

**PRIVATE SECTOR, PUBLIC WARS:  
CONTRACTORS IN COMBAT—AFGHANISTAN, IRAQ AND FUTURE  
CONFLICTS<sup>1</sup>**

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In *Private Sector, Public Wars*, Dr. James Jay Carafano provides an in-depth look at the role that private sector contractors play in contemporary military operations and offers insightful recommendations to better integrate contractors into future operations.<sup>3</sup> Although Carafano is a proponent of contractors, he supports his thoughts with historical data and well-thought argument, not with mere rhetoric.<sup>4</sup> His book will aid reasoned discussion on government policy when read in conjunction with other recently published books, most of which criticize the use of contractors.<sup>5</sup> Carafano's book is a must-read for any military professional, concerned citizen, or government official interested in the future of America's military operations.

This review addresses Carafano's thesis that contractors play an integral and helpful role on the battlefield, that contractors could have been employed better in Iraq and Afghanistan, and that the U.S. government can better integrate contractors into future operations.<sup>6</sup> Finally, this review addresses how Judge Advocates can use this book to work with contractors in contingency operations.

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<sup>1</sup> JAMES JAY CARAFANO, *PRIVATE SECTOR, PUBLIC WARS: CONTRACTORS IN COMBAT—AFGHANISTAN, IRAQ AND FUTURE CONFLICTS* (2008).

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<sup>3</sup> CARAFANO, *supra* note 1.

<sup>4</sup> *Id.*

<sup>5</sup> See JEREMY SCAHILL, *BLACKWATER: THE RISE OF THE WORLD'S MOST POWERFUL MERCENARY ARMY* (2007) (criticizing the use of the private security contractor); *see also* CARTER ANDRESS, *CONTRACTOR COMBATANTS* (2007) (criticizing Custer Battles's contracts from a first-person perspective as a former Custer Battles employee); T. CHRISTIAN MILLER, *BLOOD MONEY: WASTED BILLIONS, LOST LIVES, AND CORPORATE GREED IN IRAQ* (2006) (criticizing the contracting procedures and policies).

<sup>6</sup> CARAFANO, *supra* note 1, at 12.

### I. The Value of Contractors on the Battlefield

In developing his thesis, Carafano begins by examining the role that the private sector has played in conflict since the Middle Ages.<sup>7</sup> He feels so strongly about the contractors' role on the battlefield that he bristles when the military says its job "is to fight and win the nation's wars."<sup>8</sup> He argues that it is the nation's job instead, and that the "military is the nation's bridge between its aspirations in war and the reality of war."<sup>9</sup> The government shoulders the responsibility for oversight of war, whether fought by Soldiers or civilians.<sup>10</sup> He posits, "Washington can outsource every requirement for war but the genius for war, for which the nation relies on its armed forces."<sup>11</sup>

One can argue that Carafano's extreme use of contractors would be a breach of international law.<sup>12</sup> His assertion that "[c]ontractors are in combat because they are an integral part of modern military power" is much more widely accepted, however.<sup>13</sup> Recently, the Department of Defense (DoD) published its Quadrennial Defense Review.<sup>14</sup> In its report, the committee stressed that "[t]he Total Force of active and reserve military, civilian, and contractor personnel must continue to develop the best mix of people equipped with the right skills needed by the Combatant Commanders."<sup>15</sup> Recognizing that contractors are an accepted part of DoD's strategy, practitioners should not argue whether the private sector belongs on the battlefield, but rather how to best integrate it.

Governments contract with large scale companies because these companies have the capacity to deliver the requested product.<sup>16</sup>

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<sup>7</sup> *Id.* at 14–39.

<sup>8</sup> *Id.* at 176.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> See generally JENNIFER ELSEA & NINA SERAFINO, CONG. RESEARCH SERV. REPORT, PRIVATE SECURITY CONTRACTORS IN IRAQ: BACKGROUND, LEGAL STATUS, AND OTHER ISSUES, RL 32419, at CRS 13-15 (2007) [hereinafter CRS REPORT] (discussing the international law implications of contractors serving as combatants).

<sup>13</sup> CARAFANO, *supra* note 1, at 68.

<sup>14</sup> QUADRENNIAL DEF. REVIEW COMM., QUADRENNIAL DEFENSE REVIEW REPORT 4 (6 Feb. 2006), available at <http://www.defenselink.mil/qdr/report/Report20060203.pdf>.

<sup>15</sup> *Id.*

<sup>16</sup> CARAFANO, *supra* note 1, at 120.

