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Lies, Half-Truths, and Misrepresentations: How the Military Gets Its Money

Danielle Brian-Bland and Dina Rasor*

When Congress considers Defense Authorization and Appropriation bills, we assume that all those involved in the process share the common goal of developing the most efficient military system possible for the United States. We also assume that Congress is provided with all the necessary information about the weapons systems under consideration, and that all the information provided is true. In fact, Pentagon officials, including generals, are not telling Congress "the truth, the whole truth, and nothing but the truth." Examining some of the conditions that discourage them from doing so and documenting cases in which the whole truth was not revealed can help us understand why the truth so often remains untold, and can guide us in proposing institutional changes designed to lessen the military's propensity to mislead.

Military officials are making false statements and giving false impressions to Congress, and getting away with it. There are two possible explanations for this state of affairs. One is that Pentagon officials intentionally mislead Congress; the other is that even as they testify before Congress on a particular project, these officials are unaware of information with which they, as managers, should be familiar. Regardless of the officials' intentions, however, in either instance Congress is forced to make procurement decisions without knowing all the relevant facts. The heavy costs of this lack of information may range from the loss of millions of taxpayer dollars to the loss of the lives of American military personnel.

I. Background: The Military Mindset

Before Congress authorizes the appropriation of money for weapons systems, Pentagon officials testify in defense of their programs

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before congressional committees. Most of the examples cited below are drawn from congressional hearings investigating charges of misrepresentation leveled after the making of the appropriations decisions. These examples powerfully illustrate the problems which result when Congress depends on the Pentagon for information in making those decisions.

Three factors inherent in the military appropriations system, while not excusing military dishonesty or obfuscation, explain why we should not trust the Pentagon brass to regard the interests of the taxpayer and the soldier as their highest priority. The first factor is that military officials are not trained to think in business terms. James Fallows, a writer noted for his work on defense issues, explains that economic self-interest is a civilian, not a military, ideal. "A salesman advances his firm's interests by advancing his own," Fallows writes. "That is almost never true in the military."1 Fallows quotes a Naval Academy graduate and former marine who describes the military as "'socialist in that the group is more important than the individual . . . [and] a meritocracy in that the ways you relate to your unit are not based on monetary terms, but on values of performance that only matter within the unit and are meaningless outside.'"2 The highest goal in the military is thus to protect and defend the honor of the military establishment, because it is vital during wartime to fulfill this goal and thereby maintain esprit de corps.

The problem, however, is that this goal takes precedence over values that must be considered during peacetime, such as cost-efficiency and product quality. The military mentality does not promote business acumen, yet we require our soldiers to become business managers between wars. As a result, we expect our military leaders to perform a dual and conflicting role. Edward Luttwak, a well-known military analyst, has criticized the results of this dual role. "The military has become civilianized in the sense of emulating, at higher cost, things the civilians can do better — but not concentrating on the things civilians cannot do, which are to train combat leaders, to study tactics, and to prepare strategies."3 While this order of military priorities does not, in itself, lead to cover-ups and mistruths in military-civilian dealings, it begins to set the stage for them.

2. Id.
3. Id. at 117 (quoting from an interview with Edward Luttwak).
The second factor promoting military deception is that not only do weapons system program managers have few incentives to try to save money, but they have important incentives not to save money. Because federal agencies, including the Department of Defense (DoD), are unconstrained by profit and loss considerations, they lack incentives to cut costs and increase efficiency. The power of managers in the federal government is based not so much on their salaries, which are standardized according to job tenure, but rather on the size of their program budgets and the number of people they supervise. A program manager's peers in the bureaucracy will judge the manager on whether the program's budget is increasing every year. If the budget increases, peers expect the manager to be promoted; if it does not, they see the manager's power as waning.

Since the program managers' superiors are also judged by the amount of money under their umbrellas of responsibility, they will not look kindly upon any manager who does not spend all of the money appropriated or who does not meet the program's projected needs for personnel. The cardinal sin for a bureaucrat is to try to return any unspent money to the public coffer at the end of the fiscal year. The program manager therefore has a strong incentive to spend the annual allocation and to keep as many people on the payroll as possible in order to justify requesting a higher budget for the following year.\footnote{The above analysis of program managers' incentives to spend is drawn from a more detailed discussion of the subject in D. Rasor, \textit{The Pentagon Underground} 137-39 (1985).} Inducements to cut costs are minimal, since a "[flat [budget] means high, risk-free sales for the giant corporations, an easy, comfortable, prosperous life for all the feeders at the procurement trough, and immense economic and political power for dispensers of this largesse."\footnote{A. Ernest Fitzgerald, \textit{The High Priests of Waste} 327 (1973).} When a federal agency has as much money, responsibility, and political clout as does the DoD, the temptation to spend more money is even stronger than usual. The result is that some Pentagon officials mislead Congress to ensure the steady flow of weapon systems appropriations.

