The Vietnam disengagement act, too, has been turned aside by a Congress that still accords the President powers far beyond those he warrants constitutionally.

Now, in reaction to the events of the past week, the Senate has turned about and has approved the Mansfield amendment which calls for a total withdrawal from Indochina no later than 9 months after enactment, subject to release of prisoners of war. I support that.

The Mansfield amendment very wisely ignores the administration’s fantasies about the viability of the Thieu government or committing our people to its perpetuation and addresses itself solely to the prisoner-of-war issue, calling for negotiations and an immediate cease-fire.

It proposes negotiating an agreement with North Vietnam which:

- Would provide for a series of phased releases of American prisoners of war.
- And for the release of any remaining American prisoners of war concurrently with the withdrawal of all military forces of the United States by not later than the date established by the President pursuant to paragraph (1) hereof—

the 9 months date—

or by such earlier date as may be agreed upon by the negotiating parties.

Yesterday, the New York delegation, in keeping with my request, endorsed this proposal and asked that Members of the House be given an opportunity to direct their representatives to support it in House-Senate conferences on the selective service bill.

I would also urge that this committee report favorably a counterpart of the Mansfield amendment which is going to be introduced in the House. It is my belief that if the Congress finally bends to the will of the electorate and adopts even such proposals as the Mansfield amendment or its House counterpart, it can, by this single step, revitalize the negotiations in Paris, elicit a favorable reaction from the North Vietnamese, and finally bring the war to a close.

If the Congress finally takes this necessary action and instructs the President to set a date for withdrawal, I believe that the North Vietnamese and the NLF will, by the logic of their own public statements, have to begin negotiating immediately for the release of our prisoners. I call on them to make such a pledge.

It has always been in the power of Congress to undeclare this war. It has not chosen to do so. I submit that it must do so now.

Our people are asking for a revolution of values in this country, a reversal of priorities. As their representatives, we need to share in this inner revolution—a revulsion at death and destruction, a yearning for full life, for restoring the health and economy of our Nation, and for replacing America’s worldwide network of military bases with international agreements for peace and mutual security.

Last week, it appeared that the Congress had turned its back on the American people. The Mansfield proposal, approved by the Senate, gives us in the House an opportunity to repair that error and to look our people in the face with good conscience. I urge you to use the full authority of this committee to so act.

Mr. GALLAGHER. Thank you, Mrs. Abzug, for an impassioned and intelligent statement. I assure you that we share your conviction that the war should be ended and we share your compassion for those affected, for we are all affected by it.
I see in your statement on page 9, that you call on them to make such a pledge, on the issue of POW’s, which is so distressing to all of us who have participated in these hearings. I would tell you that if they answer positively you have our assurance that this committee would certainly be very delighted to move forward with a fixed date certain resolution. I think this is where it breaks down.

We had many of our colleagues here telling us that they have had discussions with negotiators of North Vietnam, and they have pledged many things. Of course, if something like that did happen, it would cast an entirely new light. In your opinion, does the negotiation in Paris really have anything to do with what we ourselves should do?

Mrs. Azrul. Well, I think I made that position clear. I think if we set a date of withdrawal, a time certain, we would be prepared to withdraw troops from Vietnam as a matter of policy, that negotiations in Paris would proceed to tie it up, including the release of prisoners.

I am interested in your remarks on the question of prisoners. It has been utilized by all kinds of people as a reason for not setting a date certain for withdrawing from Vietnam. On the other hand, most people who had dealings with the Vietnamese, in statements I have read from the heads of the delegation, have indicated on both sides, that is Americans who have dealt with them and leaders of the Vietnamese delegation—the North Vietnamese delegation—have indicated that if a date is set, there could be an agreement made for the mutual release of prisoners and certainly the release of our prisoners as part of that. I don’t know what all the skepticism is on that subject.

I perhaps recall something else to the attention of this committee. There have been other prisoners. There have been other wars both in this country and in Indochina and in other places. I think we all know that normally that has been the procedure. I think in the recent weeks and months that the families of the prisoners of war, many of them have come to realize that their beloved ones are going to be released with all the other prisoners of war, with all Americans that are going to be withdrawn the date certain, and I think to constantly harp on that subject will not move us anywhere in this House—

Mr. Gallagher. I am not harping on the subject. You have it in your statement, which is why I asked you about it.

Mrs. Azrul. I believe we should make a date certain and I want to suggest, and I am suggesting, that I believe—and I call on the Vietnamese as just one person, a Member of Congress—that if Congress acts in fact and makes clear that it is prepared to end the war at a date certain or if it is prepared to assume its rightful power to bring this war to an end by stating a date certain by resolution and so on, that it would then be proper and correct and appropriate and important for the Vietnamese to respond by saying that if the date certain is set, there will be a pledge to negotiate the release of prisoners in common.

Mr. Gallagher. We have some 73 or 74 various versions. Do you favor a fixed date resolution that makes the prisoner release a condition precedent to the resolution becoming totally operative?

Mrs. Azrul. Well, I favor a statement—I indicated my support for the Mansfield amendment which, in effect does that. It states the date and then provides for it to go into effect unless there isn’t this phased agreement to release. I favor that.
Mr. GALLAGHER. I have some reservation. I happen to believe that the prisoner of war issue will be resolved when the war itself is resolved. We tied ourselves into a bind now, by making the prisoner of war release contingent on any operative resolution. I am curious as to what your thinking may be on that.

Mrs. Abzug. I think that if we agree on a date of termination, and that is a commitment of the Government, that the question of prisoner release no longer becomes a major question, because the North Vietnamese have indicated that when we are prepared to say that we are getting out as of a certain date, they are prepared to negotiate the release of prisoners. That is why I don't think that this is a serious problem at this point.

Mr. GALLAGHER. Thank you.

Mr. du Pont?

Mr. du Pont. Thank you, Mr. Chairman.

Mrs. Abzug, you indicated your support for the Mansfield resolution. Let me put a question to you concerning that resolution.

If we accepted it in the House and if we passed it and it became part of the law, and if, come the end of the line, the North Vietnamese said, well, we are not going to release the remaining prisoners or some of the prisoners until you stop your economic aid to South Vietnam, and so the Mansfield resolution broke down at that point, would you be willing to vote for a resolution that we stop withdrawing troops from South Vietnam?

Mrs. Abzug. I am interested in seeing that we set a date. I am indicating our willingness to support the resolution. It is not the best resolution. I am interested in setting a date. Let's get that clear right now, we say let's get out of Vietnam tomorrow. That is my personal feeling and I believe the feeling of three-quarters of the American people. They are not interested in the nonsense that we are going through over and over.

Now, I don't know where you are getting the question of economic aid from. I am not going to muddy it up with anything but the Mansfield amendment. The Mansfield amendment, or any resolution that I support, states a date certain and sets forth certain conditions under which we will withdraw.

Now, I am not going to allow other conditions as to what else this Government might do to support oil interests and so on and so forth to be a basis for my changing my mind on the Mansfield amendment, because I think we have got to stop propping up the South Vietnamese Government. I think we have to stop having anything to do with that Government. I think it is time we allowed those people the same opportunity to determine their internal affairs that we fought for in our own American Revolution.

So, I am not concerned with other side issues that are going to come up. My objective in supporting the Mansfield resolution, which is not really the strongest resolution, is to help us get out of that war, to help us stop killing, to help us stop killing our own people and other people, to help us get on with the business of building this country. And I am not as much concerned with economic aid for the Thieu government, which is a corrupt government, or for protecting American interests, as some other Members of Congress may be. I am interested in getting us out of there that is where I stand.
So, I am not sure that I would agree to revoke the Mansfield amendment under those conditions.

Mr. du Pont. Excuse me for phrasing my question badly, and let's start over and try again.

As you stated, the Mansfield resolution sets a date certain with certain preconditions. My question is: if one of those preconditions is not met, would you then vote to stop taking troops out as the Mansfield resolution—

Mrs. Anzuc. If I am going to support the Mansfield resolution, I suppose I would have to obviously, logically, follow the next step.

Mr. du Pont. I appreciate that answer. That is better than we had from some of your predecessors this morning.

Mrs. Anzuc. I want you to understand one thing. I am not supporting this resolution, the Mansfield resolution, because I think it is the best resolution. I want that very clearly understood. I am trying to get this body to act to utilize its power. I might then go on and ask for a stronger resolution. I don't know. But I am suggesting to you that the Congress of the United States once and for all must reflect its obligation, its duty, its responsibility to act in this field which it has totally abdicated.

I accept the Mansfield amendment because it is at least a statement, accepted by the Senate, which encompasses a principle for which I stand, which is that there must be a setting of the date in order to insure our withdrawing all of our troops from Indochina, and ceasing all of our military involvement there.

I don't choose it in preference to my own concepts as to how the amendment should read. I don't choose it over the McGovern-Hatfield resolution or its House counterpart, the Vietnam disengagement bill. I choose it because it is an action of the Senate body which will come to us in that form. I think we should be prepared to support it so that we may restore some power to the Congress so that we may include some reflection of the will of the American people in the things that we do. And so, I am going to try to go along with that amendment, even though it is not exactly what I want. I may go further ultimately, but I will try to do what I can to support this item now.

Mr. du Pont. I think you have clearly gone further in House Resolution 34, which did set the July 4 date.

Could I ask a little bit tangentially—and I understand very clearly what your position is on getting our troops out—do you generally favor when the day comes that our troops are out, do you favor continued help to Vietnam, Cambodia, Laos, in any form?

Mrs. Anzuc. Well, I believe in an international community of nations. I am a person who comes originally, as you know, from a movement for peace. a movement that believes that there should be general and complete disarmament under international control, under some universal public authority and that nations should live cooperatively side by side, regardless of their economic systems and political systems.

I believe in this international community of nations. I believe that we should utilize our combined efforts and strengths and resources for the purpose of helping other nations to prosper economically—not for political purposes, not so that we can act as God or as international policemen, not to determine their course of government or their course of history, or overturn that course. We should act to make it possible
for people to exercise their inherent rightful sovereignty to build na­tions and to benefit from their own human and natural resources, not for the benefit of those in this country who make profits on such people.

Within that context, obviously, I am a great believer in interna­tional aid to nations, but to the people of nations, not to the guests or profiteers who seek to prevent people from enjoying the benefits of their own labor.

Mr. GALLAGHER. That is how we got into this in the beginning. We felt Diem was a "no goodnik" and then sent 25,000 troops and then 50,000. We get hung up on how we do these things and not disregard the whole issue of sovereignty when, involved in that sovereignty is corruption and suffering people. That is the sad and complicated part of it.

Mr. du Pont. Thank you very much, Mrs. Abzug.

Mrs. Abzug. Thank you. It was a pleasure to come before you. I wish you good luck in your deliberations and actions.

Mr. GALLAGHER. Thank you very much, Mrs. Abzug.

Our concluding witness this afternoon is Congressman James Abourezk, Democrat, South Dakota.

Mr. Abourezk is a member of the Judiciary Committee of the In­terior and Insular Affairs Committee here in the House, and played a distinguished record during his first term.

We welcome you here this afternoon.

STATEMENT OF HON. JAMES ABOUREZK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH DAKOTA

Mr. Abourezk. Thank you, Mr. Chairman.

Do you have a copy of my statement? Has that been sent to you?

Thank you.

I will pass over the statistics in the first few paragraphs. You heard them innumerable times.

I want to talk as briefly as possible, because of the lateness of the hour, about the offshore oil situation which I don't feel has received the attention that it should. The possibility of massive investments by U.S. oil companies in potential offshore oil deposits located on the Continental Shelf off the coast of South Vietnam is one that concerns me.

The possible effects on U.S. foreign and military policy that these investments could have deserved the closest possible congressional scrutiny. I would hope that this subcommittee will, in the very near future, undertake such an investigation.

I want to provide you some background information on this matter.

During the late 1960's and continuing into early 1970, two seismic surveys were performed in the coastal waters off of South Vietnam. The first was ostensibly under the auspices of the United Nations Economic Commission for Asia and the Far East. In fact, however, a recent State Department disclosure points out that the United States provided the ship, equipment, and technical personnel for the survey. The results of this first seismic survey were not entirely conclusive, but suggested that oil deposits may be present in the area studied.
In 1969 and 1970, a similar but more intensive survey was undertaken by the Ray Geophysical Division of Mandrel Industries, a Houston, Tex., based corporation, for a group of 12 international oil companies. At least six American oil companies—Standard of New Jersey, Esso, Continental Oil Co., Conoco, Union Oil, Phillips Petroleum, Marathon Oil, and Getty Oil—either participated in or purchased the results of that survey. Although the specific findings of this later study have never been publicly revealed, indications are that the findings supported the belief that substantial oil deposits are located off the coast of South Vietnam.

At the same time these surveys were being conducted, the oil industry press began to publish numerous accounts of the potential "oil boom" which might occur if these findings were correct. Suggestions of extensive deposits emanated from both the industry press and the Government of South Vietnam. Terms such as "another south Louisiana-Texas type producing area," "one of the most spectacular petroleum deposits in the world," and "one of the biggest oil production areas in the world in the next few years" were suggested.

As every oilman knows, the actual presence of oil can only be determined by drilling. These predictions, then, should not be regarded as deterministic but rather, then, to indicate that those persons who are in a position to know believe that there are some potentially valuable oil deposits off the coast of South Vietnam.

The next major development occurred on December 1, 1970, when the Government of South Vietnam promulgated a law authorizing the exploration and exploitation of oil concessions in its territorial waters at some later date. The offshore acreage was divided into 18 blocks, which were to be leased to foreign oil companies on a best-offer basis.

Immediately, reports of an impending call for bids by the South Vietnamese Government began to circulate through the oil industry. By April 1, 1971, 28 international companies were reported as very interested in the prospects and many of them, including a number of American companies, had sent representatives to Saigon to discuss terms. Throughout the spring, talk centered on when the official call for bids would be issued. Then on June 9, 1971, just 2 weeks ago, the Saigon government announced that it would begin screening applicants for bidding.

This Monday, I had an opportunity to discuss the offshore oil question with Mr. Pham Kim Ngoc, the Minister of Economics of South Vietnam, and the Chairman of the National Petroleum Board which will control the bidding and awarding of leases. Mr. Ngoc advised me that the South Vietnamese were now screening oil companies to "weed out speculators," as he put it. This will continue until August 15. Thereafter, for 45 days, the applications of the various companies would be analyzed and considered. Sometime after October 1 of this year, actual bids on the concessions will be accepted. The leases will be officially awarded by the end of this year. Mr. Ngoc stressed the fact that his government was intent on proceeding with this matter as quickly as possible.

Currently, there are 30 companies—American, Japanese and European—interested in bidding on the South Vietnamese oil concessions. Mr. Ngoc said that he would provide me with a list of these 30
companies, but, as of yet, I have not received it. I would be surprised, however, if more than half the interested companies were not American.

This, then, is a brief outline of the background surrounding this matter and a statement of where we stand today.

At this point, the question might be asked, "Why should Congress be concerned that private American oil companies may choose to invest huge sums in South Vietnamese offshore oil?"

The answer—simply and clearly—is that I fear that if these investments are undertaken, the possibility will arise that the oil companies will become a powerful economic and political constituency in this country, favoring unlimited American support for the concession-granting Thieu-Ky regime, or pressing for a Korean-type settlement to the conflict, involving the indefinite presence of American troops in South Vietnam to protect the sizable oil investments there. Neither of these solutions is acceptable, I believe.

Please note that I am not saying that oil is the reason our country became involved in the Vietnam conflict. Nor am I suggesting that our policy in regard to that war has, in the past, been determined by such considerations. What I am saying, however, is that the possibility of future American oil investments in South Vietnam will give rise to the potential for private economic considerations becoming part of the official decisionmaking process of our Government.

As an example, I would point to a story which appeared in the New York Times on June 11, 1971. The story, out of Saigon, detailed a proposal that the French Government had made to the South Vietnamese Petroleum Board. In effect, the French were offering to completely oversee the acceptance and awarding of bids on the 18 offshore oil concessions for the inexperienced South Vietnamese. Reportedly, Mr. Ngoe, the head of the Petroleum Board, was interested in the French offer. The story continued:

Considerable pressure was exerted by American oil representatives here to make Mr. Ngoe change his mind about the French offer, which in their eyes, meant that the Americans would be pushed out.

One American oil man, who was particularly incensed at the French plan, said he had told Mr. Ngoe that if the French achieved this control, his company, one of the world's most powerful, would suggest to Congressmen that they reduce or block all economic aid to South Vietnam. "Let him know that if he lets the French do this, then he could damn well ask the French for economic aid as well, because the Americans wouldn't come through with it," the oil representative said.

