

****Preliminary Transcript****

1 RPTS KESTERSON

2 DCMN BURRELL

3 HEARING ON WASTE, FRAUD AND ABUSE

4 AT K-TOWN: ONE YEAR LATER

5 Wednesday, June 25, 2008

6 House of Representatives,

7 Committee on Oversight and

8 Government Reform,

9 Washington, D.C.

"This is a preliminary transcript of a Committee Hearing. It has not yet been subject to a review process to ensure that the statements within are appropriately attributed to the witness or member of Congress who made them, to determine whether there are any inconsistencies between the statements within and what was actually said at the proceeding, or to make any other corrections to ensure the accuracy of the record."

10 The committee met, pursuant to call, at 10:05 a.m., in
11 Room 2154, Rayburn House Office Building, Hon. Henry A.
12 Waxman [chairman of the committee] presiding.

13 Present: Representatives Waxman, Cummings, Kucinich,
14 Tierney, Watson, Sarbanes, Davis of Virginia, Shays, Platts,
15 Duncan, and Sali.

16 Staff Present: Phil Barnett, Staff Director and Chief
17 Counsel; Kristin Amerling, General Counsel; Karen Lightfoot,
18 Communications Director and Senior Policy Advisor; David
19 Rapallo, Chief Investigative Counsel; John Williams, Deputy
20 Chief Investigative Counsel; Margaret Daum, Counsel; Earley

21 | Green, Chief Clerk; Jen Berenholz, Deputy Clerk; Caren
22 | Auchman, Press Assistant; Ella Hoffman, Press Assistant;
23 | Lawrence Halloran, Minority Staff Director; Steve Castor,
24 | Minority Counsel; Ali Ahmad, Minority Deputy Press Secretary;
25 | Patrick Lyden, Minority Parliamentarian and Member Services
26 | Coordinator; Emile Monette, Minority Professional Staff
27 | Director; and John Ohly, Minority Professional Staff Member.

28 Chairman WAXMAN. The committee will please come to
29 order.

30 On June 28, 2007, almost exactly a year ago today, this
31 committee held an oversight hearing on the Defense
32 Department's single largest construction project in the
33 world, a massive 840,000 square foot mall being built in
34 Germany called the Kaiserslautern Military Community Center,
35 also referred to as the K-Town Mall. This facility will have
36 an 8-story, 350-room hotel. It will have a movie theater
37 with stadium seating, large retail areas. A military
38 spokeswoman called the K-Town Mall a smaller version of the
39 Mall of America in Minnesota.

40 Last year, GAO testified that this project was in
41 serious trouble. They told us it was millions of dollars
42 over budget, had no validated cost estimate and had no
43 working completion date. GAO told us about the mall's
44 defective and continuously leaking roof, which was going to
45 cost millions of dollars to repair, and GAO told us about
46 serious construction mistakes, like kitchen exhaust ducts
47 sealed with flammable insulation.

48 We also obtained a report from the Air Force Audit
49 Agency detailing 35 different deficiencies in the Air Force's
50 management of this project, and we were informed of several
51 ongoing criminal investigations of U.S. officials involved in
52 this project, including one official who fled to Dubai

53 | instead of agreeing to testify before this committee.

54 | During last year's hearing, officials from the Air Force
55 | essentially told us not to worry. They said that despite
56 | problems identified by GAO and the auditors, the project was
57 | under control. They promised that even if the project came
58 | in late, it would still be under budget.

59 | Part of good congressional oversight is sustained
60 | congressional oversight. So today we are having our second
61 | hearing on the K-Town Mall. Today we will hear from the GAO
62 | team that has been tracking this project closely.
63 | Unfortunately, their testimony will sound like the movie
64 | Groundhog Day. The project has gone further over budget and
65 | has been further delayed. Here is what today's GAO report
66 | says: With few visible changes, no reliable construction
67 | completion date, rising repair costs and continuing
68 | construction quality problems, the KMCC will continue to be a
69 | high-risk project.

70 | What is most troubling about this year's report is that
71 | new problems are compounding the old ones. In addition to
72 | the faulty roof and the dangerous kitchen exhaust ducts, GAO
73 | has now identified long cracks in the concrete foundation of
74 | the building. Nobody yet knows the full extent of this
75 | damage, how long it will take to repair or how much these
76 | repairs will cost.

77 | Another new concern that GAO raises is that the Air

78 Force is not counting millions of dollars of costs in its
79 budget estimates. These include costs to design portions of
80 the mall, cost to rework deficiencies like the roof and the
81 foundation and costs to assign additional Air Force personnel
82 to this project.

83 GAO has also raised serious questions about \$38 million
84 in German funds that have been provided for the project.
85 Although the Air Force believes this is a grant from the
86 German Government, the Germans believe apparently that it is
87 only a loan and they expect to be repaid.

88 Finally, GAO reports that the criminal investigations of
89 U.S. officials involved with this project, quote, have
90 matured significantly since our last hearing and that several
91 officials are being investigated for dereliction of duty and
92 bribery.

93 Here is the bottom line. This facility was supposed to
94 cost \$120 million and be open by 2006. But today, GAO
95 projects that the project will cost well over 200 million and
96 may not be open for business until sometime in 2009. Even at
97 that point, GAO predicts it will likely take years before all
98 issues related to this project, including litigation and
99 potential construction quality problems, are resolved.

100 As a result, 50,000 servicemen and women who live and
101 work on or near Ramstein Air Base lack modern facilities.
102 Soldiers traveling to and from Iraq and Afghanistan are

103 | deprived of promised amenities. And service members around
104 | the world have reduced funding for morale, welfare and
105 | recreation.

106 | At yesterday's hearing on Afghan ammunition contracts, I
107 | said that over the last 8 years there has been a complete
108 | breakdown in the procurement process. Today's hearing is
109 | more evidence of a pervasive dysfunction in Federal
110 | contracting. And this hearing is particularly frustrating
111 | because the glaring problems that we identified a year ago
112 | have not been fixed. We need accountability for problems
113 | like the ones that we have found at the K-Town Mall, and
114 | those responsible ought to face appropriate consequences.

115 | We urgently need a new approach that welcomes oversight
116 | and demonstrates a commitment to fixing problems and
117 | protecting taxpayers from waste, fraud and abuse.

118 | I look forward to working with all of my colleagues to
119 | make this goal a reality, and I want to recognize Mr. Davis.

120 | [Prepared statement of Mr. Waxman follows:]

121 | ***** INSERT 1-1 *****

HENRY A. WAXMAN, CALIFORNIA,
CHAIRMAN

TOM LANTOS, CALIFORNIA
EDOLPHUS TOWNS, NEW YORK
PAUL E. KANJORSKI, PENNSYLVANIA
CAROLYN B. MALONEY, NEW YORK
ELIJAH E. CUMMINGS, MARYLAND
DENNIS J. KUCINICH, OHIO
DANNY K. DAVIS, ILLINOIS
JOHN F. TIERNEY, MASSACHUSETTS
WM. LACY CLAY, MISSOURI
DIANE E. WATSON, CALIFORNIA
STEPHEN F. LYNCH, MASSACHUSETTS
BRIAN HIGGINS, NEW YORK
JOHN A. YARMUTH, KENTUCKY
BRUCE L. BRALEY, IOWA
ELEANOR HOLMES NORTON,
DISTRICT OF COLUMBIA
BETTY McCOLLUM, MINNESOTA
JIM COOPER, TENNESSEE
CHRIS VAN HOLLEN, MARYLAND
PAUL W. HODES, NEW HAMPSHIRE
CHRISTOPHER S. MURPHY, CONNECTICUT
JOHN P. SARBANES, MARYLAND
PETER WELCH, VERMONT

ONE HUNDRED TENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051
FACSIMILE (202) 225-4784
MINORITY (202) 225-5074

www.oversight.house.gov

Go 177001-1

TOM DAVIS, VIRGINIA,
RANKING MINORITY MEMBER

DAN BURTON, INDIANA
CHRISTOPHER SHAYS, CONNECTICUT
JOHN M. McHUGH, NEW YORK
JOHN L. MICA, FLORIDA
MARK E. SOUDER, INDIANA
TODD RUSSELL PLATTS, PENNSYLVANIA
CHRIS CANNON, UTAH
JOHN J. DUNCAN, JR., TENNESSEE
MICHAEL R. TURNER, OHIO
DARRELL E. ISSA, CALIFORNIA
KENNY MARCHANT, TEXAS
LYNN A. WESTMORELAND, GEORGIA
PATRICK T. McHENRY, NORTH CAROLINA
VIRGINIA FOXX, NORTH CAROLINA
BRIAN P. BILBRAY, CALIFORNIA
BILL SALI, IDAHO
JIM JORDAN, OHIO

Opening Statement of Rep. Henry A. Waxman Chairman, Committee on Oversight and Government Reform Waste, Fraud, and Abuse at K-Town: One Year Later June 25, 2008

On June 28, 2007, almost exactly one year ago today, this Committee held an oversight hearing on the Defense Department's single largest construction project in the world: a massive 840,000 square foot mall being built in Germany called the Kaiserslautern Military Community Center (KMCC), also referred to as the K-Town Mall.

This facility will have an eight-story 350-room hotel, a movie theater with stadium seating, and large retail areas. A military spokeswoman called the K-Town Mall "a smaller version of the Mall of America in Minnesota."

Last year, GAO testified that this project was in "serious trouble." They told us it was millions of dollars over budget, had no validated cost estimate, and had no working completion date. GAO told us about the mall's defective and continuously leaking roof, which was going to cost millions of dollars to repair. And GAO told us about serious construction mistakes like kitchen exhaust ducts sealed with flammable insulation.

We also obtained a report from the Air Force Audit Agency detailing 35 different deficiencies in the Air Force's management of this project. And we were informed of several ongoing criminal investigations of U.S. officials involved with this project, including one official who fled to Dubai instead of agreeing to testify before this Committee.

During last year's hearing, officials from the Air Force essentially told us not to worry. They said that despite problems identified by GAO and the auditors, the project was under control. They promised that even if the project came in late, it would be under budget.

Part of good congressional oversight is sustained congressional oversight. So today, we are having our second hearing on the K-Town Mall.

Today we will hear from the GAO team that has been tracking this project closely. Unfortunately, their testimony will sound like the movie Groundhog Day. The project has gone further over budget and has been further delayed. Here is what today's GAO report says:

122 Mr. DAVIS OF VIRGINIA. Thank you, Mr. Chairman. Good
123 morning and thank you for returning to the subject of the Air
124 Force's major construction project in Germany dubbed the
125 K-Town Mall where I had the opportunity to visit a few months
126 ago. This building has become such a lingering and costly
127 mess, I think perhaps we should start calling it the Capitol
128 Visitor Center NATO annex.

129 A year ago we heard testimony on significant problems
130 plaguing the massive, multi-purpose complex designed to
131 feature retail, hotel and entertainment space for use by
132 American personnel stationed in Germany and for others
133 passing through Ramstein en route to and from other parts of
134 the world. At that hearing, the GAO witnesses said
135 mismanagement and lack of oversight had resulted in
136 significant cost overruns, schedule delays and construction
137 deficiencies. While any foreign construction effort is bound
138 to involve unusual complexities and risks, those in charge of
139 this development seem to have fallen into all of those
140 inherent traps, and then they kept digging. Predictable
141 difficulties were compounded by inadequate and unfocused
142 high-level leadership early on, poor planning, badly designed
143 requirements and an inadequate number of trained personnel
144 overseeing the project.

