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ENFORCEMENT OF FEDERAL CRIMINAL LAW TO PROTECT AMERICANS WORKING FOR U.S. CONTRACTORS IN IRAQ

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

DECEMBER 19, 2007

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ENFORCEMENT OF FEDERAL CRIMINAL LAW TO PROTECT AMERICANS WORKING FOR U.S. CONTRACTORS IN IRAQ

WEDNESDAY, DECEMBER 19, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:23 a.m., in room 2141, Rayburn House Office Building, the Honorable Robert C. "Bobby" Scott (Chairman of the Subcommittee) presiding.

Present: Representatives Conyers, Scott, Johnson, Weiner, Jackson Lee, Davis, Baldwin, Gohmert, Coble, Chabot, and Lungren.

Staff present: Bobby Vassar, Subcommittee Chief Counsel; Ameer Gopalani, Majority Counsel; Mario Dispenza, (Fellow) ATF Detailee; Veronica Eligan, Majority Professional Staff Member; Michael Volkov, Minority Counsel; Caroline Lynch, Minority Counsel; Kelsey Whitlock, Minority Staff Assistant.

Mr. SCOTT. The Subcommittee will come to order. Welcome to the Subcommittee on Crime, Terrorism, and Homeland Security hearing on Enforcement of Federal Criminal Law to Protect Americans Working for U.S. Contractors in Iraq.

Ladies and gentlemen, we have a situation in which many military contractors are acting with impunity and disregard for the law.

In Iraq, our troops have been supplanted in many respects by an army of contractors that is estimated to be approximately 180,000.

This is in stark contrast to the normal number of contractors, which is 2 percent, 3 percent, 4 percent, 5 percent of the troop force. Fifty percent of the Americans over in Iraq right now are contractors. About 50 percent are formal military troops.

Unfortunately, the law governing the contractors has been unclear. In September, we learned of a shooting incident involving a private contracting company in which contractors allegedly shot and killed 11 or more innocent Iraqi civilians.

We learned of hundreds of other shooting incidents that, unlike the other one, did not receive media attention and have remained dormant.

Sexual assault and rape incidents have also been uncovered recently. Just last week we learned of the case of Jamie Leigh Jones, who, while working for an apparently prestigious and reputable

contracting firm, states that she was drugged and raped by fellow employees in a company facility in Baghdad.

Without her courage to go forward, it is likely that this would have been another story which would have gone without prosecution or investigation.

And her story has encouraged other women to come forward. We are now aware of at least three other cases of such abuse, but there are likely many more.

One of those cases is Tracy Barker, whose statement, if there is no objection, will be made part of the record. Without objection, her statement will be part of the record. A copy of her statement will be at the front table, if it is not already there. And she is with us today in the front row.

[The prepared statement of Ms. Barker follows:]

PREPARED STATEMENT OF TRACY BARKER

STATEMENT OF TRACY BARKER TO THE COMMITTEE ON THE JUDICIARY
SUBCOMMITTE ON CRIME, TERRORISM, AND HOMELAND SECURITY

Hearing on the Enforcement of Federal Criminal Law to Protect Americans
Working for U.S. Contractors in Iraq, December 19, 2007

In July 2004, I began working for KBR/Halliburton in the Procurement Department located in the Green Zone in Basra, Iraq. While under the direct supervision of Crystal Daniels and Byron Marcee, I was exposed to physical threats, verbal abuse, and sexually explicit conversations on a daily basis. Several other employees and I lodged numerous complaints through the Halliburton Dispute Resolution Program ("HDRP") and by calling a toll free number which connected us to human resources in Houston, TX. Nothing was done to resolve the sexually hostile work environment or investigate the complaints.

Despite the promise of confidentiality under the HDRP, Kara Hall, a human resources supervisor, received several of my complaints and forwarded them to Marcee and Daniels. As a result, Daniels and Marcee retaliated against me by escalating the abusive behavior and screaming at me for filing the formal complaints with human resources. After filing yet another complaint, Wesley Lane, a human resources supervisor, called me in to her office and informed me that Daniels and Marcee had filed a report complaining of my job performance. While in Hall's office, I was not permitted to leave or call anyone. Lane followed me into the bathroom and watched me as I urinated. When I asked her why she was doing this she said it was to keep me from calling Houston again, or anyone else, to report the abuse. Hall then instructed me to return to my living container and remain there for three days, I was not permitted to speak with anyone, and if I was seen outside, I would be fired. After three days of confinement, I returned to work under the direct supervision of Daniels and Marcee and the abuse and hostile work environment escalated yet again until I was forced out of that position in November of 2004. I worked in billeting in Baghdad for a short time.

In March of 2005, I was transferred to the Basra military base to work in billeting. When I arrived there were men lined up outside waiting to take a look at me. I asked what was going on and one responded that they had heard I was attractive and wanted to see me themselves. I was assigned to a shared office space with Sherman Richardson. Richardson had hung pictures of prostitutes and animals having sex with one other on his office walls and he often talked about how he took his *Rest and Relaxation* time in Thailand where he would hire prostitutes. Other male employees would visit Richardson in the office to seek information on how to obtain a prostitute while on R&R.

Although I complained of the sexually hostile conditions to my direct supervisor and camp manager, Craig Grabien, nothing was done to remedy the situation. Because there was no human resource personnel at the Basra Camp, Grabien was the only one to report the abuse to and he soon became the primary culprit- Grabien himself began to sexually harass me on a daily basis by insisting that I sleep with him because he was

camp manager and he could provide benefits in exchange for sexual favors. Grabien had a reputation for sexually harassing women and it was a motto of the Basra Camp that "what happens in Basra, stays in Basra." (*See Plaintiff's Exhibit 1)* In March 2005, I filed a complaint through the HDRP by calling the toll free number to Houston and was told by a human resources supervisor that if a position opened up in Camp Freedom I could transfer out of Basra, but again, nothing was done.

During this same month I returned to the U.S. for a family medical emergency for approximately two weeks. When I returned to the Basra camp, I discovered Richardson had searched through my room and items were missing. Again, I filed a complaint with Grabien and nothing was done. Instead, Grabien increased his sexual advances and began knocking on my door late in the evening asking that I sleep with him. One evening he stopped by with one other man and asked "are you going to let us see your tits?"

On June 23, 2005, I accompanied U.S. Department of State employee, Ali Mokhtare, to his living quarters to complete a work order for an alleged faulty air conditioner and to discuss employment opportunities within the U.S. State Dept. Once we arrived, Mokhtare said the air conditioner was working fine. I immediately felt uncomfortable expressed that I was going to go home. Mokhtare said he wanted to explain the war to me and a story about a "Filipino woman." As Mokhtare began to talk about the war, he poured two drinks of Jack Daniels and Coke and offered me one. I declined but eventually took the drink in my hand anyway. Mokhtare then began to talk about a Filipino woman in Saudi Arabia who was repeatedly raped by a prince, and although she reported it to the police, no one believed her and the prince continued to rape her. Finally, the woman became so distraught she committed suicide by jumping out of a window. In the midst of telling this story, Mokhtare grabbed my breasts and tried to kiss me on the mouth. I screamed "No!" and escaped Mokhtare's hold and began to run toward the door. Mokhtare grabbed hold of me again, put his hands around my throat and tried to force his lips on my mouth and against the back of my hand; I pushed him away, escaped his hold, and ran from the living quarters. Mokhtare followed after me screaming in Arabic as I ran in the direction of my living quarters.

I immediately reported the incident to Grabien, who contacted the U.S. State Department Diplomatic Security to investigate the incident. The next day I gave Brian Hathaway, a D.S. agent, a written statement depicting the attack. I was instructed to stay in my living container until further notice. I asked Hathaway if I could have protection because I was concerned for my safety and he and Grabien told me "to just avoid Mokhtare."

On June 25, 2005, agent Paul H. Davies and Brian Hathaway interviewed Mokhtare. (*See Exhibit A)*. In the report, the notes indicate Mokhtare was uncooperative from the beginning; he refused to sign the Garrety Warnings and stated he wanted an attorney before he would speak with the agents. Before he left, the agents instructed Mokhtare not have any verbal or physical contact with me. Approximately one hour later he returned and agreed to sign the Garrety Warnings and answer questions.

During the interview, Mokhtare admitted to the agents he inappropriately grabbed my breast and attempted to kiss me. He also admitted to telling me the story of a Filipino woman who was raped by a prince in Saudi Arabia. Mokhtare's story was exactly as I had explained to agent Hathaway, he even goes so far as to admit his actions were "inappropriate" and he "made a mistake." According to the agents' notes, when they confronted him about an inconsistent statement he made regarding his alcohol consumption he became agitated and angry.

On June 27, 2005, Hathaway and Grabien interviewed me pursuant to the investigation of the attack by Ali. I was ordered to bring the clothes I was wearing the night of the attack. Once I arrived, Hathaway took pictures of the clothing. After the interview was concluded, I was ordered to return to work the following day wearing the same outfit so that Hathaway could determine whether it was sexually provocative to men. I returned to work and began to experience symptoms of post traumatic stress disorder. I requested a medical leave from Grabien and he refused. I suffered from severe symptoms of PTSD for two weeks until I was able to seek medical attention and a medical leave to return home.

I finally returned to the United States in September 2005 on a medical leave. In the months that followed, U.S. Diplomatic Security Agent, Lyn Falanga began investigating the case and telephoned on several occasions. During the calls, Falanga revealed that the investigation was ongoing and it would be presented to a U.S. Attorney's Office in Virginia, she also stated Mokhtare was interviewed and caught in a lie. However, on October 6, 2005 the case was declined for prosecution by the Eastern District of Virginia U.S. Attorney's office. *(See Exhibit B)*. Even more astonishing is the fact that the State Department failed to discipline Mokhtare for his actions. *(See Exhibit C)*.

I never received a phone call, letter or any type correspondence informing me of the decision not to prosecute nor was I provided an explanation. I called agent Falanga who eventually said the case was declined for prosecution and refused to provide any further information.

In January of 2007, my attorney Stephanie Morris contacted agent Falanga and was directed to speak with U.S. DOS Attorney Jenna Lapinski. Lapinski refused to provide any information other than the case was declined for prosecution. She would not reveal the DOJ office that officially declined prosecution nor did she provide an explanation of why I was never contacted by the prosecution for any information or input I could provide in the investigation.[1]

On February 20, 2007, my attorney filed a complaint with the Department of Justice Victims' Rights Office for violating my rights as a federal crime victim. On March 2, 2007 I received a response from the Victims' Rights Ombudsman stating the office was closing my complaint without further action because the office did not have

[1] I discovered the case was declined for prosecution by the EDVA US Attorneys' Office in October 2005 after receiving the attached documents in response to a FOIA request.

jurisdiction to review complaints "brought against employees of the State Department," because I was not a crime victim of a "*Federal*" offense, and because I failed to identify any U.S. Department of Justice employee who violated her rights. (*See Exhibit D*).

On August 16, 2007, the EEOC made a final determination and found "sufficient evidence to establish that [I] acted in good faith when [I] raised complaints of sexual harassment and that [Halliburton/KBR's] agents impermissibly tried to discourage [me] from making and pursuing [my] complaints about [Halliburton/KBR] employees and the State Department employee. *(See Exhibit E)*.

In short, when I initially arrived in Iraq I was exposed to a sexually hostile, physically threatening and verbally abusive environment. Although I reported the violations properly under the HDRP, I was retaliated against and lost my job. I was eventually transferred to a dangerous and extremely hostile camp where I endured extreme sexually hostile conditions by my immediate supervisor and was attacked by a State Department employee. Due to the lawlessness that exists in Iraq I have not had a proper opportunity to seek justice in the criminal or civil arena. The U.S. Department of Justice has refused to prosecute Ali Mohktare for the attack and the Halliburton/KBR arbitration provision is an attempt to keep me from exploiting the oppressive conditions women confront in Iraq.

AFFIDAVIT OF LETTY SURMAN

STATE OF TEXAS §
COUNTY OF HARRIS §

On this day, Letty Surman, appeared before me, the undersigned notary public and after I administered an oath to him/her, upon his/her oath, he/she said:

"My name is Letty Surman. I am over the age of 18 and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

I was employed by Halliburton/KBR in Kuwait and Iraq from May of 2004 until September of 2006. I was the Human Resources (HR) supervisor in Kuwait from May of 2004 until late-2005 and in the Baghdad Headquarters in Iraq from late-2005 until my return to the United States in September of 2006. I again worked for Halliburton in Houston from January until August of 2007, when I was laid off.

During most of my time in Kuwait, I was the key contact person for HR issues arising out of Basra, Iraq. This was because there was no HR person in Basra. There was a saying with regard to personnel and employee issues that 'what happened in Basra stayed in Basra.' As an example, Halliburton pushed for an HR representative in every camp, large or small, in Iraq, with the exception of Basra. I often thought this was suspicious.

It was concerning to me that, although I was trained in HR, there were a number of HR personnel that were not trained, and were simply no longer capable of performing their primary duties. For instance, I worked closely with a diesel mechanic who had been relabled as an HR representative, with absolutely no training. This was a disaster waiting to happen.

I know that Craig Grabien was the project lead in Basra, and that alcohol was widely used at that camp – despite the fact that this was not permitted there. In fact, it was widely known that Craig Grabien's successor, Charles English, was intoxicated the night that Basra was bombed, when he announced the need for firemen to perform a HazMat analysis in a slurred voice from the radio system in the bunker. Two visiting Army officials even complained that Charles English was drunk in the bunker.

During my time as an HR supervisor, I was aware that a lot of sexual harassment went on- it was our major complaint. I observed that sexual harassment was worse when I first arrived, and seemed to get a little better towards the end of my stay in Iraq.

PLAINTIFF'S EXHIBIT
I

LHS

I know that the Employee Relations (ER) branch of Halliburton tracked sexual harassment complaints, as this was a primary function of that department. However, I am aware that Halliburton has a policy of sweeping problems under the rug.

I have personally been the subject of sexual harassment while I was in Iraq. There were comments about my breasts shaking when I was doing something in the kitchen facility, and Michael Van Kirk, a project manager, attempting to kiss me – which was unwanted. I did not report these incidents because it would not have accomplished anything, and because of the high likelihood of retaliation that permeated the environment in Iraq. Often, there would be heckling of people who reported incidents of this nature, or they would be sent to another, more remote, camp. Furthermore, the confidential nature of these reports was purely at the discretion of the project managers, and not well enforced.

At one point, there was a company blog, on which any Halliburton employee could anonymously post their complaints about sexual harassment and other camp conditions. Halliburton took this down because it was embarrassing to them.

I know that pornography was known to be displayed in the workspaces in Basra as a result of the reports of the drivers and other employees who would travel through the Kuwait after having been in Basra. Craig Grabien had a reputation for sexually harassing the women in Basra.

In 2005, KBR came out with "supervisor training." This training included topics such as dignity and respect, sexual harassment and other topics. Prior to that, sexual harassment had not really been discussed with managers or supervisors. This training was insufficient, lacking in substance, and thought by many to be a "joke."

I recall the aftermath of the reporting of the Jamie Jones rape incident. I had been friends with the fire chief, Marshall Fiedler, and remember him commenting to me that "I don't know what I'm going to do with these guys." Several of the firefighters were very young, and known to do wild things.

I also recall that a number of people were very angry because the incident involving Jamie caused the rules to change so that drinking was no longer allowed. Prior to that reporting, drinking was allowed in the off-duty hours, and in the non-work spaces.

Part of the problem with managers such as Craig Grabien is that they have family connections in the Halliburton/KBR system. In fact, this "good 'ol boy" network is so rampant that the employees have nicknamed the company: Kinfolk, Brothers &

LHS

Relatives (rather than Kellogg, Brown & Root). The entire company is simply rife with nepotism. The same rules do not apply to all Halliburton employees – it simply depends on their connections.

I am very familiar with Halliburton's DRP program, but certainly did not think that a rape or sexual assault would ever be subject to the program. I know that the DRP prides itself on preventing most cases from ever even reaching arbitration. The DRP office is housed in the same headquarters area as KBR, in the same building as the ER offices. I believe this to be a huge conflict of interest. Simply put, I do not think that a person can get justice in the DRP. I personally do not trust the arbitration provisions of KBR, nor do many of the co-workers I know. In fact the practices of Halliburton KBR make it clear that it was there intent to circle the wagons to protect their financial interests, rather than fairly treat their employees.

KBR has utilized the DRP arbitration provision to permit, excuse and/or encourage a sexually lawless environment to exist, and to escape liability and accountability for that environment. It also keeps its findings secretly so that the public does not know about it."

Further affiant sayeth not

Letty Surman

Letty Surman
AFFIANT

SWORN TO AND SUBSCRIBED before me on the 10th day of October, 2007

PATRICIA ANN ARTAVIA
MY COMMISSION EXPIRES
October 18, 2009

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
(SEAL)

LHS

Sensitive But Unclassified

Memorandum Report of Interview	DS Case Number: V-	Office Case Number (If applicable): REOBasrah 05-04
	Case Title:	
Regarding: Interview of MOKHTARE, Ali Reza	Date: 25 Jun 2005	Time: 1620 hours
	Location: Regional Embassy Office Basrah, Iraq	

SUBJECT - MOKHTARE, Ali Reza; 02/28/1958; Ormeieh, Iran; 150-66-8484, was interviewed on 06/25/2005 at Regional Embassy Office Basrah by Reporting Agent (RA) Paul Davies beginning at 1620 hours and concluding at 1712 hours. Only SUBJECT and witness SA Brian Hatheway were present for the interview.

RA initially read and provided SUBJECT the Garrety Warnings at 1520 hours at which point SUBJECT declined to sign, stating HE wanted representation. RA informed SUBJECT that HE was not allowed to have any verbal or physical contact with Mrs. Tracy Barker and concluded the meeting.

At 1613 hours SUBJECT entered RA office space and stated HE changed HIS mind and would now sign the Garrety Warning and answer questions without representation present.

RA and SA Hatheway commenced the interview at 1620 hours after receiving the signed Garrety Warning from SUBJECT. RA reiterated to SUBJECT that HE could refuse to answer questions at any point during the interview. SUBJECT acknowledged that HE understood the procedures.

RA asked SUBJECT if HE had any concerns regarding HIS personal conduct within the last several days that HE wanted to discuss. SUBJECT replied that HE could not think of any issues.

RA asked SUBJECT who HE ate dinner with on the night of 06/23/2005. SUBJECT stated that he ate dinner with Sibby ADAMS, Holly SACO, Adam Gabriel, and Tracy BARKER. SUBJECT further stated that BARKER arrived at the dining facility late and that when others in the group began to depart

Reporting Agent	Date	Distribution
Paul H. Davies	06/25/2005	DS/ICI/PR
Approving Official (If applicable)	Date	RSO Baghdad

DS Form (April 2000)

Diplomatic Security Service
This memorandum report is the property of the Diplomatic Security Service.
Neither it or its contents may be disclosed to unauthorized persons.

