

BY DAVID HECHLER

# Attention Must Be Paid

After a Lockheed engineer uncovered problems with the Deepwater shipbuilding project, the company didn't want to hear about it—but Congress and Justice did.

**I**N 2003 MICHAEL DEKORT FACED AN ETHICAL QUANDARY. HE THOUGHT HIS COMPANY'S shipbuilding project for the U.S. Coast Guard was dangerously off-course. Cables weren't up to code; communication equipment wasn't secure; external equipment wasn't weatherproof. He was convinced that both sailors and national security were at risk—but he couldn't persuade his superiors.

DeKort was Lockheed Martin Corporation's lead engineer on an early stage of the 25-year, \$24 billion program known as Deepwater. It was supposed to modernize the Coast Guard's fleet of ships and aircraft for its post-9/11 mission to secure the country's shorelines. DeKort was working on one of the first of many planned projects that involved a collaboration between Lockheed and Northrop Grumman Corporation; this one expanded 110-foot patrol boats into 123-foot cutters.

He says he pointed out flaws in the project from the get-go. When his concerns were ignored by managers up the line, he did what his company's much-praised ethics program had trained him to do: He filed an internal complaint in 2004. He spent two years pursuing three separate internal investigations—all in an effort to persuade Lockheed ethics officers to push the company to fix the problems. But the officers kept saying his allegations were baseless.

In February 2006 DeKort phoned the hotline of the U.S. Department of Homeland Security's inspector general. Within a week the IG dispatched three auditors to meet with him. (The IG's office confirms that DeKort's complaint prompted it to open an investigation.) But six months later, the IG's office had yet to release a report, and DeKort feared that the probe was going nowhere. Finally he contacted the press and elected officials—to no avail. It seemed the end of the line.

That's when he hit on a desperate gambit: YouTube. He sat down at his desk before a \$30 Web cam and read the short script he'd prepared. "What I am going to tell you," he began, glancing up at the camera, "is going to seem preposterous and unbelievable." In plain language he described the flaws he discovered in the 123-foot cutter conversion. Cameras installed on top of the boats' pilot houses to monitor security left gaping blind spots, he told viewers. He held up his one visual aid: an illustration of the ship that highlighted the two blind spots. He detailed more problems: The cutters were supposed to include a communications system that would safeguard clas-

sified transmissions, and all external equipment was supposed to survive extreme temperatures. But these features were also unreliable. Worst of all: "Since the program leverages its design to be common on as many ships or aircraft as possible, these mistakes are probably being pushed forward onto other ships or aircraft," he told YouTube viewers.

The ten-minute video changed everything, albeit slowly. After it was posted online in August 2006, a trickle of newspaper and television reports followed that focused mostly on the novelty of a whistle-blower using the Web site. But the coverage seemed to resuscitate the IG's inquiry. The office finally produced a report on the 123-foot cutter conversions in February 2007. It gave Lockheed a pass on the cameras and the security flaws, citing vagueness in the contract's specifications. However, the report backed DeKort on the external equipment issue and another problem he'd identified: Not all the cable was "low-smoke," as required, to minimize the amount of smoke in the event of a fire.

By the time the IG report was released, problems with the

PHOTOGRAPHY BY JASON GROW



Michael DeKort says that Lockheed executives and ethics officers ignored his complaints. So he made a ten-minute video to get the word out on YouTube.



Ethics guru Daniel Terris thought Lockheed's cutting-edge program was worthy of a book. Even so, he found some troubling practices.

123-foot cutters were beyond dispute. No sooner had the Coast Guard taken delivery of the first eight (of a projected 49) in 2005 than it pulled them from service because their enlarged hulls had buckled, and the entire conversion was soon scrapped. DeKort's allegations upped the ante, painting his company as not only incompetent but unethical,

which raised the ire of politicians mindful of wasted taxpayer dollars.

On April 17 the Coast Guard's commandant tacitly acknowledged mistakes by reorganizing the program. The Coast Guard had been criticized for outsourcing management to the very contractors it had hired to build the boats. Project management would return from the contractors to the Coast Guard, the commandant announced. His remarks came on the eve of a House Transportation Committee hearing. DeKort, the

star witness, was treated respectfully by congressmen; later in the day they grilled Lockheed Martin's vice president of ethics, among others. The following day the Transportation Committee chairman announced that the U.S. Department of Justice (which declined to comment for this story) was investigating the contractor.

