COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-209049 September 29, 1982

The Honorable William Proxmire
Ranking Minority Member,
Committee on Appropriations
United States Senate

Dear Senator Proxmire:

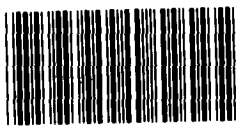
Subject: Improper Lobbying Activities by the Department of Defense on the Proposed Procurement of the C-5B Aircraft (GAO/AFMD-82-124)

In your June 24, 1982, letter (encl. 1), you asked us to investigate the accuracy of allegations of the existence and activities of a so-called "C-5B Group" that was identified in a Boston Globe article dated June 22, 1982. You asked us to determine if these activities violated provisions of 18 U.S.C. 1913 concerning lobbying with appropriated funds.

We briefed your office on July 23 and September 13, 1982. At that time your office asked us to determine the extent of the Boeing Company's lobbying and whether the costs of its effort or of Lockheed's effort could be charged to defense contracts. The scope and methodology of our review and a detailed statement of our findings and conclusions are attached as enclosure II.

SUMMARY OF FINDINGS AND CONCLUSIONS

We found that an extensive and cooperative effort was made by officials of the Air Force, the Office of the Secretary of Defense (OSD), the Lockheed Corporation, and several other Defense contractors and subcontractors during the period May 14, 1982, through July 22, 1982, to influence members of the House of Representatives, and later the House and Senate conferees, on the proposed $10 billion procurement of the C-5B aircraft. We found that this effort was initiated and directed by officials of the Department of Defense and that material, but undeterminable, amounts of appropriated funds and Government resources were spent for the purpose of influencing this procurement appropriation authorization measure which was pending before the Congress. Certain actions taken by Air Force and OSD officials to influence the Congress through the



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use of contractors were improper and violated the Federal appropriations act restrictions which prohibit the use of appropriated funds for publicity and propaganda purposes designed to influence legislation pending before the Congress. Also, the Defense Department may have exceeded the limitation on the funds it can spend on legislative liaison activities contained in the Defense Appropriation Act of 1982.

We found that the computerized recordkeeping system used to manage and coordinate these lobbying efforts was developed and operated by Lockheed personnel. The computer equipment and software used were owned or leased by Lockheed. The primary computer equipment was located in a Government-owned facility operated by Lockheed in Marietta, Georgia. The data base and all backup files were erased by Lockheed personnel between June 17 and June 23, 1982, at the direction of the president of Lockheed.

At the Pentagon Data Services Center, operated by the Air Force for the Department of Defense, we reviewed the listings of accounts, files, programs, and transactions for the period May 14, 1982, through August 18, 1982. We could find no evidence that the Center's resources had been used in any way to assist the lobbying effort. Air Force and OSD officials involved in the lobbying have all stated that no Federal computer systems or terminals were used for this purpose or to access the Lockheed data bases and reports.

LOCKHEED'S LOBBYING COSTS WERE SUBSTANTIAL AND MAY BE REIMBURSED IF ACTION IS NOT TAKEN

Lockheed's lobbying costs were substantial. Lockheed officials estimated that from May 15, 1982, through August 14, 1982, about $496,000 was spent. This did not include $265,190 in related corporate advertising costs, which are expressly unallowable charges to Federal contracts. Lockheed views its lobbying costs as allowable for reimbursement under existing Federal contracts, primarily because Defense Acquisition Regulation 15-205.51 was adopted in October 1981 and was not incorporated in the contracts for the vast majority of Lockheed's current Federal work. Lockheed officials have indicated a willingness to negotiate a voluntary disallowance. Unless Defense takes specific action to prevent it, Lockheed could be reimbursed an allocable share (roughly estimated at 54 percent or $287,840) of the C-5B lobbying costs through Federal payments for current cost-type contracts. We believe such reimbursement for lobbying costs is prohibited by existing appropriations act restrictions on the use of appropriated funds.

DEFENSE SPENT APPROPRIATED FUNDS TO INFLUENCE CONGRESS

The Defense Department has spent material, but undeterminable, amounts of appropriated funds to conduct the cooperative lobbying effort to win approval of the C-5B aircraft acquisition in the Congress. The Director of the Air Force Office of Legislative

Liaison--with the knowledge and consent of the Secretary of the Air Force, the Assistant Secretary of Defense for Legislative Affairs, and the Deputy Secretary of Defense--invited officials of Lockheed and several C-5B subcontractors to attend meetings held almost daily in his office. The stated rationale for inviting the contractors to these "airlift strategy" meetings was to use the contractors' lobbyists and subcontractor network to get the "right" information about the President's program to the Congress quickly and to get feedback on Congressional views. In other words, to promote the acquisition of the C-5B, to do things the Air Force was restricted from doing by antilobbying and legislative liaison appropriation restrictions, and to bring economic pressure to bear on members of the Congress.

