

REPORT DOCUMENTATION PAGE

Form Approved
OMB No. 0704-0188

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188), Washington, DC 20503.

1. AGENCY USE ONLY (Leave blank)		2. REPORT DATE 5 Aug. 05	3. REPORT TYPE AND DATES COVERED MAJOR REPORT	
4. TITLE AND SUBTITLE DARLEEN DRUYUN: AN EVOLVING CASE STUDY IN CORRUPTION, POWER, AND PROCUREMENT.			5. FUNDING NUMBERS	
6. AUTHOR(S) MAJ BRANSTETTER JEFFREY				
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) THE GEORGE WASHINGTON UNIVERSITY			8. PERFORMING ORGANIZATION REPORT NUMBER CI04-1150	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES) THE DEPARTMENT OF THE AIR FORCE AFIT/CIA, BLDG 125 2950 P STREET WPAFB OH 45433			10. SPONSORING/MONITORING AGENCY REPORT NUMBER	
11. SUPPLEMENTARY NOTES				
12a. DISTRIBUTION AVAILABILITY STATEMENT Unlimited distribution In Accordance With AFI 35-205/AFIT Sup 1			12b. DISTRIBUTION CODE	
13. ABSTRACT (Maximum 200 words)				
14. SUBJECT TERMS			15. NUMBER OF PAGES 40	
			16. PRICE CODE	
17. SECURITY CLASSIFICATION OF REPORT	18. SECURITY CLASSIFICATION OF THIS PAGE	19. SECURITY CLASSIFICATION OF ABSTRACT	20. LIMITATION OF ABSTRACT	

DISTRIBUTION STATEMENT A
Approved for Public Release
Distribution Unlimited

DARLEEN DRUYUN: AN EVOLVING CASE STUDY IN CORRUPTION, POWER, AND PROCUREMENT

BY JEFFREY BRANSTETTER^{1A}

INTRODUCTION

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

The U.S. system of government contracting has seen its share of corruption over the years dating back to the inception of the nation. As one retired general officer has put it; the farmers were probably ripping off the Patriots as they marched off into battle.¹ Perhaps the apex of corruption in government contracting was reached in the early 1980s. There were still large amounts of money being spent on Cold War era defense contracts during that time and there were a good deal of corrupt individuals both receiving and doling out those funds.²

Many of these abuses were investigated in Operation Ill Wind, the largest procurement fraud investigation in the history of the United States. That investigation, designed to put an end to the large scale corruption in government contracting, included over eight-hundred subpoenas issued, included two million documents, and resulted in ninety companies and individuals being

^{1a} Jeffrey Branstetter is a Major in the United States Air Force Judge Advocate General's Corps. This Article was submitted in partial satisfaction of the requirements for the degree of Master of Laws in Federal Procurement at George Washington University Law School. The author thanks Professors Steven L. Schooner and Christopher R. Yukins for their insight and guidance. The opinions expressed in this Article are solely those of the author and do not necessarily represent the views of the Department of the Air Force, the Department of Defense, or the U.S. Government.

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

² *Id.* at 2.

20050815 053

convicted of various crimes. Additionally, a good many of those contractors that were convicted of crimes were also subsequently debarred from government contracting.³

The results of Operation Ill Wind went a long way towards cleaning up the corruption in government contracting twenty years ago. Since that time there have been far fewer scandals and cases involving corruption related to the U.S. Government procurement system. However, some fear that we may be in danger of reversing that positive trend because we are getting away from the strict discipline of full and open contracting by implementing several reforms designed to increase the efficiency of government contracting, possibly at the expense of transparency.⁴

However, even though some feared that new opportunities for corruption were perhaps growing with the recent reforms in the system, the government procurement community was nevertheless shocked to learn of Darleen Druyun's recent admissions in court of illegally favoring Boeing Company (Boeing) on a number of Air Force contracts. This news was disturbing not only because of Ms. Druyun's stature in the community, but also because of the sheer amount of money involved and the sheer scope of the implications that will surely arise from a scandal of this nature.

In what is certainly the largest government contracting scandal to hit the Department of Defense (DoD) in recent years, and a scandal that seems to be growing daily, Druyun, previously the number two acquisition official⁵ in the Department of the Air Force,⁶ has admitted to steering billions of taxpayer dollars worth of contracts to one of the nations largest contractors, Boeing,

³ Id.

⁴ Id at 3.

⁵ She was the senior career civilian procurement official—second only to the political appointees that cycle through the Assistant Secretary of the Air Force for Acquisition position. In other words, she was the highest ranking long-term procurement official providing continuity to the Air Force acquisition community throughout changes in administrations.

⁶ William Matthews, *Ex-Boeing Exec Going To Jail*, FEDERALTIMES, Oct. 5, 2004, at <http://federaltimes.com/index.php?S=388578>.

because the company provided her daughter and son-in-law, and eventually Druyun herself, with jobs.

At this point, there is no way to estimate how much this scandal is going to cost the U.S. Government. There are still several related investigations ongoing and in light of Ms. Druyun's admissions, several of Boeing's competitors have recently filed bid protests with the Government Accountability Office (GAO) for contracts that Ms. Druyun handled.

What is clear is that in addition to the untold sum of treasure that Ms. Druyun's misdeeds will cost the Government, countless hidden costs will be exacted through a loss of the trust of contractors and taxpayers alike in the government procurement system. Now is the time to examine exactly what happened that led to this public affairs disaster to see if it can be prevented from occurring again.

Now we can expect the Darleen Druyun story to take its rightful place in the pantheon of procurement horror stories, along with Ill Wind and the A-12 debacle, to be used as a lesson learned for many years to come by those who instruct others on the pitfalls of procurement law. While it still may be too early to determine how the story ultimately ends, the soul searching has already begun in the form of studies commissioned by the Air Force and several protests filed at GAO in response to Ms. Druyun's admissions. The results will no doubt be of great interest to the entire government procurement community.

THE PLEA

Darleen Druyun, the former principal deputy assistant secretary for Air Force acquisition and management,⁷ recently entered a plea agreement in the United States District Court for the Eastern District of Virginia for conspiracy to violate Title 18, United States Code 208(a).⁸ On April 20, 2004, as part of her original plea agreement Ms. Druyun acknowledged a conflict of interest in negotiating a job for herself with Boeing while simultaneously negotiating a contract with Boeing on behalf of the Air Force in her capacity as the senior procurement official for that agency.⁹ Ms. Druyun was eventually hired by Boeing to help lead that company's missile defense business¹⁰ at a salary of 250,000 dollars a year.¹¹

As part of this initial plea agreement Ms. Druyun maintained that her personal employment negotiations with Boeing did not influence her official actions on behalf of the Air Force or harm the Government in any way.¹²

However, since her initial plea agreement Ms. Druyun has made even more alarming post-plea admissions as part of a supplemental statement of facts to the court. In the supplemental statement of facts Ms. Druyun admitted that she did allow her employment negotiations with Boeing, and other favors the company had performed for her, to influence her and as a result Boeing may have gained an advantage during certain Air Force procurement negotiations.¹³

Ms. Druyun also acknowledged that in addition to her own future hopes of employment with the aircraft manufacturing giant, she was also influenced by Boeing's hiring of her daughter

⁷ Press Release, Boeing, Druyun Joins Boeing As Deputy General Manager For Missile Defense Systems (Jan. 3, 2003), at http://www.boeing.com/news/releases/2003/ql/nr_030103m.html.

⁸ Supplemental Statement of Facts at 1, U.S. v. Druyun, (Criminal No. 04-150-A).

⁹ Id. at page 2.

¹⁰ Press Release, Boeing, Druyun Joins Boeing As Deputy General Manager For Missile Defense Systems (Jan. 3, 2003), at http://www.boeing.com/news/releases/2003/ql/nr_030103m.html.

¹¹ Andrea Shalal-Esa, *Ex-official in Boeing Scandal May Start Jail Soon*, REUTERS, Oct. 12, 2004, at 1, at <http://yahoo.reuters.com>.

¹² Supplemental Statement of Facts at 2, U.S. v. Druyun, (Criminal No. 04-150-A).

¹³ Id.

and son-in-law.¹⁴ Upon Ms. Druyun's request, Boeing had hired Ms. Druyun's daughter Heather as a human resource specialist in 2000,¹⁵ a position created for her,¹⁶ as well as hiring her future son-in-law¹⁷, Michael McKee¹⁸ two months prior.¹⁹ Heather Druyun had graduated from George Mason University with a B.A. in Communications in 1999.²⁰

In addition to the initial employment of her daughter and son-in-law, Ms. Druyun admitted to using her influence with Boeing to protect her daughter's career with that company.²¹ Ms. Druyun further acknowledged, that after Heather told Ms. Druyun that she was apprehensive that she may be fired for poor performance, she asked a senior Boeing official to circumvent any adverse action the company attempted to take against her daughter.²² Subsequently, the same Boeing official, 30-year Boeing veteran Chief Financial Officer Michael M. Sears²³, whom Ms. Druyun happened to be negotiating the Air Force's KC 767A tanker lease deal with, kept Ms. Druyun informed of any changes in her daughter's status with Boeing.²⁴ For example, Ms. Druyun was notified when her daughter was transferred to a new position and when she received pay raises.²⁵

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

¹⁴ Id.

¹⁵ Letter from Kenneth F. Boehm, Chairman, National Legal and Policy Center, to Joseph E. Schmitz, Inspector General, U.S. Department of Defense (Oct. 6, 2003), at <http://www.nlpc.org/view.asp?action=viewArticle&aid=46>.

