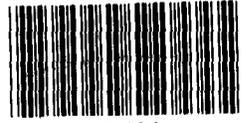


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UNITED STATES GENERAL ACCOUNTING OFFICE

FOR RELEASE ON DELIVERY
EXPECTED AT 10:00 A.M. EST
TUESDAY, NOVEMBER 30, 1982

STATEMENT OF
CHARLES A. BOWSER
COMPTROLLER GENERAL
OF THE UNITED STATES



120031

BEFORE THE
SUBCOMMITTEE ON INVESTIGATIONS
COMMITTEE ON ARMED SERVICES
HOUSE OF REPRESENTATIVES

Mr. Chairman and Members of the Committee:

I am here today to discuss our report of September 29, 1982, "Improper Lobbying Activities by the Department of Defense on the Proposed Procurement of the C-5B Aircraft" (GAO/AFMD 82-123 and 124). This report was prepared in response to requests from Chairman Jack Brooks, House Committee on Government Operations and Senator William Proxmire, Ranking Minority Member of the Senate Committee on Appropriations.

~~You have asked for a detailed analysis of the Department of Defense response to our report.~~ With your permission, Mr. Chairman, I would like to submit that analysis for the record as an attachment to my prepared statement. This morning, I would like to explain our findings and, I hope, set the record straight about the GAO role in this investigation.

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Our report concluded, first, that there was a cooperative effort on the part of the Air Force and Lockheed to influence House consideration of a bill which would authorize procurement of the C-5B aircraft. Secondly, we found that the Air Force's participation in this effort violated an appropriation act restriction against using appropriated funds "in this or any other Act" for "publicity and propaganda purposes designed to support or defeat legislation pending before Congress." This Government-wide restriction, in virtually identical form, has appeared in appropriations acts since the early fifties. We have frequently been asked to rule on whether specific actions by Government agencies ran afoul of that restriction.

It has always been clear to us that any Government agency is free to contact Members of Congress to urge the introduction, passage, or defeat of legislation which affects its programs, just as the agency may also keep in close touch with Congressional committees concerning its day-to-day operations. Similarly, private individuals and companies, using their own funds, have every right to make direct congressional contacts and also to appeal indirectly to the Congress through advertising campaigns and other appeals to the general public on matters of concern to them. We have no quarrel with the Lockheed Corporation, especially since we are advised that it is willing to negotiate a voluntary disallowance for its lobbying activities.

We are not dealing, however, with lobbying activities carried out separately by Lockheed and by the Air Force. We found evidence of joint consultation and decision making in carrying out these activities. It added up, in my view, to a cooperative lobbying campaign. The issue we had to decide was whether the nature of that cooperation moved the lobbying involved into the range of the impermissible.

The Department of Defense, in its response to our report and in other statements, has maintained that the Air Force-Lockheed lobbying effort was perfectly appropriate and was merely a legitimate exchange of information on a matter of extreme importance to both parties. Lockheed has made the same point in a recent letter to us. DOD also states that there is no evidence that its informational exchange with Lockheed and other contractors resulted in any more lobbying than would have occurred otherwise. Rather, DOD says, the meetings simply eliminated the possibility of duplicative efforts.

DOD interprets the appropriation restriction as applying only to broad-based mass appeals to the public in general, seeking to have members of the public contact their congressmen in support of the Executive agency's position. DOD argues that meetings and discussions between officials of DOD and Lockheed or other contractors does not amount to "grass roots" lobbying as previously interpreted by my Office.

It is true that many GAO decisions have dealt with the use of appropriated funds to induce members of the general public to

contact their congressmen, as in the case of the Government-produced radio tapes urging congressional contacts, which was mentioned in the DOD response. In a number of other cases, however, involving situations where Federal funds were used to help individuals or small groups lobby directly with the Congress for causes of mutual concern to both the agency and the lobbying group, we have also concluded that the anti-lobbying restriction was violated. (These cases are discussed in our detailed analysis.) None of these cases involved so-called "grass roots" lobbying. The essence of the violation in all of these cases was that Federal funds were being expended in support of the lobbying efforts of non-Federal entities. The Congress has prohibited agencies from using their appropriations for such purposes.

In this C-5B case, we found a concerted joint effort between Lockheed and the Air Force to reach out to Lockheed's contractors and employees and to other companies not directly involved in the C-5B development and production, for the express purpose of influencing the House of Representatives on the C-5B authorization. This effort, operating largely under Government auspices, involved the use of a significant, although undeterminable, amount of appropriated funds, through many joint meetings in the Pentagon attended by a number of high-ranking DOD and Air Force personnel. In our view, the effort, in its totality, went beyond the limit of appropriate executive-legislative contact allowed by the law.

The strategy to be taken in the C-5B lobbying effort was initiated at a meeting held at the Pentagon on May 24, 1982 which was attended by Air Force officials, as well as interested congressional staff members. An unsigned Air Force legislative liaison memorandum reflected a lobbying strategy agreed upon at the meeting. It included plans for bi-weekly "strategy sessions" to be attended by representatives of the Office of the Secretary of Defense, the Air Force, and Lockheed. As it turned out later, these sessions were held almost daily. On the same day, the President of Lockheed Corporation, Mr. Lawrence Kitchen, met with the Deputy Secretary of Defense, Mr. Frank Carlucci, and discussed the C-5B program.

