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PROCEEDINGS AND DEBATES OF THE 91st CONGRESS, SECOND SESSION

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House of Representatives

The House was not in session today. Its next meeting will be held on Wednesday, September 9, 1970, at 12 o'clock noon.

Senate

WEDNESDAY, AUGUST 26, 1970

(Legislative day of Tuesday, August 25, 1970)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by Hon. GEORGE MCGOVERN, a Senator from the State of South Dakota.

The Reverend Lester Cotto-Thorner, pastor, Orlando United Methodist Circuit, Orlando, W. Va., offered the following prayer:

Almighty God, direct and bless those of our generation who speak where many listen, and write what many read. Shape our desires and our deeds in accordance with Your purpose for the world, that, seeking first Your kingdom and righteousness, we may set forth the true welfare of mankind. Guide the rulers of this Nation and of the world with Your wisdom, and restrain the passions of the people, so that bloodshed may be averted and peace be preserved.

Look, O Lord, upon Your family of nations and men, to whom You have given power in trust for our mutual health and comfort. Save us, O Lord, and help us, lest we abuse Your gifts and make them our misery and ruin. Heal our divisions, cast out our fears, and renew our faith in Your unchanging purpose of good will, and peace on earth.

In Thy name we pray. Amen.

THE REVEREND LESTER COTTO-THORNER

Mr. RANDOLPH. Mr. President, I am very grateful for the understanding of the leadership in permitting me this privilege to speak at this moment.

The Senate prayer this morning was given by a young man, the Reverend Lester Cotto-Thorner of West Virginia. He is 21 years of age. I believe, from a search of the records, that he is the youngest minister to offer in the Senate the prayer at the beginning of a daily session.

He is a student at the West Virginia Wesleyan College, and while at this institution of higher learning he is serving seven small churches, of the United Methodist faith, in the central section of our State.

One of the churches is at Clover Fork. Out of its small membership of eight, the youngest member is 92 and the oldest member is 97.

I felt that it was unique that we have such a young man here today. I know that he has been delighted with the opportunity to join the Senate in the service of a beginning of this body's deliberations with the presentation of the morning prayer.

We are grateful for the cooperation of the Chaplain of the Senate, the Reverend Dr. Edward L. R. Elson, in Reverend Cotto-Thorner's appearance.

DESIGNATION OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will read a communication from the President pro tempore of the Senate (Mr. RUSSELL).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., August 26, 1970.

To the Senate:

Being temporarily absent from the Senate, I appoint Hon. GEORGE MCGOVERN, a Senator from the State of South Dakota, to perform the duties of the Chair during my absence.

RICHARD B. RUSSELL,
President pro tempore.

Mr. MCGOVERN thereupon took the chair as Acting President pro tempore.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Journal of the proceedings of Tuesday, August 25, 1970, be approved.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that all committees be authorized to meet during the session of the Senate today.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States submitting nominations were communicated to the Senate by Mr. Leonard, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Acting President pro tempore (Mr. MCGOVERN) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(For nominations received today, see the end of Senate proceedings.)

THE SENATE'S SCHEDULE—A PLEA

Mr. SCOTT. Mr. President, this is simply a plea. All Senators understand that we will be here every morning at 9 o'clock, and on Saturday morning at 10 o'clock. I express the hope that some Senators may find it possible to restrain the extension of their rhetoric, and that perhaps we may yield back some of the time allotted for debate, because, assuredly, if some of the time is not yielded back, we will not finish the bill before Labor Day. In that case I would not blame the general public for blaming us

and saying that we have wasted the time of the country; that we have needlessly palavered where we might have produced.

I, therefore, hope that some mutual understanding will arise in this Chamber to permit some degree of limitation of debate, so that we may be less concerned about what the people read about us and more concerned about what the people think about us.

If some sort of spirit can be engendered in this Chamber, we may finish the pending bill before Labor Day, and we may even be able to go home before Christmas. But if we continue to think only in terms of the beauty of the written word as it appears in the CONGRESSIONAL RECORD, the turkey which will be envisioned by the public will not be the turkey of Thanksgiving but the turkey which this body will then come to suggest itself to be, as symbolic of what we have accomplished.

AUTHORIZATION OF APPROPRIATIONS FOR MILITARY PROCUREMENT AND OTHER PURPOSES

THE ACTING PRESIDENT pro tempore. The Chair lays before the Senate the unfinished business.

The Senate continued with the consideration of the bill (H.R. 17123) to authorize appropriations during the fiscal year 1971 for procurement of aircraft, missiles, naval vessels, and tracked combat vehicles, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to prescribe the authorized personnel strength of the Selected Reserve of each Reserve component of the Armed Forces, and for other purposes.

THE ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to the consideration of the amendment of the Senator from Wisconsin (Mr. NELSON). Time for debate on this amendment is 3 hours, with the time to be equally divided between the proponents and the opponents of the amendment.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum, and ask unanimous consent that the time be equally charged against both sides.

THE ACTING PRESIDENT pro tempore. Without objection, it is so ordered, and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

THE ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Who yields time?

Mr. STENNIS. Mr. President, I yield 5 minutes to the Senator from New Hampshire.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. McINTYRE. I yield.

ORDER FOR ADJOURNMENT TO 9 A.M. TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate stand in adjournment instead of in recess at the close of business today until 9 a.m. tomorrow.

THE ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(Later in the day, this order was modified to provide for the Senate to adjourn until 8:30 a.m. tomorrow.)

AUTHORIZATION OF APPROPRIATIONS FOR MILITARY PROCUREMENT AND OTHER PURPOSES

The Senate continued with the consideration of the bill (H.R. 17123) to authorize appropriations during the fiscal year 1971 for procurement of aircraft, missiles, naval vessels, and tracked combat vehicles, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to prescribe the authorized personnel strength of the Selected Reserve of each Reserve component of the Armed Forces, and for other purposes.

Mr. McINTYRE. Mr. President, one of the peripheral issues in the debate which will take place this morning on herbicides is the use to which chemicals containing 2,4,5-T may now be put in the United States.

It is well recognized that domestic agencies of the Government have acted to restrict some domestic uses of such chemicals. It is less well know, however, that many domestic uses are still permitted.

Accordingly, a brief summary of the present situation might be useful.

On 14 April, 1970, the Secretaries of Agriculture, Interior, and Health, Education, and Welfare, pursuant to the Interagency Agreement for Protection of the Public Health and the Quality of the Environment in Relation to Pesticides, issued a statement on chemicals containing 2,4,5-T, pointing out the dangers involved and the steps needed to meet those dangers.

Mr. President, I ask unanimous consent to have the statement printed in the RECORD at the conclusion of my brief remarks.

THE ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. McINTYRE. Following the issuance of this statement, the Department of Agriculture published two regulations designed to implement it. These were as follows:

First. Pesticide regulation No. 11.—This regulation suspended the use of liquid formulations of 2,4,5-T on lakes, ponds, ditch banks, around homes and on food crops. It prohibited manufacturers from making interstate shipments of 2,4,5-T intended for these specific uses and required manufacturers' labels to be changed so as not to list any of the uses cited as recommended targets for the chemicals' application.

Second. Pesticide regulation No. 13.—This regulation suspended use of granular formulations of 2,4,5-T around homes, recreation areas, and on crops grown for human consumption.

Shortly thereafter, the Department of the Interior announced that chemicals containing 2,4,5-T would not be used on any lands under its administrative control, such as national park lands. The Department of Agriculture, however, is continuing to use chemicals containing 2,4,5-T on some lands under its administration, such as national forest lands.

The following is a brief summary of the areas in which the use of chemicals containing 2,4,5-T is and is not permitted:

Areas on which 2,4,5-T can still be used:	*Million acres*
U.S. national forests	187
State, county and private forests	180
Forest industry (paper, lumber)	216
Nonfarm grazing	317
Pasture, grassland	487
Rights of way (unknown)	-------
Total	+1,387
Areas on which 2,4,5-T may *not* be used:	
Department of Interior	534
Food crop land	385
Pasture/crop land	109
Urban areas (roads, etc.)	160
Farmsteads	29
Total	1,217

I hope, Mr. President, that this information will be useful to Members concerned about our use abroad of chemicals controlled at home. According to information furnished me by the Defense Department, the series of restrictions to which I have referred have affected only 10 percent of the domestic 2,4,5-T market.

EXHIBIT 1

2,4,5-T

A statement prepared in accord with the Interagency Agreement for Protection of the Public Health and the Quality of the Environment in Relation to Pesticides. Department of Agriculture, Department of Interior, Department of Health, Education, and Welfare.

Secretaries Hardin, Finch and Hickel today announced the suspension by the Department of Agriculture of almost all registered uses of liquid formulations of the weed killer, 2,4,5-T for use around the home and registered uses on lakes, ponds, and ditch banks.

These actions are taken pursuant to the Interagency Agreement for Protection of the Public Health and the Quality of the Environment in Relation to Pesticides among the three Departments.

They also announced that the Department of Agriculture intends to cancel registered uses of non-liquid formulations of 2,4,5-T around the home and the registered uses on all food crops (apples, blueberries, cereal crops, rice and sugar cane).

The suspension actions were based on the opinion of the Department of Health, Education, and Welfare that contamination resulting from uses around the home and in water areas could constitute a hazard to human health.

New information reported to DHEW on Monday, April 13, 1970 indicates that 2,4,5-T, as well as its contaminant dioxins, may produce abnormal development in unborn animals. Nearly pure 2,4,5-T was reported to cause birth defects when injected at high doses into experimental pregnant mice but not in rats. No data on humans are available.

These actions do not eliminate registered use of 2,4,5-T for control of weeds and brush on range, pasture, forest, rights of way and other nonagricultural land. Users are cautioned that 2,4,5-T should not be used near homes or recreation areas. Registered uses will be reviewed to make certain that they include adequate precautions against grazing treated areas long enough after treat-

ment by 2,4,5-T so that no contaminated meat or milk results from animals grazing the treated areas.

While residues of 2,4,5-T in meat and milk are very rare, such residues are illegal and render contaminated products subject to seizure. There is no tolerance for 2,4,5-T on meat, milk or any other feed or food.

USDA will issue guidelines for disposal of household products containing 2,4,5–T.

BACKGROUND INFORMATION

Secretary Finch's Commission on Pesticides, which reported its findings in November and December 1969, expressed concern that research conducted at Bionetics Research Laboratories, under the Direction of the National Cancer Institute, indicated that 2,4,5–T had produced a number of birth defects when fed or injected into certain strains of mice and rats. Because the test material contained substantial concentrations of chemical impurities (dioxins), the birth abnormalities could not be attributed with certainty either to 2,4,5–T or to the impurities known to be present. Representatives of the chemical industry pointed to evidence of extreme potency of the impurities as toxic agents, demonstrated that 2,4,5–T now being marketed is of a greater purity than that which had been tested in the Bionetics experiments and urged that further testing be undertaken to clarify the questions raised.

Responding to this suggestion and utilizing materials supplied by one of the major producers of 2,4,5–T scientists at the National Institute of Environmental Health Sciences promptly initiated studies to determine whether 2,4,5–T itself, its impurities, or a combination of 2,4,5–T and its impurities had caused the earlier findings, and whether the 2,4,5–T now being marketed produces birth abnormalities in mice and rats. The experiments were completed last week and the statistical analyses performed over the weekend. On Monday and Tuesday of this week the analyses of the data were presented to the regulatory agencies of the Federal Government and to the members of the Cabinet.

The dioxin impurities and the 2,4,5–T as it is now manufactured, separately produced birth abnormalities in the experimental mice. Because absolutely pure 2,4,5–T was not available for testing, it is possible only to infer from certain of the observations that the pure 2,4,5–T probably would be found to be teratogenic if it were tested. But, since pure 2,4,5–T is not marketed and could not be produced in commercial quantities, this is not a practical issue for consideration.

Believing that prudence must dictate action in these circumstances, the regulatory agencies of the Federal government will immediately move to minimize human exposure to 2,4,5–T and its impurities. The measures to be taken will be designed to provide maximum protection to women in the childbearing years by eliminating formulation of 2,4,5–T from household, aquatic and recreational area uses. Its use on food crops will be cancelled, and use on range and pastureland will be controlled. Maximum surveillance of water supplies and marketed foods will be maintained as a measure of the effectiveness of these controls. These measures will be announced more specifically in the Federal Register in a very few days.

While the restriction to be imposed upon the use of this herbicide may cause some economic hardship, we must all cooperate to protect human health from potential hazards of 2,4,5–T, other pesticides and the dioxins.

The chemical industry should be commended for its prompt and willing cooperation with the National Institute of Environmental Health Sciences in the studies to clarify questions raised by the initial studies of this herbicide and for working closely with the FDA in the other studies still underway. We look to the full support of industry, agriculture and the home gardner in insuring the safe use of 2,4,5–T and other pesticides which contribute in important ways to the welfare of the Nation.

Mr. NELSON. Mr. President, will the Senator yield?

Mr. McINTYRE. I yield.

Mr. NELSON. Did I understand the Senator to say that 2,4,5-T may not be used on Department of Interior land but that it is permitted to be used in the national forests?

Mr. McINTYRE. That is correct.

Mr. NELSON. Does the Senator have any knowledge of the reason for the permission of the use on lands under the control of one department but not under the control of the other department?

Mr. McINTYRE. No. I just suspect the Department of Agriculture and the Department of Interior differ on the need for a prohibition of the chemical insofar as lands under their control are concerned.

Mr. NELSON. Would it not indicate to the Senator that apparently in the Department of Interior the environmentalists, the ecologists, and the scientists decided it is too dangerous a chemical for them to permit it to be used on Interior Department land.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. McINTYRE. Will the Senator from Mississippi yield to me for 5 additional minutes?

Mr. STENNIS. I yield 5 minutes to the Senator from New Hampshire.

The ACTING PRESIDENT pro tempore. The Senator from New Hampshire is recognized for 5 additional minutes.

Mr. NELSON. My question is: Would it not appear to the Senator that the Department of Interior—which traditionally has been more concerned about the environment than the Department of Agriculture has a more sound position than the Department of Agriculture?

Mr. McINTYRE. Some might perhaps claim that the Department of Interior is a little more concerned with the environment. I, myself, have no evidence on which to base such a statement.

One of the problems in connection with the amendment offered by the Senator from Wisconsin and the Senator from New York is that there are differing opinions on the effects of these herbicides, to the extent that reasonable people can differ on their future and present danger. That is why we find some experts expressing grave concern about the future of the mangrove forests, while others are saying that secondary forests should, in the natural course of events, be reestablished in 10 to 20 years. There are differing opinions on the effects of these chemicals.

Mr. NELSON. I wonder if the Senator would advise me which report he is referring to? The Tschirley report said it would be 20 years. Then the Pfeiffer report, which came after the Tschirley report, disagreed on the ground that it would take longer because it felt Dr. Tschirley had not taken into consideration the fact that the ground was hardened and was not reseeding naturally.

Does the Senator have a report contradicting that, the one saying it would take 20 years and the Pfeiffer report, following the Tschirley report, saying it would take more than 20 years for reforestation to occur?

Mr. McINTYRE. No; I think that is probably correct.

I am just trying to point out that the Tschirley report and the Pfeiffer report differ over the effects and the potential danger of these herbicides, that the scientists, biologists, and botanists of this country do not all foresee the same horrible consequences of which the Senator has spoken.

Mr. NELSON. Mr. President, will the Senator yield?

Mr. McINTYRE. I yield.

Mr. NELSON. In what way do the Tschirley report and the Pfeiffer report differ, except that the Pfeiffer report, which was made subsequent to the Tschirley report, says it is worse than Tschirley says it is? I do not think there is any dispute. The dispute is over how many years it will take a mangrove forest to recover. One of the reports says 20 years. Another one says it will take longer than that. That is not a dispute about the devastation that occurs; it is just a dispute about how long it will take before there will be a recovery from the serious intrusion into the environment, in this case the mangrove forest.

Mr. McINTYRE. I read the Tschirley report, and it has far from the alarming tenor that would lead the Senator from Wisconsin and the Senator from New York to bring in an amendment which says that the U.S. Army should suddenly be barred from using herbicides in Vietnam. Tschirley says that he was there only 30 days and did not have a chance to go into territory held by the enemy, but that as far as he could determine our defoliation program will not produce permanently damaging effects.

Let me ask the Senator a question. Under whose auspices did Dr. Pfeiffer go to Vietnam?

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. NELSON. Mr. President, I yield myself 5 minutes.

He went there under his auspices. He is a physiologist at the University of Montana, a man of considerable distinction in his field.

Mr. McINTYRE. Is the Senator talking about Dr. Pfeiffer?

Mr. NELSON. Yes.

Mr. McINTYRE. I think Dr. Pfeiffer was the one who said that in a journey somewhere across Vietnam he did not see a living plant, but that had the vegetation in question not been destroyed he would probably not have returned alive.

Mr. NELSON. Would the Senator mind addressing himself to this question: The military, as the Senator knows, takes the view that we need to spray these defoliants for perimeter defense, that we need to spray them along the waterways to destroy enemy cover and on crops to deny them food. It also takes the view that we need to spray them along the trails to expose their view from the air. As a consequence of this military policy, we have sprayed about 100 million pounds of agents orange, blue, and white that we have been talking about here.

That is 6 pounds for every man, woman, and child in South Vietnam. One of these agents contains arsenic—54 percent. The agent 2,4,5-T and the agent 2,4-D have both been demonstrated to be teratogenic—which means that they deform the fetus as demonstrated in several animal tests. We have now sprayed approximately 6 million acres, an area almost the size of Massachusetts.

Does not the Senator have any real concern about this? Is he not worried about the long-term ecological implications? Is he not concerned about the frightening parallel, thalidomide? Thalidomide was discovered to be teratogenic too. That that drug went into the marketplace and was prescribed to women all over the world? It did not hurt the user, but suddenly we began to see in Germany, France, South America, Spain, babies being born with no arms and legs, because they had received a teratogenic substance just as 2,4,5-T is and just as 2,4-D is.

Does it not concern the Senator that we, as the only nation in the world, in the history of the world, have now sprayed 100 million pounds of these herbicides over the South Vietnam countryside as a matter of military tactics?

We now know that these herbicides have a fetal deforming effect. That has been proved. We know it kills the mangrove forests. We know two sprayings of it will kill 50 percent of the hardwoods. One spraying will kill 10 percent. Yet we are continuing the program.

Does not the Senator have some worry about what kind of environment we are going to leave the Vietnamese when we get out of there? Does he know what the implications are? Does he have enough scientific information to assure us that we are not sewing the seeds of ecological disaster? No he does not. Nobody knows. But all thoughtful scientists are concerned if not alarmed.

All the scientists are worried about it—all but the military at least in their public posture. However, they are worried about it, too, if we look at some of their classified documents, as the Senator knows.

Mr. McINTYRE. In answer to my good friend from Wisconsin, let me say that the Senator from New Hampshire——

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BYRD of West Virginia. Mr. President, in behalf of the Senator from Mississippi, I yield 2 minutes to the Senator from New Hampshire.

Mr. McINTYRE. Of course, the Senator from New Hampshire, like every other Senator, is concerned about the ecological effects of herbicides.

The point I want to make here this morning is that these herbicides are used for the protection and safety of the American fighting man, and that this immediate benefit has to be weighed against the possible ecological consequences, It is not a clear-cut case.

We have no figures or statistics to give the Senator, to tell him how many American lives have been saved by the use of defoliants in Vietnam, but we do know that they have been effective in this regard.

Mr. NELSON. Mr. President, if the question is that pure and that simple, and the only test of the conduct of the American military is the safety of American boys, why do we not drop the nuclear bomb? That would finish it in a hurry.

Mr. McINTYRE. I think that the effects of a nuclear bomb are far more clear-cut than the effects of herbicides. But in response to the Senator's earlier question, I have the same fears as he does about the ecological future of America and the world.

I question, however, whether the Defense Department has shown less concern about that future than other agencies. No one was concerned until the thalidomide tragedy and Rachel Carson's publication of "The Silent Spring." The Department of Interior and all the rest were just as dumb about it; is that not right?

Mr. NELSON. "Stupid" is a better word.

Mr. McINTYRE. All right. But we should not regard the Defense Department as the big ogre.

Mr. NELSON. But now we know; so why do we not stop it?

I should like the Senator to address himself to this point: On the floor of the United Nations General Assembly last fall 80 nations of the world voted to declare that the defoliants, the antiplant chemicals, the herbicides were, in their judgment, to be proscribed from use under the Geneva protocol. Three nations voted no: The United States, Australia, and Portugal. We now sit here as the only nation in the world advocating——

The PRESIDING OFFICER. The Senator's time has expired.

Mr. NELSON. I yield myself 5 additional minutes.

Advocating the use of herbicides as a new instrumentality of warfare. The only nation. Does not the Senator think that leaves us in an indefensible position?

Mr. McINTYRE. I thought Australia and Portugal voted with us, did they not?

Mr. NELSON. Yes, they did. I said that. I said 80 to 3.

Mr. McINTYRE. I thought the Senator said "all the nations of the world."

Mr. NELSON. I read the statement of the Australians, and it made no sense whatever on the merits. I could not find that Portugal made any statement at all. Ours was a weak position on technical grounds that the United Nations General Assembly did not have the authority to make legal interpretations of treaties.

But I ask the Senator, is this not an impossible position to defend? Here we are, trying to reach peace in the world; we are trying to stop the proliferation of nuclear weapons; we are trying to negotiate agreements on stopping the arms race; what does the Senator think about the position of the United States being the only country in the world that advocates establishing the legality of ecological warfare?

Mr. McINTYRE. Mr. President, I do not intend to get into the argument that is forthcoming in the U.S. Senate about the Geneva protocol and our position with regard to the riot control agents and herbicides. But, is it not true that we have consistently taken the position that these were outside the protocol?

Mr. NELSON. We have not acted on the protocol yet. The President took that position; I have not. We have not voted on it yet.

Mr. McINTYRE. Unfortunately, we are involved in a very tragic war over in Vietnam, doing our best, I think, to extricate ourselves. And herbicides have been helping us to do just that.

I think the Department of Defense would be the first to admit that they have made some mistakes in their use of herbicides; that they used them in indiscriminate fashion at times until rather recently.

We are talking now, however, about an amendment the Senator is offering that would prevent herbicides from being used on the moderate scale they are being used today.

Mr. NELSON. Moderate scale?

Mr. McINTYRE. Moderate scale as compared to the years 1967–69, and with the purpose of saving American lives.

Let me ask the Senator, suppose he were riding in a 2½-ton truck, down a dirt road in South Vietnam.

Would the Senator like to have the jungle which is over there right on top of him, or would he like to have that jungle about a thousand feet off to the right and left as protection against any ambush?

I believe that by the use of defoliants we have very substantially reduced the possibility of ambushes by Vietnam guerrillas.

Mr. NELSON. Mr. President, I have read all the documents the Defense Department has produced to justify military usage of these chemicals in Vietnam, the classified ones and the secret ones. They assert its use is to save life. An equally powerful argument can be made that it is costing us much more than we are gaining.

As the Senator well knows, we destroyed a whole lot of crops over there that were planted by civilians, to be used by civilians, and it has been a serious morale factor. If all the Senator is saying is that any instrumentality of war that appears to us to be helpful, we will use, why not spray those trails that they are on with mustard gas? We would just have to do that once, and that would be the end of the trail.

Mr. McINTYRE. I do not think that is a fair argument at all. The devastating and permanent effects of mustard gas, nerve gas, or nuclear weapons, for example, are indisputable. Those of herbicides are not.

Let me say that the troops over there, and the company commanders, the battalion commanders, and the brigade commanders have all written in report after report that these herbicides have saved lives and been great morale boosters to the American troops.

I am concerned for the safety of American troops over there. That is why I oppose the Senator's amendment.

Mr. NELSON. We went over there, presumably—and I am the only one left in

MEMO

FROM THE OFFICE OF THE

DIRECTOR OF INFORMATION

To: Col. McConnell

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the U.S. Senate who voted against all the appropriations to go—but we went over there, it was said, to defend the South Vietnamese. Is it the Senator's idea of defending a country that you indiscriminately spray 100 million pounds of chemicals over the land with no idea of the long-term consequences. Is that the way we are going to defend that country?

We say we are over there to protect American boys. We could have protected American boys better by never having gone in the first place.

What are we leaving behind us? Does the Senator know, when we destroy the mangroves along the Rung Sat and alter marine estuaries what the effect will be? Does he know that we may be destroying the habitat shell fish and other marine creatures from which the people get most of their proteins?

The PRESIDING OFFICER. The Senator's time has expired.

Mr. NELSON. Mr. President, I yield myself an additional 5 minutes.

What are we leaving behind for the Vietnamese? I do not think anybody can stand here and say that we are entitled to do anything that we think will be of any benefit to a soldier who is there. That is why we do not drop the nuclear bomb. That is why we do not use mustard gas. That is why we do not do all kinds of things in war, because we have decided that some of them at least are unacceptable instruments of warfare.

I do not think it is very civilized or very sensible to be spreading into the atmosphere pollutants that are likely to cause problems that nobody can predict.

The Senator well knows that picloram like DDT is a long lasting persistent chemical that remains in the environment for an indefinite time.

The Senator knows what we did out of our ignorance with DDT in this country.

All I am saying is that it is environmental warfare, and we have no notion of what is happening to the oceans, the rivers, the soil, the plants, the animal life, or the insect life, and we are going ahead and using it, anyway.

The Senator says that we use it in the United States. We have done many foolish things in the United States, and we will continue to do them, I assume, but there is a difference. As irrational as our use of these chemicals is in the United States, it is 2 pounds per acre, and we are using 27 pounds per acre over there, which is a lot more intensive dose. But neither makes any sense, in my judgment, even for agricultural purposes, when we consider the discoveries they have now made about the teratogenic effect of these chemicals as well as the unsettled questions about their unknown effects in the environment.

All I can say to the Senator is that, as I understand it, his defense is that we are entitled to use these things because we claim that the use of them saves American lives. Is that it?

Mr. McINTYRE. As far as ecological effects are concerned, all we are talking about is possibilities. The Senator does not know for a fact, for example, that 20 years from now the mangrove forests will not be reestablished.

Yet the military benefits of herbicides are certain. I am saying that as long as we are in Vietnam we cannot simply ignore this side of the question.

Mr. President, this is on my own time, if the time of the Senator from Wisconsin has expired.

Mr. STENNIS. Mr. President, I yield to the Senator from New Hampshire such time as he desires.

Mr. McINTYRE. The Senator has mentioned agent blue. Is that correct?

Mr. NELSON. Blue, orange, and white.

Mr. McINTYRE. And the Senator has mentioned picloram. Picloram was tested by the U.S. Department of Agriculture in Puerto Rico—a tropical environment—at concentrations 30 times those used in Vietnam. Even at these high concentrations it did not affect food crops or natural vegetation the following year. Tests of soil from areas in Vietnam sprayed with picloram revealed no picloram present 11 months after spraying. In very dry soils it may persist for very long periods, but in areas of heavy rainfall it is carried down into the lower layers of soil where it is ineffective.

Picloram is one of the least toxic of herbicides and has been fed to numerous laboratory and domestic animals at much higher doses than could possibly be attained by animals grazing on sprayed areas. None of these data indicate any effect on the animals or their offspring. Picloram does not accumulate in the food chain, as DDT does, for example, so there is no danger from animals grazing on sprayed land.

Cacodylic acid, on the other hand, was at one time a drug given directly to humans. It has been replaced by newer more effective drugs. There is considerable medical experience to attest that its toxicity is indeed comparable to that of aspirin. There is no scientific basis for fearing that the arsenic in it would be changed in nature to the more toxic state. In any event the more toxic form of arsenic has been widely used in some Asian countries on rubber and cocoanut oil plantations. Concentrations 100 times the concentrations used in Vietnam have been applied annually for a quarter of a century or more with no ill effects to humans or to the ecology.

Mr. NELSON. Let me respond to the Senator by saying, No. 1, that the problem with all these agents—herbicides, pesticides—is that we conclude that because we do not see any immediate damage, there is nothing dangerous in their use, and we begin to use them without extensive tests, without understanding what we are doing until it is too late.

We started using DDT 30 years ago. I recall being attacked 7 years ago for introducing a measure to ban the use of DDT. I could not get anybody in either House to join me in that because my friends who were interested in the environment said, "I will be attacked as a kook if I join you in legislation to ban the use of DDT." Yet, long before 7 years ago, the knowledgeable scientists were raising the alarms about the continued use of this slow degrading pesticide.

Then Rachel Carson came along and published "The Silent Spring," and she was attacked by many entomologists and other scientists all over the country as unqualified in this field. They said that what she was saying about the disastrous effects of the irrational introduction of slow degrading herbicides and pesticides into the atmosphere was simply wrong. She was not qualified to make such a judgment. Some entomologists who worked on it for the companies came to see me and said it was all nonsense.

What is the result? A disaster is the result. The Senator knows it and I know it. So, after 30 years of spewing hundreds and hundreds of millions of ponds of DDT into the atmosphere, just as we are doing with these chemical herbicides, we find out that DDT is everywhere. We find it in the fatty tissue of the Adelie penguin in the Antarctic, where no DDT has ever been used. In 500 samples of fish in rivers and lakes all across this country, all but a few had DDT in their fatty tissue.

We see that the peregrine falcon and the bald eagle are being driven to extinction now because they have ingested so much DDT, being creatures that feed at the end of the food chain. We find now that the hen cannot produce enough calcium to produce a shell strong enough to hold the chick.

These are some of the ramifications of the indiscriminate use of DDT. Everybody throws up his hands now and says, "Why did we do it?" We did it because we were ignorant about the consequences of indiscriminate use of very potent pesticides and herbicides, and we are proceeding on the same ignorant basis now with 100 million pounds of it in Vietnam.

If you cannot answer the questions—if neither the military, the scientists, the Senator from New Hampshire, or anybody else—cannot say what the effect is on human and the environment we should not use it.

If you cannot answer the question about whether those mangrove forests will ever recover, you should not use it. If you cannot answer the question about what the effect is on all living creatures in the forests we are destroying, you should not use it.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. NELSON. I yield myself 5 additional minutes.

If you cannot answer what is going to happen to all the shellfish and marine creatures in the estuaries that feed the people in Vietnam, you should not use it. If you cannot answer the question as to those people who eat those shellfish and other fish, if their tissue becomes infiltrated with picloram you should not use it. The only argument that anybody has to use it is that it is a defense weapon that is helpful to us. But we have no notion at all what that means to the environment in Vietnam or, for that matter, the rest of the world. The DDT we sprayed on the fields in Wisconsin and Minnesota, or New Hampshire, is over the Indian Ocean, it is in the Antarctic, it is all over the world because it is picked up by evaporation and goes all over the

world. It is in the fatty tissues of practically every animal in the world.

So, I say to you, Senator, that we are doing exactly the same thing with this herbicide as we have so tragically done with DDT. Now we see what the prospects and the consequences are. All I say is, it is not moral for us to continue to use it. I cannot find any defense that is, on balance, on any cost-to-benefit ratio, in terms of human beings, or anything else, that justifies us to proceed to medicate the whole countryside—and that is what it is—without knowing what the results will be.

Mr. McINTYRE. The Senator should make that speech to the company commanders at the various bases and centers in Vietnam. He should make it to the men who have the job of patrolling the areas where they can be ambushed and killed. They would make clear that the short-term benefits of herbicides are quite considerable, and that these have to be weighed against long-term ecological possibilities.

Mr. President, I do not know whose time I am on, but I will yield myself 5 minutes.

The PRESIDING OFFICER (Mr. ALLEN). The Senator from New Hampshire is recognized for 5 minutes.

Mr. McINTYRE. Mr. President, a number of the scientists who went over to Vietnam are confirmed opponents of our war effort and would admit that they went determined to condemn our herbicide program as a result.

Dr. Tschirley went over there with an open mind. I placed his report in the RECORD on yesterday.

Let me read some of the high points of his conclusions as a result of his 30-day study:

One of the principal fears about exposing soil in the tropics is the possibility of increased laterization.

About 30 percent of the soils of Vietnam have a potential for laterization.

But I do not find it reasonable to conclude that the defoliation program in Vietnam would hasten the laterization process significantly because bare soil does not result from defoliation.

Tschirley continues with some of the conclusions he reached as a result of his visit and study:

The defoliation program has caused ecologic changes. I do not feel the changes are irreversible, but complete recovery may take a long time. The mangrove type is killed with a single treatment. Regeneration of the mangrove forest to its original condition is estimated to require about 20 years.

On the question of the fish catch, he says:

Fish catch has increased during a period of intensive treatment for defoliation, which surprised and pleased me.

His final recommendation is as follows:

The desirability of ecologic research in Vietnam after the war ends cannot be overemphasized. The research should be administered through an institution that will provide continuity and breadth for the research program. The opportunity of establishing ecologic research under the International Biological Program should be explored.

Mr. President, this is the type of study which the committee is providing for in the bill. It has asked the National Academy of Sciences to conduct the study. The Academy is a most distinguished and unimpeachable group. It will conduct research on the herbicide problem in Vietnam and report back to us within 18 months. This seems to me to be the most sensible thing we could do to try to get the facts.

Mr. NELSON. Mr. President, if the Senator will yield for a question, I know the Senator is aware of the fact that the Department of Defense itself stated that in most of the areas, a substantial percentage of the areas defoliated and sprayed, cannot be studied until after the war is over because they are in territory that cannot be gotten to because the way is blocked by the Vietcong or other areas under their control. So a study really cannot be made and we cannot make one in 18 months that would answer the questions, anyway.

But if—I emphasize if, Senator—if the problem is serious enough so that every environmentalist I know of that has commented on it, whether it be Dr. Tschirley or Dr. Pfeiffer or Dr. Galston, or any of the rest who are concerned and alarmed and say that it is critically important that a careful study be made to find out what has happened, if—if it is so critically important to make that study, because we are worried about what we might find out, does not the Senator think that we should stop using these chemicals until we find out what the results will be?

Mr. McINTYRE. Mr. President, I think I should point out to the Senator that at this moment in Vietnam we are down to a level of 25 percent of what we have used in the past on defoliants. There has been a response from the Department of Defense to the findings of Agriculture and Interior on 2,4,5-T. Its use has been suspended. But we cannot eliminate the whole program consistent with the safety of our troops.

Mr. GOODELL. Mr. President, will the Senator from Wisconsin yield?

Mr. NELSON. How much time does the Senator wish?

Mr. GOODELL. Fifteen minutes.

Mr. NELSON. Mr. President, I yield 15 minutes to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York is recognized for 15 minutes.

Mr. GOODELL. Mr. President, last week the President transmitted to the Senate for advice and consent the Geneva Protocol of 1925. As its title indicates, it is the "Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare."

Under the interpretation of the administration, as stated in the report of the Secretary of State, the protocol's ban is not to apply to this country's use in war of chemical herbicides and a variety of antipersonal chemicals. The decision has been reached by the administration that the protocol's prohibition on chemical warfare is limited in coverage to only certain kinds of chemical weapons.

This protocol interpretation no doubt will be raised during the present debate on the Environmental Warfare Prohibitions amendment which I have authored with the Senator from Wisconsin (Mr. NELSON). Our amendment prohibits the use, transfer, and stockpiling of antiplant chemical weapons used in herbicide and defoliation military operations.

Defoliation, the reduction or elimination of forest vegetation and plant growth, has been adopted for warfare by the Department of Defense on the grounds that it allows an additional military tactical option for U.S. forces in combat. Objectives of this environmental warfare program are to deny an enemy food and concealment. Such military thinking then has brought into existence and use a vast antiplant chemical weapons arsenal, including the antiplant agents: orange—a mixture of 2,4,5-T and 2,4-D; white—a mixture of 2,4-D and picloram; and blue—an aqueous solution of cacodylic acid. Collectively, these agents have commonly been called "herbicides" and "defoliants." Technically, "orange" and "white" are growth regulating compounds and are directed mainly against forest vegetation; "blue" is considered a dissicant and is used primarily to destroy crops. Each of these antiplant chemical agents has been used as a weapon of war in Vietnam. Each can be used interchangeably to carry out programs of forest defoliation or crop destruction.

The military herbicide chemicals in formulated products of orange, white, and blue constitute the bulk of our antiplant chemical warfare arsenal. They have never been submitted to the U.S. Department of Agriculture for registration. The point here is that we are not talking about the use of domestic chemical pesticides 2,4,5-T; 2,4-D, picloram, and cacodylic acid. It is true that formulated products of these chemicals have been submitted to the USDA for registration and have registered uses. Nevertheless, according to the Pesticide Regulation Division, USDA, "none of these—domestic pesticide—chemicals are registered for use in the United States as defoliants." These chemicals are only registered for use to kill specified types of plants.

The fact is that military application of herbicide chemicals and domestic application of pesticide chemicals are different. Again, according to the Pesticide Regulation Division, in regard to domestice pesticide chemicals: 2,4,5-T; 2,4-D; picloram and cacodylic acid—

(1) "None are registered for application to crops or non-food crop areas at the dosages claimed to be used in Vietnam" (27 lbs. per acre in Vietnam as contrasted to average 2–4 lbs. per acre use in United States);

(2) "None are registered to be applied as an undiluted spray;

(3) "None are registered for use on rivers and streams."

The myth which blurs the distinction between military and domestic use—and the common misunderstanding which gives momentum to the myth—must be shattered.

Distinctions can be made which show that military use of herbicide chemicals is quite different from domestic use of pesticide chemicals. These distinctions include: dosage; concentrations of spray;

limitations on use; and application at sites of use—be they food, feed, aquatic, or nonfood areas such as roadsides, rights-of-way or ditchbanks.

There is, however, a similarity between military herbicide chemicals and domestic pesticide chemicals. And it should be noted. The similarity is in the stark lack of study and the soarcity of real knowledge on the relationship of use to a safe and livable environment and the health safety of man now and for the future.

On many occasions I have criticized this "use now-study later" approach to unleashing chemicals into the environment. What we do know now, however, can help us to put a stop to reckless and harmful chemical use. This especially applies to the massive and indiscriminate use of military herbicide chemicals as used in defoliation and crop destruction operations.

What we know is that there are no food, feed, or aquatic registered uses of cacodylic acid or picloram for this country. Regarding nonfood areas, such as roadsides, rights of way or ditchbanks, picloram is registered for use with the following limitations:

First. Do not contaminate water used for domestic or irrigation purposes.

Regarding nonfood areas use, cacodylic acid is registered for use with the following limitations:

First. Keep children and pets off treated area until after first rain;

Second. Do not graze livestock on treated areas;

Third. Do not contaminate water used for domestic or irrigation purposes.

Cacodylic acid which is so restricted for use in the United States is the military herbicide chemical, blue, used in defoliation operations in Vietnam. It has been used to destroy crops. Let us think about that—used to destroy crops. Now let us reflect on those very strict limitations set for use here at home. It has been estimated that 7 percent of Vietnam cropland has been sprayed with chemical blue. At least 1 million gallons of blue has been sprayed on Vietnam cropland. Blue, it will be recalled is an aqueous solution of cacodylic acid. Cacodylic acid is 54 percent arsenic. It is described in the Merck Index as poisonous. By some quirk of irony, we have sprayed 1 million gallons of chemical containing poisonous substance on a country we are attempting to help save. Many of the crops sprayed, the Defense Department has to admit have been grown by Vietnam civilians, many of whom are subsistence farmers.

How we can say that we are helping to save the country of South Vietnam with crop destruction—how we can say this with any reasonableness, completely escapes me. It is mere lunacy.

The amendment before us outlaws this type of environmental warfare. Our amendment relates to military herbicide chemicals not to domestic pesticide chemicals. As a practical matter, our amendment would apply in the first instance to the use of chemical blue since the Department of Defense has recently banned the use of orange and the supply of white is low.

The present low-profile use of herbicide chemicals may also be used as an argument against our Prohibitions on Environmental Warfare amendment. It may be said that defoliation operations are phasing themselves out so why legislate them out? I cannot accept this argument.

First, the crop destruction program should be stopped, stopped now, not merely phased out.

Mr. NELSON. Mr. President, will the Senator yield?

Mr. GOODELL. I yield.

Mr. NELSON. Mr. President, the Senator refers to phasing out. Is the Senator aware that in 1969 $1,600,000 was spent for procurement of these herbicides and that in 1970 the amount was $5 million? That does not sound to me like it is being phased out.

Mr. GOODELL. Mr. President, I agree with the Senator from Wisconsin. I think there is a grave question as to whether it is being truly phased out. Indeed, the amount of money we are spending on this herbicide program is increasing.

Second, we should be concerned not only with use but with the proliferation of use of any and all military herbicide chemicals.

Third, the budget amounts requested for next year's herbicide R. & D. and procurement plans do not reflect a phasing out of defoliation operation at all. That is the point made by the Senator from Wisconsin.

The report of the Senate Armed Services Committee reflects a request of $500,000 for R. & D. in herbicide chemicals; and $1 million for procurement of herbicides. The report notes that "procurement programs for CBW are not subject to authorizing legislation." I think this is unfortunate. This is a way procurement programs get out of hand. I understand that presently the Defense Department has revised its request and the revision is upward. I understand that the request is now for $6 million in procurement funds and that plans are for the procurement of over 1 million gallons of chemical herbicides white and blue. This does not appear to me as a "phaseout" operation.

