

TOO MUCH BUREAUCRACY OR TOO LITTLE? CONGRESSIONAL TREATMENT OF DEFENSE DEPARTMENT LEGISLATIVE LIAISON, 1950S- 1990S

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ABSTRACT

Legislative relations is a difficult and delicate responsibility for the public administrator, given that it is at the nexus of what has sometimes been called the politics-administration dichotomy. Legislators might simultaneously want good service from the very bureaucracy they reflexively criticize. This article is a history of Congressional treatment of Defense Department legislative liaison offices in the second half of the 20th century, especially through an annual statutory spending limit that existed from 1958 to 1990. The narrative documents Congress's ambivalence whether to cut the budgets of these offices because they were part of the bureaucracy or to increase the budgets of such offices to assure fully funded services that legislators desire. These events indicate the difficulty to the public administrator of conducting legislative relations in a way that is both responsive to the demands of the legislative branch while protecting and furthering the mission of the agency as a whole.

INTRODUCTION

Antipathy to public administration has become something of a fixed field in contemporary American political culture (Wildavsky, 1988). However, given the polity's need for an extensive administrative apparatus to run the government, this can "result in a 'love-hate' or 'dependency-resentment' relationship" of politics toward administration (Heady, 2001, 237). This tension and negativity is embedded in what public administration has traditionally called the politics-administration dichotomy.

This means that for senior government managers trying to conduct relationships with elected officials in general, and legislators in particular, it can be difficult, delicate, and sometimes even explosive.

One tangible demonstration of the US Congress's negative views towards the federal bureaucracy is its relatively consistent hostility to external communications activities by federal departments and agencies. Since the beginning of the 20th century, Congress has enacted a series of laws that place severe limits on the bureaucracy's external relations programs (Kosar, 2005). These prohibitions have included the 1913 ban on hiring "publicity experts," banning agency spending on publicity and propaganda beginning in 1951 and, in 2005, banning video news releases unless the agency that released the video is clearly identified as its source.

The academic literature has interpreted Congress's antagonism to public relations in public administration as part of an institutional push-back by the legislative branch to the natural tendency of government agencies to seek autonomy. In this context, public administrators can use external communications to mobilize public support, thereby increasing agency autonomy and reducing Congressional leverage over it (Lee, 2005, 194-203; Carpenter, 2001, 363-64; Simon, Smithburg & Thompson, 1991, Chapter 19; Rourke, 1984, 50).

The general Congressional antipathy to external communications by executive branch agencies has extended to agency relations with the legislative branch. In 1919, Congress enacted a law making agency lobbying of Congress a *criminal* activity. The law was often cited by legislators when disagreeing with a particular agency's activities, but no prosecutions by the US Department of Justice ever occurred. The law was revised in 2002, decriminalizing agency lobbying of Congress, but retaining the prohibitions on engaging those activities. In 1951,

Congress also enacted an appropriations rider that prohibited federal departments and agencies from spending appropriated funds on indirect lobbying, such as efforts to mobilize grassroots supporters to lobby Congress on behalf of the agency. Since its first enactment, Congress has consistently renewed this prohibition in annual appropriations laws and gradually extended the scope of the prohibitions to virtually all executive branch agencies (Yarwood & Enis, 1988).

Yet, simultaneously, federal legislators impose on public administrators an expectation of prompt and high quality service. According to Khademian, government managers need to keep in mind at all times that “Effective legislative relations is key to effective public administration” (1996, 193, emphasis added). In the 1970s, a federal agency head sent a memo to all agency personnel that “Response to congressional mail takes precedence over *every other item* of agency business” (Thompson, 1975, 61, emphasis added). This legislative desire for good service (and efforts by public administrators to comply with such expectations) brings to the surface a delicate dynamic. Stated in broad generalizations in order to help delineate it, for legislators Congressional liaison offices provide services that legislators value (good), yet they are integral parts of the bureaucracy (bad).

This potentially conflicting dynamic has played itself out in the implementation of Congress’s power of the purse. Appropriations can be viewed as a quantitative barometer of how legislators have struggled with the existence of legislative liaison offices. Have they subjected these offices to the same persistent pressures to cut the bureaucracy’s “runaway spending,” a typical element of Congressional rhetoric? Are Congressional liaison offices treated like just any other supposedly unnecessary central management function of public administration, such as public relations, travel, training, and “useless red tape”? Or,

has Congress through its appropriations decisions reflected what some could interpret as a double-standard, supporting *increased* funding for legislative liaison? This article seeks to identify answers to these questions as they happened in one specific case. This is an historical case study of Congressional treatment of legislative liaison offices of the largest department in the federal executive branch, the Department of Defense (DOD) during the second half of the 20th century. Finally, based on this case study and several other examples, an effort is made to draw conclusions that are helpful for the public administrator treading in this difficult political-administrative relationship.

