

INDEPENDENT POLICY REPORT

ROUTING

Congress, the Defense Budget and Pork *A Snout-to-Tail Description of Congress's Foremost Concern in Security Legislation*

Winslow T. Wheeler*

Executive Summary

In the defense bill that currently pays for the war in Iraq, the largest modification Congress made was to add \$9.3 billion in spending for items like a Memorial Day celebration, Hawaiian Islands health care, Alaskan fisheries, breast cancer research, and much more.

The Congressional Research Service found 2,847 of these earmarks, "pork," costing \$9.3 billion in 2006 alone. Moreover, it has been on the increase since September 11, 2001, when Congress spent \$7.2 billion for 1,409 earmarks.

Worse is how both Democrats and Republicans in Congress pay for it. Eagerly advertised to the voters back home as good news, they neglect to explain that they raided parts

of the defense budget to offset the cost. The favorite target is the Operation and Maintenance budget that includes spending for weapons maintenance, training, fuel, and all the other essentials key to fighting a war.

Worse still, no one in Congress does anything about it, not even the self-described "pork busters." In Congress's new effort to reform itself in the aftermath of the Duke Cunningham and Jack Abramoff scandals, the measures adopted to restrain earmarking are a sham.

There is a great need to probe the real workings of the "pork process," which is much more widespread in government, and which has far more consequences than Americans appreciate.

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Congress, the Defense Budget, and Pork

A Snout-to-Tail Description of Congress's Foremost Concern in National Security Legislation

Winslow T. Wheeler

“Now is the time when men work quietly in the fields and women weep softly in the kitchen; the legislature is in session, and no man's property is safe.”

—*Daniel Webster, 1831*

“I never can think of Judas Iscariot without losing my temper. To my mind Judas Iscariot was nothing but a low, mean, premature, Congressman.”

—*Mark Twain, 1873*

From Daniel Webster to Mark Twain to the present day, Congress has been the object of much scorn. Today, the conventional wisdom among many commentators and in the public is that as a group, Congress can be an embarrassment to the species. But individual members, often from one's own state or district, are sometimes better, if not actual statesmen or—women—an exception to the collective rule.

Lately, Congress has done little, if any-

thing, to lift itself from its low communal reputation, but the time has arrived for observers to re-inspect whether there are individual members who should be excepted from the general calumny. We have an occasional glimpse of one or two senators or representatives who inspire us with an uplifting speech or even a rare deed that merits real praise. However, those may just be temporary excursions by an individual who returns quickly, voluntarily, and sometimes even apologetically, to the fold, where partisanship and the pursuit of political advantage predominate and the consequences for the nation are ignored. It is even more distressing to note that the penalties the nation and the troops in the field often suffer are virtually never acknowledged by the press.

It is worth inspecting whether Congress has arrived at a new low and whether the apparent individual exceptions—some of them self-described reformers—are just a

different, more clever charade. There may be no more appropriate area of inquiry than Congress's recent handling of national security legislation, specifically the bills to fund the Department of Defense and the wars in Iraq and Afghanistan. In the aftermath of the terrorist attacks of Sept. 11, 2001, and in the midst of a war that is clearly not going well in Iraq, one would hope for some in Congress to rise above self- and party-promotion and exercise some diligence to focus constructively on the task at hand.

The Problem

Assessing how Congress legislates on national security affairs means taking a look at the bills put together by the House and Senate Armed Services Committees and the Defense Subcommittees of the House and Senate Appropriations Committees. Does Congress seek out and repair deficiencies in the budgets the president and Defense Department have requested to fund the wars in Iraq and Afghanistan? Or, do members simply exploit what the Pentagon has now dubbed the "Long War" to make themselves more politically secure, and in some cases to expand their political ambitions?

Any such inquiry inevitably leads to the issue of "pork"—spending that senators and representatives add for various contractors, military bases, universities, and others in their states and districts. These projects include such items as museums, parks, athletic events, holiday celebrations, recreational

parks, agricultural programs, and many other irrelevant projects, all added to defense bills. Indeed, they constitute the vast majority of modifications the House and Senate make to military spending. These baubles are added by Republicans, Democrats, liberals, conservatives, moderates, males, females—almost every single member of Congress.

Based on my 31-year career on Capitol Hill working for four senators (from both political parties) and the Government Accountability Office (GAO), I have observed "pork" add-ons to defense bills evolve from a sometime-activity that professional staff members would deride—but sometimes engage in—to an activity aggressively pursued by virtually all, occupying vast amounts of work time. It is now an endeavor that staffers pursue with the sense that they are performing an important mission both for the member of Congress they work for and their own career. In the 1970s, it was an intermittent, subsidiary activity; today it is a core activity. Some members perceive it as the most important thing they do when Congress considers defense legislation, and they require their staff to focus on it to the exclusion of almost all else.

Currently, Congress pits spending for pork against spending for essential troop support and other costs in the ongoing wars in Iraq and Afghanistan. In choosing between pork or fully funding wartime basics (such as training for the troops, their food and everyday supplies, maintenance to repair worn out weapons, and spare parts to keep them running on the battlefield), Congress has clearly opted to lard on the pork to skimp on sol-

diers' basics and other mundane, but essential needs. This selection of priorities is today the most relevant and appropriate measure of Congress's handling of national security affairs.

Moreover, this preference doesn't seem to trouble anyone in Congress to the point where he or she acts to change things, beyond giving occasional speeches about it.

We will explore the evidence. We will discuss just what "pork" is, starting with where it is, which is revealing in itself.

Where Is the Pork?

With 2,847 examples costing \$9.4 billion,¹ the "earmarks"—pork—in the Department of Defense Appropriations Act for fiscal year 2006, the most recent annual defense bill enacted into law by Congress, is not hard to find. Examples occur in almost every part of the bill.

For example, the Military Personnel "title" of the bill, which funds salaries and benefits for all military personnel, includes \$1.6 million for something called "Lewis and Clark Bicentennial Activities." It is to pay for members of Congress to invite "up to 10 students from each state and territory" to participate in a "Youth Rendezvous" in some lucky congressional district.²

Such items can be found in both the text of the enacted bill, now Public Law 109-148, and in something called the "Joint Explanatory Statement" (JES) that accompanies the text of the proposed law as it moves

through its final stages of congressional approval. While it does not become law, the JES is especially important. Its ostensible purpose is to provide guidance and clarification to the executive branch, and the public, on Congress's intent and rationale for the various provisions it has written into law. And, indeed, there is often some material that is explanatory. However, most of the document simply lists pork projects in tables, especially in the Procurement and in the Research and Development (R&D) titles of the bill; these tables literally go on for page after page after page. They list hundreds, even thousands, of individual pork projects.

It is easy to find these projects. The text of the JES for the R&D title in the 2006 Act is 116 pages. A random page flip will almost always lead to one of these ubiquitous tables. The table will show the name of the program requested by the president and the dollar amount he sought (under the heading "Budget Request"). The table will also show what the House recommended, what the Senate recommended (often a different dollar amount), and finally what the House-Senate "conferees," appointed by their respective bodies to resolve differences, recommended. In the R&D title, and to somewhat lesser extents in the Procurement and Operation and Maintenance (O&M) titles, the table will list many programs and dollar amounts not requested by the president. These are either to be paid for by taking money out of the program sought by the president, or they are wholly new programs listed under their own new category with money added

to pay for them. In the R&D title, there will usually be more of these “line items”³ added by Congress than the number of programs sought by the president.

Look for the “conference report” for the 2006 DOD appropriations bill and its component JES on-line at [http://thomas.loc.gov/cgi-bin/cpquery/R?cp109:FLD010:@1\(hr359\)](http://thomas.loc.gov/cgi-bin/cpquery/R?cp109:FLD010:@1(hr359)). Scroll to any page between 335 and 451, which constitute the R&D section. Scroll farther—up or down—and you’ll find more and more of the same thing: endless tables listing the “earmarks” the president’s budget request did not seek.

As the reader will note, the Joint Explanatory Statement provides little, if any, explanation of these items. Rarely is there any text to explain them; they are typically just listed. For example, one can find on page 315 “Crystal Materials for Electro-Optical Imaging and Communication: 1,300” (meaning \$1.3 million for that program).⁴ A little information can be deduced from where in the JES the “add-on” is placed—in this case “Night Vision Technology” in the broader category of R&D for the Army. Nowhere does it state what this really is, nor whether it is a one- or multi-year program (with “out-year” costs), the location of the contractor (and its track record of performance), what member of Congress added it, or what anybody in DOD or elsewhere thinks about it. It is quite literally “a pig in a poke.”

A few other isolated examples:

- In addition to the \$1.6 million add-on for the Lewis and Clark rendezvous, some member added \$4.7 million for “932nd Airlift Wing Personnel” in the Military Personnel Title (page 197). There is no discussion of why that specific wing should be singled out for this additional money, what mission the wing performs, nor what these additional people are to do for it.
- In the O&M title, someone added \$900,000 for “Memorial Day” (page 209) and \$4 million for “Fleece Insulated Liners for ECWCS” (page 208). Absolutely no explanation, from either context or language, is provided for the spending for “Memorial Day.” Nor is it explained whether the additional fleece liners are needed, why, who the selected manufacturer is, nor how its product compares to that of other producers.
- The Procurement title contains \$1.7 million for “Vacuum Pack Joint Single Place Life Raft” (page 249) for the Army (not the Navy) and “Scathe View Communications Upgrade Program” for C-130J aircraft in the Air Force for \$3.5 million (page 312). While the C-130J transport did fail its operational testing, and many fixes are needed, this modification was not identified in the operational test report. The nature of the program is unexplained.
- Title VI, which is primarily for the Defense Health Program, contains many earmarks, including for “Alaska Federal Health Care Network” (\$2.2 million) and “Pacific Island Health Care Referral” (\$3.6 million), “Brown Tree Snakes” (\$1.7

million) all on page 454, and breast, ovarian, and prostate cancer research totaling \$217 million (page 455). The text does not explain why the defense appropriations bill should be the vehicle for this non-defense spending.