Exhibit A

the table, BARKER asked if anyone would stay with her for dinner. SUBJECT stated that HE offered to remain with BARKER for dinner when the other personnel departed. SUBJECT stated that during dinner HE mentioned to BARKER that HE had a long day and could use some Jack Daniels. SUBJECT further claimed that BARKER agreed to join HIM in his residential accommodations for a drink after dinner.

SUBJECT claimed that the night of 06/23/05 was the first time BARKER ever went to HIS trailer room. SUBJECT clarified that BARKER met with SUBJECT in HIS office on 06/19/05 to discuss problems she experienced with fellow KBR workers. Additionally, SUBJECT stated that he offered advice to BARKER regarding her efforts to pursue full time employment options with the Department of Defense for her and her spouse. SUBJECT displayed two June 20th, 2005 email exchanges with BARKER as evidence of the professional nature of HIS 06/19/2005 meeting. The email included BARKER'S attached resume. SUBJECT claimed HE did not offer BARKER or her husband a job, but provided her various leads to DoD jobs available via the Internet.

SUBJECT claimed the HE walked with BARKER to the main REO office building and said BARKER remained outside while SUBJECT went to his office to retrieve HIS accommodation keys. SUBJECT said HE and BARKER then walked a short distance to HIS trailer.

RA asked SUBJECT where HE sat relative to BARKER in his room. SUBECT drew a diagram of HIS quarters that is divided by a bathroom between the bedroom and a sitting room. SUBJECT indicated that BARKER sat on a sofa in the middle of the sitting room, while HE sat on a separate chair immediately next to her. SUBJECT said that HE spent approximately 45-60 minutes in HIS room with BARKER.

RA asked SUBJECT what happened after they arrived in the trailer. SUBJECT stated that HE poured BARKER a drink of Jack Daniels in a cup and that she mixed it with a Dr. Pepper soft drink. SUBJECT claimed HE initially had one drink of Jack Daniels and coke.

SUBJECT stated that HE and BARKER had some initial job related discussions and the remainder of their conversation was professional. SUBJECT said that BARKER wore a buttoned vest with a white undershirt underneath. HE claimed the vest and the shirt had plunging necklines. SUBJECT further stated that BARKER continually pulled at her vest and shirt, asif to expose her breasts. SUBJECT admitted that he pulled her vest and shirt opened and said to BARKER QUOTE What do you have behind there? END QUOTE. RA asked SUBJECT if HE thought BARKER was interested in an advance or some type of romantic or sexual contact. SUBJECT replied in the negative. Upon further questioning later in the interview on this topic, SUBJECT said QUOTE I admit is was an inappropriate move END QUOTE. HE also said QUOTE I made a mistake and it was stupid END QUOTE.

RA asked SUBJECT how BARKER reacted when HE pulled her shirt and asked what was behind it. SUBJECT claimed BARKER did not react and they continued their conversation. RA asked what other topics they discussed, specifically if HE told BARKER about his travels to Saudi Arabia. SUBJECT claimed HE conveyed several stories about briefings HE received of Saudi misconduct and observations of QUOTE Chop/Chop Square END QUOTE where punishments such as cutting out tongues and chopping off limbs took place. SUBJECT further stated that HE told BARKER a story about a Saudi Prince who allegedly raped a Philipino woman who later committed suicide because no one believed her story.

RA asked SUBJECT how much HE and BARKER drank during the 45-60 minute visit. SUBJECT said that BARKER did not finish her drink during the visit, but took it with her to finish later. SUBJECT claimed HE had two and possibly a third mixed drink of Jack Daniels and coke. RA asked SUBJECT about his drinking habits. SUBJECT said that HE only drinks socially, at the bar. When RA asked why HE had a bottle of Jack Daniels and to quantify how many times per week HE drinks, SUBJECT claimed QUOTE zero END QUOTE. AGENT NOTE: When RA pointed out this discrepancy, SUBJECT became agitated and nervous and said HE was referring to the fact HE does not drink hard liquor straight.

RA asked SUBJECT what prompted BARKER to depart. SUBJECT claimed that BARKER claimed she was tired and ready to leave. RA asked what happened upon BARKER'S departure. SUBJECT said that as BARKER got up to leave he stood and they hugged at which point HE kissed her cheek. SUBJECT further stated that BARKER turned her head towards HIS mouth, giving HIM the impression that she wanted to be kissed. SUBJECT admitted that BARKER put her hand over her mouth and said NO. SUBJECT said HE released the hug at that point and offered to walk her back to her accommodation trailer.

SENSITIVE BUT UNCLASSIFIED

UNITED STATES DEPARTMENT OF STATE
DIPLOMATIC SECURITY SERVICE
REPORT OF INVESTIGATION

TITLE		DS CASE NUMBER	
		01-MC09-062005-248-0213	
TRUE NAME	SSN #	CASE TYPE	Sexual Assault/Harassment

FIELD OFFICE	DATE REPORTED	DATES INVESTIGATED	REPORTING AGENT
DS/ICI/PR	12/13/2005	06/23/2005 – 12/13/2005	SA Lynn M. Falanga

SYNOPSIS

This case was predicated on information received by Paul Davies, RSO Basrah, Iraq, concerning direct hire DOS employee, On 06/23/2005 KBR contractor Tracy Barker claims that touched her breasts while in HIS living quarters without her consent or invitation. Barker departed post on emergency sick leave and returned to the U.S. With the interviews conducted by the RSO office and telephonic interviews conducted by DS/PR with Barker, DS/PR presented the case for prosecution at EDVA for violations of 18 USC 2244(b) under 18 USC 7. The case was declined for prosecution.

- CLOSED -

APPROVED

(Special Agent in Charge)

DO NOT WRITE IN THIS SPACE

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1 – DS/ICI/PSS; 1 – DS/ICI/PR Case File

DATE RECEIVED

REVIEWED BY AGENT SUPERVISOR

MDL 12/13/05

(Initials) (Date)

SENSITIVE BUT UNCLASSIFIED

Exempt From Automatic Decontrol By Statute

CONTENT MUST NOT BE DISCLOSED TO UNAUTHORIZED PERSONS

OPTIONAL FORM 249 (FORMERLY DS-0107) JULY 1992 DEPT. OF STATE

"Exhibit B"

Investigative History

06/23/2005	Incident.
06/24/2005	Barker reports incident to RSO and gives a sworn statement (Attachment A). DS/PR is telephonically notified. Case 01-MC09-062005-248-0213 is opened.
06/25/2005	
10/05/2005	
10/06/2005	DS/PR presents the case for prosecution to the EDVA for violations of 18 USC 2244(b) under 18 USC 7. Case was denied for prosecution (Attachment D).
10/14/2005	
12/09/2005	Case closed

Pertinent Issues

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U.S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

Room 2261, RFK Main Justice Building
950 Pennsylvania Avenue, NW
Washington, DC 20530

(202) 514-2121

March 2, 2007

Stephanie Morris
The Law Office of Stephanie Morris, LLC
1660 L Street, NW - Suite 506
Washington, DC 20036

Re: Complaint No. 07-019

Dear Ms. Morris:

I have received the complaint you filed under the Crime Victims' Rights Act of 2004, on behalf of your client, acy Barker, against employees of the United States Department of State and other unidentified United States Attorneys' Offices for declining prosecution. After careful review, I have determined to close your complaint without further action. This office does not have jurisdiction to review complaints brought against employees of the State Department. Your client has not established that she is a federal "crime victim," as required by Department of Justice regulations. 28 CFR § 45.10(a). To file a complaint with this office, you must establish that you are "a person directly and proximately harmed as a result of the commission of a *Federal* [not state] offense, or an offense in the District of Columbia." In addition, the complaint fails to identify any United States Department of Justice employee who may have failed to provide rights to a crime victim under the Crime Victims' Rights Act of 2004. 28 CFR § 45.10(b).

This is a final decision. You may not seek judicial review of this determination regarding your complaint. 28 CFR § 45.10(c)(8).

Sincerely,

Marie A. O'Rourke

Marie A. O'Rourke
Victims' Rights Ombudsman

Exhibit D

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

460-2006-00439 — Charge Number

Ms. Tracy Barker
316 Ray St.
Fort Bragg, NC 28307 — Charging Party

Kellogg, Brown & Root
4100 Clinton
Houston, TX 77020
Attn: Ms. Celia Balli — Respondent

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.

All requirements for coverage have been met. On February 3, 2006, Charging Party Tracy Barker filed a charge of discrimination alleging that she was harassed, sexually harassed, and retaliated against by her employer while she was working at a few different locations in Iraq. She also contends that an employee of the U.S. State Department sexually harassed her and attempted to sexually assault her and that the respondent did not adequately handle that complaint.

The Commission's investigation revealed sufficient evidence to establish that Charging Party acted in good faith when she raised complaints of sexual harassment and that respondent's agents impermissibly tried to discourage her from making and pursuing her complaints about their own employees and the State Department employee. The efforts to discourage her from pursuing her complaints constitute retaliatory conduct against her by her employer, Kellogg Brown and Root (KBR). Furthermore, KBR staff empowered to investigate her complaints impermissibly initiated efforts to aid her manager in better documenting her purported performance shortcomings. In so doing, additional retaliation occurred under Title VII of the Civil Rights Act of 1964.

The charging party's sexual harassment complaints primarily concern five junctures, a) her initial treatment by a supervisor; b) the alleged hostile environment sex harassment at that site; c) an alleged pervasive sexually hostile environment in Basra, characterized as the company's allowing access to pornography, visuals of animals copulating, and co-workers engaging in sexual banter and propositioning the charging party; d) an alleged effort on the part of a State Department employee to sexually attack the charging party; and e) her Basra supervisor's inappropriate remarks and solicitation of an affair with her. Her complaint of retaliation includes assertions that she was subjected to additional scrutiny and disparagement because of her initial complaint and her subsequent complaints about improper behavior in Basra. A review of documentation and witness interviews demonstrate a lack of professionalism on the part of the

Exhibit E

charging party's initial manager, but, as that manager's conduct appeared nearly equally abusive to both male and female subordinates and was not sexual in nature, this investigation does not sustain a charge that that manager sexually harassed the charging party. The evidence does sustain the assertions that respondent retaliated against charging party as a direct result of her good faith complaints against that initial manager, that there was a pervasive sexually hostile environment in the Basra placement and that retaliatory conduct against charging party continued there. There is documentation that respondent's human resources staff actively abetted the mistreatment of the charging party by coalescing in an effort to unfairly claim that charging party's performance warranted severe consequences. At the same time, confronted with clear evidence of the arbitrary mistreatment of subordinates by a manager, that human resources staff appeared to be mute but championed mistreatment of the charging party. Evidence supports the fact that Respondent made plans to discipline Charging Party after her complaint of harassment. Following this incident, evidence indicates that Respondent allowed a sexually hostile environment to exist which was severe and pervasive. The evidence is equivocal regarding whether or not the State Department employee and her Basra supervisor sexually harassed her. As a result of Charging Party reporting a sexual assault Charging Party was again threatened and faced further intimidation from another of Respondent's officials.

Based on the weight of the evidence, the Commission concludes that the Respondent retaliated against Charging Party by intimidating her following her complaint of harassment by a member of management and attempting to orchestrate her termination. The Commission also concludes that Charging Party was forced to endure a sexually hostile environment in Basra. As the purported misconduct of the State Department employee and her supervisor's claimed sexual improprieties were not witnessed, no other tangible evidence was presented, and other indicia could not be assessed, no dispositive decision as to the occurrence and/or severity of those accusations can be made at this time. Though it has been suggested by respondent that it could not investigate the complaint about a non-employee's alleged sexual misconduct, its efforts to retaliate against the charging party undermine confidence in its other assertions. Finally, the Commission finds that Respondent retaliated against Charging Party following her report of an allegation of sexual assault by threatening Charging Party's employment and ordering her to refrain from elevating her complaint because it might negatively impact her supervisors. Respondent is, therefore, in violation of Title VII of the Civil Rights Act of 1964, as amended.

This determination does not conclude the processing of this charge. The Commission will begin conciliation efforts to resolve all matters where there is reason to believe that a violation has occurred. Therefore, the Commission now invites the parties to join with it in reaching a just resolution of this matter. The confidentiality provisions of Title VII apply to information obtained during the conciliation.

If the Respondent declines to discuss settlement or when, for any other reason, a settlement acceptable to the Director of the Houston District Office is not obtained, the Director will inform the parties and advise them of the court enforcement alternatives available to aggrieved persons and the Commission. A Commission representative will contact each party to begin conciliation.

On Behalf of the Commission:

8/16/2007
Date

R.J. Ruff, Jr.
District Director

Shadow Sloan,
Vincent and Elkins
First City Tower
1001 Fannin St., Suite 2500
Houston, TX 77002-6760

Stephanie M. Morris
1660 L. St, N.W. Ste. 506
Washington, D.C. 20036

List Cases | Case Information | History | Documents | Subjects | Weapons | Credentials | Pouches

Case

Case Number: 01-MC09-062005-248-0213

Case Name: MOKHTARE, ALI REZA

Agency: 01 US DEPARTMENT OF STATE

Open Date: 06-23-2005

Case Type: MC09 MISCELLANEOUS MISCONDUCT

Close Date:

Field Office: DS-ICI-PR

Reported Date: 06-23-2005

Country: 248 IRAQ

Category of Case: SEXUAL ABUSE-ASSAULT

Case Agent: FL LYNN FALANGA

Other Agents:

Case Summary: Civil service employee had a contractor in his quarters and and attempted to/may have sexually assaulted her. Statements are included with this file. PR will request his security clearance be suspended. Contractor was so upset she asked for emergency leave.

Add | Modify | Delete | Cancel

User ID: DTP User: LYNN FALANGA Admin Branch: 01 Restricted Case Type: MC View only

PSS. Declined to suspend.

RSO - Go to Subject's supervisor & inform.

"Exhibit C"

Mr. SCOTT. First, there continues to be a lack of transparency, and the most poignant sign of the problem is the Department of Justice's absence here today.

We had a hearing, in fact, on this issue back in June. We learned that 17 pending cases of detainee abuse, including the abuse at Abu Ghraib prison by contractors, have remained with the U.S. Attorney's Office in the Eastern District of Virginia for 3 years.

In some of these cases the Army has investigated circumstances behind them and has found probable cause that a crime has been committed and referred the case to the Department of Justice for prosecution.

We are not told why these cases against contractors have not been investigated or why they are being held up.

In response to our concerns, we marked up a bill, H.R. 2740, the MEJA Expansion and Enforcement Act of 2007, which would require the Inspector General of the Department of Justice to complete and submit a report about identification and prosecution of alleged abuses in Iraq. This bill has passed the House but has not been acted upon by the Senate.

In the case we will hear about today, the department has remained silent for over 2.5 years regarding the status of the criminal investigation. Why has it taken this long for the department, in what should for the department be a routine and swift rape investigation?

Second, there are a number of laws the department can enforce with respect to contractors who commit crimes abroad, but it chooses not to. These include the Military Extraterritorial Jurisdiction Act, the Patriot Act and the Special Maritime and Territorial Jurisdiction Act.

There is nothing to believe that the incidents before us are not covered by present law, and the department has even informed us that many provisions of existing law do permit prosecutions.

The bill I mentioned, H.R. 2740, would close the loophole to cover all private security contractors, not just those contracted through the Department of Defense, to ensure that all contractors overseas are accountable under United States law.

But in the situation we will hear about today, the contractor was a DOD contractor, so there should be no question about jurisdiction.

Finally, there is no mechanism in place to ensure appropriate investigation of crimes. In fact, we have heard of many instances in which the Department of Justice and the FBI failed to get directly involved once crimes are alleged.

For example, FBI agents only flew out to Baghdad to investigate the September 16th Blackwater incident after sufficient congressional pressure and media coverage. We need to know how long after the alleged shooting were they notified of the incident.

How long after Ms. Jones' allegations occurred were the FBI notified, and what steps were taken?

H.R. 2740 requires the FBI to establish on-the-ground investigative units in Iraq to investigate reports of criminal misconduct.

But the Department of Justice has balked at this idea and apparently does not support its inclusion in any bill, even though it has the current authority to create such units on its own.

The Department of Justice seems to be taking action with respect to enforcement of criminal laws in Iraq only when it is forced to do something by embarrassing media coverage.

Our government is entrusted with the responsibility to oversee contractors in Iraq and most certainly bears the burden to protect innocent American civilians.

I hope this hearing will identify the reason why this is not happening.

With that said, it is my pleasure to recognize the Ranking Member of the Subcommittee, the gentleman from Texas, Judge Louie Gohmert.

Mr. GOHMERT. Thank you, Chairman Scott. And I do appreciate your holding this hearing. This is a very important issue.

And I want to thank our witnesses for taking time out of their busy schedules to be with us today.

Professor Horton, thank you.

And especially want to welcome my good friend, dear friend, and fellow former district judge from Texas, Congressman Ted Poe.

And also, Ms. Jones, thank you for being here and for graciously agreeing to share your story. I admire your courage in coming forward. I know this is not easy to come into a public forum and do this.

Ted, we have seen people have to do this kind of thing in order for justice to be done, and we believe that by your doing so, hopefully we will move justice in the right direction.

But you have also given a voice to women who have been the victims of sexual assault in Iraq and also Afghanistan. And I hope today's hearing will shed additional light on the disturbing trend of American women being victims of sexual assault outside our national boundaries.

I am deeply troubled by what happened to you in Iraq. No one should have to suffer that kind of abuse.

And now, after 2 years, we are hearing—and I got an e-mail today indicating that the Justice Department could not come forward and testify today because the matter is finally under investigation.

And I applaud any efforts Attorney General Mukasey will make in that direction. We have got a new regime and it looks like they are finally moving in the right direction.

The members of this panel are not privy to all the details about what, if any, investigation has occurred. According to news accounts, the State Department's Bureau of Diplomatic Security investigated the assault, turned its findings over to the Department of Justice. And like I say, they are now assuring us that they are investigating the matter.

At the same time, we are learning that KBR may have been instructed by the U.S. government to cease its investigation, but we don't know who gave that instruction.

It also appears that physical evidence of the assault was subsequently lost or destroyed. I hope it is not too late to see justice done in this case. No one is above the law. No one should be above the law, whether here in the United States or in Iraq.

In recent years, Congress has addressed the application of Federal criminal laws to U.S. persons overseas. In 2000, Congress

passed the Military Extraterritorial Jurisdiction Act of 2000, also referred to as MEJA, to extend the application of U.S. Federal criminal law to acts committed by members of the military, civilian employees of the military and dependents accompanying the armed forces overseas.

Congress again amended MEJA in 2005 to apply it to employees and contractors only "to the extent such employment relates to supporting the mission the Department of Defense oversees."

The authority of the U.S. government to prosecute the assault of Ms. Jones turns on whether those accused of the attack were employed in support of a DOD mission overseas.

There seems to be some dispute amongst the expert about whether MEJA applies in this instance. But the simple fact is that we don't have enough facts to make the determination yet.

