

**HEARING TO RECEIVE TESTIMONY ON DEPARTMENT OF DEFENSE CONTRACTING IN IRAQ AND AFGHANISTAN**

**Wednesday, April 2, 2008**

U.S. SENATE  
SUBCOMMITTEE ON READINESS AND MANAGEMENT  
SUPPORT  
COMMITTEE ON ARMED SERVICES  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 2:35 p.m. in Room SR-222, Russell Senate Office Building, Hon. Daniel K. Akaka, chairman of the subcommittee, presiding.

Committee Members Present: Senators Akaka [presiding], Levin, McCaskill, and Thune.

Committee staff members present: Richard D. DeBobes, Staff Director, and Travis E. Smith, Special assistant.

Majority staff members present: Peter K. Levine, General Counsel.

Minority staff members present: Pablo E. Carrillo, Minority Investigative Counsel, David M. Morriss, Minority Counsel, and Christopher J. Paul, Professional Staff Member.

Staff assistants present: Fletcher L. Cork, Ali Z. Pasha, and Benjamin L. Rubin.

Committee members' assistants present: Bonni Berge, assistant to Senator Akaka, Jon Davey, assistant to Senator Bayh, Stephen C. Hedger, assistant to Senator McCaskill, and Jason Van Beek, assistant to Senator Thune.

**OPENING STATEMENT OF HON. DANIEL K. AKAKA, U.S. SENATOR FROM HAWAII**

Senator AKAKA. The Subcommittee on Readiness and Management Support will come to order.

This committee meets today to hear testimony regarding the steps taken by the Department of Defense to implement the recommendations of the Gansler Commission on Army expeditionary contracting.

This is the subcommittee's second hearing on this topic. At our first hearing, last December, our Army witnesses pledged to work quickly to implement the Gansler Commission's recommendations. At that time, the assistant Secretary of the Army for Acquisition, Technology, and Logistics testified, and I quote, "The Secretary of the Army, Pete Geren, has directed swift implementation of specific recommendations of both the Commission and the Task Force. For

example, the Army has approved a two-star-level Army contracting command organization, the Army also plans to grow the military contracting structure, in the—in line with the Commission's recommendations, by approximately 400 soldiers, and our civilian contracting workforce by an additional 1,000 professionals. We are extremely addressing the—we are currently addressing the need to expand, train, structure, empower our contracting personnel to support a full range of military operations," unquote.

As you know, I have a particular concern about the status of our acquisition workforce. I share the view of the Gansler Commission that the root cause of our contracting problems in Iraq and Afghanistan is a culture that does not sufficiently value or recognize the importance of contracting, contract management, and contractors. I also agree with the Gansler Commission's conclusion that the Army has excellent, dedicated people, but they are understaffed, overworked, undertrained, undersupported, and, most important, undervalued.

It is vitally important that we work together to address these problems by implementing the Gansler Commission's recommendations for improving the size, status, and training of the acquisition workforce, including the recommendations that we add ten new general officers for contracting positions and 2,000 new contracting personnel to meet the needs of the Army alone. I look forward to working with the Department of Defense, and the Department of the Army, in particular, to get this done.

Senator Thune, you have a statement, I know, and you may—

Senator THUNE. Thank you, Mr. Chairman.

Senator AKAKA.—proceed.

**STATEMENT OF HON. JOHN THUNE, U.S. SENATOR FROM  
SOUTH DAKOTA**

Senator THUNE. I want to thank you for holding the hearing today. And I want to thank our witnesses for joining us today, as well.

With the recent efforts of the Gansler Commission, the Army Contracting Task Force, the Defense Department's Task Force in Contracting, Contract Management, and Expeditionary Operations, continuous work by the GAO and others, we finally seem to be getting our arms around how much of a problem our eviscerated acquisition workforce is, and what kinds of things need to be done to get back on track, particularly with regard to contingency contracting. I hope that, with relevant legislation we enacted in our authorization bill last year, this hearing, and followup efforts by this committee, we help the Army and the Defense Department stay on track.

From today's hearing, I'd like to get a particularly good understand of what challenges lie ahead of—for the Army and the Department in trying to implement our legislation regarding the acquisition workforce and the recommendations of the Gansler Commission. Where the Army or the Department disagree on implementing any particular recommendation, I ask the witnesses to comment on why they disagree with the Gansler Commission's call for a particular solution, what alternative they propose that responds to the Gansler Commission's underlying concerns, if they

agree with those concerns, and where they are in implementing that alternative.

In this regard, I'd like to focus on the recommendation to give the Army more general-officer slots to address structural deficiencies with the workforce and the lack of contingency contracting capability. Would the Army benefit from more time to study where those additional billets should come from?

As I mentioned in our December hearing, support of Army leadership is going to be important here. So, if the Army or the Secretary has ideas on an interim solution, I'd like to hear about that.

I also look forward to discussing the Department's position on the use of private security contractors in theater, and where the Department is on implementing the legislation we enacted last year to help improve the Department's ability to manage this important component of our ability to assert our National security interests abroad.

Once again, I want to thank our witnesses for their time today. I look forward to their testimony.

Thank you, Mr. Chairman.

Senator AKAKA. Thank you very much, Senator Thune.

Senator McCaskill?

**STATEMENT OF HON. CLAIRE McCASKILL, U.S. SENATOR  
FROM MISSOURI**

Senator MCCASKILL. Thank you, Mr. Chairman.

I do have to preside at 3:30, so—I don't know if that's good news or bad news for everyone who's here today—I won't have, maybe, as much time as I would like to go into some of the issues I'd like to talk about today.

I will take just a moment, at—before your all's testimony, to reiterate how we're looking forward to the contracting commission and—that has become law and that will become operational within a few months, that we are—Senator Webb and Senator Levin and I are working to identify the appointees that will come from our side of the aisle from Congress. I know that the minority side is working on their representatives for the contracting commission. But, I want to reiterate, we have a May 28th deadline for the appointment that must come from a recommendation of the Department of Defense and the Secretary of State to the President. And I want to make sure that I go on record today saying that I have figured out that government doesn't exactly do things quickly, and I'm a little worried that May 28th is going to be here in 10 minutes and we will not have the appointments from the administration. I know Secretary Bell has indicated that he is anxious to cooperate, and that DOD is anxious to cooperate with the contracting commission. So many of the issues we're going to talk about today, we will have an opportunity to really get into with the contracting commission, and I think it is a great opportunity for us, in a bipartisan way—not a “gotcha” mentality, but a bipartisan way—to address the overarching problems of acquisition and contract management that has become so very large as we've looked at this contingency operation.

And so, I thank you, Mr. Chairman, for giving me a few moments to say that.

Senator AKAKA. Thank you very much, Senator.

We have, on our panel today, The Honorable James I. Finley, Deputy Under Secretary of Defense for Acquisition and Technology; Honorable P. Jackson Bell, Deputy Under Secretary of Defense for Logistics and Materiel Readiness; Lieutenant General N. Ross Thompson III, USA, Military Deputy to the assistant Secretary of the Army for Acquisition, Logistics, and Technology; and Mr. Jeffrey P. Parsons, the executive director, Army Contracting Command.

Honorable James Finley, will you please begin?

**STATEMENT OF HON. JAMES I. FINLEY, DEPUTY UNDER SECRETARY OF DEFENSE FOR ACQUISITION AND TECHNOLOGY**

Mr. Finley: Thank you, and good afternoon.

Senator AKAKA. Good afternoon.

Mr. Finley: Chairman Akaka, Senator Thune, Senator McCaskill, I'm very pleased to be here today to address the Department of Defense contracting in Iraq and Afghanistan.

I am fully committed to acquisition excellence and the restoration of the confidence in our leadership for the DOD acquisition system, which includes contracting. Thank you for the opportunity to participate in today's hearing.

The Department has stood up a task force to integrate the many activities associated with contracting and contract management for expeditionary operations. The task force is addressing the Commission recommendations from the Report on Army Acquisition and Program Management in Expeditionary Operations, also the associated legislative, regulatory, and policy recommendations, also the steps to be taken by the relevant requirements of Section 849 of the National Defense Authorization Act of 2008, and the acquisition requirements in Sections 807 and Section 852.

Membership of the task force is crosscutting. The task force includes the joint staff, all the services, the Defense Contract Management Agency, the Joint Contingency Contracting Office for Iraq and Afghanistan, the Defense Acquisition University, and various other elements of the Office of Secretary of Defense. We are assessing joint approaches to, one, provide command, control, and acquisition authority that are in alignment with checks and balances; two, provide scalable solutions for contract management in support of large and small expeditionary operations; three, provide training for the way we fight, factoring in the lessons learned for our acquisition and non-acquisition officers; four, assess the appropriate size and competency requirements of the contracting workforce; and five, take steps to shape and leverage the DOD acquisition workforce development fund for expeditionary operations.

The Commission report on Army Acquisition and Program Management in Expeditionary Operations identified 40 recommendations. Of the 40, 22 recommendations were directed to the Army. Lieutenant General Thompson and Mr. Parsons will address those 22. My focus will be on the balance, 18 DOD-level recommendations.

The Department is addressing the stature, quantity, and career development of contracting personnel for all services. The Depart-

ment has reviewed pertinent personnel directives and issued updated guidance to support increased civilian deployment capability.

