SOCIETY OF UNIVERSITY PATENT ADMINISTRATORS

Annual Meeting

February 5-7, 1984
Capitol Holiday Inn
Washington, D.C.

Alternative Means for Commercial Development of University Technology

		Room
Sunday, February 5		
2:00 p.m.	Trustees' Meeting	Gemini
2:00-5:00 p.m.	Educational Program	Columbia
	Elements of Licensing Albert L. Broseghini Director, Research Administration Children's Hospital Medical Center Boston, MA	
	Lamar Washington, Director Technology Transfer Research Foundation of SUNY Albany, NY	
	Ray E. Snyder Patent Licensing Consultant 209 LaSalle St. Chicago, IL	
1:00-6:00 p.m.	Registration	Outside Columbia
6:00-8:00 p.m.	Reception - Open Bar	Clark
8:15 p.m.	Trustees' Dinner	Lewis
Monday, February 6		
8:30-9:00 a.m.	SUPA Annual Meeting Introduction	Columbia
	Roger G. Ditzel, President, SUPA Spencer L. Blaylock, Annual Meeting Chairman H. Todd Eachus, Program Chairman	

9:00-10:30 a.m.	Negotiation Session I	Columbia

Negotiating a limited partnership R&D agreement between a research university and a biotechnology firm

Negotiation Teams:

University:

Louis J. Strom
Patent, Copyright and Trademark Office
University of California
Berkeley, CA

Ralph D. Pinto
Alumni Patents Foundation
University of Virginia
Charlottesville, VA

Dillon E. Mapother
Associate Vice Chancellor-Research
University of Illinois
Urbana, IL

Industry:

Lynne A. Johnson
Fried, Frank, Harris, Shriver & Jacobson
New York, NY

Linda D. Brebnor
Agrigenetics Research Corporation
Denver, CO

10:30-11:00 a.m.	Coffee Break	
11:00-12:30	Negotiation Session II	Columbia
1:00-2:30 p.m.	Lunch	Clark

Edward L. MacCordy
Associate Vice Chancellor-Research
Washington University
St. Louis, MO

Long-term Research Agreements

2:45-3:30 p.m.	Summary of Negotiation	Columbia

Louis J. Strom
(see above)

3:30-3:45 p.m.	Coffee Break

3:45-5:00 p.m.	Technology Transfer and the University of Utah J. Winslow Young, Director Patent and Product Development University of Utah Salt Lake City, UT	Columbia
6:00-8:00 p.m.	Cocktail Party - Cash Bar	Clark
8:00	Dinner - Individual plans	

Tuesday, February 7

8:00-9:30 a.m. Panel Discussions

I. Software Licensing — Columbia North

Audley A. Ciamporcero
Johnson and Johnson
New Brunswick, NJ

Robert F. Custard
University Patent Counsel
Pennsylvania State University
University Park, PA

II. Small Business Innovation Research Program — Columbia South

Ray S. Brill
Executive Vice President
The Small Business High Technology Institute
Washington, DC

Martin Rachmeler
Director, Research Services Administration
Northwestern University
Evanston, IL

Lamar Washington
(See above)

III. Copyright Licensing — Saturn & Venus

Jon A. Baumgarten
Paskus, Gordon & Hyman
New York and Washington, DC

9:30-10:00 a.m. Coffee Break

10:00-11:30 Repeat of Panels I, II and III

12:00-1:30 Business Meeting - Lunch — Clark

1:45-3:15 Panel Discussions

IV. Trademark Licensing — Columbia North

William R. Battle
Collegiate Concepts, Incorporated
Atlanta, GA

David J. Kera
Oblon, Fisher, Spivak, McClelland & Maier
Arlington, VA

V. Deposition of Biological Materials — Columbia South

H. Todd Eachus, Moderator

Bobbie A. Brandon, Director
Professional Services
American Type Culture Collection
Rockville, MD

David G. Conlin
Dike, Bronstein, Roberts, Cushman and Pfund
Boston, MA

Jorge A. Goldstein
Saidman, Sterne and Kessler
Washington, DC

Alvin Tanenholtz
Senior Examiner
U.S. Patent and Trademark Office
Arlington, VA

VI. Trade Secrets in University Research — Neptune & Venus

Mark A. Hofer
Johnson and Johnson
New Brunswick, NJ

Frank G. Stout, Director
Grant and Contract Administration
New England Medical Center
Boston, MA

3:15-3:45 Coffee Break

3:45-5:15 Repeat of Panels IV, V and VI

5:30 Trustees' Meeting — Mercury

SUPA BY-LAWS

1. For the purpose of simplifying the language and clarifying the definitions of "member" and "affiliated member", the SUPA By-Laws Committee recommends to the membership of SUPA the following motion:

> That Article I, MEMBERSHIP be revised as shown on the attached copy, deletions shown in brackets, additions underlined.

2. For the purpose of clarifying the power of the Trustees and Officers to take actions at their meetings held between annual SUPA meetings without giving notice to the membership, the SUPA By-Laws Committee recommends to the membership of SUPA the following motion:

> That Article III, MEETING OF MEMBERS, be revised by deleting from line six the words "trustees, or officers" as shown in brackets on the attached copy.