Deepwater, already a blow to Lockheed's reputation, could also damage its bottom line. Under the False Claims Act, citizens may bring *qui tam* actions on behalf of the government against companies that falsely bill it, and the Department of Justice is then permitted to join their claims. It seems likely that DeKort has filed one—but he can't say, since such suits are filed under seal. A worst-case scenario for the company would be a finding of fraud that could result in damages three times the value of either the job—the 123-foot cutter project cost around \$100 million, according to published reports—or the amount required to fix it. (A citizen who brings a suit may share 15–30 percent of the amount recovered by the government.) If a court found that the violation was willful or involved collusion, the company could be barred from future government contracts (as a division of The Boeing Company was from 2003 to 2005).

Even if there are no legal ramifications, Deepwater already hurt Lockheed's business when the company was removed from managing the \$24 billion project. And the impact may affect other contracts as well. Federal acquisition regulations say a company's ethics should be considered when the government awards a contract. In August the Federal Aviation Administration bypassed Lockheed Martin and awarded a contract worth up to \$1.8 billion to ITT Corporation for work on a next-generation air traffic control system. (The FAA says it does not comment on why companies don't get contracts.) Philip Finnegan, a defense analyst from the Teal Group Corporation in Fairfax, Virginia, was surprised that the market leader suffered this loss, speculating that the company's

performance problems might have been a factor. While he says it's impossible to draw a direct connection, he notes, "Deepwater was a black eye."

**WHAT HAPPENED?** How did the country's largest defense contractor, and its model ethics program, miss so many opportunities to fix Deepwater, which has become synonymous with "fiasco"? Through a spokesman, Lockheed Martin declined to answer questions about Deepwater for this article, saying the company stands behind the comments it has made in the public record. In those statements, Lockheed Martin maintains that it informed the Coast Guard of every potential problem, and in each instance the service branch considered its options, including the additional time and cost required to make changes, and agreed to variations from the contract.

Ironically, DeKort's allegations were aimed at a corporation that, following years of scandal, reengineered itself into a pioneer of corporate ethics. Its innovative program led Daniel Terris, who directs Brandeis University's International Center for Ethics, Justice and Public Life, to write a book about it. While researching *Ethics at Work: Creating Virtue at an American Corporation* (Brandeis University Press, 2005), Terris was granted wide access to employees of the defense giant's department of ethics and business conduct in its Bethesda, Maryland, corporate headquarters.

Historically the company (which had revenue of nearly \$40 billion last year) played an important role in paving the way for major corporate ethics legislation. In the 1950s and 1960s, Terris wrote, bribery was widely accepted as a cost of doing business abroad and wasn't even illegal overseas under U.S. law. In the 1970s Lockheed Aircraft Company won a highly coveted contract in Japan by paying off airline and government officials. The ensuing scandal spurred the passage of the Foreign Corrupt Practices Act of 1977.

It also prompted internal reforms, and not just at Lockheed. In 1986 a

group of defense industry executives banded together to create the Defense Industry Initiative on Business Ethics and Conduct, and pledged to adopt ethics programs and monitor compliance. Five years later, the U.S. Sentencing Guidelines were beefed up with criminal and civil penalties for white-collar crime and corporate misbehavior. As the guidelines made clear, an effective ethics

program could not only help a company avoid violations, but mitigate penalties.

After the 1995 merger with Martin Marietta Corporation, Lockheed Martin's leadership in this new field grew under the guidance of then-CEO Norman Augustine, who made ethics training annual and mandatory for all employees. In an effort to make it more engaging, he also introduced an interac-

## Lockheed's Mr. Clean

IN APRIL, MICHAEL DEKORT TESTIFIED ON CAPITOL HILL ABOUT DEEPWATER. A MONTH later another whistle-blower of sorts testified at a Senate hearing amid much greater fanfare. He was also a Lockheed Martin employee, and he, too, was discussing an ethical crisis. But he wasn't testifying about the company. He told the assembled senators and reporters a dramatic story about the time he almost resigned from another job as a matter of conscience.

