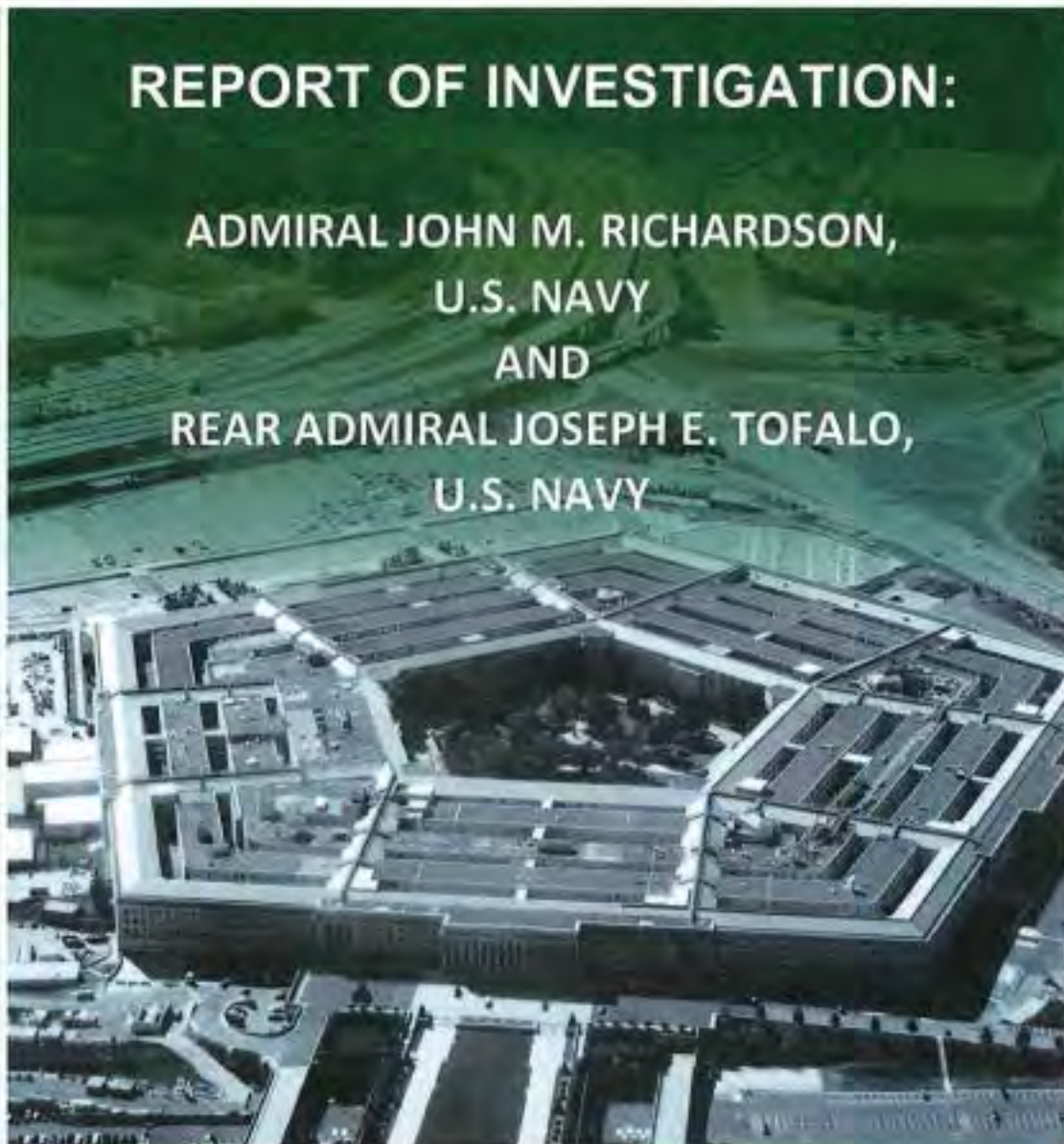




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INVESTIGATIONS OF SENIOR OFFICIALS
INSPECTOR GENERAL

U.S. Department of Defense

July 21, 2015



REPORT OF INVESTIGATION:

**ADMIRAL JOHN M. RICHARDSON,
U.S. NAVY
AND
REAR ADMIRAL JOSEPH E. TOFALO,
U.S. NAVY**

INTEGRITY ★ EFFICIENCY ★ ACCOUNTABILITY ★ EXCELLENCE

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INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22304-1500

JUL 21 2015

MEMORANDUM FOR INSPECTOR GENERAL

SUBJECT: Report of Investigation Concerning Admiral (ADM) John M. Richardson, U.S. Navy, and Rear Admiral (RADM) Joseph E. Tofalo, U.S. Navy
(Report No. 20150611-031694)

We recently completed our investigation to address an allegation that ADM Richardson and RADM Tofalo spent taxpayer funds on publicity or propaganda to engage in grass-roots lobbying. Such conduct, if substantiated, would violate Title 18, United States Code, Section 1913 (18 U.S.C. 1913), "Lobbying with appropriated moneys," also known as the "Anti-Lobbying Act"; Public Law 113-76, "Consolidated Appropriations Act"; Title 31, U.S.C., Section 1301, "Application," also known as the "Purpose Statute"; and Title 31, U.S.C., Section 1341, "Limitations on expending and obligating amounts," also known as the "Anti-Deficiency Act."