- Section 8098 of the actual bill in the General Provisions title (see page 42) adds \$3.85 million for the “Intrepid Sea-Air-Space Foundation” (a museum) in New York City, \$4.4 million for a “Center for Applied Science and Technologies at Jordan Valley Innovation Center,” \$500,000 for the “Westchester County World Trade Center Memorial,” \$850,000 for the “Des Moines Memorial Park and Education Center,” \$1.5 million for the “Battleship Texas Foundation” (another museum), and more money for several other projects. The author has repeatedly called the House and Senate Appropriations Committees to ask why these projects were added to the text of the bill, not the JES, and what they really are. Those phone calls were never returned.

You won’t find all the earmarks in the text of the final bill or even the JES. The Joint Explanatory Statement instructs the Defense Department that any item listed in several other reports from the House and Senate Appropriations Committees for their defense, military construction, veterans’ affairs, and military “quality of life” appropriations bills “should be complied with unless specifically addressed in the ... conference report ... to the contrary.”⁵ The vast majority of defense

pork does not appear in the text of bills that become law but is laced through multiple levels of numerous defense-related bills, and “explanatory” materials Congress produces that actually do little to illuminate the spending. Indeed, of the more than 2,800 earmarks found by the Congressional Research Service in the 2006 Defense Appropriations Act, all but a handful were in these report materials, not the text of the bill.

That the items do not appear in bills or ultimately the text of laws does not mean that the Defense Department is permitted to decide on its own whether or not to spend the money. DOD is permitted no discretion. For “congressional interest items,” DOD is specifically instructed in the text of the JES that the amounts specified by Congress in its various reports must be spent unless DOD specifically asks the appropriations committees for permission to change the amount in a “reprogramming” action and the requested permission is specifically granted.⁶

Such permission is rarely sought. Imposing Congress’s will through reports, not bills, is a simple matter: Senior managers in the Pentagon are unwilling to endure the ire of Armed Services and Appropriations Committee members who will not hesitate to threaten dire consequences if the member’s pet program is not funded, both fully and promptly.

Examples of this closed-door behavior became public in the revelations of court documents involving the self-confessed felonies of Congressman Randy “Duke” Cunningham, R-CA. As one document described, after

a Pentagon employee attempted to spend money for the purpose specified in an earmark legislated by Congressman Cunningham but *not* on the specific contractor Cunningham wanted, Cunningham summoned the official to his office, browbeat him, and later tried to have him fired.⁷ Similarly, one member, Senator Ted Stevens, R-AK, has a notorious temper that flares, even in public, when his insistence on dubious spending in Alaska is met with reluctance. Stevens often displays his bad temper when the Senate opposes one of his most passionate recommendations: to open up the Arctic National Wildlife Refuge for oil exploration.

As Congress and its staff chase down these and many more pork projects in defense bills, they usually argue that their projects are good for both congressional districts and the national defense. While the latter claim may occur to the reader as spurious nonsense, there are cases where the claim can be convincing. That raises the question, What is pork?

What Is Pork?

Going through the lists of pork in defense appropriations bills, it is easy to pick examples that appear foolish on their own or that obviously have no proper place in the defense budget: Museums, bicentennial Lewis and Clark celebrations, and breast and prostate cancer research are typical examples. However, items that appear to be both defense-related and even useful also occur. Surely, soldiers in the mountains of Afghanistan need those “fleece

insulated liners” identified earlier. Also, a \$1.7 million add-on for a “Program Increase” for the “Joint Stand-Off Weapon” in the 2006 DOD appropriations bill may be justifiable, as would an additional \$5.5 million for the “Walter Reed Amputee Center.”

Is it “pork” when a member of Congress is helping the wounded returning from Iraq?

Of course, it is.

The real problem is that nobody knows the real merit of these and other earmarks, even when they have relevant and useful sounding names. For example, could the \$5.5 million for the Walter Reed Amputee Center actually be for a new cafeteria, or is it for proven, quality care for wounded veterans? You will not find a meaningful answer by reading the 2006 Joint Explanatory Statement.

The real problem with “pork” is that no one knows whether it is good or bad, not even the congressional advocates. Virtually none of the add-ons are put through a rigorous, competent review process by any objective entity. For example:

- The Congressional Budget Office (CBO) is not asked to review the most likely annual cost, let alone multi-year costs, if any.
- The Government Accountability Office (GAO), or any other objective party, is almost never asked to review the need for the item or whether it would meet that existing need better than some other idea.
- If the item is the subject of any questions in the Defense Appropriations subcommittees or the Armed Services commit-

tees of the House and Senate, the inquiry is usually perfunctory, if not a set-up worked out by the inquiring member's staff and a cooperative witness, with the questions and answers all predetermined before the hearing.

- In those rare cases where the item might actually pass muster on the above criteria, no one in Congress is interested in pitting their home-district contractor (and potential campaign contributor) against manufacturers in other states or districts in a free market competition for the contract. After all, it is hardly the point of the exercise to get the business for someone else's political district.

In short, pork is not necessarily "bad stuff" crammed into the defense budget by Congress; it is unknown stuff. Complete costs and real needs are only dimly known, if at all, and a comparison of potential competitors goes unexplored. Congressional additions are included in the defense budget, not because a case for them has been made, but because someone in Congress wants them.

But then, it's not just Congress piling up the pork.

Presidential Pork

Presidents and secretaries of defense pursue pork with at least as much vigor as Congress.

A clear-cut example occurred in 1995. That year, just before the 1996 presidential elections, a Base Closure and Realignment Commission (BRAC) identified excess

military facilities that should be shut down. BRACs are habitually unpopular, especially in Congress. They can bring not only the bad news that a military base in a member's state or district will close—thus, terminating hundreds, sometimes thousands, of government-funded jobs—but also the idea that a member is ineffectual or uncaring about his or her constituents and their economic well being if that member is unsuccessful in avoiding or reversing a BRAC recommendation in his or her state or district. It is a short step from being seen as ineffectual or unconcerned to being unelected. (In fact, many localities benefit economically when bases close once they are converted to more productive commercial uses, but the fear of BRACs in Congress is near universal, with or without good reason.)

The 1995 BRAC commission recommended closing two Air Logistics Centers, one each in California and Texas—at McClellan Air Force Base (AFB), CA, and Kelly AFB, TX. Those states were important to President Clinton's re-election, and he behaved accordingly. He did not reject the BRAC commission's recommendations for closure; he circumvented them. The bases were indeed "closed," but they were immediately reopened as private facilities. Called "privatization in place," the maneuver retained virtually every job to be ended or moved. President Clinton "saved" the military facilities and—by implication—preserved his prospects for acquiring those two key state's electoral votes in the 1996 presidential election against the eventual Republican candidate, former Senator Robert Dole of Kansas.

Presidential pork comes in many other forms. Sometimes it is used to buy off members of Congress or to sate one who is lobbying for a contractor in his or her state. In 1997, the Ingalls Shipbuilding unit of Litton Industries⁸ in Pascagoula, MS, lost a bid for producing LPD-17 amphibious warfare ships for the Navy. Senator Trent Lott, R-MS, went to bat for the shipyard by having his staff send memoranda to the Navy demanding that other work be given to the Pascagoula shipyard, and that failure to do so could result in Lott's opposing other Navy programs, such as the F-18 fighter, which was not produced in Mississippi.⁹ Being Majority Leader of the Senate at the time, Lott was very much in a position to make his threats stick and to make budget life for the Navy, and the Clinton Defense Department, miserable. Pascagoula was awarded billions of dollars of work for an additional DDG-51 destroyer and a new LHD-8 (a different and even more expensive amphibious warfare ship). That the Defense Department submitted to Lott's pressure demonstrates that pork is often an activity of two branches of the federal government and not just a purely congressional enterprise.

Another way the executive branch engages in "porking" is to exploit the well known appetite of members of Congress for maintaining, or increasing, defense spending in their states. In 2006, Secretary of Defense Donald Rumsfeld provided several examples. In one case, while it was being prepared inside the Pentagon, the Defense Department's 2007 budget was broadly reported to be under some pressure from OMB to demonstrate

a little spending moderation. Some rather strange proposals were leaked to the press: In response to the wars in Iraq and Afghanistan and their demands for manpower, especially ground forces, Secretary Rumsfeld was recommending a 22,000 soldier reduction in the Army Reserve and National Guard.

Predictably, members of Congress identified this as an inappropriate idea—and one that the National Guard components in their respective states wanted reversed immediately. At this writing, Congress is considering its 2007 defense authorization and appropriation bills, and it is abundantly clear that it will restore the personnel the Reserves and Guard lost in Rumsfeld's budget proposal.

