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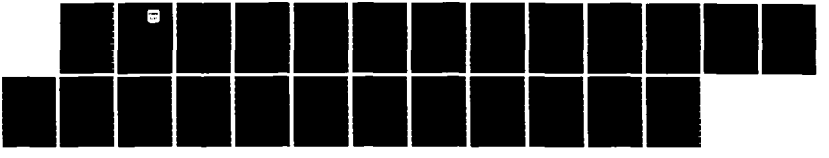

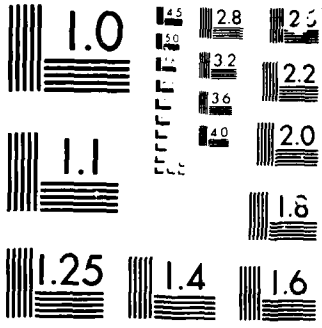
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STUDENT ESSAY

THE ROLE OF LOBBYISTS IN THE DEFENSE BUDGET AND PROCUREMENT PROCESS

BY

LIEUTENANT COLONEL RICHARD W. ROCK, AR

15 MAY 1986

US ARMY WAR COLLEGE, CARLISLE BARRACKS, PENNSYLVANIA

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Committees (PACS) and their ability to prevent the disclosure of political contributions casts doubts on the system. Questioned also is the Department of Defense practice of lobbying Congress even though such practice is restricted by law. But the overriding factor in all this is Congress' attitude toward protection of home district interests or "pork barreling" which becomes too often the overriding consideration for too many national defense issues. But through this maze of distrust and vague legalities the lobbyist emerges on the positive side of the ledger, it is the government agencies that need to be more specific in defining the parameters of the lobbyist and in making their practices more public.

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THE ROLE OF LOBBYISTS IN THE DEFENSE BUDGET AND PROCUREMENT PROCESS

AN INDIVIDUAL ESSAY

by

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ABSTRACT

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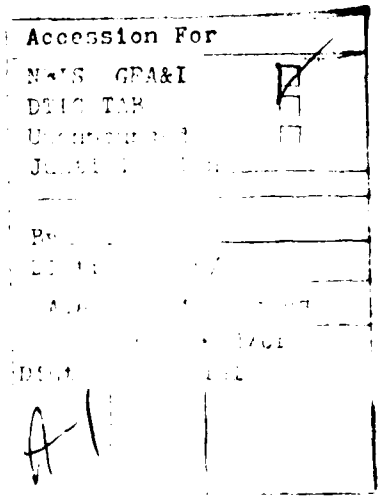
Lobbyists have been with us since the founding of the country, but there is room for debate as to whether or not their influence is positive or negative, particularly in regard to defense budget and procurement. The legal basis for lobbying is found in the Constitution and supported through legal precedence, but many aspects of the practice remain legally and ethically ambiguous. Questioned are practices such as the "revolving door" where national security experts pass between government and the defense industry taking inside knowledge and influence with them. Also the influence of Political Action Committees (PACs) and their ability to prevent the disclosure of political contributions casts doubts on the system. Questioned also is the Department of Defense practice of lobbying Congress even though such practice is restricted by law. But the overriding factor in all this is Congress' attitude toward protection of home district interests or "pork barreling" which becomes too often the overriding consideration for too many national defense issues. But through this maze of distrust and vague legalities the lobbyist emerges on the positive side of the ledger, it is the government agencies that need to be more specific in defining the parameters of the lobbyist and in making their practices more public.



THE ROLE OF LOBBYISTS IN THE DEFENSE BUDGET AND PROCUREMENT PROCESS

Defense contractor, design representative, lobbyist; whatever they're called they play a significant role in defense weapon procurement and defense budgeting. The question is whether that role is positive or negative. Often these representatives act as go-betweens for the users of military equipment in the field and procurement officers to ensure that the military gets precisely the sorts of equipment they need. And when Congress begins to scrutinize budget requests they serve as a source of political intelligence, keeping the services posted on Capital Hill developments that effect their programs.

Other watchers paint the role of defense contractors in darker colors. They see them as a tight knit group of overly influential individuals who move easily in and out of government service, teaming up with vested congressional interests to influence billion dollar procurement decisions in cooperation with pliant Pentagon procurement officers.

