

**THE TWENTY-SECOND MAJOR FRANK B. CREEKMORE, JR.  
LECTURE\***

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\* This is an edited transcript of a lecture delivered by Mr. James F. Nagle, a partner at Oles Morrison Rinker & Baker Law Firm in Seattle, Washington to members of the staff and faculty, their distinguished guests, and members of the contract law community attending the Government Contract and Fiscal Law Seminar at The Judge Advocate General's School, Charlottesville, Virginia, on 18 November 2010. The Major Frank B. Creekmore Lecture was established on 11 January 1989. The lecture is designed to assist The Judge Advocate General's School in meeting the educational challenges presented in the field of government contract law.

Frank Creekmore graduated from Sue Bennett College, London, Kentucky, and from Berea College, Berea, Kentucky. He attended the University of Tennessee School of Law, graduating in 1933, where he received the Order of the Coif. After graduation, Mr. Creekmore entered the private practice of law in Knoxville, Tennessee. In 1942, he entered the Army Air Corps and was assigned to McChord Field in Tacoma, Washington. From there, he participated in the Aleutian Islands campaign and served as the Commanding Officer of the 369th Air Base Defense Group.

Captain Creekmore attended The Judge Advocate General's School at the University of Michigan in the winter of 1944. Upon graduation, he was assigned to Robins Army Air Depot in Wellston, Georgia, as contract termination officer for the southeastern United States. During this assignment, he was instrumental in the prosecution and conviction of the Lockheed Corporation and its president for a \$10 million fraud related to World War II P-38 Fighter contracts. At the war's end, Captain Creekmore was promoted to the rank of major in recognition of his efforts.

After the war, Major Creekmore returned to Knoxville and the private practice of law. He entered the Air Force Reserve in 1947, returning to active duty in 1952 to successfully defend his original termination decision. Major Creekmore remained active as a reservist and retired with the rank of lieutenant colonel in 1969. He died in April 1970.

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Prior to his current position at Oles Morrison, Mr. Nagle's career has included service as Chief of the Logistics and Contract Law Branch of the Department of the Army Staff, Trial Team Chief in the Army's Contract Appeals Division, and Ethics Advisor with the Office of Chief of Staff of the United States Army. Mr. Nagle also served twenty years in the Judge Advocate General Corps.

Mr. Nagle's practice focuses primarily on government contracts. He is nationally renowned for his expertise in federal procurement and acquisitions, particularly in the area of construction law. Mr. Nagle's extensive experience includes working with supply, services, international, major systems, and construction contracts. He has litigated in numerous appellate and trial level federal courts, boards of contract appeals, the GAO, and the SBA. Mr. Nagle has mediated disputes between both the government and the prime, and the prime and its subcontractors. Mr. Nagle has represented owners, contractors, subcontractors, sureties, architects, engineers, and all parties in the contracting process. A prominent local and national reputation resulted in Mr. Nagle's

Thank you very much. Well, first off let me tell you how honored I am to be back here and to give this lecture, and it's nice to see so many old friends here. Now having said that, sit back, relax, put your pens down, absolutely nothing I say will have any practical value to you whatsoever [laughter]. I mean, I don't expect you to be able to work into your next brief what procurement practices were like during the French and Indian War [laughter]; but as we go through this stuff, as I talk about the themes that have developed in government contracting, you're just going to be stunned by my brilliance [laughter]. You're just going to sit back there and go, "My gosh, this guy, Nagle, has the brains of an Einstein. No one has ever thought of these things that, you know, that he's—that he's developed; the analytical skills of the man."

First, the government doesn't trust contractors. You know, what an insight. But that started early and it started at the top. George Washington called them "murderers of our cause," and I'll give you another quote from him later on. During the Civil War, Lincoln said, "Those contractors should have their devilish heads shot off."

By the way, before I go further, everyone today is worried about procurement fraud, how terrible it is. Whatever you have today pales before—with the way it was in the Revolution and the Civil War. Today when you look at procurement fraud, you always have this undercurrent: How can those people cheat their country that way? The problem in the Revolution and the Civil War was that very often it wasn't their country. They were Tories or Rebel sympathizers so they were very happy to cheat the Union Army or George Washington's Army, and if they could

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services being employed by both the government and contractors as a consultant, expert witness, and arbitrator/mediator.

Mr. Nagle has taught all aspects of government contracts, construction law, and contract management for schools including Florida Institute of Technology's Graduate Program on Contract Management and George Washington University's National Law Center. He has lectured in 23 states, the District of Columbia, and four foreign countries.

Mr. Nagle has authored six books on federal contracting, including "Nash, Cibinic and Nagle, Administration of Government Contracts, Fourth Edition," (2006) and "Whelan & Nagle, Cases and Materials on Federal Government Contracts, Third Edition" (Foundation Press 2007). Mr. Nagle has also written 80 articles on subjects including protests, changes, terminations, claims, and the Federal Acquisition Regulation, which have appeared in such publications as the "Public Contract Law Journal," "Military Law Review," "NCMA Journal," and "Contract Management."

Mr. Nagle is a past president of the Boards of Contract Appeals Bar Association (recipient of its Life Services Award) and was also recognized by *Washington Law & Politics* as a "Super Lawyer" in the Construction/Surety area for 2007-2010.

make some money at the same time, they were delighted with that, but however bare, however antithetical,—the animosity that was going on during the Revolution, the Civil War, or today, it pales to what it was in the 1930s. The 1930s, as we'll talk about later on, we'll look at the merchants of death theory, where their contractors were castigated not as cheats, not as frauds, not nearly as cheats and frauds but as murderers; people who had engineered our entry into World War I just to derive extra profits, so that's—we'll talk about that later on.

And I wanted to start with this because that's a theme that goes throughout the entire process. Now if you're sitting back there smug, thinking, "Yeah, we don't trust those guys. We don't trust those guys on the other side of the table." Well, the Government doesn't trust you either, okay [laughter]. And that has been a very recurring theme throughout government contracting. It doesn't trust your honesty, it doesn't trust your ability to avoid the appearance of evil, and it does not trust your ability to do the job right; that's how we get to this monstrosity. Basically, Ralph Nash always tell us the story: if an accounting officer up in Juneau, Alaska, makes a mistake, within a month or so we'll have a regulation prohibiting anyone else from ever making that mistake again, so that's how we get to something this big, and I'll come back to that in a moment.