¹⁶ Renae Merle, *Long Fall for Pentagon Star: Druyun Doled Out Favors by the Millions*, WASHINGTON POST, Nov. 14, 2004, at 3, at <http://www.washingtonpost.com/ac2/wp-dyn/A428241-2004>.

¹⁷ Supplemental Statement of Facts at 2, U.S. v. Druyun, (Criminal No. 04-150-A).

¹⁸ See Letter from Kenneth F. Boehm to Joseph E. Schmitz, *supra* note 12.

¹⁹ Renae Merle, *Long Fall for Pentagon Star: Druyun Doled Out Favors by the Millions*, WASHINGTON POST, Nov. 14, 2004, at 3, at <http://www.washingtonpost.com/ac2/wp-dyn/A428241-2004>.

²⁰ See Letter from Kenneth F. Boehm to Joseph E. Schmitz, *supra* note 12.

²¹ Supplemental Statement of Facts at 2, U.S. v. Druyun, (Criminal No. 04-150-A).

²² Id.

²³ Renae Merle, *Boeing Fires 2 Top Officials in Hiring Probe*, WASHINGTON POST, Nov. 25, 2003, at 1, at <http://www.washingtonpost.com/ac2/wp-dyn/A11875-2003Nov24>.

²⁴ Supplemental Statement of Facts at 2, U.S. v. Druyun, (Criminal No. 04-150-A).

²⁵ Id.

benefit of Boeing and the detriment of the Government.²⁶ One such way involved the extremely controversial tanker lease deal that she was negotiating, on behalf of the Air Force, with Boeing.²⁷

Ms. Druyun now acknowledges that she agreed, on behalf of the Air Force, to pay a higher price for the tankers than she thought that they were really worth. She admitted explicitly that she agreed to the inflated prices as a way to get in her future employers good graces and as a “parting gift to Boeing” from her position as a senior Air Force procurement official.²⁸ She also admitted to providing Boeing with a European rival bidder’s proprietary pricing information related to this same procurement.²⁹

Additionally, Ms. Druyun acknowledges that Boeing’s employment of her daughter and son-in-law influenced a deal she negotiated with the company in 2002.³⁰ During that year, Ms. Druyun was serving as the chairperson of the NATO Airborne Early Warning and Control Program Management Board of Directors. In that capacity she was charged with conducting a negotiation with Boeing concerning the restructuring of the NATO AWACS program. She now admits that her negotiated payment of 100 million dollars to Boeing as a part of that restructuring deal was influenced by the fact that members of her family worked for Boeing.³¹

In 2001, Ms. Druyun served as the source selection authority for major procurement involving the avionics upgrade of the Air Force’s C-130 aircraft. Ms. Druyun selected Boeing over four other competitors for award of that contract worth four billion dollars. She admitted that during this selection process she was influenced due to her partiality to Boeing and that

²⁶ Id. at 1.

²⁷ Id. at 2.

²⁸ Id. at 3.

²⁹ Renae Merle and Jerry Markon, *Ex-Air Force Official Gets Prison Time: Boeing Received Special Treatment in Procurement*, WASHINGTON POST, Oct. 2, 2004, at 1, at <http://www.washingtonpost.com/ac2/wp-dyn/A64968-2004Oct1>.

³⁰ Supplemental Statement of Facts at 3, U.S. v. Druyun, (Criminal No. 04-150-A).

³¹ Id.

perhaps a more objective source selection authority would have chosen one of the other competitors over Boeing in this instance. She said that Boeing's influence over her during that time was also due to her perceived indebtedness to the company for hiring her daughter and son-in-law.³²

In the year 2000, Ms. Druyun was simultaneously seeking employment for her daughter's future husband with Boeing and, in her capacity with the Air Force, negotiating a settlement over a contract clause with Boeing. She now acknowledges that her decision to settle the contract clause, related to the C-17 H22 contract, with a payment of approximately 412 million dollars to Boeing was influenced by the company's favors to her.³³

Ms. Druyun was sentenced to nine months in prison and seven months in a halfway house based on her plea and subsequent admissions.³⁴ U.S. District Judge T.S. Ellis III³⁵ apparently, in part, based the sentence on her lack of truthfulness in the early part of the investigation and her initial plea.³⁶ She reportedly admitted to the degree of influence that Boeing's future employment discussions with her and its employment of her daughter and son-in-law on her decision-making processes regarding Boeing contracts only after failing a lie detector test.³⁷

The woman that was once so feared throughout parts of the Pentagon that she was known as the "Dragon Lady"³⁸ was reduced to telling the court in a wavering voice that she felt "shame

³² Id.

³³ Id. at 4.

³⁴ William Matthews, *Ex-Boeing Exec Going To Jail*, FEDERALTIMES, Oct. 5, 2004, at <http://federaltimes.com/index.php?S=388578>

³⁵ Renae Merle and Jerry Markon, *Ex-Air Force Official Gets Prison Time: Boeing Received Special Treatment in Procurement*, WASHINGTON POST, Oct. 2, 2004, at 1, at <http://www.washingtonpost.com/ac2/wp-dyn/A64968-2004Oct1>.

³⁶ William Matthews, *Ex-Boeing Exec Going To Jail*, FEDERALTIMES, Oct. 5, 2004, at <http://federaltimes.com/index.php?S=388578>

³⁷ Id.

³⁸ Renae Merle, *Air Force-Boeing Negotiator Criticized: Close Relationship Questioned on Hill*, WASHINGTON POST, Oct. 27, 2003, at 1, at <http://www.washingtonpost.com/ac2/wp-dyn/A21519-2003Oct26>.

and remorse”³⁹ that her long career in Government had “been tarnished.”⁴⁰ How did one of the most influential women in the Pentagon come to find herself in this position—becoming the highest-ranking Pentagon official to be convicted of a crime since the 1980s?⁴¹

HER CAREER

THE EARLY YEARS

During Ms. Druyun’s thirty years of Government service she blazed a path that led to her being one of the most influential procurement officials in the Federal Government.⁴² Her aggressive, risk-taking approach⁴³ and hard-nosed style was cause for defense contractors to describe her as a formidable opponent.⁴⁴

After earning her bachelors of science degree from the University of Chaminade in Hawaii⁴⁵, Ms. Druyun began her career with the Federal Government in 1972.⁴⁶ It was in that first job as a contracting intern at Warner Robins Air Logistics Center in Georgia,⁴⁷ where her father had worked for forty years,⁴⁸ that she would learn the basics of the field that she would eventually come to master.

³⁹ Renae Merle and Jerry Markon, *Ex-Air Force Official Gets Prison Time: Boeing Received Special Treatment in Procurement*, WASHINGTON POST, Oct. 2, 2004, at 1, [at http://www.washingtonpost.com/ac2/wp-dyn/A64968-2004Oct1](http://www.washingtonpost.com/ac2/wp-dyn/A64968-2004Oct1).

⁴⁰ *Id.*

⁴¹ Peter Pae and Jonathon Peterson, *Confession Casts New Shadow Over Boeing Deal*, LOS ANGELES TIMES, Oct. 2, 2004, [at http://www.latimes.com](http://www.latimes.com).

⁴² *The Rise and Fall of a Maverick*, GOVEXEC, Feb. 15, 2004, at 1, [at http://www.govexec.com/story_page.cfm?articleid=27672](http://www.govexec.com/story_page.cfm?articleid=27672)

⁴³ *Id.*

⁴⁴ Renae Merle, *Air Force-Boeing Negotiator Criticized: Close Relationship Questioned on Hill*, WASHINGTON POST, Oct. 27, 2003, at 1, [at http://www.washingtonpost.com/ac2/wp-dyn/A21519-2003Oct26](http://www.washingtonpost.com/ac2/wp-dyn/A21519-2003Oct26).

⁴⁵ Press Release, Boeing, Druyun Joins Boeing As Deputy General Manager For Missile Defense Systems (Jan. 3, 2003), [at http://www.boeing.com/news/releases/2003/q1/nr_030103m.html](http://www.boeing.com/news/releases/2003/q1/nr_030103m.html).

⁴⁶ *The Rise and Fall of a Maverick*, GOVEXEC, Feb. 15, 2004, at 1, [at http://www.govexec.com/story_page.cfm?articleid=27672](http://www.govexec.com/story_page.cfm?articleid=27672)

⁴⁷ *Id.*

⁴⁸ Renae Merle, *Long Fall for Pentagon Star: Druyun Doled Out Favors by the Millions*, WASHINGTON POST, Nov. 14, 2004, at 3, [at http://www.washingtonpost.com/ac2/wp-dyn/A428241-2004](http://www.washingtonpost.com/ac2/wp-dyn/A428241-2004).

In 1980, Ms. Druyun left the Air Force to continue honing her acquisition skills by working on government contracting issues for the Office of Management and Budget (OMB).⁴⁹

She worked for OMB for a two-year stint before returning to the Air Force.

She also completed a short tour of duty for NASA in the early 1990s. At that agency she served for two years as head of procurement and as the chief of staff to the Administrator.⁵⁰

It was at this job that Ms. Druyun was credited with being one of the leading innovators of NASA's progressive "better, faster, cheaper" acquisition strategy.⁵¹ She said that a number of NASA's programs were in disarray and insisted on greater accountability on the part of the contractors.⁵² She was quoted in 1992 by *Florida Trend* magazine as having said; "They wonder why the hell we give contracts to someone who has a losing record. The ones who bitch and complain are the ones with lousy records. Now there will be motivation to improve."⁵³

Ms. Druyun returned to the Air Force from NASA in 1993 when she was named the principal deputy assistant secretary for acquisition and management.⁵⁴ It was in this role that she became responsible for some of the most expensive weapons programs in the history of the United States⁵⁵ and for shaping the acquisitions of the greatest air force the world has ever known.