This was a classic "Washington Monument Drill": a gambit well known in Congress where the executive branch—under pressure to reduce spending—makes its budget "savings" in programs it knows full well Congress will restore.¹⁰

The example of the Army Reserves and National Guard was hardly the only one like it in Rumsfeld's 2007 budget proposal. Congress is also rushing to undo his recommendation to truncate C-17 transport production, to increase his modest military pay raise, to rescue military retirees from a recommendation to increase their healthcare costs, and to retain in the Air Force several B-52 and F-117 bombers and Minuteman III missiles Rumsfeld recommended for retirement.

Through this mechanism, everyone benefits. The secretary of defense can pretend his budget proposal is smaller than it really is,

and members of Congress can publicly come to the rescue of “threatened” national security spending, especially that in their states and districts.

These phony budget reduction recommendations from secretaries of defense are sometimes hard to distinguish from the real thing. In the early 1990s, Secretary of Defense Richard Cheney recommended terminating production of the Marines V-22 “tilt-rotor” aircraft and the Navy’s Seawolf submarine. In 2005, Deputy Secretary of Defense Paul Wolfowitz recommended truncating production of the Air Force’s C-130J transport aircraft. In each case, Congress reacted vehemently, and each recommendation was reversed. It was quite unclear whether Wolfowitz’s recommendations were sincere, cynical, or just naïve. Moreover, in the rare case of an actual termination, such as for the Army’s Crusader artillery system and its Comanche helicopter, the secretary’s recommendation was effected only after a serious fight with Congress. In some cases, the recommendation may have been initially in earnest, but when Congress strongly resisted, the Pentagon’s leadership caved too quickly in order to preserve good relations or some other threatened priority. In other cases, the ultimate DOD capitulation may have been contemplated from the start.

Such congressional operations to rescue threatened spending projects are well advertised by members of Congress to the press and constituencies. Indeed, such activities are important business on Capitol Hill.

Advertising Pork

Even though “explanatory” materials explain little about the nature of “earmarks,” and some of the tactics used to enforce them are carried out behind closed doors, individual congressional members are anything but shy about advertising the results to their constituents. During 31 years on Capitol Hill, especially at the end of my career near the turn of the century, I found few members who did not think that publicizing his or her success in bringing home the bacon was a core activity—essential for political well being. Innumerable examples can be found at the websites of House and Senate members. The reader can go to any congressperson’s website and click on the link for press releases or “news” or “press office.”¹¹ There among the materials declaring the member’s support for the troops in Iraq and Afghanistan, find the press releases announcing that the Senate or House has started to debate a defense-spending bill, for example, the mid-December 2005 Senate action on the 2006 DOD Appropriations Act.

The press release will typically start with some generalities about the bill, usually the total amount and some details, often about military pay raises, which most on Capitol Hill think demonstrate their “support for the troops.” By the second or third paragraph, the press release will start to detail the good news for the member’s state or district. This section of the press release is often long and detailed as it plows through each item of defense spending for that state or district. For

states and large House districts, the member might break up the news into several separate releases, one each for different regions or cities.¹²

These press releases and the process behind them are not taken lightly on Capitol Hill. Regardless of party affiliation or political ideology, virtually every member realizes the importance of compiling a long list. In most offices, the work to produce these press releases in the late summer or early fall begins in early January. It is a full time job for thousands of staffers on Capitol Hill, including the ones with important or at least substantive sounding job titles, such as “Legislative Assistant for Defense Issues” on members’ personal staff, or, as in my case, “Senior Budget Analyst for National Defense” on committee staffs, such as the Senate Budget Committee. In truth, many of us spent our time processing pork rather than advising on national security issues.

How the System Works

Each year in January, staffers assigned to defense issues in the House and Senate will start to receive phone calls and visits from lobbyists from Boeing, Lockheed, or Honeywell, or from a professor from the state university, or an officer at the local Air Force base, or anyone else who is looking for some money from the defense budget. The caller or visitor will tell the staffer what he or she is after, how much it will cost, and some other basic details. Cost might be just a few million if it’s

a professor after another university research project or a contractor looking to add a few tests to a facility’s research program. If it’s a four star general who wants a new VIP transport aircraft to travel in, he or she may need \$30 to \$60 million.

The staffer will put together a list. In Senator Pete V. Domenici’s office, R-NM, where I worked as a staffer on the Senate Budget Committee, I came to call this our “pork list,” and two other staffers and I spent large amounts of time compiling the list and finding funding for the items on it.

The reader may wonder what the process is for reviewing the merits of the items that go on the “pork list.” How are the good ideas separated from the bad? The simple answer is that there usually is little review. In most offices, any reasonable sounding idea will pass muster. Most politicians’ offices are not in the business of saying “no” to constituents, especially ones who can make more money flow into the state economy, and, of course, into re-election campaigns. Review will come later, and others will do it. That way it will be easier for a member or staff to give a requester bad news if the project flunks out; someone else can be blamed.

In a few offices—one colleague estimated 10%, and that sounded high to me—the staffer will have some knowledge or insights about the project being solicited or the energy and willpower to look further into it in a reasonably serious manner. In those exceptions, the assessment might involve a review of available Government Accountability Office (GAO) reports, if any, about the project, and

discussions with experts in the Congressional Research Service or professional staff on the Armed Services or Appropriations committees. It would probably include a chat with someone in DOD, as well.

In the rare case where a congressional office does perform a substantive review and the staffer ends up with negative views about the request, it could mean the end of the line for the request, or just that it will be modified. It could also mean that the requester has to go around the problematic staffer and talk directly to the member of Congress or the chief of staff who runs the office. Staffers can be, and frequently are, overruled. Sometimes it takes just one call to someone higher up the chain of congressional command, with a reminder about how many voters will find jobs and how many dollars will flow into the state economy.

Of course, there are some requests that are so outrageous that they could embarrass any member sponsoring it, although in some offices, this test hardly seems to apply. Or, the petitioner's or the hired lobbyist's presentation could be so inept or so inappropriately articulated that the congressional listeners are alerted that to associate with the request could be politically problematic. This is a more common test of a proposal than any real merit, or lack of it. Most politicians and Hill staffers have a good nose for people who will get them into trouble.

For example, offering campaign contributions is a definite no-no. That is supposed to remain unsaid. But when the petitioner does make a contribution—and he or she often

will—it will be both noticed and remembered, especially the next year when the requester comes back for more.

In Senator Domenici's office, our "pork list" ultimately consisted of 80 to 100 individual items for the defense spending bills each year; our letters asking the Senate Armed Services Committee and Senate Appropriations Committee to add the projects to their bills were from 20 to 30 pages long. Those letters are just the beginning of a long process.

The Vetting Process

Senator Domenici is a senior member of the Defense Subcommittee of the Senate Appropriations Committee, and the experiences I had in his office illustrate how these requests become spending added to the reports and bills Congress writes.

The Senate Appropriations Committee receives thousands of requests for individual items from all senators. It cannot afford to fund them all and has adopted a process to cull them. How the committee handles requests from senators who are members of the Defense Subcommittee illustrates the process.

In March of each year, the staff of the Defense Subcommittee will notify the staff of senators on the subcommittee when their "member request letters" (i.e. their "pork letters") are due. The bill will not be "reported out" to the full Senate until May or June; the subcommittee staff needs time to process the

requests. In that March meeting, the subcommittee staff will also instruct senators' staff what format to use in their letters and an accompanying spreadsheet that is needed to make the processing easier.¹³

Later in the year, usually on the day before the Defense Subcommittee will meet to "mark up"¹⁴ the Department of Defense Appropriations bill, the subcommittee staff will convene the staff of senators on the Defense Subcommittee again. At that meeting, subcommittee staff will briefly summarize the major provisions of the bill the Chairman and Ranking Minority Member (Senators Ted Stevens, R-AK, and Daniel Inouye, D-HI, respectively) are recommending. They also hand out manila envelopes, which contain the subcommittee's responses to each senator's "pork letter."

In addressing the content of these envelopes, the subcommittee staffers often explain that no member got everything he or she wanted, and no member got absolutely nothing. Frequently, there will be two factors to explain how well each member did: 1) the availability of funds, and 2) whether a senator did or did not vote for the subcommittee's last defense bill. One subcommittee staff director was rather clear about it: "If you helped us, we helped you." In other words, if a senator opposed the Stevens/Inouye bill, that senator should not expect much pork, and—presumably—his or her political stature in the state can be expected to diminish as a result: It's extortion, pure and simple.

Beyond passing muster with Senator Stevens and Inouye, there is a second step

in the vetting process that the staff performs. Even the temperamental Stevens does not want to alienate other senators by saying no too often to their requests. And yet, if he said yes most of the time, the pork in DOD appropriations bills would be much, much larger. To resolve this dilemma, the staffers on the Defense Subcommittee simply call the Defense Department. They don't call Secretary of Defense Rumsfeld, or even one of his senior managers. Instead, they call mid-level bureaucrats who oversee specific programs and ask them if they want the add-on that a particular member has requested. If the answer is yes, the add-on will almost certainly get at least some money (unless the requester flunks the Stevens/Inouye extortion test above). If the DOD contact says no, the item will almost certainly get nothing.

This vetting process has lots of advantages. Members of Congress are virtually shaken down to support defense appropriations bills, and in those cases when an item flunks with the DOD bureaucrat, the appropriators can, and do, blame the Pentagon rather than risking resentment and possible retaliation from disappointed pork-hunting senators.

