

**HEARING TO RECEIVE TESTIMONY ON THE  
FINAL REPORT OF THE COMMISSION ON  
WARTIME CONTRACTING IN IRAQ AND AF-  
GHANISTAN**

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**WEDNESDAY, OCTOBER 19, 2011**

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-232A, Russell Senate Office Building, Senator Claire McCaskill (chairwoman of the subcommittee) presiding.

Committee members present: Senators McCaskill, Manchin, and Ayotte.

Senator also present: Senator Blumenthal.

Committee staff member present: Leah C. Brewer, nominations and hearings clerk.

Majority staff members present: Peter K. Levine, general counsel; and William G.P. Monahan, counsel.

Minority staff member present: Pablo E. Carrillo, minority investigative counsel.

Staff assistants present: Jennifer R. Knowles, Brian F. Sebold, and Breon N. Wells.

Committee members' assistants present: Joanne McLaughlin, assistant to Senator Manchin; Ethan Saxon, assistant to Senator Blumenthal; Brad Bowman, assistant to Senator Ayotte; and Dave Hanke, assistant to Senator Cornyn.

**OPENING STATEMENT OF SENATOR CLAIRE McCASKILL,  
CHAIRWOMAN**

Senator McCASKILL. Thank you all for being here.

This hearing will come to order. And today we have—I know it is weird, but this is like a special treat for me, which tells you something about my life, that this is a special treat.

But it is a special treat because we have the opportunity, in one hearing, to have representatives of the Department of Defense and members of the very hard-working war contracting commission that spent countless hours, dozens of trips abroad, compiling an amazing report and record, documenting, I think, the most significant issue facing perhaps military readiness. And that is how we handle contracting in contingencies.

It is obviously something I have spent a great deal of time on since I arrived in the Senate. It is something that I think we simply cannot afford not to get fixed. I think it is very unrealistic that we will ever get to a point that we will not be relying heavily on contractors in any future contingency. And so, this is a core competency that we have really been behind the curve on.

And I will give a brief opening statement and then give my ranking member, Senator Ayotte, a chance to make comments.

And thank you, Senator Blumenthal, for being here. I think it is great that you are attending.

And then we will hear from the witnesses and have an opportunity to answer questions.

The subcommittee today meets to consider the final report of the Commission on Wartime Contracting in Iraq and Afghanistan. The commission was established pursuant to Section 841 of the National Defense Authorization Act for Fiscal Year 2008, a provision which originated as a Webb- McCaskill amendment that was offered and passed on the Senate floor.

More than 4 years ago, when Senator Webb and I began to advocate for the creation of this commission, I was inspired by my State's own Harry Truman, who, as a Senator, headed a committee that investigated and uncovered millions of dollars of war profiteering, fraud, and wasteful spending in World War II.

Senator Webb and I agreed that what we needed was a new investigatory body to honor the Truman committee, to protect our tax dollars, and bring better accountability to the way we do business while at war.

Since that time, I have taken trips to Iraq and Afghanistan, where I have seen with my own eyes the lack of planning, inadequate oversight, and sheer waste in our contingency contracting operations. I remember being particularly appalled—I can tell a number of anecdotal stories about my visits to both Iraq and Afghanistan on contracting oversight trips. But I particularly remember the time when I asked a general in Kuwait, where a lot of the contracting work was done, how did this happen? How did this get so out of control?

And this was near the end of my trip, when I had spent time in Baghdad looking at the LOGCAP contract and other contracts. And this general was very candid with me. And he said, "I wanted three kinds of ice cream in the mess hall yesterday, and I didn't care what it cost."

I think we owe the taxpayers better than that. And I think even though that is anecdotal, I think the war contracting commission's report shows that my sense and what I believed on those trips was, in fact, factually correct. That there was literally billions and billions and billions—and I could keep saying this, getting all the way to \$60 billion—that potentially went up in smoke through waste, fraud, and abuse.

The commission has been tireless in its examination of the flaws in our wartime contracting policies and practices. Over the last 3-plus years, the commission has held 25 hearings, traveled to Iraq and Afghanistan at least 15 times, and interviewed hundreds of military and civilian Federal employees, contractor employees, and contracting experts.

In many ways, the commission has validated our worst fears about the way we were contracting in Iraq and Afghanistan. The commission found that agencies over-rely on contractors for contingency operations and that inadequate planning and lack of oversight for such contracting have led to an exceptional level of waste, fraud, and abuse. It is beyond distressing to think of how much the billions of dollars that we spent on contracting has been lost.

The commission's report and recommendations go to the heart of how we got into this mess and how we can avoid repeating a situation where we are spending billions of dollars, that we needed an understanding and control over where the money is going.

The commission's final report makes 15 recommendations, which fall into four broad categories: recommendations for reducing the Government's over reliance on contractors, recommendations for organizational changes to provide greater focus on contingency contracting, recommendations for additional staffing and resources needed to improve oversight and management of these contracts, and recommendations for changes in contracting policies, including policies relative to past performance data, suspension and debarment procedures, access to contractor records, competition requirements, and jurisdiction over foreign contractors.

I applaud the commission for their thorough, comprehensive, and bipartisan review and for the tremendous contribution they have made to our understanding of the problems we face in contingency contracting.

If the commission's report becomes one more report sitting on the bookshelf, this effort will have been a failure. The Congress and the Department of Defense will have missed a critical opportunity to serve our military and the people of this great Nation.

That is why I am currently working with Senator Webb and others on comprehensive legislation addressing the problems identified by the commission, which we plan to introduce later this year. By providing senior DOD and commission witnesses an opportunity to discuss the steps that the Department of Defense has taken to implement the commission's recommendations, the extent to which these steps meet the intent of the recommendations, and the basis for any disagreement on the recommendations, today's hearing should serve as an important milestone in the development of that legislation.

I look forward to the testimony of our witnesses, and I will now turn the microphone over to Senator Ayotte.

#### **STATEMENT OF SENATOR KELLY AYOTTE**

Senator AYOTTE. Oh, thank you very much, Madam Chairwoman. And I want to thank you so much for holding this hearing and for your deep interest in this very important issue.

And I welcome all of our witnesses today, and particularly want to thank Mr. Zakheim. Did I pronounce your name correctly? All right. Thank you.

And Ms. Schinasi, as well as the other members of the Commission on Wartime Contracting for their important work, their tireless efforts. And this is a final report that I think not only members of this committee, but every member of Congress should read. So I really appreciate your work, and certainly appreciate General

Bash and Secretary Kendall being here today to talk about this report.

The Commission on Wartime Contracting is an independent, bipartisan commission, as the chairwoman mentioned, created by Congress in 2008, and this final report represents the culmination of tremendous work that has consisted of extensive research, hearings, meetings, and the work of professional staff stationed full-time in Baghdad and Kabul. And I congratulate the commission on this report.

I believe getting contingency contracting right is particularly important for two primary reasons. First, ensuring mission success in supporting our warfighters in Afghanistan and Iraq demand no less, that we get this right. Sufficient oversight of contracting may be decisive in determining the outcome in Afghanistan and Iraq.

As General Petraeus said in his September 2010 counterinsurgency contracting guidance, “The scale of our contracting efforts in Afghanistan represents both an opportunity and a danger. With proper oversight, contracting can spur economic development and support the Afghan government’s and ISAF’s campaign objectives.

“If, however, we spend large quantities of international contracting funds quickly and with insufficient oversight, it is likely that some of those funds will unintentionally fuel corruption, finance insurgent organizations, strengthen criminal patronage networks, and undermine our efforts in Afghanistan.”

I could not agree more. It is often said that contingency contracting is the most powerful nonkinetic weapon on the battlefield, especially in a counterinsurgency campaign. We must not haphazardly, obviously, or hastily contract. Doing so can result in taxpayer money ending up in the hands of our enemies.

It is unacceptable for one dollar of ours and our taxpayer dollars to end up in the hands of our enemies, and that is why this is so important. That is why Senator Brown and I introduced legislation earlier this year called No Contracting with the Enemy. And we need to make sure that it is easier for U.S. contracting officials to get out of contracts with contractors who fuel—excuse me—funnel taxpayer resources to the enemies of the United States.

Contracting in Kandahar in a war should not be treated the same as contracting in Fort Hood, Texas, in peacetime. I am pleased that key provisions of our No Contracting with the Enemy legislation were included in the National Defense Authorization passed by the Senate Armed Services Committee.

And I would also note that this legislation hasn’t been brought to the floor yet, and I am very hopeful and was encouraged by the majority leader’s statement 2 days ago that he was going to bring forward the defense authorization to the floor. I think this is just one provision that is so important to getting that defense authorization passed.

The success of our contracting must be viewed through the metric of how well it supports our campaign objectives and the mission outcome. Contracting must be thoroughly integrated into all intelligence planning and operations. Contingency contracting must not be viewed as a separate logistical activity.

As General Petraeus said, contingency contracting is fundamentally “commanders’ business.” While General Petraeus probably had ISAF commanders in mind, I would include the leadership at the Pentagon, the State Department, and USAID in that statement as well.

Our DOD witnesses, as well as their counterparts at the State Department and at USAID, I am sure will agree that oversight of contingency contracting is a major, not a peripheral, part of their responsibilities.

The second reason contingency contracting, and it certainly doesn’t come secondary to the first reason I talked about, is because of we are at war, and we are in a time of fiscal austerity. We can’t afford to waste a single dollar as we seek to give our troops the resources that they need. Every dollar wasted or spent inefficiently diverts resources away from our mission and from protecting our country.

As ranking member of this subcommittee and also as the spouse of a veteran, I am not going to sit by idly, and I know that the chairwoman isn’t either, and allow this to continue to happen. For these reasons, I believe we must engage in a serious and ongoing discussion to understand the current challenges and the best way to address them.

However, let me be clear. I don’t want to sit around and admire the problem. The commission has concluded that between \$31 billion and \$60 billion of taxpayer funds have been lost to contract waste and fraud in Iraq and Afghanistan. It is outrageous.

If this is accurate—and I think, given the thorough work that was done by this commission, it is very accurate—we need to implement the appropriate reforms without delay with a real sense of urgency.

In order to help catalyze these efforts and to build on the excellent work of the commission, yesterday I was proud to join Senator McCaskill and Senator Webb in sending a letter to the Comptroller General asking GAO to assess the actions of the Department of Defense and State, as well as USAID, in response to the findings and recommendations of the commission. We need to clearly understand what the departments are doing to implement the commission’s recommendations right now, and I am looking forward to hearing from our witnesses on that issue today.

When there are areas of disagreement with the commission’s recommendations, perhaps related to the right to appeal and the establishment of a Joint Staff J10 element, I want to hear from the Department of Defense and the Department of State and USAID why they disagree and why they don’t believe that those recommendations should be implemented. And I think the onus is on the Department of Defense and certainly the Secretary of State’s office to tell us why shouldn’t we implement them.

I think today’s hearing will be an important part of the effort to ensure that we are conducting proper oversight of contingency contracting for the troops. The taxpayers, everyone deserves nothing less.

Before I conclude, allow me to make a brief and related comment regarding Iraq. Over the weekend, there were reports suggesting that all U.S. troops would leave Iraq by the end of the year. While

Iraq is a sovereign country and immunity for our troops is absolutely essential, and I certainly agree with the administration on that, I believe such a hasty departure may endanger a successful outcome in Iraq that has been made possible with the ultimate sacrifice of over 4,400 Americans.

In addition, the precipitous withdrawal of almost all U.S. troops by the end of the year will almost certainly invite a new and dangerous round of problems related to contracting. The Department of State transition into Iraq as U.S. troops almost completely withdraw simply cannot independently acquire and oversee the scale and nature of contracted services that will be required. And that is a real issue and concern I think needs to be addressed right away.

While the State Department intends to rely on the Department of Defense for help, the pace and extent of the administration's plan to withdraw the military and transition the State Department into Iraq will expose the U.S. to risks that taxpayer dollars in support of the State Department's diplomatic mission in Iraq will be lost due to the same concerns—waste, fraud, and abuse—and perhaps, critically, that much of the progress that our service men and women achieved to help stabilize and rebuild Iraq could be endangered.

I am very troubled by this, and I am hopeful that we will also address this issue today. And I am going to continue to press for answers on this.

I also look forward to a discussion during today's hearing related to DOD's investment in building facilities in support of the military mission that the host governments will simply not be able to sustain.

I look forward to hearing from all of our witnesses on these important issues. And again, I thank you so much, Madam Chairwoman, for holding this important hearing, and I thank the witnesses for being here.

