

Defense Acquisition Reform: Doing the Same Thing all Over Again

**A Monograph
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Abstract

Defense Acquisition Reform: Doing the Same Thing all Over Again by Major Zachary J Buettner, US Army, 51 pages.

The U.S. Defense Acquisitions System (DAS) supports the defense of our nation by developing and procuring weapons systems for by the Army, Navy, Marines, and the Air Force. Unfortunately, the DAS frequently fails to produce the needed weapons systems within budget or on time. Thus, the US Congress and the President have initiated hundreds of acquisition studies in the last forty years. Many of these studies have generated new acquisitions legislation, but the DAS still consistently fails to produce the outcomes desired by Congress.

The latest Congressional attempt to solve procurement problems is the 2009 Weapons System Acquisition Reform Act. The research used the WSRA as a means to assess the acquisition system and acquisition reform. To assess the WSRA it was necessary to examine the history of the acquisition system, the actors within the system, the regulatory environment, and the intent of previous legislation.

The research found that the 2009 WSRA is unlikely to measurably improve the DAS. The 2009 WSRA does not implement new solutions to the problems of cost overruns and schedule slippages, rather it merely re-enacts previously used provisions. Additionally, Congress has created a complex acquisitions process governed by thousands of pages of regulation and hundreds of different laws. Even if the 2009 WSRA implemented new and effective ideas, the US Congress would likely pass new legislation before the WSRA could even produce positive effects within the process. Ultimately, Congress must develop a better understanding of the DAS to implement real improvements. Congress has too frequently implemented simple legislative fixes for complex problems.

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Introduction: Acquisition from the Beginning

“Simply put, the Department of Defense (DOD) acquisition process is broken. The ability of the Department to conduct the large scale acquisitions required to ensure our future national security is a concern of the committee”¹

-House Armed Services Committee Report

The Department of Defense acquisition system has few fans among the members of the United States Congress or the American public. Over the last four decades, the acquisition system has earned a reputation for failing to produce cost effective weapons systems for the military. During the late 1980s, numerous media sources recounted a litany of acquisitions failures: over-priced spare parts, delayed production, cancelled programs, and even contractor fraud and malfeasance. In the same decade, a bipartisan congressional military reform caucus held numerous well-publicized hearings that alleged incompetence and corruption in the production of the M1 Tank and the Bradley Infantry Fighting Vehicle, and numerous other major weapons systems. More recently, the Secretary of Defense terminated the Crusader and Comanche helicopter programs due to cost overruns and a failure to meet performance specifications. The Government Accountability Office (GAO), Congressional Research Service (CRS), and the Congressional Budget Office (CBO) consistently released reports describing an ineffective acquisition system that rarely produces a major weapons system on time or within budget.

Congress and the Department of Defense attempted numerous times to identify the problems in the acquisitions process. Secretary of Defense Donald Rumsfeld observed during a Pentagon Town Hall Meeting, that there have been 128 studies of Defense Procurement since

¹ US Congress House Committee on Armed Services. Congressional Reports: H. Rpt. 109-452 - on H.R. 5122 together with Additional and Dissenting Views (Washington: Congressional Budget Office, 1997), 350.

1975.² The Fitzhugh, Grace, and Packard Commissions are only a few of the many attempts to identify the weaknesses in the system. Late in 2009, a Congressional Research Service Report found that the DOD's 96 Major Defense Acquisition Programs (MDAPS) were an average of 22 months behind schedule and 42% over their projected budgets.³ Every one of these reports found serious problems within the acquisition process and prompted repeated calls for more reform of the system

These persistent acquisition issues have continually frustrated congressional and executive branch reform attempts. Congress has attempted acquisition reform in every decade since the 1950s, but the procurement system does not seem to be improving, if anything the system's performance seems to be getting worse. The latest Congressional attempt to remedy the problems in the acquisition process is the Weapon Systems Acquisition Reform Act (WSRA) of 2009. The WSRA established three new DOD positions: the Director of Cost Assessment and Program Evaluation, the Director of Developmental Testing and Evaluation, and the Director of Systems Engineering. This bill also mandates periodic reports to Congress on MDAPS and requires the use of equipment prototypes whenever possible.⁴ The sponsors of this bill hope that these new initiatives will end the historical pattern of escalating costs and delays in defense acquisition. Casting doubt on Congress' own expectations of the 2009 WSRA's effectiveness, Congressman Ike Skelton recently announced the formation of an additional Panel on Defense

² Office of the Assistant Secretary of Defense (Public Affairs) "Pentagon Town Hall Meeting with Secretary Rumsfeld" News Transcript Dated March 06, 2003 10:25

³ Moshe Schwartz. "Defense Acquisitions: How DOD Acquires Weapons Systems and Recent Efforts to Reform the Process". (Washington, DC: Congressional Research Office, 2009), 18.

⁴ Ibid.

Acquisition Reform specifically to explore new ideas for additional acquisition reform legislation.⁵

The question is will the 2009 WSRA solve the persistent weaknesses identified in the acquisition process? It is normally quite difficult to predict the effects of any new law. However, in this particular situation a long history of congressional oversight and acquisition reform legislation exists to inform an analysis of the 2009 WSRA. There were four steps needed to assess the likelihood for success of the 2009 WSRA. The first step was examining the history and current nature of the military acquisition system. The next step was developing an understanding of the legislative-executive relationship and the nature of congressional oversight since the early 20th century. The third requirement was an analysis of acquisition studies and legislative actions since the 1970s. The fourth, and final, step needed to answer the question was the direct comparison of the 2009 WSRA to previous reform legislation efforts to see if any novel ideas were incorporated that may yield new results. Understanding the history and nature of the military acquisition system yielded useful insights on how Congress created the current acquisitions system and its statutory framework. The examination of the legislative-executive relationship oversight since the mid 20th century helped assess the mechanisms Congress has in place to track the development, enforcement, and execution of new legislation. The analysis of previous acquisition studies and legislative efforts provided insight on assessing whether the 2009 WSRA would effectively address new problems or even problems that had persisted despite previous legislative action.

The research revealed that this new legislation is unlikely to fix the persistent problems in the system. Disagreements between the executive branch and congress on acquisitions priorities

⁵ House Armed Services Press Release Dated March 6, 2009. http://armedservices.house.gov/list/press/armedsvc_dem/skeltonpr030609.shtml Accessed 18 Feb 2010.

and decisions will almost certainly continue in the future, generating additional legislation and adding more constraints into the process. This study shows that since the 1990s Congress has shifted to a more managerial role from its more traditional oversight role in military acquisition. Congress' past attempts to fix the problems in the acquisitions system have consistently failed to improve the acquisition system's performance. The flaws in the system appear to have persisted and grown as additional and increasingly prescriptive legislation has created a complex procurement environment hemmed in by excessive rules.

History of the Acquisition System

Any new congressional acquisition legislation adds to two centuries of previous legislative history and practice. Thus, understanding the history of the military acquisition system is an essential element in reliably judging the future success of any law. History shows a pattern of investigations and subsequent legislation by Congress in response to crises discovered by a Congressional investigational arm or the media. This reactive legislation, rather than a coherent design, created the acquisition system of today. The 2009 WSRA continued this trend with because it too is a response to problems identified by the GAO, CRS, and the media.

Problems in military acquisition are not modern phenomena. While the concept of defense equipment purchases for the Department of Defense can sound deceptively simple, the United States has struggled with the acquisition system since its inception, the American Revolution. During the American Revolution, the fledgling procurement system ground to a halt due to inexperienced principals, fraud, and demoralizing investigations.⁶ The American Congress then vested General George Washington with nearly dictatorial procurement and confiscatory powers in order to sustain the logistical needs of the army. While an in-depth history of the

⁶ All problems that still exist in the AS centuries later. Wilbur D Jones., *Arming the Eagle- A History of Weapons Acquisition since 1775*. (Fort Belvoir: Defense Management System Press, 1999), 2.

acquisition system might be of interest to some scholars, research provides only a general history of the US military acquisition system which later supports a more detailed examination of post-1970s acquisition studies and congressional trends. This post-1970 history provided a firm foundation for assessing the potential success of the 2009 WSRA because today's problems frequently parallel those of the recent past.

For most of the United States' history, the U.S. government maintained a small, minimally equipped active military force. When a conflict started, mass mobilization and increased industrial production of military equipment augmented the small standing military. At the conclusion of each conflict, the government demobilized and returned the vast majority of military personnel to civilian life. During this era acquisitions scandals tended to be small and cyclical because the quantity of money and resources involved were relatively minor. The government also stored equipment from previous conflicts for later use. Thus, soldiers fought the Indian Wars in the 1870s with Civil War weapons, and when WWII began, soldiers still fought with Springfield rifles.

The years between 1918 and 1939 heralded the appearance of modern acquisitions issues although the acquisition system still shared aspects of the historical trends. Media and congressional allegations of malfeasance, fraud, and overpriced equipment convinced Congress to hold numerous hearings to investigate alleged war profiteers and industrial "merchants of death".

⁷ Despite those investigations, the military acquisition system still developed designs for new ships, airplanes, and armored forces needed to confront the future threats identified by the military and others in the US government. After the US entered World War II, the nation undertook a massive industrial mobilization in order to outfit the US armed forces and those of its

⁷ Winston T Wheeler and Lawrence J.Korb, *Military Reform: A Reference Handbook*. (Westport: Praeger Security International, 2007), 173.

allies... The enormous war budgets and repeated accusations of waste and fraud prompted Congress to investigate wartime production. The Special Committee to Investigate the National Defense Program brought a little known United States Senator from Missouri, Senator Harry Truman, to national prominence. Senator Truman visited depots, armories, and industrial production facilities finding many examples of fraud, waste, and abuse.⁸ The committee claimed to have discovered millions of dollars in waste and fraud, while the military claimed that any fraud was minimal and the committee harmed more than helped wartime production.⁹

With the advent of the Cold War after World War II, the United States maintained a relatively large peacetime military force. Large peacetime forces and international competition began an era of recurring acquisition scandals because the defense budgets grew and military weapons systems became more and more expensive. Repeated investigations by congressional committees, Blue Ribbon Panels, the Government Accountability Office, and other organizations spurred increased legislation and more regulation.¹⁰ As a result, the post-Cold War regulations governing military acquisitions grew dramatically in length and scope. Although the 1947 Armed Services Procurement Regulation was only 127 pages long,¹¹ the 1987 Federal Acquisition Regulation (FAR) was 1,200 pages and continues to grow by several pages every month.¹² The current FAR is now over 2000 pages long and is unlikely to shrink in the future. The 2009 WSRA

⁸ Guide to the Records of the U.S. Senate at the National Archives (Record Group 46) <http://www.archives.gov/legislative/guide/senate/chapter-18-1921-1946>. Accessed 16 November 2009

⁹ Winston T. Wheeler and Lawrence J. Korb, *Military Reform: A Reference Handbook*. (Westport: Praeger Security International, 2007) 67.

¹⁰ Several key studies including the Grace, Fitzhugh, Grace, and Packard Commissions will be examined in greater detail elsewhere

¹¹ Ronald J Fox., *The Defense Management Challenge: Weapons Acquisition*. (Boston: Harvard Business School Press, 1988),17.

¹² Ibid.

is just another set of rules produced in reaction to reports of failure by the military acquisition system.

The System Today

Congress created today's military acquisition system through decades of legislation and oversight. The resulting acquisition system has many participants and beneficiaries- both with multiple, diverse objectives. The principal participants are the administrator within the executive branch (including the DOD), members of Congress and their staff, and defense contractors. Understanding these different participants and their goals, as well as where influence and power exist in the acquisition system, helps to assess the likely success of proposed congressional reform efforts because the actions of the participants directly influence the long-term effect of any new legislation.

To understand the role of the participants in creating the acquisitions problems, it is first necessary to understand each participant's goals. The Executive branch administrators generally want to use the acquisition system to develop and produce weapons systems that will enable our armed forces to deter, and if necessary defeat, the enemies of the United States.¹³ The United States Congress also wants to produce effective weapons systems for the armed forces, but the Congress pursues other goals as well. For example, Congress has used the DOD acquisition process to remedy past social wrongs by creating preference programs "to benefit socially and economically disadvantaged individuals and qualified HUB Zone small business concerns".¹⁴ This type of preference program establishes a goal to award more DOD contracts to minority

¹³ Robert T Marsh, "Reforming the Procurement Process: Lessons from Recent Experience." In *US Defense Policy in an Era of Constrained Resources*, by Robert L Platzgraff and Richard H Shultz. (Medford: Fletcher School of Law and Diplomacy, 1990), 333.