Processing the Pork

The envelopes handed out by the Defense Subcommittee staff with the admonishment "If you helped us; we helped you" are just the beginning of a long process that adds more and more "member items" to the defense appropriations bill at each stage. To summarize the next steps:

- Immediately after receiving the envelopes at the pre-mark-up Defense Subcommittee meeting, senators' staffers will identify what requests were turned down and where their member should try again. That evening, the senator may call Chairman Stevens or Ranking Member Inouye, explaining why the member needs more than he or she has received. Convincing Stevens and Inouye will require some proof of approval from someone in DOD, such as a letter from a base commander stating the military necessity of the construction project the senator wants added. The next day when the subcommittee marks up the defense bill, Chairman Stevens will announce a managers' package of pork amendments to the bill, consisting of whatever additions previously disappointed senators could convince him to adopt—as always with Inouye's consent. Invariably, the subcommittee unanimously adopts the package of amendments. (No senator wants to incur retaliation by opposing anybody else's pork.)
- This process—the phone calls from disappointed senators and another managers' package when Stevens/Inouye predictably acquiesce—will repeat itself for the mark up of the full Appropriations Committee, which usually convenes a day or two later.
- When the bill is reported out to the full Senate for it to consider, there will be amendments, such as the 108 offered to the FY2002 Defense Appropriations bill

shortly after the Sept. 11 terror attacks. Most of these amendments are some form of pork, some of it the same projects that had not been included in the managers' packages during the committee consideration. If the sponsor elicits some form of DOD endorsement, the persistence often pays off. Stevens and Inouye will accept some of these amendments, as well as some completely new ones, and they will be incorporated into a third (and maybe a fourth, fifth, and sixth) managers' package. Often an incomplete description is given to the Senate on each amendment in the package, but not always; sometimes they are simply listed by author. The Senate will adopt the packages with an unrecorded voice vote and no debate.

- It is usually here that Senator John McCain, R-AZ, will give a speech (usually a rather good one) about how tawdry the contents of the managers' package are (each one is shown to him and his staff) and how someday this porking behavior should be stopped. On rare occasions, he will threaten to demand a roll call vote on each and every amendment in a package of 20 or 30. It is his right as a senator to do so, which would make the process agonizingly slow and tedious. (Each individual roll call vote takes at least fifteen minutes; even if he loses on every single one of 20 or 30, McCain could drag the senate into hour after agonizing—and very public—hour of votes on these often embarrassingly irrelevant and useless earmarks.) However, McCain rarely

makes this threat, and he has yet to carry one out. At the end of his “pork buster” speech, he usually sits down or leaves the Senate chamber, doing nothing further.¹⁵

- After the Senate passes the Defense Appropriations bill, it goes to a House-Senate Conference Committee to work out the differences between the two bodies’ bills. Here, the projects endorsed by just one of the two bodies are usually added to those endorsed by both. Moreover, even though it can technically violate Senate rules, new earmarks, previously endorsed by neither the House nor the Senate in their respective bills, might be added here.¹⁶

Thus, at each stage of the legislative process, more and more pork is added to the defense bill; it occurs with only the slightest bit of “opposition.” In thirty years of Senate observation, only once did I see any senator make a real effort to obstruct this process. In April 2006, Senator Tom Coburn offered numerous amendments to strip pork items out of a supplemental defense appropriations bill. Although Coburn wilted a bit by not demanding a debate and vote on each and every pork item, or even on the amendments he offered, his action posed more of a threat to porkers than McCain’s rhetorical flourishes.

Paying the Pork Bill

This is the most important and disturbing part of the process.

Many of the senators’ and representatives’

press releases on the pork they bring home will advertise how the total amount in the defense bill, the “top line,” impacts the president’s initial budget request. During the Clinton presidency, members, especially Republicans, would advertise that they increased the president’s defense budget request, at least by a few billion. It was a simple and politically effective way to demonstrate they were “pro-defense.”

Today, even though there is a war going on, members, especially Republicans, tout their cuts to President Bush’s requests: On December 17, 2005, Ted Stevens’ Senate Appropriations Committee widely publicized that it reduced President Bush’s request for the Defense Department by \$4.4 billion.¹⁷ It is, after all, a time of record high deficits, and many members have determined that spending a little less than what President Bush seeks for DOD is politically prudent. For the 2006 DOD appropriations bill, the committee also asserted that it fully funded spending for the troops in Iraq and Afghanistan, while in the same bill they also packed in the above mentioned \$9.4 billion for pork. How can they do all of this cutting and adding at the same time?

The devices to simultaneously reduce defense spending and to add pork explains precisely how Congress exercises its most important constitutional responsibility: the power of the purse. To understand clearly what is happening, some obscure terms, opaque practices, and complex ruses need to be explained. If you do not understand these practices, you cannot really comprehend how Congress interacts with the defense budget.

The 2006 Department of Defense Appropriations Act again gives us a typical example. There, Congress appropriated \$454.5 billion. In the spring of 2006, Congress also acted on a new \$68 billion “supplemental” request to fund DOD’s additional costs for the wars in Iraq and Afghanistan, bringing DOD’s grand total for 2006 to over \$522 billion. The key question is, just how did Congress actually distribute the money?

The major titles of the 2006 appropriations bill show the cutting and adding at the first level of analysis, as follows:

- **Military Personnel:** This title funds the pay, benefits, and pensions for people in the military services. The amount appropriated by the 2006 bill was \$97 billion, \$1.2 billion *less* than what the president asked for in his budget request.
- **Operation and Maintenance (O&M):** This account includes the costs to operate forces (i.e., gasoline, food, clothing, logistics, and more), upkeep for military facilities, weapons maintenance at DOD depots, training and military exercises, transportation costs, spare parts, ROTC, all civilian salaries in the Pentagon, and almost anything else that doesn’t fit in the other parts of the budget. For FY2006, Congress appropriated \$123.6 billion in the 2006 bill, \$3.3 billion *less* than the president’s request.
- **Procurement:** This title funds the purchase of major hardware for all military services. Congress appropriated \$76.5 billion in December 2005, \$100 million *less* than the president’s proposal.
- **Research, Development, Test and Evaluation (R&D):** This title funds the development and testing of all hardware. The December appropriation was \$72.1 billion, \$2.7 billion *more* than the White House request.
- **Revolving and Management Funds:** This account supports the transactions between components inside the Department of Defense and some shipbuilding. The 2006 appropriation was \$2.3 billion, \$800 million *less* than the request.
- **Other DOD Programs:** This constitutes the Defense Health Program (89 percent of this category), plus chemical munitions destruction, and the DOD Inspector General. Congress *increased* the request by \$400 million to \$22.7 billion.
- **General Provisions:** This is a hodge-podge, varying from adding pork for Alaskan military bases, fisheries, and natural gas pipelines, protection for American producers of steel plate and anchor chain from foreign competition, support for specific military retirement homes, road building projects, museums, and other more significant items, described in detail below.

The Lure of “Emergency” Spending

In the last few years, these titles have been supplemented in appropriations bills by an additional title, Title IX, often called “Additional Appropriations.” The Title IX for FY2006 amounted to \$50 billion. Its declared

purpose is to pay for ongoing military operations in Iraq and Afghanistan for the first several months of the fiscal year.

This money has a unique characteristic. It is designated to be “emergency” spending, which has had a specific legislative meaning since a 1991 budget agreement between Congress and President George H.W. Bush. “Emergency” spending consists of appropriations that do not count in the “spending caps” Congress imposes on itself for appropriations. For example, the 2006 congressional budget resolution imposed a “cap” on the DOD Appropriation bill at \$402.3 billion. The \$452.8 billion Congress appropriated for that bill was, of course, way over that limit. However, \$50 billion for Iraq and Afghanistan in Title IX and \$5.9 billion in Hurricane Katrina and avian flu expenses were all exempted from being “scored” to the cost of the bill because they are designated “emergency.” Thus, the \$452.8 billion bill fits under the \$402.3 billion “cap” with room to spare.

More to the point, the “emergency” (budget restraint exempt) characteristic of such Title IXs provide Congress, and its budget gamers, an incentive. If Congress can find a pretext to move programs from the regular part of the bill, where the spending counts, to Title IX, where the money does not count, then Congress can claim to be “saving” money.

The Procurement Dollar Shift

The stunt is readily apparent in the procurement accounts of both the regular part of the

2006 bill and in Title IX. Peppered throughout both—in small print—are programs labeled “transfer.” For example, in the account for “Aircraft Procurement, Army” on page 249 of the regular part of the 2006 conference report, one can find the notation “Transfer to Title IX” for \$11.2 million deducted from the president’s annual request to purchase “aircraft survivability equipment.” The money is added back in on page 477 in Title IX, where the money becomes “emergency” spending.¹⁸

Why not?, one might ask. Surely aircraft survivability is a legitimate requirement in Iraq and Afghanistan. Certainly, but the point here is that Congress transferred what the president requested for normal peacetime procurement costs to the “war” account. Moreover, in transferring the program to the war account Congress did not increase the money for the additional likely wartime expenses over and above peacetime requirements to purchase such equipment.

The author counted 17 of these fine print transfers from the peacetime procurement account to the “emergency” war spending account for a total cost of \$654 million.

There appear to be additional shifts out of the baseline (peacetime) procurement program to Title IX that are not identified as “transfer” even in small print. The author counted four that move an additional \$107 million in spending. That makes a total of \$762 million that Congress moved from spending accounts where the money is counted—to measure “budget restraint”—to accounts where it is not counted.