A third factor encouraging Pentagon personnel to hide from Congress the truth about procurement is the revolving door between Pentagon officials and private defense contractors. The revolving door refers to the frequency with which Pentagon officials in charge of procurement decisions leave the government for lucrative jobs with the companies whose contracts they earlier awarded and monitored. Pentagon officials' expectations of such job opportunities
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may create an incentive to be more lenient with the contractor who may provide their post-government livelihood.

While the revolving door creates potential conflicts of interest in all areas of government, these conflicts are particularly evident in the military as a result of the “up or out” method of reviewing all personnel and the pyramidal structure of the Pentagon. As in tenure decisions at universities or partnership decisions in many law firms, when a Pentagon worker is reviewed, there are only two options: the worker is either promoted or fired. Dr. Thomas Amlie, a retired Navy engineer now working in the Financial Management Division of the Air Force, explained the resulting phenomenon in a 1983 memorandum:

The major problem with having a military officer in charge of procurement is his vulnerability. It turns out that not everyone can make general or admiral and our “up or out” policy forces people to retire. The average age of an officer at retirement is 43 years. Counting allowances, a colonel has more take-home pay than a U.S. Senator. At the age of 43, he probably has kids in, or ready for, college and a big mortgage and can’t afford a large cut in his income. Besides, he is at the peak of his intellectual powers, is emotionally involved, and doesn’t want to quit. We throw him out anyway, no matter how good a job he is doing. Many of these officers, particularly the good ones who have spent most of their careers flying aircraft, operating ships or leading troops, do not have the skills which are readily marketable in the civilian sector. This nice man then comes around and offers him a job at 50K-75K per year. If [the officer] stands up and makes a fuss about high cost and poor quality, no nice man will come to see him when he retires . . . .

Defense contractors do not have to request explicitly this special treatment, because experience tells Pentagon managers that a job offer is far more likely to be given to program managers who have befriended contractors than to troublemakers who have not. One study has reported that the number of people on record who have walked through the revolving door has increased by 491 percent between 1975 and 1985. Moreover, it is estimated that this figure represents only about one-third of the total number of people who follow this path.

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6. Internal memorandum from Thomas S. Amlie, at 3 (Sept. 14, 1983) (discussing the possibility of procurement cost reduction) [on file with the authors and with the Yale Law & Policy Review].
8. Id. The failure of many departing military employees to fill out the required forms concerning future employment accounts for this underestimation.
The factors described above are so strong that they gradually influence many program managers to ignore the evident waste and fraud. The training to protect military honor at all costs, the prestige associated in any bureaucracy with spending rather than saving, and the temptation to serve a potential future employer at the expense of the current one combine to lead some military officers to provide Congress with inaccurate and incomplete information about weapons systems, covering up the myriad mistakes and cost-overruns in the procurement process. On the basis of this flawed information, Congress determines which and how many weapons the United States will stock in its arsenal. The result is that the United States is buying too many overpriced and ineffective weapons, partly because Congress does not know any better than to approve the purchases.

II. How It's Done: Manifestations of Military Mendacity

The military uses many different methods to avoid telling Congress the truth. The most obvious is the bold-faced lie. Such blatant contempt for Congress is, however, rare. Bureaucratic obfuscation—the artful use of words to create an inaccurate impression or the omission of important explanations and details—is a technique both more common and more difficult to detect. Whether intentionally or not, false statements are made and false impressions are created, with the result that Members of Congress remain in the dark. Since Members of Congress generally have only a lay understanding of military jargon and technology (unless they have informed themselves from other sources), they must rely on this misleading testimony. By following several years of testimony in which military officials have presented Congress with information about weapons systems, the authors have come to understand how these techniques can be, and have been, used. Clearly, Congress is not being thoroughly informed.