In October, the House passed H.R. 2740, the MEJA and Enforcement Act of 2007. This legislation expands MEJA again to allow U.S. criminal prosecution of all Federal contractors operating in an area or in close proximity to an area where the armed forces are conducting a "contingency operation," and requires the FBI to establish overseas theater investigative units in areas where contractors are operating.

Hopefully, the Senate will act quickly on this legislation.

But I look forward to hearing from today's witnesses and appreciate your time in being here.

Thank you. I yield back.

Mr. SCOTT. Thank you.

The Chairman of the full Committee, Mr. Conyers?

Mr. CONYERS. Good morning, Chairman Scott and Members.

I join all in welcoming our friends here, Jamie Leigh Jones and Tracy Barker, sitting in the first row.

Congressman Ted Poe, thanks for all you have done.

This is outrageous that we even have to be here today. And it illustrates, in my judgment, how far out of control the law enforcement system in Iraq is today.

The story that we will hear truly shocks the conscience and shows how out of whack our priorities have become.

When a brave public-spirited individual working in support of her country in Iraq, like Ms. Jones, can be brutally raped by her fellow employees, this is something that demands our immediate attention. And I am so glad that at least we are moving on this immediately.

When the biggest contractor in Iraq, a large and, at one time, respected firm, can compound and worsen the situation, going as far as to falsely imprison her, this is a tragedy.

And when our own Department of Justice can and does fail to take action, while the apparently miscarriage of justice is allowed to fester, this is a public outrage that demands these hearings and investigation.

Does anyone in this room feel it is acceptable for an American citizen like Ms. Jones to be drugged, raped and falsely imprisoned?

Does anyone think it is appropriate that almost 2.5 years after the incident there hasn't been a single prosecution in the case?

Is there anyone here that thinks it is appropriate that the Department of Justice victims' rights ombudsman summarily rejected

Ms. Jones' complaint 6 months ago, and she was not even seen by a Federal prosecutor until October?

This is no small matter, given that there are 180,000 civilian contractor employees in Iraq, including more than 21,000 Americans, plus additional security contractor employees. We have got more civilians over there than military.

And there are other troubling reports of similar sexual assaults against contractor employees. So that is why I am here to tell you that this Committee's investigation will not end today.

It is unacceptable for our own Department of Justice to refuse to testify today. The letter they sent last night does not begin to respond to the tragedy and injustice that we are looking at now.

The department claims to be committed to law enforcement in Iraq. But they tell us nothing about what is being done in Ms. Jones' case. They can't even give us one example of a prosecution where the victim was a civilian contractor employee in Iraq.

And they can't describe any steps they have taken to ensure that such Americans in Iraq report crimes by contractor employees there to Federal law enforcement and that prompt investigation and prosecution will occur.

The American people and this Committee have the right to demand justice and accountability. And I, for one, intend to see that that is exactly what we get.

Thank you, Mr. Chairman.

Mr. SCOTT. Thank you, Mr. Conyers.

We will have statements from other Members.

The gentleman from Ohio waives.

The gentleman from Georgia?

Mr. JOHNSON. Thank you, Mr. Chairman. I would like to, first of all, thank you for promptly responding to this rapidly and publicly unfolding drama that first came to public attention, I believe, approximately 1 week ago.

And here we are today holding oversight hearings in Congress. And I think that this is what makes us proud to—this is what makes me proud to serve in Congress.

And of course, under the auspices of our Chairman, who has set the pace for this kind of vigorous oversight, Chairman Conyers, we want to thank you.

And I also want to thank all of the witnesses for coming today, especially to Ms. Jamie Leigh Curtis (sic), for what you have endured and for coming here to tell us your story.

Mr. SCOTT. Jamie Leigh Jones.

Mr. JOHNSON. Excuse me. Did I say Jamie Leigh Curtis? Jamie Leigh Jones. Okay, I am sorry. All right. Jamie Leigh Jones.

And I want to also point out that Ms. Tracy Barker is here, who is another victim of similar activity that was undergone by Ms. Jones.

And also here are the attorneys representing both victims. Mr. L. Todd Kelly and Mr. Paul Walton are from Houston, Texas. And also, Stephanie Morris of Washington, D.C.

And this is a case against Halliburton which actively concealed both of these egregious violations of the criminal law and then engaged in a coverup to keep these issues from ever seeing the light of day in criminal court.

And these issues have continued to this day. And for that reason alone, it would seem that both victims would be able to come into civil court and prosecute their claims for justice in front of a jury.

Unfortunately, the issue of pre-dispute binding mandatory arbitration arose when they attempted to seek redress. And these types of hidden clauses in employment agreements strip citizens of their basic rights to a jury trial.

Arbitration agreements were meant to be agreements between equal parties. But for Ms. Jones, Ms. Barker and the countless other employees who have tried to exercise their rights under these agreements, they turn out to be anything but equal.

Companies have taken advantage of employees by forcing them to sign away their rights to a public justice system in favor of a private, for-profit justice system where the chips are stacked against them and where the arbitrator, playing judge and jury, typically sides with the big business that signs his or her paycheck.

With over 180,000 civilian contractors in Iraq, our Federal laws must protect those who are working for our government. We should be protecting them.

And we should have protected you, Ms. Jones, criminally, and you should have the protection of the civil laws here in America as well.

I am hopeful that the Senate can move forward on H.R. 2740, the MEJA Expansion and Enforcement Act of 2007, which would close the loophole to ensure that all contractors are accountable under U.S. criminal law and mandates that the Department of Justice, through the FBI, enforce this bill by investigating and prosecuting offenses under the law.

But we also need to understand how pre-dispute mandatory arbitration agreements are contracts of adhesion and they affect the ability of victims, especially those who are unable to seek criminal penalties, from seeking civil damages when they have been truly wronged.

I also want to thank Representative Ted Poe, who took prompt action when notified by the father of Ms. Jones and was able to get Ms. Jones out of harm's way, out of the Green Zone in Iraq, and is here to testify today.

And I thank you, sir, for your service to the country.

And with that, I will yield back.

Mr. SCOTT. Thank you.

I would recognize Members for brief statements if possible.

In order of appearance, the gentlelady from Texas? I understand you had a brief statement.

Ms. JACKSON LEE. Let me say good morning to my colleague from Texas and to Ms. Jones and to Professor Horton. Thank you very much for being here.

I think it is the evidence of this place being the people's house that we responded so quickly.

And I thank the Chairman of the Subcommittee and the Chairman of the full Committee for their promptness in this case.

I am holding the Constitution in my hand, Ms. Jones, because I want you to know that your leaving the boundaries of the United States does not quash or deny your constitutional rights. Protection under this document goes to you wherever you go.

And particularly, the Sixth Amendment indicates that there is a right to a jury trial. You have a right to see those who perpetrated this heinous and outrageous violent act against you tried by a jury and, frankly, convicted, from the very actor to the corporation, with enhanced penalties.

So I am grateful that you are here today. And I want to tell you just a brief story in my brief comments. Just a few weeks ago, I sat in the airport. I met a young lady who was en route to Houston with all of the joy and excitement of her first time leaving her community in Georgia, getting on an airplane, leaving three children behind to be raised by her mother, to join the staff in Houston of the company that you worked for.

She was on her way, or is on her way, Congressman Poe, to Iraq. She had a sense of pride.

And so what I would say to those who are here today—you are a patriot. You are a hero. You are willing to sacrifice because you were moved by the cause, by the need, to go to Iraq and to serve your country. You deserve better.

And I am grateful that Congressman Poe, as recognized in representing you, you are—your dad is his constituent, and he made good on the promise that we make coming to the United States Congress. The people's house represents the people.

And so it is disappointing to find out that there is an empty chair sitting there—has taken an oath. The attorney general, Department of Justice—those officers there take an oath to protect the American public.

Unfortunately, with people not prosecuted, they have, in fact, not taken seriously their oath.

I, too, hope that the legislation moves forward. But as representatives or contractors to the Defense Department, we may need to look more extensively at the punitive measures against corporations that don't understand the rights of Americans and patriots and heroes who work for them.

Let me lastly say that I hope Congressman Poe will share with us his involvement or his inquiry to Halliburton and KBR. There is a suggestion that Halliburton was not involved.

I would like to hear whether you engaged with either of those or together, those corporations, and what their response was.

So let me simply close by saying the flag does not leave you when you leave this country. And the fact that you were abused and violated—and the women that are with you, and your lawyers who are here representing you—and incarcerated is a damnation to the values of the country.

And as we sit here today, I promise you, as I join the full Committee Chair, we will find a solution on behalf of you, who have served this country and can be considered a patriot and a hero.

Thank you very much. I yield back.

Mr. SCOTT. Thank you.

The gentleman from California?

Mr. LUNGREN. No, I am here to hear the witnesses.

Mr. SCOTT. Thank you, here to hear the witnesses.

The gentlelady from Wisconsin?

Ms. BALDWIN. Thank you, Mr. Chairman.

Chairman Scott and Ranking Member Gohmert, I want to express my appreciation for your holding this important and timely hearing on U.S. contractors in Iraq.

And I particularly want to thank our panel of witnesses today, and particularly you, Ms. Jones, for being here and providing testimony here today.

I also appreciate your admirable work with the Jamie Leigh foundation, because you are helping other Americans who are victims of sexual assault, sexual harassment and abuse while working abroad.

And I can only imagine what a difficult experience this has been for you, and I want you to know how much we appreciate your efforts to shed light on such an appalling and, frankly, intolerable issue.

Americans abroad should have the same protections under the law that they receive here in this country. And U.S. civilians who perpetrate crimes while working abroad should be held accountable for their actions just like they would if they were here at home.

This concept seems so simple that I am having trouble understanding how our government has failed this pitifully in helping Americans like Ms. Jones find justice.

In light of the Blackwater shootings and other serious incidents in Iraq, the fact that there has been no a single completed prosecution of a crime involving a contractor implicated in violent crime in Iraq is inexcusable.

The lack of accountability and oversight has apparently contributed to an environment of lawlessness among those serving as contract employees for the U.S. government.

And despite what I have to presume are appropriate internal policies aimed at preventing these atrocities, Ms. Jones and other former Halliburton and KBR employees have described a boys-will-be-boys environment that devastated their experiences in Iraq.

Nobody at Halliburton and KBR has yet responded effectively to multiple allegations of sexual assault and ongoing harassment. Instead, there was an attempted coverup.

I am saddened to think that this unacceptable boys-will-be-boys attitude appears to have permeated our government agencies as well.

We have applicable laws in place, but our Department of Justice seems unwilling to enforce them.

And, Mr. Horton, I agree with your assessment in your written comments of the department's attitude of official indifference.

Again, I want to thank our witnesses for being here today to help us do a better job of making sure that these situations never occur again.

Thank you. I yield back.

Mr. SCOTT. Thank you.

The gentleman from New York?

Mr. WEINER. Thank you, Mr. Chairman, and I want to thank you for holding the hearing.

You know, this is a remarkable example of how we sometimes react to things when we are fortunate enough to hear about them but have no idea how deep the roots of the problem go.

If we had not had someone like Ms. Jones, with remarkable strength, to take her breathtaking adversity and try to get some attention for it, had she not had the wisdom or her family not had the wisdom to reach out to her congressman, we might be reading about this in a postage stamp-sized dispatch in our local paper.

We don't know, as Ms. Baldwin just pointed out, how many dozens and dozens of cases like this might exist in this seam that exists in the law.

And while Professor Horton is going to talk with erudition about the fine points of the law and how we can improve it, let's not forget one overarching thing. The people that committed this crime were our employees, employees of the taxpayers of the United States of America.

We might have hired someone who was not wearing the uniform of the United States of America, but it doesn't make us any less accountable for the actions that they took.

We sign their paychecks. We sign the contracts that put them on duty. We should be the ones setting the laws and enforcing them.

The abject indifference of the Department of Justice, as exemplified by the opening remarks of Mr. Conyers and by their absence today, shows what their approach to this problem is. It is more or less "it ain't our problem," is what they are saying.

We here on the House Judiciary Committee are saying that as Members of Congress, it is our responsibility. Ms. Jones has been victimized more than one time. She was victimized, obviously, in the horrific crime.

She was victimized again when the reasonable course of justice was disrupted by a comprehensive effort to destroy evidence that might have existed, disperse people who might have been able to testify about it.

She was victimized again by the Department of State and Department of Justice essentially throwing up their hands and saying, "You have got a contract. Go try to enforce it in a civil court."

And we are here to say that, you know, there is a higher imperative here. You know, there are frequently the explanations from the Administration that say, "Look, war is hell. Things happen. There is the fog of war that sometimes takes place."

But this now seems to be an organized effort by the United States of America not to have responsibility and expressing that by hiring these outside contractors to do not only the dirty work of war, which some of us find necessary, but also they wash their hands of the dirty deeds that go on. And we have to say that enough is enough.

And I want to conclude the way I began, by expressing, I think, all of our gratitude to you, Ms. Jones. You know, it takes a remarkable amount of courage to go through what you did and not simply return to your home and try to heal yourself. You chose not to do that. You brought this forward here.

Unfortunately, in the echo chamber of information that we have nowadays, without the face and the voice of someone who has actually been through it, none of these things get changed.

Hopefully, you will change that today. Hopefully, Congressman Poe, by bringing this forward, has made that possible.

And hopefully, this Committee's actions will lead us to finally, as a Nation, say not, "Tsk tsk, it is a shame what goes on," but that, "We as the United States of America are responsible."

And I thank you, Mr. Chairman.

Mr. SCOTT. Thank you, Mr. Weiner.

I ask unanimous consent that a statement from the Chair of the Subcommittee on Commercial and Administrative Law, the gentlelady from California, Ms. Sánchez, be entered into the record.

As Chair of that Committee, she has been dealing with the issue of mandatory arbitration, and her statement relates to that issue. Without objection, so ordered.

[The prepared statement of Ms. Sánchez follows:]

PREPARED STATEMENT OF THE HONORABLE LINDA T. SÁNCHEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND CHAIRWOMAN, SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

STATEMENT FOR
CONGRESSWOMAN LINDA T. SÁNCHEZ
CHAIR OF THE SUBCOMMITTEE FOR COMMERCIAL AND ADMINISTRATIVE LAW
Subcommittee on Crime, Terrorism, and Homeland Security Legislative Hearing on
"Enforcement of Federal Criminal Law to Protect Americans Working
for U.S. Contractors in Iraq"
December 19, 2007 at 10:15 a.m. in 2141 Rayburn HOB

I thank Chairman Scott for holding this hearing to highlight the lack of oversight of contractors in Iraq. I share the concerns of my fellow members that a thorough investigation be conducted into what happened to Ms. Jones so that she may find justice and we are assured that no other human being experiences such an appalling situation.

Although the hearing today will likely focus on the atrocities Ms. Jones suffered while working as a contractor in Iraq, and the subsequent lack of a thorough investigation by those responsible here in the United States, Ms. Jones may now face another difficult situation which I hope will be addressed during today's hearing. Earlier this year, Ms. Jones filed a civil case in Texas against her employer for negligence, hostile work environment, and retaliation. Included in the dozens of employment related documents Ms. Jones signed before heading out to Iraq, was a contract containing a binding mandatory arbitration clause. This clause requires that any claim against her employer related to her employment must be submitted to binding arbitration instead of the court system. It is upon this clause that her employer, a division of KBR, and a subsidiary of Halliburton, has filed a motion to compel arbitration.

The Subcommittee on Commercial and Administrative Law, which I chair, has held two hearings this session examining problems concerning binding mandatory arbitration agreements. The testimony provided at those two hearings has generally concluded that the current use of arbitration has shifted away from the original intent of the Federal Arbitration Act, and has often become less fair for consumers and employees in many respects. Although arbitration can generally offer many benefits over the traditional legal system, when it is mandatorily imposed, it can result in a company's unfair advantage over an employee. I have serious concerns due to the testimony presented at the Commercial and Administrative Law Subcommittee hearings and worry that Ms. Jones may not find justice if the court decides she must arbitrate her claims.

Once again I thank Chairman Scott for holding this hearing and I look forward to the testimony today.

Mr. SCOTT. We have a distinguished panel of witnesses here to help us consider the important issues of the day.

Our first witness was to be a representative of the U.S. Department of Justice, but in a letter sent to us just last night they have declined to testify.

They cite the fact that there is a pending investigation on these allegations that we will hear today. And as the Ranking Member has properly pointed out, we do not expect the Department of Justice to testify on specific cases under investigation.

But they failed to inform us as to why they could not appear to discuss other contractor crimes generally in Iraq which are not undergoing any pending investigation or prosecution or whether or not they have sufficient statutory authority to investigate cases like this.

But they are not here.

Our next witness will be the gentleman from Texas, Representative Ted Poe, who represents the 2nd Congressional District of Texas. He is the founder and co-chair of the Congressional Victims Rights Caucus.

As a former criminal court judge and prosecutor for over 30 years in the Houston area, he is recognized nationally for his creative sentencing of criminals and as a dedicated advocate for victims and children.

Our next witness will be Ms. Jamie Leigh Jones, who in 2005 traveled to Baghdad as a contract employee of KBR and was placed in a predominantly male barracks located in Camp Hope.

She will testify to events that occurred only 4 days after her arrival. She subsequently founded the Jamie Leigh Foundation, a nonprofit organization dedicated to helping United States citizens and legal residents who are victims of sexual assault, sexual harassment, rape and sexual abuse while working abroad for Federal contractors, corporations or government entities.

We want to thank Ms. Jones for her courage and for her presence today.

And finally, we will hear from Scott Horton, who is an adjunct professor at Columbia Law School, where he teaches law of armed conflict and commercial law courses.

Since February of this year, he has managed the Project on Accountability of Private Military Contractors at Human Rights First.

He is the author of more than 100 publications dealing with issues of international public and private law and is currently working on a book on legal policy issues relating to private military contractors.

Now, each of our witnesses' written statements will be made part of the record, each statement in its entirety. I will ask that each witness summarize his or her testimony in 5 minutes or less.

And to help you stay within that time, I hope the timing devices are working at the table. They should start off green, go to yellow when a minute is left, and then to red when the 5 minutes are up.

First we will hear from Congressman Poe.

TESTIMONY OF THE HONORABLE TED POE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. POE. Thank you, Mr. Chairman, and Chairman Conyers and Judge Gohmert, for holding this hearing, especially in just a short period of time, in 7 days, holding this very important hearing.

I am here to introduce a brave and courageous young woman, Jamie Leigh Jones. She will tell you about the horrific experiences in Iraq as an American civilian contractor who was drugged and gang-raped by her American civilian co-workers.

She went to Iraq as a patriot to help our American military. But what Jamie will tell you paints a picture of lawlessness, where criminals go unpunished and victims are vilified.

For American civilian contractors, Iraq is reminiscent of the Old West days and no one seems to be in charge. The law must be enforced, and these outlaws need to be rounded up and we have to restore order.

I became involved in this case when Jamie's dad, who is here, called my office in Texas because I represent Jamie and her family in Congress.

He relayed Jamie's account of her assault and being held hostage in a shipping container and asked for immediate assistance.