We did not substantiate the allegation. We determined, based on the Department of Justice Office of Legal Counsel's interpretation of the Anti-Lobbying Act, that the admirals' brief speeches and RADM Tofalo's limited distribution of the Integrated Undersea Future Strategy for Industry to authorized recipients did not violate the Anti-Lobbying Act. Similarly, their actions did not violate the other standards.

We make no recommendations in this matter.


Marguerite C. Garrison
Deputy Inspector General for
Administrative Investigations

**REPORT OF INVESTIGATION:
ADMIRAL JOHN M. RICHARDSON AND
REAR ADMIRAL JOSEPH E. TOFALO
U.S. NAVY**

JUL 21 2015

I. INTRODUCTION AND SUMMARY

We initiated this investigation to address an allegation that Admiral (ADM) John M. Richardson, U.S. Navy, Director, Naval Nuclear Propulsion Program, and Rear Admiral (RADM) Joseph E. Tofalo, U.S. Navy, Director, Undersea Warfare, spent taxpayer funds on publicity or propaganda to engage in grass-roots lobbying. Such conduct, if substantiated, would violate Title 18, United States Code, Section 1913 (18 U.S.C. 1913), "Lobbying with appropriated moneys," also known as the "Anti-Lobbying Act"; Public Law 113-76, "Consolidated Appropriations Act"; Title 31, U.S.C., Section 1301, "Application," also known as the "Purpose Statute"; and Title 31, U.S.C., Section 1341, "Limitations on expending and obligating amounts," also known as the "Anti-Deficiency Act."¹

We did not substantiate the allegation. We conclude ADM Richardson and RADM Tofalo did not spend taxpayer funds on publicity or propaganda to engage in grass-roots lobbying and did not violate the applicable standards.

On October 22 and 23, 2014, ADM Richardson and RADM Tofalo were guest speakers at the Naval Submarine League (NSL) Annual Symposium held in Arlington, VA. Their presentations included one and two sentences, respectively, that encouraged attendees to inform Congress and others on the importance of the Ohio Replacement program and overall Navy undersea future requirements. The NSL published remarks attributed to the admirals in the December 2014 edition of "The Submarine Review."

By letters dated June 8, 2015, to the Comptroller General of the United States and the Chairman and Ranking Member of the Senate Armed Services Committee (SASC), the Project On Government Oversight (POGO) alleged "... Navy officials may have violated the Antideficiency Act and statutory lobbying bans." In particular, POGO alleged that during the October 2014 NSL Symposium, ADM Richardson "explicitly directed attendees to lobby for the Ohio Replacement Program in his Commander's Guidance."² POGO further alleged RADM Tofalo reiterated the same message at the same symposium during his presentation the following day.

We found that ADM Richardson asked the attendees to "aggressively look to get on people's calendars to inform those in your sphere of influence, the entire sphere, everybody from

¹ We reviewed one additional allegation against ADM Richardson and RADM Tofalo. Based on our preliminary review, this allegation did not warrant further investigation. We address the matter in Section III of this report.

² As discussed further in this report, the Ohio Replacement is a Navy program designed to replace the current 14 Ohio-class Fleet Ballistic-Missile Submarines.

Congress to your PTA [Parent Teacher Association]" about the importance of the program for the country. The next day, RADM Tofalo made reference to ADM Richardson's remarks in his own presentation, stating that ADM Richardson had challenged all of the audience "to go out and interact with folks, whether it's calling on your own Congressman" or others. RADM Tofalo offered to provide "trifolds, priorities briefs, talking points for your Congressman, whatever, we are more than happy to support you on that, as I would support any American who – who would ask."

ADM Richardson did not distribute any materials at the symposium. During and after the symposium, RADM Tofalo's staff distributed a five-page document, "Integrated Undersea Future Strategy for Industry" (IUFS-I), to approximately 30 members of industry who attended the symposium and were authorized to receive the IUFS-I.³ This IUFS-I was developed to provide industry with a summary of the Navy's undersea future strategy. The IUFS-I summarized a previous existing document and did not contain the words "Congress" or "Congressman" nor did it call for the reader to take any action or contact Members of Congress.

The Anti-Lobbying Act prohibits congressionally-appropriated funds to be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress to favor, adopt, or oppose any legislation.

The Department of Justice (DOJ) is charged with enforcing the Anti-Lobbying Act. The DOJ Office of Legal Counsel (OLC) has concluded the Anti-Lobbying Act does not prohibit public speeches or other communications designed to inform or encourage support for Administration policies and proposals. The DOJ OLC interprets the intent of the Anti-Lobbying Act as prohibiting the use of appropriated funds to implement substantial grass-roots campaigns at "great expense" designed to encourage members of the public to pressure Members of Congress to support Administration or Department legislative or appropriations proposals. The DOJ OLC also concluded that "officials are free to publicly advance Administration and Department positions, even to the extent of calling on the public to encourage Members of Congress to support Administration positions."

Based on our review and application of the DOJ OLC opinion to the facts of this case, we determined that ADM Richardson and RADM Tofalo did not violate the Anti-Lobbying Act because they did not engage in a substantial grass-roots lobbying campaign. Their speeches provided information about Navy positions on its undersea warfare strategy and were permissible under the Anti-Lobbying Act, nor did the admirals ask the attendees to pressure Members of Congress to support any pending legislation.

