

**STATEMENT OF  
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**BEFORE THE  
COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE**

**HEARING ON  
"HOLDING CRIMINALS ACCOUNTABLE: EXTENDING CRIMINAL  
JURISDICTION TO GOVERNMENT CONTRACTORS AND EMPLOYEES ABROAD"**

**MAY 25, 2011**

Mr. Chairman, Senator Grassley, and other distinguished members of the Committee, thank you for the opportunity to appear before you today. I know that each of you share the deep respect and appreciation that I feel for the men and women of the defense contracting community, especially for those individuals who endure arduous conditions and unstable environments so that they can serve alongside and support the armed forces. I want to thank you for the opportunity to address you today and to thank you for the work you have undertaken on behalf of veterans, military members and their families, and contractors. As someone who has served in the Navy, been the spouse of an Army soldier, and is now a member of the contracting community, I want to thank you on behalf of each of those communities for what you do for us.

The issue today – extraterritorial jurisdiction and accountability for contractors – does not engender a great deal of controversy or dissent. It is not, and should not be, a partisan matter. Nether is it an issue where the U.S. judicial system and the contracting community are at odds. We all share a commitment to serving the national security objectives of the United

States of America. I think we also share a desire for there to be clarity in the accountability mechanisms that reach our citizens. When the accountability mechanism is focused on those individuals who serve in harm's way on our behalf, whether they be uniformed or not, the obligation to provide them with clarity is especially strong.

I am a Naval Academy graduate, a former military lawyer, and a former fellow at the Center for the Study of Professional Military Ethics at the U.S. Naval Academy, where I studied and taught battlefield accountability. In my current practice I both advise companies on mitigating their risks and training their employees to operate in conflict environments, and represent companies when they face government investigations and civil or criminal litigation. I have also devoted several thousand hours of pro bono legal work to the representation of victims of the horrific war crimes that occurred in Somalia in the 1980's, victims who, because no jurisdiction had the capacity or will to take criminal action, had no hope of achieving redress other than through the civil courts of the United States. These experiences each contribute to my very broad perspective on the importance of clarity in criminal accountability mechanisms.

From my experience – and I speak today from the perspective of an attorney who currently manages a law practice group specializing in representing government contractors – the Military Extraterritorial Jurisdiction Act standing alone has not provided that clarity. As you know, the Act has been subject to legal challenge as to the breadth of its jurisdiction, as it applies on its face only to those contractors who are “employed by or accompanying the Armed Forces outside the United States.” Arguably, MEJA by its plain text does not apply to

those contractors working for the State Department or for government agencies other than the Department of Defense.

Clarity and certainty is as important to the contracting community as it is to the government. Companies have an obligation to their employees to properly advise them of the legal rights, risks, and accountability mechanisms to which they are subject when serving overseas. A continued absence of clarity on whether MEJA applies to civilian employees working on non-DoD contracts does not serve the interests of the contracting community or its employees. For example, a company with both Department of Defense and Department of State contracts might, under the current statutory framework, accurately advise employees working on its Defense contracts that they “are” subject to MEJA jurisdiction, while advising employees doing similar work in the same location but on a State Department contract that they “might be” subject to MEJA jurisdiction. Neither the statute itself nor the limited number of available judicial interpretations make the effective reach of MEJA completely clear. Thus the Civilian Extraterritorial Jurisdiction Act has the potential to provide more certainty regarding the application of U.S. criminal law to overseas contractors.

Not only would CEJA provide more jurisdictional certainty, it would also enable the prompt and professional investigation of potentially criminal incidents. Civilian companies, especially those operating under the often arduous conditions of contingency operations, are neither empowered to perform nor well-suited to perform the sovereign functions of law enforcement and criminal investigation. Moreover, contractors often operate in unstable environments where the host nation capacities for criminal justice functions are limited or developing. Companies operating in those environments are much better served if adequate

U.S. government resources are available to assist with or to provide the function. CEJA also provides the personnel and resources to address that need.

I know you have received written statements of support from several companies directly and from the International Stability Operations Association, a trade organization representing stability operations contractors, as well as from organizations in the human rights community. The Commission for Wartime Contracting also recently called for clarification in criminal jurisdiction over civilian-agency contractors. This diverse recognition of the need for an appropriately crafted CEJA reflects, I think, the universal recognition that accountability for criminal wrongdoers is a critical component of securing our nation's foreign policy goals. No-one wants to operate in an environment of uncertain legal clarity, least of all companies who are already operating in often unstable environments.

Thank you again for the opportunity to discuss this important topic with you today and I look forward to answering any questions you might have.