SOCIETY OF UNIVERSITY PATENT ADMINISTRATORS (SUPA) BY-LAWS

As Approved 2-1-83

ARTICLE I

MEMBERSHIP

The following definitions apply to membership status:

MEMBER:

(a) [Any] A person who is [a full or part-time] an employee of an institution of higher education [including] or a teaching hospital[s], whose responsibility includes the administration of the institution's [inventions and/or other] intellectual property, or who has the same responsibility as such person but is [a full or part-time] an employee of an entity[, corporate or otherwise,] which administers [inventions and/or other] intellectual property for [one of more of] such an institution[s]; or

(b) [Any] A person who is [not a full or part-time employee of an institution of higher education including teaching hospitals, but is] regularly engaged by [such] an institution[, on a retainer or other basis,] of higher education or teaching hospital to administer its [inventions and/or other] intellectual property.

Member or affiliated member status will be granted upon applying for membership in the manner prescribed by the Membership Committee; being elected to membership by such committee; and paying the dues for the year of such election to membership. Intitial dues shall not be prorated.

AFFILIATED MEMBER: A person who is responsible for the administration of intellectual property belonging to or under the control of an organization other than an institution of higher education or teaching hospital, or of an entity which administers [inventions and/or other] intellectual property for [one or more of] such an organization, [institutions,] such as a not-for-profit research firm, an industrial concern, other profit making organization, government agency, etc., may become an Affiliated Member upon applying for membership in a manner prescribed by the membership committee.

SOCIETY OF UNIVERSITY PATENT ADMINISTRATORS (SUPA) BY-LAWS

(if proposed revisions are adopted)

ARTICLE I

MEMBERSHIP

The following definitions apply to membership status:

MEMBER:

(a) A person who is an employee of an institution of higher education or a teaching hospital, whose responsibility includes the administration of the institution's intellectual property, or who has the same responsibility as such person but is an employee of an entity which administers intellectual property for such an institution; or

(b) A person who is regularly engaged by an institution of higher education or teaching hospital to administer its intellectual property.

AFFILIATED MEMBER: A person who is responsible for the administration of intellectual property belonging to or under the control of an organization other than an institution of higher education or teaching hospital, or of an entity which administers intellectual property for such an organization, such as a not-for-profit research firm, an industrial concern, other profit making organization, government agency, etc., may become an Affiliated Member upon applying for membership in a manner prescribed by the Membership Committee.

Member or Affiliated Member status will be granted upon applying for membership in the manner prescribed by the Membership Committee; being elected to membership by such committee; and paying the dues for the year of such election to membership. Intital dues shall not be prorated.

ARTICLE III

MEETING OF MEMBERS

There shall be an annual meeting of the membership on a date and at a place to be designated by the Board of Trustees, either within or without the state of incorporation, for the election of officers and trustees and for such other business as may be properly brought before the meeting. The Board of Trustees may from time to time call special meetings of the membership. Notification of any meeting at which action is to be taken by the members [trustees, or officers] shall be presented in writing to the membership at least thirty (30) days prior to the scheduled meeting date.

The regional Vice Presidents may hold one or more meetings in their respective areas at any time except during the month in which the annual meeting is held.

Each member shall be entitled to one vote, in person or by written proxy, at all meetings of the membership, except as herein otherwise provided. Action may be taken by the vote of a majority of the members present and voting in person or by proxy. No business shall be conducted at any meeting unless at least a majority of the Trustees are present in person.

Spencer L. Blaylock

Associate Director, Iowa State University Research Foundation, Inc., since March, 1979. Registered Patent Attorney, Member of the bar of the States of New York, Illinois and Ohio, and the District of Columbia. Admitted to practice before various Federal Courts and the Court of Appeals for the Federal Circuit. Member and past officer of Licensing Executives Society. Practicing Patent Attorney since 1957 and involved in all phases of patent, trademark and copyright practice, including extensive licensing of intellectual property.

Member of SUPA since 1979. Served on various SUPA committees and general chairman 1984 annual meeting.

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James Buchanan	Chevron	415-894-2270
Norman Latker	Department of Commerce	202-377-0659
Ken Gordon	PCIC (Department of Commerce)	202-395-4527
Maryanne Bach	House Science & Technology Committee	202-225-8123
Bob Barker	Congressman Judd Gregg/Clemson University	202-225-5206
John Ratzel	House Science & Technology Committee	202-225-6399
Gaston de Bearn	Hoffman-La Roche	202-223-1975
Barry Beringer	Commerce Congressional Affairs	202-377-8181
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Jack Williams	Department of Commerce/OPTI	202-377-1091

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Governor of Illinois
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1/84

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TASK FORCE ON TECHNOLOGICAL INNOVATION

WORK SESSION
Sunday, February 26, 1984
9:30 - 11:00 a.m.

