

RECORDED VOTE

Mr. BROOKS, Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device and there were—ayes 109, noes 311, not voting 12, as follows:

(Roll No. 128)

AYES—109

Addabbo	Garcia	Peysner
Atkinson	Gilman	Pursell
AuCoin	Gonzalez	Rangel
Bailey (MO)	Gray	Ratchford
Bellenson	Hall (OH)	Reuss
Bingham	Heckler	Richmond
Bolling	Hightower	Rodino
Bonior	Hollenbeck	Rosenthal
Brodhead	Horton	Rostenkowski
Brooks	Howard	Roybal
Brown (CA)	Hughes	Russo
Burton, John	Jacobs	Sabo
Burton, Phillip	Kastenmeier	Scheuer
Chisholm	Kildee	Schroeder
Clay	Kogovsek	Schumer
Clinger	LaFalce	Seiberling
Collins (IL)	Leland	Simon
Conce	Long (MD)	Smith (IA)
Conyers	Lowry (WA)	Solarz
Coyne, William	Markey	St Germain
Crockett	Matsui	Stark
Danielson	Mattox	Stokes
Dellums	Mikulski	Studds
DeNardis	Minish	Synar
Dingell	Mitchell (MD)	Traxler
Dixon	Moakley	Vento
Dwyer	Moffett	Walgren
Eckart	Mottl	Washington
Edgar	Murphy	Waxman
Edwards (CA)	Oakar	Weaver
English	Oberstar	Weiss
Evans (IN)	Obey	Whitten
Fascell	Ottinger	Wirth
Ferraro	Patman	Wolpe
Fish	Patterson	Yates
Florio	Paul	
Frank	Poase	

NOES—311

Akaka	Clausen	Fazio
Albosta	Coats	Fenwick
Alexander	Coelho	Fiedler
Anderson	Coleman	Fields
Andrews	Collins (TX)	Findley
Annunzio	Conable	Flippo
Anthony	Corcoran	Foglietta
Applegate	Coughlin	Foley
Archer	Courter	Ford (TN)
Ashbrook	Coyne, James	Forsythe
Aspin	Craig	Fountain
Badham	Crane, Daniel	Fowler
Bafalis	Crane, Phillip	Frenzel
Bailey (PA)	D'Amours	Frost
Barnard	Daniel, Dan	Fuqua
Barnes	Daniel, R. W.	Gaydos
Beard	Dannemeyer	Gedensson
Bedell	Daschle	Gephardt
Benedict	Daub	Gibbons
Benjamin	Davis	Gingrich
Bennett	de la Garza	Ginn
Bereuter	Deckard	Glickman
Bethune	Derwinski	Goldwater
Bevill	Dickinson	Goodling
Blaggi	Dicks	Gore
Blanchard	Donnelly	Gradison
Billey	Dorgan	Gramm
Boggs	Dornan	Green
Boiland	Dougherty	Gregg
Boner	Dowdy	Grisham
Bouquard	Downey	Guarini
Bowen	Dreier	Gunderson
Breaux	Duncan	Hagedorn
Brinkley	Dunn	Hall, Ralph
Broomfield	Dyson	Hall, Sam
Brown (CO)	Early	Hamilton
Brown (OH)	Edwards (AL)	Hammer Schmidt
Broyhill	Edwards (OK)	Hance
Burgener	Emerson	Hansen (ID)
Butler	Emery	Hansen (UT)
Byron	Erdahl	Harkin
Campbell	Erlenborn	Hartnett
Carman	Ertel	Hatcher
Carney	Evans (DE)	Hefner
Chappell	Evans (GA)	Hefstel
Chappie	Evans (IA)	Hendon
Cheney	Fary	Hertel

Hiler	McGrath	Shannon
Hillis	McHugh	Sharp
Holland	McKinney	Shaw
Holt	Mica	Shelby
Hopkins	Michel	Shumway
Hoyer	Miller (OH)	Shuster
Hubbard	Mineta	Sijlander
Huckaby	Mitchell (NY)	Skeen
Hunter	Molinari	Skelton
Hutto	Mollohan	Smith (AL)
Hyde	Montgomery	Smith (NE)
Ireland	Moore	Smith (NJ)
Jeffords	Moorhead	Smith (OR)
Jeffries	Morrison	Snowe
Jenkins	Murtha	Snyder
Jones (OK)	Myers	Solomon
Jones (TN)	Napier	Spence
Kazen	Natcher	Stangeland
Kemp	Neal	Stanton
Kindness	Nelligan	Staton
Kramer	Nelson	Stenholm
Lagomarsino	Nichols	Stratton
Lantos	Nowak	Stump
Latta	O'Brien	Swift
Leach	Panetta	Tauke
Leath	Parris	Tauzin
LeBoutillier	Pashayan	Taylor
Lee	Pepper	Thomas
Lehman	Perkins	Trible
Lent	Petri	Udall
Levitas	Pickie	Vander Jagt
Lewis	Porter	Volkmer
Livingston	Price	Walker
Loeffler	Pritchard	Wampler
Long (LA)	Quillen	Watkins
Lott	Rahall	Weber (MN)
Lowery (CA)	Railsback	Weber (OH)
Lujan	Regula	White
Luken	Rhodes	Whitehurst
Lundine	Rinaldo	Whitley
Lungren	Ritter	Whittaker
Madigan	Roberts (KS)	Williams (MT)
Markis	Roberts (SD)	Williams (OH)
Marlenee	Robinson	Wilson
Marriott	Roe	Winn
Martin (IL)	Roemer	Wolf
Martin (NC)	Rogers	Wortley
Martin (NY)	Rose	Wright
Mavroules	Roth	Wyden
Mazzoli	Roukema	Wyllie
McClary	Rousselot	Yatron
McCloskey	Rudd	Young (AK)
McCollum	Sawyer	Young (FL)
McCurdy	Schneider	Young (MO)
McDade	Schulze	Zablocki
McDonald	Sensenbrenner	Zeferetti
McEwen	Shamansky	

NOT VOTING—12

Bonker	Fithian	Jones (NC)
Cotter	Ford (MI)	Miller (CA)
Derrick	Hawkins	Santini
Dymally	Johnston	Savage

The Clerk announced the following pairs:

Mr. Miller of California for, with Mr. Jones of North Carolina against.

Messrs. PEPPER, FOUNTAIN, and EVANS of Georgia changed their votes from "aye" to "no."

Mr. STOKES changed his vote from "no" to "aye."

So the Government Operations Committee amendment was rejected.

The result of the vote was announced as above recorded.

□ 1400

JUDICIARY COMMITTEE AMENDMENT

The CHAIRMAN. The Clerk will report the Judiciary Committee amendment.

The Clerk read as follows:

Judiciary Committee amendment: Page 43, strike out line 12 and all that follows through line 17 on page 45 and insert in lieu thereof the following:

CHAPTER 18—MILITARY COOPERATION WITH CIVILIAN LAW ENFORCEMENT OFFICIALS

Sec.

371. Use of information obtained by mem-

bers of the Army, Navy, Air Force, and Marine Corps.

372. Use of Army, Navy, Air Force, and Marine Corps equipment and facilities.

373. Training and advising civilian law enforcement officials.

374. Regulations.

375. Military personnel assistance.

§371. Use of information obtained by members of the Army, Navy, Air Force, and Marine Corps

The Secretary of Defense may, in accordance with other applicable law, provide to Federal, State, or local law enforcement officials any information collected during the normal course of military operations that may be relevant to a violation of any Federal or State law within the jurisdiction of such officials.

§372. Use of Army, Navy, Air Force, and Marine Corps equipment and facilities

The Secretary of Defense may, in accordance with other applicable law, make available any equipment, base facility, or research facility of the Army, Navy, Air Force, or Marine Corps to any Federal, State, or local civilian law enforcement official for law enforcement purposes.

§373. Training and advising civilian law enforcement officials

The Secretary of Defense may assign members of the Army, Navy, Air Force, and Marine Corps to train Federal, State, and local civilian law enforcement officials in the operation and maintenance of equipment made available under section 372 of this title and to provide expert advice relevant to the purposes of this chapter.

§374. Regulations

(a) The Secretary of Defense shall issue such regulations as may be necessary to assure that the provision of any assistance, or the provision of any equipment or facility, to any law enforcement official under this chapter does not—

(1) adversely affect the military preparedness of the United States; or

(2) include or permit direct participation by any member of the Army, Navy, Air Force, or Marine Corps in any search and seizure, arrest, or other similar activity unless participation in such activity by such member is otherwise authorized by law.

(b) The Secretary of Defense shall issue regulations providing that reimbursement may be a condition of assistance to any law enforcement official under this chapter.

§375. Military personnel assistance

The Secretary of Defense, upon request from the head of a Federal agency with jurisdiction to enforce the Controlled Substances Act or the Controlled Substances Import and Export Act, may assign members of the Army, Navy, Air Force, or Marine Corps to operate and maintain or assist such agency's law enforcement officials in operating and maintaining equipment made available under section 372 of this title with respect to any violation of the Controlled Substances Act or the Controlled Substances Import and Export Act.

Mr. HUGHES [during the reading]. Mr. Chairman, I ask unanimous consent that the Judiciary Committee amendment be considered as read, printed in the Record, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

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Mr. HUGHES. Mr. Chairman, I move to strike the last word.

(Mr. HUGHES asked and was given permission to revise and extend his remarks.)

Mr. HUGHES. Mr. Chairman, the amendment now before the House to section 908 of H.R. 3519 is the result of a sequential referral of this section to the Committee on the Judiciary. This amendment differs substantively in several respects from the approach taken in the version of the bill reported by the Armed Services Committee. Let me attempt to succinctly outline the differences between the two approaches and the public policy implications of each.

As I said yesterday, and as was noted by all of the other speakers during the general debate on this question, we are deeply indebted to our colleague CHARLES BENNETT. His leadership in this area is commendable. The Judiciary Committee started with the suggestions he had developed. As good as his suggestions were, however, there were a number of refinements which were necessary.

The version of section 908 found in the Armed Services bill was the result of an amendment offered in committee and without any hearings. While virtually everyone in the areas of drug law enforcement agreed that changes in the so-called Posse Comitatus Act were necessary, there was very little focus on the exact parameters of the changes to be made. The Bennett approach had never been scrutinized by the Departments of Defense or Justice, the agencies most affected by these proposals.

The Committee on the Judiciary's Subcommittee on Crime held hearings on these proposals. Most of the witnesses found merit in the idea of clarifying the types of indirect assistance which can be rendered to civilian law enforcement authorities. Both the Department of Defense and the Department of Justice, however, strongly opposed the suggestion that the military become involved directly in the process of arresting and seizing drug law violators. Both agencies established to the satisfaction of the committee that there was no need to give the military this authority. The types of law enforcement missions which are involved in the interdiction of drug smugglers and the like inevitably will involve the presence of DEA, Customs, or Coast Guard personnel. These civilian authorities are trained to make arrests and seizures, thus there is no need to involve the military directly.

Both Justice and Defense opposed Mr. BENNETT's proposed section 375 because the military was not trained to be directly involved in making arrests. This lack of training has at least three potential adverse consequences:

First, the military could make mistakes in effectuating the seizures or arrests and the arrests could be thrown out by a court.

Second, the military, who are trained and prepared to engage in combat and to operate outside the limitations which we have placed on civilian law enforcement, could be tempted to use excessive force to achieve the arrests or seizures.

Third, training of the military to make these arrests would be costly and inevitably divert the military from its primary mission of defending this country. Because the military would be unable to anticipate which vessels or aircraft and personnel would be called upon to make arrests, virtually all of them would have to be trained to make these arrests. This type of training would take time and resources from our military preparedness. As an active participant in arrest, search and seizure they would be subjected to the constraints of a primary witness in the judicial process.

The Committee on the Judiciary carefully evaluated this testimony and agreed to reject the arrest authority suggested by Mr. BENNETT. The Judiciary Committee version is supported by the Justice Department and, with the White amendment, also by the Defense Department, and is virtually identical to the provisions in the authorization bill already adopted by the Senate.

No one in Federal or State law enforcement, including the Justice Department, former Attorney General Griffin Bell—who is currently cochairman of the Attorney General's Violent Crime Task Force—Customs, DEA, or Coast Guard has suggested that the military be given the arrest authority. The Bennett approach is opposed by an unlikely alliance of the Departments of Justice, Defense, and the American Civil Liberties Union. The approach taken by the Judiciary Committee on the other hand, gives law enforcement all the tools they need and all that they have asked for.

Mr. Chairman, adoption of the provisions found in the Bennett version of section 908 would cause unnecessary controversy and could have substantially serious adverse consequences. Therefore, the House should heed the advice of those who call for restraint in making drastic or dramatic changes in the fundamental law of our country with respect to the balance between military and civilian spheres by adopting the amendment offered by the Judiciary Committee.

Before concluding, I would like to clarify several other points of difference between the Judiciary Committee amendment and the provisions of the Bennett version. First, in response to the concerns of the Committee on Government Operations, several technical—but important—changes were made to assure that the process by which information shared by the military with civilians is governed by the provisions of existing law such as the Privacy Act. This change was also supported by the Department of Justice and Defense. In addition, a similar

change was made in proposed section 372 with respect to the disposition of equipment and other property by the military. As written, Mr. BENNETT's approach would have the effect of overturning decades of congressional enactments with respect to the procedures for property disposal or loans. Thus, the Judiciary Committee amendment meets these problems and satisfies the objections of the Committee on Government Operations in this regard.

Finally, I should point out that the Judiciary Committee amendment has been carefully fine tuned. Under the Bennett version, the Coast Guard is made subservient to the Secretary of Defense during peacetime for certain purposes. This change in command authority and Cabinet structure was probably not done by design; however, this unintended result is a good example of why legislation should be developed first at the subcommittee level and generally only after a set of hearings.

Mr. Chairman, I must add in closing that after the House hears from my distinguished colleague from Michigan on this matter, we expect to hear from our colleague from Texas with a perfecting amendment. For the reasons to be propounded by the gentleman, we are prepared to gladly accept his amendment.

I hope that you will support the amendment offered by the Committee on the Judiciary.

□ 1410

Mr. ZEFERETTI. Will the gentleman yield?

Mr. HUGHES. I am happy to yield to my colleague from New York (Mr. ZEFERETTI).

Mr. ZEFERETTI. I thank the gentleman for yielding. I want to commend the gentleman for his statement that he just made and want to associate myself with his remarks. If there ever was a time that we are going to break through this drug trafficking problem that we have with this drug industry that regulates some \$70 billion in this country, I think now is the time. If we are ever going to have the tools necessary to make that effort a sincere one, it is by using that kind of assistance from the military. But I agree with the gentleman wholeheartedly that using the men in the service is not the answer. It takes a special kind of skill and profession to do that, to make an arrest in a proper manner.

In our efforts to make that arrest, if the men are not trained—and the military men would not be trained in that effort—we could do a lot of damage to have that effort be going forward in a profitable way.

So I want to commend the gentleman for his statement and tell him to go forward and make that amendment possible, but, along with that, include the White amendment and make it possible for our law enforcement

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people to get the kind of tools necessary to do their job.

Mr. HUGHES. I thank the gentleman for his significant contribution.

The CHAIRMAN. The time of the gentleman from New Jersey has expired.

(By unanimous consent, Mr. HUGHES was allowed to proceed for 3 additional minutes.)

Mr. HUGHES. I commend the gentleman from New York (Mr. ZERRETTI). He has demonstrated a great deal of leadership as chairman of the Select Committee on Narcotics. The gentleman has a background in law enforcement. He knows how important it is to make sure that we have proper training or those with the power of arrest.

Just this morning the gentleman from Louisiana, BILLY TAUZEN, engaged in a colloquy with the Coast Guard in our Merchant Marine and Fisheries Committee, on the subject of the problems we now run into, even when the Coast Guard are trained to board and to arrest and to seize, the myriad of legal entanglements that we involve ourselves in, even when we provide training. How in the world can we train all military personnel in the law enforcement field to deal with the problem that will confront them. Defense attorneys are looking for any little mistake to ask our court to throw out the entire matter. These drugs cases are extremely important and we have to make certain that we know what we are doing when we provide additional authority, as we are doing in this bill, so that there is a role for the military, but a limited one.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. HUGHES. I am happy to yield to my colleague from Kentucky (Mr. MAZZOLI).

Mr. MAZZOLI. I thank the gentleman for yielding. I would like to commend him for the work that he did in the full committee and here on the floor on behalf of the proper kind of law enforcement. Certainly the drug problem is one of the most pernicious in the country and in the world, and I think the gentleman will actually go down in history as being one of the prime movers of a proper response.

I would like to ask the gentleman one question. I understand in his statement he has accepted the amendment soon to be offered by the gentleman from Texas (Mr. WHITE). If I understand that amendment, I believe it extends the reach of the posse comitatus to customs matters and immigration and enforcement. As chairman of the Immigration Subcommittee of the House Judiciary Committee, I have to say that we have never, as a committee, come to grips with the question of interdiction, when it should be done, how it should be done, by what method, using which personnel.

I wonder if the gentleman's subcommittee took that up and what his argument would be in behalf of ex-

tension of this principle to these cases when, so far as I know, there was not, at least in our point, any legislative history.

Mr. HUGHES. If the gentleman would bear with me, first of all the Justice Department sought the extension for many very valid reasons, and we discussed them and debated them in full committee and decided to come down as we did. But often we do not know what type of investigation we are dealing with. We may believe at first it is a drug-related matter, but often it turns out to be a drug-related matter, or immigration matter, or customs matter, or all three. It could conceivably provide defense counsel with additional arguments. If, in fact, we extend posse comitatus, for instance, in the loaning of the military personnel to operate sophisticated equipment for drug enforcement matters, but not for immigration matters, which are often interrelated, as well as customs matters; so in order to avoid that particular problem we intend to extend it to those two other areas. The Justice Department supports that extension.

The CHAIRMAN. The time of the gentleman from New Jersey has again expired.

(At the request of Mr. MAZZOLI and by unanimous consent, Mr. HUGHES was allowed to proceed for 2 additional minutes.)

Mr. MAZZOLI. Will the gentleman from New Jersey yield?

Mr. HUGHES. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. I thank the gentleman. I will not ask for further time. I am wondering if the gentleman is satisfied that we are not inadvertently, by acceptance of the amendment of the gentleman from Texas, creating a whole new law which deals with interdiction on the high seas which could involve foreign policy matters and, in addition to which, of course, many constitutional and legal matters arise in an effort to give proper attention to the drug-related crimes? Is the gentleman satisfied, having examined all of these, that we are not going too far?

Mr. HUGHES. I might say to my colleague that we have given it as much attention as we can. We have conducted hearings, as the gentleman well knows, and heard from the agencies that are impacted and others on the issue. We have tried to carefully craft the amendment to take care of existing needs.

It is my intent as chairman of the Subcommittee on Crime to take up posse comitatus either later this year or early next year to look at the criminal sanction aspect of it. The matter was before us on sequential referral and we were unable to deal with the penal provisions.

But I think we have done a relatively decent job of trying to focus in on just exactly the areas where the military can provide assistance to the drug and other agencies.

Mr. MAZZOLI. I thank the gentleman very much.

Mr. WHITE. Mr. Chairman, will the gentleman yield?

Mr. HUGHES. I yield to the gentleman from Texas (Mr. WHITE).

Mr. WHITE. I would say in response to the gentleman from Kentucky (Mr. MAZZOLI), I think it is the understanding from the Attorney General's Office that they were concerned, No. 1, about the matter the gentleman from New Jersey (Mr. HUGHES) brought up about an arrest and then having a defense in the event that it turned out to be a different crime.

In addition, I would ask the gentleman to understand the amendment I have relates only to surveillance, the use of surveillance equipment, and monitoring equipment. I think with the number of people that are coming into this country in boats, I think they were interested in the use of naval facilities and naval surveillance only. That amendment and the committee change does not call for arrest or apprehension at all, as the gentleman would understand.

The CHAIRMAN. The time of the gentleman from New Jersey has again expired.

(By unanimous consent Mr. HUGHES was allowed to proceed for 3 additional minutes.)

Mr. HUGHES. I want to say one additional thing. The first four sections basically are a codification essentially of present practice. Right now the Immigration and the Customs Services do use intelligence information provided by the military as a matter of course and they are able, from time to time, to piggyback with equipment a routine flight and Customs often uses that equipment. If, in fact, we exclude Customs and Immigration, we might be suggesting by negative implication that we do not wish to condone what is, indeed, the present practice. That is something else that gave us some concern.

Mr. MAZZOLI. Will the gentleman yield further?

Mr. HUGHES. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. I thank the gentleman for his indulgence and, in fact, I thank the committees for their indulgence too, because we may be putting the cart before the horse. But I think the gentleman from Texas (Mr. WHITE) said just a moment ago that his amendment does not deal with what was commonly called interdiction. That is a word that has newly come into the lexicon, but I guess it means actively intercepting a boat or some cargo. If I understand the gentleman's amendment correctly, which the gentleman from New Jersey has accepted, it deals only with surveillance.

But in the event the President, in his comprehensive plan on immigration, comes in with a recommendation for interdiction of ships on the high

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seas, the gentleman's amendment would not influence that. That would be another piece of legislation which would have to come before the gentleman from Kentucky's committee?

Mr. WHITE. If the gentleman will yield?

Mr. HUGHES. I am happy to yield to the gentleman from Texas to respond.

Mr. WHITE. The Judiciary Committee's amendment, and the amendment that I have to that, would only permit use of equipment. I presume they could transport, but as far as arrest and apprehension and seizure, that must be done by the existing authorities and not by the military.

Mr. MAZZOLI. That would have to come before, if I might have 1 final second, that type of authority would have to come before the House Judiciary Committee and its various subcommittees in the event the President recommends that as a part of his plan; is that correct?

Mr. HUGHES. That would be correct.

Mr. EVANS of Georgia. Mr. Chairman, will the gentleman yield?

Mr. HUGHES. I yield to the gentleman from Georgia (Mr. EVANS).

Mr. EVANS of Georgia. I thank the gentleman for yielding.

In the opinion of the gentleman, what we would be doing with the Hughes version of this bill is, as amended by the White amendment, in the event we have a situation in which there were personnel present from the armed services, present with civilian law enforcement, under the present law or under the bill as it would be amended, could those people assist the civilian law enforcement in search or seizure or any of the other things that we are not authorizing the military authority to do?

Mr. HUGHES. Under the Bennett version of the bill, the authority is granted, provided the Secretary of Defense makes the findings that are required by that section of the armed services bill, to permit the military to make arrests and seizures.

□ 1420

Under the Judiciary Committee approach, what we have tried to avoid is that confrontational setting.

While we give the authority to provide equipment and the loan of military personnel to operate that equipment, we do not provide for the right to arrest or seize.

The CHAIRMAN. The time of the gentleman from New Jersey (Mr. HUGHES) has expired.

(By unanimous consent, Mr. HUGHES was allowed to proceed for 1 additional minute.)

Mr. EVANS of Georgia. If the gentleman will yield further, in the event that personnel was present and not sufficient civilian personnel were present to effect a search, or whatever, could the military, under the gentleman's version of the bill as amended

by White, assist civilian law enforcement in a support capacity to effect what I have asked?