REVIEW OF THE LITERATURE

Legislative liaison can be viewed as a component within the larger rubric of external communications in public administration. A portion of the literature treats it that way, although somewhat glancingly (Cohen, Eimicke and Heikkila, 2008, 302-18; Graber, 2003, 231-32; Baker, 1997, 458-59; Kellar, 1994; Garnett, 1992, chap 4; Dolan, 1981). However, the more common approach in the literature has been to treat it as a separate and free-standing subject. Of those, most political science and public administration research has been executive-centric, focusing on the operations of legislative liaison from the perspective of the White House (Collier, 1997; Bowles, 1987; Davis, 1983), the institutionalized presidency (Gilmour, 1971) or that of executive branch agencies (Cummings, 2008; Khademian, 1996; Holtzman, 1970; Pipe, 1966; Freeman, 1965). A relatively recent historical exploration of military liaison was a published dissertation (and quasi-memoir) by a middle ranking Army legislative relations officer who served in the mid-1990s (Scroggs, 1996; 2000).

Generally, the literature has not paid much attention to the view from Capitol Hill *toward* legislative liaison by federal agencies (Fiorina, 1989, 63-66; de Grazia, 1966). De Grazia noted only a “*somewhat* negative attitude of Congress towards the idea of liaison in general” (1966, 300, emphasis added). Similarly, according to Murphy, “Congress as a body has not objected to the liaison efforts of agencies” (1972, 195). This ambivalent, even positive, attitude stands in contrast to Congressional attitudes towards other external communications programs of federal agencies.

On one hand, Congressional liaison is simply a fancy word for agency lobbying, since it entails direct contacts between agencies and legislators. It is “extremely difficult to distinguish ‘lobbying’ from ‘information servicing’,” if not impossible (Murphy, 1972, 193). Therefore, agency legislative liaison activities could be viewed on Capitol Hill with suspicion and regulated closely, in the context of the 1919 law criminalizing agency lobbying of Congress and the appropriations ban on indirect lobbying. Indeed, the Chairman of the House Interior Department Appropriations Subcommittee, Jed Johnson (D-OK), expressed surprise at a 1946 public hearing that the department had a “Liaison Service,” criticized it and demanded “to know from what specific appropriation these employees are paid?” (US Congress, 1946, 15). As far as he was concerned, this was just another subterfuge for agency lobbying, which he opposed. In 1978, Murphy, Nuechterlein and Stupak asserted that “Congress has responded sharply by cutting appropriations or otherwise restricting agencies” when agencies violated restrictions on lobbying, but provided no specific examples nor any sources for this claim (1978, 31).

On the other hand, Congress as an institution that co-manages the executive branch understandably wants to be served efficiently by the bureaucracy: agency heads

readily available, constituent complaints dealt with promptly, and casework arising in the district resolved. In general, Congress has imposed on agencies a significant volume of work. For example, from the period covered by this historical inquiry, USDA in the early 1960s received about 55,000 letters and phone calls a year from legislators' offices, the Treasury Department about 21,000, and the State Department about 44,000 (Clapp, 1964, 87).

For example, in 1972, when a House committee recommended approval of President Nixon's proposal to create a Department of Community Development, the committee also suggested expanding the number of assistant secretaries in the new department "to having an Assistant Secretary for Congressional Relations in view of the ever-increasing importance of expeditious exchange of information between the Department and the Congress" (US Congress, 1972, 14). This was an example of how the dynamic of the thickening of the federal executive branch would occur, despite Congress's generic anti-bureaucracy stance (Light, 1995).

In one account, the bad relations between executive branch agencies in the Carter administration (1977-81) and the Democratic Congress started when House Speaker 'Tip' O'Neill (D-MA) felt that tickets he had obtained for his personal guests at one of the inauguration galas were in inferior locations and disrespectful of his status (O'Neill, 1987, 310-11). In 1987, a Congressional subcommittee complained that it was taking the Food and Drug Administration too long to provide requested documents. It called on the General Accounting Office (GAO)¹ to investigate the matter and make recommendations to improve the servicing of Congress (US GAO, 1987).

¹ In 2004, Congress changed the agency's name to Government Accountability Office, thus retaining the abbreviation GAO.

Scope and Nomenclature of the Historical Case Study

In the second half of the 20th century, Congress occasionally grappled with the issue of the legislative liaison activities of the departments and agencies in the federal executive branch. While sometimes trying to consider these activities on an executive branch-wide approach, Congress particularly focused on the largest federal department, the Department of Defense. From 1958 to 1988, it imposed annual statutory limitations on how much DOD could spend, initially on all relevant activities, later only on direct and formal contacts with Congress. In 1988, it gave up on this effort, repealing the annual appropriations spending ceiling.

Public administration is an inherently incremental and process-oriented activity. As such, the practice of government management over a given period of time tends to lack any clear starting point and, especially, a precise finish line. Agencies and programs often exist for long periods of time. Therefore, Congress's effort to regulate DOD legislative liaison presents a somewhat unusual opportunity to examine the entirety of an historical event in public administration. The scope of this inquiry is the birth, life and death of statutory limits on DOD Congressional relations.