The argument of myth and the argument of gradual phase out may be used against our amendment. So too may the protocol interpretation be used as an argument against the Senate in making an independent judgment on the use of antiplant chemical weapons and in making an independent determination on the wisdom of forest defoliation and crop destruction as tactics of war.

Mr. President, I do not wish now, nor is it necessary at this time, to engage in a lengthy discussion as to the history of the protocol—as to whether its framers, the American delegation to the 1925 Geneva Conference, intended the protocol's ban to cover all kinds of gas for use in war or merely some gas; whether all disease-producing germs or only some come under the prohibition for use in war.

At this point, I would like to make only brief observations regarding the history of the protocol.

Let us recall that the 1925 Geneva Protocol was advanced by the United States to universalize the prior treaty of the Washington Arms Conference, that is the 1922 Treaty Relating to the Use of Submarines and Noxious Gases in Warfare. This was a treaty negotiated by the United States, Great Britain, France, Italy, and Japan. The treaty proposed a prohibition on "the use in war of asphyxiating, poisonous or other gases and all analogous liquids, materials, or devices."

Secretary of State Hughes in explaining the position of the United States at that time cited the following passages from the report of the Advisory Committee to the American Delegation:

> The Committee is of the opinion that the conscience of the American people has been profoundly shocked by the savage use of scientific discoveries for destruction rather than for construction . . . The American representatives would not be doing their duty in expressing the conscience of the American people were they to fail in insisting upon the total abolition of chemical warfare . . .
>
> Resolved, that chemical warfare, including the use of gases, whether toxic or non toxic, should be prohibited by international agreement, and should be classed with such unfair methods of warfare as poisoning wells, introducing germs of disease, and other methods that are abhorrent in modern warfare.—Source: Minutes, Sixteenth Meeting, Committee on Limitation of Armament, January 6, 1922, p. 732.

The U.S. Senate approved this treaty on March 29, 1922. The vote was 72–0.

The only exchange in this Chamber then regarding the kinds of gas covered in the prohibition on chemical warfare was an exchange between Senator Wadsworth of New York, chairman of the Military Affairs Committee and Senator Henry Cabot Lodge. The CONGRESSIONAL RECORD records the exchange as follows:

> Mr. WADSWORTH. . . . I think article 5 is drawn somewhat carelessly. . . . The phrase 'other gases' is all inclusive. It reads: 'asphyxiating, poisonous, or other gases.'
>
> Mr. LODGE. To be used in war.
>
> Mr. WADSWORTH. Yes; but there are gases used in war other than asphyxiating or poisonous gases. . . . For balloons, such as helium gas, and hydrogen. A strict construction would seem to prevent the use of any gas in war. Undoubtedly that is not meant. . . . It would seem in the French text that the word 'similaries' ties the matter up, but in the English text the equivalent of "similaries" is not used. That, however, is a point of comparatively small importance.—Source: U.S. Congressional Record, 67th Cong., 2d Sess., 1922, LXII, Part 5, p. 4729.

The remarks of Senator Wadsworth indicate his concern that the prohibition of the 1922 treaty could be construed to cover not only gas as a weapon of war, but also gas applied for a nonweapon use. The Senate, however, did not pursue this question of the kinds of gas covered by the treaty. The question, having been raised, remained unresolved.

Mr. President, for decades now, there have been varieties of interpretations by this country and other countries of the world over the kinds of gas to be prohibited for use in war. Regarding the protocol, interpretations over the years have faced difficulties such as those arising from the fact that scientific discovery brought into existence new chemical and germ weapons which were unknown at the time the protocol was

negotiated. Moreover, there have been contradictions in interpretations within governments over the years. Contrasted to contradictions, there have been differences of opinion among governments as to whether all kinds of gas or only some gas should be banned in chemical warfare. Last December, 80 nations voted in favor of a U.N. resolution which declared in part that:

Any chemical agents or warfare—chemical substances, whether gaseous, liquid or solid—which might be employed because of their direct toxic effects on man, animals or plants are contrary to the generally recognized rules of international law, as embodied in the Protocol.

Of the 80 nations voting in favor of this resolution, 38 are parties to the protocol.

Let us bear in mind the vote of the United States against this U.N. resolution. Let us keep in mind the administration's interpretation of the protocol. Let us also, however, remember that successive administrations have repeatedly announced, as did President Nixon when he sent the protocol to the Senate last week, that this country observes the principles and objectives of the protocol.

What are the principles and objectives of the protocol? There is the principle of no first-use. There is the objective of prohibiting in the interest of humanity the use of chemicals and germs in warfare. There is the objective of bringing gas and germ weapons under control and the use of these weapons stopped. There is the objective of outlawing in war gases which in the words of the protocol "has been justly condemned by the general opinion of the civilized world."

ENVIRONMENTAL WARFARE AMENDMENT CONSISTENT WITH PRINCIPLES AND OBJECTIVES OF PROTOCOL

Mr. President, I have no intention in this debate to make the case that antiplant chemicals are covered in the protocol. I do believe, however, that our amendment to control antiplant chemical weapons and prohibit their use in war is consistent with the principles and objectives of the protocol.

Regarding antiplant chemical weapons, what has become of the principle of no first-use? What has become of the objective of stopping in the interest of humanity chemical warfare operations that threaten innocent noncombatant civilians?

U.S. FIRST-USE OF ANTIPLANT CHEMICALS IN VIETNAM

ANTIPLANT AGENT FROM CLASSIFICATION: FROM BIOLOGICAL TO CHEMICAL

According to a 1969 Army training manual, antiplant agents for military application are:

Chemical agents which possess a high offensive potential for destroying or seriously limiting the production of food and defoliating vegetation. These compounds include herbicides that kill or inhibit the growth of plants; plant growth regulators that either regulate or inhibit plant growth, sometimes causing plant death; dessicants that dry up plant foliage. . . . Military applications for anti-plant agents are based on denying the enemy food and concealment.—Source: Department of the Army Training Circular TC 3-16, Department of the Army, April 1969, p. 62.

It is of interest to note that in 1964 antiplant chemicals were officially listed as biological agents not chemical agents. In 1964 the joint manual of the Departments of the Army and Air Force on Military Biology and Biological Agents listed antiplant chemicals under the heading "Microbiology Applied to Biological Agents." Antiplant chemicals were so listed, according to the manual, as indicated below, as a matter of convenience:

MILITARY BIOLOGICAL AND BIOLOGICAL AGENTS MICROBIOLOGY APPLIED TO BIOLOGICAL AGENTS

The military application of microbiology concerns only those microorganisms which may be deliberately employed in weapon systems to cause disease or death to man, animals, or plants, or to cause deterioration of material. Certain chemical compounds that effect plant life, as well as toxins, may be used in chemical weapon systems and are included as a matter of convenience. These are grouped as shown below for discussion purposes, and they will be considered in this manual along with vectors of disease.

a. Microorganisms. . . .
b. Toxins. . . .
c. Vectors of Disease. . . .
d. Chemical Antiplant Compounds. Plant growth regulators, herbicides, weed killers, defoliants, and desiccants.—Source: Department of the Army Technical Manual. Department of the Air Force Manual TM 3-216, AFM 355-6 (Departments of the Army and the Air Force, March 1964).

In 1965, the joint manual omitted antiplant chemicals from the biological agent classification.

In 1968, however, the Joint Chiefs of Staff recognized that for certain regional organizations, such as SEATO and CENTO of which the United States is a member, biological warfare included the employment of plant growth regulators to produce death or casualties in man, animals, or plants.

Antiplant chemicals, as with biological toxins, were classified later as chemical weapons. Presently, antiplant chemicals are considered part of the chemical warfare arsenal.

U.S. FIRST-USE IN VIETNAM

The United States initiated use of antiplant chemicals in the Vietnam war. The antiplant chemical warfare arsenal was not brought into use in retaliation against enemy use of such chemicals.

Use of defoliants by U.S. forces began on December 4, 1961, when President Kennedy authorized the Department of Defense to test the military effectiveness of defoliation on several lines of communication in South Vietnam. Since that time, this country has spent over $96 million to defoliate over 5 million acres of forest and crop land in South Vietnam. The primary target has been forest areas. Roughly 13 percent of South Vietnam's forest areas have been sprayed at least once and 15 to 20 percent of this sprayed forest area has been subject to repeated sprayings. Regarding crop destruction, it is estimated that 7 percent of Vietnam crop lands have been sprayed.

Mr. President, I ask unanimous consent to have printed in the RECORD a table entitled, "Chemical Defoliation and Anticrop Operations in South Vietnam for the Period 1962 to July 1969."

There being no objection, the table was ordered to be printed in the RECORD, as follows:

CHEMICAL DEFOLIATION AND ANTICROP OPERATIONS IN SOUTH VIETNAM—1962 TO JULY 1969

[Figures in acres]

Year	Defoliation	Crop	Percent crop versus defoliation
1962	4,940	741	5
1963	24,700	247	1
1964	83,486	10,374	12
1965	155,610	65,949	42
1966	741,247	103,987	14
1967	1,486,446	221,312	15
1968	1,267,110	63,726	5
1969 (January to July)	797,180	38,819	5
Total	4,560,719	505,155	

Source: Data supplied by the Defense Department to the National Security Policy and Scientific Developments Subcommittee of the House Foreign Affairs Committee (December 1969).

NOTES

The total land area of South Vietnam is approximately 42,000,000 acres. Of this, about 7,600,000 acres is reported to be under intensive cultivation and about 14,000,000 acres is forested.

Aims of this environmental warfare program are to deny the enemy food and concealment. According to the Defense Department, "in the final analysis the sole purpose of the herbicide program is to protect friendly forces, conserve manpower and deny food resources to the enemy."

Mr. GOODELL. Mr. President, the defoliation program, then, has a number of objectives, including:

First, to improve vertical and horizontal visibility of the United States and Vietnam troops;

Second, to aid in target acquisition, that is, finding the enemy;

Third, to force enemy troop movement from one place to another in range of fire; and

Fourth, to make significant numbers of the enemy divert energy from fighting to growing food.

ANTIPLANT CHEMICALS: WAR USES

According to the Defense Department, antiplant chemical weapons have been put to the following war uses:

1. Defoliation of base perimeters

A portion of the small-scale ground based or the helicopter spray missions are used in improving the defense of base camps and fire bases. Herbicides are a great help in keeping down the growth of high jungle grass, bushes, and weeds which will grow in cleared areas near these camps. This clearance opens fields of fire and affords observation for outposts to prevent surprise attack and as such is truly a life-saving measure for our forces and our allies. Without the use of herbicides around our fire bases, adequate defense is difficult and in many places impossible.

2. Defoliation of lines of communication

There are many instances of ambush sites being defoliated for better aerial observation and improved visibility along roads and trails. In 1967 there were also many requests for defoliation of VC tax collection points. In otherwise friendly territory there were points along well-traveled routes where the enemy could hide under cover and intercept travelers to demands taxes. Defoliation along these roads was very effective in opening these areas so that they can be seen from observation aircraft, and with few exceptions these roads were opened to free travel. The use of aircraft to spray alongside lines of communication proved valuable in clearing these areas and preventing costly ambush of army convoys with resulting friendly casualties.

3. Defoliation of infiltration routes

Areas used by the enemy for routes of approach, resupply or movement are targets for herbicide spray. Probably the most valuable use of herbicides for defoliation is to

permit aerial observation in such areas. This is particularly true in areas near the border so that we can detect movement of enemy units and their resupply.

4. Defoliation of enemy base camps

We know from prisoners of war and from observation that the enemy will move from areas that have been sprayed. Therefore, enemy base camps or unit headquarters are sprayed in order to make him move to avoid exposing himself to aerial observation. If he does move back in while the area is still defoliated, he will be observed and can be engaged.

5. Crop destruction

Crops in areas remote from the friendly population and known to belong to the enemy and which cannot be captured by ground operations are sometimes sprayed. Such targets are carefully selected so as to attack only those crops known to be grown by or from the VC or NVA. The authorization to attack crops in specific areas has been made by the U.S. Embassy, Saigon, MACV and South Vietnamese Government.

Frequently reviews have been conducted of the herbicide program. The most recent one was personally directed and reviewed by COMUSMACV in October 1968 to assure himself that the program was militarily effective. Prior to that, the U.S. Ambassador had directed a review which looked at the political and economic aspects of the program. The Embassy report was released in August 1968. The crop destruction program was also reviewed by the CINCPAC scientific adviser in December 1967. Each of these reports concluded that the program should be continued.

(SOURCE.—Rear Adm. William E. Lemos, Director of Policy Plans and National Security Council Affairs, Office, Assistant Secretary of Defense for International Security Affairs, Statement before House Subcommittee on National Security Policy and Scientific Developments, Hearings on Friday, December 19, 1969, pp. 229–230.)

ANTIPLANT CHEMICALS: DOD ASSESSMENT OF WAR USE

According to the Defense Department, the following examples should indicate the success of the defoliation effort in Vietnam:

In the final analysis the sole purpose of the herbicide program is to protect friendly forces and conserve manpower. The following examples should demonstrate the success of the defoliation effort in Vietnam:

1. Major defoliation has been accomplished in war zone C. Prior to defoliation, seven brigades were necessary to maintain U.S./GVN presence. During 1967, after defoliation only three brigades were required.

2. The commander of naval forces in Vietnam in a report to General Abrams stated—

As you know, a major concern is the vegetation along the main shipping channel. Your continuing efforts under difficult and hazardous flying conditions, in keeping this area and by the adjacent inland areas devoid of vegetation have contributed considerably in denying the protective cover from which to ambush the slow-moving merchant ships and U.S. Navy craft.

3. In 1968, the commanding general of the 1st Field Force reported—

Defoliation has been effective in enhancing the success of allied combat operations. Herbicide operations using C–123 aircraft, helicopters, truck mounted and hand sprayers have become an integral part of the II CTZ operations against VC/NVA. The operations are normally limited to areas under VC/NVA control remote from population centers. The defoliation program has resulted in the reduction of enemy concealment and permitted increased use of supply routes by friendly units. Aerial eurveillance of enemy areas has improved and less security forces are required to control areas of responsibility. An overall result of the herbicide program has been to increase friendly security and to assist in returning civilian to GVN control.

4. The U.S. commander in the III CTZ related:

Herbicide operations have contributed significantly to allied combat operations in the III Corps. Defoliation is an important adjunct to target acquisition. Aerial photographs can often be taken from which interpreters can "see the ground" in areas that previously were obscured. Defoliation also aids visual reconnaissance. U.S. Air Force FAC's (forward air controllers) and U.S. Army aerial observers have discovered entire VC base camps in defoliated areas that had previously been overlooked.

5. In the south in the IV CTZ, C–123 herbicide operations are limited. This is because of the vast areas of valuable crops which are not to be destroyed, even though they may be in enemy hands. Therefore, the commander of the IV Corps area in presenting his evaluation cited the value of helicopter operations as follows—

A significant helicopter defoliation mission was conducted in the vicinity of SADEC in August 1968. The target area consisted of three main canals which converged and formed a strong VC base. The dense vegetation permitted visibility of only 10–15 meters horizontally and nil vertically. The area was sprayed with approximately 785 gallons of herbicide white and over 90 percent of the area was defoliated. As the result of the defoliation, an ARVN battalion was able to remain overnight in the area for the first time in 5 years. Many enemy bunkers were open to observation. Since the defoliation, the VC presence has decreased to the point that only RF/PF forces are now necessary for local security.

6. As a part of the 1968 evaluation report of herbicide operations, the U.S. senior adviser in the IV Corps tactical zone area reported—

A section of National Highway 4 in Phong Dinh Province was the site for a defoliation operation on June 24, 1968. Since January 1968, a series of ambushes was conducted against SVN convoys and troop movements. Because of the total inability of ground troops to keep the area clear of VC, this area was sprayed using 685 gallons of herbicide whits. The target area was primarily coconut palm and banana trees that had been abandoned by their owners for several years. During the period of abandonment the vegetation had become so dense that convoy security elements were not able to see more than 5 meters into the underbush and had to rely on reconnaissance by fire to discover the hidden enemy. This method of protection had proven ineffective. Three RF/PF companies with U.S. advisers were used to secure the target for the helicopter operation in addition to an armored cavalry troop. Since the defoliation mission was completed, convoys have used the highway two or three times a week without attack or harassment. Only one RF platoon has remained in the area to provide local security to the hamlet and highway.

7. In certain instances, we know the VC have been forced to divert tactical units from combat missions to food-procurement operations and food-transportation tasks, attesting to the effectiveness of the crop destruction program. In local areas where extensive crop destruction missions were conducted, VC/NVA defections to GVN increased as a result of low morale resulting principally from food shortages.

The most highly valued item of equipment to field commanders in Vietnam is the helicopter. There was some question when the helicopter spray equipment was first procured whether field commanders would divert the use of helicopters from combat operations for herbicide spray operations. The very fact that the commanders have used their helicopter spray equipment to the fullest and have asked for more is certainly proof that herbicide operations have been helpful in protecting the American soldier and contributing to successful accomplishment of the ground combat mission.

CONCLUSION

. . ., we have presented to you in as complete and candid a manner as possible the lifesaving usage that we have made of riot control agents and herbicides in South Vietnam and the policies under which this usage has taken place. We believe this usage has been wise and has been accomplished with restraint. The result is that our forces have been better able to accomplish their mission with significantly reduced U.S. and Vietnamese casualties.

(SOURCE.—Rear Adm. William E. Lemos, Director of Policy Plans and National Security Council Affairs, Office, Assistant Secretary of Defense for International Security Affairs, Statement before House Subcommittee on National Security Policy and Scientific Developments, Hearings on Friday, December 19, 1969, pp. 231–232.)

ANTIPLANT CHEMICALS: CURRENT WAR USE

This April, following the "suspension" and "cancellation" orders by the U.S. Department of Agriculture on certain registered use of 2,4,5-T for domestic civilian applications because of hazards to public health, the Defense Department announced that it would ban the use of its primary chemical herbicide, orange in the defoliation program in Vietnam.

This decision provides an appropriate opportunity to review the basic question of whether an antiplant chemical warfare arsenal is really needed and whether the negative side effects of the U.S. "first-use" of these chemicals in Vietnam outweigh the value of defoliation and crop destruction as tactics of war.

White and blue are the herbicide chemicals now authorized by the Defense Department for use in the remaining defoliation program in Vietnam.

MILITARY DEFOLIATION VICTIMS: PLANTS AND CIVILIAN PEOPLE

It has been said by some that antiplant chemicals merely kill or injure plants, not people; therefore, they ought not to be condemned for use in warfare.

I cannot accept this logic or conclusion for several reasons.

First, there is the assumption that the chemical products and the practices in military application of herbicide chemicals present no health hazard to humans.

This assumption is sorely strained in view of the results of tests done this year by the National Institute of Environmental Health Sciences on the teratogenic, or fetus-deforming effects of 2,4,5-T registered for use in domestic civilian application.

The chemical 2,4,5-T is a polychlorinated phenolic compound that contains dioxin contaminants or impurities. When a chlorophenol is heated sufficiently, it is likely that some dioxin will result. Dioxin is considered a toxic agent.

Last year the Bionetics Research Laboratories in Bethesda, Md., under contract to the National Cancer Institute, reported that its studies on 2,4,5-T showed deformities in the offspring of pregnant mice and rats. It recommended that the Government take actions to re-

strict the use of 2,4,5-T in both domestic civilian applications and military herbicidal operations. Critics of the bionetics report, both in the administration and in industry, claimed that the 2,4,5-T marketed and registered for use as a pesticide chemical was of "greater purity" than the test material of 2,4,5-T used in the bionetics study. That test material, they claimed, contained substantial concentrations of dioxin chemical impurities.

In light of these claims and counterclaims on the hazard to public health of registered 2,4,5-T, the Senator from Michigan (Mr. HART) initiated hearings before the Subcommittee on Energy, Natural Resources, and the Environment.

It was on April 15 during one of these hearings that Dr. Jesse Steinfeld, Surgeon General, USPHS announced the conclusions of additional studies conducted by the National Institute of Environmental Health Sciences on the fetus-deforming effects of 2,4,5-T. The conclusion was that "the dioxin impurities and the 2,4,5-T as it is now manufactured, separately produced birth abnormalities in the experimental mice." Although there is consensus as to the "extreme potency of the impurities as toxic agents," Dr. Steinfeld emphasized that the studies "do not clarify the uncertainties as to significance to man." Indeed, Dr. Steinfeld said, "No data on humans are available."

It should be noted here that Dr. Steinfeld's assessment of no data on the effects of 2,4,5-T or its impurity dioxin on humans has been questioned. Dioxin could have a teratogenic, or fetus-deforming effect on pregnant women and/or a toxic or body poisoning effect on humans. While there is no confirmed evidence of the former, there is evidence of the toxic effects of dioxin on humans. It has been reported that in the mid-sixties, Dow was obliged to close down part of a 2,4,5-T plant in Midland, Mich., for some time because about 60 workers contracted "chloracne" as a result of contact with dioxin. The symptoms of this disease include skin disruptions, disorders of the central nervous system and chronic fatigue.

As a result of the conclusions of the studies by the National Institute of Environmental Health Sciences, the Secretary of Agriculture found that in order to prevent an "imminent hazard" to the public health, it was necessary "to suspend" registration for products containing 2,4,5-T and to require relabels for use as follows:

First. Suspension of liquid formulations of 2,4,5-T for use around homes, and recreation areas;

Second. Suspend all formulations of 2,4,5-T in aquatic areas, that is, in lakes, ponds, or on ditch banks.

The "suspension" order carries with it immediate halt to interstate shipments.

The Secretary of Agriculture also found that in order to prevent a "hazard" to public health, it was necessary "to cancel" registration for products containing 2,4,5-T and bearing directions for use as follows:

First. All granular 2,4,5-T formulations for use around the home, recreation areas, and similar sites.

Second. All 2,4,5-T uses on food crops intended for human consumption, such as apples, blueberries, barley, corn, oats, rice, rye, and sugarcane.

Dr. Lee DuBridge, formerly President Nixon's science adviser, has said that—

If the effects on experimental animals are applicable to people it's a very sad and serious situation.

Does the Defense Department think the military application of its primary defoliant orange, a mixture of 2,4,5-T and 2,4-D could be affecting the public health of Vietnam? According to the Defense Department, the answer is "No." When asked: Why not? the Department simply responds that there is no confirmed evidence that illness is directly the result of defoliant spraying.

Nevertheless, following the "suspension" and "cancellation" orders on registered use of 2,4,5-T for domestic civilian applications—orders affecting only about 10 percent of 2,4,5-T use in this country—the Defense Department announced that it would ban use of orange henceforth in the defoliation program in Vietnam.

It has been estimated that 50,000 tons of antiplant chemicals have been sprayed on Vietnam land, including forests, crops, ditch banks and along shipping canals and communications lines. Of the 50,000 tons, it is estimated that 20,000 tons of oranges have been sprayed.

Now let us consider again the notion by some that antiplant chemicals merely kill or injure plants not people; and that they ought not to be condemned for use in warfare.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. GOODELL. May I have 5 additional minutes?

Mr. NELSON. Mr. President, I yield the Senator 5 minutes.

Mr. GOODELL. I have said previously that I cannot accept this logic or conclusion for several reasons. The first is the questionable assumption that the formulations of antiplant chemicals for military purposes as well as the practices in military application of such chemicals present no health hazard to humans. In addition to the fetus-deforming effects and toxic effects of 2,4,5-T shown in laboratory studies, there is the question of whether or not 2,4,5-T is biologically degradable, that is, the question of whether it persists in the environment or accumulates in animal tissue. Although some claim that 2,4,5-T is readily decomposable in soil and by the action of sunlight after it has been applied, there have been no thorough studies to show that 2,4,5-T's dioxin contaminant is biologically degradable, that is, that it does not persist in the environment or accumulate in animal tissue.

Consider antiplant chemicals used in war as part of a program to deny an enemy concealment. Now think of the animals in the forest. Consider whether any of these animals are destined for food and having been exposed to the dioxin contaminant, contain residues of dioxin in their systems. Suppose that there are no food inspection teams to detect harmful levels of 2,4,5-T residue and to protect people from contaminated food.

Consider antiplant chemicals used in war to destroy forests near streams and canals. Think of the fish in the streams as another possible food supply. Think of the water as being used for irrigating food crops. Now recall the USDA suspension order for 2,4,5-T banning use in aquatic sites because it presented an imminent hazard to public health. Recall the USDA warnings and limitations for domestic use of picloram and cacodylic acid: "do not contaminate water used for domestic or irrigation purposes."

Consider drift from antiplant chemical operations to water supplies for drinking purposes.

Consider antiplant chemicals used in war to destroy crops, that is part of any enemy food denial program. Then consider the history of warfare which shows that it has always been the fighting men who have had the first claim to the available food supply; civilians always have been the ones to suffer the shortages.

Many of us were very concerned during the recent Nigerian civil war about starvation in Biafra. Allegations were made that at least some officials of Nigeria were using food and starvation as a weapon of war. Many of us stood up and called upon the international community and the Nigerians and the Biafrans to agree on ways to get food in there so that women and children would not be the primary sufferers of the civil war in Nigeria.

Many of us are equally concerned with the effects of the present food denial program in Vietnam many of us are concerned with the effects of the entire military defoliation operation in Vietnam.

Considering all the links between man and evironment, it seems clear to me that the massive spraying of antiplant chemicals in Vietnam constitutes a dangerous hazard to public health in Vietnam and warrants a total ban on this country's engagements in military defoliation operations.

Looking beyond the links in the ecosystem and the food chain, there can be no doubt that massive application of anitplant chemicals is having an adverse effect on the people of Vietnam. What effect it is having on what effects show up in the future, may be one of the saddest chapters in the epilogue of the war.

Those who defend the use of herbicide chemicals and the use of chemicals against crops in Vietnam, do so by claiming that such use saves lives of our troops. Obviously, we want to do everything possible to protect the lives of our men fighting in Vietnam.

The claim, however, that defoliation operations are "life saving" is open to question.

Regarding the military value of defoliation, several drawbacks can be considered. These drawbacks raise the possibility of "risk to life" for our men fighting in Vietnam. Drawbacks are based on the following considerations:

After spraying, several days pass before leaves fall off trees; dying leaves can "alert" the enemy to impending United States-Vietnamese operations;

After spraying along lines of commu-

nication, ambushes may still take place behind curves in the road as well as create a broader enemy fire on United States-Vietnamese troops;

Defoliation of base perimeters has often led to deemphasis of saturation patrolling which may be false economy;

There may be a trade-off between vertical and horizontal visibility; that is, defoliation of a double or triple canopy jungle increases the amount of sunlight that reaches ground level; in time this greatly stimulates growth of vines and bamboo which could impede movement of United States-Vietnamese ground troops. While United States-Vietnamese pilots may increase their visibility; ground troops may find it more difficult to move on foot. According to the report made by Dr. Fred Tschirley, Agricultural Research Service, USDA, after his investigation in 1968 of environmental effects of defoliation in Vietnam; "repeated treatments will result in invasion of many sites by bamboo. Presence of dense bamboo will then retard regeneration of the forest." It may also retard the mobility of our ground combat troops.

By all reasonable standards, crop destruction in Vietnam is a military failure. It is cursed by the locally affected Vietnamese, most of which are rural subsistence farmers. It is exploited by the VC. It is counterproductive to Vietnamization. An indicator of ill-will may be the damage claims, both valid and trumped-up. Since 1968, over 10,000 claims have been validated at a cost of over $3 million. Invalidated claims are unrecorded. Rather than save lives of U.S. troops, crop destruction could contribute to the risk of life by decreasing the cooperation we need from the Vietnamese themselves. The less cooperation we get, both in intelligence gathering and fighting, the more our troops must fight and along with this goes greater risk to the lives of our troops.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. GOODELL. May I have 5 additional minutes?

Mr. NELSON. Mr. President, I yield 5 additional minutes to the Senator from New York.

Mr. GOODELL. In Vietnam, we are fighting, supposedly, for the hearts and minds of the people.

One of the greatest problems we have in the so-called Vietnamization program is the psychological impact and the direct impact of crop destruction on the people and the small farmers. It is a very unpopular program.

It is a program which turns many of the rural people against us in South Vietnam. It is a program of marginal military significance. The end result may, on occasion, save a few lives of American soldiers, but then later lead to the deaths of many more American soldiers.

Mr. President, I believe our amendment deals directly, and precisely with the issue at hand. It would bar future military use of chemical herbicides by this country. It would bar use by proxy. It would dismantle this country's chemical herbicide arsenal. Such a measure is long overdue.

Mr. President, there are many aspects of our military defoliation operations that cannot be discussed openly here. I do not wish to make specific references to studies that have been made available, but are considered confidential and secret. But I think there is ample evidence available to all of us in the U.S. Senate that indicates that the use of chemicals for crop destruction in Vietnam has been counterproductive. We are cutting off our nose to spite our face with the continued use of these defoliants, whether we talk about it simply in a military sense or in terms of the environment of Vietnam.

I hope that the Senate will act today to let the world know that we are going to prohibit the use of antiplant chemicals in war; that we will prevent the future use of those chemicals which have, for the past 9 years, been used in Vietnam.

Mr. STENNIS. Mr. President, I ask unanimous consent that when the Senator from Mississippi happens not to be present in the Chamber, the time in opposition to the amendment may be allotted by the Senator from New Hampshire.

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

Who yields time?

Mr. NELSON. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Wisconsin has 22 minutes, the Senator from Mississippi 55 minutes.

Mr. STENNIS. Mr. President, I suggest the absence of a quorum, on my time.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. STENNIS. Mr. President, I yield the Senator from Colorado 20 minutes.

Mr. DOMINICK. Mr. President, I have a prepared speech here, which I am going to make, but before I do that, I wish to say that I know how sincere the Senator from Wisconsin is. He has been against our involvement in Southeast Asia from the very beginning. He has voted against every appropriation, every authorization, and everything else I can think of. So I am not a bit concerned over the heat with which he debates this particular amendment, because he does not think we ought to be there at all.

That is perfectly proper, and it is his right, obviously, but it is not the policy of the last three Presidents. We are there, and we have to recognize the fact that we have people there who are fighting a war, and who must have the ability to do so both efficiently and successfully.

I also wish to say, before I go any farther, that the committee has in fact not only eliminated authorization for the use of the so-called orange herbicide, which was referred to in the debate, and we do not have any money in the bill for that at all. We have also reduced the new authorization from $2 million to $1 million, and the balance of the money that has come in is money that had previously been authorized but not spent in connection with the procurement of orange, which has been realated in order to provide the funds for the defoliants in connection with both crops, trees, brush, and lines of communication, but not with the poisonous type Orange that has been referred to heretofore.

One of the most difficult problems faced by the military in South Vietnam is the inability to observe the enemy in the dense forest and jungle. As one method to help overcome this problem, defoliating herbicides were introduced in 1962, and since that time have been employed on an increased basis.

Defoliants are capable of producing a tremendous improvement in vertical and horizontal visibility in the type of jungle found in South Vietnam. As viewed by an aerial observer, it may be impossible to see through the jungle canopy at the time of spraying. After spraying, defoliation will begin in 2 to 3 weeks and in 6 to 8 weeks, the observer will have almost complete observation through the canopy. After 8 to 12 months, he will have only limited visibility due to regrowth. For ground observation, defoliation is capable of improving vertical visibility 70 to 90 percent and horizontal visibility 40 to 60 percent.

It has been claimed that defoliation along lines of communication permits the enemy to attack with heavier weapons and provides allied soldiers little cover if they are attacked. Such statements ignore the purpose of the defoliation which is to provide observation out to 200 or 300 meters on either side of a road or canal and deny the enemy a close-in, concealed ambush position.

Any soldier will tell you that it is easy to hit a target up to 100 feet away with a rifle or machinegun but it becomes increasingly difficult to hit one at 600 to 1,000 feet. Heavier weapons are effective at these greater ranges but they require open fields of fire or cleared firing positions.

The critical period in an ambush is the first 10 to 15 seconds. After this, evasive action and counterambush fires will reduce the effectiveness of the ambush. The inaccuracy resulting from distant fires gives our troops a better chance to survive the first few critical moments and then overcome or evade the enemy forces.

There is considerable evidence supporting the military effectiveness of defoliation operations. The most recent study was conducted in October of 1968 at the request of General Abrams, COMUSMACV. That study produced overwhelming evidence from both intelligence sources and afteraction reports on the effectiveness of herbicides. The following examples demonstrate the value of the defoliation effort in Vietnam:

First. According to the commander, U.S. Naval Forces Vietnam, the defoliation along the main shipping channel between the ocean and Saigon contributed considerably to denying protective cover to the enemy for ambush of the slow-moving merchant ships and U.S. naval vessels.

Second. The commanding general of I Field Force reported that the defoliation program reduced enemy concealment and permitted increased use of the lines of communication by friendly units. Aerial surveillance of enemy areas improved and less security forces were required to control friendly areas.

Third. Defoliation aids visual reconnaissance. Air Force forward air controllers and Army aerial observers have discovered VC base camps in defoliated areas that had previously been undetected.

Fourth. Helicopter defoliation operations were conducted in 1968 against infiltration routes and mortar and rocket sites in the vicinity of Pleiku City. Aerial observation of the area is now possible and Pleiku has not experienced mortar or rocket attacks since the area was defoliated.

Fifth. A portion of National Highway 4 in Phong Dinh Province was defoliated in June 1968. This mission was conducted after a series of missions against GVN convoys and troop movements. The target area consisted primarily of coconut palms and banana trees that had been abandoned for several years. The vegetation had become so dense that convoy security elements were unable to see more than 5 meters into the underbrush. It required three companies of regional and popular forces and an armored cavalry troop to secure the target during the helicopter spraying. Since defoliation, convoys have used the highway two to three times a week without attack or harassment. Only one platoon of popular forces is now required to provide local security to the nearby hamlet and the highway.

Sixth. The most important piece of military equipment in Vietnam is the helicopter. The fact that commanders use their helicopters in spray missions on a priority basis is further evidence that herbicide operations are considered valuable for protecting American soldiers and contributing to the successful accomplishment of the ground combat mission.

To determine the effectiveness of herbicides in Vietnam a number of additional tests over and above the data previously existing in the United States were conducted. Five years were spent studying the effects of herbicides in areas of Puerto Rico and Texas—by the Department of Agriculture—areas similar to portions of South Vietnam. A year's study was also made on experimental plots in South Vietnam; a botanical survey of South Vietnam was compiled and on several occasions Department of Defense and Department of Agriculture scientists went to Vietnam to search for evidence of adverse ecological change. The Agency for International Development of the Department of State also made such surveys utilizing consultants from universities, the Department of Agriculture and the U.S. Forest Service. Several years have also been spent on studying the effects of herbicides on experimental plots in Thailand. These studies have been published in the open literature. Additionally, the United States reviewed the experience of other nations, since almost all of the developed nations of the world employ herbicides domestically. For example, herbicides have been used extensively in rubber and oil-palm plantations in Malaysia for over 20 years at an application rate 5 to 6 times those used in Vietnam. The herbicide operations in Malaysia were conducted to kill old nonproductive trees and jungle vegetation in preparation for planting new trees. As the program of herbicide usage has continued in Vietnam, nearly continuous review has been made of the resulting effects. All of the information available indicates that it is not concentrated in soil or water, nor concentrated to any appreciable degree in plants.

There have been many claims of possible long-term ecological dangers from the use of chemical defoliants. These include laterization—conversion of certain soil to hardened, infertile form—permanent destruction of mangrove swamp forest and poisoning of aquatic life. The ecological investigation conducted by Dr. Fred H. Tschirley from the Department of Agriculture does not substantiate these claims. He found that laterite soil was not being produced because bare soil does not result from defoliation. Although the trees and brush may be killed, the grassy ground cover survives and grows rapidly when exposed to the sunlight as a result of the defoliation. Tschirley also found that the mangrove forest would not be permanently eliminated. He estimated it would take 20 years for the reestablishment of a mangrove forest. Surveys of defoliated mangrove areas have shown definite regrowth after 6 or 7 years. The increased fish catch in the mangrove areas indicates that the aquatic food chain has not been seriously damaged. In fact, the total fresh water fish catch in Vietnam has increased during the last few years. In addition, all of the mangrove in any particular area has not been destroyed, thereby permitting germination of seed from the established forest.

Recent test reports have indicated that 2,4,5-T caused abnormal fetuses in mice, rats, and chicken embryos. It is recognized that animal data cannot be directly extrapolated to humans. To create a comparable situation wherein a Vietnamese woman could probably have an abnormal child as a result of drinking 2,4,5-T would require that she consume large quantities of contaminated water each day for about 3 months during the middle of her pregnancy period. If one assumes an extensive rain water collection system, the necessary concentration of 2,4,5-T in the water would require that the area be sprayed every few weeks. Since an area is normally sprayed only once during any 6- to 9-month period, this postulated condition would be virtually impossible to attain. No incidents of verified malformed births resulting from herbicide operations are known.

An examination in December 1969, of the hospital records in Mimot, Cambodia, for 1968 and 1969 by Dr. A. Westing of the American Association for the Advancement of Science showed no increase in birth defects as a result of herbicide spraying of rubber plantations that occurred in April 1969.

An examination of hospital records in Vietnam has been initiated, but the results are not yet completely collated. Indications are that the birth defect rate remains essentially unchanged from the predefoliation era.

Although it appears that there are no confirmed public health hazards associated with the use of the 2,4,5-T contained in herbicide orange in Vietnam, the Department of Defense deemed it prudent to suspend all operations using orange until the problem could be resolved. In the meantime, operations continue using defoliants white and blue.

Mr. NELSON. Mr. President, will the Senator yield?

Mr. DOMINICK. I am happy to yield.

Mr. NELSON. Why did the Department of Defense decide to suspend the use of 2,4,5-T in Vietnam? What was their concern?

Mr. DOMINICK. I think the concern originated, as I said earlier in the prepared statement, from the findings that this did create problems with fetuses of mice, rats, and chickens. As a result, since we do not yet know fully what the immediate results will be, they just decided that, since the others would work, they would stop this.

Mr. NELSON. Would not the Senator consider it rather a dramatic situation and would not he consider it a very serious matter that we have been spraying million of pounds of 2,4,5-T, which Dr. Verrett and other scientists have found deforms the fetus of certain creatures? Would not that alarm the Senator, since it has demonstrated its teratogenic capacity? We have been spraying vast amounts of it, and, in fact, 2,4-D has also been shown to be teratogenic and we are continuing to use that.

Mr. DOMINICK. I say to the Senator that if all things were fair in a perfect world, I would wish that we were not using any of these, so far as I personally am concerned. But as long as we are engaged in an effort to try successfully to assist the South Vietnamese against the attacks by both the Vietcong and the North Vietnamese, I think we will have to take such action as is necessary to make that effort successful.

Mr. President, earlier this year there was a great deal of national publicity concerning deformed animals that resulted from the use of herbicides in Globe, Ariz. A lame goat and a deformed duck were shown on television to support the claims of damage caused by the herbicides. When scientists evaluated the claims, it developed that there was no causal relationship between the spray operation and the alleged damage. Nine doctors serving the Globe area stated that there had been no significant increase in human illness related to the spraying. Reports from wildlife specialists indicated no significant effects on birds, deer, and other wildlife. The team of scientists reported:

It is doubtful that the spraying of the herbicides or dioxin caused the affliction in the goat or duck because the goat was born before the treatment and the duck was hatched about four miles away from the treated area.

The amendment proposed by Senator

NELSON and Senator GOODELL would prohibit the U.S. military use of antiplant chemicals. There are over 100 antiplant chemicals available on the commercial market. Many of these chemicals are used by the military to clear rights-of-way, fence lines, and to remove undesired vegetation on posts, camps, and stations both here and abroad. This amendment would prohibit the use of these chemicals for grounds maintenance without affecting the use by other Government agencies. In addition, large quantities of herbicides are furnished the Vietnamese under the AID program in order to improve their agricultural output.

I would ask, as a rhetorical question, why we should prohibit the use of defoliants by the military and preclude any ability to support some of the Vietnamese agricultural output.

Is it the intent of Senator GOODELL and Senator NELSON to prohibit the use of all herbicides by the military and to preclude our supporting the Vietnamese agriculture?

On July 16, the Senator from Wisconsin introduced into the RECORD an article by Drs. Pfeiffer and Orians. This article was based on a visit to Vietnam by these two gentlemen and questioned the value of the defoliation program in light of the ecological consequences. It should be noted that in a press interview in New York upon his return, Professor Pfeiffer expanded somewhat on his report. I do not believe this was in the message the Senator from Wisconsin put in. He observed that it was "completely unrealistic" to expect military commanders to abstain from defoliation actions. He said:

> There is no question about it, they save American lives. On a sixty-five mile journey by armed boat from Saigon to the sea, we scarcely saw a living plant.

However, he added that had the vegetation not been destroyed, he and his companion would probably not have returned alive.

I would add, as a matter of fact, they would not even have been allowed to go down there. So that is some indication of the value of defoliants from the point of view of the preservation of American lives.

In the Republic of Vietnam, we have treated approximately 5.5 million acres since 1962. Of this total, a few areas such as war zones C and D have been resprayed, thus the actual area sprayed is closer to 4.5 million acres—in other words, we have resprayed two war zones, therefore the total acreage is only 4½ million. This represents approximately 11 percent of the land area of Vietnam. The defoliants used in Vietnam are not sprayed at random but are used only on important targets.

