

Testimony of
Jamie Leigh Jones
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Senate Committee on the Judiciary
hearing regarding
“Workplace Fairness: Has the Supreme Court Been Misinterpreting Laws
Designed to Protect American Workers from Discrimination?”

October 7, 2009

Chairman Leahy, Ranking Member Sessions, Distinguished Members of the Committee:

Thank you for the opportunity to testify before you today. I am here today to share with you a personal tragedy. I do this to bring awareness to legislation—the Arbitration Fairness Act—which is designed to ensure that no American will be deprived of the constitutionally guaranteed right to the fair administration of justice before a jury of their peers and a judge skilled in the law.

In 2005, at the age of 20, I applied for and was offered a job with Halliburton. When hired, I signed an employment contract. Days later I was sent to Camp Hope, in the “Green Zone” in Baghdad, Iraq to support Operation Iraqi Freedom. Before my deployment, Halliburton showed me photographs of the trailer that I would live in with one other woman and a shared bathroom.

This is an actual photograph I was shown prior to leaving Texas:



Upon arrival at Camp Hope, I was assigned to a barracks which was predominantly male (according to documents provided by Halliburton/KBR in response to my EEOC complaint, there were approximately 25 women to more than 400 men). Personally, however, I never saw a woman at that barracks. I found myself subject to repeated “cat-calls” and partially dressed men in their underwear while I was walking to the restroom, which was located on a separate floor from my bedroom. (Following an independent investigation, the EEOC credited my testimony with respect to this matter. That Determination Letter is attached to this statement as an Exhibit.)

Almost immediately after I moved into the barracks, I complained to Halliburton management and human resources department about the living conditions and asked to move into the quarters I had been promised. My requests were not only ignored, they were mocked: I was told to “go to the spa.”

On my fourth day in Iraq, I was socializing outside the barracks with several of the other contractors Halliburton had sent to the Green Zone. The men, identified to me only as Halliburton firefighters, offered me an alcoholic drink, stating that I should not worry, because he “saved all his ruffies for Dubai.”

I would later learn that the antics of these men (and so many others in this lawless environment), were well known to the Human Resource personnel and upper management at Halliburton and KBR. On the other hand, those facts were not (at least then) well known to me or to the general public. I naively took the drink. I remember nothing after taking a couple of sips.

When I awoke in my room the next morning, I was naked, I was sore, I was bruised, and I was bleeding. I was extremely sore between my legs and in my chest. I was groggy and confused, but did not know why - at that time. I went to the restroom, where I realized that I had bruises between my legs and on my wrists. I also realized that I was bleeding severely between my legs. At that point in time, I suspected I had been raped. As the grogginess wore off, and I returned from the bathroom I found a naked firefighter still lying in a bunk bed in my room. I was shocked. How could he have raped me like that and not even bother to leave? I now know he stayed because he already understood that there would likely be no punishment for his crime. After all, there never had been before. Halliburton and KBR had no reason to punish its employees when they could simply bury their atrocities in an arbitration designed to keep it secret.

After reporting my rape to a KBR Operations Coordinator, I was taken to the Army CASH (Combat Army Support Hospital) where a rape kit made it apparent that I had been assaulted both vaginally and anally by multiple perpetrators. After the rape kit was completed, the Army doctor turned it over to KBR security personnel.

I was then taken by KBR personnel to a trailer and locked in with two armed guards stationed outside my door. I was not allowed to leave. I asked for a phone to contact my father, and was denied. I was not provided food or drink until after I had been there for quite some time. The exact amount is difficult to know, given my state of mind at the time.

After much pleading, one of the guards eventually allowed me to use his cell phone. I called my father, who then contacted Congressman Ted Poe. Congressman Poe dispatched State Department officials to ensure my release and safe return to the U.S.

Once State Department officials (Matthew McCormick and Heidi McMichael) saved me from my imprisonment in the container, I was taken to the cafeteria because I was hungry and thirsty. I was feeling very ill from the effects of the drug. I was going to be put into a “safe” trailer, and I requested that Ms. McMichael stay with me. She did.

