S. HRG. 110–744

CLOSING LEGAL LOOPHOLES: PROSECUTING SEXUAL ASSAULTS AND OTHER VIOLENT CRIMES COMMITTED OVERSEAS BY AMERICAN CIVILIANS IN A COMBAT ENVIRONMENT

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL OPERATIONS AND ORGANIZATIONS, DEMOCRACY AND HUMAN RIGHTS

OF THE

COMMITTEE ON FOREIGN RELATIONS UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

APRIL 9, 2008

Printed for the use of the Committee on Foreign Relations

Available via the World Wide Web:
http://www.gpoaccess.gov/congress/index.html

U.S. GOVERNMENT PRINTING OFFICE

47–686 PDF WASHINGTON : 2009

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON FOREIGN RELATIONS

JOSEPH R. BIDEN, JR., Delaware, *Chairman*

CHRISTOPHER J. DODD, Connecticut	RICHARD G. LUGAR, Indiana
JOHN F. KERRY, Massachusetts	CHUCK HAGEL, Nebraska
RUSSELL D. FEINGOLD, Wisconsin	NORM COLEMAN, Minnesota
BARBARA BOXER, California	BOB CORKER, Tennessee
BILL NELSON, Florida	GEORGE V. VOINOVICH, Ohio
BARACK OBAMA, Illinois	LISA MURKOWSKI, Alaska
ROBERT MENENDEZ, New Jersey	JIM DEMINT, South Carolina
BENJAMIN L. CARDIN, Maryland	JOHNNY ISAKSON, Georgia
ROBERT P. CASEY, JR., Pennsylvania	DAVID VITTER, Louisiana
JIM WEBB, Virginia	JOHN BARRASSO, Wyoming

ANTONY J. BLINKEN, *Staff Director*
KENNETH A. MYERS, JR., *Republican Staff Director*

SUBCOMMITTEE ON INTERNATIONAL OPERATIONS AND ORGANIZATIONS, DEMOCRACY AND HUMAN RIGHTS

BILL NELSON, Florida, *Chairman*

RUSSELL D. FEINGOLD, Wisconsin	DAVID VITTER, Louisiana
ROBERT MENENDEZ, New Jersey	GEORGE V. VOINOVICH, Ohio
ROBERT P. CASEY, JR., Pennsylvania	JIM DEMINT, South Carolina
JIM WEBB, Virginia	JOHN BARRASSO, Wyoming

CONTENTS

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

CLOSING LEGAL LOOPHOLES: PROSECUTING SEXUAL ASSAULTS AND OTHER VIOLENT CRIMES COMMITTED OVERSEAS BY AMERICAN CIVILIANS IN A COMBAT ENVIRONMENT

WEDNESDAY, APRIL 9, 2008

U.S. SENATE,
SUBCOMMITTEE ON INTERNATIONAL
OPERATIONS AND ORGANIZATIONS,
DEMOCRACY, AND HUMAN RIGHTS,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:33 a.m., in room SD–419, Dirksen Senate Office Building, Hon. Bill Nelson (chairman of the subcommittee) presiding.

Present: Senators Nelson and Feingold.

OPENING STATEMENT OF HON. BILL NELSON, U.S. SENATOR FROM FLORIDA

Senator BILL NELSON. Good morning. We are having a hearing of the subcommittee of the Senate Foreign Relations Committee.

We want to take this opportunity to hear some witnesses that can bring to light a number of circumstances that are occurring, and we are very pleased to have witnesses from the Department of Justice, the Department of State, and the Department of Defense here, as well, so that they can lend their expertise to the circumstances that we find ourselves in, in order to determine an outcome of whether or not the law, in fact, is being obeyed, and, if not, what to do about it, or, if the law does not, in fact, cover some of these circumstances, should there be an additional law.

So, let me begin by recalling some stories that have been found on the newspaper pages recently.

One involves a Texas woman who was working as a civilian contractor in Iraq about 2 years ago. She was drugged, she was gang-raped, and it was gang-rape by coworkers. She was held against her will in a storage locker. And yet, her assailant remains free.

Another story involves a woman from my State of Florida. She worked in Iraq for the same American company, and she also reported that she was sexually assaulted by a male coworker, and he wasn't charged either.

More recently, just a couple of months ago, a Midwestern woman, working for the same employer, reported that she was

gang-raped by a coworker and a soldier at a U.S. base in Iraq, and her bosses, she says, discouraged her from reporting the assault.

And the latter, more recent case is among our witnesses who will testify today to help bring into sharper focus the problem of sexual assaults against American women working in Iraq and Afghanistan and the question about their ability to find justice.

Since last December, this subcommittee has been in contact with the Departments of Defense, State, and Justice, trying to ascertain the scope of this problem. And I've asked for the number of sexual assaults that have been reported to these departments. I've asked for an explanation of the policies in place to respond effectively to the allegations of sexual assault. And I've asked what steps the respective Departments are taking to ensure the full investigation and prosecution of these cases. And, although the Departments have, on the whole, certainly cooperated with my request, I think we have to paint the full picture of the number of sexual assaults perpetrated against these American contractors. And I don't believe that the respective Departments have clear policies in place to address the crimes committed by and against American contractors working alongside our troops.

We have an unprecedented number of contractors posted in war zones, and if they are victimized by their colleagues or by soldiers, then the concern of this committee is that they will end up in legal limbo. For example, the Sexual Assault Prevention and Response Office of the Department of Defense says it is not even aware of the procedures that the military criminal investigative services would take if they encountered a civilian sexual assault or harassment case, except for referring the victim to medical treatment. Now, that's disturbing. We've got a law. As a matter of fact, we've got three laws on the books. We have procedures. And it needs to be clearly understood by the Departments what the procedures are and what actions should be taken.

And that's the whole purpose of this hearing, in our oversight role of the legislative branch overseeing the executive branch.

Now, one of the other things we're going to look into is what appears to me to be an apparent lack of determination or desire on the part of the Justice Department to seek criminal prosecution of these crimes, when, in fact, the laws on the books that gives the Justice Department that authority.

And I'm told that, together, the Departments of State and Defense have referred numerous cases to the Justice Department, but, to this day, not a single one of these cases has been prosecuted. And it's certainly not that there are no legal mechanisms in place because there are. On the contrary, the Justice Department possesses the ability to prosecute such cases under the Military Extraterritorial Jurisdiction Act, M-E-J-A, MEJA. And that was passed into law in the year 2000. This law provides that persons employed by or accompanying the Armed Forces overseas may be prosecuted for any offense that would be punishable by imprisonment for more than 1 year. The law's on the books, "employed by or accompanying the Armed Forces," overseas may be prosecuted for any offense that would be punishable by a year or more. That's the law.

I am deeply concerned with the Justice Department's limited use of this law. And we're going to explore that today. I've asked the Department to address the adequacy or inadequacy of the existing legal authorities and policies; and if there's something inadequate, we need to know about it and correct it.

In the absence of criminal charges, the only option for these victims is the civil system. But, in the few cases that have come to light, the victims' employers have moved to be heard in private arbitration; and, under this system, the victims' stories never see the light of day. There's no jury, there's no public record. And so, the bottom line is, American women working in Iraq and Afghanistan continue to be sexually assaulted while their assailants go free. This injustice results simply because these crimes happen abroad within the theaters of operation of our Armed Forces.

Now, when similar crimes are committed anywhere within the United States, on or off a permanent U.S. military base or at one of our embassies overseas, the authority and responsibility to prosecute is clear. Any legal loopholes that strip American citizens of their access to justice have to be closed. And the Departments involved—State, Defense, Justice—we need to come to terms and put policies and procedures in place to ensure the close coordination and cooperation. And hopefully that's what we're going to try to get at today.

And so, what I've asked is, I've asked the second panel to start first. And this is because I wanted to set the table—we have an expert on the law, Mr. Fidell—am I pronouncing that right?

Mr. FIDELL. I prefer Fidell.

Senator BILL NELSON. Fidell. OK, Mr. Fidell. We have an expert on the law, and we'll get into that.

And then we have two very courageous witnesses who are victims, one of whom I've already referred to as the assault having taken place just 2 months ago.

So, let me start first with Mary Beth Kineston.

Ms. Kineston, tell me where you live and tell me something about your family, your marriage status, et cetera.

STATEMENT OF MARY BETH KINESTON, FORMER KBR CONTRACTOR, CAMP ANACONDA, BALAD, IRAQ

[The prepared statement of Mrs. Kineston follows:]

PREPARED STATEMENT OF MARY BETH KINESTON, FORMER KBR CONTRACTOR, CAMP ANACONDA, BALAD, IRAQ

I open by thanking Senator Bill Nelson of Florida and his staff for inviting me to come to testify before this honorable body to offer any assistance I can in helping the Foreign Relations Committee further its important legislative goals.

I hold a commercial truckdriver's license and my husband John and I joined KBR on January 19, 2004, in order to go to Iraq and work for KBR at Camp Anaconda in what appeared to be an exciting and well paying truck driving job. I would earn compensation at the rate of about $84,000.00 per year tax free when employed at KBR. When I was hired I expected that KBR would protect my physical safety while working as far as it was able and I did not expect any special treatment merely because I was a female. I am a hard worker and a loyal employee and can deal with my share of hardships as evidenced by the fact I voluntarily agreed to work for KBR at a forward combat base in a war zone in Iraq as a condition of my employment. It is undisputed I was qualified for KBR employment as a truckdriver at all times relevant. However, that being said, I was not expecting to trade my self-respect or right to be free from sexual assault as a condition of continued KBR employment

and I did not view myself as selling my human dignity as a female employee when I accepted KBR paychecks. I also expected that when I made a complaint about such activity, it would be thoroughly investigated in good faith, that is, with an intent to resolve the problem immediately, and that I would be protected from the perpetrator in the mean time. I also expected that if the laws were broken by KBR relative to gender discrimination or if I were a victim of a crime I would have an adequate legal remedy for the offense. I expected that given KBR had a sexual harassment policy and given KBR was obligated to abide by Federal civil rights laws regarding gender discrimination it would protect me in the event I was a target of any sexual misconduct by coworkers.

I can assure this committee that none of my expectations about KBR were fulfilled.

What I endured at KBR was sexual harassment by my coworkers including their openly asking me if I shaved my pubic hair or was having sex with my husband, to managers urinating in front of me when I needed restroom breaks on the job, or denying my fellow female drivers and I food and water in 120 degree heat while the men had these things and the females waited thirsty and hungry in convoy lines that were not moving for hours on end. Moreover, I was a victim of two sexual assaults, one by a third country national who raped me in the cab of my water tanker truck while I was waiting in a refilling line, and another by a coworker who decided it was funny if he put his hands down my pants, after he knew about my first sexual assault, when I was riding with him and another male employee at the base. This comes after hand-drawn pornography was placed into the cab of my truck showing a woman with her legs spread and I made numerous complaints about that and the way I was being treated to higher KBR management at Anaconda and in Houston, TX, via the Internet. My complaining about the way I was treated to to KBR male managers over 10 times ultimately lead to my termination of employment by my supervisors for retaliatory and false reasons, after a secret meeting was had between a KBR human resources officer and over 20 KBR men in attendance, including a man who sexually assaulted me, and who incredibly complained that I was discriminating against the men because I and another female were given a pickup truck to transport ourselves around the base for our own safety, after the second sexual assault took place.

With respect to my attempts at criminal prosecution of my tormentors at KBR; after I was raped in the cab of my water tanker truck, I reported the matter to a U.S. Army JAG Corps officer at Anaconda and the Military Police. I asked for help and was politely told that the JAG does not support civilians on the base. Having nowhere else to turn, I sought help with KBR management, and as noted, I was either ignored or disciplined in retaliation and nothing was done to bring the perpetrators of any sexual assault to American justice. Indeed, the investigators at KBR agree in a written report I was sexually assaulted in my water tanker truck, but then did not release their investigation results to me until after I was terminated and brought a civil action against the company which I was forced to arbitrate rather than try to a jury in open court. Although I eventually won the arbitration claim with the assistance of my counsel; I was hardly made whole for my suffering and pain.

In my opinion based upon my experience, this result is no doubt the consequence of a policy that delegates protection of the safety of civilian KBR workers by Army soldiers to KBR criminal investigators. Yet any person looking at my case can see that delegating the job of making a criminal investigation to the supervisors of criminal suspects yields predictable results as one who sits in judgment of themselves rarely finds fault. Moreover, I am not aware of any KBR–U.S. Army contract provision that requires KBR to turn over the results of its employee investigations to the Army or the Department of Justice. I am also not aware of KBR employees who commit criminal acts being subject to public confrontation and prosecution and the record of their conduct being made open for review by any nongovernment civilian institution.

The net result is that when a civilian woman has been sexually assaulted at a U.S. military base in Iraq, she has nowhere to turn for a meaningful remedy and her safety is therefore not assured. The perpetrators in my case have not spent a day of time in jail although they committed crimes on what amounts to, in effect, U.S. soil and committed acts that in this country would never be tolerated. I did not sign on for this kind of treatment when I joined KBR. I did not waive my civil rights or surrender my dignity because I wanted a job. I trust this committee has been convened to do something about the injustice people like me have experienced and I look forward to answering your questions.

This concludes my opening remarks. Thank you.

Mrs. KINESTON. I live in a city—which is a little suburb outside of Cleveland, OH. And I was born and raised in Ohio. And I'm—I've been married to my husband for 10 years, and I have three adult children. And I've been a truckdriver for over 30 years.

Senator BILL NELSON. And it was in that capacity that you were sent to Iraq as a civilian contract employee as a truckdriver?

Mrs. KINESTON. That's correct. My husband is—my husband is also a truckdriver, and we were doing team driving back and forth——

Senator BILL NELSON. Would you make sure that microphone is turned on?

Mrs. KINESTON [continuing]. Across the United States. And we both decided that if we both went over to Iraq and worked, for that large salary, we could do a lot of things. We had a couple of weddings that we needed to pay for, and we felt we could pay off our mortgage and—truckdrivers don't get retirement, so that's—was one of our—another one of our biggest goals, was to collect some money for retirement.

Senator BILL NELSON. And you went over as an employee of what company?

Mrs. KINESTON. KBR. Kellogg Brown and Root.

Senator BILL NELSON. And you were over there in about 2004?

Mrs. KINESTON. I was employed at—on January 19, 2004.

Senator BILL NELSON. Now, on a particular night in 2004, you were driving your truck. It was a water truck, and you were lined up in line to take on water——

Mrs. KINESTON. Correct.

Senator BILL NELSON [continuing]. On your tanker truck.

Mrs. KINESTON. That's correct.

Senator BILL NELSON. Tell us what happened.

Mrs. KINESTON. And it's just—it happened just to be that I had to take the night shift that night, and we had to do round-the-clock watering and supplying the troops with water on Camp Anaconda in Balad. And that particular night, I was—there's no lights on the base after dark, so everything was pretty well pitch black, except there was one light that was on the pump. And what it is, is there's a hose that goes into the Tigris River, and it—they pump it out of the Tigris River, and then they filter it, and then they put it into our trucks. So, I was on top of my water truck with a flashlight, because that's how you had to do it. And then, when you truck was full, then you had to signal the pumper to shut the water off.

Senator BILL NELSON. Let me set this setting, here. You're in a camp, which is a part of the bigger base of Balad.

Mrs. KINESTON. Correct.

Senator BILL NELSON. And at night they turn the lights out.

Mrs. KINESTON. Yeah; there's no lights on the base after dark.

Senator BILL NELSON. OK. And why was it that you were pumping your water at night?

Mrs. KINESTON. Because it was a 24-hour service that we did for the military. We had to do whatever they asked us to do. They put work requisitions in, and then that was part of the—my job, to do that.

Senator BILL NELSON. OK. So, you're up on top of your truck——

Mrs. KINESTON. Correct. And——

Senator BILL NELSON [continuing]. On top of the tank, and you're pumping this water, that's coming out of the Tigris River——

Mrs. KINESTON. Correct.

Senator BILL NELSON. Tell us what happened.

Mrs. KINESTON. And then, once it's full, then we have a ladder on the back of the truck, and I'm coming off the back of the truck, stepping down the ladder, and all of a sudden I feel these hands on my legs and on my butt. And I'm, like—you know, I turn around, like, shocked, because I didn't know what was going on, and it was the man that had his truck right behind me waiting to get filled up. And I quickly jumped off the truck and said, "No, no, no, stop." And he continued his aggression toward me, and he—I—this is a semitruck, so I had to walk all the way up the side of my truck and get into the cab of my truck, and he followed me all the way up the side of my truck and into the cab of my truck. Once the door was open to the cab of the truck, he blocked it so I couldn't shut it. And there—he pinned me down in the cab of my truck, and I can remember, I was trying to fight him off so badly that I hit the steering wheel of my truck so hard that the—my side of my arm was all black and blue for several days. And—oh, he pinned me down. He took my—I had shorts on. He took my shorts off. And he raped me.

Senator BILL NELSON. Now, this is a large truck. This is an 18-wheeler.

Mrs. KINESTON. Correct. Correct.

Senator BILL NELSON. Now, did you cry out?

Mrs. KINESTON. Oh, yes.

Senator BILL NELSON [continuing]. For help?

Mrs. KINESTON. Yeah. I was screaming and yelling the whole time. The only other person that was around that area, because we were right next to the Tigris River, was the pump operator, and he was Filipino, and I don't think he was—didn't either care to know what was going on, or he just didn't understand what was going on.

Senator BILL NELSON. And were there any other trucks in line?

Mrs. KINESTON. No.

Senator BILL NELSON. So, you were out there alone, with this one other truck behind you.

Mrs. KINESTON. Correct.

Senator BILL NELSON. Can you describe your assailant?

Mrs. KINESTON. He was a Turkish nationalist. He got a job through KBR as a subcontractor for Kulak. And they were another contracting company that they hired to come on the base and also do watering. And he was a Turkish man. He was big and bulky, and he overcame me. And they told us, when we went over there, that if you point to your wedding ring and say "married, married," that they would—sometimes they would leave you, just, alone and they would walk away. And I remember distinctly saying that over and over again, "No, no, no," and—but he wouldn't stop. He just kept—he was there for a purpose.

Senator BILL NELSON. So, he raped you and left you there in the cab.

Mrs. KINESTON. Yeah, he—I finally had—got my leg—I wiggled my legs out, and I pushed him—you know, when you climb up a

cab of a truck, you're up—you're up pretty high, so I kicked him out of my truck with my legs. And as soon as the door was cleared, I slammed the door shut, I locked the door, and I drove away.

Senator BILL NELSON. All right. Tell us what happened after that.

Mrs. KINESTON. As I was—the KBR sleeping area was on the other side of the base—I'm sorry.

Senator BILL NELSON. That's OK. We want to hear the story, and we want to hear, now, what happened in your attempts to report this rape.

Mrs. KINESTON. Well, this is part that I get upset about, because I was—they get—everybody on the base gets a radio, and that's solely for your safety. And so, I was driving back to my sleeping quarters as fast as I could, and on—I'm yelling and screaming on the radio, over and over and over again, for my supervisors or somebody to answer, and nobody would answer the radio.

Senator BILL NELSON. And all the time you are driving back to your part of the camp, the base. And once you get back there, nobody has responded on the radio to your cries for help, and then what happens?

Mrs. KINESTON. Well, when I got—when I finally did pull in, I got, like, a worker that is, like, three levels down from my supervisor, and he picks up the radio, and he says, "What do you want? You woke us up." And I said, "I need to speak to you immediately. And I need to talk to you right away." And he goes, "Well, give us a couple of minutes, and"—and he goes—I go—"Where are you?" And I said, "I'm in front of the administration office, and I need to talk to you right away."

Senator BILL NELSON. About what time at night is this?

Mrs. KINESTON. Well, it's—now it's about 10:30, quarter to 11.

Senator BILL NELSON. OK. And then what happened?

Mrs. KINESTON. Then my supervisor showed up and this other guy that answered the—finally answered the radio, and he—I just—I'm just so upset about the way they treated the whole incident. They—I told them everything that had happened, and they said, "Oh, OK, well, we'll just call security and you can tell your story again." And they called security, and I was inside this room for, like, over 2 hours, and I—and I was telling them everything. And the thing of it is, Senator, that there were women on that security team, and they didn't bring one of those women in there to listen. And I was just so embarrassed about saying it over and over and over again. And then, the—they didn't offer to take me to the hospital, they didn't offer to—they didn't even walk me back to my sleeping container. They didn't even offer to walk me back. I had to walk back, in the dark, by myself.

Senator BILL NELSON. Tell us, where was your husband?

Mrs. KINESTON. He was out on convoy. He was down by Baghdad.

Senator BILL NELSON. And so, he was gone for several days.

Mrs. KINESTON. Correct.

Senator BILL NELSON. And they had allowed you and your husband to have a residential area together.

Mrs. KINESTON. Correct.

Senator BILL NELSON. So, you had to walk back, by yourself, through the dark——

Mrs. KINESTON. Right.

Senator BILL NELSON [continuing]. Back there. How many people on the all male security team did you meet with that night?

Mrs. KINESTON. There was—I would say there was about five, all together.

Senator BILL NELSON. And did they say that they were going to do anything about this?

Mrs. KINESTON. Oh, yeah, they promised to—you know, they said, "Oh, we'll take care of it, don't worry about it. Don't worry about it, we'll take care of it." And I just went back to—you know, I was so in shock, and I just couldn't believe that I'm in a war zone, and I had to worry about my coworkers. I should have been worried about getting hit by incoming attack, and now I have to worry about being attacked by my coworkers.

Senator BILL NELSON. After you went back to your place where you lived, your residential-like trailer, what happened then?

Mrs. KINESTON. I—you know, they didn't even say, "Oh, well, Mary Beth, you go ahead and take the next couple of days off, don't worry about it. We'll—you know, you need to take"—they didn't even say that to me. I had to say to them, "Don't expect me at work tomorrow, because I'm not coming in." And so, I went back to my quarters, and I just—I think I stood in the shower for, like, 3 hours, and then I just—I just was in shock the whole—the rest of the day, the next day.

Senator BILL NELSON. Did you return to work shortly thereafter?

Mrs. KINESTON. Yeah, I was off the next day, but the following day, I did report to work. And I did all the—my whole routine, including the fact—getting back into the water line to fill up my truck. And when I was back in the water line, two trucks behind me was the man that raped me that—that very next day. So, KBR didn't do anything about anything that I had reported. And when I saw—when I saw him in the line, I immediately locked all the doors on my truck, and I got on the radio, and I don't care what KBR said, because when you hit the ground at KBR, they tell you, "You're not allowed to talk to the military, and you're—and we're a separate entity, and if you have any problems, then you call KBR." Well, I ignored that, because I was scared to death about this man being in the same water line again with me. So, I immediately got on the radio and I called for the MPs, and I called, and they were there immediately. And, Senator, they were not only there immediately, they—I told the man—I told the officer, I said, "That man that's in that truck two doors—or two trucks behind me raped me, two night ago." They immediately dragged him out of the truck, put handcuffs on him, and took him to jail.

Senator BILL NELSON. This is the Military Police at the base?

Mrs. KINESTON. Correct.

Senator BILL NELSON. What happened then?

Mrs. KINESTON. They took him to jail, and then the officer said to me—and by that time, now, all of KBR is there, and they're all saying, "Oh, what's wrong? What's wrong?" And I wouldn't even talk to the KBR people. I only did exactly what the Military Police

were telling me to do. And they said that I needed to come and give a statement of what was going on. And that's what I did.

Senator BILL NELSON. To the Military Police.

Mrs. KINESTON. Correct.

Senator BILL NELSON. All right. Now, where in the process was that reported or not reported to some authority that ought to investigate this, as to whether or not a crime has been committed? What do you know about that?

Mrs. KINESTON. All I know is that he told me—the Military Police told me that their statement—my statement—I had to—I had to identify him, also. And that, because he was a contractor, that they had the right to kick off—anybody off the base immediately, and that's what their—that's what they were going to do. I guess it had to go through the commander on the base, because he's the one that tells you that you have to get off his base.

Senator BILL NELSON. Have you ever had any indication that this was referred for prosecution against that contract employee——

Mrs. KINESTON. No.

Senator BILL NELSON [continuing]. The Turkish national?

Mrs. KINESTON. No; never.

Senator BILL NELSON. Was the Turkish national—was there done anything to him, that you know of?

Mrs. KINESTON. All I know is that he was kicked off the base, because after that day, I never saw him again, and he was doing the same job that I was doing, so—I never saw him again.

Senator BILL NELSON. In your statement, you state, "I reported the matter to a U.S. Army JAG Corps officer at Anaconda." Anaconda is your camp at Balad Air Base.

Mrs. KINESTON. That's correct.

Senator BILL NELSON. "I reported the matter to a U.S. Army JAG Corps officer at Anaconda and the Military Police. I asked for help and was politely told that the JAG does not support civilians on the base."

Mrs. KINESTON. That's correct.

Senator BILL NELSON. So, you tried to contact JAG to know your rights, and they told you that they didn't support civilians on the base.

