

scheduling delays, the government's program manager for JSF consistently awarded prime contractor Lockheed Martin most of its available award fees due to concern about the job security of his Lockheed Martin counterpart.

Appropriately, the Department of Defense fired its program manager, a Marine Corps two-star general, in February 2010. While that official had been giving away millions of taxpayers' dollars to his friend in the industry, regardless of how exceedingly poor the Joint Strike Fighter Program was performing, independent cost estimates were briefing the Pentagon that the Joint Strike Fighter Program might exceed its original budget estimates by as much as \$60 billion.

To understand why the cost to procure these fighters exploded, then-Deputy Secretary of Defense Carter requested a breakdown of F-35 costs and challenged the program manager as to why he had been giving Lockheed Martin upward of 85 percent of the maximum award fee it could have earned. As Secretary Carter recounted, that official said:

I like the program manager on the Lockheed Martin side that I work with. And he tells me that if he gets less than an 85-percent award fee, he is going to get fired.

This is totally unacceptable. It is the kind of cronyism that should make us all vigilant against, as President Eisenhower warned us over 50 years ago, the "military industrial complex." In this case, it appears taxpayers paid a massive premium for the friendship between the government's and the contractor's program managers. As disturbing as these recent revelations are, this incident also raises a few other questions. For example, why were award fee criteria that exposed those Joint Strike Fighter Program contracts to the risk of being abused in exactly this way originally negotiated into that contract? Why would the contract allow such a thing?

Where was this program manager's superiors, the Service Acquisition Executive, and particularly on the Joint Strike Fighter Program the Under Secretary of Defense for Acquisition Technology and Logistics? What about his superiors. Were they not supposed to be overseeing how and why he was awarding Lockheed Martin fees throughout the relevant period?

This whole episode underscores the importance of ethics in government contracting. If the program manager or the program executive officers, senior officials in the acquisition chain of command do not recognize the fiduciary responsibility they have to the taxpayer in their stewardship of defense dollars, any attempt to reform the defense procurement process or otherwise exercise vigilance vis-a-vis the military industrial complex will fail.

This episode also emphasizes the importance of the trade craft of government procurement contracting. Those skills and judgment that comprise the

trade craft of government procurement contracting provide government acquisition managers with the tools he or she needs to keep the "unwarranted influence" of the military industrial complex at bay and make sure the product or service to be delivered into his or her watch will be delivered on time, with the required capability, and at a reasonable cost.

That starts with structuring government procurement contracts properly so that given the nature of the work and the deliverables being placed on contract, one, exactly the kind of performance that is important to the government in a given program is being incentivized, and, two, the government is incentivizing its industry partner to render that performance effectively. If in a given program the performance that is important to us is cost control, as it should have been in the case of the Joint Strike Fighter Program development contracts, why were we even using an award fee as opposed to an incentive fee contract?

By their very nature, incentive fee contracts provide that the cost of overruns be shared between industry and government and therefore incentivizes prime contractors to minimize them. This, of course, has not been a problem that has been limited to the Joint Strike Fighter Program. For years we have seen a widespread use of award fee contracts, including those that support major defense acquisition programs with subjective measures of award fees not clearly tied to cost control.

Any internal Department of Defense guidance that simply prescribes the use of "appropriate" contract types that are not accompanied by effective guidance and training on exactly how contract types should be tailored to a given product or service should be viewed with skepticism.

This matter, and indeed the broader possibility that the episode that Dr. Carter alluded to in his speech may be more pervasive throughout the whole of government than we realize and should concern all congressional committees of jurisdiction, inspectors general, and Americans who value how their taxpayer dollars are being used.

I repeat: As a proud supporter of our Nation's defense, as an outspoken opponent of sequestration and the damage it is doing to our Nation and our ability to defend it, when we look at a program such as this, where it exceeded its original cost estimates by more than \$15 billion and more than 5 years of delay and there are still problems with the most expensive weapons system in history, and the first time \$1 trillion is being spent on one weapons system, we need to do a lot better.

