CASE STUDY

Industrial College of the Armed Forces
National Defense University

The Iron Triangle Manifested

U.S. Air Force Tanker Lease 2001–2005 Case Study

by Shahnaz M. Punjani

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Cover

An air-to-air right-side view of an E–4B advanced airborne national command post aircraft being refueled by a KC–135 Stratotanker aircraft. (2007-12-27) Photo by jamesdale10.

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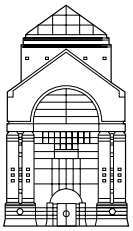

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This was language that was sneaked into the bill by the Secretary of the Air Force directly to the appropriators, as far as I can tell, without Defense Secretary [Donald] *Rumsfeld's approval. . . . Competition is fundamental to the way we do business and I don't see any reason not to have it on a program so large. I also, frankly, don't see why we are considering leasing these aircraft, which is going to cost us far more than buying them at the end of the day. This is a bail out, and Senator* [Patty] *Murray* [D–WA] *made that clear on the Senate floor when she said that Boeing needed the help. It's pork, and we shouldn't be paying for it.*

—Senator John McCain[1]

Simply put, Air Force leaders never said they even needed the tankers until they woke up one morning and saw a pile of money on the table.

—Eric Miller
Project on Government Oversight[2]

Executive Summary

The proposed lease of the KC–767 tanker aircraft was one of the most infamous procurement scandals of the post–Cold War era. Interactions within the military-industrial-congressional complex led to legislation permitting the Air Force to lease tankers from Boeing using an operating lease rather than standard procurement. Following the outcry from Congress, industry, the media, and numerous watchdog groups, Congress and the Department of Defense (DOD) launched a wave of investigations and hearings. During the lease debate, participants reached a number of compromises documented in congressional legislation. However, this was not sufficient to continue the lease process. After nearly 4 years, Congress cancelled the tanker lease and directed the Air Force to pursue a traditional procurement approach.

Setting the Requirement: The Air Force Assesses Need

Fielded in the mid-1950s, the U.S. Air Force's KC–135 is a modified version of the Boeing commercial 707 aircraft. It performs in-flight refueling and carries cargo. In August 1996, the General Accounting Office (GAO) published a report titled *U.S. Combat Air Power: Aging Refueling Aircraft Are Costly to Maintain and Operate*, voicing concerns about the long-term viability of the Air Force's 552 KC–135s.[3] Citing increased depot time, structural aging, corrosion issues, and operations/modification costs, GAO recommended the Air Force pursue acquisition of a new dual-use tanker/cargo aircraft.[4]

The Air Force agreed the KC–135 needed to be replaced but not immediately. With programs in place to deal with depot maintenance, including the oft-cited corrosion problem, a replacement program could wait until 2013. Boeing agreed with this assessment, stating the KC–135 could fly well past the turn of the century.[5] Responding to the GAO report, the Air Force formed a team of its own experts along with participants from Boeing and Rockwell to perform the KC–135 Economic Service Life Study (ESLS). Based on usage at that time, the February 2001 report projected viable KC–135 service life out to 2040. The findings indicated structural integrity was "strong" and corrosion concerns were manageable.[6] The team predicted fleet sustainment costs would grow $20 million each year due to increases in depot maintenance hours and subsystem modernization.[7] The Air Force considered these costs to be bearable. In a step to ensure the KC–135 would last through the outyears, the Air Force began a Functional Systems Integrity Program assessing the health of each aircraft subsystem. Based on the study, the Air Force stood by its initial decision to begin a KC–135 replacement program in 2013.[8] When asked about the aircraft's sustainability at a Senate hearing in June 2001, General Michael E. Ryan stated a replacement program would start in the next 15 years.[9]

The ESLS pre-dated 9/11 and did not account for increased flight hours due to homeland defense air patrols and the war in Afghanistan. Usage rates increased from the ESLS-reported figure of 308 hours per year to 435 hours.[10] Concerned, the Joint Requirements Oversight Council in October 2001 validated a mission needs statement (MNS) for a new refueling aircraft, making the Air Force the lead.[11] A month later, the Air Force signed the final MNS. Referencing the never-completed Air Force's Tanker Requirements Study, the MNS stated there was an immediate need for new tankers.[12]

Despite increased KC–135 use and a validated need, new tankers had a lower budget priority within the Air Force. The F–22 fighter program took precedence, and the C–17 was in production.[13] There were not enough funds for another aircraft program. The Air Force had to find another solution—one fitting within the available budget.

Industry Engages

In February 2001, Boeing proposed selling thirty-six 767-based tanker variants to the Air Force to replace the KC–135.[14] The offer was at odds with the KC–135 longevity recommendation they had supported in the ESLS. Building the planes in Everett, Washington, Boeing has been producing the 767 for commercial customers like United Airlines since 1979. In 1992, Boeing started marketing the 767 as a replacement for military variants of the 707.[15] The company delivered the first military 767, an Airborne Warning and Control System (AWACS) plane, to Japan in 1998. Despite Boeing's February 2001 offer, the company did not have a 767 tanker variant. Work on a 767 tanker did not begin until after signing contracts with Italy in July 2001 and with Japan that December.[16] While the Air Force was interested in a KC–135 replacement, it did not have the necessary procurement funds in 2001 and did not pursue Boeing's offer.

September 11 was a turning point for many in the defense community, and the budget was no exception. Defense budgets went from famine to feast almost overnight as a culture of vulnerability permeated U.S. society. On September 10, 2001, *Aviation Week*, in an article titled "Economic Uncertainty Dogs Defense Buildup," described how President Bush's request for more defense spending was getting pushback from the Hill. "Many of my colleagues believe your request is excessive," said Senator Daniel K. Inouye (D–HI), Defense Appropriations Subcommittee Chairman.[17] The tide changed after 9/11. In October 2001, the House Appropriations Committee Chairman Bill Young (R–FL) "told National Journal News Service after the meeting that the lid 'is pretty much' off Defense spending and conceded that the nation is back to deficit budgets because of the new war." He stated that the budget would likely increase from the $317.5 billion just passed unanimously by the House to at least $337 billion.[18] He was off

by $10 billion. The final defense appropriations bill was $329.9 billion not including emergency supplementals, which raised it to $347.7 billion.[19]

While the defense budgets were going up in the aftermath of 9/11, the commercial airline industry, from carriers to suppliers, was going down. Based on the decline in the market, Boeing announced a plan to lay off 30,000 employees.[20] This situation created coinciding interests between the Air Force and Boeing. The Air Force had a validated need for new tankers, and Boeing needed to keep the 767 production line going. The primary limitation was a lack of near-term procurement funds.

There are conflicting reports as to where the lease idea started. Was it the Air Force, Boeing, or Congress? According to a former staffer, Senator Ted Stevens (R–AK) contacted the Air Force shortly after September 11 and asked for "a proposal using 'creative funding' to acquire new Boeing aircraft to replace part of the aging KC–135 air-tanker fleet."[21] A *Washington Post* report has Boeing officials meeting with Darleen Druyun, Principal Deputy Assistant Secretary of the Air Force for Acquisition and Management, to discuss a lease arrangement on September 25, 2001.[22] Regardless of its genesis, leasing solved the funding problem.[23] The Air Force would pay a smaller sum in the near term when outlays to the F–22 and the Joint Strike Fighter were highest, deferring larger payments to the outyears. According to Boeing meeting notes, Druyun would free up funds for the lease by reducing the KC–135 modernization program. She then asked Boeing to help develop a presentation she would take to Senator Stevens, Senate Appropriations Committee Chairman.[24]