The Air Force should not be permitted to use a contractor to engage in lobbying activities. Since the Air Force is prohibited by appropriations restrictions from directly mounting a grass roots lobbying campaign by requesting private citizen supporters throughout the country to contact their congressional delegations on behalf of the C-5B procurement, it follows that it may not engage a network of Defense contractors to accomplish the same thing. The Air Force improperly expended appropriated funds for increments of the salaries of officers and employees while they were engaged in the prohibited activities. Since the improper lobbying activities were performed by employees who were also doing legitimate tasks, we were unable to determine the amount of time expended on the improper activities and arrive at a cost of employee time. Because the improper and legitimate personnel salary costs are commingled, the amount of the improper expenditure cannot be determined. It would therefore be impractical to attempt to recover the improper expenditures.

Since the 18 U.S.C. 1913 contains fine and imprisonment provisions, its enforcement is the responsibility of the Department of Justice and the courts. Accordingly, this Office does not consider it appropriate to comment on its applicability to particular situations or to speculate as to the conduct or activities that would or would not constitute a violation. (20 Comp. Gen. 488 (1941)). Our role in this area is limited, for the most part, to determining whether appropriated funds were used in any given instance, and referring matters to the Department of Justice where deemed appropriate or when requested to do so. Therefore, we are referring the matter of the possible violation of 18 U.S.C. 1913, "lobbying with appropriated monies" to the Attorney General.

DEFENSE MAY HAVE EXCEEDED FISCAL 1982 LEGISLATIVE LIAISON FUNDS LIMIT

The Defense Department may have exceeded its legislative liaison funds limitation for fiscal 1982. In addition, it may have inappropriately classified--as training, for example--the costs of activities that were obviously related to legislative liaison purposes. Section 728 of the Department of Defense Appropriations Act (Public Law 97-114, Dec. 29, 1981, 95 Stat 1565) limits to

$7.5 million the amount of funds that Defense can spend on legislative liaison activities. This limitation was increased to $8 million by Public Law 97-257 (Sept. 10, 1982), the 1982 Supplemental Appropriation Act. Defense estimates that it will spend about $9.6 million on activities it presently classifies as legislative liaison (primarily the salaries of directly assigned personnel). Although it appears that Defense may exceed the current limitation by as much as $1.6 million, this fact cannot be conclusively established until after the end of this fiscal year.

The actual cost of legislative liaison may be even higher than reported because of Defense's accounting treatment. For example, the Air Force and the Army staged a demonstration of the C-5 aircraft at Andrews Air Force Base, Maryland, from June 14 to 16, 1982. The stated purpose of this demonstration was to provide information to interested members of Congress and their staffs. The estimated cost of the demonstration, about $69,800, was not charged to legislative liaison. It could be argued that the appropriation restriction language requires that the cost of the demonstration be accounted for as a legislative liaison expenditure. However, an OSD official stated that based on a 1975 verbal agreement between the Assistant Secretary of Defense for Legislation and the Senate Appropriations Committee, the legislative liaison activity restriction is limited primarily to personnel costs. Congressional demonstrations are not charged against the restriction. However, we believe the restriction should be amended to specifically indicate which costs related to legislative liaison activities are covered.

BOEING WILL SEEK REIMBURSEMENT OF ITS LOBBYING COSTS

Boeing Company officials estimate that about 166 hours of direct lobbying time, about 20 directly related trips, and hundreds of telephone calls and mailgrams to Boeing's principal subcontractors were involved in their lobbying effort to sell Boeing's B-747F between February 1 and July 31, 1982. Assuming a narrow interpretation of the Defense acquisition regulations, Boeing officials estimate that its lobbying costs amounted to $21,800 and that related unallowable corporate advertising expenses were $78,000 from February 1 through July 31, 1982. The Boeing estimate excludes many relevant elements of cost, such as salaries of executives, lobbyists, and other employees and related fringe expenses; communications; and outside services; and includes only directly associated travel expenses. Boeing asserts that an appropriately allocated portion of its legislative liaison and lobbying costs is allowable and reimbursible under current Federal contracts because Defense Acquisition Regulation 15-205.51 was effective in October 1981, then amended in April 1982, and appropriate clauses were not incorporated in Boeing's preexisting contracts. Such contracts constitute the vast majority of Boeing's Federal work in 1982 under cost-type contracts. We believe such reimbursement is prohibited by existing restrictions on the use of appropriated funds.

RECOMMENDATIONS TO THE SECRETARY OF DEFENSE

We recommend that the Secretary of Defense take all necessary steps to preclude the charging of any lobbying costs by Lockheed Corporation, the Boeing Company, and their subcontractors, or other firms, to any existing Federal contract. The Defense Contract Audit Agency and Defense plant representatives should be directed to disallow such costs in their audits of overhead accounts.

We recommend that the Secretary of Defense direct all Defense negotiators to seek contract amendments or provisions which will specifically exclude all lobbying costs in all current as well as future contracts.

We recommend that the Secretary of Defense conduct an administrative investigation after the end of the fiscal year to determine if a violation of the Anti-deficiency Act (31 U.S.C. 665) has occurred in the expenditures related to legislative liaison activities and take action as required by the statute if the appropriation restriction has been exceeded. Further, the Secretary needs to establish proper accounting and internal controls to prevent this problem from recurring.