¹⁴ Section 1207 of the National Defense Authorization Act of 1987, Pub. L. No. 99-661, 100 Stat. 3859, 3973 (1986), codified as 10 U.S.C. § 2323.

owned/operated businesses. Congress directs the DOD to award some of these contracts even when the minority owned businesses has not submitted the lowest cost bids. Congress has also enacted similar preference programs for veteran and disabled-veteran owned businesses. These minority award goals automatically create higher costs and inefficiencies for weapons programs that measure their success by meeting projected budgets.

An analysis of where “power” resides in the acquisition system indicated why some administrative and legislative goals have been frustrated by the complex nature of the acquisition process. The American political scientist, Robert Dahl, described the concept of power as, “A has power over B to the extent that he can get B to do something that B would not do otherwise”.¹⁵ The United States Congress has statutory control, or ‘power’, over the conduct of the Department of Defense. Congress uses this control to accomplish a wide variety of objectives. Ideally, Congress shares the executive branch’s goal of efficiency; that is acquiring effective weapons systems at the least cost. However, members of Congress frequently use this statutory power to create defense jobs in their home districts. Other participants in the acquisition system also have power over the procurement process. The Army has the power to define its own service strategies in a way that steers joint acquisitions projects to army-oriented programs. The President uses his executive power to propose budgets to Congress that support his strategic security goals. The President can also veto spending bills if Congress makes unacceptable alterations to his proposed budgets. Additionally, defense contractors with multi-billion dollar programs have the power to influence congressional and executive decision-making because the tremendous sunk cost in their programs can create an enormous cancellation cost. Because these participants act in a web of interdependent power relationships the acquisitions process is complex. All parties can strive to

¹⁵ Mary Jo Hatch, *Organization Theory: Modern, Symbolic, and Post Modern Perspective* (Oxford; Oxford University Press, 2006), 254.

achieve the same end result but, nevertheless, create conditions that fail to meet budgets or production schedules. The 2009 WSRA attempts to improve the process by reducing executive branch decision-making discretion – or power- by creating additional rules governing the acquisition process.

The Future Combat System (FCS) program is a short case study that demonstrates the complexity of trying to change the power relationships in the acquisition process. The FCS program was the Army's attempt to produce its next generation of combat platforms with robust network capabilities. The Army lacked both the systems engineering and program management capability to develop and produce this next-generation multi-platform system. Therefore, the Army gave its Lead Systems Integrators (LSI), Boeing and Science Applications International Corporation (SAIC), the power to define systems specifications, control program management, and subcontract the production of entire weapons platforms.¹⁶ Unfortunately, Boeing and SAIC were unable to leverage their near complete power over the FCS program management to control subcontractor costs for research and product development. Despite all the power given to the LSI, the FCS program costs spiraled out of control from an initial estimate of \$91.4B in 2003 to \$233B in 2008.¹⁷ Secretary Gates eventually cancelled the FCS program but not before billions of dollars had been spent on a program that never produced a system. This case study shows that a well-meaning actor, the Army, can create circumstances that result in out of control costs and program cancellation when its actions fail to account for different power relationships.

Another way to look at the acquisitions system is through a systems approach. A systems approach studies the inputs, outputs, and actors within a system to gain insight on the process and its outcomes. Congress aims to produce several different outputs from the acquisitions system,

¹⁶, Hans Ulrich Kaeser. *The Future Combat System: What future can the Army Afford?* (Carlisle, CSAS, 2009), 29.

¹⁷ *Ibid.*, ii.

which resulted in a system that is more complicated than it appears. Making modifications at the legislative or administrative level is relatively easy, but the results may produce consequences other than those intended. Understanding this system helped assess the future success of the 2009 WSRA.

Figure 1 represents an ideal¹⁸ military acquisitions system that values cost, effectiveness, and time as objective standards for measuring the outputs. The sole focus of this system is to produce an effective weapons system. In reality, given the power relationships already discussed, this system representation is far too simple to adequately represent the actual process. This system representation fails to account for the diverse outputs desired by the many actors within the system. Figure 1 does not show the actors in the system who influence the allocation of resources and the definition of requirements.

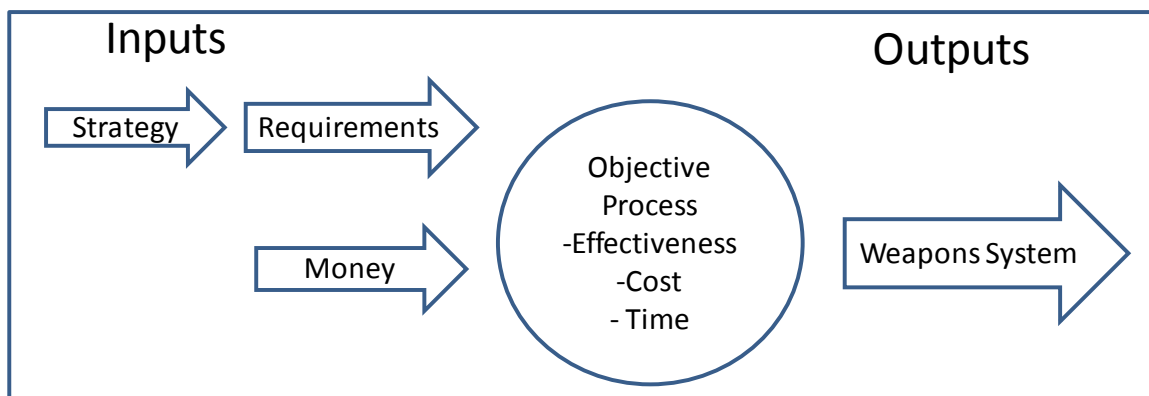


Figure 1 The ‘Ideal’ Acquisition System

Among those actors that influence the acquisitions system, Congress may be the most important because it has many constituents¹⁹ beyond the military. Over the last three decades, Congress has come to view military spending as a tool to achieve social or economic benefits for

¹⁸ In the Weberian sense of the ideal bureaucracy.

¹⁹ The most important constituent for most members of Congress are the voters in his own district. Other potential constituents are specific industries or political action committees.

these additional constituents. Because Congress uses the acquisition process to achieve social good, Congress has manipulated the standards used in the acquisition decision process to produce improved societal outcomes.²⁰ Thus to increase the fidelity of the system representation, it is necessary to list social goods among the system outputs.

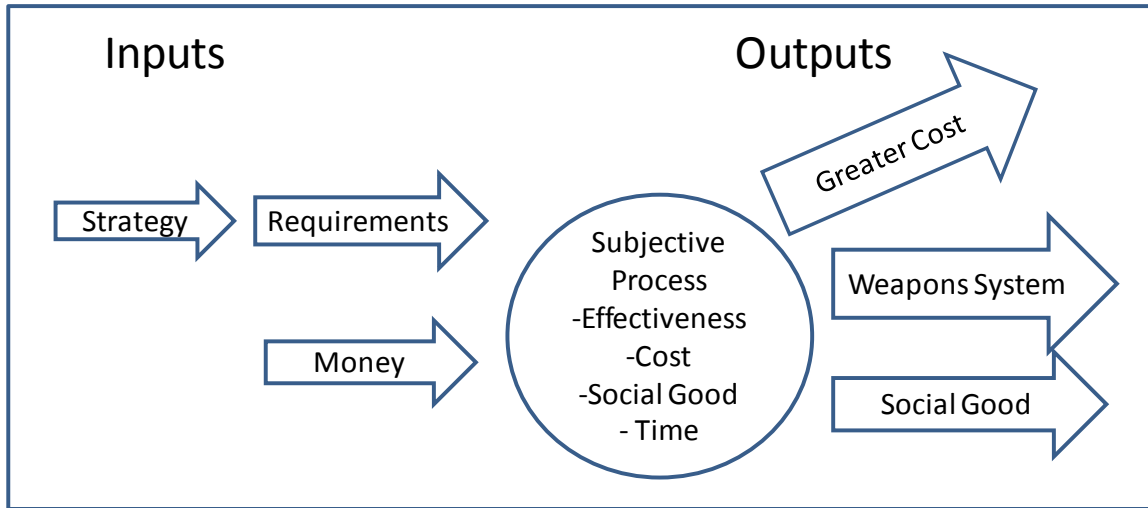


Figure 2 The Intended Acquisition System

The actual system still differs from that depicted in Figure 2, which includes social goods as an output. The depicted inputs are too simple. Congress, the DOD, and defense contractors all shape the development and identification of requirements. The explicit outputs of an effective weapons system and social goods remain, but implicit outputs include jobs and political capital. Congress uses the acquisition system to produce “unofficial” or implicit outputs that include benefits to their constituents and political good will.²¹ These efforts to satisfy more constituents and produce additional desired outputs have the potential to cause the undesired outcomes; cost escalation and longer product lead-times. Figure 3 below attempts to depict the system inputs, decision criteria, and outputs (both desired and undesired).

²⁰ As discussed before, contracts for companies owned or operated by minorities, veterans, women, etc.

²¹ Political good will can generate votes, campaign contributions, and good publicity

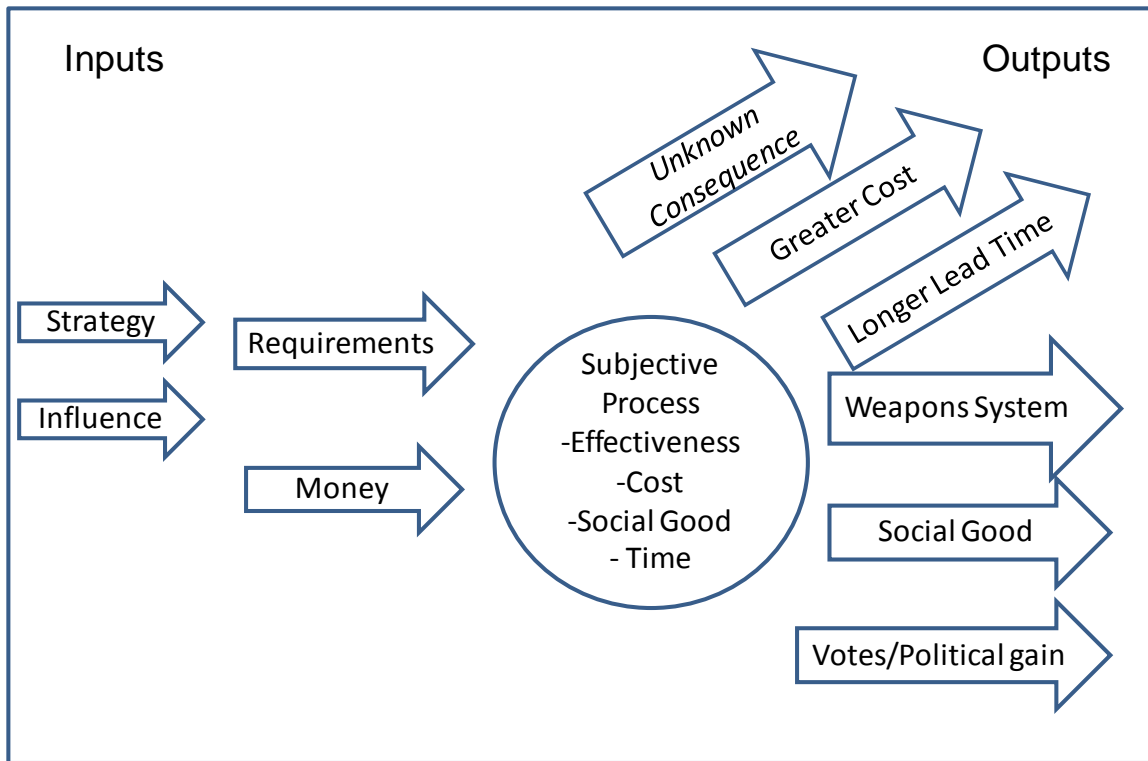


Figure 3 The Actual Acquisition System

Figure 3 depicts the most accurate semblance of the existing acquisitions system yet. Each alteration to the system designed to produce a specific intended outcome has also caused unintended negative consequences. The complexity of the system makes predicting the full effect of any change difficult to predict until after the modification is in effect.

While it can be easy to blame poor program management for bad procurement outcomes, the reality is more complicated. The acquisition system has never reflected an overall, rational design. Rather it is a series of fixes laid upon fixes generally aimed to remedy problems identified in the most recent defense studies. The multitude of intended outputs, the diversity of constituents, and the complex nature of modern weapons systems all contribute to the current pattern of cost overruns and schedule slippages. The 2009 WSRA addresses procedures and processes governing the acquisition process, but does not address the inherent conflicts within a system designed to please multiple constituents rather than produce an effective weapons system at minimal cost. The system depicted in Figure 3 does not show the web of actors who influence

the decision throughout the acquisitions process. To reveal the effect of these actors requires a closer look at the participants in the acquisition process.