Senator McCASKILL. Thank you, Senator.

We will begin our testimony with Lieutenant General Brooks Bash. And I think the lieutenant part of that, General, just happened within a few months from today. So congratulations on another well-deserved promotion.

Lieutenant General Brooks Bash is the Director for Logistics, Joint Staff, at the Pentagon. As the J4, he is responsible for integrating logistics planning and execution in support of joint operations to drive joint force readiness, maximize the joint force commander's freedom of action, and advise the Chairman of the Joint Chiefs of Staff on logistics matters.

A proud graduate of the United States Air Force Academy, welcome Lieutenant General Bash, and we look forward to your testimony.

**STATEMENT OF LT. GEN. BROOKS L. BASH, USAF, DIRECTOR  
FOR LOGISTICS, J4, JOINT STAFF**

General BASH. Thank you, Madam Chairwoman.

And first, let me personally thank you for your leadership on this commission and the efforts this commission has had because I

think the perspective it has brought has been very valuable to the military, from my review.

Ranking Member Ayotte and distinguished members of the subcommittee, I am pleased to appear before you today to testify on the Department of Defense's progress in enhancing our ability to plan for and execute operational contract support in contingency operations.

As the Joint Staff's Director for Logistics, I advise the Chairman of the Joint Chiefs on the entire spectrum of logistics, to include strategic and operational planning and doctrines related to operational contract support, or OCS. My staff and I work closely with the Office of the Secretary of Defense, the services, and defense agencies to refine the policies, doctrine, tools, and processes needed to effectively plan for OCS.

I am pleased to report the department has made significant progress to improve the operational planning need to effectively use contracted support as a part of DOD's total force. I am confident that our ongoing efforts will ensure that we meet the warfighters' current and future needs, while judiciously managing DOD's resources and balancing risk.

As Mr. Kendall and I noted in our written statement, DOD uses contract support to operations to provide a number of important capabilities, from fuel delivery to food service. We have come to leverage contracting as an important force multiplier to overcome fiscal, political, and cultural realities. Contracting today is an important and necessary capability for our forces.

Due to the ascendancy of contracting as an integral part of military operations, the Joint Staff has led a variety of efforts to institutionalize this critical capability to ensure that when we go to war in the future, we are better prepared to execute effectively and efficiently, and most importantly, to provide the best possible support to the warfighter at a reasonable cost. I am absolutely committed to this course set by Admiral Mullen and affirmed by General Dempsey to ensure we get this right quickly.

Institutionalization of OCS is a major effort that is well underway and represents a major cultural shift in how we plan for and execute military operations. We began this deliberate effort in 2007, and we have made progress. We are committed to continuing to strengthen OCS strategic guidance, doctrine, policies, processes, and resources as expeditiously as possible.

Much has been done to improve OCS, and our work will continue. The underlying theme for future planning and supporting processes involves closer links of contracts, contractors, and operational effects to more rapidly and decisively achieve the joint force commander's intent.

We have significantly increased our focus on planning for operational contract support to not only deliver supplies and services to the warfighter in a responsible and cost-effective manner, but to leverage the economic benefits of DOD's spending to achieve national strategic and operational objectives.

In closing, I would like to emphasize a few critical points with respect to the department's increased use of contracted support. First, I am convinced of the military advantage that this capability brings when planned and used properly.

Our military's contracting capabilities enable us to maintain a scalable, responsive, and cost-effective all-volunteer force, while maintaining combat capabilities. In the past decade, we have recognized that contracting delivers important support to our troops, while advancing operational objectives such as those required in the counterinsurgency strategy or stability operations.

Our contracting professionals, logisticians, forward-operating base mayors, and commanders in the field are performing superbly in a challenging, dangerous environment with limited resources and complex supporting policies and processes.

The bottom line is that contracting is an important, integral part of our military capability, and our efforts are squarely focused on how best to accomplish the mission. I know we share this objective with Mr. Kendall and the entire OSD staff.

I would like to thank you and your staff for your insights, observations, and close working relationship, all dedicated to helping the department improve wartime contracting. I believe that our goals are absolutely the same as yours. We are in lockstep to see that warfighters' needs are met, balancing operational necessity with careful stewardship of our resources.

Again, thank you for the opportunity to appear before you and I look forward to your questions.

[The prepared statement of General Bash and Mr. Kendall follows:]

Senator MCCASKILL. Thank you.

Now we will welcome—I have got to get back to your bio. I remember West Point.

Mr. KENDALL. That is a good start, Madam Chairwoman.

Senator MCCASKILL. Here we go. It was a good start, wasn't it? It was a great start. Some of our very best leaders in this country started there.

Frank Kendall is the acting Under Secretary of Defense for Acquisition, Technology, and Logistics. He has more than 35 years of experience in engineering, management, defense acquisition, and national security affairs in private industry, Government, and the military.

Thank you, Secretary Kendall, for being here.

**STATEMENT OF HON. FRANK KENDALL, PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS**

Mr. KENDALL. Thank you, Chairwoman McCaskill.

Chairwoman McCaskill, Ranking Member Ayotte, and distinguished members of the Senate Armed Services Committee Subcommittee on Readiness and Management, I am Frank Kendall, Acting Under Secretary of Defense for Acquisition, Technology, and Logistics.

I am honored to be here today and appreciate the opportunity to discuss the department's continuing efforts to enhance our ability to execute contracting in a wartime environment and discuss with you the recently released Commission on Wartime Contracting final report.

The department has been working closely with the commission since its inception in 2008, and we appreciate and welcome its ef-

forts to assist the department in eliminating waste, fraud, and abuse in wartime contracting.

Chairwoman McCaskill, I would like to request that my written testimony for General Bash and I be admitted to the record, please.

Senator McCASKILL. Without objection.

Mr. KENDALL. In that testimony, Lieutenant General Brooks and I—Brooks Bash and I lay out the history of contingency contracting and discuss how the Department of Defense has responded to the unique challenges brought on by the unprecedented large-scale reliance on contractors in Iraq and Afghanistan over the past decade. We cover the size of contractor support to CENTCOM and the efforts the department has undertaken to improve our ability to manage contractors.

This includes oversight mechanisms that had to be created from nothing or increased in capacity and capability to effectively manage contractors on the battlefield, the development of new doctrine and organizations, the establishment of training programs, the development of tools to assist contract administrators, the growth in senior leaders and professionals, and the steps being taken to ensure we neither over-rely on contractors nor are caught unprepared should the need to use contractors so extensively reoccur after we complete our operations in Iraq and Afghanistan.

Rather than summarize all the material now that is in our written report, our written submission, I would like to quickly address the specific topics noted in the letter that I received from you, Chairwoman McCaskill and Ranking Member Ayotte.

First, with regard to the commission's final report, the department was previously aware of all but four of the recommendations from previous reports. Together, these reports contained 82 recommendations—35 from the first interim report, 32 in the second interim report, and 15 in the final report. Upon the issuance of the first interim report, the department stood up a DOD task force in July 2009 to analyze the recommendations and to act on them.

In March 2010, the Under Secretary of Defense for Acquisition, Technology, and Logistics created a permanent board to provide strategic leadership to the multiple stakeholders working to institutionalize operational contract support and to track those accepted recommendations to completion. As a result of these steps, a great majority of the commission's final recommendations have already been acted upon.

For the new strategic recommendations, the department is currently completing its analysis. In broad terms, however, we agree in principle with the overarching precepts driving the commission's final report recommendations.

There are four commission recommendations not under DOD purview. They are numbers 8, 9, 14, and 15. Although these recommendations are directed at Congress and not the DOD, I believe that Recommendation 14 regarding funding for contingency contracting is essential. Without continued support or the funding from Congress, we run the risk of losing ground on oversight of contingency contracting for the future.

As for the 11 DOD-specific recommendations, we embrace all of them in principle and are in the process of implementing most of them already. Recommendation 1 on using risk factors in deciding

whether to contract in contingencies. This is a new recommendation. So we are in the process of analyzing its full requirements.

But we agree on the importance of risk-based assessments, and the department has already taken some steps in this direction. In theater, the Commander of the ISAF Joint Command memorandums—recent memorandum addresses risk as part of the go/no-go decision process for undertaking projects.

On Recommendation Number 2, developing deployable cadres for acquisition management and contractor oversight, we have implemented this, most notably through the Army's Expeditionary Contracting Command, and continue to grow our capability in this area.

Recommendation 3, phasing out the use of private security contractors for certain functions. DOD's use of private security contractors does fully comply with applicable laws and regulations that define inherently governmental functions and the governance of these contractors.

In Afghanistan, however, we are implementing the recommendation. A plan is in development to transition selected private security contractor contracts to an Afghan public protection force. As the capability and size of this force mature, certain security functions will transition from DOD control—from DOD-contracted PSCs.

Recommendation 4, improving interagency coordination and guidance for using security contractors in contingency operations. We have implemented the needed framework, pursuant to Section 862 of the 2008 NDAA.

In July 2009, we published a Federal regulation for all U.S. Government PSCs working combat operations. We updated this in August of this year to incorporate changes made in Section 832 of the 2009 National Defense Authorization Act.

Recommendation 5, taking actions to mitigate the threat of additional waste from unsustainability. We are in the process of implementing this, and we agree that there is more work to be done here. The Commander of the ISAF Joint Command's memorandum includes sustainability as part of the go/no-go decision criteria for all projects.

Recommendation 10, setting and meeting annual increases in competition goals for contingency contracts. We have implemented this for stateside contracts, and we are in the process of implementing it and deciding whether reporting systems can readily support this for contingency contracts as well. As an aside, currently approximately 90 percent of our contracting overseas is already competed.

Recommendation 11, improving contractor performance data and use. We are in the process of implementing this recommendation. DOD strongly agrees that the data in the past performance database needs substantial improvement so that contracting officers who are required to consult this data before making contract awards can have content that is accurate, complete, and reliable.

Recommendation 12, strengthening enforcement tools. We are in the process of implementing this recommendation and with congressional help. Two provisions that Senator Ayotte mentioned earlier that are included in the House defense authorization bills

would assist us in the area of enforcement tools. Both are related to the No Contracting with the Enemy Act that she and Senator Brown introduced.

One provision would expand the Government's access to contractor records, and the other provides the authority to void any DOD contracts if funds directly or indirectly support the enemy. Both of these actions were undertaken at the request of Task Force 2010, our anti-corruption task force in Afghanistan.

Recommendation 13, providing adequate staffing and resources in establishing procedures to protect the Government's interest. We have already implemented several improvements in this area. We have strengthened our ability to withhold payments to contractors with inadequate business systems as a means to protect the U.S. Government interests.

While we agree in principle with the commission on the need for accountability and leadership intention on contingent contracting, we do have concerns with regard to Recommendations 6 and 7. Recommendation 6 elevates the positions and expands the authority of civilian officials responsible for contingency contracting, and Recommendation 7 does the same for military officials.

The commission would elevate one office in the Acquisition, Technology, and Logistics Office, my office, and the Secretary of Defense's Office, to focus on contingency contracting. In my view, a division of labor is necessary and appropriate.

Each of several DOD organizations brings unique subject matter expertise and oversight of contingency contracting. This ties back to the resources and expertise of the acquisition system as a whole.

Within my organization, we need the functional expertise of both program support under our ASD, Assistant Secretary of Defense for Logistics and Materiel Readiness, and the Contingency Contracting Office under our Director for Defense Procurement and Acquisition Policy.

Similarly, I am concerned that creating a J10, as General Bash mentioned, would tend to confuse rather than streamline accountability for contingency contracting in the Joint Staff.

The department has come a long way in the area of operational contracting support, in large part as a result of enabling legislation from Congress. Section 854 of the 2007 NDAA required us to establish joint policies on requirements definition, contingency program management, and contingency contracting, and we have done so.

Section 862 of the 2008 NDAA and Section 832 of the fiscal year 2009 NDAA required us to issue comprehensive regulations managing private security contractors, which we have done. We embrace the recommendation of the Gansler commission, including its central insight that we needed to increase the scale and scope of military leadership in acquisition workforce.

We have also taken advantage of insights from dedicated internal task forces such as Task Force Shafafiyat, Task Force 2010, and Task Force Spotlight to identify and combat attempts to divert U.S. contractor funds to our enemies through fraud and corruption.

I would also like to recognize the valuable efforts of several key department personnel who have been working on this problem for several years. This would include Gary Motsek, the Deputy Assistant Secretary of Defense for Program Support, and Dick Ginman,

who is here with me today, the Director of Defense Procurement Acquisition Policy.