Mr. HUGHES. Well, we have mandated that the support capacity is one of providing equipment and personnel to operate the equipment.

The law enforcement community tells us that they have ample personnel to provide civilian law enforcement officials to carry out arrest and seizure.

I might say that under the Bennett version, however, we have a major blind spot. In that under the Bennett version, the military could not provide the manpower to operate the equipment.

One of the major problems we have is that the offer of equipment without military personnel to operate it is an empty gesture.

Under the Bennett approach, it speaks of assisting in arrest or seizure—not of operating and maintaining equipment.

The CHAIRMAN. The time of the gentleman from New Jersey (Mr. HUGHES) has again expired.

(On request of Mr. RUDD and by unanimous consent, Mr. HUGHES was allowed to proceed for 2 additional minutes.)

Mr. RUDD. Mr. Chairman, if the gentleman will yield, I would like to clarify one issue with regard to whether or not the gentleman has no objection to the presence of military police at the time of an arrest without participating in the arrest itself. Because does not the gentleman presume that they are properly trained in this area?

Mr. HUGHES. Of course, when you are talking about military police, you are talking about something else again. Military police have a law-enforcement responsibility on the base or on shore and have responsibility over military personnel. We are talking about something else again. We are talking about arrests or seizures or investigations which are primarily within the province of civilian law enforcement.

Mr. RUDD. That is what I am talking about.

But there would be no objection to the presence of military personnel at the situs of an arrest?

Mr. HUGHES. If in fact their presence is there in a capacity approved by the Defense Department under regulations which the Defense Department is required under section 374 to promulgate.

Mr. RUDD. I thank the gentleman.

Mr. BENNETT. Mr. Chairman, will the gentleman yield?

Mr. HUGHES. I yield to the gentleman from Florida.

Mr. BENNETT. Mr. Chairman, I just want to make one thing clear.

I think the gentleman misconstrued a little bit the language of section 375, because it does provide: "The Secretary of Defense, upon request from a Federal drug agency, is authorized to assign members of the Armed Forces

to assist Federal drug enforcement officials in drug seizures or arrests provided" these other things transpire.

And, of course, it was never my intention, not the intention of the requirement of that provision that they could not operate the material, they could not operate the ships. There is no way in which you are going to get the Department of Justice to operate a naval ship. So it is inherent in what I have provided here. If you want an amendment to make that clear, it certainly was my intention and the intention of the committee that they would operate these ships and do everything that the gentleman suggests under his amendment.

Mr. HUGHES. I say to the gentleman that I have no doubt that the gentleman intended to permit the military to assign personnel to operate and maintain the equipment, but it does not say that.

Mr. BENNETT. It is inherent in what is said here, and this colloquy has cleared it up. That is the intention of the law.

Mr. GILMAN. Mr. Chairman, will the gentleman yield?

Mr. HUGHES. I yield to the gentleman from New York.

The CHAIRMAN. The time of the gentleman from New Jersey (Mr. HUGHES) has again expired.

(On request of Mr. GILMAN and by unanimous consent, Mr. HUGHES was allowed to proceed for 2 additional minutes.)

(Mr. GILMAN asked and was given permission to revise and extend his remarks.)

Mr. GILMAN. Mr. Chairman, I want to associate myself with the remarks by the gentleman from New Jersey (Mr. HUGHES), and to commend him and his subcommittee for bringing this issue to the House floor.

I rise in support of the Judiciary Committee amendment, as amended by the gentleman from Texas (Mr. WHITE), permitting the assignment of military personnel to operate and maintain military equipment made available to civilian drug law enforcement authorities and limiting the operation of such equipment to monitor and communicate the movement of air and sea drug trafficking entering or leaving the United States.

I comment, too, the gentleman from Florida (Mr. BENNETT) for his efforts to help stem the flow of drug trafficking into our Nation, but I believe that the gentleman's proposal would go too far by also authorizing our Armed Forces to make drug seizures and arrests. I have been informed that the Department of Defense opposes the direct involvement of Armed Forces personnel in such civilian law enforcement functions.

As a cosponsor of a measure similar to the measure offered by the Judiciary Committee and as a member of our Narcotics Select Committee that has extensively studied the drug prob-

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lem both here and abroad. I want to remind my colleagues that if the war against drug trafficking is going to be won, then military intelligence, equipment, personnel, training, and technical advice to civilian drug law enforcement agencies are urgently needed. We should, however, resist efforts to clothe our Armed Forces with the policing authority or making drug searches, seizure, and arrests—a function that is beyond the scope of their training and expertise and one that is best left to civilian law enforcement authorities.

Narcotics trafficking and drug abuse in our Nation represent a staggering billion dollar business—a \$64 billion business. Our drug law enforcement officials unfortunately lack the jet planes, the swift vessels, and other sophisticated equipment to compete with the highly organized, well-financed drug traffickers. The Judiciary Committee amendment, as amended by the White proposal, would shore up our defenses against the drug traffickers by providing our Nation with military equipment, base facilities, training capabilities, and personnel to help our drug law enforcement officials interdict the flow of illicit drugs crossing our extensive borders and thousands of miles of shoreline. Accordingly, I urge my colleagues to support the White amendment.

Mr. HUGHES. I thank my colleague, a very valued member of the Select Committee on Narcotics, who has been a leader in this entire area.

Mr. BETHUNE. Mr. Chairman, will the gentleman yield?

Mr. HUGHES. I yield to the gentleman from Arkansas.

Mr. BETHUNE. Mr. Chairman, I am genuinely concerned about the gentleman's approach to the situation, the Judiciary Committee's approach, and Chairman BENNETT's approach for reasons which I will get into as the debate wears on. But there is one that I would like to pursue at this moment.

The gentleman spoke a moment ago to the wisdom of the Judiciary Committee's approach in separating out arrest and search and seizure.

I have a letter here from the General Counsel of the Department of Defense addressed to the gentleman in the well, wherein he makes the point that law enforcement operations, particularly those involving drugs, tend to be intense confrontational matters and it is unreasonable to expect—

The CHAIRMAN. The time of the gentleman from New Jersey (Mr. HUGHES) has again expired.

(On request of Mr. BETHUNE, and by unanimous consent, Mr. HUGHES was allowed to proceed for 5 additional minutes.)

Mr. BETHUNE. And it says, further, that it is unreasonable to expect that the crew of a military helicopter or armored vehicle will stand by in the midst of an operation without assisting law enforcement officials in arrest

or seizure should the situation necessitate such action.

And it occurred to me the other day, when we were debating this issue and I wandered in unexpectedly and asked a few questions, that perhaps we were creating some difficulties, perhaps we were creating a fertile field for those imaginative lawyers out there who would raise points and argue that evidence should be excluded, because we were drawing the line that the Judiciary Committee seeks to draw.

Mr. HUGHES. Well, the fact of the matter is that the gentleman has a broad background in law enforcement, as I do and as does our ranking minority member, and we believe that in fact what we have done is try to prevent what could be a rash of technical motions directed by the Defense counsel at personnel who are not trained in that type of confrontation situation, who are not versed in the area of arrests, search or seizure, who should not be subjected to the magistrate's proceedings, grand jury proceedings, and court trials. They are soldiers. They are not law enforcement officials.

Mr. BETHUNE. If I could make this point: Under the present state of the law, however, they are precluded from doing anything, and we still have a number of cases where they wander into the law enforcement situation, giving rise to Defense counsel's objection and motion to exclude evidence.

Mr. HUGHES. That is precisely why we have drafted our language so that we try to avoid that type of a confrontation.

The only area that civilian law enforcement needs help—I think this is the key—is in the area of providing equipment and personnel to operate that sophisticated equipment. That is why it is carefully drawn to provide the operation and maintenance of the equipment. The rest is basically a codification of existing practice.

Mr. BETHUNE. Does not the Coast Guard now have the power to—

Mr. HUGHES. That is by specific statute. They are a law enforcement agency.

Mr. BETHUNE. But presumably if we empower the military to get involved here, it would be to be sort of as deputy to the Coast Guard, if we limit it to extraterritorial effect.

Why should the Navy or the Marines, or whoever else comes in to assist the Coast Guard in those instances, have restrictions on them that will not be on the Coast Guard? And are we not then creating some delineations that will be used, as a matter of fact?

Mr. HUGHES. We are creating a very important delineation, and the delineation is that the military's mission is preparedness, national defense. They are not policemen, and they do not want to be policemen, and we do not want them to be policemen. The law enforcement agencies of the country, including the Justice Department

and every agency that has testified before our committee believes that they do not need that authority. They have ample manpower to take the lead in making arrests and seizures, and they have a difficult enough time trying to contain evidence even when they are trained to do it let alone having people who are untrained actively participating in an operation.

□ 1430

Mr. BETHUNE. The gentleman mentioned a moment ago that he has not discussed the idea of criminal sanctions yet on the committee, or have not at least shaped any sanctions that might be employed. This is a very important point, because many of the court decisions I have read in the last few days make the point that there has never really been a prosecution under those statutes for violation of posse comitatus prohibition, and the courts say there have not been enough unlawful searches and seizures and arrest procedures by the military up to this point for them to fashion an exclusionary rule. So, therefore they have really done nothing and there are no sanctions there right now.

Mr. HUGHES. There are sanctions. There is a criminal penalty.

Mr. BETHUNE. But it has never been prosecuted. The court, I can cite case after case—

Mr. HUGHES. I say to the gentleman, what difference does it make? It is still a criminal statute and any field commander that has to make a fast decision as to whether to give a piece of equipment is going to think about the Federal statute. That is one of the reasons we are trying to address the concerns of the law enforcement community.

Mr. BETHUNE. Have there been prosecutions?

Mr. HUGHES. There have been no prosecutions.

Mr. BETHUNE. It has been on the books for 100 years.

Mr. HUGHES. The fact of the matter is, it is there, and it has had a chilling effect. The testimony is that there are times when field commanders will resolve an issue against a law enforcement agency for fear that they might invoke that criminal statute.

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. HUGHES. I yield to my colleague from Illinois.

Mr. McCLORY. Mr. Chairman, I think the importance of this legislation is that it would remove the restraints which have prevented the military from providing the kind of support through information and through use of equipment and through training of personnel that can be so extremely useful, particularly in the drug traffic.

The CHAIRMAN. The time of the gentleman from New Jersey has again expired.

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(At the request of Mr. McCLORY and by unanimous consent, Mr. HUGHES was allowed to proceed for 2 additional minutes.)

Mr. McCLORY. If the gentleman will yield further, I think the fact that there have been no prosecutions is entirely beside the point. The fact that there has been a lack of cooperation has been a recognition of what the existing law is, but as the gentleman pointed out, most of this amendment that we are offering here is in existing law, and the amendment to our amendment which is offered, being offered by the gentleman from Texas (Mr. WHITE), does limit the use of equipment and personnel to areas outside the United States, so that we are not having the military involved in any kind of support operation within the country, and then at the same time it is authorizing the assignment of personnel for the purpose of operating and maintaining and assisting in the operation and maintaining of equipment, as the gentleman stated.

So that, the Judiciary Committee amendment plus the amendment to be offered by the gentleman from Texas does, it seems to me, specifically identify the kind of support that we want, particularly in the area of drug enforcement, but incidentally in connection with immigration and customs cases.

Mr. HUGHES. The gentleman is absolutely right. In fact, the White amendment does provide for those instances where aircraft have to take off and land in the continental United States, and it takes care of the coastal problems we have and problems in the estuaries. So, the amendment has been carefully crafted to take care of the needs of the law enforcement community, and we have provided for the law enforcement agencies exactly what they have requested.

Mr. McCLORY. I want to commend the gentleman from New Jersey and the ranking minority member the gentleman from Michigan (Mr. SAWYER) for their major contribution in perfecting this part of the Department of Defense authorization legislation.

Mr. HUGHES. I thank the gentleman, and commend him for his leadership.

Mr. SEIBERLING. Mr. Chairman, will the gentleman yield?

Mr. HUGHES. I will be happy to yield to the gentleman from Ohio.

Mr. SEIBERLING. Mr. Chairman, I too would like to add my commendation. As a member of the Judiciary Committee, I was very concerned when the question came before us.

The CHAIRMAN. The time of the gentleman from New Jersey has again expired.

(At the request of Mr. SEIBERLING and by unanimous consent, Mr. HUGHES was allowed to proceed for 3 additional minutes.)

Mr. SEIBERLING. We are all threatened and our children are threatened by the drug traffic, but

that does not mean we should not be very careful in how we proceed against it.

As I understand, the Posse Comitatus Act came out of the abuse of the military law enforcement in the so-called reconstruction era, and it was out of the same experience of that time and some of the other disorders that the act was enacted. I think the gentleman's amendment strikes a good balance between cautious authorization of the use of military equipment in appropriate circumstances, particularly with the amendment to be offered by the gentleman from Texas (Mr. WHITE) limiting it to offshore areas and aerial surveillance.

Now, in recent experience we used military law enforcement, military enforcement of civilian laws in an area which happens to be in my district. In Kent State University in 1970 the National Guard was given a practically blank check to enforce the civilian laws against civil disorders. Result: Four students killed, another group of students wounded, and a bunch of GI's and officers dragged through the courts for 10 years. Why? because they had no experience in this kind of situation. They were not given the adequate backup by the civilian authorities, and I would hope that we would learn from that more recent experience that we must be very, very cautious about involving the military in civilian law enforcement.

Rather significantly, the Defense Department itself wrote us a letter and asked that we not get them involved. So, I feel that the gentleman has moved about as far as we ought to go, and at the same time has preserved the very distinct line between military functions and those of the civil law enforcement authorities.

Mr. HUGHES. I thank the gentleman for his very important statement, and I urge my colleagues to vote for the Judiciary Committee amendment to the armed services bill.

Mr. SAWYER. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

(Mr. SAWYER asked and was given permission to revise and extend his remarks.)

Mr. SAWYER. Mr. Chairman, I realize this has now been pretty well talked to death, and I as ranking Republican on the Crimes Subcommittee am in total agreement with the amendment as now offered and as will be amended by the amendment to be offered by Mr. WHITE of Texas.

Basically, I cannot feel very upset about allowing the military to intervene and assist civilian law enforcement, but we nevertheless bring down a great wave of concern once we do that. It does have some open avenues of abuse. The military are not trained in such things as Miranda warnings which might render unusable admissions or confessions that are made. They are not familiar with the restric-

tions on seizure of properties and whatnot. This is just not their training.

I am sure that if we were to follow up the concern of legal counsel for the Department of Defense, who says it is totally unrealistic to think the military would stand by while the civilian arresters were, let us say, viciously attacked without assisting, I agree it would be unrealistic. On the other hand, I cannot conceive of any court convicting them of a violation of the criminal statute of posse comitatus under those circumstances. I think that rather than add legitimacy to military participation in civilian law enforcement, for which they are not trained, we have gone about as far as we should go. We expressly permit the military's operation of sophisticated equipment. We remove the fear of prosecution, if you will, that military commanders are kind of wont to use, that they do not want to help or they do not want to even give information because they might be subject to this criminal penalty.

I think we have clarified that. While it is true that there never have been any criminal prosecutions, I too have read all the cases under this statute and there have been denials of claims under the Tort Claims Act on the basis that the military, who are merely helping look for some escaped convicts with their helicopters, were operating outside their duty and in violation of the law. Therefore, some injured people were denied their Federal tort claims resulting from the crash of a helicopter. So, its validity has been recognized even though not criminally enforced. I think with the amendments to be offered by the gentleman from Texas, going as far as the gentleman from New Jersey and I and our subcommittee hearings, both the Defense Department and the Justice Department, say they do not need military assistance and participation in the arrest or seizures, we have gone just about as far as we should go and we get the maximum mileage.

□ 1440

Mr. RAILSBACK. Mr. Chairman, will the gentleman yield?

Mr. SAWYER. I yield to the gentleman from Illinois.

Mr. RAILSBACK. Mr. Chairman, I want to agree with the gentleman in the well. I happen to be a member of the Judiciary Committee, but in addition, I happen to be a member of the Select Committee on Narcotics, and I think it is most significant that the testimony before the Narcotics Committee indicates that the law enforcement people believed they would have no trouble handling the job, but they wanted the use of the very sophisticated tracking equipment and the intelligence capability that the Armed Services could provide to them.

I agree with what the gentleman in the well has said, and I want to com-

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mend him and the others who have made the points he made. I would also say that the members of the Armed Services Committee, however, including the gentleman from Florida (Mr. BENNETT), are, I think, doing the right thing in making the effort to do what they are trying to do; namely, to help combat drug abuse. I just think the bill goes a little too far, although I think the thrust of the two bills, the amendment and what is contained in the bill, is the same. I think the Judiciary Committee refines it and reverses what has been the traditional practice.

Mr. SAWYER. Mr. Chairman, I thank the gentleman from Illinois (Mr. RAILSBACK).

I would say that the amendment is strictly a refinement of a weak link in the chain and makes an improvement on what was basically the initiative of the gentleman from Florida.

Mr. BETHUNE. Mr. Chairman, will the gentleman yield?

Mr. SAWYER. I yield to the gentleman from Arkansas.

Mr. BETHUNE. Mr. Chairman, I thank the gentleman for yielding, and I do not mean to be a bother. I am not on the Judiciary Committee, so I am just trying to catch up to its speed here.

Mr. SAWYER. Yes. We are doing a pretty good job.

Mr. BETHUNE. Not being on the committee is either an advantage or a disadvantage, and I have not decided which yet.

Mr. SAWYER. To the gentleman or to the committee?

Mr. BETHUNE. Mr. Chairman, last week I asked the gentleman in the well whether or not we might encounter a situation under the Judiciary Committee's approach where a defense attorney would argue that a military man had involved himself in someway or another peripherally in the arrest circumstance, and, therefore, running afoul of the Judiciary Committee approach, the evidence should be excluded.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. SAWYER) has expired.

(On request of Mr. BETHUNE, and by unanimous consent, Mr. SAWYER was allowed to proceed for 2 additional minutes.)

Mr. BETHUNE. Mr. Chairman, if the gentleman will yield further, I think the gentleman's response was that he was not certain that that would occur or he did not know of any cases to that effect.

I in the meantime have looked very assiduously for a case in the gentleman's own jurisdiction, and I found one wherein the court held that the use by the State police of a member of the U.S. Air Force in arresting a drug traffic offender was not proper, that posse comitatus was designed to prohibit the use of military personnel as agents for enforcement of civil law,

and the airman, therefore, could not properly testify in the criminal case.

So this is the point I was trying to make. If we are going to limit the effect of what we are doing here to extraterritorial instances so we are only talking about things that happen outside the territory of the United States, the Coast Guard presently has the authority to arrest and search and seize.

We are creating a line of delineation here for the Navy which might involve itself with the Coast Guard, so a defense attorney might come in and use this act and say, "Well, the Coast Guard might have had the right to be involved in the arrest circumstance or the search and seizure circumstance, but the Navy did not, and, therefore, I move to exclude the admission of the cargo of heroin," or whatever it might be.

Now, I want to stop drug trafficking as well as anybody else and spread the burden in law enforcement, but I think that is a valid point, and I do not think the committee has satisfactorily answered it as far as I am concerned.

Mr. SAWYER. Mr. Chairman, if I may recapture my time, I think clearly that we have eliminated the impact of the case the gentleman has named in that we have prohibited or not given authority to the military to participate in the actual arrest or seizure. They can be there, they can operate the equipment, they can provide information, they can track, they can do all those things.

If the gentleman thinks that by any statute we can outstrip the imagination of criminal lawyers who would be offering motions to suppress evidence or testimony, then I think the gentleman is overly optimistic. No matter what we do, the criminal lawyer's imagination is unlimited.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. SAWYER) has again expired.

(On request of Mr. HUGHES, and by unanimous consent, Mr. SAWYER was allowed to proceed for 3 additional minutes.)

Mr. HUGHES. Mr. Chairman, will the gentleman yield?

Mr. SAWYER. I yield to the gentleman from New Jersey.

Mr. HUGHES. Mr. Chairman, I just want to say in addition that what we have attempted to do once again is to avoid the confrontation, because indeed what I think we would do if we permitted the average military personnel to participate in the arrest or seizure is that we would open up Pandora's box, because civilian law enforcement personnel make enough mistakes now, and they are trained. So if anything, what we are trying to do is we are trying to minimize the effect of a motion to suppress.

Mr. BETHUNE. Mr. Chairman, will the gentleman yield further?

Mr. SAWYER. I yield to the gentleman from Arkansas.

Mr. BETHUNE. Mr. Chairman, the point of the Department of Defense and the point of the Armed Services Committee and the point I made last week is that due to the nature of law enforcement and confrontations of that nature, especially drug violations, we cannot separate the arrest from all the other functions. We cannot separate search and seizure. We are limiting arrest and search and seizure, but there are a lot of other functions in law enforcement that we have not treated, like electronic surveillance, the interrogation of witnesses, and all that.

Mr. HUGHES. Mr. Chairman, will the gentleman yield further?

Mr. SAWYER. I yield to the gentleman from New Jersey.

Mr. HUGHES. Mr. Chairman, I thank the gentleman for yielding.

The fact of the matter is that we are only talking about those instances where civilian law enforcement Personnel believe they need a piece of equipment that they do not have available to them, and it is only to be used in those instances where the equipment is offered and there is not sufficient time to train the civilian law enforcement personnel. They are then loaned military officials to operate that equipment in accordance with regulation.

So it is only in those situations. It is not going to be a routine, regular situation. It is going to be an emergency situation where we happen to have a particular need.

Mr. BETHUNE. Mr. Chairman, if the gentleman will yield further, I clearly see the point the gentleman is making, and he has made it repeatedly. It is that he hopes to narrow down the scope of activities.

I would hope that if we do this, we can narrow down the scope of activities. The point I have been trying to make is that I think we are rushing pell-mell to do away with a hundred-year-old rule of law that must have had a number of good reasons behind it.

There is some very good language in the decisions suggesting that this might even be in the nature of a constitutional right approximating that of separation of church and State, and the gentleman in the well, by his own statement, indicated that we have not even treated the issue of sanctions on his subcommittee. Yet he wants the House to pass a bill to dispense with a hundred-year-old rule of law, and we have not even tested it.

Mr. SAWYER. Mr. Chairman, if I may recapture my time, the gentleman seems to be arguing in circles. At first, if I understood the gentleman, he felt it was unreasonable not to allow the military to assist in the arrest or seizure because otherwise defense attorneys would raise all these objections—either where they did or where they did not. And now the gentleman is in effect saying that we

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ought not to allow even the use of the equipment. The gentleman is very much confusing the issue.

Mr. BETHUNE. Mr. Chairman, the gentleman is questioning my logic, and may I respond?

Mr. BIAGGI. Mr. Chairman, will the gentleman yield?

Mr. SAWYER. I yield to the gentleman from New York.

Mr. BIAGGI. Mr. Chairman, this has been a very interesting discussion, and to a great extent we are just going around and around. I understand the language that represents the committee's position. I speak not only as a member of law enforcement for many years but as former chairman of the Coast Guard Subcommittee which has addressed itself to this issue.

Time and time again the interdiction of the flow of drugs that come in from the Caribbean has been addressed.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. SAWYER) has again expired.