9. There are also strong disincentives to blowing the whistle on fraud in the procurement system. Military personnel who decide to serve the public interest by exposing waste in the Pentagon often find themselves the subject of various forms of harassment, ranging from having their offices moved repeatedly to being transferred to jobs without substantive control to being fired.

10. While there are some executive agencies that independently monitor whether contract requirements are being met—the Defense Contract Audit Agency (DCAA), the Defense Contract Administrative Service (DCAS), and Service Plant Representative Offices—these bodies often lack Congress' objectivity because of their close working relationship with defense contractors.

11. Because Members of Congress tend to be more persistent and more ruthless when interrogating lower-level military officers or civilians, generals and admirals are
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A. The Bold-Faced Lie

The following are examples of the bold-faced lie. One need not have a military background to see the falsity of the generals’ statements in these instances.

One instance of such outright deception occurred during a congressional investigation of the Sergeant York, or Division Air Defense Gun (DIVAD), fiasco. Early in 1984, the Department of Defense sent a cure notice to Ford Aerospace and Communications Corporation when the company breached contract provisions for both the schedule and quality control of the Sergeant York. Susan Meyer, Contracting Officer for the DIVAD program, wrote to Henry Hockheimer, President of Ford Aerospace, “Please let me know by February 23, 1984 what extraordinary actions you are taking or will take to remedy this totally unacceptable contract performance.” In a congressional hearing later that year, when discussing a Washington Post article referring to this letter, Major General James P. Maloney testified: “Sir, let me say first of all, the words ‘totally unacceptable’ which appear in the banner [head]line in quotes are not found anywhere in that letter . . . .” Major General Maloney made this declaration despite the prominent play given the words in question in several newspapers. If military officials had not insisted on defending DIVAD even as test results were proving its deficiencies, perhaps American taxpayers would not have lost the $1.8 billion that were sunk into the weapon program before it was finally cancelled.

Another example of the bold-faced lie appeared in September of 1985, during testimony by Brigadier General Ronald Yates before the House Subcommittee on Oversight and Investigation of the Committee on Energy and Commerce. The occasion was an in-

often sent to testify to half-truths or worse before Congress. Thus, many of the examples that follow feature military officials of the highest ranks misleading congressional committees.


13. Letter from Susan Meyer to Henry J. Hockheimer (Feb. 6, 1984) (emphasis added) [on file with the authors and with the Yale Law & Policy Review].


16. Many of the examples in this piece come from hearings held by Representative John D. Dingell (D-Michigan), who is the Chair of the Subcommittee on Oversight and Investigation of the Committee on Energy and Commerce. Rep. Dingell is one of the
vestigation into the extreme overpricing of support equipment for the F-16 fighter aircraft. The exchange below involves the F-16 pulley puller, priced at $8,832.

Mr. Dingell: . . . . When the GAO [General Accounting Office, the investigative arm of Congress] interviewed you, General Yates, you said you did not agree with the Secretary of the Air Force's letter and you said that the pulley puller should have cost only a few dollars and that as soon as Air Force officials found out about the price, the Air Force asked and received a voluntary refund; is that correct?

General Yates: That is not correct. I have never discussed, to the best of my recollection, the pulley puller with the GAO. For sure, I never said I disagreed with the Secretary of the Air Force.

Mr. Dingell: The GAO also informed the subcommittee you said you did not agree with the refund and only requested it when you were ordered to do so; is that correct?

General Yates: Sir, I do not ever recall discussing this subject with the GAO.

Mr. Dingell: All right. The GAO also informed the subcommittee you said that the data submitted to the Headquarters U.S. Air Force was the same as presented to the GAO and did not support a refund request; is that correct?

General Yates: No, sir. It is not.

Mr. Dingell: In fact, you were supposed to have said to the GAO that General Dynamics is entitled to the refund that it made; is that correct or not correct?

General Yates: Sir, I have not discussed this with the GAO.

Mr. Dingell: Mr. Quicksall, will you come forward, please?

Mr. Quicksall [a GAO official]: The interview with General Yates was in Dayton, OH, I think in February, and I was not at that meeting. However, I know there are GAO people in the audience who were at that interview—

Mr. Dingell: I gather that Ms. Nancy Kingsbury is the GAO agent?

Mr. Quicksall: Yes, sir. I believe she is in the audience.