My staff and I contacted the United States Department of State's Department of Overseas Citizens Services. And within 48 hours, the State Department quickly dispatched two agents from the U.S. embassy in Baghdad, rescued Jamie and brought her back home to Texas.

It is my understanding that an assistant U.S. attorney interviewed Jamie and that a State Department special agent investigated the case. However, the Department of Justice has not informed Jamie or me of the status of a criminal investigation against her rapists, if any investigation exists.

It is interesting to note that the Department of Justice has thousands of lawyers, but not one from the barrage of lawyers is here to tell us what, if anything, they are doing. Their absence and silence speaks volumes about the hidden crimes in Iraq.

Their attitude seems to be one of blissful indifference to American workers in Iraq.

Jamie turned to another government agency in 2006. She filed a formal complaint with the U.S. Equal Employment Opportunity Commission against KBR for sexual harassment.

In May 2006, the EEOC issued a letter of determination that was favorable to Jamie. The EEOC determined that Jamie was sexually assaulted by one or more KBR employees, that physical trauma was apparent, and that KBR's own investigation "was inadequate and did not effect an adequate remedy."

Two and a half years after her assault, Jamie still does not have any justice. Jamie decided to go public with her case because she wasn't getting answers from our government. It seems our government agencies continued to fail her.

While the criminal justice system has certainly failed Jamie in the United States, the civil court system may be of no help to her either in holding wrongdoers civilly liable for the injuries they have inflicted on their victims.

The inclusion of a binding arbitration clause in Jamie's employment contract may preclude her from accessing a judge or jury to hear her civil case. She may be forced into arbitration, a privatized justice system with no public record, no discovery and no meaningful appeal.

As a former judge, I have always thought the best way to solve disputes was in a courtroom with a jury.

Since Jamie has gone public with her experience, my office has heard from three other women. Of course, my office will furnish the names of these women to the Judiciary Committee if requested.

One of these three women is Tracy Barker. She is a former KBR employee who says that she was sexually assaulted in Iraq by a State Department employee who still works for the State Department today. Tracy is here.

The two other women also are former KBR employees. They both report sexual assaults and sexual harassment by their co-workers in Iraq, and neither woman has seen any Federal law enforcement action.

One of the women informed my office that she was molested several times and raped once by her KBR co-workers. When she reported the crime to her supervisor, she was told that they would take care of it.

She returned to work 2 days later and found her rapist working alongside of her. She panicked and called for the Army M.P.s, who escorted the rapist off of the base. However, she was subsequently fired. And it seems, unfortunately, Jamie's case is not unique.

Our government has a responsibility to protect Americans overseas. These contractors work in support of the American military mission. Those who work in Iraq in support of the American military have the right to the same protections that we bestow on citizens that are in America.

It seems to me we need a new sheriff in Iraq to enforce Federal laws. The individual rapists must be prosecuted. Americans cannot go abroad, commit attacks on fellow Americans, without the long arm of the law holding them accountable.

The individuals who assaulted Jamie must be rounded up and tried by a jury. Nonfeasance by civil contracting companies cannot be tolerated.

And victims must get the justice that they deserve because, Mr. Chairman, justice is what we do in America.

[The prepared statement of Mr. Poe follows:]

PREPARED STATEMENT OF THE HONORABLE TED POE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Good morning, Mr. Chairman, Members of the subcommittee. Thank you for quickly organizing and holding this important hearing.

I am here this morning to introduce a brave young woman, Jamie Leigh Jones. She will tell you about her horrific experiences in Iraq as an American civilian contractor, who was drugged and gang-raped by her American civilian coworkers.

What Jamie will tell you paints a picture of lawlessness—where criminals go unpunished and victims are vilified. For American civilian contractors, Iraq is reminiscent of the Old Western days and no one seems to be in charge. The law must intervene, round up these outlaws, and restore order.

I became involved in this case when Jamie's dad called my office in Texas because I represent Jamie and her dad in Congress. He relayed Jamie's account of her assault and being held hostage in a shipping container and asked for immediate assistance. My staff and I contacted the United States Department of State's Depart-

ment of Overseas Citizens Services. Within 48 hours, the State Department dispatched two agents from the US Embassy in Baghdad, rescued Jamie, and brought her back home.

It is my understanding that an Assistant US Attorney interviewed Jamie and that a State Department Special Agent investigated her case. However, the Department of Justice has not informed Jamie or me of the status of a criminal investigation against her rapists. It is interesting to note that the Department of Justice has thousands of lawyers, but not one from the barrage of attorneys is here to tell us what, if anything, they are doing. Their absence and silence speaks volumes about the hidden crimes of Iraq.

Jamie turned to another government agency in January 2006. She filed a formal complaint with the US Equal Employment Opportunity Commission against KBR for sexual harassment. In May 2006, the EEOC issued a Letter of Determination that was favorable to Jamie. The EEOC determined that Jamie was sexually assaulted by one or more KBR employees, that physical trauma was apparent, and that KBR's own investigation "was inadequate and did not effect an adequate remedy."

Two and a half years after her assault, Jamie does not have justice. Jamie decided to go public with her case because she wasn't getting answers from our government. It seems our government agencies have failed her.

While the criminal justice system has certainly failed Jamie, in the United States, the civil court system may be of no help either in holding wrongdoers civilly liable for the injuries they have inflicted on victims. The inclusion of a binding arbitration clause in Jamie's employment contract may preclude her from accessing a judge or jury to hear her civil case. She may be forced into arbitration, a privatized justice system with no public record, no discovery, and no meaningful appeal. If her case is arbitrated, the very company who victimized her will pick the arbitrator who will decide her fate. Jamie needs and deserves justice. As a former judge, I have always thought that the best way to solve disputes was in a courtroom with a jury.

Since Jamie has gone public with her experience, my office has heard from 3 other women. Of course, my office will furnish the names of these women to the Judiciary Committee if needed. One of the three women is Tracy Barker. Tracy is also a former KBR employee, who says that she was sexually assaulted in Iraq by a State Department employee who still works at the State Department today.

The 2 other women are also former KBR employees. They both report sexual assaults and sexual harassment by their coworkers in Iraq and neither woman has seen any federal law enforcement action. One of the women informed my office that she was molested several times and raped once by her KBR coworkers. When she reported the crime to her immediate supervisor, she was told that they would take care of it. She returned to work two days later and found her rapist working alongside of her. She panicked and called Army MPs, who escorted the rapist off of the base. However, she was subsequently fired. It seems that, unfortunately, Jamie's case is not unique.

Our government has a responsibility to protect American civilians overseas. These contractors work in support of an American military mission. Those who work in Iraq in support of the American military have a right to the same protections that we bestow on our citizens here in America.

We need someone in Iraq to enforce our federal laws. The individual rapists must be prosecuted. Americans cannot go abroad and commit attacks on fellow Americans without the long arm of the law holding them accountable.

The individuals who assaulted Jamie must be rounded up and tried. Nonfeasance by civilian contracting companies cannot be tolerated. Victims must get the justice that they deserve because justice is what we do in America. And that's just the way it is.

Mr. SCOTT. Thank you very much, Congressman.

Ms. Jones?

TESTIMONY OF JAMIE LEIGH JONES, FORMER EMPLOYEE OF KELLOGG BROWN AND ROOT (KBR), HOUSTON, TX

Ms. JONES. Good morning, Mr. Chairman and Members of the Committee.

I would first like to introduce my father, Tom Jones; my husband, Joseph Daigle; my attorney, Todd Kelly; Stephanie Morris,

my other attorney; Tracy Barker, a fellow victim; and Breanna Morgan, my mother.

I went to support Operation Iraqi Freedom in the Green Zone in Baghdad, Iraq on July 25, 2005. Upon arrival at Camp Hope, I was assigned to an all-male barrack. I complained about the living conditions but Halliburton did nothing to help.

I was subject to repeated catcalls and men who were partially dressed in their underwear while I was walking to the restroom on a separate floor from me.

The EEOC reviewed Halliburton's comments, found them unbelievable and credited my testimony about what happened. The Committee has this finding as an exhibit.

On the fourth day in country, I stepped outside my barracks to take a call. Afterwards, some co-workers called me over and invited me to join them for a drink.

The men, identified only as Halliburton-KBR firefighters, told me that one of them made really good drinks, so I accepted the drink from them. He handed me the drink and said, "Don't worry, I saved all my 'roofies' for Dubai," or words very similar to that.

I thought that he was joking and felt safe with my co-workers. I believed that we were all on the same team. I took two sips from the drink and don't remember anything after that.

The next morning, I was extremely sore between my legs and in my chest. I was groggy and confused. I went to the restroom and realized I had bruises between my legs and on my wrists and was bleeding between my legs.

When I returned to my room, a man was laying in the bottom bunk of my bed. It wasn't the same man who gave me the drink. I asked him if he had 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. My heart sank that day.

I reported this incident to a KBR worker who sent me to the KBR clinic. The clinic called KBR security, who took me to the Army CASH. Dr. Jodi Schultz performed a rape kit analysis, including photographs and a form that indicated all the bruises.

She also took swabs, vaginal combings and scrapings from under my fingernails, as well as my panties and bra, and 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.

During the exam, 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 damages to my genitalia that it was apparent that I had been raped.

The KBR security then took me to a trailer and then locked me in a room with two armed guards outside my door. I was imprisoned in the trailer for approximately a day. One of the guards finally had mercy and let me use a phone.

I called my dad, who contacted Congressman Ted Poe, who took actions to get me out of the country. I believe he saved my life.

I was later interviewed by Halliburton-KBR supervisors, and it was made clear to me that I had essentially two choices—one, stay

and get over it, or, two, go home with no guarantee of a job either in Iraq or in Houston.

Because of the severity of my injuries, I elected to go home, despite the obvious threat of being fired.

Once I returned home, I sought medical attention, both psychiatric and physical. 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.

Some time around May 2007, a State Department agent called and said that she was not aware of a rape kit or any pictures of my injuries. I insisted that the rape kit existed and forwarded a copy of KBR's own EEOC response to prove that the Army doctor 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 the agent stating she had found the rape kit but the pictures were missing and so were the doctor's notes attached to the top of the rape kit.

I have had reconstructive surgery on my breasts and pectoral muscles due to the disfigurement caused by the brutal attack. I am still waiting for a follow-up surgery because I am still not back to normal. I have to sleep with a sports bra because of the pain. I still continue to go to counseling three times per week.

It seems that nothing happens in my criminal case unless there is media attention. Right after I was interviewed with 20/20, I was flown to Florida to meet with the assistant United States attorney.

I asked the AUSA where should I refer victims who contact me through the Jamie Leigh Foundation, and she responded, "Don't refer them to my office, but you may want to refer them to the Office of Victims of Crime."

This problem goes beyond just me. Through the Jamie Leigh Foundation, numerous other women have contacted me who were assaulted and raped and were then retaliated against for reporting those attacks.

There are at least 11 others that my attorneys are aware of, not including those filed by other lawyers and those who have come to me through my foundation.

As indicated by the sworn affidavit by an H.R. representative from Halliburton, it is clear that sexual harassment was an overwhelming problem in Iraq, and this was known to Halliburton and KBR, but they hide it from unsuspecting victims like myself.

There has been no prosecution after 2.5 years. My attorney, Stephanie Morris, wrote a letter to the ombudsman of the Office of Victims of Crime, also enclosed with the letter. Hopefully, the next victim will not have to wait so long.

The arbitration laws are so abusive that Halliburton is trying to force this into a secret proceeding which will do nothing to prevent continued abuse of this nature. What is there to stop these companies from victimizing women in the future?

The United States government has to provide people with their day in court when they have been raped and assaulted by other American citizens.

Otherwise, we are not only deprived of our justice in the criminal courts but in the civil courts as well. The laws have left us nowhere to turn.

Thank you, Chairman and Members of the Committee, for inviting me to be here today.

[The prepared statement of Ms. Jones follows:]

PREPARED STATEMENT OF JAMIE LEIGH JONES

TESTIMONY OF JAMIE LEIGH JONES

to the

House Judiciary Subcommittee on Crime, Terrorism and Homeland Security

Presented: December 19, 2007

I went to Camp Hope, in the "Green Zone" in Baghdad, Iraq on July 25, 2005, in support of Operation Iraqi Freedom. I was promised 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 barracks which was, at least, predominantly male (according to documents provided by Halliburton/KBR in response to my EEOC complaint, this was approximately 25 women to more than 400 men). I never saw a woman at that barracks. I did find myself subject to repeated "cat-calls" and men who were partially dressed and 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 these living conditions, and asked to be moved into the living quarters that I had been promised. These requests were denied.

On the fourth day in the country, I received a phone call on my cell phone. The reception in the barracks was bad, so I stepped outside to take the call. After I finished my call, I noticed that the woman I was replacing and several others were outside. They called me over and invited me to come and sit with them.

At some point I agreed to join them, and was offered a drink. The men (identified only as Halliburton/KBR firefighters) told me that one of the firefighters could make a really good drink. I accepted a drink from him. When he handed me the drink, he told me "don't worry, I saved all my Ruffies for Dubai," or words very similar to that. I thought that he was joking, and felt safe with my co-workers. I was naïve 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 bruises between my legs and on my wrists. I was bleeding severely between my legs. At that point in time, I suspected I had been raped. When I returned to my room a man (whom I now know to be Charles Bortz), 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 went out.

I reported this incident to Pete Arroyo (whom I had known by phone and e-mail from Houston), who took me to the KBR clinic. The clinic then called KBR security, who took me to the Army CASH (Combat Army Support Hospital). There, a rape kit was performed by the Army doctor, Jodi Schultz, M.D.

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. She stated that she didn't know if I wanted to hear it or not, but that I had "also been sexually assaulted anally." 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.

These men then took me to a trailer and then locked me in with two armed guards (Ghurka's) outside my door. I was placed into this trailer, 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).

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

At some point while I was imprisoned, (I am unable to pinpoint the time exactly), Jamie Armstrong, from KBR came to my trailer and I asked her for a phone to call my parents. She denied my request and asked for a written statement. I tried to bargain with her by offering to give a statement in return for her allowing me to use the phone. She refused.

Once State Department officials (Matthew McCormick and Heidi McMichael) saved me from the container, I was taken to the cafeteria because I was hungry and thirsty. I ate some Kiwi. I was feeling very ill from the effects of the drug. I was going to be put into 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. This was made worse by the fact that this particular man was 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 firing.

Once I returned home, I sought medical attention, both psychiatric and physical. 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.

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. My attorney, Stephanie Morris, spoke to at 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. However, Ms. Lapinski refused to identify any AUSA assigned to my case.

Some time around May 2007, Lynn Falanga called indicated she was not aware of a rape kit or 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 but the pictures were missing and so were the doctor's notes attached to the top of the rape kit.

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, and treated for that.

I also saw Sabrina Lahiri, who found that my breasts were asymmetrically disfigured, and that my pectoral muscles had been torn. She wanted to do reconstructive surgery, and I sought "second opinions" from several surgeons regarding that surgery.

Even the doctor Halliburton forced me to see, reviewed my injuries and opined that they were due to trauma. He expressed anger and disgust. The first reconstructive surgery was then performed by Dr. Ciaravino.

At some point, Halliburton also required me to undergo a "psychological evaluation" by Dr. Stuart Meisner, whom they hired for the purpose of disproving my case. He was abusive and insensitive, and made it very clear that his intention was to disprove the facts of my case.

I still require additional medical treatment, including another reconstructive surgery, and I continue to go to counseling 3 times per week.

Lynn Falanga has, on occasion, called me to tell me that there was "never a rape kit," and that she had lost the rape kit. Eventually, she called to say that the rape kit had been located, but that the photographs and the "top copy" of the doctors' notes were still missing. In October of 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 I was flown to Florida to meet with an Assistant United States Attorney (Tiffany Eggers) in Florida – who asked me about the rape almost two and a half 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, I have heard nothing from Tiffany Eggers. However, since ABC News published this story, Lynn Falanga has left several messages over the last week. This seems to be a pattern, because only when there is media attention, or following letters that I have written to Congress has Ms. Falanga even tried to contact me. She was apparently told not to even speak with my attorneys because the United States was identified as a defendant in the case.

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. As indicated by the affidavit of Letty Surman, an HR representative from Halliburton, it is clear that sexual harassment was an overwhelming problem in Iraq, and this was known to Halliburton and KBR - although they do not inform unsuspecting victims, like myself.

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 two and a half years. My attorney, Stephanie Morris, wrote a letter to the Ombudsman of the Office of Victims of Crime – also enclosed with this letter. 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
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330-2006-00968 — Charge Number

Jamie Leigh Jones — 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

AFFIDAVIT OF LETTY SURMAN

STATE OF TEXAS §
COUNTY OF HARRIS §

On this day, Letty Surman, appeared before me, the undersigned notary public and after I administered an oath to him/her, upon his/her oath, he/she said:

"My name is Letty Surman. I am over the age of 18 and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

I was employed by Halliburton/KBR in Kuwait and Iraq from May of 2004 until September of 2006. I was the Human Resources (HR) supervisor in Kuwait from May of 2004 until late-2005 and in the Baghdad Headquarters in Iraq from late-2005 until my return to the United States in September of 2006. I again worked for Halliburton in Houston from January until August of 2007, when I was laid off.

During most of my time in Kuwait, I was the key contact person for HR issues arising out of Basra, Iraq. This was because there was no HR person in Basra. There was a saying with regard to personnel and employee issues that 'what happened in Basra stayed in Basra.' As an example, Halliburton pushed for an HR representative in every camp, large or small, in Iraq, with the exception of Basra. I often thought this was suspicious.

It was concerning to me that, although I was trained in HR, there were a number of HR personnel that were not trained, and were simply no longer capable of performing their primary duties. For instance, I worked closely with a diesel mechanic who had been relabled as an HR representative, with absolutely no training. This was a disaster waiting to happen.

I know that Craig Grabien was the project lead in Basra, and that alcohol was widely used at that camp – despite the fact that this was not permitted there. In fact, it was widely known that Craig Grabien's successor, Charles English, was intoxicated the night that Basra was bombed, when he announced the need for firemen to perform a HazMat analysis in a slurred voice from the radio system in the bunker. Two visiting Army officials even complained that Charles English was drunk in the bunker.

During my time as an HR supervisor, I was aware that a lot of sexual harassment went on- it was our major complaint. I observed that sexual harassment was worse when I first arrived, and seemed to get a little better towards the end of my stay in Iraq.

PLAINTIFF'S EXHIBIT
1

LHS

I know that the Employee Relations (ER) branch of Halliburton tracked sexual harassment complaints, as this was a primary function of that department. However, I am aware that Halliburton has a policy of sweeping problems under the rug.

I have personally been the subject of sexual harassment while I was in Iraq. There were comments about my breasts shaking when I was doing something in the kitchen facility, and Michael Van Kirk, a project manager, attempting to kiss me – which was unwanted. I did not report these incidents because it would not have accomplished anything, and because of the high likelihood of retaliation that permeated the environment in Iraq. Often, there would be heckling of people who reported incidents of this nature, or they would be sent to another, more remote, camp. Furthermore, the confidential nature of these reports was purely at the discretion of the project managers, and not well enforced.