GOVERNOR JAMES B. HUNT, JR.
Chairman

GOVERNOR DICK THORNBURGH
Vice-Chairman

Roundtable discussion of Governors and task force guests:

Congressman Timothy Wirth
Chairman
Subcommittee on Telecommunications, Consumer Protection and Finance
United States House of Representatives

Clarence J. Brown
Deputy Secretary
United States Department of Commerce

Dennis Barnes
Associate Vice-President for Government Relations
University of Virginia

Donald S. Beilman
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Microelectronics Center of North Carolina

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Vice President and Chief Scientist
IBM Corporation

William Carey
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American Association for the Advancement of Science

Dale R. Corson
Chairman
Government-University-Industry Research Roundtable

John H. Gibbons
Director
Congressional Office of Technology Assessment

Edward E. Hood, Jr.
Vice Chairman of the Board and Executive Officer
General Electric Corporation

Edward A. Knapp
Director
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Egils Milbergs
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In each case we heard testimony about extraordinary prices charged by a contractor or enormous price increases from 1 year to the next. For example, in a recent audit by the Department of Defense Inspector General, of 15,000 aircraft engine parts reviewed, 4,000 had increased in price more than 500 percent and some by more than 1,000 percent. We heard from Navy and DOD auditors that the Government paid $100 to $110 for parts which were in the DOD supply system for $0.04 and $0.05.

Why did these increases or extraordinary payments occur? Were they isolated incidents? We heard numerous reasons from the DOD including lack of personnel to fill out the forms to requisition parts through the supply system; lack of technical data to compete acquisitions; inability to compete because the item was proprietary; and quality control problems if the Government buys a part from other than the known supplier. Ordering of parts and negotiating prices after the order is placed is justified because they do not have time to negotiate prices and still submit the order in time to account for the usual 18- to 24-month leadtime. But the problems uncovered and responses I just read are only the tip of the iceberg. The problem of spare part price increases, inventory management, and long leadtimes is a 20-year-old problem that resurfaces every few years. However, in that time there has never been an adequate solution proposed. I believe that has not occurred in part because this is a management problem which cannot be resolved by simply issuing new regulations or enacting legislation. The statutes and regulations which would prohibit many of the practices which led to these abuses are already in existence—they were simply not followed. The only way we will resolve these issues and insure that the taxpayers' money is not wasted is to focus attention to the problem. I think that has occurred as a result of the various hearings in both the House and the Senate, as well as the abundance of publicity which has been generated. However, the Armed Services Committee wants to insure that the attention and resources dedicated to resolving these issues in the Department of Defense do not wane once the publicity stops.

This amendment will accomplish that objective by imposing a management discipline on the system and by making it clear that Congress will not tolerate excessive spare parts prices. The committee worked long and hard to insure that this bill would attack the root causes and not just the symptoms of the problem. For these reasons I commend this amendment to my fellow colleagues and urge your support.

The CHAIRMAN. The time of the gentleman from Alabama (Mr. NICHOLS) has expired.

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

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

Mr. NICHOLS. I yield to my colleague on the committee, the gentleman from Ohio.

Mr. KASICH. I appreciate the gentleman yielding.

Mr. Chairman, let me say to the House that I could not agree more with the statements of the gentleman from Kentucky (Mr. HOPKINS). The House of Representatives, and I do not think it would be an overstatement to say that also the taxapayers of this country, owe a great debt of service to the chairman of the Subcommittee on Investigations. The chairman, under what was at many times intense pressure, called hearings time and time again to bring forward those people who, at the Government level, are in charge of procurement, a very complicated issue that took great deal of time to understand.

The chairman also saw fit to bring contractors before the subcommittee in an attempt to receive their side of the story and then put together a piece of spare parts legislation that was balanced.

Let us get to basics. The basics are that there were spare parts that were being sold by contractors to the Government for prices that were 200, 300, 400, even 500 percent in excess of what the Government should have paid for them. The public is frustrated. In fact, I even think that the majority party in this House has a commercial on television right now where we see a man hold up a wrench and say, "That is what we should be paying for this."

Everyone knows what we are talking about when we talk about the problems of inflated prices on spare parts. This legislation, the Nichols bill, which has been intensely studied and put together over a period in excess of 1 year, is going to go farther than any legislation in this Congress toward solving this problem.

I will give my colleagues a couple examples. The chairman has in his legislation the establishment of competition advocates. Those are people who will work in the services, and whose sole job will be to spur an increase in competition. We have already seen competition advocates successfully increase competition within the Navy. We are going to see it happen in other areas of the Armed Forces because of the language in this bill.

Another important item requires contractors to identify the manufacturers of items. What had been happening is that contractors were stamping their names on parts that had been manufactured by subcontractors, and dramatically increasing the price that was being charged to the Government. The Nichols bill requires manufacturers to identify who actually made the part, and to eliminate all interference in the selling of those spare parts by the firm that manufactured it. If we go directly to the manufacturers, and bypass the prime contractor, we are going to get it for a much cheaper price.

