

# Mr. Smith is Dead:

NO ONE STANDS IN THE WAY  
AS CONGRESS LACES POST-SEPT. 11 DEFENSE BILLS  
WITH PORK

\$21,000,000  
\$70,000,000  
\$10,000,000  
\$5,000,000  
\$464,000

WINSLOW T. WHEELER (A.K.A. "SPARTACUS")

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"Homeland Security: A Competitive Strategies Approach," F.G. Hoffman, March 2002.

"Less Talk, More Walk: Strengthening Homeland Security Now," David Isenberg, expected November 2002.

"Honing the Sword: Strategies and Forces After 9/11," Marcus Corbin, expected November 2002.

## About the Author

Winslow Wheeler, former senior analyst for national defense on the Senate Budget Committee, serves as a Visiting Fellow at CDI.

Mr. Wheeler worked for more than 30 years on national security issues for four different U.S. Senators, from both political parties, and for the U.S. General Accounting Office. His past efforts included participating in the drafting of critical legislation such as the War Powers Act of 1973; promoting meaningful "Military Reform" in the 1980s; and producing major public policy reports such as GAO's evaluation of the air campaign of Operation Desert Storm. He last served in Congress as senior Budget Committee analyst under Sen. Pete Domenici, R-N.M., from 1996 until his resignation July 1, 2002.

Mr. Wheeler is also well known for his writing under the pseudonym "Spartacus," addressing problems in U.S. force structure, accounting, budgeting and acquisition decision-making.

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*This and other reports under the pseudonym "Spartacus" can be found at <http://www.d-n-i.net/>.*



## Forward

The U.S. Congress has long been synonymous with pork-barrel politics, in which special treats for constituents are tucked into spending bills purporting to support lofty national purposes. Bringing home the bacon is a time-honored tradition that many observers and participants not only tolerate but celebrate. After all, representing constituent interests, even narrow local interests, is essential to a health democracy.

Up to a point. The line is crossed when the narrow interests of constituents and their legislators siphon off resources needed for critical national programs. In this volume, a strong case is presented that pork-barrel politics has become so excessive that Congress is undercutting national security, short-changing good programs, and leaving our citizens and our troops more vulnerable than they have to be. The argument, by a seasoned and respected insider, backed up by voluminous evidence gathered through firsthand observation and careful documentation, is tantamount to an indictment of contemporary congressional politics. The elevation of congressional self-promotion and narrow constituent interest over essential defense and anti-terrorism funding is literally putting lives in jeopardy.

A handwritten signature in cursive script, reading "Bruce G. Blair". The ink is dark and the handwriting is fluid and somewhat slanted to the right.

Dr. Bruce G. Blair  
President, Center for Defense Information

## Dr. Bruce G. Blair - President, CDI

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# The Sum of All Peers

*An Epilogue to “Mr. Smith Is Dead”*

**T**he movie of Tom Clancy’s post-Cold War thriller, “The Sum of All Fears,” shows hero Jack Ryan (played by heart-throb Ben Affleck) saving the United States and Russia from nuclear holocaust with his exceptional courage, intellect and ethics. Given the self-image of most members of the U.S. Senate, there are many there who probably see themselves suited for that role. Hollywood producers should, however, beware; such a casting decision would require image-makers skillful enough to convince movie critics and the public that Pee-Wee Herman is really Laurence Olivier.

Since the writing in January 2002 of the essay “Mr. Smith Is Dead: No One Stands in the Way as Congress Laces Post-Sept. 11 Defense Bills with Pork,” the U.S. Senate has done nothing to redeem its disgraceful performance of junking up national security legislation with trash intended to promote the political welfare of individual senators while they pose as guardians of the republic. The posturing has sometimes become hilariously transparent, but the national press is not covering it. This only encourages the senators to think they are in a class by themselves, where mismatches between words and actions will be excused and where they are exempted from most rules, including their own.

Let us see what new developments have transpired since “Mr. Smith Is Dead” was written.

## **Hero Takes on Pork Empire**

It was almost midnight, Thursday, June 6, 2002. The Senate had been working hard to pass a new \$27 billion emergency “Supplemental Appropriations for Further Recovery from and Response to Terrorist Attacks on the United States,” which the president had requested in March to augment “homeland defense” and the war in Afghanistan. Earlier that day, by a vote of 87 to 10, the senators had even invoked “cloture” on themselves to prevent any filibustering. Now, the Senate was getting down to the endgame for the bill. Normally, at this point – even if it is close to midnight and members are tired – there is often relief that things are getting done.

And yet, there was no such sense of accomplishment this time. Actually, many of them were pretty pissed. Red in the face, Sen. “Pete” Domenici, R-N.M., told the rest of the Senate, “what happened to me should not happen to any of you.”<sup>1</sup> Almost yelling, he violated Senate tradition and called another member by his proper name, not “respected colleague” or some other elaborate honorific. Then, Domenici spat out to that same member, “you can smile if you like, but there is nothing to smile about.”<sup>2</sup> The target of this outburst, Sen. John McCain, R-Ariz., took seriously the insult of being called by his own name and demanded a “personal privilege [to speak out of turn] since my name was used.”<sup>3</sup> Before he could start, however, Domenici had stormed out of the chamber.

Others were cantankerous as well. Sen. Byron Dorgan, D-N.D., said what happened to him was “unfair” and “arbitrary.”<sup>4</sup> Oregon’s senators, Republican Gordon Smith and Democrat Ron Wyden, thought the problem might cost lives.<sup>5</sup> With a cold stare about her predicament, Sen. Mary Landrieu, D-La., said, “there is no way to correct this.”<sup>6</sup>

Why all the hot tempers? Had someone eviscerated the emergency appropriations bill? Was the nation in danger? Were lives really threatened?

Not quite. The senators were being forced to follow their own rules.

As they all knew, when the 87 senators invoked cloture on the bill, they voted to limit further debate and other parliamentary shenanigans to just 30 hours. In addition, they voted to restrict amendments; “post cloture,” they must be “germane;” that is to say, they must directly relate to a specific subject already in the bill. And, the senators do not get to play with the rules: germaneness is determined by the Senate’s parliamentarian alone.

What terrible things were the rules imposing on the senators?

- Domenici was not being permitted to add to the anti-terrorism supplemental a \$50 million loan guarantee for the developer of a small, civilian, passenger jet from his state of New Mexico.
- Dorgan was denied an “earmark” of \$400,000 for power transmission studies that would address his home state of North Dakota.<sup>7</sup>
- The two senators from Oregon were unable to prevent the Air Force Reserve from moving a helicopter unit out of their state.<sup>8</sup>
- Landrieu could not change a funding formula to permit 37 states, including her own Louisiana, to retain Department of Health and Human Services funds they had been overpaid.<sup>9</sup>

In each case, the amendment would have introduced a new subject to the bill and was, therefore, “not germane.” All it took was for some senator to ask the parliamentarian if they were or were not; if they flunked the test, they became dead parliamentary meat. Because McCain was willing to ask the question, the rest of the Senate was not being allowed to ignore the rules by remaining silent and obviating germaneness altogether.

That was not all. Earlier that week, McCain announced to the Senate: “The worst damage, the worst pork-barreling, the egregious stuff done around here is in managers’ amendments.”\* He said he was going to “go after this pork-barrel spending and we are going to go after it and after it and after it.” He was going to exercise his right as a senator to demand separate roll call votes on each and every amendment in any package of “managers’ amendments.” Thus, every senator would be “on the record” in favor of or opposed to pork. Also, because managers’ packages typically consist of 20 or more amendments and because each roll call vote takes about 15 minutes, McCain was going to inflict some temporal pain on the Senate if it wanted to lard up the bill. Just so no one missed his point, he made it explicit, “there are going to be plenty of votes.”<sup>10</sup>

The next day, it got worse; McCain submitted 20 of his own amendments, each one removing a morsel of pork already inserted into the bill by the Appropriations Committee.<sup>11</sup> And, he repeated to the Senate, “We will not have one of these deals that we have seen in the past so many times where at the very end – maybe at 10 or 11 o’clock at night – there is a unanimous consent agreement that a managers’ package be accepted. We are not going to do that.”<sup>12</sup>

Then, he started offering his amendments. The first was to remove from the bill \$2 million for a new specimen storage facility for the Smithsonian Institution. The next was to extract \$2.5 million for mapping coral reefs near Hawaii. The third would cut \$50 million for Agricultural Research Service buildings in Ames, Iowa.

The arguments against McCain’s amendments were hilarious. According to the chairman of the Senate Appropriations Committee, Sen. Robert Byrd, D-W.Va., new specimen storage for the Smithsonian was an urgent homeland security need. Sen. Daniel Inouye, D-Hawaii, had the gall to say the coral reef study was not pork because the departments of Commerce and Defense would compete over the contracts for the work. He seemed to imply that any other state with coral reefs was welcome to try for this spending.<sup>13</sup> Sen. Tom Harkin, D-Iowa, said, “Keep in mind, this is a national laboratory. It is not an Iowa lab

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\* “Managers amendments” or “managers’ packages” are groupings of amendments that are adopted en bloc by unrecorded voice votes at the instigation of the Democratic and Republican “Managers” of a bill, who are usually the chairman and ranking minority member of the Senate committee that authored the bill being debated. The content of such “Managers’ Packages” are frequently some form of benefit for the state of the senator authoring the amendment.

[to be built in Iowa].”<sup>14</sup> Ergo – he was trying to say – federal money spent in Iowa is not “pork.”

Huh?

### **The Empire Strikes Back ...**

Through no fault of his own, McCain lost on his three amendments with at least 60 senators voting against him on each one.<sup>15</sup> Were three-fifths of the Senate such dunderheads that they bought the arguments against McCain? – Of course not. Most senators are pretty smart. They know babble when they hear it. They also knew that if McCain were able to knock out someone else’s pork, theirs might be next. It was not stupidity that won against McCain; it was an unspoken, mutual pork protection pact.

But wait! Was this laudable, even if losing, fight the harbinger of the struggle against pork being taken up in earnest by the previous “pork enabler”? Did McCain decide that the time had come to be a reformer in word *and* in deed? Were Domenici’s outburst and the arguments of Byrd, Inouye and Harkin about to be exposed in the press to the undying embarrassment of the Senate? Was Sen. Jefferson Smith rising from the dead to seriously fight Congress’ exploiting defense legislation to buy heaps of pork?

Let us not get carried away, folks. Remember, we are talking about politicians here.

### **Hero Joins Empire**

Sadly, McCain’s laudable anti-pork offensive not only fell apart; it reversed course.

After those first three votes, McCain realized the futility of his amendments and picked up, instead, the germaneness tool the Senate handed him when it invoked cloture. But, given the way he used it, he helped pork more than he hurt it. Here is what happened.