Key Actors and their Roles in the Acquisition Process

Congress and the President are the two key participants in the acquisition process because they respectively create and enforce the laws governing military acquisition.²² Understanding their constitutionally mandated legislative and executive roles and responsibilities provides a valuable perspective into the acquisition process and the effect of new legislation on the process. Research shows that Congress steadily expanded its control over the acquisition process, which limits the options available to the executive branch for achieving its policy and security goals. The 2009 WSRA implements additional regulatory controls over program management, which adds complexity to the acquisitions system, but does not guarantee better outcomes.

The President of the United States is the most powerful actor in the entire military acquisition process. Article 2, Section 3 of the US Constitution instructs the President to “take Care that the Laws be faithfully executed.” Consequently, the President must administer the entire U.S. government. As the chief government administrator, the President, ensures that the myriad of governmental agencies are effectively carrying out the policies of both his office and the US Congress. He administers the government through a system of departments headed by Senate-approved political appointees, such as the Secretary of Defense. Under his supervision, the DOD identifies requirements, develops solutions, and purchases weapons systems to meet military needs. While the President is also the Commander in Chief of the US armed forces, that wartime role is subordinate to his role as chief executive regarding acquisition matters. The

²² The DOD has an important role in procuring equipment within the rules established by Congress, but the DOD is still a subordinate element of the executive branch. Because the president supervises the Department and Congress oversees its compliance to acquisition rules, most of the research in this monograph concentrates on the two main actors.

bottom line is that the President must act within the rules and restrictions established by Congress whether these rules, such as the 2009 WSRA, actually make the acquisitions system more effective.

The US Congress is the most powerful corporate actor in defining and controlling the military acquisitions system. Article I, Section 8 of the U.S. Constitution granted Congress the enumerated powers to raise, fund, and regulate the army and the navy. Thus, Congress has the “power of the purse” over the military and must establish the rules, regulations, and statutes that govern the general operation of each service. Frequently, the President has not welcomed congressional interference in his relationship with the military services, despite the fact that the power to control and oversee the military is Constitutionally shared. Consequently, Congress must have the power to ensure the President carries out its will, which is the basis for congressional oversight. Because the US Constitution does not explicitly grant Congress the power to oversee the executive branch and its many departments²³, oversight is an implied legislative power. Constitutional scholars typically cite the “necessary and proper” clause as justification for any legislation needed to accomplish this oversight duty.²⁴ In Federalist Paper Number 51, James Madison described the oversight process as a key part of “the subordinate distributions of power, where the constant aim is to divide and arrange the several offices in such a manner, as that each may be a check on the other.”²⁵ Congress itself defines legislative oversight as “the review, monitoring, and supervision of federal agencies, programs, activities, and policy implementation.”²⁶ Without using the myriad of oversight tools possessed by

²³ Art I, Sec 8 and Art II Sections 2 &4

²⁴ Frederick Kaiser, “Report on Congressional Oversight. Update”, (Washington, D.C: Congressional Research Service 2006), 4.

²⁵ James Madison, "Federalist Paper No 51." (Independent Journal, 1788) 1.

²⁶ Kaiser, Frederick. “Congressional Oversight. Update”, (Washington: Congressional Research Service, 2006), 2.

Congress, it would be impossible to know what the executive is doing; how programs are being administered, by whom, and at what cost; and whether officials are obeying the law and complying with legislative intent.”²⁷ The Supreme Court validated the concept of congressional oversight in a decision in 1927. The court found that Congress was free to investigate on any subject “on which legislation could be, had, or would be materially aided by the information which the investigation was calculated to elicit.”²⁸

The 2007 Congressional Oversight Manual lists the ten goals of congressional oversight. The goals can be summarized as ensuring that the executive branch and its departments effectively enforce statutory rules in accordance with Congressional intent. Congress has many tools for accomplishing its oversight goals. Its oversight tools include holding committee or subcommittee hearings and issuing subpoenas. Congress also oversees executive agencies through GAO Audits, statutory reporting requirements, nominee confirmation procedures, and changes in authorizations and appropriations for specific agencies.²⁹ With all these oversight tools, Congress should be able to adequately oversee the executive branch’s enforcement of the 2009 WSRA.

Now that the constitutional roles of the executive and legislative branches of government have been defined, the next step is to explore the development of specific congressional oversight capabilities needed to monitor the executive branch. Without these oversight capabilities, Congress could not confirm that the executive enforced the new law in accordance with its legislative intent. If not effectively enforced, the 2009 WSRA will have little chance of success.

²⁷ Ibid., 3.

²⁸ *McGrain v. Daugherty*, 273 U.S. 135, 177 (1927);

²⁹ Walter J. Oleszek, *Congressional Procedures and the Policy Process*. (Washington, DC: Congressional Quarterly, 1989), 270-273.

However, Congress has not always had the capacity to perform effective oversight as will be seen when examining the great expansion of oversight capability in the last sixty years.

Competition for Knowledge and Analysis

An old saying states that, "Knowledge is power."³⁰ Congress has taken several steps since the beginning of the 20th Century to augment its power, also known as analytical and knowledge gathering capability. The expansion of Congressional oversight capability from the mid-20th century to present has implications for future legislative trends and for the success of the 2009 WSRA. Traditionally, the executive branch possessed greater analytical and policy development power than Congress. The President used the Treasury, Defense and other departments to develop internal plans, policies, and budgets that he presented to Congress for funding legislation. Until 1946, Congress had a limited committee staff³¹, and individual legislators had even fewer personal staff members³². The personal staff concentrated on schedule planning rather than analysis of executive branch budgets and legislative proposals. In 1942, Senator Adams remarked, "we provide endless equipment for the Executive and administrative agencies to take care of themselves; but we are not provided with the machinery to do the things

³⁰ The famous phrase *Ipsa Scientia Potestas Est* is a Latin maxim "For also knowledge itself is power" stated originally by Francis Bacon in *Meditationes Sacrae* (1597), which in modern times is often paraphrased, as "knowledge is power." Website: Famous Quotes. <http://www.famousquotessite.com/famous-quotes-7550-sir-francis-bacon-meditationes-sacr-de-hresibus-1597.html> Accessed by Zach Buettner 16 March 2010.

³¹ The House had 167 staffers divided between 61 committee in 1947. The Senate had 232 staffers divided between 74 committees. Wheeler T. Winslow. *The Wastrels of Defense*. (Annapolis: Naval Institute Press, 2004), 146-148.

³² The Senate authorized each member a personal staff of two in 1914, five in 1940, and eight in 1947. The House authorized a personal staff of two in 1919, three in 1940, and six in 1945. Today each Senator and Congressman usually has a staff of 40-100 individuals. Wheeler, T. Winslow. *The Wastrels of Defense*. (Annapolis: Naval Institute Press, 2004), 146-148.

we ought to do.”³³ Congress typically acted to either veto or approve the requested funding, but rarely challenged the underlying analytical basis.

Congress has since enacted several measures to create tools to match executive analytical and policy development capabilities. The Congressional Research Service (CRS) was one of the early attempts by Congress to assert independence from the executive branch. The CRS evolved from the Legislative Reference Service (LRS), which Congress established in 1914. The LRS lasted for over 40 years by providing Congress with research and analysis derived from other research institutions and scholars. In 1946, Congress renamed the LRS, the CRS, and tasked it to produce original research and analysis in support of legislative committees and their oversight process. Today, the CRS staff has “approximately 700 employees including lawyers, reference librarians, and social, natural, and physical scientists.”³⁴ These researchers work exclusively for Congress, and cannot release any reports outside Congress without specific permission by the congressional requestor. The CRS charter specifically prohibits the development of policy or legislative recommendations for Congress.

Congress established the second of the three oversight agencies in 1921.³⁵ The Government Accountability office (formerly known as the General Accounting Officer) is an independent auditor of governmental agencies. The head of the GAO, the Comptroller General of the United States, has a 15-year term of office. This term gives him the independence to provide Congress with critical reports on the executive without fear of retaliation. The GAO assesses the legality of administrative agency actions, suggests better ways for agencies to accomplish

³³ 77th Congress, 1st Session, Senate Committee on Appropriations. Hearings on a subcommittee on the legislative branch appropriations bill for 1942.

³⁴ Ida Brudnick, “The Congressional Research Service and the the American Legislative Process”. (Washington: Congressional Research Service, 2008) i.

³⁵ *Ibid.*, 135.

objectives, and verifies information provided to Congress.³⁶ Congressional and Senatorial committee requests trigger almost all of the GAO investigations, but the GAO will conduct investigations for individual members of Congress when possible. The Congress did not originally intend for the GAO to produce policies or suggest regulations; rather it was expected to be a non-partisan audit agency.

Congress created the third analytical agency, the Congressional Budget Office, in 1974 to counter-balance the executive branch's Office of Management and Budget. The Congressional Budget Office (CBO) generates independent, non-partisan analysis needed for economic and budget decision-making.³⁷ The mandate for the CBO forbids policymaking and focuses on four main services to Congress: formulating budget plans, helping maintain the limits of the budget, assessing the impact of proposed legislation or appropriations, and assessing issues related to budget and economic policy. The Legislative Reorganization Act of 1946 also established a permanent, professional and clerical staff for congressional committees.³⁸ Today, the House has a permanent staff of over 10,000 and the Senate permanent staff number more than 6,000.³⁹ Most of these positions are in the permanent committee and subcommittee staff that analyze executive branch proposals and support development of new legislation. Congress now has greater oversight capability than ever before to monitor the activities of the executive branch and its many administrative agencies.

³⁶ Ibid., 136.

³⁷ Frederick Kaiser., "Congressional Oversight" (Washington, D.C: Congressional Research Service, 2006), 125.

³⁸ Legislative Reorganization Act, ch. 753, 60 Stat. 812, enacted 1946-08-02

³⁹ US Office of Personnel Management, TABLE 9 -- Federal Civilian Employment and Payroll (in thousands of dollars) by branch, selected areas and region, November 2008. [HTTPS://WWW.OPM.GOV/FEDDATA/HTML/2008/NOVEMBER/TABLE9.ASP](https://www.opm.gov/feddata/html/2008/NOVEMBER/TABLE9.ASP) (Accessed January 25, 2010).

Congress has used this analytical capability to produce multiple reports critical of the military acquisition process. The 2009 WSRA incorporated many policies suggested by the CRS and GAO. Congress will also use its oversight tools to ensure that the executive branch fully implements all aspects of the 2009 WSRA. Congress now possesses more than adequate tools to ensure that the DOD fully implements the 2009 WSRA. Consequently, any failure to reduce cost or improve program management may be due to the design of the bill rather than its ultimate implementation

Acquisitions Studies

While Congress and the President both have agencies and resources to study the military acquisition process, frequently they form new commissions to study the acquisition process. Secretary of Defense Donald Rumsfeld observed during a Pentagon Town Hall Meeting, that there have been 128 studies of Defense Procurement since 1975.⁴⁰ To understand the current reform efforts it is important to review previous studies because they provide a view of long-term problems that have persisted despite previous legislative action. This research reviewed several reports produced from the 1970s to 2009, beginning with the Fitzhugh Commission and ending with the Defense Acquisition Performance Assessment Panel. Every acquisition report since the 1970s has found multitude deficiencies including cost overruns and program delays in weapons programs. These are among the same problems that the 2009 WSRA attempts to remedy.

The Fitzhugh Commission was the first major defense study since the reign of Defense Secretary Robert McNamara in the 1960s.⁴¹ Gilbert W. Fitzhugh led a Blue Ribbon Defense Panel tasked by President Nixon to identify flaws within the DOD and to make recommendations

⁴⁰ Office of the Assistant Secretary of Defense (Public Affairs) “Pentagon Town Hall Meeting with Secretary Rumsfeld” News Transcript Dated March 06, 2003 10:25

⁴¹ Ibid.

to improve the Department's structure and efficiency.⁴² Unlike previous studies, the Fitzhugh commission focused on the acquisition of major weapons systems rather than the procurement of common supply items.⁴³ The commission's report was critical of the Defense Department and said that the existing policies "on development and acquisition of weapons systems and other hardware had contributed to serious cost over runs and performance deficiencies."⁴⁴ The Fitzhugh commission found problems that still occur in today's acquisition process with a disheartening regularity: poor developmental testing, major cost growth or overruns, schedule slippages, and failures in operational performance. The report admitted that the nature of technological developments in military hardware make the occurrence of some cost overruns and slippages almost inevitable, but blamed the recurring nature of these problems on managerial inefficiencies.⁴⁵ The report also warned that Congress was beginning to micromanage the acquisition process in the DOD.⁴⁶ Despite the findings, there were more administrative changes in the 1970s than legislative actions. Secretary of Defense Packard published DOD Directive 5000.1, the DOD acquisitions guideline, in the early 1970s to provide "strategic guidance on the development, production, and deployment of major defense systems"⁴⁷

While the 1970s were an era of austerity measures and spending restrictions, the 1980s began a period of unprecedented peacetime military spending. The 1980s ushered in an era of change from the previous Carter administration. President Reagan mobilized Republicans and

⁴² Congress, Defense Policy Panel- US. Defense Acquisitions: Major U.S. Commission Reports, 1949-1988. (Washington: U.S. G.P.O, 1988), 10.