145 Now, that was last year. GAO went back to K-Town
146 earlier this year and the new observations they bring us

147 | today don't describe a clear path out of this expensive
148 | international morass. Steps by the Air Force to augment
149 | oversight staff and strengthen internal controls have helped
150 | to gain some measure of control over the project, but those
151 | measures aren't enough to untangle the knot formed by--and we
152 | need to understand this--multiple funding sources, vaguely
153 | worded international agreements, and the need to navigate
154 | diplomatic process to resolve complex disputes involving
155 | German contractors and U.S. dollars.

156 | To break the logjam that stalled the project for so
157 | long, the German Government provided 25 million euro, or
158 | almost \$39 million, to get construction workers back on the
159 | job. While all parties recognize the influx of money was
160 | necessary to get the project going and the status of that
161 | funding is not altogether clear, GAO has characterized it as
162 | a loan. The Air Force claims money--the U.S. won't have to
163 | pay back the money. The bilateral agreement between the U.S.
164 | and the German Governments calls the money prefinancing. No
165 | one is quite sure what it means. I hope this hearing will
166 | shed some additional light on that. But this lingering
167 | confusion about key issues doesn't bode well for completing
168 | construction by the end of this year, a forecast both the Air
169 | Force and the GAO already consider highly unlikely.

170 | In any case, we have a great deal of money invested in
171 | the project and substantial funds remain at risk. We need to

172 | be sure this project is completed properly and that future
173 | projects don't fall prey to the same oversight lapses and
174 | mistakes that steered this project into the ditch and kept it
175 | there.

176 | I hope this hearing will focus on what needs to be done
177 | to get this project back on track and the hard lessons that
178 | the Air Force and others need to learn to ensure the
179 | integrity of any future agreements governed by the terms of
180 | the current status of force agreement in Germany. And I
181 | think that is what is critical, is that you have
182 | international agreements here that have made this far more
183 | complex than ordinary--being just a government contracts
184 | problem.

185 | Investigators from the GAO are here today to provide
186 | their views on this issue. We commend them for their hard
187 | work. We also value the experience and the perspectives that
188 | the Air Force witnesses bring to this discussion. Much is at
189 | stake in terms of the U.S. tax dollars and in terms of
190 | providing our troops with the best possible overseas
191 | accommodations while deployed overseas. We look forward to
192 | today's testimony and to a frank and constructive discussion.

193 | Thank you, Mr. Chairman.

194 | [Prepared statement of Mr. Davis of Virginia follows:]

195 | ***** INSERT 1-2 *****

ONE HUNDRED TENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

Majority (202) 225-5051
Minority (202) 225-5074

Statement of Rep. Tom Davis
Ranking Republican Member
Committee on Oversight and Government Reform
“Waste, Fraud, and Abuse at K-Town: One Year Later”
June 25, 2008

Good morning. Thank you Mr. Chairman for returning to the subject of the Air Force’s major construction project in Germany, dubbed the “K-Town Mall.” This building has become such a lingering, costly mess I think perhaps we should start calling it the Capitol Visitor Center’s NATO Annex.

A year ago, we heard testimony on significant problems plaguing the massive multi-use complex designed to feature retail, hotel and entertainment space for use by American personnel stationed in Germany and for others passing through Ramstein en route to and from other parts of the world. At that hearing, Government Accountability Office (GAO) witnesses said mismanagement and lack of oversight had resulted in significant cost overruns, schedule delays, and construction deficiencies. While any foreign construction effort is bound to involve unusual complexities and risks, those in charge of this development seem to have fallen into all those inherent traps ... and kept digging. Predictable difficulties were compounded by inadequate and unfocused high-level leadership, poor planning, badly designed requirements, and an inadequate number of trained personnel overseeing the project.

GAO went back to K-Town earlier this year, and the new observations they bring us today don’t describe a clear path out of this expensive international morass. Steps by the Air Force to augment oversight staff and strengthen internal controls helped regain some measure of control over the project. But those measures may not be enough to untangle the knot formed by multiple funding sources, vaguely worded international agreements, and the need to navigate diplomatic processes to resolve complex disputes involving German contractors and U.S. dollars.

To break the logjam that stalled the project for so long, the German government provided €25 million (or almost \$39 million) to get construction workers back on the job. While all parties recognize the influx of money was necessary to get the project going again, the status of that funding is not altogether clear. GAO characterizes it as a “loan.” But the Air Force claims the U.S. will not have to pay back any of the money. The bilateral agreement between the U.S. and German governments calls the money “pre-financing.” But no one seems to know exactly what that means. Such lingering confusion about key issues doesn’t bode well for completing construction by the end of this year, a forecast both the Air Force and GAO already consider highly unlikely.

196 Chairman WAXMAN. Thank you, Mr. Davis. We are pleased
197 to welcome the following witnesses to our hearing today.
198 Judith Garber is Deputy Assistant Secretary of the European
199 and Eurasian Affairs Bureau at the Department of State.
200 Major General Mark E. Rogers is the Vice Commander of the
201 United States Air Forces in Europe. Greg Kutz is the
202 Managing Director of the Office of Forensic Audits and
203 Special Investigations at the Government Accountability
204 Office. Bruce A. Causseaux is a Senior Level Contract and
205 Procurement Fraud Specialist in the Office of Forensic Audits
206 and the Special Investigations at GAO. And Terrell G. Dorn
207 is the Director of Physical Infrastructure at GAO.

208 The committee also requested testimony from Hubert
209 Heimann, the Managing Director of LBB, the German Government
210 office that supervises the KMCC construction project. Mr.
211 Heimann wrote the committee a letter stating that he would
212 not be able to participate in today's hearing. I ask
213 unanimous consent that Mr. Heimann's letter be placed in the
214 hearing record. And without objection, that will be the
215 order.

216 [The information follows:]

217 ***** COMMITTEE INSERT *****

218 Chairman WAXMAN. We welcome all of our panelists,
219 witnesses today. We welcome all of you today to testify. It
220 is the policy of this committee that all witnesses testify
221 under oath. I'd like to ask you if you would, please, rise
222 and raise your right hand.

223 [Witnesses sworn.]

224 Chairman WAXMAN. The record will indicate that each of
225 the witnesses answered in the affirmative. Your prepared
226 statements will be made part of the record in full. We would
227 like to ask you, if you would, to limit your oral
228 presentation to 5 minutes. And we will have a clock. It
229 will be green. At the last minute it will turn yellow. And
230 then after the 5 minutes is up, it will turn red. And when
231 you see the red light, we would like to ask you to conclude.

232 Ms. Garber, why don't we start with you? There is a
233 button on the base of the mic. Be sure to press it and pull
234 the mic close enough to you.

235 | STATEMENT OF JUDITH GARBER, DEPUTY ASSISTANT SECRETARY OF
236 | STATE, BUREAU OF EUROPEAN AND EURASIAN AFFAIRS, U.S.
237 | DEPARTMENT OF STATE

238 | Ms. GARBER. I'm pleased to be here today and I'll be
239 | ready to answer any questions. I do not have an oral
240 | statement.

241 | Chairman WAXMAN. You don't have a statement?

242 | Ms. GARBER. No.

243 | Chairman WAXMAN. Okay. General Rogers.

244 STATEMENT OF MAJOR GENERAL MARC E. ROGERS, USAF, VICE
245 COMMANDER, UNITED STATES AIR FORCES IN EUROPE

246 General ROGERS. Thank you, Mr. Chairman. Members of
247 the committee, the United States Air Forces in Europe
248 appreciates the opportunity to appear today and update you on
249 the KMCC. This facility is important to ensure that future
250 retail goods, services, morale and recreation activities and
251 mission-related lodging facilities are available to our
252 military members and their families who live in the
253 Kaiserslautern military community. These services are all
254 currently available to our forces, but the quality of service
255 is hampered by early Cold War era facilities. They are old,
256 dispersed, have high maintenance costs, frustrating parking
257 deficiencies and space limitations.

258 I first became engaged on the KMCC in December of 2006
259 when I chaired the KMCC Oversight Council for the first time
260 as the new Vice Commander of the USAFE. By that time, the
261 project was months late, quality defects had been identified
262 and arguments were ongoing between the USAFE Project Office
263 and LBB, the construction agent, because USAFE was not paying
264 invoices and contractors were continuing to walk off the site
265 due to nonpayment.

266 Additionally, I was briefed on a draft audit by the Air

267 Force Audit Agency that USAFE personnel had improperly paid
268 invoices and that the Air Force Office of Special
269 Investigations was investigating two personnel for possible
270 wrongdoing. The Commander of USAFE at that time directed me
271 to take charge of an effort to do three things: Investigate
272 the reason for the delays and failures in KMCC; find out who
273 is accountable for any failures, mismanagement or wrongdoing
274 and; three, lead an effort with our German partners to find a
275 strategic solution to completing the KMCC.

276 I found that USAFE personnel had indeed improperly paid
277 invoices. According to the GAO, those funds have been
278 recovered. Investigations continue; and once complete,
279 responsible individuals will be held accountable.

280 I also found that Air Force internal controls found the
281 initial wrongdoing, properly identified quality defects, and
282 preserved our taxpayer money. And I found many previous
283 decisions by USAFE leaders were fortuitous and positioned us
284 to keep costs under control and enforce quality performance.

285 We stood up a task force and have been conducting root
286 cause analysis on about 35 different potential causes for
287 delays and failures. This analysis is complex and continues;
288 however, many conclusions have already proven useful in
289 working with our German partners for solutions.

290 Some work has continued over the past years--past year,
291 and I brought a few photos to show there are bright spots in

292 | the progress. So if you'll put up the first photo.

293 | Just so we all know, Mr. Chairman, what we're talking
294 | about, is there is an image of the KMCC. The tall portion,
295 | of course, is the hotel portion and all of the green area you
296 | see is the green roof over the mall portion. It is a very
297 | complex and, as you said, huge facility, reputed to be DOD's
298 | largest single facility project in the world.

299 | Next slide, please. There is an image of the front
300 | entry to the mall.

301 | Next. That is an image of the hotel portion as it
302 | stands today.

303 | Next, please. That is an image inside the hotel lobby.

304 | Next. That is one of the rooms in the hotel that has
305 | been outfitted with furniture. All of the rooms are
306 | essentially complete. There are 27 rooms that have finishes
307 | to be done and we've outfitted one with furniture for
308 | visitors who want to see what this is going to look like.

309 | Next. That is the Ramstein tickets and tours office,
310 | one of the morale welfare and recreation offices in the
311 | building.

312 | Next. This is the mall concourse showing the entryways
313 | to some of the vendor shops.

314 | Next. And that photo is 90 degrees out, but it is
315 | office space in the building.

316 | Next. I think that is the last slide. So there has

317 | been some progress over the past year, although minimal
318 | because contractors were essentially trying to not be in
319 | default of a contract. German leadership has worked hard to
320 | pick up the management and administrative train wreck of the
321 | KMCC and get construction on track and, due to their personal
322 | leadership, both Federal and state level, is now picking up
323 | more steam with more workers on site and contractors have
324 | signed up to a new schedule.

325 | We want to thank our German counterparts for
326 | demonstrating commitment to our great partnership by standing
327 | up to responsibilities under the international agreement,
328 | stepping out with strong leadership, and I'm convinced the
329 | German Government wants to get this facility finished as much
330 | as we do.

331 | There has been numerous rumors surrounding the cost and
332 | quality, extended delays on this project in the past year.
333 | And since the committee's hearing, we have strengthened the
334 | management, corrected all the discrepancies and the GAO has
335 | not found any new ones. We are frustrated and disappointed,
336 | but we're doing everything we can, sir, to get this done.