As we go through this, I want to talk about how procurement statutes have evolved. Originally, there was nothing. There was no statute. There was no regulation. It was all individual people going, "Just what do we do? What do we do to get the best buy for the government in these circumstances?" Then it evolved into a few broad statutes that were rarely enforced. The Forfeiture of Claims Act was enacted in 1863. You would find a handful of cases until after World War II, so for basically eighty years it basically sat on the statute books in the library with really no enforcement, and then we get to where we are today, to numerous and ever increasing laws, and not only laws but also very, very specific laws.

Now, let's start out early on. French and Indian—I told you this was going to be an impractical talk—French and Indian War: This was the model that basically everyone used for the—rest of the time in government contracting, the British model. The commissary general, the quartermaster general, they would contract with noted local firms to have things done. Now, calling these contracts is almost insignificant. It doesn't do justice to them. That contractor was a fully functioning

member of the commanding general's staff. As broad as you think any contract was to KBR or any other companies in Iraq and Afghanistan is insignificant compared to what these were. There you would basically go to the contractor, "We're going to move the Army up to Quebec, you know, five thousand, eight thousand, twelve thousand men; feed and transport them there," period. That was it. That was the entire direction to the contractor. Everything else stemmed from that individual's discretion. "Do what has to be done" was basically the model. The discretion is total. The method of payment: cost plus a percentage of cost. We'll pay you all. Basically, we'll pay you your cost plus a reasonable amount of profit. Now if you think that's shocking, well it is, but it was also fair because that's how contracting officers were paid in the early days of the Republic. If a contracting officer bought a cannon for a hundred dollars, he got a certain percentage of that. If he bought the same cannon for two hundred dollars, he got a certain percentage of that [laughter], so it worked out; it worked out.

I want to jump to the Revolution, and I'll tie all of this up eventually. Every problem we have today was present in the Revolution, okay. First, there was a shortage of supply and orders, and I should emphasize that to you because a lot of times people forget that. You impress people in the Army, great, fine, but who's going to build your cannon? Who's going to build your rifles, your muskets? So there's always been a tension between drafting people and basically leaving them home to do work that is essential to the war effort.

Cash flow problems: You worry about budgets now; insignificant compared to the problems they had then. They had no central taxing authority. Basically, the Continental Congress would have to go to the individual states and beg them for money. But the biggest problem was fraud. It was endemic.

"The people at home are destroying the Army by their conduct much faster than British Commander-in-Chief Howe and all his army can possibly do by fighting." It was that serious. It was that problematic; that was by an American general. Eventually, Washington had to resort to impressment. Well, we'll basically go in and then we'll take people's property, and he had a private navy that was designed to go out and basically steal from whoever was on the seas. Now, Washington, they don't talk like this anymore, but "The matter I allude to, is the exorbitant price exacted by merchants and venders of goods, for every necessary they dispose of. I am sensitive"—and he left out the word "to"—"the

trouble and risk in importing, give the adventurers a right to a generous price, and that such, from the motives of policy, should be paid”—got no problem with paying them a fair price— “but yet, I cannot conceive, that they, in direct violation of every principle of generosity, of reason and of justice, should be allowed, if it is possible to restrain ‘em, to avail themselves of the difficulties of the times, and to amass fortunes upon the public ruin.” How can these people live with themselves? Don’t they know that we’re fighting for their freedom and yet they take every opportunity to cheat us? So that was really the start of a problem that came up that still is with us today, that distrust of contractors that I mentioned.

The government for a while during the Revolution did away with the contracting system so there would be no general overview contractor. Basically, the commissary general or the quartermaster general would go out and buy—eliminate the middleman and buy the food themselves and then transport it themselves; that was an abject failure. Basically, the government rarely has ever been able—with all the grousing—has rarely been able to do it themselves as well as contractors could. So, basically, very shortly thereafter the government returned, about 1781, to the contract system; and then they brought in Robert Morris, the Superintendent of Finance. Robert Morris is really the father of government contracting. He was sort of an amazing character. There’s a brand new biography of him just out. A well-known merchant; what he decided to do is we’ve got to get competitive bids. We’ve got to put our needs in a newspaper. We’ve got to publish them for about four to six weeks, and we’ve got to give a date that we want bids by. So the first RFP in government contracting: June 30th, 1781. Basically, he didn’t use this phrase but it was best value procurement. He didn’t go with the lowest price. He went with the higher price who was willing to wait longer to be paid. The government’s cash flow problems were so problematic that, boy, if you can charge us a higher price but you give us six months to pay, we’ll make the award to you; that was the model long before there was any statute, long before there was any regulation which permeated government contracting for about the first thirty or forty years before you started to get some statutes.

Now, I’m going to jump a little bit. The war is over. The young republic: First off, the Army demobilizes. Until the Korean War, as soon as the war ended all the troops went home; calling it a demobilization is not even giving it credit. It was a riot. “Bring the boys home” was the mantra after every war we’ve had. For that reason,

peacetime Army contracting is pretty insignificant. I mean, basically members of Congress were not terribly worried about Army contracting during peacetime because there wasn't enough of the Army to be terribly worried about. Some of the biggest contracts during this era were to Russell, Majors, and Waddell, a transport—the freighting company, as the Army—as the Army pushed West. Most of the big contracts were either to them or to road building contracts; the Army topographical engineers would have a lot of the road building contracts. Most of the statutes, most of the attention in peacetime throughout our history has not been military, Army or Navy, contracting. It's been Post Office contracting. That was something that really got the attention of the various members of Congress.

The first statute that required competition was a Post Office statute in 1792. Most of the original clauses came out of Post Office contracts. Tremendous gaps were overcome by that. The post office really was the right arm of civilization forcing the country West. The Pony Express, everybody—that was a ploy to win the government contract, you know. They knew, one lone rider on one pony is not going to be able to carry enough mail to be profitable. They just wanted to show Congress that we can get the mail through, so give us a contract so we can run stagecoaches through that area. The postal service contracting, by the way, was the first one to engage in what they call “socioeconomic requirements.” In the 1790s they awarded a lot of contracts to the fledgling stagecoach industry just to get them started, give them a foothold. Then in the 1830s they gave mail contracts to the fledgling steamboat businesses to give them an ability. Then in the 1920s and '30s we'll talk about airmail contracts. Every airplane that you flew on, every airline that you flew on to get here got started on airmail contracts, and we'll talk more about that in a moment.