(On request of Mr. BIAGGI, and by unanimous consent, Mr. SAWYER was allowed to proceed for 5 additional minutes.)

Mr. BIAGGI. Mr. Chairman, if the gentleman will yield further, we were clearly confronted with the situation that our Government did not have the capacity to respond to the problem—a problem on the seas and a problem in the air. This Congress voted for legislation last year—and it was enacted into law—that kind of closed the loophole as far as the free and easy manner in which the traffickers' functions is concerned. They would be arrested, they would remain silent, and they would be processed, and then they would be out within several hours and then back to their abode with no indictments or convictions.

Now, one of the major difficulties that was found by the Coast Guard, as well as the Customs Service and the DEA, was the inability to detect and determine the planes that were coming in carrying drugs and the vessels that were doing likewise, because of the limited amount of equipment.

So it was hoped and suggested that perhaps we could employ some military equipment for two express purposes—for surveillance and for monitoring. What has been established during those hearings and by these committees and by these different agencies is the development of a profile. Certain types of aircraft would be subject to surveillance, identification, and reporting to ground crews, to the established agencies that were concerned with this problem. They needed certain profiles of a vessel that would be similarly identified and reported to the Coast Guard or the Customs Service that would respond with their equipment, and we did not have that capacity.

□ 1450

Frankly, the language contained in the amendment offered by the gentleman

from Texas (Mr. WHITE) is sufficient to provide the kind of response so that we can practically and effectively respond to the needs of the agencies, because currently we have hundreds of planes flying in, low-level planes flying in and landing on strips and farms and we are not aware of their existence.

With this sophisticated equipment they can be almost immediately identified when they are several hundred miles out and there can be a response on the part of the agencies.

This in my judgment is necessary. This in my judgment is a critical supplement to the entire law enforcement area. To go any further at this point, I think: First, would be premature; and second, might be begging for troubles, the kind of troubles that have been articulated here by the gentleman who is on his feet and by many others.

If we are concerned about really producing a meaningful response to a genuine need, to the law enforcement area, the gentleman's amendment, the amendment of the gentleman from Texas (Mr. WHITE), is the one that should be supported.

Mr. SEIBERLING. Mr. Chairman, will the gentleman yield?

Mr. SAWYER. I yield to the gentleman from Ohio.

Mr. SEIBERLING. I thank the gentleman for yielding.

I wonder if the gentleman from Arkansas understands that the amendment offered by the gentleman from New Jersey is a strict limitation of a very broad authority that exists in the committee's bill. The committee's bill would authorize military personnel to enforce the drug laws, and that would get into the area that the gentleman from Arkansas is so rightly concerned about; whereas the amendment of the gentleman from New Jersey, further amended by that of the amendment to it of the gentleman from Texas, would put very strict limitations, limited to loaning equipment and limited to offshore and aerial surveillance only, and it seems to me that ties right in with what the gentleman from New York (Mr. BIAGGI) said and at the same time it prevents real danger to civilian law enforcement.

I would think this amendment addresses the concerns of the gentleman.

Mr. BETHUNE. Mr. Chairman, will the gentleman yield?

Mr. SAWYER. I yield to the gentleman from Arkansas.

Mr. BETHUNE. I thank the gentleman for yielding.

My logic has been called into question and it has been suggested that there is some circuitry in the arguments that I make.

In a word, I would like to say this. I think that if we are going to enact something here in the interest of controlling crime, then the proposition brought forward by the Defense Committee is the right one when paired with the amendment of the gentleman from Texas (Mr. WHITE), because

having been limited to extra territorial matters it empowers them to do the job that we want them to do and we would not have to worry about it happening within the territory. That is my position if I were looking at that one solely.

On the other hand, as I view the Judiciary Committee's approach, I think it creates problems, which I have tried to enunciate here before. Frankly and honestly, I really admire the work of the committee, they are usually very thoughtful, but when the gentleman said we have not even considered the sanctions that would be imposed in the event of encroachment—

The CHAIRMAN. The time of the gentleman from Michigan (Mr. SAWYER) has expired.

(At the request of Mr. BETHUNE and by unanimous consent, Mr. SAWYER was allowed to proceed for 1 additional minute.)

Mr. BETHUNE. Mr. Chairman, will the gentleman yield further?

Mr. SAWYER. I yield to the gentleman from Arkansas.

Mr. BETHUNE. It truly occurs to me that we are moving a little fast when it comes to a rule of law that has stood inviolate for 100 years, and so my position is, as I stated on both the defense and the judiciary approach, but my position is that we should go back to the drawing board and resolve some of these questions that have been raised here, and I think rightfully so, and to say that we need to stop drug trafficking in this country and use that as an excuse for rushing through this particular piece does not make sense.

Mr. SEIBERLING. Mr. Chairman, will the gentleman yield?

Mr. SAWYER. I yield to the gentleman from Ohio.

Mr. SEIBERLING. Then certainly the gentleman from Arkansas should support the amendment of the gentleman from New Jersey (Mr. HUGHES), because the alternative is to adopt the committee's language which was adopted without any hearings and without any concern.

The Defense Department supported the kind of limitations that the gentleman from Texas (Mr. WHITE) and the gentleman from New Jersey (Mr. HUGHES) wanted to add to this bill.

Mr. BETHUNE. If the gentleman will yield further, if I felt that the Judiciary Committee's hearings were extensive and comprehensive and had been finished and had treated the issue of sanction, then I think to compare it with—

The CHAIRMAN. The time of the gentleman from Michigan (Mr. SAWYER) has again expired.

(At the request of Mr. FISH and by unanimous consent, Mr. SAWYER was allowed to proceed for 2 additional minutes.)

Mr. FISH. Mr. Chairman, will the gentleman yield?

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Mr. SAWYER. I yield to the gentleman from New York.

Mr. FISH. I thank the gentleman for yielding.

Mr. Chairman, I support the concept embodied in section 908 of H.R. 3519, the Defense Department authorization bill for fiscal year 1982. The gentleman from Florida and the other members of the Armed Services Committee are to be highly commended for making an important contribution to facilitating cooperation between the military and civilian law enforcement authorities. Our Subcommittee on Crime and the full Judiciary Committee agreed that such authorization was needed, with some adjustments. I strongly support the bipartisan version reported by our committee and the amendment that will be offered by the gentleman from Texas. The gentleman's amendment wisely extends certain types of assistance into the areas of immigration and customs law.

Posse comitatus is a criminal law enacted during reconstruction which prevents the Army and Air Force from serving as a posse. The confusion created by this law is a barrier to cooperation between the military and civilian law enforcement officials. Specifically, under that law, it is unclear what sort of assistance the military may legally provide and even which parts of the military are affected. Even though no one has apparently ever been prosecuted under the posse comitatus provision, it may form a basis for excluding evidence in criminal trials and an obstacle to recover under the Federal Tort Claims Act. Testimony before the Subcommittee on Crime earlier this year convinced us that something needed to be done about the problems created by posse comitatus, particularly in the area of drug smuggling and immigration.

The Judiciary Committee's version of section 908 addresses the problems that I have outlined by essentially codifying existing authority for the military to provide essential and appropriate assistance to civilian law enforcement authorities. By codifying this authority, we clarify the limits on military involvement in law enforcement, thus eliminating the confusion. We do not, however, authorize Armed Forces personnel to assist civilian law enforcement in making arrests and seizures. I believe that our approach is preferable to the language reported by the Armed Services Committee, which expands existing authority by permitting the military to participate in such activities.

First, our language would specify which branches of the military are in fact affected. Second, like the Armed Services Committee's version, it would provide for the sharing of intelligence, equipment, and base facilities, and would authorize training. It would also prohibit military assistance which would adversely affect this country's military preparedness and would encourage reimbursement to the Defense

Department. However, unlike the language recommended by the Armed Services Committee, our language would specifically prohibit military personnel from participating in hands-on arrests and seizures. This type of assistance is a departure from traditional military-civilian relations and was not requested by the Drug Enforcement Administration when they testified before our subcommittee about the posse comitatus problem.

On the other hand, we felt that it was necessary to insure that the offer of equipment was not an empty one because we envisioned situations where there would not be time for civilian law enforcement authorities to be trained to operate sophisticated military equipment or where such training would not be cost effective. For this reason, we included authority for the Secretary of the Treasury, at the request of the head of a Federal agency responsible for enforcing the Controlled Substances Act, to make military personnel available for the maintenance and operation of equipment. Under the amendment offered by the gentleman from Texas, agency heads responsible for enforcing the Immigration and Nationality Act and the customs laws also make such requests. I support that change.

Despite certain claims that have been advanced, the Judiciary Committee's version is not a departure from traditional military-civilian relations. However, providing authority for the military to arrest persons and make seizures would be such a departure. Military personnel are not trained to perform such functions. As a result, their arrests and seizures would more likely be reversed by the courts on technical grounds. Furthermore, let me stress that the head of the Drug Enforcement Administration emphatically stated before our subcommittee that there was no need for that sort of military participation.

We share with our colleagues on the Armed Services Committee the strong conviction that military assistance is needed in the war against crime, particularly in the fight against drug trafficking. I believe the Judiciary Committee's version and the amendment offered by the gentleman from Texas represent an appropriate balance.

Mr. EDWARDS of California. Mr. Chairman, will the gentleman yield?

Mr. SAWYER. I yield to the gentleman from California.

(Mr. EDWARDS of California asked and was given permission to revise and extend his remarks.)

Mr. EDWARDS of California. Mr. Chairman, I also want to join with the others in complimenting the gentleman from New Jersey, and of course, the gentleman from Texas, who will offer a most important amendment, and I urge support of those amendments.

However, I do agree with the gentleman from Arkansas that we are talking about a rather important constitu-

tional separation and constitutional right here, actually, and that we should tread very lightly and it is not very appropriate to be considering this important issue in the context of a military appropriations bill.

Mr. Chairman, I rise in support of this amendment.

Sections 371-375 of the legislation before us profoundly affect the traditional separation of the military from routine civilian law enforcement. At the outset, I must question the wisdom of allowing a defense authorization bill to be the vehicle by which we relinquish a treasured constitutional safeguard. Such a change deserves a more careful scrutiny than it is likely to get in the context of a budget debate. The better forum would seem to be in legislation to reform the Federal criminal code.

Assuming, however, that we are determined to embark on such a course, now, we should at the very least adopt the amendment offered by the gentleman from Texas to narrow the scope of the intrusion. Even the Department of Defense opposes the bill's expansion of military involvement into civilian law enforcement. We are warned that the use of military equipment thrusts military personnel into situations involving the use of force—situations the military is not trained for and which may expose them to civil liability. It appears the military has shown more concern for our traditional political system than has Congress.

Moreover, the Department of Justice—the agency responsible for Federal law enforcement—itself opposes any law enforcement role for the military within the United States itself.

This bill contains no provisions to limit the use of the military in routine domestic law enforcement activities, including, lest we so soon forget, the surveillance of civilian political activity. The provisions now in the bill are so broad as to permit military involvement in the enforcement of any and all aspects of criminal law.

Although I congratulate my colleague from New Jersey's efforts to narrow the sweeping scope of the Armed Services Committee bill, I believe we should act to narrow it still further. I supported such an effort in the full Judiciary Committee and I am happy to see that my colleague from New Jersey does so now.

I urge adoption of this amendment.

AMENDMENT OFFERED BY MR. WHITE TO THE JUDICIARY COMMITTEE AMENDMENT

Mr. WHITE. Mr. Chairman, I offer an amendment to the Judiciary Committee amendment.

The Clerk read as follows:

Amendment offered by Mr. WHITE to the Judiciary Committee amendment: Page 47, strike out line 19 and all that follows through line 4 on page 48 and insert in lieu thereof the following:

"§375. Assistance by Department of Defense personnel
 "(a) Subject to subsection (b), the Secre-

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tary of Defense, upon request from the head of an agency with jurisdiction to enforce the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), any of sections 274 through 278 of the Immigration and Nationality Act (8 U.S.C. 1324-1328), or a law relating to the arrival or departure of merchandise (as defined in section 401 of the Tariff Act of 1930 (19 U.S.C. 1401)) into or out of the customs territory of the United States (as defined in general headnote 2 of the Tariff Schedules of the United States) (19 U.S.C. 1202) or any other territory or possession of the United States, may assign personnel of the Department of Defense to operate and maintain or assist in operating and maintaining equipment made available under section 372 of this title with respect to any criminal violation of any such provision of law and to take necessary action incidental to such operation or assistance.

"(b) No equipment made available under section 372 of this title may be operated in the land area of the United States (or of any territory or other possession of the United States) by or with the assistance of personnel assigned under subsection (a) except to the extent the equipment (1) is used for monitoring and communicating the movement of air and sea traffic, or (2) is entering or leaving the land area of the United States (or any possession or other territory of the United States) incidental to a mission assigned to be accomplished only outside such area."

Conform the table of sections after line 19 on page 45 accordingly.

(Mr. WHITE asked and was given permission to revise and extend his remarks.)

Mr. WHITE. Mr. Chairman, I certainly applaud the purpose of the gentleman from Florida (Mr. BENNETT) in what he is trying to do, to control nefarious trafficking of drugs, but in trying to do good we must not do harm, that is, harm to our defense, harm to our troops, harm to our society and freedoms, and potential harm to international relations.

My amendment to the amendment of the Committee on the Judiciary and the Hughes amendment is designed to accomplish good results without harm. It is a product of careful crafting and compromising with Judiciary and other Members of Congress.

Now, compare the language of the bill of the gentleman from Florida (Mr. BENNETT) to my particular amendment. The language of the bill of the gentleman from Florida (Mr. BENNETT) calls for the use of military personnel only, not any experts in the civilian capacity in the military, but merely military only, to search and seize anywhere at sea, in the United States or on the borders of this country, internally too, if you will, because there is no limitation.

I really believe this was the purpose initially of the original bill, which prohibited the use of military in enforcement procedures, because in its very extreme, it could be the predicate for developing, if you would, without trying to sound alarmist, a police state.

My amendment with the consent of the Secretary of Defense, Defense personnel, military and civilian, could track, monitor and communicate the movement of air and sea traffic with Defense equipment, such as ships, planes, radar and we have big sections in southern parts of this country that are not even covered by radar that should be covered by radar and other surveillance equipment.

The enforcement personnel, DEA, or Immigration or Customs could be transported on such ships and aircraft and they would make the searches and seizures, they would have their own craft to make searches and seizures. They would seize the illicit drugs. They would arrest the offenders, apprehend illegal aliens, or seize other contraband, and this as pointed out was necessary to include other offenses besides illicit drugs, because otherwise, we might have a real question arising in courts if we stopped and apprehended for one offense and found another offense, and I so acceded to that particular change.

□ 1500

But the troops would not be used to search and seize. Why is it better not to use troops to seize and arrest as the language of the gentleman from Florida (Mr. BENNETT) provides?

Our military numbers are founded on military need. We are already having difficulty recruiting enough people into the military. To use troops to operate their equipment would not put more strain on the military. Their activities and operating equipment is more in the nature of training exercises; but to require them to seize and arrest, would require many more troops.

Some future budget-cutting administrator might try to substitute troops for trained DEA, immigration or customs personnel, and therefore there would be less control of drugs, contraband and aliens.

Of course, illegal aliens are very critical at the present time at sea, because we have had an incident of recent time of boat people illegally coming into this country and they could be controlled by surveillance by military personnel.

Law enforcement, especially to control drugs, contraband and aliens, requires special training and skills, often including language skills. It requires special training in the techniques of arrest to prevent injury or death of the seizing and arresting officer.

It is unlikely that troops would have that training and experience, and to require them to search and seize will expose them to injury and death in a pursuit for which they did not enlist. Surviving parents and spouses would rightfully be incensed.

For what I next say, those favoring the language of the gentleman from Florida (Mr. BENNETT) might say that the location and circumstances of searches and seizures must first be ap-

proved by the Secretary of State, as in the amendment the gentleman provided; but remember, we are proposing to change the law existing since the 1870's. Administrations and their attitudes change, so we cannot predict the commonsense of future administrations or future Secretaries of State. We have to make permanent law and assume the worst whenever you make law.

Judging from the past, there has been very little understanding by many administrations of the delicacies of international relations along the Mexican-American border. I have lived on the Mexican-American border all my life. As other colleagues who are familiar with the border and Mexico know well, the Mexican and Canadian borders traditionally have no military troops patrolling or guarding the borders. To change this by having uniformed troops on the border would destroy this tradition and international good will. Within 1 year or less there would arise a grave international incident under the latitude of the language of the gentleman from Florida (Mr. BENNETT) that would allow troops to patrol, seize, and arrest. Shots inevitably would be fired in the dangerous night and troops would be injured or killed and shots would impact in Mexico, if it were on the international border of Mexico. Repercussions would follow, especially if innocent citizens and children of Mexico were killed or injured.

Even trained enforcement officers and personnel on the borders during the day and at night are killed through accidents of the night, not knowing the identity of the other and shooting at each other in the night. We have fire fights on the border and that is precisely what you would be exposing troops to if you allowed them to seize and arrest on the border for drug contraband.

The CHAIRMAN. The time of the gentleman from Texas (Mr. WHITE) has expired.

(By unanimous consent, Mr. WHITE was allowed to proceed for 3 additional minutes.)

Mr. WHITE. The ability to speak Spanish can save lives in the night. Troops probably would not have this skill.

Therefore, rather than get more control with the language of the gentleman from Florida (Mr. BENNETT), we could get less control, less defense and more needless casualties in the military and some severe international embarrassment.

The language of the amendment I have introduced will allow the Defense Department to do what it can do best in operating its equipment, ships, planes and surveillance equipment to track, monitor and communicate the movements of suspected violators, for the professionals trained to search, seize and apprehend, without the bad results I have outlined, without the ca-

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sualties and the international incidents.

Mr. HUGHES. Mr. Chairman, would the gentleman yield?

Mr. WHITE. I yield to the gentleman from New Jersey.

Mr. HUGHES. Mr. Chairman, I thank the gentleman for yielding. He has made a very important statement and I commend the gentleman for his leadership.

The gentleman's amendment is agreeable to this side of the aisle. I believe that it adds to the amendment. It is delimiting in nature. In fact, it was an amendment that we considered in the Judiciary Committee as a way of delimiting the loaning of equipment and the providing of personnel in the continental United States. So I commend the gentleman.

I just want to make one additional point. The gentleman referred to the arrest and seizure and search aspect of the Bennett language. I might point out to my colleagues that the Bennett language permits arrests and seizure but not search authority.

Now, that means, if, in fact, the military were utilized, as envisioned by the gentleman from Florida (Mr. BENNETT) in making a direct arrest or seizure, there would be no authority to search. That means, in effect, that if the arresting military official wanted to ascertain whether the people that he confronted had weapons, he would not have the right to search. He would not have the right to search in any other part of the vessel, for instance, under the language of the bill, because it is strictly limited to arrest and seizure.

Now, I am sure that that was inadvertent, but it points out just exactly why we should not be designing language of this nature without giving it very careful thought. It is that precise reason why we are trying to avoid a confrontational situation and all the problems inherent in an arrest situation; so I commend the gentleman. We accept his amendment on this side.

Mr. WHITE. Well, I thank the gentleman for his clarification and, of course, too, the Bennett language would allow use of troops anywhere in the United States internally and not as we have tried to do externally and off the shores of the United States to help work with the authorities.

Mr. KAZEN. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman from Texas.

Mr. KAZEN. Mr. Chairman, I would like to associate myself with the remarks of the gentleman in the well.

I would shudder to think that a member of the Armed Services along the Mexican border taking part in what is purported to be a seizure of drugs and it turns out that someone is wounded or killed by a military personnel, by a member of the Armed Forces of the United States on the friendly border with Mexico, would bring about repercussions that we

cannot even comprehend. I appreciate the gentleman's position.

The CHAIRMAN. The time of the gentleman from Texas (Mr. WHITE) has again expired.

(At the request of Mr. SAWYER, and by unanimous consent, Mr. WHITE was allowed to proceed for 2 additional minutes.)

Mr. SAWYER. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman from Michigan.

Mr. SAWYER. Mr. Chairman, I want to associate myself with the gentleman's remarks and state that his amendment is agreeable to this side of the aisle also.

Mr. BETHUNE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I do not know whether any other issue has interested me as much as this since I have been in the Congress, but for some reason or another when I heard the debate last week it occurred to me that we were discussing something that was perhaps more important than it seemed at first blush; so I asked for some briefings on the subject and tried to dig into it some.

This business of posse comitatus and the rule of law that has existed now since 1875 is a pretty significant piece of law. It has held firm for a long, long time. I have wondered why it has held firm and there have been no encroachments on the law over the years. I mean, the most serious encroachment that got outside of the area of putting down riots or holding down rebellions or insurrection or domestic violence or something like that that I could find was to protect the rights of discoverers of the Guano Islands. Somehow that crept in as an exception to the law some years ago.

Now, I do not know what the argument was at that time which permitted that exception, but I do know that the law has withstood virtually every other argument since that time.

In reading some of the court decisions right on up to and including the decisions of the U.S. Supreme Court, I found some very strong language which indicates that many people who have given thoughtful consideration to this issue see the business of posse comitatus and this particular law that we are discussing here today as approximating a constitutional right to keep separate from civilian law enforcement the use of military force, the use of military might. The arguments go along the line that military personnel are trained in most instances to do a particular mission in disregard of civil rights, whereas on the other hand, at least in the last 20 or 30 years, law enforcement personnel are trained now to respect civil rights and to appreciate civil rights.

So as I began to read more about those cases, I began to understand why our courts and why this Congress has thrown off every attempt in the

last 100 years to make a serious encroachment on this.

Then as I heard the debate today, I heard someone even say that we have talked this matter to death. I take respectful issue with that. We have only devoted 2 or 3 hours to a debate here before the whole House on this issue. We have not talked it to death. We have not talked about the sanctions that would be employed if the military were to run afoul of this law and to exceed their authority.

We have not talked about what will happen when the cases get to court and how the exclusionary rule should be treated by the court.

I think that this Congress if it is going to breach this law, this Congress has the responsibility to give some criteria to the court as to how it should respond when the cases come, and they will come when we involve the military with civilian law enforcement.

□ 1510

I think the points that have been made here have been good points. I think everyone is working as hard as they can to control this heinous spread of drug traffic in this country.

But that does not mean that we have to throw down all of our responsibilities here and pass a law in this Congress contravening 100 years of history without even discussing it completely and thoroughly and finally out in the subcommittee.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. BETHUNE. I yield to the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. I want to commend the gentleman for his thoughtful attention to this part of our bill. It is very important and I think it has been understated.

Does the amendment offered by the gentleman from Texas (Mr. WHITE) change any of the views of the gentleman from Arkansas?

Mr. BETHUNE. Not really. I think the amendment of the gentleman from Texas (Mr. WHITE) does purport to set some geographical limitations which are certainly better than to lay out these very fuzzy limitations such as arrest and search and seizure. I think that is a step in the right direction but it does not settle the issue with me completely and principally for the last point that I made. If I could, I would like to bring out the case of *United States v. Wolfs*, 594 Fed. 2nd 77, a 1979 case, wherein the court did not reach the question of whether there was a violation of the statute. They said they really did not need to get into that because "application of the exclusionary rule is not warranted."