At this point, neither the South Vietnamese nor U.S. Governments have much to say about the question of offshore Vietnamese oil. Mr. Ngoe told me Monday that he had not discussed the matter with anyone in our Government during his 10-day visit here. He said he had never spoken about offshore oil with anybody in the U.S. Government, and that is a statement which I find a little bit unrealistic, because he is dealing in large part with officials of our Government on a day-to-day basis. In addition, our State Department says that the possibility of oil will have no bearing on our policy toward South Vietnam.

Yet, the question must be asked, "Would American oil companies be willing to invest huge sums to acquire 30-year oil concessions without some form of assurance from our Government of continuing political stability in South Vietnam?" And might not such stability take
the form of a continuing American military presence in that part of the world to protect such investments?

The recent revelations in the New York Times and the Washington Post indicate clearly that much of our past Vietnam policy has been made behind closed doors and beyond the critical gaze of public scrutiny. The same thing cannot be allowed to happen now. The facts surrounding this matter must be placed before the American people as quickly as possible.

I believe that this subcommittee has the right—indeed, the duty—to undertake a comprehensive investigation into U.S. interests in South Vietnamese offshore oil.

I have made this request publicly twice before. I hope that it will not go unheeded now.

Thank you.

Mr. Gallagher, thank you very much.

I frankly must say I am rather confused on the issue you present. I must also say that the subcommittee is sitting now considering the end-the-war resolutions. I wish that we could say we would stop our hearings next week and be able to get to other things, but I don't believe that that is possible at the present time.

So, while your request may not go unheeded, I am afraid I can't promise you when it will have proper consideration. It is obvious that proposals relating to oil deposits are going to have to be carefully considered, and I really have not had the opportunity, and I don't believe any of the members of the subcommittee have had an opportunity to study the documents you mentioned. But I would ask at this point: How can we forbid the Government of South Vietnam, no matter who is in power there, from developing the natural resources? Or, in effect, should we?

If they don't utilize their national wealth, would we not have to really stop them up for a considerable period of time? If the French can do it, I think that is a great solution.

Mr. Anawak. I am not suggesting that we do forbid them. All I am really suggesting is that we expose whatever is happening. I am not sure I know what is happening at this point, but that we in the Congress attempt to expose it to the public scrutiny.

As I said in different phraseology in my prepared statement, if the people of this country had known back in 1964 and 1965 our basis for entering into the Vietnam war, or the Government's basis, they would have said no, in my opinion. They would have refused to allow this country to become involved.

What I am saying now is that we ought to expose everything to the public eye so that the people of this country can make the decision based upon what the facts are. I think it is the duty of the Congress—those of us, you and I, Mr. du Pont, and the rest of the committee members—to do what we can to write everything that is going on with regard to offshore oil, out into the public eye.

By that, I am suggesting that we bring in members of the State Department, under subpoena and put them under oath, and ask them what kind of discussions have taken place with South Vietnam's Government officials, with American oil officials.

I am rather concerned, and I am a former businessman myself. I would not invest any substantial sum of money in a 30-year oil lease...
where I had a suspicion it might blow up tomorrow. Say that we do withdraw before the elections, next year, withdrawal of our troops—

Mr. GALLAGHER. That is exactly what some of these oil companies did up in Alaska. They haven't gotten the oil out yet. They invested substantial sums of money.

Mr. ABURrezk. There was no war going on in Alaska either. They had a much safer risk. What I am saying is the risk is far too great—

Mr. GALLAGHER. It looks like they had a far greater risk in Alaska than they have in Vietnam.

Mr. ABURrezk. Apparently they didn't know it at the time.

Mr. GALLAGHER. People do make large investments without checking things as completely as I am sure they would like. I am not sure whether or not on this particular issue that we are discussing relates to how to end this war and how best this subcommittee can take action to bring about the end of that war. I am not sure whether we are really pouring oil on troubled waters and then dropping in a match. Is this really germane to the pressing problems? Obviously, you believe it is.

Mr. ABURrezk. I think it is directly related. If you are going to talk about ending the war, you have to talk about all of the considerations that might come to bear on ending the war.

Mr. GALLAGHER. I don't really think there is any Member of this House on both sides of the issue, who would give five minutes of thought to oil as a consideration for not getting out of Vietnam. I would say that I have been involved in this committee for years and I heard all the reasons and all the no reasons, and supposed reasons why we are in Vietnam. I never heard this one before. That is why I find it so fascinating.

Mr. ABURrezk. I think the chairman misunderstands me. I don't believe that economic considerations has got us into the war. I don't have any question or doubt about that in my mind. That is why we got into the war. What I am concerned about is staying in the war with respect to pressure from the oil industry to keep us there.

Mr. GALLAGHER. I really think that bringing this in at this point makes me think there may be a peace complex just as rigid and determined to keep going as the military-industrial complex is. I myself think that if we were to go off on a tangent on this at the present time, we may be creating whole set of new dynamics that might interfere with getting out of Vietnam. That is the whole purpose of the exercise, most certainly of this exercise in this subcommittee. How can we generate the kind of thinking and energy within this Congress so that we can move in the direction of assisting the President in bringing the war to a halt? I firmly believe that is what he is attempting to do. If you feel oil rights are part of that, then I certainly respect your thinking.

Mr. ABURrezk. I do think that is part of it, Mr. Chairman.

Mr. GALLAGHER. Mr. du Pont?

Mr. du Pont. Thank you, Mr. Chairman.

I gather that your only interest and concern with this issue is that it might prolong our—

Mr. ABURrezk. That is right.

Mr. du Pont. I have to reassure you and to state for the record, there are very few things that would persuade me we ought to re-
main or escalate our military commitment in Southeast Asia today. I can assure you that oil interests is not one of them. So, I don't think, and perhaps you gauge the temper of the American public better than I, but I don't think that there is much chance that this would happen.

I direct your attention to two things that I received today that might be of interest. There is going to be an amendment offered by Congressman Bingham of New York to the foreign aid bill concerning oil and also I understand that the Senate has either scheduled or had some hearings on this question and—

Mr. Abourezk. They had some hearings, as I understand.

Mr. du Pont. So that the thing is underway. I agree with the chairman—I seem to be the chairman at the moment—that we should not derail our present hearings to get into this area and should the time come, if ever, that we are through with these hearings, we can perhaps look into this question. But I would say that I appreciate your bringing it to our attention, and it is something to keep in mind, and I will keep an eye out for it as we go along.

I have no further questions, Mr. Chairman.

Mr. Gallagher. Thank you very much.

The subcommittee stands adjourned until 2 p.m. next Tuesday.

Thank you.

(Whereupon, at 5:35 p.m., the subcommittee was adjourned to reconvene at 2 p.m., Tuesday, June 29, 1971.)
The subcommittee met at 2 p.m. in room 2172, Rayburn House Office Building, Hon. Cornelius E. Gallagher (chairman of the subcommittee) presiding.

Mr. GALLAGHER. The subcommittee will come to order.

I want to welcome you here this afternoon as the Subcommittee on Asian and Pacific Affairs continues the first comprehensive House hearings into bills and resolutions relating to ending the war in Indochina.

What has emerged most clearly from our first 3 days of receiving testimony from our colleagues in the House of Representatives is a widely shared belief that the withdrawal of American fighting troops from Vietnam be irreversible and that the war must end at the earliest practical date. I know of none, inside or outside of the Congress, who believes the killing of Americans or Asians should continue. We are united in our desire to see our prisoners of war released from their cruel confinement.

Events outside the House Committee on Foreign Affairs are making our hearings and our deliberations more urgent. As but one further example of how deeply the war has entered into all our institutions, even the Supreme Court is now grappling with the issue of the Pentagon's study on the beginnings of escalation. We are hearing arguments of national security in the courts, but in the streets and in the Congress and in the homes of every American we are finding the problems created by the war threatening our national sanity.

We have found areas of agreement during our hearings thus far. The question before us is not whether the war should end. The question is when and what role the Congress should play in bringing the war to an end, and whether the voting of a resolution will aid in the result we all want or hinder that result.

Our first witness this afternoon is Congressman Jonathan B. Bingham of New York.

Mr. Bingham is a valued and effective colleague on the Committee on Foreign Affairs. He was one of the first members to question American policy. Mr. Bingham is one of our most thoughtful and persuasive members of the House and I am sure his testimony will be enlightening and helpful to the subcommittee.

We will be pleased to hear your testimony at this point, Mr. Bingham. Please proceed.
Mr. Bingham: Thank you very much, Mr. Chairman, for that generous introduction.

Mr. Chairman and members of the subcommittee:

First of all, I should like to congratulate you for holding these hearings. Shortly after coming to the Congress on June 3, 1965, I joined with 27 other members in urging the Foreign Affairs Committee to hold hearings on the issue of the Vietnam war. Now, 6 years later, it is finally being done. I hope, Mr. Chairman, that you will open these hearings up to knowledgeable public witnesses as well as to representatives of the administration.

Although your subcommittee will presumably be mainly concerned with the question of how we get out of the dreadful mess we are in in Indochina, the question of how we got into it is certainly relevant to that inquiry. I am not suggesting that the subcommittee concern itself with trying to fix the responsibility—the credit or the blame, whichever way you look at it. I see little profit in such an inquiry, especially since the chain of mistakes we have made—in my view—goes all the way back to 1945.

But I would urge the subcommittee to consider the historical background, especially questions such as the following, which are pertinent to the rationale given at various times for our involvement in Vietnam:

1. In the negotiations leading up to the signing of the SEATO pact, and in the hearings and debate preceding ratification by the Senate, was there ever any suggestions that this pact might give rise to the kind of obligation which Secretary Rusk and others have argued we owe to South Vietnam?

2. Was not the domino theory rationale for our military intervention in South Vietnam largely dependent on the image of Communist China—as distinguished from North Vietnam—as the real threat in Southeast Asia, and what happens to that rationale in the light of the administration’s new widely acclaimed attitude toward mainland China?

3. To what extent were the American Congress and people tricked into accepting the necessity of American military involvement in the Vietnam war and, in the light of that background, what is America’s present obligation, if any, to the people of South Vietnam?

In order to conserve the subcommittee’s time, I will not undertake to discuss these questions now. I merely pose them as worthy of the subcommittee’s study. And, of course, there are many other such questions.

Other principal sponsors of the bill are the gentleman from Tennessee, Mr. Anderson; Mr. McCloskey of California and Mr. Riegel of Michigan; and there are a total of 75 cosponsors as of this date.

First, I should like to draw the subcommittee’s attention to the preamble of the bill, and to suggest that whatever bill or resolution the subcommittee reports out might well include a statement of findings similar to this preamble.

The preamble first states:

Congress finds and declares that under the Constitution of the United States the President and the Congress share responsibility for establishing, defining the authority for and concluding foreign military commitments.
It seems to me it would be hard to quarrel with that conclusion. In testimony before the National Security Policy Subcommittee on the question of war powers, the Legal Adviser of the State Department, Mr. John Stevenson, stressed the administration’s view that the war power—absent a declaration of war—is a power that is shared by the President and the Congress.

The preamble then goes on to say:

That the repeal of the Gulf of Tonkin Resolution raises new uncertainties about the source of authority for American involvement in Vietnam; that both the domestic and foreign policy interests of the United States require an expeditions end to the war in Vietnam.

These statements would appear to be self-evident. The next statement in the preamble is the following:

That the conflict can best be resolved through a political settlement among the parties concerned.

This is a point which is too often forgotten in any discussion of Vietnam. I will have more to say on this point later, in connection with the desirability of setting a terminal date for American participation in the war.

The final statement in the preamble is as follows:

That in light of all considerations, the solution which offers the greatest safety, the highest measure of honor, the best likelihood for the return of United States prisoners and the most meaningful opportunity for a political settlement would be the establishment of a date certain for the orderly withdrawal of all United States Armed Forces from Vietnam.

In some way, this is the heart of the matter. The establishment of a date certain is in my view certainly more important than the question of what that date should be. While section 3 of H.R. 4100 calls for a withdrawal date of December 31, 1971, and while I still believe that that date is a practical and desirable one, I am very hopeful that the Congress will not pass the Selective Service Extension Act without including the Mansfield amendment which calls for a withdrawal date 9 months after enactment.

Also, with regard to section 3 of H.R. 4100, let me say that this section would now clearly have to be amended if this subcommittee were favorably disposed to the approach of this bill. The date of May 1, which figures prominently in section 3, has long since passed and, in addition, the section is perhaps unduly detailed. The essential point is that a date for U.S. withdrawal, contingent on release of all U.S. prisoners, should be set either at December 31, 1971, or as soon thereafter as possible.

Why is it so important that a termination date should be set either by the President or by the Congress? The answer in my judgment is threefold: First, this is one sure way to assure that American combat participation in this tragic war does come to an end. Second, the President’s approach gives us no chance as I see it to obtain the release of the American prisoners in the foreseeable future; setting a withdrawal date would give us such a chance. Third, in my judgment setting a withdrawal date would provide the first real opportunity for the warring parties in Vietnam to come together in a political settlement. In particular, it would force Saigon to negotiate realistically, which it has never done until now.
I would be glad to develop each of these three points further, if the subcommittee so desires.

THE VIETNAM ELECTIONS COMMISSION RESOLUTIONS

Next, I would like to comment on House Concurrent Resolution 192, introduced by an able member of this subcommittee, my colleague from New York, Mr. Wolff and others, and on Senate Concurrent Resolution 17, introduced by Senator Stevenson and others. While I have the highest regard for the sponsors of these resolutions and applaud their purpose, I am frankly troubled by both resolutions, for different reasons.

I start from the premise that the forthcoming Vietnamese elections, to the extent that they purport to give to the people of South Vietnam that “freedom of choice” which is the avowed U.S. objective, are essentially a fraud. They have already been rigged. This is so primarily because the real opposition in South Vietnam, the Communist and the “neutralists,” are barred from putting up candidates. As if that were not enough, President Thieu has recently rammed through legislation further restricting possible candidates.

It seems to me that for the Congress to dispatch a commission to observe the conduct of the polling suggests that the Congress is satisfied with the basic frame within which the elections are to take place. The mere presence of the commission would suggest a kind of approval of the elections provided there were no irregularities in the polling. This would be misleading, both to the American people and, more importantly, to the people of South Vietnam. The fact that, later on, the commission might file a critical report would not cure that initial false impression. Yet there would be little point in sending a commission, if the commission were to state upon arrival that it considered the elections rigged from the start.

Moreover, I seriously doubt whether a group of Americans, even with Vietnamese advisers, could discern whether improper influence was being brought to bear in subtle ways on the voters by local officials and others dependent on the Saigon regime. The mechanics of conducting the polling may be flawless, and yet many voters will probably cast their ballots in fear of retribution if they do not vote for the incumbent President.

I am, therefore, fearful that, however conscientious the commission and its staff might be, their presence and their report might tend to give to a Thieu victory a respectability that it ought not to have. If, in spite of everything, an opposition candidate were to win, a congressional commission report would be superfluous.

The Stevenson resolution is quite different. Its purpose, as I understand it, is to assure the South Vietnamese that the United States is not supporting General Thieu, and the commission would be concentrating on “U.S. involvement” in the elections rather than on the conduct of the elections. However, I am still fearful that the presence of such a commission would somehow imply that the United States accepts the basic framework of the elections.

In addition, I am troubled by section 2 of the Stevenson resolution, which reads as follows:

It is the sense of the Congress that no United States troops or other military assistance shall be furnished to any South Vietnamese regime which hereafter acquires, or retains, power through a coup d'état or any corrupt or coercive means.
It seems to me unnecessary and undesirable for the Congress to commit itself now to this position. I can certainly conceive of a situation in which President Thieu might be unseated in a coup d'etat by a non-Communist group which was determined to work out a political settlement of the war. The United States might very well want to provide some military assistance to such a regime, pending the completion of peace negotiations.

I would like to add that the Stevenson resolution has been introduced in the House by Congressman Riegle and others.

In conclusion, I would like to make only this point: I would hope that, as we think about the morass that we are in in Vietnam, all of us, including President Nixon, would keep in mind the example of General de Gaulle in pulling the French out of Algeria. I loathed General de Gaulle for some of his policies, especially his ingratitude to the United States and his treachery toward Israel, but no one can deny that he was a patriotic Frenchman whose memory will be revered by his compatriots so long as there is a France.

And perhaps his finest hour was when he decided that the French military effort in Algeria had been a ghastly, costly mistake and should be ended—in spite of all the French lives that had been lost there and in spite of the commitments that France for decades had given to the French colonies.

I trust that this subcommittee will not regard the vote in the House yesterday on the motion to instruct the conferees with regard to the Mansfield amendment as conclusive of anything. In view of Chairman Hebert's strong plea that the House not tie the hands of the conferees, that vote cannot even be regarded as a vote on the merits of the Mansfield resolution.