Let me mention the Purveyor of Public Supplies. Today, we think the Army, the Navy, the Air Force. In the early days, they didn't do the contracting. It was all centralized within the Treasury Department. Alexander Hamilton was the first Secretary of the Treasury. If you've read Ron Chernow's biography of him, when there was a major contract, he didn't sign it. He didn't have authority to sign it. He would go to wherever George Washington was and George Washington would have to sign those major contracts. After a while it got too much for the President and for the Secretary of the Treasury so they came up with the title, “The Purveyor of Public Supplies,” a Treasury Department official,

and this is the person who would do a lot of the requirements for buying supplies for the Army, the Navy, as it was then.

Now, let me talk about this: the start of the arms industry. About 1798, there was a scare that we thought we were going to go to war with France, and it spurred the first mobilization of the Republic. Eli Whitney, the inventor of the cotton gin, was kind of down on his luck. He was getting into a lot of litigation over the cotton gin and he needed some money. So he wrote in a response to an RFP, "Let me build 10,000 muskets," and he got the contract. The problem was he had never built a musket before, didn't know anything about it, but he had an idea, and his idea was, his improvement was, up to this time all muskets were done individually, and if Elliott builds one type of musket and Craig builds another type of musket, basically they would not fit together, they could not be cannibalized; and, in fact, if Elliott built one last week and then he built one this week, they would not work together. Everything was done individually. He decided we're going to mass produce them. We're going to create them so that they are interchangeable. The barrels will fit on the stock. The firing mechanism—the firelock will fit along with any barrel.

He was late. He was taking a long time to get this done. They were going to terminate him for default. He said, "Please, I'm on to something here," so they arranged to have a presentation in January of 1801; went to Adams—John Adams was still President then. Thomas Jefferson was Vice President. In what has been called the most important weapons demonstration in American history until the Trinity test in 1945, he walked into the room. Adams was there. Jefferson was there. A bunch of cabinet officers and congressmen were there, and he unloaded a box of various barrels, stocks, firelocks, and said, "Assemble; assemble any weapon you want," okay. So they would each pick one apiece and worked and fit it together and it worked. He said, "That's why I'm doing this; that's why there's a delay; think of the benefits." Jefferson clicked on to this right away. "Don't terminate him for default. Yes, he's late. Yes, he's inexcusably late, but there's a real benefit to this."

He eventually delivered and then the Army—I say "the Army," the government—in really one of the best things government contracting has ever done, they said, "We've got to do more of this," so the Army Arsenal System, Springfield Armory, Harpers Ferry Armory, they really got involved in this. They imposed standardization throughout the

industry. John Hall, Simeon North, all the manufacturers of muskets and later rifles, they had imposed upon them rigid specifications and the government inspectors would test them with go/no-go gauges so that everything was standardized, all the parts were interchangeable. A leap forward. Before in Europe, only the best troops, the shock troops would have the best weapons. Now anybody in that regiment would have a great weapon.

There is a popular phrase, “Close enough for government work.” Today, that’s an excuse for shoddy work. Originally, in the 1820s, that was a boast. Companies would say, “Look at us. Our quality is so high, our tolerances are so tight that it’s close enough for government work. The government has enough faith in us to buy from us; so should you.” So I want to make sure everyone understands that, originally selling to the government, close enough for government work, was an imprimatur of quality, and it also had a tremendous impact on factory workers. Factory workers, even more so than in the Revolution, they were an indispensable part now of the mobilization process, which they had not been before.

Now, leaping ahead to the Civil War, and I need to talk about this. In every major war we’ve ever had, initially it is absolute chaos. The government is totally unprepared for the war. What they did, they bought a tremendous amount of weapons very quickly, low quality. You’ve all heard the scandals, things like that. Fraud was rampant, rampant. One classic case prior to the war, the Army had condemned about 5,000, 10,000 old muskets as unserviceable. They sold them for about a dollar to two dollars each. When the war started, some shrewd investors bought back those same things for three dollars each, then sold them to Major General Fremont, head of the Western Division – said, “We’ve got 5,000 carbines for you, perfect condition.” The government’s rushing now to—the government always rushes in a few weeks to try to make up for years of nonchalance, so they bought them. They were a disaster; better than twenty-two dollars apiece **[laughter]**. Disastrous, disastrous; people lost their thumbs when they would fire; the things would explode. Basically, the government refused to pay. The contractor sued. It went to a commission. The commission said, “Well, we’ll give you half. We’ll pay you about thirteen dollars.” That was not good enough, so they went to virtually the brand new Court of Claims and the government said, “They didn’t sell us—they’re not in perfect condition,” and this was a hundred years before the Truth in Negotiations Act, so the court goes, “Oh, the seller puffed up the quality. Gee, that’s



never happened in history before [laughter]. You bought the stuff. You signed the contract; *caveat emptor*. Pay them the full amount.” Remember, a hundred years before the Truth in Negotiations Act.

And I want to come to this next item, innovations in weapons, and I’ll explain why I’m coming to this in a moment. Prior to the Civil War, innovations in weapons went with glacial slowness. If you took an infantryman in the Mexican War, 1845, gave him a Brown Bess musket from the Revolution, it might take them a few minutes then to figure out how to do it exactly, but within a few minutes, they’d know how to do it and their tactics were perfectly geared for that weapon.

The Civil War put everything on its head. I’ll give you two examples. The repeating rifle. You’ve all seen those movies with the cavalry charge, sabers drawn on noble steeds they go out and on those hapless infantrymen. That worked fine when the hapless infantrymen had single shot, short range, relatively inaccurate muskets. It did not work well against long range, repeating rifles; what people in the Civil War called “that damn gun you load on Sunday and fire all week long.” Basically, John Keegan in his book talks about one major, Major Keegan—excuse me not—Major Keenan, John Keegan talking about Major Keenan, basically led a cavalry charge at Chancellorsville against troops with repeating rifles. They found the major afterwards with thirteen bullets in him. His adjutant had nine, so all the tactics books that were designed for single shot muskets went out the window.

But the biggest example is the ironclads. Up to the Civil War, they’d all been purely wooden ships. Both sides, the North and the South, decided we’ve got to work on ironclads. The South took a U.S. ship, the *Merrimack*, and converted it to CSS *Virginia*. The North had a competition, had an RFP, made the award to John Ericsson, and he built what would later be called “the Monitor.” He tested it up in, I think it was in the New York Harbor and there was no skunkworks at that time, so this was all in the open, and it didn’t do too well in the testing. Front page articles in newspapers ridiculing Ericsson and the government, the Navy, for buying such a thing, Ericsson’s folly. They started moving the *Monitor* down to the James River, Hampton Roads, Virginia.

