

Senate Democratic Policy Committee Hearing

“An Oversight Hearing on Waste, Fraud and Abuse in U.S. Government Contracting in Iraq”

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My name is Alan Grayson. I’m an attorney. I represent whistleblowers in the first case involving fraud by a government contractor in Iraq to be unsealed by the court. My testimony is based on what these whistleblowers have told me, and the court.

I wish that I could tell you that the Bush Administration has done everything it could to detect and punish fraud in Iraq. If I said that to you, though, I would be lying. In our case, the Bush Administration has not lifted a finger to recover tens of millions of dollars that our whistleblowers allege was stolen from the Government.

The defendant in our case is Custer Battles. This company was organized by an individual named Mike Battles. In 2002, with the invasion of Iraq imminent, Battles set himself up as a security contractor. He and his colleague Scott Custer were featured repeatedly on Fox News and other forums, as so-called “security experts.”

Following the invasion of Iraq, Custer and Battles sought contracts from the U.S. Government. Battles later told the *Wall Street Journal* that “the fear and disorder” in Iraq “offered real promise” to him. Up to this point, their security company had garnered less than a million dollars in total revenue. Indeed, when one of them traveled to Baghdad, according to my sources, he had to borrow the cab fare. Yet in the next 13 months, the Bush Administration lavished over \$100 million in contracts on Custer Battles.

In a matter of weeks, Custer Battles received two government contracts, worth around \$15 million apiece. One was to provide security inspection for civilian flights at Baghdad International Airport. Of course, there were no civilian flights at Baghdad International Airport. The Bush Administration paid Custer Battles anyway.

While at the airport, Custer Battles found some abandoned Iraqi Airways forklifts. They painted these over to hide the Iraqi Airways markings, and then billed them to the Government as “materials” under a different contract.

The other contract that Custer Battles quickly received was to provide security and logistical support for the distribution of new Iraqi dinars. Reports indicate that after the contract was awarded, one Custer Battles staffer hopped on a Custer Battles–chartered flight to Beirut with over \$10 million

in new Iraqi dinars inexplicably in his luggage. Lebanese Customs officials confiscated the money.

The currency exchange contract was a “time and materials” contract. This meant that Custer Battles could bill the Government dollar for dollar for its non-labor expenses. Sensing great entrepreneurial possibilities in this arrangement, Custer Battles set up some Cayman Islands subsidiaries. The Air Force has referred to these subsidiaries as the “sham companies.” Custer Battles backdated and forged signatures on invoices from these sham companies. Custer Battles then directed employees to sign the fabricated invoices — without looking at them — and then turn those invoices in for payment by the Government.

One of our whistleblowers, a Custer Battles subcontractor and former FBI agent, was recruited to participate in this scheme. He refused, twice, and said “you all are going to prison.” The second time, he was held at gunpoint in Baghdad, stripped of his weapons and security identification, and then released defenseless on the streets of Baghdad. I’m talking about Americans holding guns on Americans. He made his way from Baghdad, through Fallujah, to the Jordanian border.

It is worth noting that the contracts awarded to Custer Battles were signed by U.S. contracting officers, on behalf of the “UNITED STATES OF AMERICA.” Custer has testified that he reported to U.S. military supervisors every single day. Custer Battles was paid with \$4 million in brand-new U.S. \$100 bills, fresh from the Government printing press and still wrapped in plastic, as well as with U.S. Treasury checks imprinted with the Statue of Liberty, and wire transfers from U.S. Treasury accounts at the Federal Reserve Bank of New York.

On October 16, 2003, Custer and Battles attended a meeting with the U.S. military staff responsible for the currency exchange program. One of them accidentally left a Custer Battles spreadsheet on the table. One column of this spreadsheet listed what Custer Battles had spent for materials on this contract — \$3.5 million. Another column listed what Custer Battles had billed the Government for these materials — almost \$10 million. This spreadsheet was documentary evidence of over \$6 million in fraud against the Government.

Not long after, another whistleblower, this one a Custer Battles employee, complained to Custer Battles that it was submitting fraudulent invoices to the Government. Custer Battles asked its “Corporate Integrity Officer” to report. This is what he found:

Indicated in this report are enormous areas of discrepancies and irregularities that lend themselves to elements of *criminal fraud*. . . . [A] broader issue of *criminal intent* has become evident. . . . The documents are prima facie evidence of a course of conduct consistent with *criminal activity and intent*. The concerns and issues raised by [Whistleblower] Mr. Baldwin in his response to my e mail significantly reinforces my concern that *criminal activity* transpired here in the MX [Money Exchange] Project. . . . [T]hese leases were the cornerstone of identifying a *clear and definite pattern of deception and misrepresentation* while the MX Program was in operation. Further discussions and decisions concerning the MX Project should be coordinated through the corporate criminal defense attorney.

Despite this, the Bush Administration continued to award new contracts and approve new subcontracts to Custer Battles for almost a year after the spreadsheet fell in its hands, all the way until the last day of September 2004.

Our whistleblowers filed a lawsuit under seal under the Civil False Claims act at the beginning of 2004. We immediately provided a copy to the Attorney General. We know that both FBI and Defense Criminal Investigative Service agents investigated these allegations. The U.S. Air Force has said, in a formal finding, that there is “adequate evidence” that Custer Battles has defrauded the Government, and that this evidence justifies shutting off the flow of government contracts to Custer Battles.

We estimate that the Government’s total losses are tens of millions of dollars. Yet for more than a year, the Bush Administration has done nothing to recover these ill-gotten gains from Custer Battles, much less bring the wrongdoers to justice. In fact, in October 2004, in our False Claims Act case — the very purpose of which is to recover this money on behalf of the U.S. Government — the Bush Administration declined to participate in the case. When we asked why, the Assistant U.S. Attorney indicated that the Bush Administration had decided, as a matter of policy, that cheating the Coalition Provisional Authority was not the same as cheating the United States. In an interview with two federal agents, Scott Custer suggested a different answer: “Battles is very active in the Republican Party and speaks to individuals he knows at the White House almost daily.”

It is perhaps understandable why, a few weeks before a close presidential election, the Bush Administration might to try to make it seem like the Coalition Provisional Authority was a multinational “coalition of the willing” rather than simply an appendage to the U.S. Military. But does this justify letting corrupt war profiteers go scot-free?

Our Judge has invited the Bush Administration to state by this coming Friday, February 18, 2005, once and for all, whether it believes that fraud against the CPA cannot be punished. To this date, the Bush Administration hasn’t even said whether it will respond.

The fraud alleged here perpetrated by a company that the U.S. Military hired to provide *security services* in a *war zone*. If that company never has to answer these serious allegations, then perhaps the next fraud will provide the military with bombs that explode before they are dropped, flak jackets made of cheap polyester, empty fire extinguishers, or parachutes that don’t open. The False Claims Act was enacted in 1863 because, among other things, contractors back then were selling defective rifles to the Union Army. If Custer Battles can evade this law so simply, it can happen again.