Lockheed used a computerized recordkeeping system to record actions which it was agreed at the strategy sessions would be taken by the Air Force, Lockheed, or others. It also maintained a "congressional contact tally" which listed each member of the House and included information, as determined by the strategy sessions, about contacts to be made to various congressmen by contractors, including Lockheed, by Defense officials, or by other members of Congress. After copies of the two computer-generated reports for June 14, 1982 were leaked to the press, Lockheed destroyed all of its computerized records, back-up files and log tapes. Except for a single, edited copy of its final, June 18, 1982, print-out, all Lockheed records were erased. Thus, we were unable to examine the daily records or verify the date of the destruction of the data base.

There were at least 18 joint strategy meetings held on an almost daily basis in Air Force offices between May 26, 1982 and June 24, 1982. There may have been additional meetings as well. Here are a few of the "action" items discussed at the strategy sessions which further demonstrate the extent of the joint lobbying effort:

- ... Lockheed was to distribute an Air Force response to a letter from Congressman Montgomery to other members of Congress. In that letter, the Air Force explained why it preferred the C-5B. Although the Air Force could have distributed the letter on its own, its use of Lockheed representatives to deliver and discuss the letter was improper, in our view.
- ... Lockheed was to arrange contacts with Congressman Addabbo by its own representatives and representatives of other contractors. The Air Force was also to contact Congressman Addabbo directly. This collaboration between the Air Force and Lockheed to arrange multiple contacts of an influential congressman was also improper, in our view.
- ... Lockheed was to be responsible for arranging more than 500 visits to members of Congress by employees of Lockheed and by representatives of other companies. This information is contained in the surviving printout.

... At the strategy meetings, Lockheed discussed contacting all the major airlines to request that they stay out of military business and remain neutral on the airlift issue. Lockheed also presented a draft letter for consideration by the group which would go to owners of Boeing 747 aircraft. Air Force officials characterized the letter as being too long and not to the point. A letter from the Chairman of the Board of Lockheed Corporation was subsequently sent to every airline that owned a Boeing 747 aircraft, requesting neutrality on the airlift issue. The letter stated that if the B-747F was selected for military airlift, the airlines would stand to lose Government contracts for transporting military passengers and cargo.

As we have said often in our decisions on this subject, it is very difficult to draw a clear line between permissible and impermissible lobbying efforts--the exact point at which the legitimate furnishing of information to members of Congress goes too far and violates the statutory restrictions. We have therefore been reluctant to make findings of violations except in truly egregious cases. In my opinion, Mr. Chairman, this is such a case.

We recognize, Mr. Chairman, that there may be differing views on precisely which activities the Congress intended to prohibit. The legislation provides little in the way of definitions or other guidance. We note that DOD and GSA have initiated regulatory changes to limit the extent, or, in the case of DOD, to preclude altogether, the inclusion of lobbying expenses by contractors as cost reimbursable.

In addition, legislation was introduced in the 97th Congress to delineate the extent of permissible Executive branch lobbying activities. We agree that new, easier to apply, legislation is desirable and hope that these efforts are successful.

I would like to address other issues discussed in our report and mentioned in DOD's response letter.

Our report pointed out that DOD may have exceeded the \$8 million limitation on legislative liaison activities imposed by the fiscal year 1982 ~~DOD Supplemental Appropriation~~ Act. I understand that overexpenditures have been reported in the past. DOD stated in its response to our report that a report on the possible appropriation overexpenditure will be forthcoming shortly.

We also questioned the Air Force's restriction interpretation of legislative liaison as not including such expenses as the approximately \$70,000 expended in arranging a C-5B demonstration at Andrews Air Force Base. Our report recommended that legislative liaison be more clearly defined.

Finally, our report recommended that lobbying costs incurred by Lockheed in its C-5B effort and by Boeing in its 747B lobbying effort be disallowed as overhead expenses under current contracts. Defense has recently promulgated the DAR provisions that I mentioned before, which would accomplish this purpose for all such contracts in the future.

One additional issue, not addressed in our report, is the applicability to DOD of the Government-wide appropriation restriction in the Treasury, Postal Service and General Government appropriation bill, incorporated into the continuing resolution. Although the legislative provision in question states specifically that it applies to appropriations made in "this or any other Act," DOD maintains that it does not apply to its funds because DOD's appropriation was passed in December of 1981, well before the events in question took place. We do not agree. We have set forth the basis for our disagreement at some length in our detailed analysis of the DOD response to our report.

This concludes my prepared statement, Mr. Chairman. We will be happy to answer any questions.

ATTACHMENT

DOD Response to GAO Report - Point by Point Refutation

Page 1, I. - INTRODUCTION

DOD: GAO released its report to the press before showing it to DOD. Moreover, GAO violated its own standards and procedures by not giving DOD a chance to comment on a draft report before the final was issued.

GAO
REPLY:

We appreciate DOD's position. However, when we do work for congressional committees, it is our policy to honor requests that we not take the time to obtain agency comments before issuing the final report. In this case, we were encouraged to expedite the report because of the current congressional interest in this subject. DOD and Air Force officials were informed by our staff well before the report was issued that it would not be possible to submit a draft for advance comment by the agency. However, our report did present DOD's position that its lobbying activities were proper. Moreover, GAO did not release the substance of the report or even discuss the report with any member of the press.

