

I had quite a debate with Senator Tower as to whether the subs were detectable, which bore on the issue of whether we had sufficient strength, and the tabling motion was defeated on a vote of 60 to 38. I recall Senator Laxalt walking down the aisle and voting no and starting to head for the Republican cloakroom, and Senator Tower walked fast, chasing him up the aisle, and said: You don't understand, Paul, this is a tabling motion. I am looking for an "aye." And Laxalt turned and said: I understand what you are after, John, but I agree with Arlen Specter. Senator Tower said: He is trying to tell the President what to do. Senator Laxalt said: Well, so is everybody else—really, in effect, saying that is what Senators do from time to time, just expressing their opinions.

The tabling motion was defeated 60 to 38, and the resolution was adopted 90 to 8.

There has been a lot of unease and consternation among foreign nations as to what is going on in the Senate. I do not question the motives of the writers of the memorandum. I do not question their motives or their good faith. But there is considerable concern both at home and abroad as to the gridlock which now confronts the Senate. That is inevitable when one Senator says: We are going to see to it that this is President Obama's Waterloo, and when leadership on the other side of the aisle says: Our principal objective is to defeat President Obama in 2012. There is a concern about what is happening, whether there are really bona fide objections to the START talks.

In connection with the travels I have undertaken during the course of the past many months—in India, with a congressional delegation, a group of us met with the Prime Minister of India, a concern about agreements made with our executive branch, whether they will be upheld; a meeting with officials in China on certain trade issues; talking to leaders in other foreign countries, a real question about what is going on in the government of the United States.

In this interdependent world, I suggest it is very important we project a national image, a national posture of rationality in what we are doing and not to throw up roadblocks to international agreements such as START without good reason in the context where at least in appearances there is obstructionism.

When we talk about risks involved, my own view is that we are far at this point from a threat with the Russian Government. This is not the day of the Cuban missile crisis in 1962 when the world may have teetered on the edge of a nuclear confrontation. The relations with the Soviet Union were disintegrated. The relations with Russia are vastly improved, and we need the cooperation of Russia in dealing with many very vexing international problems, paramount of which is our dealings with Iran and the need to have the

Russians join us in sanctions against Iran and to promote the Russian offer to enrich the uranium from Iran so they do not enrich it themselves, posing a threat with what Iran would do with enriched uranium—a threat which is not present if it is not in Iran's hands when uranium is enriched, which could be used for peaceful purposes.

We see today the importance of the cooperation of China in the concerns we have with North Korea. When that problem broke last week, my first comment publicly in a television interview on MSNBC was to state what was the obvious: that we had to engage China to deal with North Korea. China's initial comments were muted, were not very encouraging. I am pleased to see the most recent reports are that China is moving ahead to try to deal with a threat posed by North Korea, having shuttle talks between North Korea and South Korea.

So it is in this overall context of having the assurances registered with foreign governments that there is rationality. When we talk about risks, my own assessment—and I have studied this situation closely. I was a member of the U.S. arms talks in Geneva going back into 1987, during that decade and beyond. But the risks are not what they once were. It is never possible to eliminate risks entirely, but when we are looking to evaluate the balance of risks and international cooperation with Russia and our conduct on START, as we project an image of strength with other countries, the risk is well worth taking to the extent that it exists. Again, I say my own evaluation is that there is not much of a risk involved.

The Washington Post, last Friday, November 26, quoted one of the authors of the memorandum expressing satisfaction:

I've come to the conclusion that the administration is intellectually committed to modernization now. . . . Whether they're committed in the heart is another matter. Suppose Start is ratified, and they no longer have to worry about that? Will they continue to press for the money?

Well, if we concede there is a commitment, be it an intellectual commitment, there is not a whole lot more that we can ask for.