Under policy guidance provided by State and Defense Departments, the U.S. Ambassador in Saigon and COMUSMACV are empowered jointly to authorize U.S. support of GVN requests for herbicide operations. All requests for defoliation and crop destruction must originate with the province chief at the province level.

I repeat that, Mr. President: All requests for defoliation and crop destruction must originate with the province chief at the province level. These are the South Vietnamese province chiefs.

Requests must contain a detailed justification for the operation and include a civil affairs annex to insure that any impact on the civilian population has been considered. Authority to approve small-scale defoliation projects has been delegated to the ARVN Corps commander and the U.S. Corps senior adviser.

All requests for large-scale defoliation by fixed-wing aircraft and all crop destruction missions must be approved by the Chief of the Vietnamese Joint General Staff. When the Vietnamese request for support is received at Headquarters MACV it is staffed along with a parallel request submitted through U.S. advisory channels to MACV. During staffing, the project is reviewed by Civil Operations and Revolutionary Development Support—CORDS—that is an American agency, U.S. Agency for International Development—USAID—Joint U.S. Public Affairs Office, American Embassy, and MACV.

A final opportunity is given the province chief to approve or reject each spray mission 2 4to 48 hours before the scheduled time of execution. All planes using defoliants are provided with a navigator, so that they know for sure where they are going. I think this is a good reply to the concept that some believe, that Americans have been kind of broadcasting these defoliants around on their own, indiscriminately, around the country. They have not done so. It must originate with the province chief in that area.

Some specific uses of defoliants are:

Perimeter defoliation: Herbicides are used to restrict growth of high jungle grass, bushes, and weeds around base camps and fire bases. This provides fields of fire and affords observation to prevent surprise attack.

Mr. President, I was in Vietnam twice, and I have been to the fire bases and have seen the areas, and I can assure Senators that if we did not have some method to clear this out to see what we are doing, surprise attacks around that area would be very heavy now.

The PRESIDING OFFICER (Mr. HOLLINGS). The time of the Senator has expired.

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from Mississippi, I yield 5 additional minutes to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 5 additional minutes.

Mr. DOMINICK. Mr. President, on defoliation of lines of communication, defoliation along roads and canals has been successfully used to permit aerial observation and minimize concealment which could be used by the enemy for ambushes.

Defoliation of infiltration routes: Areas used by the enemy for routes of approach, resupply or movement are important targets for herbicide spray. Defoliation of these routes permits aerial observation and allows better detection of enemy units and their resupply activities.

Defoliation of enemy base camps: Spraying of enemy base camps is used to expose them to aerial observation. Even if he does move out before the defoliation is complete his bunkers, living quarters, and other facilities can be destroyed.

The effectiveness of defoliation has been questioned on the grounds that it produces no military contact. However, this in itself can be a measure of its effectiveness. For example, in Sa Dec Province a major VC base was defoliated in August 1968. After defoliation, an ARVN battalion was able to remain overnight in the area for the first time in 5 years. Many enemy bunkers were opened to observation and destruction. Since the defoliation, the VC presence has decreased to the point that only regional and popular forces are now necessary for local security.

The American Embassy in Saigon sponsored a detailed review of the herbicide program in 1968, with particular emphasis on economic and sociopolitical aspects. To assist in the review, Dr. Fred Tschirley of the U.S. Department of Agriculture visited Vietnam to assess the ecological consequences of the defoliation program. The Embassy report indicated that the defoliation program was worthwhile and that the military value far outweighed any adverse economic effects. However, as a result of the study, improved controls were instituted to minimize the probability of inadvertent spraying of rubber trees and other crops.

The improved controls reduced South Vietnamese civilian complaints of damage to friendly crops from some 30 a month to three a month by early 1969. For comparison, it is interesting to note that in 1965 there were 259 cases of herbicide drift damage to crops in North Carolina. There was less damage in South Vietnam in terms of complaints than there were there.

The use of defoliants has created some problems but detailed reviews have shown that benefits outweigh adverse effects. Not only have herbicides assisted the military effort but they have also had a beneficial impact on the local economy in many areas by permitting the opening of roads and canals which had been under enemy control. The farmer is now able to take his produce to market without paying a tax to the VC or worrying about ambushes. In many sections, the defoliated area along roads has been cleared and is now used for farming. Rather than hindering the small farmer in his attempts to improve his lot, defoliation in conjunction with road clearing and road building operations has opened up new markets and new opportunities for him. In the light of all these factors, I urge that the pending amendments be rejected.

I ask unanimous consent at this point to have printed in the RECORD as part of my remarks a brief statement which I have made in connection with the President's actions in limiting the use of chemical warfare agents and in cutting out totally biological warfare. This is the first time, I point out, that this has been done. I think it shows the understanding the President had on the economic, emotional, and biological problems that these particular agents create.

There being no objection, the statement of Senator DOMINICK was ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATOR DOMINICK

Mr. DOMINICK. Mr. President. In the current controversy over the Army's disposal of nerve gas, I think we are forgetting the fact that President Nixon has long since taken the lead in renouncing the use of chemical and biological weapons.

On November 25, 1969, President Nixon announced that, as the result of an exhaustive review led by the National Security Council, the U.S. reaffirmed that this country would never be the first to use lethal chemical weapons and that he would extend that renunciation to include the use of chemical weapons that incapacitate.

At that time, the President also announced that in regard to biological weapons the United States would renounce the use of lethal biological agents and weapons, and all other methods of biological warfare; that the United States would confine its biological research to defensive measures such as immunization and safety; and that he had asked the Department of Defense to make recommendations as to the disposal of existing stocks of bacteriological weapons.

In his November statement the President also promised that he would submit to the Senate, for its advice and consent to ratification, the Geneva Protocol of 1925 which prohibits the first use in war of "asphyxiating, poisonous or other Gases and of Bacteriological Weapons of Warfare". That promise has been kept. On August 19th, the President formally asked the Senate to approve the 1925 Geneva agreement.

I would submit that the record of the Nixon Administration in regard to chemical and biological warfare is both commendable and unassailable. The President has clearly taken the lead in the renunciations of these terrifying weapons. I would particularly commend the President's action on the Geneva Protocol, which was never approved by the Senate although it was the United States in 1925 which sought this ban on chemical and biological weapons. In 1947 this Protocol was returned to the White House and still there was no action by the Executive Branch or the Senate.

It remained for this President to finally—after 46 years—take the humane action which I hope will result in approval of the Geneva Protocol by the Senate.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. STENNIS. Mr. President, I yield 3 minutes to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 3 minutes.

Mr. NELSON. Mr. President, would the Senator give me his view about the implications of the use of herbicides for food denial? We say that we use it for the purpose of denying the enemy food raised by the Vietcong themselves or food that might be raised by someone else for the Vietcong. If we validate the theory that it is acceptable military practice to deny food to the enemy, how about conditions in the future when another country can say, "We are spraying all crops in country 'X' because we are at war with that country and the dictatorship in that country will take whatever food there is and give it to the military. Since we have to deny food to the military, we have to spray it all because the dictatorship controls all crops."

Is that not what is likely to happen and are we not really then endorsing the use of an instrument of warfare which is applied with very little sophistication but which will proliferate in the hands of the enemy and would put us in the position of endorsing starvation warfare?

Mr. DOMINICK. Mr. President, let me say to the Senator that he is building one of his great parades of horrors—and I have seen him do it before and I admire him—on hypotheses that have not happened.

I would say that in any war that I can remember, since Atilla the Hun, the scorched earth policy has been followed. Countries have used it. We are not doing this. We are being very careful to do this only in areas which will give us the ability to protect ourselves from ambushes and to deny the use of crops to the enemy in areas we know are controlled by the Vietcong or are used by them for their crops. It is a very limited use.

As an example of what we have been trying to do, we have introduced the new wheat and the new rice grains in there and have increased the production throughout Vietnam as a result in areas that we can control.

Mr. NELSON. Mr. President, is the Senator aware of the fact that we have sprayed 500,000 acres of crops and are procuring enough Agent Blue—which includes 54-percent arsenic—this year that could be used to spray an additional 200,000 acres of crops? Some of the statistics are classified on the question of how careful we are. The Senator knows that I cannot use them. But the Senator will concede that the vast majority of croplands sprayed up until 1967 were for crops raised by civilians for use by civilians.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

Mr. NELSON. Mr. President, I yield the Senator 3 minutes in which to answer the question.

The PRESIDING OFFICER. The Senator from Colorado is recognized for an additional 3 minutes.

Mr. DOMINICK. Mr. President, I will concede that we have used herbicides to destroy crops that would be used by the enemy who attack the South Vietnamese in the villages and cities and the American soldiers as well.

It seems to me that if we are fighting a war, we have to do that.

The position of the Senator is that he does not want to fight a war. I do not blame him for taking that position. I do not want to fight it either. However, if we are fighting a war, let us do something about protecting our boys.

Mr. NELSON. I think the Senator has changed the question a little bit. I would be willing to debate that matter later. However, are we not putting ourselves in the position of being the only nation in the world—except Australia and Portugal—that says that herbicidal warfare ought to be used? Eighty nations have voted that they are against it. Italy abstained on the grounds that it is against it but it did not think that the General Assembly had the authority to make legal interpretations of treaty policies.

Mr. DOMINICK. Mr. President, I assume the Senator is talking about the U.N. debate on the use of chemical warfare.

Mr. NELSON. Where does this leave us vis-a-vis all of the rest of humanity?

Mr. DOMINICK. Where does it leave us?

Mr. NELSON. That is correct.

Mr. DOMINICK. It leaves us in the position of saying that if we are going to be engaged in an area with our troops we are going to defend our troops. Unless we do that, there is no point in being there. I am not going to send my boy over to Vietnam and say, we are not going to use herbicides because they will kill trees," knowing that the enemy can get behind those trees and kill my boy. I am not going to do that and neither is the Senator from Wisconsin.

Mr. NELSON. If the justification is that it is effective, why do we not drop a nuclear bomb?

Mr. DOMINICK. There the Senator goes with his parade of horrors. I have great admiration for the Senator, but his statement does not convince me.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. NELSON. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized for 3 minutes.

Mr. NELSON. Mr. President, every time the Senator is asked a question that the Senator cannot answer, he says that the Senator is blowing up the matter and creating a parade of horrors.

I think the Senator does not see the ecological implications of the use of these materials.

No one can tell, in our country or in any other country, the consequences of the use of this 100,000,000 pounds of herbicides in Vietnam. The only answer one can give is that he does not know.

That is the answer we got from DDT for 30 years in this country, even though the scientists were predicting that DDT was a persistent, long-lasting chemical compound that would have disastrous effects worldwide.

In 1962, the biologists and botanists and others who did not agree with Rachel Carson made the same criticism of her that the Senator just made of me, that she was parading the horrors. They said that she was not qualified to make these judgments. However, she was absolutely right. Everyone knows it now.

The Senator knows that we are proceeding again with the continued introduction of pidoram into the atmosphere, the soil, the water, and the air all over the world, which is a very slow degrading herbicide.

Because we do not know what it will do we deny there is any danger to it, despite the fact we now do know of the effects it has.

Mr. DOMINICK. Mr. President, will the Senator yield for a question?

Mr. NELSON. I would like to finish my thought first. The situation is alarming. We know that picloram in tests in some

soils only 3.5 percent disappears in over a year. That is very slow degrading. We do not know what happens to the absorption of these herbicides by plankton in the water or by other marine life. Certainly, the study by Dr. Tschirley, as fine a man as he is, does not answer even one-millionth of the consequences. The evidence with respect to massive usage of slow degrading pesticides is correct, horror stories. How can we proceed with this program when no other nation in the world agrees to it, except Australia and Portugal—who do not defend their position. Yet, we are willing to risk the environment of Vietnam.

The PRESIDING OFFICER. The time of the Senator is expired.

Mr. NELSON. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. I yield 7 minutes to the Senator from Virginia.

Mr. BYRD of Virginia. Mr. President, the purpose of the pending amendment is to end the use of herbicides as defoliants of the jungles of South Vietnam. Defoliation is the result of the elimination of plant chemistry and plant growth.

Defoliation has been adopted by the Department of Defense as a tactic of war to deny the enemy food and concealment. The American forces in Vietnam have been using herbicides for this purpose for 7 years.

I would like to see the use of herbicides ended; I would like to see the bombing ended; I would like to see the shelling ended; I would like to see the killing ended; I would like to see the war ended.

But the war has not been ended; and we still have many Americans fighting every day in Vietnam.

From the beginning I have taken a consistent view in regard to Vietnam.

From the begining I have stated on the floor of the Senate and throughout Virginia that it was a grave error of judgment to become involved in a ground war in Asia.

But I submit that so long as we continue to send Americans to Vietnam and so long as we continue to have Americans fighting in Vietnam we must give our men every protection possible.

We have tied the hands of the military commanders to an unreasonable extent ever since this war has been in progress. This measure would further tie the hands of those who are trying to protect American troops in Vietnam.

It seems to me that 7 years after the use of herbicides began for the purpose of trying to protect our troops, it is not very logical to pass an amendment at this stage ending the use of herbicides.

As I mentioned earlier, the purpose is to defoliate the jungles in order to protect our men. We send B–52's loaded with bombs over these jungles to clear away the triple canopy, so that our military men, our personnel, our troops can have better vision and view of the enemy and protect themselves. So if we are going to send these B–52's loaded with bombs to defoliate the jungle, why should the Senate outlaw the use of herbicides to accomplish that purpose?

It has been stated that the use of heribicides is immoral. I think war itself is immoral. General Sherman said "war is hell," and so it is.

I would like to see this war ended, but the war is not over. American men are still fighting there.

They are still being killed there very day and they are still being wounded there every day.

I do not like to see this war "run out" of the city of Washington. That is why we still have the war in progress now—because a former President of the United States and a former Secretary of Defense, were determined to run the war from Washington and prevent the military leaders from taking responsible steps to bring the war to an end.

I am convinced the war could have been ended several years ago.

I think it is a mistake to agree to this amendment.

I think the foremost consideration should be the protection and welfare of American troops in Vietnam. This amendment, in my judgment, could only be harmful to our troops. I shall vote against it.

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. Mr. President, I yield 5 minutes to the Senator from South Carolina. I regret I do not have more time available.

Mr. THURMOND. Mr. President, I rise in opposition to the pending amendment to H.R. 17123 which would prohibit the use of antiplant chemicals or herbicides by military forces in Vietnam.

My opposition to this amendment rests on two points.

First. There is absolutely no question that the use of defoliation type chemicals in Vietnam has saved the lives of many United States, South Vietnamese, and allied fighting men in South Vietnam. More important, its use will save lives in the future.

Second. Investigations by the Defense Department, State Department, and the Agriculture Department at various times in the past few years have revealed no serious ecological disturbances resulting from the use of antiplant chemicals.

Mr. President, I now wish to discuss in somewhat more detail the two points I have mentioned as a basis for my opposition to the pending amendment.

Point 1 related to the fact that many lives have been saved in Vietnam because of the use of antiplant chemicals. It does not take a military man to recognize this fact. In many tactical situations outposts, small villages, communications units, or base camps are effectively protected by defoliating the vegetation several hundred yards out from these installations. Thus the movement of enemy forces, infiltrators, and others may easily be detected due to the increased visibility resulting from this defoliation. Around some of our fire support bases in Vietnam adequate defense would be difficult if not impossible without the use of antiplant chemicals.

Further, movement of enemy forces and supplies along infiltration routes may now be detected and dealt with due to effective use of antiplant chemicals. Enemy prisoners have attested to the effectiveness of this technique and further evidence has been obtained from direct observation.

On point 2, the Defense Department has conducted repeated investigations in South Vietnam as to the aftereffects of the use of antiplant chemicals. These investigations have revealed that no serious ecological disturbances have taken place. Despite the claims by supporters of this amendment, these investigations have been unable to reveal any evidence of an increase in stillborn births among South Vietnamese women or of widespread nutritional deficiencies among the people there.

Mr. BYRD of West Virginia. Mr. President, may we have order? I ask that Senators' aides take their seats in the rear of the Chamber.

The PRESIDING OFFICER. That order will be followed.

The Senator from South Carolina.

Mr. THURMOND. Mr. President, the most comprehensive study regarding the effects of antiplant chemicals was performed by Dr. Fred H. Tschirley in 1968. Dr. Tschirley is an official of the U.S. Department of Agriculture. He made the study at the invitation of the Departments of Defense and State. Certain recommendations on defoliation procedures made by Dr. Tschirley are being followed.

Mr. President, there is no doubt that the use of antiplant chemicals does have some effect on our environment, but the point is that competent investigative forces have found these effects generally harmless over a period of time. It is true that an antiplant chemical known as "Orange," which contains a chemical identified as 2,4,5-T, was discontinued from use in this country and South Vietnam. This resulted from findings by the Department of Health, Education, and Welfare that it caused malformed births in certain strains of rats and mice. The main benefit of the "Orange" chemical that it was fast acting in accomplishing the defoliation mission. "Orange" was was being used in this country for range and brush control prior to its discontinuance.

The Defense Department has advised all of the antiplant chemicals now being used in Vietnam are being used in this country and in other agricultural countries of the world for the control of weeds and unwanted vegetation. These chemicals are used by homeowners and farmers with little or no technical expertise, yet they can be used safely and without any incidents of harmful effects to humans.

The principal chemicals being used for weed and plant control include 2,4-D, which all of us use each summer to kill dandelions on our lawns. Other chemicals receiving wide use for control of weeds and unwanted vegetation include Tordon, manufactured by Dow Chemical, and cacodylic acid, a product of Ansul Chemical Corp.

Mr. President, it is ironic that the questions now being raised about the use of antiplant chemicals come at a time when their deployment has greatly declined. The fact is that usage of these chemicals had rapidly dropped because of the change in the nature of the conflict

in South Vietnam. In the past, they were widely disseminated over huge areas of land because early in the war allied forces were conducting large search-and-destroy missions. Pacification is the big thing in Vietnam now and there has been a sharp reduction in large scale search-and-destroy missions. It should also be noted that the chemicals being used in South Vietnam can be bought in this country in carload lots by any citizen. Further, they are widely used by our agricultural community. In other words, the antiplant chemicals we are talking about are not some secret mixture which the military scientists have concocted in some hideaway laboratory. There is no Dr. Jekyll or Mr. Hyde in the military.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. THURMOND. Mr. President, will the Senator yield me 1 minute?

Mr. STENNIS. I am glad to yield the Senator 1 minute.

Mr. THURMOND. Mr. President, another effective use of antiplant chemicals by the military involves carefully evaluated and precisely controlled attacks on Vietcong and North Vietnam Army food crops with antiplant chemicals. This technique has caused significant increases in defection rates and caused the enemy to divert a large fraction of his forces to food supply. Many crop fields in Vietnam are being used entirely by the enemy. Other fields are more or less under the control of the enemy although cultivated by civilians. Despite this fine line of distinction, the Defense Department estimates that only about 1 percent of the food supply of South Vietnam has been adversely affected by our defoliation campaign.

Finally, Mr. President, it seems to me this amendment is much like some other amendments we have debated in the Senate during recent days. It is similar in that it would in effect tell our field commanders in Vietnam how they should conduct the war. In other words, you would be telling some colonel who has the responsibility of defending a combat outpost that he cannot effectively clear vegetation around his outpost so that fields of fire may be established to protect the men under his command.

We would be taking away from our fighting men in Vietnam a useful tool in the conduct of the war, a tool which is not harmful to our allies and in fact a tool which the South Vietnamese value very high.

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. Mr. President, I understand the Senator from Wisconsin is ready to yield some time now.

The PRESIDING OFFICER. Who yields time?

Mr. NELSON. Mr. President——

The PRESIDING OFFICER. How much time does the Senator yield himself?

Mr. NELSON. Mr. President, how much time does the Senator from Wisconsin have left?

The PRESIDING OFFICER. Fifteen minutes.

Mr. NELSON. I yield myself 15 minutes.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. NELSON. Mr. President, the justification for the use of herbicides is a military justification which says that it is so important to us militarily that we find it necessary to spray herbicides for perimeter defense, herbicides to clear the supply and infiltration routes, herbicides to defoliate forests, and herbicides to spray the food that we think may get into the hands of the enemy.

Of course, a military justification can be made for almost any conceivable weapon if it does some damage or is of some inconvenience to the enemy. The reason why we do not drop the nuclear bomb among others, I guess, is that the devastation caused by it is immediately and shockingly apparent, and everybody shys away from the horror of the utilization of nuclear weapons.

We do not use poison gases because, out of the First World War, people became terribly disturbed about the effects of mustard gas on soldiers. So we do not use that, and all nations have declared that they would not use poison gases.

However, I think because we are ignorant—just plain ignorant—about the environmental implications and the disaster that could occur from introduction into the environment of a wave of herbicides that affect the flora and the fauna—and all creatures live in the soil and in water one way or another. We do not know what the result will be, and cannot know for a long time, and still we do not shy away from their use.

Yes, it is true that it takes 2 or 3 or 4 weeks for the leaves to fall off, and by the time they fall the base camp is gone, but we have made the guerrilla move. We can spray the trail so they cannot use it in the daytime or have to abandon it. We spray food crops under the ridiculous assumption that the Vietcong are going to be denied food.

They have been supplied all through this war with whatever supplies they needed, at times when our military said it could not be done.

I sat arguing in 1965 with one of our most distinguished generals in Senator MUSKIE'S office. He argued that we needed a ratio of at least 5 to 1 in warfare like this.

I said:

The infiltration is 1,500 a month from the North, according to our intelligence; that means we will need 7,500 troops.

He said:

Your mathematics is good, but if I were the adviser of the North Vietnamese, I would advise them to withdraw some of their troops, because logistically they cannot support them.

That general was one of the best logisticians in our Military Establishment. Six months later, 7,500 men a month were infiltrating. What about the argument that we are preventing the Vietcong from raising their food? The Vietcong will simply take food from the civilians when they need it. So it is the noncombatant civilians that are the losers.

I believe this argument raises a very grave military and moral question. The military admits that most of the food that we sprayed up to 1967—and I cannot state the amount, the figures are classified—was food raised by civilians.

Even if we could do what we say we intend to do—just spray food that is to go to the Vietcong—that spray, incidentally, is 54 percent arsenic—what really is the implication? If we validate that kind of warfare, contrary to the viewpoint of all the rest of the nations of the world save three—ourselves, Australia, and Portugal—then, under that theory, what is to stop any country from saying, "We are at war with country X; we know that food raised in that country is going to go to the military first, therefore, we are going to spray all the crops in that country?"

Do not think that will not happen, especially with some of the underdeveloped countries of the world. Anticrop chemicals are a cheap weapon. Underdeveloped countries are monocultures in the main, or at least cultures with a very limited variety of foods that are easy to destroy, and thus it is easy to bring them to their knees.

We are endorsing the concept that you can spray all the food in a country. That is the effect of what we are doing.

Mr. DOMINICK. Mr. President, will the Senator yield?

Mr. NELSON. I yield.

Mr. DOMINICK. Is it not a fact that we are now producing more rice and more agricultural products in Vietnam, through new hybrid strains we have introduced, than they had before?

Mr. NELSON. Yes, I believe we are. Is it not also a fact that the Senator's question has nothing to do with what I am talking about?

Mr. DOMINICK. I do not think so.

Mr. NELSON. I am talking about the question of the policy of endorsing the concept of using herbicides against food crops, in a food denial program. I am simply saying that if we can do it, any country in the world can do it. We are the only country now which says it wants to do it. We are the most peace-loving country in the world. We stand for peace. We do not stand for using horrible weapons and, yet, we are the only one engaging in anticrop warfare.

We have the chance, right here and now, at 12 o'clock today, to vote to endorse the position of almost all of the rest of the countries of the world. Why should we not do so?

Is it because it is a convenient, handy weapon? Surely it is; so are all kinds of things.

Or is it that, as soon as we get out of Vietnam, we will join the others in condemning it? Is that our answer? Or are we going to use it any time we find it convenient, thus setting a dangerous precedent for every other country in the world to follow?

I say we have sprayed 500,000 acres of crops in 8 years.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. NELSON. I yield myself another 5 minutes.

We are now authorizing procurement of enough agent blue to spray another 200,000 acres for this year.

I think this raises a question that no one here has answered yet—none of the opponents of the amendment. That is the question: Do we intend to be the only country in the world that defends the use of these herbicides as valid military

weapons? Are we going to be the only country in the world that does that? By our continued use of them, are we saying to the rest of the world that we put our stamp of legality on chemical warfare which involves risks of disruptions of the environment and life systems that no one in the world can predict? No one. Yet, every thoughtful scientist who looks at the matter is concerned, if not alarmed. Are we going to be the country that validates it?

Suppose that in World War II we had had these chemicals, which we did not. Let us assume that every other country in World War II had taken the position we take now, and had decided to spray the same amount we have sprayed in Vietnam, 6 pounds per capita. In that war about 700 million people were involved. At 6 pounds, the amount used would have been 4,200,000,000 pounds of herbicides, if everyone had taken the position we now take.

Is this what we endorse and validate as a peace-loving nation?

Mr. President, I think it is time for Congress to make a declaration that we join all the rest of the nations in the world in proscribing chemical herbicides as a valid instrument of war. If we do not do that, I think our standing as a country that has been arguing against the proliferation of nuclear weapons is suspect, from the standpoint of sincerity, when we are willing to use and see the proliferation of these weapons.

The Senator from Colorado referred to the horror stories that the Senator from Wisconsin builds up. Well, I ask any advocate of the use of these chemicals: Is the environmental deterioration around the world a horror story, or is it not? If it is not a horror story, I do not know what is. And this is just an additional facet of man's irrational introduction into the environment of chemicals that are having environmental eruptions and consequences in deteriorating the quality and the livability of the environment and affecting the life systems all over this planet.

This is just one more aspect of it. The answer always is, well, this little bit does not do too much damage, except when you add it all together. When you add it all together, we know what we are looking at environmentally. We know we are looking at a planet in which the whole envelope of air around it is becoming disastrously polluted. We know the oceans are going to lose all their productivity, if we continue what we are doing, in another 50 years.

That is the largest single asset on the globe. We know that we will wipe out most of the living species in the next 50 to 75 years, if we continue what we are doing.

I say that, not only as a matter of principle but also as a matter of practicality, we ought to tackle the question of the broadspread usage all over the world of the herbicides and pesticides in our country and in all other countries, too; and we ought to start in Vietnam, since we have almost all the other countries of the world agreeing with that position now. So we ought to start there and move to try to bring under control the indiscriminate use of all these herbicides and pesticides which are intruding upon and upsetting the plans of nature and having disastrous effects on the environment, which we can see now, and with further effects to come which nobody can predict.

Mr. STENNIS. How much time do I have remaining?

The PRESIDING OFFICER. Twelve minutes.

Mr. STENNIS. I do not intend to use more than half that time, and then I will ask the chairman of the subcommittee, the Senator from New Hampshire, to use the remainder.

Mr. President, I appreciate very much, and I am sure that the Senate as a whole does, the splendid work of the Senator from Wisconsin and the Senator from New York. I am frank to say that they have made a very impressive argument. There is one flaw in it, however.

I am ready to start anywhere with the Senator from Wisconsin except the very vital part we are talking about here, with respect to our boys who are being sent to Vietnam. Some of them are losing their lives. I am satisfied that the herbicides we are using now, which amount to approximately 25 percent of what we had been using, are saving the lives of some of them. I am satisfied, to, that the use of the herbicides is making the enemy's problems much more difficult and is making it more difficult for the enemy to accomplish results.

Major defoliation has been accomplished in war zone C. Prior to defoliation, seven brigades were necessary to maintain the superiority of the U.S. military forces and those of South Vietnam. During 1967, after defoliation, only three brigades were required.

The Commander of Naval Forces in Vietnam, in a report to General Abrams, stated:

As you know, a major concern is the vegetation along the main shipping channel. Your continuing efforts under difficult and hazardous flying conditions; in keeping this area and the adjacent inland areas devoid of vegetation have contributed considerably in denying the protective cover from which to ambush the slow-moving merchant ships and US Navy craft.

That is another classical illustration of its valued use in our shipping and keeping down the ambushing of men in those ships.

This amendment goes all the way; there is no middle ground to it. It provides:

No part of any amount authorized or appropriated pursuant to this act or any other law—

That is the appropriation bill that will be coming—

shall be expended for the purpose of—

(1) Engaging directly in the military application of antiplant chemicals.

It says all or nothing. This is the end, if this amendment is agreed to.

This is a matter of utmost attention and deepest concern on the part of our committee. Extensive and valuable hearings have been held by Senator McINTYRE and his valued committee, which includes Senators YOUNG, BYRD of Virginia, MURPHY, and BROOKE. They have come forth with certain facts and certain protective devices that we know will continue to be helpful. But this amendment now, going all out as it does, is premature and, if adopted, could and would seriously handicap our troops in the field.

The issue is very simple. Shall we take away one way of saving the lives of our men in Vietnam? There can be only one answer to this question—a categorical "no." So long as there is any possibility that the lives of American boys, as well as those of our allies, can be saved by using herbicides, there can be no justification for arbitrarily depriving our military commanders of the option for selective application of this material.

Reports from our field commanders, in case after case, dramatically illustrate how effective herbicides have been in depriving the enemy of protective cover. Defoliation permits enemy bases, equipment and supplies to be spotted and destroyed. Restricting the growth of vegetation around our bases prevents surprise attacks from these areas of concealment and permits our troops to fire more effectively. Defoliation along roads and waterways dramatically reduces ambushes. Defoliation of infiltration routes permits aerial observation of enemy movement and attacks by our forces on troops, trucks, weapons and supplies which traverse these trails. Herbicides also have been effective in destroying enemy food crops and inhibiting his combat capability.

Let me recite just a few examples of the advantages we have gained by using herbicides, as reported by our troops in Vietnam.

USE FOR DEFOLIATION

The banks along two rivers in An Xuyen Province were defoliated in February 1964. In the year prior to the spraying there had been five attacks of boats but none in the year following. Overall, Vietcong actions showed a change from attacks of boats, military and civilian facilities to harassment, accompanied by a decrease in the intensity of the actions.

Along a major highway in Kien Hoa Province, an area 14 kilometers long and 3 kilometers wide was defoliated in October to December 1965. In the year prior to defoliation there had been 145 Vietcong initiated actions. In the 12 months following defoliation there were only 46, a decrease of 68 percent in the number of incidents. After defoliation there was an abrupt shift in Vietcong targeting toward military facilities and away from civilian objectives.

Defoliation aids visual reconnaissance. Air Force forward air controllers and Army aerial observers have discovered Vietcong base camps and major supply routes in defoliated areas that had previously been undetected. A significant helicopter defoliation mission was conducted in the vicinity of Sa Dec in August 1968. The target area consisted of three main canals which converged and formed a strong Vietcong base. The dense vegetation permitted visibility of only 10 to 15 meters horizontally and none vertically. The area was sprayed with approximately 735 gallons of herbicide white and over 90 percent of the area

was defoliated. As the result of the defoliation, a South Vietnamese battalion was able to remain overnight in the area for the first time in 5 years. Many enemy bunkers were open to observation. Since the defoliation, the Vietcong presence has decreased to the point that only regional and popular forces are now necessary for local security.

Foliage was removed within 300 meters on both sides of a road between two major fire-support bases of the 101st Airborne Division. This road was bounded by vegetation consisting of small trees and thick undergrowth aproximately 6 feet tall. Prior to defoliation, troops were frequently subjected to enemy ambush. After defoliation, even though there had been indications of enemy activity in the surrounding areas, no major difficulty was encountered in keeping the road open to traffic.

The removal of double and triple jungle canopy in the Ashau Valley area has significantly contributed to the gathering of intelligence. This removal of foliage has exposed and permitted the destruction of base areas and storage sites, and has impeded enemy infiltration into areas adjacent to friendly populations.

Defoliation operations have strengthened the defensive posture of most of the fire-support bases in Vietnam by removing available concealment for sappers—troops carrying demolition charges.

During the period November 1969 to March 1970, large area defoliation operations along major infiltration routes in western Kontum Province have significantly improved visual reconnaissance and target acquisition, aerial photography and artillery fire adjustment effectiveness. This has considerably enhanced the security posture within the 24th special tactical zone.

USE FOR CROP DESTRUCTION

Crop destruction is a small but important element of the herbicide program. Crops in areas remote from population centers, under control of the Vietcong and North Vietnamese, which cannot be captured by ground operations are considered for spraying. Crop destruction targets are carefully selected in food-scarce areas so as to attack only those crops known to be grown by or for the Vietcong or North Vietnamese.

Captured enemy documents have revealed that some Vietcong and North Vietnamese units have been put on reduced rations and forced to divert tactical units from combat missions to food-growing and food-transportation operations, attesting to the effectiveness of the crop destruction program. In areas where extensive crop destruction missions have been conducted, increased Vietcong and North Vietnamese defections to South Vietnam have been attributed to the low morale resulting from food shortages. Here are several examples of reports from Vietnam involving the effectiveness of crop destruction:

The 120th Farm Production Company, 20th Montagnard Communist Battalion, was deployed to central Quang Ngai Province in December 1969 to set up operations in a 36,000 square meter rice field. After the farm was heavily damaged by herbicides, the unit only produced enough food for its own personnel. The unit has since relocated.

In four of the five provinces in I Corps tactical zone, helicopter crop destruction operations have been effectively employed to destroy small garden plots and rice plots in areas solidly controlled by the Vietcong or North Vietnamese. During a recent 3-month period in one province, 237 garden plots were located. These are being destroyed as assets become available. Hoi Chanhs—defectors—have rallied from these areas because of food shortages. The Hoi Chanhs also report on low morale in their units because of food shortages.

COMMENTS ON THE USE OF HERBICIDES

Mr. President, I am very mindful and fully aware of the issue involving the possible ecological and physiological effects of the use of herbicides in Vietnam.

The amendment No. 784, cosponsored by the Senator from Wisconsin (Mr. NELSON) and the Senator from New York (Mr. GOODELL) provides that no funds authorized under this bill will be used to procure, maintain, or use herbicides, including delivery or dissemination equipment.

In my view this proposed amendment is premature and could, if adopted, seriously handicap our troops in the field. It would remove the option of employment of materials which are widely used by all agricultural nations for control of weeds and unwanted vegetation. More importantly, such denial could increase manpower requirements, encourage increased enemy activity, and result in large numbers of casualties among our military and civilian population in Vietnam. Those are carefully used words, Mr. President, based upon the facts of life. I, for one, would not wish to share the responsibility for these consequences.

PROPOSED LANGUAGE CALLS FOR STUDY BY NATIONAL ACADEMY OF SCIENCES

The committee has proposed language in the bill, section 506(c), which fully recognizes the problem of the use of herbicides. It calls for a study by the National Academy of Sciences into the ecological and physiological consequences inherent in the use of herbicides, to be financed from the fiscal year 1971 chemical and biological warfare program. The results of this study are required to be submitted by the Secretary of Defense with appropriate comments and recommendations by March 1, 1972. This committee will give due consideration to the report and recommendations, and will report its findings and any necessary recommendations to the Senate.

The committee believes that such a study is essential, and commends the recent decision of the Defense Department to suspend further use in Southeast Asia of herbicides containing 2,4,5-T.

The evidence which has been presented to date by our scientists does not prove conclusively that the effects of the use of herbicides are such as to preclude their use by military forces in Vietnam in certain situations. While there may be some risk even in the selective use of herbicides, the risks of our fighting men are even greater in their life and death struggle. I would not wish to increase those risks.

AUTHORIZATION FOR USE OF HERBICIDES

Let me explain the very clear lines of responsibility and the procedures which have been established for the use of herbicides to insure that their use is controlled.

Under policy guidance provided by State and Defense Departments, the U.S. Ambassador in Saigon and the commander of the Military Assistance Command in Vietnam, are empowered jointly to authorize U.S. support of South Vietnamese Government requests for herbicide operations. All requests for defoliation and crop destruction must originate with the province chief at the province level. These requests must contain a detailed justification for the operation and include a civil affairs annex to insure that any impact on the civilian population has been considered. So there is no reckless calculation in haste that possibly could creep in. Authority to approve small scale defoliation such as helicopter spray projects has been delegated to the South Vietnamese corps commander and the U.S. corps senior adviser.

All requests for large scale defoliation by fixed wing aircraft and all crop destruction missions must be approved by the Chief of the Vietnamese Joint General Staff. When the Vietnamese request for support is received at MACV—Military Assistance Command, Vietnam—it is staffed, along with a parallel request submitted through U.S. advisory channels, to MACV. During staffing at the Saigon level, the project also is reviewed by the U.S. Agency for International Development, Joint U.S. Public Affairs Office, American Embassy, and MACV. A final opportunity is given the province chief to approve or reject each spray mission 24 to 48 hours before the scheduled time of execution.

ALLEGATIONS OF HARMFUL EFFECTS OF CERTAIN HERBICIDES

The American Embassy in Saigon sponsored a detailed review of the herbicide program in 1968, with particular emphasis on economic and socio-political aspects. To assist in the review, Dr. Fred Tschirley of the U.S. Department of Agriculture visited Vietnam to assess the ecological consequences of the defoliation program. The Embassy report indicated that the defoliation program was worthwhile and that the military value far outweighed any adverse economic effects. However, as a result of the study, improved controls were instituted to minimize the probability of inadvertent spraying of rubber trees and other friendly crops. These controls preclude destruction of any crops in populated areas or which might be grown for civilian use.

Recent test reports have indicated that 2,4,5-T caused abnormal fetuses in mice, rats, and chicken embryos. It is recognized that animal data cannot be directly extrapolated to humans. Investigations have been made to identify possible effects on humans resulting from the use of this chemical. No incidents of verified malformed births resulting from herbicide operations are known.

An examination in December 1969, of the hospital records in Mimot, Cam-

bodia, by Dr. A. Westing of the American Association for the Advancement of Science showed no increase in birth defects as a result of herbicide spraying of rubber plantations that occurred in April 1969.

Although there are no confirmed public health hazards associated with the use of the 2,4,5-T contained in herbicide orange in Vietnam, the Department of Defense deemed it prudent to suspend all operations using orange until the problem could be resolved. In the meantime, operations continue using defoliants white and blue.

The proposed amendment would prohibit the U.S. military use of antiplant chemicals. There are over 100 antiplant chemicals available on the commercial market. Many of these chemicals are used by the military to clear rights-of-way, fence lines, and to remove undesired vegetation on posts, camps, and stations both here and abroad. This amendment would prohibit the use of these chemicals for grounds maintenance without affecting the use by other Government agencies. In addition, large quantities of herbicides are furnished the Vietnamese under the AID program in order to improve their agricultural output. Is it the intent of the amendment to prohibit the use of all herbicides by our military and to preclude our supporting the Vietnamese agriculture?

SUMMARY

To sum up, Mr. President, the case before us is crystal clear. Based on the detailed facts which I have presented, I must again emphasize the importance of providing our military commanders in Vietnam with selective and discretionary authority to employ herbicides to help shorten the war, save the lives of our men, and contribute to the successful conclusion of the Vietnamese conflict. This can best be accomplished by defeating the proposed amendment.

I cite these things to show that this is a matter of vast concern at every level of our Government, by the committee, and by individual Senators. We have worked on it, and we have gotten far along, as has the military, to the practical side of the problem and the only practical remedy. We are fighting there and are sending these boys into these places, and their lives are in jeopardy. The practical use of these herbicides lessens the probability of loss of life.

Mr. President, how much time do I have remaining? I meant to limit myself to 6 minutes.

Mr. BROOKE. Mr. President, our experience in Vietnam in recent years has served to focus national attention on the employment of chemical and biological warfare. No one can deny that its unregulated utilization could possibly lead to an unwanted and possibly uncontrollable proliferation of lethal CBW agents by countries who presently cannot afford the deployment of more sophisticated nuclear weaponry.

As we all know, President Nixon adopted a forward-looking position of leadership in this area last November when he announced the policy that the United States will not employ biological weapons under any circumstances and that our existing stockpiles of germ weapons are to be destroyed. He is hopeful, as we all are, that all nations will take heed and adopt a similar course of responsible action.

Herbicides, not included in this category, have been the cause for additional concern by many who question their strategic value in light of evidence suggesting long-range effects on the environment. However, the concern over possible ecological consequences of herbicides in recent months has given way to a concern over the teratogenic, or fetus-deforming, properties of 2,4,5-T, a compound present in a number of herbicides. From the studies that have been completed, it is not conclusive, in my view, that the results on experimental animals can be effectively extrapolated into the human experience. More important, on April 15 of this year, Secretary Packard announced that the use of 2,4,5-T for military operations had been suspended. This action has, in my opinion, rendered the debates over this compound moot.

On the other hand, evidence gathered from field commanders in Vietnam suggests strongly that the herbicide program is strategically valuable and is saving American lives. Their reported use includes defoliation for purposes of improved aerial reconnaissance, defoliation of enemy base camps for purposes of air strikes, defoliation around lines of communication, and around the perimeters of isolated base camps and, most important, defoliation along key roadways for the purpose of minimizing ambushes.

The Department, equally concerned over the environmental impact of their herbicide program has imposed a number of restrictions. The result has been a 75-percent reduction in use level in this area over the past 2 years.