We recommend that the Secretary of Defense review any existing guidance relating to actions and behavior of Defense officials when communicating with members of Congress on legislation, procurement proposals, and budget initiatives and revise such guidance in an effort to preclude future incidents such as described in this report.

RECOMMENDATIONS TO THE CONGRESS

To better implement the intent of the annual antilobbying appropriation restrictions, the Congress may wish to enact in permanent legislation a set of guidelines on appropriate actions by agencies, Federal employees, and contractors when carrying out legitimate communication with the Congress regarding agency policies, programs, activities, and procurements. Such guidance should specifically preclude cooperative efforts, as exhibited in this case, among Government officials and Federal fund recipients, such as contractors and grantees, for the purpose of influencing members of the Congress on legislation being considered by that body. Permanent legislation should lead to agency heads establishing appropriate implementing rules and regulations.

We also recommend that the Congress consider amending the legislative liaison appropriation restriction that limits the amount of funds that Defense and the service departments may spend on these activities. The law should specifically state which costs are subject to this restriction; for example, whether the Congress intends for this restriction to apply to any or all of the costs of personnel, travel and transportation, data processing services, subscription services, and equipment and troop demonstrations that are related to legislative liaison carried on by Defense.

We are concurrently issuing a letter with similar enclosures to Congressman Brooks, the Chairman of the House Committee on Government Operations. We did not obtain agency comments on this letter. Unless you release its contents earlier, we plan no further distribution of this letter until 30 days from its date. At that time, we will send copies to the Director of the Office of Management and Budget, the Attorney General, the Secretary of the Army, the Lockheed Corporation, and the Boeing Company, and will make copies available to other interested parties.

Sincerely yours,

Charles A. Bowsher

Comptroller General
of the United States

Enclosures

APPENDIX I

United States Senate

COMMITTEE ON APPROPRIATIONS
WASHINGTON, D.C. 20510

June 24, 1982

The Honorable Charles A. Bowsher
Comptroller General of the United States
General Accounting Office
Room 7000
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Bowsher:

Recent press accounts depict an apparently illegal collaborative effort on the part of senior Defense Department officials and at least one officer of the Lockheed Corporation. According to an article in the Boston Globe of June 22nd and the revelations of several members of Congress, this lobbying team is employing sophisticated techniques in an all-out joint effort to ensure that the U.S. House of Representatives does not block the production of C-5B aircraft by Lockheed for the Air Force. As you will recall, the Senate adopted an amendment to S. 2248, the Defense Department Aurhorization Act, which earmarked funds to purchase widebody aircraft from commercial airlines rather than to produce an additional fifty new C-5 aircraft. Obviously, Lockheed stands to suffer by the Senate's action.

Regardless of the merits of the C-5 aircraft or the Senate's decision on its purchase, these disclosures indicate that a group of senior officials of a federal department is participating in what can only be characterized as a lobbying effort in blatant violation of 18 USC 1913. This law prohibits any use of appropriated funds to carry on any lobbying activities in the following provisions:

"No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation."

APPENDIX I

One story states that sophisticated computer systems have been used to keep track of prohibited lobbying activities. In all probability, the computers and programming support for this system were paid for by the U.S. taxpayers.

Given these conditions, I request that the General Accounting Office immediately commence an investigation of these and any other activities on the part of executive department personnel to influence the Congress's decision in the C-5 matter. I further request that the GAO interview the principals identified in the Boston Globe article reprinted on pages H3813 and H3814 of the Congressional Record for June 22, 1982. From these interviews and other investigations, I ask that you provide a report to me on the accuracy of the allegations regarding the existence and activities of the so-called "C-5B Group". I also request that you provide your opinion on whether or not the provisions of 18 USC 1913 have been violated by any part of these alleged activities.

I must stress the urgency of this request. If the reported activities do exist and are indeed in violation of the law, this fact must be immediately made known so that the illegal influence is terminated and the Congress can proceed with its duties on the C-5 question and other matters in all fairness.

I appreciate your prompt handling of these questions.

Sincerely,

William Proxmire, U.S.S.
Ranking Minority Member

WP:skl

DETAILED FINDINGS AND CONCLUSIONS

SCOPE AND METHODOLOGY

Our review was performed in accordance with our current "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions," except that we did not obtain agency comments on our findings, conclusions, and recommendations. We interviewed officials of the Office of the Secretary of Defense, and of the Air Force, to determine what efforts they made to influence members of Congress on the C-5B program. We also obtained cost data from the Army. We interviewed officials of Lockheed Corporation, potential subcontractors for the C-5B program, and other companies involved to determine the scope of their lobbying effort and whether the costs of their effort would be charged to Government contracts. We also interviewed officials of the Boeing Corporation to determine the extent of their lobbying effort, the subcontractors aiding them, and their position on charging this expense to current or future Defense contracts.

We reviewed the legislative history of Federal laws pertaining to lobbying activities and appropriations restrictions on legislative liaison activities. We also reviewed the listings of accounts, files, programs, and transactions of the computers in the Air Force Data Services Center to determine whether the computers there were used in any way in the C-5B lobbying.