Two medals for civilian employees of the DOD have been established. First, the Secretary of Defense Medal for the Defense of Freedom, established September 27th, 2001, which I have illustrated here in front of me today, and second, the Secretary of Defense Medal for the Global War on Terror, established March 12th, 2003. It's to my left here in front of me, as well. I'll be happy, after the hearing, to show you the medals and explain more details about the medals.

The Department is assessing the appropriate number of general and flag officers, senior executives for contracting positions. In addition, the Department is conducting a competency assessment of the contracting workforce. The results of this assessment, along with an analysis of demographics and the workload throughput, will enable us to identify the appropriate need.

This effort was initiated last year for the entire Department of Defense contracting career field, and is planned for completion this summer.

The Joint Contingency Contract Use Support Office, a concept implemented for Iraq and Afghanistan about 2 years ago, has provided lessons learned for our training needs for expeditionary contracting. The global war on terror is far more different than the cold-war era, especially for expeditionary contracting. We are making progress to train the way we fight. For example, the expeditionary contracting curriculum has been redesigned to support journeyman-level personnel. The Community of Practice Web portal has been redesigned to streamline collection and analysis. An advanced expeditionary contracting training course has been developed for senior-level contracting personnel. Standardization and certification for an expeditionary contracting officer has been coordinated with all the services to better understand the joint environment. And five programs of instruction are being developed for expeditionary acquisition for our joint and service staff schools, formalizing the training for the acquisition and non-acquisition career fields. Also, the Joint Contingency Contracting Handbook, which—I have several examples here to share with you—were developed last year, and thousands of copies have been distributed.

We are assessing the possibility of recommending specific supportive legislation actions, as well as regulatory and policy assistance. We will provide additional information when we submit our report to the Congress by May 28th, 2008.

The DOD Acquisition Workforce Development Fund will help position the Department to more strategically address our acquisition workforce needs. Although the past 5 years have indicated top-line workforce stability, in terms of personnel, the workload has increased. We have a far different concept of operations with the global war on terror versus the cold war. The preparation and planning phase to leverage this fund for expeditionary operations has started. Proposals from the components have been received and are being mapped into three areas of focus: one, recruitment and training—excuse me, recruitment and hiring; two, training and development; and, three, recognition and retention. Reviews with civilian and military leadership have started and are ongoing.

In summary, our objective is to train the way we fight, participate in exercises with expeditionary contracting personnel, and continually integrate the lessons learned in this new era of the global war on terror. We will improve with joint scalability, integration, and synchronization of expeditionary contracting and program management. Alignment of checks and balances for decision-making authorities for expeditionary operations will be improved. Utilization of the Acquisition Workforce Development Fund as a resource will be done and will help facilitate needed change. Measurable progress has been made. Much more remains to be done. A plan for that work has been established.

Chairman Akaka and members of the subcommittee, I will be pleased to address any questions you may have.

Thank you. [The prepared statement of Mr. Finley follows:]

Senator AKAKA. Thank you, Secretary Finley.

And now we'll hear from Secretary Bell.

**STATEMENT OF HON. P. JACKSON BELL, DEPUTY UNDER SECRETARY OF DEFENSE FOR LOGISTICS AND MATERIEL READINESS**

Mr. Bell: Thank you, Chairman Akaka and Ranking Member Thune, Senator McCaskill. Thanks again for this opportunity today to discuss four topics of interest to your subcommittee: the role of private security contractors in Iraq and Afghanistan, the role of contractors in detainee interrogations, the status of DOD efforts to implement Sections 861 and 862 of the 2008 NDAA, and the status of efforts to address gaps in legal accountability of private security contractors in Iraq and Afghanistan.

I've submitted detailed written testimony addressing these topics, which I will not be able to cover in my brief oral testimony today. So, I request that my written testimony be incorporated into the record of this hearing.

Regarding private security contractors: recently, questions have arisen about the appropriateness of using private security contractors in areas of military operations. As described in more detail in my written testimony, DOD policies governing the use of PSCs in compliance with—are in compliance with existing laws and regulations. These policies, collectively, restrict PSC authority and missions to defensive operations; establish firm policies, rules, and procedures governing their conduct and their operations; provide for clear government oversight to ensure that they're not performing either inherently governmental functions or even entering areas of high risk or areas of military operations; and, finally, of course, firmly establish legal jurisdiction over their conduct.

Notwithstanding media coverage regarding PSC operations in Iraq, the frequency of serious incidents among DOD private security contractors is relatively low. During the period of August 2004 through February 2008, a period of intense insurgency and sectarian violence in Iraq, more than 19,000 DOD convoy operations were recorded. Of those, less than three-quarters of 1 percent involved the use of deadly force by a DOD private security contractor; and then, not necessarily causing casualties.

The recent execution of a memorandum of agreement between DOD and the State Department is having an even more dis-

ciplining effect on PSC operations there. General Petraeus recently reported to Secretary Gates that, quote, "There has been a 67-percent reduction in graduated-force incidents involving contractors, and both the Government of Iraq and the Iraqi people have taken notice of the changes made in the operating procedures and in the attitudes of PSCs," unquote.

Regarding contractor roles in detainee interrogations, as we all know, detainee operations are a matter of great importance to the U.S. Government, as much as they are a matter of great sensitivity. My testimony today addresses only the question of DOD policies regarding the use of contractors in detainee interrogations.

This role of contractors is authorized and governed by a number of DOD policy directives and instructions that specifically establish a policy framework for the use and the supervision of contractor personnel in detainee interrogations. These are covered in detail in my written testimony.

Regarding the legal accountability of deployed contractors, all DOD civilian employees and DOD contractors deployed outside the United States in support of our military forces are legally accountable for their conduct under the jurisdiction of both the Uniform Code of Military Justice and the Military Extraterritorial Justice Act, or MEJA, as well as other statutes. Nonetheless, both DOD and the State Department are on record about the need for legislation to strengthen the legal accountability of other U.S. Government contractor personnel deployed outside the United States in support of other U.S. Government missions, besides the DOD mission.

Regarding the status of efforts to implement Sections 861 and 862, DOD is working actively now with the State Department and with USAID to implement, on schedule, the requirements of the 2008 NDAA. The MOU, required under Section 861, is already in draft form, and should be executed by July 1st, with implementation targeted within the required 120 days after the MOU is executed.

Regarding Section 862, work is nearing completion on an expanded framework of regulations and reporting requirements relating to DOD, State Department, and USAID PSCs working in Iraq and Afghanistan.

In closing, and a personal note, I would ask that this committee reconsider legislation passed in 2007, of the NDAA, that mandates that downgrade of the position of the Deputy Under Secretary of Defense for Logistics and Materiel Readiness, upon my leaving the position. This position has oversight of all DOD logistics functions, which, in 2006, represented about 162 billion of DOD's \$537-billion budget.

Subsequent to this legislation, this position has assumed additional ongoing responsibilities, including leadership of DOD efforts to strengthen management of deployed contractors and negotiating and overseeing implementation of agreements with the State Department and USAID regarding the operations of all of our contractors in Iraq and Afghanistan, including, particularly, PSC operations in those countries.

In the future, additional work is going to be required to expand this governance to other U.S. Government departments and agen-

cies. The downgrade of this position sends the wrong signal about the importance of these areas of responsibility at the very time of their increasing significance to DOD and in GWOT operations.

Hopefully, this brief oral testimony and my written testimony will provide a useful baseline of information for your questions as we get into a discussion.

Thank you. [The prepared statement of Mr. Bell follows:]

Senator AKAKA. Thank you very much, General Bell—Secretary Bell.

General Thompson?

**STATEMENT OF LIEUTENANT GENERAL N. ROSS THOMPSON III, USA, MILITARY DEPUTY TO THE ASSISTANT SECRETARY OF THE ARMY FOR ACQUISITION, LOGISTICS, AND TECHNOLOGY; ACCOMPANIED BY JEFFREY P. PARSONS, EXECUTIVE DIRECTOR, ARMY CONTRACTING COMMAND**

General Thompson: Chairman Akaka, Senator Thune, Senator McCaskill, thank you for the opportunity to appear before you again today on the Army's contracting operations in Iraq and Afghanistan.

Since our last report to you, and in keeping with the recommendations of the Gansler Commission, Secretary of the Army Pete Geren directed the realignment of the Army Contracting Agency to the Army Materiel Command and the establishment of the Army Contracting Command Provisional. We stood up this organization on March 13th of this year. And with me today is Jeff Parsons, our first executive director of the new Army Contracting Command Provisional. We have a joint written statement that I respectfully request also be made a part of the record for today's hearing.

I would like to take this opportunity to thank the committee and the committee leadership for your unwavering support to the men and women in uniform.

Mr. Chairman, as you know, the Secretary of the Army created the Special Commission on Contracting, led by Dr. Jacques Gansler, to look at the long-term strategic view of the Army's acquisition and contracting system in support of expeditionary operations. The Army Contracting Task Force, which I co-chaired with Ms. Condon of the Army Materiel Command, was formed to review current contracting operations and take immediate actions, where necessary.