The emergency supplemental appropriations bill the Senate was debating addressed the broad subject of homeland security. That meant there were many agencies and programs already in the bill. They included the departments of Agriculture, Commerce, State, Justice, Energy, Labor, Health and Human Services, Treasury, Housing and Urban Development, and Defense. Before cloture had been invoked, even more were added: AMTRAK, federal aid to highways, the Smithsonian Institution, the U.S. Fish and Wildlife Service, and more – all at an additional cost of \$3.9 billion.<sup>16</sup> Thus, the sand box the senators were playing in was already large when cloture closed the door for new subjects.

McCain did keep some non-germane stuff out of the bill, but other senators were busy cramming germane stuff in. In all, 42 germane amendments were added. They included:

- Sen. Kay Bailey Hutchison's, R-Texas, "technical change" to enable \$10 million for agricultural aid to Texas.
- Sen. Jim Bunning's, R-Ky., \$1 million in water services for Kentucky.
- The Oregon senators' (Wyden and Smith) \$500,000 to reduce West Coast groundfish fishing capacity.
- Sen. Ted Stevens', R-Alaska, exemption for Alaska from certain unemployment taxes, \$464,000 for vocational training for specific Alaskans, altered requirements of the Alaska Native Claims Settlement Act, and altered mail delivery in Alaska.<sup>17</sup>

And so it went. There were a few amendments relevant to homeland security and the war in Afghanistan, such as a non-binding "sense of the Senate" amendment from Sen. Bill Nelson, D-Fla., on how the FBI should be reorganized, but of the 42 amendments added, just nine were in any way relevant. The rest (33) were either meaningless, irrelevant or pork.

Notably, the trash was not being adopted behind McCain's back; he was an active part of the approval process of each and every amendment. It was a process that was exercised on other bills that McCain had criticized as laden with pork. One by one, or in bunches, the amendments were shown to him and his staff and were explicitly approved. Assistant Majority Leader Harry Reid, D-Nev., made clear what was happening; he told the Senate and the public, "Sen. McCain and Sen. [Phil] Gramm<sup>18</sup> have been going through it [a "managers' package"] for about three hours." This produced a list of amendments "that have been accepted" by McCain and Gramm.<sup>19</sup> Stevens also wanted to make sure everyone knew what was going on: "Those [McCain and Gramm] that sought to review the list had no objection to the amendments on the list."<sup>20</sup>

That review by McCain and Gramm had little to do with pork; all they were doing was determining, with the help of the parliamentarian, which amendments were germane and which were not. It was germaneness that was culling the amendments not porky-ness. Indeed, if amendments were found to be non-germane, McCain and Gramm were permitting the authors to modify their amendments – no matter how porky – to enable them to comply with the germaneness rule.

For example:

- An amendment from Sen. Susan Collins, R-Maine, was made acceptable by eliminating the Department of the Interior as an actor in the \$4 million conversion of a "Naval Security Group" in Winter

Harbor, Maine, to a research and education center for Acadia National Park, Maine.<sup>21</sup>

- Another increased from \$10 million to \$32 million an earmark for West Virginia and other states for Corps of Engineers work.

There are plenty more, but surely the reader gets the point.

Then after the managers' package was adopted, en bloc, by a single unrecorded voice vote, McCain stood up and said, "We should not be doing this," and gave another speech about the evils of pork and the Senate's adoption of "managers' packages."<sup>22</sup> McCain was literally giving a speech about how terrible it was to do what he had just helped get done.

Now, that is acting! Give that man an Oscar!

What happened to the threat to force the Senate to vote on each and every amendment in any "managers' packages?" There were 25 in the package just adopted; voting on each one would have dragged the Senate through about six mind-numbing hours. It would not have helped McCain win any popularity contests in the Senate, but it would have told the gorging senators that while they may have the votes to add junk to bills, doing it would not be fun.

### **Return to Peaceful Coexistence**

After this episode, the Senate settled down to its normal behavior of cramming other defense bills with home state goodies for senators without even transitory impediment. When the Senate debated the fiscal year 2003 (FY 03) Department of Defense appropriations bill on July 31, there were four managers' packages totaling more than 50 amendments and over \$200 million. It was the usual combination of a few relevant but mostly porky amendments. McCain did nothing about them.

The bill itself was a true horror for the readiness of U.S. Armed Forces. In the back of the bill were buried item after item reducing spending for military readiness in the "Operations and Maintenance" accounts of the defense budget.

- Section 8082 extracted \$211 million in foreign currency "savings" the Appropriations Committee decided were going to occur from a rising dollar in FY 03 (an interesting prediction as the dollar is falling against the euro and the yen).
- Section 8097 permitted \$68 million in transfers out of operations and maintenance that were simply not explained.
- Section 8099 took \$8 million out for railroads at two bases in Alaska.



- Section 8100 declared that the Defense Department would save \$700 million in better service contract management in operations and maintenance.

The Senate and the Defense Department have been through this “savings” game many times: the savings do not occur. The Defense Department is unwilling or unable (or both) to be sufficiently aggressive to save the funds. These and similar provisions, amounting to \$1.1 billion in the FY 03 bill are, in reality, cuts in the operations and maintenance budget, namely the accounts that pay for training, maintenance and other key readiness activities.<sup>23</sup> In its analysis of the same kind of provisions in the Armed Services Committee’s Defense Authorization bill, the Office of Management and Budget stated: “If the aggressive savings projections do not materialize, the congressional reduction will be met by unwarranted reductions to high priority programs.”<sup>24</sup>

Despite these raids on the readiness budget, the Appropriations Committee’s report on the bill stated in its “Committee Priorities” section: “The primary goals of this bill are to ensure readiness and fair treatment of our men and women in uniform.”<sup>25</sup>

The acting is not particularly good, but they deserve a prize for *chutzpah*.

### **Real Drama Ends Up on Cutting Room Floor**

But you know about all this, don’t you? You read all about the posturing against pork while approving it, the mismatches between the words and the actions, and the hilarious arguments against pork in your newspapers. Right?

Neither did I, but I did find some handy-work from the ever-busy image-makers.

The most I was able to find was a minor blurb in *The Washington Post*. The following appeared under the heading “Pork Roast” in a June 10, 2002, article.

“Sens. John McCain (R-Ariz.) and Phil Gramm (R-Tex.) smelled pork and decided to root it out. Tempers flared as McCain blocked amendment after amendment, included one from fellow Republican Sen. Pete V. Domenici (N.M.) on loan guarantees for small jets that had been rejected by McCain’s Committee on Commerce, Science and Transportation. Domenici, furious, chastised McCain for smiling during the exchange, and McCain angrily demanded time to respond ... When the bill finally passed, it was without Domenici’s proposal.”<sup>26</sup>

OK, that is part of the story. What about the rest? Where is the discussion of all the porky amendments McCain approved – which was perfectly clear in the publicly available *Congressional Record*? What about McCain’s speech that the Senate should not be doing precisely what he had just helped it do? And, what about the unfulfilled threat to require time-consuming roll call votes on each

and every pork-chunk in the “managers’ packages.” Was *The Washington Post* ignorant of those elements to the story? Was the accurate story deemed too complicated for the *Post*’s Washington readers? Was favorable coverage of McCain imposed by the editors, even if doing so meant painting an utterly inaccurate picture? The world should wonder.

### **Give the Man a Break; At Least He Talks About It**

McCain does deserve some real credit. He reliably talks in a plain spoken and admirable manner against the pork the rest of the Senate is addicted to. He has the potential to tower above the other 99 senators who unabashedly increase pork for themselves at every conceivable opportunity (and some that are beyond normal conception). But, by failing to act – even to deliver on his own words – he denies himself real stature.

### **We Need a Sequel**

The situation cries out for more than posturing and unkept promises. Because the Senate – in the final analysis, all of it – considers individual members’ political comfort more important, U.S. military personnel are today being sent into combat in Afghanistan, and perhaps tomorrow in Iraq, with training that is not what it could be, equipment that waits long and hard for spare parts and maintenance, and looming ammunition shortages. Most senators seem to believe that rules are made for others and no harm is too great for our armed forces if it will help a senator look good. They behave as if they see themselves in a class by themselves, above the rest. They have forgotten the last paragraph of Article 1, Section 9 of the Constitution, which starts: “No title of Nobility shall be granted by the United States ...”

This sad story needs to be rewritten. It needs someone in the Senate to seriously and persistently oppose what is going on. It also needs the national press to notice the difference between Pee-Wee Herman and Laurence Olivier.



## Endnotes

<sup>1</sup> *Congressional Record*, June 6, 2002, p. S5179.

<sup>2</sup> IBID.

<sup>3</sup> IBID

<sup>4</sup> *Congressional Record*, June 6, 2002, p. S5181.

<sup>5</sup> *Congressional Record*, June 5, 2002, p. S5182.

<sup>6</sup> IBID.

<sup>7</sup> *Congressional Record*, June 5, 2002, p. S5090 & June 6, p. S5181-82.

<sup>8</sup> *Congressional Record*, June 6, 2002, p. S5182.

<sup>9</sup> *Congressional Record*, June 6, 2002, p. S5184.

<sup>11</sup> *Congressional Record*, June 4, 2002, p. S4943.

<sup>12</sup> *Congressional Record*, June 5, 2002, p. S5077.

<sup>13</sup> *Congressional Record*, June 6, 2002, p. S5119.

<sup>14</sup> *Congressional Record*, June 6, 2002, p. S5124.

<sup>15</sup> *Congressional Record*, June 6, 2002, p. S5135.

<sup>16</sup> *Congressional Record*, June 6, 2002, p. D573.

<sup>17</sup> Report to accompany S. 2551, Senate Report 107-156, p. 149.

<sup>18</sup> *Congressional Record*, June 6, 2002, pp. S5174-75 & D51.

<sup>19</sup> As they had on previous occasion, Sens. Gramm and McCain had joined forces, but Sen. McCain was clearly the leader.

<sup>20</sup> *Congressional Record*, June 6, 2002, p. S5173.

<sup>21</sup> *Congressional Record*, June 6, 2002, p. S5174.

<sup>22</sup> Compare the amendments as introduced to those as passed; see *Congressional Record*, June 5 & 6, 2002, pp. S5071 & S5180.

<sup>23</sup> *Congressional Record*, June 6, 2002, p. S5177-78.

<sup>24</sup> Congress does, however, exempt its pork add-ons from such cuts, even when they are in the O&M budget.

<sup>25</sup> Statement of Administration Policy, S.2514 – National Defense Authorization Act for FY 2003, Executive Office of the President, Office of Management and the Budget, June 19, 2002, p. 2.

<sup>26</sup> Report of the Senate Appropriations Committee to accompany HR 5010, Senate report 107-213, p. 4.

<sup>27</sup> Dewar, Helen, "Divisive Climate Stymies Work of Conference Committees," June 10, 2002, *The Washington Post*, p. A19.



# Mr. Smith is Dead

**F**rank Capra's 1939 Hollywood vignette on American life and politics, "Mr. Smith Goes to Washington," depicts an honest and stalwart Sen. Jefferson Smith (Jimmy Stewart) standing up against a crooked political machine that owns newspapers, a governor and another U.S. senator. Goodness and the American way triumph (and Stewart gets his girl) when the hero filibusters and defeats the machine's corrupt land deal buried in an obscure part of a badly needed depression era "relief" bill.