Page 1, II - ALLEGATION OF IMPROPER LOBBYING

DOD:

- a. GAO alleged that DOD violated the restriction in § 607(a) of the Treasury, Postal Service, and General Government Appropriation Act, which applies to appropriations made "in this or any other Act." But, during FY 1982, there was no Treasury, Postal Service, and General Government Appropriation Act. Projects and activities that would have been funded by that Act were instead funded by a continuing resolution.

GAO
REPLY:

- a. A continuing resolution is an appropriation act, even though the total amount of the appropriation is not specifically set forth. Instead, dollars, limitations, and Congressional mandates are generally incorporated by reference to some other document or standard. In the case of the Treasury appropriation, the reference document was H.R. 4121, as passed by the House and reported by the Senate. Both versions contained the publicity and propaganda restriction in identical form. Therefore, by the terms of the continuing resolution itself (sections 101(a)(2) and 101(b)(5)), the restriction was incorporated by reference (together with other appropriations-related provisions of H.R. 4121), and became part of the continuing resolution.

DOD:

- b. "Funding restrictions in a continuing resolution generally are applicable only to funds made available by the resolution, unless specifically made applicable to other funds * * *"

GAO
REPLY:

- b. The restriction in question was specifically made applicable to other funds. Section 608(a) 1/ of H.R. 4121 states:

"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.)

DOD:

- c. "* * * Section 101(a) (2) made restrictions on the use of certain appropriations applicable by stating 'Appropriations made by this subsection shall be available to the extent and in the same manner which would be provided in the pertinent appropriation act.' (Emphasis added.)

"During the time of the Congressional debate on the C-5B, DOD appropriations were provided for in the regular FY 1982 DOD Appropriation Act which was enacted on December 29, 1981. When Congress wants to ensure that a funding restriction applies Government-wide during a continuing resolution it has used language to clearly accomplish this purpose * * *. Since there was no comparable language in any of the FY 1982 continuing resolutions to make § 607(a) generally applicable Government-wide, and since DOD appropriations were no longer covered by continuing resolutions after December 29, 1981, the § 607(a) restriction was not applicable to DOD during the period in question."

GAO
REPLY:

- c. We agree that DOD appropriations were no longer provided by the continuing resolution after December 29, 1981, when DOD's regular appropriation act was signed. The publicity and propaganda restriction, however, is not a part of DOD's appropriation act but

1/ Both DOD's response and our report erroneously refer to Section 607(a) instead of Section 608(a). The error is understandable since the 1982 version of this perennial appropriation restriction changed the section number for the first time in many years.

GAO

REPLY: c. (Cont'd)

Treasury's. Without question, the Treasury provisions were incorporated by reference into the continuing resolution and remained operative during the entire period covered by our report. As explained in b, above, the incorporated language expressly made the prohibition applicable Government-wide.

We also agree that section 101(a) (2) of the continuing resolution, if considered alone, would appear to apply the restrictions incorporated by reference only to appropriations made by section 101(a) (1). However, DOD has not considered the effect of section 101(a) (5) of the continuing resolution. That subsection provides, in effect, that no funding restriction which, by its terms, is applicable to "more than one appropriation, fund, or authority" shall be given effect unless (1) it was "included in the applicable appropriation Act of 1981," and, (2) "such provision shall have been included in identical form in such bill as enacted by both the House and the Senate." ^{2/} While paragraph (5) is worded in the negative—that is, it puts forth two circumstances in which an appropriation provision would not be given effect—it is clear that the obverse would also be true. In other words, since the appropriation restriction (1) was included in the applicable 1981 legislation and (2) was included in identical form in both House and Senate bills, it is applicable as written.

Pages 2 - 5, A. THE INTENT OF ANTI-LOBBYING STATUTES

DOD:

- a. "The two anti-lobbying statutes are not intended to restrict the legitimate flow of information from the Executive branch to the Congress even when the purpose of supplying the information is to persuade the Congress to approve the particular program or course of action advocated by the Executive agency concerned." (DOD cites as authority for the above statement the GAO Appropriations Manual, previous GAO decisions, and a 1978 Congressional Research Service analysis.)

GAO

REPLY:

- a. We completely agree. Had DOD communicated its procurement preference directly to the Congress, without any involvement of one or more Defense contractors or any other non-Federal person or organization, we would have no reason to object.

^{2/} While only the House of Representatives had literally passed H.R. 4121 by December 15, 1981, the date of the continuing resolution, the bill had been reported out of committee by the Senate. We are instructed by the second proviso in section 101(a) (3) to treat the bill as if it had passed.

DOD:

- b. "The specific lobbying activities prohibited by the statutes are well illustrated in previous decisions of the Comptroller General. * * * The common thread in all these cases is the existence or non-existence of a broad-based mass appeal to the public in general to contact their congressional representatives * * *. Does the GAO actually believe that Air Force discussions with the President of Lockheed and a few other officials of Lockheed and other companies constitute a grass roots appeal?"

GAO
REPLY:

- b. DOD accurately summed up a number of GAO decisions in which violations of the appropriation restriction were found when agencies made appeals to the public at large to contact their congressmen about pending legislation. At no time did we say, however, that the existence of a "broad-based mass appeal to the public in general" is the only essential ingredient of a violation of the appropriation restriction. DOD may not have been aware of a number of other Comptroller General decisions on this same topic which involve Federal agency assistance to a single organization or to a small number of organizations, who planned to use the assistance provided to lobby directly with members of the Congress (without any further appeal for support from the public at large) for or against some pending legislation.