And as the war goes on, and the casualties mount, and as it becomes clearer that the President has no real plan to end the fighting, and therefore no plans for getting our prisoners out, the need for congressional action to press for a termination date will continue to grow. I hope that after comprehensive hearings this subcommittee will come to the conclusion that it should recommend a resolution to that end.

Thank you, Mr. Chairman.

Mr. Bingham. Thank you very much, Mr. Bingham, for a splendid statement.

I have several questions. First, I am intrigued by your twofold approach: one, of the necessity of getting American troops out of Vietnam with a fixed date certain resolution and the other on the question of elections.

On page 5, it would seem to me that we would be replaying the old refrain of "Diem must go" if we get involved in that election with a commission that will study coercion or perhaps corruption.

I am wondering about our priority. I have listened, as have many of my colleagues, to the various statements. It would seem to me our priority should be on the troops getting out of Vietnam rather than our presuming to police the kind of future election that Saigon will have. Do you see any conflict between our getting out of the war and our continuing to urge a democratic process in Vietnam?

Mr. Bingham. Let me say it this way, Mr. Chairman. I certainly agree with you the top priority must be on getting the United States
out of the war. That is the most important thing. But since even H.R. 1400 does not call for withdrawal before the end of the year, in principle I would not see anything wrong with an effort to improve the democratic processes in South Vietnam.

On the other hand, as I have indicated in my statement, I believe this election, so to speak, is already beyond redemption because of the basic conditions under which it is being held, which do not allow the real opposition to put forward candidates. Therefore, I reluctantly oppose the proposition that we should have a commission observing the elections.

So I think I come out on the same side that you suggest, but for slightly different reasons.

Mr. Gallagher, I recall the early days when several of us who were on this committee objected rather violently to the United States taking a part in the removal of Diem because, once having disturbed the balance within Vietnam, that balance could only be restored by the presence of greater American assistance and, finally, American ground forces.

In retrospect, I just wonder whether or not we have learned any lessons. Is it really possible for a truly Jeffersonian democracy to exist in Vietnam? If we believed that in those days, it would seem to me that we would not have assumed a moral obligation that we did to the government that succeeded Diem.

I just have one other question on a matter of history. You draw an analogy between the American withdrawal and de Gaulle's action in disengaging France from Algeria. Do you happen to know whether the French Assembly ever voted such a resolution as we are considering?

Mr. Bingham. I don't recall that, Mr. Chairman. It is a good question. I know there was a good deal of political action to General de Gaulle's action at the time, but I don't recall whether any vote was taken in the General Assembly. I would be glad to inquire into that.

(The following information was furnished:)

The first French conscripts were sent to Algeria in 1956. De Gaulle came to power in 1958 without stating a clear policy toward Algeria, the rightists believing he was the only man who could keep Algeria French and the leftists believing he was the only man who could give Algeria independence and get away with it politically.

De Gaulle's first statement on the subject was a speech on September 16, 1959 in which he called for self-determination for the Algerians. The rightists cried treason, knowing that self-determination would mean independence. But on October 15, 1959, the French Assembly passed a vote of confidence in de Gaulle in effect supporting his position on Algeria. The vote was 441 to 28 with 28 abstentions and 60 abstentions. No date for withdrawal or self-determination was mentioned.

I know of no resolution passed by the French assembly which specifically urged troop withdrawals or set a date for withdrawal.

Mr. Gallagher. I wonder whether if they restricted the flexibility of President de Gaulle, if he could have done as well as he could on Algeria. That is one of the problems that faces us—whether or not we impose an inflexibility upon the President, whether he will be able to bring that war to a quicker conclusion than if we did not.

Mr. Bingham. May I comment on that, Mr. Chairman?

Mr. Gallagher. Yes.
Mr. BINGHAM. I think that is quite basic. Normally I would be inclined to share that view that there might be some disadvantage to the Congress seeking to impose conditions on the President, but I feel in this case, first of all, we are dealing with a question of whether this country should be at war in the first place. The Congress never declared war and was never asked to declare war, but I think the very fact that the Constitution gives the Congress power to declare war, we have distinct responsibility and authority with regard to that question.

Second, I have no confidence that the President is seeking to end the war except in accordance with conditions that I think are impossible of attainment; namely, some kind of a guarantee that a government like the Thieu government will remain in power in South Vietnam. It is for that reason that I think the Congress not only is authorized, but I think is obligated to exercise some responsibility to bring pressure to bear on the Executive to end the war in a different way and without attempting to insist on that precondition.

I have no doubt whatever that if the President were only concerned or were primarily concerned, for example, with getting our prisoners of war out, that he would set a date, because having in mind only that consideration, I cannot see anything to be lost and there is everything to be gained by following that procedure.

I think the reason the President has not set a date and is reluctant to do so is because of the other condition which he mentioned. He puts it in terms of a reasonable chance for the Government of South Vietnam to survive, but I think in practice it means that he is seeking to assure the survival of the Government of South Vietnam.

I think this is the basic flaw in the administration's policy, that what is at issue today in Paris, as I see it, is the nature of the government that would be in power at the time elections are held. I do believe the Paris negotiations have made progress. Both sides have moved from their initial positions. Both sides have agreed on ultimate elections to be held in South Vietnam to determine the political future of the country. Both sides are agreed on international elections.

The crucial opinion, and it is crucial, is the character of the government that would be in power at the time those elections are held. Saigon and the United States insist that must be the existing government. The other side says, "No, we couldn't have fair elections under those conditions. We need a coalition government, something different from the present government."

I think what we face here is a kind of determination by the President still to try to save the Thieu government or something like it as the future government of Vietnam. I think it is for this that we are continuing in the war and I don't believe the American people are in favor of continuation of the war on this basis.

Mr. GALLAGHER. Do you not feel that an existing stable government regardless of who that government may be—and we all have a great many reservations on Mr. Thieu's government, do you not feel an existing stable government is a precondition to the United States being able to pivot and come out of Vietnam?

Mr. BINGHAM. No, I don't agree with that. I think while this may be a stable government in the sense that it has been able to stay in power with U.S. support, I believe that this government is basically
not interested in a political settlement and has never really been interested in negotiations because it is in power and it feels that any step that would gamble on some future loss of power would be to its disadvantage.

So I think our chances of getting out with some semblance of the preservation of our objective, which is self-determination for South Vietnam, would be greatly enhanced by a government takeover in South Vietnam that would be prepared to enter into realistic negotiations, and I think that could happen. I am not advocating that we should involve ourselves in a new coup d'etat or anything of that sort as perhaps we did before. However, I think we could bring about a change if we were determined to pursue a course that would recognize the necessity of a change in government before any elections could be held, any ultimate elections.

Mr. Gallagher. My own reservation is that an unstable government in Vietnam at the present time would drastically hinder our getting out, which ought to be the main purpose at this time; that is to get out as fast as we can. But if we would have to nurse along a new government one way or another, I am afraid that the troop withdrawal program would be slowed down. That is one of the reservations I have.

Mr. Bingham, there seems to be the implication in your statement that the President does not want to get the war over. I think the record is very clear and I think the President deserves some credit for removing better than 250,000 men since he took office. The program for withdrawal now averages close to 20,000 a month.

I am one who shares your feeling that we ought to have some kind of a resolution similar to the Mansfield resolution with a date certain, probably sometime after the first of the year. But I am wondering, even if Congress does pass such a resolution, with a stipulation that the prisoners of war would have to be released, and so forth, whether this would jeopardize our negotiations in Paris? How do you view that?

Mr. Bingham. First of all, I don't think it would jeopardize those negotiations. I think if it became the policy of the United States and presumably it could not become the policy of the United States until the President accepted it, the mere fact that it was incorporated in a resolution would not make it official and it would not be assumed by the other side.

Let’s assume the Congress made the recommendation and the President followed it and set the date, then I think it would greatly facilitate the negotiations in Paris. It would make it possible, first of all, for us to negotiate for and determine the good faith of the other side with regard to the prisoners of war. It would also, in my judgment, make Saigon much more likely to enter realistic negotiations because they would realize at the end of that time they would be on their own and they would have to face up to realities.

Let me make a brief reference to your first comment, Mr. Broomfield. I don’t doubt for a minute that the President would like to see the war over. I don’t doubt that for a minute and I do give him credit for withdrawing the troops he has and for deescalating the American involvement.
I give him for that. What I say and what I feel is that he is determined not to end the war, or he does not want to end the war at the price of a collapse of the Government in South Vietnam. I think that is the essential issue whether to end the war at the risk of collapse of the South Vietnamese Government.

Mr. Broomfield. His consistent hope has been to give Vietnam a chance to succeed. How far that actually goes, I don't know.

Mr. Bingham. I notice that is the way he phrases it. After all of these years, after assistance to Vietnam in terms of material, training, in terms of economic aid, if they are not capable of going it on their own now, we are simply holding up a shell and I don't know why we would suppose they would be any more capable 6 months or a year from now.

I think what he really means to say is he wants some kind of assurance, and I have discussed this with some of the members of the executive branch, he would like assurance that the Government of South Vietnam will not fall if we set a date and do pull out. I don't think anybody can give him that assurance.

Mr. Gallagher. I think it ought to last at least until the day after we withdraw.

Mr. Broomfield. I have no other questions, Mr. Chairman.

Mr. Gallagher. Mr. Murphy?

Mr. Murphy. Thank you, Mr. Chairman.

Mr. Bingham, I congratulate you for your statement.

However, I would like to pursue the steps you break down—a termination date should be set for the following three reasons, and No. 2 you say, "the President's approach gives no chance to obtain the release of the American prisoners in the foreseeable future." Setting a withdrawal date would give us such a chance.

On what do you base that, Mr. Bingham?

Mr. Bingham. To take the first part of the statement, I don't see how we can get the prisoners out until we end the war and our involvement in the war. That has been the case with prisoners of war release throughout history. It seems to me unreasonable to expect anything different. I don't see that the President has a plan for ending the war, and he has never spoken, for example, of definitely putting an end to our air involvement. In fact, Mr. Laird suggested our air combat would continue if we got our ground combat troops out.

Since I don't think he has a plan for ending the war, a viable plan, because it always has this condition tacked on that South Vietnam must survive as such; therefore, I don't think he has a plan for getting the prisoners out.

As far as setting a withdrawal date and giving us a chance to get the prisoners out, I think I have put that in a wild way. I say it gives us a chance. I don’t say it gives us assurance. We have colleagues who have talked to members of the other side in Paris and are satisfied that if we do set a date, withdrawal will actually takes place.

I have no assurance that will happen, but I think that we can only speculate about that until we do get a withdrawal date.

I have never at any time suggested that our withdrawal should be regardless of what happened to the prisoners. I have never suggested that. I have always felt it must be contingent upon the release of the prisoners. That being so, if we are willing to get our troops out in re-
turn for getting our prisoners out, in effect I think they have a motive for giving up the prisoners.

I don't know why they would want to keep them. It is an expense and all of the rest of it. I think we have something, in other words, there to trade with, but I very carefully did not say that I think we have an assurance of getting the prisoners out if we set a terminal date.

Mr. Murphy. Have you heard this proposition, which was advanced to me by a member of the administration?

The idea is that we would withdraw increments of troops, say, at the 25,000 level, and receive the agreement on the part of the North Vietnamese to release an equal number of prisoners—a kind of quid pro quo, and testing of each other's good faith?

What do you think of that suggestion?

Mr. Bingham. That approach is proposed in the legislation, not before this subcommittee but before another subcommittee by Mr. Leggett and a number of others. In that particular bill, I think the arrangement is too complex and attempts to be too specific to be viable and, for that reason, I have not supported that resolution.

In the last paragraph of the Mansfield resolution, there is a very definite statement that it contemplates the withdrawals be phased one to another, so as to encompass that general idea, and that we would not withdraw the last of our troops until all of the prisoners are out.

Mr. Murphy. Thank you, Mr. Bingham.

Those are all the questions I have, Mr. Chairman.

Mr. Gallagher. Mr. Whalley?

Mr. Whalley. Thank you, Mr. Chairman.

Congressman Bingham, you said in coming to Congress in 1965 you urged hearings at that time on the war. What were your personal opinions at that time when the war was just being greatly accelerated?

Mr. Bingham. I was very unhappy about it, Mr. Whalley. It is hard to reconstruct exactly, but I was very unhappy about what was happening. I felt it was very important to get negotiations going. I felt then as I do now that this war would be solved only by political settlement and it could not be solved in a military way, by a military victory.

By the end of the following year when I went to South Vietnam, I had confirmed that conclusion, and I felt that this was the view of most of the people that I talked with in Vietnam. I remember having a conversation with General Wo in Vietnam in which he said this war will not be won with bullets. That was very strongly my feeling.

I did not come to all of the same conclusions that I have come to since. It was sort of a gradual deepening of my despair about the war, but I was unhappy about it from the time I first came here.

Mr. Whalley. On page 1 you say, "Mistakes we made go all the way back to 1945."

Would you care to mention a few of those errors so we might not make the same mistakes again?

Mr. Bingham. I would be happy to.

First of all, in 1945 I think the most important mistake of all was made when we permitted the French to go back into Indochina. President Roosevelt said on a number of occasions that he would not permit the French to go back into Indochina. He felt they had not done a good
job in administering that colony and the whole of Indochina should be independent. By the end of the war, President Roosevelt was dead and President Truman was not apparently as keenly alerted to the problem.

The French moved very fast and before we almost knew it, they reasserted control. Then we found ourselves in a position of supporting the French to hold on, which identified us from the beginning with the image of a colonial power and I think to a degree we still have that image that the French were a colonial power and we have sort of taken their place.

I think we got too much involved in the hostilities in the middle 1960's, the later 1960's, I think it was a great mistake in 1965 to send in ground troops. I think this is something we always thought we would avoid and would not get involved in a ground war in Asia.

I think the beginning of the bombing of the North was a mistake. It did not achieve its objectives, I think it only stiffened the opposition, so I think these are some of the mistakes that were made and you will notice that they were made by a Democratic President.

Mr. Whalley. Thank you, sir.

Mr. Gallagher. Thank you, sir.

Mr. du Pont. Thank you, Mr. Chairman.

Mr. Bingham. Going back to the Mansfield-type resolution that envisages pullouts following prisoner exchange, which is the kind of thing you favor. One of the problems I have with these fixed-date resolutions is I foresee yet another crisis of confidence, if you will, within the United States should one of these dates approach, should most of our troops be out, and should the North Vietnamese at that time stop and refuse to go forward with the prisoner exchange.

Now let me ask you the hard question: If we agreed to a resolution of this kind, if we said, "All right, we are starting to take our troops out and 60 days from now you will start prisoner exchange." If they did not start, would you be willing to vote in the Congress to stop taking American troops out?

Mr. Bingham. I know of your concern with this matter, Mr. du Pont, and I share your concern. I think it is impossible at this stage of the game to say what any of us would do in that circumstance. I could certainly not be in favor of walking away from the prisoners and forgetting about them, but I don't think we can tell at this stage just what we would do or not do.

I think we would have to reexamine the situation. I personally believe that if we do set a date, it will lead not just to negotiations with regard to the release of the prisoners, but with negotiations for a political settlement, and in the long run I think this is even more important. It does not have the impact of the other question emotionally, but in the long run I think this is more important.

I have a certain amount of supposition that a political settlement could be arrived at. Your question basically is one of the type that President Roosevelt used to call an "iffy" question, and I think it is impossible to answer in advance.

Mr. du Pont. If we are suggesting to the President and to the country that we ought to enter into a binding agreement, dependent upon
performance by the other side; and if we are not willing to stick to our guns—which is the implication of an answer that says we have to "re-examine," then we are not really doing anything at all.

Mr. BINGHAM. I have said that I have never favored a withdrawal unconditionally and without regard to what happened to the prisoners. I think that is a sufficient statement of what you are referring to. The essential nature of the resolution that I suggest this committee adopt is a setting of withdrawal date contingent on the release of the prisoners.

Mr. du Pont. One other point, Mr. Bingham. You state as your third point in support of a fixed date that you believe negotiations would be forthcoming and that would be a step forward. I would hope that you are right, but if we could look back to your earlier views in 1965, you made some comments to the effect that you did not believe then if the bombing were stopped that the North Vietnamese would be willing to talk about anything.

Mr. BINGHAM. How is that?

Mr. du Pont. In a speech on the floor of the House in 1965, May 5, you said, "There are some who maintain the Communists would be willing to enter into negotiations if the bombings of Vietnam were suspended, but there has been no evidence to that effect."

In other words, in 1965 you felt if we stopped the bombing nothing would happen. Today you feel if we set a date, something would happen. My question is what do you think has happened to the North Vietnamese to make them less aggressive or more willing to negotiate, if you will?