337 | That concludes my opening statement. And as you
338 | mentioned, I have a written statement for the record. We
339 | appreciate your interest, sir. Thank you.

340 | [Prepared statement of General Rogers follows:]

341 | ***** INSERT 1-3 *****

342 Chairman WAXMAN. Thank you very much, General Rogers.
343 Mr. Kutz, why don't we hear from you next and your
344 colleagues? Just a minute.

345 Mr. KUTZ. Mr. Dorn can start and I'll finish.

346 STATEMENT OF TERRELL G. DORN, DIRECTOR, PHYSICAL
347 INFRASTRUCTURE, GOVERNMENT ACCOUNTABILITY OFFICE; GREGORY D.
348 KUTZ MANAGING DIRECTOR, FORENSIC AUDITS AND SPECIAL
349 INVESTIGATIONS, GOVERNMENT ACCOUNTABILITY OFFICE; AND BRUCE
350 A. CAUSSEUX, SENIOR LEVEL CONTRACT AND PROCUREMENT FRAUD
351 SPECIALIST, FORENSIC, GOVERNMENT ACCOUNTABILITY OFFICE

352 | STATEMENT OF TERRELL G. DORN

353 | Mr. DORN. Thank you, Mr. Chairman, Mr. Davis, members
354 | of the committee.

355 | Construction projects can be broken down into three
356 | fundamental areas: Cost, schedule and quality. Optimization
357 | of those three areas is the goal of good project management.
358 | But in the case of KMCC, none of the three went Air Force's
359 | way. There have been serious quality issues, escalating and
360 | still uncertain project costs, and a schedule that is likely
361 | to deliver the project at least 3 years late. This morning I
362 | will cover the construction quality and schedule issues, and
363 | then Mr. Kutz will discuss the cost issues.

364 | A year ago, the serious KMCC quality issues we discussed
365 | included a defective roof and kitchen exhaust duct work that
366 | did not comply with U.S. Fire Code standards. Both needed to
367 | be ripped out and replaced. Schedule-wise, no one knew when
368 | the project would be finished, and in fact the contractors
369 | had all but abandoned the site. Project management and
370 | internal controls were inadequate and there were allegations
371 | of fraud. Since then, there has been a lot of progress in
372 | some areas and almost none in others.

373 | First the good news. Since the committee's last
374 | oversight hearing, the Air Force has made great progress in

375 | addressing internal controls and has quadrupled the size of
376 | its KMCC Project Management Office with particular focus on
377 | staff training and acquisition management, construction
378 | management and financial management. In addition, General
379 | Rogers, assisted by State Department, met with high-level
380 | German officials to cooperatively work out the details
381 | necessary to improve oversight of the project by LBB, who is
382 | the German Government's construction agent in
383 | Rheinland-Pfalz. They also laid the groundwork for the
384 | German Government to pay its contractors and to get them back
385 | to work.

386 | Now the not so good news. The new internal controls and
387 | the new processes and the new Project Management Office have
388 | hardly been tested because insignificant progress has been
389 | made in construction over the last 12 months. Our review of
390 | the latest construction schedule furnished to Air Force by
391 | LBB was not encouraging. The schedules for the mall portion
392 | and the hotel portion of the project were not integrated to
393 | show how they might affect each other. It was also not clear
394 | from the schedule what contractor resources, such as crew
395 | sizes, were necessary to keep the project on time.

396 | The project's critical path, which is supposed to show
397 | what tasks need to be completed by certain dates to keep the
398 | project on schedule, was not clear. However, it was clear
399 | from the schedule that some tasks were already late. Given

400 | those issues, finishing all construction and fire alarm
401 | testing in the mall and hotel by the end of the January 2009
402 | is very unlikely. And given that AAFES may need as many as 4
403 | months to take the building from the Air Force's definition
404 | of complete to the day the first customer buys a pair of
405 | shoes, it is foreseeable that we may be waiting at least one
406 | year from today before the buildings are fully occupied.

407 | Here are a few slides to better illustrate the lack of
408 | construction progress over the last year. This first slide
409 | is a side-by-side comparison of the food court area just
410 | inside the mall's entrance. On the left 2007 and on the
411 | right 2008.

412 | This next slide shows a similar lack of progress in the
413 | mall's name-brand restaurant. If progress can be defined as
414 | ripping out defective work, then some progress has been made
415 | on the kitchen exhaust duct work and the roof. Demolishing
416 | and replacing the KMCC's roof began this spring, but the work
417 | is extensive, must be done in sections, and will not be
418 | completed for some time.

419 | In addition, we have identified that the KMCC project
420 | was not an isolated failure. Several other projects
421 | constructed more or less concurrently for the Air Force by
422 | LLB Kaiserslautern also experienced significant costs,
423 | schedule and quality issues.

424 | On this slide, you will see a logistics distribution

425 | facility designed to be an open bay and to not have interior
426 | columns. It now has 43 temporary columns running down the
427 | center of the building to keep the roof from collapsing. A
428 | forklift operator running into one of those columns and
429 | collapsing a portion of the roof was the nightmare scenario
430 | of one official we interviewed.

431 | This last photo is from our return visit to Ramstein in
432 | March of this year. It shows large ponding that formed next
433 | to a runway extension that was built by LBB as part of the
434 | Rheinland transition program. The ponding not only attracted
435 | waterfowl, which is something you don't want around an
436 | airfield, but also repeatedly shorted out the runway lights,
437 | causing the possible diversion of aircraft to other bases.

438 | Clearly LBB's recent track record of construction for
439 | the Air Force indicates that increased oversight to protect
440 | U.S. tax dollars is required now and in the foreseeable
441 | future.

442 | And now Mr. Kutz will highlight the KMCC's cost issues.

443 | STATEMENT OF GREGORY D. KUTZ

444 | Mr. KUTZ. Given the problems Mr. Dorn just described,
445 | you might be wondering what the total cost of this project
446 | will be. Unfortunately, because certain costs have not been
447 | tracked by the Air Force, nobody will ever fully know. If
448 | you could put the pie chart up for us.

449 | This pie chart on the monitor shows the elements of
450 | total cost, including that red slice that is referred to as
451 | unknown costs. The amounts shown are estimates by the Air
452 | Force and the German construction agency of the total U.S.
453 | dollar cost at completion. The biggest piece of the pie or
454 | the black piece there is construction costs. This \$163
455 | million represents primarily charges for trade contractor
456 | work. Other costs shown relate to foreign currency, rework
457 | design and other contracted services and furniture and
458 | equipment. When added up, the total estimate for this amount
459 | or these amounts here is \$214 million. The unknown or the
460 | red piece there represents millions of dollars of
461 | contingencies and other costs that are not tracked as part of
462 | the KMCC.

463 | For example, the cost of Air Force staff overseeing the
464 | project are not captured. Other unknown include hindrance
465 | claims and estimates of cost to repair the new cracks in the

466 floor. In addition to the \$214 million estimate and the
467 unknowns there are other real costs resulting from the
468 problems and delays. For example, for every month of delay,
469 it is estimated that \$500,000 of profits are lost from
470 operation of the shopping mall and the restaurants. In
471 total, if the project opens 3 years late, which is the best
472 case scenario, these lost profits and additional costs will
473 approach \$20 million.

474 As the chairman mentioned, last year the Air Force
475 testified that KMCC was under budget. Many of the members of
476 the committee expressed concern and wondered how that could
477 possibly be true. Last week, Air Force officials briefed
478 your staffs and told you the same thing. Let me clarify some
479 of the facts related to this representation.

480 For this project, what you have is a 35 percent increase
481 in the euro-dollar exchange rate, at least 3 years of delay,
482 over \$10 million of rework and millions of dollars of
483 improper payments. Further, funding partner records reveals
484 substantial cost overruns. For example, the largest funding
485 source for KMCC is the Army and Air Force Exchange Service.
486 According to their records, their piece of the construction
487 pie you see alone is \$24 million, or 45 percent over budget.
488 Their worst case estimate is a \$59 million, or 110 percent
489 cost overrun.

490 Clearly, KMCC will cost substantially more than the Air

491 Force and its funding partners envisioned at the beginning of
492 this project. Their budget number they are speaking about,
493 it represents the congressionally authorized spending limits
494 for the construction piece of the pie.

495 Last year I testified that KMCC was from the beginning a
496 high risk overseas project with minimal Air Force oversight.
497 As Mr. Dorn mentioned, Air Force has since your hearing last
498 year substantially increased its oversight. Improvements
499 include more and better trained staff, standardized
500 procedures and enhanced disbursement controls. We believe
501 these improved controls reduce the risk of fraudulent and
502 improper payments.

503 In conclusion, the people most impacted by the problems
504 at KMCC are military members and their families. The tens of
505 millions of dollars of cost overruns and lost profits have
506 reduced the money that is available for morale, welfare and
507 recreation programs worldwide. We are encouraged that the
508 Air Force has beefed up its oversight of this project. Given
509 the problems with other large projects at Ramstein, we
510 believe they should provide this enhanced oversight for all
511 future projects.

512 Mr. Chairman, this ends our statement. We look forward
513 to your questions.

514 Chairman WAXMAN. Thank you very much. Mr. Causseaux
515 you are here to answer questions?

516 | Mr. CAUSSEAUX. They took care of it.

517 | [Prepared statement of Messrs. Kutz, Dorn, and Causseaux

518 | follows:]

519 | ***** INSERT 1-4 *****

520 Chairman WAXMAN. Without objection, we'll proceed for
521 10 minutes on each side, 10 minutes controlled by the
522 majority and then 10 minutes controlled by the minority, and
523 I will start off the questions.

524 Mr. Kutz, when you testified before us last year, you
525 identified several severe construction deficiencies at this
526 K-Town Mall. One of these was--one of these was the roof.
527 And as you said last year, this roof had major defects and
528 leaked continually. As a result, the water was damaging
529 other aspects of the construction; is that right?

530 Mr. KUTZ. Correct.

531 Chairman WAXMAN. Okay. Now, last year you couldn't
532 tell us how much it was going to cost to fix this roof, but
533 in your report today you have a number. You say it is going
534 to cost \$10.8 million; is that right?

535 Mr. KUTZ. That is an Air Force estimate, yes.

536 Chairman WAXMAN. Okay. That is a major setback. The
537 original cost estimate for the whole project was \$131 million
538 and now it is going to cost more than 8 percent of that just
539 to repair the roof. Is it possible that this number could go
540 up?

541 Mr. KUTZ. Yes, it is. Because as I mentioned, the
542 exchange rate we are talking with for the euro--you know
543 they're being built in euros. Since your hearing last year,
544 it has gone up 16 percent and certainly materials have gone

545 up and other costs have gone up. So it is possible that it
546 will come in higher. That is yet to be determined. They are
547 in the first and second phases of a multi-phase roof
548 replacement.

549 Chairman WAXMAN. Last year, you gave us your testimony
550 and this year you found even more problems. Your report
551 describes major cracks in the concrete. And I think we have
552 a picture of an example of that. Can you tell us more about
553 these cracks? Where else did you find them?

554 Mr. DORN. These cracks were in the floor. And what you
555 are looking at is probably defective concrete. The Germans
556 working with the Air Force have a consultant, who--a proof
557 engineer they call them in Germany who is investigating to
558 see why that concrete is that way. It was probably a bad mix
559 or too much water or not enough water. At this point, I
560 would say it is not structural because it is on the floor.
561 It is like a topping slab over the existing slab. But it
562 could affect whatever floor finishes go in over top of that.