Public Law 113-76, the "Consolidated Appropriations Act," dated January 17, 2014, prohibits using congressionally-appropriated funds in any way, directly or indirectly, to influence congressional action on any legislation pending before the Congress, to include the preparation,

³ The Integrated Undersea Future Strategy (IUFS) is classified and includes approximately 200 pages. The Integrated Undersea Future Strategy for Industry (IUFS-I) is a five-page unclassified "For Official Use Only" (FOUO) summary that RADM Tofalo specifically created for members of industry.

distribution or use of any kit, pamphlet, booklet, publication, radio, television, or film presentation designed to support or defeat pending legislation. Further, no part of any appropriation shall be used for publicity or propaganda purposes not authorized by the Congress.

However, the Navy has authority to provide information about its mission to the defense industry and members of the public. The five-page IUFS-I had been previously developed and printed, not in connection with the symposium, but to provide the Navy's position on defense policy. We determined that the admirals' brief comments and the production and distribution of the five-page IUFS-I informed symposium attendees about the Navy's mission and did not directly or indirectly influence or request attendees or others to influence Congressional action on pending legislation. Accordingly, the admirals' actions did not violate the prohibitions in Public Law 113-76.

The Purpose Statute requires agencies to apply appropriations only to objects for which the appropriations were made, except as otherwise provided by law. The five-page IUFS-I was created to summarize the Navy's undersea future strategy and provide information to limited, authorized members of industry. The IUFS-I was distributed consistent with that purpose at the NSL Symposium. Accordingly, the production and distribution of the IUFS-I does not violate the Purpose Statute.

The Anti-Deficiency Act prohibits an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation. While we did not conduct a detailed analysis of the source of funding used to produce the five-page IUFS-I, we found no evidence that the production and distribution of 30 copies of the IUFS-I exceeded available appropriations.

Accordingly, we conclude that ADM Richardson and RADM Tofalo did not spend taxpayer funds on publicity or propaganda to engage in grass-roots lobbying and did not violate the applicable standards.

We make no recommendations in this matter.

This report sets forth our findings and conclusions based upon a preponderance of the evidence.

II. BACKGROUND

By letter dated June 8, 2015, POGO alleged to the Government Accountability Office (GAO) that remarks attributed to ADM Richardson and RADM Tofalo represented "a troubling coordinated campaign by Navy leadership to engage in grassroots lobbying to secure support for the Ohio Replacement Program."

ADM Richardson assumed duties as the Director, Naval Nuclear Propulsion Program, on November 2, 2012. In this position, ADM Richardson oversees the Navy's nuclear propulsion plans and ensures their safe, reliable, and sustained operation. A DoD News release dated

May 13, 2015, reported that President Barack Obama nominated ADM Richardson as the next Chief of Naval Operations (CNO).

RADM Tofalo assumed duties as the Director, Undersea Warfare (N97), in December 2013. He is the resource sponsor and requirements officer for the Navy's \$20 billion Submarine Force annual budget. On May 20, 2015, Secretary of Defense Carter announced RADM Tofalo for appointment to the rank of vice admiral and for assignment as Commander, Naval Submarine Forces; Commander, Submarine Force, U.S. Atlantic Fleet; and Commander, Allied Submarine Command.

According to the NSL's website, the NSL is a non-profit professional organization founded in 1982 committed to supporting, protecting, and advancing the Navy's submarine force through awareness, public relations, and building a community of submarine advocates and enthusiasts. The NSL's primary mission is to promote awareness of the importance of submarines to U.S. national security. The NSL holds an Annual Symposium each fall.

III. SCOPE

We interviewed ADM Richardson, RADM Tofalo, and five witnesses. We reviewed online articles that attributed remarks to ADM Richardson and RADM Tofalo in their presentations to the October 2014 NSL Annual Symposium. We viewed a video recording of the admirals' presentations, which we had professionally transcribed. We also reviewed support material the admirals used in making their presentations, such as notes, slides, and bullet lists of topics.

After conducting our initial fieldwork, we determined that one of the assertions in POGO's letter did not constitute a credible allegation of senior official misconduct and did not require further investigation. Specifically, POGO alleged the admirals also may have violated Title 5, U.S.C., Subchapter III, "Political Activities," also referred to as "The Hatch Act." However, under the Hatch Act the term "Federal employee" does not include members of the uniformed services. Military members are covered in DoD Directive (DoDD) 1344.10, "Political Activities by Members of the Armed Forces," dated February 19, 2008. The Directive prohibits uniformed members from speaking before "any gathering that promotes a partisan political party, candidate, or cause." Further, uniformed members may not participate in any "program or group discussion as an advocate for or against a partisan political party, candidate, or cause." We found no evidence that either admiral promoted or participated in a partisan political cause in the matters under investigation. Accordingly, there was insufficient evidence to warrant further investigation of this matter.

IV. FINDINGS AND ANALYSIS

Did ADM Richardson and RADM Tofalo spend taxpayer funds on publicity or propaganda to engage in grass-roots lobbying?

Standards

Title 18, U.S.C., Section 1913, "Lobbying with appropriated moneys," known as the "Anti-Lobbying Act"

No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress ... to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation.

Department of Justice Office of Legal Counsel Interpretation, September 28, 1989

The DOJ OLC determined the Anti-Lobbying Act prohibits substantial grass-roots lobbying campaigns of telegrams, letters, and other private forms of communication designed to encourage members of the public to pressure Members of Congress to support Administration or Department legislative or appropriation proposals. Further, the Anti-Lobbying Act does not apply to public speeches, appearances, and writings. The DOJ OLC determined that "officials are free to publicly advance Administration and Department positions, even to the extent of calling on the public to encourage Members of Congress to support Administration positions."