On 8 March 1862, the *Merrimack*, the Confederate vessel, sails out to meet the Yankee fleet guarding the harbor: five ships, 240 guns, a formidable armada. The battle starts. Twenty-nine-gun *Cumberland* blasts away at the *Merrimack*. It bounces off. They fire several shots

into the *Cumberland*; then they ram it, sending it right to the bottom. While this is going on, the *Congress*, a 50-gun ship, blasting away with the *Merrimack*. They all bounce off. Fires—*Merrimack* fired a few rounds into it, starts a fire, hits the magazine, blown up. The flagship of the fleet, the *Minnesota*, panicking, firing everything they can and trying to get away runs aground. Basically, the *Merrimack* can't go after them because of their draft, but they decide, okay, we'll call it a day.

What a day it had been. In a few hours they had sunk two proud ships of the line and heavily damaged a third. No nation had ever done that before. No nation would do it again until 7 December 1941. For one day the Confederates had the strongest Navy in the world. The British government said, "From now on, anyone who goes to sea in a wooden ship is a fool, and the individual who sends them there is a scoundrel." The Secretary of the Confederate Navy, Stephen Mallory, said, "We will tow the *Merrimack* up the coast. We will take it into New York Harbor, and we will bombard the city and the Union into submission."

The Union was petrified. Lincoln is especially terribly worried. Gideon Welles said, "We've got the *Monitor*," and the *Monitor* went down March 9th, the next day; cheese box on a raft. The Yankee soldiers getting ready for whatever is coming see this strange contraption coming at them. "What the heck is that?" It's the *Monitor*. A few hours later the *Merrimack* gets there. They duke it out. People—Southerners always try to argue, "Well, it was a draw." No, it wasn't. The mission of the *Merrimack* that day was to sink the fleet. It didn't get a shot off at the fleet. The mission of the *Monitor* was to protect the fleet. The fleet was protected. So less than a month after newspapers had derided the project as Ericsson's folly, the *Monitor* saved the Union. The reason I bring that out now is up to that date generals, admirals, bureaucrats never had to think too much about contractors during peacetime. Now they did. Now they had a tremendous reason not only to see what is coming out of the factories, what is on the drawing boards, but they had to have a role in shaping that, so that really created a very symbiotic relationship not only during wartime but also during peacetime.

Now, going back to other aspects, Congress acts to reform the system. In writing my history book, I discovered one thing. Congress does two things well: nothing and overreact. **[laughter and applause]** Congress would be shocked, "My gosh, you're paying so much money for this low quality stuff. You must be inefficient. You know, general

counsel, you must be screwing things up or something like that,” and they didn’t realize we don’t have time. We can’t wait 30 days, put something out on the street. We need it now.

Montgomery Meigs, one of the unsung heroes, the quartermaster general of the Union Army, basically said, “A horse, a nag that will last thirty days is very often worth its weight in silver. After the debacle at Bull Run, we don’t have time to hit the streets with a solicitation. We need horses now, we need rifles now, so don’t battle with us and nitpick us after the fact. We had to do something at that time.”

False Claims Act: Again, rampant fraud. The fraud, you know, was unbelievable. Abraham Lincoln Act, False Claims Act of 1863, imposing criminal and civil penalties. This was a long time before you had the Civil False Claims Act but the original act had both aspects to it. Stanton, by the way, sort of expanded—Edwin Stanton, the Secretary of War, wanted to expand on that, wanted to allow the Army to court-martial cheaters and their lawyers be subject to court-martial **[laughter]**, which is, of course, just a horrendous idea, but what they also did, they implemented the *qui tam* provision that had started falling into disrepair. Something like ten of the first thirteen acts passed by the first U.S. Congress in the 1790s had *qui tam* provisions.

*Qui tam* had started in the 13th century in Britain because there was no police department; same rationale here. The Justice Department in the 1860s was insignificant. You know, there was no FBI. They didn’t have huge criminal investigation departments, so they basically decided we will set a rogue to catch a rogue. We will basically say, “If you participated in the illegality, if you bring it to our attention you will be able to participate and partake in any recovery.” So that was really the first pillar of all the government’s antifraud measures that we’ll talk about later on.

The problem was—and this is a problem we have now, Meigs complained about it—the anti-contractor sentiment, antifraud sentiment was so great that Meigs complained, “Let any man propose a new provision of law slated to be intended to restrain contractors or officers”—remember what I said, the government doesn’t trust you either, okay—and it goes through with little examination. Every once in a while, and we’re in such a period now, Congress seems to just keep thinking, “Well, we can keep coming out with all these statutes and it won’t cost us a dime. We’ll just keep all these statutes in there.” And

Meigs was very concerned about that because sometimes they were so concerned about constraining fraud, restraining contractors, that they were really harming the war effort. One of the requirements was that no contract could be let until it had been approved and signed off on by a local magistrate. Where are we going to find a local magistrate during the Battle of Chickamauga? So they were very concerned about some of these requirements.

Now, I'll just keep going on this. The war ends. Demobilization and the rise of consumerism: Every one of you that are here today in suits you can thank those suits to the Union Army. Prior to that time, if you wanted a suit of clothes, you would either do it yourself or you'd buy it from a tailor who would individually make it for you. The Union Army when they all at once had to outfit hundreds of thousands or millions of men, they came up with the concept of sizes: small, medium, large, and after the end of the war, they translated that to the civilian marketplace and a lot of the companies that had really gotten their start in selling to the Union Army, the Great Atlantic & Pacific Tea Company, the first chain store, A&P, got their start. Montgomery Ward also got their start.

During this period, building the fleet, let me explain a little bit about this. During the Civil War, the U.S. Government had the strongest navy in the world, and then, as I said, demobilized. They literally demobilized so by the 1880s Brazil bought a used cruiser from the British and Washington panicked. They estimated that one cruiser could defeat the entire U.S. Navy. So Chester A. Arthur, not a President known for his activism, decided we've really got to do something. We've got to—create the gray steel, blue water Navy, so they really started that.

I want to mention one problem there. They bought a lot of armor from Andrew Carnegie, and at one point, they decided that Carnegie was overcharging the government, so the Secretary of the Navy said, "We want to come in and we want to take a look at your books." Carnegie said, "Go to hell." [laughter] "We don't open our books to our competitors; we don't open them up to you. There is no statutory, regulatory, or contract clause requiring us to open our books to you." And there was none. At that time, the government had no visibility whatsoever into a contractor's books. Secretary of the Navy Whitney decided, "Well, we'll go to Europe and find out how much you're selling it to those people," so we put an investigator, probably the equivalent of a CID or something like that, on the steamship to go over to Europe. Carnegie found out about it and put his own person on that boat, and he

got off the boat first [laughter], so he went to the British and French and said, “This guy’s coming; don’t give him anything,” so the British and French did not, and we’ll talk about that, how that comes about; how that changes things.