The CHAIRMAN. The time of the gentleman from Arkansas has expired.

(At the request of Mr. CONYERS and by unanimous consent Mr. BETHUNE was allowed to proceed for 3 additional minutes.)

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Mr. BETHUNE. The court went on to say:

The application of an exclusionary rule is not warranted. If this court should be confronted in the future with widespread and repeated violations of the Posse Comitatus Act, an exclusionary rule can be fashioned at that time.

It went on to say:

Such an extraordinary remedy is not required until such time as repeated cases involving military enforcement of civil laws demonstrates a need for such sanction.

In other instances the courts have noted that there have been no prosecutions under the Posse Comitatus Act of 1865. So, as a matter of fact, we really have not treated the issue of sanctions in the rule previously and we have not treated the issue of sanctions here today. I think we should do that before we pass an exception to the law. That is my point.

Mr. CONYERS. If the gentleman will continue to yield, the problem that bothers me was enunciated by my colleague on the Judiciary Committee, the gentleman from Michigan. He said we of course envision that there could be confrontations between drug pushers and the military, but "so what?" The "so what" is that we will have military people forced into physical confrontation with civilians, and I cannot see where the amendment of the gentleman from Texas (Mr. WHITE) will change that one bit. We will still be confronted with a situation, from what I gathered from the reactions of most Members to that remark, that would be absolutely outrageous. It would be unthinkable that the Congress would deliberately involve U.S. Armed Forces in the routine enforcement of civilian laws for any reason.

I hate drugs as much as anybody else here. But we are already now talking about using military personnel to enforce customs laws.

Mr. BETHUNE. That is my point.

Mr. LEVITAS. Mr. Chairman, will the gentleman yield?

Mr. BETHUNE. I yield to the gentleman from Georgia (Mr. LEVITAS).

Mr. LEVITAS. I thank the gentleman for yielding and I want to commend the gentleman. I am not sure I agree with his conclusion, but I commend him for his concern and focusing on this issue and elucidating something that is of great importance under our system of government and separation of civil from military authority.

But I am concerned at where we are in this debate. As I understand the gentleman, he is opposed to the utilization of military personnel in law enforcement, civilian law enforcement matters.

Mr. BETHUNE. As a general rule.

Mr. LEVITAS. As a general rule, and the gentleman would not like to see any change in the Posse Comitatus law.

The CHAIRMAN. The time of the gentleman from Arkansas has again expired.

(At the request of Mr. LEVITAS and by unanimous consent Mr. BETHUNE was allowed to proceed for 2 additional minutes.)

Mr. LEVITAS. If the gentleman will continue to yield, the question is whether or not we adopt the Judiciary amendment as amended by the gentleman from Texas (Mr. WHITE) or whether we adopt the amendment of the Armed Services Committee. The question before us at this point is not whether we should leave the law intact as it is today but whether or not we accept the Judiciary Committee provision, as amended by the gentleman from Texas, or the gentleman from Florida's (Mr. BENNETT), provision from the armed services bill.

So in dealing with a vote on this matter, if the gentleman would explain to me what he from his point of view would urge the Members to do under that circumstance.

Mr. BETHUNE. I am going to support the amendment of the gentleman from Texas (Mr. WHITE). I think that I am going to vote against both of the other proposals for the reason that I think more consideration needs to be given out in the committee to the questions that I have raised here. I do not think the time is of such necessity here that we need to push forward.

I would just like to correct the record, because the gentleman said I am not for any change in the posse comitatus law. As a general rule, I think it is a wise law. But I am not certain yet that it should be changed, and that is the point I have made repeatedly here. I have not been convinced by the members of the Judiciary Committee so far, that it should be changed without further study and review.

Mr. HUGHES. Mr. Chairman, will the gentleman yield?

Mr. BETHUNE. I yield to the gentleman from New Jersey (Mr. HUGHES).

Mr. HUGHES. I thank the gentleman for yielding. I want to assure the gentleman that we could not have taken up the question of penal sanctions because of the way it came to the Judiciary Committee, which was by sequential referral. We would have to remand title XVII to get at that segment dealing with penalty.

But let me just assure the gentleman our hearing was exhaustive from the standpoint of what is actually needed to try to provide a limited amount of additional cooperation between the military and civilian law enforcement agencies and still maintain that important separation.

The CHAIRMAN. The time of the gentleman from Arkansas has again expired.

(At the request of Mr. HUGHES and by unanimous consent, Mr. BETHUNE was allowed to proceed for 2 additional minutes.)

Mr. BETHUNE. I yield to the gentleman from New Jersey (Mr. HUGHES).

Mr. HUGHES. So I have listened to the gentleman very carefully and he

has given obviously a lot of thought to this, both from the standpoint of case law that has been developed as well as the rationale behind the original posse comitatus law. I say to my colleague the first four sections, and I am going to repeat it again, are a codification of existing practice. The only additional change, section 375, is very narrowly focused and it is to minimize the confrontation situation the gentleman is concerned about. What it does, in effect, is it says under section 375 where we loan equipment we are also going to provide where manpower is needed because there is not enough time to train manpower from the military and we are going to permit the military, where it is consistent with our military mission, to loan people to operate that sophisticated equipment. That is as far as we go.

Mr. BETHUNE. I disagree that it is just a codification of existing law and maybe this would be a good time to discuss it.

Mr. HUGHES. That happens to be the case.

Mr. BETHUNE. I disagree. It is my opinion that it is not. But maybe this would be a good time to make the point if this Congress did nothing, did not make any inroads on the posse comitatus law as presently written, that the Navy Department tomorrow, if they wanted to, by changing their regulation, could go ahead and do what the Coast Guard is doing because they are not covered by the original law to begin with.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. BETHUNE. I yield to the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. Let us examine this notion about merely codifying the existing practice. When one codifies existing practices, one is carving them in stone and making them law. That is a little bit different, I think, from what the gentleman from Arkansas is concerned about and what the subcommittee chairman is implying is happening.

□ 1520

What I am telling you now is that these practices, once codified into law, are now going to be the law.

The CHAIRMAN. The time of the gentleman from Arkansas (Mr. BETHUNE) has expired.

(On request of Mr. CONYERS and by unanimous consent, Mr. BETHUNE was allowed to proceed for 3 additional minutes.)

Mr. CONYERS. What we are doing, with a very few number of cases, is codifying existing practices before we have even examined what they are. I think that is what the gentleman from Arkansas is saying.

What I am going to do, contrary to the gentleman's suggestion to the gentleman from Georgia that the Members should support the White amendment and then vote against the rest, is

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oppose the White amendment because what we are trying to do is clean up something that cannot be cleaned up. This issue belongs in committee.

Now, another member from Judiciary asserted that the Defense Department supported this bill. Well, as a good friend of the Pentagon, I want to tell the Members that that is exactly not the case. That is exactly not the case.

The Defense Department is not in support of this measure. It is ironic that I am the only Member who can rise from Judiciary to remind the Members of that. They are not in support of getting this additional power.

Why? Because they know that once they send equipment and personnel to a drug raid, the personnel are quite likely to become directly involved. They are not going to stand by while some punk narcotic pusher tries to draw a .45 and hold off the Coast Guard or the U.S. Marines. That is why they do not want it. The gentleman from Arkansas should be commended for thoughtfully forcing us to address this matter.

Mr. HUGHES. Mr. Chairman, would the gentleman yield?

Mr. BETHUNE. I yield to the gentleman from New Jersey.

Mr. HUGHES. Mr. Chairman, the fact of the matter is that the Defense Department opposes the Bennett language. The fact of the matter is that the Defense Department does support the White amendment to the Judiciary Committee bill, which parallels pretty much the Senate bill which the Defense Department has been generally supportive of.

So to characterize the Defense Department's position as being opposed to the bill is not accurate. The Defense Department is adamantly opposed to the Bennett approach.

Now, the fact of the matter is, also that we are dealing, as the gentleman from Georgia has indicated, with two versions of a bill, the Judiciary Committee approach as opposed to the Armed Services Committee approach. And it seems to me that the approach taken by the Judiciary is the one that is very carefully crafted, the one that is very delineative, that only extends the authority to those areas where a case has been made. And even though it had been suggested that what we are doing is codifying language, I do not know of anybody who complains about the sharing of intelligence information.

Is the gentleman from Michigan opposed to the military sharing intelligence information with drug enforcement agencies? Is the gentleman from Michigan opposed to the military providing a piece of equipment so that the Drug Enforcement Administration or the Coast Guard can carry out a mission because they do not have equipment? Is the gentleman saying he is opposed to that? Because that is what we are doing.

The CHAIRMAN. The time of the gentleman from Arkansas (Mr. BETHUNE) has again expired.

(On request of Mr. CONYERS and by unanimous consent, Mr. BETHUNE was allowed to proceed for 4 additional minutes.)

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. BETHUNE. I yield to the gentleman from Michigan.

Mr. CONYERS. I thank the gentleman for yielding.

Mr. Chairman, I would like to point out that the White amendment was not in existence at the time the subcommittee handled the matter; so I do not know how the Department could at that time have had some insight about whether they were for it or not.

Now, in a letter to the Crime Subcommittee chairman, dated June 3, 1981, the Defense Department points out—this is a quote—

The operation of equipment cannot reasonably be separated from the direct application of force in the course of law enforcement.

It seems to me that you could fairly deduce that the Department of Defense has some strong reservations about this legislation. And that is what I am referring to. This is just a matter of simple fact.

Now, either they are anxious for it or they are not anxious for it. I suggest to the Members that this language tells me that they do not want this responsibility.

They also say, and I quote from the letter:

There is a substantial problem of civil liability of military personnel.

They are perfectly well aware of the problems that the gentleman from Arkansas has articulated that they will be getting into.

Now, we also happen to have a multi-billion-dollar administrative agency devoted to fighting drugs. It is not as if we are defenseless. There are plenty of ways that we can funnel some assistance to drug law enforcement without changing a tradition almost of a constitutional nature by allowing the military to intrude upon the enforcement of civilian laws.

Do not any of the other Members feel a little bit disturbed about what that suggests?

In Kent State we had an experience that I will talk about later, and in Detroit we had an experience. We are still feeling the effects of that military intrusion today.

I thank the gentleman for yielding.

Mr. BROOKS. Mr. Chairman, I move to strike the requisite number of words.

(Mr. BROOKS asked and was given permission to revise and extend his remarks.)

Mr. BROOKS. Mr. Chairman, I want to commend the Judiciary Committee and the distinguished chairman of its Subcommittee on Crime, Mr. HUGHES, for their constructive amendment to H.R. 3519, the Department of

Defense Authorization Act. Section 908 of the bill, which was sequentially referred to the Judiciary Committee, also contains a matter of longstanding concern to the Committee on Government Operations; namely, the management and disposal of Federal Government property.

Section 908 as reported by the House Armed Services Committee allows the Secretary of Defense to make available any equipment, base facility, or research facility of the Armed Forces to law enforcement officials if it does not adversely affect U.S. military preparedness. If unchanged, this provision would have a substantial impact on the Federal property disposal system which is conducted under the terms of the Federal Property and Administrative Services Act.

The Judiciary Committee has taken note of the Government Operations Committee's concern in this area and has added the phrase, "In accordance with other applicable law," to the property disposal provision. With the understanding that this amendment brings the authority under the provisions of the Federal Property and Administrative Services Act and related statutes, I urge support of the Judiciary Committee's amendment to H.R. 3519.

Also, as originally reported, section 908 of H.R. 3519 would allow the Secretary of Defense to provide to Federal, State, and local civilian law enforcement officials any information collected during the normal course of military operations that may be relevant to a violation of any Federal or State law. The Privacy Act, which comes within the jurisdiction of the Government Operations Committee, presently contains guidelines for the disclosure of information or private citizens for law enforcement purposes. This section would go substantially beyond the Privacy Act's restrictions on disclosure. The Judiciary Committee has amended this provision of section 908 so that such release will be "in accordance with other applicable law," and the Judiciary Committee's report makes clear that this phrase is meant to continue the application of the Privacy Act to this type of intelligence sharing. With this understanding, I again urge approval of the Judiciary Committee's amendment on this section.

I would also mention that there are several other provisions of H.R. 3519 which appear to conflict with provisions presently contained in the Privacy Act. First, section 904 of the bill would require Selective Service registrants to provide their social security number. This conflicts with section 7 of the Privacy Act, which forbids any Federal agency from denying any individuals "any right, benefit or privilege provided by law" for refusal to disclose his social security number. This section of H.R. 3519 also would give the President authority to require the

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Social Security Administration to turn over personal data, including social security numbers, to the Selective Service and would allow the President to require that Internal Revenue Service records be made available to the Selective Service.

Further, this information could be shared with the heads of the service agencies for recruiting purposes. The committee is concerned over this provision because of its potential for creation of a computer data bank linking numerous information systems. The Privacy Act was meant to place a moratorium on the use of social security numbers as vehicles for compiling data in such large systems pending the establishment of congressional policy in this area.

The disclosure and use of social security numbers and IRS data is a very sensitive issue which should be carefully reviewed by the appropriate committees of the Congress, and I would hope until that can be done that any use of that authority under this bill would be undertaken with caution.

Meanwhile, I again urge support of the Judiciary Committee amendments.

Mr. McCLOREY. Mr. Chairman, I move to strike the requisite number of words.

(Mr. McCLOREY asked and was given permission to revise and extend his remarks.)

Mr. McCLOREY. Mr. Chairman, I am in strong support of the Judiciary Committee amendment as amended by the amendment offered by the gentleman from Texas (Mr. WHITE).

I want to assure the Members of this body that I feel that there are full and adequate protections to the civilian community in every area of activity as a result of the Judiciary Committee's amendment, as amended by the gentleman from Texas. This is vital legislation. It is essential support in our fight against the terrible drug trafficking that is going on.

I hope that our committee amendment and the amendment of the gentleman from Texas can be adopted expeditiously and that this important legislation be promptly enacted.

Mr. Chairman, I rise in support of the Judiciary Committee amendment to H.R. 3519, as amended by the amendment offered by the gentleman from Texas.

Clearly, we are all in agreement on the general proposition that the military should be authorized to provide certain types of assistance to civilian law enforcement authorities. There is no dispute about the sharing of information, equipment and training. Where we do part company, however, is on the extent of military personnel involvement in law enforcement activities.

Mr. Chairman, I firmly believe that it is essential to preserve the cherished tradition of separating the military and civilian law enforcement authorities in this country. The Posse Comitatus Act, to which we are providing one

of a very few exceptions, was originally enacted because of the abuses which arose during reconstruction when the military was brought in to enforce civil law. Although we all agree that every appropriate weapon should be used in the war against drugs, we must act cautiously to avoid setting a precedent for military involvement in other areas of law enforcement, which are more controversial and where military intrusion would be more offensive.

The Judiciary Committee amendment, as amended, would authorize limited personnel assistance for which a very clear need has been demonstrated. Furthermore, it is structured to minimize the possibility of abuse and to maximize the potential for achieving the outcome we all support—the incarceration of the drug traffickers who have caused so much pain in this country.

Mr. Chairman, I strongly oppose any version of section 908 which would permit the military to make arrests and seizures. Limiting such authority to areas outside the land area of the United States would constitute only a slight improvement. Although the proponents' goal of cracking down on drug traffickers is highly commendable and one we all share, I fear that arrest authority would not ultimately achieve that goal. The military is simply not trained to make arrests and seizures which will ultimately result in the incarceration of the offender and the forfeiture of the fruits of his illegal trade. Furthermore, there is no evidence to suggest that there is any need for such involvement. The Drug Enforcement Administration emphasized in recent testimony before the Subcommittee on Crime that arrest authority is neither needed, nor wanted. The assistance requested by the DEA is adequately provided for in the Judiciary Committee amendment and in the amendment offered by the gentleman from Texas.

Finally, Mr. Chairman, I would like to commend the gentleman from Texas for including in his amendment authority for military personnel to assist in the operation and maintenance of loaned equipment to enforce Federal immigration and customs law as well. Like drug enforcement, these are areas where such assistance will prove invaluable. I understand that the Justice Department supports this approach.

In conclusion, Mr. Chairman, I urge my colleagues to support our committee's version of section 908, as amended by the amendment offered by the gentleman from Texas, and to resist any effort to extend military involvement into the area of arrests and seizures.

Mr. COUGHLIN. Mr. Chairman, will the gentleman yield?

Mr. McCLOREY. I yield to the gentleman from Pennsylvania.

(Mr. COUGHLIN asked and was given permission to revise and extend his remarks.)

Mr. COUGHLIN. Mr. Chairman, I rise in support of the Judiciary Committee amendment to section 908 of H.R. 3519, the fiscal year 1982 Department of Defense Authorization Act. The basic purpose of this section would be to permit military cooperation with civilian law enforcement officials under certain circumstances. The amendment proposed by the Judiciary Committee would prohibit the direct participation of military members in searches and seizures, arrests, or similar activities while permitting military personnel to operate and maintain equipment on loan to civilian law enforcement officials. Use of sophisticated equipment and trained personnel who know how to operate and maintain it is where the real need for military assistance to civilian law enforcement agencies, particularly drug enforcement agencies, lies. The need is not for additional personnel to conduct searches and make arrests.

Mr. Chairman, present interpretation of the Posse Comitatus Act has generally prohibited the military from enforcing civil laws. The result has been that the military has been extremely hesitant to respond to requests from civilian law enforcement officials for assistance. Section 908 of the fiscal year 1982 DOD authorization bill now before this body would clarify the intent of Congress on this matter.

In recent hearings before the Select Committee on Narcotics Abuse and Control, on which I serve, an array of State and local law enforcement officials testified that a new wave of international drug smuggling is underway. The results are reflected in higher figures for drug abuse, drug-related deaths, and drug-related crimes in most major metropolitan areas. It has been estimated that only 10 percent, or perhaps less, of all illegal drugs bound for the United States are presently seized by law enforcement agencies. With virtually unlimited financial resources, unpatrolled coastline, and unmonitored airspace, the drug smugglers have an enormous edge. Local and Federal drug enforcement officials have their hands full and need any help available.

While careful not to impinge on the military's paramount function of providing for national defense, section 908 recognizes that the military is in a key position to lend assistance in the massive drug enforcement effort. Military facilities and personnel are widespread geographically and their broad scope of activity and monitoring for defense purposes frequently brings them into contact with illegal drug trafficking operations.

Section 908 is a sensible and much-needed step to make available some of the vast resources of the Department of Defense on a limited basis to assist

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drug enforcement officials in their uphill battle against the mounting tide of illegal international narcotics traffic. I strongly support it and urge approval of this measure.

Mr. SHAW. Mr. Chairman, will the gentleman yield?

Mr. McCLORY. I yield to the gentleman from Florida.

Mr. SHAW. Mr. Chairman, I have been listening to the debate, and I have been staying rather quiet because I have a further amendment to offer following the White amendment. However, I feel that in support of the concept of this bill, as well as the concept behind the bill from the gentleman from Florida (Mr. BENNETT), I think we have gotten off track.

Neither one of these bills puts the military in control in any particular instances. It simply lends, for purposes of equipment or purposes of personnel, whether it is directly involved, as in the case of the Bennett proposal, or indirectly involved in the operation of equipment under the Hughes proposal.

Mr. McCLORY. Mr. Chairman, I think the gentleman is essentially correct. The only thing I would point out is that the Judiciary Committee amendment does insure that the military will not be involved in civilian-type searches and seizures and will not be involved in civilian-type arrests. I think those are essential protections in our modification of the posse comitatus law to accommodate the needs that have arisen as a result of drug trafficking.

Mr. BETHUNE. Mr. Chairman, will the gentleman yield?

Mr. McCLORY. I yield to the gentleman from Arkansas.

Mr. BETHUNE. The gentleman says that it insures that they will not be involved in civilian law enforcement with respect to the arrests and search and seizures, I suppose.

Mr. McCLORY. That is correct.

Mr. BETHUNE. But the point I have made a number of times here is that there is much more to law enforcement than arrest and search and seizures. There are a number of other functions. They overlap. It is very hard to define them.

Mr. McCLORY. Let me point out that we are providing for the exchange of intelligence and for other kinds of support that we think is essential, particularly in connection with drug trafficking. It is a dire situation that we are confronting.

Mr. BETHUNE. If the gentleman will yield, what are we going to do to the military officer or military man or military commander who goes beyond his authority?

Mr. McCLORY. Anyone who violates the law is subject to any applicable penalties. By modifying the law in this respect and adopting these amendments, we are not inviting anybody to violate the law.

Mr. BETHUNE. Will the exclusionary rule be in effect?

Mr. McCLORY. The courts will be fully capable of interpreting what we do here today. I think that we are making our intent and purpose very, very clear, so that there should be no misunderstanding on the part of any court or law enforcement agency with regard to our intent in adopting this amendment.

□ 1530

Mr. BETHUNE. Before we expand the law, should we not treat the issue of what the penalty would be if they violate, or under what circumstances the exclusionary rule will apply?

Mr. McCLORY. I think that there is urgent need for this legislation. I have given the problems that you mention thoughtful consideration as have my colleagues on the committee. Furthermore, this issue has been given full and fair debate here on the floor of the House today. I think it is now time for us to exercise our judgment. My judgment is that the Congress should adopt the Judiciary Committee amendment, as amended by the gentleman from Texas. If that happens, I think we will be making some very good law.

Mr. WHITE. Mr. Chairman, will the gentleman yield?

Mr. McCLORY. I yield to the gentleman from Texas.

Mr. WHITE. Mr. Chairman, just briefly I want to point out to the gentleman from Arkansas that on page 47 it says:

"§ 374. Regulations

"(a) The Secretary of Defense shall issue such regulations as may be necessary to assure that the provision of any assistance, or the provision of any equipment or facility, to any law enforcement official under this chapter does not—

"(1) adversely affect the military preparedness of the United States; or

"(2) include or permit direct participation by any member of the Army, Navy, Air Force, or Marine Corps in any search and seizure, arrest, or other similar activity unless participation in such activity by such member is otherwise authorized by law.

"(b) The Secretary of Defense shall issue regulations providing that reimbursement may be a condition of assistance to any law enforcement official under this chapter.

Mr. BENNETT. Mr. Chairman, I move to strike the requisite number of words.

(Mr. BENNETT asked and was given permission to revise and extend his remarks.)

Mr. BENNETT. Mr. Chairman, after hearing over an hour and a half debate on this without having the position of the Armed Services Committee yet enunciated, I hope Members will be liberal in allowing me some extension of time.

First of all, it may be a good idea to discuss just exactly what we are talking about, and that is this posse comitatus provision. It was injected into our law, the words "posse comitatus" in the 1870's. There was no reason for that language being put in there, and we have made a mystique out of it

which far exceeds the thoughtfulness that went behind that law.

This is how the law came about, that law came about because of the fact that the South had at last obtained enough Members of Congress who would vote favorably for this position. The Reconstruction governments, however, were there and they were imposing local law upon the people that the people did not enjoy having, such as interfering with the Ku Klux Klan and other matters of that type.