This case study relied on conventional historical research, as commonly used in public administration and related fields (McNabb, 2008, chap. 29; 2004, chap. 25; Piotrowski, 2008; Tuchman, 1994). In particular, this project focused on using primary and official sources, such as Congressional documents, to reconstruct legislative decision-making (Wilhelm, 1999) along with GAO reports. Secondary sources included contemporaneous newspaper coverage (largely from the ProQuest Historical Newspapers database), biographies, memoirs, and the academic literature.

Two notes regarding nomenclature. First, there is no uniformity of terminology that is used for this area of activity. Various usages found in the literature and in practice include legislative or Congressional liaison; legislative or Congressional relations; legislative, Congressional or governmental affairs; legislative or Congressional activities; legislative or Congressional information; legislative service; and liaison services. However, when Congress sought to impose a spending limit on DOD, the Department's legal interpretation of 'Legislative Liaison' was that this was a broad term covering direct and indirect activities relating to Congress, while DOD viewed 'Congressional Liaison' as a legal concept covering only formal and direct contacts. In that usage, DOD's Congressional Liaison was a specific function within the much larger rubric of Legislative Liaison. To avoid confusion, with DOD's legal interpretation of these terms, from this point on the narrative will use 'Congressional relations' as a generic term, covering all relevant activities regardless of legalistic interpretation as well as the two legal constructs used by DOD.

Second, this historical inquiry reviews Congress as an *institution*, as reflected by its authoritative actions. Even though Congress is an amorphous, bicameral and partisan institution, it seems reasonable to permit unitary characterizations of the formal and official actions it has taken, without imputing motivations beyond the plain meaning of those decisions. For example, an economic historian suggested such characterizations could fairly be made about the International Monetary Fund. According to Stiglitz, "As social scientists, we can, however, attempt to describe the behavior of an institution in terms of what it *appears* to be doing" (Stiglitz, 2002, 207, emphasis in original). Therefore, the subsequent narrative uses, but with

restraint, such phrases such as “Congressional attitudes” or “Congress raised questions.”

Legislative Attention to Congressional Relations by Executive Branch Agencies, 1950-1993

From time to time, questions were raised on Capitol Hill about Congressional relations activities of agencies and departments, but never quite in the firm denunciatory terms of similar comments about agency publicity, propaganda, public relations, direct lobbying and indirect lobbying. For example, the subject came up during several hearings of the House Select Committee on Lobbying Activities in 1950 (US Congress, 1950a, 39-41, 127-63), but the Committee seemed flummoxed whether this was a ‘problem’ and, if so, what to do about it. Noting Congress’s opposition to be lobbied by federal agencies and the various laws it had passed to control such activities, the Committee also stated that “In many instances committees of the Congress utilize the special knowledge and qualifications of executive agencies and request them to draft legislation or to express their views on pending proposals” (US Congress, 1950b, 52). In its final report, the Committee acknowledged the “futility of attempts to frame a statute distinguishing ‘good lobbying’ from ‘bad lobbying’ ” (US Congress, 1951, 3). Therefore, it did not recommend changing the status quo of federal agency contacts with Congress nor the specific laws and appropriations riders governing such conduct. It would not and, in reality, could not draw the line between agency liaison and responsiveness to Congress (good) versus out and out lobbying (bad).

Nearly thirty years later, in the late 1970s, a similar review was undertaken by the House Select Committee on Congressional Operations. It dedicated part of its work to studying the operations of Congressional liaison offices maintained by federal departments and agencies. The

Committee surveyed how Members viewed such activities and reviewed the scope of the operations of those offices (US Congress, 1979, 10-11). The Committee also commissioned reports by two legislative branch agencies, the Congressional Research Service (CRS) (part of the Library of Congress) and GAO. The historical report prepared by CRS emphasized that the executive and legislative branches could not exist in hermetically sealed worlds. They inevitably interacted in a web of relationships and connections (Fisher, 1978, Preface). Regarding agency lobbying, while reviewing the prohibitive laws and controversial incidents over the years, the report concluded by noting that “Congress not only condones but encourages departments and agencies to provide informational services and assistance” to it (Fisher, 1978, 81).

Seeking to draw conclusions from the GAO reports it requested (US GAO, 1979a; 1979b), the Committee reflected the conflicting dynamic of Congress simultaneously opposing agency lobbying while supporting robust liaison services. The Committee recognized that “Congressional liaison offices occupy a critical position in the provision of information and assistance to Members and committees.” Yet, it also acknowledged “the potential conflict of interest which exists insofar as liaison offices serve two masters – not only assisting Congress but promoting their agencies’ policies before the Congress” (US Congress, 1979, 10). No tangible recommendations or actions resulted from the Committee’s work.

After the term of the select committee expired, its former chair, Congressman Jack Brooks (D-TX), continued to be interested in the subject. In 1984, as chair of the House Government Operations Committee, he asked GAO to update its earlier studies. GAO concluded “that the costs, risks, and conceptual problems associated with setting more precise legal boundaries on permissible lobbying activities outweigh the benefits” (US GAO, 1984, 31). Similar to the

1950 committee report, GAO was again confirming the near impossibility of distinguishing between liaison (good) and lobbying (bad). Besides Brooks, other legislators occasionally inquired into the operation of these Congressional relations offices. Between 1977 and 1993, GAO was asked for and submitted four more such studies (US GAO 1977; 1982a; 1986a; 1993). However, none led to any actions or major changes.