The Gansler Commission's four key recommendations for improvement are consistent with the Army Contracting Task Force's findings. The Army is making steady progress in addressing the structural weaknesses and the shortcomings identified, and we continue to work very closely with the Office of the Secretary of Defense and our sister services on the way forward. It is clear that achieving our objective will require resources, time, and a sustained leadership focus. Our written statement outlines the major actions that we've taken to date, which include accelerating plans to set up the contracting structure recommended by the Commission and increasing the size of the contracting workforce in the Army.

As a result of the ongoing operations in southwest Asia, the Army has increased its focus on contingency contracting. Up until a year ago, we didn't have a defined structure to support expeditionary operations or to support the modular Army. We have now have established a contingency contracting structure that consists of contracting support brigades, contingency contracting battalions, and four-person contingency contracting teams. We are beginning to fill those with trained military contracting officers and noncommissioned officers: the four brigades, the six battalions, and the 121 teams that we've already established. And since we last met, we've looked at the size of that structure, and we plan on expanding that by adding three brigades, five battalions, and 51 teams to the work that we had already done.

A critically important issue, as you well know, is the size, the structure, and the training of both the military and the civilian contracting workforce. The acquisition workforce has declined significantly in the last decade, but the workload and the number of dollars associated with that workload have increased significantly. The Army has never fought in an extended conflict that required such reliance on contractor support.

We are addressing the need to expand, train, structure, and empower our contracting personnel to support the full range of military operations. We are developing a detailed contracting campaign plan to implement the necessary changes to contracting, and looking at changes in doctrine, organization, training, materiel, and leadership.

This is going to require the Army, OSD, the administration, and the Congress to work together to make the systemic fixes needed for contracting to be a government core competency.

Mr. Chairman, this concludes my opening remarks, and Mr. Parsons's, and I look forward to your questions. [The prepared joint statement of General Thompson and Mr. Parsons follows:]

Senator AKAKA. Thank you very much, General.

And now, I'd like to give my opening time to Senator McCaskill for your questions.

Senator McCASKILL. Thank you very much. I really appreciate it.

Obviously, we've got serious challenges, and I do appreciate the testimony of all of you today. And I think everyone is working hard to implement the Gansler recommendations and the contracting task force recommendations. And I do think some progress is being made. But, obviously, in the management of acquisitions and the ongoing management of contracts, we still have great challenges.

I have reviewed a very lengthy article that was written in the New York Times on March 27th, and, I've got to tell you, I feel sick to my stomach about a munitions contract that we entered into with a 22-year-old man with a record of carrying a fake ID so he could drink, and became the head of his company when he was 18 years old, and boxes and boxes and millions of dollars—\$200 million a year in business, we've done with him, and this stuff is coming from old communist-bloc countries, and a lot of this ammunition is, in fact, 40 years old and unreliable, and it's not been tested, and—I mean, it is—have any of you read this article? Are you familiar with this AEY case? [No response.]

Senator MCCASKILL. You know, I just—it's just mind-boggling to me how somebody like this gets this contract, and how we have a contract to supply munitions that doesn't require the same kind of standards that we would require for our military or from NATO. And whoever would like to tackle that, as to how we enter into a \$200-million-a-year contract for munitions to supply to the Army in Afghanistan that is working on our behalf, and paid with taxpayer dollars, and to the Iraqis, without any kind of minimum standards or testing, I just—I've got to figure out how that happened.

General Thompson: Ma'am, we have looked at that article, and the examination of that contractor and that contractor performance way, way predated the article. There's been about a 7-month look at that contractor and his performance.

There is an ongoing investigation. That contractor was suspended from contractor work with the U.S. Government. That suspension happened about the day the article was published, but the investigation that led to that formal suspension action, which is a very deliberate process, had been ongoing for months.

The contract was properly let. It followed all the proper procedures. The Defense Contract Management Agency evaluated that contractor for past performance and financial solvency before the contract was let. The requirement in that contract was for commercial ammunition in order to be used by the Afghan forces, and the requirement did not have the same specifications that we have for our military ammunition. And they did meet the commercial standards.

The basis for the contractor suspension is what's under investigation right now, because it appears that he did make a false claim that the ammunition that he provided came from a certain source, when, in fact, it was Chinese-manufactured ammunition. And so, what you have here is a case, I think, of a contractor that was not performing, and is not performing. And, therefore, we are taking the proper procedures in order to remedy that.

Senator MCCASKILL. Well, I'm curious why—I mean, if you say proper procedures were employed, who made the decision that there was no quality assurance standards to cover packaging, storage, testing, or transport, that that wasn't an important thing to be in the contract? Who would have made that decision?

Mr. Parsons: Ma'am, I'm very familiar with the contract on that, as well. And, as General Thompson said, when that ammunition was purchased, it's considered what they call "nonstandard ammunition," so it's—doesn't—we don't buy that to the same standards that we do—

Senator MCCASKILL. But, why? Who makes that decision, that you don't buy it to the same standards? That's what I want to find out. Who—

Mr. Parsons: And—

Senator MCCASKILL.—makes the decision that the ammunition that we are sending to the Afghan army to fight terrorists for us in a dangerous situation doesn't have to have the same standards as our American military?

Mr. Parsons: And you raise a good point, and that is one of the things that we are addressing with the Joint Munitions Command now, which was responsible for that requirement, to go back and

understand, Why is it that the requirements for that ammunition did not meet the same standards that we use for our own U.S. ammunition? A lot of this ammunition is bought from former Soviet-bloc countries. It's, like I said, nonstandard ammunition. It's used in AK-47s and those types of weapons. But, you raise a very good—a good point. We're taking look, very hard, at a lot of our FMS procurements, where we're buying nonstandard equipment, and to address your exact position there, that we ought to be looking at the requirements and what we are buying. That's what—and so, that is under review—

Senator MCCASKILL. The—

Mr. Parsons:—to back and review our processes to make sure that we're addressing the requirements properly.

Senator MCCASKILL. Well, you know, I want to try to figure out who's responsible, because somebody needs to be held accountable for this situation. The past performance was rated as "excellent." This is a 22-year-old that had no prior contracting experience. Now, who decided that their past performance was "excellent," and on the basis of what? Does anyone know?

General Thompson: Well, ma'am, when we let a contract with somebody, we use the Defense Contract Management Agency to evaluate both past performance and the financial solvency, and that was the process that was used in this particular case.

Senator MCCASKILL. Well, I would—and I'm going to follow up on this, but I want to—I want to drill down on this, and I want to figure out where in the—I mean, part of this is—when you sit here and you want things to get better, it's very hard to pinpoint who is the person that's responsible for these mistakes. This was a terrible mistake, this contract. I mean, if you read—even if only half—I—I mean, I assume half of what I read in the newspaper is wrong, and the other half may be just, like, slanted, but if you—if you just sweep away a lot of the factual information that's in this article, and look at it, this is—this contract was a mistake, and somebody has to be responsible for this mistake. It's not good enough to say, you know, "Well, you know, the—gosh, the fact that he was only 22, and he was providing hundreds of millions of dollars worth of munitions," and he was dealing with somebody in one country that we had to be called by their embassy to say the guy had been in black-market munitions, and—you know, I just am not assured that we have pinpointed who we say, "You know, you've got to, like, be demoted, or you've got to be fired for doing this."

General Thompson: Ma'am, like Mr. Parsons both have said, we are looking at all the circumstances surrounding that contract and that contractor, not just this individual contract, but any other contracts that individual's had. When we get all the facts out on the table, then we'll be able to determine what mistakes were made, and by whom. I—

Senator MCCASKILL. I'll be—

General Thompson: I, like you—there's always another side of a story. And I'm not defending this contractor, in any way, shape, or form. I'm just saying, I want to get all the facts on the table. And what's reported in the press, either in this article or others, is not necessarily all the facts. And we are—

Senator MCCASKILL. I agree.

General Thompson:—we are determined to get to the bottom of it, and get all the issues out on the table, and then we will use the legal mechanisms that we have, and the contracting policy venues that we've got, and I assure you, we'll make the proper decisions, and people will take appropriate action, across the board, whether in the government or outside the government.

Senator MCCASKILL. I will follow up with some more specific questions about that arms contractor, because I do think that there are some more specific questions that I hope you guys get to the bottom of as it relates to that contract. [The information previously referred to follows:] [SUBCOMMITTEE INSERT]

Senator MCCASKILL. I'm not going to have time to go into my other two questions, but I will just tell you, I will direct those questions to you, too. [The information previously referred to follows:] [SUBCOMMITTEE INSERT]

Senator MCCASKILL. First one is on KBR, the policy that we've decided it's okay to allow a contractor to use an offshore account to avoid Medicare and Social Security and unemployment taxes. We've got 10,000 Americans working for KBR that have no Medicare payments being made, and they have no unemployment compensation insurance, and they have no Social Security payments being made. They are—there's a post office box in the Cayman Islands somewhere that's taking care of all that, so that none of those responsibilities are met by KBR. I'm not saying that what that—has happened is illegal, but I do—I will ask for you all to respond in writing as to if you think this is a good thing, for us to be doing this. And, if it's not, what help do you need from us, in terms of laws, to make sure that it's illegal? Because it's offensive.

