

February 7, 2007 Wednesday
COMMITTEE HEARING

HOUSE OVERSIGHT AND GOVERNMENT REFORM COMMITTEE

REP. HENRY A. WAXMAN HOLDS A HEARING ON IRAQ **PRIVATE**
CONTRACTOR OVERSIGHT

SPEAKER:

REP. HENRY A. WAXMAN, CHAIRMAN

LOCATION: WASHINGTON, D.C.

WITNESSES:

KRISTAL BATALONA, DAUGHTER OF BLACKWATER EMPLOYEE WESLEY
BATALONA

KATHRYN HELVENSTON-WETTENGEL, MOTHER OF BLACKWATER
EMPLOYEE STEPHEN HELVENSTON

RHONDA TEAGUE, WIFE OF BLACKWATER EMPLOYEE MICHAEL TEAGUE

DONNA ZOVKO, MOTHER OF BLACKWATER EMPLOYEE JERRY ZOVKO

TINA BALLARD, DEPUTY ASSISTANT SECRETARY OF THE ARMY FOR,
POLICY AND PROCUREMENT

ANDREW HOWELL, GENERAL COUNSEL, BLACKWATER USA

TIMOTHY TAPP, MANAGING DIRECTOR OF BUSINESS OPERATIONS,
REGENCY HOTEL & HOSPITAL CO.

STEVE MURRAY JR., DIRECTOR OF CONTRACTING, ESS SUPPORT
SERVICES WORLDWIDE

GEORGE SEAGLE, DIRECTOR OF SECURITY, GOVERNMENT AND,
INFRASTRUCTURE DIVISION, KBR

TOM FLORES, SENIOR DIRECTOR OF CORPORATE SECURITY, THE
FLUOR CORPORATION

ALAN CHVOTKIN, SENIOR VICE PRESIDENT AND COUNSEL,
PROFESSIONAL SERVICES COUNCIL

BODY:

HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM HOLDS
A HEARING ON IRAQ **PRIVATE** CONTRACTOR OVERSIGHT

FEBRUARY 7, 2007

SPEAKERS:

REP. HENRY A. WAXMAN, D-CALIF.

CHAIRMAN

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REP. EDOLPHUS TOWNS, D-N.Y.
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REP. THOMAS M. DAVIS III, R-VA.

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REP. PATRICK T. MCHENRY, R-N.C.
REP. VIRGINIA FOXX, R-N.C.
REP. BRIAN P. BILBRAY, R-CALIF.
REP. BILL SALI, R-IDAHO

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WAXMAN: The meeting of the committee will come to order.

Today the committee will investigate potential fraud, waste and abuse in the almost indecipherable world of contractors and subcontractors.

For the last two years, I've tried to get a clear answer to what I thought was a simple question -- how much money the Halliburton subsidiary, named KBR, and **private** securities subcontractors were making under the Army's troop support contract, called LOGCAP.

We know that the war in Iraq has given **private** contractors an unprecedented role in providing security services. Almost \$4 billion taxpayer funds has been paid for **private** security services in the reconstruction effort alone.

But sorting out overhead, subcontracts, sub-subcontracts, profit and performance has been nearly impossible.

For over 18 months, the Defense Department wouldn't even respond to my inquiry. When it finally replied last July, it didn't even supply the breakdown I requested. In fact, it denied that **private** security contractors did any work at all under the LOGCAP contract.

We now know that isn't true and today we will try to understand the layers of subcontractors, with a particular emphasis on the Blackwater Company.

On March 31, 2004, four Americans working as **private** security personnel for Blackwater, all of whom were military veterans, were ambushed and killed in Fallujah while on a protection mission.

Their tragic death became a turning point in public opinion about the war and directly resulted in a major U.S. military offensive, which is known as the first battle of Fallujah.

Twenty-seven American soldiers and over 800 insurgents and Iraqi civilians died in that battle and military observers believe it helped fuel an escalation of the insurgency.

It is now almost three years later and we still don't know for sure the identity of the prime contractor under which the four Blackwater employees were working.

What we do know is that Blackwater was providing security services under a contract with a Kuwaiti company called Regency and that Regency was itself a subcontractor for ESS Support Services Worldwide, which, in turn, was a subcontractor providing dining services and construction services for other contractors, such as KBR and Fluor Corporation.

We also know that both Blackwater and Regency were adding significant markups to the cost of providing the security services. And on top of that, the prime contractor, whoever it was, was making its own percentage off the contract.

Blackwater initially indicated that it believed KBR was the prime contractor under the LOGCAP contract. Three months ago, however, ESS told the committee that the Fluor Corporation was actually the prime contractor for Blackwater working Fallujah.

The Fluor Corporation disputes this and the Defense Department doesn't seem to be sure what's going on.

It's remarkable that the world of contractors and subcontractors is so murky that we can't even get to the bottom of this, let alone calculate how many millions of dollars taxpayers lose in each step of the subcontracting process.

But the impacts of contracting waste go beyond just dollars and cents. Today, four family members of the four murdered Blackwater employees will share their testimony with us.

They believe Blackwater sent their relatives into Fallujah unprepared and without armored vehicles, a rear gunner for each vehicle or heavy automatic weapons to defend against attacks.

Their experience tells them that tax dollars never reached the security personnel on the ground. They believe that the money for protective equipment took a backseat to the multiple layers of contractor profits.

I don't know if we will be able to resolve that issue today, but I'm deeply troubled by one document we have found in preparing for this hearing.

The day before the four soldiers were killed, a Blackwater employee sent an e-mail alerting superiors that a lack of equipment, armored vehicles and other safety equipment left the team unprepared to begin its mission.

That warning was seemingly ignored and we need to explore that further.

And without objection, this e-mail will be made part of the hearing record today.

I've already learned that sorting out the webs of subcontracts is confusing work, but our committee has an absolute obligation to the taxpayers to make sure their tax dollars are well spent and not siphoned off into billions of dollars of unnecessary overhead.

And even more important, we have an inviolate obligation to the men and women in harm's way and to their families to make certain that their safety doesn't take a backseat to corporate profits or wasteful spending.

I look forward to learning more from our witnesses this morning.

I want to now call on the ranking member of this committee, Mr. Davis.

T. DAVIS: Well, thank you, Mr. Waxman, and thank you for holding this hearing.

We once again meet to examine the challenges of managing contracts in Iraq. Since 2004, the committee has been engaged in continuous and vigorous oversight of contracting activities in the war zone.

That oversight involved five full committee hearings, 14 subcommittee sessions, numerous briefings from the agencies involved and review of thousands of documents the committee obtained from key federal agencies.

Those efforts focused on contracts for logistical support of U.S. military operations and for reconstruction efforts.

Throughout this review, it's been our goal to move beyond just the charged rhetoric and easy generalities that swirl around the topic and get to the underlying realities of acquisitions in Iraq.

The truth is gritty enough. No one needs to embellish or exaggerate it. Still, some prefer to oversimplify and distort and prejudge the outcome of complex contracting processes to fit the preordained conclusion that nothing goes right in Iraq.

I'd rather pursue a more constructive mode of oversight that looks beyond the headlines to make a lasting difference in our policies and save taxpayers money.

Some of today's testimony will focus on a brutal incident in 2004 in which four civilian security personnel retained by Blackwater USA, a security contractor, were ambushed and killed in Fallujah.

Our hearts go out to the families of those four men.

Committee members should keep in mind that liability of the Fallujah incident is the subject of pending civil litigation and I'd ask unanimous consent at this point to put in the record a letter from Callahan and Blaine to Speaker Pelosi on this matter.

WAXMAN: Without objection, the letter will be made part of the record.

T. DAVIS: Thank you.

In view of the court actions, I know that the longstanding committee policy still applies. This is not the forum to prosecute **private** lawsuits or the place to exploit the tragic events, but there are some unanswered questions, Mr. Waxman, and I applaud you for trying to get to some closure on these issues.

A separate focus of this hearing is on management and oversight of **private** security agreements, specifically the allegation that tiering of personnel charges by layers of security subcontractors exorbitantly inflated the price paid by the government under cost-plus agreements.

Tiering could be pernicious if each party was free to mark up their invoices and pass them on. But so far, we've found that subcontractors had fixed price contracts with the DOD prime contractor, KBR, a former Halliburton subsidiary.

So the subcontractors would not pass on costs beyond the fixed unit prices, mostly competitive bid, in their contracts.

In those cases at least, the alleged profiteering shouldn't be possible. There's no legal way to profit from tiering under that scenario.

Even so, there remains the question of whether KBR may have acted improperly by allowing its subcontractors to use any type of security services at all or for not knowing whether the third and fourth tier subs included any security costs in their competitively bid fixed price contract costs.

The prime contract includes a generic prohibition against employees carrying weapons without special permission. Whether this prohibition can be stretched into a specific band or implicit security charges by remote subcontractors operating in a war zone will likely be the subject of intense discussion between the Army and KBR.

Make no mistake, there are still too many problems with contracting in Iraq. Just look again at the mess made through the Baghdad police college, with raw

sewage surging through classrooms.

More recently, we heard about unauthorized VIP trailers and Olympic-size swimming pools paid for with U.S. tax dollars.

With that in mind, I look forward to exploring solutions to the constant security and logistical challenges that make contract oversight in a war zone so challenging.

How do we get the right number of acquisition professionals and auditors with the right skills to the operational theater in time to prevent and not just chase costly mistakes?

In previous hearings, we heard that emergency short-term contracting gave way to longer contingency agreements. Then many sustainment contracts were entered into using full and open competition.

The process needs to mature and stabilize even further. I hope these hearings help us get to that end. We're looking for a slope to the acquisition learning curve, evidence that lessons learned are being applied.

Thank you.

WAXMAN: Thank you very much, Mr. Davis.

By the announcement yesterday, all members who had made an opening statement will not be called on today for an opening statement.

Mr. Towns was not here yesterday and has requested that he be given an opportunity for an opening statement.

TOWNS: Thank you very much, Mr. Chairman. I had a conflict yesterday and, of course, wasn't able to be present.

Thank you, Mr. Chairman, for holding these hearings on waste, fraud and abuse in federal contracting.

Today's hearing focuses on military contracts in Iraq, but the problems identified are not unique to the Pentagon or the war. In fact, we see exactly the same type of waste in contracts of Hurricane Katrina and in other areas.

The American people and Congress have been very, very generous, but not nearly enough of the money has been sent into the places that need the help, especially the victims of Katrina.

One of the biggest problems I see, Mr. Chairman, and something that I plan to look into in my subcommittee, as the chair, the layers and layers and layers of middlemen, each taking a cut of the money before it gets to the people who are actually doing the work.

If we could cut out these middlemen and middlewomen, we could get more funds applied to the problems we are trying to solve and save some money while we are dealing with the problem.

This problem is more than just wasted dollars. With so many layers of subcontractors, the government cannot monitor the work and hold people accountable.

This absence of accountability has real, real human costs. People who lost homes in Hurricane Katrina tell us how many different contractors they had to deal with just to get a trailer to live in or to put a roof over their heads, and relatives of Blackwater employees will tell us today how the lack of oversight and planning can contribute to a tragedy.

Mr. Chairman, I'm glad that we have the chance today to question some contractors and finally do some oversight. But the same type of wasteful contracting happens so often that this is not just a problem with a few bad apples.

The federal contracting system is broken and we must fix it. In this Congress, we need to pass a bill that closes loopholes and requires more competition.

We need to take oversight and control out of the hands of huge contractors and have government officials supervising the people who are actually doing the work and we need to make sure that we're not outsourcing work that should be done by government employees.

I look forward to working with you, Mr. Chairman, and with the members of this committee on both sides of the aisle to pass some real contracting reform as soon as possible.

On that note, Mr. Chairman, I yield back and I'm eager to hear from the witnesses.

WAXMAN: Thank you very much, Mr. Towns.

The chair would note that Ms. Foxx did not have an opportunity for an opening statement and want to see if she wishes to make one today.

FOXX: I do, Mr. Chairman, and thank you very much for this opportunity.

As our country engages in a historic struggle against evil and terror, some publicly question whether our efforts are being properly administered and operated.

While constructive criticism and genuine critical analysis help ensure transparency and proper management, some partisan rhetoric can actually compromise the good work that's being accomplished in places like Iraq.

Many contractors operating in Iraq have been subjected to a great deal of scrutiny. While I understand there may be some waste of contractors operating in a war zone, a vast majority of the work done by our **military contractors** is praiseworthy.

American contractors deliver critical supplies, infrastructure and security in an incredibly hostile environment.

One of these contractors, Blackwater USA, is headquartered in my home state of North Carolina. Today they are facing accusations of negligence and profiteering.

But I see another side of this company that often remains unmentioned in the media. For example, many Blackwater security personnel were previously honorable law enforcement and military personnel, professionals.

These folks are well trained and well equipped, as they work tirelessly side-by-side with our military as they pursue victory over vicious, heartless attacks of violence.

Furthermore, in response to emerging threats arising in the war on terror, Blackwater is developing a number of technologies which can serve to protect our brave servicemen and women fighting overseas.

Given the tremendous personal sacrifices and acts of patriotism made every day by the brave folks who work for contractors such as Blackwater, I hope that today's hearing will provide an opportunity for a fair defense against some of the accusations which have been leveled against them.

I look forward to the testimony of today's witnesses.

And I want to add one comment to these prepared statements. I appreciate very much what Mr. Towns was saying about how we should be looking at waste, fraud and abuse throughout the federal government.

I will tell you that this is an issue near and dear to my heart, but one of the problems that we have is we are doing too much at the federal level and Congress is not exercising its appropriate oversight authorities and I think many times we're working with systems that simply don't work.

Having hearing after hearing is not as productive as it should be in terms of our looking at that.

But I think one of our biggest problems is that the federal government tries to do things it's got no business doing and we simply cannot do the proper oversight and we need to reduce the role of the federal government instead of increasing the role of the federal government.

Thank you.

WAXMAN: Thank you very much for your comments.

We'll now turn to the witnesses. But before that, we have a memo that's been circulated to the members of the committee. It's additional information for the hearing on **private** security contractors and, without objection, we'd like to make that part of the record.

We'll receive testimony from the first panel of witnesses and let me introduce them.

On March 31, 2004, four men working as **private** security personnel for Blackwater USA were securing a convoy when they were killed as they traveled through Fallujah.

These brave and patriotic men were Scott Helvenston, Wesley Batalona, Jerry Zovko and Michael Teague.

We have with us today family members of all four men.

Kathy Helvenston-Wettengel is the mother of Scott Helvenston. Scott was a former Navy SEAL and a SEAL instructor, a world class athlete, and the father of two young children.

Donna Zovko is the mother of Jerry Zovko, a former Army Ranger, who was fluent in four languages and was just 32 at the time of his death.

Rhonda Teague is the widow of Michael Teague, who is also survived by his son. Mike had served as a member of the Army's elite helicopter unit, known as the

Night Stalkers. He had completed tours of duty in Afghanistan, Panama and Grenada. He was awarded the bronze star.

Kristal Batalona is the daughter of Wesley Batalona, a 20-year veteran of the Army Rangers, who took part in the 1989 invasion of Panama, the first Gulf War in 1991 and the 1993 humanitarian mission in Somalia. Ms. Batalona heard the news of her father's death on her 22nd birthday.

Before we begin, I would like to express, on my behalf of myself and the entire committee, our deepest condolences. Our hearts go out to all of you for your loss.

As Americans, we all felt the pain that came across when we saw the horrific images, but none of us can truly know your anguish and loss.

And, second, I'd like to thank you for being here today. Just like your husbands, your fathers and your sons, you are also very brave to testify before Congress. It's not an easy thing to do, so we thank you very much for it.

It's the custom of this committee to swear in all witnesses that appear before us. So if you don't mind, I'd like to ask you to stand.

Raise your right hand. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth?

Thank you very much. The record will note that each of the witnesses acted in the affirmative.

For all of you to be here today, I understand that you have a joint statement that all four of you signed and want to provide to the committee.

Normally, we'd give each witness just five minutes, but if one of you would like to read the statement, we'd like to recognize you to do that and to take as much time as you need to read this statement.

(UNKNOWN): Mr. Chairman, I'd like unanimous consent to place into the record two documents pertinent to this hearing, one addressed to you and Mrs. Pelosi, in which it's cited that the hearing should go after the Blackwater, the serious lead by extremely Republican companies such as Blackwater, and, secondly a memorandum of the funds given specifically to Democratic causes by the law firm that represents these three women.

WAXMAN: OK, without objection.

(UNKNOWN): Thank you, Mr. Chairman.

WAXMAN: We'll accept those and make them part of the record.

Please proceed however you wish and thank you very much for being here. If you would, there's a button on the base of the mike. Press it in and then pull the mike as close to you as possible.

HELVENSTON-WETTENGEL: I would like to start off by sincerely thanking the committee for inviting each of the families of the four men who were killed in Fallujah.

HELVENSTON-WETTENGEL: Although everyone remembers those images of the bodies being burned, beaten, dragged through the streets and ultimately hung from a bridge, we continue to relive that horror day after day, as those men were our fathers, sons and husbands.

Following that horrific incident, on March 31, 2004, we turned to Blackwater for answers. What we received was appalling.

We were told that the information surrounding the circumstances in which our loved ones were killed was confidential.

When we insisted on seeing the report concerning the incident, Blackwater told us that we would have to sue them to get it.

Having just lost the most important people in our lives, a lawsuit was the last thing on our minds. Instead, our focus was concentrated on finding out just what happened.

However, the people in the best position to tell us what happened refused to do so.

It was not as if Blackwater was claiming that it did not know what happened, but instead Blackwater concealed the information from us that we needed so desperately to understand why our loved ones were dead.

Imagine having the people so near and dear to your hearts killed overseas in a foreign country and then having the employer tell you that the details are confidential and that it would take a lawsuit to turn the information over.

There is no accountability for the tens of thousands of contractors working in Iraq and abroad. **Private** contractors like Blackwater work outside the scope of the military's chain of command and can literally do whatever they please without any liability or accountability from the U.S. government.

WAXMAN: I wonder if you might move the mike just a little bit back away from you.

UNKNOWN: Too close?

WAXMAN: Yes, too close. Thank you.

UNKNOWN: I'm not familiar with speaking on microphones.

WAXMAN: You're doing just fine.

UNKNOWN: Yet, they also work in countries like Iraq, which are not currently capable of enforcing the law and prosecuting wrongful conduct, such as murder.

Therefore, Blackwater can continue accepting hundreds of millions of dollars in taxpayer money from the government without having to answer a single question about its security operators.

It is our understanding that Blackwater has lost more operators than any other U.S. security company working in Iraq. The inherent flaw in the manner in which **private** contractors are being used is that there is no accountability or oversight.

If the U.S. military was performing the job that it now farms out to the **private** sector, there would always be someone to answer to, all the way up to the president of the United States.

More important, those in the chain of command would be looking out for the best interests of the soldiers in their country.

In the case of Blackwater, the people making critical decisions are those in corporate America, whose focus is often on cutting costs and making profits.

When the decision was made to save millions of dollars by not buying armored vehicles, our husbands, fathers and sons were killed. Blackwater gets paid by the number of warm bodies it can put on the ground in certain locations throughout the world.

If some are killed, it replaces them at a moment's notice. What Blackwater fails to realize is that the commodity it trades in is human life.

While maybe just a statistic to Blackwater, the four men killed in Fallujah were exceptional special forces, who collectively gave decades of military service to our country.

My son, Scotty, became the youngest Navy SEAL ever at the age of 17. He was fluent in five dialects of Spanish. He served as a Navy SEAL from Europe to Central and South America. He helped train embassy staffs and even set up the security for President Ronald Reagan's summit meeting in Venice, Italy.

Before leaving the Navy, Scott rose to the level of teaching Navy SEAL courses and was ultimately offered a promotion. Scott was also a gold medal winner at the world pentathlon. That year, he won two golds, a silver and a bronze, out of five events.

Mike Teague served in the U.S. Army for 15 years in the 160th Special Operations community. He had deployed in Panama, Grenada, Spain, Somalia, and other places that constantly immersed him in covert operations.

As a civilian, Mike taught gun training classes for the state of Tennessee, provided security for high profile celebrities and athletes, and worked as a police officer for the Federal Reserve.

He was reactivated during the war in Iraq and spent 12 months in the Army's Special Forces in Afghanistan.

Jerry Zovko and Wesley Batalona were similarly former Special Forces with the U.S. Army. Jerry was a member of the U.S. Army's 82nd Airborne Division and the Army Rangers. He served in Bosnia and in the Sinai Peninsula.

Wesley joined the Army after high school and quickly became an Army Ranger. He gave 20 years of service to our country by serving all around the world.

The talents of highly skilled special forces personnel do not always translate well into civilian life. However, Blackwater provided a high paying alternative to the routine jobs that former military personnel usually resort to.

Blackwater offered our men \$600 per day to work **private** security in Iraq. More importantly, Blackwater also promised our men certain protections which were critical in determining whether to accept such a high paying job to work in a war zone.

All four men were told they would be working in armored vehicles, with no less than six operators in each detail. There were supposed to be at least three people in each vehicle.

This would have provided for a driver, a navigator and a rear gunner, who would have heavy machine guns to fight off any attacks.

Our men were also told that they would be able to learn the routes through Iraq prior to going on any missions and to conduct a risk assessment of each mission to determine if it was too dangerous to go.

Blackwater did not provide our men with any of these protections. It is undisputed that they not have armored vehicles. They did not have a team of six. They did not have three people per vehicle. They did not have a rear gunner. They did not have heavy machine weapons.

They were not able to conduct a risk assessment of the mission. They did not have a chance to learn the routes before going on the mission.

In fact, when Scotty asked for a map of the routes, he was told, "It's a little too late for a map now."

Ultimately, all four men died before the contract they were working under was even scheduled to begin.

Lack of preparation and the strive to make as much money as quickly as possible, even if not 100 percent ready, is Blackwater's style of business.

This style was confirmed just last month when Blackwater's president, Gary Jackson, told the "Harvard Business Review," quote, "I constantly push for the 80 percent solution that is executable now over the 100 percent solution we might be able to devise in another three weeks," unquote.

An 80 percent solution means that 20 percent of the operators are dead.

Blackwater actually lost nine of its 34 operators in just over two months. That means that only 74 percent survived, which is pretty close to Blackwater's goal of 80 percent.

Our men were told that they would be performing work that would make a difference, such as guarding Ambassador Paul Bremer. Instead, they died escorting empty trucks that were going to pick up kitchen equipment.

Once the men signed on with Blackwater and were flown to the Middle East, Blackwater treated them as fungible commodities. For example, Scotty was physically and verbally attacked one night by a Blackwater program manager.

When Scotty indicated that he was not well enough to leave the following morning on the mission, despite two other Blackwater operators offering to go in Scott's place, the Blackwater manager burst into Scott's room late at night,

confiscated his weapon and told Scotty that if he personally did not go on the mission the following day, he would be fired.

It was under this threat of being fired and abandoned in Iraq that forced Scott to leave for Baghdad the following morning.

However, late that night, Scott sent his last e-mail. It was addressed to the owner, president and upper management of Blackwater security.

The treatment of the security operators was so bad that after working for Blackwater for just 11 days, Scott felt compelled to write an e-mail to the owner and president of the company that began, "It is with deep regret and remorse that I send you this e-mail. During my short tenure here with Blackwater, I have witnessed and endured some extreme unprofessionalism," unquote.

In this lengthy e-mail, Scott detailed all of the problems with the entire program and the treatment of the operators. There was no response from Blackwater's management to this call for help. Instead, our men were dead four days later.

After the incident, Blackwater held a small memorial service for our men and the other Blackwater operators who were killed.

During our time at the Blackwater compound, there were guards assigned to each of the families. The guards were with us at all times and did not let us speak with the other family members in **private**.

Ultimately, Blackwater refused to tell us anything about how our men died.

For six months after the incident, Blackwater did not return telephone calls or inquiries about the incident. Ultimately, I tracked down a direct number for Blackwater's owner, Erik Prince.

When I called it, Mr. Prince actually answered the phone. We had a brief conversation and I asked Mr. Price for a copy of Scott's contract and the incident report. He told me that I should receive them with a couple of weeks. No documents ever came.

Although Blackwater told us that we would have to file a lawsuit to obtain a copy of the incident report, Blackwater has done everything possible to prevent the disclosure of any information.

During the past two years that the lawsuit has been pending, Blackwater has not answered a single question or produced a single document.

Instead, Blackwater has appealed every single ruling all the way up to the U.S.

Supreme Court.

When we attempted to take the deposition of a key witness, Blackwater sent him out of the country just days before his deposition. When he recently returned to the United States after working for Blackwater for the past two years, we obtained another court order to take his deposition. Blackwater has now appealed that order, as well.

Thus far in our legal quest, Blackwater has hired five different law firms to fight us, including such politically connected lawyers as Fred Fielding, White House counsel, and Kenneth Starr.

It appears that Blackwater will go to any lengths to prevent us from finding out why our men were killed and to avoid any accountability for its actions.

Through it all, Blackwater has never denied that it was obligated to provide our men with certain protections. More importantly, Blackwater has never denied that it did not provide our men with these protections.

Instead, Blackwater has simply said that it cannot be sued for its conduct.

As appalling as it may seem, Blackwater also recently filed a \$10 million claim against us for bringing our lawsuit. First and foremost, we are seeking answers from Blackwater as to how and why our loved ones are dead.

Why were not they in armored vehicles? Why were they not in a team of six? Why were there not three operators in each vehicle? Why were they not provided heavy weapons? Why were they not permitted to learn the routes in Iraq before going on their mission?

Why were they not allowed to gather intelligence from the outgoing security company? Why was the risk assessment not performed prior to that mission?

Why were they not given 24-hours notice before their mission? Why were they lost in the middle of Iraq? Why did they drive through the center of Fallujah at a time when even U.S. military would not go through?

Why were they lied to about the weapons and protections they would have?

In short, why did Blackwater choose to make a profit over the safety of our loved ones?

Second, we are seeking accountability for the wrongful conduct of Blackwater. **Private** contractors such as Blackwater are being paid millions of dollars of our

taxpayer money to line their own pockets and jeopardize the safety of the men and women working for them.

There needs to be accountability for their conduct. While Blackwater is a **private** North Carolina company and should be held to answer to a North Carolina jury, the government should also create some type of accountability and oversight for **private** contractors.

Third, we are seeking to prevent other families from receiving that dreadful telephone call explaining that a father, a son or a husband has been killed.

If the message is sent throughout the industry that **private** contractors will be held accountable for their wrongful conduct abroad, the companies may devote more attention to the safety of their workers and less to the amount of their profits.

Having lost those close to our hearts and then having experienced the callous indifference of Blackwater, we sincerely hope that Congress will take action by creating accountability for the **private** contractors and not continue to allow them to make millions of dollars at the cost of the American lives.

WAXMAN: Thank you very much for that statement on behalf of all of you.