At one point, there was a company blog, on which any Halliburton employee could anonymously post their complaints about sexual harassment and other camp conditions. Halliburton took this down because it was embarrassing to them.

I know that pornography was known to be displayed in the workspaces in Basra as a result of the reports of the drivers and other employees who would travel through the Kuwait after having been in Basra. Craig Grabien had a reputation for sexually harassing the women in Basra.

In 2005, KBR came out with "supervisor training." This training included topics such as dignity and respect, sexual harassment and other topics. Prior to that, sexual harassment had not really been discussed with managers or supervisors. This training was insufficient, lacking in substance, and thought by many to be a "joke."

I recall the aftermath of the reporting of the Jamie Jones rape incident. I had been friends with the fire chief, Marshall Fiedler, and remember him commenting to me that "I don't know what I'm going to do with these guys." Several of the firefighters were very young, and known to do wild things.

I also recall that a number of people were very angry because the incident involving Jamie caused the rules to change so that drinking was no longer allowed. Prior to that reporting, drinking was allowed in the off-duty hours, and in the non-work spaces.

Part of the problem with managers such as Craig Grabien is that they have family connections in the Halliburton/KBR system. In fact, this "good 'ol boy" network is so rampant that the employees have nicknamed the company: Kinfolk, Brothers &

LHS

Relatives (rather than Kellogg, Brown & Root). The entire company is simply rife with nepotism. The same rules do not apply to all Halliburton employees – it simply depends on their connections.

I am very familiar with Halliburton's DRP program, but certainly did not think that a rape or sexual assault would ever be subject to the program. I know that the DRP prides itself on preventing most cases from ever even reaching arbitration. The DRP office is housed in the same headquarters area as KBR, in the same building as the ER offices. I believe this to be a huge conflict of interest. Simply put, I do not think that a person can get justice in the DRP. I personally do not trust the arbitration provisions of KBR, nor do many of the co-workers I know. In fact the practices of Halliburton KBR make it clear that it was there intent to circle the wagons to protect their financial interests, rather than fairly treat their employees.

KBR has utilized the DRP arbitration provision to permit, excuse and/or encourage a sexually lawless environment to exist, and to escape liability and accountability for that environment. It also keeps its findings secretly so that the public does not know about it."

Further affiant sayeth not

Letty Surman
Letty Surman
AFFIANT

SWORN TO AND SUBSCRIBED before me on the 10th day of October, 2007

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
(SEAL)

LHS

STEPHANIE M. MORRIS
ATTORNEY AT LAW
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March 29, 2007

Marie A. O'Rourke, Victims' Rights Ombudsman
Executive Office for the United States Attorneys
U.S. Department of Justice
950 Pennsylvania Avenue - Room 2261
Washington, D.C. 20530

Ms. O'Rourke:

On February 6, 2007, I sent a complaint on behalf of Tracy Barker. On March 2, 2007, I received a disturbing letter from you informing me you were "closing [my] complaint without further action. . . [because] this office does not have jurisdiction to review complaints brought against employees of the State Department." Furthermore, "my client has not established she is a federal "crime victim,"" and in addition, "the complaint fails to identify any United States Department of Justice employee who may have failed to provide rights to a crime victim under the Crime Victims' Rights Act of 2004."

After reading your reply, I was perplexed and questioned whether you read the Complaint at all. If so, you failed to identify that the Department of Justice is the prosecuting authority for crimes committed on military bases against civilians, as Ms. Barker was at the time, pursuant to the Military Extraterritorial Jurisdiction Act of 2000. Although the man who assaulted her was a State Department employee, DOJ still had prosecuting authority under the Act, and assumed it when an unknown DOJ office declined prosecution sometime in 2006.

Second, you also closed the complaint because I failed to identify a DOJ employee violated Ms. Barkers' rights under the Act. I was perfectly clear in my summary of the facts that the investigating agent refused to provide the name of the DOJ office or the name of the AUSA who declined the case. Moreover, the mere fact that DOJ never contacted Ms. Barker, yet declined prosecution, is a violation of her rights in itself. That said, it is your office's responsibility to investigate who was responsible for this matter without closing her complaint and deeming it a final decision.

Enclosed you will find a second complaint against the U.S. Department of Justice for violating Jamie Jones' federal rights under the Crime Victim's Act of 2004. In July 2005, Ms. Jones was sent to Iraq as a Halliburton contractor and forced to live in a

predominantly all male barracks that permitted alcohol consumption. In combination, these two factors caused my client to feel unsafe and alarmed. As a result, Ms. Jones immediately requested she be moved to an area with safer living arrangements. Four days later, she was brutally raped by 5-6 Halliburton firefighters. She reported the crime to the authorities and submitted to a rape kit exam.

Unfortunately, the investigation and prosecution into Ms. Jones' case was handled in exactly the same manner as Ms. Barker's. Again, she has not been contacted by anyone in DOJ and the State Department attorney and investigating agent will not reveal who they are working with in DOJ.

I suggest you investigate who is responsible for the above actions instead of closing this case and turning a blinds eye to the tragedies occurring on military bases in Iraq and elsewhere. As a representative of all federal crime victims, it is your duty to do so as required under the Act.

Respectfully Submitted,

Stephanie M. Morris

cc: Jamie Jones
Todd Kelly, Esq.

FOR OFFICE USE ONLY

DATE RECEIVED: _____
CASE NUMBER: _____

COMPLAINT
ALLEGING FAILURE OF DEPARTMENT OF JUSTICE EMPLOYEE TO PROVIDE RIGHTS TO A CRIME VICTIM UNDER THE CRIME VICTIMS' RIGHTS ACT OF 2004

Return the signed complaint, including any additional pages or documents, directly to the Department of Justice component, or local United States Attorney's Office, that is named in your complaint. If you do not know where to send the complaint, you may send it directly to the Office of the Victims' Rights Ombudsman, who will forward your complaint to the office that is the subject of your complaint.	Victims' Rights Ombudsman Executive Office for United States Attorneys Department of Justice 2261 RFK Main Justice Building 950 Pennsylvania Ave., N.W. Washington, DC 20530-0001 Fax: (202) 305-4937

This Complaint form is not designed for the correction of specific victims' rights violations, but is instead to request corrective or disciplinary action against Department of Justice employees who may have failed to provide or have violated the rights of a crime victim under the Crime Victims' Rights Act of 2004. A crime victim includes any person who has been directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia.

All complaints must be submitted within sixty (60) days of the victim's knowledge of a violation by the Department of Justice employee, but not more than one year after the actual violation. Receipt of complaints will be acknowledged in writing.

The information provided herein will be used along with other information developed during the investigation to resolve or otherwise determine the merits of this complaint. The information may be furnished to designated officers and employees of agencies and departments of the Federal Government in order to resolve or otherwise determine the merits of this complaint.

Please check the box that applies to the person filing this complaint.

☐ Victim X Attorney representing victim
☐ Legal Guardian ☐ Other representative (describe) _____

Name, phone number and relationship to victim of person completing this form (if not the victim).

Stephanie M. Morris 1660 L St. Suite 506, Washington, D.C. 20036 (202)536-2353 Victim's Attorney

Is the victim represented by an attorney in this complaint? X Yes ☐ No

If yes, please provide the attorney's name and contact information. All future contacts with the victim regarding this complaint will be made through the attorney.

See the last question.

1. **PERSONAL INFORMATION ABOUT THE VICTIM**

First Name: Jamie	Middle Name: Leigh		Last Name: Jones
Title: Mr. ___ Mrs. ___ Ms. _X_ Miss ___ Other ___			
Street Address:			
City:	State:	Country:	Zip Code:
Home Telephone No:	Work Telephone No:		Cell Phone Nc
Email Address:			

2. **INFORMATION ABOUT THE CRIMINAL CASE**

The following section requests important information about the criminal investigation or case in which you are a victim. Please provide as much information as you can.

Stage of the Criminal Justice Process - Select most recent event: X Investigation ☐ Arrest ☐ Arraignment ☐ Preliminary Hearing ☐ Guilty Plea ☐ Trial ☐ Sentencing ☐ Parole Hearing ☐ Other _____		
Defendant(s) Name(s): Charles Boartz is the only known Defendant at this time.		
Case Number: See Question (3)	District Court:	Judge:

3. **INFORMATION ABOUT THE VICTIM'S COMPLAINT**

What is the location and name of the office(s) or organization(s) of the Department of Justice that is/are the subject of your complaint?

The initial investigation office was under the Department of State because the crime occurred in Iraq. It has been transfered to the Department of Justice Office but the attorney for the Dept. Of State refuses to reveal this information.

Is your complaint against a specific person in that office? ☐ Yes X No

If yes, please identify the person(s) (include position or title, if known) who failed to provide the right(s) about which you are complaining.

Which of the following rights afforded by the Crime Victims' Rights Act of 2004, 18 U.S.C. § 3771, do you feel you were denied? Please check all that apply.

- ☐ The right to be reasonably protected from the accused.
- X The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.
- ☐ The right not to be excluded from any such public court proceeding, unless the court, afer receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
- ☐ The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
- X The reasonable right to confer with the attorney for the Government in the case.
- X The right to full and timely restitution as provided by law.
- X The right to proceedings free from unreasonable delay.
- X The right to be treated with fairness and with respect for the victim's dignity and privacy.

4. **STATEMENT OF COMPLAINANT**

Please provide as much detailed information about your complaint against the Department of Justice employee(s) as possible, including the date(s) of the alleged violation(s), and an explanation of how the violation(s) occurred. However, you should not discuss the facts of the criminal investigation or case in which you are a victim. You may attach additional pages or documents to this complaint.

In July 2005, Jamie Jones traveled to Baghdad, Iraq as a contract employee for Halliburton/KBR and was placed in a predominantly all male barracks located in Camp Hope. Four days after she arrived, she was drugged and brutally rapped by 5- 6 Halliburton firefighters and suffered extensive physical injuries as a result. She reported the crime to the proper authorities in Iraq and a rape kit was completed at the combat area surgical hospital (CASH). Rand Hultz, a Halliburton employee, was given possession of the evidence, including the rape kit results. Ms. Jones returned to the U.S. immediately following the attack. Soon thereafter, she was contacted by an agent of the U.S. Department of State, Lynn Falanga (571)345-2255), and told the investigation was ongoing, but that a male by the name of Charles Boartz had confessed he was one of the men who raped Ms. Jones. Since July of 2005, there has not be a single arrest or an indictment against any of the men who raped Ms. Jones. In January 2007, U.S. Dept. of State attorney, Jenna Lipinski, ((571)345-2955), stated the forensic evidence was not processed until sometime in the Fall of 2006. Furthermore, the U.S. Attorney's Office had not provided Ms. Falanga with an opportunity to present the case for prosecution. Ms. Lipinski refused to reveal which DOJ office this was nor would she reveal the AUS Attorney's name. To date, Ms. Jones has not been contacted by a prosecuting

attorney, a DOJ representative, and not one of the perpetrators have been arrested. Because DOJ continues to ignore the prosecution of sex crimes that occur in Iraq, all 5 to 6 men have remained free to do this to other women since July 2005.

5. **PRIOR NOTIFICATION TO THE DEPARTMENT OF JUSTICE**

Although you are not required to do so, did you notify the Department of Justice employee, or any employee of the office described above, of the alleged violation before filing this complaint? ☐ Yes X No (see question 3)

If yes, please describe your efforts to resolve this matter, including the date(s) that you notified the Department of Justice employee or any employee of the office described above; the name, address and telephone number of the person with whom you attempted to resolve this matter; and the actions taken by the Department of Justice employee or office to resolve your complaint. You may attached additional pages or documents to this complaint.

6. **OTHER RELEVANT INFORMATION**

Provide any other relevant information or event(s). You may attach additional pages or documents to this complaint.

The information set forth herein is true and correct to the best of my knowledge.

Signature: _____ Date: 3/29/07
(Stephanie M. Morris, Attorney for Victim, Jamie Jones)

If the crime victim is under 18 years of age, incompetent, incapacitated, or deceased, this form must be signed by the Legal Guardian of the crime victim or the representative of the crime victim's estate, family member, or any other person appointed by the court. Please check all that apply to the victim:

U.S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

Room 2261, RFK Main Justice Building
950 Pennsylvania Avenue, NW
Washington, DC 20530

(202) 514-2121

April 3, 2007

Stephanie Morris
The Law Office of Stephanie Morris, LLC
1660 L Street, NW - Suite 506
Washington, DC 20036

Re: Complaint No. 07-022

Dear Ms. Morris:

I have received the complaint you filed under the Crime Victims' Rights Act of 2004, on behalf of your client, Jamie Jones, against employees of the United States Department of State and other unidentified United States Attorneys' Offices for declining prosecution. After careful review, I have determined to close your complaint without further action. This office does not have jurisdiction to review complaints brought against employees of the State Department. Your client has not established that she is a federal "crime victim," as required by Department of Justice regulations. 28 CFR § 45.10(a). To file a complaint with this office, you must establish that you are "a person directly and proximately harmed as a result of the commission of a *Federal* [not state] offense, or an offense in the District of Columbia." In addition, the complaint fails to identify any United States Department of Justice employee who may have failed to provide rights to a crime victim under the Crime Victims' Rights Act of 2004. 28 CFR § 45.10(c)(2).

Please be aware that the Office of the Victims' Rights Ombudsman does not have authority to investigate or prosecute potential violations of federal law. You must contact the local office of the Federal Bureau of Investigation or the United States Attorney for further assistance with your claims.

This is a final decision. You may not seek judicial review of this determination regarding your complaint. 28 CFR § 45.10(c)(8).

Sincerely,

Marie A. O'Rourke

Marie A. O'Rourke
Victims' Rights Ombudsman

Mr. SCOTT. Thank you, Ms. Jones, and thank you for your courage in being with us today.

Professor Horton?

TESTIMONY OF SCOTT HORTON, ADJUNCT PROFESSOR OF LAW, COLUMBIA UNIVERSITY SCHOOL OF LAW, NEW YORK, NY

Mr. HORTON. Thank you for the opportunity to speak today, and I just want to start by saying that I certainly am moved by the remarks that Ms. Jones has just made.

In fact, it is hard to hear them without being angry. But I am going to try to be detached and examine some of the legal and policy issues that are presented here.

And I want to start by saying Congressman Poe, I think, laid out the basic principles and stated them well, and essentially there is not a lot more I have to add to that.

It is a question of fundamental justice and the Department of Justice failing to follow through in an area where it has clear jurisdiction and responsibilities.

I think the Committee probably needs to look at this issue at two different levels. Number one is from the perspective of legislative—its legislative role. Has it enacted legislation? Has it appropriated funds that are sufficient to address this, which is clearly a recurrent problem?

And second, from the perspective of its oversight role—that is, has the executive branch done everything it needs to do in the enforcement area?

Well, I think we need to start with the fact that we have got—we have a community of 180,000 contractors in Iraq. Crimes occur. This has to be considered as something politically neutral.

It doesn't suggest that reliance on contractors is a mistake. That is an entirely independent political question for this body.

And the community does not consist entirely of angels or devils. It consists of ordinary human beings, most of whom, undoubtedly, try very hard to honorably serve the country in fulfilling their duties.

But you won't find a community of this size in the United States or anywhere in the world where there are not violent crimes—in fact, violent crimes that occur hundreds of times in the year.

And when you add to that the high-pressure circumstances that go with wartime, life in a war zone, where there are constant shootings and bombings, for instance, we know that this frequently leads to higher-than-normal rates of violent crime.

So the question is who is playing sheriff. Who is providing the oversight? And in this case, there is a special responsibility for the United States.

That responsibility arises because of order number 17 that was issued by Jerry Bremer in June of 2004. That order cut off the law enforcement powers of the government of Iraq.

And that, I think, was an appropriate order to issue, but it created an obligation on the part of the United States to step in and fill the vacuum, to provide the law enforcement for this community.

I think human experience tells us that when there is no law enforcement provided, crime is going to proliferate. That is something we know from the writings of Hobbes and from human experience.

Now, the accusations that come out of this case are disturbing in a number of different particulars, but the first is where is the Department of Justice when the incident occurs.

I mean, clearly, there should have been notification to the Department of Justice right off the bat, certainly as soon as the embassy heard about it.

There should have been involvement of the Department of Justice in the crime scene investigation at the beginning. There is no evidence that that occurred.

Second, there are a number of outside indicators here suggesting that the embassy and others treated this as a contractor problem—that is, it is the contractor's responsibility to deal with this issue.

And I have to say now, in several months of talking with officials at the State Department, the Defense Department and the Justice Department, that is a refrain I hear over and over again—it is the contractor's responsibility.

But it is not the contractor's responsibility to enforce the criminal law. That is a ridiculous attitude. It is the responsibility of law enforcement agencies to do so. So there is just a curious failing here.

And the third thing I find particularly distressing here are the facts surrounding the medical examination, the preparation of the rape kit, and the fact that the rape kit again was turned over to the contractor.

Obviously, this leads to all sorts of problems that will complicate far down the road a criminal prosecution. There is going to be a question of chain of custody, assuming it is ever found, but now it is missing. There is no sign of it.

This has evidence in it that can't be reconstructed after the fact. So there are going to be terrible problems here.

So let me cut down to what are the issues again and what are the answers to the two questions I put up front. I think the legislation that Congressman Price put forward does address the question of jurisdiction.

Jurisdiction in this case is clearly present, even under the 2004 amendment. There is a contract that is involved that is a Department of Defense contract.

But I think, again, it highlights the danger of having too technical a restriction in that statute. There is a need to broaden it. The Price legislation does that.

But I think more important even than this, the Price legislation comes to a focus on requiring proper resourcing by the Department of Justice out in the theater in Iraq, being sure that there are FBI agents, there are investigators, that there is a trained, seasoned prosecutor.

Had those resources been present in Baghdad, I think this case would have been handled properly, and we wouldn't be facing the dilemma and the tragedy that we see right now. So there is really a pretty clear fix.

Thank you very much. I look forward to your questions.

[The prepared statement of Mr. Horton follows:]

PREPARED STATEMENT OF SCOTT HORTON

Is America establishing a culture of impunity among its contractors operating in areas of armed conflict? This is the question which a proliferation of reports out of Iraq invites. When I addressed this committee on June 25, I noted that there was

a troubling potential that certain categories of contractors would escape accountability altogether because of some issues that exist with the Military Extraterritorial Jurisdiction Act. I also noted concern that the Department of Justice might not be giving sufficient resources and priority to its enforcement responsibilities over contractors in Iraq and Afghanistan. Unfortunately all those concerns have been borne out.

America's objectives in Iraq and Afghanistan, as articulated by the President, the Secretary of Defense and the Secretary of State, include helping to create a new democratic society which values the rule of law. But the contractor community that America has fielded to pursue this objective operates in an environment that looks increasingly like Texas West of the Pecos in 1890—without even a Judge Roy Bean to keep things in order. This obviously undermines the mission's credibility. But it also creates an environment which is dangerous to all involved—contractors, the military and other U.S. Government personnel, and the host community in which they operate.