Mrs. KINESTON. That's correct. After I was raped, the sexual harassment in my department of 45 men and two women just intensified, to the point where me and this other woman, we were, like—we didn't know where to turn, so one day after work I sought out the JAG office, and I politely waited my turn for—to talk to him, and I told him that the sexual harassment and the things that we had to go through—like, we had supervisors pulling down their pants and urinating in front of us, I had pornography put in my truck all the time, and just different things like that, that we had to deal with on a daily basis. And he politely told me that they were there to support the military, and that the only thing he could do was fly in a civilian attorney out of Baghdad.

Senator BILL NELSON. All right. Going on, you say, "Having nowhere else to turn, I sought help with KBR management, and, as noted, I was either ignored or disciplined in retaliation, and noth-

ing was done to bring the perpetrators of the sexual assault to American justice."

Mrs. KINESTON. That's correct.

Senator BILL NELSON. Is there anything more that you want to tell us about this issue that we're trying to address?

Mrs. KINESTON. Well, I just—you know, my husband and I are good people. We're—we go to church every Sunday, and we just wanted to go over there to better our lives and the lives of our children. And KBR ruined that for us. And they put up with this—the behavior of those men. And I strongly believe that they put up with it because, not only did—I was raped, but I was also sexually molested 2 months before I left KBR. And so, they just put up with that behavior, and there was nothing ever, ever done about that. They say that pornography on a military base is a firing offense, and they didn't even do that. They didn't even bring—they didn't even question the man, when I told them about the—being molested. So, it was like KBR ignored it. And then there was just nowhere else for us to turn to.

Senator BILL NELSON. This is several months after the rape, and you are in a truck with other contractor employees—men——

Mrs. KINESTON. Correct.

Senator BILL NELSON [continuing]. And you were being transported from one place to another.

Mrs. KINESTON. Correct.

Senator BILL NELSON. Tell the committee what happened.

Mrs. KINESTON. I was—before we reported to work, I went to—over to the gym to work out, and on the way over to the gym, I was walking, and two of my coworkers that I worked alongside every day with pulled up next to me and said, "Where are you going?" And I told them, and they said, "Oh, we're going there, too. Do you want a ride?" And I said, "Yeah, I'll take a ride." So, I got into the truck with them, and they were laughing and carrying on, and I kind of sensed that they had been drinking. And when—so, I just sat there, and the man next to me decided that it was going to be real funny for him to put his hand in my pants. And the minute he did that, I pushed him away and opened up the door and jumped out of the truck, and the truck was still moving while I jumped out of it.

Senator BILL NELSON. And were the others engaged in this activity?

Mrs. KINESTON. No; just that one guy.

Senator BILL NELSON. Were they all noticing what he was doing?

Mrs. KINESTON. The other guy that was in the truck was the driver of the truck, and he was just laughing, and he just—he just thought that was really funny.

Senator BILL NELSON. And both of them were Americans.

Mrs. KINESTON. Yes, sir.

Senator BILL NELSON. They were employees of KBR, as well?

Mrs. KINESTON. Yes, sir.

Senator BILL NELSON. Had they been ones that had made sexual references to you, verbally, before?

Mrs. KINESTON. No; they—nothing before that point.

Senator BILL NELSON. Did you report that incident?

Mrs. KINESTON. Yes, I did, sir. I immediately reported it.

Senator BILL NELSON. To?

Mrs. KINESTON. James Kalinowski, who was a—he was, like, the head of the camp management.

Senator BILL NELSON. And—a KBR employee.

Mrs. KINESTON. Yes.

Senator BILL NELSON. All right. And then, about a couple of months later, you left.

Mrs. KINESTON. Correct.

Senator BILL NELSON. Tell us about that.

Mrs. KINESTON. Well, I continued to do my job; but every day, they would find something wrong with me, with my job. They were really giving me a hard time every day. And one night I had come home late from work, and I parked my truck close to my sleeping quarters, because I was afraid to walk in the dark. And—after the rape, my husband would walk out to the my truck every day and walk me back to my door, because I was so afraid. And that particular night, my husband was gone, so I parked my truck kind of close to my building, and they wrote me up for that. And then, they—all the men in my department got together and had a meeting with HR representative, Aiden Stockton, and they all got together and told them that we were getting special treatment because we were females, and that they were being discriminated against. And the only special treatment I ever remember getting was that they let us use a pickup truck at the end of the day to go home from work so we wouldn't have to ride with men that were going to put their hands in our pants. And that was the only special treatment we ever got. And 4 weeks after that meeting, I was terminated. I was fired, for ridiculous reasons.

Senator BILL NELSON. They said you were speeding.

Mrs. KINESTON. I was speeding, and I passed a truck on the base.

Senator BILL NELSON. If you could just hold on, Ms. Kineston, let's talk to Ms. Leamon.

Ms. Leamon, up to this point, has been known with a pseudonym, "Lisa Smith." She has not gone public, until this morning. Her real name is Dawn Leamon.

Ms. Leamon, tell me something about your family.

STATEMENT OF DAWN LEAMON, FORMER KBR CONTRACTOR, CAMP HARPER, BASRAH, IRAQ

[The prepared statement of Ms. Leamon follows:]

PREPARED STATEMENT OF DAWN LEAMON, FORMER KBR CONTRACTOR, CAMP HARPER, BASRA, IRAQ

My name is Dawn Leamon, and I am the mother of four children and stepmother of two additional children. I am employed as a civilian contractor in Iraq. Approximately 64 days ago, two men working at my camp near Basra sexually assaulted and raped me in the civilian living area. One man is a member of the U.S. military, and the other I know as an employee of KBR.

Because of the effect it will have on my family's life and my life, it is extremely difficult to come forward and identify myself to you and the American public. I hope that by telling my story here today, I can keep what happened to me from happening to anyone else.

My two sons are in the military. Both have served in active duty overseas; one in Iraq and one in Afghanistan. Because I also wished to be of service to my country, I applied to KBR as a paramedic.

In July, 2007, I went to KBR in Houston, where I signed a 17-page employment agreement with a company called SEII, an offshore company which everyone commonly referred to as KBR. I then flew to Iraq to work as a paramedic assigned to Camp Cedar. On January 26, 2008, I was transferred to Camp Harper, near Basra. There, I was the only medical professional for 60 KBR employees.

On or about the night of February 3, 2008, they raped me. I will not go into the details here, but it was brutal and horrific. I awoke to find an unknown military personnel in my living area. I made the KBR camp manager and the military liaison to the Army aware that there was a member of the Armed Forces passed out in my living area the morning after the assault. The camp manager identified the soldier by name. They told me not to tell anyone about what had happened the night before.

Being the only medical personnel on the base, I treated myself for potential STD's. There were no procedures for sexual assault in the medical protocol guidelines.

It was over a month later, after I "officially" reported the rape, that CID informed me that the camp manager had actually been there that night. It appears that other people know more about what happened to me that night than I do. I believe that I was drugged by my assailants.

Camp Harper is small and totally isolated. Travel to and from the camp is difficult and takes several days. There are frequent rocket attacks. There are only three telephones, and I believe all communications are monitored. There is no ability to have private communication with the outside world. I believed I wouldn't be safe if I filed an official report while I was there. Anyway, there was no one there from HR or Employee Assistance to notify, or from whom to seek help. I felt completely alone, and I was scared.

I was also the only medical person there for 60 civilians, and their safety was my duty. In fact, several days after the rape, I treated the KBR rapist for an occupational injury. He gave me some photographs, one of which I bring you today. You can understand why I feared for my safety when I tell you who these men are. The man on the right is the head of security for KBR in southern Iraq; the man in the middle is the only KBR security for Camp Harper, and the other is a KBR employee. This photograph reinforced their message: Don't report anything.

Around February 21, a KBR Employee Relations investigator showed up at Camp Harper on an unrelated matter. He questioned me about general issues in the camp, and I did not feel safe reporting to him as long as I was assigned to Camp Harper. I did send him a written disclosure about the rape after I left Camp Harper and was assured I would not be returning.

I finally got to Camp Cedar on February 27, 2008. That is when I was able to contact the KBR employee assistance person I knew and tell her about the assault. She discouraged me from reporting it, saying, "You know what will happen if you do." She did give me an 800 number for KBR-sponsored counseling. I called that number; they offered six half-hour telephone counseling sessions, as long as I met their strict availability requirements. They also directed me to a Web site where I was prompted to put in my Zip Code for the rape crisis center nearest me.

By this time, a friend in Iraq told me that I should talk to an attorney. I contacted Daniel Ross's office in Texas to seek assistance and legal advice. I then retained him as my attorney.

I was contacted by a woman from KBR's Global Investigations Group. She asked to meet with me at Camp Adder on Tallil Air Base. There, she questioned me about the sexual assault and I was examined by a military doctor. The doctor stated she believed I was drugged the night I was raped. I was also taken to the combat stress unit where I met with an Air Force Captain. He was encouraging and told me I had done the right thing by reporting it. I spoke with him and with a psychiatrist. I was given medication to help me sleep and I spent the night at Adder.

The next morning I was given an eight-page statement that had been prepared for me to sign. Even though I did not have the opportunity to read the entire statement, I read enough of it to see that there were parts I did not agree with. When I brought them to KBR's attention, they said that as soon as I signed the statement, I could leave Adder and go back to Cedar. So I signed it. Although KBR promised me they would give me a copy of my statement, they refused.

I was finally able to speak with one of my sons. I wanted to know if he would be ashamed of me if I reported the rape to the military. He told me that it was not acceptable for someone who wore his same uniform to behave that way, and he would expect me to report it.

Upon my return to Cedar, I again contacted my attorney, Daniel Ross, and told him what had happened. His office sent me an e-mail with a copy of the letter they intended to send to KBR on my behalf. About 10 minutes later, KBR security con-

fiscated the computer I was using. Within minutes, I received a phone call from KBR security telling me I had to be on the next hard car to Adder.

When I got to Adder, I was taken to CID, where I was interrogated from 2 p.m. until midnight by two special agents. I advised them that I had an attorney, and they convinced me to sign a waiver of my rights. The agents were very intimidating and their questions and demeanor suggested strongly that they thought I was lying about the rape.

I had no way of communicating with anyone while I was at Adder. My movements were restricted and I was accompanied everywhere. I later learned that was because the men who had attacked me were also at Adder and their movements at the camp were unrestricted. I was told that my safety was in jeopardy if I was alone.

The next day I was questioned by CID again and given a 14-page statement and another waiver to sign. I signed them. Once again I was sent back to Cedar.

The only thing that gave me hope was knowing that I was scheduled to go home for R&R on March 23. I was supposed to leave Camp Cedar on March 22, but instead I was sent back to Adder again to give swabs for DNA.

Once again, while I was at Adder, I was accompanied everywhere by personnel from KBR and CID security. My attackers were still at Adder and still had unrestricted movement. The day I left, I was taken to the airport by security, given an assigned seat on the plane, met in Baghdad by more security personnel, and taken to Dubai. Finally I arrived home.

This experience has shattered my faith and trust in things that were part of my belief system. In the dangerous and volatile environment we inhabited as employees in Iraq, I would never have dreamed that I faced an attack from the people I was there to work with and care for. I would have thought that if KBR knew this had happened to their employees before, they would have warned me. I would never have expected that when I told the people who were supposed to be there to help me that I had been brutally violated, they would tell me to stay quiet about it or try to make it seem as if I had brought it on myself or lied about it.

Despite the fact that KBR knew that I had been raped, and knew that I was in continued physical danger in Iraq, they insisted that I return to Iraq at the end of my R&R. Since then, I have been able to seek treatment here and I have received a medical leave of absence.

In response to the committee's specific questions:

- KBR's first response upon learning that I has been sexually assaulted was to try to keep it quiet. KBR then performed an investigation that I feel was intended to blame me for being raped.
- KBR did little or nothing to restore my sense of safety after I reported being raped.
- I am unaware of any measures to date being taken against the KBR employee or the member of the U.S. military who attacked me.
- The initial response of the U.S. military representatives was that the medical personnel were kind and supportive; however, CID was intimidating, suspicious, and accusatory. CID interrogated me and essentially accused me of lying.
- My attorney, Daniel Ross, has had contact with the U.S. Department of Justice on my behalf. I intend to cooperate fully and in any way necessary to assist the Justice Department in the prosecution of this matter.
- I would prefer to defer to my attorney, Daniel Ross, to comment on the obstacles I have encountered in pursuing justice in this matter. I don't really understand all of the legalities of this situation, but I understand that there is an arbitration clause in the employment agreement I signed with Service Employees International that KBR claims prevents me from seeking civil justice in a court of law.

Ms. LEAMON. I have—I'm married and have four children of my own, and two older stepdaughters. Two of my children are both in the armed services, they've both done tours, one in Iraq, one in Afghanistan. We have a fairly military-minded family, and very patriotic, and a very overwhelming sense of duty to our community and to our country. That——

Senator BILL NELSON. And——

Ms. LEAMON [continuing]. Prompted me to attempt to work in Iraq and provide service, both to the military and to the contractors that are there.

Senator BILL NELSON. And back home your home is where?

Ms. LEAMON. I live in a small town in northern Illinois. It's called Lena, IL, just west of Rockford, IL.

Senator BILL NELSON. And your training is as a paramedic?

Ms. LEAMON. Yes. I've been a Illinois State certified paramedic for 19 years.

Senator BILL NELSON. So, you signed up as a paramedic to go and help out the war effort in Iraq, and you signed up with a contractor. And who was the contractor?

Ms. LEAMON. I signed up through KBR, and on the—our contract is actually a SEII, but I assume that that's also KBR.

Senator BILL NELSON. And tell us about your deployment. You were first deployed in Iraq where as a paramedic?

Ms. LEAMON. I was first woman paramedic in Camp Cedar, which is in southern Iraq—and it's basically the largest truckstop and the fueling point in southern Iraq—and provided medical care to the contractors and the subcontractors, and then would provide support to the military, if ever needed.

Senator BILL NELSON. And you were there some 8 months or so at Camp Cedar.

Ms. LEAMON. I was there from July until January 26.

Senator BILL NELSON. From July of 2007 until January 26 this year.

Ms. LEAMON. Of this year, correct.

Senator BILL NELSON. OK. And then, they sent you to a Forward Operating Base further south, near Basrah.

Ms. LEAMON. Correct.

Senator BILL NELSON. Tell us about that.

Ms. LEAMON. That is in a—what's known as a Red Zone. It's highly active base, as far as incoming fires. It's a very small FOB. There's approximately 60 KBR employees on that FOB. And it is part of a British—overall British base.

Senator BILL NELSON. And describe for the committee the quarters of this particular base, the structure of how the residential and office units were lined up, and describe the protections from the incoming rounds of mortars and so forth.

Ms. LEAMON. Our living quarters are similar—if you can imagine a mobile-home park, but they're all connected. There's a row of 12—similar to mini—a motel, with a interior hallway and doors that would connect into the hallway, and then you would walk to your living areas. There was four rows of these, which would comprise of eight total trailers. And the office spaces would be in the front part of the—and then there would be living quarters toward the back area. This was connected to two other camps, one being a military camp. There was T-walls, which are large protection barriers that help protect from the indirect fire that we received, that surrounded this area; however, everyone could walk through all the living—all the living areas; there was no restrictions at that point. We did have security that came down in February to help with force protection and to help get the bunkers more stable and to provide a little bit more protection for the incoming fire that we were getting.

Senator BILL NELSON. And in this particular unit, about how many people are located there?

Ms. LEAMON. In our living area, there is approximately 60 people.

Senator BILL NELSON. That's Camp Cedar.

Ms. LEAMON. At Camp Harper.

Senator BILL NELSON. I mean Camp Harper.

Ms. LEAMON. Right.

Senator BILL NELSON. And it was your responsibility to be the medical person on the scene. If anyone received any incoming rockets and were hurt, you were the person that would first administer medical treatment to them.

Ms. LEAMON. Correct.

Senator BILL NELSON. Now, tell us about how Iraqi troops had access to this area.

Ms. LEAMON. They were allowed—because of other circumstances—and I really would want to be careful, as far as jeopardizing anyone's safety or security for that area—but they were allowed to walk through that area for their particular job.

Senator BILL NELSON. OK. So, it's the end of January——

Ms. LEAMON. Correct.

Senator BILL NELSON [continuing]. Of this year.

Ms. LEAMON. Correct.

Senator BILL NELSON. And tell us what happened on this particular night.

Ms. LEAMON. The night that I was assaulted, we had had quite a bit of indirect fire throughout that week. I had only been there 7 to 10 days. I was asked by a KBR employee if I wanted to go have a drink. We did go to another KBR employee's living area. There were five of us and myself. We had a drink of Absolut vodka and orange juice mixed in a Gatorade bottle. From that point, I had been drinking, we had talked about it, people were going to get up at 4 o'clock to watch the live broadcast of the Super Bowl. So, we had just been talking. I had went to my room for a moment. I had set my drink down when I went to my room. I came back and finished my drink. At that point, I started to feel strange, but I wasn't unconscious. I just didn't feel right. I wanted to step outside and have a cigarette. I asked one of my friends if he'd go outside with me. Said it was too cold. And I stayed in that room.

At some point thereafter, we left and went to another employee's room.

Senator BILL NELSON. Now, how many people were in the room with you when you're having the vodka and orange juice?

Ms. LEAMON. There was four to five people in there, and the camp manager had stopped in and said goodnight to us and went on to his room.

Senator BILL NELSON. And this is—the room that you're in is the living quarters of one of the employees?

Ms. LEAMON. Of KBR employees, yes.

Senator BILL NELSON. Were we going to name these people, or are we not going to name the people? Is there any problem with naming—putting the specific names on these people?

Ms. LEAMON. I don't know, because of the investigation.

Mr. ROSS. I don't have any problem with it.

Senator BILL NELSON. OK. All right. Whose room had you gone to with regard to the drinking of the vodka and orange juice?

Ms. LEAMON. Jamie Smallman's.

Senator BILL NELSON. And what was his position?

Ms. LEAMON. He was a power-gen operator for—power generator mechanics.

Senator BILL NELSON. I see. He was a KBR employee.

Ms. LEAMON. Correct.

Senator BILL NELSON. OK. All right. Pick up the story from there. You said you remember then going to another person's room, but you were feeling unusual.

Ms. LEAMON. I felt very unusual, and I don't—I can't honestly say that I remember walking to that room, but I remember being in that room. In that room—and, Dan, do you want me to name——

Mr. ROSS. You can—just tell the truth, Dawn.

Ms. LEAMON. OK. In that room, William Risener was with me, as well as a Special Forces soldier that I did not know at that time. That's——

Senator BILL NELSON. And was that the room of William Risener?

Ms. LEAMON. Correct.

Senator BILL NELSON. And so, you have a memory of going down to his room——

Ms. LEAMON. Correct.

Senator BILL NELSON [continuing]. Describe how you're feeling.

Ms. LEAMON. It's more of being in a fog. And from everything that I've gone over in my head, over and over and over again, there are blurps that I remember, and there's things that I remember absolutely nothing of.

Senator BILL NELSON. OK. Well, tell us what happened next that you remember.

Ms. LEAMON. The soldier was kissing on my neck, and they—I was sitting at the end of this bed, and I remember trying to push him away, but I wasn't being forceful with anyone. I—and I remember being laid flat on my back at the end of this bed and holding onto Andy's hand. And——

Senator BILL NELSON. And Andy is William Risener?

Ms. LEAMON. Correct.

Senator BILL NELSON. OK. And then what happened?

Ms. LEAMON. I remember just thinking in my head, "He's going to make this stop. He's going to make this stop." The soldier then anally penetrated me and I screamed, and, at that time, Andy put his penis into my mouth.

Senator BILL NELSON. William Risener.

Ms. LEAMON. Right. William Risener. When he let go of my hand, I felt the whole thing was—there was nothing, at that point, that I was going to do. He was my lifeline. He was my coworker.

Senator BILL NELSON. Had he made any kind of advances to you prior to this?

Ms. LEAMON. No.

Senator BILL NELSON. OK. Then what happened? So, your scream was basically stopped when he did the act that you just described.

Ms. LEAMON. Correct.

Senator BILL NELSON. All right. Then what happened?

Ms. LEAMON. I vaguely remember them switching places. I remember feeling like somebody was holding my legs up. That's the last memory I have in that room.

I woke up the following morning in my room, in a chair, naked. The soldier that was in William's room earlier was in my bed. There was feces on him. There was blood on him. There was feces on my floor. There was feces in my mouth. I——

Senator BILL NELSON. And you were in the chair, and this soldier was in the bed.

Ms. LEAMON. Correct.

Senator BILL NELSON. What did you do then, when you looked at the soldier?

Ms. LEAMON. I had been awakened by indirect—by outgoing fire. We were sending out rockets, and that's what woke me.

Senator BILL NELSON. Was the soldier naked?

Ms. LEAMON. Yes.

Senator BILL NELSON. Where were his clothes?

Ms. LEAMON. His clothes were between the chair and the bed, as well as his weapon was next to his clothes. At that time, I went and showered. I started trying to clean up the floor. I was using Soft Scrub on the floor, and it started to fade the carpet. I had tried to wake up the soldier. He didn't wake up. I started washing things, and noticed, at that time, that he had a red mark on his penis. I don't know, because I did not look that closely, if it was a scar, a birthmark, or if he does have some type of a sexually transmitted disease.

I had to report to a meeting, which began at 7 o'clock that morning. I went to that meeting. Coming back from the meeting, the camp manager pulled me into his office. He told me, at that time, that what happened last night will never happen again.

Senator BILL NELSON. And what's the camp manager's name?

Ms. LEAMON. Larry Martin.

Senator BILL NELSON. He's the camp manager for KBR of that camp——

Ms. LEAMON. Harper.

Senator BILL NELSON [continuing]. Harper.

Ms. LEAMON. Correct. At that time, I thought he was referring to me having a drink. It's strictly against KBR's policy that you drink in theater. I offered, at that time, to pack my room up and go home. He said, "No; that's OK, sweetie, we'll take care of it. It'll be all right." And I'm, like, completely confused by his behavior, at this point. I said, "Larry, he's still in my room." And that is when the soldier was identified to me as a first name of Jason. Larry said, "Jason's in your room? He just broke my trust."

At that point, I went back to my room to try to get him out of my room. Larry went to get the liaison for the military. I came out of my room, and the liaison from the military talked to me, and he said, "Dawn, don't worry about it, I'll take care of it. Just—we're not going to speak of this ever again. I'll take care of it."

Senator BILL NELSON. This is the camp manager.

Ms. LEAMON. That was the military liaison that said that, that he was going to take care of it and I was not to speak of it.

Senator BILL NELSON. Is he a KBR employee?

Ms. LEAMON. No.

Senator BILL NELSON. No. This is——
Ms. LEAMON. Military.
Senator BILL NELSON [continuing]. Military.
Ms. LEAMON. Correct
Senator BILL NELSON. Do you know who he is?
Ms. LEAMON. I know his first name, of "DJ." I don't know any——
Senator BILL NELSON. So, he was part of the military contingent that was there.
Ms. LEAMON. Was there.
Senator BILL NELSON. Yes.
Ms. LEAMON. Correct.
After that timeframe and that morning, I never had conversation with Jason again. I did speak with DJ on a daily basis, not regarding that incident, but regarding operations of daily camp living. I did speak with William Risener on a daily basis. I did treat him for an occupational injury.
Where I was, to leave that camp you had several factors—first of all, you could only get a flight 3 days a week. On those 3 days, if incoming or security issues were concerned, they would not fly. With it being springtime in Iraq, and our winter was incredibly dry this year, the dust storms were horrendous, which also would prevent flying.
The T sites normally are slated for 11 paramedics. Currently, we have five, to cover all of the T-site camps in southern Iraq. There was difficulty getting a replacement for me. There was also difficulty for me to get out of Iraq.
The reason I want you to be aware of this is to understand, to report this, first of all, I didn't have Military Police there. We had British. And even for me to take a KBR employee to the British hospital, you have to receive the permission to get care for them.
It is very easy in that part of Iraq for someone to disappear. It's very easy for accidents to happen. My communications were, I believe, monitored for—not as an intentional act against me, but for safety for the camp. I believe all the communications were monitored.
Senator BILL NELSON. So, other than talking to the camp manager and the military liaison——
Ms. LEAMON. It was never brought up again——
Senator BILL NELSON [continuing]. It was never——
Ms. LEAMON [continuing]. Until I left.
Senator BILL NELSON [continuing]. Brought up again.
Ms. LEAMON. Until I left.
Senator BILL NELSON. And you had nobody that you could report this to, and you feared—since there were no Military Police there—and you just described that it was the British——
Ms. LEAMON. Correct.
Senator BILL NELSON [continuing]. And so, you were fearful of reporting this to someone that was there, because—tell us again what you just said, about people disappearing.
Ms. LEAMON. I could disappear, in a heartbeat. I could fall, I could have a head injury, and it could be explained, it could be logically explained with the type of activities we have there.

Senator BILL NELSON. And, for example, tell the committee how it would be logical to explain the disappearance of some—of an American from a Forward Operating Base.

Ms. LEAMON. Because of the type of base that it is, because of the purpose of that base, because of the area that we're in, and because of the amount of indirect fire and the unrest in Basrah, in general, just the—that specific environment and the lack of organization, as far as structural organizations compared to other bases similar to Camp Adder or Anaconda or—you know, where you have all the departments available to your services.