In that same year, perhaps as a harbinger of things to come, Ms. Druyun was investigated for her participation in the Air Force's attempt to frontload a string of payments for the C-17 airlifter program in an effort to aid the contractor, McDonnell Douglas, with its financial

⁴⁹ *The Rise and Fall of a Maverick*, GOVEXEC, Feb. 15, 2004, at 1, at http://www.govexec.com/story_page.cfm?articleid=27672

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² George Cahlink, *Fallen Star: The Cautionary Tale of a Celebrated Federal Executive's Corporate Flameout*, GOVEXEC, Feb. 15, 2004, at 5, at http://www.govexec.com/story_page.cfm?articleid=27660.

⁵³ *Id.* at page 5 quoting FLORIDA TREND MAGAZINE.

⁵⁴ *The Rise and Fall of a Maverick*, GOVEXEC, Feb. 15, 2004, at 1, at http://www.govexec.com/story_page.cfm?articleid=27672

⁵⁵ *Id.*

situation.⁵⁶ Representative John Conyers, Jr., chairman of the House Government Operations Committee and an adversary of the C-17 program, had asked the Pentagon's Inspector General (IG) to examine the cash flow to the contractor.⁵⁷ According to the resulting IG report some officials in the Air Force were afraid that McDonnell Douglas's financial crisis would lead to serious problems in the C-17 program.⁵⁸ By the time Ms. Druyun had returned to the Air Force the C-17, designed to build an aircraft to ferry heavy equipment to theaters around the world, was already running behind the Air Force's timetable and over its budget⁵⁹ and McDonnell Douglas was getting close to not having funds to build a prototype of the aircraft.⁶⁰

The IG reportedly recommended that five Air Force officials, including Ms. Druyun, had secretly shifted approximately 349 million dollars to McDonnell Douglas in order to relieve the contractor's budget pressures in hopes of keeping the C-17 program from falling further behind schedule. The officials were reportedly accused of allowing McDonnell Douglas to backdate some of its records and label its costs differently so they could expedite payments to the company.⁶¹

Although the IG report found no criminal misconduct on anyone's part, it did recommend that the five officials, including Ms. Druyun be disciplined.⁶² Out of fairness, it should be noted that the IG report was criticized by some at the time of being poorly done and of applying the

⁵⁶ Id.

⁵⁷ John T. Correll, *Blood on the Rock: Four Air Force Officials were Fired and their Careers Ruined on the Basis of an IG Report Known to be Full of Holes*, AIR FORCE MAGAZINE, July 1993, Vol. 76, No. 7, at http://www.afa.org/magazine/1993/07edit93_print.html.

⁵⁸ Renae Merle, *Air Force-Boeing Negotiator Criticized: Close Relationship Questioned on Hill*, WASHINGTON POST, Oct. 27, 2003, at 1, at <http://www.washingtonpost.com/ac2/wp-dyn/A21519-2003Oct26>.

⁵⁹ Id.

⁶⁰ George Cahlink, *Fallen Star: The Cautionary Tale of a Celebrated Federal Executive's Corporate Flameout*, GOVEXEC, Feb. 15, 2004, at 3, at http://www.govexec.com/story_page.cfm?articleid=27660.

⁶¹ Id. at 4.

⁶² Id.

wrong contracting rules to the investigation.⁶³ However, there was apparently sufficient cause to justify then Defense Secretary Les Aspin firing one of the General Officers associated with the program.⁶⁴ Additionally, two other generals were prohibited from working in acquisitions anymore, and a high-ranking civilian was moved to a different job. Retired Air Force General Merrill McPeak, who had been the Air Force's Chief of Staff at the time, was quoted as saying that Ms. Druyun was also supposed to be fired, but that he asked Secretary Aspin to let her stay on.⁶⁵

In any event, Ms. Druyun was not punished and after the conclusion of the investigation, she continued playing a significant role in managing the C-17 program. In fact, she apparently considered her involvement in the C-17 program vital enough to the program's development to consistently refer to herself as the "Godmother of the C-17."⁶⁶ After Boeing purchased McDonnell Douglas in 1998, Ms. Druyun announced an Air Force proposal to turn the C-17 program into a commercial enterprise.⁶⁷ However, the Air Force backed off of the plan, which was touted as way for the agency to save money, after some in the procurement community pointed out that the sweetheart deal would allow Boeing to avoid virtually all government oversight.⁶⁸ In spite of all the setbacks, in the end, Ms. Druyun was widely regarded as having saved the C-17 with her aggressive management of that program.⁶⁹ Additionally, according to former Secretary of the Air Force Sheila Widnall, under Ms. Druyun's leadership the price to the

⁶³ John T. Correll, *Blood on the Rock: Four Air Force Officials were Fired and their Careers Ruined on the Basis of an IG Report Known to be Full of Holes*, AIR FORCE MAGAZINE, July 1993, Vol. 76, No. 7, at http://www.afa.org/magazine/1993/07edit93_print.html.

⁶⁴ George Cahlink, *Fallen Star: The Cautionary Tale of a Celebrated Federal Executive's Corporate Flameout*, GOVEXEC, Feb. 15, 2004, at 3, at http://www.govexec.com/story_page.cfm?articleid=27660.

⁶⁵ *Id.*

⁶⁶ *Id.* at 3.

⁶⁷ Renae Merle, *Air Force-Boeing Negotiator Criticized: Close Relationship Questioned on Hill*, WASHINGTON POST, Oct. 27, 2003, at 2, at <http://www.washingtonpost.com/ac2/wp-dyn/A21519-2003Oct26>.

⁶⁸ *Id.*

⁶⁹ George Cahlink, *Fallen Star: The Cautionary Tale of a Celebrated Federal Executive's Corporate Flameout*, GOVEXEC, Feb. 15, 2004, at 3, at http://www.govexec.com/story_page.cfm?articleid=27660.

Government fell from \$300 million per C-17 to \$165 million per copy.⁷⁰ The C-17 has since proven to be a very valuable tool in the Air Force arsenal in recent campaigns.⁷¹

AIMING HIGH

Starting in 1995, Ms. Druyun implemented a number of acquisition reform initiatives that were dubbed “lightening bolts.”⁷² These reform initiatives were aimed at saving time and money—improving efficiency—in the Air Force procurement system by implementing more practices similar to those used in the commercial marketplace.⁷³ Examples of the lightening bolt initiatives were streamlining requests for proposals by ridding them of specific military requirements and creating an alternative dispute resolution (ADR) process to keep the Air Force from being dragged into court by contractors.⁷⁴ This ADR program continues to be considered one of the best programs of its kind in the executive branch.

One notable example of the success of the lightening bolt reforms was the speed with which they allowed the development of the Air Force’s Joint Direct Attack Munition (JDAM).⁷⁵ The JDAM is a kit made by Boeing that attaches to regular “dumb” bombs and allows them to become guided like more modern precision munitions.⁷⁶ Using the lightening bolt initiatives the Air Force waived many of the usual Department of Defense procurement rules and relied on commercial technology to build the JDAM.⁷⁷ In doing so the Air Force was able to procure a

⁷⁰ Letter from Sheila Widnall, Secretary of the Air Force from 1993-1997, to John Dowd, Attorney for Ms. Druyun, (March 10, 2004), at <http://www.taxpayer.net/nationalsecurity/learnmore/Druyuncharacterwitness/index.htm>

⁷¹ Id.

⁷² *The Rise and Fall of a Maverick*, GOVEXEC, Feb. 15, 2004, at 2, at http://www.govexec.com/story_page.cfm?articleid=27672.

⁷³ George Cahlink, *Fallen Star: The Cautionary Tale of a Celebrated Federal Executive’s Corporate Flameout*, GOVEXEC, Feb. 15, 2004, at 4, at http://www.govexec.com/story_page.cfm?articleid=27660.

⁷⁴ Id.

⁷⁵ Id.

⁷⁶ Sean D. Naylor, *In Casualties’ Wake, A Quest to Prevent Friendly Fire*, AIR FORCE TIMES, at 3, at <http://www.airforcetimes.com/archivepaper.php?f=0AIRPAPER-678870.php>.

⁷⁷ George Cahlink, *Fallen Star: The Cautionary Tale of a Celebrated Federal Executive’s Corporate Flameout*, GOVEXEC, Feb. 15, 2004, at 4, at http://www.govexec.com/story_page.cfm?articleid=27660.

large amount of these precision kits in less than ten years and at a reasonable price⁷⁸ of about \$20,000 each.⁷⁹ If carried out under ordinary acquisition procedures, rather than using Ms. Druyun's innovative approach, the cost was estimated to have been \$100,000 per unit.⁸⁰ As a point of comparison, the Navy's Tomahawk cruise missile (which albeit has a different set of capabilities than the JDAM) costs approximately 1 million dollars per copy.⁸¹ The JDAM has been lauded as a great success in the recent wars in Iraq and Afghanistan because of its unmatched accuracy.⁸²

In the late nineties Ms. Druyun continued her steady rise to the pinnacle of her profession by marking several more milestones. In 1999 she concluded the largest public-private partnership in Air Force History.⁸³ The partnership, worth 10.1 billion dollars, was between Lockheed Martin and the Air Force's Oklahoma City repair depot for engine repair work. A General Accounting Office (GAO) audit estimated that the deal would represent 1.8 billion dollars in savings to the Air Force over a period of 15 years. In reference to this deal, F. Whitten Peters, former Secretary of the Air Force, was quoted as saying that Ms. Druyun had a unique ability to get various parties to team up on contracts.⁸⁴

She made more history in 2001 by supervising the award of the largest contract ever let by the Department of Defense—a \$200 billion dollar deal, in which Lockheed Martin edged Boeing in a difficult competition, to produce the Joint Strike Fighter Aircraft. The contract will

⁷⁸ Id.

