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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 sole 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 most forcefully that 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 Viet Nam) 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 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 2954 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 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 Councilor 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 2954, 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 & Marcuse, *Executive Privilege—A Study of the Period 1953-1960*, 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 should become necessary. See S. Rept. 1320, 70th Cong., 1st Sess., p. 4, and H. Rept. 1757, 70th Cong., 1st Sess., p. 6. 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.

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 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 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, 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 interest 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, 1943-1967," 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 Viet Nam, 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 Viet Nam (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 H. 5107, Congressional Record of June 14, 1971) quotes a State Department memo of November 7, 1964:

"Thai involvement. Hanoi claims to have shot down a T-28 over DRV territory on August 18, 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, nor 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 (DS552, 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.

"After the United States halted its bombing of North Vietnam on Nov. 1, 1968, it stepped up as much as 10-fold its bombing raids—support which started on a minor scale in mid-1964—against Pathet Lao-occupied northeastern Laos. The number of bombing sorties by United States Air Force and Navy jets rose to as many as 300 a day.

"This bombing campaign, code-named Barrel Roll, is separate from the other, more-publicized campaign. The latter, code-named Steel Tiger, is directed against the Ho Chi Minh Trail in southern Laos.

"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 Pimongsavan. The refugees said the bombs flattened many villages in and around the Plain and heavily damaged others. They said no villages they know of escaped the bombing.

"The refugees said they were sometimes forced to leave their villages and bunkers to do portage—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 perusing 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-1's.

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 Monteagle Starnes 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 is 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 Starnes whom I asked to show me the document in question. Mr. Starnes picked a sheaf of paper off his desk, leafing through them, and finally handed them to me at my request. This report was entitled: "Xiang Khouang Province Refugees in Vientiane Plain," and dated July 10, 1970. The report summarizes the responses of over 200 refugees, from 96 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."

"76% 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. Starnes by the U.S. Information Service on July 10, 1970, are of course 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. Starnes 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 Xiang Khouang Province. The refugee survey report of July 10, 1970, is entitled "Xiang Khouang Province Refugees in Vientiane Plain" and we accidentally learned from Mr. Albert on April 16 that Mr. Starnes 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 3:00 p.m. on the afternoon of April 14, we were able on the morning of April 15, to visit one of the refugee camps, Ban Na Nga, located about 40 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 16 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 Xiang Khouang 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 the Pathet-Lao lived 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.

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 hut.

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 15, 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. Girardo, 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 3,500 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 RECCE 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 "Phung Hoang" 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 (VCI), 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 1/2 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 investigation, arrest and detention of suspects, 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; 4502 VCI had been neutralized, nearly twice the assigned quota. Of these, 1629 had been killed, 1527 rallied, and 1346 sentenced. With an estimated 60,000 VCI in existence at the beginning of the year, this rate of neutralization, if continued, would wipe out nearly half the remaining VCI 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:

	VC Terror	US/SVN Phoenix neutralization
Killed.....	699	1,629
Abducted/rallied.....	722	1,527
Wounded.....	1,328	
Sentenced.....		1,346
Total.....	2,749	4,502

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 participate in assassinations, and that Americans who found the police-type activities of the program personally repugnant could apply for reassignment without prejudice. These provisions are found in Directive Number 525-36 from MACV headquarters, 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 Vietnamese civilians apprehended under the Phoenix program, and a further responsibility to work with the government of South Viet Nam 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. Idar Rimestad, dated December 7, 1970, containing the assurance that we and the South Vietnamese are working together to ensure fulfillment of their responsibilities (under Article 3 of the 1949 Geneva Convention) is appended as Exhibit 2 hereto.

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 accused of being VCI.

Specifically, Article 3 of the 1949 Geneva Conventions, prohibits "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.*" (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."

Confinement 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 VCI 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 24 5' 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 PIC, 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.