Senator BILL NELSON. So, you tried to get out of Camp Harper, and it took you how many weeks to be flown out of Camp Harper?

Ms. LEAMON. I was able to get out of Camp Harper by complaining about wearing my vest. We were in bulletproof vests and helmets from 5 o'clock in the morning until midnight. My vest weighed between 35 and 45 pounds. Trying to operate in that was very difficult on me.

Senator BILL NELSON. And you were the only paramedic——

Ms. LEAMON. I was the only paramedic there.

Senator BILL NELSON [continuing]. In Camp Harper.

Ms. LEAMON. Correct.

Senator BILL NELSON. And so, they had to get a replacement for you.

Ms. LEAMON. They had to have someone come down for me. I had to spend 2 days with that person, at least. And then I was allowed to leave.

Senator BILL NELSON. OK. And how long did it take you to get out of Camp Harper?

Ms. LEAMON. My replacement came in, the end of February. My travel process out of Camp Harper was—we did fly to Kuwait. From Kuwait, we fly up to Baghdad. You spend the night in Baghdad. And then you fly to Camp Adder. And then I traveled by a hard car, which is an armored vehicle, over to Camp Cedar.

Senator BILL NELSON. OK. And tell us what happened at Camp Cedar.

Ms. LEAMON. At Camp——

Senator BILL NELSON. This is 3 weeks later, after the assault?

Ms. LEAMON. Correct.

Senator BILL NELSON. OK.

Ms. LEAMON. When I got to Camp Cedar, I—my manager was there. She's normally stationed at Camp Adder. I told her that I was assaulted and that I just needed to talk to Employee Assistance, that I just needed to deal with this. In speaking with Employee Assistance, there was a concern, as far as reporting it at all, because of the history of harassment and retaliation on KBR's part. I went back and talked to my manager a little more, without giving her specific details, and then wrote a revised statement to Employee Relations explaining my assault.

Employee Relations had me sign documents stating that I would not speak of this to anyone. If I spoke of it, I would be terminated.

Senator BILL NELSON. This is a KBR employee——

Ms. LEAMON. KBR Employee Relations. He—over a couple of day's time, he did have e-mail conversations with me, requesting additional information, requesting a different—different informa-

tion regarding the camp, the situations at Camp Harper. I did provide those statements for him. When I asked him what was going to happen, he couldn't give me an answer at that time.

Later, I was contacted by Global Investigations, which is also a part of KBR. I was asked to come over to Camp Adder and speak with them. I explained the situation. Because the T sites were so short on paramedics at Camp Cedar, I was only the only paramedic there.

Senator BILL NELSON. So, while all this is going on, you're still performing your duties——

Ms. LEAMON. Absolutely.

Senator BILL NELSON [continuing]. As a paramedic.

Ms. LEAMON. Absolutely.

Senator BILL NELSON. OK. Did they transport you by vehicle over to Camp Adder?

Ms. LEAMON. Yes; they did.

Senator BILL NELSON. OK. And what happened over there?

Ms. LEAMON. At Camp Adder, Global Investigations started by asking several questions regarding the statement I wrote to Employee Relations, and asking for specific details. And we spent quite a bit of time that day talking, and then she—I had asked to be able to have a physical exam to rule out any sexually transmitted diseases, even though I had treated myself, while in Harper, for potentially sexually transmitted diseases.

Senator BILL NELSON. By taking what?

Ms. LEAMON. Doxycycline, which is an antibiotic.

Senator BILL NELSON. I see. So, you did not see a doctor until you got over to Camp Adder.

Ms. LEAMON. Correct.

Senator BILL NELSON. All right. Tell us about that.

Ms. LEAMON. Global Investigations said that it would be much better if I was seen by the military doctor; that way, it would not cost me anything. I had asked to be able to do it on my way, on—I had a scheduled vacation coming up, if I could have an extra day to have it done at the International Clinic. She advised it would be much better for me to be seen at the military—and that way, we would get the results and have everything right there, and it also would be no cost to me.

I agreed to do this. They took me over for coffee. They took me over to the Combat Support Hospital. And she went in and talked to the officer in charge of the Combat Support Hospital. I stayed outside. Approximately 30 to 40 minutes later, the investigator, as well as a physician, came out and spoke with me. The physician brought me into the clinic. We spent a great deal of time talking. She was very kind. She asked me to describe what happened. And she spent a lot of time telling me that, from what I could describe to her, that it sounded like I had been drugged and that I was raped.

Senator BILL NELSON. This is the doctor?

Ms. LEAMON. This is the doctor.

Senator BILL NELSON. And it is a military doctor at Camp Adder.

Ms. LEAMON. Correct.

Senator BILL NELSON. And this is now more than 3 weeks after the assault.

Ms. LEAMON. Yes; this is closer to almost 5 weeks.

She's—she was very, very supportive of my situation. She encouraged me, at that time, to report it, as well, further. She asked if I would see the combat stress personnel. And she did her exam and collected her samples.

Since the assault, I sleep about an hour to an hour and a half at a time, if that long. The physician wanted me to see combat stress in order to get some medication to go to sleep, at least to get one night—good night of sleep. I did follow those steps. I did speak with combat stress. I did see combat stress psychiatrist, who prescribed four tablets, for me to sleep that night.

What I found out after that was slightly disturbing, because when I went to fill my prescription, the military has my Social Security number incorrect, so I don't know if I'll ever see my test results, because of a numerical error. They said not to worry about it at that time.

Senator BILL NELSON. Do you still have trouble sleeping?

Ms. LEAMON. Yes. I sleep—I sleep—usually every other day I'm able to sleep. I sleep for about an hour to an hour and a half. I wake up. I work really hard at convincing myself to at least stay in bed, and that seems to be quite a challenge these days.

Senator BILL NELSON. In your written testimony, which, of course, all of your written testimony will be a part of the record of this committee, you say, "When I got to Adder, I was taken to CID"—Criminal Investigative Division—"where I was interrogated from 2 p.m. until midnight by two special agents."

Ms. LEAMON. Correct. That was not that day. This was Global Investigations, which is KBR's investigators, that arranged the stay of interrogation. I was allowed to go to sleep that night. And the following morning, I was to meet with Global Investigations again at 8 a.m. At 6:15, Camp Adder was hit with indirect fire, killing three American soldiers, injuring a subcontractor. I went over to the KBR clinic once we were cleared to leave the bunkers. I opened the clinic to provide medical care to the KBR contractors.

Once that was taken care of, I did go back and speak with Global Investigations. They provided a statement for me to sign. They—I had a question about some inaccuracies in it, and their response was, "The sooner you sign this, the sooner you can get back to your base, where you feel safe."

I asked her if I could have a copy of the statement. I had a photograph that she wanted, which I had back at Camp Cedar. She said, "As soon as I give her the photograph, she would bring it—she would send me a copy of my statement."

I returned to Camp Cedar that day. I did contact Mr. Ross and explain to him further what had gone on. I believe, at that time—and I'd refer to Dan to—he sent a letter to KBR.

Senator BILL NELSON. And who is Mr. Ross?

Ms. LEAMON. Dan Ross is my attorney. I contacted him, at the recommendation of a friend in Iraq, just to try to ensure some protection for me.

That day, after I—Dan had sent a proof of this letter to me, I opened it on my computer. There was a correction that needed to be made on a date. I made the correction, sent it back. Within 20 minutes, KBR security came and confiscated my computer.

Senator BILL NELSON. Now, this is at Camp Cedar.

Ms. LEAMON. This is at Camp Cedar.

Within minutes of my computer being confiscated, I received a phone call from the head of security who is stationed at Camp Adder, stating I needed to be on the next hard car, that he was sending my manager over to relieve me.

I went to Camp Adder. The head of security met me at our service center, put my belongings in his vehicle, and delivered me to CID.

Senator BILL NELSON. And that's where you pick up, here, "When I got to Adder, I was taken to the Criminal Investigative Division"——

Ms. LEAMON. Correct.

Senator BILL NELSON. Now, this is military.

Ms. LEAMON. This is the military.

Senator BILL NELSON [continuing]. "Where I was interrogated from 2 p.m. until midnight by two special agents. I advised them that I had an attorney, and they convinced me to sign a waiver of my rights. The agents were very intimidating, and their questions and demeanor suggested strongly that they thought I was lying about the rape"——

Ms. LEAMON. Correct.

Senator BILL NELSON.—end of quote.

Ms. LEAMON. Correct.

Senator BILL NELSON. Pick up, there.

Ms. LEAMON. We—at midnight, they took me to a room that was in the military housing area. It was an empty room between the two special agents. They told me that this was for my protection, as the suspects from Camp Harper were on the camp and had free motion at that time, which means they could move around the base as they wanted to.

I was advised—I am a smoker—I was advised, if I wanted a cigarette, to go the bunker and stand by the bunker; that way, I would not be seen.

They told me they could come back at 10 a.m. to pick me up. And they did. Actually, he was there a little earlier. We went back to their office. We reviewed a 14-page statement. He asked some more questions and asked me to handwrite a narrative and once I completed that, I could go back to Camp Cedar again.

I completed that and was picked up by security and taken to a hard car and taken to Camp Cedar, continuing to do my job, now without a computer, continuing to be accountable to be at meetings and briefings and do new-hire orientation, even though I was not aware of the meetings, briefings, or the orientations. I would receive a phone call, "You were supposed to be here 5 minutes ago. Why aren't you here?"

I had requested, from KBR, multiple times, as to what was going to happen next, "What's going on?"—never to receive a response.

Senator BILL NELSON. So, you were back at Cedar, and then they take you back to Camp Adder to give more swabs for DNA?

Ms. LEAMON. Correct.

Senator BILL NELSON. And all along, your attackers are freely moving about at——

Ms. LEAMON. Camp Adder.

Senator BILL NELSON [continuing]. Camp Adder.

Ms. LEAMON. Correct.

Senator BILL NELSON. But, everyplace you going on Camp Adder, you are accompanied by KBR security and military personnel from the Criminal Investigative Division.

Ms. LEAMON. That is correct.

Senator BILL NELSON. But, you saw no attempt to be curtailing the movements of your assailants.

Ms. LEAMON. Correct.

Senator BILL NELSON. And then they decide to send you home?

Ms. LEAMON. I had a scheduled vacation, and I was allowed to leave, as scheduled.

Senator BILL NELSON. And so, now you are still an employee of KBR, and you're supposed to go back to Iraq.

Ms. LEAMON. I was supposed to report back to Iraq on Sunday. If I did not report, as scheduled, I had to sign a waiver saying I would not be paid my vacation time, nor would I be reimbursed my ticket home.

I contacted Human Resources during the week, last week, requesting an extension to my R&R. They advised that I needed a medical leave of absence and would need a physician's document signed.

I did go to an emergency room to speak with a physician, because we have not been able to get appointments set up, as of yet, with somebody who has experience with PTSD and sexual assault.

The emergency room physician said, "Well, you have PTSD." And—but refused to sign the KBR document saying, you know, that I could not go back to Iraq.

I notified Human Resources of this, and asked them—there's a procedure you must go through to get an extension; I asked them if, at this time, I could request the extension. I was allowed to do that. The extension was granted for 10 days. And later that afternoon, we were notified that I was put on medical leave of absence.

Senator BILL NELSON. Are you planning to go back to Iraq?

Ms. LEAMON. My heart would love to go back and support our military. My heart would love to go back and take care of the people at my camp, at Camp Cedar. I can't go back with KBR. I can't do that.

Senator BILL NELSON. And, thus far, you don't have any indication that your assailants are being prosecuted.

Ms. LEAMON. I do not know what the status is of any of the investigations.

Senator BILL NELSON. Now, you received some photographs. When did you receive them?

Ms. LEAMON. Prior to leaving Camp Harper, my camera had been broken. We had some indirect fire that caused significant damage close to a living area. I had asked William Risener, who had been taking pictures, if he would transfer those to my flash drive so that I could take them home. He transferred those photographs, along with a photograph that was fairly undesirable of me, as well as several photographs of him, as well as a photograph of the camp—or the head of security—the head of the camp security and another KBR employee.

Senator BILL NELSON. The undesirable photograph of you having been taken, on the night of the——

Ms. LEAMON. Assault.

Senator BILL NELSON [continuing]. Assault.

Ms. LEAMON. Correct.

Senator BILL NELSON. And there was another photograph of another male that was in bed with two Bosnian women?

Ms. LEAMON. Those—that's CID's photographs that they showed me, asking me to identify people that——

Senator BILL NELSON. I see, unrelated to the photographs you got.

Ms. LEAMON. Correct.

Senator BILL NELSON. The Criminal Investigative Unit, had a separate photograph of——

Ms. LEAMON. They had——

Senator BILL NELSON. Was it one of the assailants?

Ms. LEAMON. They had a picture of the camp—the military camp liaison in bed with the Bosnian women.

Senator BILL NELSON. And the Bosnian women are people that are employees——

Ms. LEAMON. Of KBR.

Senator BILL NELSON [continuing]. Preparing the food.

Ms. LEAMON. Correct.

Senator BILL NELSON. Tell me—one of these photographs—we have a blown-up copy. Now, this is the photograph that you received that was on your—what do you call it?

Ms. LEAMON. Thumb drive.

Senator BILL NELSON [continuing]. Thumb drive.

Ms. LEAMON. MB stick.

Senator BILL NELSON. And this happened to show up on this that you were given——

Ms. LEAMON. Correct.

Senator BILL NELSON [continuing]. By whom?

Ms. LEAMON. By William Risener, my——

Senator BILL NELSON. William Risener, your assailant. And can you describe that photograph for us, who they are and what they're doing?

Ms. LEAMON. The person—I don't know which you want, from right to left—the person with the cap on, saying that's the right, is a KBR employee and just a plumber.

Senator BILL NELSON. And this is at Camp——

Ms. LEAMON. Harper.

Senator BILL NELSON [continuing]. Harper, where the assault took place. So, they gave you this thumb drive of photographs before you left to come home, or was this when you left——

Ms. LEAMON. When I left——

Senator BILL NELSON [continuing]. Camp Harper——

Ms. LEAMON. Camp Harper——

Senator BILL NELSON [continuing]. To go to Camp Cedar.

Ms. LEAMON. Yes.

Senator BILL NELSON. OK. And the fellow in the middle?

Ms. LEAMON. He's security for Camp Harper.

Senator BILL NELSON. Is he the chief of security?

Ms. LEAMON. We had one security person there, at the time.

Senator BILL NELSON. Yes, OK.

Ms. LEAMON. And the one at the end is——

Senator BILL NELSON. With his hands cupped over his ears.

Ms. LEAMON [continuing]. Is security for the T sites, the head of security for the T sites at Camp Adder.

Senator BILL NELSON. And are any one of those your assailant?

Ms. LEAMON. No, sir.

Senator BILL NELSON. No; they're not there. So, these are all employees at Camp Harper——

Ms. LEAMON. The two—the one in the middle and the one on the right with the hands over his mouth are at Camp Harper.

Senator BILL NELSON. And the one at Camp Cedar with his hands over——

Ms. LEAMON. Camp Adder.

Senator BILL NELSON [continuing]. At Camp Adder, with his hands over his ears, is——

Ms. LEAMON. Is the head of security.

Senator BILL NELSON. The head of security?

Ms. LEAMON. Correct.

Senator BILL NELSON. And so, we've got a security guy in the middle, a security guy with his hands over his ears, and we have a KBR contractor with his hands over his mouth.

Ms. LEAMON. Correct.

Senator BILL NELSON. Now, what does that picture suggest to you?

Ms. LEAMON. That picture says not to say anything. That picture has——

Senator BILL NELSON. See no evil, hear no evil, speak no evil.

Ms. LEAMON. And while I was at Camp Harper, I had talked to the person in the middle, and he said—I don't know that he had any knowledge of what happened to me, but he did have knowledge of other things, and he told me, "If you don't say anything, everything'll be fine. Just don't say anything."

Senator BILL NELSON. And he actually said that to you——

Ms. LEAMON. Yeah.

Senator BILL NELSON [continuing]. Before you left Camp Harper.

Ms. LEAMON. Yeah.

Senator BILL NELSON. What did you hear about other sexual assault cases that had received media attention?

Ms. LEAMON. I had not really been aware of any other sexual assault cases that had any media attention until after I had returned to Camp Cedar and had talked to Dan Ross a couple of times. At that time, he advised me that there were similar cases. And at that time, he also——

[Pause.]

Ms. LEAMON. And I looked up—and I looked up information on Jamie Lee Jones, who also was assaulted and raped and drugged in Iraq, working also for KBR.

I had the opportunity to meet Jamie Lee and her attorney last week, when I returned home from Iraq. We haven't had much of an opportunity to speak to each other, other than to say hello and give each other a hug.

And then, I met Mary Beth yesterday, which——

[Pause.]

Senator BILL NELSON. All right. I just want you to know, you two ladies, this is very courageous of you to step forward.

And, Mrs. Leamon, you have only done one interview, by radio, and you did it under the pseudonym of "Lisa Smith," and it's very courageous for you to step forward.

And I'm hoping that out of the drama of you all telling what has happened to you, that we can start to focus—that we've got a problem, that justice is breaking down here.

All right, Mr. Fidell, what do you think about all this?

Mr. Fidell is a senior partner in the firm of Feldesman Tucker Leifer and Fidell, here in Washington.

STATEMENT OF EUGENE R. FIDELL, ESQ., PRESIDENT, NATIONAL INSTITUTE OF MILITARY JUSTICE AND SENIOR PARTNER, FELDESMAN TUCKER LEIFER FIDELL, LLP, WASHINGTON, DC

Mr. FIDELL. Senator, this is the first opportunity I've had to become aware of the facts that these ladies have testified about. As a husband and father of a daughter, I'm very offended by these tales. As a taxpayer, I'm very concerned about the environment that obviously exists in Iraq right now with respect to the enormous number of government contractor personnel who are there. That raises issues of a different nature, I think, from the ones that the subcommittee is concerned with this morning, but it would be absurd not to say that it makes me wonder whether we should have the vast numbers of private individuals there, civilian employees there, without a workable system of law.

It's very interesting. In the Hamdi case, a couple of years ago, Justice Sandra Day O'Connor said that, famously, the war on terror is not a blank check for the executive branch. And, similarly, the existence of a wartime environment in Iraq is not a blank check for private employers.

And what strikes me is that, effectively, there's a complete breakdown of law that ought to be protecting people, such as these ladies. I'm very, very concerned about it.

One of the things that a system of law entails and requires is that it instill a sense of public confidence. There has to be public confidence in the administration of justice. That means public confidence in the administration of the criminal law, it means public confidence also in the administration of civil remedies. These ladies have invoked, I gather, a variety of civil remedies. I'm not here to address that. But, it is a challenge, because people and corporations, and employers have legal relationships that the law has to provide a framework for, even in environments as odd and unusual as Iraq. And if there isn't such a framework, then we might as well all be back in the kind of "road-warrior" environment to—I'm showing my age here, but there was an old movie with that title. It depicted conditions that were basically chaotic. And that's what I'm taking away from this.

So, the question then is, What should the United States Senate and House of Representatives do, faced with evidence like this? Obviously, neither house should be calling balls and strikes, in terms of pronouncing any corporation guilty or any individuals guilty. This isn't a court of law, and that would be a misuse of the legisla-

tive function. Instead, what I understand the subcommittee to be doing is gathering facts to try to identify deficiencies in the legal arrangements.

What I wonder about is why the criminal justice piece of this part of our legal framework appears to have malfunctioned so gravely. As I listened to the testimony, it seemed to me that the conduct described would have fallen within the criminal sweep of the Uniform Code of Military Justice, on the premise that the perpetrators were serving with or accompanying an Armed Force in the field in time of a declared war under the current legislation or a contingency operation.

I didn't get the dates on the first lady's——

Senator BILL NELSON. 2004.

Mr. FIDELL. 2004. That was before the 2006 amendment.

Senator BILL NELSON. That's correct.

Mr. FIDELL. There——

Senator BILL NELSON. But, the latter, which was just 2 months ago, clearly is within the statute of which the Uniform Code of Military Justice could apply.

Mr. FIDELL. That's correct. And if I can play lawyer for a second, it has occurred to me that the 2006 amendment may actually not have been necessary if the Averette case, which I refer to in my prepared statement, was—would no longer command the majority on the U.S. Court of Appeals for the Armed Forces.

Senator BILL NELSON. Was that the Iraqi Canadian citizen?

Mr. FIDELL. No. This is the case, going back to the Vietnam war, where the then-Court of Military Appeals held that a declared war was necessary to exercise jurisdiction over a person serving with or accompanying an Armed Force in the field. It has occurred to me that a creative military prosecutor or commanding officer might have tried to bring criminal charges under the UCMJ with respect to that offense, even before Senator Graham's amendment became law. But, that's retrospective. I think the interest here should be prospective.

Senator BILL NELSON. But——

Mr. FIDELL. I am concerned about——

Senator BILL NELSON [continuing]. Clearly, Mrs. Kineston's case in 2004, would have been covered by the law that was passed in the year 2000——

Mr. FIDELL. Yes; the Military——

Senator BILL NELSON [continuing]. Which was——

Mr. FIDELL [continuing]. Extraterritorial——

Senator BILL NELSON [continuing]. The MEJA——

Mr. FIDELL [continuing]. Jurisdiction Act, yes.

Senator BILL NELSON [continuing]. Case. And yet—we'll get testimony over here, but it appears that not one of these cases has been indicted or convicted that involve sexual assault——

Mr. FIDELL. I don't get it.

Senator BILL NELSON [continuing]. Of a civilian woman.

Mr. FIDELL. I don't——

Senator BILL NELSON. And yet, the law——

Mr. FIDELL [continuing]. Get it.

Senator BILL NELSON [continuing]. Has been there since 2000.

Mr. FIDELL. Right.

Senator BILL NELSON. So, what do you think about these MEJA prosecutions?

Mr. FIDELL. I've been baffled why there hasn't been more activity under that statute. That doesn't mean that every case should be brought to a grand jury, it doesn't mean that every case should be brought to court, but with this amount of sheer industrial activity and human interaction, an enormous workforce in a clearly wild environment—I think we can all agree on that—with, certainly, some measure of criminality in an otherwise, by the way, probably very law-abiding workforce. I think we can all stipulate that, overall, it's a very law-abiding workforce, just as the military is a very law-abiding workforce. But, there's some level of criminality that occurs when the numbers of people involved go up.

There is a real problem in transparency. Transparency is one of the components of public confidence in the administration of justice. And accountability. Somebody who has been in a position to make the decisions as to who should get prosecuted for what during the campaign in Iraq has some explaining to do. And it may be that there is a perfectly good explanation, Mr. Chairman, for the lack of activity. That may well be.

Senator BILL NELSON. Well, we're going to——

Mr. FIDELL. However, I think it is incumbent on the authorities to explain what has been done with particular respect to these cases and more broadly.

The one other thing that I wanted to mention, and then I'd be happy to respond to any questions. I was disturbed at what seemed to be a gap in the victim and witness arrangements. The military has quite a robust victim and witness assistance program. I've represented people in trouble with the military, and I've been impressed by the tenacity of the victim and witness program. There are many skilled, wonderful people who are dedicated to helping women and men who find themselves victims of assaults or other misconduct.

If there is a gap in the reach of the victim and witness program such that individuals such as these ladies or other people who are part of the civilian workforce in Iraq are assaulted by individuals who are subject to Federal criminal law, one way or the other, whether it's the Special Maritime and Territorial Jurisdiction, whether it's MEJA, or whether it's the UCMJ, there has to be a coterminous program of victim and witness protection. You can't have a sort of no-man's land where—like the old insurance ad, you know, "You're in good hands"—you're in no hands at all if you're a victim. That is something that, if I were advising the committee, I would suggest some attention be paid to.

[The prepared statement of Mr. Fidell follows:]

PREPARED STATEMENT OF EUGENE R. FIDELL, PRESIDENT, NATIONAL INSTITUTE OF MILITARY JUSTICE AND PARTNER, FELDESMAN TUCKER LEIFER FIDELL LLP, WASHINGTON, DC

Mr. Chairman and members of the subcommittee, it is an honor to appear before you as you consider the legal regime for prosecuting offenses by United States civilians in Iraq and Afghanistan. My initial remarks will be quite brief, but I will, of course, be pleased to respond to your questions as you examine the issues.

This hearing could not be timelier. Only last week, news broke of a case in which, for the first time in decades, a civilian was charged with an offense under the

Uniform Code of Military Justice.[1] Although the case involves a charge of stabbing rather than sexual assault,[2] the putative victim in that case was not a U.S. citizen, and indeed, the accused himself is a dual Iraqi-Canadian citizen, it nonetheless demonstrates the need to ensure a workable system of criminal justice wherever our forces are called upon to serve.