In B-129874, September 11, 1978, the Department of Health, Education and Welfare had been asked to provide informational material to an organization which the agency knew would use it for lobbying purposes. If the material had already been prepared and was generally available to members of the public upon request, there would have been no problem. The violation would arise if appropriated funds (salaries of the employees and other expenses) were used to research and put together materials for the non-governmental organization to use in its own lobbying campaign. Similarly, in a report entitled "The Maritime Council— Was Their Relationship Appropriate," CED-79-91, May 18, 1979, we found that the Maritime Administration violated the appropriation restrictions by providing administrative support to the National Maritime Council (a trade association) when it knew that the Council was actively engaged in lobbying to influence cargo preference legislation. In 60 Comp. Gen. 423 (1981), the Legal Services Corporation violated lobbying restrictions in its own Act and also the 1981 section 607(a) restriction when it permitted grant funds to be used by recipient organizations and their contacts at the State and local level to lobby the Congress in support of LSC reauthorization legislation.

DOD:

- c. "[E]ven in the GAO's version [of the facts] there is no allegation that anyone--DOD employees, Lockheed employees, or Lockheed sub-contractor employees--urged the public at large to telephone, write, or otherwise contact their Congressmen in support of the C-5B program * * *."

GAO
REPLY:

- c. Forty-three Lockheed officials and employees were involved in the lobbying effort, of which 10 were from the Washington office. On May 28, 1982, the Public Relations Department of the Lockheed, Georgia plant prepared and distributed a letter to all of the plant's employees, informing them of the action taken in the Senate and encouraging Lockheed employees to contact members of the House Armed Services Committee. The President of Lockheed, Georgia, Mr. Robert Ormsby, approved and signed the letter. On June 24, 1982, the Chairman of the Board of Lockheed Corporation, Mr. Roy A. Anderson, sent a letter to all Lockheed employees and retirees urging them to call, write, or wire their representatives and others in the area. The cost for reproduction and mailing amounted to \$31,196.48.

DOD:

- d. "The only contacts with members of Congress of which the DOD is aware are those made by DOD employees, military members, and the management representatives of the various contractors which have a financial interest in the outcome of the Congressional decision on the C-5B * * *."

GAO
REPLY:

- d. The final version of the Lockheed computer printout (dated June 18, 1982), which we reviewed, showed that 41 firms that were not on the list of C-5B potential subcontractors and, therefore, did not seem to have a direct financial interest in the outcome, were to assist Lockheed in the C-5B lobbying effort. The firms were: Berry Construction; Precision Data; Lakeshore, Inc.; Wormwold; Singer; Hallman Corp.; Miller and Chevalier; TANO; Marsh and McLennan; HITCO; Kodak; Arthur Young; Flying Tigers, IAM; Hi-Shear; International Switchboard; Microwave; Varo; Thiokol; Munroe Hydraulic; Avnet; VSI, SCI Systems; J.J. Henry; National Airmotive; APS; Spectrolab; General Design; Intercom System; Bird-Johnson; Textron; Simmonds; Kidde; Stewart Warner; ISC; Dyna Metric; Henschel; Ontel; Telephonics; Whittaker; and Parker-Hann.

DOD:

"Even if grass roots appeals were not essential to a violation of the anti-lobbying statutes, one would at least think that for a violation to occur a Federal agency would have to in some way cause more lobbying to occur than would have taken place in the absence of the agency's efforts."

GAO
REPLY:

It is immaterial whether the non-Federal organization would have lobbied anyway even if no assistance had been provided. The violation consists of providing assistance with appropriated funds to a non-Federal person or organization which the agency knew would use it to lobby for or against pending legislation. See B-129874, above. DOD's own characterization of the purpose of the "discussions" between Lockheed and the Air Force—to eliminate the "duplicative" efforts—suggests a clear intent to coordinate their respective lobbying efforts. As is discussed, infra, coordination was but one element of what we found to be a concerted effort at mutual assistance in promoting the C-5B program in the House.

Pages 7 - 8

DOD:

"The nature of the contacts between the Air Force and Lockheed is also in line with the guidance promulgated by the Counsel to the President for members of the White House Staff and subsequently distributed to cabinet departments. Mr. Fielding's memorandum states that Executive branch officials 'may properly have regular contact with non-governmental organizations which have among their purposes lobbying members of Congress or attempting to influence the general public to lobby the Congress. However, in these dealings, the officials should not or even appear to dominate the group or use the group as an arm of the Executive Branch.' Mr. Fielding also presented examples of permitted and not permitted activities * * * He stated that it was proper to 'exchange information, as long as it is not privileged' * * * It is also considered proper to 'make suggestions, respond to or raise particular inquiries, or discuss the merits of various legislative strategies and related matters, so long as the Executive Branch officials did not suggest organization of grass roots pressure.' * * * A third example of permitted activity is: 'Upon the request of an independent organization provide to it for reproduction and distribution by the organization: — sample copies of

documents prepared by Executive Branch officials * * * [and] letters on specific subjects written by Executive Branch officials.' * * * This seems to be exactly the kind of activity Mr. Fielding's guidelines allow. This guideline contains two caveats: 'Note that the materials must not suggest that the recipients contact Members of Congress urging support of particular positions; also the decision to publish or distribute any such material must be left to the independent organization.' Both of these restrictions were complied with by the Air Force.