Mr. BINGHAM. May I say, first of all, I am flattered by the degree of research you have undertaken, Mr. du Pont. I don't recall that particular statement, but obviously at a later stage of what happened in Vietnam, we did have indications if the bombings stopped, the North Vietnamese would negotiate. So the statement that there was no evidence that they would negotiate might have been true in May of 1965, but not true, say, in 1967.

There certainly is evidence at least as far as the prisoner of war issue is concerned, no question about it, that this will be a matter for discussion if we set a terminal date, and there is some evidence not yet on the public record, although I understand Le Duc Tho came close to saying—close to that the other day in Paris. He said the only question would be the ways and means of getting the prisoners out.

As to whether other negotiations would result, that is a matter of subjective judgment. I would say undoubtedly there is a good deal of war weariness on both sides today which was not as true in 1965, nowhere near as true. The North Vietnamese have suffered tremendous casualties, a tremendous number of deaths, and it is my judgment based on conversations with men who have been close to the North Vietnamese in terms of negotiations that they really would welcome a political settlement if it incorporated the idea of some sort of interim government before elections that would not be simply a Thiệu government or a successor to it, so I think there would be a good chance of negotiation there.

I can't conceive that the North Vietnamese expect that once the U.S. troops are out, South Vietnam is going to collapse and fall into their
hands. I know some people believe this is the case. I don't happen to believe that.

We put a tremendous amount into strengthening the South Vietnamese over all of these years and I don't believe that would happen. So I think they would have an incentive to negotiate.

On the other side, as I indicated, Saigon would have much more incentive to make a realistic settlement than they have had up to now when we appeared to be ready to support them indefinitely. Those are the reasons why I think we would have a better chance for a political settlement.

Mr. Du Pont. Thank you.

Thank you, Mr. Chairman.

Mr. Gallagher. Mr. Halpern.

Mr. Halpern. Mr. Chairman, I believe the colloquy has covered most of the points I intended to raise, and in deference to the time factor and to the other witnesses waiting to be heard, I will forgo any questions at this time, but I do wish to commend and heartily compliment our capable and dedicated witness, my colleague from New York, on his well-reasoned, highly thought-provoking testimony.

Our witness, Mr. Chairman, is a pioneer in the quest for peace. Few members of this committee and of this House possess the credentials as our witness does in the efforts for peace, and I for one certainly appreciate his valuable contributions here today.

Mr. Bingham. Thank you very much, indeed.

Mr. Gallagher. It is nice to see you New Yorkers stick together.

Thank you very much, Mr. Bingham.

Mr. Gallagher. Our next witness this afternoon is Congressman Paul McCluskey, Republican, of California.

Congressman McCluskey needs no introduction to any group considering the end of the war in Indochina. He has been speaking out forthrightly and vigorously against the war. Since coming to the Congress, Mr. McCluskey has distinguished himself as a dedicated legislator whose concern over events in Vietnam, Laos, and Cambodia has been expressed in all parts of our Nation.

We welcome you here this afternoon, Congressman McCluskey, and please proceed.

STATEMENT OF HON. PAUL N. MCCLOSKEY, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. McCluskey. I will read only the first seven pages of my testimony and leave the remaining 20 for you to study at your leisure.

Mr. Gallagher. I think the subcommittee would be pleased to accede to that request.

Mr. McCluskey. Originally I intended to testify before you today with respect to the Vietnam Disengagement Act of 1971, explaining the benefits of an end to our involvement in and over Indochina by December 31, 1971, conditioned solely upon the safe return of our prisoners of war. Arguments favoring this view already have been made by a number of our colleagues and, accordingly, I would like to limit my testimony today to an issue which is equally important, the obligation of the House to be fully informed by the executive branch on the great issues of involvement in the affairs of foreign nations,
either by covert CIA operations, as in Laos, or military intervention, as in Vietnam.

There is reasonable disagreement in the House over what our course of action in Southeast Asia should be. There should be no disagreement, however, on our need to know, indeed, our right to know, all of the facts which may bear on our ultimate decision.

It is true that Congress is not structurally suited or constitutionally mandated to participate in negotiation and day-to-day decisionmaking in intelligence and military operations. We do hold, however, the sole constitutional power, and I might add, constitutional responsibility, for providing for the common defense, declaring war, and funding the standing army, for a period not to exceed 2 years. We in the House of Representatives who must account to our constituents every 2 years—not 4 or 6—must initiate the revenue measures necessary to support the Nation's expenditures for war and foreign operations of every kind.

All of these provisions were clearly intended by the framers of the Constitution to give Congress the control over decisions in matters of war and peace. We make the laws; the President as Commander in Chief only executes those laws.

If Congress is to make wise decisions, however, we must be fully informed. We cannot authorize a war without complete information. We should not permit a war to continue without complete information.

The recent excerpts from the Pentagon documents published in the New York Times and other newspapers illustrates forcefully that we have not met our constitutional obligations to keep fully informed. Who among the Members of the House was aware, for example, that country team members in Vietnam aided and encouraged the overthrow of Premier Diem in 1963?

Who among our Members knew the true facts of U.S. military and covert activity in and over Laos, and in the coastal waters of North Vietnam prior to the Tonkin Gulf incidents of early August 1964? Or the information that during October 1964, prior to the reelection of President Johnson over Senator Goldwater:

"Two of the teams (of U.S./South Vietnamese agents operating inside North Vietnam) carried out successful actions during October. One demolished a bridge, the other ambushed a North Vietnamese patrol." This quote was taken from a State Department memo, dated November 7, 1964, for Assistant Secretary of State Bundy, and is noted to page H5107 of the Congressional Record of June 14, 1971.

If these facts had been known to the Congress, would it have affected subsequent votes on appropriations for Vietnam, or the approval of escalation of the war implicit in the House appropriations process?

What would have been the reaction in the House, for example, had we been fully informed in March 1965, before U.S. troops were sent to Vietnam, that our true goals in Vietnam were those described by Assistant Secretary of Defense McNaughton in a memo to Secretary McNamara in March 1965:

70 percent—To avoid a humiliating U.S. defeat (to our reputation as a guarantor).
20 percent—To keep SVN (and then adjacent) territory from Chinese hands.
10 percent—To permit the people of SVN to enjoy a better, freer way of life.

At the time that memorandum was written in March of 1965, I was on active duty with the Marine Corps at Camp Pendleton, Calif. We
were then engaged in "Operation Silver Lance," a counterinsurgency exercise designed to test concepts of U.S. contingency plans in the event U.S. troops were committed to Vietnam. At that time, and for some years afterward, I was under the impression that our aims in Southeast Asia were primarily to protect the South Vietnamese in their enjoyment of a better, freer way of life. Nearly all official U.S. Government announcements stressed this honorable goal.

Yesterday's Washington Post carried an excerpt from a State Department document entitled: "An Explanation of the War in Vietnam for Primary School Children."

So we decided to help the South Vietnamese people—that way we hoped to keep the war in Viet Nam from becoming a big war. . . . we have done well and soldiers from the North are not winning anymore . . . if the Communists go back home to the North and leave the South alone, the war will end . . . if we take all of our soldiers out of South Viet Nam before the peace is made or before we are sure that the South Vietnamese can take care of themselves, we would be breaking our promise to them.

What promise? Has the Congress ever made a promise to the South Vietnamese? And other than through our constitutional processes, which is the only way the SEATO treaty provides for military assistance, can anyone but the Congress promise military assistance?

Would this Nation have sent 50,000 men to their deaths had we been aware that 70 percent of our goal was the protection of America's reputation as a guarantor? Would we have chosen to become a guarantor had the choice been offered to the Congress?

Consistently throughout the Pentagon papers, which only yesterday were finally transmitted to the Congress, is the recurring reference indicating what information could be leaked to the Congress to obtain support, or prevent opposition to plans and programs that the Executive conceived to be in the Nation's best interests.

The papers also contain numerous examples of the thinly concealed assumption that Congress need not be consulted or informed with regard to the great issues of "providing for the common defense, declaring war or funding the standing army." And yet, it seems to me that we in the Congress must confess that this executive branch attitude has been permitted to grow and flourish since World War II, as much by congressional acquiescence and abdication of the demand for full information as by arrogant denial of information to us by the executive branch.

I suggest that we have permitted this growing imbalance of knowledge between the executive and legislative branches by our acceptance of the denial of information in response to our reasonable requests.

We have had provision for Resolutions of Inquiry in the House rules since the inception of the Republic. This procedure, first used during George Washington's Presidency, was most recently employed over 20 years ago.

In title 5, section 2954 of the United States Code, we have a statutory provision:

An Executive agency, on request of the Committee on Government Operations of the House of Representatives, or of any seven members thereof, or on request of the Committee on Government Operations of the Senate, or any five members thereof, shall submit any information requested of it relating to any matter within the jurisdiction of the committee.
In view of this provision in the United States Code, consider one recent response of the administration to a fairly routine request for a Government report, made by a seven-member subcommittee of the House Government Operations Committee. The subcommittee requested a copy of this report which was allegedly adverse to the SST. The reply from Presidential Counsellor John Ehrlichman is set forth in full as follows:

**HON. HENRY S. REUSS, House of Representatives, Washington, D.C.**

Dear Mr. Reuss: This is in response to the letter of May 25, 1970, signed by you and six other members of the House Committee on Government Operations which, making reference to section 2064, title 5, United States Code, requests a copy of a report on the SST prepared in 1966 by a committee headed by Dr. Richard L. Garwin. As I advised you on May 20, 1970, the report constitutes an internal governmental memorandum of a confidential nature which cannot be released.

The language of the statutory provision on which your request is based unquestionably is rather broad. The legislative history of section 2 of the act of May 29, 1928, 45 Stat. 996, from which that provision is derived, however, indicates that its legislative purpose is narrow and that it does not support your request. See in this connection Kramer & Marcelle, "Executive Privilege—A Study of the Period 1963–1965," part II, 29 George Washington Law Review 827, 881–883.

The purpose of the 1928 act was to discontinue the submission to Congress of a large number of obsolete and useless reports, and to enable Congress to obtain the information contained in the discontinued reports if this should become necessary. See S. Rep. 1320, 70th Cong., 1st Sess., p. 4 and H. Rep. 1767, 70th Cong., 1st Sess., p. 6. 5 U.S.C. 2064 is thus designed to serve as a means for obtaining information theretofore embodied in annual routine reports to Congress submitted by the several agencies, rather than to compel the release of internal executive branch information such as the Garwin report. I therefore regret that I cannot comply with your request.

Sincerely yours,

**JOHN D. EHRLICHMAN, Assistant to the President for Domestic Affairs.**

The report in question was not made available to the Congress until December 1970, after both the House and Senate had voted to continue SST appropriations. Even then, the report was released only after a different House subcommittee forced the issue by holding hearings on the administration's refusal to comply with the public information requirements of the National Environmental Policy Act.

I cite the foregoing examples to illustrate the patterns of conduct and attitudes which have developed in the executive branch with respect to the release of information to the Congress. This administration, as has been the case with prior administrations, is desirous of obtaining congressional and public support for executive branch policies and programs. It does not have the right, however, to conceal information from us which is relevant to the law-making process. We in the Congress do not have the right under our constitutional obligations to allow this concealment.

Under the Constitution, article I, section 5, we are required to keep:

A Journal of our proceedings, and from time to time publish the same, respecting such parts as may, in our judgment require secrecy.

We are fully as capable of preserving secrets as is the executive branch, and the need for secrecy in the interest of national security is no excuse for our failure to demand all information from the executive branch which is relevant to our own immense responsibilities in matters of war and peace and foreign affairs.
At this point I would like to speak in support of the three resolutions of inquiry—H. Res 492, H. Res. 493, and H. Res. 495—presently before your full committee for action. A fourth resolution, seeking the 47-volume Defense Department Vietnam task force study, “U.S.-Vietnam Relationships, 1945-67,” is now moot in view of the delivery of the study to the House yesterday.

The three remaining resolutions refer to three areas of decision presently before the Congress:

1. Authorization and funding of the continuing U.S. efforts under the direction of the U.S. Ambassador in Laos (H. Res. 492).
2. Authorization and funding of the “Vietnamization” program in Vietnam, the target aspect of which in 1971, is the Phoenix program (H. Res. 493).
3. Authorization and funding for the aerial bombardment in Northern Laos, an area unconnected with the protection of American lives in South Vietnam (H. Res. 495).

In all three of these areas the executive branch has been less than candid in advising Congress of the truth of our involvement and actions in the past, or of the nature of the programs planned for the future.

(The complete text of Congressman McCloskey's statement follows:)

STATEMENT OF HON. PAUL N. MCCLOSKEY, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman and members of the subcommittee, I had hoped originally to testify before you today with respect to the Viet Nam Disengagement Act of 1971, urging the benefits of an end to our involvement in and over Indochina by December 31, 1971, conditional solely upon the safe return of our prisoners of war. Arguments favoring this view already have been made by a number of our colleagues, however, and accordingly, I would like to limit my testimony today to an issue which is equally important, the obligation of the House to be fully informed by the Executive Branch on the great issues of foreign affairs, and particularly the intervention by the United States in the affairs of foreign nations, either by covert CIA-operated action as in Laos or military intervention as in Viet Nam.

There is reasonable disagreement in the House over what our course of action in Southeast Asia should be. There should be no disagreement, however, on our need to know, and our right to know, all of the facts which may bear on our ultimate decision.

It is true that Congress is not suited to negotiation and day-to-day decision making in intelligence and military operations. We do hold, however, the constitutional power, and I might add, constitutional responsibility, for providing for the common defense, declaring war, funding the standing army, but for a period not to exceed two years; we in the House of Representatives who face our constituents every two years, not four or six, must initiate the revenue measures necessary to support the nation’s expenditures for war and foreign operations of every kind.

All of these provisions were clearly intended by the framers of the Constitution to give Congress the controlling decisions in matters of war and peace. We make the laws; the President as Commander-in-Chief only executes those laws. If Congress is to make wise decisions, however, we must be fully informed. We cannot authorize a war without complete information; we should not permit a war to continue without complete information.

The recent excerpts from the Pentagon documents published in the New York Times and other newspapers bring home to us more forcefully than we have heretofore how we have not met our constitutional obligations to keep fully informed. Who amongst the Members of the House were aware, for example, that country team members in Viet Nam aided and encouraged the overthrow of Premier Diem in 1963?

Who amongst our Members knew the true facts of U.S. military and covert activity in and over Laos, and in the coastal waters of North Viet Nam prior to the Tonkin Gulf incidents of early August, 1964? Or that during October, 1964, prior to the re-election of President Johnson over Senator Goldwater, that "Two of
the teams (of U.S./South Vietnamese agents operating inside North Vietnam) carried out successful actions during October. One demolished a bridge, the other ambushed a North Vietnamese patrol."

(This quote was taken from a State Department memo, dated November 7, 1964, for Assistant Secretary of State Bundy, and is noted at page H5107 of the Congressional Record of June 14, 1971.)

If these facts had been known to the Congress, would it have affected subsequent votes on appropriations for Viet Nam, or the approval of escalation of the war implicit in the House appropriations process?

What would have been the House's reaction, for example, had we been fully informed in March, 1965, before U.S. troops were sent to Viet Nam, that our true goals in Viet Nam were those described by Assistant Secretary of Defense McNaughton in a memo to Secretary McNamara in March, 1965:

"70%—To avoid a humiliating U.S. defeat (to our reputation as a guarantor).

"20%—To keep SVN (and then adjacent) territory from Chinese hands.

"10%—To permit the people of SVN to enjoy a better, freer way of life."

At the time that memorandum was written in March of 1965, I was on active duty with the Marine Corps at Camp Pendleton, California. We were then engaged in "Operation Silver Lance," a counter-insurgency exercise designed to test concepts of U.S. contingency plans in the event U.S. troops were committed to Viet Nam. At that time, and for some years afterward, I was under the impression that our aims in Southeast Asia were primarily to protect the South Vietnamese enjoyment of a better, freer way of life. Nearly all official U.S. government announcements stressed this honorable goal. Yesterday's Washington Post carried an excerpt from a State Department document entitled: "An explanation of the War in Viet Nam for Primary School Children."

"So we decided to help the South Vietnamese people—that way we hoped to keep the war in Viet Nam from becoming a big war...we have done well and the soldiers from the North are not winning anymore...if the Communists go back home to the North and we leave the South alone, the war will end...if we take all of our soldiers out of South Viet Nam before the peace is made or before we are sure that the South Vietnamese can take care of themselves, we would be breaking our promise to them."

What promise? Has the Congress ever made a promise to the South Vietnamese? And other than our constitutional processes, which is the only way the SEATO treaty provides for military assistance, can anyone but the Congress promise military assistance?

Would this nation have sent 50,000 men to their deaths had we been advised that our goals were 70% the protection of America's reputation as a guarantor? Would we have wanted to become a guarantor had the choice been offered to the Congress?