Our current arrangements for prosecuting crime in Iraq and Afghanistan by individuals other than uniformed military personnel are complex, incomplete, and uncertain. Although our workforce in those countries is, I am sure, overwhelmingly law-abiding, we cannot afford to allow anyone to have the sense that "anything goes." That means we have to have a meaningful, pervasive criminal law regime, especially because the Iraqi legal system continues not to inspire confidence. This includes not only having laws on the books that will sweep in those kinds of criminality that we can reasonably anticipate, but also having an executive branch that is committed to the proposition that those laws will be enforced. This does not mean every offense that comes to light will inexorably lead to a trial, but it does mean that every offense that comes to light will be given careful consideration just as we expect our United States attorneys to do for Federal offenses committed within the country.

Congress has long attempted to subject a variety of categories of persons to military justice. Some of its efforts have run into constitutional obstacles. For example, in the 1950s, the Supreme Court held unconstitutional provisions of the then-new Uniform Code of Military Justice ("UCMJ") that were used to prosecute former GIs[3] as well as military dependents[4] and other categories of civilians. The basic theory was that courts-martial denied these civilians a variety of constitutional rights that all of us enjoy in Federal criminal cases, such as indictment by grand jury, trial by a jury of peers, jury size and unanimity, and trial before an article III judge with life tenure.

One provision in the UCMJ purported to extend court-martial jurisdiction to persons "serving with or accompanying an armed force in the field in time of war."[5] This seemed suitable for the prosecution of civilian contractors in Vietnam, but the Court of Military Appeals, as it was then called, held in *United States* v. *Averette,*[6] that that provision could apply only in time of a declared war, and of course our Nation's last declaration of war occurred in World War II. *Averette* was never reviewed by the Supreme Court because, at the time, there was no right to seek a writ of certiorari from the Supreme Court. Congress finally rectified that particular omission 25 years ago. Whether *Averette* was correctly decided is water over the dam, since Congress, of course, has subsequently made other pertinent changes in the statute. I would say, however, that it is not at all clear to me that the present court of appeals for the Armed Forces would come out the same way as their predecessors did in *Averette* if the same question were ever presented. To my knowledge, no military commander or prosecutor ever sought to test whether the case was still good law.

The various gaps created by the Supreme Court's decisions and *Averette* persisted for decades. Finally, in 2000, the second circuit, in the course of setting aside a conviction in a particularly egregious case for lack of special territorial and maritime jurisdiction, directed its clerk to send a copy of its ruling to committees of the House and Senate.[7] This spurred Congress to action, resulting in passage of the Military Extraterritorial Jurisdiction Act of 2000,[8] which created Federal district court jurisdiction over a variety of offenses that would otherwise elude Federal criminal prosecution.

Inexplicably, MEJA has been virtually a dead letter. It took a very long time for the Department of Defense to generate the implementing regulations, and even then, as far as I have been able to determine, the Justice Department has seemed to take little interest in bringing to trial cases that fall within MEJA.

In 2006, Congress finally got around to fixing the part of the UCMJ that was at issue in *Averette.* The specific "fix" was to amend article 2(a)(10) to cover not only those who serve with or accompany an armed force in the field in time of declared war, but also those who do so during a statutorily-define "contingency operation,"

---

[1] Michael R. Gordon, "U.S. Charges Contractor at Iraq Post in Stabbing," N.Y. Times, Apr. 5, 2008, at A3, col. 6.
[2] See Charge Sheet, *United States* v. *Alaa Mohammad Ali* (Mar. 27, 2008).
[3] *United States ex rel. Toth* v. *Quarles,* 350 U.S. 11 (1955).
[4] *Reid* v. *Covert,* 354 U.S. 1 (1957).
[5] Art. 2(a)(10), UCMJ, 10 U.S.C. § 802(a)(10).
[6] 19 U.S.C.M.A. 363, 41 C.M.R. 363 (1970).
[7] *United States* v. *Gatlin,* 216 F.3d 207 (2d Cir. 2000).
[8] 18 U.S.C. § 3261 et seq.

a defined term[9] that covers the operations in Iraq and Afghanistan. Here too, however, the Defense Department was slow in issuing implementing instructions. Secretary Gates finally issued a memorandum setting forth the general framework last month, but a good deal of the necessary fine-print guidance remains to be issued. For example, which kinds of UCMJ offenses will be prosecuted when committed by a civilian?[10] What does "in the field" mean, or "serving with or accompanying"?[11] Are embedded journalists covered? CIA personnel? Non-U.S. citizens? Iraqi nationals? Is the 2006 amendment to article 2(a)(10) constitutional? Early news reports suggest that the defense in the *Ali* case will raise a constitutional objection.

Your letter of invitation indicated that the subcommittee is immediately concerned with sexual assault allegations against U.S. citizens serving as government contractors in Iraq and Afghanistan. I understand from your letter, Mr. Chairman, that some of these allegations relate to incidents that reportedly occurred as much as 3 to 5 years ago, and that not one such case has been prosecuted thus far.

Obviously, I take no position as to the merit or lack of merit of any particular allegation.

That said, and passing over the fact that some of these matters may well, by now, be barred by the statute of limitations, it seems to me that Congress can take the following steps—on top of energetically exercising its oversight and appropriations powers[12]—to ensure that sexual assaults committed by U.S. Government contractors are prosecuted:

1. The definitional section of MEJA, 18 U.S.C. § 3267, could be amended to sweep in any U.S. citizen (or green card holder) who is working overseas as an employee or contractor of any Federal agency.

2. Congress could give extraterritorial effect to more of title 18, so that sexual or other offenses committed outside the country by U.S. citizens or green card holders could be prosecuted in Federal district court.

3. Congress could expand even further the reach of the Special Maritime and Territorial Jurisdiction, even beyond the 2001 expansion.[13]

4. Congress could create a Director of Overseas Prosecutions in the Department of Justice with authority to determine whether offenses by U.S. citizens overseas should be prosecuted, and if so, whether that prosecution should occur in a Federal district court or, where applicable, a court-martial.

I would be delighted to respond to your questions.

Senator BILL NELSON. Well, you've put your finger on the very reason that we're having this hearing, is that—something that's not working. And there are three laws on the books. And you just named them: One, with maritime, that has jurisdiction over active military situations; the one that was passed in 2000, which directly gives jurisdiction, called MEJA; and then, the 2006 legislation, that is now law, that involves the Uniform Code of Military Justice. So, we clearly have the laws on the books.

So, what I want to do now is, I want to get the second panel, and I want us to discuss this from the members of the Department of State, Department of Defense, and Department of Justice.

Now, you see why I asked you all, as the panel, to go second, because I wanted you to hear what is live testimony about real people in real-life situations, that something is wrong. And there are others. And one of them is a visitor in the audience. And we could go on and on.

So, let's get into that.

---

[9] 10 U.S.C. § 101(a)(13).

[10] See Jonathan Finer, "Holstering the Hired Guns: New Accountability Measures for Private Security Contractors," 33 Yale J. Int'l L. 259, 262 (2008) (urging stricter definition of who is covered and "a clause indicating that only crimes that have a parallel in civilian law should be prosecuted").

[11] See Kara M. Sacilotto, "Jumping the (Un)Constitutional Gun?: Constitutional Questions in the Application of the UCMJ to Contractors," 37 J. Pub. Contract L. 179, 192–94 (2008).

[12] See Kathleen A. Duignan, "Civilians and Military Law: An Unconstitutional Mix, Problems with Applying UCMJ to Contractors and its Effects Internationally," 6 J. Int'l Peace Operations 21 (2007).

[13] See 18 U.S.C. § 7(9).

The committee will take a 5-minute recess while we then have the next panel come up.

[Recess.]

Senator BILL NELSON. Good morning. And we will resume.

We are privileged to have the Honorable Sigal P. Mandelker, Deputy Assistant Attorney General from the Criminal Division of the Department of Justice; Mr. Gregory Starr, Acting Assistant Secretary, Bureau of Diplomatic Security, and Acting Director of the Office of Foreign Missions, Department of State; Mr. Robert Reed, Associate Deputy General Counsel for Military Justice and Personnel Policy in the Office of the General Counsel of the Department of Defense; and Mr. John B. Wiegmann, Assistant Legal Advisor for Management, Department of State. So, thank you all.

Needless to say, when you have testimony like we've just heard, from some courageous women who dared to step forward, it's riveting, but it also exposes a flaw in the system. Something's not happening right. And that's what I want to explore with you. I want to do this in a respectful way, a nonjudgmental way, but, at the end of the day, I want us all to come up with some suggestions of what we're going to do so we correct a system that is flawed.

Now, I want you to put up this chart, and I want to show you something here. I want to lay the predicate for this. Put it right up here.

All right. Of the disposition of sexual assault cases in both Iraq and Afghanistan, there has been, of civilians—now, you can see, the military ends up having 684, but you can see, of civilians, 26—three were found to be unfounded, but the remaining 26—the remaining 23—well, let's see what happened: Insufficient evidence, 7; pending, 2; administrative action, 10. And administrative action includes military discharges, reprimands, barred from post, employment terminated, and deported, referred to a foreign authority—two—and no action taken. Out of the civilian contractors, there's not one that's prosecuted. So, we want to get into that. We want to find out why.

So, let me turn to you—by the way, all of your statements will be put in the record.

We have some other Senators that want to come and join us on this, and I will, as a courtesy defer to them when they come. But, let me start out, Mr. Starr.

STATEMENT OF GREGORY B. STARR, ACTING ASSISTANT SECRETARY, BUREAU OF DIPLOMATIC SECURITY, AND ACTING DIRECTOR OF THE OFFICE OF FOREIGN MISSIONS, DEPARTMENT OF STATE, WASHINGTON, DC

[The prepared statement of Mr. Starr follows:]

PREPARED STATEMENT OF GREGORY B. STARR, ACTING ASSISTANT SECRETARY, BUREAU OF DIPLOMATIC SECURITY, AND ACTING DIRECTOR OF THE OFFICE OF FOREIGN MISSIONS, DEPARTMENT OF STATE, WASHINGTON, DC

Good morning Chairman Nelson and members of the subcommittee. It is a pleasure to appear before you today. I would like to thank you and the subcommittee members for your continued support and interest in the Bureau of Diplomatic Security's (DS) efforts to protect U.S. Government personnel and our diplomatic missions abroad.

DS agents engage in or support and assist U.S. law enforcement activities, and also serve as a liaison with foreign government law enforcement authorities, at 268

State Department missions worldwide. There are nearly 1,500 DS Special Agents who are on assignment to these foreign missions in 159 different countries, assigned to 25 field and resident offices domestically, or serving on 27 Joint Terrorism Task Forces. DS agents serve around the world in embassy and consulate Regional Security Offices, managing the security programs that ensure the safety and security of U.S. personnel, facilities, and classified information.

The safety and security of all U.S. citizens living and working overseas, including those employed by the U.S. Government or its contractors around the world, is a top priority for the Department of State. DS, in concert with the Bureau of Consular Affairs (CA), is committed to assisting U.S. citizens who become victims of crime while traveling, working, or residing abroad. DS and CA duty personnel are available 24 hours a day, 7 days a week, at embassies, consulates, and consular agencies overseas to provide assistance.

Whether a particular criminal matter overseas becomes the subject of an investigation by DS depends on the facts, the nexus of the facts to the U.S. mission, whether there is a basis for asserting U.S. criminal jurisdiction, the nature of the investigation, the role of other investigative entities, and whether the matter is brought to the attention of embassy officials. DS often works closely with the Department of Justice (DOJ) in those cases where it appears there is a basis for assertion of U.S. criminal jurisdiction overseas, including some sexual assault cases. In other cases, DOJ, the Department of Defense (DOD), or other Federal law enforcement agencies will conduct an investigation, and DS may provide support to the extent needed. Responsibility for particular investigative matters is decided among the relevant agencies on a case-by-case basis. Of course, in many cases, where there is no basis for assertion of U.S. criminal jurisdiction, any criminal investigation would be conducted by local authorities. DS may assist those investigations as well where appropriate.

To date, there have been four allegations of sexual assault in Iraq and Afghanistan that have been reported to DS. All four of the reported incidents were investigated by DS, although in only two of these incidents were any of the persons involved State Department employees or contractors or otherwise subject to the authority of the Chief of Mission. Of the four allegations investigated by DS, three incidents were referred to DOJ. We defer to DOJ for further information on these incidents. The fourth incident was addressed administratively.

In Iraq and Afghanistan, there are unique challenges for DS and for consular officers seeking to assist U.S. victims of crime. There are a large number of U.S. civilians employed in Iraq and Afghanistan as contractors, but security conditions make it more difficult for Department officials to respond and provide assistance to crime victims to the same extent as they would in other parts of the world. The lack of strong local police and judicial systems in Iraq and Afghanistan also makes it more difficult for our personnel to help Americans get the same type of support as they would in other countries when they are victimized by crime. Moreover, regardless of where they occur, sexual assault crimes can be difficult to uncover. It is often difficult for victims to come forward, particularly when the perpetrator is the victim's supervisor, reporting officer, or colleague; such crimes may also be reported to other investigative authorities and not to the U.S. Embassy.

The Bureau of Consular Affairs has made efforts to address these challenges in Iraq and Afghanistan by reaching out to the companies known to the Department that employ U.S. citizens and encouraging them to provide a main point of contact with the consular staff to enhance communication; asking them to have their employees register with the Embassy in order to be able to receive warden messages; and providing information on the Department's or the Embassy's Web site. At the Bureau of Diplomatic Security, we are also committed to doing whatever we can to help Americans victimized by crime in these dangerous places, including victims of sexual assault or rape, and will continue to work with the Department of Justice on criminal investigations of such matters, as appropriate, and subject to jurisdictional constraints.

Chairman Nelson, I thank you and the other members of the subcommittee for being given the opportunity to appear here. I would now be happy to answer any questions you or the other members may have.

Senator BILL NELSON. How many cases involving sexual assault of a U.S. contractor in Iraq or Afghanistan has the Bureau of Diplomatic Security referred to the Department of Justice?

Mr. STARR. I believe that's four, sir—if you'll give me one second. No; we have had four allegations investigated by Diplomatic Secu-

rity; three have been referred to the Department of Justice, the fourth incident was address administratively.

Senator BILL NELSON. And of those four, have any been acted upon?

Mr. STARR. My understanding is that the Department of Justice is acting on those three, sir, but I'd have to defer to the Department of Justice for questions as to exactly where they are in the process.

Senator BILL NELSON. OK. We'll get to that.

If a crime, Mr. Starr, between two contractors were to occur on a military-controlled facility or base, would the Department of State have the authority to investigate this?

Mr. STARR. It appears the answer to that is, factually, yes, sir, because, in fact, that has happened. We did investigate at least one case that was taking place on a military-controlled base. It probably would be better, had it been investigated by the Department of Justice, but the particular circumstances were such that my agents responded and did investigate.

Senator BILL NELSON. And when you say "it probably would be better," tell me about that.

Mr. STARR. I believe that the Department of Justice—sorry, excuse me, sir—the Department of Defense should have their agents present and investigating, but, as it's been spoken about, Iraq is a very grueling and tough situation. Not everybody is always available or there at the particular time. And I will simply state that, you know, the United States Department of State agents that are overseas for Diplomatic Security Service are available and will pick up, if there is a gap that has to be filled, but we are primarily there for protection of American citizens working on United States diplomatic premises and residences.

Senator BILL NELSON. You said that there were four referred to the Department of Justice for action.

Mr. STARR. Three, sir. Four—we've investigated four cases. Three were referred to the Department of Justice.

Senator BILL NELSON. OK. And you don't know what action has occurred. Has there been a conviction on any one of those three?

Mr. STARR. Not that I am aware of, sir.

Senator BILL NELSON. Do you know if there has been an indictment, a charge, on any one of those three?

Mr. STARR. I am aware that there have been grand juries convened. There has been action on the part of the grand jury. But, I would—I'm—would prefer not to go into the particulars of any cases that are—that the Department of Justice is handling. I think Justice might be better to answer that, sir.

Senator BILL NELSON. OK. Do you know if, when you referred those, that they were referred by your Department—Department of State—to Justice for prosecution using the MEJA jurisdiction?

Mr. STARR. Yes, sir, that is how we would refer these for prosecution.

Senator BILL NELSON. OK. But, no—you don't know any more than that. OK.

All right.

STATEMENT OF ROBERT REED, ASSOCIATE DEPUTY GENERAL COUNSEL, MILITARY JUSTICE AND PERSONNEL POLICY, OFFICE OF THE GENERAL COUNSEL, DEPARTMENT OF DEFENSE, WASHINGTON, DC

[The prepared statement of Mr. Reed follows:]

PREPARED STATEMENT OF ROBERT E. REED, ASSOCIATE DEPUTY GENERAL COUNSEL FOR MILITARY JUSTICE AND PERSONNEL POLICY, OFFICE OF THE GENERAL COUNSEL, DEPARTMENT OF DEFENSE, WASHINGTON, DC

Good Morning Chairman Nelson and members of the subcommittee. I am pleased to be here today to discuss the legal framework under which the Department of Defense supports U.S. criminal investigations and prosecutions of serious crimes committed overseas.

The Department of Defense (DOD) has been instrumental in supporting past legislation and Federal district court prosecution of DOD civilian employees, DOD contractors, and their dependents who commit felony-level crimes when serving with or accompanying our Armed Forces outside the United States. This effort has been in response to civilian and military appellate court decisions that, approximately 50 years ago, precluded military criminal prosecutions of civilians under the Uniform Code of Military Justice (UCMJ) during peacetime, and created a U.S. criminal jurisdiction "gap" overseas that prevented these persons being held accountable for the crimes they committed. To explain, the jurisdictional "gap" to which I refer occurs when a civilian serving with or accompanying the Armed Forces overseas commits what would be a U.S. Federal offense, but that particular offense does not have an extraterritorial reach that would enable that person to be subject to U.S. Federal criminal jurisdiction, and the host nation for whatever reason does not exercise its criminal jurisdiction, and the military's UCMJ jurisdiction does not apply. The result is that the alleged offender's criminal actions falls into a jurisdictional "gap" wherein the offender is not held accountable for the offenses committed.

I first became involved in the effort to "fill the gap" in 1996 when appointed to be a member of the DOD/DOJ Advisory Committee on Criminal Law Jurisdiction over Civilians Accompanying the Armed Forces in Time of Armed Conflict, as called for by Section 1151 of the National Defense Authorization Act of 1996 (Public Law 104–106, February 10, 1996). In response to the Advisory Committee's recommendation that U.S. Federal district court jurisdiction be extended to close this jurisdictional gap, the Departments of Defense and Justice worked closely with the Congress on legislation that is now commonly referred to as MEJA (the Military Extraterritorial Jurisdiction Act of 2000; 18 U.S.C. § 3261 et seq.), which applies to felony-level offenses committed by persons employed by or accompanying the Armed Forces outside the United States. The jurisdiction applies worldwide, not just within Iraq or Afghanistan. At that time, it was generally acknowledged that the prosecution of these overseas offenses in U.S. Federal district court would be logistically difficult and legally challenging. Recognizing this, it was then anticipated that annually only approximately a half-dozen of these cases would involve MEJA actions. MEJA first required DOD to develop regulations implementing MEJA procedures in consultation with the Attorney General and Secretary of State, which was then to be followed by a 6-month review and comment period afforded to the Judiciary Committees of the Senate and House of Representatives. The events of September 11, 2001, and the various U.S. responses to that terrorist attack, interrupted that development process and postponed the interdepartmental effort to establish proposed MEJA implementing procedures.

In the interim, the Congress enacted additional U.S. criminal jurisdiction "gap filling" measures. U.S. Federal district court jurisdiction was further extended in 2001 by the PATRIOT ACT amendment to the definition of "Special Maritime and Territorial Jurisdiction of the United States," but in doing so excluded those persons who would be subject to MEJA jurisdiction. Section 1088 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375, October 28, 2004), amended MEJA and extended its jurisdiction to cover employees and contractors of other U.S. Government agencies and provisional authorities outside the United States, but only to the extent such employment related to supporting the mission of the Department of Defense overseas. The Defense Department supports appropriate legislative efforts to provide greater accountability for unlawful acts committed in places like Iraq where we have ongoing military operations. Throughout, MEJA jurisdiction does not apply to persons who are nationals or ordinarily residents of the host nation in which the crime is committed. The DOD regulations implementing the MEJA procedures were drafted in consultation with the Depart-

ments of Justice and State, review by the Judiciary Committees was afforded, and the regulations became effective on March 3, 2005, in the form of a Department of Defense Instruction and a corresponding rule in the Code of Federal Regulations.[1]

Section 552 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364, October 17, 2006) amended military jurisdiction under Article 2, UCMJ (10 U.S.C. § 802) and extended UCMJ jurisdiction, during declared war or a contingency operation, to persons serving with or accompanying the Armed Forces in the field. In January 2007, the General Counsel of the Department of Defense referred the amendment to the Joint Service Committee on Military Justice for review regarding the amendment's potential impact on military justice practice and procedures. The General Counsel thereafter submitted for comment and coordination by the Military Departments, Combatant Commands, and Department of Justice various recommendations for managing this extraordinary jurisdiction over civilians. On March 10, 2008, the Secretary of Defense established procedures and issued guidance to be applied when addressing UCMJ jurisdiction over civilians under article 2, UCMJ.[2]

It is these statutory authorities and implementing procedures that I am today prepared to discuss with your subcommittee. I understand that the Assistant Inspector General for Communications and Congressional Liaison for the Department of Defense, in response to this subcommittee's request, recently provided a summary of DOD IG statistical information regarding the Military Criminal Investigative Organizations' collective investigations of sexual assault incidents (and resultant dispositions) associated with Operation Iraqi Freedom and Operation Enduring Freedom, and has advised that an evaluation has begun regarding the DOD response to sexual assault in these combat areas. Additional questions or requests for a further explanation of these investigative statistics should be addressed to the Office of the Inspector General.

The Department of Defense works closely with the Department of Justice whenever a MEJA case, and most recently a potential UCMJ case, involves DOD civilians and DOD contractor personnel committing offenses overseas on a worldwide basis, including those committed in Iraq and Afghanistan. The Department of Defense has established procedures requiring that notice of such cases be provided to the Department of Justice, that DOD consult with DOJ regarding appropriate jurisdiction and, to the extent practicable, provide support to DOJ during ongoing investigations and any subsequent prosecutions. The Secretary of Defense memorandum of March 10, 2008, along with the Deputy Secretary of Defense memorandum of September 25, 2007,[3] emphasize that commanders have UCMJ authority to use law enforcement and investigative resources to respond to and, at least preliminarily, address crimes that are committed within their geographic areas of responsibility. The Military Criminal Investigative Organizations generally provide criminal investigative response to reports of ongoing serious offenses or reports of past serious offenses, including sexual assaults, in areas that are under the purview of the military commander.

Cases involving potential MEJA jurisdiction or involving civilians under article 2, UCMJ, jurisdiction are to be expeditiously reported up the chain of command within the combatant command to the General Counsel of the Department of Defense who then notifies and refers such cases to the Department of Justice for review. As the General Counsel's representative for these MEJA and UCMJ cases, I work closely with the Domestic Security Section (DSS) of the Criminal Division, DOJ. All of the cases that have been brought to my attention (worldwide and involving a variety of offenses) have been referred to DOJ/DSS.

Case notifications and referrals that took weeks or months to accomplish during the early years of MEJA procedures are now taking only days to accomplish because investigators and judge advocates are learning what information is required to make a MEJA jurisdictional determination and are becoming familiar with the procedures involved. There has been one DOD contractor case involving aggravated assault

---

[1] Department of Defense Instruction 5525.11, "Criminal Jurisdiction Over Civilians Employed By or Accompanying the Armed Forces Outside the United States, Certain Service Members, and Former Service Members," March 3, 2005; Part 153 of Title 32, Code of Federal Regulations, "Criminal Jurisdiction Over Civilians Employed by or Accompanying the Armed Forces Outside the United States, Certain Service Members, and Former Service Members," effective March 3, 2005.

[2] Secretary of Defense Memorandum, "UCMJ Jurisdiction Over DOD Civilian Employees, DOD Contractor Personnel, and Other Persons Serving With or Accompanying the Armed Forces Overseas During Declared War and in Contingency Operations," March 10, 2008.

[3] Deputy Secretary of Defense Memorandum, "Management of DOD Contractors and Contractor Personnel Accompanying U.S. Armed Forces in Contingency Operations Outside the United States," September 25, 2007.

with a weapon that has resulted in court-martial charges pursuant to article 2, UCMJ. That case is pending and it would be inappropriate to discuss further details of that case at this time.

The acquired investigative information is evaluated to determine the nature of any offenses committed and those persons who may have committed the offenses. This investigative information is then evaluated according to the nature of the alleged offense, the alleged date of the offense, and the precise category of alleged offender to determine which, if any, of this patchwork of "gap-filling" statutes apply. Ultimately, this investigative information and our established procedures help determine whether the alleged offender is subject to the jurisdiction, and might be held accountable, under host-nation law, U.S. Federal jurisdiction, or UCMJ jurisdiction. With increased familiarity regarding the applicability of these various extraterritorial laws and the intra- and interdepartmental implementing procedures, along with the practical experience of handling these extraordinary cases, the process continues to improve and accountability is enhanced. Toward that end, I have presented numerous briefings regarding these laws and procedures to judge advocates, DOD civilian personnel organizations, contractor associations and organizations, DOD acquisition and Military Criminal Investigative Organization conferences and seminars, and the legal and acquisition communities of nearly all the Combatant Commands in which these cases might occur within their overseas areas of responsibility. DOJ representatives have been making similar presentations to military judge advocates and criminal investigators.