Gordan Adams, a long time critic of the military remarked in The Iron Triangle that there is a flow of people and money that moves

> between the defense contractors, the executive branch...and Congress, creating an iron triangle on defense policy and procurement that excludes outsiders and alternative perspectives.[1]

Although many of the overt lobbying activities such as Caribbean vacations are gone, many more subtle approaches--small gifts, entertainment, and flattery--are still very much present. And many of those who are the object of this effort contend that the iron triangle is alive and well, an incestuous network that stifles ideas and new initiatives in the military.

Still others note that the contractors provide valuable technical information which enables Defense Department personnel to judge military programs better. Lobbying often injects competition into procurement decisions where previously there had been none.

It is these issues that will be developed, answering a fundamental question: Are lobbyists an unwarranted influence, or do they provide a valuable service to politicians and Defense Department officials in the budgeting and procurement process?

The word lobby was first recorded in 1808 when it appeared in the annals of the 10th Continental congress, although the idea is actually as old as the right of petition as outlined in the Magna Carta. By 1832 "lobbyist" was a widely used word at the US Capitol, referring to those favor seekers previously called lobby-agents by various political institutions.

Although the actual term had not yet been coined the right to "lobby" is inherent in the First Amendment to the Constitution, which provides that

> Congress shall make no law...abridging...the right of the people to petition the Government for redress of grievance.

The Supreme Court later upheld this same idea stating,

> The very idea of a government, republic in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for redress of grievances.[2]

Throughout the 1800's and early 1900's evidence accumulated that selfish or misguided methods used by pressure groups led to legislation that lined the pockets of the pressure group or imposed the group's

standards on the nation. Based on that evidence a series of congressional investigations began in 1913 to probe the activities of several of these lobbying organizations. In its own inimical style of inefficiency, however, it was not until 1938 that reform legislation of any kind at all passed. In that year Congress approved the Foreign Agents Registration Act, requiring persons in the United States acting for foreign powers to register with the Justice Department.

The next attempt at reform was not made until 1946 when a general lobby registration law was adopted. The act's vague language, coupled with emasculating court interpretations, seriously reduced the effectiveness of the law's spending and disclosure provisions. Additionally, under the 1946 law there is an almost total lack of enforcement, and the only penalties are criminal in nature and rarely invoked. Reports are only filed with the Clerk of the House and the Secretary of the Senate, but neither has any investigative or enforcement power.

The dilemma that Congress and the courts faced in writing any legislation was to curb dishonest pressure activities without interfering with the constitutional rights of free speech and petition. Equally significant was congressional reluctance to probe into activities that might lower the public's image of Congress, should these activities eventually come to light. The result remains a lack of any strong Federal legislation restricting lobbying or requiring the open disclosure of lobbying activities, personnel, or dollars spent.

Lack of decisiveness, however, does not prevent flurries of activity brought on by crisis, or the perception of crisis, in Washington. Lobby reform fever struck hard, for instance, following the Watergate

scandals. Several serious attempts were made at reform legislation, but all manner of pressure groups, from one man church lobbies to the US Chamber of Commerce, have managed to kill the proposals. In 1976 a major revision to the 30-year-old Federal Regulation of Lobbying Act actually passed the Senate but died a slow death in the House. Two other significant efforts at reform in 1978 and 1979 met similar fates even though they received strong support from the American Civil Liberties Union and Common Cause, the two principal groups actively pushing for improvements in lobbying conduct.

Only the Federal Election Campaign Act of 1974 made a stab at limiting the lobbyist's power, but this was done indirectly. This act limits the amounts individuals can give to any one candidate, requires disclosure by the candidate of contributions received, and improves the regulation of political action committees (PAC's) that are set up by corporations, unions, and other strong pressure group organizations.[3] It must also be remembered that this legislation primarily affects the Executive Branch, and stops short of changing the system for financing congressional races.