The movie presents a popular paradigm of American politics: depravity is an inescapable part of politics, even at the lofty level of the U.S. Senate. However, our constitutional system empowers stalwart heroes with the tools to defeat the debased politicians, and the American way of life produces enough champions to get the job done, when needed.

"Mr. Smith Goes to Washington" presents a reassuring image, but for the role that Congress collectively plays these days in national defense, it's an image of the past. Mr. Smith is dead, and no one in Congress, not even the very few who pose as reformers, has any regrets. They're far too busy with something much more important: taking care of Number One.

The problem is not that political "machines" have prevailed, either the traditional state or local ones, or the 21st century, election-financing ones. Nor for national defense is it the triumph of impersonal, formulaic entities, such as the "military-industrial complex" or what some now term the "Iron Triangle" (which adds Congress to the bipolar "complex"). Moreover, it is certainly not a failure of the American constitutional system, which provides all the tools that willing stalwarts need in order to prevail. Instead, it is simply a failure of individuals. Things – complexes and triangles, or even political systems – do not engage in ethical failures; people do.

A pattern of values and commensurate behavior has evolved in Congress on national security issues that places above all the self-interest and personal advancement of self-anointed protagonists. For elected politicians, the all-consuming goal is re-election, if not advance to higher office. For the ambitious

among the 30,000-strong congressional staff bureaucracy, promotion – either on Capitol Hill, to the executive branch, or to the downtown lobbying mob – is the payoff for persistence in keeping the boss happy. Success for members of Congress and most of their staff is not achieved by laboring to improve prevailing values and behavior – although some have obtained success in appearing to do so. And, it is certainly not achieved by telling people, especially bosses, things they do not want to hear. Instead, success is obtained by working within the existing system and observing a set of commonly followed but unspoken rules:

- At all times, egos must be protected and salvaged. This is achieved in myriad ways. On the intellectual plane, the boss must never be told he or she is wrong, let alone stupid or ethically challenged. A bad idea, once embraced, is to be pursued to its logical conclusion, no matter how negative the consequences. People who oppose the selected goal are not just opponents, they are the enemy. Staff members who do not bend all energies to the goal are traitors.
- Data and analysis must always be the handmaiden of the goal. The goal determines what the data and analysis shall be; to do otherwise risks the pre-selected goal and is to be avoided.
- Rules, such as parliamentary procedures, government regulations and even statutes, are a matter of convenience. When inconvenient, they are to be ignored, circumvented, or – if doable – rewritten. Only those most zealous and obnoxious opponents shall attempt to invoke them. When one is forced into the unfortunate position of observing commonly agreed to, but inconvenient, rules, it is perfectly acceptable to get around them by making a bad idea worse, as long as the original goal remains intact.

The goals selected by senators and congressmen to advance their personal agendas are sometimes disguised as national defense programs; at other times they are simply hidden – usually poorly, but long enough to get passed – from the public. These goals frequently necessitate dropping other less important objectives, such as strengthening our Armed Forces or equipping them better at reasonable cost. In some happy situations personal agendas and the national interest coincide; when they don't, the choice is almost always in favor of personal interests.

This debasement of national interests – to propel the individual above all else – has occurred in parallel with a new evolution in warfare. As early as 1989, a small number of insightful thinkers foresaw the new form of conflict in which the United States now finds itself engaged.<sup>1</sup> They dubbed it “Fourth Generation Warfare.” One of its primary characteristics was seen to include the demise of



the nation state as the focus of loyalty for non-state actors (such as terrorists), culture becoming a primary battlefield, and what is today called “information warfare” (i.e. psychological warfare via manipulation of the media, such as CNN and Al-Jazeera) as a standard tactic for both sides.

Unfortunately for us, while Congress’ debasement of national security interests to selfish ends has degraded the effectiveness of our defenses, the evolution of warfare into “Fourth Generation” forms outside the United States has led to our non-state opponents becoming more dangerous. Both Congress and our current international adversaries have lost their focus on the nation state, but the results are a United States that is more vulnerable and enemies that have grown more treacherous: the fortuitous results for us in Afghanistan up to now notwithstanding, the overall conflict is far from over.

Despite a mountain of treasure being spent, the United States remains, and will remain, exquisitely vulnerable to myriad forms of terrorist attack. The effectiveness of any U.S. war against terrorism is eviscerated as Congress drains massive amounts of defense and anti-terrorism funding from the war fighting parts of the defense budget to pursue self-promotion in the form of useless trash. Meanwhile, Congress persistently deceives the nation about just what is going on and snickers while false reformers play-act at the role of Mr. Smith.

What substantiates these harsh accusations against Congress? The sequence of the dramatic events of Sept. 11, 2001 and Congress’ subsequent passage of three key bills to provide for the national defense present an ideal opportunity to analyze just how Congress collectively believes the national defense business should be conducted, especially in the aftermath of the most memorable attack on the United States since Pearl Harbor. We shall look at the major defense and anti-terrorism legislation that Congress sent to the president to be signed into law, focusing not just on rhetoric but also on details.

### **The Legislative Framework**

Each year, Congress handles three major bills that address the Department of Defense (DoD). They are –

- The DoD **authorization** bill, which consists of hundreds of pages codifying a myriad of major and minor defense policies and programs, ranging from how to structure a national missile defense to whether to extend “multiyear” procurement contracts for medium-sized trucks.
- The DoD **appropriations** bill, which sets the level of funding for most programs and policies and the terms and conditions upon which that money may be made available, and

- The military **construction** appropriations bill, which does the same thing as the DoD appropriations bill but only for DoD's facilities in the United States and abroad.

Each year, usually in February, the president submits his request for each of these bills, and in the subsequent months – ideally before Sept. 30, when the new fiscal year starts – these bills make their way through a labyrinthine legislative process in the House and Senate. At the end, they are sent to the president for his veto or signature into law. In 2001, President George W. Bush submitted only a preliminary request for DoD authorizations and appropriations in February; his requests were not finalized until July, thereby delaying the process. As a result, both the House and Senate had not considered their various bills until *after* Sept. 11. This permitted Congress the opportunity to incorporate into each bill any and all reactions it had to Sept. 11. The sequence of events presented virtual test-tube conditions to explore Congress' collective and individual values and behavior on defense matters in a circumstance where one would hope to find the institution and the individuals acting at their best.

### **To Each According to Status**

Of the three annual defense bills, the military construction appropriations bill is the smallest and the simplest. It consists of just a few pages, and it provides roughly \$10 billion for its stated purposes. The House debated and passed it on Sept. 21, 2001, by a vote of 401-0; the Senate handled it on Sept. 26 and passed it by a vote of 97-0. The House and Senate resolved their differences and completed action on the final version on Oct. 18 with votes of 409-1 and 96-1, respectively. The president signed it into law on Nov. 5. Note that a grand total of two members of Congress, out of a possible 535, expressed any unease with the bill by voting against it.

Bush originally had requested \$9.8 billion for military construction. Congress appropriated \$10.5 billion. Not bad, a \$700 million increase, just for military bases in the United States and abroad. Congress was augmenting the U.S. base infrastructure to help fight the war. Probably adding things like more and better training facilities, and augmented protection against terrorist attack, right?

Not exactly. Congress did add some training facilities and some new security construction, but such undertakings, or others with any apparent relationship to the war against terror, were a minuscule part of the additions. Altogether, Congress added about 120 new construction projects not requested by the president. Of these, just two were training facilities, and just one directly involved security. The balance of what was added constituted a hodgepodge of irrelevancies; they included plans for a new museum, a new chapel, gyms, warehouses, fire stations, water towers, land acquisition, day care centers, National Guard armories (which Congress renamed "readiness centers") and

much else. They were all routine additions; they were typical of the “pork” Congress adds to peacetime military construction budgets every year.<sup>2</sup>

Moreover, the additional projects cost more than the \$700 million Congress added to the bill. To wedge them in, the military construction subcommittees of the House and Senate Appropriations committees used two favorite gimmicks: first, they decided that in fiscal year 2002 (FY 02) the value of the dollar would increase over foreign currencies for the costs of military construction projects in foreign nations by \$60 million – this despite the absence of any such predictions by independent economists, such as the Congressional Budget Office (CBO), which they could have queried were they really interested. Second, they wrote into the bill a 1.127 percent “across-the-board” reduction, which arbitrarily deemed any and all projects, regardless of their priority or whatever overfunding – or underfunding – they might actually contain, to cost that much less. With the help of these tricks – like magic – the bill fit within the \$10.5 billion allocated by the chairmen of the House and Senate Appropriations committees for military construction. The two devices made another \$200 million available for the added projects.

The locations of the projects added by the Appropriations committees were even more interesting. There was a clear pattern. Eleven states were the top recipients and received added projects totaling \$25 million or more. The number one beneficiary was California: eight projects were added that were not requested by the president; they cost \$144 million, or 16 percent of the \$900 million added by Congress. Next was Texas: 10 new construction projects with a value of \$86 million, 9 percent of the additions. Not just coincidentally, senators from these two states serve in the Senate Appropriations committee as the chairman and ranking minority member<sup>3</sup> of the Military Construction Subcommittee. They are Sen. Diane Feinstein, D-Calif., and Sen. Kay Bailey Hutchison, R-Texas, respectively. Feinstein’s priorities included accelerated environmental cleanup at Hunters Point Naval Shipyard and McClellan Air Force Base, a new barracks complex at the Monterey Language Institute, and a new fire station at the March Air Force Reserve base. Hutchison added things like upgrades in air conditioning and water facilities at Corpus Christi Naval Air Station, new water treatment facilities at Fort Bliss, a new gym at Sheppard Air Force Base, and \$6 million in airfield lighting at Kingsville Naval Air Station. Environmental cleanup, gyms, fire stations and lights are all nice things to have, and the recipient bases would probably benefit from them in some meaningful way. But, is this the best Congress can do to sharpen our Armed Forces at the pointy end to fight more effectively and have a better chance to survive against terrorists and governments that harbor them?

The pattern continued: the third biggest winner was West Virginia, for which the president had requested no military construction projects but for which the appropriators added five, including a new Army National Guard armory at Williamstown and plans to renovate an Army museum at Martinsburg. These

and three other projects cost \$44 million. West Virginia just happens to be represented by Democrat Robert Byrd, who also happens to be the chairman of the full Senate Appropriations Committee. Not far down the list was Alaska, with three projects for \$29 million, which just happens to be represented by Republican Ted Stevens, the most senior Republican on the Appropriations committee. And so it went; in all, the top 11 recipients of added military construction projects consisted entirely of senior Democrats and Republicans in the House or Senate who just happen to be the sitting chairmen or ranking minority members of the Appropriations and Armed Services committees and subcommittees who handled the DoD and its military construction budgets.<sup>4</sup>

Altogether, these 11 states and their senior senators consumed \$511 million in new, unrequested projects: put another way, 22 percent of the states got 57 percent of the money Congress added to the military construction bill. Conversely, the 13 states receiving the smallest add-ons – just \$10 million or less – were, with one exception,<sup>5</sup> represented by senators or congressmen who had no senior position on the committees or subcommittees overseeing DoD or military construction.<sup>6</sup> In those cases, 26 percent of the states got a total of \$56 million, or 7 percent of the adds.