I know that up here we have the Democrats and we have the Republicans. I don't know whether you're Democrats or Republicans. I don't know whether you're sons or husbands or family members were Democrats or Republicans, and it doesn't make any difference.

HELVENSTON-WETTENGEL: No, it doesn't.

WAXMAN: They were American patriots. They were veterans of our armed services.

We want to know some of the things that you want to know, because we ought to know what's happening with our young men and women who are in the military and who are on the front line risking their lives working for **private** contractors paid by the United States taxpayers.

So we want to get some of the answers to some of the same questions, but we have an obligation beyond that to the taxpayers of this country to know how this whole operation works, where you have a contractor, a subcontractor, a sub-subcontractor, and who is responsible, who is accountable.

If you're loved ones had been members of the military, put into battle, I can't

imagine you would have had to go through all that you seen to have had to go through just to get answers to what happened to them. It's really conceivable to me.

HELVENSTON-WETTENGEL: I agree. It's unconscionable.

WAXMAN: Let me ask you some questions, because we're trying to get a record which we'll share with our colleagues and help us get the information that we need to try to understand what's been happening.

Some of these questions you may have answers to and some you may not, and I'm asking anybody on the panel who wants to give us their views.

Were your family members traveling in armored vehicles the day in Fallujah when they were killed, to your knowledge?

HELVENSTON-WETTENGEL: They were Mitsubishi Pajeros with reinforced back bumpers.

WAXMAN: And how about the number of team members that were in each vehicle?

HELVENSTON-WETTENGEL: Well, when they originally started to pull out, there were three. At the last minute, Joseph McGowan (ph) pulled out the rear gunner in each vehicle, claiming that they needed to have them there to help them do some clerical work.

WAXMAN: What was that third person supposed to do in the vehicle?

HELVENSTON-WETTENGEL: He was the one that would save them if they got in trouble. He was the one to protect them.

WAXMAN: Did they have machine guns?

HELVENSTON-WETTENGEL: I don't think Scotty ever got his own gun back. I don't think the navigators fired one bullet. The people in Fallujah literally just walked up to these vehicles and shot them at point blank range.

But then what they did after was just horrendous. Scotty lived a short while after the initial shooting. I was told he was still alive when they tied him to the back that truck and drug him through the streets of Fallujah.

And that was before they decapitated him, dismembered him and torched him.

WAXMAN: Do you know whether they had him -- I assume that...

HELVENSTON-WETTENGEL: I have no idea. I know they didn't have the big guns.

WAXMAN: If there's any difference among the others, because what you're saying, I assume you're speaking for all of them.

HELVENSTON-WETTENGEL: Well, no, ask them. Was it any different for you?

WAXMAN: If there are any differences, please let us know.

Did they have maps of the area?

TEAGUE: I'm not aware that they had any maps.

WAXMAN: Did any of you know whether they had maps?

HELVENSTON-WETTENGEL: I was told Scott specifically asked for a map and he was told it was too late for a map.

WAXMAN: So it appears, from what all four of you know, they were not traveling in armored vehicles. They were traveling in teams of two, in cars, instead of three and they didn't have a rear gunner and they didn't have heavy machine guns and they didn't have a map.

Is that a correct statement?

HELVENSTON-WETTENGEL: That is my understanding.

WAXMAN: All of you agree.

And you believe it was Blackwater's responsibility to provide these items to your family members, is that right?

HELVENSTON-WETTENGEL: Well, by just removing the armored vehicle, I was told it gave Blackwater a profit of \$1.5 million.

WAXMAN: We don't know. That's something you've heard.

HELVENSTON-WETTENGEL: Yes.

TEAGUE: I'm unsure of the profit gained by not providing these men with armored vehicles, but I have watched extensive footage of other contractors in

Iraq taking heavy fire in fully armored vehicles that can sustain 20 to 30 minutes.

And that's a possibility that our men could have gotten out, but we'll never know, because they did not have those.

WAXMAN: You've wanted to know information from Blackwater. What information did you want to get from Blackwater that you still feel you haven't received?

I think, Ms. Zovko, you had some specific information, is that right? Questions.

ZOVKO: Not information, but questions.

WAXMAN: Pull the mike a little closer.

ZOVKO: What and why were they sent, what led them into the mission that they were going to or the job that they were on, for three days or four days prior to the contract actually going into effect.

Why not prepare them? Why not give them time to prepare and get to know the route? All of these things that they were supposed to have been allowed to do prior to doing the job.

So a thousand and one questions and no answers.

WAXMAN: Did you talk to anybody from Blackwater?

ZOVKO: Did I? Actually, I did. On March 31, in the late evening, I spoke to a young woman by the name of Susan, who had, after three phone calls, confirmed that, yes, Mr. Prince will be coming to our house to tell us that our son was dead.

And I had talked to her a couple of times about the body coming home and then all of a sudden she disappeared. The only contact and good ears that I had there to listen to me were not there anymore. I've lost contact with them.

My son had time to talk to Blackwater and had communicated with them more so than I did after that. I met with the Blackwater employees at the memorial that they had in October, which is six months after the death of my son, and, after that, nothing.

WAXMAN: In the joint statement, at least one of you was told to sue Blackwater in order to get information.

ZOVKO: Yes.

WAXMAN: Is that something that they told to you?

ZOVKO: Ann told us to sue. I was under the impression that all the families, the families of my Jerry's coworkers and the families of the other young men that were killed that worked for Blackwater in Iraq will have the opportunity to go into this boardroom meeting for answers and questions, actually.

That's the impression that I was under. Well, after lunch and after everything that we went through that we did at the Blackwater facilities, my husband, my son and I were escorted to this meeting, to where it was only the three of us and four of the Blackwater employees.

There was no questions and answers really.

WAXMAN: Tell me about somebody telling you you have to sue them to get answers.

ZOVKO: Ann told us. My husband was asking, "Where are my son's personal things? Where are things that belong to my son? How did my son die?"

And she said that that was confidential. It was the information that if we wanted to know, we need to sue, and she actually was sitting on this side of the table, at the end of the table or head of the table. We were on the side.

She stood up and she said that if we wanted to know that, that we needed to sue, that was confidential.

WAXMAN: And was there anybody else there in that room from Blackwater?

ZOVKO: Yes, there was Mr. Rush.

WAXMAN: That's Mike Rush?

ZOVKO: Yes. There was...

WAXMAN: He's a very senior Blackwater official, according to our information, and he's the deputy director for operations at their North Carolina headquarters.

What did he have to say?

ZOVKO: Maybe at that time he wasn't so high in the position and chain of command, if you will. But, no, he was the person that we had met that had spent time with the families and he was sitting there. He was sitting to the right of Ann

and right next to him was a gentleman by the first name of Dave that was the fastest gun in Iraq, that was a joke.

This is supposed to make me feel like smiling or laughing because we're sitting at this table and they're introducing this gentleman that just came back from Iraq and he was the fastest gun in Iraq.

But we were told to sue and we have gotten no information. We did receive a copy of a flag that people that live near the Blackwater headquarters have made for our sons or it could have been the employees of Blackwater that were in Baghdad and Iraq, but it did have my son Jerry's name, Scotty's, Wesley's and Mike's on that flag and that was the only thing that we have gotten out of that answers and questions session with Blackwater.

HELVENSTON-WETTENGEL: I would like to add something about the flag. It was crocheted by a 70-some-year-old woman that lived near the Blackwater compound and she crocheted it.

It's a very large flag. But Blackwater had nothing to do with that. She just wanted to do something and she thought that might help us feel better. But Blackwater had nothing to do with it.

WAXMAN: Thank you.

Mr. Davis, I want to recognize you.

T. DAVIS: Thank you. I join Chairman Waxman in expressing our appreciation for their patriotism and trying to honor their memories in an appropriate fashion.

I'm having a hard time even understanding the contractual vehicle as we look at all the documents, too, if this was an ESS LOGCAP or ESS Fluor. They were a fourth or fifth tier subcontractor, and I hope we can get to the bottom of that.

But one question I have is we understand that families ought to be entitled to and receive compensation under the insurance that contractors are required to carry pursuant to the Defense Base Act.

Have each of you received those benefits?

HELVENSTON-WETTENGEL: The widows and minor children receive those benefits.

T. DAVIS: Correct.

HELVENSTON-WETTENGEL: I don't receive any.

TEAGUE: I personally never applied for those benefits. That has been brought to my attention several times as we've asked questions.

That, to me, has nothing to do with who's accountable for not providing the things to my husband and those other men that they were promised for their protection.

T. DAVIS: I agree.

ZOVKO: I receive no benefits.

BATALONA: My mother receives benefits.

T. DAVIS: Thank you.

I will yield to Mr. Issa.

ISSA: Thank you. Thank you, Mr. Chairman.

I guess I have one opening question -- well, first, a comment. Although I don't think your testimony today is particularly germane to the oversight of this committee, I am deeply sorry for the losses that you've had.

Camp Pendleton is the center of my district and so Fallujah was particularly painful for all of us in the community there, because during the same period, obviously, the Camp Pendleton Marines were heavily engaged in a dangerous zone.

One question I have is, the opening statement, who wrote it?

HELVENSTON-WETTENGEL: It was a compilation of all four of us. We all sent in our thoughts and feelings to Dean Callahan and he compiled it, because we were told we only had five minutes.

I have my own personal statement, if you'd like it.

ISSA: It was well written and I ask because it did appear as though it was written by an attorney who had obviously slipped in a lot of things that they believe would be facts in the lawsuit now pending.

And, certainly, I think it's regrettable that a family should have to sue to get information.

I guess one question. All four of these men were experienced, seasoned people who understood the military and law enforcement. Is that fair to say?

HELVENSTON-WETTENGEL: Yes.

ISSA: In a sense, and hearing some of the biographies, these were people who would have been able to set policy, set the terms, if you will.

I see you shaking your head, but think about this before you answer.

These are people who, in fact, trained other people, particularly Scotty.

So as I understand, what we're talking about are professionals, highly skilled, going into a combat situation with experience about combat.

Would that be fair to say?

HELVENSTON-WETTENGEL: No experience would have protected them that day.

ISSA: But that's not the question. Were these four...

HELVENSTON-WETTENGEL: They were very experienced, they were definitely.

ISSA: OK, I think it's important, because one thing that is legitimate to this committee's oversight is does Blackwater, who I don't know from Adam, basically, but do they hire topnotch skilled professionals that come prepared with skills commensurate with those of the U.S. military if they're to do similar jobs.

HELVENSTON-WETTENGEL: May I answer that?

ISSA: Please.

HELVENSTON-WETTENGEL: Well, they do hire very highly trained people, but they also are in Africa in these little villages hiring these men at \$30 a month and are told that if they die, their families will get \$1 million.

And there was a man from Africa that came and interviewed me. I've done interviews, two of them from Korea, because they're hiring there and Japan.

ISSA: Sure, sure, but you're experts on your children, your husbands, your father, your loved ones. They were highly qualified and highly skilled.

HELVENSTON-WETTENGEL: They certainly were.

ISSA: They were the type that we should want to have doing security and assisting our military in this combat zone. Would that be fair to say, for all four?

HELVENSTON-WETTENGEL: Those four were very highly trained, but I cannot say that for all of Blackwater's employees.

ISSA: It's a great loss obviously to you and...

HELVENSTON-WETTENGEL: Yes.

ISSA: ... the work that they were doing.

HELVENSTON-WETTENGEL: I'm a widow.

ISSA: And I'd like to thank you for the service they provided and, again, express our sympathies for their loss.

I yield back.

WAXMAN: I just want to take exception to the idea that it's not germane to our inquiry.

The taxpayers are paying for layers and layers and layers of **private** bureaucracy and if somebody who's getting taxpayers' dollars tells even highly trained American veterans that they're going to have body armor, they're going to have armed vehicles, they're going to have special people with them to help them carry out their job, we ought to know whether they failed to do that because of indifference or negligence or incompetence.

That is very much our job in oversight. It seems to me sometimes those who are criticizing our oversight didn't think we were actually going to do oversight.

This is part of our job.

SCHAKOWSKY: Will the gentleman yield for just a second?

WAXMAN: Let me ask unanimous consent that Ms. Schakowsky, who's not a member of this committee, be able to sit with us. Without objection, that will be ordered.

I do want to recognize members in order.

SCHAKOWSKY: Could I just -- in that regard, I also wanted to take exception to

the question about who wrote the testimony, because I think clearly the implication was that somehow these wonderful women couldn't possibly have written that wonderful, heartfelt testimony and that it took a lawyer in order to put it together, and I resent that very much and I wanted to just put that on the record.

Thank you.

HELVENSTON-WETTENGEL: I do have my personal testimony, if you'd like to see it.

WAXMAN: Well, whatever you have we'll be happy to receive for the record.

Mr. Tierney?

TIERNEY: Thank you, Mr. Chairman.

In your testimony that was given, you had a written question that you wanted Blackwater to answer and it essentially was why did Blackwater not listen to its own manager in charge in Kuwait who had warned of all the problems well in advance of the deaths of your relatives.

Ms. Helvenston-Wettengel, who was this manager?

HELVENSTON-WETTENGEL: Justin McGowan.

TIERNEY: I'm sorry, I couldn't hear.

HELVENSTON-WETTENGEL: His name was Justin McGowan. He was Scott's immediate superior.

TIERNEY: And what concerns did he raise with Blackwater?

HELVENSTON-WETTENGEL: John Potter was...

TIERNEY: And what concerns did Mr. Potter raise with Blackwater?

HELVENSTON-WETTENGEL: Apparently, it's my understanding that the guarantees that were given to our four men were not allowed in a subsequent contract that was signed with ESS.

In the ESS contract, they deleted the word "armored."

TIERNEY: They deleted the word "armor."

HELVENSTON-WETTENGEL: Yes.

TIERNEY: From the vehicles and from the...

HELVENSTON-WETTENGEL: In the ESS contract that Blackwater signed after Scotty had signed this contract.

TIERNEY: And you've had some difficulty getting the answers to these questions from Blackwater. So what was their response to Mr. Potter's concerns, if you know?

HELVENSTON-WETTENGEL: Well, they fired him initially.

TIERNEY: They fired him?

HELVENSTON-WETTENGEL: Initially, yes, because he was very upset because the word "armored" was deleted and he argued for that. He said, "We have to have armored vehicles." And he subsequently was fired.

TIERNEY: And have you had any communications with him since he was fired by Blackwater?

HELVENSTON-WETTENGEL: Yes.

TIERNEY: OK, and you know where he is.

HELVENSTON-WETTENGEL: Yes.

TIERNEY: Now, you brought a lawsuit against the company and their response was what?

HELVENSTON-WETTENGEL: They were outraged that we had the audacity to sue them. They claim that they cannot be sued because they're a defense contractor.

TIERNEY: And did they take any action against you?

HELVENSTON-WETTENGEL: Personally, \$10 million is something kind of personal.

TIERNEY: The countersuit.

HELVENSTON-WETTENGEL: Yes. That's pretty personal.

TIERNEY: And if I understand it, the countersuit asserts that you had no right to sue them under the terms of the contract and, therefore, you're responsible to them for \$10 million.

HELVENSTON-WETTENGEL: Yes, basically.

TIERNEY: And where in the court process is that suit and countersuit right now? How far along are you?

HELVENSTON-WETTENGEL: That was fairly recently that they did that. I don't know how far it's progressed.

TIERNEY: Now, if I discuss with you...

HELVENSTON-WETTENGEL: Well, after three years, they've yet to give us any kind of document or deposition.

TIERNEY: That's exactly where I was going to go.

HELVENSTON-WETTENGEL: Yes.

TIERNEY: So your lawyers have asked for written documents to be produced.

HELVENSTON-WETTENGEL: We've received nothing.

TIERNEY: And you've received nothing. Have you had depositions or times where you come in before...

HELVENSTON-WETTENGEL: At one point, Marc Miles, who works with Dan on this case, he flew all the way to Norfolk. He scheduled...

TIERNEY: All the way to Norfolk?

HELVENSTON-WETTENGEL: Norfolk. He had deposed a number of Blackwater employees and they just didn't show. And so Marc sat in this hotel room for 2.5 days and he kept faxing their attorneys, saying, "At least give me the courtesy, if no one is going to show all the way through Friday, please just let me know, sign it, and I'll go home."

And after I think it was the third day, they finally gave him that courtesy that nobody that had been deposed would be there.

TIERNEY: In the course of your lawsuit, do you know whether or not your

counsel have sought to have documents produced by any government agency, the Department of Defense, for instance, or taken any testimony from any government individuals?

HELVENSTON-WETTENGEL: I have no knowledge. I'm not saying that they didn't, I just have no knowledge of it.

TIERNEY: I want to thank all of you for your testimony today, saying how sorry we all are.

I think most people in this country, if not all, understand that while your family members may have been serving as **private** individuals or citizens, in this case, that they were working in the interest of our country and we all feel that they deserve the same protections and regard as people in the military, whether from our own Department of Defense or from their contracting agent.

So you have your sympathies. Thank you.

HELVENSTON-WETTENGEL: They were all very proud, patriotic men who loved their country.

TIERNEY: As are you. Thank you very much.

HELVENSTON-WETTENGEL: You're welcome.

TIERNEY: Yield back.

WAXMAN: Thank you, Mr. Tierney.

ISSA: Mr. Chairman, point of order.

While I was out of the room voting in judiciary, I understand that there was what I would consider a disparaging comment implying that my question to the witness was related to having been a woman outside the ordinary course of business.

Would that be correct?

WAXMAN: Well, it's not a point of order, but do you want to make a statement?

ISSA: I would like to have the words taken down.

WAXMAN: We'll check with the parliamentarian to see if that's appropriate in a committee.

But meanwhile we have witnesses here and I want to pursue...

ISSA: I look forward to hearing their testimony.

WAXMAN: Mr. Westmoreland?

Mr. Bilbray?

Mr. Platts?

TEAGUE: Congressman Waxman?

WAXMAN: Yes.

TEAGUE: I would just like to go back for a second to the point simply to try to make it a little bit clearer about the Congressman's point in these are men that are highly skilled, familiar with combat, the kind of men you would want in these positions, and I agree with that.

But I don't know if this is made clear. All four of these men had not been with Blackwater, my husband had been with them literally -- I put him on the plane March 26. He arrived in Kuwait March 29 and he was killed March 31, had never done a mission with Blackwater before.

Her son had been with Blackwater 11 days, her son about three months, I believe.

ZOVKO: Two weeks.

TEAGUE: Two weeks. So here you have four men, highly skilled, yes, understand combat, yes, but they're sent out on a mission, my understanding, no map, no prior time to assess the situation.

Could someone that has not worked with this company for some time go with them or help them or sort of take the lead in that?

You are all very well versed in this community and in this building. But if you'd never been here before, wouldn't you need someone to show a few things?

So whether they're highly skilled or not does not take away from providing them with maybe just the operations of that company. That's different than active military.

There's several things that were different that they were not privy to.

WAXMAN: Thank you very much. That's a good clarifying point.

Mr. Platts?

PLATTS: Thank you, Mr. Chairman.

HELVENSTON-WETTENGEL: I would like to make one more statement.

WAXMAN: [OFF-MIKE] respond in the question period and then if you want to make a statement, I'm sure that those of us who are proceeding with questions would be pleased to allow you to do that.

Mr. Platts?

PLATTS: Thank you, Mr. Chairman. No questions. I'd just convey my deep sympathies to you and your families on the loss and for the service of your loved ones to our nation and to the cause of freedom.

HELVENSTON-WETTENGEL: I'm having trouble hearing you, sir.

PLATTS: I say no questions, just convey my sympathies to you and your families on your loss and to the sacrifices that your loved ones made to our nation and to the cause of freedom.

HELVENSTON-WETTENGEL: Thank you.

WAXMAN: Thank you.

Mr. Lynch?

LYNCH: Thank you, Mr. Chairman. I also want to thank Ranking Member Davis for helping on this.

First of all, very appreciative that you have come here today to help the committee with its work.

I do want to go to the germaneness issue, because it's been raised by my colleague.

First of all, we've got a situation here where there's a growing tendency for the military or for the administration to subcontract out work that has traditionally been performed by our military, instead using **private** contractors.

And while the very tangled web of subcontractors and sub- subcontractors has been noted here this morning, it certainly is germane when American citizens are put in a very difficult situation without adequate protection.

With respect to the gentleman's comments, he initially raised the fact that the germaneness may not be to this committee's jurisdiction, but may instead be connected to a civil lawsuit. That was the gentleman's comments.

And then the question was whether or not the opening statement of the witnesses here had been drafted by a lawyer, presumably with the same lawsuit.

That was the inference that was left here. I've only been a member here for five years. I've only sat through several hundred, maybe 1,000 hearings, and that is the first time as a member of Congress that I have heard any witnesses asked who wrote their opening statements.

And I might say, also, that if that question is a fair one, then you might ask how many members up here at this table wrote their own opening statements. You might be surprised at those answers.

But I do want to ask...

HELVENSTON-WETTENGEL: Good point.

LYNCH: ... the witnesses this. There's an inference here by the attorney for Blackwater, in a letter they've presented to us, that by coming forward and filing a lawsuit on behalf of your loved ones -- and, you know, I've been to Fallujah a couple of times.

I've actually been under escort with Blackwater security forces in Afghanistan, as well. So I understand how brave your loved ones were and how patriotic they were, with the same fervor that those who -- the same patriotism as those who serve in American military uniforms, I understand that.

But the inference is there in the letter from Blackwater's counsel that by their contract, somehow your husbands, sons, relatives, gave away the right for you to sue in the event that negligence or extreme negligence caused their death.

Can you tell me where that...

HELVENSTON-WETTENGEL: They were also guaranteed certain provisions. Had they had any of those provisions, I know in my heart they would be alive today.

But a few minor things that they were promised when they took that employment were taken away from them, every single one of them.

If they had had that armored vehicle, if they had had that rear gunner, if they'd had a map, I think it's referred to as -- is it a black zone or a red zone?

The military would not even go in there with the heaviest equipment over there, it was so dangerous.

LYNCH: And I do realize, at this point, when their convoy had gone through Fallujah, the Marines hadn't been into central Fallujah before your husbands and your loved ones took that convoy through.

But with respect to the inference that there's a bar on your lawsuit because of the contract that your loved ones signed, is there any more information that you have on it?

And I realize that there are allegations and there's certainly evidence that Blackwater didn't fulfill their part of the contract, but this bar on your lawsuit, that's something that concerns me for other employees in the same situation that your loved ones were in.

I want to try to make sure that there's no assertion to other families that they can't bring lawsuits because of something that was put in that contract.

HELVENSTON-WETTENGEL: I'm not familiar with this bar that you refer to. I'm not sure what that means.

LYNCH: OK, all right, that's fair enough. Thank you, Mr. Chairman. I yield back.

WAXMAN: Thank you, Mr. Lynch.

Mr. Issa, you're recognized on your own time.

ISSA: Thank you, Mr. Chairman. And perhaps I'll use a little of it to straighten out two things.

My understanding is that the U.S. Congress has put into law prohibitions on lawsuits for government contractors operating as agents of the U.S. government in a combat zone.

HELVENSTON-WETTENGEL: Sir, I cannot answer any legal questions. I don't have the knowledge.

ISSA: No, and I'm not asking. I'm making a statement just to set the record straight. I have reviewed some of that.

And that bar might be something that this and other committees should look at. Obviously, when a company bids, they bid based on the assumption that relevant U.S. law would be there, in other words, that their losses would be limited to whatever they contracted for in the case of a death.

Having said that, I did ask an appropriate question, I believe, of who wrote the opening statement for you, not because it's without any -- I mean, it's very common for attorneys or organizations, in-house people to write opening statements.

HELVENSTON-WETTENGEL: Why are you dwelling on that?

ISSA: I'm dwelling on it because, in fact, there is a real question not as to whether or not we should oversee Blackwater and other contractors, but the role of having you three bereaved women here...

HELVENSTON-WETTENGEL: There's four of us.

ISSA: I'm sorry, thank you. It's a good thing I learned to count early, but not well.

Having you here to tell us about your loss, when, in fact, it's the subject of a lawsuit that's ongoing and, in fact, this committee has no jurisdiction here to change the outcome of your loss today or to settle your lawsuit.

HELVENSTON-WETTENGEL: And why is that? We're subcontracting out our war.

I understand there's 100,000 contractors over there and there doesn't seem to be a law that applies. They literally can get away with murder and it's happening over and over again. It didn't just happen to our four men.

It's a wild west over there and there is no accountability.

ISSA: Right. I would gather that all four of you would like us to cease using contractors wherever possible. You think it inappropriate. Is that spoken for all of you?

HELVENSTON-WETTENGEL: I have found it difficult to understand why they do, because they're paid so much more than the military and the military resents them for that.

They're taking jobs that the military had been trained to do and they're giving it to Blackwater and they're being paid enormous amounts of money and it's like a secret, secret army over there that the majority of Americans aren't aware of.

But if you are going to subcontract out this war, then there needs to be some laws that apply to these people.

TEAGUE: Sir, I would like to comment.

ISSA: Yes, please.

TEAGUE: I think these questions are a bit leading, but I'd still like to comment.

I think there's a need for contractors and subcontractors in this war. I have felt that.

I didn't want my husband to leave home again and work with Blackwater. It wasn't necessarily because it was Blackwater. I did not know as much as Blackwater. I was tired of my husband being gone.

He felt it was his calling and it's what he should do. I don't feel that it necessarily calls for there to be no contractors, no subcontractors, but you just made a point, very valid point.

When these contractors bid jobs to the Department of Defense and they do so under maybe some understanding that they're above the law and that they can do this, do they also have to account for where all those billions of dollars go? Because I don't see where any of that's spent.

I've never heard or had any account of where it's at. That's my question.

ISSA: That's something that is -- and I appreciate that. That is something that's very germane to this committee and something that we're very interested in.

As you probably know, we're going to have Blackwater's counsel here next. That will be one of the questions is the money.

I'd like to make a small enclosure into the record.

During the same time that your loved ones were there, March to August of '04, one of my legislative assistants was there with one of the provisional ministers in an unarmored vehicle with only a guard/driver, the three of them in the car outside the green zone.

It appears as though this has been a war that we thought wasn't a war, then we thought it was a war, then we thought it wasn't a war, and it is not uncommon for these loved ones to be lost or put into danger when people are saying, "Well, they're not in danger."

We have 3,000 people working in that sort of capacity. They were working for \$35,000 or \$40,000 for the U.S. government at the time as USAID and other provision authority.

This is something that is appropriate to this committee to see whether or not we should have those kinds of people in those kinds of zones with that kind protection.

And to that extent, I thank you for your testimony, because I think to the extent that we do understand whether we have appropriately used contractors is very germane to this committee.

And I yield back.

HELVENSTON-WETTENGEL: Well, Blackwater has claimed from the beginning that they are exempt from all states and all federal laws.

How can that be? These are human beings they're dealing with and they literally feel like they cannot be sued regardless of what they have done.

WAXMAN: Mr. Kucinich is going to ask some questions.