⁷⁹ Sean D. Naylor, *In Casualties' Wake, A Quest to Prevent Friendly Fire*, AIR FORCE TIMES, at 3, at <http://www.airforcetimes.com/archivepaper.php?f=0AIRPAPER-678870.php>.

⁸⁰ Letter from Sheila Widnall, Secretary of the Air Force from 1993-1997, to John Dowd, Attorney for Ms. Druyun, (March 10, 2004), at <http://www.taxpayer.net/nationalsecurity/learnmore/Druyuncharacterwitness/index.htm>

⁸¹ Id.

⁸² George Cahlink, *Fallen Star: The Cautionary Tale of a Celebrated Federal Executive's Corporate Flameout*, GOVEXEC, Feb. 15, 2004, at 4, at http://www.govexec.com/story_page.cfm?articleid=27660.

⁸³ Id. at 6.

⁸⁴ Id.

allow the Air Force, Navy and Marine Corps, as well as the British military, to buy three thousand aircraft over the next forty years.⁸⁵

Ms. Druyun's persistent style is also credited by many for saving the F/A-22 Raptor fighter aircraft procurement. When that program was billions of dollars over budget and behind schedule in the 1990s, it was Ms. Druyun that pushed Lockheed Martin to become more efficient and find ways to reduce costs or risk losing the program to the ever increasing budget cuts.⁸⁶

DESCENDING

Perhaps the most controversial procurement of Ms. Druyun's distinguished career—and certainly the one that in many ways led to her current troubles—was the tanker lease deal she fought so extremely hard to strike with Boeing. This proposal to begin replacing, or at least supplementing, the Air Force's aging refueling tanker fleet initially came to light in September of 2001 although the Air Force had been exploring the possibility since the late 1990s.⁸⁷ The plan was for the Air Force to lease one hundred tankers from Boeing instead of buying new tankers to replace the ancient KC-135s.⁸⁸

Almost immediately the lease plan drew criticism. Chief among its critics was Senate Commerce Committee chairman, Senator John McCain, who as early as December of 2001 had set his sights on the expense of the lease program.⁸⁹ Senator McCain has said that the expensive

⁸⁵ Id. at 5.

⁸⁶ Id.

⁸⁷ *The Rise and Fall of a Maverick*, GOVEXEC, Feb. 15, 2004, at 2, [at http://www.govexec.com/story_page.cfm?articleid=27672](http://www.govexec.com/story_page.cfm?articleid=27672).

⁸⁸ Joseph L. Galloway, *U.S. Tanker Scandal Grows*, DETROIT FREE PRESS, Mar. 29, 2004, at 1, [at http://www.freep.com/cgi-bin/forms](http://www.freep.com/cgi-bin/forms).

⁸⁹ Id.

leasing option, versus just buying the aircraft, was a way to bail Boeing out at a time when it was experiencing a drought in its commercial aircraft sales.⁹⁰

The tanker lease deal is seen by many as crucial to the life of Boeing's 767 manufacturing line due to that jet's slumping sales in the commercial market.⁹¹

Despite the initial concerns about the lease deal on Capitol Hill, Congress, in a series of late December votes approved the plan⁹² allowing the Air Force to begin negotiations with Boeing.⁹³ Nonetheless, Senator McCain maintained his opposition to the deal and used studies done by other agencies to advocate against it.

In May 2002, Senator McCain cited to a preliminary report done by GAO as proof that the lease plan was a bad idea.⁹⁴ The report estimated that it would cost the Air Force 26 billion dollars to lease 100 tankers for 6-10 years.⁹⁵ The report also indicated that the existing tanker fleet could be upgraded for approximately 3.6 billion dollars.⁹⁶ Senator McCain said of the report "This report details the immense waste of taxpayer dollars by the Air Force and the power of special interests in Washington, D.C. This is a corporate bailout for Boeing of tremendous proportions."⁹⁷

⁹⁰ Renae Merle, *Boeing Deal Skipped Protocol, Report Says*, WASHINGTON POST, May 19, 2004, at 1, [at](http://www.washingtonpost.com/ac2/wp-dyn/A38436-2004May19) <http://www.washingtonpost.com/ac2/wp-dyn/A38436-2004May19>.

⁹¹ *Id.*

⁹² Bruce Rolfsen, *767 Lease Plan May Cost \$25B*, AIR FORCE TIMES, Jan. 7, 2002, by Bruce Rolfsen at 1, [at](http://www.airforcetimes.com/archivepaper.php?f=0-AIRPAPER-680770.php) <http://www.airforcetimes.com/archivepaper.php?f=0-AIRPAPER-680770.php>.

⁹³ Joseph L. Galloway, *U.S. Tanker Scandal Grows*, DETROIT FREE PRESS, Mar. 29, 2004, at 1, [at](http://www.freep.com/cgi-bin/forms) <http://www.freep.com/cgi-bin/forms>.

⁹⁴ Press Release, Senator John McCain, McCain: GAO Report on Air Force Boeing Lease Confirms Deal as Corporate Welfare (May 7, 2002), [at](http://mccain.senate.gov/index.cfm?fuseaction=Newscenter.ViewPressRelease&Content) <http://mccain.senate.gov/index.cfm?fuseaction=Newscenter.ViewPressRelease&Content>.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

In April 2002, Senator McCain, along with Senator Carl Levin and Senator John Warner, asked the Congressional Budget Office (CBO) to analyze the proposed lease.⁹⁸ CBO did not have access to the figures or details that the Air Force and Boeing were negotiating, but nevertheless analyzed the lease deal using a variety of assumptions.⁹⁹

Based on the model CBO created to do the analysis, CBO responded in a letter to Senator McCain estimating it would cost the Air Force approximately 37 billion dollars to pursue the leasing option.¹⁰⁰ On the other hand, CBO estimated if the Air Force were to buy the 100 tankers outright that it would cost approximately 25 billion dollars and the Air Force would own, and thus be able to use, the aircraft for some time after the lease would have expired.¹⁰¹

The day after receiving this analysis from CBO, Senator McCain's office put out a press release using CBO's estimates as evidence that the lease option was a bad idea.¹⁰² Senator McCain was quoted in the press release as saying "CBO is one of the most respected non-partisan agencies in Washington. Their analysis confirms what everyone already knew; this leasing proposal is a bad deal for the taxpayers, a bad deal for the military and a bad deal for pretty much everyone but Boeing."¹⁰³

In response to this pressure applied by Senator McCain, and his further criticism that the lease deal was non-competitive, the Air Force acquiesced and opened the tanker lease to

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

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

¹⁰⁰ Id.

¹⁰¹ Id.

¹⁰² Press Release, Senator John McCain, CBO Analysis: Boeing Leasing Deal Totals \$37 Billion; 'Significantly More Expensive' Than Tanker Purchase (May 8, 2002), at <http://mccain.senate.gov/index.cfm?fuseaction=Newscenter.ViewPressRelease&Content>.

¹⁰³ Id.

competition.¹⁰⁴ The Air Force requested information from Boeing and Airbus. Although Airbus only had 12 days to put together a bid against Boeing's they reportedly offered a plan that met 19 of the 26 required specifications with a price that was \$10 billion dollars lower than Boeing's.¹⁰⁵ At the time a spokesman for Boeing, Doug Kennett, said that the Air Force did not select Airbus for the contract award because they failed to meet several specifications and the aircraft they were offering was too large for Air Force plans.¹⁰⁶

Of course the key negotiator for the Air Force was Ms. Druyun on the tanker lease¹⁰⁷ and we now know from her plea agreement that she was concurrently negotiating for employment with Boeing. We also know, due to her admissions in court, that in the course of this controversial transaction she improperly showed favoritism to Boeing, increased the price as a "parting gift" to her future employer, and apparently shared proprietary data from the Airbus proposal with Boeing.¹⁰⁸

An internal Boeing investigation indicated that Mr. Sears used Ms. Druyun's daughter Heather to initiate employment discussion with her mother in September of 2002.¹⁰⁹ A spokesman for Boeing confirmed that Ms. Druyun herself then met with Mr. Sears in October regarding a job with the company. All the while the tanker lease deal was still pending and Ms. Druyun did not recuse herself, as she was required to do before entering employment discussions with Boeing, from involvement in decisions affecting Boeing until November 5, 2002.¹¹⁰

¹⁰⁴ Joseph L. Galloway, *U.S. Tanker Scandal Grows*, DETROIT FREE PRESS, Mar. 29, 2004, at 2, [at](http://www.freep.com/cgi-bin/forms) <http://www.freep.com/cgi-bin/forms>.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Laura M. Colrusso, *Pentagon Investigation Could Kill Lease Deal: Ethics Questions Dog Plan to Use 767s as Tankers*, AIR FORCE TIMES, Dec. 22, 2003, [at](http://www.airforcetimes.com/archivepaper.php?f=0-AIRPAPER-247056.php) <http://www.airforcetimes.com/archivepaper.php?f=0-AIRPAPER-247056.php>.

¹⁰⁸ Supplemental Statement of Facts, *U.S. v. Druyun*, (Criminal No. 04-150-A).

