

The Darleen Druyun Debacle: Procurement, Power, and Corruption
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I. INTRODUCTION

“Few men have virtue to withstand the highest bidder.”—George Washington

The U.S. government contracting system has seen its share of corruption dating back to the nation’s inception. “[T]he farmers were probably ripping off the Patriots as they marched off to battle....”¹ As dramatic as the World War II defense scandals that first thrust Truman onto the national stage,² perhaps the apex of corruption in government contracting in the modern age was reached in the early 1980s, resulting in Operation Ill Wind, the largest procurement fraud investigation in U.S. history. That investigation, designed to put an end to the large-scale corruption in government contracting, led to the conviction of ninety companies and individuals. Many of these convicted contractors were subsequently debarred from government contracting.³

Operation Ill Wind went a long way towards cleaning up the corruption in government contracting.⁴ But since no system is perfect, and individuals may stray, as the government deviated from the strict discipline of full and open contracting, fears increased that corruption may return.⁵

¹ Brigadier General (Ret.) Richard J. Bednar, *The Fourteenth Major Frank B. Creekmore Lecture*, 175 MIL. L. REV. 286, 288 (2003).

² ROBERT H. FERRELL, *HARRY S. TRUMAN: A LIFE* 155-162 (1994).

³ Bednar at 289.

⁴ ANDY PASZTOR, *WHEN THE PENTAGON WAS FOR SALE* (1995).

Even with this foresight, the government procurement community was nevertheless shocked to learn that Darleen Druyun, a high-ranking acquisition official, recently admitted in court to illegally favoring Boeing Company (Boeing) on a number of Air Force contracts. This news was disturbing not only because of Ms. Druyun's stature in the community, but also because of the extraordinary amount of money involved and the enormous scope of issues that will be generated by a scandal of this magnitude.

In what is certainly the largest government contracting scandal to hit the Department of Defense (DoD) in recent years, and one that seems to be growing daily, Ms. Druyun, previously the number two acquisition official⁶ in the Department of the Air Force,⁷ admitted to steering billions of taxpayer dollars' worth of contracts to one of the nations largest contractors, Boeing, because the company provided her daughter and son-in-law, and eventually Druyun herself, with employment.⁸

Not since Melvyn Paisley had such a high-ranking DoD official been caught in such compromising a position with a member of the defense industry.⁹ Sure, smaller fish

⁵ Bednar at 291.

⁶ She was the senior career civilian procurement official—second only to the political appointees that cycle through the Assistant Secretary of the Air Force for Acquisition position. In other words, she was the highest ranking long-term procurement official providing continuity to the Air Force acquisition community throughout changes in administrations.

⁷ Official Air Force Biography, Darleen A. Druyun, October 2001, at 1, at <http://web.archive.org/web/20021221215107/http://www.af.mil/news/biographies/druyunda.html>; William Matthews, *Ex-Boeing Exec Going To Jail*, FEDERALTIMES, Oct. 5, 2004, at <http://federaltimes.com/index.php?S=388578> [hereinafter Official Biography].

⁸ Supplemental Statement of Facts at 2-4, *United States v. Druyun* (E.D. Va. 2004)(No. 04-150-A).

⁹ Interestingly, the member of the defense industry involved in that case was also Boeing.

crossed the line—Robert Neal (DoD OSDBU)¹⁰, the Moran fiasco in Korea;¹¹ and even Kevin Marlowe (a Defense Information Systems Agency senior contracting officer);¹² made headlines, but these were not epochal events because none of these offenders rivaled Ms. Druyun’s stature within the government contracting community.

We can expect the Darleen Druyun story to take its rightful place in the pantheon of procurement horror stories, along with Ill Wind and the A-12 debacle, to be used as a lesson learned for many years to come by those who instruct others on procurement law’s pitfalls. While it still may be too early to determine how the story ultimately ends, the soul searching has already begun.

This thesis discusses Ms. Druyun’s career, her criminal acts, and the related law. It also examines the steps taken and recommendations made to prevent a recurrence of this type of criminal conduct. Ultimately, this thesis concludes that Darleen Druyun’s

¹⁰ Neal was convicted of extortion, bribery, money laundering, and other crimes in 2003. See Press Release, U.S. Dep’t of Justice, Combating Procurement Fraud: An Initiative to Increase Prevention and Prosecution of Fraud in the Federal Procurement Process (Feb. 18, 2005), <http://www.usdoj.gov/usao/vae/ArchivePress/FebruaryPDFArchive/05/21805FraudWhitePaper.pdf>.

¹¹ Colonel Richard J. Moran, who had been the commander of the U.S. Army’s Contracting Command Korea (USA-CCK), a position in which he oversaw the approval of more than \$300 million in contracts per year, was convicted of two counts of conspiracy and one count of bribery and sentenced to 54 months in prison in 2003. See Press Release, U.S. Dep’t of Justice, U.S. Army Colonel Sentenced to Prison for Taking Bribes From South Korean Companies Seeking Military Contracts (June, 9, 2003), <http://losangeles.fbi.gov/pressrel/2003/1a060903-2.htm>.

¹² Marlowe was indicted in 2004 for conspiracy to defraud the United States, receiving illegal gratuities, wire fraud, money laundering, conflict of interest, conspiracy to conceal records, obstruction of justice, and suborning perjury. See Press Release, U.S. Dep’t of Justice, Senior Government Official, Local Attorney and Others Charged in Defense Procurement Fraud Case (August 18, 2004), <http://www.dodig.osd.mil/IGInformation/IGInformationReleases/PR-Marlowe81804.pdf>.

crimes were the actions of a rogue individual who took advantage of her powerful position and that the remedy for this unfortunate situation should be focused on criminal law—not procurement reform. The crimes in question were the product of a corrupt individual, not a corrupt system.

II. THE PLEA

Darleen Druyun, the former principal deputy assistant secretary for Air Force acquisition and management,¹³ recently entered a supplemental plea agreement in the United States District Court for the Eastern District of Virginia for conspiracy to violate Title 18, U. S. Code § 208(a).¹⁴ On April 20, 2004, as part of her original plea agreement, Ms. Druyun acknowledged a conflict of interest in negotiating a job with Boeing while simultaneously negotiating a contract with the same company in her capacity as the senior procurement official for the Air Force.¹⁵ Ms. Druyun was eventually hired by Boeing to help lead its missile defense business¹⁶ at a salary of \$250,000 a year.¹⁷

¹³ Official Biography, *supra* note 7.

¹⁴ Supplemental Statement of Facts at 1, *Druyun* (No. 04-150-A).

¹⁵ *Id.* at 2.

¹⁶ Press Release, Boeing, Druyun Joins Boeing As Deputy General Manager For Missile Defense Systems (Jan. 3, 2003), at <http://www.boeing.com/news/releases/2003/ql/nr030103m.html> [hereinafter *Druyun Joins Boeing*].

¹⁷ Statement of Facts at 7, *United States v. Druyun* (E.D. Va. 2004)(No. 04-150-A).

While these events stunned the procurement community, Ms. Druyun maintained that her personal employment negotiations with Boeing did not influence her official actions or harm the Government in any way.¹⁸

Since her initial plea agreement, however, Ms. Druyun made even more alarming post-plea admissions as part of a supplemental statement of facts to the court. In the supplemental statement of facts Ms. Druyun admitted that she did allow her employment negotiations with Boeing, and other favors the company had performed for her and her family, to influence her. As a result, Boeing may have gained an advantage during certain Air Force procurement negotiations.¹⁹

In addition to her own hopes of gaining employment with the aircraft manufacturing giant, Ms. Druyun acknowledges that she was influenced by Boeing's hiring of her son-in-law, and subsequently, her daughter.²⁰ Upon Ms. Druyun's request in 2000, Boeing hired Ms. Druyun's future son-in-law,²¹ Michael McKee²², and, two

¹⁸ Supplemental Statement of Facts at 2, *Druyun*, (No. 04-150-A).

¹⁹ *Id.*

²⁰ *Id.*

²¹ Supplemental Statement of Facts at 1, *Druyun* (No. 04-150-A).

²² Letter from Kenneth F. Boehm, Chairman, National Legal and Policy Center, to Joseph E. Schmitz, Inspector General, U.S. Department of Defense (Oct.6, 2003), at <http://www.nlpc.org/view.asp?action=viewArticle&aid=46>.

months later, created a position²³ for her daughter, Heather Druyun, as a human resource specialist.²⁴

Ms. Druyun admitted that she subsequently used her influence with Boeing to protect her daughter's career.²⁵ When Ms. Druyun's daughter informed her that she feared Boeing was preparing to fire her for poor performance, Ms. Druyun asked Boeing's Chief Financial Officer Michael M. Sears²⁶ to intervene on Heather's behalf.²⁷ At that time, Ms. Druyun and Mr. Sears²⁸ were negotiating the Air Force's KC 767A tanker lease deal. Mr. Sears kept Ms. Druyun apprised of changes in her daughter's status with Boeing.²⁹ For example, Ms. Druyun was notified when her daughter was transferred to a new position and received pay raises.³⁰

Ms. Druyun admitted that her desire for future employment with Boeing, along with her family members' employment with the company, influenced her decision-

²³ Renae Merle, *Long Fall for Pentagon Star: Druyun Doled Out Favors by the Millions*, WASHINGTON POST, Nov. 14, 2004, at A1.

²⁴ Letter from Kenneth F. Boehm to Joseph E. Schmitz, *supra* note 22.

²⁵ Supplemental Statement of Facts at 2, *Druyun*, (No. 04-150-A).

²⁶ Renae Merle, *Boeing Fires 2 Top Officials in Hiring Probe*, WASHINGTON POST, Nov. 25, 2003, at A1.

²⁷ Supplemental Statement of Facts at 2, *Druyun*, (No. 04-150-A).

²⁸ Mr. Sears was recently sentenced to four months incarceration, a \$250,000 fine, and 200 hours of community service for aiding and abetting Ms. Druyun. Press Release, U.S. Department of Justice, United States Attorney Eastern District of Virginia, Sears (February 18, 2005).

²⁹ Supplemental Statement of Facts at 1, *Druyun* (No. 04-150-A).

³⁰ *Id.*

making to the benefit of Boeing and the detriment of the Government,³¹ including her negotiations with Boeing on the controversial tanker lease deal.³² Ms. Druyun now acknowledges that she agreed to pay a higher price for the tankers than she thought they were really worth. She admitted explicitly that she agreed to the inflated prices to curry favor with her future employers and as a “parting gift to Boeing” from her position as a senior Air Force procurement official.³³ She also admitted to providing Boeing with a European rival bidder’s proprietary pricing information related to this same procurement.³⁴

Other deals experienced the taint of Ms. Druyun’s conflict of interest. For example, in 2000, Ms. Druyun simultaneously sought employment for her daughter’s future husband with Boeing and negotiated a contract dispute settlement with Boeing. She now acknowledges that her decision to settle the contract dispute, related to the C-17 H22 contract, with a payment of approximately \$412 million to Boeing was also influenced by the company’s favors.³⁵

In 2001, as the source selection authority for the avionics upgrade of the Air Force’s C-130 aircraft, Ms. Druyun selected Boeing over four other competitors for award of a \$4 billion contract. She admitted she was influenced by her partiality to

³¹ *Id.*

³² *Id.* at 2.

³³ *Id.* at 3.

³⁴ *Id.* at 3; Renae Merle and Jerry Markon, *Ex-Air Force Official Gets Prison Time: Boeing Received Special Treatment in Procurement*, WASHINGTON POST, Oct. 2, 2004, at A1.

³⁵ Supplemental Statement of Facts at 3-4, *Druyun* (No. 04-150-A).

Boeing and her perceived indebtedness to the company for hiring her daughter and son-in-law. Also, perhaps, a more objective source selection authority would have chosen another competitor.³⁶

Finally, in 2002, as the chairperson of NATO's Airborne Early Warning and Control Program Management Board of Directors, Ms. Druyun was charged with conducting a negotiation with Boeing concerning the restructuring of the NATO AWACS program. She now admits that her negotiated payment of \$100 million to Boeing, part of that restructuring deal, was influenced by the fact that her family members worked for Boeing.³⁷

A. THE SENTENCE

Based on her plea and subsequent admissions, Ms. Druyun was sentenced to nine months in prison and seven months in a halfway house.³⁸ U.S. District Judge T.S. Ellis III³⁹ apparently based the sentence, in part, on Ms. Druyun's lack of truthfulness in the early part of the investigation and her initial plea.⁴⁰ Her subsequent admissions

³⁶ *Id.*

³⁷ Supplemental Statement of Facts at 1, *Druyun* (No. 04-150-A).

³⁸ William Matthews, *Ex-Boeing Exec Going To Jail*, FEDERAL TIMES, Oct. 5, 2004, at <http://federaltimes.com/index.php?S=388578>.

³⁹ Merle and Markon, *supra* note 34.

⁴⁰ Matthews, *supra* note 38.

concerning the impact of the conflicts of interest arising from employment discussions transpired only after she failed a lie detector test.⁴¹

Once feared as the “Dragon Lady,”⁴² Darleen Druyun was reduced to telling the court that she felt “shame and remorse”⁴³ that her long career in Government had “been tarnished.”⁴⁴ How did one of the most influential women in the Pentagon arrive at this position—the highest-ranking Pentagon procurement official to be convicted of a crime since the 1980s?⁴⁵

III. DRUYUN’S CAREER

A. THE EARLY YEARS

During Ms. Druyun’s thirty years of Government service she blazed a path that lead to her having one of the most influential procurement positions in the Federal Government.⁴⁶ Her aggressive, risk-taking approach⁴⁷ and hard-nosed style caused defense contractors to describe her as a formidable opponent.⁴⁸

⁴¹ *Id.*

⁴² Renae Merle, *Air Force-Boeing Negotiator Criticized: Close Relationship Questioned on Hill*, WASHINGTON POST, Oct. 27, 2003, at A6.

⁴³ Merle and Markon, *supra* note 34.

⁴⁴ *Id.*

⁴⁵ Peter Pae and Jonathon Peterson, *Confession Casts New Shadow Over Boeing Deal*, LOS ANGELES TIMES, Oct. 2, 2004, at A1.

⁴⁶ *The Rise and Fall of a Maverick*, GOVEXEC, Feb. 15, 2004, at 1, at <http://www.govexec.com/storypage.cfm?articleid=27672>.

After earning her bachelors of science degree from the University of Chaminade in Hawaii, Ms. Druyun began her career with the Federal Government in 1970.⁴⁹ As a contract negotiator at Warner Robins Air Logistics Center in Georgia,⁵⁰ where her father had worked for forty years,⁵¹ she began learning the basics of the field that she would eventually master.

In 1980, Ms. Druyun left the Air Force to continue honing her acquisition skills by working on government contracting issues as the deputy associate administrator for major systems and policy for the Office of Management and Budget (OMB).⁵² She returned to the Air Force two years later. In 1991, Ms. Druyun left the Air Force to work at NASA, where she served for one year as the head of procurement and an additional year as the chief of staff to the administrator.⁵³

Ms. Druyun was credited with being one of the leading innovators of NASA's progressive "better, faster, cheaper" acquisition strategy.⁵⁴ At that time, Ms. Druyun said that a number of NASA's programs were in disarray and she insisted on greater

⁴⁷ *Id.*

⁴⁸ Merle, *supra* note 42.

⁴⁹ Official Biography, *supra* note 7.

⁵⁰ *Id.*

⁵¹ Merle, *supra* note 23.

⁵² Official Biography, *supra* note 7.

⁵³ *Id.* at 2.

⁵⁴ *The Rise and Fall of a Maverick*, *supra* note 46.

accountability from contractors.⁵⁵ The *Florida Trend* magazine quoted Ms. Druyun as having said; “They wonder why the hell we give contracts to someone who has a losing record. The ones who bitch and complain are the ones with lousy records. Now there will be motivation to improve.”⁵⁶

Ms. Druyun returned to the Air Force from NASA in 1993 as principal deputy assistant secretary of the Air Force for acquisition and management.⁵⁷ She became responsible for some of the most expensive and successful weapons programs in U.S. history.⁵⁸

At the same time, and, perhaps as a harbinger of things to come, Ms. Druyun was investigated for her participation in an attempt to frontload payments for the C-17 airlifter program in an effort to aid McDonnell Douglas with its financial situation.⁵⁹

Representative John Conyers, Jr., chairman of the House Government Operations Committee and an adversary of the C-17 program, asked the Pentagon’s Inspector General (IG) to examine the cash flow to the contractor.⁶⁰ The IG reported that some Air

⁵⁵ George Cahlink, *Fallen Star: The Cautionary Tale of a Celebrated Federal Executive’s Corporate Flameout*, GOVEXEC, Feb. 15, 2004, at 5, at <http://www.govexec.com/story/page.cfm?articleid=27660>.