Boeing went beyond helping Darleen Druyun with briefing charts and "scrambled its high-flying lobbying team," focusing their efforts on House and Senate Appropriations Committee members.[25] In November 2001, Boeing hosted a fundraiser for Senator Stevens in Seattle, contributing $21,900 to his campaign.[26] In addition to winning his support, they gained the advocacy of Senator Inouye; Senator Patty Murray (D–WA), a member of the Appropriations Committee; and Congressman Norm Dicks (D–WA), Chairman, House Appropriations Subcommittee on Defense.[27] A month later, Senator Stevens inserted a tanker lease provision into the Fiscal Year (FY) 2002 Defense Appropriations Bill, permitting the Air Force to lease 100 tankers from Boeing (see appendix A, Section 8159).[28]

Congress Responds

Signed into law in January 2002, the FY02 Defense Appropriations Act[29] was a departure from typical legislative and defense acquisition practices. First, it appropriated funds before they were authorized. The authorizers resented this abrogation of their authority. Second, the

language identified a specific company, raising public questions about sole-source versus open competition. Finally, leasing in lieu of purchase was a new way to acquire this type of capability and, if executed, could set a precedent. Many felt that a lease, especially an operating lease, was not an appropriate vehicle for this action.[30]

As mentioned previously, the tanker lease provision appropriated the funds without authorization. It stirred up opposition, and the most vocal opponent was Senator John McCain (R–AZ) of the Senate Armed Services Committee. Even before it was signed, Senator McCain noted, "In this bill, we find a sweet deal for the Boeing Company that I'm sure is the envy of corporate lobbyists."[31] He found the approach of working solely with the appropriators particularly underhanded: "This was language that was sneaked into the bill by the Secretary of the Air Force directly to the appropriators, as far as I can tell, without Defense Secretary Rumsfeld's approval."[32] Senator McCain's initial opposition grew to legendary proportions as he called for hearings and investigations, eventually leading to the lease's cancellation. This included a hearing by the Senate Committee on Commerce, Science, and Transportation, of which he was chairman.[33]

By specifying a particular contractor, the appropriations language effectively awarded a sole-source contract worth $20 billion to Boeing. Competition advocates and Boeing competitors protested this action including EADS, a European-based aerospace company. As owners of the Airbus production line, they saw the new tanker as another market for its Airbus 330 design. EADS's interest opened up another line of debate regarding foreign participation in U.S. defense procurement programs. Congressman Dicks shot off the opening salvo: "They're going to have to carry my cold, dead body feet first from the House chamber before the U.S. Air Force buys tankers from Airbus; it's that simple."[34] Despite Congressman Dicks's reaction, EADS continued its quest to increase its market share.

The final issue was stipulating the Air Force must use an operating lease. Operating leases use operations and maintenance funds rather than procurement funds and are for commercially available items. Under Office of Management and Budget (OMB) operating lease rules in Circular A–11, the items cannot be purchased at the end of the lease period, and the lease price cannot exceed 90 percent of the fair market value.[35] While the OMB allowed lease-purchase agreements, these required full funds in the current year to avoid incremental funding.[36] By using an operating lease, the Air Force could pay for the tanker year by year, effectively circumventing full-funding rules. While the operating lease allowed for more flexible funding options, it was not as flexible regarding aircraft configuration. An operating lease mandated Boeing supply the aircraft in a commercial configuration. In-flight refueling modifications, such as a refueling boom, required another appropriation not included in the budget. At the end of the lease,

the Air Force would have to remove all modifications before returning the aircraft. These funds were not in the budget either.

Lease Execution Begins

Financing Arrangements for the Proposal

In order to meet all of the parties' requirements, lease execution required innovative financial arrangements. Since carrying the debt would affect Boeing's financial profile, the strategy involved creating a special purpose entity (SPE) to purchase the aircraft direct from Boeing and lease them to the Air Force. The SPE, administered by Wilmington Trust, would issue commercial bonds to finance the purchase. The Air Force's lease payments of $27.7 million (in 2002 dollars) per aircraft per year would cover the purchase costs, the bond interest, and Wilmington Trust's expenses.[37] Thus, Boeing received all of its money up front while the SPE, through private investors, took on the burden of financing the lease. At the end of the lease, the Air Force would either return the aircraft to Wilmington Trust or purchase them for an additional $44 million per aircraft (in 2003 dollars).[38] The option to purchase required the Air Force to receive permission from Congress because the funds were not in the budget, and the 2002 legislation specifically forbade a purchase (see appendix A, Section 8159, paragraph d, subparagraph 2).

EADS Engages

While the Air Force considered how to execute a leasing strategy, EADS developed a strategy to counter Boeing. It began by publicly requesting an opportunity to bid on the contract rather than allowing a sole-source decision to go forward. EADS implied a sole-source award amounted to little more than a government subsidy for the industry. To alleviate concerns about foreign participation, it sought partnership with a U.S. company and stated it would bid as a subcontractor, not a prime. The president of EADS North America, Gregory Bradford, declared his company would maximize U.S. content and work in order to "be on equal footing with Boeing."[39] To bring in U.S. workers, EADS listed three options: (1) assemble the planes in France and modify them in the United States; (2) produce aircraft components in France and ship to the United States for assembly; or (3) set up a full production line in the United States.[40]

The EADS request to open up the tanker to competition was somewhat successful. The Air Force sent out a request for information (RFI) on February 20, 2002, with responses due back March 6. In addition to costs, both companies were asked to measure a "commercial configuration" of their proposed tanker against baseline technical criteria.[41] EADS's success in opening up

competition was short-lived. On March 29, 2002, the Air Force informed the Under Secretary of Defense for Acquisition, Technology and Logistics (USD AT&L) that the EADS aircraft was "higher risk" because EADS did not have a working refueling boom.[42] By April 2002, the Air Force was working with Boeing on an operating lease.[43]

Lease Debate

As the Air Force continued to pursue an operating lease, lease opponents from the media, Congress, government watchdog groups, think tanks, and executive offices such as OMB and the Office of Secretary of Defense, Program Analysis and Evaluation (PA&E) raised additional issues. Chief among them: (1) Would the lease cost less than 90 percent of the fair market value of the aircraft as required for an operating lease? (2) Was the Air Force getting a good deal? (3) What was the cost difference between a lease and a purchase? (4) Was the urgency sufficient to justify the increased lease costs? All of these issues boiled down to a debate about the assumptions. As the controversy raged on, Senator McCain deepened his investigation, requesting information, audits, and hearings. At the same time, lease supporters in Congress and the White House worked to counter lease opposition.

In order to determine if the lease would cost less than 90 percent of fair market value, the Air Force had to determine the fair market value. The Air Force developed two estimates, and the Institute for Defense Analyses (IDA) developed a third independent estimate. Determining the estimates was difficult due to the proprietary nature of commercial aircraft pricing wherein both the seller and buyer sign nondisclosure agreements regarding the aircraft purchase prices. This was further complicated by the commercial item procurement strategies. Since the tanker was supposed to be a commercial item, Boeing was not required to provide detailed pricing data. Lacking data, the Air Force relied on a combination of Boeing estimates, commercial Internet prices, Italian tanker costs, and costs of similar programs.[44] For its first estimate, the Air Force included the interest on Boeing's financing for aircraft manufacture and calculated the fair market value at $138 million (FY02 dollars). At this value, the Air Force lease was 89.9 percent of fair market value. By removing the financing charge, the Air Force's second estimate of fair market value dropped to $131 million, increasing lease costs to 93 percent and exceeding the operating lease limit.[45] IDA developed the third estimate using commercial pricing for the green aircraft and internal cost analysis models with consultation from vendors, the Air Force, and Boeing for tanker modification and development. IDA did not include pricing from the Japanese and Italian tanker contracts. Throughout its analysis, IDA provided interim results, which the Air Force disputed. In July 2003, IDA submitted its final estimate of $120.7 million

(FY02 dollars).[46] This came a little late. On May 23, 2003, the day he left office, Peter Aldridge, Under Secretary for Defense Acquisition, Technology and Logistics, signed a memo directing the Air Force to proceed with the lease as an Acquisition Category (ACAT) 1D program using $131 million plus "lease unique costs" as fair market value.[47]