Besides this sporadic interest in executive branch-wide Congressional relations activities, during the second half of the 20th century, Congress subjected one agency to intense and continuing monitoring of this function. As the largest of all federal departments, DOD would almost naturally attract more attention than others. (DOD's contacts with Congress also related to the separate and sensitive issue of civilian oversight of the military.) However, while the scrutiny of the Pentagon's Congressional relations may have been more rigorous than for other agencies, the Congressional intervention ended up having only a light touch in terms of impact.

Legislative Efforts to Limit DOD Congressional Liaison, 1952-1975

When the House Appropriations Committee began its effort to identify and limit Pentagon public relations in the early 1950s, the related topic of legislative relations inevitably also came up for scrutiny. One year after first imposing a spending cap on DOD's public relations activities, Congressman Richard Wigglesworth (R-MA) used the subcommittee's hearings on the FY1953 budget request to try to obtain comprehensive information about how much the entire department was spending on Congressional relations (US Congress, 1952, 328-29). However, despite persistent questioning, it quickly became apparent that the budget document contained no single unified account in that category. (This paralleled the same

difficulty in identifying all public relations spending [Kosar, 2005].) Expenditures for Congressional relations were separately categorized if performed by civilian vs. military personnel, by professional vs. clerical staff, and by organizational placement, such as in the Office of the Secretary of Defense (OSD) or three military services. Therefore, focusing on the budget for civilian staffing of the office of the Assistant Secretary of Defense for Legal and Legislative Affairs provided only a partial view of all DOD activities. The next year (1953, FY1954), the Eisenhower administration proposed, as part of relatively minor departmental reorganization, to create a new assistant secretary position who would have sole responsibility for legislative liaison (US Congress, 1953, 619). However, these outcroppings of the topic in the early 1950s were relatively modest and mostly information oriented.

The major Congressional effort to control DOD's Congressional relations activities was triggered by a *presidential* initiative with that goal. In 1958, President Eisenhower sent a message to Congress calling for a major reorganization of the Defense Department. One of the key reasons he cited for the reorganization was "the services' Congressional and press activities which become particularly conspicuous in struggles over new weapons, funds and publicity" (Eisenhower, 1959, 278). Eisenhower's message was the culmination of several highly publicized incidents of each service engaging in public relations and lobbying campaigns to promote a particular weapons system it wanted, regardless of the administration's recommendations (Leviero, 1955a; 1955b). As part of his message, the President called on Congress to approve strengthening the power of the Secretary of Defense over the military services, including in the area of "Legislative liaison and public affairs activities." His publicly stated goal was "stopping the

services from vying with each other for Congressional and public favor” (Eisenhower, 1959, 286).

In private and then later, when out of office, Eisenhower was more pointed about his intent. In a confidential letter to Defense Secretary Neil McElroy in early 1959, he said that “stronger supervision and *control*” of such activities was a “major goal” of his reorganization initiative (Galambos and Van Ee, 1970, 1290, emphasis added). In his memoirs, Eisenhower wrote that he wanted “the Secretary [to] strengthen his supervision over public affairs and legislative liaison work” (Eisenhower, 1965, 248). (However, in the subsequent implementation of the reorganization relating to public relations, Assistant Secretary of Defense for Public Affairs Murray Snyder opposed “stronger central control” over all DOD and military public relations activities, “fearing that it might jeopardize his relationships with the press *and with Congress*” [Watson, 1997, 286, emphasis added].) Clearly, from the president’s perspective, legislative liaison and public relations activities were inextricably linked, two sides of the same coin. Both external communications activities related to bureaucratic efforts to obtain more funding by mobilizing public and Congressional support.

The 1958 presidential message jolted Congress into action. When reporting the bill to fund DOD for FY1959, the House Appropriations Committee said that “For the first time” it was imposing a spending limit on legislative liaison and that it expected the limit to be implemented comprehensively, encompassing “*all costs related to such work* including pay of civilian and military personnel and other direct expenses” (US Congress, 1958a, 19, emphasis added). But, when the bill reached the Senate, its Appropriations Committee report reflected the ambivalence on Capitol Hill about treating legislative liaison purely as a component of a larger rubric of Congressional limitations on all the external communications activities of federal

agencies. The committee approved, in principle, the House's proposal for a spending cap, but recommended a figure about one-third higher than the House limit. Why? Because legislative liaison needed to be funded at a level to continue "*servicing the needs of the Congress* for information and assistance on defense matters" (US Congress, 1958b, 16, emphasis added). In conference, the two houses compromised on a ceiling of \$2.11 million for FY1959, a figure closer to the House level than the Senate's (US Congress, 1958c, 8). President Eisenhower signed the bill into law in late August, 1958, nearly two months into the fiscal year.²