Will you sit down over there on the end and tell us what are the facts with regard to the interview of General Yates?

Mr. Quicksall [a GAO official]: The interview with General Yates was in Dayton, OH, I think in February, and I was not at that meeting. However, I know there are GAO people in the audience who were at that interview—

Mr. Dingell: I gather that Ms. Nancy Kingsbury is the GAO agent?

Mr. Quicksall: Yes, sir. I believe she is in the audience.

few Members of Congress who are not afraid to confront even high-ranking military officials with contradictions in their testimony.
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General Yates: Mr. Chairman, may I say something?

Sir, I certainly do recall having an interview with Ms. Kingsbury. I am sorry I have not met Mr. Quicksall before and in my comments directed to you, I was addressing the GAO presentation here today. Representative Dingell finally stated that he had been reading directly from the GAO notes on its interview with General Yates, during which at least three GAO agents had questioned the general.

The following January, Representative Dingell was again having troubles with the military — this time with the Navy. Representative Dingell had been requesting a copy of the Defense Logistics Agency’s compensation study on General Dynamics. He had been alternately promised and refused a copy of the report for two weeks. The following is an excerpt from a January 7, 1986, letter from Representative Dingell to John Lehman, Secretary of the Navy, explaining the outcome of the battle:

Bruce Chafin of the Subcommittee staff called Captain Cohen late that afternoon [December 20, 1985] to determine if the report was on its way. Captain Cohen informed Mr. Chafin that there was only one copy of the report and it was in your briefcase on its way to Texas. Mr. Chafin informed Captain Cohen that the Subcommittee would subpoena the report on Monday, December 23. Less than two hours later, we received a copy of the report. The Subcommittee staff is currently investigating who were the co-conspirators in Captain Cohen’s lie.

Not only did Captain Cohen go unpunished for his statement, but Secretary Lehman never responded to the Representative’s letter.

B. Clouding the Issue: Bureaucratic Obfuscation

While bureaucratic obfuscation is more difficult to detect than outright lying, it is far more common and thus potentially more harmful. One form bureaucratic obfuscation takes is direct contradiction between accounts given by different officials, or even contradiction within the testimony of one individual. The following excerpts from both House and Senate authorization and appropriation hearings on the DIVAD, and from the congressional investigation of F-100 engine blades, illustrate how this type of misleading information is provided.


18. Letter from Rep. Dingell to Sec’y of the Navy Lehman (Jan. 7, 1986) (emphasis in original) [on file with the authors and with the Yale Law & Policy Review].
1. Contradictions

In March 1983, Major General Maloney testified before the House Armed Services Committee that "among all of the Army programs with which I have been in contact . . . none has been as stable as DIVAD. The division air defense gun program requirement [standards that ensure that the weapon is an effective one] has not changed since 1978 when it was published."\(^{19}\)

In fact, however, the requirements had been rapidly changing as they tracked the increasingly limited capabilities of DIVAD. DIVAD had originally been intended to serve primarily as a defense against high-performance, fixed-wing fighter aircraft (as distinguished from helicopters, which are much easier to hit than fixed-wing fighters). The DoD Required Operational Capability Draft of May 1974, referring to DIVAD, stated that "[t]hreat aircraft will include high performance, fixed wing close support fighter aircraft, at least half of which will have all-weather capability."\(^{20}\)

As preliminary testing of DIVAD proceeded, however, there were apparently some difficulties in getting DIVAD to achieve this original goal. Official descriptions of the purpose of DIVAD were correspondingly broadened, then altered entirely. In 1978, Colonel Len Marrella testified that "[t]he primary mission for the DIVAD gun is to provide effective air defense against attack by armed helicopters and high performance, fixed-wing aircraft for armored, mechanized, and infantry divisions."\(^{21}\) In 1983, Brigadier General Charles Adsit told the House Armed Services Committee, "[t]he primary air threat to the forward area has been and continues to be the attack helicopter."\(^{22}\) Finally, in 1984, Major General Maloney himself testified that "DIVAD is designed to cope with the hovering helicopter, the straight and level moving aircraft and any aircraft that is maneuvering in a smooth curvilinear — at a smooth curvilinear rate, you know, a predictable curve."\(^{23}\) Because the DIVAD requirements strayed further and further away from its original purpose, no

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20. Training and Doctrine Command (Newport News, VA), Dep't of Defense, Required Operational Capability (ROC) Draft, para. 3(C)(a)(1) (undated, rec'd May 30, 1974) [on file with the authors and with the Yale Law & Policy Review].