The bill requires the Department of Defense to check its own system supply inventory when ordering spare parts. In our investigation, the chairman found examples of the Government buying parts at excessive rates, even though those same parts were available through the Government's own inventory. We literally threw money away on parts that were sitting on our own shelves.

It also goes far in the data rights section. Let me say this: The data rights section is a vital part of this bill.

The chairman was good enough to accept an amendment from a freshman Republican that would provide a 7-year limit on proprietary rights. Under the current law, if a company receives proprietary rights on a product, that means for the next 200 years that company has the exclusive or monopoly right to sell that part to the Government. As the Air Force itself says, when you do not have competition in the procurement of spare parts, the cost of those items will increase dramatically.

This bill provides for significant reform in the data rights area. It states that the Government will receive all data needed to procure the part. It states that when Government funds are used to research and develop an item, it will not be proprietary. And it provides a 7-year cutoff period, stating that after a period of 7 years or less, a company shall not have exclusive or monopoly rights to sell the part to the Government.

The CHAIRMAN. The time of the gentleman from Alabama (Mr. NICHOLS) has again expired.

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

Mr. KASICH. If the gentleman will yield further, what it essentially will do is to permit the Government to bring more contractors into the process of bidding on spare parts. As we get more contractors, and as we have more competition, we are going to see a solution to this problem.

I want to compliment the gentleman from Alabama (Mr. NICHOLS) for standing up in what were very difficult times, coming forward with a bill that I think will go a long way toward solving the spare parts problem. It is not going to be totally solved under this, but we go a long way toward, that end, and I want to compliment the chairman for his leadership in the subcommittee.

Mr. NICHOLS. I thank the gentleman from Ohio.

Mr COLEMAN of Texas. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman from Texas, a member of the committee.

(Mr. COLEMAN of Texas asked and was given permission to revise and extend his remarks.)

Mr. COLEMAN of Texas. I thank the gentleman for yielding.

Mr. Chairman, I rise to express my strong support for the amendment offered today by Mr. NICHOLS, chairman of the House Armed Services Subcommittee on Investigations, to the Department of Defense authorization bill in the area of spare parts. I commend him and the members of his subcommittee for their hard work and leadership in this reform movement.

I am proud to be a cosponsor of the legislation, H.R. 5064, which is the basis of this amendment, as reported by the House Armed Services Committee. It represents a year of careful examination by the Investigations Subcommittee in response to the much publicized spare parts procurement process by the Defense Department. The amendment provides for more cost effective and efficient purchases of spare parts.

A great number of my constituents have contacted me to express their deep concern over the matter of excessive prices for spare parts by the military. This amendment helps alleviate some of those concerns. It directs that the Department of Defense should refuse to pay prices that are not fair and reasonable, should make purchases in quantities that offer the best price for the number of units needed, and use standard or commercial parts whenever technically acceptable or cost effective.

In addition, the amendment encourages competition by requiring that Government personnel evaluation systems recognize efforts to increase competition and other cost savings and mandates review of noncompetitive acquisitions. It requires contractors to identify manufacturers and producers of items so as to avoid the "middleman" where practical. The amendment also requires planning in the Department of Defense acquisitions to insure that the Department check its inventory and records before ordering from a contractor.

With respect to concerns about technical data, the amendment defines categories in which the Government shall have unlimited rights in technical data and requires contractors to warrant that data they provide be in conformance with the contract. It also mandates the Department to develop a plan for improving its data management system to allow for easier access to technical data which the Government possesses, and restricts certain limitations on the Government's use of technical data.

I think the amendment includes well-reasoned moves in the direction of much needed reform. I urge my colleagues to support it.

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

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

Mr. HUNTER. I appreciate the gentleman yieding.

Mr. Chairman, I simply want to say in the area of proprietary rights, data rights, in my experience with the Navy and with contractors that is one of the biggest problems we have and the biggest generator of cost overruns, where you have a company which makes an original part and thereafter for the next several hundred years has the right to repair that part, and there are other companies who could repair the part if they had the proprietary rights, if they had the data or the blueprints essentially that were available. They could it for maybe half the price but they cannot because the company that originally manufactured the part has the rights to that data.

I commend the committee for putting that very important element into this package. I think that this bill, in fact, will operate to greatly reduce the cost of defense to the American taxpayers.

Mr. NICHOLS. I thank the gentleman from California.

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

Mr. NICHOLS. I yield to the gentleman from Maryland, the distinguished chairman of the Small Business Committee.

□ 1720

Mr. MITCHELL. I thank the gentleman for yielding. I want to commend him for his effort.

But I have a series of serious concerns about the nature of this amendment. I am appreciative of the fact that we are going to encourage agency personnel to do things through an evaluation system, the identification of items and so forth, encourage the establishment of data management systems. But you have to lay that against the background of what this Congress has been trying to do since 1969.

Since 1969, various committees of the Congress have looked at this issue and have suggested certain things that ought to be done. But they were never really done.

Essentially it got to be a jawboning process, with DOD, and which was blithely ignored. The record will show that when the dialog first got started 50 percent of the spare parts were sole source, noncompetitive in DOD. Despite 1969 and the ensuing years, that figure has risen to 77 percent.