Running throughout the Pentagon papers, which only yesterday were finally transmitted to the Congress, is the recurring reference to what information could be leaked to the Congress to obtain support, or prevent opposition to plans and programs the Executive conceived to be in the nation's best interests.

Running throughout the papers also is the thinly-concealed assumption that Congress need not be consulted or informed with regard to the great issues of "providing for the common defense, declaring war or funding the standing army."

And yet, it seems to me that we in the Congress must confess that this executive branch attitude has been permitted to grow and flourish since World War II, as much by congressional acquiescence and abdication of the demand for full information as by arrogant denial of information to us by the executive branch. I suggest that we have permitted this growing imbalance of knowledge between the executive and legislative branches by our acceptance of the denial of information in response to our reasonable requests.

We have had provision for Resolutions of Inquiry in the House rules since the inception of the Republic. The procedure was first used in George Washington's time; it was most recently used over 20 years ago. In Title 5, Section 2054 of the U.S. Code, we have a statutory provision:

"An Executive agency, on request of the Committee on Government Operations of the House of Representatives, or of any seven members thereof, or on request of the Committee on Government Operations of the Senate, or of any five members thereof, shall submit any information requested of it relating to any matter within the jurisdiction of the committee."
And yet, consider one recent response of the Administration to a fairly routine request for a government report allegedly adverse to the SST. A seven-member subcommittee of the House Government Operation Committee requested a copy of this report. The reply from Presidential Counselor John Ehrlichman, is set forth in full as follows:

**Hon. Henry S. Reuss,**

**House of Representatives,**

**Washington, D.C.**

DEAR Mr. REUSS: This is in response to the letter of May 25, 1970, signed by you and six other members of the House Committee on Government Operations which, making reference to section 2654, title 5, United States Code, requests a copy of a report on the SST prepared in 1969 by a committee headed by Dr. Richard L. Garwin. As I advised you on May 20, 1970, the report constitutes an internal governmental memorandum of a confidential nature which cannot be released.

The language of the statutory provision on which your request is based unquestionably is rather broad. The legislative history of section 2 of the act of May 29, 1928, 45 Stat. 996, from which that provision is derived, however, indicates that its legislative purpose is narrow and that it does not support your request. See in this connection Kramer & Marcus, *Executive Privilege—A Study of the Period 1933–1969,* Part II, 29 George Washington Law Review 827, 881-883.

The purpose of the 1928 act was to discontinue the submission to Congress of a large number of obsolete and useless reports, and to enable Congress to obtain the information contained in the discontinued reports of this sort, where necessary. See S. Rept. 1220, 70th Cong., 1st Sess., p. 1, and H. Rept. 1757, 70th Cong., 1st Sess., p. 4. 5 U.S.C. 2954 is thus designed to serve as a means for obtaining information theretofore embodied in annual routine reports to Congress submitted by the several agencies, rather than to compel the release of internal executive branch information such as the Garwin report.

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Sincerely yours,

**John D. Ehrlichman,**

**Assistant to the President for Domestic Affairs.**

The report in question was not made available to the Congress until December, 1970, after both the House and Senate had voted to continue SST appropriations. Even then, the report was released only after a different House subcommittee had forced the issue by holding hearings on Administration refusal to comply with the public information requirements of the National Environmental Policy Act.

I cite the foregoing examples to show the patterns of conduct and attitudes which have developed in the executive branch with respect to the release of information contained in the discontinued reports of this sort. Under the Constitution, Article I, Section 5, we are required to keep a 'Journal of our proceedings, and from time to time publish the same, excepting such parts as may, in our judgment require secrecy.' We are fully as capable of preserving secrets as is the executive branch, and the need for secrecy in the preserving secrets as is the executive branch, and the need for secrecy in the interests of national security is no excuse for our failure to demand all information from the executive branch which is relevant to our own immune responsibilities in matters of war and peace and foreign affairs.

At this point, I would like to speak in support of the three Resolutions of Inquiry H. Res. 492, H. Res. 493 and H. Res. 495, presently before your full committee for action. A fourth Resolution, seeking the 47 volume Defense Department Viet Nam Task Force study, "U.S.-Viet Nam Relationships, 1945-1967," is now moot in view of the delivery of the study to the House yesterday.

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(3) Authorization and funding for the aerial bombardment in Northern Laos, an area unconnected with the protection of American lives in South Vietnam (H. Res. 495).

In all three of these areas, the Executive branch has been less than candid in advising Congress of the truth of our involvement and actions in the past, or of the nature of the programs planned for the future. I will detail these charges separately.

I. THE U.S. COUNTRY TEAM OPERATIONS IN LAOS

We are not formally at war in Laos, and yet we have dropped more bombs there than in Nazi Germany in World War II. The U.S. Ambassador has control over all air strikes, and both B-52s and defoliation have been used in Northern Laos where no American lives are at stake save for C.I.A. agents who are assisting forces of one Laotian faction against another.

Under the Gulf of Tonkin Resolution of August 10, 1964, the President was granted authority "to prevent ... aggression" in Southeast Asia, not just Viet Nam. This authority was repealed by Congress, effective January 12, 1971, and the President has had no authority since that time to wage war in Northern Laos. His inherent authority as Commander in Chief to protect lives of U.S. personnel in South Viet Nam may extend to bombing operations along the Ho Chi Minh Trail in Southeastern Laos, but presumably the President's sole authority to bomb elsewhere rests in the discretion and control of the Congress.

I can find no public record of any House hearings on our C.I.A. and military operations in Laos, either before or after the repeal of the Gulf of Tonkin Resolution.

What is going on in Laos?

With reference to H. Res. 492 and 495, what has the Executive Branch been willing to tell us?

During the Congressional recess in April, Jerry Waldie and I went to Laos at private expense to try to learn what we could about U.S. involvement there.

The newspapers described Thai battalions as having been ferried to Northern Laos in U.S. planes to fight in defense of Long Thieng. Upon our request to go to Long Thieng, the U.S. Ambassador, T. McMurtrie Godley flatly refused. Premier Souvanna Phouma, in Ambassador Godley's presence, told us "There are no Thai troops in Laos."

One of the documents published in the recent New York Times article (See Page 3107, Congressional Record of June 14, 1971) quotes a State Department memo of November 7, 1964:

"That involvement. Hanoi claims to have shot down a T-28 over DRY territory on August 15, and to have captured the Thai pilot flying the plane. Although the information the North Vietnamese have used in this case seems to be accurate, it is not clear the pilot is alive and can be presented to the ICC. The possibility cannot be excluded, however, that other Thai pilots might be captured by the PL (Pathet Lao)." (Italic added)

Is it not appropriate that the Congress be advised by the Administration as to Thai and other foreign armed forces operations in Laos? Can we justify to our constituents a failure to demand such advice?

With respect to CIA operations in Laos, it appears that everyone in the Orient knows more about them than does the U.S. Congress.

A number of articles have appeared in the press on this subject over a period of many years. In summary, the public which reads current publications may know more about CIA involvement in Laos than do we who authorize the CIA effort and appropriate the funds to support it.

With respect to U.S. armed forces operations in Laos, it was not until March 7, 1970, that President Nixon advised either Congress or the American people of the precise nature of our activities in Laos. Even then he was mistaken in at least one particular. "No American stationed in Laos has ever been killed in ground combat operations"—a report of The Library of Congress Legislative Reference Service on June 1, 1970 (DS522, 70-108 F "The United States and Laos") states: "At the time of President Nixon's Statement 27 Americans stationed in Laos had been killed by communist troops or listed as missing in Laos since 1962."

II. BOMBING IN NORTHERN LAOS

As to bombing in Northern Laos, again the newspapers have reported to the public more than this Administration has been willing to tell the Congress.
On March 14, 1970, the Christian Science Monitor published an article by Daniel Southerland, which included the following commentary:

"AIR POWER REDIRECTED"

"The correspondent visited four refugee camps and talked with refugees from six different locations in and around the Plain of Jars."

"After questioning a large number of them, it was possible to get a picture of the devastation unleashed by American fighter bombers in northeastern Laos over the past two years, and it is not a pretty one."

"The refugees said about 9 out of 10 of the bombing strikes flown over the past two years in the Plain of Jars were carried out by American jets and the rest by propeller-driven Royal Lao Air Force T-28s."

"In most areas of the plain, the bombings forced the people to move out of their homes and into trenches, caves, and bunkers where they lived for the most part of two years."

"In the Plain of Jars area, the bombing destroyed the main towns of Xien Khouang, Khang Khay, and Pmongsa vau. The refugees said the bombs flattened many villages in and around the Plain and heavily damaged others. They said no villages they knew escaped the bombing."

"The refugees said they were sometimes forced to leave their villages and bunkers to do porterage—carrying rice and ammunition—for the Pathet Lao and North Vietnamese. But they added that in many bombing raids there were no Pathet Lao or North Vietnamese troops near their villages."

"Some refugees said they moved four or five times, each time farther away from their villages, to escape the bombing. But the bombs always followed them. Even at night the bombers came, and finally, even the rice fields were bombed."

"There wasn't a night when we went to sleep that we thought we'd live to see the morning," said one refugee. 'And there wasn't a morning when we got up and thought we'd live to see the night.'"

"It was terrible living in those holes in the ground,' said another. 'We never saw the sun. Our hair was falling out.'"

"'My wife and three children were killed,' said a man in his thirties. 'there were no troops (Pathet Lao or North Vietnamese) anywhere near our village.'"

"All this raises some basic questions about the bombings in northeastern Laos."

"What has been its purpose?"

"It is impossible to get the United States Government side of the picture in any detail because American officials refuse to discuss except in the vaguest generalities the activity in Laos."

"PILOTS PLEDGED TO SECRECY"

"The pilots who fly the raids from air bases in Thailand and South Vietnam and from carriers in the Gulf of Tonkin are under instructions not to discuss the details of their missions.

"When Congressman Waldie and I attempted to inquire about the bombing in Northern Laos, the following chain of events occurred."

"From pursuing official U.S. documents prior to our arrival in Laos, we had learned that some 3,500 villages once existed in the northern and eastern portions of Laos which have been contested or under Pathet Lao control since 1962."

"Of the 1,000,000 or so people who once lived in these villages, generally ranging from a population of 40 or 50 to several hundred, an estimated 700,000 had become refugees in the 9 years following the Geneva Accords of 1962."

"We were further advised that in 1969 and 1970 we had dropped nearly 1 million tons of bombs in Laos, nearly twice the total dropped in 1967 and 1968 before President Johnson was succeeded by President Nixon."

"We first visited the headquarters of the 13th Air Force in Thailand, and then went on to Vientiane. We were assured by both the Commanding General of the 13th Air Force, Major General Evans, and by Ambassador Godley in..."
Vientiane that we are not and have not bombed villages and that to their knowledge any villages that had been hit were hit by mistake. Ambassador Sullivan had testified before the Senate Refugee Subcommittee a year ago, indicating that only eight villages had been hit by mistake in the four and a half years he had served in Laos, terminating in March of 1969. Both Ambassador Godley and General Evans stated that all targets in Laos had to be approved by the Ambassador, or by U.S.-Lao aerial fire control teams in O-1s.

On the evening of April 13, at a dinner at the home of Ambassador Godley, we were told by various ranking Country Team officials in the presence of both the Ambassador and Deputy Chief of Mission Montague Sternes that (1) we had not bombed villages except by occasional mistake, (2) no surveys of refugee attitudes had been made because of lack of staff, (3) bombing was certainly no more than one of the factors, and certainly not a major factor in causing refugees to leave their homes, and (4) neither the U.S. Royal Lao government had forced refugees to leave their homes; they left voluntarily. The dinner party lasted over five hours, and we were repeatedly assured of the validity of the foregoing four points. I think it fair to say that Congressman Waldie and I went to bed that evening believing that we had been told the truth by sincere and dedicated men and that the rural villages of Laos had not been subject to deliberate U.S. bombing.

On the following morning, April 14, however, I found reference in my notes to a specific refugee study made by the political section of the Embassy in July 1970. A young political officer at the Embassy confirmed that a summary of refugee opinions did exist. He went with me to the office of Deputy Chief of Mission Sternes whom I asked to show me the document in question. Mr. Sternes picked a sheaf of paper off his desk, leafing through them, and finally handed them to me at my request. This report was entitled: "Xieng Khuang Province Refugees in Vientiane Plain," and dated July 10, 1970. The report summarizes the responses of over 200 refugees, from four separate villages in the Plain of Jars area, with respect to the bombing of their homes. Quoting from pages 5 and 6 of the report:

"75% of 190 respondents said their homes had been damaged by the bombing."
"90% said the attacks took place in 1969."
"The bombing is clearly the most compelling reason for moving."

Both the facts stated and the conclusions in this report, addressed personally to Mr. Waldie by the U.S. Information Service on July 10, 1970, are in square contradiction to the testimony furnished the Senate Refugee Subcommittee last year, as well as inconsistent with the facts and opinions expressed so positively to us the previous evening.

It is clear that Mr. Sternes deliberately intended to give Congressman Waldie and myself a less than complete picture of refugee attitudes and bombing while we were in Laos. The Embassy prepared and gave to us, prior to the April 13 dinner discussions, what purported to be rather a careful "briefing book" on refugees. Three of the eight sections in the book were specifically titled as relating to Xieng Khuang Province. The refugee survey report of July 10, 1970, is entitled "Xieng Khuang Province Refugees in Vientiane Plain" and we accidentally learned from Mr. Albert on April 16 that Mr. Sternes had called Mr. Albert into his office on the afternoon of the 13th (just prior to the dinner) and asked him if he was the one who had prepared the report in question. Bearing in mind that this report, and a shorter report of similar survey of refugees in a more northerly camp, were the only such reports in the Embassy's possession on the impact of bombing on refugees, it is hard to escape the conclusion that the Embassy did not want inquiring Congressmen to learn anything about widespread bombing in 1969, directed and controlled by the U.S. Ambassador. The omission of this report from the so-called "briefing book" was clearly deliberate.

After finally obtaining possession of the reports in question at approximately 9:00 p.m. on the afternoon of April 14, we were able on the morning of April 15 to visit one of the refugee camps, Ham Na Nga, located about 60 kilometers north of Vientiane. We were accompanied by four interpreters, including two, Reverend Roffe and Father Menger, who had been personally recommended by the Ambassador as "unbiased."

We talked to 10 separate individuals and various groups of refugees who had come to the camp from at least seven separate villages in Tasseng Kat, one of the administrative sectors of Xieng Khuang Province.
The refugees were unanimous in describing the destruction of every single home in each of the seven villages where they had lived. They described both T-28 and jet aircraft, as well as the use of CBU cluster bombs and white phosphorus; in all but one of the villages, the refugees had seen people killed by the air strikes, the most numerous being the village of Ba Phone Savanh, a village of 35 homes where nine were killed and 14 wounded.

We personally observed and talked with a number of people bearing scars from CBU pellets of white phosphorous. In talking to the refugees, Congressman Waldie initially used Father Menger as an interpreter for the first five individuals interviewed. I used Rev. Roffe and a Chinese Interpreter named Wong. After several hours, we compared notes and found that we were receiving identical information from the refugees, save in one respect. The refugees interviewed by Congressman Waldie said, as interpreted by Father Menger, that Pathet-Lao soldiers were living in the villages at the time of the air strikes. The refugees with whom I talked, interpreted by Rev. Roffe and Mr. Wong, stated that the Pathet-Lao were situated some distance away from the village, with the closest soldiers being at least 500 meters away and generally as far as two or three kilometers away.

We decided to exchange interpreters, although I retained Mr. Wong to monitor Father Menger's interpretations as we were advised by several local people accompanying us that Father Menger had a reputation for inaccuracy.

Thereafter, all persons interviewed agreed that Pathet-Lao soldiers had not been living in their villages. Most important, Congressman Waldie re-interviewed one of the men who had first stated, according to Father Menger, that Pathet-Lao soldiers were living in his village. This time the refugee was unequivocal in stating that no Pathet-Lao lived in his village and that his earlier comments had been misinterpreted.

The refugees commonly described the killing of their water buffalo, and the fact that they had to live in holes or caves, farming only at night when the bombing became so intensive in 1969. In only one of the seven villages had a refugee seen any visiting Pathet-Lao soldiers killed by the bombing of his village; the soldiers were described as visiting the villages only occasionally or as passing through on the road.

At one interview, the Chief of Tasseng Kat, the administrative area where these villages had been located, volunteered the information that his Tasseng had been evacuated from the Plain of Jars in early 1970 because they were ordered to leave by the Province Governor. U.S. planes provided the airlift capability.

The Air Force briefings from General Evans and his staff conclusively demonstrated both the immense accuracy of targeting and bombing, and also the voluminous and comprehensive aerial reconnaissance photography which precedes and follows bombing strikes. It is clear that the Air Force is only following orders, and that all targets are cleared and approved by the State Department.