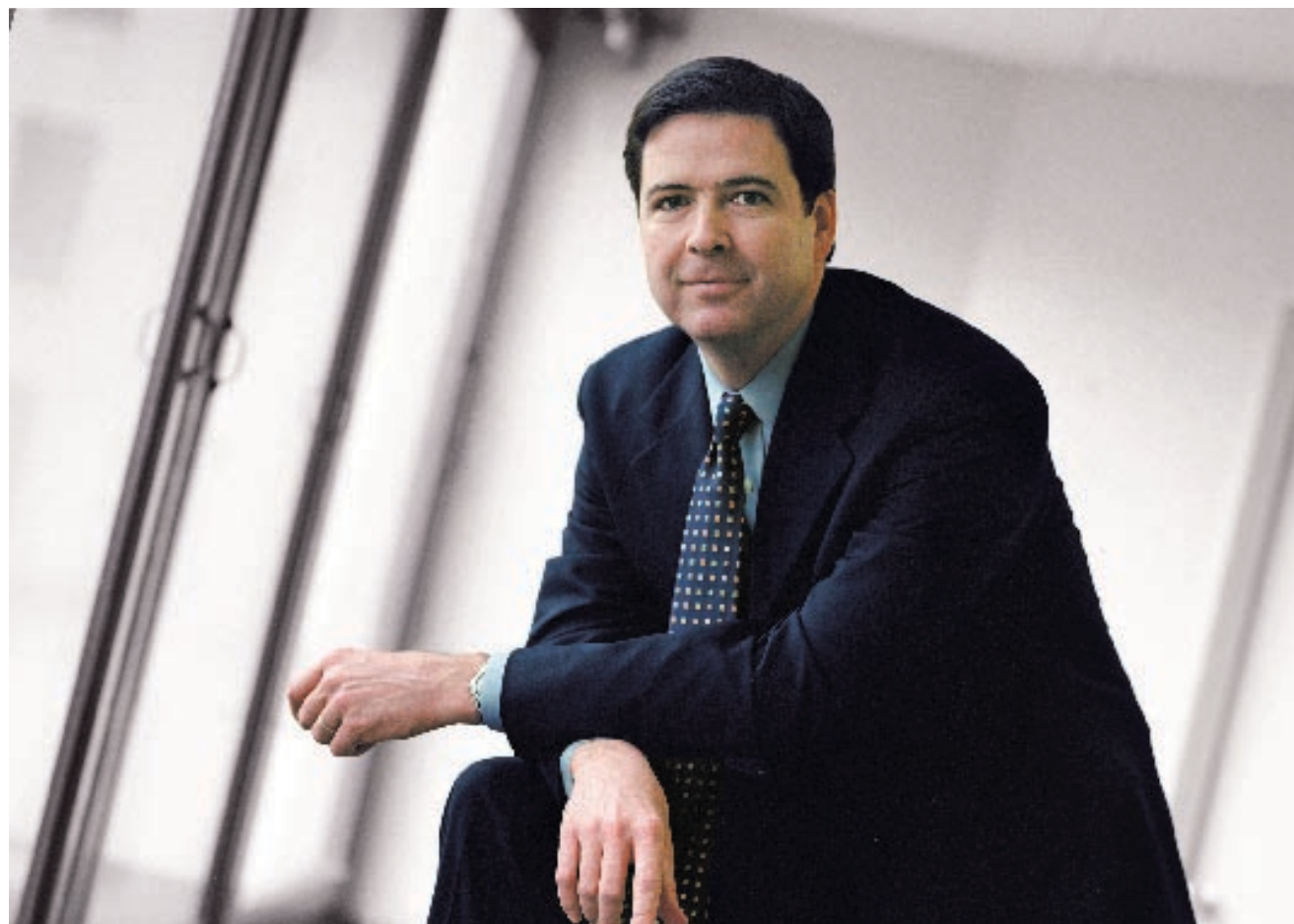
The witness was Lockheed general counsel James Comey. He was called to testify during the Senate Judiciary Committee's investigation of the firing of U.S. attorneys on then-attorney general Alberto Gonzales's watch.

In 2004, Comey recounted, the White House was seeking reauthorization of the secret warrantless wiretap program. Comey (who was deputy attorney general) and John Ashcroft (attorney general) had already responded that, in their view, it was illegal. But that winter, after Ashcroft became seriously ill and was hospitalized, Comey was tipped off that Gonzales (then White House counsel) and White House chief of staff Andrew Card were heading for the hospital to try to get Ashcroft's sign-off on the program. Comey beat them there, the GC testified, and stood at Ashcroft's bedside as his weakened boss refused to go along with their plan.