So, they went to Congress and got the law passed so that there would be no possibility of having the Federals of the Yankee side of the late war imposing laws which were imposed by the carpetbag governments upon the South. That is exactly what this law is. It is not exactly part of the Parables of the Lord or the psalms, or the prophets. It comes from a rather dingy background.

Actually, the philosophy of our country was quite to the contrary. George Washington put down the so-called Whiskey Rebellion with U.S. troops, where people did not want to pay any money to produce their bootleg whiskey in Pennsylvania. Then down in the Florida-Georgia boundary there were people who were playing around with the idea of making Florida into a territory, and George Washington sent Captain Randolph and others down there to see that they did not do it, and be threatened to put them in jail if they did do it. There are many other illustrations about what happened in the early days of our country and later days of our country. But Congress did pass this law to take care of dissension with the carpetbag government of post Civil War.

But, since that time we have passed 20-some odd amendments to that law. We passed an amendment saying that we could use the military to take care of anybody who trespassed on Indian lands, or on national parks, and to enforce civil rights. Everybody knows about the enforcement of civil rights laws with troops in this country. It has already been mentioned, Customs was also taken care of by an amendment; then crimes against Members of Congress, including threatened assaults on Members of Congress. We can call out the military to put that down. As has been mentioned before, if one happens to have a proprietary right in bird droppings they can get the Federal Government military officials, officers, and enlisted men to enforce the law. So, that is what the law actually is, not a very distinguished law and often amended for things of less significance than drug law enforcement.

What do some people think about it that have given it a lot of thought? The National Anti-Drug Coalition has written this:

It is the coalition's belief that the legislation now pending in Congress would provide a crucial weapon in the antidrug enforcement arsenal. The NADC believes that the

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provision (section 375) added by Rep. Bennett to the amendment, specifying that military involvement in arrests and seizures be confined to drug enforcement activities, comes closest to the appropriate constitutional spirit of the issue, while it provides the strongest measures against drug traffickers, it also maintains the spirit of the posse comitatus law by restricting military involvement in such activities to drug smuggling cases, thereby eliminating the possibility that such legislation could be employed against law abiding civilians.

This is the section 375 I added to the Senate provision. So, these people who are bound together throughout the United States have looked at my provision and say that it is superior to that of any other provision before us today.

The House of Representatives of the State of Florida asked that we put compulsion on the Department of Defense to utilize equipment, personnel, and technical resources to assist local law enforcement officers to apprehend those in the illegal drug trade. That was passed May 5, 1981. It is as follows:

STATE OF FLORIDA—RESOLUTION 1178

Be It Resolved by the House of Representatives of the State of Florida:

Whereas, illegal drugs are a menace to society and drug traffickers prey on our nation's youth, and

Whereas, the flow of illegal drugs coming into the United States has grown in recent years to epidemic proportions, and

Whereas, the law enforcement agencies of the State of Florida and those of the other states in the Union are strained to the limit in the effort to combat this situation, and

Whereas, federal law enforcement agencies have not been able to provide all of the required assistance, and

Whereas, the Armed Forces of the United States has the capability of rendering assistance in locating and seizing airplanes and boats involved in drug traffic, Now, Therefore, be it

Resolved by the House of Representatives of the State of Florida: That the House of Representatives respectfully requests His Excellency, the Governor of Florida, to ask the President of the United States, under his powers as Commander-in-Chief, to order and compel the Department of Defense to implement a plan to utilize the equipment, personnel, and technological resources of the Armed Services to locate and apprehend those who traffic in illegal drugs.

The National Defense Council wrote me on July 13, as follows:

I am writing on behalf of the National Defense Council in support of your amendment modifying the posse comitatus law to aid in drug enforcement activities in the United States.

The continuous flow of drugs into the United States is a threat not only to the lives of our citizens but to our national security as well. It is readily evident that civilian law enforcement agencies cannot check their constantly growing drug trade. Modification of Posse Comitatus would bring together the forces necessary to successfully combat this problem.

As elected representatives of the people it is Congress' duty and responsibility to provide the most effective means available for dealing with the problem of illegal importation of drugs into our country. If this can be achieved through the modification of posse comitatus laws then it must be done without delay.

We, therefore, urge you and your colleagues in both Houses of Congress to answer this problem through passage of this amendment.

That is the amendment which I introduced, not the amendment which has been offered by others.

Then, I have here before me a letter that came to me from Judge Thomas Russell Jones of the Supreme Court of the State of New York:

SUPREME COURT OF THE
STATE OF NEW YORK,
Brooklyn, N.Y., July 7, 1981.

HON. CHARLES E. BENNETT,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN BENNETT: Judges who know how effectively the terror tactics of drug smugglers and drug sellers against potential witnesses and informers have frustrated criminal prosecutions in drug traffic cases, support your bill to permit the United States military to share personnel and equipment in the fight against the corrupters of our civilization.

Sincerely,

THOMAS R. JONES, J.S.C.

Finally, as far as quotations are concerned, I have here a letter from Adm. "Mark" Hill, speaking for the Association of Naval Aviation, Inc.:

ASSOCIATION OF NAVAL AVIATION, INC.,
Falls Church, Va., July 13, 1981.

HON. CHARLES E. BENNETT,
Chairman, Sea Power Subcommittee, Committee on Armed Services, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: In my conversations with Admiral Tom Moorer concerning the problem of the runaway drug trade in the United States, we both agreed that our country would benefit from your proposed modification of the Posse Comitatus Law. By allowing for military participation in drug enforcement activities of our country, I heartedly agree that this amendment would result in immediate reduction of the widespread drug smuggling that now occurs.

Civilian law enforcement agencies are currently overburdened by a problem that demands more resources than they have. If they could have access to additional resources (both manpower and equipment) and information of the military, they could properly perform their duties and reduce illegal drug trade.

At the same time, the military would have an opportunity to perfect their skills in a low intensity, controlled combat environment. Hence, both the military and civilian agencies will operate more efficiently.

Even more importantly, the general population now plagued by the lack of strong drug enforcement will immediately feel the good results of the enhanced capabilities of our civilian law enforcement agencies. If we are to stop the widespread smuggling of drugs into our country and its accompanying ill effects, we must take special action. By modifying Posse Comitatus we are addressing the problem simply and directly. For these reasons, we strongly urge and support the passage of this amendment.

Sincerely,

C. A. "MARK" HILL, Jr.,
Rear Admiral, U.S. Navy (Ret.),
Vice President, Government Relations.

They are referring to the amendment which I offered to the Armed Services Committee bill, not the ones which have been submitted here today.

Now, of course this requires courage. Of course, this is disturbing. Almost everything of importance that man does, almost everything that a legislative body does that is important, distresses somebody, worries somebody. There is always somebody on both sides. There are always people who will say, "Let's wait. Let's do this tomorrow, let's don't do this thing, it is too disturbing."

I have already told the Members that this posse comitatus is not a part of the Constitution. It is contrary to the views of George Washington and Thomas Jefferson and others who enforced the laws in the early times of our country. It is not a part of that tradition whatsoever in our country. It is in fact a law which has been a hampering to our country. We have seen fit to amend it with respect to rather trivial things—some of them important like civil rights and customs—but some very trivial, like bird droppings and assaults on Members of Congress. These are hardly very significant things.

This is a tremendous problem in our country. The latest news magazines that came out in the last 2 or 3 days pointed to the annual figure of about \$80 billion; in Florida, maybe \$7 or \$8 billion or more than that. The facts are that only 15 percent of the drugs which attempt to get into the shores of the United States are stopped; 85 percent of them are not stopped.

□ 1540

And so what a callous thing for the Department of Justice to say that we can have officers there all the time to stop it. They are not there; they do not see it. The fact is that they do have an arrest opportunity when they have everything well in hand. When they have the dope well in hand and everybody is there, they can arrest; they are in good shape to do that but how about the 85 percent which escape them?

What is our problem in this country today? The first thing is the tremendous importation of drugs into our country. This leads to the destruction of the American society more cruelly and more directly and more truly than any other way in which it is being destroyed today. There is not a single other way which is more destructive. There is nothing more ominous upon the scene of American society today than drugs. Russia, Afghanistan, Iran, all these problems are nothing compared to what is happening with drugs. We are really in fact destroying a great proportion of the population of our country, and we are destroying the operation of our country and preventing it from being the kind of a country it ought to be.

This is a tremendous problem, and yet we have people who apologize one way or the other and who dream up all kinds of ideas why something like this should not be done.

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How many hard decisions have we made in Congress?

I have been here 33 years, and many hard decisions have been made. I have in that time made many hard decisions. The way to make a decision is to get all the facts, and that is what I am trying to do. We have had an hour and a half on the other side, and I am trying to give the Members some of the facts from my side.

The CHAIRMAN. The time of the gentleman from Florida (Mr. BENNETT) has expired.

(By unanimous consent, Mr. BENNETT was allowed to proceed for 5 additional minutes.)

Mr. BENNETT. So this is indeed an extremely important decision, and it is something we must address. The reason why it should be addressed in the way it is being addressed in this committee amendment that we have here is, first of all, that it did have a lot of good study. It was studied thoroughly by the Senate. My amendment was not unique to me. It came first from the Senate. I just added to it.

There are only a few ships available in the Coast Guard to do the job. There are only a few enlisted men and officers who are able to do it. In my hometown and around the Mayport area there are 42 naval ships. There are thousands and thousands of military personnel who are thoroughly capable of doing this job.

Let us understand who makes most of these arrests. Most of these arrests are not made by somebody in the Department of Justice; they are made by the Coast Guard. They are made by Coast Guard vessels. They do not have enough vessels, and they do not have enough presence. They are not there.

There is no particular mystique about the Coast Guard. I had a Coast Guard son myself, a very fine and a very capable man. But to say that they are much more capable of doing these things than the military is not true. Actually there are many more arrests made by the military—by the Navy, the Air Force, and the Army—than by Coast Guard members.

The Members must remember that I have worked and I have thought about this. Suppose we treat the problem of putting a coastguardsman on every Navy ship. In the first place, they say they have to have two. Multiplying that out for 453 Navy ships it came to \$12 million, \$12 million a year. That is not much money, but I just do not believe it is very workable to have just two coastguardsmen on every Navy ship. It is \$12 million for just having somebody stand by and not have any regular duties to perform.

Another way to do it would be to buy the ships for the Coast Guard. How much would that cost? It has been testified to. It would take \$4 billion to buy the ships, and it would take 4 years to build the ships. That is \$4 billion to buy the necessary ships. That is the amount of money that

would be necessary to buy Coast Guard ships.

In addition to that, there is the personnel involved. We would have to have 20,000 personnel involved for the Coast Guard if we did an adequate job on this. That 20,000 personnel adds up to \$180 million a year. So that is \$4 billion for the capital investment, and it takes 4 years to get the ships, and we would have to pay \$180 million a year in personnel costs to take care of what is needed for the Coast Guard to do an adequate job with regard to drug enforcement. There is no way that this Congress would even consider making such expenditures.

Let us look for a moment at what this provision is. The basic provision was taken from the Senate, and it is a provision which was studied very carefully. It was not inadequately studied; it was very thoroughly studied. There was only one section that I added, and that is the one about arrest and seizure; the rest of it comes from the Senate version. I told the committee when I introduced it that it was a workable provision, and the committee agreed it was so. The gentleman from Georgia (Mr. EVANS) had a large part to do in this, in drafting this, and we introduced it. He was a leader in this effort.

I added this particular section because I really do not feel that there is any comparability between what these two bills are doing. Some people are talking about this as if it were a very small amendment. It is no small amendment; it is a terrific amendment, it is a colossal amendment, and it makes a tremendous difference.

The difference is that there is no comparability between the two. Why is that so? It is so because if we pass the amendment I provided, everytime a military plane is overhead or a ship on the sea, every time that is so, the smuggler will know that he has a real possibility of being arrested or being detected. He will know that is a real possibility that may occur. There is no way in which the other provision that has been suggested here would take care of that, because the smugglers will know that is not going to be the case.

So the two basic things that are debated here is, No. 1, whether we are going to allow military personnel to do any actual arresting, and whether or not we are going to allow people to do this on the land of the United States. I would like to address that for a moment.

Why do I not want to eliminate the land use? Simply because I grew up in a town which was full of drugs. I grew up in Tampa, Fla., and when I was a youngster, many city officials were at that time, long ago, involved in drugs and prostitution and everything else that made quick money.

The CHAIRMAN. The time of the gentleman from Florida (Mr. BENNETT) has again expired.

(By unanimous consent, Mr. BENNETT was allowed to proceed for 5 additional minutes.)

Mr. BENNETT. Mr. Chairman, the heinous effect of these things upon public servants is felt even today. We just read about 12 people who were arrested in Miami just the other day by law enforcement officials for drug trafficking or for being involved in the matter. It is very easy for smugglers when they have billions and billions of dollars involved. There was a man the other day who skipped bail of \$1 million, and they say that is the highest bail that has ever been skipped. And there was another one for half a billion. Money means nothing to them at all.

I was going to address for a moment why it is important for me to have the land in here. It is not the end of the world if we do not have the land in here, but I think it is gravely important to have it in there, and it is a real loss if we take it out.

Why is it a loss if we take it out? It is a real loss because once we closeup the Gulf of Mexico, once we closeup the coast of Florida, and once we closeup the Pacific coast, they are going to move across the Mexican border, and there are 1 million people coming across the Mexican border every year. They are not now toting drugs, but they will be toting drugs. We can be sure of that, if smugglers see that the land cannot be involved in this law.

So I put the protection of the land in there. Incidentally, there was a letter addressed to the committee, and the gentleman from New Jersey (Mr. HUGHES), on June 3 from the Department of Defense, and it was pointed out in essence that if you are going to do anything like you suggest in the Hughes bill, you had better put in the things you left out of the Bennett bill, because the Bennett bill was the best, and not the other amendment the State Department had to agree. So I put them in there. Even the wisest man in the Department of Justice, none of them, suggested that my language was not good—not a one. No one said it was unartfully drawn up. They agreed it was well drawn. In fact, the Department of Defense said, do not pass the Hughes bill without having those provisions in there, those which are in my section of the bill and which are left out of the Hughes bill.

So in summary, Mr. Chairman, I would like to say that this is not a trivial thing. This is probably the most serious thing that has happened in my lifetime, and I hope the committee passes the bill.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. BENNETT. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I want to commend the gentleman from Florida (Mr. BENNETT) on his very sincere presentation. He has taken now

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15 minutes, and I can understand why. Is the gentleman instructing the House, then, to vote against the White amendment?

Mr. BENNETT. Well, I do not like the portion of the White amendment which limits the land. I really am not debating that.

But I really would say that all of the other amendments suggest to me that we are dealing with just little curlicues, small things in a small portion, of a very important measure.

Mr. CONYERS. Mr. Chairman, what I mean is that if those who support the gentleman's position are to vote for it, there is no point in approving another position on the amendment?

Mr. BENNETT. I am not vigorously supporting the White position because I think the language of my amendment that is in the bill, the original bill, is sufficiently protecting what the gentleman from Texas (Mr. WHITE) is worried about.

I like the gentleman from Texas (Mr. WHITE), and I may vote for the amendment for that reason, but it does not make that much difference. It will buy some intelligence information, that is fine, and it is a step forward, but it is not girding up for a real battle against a real enemy like this, not like my amendment does.

□ 1550

Mr. HUNTER. Mr. Chairman, will the gentleman yield?

Mr. BENNETT. I yield to the gentleman from California.

Mr. HUNTER. I thank the gentleman for yielding.

I would like to commend the gentleman for a tremendous statement, and I think that he has made the one major point that perhaps the Judiciary Committee has missed, and that is that in looking at the illicit drug trade, we are looking at a trade and operation that is in itself a military operation. It is complete with generals, soldiers, it has got an extensive armada of vessels and ships, it has got a huge budget, it has got a tremendous intelligence operation, and the Coast Guard, at least in Florida, we are all aware, is not up to snuff in combating this operation.

We have talked about Miranda and whether or not some of these cases are going to fly and whether we are going to be able to train our military people to make proper arrests.

I think the point that has been missed is regardless if there is a suppression motion, perhaps it wins, and there is no conviction, that 100,000 heroin or whatever that was confiscated can still be destroyed and it is not going to be flowing into the arms of American children.

And another point that I think that has been missed by a lot of people on the judiciary side is the fact that our naval officers with years of discipline and experience are probably better able to follow the mandates of Mi-

randa than some of our rookie policemen.

So, I commend the gentleman and I support the language in the bill, which is his language.

Mr. HUGHES. Mr. Chairman, will the gentleman yield?

Mr. BENNETT. I yield to the gentleman from New Jersey.

The CHAIRMAN. The time of the gentleman from Florida (Mr. BENNETT) has expired.

(At the request of Mr. HUGHES and by unanimous consent, Mr. BENNETT was allowed to proceed for 3 additional minutes.)

Mr. HUTTO. Mr. Chairman, will the gentleman yield?

Mr. BENNETT. I yield to the gentleman from Florida.

Mr. HUTTO. I thank the gentleman for yielding.

Mr. Chairman, I want to commend my colleagues from Florida for the tremendous statement that he has made and for the great amount of work that he has done on this problem which affects our great Sunshine State of Florida I guess more than any other, and I want this body to know that with the amendment that the gentleman from Florida (Mr. BENNETT) has in the Armed Services Committee bill that I believe at least we will finally be able to do something about the drug trafficking into the United States of America, and particularly as it comes into Florida and to the other coastal areas, and also I would like to ask the gentleman to please verify again that under his amendment that nothing could be done without the authorization of the civilian authority.

Mr. BENNETT. That is correct.

Mr. HUTTO. Without the Secretary of Defense's authorization?

Mr. BENNETT. Yes; and the Secretary of State. It remains under the control of the civilian authority, always.

Mr. HUTTO. It seems to me that has plenty of restrictive language to make sure it is still under civilian authority and also, is it not true that any operations against the drug trafficking would have to be conducted by the drug enforcement agency?

Mr. BENNETT. That is correct; that is clear under my language.

Mr. HUTTO. If the gentleman will continue to yield, it seems to me we have plenty of restrictions as far as the separation of civilian and the military enforcement of the law is concerned.

Mr. BENNETT. Yes, that is correct.

Mr. HUTTO. I commend the gentleman on a great statement.

Mr. BENNETT. I thank the gentleman.

Mr. HUGHES. Mr. Chairman, will the gentleman yield?

Mr. BENNETT. I yield to the gentleman from New Jersey.

Mr. HUGHES. I thank the gentleman for yielding.

I want to commend the gentleman. We pay each other, as a matter of

course, a lot of compliments. It just seems to me, I say this in all sincerity, the gentleman has performed, in my judgment, a great public service by advancing the issue to begin with.

Mr. BENNETT. I thank the gentleman for his courtesies and kindness and ability in what he has done.

Mr. HUGHES. What we have done is not in derogation of great work that the gentleman has done in Armed Services. We are concerned, however, as the gentleman is concerned, about the drug problems. In the Subcommittee on Crime, we have primary jurisdiction over the Drug Enforcement Administration. I also happen to serve with our colleague from Florida on the Committee on Merchant Marine and Fisheries, and we are concerned over the lack of resources on the part of the Coast Guard and the Drug Enforcement Administration, but the fact of the matter is that the equipment often that these military agencies have is not the equipment that we need and we cannot use a destroyer or battleship often. Much of the equipment that we have talked about just does not lend itself to the type of civilian law enforcement operations that are essential in this country. We have got to begin to realistically fund our drug enforcement efforts.

If we really mean business about directing our efforts against drug abuse, then we have got to do more than we have done today.

If we look at the budget, we are cutting across the board in every area dealing with drug enforcement, including task force operations, training, and what have you. So, posse comitatus is an important component of the overall problem we are trying to deal with.

The CHAIRMAN. The time of the gentleman from Florida (Mr. BENNETT) has again expired.

(At the request of Mr. HUGHES and by unanimous consent, Mr. BENNETT was allowed to proceed for 3 additional minutes.)

Mr. HUGHES. If the gentleman will continue to yield, the bottom line is the law enforcement community has requested specific help. They need the sharing of intelligence data. They need to use from time to time facilities that are within the realm of the military. They need research facilities from time to time and we have provided all of those things just as they have provided them as a matter of course in most instances over the last decade or so.

They have asked for one additional thing. They need from time to time a piece of equipment and just do not have it.

When we try to address that particular concern—and that is all the law enforcement community wants—they do not want the right to arrest or seize.

Mr. BENNETT. That is really not an inquiry and I would like to reply to it in my time.

I would like to say that I understand what the gentleman is saying and there has never been a finer gentleman in the U.S. House of Representatives than the gentleman from New Jersey. The gentleman is a fine and able legislator. I am a crude man compared to the gentleman in every respect.

But it is not true that there is nothing that is needed but a little bit of equipment. It may be true in some procedures that we know about, but it is not true that they do not need these ships off the coast of Florida.

They have too few ships. The Coast Guard has said they need \$4 billion of new ships which will take 4 years to build. They need 20,000 new men just to fight in drugs, \$4 billion worth of ships and 20,000 men, at \$180 million a year. That is what they need to enforce the drug situation. They will have it under control if they do it. It is not a little bit of equipment, it is a very serious thing we are facing, and it would be a good thing to pass.

What the Judiciary Committee has brought out is a good thing, but it is a very, very small thing; it will not seriously end in any great degree the drug trafficking into the United States, while the provision which I have introduced—and which is in the Armed Services Committee—will. Therefore, I plead with the Members of Congress please to pass what is in the bill and turn down, I would say, all amendments in the end result.

Mr. SCHEUER. Mr. Chairman, will the gentleman yield?

Mr. BENNETT. I yield to the gentleman from New York.

Mr. SCHEUER. I thank the gentleman for yielding.

I want to congratulate the distinguished gentleman from Florida for the tremendous job that he has done on this issue. It goes a long way to curing, to enabling our society to stop this devastating flow of drugs into our country that so far we are absolutely helpless to control.

I have served on the Select Committee on Narcotics since its inception, and I share the frustration of the members of the committee and indeed the Members of the Congress with our total inability to cope with the flow of drugs that are flooding our country. We do not think and DEA does not think perhaps more than 5 percent of the drugs that come into this country—it is a desperately tragic situation.

I am also concerned about the problem of illegal immigration, whereby perhaps a million or a million and a half illegal immigrants are coming into our shores every year. It is on that specific matter that I wish to ask the gentleman a question.

The CHAIRMAN. The time of the gentleman from Florida (Mr. BENNETT) has again expired.

(At the request of Mr. SCHEUER and by unanimous consent, Mr. BENNETT was allowed to proceed for 3 additional minutes.)

Mr. SCHEUER. If the gentleman will continue to yield, I ask the gentleman, under his legislation, without the White amendment—because the White amendment does cover the immigration nationality—under the gentleman's amendment, would the equipment, the surveillance equipment and the like be available.

Mr. BENNETT. For immigration?

Mr. SCHEUER. To help domestic agencies in the identification and the apprehension of illegal refugees trying to get over our borders?

Mr. BENNETT. Well, say the question again.

Mr. SCHEUER. It is obvious that the gentleman's language is very well crafted to meet the needs of the DEA and other agencies that are trying to control the influx of drugs, the trafficking of drugs into our country.

