

THE STAR WARS PROGRAM AND THE ROLE OF CONTRACTORS

HEARING BEFORE THE COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE ONE HUNDRED SECOND CONGRESS SECOND SESSION

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JULY 24, 1992
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CONTENTS

Opening statements:	Page
Senator Pryor.....	1
Senator Akaka.....	5

WITNESSES

FRIDAY, JULY 24, 1992

Ambassador Henry F. Cooper, Director, accompanied by William H. Carroll, General Counsel, and John B. Richardson, Acting Director of Contracts, Strategic Defense Initiative Organization, U.S. Department of Defense	6
Prepared statement	33

APPENDIX

Responses to Senator Pryor	52
Senator Pryor's questions for the record.....	59

(iii)

THE STAR WARS PROGRAM AND THE ROLE OF CONTRACTORS

FRIDAY, JULY 24, 1992

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 9:53 a.m., in room SD-342, Dirksen Senate Office Building, Hon. David Pryor presiding.

Present: Senators Pryor and Akaka.

OPENING STATEMENT OF SENATOR PRYOR

Senator PRYOR. The Committee will come to order.

In preparation for this hearing, it was my understanding that Senator John Glenn, who is Chairman of the Governmental Affairs Committee, would be present and open the hearing. I have just been advised that he will not be able to attend, so we will get right into our hearing.

I have a short opening statement, and then we look forward to hearing from Ambassador Cooper and to today's discussion.

This morning, we are going to talk about the Strategic Defense Initiative (SDI). We commonly know about this as "Star Wars." This is a program, conceived of by President Reagan and vigorously supported by President Bush. It has been the focus of extensive debate. It has been praised and it has been condemned, since its inception in 1983.

Today, I would like to set aside the debate on whether or not this program is ultimately going to actually work or not work. Instead, we are going to focus this morning on such questions as where has the money gone, who is actually managing the Star Wars program, is there accountability, is there control by Federal officials, or are the taxpayers simply providing an open money sack for contractors.

The other question is have we turned all of the keys over to the bank to private contractors. The Strategic Defense Initiative Organization (SDIO), was created to manage; to determine if the SDI program was going to be viable. It helps us to determine, I should say, if it is going to be viable. This effort has proven to be one of the most costly and questionable programs ever undertaken by the Pentagon; and, since its inception, the program has cost the taxpayers the staggering amount of some \$25 billion.

This year, the President is seeking another \$5.4 billion. During the 15-year period from fiscal years 1991 to 2005, General Account-

ing Office estimates that the program will cost the American taxpayers over \$90 billion. I am very concerned that the management and direction of the program is largely being done by an invisible layer of contractors and not by Federal officials.

SDIO spends over \$160 million, that we can account for, each year on support service contracts. These contracts produce no military equipment, conduct no research, nor develop any technology. What SDIO is buying with this \$160 million is an invisible bureaucracy that performs much of the basic work for the organization. This contract workforce actually outnumbers, if you would look at the chart, please, outnumbers the SDIO staff working on the program. According to SDIO's own analysis, on a random selection of days early this year, contractor staff comprised approximately 60 percent of the workforce at SDIO headquarters.

I have three major concerns with these support contractors. First, SDIO is over-reliant upon these contractors to perform the most sensitive internal work of the program. Secondly, SDIO's extensive reliance on contractors makes the program susceptible to potential conflicts of interest. And finally, it has been shown that the use of these support contractors cost considerably more than if the work were done by government employees.

Six months ago, I directed the Subcommittee staff to review the use of contractors by SDIO. Here are some of the examples that we are finding:

Contractors and consultants are used to distribute funds remaining before the fiscal year runs out. Contractors represent SDIO at meetings and conferences, and contractors even sometimes call and present over the meetings.

Contractors prepare many of the official SDIO documents, such as congressional testimony, congressional descriptive summaries, reports to Congress and program management agreements.

Contractors draft acquisition plans, notices for the *Commerce Business Daily*. They assist with contract negotiations. They prepare contract modifications and even review the monthly reports of other contractors to see if they are performing their work. What we are finding, the bottom line here, is that contractors today are deciding which contractors get the contracts.

Contractors are used to respond to questions submitted by congressional committees. In one instance, when GAO came over to review and audit an SDIO program, the only persons who could respond to the GAO's questions about a particular program were contractors—not Federal employees. They were designated on that particular day as SDIO's corporate memory.

The list could go on and on, but I think the point is made as to who is in charge of SDIO, contractors or Federal officials. SDIO states that as long as Federal officials sign the letters, give the testimony or become briefed by contractors, the Federal Government and other Federals are in charge.

I believe that when the degree of contractor involvement is as extensive as we find today with SDIO, that the line has been crossed and we have delegated out the management and the direction of a government program.

Another area of concern is the potential for conflicts of interest relating to the SDI Advisory Committee. GAO conducted some re-

search for me in this field and found that of the 30 individuals who made up the Advisory Committee—you might want to note the chart ¹—some 14 of these individuals have represented companies or contracting firms. We are going into that in more detail later.

These so-called advisors were either employees, consultants, or stock owners of SDI contractors. The contractors that these 14 advisors are affiliated with have now received some \$400 million in SDI contractors, from fiscal year 1988 through fiscal year 1990. I am going to repeat that sentence: The contractors that these 14 advisors are affiliated with have received over \$400 million in SDI contracts, from fiscal year 1988 through fiscal year 1990.

I am asking the question: Does anyone believe today that these advisors would quit telling SDI to stop spending so much money? Does anyone believe that one of these advisors would tell SDI to not use so many contractors?

My third area of concern is the high cost to the taxpayer resulting from the use of this huge support group, the contractors. Both the DOE and DOD Inspectors General have concluded it costs 25 to 40 percent more to use contractors to do management support work. We would like to know what SDIO's response has been to this over-reliance on contractors. Thus far, the response has been hiring an SDIO contractor to conduct a review of SDIO contracting. In other words, you hired a contractor to oversee and see if there were too many contracts. This is not surprising.

The SDIO contractors' study concluded that the use of contractors to support the contract process was essential. Contractors can conduct state-of-the-art research into new technologies. However, there is no special expertise required to rearrange a colonel's work station or covering an office, when no SDIO employees will be in on certain days. Furthermore, contractors should not draft congressional testimony, they should not draft SDIO memos, they should not represent SDIO at conferences.

At the very heart of this program is an invisible layer of contractors who have become its "corporate memory." They make the decisions, and they award the contracts to other contractors. These contractors have ties to the large prime contractors, they have ties to the SDI Advisory Committee, and they have a great deal of influence in the budgeting, the planning, the contracting and the marketing of SDI.

We are going to take a close look this morning at this invisible bureaucracy, and that precisely is what this hearing is about.

PREPARED STATEMENT OF SENATOR PRYOR

Today's hearing will focus on the Strategic Defense Initiative (SDI), or "Star Wars" as it is commonly known. This program, conceived of by President Reagan and rigorously supported by President Bush, has been the focus of extensive debate and criticism since its inception in 1983.

Today we will set aside the debate of whether or not the program will actually work. Instead, we are going to focus on where has the money gone? Who is actually managing the Star Wars program? Is there accountability and control by Federal officials or are the taxpayers simply providing an open money sack for contractors?

The Strategic Defense Initiative Organization, or SDIO, was created to manage and direct a vigorous research program which would enable us to determine if the

¹ See page 49.

SDI program was going to be viable. This effort has proven to be one of the most costly and questionable programs ever undertaken by the Pentagon. Since its inception, the program has cost the taxpayers the staggering amount of \$25 billion. This year, the President is seeking another \$5.4 billion. During the 15-year period from fiscal year 1991 to 2005, GAO estimates that the program will cost over \$90 billion. I am very concerned that the management and direction of the program is largely being done by an invisible layer of contractors and not by Federal officials.

SDIO spends over \$160 million each year on support service contracts. These contracts produce no military equipment, conduct no research, nor develop any technology. What SDIO is buying with this \$160 million is an invisible bureaucracy that performs much of the basic work of the agency. This contract workforce actually outnumbered the SDIO staff working on the program. According to SDIO's own analysis, on a random selection of days early in 1992, Contractor staff comprised about 60 percent of the workforce at SDIO headquarters.

I have three major concerns with these support contractors. First of all, SDIO is over-reliant upon them to perform the most sensitive, internal work of the program. Secondly, SDIO's extensive reliance on contractors makes the program susceptible to potential conflicts of interest. And finally, it has been shown that the use of these support contractors cost considerably more than if the work were done by Government employees.

Six months ago, I directed my Subcommittee staff to review the use of contractors by SDIO. Here are some examples of what they found:

- Contractors are used to distribute funds remaining before the fiscal year runs out.

- Contractors represent SDIO at meetings and conferences, and contractors even sometimes call the meetings.

- Contractors prepare many of the official SDIO documents like congressional testimony, congressional descriptive summaries, reports to Congress and program management agreements.

- Contractors draft acquisition plans, notices for the Commerce Business Daily, assist with contract negotiations, prepare contract modifications and even review the monthly reports of other contractors to see if they are performing their work.

- Contractors are used to respond to questions submitted by congressional committees.

- In one instance, when GAO came over to review and audit an SDIO program, the only persons who could respond to the GAO's questions about the program were contractors and they were designated as SDIO's "corporate memory."

The list could go on and on, but I think the point is made. Who is actually in charge of SDIO? Contractors or Federal officials? SDIO states that as long as Federal officials sign the letters, give the testimony, or get briefed by the contractors, they are in charge. I believe, however, that when the degree of contractor involvement is as extensive as it is at SDIO, the line has been crossed and we have delegated out the management and direction of a Government program.

Another area of concern are potential conflicts of interest relating to the SDI Advisory Committee. GAO conducted some research for me and found that 14 of the 30 individuals who have served on the SDI Advisory Committee have affiliations with SDI contractors. These advisors were either employees, consultants, or stock owners of SDI contractors. The contractors that these 14 advisors are affiliated with have received over \$400 million in SDI contracts from fiscal year 1988 through fiscal year 1990. Does anyone believe that these advisors would quit telling SDI to spend so much money? Does anyone believe that one of these advisors would tell SDI to not use so many contractors?

My third area of concern is the high cost to the taxpayers resulting from the use of support contractors. Both the GAO and DOD's Inspector General have concluded it costs 25 to 40 percent more to use contractors to do management support work.

Mr. Chairman, what has been the response of SDIO to this over-reliance on contractors? They responded by hiring a SDIO contractor to conduct a review of SDIO contracting! Not surprisingly, the SDIO contractor's study concluded that the use of contractors to support the contract process was essential. Contractors can conduct state-of-the-art research into new technologies. However, there is no special expertise required to rearrange a Colonel's workstation or covering an office when no SDIO employees will be in on certain days. Furthermore, contractors should not draft congressional testimony, draft SDIO memos, or represent SDIO at conferences.

At the very heart of the SDI program is an invisible layer of contractors who have become its "Corporate Memory." These contractors have ties to the large prime contractors, they have ties to the SDI Advisory Committee, they have a great deal of

influence on the budgeting, planning, contracting, and "marketing" of SDI. We are going to take a close look at this invisible bureaucracy.

That is what this hearing is about.

Senator Akaka, we appreciate your being here and wonder if you have an opening statement.

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. Thank you very much, Mr. Chairman.

I am pleased that the committee is reviewing the activities of the Strategic Defense Initiative Organization, and I thank you for this opportunity to make some remarks.

Often controversial and extremely costly, SDI was the dream of the previous administration to protect our country from possible Soviet missile attack. The idea was to send up space-based lasers to intercept enemy missiles. However, with the historical changes that occurred, President Bush scaled down the program to a handful of "Brilliant Pebbles."

Obviously, I am not a supporter of space-based defense, and as such, I become even more offended when questionable programs take advantage of the public's trust. I hope that this hearing will explain why SDIO is spending millions of dollars on support contracts, which may have created conflict of interest situations, and why Federal employees, thousands which are being released by the Department of Defense, could not provide these services which are contracted out.

Perception may be why we are here today, Mr. Chairman. However, perception is driven by the fact that the possibility of conflict exists. To remove the perception, you must remove the possibility.

Mr. Chairman, I hope that today's hearing will bring greater accountability to the SDIO contract programs, and I look forward with you to the testimony that will be received by the committee.

Thank you very much.

PREPARED STATEMENT OF SENATOR AKAKA

Mr. Chairman, I am pleased that the Committee is reviewing the activities of the Strategic Defense Initiative Organization (SDIO).

Often controversial and extremely costly, SDI was the dream of the previous Administration to protect our country from possible Soviet missile attack. The idea was to send up space-based lasers to intercept enemy missiles. However, with the historical changes that occurred, President Bush scaled down the program to a handful of "Brilliant Pebbles".

Obviously, I am not a supporter of space-based defense and, as such, I become even more offended when questionable programs take advantage of the public's trust. I hope that this hearing will explain why SDIO is spending millions of dollars on support contracts, which may have created conflict of interest situations, and why Federal employees, thousands which are being released by the Department of Defense, could not provide these services.

Perception may be why we are here today. However, perception is driven by the fact that the possibility for conflict exists. To remove the perception, you must remove the possibility.

Mr. Chairman, I hope that today's hearing will bring greater accountability to the SDIO contract programs, and I look forward to the Ambassador's testimony.

Senator PRYOR. Thank you, Senator Akaka.

Ambassador Cooper, we look forward to your statement.

TESTIMONY OF AMBASSADOR HENRY F. COOPER, DIRECTOR; ACCOMPANIED BY WILLIAM H. CARROLL, GENERAL COUNSEL, AND JOHN B. RICHARDSON, ACTING DIRECTOR OF CONTRACTS, STRATEGIC DEFENSE INITIATIVE ORGANIZATION, U.S. DEPARTMENT OF DEFENSE

Ambassador COOPER. Thank you, Senator Pryor.

I have a fairly lengthy statement that I would like to have included in the record and some opening comments, if I may.

Senator PRYOR. Certainly.

Ambassador COOPER. I want to thank you, Mr. Chairman, for the opportunity to appear before you and your committee to testify on SDI and the role of our contractors in the performance of our mission, but first I would like to say a few words about the mission.

The SDI Mission in a New World Order

Recent dramatic international events have transformed the bipolar world of the past 45 years, promising freedom to many previously oppressed peoples and benefits for the American people and others worldwide. A new less confrontational international era, however, does not mean that all dangers to our national security have gone away, nor that all are even less significant. Indeed, some dangers previously in the shadow cast by the former U.S. Soviet confrontation are growing.

Notable among these dangers is the proliferation of weapons of mass destruction and the means to deliver them to great distances in a short period of time. Ballistic missiles from over 15 nations today are potential threats to our troops abroad, and our friends and allies. There is no technical reason why the current threat could not evolve into an additional long-range ballistic missile threat to the United States within a decade. After all, that technology is a quarter-century old and is a natural by-product of the ever-increasing interest in exploiting the benefits of outer space.

The economic realities of the global marketplace only enhance this concern. And as demonstrated in the Gulf War, there is no good reason to doubt the seriousness of such a ballistic missile threat in the wrong hands. This is a common problem for ourselves, our long-standing allies and friends, and our former adversaries of the Cold War with whom we are seeking a new era of cooperation.

Indeed, as the East/West relationship has been evolving from confrontation toward cooperation, we have been engaging in discussions with the Russians and our allies and friends about how we can cooperate on a global protection system.

Consideration of this rapidly changing world scene led President Bush, in January of 1991, to redirect SDI toward protecting the American people, our forces abroad and our friends and allies against a limited ballistic missile attack, whatever its source.

Last year, the Congress passed the Missile Defense Act of 1991. And on January 2, 1992, Secretary Cheney submitted to the Congress the Department's plan for implementing the Missile Defense Act, indicating in his transmittal letter his guidance to the Department that this "critically important" Act be "implemented as a top national priority, consistent with prudent management of cost, schedule, performance and technical risk factors." And with con-

gressional support, we can build an advanced theater missile defense contingency capability as early as 1996, and an initial U.S. contingency capability as early as 1997.

Program Execution

Now, the SDI program, refocused on this new mission, provides for centralized management of the nation's ballistic missile defense programs with decentralized programmatic execution by the military services. In my prepared statement, I review the elements of a memorandum of agreement that I recently negotiated with the service secretaries to govern how we will manage this complex program, under OSD oversight.

SDIO assigns project responsibility and distributes budget dollars to executing agents, each of whom has its own staff and contractors to execute its respective part of the overall SDI program. Over the past 7 years, SDIO has directly managed 25 percent of the SDI funding appropriated by Congress, and the rest has been distributed to executing agents—37 percent to the Army, 25 percent to the Air Force, 6 percent to the Navy, 3 percent to the Department of Energy, 3 percent to the Defense Nuclear Agency, and 1 percent to DARPA/NSA. Each organization manages its resources according to its rules and procedures, which must meet the requirements of SDI policy and direction within the public law.

Historically, 75 percent of all SDI appropriations has ended up in contracts with industry. The remainder has gone to the Department of Energy, DOD laboratories, government salaries and overhead. I estimate that today, SDI appropriations pay for 2,000 total government personnel, 1,000 contracts, and over 20,000 contractor personnel.

Between 1984 and 1988, SDIO authorized strength grew from 29 to 263 individuals. SDIO is currently authorized 259 personnel, who, in 1991, were supported by 56 other government employees from the military services and other government organizations, by 70 individuals from Federally funded research and development centers or FFRDC's, and by about 1,300 contractor support personnel under 46 contracts with 27 firms, for which we paid about \$165 million. These support contracts provided technical, administrative and management services, performed under written task directions from a responsible government manager, whom I hold accountable for all deliverables. We also spent approximately \$536 million in the research and development contractor category.

We have maintained a high degree of competition, achieving in fiscal year 1991 a competitive rate of almost 70 percent, somewhat higher than the average for the entire Department of Defense. About 5 percent of our contract dollars have been awarded under the procedures of section 8(a) of the Small Business Act; such contracts have been unavailable for competition, as they were under \$3 million each.

I am keenly aware of our manpower shortage and share the committee's concern over the proper use of contracted support services. I would like to outline the types of contractors we use and how we ensure that only government employees perform inherently governmental functions and avoid conflicts of interest infringements. More specifics are provided in my prepared testimony.

Scientific, engineering and technical assistance support services are provided to SDIO mainly by profit-making companies, such as System Engineering and Technical Assistance, or SETA contractors, and to a lesser degree by nonprofit companies and FFRDC's under joint arrangements worked out with their government sponsors.

There are now 38 SETA and other support contractors that support systems and program support to SDIO. The most important are the three Super-SETA contractors (TASC, BDM and Riverside Research Institute) who provide "quick response" support, particularly with respect to all aspects of systems engineering, architecture, mission studies and operational concepts.

The Super SETA arrangement operates as follows: Tasks are competed among the three contractors; each contractor is required to compete for the task; proposals may be required within 10 days; and award is made to that contractor whose proposal is most advantageous to the government, considering such evaluation criteria as technical excellence, management capability, personnel qualifications, experience, past performance, schedule, cost, cost realism and the impact of the proposed task on other tasks already awarded.

SDIO requires strict organizational conflict-of-interest contractual provisions, to assure that each contractor's scientific objectivity and to avoid unfair competition advantage, by virtue of access to non-public government information or proprietary information belonging to others.

The SETA contractors are prohibited from participating in any capacity in work that stems directly from their SDIO contract work; performing services on their products and services or the products and services of another company, if they have been substantially involved in their development or marketing; and performing in any capacity in a procurement where they prepared the statement of work for the procurement.

FFRDC's differ from SETA's and other private companies. They are dedicated to perform work for their government sponsor and are not profit-making. Since SDIO does not sponsor an FFRDC, we must arrange for such services through existing FFRDC sponsoring agencies. We have such arrangements for about 70 FFRDC personnel today.

The three Super SETA contractors, other SDIO SETA contractors and the FFRDC's are required to meet stringent organizational conflict-of-interest requirements. My contracts and legal staff have worked diligently to provide organizational conflict-of-interest surveillance of these contracts, and I believe that this effort has been free of such conflicts. We have worked hard, and I believe successfully, to prevent the performance of these contracts from lapsing into prescribed personal services contracting.

I would like to increase our civilian and military staff and perform much of this effort with my own personnel, rather than relying on support contractors. But we are unlikely to bring into government service all of the expertise needed to effectively manage this complex program, and I would always want to tap into outside points of view.

The real issue is assuring that SDIO has a sufficient number of qualified government personnel, so that government employees always perform, and are perceived to perform, the inherently governmental functions that are defined by OMB as those "so intimately related to the public interest as to mandate performance by government employees. These functions include those activities that require either the exercise of discretion in applying government authority or the use of value judgments in making decisions for the government." In specific terms, these functions include the selection of program priorities, the direction of Federal employees and the management of government programs.

Savings produced by improving the ratio of government to contracted support personnel would be a relatively small percentage of our overall management, including government and contractor costs. Thus, the primary reason for increasing government staff would be to control the perception and the reality of potential conflicts of interest.

SDIO Management Initiatives

Now, I would like to talk briefly about several initiatives we have been taking to ensure proper contractor management and to improve our government to contractor ratio in SDIO.