With reference to the foregoing facts, it is clear that the Embassy officials, on the night of April 13 deliberately misled Congressman Waldie and myself in four particulars:

1. Although they denied it, non-accidental bombing had taken place in Northern Laos during 1969.
2. At least 76% of 96 small villages had been hit by such bombing.
3. Reports had been made and were in the possession of the Embassy, showing that bombing was clearly the most compelling reason for the refugees leaving their homes.
4. Some of the refugees had moved because of the direct orders of the Royal Laotian government, not voluntarily; transportation was furnished by U.S. aircraft.

It is clear that cluster bombs and white phosphorous were used against the civilian population of the country with whom the United States has not declared war. The bombing was done under the direction and control of the State Department, not the United States Air Force. Both the extent of the bombing and its impact on the civilian population of Laos was deliberately concealed by the State Department between the period July 10, 1970 when the refugee report was completed, and April 13, 1971, when the report was reluctantly handed to me by the Deputy Chief of Mission Stearnes in Vientiane.

65-972-71—12
III. THE DEFENSE DEPARTMENT'S REFUSAL TO RELEASE PHOTOGRAPHS OR
FURNISH LISTS OF LAOTIAN VILLAGES BOMBED

On April 13 and 15, I was privileged to meet with Major General Evans, Commander 13th Air Force, and on April 16 with Major General Hardin, Vice Commander, 7th Air Force. General Evans confirmed to me that the rules of engagement in Laos required that no bombing take place within 500 meters of an "active village," an active village being defined as one that was inhabited.

At the April 13 meeting, I circled eight villages in Northern Laos at random and asked for aerial photographs of such villages. General Evans said he would be glad to have such photographs located and enlarged. On April 16, General Evans advised me that his staff had located only two of the villages in question, and showed me two photographs blown up to approximately 24" square. It was clear from the photographs, and General Evans confirmed, that these two villages were no longer in existence in the circled areas indicated.

I asked General Evans for the photographs and he replied that he would first like to get permission for their release from his superior, General Clay, Commander 7th Air Force, in Saigon. He stated he was going to Saigon the following morning and request permission from General Clay for their release to me prior to my scheduled departure from Saigon at 1700 the following day, April 16.

In the early afternoon of April 16, I called at 7th Air Force Headquarters at Saigon and was referred to Major General Hardin, who advised me that General Clay had decided to refuse release of the pictures to me, and that I should request the pictures and any other Air Force data and information from the Air Force Liaison office in Washington.

I did this by letter to Major General John C. Giraudo, Office of Legislative Liaison at the Pentagon on April 19, 1971. On April 20, I submitted a list of 196 villages in Northern Laos which had been hit by U.S. bombs since such bombing commenced.

I received no responsive reply to these requests, save for the delivery of 12 photographs of Laotian villages which were not included in the list of villages for which photographs were requested.

How many of the 3,900 villages behind Pathet Lao lines have been destroyed by American bombing is a matter which is still open to question. This question can be determined quite easily however, if the Defense Department will produce current photographs of these areas from its comprehensive files. The failure to produce these photographs, under ordinary rules of evidentiary law, can only be deemed to properly raise the inference that the villages have indeed been destroyed, contrary to the statements we received from State Department officials.

Nevertheless, a few days ago, I received from the Department of Defense the following letter:

JUNE 11, 1971.

Hon. PAUL N. McCLOSKEY, Jr.,
House of Representatives,
Washington, D.C.

Dear Mr. McCloskey: Mr. Johnson has asked me to reply to your letter of 19 May 1971.

I have reflected on your various requests for photographs of villages in Laos. Your understandably humane interest in the effect of the war on the civilian population in Laos is shared by the many in the Defense Department who over the years have wrestled with this problem. I hope our basic agreement on motives is not obscured by the differences we may have over issues of management.

With regard to management, we have explained repeatedly that we have established restrictions up to the limits of the safety of our pilots in order to minimize the effects of the war on civilian populations. Ambassador Sullivan, along with knowledgeable and competent witnesses from State, AID, and Defense, has discussed the refugee situation thoroughly with cognizant bodies in the Congress. As you know, we are convinced that the overwhelming cause of refugees in Laos is the offensive military activity of the North Vietnamese Army. Finally, when civilians have been caught up unavoidably in the web of warfare, we have given strong support through AID to ameliorative programs.

It is neither feasible nor useful to go beyond these steps to furnish extended photography of Laos. Much of Laos is inhabited by itinerant groups who establish their villages temporarily and then move on. The abandoned villages, in various stages of decrepitude, dot the countryside. Those which have suffered military damage may be indistinguishable from those ravaged by the weather;
those which have suffered identifiable military damage may have been struck by the enemy rather than by U.S. bombs; finally, even if it appears from current photography that U.S. bombs might have damaged a village, we come back to our assertion that only valid military targets come under attack as an unavoidable consequence of enemy activity, an assertion which you implicitly are challenging.

In sum, I cannot see that the cause of the civilians in Laos will be advanced by our further exchange of photographs. The public record is as complete regarding our efforts to minimize the effect of the war on Laotian civilians as we can make it without disclosing information which the enemy would certainly use further to endanger the lives of our pilots. Let me assure you that we are resisting a ruthless and aggressive enemy as humanely as the circumstances permit.

Sincerely,

DENNIS J. DOOLIN,
Deputy Assistant Secretary.

To me this letter represents almost a classic example of executive branch attitude toward the Congress. In the Deputy Assistant Secretary's opinion, it is not "useful" to furnish photographs to an inquiring Congress.

Yet as early as 1964, the importance of photography of Laos was deemed of paramount importance to the Defense Department. The Joint Chiefs of Staff memo to Secretary McNamara of January 22, 1964, discussing "bolder actions" in Southeast Asia (Cong. Record of June 14, 1971, Page H 5100) mentions the need to:

"D. Overfly Laos and Cambodia to whatever extent is necessary for acquisition of operational intelligence."

A cablegram from Admiral Sharp to the JCS on August 17, 1964, (Cong. Record, June 14, 1971, page 5106) said:

"Continuous and effective pressure should be applied to the Communists in both the PDJ (Plain of Jars) and panhandle. Consequently concur in continued RECCCE of DRV, panhandle and PDJ."

On November 7, 1964, a State Department Memo, apparently from Deputy Assistant Secretary Marshall Green to Assistant Secretary Bundy included the comment:

"We have also recently told MACV that we have a high priority requirement for night photo recce of key motorable routes in Laos. At present about 2 nights recce flights are flown along Route 7 areas within a two-week span."

If photographs are so useful to the conduct of a war under the control and direction of the U.S. Ambassador in Laos, surely they might be useful to the Congress which determines whether or not to authorize and fund that war.

IV. THE PHOENIX PROGRAM

In our visit to Viet Nam in April, Congressman Waldie and I learned that the "Phoenix" or "Phong Hau" program is the first priority effort in the 1971 pacification plan.

We were told that the Phoenix program is an American constructed concept for the neutralizing of Viet Cong infrastructure (V.C.I.), the shadow Viet Cong government of mayors, police chiefs, tax collectors and rice gatherers. "Neutralizing" occurs through killing, capturing, rallying, sentencing by military courts or sentencing by Province Security Councils to the so-called "An Tri" administrative detention.

The program was apparently commenced in 1967 with the specific purpose of eliminating the V.C.I. through assassination, ambush, and capture. The P.R.U. teams (Province Reconnaissance Units), Navy SEAL teams and C.I.A. personnel and employees were apparently the original means of eliminating suspected V.C.I., but more recently the major effort has shifted to the Vietnamese police and armed forces, assisted by C.I.A. and CORDS advisors.

This year, 1971, the Phoenix program has been made the priority program of pacification, and we are in the process of financing a 50% increase in the Vietnamese National Police, partly in order to expedite this program.

Neutralization goals for 1971 were said to be 1200 per month, or 14,400 during the year, of whom at least 70% were to be sentenced to confinement of at least one year.

American personnel advise the Phoenix program at every stage-identification and opening of dossiers on V.C.I. suspects, gathering of intelligence from military
operations, informers and police interrogation, arrest and detention of suspected,
including through U.S. military operations, interrogation of suspects, and finally,
the sentencing of suspects by Province Security Committees.

In the first two months of 1971, we were advised by U.S. briefing officers in
Saigon that the program is proceeding very successfully: 6002 VC had been neutralized,
neatly twice the assigned quota. Of these, 1629 had been killed, 1527 rallied,
and 1346 sentenced. With an estimated 60,000 VC in existence at the
beginning of the year, this rate of neutralization, if continued, would wipe out
nearly half the remaining VC by the end of the year. Equally important, the war
of terror was clearly being won by the government, since the VC, in the same two
months had been able to neutralize only 2749 South Vietnamese through killing,
abduction or wounding.

The comparative figures for January and February, 1971, which were given to
us were as follows:

<table>
<thead>
<tr>
<th>US/SVN</th>
<th>Phoenix</th>
</tr>
</thead>
<tbody>
<tr>
<td>VC Terror</td>
<td>Neutralization</td>
</tr>
<tr>
<td>Killed</td>
<td>699</td>
</tr>
<tr>
<td>Abducted/rallied</td>
<td>722</td>
</tr>
<tr>
<td>Wounded</td>
<td>1,328</td>
</tr>
<tr>
<td>Sentenced</td>
<td>2,749</td>
</tr>
</tbody>
</table>

Thus, we were winning the terror—counter-terror battle by almost 2 to 1.

We were pleased to learn also that Americans are not authorized to partici-
pate in assassinations, and that Americans who found the police-type activities
of the program personally repugnant could apply for reassignment without pre-
judice. These provisions are found in Directive Number 525-86 from MACV head-
quart ers, dated 18 May, 1970, a copy of which is appended to this statement as
Exhibit 1.

We were likewise pleased to find that the U.S. Government recognized a legal
obligation under the 1949 Geneva Convention to extend protection to the Viet-
namese civilians apprehended under the Phoenix program, and a further respon-
sibility to work with the government of South Vietnam to see that all such
civilians were treated in accordance with that convention.

A copy of the letter of our Ambassador of the U.S. Mission to International
Organizations, Mr. David Rimestad, dated December 7, 1970, containing the assur-
ance that we and the South Vietnamese are working together to ensure fulfill-
ment of their responsibilities (under Article 8 of the 1949 Geneva Convention) is
appended hereto as Exhibit 2.

We were not so pleased, however to learn that the United States is not working
together with the Vietnamese to provide reasonable protections to persons ac-
cused of being VC.

Specifically, Article 3 of the 1949 Geneva Conventions, prohibits "the passing
of sentences and the carrying out of executions without previous judgment pro-
nounced by a regularly constituted court, affording all the judicial guaran-
tes which are recognized as indispensable by civilized peoples." (Emphasis added.)
A copy of Article 3 is appended as Exhibit 3 to this statement.

Under the Phoenix program, the "regularly constituted court" is the Province
Security Council, usually made up of 7 individuals, 6 of whom represent either
the military or the Police, and who can convict:
"Where evidence for trial is lacking but it is apparent that the suspect is a
threat to the national security."

Confine ment by such sentence is limited to two years, but can be extended at
the sole discretion of the province chief, usually a Lieutenant Colonel in the
South Vietnamese army.

The rules of evidence and description of the program are set forth in excerpts
from one U.S. pamphlet on Phoenix which are appended as Exhibit 4 to this
statement.

It might be well questioned whether the Phoenix program affords all the
judicial guarantees which are recognized as indispensable by civilized people.
Certainly we do not afford the VC suspects the guarantees of our own system.
A suspect has no right to counsel, to confront and examine his accusers, to see
the evidence against him, or even to appear or testify on his own behalf. He can effectively be sentenced to life imprisonment on hearsay evidence given by secret informers under a test of proof which expressly concedes it would be insufficient to convict upon trial.

This is an almost incredible perversion of American concepts and traditions of justice, but the worst aspect of all is the interrogation process. Upon apprehension of a suspect, upon information deemed too flimsy to even meet the "apparent threat to the national security" test, the suspect can be turned over to the tender mercies of the South Vietnamese Interrogators at the Province Interrogation Center (PIC). The Interrogators have until 46 days from his arrest to obtain a confession or other evidence sufficient to establish the "apparent threat" rule. No Americans sit in on these interrogations, which are conducted in isolation cells with the prisoner blindfolded and a single Vietnamese Interrogator present.

It is apparently common knowledge in Viet Nam that torture and brutality are commonplace in Vietnamese interrogations. Two American officers told us that they had seen rubber hoses in the possession of Vietnamese Interrogators. When I asked one American pacification officer if the 46 day period of interrogation was not unreasonable, he replied "we've never had to interrogate anyone for 46 days—they're all broken and confessed in 30 days."

After visiting the P.I.C. in Binh Dinh province, I could better understand why. It was constructed inside an abandoned school. False walls had been constructed so as to leave the observer with the impression that the school building was empty and abandoned. Along a central corridor were empty 2' x 7' cells on one side, with only a small 12" slit at the top to admit air. On the other side of the corridor were slightly larger interrogation cells. A 10' wall surrounded the building, with a steel gate that hid the view from outside except when it was briefly opened to admit our automobile, and then immediately closed.

Americans generally followed a hands-off policy towards these PIC's—in several provinces we were told that Americans never went near them. One officer told us he thought the C.I.A. ran the local P.I.C., and on inquiry we learned that the PIC's were not in the CORDS chain-of-command at all, but were advised solely by the C.I.A. With PIC's in 44 provinces, and less than 25 C.I.A. advisors in the program, it is fairly clear that the interrogations are conducted with little U.S. supervision that might "ensure fulfillment" of our responsibilities under the Geneva Conventions.

Congressman Waldie was shown a Phoenix document called SOP-3 which was then taken back by the briefing officer involved.

SOP-3 contained the following comments:

(Intelligence about fellow citizens) is not only of immediate value, but also will be needed in the future in any postwar political struggle with the Viet Cong. (Emphasis added.)

(In describing whether a man should report his neighbor) Those who act suspiciously: (a) the hesitation or fearful attitude of a dishonest person; (b) contact with those whom we suspect; (c) regular secret colloquies of a certain group of people in the area.

The possibilities of this type of program for the repression of political opposition and dissent are obvious. Fear of such repression was expressed to us by several Vietnamese, and the whole record of repression, torture, corruption, seizure of newspapers and arrest of political opponents under the present Saigon regime is very disquieting.

At the very least, I think Congress should insist of full disclosure by the Administration of the English and Vietnamese documents which describe and concern this first-priority pacification program of 1971.

Thank you for the opportunity to testify today.

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**Exhibit I**

**U.S. Military Assistance Command, Vietnam,**

**APO San Francisco, Calif., May 18, 1970.**

**Directive Number 525-36.**

**Military Operations—Phoenix (Phung Hoang) Operations**

Purpose: This directive establishes policy and responsibilities for all US personnel participating in, or supporting in any way, PHOENIX (PHUNG HOAN) operations.
2. Applicability: This directive is applicable to all MACV staff agencies and subordinate commands.

3. Policy:
   (a) The PHOENIX Program is one of advice, support, and assistance to the Government of Vietnam (GVN) PHUNG HOANG Program, aimed at reducing the influence and effectiveness of the Viet Cong Infrastructure (VCI) in the Republic of Vietnam (RVN). The VCI is an inherent part of the war effort being waged against the GVN by the Viet Cong (VC) and their North Vietnamese allies. The unlawful status of members of the VCI (as defined in the “Green Book” and in GVN official decrees) is well established in GVN law and is in full accord with the laws of land warfare followed by the US Army.
   (b) Operations against the VCI include: the collection of intelligence identifying these members, inducing them to abandon their allegiance to the VC and rally to the government, capturing or arresting them in order to bring them before province security committees for lawful sentencing, and as a last resort to use military or police force against them if no other way of preventing them from carrying on their unlawful activities is possible. Our training emphasizes the desirability of obtaining these target individuals alive and of using intelligent and lawful methods of interrogation to obtain the truth of what they know about other aspects of the VCI. US personnel are under the same legal and moral constraints with respect to operations of a PHOENIX character as they are with respect to regular military operations against enemy units in the field. Thus, they are specifically authorized to engage in assassinations or other violations of the rules of land warfare, but they are entitled to use such reasonable military force as is necessary to obtain the goals of rallying, capturing, or eliminating the VCI in the RVN.
   (c) If US personnel come in contact with activities conducted by Vietnamese which do not meet the standards of land warfare, they are:
      (1) Not to participate further in the activity.
      (2) Expected to make their objections to this kind of behavior known to the Vietnamese conducting them.
      (3) Expected to report the circumstances to the next higher US authority for decision as to action to be taken with the GVN.
   (d) There are individuals who find normal police work or even military operations repugnant to them personally, despite the overall legality and morality of these activities. Arrangements exist whereby individuals having this feeling about military affairs can, according to law, receive specialized assignments or even exemption from military service. There is no similar legislation with respect to police type activities of the US military, but if an individual finds the police type activities of the PHOENIX Program repugnant to him, on his application, he can be reassigned from the program without prejudice.