The following day, Ms. McMichael took me to meet with a psychiatrist. I was also later interviewed by Halliburton/KBR supervisors, and I was told that I had essentially two choices: (1) “stay and get over it,” or (2) go home with “no guarantee of a job,” either in Iraq or back in Houston. The severity of my physical injuries necessitated my decision to return home in the face of the threats of termination, which were later carried out.

Once home, I sought medical attention, both psychiatric and physical. I was originally sent to a psychiatrist chosen (for reasons that only now are obvious to me) by Halliburton. The first question asked by this “health-care provider” was “are you going to sue Halliburton?” so my mother and I walked out.

The pains in my chest continued, and I sought medical help. It was confirmed that my breasts were disfigured and that my pectoral muscles had been torn. Reconstructive surgery was required. I also saw a therapist and was diagnosed with Post Traumatic Stress Disorder.

I filed a complaint with the Equal Employment Opportunity Commission (EEOC). The EEOC in turn conducted an investigation and concluded that I had been sexually assaulted, that physical trauma was evident, and that Halliburton’s investigation and response had been “inadequate.”

I also pressed criminal and civil charges, but after finding the criminal system non-responsive and frustrating, I relied on the civil court system for justice. I knew that I had been harmed – not only by the rapists, but by the huge corporation that enabled and ratified their actions for so long. Halliburton not only tolerated the lawless environment that existed in the Green Zone, but created and promoted it through its practices there.

When I filed my civil suit, it was met with Halliburton’s response that *all* of my claims were to be decided in forced arbitration because, they said, when I signed my employment contract I had also signed away my right to a jury trial. Halliburton said that my employment contract included a mandatory binding arbitration clause that required me to submit all of my claims to forced, secret, and binding, arbitration. I didn’t even know that I had signed such a clause, but even if I had known, I would never have guessed that it would prevent me from bringing my claims to court after being brutally sexually harassed and assaulted. I have since learned that other women who were brutalized at the hands of Halliburton and KBR were forced into arbitration and silenced by its provisions. This is a simple denial of justice. Also, I had no choice but to sign the contract because I needed the job. Like so many other employees, I had no idea that the clause was part of the contract, what the clause actually meant, or that I would eventually end up in this horrible situation.

Through its pre-dispute, mandatory, confidential, binding arbitration clause Halliburton contends that rape, false imprisonment, corporate ratification of criminal behavior, and intentional tortuous activity are claims that should not be heard by a neutral judge and jury. Halliburton believes that the fact that they have been systematically exploiting and abusing

women on a consistent basis is something that should be kept secret and never be made in public.

I fought the forced arbitration clause and just last month, after years of litigation, the Fifth Circuit ruled that four of my claims against Halliburton relating to my rape were not covered by the clause in my employment contract. The rest of my claims, including my discrimination claims under Title VII, have been forced into the arbitration proceeding – not because I want it, but because at the time I signed the contract, I didn't know it existed, and certainly didn't understand it. I was 20 years old with a high school education. The contract was lengthy and drafted by experienced corporate lawyers bent on protecting a huge corporation from the arms of justice when they did what they had been doing for years – exploiting women.

The problem of forcing claims like mine into the secret system of pre-dispute, mandatory, confidential, binding arbitration goes well beyond just me. Through the Jamie Leigh Foundation, I have learned that numerous other women who were assaulted or raped were then retaliated against for reporting those attacks and forced into secret arbitration if they mustered the courage to stand up for themselves at all. As indicated by the affidavit of Letty Surman (attached to this testimony), an HR representative from Halliburton, it is clear that sexual harassment was an overwhelming problem in Iraq, and this was known to Halliburton and KBR – although they did not inform unsuspecting victims like myself.