And then, the final thing is, jurisdiction. Secretary Bell we talked, in a previous hearing, about jurisdiction for criminal acts by contractors. I know there has been some regs, the guidelines that came out in that regard since the last time we spoke, but I want to make sure that anybody who's working with taxpayer money in a foreign place is held accountable if they're raping people or committing any other kinds of crimes. We've got to make sure that our laws apply to them, regardless of whether they are actually physically in the United States or not. And so, I will have some followup questions on that, also.

And I apologize that I have to leave and won't be here for another round of questions. And I really appreciate, Senator Akaka, you giving me a chance to ask those questions before I have to go preside.

Senator AKAKA. Thank you, Senator McCaskill.

Senator Thune?

Senator THUNE. Thank you, Mr. Chairman.

Mr. Parsons, I understand that one attractive aspect of the Army Contracting Command concept is the ability to surge expeditionary contract—contracting support capability to the field through the use of contracting support brigades. Now, given the current shortage in the acquisition workforce, where will ACC get the bodies, in terms of workforce, to acquire this surge capability, and how many total people in the workforce do you think the ACC will need, at the end of the day, to provide that surge capability?

Mr. Parsons: Sir, you do raise a good point about the ability to bring additional people into the workforce rapidly. One of the things that we're doing, and especially General Thompson has done already on the military side, is to look at moving—and has directed that the accession point for our officers and our NCOs into contracting be moved to the left, so that we can start assessing more officers—junior officers and NCOs into the contracting workforce, so that we can get them into these contingency contracting teams and battalions and brigades, to get the training that they need.

On the civilian side, we're working closely with a lot of universities on establishing programs with them that will allow us to hire new graduates into the civilian side of the contracting workforce rather quickly.

Where we really are challenged is hiring experienced contracting personnel. Across the Federal Government, there is a huge demand for contracting subject-matter experts, whether it's the homeland security, other sister services—Air Force, Navy—and we are very challenged in being able to try to hire experienced personnel. So, our goal, while we're trying to provide incentives, like entitlements for permanent change of station to civilians to come join us, that have experience, we're really targeting the college graduates, to try to bring them on quickly.

What this new contracting command will do for us, though, is, now, by bringing all the contracting assets—or 72 percent of all the contracting assets across the Army into one command, we'll now be able to surge across that command, looking for the type of expertise and talent that we need to support an expeditionary operation.

So, these brigades—contracting support brigades, while they're small, we will be able to tap into other parts of the Army Contracting Command to help facilitate them.

Good example of that right now is in Kuwait. We've been challenged in being able to track the civilians—trained civilians into Kuwait. We have a new contracting support brigade commander there, Colonel Bass, who has made a lot of improvements, and he has added additional personnel to his staff. But, we've also created what we call a “reachback capability” at one of our major acquisition centers, and we're performing an awful lot of the contracting now for Kuwait out of the contracting office in Rock Island, where we had some subject-matter experts that can perform that function.

So, we're looking across the current command to see how best we can surge; but, the big challenge, as you point out, will be bringing the new people onboard to staff this up.

Senator THUNE. To the Army Contracting Command, when do you expect to achieve initial operating capability? And what exactly does that mean to the Army Contracting—

Mr. Parsons: To date—as we said, we activated the new command on the 13th of March. It's a provisional status, so we are in the process of building the command. We've requested the additional resources we need that are—from the Army—that we need for the command. I don't expect to be in an initial operating capability, beyond where we are today, with supporting installations and supporting expeditionary contracting, until the 1st of October of this year. That's when we will bring the rest of the pieces of this command together and start bringing people onboard. I don't ex-

pect that we'll be fully operational and capable until the following year.

What we've given the Department is a 3-year plan to bring both the military and the civilians onboard, and expect to have them through their—what we call level-two certification training within that 3-year period of time. That'll also give us a year or two to start getting a lot of these people training.

But, there is no short-term fix. As I said, it's a 3-year plan before we expect that we'll be fully operational.

Senator THUNE. Secretary Bell, your written testimony lays out the statutory and regulatory framework for the use of private contractors and the distinction that prohibits private contractors from carrying out inherently governmental functions. There are those who have argued that the line between what is an inherently governmental function, and what is not, is not as clear as it should be. The distinction may be particularly difficult to maintain in a high-risk environment, where private security contractors could reasonably be expected to face circumstances requiring the use of deadly force to protect the people or property covered by their contract.

In response to those who say that private security contracts should be replaced by uniformed military forces, your written statement indicates such a policy would require the manpower equivalent of nine additional brigades of combat troops. Do existing policy guidance and oversight by battlefield commanders prevent private security contractors from conducting inherently governmental functions, even in high-risk environments, or is this an area that needs more work?

Mr. Bell: I think, as you're pointing out, Senator Thune, there are two aspects to effective management of contractors. One is to have an adequate policy framework that sets the boundaries for acceptable missions and acceptable conduct; the other part is oversight of the activity in the field.

We believe that we have an adequate policy framework that sufficiently demarks between the capabilities that are allowed under the rules of law and the regulations, and those that are permissible. The—there is a challenge, which we have been working on, of implementing the effective supervision in the field. We've been working on that, very focused, in the last 6 months, and we've made significant improvements in internal DOD management of operations in theater, as well as as a result of the MOU with the State—MOA, I'm sorry—with the State Department, that General Petraeus has referred to in his letter to Secretary Gates.

Having said that, we believe that continuing emphasis on this, particularly now that military commanders have UCMJ authority over contractors in the field, is going to be another step in improving the effective oversight, in terms of their conduct and their permissible behavior.

It is an area that requires focus, and one that we are continuing to emphasize in our work in CENTCOM, both in Iraq and Afghanistan.

Senator THUNE. What policies, regulations, and coordination steps would ensure that private security contractors working for a department or agency outside the Defense Department do not nega-

tively impact the DOD's combat missions or counterinsurgency operations?

Mr. Bell: As I indicated, both in my written testimony and my oral testimony, Senator Thune, we believe, and we're on record, as is the State Department, that legislative action is required in order to establish clear-cut accountability for contractors supporting other U.S. Government missions outside the United States. There are several suggestions about the approaches to that.

Our concern is that, as we work through whatever the issues are, there is a sense of a urgency that that accountability needs to be established. And it is the opinion of our legal people that that requires legislation in order to accomplish that.

In addition, as you may know, the current legislation on the books, even under the 2008 NDAA, does not address the capability of the Department of Defense and the Department of State to have oversight of other U.S. Government agency PSC operations outside the U.S. We believe that it's a significant step forward to extend this coverage for DOD, State, and AID. But, a better approach would be to expand that to all U.S. Government—those regulations, those rules and procedures, to all U.S. Government agencies.

The additional question to be addressed, at some point down the road, is the activities of private security contractors who are there working for private sector companies. To the extent that we have a sovereign state in place that has jurisdiction over those, they have that authority over them. To the extent that we have a CPA type of situation, at some point in the future, where we're exercising sovereign powers, there is the question of, How do you exercise the authority of that? Again, the focus of the 2008 NDAA is strictly on governance for DOD, State, and AID.

Senator THUNE. What would be the impact on DOD of a change in the law that required uniformed military forces to perform the roles currently conducted by private security contractors in high-risk environments, such as Iraq and Afghanistan?

Mr. Bell: Well, as you indicated in your earlier comments, Senator, using the Congressional Budget Office methodology for the number of contract—private security contractors that we have, it would take the equivalent of nine combat brigades worth of military personnel to perform that function. We have approximately 9,000 military—we have—I'm sorry—9,000 security contractors, working for DOD alone in those two countries, and that would be the equivalent requirement, which would require not only the deployment of personnel, but, obviously, extensive training the particular skill requirements for personal security.

Senator THUNE. Is it the DOD's intention to have all of the articles of the UCMJ apply to civilians under their guidance, or just a few?

Mr. Bell: Sir, it is not. Certainly, initially—General Petraeus and I have discussed this at some length—his view is obviously to put the greatest emphasis on criminal conduct. There are a number of aspects of the UCMJ, as you know, that have to do with things that essentially do not relate to civilian personnel, and he takes—he plans to take a very conservative, but firm, approach with—regarding criminal conduct.

Senator THUNE. I see my time's expired, Mr. Chairman.

Senator AKAKA. Yes. We'll have a second round.

The Gansler Commission report recommended the establishment of, and I quote, "A core of—set of ten additional general officers for contracting positions," unquote, five of them in the Army, and five of them in joint positions.

Now, General Thompson, at our last hearing you testified that you personally agree with this recommendation and think—and, at that time, said, and I quote, "I think you will see the Army reflect its support of that in the very near term," unquote. Is the Army still on track to establish the new general-officer positions recommended by the Gansler Commission?

General Thompson: Senator, the Army has evaluated that, and we've passed our recommendation to OSD, and—both on the general officers and also the other legislative recommendations that were made in the Gansler Commission report. And it's my understanding that OSD is close to finishing, or has finished, their evaluation, as well. And I don't know where that is inside of the administration. But, the Army did finish their evaluation and gave their recommendations to OSD several weeks ago.

Senator AKAKA. Secretary Finley, what is the position of Department of Defense on the need for ten new general-officer positions in the contracting field, with particular attention to the five joint positions?