⁵⁶ *Id.*

⁵⁷ Official Biography, *supra* note 7.

⁵⁸ *The Rise and Fall of a Maverick*, *supra* note 46.

⁵⁹ *Id.*

⁶⁰ John T. Correll, *Blood on the Rock: Four Air Force Officials were Fired and their Careers Ruined on the Basis of an IG Report Known to be Full of Holes*, AIR FORCE MAGAZINE, July 1993, Vol. 76, No. 7, at <http://www.afa.org/magazine/1993/07/edit93print.html>.

Force officials were afraid that McDonnell Douglas's financial crisis would lead to serious problems in the C-17 program.⁶¹ By the time Ms. Druyun returned to the Air Force, the C-17 program was behind its timetable, over its budget,⁶² and McDonnell Douglas did not have funds to build a prototype of the aircraft.⁶³

The IG reportedly found that five Air Force officials, including Ms. Druyun, had secretly shifted approximately \$349 million to McDonnell Douglas in order to relieve the contractor's budget pressures in hopes of keeping the C-17 program from falling further behind schedule. The officials were reportedly accused of allowing McDonnell Douglas to backdate some of its records so payments could be expedited.⁶⁴

Although the IG found no criminal misconduct, it recommended that the five officials, including Ms. Druyun, be disciplined.⁶⁵ At the time, the IG report was criticized for being poorly done and of applying the wrong contracting rules to the investigation.⁶⁶ However, it was sufficient cause for then-Defense Secretary Les Aspin to fire one of the general officers associated with the program.⁶⁷ Additionally, two generals and a high-ranking civilian were moved to different positions. Retired Air Force General Merrill McPeak, who had been the Air Force's chief of staff at the time, was quoted as saying that Ms. Druyun was also supposed to be fired, but he asked Secretary Aspin to retain

⁶¹ Merle, *supra* note 42.

⁶² *Id.*

⁶³ Cahlink, *supra* note 55, at 21.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Correll, *supra* note 60, at 1.

⁶⁷ Cahlink, *supra* note 55, at 22.

her.⁶⁸ Being the only one of the five officials to go unscathed garnered Ms. Druyun a reputation for being bulletproof and further enhanced the power she wielded in the Pentagon.

In any event, Ms. Druyun was not punished and continued to play a significant role in managing the C-17 program. In fact, she apparently considered her involvement in the C-17 program vital enough to the program's development to refer to herself as the "godmother" of the C-17.⁶⁹

After Boeing purchased McDonnell Douglas in 1998, Ms. Druyun announced an Air Force proposal to turn the C-17 program into a commercial enterprise.⁷⁰ The Air Force eventually decided not to pursue the plan after some in the procurement community pointed out that the deal would allow Boeing to avoid virtually all government oversight.⁷¹ Despite the setbacks, Ms. Druyun was widely regarded as having saved the C-17 program with her aggressive management.⁷² According to former Secretary of the Air Force Sheila Widnall, Ms. Druyun was responsible for driving the

⁶⁸ *Id.*

⁶⁹ *Id.* at 21.

⁷⁰ Merle, *supra* note 42.

⁷¹ *Id.*

⁷² Cahlink, *supra* note 55, at 21.

cost to the Government down from \$300 million to \$165 million per C-17.⁷³ The C-17 has since proven to be a very valuable tool in the Air Force arsenal in recent campaigns.⁷⁴

B. AIMING HIGH

Starting in 1995,⁷⁵ Ms. Druyun launched the Air Force acquisition reform “Lightening Bolts” initiatives in order to jump-start acquisition reform.⁷⁶ These reform initiatives were aimed at saving time and money in the Air Force procurement system by implementing practices similar to those used in the commercial marketplace.⁷⁷ The goal was to make the Air Force acquisition system more efficient. For example, one initiative streamlined requests for proposals by ridding them of specific military requirements. Another created an alternative dispute resolution (ADR) process to assist the Air Force in resolving contract disputes short of litigation.⁷⁸ The ADR program continues to be considered one of the best programs of its kind in the executive branch.⁷⁹

⁷³ Letter from Sheila Widnall, Secretary of the Air Force from 1993-1997, to John Dowd, Attorney for Ms. Druyun, (March 10, 2004), at <http://www.taxpayer.net/nationalsecurity/learnmore/Druyuncharacterwitness/sheilawidnall.pdf>.

⁷⁴ *Id.*

⁷⁵ *The Rise and Fall of a Maverick*, *supra* note 46.

⁷⁶ Official Biography, *supra* note 7.

⁷⁷ Cahlink, *supra* note 55, at 22.

⁷⁸ *Id.*

⁷⁹ Joe McDade, SAF/GCQ, was the lightening bolt leader on this initiative and the Air Force’s ADR specialist.

Another notable success of the lightening bolt reforms was the speed with which they allowed the development of the Air Force's Joint Direct Attack Munition (JDAM).⁸⁰ The JDAM is a kit made by Boeing that attaches to regular "dumb" bombs enabling them to become guided like modern precision munitions.⁸¹ Using the lightening bolt initiatives allowed the Air Force to waive many of the usual Department of Defense procurement rules and rely on commercial technology to build the JDAM.⁸² This enabled Air Force to procure a large number of these precision kits in less than ten years at a reasonable price⁸³ of about \$20,000 each.⁸⁴ If carried out under ordinary acquisition procedures, rather than using Ms. Druyun's innovative approach, the cost was estimated to have been \$100,000 per unit.⁸⁵ As a point of comparison, the Navy's Tomahawk cruise missile (which albeit has a different set of capabilities than the JDAM) costs approximately \$1 million per copy.⁸⁶ The JDAM has been lauded as a great success in the recent wars in Iraq and Afghanistan because of its unmatched accuracy.⁸⁷

In the late nineties, Ms. Druyun continued her rise to the pinnacle of her profession. In 1999, she concluded the largest public-private partnership in Air Force

⁸⁰ Cahlink, *supra* note 55, at 22.

⁸¹ Sean D. Naylor, *In Casualties' Wake, A Quest to Prevent Friendly Fire*, A.F. TIMES, Dec. 31, 2001, at 19.

⁸² Cahlink, *supra* note 55, at 22.

⁸³ *Id.*

⁸⁴ Naylor, *supra* note 81, at 19.

⁸⁵ Letter from Sheila Widnall, *supra* note 73, at 1.

⁸⁶ *Id.*

⁸⁷ Cahlink, *supra* note 55, at 22.

history.⁸⁸ The Lockheed Martin and Air Force's Oklahoma City repair depot partnership for engine repair work was worth \$10.1 billion. A General Accounting Office (GAO)⁸⁹ audit estimated that the deal would represent \$1.8 billion in savings to the Air Force over a period of fifteen years. In reference to this deal, F. Whitten Peters, former Secretary of the Air Force, observed that Ms. Druyun had a unique ability to persuade various parties to team up on contracts.⁹⁰

In 2001, Ms. Druyun made history again by supervising the award of the largest contract ever let by the Department of Defense. Lockheed Martin edged Boeing in a difficult competition to produce the Joint Strike Fighter Aircraft. The contract, worth \$200 billion, allows the Air Force, Navy, Marine Corps, and British military to buy three thousand aircraft over the next forty years.⁹¹ Finally, many credit Ms. Druyun's persistent style for saving the F/A-22 Raptor procurement.⁹² When that program was billions of dollars over budget and behind schedule, it was Ms. Druyun who pushed Lockheed Martin to become more efficient and reduce costs to avoid losing the program to budget cuts.⁹³

⁸⁸ *Id.* at 23.

⁸⁹ Now known as the Government Accountability Office.

⁹⁰ Cahlink, *supra* note 55, at 23.

⁹¹ *Id.* at 22.

⁹² The Raptor is the next generation fighter aircraft.

⁹³ Cahlink, *supra* note 55, at 23.

C. DESCENDING

Perhaps the most controversial procurement of Ms. Druyun's career—and the one that led directly to her current troubles—was the proposed tanker lease deal with Boeing. Under this proposal, the Air Force would lease one hundred tankers from Boeing rather than buying new tankers to replace the aging KC-135s.⁹⁴ The plan quickly drew criticism from several fronts. Chief among the critics was Senate Commerce Committee chairman, Senator John McCain. McCain thought the expensive leasing option, versus buying the aircraft, was designed to provide Boeing with an economic boost at a time when the company was experiencing a drought in commercial aircraft sales.⁹⁵ However, because of Boeing's 767 manufacturing line's slumping sales in the commercial market, the tanker lease was regarded as crucial.⁹⁶ Thus, despite the initial concerns about the lease deal on Capitol Hill, Congress approved the plan and allowed the Air Force to begin negotiating with Boeing.⁹⁷ Nonetheless, Senator McCain maintained his opposition.

In April 2002, Senator McCain, along with Senator Carl Levin and Senator John Warner, requested that the Congressional Budget Office (CBO) undertake an analysis of

⁹⁴ "Management Accountability Review of the Boeing KC-767A Tanker Program," Report of the Office of the Inspector General of the Department of Defense, Report No. OIG-2004-171, May 13, 2004, at i, at <http://www.dodig.osd.mil/fo/Foia/ERR/tanker2.pdf> [hereinafter DoD IG Report].

⁹⁵ Renae Merle, *Boeing Deal Skipped Protocol, Report Says*, WASHINGTON POST, May 19, 2004, at E3.

⁹⁶ *Id.*

⁹⁷ DoD IG Report, *supra* note 94, at ii.

the proposed lease.⁹⁸ CBO lacked access to the figures that the Air Force and Boeing were negotiating, but analyzed the lease deal using a variety of assumptions.⁹⁹

Based on its model, CBO informed Senator McCain that the leasing option would cost approximately \$37 billion.¹⁰⁰ On the other hand, CBO estimated to buy the 100 tankers outright would cost approximately \$25 billion.¹⁰¹ Moreover, the Air Force would then own, and thus be able to use, sell, or lease the aircraft after the lease expired.¹⁰²

Upon receiving this analysis from CBO, Senator McCain's office promptly issued a press release using CBO's estimates as evidence that the lease option was a bad idea.¹⁰³ Senator McCain stated in the press release, "CBO is one of the most respected non-partisan agencies in Washington. Their analysis confirms what everyone already knows;

⁹⁸ Press Release, Senator John McCain, CBO Analysis: Boeing Leasing Deal Totals \$37 Billion; 'Significantly More Expensive' Than Tanker Purchase (May 8, 2002), at <http://mccain.senate.gov/index.cfm?fuseaction=Newscenter.ViewPressRelease&ContentId=1000> [hereinafter Press Release, John McCain].

⁹⁹ Letter from Dan L. Crippen, Director, Congressional Budget Office, to John McCain, Senator, U.S. Senate, (May 7, 2002), at <http://www.cbo.gov/showdoc.cfm?index=3413&sequence=0>.

¹⁰⁰ *Id.*

¹⁰¹ It should be noted that in determining this figure CBO erroneously assumed that there would be no interest rate applied to the purchase. In fact, the Government would have borrowed the money to procure the tankers and would have had to pay an interest rate, albeit at a lower rate than under the lease option. If CBO would have calculated the interest rate correctly the difference in price between the lease and buy option would have been significantly smaller.

¹⁰² Letter from Dan L. Crippen, *supra* note 99.

¹⁰³ Press Release, John McCain, *supra* note 98, at 1.

this leasing proposal is a bad deal for the taxpayers, a bad deal for the military, and a bad deal for pretty much everyone but Boeing.”¹⁰⁴

In May 2002, Senator McCain cited to a report by GAO as proof that the lease plan was a bad idea.¹⁰⁵ He highlighted that GAO estimated it would cost the Air Force \$26 billion to lease 100 tankers for 6-10 years,¹⁰⁶ while the existing tanker fleet could be upgraded for approximately \$3.6 billion.¹⁰⁷ Senator McCain said, “This report details the immense waste of taxpayer dollars by the Air Force.... This is a corporate bailout for Boeing of tremendous proportions.”¹⁰⁸

In response to this pressure, and the Senator’s further criticism that the lease deal was non-competitive, the Air Force acquiesced and opened the tanker lease to competition.¹⁰⁹ The Air Force requested information from Boeing and Airbus. Although Airbus only had 12 days to put together a bid against Boeing’s, they reportedly offered a plan that met nineteen of the twenty-six required specifications with a price that was \$10 billion lower than Boeing’s.¹¹⁰ At the time a spokesman for Boeing, Doug Kennett, said

¹⁰⁴ *Id.*

¹⁰⁵ Press Release, Senator John McCain, McCain: GAO Report on Air Force Boeing Lease Confirms Deal as Corporate Welfare (May 7, 2002), at <http://mccain.senate.gov/index.cfm?fuseaction=Newscenter.ViewPressRelease&Contentid=219>.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ Joseph L. Galloway, *U.S. Tanker Scandal Grows*, DETROIT FREE PRESS, Mar. 29, 2004, at 7A.

¹¹⁰ *Id.* at 1A.

that the Air Force did not select Airbus its proposal failed to meet several specifications and the proposed aircraft was too large for Air Force plans.¹¹¹

While Senator McCain may have been the most vocal critic of the tanker lease, he was not alone in his opposition. Another critic of the deal, the National Legal and Policy Center (NLPC), suspicious of the lease, informed the DoD IG that on October 21, 2002, while she was negotiating the tanker deal, Ms. Druyun sold her home to Boeing Vice President and assistant general counsel, John Judy.¹¹²

At the time NLPC raised these allegations, most dismissed them as nothing that constituted unethical or illegal behavior.¹¹³ Eric Miller, a senior defense investigator at Project on Government Oversight (POGO), another chief critic of the tanker lease, was quoted as saying that these problems amounted to “more of an appearance issue than actual illegality.”¹¹⁴ Looking back, in light of Ms. Druyun’s plea agreements,¹¹⁵ it appears that the home sale may have been more than an appearance problem. It may have been

¹¹¹ *Id.* at 7A. Ms. Druyun was the key tanker lease negotiator for the Air Force while concurrently negotiating for employment with Boeing. Ms. Druyun has since admitted that, during the course of this controversial transaction, she to improperly favored Boeing, increased the price as a “parting gift” to her future employer, and to shared proprietary data from the Airbus proposal with Boeing. Supplemental Statement of Facts at 1, *Druyun* (No. 04-150-A).

¹¹² Letter from Kenneth F. Boehm, *supra* note 22.

¹¹³ Renae Merle, *New Questions Raised About Boeing Deal*, WASH. POST, Oct. 8, 2003, at E1.

¹¹⁴ *Id.*

¹¹⁵ Statement of Facts, *Druyun* (No. 04-150-A); Supplemental Statement of Facts, *Druyun* (No. 04-150-A).

another one of the “favors” that Ms. Druyun referred to when she admitted showing preferential treatment to Boeing because of favors that had been done for her.¹¹⁶

After the tanker lease deal seemed assured of approval, despite the opposition, Ms. Druyun retired from the Air Force in November of 2002 and accepted the Boeing job.¹¹⁷

To the tanker lease critics, already suspicious about the circumstances surrounding the lease, Ms. Druyun’s \$250,000-per-year job as a vice president at Boeing appeared to confirm their fears.¹¹⁸ In September 2003, POGO released a series of dubious e-mails that had been exchanged between Ms. Druyun and Boeing officials regarding the negotiations of the tanker lease deal.¹¹⁹

¹¹⁶ Supplemental Statement of Facts at 2, *Druyun* (No. 04-150-A). I am not aware of any evidence of any wrongdoing regarding the sale of Ms. Druyun’s house; but if it looked bad before, it looks even worse in light of her admissions regarding the “favors” that she did for Boeing.