⁴³ Ibid.

⁴⁴ Ibid., 150.

⁴⁵ Ibid., 210.

⁴⁶ Ethan McKinney et al. "Acquisition Reform — Lean94-03. Study", (Cambridge: Lean Aircraft Initiative, 1994), 5.

⁴⁷ Ronald J Fox., *The Defense Management Challenge: Weapons Acquisition*. (Boston, MA: Harvard Business School Press, 1988), 45.

many other Americans by attacking the economic and military decline of the United States that had occurred under liberal foreign and social policies of the 1970s.⁴⁸ One of the clearest campaign promises was a rapid and sustained military buildup. Once in office, President Reagan initiated the promised increases in military spending with a “get tough” policy on the Soviet Union that provided further reason to focus on building military capability. President Reagan empanelled the Grace Commission “to get government off the back of Americans” with a wide mandate to focus on the entire government and to “concentrate on management reforms to avoid wasteful public spending.”⁴⁹ The Grace Commission found that the entire federal government, including the DOD, had wasteful and inefficient acquisition practices. The commission also criticized Congress for micromanaging the weapons acquisition process.⁵⁰ The Grace Commission study provided publicity for Reagan’s agenda, but produced little if any Congressional action.

The growth in the defense budget and the escalating Cold War tensions created some unusual coalitions in the United States Congress. The Congressional Defense Reform Caucus had Republicans, Democrats, peace advocates, proponents for strong nuclear deterrence, and every one in between.⁵¹ The failure of Operation Eagle Claw in Iran, the bombing of the Marine barracks in Beirut, and the invasion of Grenada provided more than enough reason for Congress to initiate congressional studies and analyses of the inner workings of military systems.⁵²

⁴⁸ Daniel Wirls., *Buildup: The Politics of Defense in the Reagan Years*. (Ithaca: Cornell University, 1992), 3.

⁴⁹ Ronald J. Fox., *The Defense Management Challenge: Weapons Acquisition*. (Boston: Harvard Business School Press, 1988), 49.

⁵⁰ Ethan McKinney et al. “Acquisition Reform — Lean 94-03. Study”, (Cambridge: Lean Aircraft Initiative, 1994), 6.

⁵¹ Winston T Wheeler and Lawrence J.Korb, *Military Reform: A Reference Handbook*. (Westport: Praeger Security International, 2007), 38.

⁵² Douglas C Lovelace., “Unification of the Armed Forces: Implementing the 1986 Department of Defense Reorganization Act” (Carlisle: Strategic Studies Institute, 1996), 9.

Beginning in 1983, Congress held a series of hearings and investigations led by Senators John Tower and Henry (Scoop) Jackson, then Chairman and ranking Minority members of the Senate Committee on Armed Services.⁵³ In 1985, Senators Barry Goldwater and Sam Nunn created a formal study that generated the *Locher Report*, formally known as *Defense Organization: The Need for Change*.⁵⁴ The *Locher Report* proposed some radical changes such as disestablishing the JCS and replacing it with a Joint Military Advisory Council.

The many alleged failures in the DOD created a climate requiring action by the President and Congress. Thus, President Reagan responded to this momentum for change with the Blue Ribbon Commission on Defense Management, headed by former Secretary of Defense David Packard. Creating the Packard Commission was a political decision to seize the initiative to maintain control over the fate of the DOD rather than hope changes proposed by Congress would be acceptable. The President gave the Blue Ribbon Commission the charter to “study the issues surrounding defense management and organization, and report its findings and recommendations.”⁵⁵ The Packard commission focused on broad structural issues rather than smaller issues of possible fraud and abuse. It produced four major recommendations changes in the acquisition process:

Create a new Under Secretary of Defense for Acquisitions (USD(A)) in charge of all research, development, procurement and testing of weapons.

Create Acquisition Executives (AE) in each service to report to the USD(A) and there service chiefs

Create Program Executive Officers reporting to each AE

⁵³ Ibid., 10.

⁵⁴ Ibid.

⁵⁵ David Packard., “President's Blue Ribbon Commission on Defense Management. Final), (Washington: Packard Commission, 1986), xi.

Give the Chairman of the Joint Chiefs of Staff (CJCS) more authority in acquisition matters and stand up a Joint Requirements management Board to establish weapons systems requirements, and approve programs at each milestone.⁵⁶

The Packard Commission recommendations paved the way for the greater centralization of the acquisition process. While the subsequent Goldwater-Nichols Act did not address all of the problems identified by the Packard Commission, the Act addressed enough Congressional complaints to shift attention to other problems and reports.

Six years after the Packard Commission released its report, the GAO published *Weapons Acquisition: A Rare Opportunity for Lasting Change*. The authors hoped that the Warsaw Pact's dissolution had created "a climate conducive to confronting acquisition problems in a fundamental way."⁵⁷ The key acquisition issues were once again cost increases and schedule delays. The GAO came to the commonsense conclusion that schedule delays increased total program cost and cost increases usually produced schedule delays. The report also identified a "selling culture" that provided an incentive for program managers and contractors to develop overly optimistic cost estimates that were unrealistic. The GAO found that weapons system proponents and their program managers frequently avoided objective risk assessments, realistic cost estimates, and prototype testing because such measures risk disruption, deferral, or even cancellation.⁵⁸ The constant Congressional oversight of weapons programs had created a system where program managers feared to present bad news on any program for fear of additional scrutiny or cancellation. The 2009 WSRA's additional reports have the potential to continue this

⁵⁶ Jones, Wilbur D. *Arming the Eagle- A History of Weapons Acquisition since 1775*. (Fort Belvoir: Defense Management System Press, 1999),75.

⁵⁷ Charles A Bowsher., "Weapons Acquisition: A Rare Opportunity for Lasting Change. Update", (Washington: GAO, 1992),6.

⁵⁸ Norman Augustine., "Getting to Best: Reforming the Defense Acquisition Enterprise" (Washing:Busines Executives for national Security, 2009), 63.

trend as the DOD feels compelled to provide only good news in order to reduce oversight and maintain funding.

As mentioned earlier, the Goldwater-Nichols Act was the largest reorganization of the DOD since the late 1940s. The GNA also made major changes to the acquisition system's organization and function. The Center for Strategic and International Studies (CSIS) published *Beyond Goldwater-Nichols: U.S. Government and Defense Reform for a New Strategic Era: Phase 2* (BGN2) in 2005 to address the results of the GNA twenty years later. The study asserted that since 1986, Congress had repeatedly reformed the acquisition process with an aim to improve how the DOD procured weapons systems, but consistently neglected the process used for system selection. The BGN2 report also compared the equipment procurement rates of the 1980s to that of today. In 1985, the DOD purchased "32,714 tactical missiles; 2,031 combat vehicles; 535 fixed wing aircraft; 390 helicopters and 24 ships/submarines".⁵⁹ By 2005, the volume of purchases had declined to 5,702 tactical missiles (one-sixth of the 1985 level); 190 combat vehicles (one-tenth); 188 fixed wing aircraft (one third); 79 helicopters (one-fifth) and 8 ships/submarines (one-third).⁶⁰ The acquisition system no longer managed multiple, high-volume programs; rather the process had to manage several smaller, but very expensive programs. However, the management infrastructure had changed little from the 1980s. The 2005 report also found that acquisition legislation moved monitoring and decision authorities for programs further up acquisition hierarchies over the last two decades. The acquisition system now had added a large number of OSD-level reviews, including milestone, pre-decision, integrated product team, working integrated product team, and overarching integrated product team reviews.⁶¹ These additional milestones and steps add cost and time to programs with questionable added benefit considering

⁵⁹ "Beyond Goldwater Nichols Report", (Washington; CSIS, 2005), 89.

⁶⁰ Ibid., 91.

⁶¹ Ibid.

the recent performance of the acquisition system. The 2009 WSRA continues the trend of adding additional approval processes and requiring higher-level administrators to approve acquisition decisions.

The last study examined by for this research was the 2005 Defense Acquisition Performance Assessment Panel (DAPAP) report. The DAPAP report identified instability as the chief culprit in the acquisition system's poor performance.⁶² The DAPAP report depicted the cycle of instability in Figure 4 to demonstrate how instability causes cost overruns and schedule slippages in defense programs. Different factors ranging from management personnel turnover to congressional changes in funding cause this cycle of instability. Jacques Gansler commented on instability in the acquisition process by comparing it to "a large business changing its purchasing commitments every year."⁶³ The constant adjustments, stretch-out's, redirections and other improvements to the defense budget generate continuous turmoil in the acquisition process as Congress defunds, over-funds, or even creates new programs every year. This instability multiplies and can eventually generate crises that result in cancelation of programs such as the Future Combat systems.

⁶² Defense Acquisition Performance Assessment, January 2006 Report Summary Slide 11.

⁶³ Jacques Gansler., "How to Improve the Acquisition of Weapons." In *Reorganizing America's Defense: Leadership in War and Peace*, by Robert Art, Samuel Huntington and Vincent Davis, 381-402. (New York, Pergamon Brasseys, 1985), 392.

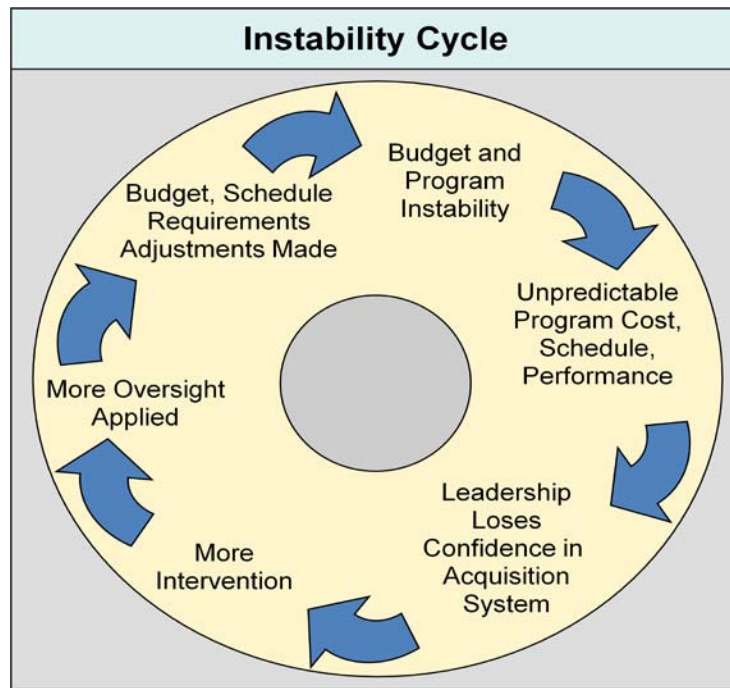


Figure 4 Instability Cycle

Source: The Defense Acquisition Performance Assessment. Report Summary as of January 2006. Page 11. The Process- Government Induced Instability

Cost overruns, schedule slippages, and program management issues have been endemic to the military acquisition system for decades. The 2009 WSRA did not discover new problems within the acquisition process. The 2009 WSRA merely addresses problems identified in many previous acquisition studies. The 2009 WSRA is unlikely to solve the problems in the acquisition process. If it were easy to fix the acquisition process, similar problems would not have persisted for decades. Like most legislation, the 2009 WSRA fails to address the real inputs and influences on the system. The WSRA will also have to cope with increasing oversight and instability as defense budgets face possible reductions brought on by national fiscal constraints. All these factors reduce the likelihood that the 2009 WSRA will succeed at constraining costs and reducing schedule “stretch outs”. However, there are still other factors to consider before making a final judgment on the WSRA.

Acquisition Legislation

The success of any new legislation passed by Congress is determined by many different factors. This paper has already discussed the role of the executive branch in enforcing new legislation and the role of Congress in overseeing that enforcement. The next logical step is to examine the Congressional trends in producing legislation to see how the trends may affect the success of the 2009 WSRA. An examination of the regulatory environment should begin with an overall assessment of congressional actions on acquisition regulations because acquisition legislation forms the regulatory environment. The United States Congress enacts several acquisition related laws every year that affect the military. Congress only makes a few of these changes with entirely new laws. Most changes to acquisition rules are written into routine authorization and appropriation acts, while others are modifications to existing statutes. The research on acquisition legislation has shown that Congress frequently produce new laws before previous laws have even taken effect. The statutory changes also tend to address the same topics repeatedly, sometimes with very similar provisions.