563 Chairman WAXMAN. Does this raise new concerns about
564 construction quality?

565 Mr. DORN. Absolutely, Mr. Chairman. I would recommend
566 that the--in this relative lull in construction, that the Air
567 Force and their consultants go over that facility with a fine
568 toothed comb looking for other quality control issues.

569 Chairman WAXMAN. Some of these defects we heard about

570 | last year, some of these are new. Are you worried that there
571 | might be other defects that aren't readily visible? In other
572 | words, defects that you wouldn't see just by walking around?

573 | Mr. DORN. That's correct. I do expect that they will
574 | find latent defects.

575 | Chairman WAXMAN. General, how much is it going to cost
576 | to repair the concrete?

577 | General ROGERS. Sir, I don't know. That is in the
578 | German courts and Germany is fixing the cracks.

579 | Chairman WAXMAN. I understand that contractors make
580 | mistakes, but these are serious flaws. The Air Force should
581 | have people inspecting the architectural plans before the
582 | designs are approved and they should have people overseeing
583 | construction, before things are installed incorrectly, but
584 | that didn't happen here.

585 | I would like to ask a few questions about when the
586 | K-Town mall project will be completed. General, as I
587 | understand it, the Air Force broke ground on this project in
588 | the summer of 2004. At that time, the plan was for the hotel
589 | to open in December of 2005 and the mall to open July 2006;
590 | isn't that right?

591 | General ROGERS. That sounds right, sir.

592 | Chairman WAXMAN. But this deadline was missed, so the
593 | next deadline the Air Force set was April 2007; isn't that
594 | right?

595 General ROGERS. Sir, the Air Force did not set those
596 deadlines. 2005 in December was the mission due date. But
597 when the German construction agent told us that couldn't be
598 met, they established April. We accepted that because we
599 don't control their schedule really. Later slippages were
600 the same way. They basically do this work since we have no
601 contracts with the construction workers company. So every
602 time they give us a slippage, it is a slippage. We can
603 complain, but it is up to them to respond and fix schedules.

604 Chairman WAXMAN. Mr. Kutz, according to your report,
605 the current plan is for the project to be turned over in
606 January of 2009. Is that your estimate?

607 Mr. KUTZ. No. We really don't have an estimate. We
608 haven't seen a legitimate estimate. As Mr. Dorn mentioned in
609 his opening statement, middle to late '09 is probably the
610 best case scenario where you'll actually see people shopping
611 and staying at the hotel. But there is no estimate right now
612 that we're comfortable has legitimate support behind it.

613 Chairman WAXMAN. Is that an estimate of the completion
614 of the project?

615 Mr. KUTZ. The General is going to have to answer that.
616 We don't really know if there is a legitimate estimate. I
617 don't think there is a legitimate--that may be the last date
618 that they've thrown out there, is January '09. But that
619 isn't even really when they are going to have people in.

620 That was when the keys kind of get turned over. You would
621 have to add several months to that to do the final finishing
622 and to get the restaurants ready and the hotels ready. So
623 that would be plus 3 or 4 months and that would be certainly
624 the best case scenario.

625 Chairman WAXMAN. Well, General, let me understand this.
626 The project was supposed to take 2 years, 2004 to 2006. Now
627 the best case scenario is that it will take at least 5 years,
628 2004 to 2009. Is that the situation, best case?

629 General ROGERS. That's about right, sir.

630 Chairman WAXMAN. Mr. Kutz, in your written testimony
631 you raise concerns that the project may not be finished even
632 by this newest projected completion date. And you just
633 indicated some of these a minute ago. We just don't know for
634 sure then when this project is going to be completed.

635 Mr. KUTZ. That's correct, Mr. Chairman.

636 Chairman WAXMAN. Is that correct, General?

637 General ROGERS. Yes, sir. I would say that the January
638 '09 completion date given to us by the construction agent
639 probably has more fidelity than any we have seen in over 2
640 years. But whether or not the construction agent is able to
641 actually pull that off, I don't know. I do have more faith
642 in it than in the past, but probably wouldn't bet on it being
643 complete by then. Maybe in a few months delay.

644 Chairman WAXMAN. We also want to explore the total cost

645 | of this project. We seem to have a disagreement among the
646 | panelists about how much the K-Town Mall will actually cost.
647 | General Rogers, you state in your testimony that your budget
648 | estimate is \$162.9 million, which is below the amount
649 | authorized by Congress. But, Mr. Kutz, in your report you
650 | conclude that tens of millions of dollars of other project
651 | costs are not included in the Air Force cost estimates. So
652 | let us just walk through these.

653 | General, construction costs paid out so far are \$121.7
654 | million and you estimated it will take about \$41.2 million
655 | more to complete construction. That is how you got to your
656 | number of \$162.9; isn't that right?

657 | General ROGERS. Yes, sir.

658 | Chairman WAXMAN. Mr. Kutz, you say this excludes other
659 | costs. For example, it doesn't count \$16.3 million for
660 | furniture and equipment; is that right?

661 | Mr. KUTZ. That's correct.

662 | Chairman WAXMAN. And, General, why don't you count the
663 | cost of the furniture? Are you going to get that furniture
664 | for free?

665 | General ROGERS. Oh, no, sir. That was planned all
666 | along, but it was never reported in the same channels. And
667 | questions in the past have not been about such things as
668 | furniture. They have been about construction. But the Air
669 | Force has tracked these costs all along for secondary

670 services, furniture and equipment, any other kinds of costs
671 that are normal in standing up a facility. And we don't
672 report those numbers routinely in any construction project,
673 although we have them budgeted and we know what they'll cost.

674 In September '05, we submitted a new 1391, which is the form
675 that comes over to Congress to get approval for a total cost
676 of a facility. That was approved by Congress in January
677 2006. And we said at that time that total costs for
678 construction and furniture equipment, secondary services,
679 design, the entire bit would be a \$210 million ceiling.

680 Chairman WAXMAN. Mr. Kutz, does that explain what
681 appears to be the discrepancies in your testimony?

682 Mr. KUTZ. Yeah. I think last year it was confusing,
683 too, because the Air Force representative simply focused on a
684 construction piece. But that is not the project. The
685 project does include, as you mentioned, furniture and
686 equipment. There are additional foreign currency translation
687 charges that have gone against certain other appropriations
688 and there is other things like rework, design--those are
689 really costs of the project. So you have to look at this in
690 a more holistic approach. And when you look at the whole
691 thing, you're talking about over \$200 million.

692 Chairman WAXMAN. And when you look at the whole thing,
693 that includes fixing the kitchen ducts for \$1.2 million at
694 the cost of currency fluctuation because of these delays for

695 | another \$8.6 million. And when you add all these up, you get
696 | an estimate of \$213.9 million. That is 63 percent more than
697 | the original cost estimate of \$131.1 million; isn't that
698 | right?

699 | Mr. KUTZ. About, yes, that's about correct.

700 | Chairman WAXMAN. You've also estimated how much the Air
701 | Force pays to house officials in other hotels while this
702 | facility is still being built. On page 16 of your testimony
703 | you say this amount will be \$2.9 million by January of 2009,
704 | the best case estimate for completion date. You also
705 | estimate the amount of revenue lost from retail sales to be
706 | another \$14 million. So if you include these amounts, by my
707 | calculations, you're up to more than \$230. And that doesn't
708 | even include other costs like all of the additional Air Force
709 | staff assigned to this contract or the cost to fix the cracks
710 | in the concrete foundation; is that correct?

711 | Mr. KUTZ. Yeah, those are related costs. Certainly
712 | they are a little bit different in their nature. But, yes,
713 | they are resulting from the problems and delays we are
714 | talking about. And they do--much of that impacts soldier
715 | morale, welfare, recreation programs, as we both mentioned in
716 | the opening there.

717 | Chairman WAXMAN. General Rogers, I don't understand how
718 | you can continue to tell this committee that the project is
719 | under budget. It seems that you're deliberately excluding

720 millions of dollars worth of costs just so that we get this
721 somewhat misleading statement. And I think the taxpayers
722 deserve more of a clear explanation if--could you respond to
723 that?

724 General ROGERS. Yes, sir. There is no deliberate
725 shading here, sir. Those kind of costs to send these people
726 off base, for example, exist today. They existed in the
727 past. What is lost here is an opportunity cost to save that
728 money because it is not open. The cost today to send people
729 off base is not nearly what it was, say, a couple of years
730 ago. For the first 4 months of this year, for example, the
731 cost to send people off base to lodging was about \$1,200 a
732 month. It surged in May and--yeah, April/May because of an
733 exercise we had, but it is back to normal now.

734 Chairman WAXMAN. Well, when you take all of those costs
735 into consideration--you said we would incur them anyway--do
736 you agree with the estimate of all of them combined, \$230
737 million?

738 General ROGERS. Yes, sir. But it is not the same
739 as--it is not the issue we're talking about here. We're
740 talking about the controllable parts of construction and
741 other management controls we can have. A lot of these costs
742 are things that you would include in the cost of doing
743 business of opening any facility. We don't include the cost
744 of the roof rework, the hindrance claims, concrete repair, et

745 cetera, because we are under no liability to pay those.

746 Currency fluctuation is a major portion of this problem.

747 Since this project began, we've experienced a total of \$47
748 million of expenses due to currency fluctuation alone. And
749 as you know, we can't control that. If the project was
750 delivered on time top quality in '06, we would have paid out
751 \$32 million in foreign currency fluctuation. The delays so
752 far have been worth \$15 million of additional foreign
753 currency fluctuation costs. Those parts--this is the
754 equivalent of buy low, sell high. We set these contracts
755 when the dollar was at its strongest in Europe and at the
756 same time construction contracts could be had for a minimum.
757 Today in Germany, there is what I would call a Katrina
758 effect. Contracts are very high, materials are up and it is
759 difficult to bring anything in very cheaply today. It is one
760 reason the construction manager has had such a difficulty in
761 getting contractors back to work because there are much more
762 lucrative contracts out there to be had and they are tied to
763 this one settled back in 2004.

764 Chairman WAXMAN. Thank you very much. We're going to
765 have other questions. I'm sure other members will ask
766 questions.

767 Mr. Davis.

768 Mr. DAVIS OF VIRGINIA. General Rogers, let me just
769 understand. Basically the fact that the euro has risen so

770 | much against the dollar accounts for an important part of the
771 | cost rise?

772 | General ROGERS. Very important part, sir.

773 | Mr. DAVIS OF VIRGINIA. You have no control over that.
774 | Now, how about in hiring the construction contractors? That
775 | wasn't the Air Force, was it?

776 | General ROGERS. No, sir. We do business with the
777 | German Government under the international agreement known as
778 | ABG-75.

779 | Mr. DAVIS OF VIRGINIA. Let me ask Ms. Garber. It looks
780 | like a huge part of this problem was that the
781 | construction--the contractors in this case were German
782 | contractors hired by the German Government and our only job
783 | was to approve the work and pay. Is that a fair
784 | understanding or am I missing something?

785 | Ms. GARBER. ABG-75 provides a framework for these
786 | military construction activities to take place.

787 | Mr. DAVIS OF VIRGINIA. Can you speak into the
788 | microphone?

789 | Ms. GARBER. ABG-75 provides a framework for these
790 | military construction contracts to take place.

791 | Mr. DAVIS OF VIRGINIA. I understand that. And it is my
792 | understanding that that framework, correct, that basically
793 | the hiring of the contractors, the German Government does
794 | that, we basically approve the work and pay the government,

795 | who then pays the contractors. Isn't that the way it works?

796 | Ms. GARBBER. Article 49 of the U.S.--

797 | Mr. DAVIS OF VIRGINIA. Just yes or no. I don't need to
798 | get into all of the article. Is that a correct
799 | understanding?