"The White House guidelines also list * * * activities that Executive Branch officials should avoid:

- "(v) requesting an organization to prepare or distribute any materials that suggest directly or indirectly that the recipients contact members of Congress, or playing any substantial role in advising an organization regarding the content of material it may wish to distribute."

GAO
REPLY:

The portions of the Fielding memorandum discussed in the DOD response establish some useful guidelines to help determine what kind of contact between governmental and independent organizations is permissible. However, in our view, it does not go far enough because it suggests that only the involvement of a governmental agency in "grass roots" lobbying is prohibited. Thus, the memorandum, as quoted by DOD, states that it is proper to "make suggestions, respond to or raise particular inquiries, or discuss the merits of various legislative strategies and related matters, so long as the Executive Branch officials did not suggest organization of grass roots pressure." (Our emphasis.) It is our position, as stated earlier, that governmental agencies may not provide assistance even to a single organization or a small number of organizations, and even when they plan to use the assistance to lobby directly with members of the Congress and without further appeals to the public at large. B-129874, CED-79-91, and 60 Comp. Gen. 423, supra.

Thus, we would not consider the provision to an independent organization of Executive branch documents for reproduction and distribution to members of Congress, as happened in this case, to be proper, as suggested by the memorandum, so long as the Executive branch agency did not directly suggest that the materials be given to members of Congress. The fact that "the decision to publish or distribute any such material" is left to the independent organization is not sufficient to avoid a violation of the prohibition in a case such as this.

Additionally, the Fielding memorandum does not directly address the kind of collaborative lobbying effort which was engaged in by the Air Force

and Lockheed. For example, we would agree that ordinarily Executive branch officials "may properly have regular contact with non-governmental organizations which have among their purposes lobbying members of Congress or attempting to influence the general public to lobby the Congress." It is when the governmental and non-governmental organizations work cooperatively and plan together to achieve a common legislative goal that the line between permissible and non-permissible activity is crossed, in our view.

Similarly, while the Air Force may not have overtly "suggested" or "requested" that Lockheed make congressional contacts or induce its employees or representatives of other companies to do so, the purpose of the strategy sessions obviously was to orchestrate a lobbying campaign to arrange multiple congressional contacts by Air Force, Lockheed and others.

Finally, the interplay between the Air Force and Lockheed would seem to have involved the playing of a "substantial role in advising an organization regarding the content of material it may wish to distribute" as exemplified by the letter prepared by Lockheed for distribution to Boeing 747 aircraft owners. According to sworn testimony, the Air Force criticized an early version of the letter as being too long and not being to the point. A letter from the Chairman of the Board of Lockheed to Boeing 747 owners was subsequently sent.

DOD:

- a. "The GAO report contains numerous factual allegations which are untrue. The principal allegations are that Air Force officials initiated, organized and directed a cooperative lobbying effort with Lockheed * * *."

GAO
REPLY:

- a. In our discussions with Air Force officials on September 30, 1982, and later with staff members of the House Armed Services Committee, we were questioned as to what did the Air Force direct Lockheed to do. Our report does not state that the Air Force directed Lockheed to take any specific actions. The report does state that " * * * 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." It is the entire effort that was directed, rather than a single task. The following testimony before the House Armed Services Committee, as well as the other evidence presented in our Report, supports our position:
 1. General Hecker stated that he was in charge of the airlift strategy meetings (line 1868).
 2. General Hecker stated that he invited the (C-5) contractors to the airlift strategy meetings (line 2035).
 3. General Hecker stated that it was largely his decision to invite the C-5 contractors to attend the strategy meetings (line 3063).
 4. General Hecker confirmed that he ran the airlift strategy meetings (line 3203).
 5. Mr. Kitchen of Lockheed stated that General Hecker, or his designee when he was not there, ran the airlift strategy meetings (line 3446).
 6. Col. Shreve stated that the strategy meetings were held in General Hecker's office. They were run by General Hecker. He was in charge of the meetings. They were called at the time and place set by him (line 1435).
 7. Mr. Cook of Lockheed stated that the airlift meetings he attended were conducted by General Hecker. This was confirmed by Messrs. Alvarado and Kneale of Lockheed (line 3366).

8. Mr. Russell Rourke, Assistant Secretary of Defense for Legislative Affairs, stated that he preferred to call the strategy meetings coordination and cooperation rather than conspiracy and collusion (line 946).

In a meeting we had with General Hecker on July 13, 1982, he told us that he was called back from leave after the defeat of the C-5B program in the Senate to orchestrate the effort to convince Congress to approve the C-5B program. He termed himself the "platoon leader" to make that happen. He further stated that he decided to coordinate activities with Lockheed and briefed the Air Force Secretary and Chief of Staff on it. We believe General Hecker's comments in this meeting along with his sworn testimony plus the sworn testimony of other witnesses support our opinion that the Air Force initiated, organized, and directed the lobbying effort.

DOD:

- b. "The allegation that the Air Force 'used Lockheed and its' sub-contractors to do things the Air Force was prohibited from doing by the anti-lobbying statutes' is untrue."

GAO

REPLY:

- b. As we mentioned in our report, one Air Force official told us "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."