The Armed Services Committee, under the able leadership of our Chairman, has authorized a study to be conducted by the National Academy of Sciences for the purposes of ascertaining the ecological and physiological consequences that follow the use of herbicides. This, hopefully, will clarify the effects of the various compounds presently in use.

In my view, the Department of Defense has adopted a responsible course of action by limiting the use of herbicides while seeking to achieve specific military objectives. Accordingly, I will vote against the amendment offered by my distinguished colleague from Wisconsin.

Mr. McINTYRE. Mr. President, I cannot accept the conclusions to which the proponents of the pending amendment are drawn, that the herbicide program should be immediately discontinued. Whatever the possible side effects of the program, there can be no dispute as to the primary contribution it has made to the war effort. It has saved the lives of Americans in Vietnam.

Mr. President, I think the best way to sum it up, with all due deference to the Senator from Wisconsin and his good ally the Senator from New York (Mr. GOODELL) in their serious concern for the ecological and physiological consequences of our herbicide program is as follows: I should like to ask of every Senator:

Suppose that you were an infantryman, riding in a jeep along a lonely Vietnamese road. Would you prefer to have the roadside within 100 feet covered by thick jungle growth, suitable for ambush, or would you prefer a clear area out to 1,000 feet, offering little chance of concealment and permitting aerial surveillance ahead of your convoy? And, if an attack were launched upon you, would you prefer to have your attackers, your ambushers, close at hand, or a long distance off, so that their accuracy would be low and your chances for evasive action high?

Which would you prefer, if you were a soldier in Vietnam?

Mr. President, we all want our boys to come home, but the policy of the Government at present is to have them there. And as long as they are there, it is the feeling of the Armed Services Committee and the Research and Development Subcommittee which looked into this program, that the herbicide program at its present much reduced level, in order to save the lives of our American soldiers fighting in Vietnam.

So, with that, Mr. President, I urge the Senate to reject the amendment of the Senator from Wisconsin (Mr. NELSON).

Mr. HART. Mr. President, I urge passage of this amendment offered by the able Senator from Wisconsin (Mr. NELSON) to prevent the use of antiplant chemical weapons by the U.S. military.

The amendment, which I have cosponsored, also would prohibit the transfer of our stockpiles of such weapons to another country and would provide for elimination of those stockpiles.

My strong support for this amendment is based on testimony we have heard before the Senate Subcommittee on Energy, Natural Resources, and the Environment.

While little evidence is available as to the actual military effectiveness of such weapons, our hearings did make clear the potential damage which may result from continuation of defoliation and anticrop operations in South Vietnam.

Several prominent scientists have argued that no limits can yet be placed on the potential damage to man that may result from the use of chemicals such as 2,4,5-T and 2,4-D.

Whereas no case of human damage has yet been determined conclusively to be attributable to 2,4,5-T or 2,4-D, constantly we have been reminded that birth defects seldom bear a brand name which will allow determination of their cause.

Perhaps the most alarming prospect discussed at the hearings was that a highly toxic contaminant known as dioxin may now be building up in our bodies and in those of the Vietnamese. Currently produced 2,4-T, a major ingredient of agent orange, is known to contain small amounts of this contaminant. Although dioxin has not yet been found in 2,4-D, which is used in both agent orange and agent white, it has been discovered in its chemical precursor 2,4-dichlorophenol. Some scientists have concluded, as a result, that it is likely that it is contained in 2,4-D as well.

The dioxin associated with 2,4,5-T, we have been told, is stable when sprayed on soil. We have also learned that it ac-

cumulates in the tissue of chicks. What this evidence suggests is that dioxin may persist in the environment after being deposited on forests and plants and that it may, when transferred to the human body through the food chain, accumulate in human tissue. Although we do not know that it will do so, it seems irresponsible to take the risk with a chemical shown to be many times more toxic than thalidomide in experiments with chick embryos.

We have also received testimony at our hearings on the ecoolgical damage that may be caused by defoliants. The risks of destruction of nontarget plants and of wildlife and fish species has been discussed, as has the possibility of permanent replacement of valuable vegetation by bamboo.

Although in most of these cases, we are dealing with possibilities rather than with instances of known harm to humans and the environment, we must ask ourselves whether the benefits of our defoliation and anticrop programs can justify these risks. Until impressive evidence of military effectiveness is available, I cannot find any such justification. At a time when we must make every effort to wind down the war in Southeast Asia, every weapon in our arsenal must be subjected to increased scrutiny and stiffer tests for effectiveness and possible harmful consequences. With the evidence at hand it does not appear that these tests have been met.

A policy which would destroy a country in order to save it would be absurd. It is the responsibility of Congress to insure against actions which might have such a consequence.

Senator NELSON effectively has described the reasons which should persuade us to adopt his amendment.

Mr. NELSON. Mr. President, I ask for the yeas and nays on my amendment.

The yeas and nays were ordered.

Mr. GOLDWATER. Mr. President, while this particular subject is outside the province of the subcommittee I work on, I want to relate what I found in South Vietnam as to the use of these defoliants.

It is absolutely true that the Province chief must be consulted and that he must approve of any use of the defoliants.

I remember the trouble I got into in the campaign, about 6 years ago, when I suggested using liquid defoliants. I had served in the jungle, and I tell you, Mr. President, the jungle is no place for American boys to be. We made a mistake sending ground troops there, in the first place; but, as long as we made that decision, we had better not give up protecting the lives of our soldiers when they are in the jungle, when one cannot see through for 5 feet, and where it rains for a month after the rains above have ceased.

We must use these defoliants. It would be a tremendous and dangerous mistake for us not to do so, in order to protect our American boys, so that when they have to move through a defoliated forest, they can get to the enemy.

The PRESIDING OFFICER (Mr. HOLLINGS). All time has now expired on the amendment.

The yeas and nays have been ordered, and the clerk will call the roll.

Mr. STENNIS. Mr. President, a parliamentary inquiry: Do I correctly understand that this is a direct vote on the amendment, up or down?

The PRESIDING OFFICER. That is correct.

Mr. STENNIS. I thank the Chair.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. KENNEDY. I announce that the Senator from North Dakota (Mr. BURDICK), the Senator from Nevada (Mr. CANNON), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Tennessee (Mr. GORE), the Senator from Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), the Senator from Hawaii (Mr. INOUYE), the Senator from Minnesota (Mr. MCCARTHY), the Senator from New Mexico (Mr. MONTOYA), and the Senator from Maryland (Mr. TYDINGS) are necessarily absent.

I further announced that, if present and voting, the Senator from Alaska (Mr. GRAVEL) would vote "yea."

I further announced that, if present and voting, the Senator from North Dakota (Mr. BURDICK) would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Hawaii (Mr. FONG), the Senator from California (Mr. MURPHY), the Senator from Oregon (Mr. PACKWOOD), the Senator from Ohio (Mr. SAXBE), and the Senator from Alaska (Mr. STEVENS), are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting, the Senator from South Dakota (Mr. MUNDT), and the Senator from California (Mr. MURPHY), would each vote "nay."

The result was announced—yeas 22, nays 62, as follows:

[No. 272 Leg.]

YEAS—22

Bayh	Hughes	Nelson
Case	Magnuson	Proxmire
Cranston	Mansfield	Ribicoff
Eagleton	McGovern	Smith, Ill.
Goodell	Metcalf	Williams, N.J.
Harris	Mondale	Young, Ohio
Hart	Moss	
Hatfield	Muskie	

NAYS—62

Aiken	Ellender	Pastore
Allen	Ervin	Pearson
Allott	Fannin	Pell
Anderson	Goldwater	Percy
Baker	Griffin	Prouty
Bellmon	Gurney	Randolph
Bennett	Hansen	Russell
Bible	Holland	Schweiker
Boggs	Hollings	Scott
Brooke	Hruska	Smith, Maine
Byrd, Va.	Jackson	Sparkman
Byrd, W. Va.	Javits	Spong
Church	Jordan, N.C.	Stennis
Cook	Jordan, Idaho	Symington
Cooper	Kennedy	Talmadge
Cotton	Long	Thurmond
Curtis	Mathias	Tower
Dodd	McClellan	Williams, Del.
Dole	McGee	Yarborough
Dominick	McIntyre	Young, N. Dak.
Eastland	Miller	

NOT VOTING—16

Burdick	Hartke	Packwood
Cannon	Inouye	Saxbe
Fong	McCarthy	Stevens
Fulbright	Montoya	Tydings
Gore	Mundt	
Gravel	Murphy	

So the Nelson-Goodell amendment (No. 784) was rejected.

Mr. STENNIS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. HOLLAND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

PUBLIC WORKS APPROPRIATIONS, 1971—APPOINTMENT OF A CONFEREE

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senator from Arkansas (Mr. MCCLELLAN) be added as a conferee on the public works apropriations bill, H.R. 18127.

The PRESIDING OFFICER (Mr. ALLEN). Without objection, it is so ordered.

AUTHORIZATION OF APPROPRIATIONS FOR MILITARY PROCUREMENT AND OTHER PURPOSES

The Senate continued with the consideration of the bill (H.R. 17123) to authorize apropriations during the fiscal year 1971 for procurement of aircraft, missiles, naval vessels, and tracked combat vehicles, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to prescribe the authorized personnel strength of the Selected Reserve of each Reserve component of the Armed Forces, and for other purposes.

AMENDMENT NO. 853

The PRESIDING OFFICER (Mr. HOLLINGS). Under the unanimous-consent agreement, the Chair now lays before the Senate the Proxmire amendment No. 853, which the clerk will state.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered, and the amendment will be printed in the RECORD.

The amendment (No. 853) is as follows:

AMENDMENT No. 853

On page 21, beginning with line 17, strike out all down through line 9 on page 22, and insert in lieu thereof the following:

"SEC. 504. (a) Of the total amount authorized to be appropriated by this Act for the procurement of the C–5A aircraft, $200,000,000 of such amount (hereinafter in this section referred to as the 'contingency fund') may not be obligated or expended except as provided in this section.

"(b) The contingency fund may be expended only for the reasonable and allocable direct and indirect costs incurred by the prime contractor under a contract entered into with the United States to carry out the C–5A aircraft program. No part of the contingency fund may be used for—".

On page 22, lines 23 and 24, strike out "such $200,000,000" and insert in lieu thereof "the contingency fund".

On page 23, line 4, strike out "such $200,000,000" and insert in lieu thereof "the contingency fund".

On page 23, between lines 16 and 17, insert the following:

"(d) No part of the contingency fund may be expended pursuant to this section except under one or both of the following conditions:

"(1) If the Armed Services Board of Contract Appeals has made a determination with respect to the amount in dispute between the prime contractor and the United States on the C–5A aircraft contract and has deter-

mined that the United States is obligated to such contractor on such definitized contract in effect on July 1, 1970 for all or any portion of the amount in dispute between the parties and no judicial review has been sought by either party with respect to the action of such Board, or if judicial review of the action of such Board was requested and has been completed, the amount, if any, finally determined to be owing to the contractor shall be paid from the contingency fund; by no amount in excess of the amount so determined to be owing by the United States (of the amount in dispute) may be expended from the contingency fund.

"(2) A trustee appointed by a court of bankruptcy pursuant to a voluntary or involuntary petition or in a corporate reorganization proceeding under chapter 10 of the Bankruptcy Act has determined that all or a part of the contingency fund is needed for the purpose of assisting the prime contractor in meeting the terms of the contract for the completion and delivery of C–5A aircraft during the fiscal year ending June 30, 1971; but no amount in excess of the amount determined by the trustee to be necessary for the contractor to meet such schedule may be expended from the contingency fund.

The Comptroller General of the United States shall, at the earliest practicable date after the enactment of this section, conduct a study of the financial capability of the prime contractor on the C–5A aircraft with a view to determining such contractor's capability of meeting the terms of the contract for the completion and delivery of forty-two C–5A aircraft by June 30, 1971, and for completion and delivery of the total number of such aircraft under the contract. The Comptroller General shall submit the results of such study to the Congress and the Secretary of Defense, at the earliest practicable date, and shall include in such report the total amount which would have to be expended by the United States to insure completion and delivery of forty-two C–5A aircraft and to insure completion and delivery of the total number of such aircraft contracted for by the United States. The Comptroller General shall include in such report such other information and cost data as he may deem appropriate.

"(e) In the event of any bankruptcy or corporate reorganization proceeding involving the prime contractor on the C–5A aircraft, the Secretary of Defense shall take all appropriate measures to insure that (1) the financial interests of the United States are fully protected, and (2) priority is given to the expeditious completion of the C–5A aircraft contract."

On page 23, line 17, strike out "(d)" and insert in lieu thereof "(f)".

On page 23, lines 18 and 19, strike out "$200,000,000 referred to in subsections (a) and (b) of this section" and insert in lieu thereof "contingency fund".

On page 23, between lines 21 and 22, insert the following:

"(g) None of the funds authorized to be appropriated by this or any other Act for any purpose other than the C–5A aircraft program may be transferred to or used for the C–5A aircraft program."

Mr. PROXMIRE. Mr. President, I send to the desk a modification of the amendment and I ask unanimous consent that the reading of the modification be dispensed with. I will explain it.

The PRESIDING OFFICER. Without objection, it is so ordered, and the modification of the amendment will be printed in the RECORD.

The modification of amendment No. 853 is as follows:

On page 2, line 18, strike out "both" and insert in lieu thereof "more".

On page 2, line 25, after the word "contract" insert a comma and the word "as".

On page 3, line 1, after "1970" insert a comma.

On page 3, line 11, strike out "A" and insert in lieu thereof "If a".

On page 3, between lines 21 and 22, insert the following:

"(3) If the Comptroller General of the United States has determined, on the basis of the study of the financial capability of the prime contractor conducted pursuant to this section, that the prime contractor cannot, without the assistance of all or a part of the contingency fund, meet the contract schelude for completion and delivery of forty-two C–5A aircraft by June 30, 1971, but can reasonably be expected to meet such schedule with the assistance of all or a part of such fund; but no amount in excess of the amount determined by the Comptroller General to be necessary for the contractor to meet such schedule may be expended from the contingency fund."

On page 4, line 7, strike out "and" and insert in lieu thereof the following: "except that the portion of the study relating to the contractor's capability of meeting the terms of the contract for the completion and delivery of forty-two C–5A aircraft by June 30, 1971, shall be submitted to the Congress and the Secretary of Defense not later than November 15, 1970. The Comptroller General".

Mr. STENNIS. Mr. President, before the Senator's time starts to run, I ask for order in the Senate.

The PRESIDING OFFICER. The Senate will be in order. This is an important matter. A period of 3 hours has been allocated for the amendment, the time to be controlled by the Senator from Wisconsin and the Senator from Mississippi.

The Senator from Wisconsin is recognized.

Mr. PROXMIRE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. PROXMIRE. Has the amendment been modified in accordance with the language I sent to the desk?

The PRESIDING OFFICER. The amendment is so modified in accordance with the modification.

Mr. PROXMIRE. Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

The PRESIDING OFFICER. Who yields time?

Mr. PROXMIRE. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized for 10 minutes.

Mr. PROXMIRE. Mr. President, last Thursday on behalf of the Senator from Pennsylvania (Mr. SCHWEIKER) and myself, as well as the Senator from Massachusetts (Mr. BROOKE), the Senator from Missouri (Mr. EAGLETON), the Senator from Alaska (Mr. GRAVEL), the Senator from Texas (Mr. YARBOROUGH), and the Senator from Ohio (Mr. YOUNG), I introduced an amendment aimed at protecting the taxpayers' interest in the disposition of the $200 million Lockheed contingency.

BUILD THE PLANES AMENDMENT

We believe that our amendment is necessary to make certain that the 42 planes funded by this bill are built, and we believe our amendment is necessary to guarantee that the men are kept at work. It is a build-the-planes, keep-the-men-at-work, protect-the-taxpayers-interest amendment.

The bill before us contains a $200 million contingency fund. This amount is over and above any money owed to Lockheed under the contract. That is what the Air Force says Lockheed insists that unless it gets these, and additional funds later, it will have to default on its contract. They have threatened to default unless they get the funds.

We have asked, repeatedly, for detailed cash flow information from the company to prove that they must have the funds. But the company and the Air Force tell us that such information is proprietary and will not be made public. We are asked, therefore, to give $200 million to the company on the basis of their word and their threat that without it they cannot complete even the 42 planes which the funds in this bill would provide.

This does not protect the public interest. Our amendment adds three additional conditions to the payment of the funds. Their basic purpose is to make certain that the funds are not paid out unless the company either has them coming or that they are needed to build the planes and keep the men at work.

THREE CONDITIONS

This amendment as modified provides that the $200 million provided in the bill for Lockheed above the amount the Air Force says is owed to Lockheed under the contract would not be given to Lockheed unless one of the following conditions were met:

First. The Armed Services Board of Contract Appeals or a court should decide that part or all of the $200 million is owing to Lockheed under the contract.

Second. A trustee in bankruptcy determines that all or part of the $200 million is necessary to complete the production of the 42 C–5A planes this bill would fund.

Third. The comptroller general determines, after a study that must be completed by November 15, 1970, that all or part of the $200 million is necessary to complete production of the 42 C–5A planes.

The third condition is a modification of the original amendment. It would permit the $200 million to be paid to Lockheed, but only after a competent, independent finding that could assure the Congress that the funds were needed to make production of the plane possible.

It would avoid what otherwise would be a precedent set in the bill that would give a defense contractor $200 million that the Air Force itself says the Government does not owe, and would give the funds without any independent determination that the money is necessary to produce the planes or that the $200 million would be adequate to permit the planes to be produced. The bill without the amendment would make the Government liable for a total of $800 million above the contract, not owed by the Government, before the contract is completed, and perhaps much more.

The amendment would require the Comptroller General to determine how

much will be necessary to complete the contract.

Now that I have stated the general points in the amendment, let me go into additional details about the amendment.

The Senator from Pennsylvania (Mr. SCHWEICKER) and I are offering a very modest and, we believe, reasonable amendment. It places limitations on the use of the contingency fund and allows it to be used if any one of the three conditions is met.

EXPLANATION OF CONDITIONS

As originally offered, our amendment contained only two provisions aimed at seeing to it that 42 of the planes were finished and delivered, the subcontractors kept whole, and finally the workmen kept at their jobs building the C–5A. At the same time, the financial interests of the taxpayers would be protected.

Our first provision stipulated that if the Armed Services Board of Contract Appeals ruled that the Government owed Lockheed the money they were claiming, Lockheed would be paid and that would be the end of it. Lockheed's appeal has been before the ASBCA since early January of this year. And as I have indicated before, there is no reason the matter should not have been settled already. If the Armed Services Board of Contract Appeal rules that the Government does not owe Lockheed the money under the contract, two things could happen: first, it is possible that Lockheed could still meet their commitments. The assumption that they cannot meet their commitments is just that—an assumption. We have been told by the Pentagon that Lockheed is in desperate financial straits. On the other hand, we have not seen any hard facts that would substantiate this assertion by the Pentagon. Moreover, we have been specifically refused access to elementary cash flow information which could define both the type and magnitude of Lockheed's cash difficulties and indicate the source of those difficulties. According to the Pentagon, the U.S. Senate is denied this information because Lockheed does not want the Senate to see it.

PROTECTS AGAINST LOCKHEED THREAT TO DEFAULT

If events subsequently prove that the Pentagon's assertions regarding Lockheed's financial status are correct or if Lockheed's management chooses to default on their contractual agreements, our amendment would help keep the plant open and get the 42 airplanes built. If Lockheed should carry out its threat to default and file for bankruptcy, our amendment would speed up the granting of the $200 million contingency money if an independent and impartial trustee determined that the money was truly required to complete the 42 airplanes due the Government at the end of this year.

Nothing in our amendment would undercut the authority of the Senate Armed Services Committee to review and approve whatever plan the Pentagon submits for solving the Lockheed problem. All the restraints and provisions of the legislation reported out of the Armed Services Committee remain in effect. In my opinion, our amendment expanded and clarified the restrictions imposed by the Armed Services Committee. In addition, it provided for accelerating approval for use of the contingency fund if justified by an impartial trustee in the event the company carried out its threat to default or to go into bankruptcy.

Our amendment also provided that the GAO would furnish additional information to the Senate on the C–5A program, information we should have had long ago.

This was our original amendment. We thought it fair and constructive. We thought it helped protect the interests of our military and our taxpayers. Notwithstanding, our amendment has been strongly opposed. It has been opposed on the grounds that conditions we laid down were impossible to meet, that the ASBCA needs another year or so to rule on the Lockheed claim they have already had for 7½ months. It has been opposed on the strongly emotional grounds that our intent was to drive Lockheed into bankruptcy and throw thousands of people into the ranks of the unemployed. But it was Lockheed which threatened default and it is our amendment which protects the workers and the subcontractors if that should happen. But the opponents distorted our amendment.

Neither Senator SCHWEIKER nor I, nor any of our cosponsors, have any intent to single out Lockheed for special punishment or for special treatment. But we are intent on keeping a semblance of free enterprise motivation in the Pentagon's major weapons programs.

GAO REPORT

To demonstrate further our intentions, and our reasonableness we have modified our amendment to provide that the contingency fund can be used to keep the production lines open if the GAO, after study and analysis, determines it is necessary. Furthermore, in order to assure that there is no halt in the production of the 42 aircraft, we have stipulated that the GAO's report to the Congress should be made no later than November 15, 1970. The $344 million in the contract for Lockheed under the contract will be sufficient to meet Lockheed's production needs until January 1971. So the additional $200 million will be available under the amendment, if necessary, in ample time.

It is my hope that this latest concession will convince our opponents that we are seeking only to provide what we perceive to be the minimum protection for the Government's interests in the spending of additional C–5A funds.

LANGUAGE OF MODIFICATION

Let me read the specific language of this third condition we have provided which, if met, would free the funds. It reads:

The $200 million contingency fund can be expended under the following conditions:

"If the Comptroller General of the United States has determined on the basis of the study of the financial capability of the prime contractor conducted pursuant to this section, that the prime contractor cannot, without the assistance of all or a part of the contingency fund, meet the contract schedule for completion and deliver of forty-two C–5A aircraft by June 30, 1971, but can reasonably be expected to meet such schedule with the assistance of all or a part of such fund; but no amount in excess of the amount determined by the Comptroller General to be necessary for the contractor to meet such schedule may be expended from the contingency fund."

We also provide specific language that the report shall be made by November 15, 1971.

The $200 million could be paid out if either this condition or one of the two other conditions were met. And each of them provides, essentially, that the funds can be paid out of an independent board or official determines that the company either has the money coming or that it is needed to build the planes.

The General Accounting Office is certainly in a position to make this determination. First of all, they have had officials in the plant from almost the day the C–5A was started.

Second, on numerous occasionally they have gathered data above the financial conditions of the plane. They have done this for their reports on overruns—the SAR's. Furthermore, I asked them some months ago to determine the facts about the cash flow and other financial matters. This information ws refused to the GAO and to me. But the Pentagon told us the company had the information, but claimed it was proprietary. Thus, since the information is available, according to both the Air Force and the company, there is no reason why the GAO cannot determine from the information whether the $200 million is needed.

Mr. TALMADGE. Mr. President, will the Senator yield?

Mr. PROXMIRE. I yield.

Mr. TALMADGE. Has the Senator from Wisconsin asked whether the General Accounting Office is qualified to and can make the investigation he now proposes?

Mr. PROXMIRE. The question is, is it my judgment that they are qualified——

Mr. TALMADGE. Has the Senator from Wisconsin interrogated the GAO or the Comptroller General to determine whether or not they can make the decision the Senator from Wisconsin would require of them?

Mr. PROXMIRE. No; and frankly, I would say to the Senator from Georgia that, on the basis of my knowledge of Mr. Elmer Staats and my experience with him, he is not going to do anything unless the Senate or the Congress directs him to do it. If he is asked about engaging in a new activity he might indicate he did not want to take part in it or do it. That has consistently been his view, as it was when we wanted him to make a feasibility study of providing uniform accounting standards. He was reluctant to do it. He made a study, at the request of Congress however, and found such standards possible. On the basis of his study we went ahead and directed the Comptroller to start to put them into effect.

Mr. TALMADGE. The Senator from Wisconsin is aware, is he not, of the fact that the General Accounting Office, the Office of the Comptroller General, is a bookkeeping agency and does not have the authority to make decisions affecting the Pentagon?

Mr. PROXMIRE. In this particular case the decision is one that involves financial capability, whether or not funds are available to do this particular job. Of course, I understand that the GAO does not have the capacity to determine the performance capability of the C–5A or any other weapons system, but they certainly, in my view—it would seem to me obvious—have the capability of determining whether or not Lockheed Corp. has the financial capability of completing this particular contract.

Mr. TALMADGE. Mr. President, will the Senator yield further?

Mr. PROXMIRE. Yes.

Mr. TALMADGE. It seems to me that the Senator's sudden proposition, which was unknown to Members of the Senate until he modified his amendment a moment ago, would delegate something to the General Accounting Office and to the Comptroller General that is the prerogative of Congress and the Defense Department, to wit, the expenditure of Federal funds for a matter that is of primary importance to the military security of this country.

I do not think we ought to bring a bookkeeping agency in and say, "The Secretary of Defense cannot handle his job well, Congress cannot handle their job well, the Armed Services Committee of the Senate cannot handle their job well, the House Armed Services Committee cannot handle their job well, so we are going to delegate this responsibility to you, a bookkeeper."

Mr. PROXMIRE. First let me say to the Senator from Georgia that we are not delegating. We are determining the conditions under which this finding would trigger the release of the $200 million.

In the second place, I think it is perfectly obvious that as far as this particular contract is concerned, the Defense Department has not done its job right, and David Packard told the contractors of this country that only Thursday night. He cited the Lockheed case as a flagrant example of incompetent procurement, a situation in which the job had not been done right.

I think there is no question that Congress itself has shown, in regard to the C–5A, a long record of doing this job very badly. Therefore, it seems to me, that getting an independent agency to go over the facts with regard to the financial capacity of the contractor in this case is logical and appropriate.

Mr. TALMADGE. Mr. President, I call attention to the language of the committee report, on page 16, as follows:

The Committee in Section 504(a) provides that the $200 million will not be obligated until the Secretary of Defense has presented a plan that has been approved by the House and Senate Committees on Armed Services. In effect this means that the proposed contractual arrangement both for the use of the $200 million and the completion of the entire C–5A program will require approval of the two Committees. Through this method there will be the opportunity of a complete review by the Committees on this problem.

The second Committee language provision provides for strict statutory guidelines which will insure that the $200 million in contingency funding will be used only for the C–5A program insofar as the contractor is concerned and not possibly intermingled or diverted to other uses among the various other programs of the company. The bill in section 504(b) expressly excludes other uses for the $200 million.

It seems to me that this language is very stringent. I think the Senator's amendment, in effect, says we do not have confidence in the Armed Services Committees of the House and the Senate to handle their responsibilities and duties, their job, and that we are going to take it away from them and give it to the General Accounting Office.

The PRESIDING OFFICER (Mr. HOLLINGS). The Senator's time has expired. The Chair is at fault; the Senator from Wisconsin yielded himself 10 minutes, but 16 minutes have expired.

Mr. PROXMIRE. I yield myself an additional 5 minutes.

Mr. TALMADGE. I know the Senator is on limited time. I thank him for yielding to me.

Mr. PROXMIRE. I say to the Senator from Georgia that there is nothing in this amendment, as I tried to say in my statement, there is nothing in this amendment which indicates any lack of respect for the ability or the judgment of the Senate Armed Services Committee. What we are saying is that it would be helpful to Congress and the Senate Armed Services Committee, in our view, to have a finding by an expert accounting agency such as the General Accounting Office, which is a competent agency, which has been found to be accurate and reliable in the past, as to just what the financial conditions of Lockheed was, whether they needed this $200 million, for the production of the C–5A plane.

I cannot see anything wrong with a finding of that kind, except that the Senator from Georgia says that they are not capable of it. If they are not capable of it, many Members of Congress will be very surprised. The GAO has 2,000 or 3,000 people working over there, and their record has been excellent in the past.

Mr. TALMADGE. I would point out to the Senator from Wisconsin that the Armed Services Committees of the Senate and the House of Representatives could, if they saw fit, call on the Comptroller General to provide whatever information the Senator would request, but the decisionmaking authority would be with the committees, and not in the Comptroller General. It seems to me that the Senator's third alternative is a vote of no confidence in the Senate and House committees.

Mr. PROXMIRE. May I say to the Senator that that certainly was not our intention, that we do not intend to indicate that we have no confidence in the committees. We do feel, however, that before this money is released, we ought to at least have a finding that the money is necessary to complete production on this plane.

To continue, Mr. President:

If we fail to at least have that kind of determination made, we will be setting a highly dangerous precedent.

MODEST AMENDMENT

Our amendment is certainly very modest. We do not strike out the $200 million. Neither do we seek to correct the grievous past errors in this program, including the ghastly mistake made by the Senate on the C–5A issue last year. In my opinion, the Senate's concurrence in last year's giveaway plan by the Pentagon was one of the most expensive errors we have made since I have been in the Senate. We wasted hundreds of millions of dollars of the taxpayers' money by failing to assess properly the facts that were before us at that time and to obtain quickly the additional facts that were so clearly needed. I would hope that having been misled and persuaded to give our blind approval we have learned a lesson. I would hope that the mistake will not be repeated, at least on this same disastrous and scandalous program.

SCANDALOUS PROGRAM

And it has been scandalous, make no mistake about that. Facts were deliberately concealed from the Congress. Civil servants and military officers who attempted to hold down the costs or even to get the true facts on the status of this program have suffered personal reverses through retaliation by high level Pentagon officials.

The real question is: What do we do from here on? I hope we will demonstrate that we have learned our lesson. I hope we will begin today to refurbish the Senate's reputation as the world's greatest deliberative body, and to dispel the growing belief that we are pushovers for special interest groups, particularly the military contracting community.

Senators can make a modest start on this undertaking by supporting the amendment offered by the Senator from Pennsylvania and me, along with our cosponsors.

Let me say, Mr. President, that anyone who has read the speech made by David Packard on Thursday night must have been convinced, although the secretary diplomatically did not indict Congress, that we have not done our job as far as procurement is concerned.

The PRESIDING OFFICER. The Senator's time has expired.

MESS IN PROCUREMENT

Mr. PROXMIRE. I yield myself 2 additional minutes.

He said that procurement was in a bad mess, that we overspent on our weapons systems as well as made many other serious mistakes.

It is Congress that authorizes this spending. If we are ever going to exercise any decision with regard to any question involving the Pentagon, it seems to me we should do it in this particular case.

Let me conclude by quoting the statement of the distinguished Senator from Pennsylvania (Mr. SCHWEIKER) in the conclusion he very effectively used in his speech on last Thursday. He said:

I ask Senators to support this amendment, whether they believe that the C–5A is needed or not, in the hope that we can give the clear indication to the Defense Department, the defense industry, and, most important, the people who pay the bills, that we are unwilling to sit back and give a blank check to these requests without asking "How much?" "How many?" "When?" and "Why?"

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. PROXMIRE. Mr. President, I yield the Senator from Pennsylvania whatever time he may require.

Mr. SCHWEIKER. Mr. President, I thank the Senator from Wisconsin for yielding, and I compliment him for his early efforts, as well as for his follow-up, on the very serious and very critical procurement crisis that is typified by the C–5A.

I should like to speak for just a moment with reference to the charge of the Senator from Georgia (Mr. TALMADGE) that our amendment bypasses or somehow thwarts the Senate Armed Services Committee.

I am a member of the Senate Armed Services Committee, and this is the last, most remote, prospect that we had in mind in drafting this particular amendment.

The reason that we inserted the particular provision to which the Senator from Georgia referred was severalfold.

First of all, the GAO has a resource capability of some 5,000 men, many of whom are trained in exactly this kind of work—auditing and fiscal control work. Some 5,000.

The Senate Armed Services Committee has a staff of two-dozen men and women, including clerks and typists, overall—two dozen against 5,000. They are not geared up to do a quick, on-the-spot fiscal auditing operation, such as required by our amendment. It is a matter of using the resources necessary to do the job. It certainly was not a slight to the distinguished chairman or the other distinguished members of that committee.

Let me say, while I am on that subject, that a number of members of our committee agreed with my position in the committee and agreed, by an 11 to 5 breakdown, that the $200 million should not be paid. So there was a substantial body of thought in the committee that we should not pay the $200 million under any circumstances.

Our amendment goes far beyond that rather abrupt cut off of the $200 million, by making three conditions. Indeed, replying to the Senator from Georgia on his contention that it bypasses the committee, the third of these modifications specifically provides that, after making a GAO audit of whether the $200 million is necessary, it then goes on and makes another determination about how much this airplane will really cost, how much will the price tag be, and then it reports back to Congress. At that point in the cycle, the Armed Services Committee is really very much involved again. The next fiscal year authorization, they will be right on the spot, considering the same problem again, only this time they will have the availability of the GAO expertise and financial report.

So, far from excluding, it includes the committee, and provides that they are going to use the GAO information to make a determination for the next fiscal year.

So let us lay to rest the argument that we are bypassing or thwarting or somehow belittling the committee's efforts.

I should like to discuss some of the things that I feel are essential in the amendment offered by the Senator from Wisconsin (Mr. PROXMIRE) and me.

First, I think that the Senator has very ably summed up the first point I want to make. I think that Deputy Secretary of Defense Packard underscored it himself by his own statement, and I concur with it, that the C–5A undoubtedly is the worst procurement situation in modern military history, bar none. It is the worst procurement satuation that we have seen in modern military history.

We are talking about 81 planes, originally estimated to cost $2.6 billion. Now, as of the end of last year, according to the selected acquisition reports, the cost has escalated to $4.6 billion, a $2 billion increase in the cost of those 81 planes. That was as of last year. That is not even figuring what cost increases have come this year.

No doubt features such as the "golden handshake clause," which is really a license to be inefficient, a license to overrun and hand the Government the bill, a license to do anything except watch costs, are also a basic issue in this contract.

I want to be fair and say that, unfortunately, those involved in the administration of this contract in the Defense Department are no longer there. I think this is tragic, because, in essence, the wrong men are taking the blame for the present situation, and a new group has come in which certainly does not deserve to be saddled with the rather atrocious procurement policies that so far have been obvious in this particular procurement.

In addition, even the Air Force's military personnel are no longer there, which points out how some of the rather foolish procurement policies of rotating procurement personnel every several years contributed to the rather great debacle known as the C–5A procurement situation. I think that this in itself testifies to why we have to change the system. The people who originated it in the DOD are not there; the military people who were charged with shepherding the project are not there; and the question becomes, who is there who really knows and cares about this particular project?

We in Congress have a responsibility, too, which we have not used. We have a responsibility in terms of our oversight, and the reason why I have cosponsored this amendment with Senator PROXMIRE is to help Congress exercise that responsibility. We, in essence, are saying here that the direction of our procurement policy will be determined by the decision the Senate makes on this particular issue. We are saying here that the ultimate result of the buy-before-you-fly policy has been so disastrous that we have to reverse that climate to really change the situation. This is a test vote of whether we are willing to reverse the climate of buying sight unseen, buying before you fly, continuing the most wasteful kind of procurement practices imaginable.

Until the present time, we have always had the policy, in preceding administrations, of writing a blank check, of bailing the company out, with no questions asked. When are we going to change that policy, to come to grips with the issue, in which we have a responsibility, and in which we have to define some limits and guidelines and meet that test? This is the issue, that is what the fight is all about.

We have no quarrel with the need for the C–5A. We are not arguing that at all. Nor are we even saying that we should jeopardize the production line of the C–5A. The latest modification we made was specifically to avert the practical situation that might be confronted on that issue. So we do not quarrel with the need. We agree that the planes should continue to be built, that the lines should be operating, and that 20,000 employees in Georgia should be kept on the job. We are not arguing that issue at all. The amendment is designed on a reasonable and rational basis to keep all that happening.

I think it is important to review the Department of Defense position in this area. The interesting part about the whole C–5A contract is that the Air Force acknowledges that we do not owe the money we are trying to give them. Let me read a few statements made by Deputy Secretary Packard.

On March 10 of this year, before the Armed Services Committee, in answer to a question by the Senator from Mississippi (Mr. STENNIS), Secretary Packard said:

> The $344 million for the procurement—

The $200 million is not in that. That is just the normal amount due this year—

> The $344 million for the procurement of the C–5A in the fiscal year 1971 budget is what the Air Force would be obligated to pay under their interpretation of the contract.

So here we have the ironic situation in which the Deputy Secretary of Defense, the Secretary of the Air Force, the Air Force, and the Government say we do not owe the contractor a cent more than that $344 million; yet, we are being strongly urged to give them that $200 million or some fraction thereof.

I would like to read from another statement by Deputy Secretary Packard, once again acknowledging that we do not owe this money to Lockheed. This statement also was made before our committee:

> This $200 million, if authorized, would be available to apply against the $600 million gap we have between the Air Force position and what the company says its costs are going to be.

That brings me to the next point I should like to make.

The next point is that this $200 million is only the first step. This is not the end in itself. It is only the first step. Here we have a plane that was going to cost $2.6 billion. It is now up to $4.6 billion. We are asked to give them $200 million we do not owe them. The company says that they need $600 million more, and even the Department of Defense says they really need $800 million more to proceed.

What a series of tragic events. The $200 million is just a starter. It is just the beginning. It is just like an iceberg.

The whole point of this amendment is

to get from the Comptroller General an honest-to-goodness definition of what the cost of this plane is—not to feed it, in pieces and dribs and drabs, $200 million this year and $400 million next year; and only then will the public and the Government really wake up to what we paid Lockheed for this particular plane.

Let me read from another statement by Deputy Secretary Packard:

There is going to be additional money. The $200 million is not going to be the end of it.

Believe me, not the end of it by far. So we are really being asked to buy a pig in a poke. We are being asked to buy something whose cost we do not know. We are being asked to have blind faith that somehow this thing is going to work out all right, that it is $200 million now, and let them negotiate the difference, and then we will see what the bill really is. We are asked to buy the whole thing on faith, and we are $200 million over on faith already.

I should like to read from an article published in the Sunday Star of June 7, referring to a Securities and Exchange Commission investigation of Lockheed in connection with this situation. I should like to read from the article relating to the lower bid of Lockheed, as to how it was handled initially.

"Lockheed wanted the contract badly and apparently knew they had to come in with a low bid to get it," the SEC report says. As a result, they cut estimates sharply—but figured the firm still would make a profit of 3 percent of costs.

Yet they were so naive, so ill-informed, so unknowing about this contract and its ramifications that they still thought they would make a profit here, and we are $2 billion in the hole already, with another $1 billion in sight.

Talk about mismanagement and inefficiency.

So the issue is, Are we going to reward that mismanagement, are we going to reward that inefficiency, are we going to give them a pat on the back and let them negotiate exactly what they want, in order to solve the problem?

There are hundreds of defense contractors watching to see if that will be our policy, because if it is, then the line will form right here and dozens of requests will come in to do exactly the same thing, to bid in low and bail out high. That is what the issue is all about.

Are we going to measure up to our responsibilities and stop this practice?

It is true that this has been the policy and the climate that has gone on for some time here. That is why we specifically designed this amendment so that we would not penalize Lockheed, so that we would not throw 20,000 people out of work, so that we would not cut them off without a red cent literally. We designed a reasonable amendment that would protect the taxpayers, keep the production line rolling, and still leave the responsibility where it belongs, namely, in Congress, to decide what to do subsequently, when the GAO report is available on the situation.

I was told that the Contract Board of Appeals, the normal person to arbitrate this dispute, will probably take more than 12 months to decide this issue, and because of that, we wrote in this other modification that would not trigger the bankruptcy of Lockheed. We bent over backwards to make sure that the production line would continue to work, that the people would not be thrown out of work, and that the Comptroller General could rule, as early as November 15 that, if they need that money to keep the production line rolling and to keep the planes coming out, they do not have to wait 12 months but, at the same time, it would give Congress an authoritative report that we in the Armed Services Committee could use in the next fiscal year, to meet the same issue, the same problem and, really, get an honest picture and an honest count—which we have not had at any point in this process—as to what the airplane will cost by the time it is completed.

One of the arguments the opponents, of course, have been making is that we should not tie the hands of the Government, that they want to negotiate this contract, that they want to settle it outside of a dispute, that they want to be free to do what they see fit. To me, that is the real issue here. What they will say is, "Do not bother us. Do not disturb us. Do not rock the boat. We want to settle for another billion dollars, if that is what it is going to take. We want to be free."

The PRESIDING OFFICER (Mr. YOUNG of Ohio). The time of the Senator has expired.

Mr. PROXMIRE. I yield whatever time the Senator requires.

The PRESIDING OFFICER. The Senator from Pennsylvania may proceed.

Mr. SCHWEIKER. The argument is made that the Government should be free to negotiate a settlement with Lockheed. That is exactly what the Senator from Wisconsin and I are against, because if we leave a loophole there, to make an end run through the whole system, every defense contractor will know that whenever it is in trouble, all they have to do is pull out the Lockheed precedent and do exactly the same thing, and come in with a bad-looking balance sheet of cash resources, say that they cannot complete the job, shed a few crocodile tears, and negotiate the contract again.

What is the sense of having any bids, what is the sense of having any procurement system, what is the sense of having any cost controls, if all we do is negotiate the whole deal again?