I do want to mention the Spanish-American War very briefly. Splendid little war, 1898. The battleship *Maine*, that had been a big dispute in government contracts, by the way, when they were building the fleet, blows up in Havana Harbor. We go to war and, boy, did we whup them Spaniards: beat them badly, beat them quickly, and as you go through the records at the time you can just feel the procurement system going, “Hey,” [laughter] “we’re good,” and they really got very, very complacent about, you know, about how effective they were, how efficient they were, and that would come back to haunt them with terrible results in World War I that we’ll talk about in a moment.

Now, Congress—excuse me, contracting enters the 20th century; contracting becomes centralized again. Remember earlier I had said the purveyor of public supplies, everything is funneled through the Treasury Department; then that went away and War Department, Navy Department, two entirely separate departments then, really got into it and Teddy Roosevelt decided, “You know, we’ve got too many people buying too many things. We’re not getting the benefits of economic quantity discounts,” things that we would require today. So there were two commissions, Dockery Commission and the Keep Commission; they came up with a board of award whereby this board of award would award schedules, you know, GSA hasn’t been created yet but there would be schedule contracts that all the other agencies would order off of. It was designed to simplify the process, get the government better quality at lower prices, so the first start of what would later evolve into GSA.

Birth of aviation.. For the first time the government confronts an industry which is evolving faster than the procurement process can deal with it and that created problems for them. In 1908 the Army bought its first airplane from the Wright brothers. There were specifications which weren’t too great because the Army didn’t really have a great idea how to do this, but the contract itself was about two and one half pages and many of you have already seen it. It said basically three things: We want to buy an airplane; we want it to fly; if it flies more than forty miles an hour, we’ll give you an extra twenty-five hundred dollars for each extra mile up to a cap of ten thousand dollars. The Antideficiency Act

was in place there, so they couldn't give them a blank check, and that was basically all it said, so that was the government's first venture into that. The same year, by the way, they bought the first airplane they also bought their first dirigible because they weren't sure where this technology was going, so the Army wanted to have both its bases covered, so that would be a main impact later on.

Navy versus the steel industry; big battles going on. The Navy decides at some point we're not going to buy any more armor plates from you; we're going to build our own plant. Disaster. They discovered it was not as easy to build this stuff as they anticipated; cost them a lot more so they abandoned it very quickly, but by the same token, the steel industry, which had always complained about what are these specifications, who are these inspectors that you have coming out driving us crazy, it took them a while but the Navy, steel industry, later decided that was a good thing. That forced us to focus on quality than we ever had before and that it really improved our ability to function.

Let me mention the Mexican Border Campaign, and I know I'm jumping around because I've got so much to cover. Pancho Villa crosses the border, has a raid, kills Americans. Everyone goes ballistic. President Wilson sends John J. Pershing down: "Teach them a lesson, capture them." The Mexican Border Campaign is important because of two developments. It was the first time the Army used its airplanes in combat, primarily for scouting, but they had bought a lot of Jennies from, I think, then, Glenn Curtis, later went to Lockheed Group, and they also used automobiles. One lieutenant described the first raid. They piled fifteen armed Soldiers into three Dodge touring cars, raced up to a bandit stronghold, shot it out with the bandits, killed their leaders and captured them all. The lieutenant wrote, "We could not have done this with horses. The automobile is the horse of the future." The lieutenant was George Patton, okay, so we just sort of love the idea that it was sort of a prelude to what would come later.

World War I: We entered the war in 1917. Europe had started fighting in 1914. We had a three-year head start. The allies were coming to buy weapons from us, so we were gearing up, already. In 1916, Enoch Crowder, former TJAG, made the most significant contribution any TJAG has ever done to the national interest. He was the principal drafter behind the National Defense Act of 1916. The War College had come out with some recommendations right after the *Lusitania* had been sunk. He implemented those and other

recommendations into this act. He said, "If we go to war, the President will decide priority." Why was that important? The Army and the Navy, totally separate cabinet departments. Anytime there was a war or a major effort, they would compete against each other, and then you had the Merchant Marine where they were competing, so they wanted a situation where the President or his delegates will decide: this steel, it's got to go to the Army; that steel, it can go to the Navy. The act also said, "And if any contractor refuses to take one of these orders in the appropriate priority, the President is authorized to take over that factory and to run it for the war effort." A similar act passed within a few days said, "Oh, and by the way, the President can seize any transportation element of this country to do that for the war effort," you know, the railroads, primarily, okay.

We get into the war in April 1917, and within about a week – well, actually, within two days but they didn't announce it until about a week later – the government did what it had always done at the start of a major war, "Oh, by the way, you know that big"—what we today call "sealed bidding"—"you know, formal advertising, well, scrap it. We don't have time for that. You know, we have to mobilize very quickly so you can go out and"—what we would today call "negotiate"—"you can buy in the open market." It was an amazing situation. The priority system went into effect; the setting prices. Contracting would eventually adapt to the war. They would come up with new contract types. Labor standards were implemented for the first time. There would be a prevailing wage. We had a contracting or an industrial czar, Bernard Baruch. General Motors, Ford, all the other—all the big automakers, they did not want to stop making their civilian cars, so they had—the government wanted them—"You got to keep building tanks and these other things," so they had a meeting in Baruch's office. William Durant, head of General Motors, said, "Oh, no, we're not going to do that."

"Oh, okay. Let me make a phone call." Baruch picked up the phone. "No more steel will be delivered to Detroit." Picked up the phone again. "No railroad deliveries will go to or out of Detroit." Picked up the phone a third time, Durant goes, "We give up. We will not make civilian cars for the duration." And the results were terrible. We failed. All that optimism, impressed with ourselves from the Spanish-American War, went to naught. When the 1st Division sailed for France, they sailed without helmets. When they arrived, they were basically put into the position of beggars and scavengers, trying to buy, borrow, steal things from the French and British. Pershing noted at the end, "Not a

single American-made tank fought at the front.” Pershing: “It seemed strange that with American genius for manufacturing from iron and steel we should not ourselves after a year and a half of war almost completely without these—we find ourselves almost completely without these mechanical contrivances which had exercised such great influence.” David Lloyd George, the British wartime prime minister, put it even more bluntly, “It is one of the inexplicable paradoxes of history that the greatest machine-producing nation on earth failed to turn out the mechanisms of war after eighteen months of sweating and toiling and hustling. There were no braver or more fearless men in any Army, but the organization at home and behind the lines was not worthy of the reputation which American businessmen have deservedly won for smartness, promptitude, and efficiency.” That was a scary thing, because even with a three-year head start, from 1914 to ’17, we couldn’t get the job done; and for the first time modern planners realized we can mobilize personnel a lot quicker than we can mobilize material, and that would color the interwar period that I’ll talk about in a moment.