The legislative history of the Anti-Lobbying Act showed that Congress was concerned about the use of appropriated funds to implement grass-roots campaigns at "great expense." Further, DOJ OLC observed that when the statute became law in 1919, "great expense" was an amount greater than \$7,500. DOJ OLC added "an expenditure of \$7,500 in 1919 would be roughly equivalent to one of \$50,000 today [September 28, 1989]."

Further, DOJ OLC "consistently has concluded that the [Anti-Lobbying Act] was enacted to restrict the use of appropriated funds for largescale, high-expenditure campaigns specifically urging private recipients to contact Members of Congress about pending legislative matters on behalf of an Administration position."

Public Law 113 - 76, "Consolidated Appropriations Act," dated January 17, 2014⁴

Section 715. No part of any funds appropriated in this or any other Act shall be used by an agency of the executive branch, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television, or film presentation designed to support or defeat legislation pending before Congress, except in presentation to the Congress itself.

Section 718. No part of any appropriation contained in this or any other Act shall be used directly or indirectly, including by private contractor, for publicity or propaganda purposes within the United States not heretofore authorized by the Congress.

Section 8001. No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress.

Section 8013. None of the funds made available by this Act shall be used in any way, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before the Congress.

Title 31, U.S.C., "Money and Finance," Subtitle II, "The Budget Process," Chapter 13, "Appropriations"*Section 1301, "Application," also known as the "Purpose Statute"*

This section requires agencies to apply appropriations only to objects for which the appropriations were made, except as otherwise provided by law.

Section 1341, "Limitations on expending and obligation amounts," also known as the "Anti-Deficiency Act"

This section prohibits an authorization, expenditure, or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation.

Facts

The current 14 Ohio-class SSBNs (Fleet Ballistic-Missile Submarines) are the survivable leg of the U.S. nuclear triad deterrent.⁵ Current Ohio SSBNs were commissioned from 1984-1997. Their programed lifetime is 30 years but has been extended to a 42-year service life. The oldest Ohio-class SSBN will reach the end of its service life in 2027, the remainder retiring approximately one per year thereafter. Navy informational materials state that it needs 12 Ohio Replacement SSBNs to meet 21st century requirements for survivable strategic nuclear

⁴ Public Law 113-76, "Consolidated Appropriations Act" was extended into FY-15 by continuing resolution and was the appropriations legislation in effect at the time of the October 2014 speaking engagements.

⁵ SSBN is the Navy designation for the 14 Ohio-class Fleet Ballistic-Missile Submarines that serve as an undetectable launch platform for submarine-launched ballistic missiles.

deterrence. In 2015, the Navy communicated to Congress “the highest priority is to ensure a seamless and successful transition to the Ohio Replacement.” The Navy’s requirement is for Ohio Replacement construction to commence in 2021, with first operational use by 2031. The lifecycle cost of the Ohio Replacement is estimated at \$240 billion, which includes operating costs for 42 years.

In January 2011, the Defense Acquisition Board endorsed replacing the current 14 Ohio-class SSBNs with 12 Ohio Replacement SSBNs and approved “Milestone A” for the replacement SSBNs.⁶ Subsequently, Congress required the Navy to provide cost assessment options for the Ohio Replacement in the FY 2012 National Defense Authorization Act (NDAA). In October 2014, the FY15 NDAA pending before the 113th Congress contained provisions on the Ohio Replacement, including an authorization for approximately \$850 million for research, development, test, and evaluation of the Ohio Replacement.⁷

On October 22 and 23, 2014, ADM Richardson and RADM Tofalo were guest speakers at the NSL Annual Symposium held at the Fairview Park Marriott, Arlington, VA. Approximately 200-500 people attended the event. Most attendees were members of private industry. Others present included active duty and retired military, Government civilians, and personnel from academia. Media members were also present. In addition to ADM Richardson and RADM Tofalo, ADM Jonathan Greenert, U.S. Navy, CNO, and three other Navy flag officers made presentations.

The NSL mission charter includes the objective “to stimulate and promote an awareness, by all elements of American society, of the need for a strong submarine arm of the U.S. Navy.” The NSL produces a quarterly professional journal, “The Submarine Review,” on submarine developments and issues “to assist members in creating public awareness of submarine capabilities and value to U.S. defense.” In the December 2014 edition of “The Submarine Review,” the NSL published versions of ADM Richardson’s and RADM Tofalo’s presentations at the October 2014 NSL Symposium.

By letters dated June 8, 2015, to the Comptroller General of the United States and the Chairman and Ranking Member of the SASC, POGO alleged “... Navy officials may have violated the Antideficiency Act and statutory lobbying bans.” In particular, POGO alleged that during the October 2014 NSL Symposium, ADM Richardson “explicitly directed attendees to lobby for the Ohio Replacement program in his Commander’s Guidance.” POGO further alleged RADM Tofalo reiterated the same message at the symposium during his presentation the following day. POGO further alleged RADM Tofalo told the attendees to contact the Navy for “trifolds, priorities briefs, talking points for your Congressman” as part of the Navy’s “strategic messaging.” POGO stated, “taken together, these remarks seem to indicate a troubling

⁶ “Milestone A” is the point at which a recommendation is made and approval sought regarding starting or continuing an acquisition program. Reaching the milestone allowed the Ohio Replacement to move into the technology development phase.

⁷ The FY15 NDAA became law on December 19, 2014. Further, the FY16 NDAA (HR1735) identified a \$971 million line item for “Ohio Replacement.”

coordinated campaign by Navy leadership to engage in grassroots lobbying to secure support for the Ohio Replacement Program.”