In your letter, you asked about legislation that might be needed to implement the commission's recommendations. The department believes that the essence of the commission's recommendations can be implemented under existing authorities. However, we will get back to the committee if we find any additional authority is required.

I would also like to thank you for your support of the two other legislative proposals that you are now considering, one in contracting with the enemy, as we have already discussed, and the other in access to contractor records. This legislation will go a long way to fighting corruption and tracking bad actors, which is yet another challenge we face in contingency contracting.

I want to close on a note of thanks to the Commission on War-time Contracting for all the hard work and dedication they put into this effort to assist the department. The department joins them in our desire to eliminate waste, fraud, and abuse whenever and wherever it occurs.

I would also like the committee to note the hard work and dedication that the department has put into the effort to create an effective contingency contracting capacity that simply did not exist at the time we entered Iraq and wasn't even considered as something we might need. Over the last several years, as that need became apparent in both the Bush and Obama administrations, an enormous amount of work has been done to correct the situation.

Dedicated professionals in and out of uniform have made great progress, but we all know there is more to be done. And we look forward to working with the Congress as we continue this important effort to protect the taxpayers' interest and the resources that they provide to us.

Thank you, Madam Chairwoman.

Senator MCCASKILL. Thank you, Secretary Kendall.

The next witness is Dov Zakheim, and he has got an amazing resume. He obviously was the Under Secretary of Defense for a number of years, the Comptroller. And it wasn't that long ago that you were in one of those chairs, and you were the one that was getting the questions that were uncomfortable to answer.

So, but you do have a long history of service to our country in a variety of different capacities relating to defense operations. And I know the amount of time this commission took, and it was good of you to take time out of your professional schedule to make time for this work.

I think you were a great contributor to the effort, and we look forward to your testimony.

**STATEMENT OF HON. DOV S. ZAKHEIM, COMMISSIONER, COMMISSION ON WARTIME CONTRACTING IN IRAQ AND AFGHANISTAN**

Mr. ZAKHEIM. Well, thank you very much, Madam Chairwoman and Ranking Member Ayotte.

With me is Katherine Schinasi, who has served for 31 years with the GAO—when she started, it was called the General Accounting Office—and most recently is Managing Director for Acquisition and

Sourcing Management at GAO and worked on defense and State Department issues and has recently been a senior adviser to the Conference Board, a nonprofit research organization.

I also want to thank you, Madam Chairwoman, for calling us—I think I speak for all of us at the table—for saying we are a special treat. I never heard that when I was Comptroller. [Laughter.]

Katherine and I are speaking today in our capacity as private citizens. We can assure you that nothing in our testimony conflicts with the solid and bipartisan consensus that developed among the eight members of the commission.

We have provided copies of our report, “Transforming Wartime Contracting,” to the subcommittee, and we respectfully request that the report and our statement be included in the official record of this hearing.

Senator MCCASKILL. It will.

[The information referred to follows:]

[SUBCOMMITTEE INSERT]

Mr. ZAKHEIM. Thank you.

We unanimously conclude that the need for change, change in laws, policies, practices, organizational culture is urgent. And it is urgent for five reasons.

The first is that although our policy for more than 20 years considered contractors to be part of what is called the total force for contingency operations, the Federal Government went into Afghanistan and Iraq unprepared to manage and oversee the thousands of contracts and contractors that were being used there.

Now there is no question that some improvements have been made. But after a decade of war, the Government remains unable to ensure that taxpayers and warfighters are getting good value for the contract dollars that have been spent. The Government also remains unable to provide fully effective interagency planning, coordination, management, and oversight of contingency contracts.

Second reason, reforms can still save money in Afghanistan and Iraq, even today. And they can avoid unintended consequences and improve outcomes there.

Just as an example—and you mentioned this—as the U.S. draws down its troops in Iraq, the State Department is poised to hire thousands of new contractors for security and other functions. Reforms would make a huge difference in that regard.

Third, as you both mentioned, the dollars wasted are significant, and so I won’t repeat again the \$31 billion to \$60 billion out of the \$206 billion spent. And if we do not sustain the U.S.-funded projects properly, we are going to see more waste still, and again, it will be in the billions.

Fourth, we know that new contingencies, whatever form they may take, will occur, whether it is Libya or something else. We are going to keep having those. And meanwhile, the Federal agencies have acknowledged that they simply cannot mount and sustain large operations without contract support. So this is something that is going to be with us for quite some time.

And finally, failure to enact powerful reforms will guarantee that new cycles of waste and fraud will accompany the response to the next contingency. In the current period of budget constraints, the opportunity cost of wasted funds is exceptionally high.

Now these observations, of course, are general and apply Government wide. But they apply with special force to DOD because the preponderance of contracting activity and spending has resided with the Defense Department.

Now DOD's Director of Defense Procurement and Acquisition Policy, Admiral Ginman, told the Senate Homeland Security Committee last month that DOD—and I am quoting here—“agrees in principle”—and you heard it again from Secretary Kendall—“agrees in principle with the 11 DOD-focused recommendations in the final report of the commission” and that DOD defense doctrine “now includes operational contract support.”

And Admiral Ginman also said that the department is making progress on matters such as developing deployable acquisition cadres, and you heard that as well from Secretary Kendall. This does appear to be a first step toward meeting the intent of Section 854 of the fiscal 2007 NDAA, which calls for creation of exactly that kind of a contingency contracting corps.

Now we welcome signs of progress at the Department of Defense. It is what we all want. And rising demands to restrain and redirect Federal spending are going to force DOD and other Federal entities to be more disciplined in the use of taxpayer dollars, and that includes dollars spent on contracting.

But, unfortunately, the commission has concluded that the U.S. military and other Federal agencies are still not fully prepared to plan and manage large-scale use of contracting contingency operations. The issue is less one of policy and more one of implementation. Policies are easy to make. Implementation is what—is really what counts.

And we are not alone in our concern. The GAO has had defense contract management on its high-risk list since 1992. So this is going on for 20 years. And in this year's update, GAO called attention to problems observed in Iraq and Afghanistan with planning for the use of contractors, vetting security contractor personnel, and training nonacquisition personnel to manage security contracts.

In light of the GAO's report, it is difficult to state that the Government has fulfilled the provisions of Section 862 of the fiscal 2008 NDAA, which calls for Government-wide regulation of private security contractors. If that was happening, GAO wouldn't say what it is saying.

We appreciate that DOD, supported and in many cases led by this subcommittee and others in the Congress, is taking steps to improve its use of contractors. Policy memos, DOD instructions, flag officer appointments, speeches, and other signs of change have been encouraging, and so have the creation of Task Force Shafafiyat to combat corruption in Afghanistan and its subordinate task forces, both of which were mentioned, 2010 and Spotlight. 2010 focuses on corruption in contracting, Spotlight on security contractors.

But the hard reality is that changing values, doctrine, expectations, practices, and other aspects of organizational culture in a vast and complex enterprise is really like herding icebergs, if you don't want to say herding stray cats. It is a slow process requiring heroic exertions, sustained attention, and unrelenting leadership.

Inertia and other institutional barriers to change are a common problem for reform everywhere. That is why one of the recommendations in our final report is that Congress require regular independent reports on agencies' progress and on the barriers to progress.

Without regular reporting to and attention by the Congress to contracting reform, the risk is great that leadership exertions and lessons learned will fade, leaving us still unprepared for the next contingency and doomed to new cycles of waste and improved remedial reactions. That would be a terrible mistake.

Contracting has provided vital and, for the most part, highly effective support for U.S. contingency operations. But we rely on contractors too heavily, manage them too loosely, and simply pay them too much.

The wasteful contract outcomes in Iraq and Afghanistan demonstrate that Federal agencies still do not see the heavy reliance on contractors as important enough to warrant thorough planning for and effective execution of the goods and services acquisitions that contingency requires.

The commission has concluded that the problems are multifaceted and need to be attacked on several levels. The first is to hold contractors accountable. Federal statutes and regulations provide ways to protect the Government against bad contractors and to impose accountability on them, including suspension and debarment from obtaining future contracts, as well as civil and criminal penalties for misconduct.

Unfortunately, and this goes again to implementation, we found that these mechanisms are not often vigorously applied and enforced, and incentives to constrain waste are often not in place. Compelling cases for charging fraud may go unprosecuted because other, possibly more headline-grabbing cases are given priority.

Recommendations for suspension and debarment go unimplemented, with no documentation for the decision. Data that would be important for past performance reviews often go unrecorded. Staffing shortages have led to a Defense Contract Audit Agency backlog of nearly \$600 billion, delaying recovery of possible overpayments and actually causing problems for the contractors themselves.

The Government has also been remiss in promoting one of the most effective of all disciplines—competition. A decade into an operation, multibillion-dollar—into the operation, sorry—multibillion-dollar task forces are still being written—task orders are still being written with no breakout or recompetition of the base contract. That is changing, but not quickly enough.

We recommend better application of existing tools to ensure accountability and to strengthening those tools. Our report contains recommendations to bolster competition, improve recording and use of past performance data, expand U.S. civil jurisdiction as part of contract awards, require official approval of significant subcontracting overseas, and provide incentives for contractors to take active steps against human trafficking by subcontractors and labor brokers. Our report indicates that implementing many of these recommendations will, indeed, require legislation.

The second level is holding the Government itself more accountable for the decision to use contractors and for the subsequent results of those decisions. Part of the problem is resources, and we have to be careful not to repeat the mistake of the 1990s.

We can't allow budget constraints to permit a further downsizing of our acquisition and contracting workforce. On the contrary, we must augment that force, especially if planned military end strength reductions move forward and there is even greater pressure to rely on contractors.

Even when the Government has sufficient policies in place, effective practices, ranging from planning and requirements definition to providing adequate oversight of performance and coordinating interagency activities, are simply lacking. We recommended steps that would improve the Government's handling of contingency contracting, and they include developing deployable acquisition cadres, and there has been a start there; legislation to elevate the positions of the agencies' senior acquisition officers—and we will be happy to discuss this in detail with you—and to create a J10 contingency contracting directorate at the Joint Staff, where the broad range of contracting activities is treated as a subset of logistics. We just don't like the word "subset."

Another critical recommendation is that agencies pay much more attention to the matter of sustainability before committing taxpayer dollars to projects and programs intended to support military, political, or development objective in contingency zones.

Our recommendation includes agency evaluations of sustainability and rejecting or canceling projects that have no credible prospect of survival without U.S. funding. In other words, weighting sustainability as part of an overall calculation simply may not be enough.

We support the recent policy guidance from OMB regarding the inherently governmental functions, which incorporates a risk-sensitive approach to determining which functions could or should be reserved for Government performance. As our report explains, the inherently governmental test is a necessary, but not sufficient condition for making decisions to hire contractors in a contingency environment.

We note that OMB's action takes the Government considerably closer toward meeting the intent of Section 832 of the fiscal year 2009 NDAA.

Considering this subcommittee's broad mandate, we would also call special attention to two recommendations embodying a whole-of-government approach that will improve efficiency and effectiveness in contracting. Both recommendations would, in fact, require legislation in order to be implemented.

The first is to establish a top-level, dual-hatted position for an official who would serve both as a Senate-confirmed Deputy Director of OMB and on the National Security Council staff as Deputy Assistant to the President. Such a dual-hatted position would promote better visibility, coordination, budget guidance, and strategic direction for contingency contracting. Now the White House would be centrally involved.

The second is to create a permanent inspector general organization for use during contingencies and for providing standards and

training between contingencies. The work of the special inspectors general for Iraq and Afghanistan reconstruction have shown the drawbacks of creating organizations limited in functional authority, geographic location, and time.

SIGIR and SIGAR have done great work, but they are going away. A permanent contingency IG with a small, but deployable and expandable staff, trained in the special circumstances of contingency operations, can provide interdepartmental oversight from the outset of a contingency.

As we have already indicated, sustained attention during and after the reform process will be essential to ensure that compliance extends to institutionalizing reforms and changing organizational cultures. That is why our recommendations include a requirement for periodic independent progress reports to the Congress on the pace and results of reform initiatives.

I know I am being repetitive here, but I think we both felt that it is important on this one to be repetitive. Without such a requirement, agencies can all too easily succumb to complacency, forget the lessons learned in Iraq and Afghanistan, and blandly reassure the Congress that they, I quote, “agree with the substance of reform recommendations and are already addressing them,” even if nothing comes of the effort.

The Government would be foolish to ignore the lessons of the last 10 years and refuse to prepare for better use of contracting. But once the wars in Afghanistan and Iraq recede into the past, it is going to be all too easy to put off taking action.