Putting aside the question of the fair market value, Secretary of the Air Force James Roche declared that the lease gave his Service an opportunity to take advantage of a downturn in the commercial aircraft industry to get a deal on its tankers. As the debate went on, many questioned whether the Air Force was getting a deal or bailing out Boeing. If there was a downturn in the market, was the 90 percent lease rate "bargain pricing"? According to testimony from a commercial leasing company executive, 90 percent was higher than typical lease rates for commercial aircraft.[48] Using commercial rates, the Air Force lease "would range from $59 million to $95 million per aircraft per 6-year lease, or about 35 to 57 percent of its value."[49] A Congressional Research Service (CRS) report speculated the Air Force was trying to get as close as possible to 90 percent to make it cheaper to buy the tankers at the end of the lease.[50]

If the Air Force purchased the aircraft at the end of the lease, leasing would be even less financially attractive than procurement with the same end result. Since many believed the Air Force did plan to buy the tankers, the difference between purchasing upfront versus at the end of the lease period became even more relevant. According to the Air Force lease proposal, the total lease price for 100 planes including military construction and operations and support costs was $17.2 billion.[51] This analysis assumed the Air Force did not keep the tankers, but it did not include the cost of removing tanker modifications. GAO estimated that removing modifications would cost the Air Force $778 million.[52] According to the Air Force report to Congress on the lease, a traditional procurement would cost $17.1 billion, which was only $150 million cheaper.[53] The cost difference increased to $900 million if the Air Force used a multiyear procurement strategy.[54] If the Air Force decided to purchase the tankers at the end of the lease, the lease costs would increase to $19.9 billion.[55] CRS found the Air Force's comparison calculations were very sensitive to assumptions such as interest for Boeing's construction insurance and the SPE bonds, insurance, inflation, and expenditure schedule for traditional procurement. If the assumptions were changed, procurement would be even more favorable than a lease, swaying the calculation by as much as $200 million per change in assumption.[56]

The Air Force did not dispute that leasing was more expensive than procurement. In addition to citing a lack of near-term procurement funds, it argued traditional procurement would take 5 to 10 years to field a tanker urgently needed now.[57] According to the Air Force, the wartime urgency of need justified the additional expense of a lease. Critics found this sense of urgency debatable since

Table 1. Summary of KC–135 Urgency Debate

Variable	Lease Supporters	Lease Detractors
Mission Availability	• 85 percent Mission Capable Rate (MCR) goal—falling behind at 78 percent for KC–135R and 71.9 percent for KC–135E • Depot maintenance hours increased from 16,000 hours/year to 33,000 hours/year for fleet • Decreased overall days in depot by adding second shift and improving processes	• MCR during Iraq War was 86.4 percent • Likely to be increased efficiencies found in depot activities
Operations and Support Costs	• Costs rising higher than anticipated • In 2001, Economic Service Life Study (ESLS) estimate was $2.1 billion, and actual costs were $2.26 billion	• New analysis contrasts with previous studies • Unlikely that increased costs for one year will continue into outyears
Corrosion and Fleet-wide Grounding	• Cannot accurately predict corrosion extent or cost • Fatal crash in 1999 due to corrosion grounded 139 aircraft	• Navy and Marines have effective corrosion programs. Why doesn't Air Force? • If corrosion and grounding are so important, why were they not addressed more strongly in ESLS?
Flying Hours	• Usage rates higher than initially predicted: 435 hours/year vs. 300 hours/year • New strategy will increase tanker requirements	• If corrosion is the limiting issue, increased flying hours do not matter since it does not make corrosion worse • New strategy impacts on tanker fleet require more study

the ESLS published in February 2001 concluded the KC–135 replacement need not start until 2013. Lease supporters countered the ESLS did not include supporting war efforts in Afghanistan and Iraq. Table 1 summarizes the arguments for both sides as reported by CRS.[58]

As the debate regarding urgency went back and forth, with each study parrying with another study or attacking the others' assumptions and assertions, Senator McCain broadened the

scope of his investigation. He requested inquiries from GAO, OMB, the DOD Inspector General (DOD IG), and Congressional Budget Office (CBO). He called numerous officials from the Air Force and DOD to testify on the necessity and validity of the tanker lease. He asked DOD for all records on the lease effort including "Email, external and internal correspondence, briefs, reports, appointment books, telephone records, telephone bills, telephone logs, appointment books, facsimiles, diaries, computer disks, etc."[59]

In an interesting congressional interplay, as Senator McCain tried to kill the lease, supporters in Congress continued to push the deal in the executive, the legislature, and in the public eye. In a letter to the Senator on August 1, 2002, OMB Director Mitchell Daniels questioned the need for the tankers since "the Air Force has not formally identified new tankers as a priority requiring immediate funding." In addition to stating the tanker would not meet the rules of an operating lease under the OMB circular rules, he wrote, "I believe it would be inconsistent with OMB circulars and irresponsible to support any lease proposal which would cost taxpayers more than direct purchase."[60] Public dissension within the executive branch did not bode well for the lease. Congressional supporters took steps to respond, and "Representatives [J. Dennis] Hastert and Dicks lobbied President Bush directly. . . . The President agreed and ordered his Chief of Staff, Andrew Card, to resolve any outstanding differences between OMB and the Air Force over how to do the deal. Card silenced internal critics within the administration."[61]

A year later, on September 4, 2003, the Deputy Director of OMB, Joel D. Kaplan, in testimony before the Senate Armed Services Committee (SASC), changed much of what Daniels had originally said: "Some of the A–11 criteria contained considerable ambiguity. . . . In light of the Air Force's conviction that these planes are needed to meet an urgent military need, and in light of clear congressional intent to support a lease, as expressed in legislation, OMB believed it appropriate to resolve ambiguities in favor of classifying this transaction as an operating lease."[62] He did restate Daniels's original assertion that leasing was more expensive than purchasing, but that issue was not in dispute.

Within Congress, the lease debate was documented in subsequent lease legislation (see appendix A). On December 2, 2002, the FY03 National Defense Authorization Act required the Air Force to either add the necessary funds in the budget or request a new start reprogramming action, which required approval from all four defense committees. The Air Force responded on July 14, 2003, by supplying the lease proposal report (specified in Section 8159 and Section 133) and requesting authorization for a new start.[63] Between July 15 and July 25, the Senate Appropriations Subcommittee on Defense (SAC–D), the House Appropriations Subcommittee

on Defense (HAC–D), and the House Armed Services Committee (HASC) approved the Air Force's request to start the lease. SASC approval was notably missing.

Throughout the legislative process, congressional members amenable to the lease continued to provide public support. In a May 23, 2003, press release, Congressman Dicks commended the lease: "I am very encouraged by the determination of Pentagon and congressional leadership to persevere and approve this creative method of addressing an urgent defense requirement." He cited Congressman Hastert and Senators Stevens, Inouye, Murray, and Maria Cantwell as key lease supporters.[64] Shortly after the approval, Senator Murray stated, "Despite the loud objections of a few, the Senate will make its decision on the facts. And the facts clearly demonstrate that the tanker lease saves money and speeds much-needed tanker aircraft to the Air Force. I expect the Senate to move forward with final approval of the tanker lease soon."[65] Senator Murray's remarks were not prophetic. The SASC continued to withhold its approval pending Senator McCain's investigations.

These investigations included congressional hearings. In addition to the defense committees, Senator McCain held a hearing on September 3, 2003, in his Senate Committee on Commerce, Science, and Transportation with witnesses from the CBO, GAO, and CRS. None of the testimony was particularly favorable toward the lease. At the end of the hearings, the SASC proposed a compromise: The Air Force could lease 20 aircraft and purchase 80 aircraft under a multiyear contract. The House agreed.[66] On November 24, 2003, Congress made the compromise official in the FY04 National Defense Authorization Act.[67] The compromise would not last long.

