

Opening Statement by Senator Robert R. Bennett

November 18, 2009

Subcommittee on Contracting Oversight

U.S. Senate Homeland Security & Governmental Affairs Committee

“Accountability for Foreign Contractors: Lieutenant Colonel Dominic ‘Rocky’ Baragona Justice for American Heroes harmed by Contractors Act”

Every year in mid-November we reflect as a nation on the sacrifices our sons and daughters have made for our nation. The week of Veteran’s Day this year was particularly poignant as it followed the tragedy at Fort Hood, Texas. This singular act of brutality against our troops, preparing to serve once again to protect the United States and others, reminds us of the dangers inherent in simply wearing the uniform of our armed forces, and the bravery of those who choose to face that danger for us.

The life and service of Lieutenant Colonel Dominic “Rocky” Baragona stands as an example of this ethic. Following his commissioning at West Point, LTC Baragona dedicated his life to being an officer in the US Army. In the early days of the war in Iraq, LTC Baragona commanded a maintenance battalion that ensured our soldiers had essential equipment and supplies needed to fulfill their mission. While fulfilling that duty, on a remote highway in Iraq, LTC Baragona was taken from us; the victim of a negligent driver.

LTC Baragona’s father, Dominic Baragona, is here today as a witness to testify. I would like to offer my condolences to you Mr. Baragona, and your family, on the loss of your son. We were able to meet the last time you were in town and talk about “Rocky” as a person, as a son, and as a soldier. I regret not getting to meet him but I felt as if I got to know a little bit about him through your stories and your description of Rocky’s selfless dedication to his country—our country and the belief that we must all serve in one capacity or another. Again, my deepest sympathies.

When our troops make this ultimate sacrifice, we as a nation inherit their legacy of selflessness, of service, and most of all, of freedom. As their beneficiaries, we owe the fallen and their families our best efforts to ensure that their sacrifice was not in vain and that fairness in contracting must be applied in all instances. In some particularly egregious instances, justice should be served.

Justice is owed to the Baragona family, but has not been found because the company that is liable for Rocky’s death has refused to answer in any forum for the actions of its negligent driver.

- There are many facets to this case that demonstrate the problems with our use of contractors overseas.
- The company, Kuwait Gulf Link, is one that performed contracts for the Army, and seeks to do so again.
- Kuwait Gulf Link, in avoiding answering for its negligence, not only avoided the judgment of the Federal courts, it avoided the suspension and debarment

process that would disqualify it from being a future contractor to the US government.

- To the outside observer, the outcome of the case, and lack of consequences for KGL is almost as abhorrent as the accident itself.

This legislation is not anti-contractor, and I have said in earlier statements on this subcommittee that I believe there is an important role to be served by contractors in government operations. Contractors, U.S.-owned and operated--and foreign-owned and operated contractors, regardless of their ownership or location, must be must be accountable for their actions and held to the same standard.

- This point is even more important in hazardous areas, where contractor actions are in many instances, an extension of US forces.
- As such – contractors in these cases must submit to the command, control, and communications of the US forces.
- Also – as they are working in concert with US forces, contractors in these areas must be expected to answer for their actions in a US forum.

As a general principle, I am against any legislation or regulation that may be a barrier to entry for well-intended contractors. In fact, I believe many well-intended regulations result in worse contracting behavior, as efficient and scrupulous companies are driven away from selling their goods and services to the government.

- This bill is not a capricious barrier to entry, however, as it addresses future contracting behavior
- As such, it is strictly voluntary, and does not impose excessive cost on either party
- The central remedy of this bill will ensure a consistent forum for civil cases in the most dire of circumstances
- The act of contracting parties voluntarily submitting to a designated forum is well established in common law

Today's hearing convenes to examine some esoteric aspects of government contracting, civil law, and justice. We will examine legislation introduced yesterday that seeks to remedy a gap that exists in the command, control and accountability of contractors that work for our military overseas, and also for other federal agencies. This legislation bears LTC Baragona's name because of the sacrifice he made six years ago. I hope we move forward to bring legislation that honors him and his brothers and sisters in arms; legislation that serves to protect them and their families after their sacrifice, in the same way they serve to protect us each day. It's the least we can do.....and it's the least we should do. If we don't look out for our American brethren who go overseas to carry-out American missions, who will? We need to stand up and ensure that when harm comes to an American servicemen and woman and American employees, that there is a way to protect their interests and ultimately ours—contractors performing responsibly and providing best value of services. This legislation accomplishes this goal.

Thank you Madam Chairwoman.