The Department of Defense has required notice and training of MEJA jurisdiction to persons subject to deployment to overseas locations and again upon their arrival at the various overseas locations. DOD regulations advise that DOD contractor personnel at those overseas locations should be invited to attend the military's briefings and training sessions. In addition, Defense Federal Acquisition Regulations require contractors to provide specific notice about the applicability of MEJA to their contractor employees while overseas and the Department of Defense will, along with the basic requirement that contractor personnel comply with all applicable laws, require notice and training of contractor personnel on the prohibitions and potential consequences of committing sexual assaults and sexual harassment. Initiatives are being made to ensure that military personnel, civilian employees, and contractor employees overseas know how and to whom to report sexual assaults that may occur to them or come to their attention at their overseas location. Multi-National Force–Iraq (MNF–I) now utilizes posters and instructions posted in all high-traffic areas, such as mail rooms and post exchanges, to provide the information needed. Delays in reporting sexual assaults to appropriate criminal investigators, even if only a matter of days or sometimes hours, can adversely affect the ability to secure and preserve crime scene evidence, identify possible witnesses, and obtain forensic evidence critical to the case.

The Department of Defense has engaged in a concerted effort to combat sexual assaults within our stateside and overseas military communities. Beginning in early 2005, over a dozen policy memorandums were issued that addressed sexual assault issues and care for victims of sexual assault. The Department established a Sexual Assault Prevention and Response Office to further these policy issues and, by June 2006, issued a DOD Directive and DOD Instruction on the Sexual Assault and Prevention and Response Program. The program includes a network of Sexual Assault and Response Coordinators and Sexual Assault Victim Advocates who assist victims of sexual assault. MNF–I has revised its Command Policy Regulation in accord with the Army Regulation issued on March 18, 2008, in order to reinforce its emphasis on sexual harassment prevention. That chapter revision mandates Sexual Assault Prevention and Response representatives and other activities be utilized to assist victims of sexual assault.

Thank you for the opportunity to address these issues today and I look forward to answering any questions the committee may have.

Senator BILL NELSON. Mr. Reed, in your department, Department of Defense, how many cases involving the sexual assault of a U.S. civilian has DOD investigated?

Mr. REED. I think the statistics you have there are from the DOD IG as to what was investigated. So, I would defer to the IG's statistical report as to what the military criminal investigative organization has investigated.

Senator BILL NELSON. How many such cases has DOD referred to the Department of Justice?

Mr. REED. There have been eight cases that have been forwarded for consideration under the MEJA statute. All eight have been referred to the Department of Defense—Department of Justice.

Senator BILL NELSON. And you sat, in a part of the Office of the General Counsel that would know about this—of those eight who have been referred to Justice for prosecution by the Department of Defense, how many convictions have there been?

Mr. REED. One.

Senator BILL NELSON. How many were there indictments or charges brought against?

Mr. REED. I don't know the precise figure on that. I keep track of them under the label of "pending," so that—after I refer them to the Department of Justice, I list them as "pending" until I find out what the ultimate disposition is. So, I have three of those that are—that I'm tracking as "pending." I have one case that's a juvenile out of the Far East—it's not applicable to Iraq—that there was a conviction in, as well. And I have three cases that my information—or the information provided to me would indicate that cases were declined due to insufficient evidence or other problems related to the case in question.

Senator BILL NELSON. The one case that you said that got a conviction, was that in a civilian or a military court?

Mr. REED. It was in civilian court.

Senator BILL NELSON. And do you know how many cases would have been prosecuted in a military court?

Mr. REED. Civilians?

Senator BILL NELSON. Yes.

Mr. REED. I would state that there have been none, because of the Supreme Court and the United States Court of Appeals for the Armed Forces decisions that require, prior to 2006, that there be a congressionally declared war, and would have a slight disagreement with Mr. Fidell's analysis.

Senator BILL NELSON. All right. That's with regard to the law that was passed in 2006.

Mr. REED. Correct, sir.

Senator BILL NELSON. Right. Now, in the cases in which assault has occurred on DOD facilities in Iraq or Afghanistan, civilian victims have reported that military investigative authorities have told them that they could not assist them. Is this correct?

Mr. REED. I don't know what the investigators told the victims. I can say that, depending on when the date of the crime was committed and when—and what the category of person was that was suspected of committing the crime, since the law has evolved and changed since 2000 up to the present, the answer could slightly change as to who has ultimate prosecutorial responsibility, and associated that—with that is investigative responsibility. However, as a general proposition, the military criminal investigative organizations normally would respond to the report of, or the complaint of, a crime that was committed on a military installation, in order to at least preliminarily respond to the complaint until such time as the details of the complaint and the identity and affiliation, if you will, of the alleged offender was determined. And that would, in turn, dictate, in large measure, the subsequent course of action to take, following the investigation.

Senator BILL NELSON. Well, let me ask you this. You're legal counsel to the Department of Defense. Would DOD have the authority to go in and take all the cases that were not prosecuted by the Justice Department and prosecute them yourself under guidance provided by the Secretary of Defense?

Mr. REED. If you're talking strictly about civilian, DOD civilian contractors or other contractors, the answer would be no, unless the offense was committed on or after the effective date of the 2006 amendment, which was October 17, 2006. Prior to that, the general consensus of opinion was that the Supreme Court and the United States Court of Appeals for the Armed Forces stated that, absent congressionally declared war, civilians would not be prosecuted in military courts in peacetime. And the analysis of that, and the interpretation of that for the last 50 years, has been, essentially, that civilians being prosecuted in courts-martial was problematic, at the least.

Senator BILL NELSON. What is your professional opinion that it is the obligation of a military officer, noncommissioned officer, or a DOD official to report and then prosecute, if possible, or assist, when given evidence from a civilian that a crime has been committed?

Mr. REED. I would say that that has generally been the rule, in my experience, that they are, in fact, investigated; they are, in fact, looked at for possible prosecution, based upon the weight and quantum of evidence, and a myriad of issues that come into play when you're talking about a very sensitive situation, such as sexual assault prosecutions involving victims who may or may not be traumatized by the events that occurred to them and the events that may—they are concerned about as a witness in a public courtroom.

Senator BILL NELSON. You must have been warmed, as a DOD counsel, by the dramatic testimony of Mrs. Kineston, that it was the Military Police that responded.

Mr. REED. I believe that, by and large—and there are always exceptions, Senator, but, by and large, Military Police and military criminal investigators do, in fact, respond to reports and information brought to their attention that a crime, especially a serious crime, has been committed within the area of responsibility of the commander. Now, granted, there are exceptions. There are some people, who, for whatever reason, don't do what we would expect them to do. But, by and large, over the years and across the spectrum of crimes that are committed by persons on or near a military installation, the military does, in fact, respond, and thereafter, after they've gathered the facts and identified the individuals involved, or suspected to be involved, then try to get the appropriate authorities, if it's not the military, involved in the case.

Senator BILL NELSON. Likewise, you must have been warmed to hear, as Ms. Leamon was shuffled around, that it wasn't until she got into the hands of the military, the Criminal Investigative Division and, even more specifically, until she got to the military doctor, that she started getting some attention.

Mr. REED. That was her testimony, and, taking it as it is, she appeared to be pleased with the care that she received from the hospital physician that treated her, and, generally, the responsiveness of the CID, once they were notified of the situation. I—so, I

guess the answer is, it would appear that they responded appropriately under the circumstances.

Senator BILL NELSON. And yet, in both cases, it's gotten lost in the system, certainly with regard to Ms. Kineston, because the assault was back in 2004. And with regard to Ms. Leamon, although it was 2 months ago, she has no evidence, thus far, that there's any prosecution.

Let me ask you this. Why——

Mr. REED. Well, Senator, there—the fact that she is unaware of what the—actions are being taken regarding prosecution does not mean that action is not being taken. And the fact that the—and investigations have not been conducted and/or are ongoing. So——

Senator BILL NELSON. And I hope that's the case with Mrs. Leamon, but certainly with regard to Ms. Kineston, nothing happened.

Mr. REED. In 2004, the MEJA implementing regulations by the Department of Defense were not in effect. They didn't take effect until March 3, 2005. And the UCMJ jurisdiction of 2006 was not applicable.

Senator BILL NELSON. You're telling me that a law that was passed in 2000 was never implemented until March of 2005?

Mr. REED. That's correct. MEJA was passed in—November 22, 2000. In 2001, we established a working group, because the statute required us to create regulations in conjunction with the Department of State and the Department of Justice, and had a built-in oversight responsibility by the Judiciary Committees of both the House and the Senate, giving them a 6-month period of time in which to review the regulations that were developed. The Department, in fact, established, in early 2001, a very robust working group with interagency/multiagency representatives on that.

Unfortunately, on September 11, 2001, certain things happened to the Department of Defense that involved all the other Departments, both Justice and State, as well, who were part of that team, and all of the parties who were focused on coming up with the implementing regulations at that time were pulled back for 9/11 and post-9/11 reactive responsibilities.

In 2002, I reinstituted development of the MEJA regulations and wrote them myself, and then, thereafter, we then coordinated with the Department of Justice and Department of State. There were several backs-and-forth between those Departments to come up with regulations on which we could get consulted. We then transmitted them to the Judiciary Committees of both the Senate and the House, gave them 6 months in which to review and comment, and thereafter, after that, to make sure that there were no changes that were required through that process. Then we had to proceed with the DOD normal process for implementing instructions and regulations within the Department and develop a corresponding Code of Federal Regulations to go along with that, to be filed in the Federal Register.

All of that process took place, and ultimately they were published in the Federal Register, they were published in the Department of Defense Regulations with an effective date of March 3, 2005.

Senator BILL NELSON. Do you think——

Mr. REED. And I have a more detailed chronology, if you need that, in my office. But, that, in a nutshell, is a summary of events that interrupted and postponed and created a difficult situation for the Department to come up with regulations, from a tridepartmental and congressional oversight perspective.

Senator BILL NELSON. Do you think justice was served as a result of all that delay?

Mr. REED. I wish the process by which we could have come up with our regulations weren't required by that process, and I wish, also, that the events of 9/11 had not occurred.

Senator BILL NELSON. Are the eight cases that you referred to of sexual assault of civilian contractors?

Mr. REED. Yes; they are. No; excuse me, they're—one is a dependent juvenile. That was the one from the Far East. The rest—the other seven are contractors. Some——

Senator BILL NELSON. Seven are.

Mr. REED. Some are third-country nationals, and other are U.S. nationals.

Senator BILL NELSON. Are they just MEJA nonsexual assaults, or are we talking about sexual assaults?

Mr. REED. This is where the main offense listed is sexual assault. That doesn't mean it's the only offense that somebody——

Senator BILL NELSON. OK.

Mr. REED [continuing]. Committed. But, to—as you know, when somebody may have committed three or four different offenses, you choose the major offense by which to categorize the case. These—that's the categorization that I gave them.

Senator BILL NELSON. I am very pleased that my colleague Senator Feingold, who has a yearning to understand all of this, as well, has joined us. As courtesy, I want to pass it to you. And you've got somewhere you've got to go. So, please—and then I'll just jump back in after you finish.

STATEMENT OF HON. RUSSELL D. FEINGOLD,
U.S. SENATOR FROM WISCONSIN

Senator FEINGOLD. Well, we always say thank you to the Chair for holding a hearing, as a matter of courtesy, but, in this case, it's particularly sincere and appropriate, Senator Nelson, for having the courage to hold this important hearing.

And I want to thank all the witnesses for attending. In particular, I'd like to thank Ms. Kineston and Ms. Leamon for appearing today. I applaud them for their courage and for everything they're doing to make sure that what happened to them doesn't happen to anyone else.

We have 180,000 contractors in Iraq alone. They are immune from Iraqi law, and U.S. officials have either not investigated or failed to prosecute those who have apparently committed crimes.

And the lack of prosecutions is not due to legal loopholes. In most cases, especially for abuses that occur off U.S. bases, crimes are likely never investigated. When abuses are investigated, like some of the abuse of interrogation techniques used by contractors on detainees, Department of Justice claims they don't have the evidence to prosecute them or that they lack the jurisdiction to do so. With at least four different statutes creating extraterritorial juris-

diction over U.S. contractors, I find this hard to believe. The time has come to end this culture of impunity that we have created.

The testimony that came forward this morning from the courageous witnesses, Ms. Kineston and Ms. Leamon, was obviously absolutely shocking. It is unthinkable that the perpetrators of such horrible acts should go unpunished. It is just as disturbing, in my view, that the military and the civilian personnel who let this happen have not been held accountable.

Ms. Mandelker, is DOJ currently investigating these cases? And, if not, will you now immediately commence a criminal investigation, based on the sworn testimony we've heard here today?

STATEMENT OF HON. SIGAL P. MANDELKER, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE, WASHINGTON, DC

[The prepared statement of Ms. Mandelker follows:]

PREPARED STATEMENT OF SIGAL P. MANDELKER, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE, WASHINGTON, DC

Chairman Nelson, Ranking Member Vitter, and distinguished members of the committee, thank you for inviting the Department of Justice to testify at this hearing. Sexual assault cases often involve the most vulnerable victims and must be treated with the utmost seriousness. Whether this conduct occurs within the United States or overseas and in a dangerous military zone, these offenders must be brought to justice.

At the Department of Justice, we take very seriously allegations that U.S. citizens employed as U.S. Government personnel and contractors in direct service to our Nation may have committed sexual assault. As the Deputy Assistant Attorney General in the Criminal Division who supervises one of the key participants in that mission—the Domestic Security Section (DSS)—I am pleased to address the Department of Justice's ongoing efforts to hold these offenders accountable.

I will focus my remarks today on three major areas: The scope of the Military Extraterritorial Jurisdiction Act (MEJA), the principal statute under which we prosecute these cases; the Department's role in MEJA cases; and interagency coordination on MEJA cases, including the steps that the Department is taking to build upon and improve cooperation on these cases.

I. MILITARY EXTRATERRITORIAL JURISDICTION ACT

The Military Extraterritorial Jurisdiction Act, Title 18 U.S.C. § 3261, et seq., is the principal Federal statute used to prosecute sexual assault crimes committed by certain U.S. Government personnel and contractors in Iraq, Afghanistan, and elsewhere. MEJA was enacted on November 22, 2000, and was designed to extend Federal criminal jurisdiction to a variety of Department of Defense employees and dependents overseas who were not subject to the court-martial process under the Uniform Code of Military Justice (UCMJ).

As originally enacted, MEJA permitted Federal courts to exercise criminal jurisdiction over conduct that was engaged in outside of the United States that would have been a felony offense if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, provided that the offender was within one of three classes of individuals associated with the Department of Defense, namely—

(1) Civilian employees, contractors, and contract personnel employed by the Department of Defense overseas;

(2) Members of the Armed Forces overseas; and

(3) Dependents of members of the Armed Forces or of civilian employees, contractors, and contract personnel employed by the Department of Defense residing overseas.

In 2004, Congress amended MEJA to cover civilian employees, contractors, and contract employees of other Federal agencies, but only to the extent that their employment "relates to supporting the mission of the Department of Defense overseas." In any particular case, the exact scope of this expansion depends upon the facts and circumstances of an individual's employment and the individual's relationship to the mission of the Department of Defense.

MEJA contains a number of important restrictions. First, MEJA does not cover crimes committed by a person who is a national of the foreign country where the offense occurred or who ordinarily resides in the foreign country where the offense occurred. Second, no prosecution may be commenced against a member of the Armed Forces unless at the time of prosecution the member is no longer subject to the UCMJ or the member is charged with committing an offense with one or more other defendants not subject to the UCMJ. Third, MEJA extends Federal jurisdiction only over felony offenses; Federal misdemeanors are excluded. Finally, MEJA may not be used to prosecute someone who has already been prosecuted or is being prosecuted by a foreign government for the same conduct without the approval of the Attorney General or Deputy Attorney General (or a person acting in either capacity).

The Department supports legislative efforts to hold Federal employees and contractors accountable for serious misconduct they may commit abroad. We look forward to continuing to work with the Congress to ensure that we have the laws we need to hold U.S. contractors properly accountable.

1II. THE DEPARTMENT OF JUSTICE'S ROLE IN MEJA CASES

The Department's involvement in MEJA typically starts when a Department of Defense or Department of State law enforcement agency presents or refers a case to the Department for possible prosecution. As a general matter, these agencies contact the Department of Justice's Criminal Division, which serves as the central point of contact within the Department of Justice for MEJA referrals from investigating agencies. On certain occasions, an investigating agency refers a matter directly to a U.S. attorney's office (USAO).

When an agency refers a potential MEJA case, Criminal Division attorneys review the investigative materials presented by the referring agency to determine (1) if jurisdiction exists under MEJA, (2) if sufficient facts exist to proceed, and (3) where appropriate venue lies within the United States. If the Department determines that the case falls within MEJA and there are sufficient facts to proceed, the Criminal Division refers the matter to the appropriate U.S. attorney's office for its consideration. U.S. attorneys' offices ultimately determine whether to prosecute or decline a case in the same manner that they make such determinations in other cases—pursuant to the Principles of Federal Prosecution in the United States Attorneys' Manual.

The Criminal Division also offers guidance and assistance to every USAO to which it refers a MEJA case. This assistance generally comes in the form of legal guidance regarding MEJA, assistance in obtaining information from and working with military law enforcement agencies, and coordinating international issues. In certain circumstances, the Criminal Division will also provide direct prosecutorial support by assigning a trial attorney to partner with the local assistant U.S. attorney assigned to the case.

If a case is initially investigated or later joined by a law enforcement agency within the Department—generally the Federal Bureau of Investigation (FBI)—the Department fulfills the roles of both investigator and prosecutor. On the investigatory side, however, the Department generally plays a supporting role as most MEJA cases are initially investigated overseas by the Department of Defense or the Department of State, because these investigative agencies are usually the first to respond to the alleged criminal activity in the conflict area. The FBI may participate in certain investigations, mainly those of particular complexity or seriousness.

Since the enactment of MEJA in 2000, the Department of Justice has received referrals of potential MEJA cases from both the Departments of Defense and State. Of these cases, 12 have resulted in the filing of a Federal indictment, information, or complaint and another has resulted in a conviction in State court. A number of other cases are under active investigation, and some have been declined.

Of the 12 cases that have been charged in Federal court, 7 have resulted in conviction, and the remaining 5 await trial. These cases include allegations of sexual abuse (including the possession or use of child pornography). Indeed, four cases involving sexual abuse have been successfully prosecuted in Federal court; another case has been indicted; and others are currently under active investigation. Because of confidentiality, privacy, and court-imposed restrictions, I cannot address ongoing investigations of sexual abuse.

The successful prosecutions include: The conviction, in the Western District of Washington, of a DOD civilian employee for abusive sexual contact of a minor while he was residing in Japan; the conviction, in the Southern District of Georgia, of a DOD contractor employed in Iraq for abusive sexual contact; the conviction, in the Western District of Texas, of a DOD contractor in Qatar on child pornography

charges; and the conviction, in the Eastern District of Virginia, of another DOD contractor in Iraq on child pornography charges.

It must be noted that even with the broadest scope of jurisdiction, however, investigating and prosecuting serious crimes in Iraq and Afghanistan are very challenging. As a general matter, investigations in any foreign country face particular difficulties of language, evidence collection, logistical support, and coordination with a sovereign power. In addition, the present circumstances in Iraq and Afghanistan raise further obstacles. Field investigation in an active war zone is extremely difficult and requires extensive security precautions. Witnesses are difficult to locate and when found are often reluctant to come to the United States to testify. In short, investigating and prosecuting serious crimes in a war zone is a very difficult and costly proposition, and the associated challenges cannot be underestimated. These logistical challenges help explain why investigations and prosecutions under MEJA may take significant time to complete.

III. INTERAGENCY COORDINATION

The Department of Justice coordinates regularly, often on a daily basis, with other Departments and agencies on MEJA cases, both at the initial referral stage and subsequently at the investigation and prosecution stage. For example, the Department receives referrals from the Department of Defense pursuant to procedures set forth in March 2005 in Department of Defense Instruction 5525.11.

In practice, the General Counsel's Office of the Department of Defense initiates the referral by sending the Criminal Division a summary of the case describing the basic allegations and facts. In some cases, the General Counsel's Office also provides a military law enforcement report with the initial referral. Once a case is referred to a U.S. attorney's office, prosecutors and agents likewise coordinate, often on a daily basis.

While these established procedures have been quite effective in ensuring appropriate coordination, we are always looking for ways to improve. Thus, in recent months, the Department has been working very closely with the Departments of Defense and State to improve the process by which both Departments investigate and refer cases to the Department of Justice for prosecution. The results of these efforts include the recent March 10, 2008, memorandum from the Secretary of Defense governing how offenses that are both a violation of MEJA and the UCMJ should be handled.

In addition, the Department recognizes that training and education is key to the successful investigation and prosecution of these highly complex cases. As a result, the Criminal Division has been proactively offering training courses on MEJA to military investigative agencies, such as the Army Criminal Investigation Command and the Naval Criminal Investigative Service, and has provided instruction on MEJA to the Judge Advocate General Corps of the Armed Services as well. This training has already contributed to an increase in 2008 of MEJA referrals from the Department of Defense.

In conclusion, Mr. Chairman, I would like to express to you and the committee the Department's appreciation for your interest in this issue. The Department is committed to remaining vigilant in our efforts to bring sexual offenders to justice. I look forward to answering the committee's questions.

Ms. MANDELKER. Senator, I can tell you that we do have a number of cases under active investigation. We also, in addition, have indicted a case of a contractor, of sexual assault, and received a conviction. The victim there was a member of the military. We've also indicted an additional case involving a former member of the military, for rape and murder, and that case is pending. So, yes, we do have a number of active investigations. Of course, the number of referrals that we've received is not a high number. It is, as you've heard today, relatively low. But, we are committed to continuing to actively investigate these cases and to prosecute them, where we have credible evidence and the jurisdiction to do so.

Senator FEINGOLD. And, specifically, on the sworn testimony we've heard today, will you be commencing or continuing criminal investigation, based on that sworn testimony?

Ms. MANDELKER. Yes, absolutely.

Senator FEINGOLD. All right.

Mr. Reed, is the Department of Defense investigating the military's response to the incidents we heard testimony about this morning?

Mr. REED. I know the second witness has been investigated. As to the first witness, I don't recall her testimony as to whether she indicated she complained to CID, and then we'd have to check with CID on that, as to whether or not they have investigated or they have a statement in order to initiate an investigation. When I heard her testimony this morning, it was the first time I had heard it.

Senator FEINGOLD. All right. Well, obviously——

Senator BILL NELSON. Yes; she did say that CID had investigated it.

Mr. REED. Right.

Senator FEINGOLD. Well, obviously we'll be watching closely what happens with these cases. These brave and patriotic women deserve justice, and we owe it to them.

In the past, when the Department of Justice has been questioned about its failure to initiate prosecutions against contractors in cases the Department of Defense referred to it, DOJ has offered two justifications. First, DOJ has argued that it lacks sufficient evidence to prosecute. I understand that DOJ has over 200 employees in Iraq working on various issues. Are any of these individuals charged with working with State Department and Army investigative personnel on investigations of contractors to ensure, among other things, that evidence is collected to make prosecutions possible?

Ms. MANDELKER. Let me just clarify, with respect to your previous question. We do have—out of the victims who testified today, we have one active investigation. And, as Mr. Reed noted, this was also the first time that we had heard about the second victim.

Absolutely, we have folks both in the Department of Justice——

Senator FEINGOLD. So, with regard to the one you just heard about, you will be commencing an investigation.

Ms. MANDELKER. We——

Senator FEINGOLD. Because you said you hadn't heard about it before today. That means you must be commencing an investigation after this——

Ms. MANDELKER. We do have——

Senator FEINGOLD [continuing]. Hearing.

Ms. MANDELKER [continuing]. An active investigation.

Senator FEINGOLD. I thought you said you hadn't heard about it before.

Ms. MANDELKER. The one victim of the incident that occurred in 2004, we didn't.

Senator FEINGOLD. I assume, then, an investigation will commence on that.

Ms. MANDELKER. Well, we will work with our colleagues at the Department of Defense, and are very interested to work with the victim and to see that—what we can do there.

Senator FEINGOLD. All right. You can go back to answering the subsequent question, then.

Ms. MANDELKER. Absolutely, we have a number of prosecutors, both here and in Iraq, who are working on these cases. Here in the

Criminal Division, for example, where I work, we have a team of prosecutors who focus on MEJA cases. We also have prosecutors all over the country who are willing and able to accept referrals of MEJA cases. We work very closely with our colleagues who are, in fact, in Iraq, whether it's with our DOD or State Department colleagues or the prosecutors the Department of Justice has stationed in Iraq.

Senator FEINGOLD. But, it sounds a little more general than my question. My question was, specifically, Are people assigned the task to make sure that evidence is collected to make prosecutions possible?