First, last March, I requested an independent review of SDIO contracting and use of contractor support services. In response, the DOD Inspector General's Office has an audit under way to evaluate the effectiveness of our procurement system and the role of our support contractors. In addition, the Defense Contract Audit Agency is conducting an audit into the acceptability of contract costs, adequacy of financial or accounting aspects of contracts, adequacy of accounting and financial management systems, estimating procedures, and property controls.

Second, in March, I also undertook a comprehensive survey to review our use of contractor support services. All of the SDIO staff said they needed more government employees; would cut back on contractor support, if given the additional staff; were in charge of the contractor effort, tasked it, approved travel, and evaluated contractor performance; performed inherently government functions, but often used contractors to draft or provide support work on those governmental functions; and, finally, assured that final responsibility and accountability for their product is always with a government representative.

Third, several years ago, we developed an in-house course for our contracting officers' technical representatives and have given it repeatedly, to assure that our staff continues to be well versed in the proper procedures governing contract support services.

Fourth, SDIO employees have been briefed to stress the importance of not using support contractors to perform inherently governmental functions or personal services, and to provide them with some methods of managing these contracts, to avoid using contractor personnel improperly. To date, nearly two-thirds of these SDIO staff, including Gen. O'Neill and myself, have attended these presentations.

Fifth, the contracts staff, in conjunction with the Office of General Counsel, is working to improve the way we draft our support

contracts, to ensure that we are buying products and services and not bodies to be used as substitutes for government employees.

Sixth, we have made a conscientious effort to upgrade the quality of our contracts staff, by bringing in more senior level contracting officers to replace some of our junior military contracting officers.

Finally, I am seeking to increase our government manpower. Last fall, after the Missile Defense Act was passed, I tasked my staff to review how we might best manage such a large undertaking. I have requested a manpower study, to assure a proper level of government employees in SDIO, and the Deputy Secretary of Defense has concurred.

Closure

As we continue to wrestle with these concerns, I anticipate we will consider three alternative actions: First, to continue roughly the same mix of government FFRDC and contractor personnel and just work harder to avoid the perception of conflict of interest, or; second, adjust the personnel mix, such that a substantially greater portion of support activities are performed by government personnel; and/or, third, shift the balance of non-government support personnel, to substantially increase the involvement of FFRDC personnel.

We are pursuing the first alternative, by taking the above-mentioned management initiatives to sensitize our personnel about existing regulations concerning conflicts of interest and inherently governmental functions. We are also pursuing the second alternative, by seeking to increase our government personnel through Department of Defense channels.

FFRDC involvement in SDIO activities so far has been far short of the comprehensive FFRDC effort that Gen. Jim Abrahamson, the first SDI Director, had in mind in 1986, when he first tried to establish an FFRDC devoted to supporting SDI. He adopted a different course, the legacy of which is our current condition, because, as I understand it, he was not able to reach a timely agreement with the Congress. I cannot help but wonder if I would be sitting here today, had he been successful.

I would welcome congressional counsel on how best to achieve an appropriate team of government, FFRDC and contractor personnel to enable timely, competent, affordable, and efficient execution of our program, without raising conflict-of-interest concerns. I share the committee's concern about the government's use of contractors and consultants and functions in my organization.

In conclusion, I would like to stress again that I and my government staff, not contractors, will remain in charge and accountable for the successful implementation of the SDI program.

Thank you, Mr. Chairman.

SDI Advisory Council

Senator PRYOR. Mr. Ambassador, thank you very much.

I have a host of questions, but I think to really start this morning, I am going to walk over to that chart and ask you some questions about the Advisory Committee. I think this is something that you need to educate me on and, perhaps the committee.

Someone has been nice to provide me with a marker here. We have taken this advisory board, that I assume sort of sets the policy.

Ambassador COOPER. No, sir, that is not correct.

Senator PRYOR. All right, what does the Advisory Committee do?

Ambassador COOPER. It provides advice on specific questions that I ask their counsel with respect to—and one of them is not programmatic advice, I might add.

Senator PRYOR. So you seek the advice of the 30-member Advisory Committee?

Ambassador COOPER. No, sir. The membership of my committee is 11 in this instance. I believe in your statement you referred to the 30 that had served on the board since its inception. There are 11 members currently. Frankly, I asked for someone to return to my office and return with their disclosure forms, so I could possibly respond to the display board that you put up here, because I am not sure who is associated with the particular companies that you have mentioned there.

Senator PRYOR. I will get right to my concern. My concern is—and I have taken these four that are either part of the present 11 members you have on your Advisory Committee or who have been on the Advisory Committee in times past since the inception of the SDI program.

My concern, Mr. Ambassador, that the Advisory Committee which gives you or your staff advice or counsel as to what do next, what to buy, what sort of research we have, I have just tracked these four firms right here.

We find also that these four firms, we find Booz Allen here and Nichols Research here. Here they are advising and here they are getting to become support contractors. OK? That may not sound like a lot to a lot of people, but from 1984 to 1990, Nichols Research, for example, they do not make the headlines very much, but from 1984 to 1990, this firm right here was paid \$68 million. Booz Allen got \$6 million in 1990 and 1991.

Lockheed is up here advising you, Mr. Ambassador, and we find Lockheed over here doing research. They say you need some more research. Who gets the research grants? Lockheed, \$393 million from 1984 to 1990.

Well, here is McDonnell-Douglas, and they received \$308 million from 1984 to 1990 for research, research and development contractors. Here they are up here, once again, as the advisor, the advisor to you as to what research you need and what we need to do.

Let us go down here: Who are the subcontractors for these support contractors and R&D contractors? Well, who do we find? Booz Allen, here they are advising, here they are support contracting, and here they are as an SAIC subcontractor, this company is a private contractor and now they are hiring Booz Allen to become a subcontractor.

Here is Nichols Research again, Mr. Ambassador, they are in the loop once again. Here is McDonnell-Douglas. Here they were up here in research and development, they are back down here, once again a lot of advice emanating from the errant Advisory Committee.

Here is Lockheed again down here. I am going to place into the record the 14, I believe there are 14, major members of the Advisory Committee that have served you, and I am not accusing them of any fraud or illegality, but I am going to put into the record the awards of contracts by SDI to each of these firms. They total, by the way, \$405 million over the last several years.

SDI Advisory Committee Members Who Had An Affiliation or Affiliations With Contractors That Received SDI-Related Contracts

(In Fiscal Year 1988 Through 1990)

Name of Contractor	Total Value of Contracts
Boeing.....	\$ 7,537,498.00
Booz, Allen.....	4,026,000.00
Draper Labs.....	1,149,119.00
General Dynamics.....	5,987,000.00
General Electric.....	145,707,912.00
Kaman.....	238,492.00
Lockheed.....	221,863.00
Martin Marietta.....	81,625,971.00
McDonnell Douglas.....	107,295,100.00
Nichols Research Corp.....	23,258,206.00
Raytheon.....	1,992,649.00
R&D Associates.....	655,000.00
Rockwell.....	14,405,703.00
Systems Planning Corp.....	1,308,705.00
TRW.....	5,913,908.00
University of California.....	1,200,000.00
Westinghouse.....	2,552,450.00
Total.....	\$405,075,576.00

So I think what we are showing there, Mr. Ambassador—I hate to use the word, but it looks to me like an incestuous relationship. I wonder if you could discuss that.

Ambassador COOPER. Yes, sir, I would like to comment on this, and I would also like to have my general counsel, Mr. Carroll, also discuss this point.

SDIO Inputs to Congress

Senator PRYOR. We would be glad to have him help assess this with us. By the way, Mr. Carroll, you are not a private contractor, are you?

Mr. CARROLL. Sir, I have served the United States government as a civil servant for 32 years. I have been honored to be with the SDI program since October of 1985, and I deeply consider myself as part of the corporate memory.

Senator PRYOR. All right.

Ambassador COOPER. I would like to say, too, Senator, lest there be any doubt, that no contractor wrote my testimony this morning nor any other testimony that I have presented in my 12 appearances before the Congress.

That does not say that contractors do not make input in the process. They do. I am not sure that they have ever provided input into my own personal testimony. They do provide input to reports to Congress, and they even on occasions provide first-cut answers to

questions that are asked by the Congress, you are quite correct in that. But at the same time, I can assure you that any material that has come out of SDIO since I have been there has been reviewed personally by me, and in most cases, as my staff can tell you, I am pretty free with a red pen—and that includes on the things I write myself.

Senator PRYOR. On that point, if I may ask, each month, the contractors and consultants have to fill out or they basically justify their paycheck for the month by giving a statement of services. Have you read any of the statements provided to the SDI program by some of the contractors on a monthly basis?

Ambassador COOPER. I have gone through some of those recently, in preparation for this hearing. Most of it, I can assure you on this matter, is pure puffery.

Senator PRYOR. I do not understand.

Ambassador COOPER. Contractors perhaps are writing things that make them appear better in the eyes of their supervision within their companies, in terms of the high character of their work, in providing material that goes to the Congress or deciding things—claims which, in fact, are not the case. Those are inputs that are written, I think, at a fairly low level within the contracts. I do not even know that they are necessarily filtered by the contractor management within the contract.

Senator PRYOR. If, in fact, they were puffery, your word, then did you pay them the full amount they requested?

Ambassador COOPER. They may have provided input, Mr. Chairman. I do not deny that they provided input. I am saying they claim too much for their input. I will stand by what I said a moment ago, everything that we have given you that I know of has been fully reviewed and often changed within the staff, and personally I have changed much of what has come to my desk, without my knowledge of how much was changed before by my staff and how much was there with the contractors' input.

I hold individuals responsible in our organization for the policy and for the decision-making, and it is my belief that that is the way it is done throughout the organization.

Senator PRYOR. I interrupted you a while ago.

SDIO Staffing Requirements

Ambassador COOPER. We are indeed short-handed, and I think your concern is a valid concern. I am not suggesting that it is not. But I do believe that we have a very competent and highly-qualified staff, two-thirds of whom have advanced degrees. They are strong-willed people, and I do not think they are easily swayed by contractor input.

Senator PRYOR. If you are, in fact, short-handed, have you requested that the Congress or the Department of Defense provide you more people?

Ambassador COOPER. Every predecessor of mine and myself—each of us has requested increased personnel, yes, sir.

Senator PRYOR. From the private or public sector?

Ambassador COOPER. I have requested increased spaces, so that I could bring additional people within the government, most of

whom presumably would already be within the government, but not necessarily all.

Senator PRYOR. With all of the military realignment and reshuffling, is there any thought to transferring individuals into the SDI program?

Ambassador COOPER. Yes, sir. As I indicated in my statement, we have on loan, through agreements with other military organizations, a number of people that are supporting our staff now. So I work to add government staff in a cooperative way through agreements with other organizations, even though I do not have the approval for that high a level staff for SDIO.

SDI Advisory Committee

Senator PRYOR. Mr. Ambassador, we were going to call on Mr. Carroll a few moments ago, but you may want to comment and then defer to him.

Ambassador COOPER. Yes, sir. I wanted to say that, first of all, for the role of the advisory group for myself, and I believe it is probably true for my predecessors, as well, is that I use them for counsel. They are senior individuals who have had a lot of experience outside. As I said, I am not sure who in particular on my advisory council now, if any, are associated with the companies that you have across the top of your chart. But I have never asked them for specific counsel with respect to detailed programmatics, nor would I be inclined to do so.

Senator PRYOR. What do you ask them?

Ambassador COOPER. Pardon me?

Senator PRYOR. What do you ask them?

Ambassador COOPER. I have gone to them with the overall general program that we are pursuing, the strategy that we are pursuing, not specific technology here or there, and asked for their counsel. We have met three times, I think maybe four times.

In addition, there have been specific technical questions that have come up and I have asked them to address specific technical areas of concern—for example, whether we should proceed with a space-based laser program, as opposed to working one which has more near-term applications and a technology program that has more focus on airborne or balloon-based experiments.

So those are technical questions, and generally, under those conditions, we certainly would not involve anyone on that subcommittee of the overall advisory group that had an interest. That would be part of the way we would set up such a subcommittee.

Senator PRYOR. Nichols Research is on the Advisory Committee. Is there any memo or any record as to what advice each of these people might give?

Ambassador COOPER. I will let him answer, but I am not aware of anyone from Nichols Research that is on my Advisory Committee.

Senator PRYOR. By the way, I had never heard of Nichols Research until just the other day. I do not know anything about them. Do you have any record of Nichols Research, when asked what they would do, any record of them ever saying that we need less research?

Mr. CARROLL. Absolutely, we have a record of the minutes that are taken at the Advisory Committee meetings. We shared those

with GAO and we went over those in detail, because the advice and the level of discussion that takes place at the Advisory Committee is key to compliance with the relevant rules in this area.

If I may, it takes a little bit of time, but the issue of getting expertise from the private sector for our government programs, without furthering private interests, making that balance is an issue that the Federal Government has been wrestling with since 1958, at least, when some policies were put down by the predecessor organization to the Office of Government Ethics.

In that connection, sir, what we do is, first of all, we charter the Federal Advisory Committee, that charter is set up through the Department of Defense, reported through the General Services Administration, and then over to the Office of Management and Budget, before we are allowed to start it, and that charter has to be renewed every two years and it sets out, as the Director says, not policies as to whether or not there should be a ballistic missile defense program.

He gets that kind of advice from the President, from the Secretary of Defense and, frankly, from 535 members of the Congress. He gets the advice from them on how best to execute it, and what he does is not appoint people, neither he nor his predecessors, on the basis of what company they come from, but on the basis of certain levels of expertise that they bring.

The Defense Department policies follow closely the guidance that was developed by the Office of Government Ethics in 1958, and what we did is each member of the Advisory Committee is appointed as a special government employee and, as a special government employee, they are subject to the same rules regarding conflict of interest that I am. Senator Levin did try to make those rules applicable to members of Congress, as you know, and the bill that he was involved in would have also applied the Defense Department rules government-wide, to all government agencies.

That is not true in all government agencies, that you have to have people employed as special government employees.

Our members of our Advisory Committees are subject to the same criminal penalties for conflict of interest that I am, that all Federal employees are. What that means is, if I may go to the chart—

Senator PRYOR. Certainly.

Mr. CARROLL. If for some reason during one of our Advisory Committees—and again, I would encourage your staff to go through with you the minutes of our Advisory Committee, we are required by law to write them down, and you will see the type of issues that Ambassador Cooper and his predecessors have used the Advisory Committee for, and not down in the level of whether more contracts should be spent in the area of the research that these companies participate in. We do not get down to the contractual level. We talk about the big issues about whether he should concentrate on sensor development, whether we are putting too much reliance on the sensors, so that the interceptors are not being tested enough, or vice versa.

But should a person who has a financial interest in Nichols Research be in a position to recommend to the Director of SDIO that he spend money on a Nichols Research contract, it is just like me

owning stock in Nichols and doing the same thing. We are subject to heavy criminal penalties. They just do not do that.

We have full compliance with all the statutes regulating Federal advisory committees, and in the Defense Department, we follow the strongest policies, by having all members appointed. They cannot attend a meeting until they are appointed as a special government employee, and, as such, they are subject to the same rules of conflicts, and the fact that they have, these financial interests are disclosed to us. That is the first thing, they have to be disclosed. Second of all, they make a conscious waiver not to participate in any particular matter that would affect that financial interest.

They are briefed on these rules by myself and my ethics staff. Again, I attend the meetings and the minutes are faithfully recorded, as required by the Federal Advisory Committee Act, and we just do not get into the level of particular matters.

As I said, the Federal Government has been wrestling with this issue for over 30 years on how do you get expertise from the private sector, without furthering a private interest. There is a recognition that members who have the expertise have a financial interest, have private benefits. You have to have a structure to make sure that it does not occur. Just throwing the names of companies, like you did, and stepping back and say, well, I am not accusing them of fraud and illegalities, well, what is the point?

There is this structure and we work very hard at it. We have worked very hard at it since I arrived in 1985, to make sure we are in compliance.

Senator PRYOR. Mr. Carroll, I have been concerned for some time. In fact, you can look back in the early 1980's in debates on the floor of the Senate, when I questioned the existence of the Defense Science Board. I have always thought that the Defense Science Board is something that had far too much influence and also was composed of people who ultimately get the contracts.

Mr. CARROLL. That may be so—

Senator PRYOR. This is exactly what we have here.

Mr. CARROLL. That may be so, Senator. I had the honor of appearing before this committee in 1988, and it was recommended by Senator Levin that we ought to get our procedures to be more like the Defense Science Board, and I think in that sense we are.

Senator PRYOR. Well, Senator Levin is one of my fine friends, but we disagree on the Defense Science Board. Also, if he thinks that this is a healthy relationship, I disagree with him again, because I do not think this is a healthy relationship.

Mr. CARROLL. The point is, this—

Senator PRYOR. How do you become a member, for example, of the Advisory Committee?

Mr. CARROLL. Each director has looked around at the type of issues that are going to be facing him on the program, and in many cases the Ambassador retained some of the people and he also knew what direction he wanted to go to and the type of expertise that he needed.

Senator PRYOR. Mr. Carroll, the bottom line is these are all the same people. The Advisory Committee, the research contractors, the support contractors, the SDI, SAIC, they are all the same people.

Mr. CARROLL. They may be—

Senator PRYOR. They are all the same company.

Mr. CARROLL. They have the interest and, as I say, we have a system to protect it.

Ambassador COOPER. They are not the same people, Senator, in any case. It seems to me, that is the point that Mr. Carroll is making. We have processes within some companies to isolate activities that would potentially be in conflict with other activities that that same company might be involved with. And that is not an unusual circumstance for SDIO.

Senator PRYOR. I think this is called self-policing, and the consulting industry around the beltway, they have always maintained that they are self-policing.

Mr. CARROLL. Sir, that is not self-policing. We police it. Again, I invite you—you know, the fact that they show up with an interest does not mean that they have furthered their interest by their performance of government service as members of Federal advisory committees and, again, I invite you to examine the minutes of our meetings.

Senator PRYOR. All right. I will tell you, we may come back to this. We may come back to this very issue.

Ambassador COOPER. Yes, sir.

Private Contractor Role

Senator PRYOR. But, what I would like to do is to basically leave the Advisory Committee concept and what appears to me to be a conflict. I would like to go to the role of the private contractor. Let's go to the contractor here for just a moment, let us talk about the private contractor.

Who has the authority to hire a private contractor today at SDIO?

Ambassador COOPER. I think I will turn to Mr. Richardson, who is the Director of our Contracts Office, to answer that.

Senator PRYOR. Mr. Richardson?

Mr. RICHARDSON. The contractors, first of all, are not hired, they are selected through SDIO, predominantly through a source selection, a competitive source selection process. The only person allowed to actually hire, in a sense, is the contracting officer.

We have a rigorous review process, that whenever a new requirement comes up, whether it is competitive or sole source, the PR process, the purchase request process goes through most of the principal directors in SDIO. For example, General Counsel reviews every purchase request, I review every purchase request, as the competition advocate for SDIO. The Comptroller and the task director review the purchase request, the office director who initiates the requirement reviews it, and the deputy for that particular office also reviews it.

Number of Contractors and SDIO Staff

Senator PRYOR. Mr. Richardson, let us go to this blue and red chart up here.¹ Is it necessary today that over 60 percent of the staff of SDIO is private contractors? Is this necessary?

¹ See page 50.

Mr. RICHARDSON. Actually, the chart is probably a bit misleading. That is data that our office provided. What we did was go to our access control center, which badges in and out each individual coming into the facility, on the days that were selected by your staff.

The red line, which is the contractor line, represents all contractors who went in and out of the facility on that particular day. The blue line, of course, is the government SDIO and other government employees who were there on the same days.

What happens in SDIO, as with any major buying command, is you have contractors who support the office, as well as contractors who are conducting business with the office. We have meetings in SDIO, we conduct pre-proposal conferences, negotiations with contractors and briefings of various sorts to industry that are conducted in SDIO. To say that the red line represents contractors who are actually supporting our staff is not really an accurate reflection.

Senator PRYOR. Once again, I want the record to show all this information we got from you, we got from your office.

Mr. RICHARDSON. Yes, the data appears to be accurate.

Senator PRYOR. So we are relying on your figures. We are not relying on our figures.

Ambassador COOPER. The point, though, Senator, is that these people do not have desks in our offices, they are not being dealt with as staff. It includes—

Senator PRYOR. Some of them do, though.

Ambassador COOPER. It includes a mix of people who are service contractors and others who are the R&D contractors that we contract with directly. It also includes contractors that are working for our agents, who represent three-fourths of the appropriations that come to SDIO.

The government numbers probably include OSD personnel, who also, on the days mentioned, visited our office, for example. They would be government people.

Senator PRYOR. We took these days at random, and these were days in 1992. Once again, I thought, and I think the Committee thought, that we were using your figures on the number of people associated or in the office in that time who were private versus public.

Mr. CARROLL. It is not a question of accuracy, it is a question of interpretation. You are interpreting them all as being government support staff. As the Ambassador said, some of them are the hardware contractors who are coming in to talk about the performance of their hardware. Some of them are representatives of the research and development contractors who are performing experiments.

Senator PRYOR. But many, many are not involved in research—

Mr. CARROLL. That is correct.