In distributing additional military construction projects, the thing that matters in Congress is who you are. If you are a senior member of the Appropriations committee or its military Construction Subcommittee, or the commensurate structure in the Armed Services committees, you get the goodies. If you're not in this hierarchy, tough luck. And, it's – apparently – unimportant to these members, or Congress as a whole, whether the added projects have major military significance, even as the nation goes to war. Congress' pork machine was churning on unperturbed.<sup>7</sup>

### **The Mismatch of Words and Deeds**

It was, however, notable that when the Senate debated the military construction bill, one finds pages in the *Congressional Record* replete with rhetorical flourishes about how dutiful senators found themselves meeting the nation's needs as it went to war. The Military Construction subcommittee chairwoman was at the head of this procession:

“Given the events of the past few weeks [i.e. Sept. 11 and its aftermath], and the events that we expect to unfold over the coming weeks and months, this bill could not be more timely. This bill was reported out of the full Appropriations committee only yesterday. We moved it to the floor today in acknowledgment of the pressures under which we are currently operating. Our men and women in uniform cannot afford delay in getting these projects underway. We have a duty to provide better for the members of our military and their families, especially at a time when the president has ordered them to ‘be ready’ for war.”<sup>8</sup>

The hypocrisy of these comments is rather stunning: having laden the bill with \$144 million in pork for her own home state and doing virtually nothing elsewhere in the bill to aid the war against terror, Feinstein was pretending that her handiwork was both relevant and urgent. She may have been in a hurry, but rushing help to the troops in the field was clearly not what weighed most heavily inside her mind. Feinstein was hardly alone, and she was hardly the most offensive.

### **The Quintessence of Irrelevance and Self-Protection**

On Sept. 21, just 10 days after the attacks on the World Trade Center and the Pentagon and concurrent with the congressional consideration of the military construction bill, the Senate started its debate on the National Defense Authorization Act for Fiscal Year 2002. The chairman of the Senate Armed Services Committee, Sen. Carl Levin of Michigan, and the ranking Republican, Sen. John Warner of Virginia, made moving statements about Sept. 11 and the importance of their bill.

Levin: "This is no ordinary time in our country. Our fellow citizens continue to sift through the ruins left by the most deadly attack ever against the United States. Our fury at those who attack innocents is matched by our determination to protect our citizens from more terror and by our resolve to track down, root out, and relentlessly pursue the terrorists and those who would shelter or harbor them."<sup>9</sup>

Warner: "Today, as the Senate turns to the consideration of our national defense authorization bill for the year 2002, in this time of national emergency, it is time we provide our president and the men and women of the Armed Forces, and the thousands of civilians who support those men and women, the requirements that they have for the coming fiscal year as best we can judge them."<sup>10</sup>

The Senate debate on this bill took seven days. The body considered and adopted 79 different amendments. But very few had much to do with the war against terrorism, declared rhetorically by the president in a special joint session of Congress just the night before the Senate took up the bill. A few amendments did relevant things, such as make Arabic language training available at the Defense Language Institute Foreign Language Center, an amendment offered by Sen. Jeff Bingaman, D-N.M., or provide for training of reserve personnel for incidents involving weapons of mass destruction, an amendment jointly offered by Sens. Kit Bond of Missouri (a Republican) and Robert Byrd of West Virginia (a Democrat).<sup>11</sup>

However, far more were either irrelevant or pure pork, or both: Sen. Kent Conrad, D-N.D., wanted a study of providing more helicopter support missions for the Minuteman III missiles based at Minot Air Force Base, N.D.;<sup>12</sup> Tom Harkin, D-Iowa, wanted to transfer land from the DoD to establish the Fort Des Moines Memorial Park and Education Center;<sup>13</sup> Sen. Wayne Allard, R-Colo., wanted to “improve the provisions relating to the Rocky Flats National Wildlife Refuge;”<sup>14</sup> Republican Sen. Rick Santorum wanted to alter the development of the U.S. Army Heritage and Education Center at Carlisle Barracks, Pa., to permit a non-profit group to design and operate the museum.<sup>15</sup> And so it went. In all, of the 79 amendments adopted, 38 were largely irrelevant to the war and directly increased spending for the state of the author of the amendment for an unrequested project; another 26 did not appear to address the author’s home state, but they were in no way relevant to the war against terrorism or the Sept. 11 attacks.

Fifteen amendments were in some way relevant, but they were also marginal. In addition to the Bingaman and Bond/Byrd amendments cited above, a relevant amendment by Warner, the ranking Republican on the Senate Armed Services Committee and a presumed leader, authorized payment of hostile fire pay to certain civilian employees of the federal government who were attacked on Sept. 11;<sup>16</sup> many, but not all, of these people just happened to live in Warner’s state of Virginia. Another relevant amendment by Sen. Jean Carnahan, D-Mo., required DoD to submit a report to Congress on its requirements for chemical and biological protective gear.<sup>17</sup> Virtually none of these amendments could objectively be called urgent or important to the war.

A surprisingly negative assessment of the Senate’s action on this bill was expressed by a senior and respected defense correspondent, Pat Towell, of the usually dry and un-opinionated *Congressional Quarterly*:

“Each year, Congress’ defense authorization bill moves on its own clock, seemingly unconnected from world developments. That has never been more clear than it is this year. The current war on terrorist forces in Afghanistan – what Joint Chiefs Chairman Gen. Richard Myers on Oct. 18 called the most important task that the military has been handed since the second world war – is affecting the legislation only at the margins.

“Overall, the bill that would authorize one-third of a trillion dollars for national defense in fiscal year 2002 is likely to be remarkably unaffected by the terrorist attacks and the U.S. response. The most contentious issue before the conference [appointed to resolve differences between the House- and Senate-passed versions of the bill] is Bush’s request – supported by the Senate and adamantly opposed by House Republicans – for a new round of military base closings in 2003.”<sup>18</sup>

Indeed, the president's request to permit DoD to stop wasting money on unneeded military bases and to consolidate activities on remaining bases absorbed more time and energy during Congress' consideration of this bill than any other issue. It provoked a major debate in the Senate, and it caused a contentious argument consuming several weeks of sporadic meetings of the House/Senate conference committee that was attempting to resolve differences in the legislation. It all showed just where Congress' focus was.

Military base closings are dreaded in Congress. Even if it means that DoD can save money and make the military services more efficient, and even if studies have shown that a locale can not just recover from the lost jobs but grow economically by converting a closed military facility into an industrial park or other commercial development, members of Congress almost universally believe that closing a military base in their state or district is terrible news. The immediate local reaction is always negative, and constituents look to members of Congress to protect them. A member who fails to do so is seen as ineffective and/or insensitive to local needs and could be vulnerable in the next election. To a member of Congress, the most important thing to remember is that a base closing can cost jobs, not just those of the folks' back home but – more importantly – the member's.

As a result, many of the Senate conferees to the DoD authorization bill were eager to overturn in the House-Senate conference their body's decision in a 53-47 vote to endorse a new round of base closings in 2003. However, as the reversal was being contemplated behind closed doors, Secretary of Defense Donald Rumsfeld learned of it and informed the conferees that if they undid the new round of closings he would recommend that Bush veto the entire bill. Because Rumsfeld's public performance in response to the Sept. 11 attacks had so favorably impressed the press and the public, the politicians on Capitol Hill knew he had the weight to make the veto threat stick. They knew they had to give in or face the embarrassment of a president vetoing their inwardly focused defense bill even with a war going on.

The members of Congress caved to Rumsfeld, but they added a catch. They delayed the base closings until 2005. That was a convenient date: not only would that be just *after* a congressional election, it was also far enough into the future that during the intervening time some helpful member would have the opportunity to repeal the obnoxious provision – thereby showing how much he cared for his district. Of course, permitting the base closing in 2003, which was not an election year and which the president had proposed, would not be a good idea because it would require an overly prompt effort to renege on the pledge to proceed.

Rumsfeld probably knew he was being had. After the 2005 deal was announced, he told the press he was “very disappointed,” and that:

“What that means is that the United States will continue to have something like 20 percent to 25 percent more bases than we need. We will be spending money that is being wasted to manage and maintain bases we don’t need. Given the war on terror, we will be doing something even more egregious, and that is we will be providing force protection on bases that we do not need.”<sup>19</sup>

He said he wanted to “sleep on” whether he would still recommend a veto. Realizing that in Washington a spurned compromise – even a bad one – can lead to an ugly fight and a potentially worse result, Rumsfeld most probably came to his senses and did not recommend a veto. The president agreed and signed the bill into law on Jan. 10, 2002.

Just like the military construction bill, the FY 02 DoD authorization bill passed by Congress was largely indistinguishable from a peacetime bill. There were no major changes to the pre-Sept. 11 request from the president except to riddle the bill with pork, irrelevancies and marginal provisions. Congress’ postponement of the president’s proposal, to stop wasting money on unnecessary military bases, made explicit just where most members’ priorities are and where they are not.

### **The Appropriators: Rushing in Where Mere Members Fear to Tread**

Defenders of Congress’ actions in the aftermath of Sept. 11 will argue that the skepticism expressed here is inappropriate because Congress withheld its constructive response to Sept. 11 for a specific measure, which did all the president asked, and more, to rebuild after the attacks and to pursue the war against the Taliban and al Qaeda. That measure is the 2002 DoD appropriations bill and a \$20 billion emergency supplemental attached to it. It is this DoD appropriations bill that actually makes the money flow for most defense programs; it is regarded in Congress as “where the action is” for defense.

However, rather than show a Congress patriotically and effectively addressing the nation’s security, this bill’s passage through Congress revealed exactly the same behavior and values revealed in the military construction and DoD authorization bills. Indeed, the actions on this measure revealed values and behavior even worse than those shown above.

This bill, H.R. 3338, provided \$317 billion for DoD’s programs and policies, except military construction, for FY 02. In addition, both the House and Senate attached an “emergency supplemental” amounting to an additional \$20 billion specifically to help recover from the attacks on New York and the Pentagon, to strengthen homeland security against further terrorist attack, and to provide resources to fight the conflict in Afghanistan and anywhere else the president might send the Armed Forces.<sup>20</sup>

Without this bill, DoD gets no money; it is essential legislation. The House



passed its version on Nov. 28, 2001. The real fun began when the Senate took it up on Dec. 6 and on Dec. 7, which being Pearl Harbor Day was a particularly cogent anniversary.