Since June, we have witnessed a parade of further headlines which demonstrate precisely the shortcomings that were identified and addressed in Congressman Price's legislation, H.R. 2740. And while that legislation overwhelmingly cleared the House—in a 389 to 30 vote—the Senate has not yet acted on a parallel measure. This legislation is urgently needed and should be enacted and signed into law in the near future.

This committee should focus on two questions. *First,* is there a question relating to appropriations or to legislation which has contributed to the problem which the public now so clearly sees? *Second,* has the executive branch done what it can and should do to enforce the law?

The horrible rape incident involving Ms. Jennifer Leigh Jones is sickening to hear recounted. It also provides an opportunity to consider exactly how the Government has responded to crimes committed by and among contractors. We have a community of 180,000 contractors in Iraq. Crimes do occur, and this is and must be considered a politically neutral fact. It does not suggest that the reliance upon contractors is mistaken. The decision to rely much more heavily on contractors was not a partisan decision. This community consists entirely neither of angels or devils, but of ordinary human beings, most of whom undoubtedly try to act honorably in fulfilling their duties. You won't find a community of this size in the United States, or anywhere else in the world, that doesn't experience serious violent crimes—hundreds of times in the course of a year. Add to that the fact that high pressure circumstances—such as life in a war zone in which shootings and bombings are common—frequently lead to higher than normal rates of violent crime.

Human experience also teaches—since the first formation of human communities—that when the state fails to enforce order, to identify crimes as crimes and to punish them swiftly and certainly, crimes proliferate. The Government has a duty to the citizens of the United States, and also to the employees of the contractor community, to vigorously uphold the law. Indeed, this is one of the most fundamental duties of any Government. If the executive branch felt it needed new tools to do the job, or more money, it had a duty to come to Congress and regulate these questions. I have a lot of difficulty seeing how the executive branch has met this responsibility in the context of the United States presence in Iraq.

I have not independently investigated the facts of the Jones case, though I personally find her account painful and compelling. But if I consider the facts that Ms. Jones has described, taking only those which have not been disputed by Kellogg Brown & Root, then I see no impediment to the exercise of the criminal law jurisdiction of the United States by the Department of Justice. As alleged the crimes occurred among employees of contractors involved in a contingency operation, on installations or facilities maintained by the United States abroad, and involve U.S. citizens as perpetrators and victims. These facts would provide multiple bases for the Department of Justice to exercise its jurisdiction. The crimes which have been alleged—rape, assault and false imprisonment among them—would come under at least two different grants of jurisdiction to U.S. federal courts, namely the Military Extraterritorial Jurisdiction Act, as amended in 2004, and the special maritime and territorial jurisdiction, as expanded by the USA PATRIOT Act. Of course, depending on the identity of the perpetrators, and potentially also the contracts which brought the personnel to Iraq, there might be some legal issues. This would have to be developed by investigation.

The astonishing failure in this case is the failure of an appropriate law enforcement authority to conduct a prompt and timely investigation of the allegations while Ms. Jones was still in theater. It does appear that the matter was reported to the Justice Department early on, and Ms. Jones recalls meeting with a special agent of the FBI from the Baghdad Embassy. But the investigation was conducted by the

State Department, and it does not appear to have been an investigation designed to support a decision to take criminal action, including potential prosecution. In a case of this sort, having a timely, professional investigation conducted that secures forensic evidence in a form which is admissible in subsequent criminal proceedings is critical. This does not appear to have occurred. This will make prosecution by the Department of Justice incalculably more difficult. It may lead a prosecutor to conclude that even though a serious crime likely occurred, it will be too difficult to develop the evidence necessary to prosecute it.

In fact the way the medical examination and resulting evidence was handled was truly shocking.

These factual allegations from the Jones case strike me as significant and revealing of structural flaws in the way contractor-related crimes are being handled in Iraq and Afghanistan:

(1) The Justice Department is effectively not present on the scene, does not have personnel deployed charged with conducting investigations, collecting evidence and making preliminary decisions as to whether incidents are suitable for prosecution. This would require a team of FBI agents with appropriate training, including access to forensic labs and personnel.

(2) The case when first alleged seems to have been treated as an issue related to administration of a contract, rather than a criminal justice matter, triggering only a State Department investigation. But the State Department does not have authority to conduct criminal inquiries or to bring charges.

(3) The Department of Defense was called upon to provide medical expertise, which was a reasonable step. But no guidelines appear to have been available as to how this was done. The alleged surrender of the rape kit by military medical personnel to Kellogg Brown & Root was grossly improper, producing a serious lapse in the chain of custody—and in this case, loss of evidence which cannot be reproduced. It reflects an attitude which I hear constantly when interviewing State Department and Defense Department personnel—namely, that the problem is the contractor's. Of course, the contractor has an interest in performing its contract and maintaining a good relationship with the contracting agency. The contractor does not have any interest per se in law enforcement. It might well decide to terminate employees it believes are involved in a crime, but beyond that the contractor will, very appropriately, believe that the responsibility for law enforcement lies with law enforcement agencies.

On December 5, the Department of State and the Department of Defense, represented through the able Deputy Secretaries Negroponte and Gordon, entered into a Memorandum of Agreement which sets out guidelines for cooperation in some investigations. When I first received and examined this document, I was convinced I must have been missing several pages. The most extraordinary thing about it is in fact what it does *not* cover. Remember, this process started in the wake of the Nisoor Square incident on September 16, in which private security contractors working for Blackwater Worldwide opened fire in the Nisoor Square neighborhood of Baghdad, leaving 17 civilians dead and severely wounding 24 more. The confusion, defensiveness, multiplicity of uncoordinated, *ad hoc* investigations, and inter-agency finger-pointing that characterized the U.S. government response to the shootings highlight the fact that the U.S. Government at this late date still had no plan or procedure for investigating allegations of serious violent crime involving private contractors fielded by the U.S. government in Iraq.

The Defense Department and the State Department got into a bit of a squabble over these investigations, a turf battle if you will. The Memorandum of Agreement was supposed to work out procedures for reconciling their differences. It actually contains a number of important advances. But there is one agency with clear primary responsibility for the investigation of criminal conduct and action thereon, and that agency—the Department of Justice—is nowhere to be found. It's not a party to the Agreement. In fact, while there is a fairly vague reference to "appropriate" law enforcement agencies, the Justice Department isn't even mentioned.

With respect to the Nisoor Square incident itself, the first Justice Department investigators appeared two weeks after it was first reported, published above the fold in newspapers around the United States. It made its appearance only after a public spotlight was focused on it, and demands were made by editorial boards and members of Congress for it to account for its inaction.

I wish this had been a unique course of events. But it seemed to me completely typical. We should also look back to the first reports out of Abu Ghraib. Remember that the Report authored by Generals Kern, Jones and Fay identified six contractors, and General Taguba linked two of them to the most serious abuses that occurred at Abu Ghraib. These matters were referred to the Department of Justice, and on to the Eastern District of Virginia in 2004. At the point of referral they had

been fully investigated by the Army's Criminal Investigations Department, with a full dossier supporting prosecution. That same set of investigations fueled more than a dozen courts-martial and even more nonjudicial punishments. On the military side, the process may be subject to some criticisms, but at least there *was* a process that moved forward and resulted in criminal prosecutions and serious sanctions.

And what about the Abu Ghraib cases involving contractors that were passed to the Department of Justice? Though there is a single newspaper report of a grand jury meeting at which questions were asked about these cases, there is no sign of *any* meaningful prosecutorial action—not even of efforts to interview victims and key witnesses. The Eastern District of Virginia has a reputation for acting quickly and skillfully. It has in the past years handled some of the highest profile cases in the country. The contrast between those cases and its handling of the cases from Abu Ghraib is nothing short of stunning. And the explanations that have been offered simply do not hold water.

There has not been a single completed prosecution of a crime involving a contractor implicated in violent crime coming out of Iraq, although the reported incidents which would have merited investigation are legion. Again, it is simply impossible to believe that in a community with a peak population of 180,000 people—with many more people than that actually cycling in and out of these jobs, tens of thousands of them Americans—over a period of approaching five years there has been no violent crime. The facts point to something else: an attitude of official indifference within the Department of Justice, or at least a decision to accord these crimes a very low priority and no or very little resources.

Looking back quickly to the two questions I started with:

The developments at Nisoor Square and the tragedy experienced by Ms. Jones show that the legislation that Congressman Price proposed is badly needed. Congressman Price's bill, as enacted by the House, requires the Justice Department to allocate the personnel and resources needed to address criminal allegations involving contractors. These cases reveal that as an urgent necessity. The Price bill also strengthens the Justice Department's jurisdictional basis for action which would help avoid unproductive litigation over the scope of the Congressional grant of jurisdiction.

The Jones case, and the Nisoor Square case point to a failure by the Justice Department to provide appropriate resources to address law enforcement within the contractor community in Iraq. There is an urgent need to have investigators, prosecutors and trained support personnel on the ground in Iraq. Back in Washington there should be a staff of experienced trial attorneys with depth in relevant criminal law and the law of armed conflict who can support prosecutions. The Criminal Division needs to be given an explicit *mandate* to cover this area, and dedicated funding, resources and personnel to do so. The fact that such resources are missing has clearly contributed to the failure to act in a timely and appropriate manner in the Nisoor Square event, in the case that Ms. Jones has described, and in many other incidents as well. It has damaged our nation's reputation for doing justice.

I look forward to your questions.

Mr. SCOTT. Thank you. Thank you, Professor.

We will now have questions from the panel, and I will recognize myself for 5 minutes and begin with Ms. Jones.

Are you aware of other cases of sexual assaults during your time in Iraq?

Ms. JONES. I am aware of several other cases, yes.

Mr. SCOTT. And do you know if any of them have been investigated by criminal law authorities?

Ms. JONES. Everyone that has came to me through my foundation don't know where to turn to for the criminal prosecution. And that is why I asked the assistant United States attorney where I should refer the victims to, Mr. Chairman.

Mr. SCOTT. And do you know whether any of them have been investigated?

Ms. JONES. Not to my knowledge, Mr. Chairman.

Mr. SCOTT. Congressman Poe, when you called the Department of State, did they give you any response to the allegations? Did they admit it, deny it?

Mr. POE. The initial call was made and told them what had occurred, and our biggest concern at that point was getting Jamie in a safe environment.

And so there were no comments—the first, obviously, they had seemed to have heard of any of this is when we called the State Department.

Mr. SCOTT. And did you call the Department of Justice as well as the Department of State?

Mr. POE. We contacted the Department of State first. Later, in the last 2 years, the Justice Department had been contacted by my office. But we have not received any response from either one.

Mr. SCOTT. Say that again.

Mr. POE. We haven't received any response from the State Department or the Justice Department.

Mr. SCOTT. Professor Horton, you indicated that the—in this case there seems to be no question about Federal jurisdiction over the crimes because KBR was a Department of Defense contractor.

We are trying to make sure that is the same case for other contractors of the Department of State or some other—Department of Interior, or whatever.

Since it is covered, who in the Federal Government should be—is responsible for the investigation and prosecution?

Mr. HORTON. Well, let me start by noting Judge Gohmert, I think, pointed out quite correctly there are still some open questions here, of course, and we don't know who all the perpetrators were.

So of course, there could be some question with respect to some of the perpetrators. If those individuals aren't in the theater in the context of a contract supporting the Department of Defense, that would be an issue.

But the core events that occurred clearly are within the jurisdictional grant of the MEJA. So what does that mean? That means that the Department of Justice had the power and the responsibility to conduct the preliminary investigation in the theater and to handle it from that point forward.

And I would point out something else that I noted in my written remarks here. That is on December 5th, there was a memorandum of understanding reached between the Department of Defense and the Department of State about conducting investigations. That is the thrust of your questions.

You know, I got this agreement recently. I read it. I thought I was missing some pages, because the Department of Justice does not appear anywhere in the document.

Not only are they not a party involved, asserting their prerogatives and their powers in connection with the investigations—and they are the paramount authority for this purpose—they are not even referred to in the agreement. They are AWOL.

Mr. SCOTT. We have talked about the mandatory arbitration clause in her employment agreement. Is there any appeal from a mandatory arbitration decision?

Mr. HORTON. I have to say that is beyond my field of expertise.

Mr. SCOTT. Okay. And finally, do you know anything about other incidences that have not been investigated?

Mr. HORTON. Well, I have interviewed a number of individual contractors who described being victims of assault, involved contract—rather, fiscal contract issues and so forth, who described only a process of internal investigation with no government oversight investigation in these cases.

So I guess I am aware of some other instances—not as serious as these, however.

Mr. SCOTT. You mean the contractor doing the investigation and not criminal authorities doing the investigation?

Mr. HORTON. That is correct.

Mr. SCOTT. Thank you.

The gentleman from Texas?

Mr. GOHMERT. Thank you, Mr. Chairman.

And to follow up, Professor, on some of the Chairman's questions, MEJA does seem to leave some questions, and so I want to ask specifically your opinion on whether part of this offense fell in cracks within the MEJA existing at the time of the alleged incident.

When I say alleged, I believe there was an incident.

Mr. HORTON. Again, I think the core of this incident certainly would be covered by the MEJA.

What I am concerned about is when we get the—when we finally discover, if we do finally discover, who all the perpetrators are, if it turns out that some of those perpetrators are not in country in connection with a contract serving the Department of Defense, then they would be outside the territorial grant of the MEJA.

I think this is one of the reasons why it is really in the interests of justice here to have a far broader, more expansive grant of jurisdiction to the Department of Justice so they pick up all those cases.

I mean, it certainly would be an inefficient use of the law enforcement resources of the United States not to be able to join all the perpetrators in this case.

Mr. GOHMERT. Well, you had said that the DOJ had responsibility for investigating. I was in the Army 4 years and familiar with their military justice.

It would seem, though, that when there is an immediate problem in a DOD theater that there should be DOD investigators immediately step in, whether there is DOJ on the scene or not. Would you agree with that?

Mr. HORTON. Absolutely.

Mr. GOHMERT. Because, I mean, there are some incredibly professional DOD investigators, detectives, well trained, good folks. It would seem that that would be the perfect people to come in, if it is support personnel for a DOD mission.

Mr. HORTON. I agree completely with that. You know, it seems to me that it would be reasonable to draw on the existing in-theater law enforcement expertise, and that would include the Criminal Investigation of the Department of the Army, medical sources and others.

We would need, I think, someone with prosecutorial experience to supervise, and there are some gaps, of course, because the criminal justice system in our civilian courts, in our Article III courts, is different from the court martial system.

So the CID frequently prepares evidence to different standards, so you would need to have a prosecutor who could supervise the process to be sure that we don't have any shortfall.

One thing. There was a reference earlier to the Abu Ghraib cases. Now, those are cases, five cases, that were referred to the Eastern District of Virginia involving civilian contractors to Abu Ghraib.

They were investigated by the CID. The portfolio and all the information was passed to the Eastern District of Virginia. There is no evidence, I see, of prosecutorial action.

One thing I am concerned about is, you know, why does the Department of Justice feel that the CID investigation doesn't meet standards for Federal court prosecution for some reason? I mean, that would be a very——

Mr. GOHMERT. Well, basically——

Mr. HORTON [continuing]. Important fact to know.

Mr. GOHMERT [continuing]. You are probably aware they operate under the basic Federal rules. They kicked in back around 1980 for military justice courts.

But if there is some question about jurisdiction of DOD or CID with the military coming in, investigating, we would welcome your input on how best to craft a fix to that legislatively to make sure that it is taken care of.

Ms. Jones, I would like to ask, what specific thing do you think we could put into law that would have allowed you immediate help once something like this occurred?

Ms. JONES. First of all, I think that if there was a standard procedure in place such as, you know, if someone is referred to the Halliburton clinic, then the Halliburton clinic should contact, like, FBI or whoever you all think needs to investigate it, because the KBR security coordinator—there is no way that that would come within the scope of their employment, I wouldn't think.

Mr. GOHMERT. Did they have a rape kit readily accessible, or was that something that took a while for them to get a hold of?

Ms. JONES. I am not sure. I was taken to the Army hospital where the rape kit was——

Mr. GOHMERT. Okay.

Ms. JONES [continuing]. Administered, but the Army doctor did hand over the rape kit to KBR security.

I think that if this would have happened in the states, the rape kit would have been handed over to, say, a police officer, and there would be a chain of command. Like if the rape kit was handed to one person, to another, it would be, you know, written out——

Mr. GOHMERT. Certainly.

Ms. JONES [continuing]. That it changed hands.

Mr. GOHMERT. Well, and normally the military understands that and they are very good about that. That is why I am very concerned about this lapse in judgment and actually in protocol for how you handle these things.

Like I know Judge Poe saw repeatedly as a judge, they had those same procedures in the military, and it is really shocking that that wasn't followed here either.

But I see my red light is on, and so thank you, Mr. Chairman.

Mr. SCOTT. Thank you.

The gentleman's time has expired.

The gentleman from Michigan, the Chairman of the full Committee?

Mr. CONYERS. Thank you, Mr. Chairman.

What a hearing. We are asking a victim about the laws and the Criminal Investigation Division.

I am going to call the attorney general, Mukasey, who started out—it was going to be a new, clean deal, we are going to pull this thing back together.

And you know, I am embarrassed that the Department of Justice can't even come forward. I want him to start talking about these questions that we are asking the witness.

Are they coordinating? Is the Criminal Investigation Division working carefully? They are real efficient. Yeah, real efficient. I am going to call the secretary of defense, too, Gates.

We are acting like this is a case of first impression, that this is very difficult, complex stuff we are working on here.

And we have got tens of thousands of people over there. Goodness knows how many people have preceded Ms. Jones in this kind of tragedy.

And we are acting like this is something very heavy—we are judges, we are lawyers, we are professors. And this is an absolute disgrace.

The least we could do is have people from the Department of Justice and defense over here talking about how we are going to straighten out the system right away. You don't even need a hearing to do that.

They should have responded to Congressman Poe immediately and said, "Let's clean this up right away." Did they do that? No. They are stiffing him. They are stiffing all the Jamie Joneses that have come and gone before. And they are stiffing us right now.

And as one who encourages and works on the bipartisanship of the Judiciary Committee—and that has been my goal since I took over in January of this Committee—I am so pained by this big-deal complex law coordination expert investigators and all that, and nothing is happening.

And so I am going to hope that we can do this without having to have countless numbers of hearings where we keep repeating the same thing. We are all in agreement that this is a mess that has got to be straightened up right away.

And I am really ashamed as someone who has been in the service 3.5 years and served in Korea. And I know what it is like being over there.

Ms. Jones, it was a great idea for the foundation. Tell us a little bit about it.

Ms. JONES. I had to do it. I had to do it for other victims. I want to have the resources readily available at people's fingertips who are going through this. I mean, there has to be a resource that is a refuge for victims.