¹¹⁷ *Id.* She had begun contemplating retirement when her boss, Dr. Marvin R. Sambur, who was appointed as the head of Air Force acquisition in late 2001, had started to gradually curtail her perceived authority. After Dr. Sambur took away her ability to decide competitions and negotiate final contract terms and change requirements, she told him that she planned to retire. Merle, *supra* note 23. Originally, she made a handshake agreement to work for Boeing’s largest competitor, and the Pentagon’s biggest contractor, Lockheed Martin. See Merle, *supra* note 23. In fact, she had apparently been, at least outwardly, focused on Lockheed as her future employer for some time. See Letter from Lawrence A. Mitchell, Brigadier General, USAF Retired, Former Senior Executive Service-6, to John Dowd, Attorney for Ms. Druyun, (Feb.23, 2004), at <http://www.taxpayer.net/nationalsecurity/learnmore/Druyuncharacterwitness/Lawrencemitchell.pdf>. She had even appropriately disqualified herself from all involvement in Air Force matters concerning Lockheed on August 26, 2002. See Statement of Facts at 7, *United States v. Sears* (E.D. Va. 2004)(No. 04-310-A). But not long after that she began negotiating with Boeing through Heather’s e-mails to Mike Sears. *Id.* at 3.

¹¹⁸ Merle, *supra* note 23.

¹¹⁹ POGO did not disclose how the e-mails were obtained. Press Release, Project On Government Oversight, More Documents Show Darleen Druyun’s Inappropriate Role in

Feeling the pressure from critics, Boeing brought in an outside law firm¹²⁰ to conduct an investigation into the circumstances surrounding Ms. Druyun's hiring.¹²¹ This investigation, along with DoD's own investigation into the matter, revealed that Mr. Sears initially approached Ms. Druyun regarding post-government employment on August 13, 2002. At that time, Ms. Druyun told Sears she could not discuss employment opportunities with him until she completed her work on certain Boeing matters. However, shortly after this meeting on September 3, 2002, Heather Druyun sent an e-mail to Mr. Sears regarding her mother's potential employment.¹²²

The subject line from Heather Druyun's e-mail, sent encrypted over Boeing's intranet, read "Please do not forward...RE: Darleen Druyun."¹²³ Heather conveyed to Sears that her mother had filed her separation papers with her JAG, was interviewing with Lockheed Martin, and was "officially available" for recruitment.¹²⁴

Boeing Leasing Deal (Sept. 4, 2003), at <http://pogo.org/p/contracts/ca-030902-boeing.html>.

¹²⁰ Boeing has not released the name of the law firm that conducted the investigation. Senator Rudman's team was conducting its original investigation—based on earlier ethics violations at Boeing—at around the same time, July-November, 2003, but it is not clear if that team also conducted the investigation into Ms. Druyun's employment negotiations. Senator Rudman's report, from that time period, focuses on other ethics issues and does not mention the Druyun incident. After Ms. Druyun and Mr. Sears were fired, Boeing brought Senator Rudman's team back to investigate the company's hiring practices and policies. The resulting second report does touch on the Druyun incident as the basis for the investigation into Boeing's hiring practices, but does not go into detail about the initial fact finding investigation on which Boeing based the termination of Sears and Druyun.

¹²¹ Statement of Facts at 8, *Druyun* (No. 04-150-A).

¹²² Statement of Facts at 3, *Sears* (No. 04-310-A).

¹²³ *Id.*

¹²⁴ *Id.*

Sears replied to Heather Druyun's e-mail:

...I met with your mom last week. She informed me of her plans, and I suggested that she and I chat. She said she needed to wait until she got some of our work completed before she could chat with me. Did I miss a signal or have the wrong picture? I'm with you... we need to be on her menu.¹²⁵

Druyun responded to Sears:

Oh! I think she is referring to the tanker deal—might be too much of a conflict right now. She hopes to have the tanker deal made or scrapped by early Dec—seems like a long time off, maybe she has to wait that long before approaching us. It still makes me very worried that she is talking to Lockheed! She is visiting me tomorrow for a couple days...I hope that I can get a better understanding then. She is also talking to Raytheon and L3 (formerly E-systems, I think?) Anyway, we need to talk to her...¹²⁶

Mr. Sears indicated to Heather that he would appreciate further feedback on the situation after Ms. Druyun's visit that week. In response to his request, Heather sent the following e-mail on September 5, 2002:

As promised...please forgive the length! It is the tanker lease that prevents her from talking to you right away. She said to contact her on October 1. Let me tell you what she is looking for:

1. Must be challenging, tough, lots of responsibility. Does not want something that puts her on display. Wants to impact processes, cut bureaucracy.
2. Want to make a difference in the makeup of the IDS organization in terms of females...she thinks it is shameful that in the Albaugh's family there aren't women.
3. Would consider moving out of DC, but would like to stay.
4. ABSOLUTELY does not want to be somewhere under Muellner...she wants to be over him like at the Pentagon.

She told me point blank that she would think the perfect offer would be a COO-like position under Albaugh. Bottom line she wants to be able to make an impact in the company.

She interviewed with Lockheed's Robert Stevens, and he outlined where they would like her to fit in – something like business and process reforms (she used the term "watchdog"). She liked the sound of it, and mentioned she had a good rapport with Stevens and seemed to like what he was saying. She is very

¹²⁵ *Id.* at 4.

¹²⁶ *Id.*

interested in talking to us, but we would have to give her something that would blow her out of the water! She also mentioned that Boeing has her most admired quality: honest values.¹²⁷

Two weeks later, on September 23, 2002, Heather Druyun sent Sears the following:

I am fresh back from a visit to DC to see the parents, and of course Mom and I discussed life after retirement. She announces it publicly on Friday, by the way. I told her that I had contacted you about discussing later employment plans, and she is VERY, VERY excited. She still wants a COO like position with IDS, and she said that is what Lockheed is doing for her right now in Bethesda. She told me very frankly that if the salary and position were ideal from us, she would accept with Boeing and work her first year traveling back and forth from DC (work 5 days in STL, fly back on weekends)... She wants to know if this "COO" position is a feasible creation with IDS, and I told her that I did not know...is this a possibility? She leaves for Brussels Tues, and will return this weekend, so she would like to hear from you next week after the 1st.¹²⁸

On October 2, 2002, Mr. Sears telephoned Ms. Druyun to set up a meeting to discuss her potential employment with Boeing. They decided to meet in Orlando, Florida on October 17, 2002, while Ms. Druyun was there attending a National Defense Industrial Association Conference and NATO-AWACS conference.¹²⁹

Prior to his meeting with Ms. Druyun, Sears asked another senior Boeing executive, who was the head of the Human Resources (HR) Department and a member of the Office of the Chairman and the Boeing Strategy Council, to set aside some time on the schedule of Boeing's next Strategy Council meeting, on October 8, 2002, to discuss Ms. Druyun's employment with the company.¹³⁰

¹²⁷ Statement of Facts at 4, *Sears* (No. 04-310-A).

¹²⁸ *Id.* at 5.

¹²⁹ *Id.* at 5-7.

¹³⁰ *Id.* at 5-6.

Over the course of October 7 and 8, Mr. Sears met with several of the other senior executives about the possibility of employing Ms. Druyun. All of the executives were very interested in retaining her services and preventing Lockheed Martin from benefiting from her considerable experience. After discussing several possible positions for her, they decided to offer her a job as a Deputy in their Integrated Defense System's (IDS) Missile Defense Systems unit in Washington, D.C. IDS was not part of the Air Force's acquisitions process so the Boeing executives hoped this would help Ms. Druyun avoid conflict of interest issues in her new job.¹³¹

On October 17, 2002, Mr. Sears flew to Orlando and met with Ms. Druyun alone in a private conference room at the airport. During the meeting, Ms. Druyun told Sears that she had not yet disqualified herself from Air Force matters related to Boeing, so they should not discuss potential jobs with the company. Nonetheless, they continued to discuss employment opportunities. Mr. Sears advised Ms. Druyun of the availability of the Deputy position in Missile Defense Systems in Washington, D.C., including the salary, signing bonus, and potential start dates for the job.¹³²

Ms. Druyun told Sears that she would consider the opportunity and asked him to mail a formal offer to her home address on November 14, 2002. The conspirators ended the discussion with an agreement to keep their meeting confidential. Immediately after concluding the employment discussions, they engaged in a discussion regarding the F-22 contract for which Boeing was a subcontractor.¹³³

¹³¹ *Id.* at 6.

¹³² Statement of Facts at 7, *Sears* (No. 04-310-A).

¹³³ *Id.* at 8.

The next day Mr. Sears sent an e-mail message to three other Boeing senior executives describing his meeting with Ms. Druyun in the following manner:

Howdy. Had a “non-meeting” yesterday re: hiring Jim Evatt’s deputy. Good reception to job, location, salary, longer-term outlook. Recommend we put together a formal offer:

*Job as we discussed

*Location as we discussed

*Salary \$250K (assuming that fits)

*Recruitment bonus \$50K (important dimension of offer~could get by with \$40K)

*Start date 3 Jan 03 (and immediately travel to Desert meeting)

FedEx offer to home for 14 Nov arrival...

He also recommended that another of the senior executives talk to Ms. Druyun soon about “further details.”¹³⁴

During the “further details” conversation with the other senior executive, in late October of 2002, Ms. Druyun informed him that she had decided to work for Lockheed Martin because she believed she had done too much work related to Boeing matters.¹³⁵ Upon hearing this information, Sears arranged for a meeting with Ms. Druyun at the Pentagon on November 5, 2002. In a reply to an e-mail from Heather Druyun regarding whether he had been informed of her mother’s decision to work for Lockheed Martin, Sears wrote:

I did and I’ve got a meeting with her next week to give it another try. All I heard was her concern over “integrity” given the work she’s done on some of our programs...¹³⁶

¹³⁴ *Id.*

¹³⁵ She was apparently acutely aware of the potential for a conflict of interest if she went to work for Boeing.

¹³⁶ Statement of Facts at 9, *Sears* (No. 04-310-A).

Finally, on November 5, 2002, directly prior to the scheduled meeting with Mr. Sears later that day, Ms. Druyun submitted a letter to the Air Force disqualifying herself from work on Boeing matters. Later that day she met with Sears and discussed the same job¹³⁷ that he had described to her in their Orlando meeting.¹³⁸

Boeing sent Ms. Druyun a formal job offer on November 14, 2002. Ms. Druyun retired from her Air Force career on November 15, 2002, and formally accepted the Deputy position with Boeing on December 16, 2002.¹³⁹

Upon learning that the circumstances of her employment negotiations was being investigated, Ms. Druyun began attempting to cover up her first meeting with Mr. Sears in Orlando. In an effort to reconcile their testimony, she sent the following version of events to Sears in an e-mail dated July 4, 2003:

I have an appointment on Monday with Judy¹⁴⁰ ..., a lawyer hired by the company to review the process used by the company to ensure that the rules were properly followed and to help offset anymore negative comments I wanted to reverify my recollection of our first discussion of potential employment. You came in to see me on 5 Nov, the day before I went on leave. I had signed a recusal letter and given it to my AF lawyer since I thought that your meeting with me would probably go into the area of potential employment since my announcement had been publicly made of my retirement in mid October. As I recall at that meeting you lectured me about not jumping at my first job offer because I mentioned that I believed I had a verbal agreement with the COO of Lockheed (Bob...) although I did not expect anything in writing in terms of a job offer until the day I retired

¹³⁷ He also told her that Boeing would be willing to offer her a consulting position if she preferred.

¹³⁸ Statement of Facts at 9, *Sears* (No. 04-310-A).

¹³⁹ *Id.*

¹⁴⁰ It is not clear if she is referring to John Judy, the Boeing attorney that bought her house in Virginia, or another attorney named Judy. Since she describes the person as “a lawyer hired by the company to review the process...” she is probably referring to an attorney with the firm that Boeing hired to do the investigation. Also, at the end of the e-mail she refers to the attorney as “she....”

which was November 14, 2002. I also told you that I did not believe that I could work for Boeing because of my involvement in attending some of the 767 tanker negotiations. You countered that it was possible for me to work for Boeing if I worked in an entirely different area. I also stated that I could not be mobile because of my spouse's employment for a few years and that there was nothing in this area that Boeing could offer to which you countered the company employed over 3000 people in the greater DC area. You also told me that you could not see me working in another staff job which is what Bob...had probably discussed and that I should consider a P&L job. As you can recall I said I would very much be interested in working for a company that could offer me a P&L in the DC area. You mentioned missile defense as one of the opportunities and generically described Boeing's Executive level compensation program. You strongly recommended that I discuss this with my lawyer in the AF and asked if you could send me a job offer and I said on my last day of work which was 14 Nov 02. I did receive a job offer from you on or about 14/25 Nov 02 which I discussed with the AF lawyer. His first reaction was that he did not see an issue. He then set about reviewing it in detail after my discussion with him and concluded around 5 Dec in writing that it would be in full compliance with the rules. It is my belief that he discussed it with Boeing lawyers. I believe it was not until 16 Dec that I officially made up my mind and called you and then faxed the paperwork to the company. I see Judy at 0900 Monday AM and wanted to verify with you that this was also as you remember it. I expect that she might call you. Please let me know Mike if I have captured everything that we discussed. Hope you are enjoying Great Britain and get some aircraft sales!¹⁴¹

Despite Ms. Druyun plainly omitting their meeting in Orlando, Mr. Sears replied to her e-mail in the following manner:

Precisely as I can recall. You obviously take good notes/have good memory...much better than mine. And we're all thrilled that things have worked out this way re: your employment choice!!! Enjoy the 4th!...¹⁴²

Over the next few months, as various newspaper articles began to question the propriety of her hiring, Ms. Druyun had several telephone conversations with Mr. Sears in which she expressed worry. She was particularly concerned about the effect the situation might

¹⁴¹ Statement of Facts at 11, *Sears* (No. 04-310-A).

¹⁴² *Id.* at 12.

have on her daughter, Heather. Mr. Sears assured her that everything would be fine and advised her to “hang tough.”¹⁴³

After learning that the DoD IG had served a subpoena on Boeing relating to that Office’s criminal investigation of her hiring, Ms. Druyun again called Sears. She expressed concerns to him that the company had located several e-mails related to her hiring. Mr. Sears again assured Ms. Druyun that everything would be fine—he believed any e-mails would relate to pre-planning efforts by Boeing and not actual employment discussions—and, again, to “hang tough.”¹⁴⁴

Finally, on October 22, 2003, during an interview with Boeing’s counsel, Sears admitted to meeting with Ms. Druyun in Orlando. He did so reluctantly and only after being confronted with a copy of his calendar, that indicated the date of the meeting, and his subsequent e-mails that referred to the meeting.¹⁴⁵

Consequently, Ms. Druyun and Mr. Sears were fired,¹⁴⁶ prosecuted, convicted, and sentenced for their roles in the circumstances surrounding Boeing’s post-government employment of the formerly powerful and influential Air Force executive.¹⁴⁷

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 13.

¹⁴⁵ *Id.*

¹⁴⁶ They were both fired on November 24, 2003. Statement of Facts at 11, *Druyun* (No. 04-150-A); Statement of Facts at 13, *Sears* (No. 04-310-A).

¹⁴⁷ *Id.*

IV. THE ACCIDENT BOARD

In the wake of the violent, destructive crash of Ms. Druyun's distinguished career, the Air Force and DoD are left to pick up the pieces and analyze what went wrong. The Air Force has pointed out that it had already started taking positive steps to reform its acquisition structure and processes, in March, 2002, even before Ms. Druyun's abuses came to light. As part of this strategy for reducing the potential for abuse, the Air Force has created the Acquisition Center for Excellence; left Ms. Druyun's position unfilled; realigned the program executive office reporting structure and decentralized program execution responsibilities outside of Washington; implemented quarterly program executive office program reviews, monthly and weekly status reporting, and automated program reporting and tracking tools; and directed that the assistant secretary for acquisition be briefed on all major source selections before contract award is made.¹⁴⁸

Additionally, the Air Force is taking several further steps in order to ascertain if Ms. Druyun committed any other abuses, how her known violations were allowed to occur, and how to prevent future abuses of the procurement system.¹⁴⁹

In this vein, DoD asked the Defense Contract Management Agency (DCMA) to form a team, comprised of DoD, Army, and Navy personnel, to examine for irregularities all of the procurements that Ms. Druyun touched during her career with the Air Force. The team's examination was to extend beyond contracts in which Ms. Druyun was the source selection official to include any area her long arm of influence could have been

¹⁴⁸ Air Force Link, *DOD Investigating Contracts, Reviewing Procedures*, (Nov. 18, 2004), at 1, at <http://www.af.mil/stories/story.asp?storyID=123009211>.