Most of the Senate's debate in the *Congressional Record* involved the Democrats' contention that the \$20 billion sought by the president in the bill to respond to the terrorist attacks was insufficient. The effort was led by the chairman of the Appropriations Committee and the generally acknowledged master of Senate parliamentary procedure, Byrd; he sought to add another \$15 billion. That exercise ran its course and out of steam after the Republicans invoked budget rules and found enough votes to hold the line at \$20 billion.<sup>21</sup> The maneuvering on this matter also entailed a Byrd/Stevens/Inouye amendment (discussed below) that replaced and redistributed the \$20 billion emergency supplemental sought by the president.

While the legislative/political wrangle was being worked out, Sen. John McCain, R-Ariz., interjected himself to object to the pork that the Appropriations Committee had larded through the entire bill. His staff had found no less than \$2.144 billion in unrequested, unjustified state-specific additions in the regular DoD appropriations portions of the bill and another \$1.457 billion in similar "pork" in the \$20 billion emergency supplemental parts of the bill. His speech was, as usual, impassioned and compelling.

"In provisions too numerous to mention," McCain said, "this bill time and time again chooses to fund pork-barrel projects with little, if any, relationship to national defense at a time of scarce resources, budget deficits, and underfunded urgent defense priorities."<sup>22</sup>

While this speech was being offered in front of the Senate's C-SPAN cameras, an on-the-scene observer would have noticed a constant level of activity in the off-camera recesses of the Senate chamber. This action was mostly the staff of multiple senators conducting their bosses' business. Were they rushing to extract their state's pork and other venal provisions from the bill having been embarrassed by the ever aggressive, "pork-busting" McCain? Were they rushing to inject new ideas and money to fight the war in Afghanistan, making up for previous inadequacies?

Not exactly. In fact, the Senate's reaction to McCain's "pork-buster" speech was to increase the pork in the bill. The staff activity before, during and after McCain's speech involved cutting various deals with the Appropriations Committee to add literally scores of state projects. Senators and staff were acquiring the consent of Sens. Inouye and Stevens (the chairman and ranking member of the defense appropriations subcommittee from which the bill originated) to add multiple amendments to the bill. This was done quietly in what are called "managers' packages;" these are adopted by a voice vote with no record of who supported and who opposed the various provisions, and with little or no discussion of the content. The curious among the public can find the

contents the next day when the text of the various amendments and a summary of them are printed in the *Congressional Record*.

The “managers’ packages” were a thing to behold. They consisted of 108 separate amendments.<sup>23</sup> According to one analysis, they added another \$387 million in pork to the bill, thereby bringing the grand total to \$4 billion.<sup>24</sup>

About 72 of these amendments were typical pork for the home state of the author. Sen. Robert Torricelli, D-N.J., won \$2 million for the Green Tree Chemical Technologies Company in New Jersey “to sustain the company through fiscal year 2002.”<sup>25</sup> Sen. Don Nickles, R-Okla., won \$4 million for the Oklahoma City Air Logistics Center Propulsion Directorate.<sup>26</sup> Sen. Harry Reid, D-Nev., won \$3 million for the Clark County, Nev. Bioterrorism and Public Health Laboratory.<sup>27</sup> Sen. Richard Shelby, R-Ala., won \$9 million for three specific projects in Alabama.<sup>28</sup> In a bipartisan amendment, Sens. Kit Bond, R-Mo., and Jean Carnahan, D-Mo., expressed “the sense of the Senate” that the “military industrial base” – in Missouri that means Boeing – “be preserved.”<sup>29</sup> And, so it goes, on and on – for more than 70 amendments.

The rest, some 30 amendments, were irrelevancies. Bond won \$5 million for administrative expenses of the “HUBZone program” under the Small Business Act.<sup>30</sup> Sen. Tom Daschle, D-S.D., got an increase in the number of general trustees for the John F. Kennedy Center of the Performing Arts.<sup>31</sup> Stevens added \$500,000 to guarantee “reduction loans” for what appears to be fisheries in Alaska.<sup>32</sup> Sen. Joe Biden, D-Del., added a provision holding up funds for the National Railroad Passenger Corporation until he and others got around to passing a new Amtrak Reauthorization bill.<sup>33</sup>

All of this was much like the shenanigans performed on the DoD authorization bill. Notably, however, there was more of it on this appropriations bill; it was all done immediately after one senator had objected to precisely this behavior, and it just happened to be Dec. 7, Pearl Harbor Day. For the U.S. Senate, war is not hell; it’s an opportunity.

### **Why Just Spend Money When You Can Waste it?**

The \$4 billion in pork and irrelevancies marbled throughout the DoD and emergency supplemental appropriations bill was hardly the totality of what senators added. Some senators were out for bigger game.

One of the indirect effects of Sept. 11 was to depress not just the air travel industry but also the U.S. airliner production industry: i.e. Boeing. A predictable, and excessive, action of the executive branch and Congress immediately after the attacks was to offer \$15 billion in direct payments and loan guarantees to U.S. airlines – regardless of their financial condition and health before Sept. 11. Given the large number of cancellation orders concurrently pouring into Boeing, could a bailout package be far off? Of course not, but the nature of what Congress did almost certainly exceeded Boeing’s wildest dreams and demonstrated just how far members of Congress are willing to go to pursue selected agendas.

Stevens wanted to help Boeing, but also in a way that assisted a policy agenda he had been pursuing for years. He was an advocate of hardware acquisition for DoD not just through normal procurement, where the rules required all the money needed to be paid “up front,” but also through leasing hardware. Leasing had two advantages in Stevens’ likely thinking: first, it is paid for out of DoD’s “Operations and Maintenance” (O&M) account, rather than the “Procurement” budget. This would have the beneficial impact of not using what he believed to be scarce procurement dollars, and permitted more of those dollars to be used to buy something else. Never mind that the “O&M” budget also paid for training, spare parts, depot maintenance, and other “readiness” activities, and that these accounts would be pinched by Stevens’ conversion of O&M into what amounted to a second procurement account.

Also, if the congressional and executive budget rules could be bent just a teeny-weeny bit, a lease could be paid out “incrementally” during its course, rather than using “full” – up front – funding as required by scoring guidelines observed by the Office of Management and Budget (OMB) and the CBO. With “incremental” funding, the cost impact for the initial years of a “lease-purchase” is reduced, and money is freed up – but only in the beginning – to be used to start up or perpetuate other hardware acquisition.<sup>34</sup>

Shortly after Sept. 11, Stevens called the Air Force. According to an Air Force source, he told them he wanted a proposal using “creative funding” to acquire new Boeing aircraft to replace part of the aging KC-135 air tanker fleet. Never mind that the Air Force had deemed KC-135 replacements as so low a priority that it failed to include such procurement in its just completed Quadrennial Defense Review to reconsider how the Air Force should “transform” for the 21st Century. And never mind that the Air Force had requested Congress to fund a study in 2002 – called Analysis of Alternatives – to determine when it would be best to buy KC-135 replacements and what aircraft to buy. Stevens wanted those decisions accelerated – without the benefit of a study – and, by the way, he also wanted the Air Force to know that “creative funding” meant leasing.<sup>35</sup>

The compliant Air Force began littering Congress with briefings advocating two decisions. First, without performing any “Analysis of Alternatives,” it decided the Boeing 767 should be the replacement for the KC-135, and it needed 100 of them.<sup>36</sup> Second, the Air Force announced it didn’t want to buy these 100 aircraft; it wanted to lease, and then purchase (hence “lease-purchase”) them. The proposal being negotiated with Boeing would cost \$20 million per aircraft per year for 10 years, totaling \$20 billion over the term of the leases. At the end of 10 years, the lease could be extended, or the Air Force might be able to buy the aircraft for \$1 each. Boeing was cogitating on that. Sounds like a good deal?

Not exactly. For a normal cash purchase, each 767 tanker would cost \$150 million to \$160 million, or between \$15 billion and \$16 billion for all 100. That’s \$3 billion to \$4 billion less than the lease. Using alternative methods to calibrate

the costs, the results come out the same. With “nominal” dollars (calibrating the value of dollars to when they would actually be obligated), OMB estimated the cost of a purchase at \$15.1 billion and the lease at \$22 billion. That’s \$6.9 billion more for the lease. Under “net present value” calculations, OMB gave the purchase an almost \$1 billion advantage.<sup>37</sup> Calculations inside the Office of Secretary of Defense gave an even larger cost advantage to buying, not leasing. DoD’s Cost Analysis Improvement Group found a 15 percent cost advantage for a purchase and that a lease would exceed a purchase by almost \$12 billion in nominal dollars over time.<sup>38</sup> CBO also performed a preliminary analysis of the different costs showing a major advantage for the purchase over the lease; however, fearful of retaliation from senators advocating the lease, CBO never permitted its analysis to be used publicly.<sup>39</sup>

In addition to the additional cost, there still was another disadvantage to Stevens’ idea of a lease-purchase. He would need not just 51 votes in the Senate to pass it; he would need a “super-majority” of 60. Under budget law scoring rules, enacted in 1990 after years of lease-purchase problems, OMB and CBO had been scoring all “budget authority” for a lease-purchase when the government makes the commitment to acquiring the asset. According to a Nov. 2, 2001, letter from OMB Director Mitch Daniels to the chairman of the Budget Committee, Sen. Kent Conrad, \$13 billion would be needed in 2002 to cover the lease-purchase proposal according to OMB rules.<sup>40</sup> But that’s exactly what Stevens wanted to avoid; he wished to stretch out the payments into cosmetically more digestible – but ultimately more costly – payments, otherwise known as “incremental funding.” This was exactly the abuse the OMB/CBO scoring rules sought to obviate.<sup>41</sup> The “up front” funding scoring rule was enforced by a provision of the budget act that required 60 votes in the Senate to waive it.

In past years, when the Senate Budget Committee was chaired by Republican “Pete” Domenici of New Mexico, that committee frequently enforced the lease-purchase up front scoring rule. Now Democrat Conrad was chairman; he had not been an activist in enforcing that particular rule, and he just happened to have in his state a squadron of KC-135 aircraft that might eventually be replaced by the new Boeing 767s. Boeing and Stevens’s staff approached Conrad, who was considering what he should do about the scoring rule. They made the senator an offer. The OMB and CBO scoring rules were different for “operating” leases, as opposed to lease-purchases. Under a lease-purchase, the government is basically acquiring the item for its permanent use. Under an operating lease, the government is just making temporary use of the item, after which it will be returned to the original owner. An arrangement was worked out whereby the lease-purchase of the 100 767s was rewritten to become an operating lease. Scoring rules for such leases permitted the stretched out – “incremental” – funding that Stevens wanted. Everybody was happy. Stevens got his incremental funding, the Air Force got its airplanes, and the new chairman of the Budget Committee got adherence to the CBO and OMB scoring rules.