800 | Ms. GARBBER. The supplemental provides that the military
801 | construction for the benefit of foreign forces stationed in
802 | Germany should be carried out by German authorities. That is
803 | correct.

804 | Mr. DAVIS OF VIRGINIA. So a lot of this problem just
805 | goes back to the German Government, who they hired and--is
806 | that fair to say? Let me ask GAO.

807 | Mr. CAUSSEAU. That's--

808 | Mr. DAVIS OF VIRGINIA. I understand that there was some
809 | work at one point--this is before General Rogers got into it.
810 | There was some work that was approved and accepted that
811 | probably shouldn't have been accepted.

812 | Mr. CAUSSEAU. That's true, sir. As far as the United
813 | States influence or control over the process, the United
814 | States can request a contracting approach. In this case, the
815 | United States did not opt for or did not go for a general
816 | contractor approach. So the Germans went with what they call
817 | trade lots. It is essentially 40 small business or trade-lot
818 | contractors, individuals and then they attempted the--LBB
819 | attempted to manage that. That was a significant problem for

820 | them. They were effectively overwhelmed.

821 | Mr. DAVIS OF VIRGINIA. And some of these contractors
822 | walked off the job, didn't they?

823 | Mr. CAUSSEAUX. They walked off the job because they
824 | weren't getting paid.

825 | Mr. DAVIS OF VIRGINIA. They weren't getting paid
826 | because they weren't doing good work.

827 | Mr. CAUSSEAUX. It wasn't--I don't believe that was
828 | necessarily the case. It was that the invoices that they
829 | were--ultimately when they were providing their invoices and
830 | they were coming through--because the change orders had not
831 | been approved--this is when the Air Force stepped in and said
832 | we're not going to pay any invoices for unapproved change
833 | orders. When that occurred, the funding stopped, the
834 | contractors walked off the job. That is certainly a control
835 | that the United States had. The question--

836 | Mr. DAVIS OF VIRGINIA. And if they had paid these
837 | contractors and with unapproved change orders, they would
838 | probably be up before this committee trying to answer why you
839 | paid unapproved change orders.

840 | Mr. CAUSSEAUX. Absolutely. And there were improper
841 | payments that had been made at a--up until a certain point
842 | and then it was finally discovered. But the question is
843 | whether or not the United States had the ability or the
844 | authority to inject greater oversight and control in the

845 | process from the beginning. And the answer to that under the
846 | ABG-75 is clearly yes.

847 | Mr. DAVIS OF VIRGINIA. But that horse is long since out
848 | of the barn. I mean, that's--we are where we are today.

849 | Mr. CAUSSEAUX. That's correct.

850 | Mr. DAVIS OF VIRGINIA. So, you know, we are where we
851 | are. I don't know--I mean, it should be a lesson learned for
852 | the Air Force and State and everybody else in terms of future
853 | projects, in terms of what can go wrong. I guess the
854 | question is today, as we look at this today, and we see where
855 | we are in trying to get this completed as rapidly as
856 | possible, given all of the other factors, the fact that
857 | construction costs are high, that you still have a rising
858 | euro against the dollar, that we don't have direct control
859 | under the contractual arrangement that we have, what is the
860 | fastest way to get this thing wrapped up as quickly as we can
861 | at the best costs? And is the Air Force doing a satisfactory
862 | job on that? That is the question.

863 | Mr. CAUSSEAUX. I think certainly the Air Force has
864 | instituted effective controls at this point. As Mr. Dorn
865 | indicated--

866 | Mr. DAVIS OF VIRGINIA. So they are doing a satisfactory
867 | job at this point?

868 | Mr. CAUSSEAUX. That's correct. But the question is
869 | those controls have not really been tested yet because there

870 | hasn't been sufficient progress. But have they--do they have
871 | adequate infrastructure and oversight in place--

872 | Mr. DAVIS OF VIRGINIA. From your perspective of looking
873 | forward, are they doing everything they can do?

874 | Mr. CAUSSEAU. It appears so, yes. And I think the Air
875 | Force in terms of--is to be commended for the actions in
876 | terms of engaging the German Government and getting them to
877 | put forth funds to stem the process and get it going.

878 | Mr. DAVIS OF VIRGINIA. Yeah. I mean, the German
879 | Government can't feel too good about this project. I'm not
880 | going to ask you to comment in terms of what they feel. But
881 | just looking at this, I'm sure it is a source of
882 | embarrassment to them, which is probably why they kicked in
883 | some money at this point to get it going.

884 | What is the status of those dollars that the German
885 | Government put in? Do they expect to get that back at this
886 | point? Do they just kind of add it to the cost? Can anybody
887 | on the record--Ms. Garber, I'll start with you as far as the
888 | State Department. Any idea what this--the money they kicked
889 | in, what is the status of that? What do we expect to get
890 | back? Would that be an added reimbursement for us? If it is
891 | an added reimbursement, do we have to do it under the euro as
892 | it rises? Can you give me a feel for that?

893 | Ms. GARBBER. The State Department was not involved in
894 | that particular piece. I think the Air Force is the best

895 | place to answer that question.

896 | Mr. DAVIS OF VIRGINIA. So you don't have the answer to
897 | that, okay. General Rogers.

898 | General ROGERS. Sir, when we went to the Germans and
899 | laid out failures of their agents, we asked them for
900 | solutions to this problem. They agreed with us that the real
901 | problem is lack of flow of money. If you don't keep the
902 | money flowing, construction doesn't proceed.

903 | Mr. DAVIS OF VIRGINIA. Contractors don't work for free,
904 | in other words?

905 | General ROGERS. Yes, sir.

906 | Mr. DAVIS OF VIRGINIA. They aren't liquid enough to
907 | carry any costs and--

908 | General ROGERS. Yes, sir. This money that has been
909 | injected by the Germans is prefinancing, was their solution
910 | to that problem to sustain liquidity in the project.

911 | Mr. DAVIS OF VIRGINIA. Now, did we sign a note for
912 | that, that they advance this and we sign a note and we pay
913 | them later?

914 | General ROGERS. No, sir. We never signed any
915 | paperwork. We didn't get any of the money. We have no
916 | control over the money.

917 | Mr. DAVIS OF VIRGINIA. So they went ahead and paid
918 | their own contractors ahead of time with no understanding
919 | from us that we'd reimburse them as far as you know?

920 General ROGERS. Yes, sir. And they--you know, we
921 really don't know exactly what they're doing with the money.
922 There are contractors involved. There are previous costs
923 involved. And we are staying out of it because under
924 advisement by our legal staff, if we stick our finger in it,
925 we could create liability. So we've stayed out of that
926 completely.

927 Mr. DAVIS OF VIRGINIA. What do you see the--how do you
928 see this moving forward at this point? There are still--as
929 we saw from the pictures that were put up there, there has
930 been no progress in some areas over the last year.

931 General ROGERS. True.

932 Mr. DAVIS OF VIRGINIA. We have a plan now that--GAO has
933 testified that you have controls in place that they are
934 satisfied with at least to date. They haven't been tested
935 and we all understand that, but at least you have them in
936 place. They've given you good marks for moving ahead. How
937 do you see this progressing on a timeline or getting
938 contractors back in there working? Can you walk us through
939 what we can expect from--

940 General ROGERS. Yes, sir. The real test on whether we
941 are making good progress is to have the worker count adequate
942 to meet the construction schedule they have created.

943 Mr. DAVIS OF VIRGINIA. Have enough workers to get the
944 job done?

945 General ROGERS. Yes, sir. We have not seen that yet.
946 The German authority--

947 Mr. DAVIS OF VIRGINIA. You don't control that either,
948 do you?

949 General ROGERS. No, sir. The German authorities are
950 doing what they can with the contractors. But as I mentioned
951 about the constructing environment in Germany, they have some
952 challenges in dealing with these contractors. To put it
953 bluntly, they are holding the cards with the government. The
954 measures the government is taking are to be commended, but
955 not all the problems are solved yet. We have seen work
956 progress on the roof. We have seen kitchen ducting removed.
957 But we understand there are additional details they are
958 having difficulty working out with the contractors.

959 Mr. DAVIS OF VIRGINIA. So the big variable, the big
960 delta here in terms of being able to get this thing done on
961 time and cutting our losses is getting the workers there to
962 perform to standards in a timely manner?

963 General ROGERS. And yes, sir.

964 Mr. DAVIS OF VIRGINIA. And that is something we don't
965 control. Does everybody agree with that?

966 Mr. DORN. I would agree with that.

967 Mr. DAVIS OF VIRGINIA. And is there anything else we
968 can do to make this happen? Obviously don't go this route in
969 the future when you're constructing this type of building

970 | because this is one case of, you know, if it can go wrong, it
971 | will go wrong. But is there anything else we could be doing
972 | at this point, except for maybe a phone call from the
973 | President to Ms. Merkel or something like that? I mean, what
974 | else can you do at this point to get the contractors?

975 | Mr. CAUSSEAU. Short of writing a blank check to bring
976 | more workers in and pay them more than they are contracted to
977 | do, no, I don't think so.

978 | Mr. DAVIS OF VIRGINIA. Okay. So we still have the
979 | unresolved issue of trying to get the contractors in in a
980 | timely manner to get this thing done, and that is the
981 | variable that nobody controls here. You think we are doing
982 | everything we can. It goes back, then, to the initial
983 | agreement that is before anybody was here on this panel, was
984 | here in terms of the contractual vehicle that would handle
985 | this where we allowed the German Government to basically hire
986 | the contractors to make this go and things started going bad
987 | from there. We made a mistake along the way at one point
988 | evidently in accepting some work that wasn't acceptable, but
989 | that is not the major part of the problem. Is that fair to
990 | say?

991 | Mr. CAUSSEAU. I think that is fair to say, but I think
992 | the agreement itself also has provisions that the United
993 | States did not take full advantage of in terms of its risk
994 | mitigation. There are opportunities that the U.S. has to

995 | inject itself into the process for oversight control,
996 | checking and checks and balances and that type of thing.

997 | Mr. DAVIS OF VIRGINIA. But we're doing that now?

998 | Mr. CAUSSEAUX. Yes, sir.

999 | Mr. DAVIS OF VIRGINIA. Okay. Thank you very much.

1000 | Chairman WAXMAN. Thank you, Mr. Davis.

1001 | Mr. Sarbanes.

1002 | Mr. SARBANES. Thank you, Mr. Chairman. Can I pick up
1003 | right where you just left off? What--because that is
1004 | the--the suggestion is that we are now at a place where we
1005 | are sort of being held hostage by these German contractors
1006 | and so forth. But like you said, it didn't have to come to
1007 | that. And I'm curious as to--well, first of all, how typical
1008 | or atypical is it for this kind of situation to arise where
1009 | work stops and then a third party enters the scene apparently
1010 | without objection and starts funding the project that we are
1011 | supposed to have control or oversight on and then creating
1012 | expectations of some kind of disposition of that outlay of
1013 | funds down the line, which apparently is not totally resolved
1014 | yet. This strikes me as out of the ordinary. Am I correct
1015 | in that?

1016 | Mr. CAUSSEAUX. That is our understanding, yes. It is I
1017 | believe the first time the Germans have engaged in this type
1018 | of a prefinancing loan, however you want to--whatever
1019 | semantic term you want to--

1020 Mr. SARBANES. Well, even just going beyond the Germans,
1021 on a project of this kind you wouldn't expect to see that
1022 kind of situation arise, right?