Senator PRYOR [continuing]. Many, many are not involved in hardware—

Mr. CARROLL. That is correct, but you used the total, and what we are saying is the total is—

Ambassador COOPER. I understand the concern that you have, and let me just say, to the degree that the blue represents our

staff—and it is more than our staff, because it would include people who are visiting us who happen to be in the government, as well, I would presume—but the degree that it does, it would suggest that the number of contractors that are visiting us are comparable to the size of our staff.

In fact, as I explained in my testimony, the support contractors number some 1,300, whereas, our staff numbers 259. So I am not sure what is the point of the chart. I openly testified here that we are supporting 1,300 contractors and we have on our staff some 259 government employees or military personnel, so that is five times as many contractor personnel supporting our staff as our staff numbers.

Relative Cost of Contractors and Government Staff

Senator PRYOR. What is the pay scale? Is there a way to use a comparability figure here that—

Ambassador COOPER. For comparable work, I believe the numbers that you gave, the range you gave is an accurate representation.

Senator PRYOR. Is accurate?

Ambassador COOPER. I believe it is, yes, 25 to 40 percent, did you say? The range you gave was 25 to 40 percent and, I believe that is accurate.

Senator PRYOR. In other words, to hire from the private sector, support personnel would cost 25 to 40 percent more, is this correct?

Ambassador COOPER. For comparable efforts, I believe that is correct.

Senator PRYOR. What does this do to the morale of the Federal employee?

Ambassador COOPER. They would like to make more money, I am sure, sir. There are certain—

Senator PRYOR. Why do they not become private contractors

Ambassador COOPER. That is a problem, and that has been a long-standing problem, in terms of individual choices that are made. Some prefer to work in the government, because they, in fact, are the ones, as we said earlier, that set the policy, that make the decisions and so on in these areas, and they give up salary to do so.

Contractor Identification

Senator PRYOR. How do you know who is a Federal employee in your operation and who is a private contractor?

Ambassador COOPER. I know who my people are, sir.

Senator PRYOR. Pardon?

Ambassador COOPER. I know who my people are, sir.

Mr. RICHARDSON. There are different colored badges for contractors, and we can recognize the contractors by the color of their badges.

Mr. CARROLL. Ambassador Cooper is very visible in the office. He holds staff meetings with his senior staff three times a week. There is quite a bit of interaction with the government staff and Ambassador Cooper.

Security Considerations

Senator PRYOR. Now, what about the security problems with private contractors? These people are involved with very, very sensitive information. Now, how do we know that some of the people who work for Booz Allen, Nichols Research, Lockheed, et cetera, and the other contractors, the W. J. Schaffer Company, for example—I do not know who the W. J. Schaffer Company is, but they seem to get a lot of government contracts out there in the SDI area—how do we know about their security and their clearances? Mr. Carroll, do you want to—

Mr. CARROLL. Well, if they are going to have access to classified data, that is a process that is run by the Defense Industrial Security Office, pursuant to very detailed processes documented in—I forget the number of the Defense Industrial Security Manual, but it is very detailed and they have to have the requisite safeguards within their facility to protect classified information, very similar to what we have in our own facilities, and those are reviewed and cleared by Defense Industrial Security.

With respect to the information that they are granted access to in the performance of the tasks that they are assigned under our contracts, among other safeguards we have, of course, is assuring that the people who are going to have access show us the proper clearances, and then, in addition to the normal criminal penalties that they would be subject for violating restrictions on disclosure of classified information, we also include very specific and stringent non-disclosure agreements with the companies that they are obligated to pass on to their personnel and basically inculcate their personnel with.

Senator PRYOR. How do you know, Mr. Carroll, that some of these consultants and private contractors have not been hired by other countries, for example, or interests that may not be conducive with our national security?

Mr. CARROLL. Again, our concern would be that the restrictions are applied to classified information and, on their contractual agreements with us, not to disclose classified, or beyond classified, any sensitive data to which they get access to.

In the case of those who do get access to, say, some of our sensitive budgeting decisions, the decision to allow us to let them get access to that, we have to demonstrate to, when he was Comptroller of the Defense Department, Mr. Sean O'Keefe, that access to data is necessary for the performance of the contract. So it is very stringently controlled in the first instance as to how they get it, and that is what we make sure, that they comply with that.

Senator PRYOR. But, is there a check and a balance system, to see who else they work for, the private contractors? I am not talking really about Booz Allen and those. I am talking about these other, I would say, smaller firms who do have access to very sensitive information.

Mr. RICHARDSON. You are talking, for example, of the contracts they have?

Senator PRYOR. Sure.

Mr. RICHARDSON. During the source selection process, if a contractor—in most of our support contracts, if not all—have a potential for conflict of interest) we require the contractors, as part of

their proposal, to identify any other SDI related contracts they may be working on, the first part of the process.

We maintain a data base in the office that tracks SDI contracts from the DD350 system, the Federal Procurement Data System. In addition to that, we maintain an integrated contracting plan, which does not cover all SDI contracts, but it does cover the principal contracts, and that lists who the major prime contractors are and their associated subcontractors. That document is updated quarterly, at which point we look at it to make sure there are no apparent conflicts.

Contracting Oversight

Ambassador COOPER. I might say, Senator Pryor, you raised a concern, and I think it is a legitimate concern, about the size of our staff in the contracts office, and the fact that surely we would like to have more people involved in surveillance and that sort of thing.

I would like to note for the record that we have an unusually high experience level among our contracting personnel. We have more GM-15's than we have GM-14's and more GM-14's than we have GM-13's. This is an inversion, I think, from what you would find in most contracting offices. So we have very senior experienced people involved in this oversight process.

Contractor Roles

Senator PRYOR. Now, the role of the contractor, is the role of the support contractor today in SDIO, is it budgetary, is it policy, is it marketing the program? What is it? Is it appearances before Congress? What role would the contractors be playing?

Ambassador COOPER. We specify tasks that they perform, and they have deliverables on those tasks. The information that they provide will be considered by various government personnel in our decision-making process. There are a number of checks and balances, I believe, in this process, not the least of which is inside of SDIO itself.

As we deal with budgetary issues and programmatic issues, there is a process of decision-making that works from the project manager level through the program review board, which deals with programmatic issues and so on, chaired by my deputy, General O'Neill. We have another board that deals with the architectural issues that is chaired by my systems architect, Dr. Gerry.

So it is a long road in moving the product of a contractor through the various technical monitoring steps provided in this decision-making process within SDI. So contractors do not make decisions, I will assert; and I understand that you are skeptical, because of the numbers. But the process is a rigorous one and a quite deliberate one.

Senator PRYOR. With regard to policy, has a contractor ever been employed by SDIO, that you know of, to advise you or your colleagues on how to expend unobligated funds?

Ambassador COOPER. To advise me?

Senator PRYOR. Yes.

Ambassador COOPER. I am not aware of it, but maybe someone else here—

Senator PRYOR. Mr. Richardson, are you aware?

Mr. RICHARDSON. There appears to be in one of the monthly status reports. They reviewed a number of MILCON documents, I believe it was, to determine whether or not any money was available at the end of the fiscal year for reprogramming purposes on contracts. That does not mean they decided where the money went or where it came from.

Senator PRYOR. On January 28, 1991, one of the contractors delivered to you a report, "Plan on How to Obligate the Remaining MILCON Design and MILCON MC Funds." Now, this contractor was not hired just to tell you how to spend all your money that you did not have obligated, that is not correct, is it?

Mr. CARROLL. Well, the purpose of that contract was to give technical assistance to the civil engineering staff and, as such, they are very much aware of our civil engineering projects, the various stages of them, those that are executed by the military departments and the Energy Department, as well as—we do not actually do construction ourselves.

Senator PRYOR. This is from the contractor's report, a monthly report, and we just took a fistful of them.

Mr. CARROLL. Yes, sir.

Senator PRYOR. Here is another function, the same contractor delivered, January 25, 1991, "Workup Memo for SDIO to Send to Congress on Award of NTFPH2." I do not know what all of that is. Do the contractors work this up, the reports to Congress?

Ambassador COOPER. Do you want to comment, if you know what that is, and then I will—

Mr. CARROLL. I am not sure what NTFPH2 is.

Ambassador COOPER. I do not know, either.

Mr. CARROLL. Certainly, on the basic issue that you have been talking to in your statement, when we do have as many government agencies do quite an extensive reporting requirement by the various statutes, particularly on military construction, when you are going to either expand or modify something that has been approved before, so you have to get a description of what that work is going to be, and that would be in the nature of support that in this case the Harris Group provides to our civil engineering staff.

The civil engineering staff, before that comes to Congress, as Mr. Richardson indicated and the Director indicated, that gets a vigorous review by the rest of the staff, not only the civil engineering staff and up his chain, but he has to get coordination from the Comptroller, from me.

Senator PRYOR. Mr. Carroll, I am trying to ascertain the role of the private contractor, that is what I am trying to do.

Mr. CARROLL. Yes, sir.

Contractor "Stipends"

Senator PRYOR. And, I am reading from their own statements of justification to receive a monthly stipend from SDI.

Mr. CARROLL. They get reimbursed for costs for performing work. I am not sure that is a stipend.

Senator PRYOR. Well, they get more than costs. Are you saying they just get costs?

Mr. CARROLL. They get costs and a negotiated fee that is established at the start of the contract. That is quite a different process from somebody who is getting—

Contractor Roles

Senator PRYOR. We are going to talk more specifically about some of those. Now, here is the same contractor, January 25, 1991, "Workup Statement of Urgency to Support Other Than Free and Open Competition for Design Work Being Accomplished by Usage for M-Z." Now, what is that? Does anyone know what that is?

Mr. CARROLL. Just as a matter of principle, if we could get into highly speculative things, we have, based on some of the examples that were cited in earlier testimony regarding the use of contractors, found that when we examined the full facts they were not quite as represented. Just taking one of those documents—

Senator PRYOR. Is this the puffery that Ambassador Cooper talked about?

Mr. CARROLL. Well, it could be puffery or it could be misinterpretation. For example, I think on another occasion you cited the Analytical Science Corporation, and your conclusion, based on the data from the staff, was that they had written a sole-source justification for their own contract. Upon review, we looked at it and what they assisted was the technical office in charge of targets, assisting in the writing of a sole-source justification to continue the contract for the preparation of that target—

Senator PRYOR. Which was not right?

Mr. CARROLL [continuing]. Which was not anything that they were involved in.

Senator PRYOR. All right, sir.

Mr. CARROLL. So when you give an example like this, we are only getting into speculation. We would be more than happy, as we did with the others, to take them under review, and I would like—

Senator PRYOR. The reason I am having to speculate is these contractors have gotten paid to do all of this and they have gotten paid big dollars to do it. I mean they are getting paid \$800 a day, some of these people. You know, that is pretty good wages right there, and so I am just seeing if it is justified to have all these contractors, to begin with, and to see if there are any conflicts. You say there are not, and I say there are.

Mr. Richardson, did you want to add something?

J&A Process

Mr. RICHARDSON. On the J&A for other than full and open competition, on the issue of the J&A, in this particular case, it might be helpful to address what the process is for the justification and approval and who approves it and who reviews it in the process.

Whether it is a government employee or a contractor who drafts the initial statement of urgency in this case or need, it goes through a rather rigorous review process. The government representative who has that requirement must certify that all the facts within that document are correct. It goes on to a legal review, where General Counsel, Mr. Carroll or one of his lawyers reviews the document, certify the legal sufficiency of the document. My contracting officers then have to certify. In each one of these steps,

the documents are reviewed, and usually modified, and finally the document goes through me, as a competition advocate, and depending on the dollar value, I either approve those under \$1 million or submit them to the front office for Ambassador Cooper's approval.

Sole-Source Contracts

Senator PRYOR. Ambassador Cooper made a statement earlier, but I did not hear his reference to the percentage of sole-source contracts. What is the percentage of sole-source contracts that are awarded by SDIO?

Ambassador COOPER. The comment I made was that there were 70 percent last year that were competed, and then I went on to say that 5 percent, in addition, were small business Section 8(a) contracts, which, by directive, were not to be competed, so there are then 25 percent of the contract dollars that were sole source.

Senator PRYOR. How many different firms—once again, I am not talking about Booz Allen—

Ambassador COOPER. If I may, say, just to again give you something about the frequency of our contract awards, I believe that, in 1991, there were 15 contract actions, and of those, three were the section 8(a), so that leaves 12, and of those 12, 9 were competed and 3 were sole source.

Senator PRYOR. Most of the contracts in government today given to private contractors are sole source and that is without any competition. What sort of requests for proposals do you receive, say, on a monthly basis—how many contractors write you and request that they be allowed to bid or compete on a particular mission?

Mr. RICHARDSON. It is very dependent on the particular contract that we are requesting proposals on, but a particular example is one that we have in-house right now. About two weeks ago, I asked how many contractors had come in so far, and it was over 100 contractors, and that is fairly typical of the level of interest that we get.

Senator PRYOR. You mean contractors that are competing or that suggest to you that you do a certain mission and that they are qualified to perform that mission?

Mr. RICHARDSON. Those are contractors who request copies of the requests for proposal. Now, during the process, they may decide, instead of bidding as a prime, they may want to be a subcontracting team with somebody else, so when we receive the proposals, the number of proposals that actually comes in is much less than that.

Mr. CARROLL. Are you referring to unsolicited proposals?

Senator PRYOR. Yes, sir.

Mr. CARROLL. We have a process—

Senator PRYOR. That would have been a better way to phrase it. Do you get a lot of those unsolicited proposals?

Mr. RICHARDSON. Not as many as we used to. I do not have the exact numbers, but we could provide those for the record.

Ambassador COOPER. As I indicated, Senator, actually, our percentage of competed awards is higher than the Pentagon average by 5 percent or so, I suppose.

Mr. RICHARDSON. I might go back to the unsolicited proposals. Very few of the unsolicited proposals, especially in this budget en-

vironment, ever get funded. We may get two or three dozen per year and, at most, I would say one or two of those ever get funded.

Senator PRYOR. We have here another contract justification for payment. The contractor states, "Completed two old Freedom of Information Act requests, one of which had been in SIS three times, problem centered around lengthy reviews by both SDIO staff and contractors, paid to perform reviews. SDIO spent \$132,000 for contractors to review the documents in response to these FOIA requests." Is this not a rather large amount?

Mr. CARROLL. No, sir. We get a huge amount of Freedom of Information requests. As you can imagine, there is a lot of interest in our program. The issue is that SIS is our security director, and many of the requests are for classified documents and, under the Freedom of Information Act, while there is a national security exemption for denial of access to Freedom of Information, the way the law is implemented, it is up to the government, in effect, to do a reclassification by going through the entire document and identifying those subject matters that are classified and those that are not and redacting.

It is quite a lengthy process to go through any classified documents. Many of our studies are lengthy, but the major point, though, is there is a lot of interest in our program that comes in through the Freedom of Information Act.

Senator PRYOR. Here is another contractor, Systems Planning Corporation. This was September 4, 1991, so that was last September. They are discussing what they did during the previous period. They said, "We authored all internal security directives, such as the SDI security police directive, foreign disclosure, foreign visits and information security policies. We provided security support, performed extensive work in areas of foreign disclosure and classification management." Now, they say dollar value, \$1,308,705. Was this for a month or a year, or what?

Mr. CARROLL. Without having the chance to sit down and go through the entire contract and where that fits in, to give you a speculative answer, that is the type of report that I think the Director was referring to earlier, where we would most likely—again, not having a chance to have seen this in the context that you are looking at it—we would probably take issue with the term "author."

Senator PRYOR. The term what?

Mr. CARROLL. The term "author" of one of our directives. The history of our organization, I think, would bear out they provided an early draft and that the draft went through—

Senator PRYOR. I am just reading from their report, their monthly report.

Mr. CARROLL. I understand you are, and that was the point we made before. There is nothing illegal that they have done there by saying they are authored, but we would disagree with that.

Senator PRYOR. Should a private contracting firm have this degree of input as to the security of the SDI program?

Mr. CARROLL. Security is a pretty complex field and there is an industry of security experts. As I mentioned earlier with respect to Defense Industrial Security, there is an extensive manual and extensive rules and regulations covering this. Looking at all of those

rules and how they apply to the vast undertakings that we have in the program, getting an early assessment in draft form from them, it is a long way from the final product.

Senator PRYOR. Now, Mr. Carroll, I will ask you this question: Do you think that the private contractors at SDIO should sit in and represent the government in meetings and conferences, seminars and committee hearings? I think we probably have a lot of private contractors here this morning in the room, I would assume.

Mr. CARROLL. I have no idea. I have been focused toward you.

Senator PRYOR. Pardon?

Mr. CARROLL. I have no idea who is in the room besides my immediate staff. Our position—

Senator PRYOR. By the way, Ambassador Cooper says he recognizes the private contractors in the public workforce. Are there private contractors in this room today who also work for the SDI program?

Ambassador COOPER. I would certainly imagine there are, Senator. They would be interested and this is a public hearing. But in terms of our support contractors, I do not believe there are any that came with us.

Senator PRYOR. All right, sir.

Mr. Carroll, I interrupted you.

Mr. CARROLL. Yes, sir. We set out in internal directive guidelines for the use of contractors at meetings. The individual member of the staff who believes it necessary for a contractor to attend a meeting is required to make a determination that it is necessary and that the role of the contractor is to present findings that have been developed by SDIO, and they may receive information that is at the meeting and bring it back to the SDIO office for deliberation.

We do not consider that representational in the technical view of getting in and engaging with whoever it is about what SDIO policies are, but we do think that, you know, covering the meetings is a function that they can do.

Senator PRYOR. Do the support contractors that you and Mr. Richardson retain, are these people covered by ethics laws? Do they have to register under the ethics laws, as the Federal employee would?

Mr. CARROLL. They certainly are not subject to the same criminal penalties as government employees for conflicts of interest laws. As you probably know, over the years, many of the companies have adopted their own ethics policies. They are certainly subject to, for certain blatant violations like disclosure of information that they are not supposed to, they are subject to criminal penalties.

Senator PRYOR. By the way, Mr. Carroll, I have introduced an interesting piece of legislation. It is a licensing proposal. I introduced it July 1st, and I did it early and I am going to try to put it on the Defense Authorization bill. My bill would require a contractor to get a license before they could do any work for the government; and before they do any work for the government, they are going to have to reveal who else they work for and what sums of money they are being paid by not only other governments, but other clients which could become a conflict of interest.

You know, if you are a barber today and work at an Air Force base, you have to have a license, an architect has to have a license and a doctor has to have a license. But many, many of the firms that we hire today by the government, do not have to have any license, they do not have to have any real qualifications, this is what I am getting at, and certainly I am getting at; and certainly I am getting at disclosure and sunshine into this very invisible bureaucracy. I hope you will look at that and I would like you to comment on it.

Mr. CARROLL. I have, Senator, and I assume that——

Senator PRYOR. I would like to have your support of it.

Mr. CARROLL. Well, I know there is one provision in there that would make it applicable as very unique and, as a 30-year government employee on this side of the table, I applaud you, because you have included members of Congress and aides to Congress.

Senator PRYOR. I believe that we should be in there.

Mr. CARROLL. My concern over those 30 years is that is probably the first provision that will drop out in the amendment process.

Senator PRYOR. Well, I am not so sure that is correct. I was very, very careful to include members of Congress in there.

Mr. CARROLL. I applaud that, but we would have some reservations about the bill.

Ambassador COOPER. Senator, I think it is important to understand that there are disclosure requirements for contractors who work in sensitive areas, as well. And perhaps Mr. Carroll might elaborate. So in some sense, what you are asking for in your bill, I believe is something that we are already doing, in fact.

Mr. CARROLL. Again, the basics here are covered in the Federal acquisition regulations. In order for the government to award a contract, the government must first find that the contractor is responsible. In determining responsibility, they have to meet certain standards. For example, they must have adequate financial resources to perform the contract, be able to comply with the required or proposed delivery schedule, have a satisfactory performance record, have a satisfactory record of integrity in business and have the necessary organizations. Those are the standards they have to meet.

Before making a determination of responsibility, and this is by regulation, the contracting officer shall possess or obtain information sufficient to be satisfied that a prospective contractor currently meets the applicable standards set out in the earlier section. So there is an extensive process already at work in this area, sir.

Contractor Costs

Senator PRYOR. Which of the contractors that you retained, Mr. Richardson, receives \$800 a day or \$100 an hour, which of those contractors? What type of work do they do in the support system?

Mr. RICHARDSON. I am not familiar with any contractors that make \$800 a day. If you have some specifics——

Mr. CARROLL. We hire firms, and not individuals.

Senator PRYOR. Well, the firms have employees who make \$500 and \$600. Let me see, one has \$500 a day, one is \$600 a day; one is \$800 a day.

Mr. CARROLL. The compensation is reviewed by the Defense Contract Audit Agency for allowability, and among the tests they provide is reasonableness, and that would be to—

Senator PRYOR. That is reasonable?

Mr. CARROLL. It has to be dependent upon the circumstances, how valuable they are and what they could command in—

Ambassador COOPER. As we indicated earlier, Senator, this is a result of the marketplace, in the sense that the bulk of these people won their contract in a competitive environment.

Senator PRYOR. A competitive environment?

Ambassador COOPER. Yes, sir, in which costs—

Senator PRYOR. It does not sound like there is any recession going on in this.

Mr. RICHARDSON. My suspicion is, in this case, those are consultants who are probably brought on for very short periods of time, on very specific issues.