¹⁴⁹ *Id.*

applied—including contract extensions and award fees.¹⁵⁰ Among other things, the Air Force wanted to know if there were any decisions that Ms. Druyun made to which others disagreed, whether she suppressed their dissent, or whether there were any cases where she took evaluations from advisory groups and changed them.¹⁵¹ The DCMA study was to be conducted in house as opposed to the more public study conducted by the Defense Science Board (DSB).¹⁵²

A. THE DEFENSE SCIENCE BOARD

In an additional step towards reform, Mike Wynne, the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) asked the Defense Science Board, a Pentagon advisory group, to review the Air Force’s entire procurement system.¹⁵³ Specifically, DoD convened a task force of internal and external experts with prior government and private sector experience, specializing in business management and ethics, to review how Ms. Druyun was able to accrue enough power to veil her misdeeds so that they went unnoticed until revealed by her admissions. The task force, under the leadership of the Defense Science Board (DSB), was asked to provide recommendations to DoD on the types of additional checks and balances that could be put in place to auger

¹⁵⁰ *Id.*

¹⁵¹ Renae Merle, *Air Force Seeks Contract Reviews*, WASH. POST, Nov. 9, 2004, at 1, at <http://www.washingtonpost.com/ac2/wp-dyn/A35534-2004Nov8>.

¹⁵² The DCMA study is not readily available to the public at this time.

¹⁵³ “Management Oversight in Acquisition Organizations,” Report of the Defense Science Board Task Force, March 2005, at http://www.acq.osd.mil/dsb/reports/2005-03-MOAO_Report_Final.pdf [hereinafter DSB Report].

against this type of power accumulation in the future, as well as any other best practices that could be adopted from other major acquisition organizations.¹⁵⁴

In determining its recommendations to DoD, the DSB Task Force met with experts in several fields, including: procurement, acquisition, leadership, ethics, oversight, organization, human resources, and best practices. The Task Force also received briefings on acquisition practices and processes within the Military Departments, as well as a sample of those practices and processes from some of the other Defense agencies such as Special Operations Command, the Missile Defense Agency, and the Defense Advanced Research Projects Agency.¹⁵⁵

The Task Force found, after studying the processes within the other Defense agencies, along with the recent reforms that the Air Force has made regarding its acquisition authority, that the probability of another Druyun-type situation occurring is remote. The Task Force also noted, however, that there is nothing in the existing acquisition structure or policies of the Department to prevent a recurrence of this type of misconduct.¹⁵⁶

In examining Ms. Druyun's case in particular, the Task Force concluded that a confluence of factors had worked to create a high-risk situation that allowed Ms. Druyun the opportunity to engage in her criminal activities. One of the contributing factors cited by the Task Force was that Ms. Druyun had personal responsibility for a broad range of

¹⁵⁴ Air Force Link, *supra* note 148.

¹⁵⁵ DSB Report, *supra* note 153.

¹⁵⁶ *Id.*

actions such as source selection, contract negotiations, fee determinations, and personnel actions. In most of the other DoD elements these actions are typically shared with, or delegated to, other officials. The Task Force discovered these vast responsibilities were bestowed on Ms. Druyun over time by the civilian leadership—sometimes intentionally, but also by default when Ms. Druyun assumed the responsibilities of unfilled positions above her.¹⁵⁷ This accretion of authority took place despite protests by senior military officers in the Air Force expressing their concern over Ms. Druyun’s accumulation of unchecked power.¹⁵⁸

The Task Force noted that it appeared to be possible for Ms. Druyun to accrue so much authority because 1) her contracting capabilities and knowledge of the system were highly regarded; 2) she had enjoyed such a long tenure as the Air Force’s leading acquisition professional; 3) during much of her tenure the position of Assistant Secretary of Acquisition—her immediate boss—went unfilled; and 4) she was able to control subordinates, thus suppressing criticism and dissent, through the substantial control she exercised over the careers and promotions of the military and civilian personnel in the Air Force acquisition world.¹⁵⁹ Additionally, the Task Force found that Ms. Druyun benefited from the temptation, driven by the extremely complex nature of the acquisition system and its regulations, for the less experienced to heavily rely on those who had already mastered the system.¹⁶⁰

¹⁵⁷ *Id.* at 7, Figure 1: Darleen Druyun Chronology.

¹⁵⁸ *Id.* at 6.

¹⁵⁹ *Id.*

¹⁶⁰ DSB Report, *supra* note 153, at 10.

In its report the Task Force made a two-tiered series of recommendations for improving the current acquisition system. The first tier of recommendations focused on immediate remedies relating to process and oversight, while the second tier dealt with longer-term changes regarding leadership and people.¹⁶¹

In terms of processes, the Task Force recommended that those sound acquisition practices that have been developed by the Services over the years, including the Air Force's recent reforms, be documented through written policy to ensure continuity through the inevitable changes in leadership throughout DoD.¹⁶²

For major procurements,¹⁶³ the Task Force recommended that each of the major acquisition authorities be required to codify a policy that advisory boards to the Source Selection Authority (SSA) provide a written report of their appraisal and recommendations to the SSA. The Task Force would have the SSA be compelled to document his decision and rationale. This document would also be required to include whether the SSA's decision differed from the advisory boards' recommendations. The SSA decision would be automatically reviewed through the recognized mechanisms of that organization.¹⁶⁴ If Ms. Druyun had followed this practice regarding her Boeing

¹⁶¹ *Id.*

¹⁶² *Id.* at 12.

¹⁶³ The Task Force did not define what would entail a "major procurement," however, the FAR defines a Major System Acquisition for DoD as one that the total expenditures for research, development, test, and evaluation of the system are estimated to be more than \$115,000,000 or the eventual total expenditure for the acquisition exceeds \$540,000,000. FEDERAL ACQUISITION REGULATION § 2.101 (July 2004).

¹⁶⁴ *Id.*

decisions perhaps it would have drawn more attention to the fact that she disregarded the advisory boards' recommendations without any explanation of her rationale.

As a way to prevent the excessive accumulation of power in one individual, the Task Force recommended that each Senior Acquisition Executive be required to implement policies and process checks to prevent such an accrual of authority among the SES professionals. The Task Force also stressed that decisions on major awards should not be allowed to be made by the same individual repetitively.¹⁶⁵ If Ms. Druyun had been held to this standard, she may not have had the same breadth of opportunity to manipulate the system.

In reviewing the oversight portion of the acquisition process, the Task Force recognized that the USD(AT&L), the senior acquisition executive in the DoD, had not overseen the processes as fully as necessary. As an illustration, the Task Force pointed out that USD(AT&L) was not involved in 1998, when the Secretary of the Air Force issued a memorandum consolidating all acquisition authorities, oversight, and management with Ms. Druyun. If the proper oversight had been utilized, USD(AT&L) would have recognized that the necessary checks and balances had evaporated from the Air Force's process with the promulgation of that memorandum.¹⁶⁶

The Task Force emphasized that it was critical to have USD(AT&L) actively engaged in the oversight of the policies, practices, and structure of all of the Defense acquisition systems to avoid the potential for abuse and ensure proper checks and balances remain. As a way to implement this concept, the Task Force recommended a

¹⁶⁵ *Id.* at 13.

¹⁶⁶ DSB Report, *supra* note 153, at 13.

series of practices modeled from processes used by several defense contractors known for possessing strong ethics programs.¹⁶⁷

The Task Force suggested that ethical behavior is a function of leadership, and that DoD lags behind the “best in class” in demonstrating the brand of leadership required to push ethics to the vanguard of organizational behavior. They noted that the Department’s focus on ethical compliance has resulted in a “check the box” attitude as opposed to developing a culture that is “obsessive” about “doing the right thing,” which the Task Force suggests is required for DoD to be considered on par with the “best in class” ethical organizations.¹⁶⁸

The Task Force’s report, which at times reads as if it was authored by the defense contractor’s bar,¹⁶⁹ recommends that DoD articulate its vision and values as an ethically

¹⁶⁷ *Id.* at 14. In addition to USD(AT&L) overseeing processes as well as programs, these recommended practices include: identifying and sharing best practices among the Services, questioning unusual practices and organizational structures, using mistakes and failures as case studies to be communicated broadly throughout the departments, requiring components to perform periodic critical self-assessments and to demonstrate continuous self-improvement (this was an attribute that the Task Force suggested was lacking in the culture of DoD), and to develop and periodically review key metrics oversight of senior personnel. The Task Force suggested senior personnel metrics focus on such areas as tenure on the job, performance evaluations, and recent program awards in which the individual was involved. *Id.*

¹⁶⁸ *Id.* at 15.

¹⁶⁹ It seems as though the Task Force may have been overly enamored with industries’ ethics programs as compared to the Government’s. To say that industry is “obsessive” about “doing the right thing” whereas the Government is only concerned with “checking the box” is, in my opinion, an unfair exaggeration. I have found that the fine men and women that I have had the privilege to work with in the Air Force are just as obsessive about doing the right thing as anyone in the private sector could be.

grounded organization in the same manner it expects from its contractors.¹⁷⁰ The Task Force further recommended that the Secretary of Defense do the following: put ethics at the forefront of Department communications; institutionalize an orientation program in the Office of the Secretary for incoming senior leadership addressing the values and objectives of DoD, the importance of leadership to sustaining an ethical culture, and performance expectations tied to both of the above. Additionally, the Task Force stressed that senior DoD leadership should be responsible for ensuring that this message is disseminated down to everyone in the Department by promoting ethical behavior and stressing personal consequences for violators.¹⁷¹

The Task Force found several challenges in the personnel system that have contributed to problems within the acquisition community, including some of the difficulties related to Ms. Druyun's situation. One such issue has been the difficulty of filling confirmed positions in a timely manner. The fact that some of these positions went unfilled for such a long time directly contributed to Ms. Druyun's ability to accumulate virtually unchecked power.¹⁷² These unfilled vacancies served the dual purposes of allowing Ms. Druyun to assume her would-be supervisor's authority while allowing her to go largely unsupervised by anyone who understood the complexities of the acquisition process.

To remedy this situation, while acknowledging it was not within DoD's control, the Task Force suggested that the Secretary of Defense place a higher priority on filling

¹⁷⁰ The tone of this point seems to be somewhat combative—perhaps someone on the Task Force was bitter about past treatment from DoD and wanted to make a point.

¹⁷¹ DSB Report, *supra* note 153, at 16.

¹⁷² *Id.*

the appointed positions. They recommended DoD work with the Administration and the Senate to find ways to accelerate the confirmation process. Additionally, to shorten the process, the Task Force suggested that DoD create a standing list of pre-vetted candidates so, when a vacancy occurs, a candidate will immediately be ready for nomination.¹⁷³

The Task Force also said it was problematic that the SES personnel practices are not on an equal plane with the military officers' personnel practices. For example, the SES evaluation system does not address behavioral problems at all. If it did, it may have become more apparent to Ms. Druyun's superiors that she had a history of being hostile to subordinates and contractor representatives. Additionally, there are no detailed guidelines for the education, training, and overall career development of SES employees as there are for those employees serving in the acquisition community below the SES level. Finally, SES employees are allowed to remain in one position for too long—they are not forced to rotate periodically like their military counterparts.¹⁷⁴

The Task Force suggested that this problem is exacerbated by the fact that the senior military officers in the acquisition community are rotated so frequently that they have a difficult time gaining the required expertise in the system to be an effective counterbalance to the more sedentary SES employees. This dynamic allows the SES employees in the acquisition world to wield more power because their military peers often become overly dependent on their specialized knowledge and expertise. The Task

¹⁷³ DSB Report, *supra* note 153, at 17.

¹⁷⁴ *Id* at 16.

Force warned that this situation potentially creates a dangerous tension over “who’s in charge.”¹⁷⁵

In order to address these issues, the Task Force recommended that the Undersecretary of Defense for Personnel and Readiness (USD (P&R)) change the SES performance management system to make it more akin to those utilized by military personnel, as well as senior personnel in the private sector. Specifically, they suggested the USD(P&R) institute a “360-degree feedback technique” in order to help deter SES employees from exhibiting unacceptable behaviors such as some of those displayed by Ms. Druyun over the years. The Task Force suggests this goal could be accomplished by providing “safe” environments for subordinates to offer critical feedback of their SES superiors without fear of retribution.¹⁷⁶

To rectify the longevity dilemma, the Task Force has recommended that USD (P&R) create a policy that requires DoD SES employees to rotate every five years. In terms of career development, the Task Force recommended that SES employees be required to complete continuing professional development courses similar to those utilized for developing leadership skills in our military officers.¹⁷⁷

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 17. In my opinion, this notion may be too “touchy/feely” for a military organization and could potentially be counterproductive. If a problem with a superior cannot be resolved through the chain of command, there are already many avenues, including the IG, Military Equal Opportunity, etc., to address issues concerning an unruly supervisor. There is no need to create yet another vehicle to deal with these issues outside the chain of command.

¹⁷⁷ *Id.*

In a clear nod toward Ms. Druyun’s situation with Boeing, the Task Force suggested the Standards of Conduct be amended to include employment disclosures for government employees’ spouses and adult offspring.¹⁷⁸ Under the current rules, Ms. Druyun was not required to disclose that her adult daughter, Heather, worked for Boeing.¹⁷⁹ If Ms. Druyun had been required to disclose Heather’s employment, perhaps it would have drawn attention to the potential for a conflict of interest surrounding Ms. Druyun’s decisions on Boeing matters.

The report particularly emphasizes that the Task Force does not recommend that the acquisition process be made more restrictive or complex in reaction to the Druyun scandal. In fact, the Task Force noted that it was “astounded” by the length of time currently involved in developing and fielding material for the warfighter, as well as the complexity of the entire process.¹⁸⁰ The report proposes that it would be folly to encumber acquisition professionals with more rules and regulations “since that would still not prevent a determined insider from illegal behavior.”¹⁸¹ The Task Force further recognized that “no amount of added rules, processes and/or legislation can prevent illegal or unethical behavior by a determined individual.”¹⁸²

¹⁷⁸ *Id.*

¹⁷⁹ For example, 18 U.S.C. § 208 only requires disqualification if a “minor” child has a financial interest. 5 C.F.R. § 2634.502 is only slightly broader requiring disqualification for “dependent” children with a financial interest. Neither would cover an adult child like Heather Druyun.

¹⁸⁰ DSB Report, *supra* note 153, at 19.

¹⁸¹ *Id.* at 3.

¹⁸² *Id.* at 11.

In fact, the Task Force suggested the addition of more rules could produce a negative effect beyond further slowing down the process to arm the war fighters. The report points out that making the system more restrictive and complicated could actually result in more abuse because it will decrease the number of individuals who have mastered the system thereby increasing reliance on those who have.¹⁸³ The Task Force warned that such a complex system only serves to augment the power of those who master it—like Darleen Druyun.¹⁸⁴

B. PROTESTS FILED

Shortly after Ms. Druyun made her admissions to the court, several of Boeing's competitors for the contract to modernize the C-130 filed agency level protests against the procurements with the Air Force. The Air Force, fearing that it would not appear independent in its review of the protests, declined to issue a decision on the protests and encouraged the parties instead to file their protests with the Government Accountability Office (GAO). None of the protestors had filed bid protests at the time of the original contract award, but apparently decided to protest after learning of Ms. Druyun's admissions.

Under GAO rules, a protestor must file a protest within ten days of the day the protestor knew or should have known of the basis for the protest.¹⁸⁵ Normally that means a protestor must file the protest within ten days of losing the competition—basically

¹⁸³ DSB Report, *supra* note 153, at 13.

¹⁸⁴ *Id.* at 19.