Mr. Finley: Mr. Chairman, I believe that the recommendation from the Army—we would depend on the Army leadership to know their business better than us. What we're looking at is, not only the Army, but we're looking at the crosscutting requirements for leadership and the pipeline of all the workforce that under—supports that leadership, including the flag officer and the general-officer population.

We have not made a determination whether or not five joint is the right number. We have tasked the Air Force and the Navy for their positions on all of the Gansler recommendations that address the Army, and we have received those reports back from both services, reflecting their respective positions and recommendations.

We are in the process of digesting all that information. We will be providing—proceeding with some due diligence to understand the—their positions and their recommendations. In parallel, we are still conducting the competency model for contracting, which goes from entry-level to flag-level personnel, which we expect to be completed by this summer. But, by May 28th, when we are required to report back to the Congress, we do expect to bring some closure as to what our recommendations will be for the Army and joint general-officer/flag-officer requirements.

Senator AKAKA. Secretary Finley and General Thompson, do you believe that legislation is needed to authorize these new general-officer positions, or can the Department establish the new positions within its existing authorization?

General Thompson: Sir, from the standpoint of the current legislation that authorizes a fixed number of general officers in the Army, the position that I have taken in the acquisition corps as the recommendation is that this needs to be additive to the current Army ceiling on general officers. For us to be able to look at existing positions, which are all critically important, senior-level posi-

tions, and downgrade those positions to something less than a flag officer in order to staff the contracting general officer, would not be helpful to the Army. So, to the extent that there's a growth in the total number of authorizations allowed to the Army, that would have to be handled by legislation. But, again, that's something that has to go both through the OSD and the OMB administration review process; and our commitment, internally with the DOD, is to have that process completed by the time we turn in the report on the 28th.

Senator AKAKA. Secretary Finley?

Mr. Finley: I believe that one of the debate issues is how to best handle any changes in top line on the number of general officers/flag officers. That discussion is ongoing in the Department. We have raised those issues for discussion—not for decision yet, but for discussion—for situation awareness of our military and our civilian leadership.

I expect there's many different views. There's, I would say, pragmatic matters that—where we are with general officers today, in terms of the quotas that have been set, and where we are in actuality against those quotas. There's also matters of how many of our quotas are filled with joint billets, and how they're consumed and allocated across the different parts of the services. All of this has to come together, from a—from my perspective, from a strategic point of view, as to how we have to change the way we're going to fight global war on terror. And, fundamentally, this gets into the roles, the missions, the concept of operations, and what kind of a pipeline of military personnel/civilian personnel will we have in contract—in contracting management, you know, for the future, as we look ahead.

So, my perspective is, this is part of the debate. We have not made decisions. There are people who believe we should come forward and increase the top line. Other people believe we should take it out of hide and start to reconfigure the way we are organized, the way we are structured.

We are having that discussion, as General Thompson reflected. I do believe we will bring this to the—some form of conclusion before the report comes out on May 28th.

Senator AKAKA. The Gansler Commission report states that—and I quote, “The number and expertise of the military contracting professionals must be significantly increased,” unquote, to address the problems we have experienced in theater.

General Thompson, at the last hearing, you testified that the Army endorsed the Gansler Commission recommendation to grow the military contracting workforce by 400 and to grow the civilian contracting workforce in the Army by about 1,000. Are those proposed increases still on track?

General Thompson: Sir, the military increase is on track. The standup of the Army Contracting Command, our internal process to look at all of the actions that need to be taken, is in the form of a concept plan. We have about 16 concept plans, across the Army right now, that all address growth in the contracting structure or adjustments to the contracting structure to some degree. We have all of those 16 plans under review right now, but we still think the number of the civilians that need to increase is somewhere in the

800-to-1,000 range. And then the question's going to be putting the money against them.

But, the critical thing, as Mr. Parsons indicated in his answer to Senator Thune's question, is, you have to get started on hiring the right people, and we need to begin that almost right away. So, from my perspective, the quicker we get this thing resourced, and the quicker we reach out to the colleges and the universities and the population to begin to attract the right people into this career field, the quicker we're going to be able to address the long-term systemic issues. Because, like anything else, it takes people, and it takes good people, if you want to make systemic fixes.

Senator AKAKA. Secretary Finley, I understand that the military services have resisted the recommendations to increase the DCMA workforce by 600. Can you explain what action the Department is taking to implement this recommendation?

Mr. Finley: Mr. Chairman, I believe what the services have resisted, including the Army, is the Gansler Commission characterization that all post/basecampaign contracting effort go under the auspices of DCMA. In DOD, we fundamentally agree with that position, that—we believe that's a—not an appropriate move or recommendation. But, in discussions and followup discussions—and we meet with Dr. Gansler about every 2 weeks, 3 weeks; we meet with principals of the Commission almost on a weekly basis—understanding the intent of that recommendation, that DCMA would have global post/basecampaign responsibility would be an enormous change in the headcount for DCMA, and we believe it is a fundamental role and mission of the military to conduct that business.

I believe, at this point in our discussions with—directly with Dr. Gansler and myself—I believe he believes the intent and where we are at in trying to evaluate alternative approaches as to how to conduct expeditionary operations between the military/civilian service, expeditionary contracting activity—I believe we are very close, in terms of what we believe needs to be done.

So, I think that this is part of the process we're going through to better understand the complications as to how we're going to fight the fight, and train for the fight, in the era of global war on terror. It is very, very different. And we—it needs to be scalable for big operations, as well as small operations. And we're going through some alternative approaches, sharing that with the services, sharing that with the joint staff, sharing that with the combatant commands, as to, How does this make sense? Because this is a cultural change as to how we'll fight the fight. The headcount that would go along with that, and where that would belong, you know, has had pushback from everybody.

In the Army's case, my personal opinion is, where they're at and where they're headed, I fundamentally believe, is in the right direction. But, the actual numbers, I believe, is still up to them, not up to OSD. We would—we will support them, if that's what they believe has to be done to make the Army do its role and mission. That would be my perspective, sir.

General Thompson: Senator, if I can just add, just, a brief comment to what Secretary Finley said, the current workforce that does the contract management on the Army posts and camps, we

don't believe needs to transfer to DCMA. We are putting our arms around the workforce that does that today, and understanding how many people there are, what functions they perform.

We do think there is a role for DCMA. DCMA's role, fundamentally, for the Defense Department, is a quality assurance role for weapons-systems contracts in plants and factories. That is a big mission shift for them to be the service contract management on posts, camps, and stations, but they do have a core competency in quality assurance on contract management, so there is a linkage between what DCMA can do and what the services do for themselves in the posts, camps, and stations. The key issue, to me, really is having a trained workforce that is prepared to go on deployments to be able to provide that post, camp, and station contract management. And those are mostly a civilian workforce right. And so, we're working that with OSD and the other services, on, What's that proper balance between DCMA and the services?

Senator AKAKA. Thank you very much.

Mr. Parsons: Sir, I'd just like to add, real quickly, too, that the concept—

Senator AKAKA. Mr. Parsons?

Mr. Parsons:—plan that we had submitted as part of the Army Contracting Command does build in some additional resources to start performing some of these quality assurance functions that we believe will be needed to enhance our ability to do contractor management. As General Thompson said, the piece that we're still wrestling with is, How many additional—or do we need additional subject-matter experts, at the installations, that will be trained in performing contract management functions, whether it's food services, transportation services, laundry services. So, that's the piece that we're still working on. But, we have built into this concept plan the actual requirement for quality assurance representatives that will oversee and train, work with DCMA in building up these contracting officer representatives.

Senator AKAKA. Let me call on Senator Levin for any remarks or his questions, and he will be followed by Senator Thune.

Senator Levin?

Senator LEVIN. Thank you very much, Chairman Akaka.

And I want to go to a question that I believe Senator Thune raised, which is the question of the contractors.

The—I guess, Secretary Bell, this question really is for you. Do you believe that private security contractors in Iraq perform security operations, quote, “in highly hazardous public areas where the risks are uncertain”?

Mr. Bell: I'm sorry, is the question as to whether I believe that's an inherently governmental function?

Senator LEVIN. No.

Mr. Bell: What is the question—

Senator LEVIN. I'll get to that in a moment. My question is, Do you believe the private security contractors in Iraq perform security operations in, quote, “highly hazardous public areas where the risks are uncertain”?

Mr. Bell: Actually, the way they are managed is that the military commander has the discretion to make the decision as to whether the areas in which they would operate would represent either a

high risk of enemy encounter or even interfere with military operations. He has the authority to redirect any convoy operation away from those areas that he assumes to be high-risk.

Senator LEVIN. He has the authority to do it. Does that—is there a statement in that direction, that they will not be performing security operations in highly hazardous public areas where the risks are uncertain?

Mr. Bell: There is a—there is direction for them, in terms of approving the missions in advance, regarding where they're allowed to do and during what times they're allowed to go there. They are allowed, as any private security contractor operation, under military authority, to defend themselves—

Senator LEVIN. I understand.

Mr. Bell:—in the event that they are attacked.

Senator LEVIN. Do, the commanders have authority—do they have discretion to permit the contractors to perform their operations in highly hazardous public areas? Do they have the authority to allow it?

Mr. Bell: I don't know that I can answer that question.

Senator LEVIN. Why not?