KUCINICH: Thank you very much, Mr. Waxman.

And just picking up on the comments of the witness, if what we're told characterizes Blackwater's way of operating, then it's basically anything goes.

HELVENSTON-WETTENGEL: I'm sorry?

KUCINICH: If Blackwater operates the way you say they operate, then it's basically anything goes. They're not bound by any laws at all.

HELVENSTON-WETTENGEL: Exactly, that's the point I'm trying to make.

KUCINICH: I just wanted to make sure it came through boldly, because what you're saying is we see these witnesses effectively being impugned because they filed a lawsuit.

Now, let me ask you, the members of the families, were you motivated by money

or were you motivated by accountability?

Did you want to make sure that Blackwater was held accountable?

HELVENSTON-WETTENGEL: I will not get one cent from this. I'd refuse to take a penny.

TEAGUE: I would like accountability, sir, from the beginning.

ZOVKO: Same here.

KUCINICH: Ms. Zovko?

ZOVKO: Same here.

BATALONA: Same here.

ZOVKO: Just let them face what they have done and let them not do it to anyone else, be accountable for what they have done.

HELVENSTON-WETTENGEL: What I don't understand is how our government can hire corporations like Blackwater knowing that they refuse accountability.

I mean, what does that say about us as a country, as a nation?

KUCINICH: See, this needs to be known. This is about a matter of the heart here. This isn't about people trying to get money, because when you see what these families have gone through and even the courage it takes for them to come forward today, this committee's very appreciative of you being here.

And I just have a couple questions that I want to ask the members of the panel here.

The practice of contracting out military operations in a war zone to **private** security contractors, it's troubling and I'll tell you why.

When the government first began turning to contractors on a battlefield, it was to provide meals and laundry and other services, so the troops could focus on the fighting. It was so our soldiers could be what they called the tip of the spear.

But today we're hiring out contractors to be that tip of the spear.

Now, here's what the head of Blackwater said last December about his company's role, and this is a quote, "We're trying to do for the national security

apparatus what FedEx did for the Postal Service. They did many of the same services that the Postal Service did, better, cheaper, smarter and faster, by innovating, which the **private** sector can do much more effectively." That's a direct quote.

Now, he makes...

HELVENSTON-WETTENGEL: That's from Blackwater?

KUCINICH: Pardon?

HELVENSTON-WETTENGEL: Is that from Blackwater?

KUCINICH: Right there in print. So he makes clear that the **private** sector has a fundamentally different goal than our military.

It's the **private** sector that wants to make money. That's why some people could be seeing the world in their own image, claiming that you're here to make money.

The **private** sector wants to make money. There's nothing wrong with that, unless it comes in conflict with the goals of our military.

Each of your loved ones spent years as the best of the best, the most elite in the U.S. military, each of them and you were accustomed to military culture.

So here's the question, Ms. Zovko or Ms. Helvenston-Wettengel. What were some of the differences that you noticed between the U.S. military and Blackwater or a for-profit business entity?

For example, when your families were on active duty, what was the military more interested in, the safety of the troops or how cheaply it could carry out the mission?

I'd like to hear your response to that.

HELVENSTON-WETTENGEL: Donna, do you want to go first?

TEAGUE: Well, I know when my son, Jerry, was in the Army, he was the best that he could be. He loved it and he was taken care of and protected.

He was to do his job, but he was given the tools to do it with. He was the best of the best in the world, 82nd Airborne, MP company, ranger. He didn't lack anything.

Well, his experience and his knowledge from the Army he was going to use with Blackwater, but they shot off his arms and his legs. They just let him out there to die. They did not provide anything for him.

He had his discipline, he had his know-how, knowing the Middle East as he did, but they didn't give him the tools to work with.

They just simply sent him out there to die, they did. And if you do what your job requires you to do and if you're making the laws, you're not making them only for our country, the America, it's the world that we make, because we are the number one.

My son was the number one. Blackwater and the companies like Blackwater, they are recruiting from other countries and they are not paying them well enough or taking care of them well enough at all.

So that needs to be seen. If we're going to police the world, then let's do it right. Let's start at home taking care of what we need to do here and go on with everything else.

KUCINICH: Ms. Zovko, first of all, to all of the witnesses, our deepest condolences to your families for what you've suffered.

If you can make a final comment, Ms. Zovko. Do you believe that Blackwater was more concerned about the safety of its personnel or how much profit it could make from the contract?

ZOVKO: It is profit. It is definitely profit and I will go to my grave believing that it was profit. They were not concerned about my son or his well being or what he can do for them.

It's what they could have charged for my son. Remember, our country had given the tools to my son to be who he was. He was an ex- Army person, a ranger, the best of the best, and they used him to get him killed.

KUCINICH: Thank you. And thank you to all the witnesses. Thank you.

WAXMAN: Thank you, Mr. Kucinich.

Mr. Shays?

SHAYS: Thank you, all four of you, for being here.

We've had a number of hearings in the subcommittee that I've chaired over the

last few years and I've been to Iraq 15 times, and I say that because I've been outside the umbrella of the military, where I've literally gone in a taxi, where I've gone in a vehicle that unfortunately was white and four-wheel drive and was a signal that there was probably a European in it.

And you knew intuitively the moment you got off the airplane in Iraq that you were in dangerous territory.

What I'm wrestling with is this. First off, I want to tell you I find myself agreeing with a lot of different people who you disagree with and agreeing with you at the same time.

And all four of you have a right to be outraged, you lost your loved ones. You have an extraordinary right to be hurt.

The reason we paid contractors what we paid them was so they could pay people who would make much more there than here and a lot of people who went to Iraq went because they could make more money and they knew they were being put in harm's way.

They could make two, three, four times as much.

HELVENSTON-WETTENGEL: Not if they're dead they can't, they can't make a thing.

SHAYS: Don't interrupt me, ma'am. Let me make my point and then you can make your point.

And it depends which contractor is there. You're interrupting me before you know whether I agree or disagree. Just listen.

And so people went there so, in fact, they could make additional money and they knew they were in harm's way.

And what we wanted is to make sure we sent the best trained people there the contractors. One of the things that's not in dispute is all four of your family members were skilled and knew the risk and knew what to do to deal with it.

The issue is were they being given the kind of assistance they needed to do their job properly. So one of the questions that it's raising for me is did they have the capability to say, "Hell, no, we're not going out there."

HELVENSTON-WETTENGEL: Scotty did say that and he said he'd be fired.

SHAYS: Please do not interrupt.

So I'm just throwing that out as an issue. Were they, in fact, capable and if they did refuse, what would be the result? Would they be court-martialed or would they be asked to say, "We don't want you to work here?"

And, frankly, if you're a skilled person, you would say, "I don't want to work here."

Were they forced under a threat of some kind of court-martial not to carry out what they did?

So what I'm saying, the value of what you're doing here in the course of this hearing is -- one is we need to evaluate the role of contractors.

SHAYS: They aren't the tip of the spear. The tip of the spear are the men and women in uniform who are going out and actively trying to root out the enemy.

The whole purpose of contractors is to free up our military from instead of doing security work, the whole purpose is to make sure that our military doesn't have to do the security work so they can be the tip of the spear.

So the questions that -- and now I want to tell you where I have tremendous envy. This company should answer every question you have, every question.

They should have immediately called you up. They should have let you know what happened. They should have said, "This is what we know. What questions can we answer?"

They should have assigned someone to you to help you get information, an ombudsman in the company.

And I'll tell you, the moment I was in your shoes, where I got pushback, I'd sue them. I'd sue them. I would do anything I could to get the information.

And so I'm just going to throw that out for your comment. I do want to say, in sympathy to Mr. Issa, his point is -- I ask this question on occasion of witnesses, "Is this your statement or is this the statement drafted by your attorney?"

And the reason is when an attorney drafts the statement, they are thinking of the lawsuit and what information they want to make to put in the public record.

It's a very valid question. I know my colleague. It wasn't whether you, as women or as bereaved people, could write a statement. You could write a wonderful statement.

The question is, as we look at it, is the committee being used properly to look at this or are we furthering a **private** lawsuit.

So let me just say to you, is it true, in fact, that you asked for information immediately and you got pushback?

And I'd like everybody, not just one spokesman, I'd like to ask you...

ZOVKO: Yes, sir, it is the truth. We were pushed back and not told the truth.

TEAGUE: Yes.

HELVENSTON-WETTENGEL: Blackwater lied to us.

BATALONA: Yes.

SHAYS: OK, ma'am?

BATALONA: Yes.

SHAYS: And so the purpose, it seems to me, is that once they did that, you had no choice but to take action against them. That's my view.

HELVENSTON-WETTENGEL: There was an earlier question in your statement and it was regarding whether or not Scotty had a choice.

An employee of Blackwater went up to Scotty's room with two thugs, held him down, took his gun away from him, told if he did not go on that mission, he was on the streets of Baghdad that night, he would be on his own to get home and he would pay back any moneys that Blackwater had paid him.

So, no, he didn't have a choice, did he?

SHAYS: [Technical difficulty] statement to put on the record under oath. Just tell me how you know that to be true.

HELVENSTON-WETTENGEL: The person that was in the room at that time with Scotty told me.

SHAYS: So someone else who was there shared that information with you.

And would you identify who that person was?

HELVENSTON-WETTENGEL: I can't.

SHAYS: No, no, ma'am.

HELVENSTON-WETTENGEL: Also, Scotty's e-mail stated...

SHAYS: Ma'am, no. I need you to say. You said a person said. Who was that person?

HELVENSTON-WETTENGEL: Can I say?

SHAYS: Do you need to ask your attorney?

HELVENSTON-WETTENGEL: He wants to know who the person was in Scotty's room. Can I answer that?

WAXMAN: Well, as I understand -- first of all, your time is up.

As I understand the question, you said that there was a person...

HELVENSTON-WETTENGEL: It was a friend of Scotty's.

WAXMAN: ... who said this was in the room and he sent an e-mail to you, and you believe it.

I guess the real question is even if you had not been told that information, are people assuming the risk of dying because their employers want to cut back on the payments to provide the security for their employees?

This is a doctrine...

HELVENSTON-WETTENGEL: Well, they took every -- the few very minor things that they were guaranteed, they took every one of them away.

Had they had any one of those, they probably would be alive today. It seems to me it was kind of a personal intentional thing. It was so blatant.

WAXMAN: I understand what you're saying. I know it's not my time, but in the early...

HELVENSTON-WETTENGEL: I can give the name of this person.

WAXMAN: It doesn't make any difference.

HELVENSTON-WETTENGEL: If he wants it, I can...

WAXMAN: It's going to be a question...

SHAYS: Point of order, Mr. Chairman, please.

WAXMAN: What is your point of order?

SHAYS: My point of order is that I had time, you've taken it away, and now you're speaking without time and you're speaking on something that I was pursuing and leaving in question something, making a statement it doesn't matter.

It doesn't matter to you. It matters to me. And if I could have my time or you could have legitimate time, we could have a -- the only...

WAXMAN: The gentleman's point of order is well taken.

I now recognize Mr. Yarmuth for his time.

YARMUTH: Thank you, Mr. Chairman.

Thanks to all of you for being here today. I join the other members of the committee in offering our sympathies and our gratitude for your sacrifice and for being here.

I want to pursue for a second the train of thought of Mr. Shays, because he tried to draw a distinction between what would be characterized as providing security and other types of military activity.

And this may be something that you may not be able to answer and if so, say so.

But it seems to me that a lot of what our military is being asked to do in Iraq involves security. Is that correct?

HELVENSTON-WETTENGEL: Yes.

YARMUTH: So my point, by way of a question, to the extent that you know, was the activity that your relatives were involved in distinguishable from what many of our military are doing in Iraq right now, our active military?

HELVENSTON-WETTENGEL: I don't know.

YARMUTH: Was the different -- you don't know, OK.

HELVENSTON--WETTENGEL: Well, I know Scotty was told he was going to be security for Paul Bremer and he would be working in the green zone. He never met Paul Bremer.

YARMUTH: He was told that by Blackwater.

HELVENSTON-WETTENGEL: Yes.

YARMUTH: So essentially, to the best of your knowledge, then, there really isn't a distinction between what your relatives were doing and what our active military are doing now, many of our active military.

HELVENSTON-WETTENGEL: The main distinction is that they were not given the equipment to do it.

YARMUTH: And they're being paid by...

HELVENSTON-WETTENGEL: Right.

YARMUTH: ... a different employer.

Immediately following the incident at Fallujah, there was a "New York Times" story and in that "New York Times" story, a man named Patrick Toohey, a high level executive at Blackwater, apparently was quoted about -- was asked about the attack and was quoted as saying, "The truth is we got led into this ambush," and he then provided some details about the Iraqi civil defense corps and how an escort had been arranged just east of the city and so forth.

So he seemed to know a fair amount of detail about the attack.

Have any of you ever been contacted by Mr. Toohey? Did you try to get information from him?

HELVENSTON-WETTENGEL: No. We had contacted them numerous times asking those very questions and they won't return our calls.

YARMUTH: But he was apparently willing to talk to the "New York Times," but not to you.

HELVENSTON-WETTENGEL: Yes.

YARMUTH: Somewhere later in that article, he talked about the fact that they were planning to conduct a more thorough investigation.

Did you ever get anymore information about subsequent investigation that they may have...

HELVENSTON-WETTENGEL: We have received no information, period.

YARMUTH: Thank you, Mr. Chairman. I yield back my time.

WAXMAN: Thank you, Mr. Yarmuth.

Mr. Hodes?

HODES: Thank you, Mr. Chairman.

Ladies, thank you for coming today and I want you to know how sincerely we appreciate your being here and the sacrifice that you have made.

And having some familiarity with litigation in my former life, I know how tough it is to go through what you are going through with the pushback from the other side and it takes a great deal of courage to do what you're doing in pursuing answers from this company.

We have watched over a period of years this intermingling of contractors with forces and the use of contractors growing by the U.S. military, especially in Iraq, and it's clear now that the numbers of Americans who are serving in Iraq, serving their country, as your loved ones did, is actually much, much higher than the numbers that the military reports, because they don't talk to us about the contractors, even though they're providing those services that your loved ones did.

So this is really a very important issue in the way things work together. And it doesn't matter to us whether your loved ones were in the Army or they were **private** contractors. They were Americans serving their country bravely. So we really understand and feel that.

I want to ask you what may be some basic questions about some information that you had or didn't have.

Did your loved ones sign written contracts with Blackwater?

TEAGUE: No. Are you asking us personally did we sign?

HODES: Well, not you. Did your sons and husbands sign written contracts with Blackwater.

TEAGUE: I believe they did.

HODES: Do you have copies of those contracts?

HELVENSTON-WETTENGEL: Yes.

TEAGUE: Yes.

HODES: And were you aware of whether or not there were any other discussions surrounding those contracts where Blackwater made representations to your loved ones about what they would have to protect themselves and what equipment they'd have?

HELVENSTON-WETTENGEL: Your questions are long. Chris Berman (ph) was with Scotty and he signed the same contract and he joined the same time Scotty did.

So they were there together and they were friends back in California. So a lot of this information comes directly from Chris Berman (ph).

HODES: And your folks were told they would have armored vehicles, they'd have protection, they'd have machine guns, they'd have what they needed to protect themselves from risk.

HELVENSTON-WETTENGEL: Correct.

HODES: Were they told anything about the various levels of subcontracts between Blackwater and these other companies that we've now heard about?

HELVENSTON-WETTENGEL: I don't know. I would doubt that would have transpired.

HODES: Sitting here today, can any of you say with any certainty what the relationships were between Blackwater and Fluor or KBR or ESS? Do you have any idea how that worked at all?

HELVENSTON-WETTENGEL: Well, I understand it's a pyramid type thing and usually it starts with Halliburton, then it goes to KBR, then Regency, then ESS, and then Blackwater. And then Blackwater prepares their invoice, adds on their 35 percent, goes to ESS, they add on 35 percent on top of Blackwater's 35 percent, and it just goes on and on.

HODES: So everybody gets a cut as it goes on up.

HELVENSTON-WETTENGEL: And it just keeps growing, too, because they're adding 35 percent on other 35 percents.

HODES: Do you know whether or not any of the companies, as things go up, exercised any oversight over Blackwater and how it was treating its employees?

HELVENSTON-WETTENGEL: I'm not aware of any.

HODES: Do you know if the Defense Department, which ultimately was at the top of this pyramid, as you called it, was monitoring what Blackwater was doing with its employees?

HELVENSTON-WETTENGEL: The only defense paper I saw when Chris brought Scotty home and he gave me his personal things, there was something in there with the Defense Department heading and it basically just said that they had no liability to Blackwater.

HODES: Do you think that someone should do more to watch over what's going on with the **private** security contractors, including Blackwater?

HELVENSTON-WETTENGEL: Most definitely.

HODES: And do you have any feelings as to whether or not it ought to be the Department of Defense, which ought to be doing more to monitor what's going on with the contractors who are serving our country so bravely?

HELVENSTON-WETTENGEL: Well, since Blackwater's whole defense is that they had a government contract with the Defense Department, yes, I think the Defense Department should establish some rules.

HODES: And do the rest of you agree with that statement?

TEAGUE: I do.

HODES: Thank you very much. Thank you for being here.

Thank you, Mr. Chairman. I yield back my time.

WAXMAN: Thank you, Mr. Hodes.

Mr. Welch?

WELCH: Thank you, Mr. Chairman. Welcome.

You mentioned that there was a service at Blackwater -- not at Blackwater -- it was for your loved ones.

Did all of you attend that?

HELVENSTON-WETTENGEL: Yes.

MS. TEAGUE: I did not

HELVENSTON-WETTENGEL: Rhonda didn't.

BATALONA: I didn't attend. My mother did.

WELCH: Your mother did, OK. And there was a reference that there were guards, that each of you was separated from one another.

And I'd like to ask you if you could each comment on that and, in your case, comment on how your parent was treated there.

BATALONA: I know that my mom said somebody was with her...

WELCH: Can you speak into that microphone so we can hear you?

BATALONA: Somebody was with my mother, but I don't think she ever referred to them as guards, per se.

WELCH: She what?

BATALONA: She never referred to them as being guards, but she knew that they were always with her. They never had alone time together with the families.

WELCH: Was she discouraged from spending time with the other families?

BATALONA: She seemed that way, yes, because whenever they went out to dinner, they joined and when they were in the hotel, they followed.

WELCH: Thank you.

And how about you, Ms. Helvenston?

HELVENSTON-WETTENGEL: The same, they would walk me to my door to go to bed at night and there would be someone standing outside of that door in the morning.

The last night we were all there, we wanted to go out to dinner and just talk and, uninvited, they chose to join us, a number of them. And so it was a pretty quiet dinner.

WELCH: Did that inhibit your conversation?

HELVENSTON-WETTENGEL: Well, one night, though, after the first night we were there, after the guards left, I snuck out of the room and we all went down to Donna's room and we talked.

So they at least allowed us that.

WELCH: And, Ms. Teague, you were not there.

TEAGUE: No. The time that it happened was my son's birthday. My son, he was struggling and we opted not to attend.

WELCH: How old is your son?

TEAGUE: He's 19 now.

WELCH: Ms. Zovko, how about you?

ZOVKO: Well, what they've shared, I did feel they were there to watch over us, not to communicate with the other people.

For instance, this one thing, they planted trees and made stone headstones for my son and for his coworkers or people that worked for Blackwater that were killed in Iraq and I ran out of film to take a picture.

I just wanted a picture of my husband with the headstone and all of that and I was going to ask a lady that was there to take a picture for me. I was going to give her my address to mail it to me.

But before you know it, there was someone already there, saying, "Oh, no, you don't have to do that. I'll take the pictures and I'll send them to you."

Well, he took the pictures, but he never mailed the pictures to us.

I had my grandchildren there and my daughter-in-law, we were all there, but there was no ease. They told us that they didn't work for Blackwater when we came in.

In reality, when we came into the headquarters the following day, the same

people that said they did not work for Blackwater, that their wives worked for Blackwater, had the tee shirts of Blackwater on and standing at the entrance letting us in.

WELCH: Thank you. I appreciate that. You're all strong women, made stronger by being together.

If each of you could have asked a question of Blackwater to get one piece of information, what would each of you ask Blackwater to do to help you come to terms with the loss that you've suffered?

ZOVKO: The truth, the simple, plain truth, "Ms. Zovko, Donna, this is what happened. This is how it happened. You couldn't see your son's body, but we're telling you that this is how it is."

Do you know the remains of my son were sent to me, what, in 11 months? The first was in 10 days and then what was left of him 11 months later.

HELVENSTON-WETTENGEL: They sent his charred arm to her.

ZOVKO: Just the truth. I mean, basic truth. You know, we live in the best country in the whole wide world. Why can't we have the basics, what we were built on, the truth, God and truth? That's all. That's all. Nothing else.

WELCH: Thank you.

TEAGUE: Very similar. I would like an account from start to finish of that day. Whether I want to hear or see it, I would, every minute of it, every part of it, the truth.

WELCH: The truth.

Ms. Helvenston?

HELVENSTON-WETTENGEL: They showed such a callous disregard for life and now they claim we have no rights.

If we don't have the right to sue them, I don't know about you, but I am outraged.

Where is your outrage?

WELCH: Thank you.

Ms. Batalona?

BATALONA: Like everybody else, I would also like the truth. It's just a simple question of why. Why couldn't you give them the protection that he said he needed to complete his mission?

WELCH: Thank you. Mr. Chairman, I yield whatever time I have.

WAXMAN: Thank you, Mr. Welch.

Mr. Bilbray?

BILBRAY: Thank you, Mr. Chairman.

Let me thank the ladies for being here today. I think it's essential to remind us that no matter how good the intentions are, there's always, in major efforts, major mistakes and Congress bears the responsibility of not just finding fault, but trying to find answers.

We can't relieve you of the burden that you're going to bear the rest of your life and your loved ones, but we do bear the burden of trying to modify the process, to minimize the potential for this to happen again.

Ms. Teague, there was a lot of discussion here about the isolation of your loved ones from the rest of the rank-and-file of the group that was under Blackwater and there were specific references to the fact of contractors going to third world countries to find, quote- unquote, "inexpensive employees" to be able to provide the infrastructure, the support that your loved one needed.

I'll be very blunt with you. Do you think we should be looking at the fact that the people that are recruited to do American jobs may need to be Americans and should be required to be U.S. citizens, so that it's U.S. citizens fighting side-by-side?

And let me just poll you. Would you suggest that we just make it a matter of fact policy or consider a policy that says that when an American contractor gets an American contract to go into these situations, they must hire U.S. citizens to do the job?

HELVENSTON-WETTENGEL: I think that would be very appropriate.

TEAGUE: I agree with that. I agree, but I think there's also the Intel part of that, which, again, falls on other people, but you have to have Intel that involves, when you're in a foreign country, people that can integrate in that.

But I do prefer in which they were all Americans, but that's a problem that has to be addressed in that.

BILBRAY: Thank you very much. I appreciate that and I appreciate the very balanced approach of many of you on this issue and it's astonishing that you can be so levelheaded and so cool with the kind of experience that you've gone through.

So I appreciate that.

At this time, the gentleman from California, I yield to Mr. Issa.

ISSA: I thank the gentleman.

Following up a little bit on what Mr. Shays had asked about, there was a statement made that there's a -- I think there were four names named and a 35 percent markup each time.

How did any of you know about that or what do you know about that?

HELVENSTON-WETTENGEL: I've read just about every article that has come out regarding Blackwater since about six months after the incident.

Jeremy Scahill has just finished a book, he has done such incredible research and he's so thorough. Jay Price has been incredible.

ISSA: So it's from unclassified information. And if I did my arithmetic, basically, your loved ones were paid about \$200,000 annualized.

That would mean, with 35 percent, it would be about \$800,000 the government would pay per person per year if four contractors did 35 percent markup.

Is that roughly your understanding from the readings you had?

HELVENSTON-WETTENGEL: I haven't done the math, but all I know is Scotty didn't even get one paycheck.

ISSA: I understand.

Are you aware, are all of you aware that Secretary Bremer was guarded for his time in Baghdad by Blackwater?

TEAGUE: Yes.

ISSA: So that's not inconsistent.

HELVENSTON-WETTENGEL: I would venture to guess he had armored vehicles.

ISSA: In your reading, were you aware of all the write-ups about our military personnel, including the Marines from Camp Pendleton, who were short up-armored Humvees and, as a result, were driving around with tin-sided Humvees at the time, because there was a worldwide shortage of the armor capability?

HELVENSTON-WETTENGEL: Yes, I was aware they would scavenged around Iraq in these junkyards trying to armor their own vehicles, which is horrible.

How could our government send them over there and they become scavengers trying to protect themselves?

ISSA: I understand that and it is regrettable, but it is documented that the U.S. military had the same problem of insufficient armored vehicles during that time.

Are you also aware that Mr. Waxman and Speaker Pelosi and myself were guarded by Blackwater as late as 2005-2006 -- March 2005 when we were there, that they've guarded, I believe, 91 CODELs, virtually every Congressman that went in and out were guarded by Blackwater in Iraq?

HELVENSTON-WETTENGEL: I wasn't aware of that. What's the point?

ZOVKO: But what does that have to do with them...

HELVENSTON-WETTENGEL: What's the point?

ZOVKO: ... sending my son the way they did on the job that he was doing when he died?

I mean, I didn't come here and say the people that work for Blackwater are not qualified to guard and protect. My son was one of them.

The reason that I'm here is because they did not supply to my son what he needed to do his job, what he was qualified for.

So what they did, that's just fine. I hope that they keep on doing a great job. But that has nothing to do with the death of my son or preventing them from not doing it to someone else just because they're good at green zone and they're able to protect the people that come there, be it you or anyone else.

They did not protect my son.

ISSA: Thank you, Mr. Chairman. Yield back, as appropriate.

WAXMAN: The gentleman's time has expired.

Mr. Clay?

CLAY: Thank you, Mr. Chairman. Thank you for this hearing today.

It seems to me that regardless of who they are technically working for, when Americans are killed in action in a war zone, there should be a moral obligation to tell the family how it happened.

Ms. Zovko, what is it that you want to know from Blackwater and what specific questions would you like to get the answers to?

If you have a list, send it forwards. Can staff go get the list for us, please?

ZOVKO: I want to know the truth about March 31, 2004. I want to know about the way that they knew of this contract coming up that blocked others who were going to have the contract.

They were working on having the teams put together for the mission and then, all of a sudden, at the last minute, they do what they did and send these men on the mission as they did.

I want to know about the contracts that Blackwater needed to fulfill what the other companies that they were subcontracting from, why didn't they oblige? Why did they not provide what they needed to provide for these employees of theirs if these employees were going to do the job?

Why did they do it three days before the day was ever to come for them to go into effect? What was the hurry? What was the rush, especially with not giving them what they needed to have?

Why did it take so long for my son's body to come home? Why wasn't there someone in front of them with the heavier equipment that they were not equipped, someone that was more equipped?