I cannot imagine a worse conception of how to run a procurement policy than to let them do that. They will pull out the argument that they have the right to do this. Well, no Government department should have the right to do that. If an industry goes $2 billion in the red, with another possible billion dollars additional, someone should blow the whistle on them. It is up to the Members of this Senate to blow the whistle and say, "Go this far, but not any farther than that because we will, at last, exercise our own legislative oversight. We are going, at last, to bring in an independent party, an outside fiscally competent agency, to decide whether they really need the money as they claim they do. They will tell us what that iceberg really looks like, whether it is $400 million, $500 million, $800 million, or $1 billion more."

Do not be surprised to see those figures come rolling out the next year, the next time, right here on the Senate floor. That is what we have a right to know, what it is going to cost.

The amendment simply provides for certain things to happen. Until we know what the price is, and the Armed Services Committee, and the Senate, can make a responsible judgment, with some meaningful fiscal information about the whole picture.

I want to say that this is a critical issue. It relates to whether we will reverse the whole procurement policy that has been so badly mishandled in the past two decades. We want a procurement policy that will recognize the taxpayers, and one that will make a military judgment based on an honest price tag of a weapons system, which we certainly do not have now.

Mr. PROXMIRE. First, I congratulate the Senator from Pennsylvania on an extremely able and powerful speech. It is hard to dispute the notion that without our amendment this giveaway is going to set a precedent. It not only says we will be giving away a substantial amount, in this case $200 million as a starter, but the committee says $800 million, before the plane is completed. As the Senator has brought out, that $800 million is a guess. It may be $1 billion. It may be more than that. Our guesses have been wrong in the past. They have often been too low. On the basis of past experience, we can assume the taxpayer gift will be considerably more. We not only give them that, we give them that without knowing, or having information, or making it public as to whether they even need it, in order to complete the contract.

What a situation for the taxpayers, if we are giving almost $1 billion away to a defense contractor just because they say they need it to finish the contract. In the amendment, all our amendment requires as modified is that the General Accounting Office determines they need it. Opponents dispute this because the GAO in their view is not competent to make the decision, that the Senate should make it, then argue we should make it without adequate knowledge; is that correct?

Mr. SCHWEIKER. That is correct. The tragedy is that this is probably the only real issue this year when we will have an opportunity to make that determination and assess our responsibility and measure up to that job of legislative oversight.

If we go along on this negotiated settlement, we will be writing another blank check all over again. As it is, this policy has been proven wrong time and time again. That is it. The Senator is absolutely correct.

Mr. PROXMIRE. What the Senator from Pennsylvania and I have tried to do is to avoid damage to anyone. In the first place, we tried to provide, if the court or the Board of Contract Appeals makes a finding that the $200 million is due Lockheed then the funds are released at once. I have documented the fact that

the finding can be made in a few weeks and not in 12 months. In the second place, if Lockheed does go into bankruptcy, we provide that funds can be freed promptly.

In the third place, we provide that even if they go into bankruptcy, if a competent accountant—the Comptroller General—says they need this money in order to complete their contract, then the funds are freed. Under the circumstances, who is being damaged? Certainly not the 20,000 workers. They will not be laid off. Management will get the funds, if their word is shown to be correct. They will not be put through bankruptcy. They are not even faced with that prospect, even though they are over the contract by $800 million or $1 billion. They still will be permitted to go along.

It seems to me that this is an extraordinarily modest amendment that does its best to avoid any serious damage to anyone. As the Senator from Pennsylvania made abundantly clear, if we are to draw the line anywhere, or have any discipline over procurement, the least we can do is to avoid this kind of giveaway of taxpayers' money. We should go at least as far as this amendment would.

Mr. SCHWEIKER. I thank the Senator from Wisconsin. I would like to say that I do not know how we can devise a more moderate or a more reasonable approach. We are not quarreling about whether they ultimately get the $200 million. We say that if they need it, they can have it. They can have it, if it is determined, as the Senator from Wisconsin has pointed out, on the basis of the Comptroller General's ruling as early as November 15 of this year that they can have it, if they need it to keep the line open.

We are saying in our amendment that if the Board of Contract Appeals finds that the Air Force is wrong in its assessment that the money is not owed to Lockheed, they keep the money. Third, we are saying that if the worst should happen and the forecasts are not accurate and they should have to go into bankruptcy proceedings, we specifically authorize the money under those conditions and even direct the Secretary of Defense to give the C–5A production priority.

I do not honestly see how much more reasonable an amendment could be. But the important thing is that we are blowing a whistle and saying, "We are not going to write blank checks any more. We are not just going to pour money down a hole without knowing where it is going. We are going to have some independent auditor come in to advise the Congress or the Senate Armed Services Committee where we are going, because we do not know where we are going now."

There is a $2 billion overrun now and the bill asks for $200 million over the contract. The Defense Department says:

It is likely that we will need $800 million.

The company itself says:

We will need at least $600 million.

I predict that next year it will be admitted on the floor that they need $1 billion additional. Wait and see if that is not correct.

Let us get an honest appraisal from an independent auditor. How reasonable a proposal could we have? I do not see that the Senate has any other responsibility than to go ahead and adopt the amendment.

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from Mississippi is recognized for 10 minutes.

Mr. STENNIS. Mr. President, I address myself primarily to what is in the bill presented to the Senate, what the committee did, what the committee stands on, and what the committee asks the Senate to affirm.

Mr. President, in the first place this contract is in no way defended, so far as the type of contract is concerned. It is a contract that did produce a good plane, a plane that has been tested satisfactorily, as will be shown, and a plane that is needed.

There was not any corruption involved. None has ever been charged. The company is not getting a windfall in any way or making money out of this matter. It looks as if they are losing money. It is a question of just how much. So we start with a clean bill of health, so to speak, in this situation.

To get value for the money we have already spent and to get a plane we need, we may have to spend some more money than is currently interpreted as called for in the contract. Frankly, we do not know as yet how much money that will be.

There are two reasons why we do not know. The Air Force and the contractor are not together on what the respective liability of each is. There has not been a reasonable time to determine that. It would be highly impracticable anyway and would occasion a loss if we were to stop the wheels from turning until that matter could be adjudicated.

Nothing has been waived. The Government still has all of its rights, and they will be respected and rigidly maintained.

There is $344 million of what we might call a regular run, a routine amount of authorization for this year. There has been no contest over that amount. We included that in the bill.

There was a small sum allowed for spares in the bill. The $200 million is a matter that was before the committee for determination. That is the additional money that is necessary now to get the planes. I will give the details later. However, everyone agrees that is necessary.

Mr. President, there is no amendment to knock out that $200 million. There is an admission here, it seems to me, by all that that money is needed and that it should be kept in the bill.

I was really expecting to be attacked on that front. But there is no opposition here to that matter, and no proposal to take that money out of the bill.

To that extent, we apparently have a unanimous judgment that the committee made the right decision in putting it in the bill, although there was some honest opposition to it by some committee members at the time. Unless some other measure is filed, it apparently is unanimous that the committee should have put that money in the bill.

The question is how it will be safeguarded. That is the only question. The committee itself very carefully and laboriously wrote in some amendments directed to the problem of protecting this $200 million or whatever sum might be needed in addition to that.

I insisted that all of the facts be brought out and that we not come here with a piecemeal policy, this year so much and then stop. We went on to show how much money might be needed next year. I think we will not need that much next year, the $600 million, but we may. However, that is to be left open.

We included these safeguards to protect the $200 million. I am referring to protecting the Federal Government. I am not interested in what the Defense Department or the Air Force says about this. They had nothing in the world to do with the restrictions we included. Those were drawn by competent staff members with the assistance of competent legal guidance. It was a very laborious undertaking. I think they did a very splendid job.

There is one human factor in this that goes with these two amendments the committee is asking the Senate to stand by. That concerns the fact that we assigned Secretary Packard this problem, and it is a problem. We asked him to give it his best attention and advice and counsel and then to report to the committee. He did this. We had all of that testimony. It is in the record.

I said to Mr. Packard:

If we approve this $200 million, we expect you to give it your personal attention, your personal surveillance.

We found him to be an extremely competent man and, I think, an honest man.

I said:

We expect you to give this your attention and surveillance and keep in touch with us. We hold you morally responsible as far as we can to follow up on this matter and see that this money is spent exclusively for this purpose and that it is spent in the right way and that the plans be sound.

He assumed that obligation. He meant exactly what he said. That lends considerable strength to the whole solution of this problem. As I say, it is a problem.

I personally did not like the idea of the committee having to assume this obligation. The report explains it. So I will read from page 16 of the report near the bottom:

(The Committee in Section 504(a) provides that the $200 million will not be obligated until the Secretary of Defense has presented a plan that has been approved by the House and Senate Committees on Armed Services.)

In other words, we thought we ought to be willing—and that is not a happy note—to assume some special obligations in this matter.

I continue to read from the report:

In effect this means that the proposed contractual arrangement both for the use of the $200 million and the completion of the entire C–5A program—

Those are broad words—

will require approval of the two Committees. Through this method there will be the op-

portunity of a complete review by the committees on this problem.

Mr. President, that is about as far as you can go so far as senatorial surveillance is concerned. That is an obligation. This is not in the House bill now, but this is our guarantee, as we believe there will be a special surveillance with respect to this contract.

There would be the General Accounting Office role, if any. If the committee felt it needed the General Accounting Office to check on any item we have authority under the general law to call on the General Accounting Office for those services. I do not have to cite that law, but I have it available if anyone is interested. That is what the General Accounting Office is for; primarily to serve the committee. They can serve individual Senators, and I do not disagree with that. But this group is available under the law on the call of the committee for any phase of this matter. If a plan is submitted, and these two committees are not satisfied, all we have to do is reject it, or hold it up and call on the General Accounting Office to take any steps, such as that, as we see fit.

The second provision the committee put in for the Senate's consideration is:

Strict statutory guidelines which will insure that the $200 million in contingency funding will be used only for the C-5A program insofar as the contractor is concerned and not possibly intermingled or diverted to other uses among the various other programs of the company. The bill in section 504(b) expressly excludes other uses for the $200 million.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. STENNIS. I yield myself 2 additional minutes.

The PRESIDING OFFICER. The Senator is recognized for 2 additional minutes.

Mr. STENNIS. Then there comes Mr. Packard with respect to his special responsibility. Then comes the General Accounting Office, if we call on them for their statutory responsibility.

Mr. PROXMIRE. Mr. President, will the Senator yield?

Mr. STENNIS. I yield.

Mr. PROXMIRE. With reference to section 504(b), page 22 of the bill, the Senator is absolutely right. The Senator from Pennsylvania (Mr. SCHWEIKER) and I both support this purpose to prevent the $200 million from being diverted to any other contract or material.

The difficulty is, although it may be the payments of the $200 million could be audited in such a way that the $200 million would go only to the C-5A, there is more. There is no discipline over the $344 million in this bill, presumably for the C-5A, that could be diverted to the airbus.

Mr. STENNIS. It better not be.

Mr. PROXMIRE. We were told by Air Force officials who came to my office that the reason Lockheed was in trouble was their commercial airbus. Here is where the money losses have gone, not to the C-5A. It would seem to me there is no effective way you can be sure the $200 million would go for this purpose.

Mr. STENNIS. There is some discretion in orderly procurement practices that would take care of that; but I do not propose to let this money go into other activities or contracts. If Mr. Packard does not bring in a plan that we think protects us in that field, I would be in favor of rejecting the plan. That is all I can say now.

Mr. President, I am glad to yield now to the Senator from North Dakota (Mr. YOUNG), a member of our Appropriations Subcommittee, on this subject for 20 minutes.

The PRESIDING OFFICER. The Senator is recognized for 20 minutes.

Mr. YOUNG of North Dakota. Mr. President, as I understand it, the proponents of this amendment, among other things, want to make sure there will be no more C-5A-type contracts. With this I am in full agreement.

The former Secretary of Defense who entered into this contract, Mr. Robert McNamara, is no longer with the Department of Defense. The proponents of the amendment can heap all the criticism on him they wish, and I will help them out because this is one of the worst contracts the Government has ever entered into. I see no possibility of this type contract ever being entered into again. Among other things, this is so disastrous to Lockheed, what industry would want that type of contract?

The real question now is, Do we want to get the rest of these planes we need so badly, which means we help keep this company from going bankrupt and shutting down? It is in the best interest of the Federal Government now to get these planes at the least possible cost.

Mr. President, one of the important military decisions before us is whether to authorize the $200 million in contingency funds which are necessary to insure continued production of the C-5A aircraft during the last half of fiscal year 1971.

President Nixon has indicated that fewer U.S. forces will be stationed abroad in the future. This is a decision long overdue. I note now that plans are being made to bring over 60,000 troops back from South Korea, so more planes will be needed in the future. Bringing back these troops will save hundreds of millions of dollars and, more importantly, it will put the United States in a much more favorable financial position through easing our balance-of-payments problem and reducing the gold drain. At the same time he has made it clear that this Nation will honor its commitments to its allies and protect our interests wherever threatened.

This new foreign policy makes it more necessary than ever before that we acquire the number of C-5A aircraft that is deemed necessary to give us the required airlift capabilities. One C-5A cargo plane will carry 80.8 tons in cargo as compared with 24.4 tons for the C-141, which has previously been our biggest cargo plane. The C-5A not only will carry a much heavier load, but it can carry the much larger military equipment necessary for deployment of forces overseas.

The program to acquire the C-5A aircraft has been subjected to unusual scrutiny and has been the source of continuing controversy. Last year a decision to reduce the procurement from the originally planned 120 C-5A aircraft to only 81 was made principally because of increased costs and budgetary constraints. The current proposal of 81 production aircraft leaves us with a deficit in our strategic airlift capability, but with a substantial gain over what our position would be without any C-5A's. Reductions below 81 would seriously erode our military capability and our overall national security.

At present, the development of this plane is nearly completed and the company is well into the production phase of its contract. Congress has already authorized $3.4 billion for the program, and the Air Force has requested $544 million for C-5A production in fiscal year 1971. This sum includes $200 million in contingency funds.

If this request is not approved, Lockheed, because of financial problems, would be in no position to continue production of the C-5A and this at a time when only 17 aircraft have been completed. The unit cost of these aircraft would be prohibitive, over $200 million per unit, and the Nation would be denied further production of a superb cargo plane so badly needed for both our national security and foreign policy.

Similarly, if only $344 million were authorized for fiscal year 1971, the Air Force would receive only 30 or 31 aircraft at a unit cost of approximately $125 million per aircraft; still too small a force to provide the needed airlift capability.

In either of these instances where funding is denied, the contract would be terminated for the convenience of the Government and the Government would probably have to pay termination costs which would result in even higher cost per aircraft. On the other hand, if we continue with the 81 aircraft program to which the Government is already committed, the cost would be approximately $4.6 billion or about $57 million per unit under the Air Force's interpretation of the existing contract.

The Government has invested a large amount of money in this program for the last 5 years and is now beginning to receive a return on its investment. A case in point is the cost of the last 51 aircraft. Beyond the $344 million in this year's request, the cost to complete these 51 aircraft would only be $800 million.

The $344 million portion of the fiscal year 1971 request is expected to last only about the first half of the fiscal year. Generally this represents payments to cover most of the expenditures up to a level that reflects the interpretation of the contract which is most favorable to the Government.

An additional $200 million is needed to cover remaining projected expenditures for the latter part of the fiscal year to insure production continuity. Normally it would be the contractor's responsibility to provide such funding, but the amount in dispute, over $600 million, is more than the contractor can manage. Lockheed has not been able to obtain private financing in this amount. Thus, if the Government does not provide the funds, production will undoubtedly have to cease.

Back of the problems of Lockheed and the necessity of this $200 million item

in the defense procurement bill is accelerated costs of all kinds going into the production of this plane and other military equipment and the resultant very large overrun. Overruns are the result of higher interest rates, higher wages, the alarming rate of inflation of the cost of everything, and some unwise provisions in the Defense Department's contract with Lockheed.

Most Air Force officials I talk with agree that this contract which was entered into by former Secretary of Defense McNamara required far more sophisticated manufacturing techniques and capabilities than were necessary. Some of these would be very difficult and expensive for any manufacturer to comply with. If the Defense Department were to enter into a new contract with Lockheed—and this may be the case sometime in the future—I understand that some of these highly sophisticated ideas will be dropped. It would still be a great plane and would meet most, if not all, of our requirements.

Mr. President, there has been a large cost overrun on the C–5A aircraft—far too much—and this speech is not intended in any way to approve of the C–5A type of contract or the procedures used. This was a bad deal both for Lockheed and the Defense Department.

The recommendations resulting from the Fitzhugh Commission investigations of Pentagon procedures will go a long way toward correcting bad contract procedures such as took place here. The prototype procedure, popularly called by Secretary Laird as the "fly before buy" approach, represents a much more economical approach and should result in better weapons systems.

The average person reading all of the publicity of the cost overrun on the C–5A can not help but get the opinion that Lockheed had made a huge profit. This is far from the true situation. Lockheed lost very heavily and, as a result, is in deep trouble financially. Fortunately, the C–5A is a superb plane and more than meets the expectations of Air Force authorities.

Mr. President, there are huge overruns in most other military procurement. For example, the overrun in the F–111 percentagewise is far greater than the C–5A. It is important to note, however, that the C–5A contract was different than almost any other procurement contract entered into by the then Secretary of Defense Robert McNamara with other defense suppliers.

Cost overruns are very common in other segments of our economy. A good example is the John F. Kennedy Center for the Performing Arts here in Washington. The first estimated cost was $46.4 million. With the construction now more than half completed, it is now estimated to cost $66.2 million. Last December in the first supplemental appropriations bill for fiscal year 1970, Congress appropriated its share of this cost overrun. If we had followed the argument of many with respect to the C–5A, Congress would have refused to appropriate the last increment for the John F. Kennedy Center for the Performing Arts.

Anyone interested could also check Corps of Engineers projects over the last several years. The bids they have received have oftentimes been far in excess of the estimated cost of the projects. Regrettable as cost overruns are either in private business or government, there is nothing unique about them.

If production is not continued on the C–5A, nearly 20,000 employees will be adversely affected at the Lockheed Georgia Co. Feeder plants in Chattanooga, Tenn.; Uniontown, Pa.; Logan, Ohio; Charleston, S.C.; Shelbyville, Tenn.; Martinsburg and Clarksburg, W. Va., would likewise be adversely affected. In addition, an estimated 20,000 more jobs at subcontractors facilities in 42 States would be jeopardized.

The Air Force advises that there is a total of 2,388 different suppliers for the C–5A program, 644 of whom employ over 250 persons. General Electric is a prime contractor for the engines and employs approximately 6,500 persons in this endeavor. GE also has many subcontractors and suppliers who would also be adversely affeoted by program termination or delay.

In summary, we cannot ignore our considerable previous investment and the need for the C–5A. We should approve this request and obtain the planes at this more reasonable price. If we deny the $200 million, then Lockheed would undoubtedly have to stop production, the number of aircraft delivered would be less than required, and many thousands of employees would be jobless. If we approve the request and continue production, we will obtain the aircraft required to provide the strategic airlift capability so essential to our national security.

In reporting out the authorization bill, the Armed Services Committee has incorporated restrictive language to insure that the Government's best interests will be protected. The Secretary of Defense must obtain the approval of both the House and Senate Armed Services Committees prior to obligation of the $200 million. In addition, the authorization bill provides strict statutory guidelines to insure that the $200 million in contingency funds will be used solely for the C–5A program. These measures provide adequate safeguards over the expenditure of these funds.

Mr. President, it is important that we understand just what this $200 million contingency represents. There are a number of disputes over the original contract between the Air Force and Lockheed, one of which involves the total price for the production of the C–5A aircraft. The contractor contends that the total price for these aircraft may exceed the estimate under the Air Force's interpretation of the contract by as much as $500 million.

This is a matter that has to be settled through the established procedures for handling disputes of this nature, and the matter is now pending before the Armed Services Board of Contract Appeals. This $200 million contingency represents an advance to the contractor against his claim under the contract, and would be an offset against any amount that the contractor might be awarded in the pending proceedings.

In the event it is determined that the Air Force's position is correct, the recovery of this $200 million is a matter that will have to be handled in the plan for the disbursement of these funds required under section 504(a) of the pending bill.

The $200 million is necessary if the C–5A program is to continue. I believe it is in our best interest to complete this vital defense program. To liquidate the C–5A contract at this juncture would mean most of the billions of dollars we have already spent would have been wasted.

Mr. STENNIS. Mr. President, if the Senator will yield, if he has time, let me commend him highly for his presentation of this matter with clarity and substance.

A question was raised about it not being in the plan to give Mr. Packard surveillance over the $344 million and that it could not be used in connection with any other manufacturing process.

In the first place, I think the answer to that is that if he gives careful surveillance to the $200 million, that will take care of the $344 million not being diverted. But, anyway, the $344 million is strictly within the contract we already have with the manufacturer. After something is already set up under contract, it is an altogether different thing than legislation making a certain demand. When he controls the $200 million, he controls the $344 million that goes along with it.

I submit that to the Senator from North Dakota and to the Senator from Wisconsin.

Mr. YOUNG of North Dakota. I thank the Senator. I think these funds have been tied down very carefully by the House and Senate Armed Services Committees and by the statements made by the Secretary and Under Secretary of Defense.

Mr. STENNIS. I thank the Senator. Mr. President, whatever time the Senator from North Dakota did not use is yielded back, I am sure.

I now yield 10 minutes to the Senator from Arizona.

Mr. GOLDWATER. Mr. President, I do not intend to discuss the amendment at any length at all, although I will have to say that it does provide protection. But I feel that the committee approach provides just as much protection as the amendment, and I have as much confidence in Mr. Packard's ability to carry this out as I have in that of any one man or committee organization in this Capital.

I would like to talk about the airplane itself, Mr. President, because it is probably the most important airplane for the armed services of the future that we have in being, or even planned.

I would remind my friends from Pennsylvania and Wisconsin, who are deserving of praise for their constant interest in reducing costs, that if the army of the future turns out to be what I think it is going to be, and what General Westmoreland is talking about, we are looking at savings, in this one area alone, of from $5 billion to $10 billion.

What we are asking for is just $200 million, to make sure that this C–5A does come into the inventory, so that we can provide the fast, heavy lift that is needed to keep our troops at home, but

put them anyplace in the world that we have to.

Mr. President, we hear four categories of commentary critical of the C–5A program. These categories pertain to: First, the basic requirement for the C–5A; second, the performance of the aircraft relative to changes in specification requirements; third, operating costs; fourth, acquisition costs and the financial problems of the contractor. Each of these areas of criticism has been addressed by me in the past. My views are a matter of record.

In this regard, it is particularly misleading to state that the reasons for buying the currently planned C–5A force are obscure. Even the most superficial examination of the legislative history of the airlift program reveals the fact that the Congress has for many years pressed upon the Defense Department the urgent need for a major expansion in our military airlift capacity. Therefore, congressional initiative as well as efforts within the Department of Defense provided the initial impetus toward the achievement of that objective.

With regard to the C–5A requirement, itself, the authors of the report are apparently aware that it grew out of a series of airlift studies conducted during the early 1960's, which culminated in September 1964 with a joint Army-Air Force study called AIRTRANS—1970's. It was from this last mentioned study that the specific requirement for six squadrons of C–5A's—96 U.E. aircraft—emerged. And, it was this program which was presented to the Congress in tentative form in early 1965, and reaffirmed in its final form in early 1966.

Mr. President, I have described this aircraft before, but it is the world's largest airplane. It will be able to transport heavy equipment, which we cannot do today. It will be able to do so quickly, to any part of the world. The fact that the basic general purpose forces strategy has been changed from 2½ wars to 1½ wars—whatever that means, Mr. President; it does not make a lot of sense to me, but that is the intention; it has been changed from the 2½-war McNamara plan to the 1½-war Laird plan; and some day I think we will have that explained—does have a bearing on the airlift requirement.

But it should be noted that the Congress has refused to approve the FDL program, leaving the full weight of the quick response lift requirement on the airlift. In late 1969, during the course of the fiscal year 1971 budget review, Secretary of Defense Laird decided to hold the C–5A force at four squadrons and the total buy at 81 aircraft. He did so because of the tight budgetary constraints, the rising cost of the C–5A, and the overall reappraisal of defense requirements. Accordingly, there is nothing inconsistent in the JCS position, still validating a six-squadron C–5A requirement.

I have remarked about the uses of this airplane. Let me give an example of what I mean.

For example, in the case of a war in Europe, a typical reinforcement of our forces there might consist of 300,000 men, 105,000 tons of bulk cargo, and 66,000 tons of outsize cargo. With 97 C–5A's in operational units, plus all of the C–141's and 75 percent of the CRAF aircraft, this reinforcement can be moved to Europe in 20 days, fully ready for combat. With 70 C–5A's, the number expected to be available for operating units from a total buy of 81, this reinforcement could be moved to Europe in 28 days. Thus, it is perfectly clear why the JCS still validates a requirement for 120—that is, 96-unit equipment—C–5A's, and why the Defense Department still insists that a total of at least 81 aircraft should be bought.

Mr. President, another criticism that is leveled at this aircraft is that it has not met specifications and requirements. Mr. President, I have stayed rather close to this airplane. I flew it myself over a year ago. I went through the program then with the chief test pilot and his crew, and they pointed out to me the aerodynamic mistakes which Lockheed had discovered, and at their own expense, and at no expense to the Government, had corrected.

They had made an aerodynamic mistake in believing, in my opinion, that the wing root section of the C–141 enlarged would work on the C–5A, and it did not turn out that way. But they have corrected it.

The airplane is ahead of its testing program. We now have, I am not sure what number it is—it might have changed since I was last visiting with these gentlemen—about five or six have already been delivered to the Air Force, and deliveries across the waters have been accepted, and training is proceeding.

At a visit to Edwards Air Force Base earlier this summer, at which time I had the good fortune to again discuss with the flight test crew and the chief pilot any progress being made, they were more enthusiastic then, after having performed especially desert tests, which tests are conducted on the dust-covered, dry lakes of California, and the engines are put into reverse to pick all the dust up they can. They were surviving these very rigid tests beautifully.

There has been one criticism of the wing. As I said earlier, I think Lockheed should be congratulated for having come up with this kind of trouble. The wing is really too strong, but it is too strong at a point just upward of the aileron. That is giving it some trouble in maintaining the flexibility needed in that type of wing. But that can be easily corrected. In fact, the Secretary of the Air Force has received the results of an analysis made by a study group appointed for purpose, and I quote just one part of it:

> The flight performance of the C–5A meets the guarantees of the contract within the accuracy limitations of good flight test measurement.

Mr. President, we have tested this aircraft to 128 percent of stress. We would like to test it to 150 percent of stress, and we will do that.

This, I might say, is higher than we test commercial aircraft. We have always done this in the Air Force, and that is one of the reasons that the Air Force, in spite of what people might believe, has a very fine safety record.

The problems reported with the landing gear are not serious problems. This is possibly the most unusual landing gear ever developed, and why it did not have more troubles is again, I think, a credit to the Lockheed Co., for having been able to solve the problems. If Senators can imagine an aircraft of 750,000 pounds being able to kneel, after it gets on the ground, just like a big camel, so that we can drive our big trucks, tanks, jeeps, and other things into the aircraft, they can have some idea of the problems involved.

Mr. President, this is not a personnel-carrying airplane. It could carry a thousand people if you wanted to stuff them into it. It will carry heavy equipment, wheeled equipment, and the troops needed to operate that equipment, to any place on the globe. Again I stress, as I did at the outset, for those who are really interested in saving money, that when we look at the possible savings of billions and billions of dollars by the new Army of the 1980's, geared to the C–5A and the new heavy-lift helicopters that we have not even begun to build yet—I am not talking about 22-ton helicopters—and when we recognize the proven ability of our electronic sensors to detect the enemy forces, I think that when all this is laid out to the American public, they will have a fine understanding of why we can talk about a smaller standing army for the 1980's and even the late 1970's.

This gets back to our argument of yesterday, as to why we will have to go to a volunteer approach to our services, so that we can attract the highly intelligent type of person we feel we can to operate the things we will have to have in the Army of the future.

Mr. President, I hope this amendment is rejected. I hate to see anything happen that would jeopardize the delivery of these airplanes. I would hate to see us wake up the first day of January and discover that Lockheed-Marietta has closed down because the $200 million was not available to them. I recognize full well that this is a step aside from normal procedure. It is not a step that I particularly like to take. I would much prefer to have seen Lockheed get along without this money coming from the Government in this form. But I think the acquisition of the weapons system is more important than what I consider to be other justifications for not approving it, and I would hope that the committee bill, the way it has been reported, after the study we have given it, will pass.

The PRESIDING OFFICER. The Senator from Mississippi has yielded time to the Senator from Georgia. The Senator from Georgia is recognized.

Mr. TALMADGE. I thank the Chair.

Mr. President, only two basic issues are involved in the C–5A controversy:

First. Is there a military need for the aircraft? That is, is the C–5A vital to our defense?

Second. Can this airplane be produced under the terms of the pending amendment?

So many red herrings have been drawn

across the path—all of them apparently for the purpose of discrediting the military, or the company, or the aircraft in a way that would gain maximum public attention.

It is true that there has been a tremendous cost overrun. There is a controversial legal case that resulted from poor military contracting procedures. Mistakes have been made, both by the contractor and by the military. But they have been blown all out of proportion to the facts.

I concede that the cost of C–5 has far exceeded anyone's expectations, and I deplore that as strongly as anyone. I too wish to get the maximum return from each defense dollar. It should be clear to everyone by now that this contract was good for no one—not for the Air Force, not for Lockheed, and not fr the taxpayers.

But I fail to see how it would help anyone now to bankrupt the company at this stage of development and production, with the end in sight and the cost per plane dropping with each one that is produced.

Moreover, so immersed have we become by the financial and emotional side of the issue, there has been little or no recognition of the unexpected conditions and the unforeseen circumstances which helped to cause most of these problems.

The C–5 is a jumbo-sized aircraft. It has provided a jumbo-sized opportunity for the critics of national defense—a number of writers especially—to appear as knights on a white charger saving the taxpayers from the Pentagon and alleged contract waste.

What they are doing in reality is to propose a course of action that itself would produce far more waste than they purport to save.

The C–5 has been made a vehicle for talking about a reordering of national priorities. I share everyone's concern about the multitude of social and economic problems that plague our people. But I fail to see how the waste of a billion dollars of unfinished airplanes in a production pipeline all over the country would solve these problems.

The fact of the matter is, Mr. President, that we have been diverted from the main issue. The matter with which we ought to be concerned—national security—has been obscured.

I carry no brief for Lockheed Aircraft Corp., although I would be less than honest if I did not express concern for the 20,000 employees at the Lockheed plant in Marietta, Ga., and another 20,000 C–5A workers all across the country. I make no apology for not wanting to throw some 40,000 people out of work in one fell swoop.

I carry no brief for the Air Force. The Government must also share part of the blame for this contractual arrangement.

But I do strongly advocate national security. Throughout the legislative history of this issue, this has been, as it should be, the prime concern.

Mr. President, in considering production of the C–5 last April, the House of Representatives recognized that the central issue is the fact that the aircraft is vital to national security.

A question arose in the House about cutting off $200 million from the C–5 program, to limit production to just 30 or 31 planes, as opposed to the required 81.

I have carefully studied the House debate. Chairman RIVERS of the House Armed Services Committee reduced it to simple terms that none of us can fail to understand. He told the House:

> If you want to cut off $200 million and destroy a whole airlift system for which you have already paid $2 billion, you can do so, but who is going to lose? American security . . . That is how simple it is.

The House in its wisdom was not disposed to gamble with the requirements of national defense.

Then the dispute came to the Senate. In its report on the military procurement bill, the Senate Armed Services Committee also emphasized that the basic issue was whether or not the C–5 aircraft were needed. That was what the committee had to decide. This is what the committee reported:

> The fact is that additional C–5As are essential for national defense purposes.

The committee, therefore, quite properly primarily addressed itself to this essential need. It recommended that the C–5 program be funded in order to produce the required number of aircraft.

The committee was concerned with the contract disputes and with the cost overrun. But, first of all, it was concerned with national security.

That was the issue before the House. That was the issue before the Senate Armed Services Committee. This now is the fundamental issue before the Senate.

The issue boils down to a close examination of the amendment offered by the Senator from Wisconsin and the Senator from Pennsylvania, laying down certain conditions for funding completion of the C–5 program. As I will discuss in more detail later, the first condition is impossible to meet.

Mr. President, the reason why it is impossible to meet is that it requires the Board of Contract Appeals to make a determination in this fiscal year, which has only 10 months to run, that the money is actually owed.

I ask unanimous consent to have printed at this point in the RECORD a schedule of events that would occur if the Board of Contract Appeals were to make a decision on it—the authority for this is the Pentagon itself—that it would require a minimum of 10 months, without any regard whatever for appeal, and an appeal probably would require another 2 years. Yet, we are legislating on a bill that will relate only to fiscal year 1971.

There being no objection, the schedule was ordered to be printed in the RECORD, as follows:

Rule 4 process: Air Force files on C5A compiled, transferred to Lockheed, documents and files studied by Lockheed, April to July of this year.

Discovery motions prepared and filed by both parties. Probable date of submission, September to October 1970.

Compliance with discovery requests will take about 60 days.

Study of discovery data and preparation for trial, about 60 days. The trial will take about 2 weeks to one month. Preparation of briefs will take about 60 days. Preparation of reply briefs, about 30 days.

Board deliberates and writes its opinion, about 60 days.

Time required, under the most optimum conditions, from date that discovery motions are filed, 10 months.

Mr. TALMADGE. I also have a statement of the chairman of the Board of Contract Appeals, Mr. Solibakke, wherein he says that the minimum time would be another 8 months in order to consider the matter without any reference whatever to an appeal on the part of either party.

Mr. President, I ask unanimous consent that the entire statement be printed at this point in the RECORD, as a part of my remarks.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

NOTES FROM CONVERSATION WITH MR. RICHARD C. SOLIBAKKE, CHAIRMAN OF THE ARMED SERVICES BOARD OF CONTRACT APPEALS

1. The first item discussed was the question of whether both parties to a case before the ASBCA have the right to appeal to the Court of Claims. The answer is that both parties do have such a right, but a Government appeal almost never occurs. In effect, the ASBCA is acting for the Secretary of Defense and therefore, an appeal by the DOD would be, in this sense, an appeal from the DOD's own decision. However, the DOD occasionally does appeal the decisions, sometimes for the purpose of having the decision reviewed by a higher judicial body for the sake of appearances as well as for the purpose of having a stronger position. Mr. Solibakke estimated that less than 1% of ASBCA cases are appealed by the DOD.

2. The next question discussed was the average length of time required by the ASBCA to reach a decision. Mr. Solibakke indicated that this, of course, depended on the complexity of the case and the volume of material that had to be reviewed. He said he had known of cases that were decided by the ASBCA in less than 1½ years from the date of the case being docketed, but the average time required would be over 2 years.

In the C–5A case now before the ASGCA, he stated that his opinion is that the minimum time required for an ASBCA decision would be approximately 8 months from this date—and this could only occur if extremely expeditious handling were given to the case. He felt the urgency and importance of the C–5A case is such that all parties would give expeditious handling to the procedures—but the procedures would still require in his opinion a minimum of another 8 months.

He described in some detail the various procedural steps that are required by ASBCA rules and the procedural rights that each contending party has in an ABSCA case. The net result of such procedures led to his opinion that 8 more months would be required even with expeditious handling.

Mr. Solibakke indicated that he could be quoted freely with respect to his statements of opinion about the time required for consummation of an ABSCA case.

3. The next question discussed with Mr. Solibakke was the matter of time consumption required for a decision by the Court of Claims following an appeal to the Court of Claims from an ASBCA decision. Of course, Mr. Solibakke is not connected with the Court of Claims in any way, but he has had a great deal of experience in observing the actions of that Court which frequently follow ASBCA decisions.

He first noted that an appeal to the Court of Claims from an ASBCA decision requires that DOD attorneys turn the Government case over to the Department of Justice. This

obviously means that the new group of attorneys would have a certain amount of time required to become familiar with the Government's case, thereby giving an appeal an inherent beginning delay.

Next, he noted that the time required by the Court of Claims would be, as in the ASBCA, dependent on two general factors. The first factor would be the complexity of the case and the volume of material to be reviewed, and the second factor would be the procedures of the Court of Claims. The net result of these, in the opinion of Mr. Solibakke, is that the minimum time required for a decision in a case like the C–5A would be 2 years from the date the appeal was made. He believes this is a conservative estimate and notes that this estimate is based on the most expeditious possible handling of the case in the Court of Claims. Obviously, he said, this would take a decision on the C–5 case by the Court of Claims at least to mid-1973 and more probably to the latter part of that year.

Mr. TALMADGE. Mr. President, I would point out that the volumes of detail, contracts, work reports, and so forth, involved in the C–5A contract are as large as this Chamber reaching all the way to the Capitol dome. It is absolutely impossible to make a determination very speedily.

The second condition that the Senator from Wisconsin and his colleague would require to make the money available is bankruptcy for the Lockheed Aircraft Co. I would point out that, under this condition, we would be operating a company under a court order. The trustee in bankruptcy might decide that this is a bad contract and, since he would want to conserve the assets of the company, the entire contract would necessarily be junked.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter which my legislative assistant, Michael McLeod, has received from an outstanding Washington law firm, describing the alternatives under a bankruptcy proceeding and pointing out that C–5A would never be acquired by the Government.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

SELLERS, CONNER & CUNEO,
Washington, D.C. August 18, 1970.

Mr. MICHAEL MCLEOD,
Old Senate Office Building,
Washington, D.C.

DEAR MR. MCLEOD: Reference is made to your telephone conversation with my partner, Herbert L. Fenster, on August 13, 1970, in which you requested that we provide you with certain information relating to the alternatives posed in the Proxmire–Schweiker amendment to the military procurement authorization bill.

We are presenting in as brief a form as possible, certain information relating to the two referenced alternatives which we think will be helpful to the Senator. Obviously, it is not possible to present any detailed statement of procedures in bankruptcy or reorganization. Rather, we are presenting information which represents our opinion as to how reorganization or bankruptcy would operate in connection with the Lockheed matter.

In the telephone conversation on August 13, we indicated that there was perhaps an inconsistency in the information available relating to the first alternative posed by the referenced amendment. Specifically, Senator Talmadge indicated in his speech that an appeal proceeding before the Armed Services Board of Contract Appeals would not be concluded until the middle or latter part of 1971. We understand that the Chairman of the Armed Services Board indicated to Mr. Shillito that with a highly expedited proceeding, the appeal might be concluded in nine months. We do not believe that there is any substantial discrepancy between the two time estimates.

With reference to the first alternative, which refers to the expenditure of the contingency fund only to the extent of a determination by the Armed Services Board or to the extent determined by a court upon appeal from an Armed Services Board decision, we believe such alternative to be wholly unrealistic.

It is quite clear that the funds will be needed long before an appeals board decision can be expected. This is true all the more if judicial review of a board decision is necessary.

Passage of the amendment therefore would leave only the second alternative which contemplates bankruptcy or reorganization. In reviewing the salient features of a reorganization action, it must be kept in mind that any such action with respect to Lockheed would involve the entire Lockheed Aircraft Corporation not just the Lockheed Georgia Company.

Corporate reorganization is provided for under what is known as "Chapter X" of the Bankruptcy Act. The basis for and purpose of reorganization is the rehabilitation of the company. If reorganization is determined not to be possible, or fails, the only alternative is bankruptcy and the liquidation of the company.

In brief summary, a reorganization would proceed somewhat as follows: A petition would be filed by the company, in the case of a voluntary proceeding, or by three or more of its creditors in an involuntary proceeding. This petition would be submitted to a Federal District Court in whose jurisdiction the corporation has its principal place of business or its principal assets. Creditors and certain other interested parties could answer this petition, indicating their interests or objections. The Federal District Judge would then enter an Order approving the petition if he were satisfied that all requirements of Chapter X had been complied with in good faith. We should point out that the petition would not be approved and the reorganization would not proceed if it were clear that the reorganization would fail.

Upon approval of the petition, if noncontingent debts which were liquidated as to amount exceeded $250,000, the Judge would appoint one or more Trustees to oversee the reorganization. The Trustee, in effect, would both reorganize and, during the reorganization period, manage the affairs of the company. His efforts could include the retention of existing management or the appointment of new management. The Trustee would be a disinterested party.

A principal function of the Trustee is to prepare and submit a plan of reorganization which would indicate some procedure in which the corporation could satisfy its obligations and develop sufficient capital and assets to continue as a viable business.

Of particular relevance to the matter at hand, it should be noted that in a reorganization the court might permit the rejection of contracts held by the corporation, except those which are characterized by the Bankruptcy Act as being "in the public authority." There is no clear judicial ruling as to whether this exception includes Government prime contracts so we cannot definitely say whether the Trustee could reject such contracts. As you will appreciate, the determination by the Trustee as to whether prime contracts could and should be rejected could involve any or all of the corporation's contracts not just those of the Lockheed Georgia Company.

Even assuming that Government prime contracts could not be rejected by the Trustee in the course of reorganization—and we believe this is the probable interpertation—if performance of these contracts appeared excessively onerous, the Trustee or the Court might determine that reorganization was not feasible. The result would then be bankruptcy and liquidation of the corporation's assets.