Lease Execution Cancelled

After all the debate and compromise over requirements, cost, and lease versus purchase, the final blow to the lease agreement was ethical misconduct associated with hiring a former government employee. The misconduct resulted in a media outcry, a move by the Defense Department to suspend the lease contracting process pending an internal investigation, and more inquiries from Senator McCain. A separate investigation by the Department of Justice led to the prosecution of two former Boeing executives. By the end of the year, the lease was over.

As previously stated, Darleen Druyun was one of the key Air Force officials working with Boeing during the lease negotiations. After her retirement from government service, she took a position at Boeing as Deputy General Manager for Missile Defense Systems on January 3, 2003.[68] Based on criticism of her involvement in the tanker lease and ethics issues on a non-related contract, in mid-2003 Boeing performed an internal investigation of Druyun's hiring.[69]

They found a message from Michael Sears, a Boeing executive, stating he and Druyun discussed future employment at Boeing while she was still employed by the Air Force and was negotiating with Boeing on behalf of the government, violating Boeing policy and breaking the law. In November 2003, Boeing dismissed Sears and Druyun. After the dismissal, DOD stopped lease negotiations pending the results of a DOD IG investigation, which started in December 2003.[70]

The Department of Justice began its own investigation and brought charges against Darleen Druyun and Michael Sears. Other questionable acts came to light during the trial. In 2000, Druyun sought Boeing employment for her future son-in-law and daughter. While it was not illegal, she requested employment for both during contract negotiations with Boeing. After prosecutors threatened her daughter with criminal charges for her own involvement in the hiring, Druyun agreed to a plea bargain. In her agreement, she admitted favoring Boeing in a number of negotiations including the tanker lease. In October 2004, she was sentenced to 9 months in prison, a $5,000 fine, and 150 hours of community service.[71] In February 2005, Sears was sentenced to 4 months in prison, a $250,000 fine, and 200 hours of community service.[72] Other contracts Druyun had negotiated with Boeing came under further scrutiny.

As DOD paused the lease negotiations, on September 11, 2003, Senator McCain requested DOD provide all of its information concerning the lease including emails.[73] After nearly a year, the SASC received its information on July 14, 2004.[74] As it reviewed over 2,000 pages, the email traffic revealed the most damaging information of all. In a series of indiscreet emails, senior Air Force officials—Dr. Roche, Assistant Secretary of the Air Force for Acquisition Marvin Sambur, and Darleen Druyun—used disparaging terms when discussing the Chief Executive Officer of EADS North America, disclosed feelings of persecution from congressional members, and highlighted an internal dispute with Program Analysis and Evaluation and OMB regarding lease costs and the appropriateness of the operating lease. In response to a report from PA&E, Dr. Roche sent a message to Michael Wynne, Under Secretary for Defense Acquisition Technology and Logistics (Aldridge's replacement), saying, "Ken Krieg's memo attached is a cheap shot, and I'm sure has already been delivered to the enemies of the lease on the Hill. It was a process foul. And Ken needs to be made aware of that BY YOU! They and OMB are trying to set the Air Force up to be destroyed by Sen McCain WITH OSD AND OMB ARGUMENTS."[75]

In an action reminiscent of Darleen Druyun's request for Boeing employment for her daughter and son-in-law, Roche assisted Robin Cleveland from OMB by recommending her brother for a job at Northrop Grumman, his former employer. After his recommendation, he sent her the following email: "Be well. Smile. Give tankers now (Oops, did I say that? My new

deal is terrific)."[76] After reviewing the documents, Senator McCain released a selection into the public record during a congressional hearing in November 2004.

On March 29, 2004, DOD IG published its audit report on the tanker acquisition.[77] In his request, Paul Wolfowitz, Deputy Secretary of Defense, had asked DOD IG to determine "whether there is any compelling reason why the Department of the Air Force should not proceed with its Tanker Lease Program."[78] DOD IG did not find any compelling reason *not* to proceed, but they concluded, "the Air Force used an inappropriate procurement strategy and demonstrated neither best business practices nor prudent acquisition procedures to provide sufficient accountability for the expenditure of $23.5 billion for the KC–767A tanker program."[79]

Before continuing with the program, DOD IG proposed that the Air Force resolve two key issues regarding the commercial item procurement approach and lack of acquisition strategy. The first issue was the Air Force decision to use a commercial item procurement strategy. DOD IG disagreed with the Air Force interpretation qualifying the tanker as a commercial item. While based on a commercially available aircraft, the tanker had no commercial market. Without commercial market forces to ensure "reasonable prices," the Air Force approach placed "the Department at high risk for paying excessive prices and profits."[80] The second issue was the lack of an acquisition strategy. They wanted the Air Force to develop an acquisition strategy in accordance with "best business practices" and "prudent acquisition procedures."[81] Rather than developing an acquisition strategy, the Air Force used Section 8159 of the Department of Defense Appropriations Act for FY02 as the basis for an informal acquisition strategy that "cannot ensure to the warfighter that the delivered KC–767A Tanker aircraft will satisfy operational requirements."[82] Stemming from these issues, DOD IG had an extensive list of recommendations requiring the Air Force reconsider the entire acquisition approach. For example, DOD IG determined the tanker lease did not meet the operating lease requirements and recommended the Air Force receive approval for a lease-purchase or change the lease to meet the operating lease terms.[83] The Air Force disagreed with the report, but it was too late to save the program. Lease proponents in Congress lost the fight, and congressional support was gone.

The lease debate drew to a close on October 28, 2004, with the passage of the 2005 National Defense Authorization Act prohibiting the Air Force from leasing any tanker aircraft (see appendix A). Instead, the Air Force was given permission to pursue a multiyear procurement for new tanker aircraft.

Appendix A: Applicable Legislation

Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Act, 2002 Public Law 107–117[84]

SEC. 8159. MULTIYEAR AIRCRAFT LEASE PILOT PROGRAM.

(a) The Secretary of the Air Force may, from funds provided in this Act or any future appropriations Act, establish and make payments on a multiyear pilot program for leasing general purpose Boeing 767 aircraft and Boeing 737 aircraft in commercial configuration.

(b) Sections 2401 and 2401a of title 10, United States Code, shall not apply to any aircraft lease authorized by this section.

(c) Under the aircraft lease Pilot Program authorized by this section:

(1) The Secretary may include terms and conditions in lease agreements that are customary in aircraft leases by a non-Government lessor to a non-Government lessee, but only those that are not inconsistent with any of the terms and conditions mandated herein.

(2) The term of any individual lease agreement into which the Secretary enters under this section shall not exceed 10 years, inclusive of any options to renew or extend the initial lease term.

(3) The Secretary may provide for special payments in a lessor if the Secretary terminates or cancels the lease prior to the expiration of its term. Such special payments shall not exceed an amount equal to the value of 1 year's lease payment under the lease.

(4) Subchapter IV of chapter 15 of title 31, United States Code, shall apply to the lease transactions under this section, except that the limitation in section 1553(b)(2) shall not apply.

(5) The Secretary shall lease aircraft under terms and conditions consistent with this section and consistent with the criteria for an operating lease as defined in OMB Circular A–11, as in effect at the time of the lease.

(6) Lease arrangements authorized by this section may not commence until:

(A) The Secretary submits a report to the congressional defense committees outlining the plans for implementing the Pilot Program. The report shall describe the terms and conditions of proposed contracts and describe the expected savings, if any, comparing total costs, including operation, support, acquisition, and financing, of the lease, including modification, with the outright purchase of the aircraft as modified.

(B) A period of not less than 30 calendar days has elapsed after submitting the report.

(7) Not later than 1 year after the date on which the first aircraft is delivered under this Pilot Program, and yearly thereafter on the anniversary of the first delivery, the Secretary shall submit a report to the congressional defense committees describing the status of the Pilot Program. The Report will be based on at least 6 months of experience in operating the Pilot Program.

(8) The Air Force shall accept delivery of the aircraft in a general purpose configuration.

(9) At the conclusion of the lease term, each aircraft obtained under that lease may be returned to the contractor in the same configuration in which the aircraft was delivered.