If our military couldn't go in, how come Blackwater could send them?

Why? Why? Don't you understand? What's the truth behind it? Is it the dollar or what is it or were there really lives being saved by taking my Jerry's life?

What is it? Tell me. I don't know.

CLAY: I don't have the answers for you and hopefully the next panel can help shed some light on it.

But it sounds like reasonable questions that deserve answers and Blackwater should be willing to answer those questions, and I'm sure that the military, if these were active duty military, they would be willing to give you the answers.

Let me also ask you about Erik Prince, who is Blackwater's CEO. He is known to be a very **private** man who does not often go on a record to talk about his company.

But I understand that two of you have spoken with him personally.

ZOVKO: Yes.

CLAY: And, Ms. Zovko, Mr. Prince came to visit you at your home in Ohio after news of Jerry's death.

What do you remember about that visit?

ZOVKO: I remember being told that he would be there about 8:00. He came accompanied by our sheriff's department. They escorted him to my son's house.

And out of everything, my brother-in-laws and my sister-in-laws were there, my daughter-in-law and myself and my husband. All I can remember, I can still see him sitting across the table, my son's dining room table, telling me that he thought, "I thought," his words, "if anyone could survive the war in Iraq, it would be Jerry."

He actually told me and made me feel like he knew who my Jerry was, to find out later that he was just an employee, that he did not know.

CLAY: It sounds as though they just looked at Jerry and the other employees as just that, employees.

ZOVKO: Just that, employees.

CLAY: And they didn't realize they had a family attached to them or anything else.

ZOVKO: Just a figure, just someone to be able to charge the government for

services rendered from people the government has educated and made who and what they were. You know?

With their own choices, granted, my son went to work for Blackwater. He chose to, because that's how he could contribute to fighting the war in Iraq.

But Blackwater did him wrong, very, very, very wrong.

CLAY: And it seems that this war has gone awry.

ZOVKO: It does.

CLAY: And people have died unnecessarily that didn't have to and, in this case, all in the name of profit.

ZOVKO: Yes, all.

CLAY: Thank you all for being here. Thank you for your testimony and thank you for your insight.

Mr. Chairman, I yield back.

WAXMAN: Thank you for yielding back.

Someone asked whether this is germane to our jobs as members of Congress.

WAXMAN: If our military wasn't provided sufficient equipment, armored vests, basic needs of our troops, that's germane to us, and if our subcontractors and contractors are not providing what they should be providing to our troops they've hired to represent our interests, that also is in our interest. That's also the range of what we want to know.

Ms. Schakowsky, do you want to be recognized?

SCHAKOWSKY: Thank you, Mr. Chairman, and I really appreciate the courtesy you've extended to me as someone who's not a member of this committee, but has tried to drill down over time on the issue of **private military contractors**.

I want to say to you that I saw -- I'm not sure if it was all of you -- the film, "Iraq for Sale," the Robert Greenwald film that I wish every member of Congress would watch, about the role of **private** contractors in Iraq.

And I really appreciate your raising the questions of accountability that you have, because that's really the policy, the questions we have.

But one policy question I wanted to point out to you is the question of why should we hire companies like Blackwater if they are so much more expensive than the military?

And Erik Prince actually answered that in a way that you may have heard. He said last year, about the military, quote, "So when they say, 'Ah, we need about 100 guys to do that job,' we say, 'Actually, you only need about 10 to do that job.'"

And I know if you've heard that quote before. He's saying Blackwater needs only one-tenth the manpower to do the same job as the military.

I wondered if anyone had a reaction to that.

HELVENSTON-WETTENGEL: If you would compare the time they were slaughtered, Blackwater had 400 employees in Iraq. By March of 2004, I think almost 25 had already died versus the military, the total military over there and the total military that have died.

Now, as I say, I have not done the math, but their percentage is much higher and if he thinks it's only their sending 10 men out, I would pretty much guarantee those 10 men will come back dead.

SCHAKOWSKY: On June 13 of last year, '06, Chairman Shays of the subcommittee, you mentioned we had a hearing.

HELVENSTON-WETTENGEL: I heard that entire hearing.

SCHAKOWSKY: And at that hearing, where we had the State Department, the Department of Defense, USAID, I asked questions about how many contractors do we have, how does it cost, how much are we paying, what's the total number of dead and wounded.

You know, your loved ones are not considered when the number...

HELVENSTON-WETTENGEL: They don't count. They're so insignificant, they don't even count.

SCHAKOWSKY: No, they're not counted. We think that it's upwards of about 800, but we can't get that answer.

I asked to see a Blackwater contract at that time. We wanted to know if any laws had been broken in the host country, U.S. laws, international laws, if disciplinary actions had been taken against any contractors.

No one had an answer. That was in June.

In December of 2006, the Government Accountability Office said there's little visibility over these contracts. We don't know.

So I just want you to know today I introduced a piece of legislation, the Iraq and Afghanistan Contractor Sunshine Act, to answer those questions.

We need to know. Your loved ones being asked to do jobs that are inherently governmental functions and given what any soldier, what any U.S. military uniformed person would be given.

We need answers to these questions that you have been asking as responsible members of Congress.

So I really want to thank you, because you put a face on this veil of secrecy of these troops that are there or these personnel that are there carrying on these missions for our country and we don't know a drained thing about them and when they die, we don't even report their deaths.

I don't know if you want to respond to that, but I thank you so much.

HELVENSTON-WETTENGEL: Thank you so much for that acknowledgement, because that is why we are here today. That is why, and I appreciate it so much, because my next question was after this hearing, what happens next?

What do you do with the information?

SCHAKOWSKY: I'd call more sponsors to this legislation. And I yield back. Thank you, Mr. Chairman.

SHAYS: If the gentlelady would yield.

SCHAKOWSKY: Yes.

SHAYS: I just want to say I think it is a great summary of the value of your testimony today.

HELVENSTON-WETTENGEL: Thank you.

SHAYS: And I, for one, would like to be put on your legislation.

SCHAKOWSKY: Thank you, Mr. Shays.

SHAYS: Thank you for yielding.

HELVENSTON-WETTENGEL: Thank you, sir.

WAXMAN: Before we have you leave and hear from the next panel, Mr. Shays did ask a question and I saw you leaning back, I guess that's your lawyer.

But I think he should get an answer and we all ought to get the answer to the question.

Who was in the room with your son?

HELVENSTON-WETTENGEL: It was Chris Berman.

WAXMAN: Chris Berman.

HELVENSTON-WETTENGEL: Chris Berman was the youngest Navy SEAL ever until Scotty came along. And they did these workout camps and workout videos together and Scotty usurped him and that record will hold forever.

So they had this fun rivalry. So they went over together and they had been friends prior to that.

WAXMAN: Mr. Shays, did you want anything else?

SHAYS: No. Mr. Chairman, I really appreciate you moving forward with that and it's helpful for us to know and I thank you.

Thank you, Mr. Chairman.

WAXMAN: Well, I think it's important, when we ask questions of witnesses, we get answers, complete answers, and I appreciate that you gave us that answer.

HELVENSTON-WETTENGEL: Chris Berman now is in Kuwait City building armored vehicles. He finished his two-month contract with Blackwater, then left, came home, built the most heavily plated armored vehicle over there and he can't build them fast enough.

So Chris is making a difference.

WAXMAN: Thank you. Well, I think your testimony will make a difference, as well, and I thank you very much for being here.

You can leave. We're going to now hear from the next panel and on this next

panel, we'll receive testimony from, first, we want to welcome Tina Ballard, the deputy assistant secretary for policy and procurement for the United States Army.

We also welcome Andrew Howell, general counsel for Blackwater USA; Steve Murray, the director of contracting for ESS Support Services Worldwide; George Seagle, the director of security for the government and infrastructure division of KBR; and, Tom Flores, the senior director for corporate security at the Fluor Corporation.

We want to welcome our witnesses. We would appreciate it if we could have some order in the room so we can hear people on our second panel.

It's our policy to swear in all the witnesses that appear before our committee. So I'd like to ask our witnesses to please rise.

We're missing one of the witnesses. Who are we missing? Ms. Ballard.

Why don't you sit for a minute? We'll do you all at once.

If you'll all stand again, because it's our practice to swear in all the witnesses. Do you solemnly swear to tell the whole truth and nothing but the truth?

Thank you. Please be seated. The record will indicate that each of the witnesses answered in the affirmative.

We have your prepared statements, which will be part of the record in their entirety. We'd ask to like each of the witnesses to give a summary of that testimony and try to keep within the five minutes that we allot.

You may submit a longer written statement and the committee will include that statement in the official hearing record.

Ms. Ballard, why don't we start with you? There's a button on the base of the mike and pull it close to you.

We'll go down the list and have questions after each witness has testified.

BALLARD: Thank you. Thank you, Mr. Chairman, for this opportunity to again report to you on the U.S. Army contract for reconstruction and troop support activities in Iraq.

It is my privilege to represent U.S. Army leadership, as well as the dedicated military and civilian members of the contracting workforce who have been at the forefront in Iraq.

Our work and our success to date would be impossible without the tremendous support the Army receives from you, the members of this committee.

We thank you for your wisdom, your advice and your guidance.

The Army contracting workforce has two very different important missions in Iraq, to support reconstruction contracting and to provide support for the troops.

The mission is also one of constant change. Over time, the reconstruction has moved from large design-build contracts to firm fixed price contracts with Iraqi firms in an effort to reduce security costs and to provide economic opportunity to the Iraqi people.

The LOGCAP contract for troop support is also changing as we move away from one contractor, as currently exists under LOGCAP 3, to multiple contractors under LOGCAP 4.

Regardless of the contract vehicle, however, one thing has and will remain constant over time, our commitment to ensuring that all contractors comply with the terms and conditions of their contracts.

There is no flexibility or negotiation or compromise in this commitment.

The last time I testified before this committee, I was asked about a letter from the secretary of the Army, dated July 14, 2006. The letter from the secretary was sent in response to allegations that there was a subcontractor relationship between Kellogg Brown and Root Services, Incorporated, ESS Worldwide Services, Regency Hotel and Hospital Company, and Blackwater Security Services.

The secretary's letter stated that based on information provided by KBRS to the U.S. Army, KBRS had never directly hired a **private** security contractor in support of the execution of a statement of work under any LOGCAP 3 task order.

Additionally, the letter stated KBR has queried ESS and they are unaware of any services under the LOGCAP contract that were provided by Blackwater USA.

I was asked if this letter was accurate. I responded that Secretary Harvey's letter was correct. I also committed to looking into this matter and I have kept that commitment.

As a result of extensive research, the U.S. Army correspondence with ESS and KBRS, ESS recently confirmed to KBRS and the Army that they obtained security

services.

ESS built and operated dining facilities both as a direct contractor to the U.S. government and as a subcontractor to KBRS and other companies.

On January 30, 2007, we learned that ESS engaged Blackwater, the Regency Hotel, and that ESS employed **private** security primarily to protect its employees and management traveling in Iraq and to transport currency to pay vendors and employees.

Based on information we received from KBRS, we understand that these security costs, which were not itemized in the contracts or invoices, were factored into ESS labor costs under its DFAC service contract with KBRS under LOGCAP 3.

The U.S. Army is continuing to investigate this matter and we are committed to providing full disclosure of the results of our investigations to the committee.

If KBRS violated the terms and conditions of a LOGCAP 3 contract and knowingly or unknowingly incurred costs for **private** security subcontractors under the LOGCAP 3, the U.S. Army will take appropriate steps under the contract terms to recoup any funds paid for those services.

The last time I testified before this committee, I also listed a few reconstruction accomplishments of the Defense Department implementing agencies.

Today I can add to that list. Twelve hospitals serving over 6,000 patients a day have been refurbished. Water treatment capacity now serves an estimated 2.2 million Iraqis.

Electrical generation projects have added 1,420 megawatts to the power grid. Crude oil has increased, though extenuating circumstances have kept production from reaching full production. And 839 schools providing classrooms for over 350,000 students have been constructed or rehabilitated.

So in conclusion, we are proud of the dedication, commitment and hard work of our contracting workforce in supporting our troops and rebuilding Iraq.

Thank you. I look forward to your questions.

WAXMAN: Thank you very much, Ms. Ballard.

Mr. Murray?

MURRAY: Chairman Waxman, Representative Davis, members of the

committee, I am Steve Murray, the director of contracting for ESS Support Services Worldwide.

I served over 20 years in the United States Army, retiring as a chief warrant officer. During my service, my mission often was to deliver food services and other logistics support to our troops.

I carried out a similar mission as an employee of ESS. ESS has extensive experience building and operating food service facilities in remote and challenging locations, such as mining camps and offshore on oil and gas drilling platforms, in Asia, Africa and the Middle East.

ESS provides a range of support services to its customers, including full food services, supply logistics management, transportation, vehicle maintenance, facilities management and communications.

I joined ESS in June 2003 to oversee its contracting for operations in Kuwait and Iraq.

In December 2002, ESS began to build and operate dining facilities, known as DFACs, to feed the American and other coalition troops that were arriving in Kuwait at bases such as Camp Commando and Camp Coyote.

Every day ESS served thousands of our soldiers and Marines four full-service high quality meals, breakfast, lunch, dinner and a midnight meal.

After coalition forces moved into Iraq in March 2003, ESS followed our troops, making sure that they were soon eating hot meals instead of MREs.

From 2003 to 2006, ESS built and operated DFACs at over a dozen sites in Iraq, including Baghdad, Fallujah and Tikrit, as well as performing camp construction at Camp Taji and in Basra.

ESS also provided food services and facilities management to the coalition provisional authority, as well as food services for civilians performing reconstruction work in Iraq.

ESS performed many of its services in Iraq as a subcontractor to KBR. We also delivered on numerous contracts directly for the Army, the Marine Corps and the Department of State.

All of the subcontracts that ESS entered with KBR were competitively awarded and were performed by ESS on a firm fixed price basis, instead of being a cost-reimbursable or cost-plus contract.

ESS' contracts with KBR stated a bottom line or a maximum not to exceed price for the services that ESS was contracted to provide, except in unusual circumstances or our costs were higher than anticipated, and that was our problem. We had agreed to a fixed price.

One of ESS' costs that was higher than we had anticipated for was for **private** security. Beginning in the middle of 2003, security conditions in Iraq compelled ESS to hire a **private** security firm to move its personnel and supplies among DFACs.

Without the aid of **private** security firms, ESS could not have performed its mission of feeding the troops.

ESS moves most of its supplies through sporadic military escorted convoys and supplies often took days or even weeks to reach the DFACs or simply never arrived at all.

When necessary, ESS called on **private** security firms to provide well trained, armed personnel who escorted supply trucks and ensured that food services to the troops were not disrupted.

Many other contractors did the same.

ESS also used **private** security firms to escort our managers and staff as they drove to and from DFACs and other sites. I traveled between sites with our **private** security providers on many occasions.

The military escorted convoy system was intended to move supplies, not people. We had over 100 ESS managers and over 1,000 ESS staff getting the job done at more than a dozen sites in Iraq.

We could not have fed the troops if we could not get our people to and from the DFACs. We were determined to never compromise the safety of our personnel when they traveled between sites.

ESS used a number of different **private** security firms between 2003 and 2006, including Blackwater. We always made it clear to KBR and other parties that contracted with ESS that we were using **private** security firms.

I am proud of the work that I have performed for ESS and my country during my time in Iraq. I'm glad to be here today to help this committee sort out the facts for the American people.

Thank you.

WAXMAN: Thank you very much.

Mr. Howell?

HOWELL: Chairman Waxman, Congressman Davis, members of the committee, my name is Andrew Howell and I'm general counsel of Blackwater USA, dedicated security professionals whose primary mission is to protect the lives of Americans in very dangerous places.

More specifically, Blackwater professionals, most of whom are military veterans, voluntarily go in harm's way at the request, direction and control of the United States government.

Chances are, if and when you, as members of Congress, and your staffs travel into Iraq, your lives will be protected for at least part of the trip by Blackwater.

Areas of Iraq are among the most dangerous places on earth, where violence against Americans is endemic.

Our people choose to put their lives on the line daily in the service of our country.

On behalf of Blackwater, I thank them for their service, especially those wounded or killed in the line of duty. I express again our deepest condolences to the families of our fallen colleagues, both those who appeared here today and those who did not.

Losing our teammates is the hardest reality of our profession.

Just two weeks ago, we lost five good men who were shot down in Iraq protecting a diplomatic convoy. Our thoughts and prayers are with their families.

The U.S. ambassador to Iraq said of the incident, "These five American citizens were our colleagues and worked on behalf of the United States government. They represent the best of America, showing valor and courage in the work they did each day."

The State Department noted that these men played a critical role in our effort to bring a better way of life to the people of a country who had never experienced freedom and opportunity.

We will always remember their courage, commitment and ultimate sacrifice for their country.

Like the other good men we have lost in the line of duty, these men are heroes who embody the best of who we are and who we strive to be.

Our professionals serving today in Iraq are part of our nation's total force. Just last month, before the Senate Armed Services Committee, Lieutenant General Petraeus, the new commander in Iraq, said he counts contract security forces among the assets available to him to deal with the enemy insurgency.

To be clear, we do not engage in offensive operations, but our defensive security function helps to unburden more of those in uniform to do so.

With regard to the important policy issues we will discuss here today, we look forward to working with Congress so that the right laws, policies and procedures are in place to ensure that **private** security contractors can support our nation's essential security missions.

I hope you'll understand that there are matters that I cannot discuss in an open forum such as this, especially matters relating to operational security or matters that our government has classified.

I will endeavor to answer your questions as fully as possible, with these restrictions in mind.

However, my task is even more complicated. Our company comes before this committee today facing a lawsuit, as you know. Committee staff provided us with a copy of a December 13 letter from plaintiffs' counsel to Speaker Pelosi, effectively requesting that Congress hold this hearing.

I respectfully request careful consideration of the impact of asking, in an open oversight hearing, questions that were requested by one party in ongoing litigation.

Our hope is that this hearing will not delve into an incomplete and one-sided exploration of a specific battlefield incident, but rather will explore the important policy issue of whether death and disability benefits of contractors and service members should remain roughly the same as current Congressional policy dictates.

At Blackwater, we are proud to serve the United States. Our professionals are highly skilled and experienced. Yet, for all of the experience and training, no one can guarantee that they will be safe when they step into a war zone. Our enemy has ensured that.

Although our teammates have bled and even died in our mission of protecting other Americans, we have never lost a protectee, and our support for and dedication to our nation remains strong.

I am prepared to answer whatever questions I can under these unfortunate circumstances.

WAXMAN: Thank you very much, Mr. Howell.

Mr. Seagle?

SEAGLE: Thank you. Chairman Waxman and members of the Committee, my name is George Seagle. I am the director of security for KBR's government and infrastructure division.

From October 2003 to May 2006, I was the director of security for KBR's Middle East operations. In that role, I oversaw all security measures for 150 project locations and more than 50,000 employees and subcontractors.

I was in Iraq an average of once a week for the 32 months I was in that job.

Let me say my heart goes out to the families of all of those who have lost their lives in brutal attacks in Iraq. My own friends and colleagues, both members of the military and civilian contractors, have been killed in support of operations in the region.

We know how difficult the situation on the ground is and the situation the troops face is a very, very tough challenge.

We are proud to provide food, housing and other necessities to them. We support U.S. and coalition troops at 55 sites in Iraq, 70 other sites in the region.

Since 2003, we have served more than 490 million meals, transported more than 675 million gallons of fuel, delivered more than 220 million pounds of mail, washed more than 30 million bundles of laundry, and hosted more than 80 million visits to morale, welfare and recreation facilities.

Whether building mess halls, providing food service or setting up housing, our goal is to provide the soldiers with the basic necessities, a hot meal, clean clothes, when they're back on base, returning from dangerous missions.

The feedback we have received from the troops on the ground has been overwhelmingly positive and we are proud of the work of our courageous employees.

Like me, many of my KBR colleagues served in the armed forces. We understand the importance of our work to support the brave men and women of our military.

I followed my father into the Marines and I'm proud to say that my son followed me and also joined the corps. I served for 26 years and my career culminated with nearly 3.5 years as a White House liaison officer for the unit that includes Marine One, securely transporting both Presidents Bill Clinton and George W. Bush.

The focus of today's hearing is the use of **private** security contractors. To my knowledge, very foreign company working in Iraq uses **private** security in one capacity or another.

KBR uses **private** security on our non-LOGCAP work and, in certain circumstances, our LOGCAP subcontractors did, as well.

Military security was not guaranteed for all of the work the company did in the region and traveling with out security is exceptionally dangerous.

SEAGLE: Since 2003, there have been approximately 400 injuries and fatalities to KBR employees and subcontractors due to hostile acts. Those injuries and fatalities were due to improvised explosive devices, mortar and rocket attacks, small arms fire and kidnapping.

At Christmastime in 2004, a suicide bomber blew himself up during lunchtime in a KBR-run dining facility, killing 13 troops, four of our employees and three subcontractors.

To date, we have lost 98 people in Iraq, Kuwait and Afghanistan. According to this morning's news reports, overall, more than 770 civilian workers have been killed in Iraq and more than 7,000 injured.

These are the realities our employees and subcontractors face every day.

Amid such dangerous conditions, KBR operates a fleet of trucks that transports military fuel, military parts, medicine, hospital supplies, food and mail to coalition troops. They have logged more than 100 million miles, with more than 700 trucks on the road on any given day.

Our mission has required us to be extremely flexible. In 2003, KBR was initially directed by the Army to plan to support between 25,000 and 50,000 troops. The scope and nature of our task changed dramatically.

This is not a criticism. Ever changing priorities are a reality of war and the reality was that our mission grew to supporting more than 185,000 troops.

This dramatic change in the scope of services presented significant challenges. KBR first faced difficulties in mounting such a large enterprise in a hostile environment.

As with any endeavor of this size and magnitude, there have been times when our company and those that we work with have made mistakes. A handful of our 50,000 individuals on the ground have acted improperly.

When we had questions about the actions of certain individuals, we investigated and reported them to the Army. The rapid growth of our assignment and constant changes taxed our systems, but we adapted and developed systems that work.

In conclusion, for more than 60 years, KBR has undertaken demanding assignments in dangerous regions to support the U.S. military. I speak for everyone in our company when I say we are extremely proud to support the courageous men and women of our armed forces.

With each meal we serve, we try to bring them some small sense of the comforts of home. And when a soldier does have a few extra hours, the fitness centers we run and the activities we host at our morale, welfare and recreation facilities offer a brief refuge from the strain of combat.

As the Congress continues its oversight of the war efforts in contracting, I want to assure you that we are fully committed to cooperating with the Congress as it fulfills its oversight responsibilities.

As a government contractor, we take very seriously our responsibility to assist in the proper oversight of our work.

Mr. Chairman and members of the committee, I look forward to your questions and will do my best to provide you with the information you need.

Thank you.

WAXMAN: Thank you, Mr. Seagle.

Mr. Flores?

FLORES: Mr. Chairman, members of the committee, my name is Tom Flores. I'm the senior director of corporate security for Fluor Corporation.

After a nearly 25-year career in the United States Army, I joined Fluor in 1998 and have since been responsible for Fluor's security programs around the world.

In 2003, I was assigned to oversee Fluor's security programs in Iraq.

Fluor began working in Iraq under a contract with the United States Army Corps of Engineers, through which we provided services throughout the entire U.S. Army Central Command region, including Iraq.

Subsequently, Fluor and its joint venture partner, AMEC, a U.K.- based engineering and construction company, also competitively bid on and were awarded three of the reconstruction contracts. These contracts covered water programs in the north and south of Iraq and restoration of electricity.

In the course of executing that work, Fluor had no contractual arrangement with Blackwater USA and Regency Hotel and Hospital Company for security or other services, a fact acknowledged by Blackwater in a letter provided to the committee.

With respect to ESS, Fluor and Fluor/AMEC contracted with ESS at three separate locations in Iraq. In two locations, ESS provide dining and/or camp facilities to Fluor and Fluor/AMEC. Those locations were Baghdad's international zone, where ESS provided dining facilities for employees working on our two water contracts and Burzigon (ph) power station in southern Iraq, where ESS provided camp services.

In a third location, at Camp Cook at Al Taji, under a subcontract to Fluor, ESS provided planning, field engineering, procurement, transportation, construction and rapid setup of housing and latrine units.

Thank you for the opportunity to testify before the committee and I stand ready to answer your questions about Fluor's work in Iraq.

Thank you.

WAXMAN: Thank you very much for your testimony.

CHVOTKIN: Mr. Chairman, thank you very much for the invitation. My name is Alan Chvotkin and I'm the senior president and counsel for the Professional Services Council.

The Professional Services Council is the leading national trade association, representing more than 200 companies of all sizes that provide professional and

technical services to the federal government.

Many of our member companies are operating in Iraq under contracts awarded by the departments and agencies of the federal government. These firms are purchasers of security services and we've worked with them to highlight and address their concerns.

Several of our member companies provide security services in Iraq, in the United States and around the globe and some also have contracts directly with the United States government and we are working with them on a myriad of issues, as well.

We share the outrage at some of the events taking place in Iraq. However, we must be realistic about the circumstances in which the events are taking place and the options that may be available to address them.

We share the outrage of the unfortunate loss of life in Iraq. Thousands of American troops have been killed in the line of duty and many thousands more wounded.

U.S. contractor employees have also been killed while performing their work, with several thousand more wounded, and we offer our condolences and prayers for their recovery.

But we must be realistic about the missions that they are asked to perform and the risks that all who are working in that hazardous environment take on a daily basis.

Iraq is a unique foreign policy event in our nation's experience. To our knowledge, it is the first time that the U.S. government has attempted three simultaneous activities, a military action, a massive reconstruction effort across 10 sectors, and an extensive developmental assistance effort.

There was an initial massive surge of resources into Iraq, often in uncoordinated and overlapping activities that led good people with good intentions to make their best judgments under trying circumstances in the middle of a war zone.

While we share the outrage about the dollars spent in Iraq for the results achieved to date, we must also be realistic about the reasons for those dollars spent and the results achieved.

In the contracting environment, for example, the U.S. government made a conscious decision to be a good steward of the contracts awarded and applied the fully scope of the federal acquisition regulations to the preponderance of the

contracts awarded there.

The U.S. government made a decision to impose U.S. health and safety requirements on those contractors. The U.S. government made a decision to require its contractors operating in Iraq to have liability insurance.

Each of these steps in isolation may have been the right decision for the right reason and we don't have any objection to the government imposing them in a planned and consistent manner.

But imposing these additional contractual requirements increases the cost of contract performance. So every dollar awarded by an agency or spent by a contractor, performance of these contractual requirements is not waste and is not abuse, as those terms have been commonly used.

We share the outrage about the appearance of a lack of accountability for certain behaviors in Iraq and strongly endorse holding all participants in the contracting process equally accountable for their responsibilities.

We strongly support a robust oversight function and where fraud is found, we strongly support vigorous prosecution.