Your subcommittee in particular is in a good position to prevent such a tragic sin of omission. Members of Congress will also be obliged to make hard choices about the Federal budget, including funds for DOD.

The Army and Marine Corps have already announced plans to reduce force strength by tens of thousands, and budget debates to come will likely require further cuts in defense. In that context, we would reemphasize Recommendation 14 from our final report to Congress. It says, and I am quoting here, “Congress should provide or reallocate resources for contingency contracting reform to cure or mitigate the numerous defects described by the commission.”

As DOD officials and senior commanders make cuts in budgets and resources, they are going to be inclined to preserve as much combat capability as possible in the years ahead by concentrating personnel cuts among support functions. We understand that. It is a natural reaction.

But we advise against reducing the size of the acquisition, contracting, and oversight workforce. Sustaining and improving that workforce is essential. Cutting it would be a false economy. Defense should instead seek offsetting savings through better planning and requirements definition, increased use of competition for contracts, more effective management and oversight, and better coordination of procurement and contracting functions.

We urge the members of the subcommittee to take care that economy drives are conducted with a balanced view of all requirements for contingency operations, not just those that involve combat units. If maintaining a balance of essential capabilities leads

to a more careful review of the scope and extent of operations, such an outcome would surely be a constructive development.

This concludes my statement, and we appreciate this opportunity to speak with you. We will be happy to answer any questions you may have.

[The prepared statement of Mr. Zakheim and Ms. Schinasi follows:]

Senator McCASKILL. Ms. Schinasi, do you have a statement also?  
Ms. SCHINASI. No.

Senator McCASKILL. Oh, you do not? Okay. That is why he told everyone how long you had toiled at GAO.

Mr. ZAKHEIM. Yes, I didn't think it was fair not to give her an intro.

Senator McCASKILL. I agree. David Walker used to tease me because my apartment overlooks the GAO building, and he used to say, "You just wanted to keep an eye on us at all times. Just in case something hit you in the night, you wanted to be able to write it down and send it across the street."

So thank you for all your work there. I know you spent decades toiling in very difficult areas of work.

Let us start with one of my favorites because I think it is one where—one thing about our military is that there is such a "can do" attitude in our military, and that is almost always a great thing, that if we decide to do something, by gosh, we are going to do it and we are going to make it work.

We have seen that attitude sometimes get in the way of being able to pull the plug when we should pull the plug, when all the signs are indicating that maybe this investment of money isn't going to turn out the way we hoped and maybe we need to cut our losses now. And this relates to the issue that the commission talked about, and that is sustainability.

It is a huge problem, and all we have to do is look at the landscape in Iraq that is littered with our taxpayer dollars that have been blown up, destroyed, not operable, dozens and dozens of buildings and infrastructure that we built that simply could not be sustained, either because of the security environment or because of resources.

I am particularly worried about sustainability in Afghanistan because it appears to me that there is a real disconnect between what we are building for Afghanistan and what Afghanistan can afford. And it does no good for us to spend this money if after we have spent it, these, whatever it is, whether it is a power plant or whether it is a highway, if it is going to be destroyed and/or not used because they don't have the resources.

We have now got 16,000 CERP projects. I am going to try to avoid the State money here now, okay? We have had 16,000 CERP projects totaling over \$2 billion that I am not aware that I have ever been able to look at or view or that there even are sustainability analysis.

We now have brand spanking new \$400 million Afghanistan infrastructure fund, which is whole new territory for us. Now we have actually formed a fund where we are going to build stuff in Afghanistan, as opposed to this being something that has traditionally been done by the State Department or AID.

The commission recommended that you examine completed and current projects for risk of sustainment failure, to cancel or redesign programs and projects that have no credible prospect of being sustained.

I need to know from the DOD witnesses, do you agree or disagree with these recommendations? And if you agree, what specific steps have been taken to perform this recommended analysis?

Mr. KENDALL. Senator McCaskill, we have—let me start with this. We agree with your concern. We have not done as much, I think, in the past as we should about sustainability of our projects. So it is definitely a criteria now for projects going forward.

We are increasing the oversight of all the infrastructure projects that we are doing. I am not sure if you are aware of all this, but for the CERP projects, anything above \$5 million now is approved at the Deputy Secretary's level in the Defense Department. It has been done that way for some time now.

Between \$5 million and \$1 million is approved at the CENTCOM level, the CENTCOM Commander. So there is very intense scrutiny of these projects as they come through.

For that and the AIF fund that you mentioned, the \$400 million fund, both are being overseen by a new council that has been commissioned just a couple of months ago by Secretary Lynn. It is the Afghanistan Resources Oversight Council, which I am a co-chair of, together with the Under Secretary for Financial Management and the Under Secretary for Policy. So we are looking at those projects very closely as well.

In May, I think we sent the list over to the Congress of the AIF projects, so that \$400 million, about a dozen fairly large projects. CERP projects above the threshold the Deputy Secretary approves are also notified to the Congress before they are implemented. So the level of oversight is definitely going up on these projects, and we are looking at them very carefully.

Within Afghanistan, they are coordinated very closely between State and the military. Both departments are involved. The commander on the scene, General Allen, together with the Ambassador, review these projects when they come up. Those are the ones that are done under the AIF primarily.

CERP, you mentioned the statistics on CERP. I don't know the total program statistics. In 2010, I believe there were about 3,500 projects. Of those, about 80 percent were battle damage repair, repairing things that we had damaged in the course of combat somehow that were unintended consequences of combat.

About another 10 percent were payments of condolence payments to people whose relatives had been killed, presumably. And then the other 10 percent were for other urgent humanitarian-type responses to things.

The point of the CERP program is to deal with relatively urgent requirements. It did grow to some extent, and it has been used for some other things. The AIF fund, however, is for larger-scale projects.

So, going forward, we are certainly looking at sustainability. It is one of the 16 criteria on the go/no-go checklist that is done for every project. The degree to which we can go back and look at projects that we have already approved or that are already com-

pleted, we are taking a look at that now. I think some work there certainly would be justified, but we have to go take a look at that and see what kind of a burden that would be on us.

Did you want to add anything, Brooks?

General BASH. Thank you.

Senator, I, too, absolutely agree. Sustainability is critically important. General Allen, in fact, just promulgated a letter last month reiterating what General Petraeus said in the relationship between construction and COIN, and the importance thereof. The go/no-go letter, which was promulgated as an operation order in October 2010, since that time, there has been very specific criteria. And I will take a moment to talk about the details of that.

They have to go through project sustainability—water, power, maintenance—so, going forward, that those are available. The scope of the project is absolutely minimum military requirements are needed for every project.

There is contractor vetting so that they have the capacity and the capability to actually do the project. End-user participation—is this really what you want to use when we turn it over to you? Capacity evaluation of subcontractors as well and the verification thereof.

The Afghan First policy, to ensure that there is a linkage to the COIN operation; design criteria, austere using Afghan standards; durability, in accordance with Afghan practices and capabilities.

Examples of that—using sinks, trough sinks instead of mounted sinks; using concrete floors instead of linoleum; building lagoons for wastewater instead of expensive plants; deep wells instead of putting in water systems; fans instead of air conditioners. All those things are being done and have been done, especially since this operation order was promulgated over a year ago.

Senator MCCASKILL. Do either of you have a comment on this?

Ms. SCHINASI. I would like to address this, Senator McCaskill. I think, given the projects that the U.S. has undertaken and the programs in Afghanistan, there are clearly some that will not be sustainable.

And so, my question would be, back to something that Commissioner Zakheim said in our testimony, what is the proof that the process is working? And so, I would want to know what has been canceled.

Senator MCCASKILL. Right.

Ms. SCHINASI. There should have been projects that are canceled. It is not just the building codes, which I think are critically important, and I am glad to see that happening, but projects and programs overall. And you would expect to see the department's process result in cancellation of some of those projects.

Senator MCCASKILL. And have there been any projects that have been canceled after they have been approved because of sustainability questions? Are you all aware of any?

Mr. KENDALL. We would have to get that information for the record. I am sure there are projects that were never approved because of that kind of concern. But as to whether ones that were approved have then subsequently been canceled or not, I am not sure. But we could get that information for you for the record.

[The information referred to follows:]

[SUBCOMMITTEE INSERT]

Senator MCCASKILL. I think that would be really important because I think that would show the kind of attention to this issue that it deserves. It is one thing to set up a process to get the go or no-go, but for these big projects, the go or no-go is being made very far from the realities on the ground.

And I guarantee you, if I took maybe some of the go's and took it to some of the folks that are on the ground in that area, they would say, "Are you kidding? Really? This isn't going to be sustained. These folks can't sustain this project."

And you know, the biggest example, which is not you all, but is this power plant in Kabul. I mean, hundreds and hundreds of millions of dollars, and it is a big—sitting there, maybe it will be used as a peak-time generator, but they can't afford it. They just can't afford it. That was all our money.

And somebody in this process should have said, "Whoa, time out. We need to stop this right now." Instead, you know, of course, we went ahead and completed it. And now it is a great exhibit A of exactly the problems I am talking about.

So my time is up and—

Mr. ZAKHEIM. I would like—may I add to what Katherine Schinasi said?

Senator MCCASKILL. Sure.

Mr. ZAKHEIM. I was there and funded CERP early on in '01, '02, '03, '04. And in those days, CERP was \$50,000, \$100,000 projects. It was really meant to be programs that the local commander felt would be useful for keeping people off the streets and fixing some things. It was not meant to be a massive infrastructure development project. That was for AID to do if they were going to do it.

We have some problems—we mentioned this in our report—with probably the biggest sustainability question of all, which is the Afghan National Security Forces.

Senator MCCASKILL. Right.

Mr. ZAKHEIM. I mean, we have spent about \$11 billion recently on the ANSF, when the entire GDP of Afghanistan is \$16 billion. So let us say we go down—I think General Caldwell wants to go down to about \$6 billion. That is still a chunk of change. For a government that can only take in about \$2 billion, you have got to wonder how this adds up.

Now then you add on top of that project, why is DOD into \$5 million projects? Why is it doing that? So it is not just enough simply to say, "Well, we are monitoring it." You have to ask the basic question. Why are they doing it?

And then another question is, I buy the fact that this is now a criterion. I don't question that. But it is one of 16. So if the other 15 go one way, and sustainability goes the other way, which way do you think they are going to go?

Senator MCCASKILL. Right.

Yes, Secretary Kendall?

Mr. KENDALL. If I could just respond to that?

They are go/no-go criteria, every one of them, and they all have to be a go for a project to go ahead.

Senator MCCASKILL. So if sustainability is a no-go, it doesn't go?

Mr. KENDALL. That is right.

Senator MCCASKILL. Regardless of the others?

Mr. KENDALL. That is correct.

Senator MCCASKILL. Okay. That is great.

Senator Ayotte?

Senator AYOTTE. Thank you, Madam Chairwoman.

I just wanted to confirm, first of all, with General Bash and Secretary Kendall that you and I spoke before this meeting. We met, and I asked you about the provisions from Senator Brown and I's legislation on No Contracting with the Enemy that got included in the NDAA. Do you think those are important, and will they be helpful?

Mr. KENDALL. Yes, we do support those, Senator Ayotte.

Senator AYOTTE. Thank you. I appreciate that.

I then wanted to ask about in particular this issue, for Mr. Zakheim and Ms. Schinasi, about where we are going in Iraq. Because in connection with the effort to transition operations in Iraq from the Department of Defense to the Department of State, the State Department will need to hire what I have heard potentially thousands of contractors to provide for—some of the things are medical, basic support, security, because we are only, if I take the latest announcement to be the case, only, you know, a very minimal amount of military security.

And basically, what I am hearing for numbers, of the 16,000 to 17,000 personnel that may ultimately make up the State Department's presence in Iraq, about 14,000 of them could be contractors. So I would like to hear from both of you, you know, what concerns do you have about that happening? And the degree to which the Department of State will rely on contractors in Iraq, what concerns you think that arises?

Because I also see a very significant discussion here with the Department of Defense, but will there be any type of transition from lessons we are learning here and we are talking about today on adequate oversight in contracting, over to the State side? And how will that all—I just would love to get your observations on it, and then, of course, if General Bash and Secretary Kendall have any observations?

I would just hate to see us do this and then pour millions, billions of taxpayer—I don't know what the number will be—in taxpayer dollars back in there and have all these lessons just kind of fly out the window.

Mr. ZAKHEIM. Well, I do have tremendous concerns. I have more concerns, unfortunately, than I have answers. Clearly, if the State Department until now has had trouble managing its contracts—and there is no question that it has had some—I don't know how it is going to manage all of this.