However, as noted above, Congress

reduced the president's \$76.6 billion procurement request by only \$100 million. The \$762 million transfer out of the "baseline" bill is not reflected. What happened? Congress simply added spending for other items in the baseline procurement account, but just enough to preserve a \$100 million "savings." The added money was spent on many programs, including one F-15E fighter-bomber (\$65 million), two "Littoral Combat Ships" (\$440 million), and a host of other much smaller purchases, numbering in the hundreds. These are the pork projects that are so broadly touted in the press releases to the folks back home.

The one added F-15E is a good example. It may seem a good idea to add an F-15E for the Air Force. Certainly, the inventory is aging, and some would argue that the \$65 million dollar F-15E is a far better bargain than the \$360 million F-22 the Air Force is anxious to procure. On the other hand, only one F-15E will do just about nothing to address these issues: Just one aircraft will not appreciably retard the growing average age of the inventory, and it will not replace the high cost F-22, which is being bought regardless. Instead, it is a simple add-on for Boeing and the line workers at the Boeing plant that makes this aircraft in St. Louis. It is the kind of addition Senator Kit Bond, R-MO, advertised in his December 22, 2005 press release to the St. Louis *Post Dispatch*.¹⁹

It's a pretty clever system. Congress can assert it is exercising "budget restraint" by imposing a modest \$100 million cut on the procurement budget proposed by the president. But few procurement programs are

actually cut (many are just moved to the "emergency" account), and the members get to add a several hundred million dollars in spending for their home states and districts. Overall, procurement expenses are increased—for which Congress claims credit, while a phony \$100 million "savings" is also claimed.

The Mega Gimmicks

Typically, members of Congress are far from satisfied with just several hundred million dollars in "pork" for 50 states and 435 congressional districts. The same kind of game is played on a far grander scale in the rest of the bill, and because of how they do it, the effects are particularly pernicious.

Here are the major gimmicks.

"Unobligated Balances." In the Military Personnel and O&M accounts of the 2006 bill, Congress cut \$872 million and \$333 million, respectively, for "unobligated balances." What on earth are those? "Unobligated balances" are simply funds that have not been spent—yet. The money coming out of the Military Personnel account could have been intended for payroll costs, but for some reason the expense either will not occur at all or will not occur on schedule. It could be that the expense is no longer required, or it could be that it is still needed, but the payment will be due later than anticipated. It will remain a mystery; nowhere does the Joint Explanatory Statement explain the cut or even specifi-

cally where in the huge Military Personnel accounts it should come from.

The Military Personnel and O&M accounts are strange places to cut money during a war, when personnel and operating expenses, such as recruiting, training, and the payroll should increase, not diminish. It's entirely possible that the Appropriations Committee staff who crafted this reduction know that and fully intended for the money to shift to wartime costs in Title IX of the bill, the "emergency" fund. However, there is no evidence that these unobligated balances are restored in Title IX in any notations in the conference report. Indeed, nothing in the conference report sheds light on the matter, other than that the appropriators are extracting money out of the regular bill because it is all deemed to be "unobligated balances." Thus, \$1.2 billion disappears from the peacetime bill, its fate left unaccounted to the public.

"Cost Avoidance." Basically, the same thing is occurring in the portions of the Military Personnel account for the Reserves and the National Guard. There, virtually every component is tapped for unexplained "cost avoidance" for a total of \$318 million. Are Reserves and National Guard personnel costs going down in a time of war? That's hard to believe, and again there is no sign that the money ends up in Title IX. Fate unknown.

These actions, and the mystery of their fate, are just the tip of the iceberg. The peacetime O&M account is crammed with other examples:

- Congress reduced "Peacetime Training"

and "Operations Support" by a whopping \$1.3 billion. Again, there is no identifiable addition of the money back into Title IX. It is unclear whether this funding for training is to be eliminated altogether or just transferred to the "emergency" account.²⁰

- Depot maintenance (of weapon systems) for various military services is reduced by \$631 million. Almost \$2 billion is added in Title IX for Depot Maintenance; it appears that Congress is funding both peacetime and wartime depot maintenance costs in Title IX.
- Funding for converting civilian jobs filled by military personnel back to slots filled by civilians is being reduced by \$282 million. This program was intended to make more military personnel available for war related tasks. There is no apparent add-back-in, in Title IX. It is again not possible to discern fully if the money is cut altogether or simply transferred.
- Financial Management is cut by \$103 million in the peacetime bill. There is no apparent add-back-in in Title IX. It appears to be a genuine reduction. However, for more than 20 years DOD has flunked audits by GAO and the DOD Inspector General. Given the Pentagon's persistent incompetence in this basic peacetime management skill, it is a strange place to cut costs and activities.²¹

And so on. Other arbitrary reductions in the O&M account (the part of the budget that enables our forces at home to be properly

trained and deployed with working weapons) amount to \$1.6 billion. Added to the O&M reductions noted above, the total (so far) comes to \$4.2 billion.

The Mayhem in General Provisions

Reading legislation is never fun; it's dry, obtuse, and legalistic. However, if there is such a thing as entertaining reading in defense appropriations bills, it occurs in "General Provisions." These titles are typically a menagerie. In the 2006 bill, the provisions go on for 129 different sections in over 35 pages. (Typically, for 2006 the "explanatory" material is only four pages.)

The lack of explanation exists for a good reason. There is much in General Provisions that members of Congress would probably prefer no one understand. There's funding for military museums, youth organizations, new roads, the Alaskan natural gas pipeline, the Civil Air Patrol, Indian lands, the Boy Scouts, retirement homes, Israeli "anti-missile" missiles, and the Red Cross, among many other things.

Several other general provisions take more whacks at the O&M budget.

- In Section 8086, another \$265 million is extracted from O&M as "savings" due to "efficiencies and management improvements."
- Section 8087 takes \$100 million from O&M to "limit excessive growth in ... advisory and assistance services."
- Section 8125 extracts \$195 million to reflect

"revised economic assumptions."

- Section 8109 cuts \$92 million to reduce travel.
- Section 8094 cuts \$250 million "to reflect cash balance and rate stabilization."

Many, if not most, of these "savings" are phony. The Office of Management and the Budget frequently complains that these reductions are arbitrary and really mean that DOD's important readiness programs will be cut. For example, on June 16, 2005, OMB complained to the House Appropriations Committee that the Committee's "reductions in the General Provisions ... could damage the readiness of U.S. forces and their preparedness."²² What OMB is, in effect, saying is that DOD is unable, or unwilling, to achieve savings (e.g. eliminate inefficiencies), and these provisions actually amount to cuts in O&M programs, potentially including training, base repairs, depot maintenance, and other readiness-related activities.

In some cases, the amount "saved" is derived from specious calculations. For example, the "savings" in "rate stabilization" can assume changes in foreign currency exchanges in favor of the dollar many months in advance, a prediction that any prudent financial adviser would be reluctant to make. In some past cases, these reductions and across the board cuts were reverse-engineered: In other words, the Appropriations Committee leadership decides how much money it needs to "save" and the staff writes provisions to come to that exact amount.

These General Provisions amount to another \$950 million cut from O&M, but

there are even more. Congress adds numerous pork projects in the General Provisions title, “earmarked” to the O&M account, but no new money is added to pay for them. Thus, DOD must reduce other O&M programs to pay for them. In this year’s bill, these O&M “earmarks” in General Provisions add up to \$268 million.

The total of Congress’ additional cuts to the O&M budget from General Provisions comes to \$1.2 billion. Added to the other reductions and transfers directed against the O&M account, discussed earlier, the grand total reduction to O&M comes to \$5.4 billion.

In General Provisions, Congress also takes some more whacks at the Procurement and R&D accounts. An annual favorite is “revised economic assumptions.” Procurement is reduced by \$264 million, R&D by \$312 million (and per above, and O&M is reduced by \$195 million). These cuts are justified by revised estimates of future inflation. (They are not adjustments based on inflation rates that actually occur; they simply replace one prediction into the future with another.) They are a perennial exercise, and for unexplained reasons, when the new predictions foresee higher inflation, or when actual inflation data arrives to compare to past predictions, adjustments are not made.

The author counts an additional \$874 million in earmarks, transfers, and cuts specified in General Provisions, bringing the grand total of reductions specified in this title to \$2.1 billion.

Grand Total

All in all, the reductions and/or transfers in all the titles of the peacetime parts of the bill (e.g. the unobligated balance “savings” in Military Personnel and the depot maintenance reductions in O&M) come to a grand total of \$8.3 billion. Add to that, the many projects that Congress added to the bill without adding the money to pay for them (thus, forcing DOD to make additional reductions to finance the projects), and add to that any gimmicks and devices this author was unable to uncover, and the total will come to something approximating \$14 billion.

That’s how you reach \$9.4 billion in pork projects while simultaneously reducing the apparent total of the bill by the \$4.4 billion, as advertised by the Senate Appropriations Committee.²³

It is a well-cloaked set of dodges allowing Congress to add pork, while advertising its bill as saving money. As members tout their patriotism and their support for the troops on the battlefield, they simultaneously raid the very accounts that would pay for training, weapons maintenance, and other wartime readiness to pay for the pork they cram into the bill.