The profound and chaotic effects of a reorganization of Lockheed under a Chapter X proceeding could perhaps be best appreciated by considering the impact on the complex array of subcontractors and suppliers which are an essential part of its various programs. The corporation has approximately 35,000 first-tier subcontractors and suppliers holding nearly 185,000 open orders with Lockheed, with a value of about two billion, one hundred twenty million dollars (the C–5A program alone involves about 2,300 first-tier suppliers furnishing material directly to the program). On virtually all major programs there are hundreds of suppliers, large and small, who furnish unique components that could be obtained from other source only after great delay and expense, if at all. Any indication that Lockheed was to be forced into reorganization or bankruptcy would have an immediate and disastrous effect on the ability and willingness of these firms to continue to perform. The ability of these firms to secure necessary credit to continue their businesses and pay lower tier subcontractors and suppliers undoubtedly would be severely impaired. Any failure by Lockheed to make prompt payment or otherwise fulfill its obligations under its orders would excuse suppliers from further performance, and even those who are not so excused would be under no obligation to accept new orders. The disruption of the complex procurement structure which would inevitably follow passage of the proposed amendment could not subsequently be remedied through election by the Trustee to require performance of open orders. Considering the straitened circumstances of the Aerospace Industry generally, before he could take such action critical suppliers might themselves have been forced into bankruptcy or might have found legal grounds for refusing to continue if this would reduce their losses.

Among other agreements of the corporation which might be affected are its collective bargaining contracts since such agreements might be subject to rejection by the Trustee.

Another effect of a Lockheed reorganization would be the automatic termination of long-term leases covering many of the buildings occupied by the Lockheed Missiles and Space Company (LMSC) at Sunnyvale, California. Some of these buildings are committed in their entirety to the performance of the Poseidon program and a number of classified Air Force space programs. Performance by LMSC of virtually all of its Government space programs would be seriously endangered and perhaps discontinued in the event of loss of these buildings. One of the buildings, used in the development and production of Government space craft and boosters, includes a thermal vacuum chamber, an altitude simulation chamber and an anechoic chamber which are essential to performance of Government space programs.

Essential work on Lockheed missile programs would also be seriously impacted by the loss of an additional leased building as a consequence of the initiation of reorganization proceedings. This building is used for fabrication of experimental Poseidon vehicles, as well as development, modification and check-out of the Safeguard System Target vehicles and Air Force reentry vehicles.

Other buildings covered by long-term leases include a building which houses LMSC's large computer complex used extensively on Government programs and the research laboratories in Palo Alto which per-

form a significant amount of research on Government programs.

Some additional buildings that are held under shorter term leases (*i.e.*, with initial terms expiring no later than 1974) are also subject to termination in the event of Lockheed reorganization or bankruptcy proceedings. Government programs performed in these buildings include Air Force special programs, advanced tactical missile and defense systems, missile systems logistics and publication.

Particularly on the long-term leases, even if the Trustee could negotiate new lease agreements, there would be major costs to these Government programs as a result of disruption and rent increases reflecting the appreciated value of these facilities.

A significant foreign sales program would also be impaired by a Chapter X proceeding. Without regard to the Lockheed commercial programs, there is a substantial foreign market, both actual and potential, for Hercules and Orion aircraft which might be eliminated under a Chapter X proceeding. We are advised that there are approximately $50 million in open foreign orders for Hercules aircraft under which the buyer would have the right to terminate in the event of a reorganization. In addition, there are almost $400 million of potential orders, about one-half of which appear to present excellent prospects for sales.

There is one other matter in connection with the amendment which we wish to bring to your attention. If, as we have indicated, reorganization becomes necessary, and even assuming that the company is able to stay in business, under the regulations of the Department of Defense (Defense Procurement Circular, No. 3, dated 4 March 1964; Armed Services Procurement Regulation 1-903) the company would be declared "not responsible" and would be ineligible to bid on or receive any new defense contracts. The result of the enforcement of these regulations would be, as a practical matter, the loss to the Government of its largest defense contractor whose work is critical to the national interest.

We have been pleased to provide the foregoing information to you. If we may be of any further assistance, please do not fail to call upon us.

Very truly yours,

GILBERT A. CUNEO.

Mr. TALMADGE. Mr. President, the Senator from Wisconsin came in this morning, without any knowledge or notice to anyone concerned with this fight, and set up a third condition, which is that the Comptroller General of the United States make a determination of this issue and report to the Congress by November 15, 1970.

I would point out that this condition, likewise, is probably impossible to meet.

The House of Representatives is in recess until September 9. The bill deals with a great many complex issues. Upon examination of the original House bill and the committee bill, we find that there are 14 major funding changes——

The PRESIDING OFFICER (Mr. GOLDWATER). The time of the Senator has expired. The Senator can yield on his own time.

Mr. TALMADGE. Mr. President, has the Senator from Mississippi left instructions with the Chair to yield time to anyone else?

The PRESIDING OFFICER. He has.

Mr. TALMADGE. Then, Mr. President, I yield the floor.

Mr. PROXMIRE. Did the Senator say that his time is limited? I would be very happy to yield him some limited time, if it will be helpful to finish his remarks.

Mr. TALMADGE. I am very grateful to the Senator from Wisconsin.

Mr. President, with the House of Representatives in recess and not coming back until September 9, and 14 major changes already in controversy between the House and Senate on the bill, and the possibility that the McGovern-Hatfield amendment could be agreed to, an amendment that would complicate the bill still further, and the fact that a conference between the House and Senate could run into weeks, there is the possibility that the bill might not even get to the White House until October 15 or November 1, so that it would be utterly impossible for the Comptroller General to make an examination of any records.

The PRESIDING OFFICER (Mr. GOLDWATER). If the Senator will permit the Chair to interject at this point, the Senator may have misunderstood my answer. The Senator from Mississippi has now returned to the Chamber, and he could yield him time.

Mr. TALMADGE. I thank the Chair. The Senator from Wisconsin was very generous to yield me additional time, and I thank him very much for it.

Mr. President, in addition to tampering with national defense, which I regard as the most important question before us, the Proxmire-Schweiker amendment would have the Senate prejudging Lockheed's legal case and preclude any possibility for a negotiated, compromise settlement.

Such an agreement between the company and the Air Force, if reached, would certainly be difficult for Lockheed financially. But it would allow them to continue normally in business to complete their various military obligations, the C–5 program and others that are so vital to national defense. But negotiation is barred by the Proxmire-Schweiker amendment.

The amendment set up only two conditions under which the $200 million contingency fund can be spent to continue C–5A production. The first condition, the completion of proceedings of the Armed Services Board of Contract Appeals, is impossible to meet and the second condition is bankruptcy for Lockheed.

Other opponents of the pending amendment will deal more thoroughly with the issue of bankruptcy, but I would like to quickly review a few points. The only way that the sponsors of this amendment could guarantee that the C–5A would be produced under bankruptcy conditions would be to amend our Federal bankruptcy laws themselves.

The pending amendment refers to bankruptcy under chapter X, which means that the company would be reorganized so that, hopefully, it would continue to carry out production of the aircraft. However, a chapter X bankruptcy can proceed only if the trustee or the court determines that reorganization is feasible.

The Lockheed Corporation has already suffered a $290 million loss due to the C–5A program, and it may continue to suffer losses even if the $200 million contingency fund is provided. Faced with such a continuing unsatisfactory financial arrangement, the trustee might well determine that reorganization is not feasible. The result would be the liquidation of all the corporation's assets, with the termination of the C–5A program.

However, the most profound and chaotic effect of a bankruptcy proceeding would be its impact on the complex arrangements and contracts that Lockheed has with its vast array of subcontractors and suppliers. The corporation has approximately 35,000 first-tier subcontractors and suppliers holding nearly 165,000 open orders with Lockheed with a value of about $2,120 million.

Many of these subcontractors and suppliers are suffering the same kind of inflation and cost problems that have plagued Lockheed. Should Lockheed be forced into bankruptcy, many of these firms would no longer be able to secure credit to continue their business and to pay their own lower-tier subcontractors and suppliers. Moreover, any failure by Lockheed to make prompt payment or otherwise fulfill its obligations under its order would excuse these subconstractors from further performance. Hundreds of these supliers furnish unique components which could be obtained from other sources only after great delay and expense, if at all.

The sponsors of this amendment are fond of comparing the C–5A program to the Penn Central bankruptcy. They like to point out that the Penn Central trains are still running.

Mr. President, there is a great deal of difference between running a train and building the largest, most complex airplane in existence. Should the complex structure of arrangements with subcontractors and suppliers be destroyed by bankruptcy proceedings, it is doubtful that we would ever obtain the C–5A airplanes which are so badly needed for our defense. If we ever would obtain them, it would be only after a great delay and a waste of millions of dollars of taxpayers' money.

The distinguished Senator from Wisconsin, although he is not a member of the Armed Services Committee, has a right to his own views. The distinguished Senator from Pennsylvania is likewise entitled to his own views, and he is a member of the Armed Services Committee.

However, the Senate must take note of the fact that the views of the Senators from Wisconsin and Pennsylvania are contrary to the overwhelming weight of evidence and judgment that has been presented to the Senate up to now.

Their views run contrary to those of the President of the United States.

Their views run contrary to the Secretary of Defense, who has utilized all the military expertise at his command to carefully study and analyze the need for the aircraft.

Their views run contrary to the Deputy Secretary of Defense, who has testified to the military need for the C–5.

Their views run contrary to the Joint Chiefs of Staff who also say the plane is required for national security.

The Armed Services Committee of the House of Representatives took a view opposite to that of the distinguished Senators from Wisconsin and Pennsylvania.

The House of Representatives voted overwhelmingly to the contrary. It regarded the military airlift capabilities of the C–5 as a prime defense item.

The Senate Armed Services Committee reported to the full Senate that the C–5A aircraft is an essential military need.

All of these have jurisdiction over the question. Each has carefully studied it, and acted after full investigation.

This indicates to me, as it should to the Senate, that the evidence is compelling on the importance of the C–5 program to national defense.

The proposal to wreck the C–5 program comes wrapped in a cloak of respectability. Everyone wants to save on defense expenditures. But it should be clear to everyone by now that destroying the C–5 is not an economy measure.

We cannot achieve economic security by cutting back on development of an aircraft that is vital to the Nation's Defense Establishment.

We cannot save the taxpayers' money by abandoning incomplete aircraft, valued at $1 billion, on a scrap pile. This would be like trying to trade a measure of economy for a billion dollars worth of waste.

In view of the alternatives, we have no real choice. We must build these airplanes because they are needed. To do otherwise would jeopardize national security. We must fund completion of the full complement of 81. To do otherwise would be fiscally irresponsible to the extreme.

For those who are concerned about reducing defense spending, let me suggest how savings can be affected. We can stop trying to police the whole world with American troops.

It has been estimated that bringing our troops home from farflung stations throughout the world could amount to savings of several billion dollars, or even go as high as between $15 and $20 billion.

The C–5 aircraft has been called "a major instrument of national policy." It is precisely that. It has opened up and made possible the concept of "remote presence" which would allow the United States to bring home several divisions of military personnel from overseas positions.

With the C–5, these troops could be maintained here in the United States on a combat-ready basis, and be speedily deployed by airlift should the necessity present itself.

Measured against this, the cost of acquiring, operating and maintaining adequate C–5 squadrons would be small in comparison with the tremendous savings that they could help bring about.

At the present time, the United States has some 15 to 17 treaties and commitments to about 42 nations throughout the world. For about 25 years since the conclusion of World War II, the United States has relied upon overseas bases, overseas armies, and sometimes uncertain allies in order to help preserve world peace.

We need only to look at the multibillion dollar balance of payments deficit year after year, the drain upon our financial and manpower resources, and the depletion of our gold reserves to see the results of this policy.

I do not say that it has not been a necessity. For many years following the war, U.S. presence was required. But I submit that this is no longer the case.

I contend that the maintenance of ground forces to honor treaties and keep the peace has virtually become a thing of the past because of technological capabilities for massive airlifts.

This after all is the mission of the C–5—to enable the United States to keep our commitments and to guard against aggression.

Through airlift, we can obtain these objectives. We can do so at great savings. We can avoid political difficulties and embarrassment in which we often find ourselves by having too many American troops in too many foreign countries, where they are no longer needed nor welcomed.

We do not want and we should not be expected to forever maintain large contingents of American troops—like the more than 200,000 in Western Europe and some 60,000 in Korea—at stations all over the world. We do not want to dominate the affairs of foreign governments, or to become directly involved in their internal problems.

The crux of the "remote presence" concept is that we can keep our foreign commitments better and cheaper by bringing most of the troops home, and by providing for an airlift capability that could put them wherever they may be needed.

In the final analysis, the crucial issue is the unique capability of the C–5 to fulfill a defense need that exists today, and which will exist in even larger scale in the years ahead.

I hope that the Senate will reject the Proxmire-Schweiker amendment.

Mr. President, I yield the floor.

Mr. PROXMIRE. Mr. President, I yield myself 7 minutes.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized for 7 minutes.

BOARD COULD ACT

Mr. PROXMIRE. Mr. President, last Thursday, August 20, 1970, at the conclusion of my prepared remarks, the Senator from Georgia objected to our amendment partly on the grounds that the first condition of our amendment was impossible to meet. The condition referred to by the Senator from Georgia provided that Lockheed could get the $200 million in the contingency fund if the Armed Services Board of Contract Appeals ruled that the Government owed them the money under the terms of their contract. To me and my cosponsors, this seemed a perfectly reasonable stipulation. On the other hand, the Senator from Georgia contended that the Armed Services Board of Contract Appeals could not possibly process this matter during the current fiscal year despite the fact that the matter has been before the Board formally since January 9, 1970. In support of this contention, the Senator from Georgia inserted a schedule of proceedings of the ASBCA which I would like to repeat here:

Rule 4 process: Air Force files on C5A compiled, transferred to Lockheed, documents and files studied by Lockheed, April to July of this year.

Discovery motions prepared and filed by both parties. Probable date of submission, September to October 1970.

Compliance with discovery requests will take about 60 days.

Study of discovery data and preparation for trial, about 60 days. The trial will take about 2 weeks to one month. Preparation of briefs will take about 60 days. Preparation of reply briefs, about 30 days.

Board deliberates and writes its opinion, about 60 days.

Time required, under the most optimum conditions, from date that discovery motions are filed, 10 months.

Until I studied this summary of the series of planned events, I simply could not understand why the matter which had been before the ASBSA for 7½ months had not already been dealt with.

Now I understand perfectly.

BUREAUCRATIC RIGIDITY

The schedule of proceedings of the ASBCA given to us by the Senator from Georgia is a perfect example of unthinking bureaucratic rigidity. I had suspected before that the Pentagon was stalling on this case. Now I am convinced.

Of course the ASBCA could take another year to process this case. They could take 2 years or 3, or more, under their routine. That is just the problem. This exceptional matter is being processed routinely through the lengthy, tedious bureaucratic system. This is being done despite the fact that Mr. Packard has said that the matter is to be given top priority.

I am convinced that Mr. Packard, the experienced and skillful Deputy Secretary of Defense, understands exactly how to accelerate this decision if he chooses to do so. To illustrate, let me quote to you from Mr. Packard's recent speech before the Armed Services Management Association in Los Angeles:

Every time we want something done in a hurry and want it done right, we have to take the project out of the system.

Quite obviously, if the Pentagon really wishes to accelerate the ASBCA proceedings, it would take the matter out of the routine, plodding system that has been established. They themselves understand this problem and understand it well, if I have read Mr. Packard correctly. Yet if the Senator from Georgia's information was correct, they plan to follow the same routine, the same leisurely and cumbersome procedures they usually do.

HOW TO SPEED UP

Later on in this same speech, Mr. Packard gave an example of how projects could be speeded up by cutting through the mass of nonproductive redtape in the Pentagon. I quote from Mr. Packard's speech:

In one case, a small, dedicated Air Force team developed the gunships which have been so successful in Vietnam. The Air Force decided to put this program into its formal system. About a month ago, I asked when we would be able to get some more gunships. The answer was in two years. That program is now out of the Air Force system and we will have more gunships in six months.

It appears to me that Mr. Packard and other high officials at the Pentagon know they can speed up lethargic and ponderous procedures. Apparently they just have not chosen to remove the Lock-

heed case from the ASBCA's laborious routine.

Clearly, any number of people could play at the game the ASBCA has mapped out for the Senator from Georgia. Any amount of time could be consumed. All one need do to have interminable delays occur in such cases as ASBCA's Lockheed deliberations is to let nature take its course. On the other hand, almost every segment of the Federal bureaucracy has demonstrated remarkable speed on occasion. I particularly remember the speed with which the Pentagon moved to commit the Government to the second buy of C–5A's on the last working day of the previous administration. The usually lengthy sequence of reviews, briefings, analysis, approvals and legal processes was telescoped from a typical period of several weeks or even several months to several days.

I have often marveled at the speedy handling of matters contrary to the taxpayers' interests, and the glacial movement of matters benefiting the people who pay the bills.

PROTECTS AGAINST DEFAULT

Mr. President, the second provision in the amendment stipulates that in the event Lockheed carries out its threat to default and goes into bankruptcy, the trustees could recover the $200 million on request, but it has been said that the corporation would disintegrate. Jobs would disappear. Production would stop.

I note that the same thing was said about Penn Central, that if they could not get the $200 million they said they needed to stay out of bankruptcy, the trains would not run, hundreds of thousands of people would be put out of work, the transportation system would be paralyzed, and there would be catastrophic economic effects.

What happened?

Penn Central did not move into bankruptcy. No one was thrown out of work. No one lost their jobs. No trains were delayed. The trains ran on time, or at least on their usual time.

GAO BEST EXPERT

The third point made by the Senator from Georgia related to the third condition, that the GAO should make a study. The Senator said that they could not possibly begin that study or might not be able to begin that study—might not—in the event the bill is delayed, and that it could be delayed, and that the House does not return until the middle of September.

We would have to have a conference and then the President would have to act on the bill and sign it. Only then could the Comptroller General act. But what is the actual situation? The GAO could not act tomorrow or today. He could begin this study on the basis of the determination of the U.S. Senate today on this amendment. The Comptroller General could certainly take action.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. PROXMIRE. Mr. President, I yield myself an additional 3 minutes.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized for an additional 3 minutes.

Mr. PROXMIRE. Mr. President, certainly if the Senate of the United States passed this amendment today, the GAO could proceed with a preliminary study and preliminary action.

As I have pointed out, and ac the Senator from Pennsylvania has pointed out, they have a great deal of information on the C–5A and on Lockheed. There are competent GAO personnel at the Marietta plant and have been for a long time. They are in a position to act swiftly, just as the Contract Board of Appeals can, if it wishes, act promptly.

Mr. TALMADGE. Mr. President, will the Senator yield?

Mr. PROXMIRE. I yield.

Mr. TALMADGE. Mr. President, the Senator on several occasions tried to compare the Lockheed case with the Penn Central case.

I point out that the Penn Central had no contract with the Government to build planes. They claim no damages from the Government and do not claim that the Government owes them anything. That comparison has absolutely no relation to this matter.

Mr. PROXMIRE. Mr. President, the point I was making was that the Penn Central went into bankruptcy. It was able to continue, as hundreds and hundreds of large corporations have been able to do. In the thirties we had many corporations go into bankruptcy and continue uninterrupted in production. When a large corporation goes into bankruptcy there is no reason for the interruption of production or service to the public.

We want to prevent such a thing from happening.

Mr. TALMADGE. Mr. President, I point out that there is a vast difference between running a railroad and building the most sophisticated airplane on the face of the earth.

Mr. PROXMIRE. But it is not relative as far as bankruptcy proceedings are concerned.

Mr. TALMADGE. It certainly is. Furthermore, a large number of subcontractors are involved throughout the United States. Thousands of individual orders are dependent upon the integrity and the solvency of Lockheed.

As I pointed out in my remarks a moment ago, Lockheed has approximately 35,000 first-tier subcontractors and suppliers. If Lockheed goes into bankruptcy, the subcontractors and suppliers might decide that it was a bad contract and they would have legal grounds to avoid the contract. The trustee might want to stop production of the C5–A because Lockheed will continue to lose money on the contract. The Government would then lose billions of dollars on airplanes that had not been completed and would only be fit for junk.

Mr. PROXMIRE. Our amendment was designed in the event Lockheed went into bankruptcy. We have it already documented that they made that threat. Under those circumstances, we wanted to continue to have the production of the C–5A plant and we wanted them to operate.

We have provided that they can get the money if they need it. The GAO is certainly a competent agency. If the GAO finds that the company needs funds with which to provide the planes, they do not have to go into bankruptcy.

Mr. TALMADGE. Mr. President, the Senator's amendment does not purport to amend the Federal bankruptcy law.

Mr. PROXMIRE. No.

Mr. TALMADGE. Then, he could not determine what view the trustee in bankruptcy would take, because the bankruptcy law would control. The Senator would have to amend the bankruptcy law.

Mr. PROXMIRE. But the amendment does direct the Secretary of Defense to use his very extensive powers to keep the C–5A in production. I refer the Senator to lines 14 through 20 of page 4 of the amendment.

Mr. President, I yield such time to the Senator from Pennsylvania as he might require.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SCHWEIKER. Mr. President, I would like to address myself to several additional points that have been raised in the debate on the C–5A amendment that the Senator from Wisconsin and I have offered.

The first point concerns the matter raised by the distinguished chairman of the Senate Armed Services Committee, who has been quite fair and certainly very equitable in the hearings and in the consideration of the amendment in the committee.

I would like to raise the question as to how much option and how much real opportunity for discussion there really is here.

I have here a statement from Deputy Secretary Packard. He made several statements in the committee indicating that $200 million is really needed, that it is a sort of open and shut case as to whether the $200 million is required or not. In his view, the $200 million is needed.

Let me quote from the statement of Secretary Packard before our committee on May 27. In the committee report he said:

> Under any possible solution of the Lockheed problem which I can see, the $200 million will be required for work which must be done for the remainder of fiscal year 1971.

There is no option, no discretion, no judgment on the part of the Armed Services Committees of the House or Senate.

Secretary Packard has said the money is needed. So all of this hocus-pocus about watchdog committees is irrelevant. The Secretary said that the money is needed, according to his definition.

He goes on to say, subsequently, on the same day:

> There is no possible solution to the Lockheed problem which will not require $200 million for payments for the C–5A in fiscal year 1971.

So there is no question about it. We are simply setting up a board that will rubberstamp Secretary Packard's determination that the $200 million is needed according to his own judgment. He said as much before our committee several times. So any discretion or judgment is simply contradictory to every-

thing that Secretary Packard and the Department of Defense have said we want.

It is interesting to hear Secretary Packard's changing view concerning this $200 million. When he appeared before our committee on the 10th of March, he was then talking about the $200 million as a contingency fund. Back in March he was saying that if it is needed, we want to stand by this discretionary proposition on the $200 million only if certain contingencies related to Lockheed's fiscal problems arise—the contingency fund.

Now listen to what he said a few months later when he came back before our committee on May 27. He said:

Under any possible solution to the Lockheed problem which I can now see, the $200 million will be required for progress payments for the work.

Two months ago it was a contingency fund. Now it is progress payments. I think we certainly might ask, "What kind of progress is this when we pay $200 million we don't owe? What kind of progress is that? There are no planes and no progress, but we are going to pay them $200 million for progress payments."

All I can say is that the argument I made a moment ago about the iceberg is proven by their own statements. Slowly but surely we are seeing the bottom of the iceberg.

First it is a contingency fund of $200 million and then it is progress payments.

I do not know what it will be next year, but I know that it will go up and the words will be a little more refined.

I have quoted from the statement Secretary Packard gave before our committee. Very interestingly in the committee record itself, the words "progress payment" are omitted. They knew they had a bad point, and they deleted those words. It is interesting that the change from the actual statement, the verbatim statement, and the statement delivered to all of the members of the committee contains that phrase, "$200 million will be required for progress payments."

However, if we read the sanitized version of the committee report—and this is a quotation on exactly the same point from Secretary Packard and relating to the same statement but with a little deletion—it reads:

Under any possible solution to the Lockheed problem which I can see, the $200 million will be required for work which must be done for the remainder of fiscal year 1971.

There is not a word about progress payments. And that is exactly the way this illusory situation has been.

Mr. President, you see a little bit of it, then you see a little less of it, and then you see a little more. I think that despite all of that we do not have any restraint at all in this situation. The amendment is designed to serve several purposes, but one of the most important is to prevent a negotiated deal between the Government and Lockheed. There is evidence that that is what they are working on, that they are secretly negotiating and they are going to present a fait accompli fiscally and come to the committee and say, "We have agreed to settlement and adjudication with Lockheed," and we are going to have to pay millions more for the contract.

So contrary to what the Senator from Georgia indicated, who was bypassing whom? The negotiated deal would bypass everyone, and once again the Senate and Congress will be presented with a situation where we will be rubber stamping a fait accompli, something that has been accomplished, and we will go along and give them the $200 million because they need $200 million to settle the situation.

The only loophole this plugs up is that loophole whereby the executive department and Lockheed negotiated a deal and then present it to Congress and say, "This is it," whether it is $400 million, $600 million, $800 million or $1 billion, which has been hinted.

All we are trying to do is to keep everybody honest and above board so we will know the contract price and have a projection next year.

I cannot emphasize too much that after the Comptroller General determines whether they really need the $200 million we will have the option to prevent them from going into bankruptcy; after he has made that determination he is to supply a second report to give some fair estimate as to what the plane will really cost.

Congress and the Committee on Armed Services can make intelligent decisions based on realistic cost figures in this situation, realistic cost figures which have eluded us so far.

We have made no argument against the need for these planes. We have not questioned that. In spite of some severe technical difficulties that they are having, including a wing that will not fly for the job required, we have not even questioned that. So we are not arguing merits of that particular technical question, and maybe we should make that argument, but we are not.

We are saying it should be on the basis of a reasonable approach, on the basis of doing something fairly so everybody knows what the deal is other than just big government and a big contractor sitting down and working out a deal secretly and handing it to the taxpayers.

To me this is a very important precedent we are trying to establish. If we do not succeed and there is a negotiated secret deal, and it is given to the Department of Defense and our committee as a fait accompli, we will again have totally abdicated, our responsibility and walked away from our responsibility in terms of legislative oversight on these contracts.

We cannot possibly assume our responsibility under those conditions.

So our amendment is merely designed to protect the taxpayers, to pull the water away from the rest of the iceberg and show everybody what it is, and let Congress work its will after it has the facts and not present a fait accompli or a fiscal coup d'etat in this situation.

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. Mr. President, I am glad to yield 5 minutes to the distinguished Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee is recognized for 5 minutes.

Mr. BAKER. Mr. President, I thank the Senator for yielding to me for 5 minutes so that I may address myself to a point or two in the amendment offered by the Senator from Wisconsin (Mr. PROXMIRE) and the Senator from Pennsylvania (Mr. SCHWEIKER), especially on the bankruptcy aspect of this situation. It might be appropriate to consider for a moment, not in great detail, the purpose of the Bankruptcy Act applicable to this situation. The statement is made that if Lockheed chooses to go into bankruptcy, they get the money.

First of all, as I read the amendment, section (2) provides that in case of voluntary or involuntary bankruptcy, they can get the money.

The statement is made that this would in no way prejudice the interests of the United States, as I understood the distinguished Senators to say, or the production of these airplanes in the pipeline, or the 20,000 jobs at the plant in Georgia, or the thousands of jobs around the country, or the procurement of this defense system.

That is why I suggest we consider the provisions of the Federal bankruptcy statute because the Federal Government, including the Department of Defense, will only be a party to that proceeding by intervention.

The bankruptcy statute provides that the prime responsibility of the trustee in bankruptcy is not to protect the Government of the United States or any intervener, but rather, the creditors and the stockholders of that company; and to conserve the assets of that corporation so there will be a maximum realization of those assets, to protect them, and to pay the remainder to the stockholders. The Bankruptcy Act was to provide for arrangement for payment of creditors and to provide conservation of resources for payment to the equity owners, the stockholders.

It seems to me if we are to judge the second paragraph of this amendment, we must do it on the basis of whether we are going to protect the interests of the United States by preserving that company as a going concern, or whether we are going to provide for protection of the creditors and stockholders.

I believe I will choose to protect the best interest of the United States.

Mr. PROXMIRE. Mr. President, will the Senator yield?

Mr. BAKER. I yield.

Mr. PROXMIRE. The Senator from Pennsylvania (Mr. SCHWEIKER) and I are very anxious to keep them out of bankruptcy. But we say if they go into bankruptcy—and they have threatened to go into bankruptcy—we want to do all we can to protect the interests of the U.S. Government.

We provide another condition which states they will be given the money if the Comptroller General says they need it to complete the plane.

Mr. BAKER. Mr. President, how much time do I have remaining? I think I was yielded 5 minutes by the Senator from Mississippi.

The PRESIDING OFFICER. The Senator has 2 minutes remaining.

Mr. BAKER. Mr. President, with reference to paragraph 1, the point was made that by removing this procedure, that is, review of this contract, from the system, the bureaucracy, it could be expedited, and the example of Under Secretary Packard's efforts to do so in the case of the gunships was cited. That is true. I doubt there is any greater champion of government efficiency or anyone who tries to keep this nameless bureaucracy on its feet, than the Senator from Wisconsin (Mr. PROXMIRE). I am with him. I think he is right.

But undoubtedly we are overlooking one other fact. The Senator from Pennsylvania (Mr. SCHWEIKER) said to "pump the water away from the iceberg" or get this matter away from the bureaucratic maze—and this might expedite that portion of the procedure—the Department of Defense can control timely review by the Board of Contract Appeals.

There is no way I know of unless there is a modification of the Judicial Code that you can deprive either party of the right to appeal to the Federal judiciary. Unless that is done, either of them would have the right to appeal, and there is no way we can change that.

Mr. PROXMIRE. I yield myself 1 minute.

The answer is that if the Board of Contract Appeals finds in favor of Lockheed, on the basis of our precedents there would not be any appeal, and Lockheed would get the money. If they find against them, there would be time for an appeal.

It is true under any circumstances that if the Board of Contract Appeals finds against Lockheed, it would take substantial time to appeal the case, but if they have it coming, they would get it right away.

Mr. BAKER. They would. That is like saying if you win a lawsuit you are in good shape; if you lose, you are sunk. That is right, because if you——

Mr. PROXMIRE. If they lose the lawsuit they are not sunk. This is such a modest amendment that even if they do not have a legal leg to stand on and no money is owed, if the Comptroller General finds this money is necessary to build the C–5A, they will get it.

Mr. BAKER. Mr. President, will the Senator from Mississippi yield me 2 additional minutes so I may speak on the point just brought up by the Senator from Wisconsin?

Mr. STENNIS. I yield 2 minutes to the Senator from Tennessee.

Mr. BAKER. This does, in fact, bring us to the third proviso of the amendment, and that is the determination by the Comptroller General that the money is needed.

I think it probable that the Comptroller General could very quickly act in the matter. I think it is probable that the Comptroller General, as the Senator from Pennsylvania (Mr. SCHWEIKER) has suggested, would find that the money is needed, if that is the test.

The test in the third proviso, for the review and determination of the Comptroller General, does not tell me what the conditions precedent are that the Comptroller General must find in order to permit the disbursement of the $200 million contingency fund. If it means it is needed, as we have discussed, then I doubt that there would be great difficulty with time or anything else; but if it means the balancing of equities, the judgment of the interests of the Government and the need of the airplane, and the total concept of the defense needs—if that is what is meant by "needed"—it may take years before that is concluded.

I have studied the provisions of this amendment carefully. I am in frank admiration of the sponsors of it for taking this approach rather than deleting the money. However, I feel the intendment of the three conditions precedent under which this money might be made available to Lockheed requires one of two things, neither of which I can support: that is, the stopping of the construction of the rest of the planes, or a petition for voluntary bankruptcy by Lockheed, neither of which would be in the interest of the United States. Our duty now is to make good of a bad situation.

Mr. STENNIS. Mr. President, I yield 4 minutes to the distinguished Senator from Missouri (Mr. SYMINGTON).

Mr. SYMINGTON. Mr. President, many years ago I became convinced that military airlift was important to the security of the United States, especially from the standpoint of conserving our resources and at the same time maintaining an entirely adequate security. Under the theory that the British have adopted, a central reserve, as against having thousands of bases all around the world, we need this C–5A plane.

No one has more respect than I, as I have repeatedly stated, for the mighty fine work that has been done by the distinguished senior Senator from Wisconsin in pointing out where waste could be eliminated in many aspects of our Federal budget, especially the military budget.

Therefore, it is with regret that in this case I must disagree with him and my distinguished colleague from Pennsylvania, with whom I have the honor of serving on the Armed Services Committee.

As I see it, one of the most important things we are talking about is psychology, and perhaps as much as anybody in the Senate I have had some experience in industry. Right now, if we do something when, in effect, could destroy the morale of this corporation, or even seriously impair it, we may be extending the length of time, by many months if not years, necessary to obtain planes I believe important to our security.

The United States today, in my opinion is heavily overcommitted, all around the world. Therefore, one of the chief reasons why for years I have been hoping we would develop a plane comparable to the C–5A is that I believe it will result in our being able to reduce many of the thousands of installations that are costing the American people billions of dollars every year.

I am glad to see this amendment to the proposed amendment, and believe it improves it. On the other hand, there are thousands of people involved in producing this plane. We need it. I would hope, therefore, that we continue with a program that does not impair their morale. If that happened, the losses could be far greater than any possible saving under this amendment.

Accordingly, I shall vote against the amendment of my distinguished colleagues, the able senior Senator from Wisconsin and the able junior Senator from Pennsylvania.

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. Mr. President, I yield 3 minutes to the Senator from California (Mr. CRANSTON).

Mr. CRANSTON. Mr. President, this amendment raises questions of critical importance to our national defense and our national economy.

There have been serious problems in connection with the C–5A program. Mistakes have been made at Lockheed and mistakes have been made at the Pentagon. Perhaps the most fundamental mistake of all was the adoption of the total package procurement contract procedure. This contract concept was devised by the executive branch of the U.S. Government—not by Lockheed. It did not happen under the present Republican administration. It happened under the preceeding Democratic administration. This unrealistic procedure was tried for the first time when the C–5A contract was let. Hopefully, it will be the last time.

Without question, the C–5A program has been a costly, wasteful mess. The question now is how to clean up the mess without creating even more of a mess in the process.

I believe we need the C–5A. This is at issue since the amendment threatens our Nation's ability to acquire it. The C–5A is one of the few weapons systems that can help us disengage from forward military bases around the world while at the same time give us the ability to move back in quickly if the need arises. This concept of remote presence will increase national security and, in time, save millions of dollars.

It will eliminate the balance-of-payments drain caused by our maintaining large numbers of American troops in Europe, Japan, Korea, and elsewhere around the globe. It will enable us to reduce our overall military budget and cut excessive military spending, which I strongly oppose.

I am also deeply concerned by the adverse effects this amendment could have on the national economy and on the production of other needed weapons systems.

The adoption of this amendment will put the U.S. Senate in the position of clouding Lockheed's prospects of corporate survival while threatening to create a tremendous waste both in manpower and in dollars represented by the incomplete C–5's still in the pipeline.

Many statements are made about the certainty of keeping planes coming and the certainty of keeping the tens of thousands of employees working if this amendment is adopted. These statements about certainties must necessarily be loose and fuzzy, the only thing cer-

tain about threatened bankruptcy is its uncertainty.

The Lockheed corporation is by far the Nation's largest defense contractor. Its other divisions include the Missiles and Space Co. in Sunnyvale, Calif., where the Polaris and Poseidon missiles and the Agena military satellites are built—the Lockheed-California Co. in Burbank, Calif., where the P–3 and S–3 antisubmarine aircraft and the company's new commercial liner, the L–1011 are built—the Lockheed Electronics Co. in Plainfield, N.J., where the all-important Mark 86 gunfire control system is built for the Navy—the Lockheed Propulsion Co. in Redlands, Calif., where a new technological breakthrough in rocket motors has been achieved for use in the Air Force-Boeing SRAM missile—and the Lockheed Shipbuilding and Construction Co. in Seattle, Wash., where many ships are under construction for the U.S. Navy.

If this amendment forces bankruptcy on Lockheed, it is all these and more—not just the C–5 producing division in Marietta, Ga., which will go under.

The first uncertainty out of bankruptcy is the uncertainty of whether the trustees under bankruptcy would be required by bankruptcy laws to complete the Government contracts now held by Lockheed, such as those programs mentioned before, and hundreds more. It is true that the Bankruptcy Act does not permit rejection of contracts held by the corporations which are "in the public authority." But there is no clear judicial ruling as to whether this exception includes Government prime contracts.

But even assuming the current Government contracts could not be rejected—and this seems to be where the preponderance of legal opinion lies—if the performance of these contracts appeared to be excessively onerous to the corporation, the trustees or the court might determine that a successful reorganization of the corporation was not feasible. In this event, the result would be liquidation of the corporation's assets.

So the first point made by the sponsors of the amendment—that it is "a keep building the planes" proposal—is hardly an accurate description of it. If this amendment passes, we may end up with economic chaos and no C–5A's at all.

But this is by no means the only uncertainty.

One of the more important uncertainties under bankruptcy is the sanctity of the corporation's collective bargaining agreements with union organizations? All such agreements could be subject to rejection by the trustees, which could void most or all of the protections the workers have under those hard-won agreements.

Another very important uncertainty would be the availability of many buildings and facilities leased by Lockheed, with the leases automatically terminated in the event of Lockheed bankruptcy. These include, for example, facilities that are essential to the Poseidon missile program and to the highly classified and highly important Agena satellite program.

Still another effect which is not so uncertain, according to eminent legal authorities, is the adverse effect on Lockheed efforts to get new Government business. If Lockheed is reorganized under bankruptcy, it then could not meet the financial requirements contained in the armed services procurement regulations. Lockheed would be declared "not responsible," and would be ineligible to bid on or receive any new defense contracts. That is a fairly drastic result, I would say, for a company that has fought for and won first place among defense contractors for most of the last 10 years.

And, of course, it would be a disastrous result for the 87,000 workers who hope to continue their employment with Lockheed, and with the benefits of seniority, retirement plans, and so on.

More is involved than the possible bankruptcy of a single company. Bankruptcy for Lockheed would affect more than that company's 87,000 employees and 50,000 stockholders—Lockheed has 35,000 first tier subcontractors for all its programs. Some 25,000 of these subcontractors are small businesses, employing less than 500 people.

Subcontractors of Lockheed hold contracts totaling $2,120,000,000, of which $465,000,000 are held by those small businesses.

The effect of Lockheed bankruptcy on these subcontractors is almost incalculable, according to legal authorities. The rights of a group of bankruptcy trustees to alter subcontractor relationships could become a chaotic cloud over the more than 185,000 subcontracts now in force with Lockheed. The ability of the subcontractors to finance their work-in-progress through loans or equity capital could be severely curtailed by the relative financial irresponsibility of the prime contractor. The possible lack of willingness of some subcontractors to continue their share of the production with even a short delay in progress payments during the initial period of bankruptcy reorganization could endanger the whole program.

Some subcontractors have the automatic right to "walk" if the prime contractor is in bankruptcy, and so the whole team effort could be lost.

All this constitutes a matter that cannot be dealt with lightly or carelessly, or without long detailed studies of what the social, economic, and political consequences for the country will be.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. STENNIS. Mr. President, I yield 2 additional minutes to the Senator from California.

Mr. CRANSTON. The C–5A is not a local issue. I oppose wasteful and counterproductive spending in the guise of national defense no matter where the affected industries are located, in California or elsewhere. I have consistently voted against the ABM and other weapons systems I believe to be unproven and unnecessary even though major components are built in California. In fact, it is virtually impossible to find any major sophisticated weapons system which is not built, in part, in California. Yet my position in favor of reducing our excessively high level of defense expenditures is well known.

In a like vein, I am opposed to the development of the SST, in which California's aerospace industries have a major stake. I regard the SST as a dangerous threat to our environment which should never be allowed to get off the drawing boards, let alone off the ground. Moreover, I oppose adding still further to our long list of Government subsidies to commercial interests.

If a commercial venture like the SST cannot be economically developed and produced by private industry, it should not be developed and produced at taxpayer expense.

The C–5A involves enormously important national interests. Too much uncertainty already surrounds the fate both of the C–5A and the Lockheed Corp. At a time like this, when the Nation is in an economic recession with high unemployment, the Government dare not risk deliberately sinking a giant corporation which could take hundreds of other businesses and thousands of jobs down with it.

It is imperative that we make certain that these planes are delivered to the Government.

This amendment is undoubtedly well intentioned. But its practical effects could be chaotic, militarily, and devastating economically. I urge its defeat.

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. Mr. President, I yield 8 minutes to the Senator from South Carolina. Again I regret that I do not have more time.

Mr. THURMOND. Mr. President, I would like to take a few minutes today to discuss briefly the C–5A program that is included in this year's authorization request. The budget request for this program totals $622.2 million identified as follows: $344.4 million for unfunded prior year production commitments; $66.2 million for initial spares; $11.6 million for research and development; and $200 million contingency funding. Mr. President, the principal item with which we are faced in this program request is the $200 million identified as a contingency requirement.