One thing that concerns me and that can be dealt with, it is my understanding that the State Department believes that when the Government has now stated that risk should be accounted for in considering contracting and that that security is an inherently governmental problem, that that does not apply to the State Department simply because State says, "We are not into the business of fighting, and therefore, whatever we are doing is not inherently governmental."

Now, clearly, if you have got a whole bunch of contractors out there with guns who will be doing all sorts of things, to me—to my simple mind, that is something that involves security, and that is inherently governmental. So I think it is very, very important that State adopt the same risk kind of approach that DOD appears to be adopting, which is don't send them out there if it is a high-risk project because then you are going to have a bunch of contractors either being shot at or shooting at Iraqis.

And that is just not going to be a very good thing. That is a disaster waiting to happen. So that is one possible thing that maybe even could be legislated. I don't know.

The other is simply to get more oversight. And if State has to beg, borrow, and steal people from other agencies, well, why not? That is doable. Part of the problem is that, unfortunately, many of our civil servants, certainly outside DOD, are just not willing to deploy.

It is all voluntary. And so, we have a problem there, too. I mean, you know, when I was in Government, I often felt that there two and a half agencies fighting this war. DOD was fighting this war. State was fighting this war. And you added up all the others, and there was another half agency, all combined.

Well, our country is at war. And every civil servant who has something to contribute out there ought to be able—ought to be told you are going. That could be something that could help State as well.

Senator AYOTTE. Thank you. Please.

Ms. SCHINASI. To add just something, the State Department, in responding to recommendations in our interim report, made the case that they felt that their model for contracting and overseeing contractors was sufficient. They knew how to operate in an international environment. They contracted all the time. You know, they knew what they were doing, and so they pushed back on a number of our recommendations.

We would argue that we have seen enough poor outcomes from State Department contracting that we were not in agreement with their assessment of that. What you have seen, which brings me to the point of is the problem being addressed, and we have written—the commission put out two special reports on this. The issue has been on the table for over a year. It doesn't seem to be much closer to resolution.

The State Department has not moved to solve the problem. The Defense Department has offered the use of the LOGCAP contract for some of the operations, but the State Department has not trained up its contracting officials sufficiently to be able to make good use of that LOGCAP contract.

I think what you will see is a diminishment of what the State Department says is required for its operations in Iraq. As you probably know, they have cut down on the number of locations where they said they would be able to operate. That is, you know, possibly going to go down and down and down, to the point where they can actually match what their resources are to a requirement set.

And I don't think that has been done yet. So I share Commissioner Zakheim's concern that we are going to be ready to do this when the time comes.

Senator AYOTTE. Thank you.

And I certainly want to hear from General Bash and Secretary Kendall about this. But before I do that, I just want to have one follow-up to what you said, Ms. Schinasi, which is I am new to this place. I am a new Senator.

And have we done the same type of analysis that you just did, which was phenomenal, and it is going to be very helpful in guiding policy decisions—and obviously, Department of Defense is here before us, taking this very seriously—with State?

Ms. SCHINASI. The analysis of whether or not—

Senator AYOTTE. Right. I mean, the contracting analysis that we are doing here.

Mr. ZAKHEIM. Oh, yes. State is part of this report.

Senator AYOTTE. Okay.

Mr. ZAKHEIM. Because this is an Armed Services Subcommittee, we focused on DOD. But let me make it clear, our report addresses State and AID. We had testimony from senior officials in both agencies.

Senator AYOTTE. But one of the concerns I have is just from what Ms. Schinasi just said, that we didn't get the full response from State that you got from DOD.

Mr. ZAKHEIM. I think that is accurate.

Senator AYOTTE. And that seems to me—then how can we have a full picture of State? Now, I know State is mentioned in this report, that you have talked to those officials, USAID. But is there more work that we need to do on that end?

Ms. SCHINASI. Yes.

Mr. ZAKHEIM. Yes.

Senator AYOTTE. Okay. Thank you. I appreciate it.

Mr. ZAKHEIM. In fact, I would say a lot more work.

Senator AYOTTE. Okay. And I am sorry. Secretary Kendall and General Bash?

Mr. KENDALL. I could go on for hours about the transition in Iraq because I am the senior DOD official who has been working that problem with the State Department. My counterpart has been Under Secretary Pat Kennedy at State, who is their Under Secretary for Management.

I have made three trips to Iraq as part of examining progress and getting ready for the transition. There is a lot of risk in the transition, and I will let the State Department address that. But I can talk directly to the contracting concerns.

The DOD is basically providing the contracting support to State Department for all of its essential functions. We are transferring thousands of pieces of equipment to the State Department. We have worked hand-in-glove with them on the sites that have already now nominally been transitioned to their initial control.

They are keeping 11 sites, roughly, I think, 5 of those that we will still be operating under the chief of mission stature for operation—for security cooperation in Iraq. We are providing the LOGCAP IV contract support to them. That was awarded recently. There was a protest, which was not successful. That is in place.

There are contracts in place for security. There are contracts in place for fuel delivery and other supply delivery. Defense Logistics Agency is supporting the State Department.

The plan is that we would essentially, through our organizations, particularly the Army Contracting Command, administer these contracts, from the stateside perspective at least, through 2012. At that point, State would, hopefully, be ready to transition over to direct administration themselves. If they are not, we are prepared to continue that support.

Now, most of the oversight in country would be provided by State Department people, and they need to train their people up to do that. That is in progress.

So I think—I started on this a year ago, roughly. At that point in time, we were nowhere, in terms of getting ready for this transition. But I think today we are in decent shape. We are ready to transition to State. The contracts are in place that they need.

I am sure there will be problems. There have to be with a transition. The State Department has never done anything this big, even though they have got a reasonable amount of experience with smaller scale.

A lot of the projects I think that the commission looked at were USAID projects and infrastructure projects and so on. That doesn't apply here. This is essentially base operations.

The 17,000, or 16,000 figure that you mentioned is approximately correct. They are mostly contractors. A good fraction of them are private security contractors who will mostly be doing static security. They will be providing protection on the bases because we will not be there. The military will not be there.

There will be a small Marine contingent for the embassy and some other locations, but generally, security will be provided by private security contractors, mostly static security. There will be some security also for people when they go outside and do whatever they have to do outside of the bases.

The Iraqi security forces are also supposed to be providing security for our people who are there as part of the mission. But that is not immediate, direct security of the facilities. That will be provided through private security contractors primarily.

There is risk in this. But I can tell you that from the contracting perspective, I think we are in pretty good shape to make the transition.

Senator AYOTTE. Thank you very much.

And I have to say, for our people, I can understand why they wouldn't—might not want to go now, even some of the civilian personnel, if that is what we are going to rely on for security.

Senator MCCASKILL. Senator Manchin?

Senator MANCHIN. Thank you, Madam Chairwoman.

I am sorry if you said something before I came, and I missed it. I am so sorry and apologize for that. But a couple things I would like to ask is, and anybody here, I think, probably the lieutenant general or Secretary—can you give me the dollar amount of our DOD annual budget spent on contracting in dollars?

So if our budget is, what—DOD budget is 700—

Mr. KENDALL. The base budget, \$554 billion—

Senator MANCHIN. Five fifty-four.

Mr. KENDALL.—this year, to give you a round number. But we add to OCO—the supplemental funding for OCO, it is over another \$100 billion. I think we contracted out, number for 2009 that I hap-

pen to know pretty well, is \$412 billion. That is out of a grand total of over \$700 billion.

And that is for a combination of services contracting and products. It is roughly 50/50 within that number, services that are provided of one kind or another, maintenance, facility support, and so on—

Senator MANCHIN. So it is fair to say that—

Mr. KENDALL.—and actual products.

Senator MANCHIN.—it is 50 percent or more, right?

Mr. KENDALL. Yes.

Senator MANCHIN. Of our budget is spent on contracting?

Mr. KENDALL. Yes.

Senator MANCHIN. And if we look at that in numbers of people, what numbers of people—I saw here in the breakdown of the charge, you had Afghanistan, 101,000, almost 102,000 contractors.

Mr. KENDALL. I have the numbers for Afghanistan and Iraq.

Senator MANCHIN. In the total—in the total program, DOD, what would be the number of contractors working today, compared to number of military?

Mr. KENDALL. We are collecting that data. We owe a report to the Congress, which is late, on how many contractor individuals—

Senator MANCHIN. A quick, rough estimate?

Mr. KENDALL. I really hesitate to give you a number. It is a large number. You can do the math, but it is—

Senator MANCHIN. Is it more—do we have more contractors working than we do have military personnel?

Mr. KENDALL. It is comparable.

Senator MANCHIN. So it is based on—

Mr. KENDALL. The reason I can't give you an exact number is that many of the things we contract for, we don't contract for people. We contract for things or specific services.

Senator MANCHIN. Sure. I am talking about just people.

Mr. KENDALL. Yes.

Senator MANCHIN. I am talking about personnel.

Mr. KENDALL. I would have to take that for the record to try to get you a number that would break it out in a reasonable way.

[The information referred to follows:]

[SUBCOMMITTEE INSERT]

Mr. KENDALL. If we buy an aircraft, there are a number of contractors that we are paying for that are working on the aircraft.

Senator MANCHIN. I understand that.

Mr. KENDALL. But we didn't pay for people. We paid for the aircraft. And in many cases, we buy services. We buy a certain level of service. And how the contractor happens to staff that is up to the contractor.

Senator MANCHIN. Probably it is a fair evaluation. If the money is about 50/50, then personnel would be about probably in that neighborhood.

Mr. KENDALL. If half of those services is essentially more buying people, so you could do the math from that with an average price. We can give you an estimate, but it is going to be a rough estimate.

Senator MANCHIN. And is it accurate to say that we are the largest employer in Afghanistan?

Mr. KENDALL. I think that is definitely——

Senator MANCHIN. That is accurate?

Mr. KENDALL. Yes, I think so.

Senator MANCHIN. Because of basically their economy——

Mr. KENDALL. The figures that were mentioned, because of the amount of money we are putting into the country, yes.

Senator MANCHIN. But we are their largest—we are their largest employer in that country?

Mr. KENDALL. I would say that is probably true. Some of those are foreign nationals that are brought in.

Senator MANCHIN. Department of Defense, if you can give me what your definition of nation building is?

Mr. KENDALL. I will have to defer that question. That is——

Senator MANCHIN. Who to?

Mr. KENDALL. Probably the Under Secretary for Policy or possibly the Joint Staff.

Senator MANCHIN. General, can you answer that one?

General BASH. Well, we know that the President, in his national policy decision memo of 2005, directed DOD to undertake stability and reconstruction, which is what we are doing. General Allen——

Senator MANCHIN. And that was done when, sir?

General BASH. 2005, sir.

Senator MANCHIN. So you were at that time directed in Afghanistan to take that action?

General BASH. That was the policy decision at that time by the President for the military to undertake stability and reconstruction as a mission set.

Senator MANCHIN. And it has continued today, to this day?

General BASH. That is correct.

Senator MANCHIN. So then it would be defined as nation building?

General BASH. You know, nation building——

Senator MANCHIN. If you are the largest employer and you are spending more than anybody has ever spent in that country, you would have to be doing something that you would call—define as nation building because you are the only one building anything.

We, the United States Government and the taxpayers, the only ones truly that are building or investing?

General BASH. From my perspective, we don't talk in terminology wise of nation building. What we talk about is counterinsurgency, which is what General Allen is focused on.

Senator MANCHIN. Oh, I know how you all—I know what—I know what you are trying—I know that. I am trying—I am being as respectful as I possibly can, sir. But, truly, in the eyes of an average American, that would be trying to build another nation, and we can make determinations at the expense of our own.

So the thing I would ask you about, I understand that the GSA has identified an awful lot of rare earth mineral resources, if you will. Now I am understanding, to date, the only success or the only country that has been successful or making a successful attempt at mining, let us say copper, is China. Does China have—what type of an investment does China have in Afghanistan that you know of, militarily or monetarily, or personnel wise?

Mr. KENDALL. I am not aware of the answer to that question. I am sorry, Senator Manchin.

General BASH. We would have to take that for the record, Senator.

[The information referred to follows:]

[SUBCOMMITTEE INSERT]

Senator MANCHIN. Let me ask you, just you have been there how many times to Afghanistan?

Mr. KENDALL. I have only been to Afghanistan one time.

Senator MANCHIN. How about you, sir?

General BASH. Senator, I have been there dozens of times, and I will be going—

Senator MANCHIN. Have you seen many Chinese military there?