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weapon was in fact being produced to meet the acknowledged threat of fixed-wing fighter aircraft. In consequence, soldiers remain without this necessary protection from air attack during ground warfare.

Another example of military contradiction arose in 1986, when it became clear to congressional investigators that engine failures in Air Force F-15 and F-16 fighter planes resulted from the practice of repairing and reinstalling defective engine blades, rather than scrapping the defective blades and installing new ones. A congressional hearing was convened to investigate the matter. Prior to the hearing, the Air Force received a letter of inquiry from Representative Dingell, addressed to Secretary of Defense Caspar Weinberger. Colonel Robert F. Raggio responded to Representative Dingell as follows: “Since we began using Chromalloy [a subcontractor] repaired blades in 1980, the F-100 engines installed in our F-15 and F-16 fleets have operated more than two million hours without a single mishap attributable to the failure of a Chromalloy repaired turbine blade.”

The Air Force, however, had available to it information about Chromalloy failures over four years before Colonel Raggio’s letter was written. Pratt & Whitney’s 1982 report on an F-100 engine failure clearly stated that “[t]he fractured 1st blade was a tip repaired blade based on remaining markings. The blade fell within the group of blades that were repaired by Chromalloy in February, 1980.” General Earl T. O’Laughlin, in his prepared opening remarks at the congressional hearing in 1986, admitted that Chromalloy-repaired blades had failed in the past: “While our initial reviews failed to highlight any failures, the GAO discovered one such mishap and our own additional investigations have revealed two.” He did not, however, tell Representative Dingell about the Pratt & Whitney report, although the Air Force certainly should have had the report and should have done something to address the

24. Letter from Rep. Dingell to Sec’y of Defense Weinberger (July 14, 1986) [on file with the authors and with the Yale Law & Policy Review].
problem. Amazingly, even after this admission had been made, General Henry Viccellio — who was in charge of the Air Force inquiry into the engine blades — stated during the hearing: “[W]e have no indication that an engine blade sent to repair has failed in any engine.”

Whether these omissions sprang from a deliberate decision to hide information, or whether they simply occurred through inefficiency and incompetence, is unclear. The result, however, is the same in either case. If Representative Dingell had not been alerted by an outside source (in this instance, the GAO) to a problem that was not being resolved by the Air Force, the installation of faulty engine blades would have continued, with serious consequences. An engine blade that breaks within a running engine will tear through the engine and completely disable it. The F-100 engine blades are used in both F-15 and F-16 fighter planes. While a pilot could land the dual-engined F-15 on the remaining good engine, the F-16 has only one engine. It is nearly certain that if the engine of an F-16 were disabled, the plane would be lost. An F-16 costs between $20 million and $30 million per plane, depending on the version built. But more important, in either type of plane the life of the pilot would be placed in jeopardy.

Pilots’ lives were also endangered by another cause of F-100 engine failures. In addition to the poorly repaired engine blades, the F-100 engine was receiving faulty “root seals” (a small part of the engine blade containing holes allowing air to pass through). Over a four-month period in 1983, five engines were destroyed as a result of faulty root seals. General Henry Viccellio asserted, however, that “[t]hose were all installed in new manufacture, sir, not at the [Air Force] depot.” After reading aloud for the record report after report of engine failures caused by faulty root seals that had been re-

28. Colonel Raggio's letter to Representative Dingell, supra note 25, makes it clear that the Air Force had seen “the results of periodic reviews of contracted turbine blade repair at Chromalloy”; it is not clear, however, whose reviews are referred to. It seems most unlikely that a report done by a major contractor such as Pratt & Whitney would not have been sent to — and read by — those military officials responsible for managing the items under study. See infra note 29.

29. Engine Blade Hearings, supra note 27, at 164 (statement of Gen. Henry Viccellio). General Viccellio also stated that “[w]e participate with Pratt & Whitney ... to look at new configurations of blades that are coming out.” Id. at 158. In light of this statement it seems probable that the Pratt & Whitney study, supra note 26, was widely read among those officials connected with the engine blade program.