While an examination of specific statutes follows, this section begins by trying to depict the fast rate of changes to the acquisition process. The acquisition legislation depicted in Figure 5 is only a small selection of the many legislative acts since 1986 because Congress modified acquisition legislation almost every year through separate bills or annual defense authorization acts. The rate of legislative change makes accurately assessing the results of any given piece of legislation difficult because subsequent legislation frequently modifies or repeals previous measures.

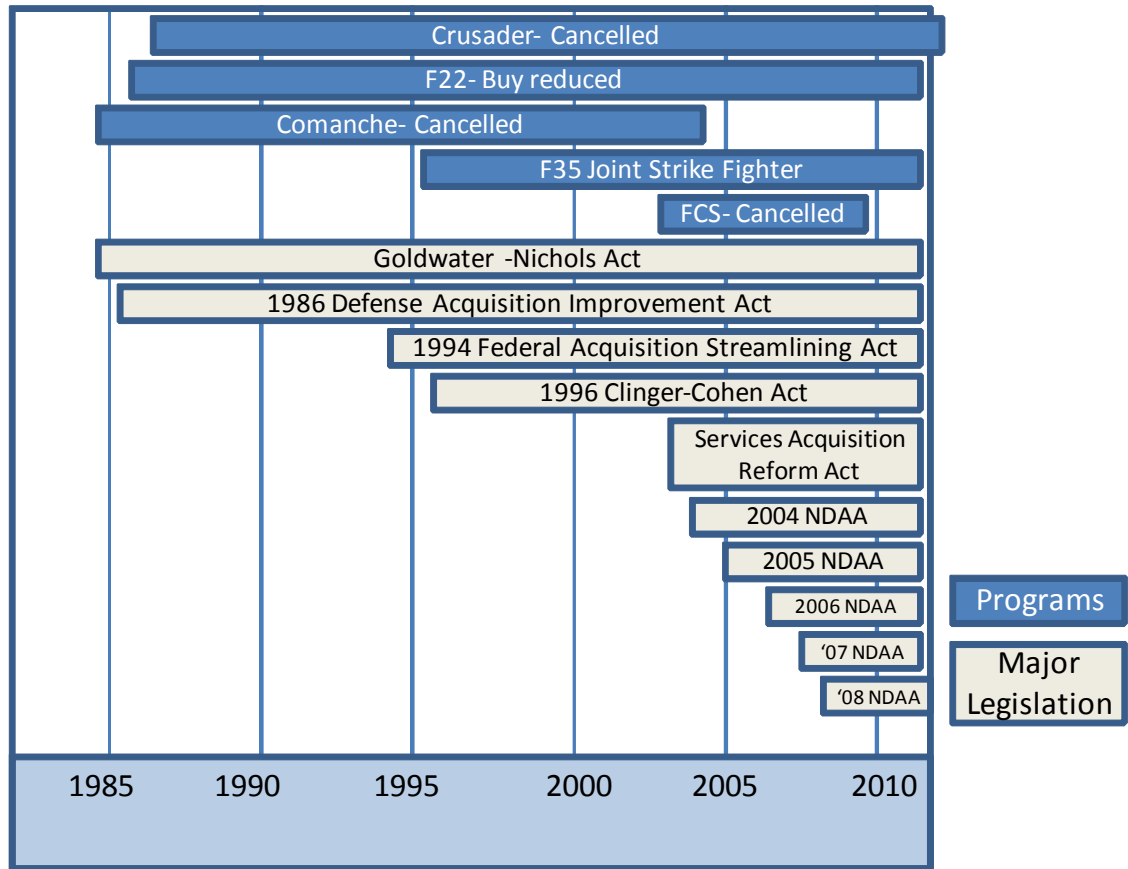


Figure 5 Legislative Velocity

The trend towards continual legislation, as depicted in Figure 5, gives little assurance that additional legislation will not follow the 2009 WSRA before the current statute has a chance to succeed. That modification may well affect the 2009 WSRA's ability to control program costs and reduce schedule slippages.

An early trend in acquisition legislation not addressed in Figure 5 concerns development and procurement of new weapons systems. Congress has systematically withdrawn from the DOD any prerogative to begin new acquisitions programs without explicit permission from Congress. Until the 1959 NDAA, the military did not require specific authorization from Congress to develop new weapons systems. Before that that year, Congress allocated funds for defense activities by type without specifically authorizing specific systems. A rider on the 1959 Military Construction Authorization Act required annual authorizations for the procurement of

aircraft, missiles, or naval vessels. The 1959 Military Construction Authorization Act was the beginning of a new era of increased Congressional control of military procurement expenditures.⁶⁴ In 1962, the House Armed Services Committee (HASC) required the DOD to annually seek authorization of all research, development, test, and evaluation of (RDT&E) associated with aircraft, missiles, and naval vessels. By 1964, the HASC required annual authorization for all RDT&E and naval vessels, and by 1965 for all armored vehicles. By 1967, all weapons systems from individual weapons (such as the M16) to torpedoes required annual authorizations. The steady progress towards tight control of DOD expenditures culminated in 1982 and 1983 when Congress required an annual authorization for operations and maintenance (O&M) funding and ammunition purchases.⁶⁵ This statutory series of actions demonstrates the legislature's tendency to restrict the military's ability to make procurement decisions without explicit permission from Congress. Thus, the military must convince Congress to approve the initial development of a program, and then repeatedly defend the same decision in front of congressional committees throughout the life of the program. The authorization with specific line items for programs creates an incentive for the military to defend weak programs because the money appropriated to specific weapons systems cannot be reprogrammed without Congressional authorization.

The previous paragraphs examined legislative patterns that characterized the acquisition environment into the 1980s. The next areas of interest are several specific statutes created since 1986, beginning with the 1986 Goldwater-Nichols Act. As discussed earlier, the Packard Commission made several recommendations to change the DOD that Congress accepted and turned into law with the 1986 Goldwater-Nichols Act. The Act was the largest statutory reform of

⁶⁴ Thomas O. Mackubin. "Micromanaging the Defense Budget." (Public Interest, 1987), 133.

⁶⁵ Ibid., 134.

the Department of Defense since the National Security Act 1947. All the military services roundly opposed this reform because the Services opposed centralization of power and decision making at the expense of service autonomy.⁶⁶ While Congress attempted to achieve eight key improvements with the GNA, only three goals are relevant to assessing the WSRA. The three acquisition-related goals congress sought to achieve with the GNA were: to provide for the more efficient use of defense resources, to enhance the effectiveness of military operations, and to improve DOD management and administration.⁶⁷ To provide for more efficient use of defense resources, the GNA mandated specific changes that altered areas of the acquisition process. First, Congress directed the Chairman of the Joint Chiefs of Staff to develop acquisition priorities from the Combatant Commanders' list of strategic requirements rather than the list provided by the service secretaries. This ensured that separate service requirements aligned with the operational needs of the Combatant Commands, rather than the other way around.⁶⁸

The 1994 Federal Acquisition Streamlining Act of 1994 (FASA)⁶⁹ revised more than 225 acquisition rules in an attempt to simplify governmental acquisition procedures. This act encouraged the purchase of civilian off the shelf equipment,⁷⁰ raised the simplified purchase

⁶⁶ Douglas C Lovelace., "Unification of the Armed Forces: Implementing the 1986 Department of Defense Reorganization Act" (Carlisle,: Strategic Studies Institute, 1996),14.

⁶⁷ 1- Reorganize the DOD and strengthen civilian authority ,2- Improve the military advice provided to the President, National Security Council, and Secretary of Defense , 3- Place clear responsibility on the commanders of the unified and specified combatant commands for the accomplishment of missions assigned to those commands, 4- Ensure that the authority of commanders of unified and specified combatant commands is fully commensurate with the responsibility of those commanders for the accomplishment of missions assigned to those commands to increase attention , 5- Increase attention to strategy formulation and contingency planning, 6- Provide for the more efficient use of defense resources , 7-Improve joint officer management policies , 8-Enhance the effectiveness of military operations and improve DOD management and administration Ibid., 15.

⁶⁸ Ibid., 41.

⁶⁹ Public Law 103-355, A bill to revise and streamline the acquisition laws of the Federal Government, and for other purposes
<http://thomas.loc.gov/cgi-bin/bdquery/z?d103:SN01587:@@D&summ2=m&>

⁷⁰ Finally enacting a 10 year old recommendation for the Packard Commission

financial threshold from \$25,000 to \$100,000, and reduced some of the regulatory burden for complying with the federal price certification process. The FASA simplified the federal bid-protest process and repealed the competitive prototyping and alternative source requirements for major weapons systems. While the bill had many other provisions not examined here, the bill's overall intent was to simplify and standardize several decades of acquisition legislation.⁷¹

The 1996 Federal Acquisition Reform Act later renamed the Clinger-Cohen Act of 1996, modified the rules established in the FASA to accelerate the use of commercial items by the DOD.⁷² The bill also reduced the certification requirements for companies selling commercial items and established the GAO as the adjudicator for all bid protests. One controversial aspect of this bill directed the DOD to eliminate 15,000 acquisition personnel and plan a further 25% reduction in the next five years.⁷³ While beyond the scope of this research, the 2007 Gansler Commission report blamed the Congressional mandated reduction in acquisition personnel for personnel shortages in contingency contracting during Operation Iraqi Freedom.⁷⁴

The 2009 WSRA

The 2009 WSRA is the latest example of acquisition legislation intended to remedy problems identified in many previous studies. The specific provisions of this bill were examined to determine whether any new ideas were used, or whether previous changes are merely recycled. The 2009 WSRA consists of three sections addressing acquisition organization (section 100),

⁷¹ Public Law 103-355, A bill to revise and streamline the acquisition laws of the Federal Government, and for other purposes <http://thomas.loc.gov/cgi-bin/bdquery/z?d103:SN01587:@@D&summ2=m&>

⁷² National Defense Authorization Act for Fiscal Year 1996, http://thomas.loc.gov/cgi-bin/cpquery/?&dbname=cp104&sid=cp104O1yiy&refer=&r_n=hr450.104&item=&sel=TOC_2219&

⁷³ Ibid.

⁷⁴ Jacques Gansler, "Report of the Commission on Army Acquisition and Program Management in Expeditionary Operations" (Washington, Commission on Army Acquisition and Program Management in Expeditionary Operations, 2007), 3.

policy (section 200), and additional acquisition provisions (section 300).⁷⁵ The entire WSRA is over 30 pages long, but there is no need in this monograph to address every provision to understand the major elements of the bill. The WSRA sections analyzed here were identified in House Armed Services Committee press releases as key points of the legislation. Thus, analysis of those points is useful in assessing the entire bill. The major elements of the bill increase the number of acquisition supervisors, require more analysis of major programs, and mandate more reports to Congress and the DOD. Several key elements of the bill were analyzed to see if the new provisions promise successes not produced by previous legislation. Given that Congress has taken this approach many times before, it seems unlikely to improve the acquisitions process now.

Several major provisions of the 2009 WSRA do little more than repeat requirements previously enacted by Congress. The first example of such repetition occurs in Section 101 of the 2009 WSRA which creates a Director of Cost Estimate and Program Analysis (Director, DCAPE) in the DOD⁷⁶. Congress directs the President to nominate a Director, DCAPE for confirmation by the Senate. The Director, DCAPE will be the principal advisor to the Secretary of Defense and other senior officials on any matters dealing with cost estimates, alternative plans, programs, and policies with respect to DOD acquisition programs. This position has actually existed since at least 1999, when DOD Directive Number 5141.1 created the Director Program Analysis and Evaluation to provide advice to the Secretary of Defense on program analysis and evaluation, alternative plans, and budget submissions.⁷⁷ The only substantive difference between the provision found in the WSRA and the existing office is the requirement for Senate confirmation.

⁷⁵ Carl Levin and John McCain, 111th US Congress, S 4545 “Weapon Systems Acquisition Reform Act of 2009”. 1.

⁷⁶ Ibid., 2.

⁷⁷ Department of Defense Directive # 5141.1, “Director, Program Analysis and Evaluation (PA&E)”, (Washington, DC: DOD, 1999), 1.

Section 101 holds little promise to dramatically improve the military acquisition process because it only nominally modifies the process.