¹⁰⁹ Renae Merle, *Boeing Fires Top 2 Officials in Hiring Probe*, WASHINGTON TIMES, [at](http://www.washingtonpost.com/ac2/wp-dyn/A11875-2003Nov24?) <http://www.washingtonpost.com/ac2/wp-dyn/A11875-2003Nov24?>

¹¹⁰ *Id.*

After the tanker lease deal seemed to be well on its way to being approved, despite the notable opposition from Senator McCain, Ms. Druyun retired from the Air Force in November of 2002.¹¹¹ She had begun contemplating retirement since her boss, Dr. Marvin R. Sambur, who was appointed as the head of Air Force acquisition in late 2001, had started to gradually curtail her overreaching authority.¹¹² After Dr. Sambur took away her ability to decide competitions and negotiate final contract terms and change requirements she told him that she planned to retire.¹¹³

Originally, she made a handshake agreement to go to work for Boeing's largest competitor, and the Pentagon's biggest contractor, Lockheed Martin.¹¹⁴ In fact, she had apparently been, at least outwardly, focused on Lockheed as her future employer for some time.¹¹⁵ But at that same time she started her employment negotiations with Boeing through her daughter's e-mails to Mr. Sears.¹¹⁶ According to Heather's emails, her mother would be willing to move from Washington, D.C., but wanted a position with considerable authority.¹¹⁷ Ironically, Heather said that her mother admired Boeing for their "honest values."¹¹⁸ Ms. Druyun

¹¹¹ Id.

¹¹² Renae Merle, *Long Fall for Pentagon Star: Druyun Doled Out Favors by the Millions*, WASHINGTON POST, Nov. 14, 2004, at 3, at <http://www.washingtonpost.com/ac2/wp-dyn/A428241-2004>.

¹¹³ Id.

¹¹⁴ Id.

¹¹⁵ Letter from Lawrence A. Mitchell, Brigadier General, USAF Retired, Former Senior Executive Service-6, to John Dowd, Attorney for Ms. Druyun, (Feb. 23, 2004), at <http://www.taxpayer.net/nationalsecurity/learnmore/Druyuncharacterwitness/index.htm>

¹¹⁶ Renae Merle, *Long Fall for Pentagon Star: Druyun Doled Out Favors by the Millions*, WASHINGTON POST, Nov. 14, 2004, at 3, at <http://www.washingtonpost.com/ac2/wp-dyn/A428241-2004>.

¹¹⁷ Id.

¹¹⁸ Charles Pope, *Guilty Plea in Boeing Hiring Scandal: Former CFO Likely to Help Prosecutors*, SEATTLE POST-INTELLIGENCER, Nov. 16, 2004, at 4, at http://seattlepi.nwsourc.com/business/199821_sears16.html

started her new job as Boeing's Vice-President and Deputy General Manager of Missile Defense Systems in January of 2003.¹¹⁹

The National Legal and Policy Center (NLPC), another opponent of the tanker lease, pointed out in a letter to the DoD IG that Ms. Druyun also sold her home to a Boeing official during the period she was negotiating the tanker deal.¹²⁰ The letter pointed out that Ms. Druyun entered a contract to sell her \$614,000 house in Dunn Loring, Virginia on October 21, 2002.¹²¹ The buyer was a Boeing Vice President and Assistant General Counsel, John Judy.¹²²

At the time that these allegations were raised by NLPC, including possible impropriety relating to Heather's employment with Boeing, in October of 2003, most dismissed them as not being unethical or illegal.¹²³ Eric Miller, a senior defense investigator at Project on Government Oversight (POGO), another chief critic of the tanker deal, was quoted as saying that these problems amounted to "more of an appearance issue than actual illegality."¹²⁴ Looking back now, in light of Ms. Druyun's plea agreements, it appears that the home sale may have been more than just an appearance problem. It may have been another part of the "favors" that Ms. Druyun was referring to when she said she showed preferential treatment to Boeing because of favors that they had done for her.

For the critics of the tanker lease deal, already powerfully suspicious about the circumstances surrounding the lease of the tankers, Ms. Druyun's \$250,000 per year job as a vice

¹¹⁹ Renae Merle, *Boeing Fires Top 2 Officials in Hiring Probe*, WASHINGTON POST, at <http://www.washingtonpost.com/ac2/wp-dyn/A11875-2003Nov24?>

¹²⁰ Letter from Kenneth F. Boehm, Chairman, National Legal and Policy Center, to Joseph E. Schmitz, Inspector General, U.S. Department of Defense (Oct. 6, 2003), at <http://www.nlpc.org/view.asp?action=viewArticle&aid=46>.

¹²¹ Id.

¹²² Id.

¹²³ Renae Merle, *New Questions Raised About Boeing Deal by Merle*, WASHINGTON POST, Oct. 8, 2003, at <http://www.washingtonpost.com/ac2/wp-dyn/A59171-2003Oct7>.

¹²⁴ Id.

president at Boeing was too much to swallow.¹²⁵ In September 2003, POGO released a series of e-mails exchanged between Ms. Druyun and Boeing officials regarding the negotiations of the tanker lease deal.¹²⁶

Feeling the pressure from the critics, Boeing brought in an outside law firm to conduct an investigation of the circumstances surrounding Ms. Druyun's hiring.¹²⁷ The investigation substantiated the claims that employment negotiations did occur with Ms. Druyun while she was still actively overseeing Boeing contracts at the Pentagon.¹²⁸ Boeing subsequently fired Ms. Druyun and Mr. Sears.¹²⁹

THE ACCIDENT BOARD

In the wake of the violent, destructive crash of Ms. Druyun's distinguished career the Air Force is left to pick up the pieces and try to figure out what went wrong. Through a press release on the subject, the Air Force has pointed out that it had already begun, in March 2002, taking positive steps to reform its acquisition structure and processes even before Ms. Druyun's abuses came to light. As part of this strategy for reducing the potential for abuse the Air Force has created the Acquisition Center for Excellence; eliminated Ms. Druyun's position; realigned the program executive office reporting structure and decentralized program execution responsibilities outside of Washington; implemented quarterly program executive office program reviews, monthly and weekly status reporting, and automated program reporting and tracking

¹²⁵ Renae Merle, *Long Fall for Pentagon Star: Druyun Doled Out Favors by the Millions*, WASHINGTON POST, Nov. 14, 2004, at 3, at <http://www.washingtonpost.com/ac2/wp-dyn/A428241-2004>.

¹²⁶ Press Release, *The Project On Government Oversight, More Documents Show Darleen Druyun's Inappropriate Role in Boeing*(May 8, 2002).

¹²⁷ Renae Merle, *Long Fall for Pentagon Star: Druyun Doled Out Favors by the Millions*, WASHINGTON POST, Nov. 14, 2004, at 3, at <http://www.washingtonpost.com/ac2/wp-dyn/A428241-2004>.

¹²⁸ Id.

¹²⁹ Id.

tools; and directed that the assistant secretary for acquisition be briefed on all major source selections before contract award is made.¹³⁰

In the aftermath of the scandal, the Air Force is taking several further steps in order to ascertain if there were any other abuses committed by Ms. Druyun, how her known violations were allowed to occur, and to figure out how to prevent future Druyun-like abuses of the procurement system.¹³¹

In this vein, DoD has asked the Defense Contract Management Agency to form a team, comprised of DoD, Army, and Navy personnel, to examine for irregularities all of the procurements that Ms. Druyun touched during her career with the Air Force. The team's examination is to extend beyond contracts in which Ms. Druyun was the source selection official to include any area in which her long arm of influence could have been applied—including contract extensions and award fees.¹³² Among other things, the Air Force wants to know if there were any decisions that Ms. Druyun made that others disagreed with and she suppressed their dissent or if there were any cases where she took evaluations from advisory groups and changed them.¹³³

Additionally, the Defense Science Board, a Pentagon advisory group is reviewing the Air Force's entire procurement system.¹³⁴ Specifically, DoD has convened a task force of internal and external experts, comprised of academics specializing in business management and ethics, to review how Ms. Druyun was able to accrue enough power to allow her to commit her misdeeds

¹³⁰ Press Release, United States Air Force, DOD Investigating Contracts, reviewing procedures, (Nov. 18, 2004), at 1, [at http://www.af.mil/stories/story.asp?storyID=123009211](http://www.af.mil/stories/story.asp?storyID=123009211)

¹³¹ Id at 2.

¹³² Id.

¹³³ Renae Merle, *Air Force Seeks Contract Reviews*, WASHINGTON POST, Nov. 9, 2004, at 1, [at http://www.washingtonpost.com/ac2/wp-dyn/A35534-2004Nov8](http://www.washingtonpost.com/ac2/wp-dyn/A35534-2004Nov8).

¹³⁴ Id.

unnoticed. The review board, under the leadership of the Defense Science Board, will then provide recommendations to DoD on what types of checks and balances could be put in place to auger against this type of power accumulation in the future as well as any other best practices that could be adopted from other major acquisition organizations.¹³⁵

PROTESTS FILED

Another interesting development in the aftermath of the scandal is that shortly after Ms. Druyun made her admissions to the court, several of Boeing's competitors for the contract to modernize the C-130 filed protests with the Air Force. The Air Force, apparently fearing that it would not appear independent in its review of the protests, declined to issue a decision on the protests and encouraged the parties to file their protests with the GAO instead. None of the protestors had filed bid protests at the time of the original contract award, but apparently decided to protest after learning of Ms. Druyun's admissions.

At the GAO you have to file a protest within 10 days of when you knew or should have known about the basis of your protest. Normally that means you must file the protest within 10 days of losing the competition—basically within 10 days of the contract award¹³⁶. What makes these protests interesting is that the award was made in this contract over three years ago making them rather different than the norm. The protesters will probably argue that the timeline in their case should be within 10 days of Ms. Druyun's admissions since that is when they knew or should have known about the basis for their protests. It will be interesting to see how GAO decides on this issue because, while this is not the way the process is designed to work, there is a

¹³⁵ Press Release, United States Air Force, DOD Investigating Contracts, reviewing procedures, (Nov. 18, 2004), at 1, at <http://www.af.mil/stories/story.asp?storyID=123009211>

¹³⁶ Except in cases where you are challenging the solicitation. In those cases you have to file the protest before the contract is awarded.

good argument to be made since no one knew that there was a problem with the contract award until Ms. Druyun admitted to being biased. The Government will likely have a difficult time making a counter argument given the circumstances.