However, one small problem remained. To transform the lease-purchase into an operating lease required changing the already bad idea of the more expensive lease-purchase into a truly horrible idea. Under CBO's rules, there were three characteristics that distinguish a lease-purchase from an operating lease: (1) the item in question had to be a commercially available item; (2) the cost of the lease could not exceed 90 percent of the purchase price, and (3) the item had to be returned to the original owner in its commercially available configuration at the end of 10 years. This meant the 767 deal would have to go through some real contortions. First, the Air Force would have to lease a 767 airliner from Boeing, not an air tanker. Then, the Air Force would have to pay (Boeing) to modify the airliner into an air tanker (cost: \$30 million). The Air Force could then operate the aircraft for just 10 years, not the 40-year operating life the aircraft was expected to have. And, finally, before being returned it to Boeing at the end of the lease, the air tanker had to be re-modified (by Boeing) back into an airliner (for another \$30 million). According to OMB, calculations this increased the total cost of the lease to \$26 billion,<sup>42</sup> while also decreasing the availability of the aircraft to the Air Force from 40 to 10 years.

This change was just fine with everybody involved. The Air Force continued to lobby Congress for the modified deal; Stevens proudly announced that his lease now complied with all OMB and CBO rules; and the new chairman of the Budget Committee, Conrad, had enforced the rules. The idea was also endorsed by former Budget Committee Chairman Domenici.<sup>43</sup>

The proposal did finally find two critics when the DoD appropriations bill was debated by the Senate on Dec. 7. McCain included a cauterization of it in his "pork buster" speech: he called the operating lease "a sweet deal for the Boeing Company that I'm sure is the envy of corporate lobbyists from one end of K Street [in downtown Washington] to the other."<sup>44</sup> He was supported by Sen. Phil Gramm, R-Texas, who said, "I do not think I have even seen a proposal that makes less sense economically and I have been here for 22 years."<sup>45</sup> Given the strong rhetoric, one would expect some strong action, right?

Not exactly. McCain and Gramm did offer an amendment to modify the 767 deal. Stevens accepted it without debate. He was smart to do so. As he explained to Gramm and McCain,<sup>46</sup> the terms of the amendment changed nothing, and he would accept it for that reason.<sup>47</sup> The amendment was pure cosmetics, but now McCain and Gramm could claim they did something.

Shortly after this charade, the Senate passed the bill and sent it to conference with the House to conform the two bodies' different versions into one. At that point in the legislative process, the bill was subject to further congressional-style "improvement."

### **Why Stop with Just One Bad Idea?**

It looked like the 767 deal might be headed for trouble when the Senate-passed DoD appropriations bill went to conference with the House. The defense

subcommittee of the House Appropriations Committee had expressed itself as strongly opposed to exactly the kind of gimmickry Stevens had authored. The only difference was that the House critics focused on incremental funding gimmicks being used for Navy programs. They argued:

“The committee is dismayed that the Navy continues to advocate the use of alternative financing mechanisms to artificially increase shipbuilding rates, such as advance appropriations, or incremental funding of ships, which only serve to decrease cost visibility and accountability. Those Navy advocates of such practices would actually decrease the flexibility of future administrations and Congresses to make rational capital budgeting decisions. Accordingly, the committee bill included a new general provision (section 8150) which prohibits the Defense Department from budgeting for shipbuilding programs on the basis of advance appropriations.”

This was pretty stern stuff, and the same complaints applied – in spades – to the Stevens’/Air Force lease proposal that added extraordinarily high cost and truncated use to the incremental funding tricks the Navy was trying. Surely, the lease deal had finally met a stone wall, right?

Not even close. The House members of the Conference Committee accepted every word of the original Stevens’/Air Force operating lease deal. They also agreed to take the whole thing a step further. Not content to lease at extraordinary cost air tankers that the Air Force had not included in its initial budget plans, the House conferees agreed to lease under the same arrangements four additional 737 aircraft. These are not to be air tankers to assist future combat aircraft engaged in military operations, they are what DoD likes to call “CINC Support” aircraft. They are otherwise known as “VIP transports,” and it is not just uniformed military dignitaries who use them; members of Congress also routinely fly in them. Neither the House’s bill nor the Senate’s had included these four 737s, but the White House and Vice President Dick Cheney’s office – and some unnamed members of Congress were reported to have urged their addition,<sup>48</sup> even though doing so stretched Senate Rule 28 that purported to bar the adoption in conference of anything that neither House nor Senate had endorsed in their initial bills. The rules, the cost and the embarrassment notwithstanding, the VIP transports were added to make the atrocious 767 deal even worse.

### **Just Adding Bad Ideas is Insufficient; Undermining Good Ones is Sometimes Necessary**

If all Congress did were to add expensive garbage to defense bills, the problem would just be a question of finding the additional money to pay for it. Unfortunately, both the House and Senate Armed Services committees and the

House and Senate Appropriations committees did not find any new money to fund their pork and irrelevancies. They used money from existing programs, including the accounts in the DoD budget most directly related to fighting the war against terrorism. Knowing that being found to do so might be embarrassing, they used numerous devices to cover up the raid.

The first gimmick was to simply misstate what they were doing. The chairmen and ranking Republican members of the various committees and subcommittees involved claimed they were increasing funding for military “readiness” – the all important training, spare parts, and weapons maintenance activities funded by the O&M account in the DoD budget.<sup>49</sup> Predictably, the members were full of good sounding words about their handiwork.

Rep. Bob Stump, R-Ariz., chairman of the House Armed Services Committee, claimed the DoD authorization bill, as sent to the president in final form, “substantially increases critical readiness accounts.”<sup>50</sup>

Levin, chairman of the Senate Armed Services Committee said his bill “includes a major victory for good government and for the readiness and transformation [of] our Armed Forces,” and that “this bill makes significant contributions to the readiness of our military.”

How could this be? The DoD authorization bill actually reduced the funding requested by Bush for the O&M account. The president requested \$125.7 billion; the final version of the bill authorized just \$123.3 billion, a reduction of \$2.4 billion. The reader has probably come to realize that on Capitol Hill, words should not just be accepted; they have to be verified. In referring to an “increase,” these politicians were addressing the change in the O&M budget from the last year of the Clinton administration. The final, anemic, FY 01 budget for O&M had been \$113.2 billion; the FY 02 authorization bill provided \$123.3 billion; thus, an almost \$10 billion “increase,” which was dutifully headlined in the press releases. Those same press releases and speeches did not point out that the president had requested \$125.7 billion – \$2.4 billion more than was allowed in the bill. Had the politicians been willing to be complete and accurate, they would have included both terms of reference. Being unwilling to fully explain themselves, they excluded a key point of reference.

That was hardly all. A review of the final legislative product text for the O&M account show an O&M budget laced with still more state-specific projects added by the Appropriations committees. In addition to the military construction, procurement, and research and development accounts, the House and Senate Appropriations committees also laced the O&M budget with pork projects. The reports of the Appropriations committees and their joint, final conference report add item after item of state specific projects, many – again – having nothing to do with the war on terrorism or even war in general. The list includes not just repairs and operating expenses for specifically designated items, but also acquisition and research and development, which otherwise belongs not in O&M but in other accounts.



Some examples: \$1 million for buying MBU-2 oxygen masks and another \$1 million for an alternative fuel program at Hickham Air Force Base, Hawaii,<sup>51</sup> \$2.5 million for the Philadelphia Naval Business Center,<sup>52</sup> \$3.4 million for a landfill relocation,<sup>53</sup> \$4.9 million for a Northwest Environmental Resource Center,<sup>54</sup> \$14.7 million for “biometrics” research in West Virginia,<sup>55</sup> and \$2 million for Rock Island bridge repairs.<sup>56</sup> It goes on in the text and tables of three Appropriations committee reports. Moreover, because of directions contained in the final, authoritative conference report, each of the three reports adds to the projects designated by the other two.

The impact is not to add new funding; the money used for these projects displaces the money that had been intended for the regular purposes of the O&M budget. This constitutes reductions in the real O&M budget. According to McCain, these earmarks for pork in the O&M budget just in the preliminary Senate Appropriations Committee report totaled more than \$400 million.<sup>57</sup>

However, the pork earmarks that displaced normal O&M spending are the lesser of the obscure mechanisms to reduce O&M spending below apparent levels. In the back of the authorization and appropriations bills – in the “General Provisions” sections – one finds more bites out of O&M. Some of these are just more pork; others have more elegant justifications.

For example, in the final DoD Appropriations Conference Report, Section 8062 of the General Provisions Title uses \$10.2 million of O&M funding to realign railroad track at Elmendorf Air Force Base and Fort Richardson, Alaska; Section 8136 takes \$2.1 million for a Lafayette Escadrille Memorial; Section 8138 takes \$4.2 million for the battleship Alabama museum and memorial; Section 8139 takes the same amount for the USS Intrepid museum and memorial; Section 8140 takes another \$4.2 million to relocate a school at Fairchild Air Force Base; and Section 8141 takes \$3.5 million for a special needs learning center for the Central Kitsap School District in Washington state.

Different provisions take larger chunks, again out of O&M funding. Section 8095 in the same General Provisions Title of the bill reduces O&M by \$240 million to “reflect savings from favorable foreign currency fluctuations.” Section 8102 takes out \$262 million to restrict travel of DoD personnel. Section 8135 extracts \$105 million “to reflect fact of life changes in utilities costs;” Section 8146 takes \$100 million to improve scrutiny and supervision in the use of government credit cards.” Section 8123 is the granddaddy; it reduces O&M by \$1.650 billion for “business practice reforms, management efficiencies, and procurement of administrative and management support.”

Some members of Congress call these “good government” provisions, but they are mostly phony. They pretend to assume reforms and savings – even to force them to occur – but as the committee members are acutely aware, they aren’t going to happen. As they have been told that time and time again by DoD and OMB, these mandated reductions involve unrealistic assumptions about DoD’s ability (and willingness) to adopt management reforms within the



current fiscal year; they make unjustified economic assumptions regarding foreign currency exchange rates; they assume that in a time of war DoD is going to reduce travel costs, and they pretend that defense contractors can and will adopt efficient business practices despite decades of obstruction to full and open competition. Numerous times during the House and Senate consideration of the DoD appropriations bill, both bodies were told that these reductions in O&M were unrealistic and, more importantly, would hurt real defenses. On Nov. 28, 2001, the House Appropriations Committee leadership was told by OMB:

“These reductions were based on unrealistic assumptions about achievable FY 2002 savings – primarily from reductions in consultant services, headquarters staff, and A-76 studies. The real effect of the House’s deep O&M reductions would be to undercut the president’s plan to address readiness shortfalls and competitive sourcing, and reduce funds available for military operations and support.”<sup>58</sup>

On Dec. 6, 2001, OMB told the Senate appropriators:

“The committee has made reductions to Operations and Maintenance (O&M) programs, based on unrealistic assumptions of how much savings could be achieved through reductions in consultant services, foreign currency fluctuation account balances, and travel. These reductions would undermine DoD’s ability to adequately fund training, operations, maintenance, supplies, and other essentials. They would seriously damage the readiness of our armed forces and undermine their ability to execute current operations, including the war on terrorism.”<sup>59</sup>

And yet, the House and Senate appropriators persisted. Not only did they refuse to eliminate the phony cuts, they also refused to take care that the cuts they were requiring did not come out of the key training, spare parts, maintenance or operating expense accounts of the O&M budget: something they could have easily done by prohibiting such cuts in those places. To do so would have been contrary to the goal they had quietly established: to lower spending in the O&M budget in order to increase it in the procurement and research and development budgets, which they had already laced with their state specific add-ons.<sup>60</sup>

Just to make it all worse, they also explicitly stated that none of these cuts were to be taken out of the “line item” pork they had laced throughout the O&M budget. Offered the choice to load up the bill with pork projects for the members’ home states and districts, or to load up the combat units of the Armed Forces with extra training, spare parts and other necessities for going to war in the most effective manner possible, members of Congress – all of them – opted for pork over military readiness.