Mr. BENNETT. Particularly 375, section 375.

Mr. SCHEUER. What I also am asking is, in addition to identification of drug traffickers, could the surveillance system and the equipment be used for the identification of illegal immigrants?

Mr. BENNETT. It could. It would, yes.

Mr. SCHEUER. Is the gentleman sure?

Mr. BENNETT. Absolutely.

Well, that is true because of the broad sections which came from the Senate. They are broad enough to cover that, also which the Judiciary Committee approved and the way the gentleman frames the question, that is the reason I got the gentleman to restate it because the gentleman used one word that threw me a little bit, because the gentleman left that word out in his further reply. Leaving the word out, it became a thing that I can say, yes, it does cover.

□ 1600

Mr. SCHEUER. If the gentleman's language is passed, the surveillance system, the equipment, and the manpower could be used to help the Immigration and Naturalization Service identify the time and place and the circumstances of illegal immigration taking place across the border.

Mr. BENNETT. Yes; correct. They could not apprehend the people.

Mr. SCHEUER. They could not apprehend them.

Mr. BENNETT. Yes. The first way the gentleman was asking the question, it seemed to me the gentleman was asking whether they could arrest or not.

Mr. SCHEUER. Short of apprehension.

Mr. BENNETT. Short of apprehension.

Mr. SCHEUER. All the surveillance and equipment could be used identify for the INS.

Mr. BENNETT. I think that is true of all the views, everything here, except the views of the gentleman from Michigan (Mr. CONYERS).

Mr. SCHEUER. It is specifically true of the amendment of the gentleman from Texas (Mr. WHITE), because he mentions the Immigration and Nationality Act. I just wanted to clarify for the record that, under the gentleman's language, this entire surveillance system and all the equipment could be used to help the INS to know where, when, and how illegal immigration was taking place.

Mr. BENNETT. That was the intention when it passed the Senate. It was my intention, when I offered it in the Committee on Armed Services, and I think it is clear by the language.

Mr. WHITE. Mr. Chairman, will the gentleman yield?

Mr. SCHEUER. May I yield to my colleague, the gentleman from Texas (Mr. WHITE)?

Mr. BENNETT. Yes.

Mr. WHITE. I thank the gentleman for yielding.

Let me read the language of the gentleman from Florida (Mr. BENNETT):

The Secretary of Defense, upon request from the Federal Drug Agency, is authorized to assign members of the Armed Forces to assist Federal Drug Enforcement officials in drug seizures or arrests, provided that—

Mr. BENNETT. Yes; but he talked about the whole amendment. The whole amendment deals with the other section. It deals with 371, 372, and 373.

Mr. WHITE. But there is no reference to the Nationality Act.

The CHAIRMAN. The time of the gentleman from Florida (Mr. BENNETT) has again expired.

(By unanimous consent, Mr. BENNETT was allowed to proceed for 5 additional minutes.)

Mr. BENNETT. Mr. Chairman, I have asked for 5 additional minutes because I am not getting much of my time. Everybody else is using it up but me.

Now I will decide to whom I am going to yield. I will yield to the gentleman from New Jersey (Mr. HUGHES) in just a minute.

It is true that section 375 deals only with drugs, but the other portions of the bill do not deal only with drugs. They are very broad and they would include immigration.

Mr. Chairman, I yield to the gentleman from New Jersey (Mr. HUGHES).

Mr. HUGHES. Mr. Chairman, I thank the gentleman for yielding.

I have a couple concerns with section 375 of the gentleman's bill. The language recites that the Secretary of Defense, upon request from the Federal drug agency, is authorized to assign members of the Armed Forces. By definition, the Coast Guard is defined as being one of the Armed Forces.

Now, it would seem to me that what the gentleman has done is made the Coast Guard now subject to the Department of Defense in drug-related matters.

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Mr. BENNETT. It may seem that way to the gentleman, but I am not doing that.

Mr. SHAW. Mr. Chairman, will the gentleman yield?

Mr. BENNETT. I yield to the gentleman from Florida.

Mr. SHAW. Mr. Chairman, for purposes of clarification and in specific reply to the question of the gentleman from Texas with regard to the use in immigration problems, section 371 of the bill of the gentleman from Florida (Mr. BENNETT) says that the Secretary of Defense may provide to Federal, State, or local law enforcement officials any information collected during the normal course of military operations that may be relevant to a violation of any Federal or State law.

I believe that covers the question that was raised.

Mr. BENNETT. I knew that some members of the Judiciary Committee felt that, but there was no intention to exclude Immigration or Customs. In fact, Customs is a specific exception to the comitatus anyway.

I am thankful for your attention. I am sorry I trespassed so much upon our time.

Mr. CONYERS. Mr. Chairman, I move to strike the requisite number of words.

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Chairman, well, here we have it. The fact of the matter is that there is very little difference between either of these amendments, even with the proposed White amendment being added to the Judiciary Committee amendment. Both amendments are feared by the Department of Defense.

Just when has it arisen that the Judiciary Committee and the Armed Services Committee suddenly have a wisdom greater than the Department that they are saddling these impossible programs to be carried out with?

I would like to read to you from the testimony given on behalf of the U.S. Department of Defense on June 3, 1981, by the General Counsel of the Department of Defense, William H. Taft IV, Esq. Here is what he said:

The position of the Department of Defense on the proposed legislation is characterized by two overriding considerations. First, the mission of the Department of Defense is military preparedness. Assistance to law enforcement agencies should be provided only when incidental to the performance of the Department's mission.

What is he trying to tell the subcommittee?

Second, the Department is sensitive to the historic separation between military and civilian spheres of activity. This distinction is embodied in the Posse Comitatus Act, 18 U.S.C. § 1385—

Incidentally, a criminal statute—which generally prohibits military participation in civilian law enforcement, with limited exceptions.

What are those exceptions? An emergency; the Governor of a State

declares he can no longer maintain law and order; an invasion by a foreign enemy; the quelling of a domestic insurrection against the Government.

Mr. Taft goes on to say:

Preservation of this distinction is one of the most fundamental precepts of our form of government.

This is not the American Civil Liberties Union speaking, but the Department of Defense, sensitive to its obligations.

Then Mr. Taft goes on to review what happened in the Senate, which was a tragedy as far as the Defense Department was concerned, and so he again expresses the point iterated previously.

There is another important consideration before we vote on this matter. Mr. Taft notes that—

Members of the armed forces put in long, arduous duty hours in furtherance of the training and operation necessary for military preparedness. Military readiness is further enhanced by eliminating performance on nonmilitary tasks by members of the armed forces in order to provide increased time for military training. Assignment of military personnel to civilian law enforcement duties would be contrary to the goal of military preparedness, because civilian operations are not an adequate substitute for military training.

This is the Department of Defense. The Pentagon is telling us that they cannot conduct these operations effectively because, to do so would deter from its military preparedness. Mr. Taft concludes by stating that—

Such operations normally cannot replicate the training necessary to meet military contingencies. Moreover, participation in civilian law enforcement activities would require specialized training with respect to civilian operations.

Mr. SHAW. Mr. Chairman, will the gentleman yield, please, on that point?

Mr. CONYERS. Yes; I will yield to the gentleman from Florida.

Mr. SHAW. Mr. Chairman, I would like to address the particular question as to military preparedness. In the Bennett amendment, it provides in section 375 that this assistance shall not be granted if it should be shown that it would adversely affect the military preparedness of the United States.

Mr. CONYERS. Exactly.

Mr. SHAW. I would like to say also that in the Hughes amendment the same question is addressed and it provides in section 374 that the military will not be used if it adversely affects the military preparedness of the United States. And both bills adequately address that question.

Mr. CONYERS. I presume by the gentleman bringing this point to our attention that the gentleman would not want the preparedness to be interrupted by such activities, if that were the case.

Mr. SHAW. Both bills specifically prohibit that.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. CONYERS) has expired.

(By unanimous consent, Mr. CONYERS was allowed to proceed for 5 additional minutes.)

Mr. CONYERS. In that case, I would bring the gentleman to the next paragraph of the testimony before the Crime Subcommittee of the Pentagon's representative. Here is how many provisos he added. The gentleman mentioned one. He said that these considerations are also applicable to section 375 of the proposed amendment, and he said that unless four conditions were met in terms of having members of the armed services participate in drug enforcement operations, we could not possibly support the legislation:

(1) the Secretary of Defense must find that such assistance will not impair military preparedness; (2) the Secretary must verify that the drug enforcement operation may not succeed without military personnel assistance;

Must verify—

(3) Federal drug enforcement officials must maintain ultimate control over the activities; and (4) the assignment cannot take place in any location or circumstances not previously approved by the Secretary of State. The Senate bill does not contain a similar provision.

In other words, Mr. Chairman, if you enforce all four provisos, there is no way they could ever get there in time to intervene with anything. That is why the Pentagon has been telling us in one way or another that with all the limitations they are saddled with, plus the White amendment which now keeps them—how many miles, 12 miles, 60 miles out somewhere in the waters—makes the whole thing totally impracticable, even if you are not sensitive to the constitutional considerations that we have been trying so long to get across to this body.

□ 1610

What we are talking about is no idle matter. We are talking about bringing the U.S. Armed Services into the normal, ordinary enforcement of civilian laws. By doing what? By loaning equipment and personnel to operate that equipment to civilian authorities.

If we loan the equipment with the pilots, the officers and the troops, as soon as one of those are endangered, what is the automatic military response, Miranda warnings to the contrary notwithstanding? Wipe them out. Blow them away. That is what they are trained to do, is it not?

Do they have any understanding of whether the Governor of Florida wants them to come in, or whether the mayor of some drug infested town approves of it, or where is the Coast Guard as opposed to the merchant marine as opposed to the Army? They see it for what it is, a totally impracticable but well-intentioned notion about how we should deal with the drug problem.

Little has been said about the multi-billion dollar Drug Enforcement Administration. Why do we not just give

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them some more money? Why do we not loan, or dare I suggest, give them some equipment? If we have so much in the procurement bill that the Navy or somebody has some excessive equipment, let us give it to them and keep them out of enforcing civilian laws.

There are constitutional considerations that are being ignored in this debate. I plead with my colleagues to examine what this could ultimately lead to. It would routinely authorize the armed services to intrude into the civilian laws of the United States. That is the beginning of a police state, I say to my colleagues. Nobody here wants that. Already we are talking about hitting the aliens at the same time. Already we are talking about knocking out terrorists along with drug pushers. Where does it end?

Let us pause for a moment. If it is the collective judgment of this body to change a long-standing principle of our form of government, then obviously I will be unable to restrain that. But let us not do it in a military authorization bill that addresses how much equipment we are going to build for the greatest military instrument on the face of the globe.

Mr. JACOBS. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, somebody wrote to me about this proposal a couple of weeks ago, I think, and my offhand response was that it sounded like a pretty good idea to me. But this debate has messed up my thinking with some facts.

The first fact that has messed up my thinking is what happened in the Boston Massacre. Although not generally noted in our history books, the first American citizen to die in the Boston Massacre was a man named Crispus Attucks.

Military law enforcement agencies, without the finery of procedures, shot dead several people in that gathering, that demonstration on that day. It was the precursor, I suppose, of the Kent State tragedy to which reference was made earlier.

My father used to say there are too many people making history who have never read history. I think that has been the problem with most republics throughout history. My father also, a colleague of my dear friend from Florida, Mr. BENNETT, was probably one of the first people to vote in Congress against our unfortunate involvement in the Vietnam war, because there was legislation in the Congress to provide only weapons, not manpower, to the French in their Southeast Asia war. The Record will show that my father in that debate many, many decades ago said in this very chamber that if the equipment goes, our men will follow, eventually, inevitably.

Mr. Chairman, I am a former police officer. I know something about training police officers, and I know something about arrests on the street. Much has been said about protection

of the defendant's rights here. What about protection of the public's rights?

The public is entitled to an arresting officer who is trained in the preservation and presentation of evidence, an officer who can give evidence and obtain a conviction. Those who are trained in the military sphere are simply not trained that way, with the possible exception of the military police.

If the tools are lent to the law enforcement agencies, those best capable of operating those tools will, in my opinion, inevitably follow; indeed, they will be there in the first place if the gentleman from Florida's (Mr. BENNETT) proposal is ultimately accepted.

So I caution the committee to think a little bit about history, to think about the cause for the third amendment, the third part of our Bill of Rights, and to think a little bit about the practical means for improving our law enforcement agencies in this area.

The gentleman from Michigan has suggested that the equipment be given to the law enforcement agencies. Why not? The only reason I could think of is the military may still need the equipment. If the military still needs the equipment it probably means that it has the personnel to operate that same equipment. That also probably means that same personnel would end up operating the equipment in its civilian law enforcement role.

As to civilian control of the forces, my colleagues, the civilian part of our Government already controls the military. The President of the United States is the Commander in Chief.

That does not insure constitutional protection of our citizens and their right to have effective, constitutional law enforcement.

In the novel "On the Beach," Nevil Shute wrote that in the final destruction of the Earth, there were five missiles left in China and five missiles left in the Soviet Union. The Prime Minister of Australia reached a Chinese lieutenant who had charge of the five missiles in an effort to stop the last exchange of missiles on Earth. Somebody asked what the answer of the Chinese lieutenant was. And the answer was "If you were trained to fire missiles in hostility, and that was the only training you had, what would your answer have been?"

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. JACOBS. I yield to the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. I thank the gentleman for his contribution.

In 1967 Detroit had the largest riot in the history of this country, I am sorry to say. The President of the United States ordered troops into Detroit and Michigan. Without lawful authority, in defiance of national traditions, and in secrecy, the Army seized on that event as an excuse to convert its intelligence unit into a nationwide detective force and to assign 1,500 of their agents to spy as plain-

clothes agents on civilians and organizations.

The CHAIRMAN. The time of the gentleman from Indiana has expired.

(By unanimous consent Mr. JACOBS was allowed to proceed for 3 additional minutes.)

Mr. CONYERS. One of those organizations was the House of Representatives. We had Members who were the subject of that kind of activity.

Could we have secret intelligence actions going on as a result of this authority being granted?

Whether we could do anything about it is yet another question. I hope the gentleman's remarks on these issues will be considered by every Member who is casting a vote on this matter.

Mr. JACOBS. I thank the gentleman for his contribution. I might just say, Mr. Chairman, that I believe the need to do something should not lead to the willingness to try anything. I urge extreme caution in this area.

Mr. WHITE. Mr. Chairman, will the gentleman yield?

Mr. JACOBS. I yield to the gentleman from Texas.

Mr. WHITE. The gentleman would be then very willing to vote for whatever amendment would eliminate the power of arrest and seizure, from what he says. And from what the gentleman from Michigan (Mr. CONYERS) says, the power to merely use equipment and not to make surveillance and not to arrest and seize and search.

Is that correct?

Mr. JACOBS. I do not believe the gentleman grasps the purport of my remarks. I am simply saying that no matter what the statutory prohibition is, when the Constitution in this case becomes a little bit pregnant, eventually "Rosemary's Baby" will be born.

Mr. HARTNETT. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

(Mr. HARTNETT asked and was given permission to revise and extend his remarks.)

Mr. HARTNETT. Mr. Chairman, I have sat here this afternoon and listened to the debate. Before I sat here, I knew very little about it. And perhaps I am still not as well versed on the subject matter as many of the Members who have preceded me to these podiums.

I have heard the gentleman from Michigan say to us that we should be concerned that the Department of Defense is opposed to this, and wherein do we think that the wisdom collective of the Judiciary Committee and the Armed Services Committee exceeds that of the Department of Defense?

I would answer that by asking the gentleman or saying to him that I do not know of any group of people or any agency that is more adversely affected by illegal drug use than our military. It threatens the very survival of this Nation as a free nation and our

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capabilities of being able to defend ourselves.

The gentleman from Florida pointed out that when things have threatened this Nation internally, such as the great civil rights strife which we have had in past years, and we saw that was an issue that was about to destroy this great Nation from within, no one objected then to the use of our military forces to enforce a law that was about to destroy the American people and our Nation from within.

And what was so capably pointed out by the distinguished gentleman from Florida was: What, Mr. Chairman, what issue in society today more threatens to destroy our Nation from within than the drug problem which we have, to destroy our society, the minds and bodies of countless millions, many of whom happen to be minority members of our great Nation? What greater issue right now than the drug traffic problem?

And we say, "We have got to do something, but we do not want to step on the constitutional rights of those who would prey on the very right to life of many of our young people."

How many of you in your States—and many of you served in your State legislatures—knew that your highway department on peak Labor Day weekends and Fourth of July weekends would park empty patrol cars, highway patrol cars, State trooper cars on sides of roads? Do you know what it would do? Just the presence of that empty automobile alone caused people to be more conscious that there were such people as drug enforcement officers and law enforcement officers nearby, and they would slow down and drive more carefully or be more cognizant of our traffic laws.

And again as was very ably pointed out by the distinguished gentleman from Florida, their mere presence to a drug-trafficking ship passing a naval vessel or a Coast Guard vessel at sea would cause them to think twice about what their cargo might be.

And maybe we will not get convictions. But maybe countless billions of dollars of illegal drugs will be destroyed, and that will keep that terrible agent from reaching, as was so ably pointed out by my distinguished friend from California, the young people of this country.

So maybe it has got to be a temporary thing, I say to the gentleman from Michigan. Maybe it is something that you and I fear because God knows we do not want a police state, we do not want military people stopping your wife or mine, or your husbands or children as they travel our highways and byways. But I think in the cause of eliminating what is the most insidious cancer that is preying on the American society now, maybe—just maybe—we could put the faith in our Department of Defense and our military people and urge them to do what they can to eliminate this terrible, terrible cancer.

So, Mr. BENNETT—I understand you are not supposed to mention names on the floor, but I do not know why. I think when people deserve bouquets, they ought to get them; when they deserve brickbats, they ought to get them. But I salute you and take off my hat to you, sir, for pointing out and being a leader in what I think is an idea that will go a long way toward eliminating a lot of the drug traffic problem which we have, and I hope that this body will see fit to pass what I think is the first step forward in bringing about some control, some first step forward in bringing some relief to our society and this terrible problem that has infected it.

Mr. EVANS of Georgia. Mr. Chairman, I move to strike the requisite number of words.

(Mr. EVANS of Georgia asked and was given permission to revise and extend his remarks.)

Mr. EVANS of Georgia. Mr. Chairman and my colleagues, I am in a unique position of supporting all versions of the posse comitatus because I think anything that can be done in this area is an improvement over the present situation.

It has been pointed out that posse comitatus has a constitutional, almost a constitutional mandate, that it is a constitutional right for the separation from the military and the civilian.

Congress passed that law in 1875. It can certainly amend it today to deal with the kind of problem that the previous speaker has just addressed.

We are talking about a situation in which several people have pointed out, "Well, why do we not just give more resources to our civilian law enforcement?" The many billions of dollars that it would cost—the gentleman who mentioned that knows—will not be done under this administration or any other administration because we are talking about a \$70 or \$80 billion industry that has the ability to buy the kind of equipment, the kind of communication, the kind of sophisticated means to evade law enforcement that we cannot compete with and take out of the taxpayers' pockets.

It seems ludicrous, to me, to have the equipment and personnel available. We have the military. What is our military doing? We are not engaging in any war. We can at this time, consistent with routine flights and with routine training, with routine observation, through our military personnel and the use of the equipment that was bought at the expense of the taxpayers, assist law enforcement with a serious problem. Why can we not wait for every minute? Every few minutes that we wait, we have another child caught up in the drug scene.

Mr. SKELTON. Mr. Chairman, will the gentleman yield?

Mr. EVANS of Georgia. I yield to the gentleman from Missouri.

Mr. SKELTON. Mr. Chairman, a lot has been said today in the name of history, and I would like to join with

the gentleman in his thoughts. The gentleman mentioned a few moments ago that the law that did away with the military enforcing civilian law was in 1875. I know the gentleman will recall this as a corrective law that corrected the Reconstruction Era and the excesses of that day which were part of our American history.

This is a different situation today.

The drug problem, as the gentleman has so aptly pointed out, is one of the most, if not the most, devastating to the youth of America.

I certainly hope that in looking at history we will not look at it through the wrong tinted glasses and look at this foursquare because we must do something; and the use of history to divert us from a true and correct solution is not the way to go.

I commend the gentleman on his comments.

□ 1630

Mr. EVANS of Georgia. I thank the gentleman. I would like to further point out that in dealing with not only the cost that we have talked about before and what it would cost to put in the same thing that we have available through our military into civilian law enforcement, it would cost tens of billions of dollars. We do not need full-time equipment. We just need the surveillance. We need the assistance when we need it, and Congress certainly has the authority to do that.

It has been pointed out by law enforcement officials that if they could get someone to just tell them when suspicious ships were coming in or suspicious planes were flying in, they can follow that in to where the plane landed. They could confiscate the drugs or make the arrests. There is no reason why the taxpayers of this country have to face the great drug problem because we do not have the good sense to duplicate the use or to double the use of what we already have available.

Mr. WHITE. Mr. Chairman, will the gentleman yield?

Mr. EVANS of Georgia. I yield to the gentleman from Texas.

Mr. WHITE. Mr. Chairman, I want to thank the gentleman for yielding. Pertaining to one of the statements the gentleman made earlier as to the use of the equipment, and why should we not use this equipment and personnel, I merely wanted to point out one very important difference between the Bennett bill and the one I have provided.

The CHAIRMAN pro tempore. The time of the gentleman from Georgia has expired.

(At the request of Mr. WHITE and by unanimous consent, Mr. EVANS of Georgia was allowed to proceed for 5 additional minutes.)

Mr. WHITE. In the Bennett language there is no provision for the use of equipment by the military personnel for the surveillance of those who

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would violate our narcotics laws. There is no provision in there whatever. The only provision that exists in the language of Mr. BENNETT that is now in the Armed Services Committee bill is that they will provide any information collected during the course of military operations. Otherwise, there is no mention of the use of equipment by military personnel. The only other provision is the lending of military equipment.

Now, this is very sophisticated equipment. Much of it needs to be operated by the military personnel. The amendment I have presented to the Judiciary Committee's amendment does provide for the lending of the equipment, but also provides for the operation of the equipment by the military personnel for the purpose of surveillance, monitoring, tracking those who violate the narcotics laws, and those who are illegal aliens and contraband. So, those are provided specifically in the bill we are supporting here.

Mr. EVANS of Georgia. I thank the gentleman, and I would like to reclaim the balance of my time and conclude my remarks.

The whole point I was trying to make here is not so much which bill to support. I personally believe that the Bennett bill would be much more effective in coping with the drug traffic. At the same time, I believe that the Hughes amendment, as amended by White, would do a great deal because the problem in the past has not been the overuse of the military; the problem has been that the people in charge of the military bases have used the posse comitatus statute to not do anything to assist civilian law enforcement. They have acted on an individual basis depending on who the commander was to not participate, and all this fear of what is going to happen when the military takes over is in direct contradiction to what the facts are.

We have had hearings all over the Southwest; we have had hearings in the Judiciary Committee; we have had hearings in the Defense Committee, and all those hearings indicate that the problem is not abuse, the problem is inaction. The problem is, nobody is doing anything and our children every day, more and more, are being infested with this problem.