We have listed below some examples of lobbying services provided by Lockheed which the Air Force could not perform itself because the services involved the use of non-Federal personnel to lobby.

1. Lockheed's network of lobbyists provided the Air Force with feedback from the more than 500 visits that were scheduled 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.) The lobbyists also made many suggestions to the Air Force on which members should be visited and the issues to be addressed.
2. Lockheed 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 Singer, Marsh-McClennan, HTICO, and Parker-Hann, and other defense contractors, for example, Thiokol 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 had facilities and explaining the program's possible impact on jobs and the local economy.
3. Lockheed contacted all the major airlines and requested that they stay out of military business and remain neutral on 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 were selected for military airlift, the airlines would stand to lose Government contracts for transporting military passengers and cargo.

4. Lockheed personnel 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.
5. Lockheed personnel kept track of the member-to-member contacts in support of the C-5B program.

As discussed before, all these actions, which involve use of non-Federal personnel to conduct lobbying activities, are prohibited by the appropriation restriction.

Page 9

DOD:

- c. "The meetings between Lockheed and Air Force officials were for the purpose of exchanging information. Neither party attempted to direct or influence the legislative liaison effort of the other."

GAO
REPLY:

- c. We agree that the meetings were for the purpose of exchanging information. However, the information being exchanged was not cost or technical, but rather what's happening on the Hill. The meetings were also to decide upon tasks to be done. Our report states:

"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. * * *"

Excerpts from the HASC hearings which support the type of information discussed follow:

1. Mr. Cook of Lockheed stated that the meetings were primarily informational "on occasion, somebody would say I spoke with so and so on the Armed Services Committee staff and his opinion was such and such. We would discuss that for a few minutes and try to figure out why, if it happened to be negative; or conversely what our strengths were, and what points of view seemed to be better understood * * * ." (line 3157).

2. Mr. Mosemann, a senior Air Force official involved in military airlift, confirmed that there was discussion in the airlift meetings as to who would go see members of Congress concerning the position of the various members of Congress on the C-5B issue (line 493).
3. Mr. Kitchen, President of Lockheed, stated that "the purpose of the meeting was, one, to find out what had gone wrong or to discuss what had gone wrong, and then as a result of that the Air Force said they were going to take certain action to try to get data synthesized down to the point that it was more understandable and get it before the members of the House. There were certain things then that I said I would do in trying to be supportive of their effort." (Line 3437). (Emphasis added.)
4. Mr. Barry of the Office of Legislative Affairs, OSD, made the following comment concerning Lockheed's participation in the strategy meetings: "Mostly they had some suggestions. They gave input as to who they had seen and where an individual member would stand on the issue or where he was not standing, when he was leaning for or against." (line 2254).

The DOD statement that "neither party attempted to direct or influence the legislative liaison effort of the other" is not supported by sworn testimony or our interviews with the Air Force and Lockheed officials. Both Lockheed and the Air Force had a mutual interest, of course, in ensuring that the C-5B program was approved by the Congress. We did not assert that the Air Force directed Lockheed to take any specific actions. The Air Force did not have to direct Lockheed to do anything because it volunteered to do it. While there were no directives given, both parties had influence on the actions of the other. The following excerpts from the sworn testimony before the HASC support this contention:

1. Mr. Carlucci stated that Mr. Cook of Lockheed suggested that the Defense Department call on a particular Congressman (line 326).
2. Mr. Kitchen of Lockheed stated that he provided Mr. Carlucci with a proposed point paper that would result in a DOD letter (line 3734).
3. General Hecker stated that Lockheed gave inputs to "Dear Colleague" letters (line 3144).
4. Col. Shreve, Associate Director, Air Force Legislative Liaison, stated that the strategy meetings "involved an exchange of ideas and information and the contractor had good ideas in our estimation as well as bad ideas. And when we thought they were good we would pursue them and when we thought they were bad we would reject them." (line 2017).

5. General Hecker stated that a Lockheed letter to the airlines having 747's was too long and not to the point (line 2168).
6. Mr. Rosemann stated that a representative of Lockheed, probably Mr. Kitchen, offered a draft letter for DOD to send to the Hill and that the letter was probably used as a source of ideas. (line 302)

The following statements were made in interviews we had with Air Force and Lockheed officials:

1. 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.
2. Mr. Rosemann of the Air Force stated that on one or two occasions that he observed, the Air Force reviewed drafts of Lockheed letters. He does not remember what the letter was, but he made the comment that it was too long and not to the point. Lockheed also reviewed Air Force draft documents such as point papers and position letters. Mr. Rosemann provided a MAC-prepared report on CRAF to Lockheed.
3. General Lary stated that Lockheed provided feedback from the Hill such as there were not enough high ranking blue suiters on the Hill pushing for the C-5B. This was seen by the Hill as a lack of enthusiasm for the C-5B by the Air Force. He also stated that another service that Lockheed provided was to distribute letters to members from DOD/Air Force to other members to correct the misinformation. He stated that the Air Force can only send the letter to the requestor.
4. Mr. Kitchen stated that Lockheed discussed what problems it had heard from the Hill and, for example, passed on Congressman Heftel's comment "Where the hell is the Air Force?" He also stated that the Air Force showed him drafts of its letters which he commented on. He stated that he also saw General Allen's prepared testimony and noted that it did not address the 747 and that General Allen's actual testimony did.
5. Mr. Alvarado of Lockheed stated that there was an exchange of information during the meetings. For example, Lockheed would report the outcome of a congressional contact. If the outcome was inconclusive, Lockheed would suggest that the Air Force follow up.