MILITARY AIRLIFT PROGRAM

The Defense Department has long been concerned about the military services' inadequate airlift capabilities, with recent emphasis on intertheater airlift. In 1979 the Secretary of Defense directed that the services emphasize development of the CX--an intertheater transport plane with secondary intratheater capability. A CX Request for Proposals was released to industry in October 1980.

In response to the CX Request for Proposals, Boeing, Lockheed, and McDonnell-Douglas submitted proposals for a newly designed CX aircraft. In August 1981, the Secretary of the Air Force announced that the McDonnell-Douglas C-17 was the winner of the CX competition. In September 1981, Lockheed submitted an unsolicited proposal to build 50 C-5B aircraft--a new version of C-5A, the primary aircraft currently in use for transporting outsize and oversize cargo--as an alternative to the CX development program.

In early January 1982, the Secretary of the Air Force advised the Deputy Secretary of Defense that as executive agency it had chosen a combination of C-17 cargo aircraft, McDonnell-Douglas KC-10 tanker/cargo aircraft, and Civil Reserve Air Fleet (CRAF) enhancements as the recommended airlift program. However, with an

ENCLOSURE II

additional $5 billion of available funds in the budget, the Defense Department announced in late January 1982 that it was not going to procure the C-17 now, and instead proposed the purchase of 44 KC-10s under an existing contract and 50 C-5Bs under a new sole-source contract with Lockheed.

On May 13, 1982, the Senate deleted authorization of funds for the C-5 aircraft and authorized instead the procurement of new and used commercial wide-body cargo aircraft to meet its current military airlift requirements. A similar change was initiated in the House by Congressman Norman Dicks and others.

INTENSE LOBBYING EFFORT

After the defeat of the C-5B program in the Senate, the Director of Air Force Legislative Liaison initiated, organized, and directed an intense legislative liaison and lobbying effort to promote the C-5B program in the House. The effort included numerous visits to Congressmen by Air Force, Army, and Marine officials, other Congressmen, Lockheed Corporation officials, and representatives of other companies that had an interest in the C-5B program or did business with Lockheed or the Department of Defense. It also included drafting and distributing "Dear Colleague" and Defense position letters on the C-5B aircraft and a special demonstration of the aircraft's capabilities for interested members of Congress and their staffs. A computer was used by Lockheed to monitor the progress of the legislative liaison and lobbying effort.

Strategy formulated to influence Congress

A meeting was held on May 24, 1982, at the Pentagon to determine actions necessary to win approval of the C-5B program prior to the House floor debate of the fiscal 1983 Defense Authorization Bill. Several high ranking civilian and military Air Force officials attended the meeting. In addition, staff members of three Congressmen (one Senator and two Representatives) from Georgia, the State that would benefit most from a contract award to Lockheed, attended the airlift meeting. As a result of the meeting, a strategy was developed that included 14 actions to be taken by the Air Force or OSD. Key elements of this initial strategy 1/ that appear questionable are:

--"Energize AFA [Air Force Association] and ROA [Reserve Officers Association]."

1/Taken from an internal, unsigned, Air Force Legislative Liaison memorandum, dated May 24, 1982.

--"Draft "Dear Colleague" letter in support of C-5B. Issues are: military utility, present CRAF [Civil Reserve Air Fleet] availability of the 747s, ownership issues, false savings associated by budget outlays."

--"Establish bi-weekly strategy session with OSD, Air Force and Lockheed." 1/

The Secretary of the Air Force and the Assistant Secretary of Defense for Legislative Affairs were aware of the strategy established to achieve approval of the C-5B program in the House, and both believed that the actions taken and the coordinated effort with Lockheed were appropriate and necessary. The Deputy Secretary of Defense and the Under Secretary of Defense for Research and Engineering were also aware that Defense personnel were talking to Lockheed and other contractors, but stated they were not aware of the extent of the coordinated effort.

According to Air Force officials, Lockheed was invited to attend the near-daily airlift strategy meetings to ensure that the corporation's actions were consistent with what the Air Force was doing. The intent of working with Lockheed was to use Lockheed's network of lobbyists and other contacts to get the "right" information about the President's program to the Congress quickly and to get feedback on congressional views. One Air Force official stated that "Lockheed did things that the Air Force couldn't. It was a great advantage cooperating with them because they could work the Hill every day."

Air Force and Lockheed officials contend that a massive effort was needed to counter the "misinformation" that had been provided by Boeing on military airlift requirements. Air Force and OSD officials believe that the lobbying efforts were proper since it is in the public interest to defend the budget in support of the President's program. An Air Force official stated that there are no Defense guidelines on what constitutes proper legislative liaison activities and that "we do things unless otherwise proscribed."

Lockheed's lobbying effort was extensive

The Secretary of the Air Force suggested to Lockheed's chairman of the board that the company "better get moving or it will lose the C-5B program in the House." Subsequently, Lockheed initiated an intense lobbying effort to promote the C-5B program in

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1/Schedule permitting, airlift strategy meetings with contractors were actually held daily in the Pentagon.

the House. Lockheed's involvement in the lobbying efforts included the following:

--Solicited and received lobbying support from its subcontractors such as General Electric, Avco, Colt Industries, and General Dynamics. Other firms that are not subcontractors, such as Kodak, Arthur Young, 1/ and other Defense contractors such as Flying Tigers also participated in the lobbying efforts on behalf of the C-5B program. The lobbying support often involved contacting the Congressman representing the district in which the company has facilities and explaining the program's possible impact on jobs and the local economy.