With this introduction, I would like to present some of the pertinent facts relating to this program that the Armed Services Committee considered in approving this budget request. I would first like to say, Mr. President, that the committee went deep into this program and studiously studied the issues. In fact, the committee called the Deputy Secretary of Defense over on three different occasions to discuss matters on this program. I would like to emphasize, as we are all well aware, that varying inputs are considered in making decisions on these major weapon systems and that cost figures can be added to different totals, depending on the method of presentation and the data included. This is to say, that any input on its own merit is not right or wrong, but must be considered in the overall decision and that is what the committee has attempted to do. The committee has also tried to present cost data that is consistent with the data pre-

sented in our quarterly reporting system and consistent with data used in hearings that the committee held last year on this program.

To briefly summarize the initial cost data on this program, Mr. President, the original estimate of cost for a projected 120 aircraft at the time of contract award in October 1965 was $2.985 billion. At hearings held by the Armed Services Committee last year, the cost estimate had been increased to $4.348 billion or an estimated cost growth of about $1.363 billion. These costs did not include an estimated $855 million for support equipment for 120 aircraft. The cost figures that are currently being considered are for only 81 aircraft and on a comparative basis are estimated at $3.463 billion or a cost growth of $1 billion over the original estimate for a like number of aircraft. This figure also does not include about $747 million of support equipment that is being estimated for these 81 aircraft. I want to say also that as we now understand it some additional costs may be added when a revised delivery schedule is finalized and when the cost to resolve current technical problems is determined. These estimated program costs do not consider the possible cost to produce the aircraft nor the litigation that has arisen on this program. Current estimates indicate that the cost to produce the C–5A aircraft that will be incurred by the prime contractor is about $648 million more than the contract ceiling costs estimated by the Air Force and included in the cost figures that I have presented.

Mr. President, with regards to the performance of this aircraft, I am aware of certain wing structural problems and developmental problems with the avionics and landing gear and am following the progress in these areas closely. I do not intend to put off lightly these technical problems, although some of the areas seem normal in development of an aircraft of this size. We have seen no indication to date, however, that would preclude the aircraft from meeting its basic mission requirement.

Mr. President, the original scheduling of the Air Force planned a rollout of the first aircraft in February 1968, the first flight in June 1968, and delivery of the last of 120 production aircraft in April 1972. While the rollout of the first aircraft and the first flight were on schedule, the remaining delivery schedule has slipped. The Air Force is currently estimating a final delivery of 81 production aircraft in February 1973 although this has yet to be finalized.

Now, Mr. President, I would like to discuss the funding for this program briefly as it relates to the financial problems of the prime contractor. Through fiscal year 1970, the Congress has authorized and appropriated about $3.4 billion for the development and production of C–5A aircraft.

As it now appears, the Air Force will receive about 17 complete aircraft plus other aircraft or material in various stages of completion for this money. If production is to continue with fiscal year 1971 funding of $344.4 million, an additional 13 aircraft can be completed through December 1970.

The $200 million budget request for contingency funding is intended for continued production of aircraft during the remainder of fiscal year 1971. It is estimated that an additional 12 aircraft can be completed during this period. Mr. President, without the fiscal year 1971 funding, we will receive very few aircraft and a large amount of unfinished work in process for our effort and money.

I believe, Mr. President, that it is proper to say something briefly here about the contractual litigation on this program without entering any judgment on the merits of this litigation. As I understand it, the prime contractor has raised several issues regarding possible ambiguities in the contract that would reflect on the amount of reimbursement the contractor would receive. The prime contractor has requested the Department of Defense to provide interim financing on this program until the litigation is settled because the contractor does not have the financial resources to continue the program while awaiting a legal determination. I understand that the issues concern over $600 million.

Mr. President, I don't think this presentation would be complete without a few words on the need for this aircraft. Last year the Senate had a fine debate on the need for the four squadrons of 81 C–5A aircraft and I believe, at that time, we firmly established a need for these planes when all things were considered.

To summarize this need, Mr. President, the C–5A is intended as an airlift aircraft designed to provide a fast reaction capability to airlift combat or support units to meet worldwide commitments. Since its inception, this aircraft has been primarily intended to provide the airlift capability for combat and support equipment outsized by dimension or weight to the present or planned airlift aircraft capability. This equipment, such as tanks, self-propelled howitzers, helicopters, et cetera, and in the case of an armored division, constitute about 75 percent of the heavy firepower. The C–5A aircraft is intended for use in complement with other airlift and commercial aircraft in meeting the rapid deployment requirements of the Department of Defense. We are all aware of this deployment requirement that has been discussed many times in connection with proposed reductions of overseas forces. The C–5A aircraft plays a vital role in providing the capability to meet the deployment requirements.

This leads us, Mr. President, to the main and only issue in this authorization request for the C–5A program that can be raised—the $200 million contingency fund. This issue was raised in the Armed Services Committee deliberation on the C–5A program and some very good data was presented. Considering all aspects of this issue, however, the committee approved this amount because there was no other reasonable solution that could be presented that would meet the airlift requirements of the C–5A at the estimated cost to complete this program. I can assure you that all issues relating to this difficult matter were discussed in the committee's deliberation. In fact, in approving the budget request for $200 million, the committee placed specific restrictions on any use of these funds.

In addition, the committee stipulated that the funds cannot be obligated until the Department of Defense presents a plan to resolve this issue in such a way to best protect the public's interest for approval of the House and Senate Armed Services Committees. As you can see, Mr. President, the committee did not intend in any way that this would establish a precedent or "bailout" for the contractor as has been reported in some media. The committee did consider, however, the current and future potential investment in this program and weighed this heavily against the requirement for the aircraft.

The committee arrived at the only possible solution to meet this airlift requirement and approved the funding request pending presentation of a reasonable plan by the Department of Defense. I urge the Senate to also consider the present and potential future investment in this program in their deliberation and to also consider the alternative ways of meeting the airlift requirements associated with the rapid deployment necessary as a deterrent capability in meeting our commitments.

Mr. President, again, the many ramifications of the C–5A program are being subjected to intense but justified scrutiny by Senators from both sides of the aisle. The distinguished Senator from Wisconsin and the distinguished junior Senator from Pennsylvania have submitted an amendment to restrict the use of the $200 million in contingency funds as it relates to continued production of C–5A aircraft. According to news releases I have seen, this amendment has been referred to as a keep building the planes proposal.

Mr. President, I intend to devote the next few minutes to voicing my objections to this proposed amendment. I will base these objections on two prime points: First, the amendment cannot possibly achieve its stated purpose, due to the prime contractor's apparent need for the contingency funds to continue production beyond December of this year; second, the restrictive nature of the amendment eliminates any flexibility that the Department of Defense might have in restructuring the contract with the Lockheed Corp.

I am not the first to recognize the deficiencies in this amendment. My able colleague, Senator TALMADGE, addressed this topic most forcibly on the 12th of August. I commend the distinguished Senator for his discerning analysis and penetrating comments. I will tailor my comments in light of the auspicious start provided by my able friend and colleague.

Mr. President, as I see it, the proposed amendment would not only create another veil of confusion around the C–5 contract dispute, but more importantly would place a completely unfair and unrealistic time constraint on the adjudicative process now underway within the Armed Services Board of Contract Appeals. The language of the amendment, as I understand it, limits the use of the $200 million to three situations. The first situation requires the settlement of the outstanding contract disputes which ex-

ist between Lockheed and the Air Force. Specifically, the language of the amendment requires a decision in favor of Lockheed by the ASBCA or by a court of law. The second situation stipulated in the amendment is one wherein Lockheed has been forced into bankruptcy or reorganization. The third situation, would require the General Accounting Office, to decide on Lockheed's need for the money.

Now, forestalling for the moment consideration of the consequences of the second and third situations, let us focus on the unreality of the first situation identified in the proposed amendment. I emphasize the deficiency in this element of the amendment, because we are completely without precedent in presuming that the Armed Services Board of Contract Appeals will reach a decision on the complex C–5 dispute by the end of this year. Furthermore, it is not inconceivable that the adjudication of these issues could reach a higher level of appeal, namely the court of claims or even the Supreme Court. It has been estimated that the entire process, including the appellate procedures, could take as much as another 3 years. So, in effect the first situation outlined in the proposed amendment is an illusory objective unattainable by the time that Lockheed apparently needs the funds.

Therefore, since it is highly unlikely that a judgment on the contract dispute can possibly be rendered in time, the only operating sense of the proposed amendment is contained in the second and third provisions. The second provision, bankruptcy for Lockheed, presents several objections. First, by passing the amendment, the Congress in effect could be voting in favor of the bankruptcy or reorganization of the Lockheed Corp. Second, the trustee under bankruptcy is not obliged to protect the best interests of the firm's customer, in this case the Government. To the contrary, the trustee's duties are to protect creditors and then stockholders. Therefore, under this second provision we would have no assurance that the trustee would "keep building the planes."

The third situation submitted only this morning, to subject the $200 million to a review of Lockheed's financial needs by GAO before November 15, 1970, is redundant and an unnecessary expense of taxpayers' moneys. As pointed out by Secretary Packard during May and June in testimony before the Armed Services Committee, the Department of Defense has already made a comprehensive analysis of Lockheed's financial condition and its ability to obtain necessary financing of the C–5A programs. This DOD analysis clearly indicates that Lockheed does not have the financial capability to support continued production of the C–5A pending the settlement of disputed issues. I find it hard to justify the use of GAO resources simply to verify something we already know.

I believe it should also be pointed out that language in the current bill presently before us provides for continued GAO review of all moneys flowing to Lockheed out of the $200 million contingency. Further, after each review by GAO a report is to be submitted to the Congress on the status of the $200 million contingency. I feel this continued GAO review, as well as the other controls in the present bill, provide sufficient safeguards on the $200 million to protect the public interest and prudent use of the taxpayers' funds.

Now, Mr. President, I do not wish to dwell too long on the inadequacies of this proposed amendment, without providing specific rationale as to an alternative course of action. The action I propose is in keeping with the spirit of the Proxmire-Schweiker amendment. In fact, it not only abides by the intent of their adopted slogan, "keep building the planes"; but also provides the foundation for an orderly continuation of the C–5 procurement program.

My proposal is that we should allow the Department of Defense sufficient latitude in their efforts to restructure the contract with Lockheed. Now, let me be perfectly clear in this regard. The restrictive language in the bill reported by the Committee on Armed Services requires the Secretary of Defense to have the approval of the appropriate committees from both the House and Senate before the contingency funds can be obligated. This restriction provides the Congress the appropriate degree of control in these contractual matters. It serves notice to both the Executive and to Lockheed that the Congress fully intends to abide by its responsibility in protecting the taxpayers interests.

Now, when this restriction is in effect, it seems to me that the Executive should be allowed to pursue every potential avenue of negotiation which might result in a satisfactorily restructured contract and, above all, permit the delivery of the much needed aircraft.

Mr. President, I hope the Senate will defeat this amendment.

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. Mr. President, I certainly thank the Senator from South Carolina, and wish I had more time to give him.

Mr. President, I thought perhaps the Senator from Wisconsin wished to use some time at this point. We are down to 14 or 15 minutes.

Mr. PROXMIRE. Mr. President, how much time remains on both sides?

The PRESIDING OFFICER. The Senator from Wisconsin has 21 minutes. The Senator from Mississippi has 14 minutes.

Mr. PROXMIRE. Mr. President, I yield myself 1 minute. I say to the Senator from Mississippi that I have discussed this with the Senator from Pennsylvania (Mr. SCHWEIKER), and he and I are pretty much ready to sum up, unless the Senator from Pennsylvania has another short statement he would like to make before his summary.

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. Mr. President, I yield myself 4 minutes.

I have given an outline of the issues here and of the committee's position. I do not need to repeat it simply for the sake of repetition. I want to refer to what the Senator from Pennsylvania said about the $200 million.

Yes, it is now a fact that this $200 million will have to be used. That is why we put it in the bill—in order to recover on what we already have spent. The question is, How is it going to be protected and how is it going to be used? That is why we put this restrictive language in here.

Contrary to our desires, we assume the responsibility of requiring a plan to come back to the two committees, whereby we would have to assume additional responsibility.

This is an amendment offered against the $200 million. I think it is admitted that it will have to be spent—that much, anyway. I am frank to say that I think it will probably be more than that, in order for us to recover on what we have already spent. But what I am concerned about is that we not stop the wheels until all the processes can be gone through to determine which one is right about this controversy between the Air Force and the contractor, under the contract, that we have the safeguards, and I believe we do have them.

I mention the one that is not written in, and that is the responsibility Mr. Packard assumes, where he has made special assumptions for us before, he has come through in a mighty fine way—and we have it written in here, too—that this money must be spent in such a way as not to become commingled and not to be used for any purpose but the product in which the Government has a stake. Unless that can be done, and Mr. Packard can recommend a plan to us that does, this money is not going to be spent.

I want to say this again to the Senate: This provision that we already have in the bill, which now would be substituted for by something else, is the tightest statutory language ever drawn for a defense contract with respect to precluding any possible intermingling or diversion of these funds to other programs of a contractor. The committee got that language up under its own responsibility, coupling it with their special responsibility under the other amendment, coupling it with Mr. Packard's special responsibility on his promise, and coupling it with the fact that we already have the authority to call on the General Accounting Office. For my part, they need not expect to escape being called on unless we are satisfied with this plan.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. STENNIS. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Time is running equally.

Mr. STENNIS. I yield 4 minutes to the Senator from Tennessee.

Mr. BAKER. Mr. President, I thank the Senator from Mississippi for yielding so that I can continue with remarks I started earlier in this colloquy on the pending amendment.

As I pointed out at that time, the three conditions precedent, it seems to me, are not really in fact conditions precedent to obtaining disbursement of this $200 million contingency fund, but, rather, conditions that will lead inexorably to bankruptcy of Lockheed or the cancella-

tion of the production run of the C–5A. That is the net effect of the amendment, in the humble judgment of the junior Senator from Tennessee.

Mr. President, I do not serve on the Armed Services Committee. I have no vested interest in the production of this airplane. So far as I know, no major parts or assemblies are manufactured in my State. I am trying to take—and I believe I am taking—the broadest view of the importance of this weapons system to the formulation of the first genuinely new foreign policy that the United States has attempted to formulate since the postwar era. Some are not aware that this we are doing, but we are doing it any way.

So if we are trying to examine whether we continue to maintain a presence in the Asian crescent or in Western Europe or in the Middle East, and if so, how, the C–5A is a weapons system that becomes vitally important to that, because it gives us the flexibility to move with strength and to maintain a substantial presence for the United States, in its peacekeeping efforts, in any part of the world, without maintaining extremely costly fixed bases, without maintaining the irritant of American troops on foreign soil.

It seems to me that it is vital to our flexibility in determining how and how soon we can disengage from wars such as the war in Southeast Asia and Vietnam and how we can successfully come to terms with our responsibility as a great, moral, and free nation without committing millions of troops to positions of permanent strength overseas.

I have flown the C–5A, not as an accomplished pilot. Having some experience in this field, I wanted to see firsthand what sort of weapons system this was. I wanted to see the hardware. I was permitted to sit in the right seat of the biggest airplane on earth and to see it perform. The fact alone that it is a highly complex and sophisticated system is not justification for continuing our production of this machine, but it is nonetheless an impressive array. The fact that it is a marvelous performing airplane is not a justification for expending this $200 million in contingency funds, but it is a marvelous performing machine, the largest airplane on earth. The fact that it will permit us to have the mobility for the transport of troops, with front and rear loading, in a kneeling position, is not justification in itself for authorizing, appropriating, and expending under certain circumstances the $200 million contingency fund. But they are important items in our consideration.

The single most important point is this: There is a need for a strategic weapon of this sort. There is a need in the new and evolving foreign policy of the United States for a machine of this type and design. There is no other machine of this type and design in the world; and if we stop, if we do not authorize the continuation of the full production run on the C–5A, we will have to start over, because there is no other airplane that can fulfill this need.

If is unfortunate that there are cost overruns. They are due to many factors, and I do not defend them. The fact is that we are faced with a bad situation, but we necessarily must have this sort of weapons system if we are to have the flexibility to respond and the flexibility of defense that I think we all need.

I do not believe it is in the best interest of the United States to adopt an amendment which creates three untenable alternatives: one, to test the determination and review of the propriety the paying of this contingency fund with the Board of Contract Appeals and a review through the judiciary; two, for the voluntary or involuntary bankruptcy of Lockheed, in which event the responsibility of the trustee in bankruptcy will be to conserve the assets and protect the debtors and the stockholders, not the Government; or three, until we create the situation where the Comptroller General has to pass on whether we need to pay the money.

I believe that we have got to face up to the fact that this is an expensive weapon system. We have been unfortunate in the cost overruns, but the cheapest thing that can be done now is to continue with the present production run.

Mr. STENNIS. Mr. President, I have only 10 minutes remaining. One of the speakers is delayed for some reason.

Mr. PROXMIRE. I will yield myself some time, and then shall yield to the Senator from Pennsylvania, but just let me answer the Senator from Tennessee who has just spoken, and also the Senator from Missouri and other Senators who have spoken about the great advantages of the C–5A.

IRRELEVANT POINT

Mr. President, that point is totally irrelevant. It has nothing to do with this amendment. There is nothing in this amendment that would foreclose the C–5A from being produced.

All we are trying to do by this amendment is to protect the taxpayer. In addition we provide additional circumstances not provided in the bill for the funds to be paid. That is without this amendment if the Lockheed Co. went into bankruptcy, there would be no provision in the bill that the trustees could call on the Federal Government for the money necessary to continue production of the C–5A.

We provide for that in this amendment.

No one—in spite of the fact that some of the ablest Members of the Senate are on the other side of this—has argued that the GAO is incompetent to determine financial capability. If the GAO is competent and finds that this money is needed in order to keep the airplane in production, they get the money.

What could possibly be fairer than that?

It would seem to me that we have tried hard in this amendment to meet the objections which have understandably been raised against those Senators—there were five members of the Armed Services Committee of this body who said that we should cut out the $200 million, period.

That was the position of five members of the committee who were familiar with the problem, and sat through the hearing, and concluded that we simply should authorize this $200 million at all.

Mr. STENNIS. If the Senator will yield briefly on that, those members do not say that, now. There is no amendment to this——

Mr. PROXMIRE. No, there is no amendment on that, but they said that in the vote on the Schweiker amendment in committee.

Mr. SCHWEIKER. Mr. President, will the Senator from Wisconsin yield?

Mr. PROXMIRE. I yield.

Mr. SCHWEIKER. I should like to state that that amendment offered in committee was much more arbitrary, much more inflexible, and much more rigid than what we are doing here. That was strictly to delete the $200 million, period.

Thus, with the three contingencies we allow, with the $200 million being paid, we actually have picked up some support. This is a most reasonable amendment that will still protect the taxpayers, yet not give a blank check on a Government contract, with no questions asked.

C–5A PROGRAM CALLED MESS

Mr. PROXMIRE. To listen to the opponents of the amendment, one would think that this was just a routine procurement of an important weapons system and that no problems have developed. Secretary Packard was right when he spoke on Thursday night and singled out the fact that the C–5A was the most scandalous and serious procurement problem in a situation which he called a mess, in which he said that we have made serious blunders, spent far too much money, overorganized, and overspent.

Under these circumstances, it seems to me that the Senate is bound to take some action to protect the taxpayers.

NEED INDEPENDENT FINDING

With the greatest of respect for the committee, I would say to the Senator from Mississippi that he has tried hard to write into the bill protective language. But all we are asking is that an independent agency make a finding of fact that has never been made to the Members of this body or to the public, to find that Lockheed needs this money in order to keep in production.

Mr. CRANSTON. Mr. President, will the Senator from Wisconsin yield?

Mr. PROXMIRE. I yield.

Mr. CRANSTON. The Senator has referred to Under Secretary of Defense David Packard in his presentation today. He is a man for whom I have the greatest of respect. He is a fellow Californian. I gather that he is not a supporter of this amendment. Is that correct?

Mr. PROXMIRE. Of course he is not. No indeed. Mr. Packard is not a supporter of the amendment. We feel that the Department of Defense, with the greatest respect for Mr. Packard, Mr. McNamara, Mr. Laird, Mr. Charles, and other able men, has made blunders in the past on this, it has made mistakes, but this is not a partisan or an individual matter.

We are saying, under the circumstances, and the record which we have, that we should not be fooled again.

Therefore, we should get from the GAO some assurance that these funds are needed.

Mr. President, I reserve the remainder of my time.

Mr. JACKSON. Mr. President, will the Senator from Mississippi yield?

Mr. STENNIS. I yield 4 minutes to the Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington is recognized for 4 minutes.

Mr. JACKSON. Mr. President, I believe that the pending amendment is an unwise alternative to the careful arrangements secured by your Committee on Armed Services—arrangements designed to protect the interests of both the taxpayer and the needs of the armed services. I should like to take but a moment of the Senate's time to summarize the arrangement established by the committee and the substitute approach contained in the amendment introduced by the Senator from Wisconsin.

First, as a result of an understanding reached with the Deputy Secretary of Defense, the Senate has been assured that the funds in question will not be released unless the joint objectives of fiscal responsibility and the needs of the armed services are thereby realized.

Second, the Armed Services Committee has received solemn assurances that these funds will not be used for any purpose other than to facilitate the essential completion of the construction of 42 C–5A aircraft.

Third, and again by careful arrangement, we have been assured that any plan for the disposition of these funds for the purpose of acquiring the aircraft will be submitted to the Committee on Armed Services.

I believe, Mr. President, that these unusual arrangements are adequate to secure the interests of economy and prudent expenditure while, at the same time, making adequate provision for a wise decision with respect to the procurement of an important element in our national defense.

We are all concerned at the difficulties posed by cost overruns in Government procurement. The multiple causes of cost growth, particularly in areas of high technology and where operational specifications are subject to change in the course of development, require careful consideration by the legislative, as well as the executive branch. The complexity of the present dispute between the Government and the contractor should surely suggest how difficult determinations are in this area.

The alternative suggested by the pending amendment has two essential provisions. The third, which would make the funds available in the event that they are found legally owing to Lockheed, is simply gratuitous.

The first would leave the determination as to the necessity of releasing the contingency funds to the Comptroller General, whose decision would be based upon a necessarily hasty and possibly inconclusive study. The ability of the Comptroller General to make such a finding by November 15 after weighing all relevant considerations is questionable. In any event, it seems to me preferable that the determination be made by the Department of Defense and subject to the approval of the Committee on Armed Services.

The second method for reaching a decision on the disposition of the contingency funds—and that is all that is at issue here—would assign this responsibility to a trustee in bankruptcy—an unidentified individual whose competence, under the amendment, would substitute for that of the Department of Defense and the Committee on Armed Services.

Neither of these avenues to decision seems to me, Mr. President, as likely to result in a decision reflecting the national interest as the arrangements secured by the Committee on Armed Services. If anything they would entrust a most complex and difficult decision to institutions whose expertise provides only partial qualifications to make a judgment.

While I share the concern of many Senators at the rising costs of defense procurement, I simply cannot agree that the proposed amendment would be a wise or sensible corrective measure, either as a means of coping with the overrun in the C–5A program or as a model for the future. I would hope that we will set about the important task of finding answers to the overrun problem that will enable us to devise methods for corecting or minimizing it. We must not allow our displeasure at a general problem to lead us to unwise and uncertain action in a specific instance.

Mr. PROXMIRE. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized for 5 minutes.

Mr. YARBOROUGH. Mr. President, will the Senator yield?

Mr. PROXMIRE. I yield.

Mr. YARBOROUGH. Mr. President, what amount of money has been spent on the C–5A by the Federal Treasury?

Mr. PROXMIRE. Mr. President, on page 18 of the committee report the following statement appears:

> If no additional funding is authorized we will have 17 aircraft at a cost of about $3.4 billion or approximately $200 million per aircraft.

Mr. YARBOROUGH. $3.4 billion has already been paid out for the aircraft.

Mr. PROXMIRE. It has been authorized to be paid out.

Mr. YARBOROUGH. We have actually appropriated $3.4 million, have we not?

Mr. PROXMIRE. The committee report language says that $3.4 billion has been authorized. As I understand, $2.5 billion has been paid out.

Mr. YARBOROUGH. Mr. President, I have recently had some unfortunate personal experience with Lockheed. One of their directors ran against me in the primary this spring and defeated me. He spent money in an amount that is triple any amount ever seen before in Texas primaries.

If we keep pouring money into such corporations, they will be able to buy the whole Senate. I have just been through that experience.

Mr. PROXMIRE. I think that is a point extremely well taken.

Mr. President, in this debate we have overlooked some important facts about this contract. The original contract called for 120 planes to be built at a cost of $3.4 billion. But 20 months ago, hearings before my subcommittee brought to light the fact that there was a $2 billion overrun. That is fact No. 1.

At the end of this year, the Air Force and the contractors will have spent every dollar coming to them under the original contract—including the added funds in the contract for inflation, target ceiling provisions, and the supplementary agreements. According to the committee, this amounts to $3.75 billion.

But instead of 120 planes, we will have only 30. Instead of costing $27 million a copy, these 30 airplanes will cost $125 million per aircraft, according to the committee report. That is fact No. 2.

That is the size of the scandal on this airplane. Let me repeat. We will have spent $3.75 billion at the end of this year, yet we will have only 30 airplanes completed instead of the 120 planes that should have been provided $300 million ago.

In addition, there has been concealment, suppression, and downright falsehoods told to congressional committees and the public.

Furthermore, contrary to repeated claims, the plane does not meet its original specifications. The Whittaker report listed 12 items which had been degraded and which, taken together, indicated a weakening of the structure of the airplane, a condition which has been very unhappily demonstrated since.

The crack in the wing, for example, limits the ability of the plane to land on unimproved airports, as originally specified. Now it is being said that it can be used on "lightly paved" runways. Those are the facts.

I can recall very well that on an NBC-TV program recently the C–5A was shown coming in for a landing. Awaiting the plane were some generals and the distinguished chairman of the House Armed Services Committee. As the plane touched the runway, a wheel rolled off. Then a tire rolled off. It was embarrassing for the distinguished Representative from South Carolina, Mr. RIVERS, and for the generals, as well.

This has been the history of the plane. It is true that it has potential. But it is not true that this is a plane which has been demonstrated in its excellence.

Nevertheless, this amendment does not go nearly as far as five members of the Armed Services Committee of the Senate felt we should have. This is a much more moderate amendment. I repeat, because I think it is important to repeat and to emphasize, that this amendment provides that $200 million will be paid providing one of the following conditions is met.

First. The Armed Services Board of Contract Appeals or a court should decide that part or all of the $200 million is owing to Lockheed under the contract.

Second. A trustee in bankruptcy determines that all or part of the $200 million is necessary to complete the production of the 42 C–5A planes this bill would fund.

Third. The Comptroller General determines, after a study that must be com-

pleted by November 15, 1970, that all or part of the $200 million is necessary to complete production of the 42 C–5A planes.

The third condition is a modification of the original amendment. It would permit the $200 million to be paid to Lockheed, but only after a competent, independent finding that could assure the Congress that the funds were needed to make production of the plane possible.

It would avoid what otherwise would be a precedent set in the bill that would give a defense contract $200 million that the Air Force itself says the Government does not owe, and would give the funds without any independent determination that the money is necessary to produce the planes or that the $200 million would be adequate to permit the planes to be produced. The bill without the amendment would make the Government liable for a total of $800 million above the contract, not owed by the Government, before the contract is completed, and perhaps much more.

The amendment would require the Comptroller General to determine how much will be necessary to complete the contract.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. PROXMIRE. Mr. President, I yield myself 2 additional minutes.

The PRESIDING OFFICER. The Senator is recognized for 2 minutes.

Mr. PERCY. Mr. President, will the Senator yield?

Mr. PROXMIRE. Mr. President, I yield to the Senator from Illinois.

Mr. PERCY. Mr. President, I was very much concerned about the amendment in its original form. However, in its modified form, I feel that a reasonable and rational approach has been taken. I am happy to indicate my support of the amendment.

I think I should also commend the Senator from Pennsylvania and the Senator from Wisconsin because not only does their amendment focus attention on a very serious problem, but it also has accomplished another purpose. Under the leadership of these two distinguished Senators, we have adopted a new policy.

The new policy enunciated by the Secretary of Defense is a result of their own bitter experience in these problems.

I commend the distinguished Senator from Wisconsin for the contribution he has made and indicate again my support for the amendment.

Mr. HATFIELD. Mr. President, the amendment we are offering today is an overture to the administration. We are seeking an approach which we believe will be most reasonable to all parties concerned.

What we are proposing is this: Let us complete the withdrawal of American Armed Forces from Vietnam by the end of 1971; yet we have no intention of setting any inflexible deadline. If the President discovers that for any reason, our troops cannot be withdrawn by that date, then the President may extend this period by 60 days. Thus, he has complete flexibility to do what is necessary to safely complete this withdrawal.

Furthermore, if the administration advocates an alternative course of policy, then he need only to request an extension of this period for the approval of the Congress.

Thus, we are giving the administration full authority to carry out its withdrawal program, to be completed by the end of 1971. If the administration differs with the course of action, then they need only to justify an alteration of the timetable to the Congress.

I do not know why the administration should find this to be an unreasonable proposal.

In my view, it certainly would be unreasonable to propose that the administration be given full authority for any course of continued military activity in Vietnam without congressional approval beyond 1971.

Therefore, I would hope that all the Members of the Congress as well as the administration will carefully consider this revised amendment with an open mind. In my view this represents a most sensible approach for guiding our future course of action in Vietnam; it is the responsible way for the legislative and executive branches to cooperate together in this process.

There is no excuse for men of reasonable mind to reject such an overture.

Mr. STENNIS. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from Mississippi is recognized for 2 minutes.

Mr. STENNIS. Mr. President, I want to discuss for a few minutes amendment No. 853 introduced by Senator PROXMIRE and Senator SCHWEIKER and point out what I believe to be serious deficiencies in the meaning and intent of this amendment.

This amendment is being identified by these Senators as the "Keep building the planes" amendment. While this appears to be another catchy slogan, a detailed analysis of the amendment and its ramifications appears to have just the opposite effect.

The amendment proposes to restrict obligation and expenditure of the $200 million contingency fund to be authorized and appropriated to the following one or two conditions:

First. If the Armed Services Board of Contract Appeals—ASBCA—has made a determination that the United States is obligated to the contractor for the amount currently in litigation.

2. If a trustee appointed in bankruptcy under chapter 10 of the Bankruptcy Act determines that all or part of this contingency fund is needed.

The amendment also proposes to require the Comptroller General of the United States to conduct a study of the financial capability of the prime contractor with a view toward determining the contractor's ability to meet the contract terms.

The amendment proposes that the Secretary of Defense be instructed to insure that, in the event of any bankruptcy or corporate reorganization proceeding involving the prime contractor, the financial interests of the United States are protected and priority is given to expeditious completion of the C–5A aircraft contract.

The amendment finally proposes that none of the funds authorized to be appropriated by this or any other act for any purpose other than the C–5A program may be transferred to or used for the C–5A program. This section is intended to preclude programing from other programs.

In response to this amendment, the following points should be considered:

One of the intentions of this amendment is to preclude negotiated settlement of disputes or restructuring of the contract. The amendment precludes any use of the $200 million unless there is a dispute for the Armed Services Board of Contract Appeals to settle or there is a bankruptcy proceeding. Under the first clause, without a dispute, the money could not be used; under the second, without a trustee in bankruptcy, the money could not be used.

The first condition that the amendment proposes—that the $200 million cannot be used until the Armed Services Board of Contract Appeals makes a determination—appears to be an impossible condition with respect to the time factor involved in this program. The $200 million funding is required for continued production approximately at the end of December 1970. The contractor complaint appealing the contracting officer decision on the litigation issue was filed before the Armed Services Board of Contract Appeals in January 1970. Significantly large quantities of paperwork are being reviewed in this case.

The optimum schedule with a highly expedited proceeding as indicated by the Chairman of the Armed Services Board of Contract Appeals is estimated at about 10 months after discovery motions are filed sometime in September or October 1970. This would place the time of determination about June or July 1971 even without an appeal of the determination which could further prolong the issue. It appears fairly evident that under the best and fastest of circumstances the decision of the Armed Services Board of Contract Appeals would not be handed down in time to meet the funding requirements to continue production after December 1970.

It appears evident, therefore, that since the first condition of the amendment could not be met, the funds would not be available for continued production and the contractor would have the obvious choices of defaulting on the contract, which would probably ultimately result in bankruptcy proceedings, or declaring bankruptcy itself. The latter does not appear to be a desirable or feasible course of action.

Based on available data, therefore, it appears that passage of this amendment would force a bankruptcy proceeding. It also appears from all available information that any bankruptcy proceeding in this case would be under chapter 10 of the Bankruptcy Act. This would lead into the second condition of the amendment under which the $200 million could be obligated and expended.

Chapter 10 of the Bankruptcy Act provides the means for debtor reorganization. This section of the Bankruptcy Act, in essence, provides that a trustee appointed by the court to operate the cor-

poration would draft a plan for reorganization for court approval and subsequent approval by the creditors whose interests are affected. The Secretary of the Treasury acts for the United States if the United States is a creditor.

The amendment would allow the use of the $200 million contingency fund if the trustee determined that all or a part of the fund was needed to assist the prime contractor in completing the contract.

The amendment does not require that a plan of reorganization be approved or that the trustee even have formulated a plan of reorganization prior to use of the $200 million. The amendment just provides that the trustee can use all or any part of the $200 million if he determines it is needed.

In summary, therefore, if the amendment passes, the $200 million could be used by a trustee with or without a plan of reorganization. The plan of reorganization would be subject only to the approval of the executive branch through the Secretary of the Treasury.

In comparison, it is stipulated in the authorization bill that the $200 million emergency fund could only be used after a plan submitted by the Secretary of Defense is approved by the Armed Services Committees of the Senate and the House of Representatives.

It is also important to note that this amendment would only cover the availability of funds to the trustee up through June 1971. While I do not intend to prejudge any issue of a potential bankruptcy, I do not believe that a responsible trustee, in formulating a reorganization plan, could consider maintaining a contract without some assurance of funding availability through the contract completion. The amendment does not make any provision for this issue and it can only be assumed that this contract would not be considered in a reorganization plan.

It is apparent, therefore, to me, Mr. President, that this amendment will not be a "Keep building the planes" amendment but would be one of the quickest ways to stop building the planes and deny us the capability that everyone agrees is required.

Mr. President, I ask unanimous consent to have a letter from Deputy Secretary Packard to me under date of August 25, 1970, put in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE DEPUTY SECRETARY OF DEFENSE,
Washington, D.C.

Hon. JOHN STENNIS,
Chairman, Senate Armed Services Committee, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I have examined the proposed amendment to the Military Procurement Authorization Bill concerning the C–5A, which has been characterized by its authors as one to "Keep Building the Planes." In my opinion, this amendment would assure that we could not "keep building the planes."

Under the amendment the contingency funds for the C–5A could only be expended under one of the following conditions:

1. If the Armed Services Board of Contract Appeals (ASBCA) determines that a part or all of the money is owed to Lockheed, *or*

2. If a trustee in bankruptcy or reorganization under Chapter X determines that the funds would be needed in completing those aircraft scheduled to be delivered by the end of the fiscal year.

I wish to express my objections to the amendment for the reasons stated below.

The amendment does not achieve its stated purpose; that is, the continued production of the C–5A. Based on the present expenditure rate, the funds requested for FY 1971 will be exhausted shortly after the end of calendar year 1970. The ASBCA will not have reached a decision on the extremely complex issues by this date. Therefore, once the funds appropriated for the contract are expended, Lockheed would have to carry the burden of providing financing for this contract until a decision is rendered by the ASBCA. Present indications are that ASBCA cannot reach a decision before mid-1971.

As I have testified before your Committee on several occasions, the company lacks the cash resources to carry this obligation. In short, production of the C–5A aircraft would therefore cease with the expenditure of the FY 1971 appropriation.

Moreover, should the amendment pass and should Lockheed subsequently prevail before the ASBCA or the Court of Claims, the Department of Defense would be in serious danger of having created yet another litigation issue; that is, a charge of breach of contract for failure to continue making payments, which the Board or Court determined were due Lockheed.

I am particularly concerned that the amendment, if passed, would impair our flexibility to seek alternative solutions to this problem. As I informed the Committee during my testimony in May and June, we are trying to negotiate our disputes and restructure the C–5A contract in a manner which will create a better working arrangement for management by the Air Force.

As I also have testified, the present contract is fraught with several clauses subject to divergent interpretation and not conducive to intensive management on the part of the Air Force. The repricing formula, the abnormal escalation clause, and the production option dispute have all tended to obscure and divert attention from that which is most needed—management by both the Air Force and the contractor to assure continued production at reasonable future incremental costs. It has become my conviction that a restruoturing of this contract to eliminate these problems and to promote improved management is mandatory.

I must emphasize that whether the solution is ultimately reached through litigation or settled by negotiation, the funds will be needed in early calendar year 1971 to continue production of the C–5A. Since a decision by the ASBCA is not likely to occur before the funds are needed, passage by Congress of the amendment would halt production of the airplanes.

As I have informed your Committee, I would not use any of the $200 million involved in this issue without again appearing before both your Committee and the House Armed Services Committee to explain in detail my proposed course of action and recommended solution.

Sincerely,

DAVID PACKARD.

Mr. STENNIS. Mr. President, I yield to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. COOK. Mr. President, under normal circumstances I would like to vote for the amendment. I must say that I think it is a bad contract. I think it has been badly handled.

I disagree with the Senator. This can in no way stop the production of the C–5A. The amendment says that the trustee in bankruptcy can make up his mind whether they need the funds.

A court of bankruptcy has two responsibilities, to see to the interests of the creditors and the stockholders.

The U.S. Government would be last. If this corporation were to go into bankruptcy, it would be the determination of the bankruptcy court whether it should stay in business or not stay in business. If he should say that it should not stay in business, the C–5A would not be built, Poseidon would not be built, the SAM would not be built, the SR–71 would not be built, and the U–2's would not be built.

This is a determination that the trustee makes for the benefit of the stockholders and the creditors and not for the U.S. Government.

I will give a good example. We are now faced with the bankruptcy of the Penn Central. If they cannot pay their debts and they quit, if the Federal Government wants this company to operate, it will then have to subsidize it.

I do not like it. I think it is a bad contract. I think that everyone admits that. However, we cannot say to the American people that we are saving them $200 million because if we need these 81 aircraft and have to have them, we will have to pay for them. If it costs too much, we will have learned a lesson. But we cannot go to the American people and say that we are saving something for them when in the long run we will have saved them nothing at all.

The PRESIDING OFFICER. Who yields time?

Mr. PROXMIRE. I yield the remainder of my time to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SCHWEIKER. Mr. President, I thank the Senator from Wisconsin for giving me a further opportunity to sum up the arguments that he and I have made.

We have pointed out that this is probably the worst illustration of military procurement practices in modern history. Rightly or wrongly it has become a test case. The amendment gives us the opportunity to permit this to continue or to blow the whistle and reverse these policies.

As the Senator from Wisconsin has pointed out, we can cite this example as the worst one we have ever come across.

So this is not in dispute. What is in dispute is how we are going to get out of the mess we got into. The original price was $2.6 billion. The latest figure from the selected acquisition reports indicate that it has gone up to $4.6 billion. For 81 planes we are up $2 billion, or nearly a 100-percent overrun.

Now we come to the situation where there is requested another $200 million which Secretary Packard said is actually needed to keep the company from going bankrupt, but in the next breath he said, and the chairman of the committee also said, that is just the beginning; that $200 million is just a part of it. No one knows how much must be supplied after the $200 million. But both of them

pointed out that the company said it needs $600 million. Yet the Department of Defense said it really needs $800 million more. Where will all this come to an end?

Now they want us to, in essence, rubberstamp the procedure, as if we have not made enough mistakes, and as if this is a wonderful policy and this is what we should be doing, when the reverse is true.

Mr. President, the only way we will change the policy is to blow the whistle somewhere, and I hope this body today has the courage and the conviction to blow the whistle.

The Senator from Wisconsin and I have offered a reasonable amendment that will not put anyone out of business; it will not put anybody into bankruptcy and it treats them the way the committee would in this regard. There is no question about our amendment triggering that. We give the Comptroller General the right to give them the $200 million, if it is necessary.

We are going to reverse the policy and not permit companies to bid in low and bail out high. If this amendment is rejected, I can imagine that one result will be that we will invite other contractors to bid in low and bail out high. We would set a terrible precedent and invite everyone to do what Lockheed has done.

If we reject the amendment we are going to show everyone that the United States is not going to regulate its own house and put its procurement in order, and that we are not going to meet the issue head on, but give the $200 million to Lockheed because Secretary Packard told the committee that.

In addition, now there are discussions going on between the Government and Lockheed to settle the matter out of the normal process. They want to bypass Congress and the appeals procedure, and sweep us aside once again, whether the figure is $600 million, $800 million, or $1 billion. Then, once again, we will be presented with a fait accompli or a fiscal coup d'etat, and we will go along.

I concede we need the planes, but through our amendment we would be saying, for once, that we should stand on our feet and say there is a limit; that we are going to meet our responsibility today; and that we are not going to condone and sanction the bad military practices that have gone on before.

Mr. President, this vote is vital to determine the future of our procurement policy, whether we have the old blank check approach, the old "give it to them if they need it" philosophy, the bid-in-low and bail-out-high policy, or whether good auditors with fiscal responsibility will deal with military contracts, as is done with every other contract in this Government.