Ms. MANDELKER. As cases come into the Department, we do have prosecutors who are specifically designated to work on a particular case. And we reach out to our colleagues in Iraq regularly, as we need—as we need assistance in—their assistance, as well as law enforcement's assistance, in collecting evidence.

Senator FEINGOLD. It sounds, a little bit, that's case by case, rather than assigning somebody with this general responsibility. Wouldn't it be helpful to designate a person or persons with that particular responsibility?

Ms. MANDELKER. Well, we do have individuals who are designated with that responsibility here in the Criminal Division at the Department of Justice. We reach out to our colleagues in Iraq, as necessary, and they do provide us with a good deal of assistance in furthering these cases.

Senator FEINGOLD. Well, it sounds like it's particularly challenging to do it over there, so I think you may well need somebody over there who has that expertise.

DOJ's second justification for not prosecuting certain offenses by contractors is the lack of jurisdiction. DOJ has declined to prosecute civilians who have allegedly abused detainees, in part because the Military Extraterritorial Jurisdiction Act, MEJA, does not provide jurisdiction over misdemeanor assault.

But, MEJA is not the only statute that DOJ statute that DOJ can employ. There are other criminal statutes that apply on U.S. bases and other facilities within the special maritime territory jurisdiction of the United States, which would include U.S. bases and detention facilities abroad. For example, Section 113 of Title 18 of the U.S. Code provides for jurisdiction over simple assault in U.S. special maritime territory jurisdiction.

In a letter to Senator Durbin regarding 20 cases of alleged detainee abuse that were referred to the Justice Department, the Department stated that, "There may have been evidence of misdemeanor assaults." Why didn't you prosecute those individuals under section 113 of title 18?

Ms. MANDELKER. Senator, I can tell you that we do, in fact, have a conviction emanating out of a case in Afghanistan in which we did prosecute a CIA contractor for exactly the charge that you mentioned, which is assault. As for the other cases, we have a task force that's set up in the Eastern District of Virginia. That task force does not sit under me. And I am happy to get back to you with a response to your question.

[The information referred to above was not available at press time.]

Senator FEINGOLD. Please do. And thank you.

The Justice Department has also argued that MEJA doesn't apply to State Department contractors in Iraq. But, Ms. Mandelker, isn't it true that MEJA applies to anyone supporting a Defense Department mission, and that, in Iraq, the State Department and Defense Department have a joint mission?

Ms. MANDELKER. You are correct that MEJA provides for jurisdiction over non-DOD contractors whose employment is in the scope—is in support of the DOD mission. So, with respect to State Department contractors, we have to undertake an analysis on a case-by-case basis with respect to whether or not the contractor, the offender, the scope of his employment was, in fact, in support of the DOD mission.

Senator FEINGOLD. So, it is possible that it would be included——

Ms. MANDELKER. Yes——

Senator FEINGOLD [continuing]. And applicable to Iraq.

Ms. MANDELKER. That's right, it is possible.

Senator FEINGOLD. OK.

Let's talk for a minute about the contractor's response to these allegations. There appear to be many cases where the contractor's response to these horrible events has been to ignore complaints, warn employees to keep quiet, or even fire them. To add insult to injury, KBR, Halliburton, and other companies have included mandatory arbitration clauses in their contracts with employees, which means that these victims cannot sue their employers in court, but, instead, must make use of an arbitration process that is stacked against the employee.

Because arbitrations, unlike court proceedings, are not open to the press and the public, these mandatory arbitration clauses have the additional effect of limiting the information available to the public about what's happening with contractors in Iraq.

The United States Government has an obligation to help these employees who undertake dangerous service in Iraq and elsewhere to vindicate their constitutional right to have a court consider their claims against their employers. Will the Defense and State Departments give serious consideration to requiring contractors to remove these mandatory arbitration provisions from their contracts with employees?

And then, after that, Ms. Mandelker, do you see any legal difficulty with adding that requirement as a condition of the government contracts under which KBR, Halliburton, and others provide services to the United States?

Mr. Reed.

Mr. REED. First of all, as to the arbitration clause and contractors, it's outside of my area of expertise, so I won't—I won't attempt to address that, other than the fact that you've made your concern known, and we can take that back.

I don't know, personally, whether or not the Department can demand certain contractual provisions within a civilian contract or not, so—but, you have made your—you've made your——

Senator FEINGOLD. Thank you.

Mr. REED [continuing]. Point known, and I think we'd—I'd have to leave it at that, from a personal——

Senator FEINGOLD. OK.

Mr. REED [continuing]. Perspective.

Senator FEINGOLD. Mr. Starr. State.

Mr. STARR. Sir, I would have to do the same thing. I think I'd have to check with our procurement officials to make a determination whether we could require that in a contract.

Senator FEINGOLD. All right.

Mr. STARR. We'd have to have a discussion within the Department about it.

Senator FEINGOLD. And then, let me ask DOJ, then. Ms. Mandelker, finally, again, Do you see any legal difficulty with adding that requirement as a condition of the government contracts?

Ms. MANDELKER. Senator, I, likewise, am not a procurement or contract lawyer, but I can say that there should be no circumstance under which a victim feels inhibited or hindered from reporting their crime to law enforcement. And we need to make sure that we create the environment under—by which they feel comfortable, again, to report their crimes to law enforcement. And we do so, and we will continue to do so. But, a lot of work needs to be done.

Senator FEINGOLD. Well, let me say, on that point, that that's a valid point, but this also has to do with the accountability and the public nature of proceedings and the need for the American public—I'll tell you, I do town meetings in every one of Wisconsin's 72 counties every year, and I've done 42 listening sessions this year in some weather you wouldn't—people in—well, Florida has other challenges, but it was cold, and everybody showed up at these listening sessions, that—I had so many listening sessions, people are saying, "What's going on with these contractors?" And there's a lot of different issues. This one's going to upset people a lot. So, the issue of mandatory arbitration has to do with justice for the individuals, but it also has to do with accountability and—for the American people, as well.

So, I would like a response, after the fact, from all of you, as you've all offered to do, particularly with regard to the legality of including that in contracts, but also with regard to the other departments.

[The information referred to above was not available at press time.]

Senator FEINGOLD. And, Mr. Chairman, thank you so much for your kindness in letting me go, at this point.

Senator BILL NELSON. I want you to know how much I appreciate you coming here and your interest in this subject. At the end of the day, we're trying to make the system work like it's supposed to, and something is not working.

Senator FEINGOLD. Thank you, Mr. Chairman.

Senator BILL NELSON. I'm curious, Mr. Reed, why—where an incident occurred before 2006, as was the case here with Ms. Kineston in 2004, why is prosecution barred under the Uniform Code of Military Justice, which was amended in 2006, in an 2006 law, if the case hasn't been prosecuted yet? Is there a statute of limitations problem?

Mr. REED. Well, statute of limitations would not normally be a problem. The general proposition is that both the person and the

events need to be subject to the code at the time for UCMJ jurisdiction to be applicable. And so, even though the offense may have been a codal offense, the person, at the time that the crime was committed, was not a person subject to the code. And I think that would be the argument, if you will, or the position that people would take, that the person would not be prosecuted subsequently.

Senator BILL NELSON. How about the third law, the maritime and territorial jurisdiction?

Mr. REED. That particular—was a Patriot Act amendment in 2001 to address U.S. citizens—crimes committed by or against U.S. citizens on a military installation, I believe. I would primarily defer to Mr. Wiegmann on that. But, that is a separate—if the person and the offense otherwise qualified, it could be another basis for extraterritorial application of prosecution in Federal district court, but it is not a basis for prosecution under the UCMJ.

Senator BILL NELSON. In fact, Mr. Wiegmann, didn't you have a CIA contractor convicted under that provision of law for the assault of a detainee in Afghanistan?

STATEMENT OF JOHN B. WIEGMANN, ASSISTANT LEGAL ADVISOR FOR MANAGEMENT, DEPARTMENT OF STATE, WASHINGTON, DC

[The prepared statement of Mr. Wiegmann follows:]

PREPARED STATEMENT OF J. BRADFORD WIEGMANN, ASSISTANT LEGAL ADVISER FOR MANAGEMENT, DEPARTMENT OF STATE, WASHINGTON, DC

Good morning Chairman Nelson and members of the subcommittee. I am pleased to be here today to discuss the legal framework under which the Department of State supports U.S. criminal investigations of violent crimes overseas.

The President has long delegated to Chiefs of Mission his responsibility for the security of our missions abroad and of all U.S. Government personnel on official duty abroad, other than those under the protection of a U.S. area military commander. Likewise the Congress has by law vested in the Secretary of State the responsibility to develop and implement policies and programs to provide for the security of U.S. Government operations of a diplomatic nature, including protection of U.S. Government personnel on official duty abroad and establishment and operation of security functions at all U.S. Government missions abroad. Among the Secretary's specific security responsibilities in this regard is the conduct of investigations relating to employee security and the performance of other security and investigative matters as authorized by law. Finally, the Secretary may direct members of the Foreign Service to perform functions, including investigative functions, on behalf of other Federal law enforcement agencies requiring their services.

Collectively, these authorities have been viewed as supporting the Deparment's role in investigating violent crimes committed by or against U.S. Government personnel operating overseas at U.S. diplomatic missions or otherwise related to the security of the mission. Such investigations are inherent in the responsibilities vested in the Secretary of State and in all Chiefs of Mission overseas to provide for the security of our missions and personnel abroad. Within the Department of State, the responsibility for conducting such investigations has been delegated to the Bureau of Diplomatic Security (DS), which in turn assigns that responsibility to Regional Security Offices that are staffed by DS Special Agents at posts all over the world. Of course, such investigations are only one of many tasks these agents perform for the Department overseas, including post security and protective functions, communications and information security, emergency planning, and conducting visa and passport fraud investigations.

The Department of State's investigative functions in this regard are of course shared with the Department of Justice, and DS agents work closely with their counterparts at the FBI and other Federal law enforcement agencies on many of the investigative matters they undertake overseas related to the U.S. mission. As authorized by law and with respect for the sovereignty of the host country, DS agents overseas may also support and assist criminal investigations abroad undertaken by

the Department of Justice or other law enforcement agencies, even where such investigations do not relate directly to the U.S. Mission or U.S. Government personnel abroad. DS agents also serve as a liaison with foreign government law enforcement authorities on many different matters. In places like Iraq and Afghanistan, with significant ongoing military operations, DS agents serve as the Embassy's principal law enforcement liaison with military investigative authorities in the country. Thus an Embassy Regional Security Office is one of several different entities that may potentially investigate a particular criminal incident abroad.

In many cases, because Embassy officials are the primary representatives of the U.S. Government in the country, they may be the first to learn of, and respond to, criminal activity by or against a U.S. national overseas. Where appropriate, DS agents may take the lead on any subsequent U.S. investigation, particularly where the criminal activity involves the U.S. mission and its security. Alternatively, after an initial assessment of the facts, they may refer the matter to local authorities, the Department of Justice, or other Federal law enforcement agencies to investigate, particularly where a nexus to the U.S. mission is lacking. Of course, as I have said, DS can and does continue to provide support to such investigations where requested to do so.

An important consideration in any U.S. investigation of criminal activities overseas is U.S. criminal jurisdiction. U.S. criminal laws generally apply only in the United States, unless Congress expressly provides otherwise or the courts infer extraterritorial application from the nature of the statute or its structure. Many crimes that are committed against U.S. citizens overseas are beyond U.S. criminal jurisdiction. There is no Federal statute, for example, that makes rape or sexual assault of a U.S. national a Federal offense worldwide. In most cases, only the local authorities have jurisdiction to prosecute the offense. Therefore, most crime against U.S. nationals overseas is investigated by local authorities and, if a perpetrator is identified, prosecuted within the local court system.

However, there are of course circumstances where U.S. criminal jurisdiction does extend overseas: Under the U.S. Special Maritime and Territorial Jurisdiction, the U.S. Government can prosecute individuals for a broad range of felonies if they are committed by or against a U.S. national on the premises of U.S. diplomatic, consular, or military facilities overseas, or residences used by U.S. personnel assigned to those facilities. There is a number of specific criminal offenses under U.S. law that apply extraterritorially, such as certain offenses involving torture, war crimes, material support for terrorism, or drug offenses that impact the United States. Notably, there is a Federal statute that makes it a Federal offense for one U.S. national to murder another, anywhere in the world. Finally, under the Military Extraterritorial Jurisdiction Act (MEJA), the U.S. Government may prosecute, inter alia, DOD contractors for a broad range of felonies committed abroad, as well as non-DOD contractors to the extent that their employment relates to supporting the mission of the Department of Defense overseas.

The administration is currently working with the Senate on legislation to expand the coverage of U.S. criminal laws in places like Iraq where we have ongoing military operations, to ensure that we have the tools we need to hold U.S. Government employees and contractors overseas accountable where appropriate.

Thank you for the opportunity to address these issues today and I look forward to answering any questions the subcommittee may have.

Mr. WIEGMANN. I think—Ms. Mandelker can address that, but I think that is correct. It just depends on where the offense occurs under the special maritime territorial jurisdiction. As Mr. Reed said, it has to occur on diplomatic premises, military base, military installation. I'm not quite sure where exactly Ms. Kineston's offense occurred, but that would be the issue. If it did occur in one of those locations, it might be subject to U.S. jurisdiction.

Senator BILL NELSON. OK.

Let me go back to you, Mr. Reed. What kind of predeployment training on sexual harassment is required of DOD contractors?

Mr. REED. It is my understanding that there is—there are provisions which would indicate that contractors are required to abide by all the laws, regulations applicable—and regulations applicable during their contractual relationship with the Department. And I believe there is a reference to sexual harassment in a requirement

that, prior to deployment, they be referred to the sexual harassment Web site to get information on that. But, that's really not—I think the best way I would like to answer that question for you is that we have recognized that we need to emphasize, with contractors, the requirement that they notify contractor employees that these various laws are applicable, including, you know, the laws applicable to sexual assault, and that they provide training to those contractors, predeployment, and making it available to them upon arrival in the deployed location, to take local conditions into consideration. We have taken a position to develop those. We are in that process right now. And the effort is to increase awareness and, therefore, enhance accountability, and ultimately, hopefully, deter this kind of misbehavior as employees under contracts to the Department of Defense. So, that is a Federal acquisition regulation-type of procedure required in order to place the requirement on that.

Now, we have also, in the interim, publicized the applicability of the DOD rules and regulations regarding prohibited sexual harassment and sexual assault. They have been implemented in the Army as of March 18, 2008, in the regulation that further implemented the DOD implementation. And it's my understanding that Multi National Forces Iraq (MNFI), in Iraq, has made that a requirement within the AOR, and that notifications be publicized in public places as to where persons who become aware of, or may be subjected to, sexual harassment and sexual assault can go for help, as well as where to report incidents of that nature.

So, to fully answer your question, we have a program ongoing right now, and we anticipate that it will expand the awareness and the knowledge of all folks who join the Armed Forces.

Senator BILL NELSON. Certainly, the deficiencies that have been brought out—and let me amend your last statement, there, to "make aware members of the Armed Forces." We're talking about making aware civilian contractors——

Mr. REED. Right.

Senator BILL NELSON [continuing]. As well, who are there as a result of the United States Armed Forces.

Mr. REED. I should have said "total forces"——

Senator BILL NELSON. Yes.

Mr. REED [continuing]. Because total forces include our civilian——

Senator BILL NELSON. Right.

Mr. REED [continuing]. Employees and our civilian contractors, as well as the members of the Armed Forces, that we bring to the fight, so to speak.

Senator BILL NELSON. OK.

Now, I think what you've said is certainly a step in the right direction, but isn't the question so obvious? We're in the fifth year of a war. Why wouldn't we have made sure that every member of the total Armed Forces was aware of what they need to do about these assaults?

Let me ask you this. Is there a requirement in the contracts that requires contractors to provide training on how to report and handle sexual assaults while they are deployed?

Mr. REED. I don't believe there currently is, although, as I mentioned, the Department has—is in—is pursuing that to put it in a Federal acquisition regulation system in order to make that a requirement, and the Department stands ready to assist the contractors in the formulation of what that training ought to consist of.

Senator BILL NELSON. Well, you're the Office of Legal Counsel. It seems like, to me, as a result of what you might have learned today, that might be something you want to insert in your contracts.

Mr. REED. We are pursuing that, Senator. Thank you.

Senator BILL NELSON. I don't want to be a cynic and respond to you by saying "5 years later."

Let me ask you this. In one of the reported cases—this is one of the reported cases in the news—the alleged victim had a rape kit that was completed by an Army medical officer shortly after the rape. And then, the rape kit was turned over, allegedly, to KBR. My question to you is, What criteria guide the decision by which the investigative authorities in Iraq and Afghanistan, or any other forward-deployed locations, turn cases over to the victim's employer for further identification? When the military has the evidence, doesn't the military have a responsibility to keep that evidence?

Mr. REED. Well, I can't respond to that particular point in time, but, yes, the position ought to be that when the military provides treatment that results in forensic evidence of a crime that was committed, that they ought to have the evidence turned over to the military criminal investigative organization that's available until such time as the facts and circumstances of the alleged perpetrator and the jurisdiction of the case is sorted out, and then hand it over to the appropriate authorities for purposes of doing that.

Whether or not such were available at the specific time in question, I can't answer that.

Senator BILL NELSON. Well, of course you can't. No; I'm trying to get to the bottom——

Mr. REED. Right. But——

Senator BILL NELSON [continuing]. Of this whole thing.

Let me give you another one. For example—now, where the military has the evidence and they turn it over to contractor security control, shouldn't you have a formalized system in place in order to ensure the integrity of the evidence and the followup on these cases?

Mr. REED. I don't believe it's protocol to turn them over to non-law-enforcement officials.

Senator BILL NELSON. I would agree with that.

Mr. REED. And I also don't——

Senator BILL NELSON. But, in this case, it did happen.

Mr. REED. And I also don't believe that the military criminal investigative agencies who obtain evidence under chain of custody would not turn it over to somebody under chain-of-custody procedures. And I'm not aware that that occurred in this case, or not.

Senator BILL NELSON. That's one of the cases that I cited, at the outset, in my remarks.

Well, let me ask you this. If there's evidence suggesting that a U.S. member of the Armed Forces sexually assaulted a civilian contractor, and that evidence is told to another U.S. serviceman, what

should be the process by which—point by point, step by step, that the evidence would be protected? You're the legal counsel.

Mr. REED. It depends on the capabilities and qualifications of the soldier—or military members you're talking about. But, if you get a military law enforcement or official involved in that process, if they are such, then they should take the evidence under chain-of-custody purposes, preserve it, protect it, secure it, and turn it over to appropriate authorities for consideration of prosecution. If they are just a soldier or an airman or sailor who have no training or experience in evidence-collecting and/or forensics, that could be problematic. So, the answer depends on who those military members are, and their backgrounds and experience and responsibilities. But, once it's in the hands of a law enforcement community official, then they should be taking such evidence under chain of custody and preserving it for possible prosecution down the road.

Senator BILL NELSON. OK. Now, Mr. Reed, this is your chart.

Mr. REED. No; it's not. That's the IG's chart.

Senator BILL NELSON. Well, it's the Department of Defense chart.

Mr. REED. Oh. OK.

Senator BILL NELSON. You're here as a representative of the Department of Defense.

Mr. REED. All right.

Senator BILL NELSON. And this is the inspector general of the Department of Defense.

Now, you say, of—the victim being a U.S. civilian, that of those 26 sexual assault cases, you know of no convictions on there.

Mr. REED. Sir, that list is by victim status. Whether or not a person is prosecuted is determined by the offender's status. So, I don't know. You have a lot of U.S. civilian victims there, but I don't know whether the perpetrator of the offense is a military member, a DOD civilian, a non-DOD civilian, a contractor, a non-DOD contractor, or whatever, and it's that factor that is determinative as to whether or not there is jurisdiction under the Federal Code and the UCMJ Code. The status of the victim does not determine the jurisdiction.

Senator BILL NELSON. Well, your inspector general in the Department of Defense argues that these are the ones that would have had the connection with the military, and we're just trying to get some action, here.

Mr. REED. I understand, sir. And I don't disagree with you. I believe that it—based upon the IG's information as to the victim status, he's telling you that they had investigations that involved these victims in that status. What it doesn't tell you is what the status is of the alleged offender, which is what you would use to determine the jurisdiction of those cases. Many of the cases that are "no action" might be because the individual was not subject to U.S. laws and was not subject to the UCMJ. I can't answer that question. It could have been a foreign national that was the perpetrator. So, the information tells you of the number of cases that the military criminal investigators ran that involved a victim of sexual assault—by the military criminal investigative organizations in those two locations—but, it doesn't specifically identify the basis, *in personam* jurisdiction over the individual.

Senator BILL NELSON. Do you see the bottom of that chart? It says "Investigated Subjects by Affiliation."

Mr. REED. I see that.

Senator BILL NELSON. Can you move that chair? Yeah, just put it up. Does that answer your question?

Mr. REED. It depends on—I don't—I assume—I have to assume that they correspond with—up in—in table No. 1, but I don't know for sure, and I don't know which cases they latch up to.

Senator BILL NELSON. All right. But, you know——

Mr. REED. But those——

Senator BILL NELSON. You know what I'm getting at.

Mr. REED. But, those are categories——

Senator BILL NELSON. All right, let's just get——

Mr. REED. But, those are categories of——

Senator BILL NELSON [continuing]. Let's get——

Mr. REED [continuing]. Of jurisdiction, U.S. civilian, if they're subject to MEJA, and U.S. military, if they're subject to UCMJ.

Senator BILL NELSON. All right.

Mr. REED. Or MEJA.

Senator BILL NELSON. Ms. Mandelker.

Ms. MANDELKER. Yes.

Senator BILL NELSON. With regard to your Department of Justice, how many people has Justice successfully prosecuted for sexually assaulting a U.S. civilian contractor in Iraq or Afghanistan?

Ms. MANDELKER. For sexual assault? Senator, we—I don't know of any convictions. I do know that we have active investigations.

Senator BILL NELSON. And how many of those are active investigations?

Ms. MANDELKER. Well, it's upward of about—somewhere of about—somewhere between four and six, I believe is the number.

Senator BILL NELSON. And, as a result of today, you say that Mrs. Kineston's is one of those?

Ms. MANDELKER. Again, Senator, today is the first day that we—Mrs. Kineston's testimony is the first time that we've heard of such a case. We will absolutely reach out to Mrs. Kineston. We, in fact, had a good discussion with her lawyer, in the recess. And I can give you my word that as—across the board, we remain very committed to investigating these cases and to prosecuting these cases.

I would like to point out one very important——

Senator BILL NELSON. Let me ask you about Mrs. Leamon before you go on. What about her?

Ms. MANDELKER. We do have an active investigation of that case. As you know, it just recently came to light, but we do have an active investigation.

Senator BILL NELSON. OK. And, of course, you can't comment on the investigation. But, that's—well, that's news. You do have an investigation going on, on—the Department of Justice—on Mrs. Leamon's case.

Ms. MANDELKER. That is correct.

Senator BILL NELSON. Let me ask you—you were going to say something, and I interrupted you.

Ms. MANDELKER. Well, I would just want to point out, because I think it's a—it's very important to note, as Mr. Starr noted at the outset, these cases are very important cases. The allegations are

very serious. At the same time, it can be extremely difficult to investigate these cases. As you heard today, it is an unfortunate fact that these crimes occur in a war zone. And there are numerous difficulties, of course, with investigating cases, when the conduct occurred in a war zone. These are dangerous areas.

We do make—we do send our investigators out to investigate these cases. I've personally been involved in the decision to send our agents out to investigate these cases, to collect evidence. It's very important to—that we do so. But, we should applaud the men and women who take on this—take on these investigations, because—I can tell you that we send them out, they do great work. We worry about them when they're out there. And it needs to be recognized that, you know, time is, unfortunately, not on our side, when you're talking about a sexual assault case, but we face some very difficult obstacles, and it is also unfortunate that we don't control the timetable by which we go and investigate these cases.

Senator BILL NELSON. Well, of the four to six cases that you say that are open investigations, how old are these investigations?

Ms. MANDELKER. Senator, I'm simply not at liberty to discuss pending investigations.

Senator BILL NELSON. Well, of course, the concern would be that they've been going on for years, and the perpetrators, of course, would not be brought to justice, if they are responsible.

Well, knowing that the evidence is so difficult to collect and to preserve, why is there no office from the Department of Justice deployed to the theater?

Ms. MANDELKER. We do, in fact, have both prosecutors and agents in theater. We have prosecutors here at home who are working on these cases. So, I can't tell you that the individuals who are in-theater are only dedicated to MEJA cases, but we do enlist their help and their support, and they have provided us with a great deal of support.

Senator BILL NELSON. I can tell you that I think that I speak for the committee, that that's not good enough. In a war zone, where evidence is hard to collect and it has a way of disappearing, and the preservation of that evidence is necessary, I think you all ought to consider putting an office forward in the theater.

Ms. MANDELKER. Let me say, of course, it's very often the case that the law enforcement—it's always the case, I should say, that the principal law enforcement agents that respond to the scene are either in the military or at the State Department, and they, as well, have a number of dedicated agents in the field who are working on these cases. So, there are a—there's a good deal of resources available in-theater in Iraq to handle these investigations.