But we must be realistic about the activities that are taking place and the root cause for them.

Companies don't set the mission. The nature of the contracting arrangements in Iraq, particularly at the earliest stages of the war, was driven exclusively by the government's choice and the government's requirements.

So while it is legitimate to talk about the appropriate roles and assignments for contractors, the use of code words for their work masks the real issues and diminishes the opportunities for serious discussion.

Contractors are playing critical roles in each of the concurrent operational areas taking place in Iraq today. It would be impossible to execute the number and scope of projects underway without them.

We share the outrage about the cost of security, but we must be realistic about the factors that are driving such behaviors. For those contracts awarded by the Defense Department to directly support the military's activities, the contractors that accompany the force, for them, force protection and other life cycle support functions have traditionally been the responsibility of the military.

We strongly support that formulation. But in a significant and little discussed June

16, 2006 change to the Defense Department's acquisition regulations, the Defense Department has made force protection the primary responsibility of the contractors performing, unless the military accepts the responsibility directly in the contract.

We strongly oppose that reversal of policy, but our companies are adjusting to it, including addressing the cost of performance to reflect these changes.

For contractors who are supporting the reconstruction activities or are under contract to other federal agencies, force protection has traditionally been the responsibility of the contractor performing that work and we support that.

A July 18, 2006 proposed acquisition regulation has reconfirmed the U.S. government policy to impose this responsibility and the expense on contractors.

So while we can be outraged about the security instability in Iraq and the cost of security spent by contractors to support their activities, we must be pragmatic about understanding the costs that are driving such costs.

In conclusion, hiring **private** security is common in overseas operations. Iraq is not new in that regard. However, the magnitude of the work and the concurrent operations taking place there create unique challenges we see.

The security situation is highly volatile and contributes to the unique challenges. But any solution must be addressed carefully, with full consultation, to address the real issue without creating new problems.

Professional Services Council would welcome the opportunity to work with this committee and others on these important matters.

Thank you for the opportunity to provide this information. Look forward to your questions.

WAXMAN: Thank you. I want to thank each of you for your testimony.

Before we proceed to questions, there was a motion by Mr. Issa to take down the words of the gentlelady from Illinois and I want to recognize Mr. Issa on this point.

ISSA: Thank you, Mr. Chairman.

It was unfortunate that I was out of the room when the words were spoken. After reviewing the words, which I'll read just to be sure we all understand them, "I also wanted to take exception to the question about who wrote the testimony, because I think clearly the implication was that somehow these wonderful women

couldn't have possibly written that wonderful, heartfelt testimony and that it took a lawyer in order to put it together."

And I resent that very much and I just wanted to put that in the record.

Mr. Chairman, although these words, I think, are inappropriate and they set the wrong tone for the business that we must do on a bipartisan basis, after reviewing them and after believing that this was an anomaly in this committee and not something that would be regularly repeated, I'd like to withdraw my motion and I appreciate the time.

I yield back.

WAXMAN: I appreciate that. The gentleman has withdrawn his motion and, therefore, there's nothing pending before us.

I was going to read the words, but the gentleman did accurately read the words in question.

Well, let me start with my questions. And without objection, the chair and the ranking member will have 10 minutes each and all members will get five minutes to pursue the matters.

Mr. Howell, let me start with you.

I want to begin by extending my thanks to you to be here. We heard very emotional testimony from people who lost their loved ones who worked for your company.

Their pain is very personal, but there's pain to your company, as well, when any of your employees lose their lives and I want to acknowledge that fact. You pointed that out in your testimony. And I think I'm speaking for all the members of the committee that we're sorry for your losses.

HOWELL: Thank you, sir.

WAXMAN: As a company providing security services, you have a job to do and, as members of Congress, we have a job to do.

Our job is to provide oversight to make sure government is working effectively and efficiently and to identify and eliminate any waste in taxpayers' dollars.

We've heard allegations that call into question the job that Blackwater was performing in Iraq. The family members raised questions, I think legitimate

questions that deserve answers, about whether Blackwater is endangering the lives by skimping on protective equipment. That was the issue raised.

The contracts and audits we've received have raised questions about whether Blackwater is overcharging and double billing the government.

I don't know what's true or not. I haven't reached any conclusions on these allegations, but they are important allegations and I think they should be fully investigated.

I want to focus on an e-mail you provided to us. It's an e-mail from Tom Powell, who we understand was operations manager for Blackwater in Baghdad. It's dated March 30, 2004, one day before the attack in Fallujah that killed the four Blackwater contractors.

And in hindsight, it's a pretty chilling communication. The e-mail begins, and I quote, "Ground truth, guys, this is reality," end quote.

The e-mail was sent to Brian Berry. I understand he's a senior Blackwater executive. My understanding is he is the director of Blackwater Consulting.

Am I correct that Mr. Berry was the director of Blackwater Security Consulting?

HOWELL: My understanding is that he was not director at that time, but he was certainly a Blackwater official.

WAXMAN: Another recipient of the e-mail was Mike Rush. Can you tell us what position he had at that time?

HOWELL: I believe that he was the director at that time.

WAXMAN: He was the director of operations for Blackwater.

HOWELL: He was the director of Blackwater Security is my understanding, yes, sir.

WAXMAN: The third recipient of the e-mail was named Justin and we presume this is a reference to Justin McGowan, who McQuown, who is the program manager in charge of Blackwater's contract with ESS and Regency.

Is this right?

HOWELL: I believe that's correct. And if I could, Chairman, those names have all been made public, but to the extent that our personnel, publishing the names of

Blackwater personnel that are not public information could possibly place them at risk.

I would ask that if we could find a way to identify them without publicly stating the names or perhaps go into closed session. I'm certain that they would appreciate that respect for their...

WAXMAN: I appreciate what you're saying.

HOWELL: Yes, sir.

WAXMAN: This is a disturbing e-mail, because if it's correct, if it's accurate, it shows that Blackwater personnel working on the contract with Regency and ESS, which is the contract involved in the Fallujah incident, did not have adequate equipment or vehicles.

And it also shows that Blackwater may have been circulating situation reports that were, I quote, "smoke and mirrors show" and not, quote, "reality-based information," end quote.

Let me read you a passage from the e-mail, quote, "I need new vehicles. I need new COMs," which means communications devices. "I need ammo, I need Glockes and M4s," which are types of weapons. "All the client body armor you got, guys are in the field with borrowed stuff and in harm's way. I've requested hard cars from the beginning and, from my understanding, an order is still pending. 'Why,' I asked. It is my understanding that someone in Kuwait made a decision to go with Suburbans that are used. Bad idea," end quote.

The e-mail ends, quote, "Ground troop is appalling," end quote.

My understanding is that this e-mail was addressing the lack of equipment available for Blackwater personnel working on the Regency and ESS contract, which is the current contract involved in the Fallujah incident.

Is that correct?

HOWELL: If you'd like me to comment on specific text from the e-mail, I'd like to have it in front of me, sir. But the general subject of the e-mail was overall equipment requirements. That is correct.

WAXMAN: OK, we'll be glad to give that to you, but the question I have sort of preliminarily is whether the e-mail was addressing the lack of equipment available for Blackwater personnel working on the Regency and ESS contract, which is the contract involved in Fallujah.

HOWELL: It was discussing a lack of equipment as to the contract as a whole. It doesn't follow there from that any individual that any individual who set out to accomplish a task didn't have the equipment that he needed.

WAXMAN: Mr. Howell, have you investigated the circumstances surrounding the Fallujah incident?

HOWELL: I am familiar with them, yes, sir.

WAXMAN: Have you determined whether the conditions described in the e-mail are accurate as it relates to that incident?

Were your forces sent on missions in used Suburbans rather than hardened vehicles, as the e-mail describes?

HOWELL: Yes, our forces did go on missions, some of which were in soft-skinned vehicles, but the nature of what we were doing there is that it was not a single task.

It was not a single mission that our men did. So different equipment was appropriate for different missions given the threat as it was known at the time on the ground in Iraq.

WAXMAN: Were your forces short on communications devices, as the e-mail describes?

HOWELL: There was not sufficient communication gear for the team on the day of this memo, had it been fully manned. However, there was sufficient communication gear for the teams that would have been operational at this time.

WAXMAN: You answered my question about the Suburbans as opposed to hardened vehicles and you said on certain missions that was the case.

On the mission in Fallujah that we heard about this morning, was it the case for that incident?

HOWELL: I'm not following your question, sir. Was it the case that the Suburban was appropriate?

WAXMAN: No. Did they use a Suburban as opposed to a hardened vehicle?

HOWELL: They used something equivalent to a Suburban, which was a Mitsubishi Pajero. It's the equivalent in the U.S. of a Montero and the idea behind

using that vehicle is that it was sort of a local vehicle that was a low key approach. It sort of blended in, if you will.

WAXMAN: Was it hardened?

HOWELL: It had been outfitted with some steel plate, yes, sir.

WAXMAN: And on the issue of communication devices, which the e-mail described, in this particular Fallujah incident, did they lack communication devices?

HOWELL: They did not. If we are going to inquire into specific facts that are under litigation, I would propose that we do so not in an open session. But I can answer that question, yes, sir.

WAXMAN: You cannot answer.

HOWELL: I can answer the question.

WAXMAN: Well, I'd like you to answer the question.

HOWELL: Yes, sir, the men that day did have communication devices.

WAXMAN: They did, OK. Were they short on ammunition and weapons, as the e-mail describes?

HOWELL: The e-mail describes the situation for the project as a whole. The men who went on the mission on March 31, each had their weapons and they had sufficient ammunition.

WAXMAN: Mr. Murray, you work for ESS, which is the contractor that hired Regency, which is the contractor that hired Blackwater.

I'd like to ask you about this e-mail.

At one point in the e-mail chain, Lawrence Badenhorst (ph) receives a copy of Mr. Powell's e-mail. Mr. Badenhorst (ph) is an executive director at ESS, as I understand it. Is that accurate?

MURRAY: Chairman Waxman, yes, Lawrence Badenhorst (ph), at the time, was our CEO of our design and build division.

WAXMAN: And, Mr. Murray, what information does your company, ESS, have about the conditions described in Mr. Powell's e-mail?

MURRAY: Chairman, I'd like to first say that ESS' relationship was with Regency. We had contracted with Regency to provide ESS with our **private** security as a turnkey service.

What I mean by turnkey is we relied on Regency to tell ESS what equipment, what routes and such were safe for us to move throughout Iraq and we relied on them exclusively.

And in our contract with Regency, we gave them the ultimate authority for a go or no-go scenario. So if they determined it was unsafe, they had the ability to do that and we indemnified them for that fact.

WAXMAN: But one of your executives received this e-mail. Do you have any information that corroborates the complaints about lack of equipment and vehicles that Mr. Powell describes?

MURRAY: No, I don't, Chairman.

WAXMAN: Perhaps the most disturbing parts of the e-mail involve what Mr. Powell had to say about the situation reports that were being prepared by Justin McQuown of Blackwater and Regency, and let me read you some excerpts of this part of the e-mail.

"The SITREPs by Regency/RHHC I'm reading are very misleading and bogus on the surface. My only hope is that Justin sees through the smoke and mirrors show and believes me when I'm telling him that all is not what it seems. Justin knows what has to forward and realizes that it is just enough to sustain the appearance of gear and an operational capacity. Please, Justin, send your SITREPs to the client with reality-based information."

Mr. Howell, have you investigated the situation reports that Mr. McQuown was preparing?

HOWELL: No, sir.

WAXMAN: Do you agree with the description in the e-mail that they were smoke and mirrors and not reality-based?

HOWELL: Not having seen them, I can't comment one way or the other, sir.

WAXMAN: Mr. Murray, do you have any information about whether ESS believes it was getting accurate information from Blackwater and Regency about the ground truth?

MURRAY: Chairman, ESS had confidence in Regency to provide us with accurate intelligence, accurate movement guidance. So to answer, yes, we relied on Regency to provide that to us.

WAXMAN: We also have a response from Mike Rush, who's deputy director of operations for Blackwater. It's dated March 30, the day before the fatal attacks.

And as I read it, Mr. Rush is telling Mr. Powell that the problems he has identified are not Blackwater's responsibility to fix. Let me read you some excerpts of what Mr. Rush told Mr. Powell, the author of the ground truth e-mail.

"You are right about vehicles and COMs being the responsibility of RHHS," which, of course, stands for Regency Hotel and Hospitality. "There is no order for hard cars. The contract only allows for hardening and, yes, I realize that is not optimum, body armor for the clients is not our responsibility either. It is, in fact, up to RHHS," Regency, "to fix some of the things you mentioned, particularly reliable vehicles."

Mr. Howell, the e-mail from Mr. Rush reads to me like someone is passing the buck. Do you agree?

HOWELL: I don't agree, Mr. Chairman, and the reason is Mr. Rush is just correctly noting that it was under our contract with Regency. It was the responsibility of Regency to fund the acquisition of that equipment.

It does not mean that Blackwater was not actively seeking to assist in identifying and obtaining the required equipment, as the other e-mails would indicate.

WAXMAN: Well, there are three issues and questions whether the vehicles were hardened sufficiently to protect them or that they had the ammunition and equipment needed to protect themselves.

And, thirdly, the question also is whether they had the third person to be a tail gunner.

Can you tell us whether they had what they needed in all three of those areas?

HOWELL: Yes, sir. With regards to the armored vehicle question, there was certainly desire to have some sort of armored vehicles on this project, meaning the ESS project as a whole.

But, again, it doesn't follow there from that each mission involved an armored vehicle and, in fact, a close review of the contracts revealed that it was

specifically contemplated that there would be other vehicles which had had some sort of protection added that would be used on the project.

Beyond that, the armored vehicle question, the vehicle that they went out in that day was believed appropriate based on the mission by everyone involved or the mission, I don't believe that it would have been carried out at that point.

And the armored vehicle, whether it would have affected the events of that day is another question.

With regard to the third person, the protocol for the type of mission the men were on that day, and, again, we're bordering on things that could place -- could involve operational security of not only our folks, but service members.

The mission they were on that day, at that point in time, given the threat as it was known on the ground in Iraq, the norm was not to have the third person.

WAXMAN: Well, Mr. Powell, obviously, in his e-mail, was expressing concern.

I guess my general question is when Blackwater sends **private** forces into a war zone, do you have an obligation to equip them adequately? And I assume you would have to say yes.

And then my next question is did Blackwater meet this obligation in Fallujah?

HOWELL: Yes, we did.

WAXMAN: I just want to conclude by reading this quote again, "But guys are in this field with borrowed stuff and in harm's way, with a client which I'm very uncomfortable with given the upcoming events with five million Shia moving in Karbala in five days. I've requested hard cars from the beginning and, from my understanding, an order is still pending. 'Why,' I ask."

Thank you.

Mr. Davis?

T. DAVIS: Thank you.

Ms. Ballard, I'm going to start with you. You note that the Army takes steps to recoup funds paid under LOGCAP for **private** security contractors.

But as I understand the law, the security services were likely performed under a fixed price subcontract.

T. DAVIS: As far as you know, has the Army ever been able to recoup funds in a situation like this where the costs to appear to have been embedded within a fixed price subcontract?

BALLARD: As far as I know, they have not.

T. DAVIS: How would you be able to do that, if it was competitively bid?

BALLARD: In a competitive fixed price contract, we don't have access to the subcontractor's data. The regulation prohibits us from getting cost and pricing data in a fixed price competitive contract from the prime.

It also prohibits that prime from getting that data from the subcontractor.

T. DAVIS: Does the Army have enough personnel on the ground to support military convoys for LOGCAP subcontractors? Do you know the answer to that?

BALLARD: I don't have the answer to that, sir.

T. DAVIS: The majority says that the costs of security services provided by **private** firms are substantially higher than the direct costs that we be incurred by the military.

Do you have any comment on that?

BALLARD: No, sir, I don't. The GAO and (inaudible) have estimated that our security costs on the ground are between 9.8 and 12.55 percent.

T. DAVIS: We hear a lot about the so-called evils of procuring. Now, as I understand the practice of using a number of levels of subcontractors to perform various functions under a prime contract, which is larger and has myriad features, which one company may not be able to deliver all of those services.

I guess the alternative would be to just have more direct contracts, which would entail much higher aggregate costs to the Army in terms of overseeing it.

But do you think the practice, in general, is wasteful and inefficient, as it's portrayed?

BALLARD: Sir, the practice of having a subcontract tier is a practice, according to our research, that even occurs in commercial construction in the United States.

T. DAVIS: Of course. So from your perspective, there's no reason to outlaw

anything. Obviously, oversight is important to make sure that they're subcontracting appropriately and there's competition.

Would that be fair to say?

BALLARD: We don't have anything in the regulation that allows us to prohibit subcontract tiers.

T. DAVIS: And, in fact, if a prime contractor didn't have the in-house capability to perform that, they would have to subcontract it or the alternative would be to have a myriad of additional contracts directly with the government, where the government would, in a sense, be the integrator.

BALLARD: Yes, sir.

T. DAVIS: Mr. Howell, we've heard that the cost of security services provided by firms such as yours are much substantially higher than the direct costs that would be incurred by the military.

Do you have any comment on that? You're not the decision-maker here, but you're on the ground delivering.

HOWELL: I'm not qualified to comment on the costs, the direct costs of military services.

T. DAVIS: Let me ask you this. You noted that 99 percent of your contracts in Iraq are fixed price contracts. Is that correct?

HOWELL: Yes, sir, the vast majority are of a firm fixed price nature.

If I may clarify, sir, that in some contracts, there are mandatory provisions for a pass-through of costs, but there is no markup or profit on those costs.

The general nature of those contracts is very limited number of specific items are passed through at cost.

T. DAVIS: How many of your contracts were awarded under competitive acquisitions?

HOWELL: Of our contracts in Iraq, and, again, I understand that the nature of today's hearing is only on unclassified contracts, I'm not prepared to -- I don't know the answer regarding any classified work at the moment.

But in terms of unclassified work, of approximately -- out of all our contracts in

Iraq, one, to my knowledge, was not competitively bid and it was issued on an urgent and compelling basis after the incumbent was unable to provide the services and we were asked at short notice to provide those services.

T. DAVIS: But that's not the contract that's been at issue today.

HOWELL: That's not the contract at issue and ultimately that's not a contractor decision. That's a government decision, yes, sir.

T. DAVIS: We've heard that your people are paid anywhere from \$600 to \$1,500 a day for these dangerous assignments.

I wonder if you could give us, explain the various payment structures you have with your employees?

HOWELL: Yes, sir. First of all, I think there's a great deal of myth about the exorbitant pay rates. Certainly, our people face grave danger and that's well recognized.

But in terms of the rate structure, which is your real question, the general nature of these sorts of government contracts for security services involve breaking it down into classes, they're typically called tiers.

A given tier, there are very specific requirements by the government client on the experience level and capabilities of the individual and the individual's services are billed out at firm fixed price per day, based on which tier they lie in.

So, for example, a special forces veteran with extensive experience is billed at a much different rate than someone who's just had more general military experience and less time.

T. DAVIS: What kind of markup do you get over the direct costs on a basis? Does that also vary with the tier?

HOWELL: Well, the nature of our contracts is a fixed price basis.

T. DAVIS: Right, and it's competitively bid. So I'm not...

HOWELL: It's competitively bid, yes, sir. So our pricing is really based on...

T. DAVIS: It's the market price.

HOWELL: It's pricing, not cost.

T. DAVIS: I'm just curious.

HOWELL: I don't want to be unresponsive, sir, but it's a question that's sort of mixing apples and oranges. Cost contracts involve markups over cost. Fixed price...

T. DAVIS: I understand the business.

HOWELL: Yes, sir.

T. DAVIS: Basically, you don't want to give away your cost data. Basically, you don't want to give away -- you're not compelled to give it away, you don't want to give it away.

HOWELL: Right. It would harm competition on future contracts.

T. DAVIS: Obviously, it's a question, even though these are fixed prices, that is of interest to us. But I'm not going to press you at this point.

HOWELL: Yes, sir.

T. DAVIS: What death benefits do you provide to the survivors when an enemy kills a contract employee?

HOWELL: Well, all government contractors are mandated by statute to provide benefits under the Defense Base Act and it's a program that was set up that goes back actually to World War II, and it was set up in order to provide what is, in effect, a worker's compensation benefit for those who are injured or killed in the service of their contractor, contractors overseas working for the government.

T. DAVIS: But you don't do anything in addition to that, is that correct?

HOWELL: Well, we're always looking for additional ways to protect our folks.

We currently have an additional insurance policy that's above and beyond that that we acquire because we want to provide for our folks.

T. DAVIS: In the contract at issue, we heard from the first panel, who was Blackwater's clients? Were you contracting with Regency or ESS?

HOWELL: Our contract was with Regency.

T. DAVIS: With Regency. And I've seen some tiers that have been introduced and some charts and the like.

And who was Regency contracting with above that?

HOWELL: My understanding is that Regency's contract was with ESS.

T. DAVIS: There's been a lot of attention to the costs of providing security services, and let me just ask a general question, for anyone who wants to take it.

Why are these costs -- these costs seem to be very, very large over there. Obviously, there's a huge premium whenever you're doing this kind of thing.

Could somebody explain to me what goes into your marketing of this and your costing of this, your pricing?

How do you price a security provision into a contract? Is it a marketplace based or is it your costs or being able to recruit people to go over? What goes into that?

HOWELL: Well, these are competitively bid contracts. So, yes, it is ultimately driven by the marketplace.

There is high competition for the individuals, security professionals with expertise that's needed. We have to account for that, as well as the many expenses that we incur in training them, often providing weeks of training at Moyock, transportation.

On many contracts, there's lodging, subsistence, travel to and from Iraq. The list of factors that go into it vary with each contract.

T. DAVIS: Is it hard to find people that are willing to do this, qualified people?

HOWELL: It is always a challenge to find the most qualified people, yes, sir.

T. DAVIS: Mr. Murray, let me ask you, the military convoy system for LOGCAP contractors has been described to us as unreliable.

Could you address some of the choices your company's faced with when the military convoy system doesn't work as it should?

MURRAY: Yes, I can. We face many challenges, moving our cargo. Actually, two aspects, we move cargo and we move people.

I mentioned in my statement the convoy system wasn't designed to move people. We had in excess of 1,000 ESS employees in the country of Iraq. Primarily, we had to move them from Kuwait into Iraq and it was a challenge to move them into

Iraq, into coalition camp, either a KBR site or another site, safely.

The convoy system itself, the rules to put our non-tactical vehicles, they're called NTVs, non-tactical vehicles, those are the vehicles that would carry our civilian employees into a convoy, would change virtually on a daily basis.

Some days we'd be allowed to put a non-tactical vehicle in a convoy. Some days we'd arrive with one or two of these vehicles and we'd be told at that point, "Well, the rules have changed, we can't accept your vehicles today."

How did that impact us? That prevented us from moving our chefs, our cooks, our laborers up to the site. That was one impact to us. That caused, could have caused delays in our performance.

Another impact, another extenuating circumstance perhaps is the border crossing between Kuwait and Iraq, called NAVSTAR, was an assembly point for all the contractors that crossed our vehicles into Iraq.

We would ship, at the peak, in excess of 300 to 350 trucks per week. Convoys in the early days would take five to 10, perhaps 20 of these trucks.

We'd be queued up or lined up at the border 3:00, 2:00 in the morning, in hopes of getting in a convoy and it may take two to three days to have a lot of trucks slotted into that convoy. That, again, caused further delays to us.

T. DAVIS: Let me ask you this. On the contract at issue that you heard the first panel, where the individuals lost their lives, were you contracting at that point with KBR under LOGCAP or with Fluor?

MURRAY: For the particular contract at issue, we engaged -- actually, I can answer by saying both.

We employed **private** security. You asked about the contract at issue, which is the ESS-Regency contract for **private** security.

We used that **private** security detachment team, the **private** security to move our people throughout Iraq across all contracts.

Now, the specific incident on March 31, if you'd like me to address that.

T. DAVIS: That's what I want to address.

MURRAY: Now, that particular incident...

T. DAVIS: Because we've been having a hard time figuring it out, I think, up here.

MURRAY: On March 31, that particular incident was a movement of ESS cargo. We had a convoy that was moving from Taji, Camp Taji, which was going to Al Assad. Al Assad was on the far side of Fallujah, the western side of Fallujah.

We were picking up cargo and that was a KBR site and we were going to return that cargo, supplies and construction equipment to Camp Taji, where we were building -- had a construction contract with Fluor.

The attack occurred in route from Taji through Fallujah to Al Assad. They never reached their destination, but they were moving cargo through our contract.

T. DAVIS: So it was still intermingled at this point.

Let me just ask then one question, Mr. Flores, for you.

Were you aware that Blackwater was apparently performing security services for ESS, as well?

FLORES: No, sir, I was not.

T. DAVIS: You were not, OK. Thank you. Thank you very much.

WAXMAN: Thank you, Mr. Davis.

Mr. Cummings?

CUMMINGS: Thank you very much, Mr. Chairman.

You know, these accounts that we've heard about with Blackwater and the **private** security contractors are very troubling and I'm concerned about the profit motive they have and the lack of insight.

Some reports have estimated that there are as many as 50,000 **private** security contractors in Iraq right now, but I have yet to see the data from the Defense Department.

Ms. Ballard, how many **private** security contractors are there in Iraq right now?

You know, the president just -- in the "State of the Union" and I've heard some discussion here, the president said during the "State of the Union" that he wanted more civilians, but I think he was talking about volunteers.

But I'm just curious, how many security contractors do we have?

BALLARD: Congressman, I can take that question for the record. I don't have that number.

The security contractors on the ground aren't all for the Department of Defense. There are contractors on the ground providing security for other agencies, as well.

So I'd have to take that question for the record. I don't have it for DOD or the total number.

WAXMAN: We'll hold the record open to receive that information.

How long will it take? Can we get that within a week?

BALLARD: I can go back and request the information be provided in a week, Mr. Chairman.

CUMMINGS: On a larger question -- I really appreciate that, Ms. Ballard.

Why does the administration rely on so many **private** contractors, do you know? And we can't even count them.

And I take it from the testimony here the American people end up one way or another paying for them and I'm sure we all would want to know how many we have.

And I know you're going to get that information for me, but why do we have to do that? We've got the president asking for another 21,500 troops. There's debate as to whether it's that number or more.

And I guess what we're trying to do here, too, is just try to get to the bottom line of exactly who is over there in Iraq, what they're doing and how much are the American people paying for them to do whatever they do and are they doing the things that are lawfully -- that they can do lawfully?

WAXMAN: Mr. Cummings, you had asked a question about the number of contractors and Ms. Ballard said she has to check, because of other agencies.

But do you should know for the Department of Defense. Do you have that information for us?

BALLARD: No, sir, I do not.

CUMMINGS: How soon can you get that to us?

BALLARD: The question on how many security contractors in the Department of Defense?

I've taken that for the record and, as the chairman requested, I will go back and ask if we can provide it in a week.