30. What is most likely, however, is that Gen. Viccellio was merely doing what a military man should do on the battlefield, but not before Congress. He was being positive and assertive, even if he did not know the answer.

31. Engine Blade Hearings, supra note 27, at 165.
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paired and installed at the Air Force depot, Representative Dingell had the following colloquy with the General:

Mr. Dingell: General, why is it that you told me that was not a problem with depot-installed blades?

General Viccellio: Because at the moment, sir, that was the best knowledge I had available, and basically—

Mr. Dingell: Did you know when you told me or did you not know?

General Viccellio: Did I know?

Mr. Dingell: Did you know or did you not know when you told me this? Did you know what the truth was or were you guessing?

General Viccellio: I was passing on information that essentially came off the top of Colonel Eickmann's head, sir.32

As a result of one incidence of root seal failure, an F-16 was lost and two pilots were forced to bail out and were rescued from the Gulf of Mexico.33 There were no fatalities, but a pilot might not be so fortunate the next time.

2. Partial Truths

Another method commonly used to avoid telling the truth is simply to leave out the bad news. For example, still further problems for the DIVAD included its inadequate lethality (the probability of hitting the target) and its slow reaction time (the length of time between spotting the target and firing at it). On January 4, 1983, James Finsterle, Division Director of Land Forces, wrote an internal memorandum stating that:

Data released since the [DIVAD] 'Buy' decision shows that several key effectiveness parameters were overstated in the information previously available to either you or Dr. DeLauer [Undersecretary of Defense for Research and Engineering] or, presumably, to other DSARC [Defense Systems Acquisition Review Council] members:

—Lethality by as much as 300%
—Reaction time by as much as 400%34

Two months later, however, Dr. Jay Sculley and Lieutenant General James Merryman testified before the Senate Armed Services Committee that DIVAD's design "results in extremely fast reaction time from target unmask, and although the exact value is classified, I can inform you that it is sufficiently rapid to engage and destroy a

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32. Id. at 171.
33. Id.
34. Internal memorandum from James C. Finsterle to Mr. Chu through Mr. Christie (Jan. 4, 1983) (discussing the possibility of reconsidering the DIVAD program) [on file with the authors and with the Yale Law & Policy Review].
pop-up helicopter [one which appears suddenly from behind an obstacle] before it can guide an antitank missile to a target."

In this example, the Pentagon officials used vague and limited descriptions in order to avoid telling Congress that the Pentagon had been operating under extremely inaccurate assumptions. Although Finsterle’s memorandum shows that there was a serious problem with the DIVAD reaction time, Sculley and Merryman’s testimony glossed over this issue, and never revealed the unpleasant truths the Army had discovered. But for the release of the memorandum, soldiers on the field might have believed that they could rely on the gun under circumstances in which it could not, in fact, protect them.

One of the most blatant examples of misrepresentation about weapons system capabilities involved “cueing,” the test runs that pilots of the Maverick missile ran before their missions were recorded in the testing data. The tests were performed to determine whether the missile’s guidance system would actually “lock-on” to the target. The pilots conducted many test runs over the target site before the missions were recorded, although it appears that these practice runs were not intended to be public knowledge. This example illustrates a common method by which Congress is kept in the dark about problems in weapons systems. The Pentagon official tries to take advantage of Congress’ limited knowledge of military jargon and the weapon program in question by conveniently leaving out the explanations.

During hearings on the Maverick in 1978, the dialogue between House Armed Services Committee members and Pentagon officials took a surprising turn:

Mr. Lloyd: . . . . I want this clarified Mr. Chairman. I don’t think this is apparently a very significant involvement. That’s not very many passes. They don’t mean anything. How many flights or missions do you have? You could do all that in practically one day.

Col. Martin: It is 30 missions.

Mr. Lloyd: Thirty?

Col. Martin: Yes.


36. It is possible that Sculley and Merryman were unaware of the Finsterle memo. One would hope, however, that a memo entitled “Why Not Revisit the DIVAD Decision,” written by the Division Director of Land Forces and pointing out serious flaws in DIVAD’s performance, would reach the attention of high-level officials testifying about that program before Congress.
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Mr. Lloyd: Thank you.
Mr. Ichord: Thirty what?
Col. Martin: It is thirty separate flights.
Mr. Ichord: How many total passes were made?
Col. Martin: For the active test . . .
Mr. Ichord: Break it down into training and passes, Colonel.