Comey's congressional testimony was awkward on several levels. It cast an unflattering light on the government, and Lockheed Martin's lifeblood is federal contracts. Its executives never want to embarrass the government—particularly the U.S. Department of Justice at the very moment it's investigating the company in connection with Deepwater. Comey didn't look forward to testifying, he tells *Corporate Counsel*: "I don't relish the attention." But he did get a positive response. "I think a lot of former and present [Justice] people thought—I'm not even comfortable saying this—it reflected well on the department," says Comey, who is much more at ease flashing self-deprecating humor. His testimony was also well received at Lockheed, according to deputy GC Scott MacKay. "People have responded extremely positively," MacKay says. "It shows that Jim walks the walk, he doesn't just talk the talk [about ethics]."

Comey's biggest challenge since arriving at Lockheed in October 2005 has been learning the business. What convinced him to make the leap? Conversations with two former Justice Department officials who are now GCs—Verizon Communications Inc.'s William Barr and PepsiCo, Inc.'s Larry Thompson. "Each of them was very keen on the idea that it's a natural move for someone who has run an organization of lawyers and represented a single constituent," Comey says.

But the transition is daunting, and new GCs are often overwhelmed. William Lytton, another former prosecutor who has been a GC (twice) and earlier worked at Lockheed Martin, observes: "The amount of information that reaches you is extraordinary." It includes, he says, long-standing problems. Lytton says he can't comment on Deepwater, but he adds: "You never know, of the thousands of things that come to your desk on a Monday morning, what is going to come back a year and a half later as a congressional investigation." —D.H.



Former deputy attorney general James Comey was an attractive hire for Lockheed, in part because of his Mr. Clean image.

tive game that incorporated characters from the comic strip *Dilbert*. These initiatives put his company at the forefront of the emerging field of corporate ethics. In recent years, Lockheed has continued to innovate. Moving beyond *Dilbert*, Terris wrote, employee groups study thinly disguised cases pulled from the business headlines and debate what the “ethically sound” approach to the problem would have been.

Terris is particularly complimentary of this training program, which is conducted by about 65 in-house ethics officers. But in an interview, he expressed reservations about the ethics officers’ dual roles. They are asked to both educate employees about ethics and investigate alleged violations. He wonders whether they are qualified to investigate complicated fact-

patterns, and worries that their two missions may sometimes collide.

**THESE DAYS LOCKHEED** Martin’s new general counsel speaks often about ethics to audiences inside and outside the company. In fact, his Mr. Clean persona is undoubtedly one of the factors that made James Comey an attractive hire in October 2005, following the retirement of longtime GC Frank Menaker. As a former U.S. attorney and deputy attorney general, Comey brought to the job political and managerial experience, and a reputation for integrity [see “Lockheed’s Mr. Clean,” page 97]. Comey chairs the steering committee that oversees the ethics department and related issues—which presumably included the Deepwater hearings. But Comey’s own involvement in the affair remains unclear. The only record is a short letter the GC sent DeKort in June 2006 on behalf of the board of direc-

tors, saying the issues he’d raised were considered and that “no further action is warranted.” That correspondence was the last word DeKort received from Lockheed on Deepwater. (Comey agreed to a wide-ranging interview during the summer on the challenges of his previous job and his transition in-house, but declined to discuss Deepwater.)

A careful look at DeKort’s background might have convinced his superiors to pay attention. He grew up the adopted son of a childless couple who later had three children of their own. His adoptive parents treated him differently from their natural children, depriving him of luxuries and even basic necessities, he says. DeKort survived by using his intelligence and sharp tongue—setting a template for his professional life.

He escaped by joining the Navy. He won various awards there, and his self-confidence soared. And the lack of a college degree didn’t seem to hold him

back. After his 1989 discharge, he soon landed a job as a communications engineer at the U.S. Department of State. Then he jumped to Lockheed Martin in 1992 and rose through the ranks until he left in August 2006. “I didn’t get there washing someone’s car or marrying their daughter,” he says.

His greatest honor is one he’ll receive in early 2008. The Society on Social Implications of Technology—a part of the Institute of Electrical and Electronics Engineers, the leading engineers association—voted to give him the Carl Barus Award for Outstanding Service in the Public Interest. It’s in recognition of his efforts to fix the Deepwater project and will be only the ninth time the award has been given since 1978.