And if I couldn't find out where to go—I tried through the assistant United States attorney—then perhaps I could help them at least find therapists, doctors, whatever I could do.

Mr. CONYERS. Well, that is so courageous. You know, as you know, this could break up, you know, a normal person. You are tough. You are patriotic.

And I am just so proud that thanks to you and Congressman Poe, we are going to turn this thing around. You can bank on that.

Mr. SCOTT. Thank you, Mr. Conyers.

The gentleman from California, Mr. Lungren?

Mr. LUNGREN. Thank you very much, Mr. Chairman.

This is a very difficult hearing. If one of my four sisters or my two daughters that are younger than you, Ms. Jones, had undergone this, I am not sure I could control my rage.

We have all seen that the first obligation of government, in my judgment, internationally is to provide for the common defense.

Our first obligation domestically is to create a modicum of security and safety for our citizens so that they might be able to exercise their rights.

Those two things shouldn't collide. And the fact that we are out fighting a war doesn't give us an excuse to forget the elements of our governmental structure and our criminal justice system. And I don't think I could add too much to what the professor has already said.

I think you have analyzed the law. I think you have indicated what some of the problems are. I would echo the comments of our Chairman. This isn't rocket science. Any sophisticated law enforcement agency knows how to handle cases like this.

Because you have a distribution of authority between the Department of Defense, the Department of State and the Department of Justice is not an excuse that they can't get it together.

Every law enforcement agency of which I am aware works with other law enforcement agencies and other governmental structures. And if you think it is important, you establish a protocol and you work these things.

We had testimony here by the Department of Justice, by the FBI, as to what their priorities are. We know they have given, for instance, tremendous number of new agents and attorneys to look at public corruption.

I mean, they talk about that all the time. They talk about it as one of the four keystone things that they do. I have never heard them talk about this. I am outraged by this. I don't have any answer as to why this should happen.

Ms. Jones, you are owed an apology by the government the way this was handled. Look, I know there are some great people that work at Halliburton and KBR. I am sure you would say that as well.

I would probably bet that the vast majority of them are wonderful, patriotic people. But when you have got some bad apples, someone has got to do something about it.

And most of our men and women who are working overseas to defend this country are great patriots, but there are among them the bad guys. And we should not allow them to hide behind bureaucratic inaction or, worse, such fear of bureaucratic inaction being revealed that somehow you don't act and you cover things up.

I think all of us on a bipartisan basis would join in the words of the Chairman that we need to get to the bottom of this, that this

is not a partisan issue, that I certainly grant our new attorney general the benefit of the doubt.

I am going to presume that he personally is not aware of this and that personally he did not make the decision not to have someone, at least someone, here and testify as to the procedures and the processes.

But we will work together on this, because this is totally, totally unacceptable.

Mr. CONYERS. Would the gentleman yield?

Mr. LUNGREN. I would be happy to yield.

Mr. CONYERS. I just want to thank him for his continued cooperation that I have enjoyed on the Committee this year, and I just want to applaud his perceptions of this problem.

Thank you.

Mr. LUNGREN. Well, I thank you.

Ms. Jones, did anyone ever explain to you what was going to be done with the rape kit, number one?

And number two, has there been any effort to give you an explanation of what has happened to it since that time?

Ms. JONES. The only thing that I was told by State Department agents is that the pictures and doctor's notes are still missing.

Mr. LUNGREN. See, this is an absolute outrage. Anybody who has ever been involved in prosecuting sexual assault cases understands the importance of a rape kit, understands the importance of maintaining evidence, understands the idea of chain of custody, understands you can undercut those cases if you let any of those things fall through the cracks.

And this is—I don't understand how anybody could explain it, except to say that no one knew what they were doing, no one knew who was in charge, somehow yours was the first case of this type anybody had ever heard of so they couldn't figure out how to work it from an investigative and a follow up and a prosecutorial standpoint.

And that is totally unacceptable.

Ms. JONES. I agree.

Mr. LUNGREN. Judge Poe, have you seen this in your experience as a judge on the state level in Texas?

Mr. POE. No. After 22 years, I have never seen a case where the doctor takes a rape kit, does it correctly, and gives it to the perpetrator.

Mr. LUNGREN. I mean, how many times have we been told the feds know how to do it and we don't know how to do it on the state level? I mean, we ran——

Mr. POE. We hear that a lot.

Mr. LUNGREN [continuing]. Into that all the time when we were in the criminal justice system in our respective states. There is no excuse for this.

Do you have any opinion as to why this could happen, how this could happen?

Mr. POE. I don't know why it happened. It shouldn't. But you mentioned it. I think the protocol—no one knew who was in charge, who was responsible, who was supposed to follow up, which—of course, it is our Justice Department.

Mr. LUNGREN. This sounds like the way we handled sexual assault cases 50 years ago, you know?

Mr. POE. It does.

Mr. LUNGREN. Where the victim was the last person thought of, where we didn't know what to do with the evidence, where we didn't realize how important it was to preserve the evidence, where we let the perpetrator sort of get away because we weren't doing it on a timely basis—I mean, this is about as bad a foul-up as I have seen.

And I apologize to you on behalf of the Federal Government——

Ms. JONES. Thank you.

Mr. LUNGREN [continuing]. Ms. Jones. This should not happen to you. It should not happen to anybody else similarly situated.

And how do we attract young people who are patriotic, as you are, to do the service to our country that is necessary? You were willing to go to a combat zone.

We saw the reaction we had from some of the people in the State Department just a couple weeks ago, or a month ago, when the secretary of state suggested they needed to be out there doing stuff.

I mean, you have been doing it, and this is the thanks you get. There is something rotten in Denmark, and we had better take of it.

Mr. SCOTT. The gentleman's time has expired. Thank you.

The gentleman from Georgia, Mr. Johnson?

Mr. JOHNSON. Thank you, Mr. Chairman.

In watching the news last night, I saw—or heard; I was washing dishes during that time—a report—yes, I do wash dishes—and heard a report of a homicide on a military base on Fairfax County, Virginia that had occurred on Monday.

And the report went on to say that the FBI has taken over the case and was investigating this homicide to determine whether or not any foul play that was involved in it.

And something of that—a simple procedure like that was called for in this case, even though it occurred in the Green Zone in Iraq, a place where we had invaded, destroyed the infrastructure, then put in our own systems of justice over there, of maintaining law and order, especially in the Green Zone.

And so I know that there are some—or I know that at the time that the incident occurred, Ms. Jones, that there was law enforcement available, a neutral law enforcement available, in the Green Zone to protect persons who were crime victims.

And that system failed you. In fact, there are strong implications that perhaps that system and your private employer, Halliburton, the owner of KBR, which is a wholly-owned subsidiary—perhaps there was some unholy alliance between the law enforcement at that facility and your private employer, and that operated to deprive you of your right to justice under the criminal law up to this point.

And with the state of the evidence, I am not sure whether or not it will be feasible to move forward with a criminal case, but certainly you having come back to the United States of America, you would seek to establish justice in the civil courts.

And you have been met with resistance in doing that because of this mandatory binding arbitration clause in the agreement that

you signed with Halliburton in connection with your employment, is that correct?

Ms. JONES. Yes, and I wanted to go and get a—do away with the arbitration in my case because I want justice, and I want to contribute every penny to the Jamie Leigh Foundation, to put it back and help other victims, and do everything that I can in my power to help victims of violent crime.

Mr. JOHNSON. Well, let me tell you, I have got a daughter who is 18 years old, not much younger than you. I think you are, what, 22 at this time?

Ms. JONES. I just turned 23.

Mr. JOHNSON. Twenty-three.

Ms. JONES. Yes, on the 13th.

Mr. JOHNSON. And I will say that if something like this would have happened to my daughter, I, like all of the others sitting on this podium, would—it is impossible to say how one would react until one is faced with some dilemma like this, and it could actually tear apart the family.

And I am so happy that you are here with your family today, your father, your mother and your husband, who has stuck with you throughout this trial and tribulation. And so my hat goes off to that family support that you have.

And I am proud of you for the stance that you have taken, and I know that they are very proud of you as well.

Ms. JONES. Thank you.

Mr. JOHNSON. You were 19 years old or so when you signed this employment agreement with Halliburton?

Ms. JONES. I think I was 19—I think I had just turned 20.

Mr. JOHNSON. Did you have a lawyer present to explain to you what was in that agreement?

Ms. JONES. No, sir.

Mr. JOHNSON. And did you have any idea of knowing anything about the so-called Halliburton dispute resolution program that was alluded to in that contract?

Ms. JONES. I didn't see that it was alluded in the contract.

Mr. JOHNSON. Yes. Well, now, the contract did mention about mandatory binding arbitration for any employment disputes. Were you aware of that when you signed?

Ms. JONES. No, it was 18 pages long, and it was in verbiage at the time that I, quite frankly, did not understand. If you would have asked me at 20 years old what an arbitration was, I would not have been able to tell you.

Mr. JOHNSON. And, Congressman Poe, according to an analysis by the National Employment Lawyers Association based on the American Arbitration Association's public reports from January 1st, 2003 to March 31st of 2007 of the arbitration decisions involving Halliburton, the Triple A arbitrators, who are the lead arbitrators in this case, found for Halliburton 82 percent of the time. Do you find that number disturbing?

Mr. POE. Well, it is hard to understand that somebody could be correct 82 percent of the time in these type of disputes. It is somewhat disturbing.

On arbitration, it just seems like it ought to be, in a case like this, optional. And it certainly shouldn't apply to criminal activity.

Mr. JOHNSON. Why do you think a public hearing, in a public courtroom, with a judge paid for with public funds, charged with being fair and impartial, is so important in resolving disputes of any nature?

Mr. POE. Oh, I am a great believer in the jury trial. I just think it is one of the greatest things we have in our judicial system, whether it is a civil case or a criminal case. I heard over 1,000 jury trials.

And so I think the public courtroom and our philosophy in the Constitution is fundamental. And so I am a great believer in it.

It seems to work because it is public, and you have the jury, and you have the judge, and you have both sides, and you are making your case—the lawyers are making their case before a public forum. So I am a believer in that.

Mr. JOHNSON. And on the other hand, an arbitration proceeding is secret. Rules of evidence, rules of procedure, don't apply. And an appeal is limited. So having said that, I will close my comments at this time.

Thank you, Mr. Chairman.

Mr. SCOTT. Thank you, and I thank the gentleman for his comments.

The gentleman from North Carolina?

Mr. COBLE. Thank you, Mr. Chairman.

Mr. Chairman and Mr. Ranking Member, a very distinguished panel today.

We appreciate you all being here, but particularly you, Ms. Jones.

Ms. JONES. Thank you.

Mr. COBLE. Ms. Jones, how long after the assault was the medical examination performed?

Ms. JONES. The next morning.

Mr. COBLE. By a physician?

Ms. JONES. Yes, by an Army medical doctor.

Mr. COBLE. And did he question you in any way about the facts surrounding the assault or just restricted to the medical exam?

Ms. JONES. It was a medical exam.

Mr. COBLE. Do you know, Ms. Jones, whether there were witnesses to the assault?

Ms. JONES. To the assault?

Mr. COBLE. Yes.

Ms. JONES. The perpetrators that did this to me would be witnesses.

Mr. COBLE. And you know their identities, I presume.

Ms. JONES. We know one by name.

Mr. COBLE. Okay. Did you remain employed after the assault with KBR?

Ms. JONES. No.

Mr. COBLE. Well, let me put my oar in these waters. Did you have reason to believe that if you reported it that your job might be in jeopardy? Did that ever cross your mind?

Ms. JONES. Yes, when I was imprisoned in a—locked in a shipping container with two armed guards not letting me outside of my door, then I think that I was very aware that my job was in jeopardy.

They did not want me to come out because—it was not to protect me. It was to protect them.

Mr. COBLE. Yes.

Professor, in your opinion, is there a constitutional line in the sand as to how far the Congress can extend Federal criminal jurisdiction to conduct overseas, A?

And B, in your opinion, does H.R. 2740 stay on the right or the appropriate side of that line?

Mr. HORTON. There definitely are some limits to the extension of extraterritorial criminal jurisdiction.

Here, there is a special hook because of the power of the Congress to define criminal law jurisdiction in connection with hostilities overseas, so it would come under the clause that grants you the right to define the law of nations.

And there, a country that sends a force into the field—that could include both uniformed military and contractors—has the power and the right to enforce criminal law with respect to that force that is deployed wherever they are deployed.

So it seems to me quite clear that the legislation that was recently enacted—or recently passed by the House—is well within the constitutional grant of jurisdiction to the extent it is tied to a contingency operation that is occurring overseas.

Mr. COBLE. Ms. Jones, as the distinguished gentleman from California said, many people owe you profound apologies, and I thank you very much for the courage you have shown in appearing here today.

Ms. JONES. Thank you.

Mr. COBLE. Ted, Congressman, do you want to add anything before my red light illuminates?

As the Chairman knows, I try to comply with that red light, Mr. Chairman.

Mr. POE. No, I think it has all been covered. But the comments from the panel regarding the apology by our government, I think, is well taken, well deserved to Jamie Leigh Jones and the other victims.

Mr. COBLE. Ms. Jones?

Ms. JONES. And I really appreciate all of your apologies and I take them to heart.

Mr. COBLE. Thank you, Professor.

Good to have all of you with us.

Mr. Chairman, I yield back.

Mr. SCOTT. Thank you, Mr. Coble.

The gentlelady from Wisconsin?

Ms. BALDWIN. Thank you, Mr. Chairman.

I have to echo the frustrations that have been expressed by many, and I am sure are shared by the panel, that many of the Federal entities that we want to question about this aren't here, including, of course, the Department of Justice.

And your testimony is providing us with very important information. And my question that will follow may elicit that this is much more widespread than we could even know.

But the frustration of not being able to hold folks to account that need to be held to account is very aggravating.

Ms. Jones, I wonder if, through your work with the Jamie Leigh Foundation, you might have an answer to this question. This past March there was an article in the New York Times titled "The Women's War."

It was written by Sarah Corbett, and it detailed the experiences of about—well, 160,000 women soldiers who have been deployed to Iraq and Afghanistan. Corbett cites a 2003 study that was financed by the Department of Defense.

And in that study it was revealed that nearly one-third of a nationwide sample of female veterans seeking health care through the V.A. said that they had experienced rape or attempted rape during their time of service.

Of that group, 37 percent said that they were raped multiple times and 14 percent said that they were gang-raped. What I am wondering is if we know whether these absolutely stunning statistics would apply also to women contractors serving in Iraq.

Are there statistics on sexual assault of women contractors abroad? Are any similar studies available that you know of on the experiences of women contractors?

Ms. JONES. Not to my knowledge, but so far there are so many women coming forward I can't even count them. And there hasn't been a woman once come to the Jamie Leigh Foundation and state that nothing has happened to them.

All the women that have come to my foundation have a story, and a significant story, and they all deserve their day in criminal court. And you know, their letters—you know, they make me cry, and that is why I am here today, not just for myself, but for these women that deserve justice.

Ms. BALDWIN. I know that partially in response to these studies that the U.S. military has worked to become more sensitive to women, and they now have regular mandated workshops on preventing sexual harassment and assault.

I am wondering whether there are similar educational programs for U.S. government contractors.

And in particular, in your experience, Ms. Jones, did you learn about the topics of sexual harassment or preventing sexual assault in any of the training that you might have received before you left for Iraq? And did you receive any training before you left for Iraq?

Ms. JONES. The only thing that they told women to be aware of was insurgency. They never once trained us about how to maintain an environment in the workplace free of sexual harassment and assault.

I applaud the military. My husband is in the Navy, and he brings home booklets full of stuff about how to behave in a military environment, what to do, what not to do in regards to women, and men, in that matter.

If Halliburton maybe would take the time and do the—maybe even the exact same thing the military does, because they are working among the military personnel, I think that that would be absolutely wonderful. But they didn't.

Ms. BALDWIN. Thank you again for your testimony.

Mr. SCOTT. Thank you.

The gentleman from Alabama, Mr. Davis?

Mr. DAVIS. Thank you, Mr. Chairman.

Ms. Jones, let me echo everyone today who has thanked you and complimented you for your courage.

Ms. JONES. Thanks.

Mr. DAVIS. Someone who was once very close to me, a young woman, experienced the same thing that you did. She was drugged and sexually assaulted against her will, and I still remember her telling me in some detail about it.

She was unwilling to report her crime because she felt that people wouldn't believe her version of what happened. And all too many women realize that is what happens in so many of these cases.

You walk in, you tell what someone did to you, and you are the person who falls under the critical microscope. You are the person who is doubted at every turn.

So thank you for having the courage to come forward. Hopefully it will inspire other women to do the same.

Let me say this much about the substance of this matter. I think there are two wrongs here. One of them has to do with the complete inattention of the element of the U.S. government that is charged with prosecuting criminal laws.

Mr. Horton, or Professor Horton, I noticed a very interesting sentence in your opening statement, "There has not been a single completed prosecution of a crime involving a contractor implicated in violent crime coming out of Iraq, although the reported incidents which would have merited investigation are legion."

This is how I translate that: There is essentially a protection-free zone in Baghdad if you work for an American contractor. And I am sure that the Halliburtons of the world have figured that out by now.

I suspect that one of the reasons why civilians who are working for your company or your former company and others are mistreated and subjected to criminal activity and to tortious activity is, in part, because a lot of the wrongdoers know very well that they are not going to be prosecuted, because they know very well that the government is not going to be interested in going after them for their misconduct.

Would you agree with that, Ms. Jones, that there is some perception on the part of some of these contractors that they will not be prosecuted?

Ms. JONES. I absolutely agree with it. I mean, so many women are coming forward with similar events that have occurred that have occurred to me. I mean, obviously, they know that they can get away with it.

Mr. DAVIS. And I will echo Mr. Lungren's comment that I struggle to understand the priorities of the Department of Justice under the best of circumstances.

If you had been a Democratic politician in Alabama and someone said something about you, they would have been all over that like white on rice. But a young women saying that she was raped obviously did not produce the same level of attention.

And based on the absence of prosecutions in any single case coming out of Iraq, again, I am stunned by the comparison.

If you were in Greene County, Alabama, and someone said you were trying to manufacture absentee ballots, it would have attracted an enormous amount of interest.

There is another wrong here, though, and Mr. Johnson or Congressman Johnson touched on it. This is exactly the kind of case where arbitration clauses should not be applicable.

Now, if somebody is saying my cable T.V. company charged me too much money, maybe there ought to be binding arbitration there. If someone is saying I am trying to get 2 months' extra leave and they are saying I should get 29 days extra leave, maybe that is a place for arbitration.

But when someone is alleging a serious tortious assault, that ought to be determined—liability, in my mind, ought to be determined in a court of law. It ought to be determined by a jury of one's peers.

You ought to have a chance to look your accusers in the eye and to make your claim and to recover damages, and a jury ought to decide that, not one individual sitting somewhere who may or may not be disposed to be sympathetic to your circumstances.