One of the actions that has to be taken, which has not been taken, is holding people accountable. I remember talking at a hearing and asking the Chief of Naval Operations about the USS *Gerald R. Ford*, their brandnew aircraft carrier. It had a \$3 billion cost overrun. I asked the Chief of Naval Op-

erations who was responsible. The Chief of Naval operations said he did not know. That is absolutely unacceptable.

So what we are doing by these terrible cost overruns—and the list goes on and on. I will come to the floor one of these days with a long list of programs that did not even reach fruition, that were canceled, such as the Future Combat System Program that the Army was touting for many years, for which we got zero return at a cost, as I recall, of over \$3 billion.

Unless we fix this cost overrun problem, the American people will stop supporting spending money on defense. That is just a fact. It is time we in Congress exercised much greater oversight, much greater scrutiny, much greater questioning, both before, during, and after the acquisition process. I strongly recommend the work of inspectors general. I strongly recommend using the Government Accountability Office, which is one of our most important tools. I strongly recommend using committee staffs and sending them to the places where these weapons systems are being assembled to get detailed briefings because this has to stop. I am getting a little bit repetitious over the years saying it has to stop, but when we look at the strains and the challenges around this globe that are taking place now, from the China Sea to Iraq, we are going to have to have a strong national defense. We cannot have that with these outrageous and unacceptable cost overruns.

I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that following the cloture vote on Calendar No. 778, Gayles, the Senate proceed to consideration of Calendar No. 78, Wells, and the Senate proceed to vote on the confirmation of the nomination; further, that if confirmed the motion to reconsider be considered made and laid upon the table, with no intervening action or debate; that no further motions be in order to the nomination; that any statements related to the nomination be printed in the RECORD; that the President be immediately notified of the Senate's action.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. We hope this will be a voice vote, but we still expect to have three rollcall votes starting in 15 minutes.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session.

CLOTURE MOTION

The PRESIDING OFFICER. Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the nomination of Salvador Mendoza, Jr., of Washington, to be United States District Judge for the Eastern District of Washington.

Harry Reid, Patrick J. Leahy, Christopher A. Coons, Sheldon Whitehouse, Christopher Murphy, Al Franken, Jon Tester, Richard Blumenthal, Jeff Merkley, Richard J. Durbin, Kirsten E. Gillibrand, Benjamin L. Cardin, Bill Nelson, Dianne Feinstein, Elizabeth Warren, Tom Harkin, Mazie Hirono.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Salvador Mendoza, Jr., of Washington, to be United States District Judge for the Eastern District of Washington, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Iowa (Mr. HARKIN) and the Senator from Alaska (Mr. BEGICH) are necessarily absent.

Mr. CORNYN. The following Senators are necessarily absent: the Senator from Missouri (Mr. BLUNT), the Senator from Mississippi (Mr. COCHRAN), the Senator from South Carolina (Mr. GRAHAM), the Senator from Kansas (Mr. ROBERTS), the Senator from Florida (Mr. RUBIO), and the Senator from Louisiana (Mr. VITTER).

The PRESIDING OFFICER (Mr. DONNELLY). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 55, nays 37, as follows:

[Rollcall Vote No. 192 Ex.]

YEAS—55

Baldwin	Heitkamp	Pryor
Bennet	Hirono	Reed
Blumenthal	Johnson (SD)	Reid
Booker	Kaine	Rockefeller
Boxer	King	Sanders
Brown	Klobuchar	Schatz
Cantwell	Landrieu	Schumer
Cardin	Leahy	Shaheen
Carper	Levin	Stabenow
Casey	Manchin	Tester
Collins	Markey	Udall (CO)
Coons	McCaskill	Udall (NM)
Donnelly	Menendez	Walsh
Durbin	Merkley	Warner
Feinstein	Mikulski	Warren
Franken	Murkowski	Whitehouse
Gillibrand	Murphy	Wyden
Hagan	Murray	
Heinrich	Nelson	