Another interesting aspect to the protests is that one of the protestors, Lockheed Martin, has filed a second protest challenging all of the contracts that that company competed for and Ms. Druyun had a hand in deciding. This may have been the first omnibus type of protest of this nature filed with GAO and it would have been interesting to observe the outcome. However, Lockheed Martin and the Air Force spared GAO considering the omnibus protest as originally filed with the agency by narrowing their dispute down to a single program shortly after the protest was filed with GAO.

THE LAW

Ms. Druyun was convicted of a violation of 18 U.S.C. 208(a), essentially for creating a criminal conflict of interest by negotiating employment with Boeing while not recusing herself in a timely fashion from Air Force procurements involving that company.¹³⁷ However, she could have also faced civil penalties, and perhaps been convicted criminally, under the Procurement Integrity Act (PIA).¹³⁸

¹³⁷ 18 U.S.C. 208 provides: Acts affecting a personal financial interest
(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, a Federal Reserve bank director, officer, or employee of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective, has a financial interest—
Shall be subject to the penalties set forth in section 216 of this title.

¹³⁸ 41 U.S.C. 423.

The PIA and 18 U.S.C. 208 overlap to the extent that both address improper employment negotiations. Additionally, disclosure and recusal from acting in an official capacity on procurements involving potential future employers seems to be envisioned by each statute as appropriate measures for dealing with these types of potential conflicts of interest. However, these protective measures are addressed much more directly in the PIA¹³⁹ than 18 U.S.C. 208, which is rather vague in comparison.

If the prosecutors elected to use the PIA instead of 18 U.S.C. 208, Ms. Druyun could have faced civil penalties under Section (c)(3) of the PIA for failing to comply with its disclosure and recusal requirements relating to her employment discussions with Boeing. She could possibly have also been found liable under Section (d)(1) for accepting compensation from a contractor as an employee within a period of one year after she made decisions affecting Boeing's contracts—depending on how the court would have treated the status of the tanker lease deal and the decisions Ms. Druyun made regarding that procurement.¹⁴⁰

¹³⁹ 41 U.S.C. 423(c)

¹⁴⁰ 41 U.S.C. 423 (d), Prohibition on former official's acceptance of compensation from contractor, provides:

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

Based on Ms. Druyun's subsequent admissions, assuming those admissions were not offered as part of a plea bargain, she could also have been convicted criminally¹⁴¹ of violating Section (a) of the PIA for disclosing Airbus' prohibited procurement information to Boeing.¹⁴² Arguments could also be made, based on her admissions, that Ms. Druyun violated federal bribery and gratuity laws¹⁴³ for accepting favors from Boeing in exchange for favorable treatment of their contracts.

The point of this cursory review of the related law is to highlight that Ms. Druyun's misdeeds were not exacerbated by a lack of legislation dealing with this type of criminal conduct. While it has been suggested that there may be a gap in the laws and regulations dealing with post-government employment¹⁴⁴, the truth of the matter is that Ms. Druyun's prosecution was not hampered by a hole in the law. In fact, the prosecutors had the luxury of choosing under which statute they would rather proceed. They probably elected 18 U.S.C. 208 over the PIA because they had a better chance for confinement under that statute since Ms. Druyun would have likely only faced civil penalties under the PIA given the evidence available at the time that charges were filed.

However, an argument could be made that the maximum penalties of some of these laws should be increased. Perhaps 18 U.S.C. 208 should authorize a longer period of confinement or the PIA should offer criminal penalties for all of its subsections rather than just two. Some believe that Ms. Druyun's crimes should be subject to a greater window of confinement than five years. However, while that is an argument with some merit, unfortunately it is less persuasive in

¹⁴¹ The PIA, at 41 U.S.C. 423(e), authorizes criminal penalties for violations of subsections (a) and (b) and civil penalties for violations of subsections (a), (b), (c), or (d).

¹⁴² 41 U.S.C. 423(a)

¹⁴³ 18 U.S.C. 201

¹⁴⁴ Lieutenant Colonel Richard B. O'Keeffe, Jr., *Where There's Smoke... Who Should Bear the Burden When a Competing Contractor Hires Former Government Employees?*, 164 Mil. L. Rev. 1,16 (2000).

light of the nine month sentence imposed on Ms. Druyun—far less than the current maximum sentence of five years confinement allowed under 18 U.S.C. 208.¹⁴⁵

In addition to the criminal statutes mentioned above there are also several relevant regulations that provide guidance on post-employment restrictions for Government employees. 5 CFR § 2635.604, which covers disqualification while seeking employment, provides that an “employee shall not participate personally and substantially in a particular matter that, to his knowledge, has a direct and predictable effect on the financial interests of a prospective employer with whom he is seeking employment.”¹⁴⁶

Further guidance is provided by 5 CFR § 2635.606, which governs disqualification based on an arrangement concerning prospective employment or otherwise after negotiations. That regulation states that an “employee shall be disqualified from participating personally and substantially in a particular matter that has a direct and predictable effect on the financial interests of the person by whom he is employed or with whom he has an arrangement concerning future employment, unless authorized to participate in the matter by a written waiver.”¹⁴⁷

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

A military officer has accepted a job with a defense contractor to begin in six months, after his retirement from military service. During the period that he remains with the Government, the officer may not participate in the administration of a contract with that particular defense contractor unless he has received a written waiver under the authority of 18 U.S.C. 208(b)(1).¹⁴⁸

¹⁴⁵ 18 U.S.C. 216(a)(2)

¹⁴⁶ 5 CFR § 2635.604(a)

¹⁴⁷ 5 CFR § 2635.606(a)

¹⁴⁸ 5 CFR § 2635.606(a) Example 1

If Ms. Druyun was confused about her own situation after reading 5 CFR 2635.606(a), Example 1 should have removed all doubt in her mind about her obligations regarding Boeing.

WHERE DOES RESPONSIBILITY LIE?

It is important to analyze why Ms. Druyun committed these misdeeds and how she was able to get away with them so that this type of corruption can be prevented from happening in the future. Clearly Ms. Druyun is an individual who worked extremely hard for many, many years and achieved great success in bettering the United States Air Force through her unique abilities. How and why did she wind up at this dishonorable juncture? There seem to be several differing schools of thought. Were these the acts of one rogue individual who had been allowed to accumulate too much power? Or is Ms. Druyun's case symptomatic of a larger systematic problem, as critics of the procurement reforms of the 1990s would have us believe?

SAY IT AIN'T SO

There are those of her defenders, it seems, that still seemingly disbelieve that she even committed the crimes she admitted to in court. She did after all plead guilty, at least partly, to spare prosecution of her daughter, who was an unindicted co-conspirator in the case.¹⁴⁹ Several distinguished individuals submitted letters of support to the court on behalf of Ms. Druyun. In addition to enumerating her many truly impressive achievements many of the authors also testified that they had never witnessed anything but the highest standards of integrity from Ms. Druyun.¹⁵⁰

¹⁴⁹ Renae Merle, *Air Force Seeks Contract Reviews*, WASHINGTON POST, Nov. 9, 2004, at 5, at <http://www.washingtonpost.com/ac2/wp-dyn/A35534-2004Nov8>.

¹⁵⁰ The character letters to can be read at <http://www.taxpayer.net/nationalsecurity/learnmore/Druyuncharacterwitness/index.htm>.

However, defending Ms. Druyun is not for the faint of heart or without its risks. Some observers seem to believe that General Gregory S. Martin, Air Force Materiel Command, seemed to doom his opportunity to become the first Air Force General Officer to be the Commander of the Pacific Forces (PACOM) by taking on this very feat.¹⁵¹ When he testified during his confirmation hearing for that post on October 6 before the Senate Armed Services Committee, General Martin expressed doubt as to whether Ms. Druyun had actually committed the crimes of which she was accused.¹⁵² General Martin's defense of Ms. Druyun so angered Senator McCain that the Senator questioned the General's ability to command and vowed to block his nomination for the PACOM job.¹⁵³ General Martin withdrew his name from the process that same day, presumably due to the stance that Senator McCain promised to take against his nomination.¹⁵⁴

Ms. Druyun's defenders, along with those who would rather blame a system or institution than the individual wrongdoer, will likely also argue that Ms. Druyun was influenced by pressure from above in her unconventional treatment of the tanker contract. Some may take the position that a series of e-mails recently released to the Senate, and reported extensively in the press, would seem to indicate a great deal of pressure coming from Secretary of the Air Force James Roche's Office to make the Boeing deal happen.¹⁵⁵ Several of Secretary Roche's e-mails could be construed to imply that he may have had a personal animus for European Aeronautic Defense and Space Company (EADS) and its CEO Ralph Crosby, whom Secretary Roche had worked with at Northrop Grumman.¹⁵⁶ Airbus is a division of EADS.¹⁵⁷

¹⁵¹ George Cahlink, *Procurement Scandal Cuts Short Air Force General's Quest for Command*, GOVEXEC, Nov. 5, 2004, at 1, at <http://www.govexec.com/dailyfed/1104/1105004gl.htm>.

¹⁵² *Id.* at page 2.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ Press Release, Senator John McCain, McCain Statement on U.S. Air Force Accountability Regarding the Boeing 767 Tanker Lease Deal, (Nov. 19, 2004), at <http://mccain.senate.gov/index.cfm?fuseaction=Newscenter.ViewPressRelease&Content>.