General [Alton] Slay [Deputy Chief of Staff for Research, Development and Acquisition]: It is 317 training and 215 active tests for a total of 532 seeker activations.\textsuperscript{37}

Had Representative Ichord not known that there could be several passes in a single mission, Congress and the public would never have discovered exactly how many times a pilot flew over a target before the flight was recorded. The missile performed poorly in this test; as this dialogue demonstrates, the method of presenting testing information can easily obscure such facts. Three hundred and seventeen dry runs over a target before firing one shot is a luxury we cannot expect the enemy to grant us during a real war. Pilots, as well as ground troops, will be counting on the Maverick to protect them from enemy tank fire from the start.

III. Solution

The first approach to correcting the problem of military lying and obfuscation is to change the structure of the Pentagon, which now necessitates (or at least facilitates) lying and misrepresentation. One such structural change could be to reduce the large numbers of military officers now involved in the procurement process,\textsuperscript{38} so that fewer military personnel and more qualified civilians would be involved in the actual business of buying weapons. The critical task of determining weapon requirements would remain with the military, but the job of buying weapons meeting those requirements would be delegated to civilians. Since civilians working within the DoD, unlike military personnel, are not subject to the “up or out” rule


\textsuperscript{38} The large number of military officers currently a part of the procurement process is a result of the increase in the overall size of the officer corps during the 1980s. The number of officers grew from 274,129 in September 1979, DIRECTORATE FOR INFORMATION OPERATIONS AND REPORTS, DEP’T OF DEFENSE, SELECTED MANPOWER STATISTICS FY 1979, at 12, Table P10 (1980), to 308,119 at the start of 1986, DIRECTORATE FOR INFORMATION OPERATIONS AND REPORTS, DEP’T OF DEFENSE, MILITARY MANPOWER STATISTICS DECEMBER 31, 1985, at 1, Table P10 (1986), an increase of nearly 14%. Because the number of officers on active service during peacetime remains relatively stable, a large portion of these new officers are assigned to procurement.
and have not been trained to give unquestioning loyalty to the military, this structural remedy would promote cost-efficiency and product quality.

Two measures passed at the end of the most recent session of Congress are aimed at reducing the large number of officers in the military and in the procurement process. The National Defense Authorization Act for Fiscal Year 1987 provides for a 6 percent reduction in the size of the officer corps over the next three years, and the conferees specifically noted that they were "concerned about the overall size of the officer corps . . . and about the disproportionate growth in the officer corps in the last five years." The Department of Defense Appropriations Act of 1987, taking note of the authorization bill's recommended reduction in the number of active officers, provides that funding for officer pay and allowances be cut by $77 million in the coming fiscal year. While these acts are a good start, a more drastic cut in the number of military officers will be needed if the military's presence in the procurement process is to be significantly reduced.

Another structural change could be to create incentives for weapons system program managers to save money. If a program manager finishes a program below cost, or successfully stops a wasteful program from continuing to swallow money, that manager should be put in charge of a larger program or be given a pay raise or a promotion. (Of course, it would still be necessary to ensure that all of the original standards of program quality have been met.) This suggestion may seem an obvious one to those who are only familiar with the commercial world, but it would cause substantial changes inside the Pentagon.

A third structural solution could focus on the revolving door problem. For at least two years after leaving the Department, DoD

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procurement officers with substantial procurement decision-making power should be barred by law from accepting employment with any contractor with whom they had worked as government employees. This change could reduce procurement officers' biases in favor of particular contractors. While legislation has been passed on this issue, none has been broad enough to cover all relevant officers. The 1987 Defense Appropriations Act applies a two year ban to most middle-level officials, but it effectively exempts the high-level DoD political appointees who actually award the contracts and set military procurement policy.44

The other approach to correcting the problem of military lying is a legal one; it entails expanding the present law to ensure that Pentagon officials who lie to Congress are prosecuted and convicted. The United States Code states:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.45

Not once has a general been imprisoned or personally fined for lying to Congress. Rather, this law has primarily been used to prosecute lower-level military officials who cheat on their expense statements. Enforcement of the law should be strengthened, how-

44. Department of Defense Appropriations Act of 1987, supra note 42, § 931 (to be codified at 10 U.S.C. § 2397b), reprinted in 132 CONG. REC. H 10645-46 (daily ed. Oct. 15, 1986). The ban applies to those high-level officials who perform a procurement function for one major defense system, or who negotiate contracts as a primary representative of the United States. The vast majority of high-level DoD officials perform procurement functions for numerous defense systems, or are involved as policymakers and as awarders (not negotiators) of contracts; thus, they do not fall within the Act's ambit.