Despite protests from many quarters, Congress repealed a portion of the 1974 law that barred government contractors from forming PAC's. PAC's often represent corporations, many of those defense businesses, who funnel money to the candidates campaigns. These contributions are often given by groups that regularly engage in lobbying and are often given with legislative purposes in mind. Common Cause, the most active pressure group advocating reform on this issue, argued that companies spend large sums of money to lobby, but launder that money through PAC's. and do not have to disclose those sums of money because lobbying

is not the "principle purpose" of the contributing companies. The concern exists that secret money spent in secret ways for secret purposes may become the most corrupting influence in American politics, but as of this time no reform is in the offing.[4]

As the defense procurement budget increased from $35 billion to more than $83 billion between 1980 and 1986 there was tremendous competition and a scurry for contracts. To better influence decisions in a timely manner and to better exert pressure on decision makers, contractors established offices in Washington where they could be close to the action. They also paid top dollar to men and women who knew the system and knew the right people to pressure. Often these were former Congressmen, former military officers, or former employees of the Administration or bureaucracy. The cost of staffing this effort was enormous, but the rewards could be handsome.

Although movement through this "revolving door" permits government to take advantage of private sector expertise, it has been attacked as detrimental to the overall procurement process because it creates a community of shared assumptions about policy issues and developments and opens the door for conflict of interest. The major difficulty with this system is that this closed relationship stagnates initiative and limits fresh perspectives on old problems.

Several measures have been taken to diminish the impact of the revolving door; but, like other lobby reform, it lacks the punch in terms of enforcement to be very useful. For example, each year the Defense Department must send the Senate a list of military retirees or civilian employees (GS-13 or above) who have gone to work for defense contractors or vice versa. The average for the last few years shows

about 540 such people per year moving from defense to industry, while about 25 moved the other way. The report does not include those who move from policy positions outside of defense, such as Congressional staffers or administration aides. Moreover, Common Cause reports that a 1975 study found that about one-third of those individuals required to report did not. Those ignoring the law as late as 1982 were Richard DeLauer, who left TRW Incorporated to become Under Secretary of Defense for Research and Engineering, and Under Secretary of the Navy James Goodrich, who had been Chairman of Bath Iron Works.[5] Although the mere act of reporting may seem like a small point it does raise a question of legitimacy and becomes another of those small points that adds to the public distrust of the system.

The magnitude of this interchange of people has also led to media accusations of conflict of interest. For instance, John Stirk, the defense advisor to Senator Robert Morgan was hired by General Dynamics during the debate over whether the Air Force should buy the FB-111 as a manned bomber. Stirk continued to advise Senator Morgan even while he was on General Dynamic's payroll, and Morgan became a leading advocate for the FB-111.[6] Disclosures such as this cannot have a positive impact on supporters of military programs and certainly add fuel to the fires of opponents.

On the other hand there is an argument that the influence of those who move through the "revolving door" is really not that great, and indeed the influence of contractors in general might be overstated. And, in fact, defense contractor influence on Congress is limited because Congressional control of defense spending is limited. By the time a weapon system's budget has grown large enough to warrant

Congressional review that system has already lived through the competition with other products. Assuming that Congress agrees with Defense that the system is necessary then the companies can influence little more than the size of the buy.

However; one should not assume that influence is not felt early on in the acquisition process. The lobbyist educated the Defense Department on the latest technology, provided technical support during testing, and helped educate staffers or Members on the capability of the system. And, no doubt, some good was done, as long as the lobby did not so focus the buyers attention on the technology that long-range national strategy was left out of the equation.

Another common criticism, and perhaps the one most directly related to the defense budget and procurement process, is the charge that companies use huge sums of money in their lobby effort, then tack those charges on the price of their products, often military weapons. Lockheed, for example, was charged by the General Accounting Office of trying to recover $288,000 of its lobbying expenses by charging it to existing defense contracts in 1982.

Title 18 of the US Code states that,

> No part of the money appropriated by any enactment of Congress shall...be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone...or any other device, intended or designed to influence in any manner a Member of Congress...[7]

In plain English that means that no one is supposed to pay any lobbying expenses with funds that originated in Federal appropriations. Thus, all lobbying efforts must be paid for by the corporation or the private individual. Although that may be the law, that is not how it was

working, and the issue became the catalyst for Common Cause and other pressure groups to move for new legislation.