If we want to sit here and talk about fine points and talk about the Constitution, where it does not apply to this particular case, and let more and more of our kids go down the drain, and let more and more of our parents be brokenhearted because they have lost their kids, then I think what we ought to do is just sit here and engage in a fine debate and talk about all the fine points and talk about the rights of poor criminals who are making billions of dollars out of killer-dealing death to our young people. If we want to do that, let us do it, but I would say, let us do something today, whether it be Hughes amended by White or Ben-

nett. Let us do something, pass something, and show the criminal element of this country that we mean business about the drug traffic in this country.

Mr. HUGHES. Mr. Chairman, will the gentleman yield?

Mr. EVANS of Georgia. I yield to the gentleman from New Jersey.

Mr. HUGHES. Mr. Chairman, first let me just commend the gentleman for his superb leadership in this entire area. He has been very deeply in this for a number of years, and goes back to before he came to this Congress. He is to be commended.

Let me, if I might, raise another concern that I have about the Bennett language. Section 375 of the Armed Services Committee bill provides that the Secretary of Defense has to make certain findings. One of the findings, and let me read it, is:

The Secretary of Defense has to verify that the drug enforcement operation may not succeed without military personnel assistance.

Now, our colleague from Michigan aptly pointed out that the Department of Defense does not really want any additional authority. They like it as it is. They are going to say to the Secretary of Defense, "Before you can provide equipment and personnel, you have got to make a finding that the operation would not succeed without your intervention."

How is the Secretary of Defense going to do that? In fact, it gives him an out. All a Secretary of Defense has to do as an excuse for not cooperating, as often they do not cooperate, as the gentleman knows, is to find that it would have succeeded without them.

Mr. EVANS of Georgia. May I answer the gentleman's question by stating that, if I understand the rules, the Hughes amendment will come up first. I intend to support that. I intend to support Mr. WHITE, and if for some reason they do not pass, I intend to support Mr. BENNETT. The point is, we need to do something. I understand the practical effect. We have a conference committee that will take this and perfect the language if it needs to be perfected, but the important thing today is that we get a version of this bill passed.

The CHAIRMAN pro tempore. The time of the gentleman from Georgia has again expired.

(At the request of Mr. HUGHES and by unanimous consent, Mr. EVANS of Georgia was allowed to proceed for 1 additional minute.)

Mr. HUGHES. Let me just say that in the final analysis we all want to get the ball to the goal line.

Mr. EVANS of Georgia. Yes.

Mr. HUGHES. The important thing is to try to do something of significance to combat the drug traffic. I say to my colleague, whatever we do has to be carefully crafted because if, in fact, in our endeavor to try to provide law enforcement with assistance we in fact undermine law enforcement capabilities by providing personnel that are

not trained, then we have not done our job.

Mr. EVANS of Georgia. I would answer the gentleman's question by saying that should the military desire not to do anything, they may be able to use that language not to do it; but that is a guess on my part, and my colleague from Florida may disagree.

Ms. FIEDLER. Mr. Chairman, I move to strike the requisite number of words.

I would like to make an inquiry of the gentleman from Texas. I would like to ask Congressman WHITE for some information regarding the amendment.

I live in the State of California, and there has been a tremendous flow of illicit drugs over the border from Mexico. I am very concerned that the gentleman's amendment might limit any surveillance or involvement on the part of the military where there happen to be a number of bases close by that might be involved, so I would like to know what the limits are of the amendment regarding the geography.

Mr. WHITE. The limits are these: They can monitor, they can survey, they can pass the information. They cannot arrest or seize. They put out sensory devices. They can use radar to catch planes. A good deal of narcotics are coming across in small aircraft. They can use radar, but they cannot go in and seize.

I do not think the gentlewoman from California would want to see any troops where they do not have any military posts on the border, going there in the dead of night when they are coming across, trying to make arrests and seizures, because there may be shootings, international incidents, and we will not have expert apprehensions.

Ms. FIEDLER. Is the gentleman indicating, then, that in the situation on land as between California and Mexico, that it would not be permissible under the gentleman's amendment to seize illicit drugs?

Mr. WHITE. It is not permissible in any event by my amendment to seize, and no arrest whether at sea or on land. It removes the troops from the seizure and apprehension because that is not what their service is for, but it does permit the full limit, unlike the Bennett amendment. It allows them to be used on request for surveillance. They do not provide for surveillance specifically for narcotics and for other purposes. Theirs is only in relation to military use. Ours is specifically requested to survey, to monitor, to track, and pass that information on to the arresting and seizing officers; have them working in tandem with DEA, Customs border patrol, with all working in tandem.

□ 1640

They would be the arresting officials, not the military. We would not expose the troops to the shooting and

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all the other problems and to the poor establishment of evidence as we would if we just used civilian people.

Ms. FIEDLER. Mr. Chairman, I thank the gentleman very much for his explanation.

I simply want to add my support to the efforts of the gentleman from Florida (Mr. BENNETT). I would in fact support the use of the military in the event it were necessary and in the event that it was there onsite when there was illicit drug traffic.

As a former member of the Los Angeles school board, I have seen the terrible implications of drug abuse among children. We see it on an ongoing basis in our increasing crime statistics, and I think unless we get it under control, we are going to see a continual erosion of law.

I cannot in strong enough terms indicate that where there is abuse and illegal action and where we have resources on the spot, we ought to utilize them. To do anything less is really a disservice to the people of our country and particularly our children.

Mr. PRICE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to see if we could come to some agreement on winding this up. We have been on this one issue for about 2½ or 3 hours.

I wonder, Mr. Chairman, if we could agree to take the vote on this in 10 minutes, and I make that as a unanimous-consent request.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

Mr. HUGHES. Mr. Chairman, reserving the right to object, is the gentleman talking about debate on the White amendment?

Mr. PRICE. On the issue before us.

Mr. HUGHES. The White amendment?

Mr. PRICE. The White amendment and all amendments thereto.

Mr. HUGHES. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

Mrs. CHISHOLM. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I was viewing the proceedings in my office, and I recognized that I just could not sit still any longer. It was necessary for me to come over here and at least register my deep concern over what is taking place in this Chamber today.

This is a very basic issue. It is a very important issue. First of all, we are cognizant of the fact that the Department of Defense is not interested in this particular situation at all. Second, if indeed the Department of Justice really feels that we are not winning our battles in the drug war and that one of the several reasons might be the necessity for new kinds of equipment and materials, why is it that the money and the equipment cannot be placed in that particular unit?

Third, I think we have to recognize that because of the training of persons in the military, there is no question of the fact that in the event they have to pursue a number of drugpushers or persons engaged in the drug business, the immediate response would be to put into operation the kind of training and the kind of attitudes that have been engendered in said persons as a result of that kind of training that goes on over a period of years. And in many instances I do not think that many of us can really foresee that there is a possibility of many persons really getting killed and getting hurt unnecessarily.

There is no room in our society for the intervention by the military in terms of civilian life. We are moving in recent days in the direction of acknowledging that we have failed, in spite of the tremendous amounts of money that we have placed in different areas, to do a job, and in a state of panic and in a state of paralysis or stagnation, dependent on how we view it, we are now going to come forth with suggestions that would help the situation irrespective of what the implications and the ramifications of these suggestions might mean to the people in this country.

I just could not believe that we are moving in the direction of involving the military in terms of the civilian life and the problems that we are finding in our society with respect to the drug business. I do not know if we have really sat down and thought it out very, very carefully as to what we are really doing, and in our panic and with the fact of what the statistics show in terms of the drug trade and in terms of the breakdown of family units and morality in this country, the feeling is that what we must do is come up with anything irrespective of what is meant without taking into consideration what this could do to our society as a whole in the future.

I have been here now going on 13 years, and this has really shocked me more than anything else that I have observed since I have been in the U.S. House of Representatives, because we are moving in our society toward a terrible control on every level and we are moving into a society in which there will be a great deal of control and a great deal of intervention in the lives of people.

Mr. Chairman, it just frightens me to death that we cannot find other ways of combating this particular drug trade that we have in our country without now going to the military and bringing them into our civilian lives.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mrs. CHISHOLM. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I appreciate the gentleman's presentation, because it is a nonlawyer but humane, responsible, legislative examination of what we are doing here.

Now, constant reference has been made to brushing the Constitution aside because this is an important social question. A number of Members here have carelessly gotten up and said, "So what, if it is just a matter of arguing about somebody's constitutional rights?"

But certainly the constitutional rights are those of the American people, not the drug pushers that we are concerned about here.

The CHAIRMAN. The time of the gentleman from New York (Mrs. CHISHOLM) has expired.

(On request of Mr. CONYERS, and by unanimous consent, Mrs. CHISHOLM was allowed to proceed for 4 additional minutes.)

Mr. CONYERS. Mr. Chairman, if the gentleman will yield further, let me tell the Members that for everybody who has recognized that there is a constitutional issue involved in this amendment, others are saying, "Well, this is just an argument between lawyers and legislators about an old law, so we will change it." Right?

Wrong. Because if it has a constitutional basis, then we cannot change it without peril to the Federal judiciary and setting it aside. Because of what? Unconstitutionality.

So I ask, could we merely take that into passing consideration? If we decide in our ultimate wisdom that we are going to change this 100-year-old law that has admitted constitutional sacredness, please, let us consider that we are tampering with the Constitution here. I ask all the Members to very carefully consider that one fact.

Mr. Chairman, I thank the gentleman for yielding.

Mr. STRATTON. Mr. Chairman, will the gentleman yield?

Mrs. CHISHOLM. I yield to the gentleman from New York.

Mr. STRATTON. Mr. Chairman, I appreciate my colleague, the gentleman from New York, yielding to me.

I do not pretend to be a constitutional expert nor a lawyer, but I believe the false interpretation of what she said she heard on the tube which brought her over here may be slightly distorted. My understanding of what the proposal that is included in our bill and that was offered by the gentleman from Florida (Mr. BENNETT) and which was defended very ably by him on the floor is directed primarily toward keeping out of the United States those people who would bring in these drugs from somewhere around the world to damage the American people.

This proposal, as I understand it, is not suggesting that we hire the Army to track down the drug pushers on the streets of New York City, for example. It is an attempt to try to establish some kind of border situation, as long as we have a Navy available, that would track down people who are preying primarily on American citi-

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zens, people from other countries that bring in drugs and think they can keep it up.

□ 1650

Mrs. CHISHOLM. Mr. Chairman, I yield no further because I think what the gentleman is attempting to do is to really in a sense distort what I have said.

The basic question, the bottom line of what I have said is that we are now going to involve the military in some form with respect to this particular issue, and I am asking the question as to why is it necessary at this point in time to involve the military or any aspect of the military? Why is it that we could not give the equipment and the materials and all of the things that are necessary to those units of Government that are already handling the issue because of the ramifications of involvement of the military in any sense?

Mr. STRATTON. Mr. Chairman, will the gentlewoman yield?

Mr. CONYERS. Mr. Chairman, will the gentlewoman yield?

Mrs. CHISHOLM. I yield to the gentleman from Michigan.

Mr. CONYERS. May I point out the gentleman from New York is in gross error. The Bennett language is not in any way restrictive in limiting it anywhere in its operation. No. 2, the armed services already have the authority to operate extraterritorial. They do not have to get a special law from us to operate overseas and in other places.

Mr. HUGHES. Mr. Chairman, will the gentlewoman yield?

Mrs. CHISHOLM. I yield to the gentleman from New Jersey.

Mr. HUGHES. I thank the gentlewoman for yielding.

What the gentlewoman has said, I think, is apt. What we should be doing is providing more equipment, more personnel, to our law enforcement community. We are not doing that. We put back into the budget about \$3.2 million needed by DEA, but it is still inadequate. Each year it keeps going down.

The CHAIRMAN. The time of the gentleman from New York (Mrs. CHISHOLM) has expired.

(At the request of Mr. HUGHES and by unanimous consent, Mrs. CHISHOLM was allowed to proceed for 2 additional minutes.)

Mr. HUGHES. If the gentlewoman will yield further, the issue we see on the Judiciary Committee part is a meager effort to try to encourage cooperation where that is possible. The sharing of intelligence information, the sharing of that equipment, where that can be done without taking away from the military mission.

In fact, by regulation, under section 374, the Secretary of Defense can do just as the gentlewoman has suggested, provide the separate arm for the equipment so that when that is loaned out that there is a separate group that

would operate that equipment. That can be done by regulation. So, it can be carried out.

But unfortunately, the arguments have gotten off on tangents. The bill as drafted by Judiciary is very narrowly crafted to provide what law enforcement has requested, and unfortunately we have gotten off on a whole host of other issues that are interesting, but they really are not relevant to the Judiciary Committee bill.

Mr. BENNETT. Mr. Chairman, will the gentlewoman yield?

Mrs. CHISHOLM. I yield to the gentleman from Florida.

Mr. BENNETT. I thank the gentlewoman for yielding.

The gentlewoman did ask why not do this through appropriated money? I do not believe the gentlewoman probably understood the statistics cited here. The Coast Guard says it would cost \$4 billion to build the ships necessary to make a reasonable attack on the drug trade coming in. It would require 20,000 new personnel. That is \$180 million a year. That is \$4 billion which we are not going to get. We are not even getting \$3 million.

We are actually cutting down, this Congress is cutting down on what is done.

Mr. CONYERS. Mr. Chairman, will the gentlewoman yield?

Mr. CHISHOLM. I yield to the gentleman from Michigan.

Mr. CONYERS. I thank the gentlewoman for yielding.

We have two sets of views here. One, that this is the most horrendous problem we have ever faced, and, two, we know darn well we will not allocate any money to it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. WHITE) to the Judiciary Committee amendment.

The question was taken; and the Chairman announced that the ayes appeared to have it.

Mr. CONYERS. Mr. Chairman, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present.

The Chair announces that pursuant to clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the Committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

□ 1700

QUORUM CALL VACATED

The CHAIRMAN. One hundred Members have responded. A quorum of the Committee of the Whole is present. Pursuant to rule XXIII, clause 2, further proceedings under the call shall be considered as vacated.

The Committee will resume its business.

On the voice vote, the Chair will rule that the amendment had carried.

So the amendment to the Judiciary Committee amendment was agreed to.

AMENDMENT OFFERED BY MR. SHAW TO THE JUDICIARY COMMITTEE AMENDMENT, AS AMENDED

Mr. SHAW. Mr. Chairman, I offer an amendment to the Judiciary Committee amendment, as amended.

The Clerk read as follows:

Amendment offered by Mr. SHAW to the Judiciary Committee amendment, as amended: Page 47, strike out line 14 and insert in lieu thereof the following: "member is authorized by Section 375 of this Title or is otherwise authorized by law."

At the end of the amendment add the following:

"(g) The Secretary of Defense, upon request from the head of a Federal agency with jurisdiction to enforce the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), may assign members of the armed forces to assist such agency's drug enforcement officials in drug seizures or arrests outside the land area of the United States (or of the territories and possessions of the United States) if (1) that assistance will not adversely affect the military preparedness of the United States, (2) the Secretary of Defense verifies that the drug enforcement operation may not succeed without military personnel assistance, and (3) Federal drug enforcement officials maintain ultimate control over the activities and direction of any drug enforcement operation."

Mr. SHAW (during the reading). Mr. Chairman, I ask unanimous consent to dispense with further reading of the amendment, and that the amendment be considered as read printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. SHAW. Mr. Chairman, I will be brief in my remarks. I believe that we have thoroughly debated the proposition before the House with regard to the amendment to that provision. We have heard, I think, eloquent debate late this afternoon.

I think that there is no question in this House in anyone's mind that the drug problem is the No. 1 domestic problem that we have in the country today. In my opinion, it surpasses the problems that we have with a crippled economy that we are dealing with; it surpasses the problem that we are having dealing with the tax problem and the tax cut. We have a cancer that is totally out of control in this country. We have two amendments that are yet to be considered after my amendment. We have two very fine amendments to be considered; one by the gentleman from Florida (Mr. BENNETT) of the Armed Services Committee, which is an excellent amendment. It provides that the military can be used in effecting seizures, as well as arrests. The other is by the Judiciary Committee, as offered by the gentleman from New Jersey (Mr. HUGHES), and amended by the amendment of the gentleman from Texas (Mr.

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WHITE). It also is a very fine amendment. It restricts the use of military personnel and equipment to providing intelligence and also operating equipment.

What we are trying to do by my amendment is to strike a compromise. We have heard this afternoon statements about the placement of troops on the American-Mexican borders and how that would be repugnant to many of the people here.

We do have a drug problem that we have totally been unable to deal with through local and Federal law enforcement officials. I think it has been very aptly pointed out that the drug traffickers are in themselves a military force outfitted with the finest equipment and with well-trained personnel. They have us outmanned, they have us outequipped, and they have us outgunned.

I therefore think that it is vitally important that we permit in some instances the actual use of military personnel in making seizures and making arrests.

I am specifically concerned about the waters surrounding the United States as the route over which the vast majority of drugs are brought into our country so I am proposing an amendment that would be an amendment to the bill of the gentleman from New Jersey (Mr. HUGHES) which would provide that in those instances outside of the land areas of the United States and our territories under very specific circumstances when military personnel are required to assist in making arrests and seizures, that they would be able to do so.

In all instances, however, the Federal Drug Enforcement officials would maintain the ultimate control over the activities and directions of this enforcement operation.

I think that for us to have the military personnel that we have, and I am specifically concerned with the Navy personnel that we have under our command as a nation, and for us not to effectively use them is very bad judgment, indeed.

I do believe that with their use, we can make a significant dent in the trafficking of drugs coming into this country.

I would like to quickly say, though, that I intend to vote "yes" on the Hughes amendment with or without my amendment attached to it. If that does not pass, I intend to vote "yes" on the Bennett amendment, because I think that it is very important. It is vital that we pass here in this House a bill that will qualify the provisions of posse comitatus to use the military in the enforcement of our drug laws.

□ 1710

Mr. STRATTON. Mr. Chairman, will the gentleman yield?

Mr. SHAW. I yield to the gentleman from New York (Mr. STRATTON).

Mr. STRATTON. The effect of the gentleman's amendment is to permit the military to do what?

Mr. SHAW. It permits—the big significant difference or difference that this would make to the Hughes amendment is to allow the Armed Forces to be used outside of the land area of the United States and its territories to assist the Drug Enforcement officials in making arrests and in seizures.

Mr. STRATTON. The Hughes amendment would not allow their use either inside or outside the United States; is that correct?

Mr. SHAW. That is correct.

Mr. STRATTON. So the gentleman would oppose the use within the United States but not outside?

The CHAIRMAN. The time of the gentleman from Florida has expired.

(By unanimous consent Mr. SHAW was allowed to proceed for 5 additional minutes.)

Mr. SHAW. I would ask the gentleman to repeat the question, please.

Mr. STRATTON. In other words, the gentleman's amendment is a perfecting amendment to the Hughes amendment, as I understand it; is that right?

Mr. SHAW. I think it is a compromise. I think Mr. HUGHES would disagree that it is perfecting.

Mr. STRATTON. Is the gentleman offering his amendment as an amendment to the Hughes amendment or as a substitute?

Mr. SHAW. It is an amendment to the Hughes amendment.

Mr. STRATTON. So the gentleman would go further than the Hughes amendment by at least allowing the use of American military forces at sea, if not on land?

Mr. SHAW. Outside of the land area of the United States.

Mr. STRATTON. The Hughes amendment, as I understand it, would say it is all right to use the military, but not use the military people.

Mr. SHAW. The gentleman says it is all right to use the military, but not in arrests and seizures.

Mr. STRATTON. I appreciate the clarification. I have listened to this for so long that it is all getting a little confusing. I think the gentleman's amendment is a good one and I will support it.

Mr. SHAW. I thank the gentleman. We seem to be catching our tail here this evening, but I do think it is an important distinction and I think it is so important that when we have the military personnel out there, one of the most valuable tools that they have in defense of their own safety is the power to make an arrest. This is true of any law enforcement official and I think it is particularly true here when the military is under the control of the law enforcement agency.

Mr. STRATTON. If the gentleman will yield to me further, one of the major sources of drugs, as I understand it, is not just the boats that

come in from Cuba to the gentleman from Florida's home State, but that we also have a lot of little planes that fly over from Mexico. If we send some American planes after these people who are coming in with drugs, is that in line with the gentleman's amendment or not?

Mr. SHAW. I believe that the Hughes amendment already addresses that with or without my amendment as far as surveillance is concerned. The only thing my amendment really adds is the arrest and seizure provision outside the land area of the United States.

Mr. STRATTON. They can surveil but they cannot shoot them down.

Mr. SHAW. They cannot shoot them down under either provision; but the gentleman is correct.

Mr. STRATTON. It is a little hard to make an arrest in the air.

Mr. SHAW. I would certainly agree with that.

Mr. Chairman, I yield back the balance of my time.

Mr. HUGHES. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

(Mr. HUGHES asked and was given permission to revise and extend his remarks.)

Mr. HUGHES. Mr. Chairman, it has been a long afternoon and I know that we have spent a lot more time than a lot of people envisioned, but it is an important issue.

I oppose the Shaw amendment, not because it is not well intended, because it is. I understand my colleagues' utter frustration. They have a mind-boggling drug problem in Florida. Some reports suggest it is larger than the citrus industry in money being generated. Their law enforcement community today just cannot cope with the problem. So I understand where the gentleman is coming from.

But the bottom line is we are talking about soldiers and sailors. They are not policemen. They have not been trained as policemen. They have not been trained as witnesses.

My colleague, in all fairness, would provide the right to arrest and seize, but not search. That in itself may seem to be somewhat innocuous, but think of it for just a moment, a military officer on the scene with the authority to arrest and to seize, but not to search. One of the first things one wants to give a police officer, first of all, is the right to search in the event whatever he is seizing does not prompt the person he is seizing it from to assault him. So, under this amendment, you do not have authority to search either the individual or the property in whatever situation is presented.

In addition to that, the gentleman's amendment would make the Coast Guard, and I am sure the gentleman does not want to do this, subject to the authority of the Secretary of Defense in peacetime. By definition, the Armed

Forces that he refers to in his amendment incorporate into that the Coast Guard. The last thing we should want to do is make the Coast Guard subject to the Secretary of Defense in peacetime operation. We have enough problems in trying to get agencies to talk to one another.

Finally, and another concern of mine, and it is just as real, is that in order for the Secretary of Defense to act he has to find and verify that the drug enforcement operation may not succeed without military personnel or assistance. I ask my colleagues: How can the Secretary of Defense know whether or not a law enforcement operation is going to succeed?

The reason we are here today is because the Secretary of Defense does not want this authority anyway. He does not want to cooperate. If we require him to make a finding and verification that the operation will not succeed before cooperation is available he will have a perfect out. That is precisely why we did not like the language when we first looked at it.

If my colleagues want to help law enforcement, give them what they want. All they have asked for is, first of all, a sharing of intelligence, a sharing of base facilities, a sharing of research, and they need equipment from time to time. Second, it is an empty gesture to give them equipment without an operator if it is so sophisticated that DEA cannot operate it. Where we are confronted with an emergency situation, where equipment is not available to DEA or the Coast Guard, this permits that agency to seek help from the Secretary of Defense if, in fact, the Secretary can provide it without taking them away from the military mission, which is paramount. That is all the law enforcement community has requested. They do not want the right to arrest inherent in the military role. They cannot possibly train every soldier and Navy personnel in the art of arresting and seizing.