--Made numerous visits to congressional members or their staffs to provide information on the C-5B and military airlift requirements and to put Boeing's arguments for the B-747F aircraft in a different perspective. According to Lockheed-prepared computer printouts, more than 500 visits were to be made by employees of Lockheed and other companies to members of Congress or their staffs. We did not determine how many visits were actually made.

--Attended the near-daily airlift strategy meetings at the Pentagon. During these meetings, Lockheed officials provided feedback from congressional contacts and made suggestions to the Air Force on what members should be visited and the issues to be addressed. Lockheed officials also reviewed draft Air Force and Defense position papers, letters, and testimony and made suggestions for their utility.

--Obtained and distributed copies of Defense Department position letters on the C-5B program to members of Congress who were not the addressees. Lockheed also ensured that its subcontractors had copies of supportive Defense letters to distribute.

--Prepared point papers on the Civil Reserve Air Fleet and other airlift issues.

--Contacted all the major airlines and requested that they stay out of military business and remain neutral in the airlift issues. A letter from the chairman of the board of Lockheed Corporation was also sent to every airline that owned a Boeing 747 aircraft, requesting neutrality on the airlift issue. The letter stated that if the B-747F

1/Arthur Young is the public auditor for both Lockheed and Avco.

were selected for military airlift, the airlines would stand to lose Government contracts for transporting military passengers and cargo.

Computer used to manage lobbying effort

Lockheed developed a computerized recordkeeping system to help manage the C-5B lobbying efforts. Two types of reports were generated from the computerized system. The first was a report of actions to be taken and their status. Typical entries in the action report included:

ACTION: 05/26 AF
DOD

Energize all military associations and obtain leadership and "back home" support.

STATUS: Open
LL: Issue too split by contractors.

ACTION: 06/01 LK

Member to request comments from AF on Dicks' letter.

STATUS: 6/3 Montgomery did
6/4 AF response in work
6/11 Draft prepared

ACTION: 06/14 LK

Get AF letter to Sonny Montgomery--responding to Dicks' points distributed to members.

STATUS: Complete

The first action shown, "energize all military associations," was one of the actions proposed at the Pentagon meeting that established the strategy to influence the House on the C-5B program. The printout indicates that the Air Force and Defense Department were to be responsible for carrying out the action. It also shows that the Air Force Office of Legislative Liaison (LL) decided not

to pursue obtaining support from military associations. A senior Air Force official stated that it was decided to "stay away from the associations because they would be torn among the contractors involved and they might come up with something on their own."

The second and third actions shown are related. The printout indicates that Lockheed was to be responsible for asking a Congressman to ask the Air Force to comment on Congressman Dicks' "Dear Colleague" letter. This particular "Dear Colleague" letter strongly advocated the Boeing 747 aircraft for military airlift. The printout also shows that Congressman Montgomery did ask the Air Force to respond and that on June 11, 1982, a draft response was prepared by the Air Force. The letter was actually dated June 10, 1982. We asked Congressman Montgomery's administrative assistant whether the Congressman was asked to request the information from the Air Force. He stated he believed that Congressman Montgomery made the request on his own initiative. The third action on the printout shows that Lockheed was responsible for distributing the Air Force response to Congressman Montgomery to other members of Congress and that the action was completed. Normally, this response would not have been distributed by the Air Force, except to the addressee.

The second report was a "Congressional Contact Tally" which listed each member of the House, the member's position on the C-5B program, contacts to be made to the member by contractors, Defense officials, and other members of the Congress and further actions to be taken. Typical entries include:

Member	Contr. Contacts	Pos	Member Contacts	Further Actions
Adabbo, Joseph P. (D-NY) 2256R 225-3461, HAC-Def. S/C-Chairman	LOK	u	Ginn	Carlucci one on one. Orr one on one. Against C5 in FY 82 markup.
Gen. Dyn. (GELAC) Colt. Indust. (GELAC) Gen. Dyn. (GELAC)	Blackshaw Bolles Stirk			More work to swing. Will contact. Buy both C-5's and 747s. RKC: See Seelmyer (A/A)

Bennett, Charles E. (D-Fl) 2107 R 225-2501 Air Force	RBO Hale	u o	Brinkley	Member contact P.X. Kelly contact 'C-5 in trouble'

The following explains the abbreviations used in the reports:

A/A : Administrative Assistant
LL : Legislative Liaison
LK : Lockheed Corporation
LOK : Lawrence O. Kitchen, President of Lockheed Corporation
GELAC: Lockheed Corporation, Georgia Company
RBO : Robert B. Ormsby, President of Lockheed Corporation, Georgia Company
RKC : Richard K. Cook, Vice President, Lockheed Corporation
Pos : Position
o : opposed
u : uncommitted
S/C : subcommittee

The computerized recordkeeping system was developed by Lockheed employees on a Lockheed computer. The computer that produced the reports is located in Building 6, a Government-owned facility of the Lockheed plant in Marietta, Georgia. The development work and data entry were accomplished from Lockheed's Washington office via a data communications link to the main computer. This application of the computer system was developed uniquely for the C-5B lobbying effort.