International companies like KBR<sup>17</sup> have the technology, capital, and resources to deliver its product anywhere in the world in a short period of time.<sup>18</sup> As Carafano notes, “[m]any of the goods and services that the Pentagon demands from its contractors are the same things the private sector demands from the private sector—just-in-time delivery of common goods and services, everything from food to fuel.”<sup>19</sup> The Congressional Research Service agreed in a 2007, study stating that “[w]ithout private contractors, the U.S. military would not have sufficient capabilities to carry out an operation on the scale of Iraq . . . .”<sup>20</sup> Through its developed capacity, the private sector is a powerful tool that is integral to the U.S. military’s power projection.

Carafano also argues that the private sector distinguishes itself from the public sector because it is “bred for efficiency.”<sup>21</sup> He attributes the capitalist model as the catalyst for efficiency.<sup>22</sup> The military learned the lesson in Vietnam to tap into the private sector and save the military’s resources for combat power.<sup>23</sup>

Fellow scholar Peter Singer refutes this logic in his book *Corporate Warriors*.<sup>24</sup> Singer argues that few private companies can deliver large scale contracts, thus reducing competition.<sup>25</sup> Additionally, Singer argues that monitoring contract performance raises their costs.<sup>26</sup> In turn, adding contractors to the battlefield blurs the chain of command and diffuses responsibility to the contracting agency.<sup>27</sup>

Singer adds a dimension to the efficiency argument. Financial cost alone is not dispositive of efficiency. Instead, one must consider the non-economic costs of factors such as those cited by Singer. Nevertheless, contractors deliver significant support to the U.S. government’s operations and are part of the government’s operations for

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<sup>17</sup> KBR History, [http://www.kbr.com/corporate/kbr\\_history/index.aspx](http://www.kbr.com/corporate/kbr_history/index.aspx) (KBR, Inc. was formerly known as Kellogg Brown & Root, Inc.).

<sup>18</sup> CARAFANO, *supra* note 1, at 120–21.

<sup>19</sup> *Id.* at 122.

<sup>20</sup> CRS REPORT, *supra* note 12, at 13–15.

<sup>21</sup> CARAFANO, *supra* note 1, at 37.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 43.

<sup>24</sup> PETER SINGER, *CORPORATE WARRIORS: THE RISE OF THE PRIVATIZED MILITARY INDUSTRY* (2003).

<sup>25</sup> *Id.* at 152–53.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

the foreseeable future.

Contractors bring an additional non-economic benefit to a conflict: economic revival.<sup>28</sup> A large benefit of contractors in combat is that they “promote economic activity in the countries, which helps kindle the postwar revival of private business.”<sup>29</sup> At one point, KBR was the largest single employer in Kosovo.<sup>30</sup> As such, its subcontracts boosted new companies, thus enhancing the economy and facilitating stability.<sup>31</sup> This concept has gained significant traction in counterinsurgency operations by using “money as a weapon system.”<sup>32</sup>

## II. Concerns With Contractors on the Battlefield

Carafano discusses the contempt that many Americans have towards contractors on the battlefield.<sup>33</sup> Much of the information the public receives is through the media.<sup>34</sup> In turn, the media shapes public perception.<sup>35</sup> In the absence of scholarly information on contractors, the public turns to Hollywood.<sup>36</sup> Hollywood is not a good medium to display an unbiased look into contractors in war, however.<sup>37</sup> Carafano criticizes documentary makers like Michael Moore for having “little concern that they might be held accountable for the veracity of their research. Ticket sales, rather than quality of scholarship, stand as the most important measure of a film’s long-term influence.”<sup>38</sup> Carafano also dismisses press coverage as only delivering small pieces of information without examining all the facts, because of the “episodic nature of the media business.”<sup>39</sup> Indeed, he argues, “[i]n today’s 24–

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<sup>28</sup> CARAFANO, *supra* note 1, at 46.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> See COMMANDER’S COUNTERINSURGENCY GUIDANCE, MULTI-NATIONAL FORCE–IRAQ (21 June 2008), available at [http://www.mnf-iraq.com/images/CGs\\_Messages/080621\\_coin\\_%20guidance.pdf](http://www.mnf-iraq.com/images/CGs_Messages/080621_coin_%20guidance.pdf) (encouraging subordinate units to “[e]mploy money as a weapon system” and “[e]nsure contracting activities support the security effort, employing locals wherever possible”).

<sup>33</sup> CARAFANO, *supra* note 1, at 136–59.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 143.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 143–47.

<sup>38</sup> *Id.* at 147.