Section 102 created two positions in the Office of the Secretary of Defense, the Director, Developmental Testing and Evaluation (DTE) and the Director, Systems Engineering (SE).⁷⁸ The 2009 WSRA requires the Director, DTE serve as “the principal advisor to the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology, and Logistics on developmental test and evaluation in the Department of Defense.” Congress tasked the Director, SE to act as “the principal advisor to the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology, and Logistics on systems engineering and development planning in the Department of Defense.”⁷⁹ The Director, DTE and the Director, SE are to integrate the developmental test and evaluation activities of the Department of Defense and ensure they comply with the systems engineering and development planning processes of the Department. Directors of test and evaluation and systems engineering with almost identical duties already existed within the Office of the Under Secretary for Acquisition, Technology, and Logistics (OUSD (AT&L))⁸⁰. Previously, the actual USD(AT&L) approved the test and evaluation and systems engineering plans, now his subordinates approve the plans.⁸¹ While these “new” positions now have additional Congressional reporting requirements, little else has functionally changed within the organization and there is little reason to foresee dramatic improvement in the process.

⁷⁸ Carl Levin and John McCain, 111th US Congress, Public law 111-23 “Weapon Systems Acquisition Reform Act of 2009”, 7.

⁷⁹ Ibid.

⁸⁰ Bradford Brown, “Weapons Systems Reform Act of 2009”, (Fort Belvoir; DAU, 2009), 6.

⁸¹ Ashton Carter, “Directive-Type Memorandum (DTM) 09-027 – Implementation of the Weapon Systems Acquisition Reform Act of 2009”, (Washington: DOD, 2009), 7.

Section 103 directs the Secretary of Defense to designate a senior DOD official to perform “root cause analysis” of any major defense system that fails to meet projected cost, production, or performance standards.⁸² The official performing the “root cause” cannot have any program management responsibilities to maintain objectivity. Congress assumes that an empirical root cause exists when a program fails to meet budget and schedule projections. Previous analysis of the acquisitions systems showed that there are many participants that can affect acquisition system outcomes. Identifying one root cause for the failure of a billion dollar program would be challenging for anyone.

Section 105 of the 2009 WSRA requires the Joint Requirements Oversight Council (JROC) to seek and consider inputs from the Combatant Commanders on current and projected missions and threats in their regions. The JROC is to use the input from the Combatant Commanders to assess the sufficiency of proposed joint requirements in addressing projected missions and needs of partner nations. The 1986 Goldwater Nichols Act already directed the Combatant Commanders to provide inputs to the Chairman of the Joint Chiefs of Staff. “on the operational requirements of their commands.”⁸³ Section 203 of the 2009 WSRA mandates increased developmental testing and prototype development during the acquisition process. The Fitzhugh and Packard Commissions already made this suggestions and Congress enacted prototyping into law by Congress in 1995 and 1996.⁸⁴ The 2009 WSRA also requires balancing trade-offs between cost, schedule, and performance early in the process of developing major weapon systems.⁸⁵ Balancing cost and performance is not a new idea. The Packard Commission

⁸² Carl Levin and John McCain, 111th US Congress, Public law 111-23 “Weapon Systems Acquisition Reform Act of 2009”, 12.

⁸³ U.S. Code, Title 10, Subtitle A, Part I, Chapter 5, Section 153, Subparagraph 4

⁸⁴ FASA (PL 103-355, sec 1091); FAC 90-26; DoD5000.2 (3.3.4.2) and DoDD5000.2 (3.4);

⁸⁵ Carl Levin and John McCain, 111th US Congress, Public law 111-23 “Weapon Systems Acquisition Reform Act of 2009”, 16.

suggested that program managers “define weapon requirements and apply cost/performance tradeoffs.” The 1996 DOD 5000.1 already adopted this recommendation and added it to the mass of acquisition regulation in effect.

Other studies also addressed the implementation of the 2009 WSRA. The USD (AT&L) memorandum for implementation of the 2009 WSRA, which is the blueprint for DOD implementation of the 2009 WSRA, identified three areas that require greater discussion, three reports that are now signed by different individuals, and an additional independent cost estimate to comply with the 2009 WSRA. The Defense Acquisition University analysis of the 2009 WSRA identified twelve new reports to Congress and the GAO. These new required reports will take yet more time away from program managers and increase the level of oversight and instability within existing procurement programs. Considering the instability cycle identified by the Defense Acquisition Performance Assessment Panel, the 2009 WSRA may merely degrade the performance of these major programs, rather than reduce costs and maintain schedules.

Increasing Control of Military Acquisitions and Budgets

While the previous research examined the purpose of specific legislation, including the 2009 WSRA, the next section uses trends in Congressional oversight and legislation to understand the current acquisitions environment. The volume of acquisition legislation makes it difficult to analyze the affect of each bill on the acquisition process. Thus, the macro-behavior of Congress in carrying out its oversight and legislative responsibilities provides a useful viewpoint on probable Congressional actions. The analysis of congressional legislative trends found that since the 1990s the U.S. Congress has become increasing prescriptive with acquisition legislation. During the same time period, Congress has maintained a relatively level degree of oversight capability. Considering the growing Congressional dissatisfaction with the acquisitions process, these trends reveal indicate that additional prescriptive legislation and regular oversight will probably not improve the acquisition process.

It is difficult to measure directly the quantity of congressional oversight and the degree of congressional control over the acquisition process. However, suitable surrogate variables were identified to inform this analysis. The first surrogate variable identified to measure congressional control of the acquisition process was the length of the annual National Defense Authorization Act. Changes in the length of the NDAA serve as an indicator of the detail of each act. A trend in increasing length, demonstrates a greater level of specificity, and, thus, correlates with increasing control by Congress. The size of the House and Senate Armed Services Committees' staff serves as a suitable surrogate variable for measuring oversight actions by Congress. As discussed earlier, a key function of standing congressional committees is to perform oversight. Congressional committee staff size normally reflects the volume of oversight activity and analysis that a committee accomplishes. As staff size increases, or decreases, the committee's capability to perform analysis and oversight increases or decreases.

The first measure examined was control over the acquisition system by Congress, as measured with the NDAA. Congress produces the NDAA to authorize specific amounts of funding for programs and services under multiple categories. This NDAA was formerly a simple document used to authorize large blocks of money under general categories, but it has grown into a several hundred-page document with very specific authorizations. Figure 6 shows the change in length of the NDAA from 1990 to the present.⁸⁶

⁸⁶ The library of Congress website holds electronic copies of each NDAA. Each bill was examined individually in order to derive the length of the bill. <http://thomas.loc.gov/>

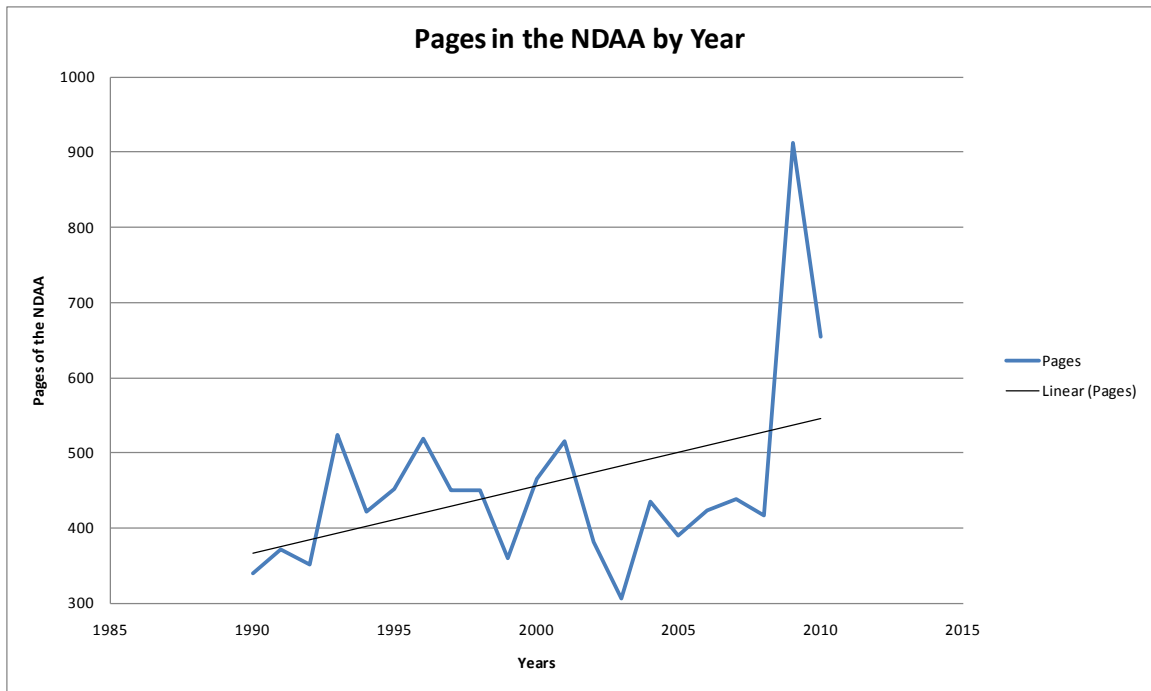


Figure 6 Pages of the NDAA by Year since 1990

Figure 6 shows a strong trend towards increasing length of the NDAA from 1990 (removing the effect of the outlier year 2010). But, when additional data is added about the size of the armed forces over this same time period⁸⁷, the graph shows an even stronger trend towards an increased number of pages in the NDAA while the size of the armed forces shrinks. Figure 7 provides

⁸⁷ The active duty military forces numbers are listed on <http://www.census.gov/compendia/statab/2010/tables/10s0498.pdf> while the Reserve and national guard sizes were obtained from <http://www.census.gov/compendia/statab/2010/tables/10s0501.pdf>

evidence that congress has become increasingly prescriptive over these decades.

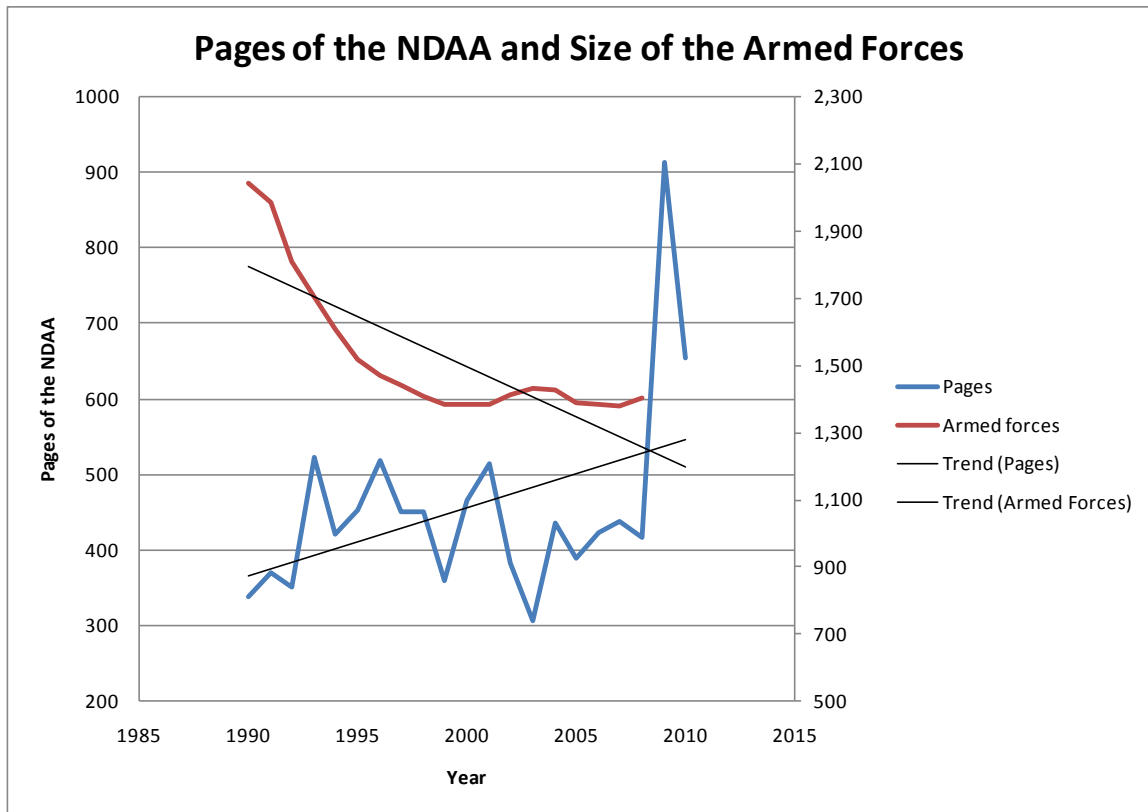


Figure 7 Pages of the NDAA and Size of the Armed Forces

Figure 8 portrays the size of the Armed Service committee’s Staff in the House and the Senate from 1947 to present.⁸⁸ The House and Senate staffs have grown dramatically since the 1940s, but in the Post Cold War era, the trend has reversed with a small increase since 2001. The earlier examination of the legislative Reform Act of 1946 explained that this increased staff

⁸⁸ Norman J Ornstein et al. *Vital Statistics on Congress 2008* (East Peoria: Versa Press, 2008), 113-114.

provides to Congress greater oversight and analytical capability.