And I will make this my last comment. It speaks to a broader point. There are too many mandatory arbitration clauses that have worked their way into the fabric of the employment world. They are too excessive.

Most people, like you, Ms. Jones—they don't read that stuff. When you get hired, you want to know when do I start. You don't do the fine print on a mandatory arbitration clause. You don't go out and get a lawyer to interpret it to you. There are too many of these things.

And one of the things, Mr. Chairman, that I hope this Committee will do over the course of the next year is to do a more searching scrutiny of these clauses and to figure out what we can do to uproot some of them.

My final 30 seconds—I have a bill that I have introduced which deals with former Guard and reservists who are coming back home to work at their old company and who are being terminated because they served their country.

They go back to work for a store or a company and they are fired because they missed too much time serving their country. A lot of those individuals don't get a chance to go to court because of binding mandatory arbitration clauses. My bill would eliminate the clauses in those cases.

Thank you again for your courage, Ms. Jones.

Ms. JONES. Thank you.

Mr. SCOTT. Thank you, Mr. Davis.

Ms. Jackson Lee?

Ms. JACKSON LEE. I started my comments this morning, Ms. Jones—and you are from Texas, so there is a bond here that I hope you realize is in truth and honesty—that, in fact, you represent voices that cannot be heard.

And I want to reaffirm the fact—and I thank your father and mother, lawyers, your husband, the other victims that are here—thank you for your service to this country. Thank you for your commitment and bravery to this country.

And I hope that Congressman Poe and myself and the Members of this Committee can work together, because we would like to hear from those who are not at the table.

Your foundation has generated names and if they are desiring of those names to be public, I would like to work with you.

Ms. JONES. Okay.

Ms. JACKSON LEE. Because as I indicated, I gave you the small story of a young woman who was on the way where you had gone, and she was very proud. She was going to be gone a year. And I think of her even today, because she is heading out as we speak.

And so it is imperative that we take up a number of the issues that my colleagues have said, and I would like to pose them with you using Professor Horton's very astonishing fact and raise some questions with you on that.

I do want to go to Congressman Poe again, Congressman, because I want to know, did you separately deal with Halliburton and KBR? We have been using Halliburton, and I know that in my absence maybe KBR was mentioned.

But let us be very clear of the two entities or the entities together, but, in fact, the culpability of these companies falls where?

Did you reach out to both? Did you find that they were separated at the time? Are they not separated? What did you find out in your fact finding?

Ms. JONES. Well, I remember when my Grandma asked me who I was going to go work for overseas, the only answer that I knew to say was Halliburton.

Ms. JACKSON LEE. And clearly, as the war started, you were correct to be saying that. And so I understand that in terms of your perception.

I want to ask Congressman Poe who he reached out to and what did he find out.

Mr. POE. We started with the State Department; expected, as we were informed, that the State Department would follow up on all the prosecutions.

We did not deal with KBR or Halliburton. My understanding is they are not the same entity anymore. But this is a criminal investigation that we expected the Justice Department, who isn't here, to follow up on and prosecute.

So we didn't deal with either entity at all.

Ms. JACKSON LEE. Well, I think the point should be made you had a life and death situation to deal with, and you needed to rescue someone. And clearly, your task was completed—that is, to save her life and get her out of there.

And so let me—and I appreciate that. And the reason why I mentioned that is because you are right. I think the Department of Justice owes us its duty to investigate and to determine who the culprits are and to have those particular entities, corporate and otherwise, prosecuted to the fullest of the law.

And those companies have a responsibility to come forward, to shine the light on, to stand up and indicate here is our corporate structure, here is who was here, here is who was not here, so that, in essence, the investigation can go forward.

My colleague, Mr. Weiner, said it is a shame that American tax dollars would be used to commit criminal activity, violent criminal

activity. What American would say send my tax dollars to make sure that someone is criminalized?

So let me proceed, Mr. Horton, to the outrage of your astonishing fact and suggest that legislation needs to be in place. And I have not looked at the legislation recently that we have moving through this Congress.

That is, the failure of an appropriate law enforcement authority to conduct a prompt and timely investigation of the allegations while Ms. Jones was still in theater. The facts should note that Ms. Jones was held without her permission. She was not given food or water.

And can you believe that we believe that we have funded FBI agents on the ground in theater and we did not have an investigation on the ground? We did not have the FBI come there and say where is the rape kit, where is this doctor, what hospital, where is the scene, let us take pictures of the place where she was incarcerated.

Can you believe that did not happen? Professor Horton, what do we need to do about this?

Mr. HORTON. Well, I think just start with some simple numbers. If we go and look at the U.S. embassy's Website for Baghdad, we will see that there are 200 Department of Justice employees in the Green Zone at the embassy.

And out of that total, how many of them are dedicated to deal with questions of crimes involving contractors? Well, the answer, Congresswoman, appears to be zero. None. So it is a matter of incomprehensible resource allocation.

I would just note another fact. Thirty-eight Department of Justice professionals—that is lawyers—were sent to Iraq to assist in setting up the international tribunal that tried Saddam Hussein and members of his regime.

Ms. JACKSON LEE. Say that number again. I am sorry.

Mr. HORTON. Thirty-eight lawyers were sent there to assist in connection with that tribunal, criminal justice process. Perfectly reasonable move. I don't question that.

But to me, it is incomprehensible that we see that level of dedication to something which is, from our perspective, really a political act, not really a criminal justice matter, and we see no allocation of resources to deal with the crime situation within the contractor community.

I think that is letting down our contractors, the employees there.

Ms. JACKSON LEE. In my 30 seconds of closing, to simply say that we should legislatively, then, establish this unit with the FBI personnel, with the Justice Department lawyers, and an in-theater investigation should ensure immediately protection of all the witnesses and the victim and, if necessary, to be tried in theater.

With that, Mr. Chairman, I thank you and I look forward to working with this Committee to respond to this huge injustice.

Thank you again for your service, Ms. Jones.

Ms. JONES. Thank you.

Mr. SCOTT. I thank the lady for her questions.

And the recommendation of the investigatory unit is in the bill that we have passed. It is sitting over in the Senate. So we would hope that the Senate would take the bill up and pursue it.

The gentleman from Texas?

Mr. GOHMERT. Thank you, Mr. Chairman.

Just a couple of follow-up matters. The Chairman, for whom I have immense respect, had pointed out, you know, what a hearing and what a disgrace, and pointed out that we are asking the victim questions about the law.

And what I found in my 3 years in Congress is that too often we don't ask the people most closely associated with problems what they see as a proper fix.

And to me, this really is a heavyweight matter. As a judge, I saw where the state legislature made conflicting laws and as a result they gave technicalities for people to get off down the road. So I want to make sure we get this right.

And if I could ask the professor a question about statute of limitations, because, Chairman, you had mentioned that, and a—brilliant, intuitive, right to the heart of it.

Professor, as I understand it and recall from the military, there is a 5-year statute of limitations on an offense like this. I don't know if that would apply. Do you know what statute of limitations would apply here?

Mr. HORTON. That is something I would have to research and get back to you on. I don't know.

But actually, raising the military point is another good point, because we haven't discussed in the course of this hearing the possibility of using the military criminal justice process to address it.

That is also an option that is out there, the UCMJ. And its availability would turn on a number of facts, including who the perpetrators were.

So obviously, if we had military personnel or reservists or others who are within the grant of jurisdiction in Article 2 of the UCMJ, that would be another possibility, and then we would get the 5-year statute of limitations.

Mr. GOHMERT. Because listening to this hearing, it does sound from both sides of the aisle that one of the problems that we keep coming back to is I don't think we have made clear who is in charge in this situation.

And what I have seen also is that doctors—they are not criminal experts, so whoever appears to be in charge is the one they end up giving stuff to. They require somebody on the scene to tell them—and I hope that we can get that fixed.

And I am concerned about the justice's non-appearance, as my colleagues are, but I was presented a letter that was sent by a Clinton administration—Attorney General Reno basically taking the same position that even when there is—we are going to be asked questions about procedure, if there is an open case that it might pertain to, then we don't want to come testify.

And I really appreciated the Chairman stepping back here—sometimes you wonder what we are talking about. The Chairman is trying to figure out a way we can get to the heart of it and really appreciate that.

And I think a bipartisan letter where it doesn't matter which Administration, whether it is Clinton or Bush or whoever in the future—we ought to lay out some ground rules that we can agree with.

Look, we are not going to ask you about a pending case that you can't answer, but you need to come forward. If the Justice Department doesn't come forward and tell us proper applicability of laws, then that whole side is not being represented, and we may make a mistake in prescribing the proper laws.

So I would applaud, Chairman Conyers, your effort in doing that. We really ought to be able to lay out ground rules that can force the hand of any Administration's justice department to come before this Committee and explain their position on the laws, because when we get laws wrong, people suffer.

And I applaud, Chairman Scott, your having this hearing and having it so quickly. And I hope we can get to a solution.

Oh, and one other thing. I may be the only person that went through international arbitration testing for 3 days. And what I have seen is—my colleagues are exactly right.

When it pertains to something this tortious, arbitration rules of evidence are far too lax to be the appropriate venue for something like this. So that may also be something we——

Ms. JACKSON LEE. Would the gentleman yield for a moment?

Mr. GOHMERT. Yes.

Ms. JACKSON LEE. I appreciate your comment on that. I just thought that possibly we could have a criteria that says if it is a criminal matter, then—that the provision that maybe an employee signs is waived, and that might be one element that we might consider as, you know, having arbitration but waiving it if it happens to be a criminal matter.

Mr. GOHMERT. Thank you.

Ms. JACKSON LEE. I yield back.

Mr. GOHMERT. I agree.

And I yield back, Mr. Chairman. Thank you very much.

Mr. SCOTT. Thank you.

That legislation is pending now in another Subcommittee.

I would like to thank the witnesses for your testimony today. Members may have additional questions for our witnesses which we will forward to you and ask that you respond as promptly as you can so they may be part of the record.

Without objection, the hearing record will remain open for 1 week for submission of additional materials.

And I would recognize the Chairman of the Committee for a final comment.

Mr. CONYERS. Well, I thank everybody, but this has been helpful for all of us, and I thank particularly my Republican colleagues.

I have talked to Lungren and Coble and Judge Gohmert, and we are going to communicate with the attorney general and the secretary of defense and work this thing out more quickly. I mean, we are all lawyers. We don't need to hold hearings on Criminal Law 101. And that is what we are here to expedite.

The whole thing is not how many hearings can you hold. It is how can you make the law more efficient and make it work. And that is what this hearing has done in a great way, thanks to all of our witnesses.

Ms. JONES. Thank you.

Mr. SCOTT. Thank you.

Finally, as the Chairman has indicated, notwithstanding the absence of Department of Justice officials today, we will get answers and, if not soon, we will have other additional hearings in which they will have an opportunity to explain themselves.

In any event, Ms. Jones, we may need more research, but I think most of the people up here believe that the statute of limitations on all of the criminal offenses that have been alleged in your case extends into the next Administration.

And so if this Administration will not investigate and prosecute, I am sure the next Administration will.

With that, without objection, the Committee stands adjourned.

[Whereupon, at 12:11 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

LETTER TO THE HONORABLE JOHN CONYERS, JR., CHAIRMAN, COMMITTEE ON THE JUDICIARY, FROM BRIAN A. BENCZKOWSKI, PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE, OFFICE OF LEGISLATIVE AFFAIRS

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

December 18, 2007

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This responds to your letters, dated December 11, 2007, which requested information about the Department's jurisdiction to investigate and prosecute criminal misconduct involving U.S. persons who are contract employees in Iraq, and December 13 and 17, 2007, which invited the Department to testify before the Subcommittee on Crime, Terrorism, and Homeland Security at a hearing, entitled Enforcement of Federal Criminal Law to Protect Americans Working for U.S. contractors in Iraq, on December 19, 2007. We also understand that the hearing will examine, *inter alia*, allegations by Ms. Jamie Leigh Jones that several of her coworkers raped her while she was working in Baghdad, Iraq, as a contract employee for KBR. As we have advised Committee staff, in light of the Department's pending investigation of these allegations, we must respectfully decline the Committee's request for a witness at the hearing and, for the same reason, we are not in a position to respond to the specific questions raised in your letter of December 11, 2007, about the investigation.

We would, however, like to respond to your concerns about the protections in U.S. criminal law afforded Americans who become victims of crimes by U.S. contract personnel in Iraq. As a preliminary matter, we want to advise you that the Department of Justice is committed to the investigation and prosecution of criminal misconduct by U.S. contract personnel overseas. These cases can be very challenging, particularly in the context of a war zone such as Iraq, but the Department has and will continue to pursue them. For example, in 2006 the Department of Justice convicted a Department of Defense contract employee stationed in Iraq of abusive sexual contact with a female American soldier.

While the government's ability to apply U.S. criminal law overseas is, in certain circumstances, more limited than it is within the United States, many provisions in existing U.S. law do permit the government to prosecute U.S. contractors who commit crimes overseas. Examples of these provisions include the following:

- The Military Extraterritorial Jurisdiction Act (MEJA). MEJA, which is codified at 18 U.S.C. §§ 3261 *et seq.*, provides extraterritorial federal jurisdiction over U.S. military contractors working overseas. MEJA also covers other U.S. government contractors working overseas, provided their employment relates to supporting the mission of the Department of Defense overseas.

- Extraterritorial Jurisdiction over Trafficking and Prostitution Offenses. 18 U.S.C. § 3271 extends federal jurisdiction over sex trafficking and prostitution offenses committed by U.S. government contractors regardless of their relationship to the Department of Defense.

- Special Maritime and Territorial Jurisdiction of the United States (SMTJ). The SMTJ, defined at 18 U.S.C. § 7, extends federal jurisdiction over a number of serious federal offenses committed by or against a national of the United States at a U.S. government facility overseas. Included within these offenses are murder and sexual abuses.

- Direct Extraterritorial Application. Many federal offenses have direct extraterritorial application without regard to MEJA, 18 U.S.C. § 3271, or the SMTJ.

We appreciate your interest in this matter and hope that this information is helpful. Please do not hesitate to contact this office if you would like additional assistance regarding this or any other matter. We are sending a similar letter to Congressman Poe, who joined in your letter, dated December 11, 2007.

Sincerely,

Brian A. Benczkowski
Principal Deputy Assistant Attorney General

cc: The Honorable Lamar Smith
The Honorable Robert Scott
The Honorable Louie Gohmert

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CONGRESSWOMAN SHEILA JACKSON LEE, OF TEXAS

COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

"ENFORCEMENT OF FEDERAL CRIMINAL LAW TO PROTECT AMERICANS WORKING FOR U.S. CONTRACTORS IN IRAQ"

NOVEMBER 15, 2007

Thank you, Mr. Chairman, for calling this important and timely hearing. Charges concerning lawlessness and lack of law enforcement protection regarding contractors working in Iraq are extremely serious, and I am pleased that this subcommittee is taking the time to probe these charges today. May I also take this opportunity to welcome our distinguished panel of witnesses: my

colleague from Texas, the Honorable Ted Poe; Professor Scott Horton, Adjunct Professor of Law, Columbia University School of Law, New York; and Ms. Jamie Leigh Jones, former employee of Kellogg Brown and Root (KBR), from my hometown of Houston, Texas. I look forward to your informative testimony.

Mr. Chairman, in light of recent charges concerning a lack of federal law enforcement protection for Americans working as contract employees in Iraq and concerning lawlessness by some corporate contractors there, I believe there is warrant for significant concern into the conduct of those civilian contractors that we are employing in Iraq. Estimates from July indicated that there are currently more civilian contractor employees working in Iraq than there are combat troops. Contracts awarded by the federal government currently employ an estimated 180,000 civilian contractor employees, including over 21,000 Americans.

Concerns about contractor accountability were raised earlier this year, following a controversial shootout in late September, involving Blackwater security contractors. Eleven Iraq civilians

were killed in this incident, and many others were injured. According to a report by the House Committee on Government Reform, such concern is well placed. This report found that Blackwater employees have been involved in nearly 200 shooting incidents since early 2005, including several previously unreported killings of Iraqi civilians.

Mr. Chairman, we must have some sort of real accountability for our contractors serving in Iraq. U.S. taxpayer dollars must not be used to fund lawlessness and impunity. It is of great concern to me that not a single contractor serving in Iraq has been prosecuted. I am also extremely worried by recent media reports, which indicate that hundreds of serious incident reports, voluntarily filed by contractors, as well as reported shootings and killings have been unaddressed by the justice department.

Mr. Chairman, in addition to these reported killings of Iraqi civilians, this subcommittee must look carefully at the treatment by contractors of their own personnel. There have been a number of serious allegations made concerning sexual abuse and rape, and I

thank Ms. Jamie Leigh Jones for agreeing to testify before us today. Ms. Jones has come forward to report her horrific experience as an employee of KBR working in Iraq, which includes being drugged and raped by fellow employees in 2005.

The conduct of contractors, described by Ms. Jones, is absolutely shameful. She states that she was raped in KBR company quarters inside Baghdad's Green Zone, after which she was imprisoned by armed company guards for over 24 hours without food, water, or medial attention. After she was finally able to call her father for help, State Department agents were dispatched to the camp where she was being held, and they rescued her from the container. Though Ms. Jones was subsequently examined by a U.S. Army doctor, the contents of the rape examination kit were turned over to her employer, KBR, and parts of the kit are currently missing.

Unfortunately, Ms. Jones' story is not the only case of such abuse. Other cases, involving serious allegations of sexual assault,

have garnered some congressional attention, but have not been prosecuted.

Mr. Chairman, reports indicate that there are currently at least 28 private security companies operating in Iraq. A number of laws currently on the books appear to apply to their conduct, including cases like Ms. Jones. The U.S. Justice Department has the authority to prosecute civilian contractors for certain crimes committed outside the United States under several U.S. laws, including the Military Extraterritorial Jurisdiction Act (MEJA) of 2000, which was amended in 2005 to include civilian employers, contractors, or employees of contractors of the Department of Defense, as well as of any other Federal agency "to the extent such employment relates to supporting the mission of the Department of Defense overseas." In addition, the USA PATRIOT Act applies to civilian contractors, and the War Crimes Act and the Torture Statute apply to crimes committed by U.S. nationals. As KBR is a Department of Defense contractor, all of these laws apply to this case.

Mr. Chairman, as the current debate over appropriations has illustrated, there are deep divisions in our country over the ongoing war in Iraq. Many of us have opposed the war from its inception, and we continue to do all in our power to work to bring American troops home. However, whether or not my colleagues agree about the role of the United States in Iraq, we should all be in accord that certain practices are absolutely unacceptable. Employees of the United States, whether they are directly in the employ of the Department of Defense or a private contractor, must be held accountable.

What happened to Ms. Jones is absolutely unacceptable, and we as a Congress have a responsibility to ensure that U.S. taxpayer dollars are not going to fund such practices. I look forward to today's testimony, and to a discussion about how we can work to increase the accountability of U.S. contractors serving in Iraq.

Thank you, Mr. Chairman. I yield back the balance of my time.

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