<sup>39</sup> *Id.* at 154.

hour news cycle, . . . even the best investigative reporting does not provide the kind of sustained attention to an issue that is necessary to really inform a public policy debate.”<sup>40</sup>

Perhaps the most contentious topic is contractor accountability. Contractors may not adequately fulfill their obligations or they may commit misconduct. Although contractors are not members of the U.S. armed forces, America cannot divest itself of contractor misconduct.<sup>41</sup> Examples include contract interrogators who were involved in the Abu Ghraib abuse scandal and four Blackwater employees who were killed in Fallujah.<sup>42</sup> Likewise, contractors using excessive force, such as forcing civilian cars off the road or shooting at civilians, hampers American efforts to secure a post-war Iraq.<sup>43</sup>

Carafano argues that profit and economic efficiency will encourage contractors to deliver a superior product.<sup>44</sup> He argues that contractors wish to avoid scandals because it interferes with their ability to make profits.<sup>45</sup> Yet, Singer’s proposition that there is limited competition for large scale contracts cuts against Carafano’s argument.<sup>46</sup> For if there is limited competition, then the government has little recourse against subpar performance.

Congress also discussed poor contractor practices in July 2008 congressional hearings.<sup>47</sup> Senator Byron Dorgan addressed shoddy electrical wiring performed by KBR.<sup>48</sup> He cites an instance where thirteen people, eleven of them Soldiers, were electrocuted in Iraq.<sup>49</sup> Electricians for KBR testified there was “pervasive carelessness and disregard for quality electrical work at [KBR].”<sup>50</sup> Rather than punish KBR, the government ordered the wiring inspected and awarded the

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 163.

<sup>42</sup> *Id.* at 164.

<sup>43</sup> *Id.* at 105 (citing Paul Christopher, a contractor and a veteran, for the proposition that there were aggressive personal security teams whose actions “undermined the mission of bringing security and stability to Iraq” and “undercut the utility of contractors as an adjunct to the military forces”).

<sup>44</sup> *Id.* at 166–67.

<sup>45</sup> *Id.*

<sup>46</sup> SINGER, *supra* note 24, at 152–53.

<sup>47</sup> 154 CONG. REC. § 7241 (daily ed. July 24, 2008).

<sup>48</sup> *Id.* (statement of Sen. Dorgan).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

contract to KBR to inspect its own shoddy work.<sup>51</sup>

Carafano loses credibility when addressing contractor accountability. Unlike his historical analysis, he cites few facts to reinforce his argument. While this attenuates his argument, the remedies discussed in Section IV below still hold true despite the author's scantily supported assertion.

### III. The Government's Use of Contractors in Iraq and Afghanistan

In 2002, the Secretary of the Army complained to DoD that a third of the Army's budget went to pay contractors but there was little visibility into the "costs associated with the contract workforce and of the organizations and missions supported by them."<sup>52</sup> Although the number of contracts has increased, the number of contracting officers who manage them has not.<sup>53</sup>

Carafano believes that the problem with contract performance is the government's failure to properly issue and manage the contracts.<sup>54</sup> He argues that the lack of experienced, deployable contracting officers led the government to deploy poorly trained contracting officers who faced a tremendous workload.<sup>55</sup> Carafano's conclusion rings similar to a maxim that a job is not going to be done right unless it is inspected.

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<sup>51</sup> *Id.*

<sup>52</sup> CARAFANO, *supra* note 1, at 82 (quoting an 8 March 2002 memorandum from Secretary of the Army Thomas E. White to the Defense Undersecretary for Acquisition, Technology, and Logistics et al.)

<sup>53</sup> *Id.* at 83; *see also* CRS REPORT, *supra* note 12, at 28 (noting a lack of contracting personnel as part of the problem and noting that the largest problem in deployed situations is the lack of contracting officer representatives to supervise contractor performance abroad).

<sup>54</sup> CARAFANO, *supra* note 1, at 85.

<sup>55</sup> *Id.*

#### IV. Recommendations to Better Integrate Contractors Into Military Operations

Carafano proposes three ways to better utilize contractors: (1) bring back America's competitive edge, (2) fight better wars, and (3) make government a better customer.<sup>56</sup> To fight better wars, Carafano suggests that America enhances its interagency operations.<sup>57</sup> He posits that the government should create strong doctrine on interagency operations.<sup>58</sup> Arguing that the "government has seldom bothered to exercise anything worthy of being called interagency doctrine,"<sup>59</sup> Carafano offers the government response to Hurricane Katrina as an example of interagency failure.<sup>60</sup>

As a remedy for these failures, he suggests the government create Joint Interagency Groups.<sup>61</sup> These groups would consist of representatives from various governmental organizations and liaisons from nongovernmental organizations.<sup>62</sup> These groups would then deploy Joint Task Forces to the field to ensure the government utilizes a proper doctrinal response to deployed situations.<sup>63</sup> Furthermore, he argues that these task forces would allow the government to place one leader directing the entire mission. He compares the confusion among the split commands in Iraq with a successful single organization involved in post-World War II Germany's reconstruction.<sup>64</sup>

Carafano's argument demands significant study at the highest governmental levels. All too often an organization attempts to fix an inadequate situation by not only continuing its same doctrine but by expanding it, effectively reinforcing failure. Joint Interagency Groups will bring together leaders who will prepare for international missions in

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<sup>56</sup> *Id.* at 183. The first proposal deals with national reform involving trade policies, fiscal and educational reforms, and social policies. These lie outside the scope of this review.