¹⁸⁵ 4 C.F.R. § 21.2(a)(2)(2004).

within ten days of contract award.¹⁸⁶ What makes these protests interesting is that they were filed over three years after the award was made, a far longer period than the norm.¹⁸⁷ The protesters apparently argued that the timeline in their case should be within ten days of Ms. Druyun's admissions because that is when they knew or should have known about the basis for their protests. GAO treated the protests as timely since the protestors had no reason to know of the information disclosed in Ms. Druyun's admissions to the court prior to her confession.¹⁸⁸

GAO also found for the protestors on substantive grounds, holding that the agency failed to demonstrate that Ms. Druyun's acknowledged bias did not prejudice the protestors.¹⁸⁹ GAO rejected the Air Force's arguments that, regardless of Ms. Druyun's admissions, there was no evidence that she influenced the source selection evaluation team (SSET) and that the evaluation process was conducted properly and in accordance with the evaluation criteria.¹⁹⁰ In the opinion, GAO highlighted several instances in the

¹⁸⁶ However, protests challenging the solicitation must be filed before the contract is awarded. 4 C.F.R. §21.2(a)(1)(2004).

¹⁸⁷ 4 C.F.R. §21.2(a)(2)(2004). Another interesting aspect to the protests is that one of the protestors, Lockheed Martin, filed a second protest challenging all of the contracts that that company competed for and Ms. Druyun had a hand in deciding. This may have been the first omnibus type of protest of this nature filed with GAO and it would have been interesting to observe the outcome. However, Lockheed Martin and the Air Force spared GAO the consideration of the omnibus protest as originally filed with the agency by narrowing their dispute down to a single program, the Small Diameter Bomb (SDB), shortly after the protest was filed with GAO.

¹⁸⁸ *Lockheed Martin Aeronautics Company; L-3 Communications Integrated Systems L.P.; BAE Systems Integrated Defense Solutions, Inc.*, B-295401, B-295401.2, B-295401.3, B-295401.4, B-295401.5, B-295401.6, B-295401.7, B-295401.8, 2005 WL 502840, at *2 (C.G.Feb.24, 2005).

¹⁸⁹ *Id.* at *1.

record, which seemed to indicate that Ms. Druyun did exert her influence over the SSET with regard to Boeing's proposal as well as those of the protestors.¹⁹¹

This is an unusual case because Boeing has been performing the contract for three years. Accordingly, GAO recommended that the Air Force recompetete only those aspects of the contract that are feasible in the present circumstances—namely the installation portion of the job that has not yet begun.¹⁹² GAO also recommended the protestors be awarded filing costs, the costs of pursuing the protest, and attorneys' fees.¹⁹³

On February 18, 2005, GAO sustained Lockheed Martin's protest regarding the SDB. Part of the reasoning behind the decision was that the evidence showed that Ms. Druyun "was involved in the decision-making process that culminated in changes made to evaluation factors—including deletion of specific technical requirements." Additionally, GAO indicated the Air Force intended to amend the contract with Boeing, on a sole-source basis, to add the previously deleted requirements.¹⁹⁴

GAO recommended that the Air Force hold a competition for the deleted requirements rather than amend Boeing's contract on a sole-source basis.¹⁹⁵

¹⁹⁰ *Id.* at *8.

¹⁹¹ *Id.* at *7-*8.

¹⁹² *Id.* at *9.

¹⁹³ *Id.* at *10.

¹⁹⁴ Press Release, U. S. Government Accountability Office, Statement Regarding Lockheed Martin Small Diameter Bomb Procurement Protest (Feb. 18, 2005).

¹⁹⁵ *Id.* Additionally, GAO recommended that Lockheed Martin be reimbursed for the costs generated by its prosecution of the protest. Ironically, GAO deferred ruling on a Lockheed Martin request for its proposal preparation costs due to concerns regarding the treatment of post-employment restrictions by Lockheed Martin of one of its current employees (who apparently happens to also be a retired senior Air Force official.) *Id.*

C. BOEING'S RESPONSE

Boeing's response to the scandal, beyond firing Ms. Druyun and Mr. Sears,¹⁹⁶ was to commission former Senator Warren Rudman, along with several colleagues from the law firm Paul, Weiss, Rifkind, Wharton, and Garrison, to do an independent review of the company's procedures and practices related to the hiring of current and former government employees.¹⁹⁷ The investigation began in November of 2003, and was completed on February 26, 2004.¹⁹⁸

Senator Rudman had previously¹⁹⁹ accomplished a similar investigation, relating to Boeing's policies and procedures regarding ethics and the handling of competitive information, after the company was accused of misusing information from Lockheed Martin.²⁰⁰

¹⁹⁶ The resignation of Boeing's CEO, Phil Condit, was also, at least partially, due to the events surrounding Ms. Druyun's hiring.

¹⁹⁷ Press Release, Boeing, Boeing Releases Independent Review of Company Hiring Practices, (Mar. 9, 2004), at 1, *at* <http://www.boeing.com/news/releases/2004/q1/nr040309a.html>.

¹⁹⁸ "A Report to the Chairman and Board of Directors of the Boeing Company Concerning the Company's Policies and Practices for the Hiring of Government and Former Government Employees," Report of Paul, Weiss, Rifkind, Wharton, & Garrison LLP, Feb. 26, 2004, at 1, *at* <http://www.boeing.com/news/releases/2004/q1/Rudman030904.pdf> [hereinafter Rudman Report].

¹⁹⁹ The first investigation was conducted between July and November of 2003.

²⁰⁰ The alleged misuse of information occurred in 1997 and 1998 during the competition for the Evolved Expendable Launch Vehicle (EELV) program. Press Release, Boeing, Senator Rudman to Lead Independent Review of Boeing, (Jul. 17, 2003), at 1, *at* <http://www.boeing.com/news/releases/2003/q3/nr030717a.html>.

The Rudman team's report regarding the hiring practices was written as a companion to the earlier review of practices relating to the treatment of Lockheed Martin's proprietary

Senator Rudman's group investigated every aspect of Boeing's hiring practices as they related to current and former government employees including internal policies, oversight mechanisms, organizational structure, process management, and monitoring systems.²⁰¹ They interviewed dozens of the company's employees who had been hired away from government jobs, encompassing almost every employee hired by Boeing at the level of vice president or above, during the preceding five year period. They also interviewed a cross-section of these former government employees hired by the company for various other positions during the same period.²⁰²

Senator Rudman's group identified ten overall weaknesses related to Boeing's practices regarding the hiring of former government employees. The investigation team made several recommendations as to how Boeing could strengthen its hiring program for former government employees.²⁰³

The team faulted the oversight of Boeing's hiring process as too decentralized, highlighting the fact that the responsibilities and functions associated with the recruitment and hiring of employees was dispersed among too many entities. The investigators found that this dispersion made it difficult for Boeing to achieve uniformity

information and at times refers back to that report for a more thorough explanation of Boeing's overall organization and policies. Rudman Report, *supra* note 198, at 2.

²⁰¹ Press Release, Boeing, Boeing Releases Independent Review of Company Hiring Practices, (Mar. 9, 2004), at <http://www.boeing.com/news/releases/2004/q1/nr040309a.html>.

²⁰² During the investigation, the team also examined the pre-hire personnel files for a number of other employees that had worked for the government, in addition to reviewing the company's on-line hiring and personnel systems, its personnel organization and division of hiring responsibilities, its conflict of interest review procedures, its record-keeping and data-gathering procedures, and its training and auditing practices. Rudman Report, *supra* note 198, at 1.

²⁰³ *Id.* at 31-41.

of procedures, effective central monitoring, thorough record keeping, and consistent pre-employment and post-employment conflict of interest (COI) reviews for government hires.²⁰⁴ To alleviate this problem the team recommended that Boeing establish a system for central oversight and monitoring of the recruitment and hiring of government officials.²⁰⁵

Senator Rudman's team also found no formal mechanism to ensure that disqualification issues were addressed at the beginning of the hiring process. The investigators noted that, prior to the Druyun/Sears scandal, not enough attention was paid to COI reviews of government hires. They discovered that Boeing's procedures had not effectively required government employee applicants to provide the company with a copy of a disqualification statement until immediately before, and in some cases after, an offer letter had been issued. Furthermore, the online employment application Boeing utilized did not ask a full set of COI questions, possibly permitting a government employee with responsibilities related to Boeing (like Ms. Druyun) to apply for a job with the company before disqualifying herself from those responsibilities.²⁰⁶

To remedy this problem, the team suggested that Boeing employ further safeguards in the early stages of the hiring process to ensure that government officials have filed proper disqualification statements prior to becoming involved in employment discussions with the company.²⁰⁷

²⁰⁴ *Id.* at 31.

²⁰⁵ *Id.* at 36.

²⁰⁶ *Id.* at 31.

Another shortcoming identified by the report was the lack of uniformity in the conduct of COI reviews during the hiring process. Although, according to Boeing's written procedures, the reviews were supposed to be conducted before the interview process commenced, in many instances reviews were not done until after an offer letter was issued. In the case of some hires, there was no indication in the files that a COI review was ever done. When they were accomplished, the reviews varied in content, thoroughness, and were often based on sparse documentation.²⁰⁸

The report pointed out that Boeing had no individual focal point in the recruitment and hiring process that served as a single point of control for COI issues throughout the corporation.²⁰⁹ The team recommended that Boeing use their offer letter as the central point of control—by insisting that no offer letter be given to recent or current government employees until all COI documentation has been received, reviewed, and approved by the Law Department.²¹⁰

²⁰⁷ Some of the safeguards suggested are: that government officials be required to answer a full list of COI questions regarding their responsibilities, a mechanism be put in place to prevent interviews from being scheduled with individuals that have not produced a disqualification statement, and the company have the individual certify that they filed a disqualification statement prior to engaging in any employment discussions with Boeing. Rudman Report, *supra* note 198, at 36.

²⁰⁸ As a response to this lack of uniformity, the investigation team recommended that the Boeing Law Department conduct the COI review process in a manner that is based on complete information, performed uniformly, and is fully integrated into the hiring process. They further suggested that the attorney reviewing the documents contact the applicant directly, if necessary, to obtain the complete information needed to accomplish an appropriate COI determination. They also recommended that each COI review be documented through a memo to be placed in the employee's personnel file, in addition to providing a copy of the memo to the applicant and the hiring manager *Id.* at 32, 37.

²⁰⁹ *Id.* at 32.

²¹⁰ *Id.* at 37. The team also discovered that Boeing had done a poor job of monitoring COI issues for their current employees. Specifically, an employee database that was

The review also criticized Boeing's haphazard style of record keeping and data gathering regarding COI reviews.²¹¹ The team suggested that the company enhance this area of operations by ensuring that the important pre-hire documentation for government and former government employees is maintained in a central, easily accessible location in a filing system that is easy to update and capable of generating company-wide data for periodic review.²¹²

The investigators also learned that while the hiring of government employees and former government employees had been identified by Boeing as a risk area, there had been no internal audit resources devoted to this realm in the previous five years.²¹³ They recommended that, for at least the next two years, the practice of hiring government employees be included in the areas of risk that merit inclusion in the company's annual Compliance Assessment Process audit.²¹⁴

The investigation team's report noted that Boeing's training program has been insufficient in the realm of hiring government and former government personnel. They

supposed to flag that a new COI review was needed when a former government employee changed positions within Boeing (in case their new responsibilities created a conflict where none existed before) was not being properly followed.

To alleviate this problem, the team recommended that Boeing adopt a policy that requires the electronic database be checked for COI flags before an employee is allowed to change positions within the company. In addition, before a position change or a major change in responsibilities is made the COI review should be completed by the Law Department and filed in the employee's personnel file. *Id.* at 38.

²¹¹ *Id.* at 33.

²¹² *Id.* at 39.

²¹³ *Id.* at 34.

²¹⁴ Rudman Report, *supra* note 198, at 40.

found that the training programs were not very well known throughout the company and were not mandatory in nature.²¹⁵

In order to improve in this regard, the team suggested that Boeing make its training programs both mandatory and higher-profile. They also recommended that Boeing draw on the Druyun situation to create problem scenarios related to government hires for inclusion into the company's ethics and compliance training programs.²¹⁶, ²¹⁷

The Rudman team indicated that many of the deficiencies it pointed out in the report were exacerbated by Boeing's excessive reliance on the government and former government employees to monitor their own compliance with the COI laws. They found this was a problem both during the hiring process and after the employees had become employed by the company. The team noted that this issue seemed to be especially prevalent regarding senior executive hires from the ranks to the U.S. Government, such as Ms. Druyun.²¹⁸

However, the report did not find this reliance on the government employees to comply with the law to be entirely misguided since the Rudman team agreed that the primary responsibility to obey the disqualification requirements rests with the individual leaving government employment. Additionally, the team found that most of the former

²¹⁵ *Id.* at 34.

²¹⁶ *Id.* at 41.

²¹⁷ Another problem area that the report revealed was that Boeing's World Headquarters lacked a unified head of Human Resource (HR) functions to provide centralized leadership and set HR policies.²¹⁷ The team recommended that the company consider establishing some type of centralized oversight of HR functions within its World Headquarters in order to remedy this perceived problem. *Id.* at 41.

²¹⁸ *Id.* at 28.

government employees working at Boeing understood the rules and were very sensitive to their need to comply with them. Notably, the team concluded that most of the senior executives that Boeing hired from government jobs had benefited from substantial access to their agency's ethics and legal resources to assist them with these issues before leaving government service.²¹⁹

Interestingly, the team noted that the situation involving Ms. Druyun set in high relief that Boeing, by excessively relying on the government employee to act in accordance with the applicable laws, was taking a considerable risk that an employee would make a mistake or commit willful misconduct. As such, the team stressed the need for the company to implement, maintain, and follow internal procedures that would limit the opportunities for individuals to commit errors or misconduct of this nature.²²⁰ Although it is the employee's responsibility, Boeing could have potentially avoided all the negative consequences from this scandal if it would have been more proactive in ensuring that Ms. Druyun had followed the rules.²²¹

Senator Rudman's team did, however, conclude that Boeing had adopted written procedures that clearly addressed its obligations regarding the hiring of government employees. They noted that, in their opinion, Boeing was knowledgeable about its legal responsibilities in this sphere and it would be a mistake to think otherwise because of the situation involving Ms. Druyun. They report suggests that the Druyun incident was an

²¹⁹ Rudman Report, *supra* note 198, at 29.

²²⁰ *Id.* at 29.

²²¹ Although in the Druyun case it appears that some employees of Boeing, particularly Mike Sears, actually helped, or encouraged, Ms. Druyun to break the rules rather than insisting that she comply with them.

aberration, noting that no similar incidents were discovered in the course of the investigation.²²²

D. PROCUREMENT FRAUD WORKING GROUP

Immediately after Mr. Sears' sentencing, Paul J. McNulty, the United States Attorney for the Eastern District of Virginia (EDVA), announced that he would spearhead a procurement fraud initiative aimed at promoting the early detection and prevention of procurement fraud associated with the increase in contracting activity for national security and other government programs.²²³

The initiative, the Procurement Fraud Working Group (PFWG), consists of representatives from several federal agencies including members of the FBI, DoD, the National Reconnaissance Office, the Department of Homeland Security, the State Department, and the Department of Transportation. The PFWG should facilitate the

²²² *Id.* at 27-28. In a March 9, 2004 press release, Boeing's Chairman, Lew Platt, indicated that the company had already acted on many of the Rudman team's recommendations from the report and intends to eventually implement all of them. He said, "We are tightening up central oversight, improving record-keeping, monitoring the records or people as they move through the system, increasing our audits of the records and results, and improving training in all of these areas." Press Release, Boeing, Boeing Releases Independent Review of Company Hiring Practices, (Mar. 9, 2004), at 1, *at* <http://www.boeing.com/news/releases/2004/q1/nr040309a.html>.

²²³ McNulty decided he was in a unique position to lead an endeavor like this because his Office is the chief law enforcement agency for a district that is home to several large procurement offices, including the Pentagon and Norfolk Naval Base, as well as many defense contractors. Moreover, EDVA has experience with these types of prosecutions. In addition to prosecuting Ms. Druyun and Mr. Sears, EDVA has prosecuted several other cases of this nature including performing a large role in Operation Ill Wind. Press Release, U.S. Department of Justice, United States Attorney Eastern District of Virginia, News Release, (Feb. 18, 2005), at 2.

exchange of information among the participating agencies and assist them in developing new strategies to prevent and promote early detection of procurement fraud.²²⁴

The PFWG's agenda includes an improved training program for auditors and special agents so that they will be better prepared to assist in procurement fraud investigations. The PFWG will also seek to improve communication between the Government and the government contractor community as it relates to sharing more effective ways to prevent procurement fraud.²²⁵ Additionally, the PFWG will aim to increase collaboration between special agents and prosecutors in the essential early stages of procurement fraud investigations in order to enhance the probability of a successful prosecution or civil recovery.²²⁶

The group also plans to initiate a program that places agency investigators at major procurement offices to do hands-on work with the agency employees directly involved in the negotiation of government contracts. The group hopes to couple this initiative with an increased emphasis on educating contracting officers, program managers, and other agency employees on how to detect and prevent procurement fraud.²²⁷

Finally, the PFWG expects to be able to use (as yet unidentified) enhanced efforts to detect ethics violations and COI by current and former agency officials and use

²²⁴ *Id.*

²²⁵ *Id.* at 3.