Mr. Bell: I believe that's a matter of command decision, and that would be something you probably should ask General Petraeus.

Senator LEVIN. Well, I mean—I can ask General Petraeus, but you've said that they have authority to—

Mr. Bell: They have the authority.

Senator LEVIN. They have the authority. My question is the other side of the coin. Do they have authority, then, to allow the contractors to operate in those hazardous public areas?

Mr. Bell: I would assume, if they have the authority to make the decision, they would have the authority to do that. The direction in the policy is that they not do that. So, I would assume the authority does not exist.

Senator LEVIN. The authority in direction is that the—

Mr. Bell: The military commander has the authority—

Senator LEVIN. No. No, no. No. I—is the direction that they not perform in highly hazardous areas, or is it simply a matter of giving authority to the commander to prohibit them from operating in those areas?

Mr. Bell: The commander has the authority to make that decision.

Senator LEVIN. All right. I think you're—you obviously are familiar with what I'm driving at, here, which is the DOD manpower-mix criteria, which says that security operations that are performed in highly hazardous public areas where the risks are uncertain could require deadly force that is more likely to be initiated by U.S. forces than occur in self-defense, as an example of where there is a governmental function being performed. You—have you—it's clear you're familiar with the language that I'm talking about.

Mr. Bell: I'm quite familiar, as I'm sure you are, sir. The—this is a complex document, as you know. It's 56 pages of instructions. It describes a number of generalized conditions under which security functions would be inherently governmental, and it describes other conditions under which it would not be inherently govern-

mental. Specifically, in paragraph 2.1.4.1.4, it specifically describes the conditions under which the military commander is authorized to have private security contractors functioning in a defensive role. The DOD's position is that we comply with those requirements, as well as requirements elsewhere in regulations.

Senator LEVIN. Part of that paragraph, though, also reads, does it not, that "security operations that are performed in highly hazardous public areas where the risks are uncertain" is an example of a governmental function?

Mr. Bell: As I said, it's a complex document, and that's the reason there's specific language in the document defining the conditions under which it is not inherently governmental to have private security contractors perform those functions.

Senator LEVIN. And I also, did I not, correctly read the part where they give an example where it is inherently governmental?

Mr. Bell: I believe you did, sir.

Senator LEVIN. All right.

Now, what about interrogation of detainees. Is it true that there is a—in the 2005 document about the use of contractors in interrogating prisoners of war, terrorists, and criminals, that "the handling of these people cannot be transferred to the private sector to contractors who are beyond the reach of controls otherwise applicable to government personnel"? Did I accurately read from the 2005 document—before we get to 2006, did I accurately read from the 2005 document?

Mr. Bell: My understanding—not having seen the 2005 document, my understanding from your counsel is that you are reading that accurately.

Senator LEVIN. All right. And if I did read that accurately, is it true that we did have contractors, prior to 2006, when they were authorized to engage in detainee interrogation, that, prior to that, they were not authorized to engage in detainee interrogation?

Mr. Bell: I'm sorry, but I don't have qualified knowledge of that.

Senator LEVIN. Is there anyone here that does? [No response.]

Senator LEVIN. Okay. Do you want to answer that, then, for the record? Would you give us, Secretary Bell, an answer for the record? [INFORMATION]

Senator LEVIN. Before I arrived, Secretary, you made the statement that Section 862 of last year's Defense Authorization Act, which is the private security contractor provision, applies only to the Department of Defense, Department of State, and USAID, and that the application to other government entities is needed. 862 does apply to all government agencies.

Mr. Bell: Good. Pleased to hear that.

Senator LEVIN. Well, I'm pleased you're pleased. But, I think, then, that we would expect that that's the way it will be implemented, because there is no loophole, such as the one you described.

Thank you. I—I'll—go back and forth. I have a few more questions, but if there's others that have questions, I've taken more than my time, probably.

Senator AKAKA. Thank you, Senator Levin.

Senator Thune?

Senator THUNE. Secretary Bell, I want to come back to this question of the legal framework that would command—would govern a command response to any suspected illegal activity and the March 10th guidelines that the Secretary of Defense issued to commanders on the exercise of the UCMJ authority during those contingency operations. Basically, the guidelines provide that, whenever an offense allegedly committed by a civilian violates Federal criminal law, the DOD has to notify the Department of Justice and give it 14 days, unless extended, to decide whether it's going to prosecute the case. In the interim, DOD has the authority to investigate, make arrests, and continue to address the immediate impact of the alleged criminal act.

As a threshold matter, what is the Department's opinion about the applicability of the UCMJ to all civilian DOD employees and contractors?

Mr. Bell: Our view is that all DOD contractors and civilians who are accompanying military forces in the field—is the way the legislation reads, which we interpret to be in contingency operations—are subject to the UCMJ.

But, there's a first that does—I guess, the followup question, then, is—because, if—first off, they've got 14 days, DOJ. Does that guidance reflect dissatisfaction or constitutional concerns about applying the UCMJ to civilians?

Mr. Bell: Because the MEJA law is well established, I believe there is a preference to use that law, because it has been tested in the courts. Obviously, the legislation relating to the application of UCMJ is a new law that has not been tested in the courts. And so, there is some natural preference to give the Justice Department the opportunity to prosecute under MEJA.

Senator THUNE. So, the DOD—DOD, at least at this point, absent that opportunity to test it in the courts, believes that MEJA provides a sounder basis for bringing justice to DOD civilian employees?

Mr. Bell: I don't believe that's the judgment, no, sir. I believe that we have full confidence in the ability of UCMJ to be applied equitably to contractors and DOD civilians. I think the concern is whether there is some basis on which the legislation might be constitutionally challenged, as opposed to being applicable for enforcement.

Senator THUNE. Okay. So, if the—the issue is going to be more of a—it's going to—that's going to be the—

Mr. Bell: Exactly.

Senator THUNE.—concern with respect to the—

Does the—with regard to just being able to support whatever the Department of Justice would do in that 14-day period when they're making a decision, I guess the other question has to do with whether or not the FBI, which doesn't currently have sufficient capability or an organizational structure outside the States to support prosecutions in a way that would effectively implement the DOD guidance. And is that—given the lack of that capability by the FBI, except in, maybe, what are very egregious cases, suggest that the DOJ is likely going to decline to prosecute, and, in most cases, going to cede prosecution of a given case to DOD?

Mr. Bell: Actually, the primary difficulty—

Senator THUNE. As a practical matter. I mean, is—

Mr. Bell: As a practical matter, the difficulty, we believe, in the Department of Justice taking the case, is that they actually have to get the U.S. Attorneys office in the location of last residence of the alleged criminal to agree to take the case to prosecute it. That means that if the individual last left Boise, Idaho, on his way to Iraq, where he committed a crime, that the U.S. Attorney for the area in Boise, Idaho, would have to agree to take the case. All other considerations, in terms of his caseload, his—the availability of his people, his familiarity with military operations, his familiarity with Iraq, would all be considerations that might cause him or her to agree to take the case, or not.

So, it's—while we give them that preference, and er—we've limited it to 14 days, by agreement with the Justice Department, because if they make a decision not to take that case, then we believe we should proceed to a speedy investigation and indictment, if it's so called for.

Senator THUNE. And would that be the outcome that the DOD had, sort of, intended? I mean, it looks like you get—it gives you the constitutional protection of giving DOJ the, sort of, right of first refusal to prosecute, but, ultimately, DOD is going to be—end up with most of those cases, it would appear.

Mr. Bell: We're certainly prepared for that. And in the discussions I had when we discussed this in September, when I was over in Iraq, we discussed with General Petraeus and his staff judge advocate what some of the staffing implications would be for both investigators, as well as attorneys and paralegals, which they are prepared to support in moving ahead with UCMJ.

Senator THUNE. Mr. Parsons, the Army Contracting Task Force, found, among other things, that post-award contract management was inadequate, and referred to, in particular, the failure to appoint and train contracting officer representatives. What actions will the Army Contracting Command undertake to help assure that, one, an adequate number of contracting officer representatives will be retained to provide post-award contract management support for expeditionary operations, and, two, that those contract operating representatives will be sufficiently trained to provide that support?

Mr. Parsons: Sir, we've already taken a number of actions. As I mentioned earlier, the concept plan that we have submitted as—for the Army Contracting Command—actually establishes what we call “quality assurance representative” positions. And these individuals are experts in quality—quality control, quality management. And we are going to be assigning them the responsibility of ensuring that contracting officer representatives are, one, appointed for each contract; two, are trained; and, three, are actually performing their duties. We've already—have initiated this in Kuwait, where we've trained over 200 additional contracting officer representatives. Every contract in Kuwait now has an assigned and trained contracting officer representative. And the—now what we're doing is actually going out and evaluating how well they're performing those duties. So, we're going to take that model and start applying that across the Department of the Army.

The other thing that we have been doing is working very closely with the Combined Armed Support Command, which is part of TRADOC, the Training Doctrine Command, and they are developing additional contracting officer representative courses that are now being taught to all the logistics officers, logistics NCOs. Many of the pre-command courses now are giving the contracting officer representative training in it, as well.