The next year (1959, FY1960), DOD asked the House Appropriations Committee to discontinue the legislative liaison spending cap. (See Table at end of next section.) Using much the same kinds of arguments it presented to repeal the counterpart spending cap on public relations activities (Lee, 2000), its spokesman declared that DOD had gotten the message and would closely control legislative liaison costs even without the statutory limit (US Congress, 1959a, 1021). During the hearings, one committee member openly called for *increasing* staffing for legislative liaison, saying to the Pentagon's representative, "I don't think you have enough men in the liaison office" (US Congress, 1959a, 1052). Ultimately, the Committee denied the request to terminate the statutory ceiling. But, clearly, there were divisions within the committee. The eventual political compromise was to renew the legal limitation, but to raise it by nearly 40%, thus setting the spending limit so high that it would not degrade the high level of service that military congressional liaison offices were providing (US Congress, 1959b, 76). This suggests that the law was a spending *limit* in name only.

² 72 Stat. 729.

For the FY1960 appropriations cycle, the roles of the two houses were reversed from the previous year's budget. The Senate sought a lower limit than the House, \$2.4 million versus \$2.9 million. However, the Senate recommended that the Secretary of Defense be given the power to allocate the funds appropriated for legislative liaison between the three services and the Secretary's own office (US Congress, 1959c, 23). This was a substantial grant of power that threatened the autonomy of the military services. As bureaus within larger agencies, they disliked centralized control from the top that 'meddled' in their autonomy. The grant of power to the secretary would permit him to punish any service that continued to conduct its legislative liaison in ways President Eisenhower had condemned. Without difficulty, the conference committee split the numeric difference between the two houses, agreeing on a statutory cap of \$2.65 million. But the House conferees balked at the Senate's grant of power to the Secretary (US Congress, 1959d, 8). Eventually, the House acceded to the Senate proposal³ and the new language went into effect on August 15, 1959. It stated that "this amount shall be available for apportionment to the Department of the Army, the Department of the Navy, the Department of the Air Force, and the Office of the Secretary of Defense as determined by the Secretary of Defense."⁴

(Two years later, Defense Secretary McNamara tried to assert greater control over the lobbying of the military services based, in part, on the powers granted him by this provision [Raymond, 1961]. The issue of centralization and the Secretary's powers resurfaced again in 2002. Defense Secretary Donald Rumsfeld wondered out loud about abolishing the separate liaison offices maintained by the three uniformed services and shifting all

³ *Congressional Record* 105:12, 15109 (August 4, 1959).

⁴ 73 Stat. 383.

liaison responsibilities to the civilian side of DOD, i.e. his office. That threat was in reaction to Army lobbying on Capitol Hill for an arms system that Rumsfeld wanted to kill [Dao, 2002].)

During the FY1960 funding review process, the House committee began a custom of asking the Department to submit comprehensive information, across all budget categories, of legislative liaison expenditures (US Congress, 1959a, 1054-55, 1085). The filings indicated that DOD viewed the term 'legislative affairs' as the overarching name of the generic activity. Then, it categorized 'legislative liaison' as those activities that involved direct contact with Congress while 'Other legislative affairs' related to back-office activities entailing no direct contact with Congress. As with a parallel effort to impose a ceiling on DOD public relations, terminology and definitions were crucial details. The significance of terminology and definitions quickly came to the surface, as did the internal tensions whether Congress viewed legislative liaison as a good thing or a bad thing.

The next year (1960, FY1961), the House recommended narrowing the scope of the statutory spending cap from legislative liaison (direct and indirect contacts) to Congressional liaison (direct contacts only). The Committee's report asserted it sought a balance between funding "continued in order to assist members of Congress in doing business with the Department of Defense," but equally that "military service partisan influence will continue to be curbed" (US Congress, 1960a, 73). The logic was unclear, but likely reflected a compromise within the committee between those wanting robust funding for legislative liaison and those who viewed it as a way to choke one aspect of an agency's external communications.

The Senate did not like the House approach and wanted simply to renew the approach from the previous year (US Congress, 1960b, 38). In conference, the Senate yielded to the House, but with an increase in the amount for direct-contact congressional liaison from \$900,000, as recommended by the House, to \$950,000 (US Congress, 1960c, 10). The new law retained the power of the Defense Secretary to allocate the funding. The big change was that instead of limiting all “legislative liaison” to \$2,650,000, the FY1961 law focused only on “congressional liaison” and capped it at \$950,000.⁵ This meant Congress was trying to use an annual appropriations rider to limit spending on an external communications activity, but setting the level somewhat liberally and with a limited scope of coverage.

With that, Congress settled into a routine relating to DOD’s Congressional liaison spending that lasted until 1975. Every year, as part of its review of the budget request for the next fiscal year, the House Defense Appropriations Subcommittee required a comprehensive report on all military legislative activities. Similarly, the statutory limit on Congressional liaison was routinely renewed, with the cap gradually increasing when it threatened to constrain direct-contact military liaison on Capitol Hill.