4. Responsibilities: Subordinate US commanders are to insure that the policies outlined above are strictly adhered to.

5. Reports: This directive requires no report.

W. G. DOLVIN,
Major General, U.S. Army,
Chief of Staff.

EXHIBIT II
U.S. MISSION TO INTERNATIONAL ORGANIZATIONS,

Mr. MARCEL NAVILLE,
President, International Committee of the Red Cross,
Geneva, Switzerland.

DEAR MR. NAVILLE: Thank you for your letter of August 31, 1970 containing further observations on the application of the Fourth Geneva Convention of 1949 (Civilians) to Vietnamese civilians captured by United States forces in the Republic of Viet-Nam. On behalf of my Government, I would like to present the following comments:

With respect to Article 45 of the Convention and to the quotation from Pictet’s commentary to which we referred in our letter of January 20, we appreciate your observation that the quotation applied directly to repatriation of protected persons after the cessation of hostilities. However, we believe that a transfer at any time of a protected person to the power of which he is a national should be sufficient to terminate his status as a protected person.
In our view, the Convention was not designed to give "protected person" status to individuals vis-à-vis their own government. We note that the Convention provides in Article 4 that "nationals of a co-belligerent state shall not be regarded as protected persons while the state of which they are nationals has normal diplomatic representation in the state in whose hands they are." That provision would seem to cast considerable doubt on the entitlement of South Vietnamese civilians captured by U.S. forces to protection as "protected persons" even while they are in the custody of the U.S. forces. In any event, we see no necessity to resolve these difficulties, for we note the view stated in your letter of August 31st that in view of the special situation of these persons in Viet-Nam the humanitarian requirements of Article 3, rather than the Convention as a whole, express the minimum applicable standards. In this connection, in our letter of January 20, 1970, we stated "The United States Government recognizes that South Vietnamese civilians captured by it and turned over to the Republic of Viet-Nam are entitled to humanitarian treatment as described in Article 3 of the Fourth Geneva Convention of August 12, 1949 (Civilians). We are informed by the Government of Viet-Nam that they share this view."

With respect to South Vietnamese civilians captured by U.S. forces and transferred by them to the authorities of the Republic of Viet-Nam, the United States Government recognizes that it has a residual responsibility to work with the Government of the Republic of Viet-Nam to see that all such civilians are treated in accordance with the requirements of Article 3 of the Convention. The United States and the Government of the Republic of Viet-Nam are working together to ensure fulfillment of their responsibilities.

With respect to the question of ICRC visits to Vietnamese prison facilities, the United States Government has in the past made known to the Government of the Republic of Viet-Nam its view that it would be helpful for your delegates to be able to visit such facilities in the same manner they are able to visit prisoner of war camps. We have noted the announcement by the Office of the Prime Minister of the Republic of Viet-Nam on July 10, 1970, stated: "The Government of the Republic of Viet-Nam solemnly affirms once again that its policy is to give humane and decent treatment to all prisoners, whether military or civilian, and to strictly observe the international agreements on prisoners, such as the Geneva Conventions (as has already been shown in the past). The Government of the Republic of Viet-Nam is always prepared to assist qualified international institutions which may wish to make on-the-spot visits to its correctional institutions and prison camps."

Sincerely yours,

Idar Rimesstad, Ambassador.

EXHIBIT III

GENEVA CONVENTION RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR OF AUGUST 12, 1949

The undersigned Plenipotentiaries of the Governments represented at the Diplomatic Conference held at Geneva from April 21 to August 12, 1949, for the purpose of establishing a Convention for the Protection of Civilian Persons in Time of War, have agreed as follows:

PART I—GENERAL PROVISIONS

Article 1

The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

Article 2

In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in
their mutual relations. They shall furthermore be bound by the Convention in
relation to the said Power, if the latter accepts and applies to the provisions
thereof.

Article 3
In the case of armed conflict not of an international character occurring in
the territory of one of the High Contracting Parties, each Party to the conflict
shall be bound to apply, as a minimum, the following provisions:
(1) Persons taking no active part in the hostilities, including members of
armed forces who have laid down their arms and those placed hors de combat
by sickness, wounds, detention, or any other cause, shall in all circumstances
be treated humanely, without any adverse distinction founded on race, colour,
religion or faith, sex, birth or wealth, or any other similar criteria.
To this end, the following acts are and shall remain prohibited at any time
and in any place whatsoever with respect to the above-mentioned persons:
(a) violence to life and person, in particular murder of all kinds, mutilation,
cruel treatment and torture;
(b) taking of hostages;
(c) outrages upon personal dignity, in particular humiliating and degrading
treatment;
(d) the passing of sentences and the carrying out of executions without previous
judgment pronounced by a regularly constituted court, affording all the judicial
 guarantees which are recognized as indispensable by civilized peoples.
(2) The wounded and sick shall be collected and cared for.
An impartial humanitarian body, such as the International Committee of the
Red Cross, may offer its services to the Parties to the conflict.
The Parties to the conflict shall further endeavour to bring into force, by
means of special agreements, all or part of the other provisions of the present
Convention.
The application of the preceding provisions shall not affect the legal status of
the Parties to the conflict.

Article 4
Persons protected by the Convention are those who, at a given moment and in
any manner whatsoever, find themselves, in case of a conflict or occupation, in
the hands of a Party to the conflict or Occupying Power of which they are not
nationals.
Nationals of a State which is not bound by the Convention are not protected
by it. Nationals of a neutral State who find themselves in the territory of a
belligerent State, and nationals of a co-belligerent State, shall not be regarded
as protected persons while the State of which they are nationals has normal
diplomatic representation in the State in whose hands they are.
The provisions of Part II are, however, wider in application, as defined in
Article 13.
Persons protected by the Geneva Convention for the Amelioration of the Con-
dition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949,
or by the Geneva Convention for the Amelioration of the Condition of Wounded,
Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949, or
by the Geneva Convention relative to the Treatment of Prisoners of War of
August 12, 1949, shall not be considered as protected persons within the mean-
ing of the present Convention.

Article 5
Where, in the territory of a Party to the conflict, the latter is satisfied that an
individual protected person is definitely suspected of or engaged in activities
hostile to the security of the State, such individual person shall not be entitled
to claim such rights and privileges under the present Convention as would, if
exercised in the favour of such individual person, be prejudicial to the security
of such State.
Where in occupied territory an individual protected person is detained as a
spy or saboteur, or as a person under definite suspicion of activity hostile to
the security of the Occupying Power, such person shall, in those cases where absolute
military security so requires, be regarded as having forfeited rights of com-
munication under the present Convention.
In each case, such persons shall nevertheless be treated with humanity, and
in case of trial, shall not be deprived of the rights of fair and regular trial
prescribed by the present Convention. They shall also be granted the full rights
and privileges of a protected person under the present Convention at the earliest
date consistent with the security of the State or Occupying Power, as the case
may be.

**Article 6**
The present Convention shall apply from the outset of any conflict or occupa-
tion mentioned in Article 2.
In the territory of Parties to the conflict, the application of the present Con-
vention shall cease on the general close of military operations.
In the case of occupied territory, the application of the present Convention
shall cease one year after the general close of military operations; however, the
Occupying Power shall be bound, for the duration of the occupation, to the extent
that such Power exercises the functions of government in such territory, by the
provisions of the following Articles of the present Convention: 1 to 12, 27, 29 to
34, 47, 49, 51, 52, 53, 54, 61 to 77, 143.
Protected persons whose release, repatriation or re-establishment may take
place after such dates shall meanwhile continue to benefit by the present
Convention.

**Article 7**
In addition to the agreements expressly provided for in Articles 11, 14, 15, 17,
30, 106, 109, 132, 133 and 149, the High Contracting Parties may conclude other
special agreements for all matters concerning which they may deem it suitable
to make separate provision. No special agreement shall adversely affect the situa-
tion of protected persons, as defined by the present Convention, to restrict the
rights which it confers upon them.
Protected persons shall continue to have the benefit of such agreements as long
as the Convention is applicable to them, except where express provisions to the
contrary are contained in the aforesaid or in subsequent agreements or where
more favorable measures have been taken with regard to them by one or other
of the Parties to the conflict.

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**EXHIBIT IV**

**AN ANALYSIS OF PROVINCE SECURITY COMMITTEE**

**BACKGROUND**

Provincial Security Committees (PSC) were created in 1957 to provide the
GVN with an administrative method of settling the status of political detainees
considered threats to the national security. Their purpose is political; their
method is administrative of these persons reasonably believed to endanger the
national security, but against whom sufficient evidence for a trial is lacking.

**COMPOSITION**

Province Chief (PC), Chairman.
Judge Prosecutor, Deputy Chairman.
Sector Commander (presently same as PC), Member.
Chief of Internal Security, Briefing Officer
Council Member, Member.
Police Chief, Member.
M. S. Chief, Member.
Phung Hoang Committee Member; Member.

It is not unusual to find committees with membership as high as thirteen. Such
committees include representatives of all agencies concerned with Phung Hoang.
In some provinces all districts are represented on the POC.

**MEETINGS**

GVN MOI Circular No. 2212 requires each PSC to meet weekly, or more often
if necessary. In practice, the norm to be used is the existence of a backlog await-
ing a position. If cases are being heard within 30 days, there is no need to insist
on weekly meetings. Conversely, if weekly meetings result in a continued backlog,
more frequent meetings are in order.
PROCEDURE

Suspect detainees may appear before the committee but do not have the right to demand such appearance. Due to the administrative nature and political mission of the PSC, procedures are far less exacting than those of the courts. All members of the PSC, procedures are far less exacting than those of the courts. All members of the PSC may examine the detainee dossiers before the hearings and request clarification of any questionable area. The local judge acts as advisor to the committee. During an administrative screening the assures that the cases are proper for presentation and all administrative formalities have been adhered to. The Chief of Internal Security acts as Briefing Officer and is responsible for recommending the type and duration of detention. He is the person most involved in determining adequate detention. Along with the PSC Chief, he has received special training at a two-day seminar in Saigon on the sentencing procedure of GVN MOI Circulars No. 757 and 2212. Although the Chief of Internal Security is probably the official most responsible for the type of sentences given by the PSC, he remains an unknown force within the committee. He is lacking an American counterpart and has little to do with Pham Huong outside the PSC. In many cases there is an urgent need to educate these Briefing Officers to the urgency of complying with the guidance provided in 757 and 2212. The Chief of Internal Security should not be an unknown factor in VCI sentencing. It is the obligation of the PHOENIX Coordinator to advise his counterpart on this subject and with his counterpart, determine what the Chief of Internal Security considers to be necessary to have a dossier which is sufficient for him to recommend maximum "an-tri" detention.

COURSES OF ACTION AVAILABLE TO THE PROVINCE SECURITY COMMITTEE

Release

Naturally, the committee may release suspects found to be innocent. This criteria would also apply to all those suspects whose dossiers do not indicate that the individual is "probably" a threat to the national security. In other words, the PSC does not "reasonably believe" that the suspect is a threat to the national security. [Italic added.]

Recommend trial by military court

If there is clear evidence of a violation of the national security laws, or if the suspect was apprehended in the act of committing an offense against the national security, the case must be forwarded to the appropriate Military Court. This Court will try and sentence the suspect. This particular function of the PSC is similar to that of a Grand Jury.

Detention

Where evidence for trial is lacking, but it is apparent that the suspect is a threat to the national security, the committee may impose administrative ("an-tri") detention. This is a type of preventative detention to protect the state from a known threat to its security. There is the additional provision of continual extension of two year terms if the individual remains a threat to the national security. "An-tri" detention is nonjudicial and administrative in nature. A violation of the national security laws need not be proven; all that must be demonstrated is that the suspect threatens the national security. Once "an-tri" detention is imposed there are no judicial remedies. The duration and place of detention are governed by GVN administrative regulations.

Summary

The PSC has three courses of action available: (1) it may release the innocent, (2) act as a type of grand jury in forwarding violators of the national security laws to a Military Court, or (3) impose administrative detention upon those individuals whom the PSC reasonably believes threaten the security of the nation.

BASIS OF DETERMINATION

The purpose of the PSC is to protect the State from those persons threatening its existence. Thus its power goes beyond that of the courts into the area of emergency political detention necessitated by the need of the State to survive. There is no defined burden of proof, as utilized by courts, because the committees are not engaged with violators of law. The committee is concerned with those
cases which, due to a lack of evidence, cannot be presented under existing judicial standards. Rather than a judicial determination, these cases call for an administrative determination. The decision of the committee is based on a prosecution dossier. There is no rigid rule regarding the amount of evidence necessary for detention, and the criteria may vary significantly from province to province. Each committee determines the existing threat to national security based on conditions within the particular province, and the function of the detainer within the VCI. This process, because it is administrative and political in nature, reflects the political "facts-of-life" in the province. It is incumbent upon each PHOENIX Coordinator to determine these local variances and tailor his advice accordingly. The PSC does not need evidence of the type required by a court; on the other hand, a dossier which contains nothing but an interrogation report cannot be expected to convince the committee that a maximum detention is warranted. What is necessary is sufficient intelligence to reasonably indicate that the suspect is a threat to national security. Thus the test applied by the PSC is not one of proven guilt. This is the distinguishing factor between the PSC and a Military Court. The court is concerned with guilt beyond a reasonable doubt, or the existence of a proven violation of national security, whereas the PSC is concerned with preventing danger to the State by a suspect who appears to threaten the national security. The Military Court is punitive; the committee is preventative in nature.

**COMPARISON**

<table>
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<th>Province Security Committee</th>
<th>Military Court</th>
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<td>Administrative body.</td>
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<td>Founded in the right of the State to survive.</td>
<td>Founded in law.</td>
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<td>Threats to security.</td>
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<td>Protective detention (&quot;an tri&quot;).</td>
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<td>Maximum 3 year renewable sentence.</td>
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**OBSERVATIONS**

1. The PSC's are, by definition, political tools, and are governed from province to province by the political "facts-of-life."
2. PSC existence is extra-constitutional and non-judicial, based upon the right of a State to survive.
3. These committees, although in possession of power to administratively detain anyone reasonably believed to threaten the national security, have acted with remarkable restraint.
4. The nature of these committees, and their strictly political function, dictate a "hands-off" policy by all US personnel and agencies.
5. U.S. advisors, specifically PHOENIX Coordinators, should direct their efforts to ensure that their counterparts provide the PSC with the necessary evidence for the committee to reach an informed decision. This evidence should be in accordance with the minimum considered necessary for detention by the Chief of Internal Security. Additional emphasis should be placed upon providing the committee the type dossier specified by GVN MOI Circular No. 2212 and Phung Hoang SOP 3. If all available intelligence is in the dossier, an informed, intelligent, and equitable decision can be rendered.
6. The varying quality of dossiers presented to the committee has caused an imbalance in proof, resulting in reliance upon the interrogation report to the exclusion of the Phung Hoang dossier. In far too many cases, the quality of the dossiers provided to PSC's can only be described as poor and incomplete. It is advisable for both PHOENIX Coordinators and their counterparts to screen the dossiers before they leave the PIOCO: if this is accomplished regularly, a comparison can be made between the amount of evidence presented to the committee, and the relative decisions reached by the committee. Thus, by reviewing the decisions of the PSC, in conjunction with the dossiers presented to the PSC, the PHOENIX Coordinator and his counterpart can determine what type of dossier the committee considers to be sufficient for detention.
7. Guidance had been provided to the PSC's in GVN MOI Circulars No. 757 and 2212. Utilization of this guidance, coupled with an understanding of the political realities of the province, will provide the coordinator with an understanding of dossier deficiencies. The critical official to satisfy is the Chief of In-
ternal Security, the second most influential member (after the Province Chief) of the PSC. The Chief of Internal Security is the central figure in determining what burden of proof the committee adheres to, as it is his recommendation which usually determines the duration of detention. It is essential to determine what minimum content a dossier must contain to conform to his standards.

Mr. Gallagher. Thank you, Congressman McCloskey.

I might say the Resolutions of Inquiry are on the agenda for the full committee tomorrow morning. I want to thank you, too, for a fine statement. You meet no opposition from the Chair in the need for bringing Congress into a better sense of balance with the executive branch. In fact, for many years, I have been advocating the view that unless Congress does bring itself back into balance, perhaps our most important function will be having our picture taken out on the Capitol steps with graduating classes.

So, I would hope that there is a lesson we will learn from Vietnam. That is that Congress not only has a very strong responsibility in this area, but Congress has to update itself so that we have a source of expertise in our own hands to make proper inquiries, some of which you have pointed out here.

