

Senate Democratic Policy Committee Hearing

“An Oversight Hearing on Accountability for Contracting Abuses in Iraq”

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Members of the Committee,

I would like to thank you for inviting me here today to speak on matters that I consider to be of critical importance not only to my clients, families of the truckers who died in the April 2004 attack and the survivors of that attack, but to all civilian employees of civilian contractors working in Iraq and Afghanistan, or in similar settings, both now and in the future.

My name is Scott Allen. I practice trial law. Importantly, I believe, over my career an estimated 90% of my practice has focused on the defense of individuals and companies in civil cases. However, after I learned of the facts surrounding the multiple civilian truck drivers' casualties that occurred on April 9, 2004, I felt compelled to assist in their effort to seek justice. My clients and I believe that Halliburton should fully explain what they knew, when they knew it, and most importantly why they would allow unarmed civilian employees to drive unarmored camouflaged military trucks down a road that was then engaged in active combat between the U.S. Army and Iraqi insurgent military personnel.

Before I begin my remarks I think it is important to categorically state why we are **not** here.

We are not contending that the United States Army is responsible for the deaths and injuries that occurred on April 9, 2004. To the contrary, the truck drivers and their families have asked me to specifically thank the soldiers from the Second Platoon of the 724th Transportation Company of the United States Armed Forces Reserve Center in Bartonville, Illinois who fought so valiantly to protect the drivers when they were attacked on Main Supply Route Sword. Sergeant Elmer Krause, PFC Gregory Goodrich, and PFC Keith Matthew Maupin (who was captured alive but remains missing) . We would also like to recognize Specialist Jeremy Church who received the Silver Star for his brave actions in Iraq that day.

Secondly, we are not here today to suggest that civilian workers of private contractors can expect an absolute guarantee of safety. In fact, we would not have become involved, and our case would not have been filed, if, for example, these truck drivers been the victims of a true “surprise attack” under conditions that were not foreseen or known by Halliburton. I regret to say, however, that such are not the facts of our case.

Rather, we have sadly discovered evidence and testimony which proves that Halliburton/KBR knew well before my clients were sent from Camp Anaconda on April 9th that the roads they would travel were engaged in active combat, that the areas were closed and off limits to civilian personnel, and that other Halliburton/KBR convoys had been attacked at or near the same location which had already resulted in multiple civilian casualties.

I must inform the Committee that the facts I will discuss are only an “overview” and not a complete disclosure of the evidence in my possession. Importantly, the constraints on my testimony are not merely limited by time, but are more severely restricted by a “Protective Order” entered at the request of Halliburton which prohibits me from disclosing most of the documents and evidence we have discovered. In that regard, the most important request that I can make is to ask that this investigation not end today but that the Senators continue to pursue the facts and the truth and request that Halliburton/KBR provide you with all of the documents and evidence in their possession.

My clients and all of the workers for Halliburton/KBR in Iraq are civilians, not military personnel. The LOGCAP Contract between Halliburton and the United States Army and the Army Field Manual make this clear. In short, under both the LOGCAP Contract and the applicable Army regulations, although the Army can certainly **request** Halliburton/KBR to supply truck drivers to deliver goods, including fuel, between various locations in Iraq, it is Halliburton/KBR, not the Army, who has the authority, and more importantly the responsibility, to ensure that their employees do not drive trucks in areas of known combat.

In that regard, I am supplying the Committee with an example of the “Job Description” for a truck driver posted on the Halliburton/KBR website as it existed in February, 2004. This posting reflects that the work to be performed by my clients concerned tasks completely civilian in nature and did not indicate that the drivers would be asked to do anything but operate “company vehicles” in a strictly civilian capacity.

A January 22, 2003 memorandum provided to all United States citizen civilians at Halliburton/KBR’s employee orientation in Houston before being sent to Iraq said that Halliburton/KBR would not place its employees in areas of known danger/combat. As stated in this “Safety” memo:

*LOGCAP III Support Contract operations are often conducted in a hostile environment. **This does not mean your safety will be compromised.***

*The LOGCAP III Support Contract safety philosophy is simple. **There is not one thing that we do that is worth injury to an employee.***

I will now give you some background on the nature and purpose of my clients' convoy mission. My clients' convoy was asked to deliver JP8 fuel from Camp Anaconda in Balad, Iraq to BIAP, a distance of approximately sixty miles. The convoy would essentially travel down two main roads; a north/south route (Tampa) which intersected with an east/west route to BIAP (Sword). The trip would also take them past another air base, Taji, which was also known to be "closed" due to dangerous conditions. Importantly, for reasons about which we are still seeking answers, my clients were told to drive camouflaged and unarmored military fuel trucks, as opposed to KBR's white civilian fuel tankers.