From the hindsight of history, a clear trend had appeared. Of the overall amount that DOD reported spending on Congressional relations, the proportion that was under the scope of the statutory cap kept dropping. For example, for FY1961, the first year that the spending cap shifted from overall expenses to direct-contact expenses only, DOD reported that of the total \$2,557,894 that it spent on all legislative activities, it only spent \$814,174 on direct contact liaison (US Congress, 1962, 632), or 32%. Five years later (FY1966), it reported spending \$3,593,783

⁵ 74 Stat. 354.

for all legislative activities, but only \$853,078 on activities subject to the legal limitation (US Congress, 1967, 121), or 24%. Viewed another way, total spending on legislative activities in that half decade had increased 40% while spending subject to the statutory ceiling had increased only 5%.

This meant the Pentagon was expanding overall Congressional relations operations, while – through careful accounting of categories of activities – it was in compliance with the law. Congress acquiesced. When the \$950,000 limit on direct contacts became burdensome for FY1970, it increased it to \$1.15 million.⁶ By FY1974, DOD said it was in compliance with the cap (then at \$1.3 million), but that those activities comprised only 20% of all legislative-related spending (US Congress, 1975a, 672). Between FY1961 and FY1974, the proportion of legislative liaison spending subject to the cap had dropped from one-third of all spending to one-fifth.

Congress Softens Its Limits on DOD Legislative Liaison, 1975-1989

In 1975, Senator Patrick Leahy (D-VT) raised the issue of the diminishing scope of the statutory limitation and asked the Appropriations Committee to review it (US Congress, 1975a, 619). In its report, the committee noted the “curious situation” of the “migration” of activities from those subject to the statutory cap and those that were not (US Congress, 1975b, 27). It called for definitions that would be more realistic. However, the committee was reluctant to order any draconian changes in definitions or truly restrictive statutory spending caps that would affect DOD’s service to Congress. Its intent was “merely to clarify the situation.” The key premise, according to the Committee, was that to the extent the legislative workload

⁶ 83 Stat. 485.

requires it, the Department must be provided funding that will enable it to meet the legislative demands placed on it. The necessary functions of legislative affairs and liaison must be continued in order to assist the Congress in doing its business with the Department. ... The Department's costs in this area can be reduced only to the extent that the demands on it are reduced. (US Congress, 1975b, 31)

In other words, robust legislative liaison was desirable and needed to be fully funded. In conference, the House accepted the Senate's position (US Congress, 1975c, 22).⁷

The next year (1976, FY1977), DOD petitioned Congress to delete the statutory spending cap altogether. The House Appropriations Committee denied the request and continued pushing for more realistic definitions of legislative liaison (US Congress, 1976a, 196). The Senate agreed about the need for such realistic definitions but, as reflected by its stance the previous year, suggested concomitantly increasing the spending cap to \$7.9 million, essentially providing full funding of all legislative contacts. In conference, the two houses compromised on \$5 million (US Congress, 1976b, 46), but with another key change. From now on, the statutory cap would revert back to covering all "legislative liaison" (as it had been in 1958 and 1959) instead of the narrower term "Congressional liaison" that covered only direct contacts and that had been used since 1960.⁸ But, even this relatively strict financial cap did not last long. By FY1981, it had increased to \$7.5 million⁹ and for FY1987 the figure was \$13.9 million.¹⁰

⁷ 90 Stat. 173. This appropriations cycle was the one that shifted from the federal fiscal year from starting on July 1 to October 1. Therefore, all appropriations bills for FY1976 contained five quarters of funding.

⁸ 90 Stat. 1296.

⁹ 94 Stat. 3086.

¹⁰ 100 Stat. 1783-103, 3341-103.

Table:1

Congressional Appropriations for DOD Legislative Relations, Fiscal Year 1958 to Fiscal Year 1990

Note: DOD interpreted “Legislative Liaison” as a broad term, while “Congressional Liaison” was considered a narrower one, encompassing only direct and formal contacts.

Fiscal Year	DOD Appropriation Funding for:	Appropriation (in millions)
1958	(No statutory limit)	NA
1959	Legislative Liaison	\$2.11
1960	Legislative Liaison	\$2.65
1961	Congressional Liaison	\$0.95
1962	Congressional Liaison	\$0.95
1963	Congressional Liaison	\$0.95
1964	Congressional Liaison	\$0.95
1965	Congressional Liaison	\$0.95
1966	Congressional Liaison	\$0.95
1967	Congressional Liaison	\$0.95
1968	Congressional Liaison	\$0.95
1969	Congressional Liaison	\$0.95
1970	Congressional Liaison	\$1.15
1971	Congressional Liaison	\$1.15
1972	Congressional Liaison	\$1.15
1973	Congressional Liaison	\$1.15
1974	Congressional Liaison	\$1.3
1975	Congressional Liaison	\$1.32
1976	Congressional Liaison	\$1.5
1977	Legislative Liaison	\$5
1978	Legislative Liaison	\$6.9
1979	Legislative Liaison	\$6.9
1980	Legislative Liaison	\$6.9
1981	Legislative Liaison	\$7.5

1982	Legislative Liaison	\$7.5
1983	Legislative Liaison	\$9.1
1984	Legislative Liaison	\$9.5
1985	Legislative Liaison	\$12.7
1986	Legislative Liaison	\$13.334
1987	Legislative Liaison	\$13.9
1988	Legislative Liaison	\$14.362
1989	Legislative Liaison	\$15
1990	(Repeal of annual statutory limit)	NA

Source: Figures obtained from the annual “Department of Defense Appropriation Act,” located in *United States Statutes at Large: Public Laws*, volumes for 1957-1990 (Washington, DC: US Government Printing Office).