²²⁶ *Id.*

²²⁷ *Id.* at 4.

computer data mining, and other such computer programs, to help them uncover and detect procurement fraud.²²⁸

The EDVA says that the PWFG plans to hold meetings periodically to exchange information and ideas. They insist that the group will expand its membership as necessary to provide maximum positive impact on the procurement process. Their expectation is that increased communication and collaboration in investigative efforts will lead to increased prosecution of this category of crime.²²⁹

E. CONGRESS WEIGHS IN

The scandal involving Ms. Druyun, and, to a lesser extent, several less notable procurement improprieties, has prompted Congress to attempt to implement stricter measures in the DoD contracting arena through the Defense Authorization Bill for fiscal year 2006. The Senate Armed Services Committee (SASC), in a report²³⁰ accompanying the Defense Authorization Bill, discussed the problems that plague the defense procurement system as well as several proposed solutions.²³¹

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ Senate Report 109-069 – National Defense Authorization Act for Fiscal Year 2006, Title VIII, Acquisition Policy, Acquisition Management, and Related Matters, at 1 [hereinafter Senate Report].

²³¹ Stephen Barr, *Defense Bills Push for Stricter Contract Procedures*, WASHINGTON POST, May 30, 2005, at 1, at <http://www.washingtonpost.com/wp-dyn/content/article/2005/05/29/AR2005052900991>.

In the report, SASC pointed out that the Federal Acquisition Streamlining Act of 1994 (FASA)²³² and the Clinger-Cohen Act in 1996²³³ allowed the government new flexibility in government contracting. These acts made it easier to buy commercial items, streamlined the process for making small purchases, eliminated GSA as the gatekeeper for all federal information technology purchases, and opened the door to government-wide acquisition contracts and other flexible multiple-award contracting vehicles.²³⁴

While these streamlining initiatives allowed DoD to save billions of dollars in payroll expenses by reducing its acquisition workforce by approximately 50% over the following decade, SASC believes these cuts may have gone too deep. SASC argues, that although some cuts were justified, the workforce reduction was done in a shortsighted way that has led to some of the problems we have today.²³⁵

SASC contends that DoD slashed the acquisition workforce in half without considering the recruitment, training, or career-building that was required to ensure the continuing viability of acquisition structures. In addition to the haphazard way those justified cuts were made, SASC says that DoD continued to reduce the acquisition workforce even after the Global War on Terrorism, and its resulting acquisition demands,

²³² Public Law 103-355.

²³³ 40 U.S.C. § 113.

²³⁴ Senate Report, *supra* note 230, at 1.

²³⁵ *Id.* at 2.

began to put further pressure on the dwindling acquisition community to meet the war fighter's needs.²³⁶

In light of the war on terrorism, the increasing defense budget, and the looming specter of numerous retirements from the acquisition community, SASC has made rebuilding and restoring the health of the defense acquisition workforce a priority.²³⁷

However, the SASC does not want to return to the days of an over burdensome regulatory scheme. In the report, SASC lamented that twenty years after the Packard Commission²³⁸ report, and all the subsequent reforms to the procurement system, "major weapon systems programs still cost too much and take too long to field."²³⁹

To address these problems, SASC recommends that DoD consider allowing longer tenures for program managers. The committee expressed doubt over the ability of DoD to effectively manage major programs when senior officials typically rotate every

²³⁶ As further illustration of this point, SASC points out that during the same period that the workforce was being halved, the contract dollars have nearly doubled. *Id.* SASC cited this "inadequate human capital planning and continuing reductions in the defense acquisition workforce" as the reason that weapon systems acquisition, contract management, and management of interagency contracting have all been areas within the DoD acquisition system that were designated as high risk areas for susceptibility to fraud, waste, and abuse by GAO. *Id.*

²³⁷ The Senate attempted to address this issue in section 832 of the bill by: giving the SecDef the authority to realign positions in the acquisition workforce to reinvest in higher priority acquisition positions; increasing the size of the acquisition workforce by 15 percent; and requiring the SecDef to accomplish a strategic assessment and cultivate a human resources plan for the acquisition workforce. *Id.*

²³⁸ The Packard Commission was the common name used to describe the President's Blue Ribbon Commission on Defense Management. Its report twenty years ago, which found that weapons systems take too long and cost too much to produce, was credited with bringing about many acquisition reforms.

²³⁹ SASC believes that this problem is partly caused by problems with organizational structure, shortfalls in acquisition workforce capabilities, and personnel instability. Senate Report, *supra* note 230, at 3.

18 months. Consequently, they have asked GAO to review the tenure issue as part of a broader review of the authority and responsibilities of program managers. Additionally, section 806 of the bill will require the Defense Acquisition University to review the acquisition organization of the military departments and report any deficiencies found to Congress.²⁴⁰

The SASC cited the Boeing Tanker Lease deal as an example of how DoD has frequently waived TINA and CAS requirements without a valid legal basis and has failed to conduct adequate price analysis to support price reasonableness when waiving these requirements. The SASC argued that in the case of the Tanker Lease this resulted in a heightened risk of fraud and abuse, which they contend, would have resulted in greater costs to the taxpayer if they had not stopped the deal.²⁴¹

As a check on these practices, sections 844 and 804 of the bill will prohibit “other transactions” in excess of \$100 million and ensure that the Procurement Integrity Act (PIA)²⁴² applies to all transactions of a similar nature. These sections will also require a specific authorization for the purchase of major weapon systems under procedures established for the procurement of commercial items.²⁴³

In a direct attempt to prevent another Druyun-type scandal, the SASC has recommended a provision that would require contractors that receive defense contracts in excess of \$10 million to report annually to DoD on any former DoD officials that they

²⁴⁰ *Id.* at 4.

²⁴¹ *Id.* at 5.

²⁴² 41 U.S.C. § 423.

²⁴³ Senate Report, *supra* note 230, at 5.

compensate. The provision would be aimed at providing a more complete set of records for DoD to use in assessing whether former DoD workers, currently employed by defense contractors, are complying with ethics requirements. The lack of these types of records to date has hampered the efforts of the EDVA, as well as DCMA and DCAA, to monitor and identify potential ethics violations by former DoD employees working for defense contractors.²⁴⁴

In the same vein, the SASC cited a recent²⁴⁵ GAO report that concluded monitoring of these former DoD officials is fairly limited. They alluded to Senator Rudman's review of Boeing's practices for the notion that companies lack the management controls to run effective ethics programs—instead excessively relying on the employees to self-monitor. The recommended provision in section 821 is intended to provide more information to the Government to alleviate this oversight problem.²⁴⁶

Additionally, the committee recommended a provision, in section 823, to establish a risk assessment team to assess the vulnerability of DoD contracts to fraud, waste, and abuse. This provision would require the SecDef to develop an action plan to address areas of vulnerability identified by the team. The SASC believes such a

²⁴⁴ *Id.* at 1.

²⁴⁵ The report was completed in April of 2005.

²⁴⁶ Senate Report, *supra* note 230, at 1. In section 822 of the bill, the SASC recommends a provision that requires the SecDef to review ethics issues raised by contractor employees who are involved in activities that are closely associated with inherently governmental functions as well as those contractors that are performing duties that have been historically performed by government employees. This initiative is meant to address the problem of contractors, who are not subject to the same ethics rules and regulations as government employees, performing some of the Government's most critical work along side their federal employee peers who are subject to an entirely different set of rules. *Id.* at 2.

proactive fraud prevention measure could work in conjunction with EDVA's PFWG to deter improper contracting practices.²⁴⁷

Next, the House Armed Services Committee (HASC) will have an opportunity to weigh in on the appropriations bill. While the House of Representative's version of the bill is not expected to focus on ethics matters as directly as the Senate's, it will emphasize greater accountability and transparency for major acquisitions—due largely to the Druyun scandal.²⁴⁸

V. THE LAW

Ms. Druyun was convicted of a violation of 18 U.S.C. § 208(a), essentially for creating a criminal conflict of interest by negotiating employment with Boeing while failing to recuse herself in a timely fashion from Air Force procurements involving that

²⁴⁷ *Id.* at 3. SASC also called for a restructuring of management within the DoD acquisition system to enable better oversight of the newly dominant services contracts portion of the DoD budget. The report points out that the acquisition structure has not been adapted to meet this recent shift from the prior domination the Defense budget by supply contracts to the growth of service contracting. This is highlighted by the fact that some DoD managers were quoted by the SASC report as having told GAO that contract oversight is “not always a top priority” and “is not given the same importance as getting the contract awarded.” *Id.* at 6. SASC hopes to alleviate this problem through their drafting of section 802 of the bill to require the military departments to establish a Contract Support Acquisition Center to act as the executive agent for the acquisition of contract services for each military department. Additionally, in order to cut down on the abuse and lack of accountability associated with multi-agency contracts, like the one used to supply some of the controversial interrogators at the Abu Ghraib prison in Iraq, the SASC has attempted to require, through sections 801 and 805 of the bill, that the DoD IG conduct joint reviews with other interested agency IGs of all of the major interagency contracts used by DoD to ensure that there are appropriate processes in place and complete compliance with all applicable laws and regulations. These sections will also require the secretary of each military department to monitor and give an account of service surcharges imposed on DoD purchases by other DoD agencies. *Id.* at 8.

²⁴⁸ Rebecca Christie, *House Panel Eyes Weapons-Buying Reform After Senate Move*, DOW JONES NEWS WIRES, May 16, 2005, at 3, <http://money.iwon.com/jsp/nw/nwdtrt.jsp?cat+USMARKET&src+704&feed+dji§i>.

company.²⁴⁹ She potentially could have also faced civil penalties, and perhaps been convicted criminally, under the Procurement Integrity Act (PIA).²⁵⁰

The PIA and 18 U.S.C. § 208 overlap to the extent that both address improper employment negotiations. Additionally, disclosure and recusal from acting in an official capacity on procurements involving potential future employers seem to be envisioned by each statute as appropriate measures for dealing with these types of potential conflicts of interest. However, these protective measures are addressed directly in the PIA,²⁵¹ 18 U.S.C. § 208 is rather vague in comparison.

If the prosecutors elected to use the PIA instead of 18 U.S.C. § 208, Ms. Druyun could have faced civil penalties under section 423(c)(3) of the PIA for failing to comply with its disclosure and recusal requirements relating to her employment discussions with Boeing. She could possibly have also been found liable under section 423(d)(1) for

²⁴⁹ 18 U.S.C. § 208 (2000) (acts affecting a personal financial interest). The statute states as follows:

(a)Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, a Federal Reserve bank director, officer, or employee of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective, has a financial interest—
Shall be subject to the penalties set forth in section 216 of this title.

²⁵⁰ 41 U.S.C. § 423 (2000).

²⁵¹ *Id.* § 423(c).

accepting compensation from a contractor as an employee within a period of one year after she made decisions affecting Boeing's contracts—depending on how the court would have treated the status of the tanker lease deal and the decisions Ms. Druyun made regarding that procurement.²⁵²

Based on Ms. Druyun's subsequent admissions, arguments could also be made that Ms. Druyun violated federal bribery and gratuity laws²⁵³ for accepting favors from Boeing in exchange for favorable treatment of Boeing's contracts.

²⁵² *Id.* § 423(d) (prohibition on former official's acceptance of compensation from contractor). The statute reads as follows:

- (1) Federal agency may not accept compensation from a contractor as an employee, a former official of a officer, director, or consultant of the contractor within a period of one year after such former official—
 - (A) served, at the time of selection of the contractor or the award of a contract to that contractor, as the procuring contracting officer, the source selection authority, a member of the source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of \$10,000,000;
 - (B) served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10,000,000 awarded to that contractor; or
 - (C) personally made for the Federal agency—
 - (i) a decision to award a contract, subcontract, modification of a contract or subcontract, or a task order or a task order or delivery order in excess of \$10,000,000 to that contractor
 - (ii) a decision to establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of \$10,000,000;
 - (iii) a decision to approve the issuance of a contract payment or payments in excess of \$10,000,000 to that contractor; or
 - (iv) a decision to pay or settle a claim in excess of \$10,000,000 with that contractor.

²⁵³ 18 U.S.C. § 201 (2000).

Ms. Druyun's misdeeds were not effectively immunized from civil or criminal prosecution because of a dearth of law on the subject matter. While there may be a gap in the laws and regulations dealing with post-government employment,²⁵⁴ Ms. Druyun's prosecution was not hampered in this regard. In fact, the prosecutors had the luxury of choosing the statute on which to base their case. They may have elected 18 U.S.C. § 208 over the PIA because of the greater likelihood of obtaining a prison sentence. Ms. Druyun would have probably faced only civil penalties under the PIA given the evidence available at the time charges were filed.

An argument could be made, however, that the maximum penalties of these laws should be increased. Perhaps 18 U.S.C. § 208 should authorize a longer period of confinement, or the PIA should offer criminal penalties for all of its subsections rather than only two. Some believe that Ms. Druyun's crimes should be subject to a greater term of confinement than five years. However, while that is an argument with some merit, unfortunately it is less persuasive in light of the nine month sentence imposed on Ms. Druyun—far less than the current maximum sentence of five years confinement allowed under the statute.²⁵⁵

In addition to the criminal statutes mentioned above, there are also several relevant regulations that provide guidance on post-employment restrictions for government employees.

²⁵⁴ Lieutenant Colonel Richard B. O'Keefe, Jr., *Where There's Smoke... Who Should Bear the Burden When a Competing Contractor Hires Former Government Employees?*, 164 Mil. L. Rev. 1,16 (2000).

²⁵⁵ 18 U.S.C. § 216(a)(2)(2000)(setting out penalties for violation of section 208).

One such regulation, 5 C.F.R. § 2635.604, which covers disqualification while seeking employment, provides that an “employee shall not participate personally and substantially in a particular matter that, to his knowledge, has a direct and predictable effect on the financial interests of a prospective employer with whom he is seeking employment.”²⁵⁶

Further guidance is provided by 5 C.F.R. § 2635.606, which governs disqualification based on an arrangement concerning prospective employment, or otherwise after negotiations. That regulation states that an:

employee shall be disqualified from participating personally and substantially in a particular matter that has a direct and predictable effect on the financial interests of the person by whom he is employed or with whom he has an arrangement concerning future employment, unless authorized to participate in the matter by a written waiver.”²⁵⁷

Interestingly, the first example under paragraph (a) of that regulation reads as follows:

A military officer has accepted a job with a defense contractor to begin in six months after his retirement from military service. During the period that he remains with the Government, the officer may not participate in the administration of a contract with that particular defense contractor unless he has received a written waiver under the authority of 18 U.S.C. § 208(b)(1).²⁵⁸

If there was any doubt whether Ms. Druyun was confused about her ethical obligations while negotiating employment with Boeing, after reading 5 C.F.R. § 2635.606(a), Example 1, it should have dissipated. To be clear on this point, of all the articles written

²⁵⁶ 5 C.F.R. § 2635.604(a) (2004).

²⁵⁷ *Id.* § 2635.606(a).

²⁵⁸ *Id.* § 2635.606(a), Example 1.

on this case—no one has suggested that Ms. Druyun did not understand, or was in any way confused by, the myriad of rules and laws governing post-government employment. The rules are too clear, and Ms. Druyun too savvy, to allow for the possibility of any confusion regarding Ms. Druyun’s obligations related to her employment negotiations with Boeing.