At approximately 12:10 p.m., an hour and a half after leaving Anaconda and after entering the east/west Route Sword near the Abu Ghuraib Market, this convoy was massively attacked from both sides of the road with deadly weapons which included improvised explosive devices (IEDs), machine guns, small arms fire, and rocket propelled grenades. The area of this attack has been described by Mr. Thomas Hamill, the convoy commander, in his book as an endless "kill zone." Unfortunately, as we have already discussed, two-thirds of the civilian drivers in the Convoy were either killed or wounded.

As I speak to you today the "official" death count of the civilian Halliburton/KBR employees is six: Steven Fisher, Stephen Hulett, Jack Montague, Tony Johnson, Jeffrey Parker and William Bradley. Another Halliburton/KBR truck driver, Mr. Timothy Bell, has never been found and while "officially" declared as missing is also believed to be dead. It should be noted that the bodies of three of the dead, Stephen Hulett, Jack Montague and Jeffrey Parker, were not recovered until April 13, 2004 when their remains were found in a shallow grave west of the location of their attack. Tony Johnson was listed as "missing" until a small piece of his vertebral column was recovered and identified by DNA testing on April 18th. Additionally, a fifth dead driver, Mr. William Bradley, was also listed as "missing" until his body was found near Baghdad in January 2005. Mr. Steven Fisher died from his wounds after being transported in the back of a "Humvee" while military personnel, along with other civilian members of the convoy, tried unsuccessfully to save his life.

Here is what we know and can currently disclose concerning the facts as they existed prior to the time my clients' convoy was sent from Anaconda to BIAP:

- (1) April 9, 2004 was a date of expected violence due to its religious and historical significance. It was the first anniversary of the fall of Baghdad to coalition forces, it was a significant Muslim holiday (Arab'in), and it was Good Friday.
- (2) The United States Army and the Coalition Provisional Authority on both April 7th and April 8th, 2004 acknowledge in press briefings the increasing

level of hostility and specifically disclose the combat operations Vigilant Resolve and Resolute Sword, including areas of known and expected combat activity in and around Baghdad.

- (3) As reflected in the Army's report of that day, the 1st Calvary Division had been engaged in combat operations on route Sword for approximately two days prior to the attack on my clients' convoy and all agree that combat operations on a supply route automatically close the route to civilians;
- (4) As reflected in the testimony of Mr. Stephen Pulley (which you will see in a moment), he and the KBR Security Department had specifically recommended to Halliburton/KBR that no civilian convoys be deployed;
- (5) As reflected in the testimony of Mr. Kenneth Waller of KBR's Theater Transportation Mission (TTM) Operations at Camp Anaconda (which you will also see), the roads that my clients would later travel were known to be designated as "black" and/or "red" and therefore closed to civilian convoys;
- (6) In fact, on April 8, 2004 KBR civilian convoys had been attacked at/near the same location where my clients would later die and KBR TTM Operations and Security were aware of these attacks;
- (7) Despite the above, other KBR civilian convoys were sent out on the morning of April 9th and at least three (probably more) convoys were attacked at/near the precise location where my clients were attacked on the afternoon of that day;
- (8) Another KBR fuel convoy, the Reina Convoy, was deployed from Camp Anaconda to BIAP within minutes of the deployment of my clients' convoy. However, due to the known threat level on the route, the Reina Convoy was returned to Anaconda on the orders of TTM. But, my clients' convoy in camouflaged military trucks escorted by the 724th Transportation Company was still allowed to proceed.

Now, with your permission I would like to show portions of the depositions of three former Halliburton/KBR employees who were working in Iraq in different capacities on April 9, 2004. These men are: (1) Mr. Kenneth Waller, who worked in TTM Operations at Camp Anaconda and was a subordinate of KBR's TTM Project Manager, Mr. Keith Richard. (2) Mr. Stephen Pulley, KBR Security Coordinator at Camp Anaconda on April 9, 2004. Additionally, we will present portions of the deposition of Mr. Tommy Hamill who was the KBR convoy commander of my clients' convoy and is still employed by Halliburton/KBR where his duties include training other truck drivers at KBR's Houston orientation facility and representing Halliburton/KBR as a corporate representative at trade shows.