(10) The present value of the total payments over the duration of each lease entered into under this authority shall not exceed 90 percent of the fair market value of the aircraft obtained under that lease.

(d) No lease entered into under this authority shall provide for—

(1) the modification of the general purpose aircraft from the commercial configuration, unless and until separate authority for such conversion is enacted and only to the extent budget authority is provided in advance in appropriations Acts for that purpose; or

(2) the purchase of the aircraft by, or the transfer of ownership to, the Air Force.

(e) The authority granted to the Secretary of the Air Force by this section is separate from and in addition to, and shall not be construed to impair or otherwise affect, the authority of the Secretary to procure transportation or enter into leases under a provision of law other than this section.

(f) The authority provided under this section may be used to lease not more than a total of 100 Boeing 767 aircraft and 4 Boeing 737 aircraft for the purposes specified herein.

Defense Appropriations Act for Fiscal Year 2003, Public Law 107–248[85]

SEC. 8117. Section 8159 of the Department of Defense Appropriations Act, 2002 (division A of Public Law 107–117; 115 Stat. 2284), is revised as follows:

(1) in subsection (c) by inserting at the end of paragraph (1) the following new sentence: "Notwithstanding the provisions of Section 3324 of Title 31, United States Code, payment for the acquisition of leasehold interests under this section may be made for each annual term up to 1 year in advance."

(2) by adding the following paragraph (g):

"(g) Notwithstanding any other provision of law, any payments required for a lease entered into under this Section, or any payments made pursuant to subsection (c)(3) above, may be made from appropriations available for operation and maintenance or for lease or procure-

ment of aircraft at the time that the lease takes effect; appropriations available for operation and maintenance or for lease or procurement of aircraft at the time that the payment is due; or funds appropriated for those payments."

Bob Stump National Defense Authorization Act for Fiscal Year 2003, Public Law 107–314[86]

SEC. 133. LEASES FOR TANKER AIRCRAFT UNDER MULTIYEAR AIRCRAFT-LEASE PILOT PROGRAM.

The Secretary of the Air Force may not enter into a lease for the acquisition of tanker aircraft for the Air Force under section 8159 of the Department of Defense Appropriations Act, 2002 (division A of Public Law 107–117; 115 Stat. 2284; 10 U.S.C. 2401a note) until—

(1) the Secretary submits the report specified in subsection (c)(6) of such section; and

(2) either—

(A) authorization and appropriation of funds necessary to enter into such lease are provided by law; or

(B) a new start reprogramming notification for the funds necessary to enter into such lease has been submitted in accordance with established procedures.

National Defense Authorization Act for Fiscal Year 2004, Public Law 108–136[87]

SEC. 134. AIRCRAFT FOR PERFORMANCE OF AERIAL REFUELING MISSION.

(a) RESTRICTION ON RETIREMENT OF KC–135E AIRCRAFT—The Secretary of the Air Force shall ensure that the number of KC–135E aircraft of the Air Force that are retired in fiscal year 2004, if any, does not exceed 12 such aircraft.

(b) REQUIRED ANALYSIS—Not later than March 1, 2004, the Secretary of the Air Force shall submit to the congressional defense committees an analysis of alternatives for meeting the aerial refueling requirements that the Air Force has the mission to meet. The Secretary shall provide for the analysis to be performed by a federally funded research and development center or another entity independent of the Department of Defense.

SEC. 135. PROCUREMENT OF TANKER AIRCRAFT.

(a) LEASED AIRCRAFT—The Secretary of the Air Force may lease no more than 20 tanker aircraft under the multiyear aircraft lease pilot program referred to in subsection (d).

(b) MULTIYEAR PROCUREMENT AUTHORITY—(1) Beginning with the fiscal year 2004 program year, the Secretary of the Air Force may, in accordance with section 2306b of title 10, United States Code, enter into a multiyear contract for the purchase of tanker aircraft necessary to meet the requirements of the Air Force for which leasing of tanker aircraft is provided for under the multiyear aircraft lease pilot program but for which the number of tanker aircraft leased under the authority of subsection (a) is insufficient.

(2) The total number of tanker aircraft purchased through a multiyear contract under this subsection may not exceed 80.

(3) Notwithstanding subsection (k) of section 2306b of title 10, United States Code, a contract under this subsection may be for any period not in excess of 10 program years.

(4) A multiyear contract under this subsection may be initiated or continued for any fiscal year for which sufficient funds are available to pay the costs of such contract for that fiscal year, without regard to whether funds are available to pay the costs of such contract for any subsequent fiscal year. Such contract shall provide, however, that performance under the contract during the subsequent year or years of the contract is contingent upon the appropriation of funds and shall also provide for a cancellation payment to be made to the contractor if such appropriations are not made.

(c) STUDY OF LONG-TERM TANKER AIRCRAFT MAINTENANCE AND TRAINING REQUIREMENTS—(1) The Secretary of Defense shall carry out a study to identify alternative means for meeting the long-term requirements of the Air Force for—

(A) the maintenance of tanker aircraft leased under the multiyear aircraft lease pilot program or purchased under subsection (b); and

(B) training in the operation of tanker aircraft leased under the multiyear aircraft lease pilot program or purchased under subsection (b).

(2) Not later than April 1, 2004, the Secretary of Defense shall submit a report on the results of the study to the congressional defense committees.

(d) MULTIYEAR AIRCRAFT LEASE PILOT PROGRAM DEFINED—In this section, the term "multiyear aircraft lease pilot program" means the aerial refueling aircraft program authorized under section 8159 of the Department of Defense Appropriations Act, 2002 (division A of Public Law 107–117; 115 Stat. 2284).

(e) SENSE OF CONGRESS—It is the sense of Congress that, in budgeting for a program to acquire new tanker aircraft for the Air Force, the President should ensure that sufficient budgetary resources are provided to the Department of Defense to fully execute the program and to further ensure that all other critical defense programs are fully and properly funded.

Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108–375[88]

SEC. 131. PROHIBITION OF RETIREMENT OF KC–135E AIRCRAFT.

The Secretary of the Air Force may not retire any KC–135E aircraft of the Air Force in fiscal year 2005.

SEC. 133. AERIAL REFUELING AIRCRAFT ACQUISITION PROGRAM.

(a) TERMINATION OF LEASING AUTHORITY—Subsection (a) of section 135 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1413; 10 U.S.C. 2401a note) is amended by striking "may lease no more than 20 tanker aircraft" and inserting "shall lease no tanker aircraft."

(b) MULTIYEAR PROCUREMENT AUTHORITY—Subsection (b) of such section is amended—

(1) in paragraph (1)—

(A) by striking "Beginning with the fiscal year 2004 program year, the Secretary" and inserting "The Secretary"; and

(B) by striking "necessary to meet" and all that follows through "is insufficient";

(2) in paragraph (2), by striking "80" and inserting "100"; and

(3) by striking paragraph (4).

(c) STUDY—Subsection (c)(1) of such section is amended by striking "leased under the multiyear aircraft lease pilot program or" in subparagraphs (A) and (B).

(d) RELATIONSHIP TO PREVIOUS LAW—Such section is further amended by adding at the end the following new subsection:

"(f) RELATIONSHIP TO PREVIOUS LAW—The multiyear procurement authority in subsection (b) may not be executed under section 8159 of the Department of Defense Appropriations Act, 2002 (division A of Public Law 107–117)."