Now, a lot of problems during the war as you anticipate. Right after the war, Congress enacted what today we call the False Statements Act, so by October 1918 the government had the two pillars of what is today its antifraud methods: False Claims Act, False Statements Act. They also prohibited “cost plus a percentage of cost” contracting. What had been the standard method for the first fifty years clearly of our national existence were done away with. Now, Congress again went back and had some hearings, very upset, “Boy, look at the prices you paid. This is outrageous. Couldn’t you have gotten competition; couldn’t you have gotten lower prices?”

Now today when that happens and generals and admirals are called—and SESs are called up to Capitol Hill, they’re very, “Oh, we’re sorry. We tried. It was terribly stressful circumstances. We’ll do better this time.” Charles Dawes was the head of the purchasing for General Pershing. “Sure we paid. We would have paid horse prices for sheep if sheep could have pulled artillery.” **[laughter]** “It’s all right now to say we bought too much vinegar or too many coal chisels, but we saved the civilization of the world. We weren’t trying to keep a set of books. We were trying to win a war.” I like that guy. Dawes, by the way, in 1921 Congress passed the Budget and Accounting Act of 1921, created the GAO, and created the Bureau of the Budget, today OMB, he was the first Director of the Bureau of the Budget; later won the Nobel Peace Prize for the work he did in helping Europe to recover and became the Vice



President of the United States. So somebody didn't hold it against him the fact that he went in there and said, "This is what we're going to do."

The interwar period: Airmail. As I said, all the airlines started there. There was a conference with the Post Office; they drove this. Post office basic—postmaster general said, "Okay, we're not going to have this debilitating competition for so long. I'm going to divvy up the routes this way," and out of that conference, called the "Spoils Conference," United Airlines arose, American Airlines arose, and eventually Delta arose, so airmail contracts were a big, big deal that was to survive, because nobody was going to be a passenger in these planes. This was a fairly dangerous activity in the '20s and '30s, so airmail was the lifeline.

The military between the wars: When you go back and you look at this, this is really kind of an amazing period. The military, you could just feel, they were frightened. They had seen what had happened in World War I, and they were—they were petrified. Douglas MacArthur was the Chief of Staff in the early '30s. He begged Congress, "Let us award" what they called "educational orders to industry just to educate them as to how to build tanks, how to build the latest artillery." Congress refused because of that merchants of death theory. They were so upset with industry, the profits they were making, that they refused—refused to give them any—any more audits, and I'll talk more about that in a moment. Vinson—by the way, remember, two entirely separate departments—Vinson-Trammel hearings only applied to the Navy; the Army hearing obviously applied to the War Department. For the first time, we really had statutory authorization for audits, so you can go in and take a look at the contractor's books, very limited but the door had been opened, and they also put a cap on profit.

Now, socioeconomic goals during the '30s. First of all, contracting for the CCC, the Civilian Conservation Corps, Roosevelt's program. The Secretary of War tasked the quartermaster general, "Supply all those youngsters in the CCC," primarily youngsters, "with food, equipment, clothing, shelter, and then transport them to wherever they need to be," really helped the government get their act together in that regard.

Hoover Dam, right outside Las Vegas. People today think of that as a New Deal program. It was not. It was started under Herbert Hoover, the Republican predecessor. Sort of an interesting contract. Department of the Interior and the Bureau of Reclamation had an interesting clause in there. "No Mongolians are to be hired during the performance of this

contract.” No Asians, okay; didn’t say anything about African-Americans, one way or the other, so they—out of the thousands of people that Six Companies, which was the name of the contractor hired, they only hired a handful of African-Americans, housed them separately in deplorable conditions, and gave them the worst jobs. When the Roosevelt Administration came in, they didn’t like that, but there really wasn’t anything they could do at the time.

Now later, in June of 1941, President Roosevelt issued an executive order, 8,802, prohibiting discrimination by government contractors. Congress went ballistic. “Who do you think you are, Mr. President, to do something like that? You have no authority to do that.” His response was, “I’m doing it in my capacity as commander-in-chief. World War II has already broken out in Europe. I do not want, you know, the—our mobilization effort hampered by discrimination.” So the Hoover Dam contract, if you ever get a chance take a look at it, that actually led to the Buy American Act of 1933. While the major contract was awarded to an American company, a lot of the other contracts were awarded to foreign countries, British, German, what have you. They didn’t like that; the Great Depression. So basically Congress delayed opening of some other bids until they passed the Buy American Act. Herbert Hoover—it was the last act Herbert Hoover signed before he was replaced by Franklin Roosevelt, and it was a good thing that they did because when they finally did open the bids, the winning firms would have been German firms, so they excluded them and were able to award to the U.S. firms. Buy American Act, by the way, if not *the* first it’s one of the first statutes that ever specifically calls for debarment for those who violate it, and I’ll come back to that in a moment.

Wage laws: This is one of those areas where the government really put its money where its mouth was; where the government says, “Okay, we know that during the Depression that we can hire workers for pennies a day. We don’t want to do that.” So they came out with the Davis-Bacon Act, the Walsh-Healey Act, trying to make sure that people were paid a decent wage. The same thing with the Miller Act, 1935, 1936, basically saying, “If the prime—the general goes bankrupt and you have no privity, you cannot sue us, then basically, we will require and we will pay for a bond.”

Now, I need to keep going quickly now. World War II: To say we had let our defenses down doesn’t really give it justice. In 1939, the U.S. Army was the seventeenth largest in the world. When Hitler crushed

Poland in September of '39, we rose to sixteenth. Romania had a bigger Army than the U.S. Army. Not only was it small, it was terribly ill-equipped. Recruits trained with broom handles, wooden machine guns. If you've seen film clips of the era, you'll see an old truck moving around with a sign painted on it, "Tank," so they could practice armored maneuvers. In 1940 and 1941, the Army had maneuvers in Louisiana and you saw the cavalry charging and the trucks with paint—tanks painted on them, and back then there was no television, but news reels at the movie houses showed this. And a few years earlier, everyone would have been impressed with this, but those same movie theater goers just a few months before had seen the German tanks on the blitzkrieg and one newspaper, major newspaper, really encapsulated it and I'm pretty much quoting, "We felt as if we were watching a bunch of Boy Scouts playing with BB guns." It is obvious that the only thing for America to do now is to arm with all its might."