CUMMINGS: And would you also get us the number of subcontractors, too?

BALLARD: I will ask for that information, sir.

CUMMINGS: And can you find out for us how much, as best you can, the citizens of the United States of America are paying for these contractors and subcontractors, so as we try to assess how we vote on more money for Iraq, so we can just have the total picture? Will you do that for us?

BALLARD: I will certainly ask and take that as a question for the record, sir.

CUMMINGS: All right, that's all I have, Mr. Chairman.

WAXMAN: Mr. Cummings, it just strikes me as amazing that this kind of information wouldn't be readily available. That is the purpose of this hearing.

The Department of Defense -- I can understand you might not know about other agencies, but you certainly should know what's going on in the Department of Defense.

We did invite you to come and talk about this topic. Did you not think you'd be asked, Ms. Ballard?

BALLARD: Mr. Chairman, we appreciate the invitation to come and speak on this topic. However, in the case of the KBR contract, there were no provisions allowing security.

So in our estimation, there should not have been any security provided.

WAXMAN: Well, no, the question that...

BALLARD: In terms of the...

WAXMAN: That wasn't the question that Mr. Cummings had asked. Mr. Cummings wanted to know how many contractors and subcontractors do we

have out there under the Defense Department and how many under other departments.

He asked it generally. You said, "Well, I have to check those other departments."

But you'd also have to check it for the Defense Department.

BALLARD: I can't speak for the Defense Department, sir, because I work for the Department of the Army and in the case of the department...

WAXMAN: Well, tell us about the Department of the Army, how many do you have?

BALLARD: In the case of the Department of the Army, we have the design-build contracts, where the contractors were required to provide their own security.

Those costs would be subcontracted. So we would have to go back and ask those prime contractors to provide that information, because we do not have privity of contract with the subcontractors.

WAXMAN: How many contractors do you have at the Department of the Army that are involved in Iraq?

BALLARD: Sir, I did not come prepared to answer that question. I will take it for the record.

WAXMAN: Well, we will hope that you get that information to us and break it down. Thank you.

We now go to Ms. Foxx.

FOXX: You mentioned that there's a prohibition on the contractors having security. That's in the contract.

Does that apply to other groups? And if there is that prohibition, then how do you all expect people to provide security for the people there if there's a prohibition?

BALLARD: There is a specific clause in a LOGCAP contract that addresses security. That clause stipulates that a theater commander will provide force protection commensurate with that provided to the service and agency civilians, unless otherwise stipulated in a task order.

On the design-build contracts, which are different than the LOGCAP contracts, the contractors were expected to provide their own security.

So there are different contract vehicles and different terms and conditions.

CHVOTKIN: Ms. Foxx, if I may, Ms. Ballard makes an important point and I wanted to reiterate a point I made in my testimony.

There are three simultaneous actions taking place. There's a military action and for the military action, the military is supposed to provide force protection for its contractors.

But for everybody else that's operating in Iraq, and that is the reconstruction contractors, those supporting the Department of Justice, USAID, the Department of Agriculture, Health and Human Services, all of those contractors are required to provide their own security.

And that's why the difficulty of -- that's why you have a lot of security operations in Iraq unrelated to the military activity.

FOXX: Mr. Chairman, I want to follow-up with a question, but I want to make a comment about the direction in which this hearing has gone.

I've been here from the beginning, I've read a lot of the material. And I am a person who, again, is very much opposed to waste, fraud and abuse and I like to think in (OFF-MIKE) systems issues.

And it seems to me that if we're interested in waste, fraud and abuse and we want to do something about it, what we should be doing is being focused on the way the systems operate in all these areas.

And what we've got here is a gotcha situation, it seems to me. There's a tragic loss of life that's occurred and every life that's been lost in any of our wars I am sorry for.

What's been happening in Iraq and the war on terror I am very, very sorry for and the people who are working for Blackwater, I'm extremely sorry they lost their lives.

But particularly in Iraq, everybody is going there as a volunteer and I understand that, but what we ought to be about is asking for how the systems work, what's wrong with the systems now, and how do we get at it, instead of spending all this time trying to get people on issues that are irrelevant to much of what we should be concerned about.

So I want to ask one question and I'll ask you to answer with it a yes or no.

Has anybody associated with the Congress or with any of the departments that you work with asked you in any formal way or any organized way to give suggestions on how we can make these systems better? Because it seems to me that's what our focus ought to be.

So real simple answer, yes or no, and if you answer yes, then I'll ask you to follow-up with that with some information. But I won't burden us with a lot of time.

So I will start down here. Has anybody in your group looking at this, has anybody asked you that question?

BALLARD: Yes, ma'am.

FOXX: (OFF-MIKE)

WAXMAN: It's up to you. It's your time.

FOXX: Let's go down the line and then we'll come back to whoever says yes.

BALLARD: Ma'am, we have...

FOXX: Wait one second. Mr. Murray?

MURRAY: No, they've not.

FOXX: Mr. Howell?

HOWELL: Yes, they have.

FLORES: No, ma'am.

SEAGLE: Would you rephrase that question, please, Congresswoman?

FOXX: Has anyone in a position of authority, and I'm not going to try to name departments and that sort of thing, asked you to make suggestions on how the systems within which you're working, how could they be made better so that we cut down on waste, fraud and abuse and certainly cut down on the potential for loss of life?

SEAGLE: Yes, ma'am.

FOXX: Then let's go back up here and see. Can you tell us briefly, have those suggestions been taken? Are they still in the mill?

Tell me just a little bit about that without going into too great a detail.

BALLARD: Yes, ma'am. Several of the suggestions have been taken.

As a result, over the years, we have evolved significantly in our contracting operations in the theater and the Army has also made a significant change in the structure.

We have established a contingency contracting officer battalion that are under the Army field support brigades and this will enable our contracting officers to interface with the combatant commanders in the planning states for contingency operations.

So we've made several significant changes.

FOXX: Let me follow-up real quickly.

Has anybody from the Congress asked you for any suggestions before today?

BALLARD: No, ma'am.

FOXX: OK, would each one of you respond to that part, as you go down the line.

Let's see. Who else said yes? Who else said yes? Mr. Howell?

HOWELL: Yes, Congresswoman. On hearing you restate that question, I can't say definitively that we've been asked.

I would say we've discussed that issue with one of our largest clients and it's been more in the nature of us and the client seeking to provide the best protection possible for the folks that we're protecting and to agree to -- our billing is closely scrutinized and we make sure that we're in agreement that the bills are correct.

FOXX: But no one from Congress has asked you that question before today.

HOWELL: No, ma'am.

FOXX: (OFF-MIKE)

FLORES: No one from Congress has asked me anything about this, but a gentleman named Lawrence...

WAXMAN: Before you get into details, because the time has expired, but you basically wanted to know if anybody in the Congress asked.

FOXX: Right.

WAXMAN: And your answer is no.

Anybody have an answer in the affirmative, that anybody in the Congress has asked you?

Yes, Mr. Chvotkin?

CHVOTKIN: Yes, for us. We worked closely with the House Armed Services Committee in 2005 in the oversight work that they were doing, development of some legislation, similar work with the Senate, and, also, of course, this committee in the past years.

WAXMAN: Thank you, Ms. Foxx.

I do want to point out that now is the time Congress should be asking these questions. We should have been asking them in the past and asking questions and trying to get accountability is not gotcha. It's trying to do our job and I think we need to work together on a bipartisan basis to do that.

Mr. Tierney?

TIERNEY: Thank you, Mr. Chairman.

Mr. Howell, I'm going to ask you some questions. Would you do me the favor of turning up your microphone towards you so that I can hear you better when you respond?

Thank you.

You, in your comments, I think, inferred the fact that you thought that the gentlemen that went into Fallujah and lost their lives were outfitted and situated in such a way as warranted by the general conditions at that time.

I want to ask you if you're aware of an agreement for security services dated March 8, I believe, 2004 between ESS and Regency?

I'd draw your attention to the appendix A of that document. The second paragraph reads, "Further to Regency's analysis of ESS requirements and the current threat in the Iraqi theater of operations, as evidenced by the recent

incidents against civilian entities in Fallujah, Al Ramadi, Al Taji and Al Hallah, there are areas in Iraq that require a minimum of three security personnel per vehicle. The current and foreseeable future threat will remain consistent and dangerous. Therefore, to provide tactically sound and fully mission capable protective security details, the minimum team size is six operators, with a minimum of two armed vehicles to support ESS movements."

Were you aware of those contract provisions, sir?

HOWELL: Yes, I was.

TIERNEY: Now, does that change your testimony earlier that you thought having two people per vehicle, with plated vehicles as opposed to armored vehicles, was sufficient on the date in question?

HOWELL: It does not and there are a number of reasons why. First of all, this agreement, as you said, was executed March 8 between ESS and Regency.

On March 11, during a meeting between Regency, ESS and Blackwater, my understanding is ESS confirmed that armored vehicles were not appropriate or not expected, not requested for all missions.

TIERNEY: So what you're saying is they told you verbally something that absolutely contradicts this statement here that ESS had requirements that for the current and foreseeable future, threat will remain consistent and dangerous and recommending a minimum of six operators and a minimum of two armored vehicles.

So three days after this contract was executed, you say they said exactly the opposite thing.

HOWELL: This contract was between Regency and ESS.

TIERNEY: That's correct.

HOWELL: Three days after that, my understanding is ESS stated that that was not required and the requirement imposed by Regency on Blackwater was that it was not a requirement for armored vehicles.

TIERNEY: Do you agree or disagree with the threat assessment, as stated in that paragraph?

HOWELL: That statement in the paragraph just reflects the fact that it was a dynamic and dangerous environment in Iraq. It is not a statement as to the

specific conditions in any particular place on any given day.

TIERNEY: Well, it talks about (inaudible) Fallujah, Ramadi, al- Taji, al-Hillah. Those are fairly specific places. It talks about a consistent and dangerous threat remaining for the current and foreseeable future. And it talks about the fact those capabilities they think are necessary to deal with those: a minimum team of six operators and a minimum of two armored vehicles.

Do you agree or disagree with that assessment?

HOWELL: I disagree with part of that, sir. It notes specific incidents to reinforce the general point that Iraq was a dangerous place. And, with regard to the armor requirements, it's discussed in Appendix A of the Regency-ESS contract.

My understanding is that that's with regards to personal protective services, which is a different mission than convoy operations.

TIERNEY: Mr. Murray, do you agree or disagree with that threat assessment in that paragraph.

MURRAY: I'd like to make a couple of points, if I may.

TIERNEY: No I really just wanted your answer. I've got limited time.

MURRAY: OK.

TIERNEY: So that'd be yes or no would be sufficient, thank you.

MURRAY: Yes, I would agree with that.

TIERNEY: Thank you. You do.

And, Mr. (inaudible), let me just say this -- I'm aware that you asserted earlier that Mr. Powell's (ph) e-mail may have been speaking generally about conditions, but are you aware that that e-mail was written at 1:00 a.m. on the morning of March 30th, which is in fact the morning of the day in which the gentlemen were sent out on their missions.

Are you aware of that date?

(UNKNOWN): Yes, sir, I'm aware of that.

TIERNEY: OK. And are you aware that Mr. Powell (ph) was, in fact, the one that directed those men on that mission; he was their direct supervisor that day?

(UNKNOWN): Yes, sir.

TIERNEY: And you still think that that was only generally, that he was not contemplating those men and conditions specifically on the morning when he wrote that?

(UNKNOWN): I can't read his mind, sir. But given what I know of the status of the program, the problems -- I would say the challenges faced by the program were the same challenges faced by everyone in Iraq, which was acquiring enough equipment.

But the question whether there was enough equipment for the program had it been fully manned that day is a very different question from whether the team was equipped.

TIERNEY: Thank you.

I yield back, Mr. Chairman.

WAXMAN: Thank you, Mr. Tierney.

Mr. Shays, you -- Mr. Issa -- oh, Mr. Cannon?

CANNON: Thank you, Mr. Chairman.

Mr. Howell, when did Blackwater enter its first government contract?

HOWELL: I believe that was 1998. And I think we have contracts for training in the U.S. and contracts for security services overseas, and those are two different animals.

CANNON: And that was under the Clinton administration?

HOWELL: Yes, sir.

CANNON: And do you have staff or contracts with people who've been employed by Clinton administration?

HOWELL: I'm sorry, I didn't fully...

(CROSSTALK)

CANNON: For instance, you're accompanied by counsel today. Do you know

what is her name and what was her political experience?

HOWELL: Yes, sir. Her name is Ms. Beth Nolan and she was, indeed, part of the Clinton administration, from my understanding.

CANNON: And do you know what her title was there?

HOWELL: I'm sorry, sir, I don't recall one at the moment.

CANNON: Well, that's fine. I guess my point is that you're not exactly what you would call a Republican company, then, are you?

HOWELL: No, sir. We have folks in our company of many persuasions.

CANNON: And, therefore, it would follow that you're not an extremely Republican company. And, at this point, I would like Mr. Chairman to introduce or ask unanimous consent to introduce into the record a letter from Callahan & Blaine dated December 13th, 2006, to the honorable Nancy Pelosi, wherein the...

WAXMAN: Let me inform the gentleman that that letter is already part of the record.

CANNON: Thank you, then. Referring to that letter as part of the record, the lawyer who drafted that letter referred to you as an extremely Republican company, and went on to demand that this committee proceed to investigate issues, presumably to help them with their discovery.

They also accuse you of profiteering from the war in Iraq. But your country existed before the war in Iraq came into being, did it not?

HOWELL: Yes, sir.

CANNON: And are you, in fact, profiteering from that war? Do you skimp on equipment?

HOWELL: We have not skimmed on equipment, no, sir.

CANNON: Thank you.

Let me just say here, Mr. Chairman, that I personally don't think it's wrong for committees to investigate issues where there is litigation. In fact, I think that's appropriate on occasion.

But I think it is highly inappropriate to have the perception that this committee or

any organ of Congress is used to beat up a company, to discover information that lawyers can't discover in the ordinary course of litigation, and that the purpose of this committee should be, in fact, to find out what's wrong and then to help fix those things that are wrong.

I think it's absolutely clear that things have not gone perfectly well in Iraq. But to victimize any particular company, especially when that company is undergoing litigation under tragic circumstances is, I think, just something we need to be very careful.

Now of course this committee is not at fault for a letter written by a law firm. But I would hope that the committee would be extraordinarily careful to not be the instrument of a law firm like that.

And, Mr. Howell, you had five employees that were tragically killed recently. Would you like to talk a little about the circumstances of what they were doing that day and what was behind the decision? Are there statements you would like to make so that we can understand that a little better?

HOWELL: Yes, sir, I would very much like to discuss that. But I'm unable to do so in open hearing.

CANNON: Because what they were doing was classified. And the fact is, much of your work is very, very difficult, driven by sensitive information, by information that can't be made known.

Thank you. I appreciate your being here and your undergoing these questions. War is difficult, especially when it's as extensive and complex and with so many issues at hand as we have in this war. And I want to just let you know I appreciate you being here and yield back the balance of my time.

WAXMAN: I thank the gentleman for his questions. I do want to state to you that I strongly agree with that statement, that it's not appropriate for committees to be getting information for **private** lawsuits. I resented it when I saw it take place, when the Republicans were in charge of the Congress. That's the last thing this committee should be doing.

But we need to ask questions, even if a lawsuit is pending. And as I heard from the family members this morning, there's a lot of information that I think they're entitled to know. And I've been working on this particular investigation for a couple of years. It's about time we got all the information out.

Mr. Lynch?

LYNCH: Thank you, Mr. Chairman. And I think -- and I agree with the gentleman -- but I think that part of the problem is that we've got this perception because Vice President Cheney's connections with Halliburton just put a flavor of, I don't know, complicity there -- you know, a political one. Appropriate or not, it's there so we just have to address it.

WAXMAN: Would the gentleman yield? Is the gentleman suggesting that the complicity is a term that means that the vice president's...

LYNCH: Connections.

WAXMAN: ... been involved with illegal dealings. I don't think that anybody in this hearing's been...

LYNCH: Connections.

WAXMAN: But connection to illegal activities?

LYNCH: I'm sorry?

WAXMAN: Is the gentleman suggesting improper, illegal activity on the part of the vice president?

LYNCH: I'm sorry. No, I'm saying that the perception of a connection between Republican efforts and some of the military- industrial complex is because of that perception; he's a former CEO. And so I think that that flavor is just out there and that something will..

WAXMAN: Well it's certainly something -- if the gentleman would yield -- it's something we ought to look at. I agree completely.

LYNCH: Reclaiming my time...

WAXMAN: Complicity is a...

(CROSSTALK)

WAXMAN: ... word...

LYNCH: Mr. Howell, can I just say that -- I just want to follow up on Mr. Tierney's question. He referred to a document that indicated that, between ESS and Regency, there was a requirement that a minimum of three security personnel be added to each vehicle. It also refers to two armored vehicles to support ESS movements.

Now, based on your earlier response, you were saying that between March 8th, the date that this document was executed in fairly rigorous detail saying that the current and foreseeable future threat will remain consistent and dangerous on March 8th -- I want to clarify something: You're saying that this document was changed after the 8th?

HOWELL: I'm not certain whether a subsequent contract was ever executed between ESS and Regency or not, sir. I don't know the answer to that.

LYNCH: But you were saying that that was not the case on the 11th. You referred to another meeting on the 11th. I'm just asking, if you have documents that changed this contract that we were given, then I just ask you to produce it, that's all.

HOWELL: My understanding is that the minutes of the meetings that I mentioned have been produced to the committee. I don't know if a subsequent written agreement between Regency and ESS exists.

LYNCH: OK. All right.

I do want to refer to -- there was one audit that was actually produced. We asked for all audits, but there was one audit that was produced regarding the provision of security personnel.

And in this audit, it indicates that there were duplication of labor costs in connection with personnel hired by Blackwater. What it essentially says here is that you were double billing, you were putting three people, including the driver, in some of these vehicles, and then you were charging the government for a driver and three security people because a security person was driving. You get what I'm saying?

They're saying that, here, there were costs, \$1.25 million for drivers at \$750 a day, but those costs were already included in the security contract. And they're saying that it is, in effect, a duplication of labor cost. And, consequently, they question the cost, including in Blackwater's proposed dedicated overhead and total.

And what they say further on is that Blackwater applied profit to profit. In other words, you applied your percentage of profit to profit that had already been accumulated.

And lastly, they indicate in this audit that the proposed profit by Blackwater represented 23 percent -- 23.6 percent -- of total proposed costs, which is

significantly higher than what we've seen for similar contracts in dealing with the Department of Defense, which is usually 1 percent to 5 percent profit margin, maybe 10 percent at the most.

And I just want to -- 23.6 percent profit on this, I just want to know: Do you think that's reasonable? Is that customary for the way you do business?

HOWELL: First, with regard to production, I would just like to note that we're a small business and we have been seeking to produce as much as possible. In connection with the committee staff, agreement was reached to focus on the hearing today. We've produced close to 7,000 documents, and we are continuing to produce documents.

I don't know which of our audits you are referring to. So there's some speculation inherent here. But...

LYNCH: This is the State Department contract.

HOWELL: OK. I came here prepared to talk about ESS, but what I can say about that audit that I know as of today is that, when that report was issued, it was not a final report. There were subsequent reviews of documents by the auditors and by our financial team.

And when all of the concerns had been fully investigated, most of those concerns were determined to be based on misunderstandings.

LYNCH: Well, I understand. My time has expired.

I just want to say that the last time we had a hearing, we were told that there was no contract between Blackwater and Regency and ESS. And that was confirmed by the Department of the Army, I believe. And now we come here today and we find out all that was wrong and that there were, indeed, contracts between the parties.

So it's getting a little frustrating not getting straight information, I can tell you that.

I don't know what we're going to hear at the next hearing. It may delete everything that we've heard here today.

HOWELL: Sir, we are seeking to answer your questions today as best we can. And from what I know of the prior hearings, I do not believe that the question of whether there was a contract between Blackwater and Regency was a question.

There was a contract, and I believe that was the understanding during the

hearing. I can't answer for the other companies that would have been in the chain.

LYNCH: OK. I yield back.

WAXMAN: (OFF-MIKE)

(UNKNOWN): I thank the chairman.

You know, I apologize if I don't ask enough questions to quite everyone on the panel, but this appears to be mostly about Blackwater, so I'll focus my questions somewhat on them.

Mr. Howell, I know this is a lot of proprietary information, but I hope that you can at least answer a couple of questions related specifically to this contract.

One, have you been paid on this contract?

HOWELL: None of the invoices that we've submitted to Regency were ever paid. There was an initial mobilization payment, but it was a small portion -- a relatively small portion -- of the overall work that we did.

(UNKNOWN): And how much have you spent on this contract, if you can tell us?

HOWELL: I believe it was approximately \$2.3 million. That's a rough number.

(UNKNOWN): If you get paid some day.

HOWELL: If we had been paid, I believe it would have been -- the total billing for 2,290,000 and some dollars.

(UNKNOWN): And, earlier, there was a statement about a 35 percent upcharge -- contractor fee, if you will -- that gets marked up not just at your level but at each level.

To the extent you can, without revealing classified information or confidential proprietary information, is 35 percent anywhere close to an accurate number?

HOWELL: If we had been paid. And I can discuss this because it's a contract that's closed, the market has changed significantly, and it doesn't affect our government bids going forward.

Had we been paid, our profit would have been significantly less than that. I have a pie chart that would show exactly where the payments to us that we didn't

receive would have gone. And our profits were approximately -- they would have been slightly over 1 percent.

(UNKNOWN): So if you got paid, it would have been slightly over 1 percent. If they pay you today without interest, you're in the hole for the cost of the interest.

I'm particularly concerned about the allegations that, in a strange way, had nothing to do with the previous panel. And you were in the audience for the previous panel, I assume?

HOWELL: Yes, sir, I was.

(UNKNOWN): OK. The previous panel seemed to say unequivocally that the four men who died in March of 2004 were highly qualified, highly skilled professionals that you offered \$200,000 -- roughly -- a year to come there because of their security expertise, their training, their SEAL training and so on.

But then they allege that, in fact, you hire people from Africa for a few hundred dollars a month. Can you tell us how, you know -- because they referred to it, but they didn't have firsthand knowledge -- tell us about how that would work and what they would be used for, if you do it?

HOWELL: Yes, sir. It goes back to the issue of there being multiple tiers of security professionals. Some, it may be required that they are cleared, in terms of security clearance; special forces veterans with a required number of years; all the way down to where the requirement may simply be for a third-country national who has received training in firearms and security procedures and things like that.

The level of training and the category within which a given individual will fit is specified by the customer. In terms of U.S. government contracts, it's normally specified by tier, how many people by tier by the customer.

So we are directed, effectively, to use some folks who are third- country nationals. That being said, they are cleared and vetted by the U.S. government. And they have met the minimum required training standards.

(UNKNOWN): OK. Sir, if you were using third-party -- and I guess we'll kind of call them second- or third-tier compared to these four men that we met with today, or their widows and parents and so on -- you pay them less.

Does the government pay you less for them?

HOWELL: Sir, I believe the category would be fifth tier. And fifth-tier personnel,

third-country nationals, they are paid a different wage commensurate with the skills that they bring to the project. And the government, accordingly...

(UNKNOWN): Recapping: Lower skills, lower expectations because of (inaudible) wages, and lower cost to the government?

HOWELL: Lower cost to the government. And they're also used for fundamentally different tasks.

(UNKNOWN): Would these third-country nationals, would they tend to be selected because they were Muslim, because they could speak Arabic, because they had sensitivity, and/or because they were not Iraqis and, as a result, would be less likely to align with insurgent groups?

That's a combined question, but I think you get the gist.

HOWELL: Yes, sir. I think it's very much driven by the contract. And we do use some third-country nationals to provide interpretation -- interpreting services. That's a very complex question. It's difficult to answer briefly, sir.

(UNKNOWN): OK.

I thank the chair. Hope we'll even follow up further. I yield back.

WAXMAN: (OFF-MIKE)

(UNKNOWN): Thank you, Mr. Chairman.

I'd like to follow this whole tier billing system so we can get a clearer picture of what this is costing the American taxpayer.

We have some slides that we want to show that illustrate this.

As we've all heard many times before, at the initial level, the first level -- we have four tiers of contractors: the individual contractor, Blackwater, Regency, ESS and then KBR, and then finally the Army above that; so six tiers all together.

And we know from all the original testimony that the individual contractor is being paid, at least for the one case we heard about earlier, \$600 per day.

And then in the next slide, we'll show that Blackwater billed \$815 for that same \$600 employee or contractor, which represents a 36 percent markup. And, then, Regency billed ESS \$1,100 for that same contractor.

And, Mr. Murray, ESS was paying \$1,100 for the same contractor who originally was being paid \$600 -- supposed to be paid \$600 a day.

Now that figure does not include housing, food costs, those types of support services, is that correct?

MURRAY: Congressman, the \$1,100 you refer to does not include accommodation, which would include food; it does not include fuel, and that's one of the items mentioned that's cost-reimbursable is fuel; did not include the DBA insurance -- that was the cost-reimbursable item itself.

That \$1,100 you see there refers to just the -- I think that's a T-3, perhaps, security personnel.

(UNKNOWN): So, essentially, you paid \$285 more to Blackwater than they paid the contractor. What does that \$285 represent?

MURRAY: Congressman, I don't...

(UNKNOWN): Where was the value added for that \$285?

MURRAY: I had no visibility on the pricing between Regency and Blackwater. The contract was clearly with Regency for security services. And that was the quoted rate that we were paying.

Their rates with their subcontractor, Blackwater, I have no visibility of.

(UNKNOWN): OK.

Now, do you know what percent of your contract with KBR comprised labor costs?

MURRAY: Pardon me, Congressman?

(UNKNOWN): What percent of your contract with KBR comprises labor costs, the cost of personnel -- of the total?

MURRAY: OK. Approximately -- and we provided a detailed letter to the KBR on this -- approximately 45 percent.

(UNKNOWN): Forty-five percent. And do you know what percent of your labor costs are on security?

MURRAY: Practically 12.5 percent.

(UNKNOWN): 12.5 percent. So you're talking about probably somewhere around 5 percent of the total cost would have been represented on **private** security contracts?

MURRAY: That's practically right.

(UNKNOWN): Does that have an impact on the price you can quote to a potential contractor?

MURRAY: Congressman, our prices are, as we mentioned, fixed prices -- firm, fixed price.

During the time that this scenario developed, we were already evolved in our contracting with all of our clients. This actually came in mid-term with our clients. We'd already budgeted our security costs.

(UNKNOWN): I'm saying, is that an element that is an important element in your bidding -- the construction of your bids and your competition for bids, those security costs?

MURRAY: It's an important element. Yes, it's a very important element.

(UNKNOWN): Do you know -- has ESS ever lost a bid because of the difference in the cost of security?