Appendix B: Key Individuals

Name	Office
Aldridge, Peter	Under Secretary for Defense Acquisition Technology and Logistics (May 2001–May 2003)
Card, Andrew	White House Chief of Staff
Cleveland, Robin	Deputy, Office of Management and Budget
Corley, John D.W.	Lieutenant General; Principal Deputy, Assistant Secretary of the Air Force for Acquisition
Dicks, Norm	Congressman—Washington; Chairman, House Appropriations Subcommittee on Defense
Druyun, Darleen	Principal Deputy, Assistant Secretary of the Air Force for Acquisition and Management; after retirement from government, Deputy General Manager for Missile Defense Systems, Boeing (January–November 2003)
Hastert, Dennis	Congressman—Illinois; Speaker of the House
Inouye, Daniel	Senator—Hawaii; Chairman, Senate Appropriations Subcommittee on Defense
McCain, John	Senator—Arizona; Chairman, Senate Committee on Commerce, Science and Transportation; Member, Senate Armed Services Committee
Murray, Patty	Senator—Washington; Member, Senate Appropriations Committee
Roche, James	Secretary of the Air Force
Sambur, Marvin	Assistant Secretary of the Air Force for Acquisition
Sears, Michael	Chief Financial Officer, Boeing
Stevens, Ted	Senator—Alaska; Chairman, Senate Appropriations Committee
Wolfowitz, Paul	Deputy Secretary of Defense
Wynne, Michael	Acting Under Secretary for Defense Acquisition Technology and Logistics (May 2003–April 2005)

Appendix C: Timeline[89]

1 Feb 01: Tanker Requirements Study for 2005

1 Feb 01: KC–135 Economic Service Life Study

10 Mar 01: Boeing unsolicited proposal to sell thirty-six 767s as tankers

17 May 01: Draft mission needs statement (MNS) for commercially-derived tanker

28 Jun 01: Air Force Requirements Oversight Council approves MNS for commercially derived tanker

25 Sep 01: Boeing briefs Darleen Druyun on proposed lease

17 Oct 01: Air Force MNS for Future Fuel Refueling Aircraft Validated by Joint Requirements Oversight Council (JROC)

1 Nov 01: Air Force MNS for Future Fuel Refueling Aircraft Validated by JROC; Begin recap in FY13 based on Feb 01 studies (Tanker Requirements Study for 2005 and KC–135 Economic Service Life Study)

7 Dec 01: FY02 Defense Appropriations Act—Section 8159: authorizes 767 and 737 leasing—Air Force cannot execute until 30 days after submitting implementing report to Defense committees

10 Jan 02: FY02 Defense Appropriations Act (Section 8159) signed into law

20 Feb 02: Request for information (RFI) issued to Boeing and EADS

8 Mar 02: RFI responses from Boeing and EADS received

29 Mar 02: Air Force finds Boeing 767 has lower technical and financial risk

1 Apr 02: Air Force RFI evaluation results briefed to Boeing and EADS

5 Apr 02: Negotiations begin between U.S. Air Force (USAF) and Boeing re 767 lease

10 Apr 02: Senate Armed Services Committee (SASC)/Senator McCain letter to the General Accounting Office (GAO) requesting investigation

17 Apr 02: Senator McCain requests simultaneous investigations by Office of Management and Budget (OMB), Congressional Budget Office (CBO), GAO, and Department of Defense Inspector General (DOD IG)

8–12 May 02: Responses provided to Senator McCain by OMB, CBO, GAO, DOD IG

15 May 02: GAO Report requested by SASC/Senator McCain

30 Jul 02: JROC approves Operational Requirement Document (ORD) for commercially derived tanker

1 Aug 02: Boeing and USAF reach initial agreement on KC–767 lease price and content

20 Sep 02: USAF and Boeing reach negotiated "handshake" on lease details

8 Oct 02: Senator McCain letter to Secretary of Defense (SECDEF) expressing concern about unprecedented way DOD was about to undertake a New Start; no authorizing legislation and no communication from the Secretary of the Air Force (SECAF)

1 Dec 02: FY03 Defense Authorization Act–Section 133: in addition to submitting the implementing report required by Section 8159, Air Force must get four committee authorizations for funding or submit new start reprogramming notification

1 Jan 03: Under Secretary of Defense for Acquisition, Technology and Logistics (USD AT&L) and Director Program Analysis and Evaluation (PA&E) task Institute for Defense Analyses (IDA) to estimate direct purchase price of 100 KC–767A Tanker/Combination Interim Report issued 4 March 2003 and Final Report issued July 2003

4 Mar 03: IDA provides interim direct price estimate to OSD; final report issued July 2003

23 Apr 03: Meeting w/Michael Wynne re comparison of Air Force and IDA price estimates for the KC–767

23 Apr 03: IDA and USAF compare price estimates in meeting chaired by Wynne

13 May 03: USAF–OSD Price Meeting (USAF price $134.3 million)

23 May 03: Lease Decision Memo signed by USD AT&L under authority granted in Section 8159; $131 million price + $7 million in construction financing costs per aircraft; directs PA&E to finalize offsets in FYDP; directs USAF to submit long-range recap plan to SECDEF by 1 Nov 03; program designated Acquisition Category 1D Major Defense Acquisition Program; USAF considers decision tantamount to MS C ADM

20 Jun 03: Director PA&E memo to USD AT&L and USD(C) stating lease deal not in compliance with A-11 and leasing more expensive

1 Jul 03: IDA submits final report with $120.7 million price position; starting Boeing price was $146.5 million and final Air Force–Boeing negotiated price was $131 million.

2 Jul 03: Senator McCain letter to SECDEF requesting numerous documents and postponement of lease signing pending Department of Justice investigation of Boeing's government contracting practices

10 Jul 03: USAF submits Report to Defense Committees in accordance with Section 8159 of FY02 Defense Appropriations Act and Section 133 of FY03 Defense Authorization Act; report states Air Force intends to fund lease with Aircraft Procurement appropriations that have not yet been specifically identified

11 Jul 03: Air Force submits budgetary New Start Notification in accordance with Section 133

15–25 July 03: USAF receives New Start approvals from SAC (15 July), HAC (July 17), and HASC (25 July)

2 Sep 03: CRS Report on KC–767 Lease Proposal raises numerous issues

4 Sep 03: OMB Dep Director statement to SASC; explains why lease qualifies as an operating lease under OMB Circular A–11

11 Sep 03: Senator McCain letter to SECDEF re determination of lease as "operating lease" under A–11; suggests OSD officials changed view as a result of intense USAF/Boeing lobbying; requests all records of SECAF and acting USD AT&L relating to lease to include emails

1 Oct 03: SASC proposed amendment with a lease 20/buy 80 compromise

9 Oct 03: Senator McCain letter to SECDEF requesting Roche/Wynne documents previously requested in 9 Nov 03 letter; also asked how much of $131 million price is for SPE/lease admin related costs

24 Nov 03: 2004 National Defense Authorization Act approved. Section 134 restricts KC–135E tankers retirements and requires SECAF to submit to the Defense committees Analysis of Alternatives conducted by independent entity for meeting Air Force tanker requirements not later than 1 Mar 04. Section 135 authorizes lease of 20 767s and multiyear procurement of 80 767 tankers. Further, Section 135 requires SECDEF to submit a report not later than 1 Apr 04 on alternative means for meeting long-term maintenance and training requirements for leased or purchased tankers. Air Force intent to execute lease with first delivery slipped to 2007. Intent to sign Multiyear Procurement contract by end of FY04.

24 Nov 03: Boeing fires Druyun and Sears

28 Nov 03: Senator McCain letter to SECDEF re Druyun allegations, requests delaying lease execution until after DOD IG Report on matter

1 Dec 03: Dep SECDEF sends letter to SASC Chairman informing Senator Warner of pause to allow for DOD IG report on Druyun allegations; Senators Warner and McCain respond favorably on 2 Dec 03; Senator McCain reiterates need for all documents on proposed lease

5 Mar 04: Draft DOD IG Report states tanker lease deal may have to be renegotiated because of "unsound acquisition and procurement practices," questions fixed-price contract, and suggests need for cost data

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[3] U.S. General Accounting Office, *U.S. Combat Air Power Aging Refueling Aircraft are Costly to Maintain and Operate: Report to Congressional Committees* (Washington, DC: General Accounting Office, 1996), available at <http://www.gao.gov/archive/1996/ns96160.pdf> (accessed October 15, 2010).