About a decade later, GAO reviewed DOD’s implementation of the Congressional directive to use more comprehensive definitions of legislative contacts relating to the cap on legislative liaison costs. GAO found that DOD had essentially continued its bifurcation of legislative activities between ‘above the line’ and ‘below the line’ expenditures (US GAO, 1986b). Even though the intent of the changes, inspired by Senator Leahy, was to bring all expenses under the (higher) cap, the military continued categorizing some legislative costs as falling outside the scope of the statutory spending limit. In some cases, it even disregarded decisions by the Department’s Inspector General regarding appropriate categorization of legislative liaison costs (US GAO, 1986b, 8-9).¹¹ For example,

¹¹ The author’s attempts to obtain the Inspector General’s decisions which GAO had cited in its own report were unsuccessful. In 2006, following a FOIA request, the author was informed that “We have conducted a thorough search of our files and found no records responsive to your request” (Letter from Darryl R. Aaron, Chief, FOIA

according to GAO, the cap for FY1985 was \$12.7 million and the Pentagon reported spending \$12.359 million for cap-related expenses. However, it also reported “Other” legislative expenditures of \$15.595 million, for a total of about \$28 million, more than twice the level set by the spending limit (US GAO, 1986b, 5). In reaction, Congress added new wording to the legal spending limit stating that “costs for military retired pay accrual shall be included within this limitation.”¹²

Senator Leahy’s intervention had prompted a broader and more realistic definition of the scope of legislative liaison for the statutory spending cap, but legislators simultaneously increased the level of funding. However, based on the GAO study, even that higher funding level did affect actual activities. DOD continued spending more on legislative liaison than permitted by the increased cap by categorizing about half those activities as falling outside the scope of the statutory limitation – whether the law was worded to apply to ‘Congressional liaison’ only or more broadly to ‘legislative liaison.’

In 1989, three years after the GAO report on DOD’s improper implementation of the legislative liaison spending cap, Congress stopped trying. The limitation on legislative liaison spending was terminated along with about a dozen other DOD spending limitations and provisos (including the parallel limitation on public relations spending). But the Appropriations Committees stated that the legislative intent of the repealed spending limitations should be considered as still in force. The House Committee included a warning to the Pentagon that “Wholesale or flagrant disregard of the Committee’s desires will result in these limitations again being included in law” (US Congress, 1989a, 230). With the Senate concurring (US Congress, 1989b, 324), the

Requester Service Center, Inspector General, Department of Defense, to the author, March 13, 2006; author’s files).

¹² For example, 100 Stat. 1783-103.

legislative liaison spending cap was repealed. Its last appearance was in the FY1989 DOD appropriation bill¹³ and was no longer part of the FY1990 funding law.¹⁴

**CONCLUSIONS (I): TWO CONGRESSIONAL
INTERVENTIONS IN DOD LEGISLATIVE LIAISON
AND THE LESSONS FOR PUBLIC
ADMINISTRATORS**

What lessons can be drawn from the preceding sections? Through its behavior, can one discern any principles of how Congress distinguished between good and bad agency external communications? It appears that an outside observer can draw conclusions about the instability of the political-administrative relationship, with the instability almost exclusively generated from the political side. Based on Congressional treatment of DOD's legislative liaison, it appears that 'good' lobbying, entailed serving Congress's wants and was de facto unlimited and unregulated. At the same time, 'bad' lobbying would continue to face legal restrictions and verbal denunciations. Two further incidents on Capitol Hill in the mid-1980s stand out as demonstrating the legislative ambivalence towards the military's Congressional relations and carry lessons for public administrators trying to navigate this difficult political terrain.

First, as part of its investigation of accusations of illegal military lobbying for the C-5B airplane in 1982, GAO noted that the statutory limit on legislative liaison had probably been violated. According to its calculations, if the costs of a military demonstration held for legislators of the airplane had been included in the accounting of the legislative liaison limit, then the Pentagon would have

¹³ 102 Stat. 2270-19.

¹⁴ 103 Stat 1112.

busted the cap and spent more than legally permitted. However, DOD did not categorize the costs of the demonstration for accounting purposes as legislative liaison, but rather as *training*. In its defense, the military claimed there had been a *verbal* understanding between the-then Assistant Secretary of Defense for Legislation and the-then Chair of the Senate Appropriations Committee that the cap only related to *personnel* costs (US GAO, 1982b, 20-22; Knickerbocker, 1982).