General BASH. Never.

Senator MANCHIN. Have you seen many—much Chinese way of investment, infrastructure?

General BASH. Not in the missions I was on.

Senator MANCHIN. But they are intending to extract at least that one resource. Am I correct?

General BASH. I am unaware of their activities.

Mr. KENDALL. I am aware of press reports that Chinese are interested in mining in Afghanistan.

Mr. ZAKHEIM. You are right on. And by the way, you are right. I mean, stabilization and reconstruction is a euphemism for nation building, or state building. It is really more accurately state building. So they are nation building.

Senator MANCHIN. Right. But I am understanding now we have—it has been in 2005 that decision was made, and it has been ongoing ever since?

Mr. ZAKHEIM. That is right.

Senator MANCHIN. And you can imagine the consternation a lot of us have here with what is going on in our country.

Mr. ZAKHEIM. Well, you know, we are pouring almost as much into Afghanistan as Afghanistan generates in its own GDP.

Senator MANCHIN. Let me ask this question, and this is something that I have been there twice and talked to a lot of troops, and a lot of people from West Virginia are the troops. And without naming names, you know, invariably I have been told that they intended to cycle out so they could get a better job working as a contractor for our Government.

Do any of you confirm that? How many—do you have a percentage of the people working in contracting that basically were former military? Can you get me that, if you don't have it? But would you say it would be quite high?

General BASH. Senator, I wouldn't have that off the top of my head. I would tell you, though, that what we are getting at here is retention of the forces, which is really at an all-time high right now. So the decision to leave the military because of that opportunity is not overwhelming.

Senator MANCHIN. Secretary Kendall?

Mr. KENDALL. I think earlier on, in the Iraq conflict in particular, there was some indication in the press that people were leaving and then coming back as contractors.

For contract people, people that administer contracts, we generally hire people out of school initially. There is a veterans preference in civil service hiring, and I don't know that we keep track of the prior service of people necessarily, but I can try to get that for you for the record.

[The information referred to follows:]

[SUBCOMMITTEE INSERT]

Senator MANCHIN. And this would be a military question, Lieutenant General. Do you believe that we could utilize our National Guard much more effectively and cost efficiently?

General BASH. Senator, I think today we are absolutely using our National Guard very effectively. With my background from Air Mobility Command, for example, we are deploying them at a deployment rate that is maxing their capability out. So from that perspective and the other military forces, we really couldn't be using them any more in a majority of their mission areas.

Senator MANCHIN. No, I am saying is, could we build off of the National Guard premise that we have right now with the expertise they do have, be able to do a lot of the contracting work that we are hiring at a higher wage rate or cost, and do it more effectively and efficiently through our Guard than what we can through contracting?

You all haven't taken a position on that, or do you have a comment? Because my time is running out, and I appreciate it.

Mr. KENDALL. We have been increasing the size of the contracting workforce in Government. We have added a few thousand positions, actually, in the last 2 or 3 years, mostly under the Defense Acquisition Workforce Development Fund. A lot of those people are entry-level people who have come out of school. Some of them, I am sure, are coming from the military.

We haven't tried—we also increased the number of military people that are doing contracting for us, you know, as part of our force structure. I visited a unit in—it was in Iraq, actually—which had asked to have military people included in their organization as part of their organization to do contracting. We were talking earlier about institutionalizing contracting. So they clearly saw the need at that level to have that kind of capability, and presumably, those people would be military.

Senator MANCHIN. I am so sorry, Madam Secretary. Just very quickly. I know.

Senator MCCASKILL. It is Senator Blumenthal, not me.

Senator MANCHIN. I know. Very quickly, ma'am. I am sorry.

I think just to make the point, if you could, if I could even talk with you all later, if you can get back to me later time, does the Department of Defense look at our National Guard, with the expertise they have been able, the support they have been giving, to basically be more effective and efficient, growing it than the cost that we are spending for private contractors I think is where I am going?

And we can talk about that. I want to make that on the record.

[The information referred to follows:]

[SUBCOMMITTEE INSERT]

Senator MANCHIN. Thank you. I am sorry, ma'am.

Senator MCCASKILL. No, it is fine. Thank you. We are glad you are here, Senator Manchin.

Senator Blumenthal?

Senator BLUMENTHAL. Thank you, Madam Chairwoman.

And thank you for those questions, Senator Manchin, very well taken.

And I want to thank our chairwoman for the great work she has done and is doing on this issue. She has been a real champion. I don't need to tell anyone in this room or

in this building or in the United States Senate that she has been at the forefront of eliminating waste and fraud in Government contracting, but also trying to make all of our policies more effective.

And I have a wide array of questions which I will not ask here, but hope perhaps either to submit in writing or follow up on. But I do want to concentrate on one area that is mentioned in your report—the issue of human trafficking by Federal contractors, which has been of grave concern to me and some of my colleagues on the Judiciary Committee.

I have a number of measures that have been reported out of the Judiciary Committee to address human trafficking by contractors on our military bases in Afghanistan and Iraq not only because it is immoral, but also because it is dangerous to our troops. So this is an issue of security, not just morality.

And I noted in the report, and I am quoting, “tragic evidence of the recurrent problem of trafficking in persons by labor brokers or subcontractors of contingency contractors.” Could I ask you to elaborate on that finding because it is a fairly succinct and concise one?

And again, you can do it either outside of this room or in another setting if you wish or expand on any of your remarks here.

Mr. ZAKHEIM. I have been asked to go first.

It takes place in lots of different ways. What the brokers tend to do is get these people over to, say, Afghanistan or Iraq, but mostly Afghanistan, and they take their passports away. Once they do that, these people are prisoners.

They promise them wages at one level and pay them subsistence wages, if that. They coop them up in dormitories, and they can't get out. Now, what—and quite frankly, our commission just scratched the surface of this, to be honest. There is a lot more in that iceberg. We just saw the tip of it.

But part of the way that we can get our arms around it—and we did report this—is to have visibility into what the subcontractors are up to. We deal with the primes, and we say the primes are responsible for dealing with their subs.

Now if you are working in Peoria, or in Darien, Connecticut, or wherever, that is fine. It is not fine in Afghanistan. It just won't work.

And so, we need to ensure that our oversight agencies have complete visibility not just into the dollars, but into the practices of these subs. And we are being taken to the cleaners in all sorts of ways. I mean, it is not the primes that are paying off the insurgents. It is the subs that are paying off the insurgents.

So it is just another aspect of the same problem. And that is one, I think, that will require legislation.

Senator BLUMENTHAL. I noted in a footnote in the report that the witnesses from the Defense Department in the hearing on July 26, 2010—the two witnesses from the Defense Department being Ed Harrington, the Deputy Assistant Secretary of the Army for AT&L, and Patrick J. Fitzgerald, Director of Defense Contract Audit Agency—were asked, and again, I am quoting, “If any companies have been suspended or debarred for”—and I am inserting here—“human trafficking in particular?”

I wonder whether you could tell me whether that—and they took that question for the record. They said they would get back to you. Did you get any additional information from them?

Ms. SCHINASI. I am not aware that we did, Senator.

Senator BLUMENTHAL. I wonder if I could ask General or anyone else who is here on behalf of the Defense Department—Secretary, Mr. Secretary—if you could answer those questions for us because the Department of Defense did commit to responding to them and evidently has not done so.

Mr. KENDALL. We will take that for the record, make sure you get it. I just checked, and we don’t have that information with us. [The information referred to follows:]

[SUBCOMMITTEE INSERT]

Senator BLUMENTHAL. I appreciate it.

Mr. KENDALL. Sir, if I may make a comment or two about human trafficking, what we are doing about it?

We recognize this is a serious problem. It is a violation of criminal law. It is inhumane. There are any number of things wrong with it. It is a violation of basic human rights and human dignity.

We have put in place—there are, obviously, criminal statutes that can be enforced. We are putting and we have put into all of our contracts clauses that would prohibit it, and it is a basis potentially for debarment. We will check on the statistics to see if there are any cases where we have done that.

We have also taken steps to notify the workers of what their rights are, so they know that they can do something about ill treatment if it occurs. And I have got a brochure here that we just put out, which we are putting out in seven languages, which all workers will get to make sure that they are aware of their rights. And there is a smaller card version of this as well.

So we have taken some strong measures to address this problem.

Mr. ZAKHEIM. And can I just add to that?

Senator BLUMENTHAL. Please do.

Mr. ZAKHEIM. I think what DOD has done, given what it is now able to do, is absolutely on the mark. But think about it. You are some poor Filipino. You don’t have your passport. You don’t really know the country. You don’t really know who to turn, and somebody gives you a pamphlet. What are you going to do?

And so, unless we legislate accountability for subcontractors—right now, we don’t really have that. So you can’t expect DOD to do more than it is doing. They are doing what they can do. But unless we go further, this problem is not going to go away.

Senator BLUMENTHAL. And that actually was going to be my own observations in probably less articulate form. That a brochure—and I don’t doubt the good intentions and the determination of the Department of Defense to address this problem. So that is really why

I would welcome the opportunity to work with you in providing that additional authority, if it is desirable and necessary.

Because this problem—and you know it much, much better than I—affects not only human rights, but also security on the bases, in facilities, you know, in a whole vast array of ways. I just want to—

Mr. KENDALL. Senator Blumenthal, if I may, just—

Senator BLUMENTHAL. Yes, I am sorry.

Mr. KENDALL.—because there are other steps we are taking. We do flow those requirements down to subcontractors. This is an area that gets audited in our larger contracts repeatedly to ensure that, you know, the kinds of deplorable conditions we have heard about in the press and other places actually are not—do not occur, that these abuses don't occur.

The LOGCAP, for example, is reviewed by the Defense Contract Management Agency monthly for this. I am sorry, bimonthly, and other contracts are audited monthly for this. So we are paying close attention to this, and we are trying to flow it down to subcontractors.

Senator BLUMENTHAL. Lastly, to switch subjects, and again, I am going to be sort of questioning in shorthand because I don't want to keep everyone here for too long, and I apologize that I was absent.

You know, my thought is, given the escalating scale of the contracting that will take place in Iraq and likely in Afghanistan, and I know a number of you have alluded to it while I was out of the room, that there should be some preparation in terms of a more effective and cohesive comprehensive structure for almost another commission begun right now, given the problems that we can see on the horizon. And I think you've commented generally on it in the past, but does that kind of thought make any sense?

And by the way, I know that Senator McCaskill has been working in this area and has a legislative proposal that begins or more than beginning, but addresses this issue. But if I could elicit your comments on it?

Mr. KENDALL. Let me just talk about some of the things we are doing to institutionalize this capability, which I think is one of the central concerns of the commission.

Secretary Gates put out a letter last January tasking various Under Secretaries and largely the Chairman of the Joint Chiefs to take a number of steps to institutionalize this. We put out a DOD directive, which is at OMB right now for review before it goes final. There will be a rule that will go out for public comment that updates the DOD directive that governs this. It was dated 2005.

The Joint Staff has a joint publication that covers the doctrine of this area that it has been published, I believe. And to give you a sense of how this has infiltrated through our system, this is a letter that General Allen just put out, and it is a several-page letter directing all of his commanders in terms of their responsibilities as far as contracting is concerned.

And a key sentence in here is that contracting has to be commanders' business. It is part of the force. When half the people you deploy are contractors, they have to be managed as part of the force. And I have got some training aids kind of with me here. I

have got the contingency handbook, contracting handbook, the third edition, okay, we have been working on. This is for contracting officer representatives, the people that supervise day to day.

There is one here about contracting as a weapon. So the department, I think, has got it. We have got the fact that when we do an operation like this and we put contractors out there in equal numbers roughly to the soldiers we put on the ground, we have got to manage them just as effectively.

And because they are there under contract and not under the UCMJ necessarily, although they may be under that in Armijah, we have to do that very aggressively and carefully. So I think we have got it, and we are meeting the very fundamental, I think, recommendations of the commission, which is to institutionalize this capability.

I share their concerns that when we get out of Iraq and Afghanistan that we might lose this, just it might atrophy because we are not using it. So one of the things that I know the Chairman of the Joint Chiefs is trying to do is ensure that this gets into standard operational plans.

It is an annex where you do address contracting, just like you address logistics or communications or another military area. And when we do exercises at any level, that we take into account the need for contractors to support the operation that we are exercising for.

Brooks, do you want to add to that?

Ms. SCHINASI. Senator Blumenthal?

General BASH. Senator, if I may, I can answer this question really in the context of the recommendation of whether it ought to be a J10 or not. This gets to the institutionalization. I mean, this is at the end of the day, as Mr. Zakheim says, it is really what happens on the ground.