[Video clips]

Senators, we leave the evaluation of this testimony and other evidence to your committee, and hopefully the entire Congress. However, we believe this evidence proves:

- (1) Halliburton/KBR TTM Operations knew that the roads where my clients would travel were under attack, closed and unsafe for civilians on April 9, 2004;
- (2) On both April 8th and on April 9th, well before my clients departed, Halliburton/KBR knew of armed attacks on its civilian convoys near BIAP. Despite this knowledge KBR executives and managers intentionally permitted the Good Friday Convoy personnel to proceed into this “kill zone.”;
- (3) The KBR Security Department had specifically asked KBR management to stop the convoys because of the known danger. But, KBR’s management/executives overruled and disregarded their own Security Department’s recommendations;
- (4) As reflected in Mr. Tommy Hamill’s book (and in his public interviews given within weeks of these attacks), as the KBR convoy commander he believed that April 9th was “just a normal day” and neither he nor my clients were told of the combat and attacks on the other convoys.

The obvious question that one must ask after these events is: Why was this convoy allowed to proceed? I believe I have the answer to that question. But, due to the restrictions placed upon me by the Protective Order I am unable to show you the documents which would provide you and others with the answer. However, an anonymous KBR employee who was in Iraq at the time of these events sent a letter to Mr. Hamill to explain that KBR’s then-Vice President of Contingency and Homeland Operations, Mr. Craig Peterson, was “...under pressure from KBR management to improve the performance of KBR” and “having that convoy proceed in the face of danger was one way to show improved performance.”

Finally, Senators, I want to express my sincere concerns and make some requests on behalf of not only the truck drivers that were wounded and killed on April 9, 2004 but the current and future employees that may be placed in a similar position. In response to our lawsuit Halliburton/KBR has contended that its conduct in Iraq is not subject to the jurisdiction and judgment of the United States civil courts or citizen juries. Rather, Halliburton/KBR has contended that its conduct, no matter how wrong, egregious or intentional, is completely immune from any civil liability and that they cannot be held accountable for their actions.

In contrast to their claims of “immunity,” in November, 2004 Halliburton/KBR seemingly recognized their liability and surreptitiously attempted to prevent the drivers from filing any claims and improperly used the United States Department of Defense Medal of Freedom as their bait. In that regard, Halliburton/KBR in their most offensive conduct since April, 2004, tried to have at least one of the civilian drivers, Mr. Raymond Stannard, execute a release and waiver of Halliburton/KBR’s liability which they disguised as a “Medical Release Form” they would provide to the Pentagon in order to process his nomination for the Department of Defense Medal. We are providing your Committee with this evidence.

Additionally, as this Committee knows, although Halliburton billed the taxpayers \$7 billion in 2004, they are refusing to disclose even to members of our own legislative bodies all of the documents and evidence in their possession which would allow either Congress or the courts to fully evaluate Halliburton’s conduct. Halliburton is a public company, accepting public money, for a public trust but refuses to subject itself to the public’s judgment in our public courts.

Thus, we come before this Committee asking three things:

- (1) We ask this Committee and your fellow Senators to take whatever measures they can to legislatively preserve the rights of American civilians to a trial by jury if they are killed or wounded due to the wrongful conduct of civilian contractors knowingly and intentionally directing their employees to proceed into areas of known danger or combat;
- (2) We ask this Committee and your fellow Senators to enact legislation that would provide oversight of civilian contractors in Iraq so that contractors such as Halliburton/KBR are required to provide their evidence and documents in a manner that allows for meaningful oversight by both the courts and the Congress;
- (3) Most importantly, we ask this Committee to not give up but continue its investigation into the tragic events of April 9, 2004. As we sit before you today, 2-1/2 years after these deaths, Halliburton’s claims of “privilege,” “confidentiality” and “immunity” have prevented us from taking the sworn testimony of a single Halliburton/KBR executive or manager personally familiar with the events of April 9, 2004. Further, Halliburton/KBR has never provided their internal investigation into the events of April 9, 2004 to the families.

I hope that I have spoken well on behalf of the men who were killed and wounded on April 9th and that I have made a meaningful and thoughtful presentation that will help bring about action to assure that not only my clients but the millions of Americans who pay Halliburton/KBR’s bills receive a full and complete disclosure of all of the information concerning the events of April 9, 2004.

I thank you for your time and I am available and willing to answer any questions this Committee may have.