Senator BILL NELSON. I would beg to differ with you, on the basis of the testimony that we received this morning.

Let me ask you about your coordination with the Department of Defense and the Department of State. Now, this is a response I got from your Department last night, "We coordinate closely with the referring agencies, and in most instances, the referring agencies play a significant role in the investigation in any prosecution. The Department"—in this case, of Justice—"is aware of the small number of allegations of sexual assault cases by women who worked as government contractors in Iraq."

So, you consider 26 cases as a small number.

Ms. MANDELKER. Again, I think, Senator, that you heard from the other Departments the number of referrals that have been made to the Department of Justice with respect to sexual assaults in Iraq. I think most of those cases are—have to do, in fact, with the military, and I don't know if those cases reflect cases, again, where we would have jurisdiction to prosecute.

Senator BILL NELSON. Well, in your testimony, you state that MEJA contains a number of important restrictions. Has the Department of Justice sought legislation to alleviate any of those restrictions?

Ms. MANDELKER. We have—we do support legislative efforts to provide greater accountability for unlawful acts committed by contractors in Iraq. We are working with the Congress, and we will continue to work with the Congress on such efforts.

Senator BILL NELSON. Are there any other restrictions in your testimony this morning, in your written testimony, that you want to change, or do you support those restrictions?

Ms. MANDELKER. Well, again, Senator, we are working with the Congress on legislative efforts to amend MEJA to ensure that more contractors are accountable in Iraq.

Senator BILL NELSON. It's my understanding that, in one of these cases, that your Department instructed the State Department, upon referral of a potential MEJA case, to cease any further investigation in that case, and you prohibited the State Department from discussing the matter with anyone. Is that true?

Ms. MANDELKER. Again, Senator, I don't have that information, and I'm——

Senator BILL NELSON. You don't know.

Well, then I would like to keep it open for the record for you to answer that and give, if that was true, any justification for stopping any further action by the Department of State. If you will respond in writing to the committee.

[The information referred to above was not available at press time.]

Senator BILL NELSON. Your testimony describes MEJA cases in which convictions have been obtained or charges brought, but every one of those involves charges other than crimes, such as the possession of child pornography or sexually abusive contact. And I want to applaud you to enforce the law in those cases.

But, that's not why we're here today. We're here for the sexual assault cases. And, thus far, you've told us, now, that there has not been one conviction under MEJA which you have, and you just told us that you have one open investigation on this case that was presented to us today.

If you will, take from this hearing the fact that the Department of Defense inspector general has identified those 26 sexual assault cases involving U.S. civilian women between 2002 and 2008, and not one of them appears to be have been prosecuted.

So, is there anything more that you want to add about the lack of a prosecution in any of those cases?

Ms. MANDELKER. Again, I am not familiar with the cases that are represented on the chart. I am only familiar with cases that have been specifically referred to the Department of Justice.

I want to assure you that, when we get such a—referrals, we take those referrals very seriously. We undertake active investigations. As I already mentioned, it can be extremely difficult to conduct an investigation in a war zone, but we are committed to taking those cases. The Department, in fact, has a long history of success when we're talking about prosecuting sexual offenders. We have a long history of success, both domestically and abroad. We prosecute numerous child offenders. We have, in fact, under MEJA. We prosecute sex traffickers. We prosecute sex tourists. We take sex offenses very seriously, and there's no exception when it comes to sexual assaults of contractors or civilians in Iraq.

Senator BILL NELSON. Well, one of the reasons of this hearing was to make you aware. And you now are aware. And this is an inspector general report from the Department of Defense dated April the 3rd in a letter to me. So, I would suggest to you, in our capacity of oversight of the executive branch of government, that you coordinate with the Department of Defense and the Department of State as to whether or not some of these cases have fallen through the cracks.

For me to say anything more would be superfluous. You know what the problem is. Let's get it solved.

Thank you.

And the meeting is adjourned.

[Whereupon, at 12:17 p.m., the hearing was adjourned.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

RESPONSE TO AN ADDITIONAL QUESTION SUBMITTED FOR THE RECORD TO ACTING ASSISTANT SECRETARY GREGORY STARR BY SENATOR FEINGOLD

Question. I understand that the bilateral security agreement between the United States and Iraq that is currently under negotiation is likely to provide immunity for U.S. contractors. Given the U.S. Government's failure to establish a meaningful oversight regime, do you think it makes sense to deny the Iraqis the authority to prosecute contractors? Why don't we, at a minimum, provide for Iraqi jurisdiction where the United States declines to exercise its jurisdiction? What is the precedent for a blanket grant of immunity to contractors where no jurisdiction exists under local law?

Answer. Contractor support is critical to the U.S. Mission in Iraq. The status of contractors is an issue of concern to both the United States and Iraq. Contractors working on behalf of the U.S. government in Iraq currently possess immunity from Iraqi legal process for their contractual acts under a CPA Order (now part of Iraqi domestic law), which is tied to the presence of the Multinational Force in Iraq and its UN Chapter VII mandate. As we negotiate a new strategic and security relationship with Iraq, we have stressed our respect for Iraqi sovereignty, and Iraq has emphasized the importance they place on effective accountability for USG contractors in Iraq. We seek an outcome that will ensure our ability to maintain an effective contractor presence in Iraq.

Our negotiations with the Iraqi government are still ongoing; so we cannot comment on any specific provisions until those negotiations conclude.

I must register disagreement, however, with the premise that the United States government has failed to establish a meaningful oversight regime for contractors. While it is well understood that conducting investigations of critical incidents in a war zone poses many difficult challenges, there have been investigations concerning conduct by U.S. government contractors in Iraq, and, where appropriate, referrals to U.S. law enforcement entities have been made. With regard specifically to private

security contractors, the U.S. government has made significant efforts to improve its oversight and accountability in the last several months.

Moreover, the Department of State strongly supports efforts to provide greater legal accountability for unlawful acts its contractors may commit in Iraq or other areas of combat operations. The Administration has been working closely with the Senate on legislative amendments that would increase our ability to hold U.S. contractors overseas accountable under federal law. We have supported those efforts and would very much like to see appropriate legislation on this issue enacted as soon as possible.

RESPONSES TO ADDITIONAL QUESTIONS SUBMITTED FOR THE RECORD TO ROBERT REED, ASSOCIATE DEPUTY GENERAL COUNSEL, MILITARY JUSTICE AND PERSONNEL POLICY, OFFICE OF THE GENERAL COUNSEL, DEPARTMENT OF DEFENSE, BY SENATOR FEINGOLD

Leamon Case

Question. During the hearing, you testified that in Ms. Leamon's case, Ms. Leamon "appeared to be pleased with . . . the responsiveness of the CID once they were notified of the situation," and that agents of the Criminal Investigative Division (CID) appeared to have "responded appropriately under the circumstances."

a. Ms. Leamon testified that, at CID, "I was interrogated from 2 p.m. until midnight by two special agents. I advised them that I had an attorney, and they convinced me to sign a waiver of my rights. The agents were very intimidating and their questions and demeanor suggested strongly that they thought I was lying about the rape." Does this testimony indicate to you that Ms. Leamon was "pleased" with CID's "responsiveness?" Do you consider the behavior she described to be appropriate?

b. Ms. Leamon testified that CID did not detain her assailants or restrict their movements, instead requiring her to be accompanied by CID military personnel as she moved about the base. Is it your position that it was not appropriate under the circumstances to detain her assailants? If so, was it inappropriate in your view for the military police to arrest Ms. Kineston's assailant?

c. Ms. Kineston testified that the Judge Advocate General she spoke with regarding sexual harassment on the base told her he could not assist her. Was this an appropriate response?

Answer.

> Does Ms Leamon's testimony indicate to you that Ms. Leamon was pleased with CID's "responsiveness?" Do you consider the (CID) behavior she described to be appropriate?

a. The question now presented to me is an inaccurate reflection of the dialogue between me and Senator Nelson at the hearing on April 9, 2008, about the content of the testimony of another witness, Ms. Leamon. In order to understand the response I provided, in context, an understanding of the previous testimony at the hearing is required as background.

Ms. Leamon's testimony begins on page 41[1] of the Congressional Transcript of the hearing, in which she testified that she had not seen a doctor until she had left Camp Cedar and arrived at Camp Adder, where she was seen and examined by a military doctor at the Combat Support Hospital. Ms. Leamon stated, "The physician brought me into the clinic. We spent a great deal of time talking. She was very kind. She asked me to describe what happened. And she spent a lot of time telling me that, from what I could describe to her, that it sounded like I had been drugged and that I was raped." On page 42, Ms. Leamon's testimony goes further in describing her treatment by the military physician and states, "She's—she was very, very supportive of my situation. She encouraged me at that time, to report it, as well, further. She asked if I would see the combat stress personnel. And she did her exam and collected her samples." She testified that she followed the advice given, stating, "I did see combat stress psychiatrist, who prescribed four tablets, for me to sleep that night." This testimony was in contrast to the treatment she received by Kellogg

[1] The page numbers mentioned in Mr. Reed's response refer to the page numbers of the unedited transcript of the hearing, not this print.

Brown and Root (KBR) personnel and Global Investigations personnel, which is also a part of KBR, while still at Camp Cedar.

On page 43, when Senator Nelson first asked Ms. Leamon about her signed statement in which she stated, "When I got to Adder, I was taken to CID (Criminal Investigation Division) where I was interrogated from 2:00 p.m. until midnight by two special agents," Ms. Leamon responded, "Correct. That was not that day. This was Global Investigations, which is KBR's investigators, that arranged the stay of interrogation." Ms. Leamon's testimony then went on to discuss events involving Global Investigations. Although Ms. Leamon again verified, on pages 45–46, what she said in her written statement, on page 46, Ms. Leamon also testified that the CID special agents took her to a room in the military housing area and put her in a room for the night between the two special agents for her protection and was given further advice for her protection when she wanted to leave the room to smoke a cigarette. Ms. Leamon had previously testified about her concern for her safety and criticism of KBR treatment and the fact that her alleged assailants were still present where she had to work at Camp Cedar. Ms. Leamon's testimony on page 46 continued, in which she stated she was picked up the following morning, as scheduled, and went back to the CID office where they reviewed her 14-page statement, asked her more questions, and asked her to handwrite a narrative. Once completed, she was taken back to Camp Cedar.

The relevant dialogue referenced between Senator Nelson and me is on pages 72–73 of the Congressional Transcript. Senator Nelson's question to me was, "Likewise, you must have been warmed to hear, as Ms. Leamon was shuffled around, that it wasn't until she got into the hands of the military, the Criminal Investigative Division and, *even more specifically, until she got to the military doctor, that she started getting some attention.*" (Emphasis added.) I answered the question as more specifically presented, "That was her testimony, and, taking it as it is, *she appeared to be pleased with the care that she received from the hospital physician that treated her, and generally, the responsiveness of the CID, once they were notified* of the situation." (Emphasis added.) My response then stated, "I—so, I guess the answer is, *it would appear that they responded appropriately under the circumstances.*" (Emphasis added.) In summary, my response to the question regarding the CID involvement was on the issue of their responsiveness to Ms. Leamon's request for medical and CID assistance, not all aspects of CID's involvement, although providing her security and security advice and allowing her time to review and amend her statement were additional indicia of assistance she was provided. As to whether the length of time attributed to "interrogation" is accurate or appropriate under the circumstances, that issue is a matter best addressed to CID officials familiar with procedures and the case in question. My response to Senator Nelson's question was not addressing this aspect of Ms. Leamon's testimony—it was only addressing what Senator Nelson's question appeared to be actually asking about—CID's responsiveness to her request for assistance.

Ms. Leamon's hearing testimony on page 45 of the Congressional Transcript was unspecific about what rights (as a victim of a crime) she was asked to waive, or even explain why (as a victim of a crime) she would be asserting she had an attorney and, therefore, would be reluctant to cooperate with CID as a law enforcement organization attempting to investigate her complaint. Similarly, she did not explain what she meant by ″the agents were very intimidating.″ It is not uncommon for investigators to challenge a complainant's complaint in order to determine what occurred without the added possibility of self-serving embellishments or generalizations. However, since there is no further explanation provided, I cannot comment on such statements when presented in a vacuum.

> Is it your position that it was not appropriate under the circumstances to detain her assailants? If so, was it inappropriate in your view for the military police to arrest Ms. Kineston's assailant?

b. Ms. Leamon's complaint apparently involved a fellow KBR contractor civilian employee and a military member only identified as "Jason" (pages 30 and 34, Congressional Transcript). CID was initiating an investigation based on Ms. Leamon's complaint. On a military installation, such as Camp Cedar, authority to ″arrest″ and "detain" (in the context of putting someone in jail) is limited by the circumstances, and the standards applicable to pretrial confinement. Generally, persons are not placed in military confinement based solely upon being accused of committing a crime. In this case, CID provided Ms. Leamon protection from her alleged assailants, as she testified. In Ms. Kineston's testimony she stated that the military police "dragged him out of the truck, put handcuffs on him, and took him to jail." I cannot confirm or deny what Ms. Kineston stated took place regarding this 2004 incident and would question whether this person was ever "jailed" as testified. Ms. Kineston

later testified on page 18 of the Congressional transcript that she was told by the military police that ″because he was a contractor, that they had the right to kick off—anybody off the base immediately, and that's what their—that's what they were going to do." This latter procedure of "kicking the person of base" is what is ordinarily referred to as being "barred from the installation" under the installation commander's authority. As a general rule, military law enforcement officials only temporarily detain, without "jailing," civilians until such time as the civilian in question can be turned over to civilian law enforcement authorities, if available. If civilian authorities are not available to assume custody of the individual, or are without authority to do so, the person is normally removed and barred from the installation. This appears to be what Ms. Kineston stated had occurred regarding her alleged assailant.

DoD's regulations implementing the Military Extraterritorial Jurisdiction Act (MEJA; 18 U.S.C. § 3261 et seq.), Department of Defense Instruction 5525.11 (March 3, 2005), now authorize military law enforcement officials outside the United States to arrest persons based on probable cause who are believed to have violated the Military Extraterritorial Jurisdiction Act (MEJA; 18 U.S.C. § 3261 et seq.). This action is only to be taken with a view toward MEJA prosecution in Federal district court. The MEJA limitations against the removal of the person from the foreign country (18 U.S.C. § 3264), the initial proceedings required by 18 U.S.C. § 3265, and procedural requirements of DODI 5525.11 will apply. The temporary detention in a military detention facility of a person charged with a MEJA offense may only be pursuant to the order of the Commander of the Combatant Command or designee. The decision is made on a case-by-case basis and temporary detention in a military detention facility should be ordered only when a serious risk is believed to exist that the person shall flee and not appear, as required, for any pretrial investigation, pretrial hearing, or trial proceedings, or the person may engage in serious criminal misconduct (e.g., the intimidation of witnesses or other obstructions of justice, causing injury to others, or committing other offenses that pose a threat to the safety of the community or to the national security of the United States). Paragraph 6.2.5, DODI 5525.11. Since October 2006, persons serving with or accompanying the armed forces during a contingency operation conducted for the purpose of engaging the enemy or hostile forces would be subject to military jurisdiction under the Uniform Code of Military Justice (UCMJ; chapter 47 of title 10, United States Code). As such, a person subject to the UCMJ can be apprehended and placed in pretrial confinement based on probable cause and when a lesser form of restraint is determined to be inadequate to ensure the person's continued presence for any court-martial proceedings or to prevent the person from committing additional offenses or being a threat to the safety of others.

> Ms. Kineston testified that the Judge Advocate General she spoke with regarding sexual harassment on the base told her he could not assist her. Was this an appropriate response?

c. As to the question regarding Ms. Kineston's testimony that she was denied judge advocate assistance regarding her request for legal assistance for being sexually harassed, Ms. Kineston's testimony is on pages 19–20 of the Congressional Transcript. As I understood her to testify and I read the transcript of her testimony, Ms. Kineston sought assistance under the military Legal Assistance Program, as then-provided in 2004 at Anaconda, the KBR camp at Balad Air Base, Iraq. In her testimony, Ms. Kineston, a civilian contractor employee, stated to Senator Nelson that it was correct that she was told she wasn't provided such legal services because the JAG office "didn't support civilians on the base" and she explained her situation involving her civilian assailant and how she had been subjected to sexual harassment and inappropriate behavior by her fellow KBR civilian contractor employees and supervisors. She was advised that she could contact a civilian attorney in Baghdad.

Paragraph 2–5, Army Regulation 27–3, "The Army Legal Assistance Program," defines those persons eligible to receive legal assistance (and, where noted, within the limitations described. Subparagraph (a) (7) states that civilian contractors accompanying the Armed Forces of the United States outside the United States are persons eligible to receive legal assistance, when DOD is contractually obligated to provide this assistance to such personnel as part of their logistical support and (a) the legal assistance provided must be in accordance with—and not prohibited by—applicable international agreement, or approved by the host-nation government in some way, and (b) legal assistance is limited to ministerial services (for example, notarial services), legal counseling (to include the review and discussion of legal correspondence and documents), legal document preparation (limited to powers of attorney and advanced medical directives, and help on retaining civilian lawyers. Subparagraph

(a)(7) goes on to state that Staff Judge Advocates (SJAs) should recommend elimination of such contractual obligations whenever these contracts are reviewed or renegotiated. As previously stated, Ms. Kineston was told that she wasn't eligible for legal assistance concerning her concerns and complaints about her civilian supervisors and co-workers and that she could seek assistance from a civilian attorney in Baghdad.

Army Regulation 27–3, also authorizes a commander responsible for legal assistance services to limit legal assistance when the space, facilities, or legal and supporting staff are unavailable to provide full legal assistance services. There is similar authority to limit the legal assistance services provided to one or more categories of persons who otherwise would be eligible to legal assistance. A request for a more specific and detailed response regarding the eligibility of civilian contractor employees at Camps Cedar or Adder, Iraq, at that time, should be addressed to the Judge Advocate General of the Department of the Army.

Use-of-Force Incidents

Question. How many investigations of use-of-force incidents involving contractors off of U.S. bases in Iraq have been conducted by the Army Criminal Investigative Division or other military law enforcement agencies? What was the outcome of these investigations?

Answer. Questions 2 through 5 presented to Mr. Reed involve investigative procedures and unrelated investigation cases. Those questions are beyond Mr. Reed's knowledge and the information he possesses. Those questions should be addressed to the Office of Investigative Policy and Oversight, Office of the Inspector General, Department of Defense.

Referral of Contractor Personnel for Investigation

Question. How many incidents have been referred by the agencies that hire and oversee contract personnel, such as the Army Corps of Engineers, to the criminal investigative agencies?

Answer. Questions 2 through 5 presented to Mr. Reed involve investigative procedures and unrelated investigation cases. Those questions are beyond Mr. Reed's knowledge and the information he possesses. Those questions should be addressed to the Office of Investigative Policy and Oversight, Office of the Inspector General, Department of Defense.

Review of All Defense Contractor Weapons Discharges

Question. The 2008 defense authorization legislation required the Defense Department to review all discharges of weapons by its contractors and to investigate these incidents when appropriate. The Washington Post reported in October 2007 that Maj. Kent Lightner, head of the Reconstruction Operations Center and the individual charged with oversight of Army Corps of Engineer contractors, usually accepted the companies' version of events when he learned of a shooting incident. He said, "If [a contractor] sends me a report and says, 'Bad guys shot at us, we shot back and dropped two of them,' I'm not going to investigate." This suggests that the Army's investigative system may be overly passive.

a. What are the criteria for determining whether an investigation is needed?

b. What do you consider to constitute an investigation for purposes of complying with the 2008 defense authorization? Does it include an effort to speak to witnesses and collect evidence?

c. At what point must an incident be referred to a law enforcement agency?

Answer. Questions 2 through 5 presented to Mr. Reed involve investigative procedures and unrelated investigation cases. Those questions are beyond Mr. Reed's knowledge and the information he possesses. Those questions should be addressed to the Office of Investigative Policy and Oversight, Office of the Inspector General, Department of Defense.

Washington Post Article on Triple Canopy

Question. Last year, the Washington Post reported that former U.S. servicemembers Shane Schmidt and Charles Sheppard alleged that, while working for Triple Canopy, another employee, also a former U.S. servicemember, fired deliberately at Iraqi vehicles and civilians. Has the Defense Department interviewed these witnesses (Mr. Schmidt and Mr. Shane)? Has it conducted an investigation? What was the result of this investigation?

Answer. Questions 2 through 5 presented to Mr. Reed involve investigative procedures and unrelated investigation cases. Those questions are beyond Mr. Reed's knowledge and the information he possesses. Those questions should be addressed to the Office of Investigative Policy and Oversight, Office of the Inspector General, Department of Defense.

PREPARED STATEMENT OF HON. BARACK OBAMA,
U.S. SENATOR FROM ILLINOIS

Mr. Chairman, thank you for holding this hearing on closing legal loopholes to ensure the prosecution of sexual assaults and other violent crimes committed overseas by American civilians operating in war zones. I also appreciate the courage of the witnesses who are testifying about their experiences in the hope that their efforts will prevent similar crimes against others and bring perpetrators to justice.

I am deeply disturbed by the pattern of sexual assaults taking place in war zones and the apparent inability of the Federal Government to deter these crimes or hold perpetrators accountable. Press reports have described the accounts of a number of women who have been victims of sexual assault. These victims have described an unacceptable pattern of intimidation and obstruction in their pursuit of justice and assistance.

We need immediate action to ensure that cases like these are investigated and prosecuted aggressively. Last December, I joined with Senators Daniel Akaka and Jon Tester in sending letters to the Attorney General and the inspectors general of the Departments of Defense and State seeking information about their apparent failure to investigate allegations made by former Halliburton/KBR administrative assistant Jamie Leigh Jones that she was drugged and raped by several coworkers while employed at Camp Hope in Baghdad.

With approximately 180,000 contractors working in Iraq, we also need to address the broader challenge of ensuring that we have adequate legal mechanisms and adequate enforcement resources to deter and prosecute violent crimes committed in Iraq. In February 2007, I introduced the Transparency and Accountability in Military and Security Contracting Act to require accountability and enhanced congressional oversight for contractors operating in war zones. Components of this bill that require new reporting on the role of contractors operating in Iraq and new regulations on selection, training, and equipping of security contractors were signed into law as part of the FY08 National Defense Authorization Act. I am working with Senate colleagues to pass other components of the bill to increase accountability of contractors operating in war zones by ensuring that they are subject to U.S. criminal law.

I will continue to work with this committee and other Senate colleagues to ensure that contractors are held accountable for their actions and that we take all appropriate steps to prevent the types of crimes that are the subject of today's hearing.

PREPARED STATEMENT OF JAMIE LEIGH JONES

Good Afternoon, Mr. Chairman and members of the committee. First and foremost, I would like to thank all the members of the Senate and Congress who have united together in support of holding military and State Department contractors accountable under enforceable law.

My name is Jamie Leigh Jones and I am the President of "The Jamie Leigh Foundation" which is a nonprofit organization dedicated to helping United States citizens and legal residents who are victims of crime while working abroad for government contractors and subcontractors. We demand government contract corporations and government entities act responsibly, and are held accountable to provide a work environment free of sexual harassment, and limit the potential for abuse. We work toward the day when all U.S. citizen contractors will be able to work without fear, consternation, and safety concerns. I am submitting this written testimony to share with you a personal but not isolated tragedy that affects our fellow women who go overseas to fight for our shadow army, the United States contractors.

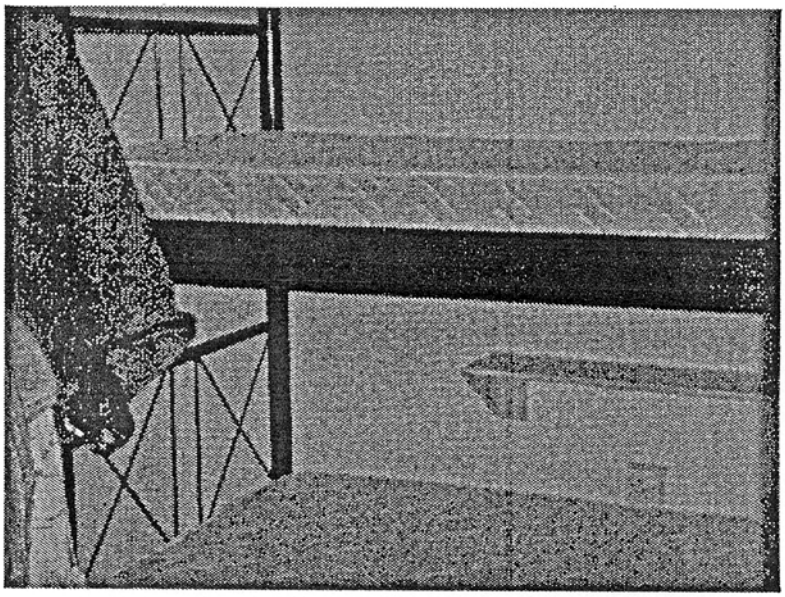
I went to Camp Hope, located in the "Green Zone," Baghdad, Iraq, on July 25, 2005, in support of Operation Iraqi Freedom. Halliburton/KBR, my employer, prior to leaving the U.S., promised me that I would live in a trailer equipped to house two women, with a shared bathroom. This is an actual photograph I was shown prior to leaving Texas:

Upon arrival at Camp Hope, I was assigned to a predominantly all-male barrack. According to documents provided by Halliburton/KBR in response to my EEOC complaint, approximately 25 women to more than 400 men were documented to be housed. I never saw a woman at the barrack. I did find myself subject to repeated "cat-calls" and men who were partially dressed in their underwear while I was walking to the restroom, on a separate floor from me. The EEOC credited my testimony with respect to this matter. That Determination Letter is attached to this statement as an Exhibit.