So the rules started changing, and they changed—Congress changed them, not because they feared contractors any less, but they feared Hitler more, so when he crushed Poland a lot of the restrictions came off; when he went into France, more restrictions came off; and then, Pearl Harbor, everything was off. Absolute chaos. Again, we were unprepared but we got the act together fairly quickly. On 7 December 1941, Pearl Harbor was bombed. On 18 December 1941, Congress passed the first War Powers Act, saying in pertinent part, "For the duration of this conflict, the President is authorized to contract without regard to any provision of law." Translation: Win the war; forget about all this legal foolishness. So they really got going.

Richard Neurater, a great political scientist, said, "Of all the Anglo-American freedoms, freedom of contract took the biggest beating during World War II." You did what the government told you; you would do it at the price they told you, you would do it. It was a very, very structured economy. For the first time we really started seeing incentive contracts, new contract forms. Cost contracts not only proliferated but now the government said, "We need to take a look at your books," so the audit clause is expanded. "Not only that, we're going to come up with this new law of cost principles; we're going to tell you right now what type of costs we think are appropriate for us to reimburse you," and they came up with renegotiations to try to eliminate excess profits, okay. This worked successfully.

After the war, again, massive demobilization, but Congress realized there's a problem. We can't have any more of this interservice rivalry, and today we joke about it, but then it was really serious. I mean, in the Pacific, MacArthur and Nimitz basically fought two different wars, so they created the Defense Department. And then they came out with the Armed Services Procurement Act of 1947, unifying the procurement practices. Two years later, they came out with the Federal Property and Administrative Services Act, 1949.

Korean War: For the first time we do not totally demobilize after a war. The Cold War was going strong and we keep up the process. The Defense Production Act basically allows the government to act as a traffic cop. Here I need to spend some time on this. From 1953 to 1980, for the first time you have the rise of a real defense industry. For a long time contractors didn't want to sell to the government because it was so sporadic. You know, now they could realize, no, the government's in this for the long haul, so you have the rise of the aerospace industry; and for the first time, you have companies who are totally dependent on the U.S. Government. They are a monopsony. Everyone knows what a monopoly is, when there's only one seller. "Monopsony" is when there's only one buyer, so there's a tremendous impact for those companies to really, for lack of a better expression, be cozy with the government.

Antifraud measures come about. Truth in Negotiations Act, 1962. Remember that case I mentioned in the Civil War, *caveat emptor*. Truth in Negotiations Act basically guts *caveat emptor*. "You've got to disclose this to the government, and then with our expanded audit provisions, we will determine whether that is a fair and reasonable price." And the sole reason why Congress did that was that Congress said, "Government, you are now buying a lot of things that nobody else buys. You have no ability to determine if that is a fair and reasonable price by price comparison because there may not be any price comparison." What you had during this period – you had the culmination of everything we've talked about that allowed the government to have a really vibrant antifraud remedy. Let me explain that. The U.S. Government is not the brightest entity on the face of the earth [laughter], but if at any point it decides people are trying to cheat it, things get very ugly very, very quickly. Criminal remedies: False Statements Act, False Claims Act; civil: Civil False Claims Act; contractual remedies; and then what we really got going during this time was debarment.

Okay, I need to explain that to you. Debarment has evolved over a period of time. Late 1920s, 1930s, the Army Air Corps discovered that what is now General Dynamics had been overcharging it on airplanes, about \$300,000, a huge sum there. This is what the Army Air Corps did, and they didn't hide this, they bragged about it. Major General Mason Patrick, head of the Army Air Corps, Patrick Air Force Base in Florida is named for him, he calls in Reuben Fleet, the head of what is now General Dynamics, and says this: "You're going to build 50 more airplanes. You're going to sell them to us at a dollar apiece or you'll never again get a contract with the Army Air Corps." And there was none of this foolishness about due process [laughter], because in 1930—today, if you had a dispute with J.C. Penney, you would not have to have a hearing to decide if you'll take your business elsewhere; that's the way the government perceived itself then. If we have a dispute with you, we'll just go elsewhere; and trust me, in 1930 if the Army Air Corps didn't buy your planes, you were out of business if you were a plane manufacturer, so they delivered—they delivered the planes.

By the 1960s, however, the philosophy was that while no one has a right to a government contract, everyone has a right to compete fairly for a government contract, so you have more due process remedies; however, the problem was the monopsony. Those contractors depended on the government; the government depended on those contractors. So let me make a statement and let me explain it. The debarment process is not a fair process. The reason why I say that: Boeing has been caught doing some things in the last decade that if a Mom and Pop machine shop did it, they would have been debarred in a heartbeat because you can find 500 more willing to take your place. The government's not going to debar Boeing. I gave a talk one time when there was an Air Force criminal investigator and he explained he had wanted to debar Boeing. He got a briefing with the Secretary of the Air Force. He went in there with all his charts, "This is what Boeing did. This is why we should debar the entire corporation," and at the end of the briefing, the Secretary of the Air Force said, "You obviously don't understand. Without Boeing, there is no Air Force. Get out." The situation had grown to such a level that those contractors were totally dependent on the government but the government was really dependent on those people, too.

Now, let me mention one other thing. You had the criminal, civil, contractual, and administrative. The other problem was the process had gotten so complicated. In the late '80s, the Government was prosecuting

Rockwell International for defective pricing, false statement, false claim. Rockwell pled guilty. The subcontract manager pled guilty. The material manager pled not guilty. I was brought in as the government's expert witness to explain to the judge and the jury in LA what government contracting was all about, what defective pricing was all about. So I was on the stand for direct examination for about a day and then I was cross-examined for about a day and it wasn't nasty cross-examination. It wasn't my case, I didn't care who won, but they put the long definition of cost or pricing data in front of the jury and walked me through it, and I said, "Well, yes, there are eleven cases that say that word means this; then there's another two or three that say it means that." Then in their summation to the jury, the defense counsel praised me to the hilt. "Ladies and gentlemen of the jury, we had a learned expert come in here, charming, witty, intelligent," **[laughter]** "just a wonderful fellow. Ladies and gentlemen, if the Government had to bring in an expert to try and explain these rules to you, try and make sense of these rules to you, how can you convict this poor man of violating them?" whereupon the government's case went into the toilet. The rules had gotten so complicated that it was very difficult—but remember, criminal, both beyond a reasonable doubt and to a matter of certainty, didn't do it in that case. Civil, a preponderance of the evidence, lower standard; contractual, whatever the accounting officer thinks is reasonable; and debarment, whatever the debarring official thinks is reasonable.