In 1977 the Defense Contract Audit Agency, (DCAA) which reviews contractor claims, reviewed the accounts of 10 major defense industry companies including Hughes, Lockheed, and General Dynamics. The DCAA found that a substantial part of the expenditures of these 10 major companies had been used for lobbying. For instance; $17,185 was claimed by Rockwell International for 100 prints of a film promoting the B1 bomber entitled "The Threat, What Can We Do?" $22,032 was claimed by Lockheed Aircraft for travel expenses of executives and their spouses who attended air shows in Paris and England. $181,000 to Martin Marietta for building rapport with Congressmen in the states in which the company has offices. And $120,000 to Sperry Univac to reimburse the salary, entertainment, and other expenses for its public relations manager in Washington.[8]

In October 1981 Secretary of Defense Caspar Weinberger issued an amendment to the defense acquisition regulation prohibiting contractors from charging lobbying costs to the government. Defense contractors did not seem alarmed and one quote sums up their attitude:

> I have no problem with the regulation. I don't think our unallowable costs will materially increase as a result of it,

stated Richard Cook of Lockheed.

And Cook was right, because the crux of the matter lies in the definition of what really constitutes lobbying. The latest hearings on

the subject were held November 15 and 16, 1983 by the Senate Governmental Affairs Committee. In their report they state:

> Much of the past criticism of the act (1946 Federal Regulation of Lobbying Act) concerns the difficulty of determining whether a person is principally engaged in lobbying activities and the narrow definition given "lobbying."[9]

And the dilemma still exists today; there is no consensus on what constitutes lobbying. In fact, there is no clear, uniform definition of prohibited activities to which government agencies can refer.[10] Therefore, effective legislation to limit the secrecy, disclose contributors and dollar amounts, and regulate the degree of influence is impossible.

This lack of definition supports another aspect of lobbying that needs review; lobbying of Congress by the Defense Department, which is literally against the law. The criminal provision is section 1913 of Title 18 of the US Code, but this law this law has virtually never been enforced. Moreover, it contains a loophole: it does not prohibit contact between legislators and Department of Defense if the request is made by the legislator, then it is not considered lobbying but is defined as "legislative liaison."

The marketing of the defense budget requires impressing Congress with the urgency of the need for what has been requested, maintaining good relations with Members, and getting the votes needed on key issues. Legislative liaison offices (each service and DOD has one) are key to winning many of these budget battles. Most of what these offices do is legitimate, necessary for orderly legislative functioning, and a benefit to both Defense and Congress. However, there are some activities that are questionable and, of course, it is this area that catches the

attention of critics and the media and erodes credibility with the public.

The services, most often through these legislative liaison offices, dispense a wide variety of favors to Members of Congress. Most often cited by critics are Air Force flights for supporting legislators such as Senators Barry Goldwater and Pete Domenici and their aides and often spouses.

According to U.S. News and World Report,

> documents obtained through a Freedom of Information Act request revealed that DOD spent over $2 million entertaining Members of Congress, staffs, and spouses during fiscal year 1982. The Air Force's 89th Military Airlift Wing ferried 35 Senators, 111 Representatives, 21 spouses, and scores of Capitol Hill staffers.[11]

All of which once again calls into question ways that the Pentagon operates and how it employs its power to influence legislation.

All of these factors; the "revolving door," lobby costs charged to the government, and the involvement in lobbying by the Defense Department, may be over shadowed by the most powerful driver of all--The Pork Barrel. It may be this preoccupation with "pork" that more than any other single aspect drives the behavior of lobbyists and the way Congress reacts. Most often when a Member expresses a keen interest in some detailed item in the defense budget it involves his home district and, specifically, jobs within that district. While it is only natural that Members should try to help their constituents, this parochial view from the pork barrel is detrimental to this country's overall defense and leads to wasteful spending that does not support strategic aims.

Some aspects of pork barrel politics involve retaining unneeded military bases, constructing new facilities in home districts, or

continuing production of obsolete or unnecessary weapons or planes just to keep assembly lines open. Perhaps the best example of the "pork barrel" in high gear is the A7 attack fighter, which was only recently cut from the defense budget. Although the Air Force has not needed or wanted more A7's, each year the Congress ordered the Pentagon to buy more, primarily for use by the Air National Guard.