45. 18 U.S.C. § 1001 (1982). This section was held to apply to misrepresentations made to the legislative branch in United States v. Bramblett, 348 U.S. 503 (1955). In that case, the Court upheld the conviction of a former Congressman under § 1001. (While in office, the Congressman had filed falsified records with the House Disbursing Office.) The Court held that the legislative history of the section indicated that 'department,' as used in this context, was meant to describe the executive, legislative and judicial branches of the Government." Id. at 509. For similarly broad readings of § 1001, see United States v. Lavelle, 751 F.2d 1266, 1270 n. 5 (D.C. Cir. 1985) (upholding conviction for submitting false statements to a House investigative committee), cert. denied 106 S. Ct. 62 (1985); United States v. Diggs, 613 F.2d 988, 999 (D.C. Cir. 1979) (upholding conviction for submitting false records to the House Office of Finance), cert. denied 446 U.S. 982 (1980).
ever, so that misstatements like the ones recorded in this article would qualify for prosecution.

Another federal law that could be used to punish military deception is the prohibition against perjury, codified as follows:

Whoever —

1. having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; . . .

. . . .
is guilty of perjury and shall . . . be fined not more than $2,000 or imprisoned not more than five years, or both.  

It is clear that knowingly giving false testimony under oath before a congressional committee, where the testimony was material to the purpose of the hearing, would constitute perjury under § 1621.  

While some of the statements quoted in this article might not qualify as perjury under § 1621, prosecution of those military personnel, including generals, who do commit perjury before congressional committees would provide Pentagon officials with a compelling reason to tell the truth.

Criminal laws already on the books, though, will not correct the problem unless the members of the Department of Justice and other political appointees of the executive branch are willing to prosecute or administratively punish officials who lie to Congress. A. Ernest Fitzgerald, Air Force Financial Management Systems Deputy, doubts that members of the executive branch would be willing to prosecute fellow political appointees in the DoD. As he has written, “[w]hen did you last see the King’s attorney (the Attorney General) prosecute one of the King’s men (a Presidential appointee) for doing the King’s business (handing out patronage)?”  

While the Department of Justice will of course have a significant role to play in


47. In Christoffel v. United States, 338 U.S. 84 (1949), the Court noted that under the perjury provision of the D.C. criminal code (modeled on § 1621), a statement made to a committee quorum would satisfy the requirement of a competent tribunal. Id. at 85-86. See also Lavelle, 751 F.2d at 1271 n.4 (upholding conviction for perjured testimony before a Senate committee); United States v. Reinecke, 524 F.2d 435, 437 (D.C. Cir. 1975) (upholding perjury conviction arising from false statements made by witness at Senate confirmation hearing).

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enforcing criminal laws against the military, the problems inherent in executive branch self-monitoring make it crucial that Congress and private watchdog agencies closely monitor and report instances of Pentagon lying.

Sadly, we must recognize that some of the above misrepresentation has been uncovered during congressional hearings, and yet few Members of Congress have done anything about it. Congressional oversight of the DoD is meant to prevent precisely such misrepresentation. Oversight, however, can be defined either as 'to monitor' or as 'an omission or error.' Is Congress' deliberate inactivity due to a misunderstanding about which definition of oversight they are supposed to carry out? At some point, one must begin to wonder how seriously Congress intends to find out the facts and fix the mistakes. Congress has the power and the means to change the Pentagon's systemic reluctance to work with the truth. Until Congress actually wields this power, it is difficult to take congressional outrage over military inefficiency and overspending too seriously.

Attitudes prevailing in the Pentagon, in Congress, and even among the public must change, so that military brass no longer awes people into believing every Pentagon statement. Taxpayers cannot sit back, comfortably assuming that Congress will address any departure from the truth. Ultimately, the burden lies on our shoulders to remind the Pentagon hierarchy and our congressional representatives that their duty is to the taxpayer, whose money is being used to buy the weapons, and more important, to the enlisted personnel, whose lives depend on the quality of those weapons.