Contractor Travel

Senator PRYOR. Do you check the travel vouchers of the various firms that are retained by SDIO?

Mr. CARROLL. Travel is checked by our contracting officers technical representative before they travel.

Senator PRYOR. Here is one W.J. Schaffer Associates. Let us see, they made 107 trips: Western U.S., Hawaii, four overseas trips; cost of travel, \$167,000. They have a contract, by the way, of \$2.4 million. Did you check and see if they actually took those trips?

Mr. RICHARDSON. Did we check?

Mr. CARROLL. Senator, again, the review of the actual cost is a function that is performed for us by the Defense Contract Audit Agency, and for a company to submit a bill for something that they did not do, including taking a trip, I mean that is fraud of the grossest nature. We do rely on the DCAA, and they are very good, I think, in their record at disclosing fraud. They certainly have not—we work very closely with the criminal investigative services on issues such as cost mischarging, and nothing like that has ever showed up here.

Senator PRYOR. Here is a contractor—

Ambassador COOPER. Senator, I believe in this particular case, because it was brought up earlier, we did look into it and I believe that it was determined that the trips were, in fact, legitimate trips, all authorized by the appropriate people within my organization. And they not only went to the "exotic" places you mentioned, but a lot of other places that do not sound so exotic. Also, it was over a substantial period of time and legitimate work.

Contractor Drafted Letters

Senator PRYOR. To get away from the travel for a moment. Here is a little firm or a big firm—I do not know how big—in Arlington, Virginia, SRS Technologies, they were submitting to you, Mr. Ambassador, a proposed letter, for your signature, to the Secretary of Defense. Now, do you have to hire an outside consulting firm to write a letter to the Secretary of Defense?

Ambassador COOPER. No, I sure do not, and I am not aware that has ever happened.

Senator PRYOR. How much did we pay this company to write this for you?

Ambassador COOPER. You know more than I know, Senator. Every letter I have ever sent to the Secretary, I wrote myself.

Senator PRYOR. It is September 10, 1991, that is very recent.

Ambassador COOPER. It is news to me.

Senator PRYOR. There are hundreds and hundreds of examples like this.

Mr. CARROLL. As I said earlier, sir, to the extent you have shared them with us and we have been able to look at them in the total context, we found that, again, where it says "written," somebody might have asked, "I need a draft on this subject and I want you to cover these areas;" we do not know the whole context.

Senator PRYOR. In the Federal system of government, have we lost all of our expertise and all of our ability to write a letter to the Secretary of Defense?

Ambassador COOPER. Absolutely not.

Senator PRYOR. We do not have any Federal employees who know enough to do that, to assist you?

Ambassador COOPER. Senator, that is an outrageous suggestion. Of course not. As I said earlier, I generally write my own letters to the Secretary, so I have no idea what you are referring to, in particular. I do not know what led to whatever it was they prepared, and I am certainly unaware of any particulars.

You know, this is just like the allegations that all the newspapers have made on our report to Congress, before there was a report to Congress. It turns out those were annotated briefing charts prepared by one of our support contractor teams—very important work that was input, but bore absolutely no correlation whatsoever to the 180-day report that we sent over to Congress. And anybody who wants to confirm that can dig out what the newspapers alleged was our report to Congress and what we actually sent to Congress.

Senator PRYOR. Mr. Ambassador, this was not an isolated case. Here is another company, a letter—this, once again, is their monthly report—Task 27, a letter and associated staff package from Ambassador Cooper to the Under Secretary of the Air Force, was prepared and delivered. I think you see what I am—I am not going to—

Ambassador COOPER. I do not know what that is, even.

Mr. CARROLL. I would repeat, to the extent we have had an opportunity to review these in context, we found—

Senator PRYOR. I will be glad to give you all of these. We got them from your office. We got everything from your office that we have here this morning.

Mr. CARROLL. I understand. The point is that we have one document in isolation and that does not tell the whole story.

Senator PRYOR. I understand that. I was trying to ask for an explanation of why the SDIO, this program is having to hire outside contractors and consultants at exorbitant fees for having to write a letter to the Under Secretary of the Air Force or the Secretary of Defense. I do not understand why.

Mr. CARROLL. Sure, and to the extent we have been able to work with your staff on individual cases, we have been able to get it. But

when you start out and say here it is and state that as the final conclusion, I mean—

Senator PRYOR. Mr. Carroll, I do not understand why congressional testimony has to be prepared by outside consultants. I do not understand, when a Senator writes a letter, or a Congressman or a citizen, whoever it might be, to your office, that you have to go outside the Federal workforce and hire a Federal consultant to answer that letter. I do not understand it. What am I missing?

Mr. CARROLL. First of all, the volume of congressional inquiries, second of all, they may be forwarding constituent inquiries on very technical matters and we turn to the person who is helping us with the technical information, to get the information. It is economical to have them furnish that in a draft report. That by no means is the end of the process. That is just the very start of it. Letters do not go over to Congress, they do not even get into the front office, he has a junkyard dog of an exec who makes sure that, before he sees anything going to Congress, it has got the appropriate staff coordinations.

Balance Between Contractors and Government Staff

Senator PRYOR. Now let's go back to our red and blue chart, the reds and the blues. The blues are the Federal workers and the reds are the private contractors in your office.¹

You are going to be asking for \$5.4 billion to continue this program, and this issue is going to crystallize here in the next several days or weeks.

Let us say the Congress cuts you \$1 billion, down to \$4.4 billion. Which are you going to cut back? Are you going to cut back on the private contractors or the government employees?

Ambassador COOPER. Senator, I do not know how to answer such a question in the abstract. I am certainly not going to cut back on the government employees. As I told you earlier, I am trying to get more government staff, and I have done that continuously almost since I took the job two years ago. And my predecessors did, as well. I want more government people working on my program. But I am also trying to get a job done, and I am trying to do it the best way I can. And I am trying to do it in such a way that is consistent with all the laws of the land and common sense, when it comes to issues such as you are concerned about, for valid reasons.

Senator PRYOR. Are you under a freeze order? Can you hire additional—

Ambassador COOPER. I have a limit of authorized spaces in my organization; yes, sir, as I suppose does every other government organization.

Senator PRYOR. During the President's State of the Union Address, he said we are going to freeze Federal employees, and everyone, of course, gave a big round of applause and cheers. The Federal employees seem to be very easy to beat up on these days.

Mr. CARROLL. I think I heard also—

Senator PRYOR. Also, I think the private contractors probably celebrated that night, because when you freeze the Federal employ-

¹ See page 50.

ees, all you do is increase the number of private contractors that perform functions for the government.

Mr. CARROLL. I heard, coming out of New York a couple of weeks ago, that we are going to increase the role of the government in helping the people, but we are going to cut 100,000 bureaucrats at the same time.

Senator PRYOR. You hear a lot of things these days.

Gentlemen, you may be thinking maybe I have been a little rough with you this morning, but I wonder if you would like to respond? Is there anything you would like to say, Mr. Ambassador?

SDI Advisory Committee

Ambassador COOPER. There are a couple of things I would like to say. I have not had a chance to go through the material myself, but Dr. Gerry has gone through the disclosure forms from all the current members of the SDI Advisory Board and sees no correlation whatsoever with the four contractors that you have mentioned up there, so presumably they are from the other 19 members of past committees.

I am not quite sure what that means to you, in terms of your concern. Mr. Carroll gave, in fact, part of what the response I suppose would be, even if they had been associated with the four companies mentioned. But I have tried to be very careful since I came on the job; to assure that every member of my advisory council fully discloses his holdings and whatever else, before joining my committee or even attending meetings. We have held rigorously to that, and I think that our skirts are clean.

SDIO Staff Quality

I would like to say in closing that I appreciate the concerns that you are raising. Perception is a very important aspect to the success of any program, perhaps, but particularly a program as controversial as ours. I think this has been the case since the outset of the program. General Abrahamson, General Monahan and I have placed a premium on making the conflict of interest issue a top-level concern.

In dealing with that, I do not think there is any substitute for good people in the organization on the government side. I believe we have a good, competent, experienced and highly ethical staff. As I mentioned earlier, they are qualified—more than two-thirds with advanced degrees. It is a more senior staff, I think, than what you would find in most organizations. We work hard to train them, to provide the training and so on from the contracting and legal point of view, so that they understand the law and also understand what is appropriate and inappropriate behavior.

Transparency of Contractor Interactions

One thing I would mention that we have not talked very much about, except sort of in passing, and that is that, in our dealing with contractors, we are trying to maintain a high degree of transparency. And in dealing with the Congress, indeed, transparency is important in the sense of what our program is about, what our objectives are, what various contractors' roles are, what they are doing. We are trying to maintain a highly competitive environ-

ment. I mentioned that over 70 percent of our contracts have been competed.

There is a certain self-cleansing aspect of this, and the contractors themselves will cry foul over these conflict of interest issues, and I do not think that should be under-rated. We have seen evidence of it in our past dealings with contractors and they have responded to concerns that they themselves have raised.

The world is not perfect. It is the world we have to live with and deal with, and I want to try to assure you, Mr. Chairman, that we are doing it in the most honest and open and ethical way possible. I believe your interest and your concerns and, indeed, this hearing itself helps us in this process.

Senator PRYOR. Mr. Ambassador, thank you. I hope you will not feel that I have singled out you or your program as the subject of this hearing. I have been doing this now for 13 years, talking about private contractors and the shadow government or invisible bureaucracy or whatever you want to call it, and I must say I have made absolutely no headway.

We are hiring more and more private contractors today throughout our Federal system of government than ever before, especially now that we have basically a freeze on the number of Federal employees. And one of my grave concerns has always been that we are going to lose the expertise and the knowledge of our Federal workforce.

We have a tremendous reservoir, a tremendous resource there, but they are all gravitating out to the private contracting world, because they get more money, the dollars are bigger. They are still paid for by the taxpayers, but they just know how to utilize the system a little more and get more tax dollars that way. They circumvent the system.

So I am going to continue talking about these concerns. I am also going to place in the record, Mr. Ambassador, the four firms that I have talked about here that are involved with the Advisory Committee and the number of dollars that the firms have received in contracts.

Should you not like the spin I put on that, we are going to leave this record open and I would certainly welcome you taking issue with any conclusions that I might reach.

That applies to you, Mr. Carroll, and to you, Mr. Richardson, and we will leave the record open for about 10 days for any responses that you might have.

Ambassador COOPER. Thank you, Senator.

Senator PRYOR. I thank you very much. Our hearing is concluded.

[Whereupon, at 11:16 a.m., the Committee was adjourned.]

APPENDIX

Testimony of Ambassador Henry F. Cooper
Director, Strategic Defense Initiative Organization
Before The Committee On Governmental Affairs,
United States Senate
July 24, 1992

Thank you, Mr. Chairman, for the opportunity to appear before you and your committee to testify on the Strategic Defense Initiative and the role of contractors in the performance of our mission.

I will begin by briefly describing the Strategic Defense Initiative mission, particularly in implementing, as a top national priority, the critically important Congressional mandate embodied in the Missile Defense Act of 1991. I will then turn to how we are organizing and, in that context, how we have managed and will in the future manage our government and contractor resources to execute this important mission. Finally, I will be happy to answer any questions that the Committee may want addressed.

I. THE SDI MISSION IN A NEW WORLD ORDER

Recent dramatic international events have transformed the bipolar world of the past forty-five years, promising freedom to many previously oppressed peoples and benefits for the American people--and others worldwide. A new less confrontational international era, however, does not mean that all dangers to our national security have gone away, nor that all are even less significant. Indeed, some dangers--previously in the shadow cast by the former U.S.-Soviet confrontation--are growing.

President Bush Redirects SDI

Our assessment of this rapidly changing world scene, beginning in 1989, led President Bush in January 1991 to redirect the SDI program away from its early focus on defending the United States against a massive attack out of the former Soviet Union. The President's new mission for ballistic missile defense is to protect the American people, our forces abroad, and our friends and allies against a limited ballistic missile attack, whatever its source. The President's redirection had significant implications for developing and deploying theater as well as strategic ballistic missile defenses.

Rather than contributing to the deterrence of a massive missile attack against the United States by the former Soviet Union--now judged to be substantially less likely, our objective is now to protect the United States, or our forces abroad, or our friends and allies against 10's or perhaps 100-200 reentry vehicles

launched from anywhere--a capability of increasing potential importance. In an uncertain future, such missiles might be launched accidentally or in an unauthorized way--or they might be launched deliberately, as was the case in the Gulf War.

The Missile Defense Act of 1991

The President's FY 1992 budget submission and the testimony of senior DoD officials described the new mission for SDI to the Congress last year. And the Congress itself took the initiative to pass the enormously important Missile Defense Act of 1991, establishing by law the goals to:

- "(1) deploy an antiballistic missile system, including one or an adequate additional number of antiballistic missile sites and space-based sensors, that is capable of providing a highly effective defense of the United States against limited attacks of ballistic missiles;
- (2) maintain strategic stability, and
- (3) provide highly effective theater missile defenses (TMDs) to forward-deployed and expeditionary elements of the Armed Forces of the United States and to friends and allies of the United States."

Although the MDA directed that space-based interceptors such as Brilliant Pebbles (BP) not be included in the initial plan for deploying the Limited Defense System (Sec. 234(b)), it established a separate Space-Based Interceptor Program Element, including BP, which has as its primary objective, "the conduct of research on space-based kinetic-kill interceptors and associated sensors that could provide an overlay to ground-based antiballistic missile interceptors." (Sec. 236(c)) Furthermore, the MDA explicitly stated a requirement for "robust funding" for research and development of such promising follow-on ABM technologies.

There was a sense of urgency established by the Missile Defense Act. In particular, it directed the Secretary of Defense to:

- (1) "aggressively pursue the development of advanced theater missile defense systems, with the objective of down selecting and deploying such systems by the mid-1990s;" and
- (2) "develop for deployment by the earliest date allowed by the availability of appropriate technology or by fiscal year 1996 a cost effective, operationally effective, and ABM Treaty-compliant antiballistic missile system at a single site as the initial step toward deployment of an antiballistic missile system" described in the goal of

the Act, "designed to protect the United States against limited ballistic missile threats, including accidental or unauthorized launches or Third World attacks."

And notably, in the Conference report for the FY 1992-93 Defense Authorization Act, the Congress expressed the understanding that:

"to meet the deployment date for the initial ABM treaty-compliant system and to achieve the mid-1990s deployment date for a theater missile defense system, acceleration of normal acquisition processes and procedures is required in light of the very high priority of these objectives." (H. Rept. 102-311, pp. 492-493)

Administration Plan To Implement The Missile Defense Act

On July 2, 1992, Secretary Cheney submitted to the Congress the Department's plan for implementing the Missile Defense Act. He indicated in his transmittal letter his guidance to the Department that this "critically important" Act be "implemented as a top national priority, consistent with prudent management of cost, schedule, performance and technical risk factors." From my perspective, the direction from the President, the Secretary of Defense, and the Congress now constitute the SDI mission and a clear mandate for our plan to accomplish that mission which we submitted to the Congress on July 2, 1992. With the necessary support of Congress, we can provide an advanced Theater Missile Defense contingency capability as early as 1996 and field an initial U.S. contingency capability as early as 1997.

The Plan Responds To A Growing Problem

Mr. Chairman, I know of your longstanding interest in our concerns about the proliferation of weapons of mass destruction and the technology that could enable the delivery of such weapons to intercontinental range. Therefore, I want to say a word or two about the problem that motivates our mission.

Today, over 15 nations possess a ballistic missile capability. By the turn of the century this number could increase to 20, and some may be able to arm them with chemical, nuclear and biological warheads. This trend is of serious concern to the United States and our friends and allies. The Russians too have acknowledged this problem. Existing short and intermediate range missiles today could threaten our overseas troops and our allies and friends.

While we continue our arms control and other diplomatic efforts to reduce nuclear armed missiles aimed at us, we cannot lose sight of the fact that today there are still intercontinental range ballistic missiles in four sovereign republics of the former

Soviet Union--and, of course, in China. Furthermore, there is no technical reason why additional countries could not acquire a long-range capability to threaten directly the United States with a limited missile attack within a decade--after all, the technical know-how is a quarter century old and is a natural by product of the ever-increasing interest in exploiting the benefits of outer space. The economic realities of a global market place only enhances this concern.

Furthermore, as the Iraqi use of Scuds in the Gulf War has shown, some nations that possess a ballistic missile capability may not be deterred from using that capability, even in the face of overwhelming military forces arrayed against them. In addition, other non-detractable threats such as accidental and unauthorized launches of ballistic missiles become more of a concern as ballistic missile technology spreads throughout the world including in areas of political instability.

While we seek to impede such proliferation through diplomatic means, prudence demands that we also provide to the American people, our forces abroad, our allies and our friends effective, active defenses against limited ballistic missile attack as soon as technologically feasible. Indeed our diplomatic and development activities can be conducted in a mutually reinforcing way to improve the protection of Americans and our friends and allies.

A New Era Of Cooperation

Finally, I believe it is important to note the inherent international nature of our current mission, which is amplified by the international nature of the above-mentioned proliferation problem. SDIO has long worked with allies and friends to explore the utility of defenses against ballistic missiles, particularly in a theater missile defense context. And, beginning in 1985, the United States proposed cooperation with the former Soviet Union in Geneva on moving jointly to a new, stable strategic regime in which defenses against ballistic missiles play an increasingly important role.

There has been growing interest in our proposals as the East-West relationship has been evolving from confrontation toward cooperation. No more graphic evidence of this fact was President Boris Yeltsin's January 31, 1992 proposal, that we cooperate on a Global Protection System to provide protection to the world community--and that the SDI program be redirected to take advantage of Russian technology in working toward that end. We are continuing this dialog, in consultation with our Allies.

On July 13 and 14, a U.S. delegation, led by Dennis Ross, the Director of Policy Planning at the State Department met with a high-level Russian delegation in Moscow to hold consultations on

establishing a Global Protection System (GPS). This meeting was held in response to an agreement between Presidents Bush and Yeltsin at the June 16-17 Washington Summit. Progress at the recent Moscow high level group meeting is illustrated by the agreement to set up three working groups to carry forward expeditiously the task of developing the GPS concept. (I might note that one of the groups will consider the implications of the proliferation problem mentioned above.)

In conclusion, our mission--to be accomplished in an evolving international context--is to field as soon as is technologically feasible advanced defenses to protect the people of the United States, our forces abroad, our allies and friends against limited ballistic missile attack, whatever its source.

II. SDI REALIGNMENT

To accomplish this important mission, the SDI program will be transformed from a relatively narrowly focused Research, Development, Testing and Evaluation (RDT&E) program to a serious acquisition activity to bring into being a fundamentally new multi-service, multilateral world wide capability--all in the evolving international geopolitical context mentioned above. Attributes of this system will require the integration of the acquisition, training and operational attributes of the U.S. Military Services into a single system architecture and a single system capability. It will also require assuring interoperability of various systems of our allies and friends that ultimately may compose the Global Protection System now under discussion between the United States and Russia, and in consultation with our allies and friends.

New Management Agreement

This past May, I worked out a formal Memorandum of Agreement with the Service Secretaries to establish the management structure for acquiring such an integrated system capability. As the Department's SDI Acquisition Executive, I will be responsible and accountable to the Secretary of Defense and the Under Secretary of Defense for Acquisition for the architecture and acquisition of the Department's strategic and theater ballistic missile defense systems. The Service Secretaries and I agreed that day-to-day execution of the strategic and theater programs will be the responsibility of a senior (three star) military officer--to be called the General Manager--who will report to me. With support from the systems engineering and integration contractor, he will be responsible for overall configuration management, configuration control and the overall battle management, command, control and communications (BM/C³) system development.

Under SDIO direction, the Services will acquire their

respective system elements using existing management infrastructure and acquisition policies and procedures. Each of the Military Departments will centralize its program execution activities under a single Program Executive Officer (PEO) accountable to the Service Acquisition Executive to ensure a smooth development process that integrates across Service lines, but within the framework of the normal Service processes, procedures and regulations. The PEO's will also be Deputies to the General Manager. Service element program managers will report to the PEOs and execute their programs with direction that flows from the General Manager.

In addition, an SDI Acquisition Review Council has been established to assist the Director, SDIO in assessing program progress and identifying and resolving program issues. The council is designed to foster the integration of the interests of the Services and strategic and theater user communities with the goals and objectives of the systems acquisition program.

The management structure described above is expected to be fully implemented by January 1993. It is expected that this arrangement will foster clear-cut communications and provide effective central control of this complex system acquisition. Further, a continuing objective of the SDIO/Service management team will be to use streamlined management techniques to achieve program goals as promptly and efficiently as possible.

Program Oversight

Finally, the program will be under full oversight and review by the Under Secretary of Defense for Acquisition, who is the Defense Acquisition Executive (DAE). All major programs and systems contracts awarded by the SDI program will be reviewed and approved by the DAE. Numerous DAB related reviews are conducted by (1) the pre-Defense Acquisition Board Committee; (2) the Office of the Secretary of Defense Cost Analysis Improvement Group, which oversees SDIO's estimate of acquisition costs; and (3) the Joint Requirements Oversight Council (JROC), which has the responsibility to assess military requirements and approve the military need for acquisition programs. Also, the Director of Defense Research and Engineering has oversight responsibility for the SDIO technology program, which is a significant element of the DoD's Science and Technology program.