I guess what I am saying, though, is I commend the gentleman for all of the work he has done, and particularly my colleague for his very good amendment. It comes almost down to, except in the case of your amendment, it comes down to jawboning again.

The CHAIRMAN. The time of the gentleman from Alabama (Mr. NICHOLS) has again expired.

(By unanimous consent Mr. NICHOLS was allowed to proceed for 2 additional minutes.)

Mr. MITCHELL. That is my only concern. I would like to see an amendment that was a little bit tougher. Yours is all right, no question about that.

But the rest of it, it certainly seems to me to encourage, to encourage to identify, to encourage the agency to identify every other source, that is what we have been telling them since 1969, and that is what they have ignored.

Mr. NICHOLS. Let me respond to the gentleman, my friend from Maryland, and tell him he is exactly correct. This has been an ongoing problem ever since I have been in Congress, ever since you have been in Congress.

But let me remind the gentleman we have never put this into the law. We have always done it by regulations, and the Secretary of Defense, and admirals and generals, they come and they go. For that reason, that is why we are putting it into the law. We feel like it has sufficient teeth in it to do the job.

Mr. MITCHELL. I thank the gentleman for his explanation.

I am not yet satisfied, but I do commend you for these first forward steps you have taken.

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

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

Mr. DINGELL. I thank the distinguished gentleman from Alabama for yielding. I endorse his amendment.

I support the very careful work which the gentleman has done. I commend him for the leadership which he has brought to the House, and I urge my colleagues to adopt his amendment.

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

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

(Mr. DURBIN asked and was given permission to extend remarks.)

Mr. DURBIN. Mr. Chairman, I would like to commend Mr. NICHOLS for preparing this legislation which shows that Members of Congress are truly concerned about eliminating waste, correcting system failures, and improving management deficiencies in the Government.

The Democratic freshmen have been concentrating their efforts on identifying ways to control the high Federal deficits. When the President's Private Sector Survey on Cost Control, the Grace Commission, published its findings earlier this year, we were naturally interested in applying those recom-

ing and to set forth penalties for violating regulations on proprietary rights. It does not remove any part of the Nichols bill in regard to proprietary rights, and those parts of the Nichols bill that are in the amendment, will continue to be in the amendment and will continue to be part of this legislation if my amendment is added.

Four, it requires contractors to supply parts at their lowest commercial price or justify reasons for any higher charge.

Five, it requires that only overhead applicable to the part can be charged to the Government. This will eliminate the ways the contractor justified $435 for a $7 hammer.

I had planned to include in this amendment a provision that costs would be a secondary consideration in the selection of architects and engineers with qualifications of the firm and the quality of the proposal receiving primary consideration.

Since this is different from the spare parts issue I have not included it in the amendment. But I will offer such an amendment later in this bill.

Mr. Chairman, the problem of Government procurement came to my attention when the Small Business Subcommittee which I chair held hearings on legislation that was referred to my subcommittee.

As a former businessman, I was shocked to find some of the problems that exist in Government procurement practices. My subcommittee held two full days of hearings on this matter in Washington. We also had a field hearing in North Carolina. My subcommittee investigation included a visit to a Government purchasing department in New York State, and I visited a procurement office in the Washington area.

□ 1730

In addition to this, my committee visited a Navy base in Florida to further investigate this matter. Time is limited. But as an example, I would like to tell the committee about one of my experiences. When the Army, Navy, and Air Force were testifying before us, I asked them "who is responsible for paying $430-some for a hammer."

The admiral from the Navy said, "I am responsible for that. It was the Navy that did that."

"How did that happen?" I asked him.

"We needed a repair kit for flight simulators," he said, "and when the quote came in from this supplier since it came within our guidelines and seemed reasonable to the buyer, he did not check the prices on the individual items."

"How much did the repair kit cost?" I asked him.

"I don't know, but I can find out for you," he replied.

"I wish you would get for us the cost of the kit and also the cost of the individual items in the kit" I requested.

Well, we finally received the information from the Navy. The repair kit cost the taxpayers $847,000. The hammer was one of the better buys; it cost only 62 times the normal retail price.

I purchased this tool kit from a local retail store for $92.44 for some 21 items. Those are common items that include such items as pliers, thickness gages, hammers, socket drive. This ⅝-inch socket was $1.49; the Government paid $456 for it, for example.

On and on with the various items. This is the list of the 21 items I bought for a total of $92.44.

The Government paid over $10,000 for those identical items, over 100 times the retail price in total for those items. I also have a list of how the supplier justified charging $436 for a hammer. Here are the figures that he gave us.

The hammer cost $7, the material packaging $1, material handling, $2; spares-repair department, 1 hour; program support administration, 0.4 of an hour; program management; 1 hour; secretarial, 0.2 of an hour; 2.6 hours of engineering support, $37; overhead, 110 percent, $41; mechanical subassembly on a hammer, 0.3 of an hour; quality control, 0.9 of an hour; operation program management, 1.5 hours, program planning to buy a hammer, 4 hours; management projection, 1 hour; quality control, 1 hour; total 7.8 hours, $93; manufacturing overhead, 110 percent, $102; G&A, $90; fee, $56; total of $436 for a $7 hammer.