The system of pre-dispute, mandatory, confidential, binding arbitration keeps this evidence from ever coming to public light and allows companies like Halliburton to continue to allow the abuse of their employees without repercussion. Even where individuals pursue their claims in arbitration, all of this information is sealed and kept confidential.

Arbitration has a place, but only when it is voluntary, consented to after a dispute arises, negotiated by parties with equal bargaining power, and both sides know exactly what they are signing up for. It is clearly immoral and should not be legal for a large multi-billion dollar corporation to force this secret process on a person who needs a job to survive and doesn't understand what the process involves.

Pre-dispute, mandatory, confidential, binding arbitration has made corporate entities in this country above the law. It allows employers to violate state and federal civil rights and anti-discrimination laws with impunity. Likewise, through confidential arbitration the public is denied the ability to learn about such discrimination because the proceedings are kept secret and there is not even a requirement that a written record be kept.

Distinguished Members of the Committee, you have the power to stop the abuses that hide behind the veil of arbitration and hold corporate America accountable to the people, the people whom you are sworn to serve.

Thank you for your time.



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Charging Party

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Attn: Celia Balli, Attorney
Legal Department

Respondent

LETTER OF DETERMINATION

Under the authority vested in me by the Commission's Procedural Regulations, I issue on behalf of the Commission the following determination as to the merits of the subject charge filed under Title VII of the Civil Rights Act of 1964, as amended ("Title VII").

All requirements for coverage have been met. On January 24, 2006, Charging Party Jamie Leigh Jones filed a charge of discrimination alleging sexual harassment. Charging Party alleges that upon her arrival in Baghdad, Iraq she was assigned to all male living quarters and subsequently was drugged and sexually assaulted by several employees of Respondent.

Respondent denies Charging Party was assigned to an all male barracks and contends that those barracks were co-ed, and there were approximately 25 other females assigned to the same barracks with Ms. Jones. Respondent asserts that the alleged assailant claims Charging Party consented to have sex with him. Respondent also maintains that its efforts to investigate the alleged assault was halted by the U.S. State Department officials telling Respondent they were taking over the investigation.

The investigation revealed that Charging Party was in Baghdad, Iraq for less than one week when the attack allegedly occurred. According to Charging Party's credible testimony, she reported the attack and sought medical attention. Respondent provided medical assistance, placed her in a secure location, and transported her back to the United States. The investigation credits Charging Party's testimony that she was indeed sexually assaulted by one or more of Respondent employees and physical trauma was apparent. Respondent's investigation was inadequate and did not effect an adequate remedy.

PLAINTIFF'S
EXHIBIT

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AFFIDAVIT OF LETTY SURMAN

STATE OF TEXAS §
COUNTY OF HARRIS §

On this day, Letty Surman, appeared before me, the undersigned notary public and after I administered an oath to him/her, upon his/her oath, he/she said:

"My name is Letty Surman. I am over the age of 18 and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

I was employed by Halliburton/KBR in Kuwait and Iraq from May of 2004 until September of 2006. I was the Human Resources (HR) supervisor in Kuwait from May of 2004 until late-2005 and in the Baghdad Headquarters in Iraq from late-2005 until my return to the United States in September of 2006. I again worked for Halliburton in Houston from January until August of 2007, when I was laid off.

During most of my time in Kuwait, I was the key contact person for HR issues arising out of Basra, Iraq. This was because there was no HR person in Basra. There was a saying with regard to personnel and employee issues that 'what happened in Basra stayed in Basra.' As an example, Halliburton pushed for an HR representative in every camp, large or small, in Iraq, with the exception of Basra. I often thought this was suspicious.

It was concerning to me that, although I was trained in HR, there were a number of HR personnel that were not trained, and were simply no longer capable of performing their primary duties. For instance, I worked closely with a diesel mechanic who had been relabled as an HR representative, with absolutely no training. This was a disaster waiting to happen.