Yet, that is what we would have to do, in effect, to responsibly comply with the mandate that would give them the right to search and seize. So I would urge my colleagues to reject the Shaw amendment. It is well intentioned, but it falls far short of the mark and, in fact, would just be counterproductive. The Justice Department is opposed to it. The Defense Department is opposed to it. And every law enforcement officer that has testified before our committee is opposed to it.

I yield back the balance of my time.

Mr. McCOLLUM. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the Shaw amendment.

(Mr. McCOLLUM asked and was given permission to revise and extend his remarks.)

Mr. McCOLLUM. Mr. Chairman, as a member of the Judiciary Committee, and as a person very vitally concerned with this particular problem, who sat

here all afternoon listening to this particular debate, I am very pleased to rise in support of the amendment offered by the gentleman from Florida (Mr. SHAW). I happen to think that my colleague from Florida has hit the nail on the head in perfecting what otherwise is basically a good amendment by the Judiciary Committee.

The efforts by my colleague from Florida (Mr. BENNETT) in bringing this about are to be commended. His objective, which is incorporated in the Shaw amendment, of providing military personnel, at least on the seas, in a real war on drugs, is very appropriate and very necessary if we are going to control the drug traffic incoming in the United States. That is precisely the beauty and the benefit of what the Shaw amendment provides.

Let me speak for a moment to the facts of life in the military. As far as the military justice system is concerned, there are plenty of opportunities and have been historically for the training of military personnel to be engaged in the pursuit of seizures, and arrests as well as seizures.

□ 1720

I have spent 4 years on active duty in the U.S. Navy's Judge Advocate General Corps. I have been a reservist ever since that time wearing that particular banner. And I can tell the Members that the military law under the UCMJ is far more stringent in this area of its requirements than the civilian criminal law area. The military personnel, particularly the officers in command of the vessels and the craft and the units involved, have very strong backgrounds and stringent backgrounds in obeying the constitutional principles involved in enforcing laws of this nature. So I do not think that problem merits the kind of attention that it has gotten today.

Although it should be discussed, it does not hold water.

I can further say that I do not think there is any greater position where there would be a better use of the term "war" on something outside of a foreign enemy than on drugs in this country.

We have talked about wars on poverty, we have talked about wars on hunger. We have talked about a lot of wars, but there is no place better suited to talk about a war than when we talk about the equivalence of piracy on the seas, which is what is going on in this case in our Caribbean in particular, and in some other territorial waters immediately offshore.

We need to use every ship we can possibly use to intercept this particular invader in this particular instance. There is no reason why we cannot follow the piracy precedents in our history while we are talking about that, to use our military for this purpose. And there is no reason why we should not empower, as actually in listening to and in reading the letter from the gentleman representing the

Department of Defense. There is no reason why we should not, if we are going to put the equipment out there, let it be used, and have some personnel to operate it. There is no reason why we should not allow the military to protect itself and the military manpower of this country to be used as it would be required to be used in order to implement the Judiciary Committee's approach.

Mr. SEIBERLING. Mr. Chairman, will the gentleman yield?

Mr. McCOLLUM. I yield to the gentleman from Ohio.

Mr. SEIBERLING. Why not just draft the DEA and draft Immigration Service and put them in the military? Why do we not just draft the police and put them in the military? Then they will have plenty of funds, and they can enforce the drug laws to the hilt?

Mr. McCOLLUM. The answer to that is, very simply, we do not have enough personnel to do both of those jobs, but the military does.

Mr. STRATTON. Mr. Chairman, will the gentleman yield?

Mr. McCOLLUM. I yield to the gentleman from New York.

Mr. STRATTON. The gentleman is making a very fine statement, and I support his view.

The gentleman from New Jersey indicated that the Secretary of Defense was against the Shaw amendment, that the Secretary of the Treasury was against the Shaw amendment.

Is it not also likely that the drug pushers are against the amendment, too?

Mr. McCOLLUM. I think the gentleman's point is well taken.

May I say something in response, also?

The letter of the Secretary of Defense, which I have read—the gentleman from New Jersey very eloquently presented it before our Committee—does say that the Secretary of Defense is opposed to any of this. But the fact is he also says in that letter, if I am interpreting it correctly—and I will ask the gentleman from New Jersey to correct me if I am wrong—that if we are giving this power out there, we have got a real problem if the military manpower is out on the seas and is not allowed, in essence, to defend itself or to participate in the activities.

Mr. HUGHES. Mr. Chairman, will the gentleman yield?

Mr. McCOLLUM. I yield to the gentleman from New Jersey.

Mr. HUGHES. Mr. Chairman, I can say, without hesitation, that the language built into the White amendment and existing law is that the military has the authority to defend itself. So any suggestion that the military would not have the authority to defend itself is not accurate.

The CHAIRMAN. The time of the gentleman from Florida (Mr. McCOLLUM) has expired.

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(On request of Mr. HUGHES, and by unanimous consent, Mr. McCOLLUM was allowed to proceed for 2 additional minutes.)

Mr. HUGHES. Let me just say to my colleague, the gentleman from New York, I think that all versions, whether we are talking about DICK WHITE's attempt or whether you are talking about the attempt on the part of the author of the armed services amendment, the gentleman from Florida (Mr. BENNETT), are all sincere efforts to try to provide law enforcement with some additional tools. But you have two different approaches.

One, in fact, is very limited, suggested by the law enforcement community, indicating to us what they need, and we tried to craft the language that would meet the needs of the law enforcement community.

Frankly, much of the equipment which is held by the military is not the type of equipment, as the gentleman knows, that we need in law enforcement. And even what we are doing today is inadequate. If you look at the Drug Enforcement budget or the BATF budget or the FBI budget, we are really losing ground on all fronts.

We talk about combating drug abuse. We are doing a lousy job of combating drug abuse when we cut across the board, as we have done in the last several years. If you look at the Drug Enforcement Administration's budget just this year, we have lost ground again. So that is where we ought to be shoring up our resources, right there. And even though the language in our bill is going to help, it is not going to be the cure-all. It seems to me that any effort to give the military the right to arrest and seize is going way beyond what is needed and in fact is going to be counterproductive.

Mr. STRATTON. Mr. Chairman, will the gentleman yield?

Mr. McCOLLUM. I yield to the gentleman from New York.

Mr. STRATTON. The gentleman from New Jersey says that there are two different ways of proceeding against this.

I might borrow a saying from my friends from the other side of the aisle that the other system that we have been using so far has not worked. Maybe the idea of the gentleman from Florida (Mr. BENNETT) will be a little bit more effective.

Mr. McCOLLUM. I think that the key crux to this whole matter is that we need to stop the drug trafficking. The Coast Guard and the civil law enforcement authorities do not have the equipment.

The CHAIRMAN. The time of the gentleman from Florida (Mr. McCOLLUM) has again expired.

(By unanimous consent, Mr. McCOLLUM was allowed to proceed for 1 additional minute.)

Mr. McCOLLUM. What we need to observe is the fact that the Coast

Guard and the civilian law enforcement agencies of this Nation do not have either the equipment or the manpower to cover the vast seas and the limits of our territorial waters off the landmass. What the Shaw amendment does is to give them not only the equipment but also the manpower to cover that territory, not only for the purposes of interception by radar, but also for the purposes of arrest and seizure, which is what is demanded if we are really going to win the war on drugs.

Let me conclude by saying that I believe that it is far greater of a worry for us to be worried about winning the war on drugs than it is to be worried about some minor international embarrassment that might result from this, which I do not think will be the case in any event.

I urge the support of the Shaw amendment.

Mr. CONYERS. Mr. Chairman, I move to strike the requisite number of words.

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Chairman, I will not, possibly, use the 5 minutes; but I should report to the Members what the Subcommittee on Criminal Justice, of which I am a member, is doing.

We are working right now, continuing efforts begun before the consideration of this bill, for additional funding for the Drug Enforcement Administration.

Now, we need that.

We are ready to violate the Constitution, some of us here, in a effort to get more resources to fight the drug problem.

So rather than jeopardize passing an unconstitutional piece of legislation, which is all the subcommittee chairman is suggesting this amendment will do to his already questionable piece of legislation, why do not some of the members join us and testify in support of additional funding, and then perhaps urge on this side of the aisle that the Department of Justice come before the Criminal Justice Committee and testify for what everybody knows is so necessary; namely, some additional funding for the resources that are leading us to beg, borrow, and steal from the armed services?

Mr. SAWYER. Mr. Chairman, will the gentleman yield for a question?

Mr. CONYERS. I yield to my colleague, the gentleman from Michigan, for a question.

Mr. SAWYER. Mr. Chairman, the gentleman has kept continuously referring to this being not changing an old law but violating the Constitution.

Mr. CONYERS. That is right.

Mr. SAWYER. Will the gentleman please cite me what article of the Constitution he is talking about?

Mr. CONYERS. Well, if the gentleman in his years of legal research and wealth of legal experience needs a con-

stitutional citation to figure out whether this is constitutional or not, I am puzzled. Fifty Members have taken the floor and have suggested that there is a constitutional question. Every court case has suggested that there is a potential constitutional infirmity in this whole question of bringing the military into civilian law enforcement.

□ 1730

Mr. SAWYER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would just like to comment that the reason I asked the question is because there is in fact no constitutional problem at all. This is strictly what the gentleman from Michigan originally posed as a problem of changing an old law. It is not what he has then gone on to say, it is more than that, to violate the Constitution.

The reason I asked is because I know there is no section of the Constitution involved. I have read every case decided under the statute, which I dare say is more than the gentleman from Michigan has done, and there has been no allusion to any constitutional problem at all.

I yield back the balance of my time.

Mr. DELLUMS. Mr. Chairman, I move to strike the requisite number of words.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. DELLUMS. I yield to my colleague.

Mr. CONYERS. I want to thank my colleague from Michigan, a distinguished lawyer, for recognizing despite 2 days and 6 hours of debate that there was not any constitutional question at all.

Mr. DELLUMS. Mr. Chairman, this has been a very interesting debate, and I would first like to try to put this debate in its broadest context. What we are ostensibly here to do is to debate an authorization for the largest military budget in the history of this Nation, approximately \$226.3 billion, a \$53 billion increase in budget authority over what we spent last year. It would seem to me that we should spend our time here debating and assessing our perception of the world and America's role in that changing world, to determine whether or not we need to spend what has been purported to be somewhere in the neighborhood of \$2.5 to \$3 trillion in the next 10 years on the military function alone.

But, we have chosen not to do that. One of our colleagues has chosen to use this particular instrument, this authorization bill, to raise a significant question; that is, whether or not the military shall play some role in addressing one of the significant domestic problems we have; namely, the trafficking of drugs in this country.

Now, this gentleman would not argue with any Member of this body

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that we have a significant drug problem in this country. I would also not argue with any Members that we need to address this human misery. It is eating tens of thousands of people up every single day in this country. I would also, interestingly enough, not argue with any person that suggested that if we put the full weight and power of the military into this issue, that we could not solve the problem. I do not argue with that. If we put all of our troops with all of our sophisticated technology into this issue, we probably could eradicate it.

But the question is, at what price? Now, one of my colleagues suggested there is no constitutional problem. Perhaps that is true. This gentleman is not a constitutional lawyer, but I can say this, and I would like to raise for a moment two issues. One of our distinguished colleagues from the other side, in a very eloquent speech, suggested that one time in the not-too-distant past, in the 1960's, during the agony of the civil rights movement, Federal troops were used. The gentleman stated that no one argued with respect to that.

I approached the gentleman a little while ago, and I indicated to him that as one young black in this country concerned about those injustices, I had some significant problems with a country that needed Federal troops to march some tiny black children to schools. I also recall that there were a number of Governors in this country, in the full light of television cameras, who stood in the door and said, "To hell with Federal law. These black children will not integrate these schools."

So, I saw State officials abdicate their responsibility and say to the Federal Government, "We will not address these problems." I say Bull Connors and other local law enforcement agents determined not to implement the mandate of the Federal Government. They did it with Federal troops. That was not a happy time in this country, but the one argument I would make with the gentleman who argued that there is no comparison here in that certainly Federal troops were being used because State and local law enforcement agents and public officials denied the right of young children to matriculate in schools. It was an ugly period in our history.

This gentleman felt anger that we had to have troops to do what civilian law enforcement agents should have been able to do, or local and State public officials, standing up for the rights of young black children to have an education along with other human beings in our society.

The second vision that I have is Nazi Germany, when you consider the Gestapo involved in enforcing laws. We have a very delicate form of government in this country. It is called a democracy. It is called a representative government.

The CHAIRMAN. The time of the gentleman from California has expired.

(By unanimous consent, Mr. DELLUMS was allowed to proceed for 5 additional minutes.)

Mr. DELLUMS. It would seem to me, Mr. Chairman, members of the committee, that all the people on this floor who believe strongly and powerfully that this drug problem must be addressed, I would simply say to them, in the process of dealing with the drug problem, will we unalterably distort and pervert our way of government and our way of life? We have never allowed ourselves to see law enforcement agents in military uniforms—never. Every time that issue came forward many of us felt great pain. I do not want to return to the days of the 1960's when we needed troops to implement laws that civilians were charged with the responsibility to implement, and I certainly do not want to go further than that, to Nazi Germany, where I can see uniforms involved in implementing laws and enforcing laws that civilians ought to be enforcing.

So, this gentleman will say to you, irrespective of whether there is a constitutional concern, we all in this room know that we have evolved a way of life that has separated out clearly the civilian function and the military function. I do not think we need \$226 billion to be talking about waging war in the world, let alone waging war in this country.

I find it ludicrous and tragic that many of my colleagues supported a budget resolution that substantially cut the budget of the Drug Enforcement Agency and then said, "But I want to go home and tell my constituents that I am not soft on communism, so I voted for a big military budget—and oh, by the way, we have a drug problem, and since we cut the money out of DEA, let us go over where we are putting all the money and get the military to solve the problem."

Then, maybe this gentleman ought to say, "I think we need to deal with mass transit in this country. Maybe we ought to get the military to develop a mass transit system. I think we ought to better educate our children, but since all the money is going to the Pentagon, maybe we ought to get Pentagon personnel to educate our children. We need housing in this country for tens of thousands of human beings, but since much of our money is going to the Pentagon, maybe we ought to let the Corps of Engineers build the housing."

Your response would be, "That is a civilian function. We do not need the military to engage in this activity."

I am simply saying to you, if it is not good enough to try to build mass transit, to educate our children, it is reasonable to say that we will not do it in terms of law enforcement.

If we have a significant problem of law enforcement in this country, then let us address it, but let us not delude ourselves into believing we can simply throw the ball to the military and run home and say, "I have done something for the drug problem," when we have perverted and distorted our way of government.

We need to effectively keep that dichotomy between civilian and military. Once we put law enforcement people in military uniform, we conjure up in peoples' minds the agony of Nazi Germany and the pain in the 1960's when many in this country chose not to address the problems, and we were forced to have the military deal with it. I do not think the drug enforcement agents are saying, "We do not want to implement the laws." What they are saying is, "We need the necessary capability to do it," and that is not turning that function over to the Pentagon. So, I would conclude by saying that it is my hope that we are not treading on constitutionality, and even if we are not, we are treading on a way of life that should be precious to us, and in the process of solving the problem let us not create problems for our children's future and their children's future.

□ 1740

Mr. JOHN L. BURTON. Mr. Chairman, will the gentleman yield?

Mr. DELLUMS. I yield to my colleague, the gentleman from California.

Mr. JOHN L. BURTON. Mr. Chairman, I thank the gentleman for yielding and for pointing out the most important point that we are on our way to establishing a national police force with this type of legislation.

We are not talking about whether it is constitutional or unconstitutional. This is a national police force in the form of the military, and I think that is something that, those on the right, those on the left, and those in the middle should be afraid of.

Mr. Chairman, we want stronger drug enforcement. We have got an agency for that, the DEA, and let us fund it and let us stop them from destroying it in the reorganization plan if we want to do something about drug enforcement.

Mr. DELLUMS. Mr. Chairman, that is one of the clearest and most concise statements my distinguished colleague, the gentleman from California, has made, and I thank him for it.

Mr. Chairman, I yield back the balance of my time.

Mr. GONZALEZ. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the pending amendment.

Mr. Chairman, I rise also to identify myself with the position very eloquently stated heretofore by the distinguished gentleman from Michigan (Mr. CONYERS), a member of the Committee on the Judiciary, with the position, very particularly, of the gentle-

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woman from New York (Mrs. CHRIS-HOLM), who I think capsulized the whole issue very accurately, and, most particularly, with the position of the last speaker, the gentleman from California (Mr. DELLUMS).

(Mr. GONZALEZ asked and was given permission to revise and extend his remarks.)

The CHAIRMAN. The question is on the amendment offered by the gentleman from Florida (Mr. SHAW) to the Judiciary Committee amendment, as amended.

The question was taken; and on a division (demanded by Mr. SHAW) there were—ayes 52, noes 57.

Mr. SHAW. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. A recorded vote has been demanded. All those in favor of a recorded vote please rise.

Mr. PRICE. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. MURTHA) having assumed the chair, Mr. SIMON, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 3519) to authorize appropriations for fiscal year 1982 for the Armed Forces for procurement, for research, development, test, and evaluation, and for operation and maintenance, to prescribe personnel strengths for such fiscal year for the Armed Forces and for civilian employees of the Department of Defense, to authorize appropriations for such fiscal year for civil defense, and for other purposes, had come to no resolution thereon.

REPORT ON RESOLUTION WAIVING CERTAIN POINTS OF ORDER AGAINST H.R. 4119, AGRICULTURE, RURAL DEVELOPMENT, AND RELATED AGENCIES APPROPRIATIONS, 1982

Mr. MOAKLEY, from the Committee on Rules, submitted a privileged report (Rept. No. 97-175) on the resolution (H. Res. 178) waiving certain points of order against the bill (H.R. 4119) making appropriations for Agriculture, rural development, and related agencies programs for the fiscal year ending September 30, 1982, and for other purposes, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION WAIVING CERTAIN POINTS OF ORDER AGAINST H.R. 4120, LEGISLATIVE BRANCH APPROPRIATIONS, 1982

Mr. MOAKLEY, from the Committee on Rules, submitted a privileged report (Rept. No. 97-176) on the resolution (H. Res. 179) waiving certain points of order against the bill (H.R. 4120) making appropriations for the

legislative branch for the fiscal year ending September 30, 1982, and for other purposes, which was referred to the House Calendar and ordered to be printed.

EXPLANATION AS TO VOTE

(Mr. DANIELSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DANIELSON. Mr. Speaker, I was absent from the House during the week beginning June 22, 1981, because of an illness in my family. During that week I missed a number of votes and I wish to state how I would have voted had I been present. In every instance my vote would not have changed the outcome. Those rollcall votes, and how I would have voted, are:

Tuesday, June 23, 1981:

Rollcall No. 92, the House, by a vote of 399 to 0, agreed to House Resolution 161, the rule under which it considered the bill H.R. 1257, to authorize appropriations to the National Aeronautics and Space Administration, I would have voted "yea."

Rollcall No. 93, passage of H.R. 1257, to authorize appropriations for the National Aeronautics and Space Administration, I would have voted "yea." The bill passed by a vote of 404 to 13.

Rollcall No. 94, by a vote of 360 to 50, the House passed H.R. 2614, Department of Defense Supplemental Authorization Act for fiscal year 1981, I would have voted "yea."

Rollcall No. 95, by a vote of 146 to 265, the House rejected an amendment to H.R. 3238, to reduce by \$50 million and public broadcasting authorization for fiscal year 1984, \$45 million for fiscal year 1985, and \$30 million for fiscal year 1986, I would have voted "nay."

Wednesday, June 24, 1981:

Rollcall No. 96, by a vote of 344 to 16 the House approved the Journal of Tuesday, June 23, 1981, I would have voted "yea."

Rollcall No. 97, by a vote of 375 to 16 the House agreed to S. 1124, to authorize the Sergeant at Arms and Doorkeeper of the Senate, to enter into contracts which provide for the making of advance payments for computer programming services, I would have voted "yea."

Rollcall No. 98, by a vote of 398 to 9 the House agreed to the conference report on H.R. 31, to encourage cash discounts, I would have voted "yea."

Rollcall No. 99, by a vote of 385 to 16 the House agreed to resolve itself into the Committee of the Whole, to consider H.R. 3238 the public broadcasting authorization bill, I would have voted "yea."

Rollcall No. 100 was a quorum call.

Rollcall No. 101, by a vote of 171 to 226 the House rejected an amendment to H.R. 3238, to retain quarterly disbursement rather than annual, of funds to the Corporation for Public

Broadcasting, I would have voted "nay."

Rollcall No. 102, by a vote of 323 to 86 the House passed H.R. 3238 authorizations of appropriations for public broadcasting, I would have voted "yea."

Thursday, June 25, 1981:

Rollcall No. 103, by a vote of 380 to 12 the House approved the Journal of Wednesday, June 24, 1981, I would have voted "yea."

Rollcall No. 104, by a vote of 210 to 217 the House failed to order the previous question on House Resolution 169, the rule under which the Omnibus Budget Reconciliation Act of 1981, H.R. 3982 was to be considered, I would have voted "yea."

Rollcall No. 105, by a vote of 219 to 208 the House agreed to order the previous question on the amendment offered by Mr. LATTA to House Resolution 169, in the nature of a substitute, which provided for 8 hours of general debate, 2 hours on the Broyhill amendment and 4 hours on the Latta amendment, I would have voted "nay."

Rollcall No. 106, by a vote of 216 to 212 the House agreed to an amendment in the nature of a substitute to House Resolution 169, for the consideration of budget reconciliation, I would have voted "nay."

Rollcall No. 107, by a vote of 214 to 208 the House agreed to House Resolution 169, the rule under which the budget reconciliation bill, H.R. 3982 was considered, I would have voted "nay."

Friday, June 26, 1981:

Rollcall No. 108, by a vote of 346 to 37 the House approved the Journal of Thursday, June 25, 1981, I would have voted "yea."

Rollcall No. 109, by a vote of 316 to 84 the House resolved itself into the Committee of the Whole for further consideration of H.R. 3982, the budget reconciliation bill, I would have voted "yea."

Rollcall No. 110, by a vote of 412 to 4 the House agreed to the conference report on H.R. 3520, to amend the Clean Air Act to provide compliance date extensions for steelmaking facilities on a case-by-case basis, I would have voted "yea."

Rollcall No. 111, by a vote of 217 to 211 the House agreed to amendments en bloc to H.R. 3982, by Mr. LATTA, I would have voted "nay."

Rollcall No. 112, by a vote of 215 to 212 the House agreed to order the previous question on a motion to recommit H.R. 3982 to the Committee on the Budget with instructions to report it back forthwith containing an amendment to provide for semiannual cost-of-living adjustments for Federal employees, I would have voted "nay."

Rollcall No. 113, by a vote of 232 to 193 the House passed H.R. 3982, the budget reconciliation bill, I would have voted "nay."