### The Mr. Smith Who Isn't

One of the modern rituals of Senate passage of a defense authorization or appropriation bill is a short, standard speech by McCain. These are given after his staff dutifully tabulates everything they consider to be “pork-barrel” spending in the bill.<sup>61</sup> The speech is usually impassioned and – for those depressed by even a cursory review of the contents of these bills – uplifting. The speech usually takes about 15 to 20 minutes and is accompanied by the insertion into the *Congressional Record* of several pages of tabulations of pork items, letters from outraged organizations, newspaper articles identifying wasteful provisions, etc. It is all quite impressive, up to a point.

The exchange that occurred on Dec. 20, 2001, when the Senate was about to vote on the final version of the FY 02 DoD appropriations bill, presents a typical example. The House and Senate Conference Committee had taken the Senate-passed DoD appropriations bill McCain had complained so bitterly about on Dec. 7, 2001, and made it worse. They eliminated the irrelevant, cosmetic amendment he had added regarding the 767 air tanker lease, and they added the unrequested, superfluous VIP transports to the obnoxious deal. They included the hundreds of pork add-ons of both the House- and Senate-passed bill that McCain objected to, and they added a few more goodies.

One of these was a particularly egregious addition larded on by Daschle, the Senate majority leader. This juicy little tidbit, according to OMB, “would transfer unprecedented and virtually unlimited liability for environmental clean up and tort claims to the American taxpayer, even where the liability is unrelated to action of the U.S. government” for an operation called the Homestake Mine. Homestake was one of numerous gold mines owned by a multibillion-dollar corporation with mines in the United States, Canada, South America and Australia. The mineshaft in Lead, S.D. (Daschle’s home state), was now defunct, but it is also over a mile deep. This makes it a good candidate for a research facility for neutrinos and other subatomic particles – an endeavor that would maintain many jobs in the region. The only problem was that Homestake demanded release from any liability for cleaning up cyanide and other pollution commensurate with 125 years of gold mining in the shaft before it was willing to hand over its mine for conversion into the research facility. While the liability that the Daschle amendment handed to the federal government was unlimited, CBO scored it with a *de minimus* \$50 million dollar cost.

There was this and more. According to McCain, several hundred million had been added to the bill for highway spending, non-security spending for the Olympics in Salt Lake City, commercial shipbuilding in Mississippi, capital grants to the National Railroad Commission, the Woodrow Wilson Bridge in the Washington area, and more.<sup>62</sup>

McCain turned on the rhetorical afterburners; he found all this, quite literally, “incredible.”<sup>63</sup>

“[T]he spending borders on gross negligence. The Senate Appropriations Committee has not seen fit to change in any degree its usual blatant use of defense dollars for projects that may or may not serve some worthy purpose, but that certainly impair our national defense by depriving legitimate defense needs of adequate funding.”<sup>64</sup>

“[T]his system has run amok. The Senate ought to look at itself. What are we doing here?”<sup>65</sup>

“This kind of behavior cannot go on. You will lose the confidence of the American people. This is called war profiteering.”<sup>66</sup>

“You read these things. First you laugh, and then you cry.”<sup>67</sup>

The stage had been set. The Senate had taken its egregious, pork- and irrelevancy-laden defense appropriations and emergency supplemental bill and had, quite literally, made it even worse. Not only had the Senate appropriators been caught red-handed, McCain caught them at a highly vulnerable moment. The Senate was anxious to finish the bill and adjourn for a recess. It was Dec. 20, 2001. Under ideal circumstances, they would have finished their business at or shortly after the new fiscal year started on Oct. 1, but Sept. 11, the war in Afghanistan, and a labyrinth of tax and spending politics had intervened. Now the senators “were smelling the jet fumes” of airliners to take them home for Christmas, Hanukkah, and local – career lengthening – politics. With a war going on, the defense bill was “must” business. It would be impossible to depart Washington with the bill unpassed. A filibuster or other delay tactic, unless and until some concessions were made in favor of a better bill, would have come at an exquisitely painful moment. The time to wring some concession out of the grisly appropriators had arrived.

Any number of parliamentary maneuvers by McCain could have stymied the passage of the bill. Just starting a good old fashioned, Sen. Jefferson Smith-type filibuster would have given rise to 99 audible senatorial groans. When they realized the “problem” senator was serious and they had to tell their personal secretaries to cancel their flights, a delegation would almost certainly have been sent to ask what concession he required to desist. Or, if McCain had no energy for an old fashioned filibuster, he could have exercised his right as a senator under the rules to demand that the Senate’s clerk be forced to read aloud every word of the 127 page conference report. Or, he could have demanded that a quorum call of absent senators be continued again and again, a device that can end up taking hours. Or, he could have exercised one of the various budget act points of order that the conference report was technically vulnerable to, thus requiring further debate and roll call votes.

These and other actions were available to McCain, if he were serious about waging a real war against pork in a time of national emergency. He chose to do nothing. He chose only to talk for a very short time. Rather than giving reality to his words through action, he told the Senate, “I know the hour is late; I apologize to my colleagues if I have inconvenienced them” with his 30 minute speech.<sup>68</sup> He then yielded the Senate floor and disappeared. After a few more senators gave speeches about the wonderful things they were doing for the national defense and a few others inserted into the text of *Congressional Record* typed statements that were printed to appear as if they were actually given as speeches, the Senate voted on the conference report. The vote was 94 to 2: McCain and Gramm voting in opposition. The bill was sent to the president and was signed into law on Jan. 12, 2002. The deed was done.

# Conclusion

The ongoing joke on Capitol Hill and among some political scientists is that there are two things one should never see in the making: sausage and legislation. Usually, when a particularly disgusting bill or amendment is passed, Capitol Hill staffs assuage their consciences by knowingly joking to each other that “the sausage factory” – the U.S. Senate – has been at work again. As if there is forgiveness in acknowledging that the legislation is loaded with garbage.

It’s a little more complicated than that. After the bills discussed here were passed by the House and Senate, they went to the president and were duly signed into law. Then things started to happen, or not happen. Programs that neither needed nor deserved the money got the money. Programs that did, didn’t. A large gold mine company got protection from unfettered lawsuits; the nation got the shaft. Unneeded bases stayed open, while soldiers were deployed to war with training budgets reduced to enable more pork. Unsought air tankers will be borrowed at extraordinary cost while weapons used in the new conflict are shorn of maintenance resources for their use. Members of Congress are given brand new VIP transports for their personal travel, while combat aircrew fly in fighter/bombers that are up to 20 years old and B-52 bombers that were last built in 1962.

Members of Congress are not just raiding the federal treasury; they are also wrenching money away from our combat forces at the very moment they send them to war. They are doing this to make themselves look good: to the voters back home, to the corporations that inevitably will find a way to express their thanks, and to the Washington community at large that is forever on the hunt for sharp new hustlers to promote to higher status. That new status might not merely be a better job, but what in the Washington vernacular is far more valuable: to be known as a power broker for nationwide interests (such as Stevens), or a dispenser of heretofore unheard of federal largess for the folks back home (such as Byrd), or – for the more stylish in the mob – acknowledged presidential timber (such as Daschle).

There are some who profess not to be a part of this system; they posture to their constituents as toiling to do the nation’s urgent business in a time of need

(such as Feinstein), to be working for “good government” (such as Levin), or to have nothing on their mind but to support the men and women in the Armed Forces (such as Warner). Closer scrutiny of these politicians reveals them to have their hand in the public’s pocket and the combat soldier’s knapsack for their own self-advancement as much as the more brazen.

McCain is none of the above. He insists that his staff ferret out much of the junk in Congress’ defense bills. Without fail, he marches to the floor of the Senate to rail against it. What his staff finds never ceases to amaze even the most jaded in the congressional bureaucracy, and his speeches never fail to aggravate the perpetrators and their staff for being found out so early and so easily or to give a lift to an unknown number of staff – and perhaps even a senator or two – who have grown disgusted with the new business as usual.

But with McCain, the buck does stop; unlike Harry Truman, it stops short of his desk. He gives the good speech, expresses his outrage, lectures his colleagues and stirs up the place with an occasional short delay. But then he walks away. When it comes to action – meaningful action – McCain is only a paper press release tiger. In a constitutional system specifically designed to equip a minority – even of one – with the parliamentary weapons to bring the system to a halt unless and until the minority is given some level of satisfaction, McCain has unilaterally disarmed himself. Of the dozens of tactics available to him to bring the Senate into legislative agony – tactics many others have used to achieve their own ends – McCain has chosen to sit on his hands.

His doing so is all the more remarkable because more than any other senator, he has informed himself of the garbage packed into Congress’ defense bills. Knowing at least as well as any other just what is going on, he finds it somehow going too far to put an end to it with the many tools at his disposal. By assuming this role – i.e. the self-anointed, but also self-disarmed, crusader against “pork” – McCain has made himself not the Senate’s “pork buster” but its “pork enabler.” If the worst the Congress’ most outspoken opponent of pork is going to do is give a speech, there is clearly no meaningful downside.

In the absence of any real action, McCain appears to be seeking the appearance of a reformer without the substance. In the final analysis he sinks to the level of the rest: he seeks to be accepted for something he is not. The others seek to be taken as patriots and statesmen while they snatch what they can for their self-advancement. In the Indochina War, McCain proved his patriotism on a daily basis for many painful years, but these days he seeks, just like all the rest, to be seen as something that his actions – or rather inactions – belie.

The American constitutional system provides patriotic stalwarts many tools to take arms against misbehavior. In the movie “Mr. Smith Goes to Washington,” the protagonist used those tools against an earlier form of business as usual. Not knowing whether he would win and not caring that he was utterly alone, Sen. Jefferson Smith took on the fight and – much to his own surprise – prevailed. Today, there is no Jefferson Smith in Washington.

Moreover, Smith did not move to the executive branch. When Rumsfeld was confronted with the DoD authorization bill and its prolongation of unneeded, wasteful military bases and all the other junk, he blinked. Unfortunately, so did his boss.

When he signed the DoD appropriations and emergency supplemental bill into law, Bush said that because the bill:

“[P]rovides approximately \$2 billion less than requested, the Act does not adequately fund all my critical priorities, specifically the readiness of our forces. The \$2 billion reduction is largely achieved by cuts to operation and maintenance programs ... As a result, these cuts will place our military forces in the all too familiar predicament of having to choose either to sacrifice near-term readiness or to forego critical repair of family housing, defer important depot maintenance of our weapon systems, and reduce base operations.”<sup>69</sup>

Thus, like McCain, Bush chose words – not actions – to address Congress’ deeds, and like McCain, he joined the ranks of “enablers” to permit Congress to substitute self-advancing pork and irrelevancies in lieu of more and better support for the soldiers and aircrew he had sent to fight, and perhaps die, in Afghanistan.