VI. ALLOCATING RESPONSIBILITY

It is important to analyze how Ms. Druyun was able to get away with her misdeeds so that repetition of this type of corruption can be prevented. Clearly, Ms. Druyun had worked extremely hard for many years and achieved success in bettering the United States Air Force through her unique abilities. There seem to be several differing schools of thought as to the reason Ms. Druyun ended her government career in such a dishonorable state. The critics of the procurement reforms of the 1990s would argue that Ms. Druyun’s case is symptomatic of a larger systematic problem. Others believe these were the acts of one rogue individual who had been allowed to accumulate too much power. There is even an element, however small, that apparently believes Ms. Druyun is innocent—her guilty plea motivated by something other than guilt.

A. SAY IT AIN’T SO

Some of Ms. Druyun’s defenders still seemingly disbelieve that she committed the crimes she admitted in court documents. She did, after all, apparently plead guilty to

spare prosecution of her daughter, an unindicted co-conspirator in the case.²⁵⁹ The pleadings from Mr. Sears' case certainly suggest that Ms. Druyun, after discovering that she was being investigated, was very concerned about how the investigation would impact Heather due to her role in the employment negotiations.

Additionally, several distinguished individuals submitted letters to the court attesting to Ms. Druyun's good character. In addition to enumerating her many truly impressive achievements, many of the authors declared they had never witnessed anything but the highest standards of integrity from Ms. Druyun.²⁶⁰

However, defending Ms. Druyun was not without risk. General Gregory S. Martin, Air Force Materiel Command, seemingly doomed his opportunity to become the first Air Force General Officer to be the Commander of the Pacific Forces (PACOM) by supporting Ms. Druyun.²⁶¹ At his confirmation hearing before the Senate Armed Services Committee, General Martin expressed doubt as to whether Ms. Druyun had actually committed the crimes of which she was accused.²⁶² This so angered Senator McCain that the senator questioned the general's ability to command and vowed to block his

²⁵⁹ Merle, *supra* note 151, at 5.

²⁶⁰ The character letters from Former Secretary of the Air Force Sheila Widnall, General Lawrence A. Skantze, USAF (retired), Lieutenant General M.A. Hough, USMC, Brigadier General Lawrence A. Mitchell, USAF (retired), Colonel Maureen M. Clay, USAF, Colonel Thomas W. Mahler, Jr., USAF, Colonel Stephen P. Busch, USAF (retired), Dennis J. Picard, Chairman Emeritus and retired CEO of Raytheon, and others, can be read at <http://www.taxpayer.net/nationalsecurity/learnmore/Druyuncharacterwitness/index.htm>.

²⁶¹ George Cahlink, *Toll Rises in Procurement Scandal: Air Force General's Quest for Pacific Command Cut Short as Taint of Wrongdoing Spreads*, GOV'T EXECUTIVE, Nov. 5, 2004, at 1, at <http://www.govexec.com/dailyfed/1104/1105004gl.htm>.

²⁶² *Id.*

nomination for the PACOM job.²⁶³ General Martin withdrew his name from the process that same day.²⁶⁴

Ms. Druyun's defenders, along with those who would rather blame a system or institution than the individual wrongdoer, will likely also argue that Ms. Druyun was influenced by pressure from above in her unconventional treatment of the tanker contract. Some may take the position that a series of e-mails recently released to the Senate, and reported extensively in the press, seem to indicate pressure coming from then Secretary of the Air Force James Roche's²⁶⁵ Office to make the Boeing deal happen.²⁶⁶ Several of Secretary Roche's e-mails could be construed to imply that he may have had a personal animus for European Aeronautic Defense and Space Company (EADS)²⁶⁷ and its CEO, Ralph Crosby.²⁶⁸

The "blame the system/institution" set may point to an e-mail exchange between Secretary Roche and Ms. Druyun that occurred just prior to Druyun's retirement. Ms. Druyun emailed Secretary Roche on September 5, 2002, saying "I read with disgust the article on Airbus tankers from the new EADS CEO of North America. What BS...should

²⁶³ *Id* at 2.

²⁶⁴ *Id.*

²⁶⁵ Secretary Roche has since resigned his post, at least partly due to the controversy surrounding the tanker lease deal.

²⁶⁶ Senator John McCain, McCain Statement on U.S. Air Force Accountability Regarding the Boeing 767 Tanker Lease Deal, (Nov. 19, 2004), at <http://mccain.senate.gov/index.cfm?fuseaction=Newscenter.ViewSpeech&Contentid=1332> [hereinafter McCain Speech].

²⁶⁷ Airbus is a division of EADS. See EADS website at <http://www.eads.com>.

²⁶⁸ Secretary Roche had worked with Crosby at Northrop Grumman. *Id* at 3.

not have been surprised at the slime...his day of reckoning will come hopefully.”²⁶⁹

Secretary Roche apparently responded: “Oy. I agree. I had hoped you would have stayed and tortured him slowly over the next few years until EADS got rid of him!”²⁷⁰

In the same vein, Secretary Roche reportedly e-mailed William Swanson at Raytheon the next day saying, “Privately between us: Go Boeing! The fools in Paris and Berlin never did their homework. And, Ralphie is the CEO and Chairman of a marketing firm, for that’s all there is to EADS, North America. The [Air Force] has problems with EADS on a number of levels.”²⁷¹

While these e-mails certainly do not prove the Secretary of the Air Force knew or encouraged Ms. Druyun to raise the price on the contract as a “parting gift” to Boeing, some may argue the e-mails do not seem to foster an environment that favored healthy competition between Boeing and Airbus for the contract. The tone of the e-mails could also encourage speculation that Ms. Druyun felt pressure from above not to recuse herself from the tanker negotiations after she began employment negotiations with Boeing due to the intense high-level interest in getting that particular deal done.

Did Ms. Druyun “take one for the team” when she plead to the court as this line of speculation implies? Did she agree to admit to things that the prosecutor wanted to hear in order to save her daughter from prosecution and perhaps the Air Force, for whom she had worked for so long, further embarrassment? When asked why she had initially told

²⁶⁹ DoD IG Report, *supra* note 94, at 98.

²⁷⁰ *Id.*

²⁷¹ McCain Speech, *supra* note 266, at 3.

prosecutors a different story, her attorney, John M. Dowd, said, “There’s a lot of fear. There’s a lot of tension. There’s a lot of pressure.”²⁷²

Most people, however, believe that innocent criminal defendants do not admit to criminal conduct.²⁷³ Of course a false plea is possible.²⁷⁴ After all, the things that Ms. Druyun admitted to are hard to prove or disprove because they involve her own judgment. That very fact may itself indicate that Ms. Druyun had too much power and discretion. However, Ms. Druyun was by all accounts a tough individual and a shrewd operator within the DoD regulatory scheme. She was certainly no pushover that would have been easily influenced to do something that was against her will.

In any event, for the sake of this thesis I will assume that everything that Ms. Druyun admitted to in court was true and that she acted alone in committing the crimes notwithstanding her conspiracy with Mr. Sears regarding the illegal employment discussions that they shared.

²⁷² Pae and Peterson, *supra* note 45, at A21.

²⁷³ “73 percent of juries will vote to convict even when admissions have been repudiated by the defendant and contradicted by physical evidence, studies show.” JIM DWYER, PETER NEUFELD & BARRY SCHECK, *ACTUAL INNOCENCE* 120 (2000).

²⁷⁴ See Richard J. Ofshe & Richard A. Leo, The Decision to Confess Falsely: Rational Choice and Irrational Action, 74 *Denv. U. L. Rev.* 979 (1997); Richard J. Ofshe & Richard A. Leo, The Social Psychology of Police Interrogation: The Theory and Classification of True and False Confessions, 16 *Stud. in L., Pol., & Soc'y* 189 (1997); Gail Johnson, False Confessions and Fundamental Fairness: The Need for Electronic Recording of Custodial Interrogations, 6 *B.U. Pub. Int. L.J.* 719 (1997); Saul M. Kassin, The Psychology of Confession Evidence, 52 *Am. Psychol.* 221 (1997); Michael Radelet et al., Prisoners Released From Death Rows Since 1970 Because of Doubts About Their Guilt, 13 *T.M. Cooley L. Rev.* 907 (1996).

B. BOEING'S ROLE

While this paper addresses the totality of Ms. Druyun's crimes, not just the illegal employment discussions, it may be unfair to minimize Boeing's role in that portion of her misconduct. Boeing should not get a pass regarding its behavior in this matter.

After all, there is at least some indication from the evidence that Ms. Druyun initially tried to do the right thing in relation to her employment discussions with Boeing. Heather Druyun's e-mails to Mr. Sears appear to demonstrate that Ms. Druyun tried to hold off discussions with Boeing until after the tanker deal, but Sears continued to pursue her.²⁷⁵

The record also indicates that during the infamous meeting in Orlando, Ms. Druyun informed Mr. Sears at the outset that she had not disqualified herself from Boeing matters and thus should not discuss employment opportunities with Boeing at that time. Mr. Sears pressed forward with employment discussions, without regard to her admonition, by presenting the terms of the job Boeing was prepared to offer her.²⁷⁶

Boeing seems inclined to put the responsibility for Ms. Druyun's inappropriate hiring on Mr. Sears and some process problems (see Rudman report), but Mr. Sears wasn't the only top Boeing executive to court Ms. Druyun. When another nameless senior executive from the company had a "further details" meeting with Ms. Druyun she informed him that she had decided to take Lockheed Martin's offer because she believed she had done too much work on Boeing matters.²⁷⁷

²⁷⁵ Statement of Facts at 4, *Sears* (No. 04-310-A).

²⁷⁶ *Id* at 7.

After hearing of her decision, Mr. Sears refused to take “no” for an answer and quickly arranged for another meeting with Ms. Druyun. He acknowledged via e-mail to Heather that he had learned of her mother’s concern over integrity given her work on Boeing programs. Tellingly, he enclosed the word “integrity” in quotation marks, in a mocking fashion, apparently showing his disdain for that particular value. In the subsequent meeting, Mr. Sears convinced Ms. Druyun to take the Boeing job.²⁷⁸

If accepting the job from Boeing, knowing what she knew about her own track record with that company, wasn’t enough, Ms. Druyun quickly displayed her own lack of integrity when she discovered she was under investigation. She sent an e-mail to Mr. Sears trying to cover up their employment discussions in Orlando in what was a blatant attempt to get their stories (i.e. lies) straight before talking to investigators—and Sears played along.²⁷⁹

Boeing tried to use Senator Rudman’s report to gloss over the company’s role in this controversy, but many of the explanations in that report do not hold up when examined in the context of Ms. Druyun’s hire. For example, the report partially blamed the lack of central oversight and monitoring of recruitment and hiring of government officials, but the pleadings in the Sears case seem to make clear that the executive steering committee was involved in Ms. Druyun’s recruitment and hiring.

The report also cited problems with COI reviews before making hires, but it is equally clear that the leadership at Boeing was already aware of Ms. Druyun’s conflict

²⁷⁷ *Id* at 8.

²⁷⁸ *Id* at 9.

²⁷⁹ Statement of Facts at 10-12, *Sears* (No. 04-310-A).

issues without needing a COI review to enlighten them. The Rudman report also recommends that Boeing's law department do the COI reviews, but Mr. Sears, or any of the other executives involved, could have submitted her hire to the law department for review at anytime. They did not do so because they already knew the answer would not be one they wanted.

The Rudman report seems to want place the blame regarding hiring problems on the low levels in the company for not having in place, or following, a proper system to catch COI in the hiring process.²⁸⁰ Ironically, Ms. Druyun's hire, the one that was the impetus for the review in the first place, would have never gone through the low levels of the HR department. She was a very big fish in the acquisition world whose pursuit was being conducted sub rosa by the big fish at Boeing.²⁸¹ They were not going to have her fill out an application with the HR department and wait for a COI review to be done by the law department before hiring her away from Lockheed Martin.²⁸²

The Rudman report blames the situation on mistakes in the process,²⁸³ but the Boeing executives clearly knew what they were doing was wrong. There is no other explanation for the cryptic e-mail that Sears sent them after his meeting with Ms. Druyun in Orlando²⁸⁴ and their apparent lack of reaction to it. If they did not know the company

²⁸⁰ Rudman Report, *supra* note 198.

²⁸¹ Statement of Facts at 8, *Sears* (No. 04-310-A).

²⁸² Although Heather Druyun was a Human Resource Specialist with Boeing at the time of her mother's hiring, it is not clear what role, if any, she would have played in handling Ms. Druyun's paperwork if it would have been sent to the HR department.

²⁸³ Rudman Report, *supra* note 198.

²⁸⁴ Statement of Facts at 8, *Sears* (No. 04-310-A).

was doing something wrong before receipt of that e-mail,²⁸⁵ they certainly would have realized upon reading it. After all, given their positions, we can assume these are reasonably intelligent people.

The Rudman report also explained that Boeing had erred in excessively relying on government employees to monitor their own compliance with COI laws.²⁸⁶ While I agree that the employee is primarily responsible for being in compliance, the notion that Boeing excessively relied on Ms. Druyun for compliance is laughable given her exchanges with Mr. Sears.²⁸⁷

The DSB report, and some others in the government contracts community, seems to hold up the corporate world and its ethics programs as a model for the Government to emulate.²⁸⁸ Sadly, given Boeing's conduct in this matter, that notion may be misguided.

C. ABSOLUTE POWER CORRUPTS ABSOLUTELY

Regardless of how aggressively Boeing pursued Ms. Druyun after her retirement became inevitable, that late push for her services could not have been the underlying cause of her earlier transgressions. If not, was Ms. Druyun's personal accumulation of power over the procurement process the reason for the corruption? Her important office,

²⁸⁵ Referring to the October 18, 2002, e-mail that started out "Howdy. Had a "non-meeting" yesterday re: hiring Jim Evatt's deputy." *Id.*

²⁸⁶ Rudman Report, *supra* note 198.

²⁸⁷ Statement of Facts at 8, *Sears* (No. 04-310-A).

²⁸⁸ DSB Report, *supra* note 153, at 19.

and its related authority, was a relevant factor that allowed her to cover her actions. Her broad individual discretion and authority over the acquisition process is one of the reasons we are left to speculate about whether she really committed the crimes she admitted in court. Because she had and used the full extent of her power, only she would know. Some would argue that it was a culture of power at the Pentagon, and Ms. Druyun's mastery of it, that led to her current troubles.

One Pentagon tale is a testament to the power she wielded in the building. Apparently, while she was on vacation in the mid-1990s, Druyun's secretary called her with a warning that two of her political and military supervisors, who feared she had accumulated too much power, decided to eliminate her position.²⁸⁹ Ms. Druyun came back early from vacation and went straight to the Office of the Secretary of Defense to confer with political allies there.²⁹⁰ Her enemies, one of them a three-star general, were vanquished. Both had left the service by the next year.²⁹¹ Ms. Druyun has been quoted as saying of her adversaries "They're gone, but I'm still here."²⁹²

Although investigations are ongoing, Dr. Sambur²⁹³ and the Air Force seem to subscribe to this theory. Dr. Sambur has said that when he first came into his job, attendees at his meetings would look to Ms. Druyun to discern if she agreed with his

²⁸⁹ Cahlink, *supra* note 55, at 20.

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ Dr. Sambur has since retired, also, at least partly, due to the controversy surrounding the tanker lease deal.

ideas, even though he was supposed to be the one in charge.²⁹⁴ He referred to her power as making him feel like he was just the summer help.²⁹⁵ He also commented that he was surprised that Ms. Druyun was personally deciding the outcome of contract competitions rather than allowing her subordinates to perform this role.²⁹⁶ Additionally, Dr. Sambur has accused Ms. Druyun of hoarding information and keeping her decision-making processes secret.²⁹⁷ An anonymous former defense official was quoted by *The Washington Post* as stating “ she would say, ‘Don’t send it up with a recommendation, just send it up with information.’”²⁹⁸

Perhaps, because of this belief that Ms. Druyun’s accumulation of power led to the current problems, the Air Force has yet to fill her former position. No one was hired to fill her vacancy when she retired.²⁹⁹ The vacancy was apparently left open in hopes it may alleviate the problem by preventing another civilian career executive from taking over where Ms. Druyun finished. The Air Force, through spokesman Douglas Karas, has said, “Ms. Druyun is solely responsible for her misconduct and the fact that she was caught, convicted, and sentenced reflects that the checks and balances in the system work.”³⁰⁰

²⁹⁴ Merle, *supra* note 23.

²⁹⁵ *Id* at 4.