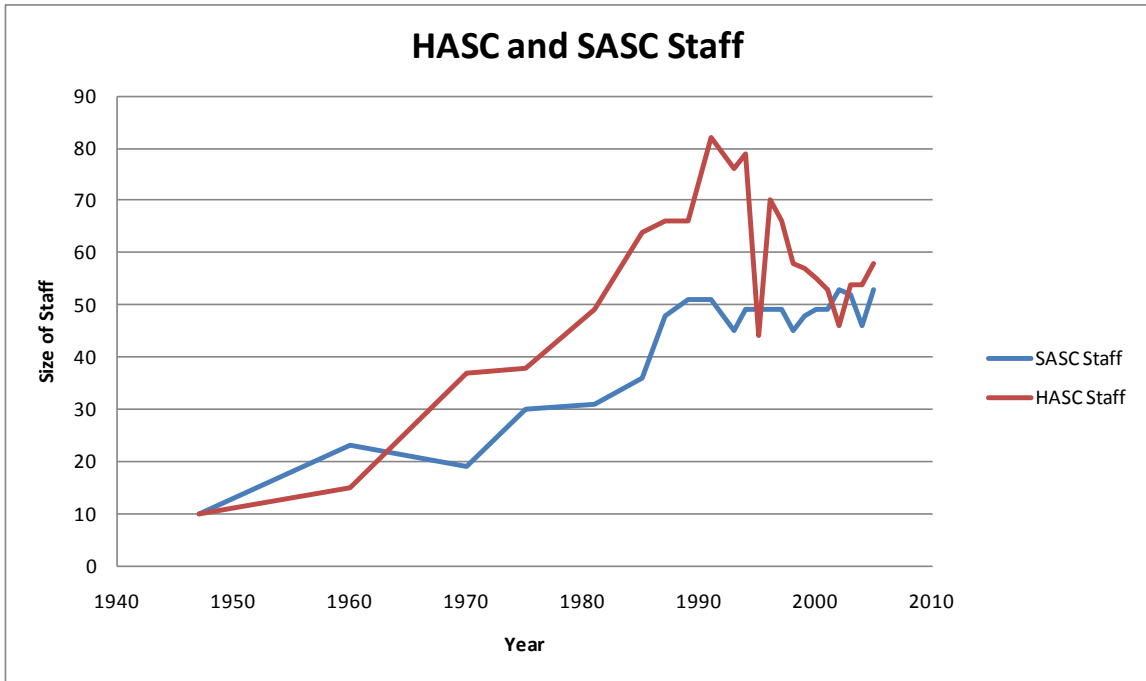


Figure 8 House and Senate Armed Service Committee Staff

When the size of the Armed Forces during that time frame is overlaid on the size of Congressional staff, new trends appear. Figure 9 shows that the size of the SASC staff remained stable while the HASC staff declined proportionally with the size of the Armed Forces. The data on staff size does not support the argument that Congress has increased strict oversight and management of defense acquisition since the end of the Cold War. The degree of oversight has actually stayed steady proportional to the size of the armed forces.

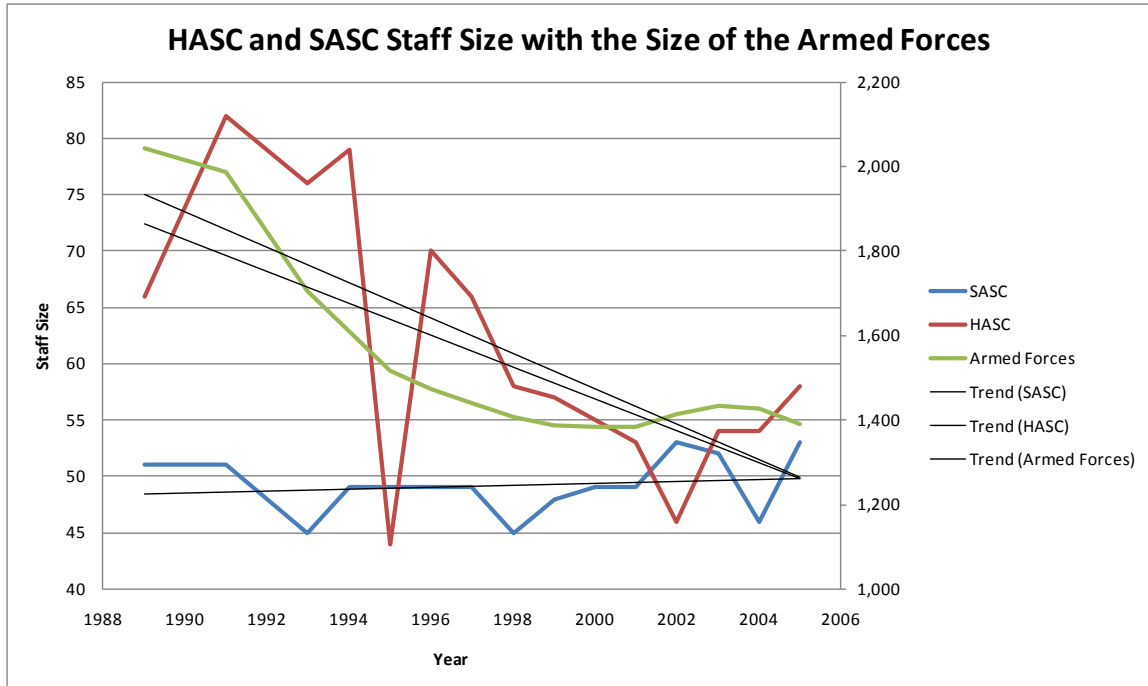


Figure 9 HASC and SASC with the Size of the Armed Forces

The macro level examination of congressional legislative patterns has revealed that Congress has steadily increased its influence on the budgeting process while maintaining a steady oversight of the DOD. During this same period congressional dissatisfaction with the acquisition process increased. These decades of increasingly detailed legislation also correlate with the near universal pattern of cost overruns and scheduled slips experienced in major defense programs. Congressional action appears to be the problem rather than the solution. Unfortunately, the WSRA merely continues the pattern of acquisition legislation without developing any new solutions

Congressional Actions Affecting Defense Acquisition Programs

The macro data is interesting, but does not reveal every aspect of the acquisitions process. To see deeper into the system, it is necessary to examine two case studies. These case studies are the F35 Joint Strike Fighter and the Air Force tanker replacement program. The F35 case study exposes a congressional tendency to intrude into program management decisions beyond the mere oversight. The Air Force tanker case study reveals that Congress has acted to create jobs rather

than simply ensure that the military adheres to acquisition regulations. The 2009 WSRA does not try to address problems created by congressional intrusion into program management decisions.

The F35 Joint Strike Fighter is the DOD's largest weapon procurement program in terms of total estimated acquisition cost.⁸⁹ The Navy, Marines, and Air Force will procure variants of this aircraft to replace various airframe platforms currently in use. The JSF program emerged in 1995 as an offshoot of the Joint Advanced Strike Technology (JAST) that was intended to replace the Navy's A-12 program (a replacement for the A-6) and the Air Force's Multi-Role Fighter (a replacement program for the F-16). The first example of intrusive congressional involvement in the F35 program occurred in 1995 when Congress directed the DOD to merge an existing advanced short takeoff and vertical landing (ASTOVL) aircraft with the JAST program.⁹⁰ The development of the F-35 B Series, the ASTOVL version, has since consistently lagged behind the development of the Air Force F35A and the Navy F-35C versions.⁹¹ This is an example of congressional actions leading directly to delays in product development that are normally blamed on program management. The 2009 WSRA would not improve the acquisition process if a similar situation reoccurred.

The next example of Congressional intervention into program management pertains to one of the most controversial aspects of the F35 program. In 1996, the DOD initiated a dual engine development program to reduce risk and foster competition between GE-Rolls-Royce and Pratt & Whitney. Starting with the 2007 budget request and continuing to the 2010 DOD budget submission, the DOD did not request funds for a GE-Rolls Royce engine because "the Pratt & Whitney development of the main engine was progressing well and analysis indicated that

⁸⁹ Jeremiah Gertler., "*F-35 Joint Strike Fighter (JSF) Program: Background and Issues for Congress*". (Washington, : Congressional Research Service, 2009), 1.

⁹⁰ Ibid., 7.

⁹¹ Ibid., 8.

savings from competition would not be offset by high upfront costs.”⁹² Congress responded by placing the following text in the 2007 NDAA: “

-“The Secretary of Defense shall provide for the development and procurement of the propulsion system for the Joint Strike Fighter aircraft through the continued development and sustainment of two interchangeable propulsion systems for that aircraft by two separate contractors throughout the life cycle of the aircraft.”⁹³

Congress has continued to require a second engine development program despite continued requests from the DOD to cancel the program after analysis of the costs and benefits of the engine competition. Congressional actions here have resulted in increased program costs with no demonstrated benefit to systems performance.

The last area of this case study examined involves an unusual rotating program management plan that shifts program responsibility between the Navy and the Air Force. The DOD used the unique management method to prevent one service from dominating the program’s direction and efforts.⁹⁴ Congress repeatedly challenged this unique management plan by requiring a report from the DOD justifying rotating management responsibilities. The HASC and SASC clearly preferred a standard program management policy.⁹⁵ The DOD eventually transitioned to a joint, rather than alternating, management model after Congress required numerous justifications for the previous management plan.

The series of Congressional actions affecting the JSF program have not all resulted in bad consequences for the F35 program. What the oversight actions do illustrate is Congress’ ability to

⁹² Jeremiah Gertler., “*F-35 Joint Strike Fighter (JSF) Program: Background and Issues for Congress*”. (Washington, : Congressional Research Service, 2009), 22.

⁹³ H.R.5122 John Warner National Defense Authorization Act for Fiscal Year 2007 (Enrolled as Agreed to or Passed by Both House and Senate) <http://thomas.loc.gov/cgi-bin/query/F?c109:1:./temp/~c109fXPEWu:e123897>: Accessed 02 Feb 2010.

⁹⁴ Ibid.

⁹⁵ House Report 108-553 – 2005 Department of Defense Appropriations Bill. 234.

control the program management process for any specific weapons systems and the specific detail that can be found in legislation. This management by legislation rarely increases the efficiency of a program, and frequently increases cost and delays.

The next case study examines Congressional intervention in the acquisition process during the Air Force's continuing attempt to procure a new air-refueling platform. The acquisition of this tanker system has been a long process fraught with numerous problems. The first problem encountered in this acquisition process was the structure of the program. The Air Force initiated an unusual lease agreement rather than a purchase.⁹⁶ The military generally purchase major systems because the equipment will remain in service for many decades. The lease was an attempt to minimize the upfront costs of purchasing very expensive aircraft. Congress approved this lease in Section 8159 of the FY2002 defense appropriations act⁹⁷ but held four hearings on the subject in 2003. Later in 2003, the 2004 Defense Appropriations bill changed the authorization to the lease of 20 aircraft and the multi-year purchase of 80 more tankers and "prohibited the Air Force from retiring more than 12 KC-135Es in FY2004".⁹⁸ While these actions are not inappropriate in themselves, they reflect aggressive oversight and congressional control of this program.

The leasing agreement became a problem in 2002 when Darleen Druyun, a senior Air Force procurement official, gave Boeing illegal preference in the bidding process in exchange for a job for her, her daughter, and her son-in-law.⁹⁹ As a result in 2005, she and the Boeing CFO were convicted and imprisoned. The DOD had already cancelled this lease in 2004 due to the

⁹⁶. Jeremiah Gertler., "*F-35 Joint Strike Fighter (JSF) Program: Background and Issues for Congress*". (Washington, : Congressional Research Service, 2009),79.

⁹⁷ H.R. 3338/P.L. 107-117 of January 10, 2002

⁹⁸ Ibid., 80.

⁹⁹ George Cahlink., February 18, 2005. <http://www.govexec.com/dailyfed/0205/021805g1.htm> (accessed February 3, 2010),1.

controversy and allegations of misconduct. Senator McCain was instrumental in the cancellation of this first lease agreement before any legal irregularities were identified because he objected to the nature of the lease agreement. The GAO ultimately concurred with Senator McCain on the inherent risks in the lease, but legislative actions affected clearly influenced the purchase process. This ended the first unsuccessful phase of the tanker acquisition process.