Note that the press pays not the slightest attention to how the pork is paid for. Rather than being too complicated to report, the author suspects that the press has no clue how it is paid for. Members of Congress do not put the mechanisms in their press releases, which means most American journalists have no awareness of them. Journalists have only

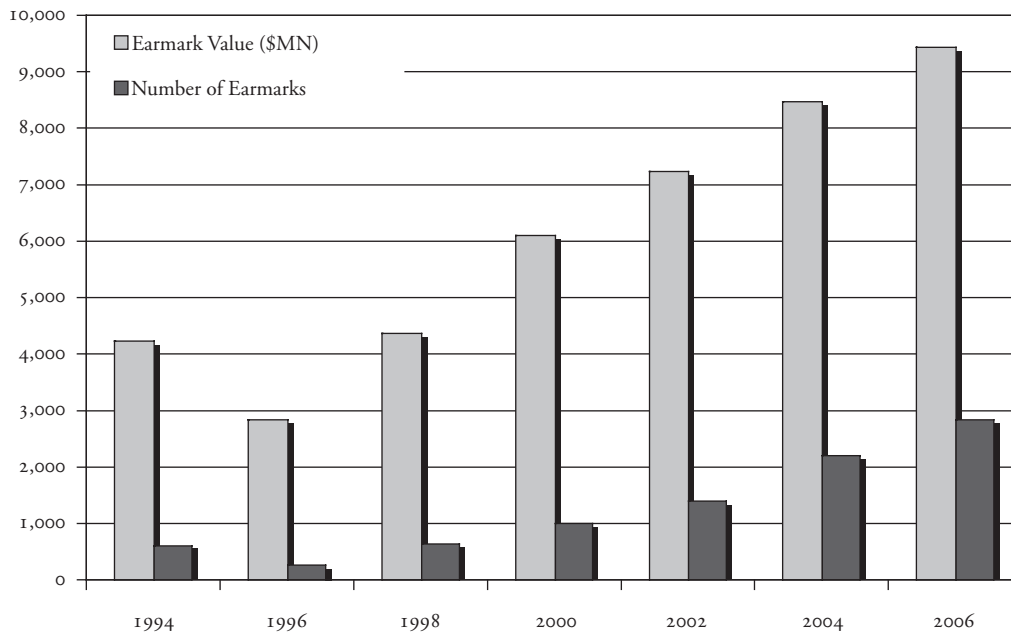


FIGURE 1 Summary of Defense Appropriations Earmarks. Source: CRS Appropriations Team Memoranda for FY1994–FY2005 and FY2006, dated October 13, 2005 and March 6, 2006, respectively.

the narrowest grasp of what pork its: They believe it is silly stuff Congress adds to defense budgets over the objection of the Defense Department—good fodder for light-hearted newspaper coverage. This understanding, though, is wrong in almost every respect.

A Growth Industry

Least funny of all, Congress' porking behavior has been growing rapidly during a time of war. For every year since Sept. 11, 2001, Congress has added more billions in pork to defense appropriations bills while simultaneously raiding various sections of the bills, most notably the O&M and Personnel accounts, to pay for it.

For the 2002 Defense Appropriations

Act, which became law just four months after Sept. 11, 2001, the Congressional Research Service (CRS) counted \$7.2 billion in "earmarks." This was \$1.1 billion *more* than the \$6.1 billion in DOD earmarks CRS found in the 2000 legislation, and was almost \$3 billion more than the \$4.4 billion CRS found in the 1998 bill.²⁴ Since the 2002 Act, the pork bill has continued to grow steadily: CRS found \$8.5 billion in 2004.²⁵ And as we know, it increased to \$9.4 billion in 2006.²⁶ Figure 1 illustrates this growth.

A further review of the same CRS studies shows an interesting pattern in these defense earmarks: While the absolute numbers and cost have been growing, the cost of earmarks as a percent of the total cost of DOD appropriation bills has been stable at almost exactly 2.3 percent since the year 2000. While the

CRS study does not address this characteristic beyond simply citing the percentages, it is interesting that no other appropriations bill for other agencies shows a similar stability; in fact, many show very different percentages from year to year. That the DOD appropriations legislation has been stuck at this 2.3 percent suggests a conscious, not a random, pattern. Could it be that the House and Senate Appropriations Committees have settled on a fixed percentage for their pork? Based on my experience on Capitol Hill, such a tacit game plan—a fixed quota for pork—is well within the mental capabilities and ethical boundaries of the appropriations committees.

If such a quota exists, it is merely this author's, not CRS' hypothesis. Surely, the House and Senate Appropriations Committees will deny it, but any such denial merely begs the question, what criteria *do* they use to decide how much pork is enough? The pattern is too consistent to believe that they have just happened to end up in the same place every year since 2000.

In addition, it suggests a non-solution to the overall problem that a member of Congress might suggest: to simply reduce the quota and permit Congress to fund a lesser percentage of the defense budget for local spending projects that no one bothered to evaluate for cost, need, or efficacy and that should only go to pre-designated contractors in pre-selected locations. There are other non-solutions some in Congress have recently advocated. Some of them even sound good, but they do not withstand scrutiny.

Phony Solutions

Pork is acquired through an opaque process that seeks to operate in the shadows of government with as little explanation and evaluation as possible to ensure that the intended recipient gets the goodies.

One option—popular on Capitol Hill—is to simply illuminate the pork. This has been a highly *ineffective* technique. For years Senator McCain's excellent speeches have highlighted earmarks in defense and other appropriations bills. The result has been an increase in congressional porking, not a decrease. In the wake of McCain's speeches, pork has increased from \$7.2 billion in the FY2002 DOD Appropriations Act to \$9.4 billion in 2006.

In the Senate, members understand the difference between talking about a problem and taking action against it. The Senate is an institution specifically designed to permit members in the minority, even a single senator, to throw the body into parliamentary fits if the member is not accommodated.²⁷ Here senators who describe themselves as “pork busters” convey to other senators an implicit but well understood message: They will talk but not take commensurate action—in an institution where action can readily be carried out, and often is. It is clear that nothing untoward is going to happen to the porking senators; all they have to do is wait out a twenty-minute speech. Moreover, if the porking senators perceive their behavior to be in their political interest, they will continue and even expand the activities, as has been the case.

The pretense at opposing the objectionable behavior—talk without action—can actually serve to encourage the behavior, even enable it, if the objecting member escalates his or her talk to specific threats that are never carried out. This is the fatal flaw in Senator McCain’s approach. Not only has he threatened to use parliamentary maneuvers, such as exercising his right to debate and have a roll call vote on each individual amendment in a porky managers’ package, but he has also threatened the ultimate parliamentary thermo-nuclear device—the filibuster—again without following up.

On December 9, 1998, McCain wrote to Senator Stevens, in Stevens’ capacity as Chairman of the Senate Appropriations Committee, threatening a filibuster. The letter was also signed by Senators Chuck Robb, D-VA, and Chuck Hagel, R-NV; it stated the signers would “employ all legislative tactics at our disposal, consistent with the rules of the Senate, to stop wasteful defense spending once and for all.”²⁸ That’s parliamentary talk for a filibuster against any future defense appropriations bill riddled with pork.

In the subsequent DOD appropriations bill Senator Stevens’ increased the pork, but McCain failed to uphold his threat.

A New Wave on Non-Solutions

With the double whammy of scandals in 2005 involving Rep. “Duke” Cunningham and lobbyist Jack Abramoff, a whole new crop of representatives and senators have lined up

as reformers of the current system. They are focusing on reforms involving lobbyists, lobbying, and—what’s relevant here—earmarking. Unlike the past, the Cunningham and Abramoff scandals have given rise to a political imperative to take action. How serious the members’ conversions have become is evident in the action they have taken.

The Senate’s reaction to the joint lobbying/earmarking scandals took the form of S. 2349, the “Legislative Transparency and Accountability Act.” It was the joint product of the Senate Rules Committee, primarily that committee’s chairman Senator Lott, and the Senate Homeland Security and Government Affairs Committee, primarily the Chairwoman Susan Collins, R-ME, and the Ranking Minority Member, Joe Liebermann, D-CT.

After going through both committees, the bill was jointly amended by Senators Lott and Collins to produce, at least for them, a consensus product. Its provisions require any earmark to be listed with the identity of its congressional sponsor and an explanation of its “essential governmental purpose.”²⁹ Sounds fine as far as it goes: Knowing what the earmarks are, who in Congress wants them, and what they consist of constitutes useful information. It is information only available now to the staff of the Appropriations Committees and a handful of congressional researchers, such as “Taxpayers for Common Sense,” which has spent many hours trying to figure those things out.

On the other hand, the bill makes the above provisions virtually meaningless with

the way it defines “earmarks.” According to the Lott-Collins proposal an “earmark” is only an “earmark” if it makes money available to a “non-federal entity.”³⁰ That meaning was not clear, and neither the Government Affairs nor the Rules Committees wrote reports to clarify things.³¹ Luckily, after some debate in the Senate—to his credit prompted by Senator McCain—the meaning was ultimately explained. “Earmarks” pushing money to federal entities, such as most of the examples cited in this article (items like “932nd Airlift Wing Personnel,” “Fleece Insulated Liners for ECWCS,” “Vacuum Pack Joint Single Place Life Raft,” “Scathe View Communications Upgrade Program,” “Alaska Federal Health Care Network,” “Pacific Island Health Care Referral,” breast, ovarian, and prostate cancer research and the literally thousands of add-ons inserted into the R&D, Procurement, and O&M titles of the 2006 DOD appropriations bill) are not “earmarks.” The money was appropriated by the bill to the Departments of the Army, Navy, Marines Corps, Air Force, and their component parts, federal entities all. Only the relatively few earmarks going directly to private sector recipients, such as the Battleship Texas and the Intrepid Air and Space museums, would qualify.