DOD: d. "The GAO report inexplicably fails to include or even mention the testimony of DOD and contractor representatives at sworn hearings before the Subcommittee on Investigations, House Committee on Armed Services."

GAO
REPLY:

d. We did not mention the testimony given by DOD and contractor representatives in our report because the corrected transcripts were not available at that time and the testimony given generally supported the facts as presented in the report. The main conflict between the testimony and the GAO report was whether the actions taken by DOD and the Air Force were legal.

DOD: e. "Deputy Secretary of Defense, Frank C. Carlucci, testified on September 15, 1982, that he had no knowledge of the violation of any lobbying laws, that DOD adheres vigorously to the terms of the statute, and that he was fully confident the Defense Department did nothing wrong."

GAO
REPLY:

e. This is Mr. Carlucci's opinion, but see earlier discussion of the legal issues. (See pp. 1-8.)

DOD: f. "The Air Force Director of Legislative Liaison, Major General Guy L. Hecker, Jr., testified on September 14, 1982, that the Air Force applied no pressure on contractors, that there were no telephone calls or telegrams to anyone outside of Congress, and there were no grass roots lobbying. He also testified that the relationship between the Air Force, OSD, and Lockheed was one of information exchange, and that Lockheed was not directed to do anything by the Air Force."

GAO
REPLY:

f. The report does not state that the Air Force applied pressure on contractors, nor does it state that telephone calls were made or telegrams sent by Air Force to anyone outside of Congress, or that there were Air Force contacts with associations.

However, there were some calls made. For instance, Dr. DeLauer, Under Secretary of Defense for Research and Engineering, called Mr. Wilson, Chairman of the Board of the Boeing Company, to find out why Boeing was lobbying so intensely for the 747 and to express disappointment at their actions. This was confirmed in sworn

GAO

REPLY: f. (Cont'd)

testimony (line 987). Also, Mr. Lloyd Mosemann told us on July 14, 1982, that he called the Air Transport Association (ATA) twice to get their position on the C-5B and found that the carriers were split on the C-5B/747 issue and that the ATA would remain neutral. He also stated that he "reminded in jest" two Boeing representatives of their support of the C-5B. The Boeing representatives were there on the Cruise Missile project. Both of these contacts were verified by Mr. Mosemann's sworn testimony (lines 247 and 351). There was one other telephone call that Mr. Mosemann allegedly made that he did not mention in testimony. According to Mr. Ralph Kissick, an attorney with Zuckert, Scutt, Rasenberger, and Delaney representing World Airways, Mr. Mosemann called him on June 3, 1982, about the C-5/747 issue. Mr. Mosemann told Mr. Kissick that "the Pentagon position is that the Air Force is not interested in buying or leasing 747's. If the Air Force was forced to buy 747's they undoubtedly would be placed in MAC. This would likely mean less MAC business for World and other commercial firms." Mr. Kissick had been lobbying for the 747 in the Senate representing the interests of World Airways. The issues of grass roots lobbying and the nature of the Air Force and Lockheed meetings has already been addressed.

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DOD: g. "Mr. Lawrence O. Kitchen, President and Chief Operating Officer, Lockheed Corporation, also testified on September 14, 1982, that the Lockheed meetings with the Air Force were informational in nature, that Lockheed neither received nor gave any directions, and that Lockheed took its actions on its own initiative."

GAO

REPLY: g. During the airlift strategy meetings, information was exchanged. However, 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. Based on interviews with the involved parties, we found that the purpose 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. Mr. Kitchen also testified before the HASC that as a result of the meetings, there were certain things that he would do in trying to be supportive of the Air Force's effort (line 3443). Also, in an interview with us, Mr. Mosemann stated that "for the most part, tasks were assigned by those at the meeting saying that it is my area and I will do it." While tasks were not assigned by "directives," it was to the mutual benefit of all concerned to accomplish the needed tasks and assignments were accepted by mutual consent.

DOD: a. "In one of its few attempts at specificity the GAO report criticizes three aspects of the Air Force's 'strategy' to influence the Congress. The first 'questionable element' of the strategy related to 'energizing' the Air Force Association and the Reserve Officers Association. Although this subject is mentioned in a memorandum and the computer print-out, it was rejected at an early stage and simply never happened. The GAO auditors were aware that this idea was not pursued, but nevertheless included it in their report."

GAO
REPLY:

a. We acknowledged in our report that the energizing of the Air Force Association and the Reserve Officers Association was rejected by the Air Force. Our report states:

"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.'"

We note that the Air Force did not reject the idea because it was illegal or improper, but because the idea did not have merit.

DOD: b. "The second item concerned preparing "Dear Colleague" letters. Such a letter was prepared by the Air Force, but it was done at the specific request of Representative Sonny Montgomery. Lockheed officials did not participate in writing the letter. If Lockheed officials subsequently obtained copies of the letter and gave it to other members of Congress, that it would not be a violation of anti-lobbying statutes." In a footnote on page 7 of the Response, Air Force states that our report was "factually wrong" in alleging that such letters would not have been normally distributed by the Air Force to persons other than the addressee.