The Air Force launched the second phase of the tanker acquisition in 2008 when it opened competition between Boeing and Northrop Grumman. The Air Force awarded the contract to build new mid-air refueling tankers to a team of Airbus, European Aeronautic Defense and Space (EADS), and Northrop Grumman.¹⁰⁰ This second phase contained even more direct action and influence by Congress. Senator John Murtha threatened to stop the previously approved funding for this program when he said, "There is the industrial base you have to consider. The political implications are important. . . . This committee funds this program. All this committee has to do is stop the money, and this program is not going forward."¹⁰¹ Kansas Representative Todd Tiahrt whose congressional district is home to Boeing facilities stated, "An American tanker should be built by an American company with American workers."¹⁰² Senator Pelosi offered that: "Given the ramifications of this decision for the United States, the Air Force must explain to Congress how it meets the long-term needs of our military and the American people." These congressional objections had nothing to do with the merits of the chosen aircraft. These members of Congress were loudly objecting to a program that the DOD awarded in accordance with the rules Congress had previously established. This is clearly an example of Congress considering the impact on their various constituencies other than the military.

¹⁰⁰ Jeremiah Gertler., "*F-35 Joint Strike Fighter (JSF) Program: Background and Issues for Congress*". (Washington: Congressional Research Service, 2009)., 82.

¹⁰¹ Dana Hedgpeth., "Congress Threatens To Pull Funding for Air Force Tankers." *Washington Post*. 6 March 2008.

¹⁰² Ibid.

After a protest from Boeing on the bid process, the GAO investigated and found that the bid process was flawed again.¹⁰³ At that point, the Bush administration decided to delay any further action and to allow the incoming Obama Administration to finish the process. The third attempt to award this contract is, as yet, unfinished. Northrop Grumman has threatened to walk away without submitting a bid because the company asserts the aircraft requirements favor Boeing.¹⁰⁴ Boeing's Congressional supporters want the Air Force to use potential WTO findings concerning illegal subsidies to Airbus as grounds to give preference to Boeing in the bidding process. Politics may force the Air Force to split the contract between Northrop Grumman and Boeing to appease members of congress when constituents are potentially affected by awarding the contract solely to one manufacturer.

The disputes in this process that centered on illegal actions on the part of acquisitions officials fall within the bounds of reasonable oversight by the legislative branch. The inappropriate program management problems appear when Congress intrudes into processes conducted in accordance with the FAR or other regulations. Congress will always be an inherently political organization, but attempts to influence acquisition decisions for solely political purposes create roadblocks in the process that make any claim for empirical decision making almost impossible. These intrusions also create delays in the acquisition process, and ultimately contribute to the poor reputation of the process. This environment of congressional intrusion into the "objective" acquisition process will reduce the potential of the WSRA to improve acquisition effectiveness.

¹⁰³ Jeremiah Gertler., "*F-35 Joint Strike Fighter (JSF) Program: Background and Issues for Congress*". (Washington, : Congressional Research Service, 2009), 1.

¹⁰⁴ *Ibid.*, 6.

Problematic Legislation affecting the Acquisition process

While general acquisition legislation governs the “what¹⁰⁵” of the process, Congress more often produces legislation that dictates the “how” of the acquisition process. Congress created tensions in the acquisition process by passing legislation that has unintended effects on the process of contracting. Evidence of Congress’ effect on the acquisition rules are easily found in the Truth in Negotiation Act, firm, fixed price contracts, and the practice earmark practices. These concepts and practices reduce the value of the 2009 WSRA because those rules govern the program management of major weapons systems subject to WSRA legislation.

Congress passed the Truth in Negotiation Act (TINA) in 1962.¹⁰⁶ This act required that any vendor in a sole source contract for over \$550,000.00 must provide the contracting officer all of the cost information for producing the required item or system. The vendor must certify his cost data as accurate and is then subject to fines and forfeiture of funds if the cost estimate is “defective.”¹⁰⁷ Congress intended this legislation to provide a contracting officer the data needed to ensure that the negotiated price is fair to all parties. Unfortunately, the TINA creates a potential disincentive for efficiency and cost savings. A firm risks financial loss for achieving cost savings because its initial estimate will prove too large. This provides an incentive for the contractor to comply with, or even exceed, the projected costs rather than reduce material or labor costs at the risk of suffering financial penalties imposed by the DOD contracting officer.

An area of congressional influence not previously addressed in the monograph is the funding “earmark”. The Office of Management and Budget defines an earmark as “funds

¹⁰⁵ “What” legislation governs identification of requirements. “How” legislation governs the methods used to procure those requirements.

¹⁰⁶ D. E Cooper., “DOD's use of the Truth in Negotiations Act could be increased” (Washington, : GAO, 1993), 2.

¹⁰⁷ Ibid.

provided by the Congress for projects or programs where the congressional direction (in bill or report language) circumvents the merit-based or competitive allocation process, or specifies the location or recipient, or otherwise curtails the ability of the Administration to control critical aspects of the funds allocation process.”¹⁰⁸ The executive branch typically classifies any funding not requested by a department but allocated by Congress as an earmark. Many observers dismiss the impact of earmarks as negligible compared to the whole defense budget.¹⁰⁹ This may have been true in the past, but the FY 2005 Defense Appropriations Act had 12.2 B dollars in earmarks.¹¹⁰ The earmarks alone would have qualified as the world’s 14th largest defense budget in 2004. The process of earmarking can short-circuit the requirements validation process within the DOD by “imposing a solution on the process rather than letting the acquisition system work to reveal the best solution.”¹¹¹ While earmarks may not have been present in the budget presented by the President, they should not present any great difficulty to the DOD. Earmarks should receive little if any blame for the inadequacies of the acquisition system. Additionally, the US House just passed a bill prohibiting new earmarks directing funds directly to any for-profit company.¹¹² Even if lawmakers find ways to circumvent their own rules and continue the practice of earmarking fund to specific companies, the effect on the system will never be more than negligible. Thus, earmarks should not be blamed for any of the recurring ills of the acquisition system

¹⁰⁸ D. M Walker., “Congressional Directives: Selected Agencies’ Processes for Responding to Funding Instructions”. (Washington, : GAO, 2008), 11.

¹⁰⁹ L. R. Jones and Jerry McCaffery., Budgeting, financial management, and acquisition reform in the U.S. Department of Defense (Charlotte: Information Age, 2008), 252.

¹¹⁰ Ibid.

¹¹¹ Ibid., 255.

¹¹² Eric Lichtblau, “Leaders in House Block Earmarks to Corporations.” New York Times, 10 March 2010, A1.

Congress also imposed another contracting process on the DOD intended to reduce the risk to the government on major equipment purchases. This new cost savings idea is the firm, fixed price contract. This contract method has a price that is not subject to adjustment based on the contractor's cost experienced in performing the contract.¹¹³ The contractor holds the full risk and full responsibility for any costs and resulting profit or loss. This contract vehicle provides the maximum incentive for the contractor to control costs and perform effectively.¹¹⁴

Unfortunately, the military has had several bad experiences with the firm, fixed price contract in the past. The DOD developed the C5 Galaxy with a Total Package Procurement concept. That program required a multi-year firm, fixed price contract for development followed by a firm, fixed price production contract. Lockheed won the contract with a \$1.9B, compared to Boeing's \$2.3B offer. The ultimate program cost exceeded \$5B and nearly bankrupted Lockheed. Several other failed programs, including the A-12 in the 1980s, convinced Congress to ban the use of firm, fixed price contracts in product development. Despite the bad history with these contracts, the 2007 NDAA repealed section 807 of the 1989 NDAA and established a strong preference for firm, fixed price contracts in development and production contracts.¹¹⁵

Two contemporary defense programs also demonstrate some of the problems with firm, fixed price contracts. The first example is the European Aeronautic Defence and Space (EADS) A400M contract to produce 180 aircraft. This program started with a \$29B firm, fixed price contract for EADS to begin producing aircraft in 2007.¹¹⁶ EADS now has to renegotiate a \$7B

¹¹³ Subpart 16.2—Fixed-Price Contracts . February 1, 2010.
https://www.acquisition.gov/far/html/Subpart%2016_2.html (accessed March 11, 2010).

¹¹⁴ Ibid.

¹¹⁵ H.R 5122, John Warner National Defense Act: Authorization Act for 2007, Signed By the President of the United States 17 October 2006, 231.

¹¹⁶ J. L Wiesmann., "EADS pleads for €5bn to complete A400M". *Financial Times* . 9 December 2009

contract increase or risk bankruptcy due to its inability to recoup additional costs that were not identified in the initial contract. The last program is the air force tanker replacement contract discussed elsewhere in this paper. Northrop Grumman declined to compete on the lasted iteration because it believes the request favors a smaller Boeing aircraft and the company is also extremely concerned that a 18 year firm, fixed price contract exposes the company to too many unforeseen risks.¹¹⁷ The history of firm, fixed price contracts and the two current programs show that the firm, fixed price contract is no panacea for cost overruns and acquisition issues. The use of firm, fixed price contracts may further impair the ability of the 2009 WSRA to costs in new procurement programs.

The 2009 WSRA can only control the program management of major weapons systems costs within the existing regulatory framework. Research demonstrated that previous “legislative fixes” produced a regulatory environment that shifts decision-making authority up the chain of command at the expense of flexibility and responsiveness. The thousands of pages of existing regulations so limit the 2009 WSRA that is highly unlikely to prove effective in reducing cost overruns or schedule slippages.

Conclusion

There is always an easy solution to every human problem—neat, plausible, and wrong.- H.L. Mencken¹¹⁸

When Congress passed the 2009 WSRA it intended to remedy endemic problems in the military acquisition field related to excessive cost growth in weapon systems and excessive delays in fielding those same systems. This legislation follows decades of similar legislation

¹¹⁷ Amy Butler., “EADS Was Unable To Prime On KC-X " *Aviation Weekly*." March 11, 2010.

¹¹⁸ Bartelby.Com great Books online. <http://www.bartleby.com/73/1736.html> Accessed on March 2010 by Zach Buettner

using almost identical reform solutions. Unfortunately, the 2009 WSRA is unlikely to produce meaningful improvements in cost control or schedule adherence. Among other changes, the 2009 WSRA adds additional approval processes into the development and production process for major weapons systems and increases the number of reports required by Congress. These improvements have all been tried in previous acquisition reform legislation, without measurable improvement in the process. As discussed earlier, a recent GAO report found that DOD major weapons systems were an average of 22 months behind schedule and 42% over their projected budgets, despite decades of investigations and legislative action.

If the legislation itself does not introduce new ideas, can greater congressional oversight produce program management improvements? While congressional oversight is a key function of Congress, acquisition commissions have routinely found a congressional tendency to micromanage, rather than oversee, acquisitions programs. The GAO, CRS, and CBO are powerful oversight tools that can easily create harmful turbulence in program management by suggesting alterations to programs already in final stages of development. The F-35 program experienced over ten major legislative changes, and countless minor ones, in its program life. The massive cost escalation and program management woes should come as no surprise to any observer monitoring the program. Thus, greater oversight itself is unlikely to improve acquisition outcomes.

The repeated use of the same legislative fixes brings to mind a quote often attributed to Albert Einstein; “The definition of insanity is doing the same thing over and over again and expecting different results.” Congressional actions frequently seem to fall into this trap. Congress passes reform legislation with great acclaim and fanfare, and before the DOD has a chance to fully implement the new regulations, Congress passes new laws that mandates more fixes which alter the recently passed rules. The recent report by the Panel on Defense Acquisition Reform (PADAR) proves this assertion. The latest PADAR interim report identified requirements

identification and root cause analysis, two areas just significantly modified by the 2009 WSRA, as areas requiring additional legislation in order to improve the acquisition process.

Congress is unlikely to pass truly useful acquisition reform until its members fully grasp the complexity of the acquisitions system. Congress has routinely proposed simple fixes, such as firm-fixed price contracts, rather than the truly innovative organizational reforms that could match the complexity of the problems with adequately complex solutions. Acquisition reform may never work until Congress implements new ideas such as multi-year program budgets for Army and Air Force weapons system or greater decision making authority for program managers.

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- TABLE 9 -- FEDERAL CIVILIAN EMPLOYMENT AND PAYROLL (IN THOUSANDS OF DOLLARS) BY BRANCH, SELECTED AGENCY, AND AREA, NOVEMBER 2008. November 2008. <https://www.opm.gov/feddata/html/2008/november/table9.asp> (accessed January 25, 2010).
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