NAYS—37

Alexander	Fischer	McConnell
Ayotte	Flake	Moran
Barrasso	Grassley	Paul
Boozman	Hatch	Portman
Burr	Heller	Risch
Chambliss	Hoeven	Scott
Coats	Inhofe	Sessions
Coburn	Isakson	Shelby
Corker	Johanns	Thune
Cornyn	Johnson (WI)	Toomey
Crapo	Kirk	Wicker
Cruz	Lee	
Enzi	McCain	

NOT VOTING—8

Begich	Graham	Rubio
Blunt	Harkin	Vitter
Cochran	Roberts	

The PRESIDING OFFICER. On this vote the yeas are 55, the nays are 37. The motion is agreed to.

NOMINATION OF SALVADOR MENDOZA, JR., TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF WASHINGTON

The PRESIDING OFFICER. The clerk will report the nomination.

The bill clerk read the nomination of Salvador Mendoza, Jr., of Washington, to be United States District Judge for the Eastern District of Washington.

CLOTURE MOTION

The PRESIDING OFFICER. By unanimous consent, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The bill clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the nomination of Staci Michelle Yandle, of Illinois, to be United States District Judge for the Southern District of Illinois.

Harry Reid, Patrick J. Leahy, Richard J. Durbin, Elizabeth Warren, Tim Kaine, Richard Blumenthal, Robert P. Menendez, Barbara A. Mikulski, Debbie Stabenow, Christopher Murphy, Sheldon Whitehouse, Sherrod Brown, Patty Murray, Tom Harkin, Tom Udall, Christopher A. Coons, Robert P. Casey, Jr.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Staci Michelle Yandle, of Illinois, to be United States District Judge for the Southern District of Illinois, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Alaska (Mr. BEGICH) and the Senator from Iowa (Mr. HARKIN) are necessarily absent.

Mr. CORNYN. The following Senators are necessarily absent: the Senator from Missouri (Mr. BLUNT), the Senator from Mississippi (Mr. COCHRAN), the Senator from South Carolina (Mr. GRAHAM), the Senator from Kansas (Mr. ROBERTS), the Senator from Florida (Mr. RUBIO), and the Senator from Louisiana (Mr. VITTER).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 55, nays 37, as follows:

[Rollcall Vote No. 193 Ex.]

YEAS—55

Baldwin	Heitkamp	Pryor
Bennet	Hirono	Reed
Blumenthal	Johnson (SD)	Reid
Booker	Kaine	Rockefeller
Boxer	King	Sanders
Brown	Klobuchar	Schatz
Cantwell	Landrieu	Schumer
Cardin	Leahy	Shaheen
Carper	Levin	Stabenow
Casey	Manchin	Tester
Collins	Markey	Udall (CO)
Coons	McCaskill	Udall (NM)
Donnelly	Menendez	Walsh
Durbin	Merkley	Warner
Feinstein	Mikulski	Warren
Franken	Murkowski	Whitehouse
Gillibrand	Murphy	Wyden
Hagan	Murray	
Heinrich	Nelson	

NAYS—37

Alexander	Fischer	McConnell
Ayotte	Flake	Moran
Barrasso	Grassley	Paul
Boozman	Hatch	Portman
Burr	Heller	Risch
Chambliss	Hoeven	Scott
Coats	Inhofe	Sessions
Coburn	Isakson	Shelby
Corker	Johanns	Thune
Cornyn	Johnson (WI)	Toomey
Crapo	Kirk	Wicker
Cruz	Lee	
Enzi	McCain	

NOT VOTING—8

Begich	Graham	Rubio
Blunt	Harkin	Vitter
Cochran	Roberts	

The PRESIDING OFFICER. On this vote the yeas are 55, the nays are 37. The motion is agreed to.

NOMINATION OF STACI MICHELLE YANDLE TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF ILLINOIS

The PRESIDING OFFICER. The clerk will report the nomination.

The legislative clerk read the nomination of Staci Michelle Yandle, of Illinois, to be United States District Judge for the Southern District of Illinois.