The chair of the awards committee was Janet Rochester, a recently retired engineer from Lockheed Martin. The connection to her old company made her feel “very uncomfortable,” Rochester acknowledges, adding, “I’m very disappointed by this whole affair.” But she and her colleagues researched Deepwater carefully, and she fully supports the award, she says.

**DEKORT WAS** assigned to Deepwater in the summer of 2003. The design of the cutters was complete, and most of the equipment had been purchased for the first batch of boats. DeKort was checking final details when he noticed that the radios were constantly exposed to the elements, but weren’t waterproof. Yet, when he pointed this out, management told him the radios were part of the “design of record” and that changes would cost time and money, DeKort says. Instead of replacing them, the team ordered more. DeKort’s notes and Lockheed e-mails show that from October 2003 to February 2004, he tried repeatedly to change managers’ minds. Shortly before the first boat was scheduled for delivery, nature intervened during a test run—it rained. Several radios shorted out.

It was only then that Lockheed broke down and replaced them, he testified before the House committee. But

managers’ attitudes hadn’t changed. Between August 2003 and February 2004, DeKort complained about the surveillance cameras, the low-smoke cables, the insecure communications, and the exposed equipment. Invariably, project managers minimized problems and maximized the importance of staying on schedule, according to DeKort’s testimony and e-mails.

Over time, management responses grew clipped. “No one likes it but its [sic] there,” wrote one manager in an e-mailed response to DeKort’s complaint about the external equipment. “We all need

tation—e-mails, project notes, and his own copious memos.

A month passed. Then two. In December, DeKort learned that his case was closed, but it took two more months for Shelton to explain. The allegations were unsubstantiated, Shelton said. “Who’s your boss?” DeKort demanded. (Lockheed Martin would not make Shelton, or other company employees named in this story, available for comment.)

Corporatewide ethics was DeKort’s next stop. Shelton passed the baton (and the data) to Gail Allen, director of ethics and business conduct. DeKort had

**“You’re doing the right thing,” DeKort remembers his manager telling him, “but it’s going to come back to bite you.”**

to move on.” Unable to make headway, DeKort finally asked to be reassigned.

In April of that year, he received a performance evaluation significantly lower than his previous ones. “You’re doing the right thing,” DeKort remembers his manager telling him when he asked for support in pursuing the Deepwater problems, “but it’s going to come back to bite you.” After the weak performance appraisal, he was told he would no longer get the same caliber of work assignments. In August he made an ethics complaint, citing the Deepwater issues and retribution.

His transfer the same month came with a pleasant (if temporary) surprise: DeKort was promoted to software engineering manager at the North American Aerospace Defense Command (better known as NORAD) in Colorado Springs.

In September he inquired about the ethics probe. Days later John Shelton came to see him. Shelton was one of about five dozen ethics officers assigned to Lockheed business units. The meeting lasted five or six hours, DeKort says. He walked Shelton through the allegations and gave him plenty of documen-

a suggestion for her: She should get an independent engineer to help her investigate. “I didn’t think [ethics officers] had enough background to know when they were being bullshitted—whether by me or anyone else,” he explains. So in April 2005 Allen came to Colorado with Carol Boser, research engineering director for the electronic systems business area. Their meeting was similar to the one DeKort had with Shelton—short, polite, professional. Sorry, they told him, they couldn’t substantiate any of his claims. DeKort says he locked eyes with Boser: “You’re an engineer, and you’re telling me it’s *all* wrong?” DeKort laughed out loud. But they didn’t budge. Then he asked who was next on the hierarchy.

In May 2005 DeKort flew to Bethesda for a meeting with Maryanne Lavan, Lockheed’s vice president of ethics and business conduct. They met for a few hours in a conference room. Boser was there, along with a lawyer from the legal department. But the big difference this time was that they didn’t just listen; they talked. DeKort says the lawyer held up a document. “Look,” the attorney reportedly said, “we got the sign-off from the customer.” DeKort asked

to see it, but the lawyer demurred. How much would the document mean, DeKort asked, if someone got hurt and the problems came out?

"I think they still thought I was a nut," DeKort says. But at least there was back-and-forth. What he desperately wanted from Lavan, he says, was proof that the mistakes had been acknowledged and corrected, and would not be repeated in other Deepwater projects, like the new National Security Cutters. As the meeting dragged on, they seemed to concede missteps. "We're going to give you the data so that you will understand everything we did," he remembers Lavan saying. He felt deep relief. "Finally!" he thought.