MURRAY: Congressman, it's hard to say if we've lost the bid because of the difference in our security costs. We've certainly won and lost bids in Iraq. Bids are based on either the best value or, in some cases, they use the lowest price.

So we have lost some business, but I can't tell you if it's attributable to our security factor or not.

(UNKNOWN): Fine. As you go up that chain, is there a place where you can tell me, just based on your knowledge of the whole process and the industry, where there was any value added to that initial \$600 paid to that individual contractor along the chain?

MURRAY: Well yes I can, Congressman.

HOWELL: Sir, I'm the one best suited to answer that with regard to Blackwater, if I may.

(UNKNOWN): OK. Sure.

HOWELL: There are two serious areas of possible misunderstanding on that slide. The first is the fact that the contract chain is reflected as being KBR on LOGCAP work.

And my understanding, which may not be correct, is that that has not been definitively determined.

More to your question, the numbers that keep coming up, the \$600 and \$815, that's not the correct calculus, because the assumption that anything other than the amount paid in labor costs is pure markup and pure profit is wrong, because this is a firm, fixed price per day situation.

The amount of profit out of the services was...

(UNKNOWN): Well, that's the question I was asking.

HOWELL: OK.

(UNKNOWN): Where is there value added to that \$600 as it goes up the chain because, ultimately, the taxpayer's paying a lot more than that?

HOWELL: Yes, sir. I'll try to answer your question directly. \$815's not the right number because there were multiple labor rates involved. The average labor rate, I think, is more reflective, because the costs were spread among the different categories equally.

So the blended labor rate of approximately \$885 per day per man, I think, is a more useful way to discuss this.

Out of that \$885 per day that Blackwater invoiced to Regency, the average labor cost was \$683 per day, and that went to the individual security professional.

\$51.78 per day went to airfare. Blackwater was responsible for the initial movement, the initial mobilization of security professionals into Iraq.

Supplies, including the personal weapons, ammunition, personal gear for our men -- that sort of thing was another 18 plus dollars per day.

Other costs such as lodging and transportation in the U.S. -- that would be from their home to Moyock, housing and berthing while they were receiving training in Moyock, freight, Internet access, that sort of thing accounted for another...

(UNKNOWN): Well, if I can interrupt you for a second. We had testimony that

ESS didn't pay that; that was added cost.

So not necessarily from you, but along the whole chain, housing costs and food wouldn't have been included. It might have been included at your level, but not subsequently.

HOWELL: There are two different categories of housing costs, sir. That's that Blackwater incurred for the men prior to their arrival in theater, and that which was the responsibility of Regency after they were in theater.

(UNKNOWN): OK. My time has expired.

Thank you.

WAXMAN: (OFF-MIKE)

(UNKNOWN): Thank you, Mr. Chairman.

What I would like to ask, Mr. Chairman, if I could, and maybe you could get some answers from staff for me, but I was reading the memorandum that we got today, and I found it interesting -- I'm a little slow -- but it says today's hearing provides an opportunity for the committee members to ask three basic questions about the extensive use of **private** security services.

The first one says: Are **private** security contractors operating in Iraq doing an adequate job?

I haven't seen anybody from any of the two panels that could really testify to that; that I don't think any of them has ever been protected by one of these **private** security companies.

So I was wondering why that statement's in there.

The second statement says: How much are they costing the federal taxpayer?

I haven't seen anybody from either panel that works for the GAO who would know the answer to that.

And then it says: And is the federal government providing sufficient oversight? Which I think the majority staff pretty much answered itself. On page 3 it says: "U.S. contract employees may be prosecuted under American criminal law." And then in the next line, it says, "All security contractors in Iraq are under the Uniform Code of Military Justice."

So I'm kind of confused about the panels that we had today, based on what the committee staff said we were supposed to find out.

So, if you could just find out those answers, I think it would help us all.

(UNKNOWN): (OFF-MIKE)

(UNKNOWN): OK.

(UNKNOWN): (OFF-MIKE) United States Army, Ms. Ballard, here today, who's actually been intimately involved in the issue of the use of taxpayer money, especially as it pertains to the contracts that we're dealing with today.

In fact, there's been lots of correspondence between this committee and Ms. Ballard and the secretary of the Army, including a number of letters that I have sent, that Mr. Waxman has sent, and others.

And the focus of this hearing has been to try and put a lens on these contracting issues, by looking at this particular case.

And so I think these are the appropriate individuals and witnesses to have to answer those questions.

(UNKNOWN): OK, so the gentlelady from the Army would be who we would need to address the questions to, as far as the costs?

I'm asking -- I mean, is that what I'm hearing?

(UNKNOWN): Feel to address any question to (inaudible).

(UNKNOWN): OK. The other point I want to make -- and I'm glad you're in the chair because I wanted to continue on with what Mr. Cannon talked about. The letter from Callahan & Blaine continually used the word "profiteering."

I thought it was also interesting that they did copy you, as the DCCC chairman, with a letter. And I know that the chairman previously stated -- and I believe him - - that these hearings have no political ties.

And I found it interesting. As I was sitting here, I went to the waste, fraud and abuse hotline and saw where the chairman had introduced a bill that was to do away with cronyism.

And as I look at this letter from this attorney, and who he addressed it to and all the contributions that he had made and his former law partner, I can hardly wait

until we get into those cronyism hearings.

But I think that we are walking on very thin ice when we start having public hearings with panels that are both the defendant and the plaintiff in something that's in a civil action.

But I have a question for Mr. Howell.

In the letter I referenced and that has been submitted for evidence from Callahan & Blaine, they keep talking about profiteering.

I was a contractor before I got into politics, in the building business. And I used many subcontractors. In fact, I have been a subcontractor, before, from another subcontractor.

And if I understand profiteering, and Blackwater was specifically picked out in this letter, and I'm sure it was not for political reasons, even though it mentioned Blackwater as being a Republican company and then the copy going to Mr. Van Hollen, the DCCC chairman. But it keeps talking about profiteering.

Now, on this particular contract, the thing that I've got says the federal government contracted with KBR, that then contracted with ESS Support Services, that then contracted with Regency Hotel services that then contracted with Blackwater.

Now, being in the contracting business and talking about profiteering, how can the last person -- or how can the person at the bottom of the totem pole be profiteering?

Can you explain that to me?

HOWELL: Sir, I don't see how they can be. And I also think that the notion of profiteering is inherently compatible with a competitively bid contract.

(UNKNOWN): What would your definition of profiteering be?

HOWELL: My understanding of the definition, under the English language, is someone seeking to make an excessive profit when the person desiring the services is somehow in dire straits, if you will.

(UNKNOWN): OK. And I think that's a pretty good definition. And as Mr. Issa was questioning you, I understand that you never got paid from Regency Services. Is that true, on this particular contract that was a little over \$2 million?

HOWELL: None of our invoices were paid. We did receive the initial mobilization payment.

And if I may -- I forgot to mention earlier -- would it be possible to make this chart that we discussed at length part of the record, just so it's clear. It's been previously provided to the committee?

(UNKNOWN): (OFF-MIKE)

(UNKNOWN): Thank you, sir.

And just one further question. You are sitting there with your friend from ESS. Did they get paid?

HOWELL: I'm not certain, sir. I think they can answer that.

(UNKNOWN): Did ESS get paid on the contract that specifically is mentioned so many times here today, that -- where the four brave Americans lost their lives?

(UNKNOWN): Are you asking me if ESS brought value?

I'm not understanding your question, Congressman.

(UNKNOWN): Did KBR pay you for the services rendered that you subcontracted to Regency Hotels Services who then contracted with Blackwater?

Did you get paid for the services that Blackwater and Regency Hotel Services subcontracted from you?

(UNKNOWN): Congressman, I'd like to address that, kind of, two- fold.

Number one, I think I understand our contract was with Regency to provide security services...

(UNKNOWN): Did you get paid from Kellogg, Brown & Root for that contract?

(UNKNOWN): That contract was not with Kellogg, Brown & Root. So the answer to that would be no.

(UNKNOWN): OK. So I got some bad information that KBR did not subcontract to you on that particular contract?

(UNKNOWN): On that particular contract, I indicated earlier it was a contract was run out of (inaudible), which was not a KBR contract.

(UNKNOWN): I can't hear you. Could you speak up a little?

I'm a little slow and hard of hearing.

(UNKNOWN): Yes, as I mentioned earlier, that particular contract was run out of (inaudible). And that was not the KBR contract that ESS had.

WAXMAN: All right. We're going to have to wrap it up.

OK. Thank you -- are there going to be further questions from other members of the panel?

Because we're going to have to...

(UNKNOWN): Mr. Chair, if you're not coming back again, I would just like to...

WAXMAN: No, we can come back.

(UNKNOWN): OK. But if we were not, you're not referred to as the DCCC chair (inaudible) you are a member of Congress...

(CROSSTALK)

WAXMAN: Thank you. I was going to...

(UNKNOWN): ... Mr. Westmoreland.

WAXMAN: Thank you. I was just...

(UNKNOWN): Mr. Chairman, I've been here for just about 2.5 hours, waiting for questions. So I'd like to come back.

WAXMAN: We will do that. Just for the record, let me say, my understanding -- and I hadn't seen that letter -- is that they essentially copied members of the Democratic leadership, including Ms. Pelosi.

And I'm also informed, apparently, that this firm has contributed, also, to Republicans as well.

I just think it's important for the record to reflect that this hearing has been designed to get at the facts on the ground. I think it's done a good job of doing that.

And to suggest that there's some sort of political motivation behind it other than trying to get to the truth of the matter, I think, is unfortunate.

WAXMAN: We will now recess the committee until after the voting -- at 2:45. We'll recess until 2:45.

(RECESS)

WAXMAN: The meeting of the committee will come back to order. To continue questioning this panel, the chair recognizes the gentlemen from Maryland, Mr. Sarbanes, for five minutes.

SARBANES: Thank you, Mr. Chairman.

We've heard a lot about the contracting and I've done a fair amount of contracting in my life as an attorney, so I know when there's this multi-tired contracting, it can get very confusing. It can be hard to pin down exactly what happened, and when we're talking about cost plus contracts, we're talking about fixed price contracts, we're talking about turnkey contracts et cetera.

And depending on what goes into developing a bid or how you load up a contract on the pricing side, you know, whether profiteering or mark-ups that are more generous than they should be is occurring, that can happen.

And I think the inquiry will continue on whether the particular contractor we're looking at today had those characteristics or, more generally, whether the environment in which **private** contract was being engaged in Iraq allowed for that kind of thing to occur.

But that's actually what I'm more interested in. I'm more interested in the larger environment because I, frankly, believe that a lot of the things that you do -- Blackwater, ESS, Regent (sic). whatever -- are things that you should not be doing.

I think that this is symptomatic of a situation in which the secretary of defense's ideology, philosophy, sort of new notions of tactical warfare, were pushing this notion so that we were on a mad dash to slimming down our military. And most people agree that the initial response, in terms of the number of troops in Iraq, was inadequate.

And that meant that there was space that our military should have occupied that now had to be occupied by someone else, and that's when people turn to the **private** contracting community to fill that space with the kinds of tragic results that can occur.

So I really just have one question. I invite any of you who wish to answer it, and that is, did you, yourselves, ever reflect on whether you were in a space where you didn't belong? Did you ever say to yourselves, we shouldn't be doing this, this is something that the armed forces should be engaged in and we're being put in an untenable position? So anyone can answer that, if they'd like.

Maybe you'd like to start Mr. Howell.

HOWELL: I think the best answer I can give is one based on my nearly 20 years as a Naval officer, informed, if you will, by my time with Blackwater. And I have to say that it's ultimately a policy decision that's set by Congress.

But I think that the idea of using contractors to supplement and to aid armed forces is a valid one. We have a role to play. We have a contribution to make, and there are certain functions that we can do at a cost efficiency that, when it's properly executed to the government, that free up soldiers, Marines, airmen and sailors to do service member tasks.

SARBANES: Well, I allow that there will be situations where you have an appropriate role. I guess I'm asking whether you believe that in this situation, at all times, you think the role that you played was appropriate. Not the way you executed it, because I understand that once you have the assignment, you're going to try to execute it.

And whether you executed it well or not has been a subject of the discussion today, but whether the assignments that you were being asked to execute were appropriate in this larger context of what our military should have been doing, versus what the **private** contracting community should have been doing.

HOWELL: I believe that escorting personnel and convoys in a truly defensive role is an acceptable task for **private** security. That said, I believe, and Blackwater supports, appropriate government control thereover.

And if I could add one other thing that sort of slipped out of my mind -- I've had a massive amount of information that I tried to bring here today. And I don't want to not provide proper respect to Ms. Nolan. And I want to just clarify, she was former White House counsel for the Clinton White House.

SARBANES: Does anyone else have a response?

(UNKNOWN): Mr. Sarbanes, just to remind you, what I said earlier -- I don't know if you were here for that -- the unusual situation taking place in Iraq today is three, simultaneous actions. There was a military action, and the contractors who

are supporting the military, accompanying the force, that has been long-standing weapon systems support, logistic support, traditional.

There is the reconstruction activity, and that has usually followed the military activity. We are now doing that simultaneously, and an economic development, developmental assistance activity, all taking place in a very confined space. That's created some ambiguity about who's there doing what for what purposes, and I think that clarity is very important in your thought process about the appropriate role of contractors.

SARBANES: And do you agree that having that kind of ambiguity can create dangerous situations for people on the ground?

(UNKNOWN): Absolutely. It absolutely creates difficult situations, confusion, unclear lines of authority and responsibility and questions on both parts.

SARBANES: And confusion, would you agree, can lead to situations both where there is abuse in terms of the way contracts and assignments come together, and can also lead to situations where there's tragedy as well?

(UNKNOWN): There's tragedy, clearly. I'm not sure that, by definition, you have abuse. Confusion could create ambiguity, ambiguity could create a variety of situations that may be abuse of the process.

WAXMAN: Gentleman's time is up.

SARBANES: Thank you.

WAXMAN: Thank you, Mr. Sarbanes.

Mr. McHenry?

MCHENRY: Thank you, Mr. Chairman.

Undersecretary Ballard, I have a simple question. I assume you'll be able to answer this because of your position.

How many **private** security contractors are currently working for the U.S. government in Iraq?

BALLARD: Sir, that is a very broad question, and I am unable to answer that question. It's a very complex situation on the ground. There are many organizations over there who may have **private** security contractors, and a lot of these security contracts are subcontracts under prime.

MCHENRY: OK, thank you. Thank you. There are approximately 60, according to the research we've done.

I ask Mr. Howell, Blackwater is one of those 60 currently working in Iraq, providing security services. Is that not correct?

HOWELL: We are currently providing security services in Iraq to the U.S. government, yes, sir.

MCHENRY: All right. What year was the company founded?

HOWELL: 1997.

MCHENRY: What year did the company receive its first contract from the U.S. government.

HOWELL: 1998.

MCHENRY: Who was in the White House in -- pardon me. I know that's a bit ridiculous to ask. It was, obviously, William Jefferson Clinton, a Democrat. And it seems that the questioning here today is that these are sort of a Republican scandal that we have contractors, working for the U.S. government, providing essential security services for us in war zones.

It's actually something very common for the last 200 years, working with firms, **private** sector firms, who provide needed resources for our military and for our diplomats overseas. So I apologize for asking that question, because it was obviously a Democratic administration that gave you your first contract.

I think it's also ironic that there's a big discussion from the chairman of this committee and the Democratic leadership about a company called Halliburton and how it's this Republican scandal that Halliburton is getting contracts from the U.S. government.

I think today -- Mr. Seagle, you work for what firm?

SEAGLE: I work for KBR.

MCHENRY: Which is Kellogg, Brown and Root.

SEAGLE: Which is a subsidiary.

MCHENRY: Which is a subsidiary of...

SEAGLE: That's correct. Of Halliburton.

MCHENRY: Of Halliburton. How many questions have you been asked today by this panel.

SEAGLE: One question, I believe.

MCHENRY: One question? Was it just now?

SEAGLE: No, it was a simple yes or no question that was earlier.

MCHENRY: Oh, very good. How long have you been here?

SEAGLE: For about three hours.

MCHENRY: Three hours. It's kind of interesting, I find, that a lot of vitriol is heaped on your organizations, but there's not even question asked of you.

But back to you, Mr. Howell. I understand there is an ongoing lawsuit which Callahan & Blaine have filed on the behalf of families that were taken down in action. It's a very sad thing.

I also know that letter that's already been admitted to the record here refers to you and other contractors as "extremely Republican companies." It's ironic coming from a law firm that is extremely Democratic, and it's ironic that they send this letter to the speaker of the House and C.C. the committee chair here, but also copy the Democrat Campaign Committee chair.

Well, it might not be ironic, because, after all, this law firm has given over 60,000 to Democrats over the years, so this might be another pay-to-play prospect here in Washington, D.C., where Democrat donors get the investigations that they wish in order to help their law firm win a law suit.

And so, if you could comment, just in legal terms, about this idea of turning a **private** law suit into a legislative show trial?

HOWELL: Sir, I think the best answer I can give is to refer to a U.S. Supreme Court case that's been around for a large part of the existence of our Republic. It's a case that's known by the name Kilbourne. It goes back to 1880, and that it established the long- standing principle that, in certain circumstances, congressional involvement in **private** litigation can be unlawful.

And, obviously, it's a very complex issue, a lot of subsequent case law, but that's

the general principle that I think you're asking about.

MCHENRY: Thank you, sir.

I think it's also interesting and important to note that this committee hearing that we have here today, and according to House rules, the minority side is entitled to receive notification about what the hearing is intended to be about. And then the night before, we receive a supplemental document that completely changes the notion of this hearing.

So I want to apologize to your individuals working in the **private** sector and Undersecretary Ballard, who works for the government, for having to waste a full day on a hearing that is nothing more than a show trial for a Democrat trial lawyer firm. And I apologize to you for that.

I think it shows that, you know, the new majority and the new leadership of this committee is intent on making political hay out of something that simply is not a valid point, and I apologize that you have to be brought in to be a part of this spectacle.

WAXMAN: The gentleman's time has expired, and I must say that you just were so partisan in what you had to say without a foundation for it. I have no idea who's a Democrat and who's a Republican. I know that the four people, four men who lost their lives were Americans. I don't know whether they were Democrats or Republicans.

I know that Americans, Democratic and Republican, and paying taxes and they don't want their taxes wasted. And I think Congress should be following up on these investigations and asking witnesses questions.

And I must say, I am outraged at Ms. Ballard coming here to represent the Army and not being able to give us an answer to the simple question of how many contractors and subcontractors have contracts with the Army. I mean, that's what this hearing was all about, and we couldn't even get an answer from that, on that point.

So I know the gentleman wants to look at partisanship under every rock, but I suggest that he return to under that rock and look at his own reasons for trying to make everything partisan. This is not a partisan investigation, nor it should be.

MCHENRY: I think it's rather partisan...

(CROSSTALK)

WAXMAN: And I resent that you're trying to make it one. I resent that you're trying to make it a partisan one.

Gentlemen from Ohio, Mr. Kucinich, is now recognized.

KUCINICH: Secretary Ballard, the president recently gave an order that was basically a shoot to kill order for anybody who was coming in from Iran who was thought to be an operator of the Iranian government. Does that order extend to the personnel hired by the companies who are here? **Private** contractors, are they given the authority to go and shoot to kill Iranian operatives in Iraq?

BALLARD: Congressman, those orders are executive orders that deal outside my area, which is strictly contracting.

KUCINICH: OK, well, this is contracting in a sort.

Mr. Howell, we've heard from the families on the first panel that they had to sue Blackwater to get information about what happened to their relatives.

Then we heard something else that I have to say astounded me in its callousness, and that is that Blackwater filed a countersuit against the families for \$10 million.

Now, Mr. Howell, you're the general counsel for Blackwater. Why did the company sue the families that lost two sons, a husband and a father?

HOWELL: First, let me say that, once again, we extend our deepest condolences to the family, that their loss is almost unimaginable.

KUCINICH: Was the lawsuit part of those condolences?

HOWELL: The lawsuit was not against the families. We seek nothing from the families. We have sought to support them. The lawsuit was against a North Carolina attorney who established hollow estates that did not contain any assets of the fallen men, their homes, their cars. They were just shall estates established for the purpose of personal injury litigation and the claim against that attorney was for violation of our agreements with the men.

KUCINICH: So you're saying that attorney violated your agreement. What did they do? Did they make a misstatement? How did they violate your agreement?

HOWELL: Our agreement with the men provided that any dispute that involved Blackwater would be resolved via arbitration, and that's where we are seeking to have this matter addressed.

KUCINICH: Did you have a contract with the men who fought for your company there? Did they have a contract with you that they had no right to sue, couldn't seek publicity, had to protect certain information and that they would have to assume all risks of being shot, killed with a firearm, terrorist activity, hand to hand combat? Did you have a contract with them to that effect?

HOWELL: The terms of their contract included a waiver regarding certain injuries or death in certain circumstances, and it also contained provisions regarding confidentiality.

KUCINICH: But aren't you, in effect, suing the estates of the decedents? Isn't that what you're doing?

HOWELL: None of the property that is in the actual estates of the decedents is involved in what we're seeking to do.

KUCINICH: There's no connection whatsoever with the action you're taking and the decedents' property, their estates?

HOWELL: The estates that are at issue in the Norton (ph) litigation, as I understand it, have no assets at all. They were established solely for the purpose of personal injury litigation.

KUCINICH: And could you tell me then, is it your position that this attorney you're talking about has violated an agreement and that's why you're suing?

HOWELL: As the shortest possible answer, that's a summary of the gist of the argument, yes, sir.

KUCINICH: I'd like to raise an issue regarding Blackwater's prior testimony in front of Congress.

Mr. Waxman, Blackwater testified before a National Security Subcommittee, on 6/13/06, and I had asked questions about their contracts. Blackwater's vice president testified that Blackwater charge \$815 per day for the services of an independent security contractor working in Iraq. And he certified that the \$815 was fully burdened.

Specifically, he provided the follow response to me. I asked, "In those contracts, is it true you were paying your men \$600 a day, but billing Regency \$815 a day?" He said, per the presentation, "Mr. Kucinich, \$815 a day is the right figure, but it's a fully burdened figure." That includes travel, training, gear, housing, food, the works, a fully burdened number.

But the documents obtained by this committee, Mr. Chairman, refute the claim that these were fully burdened. We've received the contract between Regency and Blackwater, which clearly provides information contract to Mr. Taylor's claims: one, that housing costs were the responsibility of ESS, not Blackwater; two, that food, subsistence for the contractors was the responsibility of ESS, not Blackwater; and three, insurance was to be paid by ESS, not Blackwater.

Now, Mr. Chairman, I know my time has expired. I think that since I have information here that says that Mr. Taylor presented misleading testimony, under oath, to our committee, that I'm going to ask if this committee would look further into that to try to reconcile what he said and what the facts are as this committee has been able to determine them.

WAXMAN: If the gentleman will permit, we will take a look at that issue with you and pursue further clarifications for the people involved.

KUCINICH: I think it would be good to get it clarified, because the exchange that we had really didn't leave a positive impression. It seems to me there may have been an effort by Blackwater to mislead or conceal relevant information from the Congress. I thank the chair for his willingness to look at it further. Thank you.

WAXMAN: Thank you.

HOWELL: Mr. Chairman, if I may, I believe there's a grave misunderstanding here, and I would like just a moment to address it. I respect the time constraints, but this is a fundamental misunderstanding.

WAXMAN: We want to be fair. Go ahead and say what you have to say.

HOWELL: Yes, sir.

If we could put up this graph that reflects the approximately \$885 per man, per day that was invoiced by Blackwater, if we could put that up on the LMO (ph), I believe it will help clarify this.

The testimony that Mr. Taylor gave, as I understand it, is that Blackwater's cost, meaning things such as weapons, ammo, personal gear -- and to go directly to Congressman Kucinich's point -- housing providing while at Blackwater prior to the men going in theater, food provided to men while at Blackwater, that sort of things, those were costs that Blackwater had to pay. They came out of the \$884.97 per day average daily rate that was invoiced to Regency.

And the amount that was the mark-up or the profit, if you will, was approximately

\$10.61 per day out of that \$885, so it's approximately 1 percent.

There are basically two different categories of expenses, if you will. There are in-theater expenses, which Mr. Kucinich is absolutely correct in stating that Regency was responsible for providing housing, food, things like that when the men were in theater.

But there were similar expenses that were incurred by Blackwater prior to the men going into theater, for example, when they were receiving training in Moyock that were Blackwater costs that were born by Blackwater and that were incorporated into our invoices, although the invoices were never paid.

KUCINICH: Mr. Chairman, I'm asking unanimous consent to be able to have five minutes of time to continue the questioning, because he said something that doesn't square with some facts here, and I'd like to just know if I could have a unanimous consent to ask some questions.

WAXMAN: I'd like to see if the gentleman can handle it in three minutes, and if not...

KUCINICH: OK, that's fine.

(CROSSTALK)

WAXMAN: If Mr. Shays would be kind enough to reserve his opportunity for questioning until you've completed yours.

KUCINICH: I thank you. I thank the chair.

I'd just like to ask Murray, did ESS pay for the housing costs?

MURRAY: Excuse me, Congressman.

KUCINICH: Could you pull the mic closer?

MURRAY: Of course, ESS was responsible for the housing.

KUCINICH: Did ESS pay for the housing costs? Could you answer yes or no?

MURRAY: ESS paid for the housing costs while they were in-theater.

KUCINICH: Did ESS pay for their food costs?

MURRAY: While they were in-theater, yes.

KUCINICH: Did ESS pay insurance?

MURRAY: Yes.

KUCINICH: OK, Mr. Chairman, that doesn't square with the impression Mr. Howell was trying to give to this committee.

Now, Mr. Murray, the same contract also shows that Regency, not Blackwater, paid the cost of rotation travel. Is that correct?

MURRAY: I can't answer that. I'm not aware of that.

KUCINICH: The same contract shows that Regency, not Blackwater, paid for the individual body armor, heavy weapons, vehicles, navigational devices and personnel radios. Is that correct?

MURRAY: Congressman, our contract was with Regency. ESS' contract was with Regency, not with Blackwater. I had a turnkey service with Regency to provide all of our security services except for those few items that were cost-reimbursable, or those items that ESS would provide.

ESS would provide the accommodations and the food while in- theater. We paid for the DBA insurance, and we paid for fuel and a few other items that were cost reimbursable. All other services were part of that turnkey service.

KUCINICH: Thank you for answering that, and the point is that, Mr. Howell, it does not appear that Mr. Taylor's testimony was accurate. You know, he said \$815 per day charge was so high because Blackwater had to pay for housing and meals and insurance, but, in fact, this was not the case according to the contract documents.

And what made it worse was that Mr. Taylor was given the chance to go back and consult with the company, provide a follow-up response in writing, and when he did so, he sent a letter dated July 14, 2006, reaffirming his testimony, stating \$815 is what's known as the fully burdened rate.