Mr. SCOTT. Mr. President, I am pleased to support the Proxmire-Schweiker amendment controlling the expenditure of funds for the C–5A transport. This amendment provides that the $200 million provided for the C–5A would not be payable to the prime contractor, in this case Lockheed Aircraft Co., unless one of certain conditions are met.

The important modification of this amendment which leads me to support it is that provision directing the Comptroller General of the United States to complete an independent study by November 15, 1970, to determine whether all or part of the $200 million is necessary to complete production of the current contract for the C–5A aircraft. I believe this modification is sound and deserves support by the Members of the Senate.

Mr. President, this debate marks the end of a year in which military expenditures have been given the closest scrutiny ever. I support that effort. We should not be paying $1 more than we have to for military procurement.

It is inconceivable that American taxpayers must foot bills for unwise procurement procedures. For that reason, I support the Proxmire-Schweiker amendment and urge Senators to do the same.

Mr. PROXMIRE. Mr. President, I yield back the remainder of my time.

Mr. STENNIS. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back.

Mr. STENNIS. Mr. President, what is the matter pending before the Senate?

The PRESIDING OFFICER. The matter pending before the Senate is the amendment of the Senator from Wisconsin and the Senator from Pennsylvania.

Mr. STENNIS. Mr. President, the yeas and nays have been ordered; is that correct?

The PRESIDING OFFICER. The yeas and nays have been ordered.

Mr. STENNIS. This is straight up and down on the amendment.

The PRESIDING OFFICER. The Senator is correct.

The question is on agreeing to the amendment (No. 853), as modified, offered by the Senator from Wisconsin and the Senator from Pennsylvania.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. HATFIELD (after having voted in the affirmative). Mr. President, on this vote I have a live pair with the distinguished Senator from California (Mr. MURPHY). If he were present and voting, he would vote "nay." If I were permitted to vote, I would vote "yea." Therefore, I withdraw my vote.

Mr. SPARKMAN (after having voted in the negative). Mr. President, I answered the rollcall and voted in the negative. However, I have a live pair with the Senator from Arkansas (Mr. FULBRIGHT). If he were present and voting, he would vote "yea." If I were permitted to vote, I would vote "nay." I withdraw my negative vote.

Mr. KENNEDY. I announce that the Senator from Indiana (Mr. BAYH), the Senator from North Dakota (Mr. BURDICK), the Senator from Nevada (Mr. CANNON), the Senator from Connecticut (Mr. DODD), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Tennessee (Mr. GORE), the Senator from Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), the Senator from Hawaii (Mr. INOUYE), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Montana (Mr. METCALF), the Senator from New Mexico (Mr. MONTOYA), and the Senator from Maryland (Mr. TYDINGS) are necessarily absent.

I further announce that, if present and voting, the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from New Mexico (Mr. MONTOYA), and the Senator from North Dakota (Mr. BURDICK), would each vote "yea."

Mr. SCOTT. I announce that the Senator from Hawaii (Mr. FONG), the Senator from Michigan (Mr. GRIFFIN), the Senator from California (Mr. MURPHY), the Senator from Oregon (Mr. PACKWOOD), the Senator from Ohio (Mr. SAXBE) and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

On this vote, the Senator from Ohio (Mr. SAXBE) is paired with the Senator from South Dakota (Mr. MUNDT). If present and voting, the Senator from Ohio would vote "yea" and the Senator from South Dakota would vote "nay."

The pair of the Senator from California (Mr. MURPHY) has been previously announced.

The result was announced—yeas 30, nays 48, as follows:

[No. 273 Leg.]

YEAS—30

Brooke	Kennedy	Percy
Byrd, Va.	Mansfield	Proxmire
Case	Mathias	Ribicoff
Church	McGovern	Schweiker
Cooper	Mondale	Scott
Eagleton	Moss	Smith, Ill.
Goodell	Muskie	Spong
Hart	Nelson	Williams, N.J.
Hughes	Pastore	Yarborough
Javits	Pell	Young, Ohio

NAYS—48

Aiken	Eastland	McClellan
Allen	Ellender	McGee
Allott	Ervin	McIntyre
Anderson	Fannin	Miller
Baker	Goldwater	Pearson
Bellmon	Gurney	Prouty
Bennett	Hansen	Randolph
Bible	Harris	Russell
Boggs	Holland	Smith, Maine
Byrd, W. Va.	Hollings	Stennis
Cook	Hruska	Symington
Cotton	Jackson	Talmadge
Cranston	Jordan, N.C.	Thurmond
Curtis	Jordan, Idaho	Tower
Dole	Long	Williams, Del.
Dominick	Magnuson	Young, N. Dak.

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY ANNOUNCED—2

Hatfield, for.
Sparkman, against.

NOT VOTING—20

Bayh	Gravel	Mundt
Burdick	Griffin	Murphy
Cannon	Hartke	Packwood
Dodd	Inouye	Saxbe
Fong	McCarthy	Stevens
Fulbright	Metcalf	Tydings
Gore	Montoya	

So the amendment (No. 853) was rejected.

Mr. STENNIS. Mr. President, I move to reconsider the vote whereby the amendment was rejected.

Mr. TALMADGE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MANSFIELD. Mr. President, may

we have order? I ask Senators to stay, because we are going to try to see if we can expedite the business, on both sides.

The PRESIDING OFFICER. Under the order previously agreed to by unanimous consent, amendment No. 853, the McGovern-Hatfield end-the-war amendment, is to be laid before the Senate at this time.

Mr. MANSFIELD. Mr. President, before the amendment is laid before the Senate, I wonder if it would be possible to determine whether any Senators have amendments they would like to offer this evening, under a time limitation.

Mr. STENNIS. Mr. President, will the Senator yield to me?

Mr. MANSFIELD. Yes, indeed.

Mr. STENNIS. If it is at all possible to get up another amendment, I think we should do it—one that we can dispose of today.

Mr. MANSFIELD. That is what I mean.

Mr. President, it is my understanding that the senior Senator from Illinois (Mr. PERCY) will now agree to a 1-hour limitation on his amendment, which will come up at approximately 11:30 tomorrow morning.

Mr. STENNIS. Mr. President, if the Senator will yield, debate would start at——

Mr. MANSFIELD. On the amendment, it would be changed from 2 hours to 1 hour, with the time to be equally divided between the Senator from Illinois and the Senator from Mississippi.

Mr. STENNIS. Mr. President, reserving the right to object, the Senator from Illinois tells me he thinks he is going to get an agreement on his amendment. If he should, frankly, we would not oppose it, because it is an administrative matter, dealing with detoxification. So, if we could have something else right behind it, it would be helpful.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the time limitation on the amendment of the Senator from Illinois be changed from 2 hours to 1 hour, the time to be equally divided.

The PRESIDING OFFICER (Mr. BENNETT). Is there objection? Without objection, it is so ordered.

Mr. MANSFIELD. Following the amendment of the distinguished Senator from Illinois (Mr. PERCY), on the amendment offered by the distinguished Senator from Wisconsin (Mr. NELSON), again having to do with herbicides, he indicates that he is willing to agree to a 30-minute limitation.

Mr. STENNIS. Mr. President, reserving the right to object, I want to cover this point: The amendment of the Senator from Illinois may be agreed to. I want it fixed where we can move immediately, then, into the next amendment, without having to wait an hour.

Mr. GOODELL. Mr. President, will the Senator yield?

Mr. STENNIS. I yield.

Mr. GOODELL. I am going to offer that amendment, coauthored by the Senator from iWsconsin and myself. We have discussed it, and I believe we can be prepared at any time tomorrow to take it up.

Mr. STENNIS. Let us take it up now.

Mr. GOODELL. The Senator from Wisconsin is not on the floor. I am perfectly willing to take it up now.

Mr. STENNIS. We had the same speech made this morning, Mr. President. We are all familiar with it. The same Senators are here.

Mr. MANSFIELD. That is why they are willing to agree to a reduced time limitation. But apparently we can get nowhere.

We do have a 1-hour limitation on the Percy amendment, after which time, hopefully, the Nelson-Goodell amendment will be brought up. I would like to get a half hour time limitation on it now. If not, apparently we can get it tomorrow.

Mr. STENNIS. Reserving the right to object on this matter tomorrow, as I understand, now, the Goodell amendment would follow immediately after the amendment of the Senator from Illinois has been disposed of.

Mr. GOODELL. Right.

Mr. STENNIS. Let us make that 20 minutes to a side.

Mr. MANSFIELD. All right. Mr President, on the Nelson-Goodell amendment, which will follow the Percy amendment, I ask unanimous consent that there be a time limitation of 40 minutes, the time to be equally divided between the Senator from New York (Mr. GOODELL) and the Senator from Wisconsin (Mr. NELSON) on the one side, and the manager of the bill (Mr. STENNIS) on the other.

The PRESIDING OFFICER. Is there objection?

Mr. STENNIS. Mr. President, reserving the right to object one more time now, I understand that one of these amendments is not even printed yet.

AMENDMENT NO. 863

Mr. GOODELL. We will put it in for printing today.

The PRESIDING OFFICER. The amendment will be received and printed and will lie on the table.

Mr. STENNIS. Has the amendment of the Senator from Illinois been printed?

Mr. PERCY. My amendment is a printed amendment.

The PRESIDING OFFICER. Without objection, the order is entered.

The unanimous consent agreement, later reduced to writing, is as follows:

Ordered, That during the further consideration of H.R. 17123, military procurement bill, debate on various amendments thereto be limited as follows:

Debate on the amendment by the Senator from South Dakota (Mr. McGOVERN) and others, the so-called "end-the-war" amendment, numbered 862 (which became the pending business following the disposition of the Proxmire amendemnt (No. 853 on C–5A)) to be limited to 6 hours of controlled time, with a vote coming at 10 o'clock a.m. on Tuesday, September 1. Five hours of the controlled time will begin at 12 o'clock noon on Monday, August 31, and the other hour will occur on Tuesday, September 1 following the prayer, with all of the controlled time to be equally divided and controlled by Mr. McGOVERN and the manager of the bill, Mr. STENNIS. Any amendments to the amendment or motions or appeals relative to the amendment—except a motion to table, if offered—shall be limited to 30 minutes, to be equally divided and controlled between the proponents and Mr. McGOVERN; if Mr. McGOVERN is not opposed to any such amendments, motions, or appeals, the time in opposition will be controlled by Mr. STENNIS or the majority leader or his designee.

The amendment by the Senator from Wisconsin (Mr. PROXMIRE) (No. 861) relative to reduction of military funds by $5 billion, shall be laid down before the close of business on Thursday, August 27; on Friday, August 28, after the prayer, debate on this amendment to be limited to 3 hours, to be equally divided and controlled by Mr. PROXMIRE and the Senator from Mississippi (Mr. STENNIS) with the vote occurring immediately thereafter.

Debate on an amendment by the Senator from Wisconsin (Mr. PROXMIRE) on draftees (No. 754) will become the pending business on Tuesday, September 1 following the disposition of the so called "end-the-war" amendment by the Senator from South Dakota (Mr. McGOVERN), to be limited to 1 hour, to be equally divided and controlled by Mr. PROXMIRE and the Senator from Mississippi (Mr. STENNIS); debate on any amendment to the amendment shall be limited to 20 minutes, to be equally divided and controlled by the mover of the amendment and Mr. PROXMIRE, or Mr. STENNIS if Mr. PROXMIRE is not opposed to the amendment.

Debate on an amendment to be offered by the Senator from Illinois (Mr. PERCY) to be limited to 1 hour, with the time to be equally divided and controlled by Mr. PERCY and the manager of the bill (Mr. STENNIS); any amendments to the amendment will be limited to 10 minutes each, to be equally divided and controlled by the mover of the amendment and Mr. PERCY, or Mr. STENNIS if Mr. PERCY is not opposed to the amendment. Following the disposition of the above amendment, debate on an amendment to be offered by the Senator from Wisconsin (Mr. NELSON) and the Senator from New York (Mr. GOODELL) to be limited to 40 minutes, with the time to be equally divided and controlled by Mr. NELSON and the manager of the bill, Mr. STENNIS.

Debate on tw. amendments to be called up by the Senator from Massachusetts (Mr. BROOKE) (by unanimous consent if the McGovern amendment, No. 862, is pending) to be limited to 3 hours each, to be equally divided and controlled by Mr. BROOKE and Mr. STENNIS with any amendments thereto to be limited to 10 minutes each, to be equally divided and controlled by the mover of the amendment and Mr. BROOKE, or Mr. STENNIS if Mr. BROOKE is not opposed to the amendment.

The PRESIDING OFFICER. The McGovern-Hatfield amendment will be stated.

The legislative clerk read as follows:

AMENDMENT NO. 862

At the end of the bill add a new section as follows:

"SEC. — (a) In accordance with public statements of policy by the President, no funds authorized by this or any other Act may be obligated or expended to maintain a troop level of more than 280,000 armed forces of the United States in Vietnam after April 30, 1971.

"(b) After April 30, 1971, funds herein authorized or hereafter appropriated may be expended in connection with activities of American Armed Forces in and over Indochina only to accomplish the following objectives:

"(1) the orderly termination of military operations there and the safe and systematic withdrawal of remaining armed forces by December 31, 1971;

"(2) to secure the release of prisoners of war;

"(3) the provision of asylum for Vietnamese who might be physically endangered by withdrawal of American forces; and

"(4) to provide assistance to the Republic

of Vietnam consistent with the foregoing objectives.

"*Provided, however,* That if the President, while giving effect to the foregoing paragraphs of this section, finds in meeting the termination date that members of the American armed forces are exposed to unanticipated clear and present danger, he may suspend the application of paragraph 2(a) for a period of not to exceed 60 days and shall inform the Congress forthwith of his findings; and within 10 days following application of the suspension the President may submit recommendations, including (if necessary) a new date applicable to subsection (b)(1) for congressional approval."

Mr. McGOVERN. Mr. President, the proposal we present today is the fruition of several months of effort to offer Congress a practical alternative to the course now being followed in Vietnam and in Indochina as a whole, and at the same time to bring into play the legitimate responsibilities of Congress on questions of war and peace.

The amendment has gone through several revisions since it was first offered on April 30, shortly before the dispatch of U.S. troops into Cambodia. The sponsors of the amendment have maintained from the very beginning that the initial draft or any subsequent version could be modified to meet reasonable suggestions designed to strengthen the base of support for our essential purpose.

We have sought, we have received, and we have incorporated the suggestions of a number of Senators and the numerous private individuals who have expertise on the issues we are raising.

On last Wednesday, a week ago today, we announced that the original sponsors of the amendment had agreed to some modifications in our first proposal. We felt then, and we feel now, that because several months have passed since we first introduced the amendment, it was advisable to modify the termination date for withdrawal to reflect the fact that several months had passed since the amendment was first introduced. But the amendment continues a terminal date approximately 1 full year after the pending amendment could be enacted. The superfluous reference to a declaration of war was dropped from the original language, and the language was changed to provide a uniform terminal date for U.S. military operations in all the Indochinese states.

Finally, we eliminated the provision which would have prohibited expenditures after December 31 of this year on offensive combat operations. We eliminated that out of a desire to avoid any unnecessary problem of definition and to assure that the President would have full flexibility as Commander in Chief to establish strategies best suited to meet the overall policy limitations called for by the amendment.

Mr. President, the amendment we formally introduce today incorporates some further modifications based primarily on valuable suggestions of members of the Committee on Foreign Relations. Outside of adjustments in form, there are three substantive alterations that would have significant legislative effect.

First of all, a new paragraph has been added to codify the withdrawal schedule already announced by the President to reduce the American troop strength in Vietnam to no more than 280,000 men by next April 30.

We believe that that withdrawal schedule, if combined—and this is a very important quotation "if"—with the commitment to full withdrawal, is a highly worthwhile initiative, and we endorse it.

Second, we have added a provision which would allow the President to suspend the December 31, 1971, deadline for up to 60 days and to do that on his own motion, without the consent of Congress, but upon his finding that American troops were subjected to a clear and present danger.

Third, if the President did exercise the authority to extend the deadline, and if he believed that additional time would be needed beyond the 60 days, the amendment provides that he could submit recommendations to Congress within 10 days, including a revised deadline. Such recommendations are to be submitted to Congress within 10 days after the President exercises his option to extend the withdrawal date, so that we would eliminate any doubt that delays inherent in the congressional process might prevent timely action. The President would, of course, be free to submit recommendations to Congress at any time, as he is now.

These changes do not alter the basic purpose or the central policy objective of our amendment. In fact, they clarify it.

We appreciate the important contributions of key members of the Committee on Foreign Relations with whom we have worked, including the Senator from New York (Mr. JAVITS), who has been one of the leading members of that committee in working out substantive provisions in this amendment that would get the concurrence of a significant number of members of the committee.

Mr. GOODELL. Mr. President, will the Senator yield?

Mr. McGOVERN. I am happy to yield to the Senator from New York.

Mr. GOODELL. Mr. President, I think it is important that we emphasize that, although there are modifications in the original amendment to end the war, the two major substantive thrusts of the amendment to end the war are retained.

When I introduced the bill last year, S. 3000, it was a one-sentence bill which said that we are cutting off all funds for American military personnel in Vietnam by December 1 of 1970. That set a fixed date and used the congressional power to cut off funds. That approach was embodied in our amendment to end the war. It is embodied in this modification.

The original concept that I had and that the other Senators had who sponsored the amendment to end the war was that we were not calling for immediate withdrawal, which is unrealistic and unattainable. One cannot just wave a wand and get all the men out of Vietnam. There is a time factor here, in which the troops must be withdrawn, with full attention to their safety and the orderliness of the withdrawal. In addition, there is a notice to the Saigon government, to the North Vietnamese, to the Vietcong, and to the world, in advance, that by a fixed date in the future we are going to be out completely. So those features are retained.

Last fall, we could say December 1, 1970, which was essentially a year hence from the date of introduction. Last spring, we could say July 1 or June 30 of 1971, essentially a year hence. Now we are saying December 31 of 1971, which still gives approximately a year's time for withdrawal of the troops in a safe and orderly way, with the President retaining his power as Commander in Chief to protect the troops in the interim period. Other Senators, as the Senator from South Dakota has indicated, have come forward with very important and substantive suggestions.

It is my view that what is incorporated as a modification in the amendment was implicit in the amendment to end the war and my proposal last fall; namely, that we could provide asylum for the South Vietnamese, if necessary, and that we would give the President full authority to protect the troops in the interim period.

Of course also, if the President felt this was an unattainable objective, he could come back to Congress, which he can do in any event, and request an extension of whatever deadline date we had set. That obviously is implicit, that the President can come back on his own, but we have provided that specifically here and we have also provided specifically to continue to give arms aid to the Vietnamese which, of course, was implicit in the original amendment, and that we can provide asylum.

Those are important additions, simply to underscore the fact that we are not saying, "Abandon everything. Pull out. Leave with no continuing concern, no continuing responsibility there." We are saying that we cut off our responsibility for combat troops and military personnel, with aid to go on, and to provide asylum, if necessary. The President can come back and suggest or propose to Congress extending the date, and Congress will then exercise its rightful responsibility in assessing whether the extending date is necessary, and whether it should be approved by us.

Thus, I join the Senator from South Dakota in praising the members of the Foreign Relations Committee for their contribution, particularly my senior colleague Mr. JAVITS, who has been the leader in this endeavor, and has been active in negotiating an approach that retains the viability of the amendment to end the war. The operative provisions of the amendment to end the war bring forth the other substantive aspects of the issue that are dealt with directly in the amendment.

I think this is a good modification and I join the Senator from South Dakota, the Senator from Oregon, the Senator from California, the Senator from Iowa, and the other cosponsors, in this modification.

Mr. McGOVERN. I concur completely in the Senator's elaboration on what it is we are attempting to accomplish with

the modifications. They certainly go to the heart of what the junior Senator from New York has had in mind for a long period of time. To the best of my knowledge, he was the only Member of Congress, either in the House or Senate, to submit legislation calling for termination of U.S. military operations in Vietnam, and he did that many months ago. I was proud to be a cosponsor with him on the measure at the time. I am very much pleased to be a cosponsor with him on this modified amendment today.

Mr. CRANSTON. Mr. President, will the Senator from South Dakota yield?

Mr. McGOVERN. I yield.

Mr. CRANSTON. The Senator from South Dakota is in the process of presenting to the Senate what I believe historians will look upon as the most important matter we will have an opportunity to vote upon during this session of Congress.

There are two points I should like briefly to stress.

First, in revising the amendment, great care and wisdom have been exercised in removing language that might have led to the feeling in some quarters that there was some challenge to the President's responsibilities as Commander in Chief. There is nothing in the amendment that does that in any way in its revised form. What is now at issue here is a sharing of the constitutional responsibility that is quite clear, between Congress and the President, in determining what the American Armed Forces shall do, where they shall do it, and whether or how they shall be financed.

The second point—which I will develop later in the course of this debate but wish only to mention now—is that the amendment provides far greater assurances as to the safety of our men in Vietnam and, hence, for the safety and security of this country, than in the present situation, where we have no time table, and an erratic withdrawal program of great uncertainty. The President, in seeking to withdraw troops—and no one challenges him on that point, as to how far or how fast he can go—could lead us into a dangerous situation, having reduced the number of American troops in Vietnam in the course of withdrawal under that approach.

That, I think, is one of the most vital reasons for giving careful consideration to the merits of the amendment, in providing greater protection to American troops in Vietnam.

Mr. McGOVERN. The point the Senator makes is especially important because once we have set a definite, published timetable for withdrawal, we have removed most of the reason the enemy might have for attacking our forces. He knows that every American soldier is going to be out of there by such and such a date. It seems to me that that eliminates the temptation to make that withdrawal difficult. But the present formula that we are following, where we say that we will reduce our forces to such and such a level by next spring, would leave open ended the length of time the remaining forces may stay there, which would be an invitation to the enemy to step up his military operations as long as we have combat forces in the field.

Mr. CRANSTON. That is the exact point. The feeling of the Senator, and my feeling, too, is that if Vietnamization proved not to be working and if, as we withdrew many of our men, they were more and more dependent, as they, of course, would be on the South Vietnamese forces for their protection, and if their forces proved unable to provide that protection, then the failure of Vietnamization would mean a blood bath for the American troops left in Vietnam without adequate American reenforcement to insure their safety.

Mr. GOODELL. Mr. President, in addition to the impact on the North Vietnamese, they would have no motive—reasonable or unreasonable—to attack American forces once a fixed date was set. We know that we are withdrawing completely, and that should have a salutary effect upon Saigon, upon the Thieu-Ky government, because, after all, if there is going to be any negotiated settlement among the Vietnamese, the South Vietnamese leaders must be more realistic about their approach here. This, I think, would make them somewhat more realistic.

One vital point with reference to that raised by the Senator from California, as to the safety of our troops, at a public meeting that I participated in last spring, a group of sincere individuals in the audience were waving a sign disagreeing with those of us speaking on the platform. The sign read, "Defend the safety of our men in Vietnam."

There was a young veteran who had just returned from Vietnam, who spoke from the platform, and he pointed to the sign and those who were conscientious and sincere in their belief about it, and he said, "The best way to protect the safety of our men in Vietnam is to bring them home."

That is exactly what this would do.

Mr. McGOVERN. The Senator's point is well taken.

Mr. President, I made reference here a while ago to the consultation with the Senator from New York (Mr. JAVITS), and other members of the Foreign Relations Committee, in agreeing that the amendment has not formally been considered by that committee, as was the case with the Cooper-Church amendment. We are hopeful that a majority of the committee will be prepared to support the revised amendment following the return of the committee Chairan, the Senator from Arkansas (Mr. FULBRIGHT), who unfortunately has been called away from the Senate this week because of a death in his family.

Throughout the period since we first proposed action of this kind we have held to one central belief—that the interests of the United States would be best served by establishment of an orderly timetable for the removal of all U.S. Forces from Vietnam. We remain firmly convinced that such a commitment is the best available means of terminating the tragic conflict in Indochina, of ending its enormous drain on our human, material, and spiritual resources, and of recapturing the respect of nations throughout the world that look to the United States for leadership.

I think this formula that we offer in the pending amendment can release American policy from arbitrary control by others, either from Saigon or Hanoi, as the Senator from New York (Mr. GOODELL) has just underscored, and place it back in American hands; namely, in the control of Congress and the President of the United States. And it can stimulate the negotations which have been stagnating so long in Paris while the killing has been going on.

At the same time the amendment raises another issue of paramount importance. It seeks to reassert the declining role of Congress in decisions whether or not to commit American forces to battle. I emphasize in this connection that we do not pose a confrontation with any particular President. Rather we confront a dangerous trend which goes back many years, in violation of what we take to be the clear intent of the Constitution. If anyone sees provocation of a "constitutional crisis" in what we are doing, that is perhaps the best illustration of the distance we have strayed from the Constitution itself. Neither the legislative history nor the language of that document allows the interpretation that the Executive alone can initiate war or that, once begun, a war becomes his prerogative alone to end or to expand and continue indefinitely without reference to the wishes of Congress. On the contrary there rests with the Congress an affirmative duty—more than a power—to regularly review every military activity in which the Nation is engaged. The notion of an unbridled executive war power is as foreign to our system as would be an assertion that the President can simply dissolve the Congress and run the country by one-man rule.

Although they will be discussed in more detail as the debate progresses, I do want to make brief reference at this point to several provisions in the amendment that affect central points of concern about the consequences of withdrawal.

No one would be so foolish as to suggest that any kind of a plan, a withdrawal formula or any other formula, for dealing with this war is entirely free from risk.

Among the most serious problems we must face is the status of prisoners of war now held by North Vietnam in a manner which defies standards of decency, including those established in the Geneva accords to which North Vietnam is a signatory. We believe a timetable for withdrawal would facilitate their release by opening the way to meaningful negotiations and by allowing concentration of our strategy on this specific problem in place of its inclusion in a broad range of other goals. The amendment leaves the President with full authority to pursue this issue in any manner he deems appropriate.

Another matter of great concern to all of us is the safety of our forces in Vietnam. On this point, the language explicitly states that the withdrawal shall be conducted in a safe and systematic manner, and it would not hamper the President's power to determine the tactical arrangements and deployments by which this objective can be

best achieved within the broad time limitation.

This gives the safest and most systematic disengagement possible within this broad time limitation extending to the end of 1971 and with an emergency clause that would permit the President the right to go ahead in an emergency for a 60-day period beyond that.

It is my conviction that if the amendment is adopted there will be little likelihood of forcing withdrawal under combat pressure.

If one stops to think about it, an adversary would have little or no incentive to attack troops that are being removed. As a matter of fact, it would be in his interest to enhance that withdrawal process if he were certain all the forces would be out by a certain date, provided he did not interfere. The enemy would have a greater incentive to see that that withdrawal is conducted safely lest they risk a longer U.S. presence.

This amendment would permit that to take place in the event there was serious interference with the safe withdrawal of our forces.

The effects of American withdrawal on the people of South Vietnam has also been widely discussed. In my view the predictions of a "bloodbath" have been greatly inflated. But if this is a concern, we suggest a diligent effort, in combination with other nations, to find asylum for those South Vietnamese who might be endangered.

Let me just say parenthetically, Mr. President, that there are tens of thousands of South Vietnamese being killed as this war proceeds. We talk about a bloodbath. We need to keep in mind that not only have thousands of combat forces been killed on both sides, but also hundreds of thousands—I have seen estimates running up to 2 million—of South Vietnamese civilians that have been killed as a result of this war. Many of the deaths have been unintentional. However, it is the direct and indirect result of the kind of massive firepower that has been introduced into this conflict. So, the question is how to terminate this with a minimum continuing danger to the people of Vietnam.

I think that likely there are people prominently identified with the government, either with the military or the political side of that government, who might feel that they are the targets of reprisals in the event the American forces were to be withdrawn. I feel that those people and others who might have the feeling that their lives and well-being are in danger should have some assurance that we will do everything we can to see that asylum is offered in various parts of the world.

My guess that is in view of the French speaking character of the people of Vietnam, many of them would follow their countrymen who have already gone to France in previous months.

The amendment does not oblige the President to take this course and it does not prevent him resources needed to explore the possibilities. Surely such an approach is preferable to the situation now, in which we practice the chilling paradox of staying in Vietnam to prevent a bloodbath while innocent civilians continue to die by the tens of thousands each year because of our own massive firepower.

I again want to stress that most of these deaths are unintentional. I do not think that American artillerymen or American pilots are trying to slaughter innocent people. However, when they pursue enemy guerrillas into areas or towns marked for interdiction or as free fire zones, it is quite obvious that some innocent people are going to be killed in the process.

Beyond these provisions, the amendment specifies that funds will remain available for general assistance to South Vietnam both during and after the withdrawal of U.S. forces, in amounts authorized under ordinary constitutional process. We do not draw a distinction between military and civilian aid. This language further emphasizes that our single purpose is to complete the withdrawal of American Armed Forces both on the ground and in the air by December 31 of next year. And it assures that even then the South Vietnamese will not be denied supplies and equipment from the United States unless Congress makes a separate determination on that issue.

Mr. President, we make no claim that the course we advocate will be convenient or painless. A Vietnam policy with such attributes will never be found. Certainly they cannot be claimed for the course that is promised if our alternative is rejected.

All we ask is that our proposal be fairly compared with existing policy, and that the Congress exercise its own responsibility for bringing this terrible conflict to an end.

Mr. President, I ask unanimous consent that the text of the amendment now pending and discussed earlier this afternoon be printed in the RECORD.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

At an appropriate point in the bill insert the following:

"1. In accordance with public statements of policy by the President, no funds authorized by this or any other act may be obligated or expanded to maintain a troop-level of more than 280,000 armed forces of the United States in Vietnam after April 30, 1971.

"2. After April 30, 1971, funds herein authorized or hereafter appropriated may be expended in connection with activities of American armed forces in and over Indochina only to accomplish the following objectives:

"(a) the orderly termination of military operations there and the safe and systematic withdrawal of remaining armed forces by December 31, 1971;

"(b) to secure the release of prisoners of war;

"(c) the provision of asylum for Vietnamese who might be physically endangered by withdrawal of American forces; and

"(d) to provide assistance to the Republic of Vietnam consistent with the foregoing objectives.

"Provided, however, That if the President, while giving effect to the foregoing paragraphs of this section, finds in meeting the termination date that members of the American armed forces are exposed to unanticipated clear and present danger, he may suspend the application of paragraph 2(a) for a period of not to exceed 60 days and shall inform the Congress forthwith of his findings; and within 10 days following application of the suspension the President may submit recommendations, including (if necessary) a new date applicable to section 2(a) for Congressional approval."

Mr. McGOVERN. Mr. President, in connection with the amendment an important brief has been prepared by a number of lawyers, law professors, and law students. A part of the brief was printed earlier in the RECORD. But for the convenience of Senators and others who will be following this debate over the next few days, and because the amendment does raise certain constitutional questions that will especially concern Members of the Senate, I ask unanimous consent that the entire text of the brief be printed at this point in the RECORD.

There being no objection, the brief was ordered to be printed in the RECORD, as follows:

THE AMENDMENT TO END THE WAR: THE CONSTITUTION QUESTION

(Material submitted by the Senate Steering Committee of the Congressional Committee for a Vote on the War: Hon. GEORGE MCGOVERN, Democrat, of South Dakota; Hon. MARK HATFIELD, Republican, of Oregon; Hon. CHARLES GOODELL, Republican, of New York; Hon. ALAN CRANSTON, Democrat, of California, and Hon. HAROLD HUGHES, Democrat, of Iowa).

May 13, 1970

Mr. MCGOVERN. Mr. President, there are two profound issues involved in the amendments which have been proposed to limit U.S. activities in Southeast Asia.

The merits of whether it is politically, militarily, or morally sound for us to be entangled in that conflict will be debated at length, as they have been debated for many years. Most of us have strong opinions.

The other issue has received less attention, and for that reason alone it deserves a special focus. Regardless of how any Senator feels about the wisdom of our involvement, he has good reason for deep interest in the procedures through which it has come about, and particularly in the role Congress has or has not played. Concern has been expressed about a possible constitutional crisis over the war power. In truth that crisis already exists, and the Vietnam war is the best possible illustration of that fact.

The complementary amendments introduced by Senators CHURCH and COOPER, on Cambodia, and by Senators HATFIELD, GOODELL, HUGHES, CRANSTON, myself, and other Senators on Vietnam, Cambodia, and Laos, are practical attempts to assert proper congressional involvement. In fact, they use the only vehicle—limitations on spending appropriated funds—that we have available to enforce our decisions on the use of American military power abroad. Moreover, it is a vehicle which the founders of our Republic believed should be vigorously employed.

In this connection, Mr. President, I would like to make available to Members of the Senate an analysis of the constitutional issues broached by these amendments. Entitled "Indochina: The Constitutional Crisis," it supplies an excellent historical description of the war power and a concise discussion of the legislative actions which have been used to justify our posture in Southeast Asia.

With respect to our amendment, it concludes that:

"Proposed restrictive provisions (such as those advanced by Senators McGovern, Hatfield, Hughes, Goodell and Cranston) are not only a legitimate exercise of Congress' money power, but pose no danger of inflexibility committing our policy to a hazardous course because (1) they include exceptions which insure the safety of our forces and (2) they may be overridden by future congressional action if circumstances change."

Mr. President, the authors of this memo-

randum include prominent legal scholars and former government officials. I should like to read their names:

Alexander M. Bickel, Professor of Law, Yale Law School.

Bruce Bromley, Attorney, New York City; former Judge, New York Court of Appeals.

Elias Clark, Professor of Law, Yale Law School.

Ramsey Clark, former Attorney General.

William T. Coleman, Attorney, Philadelphia, Pa.

John Doar, President, Bedford-Stuyvesant D&S Corporation, Brooklyn; former Assistant Attorney General.

John W. Douglas, former Assistant Attorney General.

George N. Lindsey, Attorney, New York City.

Burke Marshall, Professor of Law, Yale Law School; former Assistant Attorney General.

Louis F. Oberdorfer, former Assistant Attorney General.

Robert M. Pennoyer, Attorney, New York City.

Stephen J. Pollak, former Assistant Attorney General.

Paul C. Warnke, former Assistant Secretary of Defense.

Edwin M. Zimmerman, former Assistant Attorney General.

In addition, Mr. President, I want to note that the basic research and drafting for the memorandum was done by the 12 Yale Law School students: David Cooke, Reid L. Feldman, Gary Fontana, Frank Hamsher, Gertrude Hamsher, Howard O. Hunter III, Christopher Lunding, David Marks, Jeffrey Orleans, Randall Shepard, Eric Stauffer and John M. Townsend.

Their outstanding work on this project provides a graphic demonstration of how students are doing important, useful, and construotive work on behalf of the peace effort.

I ask unanimous consent that the memorandum to which I have referred be printed in the RECORD.

(There being no objection, the memorandum was ordered to be printed in the RECORD, as follows:)

INDOCHINA: THE CONSTITUTIONAL CRISIS

The dispatch of American troops into Cambodia by the President, without specific authorization by Congress, raises serious questions about the constitutional allocation of power between the legislative and executive branches. The most significant factor in the resolution of such questions is the presence or absence of action by each branch.

The power to commit American forces to combat was originally entrusted to Congress, which retained it almost unchallenged for over a century. But in the twentieth century, Congress has passively allowed the effective ability to engage the United States in hostile actions abroad to be assumed almost entirely by the Presidency.

Proposals now before Congress invoke the money power as a means of asserting control over the Indochinese War. If Congress exercises its money power to prohibit specific uses of the armed forces, it will reassert its long dormant capacity firmly and constitutionally to limit the President's ability to use the armed forces for purposes which Congress does not approve.

I. The language of the constitution

The power to commit American troops to battle was allocated by the Constitution between the President and Congress. (The relevant clauses of the Constitution are quoted in the Appendix.) The President is entrusted with the executive power,[1] made Commander in Chief of the Army and Navy,[2] and, with the advice and consent of the Senate, empowered to make treaties and appoint ambassadors.[3] The Congress is empowered to lay taxes to provide for the common defense,[4] to define and punish offenses against the law of nations,[5] to declare war,[6] to raise and support armies (but not to finance them for more than two years at a time),[7] to provide and maintain a navy,[8] to make rules for the land and naval forces,[9] and to provide for calling up and organizing the militia.[10]

II. The original understanding

The Constitution does not say explicitly whether the army may be sent into battle when Congress has not declared war, or if it may, under what circumstances and by whose decision. In interpreting the Constitution on this point, it is helpful to look at the intent of the Framers and to the understanding of the men who first put the Constitution into practice.[11]

The Constitutional Convention debated the clause giving Congress the power to declare war on August 17, 1787.[12] The clause originally empowered Congress "to make war."[13] Some delegates objected that the power should lie with the executive, as it did in England.[14] Most of the Convention seemed firmly of the opinion that the power should lie with Congress, but that the President should have the power to defend against a sudden attack. The Convention decided to "insert 'declare,' striking out 'make' war, leaving to the executive the power to repel sudden attacks."[15] The Framers had in mind a division of functions. The President, as Commander in Chief, was charged with the conduct of hostilities after they are legally begun. He was also expected to take measures to repel any actual attack upon the United States, as an incident of his executive power. But the power to initiate hostilities was clearly meant to be served to the Congress, with the President participating in that initiative only so far as his signature was necessary to compete an act of Congress. Thus, *the President, unless his veto is overridden, may prevent war, but he cannot constitutionally act alone to begin a war.*

The judicial branch was also quick to conclude that Congress alone can declare war. Delivering the opinion of the Supreme Court in an 1801 prize case, Chief Justice John Marshall concluded that the "whole powers of war" were "vested in Congress."[16]

There may, however, be hostilities which fall short of requiring an actual declaration of war. Ten years after the adoption of the Constitution, the naval trouble between the United States and France which had begun under Washington became so acute that American shipping was greatly endangered.[17] President Adams had to decide what to do. Alexander Hamilton advised the administration against action without Congressional authority:

"In so delicate a case, in one which involves so important a consequence as that of war, my opinion is that no doubtful authority ought to be exercised by the President."[18]

Adams decided to wait for Congress to act, and it passed laws authorizing him to protect American commerce.[19] Similarly in 1801, President Jefferson was faced with hostilities on the Barbary Coast, but felt that he could order only defensive measures until Congress authorized him to commit forces to offensive action.[20]

In the first two limited wars in which the United States found itself, both Adams and Jefferson had the means to order retaliatory action immediately. Perhaps some lives and property would have been saved had they done so. But both clearly felt that the decision to commit American forces was not constitutionally theirs to make, and preferred the preservation of the Constitutional process to the pursuit of a temporary military advantage.

III. Historical development of the war power

A. Wars and Limited Wars in the 19th Century

If the President's power to engage American forces in hostilities on his own initiative is limited to defensive action by a strict construction of the Constitution, the question of the proper role of Congress arises. Congress clearly has the power to engage the United States in formal war, as it did in 1812 with the President reluctantly assenting.[21] It may declare war at the request of the President.[22] And the Congress may also ratify after the fact hostilities begun by the President.[23]

The executive branch very early recognized the exclusive power of Congress to declare war. In the course of a dispute with Spain in 1805, President Jefferson told Congress:

Considering that Congress alone is constitutionally invested with the power of changing our position from peace to war, I have thought it my duty to await their authority before using force in any degree which could be avoided.[24]

Similar deference to the sole power of Congress to make any decision to commit the United States to war was voiced by President James Monroe,[25] Secretary of State John Quincy Adams,[26] and Secretary of State Daniel Webster.[27]

The Congress itself was jealously aware of its war power, and on one occasion nearly censured the President for invading it. In 1846 it had declared, after the fact, that a state of war existed with Mexico. But the debate was bitter and the war unpopular. At the end of the war, the House of Representatives voted its thanks to General Taylor, but amended its resolution to note that he had won a war unnecessarily and unconstitutionally begun by the President of the United States.[28]

Among the Congressmen supporting the amendment were former President John Quincy Adams and future President Abraham Lincoln.

Congress also has considerable power, short of a declaration of war, to authorize and regulate limited hostilities, as it has done on a number of occasions, with and without executive approval, since 1798.[29]

During the nineteenth century, the executive branch frequently recognized the need for congressional authorization even for limited military actions. In 1857 the Secretary of State refused to send ships to help a British expedition in China, because he lacked congressional authority to do so.[30] The next year President Buchanan pleaded with Congress for authority to protect transit across the Isthmus of Panama, but refused to act without it.[31] Nor in 1876 would the State Department use force to help Americans in Mexico, because it felt it lacked the power to do so.[32] As late as 1911 President William Howard Taft felt that he had enough power to move troops to the Mexican border, to be ready in case Congress told him to protect American lives and property endangered by the revolution there, but refused to send them in on his own authority.[33]

B. Erosion of the Congressional Warmaking Power in the 20th Century

In the early part of the twentieth century, the executive began to exercise greater discretion in the use of American armed forces abroad. For instance, without specific congressional approval, President Theodore Roosevelt sent American troops into Panama in 1903 and President Wilson sent troops into Mexico in 1916 in pursuit of the Pancho Villa bandits.[34]

Since 1945, the executive has regularly used military force abroad as a tool of diplomacy. Aside from Indochina, the greatest use of American force was in Korea, where several hundred thousand troops were committed to combat and major casualties were incurred. There was neither a formal declara-

Footnotes at end of article.