Thus, an item like an additional VIP transport in the 2006 DOD authorization and appropriations bills, known as a C-37 aircraft, for generals and members of Congress to travel in would be for a “federal entity,” namely the U.S. Air Force, and would not be listed or explained as an “earmark.” Similarly, money for those “fleece insulated liners”

would first go to the Department of the Army, not some other “non-federal entity.”

That gigantic loophole was apparently insufficient for the authors of the bill; if read closely, the bill also describes an earmark as only a “provision” in the text of bills, and ultimately laws.³² In other words, the thousands of earmarks that committees like Armed Services and Appropriations add to committee reports and joint explanatory statements would also not be considered “earmarks.” Thus, of the 2,847 earmarks CRS found in 2006 DOD appropriations, only a handful—one congressional analyst stated he could find only four and the author counted only about a dozen—would be covered by the bill.

In sum, as to its requirements to “reform” earmarking, the Lott-Collins bill is a sham.

Again to his credit, Senator McCain sought to repair some of these deficiencies. He and Senator John Ensign, R-NV, sought to amend the bill to include federal entities in the definition of earmarks.³³ However, that was too onerous for the majority of the Senate, which rejected the amendment with a tabling motion—thus killing it—by a vote of 57 to 41 on March 29. McCain also sought to move an amendment that would have removed the other loophole, but his amendment to require all “earmarks” to appear in the text of bills, not reports or joint explanatory statements, if they are to receive any federal money was never voted on for technical reasons.³⁴

The Senate also voted down other amendments to make the bill’s lobbying provisions more meaningful. Happy with its

product, on March 29, by an overwhelming vote of 90 to 8 the Senate passed S. 2349.³⁵

Still Enabling?

Senator McCain's efforts to repair the virtually useless Lott/Collins earmarking reforms require close inspection. Dissecting these proposals helps to dissect the sponsor.

McCain had his own "Pork-Barrel Reduction Act," S. 2265. It defined "pork" as earmarks in appropriations bills that are not "authorized." By that McCain meant not approved by the relevant Senate "authorization" committee for defense matters, namely the Senate Armed Services Committee where McCain sits as a senior member. Put simply, according to McCain, it is "pork" if the Appropriations Committee added it; it is not pork if the Armed Services Committee added it.

There would be some legitimacy to McCain's distinction if the review process for earmarks in the Senate Armed Services Committee were somehow different and superior to that in the Senate Appropriations Committee; however, it is not. As with appropriations committee pork, senators pelt the committee with "pork letters"; in Senator Domenici's office, the letter we sent to Armed Services was virtually identical to the pork letter we sent to appropriations. Also, the review process is essentially the same as in the Appropriations Committee; it consists of the committee staff soliciting bureaucrats in the Pentagon. If Pentagon bureaucrats want the additional spending, the committee will

accept the earmark and some spending for it; if the DOD bureaucrat does not want the "add-on," it will almost certainly be rejected by the committee.³⁶ Put simply, the process is virtually indistinguishable from that of the Appropriations Committee; McCain attempts to draw a distinction where there is none.

Indeed, an inspection of National Defense Authorization bills reveals heaps of the same porky items, ranging from VIP transports to museums to hordes of unexplained and unevaluated additions to the R&D, Procurement, and O&M titles of the bill.

The only possible difference in the two committees' review of pork is the political tests they separately apply. As discussed, Senators Stevens and Inouye at the Defense Appropriations Subcommittee tend to limit pork for senators who vote against their bills. In their joint review of pork at the Armed Services Committee, Senators John Warner, R-VA, and Carl Levin, D-MI, tend to be less politically crude and to rely solely on the judgment of DOD bureaucrats without an intervening filter of a political smell test.

Annually, the National Defense Authorization Act is festooned with scores, sometimes hundreds, of amendments when the bill reaches the Senate floor. Many, often most, of these are member "pork" amendments, and they are accepted and adopted—jointly by Warner and Levin—through a process almost identical to the managers' packages employed by Stevens and Inouye in the Appropriations Committee.

The other major defining characteris-

tic of an earmark in McCain’s “Pork-Barrel Reduction Act” is that earmarks must appear in the text of bills. Unlike the sham Lott/Collins bill, however, McCain specifies that the earmark can only receive money if it appears in bill text: The hordes of add-ons in Appropriations Committee (and Armed Services Committee) reports and joint explanatory statements would be left high and dry. This approach is similar to that of Congressman John Boehner, R-OH, the new Majority Leader of the Republicans in the House. In a *Wall Street Journal* commentary, he proposed that earmarks should be permitted only in the text of legislation.³⁷ The apparent theory of both McCain and Boehner is that the embarrassment of a few thousand earmarks listed in the text of a public law, rather than in congressional reports, will reduce their number. That theory strikes this author as ridiculous.

For example, Congress already stuffs all manner of specific provisions, intended to benefit selected constituents and constituencies, in many types of bills. Revenue bills from the Senate Finance Committee and the House Ways and Means Committee are habitually crammed with highly specific tax advantages for specific companies and individuals. It is absurd to think that the attitude toward junking up the text of bills, and laws, with highly specific “earmarks” will suddenly transform. And, if pork items listed in the text of national security legislation prove to initially be embarrassing, that will change in election years as members scramble to gain credit for bringing home the bacon. In effect,

requiring earmarks to appear only in the text of bills if they are to receive any money is an idea that achieves nothing more than different plumbing: The underlying reality doesn’t change.

In the final analysis, McCain’s “Pork-Barrel Reduction Act” is simply more “pork enabling.” It purports to redefine pork as something the Appropriations Committee does, but not that McCain’s own—very porcine—Armed Services Committee does. McCain’s “reforms” were not as utterly transparent as the Lott/Collins bill; McCain’s ideas were far more clever: They appeared to bring real change, but in fact brought little.

A Simple but Difficult Solution

What would actually reform the current process? A meaningful solution requires changing how Congress thinks and acts, rather than simply redefining a few terms.

We have already established that pork is an unknown quality that may or may not meet a legitimate requirement, and that it is intended for a specific recipient of unknown worthiness. Any meaningful reform must address these characteristics, and it must impose due diligence on the process. Put simply, each congressional earmark for additional spending in the defense budget, or any other part of the budget, should be subject to the following:

1. An independent estimate of the cost of the proposal from the Congressional Budget Office. The estimate should include both

the first and the next five years. There should be an objective assessment (i.e., not one from the contractor or other advocates, such as those in DOD) of the cost, including whether there is a camel attached to that nose under the tent.

2. An evaluation by the Government Accountability Office, or another reputable evaluation entity with no contract relationship with the Pentagon or the defense program in question, on the effectiveness and appropriateness of the proposed spending.
3. A written, public statement on the desirability of the earmark from the manager in DOD, whether civilian or military, who would oversee implementation of the project. This requirement would put DOD program managers on the public record who today circumvent the authority of the Secretary of Defense, the Office of Management and Budget, and the White House by quietly agreeing to more money for their own projects.³⁸
4. A detailed explanation in committee reports and conference reports of the nature of each earmark, its short and long term costs, and its worth as identified by GAO and CBO, together with the identity of any member of Congress seeking the earmark.
5. A requirement that any earmark that makes it through this process can only be awarded to a contractor after complete and open nation-wide contract competition.

Many in Congress will oppose these suggestions; clearly they would subvert the intent of most members to steer government spending toward selected interests.

Because these proposals will not attract any significant support, some might regard them as impractical. However, they distinguish real reform from sham, and they may be able to attract a following. For example, if there were members, especially in the Senate, who sought genuine reform, there are tools at their disposal to help them. Senate rules have been specifically designed to assist in this regard; all that is needed is the will to employ them. Exercising available rules could potentially make the proponent a quick media star, the first real “Mr. Smith” to come to Washington in a long time.³⁹

It would not likely be a pretty fight, but it would definitely be worth watching. It would help the country separate the real reformers from the phonies.

Conclusion

As Daniel Webster and Mark Twain make clear at the top of this article, Congress has often put itself in low repute. With wars in Iraq and Afghanistan going poorly, the Senate and House have done little to react constructively to the issues and, more to the point, have both gone to great lengths to exploit, for selfish political advantage, the national sentiment for defense spending in a time of war. Not only has Congress endorsed an ever growing amount of unevaluated, often irrelevant spending that members promote back home as their handiwork in Washington; but also members exploit important war spending—for training, weapons maintenance, and

many other essential programs—to pay for it all. Meanwhile, they mask their actions successfully, at least with regard to the national press.

It is a most unhappy condition for the nation, and there is no prospect of improvement. The vast majority of members in Congress are happy to endorse thinly veiled shams in response to ongoing scandals, while a much smaller number of erstwhile reformers, the self-declared “pork busters,” pretend to offer themselves as saviors crusading against the rest. But, they are in fact no better than the rest, just more clever: They exploit citizen distress over business as usual in Congress but ultimately take little action, and in the end, they rise no higher than the general herd and make no difference.

The American political scene continues to lack a true reformer. Until the genuine article arrives on the scene, the American electorate can only choose between obvious shams on the one hand and the appearance of reform on the other.