1023 Mr. CAUSSEAU. No, I don't believe so.

1024 Mr. SARBANES. Okay. And you suggested that it is
1025 because we didn't take advantage of earlier warning signs,
1026 things we could have done presumably before it got to a stage
1027 where the contractors felt they had to walk off--well, before
1028 it got to a stage where we had to do a stop work--

1029 Mr. CAUSSEAU. Correct.

1030 Mr. SARBANES. --order and then force these contractors
1031 in effect to walk off the job because they weren't getting
1032 paid and then invite the third party, German Government, to
1033 come into the situation. What are some of the things--what
1034 are some of the earlier stages that we could have taken
1035 advantage of to avoid that?

1036 Mr. CAUSSEAU. Well, at the very outset of the
1037 arrangement or the agreement, the U.S. has the ability to
1038 inject itself in terms of reviewing the construction, onsite
1039 quality control, oversight of the process, the invoices, all
1040 the change orders. The fact that there were such a huge
1041 backlog of change orders and that the invoices were being
1042 paid associated with those before the change orders had been
1043 approved suggests that, you know, the government--the United
1044 States was not, you know, adequately monitoring the process

1045 | at that time. That all caught up when the surge of change
1046 | orders hit and it was finally realized, you know, holy cow,
1047 | we're paying for stuff that we haven't approved of yet. So
1048 | then it was we are not going to process any further payments.

1049 | That obviously created the dilemma. So injecting the
1050 | adequate amount of oversight resources up front would have
1051 | mitigated that risk.

1052 | Mr. SARBANES. How fast based on your--when you do
1053 | reviews of these kinds of projects and other instances as
1054 | well and have a general sense of how a contract proceeds over
1055 | time and when--where the trigger mechanisms are. So--I mean,
1056 | how fast if you have an efficient oversight and monitoring
1057 | role in place, how fast should you be able to detect things
1058 | that you need to weigh in on? I mean, this project started
1059 | when--what was the start time when this project--

1060 | General ROGERS. Fall of '04.

1061 | Mr. SARBANES. So on a project of this size and
1062 | complexity, you know, granted--if you have a good oversight
1063 | function in place, how quickly could you expect to know? I
1064 | mean, 2 months out, 3 months out, 6 months out? I mean, here
1065 | we are 4 years out. We looked at this last year. So say 3
1066 | years out. But, I mean, a good oversight operation should be
1067 | able to judge whether things are going in the right direction
1068 | or not how quickly?

1069 | Mr. DORN. A couple of months, Mr. Sarbanes.

1070 | Mr. SARBANES. A couple of months. A couple of months
1071 | you're going to know if you've got--

1072 | Mr. DORN. That's correct. Construction is normally 30
1073 | days in arrears. So--but if you're out there every day,
1074 | you're going to see what is going on. One of the things that
1075 | they didn't do early, and I'll be brief, is they didn't have
1076 | a schedule that they could trust. The Germans are giving
1077 | them Excel spreadsheets instead of network schedule that
1078 | showed what resources were needed. So they didn't have the
1079 | tools necessary to even know how many people were going to be
1080 | on the site. And they don't have that tool today. They
1081 | still couldn't tell you how many people need to be on the
1082 | site today to make sure you're on schedule.

1083 RPTS BINGHAM

1084 DCMN MAYER

1085 [11:05 a.m.]

1086 Mr. SARBANES. So tracing back to--I mean, if I were
1087 interested in knowing exactly how the oversight role broke
1088 down, where does that path lead? Was it that there should
1089 have been 10 people overseeing this and there was only one,
1090 that there should have been somebody with more experience and
1091 background doing this sort of thing, and there wasn't anyone?
1092 What was the breakdown in terms of the failure to do the
1093 early oversight? Specific.

1094 Mr. DORN. It's--again, it gets to back to what Mr.
1095 Causseaux said. In the beginning we had the option to insist
1096 on one general contractor, for example, and instead we had
1097 over 20 general contractors effectively; and trying to manage
1098 that many contractors is--

1099 Mr. SARBANES. I'm out of time, but it sounds like,
1100 right out of the gate, the structure of this was such that it
1101 was going to lead to confusion, missed oversight, and all the
1102 rest of it; and here we are.

1103 Mr. DORN. Made it a high-risk job, as Mr. Causseaux
1104 said.

1105 Chairman WAXMAN. Thank you, Mr. Sarbanes.

1106 Mr. Tierney.

1107 Mr. TIERNEY. Thank you, Mr. Chairman.

1108 Thank you, folks, for coming in to testify.

1109 Mr. Kutz, particularly, I want to thank GAO for helping
1110 us understand what went wrong with this particular project.
1111 But in your report you also warned that there may be some
1112 construction problems that were also discovered in other
1113 places when you were looking at the installation in Germany.

1114 First, you showed us a picture of a runway at Ramstein
1115 Air Base. I think there's a photo on the screen there. Your
1116 report says this runway was built to help support an increase
1117 in U.S. mission to Iraq and Afghanistan. You said that the
1118 runway's lights don't work when it gets wet. And you said a
1119 construction defect allows groundwater to damage lights and
1120 cause power outages. As a result, the base actually has to
1121 divert aircraft to other bases in Europe.

1122 Am I understanding that correctly?

1123 Mr KUTZ. Yes, that is correct.

1124 Mr. TIERNEY. And now they're forced to use portable
1125 lights, and they have to pump water from the manholes on an
1126 ongoing basis?

1127 Mr. KUTZ. Yes.

1128 Mr. TIERNEY. I don't understand how this could have
1129 happened. Should there not have been some oversight that
1130 identified the contractor who installed these lights and some
1131 required repairs by them?

1132 Mr. KUTZ. Yes. It was the same LBB agency, I believe,

1133 | that is overseeing the KMCC, which is why we looked at them.
1134 | We looked to see if there were other similar types of issues
1135 | in that immediate area that LBB Kaiserslautern was involved
1136 | with.

1137 | And so we see the same kinds of things we saw with KMCC
1138 | on a little bit smaller projects, but still important
1139 | projects.

1140 | Mr. TIERNEY. So no one inspected the work before it was
1141 | accepted by the U.S. Government?

1142 | Mr. KUTZ. We don't know that.

1143 | Mr. TIERNEY. Does anybody on the panel know that?

1144 | General ROGERS. Say again the question, sir.

1145 | Mr. TIERNEY. Did not somebody inspect the work before
1146 | it was accepted by the government?

1147 | General ROGERS. Yes, sir. Some of these projects were
1148 | managed by another government agency. LBB as the German
1149 | construction agent, a German government organization, accepts
1150 | from contractors on behalf of the forces. So when LBB
1151 | accepted it, there was the first breakdown.

1152 | Mr. TIERNEY. Back to Mr. Kutz's report, it says, When
1153 | it rains, ponds that are as big as acres across develop
1154 | between the runways because of poor drainage. So I think
1155 | you're saying that again we accepted that particular
1156 | situation of the construction without its ever being properly
1157 | graded.

1158 Mr. KUTZ. Yes. And that is the picture you see. That
1159 was in March of this year.

1160 Mr. TIERNEY. What's going on with the runway now?

1161 Mr. KUTZ. These guys were there last month, Mr. Dorn
1162 and Bruce.

1163 Mr. TIERNEY. Mr. Dorn, what's happening now?

1164 Mr. Dorn. As of last month, they've started grading
1165 operations to fill in those low spots, but they're still
1166 having trouble; and we watched them pump water out of the
1167 manholes.

1168 Mr. TIERNEY. So was that same company that was
1169 responsible brought back to do the repairs, or is some
1170 additional or new company in there doing the work?

1171 Mr. DORN. I'm not aware of that. The Air Force
1172 probably is.

1173 General ROGERS. Those are items that we identified to
1174 the Germans as unacceptable. The construction agent and the
1175 German Government is working with the contractors to repair
1176 these deficiencies.

1177 In the meantime, it's true that they impact certain
1178 capabilities out there. We've got measures in place to
1179 ensure safety and mission are not impacted more than
1180 necessary, but we're holding their feet to fire to make sure
1181 we get good results on this one.

1182 Mr. TIERNEY. So we're not paying additional to have

1183 | that done; they're coming back under the original contract
1184 | and completing that. Is there any penalty involved?

1185 | General ROGERS. So far, we haven't paid anything. They
1186 | haven't told us we're going to pay anything. Because we have
1187 | identified most--in fact, all of the known ones that were
1188 | shown here we identified prior to when it was accepted.
1189 | Because you can accept the runway for usage while other
1190 | pieces can be repaired later, a punch list.

1191 | Mr. TIERNEY. So it was accepted for use, but not
1192 | accepted in terms of all responsibility; and they own the
1193 | problem of fixing it and the cost of doing that?

1194 | General ROGERS. Yes, sir.

1195 | Mr. TIERNEY. Ms. Garber, is that generally the recourse
1196 | that the United States Government has from the German
1197 | Government or the German contractors when a situation like
1198 | this arises?

1199 | Ms. GARBER. I think the Air Force is the best place to
1200 | answer that question. The State Department generally does
1201 | not get involved in the technical construction issues and
1202 | questions.

1203 | Mr. TIERNEY. And it never gets to a diplomatic level of
1204 | concern?

1205 | Ms. GARBER. In this particular case, because there were
1206 | problems with the LBB agent, the embassy did play a
1207 | facilitative role in trying to arrange meetings to facilitate

1208 | and support, to help bring the parties to agreement at the
1209 | Federal level. So in that sense, yes, but generally it was
1210 | handled by the Air Force directly.

1211 | Mr. TIERNEY. Mr. Kutz, could you tell us what you found
1212 | when you went to the warehouse in terms of the structure
1213 | there and deficiencies in the steel frame?

1214 | Mr. KUTZ. Well, there were the beams that were
1215 | inserted. I guess that is the picture there. And there was
1216 | originally issues where this had to be evacuated because
1217 | there was concern that the roof would cave in. So, again,
1218 | Mr. Dorn and Mr. Causseaux saw that last month; and I believe
1219 | that is a recent picture.

1220 | Mr. TIERNEY. So the building can't be used to capacity.
1221 | In some areas, I think you said, a forklift couldn't get
1222 | into it anymore, correct?

1223 | Mr. CAUSSEAUX. That's correct.

1224 | Mr. TIERNEY. So what's happening with that?

1225 | Mr. CAUSSEAUX. They have work-arounds.

1226 | Mr. TIERNEY. And now we are just going to have a
1227 | building that is not up to the capacity originally designed?

1228 | Mr. CAUSSEAUX. It's essentially a huge basketball court
1229 | with pillars in it, and it's a little difficult to play
1230 | basketball in that scenario. But they have forklifts moving
1231 | equipment and other things around, and in some cases they
1232 | can't get to certain locations easily so they have to use

1233 | either hand facilities or work-arounds. But as Mr. Dorn
1234 | alluded, one of the officers that we spoke with there said
1235 | one of the things that he worries about significantly is a
1236 | forklift backing into one of those pillars and the pillar
1237 | falling or affecting the structure of the roof.

1238 | Mr. DORN. They are using that facility. There are
1239 | operations, but they are degraded by the interior columns.

1240 | Mr. TIERNEY. So have we accepted that? Are we paying
1241 | for it? Are we going to pay in full? Is somebody going to
1242 | assist on that? What's going on?

1243 | General ROGERS. That facility was accepted about 3
1244 | years ago by another government agency, and the Germans
1245 | notified us of the defects in the building because they
1246 | weren't visible to us. It has to do with the defective metal
1247 | that was used in multiple government facilities throughout
1248 | Germany, some German Government projects, some U.S. Army
1249 | projects; and in conjunction with that, they found some
1250 | defective welds in this one.