General Thompson: Sir, if I can add to that, just a minute. We have evaluated, not just the contracting courses, but also the content for the non-acquisition personnel, to make sure they recognize the importance of contracting. The operating part of the Army, not the contracting workforce, has got an inherent responsibility—and this gets back to the Gansler Commission recommendation, to recognize they have a role in contracting. And their role is helping define that requirement. What do they want? When do they want it? How much? And then, on the back end of the contract, they have a significant role in appointing contracting officer representatives. These are not professional contracting individuals—military, civilian—these are the Sergeant Thompsons or the—you know, the Captain Thompsons or the Lieutenant Thompsons out there, that are there to see that the product or service that we contracted for is properly delivered and is the right product or service.

And so, this is part of a culture change in the operating part of the Army, that we need to get them to understand and accept, and we are actively adjusting all the course content, all the way up to the general-officer level. And the Chief of Staff of the Army has got me, personally, talking to the general-officer classes now about the importance of their role in contract requirements and in contract management, and part of that is appointing the right number and the right people to do the contracting officer representative tasks.

Senator THUNE. Mr. Finley, what will AT&L do, if anything, to support what the Army's trying to do to develop this critical post-award contract management capability?

Mr. Finley: Senator Thune, AT&L will be extremely integrated and support, not only the Army, but, from a best of best practices, we will take all the good things that the Army is doing, we will factor that in with the efforts that are already doing, which, to a large extent, have been coordinated with the Army and the Air Force and the Navy, but we are resetting, restructuring, implementing new coursework for all levels—acquisition, contracting, as well as non-acquisition, noncontracting personnel—geared toward the global-war-on-terror environment that we're now in.

To a large extent, a lot of that work has been done. We have the ability to have people tap in on the Internet, when they're in theater, and come into our library of capabilities and training. And I believe we're on the right track.

I mean, we have a lot of work to do, though, to get this to the next level of effectiveness, you know, to fight the fight, train the way we fight, and get this expeditionary training done more as a part of our normal way doing business in our training commands, if you will, than make it, you know, the exception.

Senator THUNE. You do see the need, though, to strengthen that capability across the other services—

Mr. Finley: Yes, sir

Senator THUNE.—as well.

Mr. Finley: Absolutely.

General Thompson: Sir, the Defense Acquisition University that is—reports to the—Mr. Finley and Secretary Young, has strengthened their coursework, and they do have an online course for contracting officer representative, and we continue to upgrade the content of that course with the lessons learned. And it's a requirement for the Army CORs to take that online course, and then we have the additional training that we put them through now with the—the direct help that they get with the quality assurance representatives.

Senator THUNE. Okay.

Thank you, Mr. Chairman.

Senator AKAKA. Thank you, Senator Thune.

Section 852 of the National Defense Authorization Act for fiscal year 2008 established an Acquisition Workforce Development Fund. Substantial amounts of money are supposed to be transferred to that fund, beginning this summer.

Secretary Finley, can you describe the steps that the Department is taking to ensure that this money is spent in a sound manner to address efficiencies in DOD's acquisition workforce?

Mr. Finley: Yes, Mr. Chairman. We have solicited proposals from all the components in DOD for their recommendations on how to address this Acquisition Development Fund. Those proposals have been received. We have over 80 proposals that we have received, and we have binned those into the different categories of training, retention, recruitment, hiring, and so on.

The efforts are to see how we fund this. There's many ways the Department can look to fund a—basically, what's been authorized, but not appropriated. And we have met with the Comptroller's Office to provide us some alternatives on how to implement some of the funding scenarios that have been identified, you know, for going forward.

We have met, at—with all the services. We have integrated in with the various other organizations in OSD to start communicate the fund, the approach. We're taking a very strategic approach on this. Again, the global war on terror is very different than the cold war. This is not a personnel account, you know, that needs to be tapped into, it's more of a strategic account for addressing some pockets of areas that we feel have—need attention.

My personal concern on this is, this is a lot of money. This needs the oversight and the checks and balances to assure ourselves that we're spending the taxpayers' money wisely.

And I'm not fast to spend, but I am fast with a sense of urgency to determine where the proposals have come in, where they best fit, where are the gaps in these proposals that have come in, that we have missed the needs, if you will. And that comes about by having a discussion and reflection with the services and the joint staff and the members of OSD to say, "Here's what we got, here's where we're headed." This needs to be reflected in our human-capital strategic-planning process for DOD, as well as AT&L. And it's receiving a very high level of attention from me, personally.

Senator AKAKA. General Thompson and Mr. Parsons, is the Army taking steps to evaluate its need for this funding and the way in

which you could use it to address deficiencies in your acquisition workforce?

General Thompson: Yes, sir, we definitely are. The working group with the services in the different staff elements of OSD have been tightly linked in this. We are just a couple of weeks away from taking the recommendations on those 80 proposals forward to the service acquisition executives to make some decisions. You know, with me today is my senior person that does all of the workforce planning and initiatives for the Army, and he spent a significant amount of his time over the last couple of months helping to develop those proposals and prioritize them from the Army's perspective, leveraging what we already do. So, like Secretary Finley said, we're looking, not to duplicate what we already do, from the standpoint of recruitment, training, and retention, we're looking at, Where are there gaps today, and where is additional resources, and what do we get with those additional resources?

Mr. Parsons: Sir, I'd just like to add—and it gets to the point that Senator Thune raised earlier. In order to get this contracting command the additional resources, we definitely are going to need to take advantage of some of the programs that are being considered in the area of recruitment and retention. A lot of interest has been expressed about increasing number of interns, looking at student loan repayment opportunities. And these are all things that the team is taking a look at, in trying to prioritize and figure out how we distribute that.

Senator AKAKA. Secretary Finley, General Thompson, and Mr. Parsons, a related provision to Section 852, Section 807 of the National Defense Authorization Act for fiscal year 2008 requires DOD to develop inventories and review functions currently performed by contractors. The idea is that you can't effectively manage your workforce, including your contractor workforce, unless you know what they are—what they are and what they aren't doing. This provision is a counterpart to the F-A-I-R, FAIR Act, which already requires similar inventories of functions performed by government personnel.

Can you tell us what steps the Department is taking to implement the requirements of Section 807?

Secretary Finley?

Mr. Finley: Yes, sir. Section 807, for us, represents a major effort, you know, to implement. There's part of Section 807 that have already been well underway, in terms of trying to understand acquisition services and address acquisition services, which is a substantial part of the overall budget. We've already implemented policy in this respect, but it's the implementation of this policy that's going to need to be executed. I would see opportunities, for example, from the 852, to leverage a fast start in the area of the 807, to get us going.

The fundamental challenge, though, is that this kind of activity—be it interns or other hiring of people—to jumpstart some shortfalls, which is, I think, excellent for the short-term—but, for the longer term, this has to be POM'd into our planning for the Department of Defense. And that's where some of the planning activity right now needs to come together, from the strategic planning point of view, as to how we are, in fact, going to make this happen. And

my personal recommendation is that we start making this happen in the POM-10 cycle.

So, we envision that the 807 is a work in progress that needs to be further defined, further understood. How will we meet the requirements of this, from a strategic planning point of view and going forward? So, we don't just shoot from the hip, we don't have a knee-jerk reaction. We have addressed this from an acquisition-of-services point of view over—I'd say, over the past 18 months, and we have policy out there, but we are going to need to do far more work now for implementation.

General Thompson: Sir, from an Army perspective, you know, before Section 807 was made part of the law, the previous Army Secretary really recognized the need to get our arms around the total workforce, to include the contractors, and he required, you know, much to the chagrin of many people that had to do the reporting, for us to count noses on the contractor manpower equivalents. And we've been doing that for a number of years, and have a pretty thorough process in place right now to do that.

We also are now looking at those things that are really inherently governmental, and looking at the business-case analysis and insourcing things that we are currently, in many cases, using contractors for. If it's an enduring function and it's inherently governmental, it should be a government employee who's doing that.

And, just on my own staff, for example—I use one example, where we have 11 different support contracts. We've now consolidated them into one. And the next step to that is taking about 50 of those contract employees and insourcing the appropriate number to be government civilians, Army civilians, because it's enduring functions that were having contractors doing. And that kind of activity is going on across the Army, and that's part of what I use as an example when I educate the senior leaders, that they need to be doing that in their organizations, as well.

Senator AKAKA. Mr. Parsons?

Mr. Parsons: And I'll just add to that, sir, that what we are finding now with our contracting people, as a way of enforcing that, is to make sure that all contract services have been reviewed by a commander and determined to be necessary with addressing these issues, like whether it's an enduring service. So, our contracting folks will not execute a contract for contract services unless approval has been in there by the commander. So, we've got a very disciplined process to where we now start focusing on contract services and how we ought to be executing it.

General Thompson: Inside the direct-report organizations that come to me, all of those approvals for contract services come to me to be signed off on. And I assure you, I ask some very hard questions.

Senator AKAKA. Thank you.

Senator Levin?

Senator LEVIN. Thank you, Mr. Chairman.

A few weeks ago, the Boston Globe reported that KBR employs about 10,000 Americans in Iraq through subsidiaries in the Cayman Islands. These subsidiaries are shell corporations, they have no function other than to taxes. And a KBR spokesman acknowledged that these subsidiaries were created to enable the company

to avoid paying Social Security and Medicare taxes, as well as State unemployment taxes. And I know that Senator McCaskill raised this question, but I'd like to pursue it with you, Secretary Finley, a little bit more thoroughly than she had an opportunity to do.