[4] Ibid.

[5] Ibid.

[6] The study based the 2040 date on a service life of 39,000 hours for the KC–135R/T and 36,000 hours for the KC–135D/E. KC–135 D/E fleet operated 308 hours per year and KC–135R/T operated 368 hours per year. For comparison, commercial utilization rates are 4,000 hours per year; KC–135 ESLS Integrated Product Team, *KC–135 Economic Service Life Study* [ESLS], 2001; AeroStrategy Management Consulting, *An Assessment of the Life-Cycle Cost of the Boeing 767 and Airbus A330* (Ann Arbor, MI: AeroStrategy Management Consulting, 2010), available at <http://www.unitedstatestanker.com/SiteContent/Static/Docs/AeroStrategyLifecycleCostAssessment.pdf> (accessed December 3, 2010).

[7] KC–135 ESLS Integrated Product Team, *KC–135 Economic Service Life Study*, iii, 13.

[8] On p. 1 of ESLS there was a reference to the Tanker Requirements Study for FY05 (TRS05) which would look at the number of tanker aircraft and aircrews required to meet air-refueling requirements for 2005. This report with the ESLS was to be the cornerstone of the Analysis of Alternatives for air refueling scheduled to begin in June 2001. However, according to General Accounting Office testimony, the Tanker Requirements Study, while started in 2000, was never published; House Armed Services Committee, *Military Aircraft: Information on Air Force Aerial Refueling Tankers, Prepared Statement by Neal P. Curtin*, 108th Cong., 1st sess., 2003, 4, available at <http://www.gao.gov/cgi-bin/getrpt?GAO-03-938T> (accessed December 2, 2010).

[9] Senate Appropriations Committee, *U.S. Senator Daniel Inouye (D–HI) Holds Hearing on Air Force Budget*, 107th Cong., 1st sess., 2001, available at <http://web.lexis-nexis.com/congcomp/document?_m=d6e79222cf69d57b781e2b612b728fa6&_docnum=67&wchp=dGLzVzb-zSkSA&_md5=4af02e3461a85d4c299aae01e817052b> (accessed October 21, 2010).

[10] Christopher Bolkcom, *The Air Force KC–767 Tanker Lease Proposal: Key Issues for Congress* (Washington, DC: Congressional Research Service, 2003), available at <http://handle.dtic.mil/100.2/ADA435734>.

[11] A Mission Needs Statement is a term previously used in the requirements process. It identified the need for a new system and what it was supposed to do. It has been replaced by the Initial Capabilities Document in the Joint Capabilities Identification System process.

[12] Marvin Sambur (Assistant Secretary of the Air Force [Acquisition]), "Briefing to Secretary of Defense on Review of Tanker Leasing Actions," 2003.

[13] Shane Harris, "Own the Sky," *Washingtonian* 46, no. 2 (November 1, 2010), 54, available at <http://www.washingtonian.com/articles/people/17244.html> (accessed December 8, 2010).

[14] Bolkcom, 4.

[15] In 1992, Boeing did not consider the 767 as a potential replacement for the KC–135 because the "oldest KC–135 tankers, for example, will likely be retired without being replaced because of the reductions being made in the fighter force; "Boeing Sees 767 as Heir to 707 in AWACS, Tanking, Other Missions," *Aerospace Daily*, July 14, 1992, 78, available at <http://www.lexisnexis.com/lnacui2api/results/docview/docview.do?docLinkInd=true&risb=21_T10822546679&format=GNBFI&sort=null&startDocNo=1&resultsUrlKey=29_T10822546682&cisb=22_T10822546681&treeMax=true&treeWidth=0&csi=8151&docNo=1> (accessed December 9, 2010).

[16] "Boeing: Commercial Airplanes—767 Home," available at <http://www.boeing.com/commercial/767family/> (accessed October 21, 2010).

[17] Paul Mann, "Economic Uncertainty Dogs Defense Buildup," *Aviation Week & Space Technology* 155, no. 11 (September 10, 2001), 31, available at <http://ezproxy6.ndu.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=mth&AN=5210207&site=ehost-live&scope=site>.

[18] George C. Wilson, "House Appropriators Expect FY02 Defense Spending to Jump," *CongressDaily AM* (October 25, 2001), 7, available at <http://ezproxy6.ndu.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=mth&AN=5424717&site=ehost-live&scope=site>.

[19] Michelle Ciarrocca and William D. Hartung, *Increases in Military Spending and Security Assistance since 9/11* (New York, NY: Arms Trade Resource Center–World Policy Institute, 2002), available at <http://www.worldpolicy.org/projects/arms/news/SpendingDOD911.html> (accessed December 3, 2010).

[20] Bolkcom, 36.

[21] The former staffer was fired from Senator Domenici's staff for publishing an essay titled "Mr. Smith Is Dead" denouncing excessive congressional earmarks using the pseudonym Spartacus; Winslow T. Wheeler, *The Wastrels of Defense: How Congress Sabotages U.S. Security* (Annapolis: Naval Institute Press, 2004), xi–xv, 40.

[22] Jeffrey Smith and Renae Merle, "Rules Circumvented on Huge Boeing Defense Contract," *The Washington Post*, October 27, 2003, available at <http://ezproxy6.ndu.edu/login?url=http://proquest.umi.com/pqdweb?did=431080031&Fmt=7&clientId=3921&RQT=309&VName=PQD>.

[23] The lease fixed two things: timing of funds and type of funds. Even though more costly in the long term, leasing allowed the Air Force to pay far less in the near term than needed for a traditional procurement program. By leasing, the Air Force could use operations and maintenance funds rather than procurement funds.

[24] Ibid.

[25] Brody Mullins, "The Wind Beneath Boeing's Wings," *National Journal* 33, no. 46–47 (November 17, 2001), 3607, available at <http://ezproxy6.ndu.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=5618255&site=ehost-live&scope=site>.

[26] Some of the Boeing donors contributed to Senator Stevens's campaign for the first time at this fundraiser; Smith and Merle, A.01.

[27] Mullins, 3607.

[28] Smith and Merle, A.01.

[29] The full title was: *Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Act, 2002,* Public Law 107–117.

[30] An operating lease did not allow the Air Force to purchase the tankers at the end of the leasing term.

[31] Robert Pear, "Lobby Groups Find Congress in Giving Mood," *The New York Times*, December 18, 2001, available at <http://ezproxy6.ndu.edu/login?url=http://proquest.umi.com/pqdweb?did=95618146&Fmt=7&clientId=3921&RQT=309&VName=PQD>.

[32] "McCain Sees Hearings on Air Force Tanker Lease Plan; Questions Process," 1.

[33] "McCain Requests Boeing Documents for Hearing on Tanker Lease Deal," *Defense Daily* 218, no. 57 (June 19, 2003), 1, available at <http://ezproxy6.ndu.edu/login?url=http://proquest.umi.com/pqdweb?did=349301841&Fmt=7&clientId=3921&RQT=309&VName=PQD>.

[34] "McCain Sees Hearings on Air Force Tanker Lease Plan; Questions Process," 1.

[35] Office of Management and Budget, Appendix B: *Budgetary Treatment of Lease-Purchases and Leases of Capital Assets*, OMB Circular A–11, 2010, 6.

[36] Wheeler, 40–43.

[37] Bolkcom, 7, 63.

[38] Ibid.

[39] David A. Fulghum, "Allies Call for U.S. Tanker Competition," *Aviation Week & Space Technology* 156, no. 3 (January 21, 2002), 40, available at <http://ezproxy6.ndu.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=6010707&site=ehost-live&scope=site>.

[40] Ibid.

[41] RFIs are used to obtain initial information from potential offerers. While not set by regulation, timelines for responding can be as low as 15 days for commercial items and up to 60 days for more complex programs; David A. Fulghum, "USAF Eyes Tanker Contest between Boeing, EADS/Airbus," *Aviation Week & Space Technology* 156, no. 9 (March 4, 2002), 34, available at <http://ezproxy6.ndu.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=6335785&site=ehost-live&scope=site>.