ADM Richardson's Presentation

ADM Richardson spoke on the first day of the NSL Symposium, October 22, 2014. ADM Richardson spoke for 34 minutes to an estimated 200-400 attendees. He did not use slides but did refer to an 11-page bulleted presentation script his speechwriter prepared. We obtained and had transcribed the audio portion of his presentation. Regarding the Ohio Replacement program, near the end of his presentation, he stated:

So we need to get involved and figure out how to contribute in measurable ways. I think that if we haven't done everything we can to increase the support for this program, I would ask you to do that. I would ask you to aggressively look to get on people's calendars to inform those in your sphere of influence, the entire sphere, everybody from Congress to your PTA. Get out in front of people and tell them how important this program is for the country.

Look for ways to make people aware of how vital this program is to the nation's security. Convey to them the stakes that are involved. Don't assume that somebody else will do it. Don't assume that the professional messengers will do it. Don't assume that this is the government's job. This is all of our job. It's like that Kennedy quote. 'Ask not what the country can do for you. Ask what you can do for the country.' A lot of parallels here.

We obtained and reviewed a copy of the 11-page script ADM Richardson's speechwriter prepared and did not observe the words "Congress," "Congressman," or "PTA." Further, ADM Richardson's speechwriter testified the presentation script she wrote for ADM Richardson did not include the words "Congress to your PTA."

By email dated October 29, 2014, ADM Richardson's speechwriter asked the NSL event coordinator for a copy of the video of ADM Richardson's presentation, adding, "Several people have asked for copies of the speech and the Admiral drifted from what was written at times." By email dated November 3, 2014, the NSL event coordinator provided the speechwriter with a written transcript a stenographer produced.

The speechwriter testified she modified her 11-page bulleted script into a 12-page narrative reflecting changes ADM Richardson made during the presentation as captured in the stenographer's transcript. After coordination with ADM Richardson and others, the speechwriter provided an NSL assistant editor with the 12-page narrative on November 12, 2014. We observed the 12-page narrative differed from the transcribed audio of ADM Richardson's speech. "The Submarine Review" used the speechwriter's 12-page narrative as their source to publish in their December 2014 issue the following remarks attributed to ADM Richardson:

Increase support. Inform those in your sphere of influence: everyone from your Congressmen to your local PTA. Look for ways to make people aware of how vital this is to the nation's security; the stakes are extremely high. Don't assume that somebody else will do this; we all need to do it. Like John F. Kennedy said, 'Ask not what your country can do for you, but what you can do for your country.' (emphasis in original)

The POGO letter to the Comptroller General included the above text and cited "The Submarine Review" as their source material. The POGO letter to the SASC Chairman and Ranking Member did not include any quotes but did refer recipients to its letter to the Comptroller General.

In the December 2014 issue, "The Submarine Review" characterized ADM Richardson's presentation as addressing "tough technology, industrial and funding problems to be faced, and solved, in getting [the Ohio Replacement SSBN] into service on time—if at all." "The Submarine Review" added, "[ADM Richardson] also called for everyone ... to get the word out into the public" and added, "It is vital to inform those voting citizens of what is involved with this submarine effort."

ADM Richardson testified he considers the Ohio Replacement to be a "very, very important" program for the nation and that the nation should make an educated and informed decision due to its high cost. He stated his intent was to "educate and inform" the audience so they could "do something to help the program." He stated he employed the phrase "everybody from Congress to your PTA" as a means to indicate the span of people that symposium attendees could educate and inform within their spheres of influence. He added, "I might have said, you know, janitors to astronauts ... in terms of just describing a wide expanse of the American public." Further, he testified his intent "was not to encourage lobbying of any type."

ADM Richardson testified he did not ask the attendees to support "any particular point, legislation, law, whatever. I was not asking them to in particular to go up and garner support for or against anything with their Congressman." Further, he testified he did not contact, nor did he direct anyone to contact, a Member of Congress regarding the matters in his presentation. ADM Richardson testified no one solicited him at the symposium for further information or materials to "educate and inform" anybody. Further, we found no evidence ADM Richardson offered or provided symposium attendees any written material nor did we find evidence ADM Richardson directed others to do so.

RADM Tofalo's Presentation

On October 23, 2014, the day after ADM Richardson's presentation, RADM Tofalo presented his remarks. RADM Tofalo testified he spoke "totally extemporaneously" without a prepared script but did employ a 16-slide PowerPoint presentation. Witnesses testified about 125-500 people attended RADM Tofalo's 21-minute presentation. Symposium attendees present during his presentation represented similar professional backgrounds of industry and government as those who attended ADM Richardson's presentation the day prior.

We obtained and transcribed the audio portion of RADM Tofalo's remarks. Approximately 2 minutes into his remarks, he stated:

ADM Richardson also talked about in his commander guidance section, he talked about, you know, getting out. He challenged all of you to -- to go out and interact with folks, whether it's calling on your own Congressman or if you're -- if you belong to some other organization from -- from the Chamber of Commerce to whatever, Rotary Club, whatever, getting that word out, and I am committed to help you do that. If anybody needs help in strategic messaging, then you call 1-800-N97, and -- and let us know. [REDACTED] -- stand up, [REDACTED] -- he's my guy. Go slip him your business card on a break, and if you need, you know, trifolds, priorities briefs, talking points for your Congressman, whatever, we are more than happy to support you on that, as I would support any American who -- who would ask.