The computer system was updated daily by Lockheed personnel. Other companies involved in the lobbying effort reported to Lockheed actions they had taken. Often, the actions taken were reported in meetings held by Lockheed with its subcontractors. For the most part, progress on Air Force and OSD actions was entered from notes taken by the president of Lockheed or other Lockheed personnel who attended the airlift strategy meetings. However, on at least one occasion, an Air Force official called a Lockheed employee to report progress made on 10 to 15 tasks that the Air Force was responsible for accomplishing.

The computerized reports were used primarily by the president of Lockheed to help him manage the lobbying effort. One copy of each report was provided to the Air Force Office of Legislative Liaison and the Defense Office of Legislative Affairs. Although Air Force and OSD officials had copies of the Congressional Contact Tally and the lobbying action report, they stated that the reports were neither used nor asked for. One Air Force official stated that

the reports were "shredded" after he read them. However, Air Force airlift strategy meeting memorandums ceased shortly after the Lockheed reports became available.

Computerized records were destroyed

No airlift strategy meeting was held on June 14, 1982. Because there was no meeting, the updated copies of the Congressional Contact Tally and lobbying action report were hand delivered by a Lockheed employee to the Air Force Office of Legislative Liaison and the Defense Office of Legislative Affairs. A copy of each of the two reports for June 14, 1982, was subsequently leaked to the Project on Military Procurement, a private nonprofit public interest organization which, in turn, provided copies to the press.

Lockheed officials said they discovered that their C-5B lobbying reports were provided to members of the press on June 16, 1982. After a final update on June 18, 1982, Lockheed destroyed all computerized records, retaining one copy of the final update. We reviewed that copy and found a number of new items and changes in the format of the reports.

Lockheed's lobbying costs were substantial

The total cost of the Lockheed C-5B program lobbying effort has been estimated by Lockheed at about $496,000. This amount does not include advertising expenses in the amount of $265,190 (which are unallowable charges to Defense contracts) for the Washington Post, Wall Street Journal, and Roll Call, nor does it include lobbying costs of Lockheed subcontractors and other companies that supported Lockheed's efforts.

Lockheed has advised us that it views its lobbying costs as allowable costs for reimbursement under existing Federal contracts, primarily because Defense Acquisition Regulation 15-205.51, prohibiting the reimbursement of contractor lobbying costs, was adopted in October 1981 and is not incorporated in the contracts for the vast majority of Lockheed's current Federal work. Lockheed believes the C-5B lobbying costs were incurred in response to requests by congressional and executive branch personnel. However, Lockheed officials have stated that the firm is willing to negotiate a voluntary disallowance for overhead settlement purposes. Unless Defense takes specific action to prevent it, Lockheed could be reimbursed an allocable share (roughly estimated at 54 percent or $287,840) of the C-5B lobbying costs through Federal payments for current cost-type contracts. We believe such reimbursement for lobbying costs is prohibited by existing legal restrictions on the use of appropriated funds.

The Boeing Company effort

Boeing Company officials estimate that about 166 hours of direct lobbying, about 20 directly related trips, and hundreds of telephone calls and mailgrams to Boeing's principal subcontractors were involved in their lobbying effort to sell Boeing's B-747F between February 1 and July 31, 1982. Assuming a narrow interpretation of the Defense acquisition regulations, Boeing officials estimate that its lobbying costs amounted to $21,800 and that related unallowable corporate advertising expenses were $78,000 from February 1 through July 31, 1982. The Boeing estimate excludes many relevant elements of cost, such as salaries of executives, lobbyists, and other employees and related fringe expenses; communications; and outside services; and includes only directly associated travel expenses. Boeing asserts that an appropriately allocated portion of all of its legislative liaison and lobbying costs is allowable and reimbursible under current Federal contracts because Defense Acquisition Regulation 15-205.51 was effective in October 1981, then amended in April 1982, and appropriate clauses are not incorporated in its preexisting contracts. Such contracts constitute the vast majority of Boeing's Federal work in 1982 under cost-type contracts. In our opinion, any reimbursement for lobbying costs is prohibited by existing legal restrictions on the use of appropriated funds.

Lobbying techniques not unique to C-5B

Air Force and OSD officials stated that the actions taken to promote the C-5B program were similar to those taken for other large Defense programs such as the B-1 Bomber and the sale of AWACS aircraft to Saudi Arabia. A senior Air Force official commented that the lobbying effort was "democracy in action."

A senior Lockheed official stated that the lobbying effort was unique only in that a computer was used to help manage it. Similar efforts were made for other large Defense programs; the tasks were similar. The airlift strategy meetings and the use of the computer made the effort more highly organized.