Since I have been in this position, there has been a sea change in my observation of what we have done. And insofar as meeting the intent, I think we are either there or well on our way. And based on my review, I would say that, currently, there is no compelling reason to add organizational structure such as J10. I say that, in my judgment, for four primary reasons.

One, leadership, as just alluded to here, all the way from the Secretary of Defense to General Petraeus, to General Allen, to subordinate commanders, we are having significant attention on this problem. The Secretary of Defense has promulgated the strategic planning guidance. It now is—operational contracting support is in all of our plans by direction, the plans, policy, and resources.

The second reason is organization. So this gets to the J10 recommendation squarely. First of all, in my position as a three-star, I report directly to the Chairman, and I am responsible for operational contract support. And there are four general officer equivalents, including me, within that organization.

OCS, operational contract support, is now designated as a joint capability area. There is only 37 joint capability areas in all of our military. So it is fairly significant that that has occurred.

The division of operational contract support that works for me is on par, it is on par with maintenance, health, supply, and engineering—all major joint capability areas.

Doctrine is the third primary reason. So when we institutionalize, we have to make sure it is codified and people follow the rules that they are supposed to. Joint Pub 4-10, which has been published now for several years, is undergoing another revision based on the lessons learned in Iraq and Afghanistan. In all, there are 41 authoritative directions with instructions, manuals, and joint publications.

Furthermore, operational contract support is now part of our joint task list. Now our joint task list in the military, of which there is 1,164 of them, today we have identified 372 of those that have OCS equities. And so, they will be adjusted accordingly.

But more importantly, there is now we have identified 51 specific joint tasks that will be included in the joint task list. Now what does that mean? That means now the military, once they are codified in that position, will have to man, equip, train, exercise, and report to each of those tasks because that will be 51 direct OCS ones out of the 1,100 plus total.

The third area is planning, as it was mentioned. And Madam Chairwoman, I think this is one of your big concerns. OCS heretofore, back when Iraq started, there was no planning for it. We just did not foresee that this would be an important capability.

Today, it is required in all plans. And we have a new annex, which you are aware of, which is Annex W. Every plan that requires an Annex W has one today. And indeed, we have now adjusted the Annex W criteria to make it 5-fold larger, and all those plans are going through the cycle of improving them down to the point of processing maps for planning manuals and all that for the operators.

The last thing I would say, and this is at the end of the day—and Mr. Zakheim makes this point, I think, very well—what happens on the ground? Does it get implemented?

I can tell you—I will give you two vignettes from my personal experience just in the past year and a half. One of my previous jobs as the Operations Director at Air Mobility Command, when the Haiti earthquake occurred, we deployed a contingency response group that had a contractor representative embedded that went to that airport, and that airport went from a capability of about 20 flights per day to over 150 flights a day. And that was primarily because that contracting representative was able to quickly leverage the local economy to get to that scale of operation.

The second vignette I would give you is in my most recent assignment as the Deputy Commander for JTF-519. I was deployed to Japan to support Operation Tomodachi. I can tell you that when I arrived there that the J4, the logistics expert, at that point had done two things in this vein. One, he immediately started a contracting board, if you would, to make sure that the contracting actions were commensurate with what the commander wanted.

And the second thing they did is it was integrated in the joint effects board to make sure that the contracting actions did not waylay some of the efforts that we had. Now why is that important?

It has bubbled all the way down to operational level and to very important humanitarian relief efforts.

And so, that is evidence that that this is actually getting to that point. We have a long ways to go, but I am confident that we are actually getting there.

Senator BLUMENTHAL. My time has expired, but I really want to thank—oh, I am sorry?

Ms. SCHINASI. Could we just, yes, have a couple minutes on this? Because this is clearly one of the issues that the department and the commission disagree on.

Senator BLUMENTHAL. I am not in charge.

Senator MCCASKILL. Sure. No, go ahead.

Ms. SCHINASI. Okay. Right. So we will both have something to say. I don't—maybe different things, but—

Senator BLUMENTHAL. Well, I welcome it.

Ms. SCHINASI. I am just going to give you another way to look at it, and that is in the Department of Defense in particular, the positions that general officers and admirals have really tell you what they think is important. When we look at contracting, contracting has always been a subset of acquisition. Logistics is a subset of acquisition.

What we are talking about is elevating this beyond even the acquisition function, right? This is a matter of—we have been talking mostly about management this morning. Management is very important, but it is really that decision to use contractors that begins the whole need for the management structure to be in place, and that decision to use contractors is really a policy issue. So we are talking about policy.

It is also a force structure issue. So we are talking about personnel and readiness. What we have seen, many good things happening in the department. But if you are not willing to commit the positions of leadership, then you really are not saying that this is important to you. So that would be one thing.

There are 51 general officers on the Joint Staff. We believe that one is not too many to put with the focus on contingency contracting. So I will stop there because we are short on time. But—

Mr. ZAKHEIM. Let me add to that, if I may? First of all, while the department is doing what it can do now, we go back to the question of what happens when the contingency ends?

What you need is an advocate. If you don't have a senior advocate, what then happens is that people simply don't pay attention. Now think about it. We have been at this for 10 years, and you know, what we are hearing is we still have a ways to go.

How many more years do we need to have a ways to go? It tells you something about leadership and policy. If you have a senior leader who is an advocate for these issues—and by the way, when I was first in the building in the '80s, I think we had a J1 to a J6. Okay, now we have a J8 and so on. When the Joint Staff wants to add J's, they figure out a way how.

And I only heard today when I was in the department that the Joint Staff was going to add more people. So if they can add people and they can add departments, what their message is, why is there a J8? Because, quite rightly, the Joint Staff has to be a major player in programs and budgets.

When I was Comptroller, I barely did anything without consulting with my J8 counterpart, for good reason. Well, this is the same message. If contingencies management, oversight, planning are really, really important—and, oh, by the way, the QDR had barely a line, barely a line, about contingency contracting. I guarantee you, if there was a three-star J10, it would have been more than a line.

Senator BLUMENTHAL. Thank you very much.

I want to thank all of the witnesses for your very excellent and forthright answers and for all the work the commission has done.

And Mr. Secretary and General Bash, thank you for your service to our Nation. Thank you, particularly, General Bash, for your lifetime of service in our military, and please convey my thanks as well to the brave men and women working with you.

Thank you.

Senator MCCASKILL. You know, I have got so many places that I would like to go right now. Let me, since we are on this, the Joint staff, and you know, Mr. Zakheim is persuasive about the number of officers at Joint Staff and whether or not we need someone. And maybe we would get less resistance to this if we talked about a senior leader at the Joint Staff that is in charge of contracting, not contingency contracting.

Because as Senator Manchin pointed out, I wish we had that at Homeland Security because they can't even come close to telling me how many contractors they have. They are closer now than they were when I got here in 2007. But when I asked that question in 2007, they acted like I was speaking a foreign language.

And by the way, over there, it is contractor, contractor, employee, contractor, contractor, contractor, employee, employee, contractor, contractor, contractor—all doing the same function at vastly different levels of pay. And I would be willing to bet we have got that in DOD.

And so, I honestly think that if we are going to be honest with the American people about how our Department of Defense relies on contracting, then it is time—and believe me, I am very proud of the progress that has been made. And I don't want you to leave this hearing without you knowing I recognize the progress that has been made.

I know how bad it was in 2007. I was in a room in a briefing on LOGCAP that was shocking to me, that the only person in the room that knew anything to the questions I was asking was a woman civilian. Not any of the officers in the room had any idea about the details and the granular nature of what LOGCAP was costing us and why.

And that is why we got monogrammed hand towels. That is why we had cost-plus and noncompetitive in a way that was wildly abusive of the American taxpayer, to say nothing of the risks that we put our men and women in because of sloppy contracting on logistics contracts.

So I really hope you leave this hearing, and I will take it upon myself to go to leadership and press as it relates to the war contracting commission that the way it doesn't atrophy, the way we don't have a lessons learned that weren't learned is by not having that senior leadership that is—their whole portfolio is to have eyes

and ears on contracting, no matter where it occurs. And I think that is very important.

Let me quickly move to some areas of irritation about past performance and suspension and debarment. I sense a little pushback on maybe not so much past performance, but certainly on suspension and debarment in terms of the commission's recommendations.

I am disappointed that we have a lack of past performance information going into the databases. I mean, this is a good example of where we set up the structures, and because they never have that continued attention and because it is not part of the mission, that it doesn't happen.

And what the committee said was, in fact, that you are failing to input timely and complete contractor performance information. And they want to—the 821 of the 2012 defense auth is going to require DOD to develop a strategy for ensuring that timely and accurate information on contractor performance gets included.

Is this a good thing, and do you think a streamlined—and with some kind of verification, that before a contract is entered into, that they have, in fact, tried to verify that contractor performance in the database on both ends, putting it in and then using it once it is in?

Mr. KENDALL. I think the short answer is yes. We have been working for some time to improve the quality of our CPAR information. There hasn't been an enforcement mechanism to get the data put in or to ensure that it has been accurate. So it has not been consistently good.

We recognize this is a problem across our contracting, probably as much so in other areas as it is in contingency contracting. So we are taking steps to improve it.

It is partly information systems. It is partly enforcement mechanisms. It is partly management attention. So, in general, we agree with the direction in which you are heading.

The only place that we would quibble a little bit with the recommendations of the commission in this regard is regard to the right of a contractor to appeal an adverse rating. We think there should be some opportunity. The rating can be posted, but there should be some opportunity for due process for contractors. So if they feel they have been unfairly rated, they have at least a chance to go to a higher authority and get that reexamined.

Other than that, though, we are in general agreement on this.

Ms. SCHINASI. Senator McCaskill?

Senator MCCASKILL. Yes?

Ms. SCHINASI. Point of clarification. What we recommended was that the appeal process not hold up—not hold things up, not that there not ever be an appeal process. So I just want to put that in the record.

Mr. KENDALL. We are okay with that.

Senator MCCASKILL. Yes, I think if we could agree on that, that the appeal process would not—it could be noted there was an appeal, but it couldn't change the fact that the data is going in. So it is there in case there is somebody else thinking about contracting with that particular contractor.

Suspension and debarment. This one is frustrating because I think the commission has recommended a streamlined procedure

for suspension and debarment in a wartime environment. And I think that the department has pushed back, saying that it should remain a fairly rigorous administrative procedure. Contracting officers can use past performance databases in a flexible way to avoid awarding contingency contracts to contractors where there has been evidence to suggest unreliable performance.

Well, reference my last line of questioning about those databases. And second, why would we want to have—informally debar contractors on a de facto basis, rather than documenting the decision through a streamlined process? What are we afraid of here?

Mr. KENDALL. I am not sure about part of that. If we do debar or suspend someone, that is public information. We are not doing that, you know, under the table.

Senator McCASKILL. No, no. I am talking about you all pushed back and said we don't want to streamline the suspension and debarment process in theater because, you know, we think a rigorous administrative process is necessary.

And so, what you kind of said is we can kind of do it informally if there is bad information there. And I am having a hard time reconciling those positions.

Mr. KENDALL. A couple of things about that. One is that suspension and debarment are done to protect the Government's interest, to make sure that we are, you know? And debarment in particular is fairly serious systemic violations or a violation of law which is significant because it debars a contractor for up to a 3-year period.

We have increased to about 50 percent the numbers of which—of times of which we are doing this sort of an action. So we have increased enforcement in that regard.

There are a number of other remedies we have as well. We can recover funds. I have got some statistics here of how much—several million dollars have been recovered by our audit agencies, and there are a variety of reasons why there would be an error in payments that would cause us to recover.

So we are taking action. There is criminal action in some cases, if that is called for, as well as suspension and debarment and administrative action. So, in general, we would agree that enforcement should be stronger. We do want some discretion for this so that people who are higher contracting authorities can examine a case carefully before they take that kind of an action because it is a fairly severe action to take.

Senator McCASKILL. Well, it is. On the other hand, I have sat in a lot of these hearing rooms and heard tales of horror about contracting malfeasance. And by the way, that contractor got another contract after the malfeasance.

So, I mean, if we are going to err, I think we should err on the side of making sure that we are weeding out the bad actors that are ripping us off, as opposed to erring on the side of, you know—and that is where because I have not heard—I mean, not that I am sure there are some cases where there has been some unfairness, and that is why we have to have a process.