Approximately 4 minutes into his presentation RADM Tofalo told the audience:

The IUFS is a 200-plus page document. I've distilled it down into five pages, industry overview, to describe where N97 is going and what our priorities are ... We'll do the due diligence and make sure that you have the appropriate clearance, and we'll get you a copy [of the IUFS for Industry]. It's that important to me. I want people to know where we're going. That shouldn't be, you know, part of the mystery.

RADM Tofalo spent the remaining 17 minutes of his 21-minute presentation discussing the IUFS-I exclusively.

We also obtained a copy of RADM Tofalo's PowerPoint presentation, "Integrated Undersea Future Strategy," dated October 23, 2014, and observed no reference to the words "Congress" or "Congressman" in any slide. The final two slides of RADM Tofalo's PowerPoint presentation addressed "Technology/Innovation Challenges" and included the comment "We need industry help addressing technologies, CONOPS, reliability, etc."

RADM Tofalo testified he first saw ADM Richardson's presentation when ADM Richardson presented it on October 22, 2014. RADM Tofalo added he attempted with his own presentation to show a connection to ADM Richardson's remarks. RADM Tofalo testified that ADM Richardson did not influence his remarks about the Ohio Replacement program. Further, RADM Tofalo stated he did not coordinate his remarks with ADM Richardson. ADM Richardson testified he did not communicate with RADM Tofalo "at all" regarding their presentations other than telling RADM Tofalo, "You talk about the programmatic, I'll provide the strategic overview."

RADM Tofalo's speechwriter testified that after the symposium, he prepared a narrative text of RADM Tofalo's symposium remarks, coordinated them with RADM Tofalo, and provided them to the NSL to publish in the December 2014 "The Submarine Review." Based on the narrative text the speechwriter provided, "The Submarine Review" attributed the following remarks to RADM Tofalo:

Admiral Richardson talked about commander's guidance and getting the message out. He challenged all of you to go out and interact with folks, whether it's calling on your own Congressmen, or if you belong to some organization from the Chamber of Commerce to the Rotary Club. I am committed to help you do that. If anybody needs help in strategic messaging, then you call '1-800-N97' and let us know. [REDACTED], would you stand up? Go slip him your business card on a break, and if you need trifolds, priorities briefs, talking points for your Congressman, we are more than happy to support you.

The POGO letter to the Comptroller General included the above text and cited "The Submarine Review" as their source material. The POGO letter to the SASC Chairman and Ranking Member did not include any quotes but did refer recipients to its letter to the Comptroller General.

In the December 2014 issue, "The Submarine Review" summarized RADM Tofalo's presentation as "a glimpse of future submarine capabilities" and added that RADM Tofalo's "offer of access to those efforts and their requirements for the industrial sector of the submarine community is very innovative and commendable."

RADM Tofalo testified his presentation's primary purpose was to debut the IUFS-I. He added he and his staff developed the IUFS-I to satisfy the Vice Chief of Naval Operations' (VCNO) direction to communicate with industry as referenced by an undated document he provided us, titled, "Communications with Industry," which stated the following, in part:

The Navy's ability to meet the challenges of the future is enhanced by frequent, fair, even, and transparent communication with members of the industrial base. There is no per se legal or ethical prohibition on Navy officials communicating with industry members ... Develop a comprehensive industry engagement strategy that aligns your mission responsibilities with the [Department of the Navy] and DoD strategy and position.

We obtained a copy of the IUFS-I dated October 20, 2014, and marked "For Official Use Only" (FOUO). The five-page document, "Integrated Undersea Future Strategy: Overview for Industry," states the IUFS is "designed to help guide undersea forces investment in technology ... The purpose of this document is to provide our industry partners with insight into where the Undersea Warfare Division is trying to go so that they can help us be as effective and cost-efficient as possible in achieving our required aims."

RADM Tofalo testified he intended to distribute the October 20, 2014, IUFS-I to symposium attendees. He stated he told (b) (6), (b) (7)(C) to bring copies of the IUFS-I to the symposium, but he did not follow-up with (b) (6), (b) (7)(C) after the symposium to determine if, in fact, (b) (6) distributed copies of the IUFS-I. (b) (6), (b) (7)(C) testified RADM Tofalo advised (b) (6), (b) (7)(C) the morning of his presentation to be prepared to distribute hardcopies of the IUFS-I because "the whole point" of ADM Tofalo's presentation was to debut the IUFS-I. (b) (6), (b) (7)(C) stated (b) (6) distributed about 30 copies during and after the symposium – "exactly what we planned on ... and that's it. That's all I handed out, was IUFS for Industry."

RADM Tofalo and witnesses testified the terms "trifolds," "priorities brief," and "talking points" as used by RADM Tofalo in the symposium were references to the IUFS-I.

RADM Tofalo testified his comments that attendees could support the Navy's "strategic messaging" by means of "trifolds, priorities briefs, talking points for your Congressman" did not "come out clearly" because those specific remarks were "ad-libbed and off-the-cuff." He added, "I certainly never intended to illegally lobby Congress."

IUFS-I and other N97 Informational Products

N97 maintains a "Distribution-D" Common Access Card (CAC)-enabled website for unclassified, FOUO N97 informational products.⁸ As of June 2015, the website contained nine items: three PowerPoint presentations and six portable document format (pdf) files, including a trifold on Ohio Replacement and the IUFS-I.⁹ We reviewed all nine documents. The documents are either unclassified or marked FOUO.¹⁰ The documents contained basic information regarding the IUFS and the Ohio Replacement. None of the documents include the words "Congress" or "Congressman," nor do they call for readers to take any action or contact Members of Congress. RADM Tofalo and (b) (6), (b) (7)(C) testified trifolds and other N97 informational products existed for years before the October 2014 symposium.