1251 | It is now in the hands of German courts, and we're
1252 | standing by for the German officials to tell us what their
1253 | solution is.

1254 | Mr. TIERNEY. They'll tell us what our recourse is?

1255 | General ROGERS. Yes, sir.

1256 | And this is, of course, dragged out with the court
1257 | process over there.

1258 Mr. TIERNEY. I see my time is up, Mr. Chairman. Thank
1259 you.

1260 Ms. WATSON. I just want to follow up the questioning of
1261 my colleague, Mr. Tierney.

1262 The committee staff received a briefing on June 30 from
1263 the Air Force Office of Special Investigations. And at this
1264 briefing, Air Force investigators gave us some additional
1265 information, and they said we could share it with certain
1266 limitations.

1267 They told us that they believed that two Air Force
1268 officers and two Air Force civilians and a fifth individual,
1269 who was a contract employee, falsely certified almost \$8
1270 million in payments to German contractors. So this is a
1271 question for General Rogers.

1272 Are you familiar with this investigation and these
1273 allegations?

1274 General ROGERS. Yes, ma'am, I am.

1275 Ms. WATSON. And let me ask you this. Have you
1276 reprimanded or removed any of the Air Force personnel that
1277 were involved in the payments?

1278 General ROGERS. I would put it this way, ma'am. One of
1279 them self-removed. The others, the investigations are not
1280 complete yet, but when they are complete and if it's
1281 warranted, we will take appropriate action and hold them
1282 accountable.

1283 To date, it appears that it's more process foul and lack
1284 of training versus intentional--

1285 Ms. WATSON. Criminal activity?

1286 General ROGERS. Yes, ma'am.

1287 Not absolving them of responsibility to know, but the
1288 individual who self-eliminated also happened to run that
1289 office, who had an interest in them not necessarily knowing
1290 exactly how to do this job.

1291 Ms. WATSON. Because the case is being investigated now.
1292 I think they're in court.

1293 If there are criminal activities, it will be adjudicated
1294 there? Is that what you're saying?

1295 General ROGERS. Yes, ma'am.

1296 A civilian employee, it would go through the civilian
1297 process, the Department of Justice. Military ones do the
1298 Universal Code of Military Justice.

1299 Ms. WATSON. It seems like there has been very poor
1300 conduct by U.S. officials, so this question is to Mr. Kutz.

1301 Program managers have an obligation to protect the
1302 taxpayers' funds, don't they?

1303 Mr. KUTZ. That's correct, yes.

1304 Ms. WATSON. And do you think a government supervisor
1305 needs to prove beyond a reasonable doubt that someone engaged
1306 in criminal activity before taking any administrative action?

1307 Mr. KUTZ. We don't believe that because we come across

1308 | it. We refer hundreds of thousands of cases to agencies for
1309 | criminal investigation and administrative action because, as
1310 | you're probably well aware, criminal virtually never happens,
1311 | but administrative should happen when someone does things.

1312 | So that's our view. And if it's proven, if someone is
1313 | still being investigated, then that is one thing. But if you
1314 | know that they did a poor job in their work, they should be
1315 | reprimanded. Their ratings should reflect that, their
1316 | performance ratings and things like that.

1317 | And you're talking here about individuals who were
1318 | rubber-stamping, if you will, the bills that came in versus
1319 | other individuals who are under investigation for fraud.
1320 | There are other cases of fraud.

1321 | Ms. WATSON. Well, when we see the pictures that were up
1322 | on the screen and the shoddy kind of construction, and we
1323 | look away or we wait for somebody to maybe give us a clue
1324 | that things are not right, it just is very troubling.

1325 | We're the oversight committee, and we're here to protect
1326 | the general public, the taxpayers' dollars, protect
1327 | Americans; and when we have these kinds of projects that seem
1328 | to be not worthy of who we are, it's very troubling.

1329 | And we have all of you out there, and I appreciate your
1330 | coming here today and being willing to testify. We need to
1331 | get to the truth, and we need to remove those people who are
1332 | demonstrating very poor judgment and poor, shall I say,

1333 | conduct--maybe because they expect a fiduciary reward in the
1334 | end. That is always our concern.

1335 | So I yield back my time, Mr. Chairman, and thank you
1336 | very much, witnesses.

1337 | Thank you, Mr. Chairman.

1338 | Chairman WAXMAN. Thank you, Ms. Watson.

1339 | I want to ask a few questions.

1340 | Mr. Kutz, last year, you testified before us on this
1341 | project and you told us that the Air Force's program office
1342 | had lost control of project finances and was paying invoices
1343 | for work they weren't sure was done.

1344 | At last year's hearing, the witness for the Air Force
1345 | was Brigadier General Danny Gardner, who was in charge of the
1346 | project at that time. He acknowledged some problems with the
1347 | project, but he basically said the Air Force had addressed
1348 | these problems.

1349 | Mr. Kutz, if I recall correctly, you didn't agree with
1350 | those assertions; is that correct?

1351 | Mr. KUTZ. That's correct.

1352 | Chairman WAXMAN. It doesn't seem the Air Force believed
1353 | them either, because after our hearing the Commander of Air
1354 | Forces in Europe, General Hobbins, formed a high-level task
1355 | force to troubleshoot the project; and by the following
1356 | month, July 2007, it presented its findings to top Air Force
1357 | officials supporting GAO's findings. Here is what the Air

1358 Force's own internal review stated, quote:

1359 "Air Force did not properly monitor or approve
1360 contractor payments. Air Force did not have adequate
1361 policies and controls in place. And Air Force did not have
1362 sufficient staffing to oversee complex project."

1363 General Rogers, you're here in the Air Force seat today.
1364 Do you agree that the Air Force did not adequately oversee
1365 this project, and do you agree with GAO's findings in that
1366 regard?

1367 General ROGERS. Sir, as I mentioned earlier, I have
1368 been investigating this thing for 18 months, and I probably
1369 know more about it than anybody.

1370 What I found is--of course, I participated in this piece
1371 of it. The task force was directed by General Hobbins even
1372 prior to the hearing. We just had logistic difficulties
1373 getting stood up quick enough.

1374 The internal findings that you speak of by the Air
1375 Force, the source for that was members from here in the Air
1376 Staff in the Pentagon. Those members were there for 2 weeks
1377 and had a short look. Their opinion, I do not agree with.
1378 Initially I did, but now I know better.

1379 As it turns out, the main crux of the problem was
1380 transparency from our construction agent. As an example, to
1381 know about change orders, the construction agent has to tell
1382 you they're there, because we're not in their offices. In

1383 | terms of controls, we have to know something is not quite
1384 | right to ramp it up.

1385 | Initially, the Air Force knew that this project was
1386 | going to be more complex. And because we had tried to get a
1387 | general contractor--actually written an official letter to
1388 | the Germans and couldn't get it supported by the Minister of
1389 | Defense of Germany, who also wrote letters saying, You have
1390 | got to put a general contractor on this--we lost that fight,
1391 | and LBB did not put a general contractor on it.

1392 | So based on that, the Air Force doubled its normal
1393 | oversight team size to eight in the beginning.

1394 | Chairman WAXMAN. But you disagree with the Air Force's
1395 | own findings?

1396 | General ROGERS. Sir, those--you can't classify those as
1397 | the Air Force's own findings. Those were members of the team
1398 | who generated their briefing when they came back here, and
1399 | they had far less information.

1400 | So I don't. There are pieces of it that have some
1401 | credibility, but you can't count those as the findings.

1402 | Chairman WAXMAN. This was at the request of General
1403 | Hobbins, they put together this inquiry?

1404 | General ROGERS. He directed me to lead it, sir.

1405 | Chairman WAXMAN. On the chart, the type of findings, it
1406 | says, these are the findings pursuant to an internal Air
1407 | Force review.

1408 General ROGERS. Yes, sir.

1409 We're talking two different things here. This is not
1410 the task force; this is the Air Force Audit Agency findings.

1411 Chairman WAXMAN. I see. And there are findings and you
1412 agree with those findings?

1413 General ROGERS. We agreed with those when the audit
1414 agency came up with them. What I now know is that when an
1415 audit agency looks at a project in Europe, they can only look
1416 at the U.S. side. That is like looking at the tip of an
1417 iceberg and judging the whole iceberg.

1418 Chairman WAXMAN. GAO, it created some findings as well.
1419 Do you disagree with their findings?

1420 General ROGERS. Depends which ones you're talking about
1421 sir.

1422 Chairman WAXMAN. With regard to the work of the Air
1423 Force and their having sufficient staffing to oversee the
1424 complex, to properly monitor and approve the contractor
1425 payments, and adequate policies and controls in place,
1426 address those as well.

1427 General ROGERS. Here is what happened. If the question
1428 on any given day through the process of building this
1429 facility, what do you know at the time?

1430 In this project LBB hired another firm to act as a
1431 surrogate general contractor because they were directed not
1432 to have a general contractor. That general contractor served

1433 | and failed miserably and did not inform LBB of all the
1434 | situation on the site. The LBB subsequently did not inform
1435 | the Air Force. So the story--

1436 | Chairman WAXMAN. Does the Air Force have any
1437 | responsibility or is it all contractor's fault?

1438 | General ROGERS. Sir, I will tell you that the Air Force
1439 | has responsibility. We execute the responsibility based on
1440 | what we know at the time.

1441 | As I look back at those times, the question becomes,
1442 | what was reasonable at the time based on what you knew. I
1443 | have reams of facts that show that the efforts made by Air
1444 | Force people at the time seemed reasonable. Now that I have
1445 | more information from the surrogate GC, the general
1446 | contractor, and from LBB, what their internal memo said at
1447 | the time, I realize the situation the Air Force people were
1448 | trying to manage was completely different from reality.

1449 | Chairman WAXMAN. Let me ask Mr. Kutz. It seems to me
1450 | that we don't have an acknowledgement from General Rogers to
1451 | what the findings were from the internal audit of the Air
1452 | Force, that there were some mistakes by the Air Force.

1453 | Do you agree that those findings were incorrect and
1454 | General Rogers is correct?

1455 | Mr. KUTZ. We would agree with the Air Force Audit
1456 | Agency's findings. And last year you asked, I think, General
1457 | Gardner when they first became aware that there were real

1458 | problems. He told you December 2005, a couple of months
1459 | before the project was supposed to be done.

1460 | How could you say you didn't have Air Force oversight
1461 | problems when you became aware of the problems a couple of
1462 | months before the ribbon-cutting ceremony? It doesn't make
1463 | any sense, Mr. Chairman.

1464 | Chairman WAXMAN. Well, General Rogers, what has passed
1465 | is past. But it seems to me it's important to have some
1466 | acknowledgement of the problems that existed and how they
1467 | came to be the responsibility of the Air Force.

1468 | It sounds like the Air Force is in denial mode, and that
1469 | is not very comforting. If you don't deny--if you deny what
1470 | happened in the past, I fear you might be likely--not you
1471 | yourself, but the Air Force might be likely to make some of
1472 | the mistakes again.

1473 | General ROGERS. Sir, I'm not in a denial mode. I
1474 | acknowledge what happened in the past. My job is to figure
1475 | out why it happened.

1476 | I do now understand why the Air Force Audit Agency and
1477 | GAO could come up with these findings, that we also would
1478 | agree with--there were inadequate controls, et cetera. The
1479 | issue is, why did it happen.

1480 | For example, Mr. Kutz says, why did we learn in December
1481 | '05 that this facility is going to be late when it's only a
1482 | couple of months from delivery. The delivery date being

1483 | promised in December '05 by the construction agent and showed
1484 | to the KMCC council with all of the stakeholders, German
1485 | Government officials, AFE services, everybody at the table,
1486 | was April or May of '06.