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ *Id.* at 3.

²⁹⁹ McCain Speech, *supra* note 266, at 2.

But not everyone subscribes to this theory. The DSB report agrees that the proper checks and balances work, but argues that those checks and balances were not in place at the time of Druyun's crimes because too much power had been delegated to her—effectively rendering the system of checks and balances impotent.³⁰¹

Senator McCain voiced his lack of faith in the Air Force's explanation by saying "I simply cannot believe that one person, acting alone, can rip off taxpayers out of possibly billions of dollars. This appears to be a case of either a systematic failure in procurement oversight, willful blindness, or rank corruption. Either way full accountability among Air Force leadership is in order."³⁰² He has also raised the question "[w]hat kind of a system is it that one individual has the ability to determine multibillion, \$20, \$30 billion contracts without anyone checking up on it?"³⁰³

Others agree that a systematic failure is to blame. Ms. Druyun was coming into the apex of her power in the mid-1990s³⁰⁴ at the same time procurement reforms were beginning to allow the Government more flexibility and speed in the contracting process.³⁰⁵ These new rules emphasized efficiency and flexibility instead of, and perhaps

³⁰⁰ R. Jeffrey Smith, *Air Force Pitch for Boeing Detailed: E-mails Show Pressure From Roche*, WASHINGTON POST, Nov. 20, 2004, at 1, at <http://www.washingtonpost.com/ac2/wp-dyn/A63815-2004Nov19>.

³⁰¹ DSB Report, *supra* note 153, at 19.

³⁰² McCain Speech, *supra* note 266, at 2.

³⁰³ Scott Pelley, *Cashing In For Profit?* CBSNEWS.com, Jan. 5, 2005, at 3, at <http://www.cbsnews.com/stories/2005/01/04/60II/printable664652.shtml>.

³⁰⁴ Official Biography, *supra* note 7, at 1.

³⁰⁵ See the Federal Streamlining Act of 1994 (FASA), Public Law 103-355; The Clinger Cohen Act of 1996, 40 U.S.C. § 113.

at the expense of, the concepts of integrity and transparency that had always been such stalwart principles in government contracting.³⁰⁶ Mixing this kind of flexibility with Ms. Druyun’s tough, aggressive style—she is said to have once told Lockheed Martin executives “If I detect bullshit, you go to the bottom of the chart”³⁰⁷—may have created the perfect storm. Add to the mix the corresponding drastic cuts in the acquisition workforce³⁰⁸ and the unfilled vacancies in the appointed positions over Ms. Druyun³⁰⁹ and you have a disaster that was waiting to happen.

Ms. Druyun has displayed a penchant for pushing the envelope—and sometimes that seems to have resulted in shortcutting the rulebook. Both times she was investigated involved financially bailing out large defense contractors that could have been accomplished legitimately. There is an exception to the Competition in Contracting Act that allows the Government to prop up defense contractors so that they will remain in business for times when the country needs them.³¹⁰ However, Ms. Druyun did not take advantage of the Industrial Base Exception to the competition rules in either instance. Instead, in the case of the tanker lease deal, she argued that there was competition by pointing to the proposal submitted by Airbus. The procurement reforms of the 1990s almost certainly helped Ms. Druyun be more creative and gave certain legitimacy to her taste for pushing the envelope and, perhaps, taking shortcuts around the rules. In many

³⁰⁶ Steven L. Schooner, *Desiderata: Objectives for a System of Government Contract Law*, 11 PUB. PROCUREMENT L. REV. 103 (2002).

³⁰⁷ *See Cahlink, supra* note 55, at 21.

³⁰⁸ Senate Report, *supra* note 230, at 2.

³⁰⁹ DSB Report, *supra* note 153, at 7.

³¹⁰ 10 U.S.C. § 2304(c)(3)(A) (2000).

instances, like the lightening bolt initiatives, this combination of flexible rules and aggression served Ms. Druyun, and the Air Force, well and resulted in numerous successes.³¹¹ However, in the end it may have also hastened her fall from grace.

Some procurement officials are afraid that this scandal, along with other recent lesser scandals, will prompt an overly harsh correction of the procurement reforms of the 1990s.³¹² Are those steps really necessary to prevent this insidious behavior? While the contracting reforms of the 1990s may have given Ms. Druyun the opportunity to commit her crimes, and perhaps made them easier to conceal because of the lack of transparency involved,³¹³ you still must include a corrupt individual in the recipe to complete the crimes. The new rules may have encouraged cheating by cutting corners and ignoring or “working around” certain rules. The greater flexibility incorporated in the newer rules may have even made it easier to make the end justify the means. Nevertheless, that kind of policy or regulatory change in no way constitutes the encouragement of a federal official to commit crimes to benefit herself and her family.

The SASC and the DSB both seem to recognize this fact. Neither of those bodies has called for rolling back of the reforms. In fact, both groups have pointed out that the system is still too burdensome. In fact, the system’s complexity may have generated this

³¹¹ Druyun’s official Air Force biography states that the Lightening Bolt initiatives yielded more than \$20 billion in savings to the Air Force. Official Biography, *supra* note 7, at 1.

³¹² Stephen Losey, *Procurement Scandals Could Lead to Unnecessary Reform, Some Fear*, FEDERAL TIMES, Oct. 26, 2004, at 1, at <http://federaltimes.com/index.php?S=42788>.

³¹³ Steven L. Schooner and Christopher R. Yukins, Government Contracts: A Practice Focus, *Adding Up Efficiency’s Cost: Druyun Scandal Shows Anew the Value of Openness and Competition*, LEGAL TIMES, Vol XXVII, No. 43, Nov. 1, 2004, at www.legaltimes.com.

problem because it allowed Ms. Druyun, who had a mastery of the system, to manipulate it while her less sophisticated supervisors remained in the dark as to what she was doing.³¹⁴

The procurement reforms did not corrupt Darlene Druyun. In the sense that there needs to be motive and opportunity to have a crime, the procurement reforms in some way may have given her the opportunity, but the motive was her own greed and lust for power. That is not to say that her motivation was all based on greed. It was almost certainly also based on the desire to take care of her family and other reasons less offensive than greed. These motives are often why people commit financial crimes, and they are personal and not created by a system.

Ms. Druyun's desire for continued power was no doubt as important to her, if not more so, than any financial considerations.³¹⁵ In response to a question from *60 Minutes Wednesday* about whether Ms. Druyun liked being in charge of acquisitions at times between political appointees, Dr. Sambur responded, "[s]he liked the power, absolutely."³¹⁶ She decided to retire only after Dr. Sambur had begun incrementally diminishing her power within the Air Force. Even before that, she must have realized she could not maintain her power in the Air Force forever—she had already been in federal service for 32 years at the time of her retirement.

³¹⁴ Senate Report, *supra* note 230; DSB Report, *supra* note 153, at 19.

³¹⁵ Particularly since most of her bad acts did not result in any obvious financial gains to Ms. Druyun—aside from employment for herself and certain family members.

³¹⁶ Pelley, *supra* note 303.

Ms. Druyun's successful power grabs in the Air Force are consistent with a motivation for power and, through her discussions with Boeing, she may have sensed a way to continue in a powerful position in the private sector. In Boeing, she saw that opportunity to maintain the stature that she had worked so hard to attain. Her daughter's e-mail to Boeing during Ms. Druyun's employment negotiations seems to indicate that was the case. As noted earlier, Heather Druyun passed on to Boeing executives that her mother would be willing to move from Washington, but she wanted a position of significant responsibility with the company.³¹⁷ This e-mail from her daughter offers tremendous insight into Ms. Druyun's priorities.

The lack of transparency in the reformed procurement rules may have given Ms. Druyun a better opportunity to engage in crime—but it should not become the sole focus in the debate over how to prevent another Druyun-type incident from occurring. We are all faced with the opportunity to commit crimes, maybe many times each day, but rarely in any other context do we talk about reducing crime by taking away the opportunities people have to commit crimes.

Generally we seek to deter crime by imposing harsh sentences meant to both protect society from the wrongdoer (by removing him or her from the community) and deterring others from taking part in the same crimes. For example, while we do try to protect our borders against the influx of drugs into the country, our main tool against drug trafficking seems to be using severe sentencing schemes aimed at deterring behavior, rather than focusing our resources on removing the opportunity altogether by preventing any illegal drugs from entering the country.

³¹⁷ Statement of Facts at 4, *Sears* (No. 04-310-A).

One reason for this approach is that you can never eliminate all opportunities for people to engage in criminal activities. We have no greater chance to remove all opportunities for corruption in government contracting through revising the system than we do of stopping all the illegal drugs from crossing over our nation's borders. That is why crime prevention should be focused on deterrence through sentencing—whether it's corruption in government contracting or virtually any other criminal enterprise.

Closing the “revolving door” between Government and business is another argument being made to take away the opportunities to commit crimes of this nature. POGO recently released a report calling for stricter rules to keep government employees from going to work for contractors that could be affected by the government employee's official decisions.³¹⁸ Defenders of the current system say that it normally works—Druyun is an anomaly³¹⁹—and that both the Government and private industry benefit greatly from the revolving door between the two entities. This argument about closing the revolving door just seems like another way of focusing on reducing opportunities as a method of crime prevention. The SASC seemed to recognize this when it called for greater monitoring in this area, but stopped short of attempting to close the revolving door.³²⁰

If the aim is to prevent this type of crime from happening again, the focus should be on rooting the corrupt individuals from the system and imposing penalties on them that are significant enough to deter others. Ms. Druyun's sentence of nine months in

³¹⁸ Thom J. Rose, *Report: U.S. Should Close 'Revolving Door,'* UNITED PRESS INTERNATIONAL, Jun. 29, 2004, at <http://www.upi.com/view.cfm?StoryID=20040629-063847-8841r>.

³¹⁹ *Id.*

³²⁰ Senate Report, *supra* note 230.

prison, and that term is used loosely,³²¹ may be grossly disproportionate with the damage done to the Air Force by her conduct.

Her sentence is particularly appalling since many airmen have received far greater sentences from courts-martial for offenses not remotely as damaging to the Air Force as those committed by Ms. Druyun.³²² She should be thankful that she was not a uniformed Air Force member as a court-martial panel would not have been as forgiving of the damage she has done to the Air Force's reputation for integrity, among other things. It is difficult to imagine that she would have been allowed to retain her full retirement benefits, as she currently does, if she were a uniformed member of the Air Force.

D. PERSONAL RESPONSIBILITY

There seems to be a certain inclination in our country to want to blame an institution or a system rather than hold individuals accountable for their actions. This was obvious in the recent 9/11 Commission hearings.³²³ During those hearings there

³²¹ Ms. Druyun is currently serving her time at a minimum-security federal prison for women in Marianna, Florida.

³²² For example, I have seen several airmen receive sentences of confinement equal to or greater than Ms. Druyun's for drug use. I do not condone drug use in any way, but I would argue that given the gravity and far reaching consequences of Ms. Druyun's crimes, in addition to her position, age, and experience, she deserved a much longer term of confinement than a young airman who experimented with drugs. I don't mean this to be an indictment of the military justice system in any way, but rather one of its civilian counterpart. I think this is an instance, among many others, where the military justice system would have proven to be better than the civilian system—especially in terms of the sentence in this case.

seemed to be a strong desire to blame someone in the Federal Government for the horrific terrorist attacks against our country on September 11, 2001.³²⁴ Many seemingly, do not want to accept that the terrorists alone are responsible for their treacherous actions on that day.³²⁵

This phenomenon is also played out again and again in criminal trials. Invariably, at some point during seemingly every court-martial, or at least those witnessed by the author, the defense counsel will employ the “blame the Air Force” defense. It usually goes something like the following: “Yes, my client may have committed the crime, but he’s just a poor dumb kid. The Air Force, in comparison, has such vast resources at its disposal that it (as an omnipotent institution) should have predicted my client was about to commit this crime and prevented it from happening. It’s really the Air Force that is to blame for the crime because it failed to prevent the crime—not my poor, troubled client who was virtually left no choice but to go ahead and commit the crime.”³²⁶ Thankfully, this defense does not usually work, but the fact that it is often considered and given weight by certain members of the court is a testament to our societal penchant for blaming institutions or systems over individuals. Perhaps it is our love of the underdog, our belief in the innate goodness of people, our suspicion of institutions, or maybe it is just easier to blame a faceless system or institution than it is to blame a living, breathing human being.

³²³ Transcripts of the hearings can be viewed at the Commission’s website at <http://www.9-11commission.gov/archive/hearing8/index.htm>.

³²⁴ *Id.*

³²⁵ *Id.*

³²⁶ Admittedly, this argument may sound more plausible when expressed by a skilled defense counsel advocating for their client, but not much.

In any event, we are seeing that same phenomenon play out to some degree in the Druyun scandal. There seems to be a great reluctance to simply accept that Ms. Druyun alone is responsible for her actions. Certain elements prefer to blame the system, or certain unpopular reforms to that system, while others want to point the finger at the Air Force, Boeing, or the prosecutor (another favorite target for those who deflect responsibility), rather than lay the responsibility where it belongs—at the feet of Ms. Druyun.

This is not to say there are not other worthy reasons to focus on the role the procurement reforms played in this situation. For example, in addition to trying to prevent this type of corruption from recurring, the Government needs to somehow restore trust in the procurement system. It is in this regard that transparency in the system becomes more important. While it may play some role in prevention, by making it more difficult for the culprit to go undetected,³²⁷ transparency is crucial to restore faith in the system for contractors and taxpayers because it is what allows them to see exactly what transpires in a given procurement. At this point, given the recent controversies in the government contracting arena, it will be difficult to restore trust in the system even with greater transparency, but without it it will be impossible.

VII. CONCLUSION

The Darleen Druyun scandal has set the government procurement community on its ear. Many are scrambling to grasp how this could have happened and how to prevent

³²⁷ Schooner & Yukins, *supra* note 313, at 2.

its recurrence in the future. This scandal is still unfolding. By the time the dust settles, it may set government contracting back for many years. Surely, some would be happy with that outcome. Many of those that are advocating harsh reforms to the system, however, may be barking up the wrong tree.

There is little doubt that some view the Druyun scandal as a convenient excuse to push a personal or political agenda. Others truly believe that the system is responsible for Ms. Druyun's crime. While many things may have contributed to Ms. Druyun's predicament, ultimately only one entity is responsible—Ms. Druyun. While she may have had assistance or encouragement—Mr. Sears certainly conspired with Ms. Druyun on the illegal employment negotiations, and, perhaps, the other officials named by the DoD IG report acted inappropriately regarding the tanker lease deal—only Ms. Druyun is responsible for her actions regarding the entire course of criminal conduct she admitted to in court.

The point to this thesis is that a person with integrity could be placed in Ms. Druyun's exact same environment—with its flexible, reformed rules; its so-called Pentagon “culture of power;” its pressure from superiors; pressure from Mr. Sears and Boeing; and its revolving door—and, in all likelihood, that person would have done the job without resorting to criminal conduct.

Conversely, put a corruptible person, as Ms. Druyun turned out to be,³²⁸ into a rigid and transparent system and that person will still likely find a way to cheat. An intelligent individual will eventually devise a way to take advantage of any system, no

³²⁸ It seems wrong to minimize Druyun's tremendous contributions to the Air Force over three decades of service, but her missteps, followed by her shocking admissions, likely will define her legacy.

matter how restrictive, unless there is something, whether it is their own integrity or fear of the harsh consequences, that deters them.

For crime prevention, integrity³²⁹ of the individuals working within the system may be more important than the integrity of the system itself. If the aim is to prevent corruption, the greater focus should be placed on attaining, and maintaining, a civilian acquisition work force with the highest levels of personal integrity³³⁰ before attempting to unduly restrict the system in the name of greater integrity or transparency in the system.

Restoration of the public's faith in the procurement system, however, will also require some renewed focus on the integrity and transparency of the system. Taxpayers trust what they can see and verify more than the word of a public official. Sadly, this perception that public officials are not always trustworthy can only have grown stronger because of Darleen Druyun.

³²⁹ Ironically, "Integrity First" is the key core value of the Air Force, and Ms. Druyun's behavior resulted in a public humiliation of the thousands of proud airmen who live their lives according to that principle.

³³⁰ We should demand the same level of personal integrity from civilian officials in these positions as we expect from our military officers.