Witnesses characterized the nine products on the N97 website as informational products designed to educate and inform Congressional staff, DoD legislative liaison personnel, DoD contractors and industry, and DoD military members on undersea programs and priorities,

⁸ According to Department of Defense Instruction (DoDI) 5230.24, "Distribution Statements on Technical Documents," dated August 23, 2012, "Distribution-D" refers to documents authorized only to DoD personnel and contractors which may include unclassified and classified technical documents. The Instruction notes that it is DoD policy to "promote information sharing to the maximum extent possible to facilitate efficient use of resources consistent with protection requirements."

⁹ The N97 website is at: <https://usff.portal.navy.mil/sites/csl/stratcomms/default.aspx>.

¹⁰ Department of Defense Manual (DoDM) 5200.01, Volume 4, "DoD Information Security Program: Controlled Unclassified Information (CUI)," dated February 24, 2012, provides at Enclosure 3, Subsection 2. d, "Access to FOUO Information," that information designated as FOUO may be disseminated within the DoD Components and between officials of DoD Components and DoD contractors, consultants, and grantees to conduct official business for the Department of Defense, provided that dissemination is consistent with any further controls imposed by a distribution statement.

including the Ohio Replacement. Witnesses testified the N97 website existed as an outreach tool prior to the October 2014 symposium.

We reviewed the IUFS-I and observed it is an unclassified summary of the IUFS created on October 20, 2014, and posted to the website the same day. It mentioned the strategic deterrence role of the Ohio Replacement only as part of the Navy's comprehensive undersea strategy; it did not address specifics of the Ohio Replacement Program.

The officer who supervised N97 "Undersea Influence" legislative affairs and strategic communications in October 2014 testified RADM Tofalo merely wanted to ensure attendees knew of the website and had access to it. The officer testified that in October 2014 "... all we were doing is giving access to stuff that we were already putting out for internal Navy use."

The speechwriter testified, "We did not conduct any grass-roots lobbying. It was never our intent to provide anything to someone to lobby their Congressman."

RADM Tofalo testified N97 website informational products were not designed nor intended to lobby Congress nor to his knowledge have they been used to do so.

Discussion

We conclude that ADM Richardson and RADM Tofalo did not spend taxpayer funds on publicity or propaganda to engage in grass-roots lobbying and did not violate the applicable standards.

We found that on October 22 and 23, 2014, ADM Richardson and RADM Tofalo were guest speakers at the NSL Annual Symposium held in Arlington, VA. Their presentations included one and two sentences, respectively, that encouraged attendees to inform Congress and others on the importance of the Ohio Replacement program and overall Navy undersea future requirements. Further, we found the NSL published a version of their remarks in the December 2014 edition of "The Submarine Review." POGO alleged in June 2015 that portions of the admirals' remarks violated the Anti-Lobbying Act.

We found there was legislation for the Ohio Replacement program pending before Congress prior to and during the October 2014 symposium. We found ADM Richardson used in one sentence of his presentation the phrase, "from Congress to your PTA," to encourage symposium attendees to inform those within their spheres of influence of the importance of the Ohio Replacement program, which was, at the time, included in the FY 15 NDAA pending Congressional action. RADM Tofalo made reference to ADM Richardson's remarks in his own presentation.

We found ADM Richardson did not distribute materials at the symposium. During and after the symposium, RADM Tofalo's staff distributed a five-page IUFS-I to approximately 30 members of industry authorized to receive it. The IUFS-I summarizes the Navy's undersea future strategy, did not contain the words "Congress" or "Congressman," nor did it call for the reader to take any action or contact Members of Congress.

The Anti-Lobbying Act

The Anti-Lobbying Act prohibits congressionally-appropriated funds to be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress to favor, adopt, or oppose any legislation.

The DOJ OLC concluded that the Anti-Lobbying Act does not prohibit public speeches or other communications designed to inform or encourage support for Administration policies and proposals. The DOJ OLC interpreted the intent of the Anti-Lobbying Act as prohibiting the use of appropriated funds to implement substantial grass-roots campaigns at "great expense" designed to encourage members of the public to pressure Members of Congress to support Administration or Department legislative or appropriations proposals. "Consequently, Department officials are free to publicly advance Administration and Department positions, even to the extent of calling on the public to encourage Members of Congress to support Administration positions."

We determined, based on DOJ OLC's interpretation of the Anti-Lobbying Act, the admirals' speeches did not violate the Act. Their presentations were speeches designed to inform and educate attendees on Navy undersea future requirements. ADM Richardson's and RADM Tofalo's speeches included one and two sentences, respectively, that encouraged attendees to inform Congress and others generally on the importance of the Ohio Replacement program. We determined, consistent with the DOJ OLC opinion, that such encouragement is permissible under the Anti-Lobbying Act.

ADM Richardson briefly encouraged the audience to "get on people's calendars to inform those in your sphere of influence, the entire sphere, everybody from Congress to your PTA." We determined that such encouragement did not amount to a substantial grass-roots lobbying campaign at great expense to pressure Members of Congress.

RADM Tofalo encouraged members of the audience to call on their own Congressman, and offered to provide the IUFS-I for "help in strategic messaging." We similarly determined that this brief reference was not a substantial grass-roots lobbying campaign at great expense to pressure Members of Congress.