I know that Craig Grabien was the project lead in Basra, and that alcohol was widely used at that camp – despite the fact that this was not permitted there. In fact, it was widely known that Craig Grabien's successor, Charles English, was intoxicated the night that Basra was bombed, when he announced the need for firemen to perform a HazMat analysis in a slurred voice from the radio system in the bunker. Two visiting Army officials even complained that Charles English was drunk in the bunker.

During my time as an HR supervisor, I was aware that a lot of sexual harassment went on- it was our major complaint. I observed that sexual harassment was worse when I first arrived, and seemed to get a little better towards the end of my stay in Iraq.

**PLAINTIFF'S
EXHIBIT**
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I know that the Employee Relations (ER) branch of Halliburton tracked sexual harassment complaints, as this was a primary function of that department. However, I am aware that Halliburton has a policy of sweeping problems under the rug.

I have personally been the subject of sexual harassment while I was in Iraq. There were comments about my breasts shaking when I was doing something in the kitchen facility, and Michael Van Kirk, a project manager, attempting to kiss me – which was unwanted. I did not report these incidents because it would not have accomplished anything, and because of the high likelihood of retaliation that permeated the environment in Iraq. Often, there would be heckling of people who reported incidents of this nature, or they would be sent to another, more remote, camp. Furthermore, the confidential nature of these reports was purely at the discretion of the project managers, and not well enforced.

At one point, there was a company blog, on which any Halliburton employee could anonymously post their complaints about sexual harassment and other camp conditions. Halliburton took this down because it was embarrassing to them.

I know that pornography was known to be displayed in the workspaces in Basra as a result of the reports of the drivers and other employees who would travel through the Kuwait after having been in Basra. Craig Grabien had a reputation for sexually harassing the women in Basra.

In 2005, KBR came out with “supervisor training.” This training included topics such as dignity and respect, sexual harassment and other topics. Prior to that, sexual harassment had not really been discussed with managers or supervisors. This training was insufficient, lacking in substance, and thought by many to be a “joke.”

I recall the aftermath of the reporting of the Jamie Jones rape incident. I had been friends with the fire chief, Marshall Fiedler, and remember him commenting to me that “I don’t know what I’m going to do with these guys.” Several of the firefighters were very young, and known to do wild things.

I also recall that a number of people were very angry because the incident involving Jamie caused the rules to change so that drinking was no longer allowed. Prior to that reporting, drinking was allowed in the off-duty hours, and in the non-work spaces.

Part of the problem with managers such as Craig Grabien is that they have family connections in the Halliburton/KBR system. In fact, this “good ‘ol boy” network is so rampant that the employees have nicknamed the company: Kinfolk, Brothers &



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Relatives (rather than Kellogg, Brown & Root). The entire company is simply rife with nepotism. The same rules do not apply to all Halliburton employees – it simply depends on their connections.

I am very familiar with Halliburton's DRP program, but certainly did not think that a rape or sexual assault would ever be subject to the program. I know that the DRP prides itself on preventing most cases from ever even reaching arbitration. The DRP office is housed in the same headquarters area as KBR, in the same building as the ER offices. I believe this to be a huge conflict of interest. Simply put, I do not think that a person can get justice in the DRP. I personally do not trust the arbitration provisions of KBR, nor do many of the co-workers I know. In fact the practices of Halliburton KBR make it clear that it was there intent to circle the wagons to protect their financial interests, rather than fairly treat their employees.

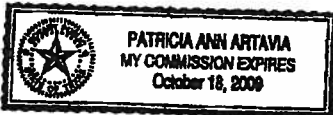
KBR has utilized the DRP arbitration provision to permit, excuse and/or encourage a sexually lawless environment to exist, and to escape liability and accountability for that environment. It also keeps its findings secretly so that the public does not know about it."

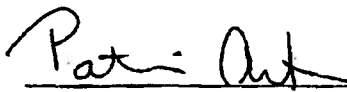
Further affiant sayeth not



Letty Surman
AFFIANT

SWORN TO AND SUBSCRIBED before me on the 10th day of October, 2007





NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
(SEAL)



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