III. PROGRAM EXECUTION

Thus, the realigned SDI program provides for centralized management of the nation's anti-ballistic missile defense programs with decentralized program execution undertaken by the military services. SDIO, itself, is a small, compact defense agency, which assigns project responsibility and distributes budget dollars to

such executing agents as the Army, Air Force, Navy, Defense Nuclear Agency, Defense Advanced Research Projects Agency, NASA, and the Department of Energy. Each of these executing agents has its own staff and contractors to execute its respective part of the overall SDI program.

Over the past seven years, 25-percent of the funding appropriated by Congress for SDI has been directly obligated by SDIO. The other 75-percent has been distributed to the executing agents pursuant to Program Management Agreements: 37-percent to the Army, 25-percent to the Air Force, 6-percent to the Navy, 3-percent to the Department of Energy, 3-percent to DNA, and 1-percent to DARPA/NSA. Each of these organizations manages its resources according to its rules and procedures which must meet the requirements of SDI policy and direction within public law. Historically, about 75-percent of all SDI appropriations has ended up in contracts to industry. The remainder has gone to the Department of Energy, DOD Laboratories, government salaries and overhead.

I estimate that there are approximately 2000 total government personnel today directly reimbursed by SDI appropriations, 1000 contracts let by ourselves and our agents, and over 20,000 contractor personnel.

SDIO and its Contractors

SDIO has a manpower shortage.

Our present manpower and contractor support is, of course, a legacy of our past history -- and is the point of departure for charting how we will carry out our new responsibilities. Between 1984 and 1988, SDIO authorized strength grew from 29 to 263 individuals and has been essentially constant since then. To support this high quality, but small, government staff, we are compelled to rely on two categories of contractors: those that perform research and development functions, and those that provide support and administrative services.

Under my current manpower ceiling, I am allowed a staff of 259 civilian and military government personnel at SDIO. In FY 1991, my staff was supported by 56 other government employees from the Services and other government organizations, and approximately 1300 contractor support personnel under 46 contracts with 27 firms, for which we paid about \$165 million. These support contracts provided technical, administrative and management services. These efforts were performed under written task directions from responsible government managers, whom I hold accountable for all deliverables.

In the research and development contractor category, we spent

approximately \$536 million in FY 1991 for contractors working on system integration and engineering, concept development studies, technology experiments, the national test bed, providing launch services, as well as a myriad of other research and development efforts that support our theater and strategic missile defense efforts.

In all of these SDIO contracts, we have maintained a high degree of competition. In FY 1991, we achieved a competitive rate of almost 70-percent of all contract dollars -- somewhat higher than the entire Department of Defense. I should note that about 5-percent of our contract dollars awarded to U.S. industry have been awarded under the procedures of Section 8(a) of the Small Business Act and, as such, these contracts are unavailable for competition if they are under \$3 million each -- as all of ours have been.

In FY 1991, there were 15 new support contracts awarded, 3 of which were Section 8(a) awards. Of the remaining 12, 9 were awarded after full and open competition. So, three-fourths of our support contracts awarded last year resulted from competition.

These activities are managed by my Contracts Office, which is staffed by 12 senior contracting officers, a procurement clerk and a secretary. We have made a conscious effort to upgrade our Contracts staff in recognition of our limited manpower resources. Because of the workload volume, they are supported by two Section 2(a) contractors who have organizational conflict of interest provisions in their contracts and who sign proprietary agreements with other SDIO contractors.

Contractor Support Services

I am keenly aware of the manpower shortage that SDIO is confronted with, and share the Committee's concern over the proper use of contracted support services. I would like to briefly outline the types of contractors we use and then discuss ways by which we ensure that only government employees perform inherently governmental functions and how we avoid conflicts of interest infringements.

Support services are mainly provided to SDIO by profit making companies such as the Scientific, Engineering, and Technical Assistance (SETA) contractors, and to a lesser degree by non-profit companies and the existing Federally Funded Research and Development Centers (FFRDC) under a joint arrangement worked out with their government sponsors.

There are presently 38 SETA and other support contracts that provide systems and program support to SDIO. Typical tasks include:

- o Conduct systems analysis for interceptors.
- o Identify technical requirements for modelling and simulation.
- o Support for interface definition and control, technical analysis, and trade off studies.
- o Support for high temperature super conductors, space structure technologies, space experiments and advanced materials, systems analysis.
- o Investigate and analyze directed/kinetic energy concepts and new technologies in materials and structures.
- o Investigate and analyze new technologies in the areas of high power microwaves and electromagnetic technology.

The most important of our SETA contracts are the three "Super-SETA" contractors, TASC, BDM, and Riverside Research Institute, who provide systems and program support (rather than technology support) to SDIO in the following areas: systems engineering, strategic architecture, mission studies and operational concepts, Blue Team support, battle management and command, control and communications, test and evaluation, National Test Bed efforts, theater architecture, planning and programming support, natural and perturbed (nuclear and non-nuclear) environments/systems effects studies and analyses, logistics support studies and analysis, producibility analyses, cost estimating and analyses, environmental analyses, and basing and siting analyses.

Under the "Super-SETA" arrangement the three contractors were awarded requirements contracts, under full and open competition, for the forgoing work for a base period of three years each. The arrangement operates as follows:

- o When a task is identified it is competed among the three contractors.
- o Each contractor is required to compete for the task.
- o Proposals may be required within ten days.
- o Award is made to that contractor whose proposal is most advantageous to the government under the following evaluation criteria: technical excellence; management capability; personnel qualifications; experience; past performance; schedule; cost; cost realism; the impact of the proposed task on tasks already awarded; and any other relevant factor.

The "Super-SETA" arrangement was established to: avoid multiple contracts for systems and programs support; provide for strong on-going competition for SDIO's requirements in lieu of getting into a sole source situation with one contractor; and provide "quick response" support for fast breaking SDIO programmatic requirements.

In the case of the SETAs and our other support contractors, SDIO requires strict organizational conflict of interest (COI) contractual provisions to assure the contractor's objectivity and to make certain that the contractor does not obtain unfair competitive advantage by virtue of access to non-public government information or proprietary information belonging to others. Under the SETA contracts, the contractors are prohibited from the following activity: (1) participating in any capacity in work that stems directly from their SDIO contract work; (2) performing services on its products or services or the products and services of another company if they have been substantially involved in their development or marketing; and (3) performing in any capacity in a procurement where they prepared the statement of work for the procurement.

FFRDCs differ from SETAs and other private companies in that they are dedicated to perform the work of their government sponsor and are not profit making. Services are provided the government pursuant to a tasking mechanism in the sponsoring agreement. Since SDIO does not sponsor any of the FFRDCs, we must make arrangements for their services through their various sponsoring agencies, with appropriate reimbursement.

Unique Contractor Support: The AIS

During the planning leading up to the President's January, 1991 announcement of the new focus for SDI, SDIO recognized the need for a structured high level architecture trade effort to develop options for responding to the challenges of the new direction. This was a very different mission than considered for BMD before and, to develop an architecture and program strategy, required a complete reevaluation of the technical trades among the potential BMD elements. Supporting SDIO analyses with these complex, interdependent technical and programmatic issues on a timely basis clearly required the attention of experienced, senior, knowledgeable experts supported by the necessary staff to undertake the required technical trades. Such a team was not available within the Government, so SDIO undertook to obtain the needed expertise from the contractor community.

SDIO used the Super SETA contractors discussed above, who are not associated with the major hardware prime contractors, to provide expert analysis and engineering support over the full technical and programmatic spectrum of SDI. However, in this case, a competition was not held among the three contractors because no one had all the expertise required to perform the full scope of the required architecture trade task. Collectively, the three had the capability, therefore they were tasked to work together cooperatively to provide the full range of expertise required to conduct the architecture evaluation task. This Super SETA

contracts task was called the Architecture Integration Study (AIS) with work performed in a separate facility to create a "badgeless" environment where key individuals from multiple companies could operate as a single team to conduct the required analysis. Careful attention was focused on the avoidance of conflict of interest in formulating the contractual arrangement. A government review team consisting of SDIO staff and Service representatives was established to monitor the work and validate the contractor products.

SDIO believes the AIS effort has been very successful in supporting a fully informed broad architectural analysis of technical and program options for accomplishing the objectives for SDI set forth by the President and the Congress. The study has provided valuable input to the government in many areas. The results of the analysis team's efforts were used as important (but not the only) input in formulating the government's architecture and program structure approach. In particular, the study examined multiple architecture and program alternatives for responding to the mandate of the Missile Defense Act. The study has conducted numerous, detailed system trade-off analyses and detailed element trade-offs. It has investigated specific technical issues such as interceptor lethality, sensor performance and capability trade-offs, and interceptor performance. The study has also investigated numerous alternative architectures based on threats, technologies, and political constraints. The team has also been utilized in major analysis activities in support of the Defense Acquisition Board review process. Currently, the AIS is examining evolutionary battle management, command, control and communications options to support ongoing program definition in this area. As with all our contractor efforts, all AIS activities are closely monitored by a senior SDIO government official.

Keeping an Eye on Contractors

I want to emphasize that the three Super-SETA contractors, as well as other SDIO SETA contractors, are required to meet stringent Organizational Conflict of Interest requirements. I believe that this arrangement provides SDIO with the requisite expertise. My contracts and legal staff have continuously worked to provide Organizational Conflict of Interest surveillance of these contracts, and I believe that this effort has been free of such conflicts. However, while we have also worked hard, and I believe successfully, to prevent the performance of these contracts from lapsing into proscribed personal services contracting, I must admit that it would be far more efficient and desirable to perform much of this effort with my own personnel rather than relying on support contractors. Thus, it would be desirable to increase our civilian and military staff.

On the other hand, as a practical matter, we are unlikely to

bring into government service all of the expertise needed to effectively manage this complex program. Furthermore, I would always want to tap into the external non-government points-of-view to avoid too narrow a look at such a complex acquisition program as SDI.

Undoubtedly, the real issue has to do with acquiring an appropriate number of qualified government personnel, fully sufficient to assure that the government employees always perform-- and perhaps of equal importance are perceived to perform -- the inherently governmental functions, which are defined by OMB as those "so intimately related to the public interest as to mandate performance by government employees. These functions include those activities which require either the exercise of discretion in applying government authority or the use of value judgements in making decisions for the government." In specific terms, these functions might include the selection of program priorities, the direction of federal employees, and the management of government programs.

It should be understood that the amount of money that would be saved by improving the ratio of government employees to contracted support personnel is probably a relatively small percentage of our overall management (including government and contractor) costs. For example, we recently conducted a manpower study which showed that increasing the SDIO staff by 400 individuals, while reducing contract support man-years by a like amount, would save about \$15 million dollars. Although this savings would be small with respect to our overall budget for government salaries, it would reduce the costs of the particular bloc of work at issue by about one-third.

Thus, a primary reason one would increase the government staff has to do with controlling the perception, and the reality, that there are not enough government employees to perform the required inherently governmental functions as well as to deal with potential conflicts of interest concerns.

IV. SDIO MANAGEMENT INITIATIVES

I have talked to you today about the SDIO mission and organization, and outlined how we manage our contractor support services and the government role in managing the SDIO program with this important and necessary contractor support. I have also mentioned the manpower history in SDIO and what I consider to be an artificially low staffing level. Now let me turn to some initiatives we have been taking to ensure proper contractor management and improve our government to contractor ratio in SDIO.

First, I requested back in March of this year that an independent review of SDIO contracting and use of contractor support services be performed. This is now being undertaken by the

DoD Inspector General's Office in an audit to evaluate the effectiveness of the procurement system and the role of support contractors in SDIO. Specific objectives will determine the allowability, reasonableness, and allocability of costs charged to contracts; whether support contractors are cost effective; and whether management controls are adequate to preclude contractors from any conflicts of interest or performance of inherently government functions. In addition, the Defense Contract Audit Agency (DCAA) is also conducting an audit into the acceptability of contract costs, adequacy of financial or accounting aspects of contracts, adequacy of accounting and financial management systems, estimating procedures and property controls. As you can see this is a thorough review of our contracting system and use of contractor support.

Second, in March of this year, I undertook a comprehensive survey of the SDIO staff to review our use of contractor support services. It may be beneficial to share with the committee some of these findings. All of the staff said they needed more government employees and would cut back on contractor support if given the additional staff. The staff also stated that they were in charge of the contractor effort, closely monitored the contractor work force, tasking it, approving its travel, and evaluating contractor performance. The staff reiterated that they performed all inherently government functions but often used contractors to draft or provide support work on those government functions. For example, contractors might collect information or data, provide drafts of correspondence or work, analyze or make recommendations on requirements, and review budgets or evaluate other contractor work performed. The important item is that these were pre-decisional items that were prepared by contractors and forwarded to their government sponsor for evaluation and acceptance. Final responsibility and accountability for the SDI product is always with a government representative.

Third, because of our use of contractors, we felt it necessary that our staff be well versed in the proper policies and procedures governing the use of contracted support services. To this end, we developed an in-house course for our contracting officer's technical representatives (COTRs). This course was developed and first presented several years ago and has been given on a periodic basis as new COTRs are assigned to SDIO. In fact this course is a good case study in the use of support contractors, since the course was developed with contractor assistance. Given an outline of the course that was developed by my contracts office in conjunction with General Counsel, the contractor was tasked to perform the regulatory research and draft presentation material for the course. The draft material was reviewed and modified by the individual government employee who was responsible for each section of the course prior to coordination and review within the Contracts Directorate and General Counsel. Then and only then was the course material considered ready for presentation. Over the past several

years this course has been presented numerous times, and each time entirely by members of the SDIO staff.

Fourth, a presentation was developed for all SDIO employees to stress the importance of not using support contractors to perform inherently governmental functions or personal services, and to provide them with some methods of managing their contracts to avoid using contractor personnel improperly. To date, nearly two thirds of the SDIO staff, including General O'Neill and myself have attended these presentations.

Fifth, the Contracts staff, in conjunction with the office of the General Counsel, is working to improve the way we draft our support contracts to ensure that we are buying products and services and not personnel to be used as substitutes for government employees.

Sixth, we have made a conscientious effort to upgrade the quality of our Contracts staff by bringing in more senior level contracting officers to replace some of our junior military contracting officers.

Seventh, and perhaps most important, I am taking action to increase the level of government manpower. Last fall after the Missile Defense Act was passed, I asked the senior members of my staff to review how we might best manage such a large undertaking, including what organizational and manpower changes were necessary. I have requested, and the Deputy Secretary of Defense, has concurred that a manpower study be conducted to assure a proper manpower level of government employees is established in SDIO. Last winter, I personally entered into discussions with each of the Service Secretaries, and, by May, had negotiated a new Memorandum of Agreement (MOA) to govern the interrelationships, roles and responsibilities of our respective organizations in the execution of the GPALS program, as I discussed earlier.

It is my sincere hope that with the implementation of the General Manager organization established by this MOA, we will be able to hire sufficient Government personnel to begin to reduce our need for contracted support to carry out our day-to-day operations of this critical program.

However, I must stress, Mr. Chairman, that I do not want to leave you with the impression that if you revisit SDIO in one or even two years, you will find an organization that is free of contracted support; such will not be the case. We will always find ourselves at the leading edge of technology, exploring and experimenting in areas where there is no government capability or expertise. In such cases, as we do now, we will continue to rely on expertise that exists in the private sector. Additionally, there may be functions of an administrative nature that do not represent inherently governmental functions, that can be performed

more economically by the private sector. What I can promise the Committee is my commitment that these decisions will be made based on the merit of each case, and not driven by simply having no other alternative.

V. CONCLUSION

SDIO is working to evolve into a more economic and efficient structure that better manages the acquisition of ballistic missile defenses and better utilizes its contractor and government personnel. This is something I have been working on over the past year. I expect these initiatives will be implemented in the months to come. I have high confidence in the military and civilian staff in SDIO, but, given present force restrictions, they cannot do the job without contractor support. As I continue to wrestle with this concern, I would like to share with Congress three potential alternatives for their consideration.

- 1) Continue roughly the same mix of government, FFRDC and Contractor personnel and just work harder to avoid the perception of conflict of interest; or
- 2) Adjust the personnel mix such that substantially greater portion of support activities are performed by government personnel; or
- 3) Shift the balance of non-government support personnel to substantially increase the involvement of FFRDC personnel.

The first alternative is the path we are now on. As I have indicated above, SDIO has taken specific management initiatives to sensitize its employees about existing regulations concerning conflicts of interest and inherently governmental functions.

The second alternative, increasing the portion of government employees, is being pursued through Department of Defense channels. We now await the Department's review of our manpower needs.

Finally, there is the idea of increasing the involvement of FFRDC personnel in our support activities. Some history of this approach might be useful. Over the past 4 or 5 years, we have had up to 70 employees of several FFRDCs actively engaged in supporting our activities. They have led important architectural studies -- such as the Midcourse and Terminal Tier Review (MATTR) in 1990. Today, about half of that effort is playing a very important role in helping us structure a sound Theater Missile Defense program, involving all the Services and several of our allies.

But this important and useful involvement is far short of the kind of comprehensive, dedicated FFRDC effort that General Jim Abrahamson, the first SDI Director, had in mind in 1986 when he

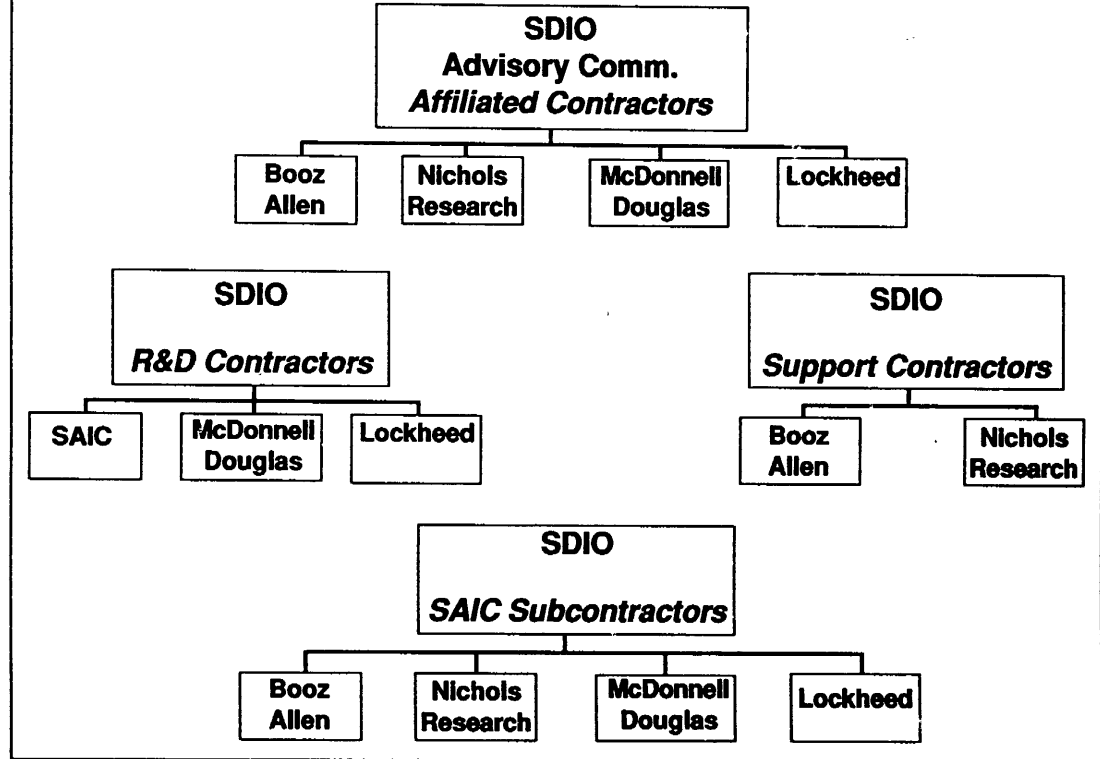
first tried to establish a substantial FFRDC devoted to supporting SDI. As you may recall, he adopted a different course, the legacy of which is our current condition, because, as I understand it, he was not able to reach a timely agreement with the Congress. I can't help but wonder if I would be sitting here today had he been successful.

So, I intend to reconsider this approach in view of the realigned SDI mission and our mandate to pursue a serious, complex, acquisition program to begin fielding a fundamentally new capability within five years or so. And I would welcome Congressional counsel on how best to achieve an appropriate team of government, FFRDC and contractor personnel to enable timely, competent, affordable and efficient execution of our program without raising concerns regarding conflicts of interest.