It was a lame, even laughable, excuse. But in the way Washington operates, it is not what the law says and not what the merits of the case are, but the tenacity and vociferousness of the advocates of a position and their successful spinning to the news media. In this case, a majority of the members of the House Armed Services Subcommittee that investigated the C-5B lobbying case were predisposed to defend military spending, especially when it occurred in their districts. So, the transparent violation of the law and GAO's documentation of it did not bother them at all. Instead, they accused GAO of trying to delegitimize the right of Congressmen to inspect military hardware (US Congress, 1982, 191-93). It was a display of raw politics at work.

But, occasionally, the 'bad' face of legislative liaison reared its ugly head. The second incident occurred in mid-1982. Leaked documents showed that the Navy's liaison office developed its own ratings system to score the voting records of some members of Congress, especially those in the Military Reform Caucus (which, generally, was critical of DOD), instead of using the ratings generated by various non-governmental lobbying groups. This caused shock and dismay on Capitol Hill, that a bureaucracy was keeping files on legislators and evaluating them as friends or enemies. Members of Congress got into high dudgeon denouncing the tactic. GAO was promptly directed to investigate the outrage. Its report showed that the practice

was new and limited and had quickly been terminated by the Secretary of the Navy when the matter became public (US GAO, 1983).

Left unexplored was the basic question of what was wrong about a legislative liaison office maintaining records on the stance of legislators on issues of interest to the agency? Why was it OK to correlate these records with rating systems developed by special interest groups, but not to a system developed by the agency? It seemed like Capital Hill politicians wanted it both ways. On one hand, they expected their every whim to be serviced by the military and that is why they generously set the cap on legislative liaison expenses so as not to limit any such activities. The underlying reason for the sanctimonious denunciations is related, of course, to political survival. That a federal agency would maintain a ratings system of legislators is only one step away from those ratings becoming public. Who is a friend and who is an enemy of cause X would suddenly have an official imprimatur. A legislator running for reelection, claiming to be, say, a friend of the environment, would suddenly be on the defensive because the EPA rated him negatively – far different from a bunch of radical environmental activists claiming the same. This could make it much harder for politicians to obscure their true voting record in Washington when campaigning back home. Soothing rhetoric and generalities would no longer do. The red line of elected officials protecting their political lives shone brightly in this incident.

This controversy with the Navy was similar to another that happened in 1973, but not relating to DOD. A Senate Committee had denounced a different federal agency for collecting information about legislators because, “In some cases, this material goes so far as to attack specific Members of Congress” (US Congress, 1973, 101). The incident with the Navy’s ratings of legislators similarly

struck too close to a raw nerve, namely potential reelection problems. It triggered reactions that demonstrated Congressional wariness about agency external communications was not only about institutional power of the legislative branch versus the bureaucracy, but also about political survival in the administrative state.

For the public administrator, trying to learn how to conduct 'good' Congressional relations and not 'bad' ones, the lesson from these two incidents was relatively clear. For politicians, the applicable maxim was that 'where you stand depends on where you sit.' In Congress, good lobbying was what the members liked and bad lobbying was what the members disliked. There were no fixed and clear lines, only political ones, largely defined by legislative friends and enemies. Senior public administrators cannot know if and when they are crossing a red line regarding legislative relations. Only politicians can.

CONCLUSIONS (II): IMPLICATIONS AND FUTURE RESEARCH

In summary, during the second half of the 20th century, legislators generally exempted Congressional relations offices from its traditional penny-pinching and budget cutting attitudes towards managerial overhead activities. Instead, lawmakers sought to assure sufficient funding of these agency activities. In particular, the budgets of Congressional liaison offices of the Department of Defense (DOD) were under continuing scrutiny of the Senate and House appropriations committees as well as by other legislators.

From 1958 to 1989, Congress imposed a statutory limit on spending on these departmental activities. However, the history of the legal spending cap reflected the tugs and pulls of Congressional culture: cutting spending versus institutional self-interest. This historical case study

documented Congress's ambivalence whether to cut the budgets of these offices because they were part of the bureaucracy or increase their budgets because they reflected the institution's self-indulgence. In the end, the latter prevailed over the former. For Congress, the norms of cutting spending did not apply to legislative liaison offices maintained by the federal bureaucracy.

What are the implications of this historical inquiry for theory and policy as well as for senior government managers? The case study and related events raise the specter of an institution insistent on being catered to, even coddled, by the executive branch. Congress has created something of a relatively well-funded function of public administration within the generally impoverished bureaucracy. Congressional relations offices were, in this case study, provided adequate budgets by the legislative branch, while other central management functions were not.

Congressional relations has been important to Congress and it is equally important to federal administrators. Additional research would assist practitioners and academicians in understanding this vital, but largely unexplored, aspect of public administration in the national capital. Parallel attention by public administration researchers to legislative liaison issues at the state, county and municipal level would be equally enlightening and constructive.

Public administration practitioners want to understand when legislative liaison is 'good' and when is it 'bad' in the eyes of the legislative branch they deal with and which controls their purse strings? Knowing the difference, by identifying where that red line is drawn by elected officials, can contribute to improved management and executive-legislative relations at all levels of American government.

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