Mr. Chairman, we must bring some sense to this waste of taxpayers money. The Nichols amendment goes part way in addressing this problem.

My amendment does not dilute the Nichols amendment, it strengthens the Nichols amendment and legislates some further considerations in military spending.

Mr. Chairman, we cannot sit idly by and let this waste of taxpayers money continue. We must let our constituents know we mean business.

I urge support of my amendment and the support of the Nichols amendment including my strengthening amendment.

Mrs. HOLT. Mr. Chairman, will the gentleman yield?

Mr. BEDELL. I yield to the gentlewoman from Maryland.

Mrs. HOLT. I thank the gentleman. I commend him for supporting the Nichols amendment. I think it should be said here that the testimony we received in the Armed Services Committee was to the effect that this administration, through Mr. Carlucci's efforts; had brought all of this to light; that these are things that were written into contracts in the past and that now we are trying to change that.

I think it brought it to the press's attention, to the public's attention, and certainly should be commended and we are trying to change those contracts.

Many vendors have been willing to rewrite the contracts so that these spare parts and these tools are not included in the total overhead. I think it is really time that we all set about trying to correct that. But the administration does deserve credit for bringing this to light; bringing it out in the open and making the press and the public aware of it.

I thank the gentleman.

Mr. BEDELL. If I may reclaim my time, I think it is correct the administration is making some efforts. But I would tell the gentlewoman from Maryland that the only way we found this out was by the pursuit of our subcommittee of demanding that we get the information.

I would tell the gentlewoman first that I have had the Navy in my office and the Navy seems to think this method of procurement is still perfectly satisfactory. So that I would hope that the gentlewoman would understand that in this particular case we had to demand from the Navy the information as to what they had paid and it took a large number of phone calls to get it.

Mrs. HOLT. If the gentleman would yield further, certainly in the Armed Services Committee it was brought to the attention of the subcommittee. We were making every effort to try to correct legislation or prepare legislation that would force the Defense Department to look at it further.

But the initial bringing this to light was done by Mr. Carlucci and the people in the Defense Department. When the press began to talk about it then all the committees became concerned and the people became concerned.

But I do think they deserve credit for pointing out the way that these contracts had been written in the past and that it should be corrected.

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

Mr. BEDELL. I yield to the gentleman from Louisiana.

Mr. ROEMER. I thank my colleague for yielding. Let me make sure I understand the purpose of your presentation. No. 1, do you support the Nichols amendment?

Mr. BEDELL. I support the Nichols amendment and my amendment does not delete anything that is in the Nichols amendment.

If my amendment is passed and we then pass the Nichols amendment as amended by Bedell, it would include everything that is already in the Nichols amendment.

Mr. ROEMER. I see. So your amendment would be in addition to?

Mr. BEDELL. That is absolutely correct.

Mr. ROEMER. Is it true your amendment would be directed toward competition and adding to the number of firms that might bid on these parts

or individual assemblies thereof, is that true?

Mr. BEDELL. That is absolutely correct.

Mr. ROEMER. I have a feeling and it is unofficial; informal, that there is some objection to your amendment. Have you had that same feeling?

The CHAIRMAN. The time of the gentleman has expired.

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

Mr. BEDELL. I yield to the gentleman from Louisiana.

Mr. ROEMER. I thank the gentleman from Iowa for yielding.

Does the gentleman have the same feeling that some object, and could you help us, those of us who have not been either on your subcommittee or theirs, as to why they might object to increasing competition or increasing the number of bidders on these spare parts?

Mr. BEDELL. I will do what I can. One of the provisions of my amendment says that anybody can bid on a Government contract. There are those who say that they do not want anybody to bid unless they are qualified bidders or qualified products list.

In my opinion this is a restriction of competition and this indeed is a way of keeping people from being able to bid. Some people object to that. But it should be clearly understood that if my amendment is passed and is added to the Nichols amendment, that anybody will be able to bid but the Government will not be required to take the low bidder until they have satisfied themselves that both the product and the bidder meet the adequate criteria to meet their requirements and if there is not time to do that they are not required to take the low bid.

Mr. ROEMER. I thank the gentleman.

Mr. OTTINGER. Mr. Chairman, will the gentleman from Iowa yield?

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

Mr. OTTINGER. I just would like to congratulate the gentleman for the fine job he has done in his subcommittee in bringing out these horrendous situations to public scrutiny, and for his amendment which really adds to and puts teeth into the Nichols amendment which I join him in supporting.

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

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

Mr. ADDABBO. I thank the gentleman for yielding.

I sit on the subcommittee with the gentleman. I wish to commend him on this amendment. I think it is very important. I think we have proven in the past through our hearings with the Small Business Committee that where there is competition you not only get lower prices but you also get better quality; especially when there is small business involved.