Now, the tax savings are passed along to DOD, but the workers of KBR suffer, and KBR gains a competitive advantage over companies that pay their taxes. I don't think it's the intent of the Internal Revenue Code that companies be able to form shell corporations, wholly-owned subsidiaries and tax havens, and then avoid paying Medicare taxes and Social Security taxes. That cannot be the purpose of the Internal Revenue Code.

The article in the Boston Globe reports that the Department of Defense has known about KBR's avoidance of taxes since at least 2004, when the issue was flagged in DCAA audit reports.

So, Secretary Finley, let me start with you. Does it concern you that 10,000 Americans working in Iraq are going to not have unemployment benefits and will receive less money from Social Security when they retire because of KBR's activities in the Caymans?

Mr. Finley: Yes, sir.

Senator LEVIN. What is the Department doing about it?

Mr. Finley: I'm not familiar with the details, Senator Levin. I would have to take the question for the record, and would be more than happy, you know, to get back to you on the details of what the DOD is doing. [INFORMATION]

Senator LEVIN. Do you know whether the DOD has ever consulted with the IRS on this subject?

Mr. Finley: No, sir, I do not.

Senator LEVIN. Now, there's a contract going on now, a competition for LOGCAP IV, which is a follow-on to the contract that KBR currently holds, and KBR is one of the companies that's competing for the follow-on contract. Are you familiar with the competition that's going on now for LOGCAP IV, Secretary Finley?

Mr. Finley: I'm not—I have—do not have a detailed familiarity with that contract.

Senator LEVIN. Okay. By the way, are you—General, are you familiar with this issue? General Thompson?

General Thompson: On the LOGCAP IV?

Senator LEVIN. Yeah.

General Thompson: I'll let Mr. Parsons address that.

Senator LEVIN. Okay, fine. Sure.

Mr. Parsons: Sir, the—as you know, the LOGCAP IV has been under re-evaluation, based on the Government Accountability Office decision that the protests that were filed by the two unsuccessful offers were sustainable. So, that process is underway. The evaluation is—been taking place for a number of months. Beyond that, I can't really address the specifics on this exact issue on the off-shore and the impact on that evaluation.

Senator LEVIN. Well, putting aside the impact on the evaluation of a particular contract—and I can understand the reluctance to get into the details of a competition—but, in general, are you troubled, Mr. Parsons, by what I've described?

Mr. Parsons: Sir—

Senator LEVIN. Does it trouble you, that we've got 10,000 Americans working in Iraq who lose their unemployment compensation while they're there because a company has created a—the company that is operating in Iraq has created a phony subsidiary in the Caymans, a totally shell corporation, paper corporation, with no purpose other than to avoid taxes? Is that something which, at least on its surface, would trouble you?

Mr. Parsons: Sir, I'm not real familiar with the issue. I do know enough that there is nothing that prohibits it in law or regulation. And I'll have to defer to the Department of Defense on this, because I really believe it's a broader policy issue than at my level or the at the Army level.

Senator LEVIN. Do you know whether the IRS has ever been consulted as to whether or not this is an appropriate way to avoid taxes?

Mr. Parsons: I have no knowledge of that, sir.

Senator LEVIN. General, would you know anything about this issue?

General Thompson: No, sir, I have no knowledge of that either.

Senator LEVIN. Okay. Well, either Mr. Parsons, then, or Secretary Finley, would you get back to the subcommittee with answers to the questions? [INFORMATION]

Senator LEVIN. I'm glad to hear that Secretary Finley's troubled by it, because I think Americans in these families that these workers are in would surely directly be troubled by it. I mean, it's easy to say, "Well, the DOD benefits, because they're not—their contract can go for less, because they're not paying taxes that they should be paying." I mean, that's an easy out for all the employees of the DOD. Maybe the DOD ought to stop paying taxes on all of its employees, or all contractors' employees, put it that way, so that contractors can bid lower, because they're not paying taxes on their employees. We wouldn't tolerate that for one minute for a contractor that's operating in the United States, and I'm not sure we should—I don't think we should tolerate it for a contractor who's hiring American citizens overseas.

And so, I guess, Secretary Finley, maybe I should put this responsibility on you. I'm not sure whether you or Mr. Parsons is the right person to give us an answer for the record, but does the—does the Department—has the Department consulted with the IRS on this issue? And what's the IRS's response been? And whether or not the Department is considering including in its specifications for contracts requirements that American employees working abroad have their Medicare and their other payroll taxes deducted—would you get back to us, Mr. Secretary?

Mr. Finley: Yes, sir. I'd be happy to. [INFORMATION]

Senator LEVIN. Thank you.

Thank you very much, Mr. Chairman.

Senator AKAKA. Thank you, Senator Levin.

Senator Thune?

Senator THUNE. Mr. Chairman, I don't have any further questions, so—I appreciate our panel being here, and thank you.

Senator AKAKA. Let me ask one question, here, before we adjourn.

The Gansler Commission reported extensively on the inadequacies of contract management in Iraq, explaining that—and I quote, “After the contract is awarded, there are no resources trained to monitor and ensure that the contract is performing and providing the services needed by the warfighter,” unquote.

I understand that the Army is trying to address this problem by shifting existing contract oversight resources to Iraq. However, the Army and other DOD components have long had a shortage of trained, experienced, qualified personnel to perform needed oversight on service contracts here in the United States. For example, in March 2005, GAO reported that the Army failed even assign contract surveillance personnel to 13 of 30 contracts reviewed. In October 2005, the DOD inspector general reported that only one—three of 23 contracts reviewed contained adequate contract surveillance plans, and 14 had no surveillance plans at all. And in 2006 and 2007, the IG reported that DOD failed to perform adequate contract surveillance on 23 of 24 task orders awarded through the Department of the Interior, 15 of 61 task orders awarded through the Department of the Treasury, and 54 of 56 task orders awarded to the General Services Administration.

Secretary Finley, General Thompson, and Mr. Parsons, what steps are the Department of Defense and Department of Army taking to address shortcomings in the surveillance of service contracts and ensure that you have the workforce you need to ensure that the Department gets the performance that it pays for?

Mr. Finley: Mr. Chairman—

Senator AKAKA: Mr. Finley?

Mr. Finley:—I’m not familiar with the specific statistics that you have cited, but the efforts that we are doing is, we are doing a review of our contracting competencies for all of the DOD. It’s an effort that we started last year, and it’s a effort that we expect will be completed by this summer. Within that construct, I would expect that the surveillance plans and the effectiveness of our oversight in those surveillance plans will be addressed from a contractual contract-management point of view.

So, I’ll be happy to take the question for the record and outline for you what we have—work we have left to do. [INFORMATION]

General Thompson: Sir—

Senator AKAKA: General Thompson?

General Thompson:—like Dr. Finley, I’m not familiar with the specific examples cited in the GAO and the audit reports, but, from a broader perspective, we do have an Army policy now that we are enforcing, that all contracts—all service contracts over \$25 have an appointed COR. The example that Mr. Parsons gave you earlier, about the shortfall that we found in Kuwait, and now, in Kuwait, in particular, we’ve assigned a COR to every contract, I do know—and the numbers, I believe, are about 100 DCMA personnel have been sent in the last couple of months to Iraq to increase the contract management ability of the Joint Contracting Command in Iraq, and there is an additional number of personnel—and I’m not sure of the exact number—that will deploy over there once we identify them and get them ready. So, this is something that we are systemically addressing across the board.

Sir, if I could just take one opportunity—I made a statement earlier, to a question that was asked by Senator McCaskill about the AEY ammo contract and the role of DCMA. DCMA did conduct a pre-award survey for that contract, but the past-performance award was something that was done by the Army Source Selection Authority. And the actions of the Army Source Selection Authority on that contract are part of what were reviewing. So, I just did—I want to make sure that I made that correction for the record, publicly, because I didn't want to have a misstatement for the record.

Senator AKAKA. Thank you very much. That certainly will be recorded.

Mr. Parsons?

Mr. Parsons: Sir, I'd just like to amplify on the contracting-officer-representative discussion, that in addition to this additional training that we are giving for CORs, we've developed a new training course at the Combined Armed Services—Combined Armed Support Command to focus on preparing performance work statements for service contracts. And part of that training now requires—or, teaches the individuals how to prepare a quality assurance surveillance plan. And we are instructing our contracting personnel that, for every service contract that they issue, that that quality assurance service plan must be—surveillance plan—must be a part of the contract surveillance in the post-award activity

So, again, a lot of this is training the nonacquisition people on their role in contractor management and contract management in—we're developing as many new courses as we can to get them additional training and better educated.

Senator AKAKA. Okay.

Well, I thank you all very much for your part in this—your testimony and your responses in this hearing on contracting in Iraq and Afghanistan. I look forward to working with all of you to continue to try to improve our programs, wherever they are. It's a huge operation, here, but we want to do the best we can to help our military be the best that they can, as well.

And, with that, I thank you, again. This hearing is adjourned.

[Whereupon, at 4:18 p.m., the hearing was adjourned.]