[42] Sambur.

[43] Ibid.

[44] Office of the Inspector General, *Acquisition of the Boeing KC–767A Tanker Aircraft* (Department of Defense, 2004), available at <http://www.DODig.mil/Audit/reports/fy04/04-064.pdf> (accessed November 17, 2010). The Air Force also used a commercial pricing strategy for the C–130J. Given his experience on the tanker, Senator McCain took exception to commercial pricing for these types of procurements. Based on his concerns, the Air Force changed to a traditional procurement strategy. John McCain, "Senator McCain Statement on the Announcement to Change the C–130J Program to a Traditional Military Procurement," available at <http://mccain.senate.gov/public/index.cfm?FuseAction=PressOffice.PressReleases&ContentRecord_id=97d4ff25-5521-427f-ac00-563fde2ad36d&Region_id=&Issue_id=1172f761-a830-4020-ae1b-7ec3db088fc9> (accessed December 3, 2010).

[45] In a traditional procurement, a construction loan would not be required since the government funds manufacturing; Bolkcom, 63.

[46] The information used to determine percentage of fair market value was based on multiple factors which were not publicly reported. As such, the numbers supplied cannot be used to independently calculate and compare fair market value percentages; See Sambur.

[47] Ibid.

[48] In an interesting side bar, during his testimony, Plueger stated aircraft pricing was a closely guarded secret in the commercial industry and that "most of the time you only know for sure what you paid for an aircraft, not what anyone else pays for an aircraft." He also speculated that surplus commercial B767–200ER&DC–10s could be converted to tanker to supplement near-term tankers needs; House Armed Services Committee, *Air Force Tanker Lease Proposal, Testimony by John Plueger*, 108th Cong., 1st sess., 2003, available at <http://web.lexis-nexis.com/congcomp/document?_m=6d7812f33485d1bd3832ea3b26541412&_docnum=6&wchp=dGLbVzb-zSkSA&_md5=c3874c79194e638002e68dc8b3ef4746> (accessed December 3, 2010).

[49] Bolkcom, 87.

[50] Ibid.

[51] U.S. Air Force, *Report to the Congressional Defense Committees on KC–767A Air Refueling Aircraft Multi-Year Lease Pilot Program*, 2003), available at <http://www.globalsecurity.org/military/library/report/2003/767_congress_final-10jul03.pdf> (accessed November 8, 2010).

[52] U.S. General Accounting Office, *Military Aircraft: Considerations in Reviewing the Air Force Proposal to Lease Aerial Refueling Aircraft* (Washington, DC: General Accounting Office, 2003), available at <http://www.gao.gov/new.items/d031048t.pdf> (accessed October 21, 2010)>.

[53] U.S. Air Force, *Report to the Congressional Defense Committees on KC–767A Air Refueling Aircraft Multi-Year Lease Pilot Program*.

[54] Bolkcom, 37–53.

[55] U.S. General Accounting Office, *Military Aircraft: Considerations in Reviewing the Air Force Proposal to Lease Aerial Refueling Aircraft*.

[56] Bolkcom, 37–53.

[57] U.S. Air Force, *Report to the Congressional Defense Committees on KC–767A Air Refueling Aircraft Multi-Year Lease Pilot Program*.

[58] Bolkcom, 10–21.

[59] Sambur, (tab Q).

[60] John M. Donnelly, "U.S. Budget Boss Opposes Boeing Tanker Deal," *Defense Week* (August 5, 2002), available at <http://www.defensedaily.com/articles/dt/2002/dt08050201.htm> (accessed December 6, 2010)>.

[61] Selden Biggs and Lelia B. Helms, *The Practice of American Public Policymaking* (Armonk, NY: M.E. Sharpe, 2007), 322.

[62] Senate Armed Services Committee, *Lease of Boeing KC-767 Air Refueling Tanker Aircraft, Statement of Joel D. Kaplan, Deputy Director, Office of Management and Budget*, 108th Cong., 1st sess., 2003.

[63] U.S. Air Force, *Report to the Congressional Defense Committees on KC–767A Air Refueling Aircraft Multi-Year Lease Pilot Program*.

[64] This was the same day that Secretary Aldridge signed the lease memo; "Rep. Norm Dicks Says KC–767 Tanker Lease Recognizes Urgency of Replacing Older Defense Dept. Equipment,"

available at <http://www.house.gov/list/press/wa06_dicks/morenews/03finaltankers.shtml> (accessed November 15, 2010).

[65] Charles Pope, "McCain to Release Data Unfavorable to Boeing Air Tanker Deal," *Seattle Post-Intelligencer*, August 29, 2003, available at <http://www.seattlepi.com/business/137159_tankers29.html> (accessed November 15, 2010).

[66] Sambur.

[67] *National Defense Authorization Act for Fiscal Year 2004*, Public Law 108–136, (2003), 134, available at <http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_public_laws&docid=f:publ136.108.pdf> (accessed December 2, 2010).

[68] "Druyun Joins Boeing as Deputy General Manager for Missile Defense Systems," Boeing, available at <http://www.boeing.com/news/releases/2003/q1/nr_030103m.html> (accessed December 3, 2010).

[69] Renae Merle, "Boeing Fires 2 Top Officials in Hiring Probe," *The Washington Post*, November 25, 2003, available at <http://ezproxy6.ndu.edu/login?url=http://proquest.umi.com/pqdweb?did=463803811&Fmt=7&clientId=3921&RQT=309&VName=PQD>.

[70] Office of the Inspector General, *Acquisition of the Boeing* KC–767A *Tanker Aircraft*, 83; Charles Pope, "Boeing Tanker Deal Faces Inquiry," *Seattle Post-Intelligencer*, September 4, 2003, available at <http://www.seattlepi.com/business/137948_tanker04.html> (accessed November 8, 2010)>.

[71] Project on Government Oversight, "Federal Contractor Misconduct Database," Project on Government Oversight, available at <http://www.contractormisconduct.org/index.cfm/1,73,html> (accessed November 10, 2010).

[72] Ibid.

[73] "McCain Demands Pentagon Documents on Tanker Lease," *CongressDaily AM* (September 12, 2003), 15, available at <http://ezproxy6.ndu.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=mth&AN=10824369&&site=ehost-live&scope=site>.

[74] "Armed Services Panel Begins Reviewing Tanker Documents," *CongressDaily AM* (July 15, 2004), 21–22, available at <http://ezproxy6.ndu.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=mth&AN=13828775&site=ehost-live&scope=site>.

[75] "Boeing 767 Tanker Lease: Internal Documents Released by Sen. McCain," available at <http://www.fas.org/sgp/congress/2004/s112004.html> (accessed November 15, 2010).

[76] Ibid.

[77] Office of the Inspector General, *Acquisition of the Boeing KC–767A Tanker Aircraft*.

[78] Ibid.

[79] Ibid.

[80] Ibid.

[81] Ibid.

[82] Ibid.

[83] Ibid.

[84] *Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Act, 2002,* Public Law 107–117, (2002), 8159, available at <http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&&docid=f:publ117.107.pdf> (accessed December 2, 2010).

[85] *Defense Appropriations Act, FY 2003*, Public Law 107–248, (2002), 8117, available at <http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ248.107.pdf> (accessed December 2, 2010).

[86] *Bob Stump National Defense Authorization Act for Fiscal Year 2003*, Public Law 107–314, (2002), 133, available at <http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ314.107.pdf> (accessed December 2, 2010).

[87] *National Defense Authorization Act for Fiscal Year 2004*, 134–136.

[88] *Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005*, Public Law 108–375, (2004), 131, available at <http://www.DOD.gov/DODgc/olc/docs/PL108-375.pdf> (accessed December 2, 2010).

[89] Richard Shipe, "Air Force Tanker Lease Timeline" (Internal Document, Industrial College of the Armed Forces).

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