I ask the House to support the gentleman's amendment.

Mr. Chairman, I rise in strong support of the Bedell amendments to H.R. 5167.

Recently a considerable amount of publicity has been given to DOD's purchasing procedures in the area of spare and replacement parts. For example, press reports revealed instances where DOD paid $1,118 for a plastic stool cap, $104 for an electric diode and $435 for an ordinary claw hammer. These outrageous procurement practices are by no means novel to the Congress. The Defense Appropriations Subcommittee has repeatedly directed DOD to improve its record with regard to spare part purchases.

I would like to point out what action has been taken by the Congress and why we are here now in 1984 to legislate some solutions.

In 1968 the Defense Appropriations Subcommittee found that "no procedures to coordinate procurement of this type had been established."

In 1969 the committee report stated that DOD "was not making sufficient and realistic attempts to obtain competition in the procurement of spare parts." The report found that 50 percent was negotiated without price competition.

In 1979 the committee report stated that procurement personnel were not really familiar with the items they were procuring and managing and that this made it easy to pass through the system items which were grossly overpriced. The committee directed DOD to establish remedial policies.

In 1980 the committee directed the establishment of component breakout programs to correct overpricing.

In 1981 the committee report highlighted the area of procurement of spares as needing additional manpower and encouraged DOD to find alternate sources.

In 1982 the committee report stated that "direct purchase of spares from subcontractors (rather than from the prime) should be pursued."

In spite of all these congressional directives dating back some 15 years, noncompetitive purchases of spare parts have actually increased from 50 percent in 1969 to 77 percent in 1982.

Finally in 1983, the fraud and abuse of the taxpayer's dollars was highlighted by the press. Only as a result of unfavorable publicity did DOD decide to make major changes in their procedures for purchasing spare parts.

Unfortunately, the 10-point memorandum issued by the Secretary of Defense in July, 1983 lacks specificity and fails to offer an adequate solution to the spare parts problem. For instance, there is clearly a need for DOD to specifically set forth what constitutes an adequate sole source justification. However, the memo merely states that DOD should "* * * accelerate reform of our basic contract procedures to encourage competition and preclude overpricing." I assure you that within DOD this will only be interpreted as a "best efforts" missive rather than a mandate to get the job done. This is not the proper approach. Instead, specific restrictions should be placed upon the use of noncompetitive sole source contracts for spare parts. The Bedell amendment to H.R. 5167 accomplishes this by enumerating only five specific instances where a noncompetitive sole source contract for spare parts may be awarded.

Other anticompetitive practices are eliminated by the Bedell amendments. The qualified products list and qualified bidders list have been used by DOD to screen out potential offerors. All business concerns should be afforded the opportunity to offer their product or service to the Government. This will effectively increase competition and cost savings without any reduction in the quality of products furnished to the Government.

I urge all my colleagues to support the Bedell amendments to H.R. 5167 as a logical approach to promote competition, reduce, acquisition costs and maintain the Nation's full productive capacity.

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

Mr. BEDELL. I yield to the Chairman.

Mr. MITCHELL. I, too, congratulate the gentleman. This is the issue I was speaking to earlier in my colloquy with the gentleman from Alabama.

This puts some teeth into the thing and that is what is needed.

The CHAIRMAN. The time of the gentleman has expired.

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

Mr. MITCHELL. If your amendment did nothing else than to limit the use of the present qualification criteria, such as qualified products and bidders lists, if it did nothing else than that, that would be a major blow against this kind of rooking of the American public in terms of the way the agencies procure.

□ 1740

The argument will be raised that somehow or another this affects competition.

How in the name of God when you open up a bid to everybody can that affect competition adversely? Particularly when the gentleman insists that the military will have the final say so. The argument on competition is a specious argument. It does not belong here.

I would urge the House to support the gentleman's amendment.

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

Mr. BEDELL. I yield to the gentleman from Colorado.

the procurement procedures. Well, we certainly would not want to do anything like that, would we. After all, GAO said that if we make the connections called for in this area over a period of time, we could have saved $25 billion. The Grace Commission report said that within 1 year with competitive bidding, as the Bedell amendment calls for, we would save $9.3 billion.

Now, we realize that our deficit is close to $200 billion and this is not going to solve our deficit problems entirely. But certainly $9.3 billion, my friend, is not chickenfeed. If anything, the Nichols amendment, which I support, and the Bedell amendment, which I support, do not go far enough, and I am going to tell the gentleman why I feel that way. There is no onus, no burden put on anyone in DOD because of these unconscionable cost overruns.

Mr. BROOKS. May I say to my friend that I am going to have to regain my time, because I promised also to yield to the gentleman from Kentucky (Mr. HOPKINS).

Mr. HOPKINS. I thank the gentleman for yielding.

Let me remind my colleagues that the gentleman in the well is the chairman of the Government Operations Committee and has spent many, many hours and has vast knowledge on this subject.

I would agree with my colleague from Maryland, perhaps this does not go far enough. But it is eons ahead of where we were.