DEFENSE OFFICIALS VIOLATED ANTILOBBYING AND OTHER LAWS

Air Force and OSD officials violated Federal antilobbying laws by using contractors to do things that they could not do themselves. Also, the Defense Department may have exceeded the limitation on the funds it can spend on legislative liaison activities and inappropriately classified--as training, for example--the cost of activities that were obviously for legislative liaison.

Federal antilobbying restrictions

Two laws prohibit the use of appropriated funds for lobbying activities by Defense officials. These are 18 U.S.C. 1913, entitled "Lobbying with appropriated moneys" and section 607(a) of the annual Treasury, Postal Service, and General Government Appropriation Act.

Penal antilobbying law is the responsibility of the Justice Department

The penal statute that is pertinent to lobbying activities of Federal agencies is 18 U.S.C. 1913, and provides that:

> "No part of the money appropriated by an enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member of Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.
>
> "Whoever, being an officer or employee of the United States or of any department or agency thereof, violates or attempts to violate this section, shall be fined not more than $500 or imprisoned not more than one year, or both; and after notice and hearing by the superior officer vested with the power of removing him, shall be removed from office or employment."

A review of the legislative history and the case law construction of this statute establishes that the Congress intended to prohibit Federal agencies from using appropriated funds to assist individuals and/or organizations outside Government such as defense contractors, in urging members of Congress to support or oppose legislation pending before the Congress. By the same token, the Congress intended to exempt from the lobbying restriction certain direct communications from the executive branch by the following provision:

> "* * * but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any member or to Congress, through the proper official channels, request for legislation or appropriations which they deem necessary for the efficient conduct of the public business." (Emphasis added.)

In light of the foregoing, it appears that 18 U.S.C. 1913 is intended primarily to restrict officers and employees of Federal agencies from expending appropriated funds to encourage and assist persons and organizations outside the Federal Government to contact members of Congress on behalf of legislation favored by the agency.

Since the above statute contains fine and imprisonment provisions, its enforcement is the responsibility of the Department of Justice and the courts. Our role in connection with this statute is limited for the most part to determining whether appropriated funds were used in any given instance, and referring matters to the Department of Justice when we deem it appropriate or when we are requested to do so. To the best of our knowledge, no one has ever been successfully prosecuted under this statute.

Section 607(a) antilobbying appropriation restriction is also applicable

Since the early 1950s, various appropriation acts have contained general provisions prohibiting the use of appropriated funds for "publicity or propaganda" designed to influence legislation. The acts appropriating funds for the Department of Defense do not contain such restriction. However, section 607(a) of the Treasury, Postal Service, and General Government Appropriation Act contains an antilobbying restriction:

> "No part of any appropriation contained in this or any other Act, or of the funds available for expenditure by any corporation or agency, shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before Congress." (Emphasis added.)

The prohibition set forth in section 607(a) applies to the use of any appropriation "contained in this or any other Act." Thus, it is applicable to the use of appropriated funds by the Department of Defense.

We recognize that every Federal agency has a legitimate interest in communicating with the public and the Congress regarding its policies and activities. If the policy or program of an agency is affected by pending legislation, including appropriation measures,

discussions of that policy by officials will necessarily refer to such legislation and will presumably be either supportive of or in opposition to it. An interpretation of section 607(a), which strictly prohibited expenditures of public funds for dissemination of views on pending legislation, would consequently preclude virtually any comment by officials on administration or agency policy, a result we do not believe was intended.

The prohibition of section 607(a) applies primarily to expenditure by agencies and Departments of appropriated funds designed to encourage and assist certain individuals, members of the public at large, or private organizations in urging members of the Congress to support or oppose pending legislation.

What constitutes a violation?--The question to be answered when there is a possible violation of the appropriations restriction contained in 607(a) is whether any Federal funds were expended on an improper activity. Improper expenditure of funds is difficult to demonstrate when the expenditure is made in connection with authorized activities. However, in the past we have held that improper expenditures include increments of the salaries of officers and employees who spend part of their time performing activities that violate the above-referenced antilobbying appropriations restrictions. Our decision, B-178648 of September 21, 1973, involved a situation in which agencies authorized their employees to prepare recorded news reports of agency activities for daily dissemination to radio stations. Generally, agencies may legitimately expend funds to keep the public informed of their activities. However, some of the agencies would occasionally include in the recorded material an exhortation that listeners contact their congressional representatives and urge them to support or oppose certain legislation. We found this to be a violation of the antilobbying appropriations restrictions. Since the improper lobbying activities were performed by employees who were doing legitimate work, we were unable to determine the amount of time expended on the improper activities and arrive at a cost of employee time.

We believe the precedent set by this earlier decision applies to the Defense Department's lobbying activities in support of the C-5B program. The Director of the Air Force Office of Legislative Liaison invited certain C-5B contractors to attend "airlift strategy" meetings held in his Pentagon office almost daily. The stated rationale for inviting the contractors was to use the contractors' network of lobbyists and other contacts to get the "right" information to the Congress quickly and to get feedback on congressional views. In other words, the purpose was to do things the Air Force was restricted from doing under the antilobbying appropriation restrictions by bringing pressure to bear on members of Congress. During the daily meetings, the contractors reported the results of their lobbying efforts. Defense officials would also report

the results of their lobbying efforts. On at least two occasions an Air Force official telephoned a Lockheed official to provide an update on Air Force actions taken and to obtain information on Lockheed's lobbying efforts.