I complained about my living conditions to Halliburton/KBR management and asked to be moved into my promised living quarters. These repeated requests were denied.

On the fourth day in Iraq, I received a call on my cell phone. The reception in the barracks was bad, so I stepped outside to take the call. Afterward, I noticed that the woman I was replacing (her contract had expired and she was returning back to the U.S.) and several others were outside. They called me over and invited me to come and sit with them. When I did, I was offered a drink. The men (identified only as Halliburton/KBR firefighters) told me that one of them could make a really good drink and so I accepted. When he handed it to me, he told me, "Don't worry, I saved all my Rufies for Dubai," or words very similar to that. I thought that he was joking, and felt safe with my coworkers. I was naive in that I believed that we were all on the same team. I took two sips or so from the drink.

When I awoke the next morning, I was extremely sore between my legs, and in my chest. I was groggy and confused, but did not know why at that time. I tried to go to the restroom, and while there I realized that I had many bruises between my legs and on my wrists. I was bleeding between my legs. At that point in time, I suspected I had been raped or violated in some way. When I returned to my room, a man was laying in the bottom bunk of my bed.



I asked him if he had sex with me, and he said that he did. I asked if it had been protected, and he said "no." I was still feeling the effects of the drug from the drink and was now very upset at the confirmation of my rape. I dressed and left for help.

I reported this incident to an Operations coordinator, who took me to the KBR clinic. The clinic then called KBR security to escort me to the Army CASH (Combat Army Support Hospital). Army doctor, Jodi Schultz, M.D., performed a rape kit.

Dr. Schultz confirmed that I had been penetrated both vaginally and anally, and that I was "quite torn up down there." She indicated that based upon the physical damage to my genitalia, that it was apparent that I had been raped. Dr. Schultz took photographs, and completed a form that indicated the bruising on my inner thighs and stomach, and on my wrists. She also took swabs, vaginal combings, and scrapings from under my fingernails (on a blue sheet) as well as my panties and bra, and then put the entire kit together in a small, white box. I watched her give this box to the KBR security personnel as I was, again, turned over to these men.

The KBR security men then took me to a trailer and locked me in. Two armed guards (Ghurka's) were stationed outside my door. I was placed inside and not allowed to leave. I had my cell phone, but it would not call outside of Baghdad. I asked for a phone to contact my father, and this was denied. I was not provided food or drink (although there was a sink, I did not trust it to drink from), until after I had been there for quite some time (approximately a day).

I begged and pleaded with one of the Ghurka guards until he was finally willing to share his cell phone with me so that I could call my father, back in Texas. I had begged him until he finally agreed. My father then contacted my Congressman, Ted Poe. Congressman Poe then took actions to get me out of Iraq.

Once State Department officials (Matthew McCormick and Heidi McMichael) saved me from the container I was placed in—a "safe" trailer—and I requested that Heidi stay with me. She did.

The following day, Heidi took me to Saddam's palace to meet with a psychiatrist. I did not feel comfortable speaking with a man, alone, at that point in time. The psychiatrist was insensitive and not compassionate.

I was later interviewed by Halliburton/KBR supervisors, and it was made clear to me that I had essentially two choices: (1) "Stay and get over it," or (2) go home with "no guarantee of a job," either in Iraq or back in Houston. Because of the severity of my injuries, I elected to go home, despite the obvious threat of termination.

Once I returned home, I sought medical attention for both psychiatric and physical evaluation. I was originally sent to a psychiatrist of Halliburton's choosing. The

first question asked was "Are you going to sue Halliburton?" So my mother and I walked out.

My mother found a therapist (Dawn Nelson) who agreed to treat me, and did so until I moved from Texas. I was diagnosed with PTSD.

I also saw Sabrina Lahiri, M.D., who found that my breasts were asymmetrically disfigured, and that my pectoral muscles had been torn from the brutal rape. She wanted to do reconstructive surgery, so I sought "second opinions" from several surgeons regarding that surgery. Even the doctor Halliburton forced me to see, reviewed my injuries and agreed that they were due to forced trauma. He expressed anger and disgust. Dr. Ciaravino performed my first reconstructive surgery.

Shortly after returning to Texas, I was contacted by a State Department Diplomatic Security Special Agent, Lynn Falanga. During our initial conversation she seemed very nice and compassionate. She appeared to be angry and driven by what happened to me. However, I did not hear from her for months at a time. My attorney, Stephanie Morris, spoke to a State Department attorney, Jenna Lipinski, several times from January 2007 through to May 2007. During the initial call in January, Lipinski stated the forensic evidence in the case had been processed back in the fall of 2006. Then, Ms. Lapinski refused to identify any AUSA assigned to my case.

Some time around May 2007, Lynn Falanga indicated during a conversation that she was not aware of a rape kit's existence or of any pictures of my injuries. I insisted the rape kit existed and forwarded a copy of KBR's EEOC response to prove that the doctor had handed it over to a KBR employee at the hospital the night of the rape. It was a few days later that I received a call from Falanga stating she had found the rape kit, however, the pictures and the doctor's notes that were originally attached to the top of the rape kit were still missing.

In October 2007, Lynn Falanga called to ask if I had spoken with ABC for a 20/20 segment. I informed her that I had and that it was expected to air in October 2007. A couple days later Falanga called with flight information to meet with the assistant U.S. attorney assigned to my case. I was flown to Florida to meet with an assistant U.S. attorney (Tiffany Eggers) in Florida—who asked me about the rape almost 2½ years earlier. I asked Eggers where I should refer victims who contacted me through the Jamie Leigh Foundation and she responded "Don't refer them to me or my office, but you may want to refer them to the Office of Victims of Crime."

Since that time, a grand jury was convened and I presented a grand jury testimony at the end of January 2008, which was 2½ years after my sexual assault. Before the hearing, I was told by the AUSA that all parts of my rape kit had been located and were in my case file. I have not received any results from the grand jury hearing, to date. Currently there has not even been an indictment filed in my case.

I still require additional medical treatment, including another reconstructive surgery, and I continue to go to counseling 2 times per week.

I turned to the civil court for justice, in part, because the criminal courts have failed to even file an indictment at this point. Currently there are approximately 180,000 military contractors in Iraq. Approximately 20,000 of those contractors are females. Fifty percent of Americans on military bases in Iraq are contractors. Contractors have been immune from both Iraqi law and the Uniformed Code of Military Justice therefore they are hired to work in a legal vacuum, beyond adequate jurisdiction. There has not been a single complete prosecution of a criminal contractor to date.

When I decided to pursue a civil suit, I was informed that within my 13-page employment contract that had an additional 5 pages attached, included an arbitration clause. At this point in my life I had no idea what an arbitration was other than a tiny paragraph included in the lengthy document that mandated that I could not get justice from the civil court system. I learned that I had signed away my right to a trial by jury. I thought this right was guaranteed by the seventh amendment to the United States Constitution that specifically states, "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." When there are no laws to protect army contractors who are working abroad (from violent crimes), what is to stop people from taking the law into their own hands? The arena harbors a sense of lawlessness. The forced arbitration clause in army contractor's contracts, prove to protect the criminals of violent crimes, rather than enforce they be held accountable by a judge and jury.

Victims of crime perpetrated by employees of taxpayer-funded government contracts in Iraq deserve the same standard of treatment and protection governed by the same laws whether they are working in the U.S. or abroad.

Military contracting corporations harbor and ignore criminal activities in Iraq, which under the arbitration clause agreement, protects them and does not hold corporate accountability when a crime has been committed. This clause also paves the way for corporations to not be held accountable under criminal law. My case wasn't an isolated incident. Since no actions of law could help other victims at this point, I started "The Jamie Leigh Foundation" www.jamiesfoundation.org. This problem goes beyond just me. Through the Jamie Leigh Foundation, I have become aware of numerous other women who were assaulted and raped and were then retaliated against for having reported those attacks. To date, 40 women have come forward through my foundation. A number of them shared their tragedies in confidence because they were silenced by provisions of their arbitration agreements.

The arbitration proceeding is private and discrete and the outcome of arbitration cannot be disclosed to the public. Unfortunately, arbitration is stacked in favor of businesses, making it harder for individuals to prevail in a dispute and that is not just, and unfair to the patriotic hard-working employees.

How can this country not protect us contractors, who have left our families to help our country in an effort to build democracy overseas, when we are victimized criminally? The United States military and its supporting contractors are in Iraq to create a democratic society. Within this democratic society, our military is teaching Iraq and Afghanistan the values and importance of the rules of law. Why teach other nations democracy and the importance of enforceable law when the U.S. hires civilians to work in Iraq with full blown immunity to all laws? To not provide adequate laws to umbrella contractors in Iraq undermines this mission's credibility.

My goal is to ensure all American civilians who become victim of violent crimes while abroad, have the right to justice before a judge and jury no matter what the case—civil or criminal.

The United States Government needs to provide people with their day in court when they have been raped and assaulted by other American citizens. There has been no prosecution after 2½ years in my case. Hopefully the next victim will not have to wait so long.

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Houston District Office

Mickey Leland Federal Building
1919 Smith Street, 7th Floor
Houston, TX 77002-8049
(713) 209-3320
TTY (713) 209-3439
FAX (713) 209-3381

330-2006-00968 — Charge Number

Jamie Leigh Jones
15596 IH 45 South 3004
Conroe, TX 77384 — Charging Party

Kellogg Brown & Root ("KBR")
4100 Clinton Drive
Houston, TX 77020
Attn: Celia Balli, Attorney
Legal Department — Respondent

LETTER OF DETERMINATION

Under the authority vested in me by the Commission's Procedural Regulations, I issue on behalf of the Commission the following determination as to the merits of the subject charge filed under Title VII of the Civil Rights Act of 1964, as amended ("Title VII").

All requirements for coverage have been met. On January 24, 2006, Charging Party Jamie Leigh Jones filed a charge of discrimination alleging sexual harassment. Charging Party alleges that upon her arrival in Baghdad, Iraq she was assigned to all male living quarters and subsequently was drugged and sexually assaulted by several employees of Respondent.

Respondent denies Charging Party was assigned to an all male barracks and contends that those barracks were co-ed, and there were approximately 25 other females assigned to the same barracks with Ms. Jones. Respondent asserts that the alleged assailant claims Charging Party consented to have sex with him. Respondent also maintains that its efforts to investigate the alleged assault was halted by the U.S. State Department officials telling Respondent they were taking over the investigation.

The investigation revealed that Charging Party was in Baghdad, Iraq for less than one week when the attack allegedly occurred. According to Charging Party's credible testimony, she reported the attack and sought medical attention. Respondent provided medical assistance, placed her in a secure location, and transported her back to the United States. The investigation credits Charging Party's testimony that she was indeed sexually assaulted by one or more of Respondent employees and physical trauma was apparent. Respondent's investigation was inadequate and did not effect an adequate remedy.

PLAINTIFF'S EXHIBIT 5

PREPARED STATEMENT OF HON. TED POE,
U.S. REPRESENTATIVE FROM TEXAS

I thank the Senate Committee on Foreign Relations for holding this important hearing on how to prosecute crimes committed overseas by American civilian contractors. I became involved in this issue nearly 3 years ago when my constituent called me asking for help for his daughter, Jamie Leigh Jones. He said that his daughter was drugged, gang-raped, and being held against her will in a shipping container only 4 days after she arrived to work at Camp Hope in Baghdad. My staff and I contacted the United States Department of State's Department of Overseas Citizens Services. Within 48 hours, the State Department dispatched two agents from the U.S. Embassy in Baghdad, rescued Jamie, and brought her back home to the United States.

The United States Government has a responsibility to protect American civilians who work in support of an American military mission overseas. The Government affords these protections to American citizens on American soil and to American soldiers in combat, but the Government doesn't know how to react when the crime involves contractors. This is unacceptable.

It's been nearly 3 years since Jamie was assaulted, but still she has not seen justice. Although an Assistant U.S. Attorney interviewed Jamie and a State Department Special Agent investigated her case, Jamie was left in the dark about the status of her case for long periods of time. After 2½ years, Jamie wanted answers, so she decided to go public with her case. It was only after appearing on 20/20 that the Department of Justice began to communicate more frequently with Jamie.

Since Jamie has gone public with her experience, my office has heard from several other women who are all former contractors and allege similar assaults. Unfortunately, we've learned that Jamie's case is not unique. I've met with Department of State employees, who explained who is responsible for investigating crimes committed against contractors, how the Department of State conducts investigations, and when a case is turned over to the Department of Justice for possible prosecution. Since civilian contractors work under one government agency, the other agencies refuse to take responsibility when a crime occurs and pass the buck to another agency. My repeated inquiries to the Department of Justice have received generic responses, all providing already known information. In January, I sent a letter to Secretary of State Condoleezza Rice and Secretary of Defense Robert Gates along with 110 Members of Congress, requesting detailed information on the policies, procedures, and protocol that exist to prevent and respond to sexual assaults on contractors in Iraq. In his response, Secretary Gates informed me that he called for the Department of Defense inspector general to conduct a review of the Department's policies and procedures regarding crimes committed against civilian contractors in Iraq and for possible recommendations. I look forward to the conclusions and recommendations, but in the interim, we must not forget the women victimized in Iraq and further victimized by the system that is set up to deliver justice.

While the Federal Government figures out who is responsible and who has jurisdiction, the assailants remain free and unaccountable for their crimes. Americans cannot go abroad and commit attacks on fellow Americans without the long arm of the law holding them accountable. Jamie deserves justice; the other victims deserve justice; and justice is what we do in America. And that's just the way it is.

PREPARED STATEMENT OF HON. LOUISE M. SLAUGHTER,
U.S. REPRESENTATIVE FROM NEW YORK

Thank you, Chairman Nelson and the Senate Committee on Foreign Affairs, for holding a hearing on the disturbing and critical issue of sexual assault committed overseas by American civilians in combat environments.

American citizen Jamie Leigh Jones, while employed in Baghdad, Iraq, by KBR, a former subsidiary of Halliburton, alleged that she was drugged, assaulted, and viciously gang-raped by her coworkers. Following the attack, Army doctors performed a medical examination on Ms. Jones, showing evidence of vaginal and anal rape. However, the results of the rape kit were turned over to KBR, Ms. Jones' employer. She would later discover that portions of that kit had mysteriously disappeared. According to Ms. Jones, she was then held captive under armed guard and deprived of food and water for 24 hours. State Department agents in the U.S. Embassy at Baghdad facilitated Ms. Jones' release. Over 2½ years later, Jamie's assailants have yet to be indicted, and she has yet to receive justice.

We would like to believe this is an isolated horrifying incident.

But Jamie Leigh is far from alone.

The affidavits filed in the case of Jamie Leigh Jones show an alarming pattern of widespread sexual assault and harassment among government-contracted employees, environments that condone and support such behavior, and retaliation against victims who come forward regarding these crimes. Indeed it seems contractors prefer to sweep allegations under the rug and out of the public view because billions of dollars, taxpayer dollars, are at stake.

This week, The Nation published the harrowing story of "Lisa Smith" another KBR-contracted employee raped while working in Iraq. I have been advocating against sexual violence for many years, and this was one the most disturbing cases that I have ever come across. I am impressed with her strength to come here today to testify before this committee and share her story. KBR discouraged Lisa repeatedly from reporting her assault, warning that doing so would put her in danger. Well, we stand here with her today to say Lisa Smith deserves justice.

In January of this year, I was joined by 110 Members of Congress in sending letters to the Departments of Defense and State making it clear that we will not rest until criminal offenders are punished to the letter of the law, victims are treated with respect and receive needed services and contractors paid for by the American taxpayer, are held to account. I would like to submit a copy of this letter for the record.

Let today's hearing be a wakeup call to the Departments of Defense and State. As they dole out massive government contracts with taxpayer dollars, they have an obligation to make clear exactly what steps they are taking to ensure that what happened to Jamie Leigh Jones, Lisa Smith, and others like them will never happen again. There is no excuse but to afford Americans living at home or abroad the same rights to treatment, services, and proper legal recourse when they are victims of a violent crime.

Attachments:

CONGRESS OF THE UNITED STATES,
Washington, DC, January 24, 2008.

Hon. ROBERT M. GATES,
Secretary of Defense,
Washington, DC.

DEAR MR. SECRETARY: We are concerned about the Department of Defense's efforts to protect Americans employed by government contractors in Iraq from violent crime and to ensure the needs of victims are met. DOD employees who commit crimes are accountable for those crimes under U.S. law.

American citizen Jamie Leigh Jones, while employed in Baghdad by KBR, a former subsidiary of Halliburton, alleged that she was assaulted and gang raped by fellow employees. Afterwards, Army doctors performed a medical examination on Ms. Jones. However, the results of the rape kit were turned over to KBR, Ms. Jones' employer. Portions of the rape kit are now missing. According to Ms. Jones, she was then held captive under armed guard for 24 hours without food or water. State Department agents in the U.S. Embassy at Baghdad facilitated Ms. Jones' release.

In another case, American citizen Tracy Barker, while employed by KBR, alleged that she was sexually assaulted by a State Department employee. Her alleged assaulter continues to work for the State Department today.

Unfortunately, these are not isolated incidents. Many other women have reported sexual assault and harassment while working for government contractors. Ms. Jones and Ms. Barker's harrowing experiences prompt us to pose questions regarding the DOD's overall efforts to address crimes against individuals in similar situations.

Prevention and Assistance

How does the DOD assist American civilians living and working in Iraq who are victims of crime? Does the DOD include language in contracts requiring contractors to ensure their employees live and work in non-hostile/non-violent environments? Does the DOD provide government contracted employees with sexual assault and sexual harassment training? If so, how and when is this training implemented? Does the DOD provide such employees—American citizens—with information regarding their rights as crime victims? Does the DOD have available resources for dealing with the aftermath of victimization?

Investigations

What is the DOD's protocol on rape and sexual assault investigations of government contract employees abroad? Does the DOD send information regarding allegations of sexual assault to the Department of Justice for possible criminal investigations? Who provides the forensic examinations and what is the protocol to ensure

that the exams and evidence are appropriately maintained and a chain of custody is in place?

Accountability

What types of control and enforcement power does the DOD have over civilian contracting companies when their employees commit violent crimes? What is the procedure for receiving complaints from American civilian contractors? If a complaint is received, what repercussions exist, including contractual repercussions, for the contracting company? Have there been any contractual repercussions for KBR following Ms. Jones' accusations? What was the rationale of the Army Doctor that turned Ms. Jones' rape kit to KBR? Who is responsible for receiving rape kits turned over by Army doctors? After receiving a rape kit, who safeguards it and ensures that the chain of custody is not tampered?

Offenders

What policies exist for addressing American civilian contractors, who are alleged or accused of committing crimes while in Iraq? What safety mechanisms are put in place after a report of sexual assault to ensure the safety of the victim and other potential victims? Are the alleged offenders removed from their position? Are contractors required to terminate the employment of alleged offenders of violent crime during investigations?

Reporting

Does the DOD collect data on the number of reported cases of sexual assault and other violent crimes among American civilian contractors or government contracted employees? If so, how is that data collected and where is that data published?

Victims of crime perpetrated by employees of taxpayer funded government contracts in Iraq deserve the same standard of treatment they have a right to at home. We hope the DOD is working to prevent crime, protect victims, and hold contract employees accountable. Thank you for your consideration. Because of the urgent nature of this matter, we request a response by February 24, 2008.

Sincerely,

Signed by the following Members of Congress:

Louise M. Slaughter; Ted Poe; Jan Schakowsky; Henry Waxman; Tom Lantos; Susan Davis; Gary Ackerman; Loretta Sanchez; Jane Harman; Zoe Lofgren; James R. Langevin; Lloyd Doggett; Robert Brady; Joe Courtney; Doris Matsui; Pete Stark; Kathy Castor; John Lewis; Shelley Berkley; Ginny Brown-Waite; Allyson Schwartz; Madeleine Bordallo; Brian Higgins; James McGovern; Steve Cohen; John Larson; Jim McDermott; Lois Capps; Phil Hare; Christopher Shays; Tom Allen; Sam Farr; Linda Sánchez; Mazie K. Hirono; Sander Levin; Jim Costa; Vic Snyder; Tim Ryan; Leonard Boswell; Raul Grijalva; Neil Abercrombie; Dave Loebsack, Bob Etheridge; Grace Napolitano; Chris Van Hollen; Nancy Boyda; Michael Honda; Betty McCollum; Betty Sutton; Michael Michaud; Dennis Moore; Solomon Ortiz; Eleanor Norton; Danny Davis; David Price; George Miller; Donald Payne; Howard Berman; Rosa DeLauro; Lynn Woolsey; Carolyn Cheeks Kilpatrick; Earl Blumenauer; Chaka Fattah; Steve Rothman; Carolyn Maloney; Jerrold Nadler; Gene Green; Jim Moran; Maxine Waters; Adam Smith; Joseph Crowley; Bob Filner; Maurice Hinchey; Silvestre Reyes; Dennis Kucinich; Tammy Baldwin; William Delahunt; Ellen Tauscher; Nydia Velázquez; Norman Dicks; Albert Wynn; Bobby Scott; Joe Sestak; Corrine Brown; Debbie Wasserman Schultz; Sheila Jackson Lee; Alcee Hastings; Keith Ellison; Michael Capuano; Adam Schiff; Henry Johnson; Patrick Kennedy; Lucille Roybal-Allard; Al Green; Edolphus Towns; Chris Murphy; John Tierney; Collin Peterson; Brad Miller; Bruce Braley; Ed Marky; Carol Shea-Porter; Peter DeFazio; Darlene Hooley; Michael McNulty; Jay Inslee; Gabrielle Giffords; John Hall; Hilda Solis; Joe Baca; and Elijah Cumming.

CONGRESS OF THE UNITED STATES,
Washington, DC, January 24, 2008.

Hon. CONDOLEEZZA RICE,
Secretary of State,
Washington, DC.

DEAR MADAM SECRETARY: We are concerned about the State Department's efforts to protect Americans employed by government contractors in Iraq from violent crime and to ensure the needs of victims are met. We believe the State Department should play a role particularly when such crimes occur within the State Department's territory.

American citizen Jamie Leigh Jones, while employed in Baghdad by KBR, a former subsidiary of Halliburton, alleged that she was assaulted and gang raped by fellow employees. Afterwards, Army doctors performed a medical examination on Ms. Jones. However, the results of the rape kit were turned over to KBR, Ms. Jones' employer. Portions of the rape kit are now missing. According to Ms. Jones, she was then held captive under armed guard for 24 hours without food or water. State Department agents in the U.S. Embassy at Baghdad facilitated Ms. Jones' release.

In another case, American citizen Tracy Barker, while employed by KBR, alleged she was sexually assaulted by a State Department employee. Her alleged assaulter continues to work for the State Department today.

Unfortunately, these are not isolated incidents. Many other women have reported sexual assault and harassment while working for government contractors. Ms. Jones and Ms. Barker's harrowing experiences prompt us to pose questions regarding the State Department's overall efforts to address crimes against individuals in similar situations.

Prevention and Assistance

How does the State Department assist Americans living and working in Iraq that are victims of crime? What efforts has the State Department undertaken to ensure that Americans employed by government contractors are living and working in non-hostile/non-violent environments? Has the State Department provided government contracted employees with sexual assault and sexual harassment training? If so, when is this training provided and what personnel provide that training? Has the State Department provided such employees—American citizens—with information regarding their rights as crime victims and available resources for dealing with the aftermath of victimization?

Investigations

What is the State Department's protocol on rape and sexual assault investigations abroad? Does the Department send information regarding allegations of sexual assault and other violent crimes to the Department of Justice for possible criminal investigations? Who is responsible for conducting sexual assault forensic examinations on victims? What is the protocol to ensure that the exams and evidence are appropriately maintained and a chain of custody is in place?

Offenders

What is the State Department's policy for addressing American civilian contractors who are accused of committing crimes? What safety mechanisms are put in place after a report of sexual assault to ensure the safety of the victim and other potential victims? What is the policy for removing alleged offenders from their position following an allegation?

Reporting

Does the State Department collect data on the number of reported cases of sexual assault collected among government contracted employees? If so, how is this data collected and where is that data published?

Victims of crime perpetrated by employees of taxpayer funded government contracts in Iraq deserve the same standard of treatment they have a right to at home. We hope the State Department is working to prevent crime and protect victims. Thank you for your consideration. Because of the urgent nature of this matter, we request a response by February 24, 2008.

Sincerely,

[Signed by the same 111 Representatives listed in the letter to DOD above.]