And if I may ask the gentleman in the well, in his opinion, based on his knowledge and experience, if the amendment of the gentleman from Iowa were to pass, would it not open up bidding by all vendors and thereby open up the possibility that a vendor, well intended as he may be, might not be qualified to supply either the quality or the quantity that might be needed by the armed services?

Mr. BROOKS. I believe the gentleman states the situation accurately. I think it would endanger the procurement of properly tested equipment, services and facilities that many areas of our Defense establishment need in the worst way if we are going to have a good defense system.

Mr. HOPKINS. If the gentleman will yield further, would it not, then, if that were the case, based on the gentleman's experience, cost more, if that were the case, if that should happen?

Mr. BROOKS. I think that is correct. This will ultimately result in higher cost of spare parts. They are not facing the problem. They are trying to destroy the whole situation. They do not understand the entire procurement process. They are trying, with an aborting amendment, to set aside just what the Defense Department is supposed to do. What we need is general legislation. We need general legislation on competition. That is the heart of good pricing—competition.

Mr. HOPKINS. So the Nichols amendment then is a step in the right direction?

Mr. BROOKS. That is what I said and that is what I believe. It is not perfect. We are not going to cure the world, not the whole world, this week. But we can make a step forward, and the Nichols amendment does that.

Mr. HOPKINS. I thank the gentleman.

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

Mr. BROOKS. I yield to my friend, the gentleman from Louisiana.

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

(On request of Mr. ROEMER and by unanimous consent, Mr. BROOKS was allowed to proceed for 1 additional minute.)

Mr. ROEMER. I thank my distinguished colleague for yielding.

Let me make sure I understand what the gentleman just said in answer to our colleague from Kentucky.

Is the gentleman making the case that if the Bedell amendment is adopted by this committee, the price of clawhammers is going to go up from $435?

Mr. BROOKS. It could.

Mr. ROEMER. Does the gentleman really believe that?

Mr. BROOKS. I am not going to buy any of that. I did not buy this Allen wrench they offered for $9,000. But the cost could go up. This Allen wrench was offered at $9,000 to the Air Force, and it cost more than that whole stack of television gismos that we had already on here.

Mr. ROEMER. The gentleman has made a serious charge about the amendment of the gentleman from Iowa, that the price of already inflated spare parts could go higher.

Mr. BROOKS. Yes; I think it could.

Mr. ROEMER. Could the gentleman explain his charge?

Mr. BROOKS. Sure, it could go higher, certainly.

Mr. ROEMER. How?

Mr. BROOKS. Would anybody in their right mind believe that you would sell an Allen wrench like this one for more than 45 cents? But they offered it to the Government for $9,000. I do not think you could go much higher than $9,000 on an Allen wrench.

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

Mr. Chairman, I must oppose the amendment offered by my friend from Iowa (Mr. BEDELL). In so doing, let me say that I commend my colleague for his persistence in bringing the problems associated with spare parts to the attention of the Members. We differ in the approach in solving these problems. After more than a year-long investigation and eight hearings on the subject, the Armed Services Committee has reported a rather comprehensive bill.

□ 1800

We believe that the provisions in the amendment just offered which have been accepted by my chairman and by my ranking minority Member, address the real issues in a much more comprehensive and effective manner.

Many of the provisions in my amendment encompass, and in fact are more stringent, are more demanding than those in the amendment offered by Mr. BEDELL. In addition, I am opposed to the substance of Mr. BEDELL's amendment and let me explain to the Members why.

The amendment would, in my judgment, preclude the Department of Defense's use of a qualified products list which are necessary to insure qualified products are offered to the Government. Let me explain the qualified products list, if I may.

It is much like getting the Underwriter's Laboratory seal of approval, which all consumers rely on as an indication that the products has met certain safety standards.

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

Mr. NICHOLS. I yield to the gentleman.

Mr. OTTINGER. Why on Earth would you have to be on a qualified bidders list to supply a claw hammer or an allen wrench?

Mr. NICHOLS. Let me tell the gentleman that I am not talking about claw hammers. We have about 100,000 items a year that are bought out of the 4 million items that we buy on the qualified bidders list. Let me tell the gentleman why that is necessary that we not abandon the qualified bidders list, if I may.

We think it is necessary that DOD must test products ahead of time before we buy them. Because the Defense Department is obliged to buy from the lowest bidder, it does not have the option of going out and picking the best product and buying it. Those of you who read Jack Anderson's column, and I do not usually quote from Jack Anderson's column, but on the 17th of May, he gave a clear example why qualified bidder's lists are needed.

In that column he cited the loss of about 16,000 American servicemen in the last 21 years due to accidental death. And he stated, and I will quote:

> Often our soldiers paid with their lives for penny-pinching practices that led to accidents. One such instance has been the increase in drowning accidents due to faulty and inadequate life jackets.

It is obvious then why lifejackets are on a qualified bidders list.

The same thing would apply for brake components on our aircraft. If that brake system fails or wears out prematurely, we do not only lose a $25 or $30 million aircraft, but we lost a human life as well.