¹⁵⁶ *Id.* at page 3.

The “blame the system/institution” set may point out that an e-mail exchange between Secretary Roche and Ms. Druyun, not long before her retirement, is revealing in this regard. Ms. Druyun emailed Secretary Roche on September 5, 2002, saying “I read with disgust the article on Airbus tankers from the new EADS CEO of North America. What BS...should not have been surprised at the slime...his day of reckoning will come hopefully.”¹⁵⁸ Secretary Roche apparently responded by saying “Oy. I agree. I had hoped you would have stayed and tortured him slowly over the next few years until EADS got rid of him!”¹⁵⁹

In the same vein, Secretary Roche reportedly e-mailed William Swanson at Raytheon the next day saying, “Right. Privately between us: Go Boeing! The fools in Paris and Berlin never did their homework. And, Ralphie is the CEO and Chairman of a marketing firm, for that’s all there is to EADS, North America. The [Air Force] has problems with EADS on a number of levels.”¹⁶⁰

While these e-mails certainly do nothing to show that the Secretary of the Air Force knew or encouraged Ms. Druyun to raise the price on the contract as a “parting gift” to Boeing, some may argue that they do not seem to show an environment that favored a healthy competition between Boeing and Airbus for the contract. The tone of the e-mails could also encourage speculation that Ms. Druyun may have felt pressure from above not to recuse herself from the tanker negotiations after she began employment negotiations with Boeing due to the intense high-level interest in getting that particular deal done.

Did Ms. Druyun “take one for the team” when she plead to the court as this line of speculation implies? Did she agree to admit to things that the prosecutor wanted to hear in order

¹⁵⁷ R. Jeffrey Smith, *Air Force Pitch for Boeing Detailed: E-mails Show Pressure From Roche*, WASHINGTON POST, Nov. 20, 2004, at 1, at <http://www.washingtonpost.com/ac2/wp-dyn/A63815-2004Nov19>.

¹⁵⁸ Id at page 3.

¹⁵⁹ Id.

¹⁶⁰ Id.

to save her daughter from prosecution and perhaps the Air Force, for whom she had worked for so long, further embarrassment? When asked why she had initially told prosecutors a different story, her attorney, John M. Dowd, said, "There's a lot of fear. There's a lot of tension. There's a lot of pressure."¹⁶¹

Although unlikely—false confession experts aside, most people believe that criminal defendants do not tend to admit to things that they did not do—it is possible, after all, the things that she admitted to doing are hard to prove or disprove since they mostly involve Ms. Druyun's own judgment. That very fact may itself indicate that Ms. Druyun had too much power and discretion. In any event, for the sake of this paper we will assume that everything that Ms. Druyun admitted to in court was true and that she acted alone in committing the crimes.

ABSOLUTE POWER CORRUPTS ABSOLUTELY

Was Ms. Druyun's personal accumulation of power over the procurement process the reason for the corruption that occurred? Her immense power seems to have at least been a factor that allowed her to cover up her corrupt actions. Her great individual power over the processes is the reason that we are left to speculate at all about whether she really committed the crimes she admitted to in court. Because she had so much power, only she would know. Some would argue that it was a culture of power at the Pentagon, and Ms. Druyun's mastery of it, that led to her current troubles.

One Pentagon tale is a testament to the power she wielded in the building. The legend goes that while she was on vacation in the mid-90s her secretary called Ms. Druyun and warned her that two of her political and military supervisors, who feared she had accumulated too much

¹⁶¹ Peter Pae and Jonathon Peterson, *Confession Casts New Shadow Over Boeing Deal*, LOS ANGELES TIMES, Oct. 2, 2004, at <http://www.latimes.com>.

power, decided to eliminate her position.¹⁶² Ms. Druyun came back early from her vacation and went straight to the Office of the Secretary of Defense to confer with her political allies there.¹⁶³ Her enemies, one of them a three-star general, were vanquished. Both had left the service by the next year.¹⁶⁴ Ms. Druyun has been quoted as saying of her adversaries “They’re gone, but I’m still here.”¹⁶⁵

Although investigations are ongoing, Dr. Sambur and the Air Force, so far seem to subscribe to this theory of the problem. Dr. Sambur has said that when he first came into his job people attending his meetings would look to Ms. Druyun to see if she agreed with what he was saying, even though he was the one that was supposed to be in charge.¹⁶⁶ He referred to her power within the office as making him feel like he was just the summer help.¹⁶⁷ He also commented that he remembered being surprised to learn that she was personally deciding the outcome of contract competitions rather than allowing her subordinates to do it.¹⁶⁸ Additionally, Dr. Sambur has accused Ms. Druyun of hoarding information and keeping her decision-making processes secret.¹⁶⁹ An anonymous former defense official was quoted by the Washington Post as stating “ she would say, ‘Don’t send it up with a recommendation, just send it up with information.’”¹⁷⁰

¹⁶² George Cahlink, *Fallen Star: The Cautionary Tale of a Celebrated Federal Executive's Corporate Flameout*, GOVEXEC, Feb. 15, 2004, at 4, [at http://www.govexec.com/story_page.cfm?articleid=27660](http://www.govexec.com/story_page.cfm?articleid=27660).

¹⁶³ Id at page 1.

¹⁶⁴ Id.

¹⁶⁵ Id.

¹⁶⁶ Renae Merle, *Long Fall for Pentagon Star: Druyun Doled Out Favors by the Millions*, WASHINGTON POST, Nov. 14, 2004, at 3, [at http://www.washingtonpost.com/ac2/wp-dyn/A428241-2004](http://www.washingtonpost.com/ac2/wp-dyn/A428241-2004).

¹⁶⁷ Id at page 4.

¹⁶⁸ Id at page 4.

¹⁶⁹ Id.

¹⁷⁰ Id at page 3.

Because they believe Ms. Druyun's considerable power led to the current problems, the Air Force has eliminated her position. No one was hired to fill her vacancy when she retired.¹⁷¹ The vacancy was apparently unfilled in hopes that this may help to resolve the problem by preventing another civilian career executive from filling the position and taking over where Ms. Druyun left off. The Air Force, through spokesman Douglas Karas, has said, "Ms. Druyun is solely responsible for her misconduct and the fact that she was caught, convicted, and sentenced reflects the checks and balances in the system work."¹⁷²

But not everyone subscribes to this theory. Senator McCain for one has said, "I simply cannot believe that one person, acting alone, can rip off taxpayers out of possibly billions of dollars. This appears to be a case of either a systematic failure in procurement oversight, willful blindness, or rank corruption. Either way full accountability among Air Force leadership is in order."¹⁷³ He has also raised the question "[w]hat kind of a system is it that one individual has the ability to determine multibillion, \$20, \$30 billion contracts without anyone checking up on it?"¹⁷⁴

Others agree with Senator McCain that a systematic failure is partly to blame. Ms. Druyun was coming into the apex of her power in the mid-90s at a time when procurement reforms were pushing for new rules that allowed the Government more flexibility and speed in the government contracting process.¹⁷⁵ These rules emphasized efficiency and flexibility instead of, and at the expense of, the concepts of integrity and transparency that had always been such

¹⁷¹ Press Release, Senator John McCain, McCain Statement on U.S. Air Force Accountability Regarding the Boeing 767 Tanker Lease Deal, (Nov. 19, 2004), at 2, [at](http://mccain.senate.gov/index.cfm?fuseaction=Newscenter.ViewPressRelease&Content) <http://mccain.senate.gov/index.cfm?fuseaction=Newscenter.ViewPressRelease&Content>.

¹⁷² R. Jeffrey Smith, *Air Force Pitch for Boeing Detailed: E-mails Show Pressure From Roche*, WASHINGTON POST, Nov. 20, 2004, at 1, [at](http://www.washingtonpost.com/ac2/wp-dyn/A63815-2004Nov19) <http://www.washingtonpost.com/ac2/wp-dyn/A63815-2004Nov19>.

¹⁷³ *Id.* at page 2.

¹⁷⁴ Scott Pelley, *Cashing In For Profit?* CBSNEWS.com, Jan. 5, 2005, at 3, [at](http://www.cbsnews.com/stories/2005/01/04/60II/printable664652.shtml) <http://www.cbsnews.com/stories/2005/01/04/60II/printable664652.shtml>.

¹⁷⁵ George Cahlink, *Fallen Star: The Cautionary Tale of a Celebrated Federal Executive's Corporate Flameout*, GOVEXEC, Feb. 15, 2004, at 4, [at](http://www.govexec.com/story_page.cfm?articleid=27660) http://www.govexec.com/story_page.cfm?articleid=27660.

stalwart principles in government contracting up to that point in time. When you mixed these new, more flexible rules, with Ms. Druyun's tough, aggressive style—she is said to have once told Lockheed Martin executives “If I detect bullshit, you go to the bottom of the chart”¹⁷⁶—you may have created the perfect storm.

Ms. Druyun has displayed a penchant for pushing the envelope—and sometimes that seems to have resulted in her shortcutting the rulebook somewhat. Both times that she was investigated it was due to the financial bailout of a large defense contractor that she could have accomplished legitimately. There is a widely used exception to the Competition in Contracting Act that allows the Government to basically prop up defense contractors so that they will remain in business for times that the country needs them¹⁷⁷. Ms Druyun did not take advantage of this exception to the competition rules in either instance. Instead, in the case of the tanker lease deal, she tried to say there was competition by pointing to the proposal submitted by Airbus. The procurement reforms of the 90s almost certainly helped Ms. Druyun become even more creative and gave certain legitimacy to her taste for pushing the envelope and perhaps taking shortcuts around the rules. In many instances, like the lightning bolt initiatives discussed earlier, this combination of flexible rules and aggression served Ms. Druyun, and the Air Force, very well and resulted in numerous successes. However, in the end it may have also hastened her fall from grace.