Now, Mr. Howell, do you know why Mr. Taylor would continue to insist on this information, which appears to be erroneous and misleading twice in communicating with this committee?

HOWELL: Sir, Blackwater incurred housing costs, subsistence costs, travel costs and things like that that were properly its expenses under the contracts. The Blackwater/Regency contract did provide that Regency would pay for some

housing, some subsistence, some travel, but Blackwater also paid for some of those expenses.

For example, the initial deployment of the personnel into Iraq was Blackwater's responsibility, so Blackwater did pay for some travel and I believe that's clear from the contracts.

KUCINICH: Mr. Chairman, I don't think that's responsive. You know, I'd just like to conclude by saying that, you know, they only got paid when the troops were in-theater, and I think it's important to keep that in mind, because it goes back to the question of whether, in fact, the taxpayers of the United States have been overcharged.

Thank you, Mr. Chairman.

WAXMAN: Thank you, Mr. Kucinich.

Mr. Shays?

SHAYS: Thank you, Mr. Chairman.

Mr. Chairman, I really appreciate you having this hearing, and I have a lot of questions. Pretty much I don't understand certain relationships, but what I do understand is this. We need contractors. They enable our troops to focus on being the tip of the spear and not setting up housing, not manning the kitchens, and contract it out. So that part makes sense to me.

And I understand that Kellogg, Brown and Root, the LOGCAP contract that they were under during this phase of the war was actually negotiated under the previous presidency. Is that correct?

SEAGLE: That is correct.

SHAYS: So that contract -- and I hate to see it. It's the kind of contract that you would seem. In other words, your contract, and when an emergency arises, you're on board and you take over. And there's logic to doing that so you know.

So let me understand this. When you negotiate a contract, it may involve a lot of work or not that much work. You never know. Is that correct?

SEAGLE: That's correct.

SHAYS: How long do the contracts usually last, Mr. Seagle?

SEAGLE: This contract was a 1-year base contract with 10 option years.

SHAYS: So you had the right to roll it over for 10 years?

SEAGLE: No, the Army has the right to continue.

(CROSSTALK)

SHAYS: So they contracted it under the Clinton administration, but it was renewed under the Bush administration, is that correct? If you do it every year?

SEAGLE: That's correct.

SHAYS: Yes, OK.

I understand why if you hire someone for food service, they may want to engage someone who has a service that they don't provide, like security. So I can understand a subcontract there, and I understand in the LOGCAP, that they have to eat that cost, is that correct? That ESS, for instance, would have to eat the cost of security if it's a LOGCAP contract?

SEAGLE: LOGCAP contracts state that the military will provide our force protection.

SHAYS: And you don't think it's being provided adequately, and you choose to get security, contract out security, you're allowed to do that but then you have to pay the cost?

SEAGLE: We haven't asked any subcontractors to contract for security.

SHAYS: Well, let me understand.

SEAGLE: We ask for a turnkey price to provide a service.

SHAYS: OK, now, when you subcontracted, when ESS contracted with Regency, Regency then negotiated with Blackwater, correct?

SEAGLE: I don't know, sir. We contracted with ESS for a turnkey job. It was not an itemized bid.

SHAYS: OK. I understand you don't know, but it's not comforting because what it's like is you can be Pontius Pilate and wash your hands of it. In other words, you contract with someone else, they get the job done and it's their responsibility and not your responsibility. That's what you're saying.

SEAGLE: We certainly don't wash our hands. It's a competitively-bid project against other contractors.

SHAYS: Right, but they bid it. They bid the contract and then it's theirs. But it was yours, and you subletted, correct? You subcontracted?

SEAGLE: Yes, sir. We subcontract a lot of things.

SHAYS: You subcontracted to ESS.

SEAGLE: Correct.

SHAYS: Then ESS subcontracts to Regency to provide...

SEAGLE: Any service they need to meet those contract requirements.

SHAYS: And then Regency then engaged Blackwater.

SEAGLE: I don't know who our subcontractors determine they need to perform the contract. They give us the...

(CROSSTALK)

SHAYS: I understand you don't. I'm going to just tell you what I think. I think you should know. I think the system should somehow require it. I think there should be some responsibility to it, and my analogy to Pontius Pilate is you just wash your hands of it. It's not your responsibility.

I just can't believe that if I were doing a contract for a building and I was subcontracting, that I would be oblivious to who my subcontractors were dealing with. So it just strikes me as something I'm surprised by. That's all.

Maybe I shouldn't be. Maybe that's the way it works, but we did good things with contractors and we did some bad things with contractors. And the bad things have given the good concept a bad name.

Ms. Ballard, I'm surprised that you can't give us an idea of the number of contracts and the number of contracts in-theater? Is that because you just tired out from the first and then from then on, you don't feel you have an interest or a responsibility to know who they subcontracted? In other words, once you put out that contract, whoever is subcontracted is not your interest or responsibility?

BALLARD: I can tell you how many contract...

SHAYS: Put the mic closer to you, please.

BALLARD: I can tell you how many contract actions have been awarded in Iraq. How many subcontracts, you are correct. The prime has responsibility for the subcontract. We do not have privity of contract with the sub.

SHAYS: And so you don't know who they hire? You don't know the quality of who they hire and so on?

BALLARD: We have, with the prime, the quality surveillance plan and a quality plan that is monitored by the Defense Contract Management Agency to ensure that...

SHAYS: I don't know what that means. I honestly don't.

BALLARD: ... we have quality plans in place to ensure that the prime is doing what he committed to do in terms of monitoring his subcontractors, so we don't actually do the sub.

WAXMAN: Gentleman, do you yield?

SHAYS: Yes, happy to yield.

WAXMAN: You say you do know the number of prime contracts you have?

BALLARD: I know how many actions that we had in Iraq. In JCCI in fiscal year '06, we had 26,994 contract actions. I can't tell you that those were all security contract actions. In fact...

WAXMAN: Can you tell us if those were all prime?

BALLARD: Those are all prime contract actions...

WAXMAN: So 26,000?

BALLARD: ...994 actions out of JCCI, the Joint Contract and Command...

WAXMAN: Actions means a contract?

BALLARD: Yes.

WAXMAN: So you had close to 27,000 contracts, and then you don't know how many of those contractors had subcontractors?

BALLARD: Correct.

WAXMAN: And you don't know how many of those subcontractors had subcontractors?

BALLARD: Correct.

SHAYS: I mean, tell me why I shouldn't be concerned by that. I mean, maybe you could tell me? Tell me. I mean, you're smiling, but it's a concern to me.

(UNKNOWN): You should be concerned. A contract action is not a contractor, so my guess is that Ms. Ballard would know there are fewer contractors, many of whom are receiving multiple transactions, so the number of contract actions does not equal on a one-to-one basis the number of contractors.

The subcontract relationships, there is elements of transparency, elements of visibility on the ground. Some of that may not be known in a database where it's easily obtainable, either at a higher level or at headquarters or here.

SHAYS: Well, let me just conclude. What I know is this, that this would be something I'd recommend to the Subcommittee on Government and Reforms Oversight for national security, because, I think, you know, just a few members who could ask questions for 10 or 15 minutes, we could get a better understanding.

But I was always left with the feeling that our government would know who the contractors were, who are the subcontractors, who got a subcontract from a contractor. I just thought it would be intuitive that we would know how many people and so on.

And the fact that once the major contractors subcontract, they don't care who is subcontracting that is of concern to me. And it tells me that we're not going to have good quality control, and that we're going to have pretty serious mistakes.

And I just add to this that if, in fact, anybody who was a contractor was told he'd better get his butt out there, even without proper protection, weapons and so on, I think the company has to be held responsible.

BALLARD: Congressman Shays, if I may, I don't want to leave you with the impression that we don't have any visibility at all of the subcontractors. We do have a consent to subcontract process, and there are clauses in the contract that require the contractor to notify us when they are taking certain subcontract actions at certain dollar thresholds.

But that regulation is very clear as to what that information will be, and it says specifically that we are not, in our consent to that subcontract, consenting to the terms and conditions of those contracts, the price of those subcontracts, or the allowability of costs under those contracts.

But the contractor does come to us and tell us that they are subcontracting based on what the contract specifically asks. But to my knowledge, we don't have any system where we automatically keep track of then every subcontractor that subcontractor or a prime contractor lets.

SHAYS: Thank you, Mr. Chairman.

WAXMAN: Thank you, Mr. Shays.

This point leads into some questions I have. So if the gentleman from Maryland would allow me to go ahead of him, the question of oversight over the activities of these **private** security contractors, this problem is illustrated by the clear indications that there was unauthorized, **private** security work under government contracts, but the Defense Department and prime contractors were not even aware of it or did nothing to address it.

Mr. Flores, Fluor Corporation has a similar provision in its contract with the Air Force, a contractor force protection. The U.S. government will provide for the security of contractor, personnel and convoys and on site commensurate with the threat and in accordance with the applicable theater anti-terrorism/Fluor protection guidelines.

Do you agree that this provision bars not just Fluor, but its subcontractors from using **private** security contractors?

FLORES: In the case that you're speaking of, and in all those cases where we have to use government for those security requirements, we have never acquiesced to our subs to have **private** security, at least on the site and working with us and getting that particular task done.

WAXMAN: What would you do if you determined that one of your subcontractors had violated this provision? Would you report it to the Army or the Defense Department?

FLORES: What we would certainly do -- I think a good example was at Taji. We recognized that the Army was having trouble support ESS, and Lauren Battenhorse (ph) coordinated with our project director, and we went back to the Army and said, "It's not working. We're anxious to get this bid down, project

completed for soldiers so that we will improve their quality of life on this base." But the Army said, "No, you can't use **private** security on this."

We kept beating on the Army because of this, but if the Army determines that their soldiers are living in certain conditions, and they don't have the personnel or other missions come up that preclude them from providing that convoy escort, we're not going to go past the provisions of our contract and suggest to ourselves that they need to get **private** security.

WAXMAN: In a letter to Congressman Shays dated July 14, 2006, the secretary of the Army stated, quote, "Under the provisions of the LOGCAP contract, the U.S. military provides all armed forces protection for KBR unless otherwise directed. Additionally, the LOGCAP contract states that KBR personnel cannot carry weapons without the explicit approval of the theater commander," unquote.

In your written testimony, Mr. Seagle, you acknowledge that KBR contractors have used **private** security contractors. Doesn't that violate the terms of the LOGCAP contract?

SEAGLE: To clarify, I said we had other non-LOGCAP contracts in which we subcontracted for armed security. KBR has never directly subtracted for armed security under the LOGCAP contract.

WAXMAN: Is your mic on?

SEAGLE: KBR has never directly contractor for armed security under the LOGCAP contract.

WAXMAN: You've done it through ESS though?

SEAGLE: We've not required or directed any of our subcontractors to subcontract for security either. The majority of our contracts are firm fixed priced, competitively big. We award them on best value to the government, fully understanding...

WAXMAN: Are you now aware that you did subcontract with ESS for **private** security?

SEAGLE: At this time, I understand. When we initially had this conversation with the Army, we were focused on had Blackwater ever worked for KBR to which the response was no. We were initially told by ESS and Blackwater both that Blackwater was not contracted to KBR.

WAXMAN: Well, let me ask you about this. James Ray (ph) of KBR wrote this e-

mail on June 3, 2004, and it said, "We should not attempt to affect the material change in our contract with the government by hiring a company that we know uses armed escorts. That company is an agent of KBR, and if anything happens, KBR is in the pot with them. Even with lipstick a pig is a pig."

Ms. Ballard, there seems to be a disagreement here on whether the Defense Department prohibits the use of **private** security contractors on these contracts. Why is there so much confusion about such a simple issue?

BALLARD: Contracts contain different provisions. In the case of the LOGCAP contract, there was a specific provision that prohibited the use of **private** security contractors. There are others, the design/build contracts, for example, that expressly said that the contractors would be providing their own security, and the proposals included those security costs.

WAXMAN: The LOGCAP has an agreement they won't have these **private** security people, but they did it. Now what happens?

BALLARD: What happened when we had all the data that demonstrated that they had, in fact, incurred these costs and passed them onto the government, the contracting officer issued a payment adjustment and yesterday withheld \$19.6 million. I'm sorry. They didn't withhold it. They removed it from the KBR payment.

WAXMAN: It seems to me that the Defense Department and the prime contractors sometimes don't seem to have an idea of what's going down lower down on the contracting chain, and it may be acceptable not to have any oversight over subcontractors who provide paper clips, but it's not acceptable when the subcontractors are putting armed forces in the field.

That's my big concern. I think it should be all of our concern, and if the contracts don't allow it, those contracts need to be enforced.

Mr. Van Hollen?

VAN HOLLEN: Thank you, Mr. Chairman, and let me thank all our witnesses today. And you covered a lot of material I was going to go over, and so I'm not going to go back over it in great detail.

But, as you know, we sort of launched on this effort many, many months ago in terms of looking at some of the contracts. It began as an effort to try and determine whether, from the taxpayers' perspective, some of this layering of subcontracting, cost plus subcontracts, was a good deal for the taxpayer or not a good deal for the taxpayer, because it did appear to be lots of markups that accumulated and with a big price tag at the end of it.

And during that process, we looked into whether or not the contracts between KBR and the others in the subcontractor chain permitted the contracting for **private** security personnel.

And as was testified to by Ms. Ballard, the contracts with KBR prohibited, essentially, both KBR and as I understand it -- and correct me if I'm wrong, but your view also remains that it also prohibits subcontractors under that prime contract from, essentially, engaging **private** security.

Is that right, Ms. Ballard?

BALLARD: That's correct.

VAN HOLLEN: OK, and it was on that basis that you made the decision, as I understand just yesterday, to at least withhold -- did you withhold it or you took back \$19.6 million?

BALLARD: We took back \$19.6 million.

VAN HOLLEN: And that was your estimate, I take it, of the amount of monies under this KBR LOGCAP contract that had gone toward the **private** security component, is that right?

BALLARD: Yes.

VAN HOLLEN: OK. I'm just trying to get a better sense of the Blackwater, and was most of it going through this process to the Blackwater **private** security?

BALLARD: What we relied on was a letter that was referred to earlier from ESS to KBR that said there was a factor applied to their direct labor cost, and our analysts then do the calculations against that to take the funds back from KBR.

VAN HOLLEN: OK, so that was done through your discussions with ESS?

BALLARD: It was KBR that notified us that this had occurred.

VAN HOLLEN: OK. With respect to the Blackwater **private** security folks, you were operating under this. In your contract did you understand that you were operating under the LOGCAP contract with KBR?

HOWELL: No, sir. We have not been certain which contract applied. What we did know was it was two key facts. We were subcontracted to Regency and ultimately, we were providing services to the U.S. military.

VAN HOLLEN: So the personnel whose family members we heard from earlier, you hired pursuant to your contract with Regency, right?

HOWELL: Yes, sir.

VAN HOLLEN: OK. And I guess for the Regency representative here, was that contract, the KBR contract that we're talking about today that LOGCAP contract?

MURRAY: Well, Congressman, I don't it's a representative from Regency. I am with ESS.

VAN HOLLEN: I'm sorry. ESS. The ESS person. Yes, I'm sorry.

MURRAY: We contracted Regency to do our security services. Turnkey service we contracted for, for all of our contracts. It wasn't targeted for KBR or non-KBR. It was across all of our contractors, both with KBR, direct with the military and commercial contracts. And if we had a security mission going to one of those camps or sites, Regency would carry that mission for us.

VAN HOLLEN: Right, but let me just make sure I understand. The \$19 million that was withheld yesterday, taken back yesterday was essentially part of the funds that you initially charged the government under this contract, is that right?

MURRAY: I'm not aware of that, Congressman. I'm not aware of the withhold or the action that was taken.

VAN HOLLEN: OK, well, let me ask Ms. Ballard. Was that pursuant to this chain of contracts that we've been talking about today?

BALLARD: Yes, sir. It was.

WAXMAN: And, if I might further inquire on that, may I assume that it has to do with the fact that you were going to be coming before this hearing today and therefore punitive action was warranted and you took it?

BALLARD: No, sir. We received our positive confirmation on January 30, and from then until yesterday, we accumulated the documentation to solidify our decision. We consulted with counsel and other agencies that bear upon that decision, and then we were able to take action.

This was important because KBR has the right to dispute this, so it was important that we have our facts in order before we take action.

WAXMAN: Well, I'm pleased that you have your facts in order and you took action, but I haven't heard of too much action being taken by the Defense Department in actually denying money to KBR and some of these contractors, so even though you won't want to acknowledge this, I think that the fact we are holding this hearing today might have saved the government \$20,000.

VAN HOLLEN: Well, thank you. And, again, appreciate the letter we received yesterday. I think Mr. Waxman and I both received a letter yesterday.

And let me just -- with respect to the KBR contract here, is the reason that the U.S. government takes the position that they cannot subcontract out for **private** security services because the expectation is that the U.S. military will provide for that security.

BALLARD: The cause in the contract does stipulate that the U.S. military will provide that security.

VAN HOLLEN: To your knowledge, did any of the entities, the subcontractors in this chain of subcontracts we're talking about today, did they request that the U.S. military provide security?

BALLARD: We have, in writing, from KBR that they, nor any of their subs, ever requested in writing for this security.

VAN HOLLEN: Thank you, Mr. Chairman.

WAXMAN: Thank you, Mr. Van Hollen.

Mr. Kucinich had just one question he wanted to ask so we can get an answer for the record.

KUCINICH: Yes, Mr. Chairman, I'm going to submit for the record a story that was in the January 11, 2007 edition of the Pilot newspaper, and the headline says "Iraq Killing Tracked To Contractor Could Test Laws."

Now, the question is this, Mr. Howell. Are you familiar with a December 24th shooting involving one of your employees, who shot and killed an Iraqi security officer and are you familiar with that?

HOWELL: I am familiar with some aspects of it, yes, sir.

KUCINICH: Did your company order that man back to the States?

HOWELL: That gentleman, on the day the incident occurred, he was off duty.

Blackwater did bring him back to the United States, and our client also, understandably, directed that he be off the project immediately. His security clearance was revoked, and there is other activity going on, sir.

KUCINICH: Is he going to be extradited back to Iraq for murder, and if not, why not?

HOWELL: Sir, I am not law enforcement. All I can say is that there's currently an investigation by, as I understand it, the FBI and the Department of Justice of the incident that day, and we are fully cooperating and supporting that investigation. And what action they'll take, sir, I can't say.

WAXMAN: Thank you, Mr. Kucinich, because Mr. Welch has been waiting. And if you have further questions, if you would submit it in writing, and we would appreciate responses in writing.

KUCINICH: Mr. Waxman, I appreciate your indulgence, and I just want to point out that there's a question that could actually make their corporate officers accessories here in helping to create a flight from justice for someone who's committed a murder. And so that's why I feel it's important that we get these answers. Thank you.

WAXMAN: Well, let's the answers before we make the charges, and we would certainly welcome further responses to questions that either Mr. Kucinich or any member of the committee may want to ask and have you respond to in writing for the record. And we'll keep the hearing record open for another week.

Mr. Welch, you're going to conclude the questioning for the day.

WELCH: Thank you, Mr. Chairman.

Mr. Howell, Blackwater has multiple contracts with the federal government, including the Defense Department, State and other agencies, and it has contracts, of course, with other companies.

And I want to ask you about whether Blackwater will be getting any additional contracts in the near future, and specifically, to your knowledge, is Blackwater currently under consideration for any sole-source or no-bid contract from the Defense Department or any other federal agency?

HOWELL: Not to my knowledge, sir. At any given time, we have a number of business initiatives in progress, including U.S. government work and to my knowledge, no, but we may. I can't say definitively, sir.

WELCH: So you will confirm yes or no and get back with a specific answer?

HOWELL: Yes, sir, and if I could caveat, if we could make it with regard to unclassified matters.

WELCH: Has Blackwater has had any communications with the Defense Department or any other agencies in the past several months regarding a contract to provide emergency evacuation services?

HOWELL: I don't know, sir.

WELCH: And you'll check?

HOWELL: I will check.

WELCH: And does Blackwater currently own any helicopters that are designed for defensive purposes or for evacuating people quickly?

HOWELL: A helicopter designed for defensive purposes, as I've said, the military person to understand it would be like an Apache attack helicopter. We don't own anything in that nature.

In terms of evacuation, any utility helicopter that would be used for personal movement would be suitable for evacuation.

WELCH: And has Blackwater been trying to raise capital, to your knowledge, to purchase or lease helicopters of this sort in order to potentially provide services to the United States government?

HOWELL: Mr. Congressman, answering that question necessarily would harm a competitive U.S. government bidding process that's underway. I'm happy to answer it, but I would ask that in the interest of preserving competition, we do so in a closed session or in writing.

WELCH: You will do that in writing?

HOWELL: Yes, sir.

WELCH: Thank you.

I want to ask you about the Fallujah incident. I heard you testify about Blackwater's concern for its employees, members of the team and all of us take seriously the genuineness of that statement. But you heard the four women who were here. And they had a question about what happened and why. My

understanding is that your company has done an incident report.

HOWELL: As I understand it, there was more than one inquiry in to the events of that day.

WELCH: So your company has done an inquiry, maybe not just one but several, correct?

HOWELL: I was not referring solely to Blackwater, sir.

WELCH: Well, I'm asking you about Blackwater. You're Blackwater.

HOWELL: Yes, sir.

WELCH: And I'm asking you about Blackwater, if you've done an incident report.

HOWELL: There was an investigation. Yes, sir.

WELCH: Is my question complicated? Have you done a report or not?

HOWELL: No, sir. I'm just trying to be clear. Yes, sir, we have done a report.

WELCH: And you were a member of the military.

HOWELL: Yes.

WELCH: And, obviously, when the military loses one of their sons or daughters, they provide information to the family, as much as they have, about what happened, correct?

HOWELL: With one important caveat, sir, that there are instances where the military does not. And I can discuss that not in the public forum.

WELCH: Well, the military takes seriously its ability to help families who are grieving come to terms with their loss by doing one of the most basic and human steps that an organization can take, and that is to provide as much information as they can, correct?

HOWELL: Yes, sir.

WELCH: What's the problem about answering the questions that these four people who lost their loved ones, by telling them everything you know about what happened and how it happened so they can have the one thing they're requesting, and that's the truth?

HOWELL: Sir, some of the facts of that day were classified by the government and we are not permitted to discuss those.

WELCH: Well, let me ask you this. This committee has requested copies of that report or reports, correct?

HOWELL: Yes, sir.

WELCH: Will you turn over to this committee those reports?

HOWELL: Sir, we cannot turn over classified information. It would be a criminal act.

WAXMAN: If the gentleman would permit, that's not an accurate statement. We are entitled to receive classified information in this committee. This was requested in our document request to you, and we are expecting to receive that information from you.

HOWELL: I understand, sir.

WELCH: Ms. Ballard, are you aware of whether there was a report that was done in the Pentagon concerning this incident?

BALLARD: No, sir, I'm not.

WELCH: Is that anything within your knowledge that you could respond to questions from me about or do I have the wrong person here?

BALLARD: Wrong person, sir.

WELCH: OK. Thank you.

Mr. Chairman, I just want to be certain I understand that you've made it clear that this committee has requested the Fallujah incident reports from Blackwater.

WAXMAN: We have. Mr. Howell is not fully responsive to my statement that we are entitled to receive information, even if it is classified, and we want you and expect you to turn over that document to us. Will you comply?

HOWELL: I want ensure that we comply with the law, sir, and I want to fully respond to the committee as much as possible. We will turn over everything that we are permitted to without affecting attorney-client privilege and government classification interests. And if that's not a sufficient answer, I would have to

provide one in writing, sir. I'm not sure how to respond.

WAXMAN: Let me suggest this to you, in case there's any vagueness of the law.

HOWELL: Yes, sir.

WAXMAN: We will supply you with the information about our entitlement information, notwithstanding its classification, and that should eliminate the objection that you've raised to us. Attorney-client privilege, we will talk further about that. But matters that Congress are entitled to receive, we expect to receive unless you have some argument against it that fits into exceptions that are recognized. We'll both look at that together.

SHAYS (?): Mr. Chairman, if I could just make a comment too and just a question. One, I don't have a lot of sympathy, frankly, for the position of Blackwater right now, but I do have a concern and I just want to express it. If information is provided to the committee that is important for the committee to know, is it then transferred to the parties that are in a lawsuit, and then does it become available to either side? And is that a role we should playing?

WAXMAN: Absolutely not. It is not a role we should be playing, and it would not be transferred for purposes of litigation, especially if it's classified information.

SHAYS (?): And then, just if I could, make a closing comment about this hearing, I just think it really has set the stage, I think, for a very real dialogue about a lot of things.

For instance, I just didn't know the disinterest of one contractor of the government contracting out and then subcontractors, and the further down the chain you get, there doesn't seem to be this interest either by the original contractor or by the government, in my judgment. And that concerns me.

And I would also like to know, what is the policy of our government? I consider contractors who die in Iraq as much heroes as anyone else who's risked their lives in Iraq. They're contractors, and it just strikes me that the families should have the same courtesy that exists for our military families.

And I'm struck by the fact that we may want to get into providing advice, counsel, whatever in the course of our hearing as to a uniform practice that should be provided. Because I'm left with the impression from our first four witnesses that they were treated in a very shabby way, and I'd like to think no one would be treated like that. So that's the impression I'm left with.

So I thank the chairman for allowing me to close with those comments.

WAXMAN: Well, I appreciate your comments. They certainly feel that way, expressed it with a great deal of emotion in very powerful testimony today.

Mr. Shays, I'm pleased that you stayed here for the whole hearing. You more than any other member of Congress in the last Congress actually actively got into many of these issues, and we look forward to you and Mr. Davis on a bipartisan basis.

These are not partisan issues. I resent it when people try to make this into a partisan issue, and I particularly resent it when it suggests that the family members came before us as partisans. It's such an outrage. They're the ones who lost people in Iraq, and we have no idea what their party affiliation is, nor do we have any interest in knowing what their party affiliation is.

For this panel, I thank you very much.

MURRAY: Mr. Chairman Waxman?

WAXMAN: We will have possible questions for the record and we'd ask you to respond.

Yes, Mr. Murray, do you want to...

MURRAY: I would like to just make, if I may, one clarification on comments that were discussed in the earlier session. Their were discussions around our contract, ESS' contract with Regency, which is dated the 8th of March, and the subsequent meeting to that on the 11th of March, whereby ESS and Regency and Blackwater attended a joint implementation meeting.

I just wanted to advise the committee that our contract, dated the 8th of March, did not change. None of the terms and none of the conditions of that contract changed as a result of that meeting or any other reason. The contract on the 8th of March stood as it is.

WAXMAN: And we appreciated that clarification. Thank you all. You've been very helpful to us and we appreciate your being here and giving your time and your answers to us.

That concludes our hearing. We stand adjourned.

END

NOTES:

[????] - Indicates Speaker Unknown

[--] - Indicates could not make out what was being said.[off mike] - Indicates could not make out what was being said.