GAO
REPLY:

b. Our report states:

"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

GAO

REPLY: b. (Cont'd)

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 believes 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."

Responding first to the page 7 footnote allegation the statement in our report was based on information obtained from General Lary, former Deputy Director of Air Force Legislative Liaison. In the course of an interview with him on July 13, 1982, he stated that "the Air Force can only send the letter to the requester." Evidently, the General was not aware of Air Force policy to the contrary. In any event, our objection was not to the distribution of the letter per se but to the utilization of Lockheed by the Air Force to make the distribution.

DOD: c. "The third 'questionable' item specified by the GAO report was the meetings between Air Force and contractor officials. Given the nature of these meetings, as explained above, there could certainly not be anything improper in them. Discussions by Federal agencies and their contractors on such important matters of mutual interest occur routinely throughout the Government."

GAO

REPLY:

c. Given the nature of the airlift strategy meetings, we believe that they were improper. The DOD has a right to meet with potential contractors to discuss cost and technical information; it does not have the right to meet with contractors to plot strategy to influence the Congress. The DOD statement that these types of meetings occur routinely throughout the Government, even if accurate, does not make them proper or legal.

DOD: "The GAO report suggest both Lockheed and Boeing may be able to recover allocable shares of their respective lobbying costs through payments made by the Government on various cost reimbursement contracts. No payments will be made to Lockheed or Boeing for lobbying costs unless the DOD is legally required to do so. The GAO report also indicated that Lockheed has said it may not seek recovery of lobbying costs. * * *

"During the past year the DOD has taken aggressive steps to increasingly limit the circumstances under which lobbying costs may be recoverable under defense contracts. Prior to October 30, 1981, the DOD policy regarding reimbursement was to subject contractor-incurred lobbying costs to the tests for allowability contained in the general provisions of the Defense Acquisition Regulation (DAR) Cost Principles, DAR Section XV. On October 30, 1981, a specific DAR Cost Principle (DAR 15-205.51) was adopted which disallowed most lobbying costs. This Cost Principle was significantly strengthened by a revision, announced by Secretary Weinberger on October 22, 1982, which virtually eliminates the circumstances under which contractors can obtain reimbursement for lobbying expenses under contracts entered into after October 20, 1982. Moreover, even though lobbying costs are, to a limited extent, recoverable under cost reimbursement contracts executed prior to that date, the scope of circumstances permitting recovery under those contracts is narrow indeed.

"The new cost principle precludes any contractor recovery for a broad array of lobbying costs by expanding the definition of "lobbying." It is now defined as "any activity, including legislative liaison, or communication which is intended or designed to influence, directly or indirectly, or to engage in any campaign to encourage others to influence members of any legislative body, their staffs, or the staffs of their committees to favor or oppose legislation, appropriations or other actions of the legislative body, its members, or its committees." [Emphasis added.] Thus, costs associated with lobbying, as defined, are unallowable. Furthermore, under the new version of the cost principle, even if a contractor is responding to a written request from a congressional source, the costs associated with preparing a response are unallowable.

"Given the restrictive nature of the lobbying cost principle now contained in DAR 15-205.51, contractors, including Lockheed and Boeing, will not be able to obtain reimbursement of lobbying costs under future contracts containing the clause. It may be possible, however, for a contractor to obtain reimbursement for an allocable share of its lobbying costs under existing contracts which are not subject to the latest restriction since DAR cost principles and procedures applicable to a particular contract are those which are in effect on the contract's execution date."

GAO
REPLY:

The report merely states that both Lockheed and Boeing view their lobbying costs as allowable for reimbursement under existing Federal contracts. It also states that Lockheed is willing to negotiate a voluntary disallowance of its lobbying costs.

We believe that the recent revisions to the Defense Acquisition Regulation indicate Defense's concern about the issues. However, we believe that reimbursement of Lockheed or Boeing's lobbying costs is prohibited by existing appropriations act restrictions because it would result in the use of appropriated funds—the cost reimbursements—to finance, in part, publicity and propaganda efforts designed to influence the Congress on pending legislation. For reasons previously stated, Section 608(a) of the Treasury Appropriation bill is applicable to the Defense Department.

Page 11 - IV. APPROPRIATION ACT LIMITATIONS ON LEGISLATIVE LIAISON

DOD: "In his letter dated October 13, 1982 to the Honorable Joseph P. Addabbo, Chairman, Subcommittee on Defense, House Committee on Appropriations, Secretary Weinberger deferred comment on the specifics of the question of whether or not DOD exceeded its FY 1982 \$8.0 million limitation on legislative liaison activities. The Office of Review and Oversight is currently reviewing that question and a report will be forthcoming shortly. Until that time, the DOD believes it would be premature to address the matter."

GAO
REPLY:

Even when the financial information is released, it will take additional analysis to determine the extent to which the \$8 million ceiling on legislative liaison activities has been exceeded. The statute does not define the term "legislative liaison activities" and DOD has never promulgated written guidance to assure that its component units do not routinely disregard the ceiling because of uncertainty about which activities to include. We have been advised, informally, that program managers are relying on a 1975 verbal agreement in deciding whether certain activities should or should not be charged to the legislative liaison account. We recommend that the Office of Review and Oversight or some other appropriate office provide the necessary definitive guidance to guard against inadvertent Antideficiency Act violations in the future.