The "Iron Triangle" was at its best with the A7. The legs of the triangle were the Dallas based Vought Corporation and the Texas congressional delegation; while the base was the National Guard, who liked the aircraft because it was easy to fly and to use for instruction. Only defense trims in 1982, coupled with pressure from President Reagan, forced the cancellation of the obsolete aircraft over the objections of the Texas congressmen and their supporters.[12]

Perhaps the best way to visualize the dynamics of lobbying and the "pork barrel" in action is to look at one specific case study that shows the many dimensions of the process. The most controversial and best documented case in the recent past is the story of the C-5B Galaxy and how Congress became embroiled in the seemingly obscure issue of what cargo plane to buy. Few military issues captured more of Congress' time and attention at that time; even though war had erupted in the Falkland Islands, the Persian Gulf, and Lebanon.

In January 1982 the Department of Defense, over objections by the Air Force, announced that it had changed its mind about buying the new C-17 cargo plane which had been chosen only a few months prior. The decision was not a complete surprise and in some ways only responded to resistance felt from Congress and the General Accounting Office.

Instead of the C-17 the Air Force announced that it would purchase an updated version of the Lockheed C-5 Galaxy.

During this time frame the Lockheed production line in Georgia, where the original C-5s were built, had slowed tremendously and Lockheed had no real production options to turn to.

The Air Force was unhappy with their 77 C-5s because of cost overruns and a history of technical troubles. A design competition for the new C-17 was won by McDonnell Douglas to replace the C-5, but it was Boeing Corporation that really muddied the water when it entered the fray in March 1982. Boeing offered to sell used 747s, refurbished for use as cargo planes, at a much cheaper price than the new C-5Bs. The 747 offer also looked like a good opportunity for some troubled airlines to dump some of their unprofitable planes on the Department of Defense.

The Pentagon thus faced three options; to develop and field the C-17, to buy and convert 747s for considerably less money ($58 million each vs. $118 million each for C-5Bs.), or to build 50 new C-5Bs. Secretary Weinberger decided the most sensible choice was the C-5B.

All this occured just as Congress was scrutinizing the proposed fiscal 1983 defense budget, and the decision on the cargo plane had to clear the defense authorization and appropriation bills before any final decision would be made. The Armed Services Committees rarely tamper with Pentagon requests, and the C-5B purchase was no exception; the Senate Armed Services Committee (SASC) recommended passage.

In this case; however, Boeing had mobilized its lobbyists, who attacked Capitol Hill with charts, photos, and lavish brochures. Meanwhile, Senator Henry Jackson of Washington, Boeing's home state, strongly campaigned for the company, asserting it would help the

troubled airline industry. On the day of the vote Braniff declared bankruptcy which did not hurt Boeing's cause.

Also lining up behind the 747 conversion were a troop of Senators who's constituencies would all benefit by jobs in states where component parts manufacture or construction would occur, principally Kansas and Missouri. Corporations and other lobbying interests took sides depending on their economic leanings.

Arguments raged in the Senate debating airlift scenarios, cost estimates, strategic doctrine, and availability times. But the real issue, and that which prevailed was purely politics. DOD was caught asleep and thus manufacturing locations and associated jobs prevailed over the long term cost to taxpayers and the effect on national security and readiness. The Senate overrode the SASC recommendation and deleted C-5B funding and directed the Air Force to buy 747s instead.

Stunned by the decision, the Pentagon and Lockheed decided to fight. Boeing, for its part, continued its strategy of mobilizing subcontractors, 747 operators, and others around the country to pressure key Members of Congress for support.

A new twist occurred when a 27-page Lockheed document was leaked to the press. The document revealed a coalition strategy where Lockheed executives along with Air Force and DOD officials had been meeting at least four time a week for strategy sessions in the Air Force Legislative Liaison Office. It also listed 250 Congressmen who were to be lobbied by military personnel or company lobbyists. The printout detailed arrangements for a C-5B demonstration at Andrews Air Force Base and arranged for former Representative Andrew Young to "work" the Black Caucus.

Meanwhile, DOD applied pressure on Boeing and threatened that the company might be punished through cancellation of current contracts and programs (which totalled about $2.7 billion).[13]

Both Lockheed and Boeing pulled out all the stops and stepped-up their lobby efforts, and both hired former Congressmen to assist them. Former Members can be especially powerful because they have inside contacts, knowledge of the system, and all important access to the House floor. Both companies also pressed their allies to increase their pressure on Members via the home district, grass roots lobby. They also began extolling the virtues of their planes with splashy full-page advertisements in the nations largest newspapers. And on the House floor supporters from both sides lined up geographically to back their product and deride the opposition; Georgians for Lockheed, backers from Washington and Kansas behind Boeing

Despite all efforts; however, this round went decisively to Lockheed. The full House decided nearly two to one to fund the C-5B rather than the 747s.