## Endnotes

<sup>1</sup> William Lind, Col. Keith Nightengale, Capt. John F. Schmitt, Col. Joseph W. Sutton and Lt. Col. Gary I. Wilson, "The Changing Face of War: Into the Fourth Generation," *The Marine Corps Gazette*, October 1989. This article can also be found at <[www.d-n-i.net](http://www.d-n-i.net)>.

<sup>2</sup> For a definition of "pork," see Sen. John McCain's website at <<http://mccain.senate.gov/pork02.htm>>.

<sup>3</sup> A ranking minority member is the member from the party in the minority in the House or Senate who is the most senior member of that party on a committee or subcommittee. Were that party to become the majority party in the House or Senate, that member would become chairman.

<sup>4</sup> There was one exception to this rule: number 11 was the state of Nevada which had no top-of-the-heap representation on DoD or military construction committees or subcommittees. However, Sen. Harry Reid, D-Nev., is the majority whip of the Senate, and he is also the chairman of the Energy-Water Subcommittee of the Senate Appropriations Committee, which handles the Department of Energy's nuclear weapons matters.

<sup>5</sup> Wisconsin, represented by the ranking Democrat on the House Appropriations Committee, David Obey.

<sup>6</sup> One might argue that members with large and numerous military bases in their state or congressional district would tend to sit on these committees and subcommittees and therefore properly add proportionally larger military construction budgets. This is frequently not the case. For example, West Virginia, Florida, Alaska, New York, and New Jersey, which have relatively few and small military bases, persist among the top military construction recipients. It is also true that members not on the military construction committees and subcommittees also represent districts and states with large military bases. For example, the list of under \$10 million "losers" includes North Carolina and Kansas, which have substantial military bases. A statistical analysis will show that senior membership on military construction-relevant committees and subcommittees correlates significantly more with added projects than do states with large military bases.

<sup>7</sup> Analysis of past military construction appropriations acts and other "pork laden" bills can be found at McCain's website at <<http://mccain.senate.gov/pork.htm>>.

<sup>8</sup> Remarks of Sen. Dianne Feinstein, *Congressional Record*, Sept. 26, 2001, p. S9828-9829.

<sup>9</sup> Remarks of Sen. Carl Levin, *Congressional Record*, Sept. 21, 2001, p. 9565.

<sup>10</sup> Remarks of Sen. John Warner, *Congressional Record*, Sept. 21, 2001, p. 9569.

<sup>11</sup> See *Congressional Record*, Oct. 1, 2001, p. D953.

<sup>12</sup> *Ibid.* p. D943.

<sup>13</sup> *Congressional Record*, Sept. 26, 2001, p. D944.

<sup>14</sup> *Ibid.* p. D944.

<sup>15</sup> *Congressional Record*, Sept. 24, 2001, p. D926

<sup>16</sup> *Congressional Record*, Oct. 1, 2001, p. D953.

<sup>17</sup> *Congressional Record*, Sept. 26, 2001, p. D944.



- <sup>18</sup> “Changes to Defense Bill Modest Despite Focus on Anti-Terrorism,” *Congressional Quarterly Weekly*, Oct. 23, 2001.
- <sup>19</sup> Helen Dewar, “Defense Bill Passes: Base Closings Delayed,” *The Washington Post*, Dec. 14, 2001, p. A43.
- <sup>21</sup> The president was able to win with a minority of 48 votes in a Senate of 100 voting senators by exercising the right to invoke the provisions of the budget act which require a “super-majority” of 60 votes to infringe on various budget enforcement rules. Various provisions of H.R. 3338 violated those rules, and when the Republicans invoked them, the minority was able to prevail and strip out the money added by Byrd.
- <sup>22</sup> Remarks of Sen. John McCain, *Congressional Record*, Dec. 7, 2001, p. S12595.
- <sup>23</sup> *Congressional Record*, Dec. 7, 2001, pp. D1219-1224.
- <sup>24</sup> “Senate Passes Defense Appropriations Bill,” Council for a Livable World, Dec. 10, 2001, received via e-mail by the author.
- <sup>25</sup> *Congressional Record*, Dec. 7, 2001, p. D1220.
- <sup>26</sup> *Ibid.*
- <sup>27</sup> *Ibid.*
- <sup>28</sup> *Ibid.* p. S12658.
- <sup>29</sup> *Ibid.* p. D1219.
- <sup>30</sup> *Ibid.* p. S12655.
- <sup>31</sup> *Ibid.* p. D1223. One wonders who got the plum of the assignments as trustees.
- <sup>32</sup> *Ibid.*, p. S12664. The text of the amendment leaves unclear the precise intent, and it is not explained at any point in the *Congressional Record* or other materials relevant to the bill.
- <sup>34</sup> Some will argue that procurement of hardware supplies troops with needed equipment and therefore should be called “long term readiness.” Major hardware acquisition typically takes two to four years, or even longer, to produce equipment on the ground. Such hardware, which may not be available until 2004 or later, should not be considered relevant to fighting a conflict in 2002.
- <sup>35</sup> Stevens’ “instructions” to the Air Force were described to the author by senior representatives of the Air Force, members of Stevens’ staff, and members of two Senate committee staffs.
- <sup>36</sup> The 767 is an excellent candidate for the air tanker mission, but there are also compelling arguments for the Boeing 757. Its lower cost would mean a larger number of refueling aircraft. Thus, even though the 757 carries less fuel, a larger fleet of 757s could refuel more aircraft at one time than could a smaller fleet of bigger 767s, an important tactical consideration. There are other factors for and against the 757, and there is a third option that might be the most compelling – a mixed 757/767 fleet. We may never know; the Air Force decided it already had the answer to a question it had not studied.

<sup>37</sup> Analysis provided by OMB analysts to the author.

<sup>38</sup> The memo, titled “NO21– KC-135E Recapitalization (U)” is in the possession of the author.

<sup>39</sup> The analysis is in the possession of the author.

<sup>40</sup> Letter of OMB Director Mitchell E. Daniels, Jr. to Honorable Kent Conrad, chairman, Committee on the Budget, U.S. Senate, Nov. 2, 2001.

<sup>41</sup> The federal government has a lot of experience with incremental funding; none of it good. As Daniels said in his letter to Conrad, in the past “[incremental] scoring hid the fact that these [lease] agreements had a higher economic cost than traditional direct purchases, and in some cases allowed projects to go forward despite significant cost overruns.” That is why OMB and CBO insist on knowing and scoring the total cost of the lease-purchase commitment up front. Daniels is not alone; since 1996, GAO has produced at least eight studies on why incremental funding “erodes future fiscal flexibility,” “limits cost visibility and accountability,” and contributes to “cost overruns and schedule delays.” (See Budget Issues: Incremental Funding of Capital Asset Acquisitions, U.S. General Accounting Office, Letter to Honorable Pete V. Domenici, chairman, Budget Committee, Feb. 26, 2001, GAO-01-432R Incremental Funding of Capital Assets, p. 3.)

<sup>42</sup> Letter of OMB Director Mitchell E. Daniels, Jr., to Honorable John McCain, U.S. Senate, Dec. 18, 2001.

<sup>43</sup> Public statements of Domenici and Stevens at the Defense subcommittee “mark up” of H.R. 3338 on Dec. 5 2001, Dirksen Senate Office Building.

<sup>44</sup> Remarks of Sen. John McCain, *Congressional Record*, Dec. 7, 2001, p. S12595.

<sup>45</sup> Remarks of Sen. Phil Gramm, *Congressional Record*, Dec. 7, 2001, p. S12600.

<sup>46</sup> This description is based on an eyewitness account.

<sup>47</sup> The amendment permitted the president to “reprogram” funds intended for the lease to any other purpose in the bill. However, the original provision left room for the president to instruct the secretary of the Air Force not to enter into any lease arrangement. The amendment added nothing substantive.

<sup>48</sup> Juliet Eilperin, “Plane Lease Deal to Cost U.S. Extra,” *The Washington Post*, Dec. 26, 2001, p. 1.

<sup>49</sup> The O&M account funds many things, including the Defense Health Program, base repairs, anti-drug activities, DoD’s civilian employees, and much else. Readiness is just one of the myriad activities funded in O&M.

<sup>50</sup> Bob Stump (chairman), “Conferees Reach Bipartisan Accord on Fiscal Year 2002 Defense Authorization Bill,” Press Release, House Armed Services Committee, Dec. 12, 2001, p. 1.

<sup>51</sup> Conference report to accompany H.R. 3338, “Making Appropriations for the Department of Defense for the Fiscal Year Ending September 30, 2002, and for Other Purposes,” House Report 107-350, Dec. 19, 2001, p. 188.

<sup>52</sup> *Ibid.* p. 192.

<sup>53</sup> *Ibid.* p. 193.

<sup>54</sup> Ibid. p. 177.

<sup>55</sup> Ibid. p. 170.

<sup>56</sup> Ibid. p. 170.

<sup>57</sup> Tabulated from the table inserted by McCain in the *Congressional Record*, Dec. 7, 2001, p. 12597-12596.

<sup>58</sup> Statement of Administration Policy, Nov. 28, 2001, Department of Defense Appropriations bill, FY 2002, Executive Office of the President, Office of Management and the Budget, p. 4.

<sup>59</sup> Statement of Administration Policy, Dec. 6, 2001, Department of Defense Appropriations bill, FY 2002, Executive Office of the President, Office of Management and the Budget, p. 3.

<sup>60</sup> It is also notable that these reductions in buying power – especially the \$1.65 billion “procurement reform” reduction – occur in the O&M accounts, not in the procurement or research and development accounts where much of the buying actually occurs.

<sup>61</sup> McCain’s definition of pork is forgiving; it does not consider pork to be any program requested by the DoD, even if it is added to accommodate a politician or a contractor purely for political or extraneous reasons, and it does not consider pork to be any program added by the Joint Chiefs of Staff’s annual “wish lists,” which are backdoored over to Congress after the formal DoD budget is put together. “Wish list” items are programs that did not make the cut for the formal DoD budget; the lists are reviewed neither by the Office of the Secretary of Defense, OMB or the competitor military services.

<sup>62</sup> See McCain’s remarks, *Congressional Record*, Dec. 20, 2001, p. S13837.

<sup>63</sup> Ibid. p. S13839.

<sup>64</sup> Ibid. p. S13838.

<sup>65</sup> Ibid. p. S13841.

<sup>66</sup> Ibid. p. S13842.

<sup>67</sup> Ibid. p. S13842.

<sup>68</sup> Ibid. p. S13842.

<sup>69</sup> Statement by the President, Defense Bill Signing Statement, Jan. 10, 2002, p. 2.





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