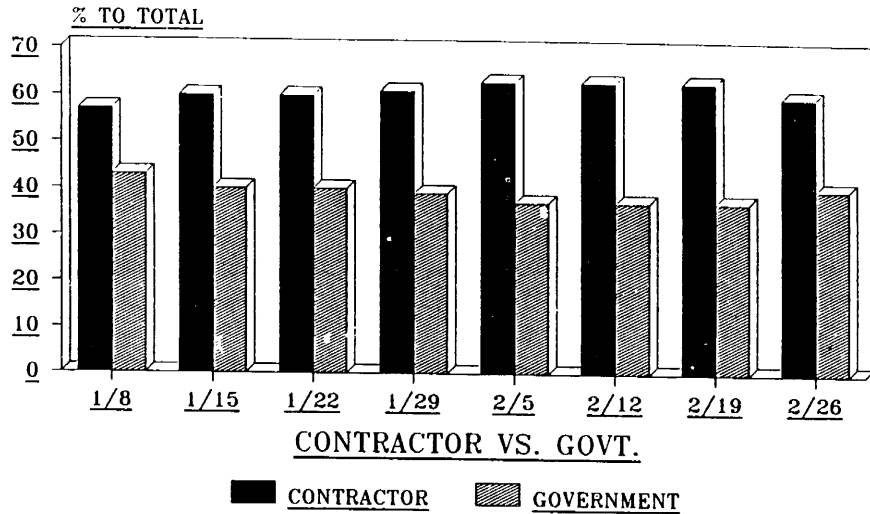
I, and my predecessors, have sought the very best management, engineering, and scientific expertise, preferably resident in the SDIO staff or readily available to it. We have all sought to manage the SDIO such that there is not even an appearance that contractors are performing inherent government functions or personal services. We have not always succeeded. In the future, as we focus on implementing the Missile Defense Act of 1991, we must do better because strong and effective government management is even more important to the overall viability of our program during this acquisition phase.

In concluding, I would like to repeat that I share the Committee's concern about the government's use of contractors and consultants and will redouble my efforts to ensure that they do not perform inherently governmental functions in my organization. I would like to stress again that it is myself, and my government staff, not contractors, who are in charge and accountable for the successful implementation of the program.

SDIO CONTRACTOR NETWORK



SDIO STAFF CONTRACTOR VS. GOVT



Note: Random days -- 1992

Source: SDIO

JOHN GLENN OHIO CHAIRMAN

SAM NUNN GEORGIA
 CARL LEVIN MICHIGAN
 JIM BASSER TENNESSEE
 DAVID PRYOR ARKANSAS
 HERBERT KOHL WISCONSIN
 JOSEPH I. LIEBERMAN CONNECTICUT
 DANIEL K. AKAKA HAWAII

WILLIAM V. ROTH JR. DELAWARE
 TED STEVENS ALASKA
 WILLIAM S. COHEN MAINE
 WARREN B. RUDMAN NEW HAMPSHIRE
 JOHN SETHMOUR CALIFORNIA

LEONARD WEISS STAFF DIRECTOR
 FRANKLIN C. POLK MINORITY STAFF DIRECTOR AND CHIEF COUNSEL

United States Senate

COMMITTEE ON
 GOVERNMENTAL AFFAIRS
 WASHINGTON, DC 20510-6250

August 6, 1992


The Honorable Henry F. Cooper
 Director
 Strategic Defense Initiative Organization
 Department of Defense
 Washington, D.C. 20301

Dear Mr. Ambassador:

I would like to thank you for testifying on July 24, 1992, before the Committee on Governmental Affairs on the Strategic Defense Initiative Organization's (SDIO) use of contractors. Your informative statement and responses to my questions were very useful to the work of this Committee.

Enclosed are a number of additional questions for the record. I would appreciate your written response to these questions by August 21, 1992. Again, thank you for your cooperation.

Sincerely,



David Pryor

RESPONSES TO SENATOR PRYOR

NUMBER OF GOVERNMENT VS. CONTRACTOR SUPPORT PERSONNEL

Senator Pryor alleged that approximately 60% of the SDIO staff are contractors.

This allegation apparently is based on data provided in an April 7, 1992 letter from Ambassador Cooper to Senator Pryor giving the total number of government and contractor personnel who entered the SDIO facility on specific dates, as requested by the Senator. There are no contractors on SDIO staff.

Reference the chart titled "SDIO STAFF, CONTRACTOR VS. GOVT." The data in this chart is assumed to be from data provided in the same April 7, 1992, letter from Ambassador Cooper to Senator Pryor. Rather than the percentage of 40% government vs. 60% contractor personnel as depicted in the chart, Ambassador Cooper in his opening statement indicated SDIO is currently authorized 259 government personnel, who in 1991 were supported by about 1,300 contractor support personnel (most of whom do not work in the SDIO facility).

In addition, the chart's title is misleading. The SDIO staff does not include contractors; however, contractors do provide support to the staff. Further, the implication that all contractor personnel who were in the facility on 8 specific days in January and February 1992, were providing support to the SDIO staff is incorrect.

Contractors visit the SDIO facility for various reasons. There are support contractors, some of whom are physically located in the SDIO facility (~42 contractor personnel are required by contract to be on-site). However, many contractors attend meetings, and conferences held by SDIO which are necessary to the performance of their research and development, prototype, and hardware contracts. Still others have requested meetings with the SDIO Small Business Director to discuss potential small or small disadvantaged business contracting possibilities. The data provided by SDIO only shows a breakout of the number of contractor representatives and government employees who entered the SDIO facility on 8 given days and does not represent the contractor personnel versus government SDIO staff.

Additionally, all the calculations illustrated in the chart are slightly inaccurate. For example, on January 8, 1992, the percentage of contractors who passed through the SDIO facility was -53.3% vice the -58% on the graph.

USE OF CONTRACTORS/CONSULTANTS TO DISTRIBUTE FUNDS

Senator Pryor alleged, during his opening statement, that SDIO contractors or consultants are used to distribute funds remaining before the fiscal year runs out.

SDIO does, on occasion, use support contractors to review the status of various accounts to ascertain if there may be excess funds available from those accounts that could be applied to other programs that are underfunded. However, these support contractors do not distribute funds, nor do they determine which programs should obtain additional funding. Only SDIO managers have the authority and responsibility for determining which programs are funded and which are not. The support that these contractors provide is not considered "inherently governmental," according to OMB guidelines.

CONTRACTORS REPRESENTING SDIO AT MEETINGS/CONFERENCES

Senator Pryor, in his opening statement stated that "Contractors represent SDIO at meetings and conferences, and contractors even sometimes call and preside over meetings."

Contractors do not preside over meetings or act as surrogates for government personnel called upon to perform inherently governmental functions. Rather, in performing the services or studies and analysis called for in some of our support contracts, contractors often attend meetings or conferences.

In the sense that these efforts are performed under an SDIO contract, these contractors do "represent SDIO;" however, they generally do not represent SDIO in the sense that they make decisions or speak on behalf of SDIO. On occasion, a contractor will attend a meeting to gather information when a government employee cannot attend. In this capacity, the contractor does not speak for SDIO unless he has a statement that has been approved by the SDIO manager in advance.

USE OF CONTRACTORS TO PREPARE OFFICIAL SDIO DOCUMENTS

Senator Pryor stated that contractors prepare many of the official SDIO documents, such as congressional testimony, congressional descriptive summaries, reports to Congress and program management agreements. Senator Pryor also stated that contractors draft acquisition plans and notices for the Commerce Business Daily.

In each case cited by Senator Pryor, SDIO has used contractors to provide initial drafts for official documents. This is not to say that all official documents are initially drafted by contractors, they are not. In each of the examples cited, the preparation of these documents is an iterative process in which the first or second draft bears little or no resemblance to the final document. This is true whether an SDIO employee or a support contractor drafts the first version. In each case, regardless of the author, the document is reviewed and modified as needed by the responsible government managers throughout the SDIO staff so that the final document is truly a Government document.

In not one of his 12 appearances before the Congress has a single

contractor drafted Ambassador Cooper's prepared testimony. He is scrupulous in preparing his own testimony.

CONTRACTORS SERVING AS 'CORPORATE MEMORY'

Senator Pryor stated in the opening statement that "when GAO came over to review and audit an SDIO program, the only person who could respond to the GAO's questions about a particular program were contractors, not federal employees. They were designated on that particular day as SDIO's corporate memory."

One of the unfortunate byproducts of being one deep in many positions is on occasion, as military and civilian personnel turn over, the one thread of continuity is the support contractor. The case cited by Senator Pryor is one in which two SDIO managers were about to leave and their replacements had not yet arrived. Since GAO was about to begin a review, two contractor employees were apparently identified as the "corporate memory" to assist GAO until new government managers were assigned. This situation was somewhat unique in that two SDIO managers in the same office were leaving at the same time.

SDIAC AND SDI CONTRACTS

Senator Pryor stated that 14 individuals who have served on the SDIAC represented companies or contracting firms which received some \$400 million in SDI contracts from fiscal year 1988 through fiscal year 1990.

The chart titled "SDIO Contractor Network" attempts to demonstrate a direct connection between the SDIO Advisory Committee (SDIAC) and four major SDI contractors: Booz Allen, Nichols Research, McDonnell Douglas, and Lockheed.

The chart is in error. There is no current connection, whatsoever, between the eleven current members of the SDIAC that were appointed by Ambassador Cooper beginning in 1990 and the four contractors cited in the chart. One of the current members consulted for Booz Allen in 1987 and 1989. No current member has ever been affiliated with Nichols Research. One of the current members consulted for McDonnell Douglas in 1978 and another consulted for Lockheed from 1987 through 1989. Three former members of the SDIAC, serving with other Directors of SDIO, also had a relationship with the named contractors.

The chart tends to mislead. Even if such affiliations were current, the strict conflict-of-interest and disclosure provisions of the formally chartered SDIAC would preclude members from using their appointment to further private interests under penalty of law. Since the members of the SDIAC become special government employees during the time that they participate in the SDIAC meetings they are equally bound by financial disclosure regulations. Their situation is no

different than other government employees who have interests in companies doing business with SDIO. These provisions are important to allow SDIO access to critical expertise in the strategic defense arena, even when the individual is affiliated with an organization doing business with SDIO.

CONTRACTORS INFLATE IMPORTANCE OF THEIR EFFORT

Senator Pryor stated that each month the contractors and consultants have to fill out, to basically justify their paychecks, a report for the month giving a statement of services performed. He asked are contractors perhaps writing things that make them appear better in the eyes of their supervisors within their contracts in terms of the high character of their work in terms of providing material that goes to Congress or deciding things which in fact are not the case?

Monthly status reports are not used as justification for payment to a contractor. They are statements to the government managers of the work that is being performed by contractors.

Contractors are, in fact, paid on the basis of invoices submitted. These are regularly audited for accuracy and allowability by DCAA. Furthermore, many of the instances of contractors allegedly performing inherently governmental functions, cited by Senator Pryor as suggested from these reports, are nothing more than the contractors' imprecise use of the English language. One person may describe his efforts as drafting a document, while another may describe the same effort as preparing the document. In fact, the person who drafts a document may never see the final product, so as far as he is concerned, he prepared the document. Regardless, no document is signed out of SDIO without substantial review, revision and coordination by Ambassador Cooper and his senior staff.

SECURITY CLEARANCE OF CONTRACTOR EMPLOYEES

Senator Pryor asked how does SDIO know about the security clearances for our contractor's employees.

All contractors who aspire to work under a government contract for which classified information must be disclosed as a condition of the contract, must be cleared by the Defense Investigative Service. Each contractor must have a successful background investigation of a depth that corresponds to the level of classified information to be revealed. In addition, all companies that perform classified work for the government must be designated as "cleared facilities" in accordance with the very exhaustive procedures of the Defense Industrial Security Manual. The level of confidence assigned to a clearance obtained by a contractor is the same as that granted to a government employee. Once a security clearance is granted to an individual and a "cleared facility" designation is granted to a company, the provisions of "need-to-know" are also employed. Possession of a security clearance does not entitle anyone "access"

to classified information. "Access" must be granted on a case by case basis depending on the justified information needed as determined by the agency head or the proponent of the information. Management clearly understands that in no way should a contractor in possession of a clearance have subordinated standards for access.

UNSOLICITED PROPOSALS

Senator Pryor asked about SDIO's awarding of contracts based on unsolicited proposals.

During fiscal years 1990 and 1991, SDIO received a total of 43 unsolicited proposals, of which three were funded. None of the three proposals that resulted in contract awards during this period were for support to SDIO. In each case the proposal represented a unique scientific or engineering effort which the contractor developed on his own and that had a direct application to the SDI program. In each case, the unsolicited proposal was subjected to a thorough technical review and supported by a Justification and Approval for other than full and open competition in accordance with the Competition in Contracting Act. If not abused, the unsolicited proposal process is one that stimulates private industry to seek new and innovative solutions to scientific and engineering problems. It is unfortunate that funding restrictions do not allow us to explore more of these proposals.

SDIO CONTRACTORS REVIEW FOIA REQUESTS

Senator Pryor asked about paying a contractor \$132,000 to review documents in response to Freedom of Information Act requests.

A review of the documentation and discussions with government and contractor personnel does not support the comment made in a contractor's monthly status report that SDIO spent over \$132,000 for contractors to review documents in response to FOIA requests. The contractor who made the statement does perform security reviews on documents that are to be released to the public, which may potentially contain classified information. During these reviews there are often several iterations between the original classification and the final version. On a lengthy document, these reviews can consume many government and contractor manhours. As a result, these reviews can be very costly; however, none of the official records supports any costs approaching \$132,000.

SDIO SUPPORT CONTRACTOR TRAVEL

Senator Pryor asked about W.J. Schafer taking 107 trips in support of SDIO, the cost of which was \$166,000. This example was also used in his February 27 floor speech concerning the use of support contractors by SDIO. These and other business trips were described as "boondoggles" to exotic locations.

The travel in question was identified in a Task Plan submitted by the contractor, reviewed and approved by the SDIO Power Program Manager and the Contracting Officer as reasonable and necessary under the performance of the contract. SDIO does not conduct travel to locations where there is no official business conducted. SDIO also conducts travel to less "exotic" locations such as Dayton, Cleveland, Lubbock, Hartford, Detroit, Madison and others. In order to be more specific, the following is a summary of some of the trips questioned by Senator Pryor and his staff:

London - The purpose of the trip was to attend the SDIO/UK MOD Scientific and Cooperative Research Exchange (SCORE) meeting in order to perform an evaluation of United Kingdom capabilities related to technologies of interest to SDIO.

Moscow - The purpose of this trip was to make an assessment of the applicability of Russian technology to SDI missions and to investigate the feasibility to technology transfer.

Honolulu - This trip was to attend a meeting at the Maui Test Range in order to provide input on the SIREN program.

Los Angeles & San Francisco - To review work in progress on the SUPER program at Hughes and Lockheed.

Orlando - No record of a W.J.Schafer employee or subcontractor taking a trip to Orlando. There is reference to attending a meeting with Martin Marietta on the SUPER program; however, this was Martin Marietta out of Denver, not Orlando.

CONTRACTOR WROTE ALL SDIO SECURITY DIRECTIVES

Senator Pryor asked about spending \$1,308,705 for Systems Planning Corporation to write all internal SDIO security directives.

SDIO did use this contractor to research and draft internal security directives; however, these documents were reviewed by government security experts and revised as needed. After these directives were drafted, as is the case with all SDIO Directives, they were fully coordinated with the remainder of the SDIO staff. In each case, the coordination of every directive is accompanied by the signature or initials of the government official indicating concurrence or nonconcurrence. Only upon resolution of all disagreements and signature by the Director or Deputy Director of SDIO, does a directive become an approved document. The fact that the contractor claimed on one hand to have authored all internal security procedures and later, on the same page, states that they developed many of the procedures is a perfect example of the contractor's overstating their case.

The cost of \$1,308,705 was for the entire contract, which covered a period of one year and included numerous other efforts such

as security support for special access programs, foreign disclosure and classification procedures.

CONTRACTOR FEES

Senator Pryor raised a series of questions concerning contractors or, more accurately, consultants who work for SDIO support contractors receiving between \$450 and \$800 per day.

The contractors who support SDIO do from time to time utilize the services of consultants at rates consistent with those identified by Senator Pryor. Although these rates may appear excessive at first glance, there are several factors that should be considered. First, these individuals are experts in their particular fields with many years of experience and extensive qualifications. Second, they often have their own secretarial support, and an office which normally would be paid for out of overhead. Third, since they are self-employed,, they must cover all of the normal fringe benefits such as retirement and health insurance. Last but not least, these arrangements tend to be more economical than hiring an employee since a consultant is only paid for the days he or she works and only works when needed. This is borne out by the documents used by Senator Pryor where the consulting agreements were for 15 days, 68 days and 77 days.

SEN. PRYOR'S QUESTION

Senator Pryor: In March 1992, I requested that you provide me with information on SDIO's use of contractor/subcontractor employees and federal employees on a random selection of days. As shown on the display chart, contractors outnumbered federal employees on each of the eight days selected. Are you aware that on any given day, about 60 percent of the workforce at SDIO headquarters were contractors? What is your explanation for this situation?

Ambassador Cooper: Reference the chart titled "SDIO STAFF, CONTRACTOR VS. GOVT". The source for the data in this chart is listed as SDIO, and it is assumed the chart was derived from data provided in an April 7, 1992 letter from me to Senator Pryor.

The chart's title is misleading in that the SDIO staff does not include contractors. Also, contractors do provide support to the staff, but contractors are not SDIO staff nor do they perform the inherently government functions.

As to the factual relationship between the numbers of SDIO staff and contractor support personnel, I indicated in my opening statement, that SDIO is currently authorized 259 government personnel, who in 1991 were supported by about 1,300 contractor support personnel. My April 7, 1992 letter provided requested data that only indicated some measure of the number of government and contractor personnel in SDIO offices at several times--which is not a particularly meaningful reflection of the numbers of support contractors supporting the 259 members of the SDIO staff.

Further, the implication that all contractor personnel who were in the facility on 8 specific days in January and February 1992, were providing support to the SDIO staff is incorrect. For example, on February 26, 1992, there were 384 non-SDIO personnel in the SDIO facility. Approximately 42 of these were contractors who are required by contract to be located at the SDIO facility. An additional 131 were support contractors who routinely visit the facility. (Of those, 101 provide scientific, advisory and assistance services support, while the other 72 provide administrative support.) The remaining 211 visitors were at the facility for various reasons. Many attended meetings, and conferences held by SDIO which are considered necessary to the performance of their research and development, prototype, and hardware contracts. Still others meet with the SDIO Small Business Director to discuss potential small or small disadvantaged business contracting possibilities. Others were government employees from other agencies who must interface with SDIO employees. Again, the data provided by SDIO only shows a breakout of the number of contractor representatives and government employees who entered the SDIO facility on 8 given days and does not represent the contractor versus government SDIO staff.

Additionally, all the calculations illustrated in the chart are a

little off. For example, on January 8, 1992, the percentage of contractors who passed through the SDIO facility was -53.3% vice the -58% on the graph.

SEN. PRYOR'S QUESTION

Senator Pryor: Contractors outnumbered Government employees at SDIO headquarters. How can SDIO officials independently develop their judgements, options, and decisions when they are so dependent on contractor support?

Ambassador Cooper: Contractors do not outnumber government employees at the SDIO headquarters. Since space at SDIO headquarters is very limited, the number of on-site contractor personnel is very small in relation to the number of government personnel.

SDIO government personnel are typically experienced and highly motivated managers. Although these managers clearly must depend on contractor support to accomplish their individual missions, these managers do not concede anything in the way of independent judgement to support contractors. Instead they typically work long hours of overtime to assure that they are on top of their programs and that they are fully in control of their programs.

SEN. PRYOR'S QUESTION

Senator Pryor: At SDIO's direction, a study was conducted from June through October 1991 to determine, among other things, whether SDIO's contracting office had adequate resources to fulfill its functions. The study report issued in February 1992 said that the contracting office will have to continue to rely on contractor support to get its work done. The study also concluded that the role of contractors will probably have to expand in the future. There are presently about twice as many contractors working in the contracting office as there are federal employees. SDIO hired a contractor to conduct this study. Are you in any way surprised by the contractor's conclusions?

Ambassador Cooper: There was no predisposition regarding the outcome of this study. None of its conclusions were self-evident and the study proved enlightening. Although a contractor prepared the report, the process of assessing CT was based on a team approach involving many people, including the CT staff, other SDIO employees, and other support contractors.

The Executive Summary of the study report states that "The study's primary focus concentrated on how well CT (SDIO's Contracts Directorate) was supporting SDIO's overall program objectives as well as the degree of risk existing or associated with specific contract functions. A specific purpose of the study was to determine if CT had adequate resources to fulfill its current functions without unacceptable program and contracting risk." The study accomplished a great deal more than merely answer the question if SDIO's contracting office had adequate resources to fulfill its function. The issues of how well CT was doing its job and the potential risk factors to the program were major elements being assessed.

The three most significant conclusions from the study were:

- (1) "...in spite of severe government manpower limitations, CT has done a commendable job supporting the SDIO staff especially in view of the expanding workload since the inception of the program;"
- (2) "...during this period of DoD manpower reductions, CT will have to continue to rely on contractor support to maintain programmatic contractual stability and balance;" and
- (3) "...CT was not being included as a major participant in formulating SDIO's Global Protection Against Limited Strikes (GPALS) acquisition and contracts strategy' and this should be reversed such that CT be included as a major participant in program management decisions.

One final point of clarification. There is and has historically been only one contractor employee tasked to work on-site in the Contracts Directorate.

SEN. PRYOR'S QUESTION

Senator Pryor: SDIO support contractors regularly serve in the capacity of Government staff to conduct SDIO business. For example, in one case, the contractor functioned as the Government representative reviewing the work of another contractor. In another case, a contractor assisted SDIO officials by serving as a stand-in during a project manager's vacation. Is SDIO using its contractors to bypass personnel ceilings? Are you aware that contracting for the purpose of augmenting agency staff is not permitted by OMB policy?