<sup>57</sup> *Id.* at 184.

<sup>58</sup> *Id.* at 185.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 187.

<sup>61</sup> *Id.* at 186–87.

<sup>62</sup> *Id.*; see also SINGER, *supra* note 24, at 154 (stating that there is no doctrine to manage contractor resources and effectively integrate them into operations, thus buttressing the need for Joint Interagency Groups).

<sup>63</sup> CARAFANO, *supra* note 1, at 187.

<sup>64</sup> *Id.* at 191.

the same way that they will fight them.<sup>65</sup>

Finally, Carafano suggests that the government become a better customer.<sup>66</sup> He believes that the Pentagon must better determine which contracts to award and then properly oversee its contracts.<sup>67</sup> He argues that the government should adopt a risk-based analysis that considers the noneconomic costs of contract failure.<sup>68</sup> To do so, he recommends that the government employ more operations research professionals.<sup>69</sup> These professionals analyze complex systems and determine ways to use available resources to maximize mission accomplishment.<sup>70</sup>

The DoD should then increase the size and quality of its contracting force.<sup>71</sup> Carafano argues that to build its capacity to function on the ground, the Army “could do no better than read[] its own report.”<sup>72</sup> In a study titled *Urgent Reform Required: Army Expeditionary Contracting*, an Army commission “found that only three percent of the Army’s contracting personnel were on active duty and that the Army did not have one career Army contracting general officer position.”<sup>73</sup>

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<sup>65</sup> See Major Tonya Jankunis, *Military Strategists Are from Mars, Rule of Law Theorists Are from Venus: Why Imposition of the Rule of Law Requires a Goldwater-Nichols Modeled Interagency Reform*, 197 MIL L. REV. 16 (2008) (discussing the existing national security apparatus and arguing that the interagency must be reformed if the rule of law is to be established in failed or fragile states). At the strategic level, Major Jankunis argued for the incorporation of the Departments of State and Defense beneath an authoritative Department of National Security. The Director of this department would oversee Geographic Control Center Commands at the high operational level. These commands would have areas of responsibility similar to the current combatant commands. A civilian ambassadorial director would lead each of these commands with a Deputy Military Commander representing the DoD and a Deputy Civilian Commander representing the Department of State. See generally *id.*

<sup>66</sup> CARAFANO, *supra* note 1, at 198.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 200–01.

<sup>70</sup> *Id.* at 200.

<sup>71</sup> *Id.* at 201.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* (citing COMM. ON ARMY ACQUISITION & PROGRAM MGMT. IN EXPEDITIONARY OPERATIONS, URGENT REFORM REQUIRED: ARMY EXPEDITIONARY CONTRACTING 2 (2007) [hereinafter URGENT REFORM REQUIRED]). The report additionally found that “[t]he Army’s acquisition workforce is not adequately staffed, trained, structured, or empowered to meet the Army needs of the 21st Century deployed warfighters.” URGENT REFORM REQUIRED, *supra*, at 2; see also SINGER, *supra* note 24, at 154 (stating that DoD has a poorly trained contracting corps).

Carafano's two-pronged approach to contracting reform delivers a reasonable method of fixing the problem. As with any major decision, DoD must analyze the decision to contract through solid, unbiased analytical thought. Operations research professionals are well suited for the job. After the decision to contract has been made, an adequately staffed group of professional contracting officers in the same theater as the contractors would be best able to procure and manage DoD's contracts.

#### V. Utility to Judge Advocates

As military professionals, Judge Advocates should read *Private Sector, Public Wars* to better understand contractors, to learn about the private sector's historical role on the battlefield, and to understand that contractors are an integral part of military operations. This knowledge will allow Judge Advocates to better serve their commanders not only as attorneys, but as staff members who can better integrate contractors into their command's mission planning.

In sum, *Private Sector, Public Wars* offers a thought-provoking look into the private sector's place in modern military operations. Carafano gives his readers more than observations; he offers practical solutions. America's leadership should take a hard look at Carafano's recommendations to consider how to best utilize the private sector in this age of persistent conflict.