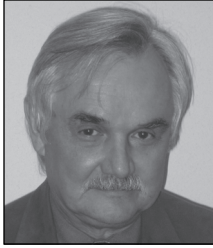
Endnotes

- 1 Congressional Research Service Appropriations Team, Congressional Research Service Memorandum, March 6, 2006, Earmarks in FY2006 Appropriations Acts, p. 10.
- 2 See Conference Report for H.R. 2863, “Making Appropriations for the Department of Defense for the Fiscal Year Ending September 30, 2006, and for Other Purposes,” House Document 109–359, p. 199.
- 3 Many euphemistic names are used on Capitol Hill in lieu of “pork”: “line items,” “earmarks,” “member-” or “state-” or “district-” or “congressional-interest items.”
- 4 Arbitrarily selected from the conference report for HR 2863, House Document 109–359.
- 5 Conference Report for H.R. 2863, p. 173.
- 6 Conference Report for H.R. 2863, p. 245.
- 7 United States District Court, Governments Objections to Presentence Report, Carol C. Lam, et. al., United States of America, Plaintiff v. Randall Harold Cunningham, Defendant, February 28, 2006, p. 9. The court document does not make clear whether the individual did or did not lose his job; however, Cunningham did convince other officials to spend the funding as the congressman wanted.
- 8 The owner is now Northrop-Grumman.
- 9 For a more detailed description of this episode see pp. 66–68 of the author’s book, *The Wastrels of Defense*, U.S. Naval Institute Press, 2004.
- 10 The term refers to a mythical Secretary of the Interior recommending closing the Washington Monument in Washington in response to pressure to cut costs. In doing so, he would know that Congress would rush to restore funding for the popular monument.
- 11 All members of Congress websites can be found at <http://thomas.loc.gov>. Find on the left of the page, the directory for “House” or “Senate” and proceed to any member’s website.
- 12 For example, see eight press releases offered by Sen. Hillary Clinton, D-NY, on December 19, 2005 on 2006 defense spending added for different regions (the Long Island, Greater Rochester, Westchester, Southern Tier, New York City, Capital, Central, and Western regions) of New York State at <http://clinton.senate.gov/news/statements/index.cfm?year=2005>.
- 13 When I came to Senator Domenici’s Budget Committee staff in 1996, I found the compilation of these lists to be quite chaotic—little more than a confused pile of paperwork. I started trying to keep track of it all by making a WordPerfect table/spreadsheet showing what the item was, various defense budget identifiers, and each item’s status in the House and Senate Armed Services and Appropriations Committees. At one point I showed my spreadsheet to

- the staff of the Defense Subcommittee when they asked for Domenici's requests. Years later, I was told they liked the idea so much that they required all senate offices to submit their requests in a very similar spreadsheet. I may not have reduced porking in defense bills in the Senate, but apparently I did make it a bit more organized and coherent!
- 14 A "mark up" is a committee or subcommittee meeting to consider a draft bill. The meeting will proceed through the text of the bill considering it and amendments, usually cursorily. A mark up of the almost half-trillion dollar defense bill in the Defense Subcommittee, and then again in the full Senate Appropriations Committee, typically takes no longer than an afternoon.
- 15 The author is aware of two instances of McCain making this threat and not carrying it out. Once in June 2002 when the Senate was debating an emergency supplemental for Afghanistan. See remarks of Senator McCain in the *Congressional Record*, for June 4 and 5, 2002, pp. S4943 and S5077. Essentially the same threat was made in cooperation with Senator Tom Coburn, R-NE, on December 20, 2005.
- 16 The phenomenon is frequent enough to have its own name: "Immaculate Conceptions." They do indeed occur, such as the four Boeing 737 VIP transports added to the FY2002 Defense Appropriations bill when it was in conference.
- 17 See Dec. 17, 2005, U.S. Senate Committee on Appropriations, "Conferees Approve FY2006 Defense Spending Bill." See first sentence in addition to the press release's title.
- 18 If the reader cares to observe these notations, they can be found in the text of the Conference Report for the 2006 DOD Appropriations bill at the page noted above; at [http://thomas.loc.gov/cgi-bin/cpquery/R?cp109:FLD010:@1\(hr359\)](http://thomas.loc.gov/cgi-bin/cpquery/R?cp109:FLD010:@1(hr359)).
- 19 "Bond: Guard to Receive \$900 Million for Equipment Needs; Senator Announces \$65 million for F-15's and Funds for Key Military Projects," Press Release from Senator Bond's website, December 22, 2005.
- 20 When alerted by the author of a \$250 million reduction in Army training in the peacetime part of the bill, a conscientious House staffer called the Appropriations Committee to ask why the money was eliminated. He was told that the money was not cut but transferred to Title IX. When asked where the money was moved to, the appropriations committee staffer responded it was in an account labeled "Rapid Fielding Initiative; Force Protection; IBA," all budget activities that have little, if anything, to do with training. The appropriations committee staffer provided no further information; it is impossible to tell whether and how much peacetime training money was moved to this Title IX account, or whether, in truth, the money was transferred at all.
- 21 There are scores of Government Accountability Office and DOD Inspector General reports since the 1970s documenting DOD's horrendous record on financial management.
- 22 Statement of Administration Policy, Office of Management and Budget, June 16, 2005, H.R. 2863—Department of Defense Appropriations bill, FY2006, p. 2.
- 23 For example, see Senate Committee on Appropriations press release, *op. cit.*, p. 1.
- 24 These amounts in the 1990s are dramatic increases from earlier times. In the 1970s, the author counted only several hundred million in defense pork add-ons per year.
- 25 "Earmarks in Appropriations Acts: FY1994, FY1996, FY1998, FY2000, FY2002, FY2004," CRS Appropriations Team, Congressional Research Service, March 17, 2004, p. 11.
- 26 CRS's tally could be conservative. For 2006, a public interest group, Tax Payers for Common Sense counted the pork in the bill at \$11.1 billion.
- 27 Beyond the well-known filibuster, any member can impose numerous roadblocks to the passage of legislation he or she objects to. These motions include points of order established by Senate and Budget Act rules, various "dilatatory" actions—such as "cloture calls" (which amount to attendance calls on the Senate floor that can take 40 minutes or more for each)—and even

- requiring that every word of a bill be read out loud by a Senate clerk, even if the bill is thousands of pages long.
- 28 “Letter to the Honorable Ted Stevens,” December 9, 1998, signed by Senators McCain, Robb, and Hagel, p. 2. Senator McCain was the originator of the letter, as indicated by its being on his Senate stationery.
- 29 See Section 103 (2) of S. 2349 as amended by Lott-Collins amendment number 2907 on March 7, 2006.
- 30 See Section 103 (1) of S. 2349 as amended by Lott-Collins amendment number 2907.
- 31 Virtually every bill reported to the Senate by its committees comes with an official committee report to explain it and its cost. It was both unique and strange for S. 2349 to come to the Senate with no report. Its absence only raises the skepticism of the author that the committees did not want issues such as this to be explained.
- 32 See Section 103 (1)(1) of S. 2349 as amended by Lott-Collins amendment number 2907.
- 33 Amendment number 2980 to S. 2349.
- 34 Because the Senate imposed “closure” on the bill to impede a possible filibuster, this additional McCain amendment was ruled “non-germane” and, therefore, “out of order.” To his credit, yet again, McCain opposed closure, stating that it would technically disallow this and other amendments.
- 35 Senators who deserve notation for voting against this bill are Coburn, Demint, Feingold, Graham, Inhofe, Kerry, McCain, and Obama.
- 36 For example, when a colleague in Senator Domenici’s office was pushing an earmark for New Mexico, she was informed by Armed Services Committee staff that the Pentagon had rejected the proposal. She asked whom the committee staff had contacted. When told who, she responded, “you called the wrong person; call X.” The committee staffer did so, and the “no” became a “yes.”
- 37 “Keep Politics Kosher: No Pork,” John Boehner, *Wall Street Journal*, January 17, 2006, p. A16.
- 38 For a description of the involvement of mid-level bureaucrats in DOD in the pork process, see *The Wastrels of Defense*, chapter entitled “Confessions of a Pork Processor.”
- 39 The reference here is to the hero in the movie *Mr. Smith Goes to Washington*, the Frank Capra classic about a senator who rises above business as usual in the ethically challenged waters of a Hollywood version of the U.S. Senate.

About the Author



Winslow T. Wheeler worked on national security issues for 31 years for members of the U.S. Senate and for the U.S. General Accountability Office (GAO). In the Senate, Wheeler worked for Jacob K. Javits (R-NY), Nancy L. Kassebaum (R-KS), David Pryor (D-AR), and Pete V. Domenici (R-NM). He was the first, and, according to Senate records, the last Senate staffer to work simultaneously on the personal staffs of a Democrat and a Republican (Senators Pryor and Kassebaum, respectively).

Wheeler is now the Director of the Straus Military Reform Project of the Center for Defense Information in Washington, DC.

He is the author of *The Wastrels of Defense: How Congress Sabotages US Security* from the US Naval Institute Press. The book has been the subject of commentary and interviews on *60 Minutes*, C-SPAN's *Book Notes*, and various newspapers and radio stations.

He has also authored various commentaries on Congress and national security, which have appeared in the *Washington Post*, *Proceedings of the Naval Institute*, *Government Executive*, *Defense Week*, *Barron's*, *Army Times*, *CounterPunch*, and elsewhere.

While at the GAO, Wheeler directed comprehensive studies on the U.S. strategic-nuclear triad and the air campaign of Operation Desert Storm.



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