The IUFS-I was not designed to support or defeat pending legislation. RADM Tofalo created the IUFS-I from a previously existing document that explains the Navy's undersea future strategy. The stated purpose of the IUFS-I is to "provide [Navy's] industry partners with insight into where the Undersea Warfare Division is trying to go so that they can help [the Navy] be as effective and cost-efficient as possible in achieving [the Navy's] required aims." Nothing in the IUFS-I directly or indirectly asked or suggested readers to contact any Member of Congress or to pressure Congress to vote for or against specific pending legislation. RADM Tofalo directed limited distribution of the IUFS-I for its intended informational and educational purpose to symposium attendees who were authorized to receive it. Further, we determined the five-page

IUFS-I was produced at a negligible expense and not created as part of a substantial grass-roots lobbying campaign.

Accordingly, based on our review and application of the DOJ OLC opinion to the facts of this case, we determined ADM Richardson and RADM Tofalo did not violate the Anti-Lobbying Act.

The Consolidated Appropriations Act

Public Law 113-76, the "Consolidated Appropriations Act," dated January 17, 2014, prohibits using congressionally-appropriated funds in any way, directly or indirectly, to influence congressional action on any legislation pending before the Congress, to include the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television, or film presentation designed to support or defeat pending legislation. Further, no part of any appropriation shall be used for publicity or propaganda purposes not authorized by the Congress.

Although the publicity and propaganda prohibition has appeared in some form in the annual appropriations acts since 1951, the prohibitions themselves provide little definitional guidance as to what specific activities constitute publicity or propaganda. GAO has identified three activities that are prohibited: 1) self-aggrandizement (publicity of a nature tending to emphasize the importance of the agency or activity in question), 2) covert propaganda (non-attributed or concealment from a target audience of the agency's role in sponsoring the material), and 3) purely partisan materials (designed to aid a political party or candidate).¹¹

We determined neither the admirals' brief comments nor the IUFS-I constituted publicity or propaganda because they were not self-aggrandizement, covert propaganda, or purely partisan materials.

We determined that, as a part of its mission, the Navy has authority to provide information about its mission to members of the public. RADM Tofalo created the IUFS-I, from a previously existing document, to inform and educate authorized industry recipients about the Navy's undersea future strategy. The IUFS-I was not designed to support or defeat pending legislation. Nothing in the IUFS-I directly or indirectly asked or suggested readers to contact any Member of Congress or to pressure Congress to vote for or against specific pending legislation. RADM Tofalo directed distribution of the IUFS-I to a limited number of authorized

¹¹ POGO's letter cites two specific examples that are not factually similar to this case: 1) In 2013, the Comptroller General determined that a U.S. Consumer Product Safety Commission (CPSC) employee's email encouraging a company to contact nine specific Members of Congress concerning a CPSC administrative action did not violate the federal agency-wide (similar to Section 715) appropriations act limitations on grassroots lobbying, publicity, and propaganda since the email did not pertain to pending legislation. 2) In 2014, the Comptroller General determined that an email from the Deputy Secretary of Housing and Urban Development (HUD) to over 1,000 recipients, including members of the public, did violate a statutory provision identical to Section 715 cited above. The email requested recipients to contact named Senators in support of the Senate's version of the pending HUD FY-14 appropriations bill, encourage the Senators to oppose specific amendments to the bill, and vote in support of the bill itself. In addition to violating the appropriations restrictions, GAO concluded the action violated the Anti-Deficiency Act.

recipients for its intended informational and educational purpose. RADM Tofalo's comments were off-the-cuff and not part of a calculated plan.

We determined that the admirals' brief comments and the production and distribution of the IUFS-I for educational and informational purposes are consistent with the Navy's authority to inform members of the public. Therefore, their actions did not violate the prohibitions in Public Law 113-76. Neither the comments nor the IUFS-I constituted publicity or propaganda; they were not self-aggrandizement, covert propaganda, or purely partisan materials. The IUFS-I was not designed to support or defeat pending legislation and was distributed to a limited number of authorized recipients in accordance with its intended purpose.

The Purpose Statute

The Purpose Statute requires agencies to apply appropriations only to objects for which the appropriations were made, except as otherwise provided by law. Consistent with DoD policy, the Navy has authority to share information to the maximum extent possible to facilitate efficient use of resources regarding its mission and future strategy. As noted above, the five-page IUFS-I was created to summarize the Navy's undersea future strategy and provide information to limited, authorized members of industry. The IUFS-I was distributed consistent with that purpose at the NSL Symposium. Accordingly, the production and distribution of the IUFS-I does not violate the Purpose Statute.

The Anti-Deficiency Act

The Anti-Deficiency Act prohibits an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation. While we did not conduct a detailed analysis of the source of funding used to produce the five-page IUFS-I, we found no evidence that the production and distribution of 30 copies of the IUFS-I exceeded available appropriations.

Accordingly, we conclude ADM Richardson and RADM Tofalo did not spend taxpayer funds on publicity or propaganda to engage in grass-roots lobbying and did not violate the applicable standards.

V. CONCLUSIONS

We conclude ADM Richardson and RADM Tofalo did not violate the Anti-Lobbying Act, Public Law 113-76, the Purpose Statute, or the Anti-Deficiency Act.

VI. RECOMMENDATIONS

We make no recommendations regarding this matter.

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DEPARTMENT OF DEFENSE | INSPECTOR GENERAL

4800 Mark Center Drive
Alexandria, VA 22350-1500
www.dodig.mil
Defense Hotline 1.800.424.9098

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