



Congressman Joe Donnelly
Statement for the Record
May 25, 2011
H.R. 1540

Mr. Chair, on February 19, 2010, a constituent of mine, Marine Lance Corporal Joshua Birchfield of Westville, Indiana, was shot and killed while on patrol by a local Afghan security contractor who had been hired, with six other colleagues, to guard a nearby construction project and road. The construction project and the security contractor were funded by the U.S. Department of Defense. While the shooter was immediately apprehended and would later admit to the shooting and be sentenced to 15 years in prison by an Afghan court, I am deeply troubled by the fact that insufficient contract oversight by our government may have led to this tragedy.

According to NCIS documents obtained by the Birchfield family through a Freedom of Information Act request, the seven Afghan guards taken into custody were found in possession of five ounces of opium and some of them were presenting symptoms of opium withdrawal. Several of the guards admitted that they had little to no training, and most of them stated they had none of the permits required for their jobs. Their employer, a subcontractor providing security for the project, admitted his employees were not properly licensed and that he did not know where he was supposed to obtain licenses.

Last month, the Department of Defense confirmed to me that the project these security guards were subcontracted under was funded by U.S. funds known as Commander's Emergency Response Program funds, or "CERP".

It appears clear that proper oversight of these security contractors paid by our government did not happen. These private security contractors were operating without the licenses that are required of private security contractors in Afghanistan, they were not properly trained, and several of them were drug users. I cannot say that had there been better oversight by our government this tragedy would have been avoided, but we owe it to our service men and women in harm's way to get this right. I believe DoD must significantly improve their oversight of private security contractors.

According to the Congressional Research Service, right now the DoD relies on 19,000 private security contractors in Afghanistan, a force equal to almost 20% of all U.S. military personnel in that country. Not only is the ratio of armed contractors to U.S. forces higher in Afghanistan than it ever was in Iraq where we had many more troops, 95% of the security contractors in Afghanistan are Afghans, a much, much higher reliance on local security contractors than Iraq. Meanwhile, the performance and reliability of Afghan security contractors is spotty and continues to be. If we are going to continue to rely on local security contractors in Afghanistan, we must make oversight a top priority. And that means ensuring that rigorous oversight on the ground is getting done.

The Congress and GAO have been critical of DoD's security contract oversight for years. In the 2008 NDAA, Congress directed DoD and the State Department to prescribe regulations for the use of private security contractors in an area of combat operations by May of 2008. In 2009,

GAO recommended specific steps that DoD implement to satisfactorily comply with Congress' directive on security contractors, including the screening, training, equipping and oversight of contractors. Currently, the GAO considers all of these recommendations as either only partially implemented or not implemented at all.

Further, the DoD has acted to try to improve oversight, but the fact is, I don't think they are focusing enough properly trained personnel on oversight maintenance. Many contract officers are not even in the same country as the project they are responsible for managing. And often the responsibility for on the ground oversight falls to a service member designated as a Contracting Officer's Representative (COR) whose primary responsibility likely has nothing to do with contracting and who may have had only minimal contract oversight training before arriving in the field. DoD needs to do more than come up with plans and guidance, they need to ensure that sufficient personnel who are adequately trained are in place and actually doing their job, especially when the contracts involve paying and arming Afghan security personnel in a theatre of combat.

My amendment to H.R. 1540 does two things which I believe are crucially important but also should not be difficult for DoD to comply with.

First, my amendment directs the Secretary of Defense to establish a Quality Assurance Surveillance Plan which would set uniform standards for contract oversight plans for all private security contracts funded by DoD in Afghanistan and in any future contingency. Beyond just ensuring that paperwork is in order, all security contracts would require a plan clearly laying out an oversight strategy and designating sufficient personnel to exercise necessary oversight to ensure contract performance and reliability.

Second, my amendment directs the Secretary of Defense to designate a single official in the country of operations with the responsibility of reviewing private security contracts to ensure compliance with the Quality Assurance Surveillance Plan. Further, this official must certify that they have reviewed the oversight plan for a security contract, that the oversight plan is appropriate for that contract, that there is an appropriate number of appropriately trained personnel available to oversee that contract, and confirm that any and all licenses and permits required of a security contractor and its employees have been reviewed and verified as current and authentic.

The Congressional Budget Office has reviewed my amendment and has advised me that it does not affect direct spending or discretionary authorizations.

Mr. Chair, if we have the time, money and resources to bid and hire private security contractors, and if these private security contractors are essential to successfully executing military operations and reconstruction in Afghanistan, then we should make sure that we've clearly planned how we will maximize contract performance and ensure safety and reliability, and make sure someone is held accountable for seeing that this is actually carried out.