I'm going to talk a little bit about McNamara, Robert McNamara, Secretary of Defense under Kennedy and Johnson. You can thank Robert McNamara for this. Basically McNamara did not like Army supplements, Navy supplements, so he basically had his RIP, his Reduction in Implementation plan. He created the Defense Contract Administrative Services; took all of this stuff, put it into the FAR; tripled the size of the FAR, the ASPR at that time, in one year. He also did one other thing on profit. He started the weighted guidelines method for computing profit. You're probably all familiar with that. McNamara started it because he was worried that defense contractors were not making enough profit. He was worried that contracting officers were being so hard-nosed at the bargaining table they were forcing such low profit margins that industry would not be able to modernize and that was a big worry for him. He came out of World War II, where the arsenal of democracy had saved us, so he wanted to make sure of that.

Now, let me keep going on this. We know a sea of paperwork is a real problem. Remember in 1939, *Perkins versus Lukens Steel*, “a violation of a regulation.” What does the Supreme Court say? Who cares? If a contracting officer violated a regulation, that’s between the contracting officer and his or her supervisor. Contractor, you get no standing to challenge that; go home. That had turned. Now basically everyone’s coming in and suing because this regulation has the force and effect of law by virtue of the *Paul* and *Christian* cases in 1963, so now you’re not violating just some rinky-dink guidance, you’re violating something of law. So the age of lawyers and litigation comes in.

Protests: I don’t have to take a poll. Every one of you hates protests. Congress loved protests. Congress calls protestors, “private attorneys general out there policing the system,” so the system had gone very non-agile.

In 1986, all of you are with the government. You are the beneficiary of 200 years of loophole closure [laughter]. Very often when the government litigates and loses a case they’ve got to decide, well, do we want to appeal or not? No. You know, we’ve got bad facts; that’s why we lost at the trial level. We don’t want to appeal and lose again under a broader presence. Let’s go back and change the rules, and that’s basically what they did. In 1986, Congress amended the Truth in Negotiations Act eliminating a lot of defenses. Well, the Contracting Officer, you should have known; I was in a superior bartering position. We negotiated not on line item but on bottom-line price and they never got a certification; wiped out. The other thing that Congress wiped out was a problem with that False Claims Act from 1863. Basically the original statute came out “knowingly submit a false claim.” No definition of “knowingly,” so it was actual knowledge. Congress discovered, however, that every contractor had someone like Mike Mueller. Every company should have someone like Mike Mueller. Mike will sign anything [laughter]. A leaf blows on his desk, he’ll sign the leaf, and he would pass a polygraph, “I did not know that was false”; therefore, he and his company escaped liability. So Congress in ’86 amended the statute, three definitions now of “knowledge”: actual knowledge, deliberate ignorance—remember *Hogan’s Heroes*, Sergeant Schultz. “I know *nothing!* I see *nothing!*”—or reckless disregard; if Mike does nothing to really check that out.

Now—all right I know I’m kind of moving quickly now. What was the result of all this? Contractors, not just crooked—a lot of good

contractors leave or don't get into the market. I retired from the JAG Corps in 1990. I was a typical government employee. For twenty years, every contractor I had dealt with was a government contractor or a wannabe government contractor. I assumed everybody wanted to be a government contractor. When I joined my law firm, they had a reception for me to meet some clients. I met a medical supplier. "Oh, you must sell a lot to the government."

"No, we don't sell to the government; too much trouble."

And a month or two later I met another contractor, medical supplier. "Oh, do you sell to the government?"

"Yeah, but we're getting out of that business."

"Why? I mean, the government spends so many billions of dollars."

"The government is three percent of my business and they're forty percent of the paperwork. I can find more profitable work elsewhere."

And that was a real problem at the time. Congress also had a study done at the same time that discovered anywhere from fifteen to fifty percent of a government contract had nothing to do with what makes these contraptions work. It was designed to accomplish a lot of other socioeconomic goals that added nothing to the value of that. So there was an impetus to try and resolve that. Some of you—you know, Elliott probably remembers this very well. The biggest deal was in Desert Storm. Basically, the Army had to buy 6,000 commercial radio receivers, what today we would call "cell phones." Motorola or Magnavox, I can't remember which one it was, **[cell phone rings]** was going to sell them—right on cue, okay **[laughter]**. My training aid, ladies and gentlemen—was going to sell them but the Government said, "We need this most favored customer, that this is the lowest price," and they couldn't waive that so the company refused to sell. They didn't want to wander in and make a mistake that would get them indicted. The Japanese government, as part of its contribution to Desert Storm, bought the radios and donated them to the Army; that was a major embarrassment. In fact, President Clinton when he signed FASA, the Federal Acquisition Streamlining Act, mentioned that.

I'm going to just try to leave one or two moments for questioning. I wanted to leave you with this about World War II. We failed in World



War I. World War II was our greatest success story. The arsenal of democracy really came through. DuPont was producing more explosives in one day than it had done in all four years of the Civil War. Liberty ships were coming off the line one a day. There was a joke that went around the country in 1944. A woman was invited to christen a ship. She comes to the Liberty shipyard. She was taken to an empty boat slip, given a bottle of champagne. “Well, where’s the ship?”

“You just start swinging that bottle, lady, we’ll have a ship there”  
[laughter].

But the greatest testament, accolade to government contracting was on 30 November 1943. President Roosevelt and Prime Minister Churchill have gone to Tehran to meet with then Marshal Stalin. After dinner one night, Stalin stood up and he proposed a toast, and Stalin is not a man known for dropping praise, but he said, “To American production, without which this war would have been lost.” So the next time someone finds out you’re involved in government contracting and kid you, as they always do, about how many four-hundred-dollar hammers you bought or sold that day, ask them when was the last time their profession helped save the nation. We’re in sort of a rough time now. We get criticism on both sides of the table; a lot of it justified, much more of it unjustified, but it will turn around. The nation has always been able to count on us, so I think I ended—I’m a beloved guest speaker, by the way, and it is not only because of the brilliance of my remarks, the comprehensiveness of my material, it is because I never, never go over my allotted time [laughter and applause]. I finished with four minutes to spare. Thank you very, very much.