We in the Congress talk about a balanced government, but our Government at the present time is in imbalance because of the very development of power in the executive branch following World War II, as you have pointed out.

So, if there is any good that may come out of Vietnam it may well be that the Congress itself will take a hard look at what its responsibilities are and whether or not we are going to be a relevant body as we slide into the twilight of the century.

Congressman McCloskey, the war naturally causes the greatest distress to all of us, and we appreciate your informed and extremely interesting statement.

I suppose the job that this subcommittee has boils down to whether we can expedite the withdrawal of American troops by insisting that the President meet a deadline he says will hinder his negotiators in Paris and threaten to frustrate the return of American prisoners of war.

My gravest doubt about a date certain is that such a congressional initiative would not help but be interpreted in some quarters both here and abroad as an attempt to reduce the flexibility of the President. Events may occur inside Vietnam which would make it impossible for a President to comply with the congressional dictates.

For example, what do you see happening to the last few thousand American troops in Vietnam if the other side knows that the President is bound not even to defend those troops, if the other side should get rather nasty and impose the humiliation in Mr. McNaughton's "one man's opinion." But if we were to pass an iron-clad date certain for American withdrawal, thus eliminating American options, what assurances do we really have that the other side would allow such a graceful, bloodless disengagement? This is one of the troublesome things, Mr. McCloskey, about binding the President's hands.

One of the things you pointed out was that the Congress was never aware of the escalation preconditions. I think several members sitting here were engaged in violent arguments with the executive branch during the days when the pressures were building up to get rid of Diem. It was said, with some justification, that he was repressive as well as
a number of other things. But the fact is we were not there in force.
I remember all of the editorials of those days denouncing him—which
we all agreed with—but I am sure now even the ADA would give
Diem, Madame Nhu, and his brother an endorsement if we could get
American soldiers back and end the war.
Mr. McCloskey, the question of inflexibility is one that bothers us,
especially if the other side is nothing but nasty to us on our way out.
One of the things the previous administration was always concerned
with was that American public opinion might demand a very strong
response, even a limited nuclear response, if a slaughter of American
troops was about to take place. I would like to have your feelings on
that, Mr. McCloskey.
Mr. McCloskey, if I may speak as a military officer rather than as
a Member of Congress, I have been in Vietnam three times. I was there
in 1965 when we made a study of the trends and problems involved.
It is my judgment—and my judgment could be in error—that there is
no risk to American troops from a gradual disengagement over a pe-
riod of 6 months to a year, provided that such disengagement is car-
rried out with attention to the protection of the troops themselves. If
there is any danger to the American troops in the withdrawal process,
or American personnel, I fear that it is far more likely to result from
an upheaval within the South Vietnamese Government than from the
enemy forces of the Viet Cong and the North Vietnamese.
As I last saw it the present order of battle in the 44 provinces of
South Vietnam was that there were approximately 100,000 Vietnamese
regular forces primarily scattered throughout the northern and cen-
tral jungle regions of the country, plus, at the most, 40,000 Vietcong ir-
regulars—a total of 140,000 enemy troops ranged against approxi-
mately 1.9 million South Vietnamese troops plus about 240,000
Americans.
Now, at one time, we considered a 10 to 1 numerical superiority of
friendly troops against the enemy's necessary in a guerrilla-type war.
But this war has gradually evolved from a guerrilla type war which
we have won, to a war between enemy main units and the South Viet-
namese main units with some American participation. There is no
reason whatsoever why the South Vietnamese cannot take care of
themselves. As reports indicate, they are well-equipped, they are led
well, and they can provide a substantial screen, in fact, a very excel-
sent screen, against the danger to American troops as they withdraw.
If we kept American troops out at Pleiku and Dak To and some of
the advanced places near the DMZ, they would be in danger of encirclement
and isolation if the North Vietnamese committed some of the
50,000 or 70,000 or 120,000 troops in the DMZ area. But the ability to
commit troops rapidly against withdrawing American forces is no real
danger whatsoever. There is no danger of a Dunkirk in South Viet-
nam from a steady and orderly disengagement of American troops. I
would presume that disengagement would involve coastal enclaves like
the Da Nang, Cam Rahn Bay, and Saigon areas and the final parts of
the disengagement should take place from those ports where the mass-
ing of American firepower and troop strength would be overwhelming.
The North Vietnamese have not been able to mass more than five or
10 people in a rice paddy without having them obliterated by the tre-
mendous firepower we have from the Tonkin Bay and the Yankee
station carriers and airpower based in Thailand. Certainly that airpower would be retained to give firepower to support withdrawing American troops, and this should furnish an absolute guarantee to their safety.

The other point I wanted to make, however, is if in the process of withdrawal there was a rebellion within South Vietnam itself, and throughout South Vietnam resulting from the Vietcong infiltration of the South Vietnamese Army and police units, then it would be fairly simple child’s play for the enemy, as part of the South Vietnamese forces, to take out of action the American civilian and military personnel presently scattered throughout the country. In my view, that would be a real danger in a position that does not take into account the possibility that American withdrawal might be attended by a South Vietnamese rebellion.

Mr. Gallager. What you point out as a military officer is true. That is one of the hesitations I have with a fixed-date withdrawal resolution, however. A screen is always contingent on a certain element of mystery, it would seem to me. It is always nice when you are withdrawing to hide exactly when you are. I recall when I was a little boy and I pushed a rifle company around in General Patton’s army that it was far more difficult when they announced on the radio that he was not going to have any more gas and the enemy knew we had to turn around. It was far more difficult and the casualties were far greater coming back then when we had been on the offensive.

So, I agree with you that all of those things could happen. The shield and screen should be the South Vietnamese Army. But if we say March 21 or June 21, I wonder whether that in itself sets up a new condition that creates hazards for the remaining forces that may be a screen and the American combat group the President is trying to get out. That is one of my reservations.

What is your feeling when it gets right down to the crunch when it comes to whether or not we should support the Government up to the time that we withdraw? Do you yourself see any inconsistency in the Bingham proposal, of which you are a cosponsor, Mr. McCloskey?

Mr. McCloskey. Which one of Mr. Bingham’s proposals?

Mr. Gallager. That which states we should have a commission making certain the elections in Vietnam are not rigged in any way.

Mr. McCloskey. I think we owe that to the Vietnamese and the American people.

Until very recently, I had assumed the accuracy of the report made by the men sent to South Vietnam by the White House to monitor the elections. I seriously doubt my former assumption of accuracy in light of an interview I conducted of two South Vietnamese senators brought to my office by the State Department. In the course of my conversation with these two senators, both identified 21 separate ways in which the ballots had been rigged in the 1967 Vietnamese elections. They discussed freely and with some candor in my office the nature of the deceit that was foisted upon the visiting American monitors that were sent there to determine the fairness of that election. This deception resulted from their inability to understand Vietnamese and, thus, their ability to receive these 21 methods of rigging or stuffing the ballot boxes.

The two South Vietnamese senators indicated some concern that these forthcoming 1972 elections might be rigged. When I was in
South Vietnam, my staff was told Big Minh would run against President Thieu only if he could be assured that Americans would stay out of the election process. I see no alternative for us other than to attempt to at least observe and monitor that election process to make sure that it is fair, because apparently we were deceived 4 years ago.

Mr. Gallagher. Of course, Big Minh said that in 1963 or 1964, and I think a lot of us believed him. He got a lot of editorial support in the United States. As the Pentagon papers about which you are making a point disclosed, Big Minh's inability had to be buttressed up about 25,000 troops and Little Minh cost us more troops, too.

I wonder whether that kind of a moral obligation for democratic representation in Vietnam is as important as our finding a way to get out of Vietnam as quickly as possible.

Mr. McCloskey. I don't think it is, Mr. Chairman. I have always questioned our ability to export successfully a democracy such as ours, which took roughly 600 years to evolve to domestic tranquility and even then, in our own civil war we had to settle an issue with one of the bloodiest wars ever fought. I am dubious of the possibility of exporting our brand of democracy given the concepts involved in their country over the centuries. No matter how many people we kill over there, I do not think we can be assured that we can make the government of any oriental country a democracy any more than we have been able to do that in Greece or any other Western country. They have to go through a process to achieve the ultimate form of government consistent with their culture such as we have done, and it takes centuries.

Mr. Gallagher. Of course, I agree with you, and this is the point that has troubled many of us on the moral issue of the kind of government that should exist. I believe that we have a higher responsibility to get American soldiers out of there. Only yesterday Pat Moynihan said on the moral issue, which is really how we got there, that this was the most exquisitely moral, more perfectly pure in its moral passion than its desire to bring democracy and self-government to Southeast Asia. So, I wish we would get out and not continue on with the need for a pure, sanitized government there.

My hope would be that that government would last at least 1 day after we got out.

Mr. Whalley.

Mr. Whalley. Thank you, Mr. Chairman.

Congressman McCloskey, we want our men out of Vietnam. I hope these hearings will bring about ways and means to help us bring this about successfully.

Do you believe North Vietnam wants U.S. troops out of South Vietnam?

Mr. McCloskey. Yes, I do.

Mr. Whalley. Why do they continue the rocket attacks when they know it slows up the process of our coming out?

Mr. McCloskey. I think, Mr. Whalley, that their concept of achieving a rapid withdrawal of our forces depends on their ability to exert sufficient military pressures so that the American people insist that our troops be withdrawn.

When I was in Vietnam 3 years ago, I had the opportunity to talk with a hard-core Communist VC lady who had been in confinement
for some months. She discussed the Communist awareness that the American people, with their lack of patience with wars of this kind, were exerting such pressures that the American Government would ultimately be required to bow to the wishes of their people. This was back in 1968. At that time, I mentioned to her my concern that as a result of talking with her, even I, who had come over there inclined toward the belief that we should withdraw forthwith, was becoming more hardened at the results she expressed. Her response to me by an interpreter in the presence of her province chief was, “You are only one Congressman. You cannot stop the increase in the flow of public opinion that will ultimately force your country to withdraw.”

I believe the rocket attacks and the demonstration of the ability to maintain continued military pressure, despite the fact that they have lost over 750,000 casualties from a country of 17 million people, indicates the desire to show the willingness and the stamina to fight and to continue these military pressures we have seen these past few months.

Mr. Whalley. The North Vietnamese are very intelligent people. Would it not have been easier or made more sense for them to reduce fighting, withdraw back to North Vietnam which would have made world opinion pretty much force us to come home 3 or 4 years ago, and North Vietnam then wait 3, 4 or 5 years and then made their grab in South Vietnam?

Mr. McCloskey. That has been their pattern over the past year or perhaps 2 years, and has been changed only recently. Their cadres and troops, trained as a fighting force, took a terrible beating in the 1968 Tet offensive. It seems to me, that following this, they withdrew to the concept of guerrilla warfare. They chose not to mass large bodies of troops against large positions. They chose not to engage in major battles and to withdraw to small units engaging small units in the old concept of guerrilla warfare. They realized they went too far, and particularly when confronted with American firepower, it was not their way of fighting to mass large numbers of troops in large battles, so they withdrew into small units where their units would not be subject to the B-52’s and the major use of firepower. It is only recently that they have become more aggressive in their conduct as I see reported in the newspapers indicating that they are continuing to wage the fight.

However, I still think they have refrained from committing major parts of their armed forces. When they saw the possibility of making a major effort against South Vietnamese forces which were somewhat overextended—

Mr. Whalley. The American people are very much fed up with the war. It is the longest war in history—approximately 9 or 10 years. With hindsight and from what we have learned over the 10 years, the American people are now saying bring our boys home. What would you suggest is the best way to bring this about? In your opinion, what would be the best way to bring our troops home and get our prisoners of war freed?

Mr. McCloskey. I have felt, Mr. Whalley, we could not demand the return of our prisoners so long as we continue with either the threat of bombing or a residual force remaining in South Vietnam. The one thing the North Vietnamese and Vietcong will never accept is the concept of permanent protection of South Vietnam by Ameri-
can firepower. I feel that if we agreed to give up that part of our negotiating demand and reduce our demand to the return of our POW's before our withdrawal, we would then have successful negotiations.

President Nixon has a very understandable position that we should not permit a foreign country to become Communist if we could prevent it. We had to prevent this humiliating defeat, or South Vietnam would fall after all of our efforts and guarantees and, consequently, he has insisted on two points—that the prisoners be returned, and that the South Vietnamese have a reasonable time to prevail after American withdrawal.

I would abandon that second negotiating factor of the President. I think if it were left up to the North and the South, with the indication that we would be out in 9 months, we would have a negotiating position that might be acceptable to them. Perhaps I am wrong in this. But whatever we do, I don't think that we can withdraw from Vietnam and leave 700 or 800 of our finest young men behind. If our present policy has been erroneous, which I believe it has been, we cannot leave the cutting edge of that policy. If the men were not returned within a reasonable period after we announced our withdrawal and the removal of our power, then we would have to do something far more forceful, in my opinion, to get them back.

But I am afraid the North Vietnamese will not trust the President of the United States in his negotiations to end the war and the termination of American firepower. They have been misled once in 1946 and once in 1954. They know President Nixon's long record of harshness and his desire for a firm barrier to the expansion of communism. In my judgment, an act of Congress will be needed in order to satisfy the North Vietnamese that we do intend and insist that we are going to withdraw.

I think for this reason an act of Congress may be appropriate at this point to set a firm and final date conditional upon the return of our POW's.

Mr. Gallagher. Would the gentleman yield?

Mr. Whalley. I yield.

Mr. Gallagher. This is the crux of what bothers this subcommittee. You say we set a 9-month limit for withdrawal with the prisoners to be returned in 6. If they are not returned in 6, then you would do something forceful. What would you advocate that we do? Would we go back in and go to a nuclear strike because we don't want ground forces there? What would you advocate?

Mr. McCloskey. That is a difficult problem, for the same reason that the President does not want to discuss his options with us at the present time, the threat of force if not backed up is only a bluff. I think this is one area where the choice is better left to the President as to how those POW's get back, but we have to give a firm indication of what Congress is willing to do and what we are not willing to do.

If those prisoners were not returned, I for one would be willing, should the President ask for it, to sign a declaration of war if necessary, to get them back. I think the fate of the POW is that important to this Nation.

Mr. Gallagher. With all that a declaration of war implies?

Mr. McCloskey. Yes, sir.
Mr. Gallagher. Making operative various treaties, the possibility of cranking up of our nuclear plant?

Mr. McCloskey. I don't think we can demand those prisoners back as long as we threaten bombing and insist on intervention in the course of history of the nation of Vietnam. It was one country, not two. They fought an 8-year war for independence. They won that war at Dien Bien Phu. They were promised a unified country and we stopped in and blocked it. As long as we prevent that or continue the threat of this massive use of firepower to destroy their cities. They will not return our POW's. I think Do Gen Shoc, if I were in his shoes, would have one of those prisoners in each city with a population of over 5,000 to let the Americans know they are there so that we would not destroy their cities.

Mr. Gallagher. This is one of our reservations. If we force the President into an inflexible position and the prisoners are not returned within the time, I think that a great many people would be interested in a declaration of war. I recall how we got into all of this. We used to talk about nuclear wars. We don't talk much now about nuclear wars and we don't worry whether the other side is going to "nuke" us or we are going to "nuke" them. This troubles us a great deal. If we say to them that we are pulling out in 9 months if you return our prisoners in 6, and we continue the withdrawal process and then must suddenly reverse it, are we not really right back where we began in the whole business of potential nuclear confrontation?

Mr. McCloskey. I don't think so, Mr. Chairman.

Mr. Gallagher. If you would advocate a declaration of war at that time, you who have been very prudent and very forthright in the necessity to end this war, it would seem to me the American public would force the President, whoever he is then, into a very extreme position.

Mr. McCloskey. I say this based upon my study of the evolution of the North Vietnamese. They are an intelligent people. From many of the aspects of their conduct, they are more humane than, say, the North Koreans or even the Chinese. Their conduct has been fully understandable. Their public pronouncements over the years, their attempts to consolidate their country even when Ho Chi Minh was alive, many of the aspects of their declaration of independence and the nature of the war they fought are comparable to the evolution of America. They are not going to exact the last ounce of humiliation in retaining our POW's. But right now the POW's are the only trump card they have to prevent the obliteration of their cities.

Vice President Agnew has said that we bargained away our greatest power for pottage. They can read the statement General LeMay made of bombing them back to the Stone Age. They cannot give up those prisoners as long as there is this fear that we might obliterate their cities, and we have the ability to do that even without nuclear weapons.

Consequently, I do not see any realistic chance of getting our POW's back until such time as we give up the threat of bombing and we abandon the intention to maintain residual force in South Vietnam as the President has insisted.

I suggest we must do it by an act of Congress because if I were Vietnamese I would not believe our negotiators either, in light of past performance with respect to the Vietnamese. These Pentagon papers