Ambassador Cooper: SDIO support contractors are not government staff nor do they perform inherently governmental functions.

We are aware that personal services contracts for the purpose of augmenting agency staff are not permitted, with a few exceptions. SDIO contracts for specific services to be performed and not for employment of individual personnel. I have testified that SDIO is undermanned and I certainly would prefer to have more government personnel and cut back on contractor support. Contractors, however, do not function as SDIO officials and are not hired to serve as Government representatives or to stand-in for Government personnel. Further, individual contractors are not subject to direct supervision by Government managers, but are controlled through their employer organization which has been retained to perform specific tasks.

SEN. PRIOR'S QUESTION

Senator Pryor: I found examples where SDIO contractors:

-- Were used to staff SDIO offices in September and October 1991 while SDIO employees were away.

-- Served as the coordinator for SDIO's participation in a NASA program.

-- Served as the point of contact between one SDIO office and the Strategic Defense Command.

Does the practice of staffing SDIO offices with contractors still continue?

Also, should contractors serve as a representative or point of contact for the Government?

Ambassador Cooper: Contractors do not "staff" SDIO offices. On occasion, a contractor may be called upon to sit in a Government office during the absence of a Government employee to answer the phones and direct inquiries to the appropriate office. In such a case, the contractor is not there to act as a substitute for the Government employee and clearly is not there in a decision making capacity, but rather merely provides administrative support services.

In some cases, a contractor has a unique expertise not available to the government. Occasionally, in such cases, the contractor may be called upon to act as a technical liaison on a complex program which requires his or her expertise. In a case such as this, the contractor may occasionally be asked to gather information to provide to the government manager who makes decisions.

SEN. PRYOR'S QUESTION

Senator Pryor: Do SDIO contractors make policy for the agency? Are you aware that the use of contractors to make policy for the Government is prohibited by OMB policy?

Ambassador Cooper: SDIO contractors do not make policy -- and yes, I am familiar with OMB policy in this regard.

In particular, I am well aware of OMB's policy barring contractors from the performance of inherently governmental functions. SDIO contractors do not perform any of those functions included in the OMB exemplary list of inherently governmental functions, or any other functions which might be construed as inherently governmental functions. In all cases, SDIO government personnel retain final authority to review, reject or change contractor deliverables. Actions and documents emanating from SDIO therefore reflect Government judgment, Government discretion, and are, thus, Government products.

SEN. PRIOR'S QUESTION

Senator Pryor: An SDIO contractor prepared all internal security directives such as the Strategic Defense Initiative Security Policy Directive, Foreign Disclosure, Foreign Visits/Accreditation, and Information Security Policies. Is this contractor making policy for SDIO?

Ambassador Cooper: No. Performing tasks specifically ordered and directed by Government officials, an SDIO contractor prepared drafts of the above documents based on established DoD-wide regulations which were subsequently reviewed, modified as appropriate, and approved by SDIO officials. Policy on matters of this nature is promulgated by the Office of the Secretary of Defense and implemented by subordinate organizations including the Defense Agencies.

SEN. PRYOR'S QUESTION

Senator Pryor: Contractors do the following:

- Develop new military position descriptions for an SDIO reorganization.
- Provide program guidance, establish management procedures, oversee technical reviews, and ensure execution for SDIO environmental, facility and utility requirements?
- Manage the preparation of congressional facility budget documents, congressional hearing statements, and advise on congressional procurement procedures for facility acquisition?

Are these contractors making policy for SDIO?

Ambassador Cooper: Contractors were not making policy for SDIO. In the specific example cited above, The contractor was tasked to provide expertise in various areas of civil engineering program management.

The contractor did not establish procedures or manage the creation of budget submissions. The contractor was tasked to provide background information which was then processed by government representatives to create the final submissions. The contractor drafted procedures and provided draft working papers for background information, but did not make decisions on what information would be used. The government representatives always made the decision on what information was used in developing the program requirements. The contractor has not been in a position to ensure the execution of SDIO environmental, facility or utility requirements. They were tasked to monitor the ongoing programs and required to provide status reports. The government employees used these reports to determine what actions required attention/further action. The contractor did not manage the preparation of congressional budget documents, hearing statements or procedures. As indicated previously, The contractor was tasked to gather information, which was used by government staff members to generate the above mentioned documents.

SEN. PRYOR'S QUESTION

Senator Pryor: One SDIO contractor responded to requests at 6:30 PM and provided signature-ready products by 8:00 AM the next day. Where was the time for SDIO input?

Ambassador Cooper: Your remarks appear to be based on a potential contractor's technical and management proposal. The particular document was an "Executive Summary" describing the contractor's dedication to accomplishing the mission and not necessarily a specific incident. In fact, I was unable to find any other reference to such an event.

However, there are numerous occasions, e.g. when the program does go through a Defense Acquisition Board (DAB) review, when it is not unusual for SDIO employees to work from very early in the morning until late at night. The SDIO staff are highly dedicated to their jobs and the SDIO mission.

SEN. PRYOR'S QUESTION

Senator Pryor: Are you aware that contract employees sometimes complete Freedom of Information Act requests for SDIO?

Ambassador Cooper: SDIO contractors do not "complete" Freedom of Information Act requests. Contractors, however, may compile or perform security classification reviews on the documents which are being reviewed for release. The determination of actual release or denial is always made in the first instance by the SDIO Assistant Director for Organization and Management.

SEN. PRYOR'S QUESTION

Senator Pryor: For the purpose of one GAO review, a contractor was designated as the corporate memory of SDIO. Does this tell you that SDIO has gone too far in relying on contractors?

Ambassador Cooper: One of the unfortunate results of being one deep in many positions is that on occasion, as military and civilian personnel turn over, the one thread of continuity is the support contractor. The case cited here happened when two SDIO managers were about to leave and their replacements had not yet arrived. Since GAO was about to begin a review, two contractor employees were apparently identified as the "corporate memory" to assist GAO until new government managers were assigned. This situation was somewhat unique in that two SDIO managers in the same area were leaving at the same time. That a contractor was identified as "corporate memory" on a particular isolated subject does not mean that SDIO does not have full control of information needed to execute its mission. The alternative would have been unacceptable: to deny GAO reviewers access to needed information pending assignment of the replacement Government personnel.

SEN. PRYOR'S QUESTION

Senator Pryor: An SDIO contractor prepared a letter for your signature to the Director, Defense Research and Engineering and to the Director, Office of Operational Test and Evaluation, and a SDIO contractor prepared and delivered a letter and associated staff package from you to the Under Secretary of the Air Force. Did you [know] that contractors are preparing these documents?

Ambassador Cooper: I cannot answer the specific occurrences mentioned above since the particular pieces of correspondence are not identified. However, a contractor is occasionally tasked to draft such correspondence after the responsible government manager has given guidance on the content and tone of the message to be sent. These draft letters are reviewed, corrected if necessary and adopted by the responsible government manager before they are printed in final for government signature. As you can verify with my staff, I often edit final drafts myself, and heavily engage in all correspondence with Senior Defense Officials and the Congress -- including this current answer to your question.

SEN. PRIOR'S QUESTION

Senator Pryor: An SDIO contractor delivered a draft directive on the unsolicited proposal process for distribution and review by SDIO Directorates. Isn't it a conflict to have a contractor develop agency policy on how to handle unsolicited contractor proposals?

Ambassador Cooper: No. Subpart 15.5 of the Federal Acquisition Regulation (FAR) prescribes policies and procedures for submission, receipt, evaluation, and acceptance of unsolicited proposals. FAR 15.506 requires agencies to establish procedures, including assurance of accountability, for controlling the receipt, evaluation, and timely disposition of proposals and requires agencies to establish contact points to coordinate the receipt and handling of unsolicited proposals.

Since 1986, such procedures have been in place at SDIO; however, these procedures had not been formally documented in a SDIO directive. A contractor was formally tasked to assist the Contracts Directorate (CT) in the development of a directive which outlined the policy and procedures for processing unsolicited proposals within SDIO. Concurrently, the contractor was tasked to update the guidance to potential offerors on unsolicited proposal requirements to reflect the current SDIO structure and technical directorate mission responsibilities.

There is no conflict here since the policy is primarily covered by FAR Subpart 15.5, the procedures are documentation of long-standing SDIO procedures, and the guidance to potential offerors is an update to reflect the latest organizational structure of SDIO. In short, the contractor performed essentially nondiscretionary, ministerial tasks subject to specific government direction and review of its products prior to their adoption by SDIO.

SEN. PRYOR'S QUESTION

Senator Pryor: I found examples showing that contractors:

- Prepared correspondence to members of the Senate.
- Prepared a congressional response on program funding support, prepared a letter from you to Congress, and assisted SDIO in preparing a briefing to the Congressional Overview Committee on what SDIO had done in the last 6 years.
- Prepared questions and answers for congressional testimony on the fiscal year 1993 budget, developed and prepared answers in response to questions from the Senate Foreign Relations Committee, and updated congressional question and answer book for that Committee for use by your Director of Systems Integration and Command and Control.
- Prepared SDIO's opening statement for military construction hearings in March 1991.
- Prepared the Congressional Descriptive summary for numerous projects.

Should contractors perform the functions of SDIO Officials when providing information to the Congress which frequently involves policy and budgetary matters?

Ambassador Cooper: SDIO contractors do not perform the functions of SDIO officials. The support that these contractors provide is not considered inherently governmental in accordance with OMB guidelines. In the specific example cited, the contractor performed necessary research and provided background information which was then used by government employees to create the military construction hearing opening statement. This same type of background information was provided by the contractor to the government employee in the development of the Congressional Descriptive Summary for the FY 1992 President's Budget submission. All contractor input was reviewed, evaluated and incorporated/rejected by government employees in preparation of these documents.

SEN. PRYOR'S QUESTION

Senator Pryor: We found several examples of contractors being used to help SDIO spend money. One SDIO contractor "was actively involved in developing and presenting options for expending unobligated fiscal year 1990 funds" and in planning fiscal year 1991 through 1997 budgets. Do you see a potential for abuse in having contractors perform this work?

Ambassador Cooper: SDIO has not and does not use contractors to help spend money.

SDIO, like any rational business activity, has strived to put its money on contract in a reasonable period of time. Like any rational business activity, we pay careful attention to how our money is being used. The characterization that we are using contractors to spend money, just to get the money spent, is far from the truth. From the point of view of any SDIO manager, in a program which has constantly suffered severe budget cuts, the funds available have never been adequate for the mission. Constant management attention and ingenuity are required to accomplish as much as possible with limited funds. In every case, it was the SDIO program manager, a government employee, who made the request to have funds allocated and it was senior SDIO management that made the decision to reallocate funds, usually after intense debate among several government employees. Contractors performed research and gathered data subject to Government direction. Government people made all the decisions.

As pointed out in the specific example cited earlier, the contractor was tasked to help track the status of ongoing projects. In this capacity, they were required to track funds expenditures and compare this data to funding requirements. The information provided was reviewed by the government staff and then appropriate management decisions were made by the government employees as to where funds should be effectively applied and what existing projects should continue to be funded within existing authorizations. The contractor did not create any new projects or approve any funding actions.

The assertions associated with this question further distort the actual work performed by these contractors. The contractor did not plan the budgets for fiscal years 1991 through 1997. They were tasked to compile requirements generated by government agencies and to supply background information on funds required to support these requirements. The government staff used this information to prepare the actual budget submissions which then were reviewed and revised by SDIO government management staff at several levels, before it was eventually reviewed and approved by the SDIO Director, before it was sent to the OSD Comptroller for their review, before it was eventually sent to Congress. In every case, government personnel, not contractors, made all the funding decisions.

SEN. PRYOR'S QUESTION

Senator Pryor: Why was it necessary to hire a contractor to help SDIO spend its unobligated money?

Ambassador Cooper: The question has a false premise. SDIO did not hire a contractor to help it spend its unobligated money. Contractors were not being used to help SDIO spend money.

As pointed out in the answer to the earlier question #15, the characterization that we are using contractors to spend money, or to tell us how to spend our funds is simply not correct. Contractor personnel do administrative support work. For example, an SDIO contractor, was tasked to help track the status of ongoing projects. In this capacity, they were required to track funds expenditures and compare this data to funding requirements. The information provided was reviewed by the government staff and then appropriate management decisions were made by the government employees as to where funds should be effectively applied and what existing projects should continue to be funded within existing authorizations. The contractor did not create any new projects or approve any funding actions, they simply accomplished essential research and provided funding status information for government officials to effectively manage these important resources.

As we stated earlier, contractors perform research and gather data. Government personnel make decisions.

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SEN. PRYOR'S QUESTION

Senator Pryor: How much money was unobligated at the end of fiscal year 1990.

Ambassador Cooper: The official accounting records for 30 September 1990 show an unobligated balance of \$89.8M. This represents only 2.4% of SDIO's FY90 RDT&E appropriation (\$3.571B) or an obligation rate of 97.6%

Compared to other FY90 RDT&E programs, SDIO achieved the highest obligation rate for all of DoD:

SDIO	97.6%
Air Force	96.3%
Navy	96.2%
Army	95.0%
Defense Agencies	90.5% (less SDIO)

It should also be noted that the official accounting records normally lag 30 to 60 days behind "real time" obligations, thus the "actual" unobligated balance at the end of the FY would be considerably less than the "official" amount reported.

SEN. PRYOR'S QUESTION

Senator Pryor: Is SDIO getting more funds than it needs?

Ambassador Cooper: No. To the contrary, we are being funded at a marginally acceptable level for a viable acquisition program.

As shown below, SDIO has consistently received significantly less funding than requested in the annual budget submission:

FY	Budget	
	Request	Appropriation
89	\$4.545B	\$3.627
90	\$4.601B	\$3.571
91	\$4.460B	\$2.868
92	\$5.151B	\$3.906

Consequently, SDIO has never had more money than it needs. Instead, SDIO has devoted--and continues to devote--a significant amount of time and effort to revising its program to meet the funding and programmatic limitations accompanying each new FY's appropriation from Congress. As a result, SDIO has been forced every year to reduce or even terminate promising programs because sufficient funds were not available to continue these essential ballistic missile defense efforts. SDIO is, ultimately a funding constrained program, not a technology constrained program.

SEN. PRYOR'S QUESTION

Senator Pryor: I would like you to provide for the record:

-- Information on how much money was unobligated at the end of fiscal years 1989, 1990, and 1991.

-- An analysis by month showing how much money was obligated during fiscal years 1989, 1990, 1991, and 1992.

Ambassador Cooper: Unobligated balances at the end of FYs 89, 90, and 91:

FY89	\$112.3M	(as of 30 Sep 89)
FY90	\$89.8M	(as of 30 Sep 90)
FY91	\$210.7M	(as of 30 Sep 91)

Obligations by month during FYs 89, 90, 91, and 92:

	(\$M)			
	FY89	FY90	FY91	FY92
Oct	1165.4	210.7	138.0	169.9
Nov	629.0	396.1	158.8	184.1
Dec	444.6	245.8	286.3	479.3
Jan	374.3	846.4	623.3	496.0
Feb	179.8	315.9	330.5	464.1
Mar	212.8	447.8	242.6	461.2
Apr	163.6	357.3	201.4	229.5
May	99.0	195.4	198.9	457.9
Jun	77.4	135.1	164.4	320.8
Jul	41.8	90.0	112.0	
Aug	68.1	125.5	79.6	
Sep	59.3	115.4	122.1	
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	3515.1	3481.4	2657.9	

SEN. PRYOR'S QUESTION

Senator Pryor: Are you aware that SDIO contractors frequently hire consultants that are paid for by SDIO? I have several examples that consultants were hired to assist contractors at what seems to be very high rates. I have found consultants to SDIO making \$450, \$500, \$600, and \$800 a day. Is there any limit to how much consultants can make?

Ambassador Cooper: Yes, the contractors who support SDIO do from time to time utilize the services of consultants at rates consistent with those identified by Senator Pryor -- rates which I do not consider exorbitant, given a fair appraisal of the circumstances.

Concerning their rates of compensation, there are several factors that should be considered. First, these individuals, who are experts in their particular fields with many years of experience and extensive qualifications, are in great demand and can command high salaries. Second, they often have their own secretarial support, and an office which normally would be paid for out of overhead. Third, since they are self-employed, they must cover all of the normal fringe benefits such as retirement, vacation and health insurance. Last but not least, these arrangements tend to be more economical than hiring an employee, since a consultant is only paid for the days he or she works and only works when needed. This is borne out by the documents used by Senator Pryor where the consulting agreements were for 15 days, 68 days and 77 days.

SEN. PRYOR'S QUESTION

Senator Pryor: When you allow contractors:

- to develop positions for negotiations,
- to draft a Request for Proposal for SDIO,
- to draft an Acquisition Plan,
- to draft a Source Selection Plan,
- to attend Statement of Work review meetings, and
- to assist in the evaluation process for selecting other SDIO contractors, how do you know that contractors are not running the contract process at SDIO?

Ambassador Cooper: Support contractors who assist SDIO in performing functions such as those listed in your question work within guidelines established by warranted Contracting Officers.

The SDIO Contracting Officers are responsible for protecting the Government's interests with respect to each acquisition action assigned to them. The Contracting Officers determine negotiation and acquisition strategies, and then support contractors draft the associated file documentation. Each of the functions you have listed entails written reports with certain boilerplate information or spreadsheeting, which the support contractors prepare in draft for Contracting Officer review. Finally, only the Contracting Officers have the signatory authority necessary to finalize the acquisition actions listed, and they review each document thoroughly prior to signature. Thus, the contractors are not "running the contract process at SDIO", but perform necessary nondiscretionary support which enables Contracting Officers to run the process more effectively.

SEN. PRYOR'S QUESTION

Senator Pryor: An SDIO contractor assisted an SDIO contracting officer with research and resolution of Organizational Conflict of Interest waiver requests from another contractor. Isn't this an area that should be handled by federal employees?

Ambassador Cooper: It is not essential that only federal employees be involved in the process of researching and resolving an Organizational Conflict of Interest Waiver Request. A contractor performing support functions for the Government contracting office can perform research to verify facts provided by the contractor disclosing an apparent conflict of interest, research policy pertaining to granting or denying a waiver request, and provide administrative support for documenting the facts as well as suggested reasoning pertaining to granting or denying the waiver request.

On the other hand, it is essential that a government employee review the adequacy of the research and documentation provided by the support contractor and make the decision whether it is appropriate to grant a waiver. SDIO government staff always do this.

SEN. PRYOR'S QUESTION

Senator Pryor: I also found the following examples:

-- An SDIO contractor reviewed contractor monthly progress reports, generated task orders and contract modifications, and reviewed contractor task plans.

This contractor also participated in award fee review, preparation, and execution.

-- One SDIO contractor prepared a briefing paper for you on SDIO's use of contractors.

-- Another SDIO contractor determined a set of alternatives for providing additional contractual support to SDIO.

Has SDIO turned over the administration of its contracting award and management functions to contractors?

Ambassador Cooper: No. The Statements of Work of the applicable support contracts clearly demonstrate that the function of these contractors is to assist government officials and not to administer contract awards or manage contracts.

In accordance with the contract Statement of Work for the applicable Scientific, Engineering, and Technical Assistance (SETA) contracts, the support contractor "is to support Award Fee Evaluation Boards in accordance with specific award fee plans. Their effort shall include notifying participants, preparing evaluation sheets, recording minutes of meetings, storing records, compiling performance ratings, documenting results, preparing decision memoranda, and other functions as directed". No contractor personnel perform the function of evaluator although they may be a technical advisor.

The contractor is also "to lead, conduct, or support special studies and analyses related to the management of specific SDIO programs. The contractor is to prepare briefings as required to support these activities". The research information and statistics pertaining to contractor support and alternatives for this support would be consistent with the special studies and analyses tasks. The contractor would not be making decisions, but would rather be gathering facts, e.g., number of contractor personnel, dollar values of contracts.

The contractor is "to support the Contracting Office in the preparation of task orders, initial contracts, and contract modifications". The contractor prepares the documents under the strict guidance of Government personnel. The policies, procedures, and formats are all designated by the Government. It is also the Government's responsibility and function to approve and issue the documents.

"The contractor is also to review and analyze Contract Status Reports, Cost/Schedule Status Reports, Program Management Reports, and other data as directed to assess performance on specific programs". The contractor highlights and summarizes this data to provide to the Government for their action.

SEN. PRIOR'S QUESTION

Senator Pryor: SDIO contractors actually meet with other contractors seeking new SDIO business and give advice on whether or not the prospective contractors should get any money. For example, we found the following three examples where SDIO contractors helped other contractors to obtain new SDIO business.

-- One contractor met with a prospective contractor that presented a number of ideas for work they would like to pursue with SDIO. The SDIO contractor reviewed the proposals and concluded that a limited effort would be useful. The contractor recommended the proposals to SDIO and SDIO concurred and directed the SDIO contractor to advise the hopeful contractor of its decision.

-- In another instance, this same contractor, while attending a conference for SDIO, met with other contractors privately to discuss how they could contribute to a new SDIO project.

-- In a third case, the same SDI contractor hosted a meeting with representatives of another contractor to review technical requirements. As a result of the meeting, additional requirements were established.

Do you see a potential for the loss of Government accountability when contractors engage in these activities for SDIO?