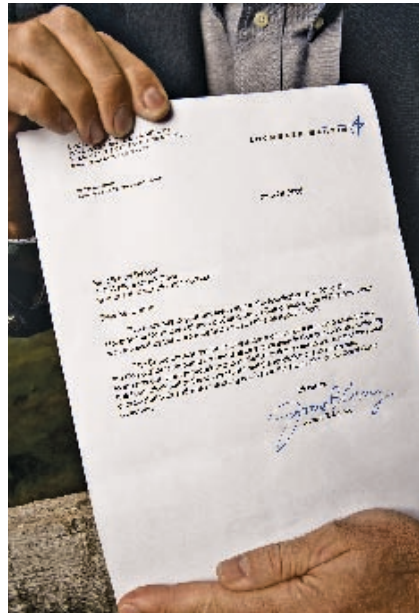
A month later, Lavan and DeKort had another conversation. Lavan repeated her pledge, DeKort says. But instead of data, three months later DeKort received yet another e-mail. "The Coast Guard is fully informed of the issues that concerned you," Lavan wrote on September 26, 2005, adding that the service signed off on everything. She did acknowledge, for the first time, that his "concerns" had been addressed and "corrective actions have been taken," adding: "I consider the investigation complete and the matter is now closed."

She was wrong. The matter would have a very public airing in April 2007. By the time Lavan testified at the Transportation Committee hearing, she no longer headed the ethics department, having moved to vice president of internal audits. Under the skeptical questioning of committee chairman James Oberstar (D-Minnesota), she defended the company's investigations. "We took [DeKort's] complaint very seriously," she insisted. It was deemed "unsubstantiated," she explained, because the company was keeping the Coast Guard informed about the problems.

**IN SOME WAYS** Daniel Terris predicted Deepwater. His book acknowledges the pressures imposed not only by budgets and deadlines, but by "groupthink." Lockheed's ethics program "counts on

the power of the courageous individual to stand up and challenge the collective wisdom that is pushing a decision across an ethical boundary," Terris wrote. He wondered whether that was realistic.

Today, Terris sees systemic flaws in Lockheed's investigations. The two roles its ethics officers are asked to play may be in conflict, he says. They



Michael DeKort displays a letter signed by GC Comey stating that Lockheed looked into DeKort's concerns and no further action was necessary.

educate, which requires them to build employees' trust; and they investigate, which may require them to shatter that trust. And they have no background in investigative techniques.

Furthermore, Terris says, Lockheed's ethics officers are embedded in the business units and work hand in glove with business executives; they report to them, as well as to the VP for corporate ethics. Lockheed Martin would be better served, Terris says, if the entire ethics department were more independent. The system's greatest vulnerability, he adds, is a big case that goes up the chain. The higher it goes, the more pressure on the individual to affirm the judgment of others. If an ethics investigator reaches a different conclusion, "you're challeng-

ing a lot of important people who have made a decision. The structure is not designed to assess mistakes in collective thinking," Terris says.

Lockheed Martin isn't alone. The corporate ethics field is still young and immature, says W. Michael Hoffman, founder and director of the Center for Business Ethics at Bentley College. Though most large companies now have ethics or compliance officers, the close relationship they maintain with the business side is common, he says, "and a serious problem." Few if any are independent of management, says Hoffman. He would like to see ethics departments report directly to a company's board the way chief compliance officers at mutual funds must do.

Michael DeKort's last day at Lockheed Martin was August 11, 2006. His NORAD job was eliminated in a reduction in force, and he received another low appraisal, which he says made it impossible to move to another division. He considers himself effectively terminated and has asked the inspector general to investigate this, too. Now 42, he's living in Kentucky, working in an unrelated industry because, he says, he can't get a job in defense.

He continues to follow Deepwater developments obsessively. Now that the 123-foot cutters have been deep-sixed, Lockheed and Northrop Grumman are building this year's model for the Coast Guard, the National Security Cutter. In September *The New York Times* reported that internal Coast Guard documents revealed "hundreds of deficiencies" in the communications and electronics systems being installed in the first vessel by Lockheed Martin. Some observers say these sorts of things happen with early testing. Others think the problems are more serious. DeKort is impatient to learn if his old company has really corrected the flaws of the 123s. A full inspection will precede the ship's delivery—now slated for February. That ought to reveal which side is right. "Looks like we're headed for a showdown," DeKort says. ■