Immediately following the vote in late July 1982 there arose an outcry that the Pentagon had violated the law in its effort to persuade Congress. The Lockheed printout describing the DOD/Lockheed coalition tactics had been given to, among others, Dina Rasor, Project Director at the Project on Military Procurement, a private watchdog group. The following quote from Ms. Rasor underscores her attitude, and that of other members of the press regarding the incident:

> ...the disclosure of the collusive efforts of the Department of Defense (DOD) and Lockheed Corporation to push the scandal-ridden C-5 cargo airplane...The story behind this massive effort and its detailed documentation give the public a rare look on how the Pentagon really buys and promotes its weapons and a

> better understanding of why we are buying so many weapons that do not work.[14]

The incident was far from over and based on the evidence found in the Lockheed printout Senator William Proxmire asked the General Accounting Office (GAO) to conduct an investigation into the charges that the Pentagon used its equipment and funds for lobbying and perhaps broke a 1919 law that prohibits the use of tax dollars for lobbying. The subsequent GAO investigation concluded:

...extensive and cooperative effort was made by officials of the Air Force, the Office of the Secretary of Defense, the Lockheed Corporation, and several other Defense contractors...to influence members of the House of Representatives...amounts of appropriated funds and Government resources were spent for the purpose of influencing this procurement appropriation...[15]

Following the GAO pronouncement the House Armed Services Committee conducted hearings on these charges of illegal lobbying by the Pentagon. The House Committee exonerated DOD by concluding:

> The subcommittee finds no violation of existing law...Those charges against the Department of Defense arose from an erroneous perception of the multiple meetings between the Department of Defense and the contractor to plan strategy to influence members of Congress. This procedure is frequently followed in varying degrees.[16]

Although those findings ended the formal inquiries into the matter it did not quiet the press or defense opponents. The hearings became known in the press as the "whitewash hearings," alleging that questioning was purposefully easy and that the GAO report had been

excused away. In the minds of the press the question still remains:

> Is there anything wrong with a contractor and the Pentagon lobbying together for a mutual interest?[17]

Unfortunately this kind of negative connotation too often lingers around the procurement process. Forgotten too quickly is the real purpose for military equipment, in this case heavy lift cargo planes which are designed to move US forces to distant places to meet a threat and then to keep those forces resupplied. Unfortunately real facts rarely appear in the press, and too often important points are lost or distorted because DOD does not educate and inform the public and the press. For instance, a major point overlooked by the press was that, unlike the 747, the C-5B can carry such outsized cargo as tanks and howitzers, which can roll on and off the ramps of the C-5B. To load the 747, however, equipment must be hoisted 16 feet into the air.

Following the final decision on the C-5B some military officers at a congressional hearing were asked whether the difference in performance was worth the extra cost. The unanimous reply was, of course, yes. So perhaps the Congress eventually made the right choice of airplanes, just did it with the wrong motives and for the wrong reasons.

Those of us in the Department of Defense often complain that the press and the liberal pressure groups do not understand the importance of force modernization or the importance of a larger military budget to counter a specific threat. But, perhaps the real fault is our own, and that of Congress.

Lobbyists can be a positive influence on the system and should be employed to educate both DOD and Congress on emerging technologies, new products, and the best ways to test and use those devices. Few question

the benefits provided by the lobbyists, nor the First Amendment right to lobby. The questions and distrust arise from the secrecy of the process and the perceived shortage of public information about the operation.

DOD has nothing to hide in its budgeting and procurement process. Its regulations are firm, perhaps too trivial and inefficient, but firm on its dealings with contractors. So why does it always appear so guilty? The solution is not the lobby reform, but a more open approach with the public and the press.

It is not the lobbyist who is at fault in the system but the government; the bureaucracy, the courts, and the Congress, who fail to define the parameters in which the lobbyist can operate in performing a useful function.

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17. Rasor, p. 20.

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