The Air Force should not use a contractor to engage in grass roots lobbying activities that it could not perform itself. Since the Air Force is prohibited by the above-cited statutory provisions from directly mounting a grass roots lobbying campaign by requesting private citizen supporters throughout the country to contact their congressional delegations on behalf of the C-5B procurement, it follows that the Air Force may not engage a network of Defense contractors to accomplish the same result.

Improper activities on the part of Air Force and OSD officials were intermingled with legitimate functions. We found that office space of the Director of the Air Force Office of Legislative Liaison was used for about an hour on about 19 occasions from May 26 through July 12, 1982. Air Force and OSD personnel took part in these meetings. Part of the time was spent discussing activities that the Air Force could not have performed on its own. The costs of salaries for the individuals attending these meetings cannot be segregated from otherwise authorized activities. Without contractor participation, Air Force and OSD officials would not have spent time discussing contractor lobbying activities. Therefore, an undetermined amount of appropriated funds was used improperly to influence pending legislation--a violation of section 607(a). Because of the comingling of proper and improper expenditures, we do not believe it would be practical to recover amounts illegally spent.

Since 18 U.S.C. 1913 contains fine and imprisonment provisions, its enforcement is the responsibility of the Department of Justice and the courts. Accordingly, this Office does not consider it appropriate to comment on its applicability to particular situations or to speculate as to the conduct or activities that would or would not constitute a violation. (20 Comp. Gen. 488 (1941)). Our role in this area is limited, for the most part, to determining whether appropriated funds were used in any given instance, and referring matters to the Department of Justice where deemed appropriate or when requested to do so. Therefore, we are referring the matter of the possible violation of 18 U.S.C. 1913, "Lobbying with appropriated moneys" to the Attorney General.

Defense Department may have exceeded its legislative liaison funds limitation

Another limitation on activities carried out by the Defense Department is an appropriation restriction that limits the amount

of funds that can be spent on legislative liaison. Defense may have exceeded this limitation and may have also inappropriately classified as training, certain activities that were obviously for legislative liaison.

Section 728 of the Department of Defense Appropriation Act (Public Law 97-114, Dec. 29, 1981, 95 Stat 1565) limits to $7.5 million the amount of funds that the Defense Department can spend on legislative liaison activities during fiscal 1982. This limitation was increased to $8 million with the enactment of the 1982 Supplemental Appropriation Act (Public Law 97-257, Sept. 10, 1982). However, Defense estimates that it will spend about $9.6 million for reported legislative liaison activities. Although it appears that Defense may exceed its current limitation by as much as $1.6 million, this fact cannot be conclusively established until after the end of this fiscal year.

The actual cost of legislative liaison may be even higher than reported because of accounting treatment. For example, the Air Force and the Army have performed legislative liaison activities and classified them as training. At the request of the Air Force's Director of Legislative Liaison, the Air Force and the Army staged a demonstration of the C-5 aircraft at Andrews Air Force Base, Maryland, from June 14 to 16, 1982. The stated purpose of the demonstration was to show interested members of Congress and their staffs the capability of the C-5 aircraft to haul outsize Army combat equipment. Clearly, this is a legislative liaison activity. However, the funds used for the demonstration were charged to training. The C-5 aircraft used in the demonstration was based at Dover Air Force Base, Delaware, and flew to Pope Air Force Base, North Carolina, to pick up Army personnel and equipment. The equipment included two Cobra and one Blackhawk helicopters and two armored vehicles. The cost of the demonstration was estimated at about $69,800.

The legislative history of this provision contained in House Appropriations Committee report 1830 (85th Cong. 2d sess. 1958 p. 19) establishes that it was the intent of the Congress in enacting the provision to include within the restriction "* * * all costs related to such work including pay of civilian and military personnel and other direct expenses." (Emphasis supplied.)

It could be argued that the appropriation restriction language requires that the cost of the demonstration be accounted for as a legislative liaison expenditure. However, an OSD official stated that, based on a 1975 verbal agreement between the then Assistant Secretary of Defense for Legislation and the then Chairman of the Senate Appropriations Committee, the legislative liaison activity restriction is limited primarily to personnel costs. Congressional

demonstrations are not charged against the restriction. However, we believe the restriction should be amended to specifically indicate which costs related to legislative liaison activities are covered.

Conclusions

An extensive and cooperative effort was initiated and directed by officials of the Air Force and the Office of the Secretary of Defense, with the Lockheed Corporation and several other Defense and non-Defense firms, for the purpose of influencing members of the Congress on the proposed $10 billion procurement of 50 C-5B aircraft, then under consideration by the Congress.

Air Force and OSD officials have violated Federal antilobbying laws by expending appropriated funds in the aiding and supporting of contractors to perform lobbying activities. Also, reimbursement to these contractors for portions of their lobbying costs as overhead expenses incident to current year Government cost-type contracts is prohibited by section 607(a).

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