Maybe we could have a streamlined process in contingencies that would lead to suspension and debarment, where there could be something that takes longer to get it reinstated perhaps inside the 3-year period. But I am pushing this envelope because what I have

seen is a reluctance to go there culturally. That it was just easier not to because, frankly, the process is so hard, it is a little bit like leasing temporary buildings rather than MILCON, you know?

I mean, a lot of folks were leasing temporary buildings because it is a lot harder to get something through MILCON. And I think this is the same kind of situation, that we have built up such a rigorous process for debarment, it is just easier for folks on the ground to say, "Well, I don't want to go debarment. That is too much paperwork."

Mr. KENDALL. I don't have any information that would suggest that that is the case, but I don't have any information suggesting it is not either. So I would like to take that one as something that I would look into and perhaps get back to you.

Senator MCCASKILL. Yes, if you could drill down on this whole issue and—because I want to push on trying to get suspensions and debarments, something that can happen and can happen fairly quickly when there is egregious activity on a contractor's part, particularly in contingencies.

Senator Ayotte?

Mr. KENDALL. One area before—if I could, where we would want to have that authority and exercise it is the area that the new law will cover, where money is falling to our enemies through a contractor and where we can void a contract at least and maybe take stronger action beyond that.

Senator MCCASKILL. And I think that is obviously something we all agree on, but monogrammed towels are almost as bad. I mean, they are not. I am being sarcastic. That will be clipped somehow and used against me.

[Laughter.]

Senator MCCASKILL. You know, let me clarify that was me being a smart aleck, and I shouldn't have. But there just was so many—the faulty wiring of showers is as bad. That is a much better example where our men and women were subjected to life-threatening dangers because of corners being cut in the name of profit.

Mr. KENDALL. Understand.

Senator AYOTTE. Thank you very much.

So just to follow up, Secretary Kendall, when you say the ability to cut off contracting more quickly as in the provisions that are included in the NDAA, is that something that we should be putting together on a broader capability?

For example, what is in the authorization right now doesn't apply across all of DOD. It applies to our operations in Afghanistan and I believe Iraq as well, but it doesn't apply to all of DOD. So isn't this capability we need universally across DOD?

And it also raises a question with me based on what I heard before with State. I mean, why wouldn't State also need that authority? If they get wind that we are dealing with a bad actor, we need to act immediately. So I just pose that question.

Mr. KENDALL. Presumably in a contingency environment I would think State would need that, but I have to defer to them to answer the question. I would have to take a look and think more carefully about any unintended consequences and existing remedies for expanding that beyond areas where there is a contingency operation going on.

There are a lot of remedies in place in those areas already, and they may be adequate. I am enough of a lawyer not to offer an opinion about something—

Senator AYOTTE. Well, I think that is the problem, though.

Mr. KENDALL.—that I haven't looked at carefully.

Senator AYOTTE. The reason that we passed this stuff is because it was getting overly lawyered, and we needed to give you the authority. Just we got a bad actor, we have got to cut it off.

And so, it just seems to me that this isn't going to be the last conflict. This is authority that I don't want you to have to come back to Congress for. And so, when we run into the next bad actor and we are dealing with the—I am a lawyer myself—you know, all the great arguments that can be made. But, so I just—I appreciate an answer on that if you could give it some more thought.

Mr. KENDALL. Yes, off the cuff, I am inclined to agree with you. But I would like to take a look at it with our attorneys.

Senator AYOTTE. Thank you very much.

And I have one follow-up based on the discussion that we were talking about before with what is happening in Iraq. You described it, Secretary Kendall, as State Department has never done anything like this before.

Mr. KENDALL. Not on this scale.

Senator AYOTTE. Right.

Mr. KENDALL. Not with this many, large number of people or contractors.

Senator AYOTTE. So how, you know, I am deeply concerned about how this is going about. So put that aside for a minute. If we are going forward in this regard, how are we going to best leverage this military to civilian transition, and how can the Department of Defense, I know that you have talked about that to some extent, leverage their reliance on contractors, this experience, to help State actually put in place the minimum amount of acquisition capability it needs to support its diplomatic mission in Iraq and to keep people secure?

I mean, how is this going to work with the two of you together? And are you going to give them people? Are we going to get people from other agencies? How is this going to work?

Mr. KENDALL. I could get you a longer answer for the record. But we have been working, I think it is an absolutely fantastic example of interagency cooperation, frankly. I think it is partly due to the fact that our military has put so much into Iraq and tried to achieve success there that we want to make sure that State is prepared as possible to take over and continue that part of the mission.

But we have, in terms of providing equipment, partly excess equipment, partly under the Economy Act where they reimburse us, thousands of pieces of equipment, and we have helped them with the planning as they have tried to decide what they need and how they are going to use it.

I mentioned the health contracting and pretty much all the support functions that they are going to need, analyzing their needs for things like materiel handling for aircraft because they are going to operate a small transport air arm. We have looked across the board. I think they have benefited enormously from the military's

experience and the commitment we made to try to help them make this a success.

And I hope that we have done so in a way that will make this transition smooth, and I think we have. And we really, really want to see them succeed in their mission.

Senator AYOTTE. Just to get to Mr. Zakheim's fundamental, but very important question, which he raised in answering my initial questions about Iraq. How is State going to deal with this risk question, which seems to be the fundamental important question? Because there is still a lot of militant activity there that—

Mr. KENDALL. Yes, I think that is a question—I think you have to ask the State Department that question. I don't want to speak for them, but I think they believe that with U.S. forces withdrawn, with the current security environment that is there, that they can manage the situations they will have.

They will have physical security contractors on each of their sites, significant number of them. They will have sensors and warn sensors to alert them to any incoming improvised rocket munitions and so on, so they can take cover. They will have physical protection. They are putting overhead protection over all their living spaces where people will have their quarters, as well as some of the common spaces.

And you know, they believe that that will be adequate. Beyond that, I think I would have to defer to State to answer the question.

Senator AYOTTE. I just want to ask the basic question. Isn't it riskier to have contractor undertake this kind of security than our military?

Mr. KENDALL. It is a mission that contractors—

Senator AYOTTE. I mean, you are talking about rocket launchers and—

Mr. KENDALL.—are performing the static security mission in a lot of sites today. They are doing it for State, and they are doing it for us. So the difference will be that U.S. forces will not be there to react if they are needed. That is a significant difference.

Ms. SCHINASI. Senator?

General BASH. I would just add that as previously mentioned, we have been working with State on a biweekly basis for the past year and a half. The last—I mean, most of the contracts, a lot of them like LOGCAP IV that was mentioned and some of the DLA fuels contracts, have transitioned to State. So it is not like they are starting new contracts. A lot of them are moving over.

DCMA, Defense Contract Management Agency, has 52 people dedicated to help State with oversight on all of those contracts. As was mentioned, the equipment, the detail has gone down to, at this point, 2,326 items. You know, all the way to Caiman MRAPs, which are top of the line, to provide them security to some of the warning systems that was previously mentioned.

DOD has also taken to train a lot of the State Department contract representatives to our DOD standards. And so, we continue to work with them, but I think the key point that Mr. Kendall made was based on today's security environment, is the transition occurring? If that environment were to change to the worse, obviously, then there will be obviously more risk.

Ms. SCHINASI. Senator Ayotte, if I could just add two things?

Senator AYOTTE. Sure.

Ms. SCHINASI. One, I believe that the State Department could not do this without the contract support that the Department of Defense is providing. But the question, I think more basically for the U.S. Government is, is this the position we want to be going forward, right?

And that is something—we are in the position we are because nobody thought about this ahead of time. So there really is no option but to carry on the way we are carrying on now. But the more basic question, as I said, is, is that they way you want to be? Have the U.S. Government operate going forward?

Second thing I would add, on your issue of risk, it is not clear yet that what sort of—the civilian private security contractors do not come under the military justice system, and it is still not clear what system they come under for anything that would happen. Hopefully not, but that anything would happen.

Senator AYOTTE. So there are still questions surrounding accountability and liability?

Mr. ZAKHEIM. Yes.

Senator AYOTTE. And that is significant?

Mr. ZAKHEIM. And I would only say this. When you are talking about the kinds of systems you just heard that are going to be transferred to contractors, how can you say there is no risk or even minimal risk? I would call it significant risk.

Senator AYOTTE. You know, I have to agree. I think there is huge risk with this strategy and what we are going to try to undertake in Iraq. And I appreciate all of you being here today and your important work that you are doing, that you have done in this commission, and we are going to continue to rely and seek your advice as we try to implement the recommendations of the report going forward.

And I would thank you, General Bash, for the important work that you are doing and for your leadership, and Secretary Kendall as well. This has been a terrific panel.

And I would just add that I remain deeply concerned that we are going to ask these civilians to undertake what is a military function, and that to the detriment of the security of our State personnel that will be there and others.

So thank you very much.

Senator BLUMENTHAL. Madam Chairwoman, may I ask just a couple questions?

Senator MCCASKILL. Yes, sure.

Senator BLUMENTHAL. Very quickly, Senator Ayotte has asked a series of questions that are very much on our minds and that a number of us have expressed privately, if not publicly. And I realize—I, too, am a lawyer, by the way, and I have told a lot of witnesses don't give your opinions, just give the facts, right?

But we need your opinions, and we need your perspectives on these very critical issues because you are involved in providing critical support and training to a group that will be at risk. There is no question in my mind, as you and members of the panel have stated, that there are serious risks to these individuals and to the United States, insofar as they are our agents. Not just legally, but

morally, they are our agents in the same way—not exactly, but in the same way a member of the United States military would be.

And so, the jurisdiction of this committee may not be exactly, just as you are not directly responsible, but you will be involved in supervising and training and providing the support, as is appropriate. And I would hope that we can continue to ask questions and rely on your opinions, as well as your factual knowledge on this issue.

So, again, I thank you. And it is not a question, but it is an invitation in the future for additional comment.

Thank you, Madam Chairwoman.

Senator MCCASKILL. Thank you, Senator Blumenthal.

I have a number of other questions that get into some details on private security contractors, get into some details on additional staffing and resources, get into some additional questions on IGs and GAO and some of those issues. I am going to give those all to you for the record.

[The information referred to follows:]

[SUBCOMMITTEE INSERT]

Senator MCCASKILL. And to the extent that we will copy you all the questions also, if there are any comments that you would like to make, most of these are about the implementation of the recommendations. And I think what has been so valuable about today is the fact that you are both here.

This is fairly unusual. And I want to particularly commend General Bash and Secretary Kendall because there have been times that people in your jobs have refused to appear on panels with witnesses that are not members of the Department of Defense or the active military. And the fact that you are here in this way, making yourself accountable to members of this commission that have done, I think, yeoman's work in trying to help us improve an area that is vitally important to our military, to our National security, and to the taxpayers of this Nation.

So I appreciate it. And bear with me in terms of the number of questions I have. It is probably much easier than me staying here another hour and a half. And although I would be tempted, but I actually have another general I am supposed to meet with at 5:00 p.m., and I have got to go upstairs and make sure I have got all my really hard questions ready for him at 5:00 p.m.

[Laughter.]

Senator MCCASKILL. And so, we will adjourn the hearing at this point in time. And know that this will not be the last of the hearings we will have on this.

One of the places I want to drill down, just so you can begin to prepare, is this issue of prime versus subcontractors. I think it is a lack of transparency. I know that if Harry Truman were sitting here, he would want to know who was making all the money.

And clearly, it is not the third-country nationals that are living in dormitories. They are not making the money. Many of them are working, as you all know, for pennies compared to what they would work for on a contract if they were stateside.

And so, where is this money being made, and how necessary are these primes? How much are we paying the middle men? Do we need that many middle men? Can we not get the expertise that we

can start being more task specific and compete these contracts for the tasks, rather than having these overarching contracts that have a tendency to get renewed without the kind of oversight that I think most of us would want?

So we will save that for another day. It may be in this hearing. It may be in the Contracting Oversight Committee. But I do think that is an area that we haven't really drilled down enough in yet, and I would be anxious to get any comments from you all. And I will pose those questions as part of the QFRs for this hearing about how much do we know about primes versus subs in terms of where the profit is actually landing?

Thank you all very much for being here today. Thank you so much to Senator Ayotte. She is a terrific, terrific addition to the Senate—

Senator AYOTTE. Thank you.

Senator McCaskill:—in terms of oversight on contracting, and I am glad to have some company.

[Laughter.]

Senator MCCASKILL. It is terrific. And Senator Blumenthal, it is terrific to have you here. And you stayed, and you actually appeared interested in all of these little arcane details, which is also terrific.

So thank you all very much. And this hearing is adjourned.

[Whereupon, at 4:42 p.m., the subcommittee adjourned.]