Ambassador Cooper: No. These allegations misrepresent the actual situations in all three cases.

In the first instance cited, a contractor met with another contractor to discuss "a number of proposed areas of SDIO support by the second contractor in the nuclear power source area." As the preceding paragraph in the contractor's report makes clear, the meeting was held at the request of the SDIO manager, to explore "possible second contractor support through the first contractor to SDIO." In short, the first contractor was meeting with a potential subcontractor. In a meeting with a potential subcontractor it was not only appropriate that the first contractor conduct the meeting, it would have raised significant privacy of contract issues if the SDIO manager had been present.

The subject of this meeting was clearly the usefulness of "effort in the thermionics fuel area", not "advice on whether or not the prospective contractors should get any money." The suggestion that the meeting was held for the purpose of finding a way to spend money is not supported by the contractor recommendation, which was to pursue only a limited effort. This limited effort was given a low priority and it was anticipated that this effort would probably be canceled as the result of subsequent budget cuts.

The second instance cited is not as clearly identifiable. In

the one identifiable instance where a contractor participated in a side meeting, the purpose was "negotiations with J. Wetch and E. Britt on the cost and hardware deliverables for the TSET purchase." It is not entirely clear whether the contractor was negotiating with a subcontractor or, which is more likely, the contractor's representatives were present to provide support to a government negotiator. In any case, their purpose was to assist in obtaining a better contract for the government in terms of cost and the hardware deliverables.

The third instance cited refers to a meeting where a contractor met with another contractor and established additional "requirements." The specific instance that we were able to locate is stated as follows. "As part of this effort WJSA hosted a meeting with representatives from Aerospace Corporation to review technical requirements concerned with the electronics architecture. As a result of the meeting, a number of additional requirements were incorporated into the SAMMES Technical Requirements Document." Aerospace is an FFRDC. Neither WJSA as a SETA nor Aerospace as an FFRDC would be providing hardware for this experiment. WJSA and Aerospace were meeting to do engineering work within the scope of their respective contracts. The "requirements" which resulted from this meeting were in the character of engineering specifications established to assure the success of the experiment.

There was no loss of government accountability associated with these three incidents.

SEN. PRYOR'S QUESTION

Senator Pryor: You are probably aware that OMB presently is considering a new policy on inherently governmental function, or functions that should only be performed by Government employees. The draft guidance would prohibit the use of contractors to perform such work as:

- Determining agency policy, such as determining the substance and application of regulations.
- Determining federal program priorities or budget requests.
- Administering contracts.
- Approving Freedom of Information Act requests, other than routing requests that do not require the exercise of judgment.

Also, on July 1st, I introduced legislation (S.2928) which, in addition to requiring the licensing of contractors, requires the head of each agency to review all agency functions performed by employees or performed by contractors to ensure that all inherently governmental functions are performed only by Government officers and employees.

If OMB's policy becomes effective and my bill becomes law, how will SDIO continue to function since the agency is so dependent on support contractors?

Will SDIO have to go out of business?

Ambassador Cooper: The Strategic Defense Initiative is well aware of both the OMB's proposed guidance prohibiting contractor performance of inherently governmental functions and of S. 2928, Senator Pryor's contractor licensing reform bill. As we have testified, there is no doubt that SDIO needs more Government personnel and I, as well as my predecessors, have strongly sought authorization to increase our staff of Government employees. We share the Senator's concerns about retaining control of the Federal Government by accountable Federal officials.

However, if both OMB's proposed inherently governmental function policy and S. 2928 should go into effect, we believe that SDIO could continue to function with continuing necessary contractor support. However, SDIO's operation might become more expensive and less effective. More expensive, if contractor overhead is driven up by the administrative licensing requirements of S. 2928. Less effective, if already scarce Government personnel resources are compelled not to use properly-compartmented contractor personnel to augment Government efforts by performing many of the preliminary, ministerial, non-judgmental functions required to be performed before the issuance of regulations or requests for proposals, for example.

SEN. PRYOR'S QUESTION

Senator Pryor: It seems that conflict of interest controls are generally left to the contractors who make their own assessment. Procedures for Government officials, who must make detailed financial disclosures, are much greater than for contractors. What controls are in place to ensure against conflict of interest situations?

Ambassador Cooper: Strategic Defense Initiative Organization (SDIO) contracting procedures for detecting and dealing with contractor organizational conflicts of interest are in accord with governing law and regulation. These procedures preserve contractors' objectivity and guard against unfair competitive advantage by virtue of access to non-public Government information or proprietary information belonging to others.

Our procedures do rely on self-disclosure by contractors, subject to oversight by Government personnel and to surveillance by their competitors in the marketplace. Contractors are subject to harsh penalties for deceptive practices. Such penalties include potential criminal action or termination for default if contractors violate the contract clauses barring organizational conflicts of interest, or disclosure or misuse of protected Government information.

Well before contracts are let, SDIO procedures to guard against contractor and subcontractor conflicts of interest begin. During the solicitation process, when upcoming requirements are synopsisized in the Commerce Business Daily, contractors are put on notice that performance will be subject to an organizational conflict of interest clause.

During the source selection process, competing contractors are required to disclose any potential organizational conflicts of interest, and to state exactly how they, if successful in the competition, would prevent the organizational conflict from actually arising. If would-be competing contractors cannot eliminate any potential organizational conflicts, they are permitted to propose plans detailing how they might mitigate unavoidable organizational conflicts of interest. Any proposed plans are carefully scrutinized by Government personnel. SDIO policy has been to declare ineligible for award any would-be competitors with actual organizational conflicts of interests -- however proposed by the contractor to be mitigated -- unless that contractor's continued participation is required to maintain competition in the acquisition process, or unless that contractor offers some unique, necessary capability not available from other sources.

After contract award, successful contractors are required by the terms of their contracts -- subject to severe criminal, civil or contractual sanctions -- to maintain active organizational conflict of interest programs, and to prevent the misuse or disclosure of sensitive information, including classified data or other

contractors' proprietary data. For example, SDIO's scientific, engineering and technical assistance (SETA) contractors are prohibited from performing work that stems directly from their SDIO contract work, performing services on their products, and services or products of another company if they have been involved in development or marketing or preparing the statement of work. Their programs are subject to oversight by Government personnel, and constant monitoring by their competitors in the marketplace.

SEN. PRYOR'S QUESTION

Senator Pryor: I found that several SDIO contractors (W.J. Schafer, Assoc., TASC, Booz Allen, Nichols Research) also served as subcontractors to another SDI contractor (Science Applications International Corp.)

- Doesn't this make SDIO susceptible to conflicts of interest?

- How do you ensure that allowing SDIO contractors to also serve as SDIO subcontractors to other contractors does not result in conflict of interest situations?

Ambassador Cooper: Having several SDIO contractors serve as subcontractors to other SDI contractors does not necessarily make SDIO susceptible to conflicts of interest.

To ensure SDIO is not susceptible to conflicts of interest SDIO takes the following actions:

a. Our contracts require our contractors to report potential instances of conflict of interest to the Government contracting office.

b. SDIO contractually requires contractors to restrict their activities to avoid conflicts of interest, such as requiring a contractor to use a designated subcontractor to perform tasks which would be a conflict of interest for the prime contractor.

c. The Government contract administration office performs oversight to assure contractors are complying with the contract requirement to avoid conflicts of interest.

SEN. FRYOR'S QUESTION

Senator Fryor: In February of this year, one of your support contractors, Systems Planning Corporation, prepared a report to the SDIO Advisory Committee for their review. Was SDIO aware that one of the members of the SDIO Advisory Committee is a consultant to Systems Planning Corporation?

Ambassador Cooper: In the first place, the Strategic Defense Initiative Advisory Committee (SDIAC) does not contract out for any services.

The Systems Planning Corporation, under a contract to the SDIO Director for Security, Intelligence and Countermeasures, did conduct a briefing and distributed a draft report - "Third World Proliferation Threat Document" - to the SDIAC in February 1992. And the SDIAC chairman and several members of the SDIAC, not including the member referred to above, did critically review and recommend changes to the draft report at the request of the SDIO Director. I would emphasize that this contractor draft report has also been critically reviewed by senior SDIO staff personnel and other offices in the Department of Defense and intelligence community.

The particular member of the SDIAC referred to above had filed a Disqualification Statement, which disqualifies him from participating in any matters involving SPC. No matter or discussion involving SPC is to be presented to him for recommendation, advice, investigation, coordination or other official or unofficial action. This is in accordance with the Department of Defense rules on conflict of interest. The minutes of the SDIAC meeting indicate that SPC did present a briefing on the document, but the individual referred to in your question did not attend the meeting, nor had he any involvement whatsoever in preparing the referenced report.

All members of the SDIAC are employed as intermittent special government employees. They file a DD form 1555, "Confidential Statement of Affiliations and Financial Interests", which lists their business and financial interests and is reviewed by the General Counsel for conflict of interest. As such, SDIO is aware of the financial and business ties of members of the SDIAC.

SEN. PRYOR'S QUESTION

Senator Pryor: How do you ensure that you receive objective advice from your advisory committee when its members are affiliated with your contractors?

Ambassador Cooper: The members of the SDI Advisory Committee (SDIAC) are appointed as Special Government Employees (SGEs), in order to ensure that they are subject to the same criminal penalties prohibiting conflicts of interest as any other Government employee. Further, under these rules, SDIAC members are required to disclose their financial and organizational affiliations, exactly as are other Government employees. These disclosure statements are carefully scrutinized for actual or apparent conflicts of interest. Should any be revealed, SDIAC members would be required either to divest themselves of such conflicting interests, or to recuse themselves from participation in any matters involving those interests. Furthermore, the level of consultation and advice sought from the SDIAC is well above the "particular matter" level. Hence, the matters on which SDIAC matters are asked to consult are inherently unlikely to result in any direct, concrete financial benefit being conferred on anyone.

SEN. PRYOR'S QUESTION

Senator Pryor: One of your contractors, ANSER, last August granted a sole-source subcontract to the Grumman Corporation for 400 hours of policy and technical advice on several SDIO programs. Since the Grumman Corporation is one of the largest SDI contractors, how does anyone know that they won't use the sole-source subcontract as a vehicle to bring them more business in the future?

Ambassador Cooper: The sole-source subcontract that ANSER awarded to Grumman Corporation was for 400 hours of Dr. William Jeffrey's support to provide scientific and technical guidance to the ARGUS and HALO aircraft measurements programs. Specifically, this support was: (1) to help assess SDIO plume phenomenology requirements, (2) to provide expertise in the planning and accomplishment of sensor and airframe upgrades to the ARGUS and HALO data collection platforms, and (3) to help establish both long term and individual mission data collection objectives. No policy advice was involved.

This sole-source support was requested in order to retain the services of the ARGUS/HALO Chief Scientist, as he left the employ of the Institute for Defense Analysis (IDA) and accepted a position with Grumman. No other contractor was identified that had the requisite program knowledge, in-place capability, nor specific experience to provide the support outlined above, or could obtain that knowledge or capability in time to support on-going operations of the two aircraft. In addition, ARGUS was about to enter layup for installation of the specified instrument and airframe upgrades, making the retention of Dr. Jeffrey's expertise critical to the successful completion of these modifications.

SEN. PRYOR'S QUESTION

Senator Pryor: SAIC has received over \$200 million in SDI contracts. They support SDIO and assist with defining how the system should work. What concerns me is that SAIC then turns around and uses their SDI expertise to [compete] as a subcontractor. Listen to their description of their recent work:

"We are the largest subcontractor to General Electric, the systems engineer for the first deployment phase of the Strategic Defense System...GE will have the benefit of SAIC's formidable experience in mission and threat definition..."

"We are the senior subcontractor on the winning U.S.-Japanese [team], led by Mitsubishi Heavy Industries..."

"Since 1986, SAIC has been the senior subcontractor on the U.S.-European team, led by MBB of West Germany."

Do you see the potential for conflict of interest if the same contractors work for SDI directly to make the plans, and then team up with large defense contractors to implement the plans?

Ambassador Cooper: Yes, SDIO does see a potential for conflict of interest if the same contractor works for SDI directly to make plans and subsequently proposes as a prime or subcontractor to implement these plans. For this reason, our support contracts include organizational conflict of interest clauses. These clauses normally include language which prohibits the successful offeror from responding as a prime or subcontractor for future procurements if the contractor has been involved in making the plans which are to be implemented in the future procurement. Such prohibitions are rarely waived.

The three particular contracts cited do not appear to represent a conflict of interest. It appears that the question, as stated, assumes that SAIC was first involved in making plans under the Systems Engineering and Integration (SE&I) contract and subsequently involved in implementing these plans while teamed with large defense contractors such as Mitsubishi and MBB. However, the MBB Theater Missile Defense Architecture Study (TMDAS) contract was awarded before the award of the SE&I contract. The Mitsubishi "WESTPAC" architecture study was awarded to examine possible solutions to recognized threats to Japan from Northeast Asian neighbors. It was not directly related to the SE&I contract. All three of the contracts cited can be characterized as contracts for the purpose of helping SDIO make plans. None can be characterized as contracts for the purpose of implementing plans. Therefore, in neither case could SAIC be said to be executing or implementing plans which they could have made while performing as a subcontractor on the SE&I contract.

SEN. PRYOR'S QUESTION

Senator Pryor: In October 1991, SDIO support contractor W.J. Schafer awarded sole-source subcontracts of \$100,000 apiece to TRW, Lockheed, and Martin Marietta for studies on the future of the SDI system. Other than boilerplate language that these contractors should avoid conflicts, how can the taxpayers be sure that these same three large contractors won't be on the receiving end of future business resulting from these studies?

Finally, why didn't SDIO award these study contracts directly so that potential conflicts could be monitored by federal employees and not turned over to a support contractor for oversight?

Ambassador Cooper: W.J. Schafer's study effort evaluated utility, maturity and cost issues for protecting against limited ballistic missile attacks with high energy laser systems. In order to produce a credible product in this very specialized area, the contractor determined that access to the unique hardware expertise available in very narrow technical areas (chemical laser device, high power beam control, etc) from the team carrying out the Zenith Star program (Martin Marietta prime, Lockheed and TRW major subs) was essential.

The SDIO Contracting Officer performed an analysis of the potential conflict of interest and determined that no conflict of interest existed to preclude the performance of the effort by Martin Marietta, Lockheed, and TRW.

The Zenith Star team--selected through free and open competition--has been under contract to SDIO since 1988 to integrate and test high energy laser weapon technology at near-weapon-levels. By contracting with each of the major players in Zenith Star, the unique knowledge gained through four years of SDIO effort could be efficiently exploited. Further, with all three major hardware contractors involved, it was deemed unlikely that any one of them could be given a competitive advantage.

SDIO is confident that the same three contractors will not receive future business as a direct result of their participation in this effort. The inputs from each were highly specialized, and could not dominate the overall results. Also, any subsequent efforts in this area will be awarded through competition, and the results of the study are available to all potential bidders.

SDIO did not award these contracts directly because we felt that in order to get responsive support for this small effort from very large corporations, an arrangement in which they worked directly for our study contractor would be preferable. Also, it is administratively more efficient to proceed with one contract rather than four. As the work proceeded, the efforts of all parties were monitored closely by federal employees who themselves had many years of experience in these areas.

SEN. PRYOR'S QUESTION

Senator Pryor: Why doesn't SDIO make cost comparisons to determine whether it would be less costly to have the agency's work done by Government employees rather than by contractors?

Ambassador Cooper: As I testified, we recently conducted a manpower study which showed that increasing the SDIO staff by approximately 400 government employees, while reducing contract support man-years by a like amount, would save about \$15 million dollars. A Departmental personnel ceiling on the SDIO program, however, restricts my ability to increase my current government staff. Every SDIO support contract goes through a lengthy review and coordination process which includes a certification that no Department of Defense or other government source is available or adequate to perform the proposed work.

SEN. PRYOR'S QUESTION

Senator Pryor: SDIO's spending for support contracts has grown from \$111 million in fiscal year 1989 to an estimated \$162 million in fiscal year 1993. How do you explain this rapid increase in your contracting budget?

Ambassador Cooper: Part of the increase in support contracts is due to the 15% growth in the SDI program from FY89 (\$3.627B) to FY93 (\$4.3B at current SASC/HASC mark). A much more significant factor, however, is the evolution of the SDI program from a technology-oriented effort to a systems-oriented effort, as reflected in the new Program Elements (PEs) which Congress developed in FY91.

Through FY90, SDI's PE titles each described a different type of technology:

- Surveillance, Acquisition, Tracking, and Kill Assessment
- Directed Energy Weapons
- Kinetic Energy Weapons
- Systems Analysis and Battle Management (Technologies)
- Survivability, Lethality, and Key Technologies

After FY91, however, the program had begun to focus more on applying these technologies to building actual systems (GBI, GBR, GSTS, BE, etc) as evidenced by the current PE descriptions:

- Theater Missile Defenses
- Limited Defense Systems
- Space-Based Interceptor
- Other Follow-On Systems
- Research and Support

The greater technical, engineering, and management requirements for these developing systems have been the primary impetus for the increase in SDIO support contracts. For example, SETA support for Theater Missile Defense efforts has grown from \$2.9M in FY89 to a projected \$11.0M in FY93. Similarly, support for formal acquisition management has increased over the same period from \$1.7M to an estimated \$14.3M. These support contracts are essential to providing continued scientific and technical assistance to these critical SDIO programs.

SEN. PRYOR'S QUESTION

Senator Pryor: How many contract security personnel from BETA Analytics, INC. (BAI) are physically working inside SDIO?

Ambassador Cooper: Twenty-six. Normally, twelve work in shifts operating the Access Control Center (ACC) which functions 24 hours per day. Fourteen work eight hours per day five days per week providing responsive technical support on-site.

SEN. PRYOR'S QUESTION

Senator Pryor: What is the total man-years of effort in this contract?

Ambassador Cooper: There are two contracts with Beta Analytics, INC. The Access Control Center contract is a "completion" contract with no prescribed number of man-years, although experience has shown that about 17.5 man-years per year are required. The technical support contract entails approximately 22.5 man-years per year.

SEN. PRYOR'S QUESTION

Senator Pryor: What is the total \$ amount of the BAI contract?

Ambassador Cooper: The Access Control Center contract has a potential value of \$3,642,483 over a five-year period, if all contract options are exercised. Similarly, the technical support contract has a potential value of \$9,689,463 over an equivalent period if all options are exercised.

SEN. PRYOR'S QUESTION

Senator Pryor: How many years are remaining on the BAI contract? What are the plans for an extension of this contract?

Ambassador Cooper: The Access Control Center contract will end in March 1995, if the two remaining option years are exercised. The technical support contract will expire in October 1993 if the one remaining option year is exercised.

SEN. PRYOR'S QUESTION

Senator Pryor: BAI contract personnel write policy for SDIO that puts requirements on SDI participants, i.e., Army and Air Force that require them to submit security related packages to SDIO for review/approval by BAI contract personnel which causes BAI to add more and more personnel to fulfill their own requirements articulated in SDIO policy. Why aren't the Army and Air Force existing security policies and practices adequate to protect SDI technologies? Who in DoD reviews SDIO security policies to ensure against duplication and over kill?

Ambassador Cooper: BAI contract personnel do not write policy. They assist SDIO in implementing OSD policy or drafting documents for review, modification, and approval by SDIO management.

Existing Army and Air Force security policies and practices contribute significantly to the protection of SDI technologies, but it is necessary that they be applied uniformly consistent with the judgments made by the Director, SDIO and promulgated by his staff. SDIO's Director of Security, Intelligence and Countermeasures, aided by the Assistant Director for Security, reviews SDIO security policies to ensure they are consistent with OSD policy and properly balanced.

SEN. PRYOR'S QUESTION

Senator Pryor: Does BAI personnel review and comment on the work of Government personnel?

Ambassador Cooper: BAI reviews both contractor and government drafted documents and provides technical review and comments as requested by the Office of security. However, their comments are reviewed and considered along with government observations before any decisions are made. As mentioned earlier, all decisions and policy determinations are made by government personnel and not the contractors.

SEN. PRYOR'S QUESTION

Senator Pryor: What would be the savings to the taxpayer if the 57 BAI contractors were replaced with U.S. Government personnel? Why has this not been considered?

Ambassador Cooper: As previously mentioned, BAI performs services based on two distinct contracts. The support for the Access Control Center performs clearance, security and badging services at the SDIO entranceway. This is manned 24 hours a day and employs roughly 18 full time and a number of part-time and temporary contractors. BAI provides these services for \$ 697,000 dollars in FY 1992. The cost of converting this function to Government personnel would be approximately the same or more when calculating shift and night differential costs for government employees. BAI also provides technical support to the SDIO Security Division. This is funded at \$ 2,038,400 in FY 1992 and entails approximately 23 manyears of support. It is estimated that this could be accomplished by government personnel for approximately \$1.7 million.

SDIO does not consider that converting the Access Control Center from contractor support to government support would be beneficial to the government. Some of the contractor technical support to the Security Division, however, could be converted to government personnel at a significant cost savings to the government. However, as noted earlier, we cannot convert contractor to government personnel without a change to the DoD-imposed personnel ceiling on SDIO personnel.

SEN. PRIOR'S QUESTION

Senator Pryor: Is the BAI contract a personal services contract?

Ambassador Cooper: No.