1487 | At that time, there was 16 weeks of construction work
1488 | remaining, and if you look at the clock, you would say, Well,
1489 | there is the building, it is standing, looks right, 16 weeks
1490 | from now--they're telling us 16 weeks, it's going to open in
1491 | 16 weeks. You don't have a reason to question that, and when
1492 | you go out and look at the site, you can correspond work to
1493 | invoices you are getting.

1494 | So as you can see, the issue here was one of
1495 | transparency.

1496 | My finding is that once this construction project broke
1497 | ground, there was a difference in the rate of information
1498 | that flowed from the surrogate general contractor to LBB, and
1499 | from LBB to the Air Force. And as you went through time,
1500 | that lag in situation awareness continually grew to the point
1501 | that even in November or December of '05, I now have internal
1502 | memos from LBB showing that that project was not going to be
1503 | delivered until--the hotel portion until July or August. Yet
1504 | the entire council, which is where they're reporting out the
1505 | status to the oversight, to all the stakeholders, that
1506 | council was briefed, this will be here in May.

1507 | Chairman WAXMAN. Let me ask Mr. Kutz the last question

1508 I have.

1509 If we hold a hearing next year at this time, are we
1510 going to find that we've learned some lessons and they're
1511 going to correct the situation, or do you think that there is
1512 a denial going on, and it's troubling to you as it appears to
1513 be to me.

1514 Mr. KUTZ. It's too late for KMCC. It is what it is at
1515 this point. It's a mess. There is a lot of issues and a lot
1516 out of our control at this point.

1517 The real question is for new projects going forward, at
1518 the very beginning, before we start spending the money, will
1519 we have the people in place, will we make sure that a general
1520 contractor whatever makes sense here, we'll make sure we're
1521 not schedule driven, driven based upon milestones, et cetera.
1522 That is the real test here.

1523 I think KMCC, it's really too late.

1524 Hopefully, there are lessons learned going forward, and
1525 at the very beginning of the project they will learn from
1526 what has happened here and, hopefully, not repeat the same
1527 situation.

1528 Mr. DAVIS OF VIRGINIA. Do you want to ask any questions
1529 Mr. Duncan?

1530 Mr. DUNCAN. Well, very briefly. Thank you, Mr.
1531 Chairman.

1532 I was sitting here reading this memo that the staff

1533 provided us, and it says, "Unfortunately, this recent report
1534 from GAO is not good. Little work has been completed in the
1535 year that has passed since the first hearing, and while the
1536 U.S. Air Force and the German Government have recently
1537 reached an agreement on a plan to complete the project by
1538 January 2009, neither the Air Force nor GAO has confidence
1539 that completion date will be met. The project is now more
1540 than 2 years overdue and the building will suffer from
1541 significant structural problems, including a defective roof
1542 that is in the process of being replaced."

1543 If neither the Air Force nor the GAO has confidence that
1544 the completion date of January 2009 will be met, General
1545 Rogers, when is the completion date? When is this going to
1546 be completed?

1547 General ROGERS. Sir, we count on our German
1548 construction agent to give us the schedule, in terms of--you
1549 know, they figure out how long it's going to take and level
1550 of effort. And they have offered January--not offered; they
1551 have told us that January '09 is when they expect to turn it
1552 over.

1553 We see indications that do not--while they're performing
1554 better than in the past, it's not like we should count on
1555 January '09. But as I mentioned earlier, I at least have a
1556 little more confidence in this schedule in only slipping a
1557 few months versus years because contractors have at least

1558 | signed up to this schedule. And it's the first hard
1559 | schedule, after years of begging, that LBB has given us since
1560 | November of '04.

1561 | Mr. DUNCAN. And in this memo also says that "Total cost
1562 | to complete the project is unclear. The Air Force contends
1563 | it will spend \$162 million, but the GAO estimates the cost to
1564 | complete the project will be over \$200 million."

1565 | What do you say about that? Where is the disagreement
1566 | between the Air Force and the GAO?

1567 | General ROGERS. The Air Force and the GAO are really
1568 | saying the same thing here, sir. The 163 alludes to pure
1569 | construction costs. That one should be about 7 to 7.5
1570 | million, under the agency approved amount for construction.
1571 | The other costs that take over \$200 million include furniture
1572 | and equipment, secondary services, design fees that are not
1573 | included in construction that are normal in any construction
1574 | project; and just about all of those would have been spent
1575 | even if we completed it on time.

1576 | Last year, the discussion seemed to be all about the
1577 | construction costs being out of control, so those other costs
1578 | weren't really brought up. The Air Force tracks them
1579 | carefully, which is why we're able to provide them to the GAO
1580 | when they ask. But we're basically saying the same thing.

1581 | Mr. DUNCAN. But do you have somebody now who is in
1582 | charge of this, who has major construction experience?

1583 General ROGERS. Yes, sir. We had to delay a little bit
1584 last year to stand up and consolidate the management office,
1585 because our colonel was deployed to Iraq. We got him back,
1586 and as soon as he came back, he plowed into this and he is
1587 doing a great job.

1588 Mr. DUNCAN. Thank you very much. I yield back.

1589 Mr. SHAYS. I'm not going to take the full 5 minutes
1590 because I wasn't here. But could we have it clarified for
1591 the record why there was no general contractor, a U.S.
1592 general contractor, overseeing this?

1593 General ROGERS. Yes, sir, I can.

1594 During investigation of this project, I found letters
1595 from previous vice commanders of USAFE, and meeting minutes,
1596 where USAFE officially and repeatedly asked for a general
1597 contractor.

1598 Additionally, the Minister of Defense in Germany wrote
1599 letters to German Government agencies saying, You're going to
1600 need a general contractor or this thing is going to go afoul.

1601 However, there were other German bureaus and political
1602 interests who insisted on trade lot contracts because they,
1603 like us, have rules and laws that ensure that small business
1604 has opportunities, et cetera.

1605 And in those initial days, when told we wouldn't get a
1606 general contractor, the people overseeing the project
1607 accepted it in the sense that there were only about four

1608 trade lots envisioned at the time. But nobody had a clue
1609 that it was going to grow to over 42.

1610 Mr. SHAYS. Just a question: We had a project manager
1611 on this project? Someone?

1612 General ROGERS. Yes, sir.

1613 Mr. SHAYS. Thank you, Mr. Chairman.

1614 Mr. DAVIS OF VIRGINIA. Let me sum up.

1615 We just don't want to be here next year going through
1616 the same thing. And I guess the real variable here is
1617 Germans and the contractors and how they act. And we have
1618 the controls in at the Air Force, I understand. So the real
1619 question is, are the German contractors going to show up?
1620 Are they going to be able to do the job? Are they going to
1621 show in the numbers that we need to get this thing done?

1622 Am I missing some something, or is that the essence of
1623 where we are right now?

1624 Mr. KUTZ. Yes. And I think the other thing that has
1625 been discussed here, too, is whether that German amount is a
1626 loan or a grant or whatever the case may be, because that
1627 will have to be sorted out later as to who will pay for what.

1628 But with respect to physical progress, getting it done,
1629 we agree with that.

1630 Mr. DAVIS OF VIRGINIA. Just tell me, we're not going to
1631 use this procedure again. General?

1632 General ROGERS. Sir, under ABG 75, we're obligated to

1633 use a German construction agent which in that region is LBB.

1634 What we intend to do is--

1635 Mr. DAVIS OF VIRGINIA. Is this is State Department
1636 agreement or a military agreement?

1637 I'll ask Ms. Garber.

1638 Ms. GARBBER. It's an agreement between the forces and
1639 the Germans.

1640 Mr. DAVIS OF VIRGINIA. Does that agreement have a
1641 10-year time frame? Is that just part of the agreement for
1642 our bases being there?

1643 General ROGERS. Yes, sir. The Germans conclude
1644 agreements like this with all forces, all nations. It will
1645 be changed if the forces at some point decide to renegotiate.

1646 Mr. DAVIS OF VIRGINIA. But we did note we did have
1647 other options with this?

1648 Mr. CAUSSEAUX. There are clearly provisions in the ABG
1649 75 for the U.S. to--in some cases to demand, insist and
1650 request; and the option for using a general contractor, I
1651 think the U.S. could have insisted on the use of a general
1652 contractor.

1653 Mr. DAVIS OF VIRGINIA. My question is, we have learned
1654 from this so that next time we will handle it differently,
1655 within the confines of that agreement.

1656 General ROGERS. Yes, sir. As a matter of fact, the
1657 Germans agree because this didn't work for them either, and

1658 | it's now costing. Believe me, the impact on them is more
1659 | than us.

1660 | Mr. DAVIS OF VIRGINIA. Good. Thank you very much.

1661 | Chairman WAXMAN. Well, I thank you all for advising us
1662 | where we stand with this project, and I appreciate your being
1663 | here today.

1664 | That concludes our business, and the committee stands
1665 | adjourned.

1666 | [Whereupon, at 11:34 a.m., the committee was adjourned.]

 SPEAKER LISTING

CAUSSEAUX.	26	38	39	40	41	45	46
	47	55	72				
DAVIS OF VIRGINIA.	7		36	37	38	39	40
	41	42	43	44	45	46	67
	71	72	73				
DORN.	19	28	29	44	48	49	50
	53	56					
DUNCAN.	67	69	70				
GARBER.	12	37	38	41	54	72	
KUTZ.	18	23	27	30	31	32	33
	34	51	52	53	55	58	60
	64	67	71				
ROGERS.	13	29	30	31	32	35	37
	42	43	44	48	52	53	54
	56	57	58	61	62	63	64
	65	68	69	70	71	72	
RPTS BINGHAM50							
RPTS KESTERSON		1					
SARBANES.	46	47	48	49	50		
SHAYS.	70	71					
TIERNEY.	50	51	52	53	54	55	56
	57						

WATSON.	57	58	59				
WAXMAN.	3	10	11	12	18	25	27
	28	29	30	31	32	33	34
	35	36	46	50	60	62	63
	64	65	66	73			

 CONTENTS

STATEMENT OF JUDITH GARBER, DEPUTY ASSISTANT SECRETARY OF STATE, BUREAU OF EUROPEAN AND EURASIAN AFFAIRS, U.S. DEPARTMENT OF STATE	PAGE	12
STATEMENT OF MAJOR GENERAL MARC E. ROGERS, USAF, VICE COMMANDER, UNITED STATES AIR FORCES IN EUROPE	PAGE	13
STATEMENT OF TERRELL G. DORN, DIRECTOR, PHYSICAL INFRASTRUCTURE, GOVERNMENT ACCOUNTABILITY OFFICE; GREGORY D. KUTZ MANAGING DIRECTOR, FORENSIC AUDITS AND SPECIAL INVESTIGATIONS, GOVERNMENT ACCOUNTABILITY OFFICE; AND BRUCE A. CAUSSEAU, SENIOR LEVEL CONTRACT AND PROCUREMENT FRAUD SPECIALIST, FORENSIC, GOVERNMENT ACCOUNTABILITY OFFICE	PAGE	18
STATEMENT OF TERRELL G. DORN	PAGE	19
STATEMENT OF GREGORY D. KUTZ	PAGE	23

INDEX OF INSERTS

***** INSERT 1-1 *****

PAGE 6

***** INSERT 1-2 *****

PAGE 9

***** COMMITTEE INSERT *****

PAGE 10

***** INSERT 1-3 *****

PAGE 17

***** INSERT 1-4 *****

PAGE 26