Some procurement officials are afraid that this scandal, along with other recent lesser scandals, will prompt an overly harsh correction of the procurement reforms of the 90s.¹⁷⁸ Are those steps really necessary to prevent this insidious behavior? While the contracting reforms of

¹⁷⁶ Id at page 5.9

¹⁷⁷ 41 U.S.C. § 253(c)(3)(A)

¹⁷⁸ Stephen Losey, *Procurement Scandals Could Lead to Unnecessary Reform, Some Fear*, FEDERAL TIMES, Oct. 26, 2004, at 1, at <http://federaltimes.com/index.php?S=42788>.

the 90s may have given Ms. Druyun the opportunity, or the vehicle, to commit her crimes, and perhaps made them easier to conceal because of the lack of transparency involved,¹⁷⁹ you still have to add the corrupt individual into the equation to complete the crimes. The new rules may have encouraged cheating in the manner of cutting corners and breaking certain rules—allowing the ends to justify the means—that does not equate with the rules encouraging her to commit crimes to benefit her and her family.

In other words, the procurement reforms did not corrupt Darlene Druyun. In the sense that there needs to be motive and opportunity to have a crime, the procurement reforms in many ways may have given her the opportunity but the motive, presumably, was her own greed and lust for power. That is not to say that her motivation was all based on greed for money. It was almost certainly also based on the desire to take care of her family and other reasons less offensive than pure greed—essentially the same reasons anyone commits financial crimes—but they were personal and they were not created by a system.

Her desire for continued power was no doubt as important to her, if not more so, as any financial considerations. In response to the question from *60 Minutes Wednesday* about whether Ms. Druyun liked being in charge of acquisitions at times between political appointees, Dr. Sambur responded, “[s]he liked the power, absolutely.”¹⁸⁰ She only decided to retire after Dr. Sambur had begun incrementally diminishing her power within the Air Force. Even before that though, she must have realized she could not maintain the base of power she had accumulated in

¹⁷⁹ Steven L. Schooner and Christopher R. Yukins, Government Contracts: A Practice Focus, *Adding Up Efficiency's Cost: Druyun Scandal Shows Anew the Value of Openness and Competition*, LEGAL TIMES, Vol XXVII, No. 43, Nov. 1, 2004, at www.legaltimes.com.

¹⁸⁰ Scott Pelley, *Cashing In For Profit?* CBSNEWS.com, Jan. 5, 2005, at 3, at <http://www.cbsnews.com/stories/2005/01/04/60II/printable664652.shtml>.

the Air Force forever—she had already been in federal service for 32 years at the time of her retirement.

As power hungry as she appears to have been from reviewing all the power grabs she managed to accomplish, she must have been desperate to find a new vessel for her power when she sensed it coming to an end with the Air Force. In Boeing she saw that opportunity to maintain the stature that she had worked so hard to attain. Her daughter's email to Boeing during Ms. Druyun's employment negotiations seems to indicate that was clearly the case. As noted earlier, Heather Druyun passed on to Boeing executives that her mother would be willing to move from Washington, but she wanted a position of significant responsibility with the company. This gives us excellent insight into Ms. Druyun's priorities.

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

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

One reason for this approach is that you can never eliminate all opportunities for people to commit crime. We have no greater chance to remove all opportunities for corruption in

government contracting through revising the system than we do of stopping all the illegal drugs from crossing over our nation's borders. That is why crime prevention has to be about deterrence through sentencing—whether you are talking about corruption in government contracting or the illegal distribution of drugs.

Closing the “revolving door” between government and business is another argument being made to take away the opportunities to commit these type of crimes. POGO recently released a report calling for stricter rules to keep government employees from going to work for contractors that could be affected by the government employee's official decisions.¹⁸¹ Defenders of the current system say that it normally works—Druyun is an anomaly¹⁸²—and that both the Government and private industry benefit greatly from the revolving door between the two entities. This argument about closing the revolving door just seems like another way of focusing on reducing opportunities as a method of crime prevention.

If the aim is to prevent this type of crime from happening again, the focus should be on rooting the corrupt individuals from the system and imposing penalties on them that are significant enough to deter others. Ms. Druyun's sentence of nine months in prison—and that term is used loosely¹⁸³—is not very imposing given the virtually unfathomable magnitude of damage she has wrought on to the Air Force and the government procurement system as a whole. Her sentence is particularly appalling given that many airmen have received far greater sentences from courts-martial for offenses not even remotely as damaging to the Air Force as those committed by Ms. Druyun.¹⁸⁴ She should be thankful that she is not a uniformed member of the

¹⁸¹ Thom J. Rose, *Report: U.S. Should Close 'Revolving Door,'* UNITED PRESS INTERNATIONAL, Jun. 29, 2004, at <http://www.upi.com/view.cfm?StoryID=20040629-063847-8841r>.

¹⁸² *Id.*

¹⁸³ Ms. Druyun is currently serving her time at a minimum security federal prison for women in Marianna, Florida.

¹⁸⁴ I don't mean this to be an indictment of the military justice system in any way, but rather one of its civilian counterpart. I think this is an instance, among many others, where the military justice system would have proven to be better than the civilian system—at least in terms of the sentence in this case.

Air Force as a court-martial panel would surely not have been as forgiving of the damage she has done to the Air Force's reputation for integrity, among other things.

PERSONAL RESPONSIBILITY

There seems to be a certain inclination in our country to want to blame an institution or a system rather than hold individuals accountable for their actions. This was obvious recently in the 9/11 Commission hearings. During those hearings there seemed to be an almost desperate desire to blame someone in the U.S. Government for the horrific terrorist attacks against our country on September 11, 2001. No one seems to want to accept that the terrorists alone are responsible for their treacherous actions on that day.

I have seen this same phenomenon play out again and again in my job as a prosecutor for the Air Force. Invariably, at some point during each court-martial the defense counsel will float out the "blame the Air Force" defense. It usually goes something like this: yes my client did X but he's just a poor dumb kid and the Air Force has all these resources and they should have really seen this coming and should have been able to prevent it—so you see it's really the Air Force that is to blame for X—not my poor, innocent client. This defense does not usually work, but the fact that it is often considered and given weight by certain members of the court is a testament to our penchant for blaming institutions or systems over individuals. Perhaps it is our love of the underdog, our belief in the innate goodness of people, our suspicion of institutions, or maybe it is just plain easier to blame a faceless system or institution than it is to blame a living, breathing human being.

In any event, we are seeing that same phenomenon play out somewhat in the Druyun scandal. There seems to be a great reluctance, for whatever reason, to simply accept that Ms. Druyun alone is responsible for her actions. Certain elements prefer to blame the system, or

certain unpopular reforms to that system, while others want to point the finger at the Air Force rather than lay the responsibility where it belongs—at the feet of Ms. Druyun.

This is not to say there are not other worthy reasons to focus on the role the procurement reforms played in this situation. For example, in addition to trying to figure out how to prevent this type of corruption from happening again, the Government also needs to think of ways to restore trust in the procurement system. This is the area that transparency in the system becomes more important. While it may play some role in prevention by making it more difficult for the culprit to get away with it,¹⁸⁵ transparency is of more importance to restore faith in the system for contractors and the taxpayers by allowing them to see exactly what transpires in a given procurement. At this point, given the recent controversies in the government contracting arena, it will be difficult to restore trust in the system even with greater transparency, but without it it will be impossible.

CONCLUSION

The Darleen Druyun scandal has set the government procurement community on its ear and many are scrambling to come up with answers about how this could have happened and how it can be prevented in the future. This scandal is still unfolding and it may, by the time the dust settles, set government contracting back 100 years. There are surely some that would be happy with that outcome. However, many of those that are advocating harsh reforms to the system may be barking up the wrong tree.

While there is little doubt that some view the Druyun scandal as merely a convenient excuse to push a personal or political agenda, others truly believe that the system is responsible

¹⁸⁵ Steven L. Schooner and Christopher R. Yukins, Government Contracts: A Practice Focus, *Adding Up Efficiency's Cost Druyun Scandal Shows Anew the Value of Openness and Competition*, LEGAL TIMES, Vol XXVII, No. 43, Nov. 1, 2004, at 2, at www.legaltimes.com.

for Ms. Druyun's crime. However, while many things may have contributed to Ms. Druyun's predicament, ultimately only one entity is responsible—Ms. Druyun.

A person of great integrity could be placed in Ms. Druyun's environment—including the flexible reformed rules, the so-called culture of power at the Pentagon, pressure from superiors, and the revolving door—and that person could have done the job without resorting to criminal conduct.

Conversely, put a corruptible person, as Ms. Druyun turned out to be,¹⁸⁶ into a rigid and transparent system and that person will still likely find a way to cheat because of their basic lack of integrity—unless there is something that deters them from doing so.

So in the case of crime prevention, integrity of the individual seems to be more important than integrity in the system. Ironically, "Integrity First" is the key core value of the Air Force and Ms. Druyun's behavior has resulted in a public humiliation to the thousands of proud airmen who live their lives according to that principle.

However, when it comes to restoring the public faith in the procurement system, the integrity and transparency of that system move to the fore because people are more likely to trust what they can see and verify themselves than they are to trust a public official. Sadly, this perception that public officials are not always trustworthy can only have grown stronger because of Darleen Druyun.

¹⁸⁶ It seems wrong to minimize Druyun's tremendous contributions to the Air Force over three decades of service, but her missteps, followed by her shocking admissions, likely will define her legacy.