#### EMBRYONIC STEM CELL RESEARCH

Mr. SPECTER. Mr. President, I had spoken about this when we reconvened several weeks ago, that it is my hope that Congress, the Senate specifically, will take up legislation which I have introduced which would authorize the use of Federal funding for embryonic stem cell research. Embryonic stem cell research holds enormous potential. You take the embryos which are the most flexible of all of the stem cells and they can replace diseased parts of the body and they offer promise of a veritable fountain of youth.

The U.S. District Court for the District of Columbia said the Executive

order issued by President Obama was invalid. But Congress has the authority to legislate to cure any defect. The case is on appeal to the circuit court, and a stay has been issued. But the scientists are very apprehensive, as they testified before the Labor, Health and Human Services Subcommittee. There are some 200 projects with some \$200 million involved.

It is not a constitutional matter. It is a matter of statutory interpretation on the existing statute. But to the extent there is any ambiguity, this is something which we ought to address and we ought to address promptly because it is a life-and-death matter. As long as the litigation is pending in the Federal court, the scientists do not know which way to turn. So they have made their point very clear.

The case could go on for a very protracted period of time when you have to file briefs, have argument, and a decision in the Court of Appeals for the District of Columbia. Then a possible petition for certiorari could take a matter of years. With the ideological issues involved, who knows what the final outcome would be in the judicial system. But that can all be put to rest by legislation.

#### TELEVISIONING THE SUPREME COURT

Mr. SPECTER. One other point briefly—I see a colleague awaiting an opportunity to speak—and that is my hope we will address, before the end of the year, the issue of televising the proceedings of the Supreme Court of the United States. This is an issue I have worked on, on the Judiciary Committee, for a couple decades now. It has been reported a number of times out of committee. It is currently on the Senate agenda.

The Supreme Court of the United States decides all of the cutting edge questions. There ought to be transparency. When the case of Bush v. Gore was argued, then-Senator BIDEN and I wrote to the Chief Justice urging that the proceedings be televised. We got a response back in the negative, but on that day there was a simultaneous audio released. I noticed 2 weeks ago that on C-SPAN there was a Supreme Court argument which was a couple weeks old with an audio, and they had a picture of the Justice who was speaking and a picture of the lawyer arguing the case—sort of like movies before talking; sort of like silent movies. There was an audio.

It is high time the public's business be open. Newspaper reporters can walk into the Supreme Court, make notes, upheld by the Supreme Court of the United States. Visitors are limited to some 3 minutes. The chambers can only hold about 250 people. It is time the Court was televised. I hope the Senate will act. I have discussed the issue with the leadership in the House and there are positive responses on the issue.

## EXHIBIT 1

From: Sen. Jon Kyl, Sen. Bob Corker  
 To: Republican Members  
 Date: November 24, 2010  
 Re: Progress in Defining Nuclear Modernization Requirements

We appreciate your willingness to consider New START in the context of modernization of our nuclear complex and the weapons it supports.

In advance of having an opportunity to discuss the issue more fully next week in Washington, we want to summarize the status of our discussions with the administration.

## SUMMARY

Throughout the Obama administration's pursuit of a New START treaty, we have been clear, as has Secretary Gates, that we could not support reductions in U.S. nuclear forces unless there is adequate attention to modernizing those forces and the infrastructure that supports them. The Administration's recent update of the 1251 plan, originally submitted in May in accordance with Section 1251 of the FY2010 NDAA, is an acknowledgment that more resources we needed to accomplish the objectives set forth in the Nuclear Posture Review for the modernization of the U.S. nuclear deterrent. This memo discusses our concerns with the original 1251 plan, changes made and our assessment of those changes and remaining issues.

## BACKGROUND—THE DECLINE OF THE NUCLEAR WEAPON STOCKPILE AND INFRASTRUCTURE

Since the end of the Cold War, the U.S. nuclear weapons infrastructure (including laboratories, production facilities and supporting capabilities) has been allowed to deteriorate. The weapons have remained safe, secure and reliable, but they and their caretakers have been in a state of limbo—only when critical problems have arisen has action been taken. The production facilities are Cold War relics, safety and security costs have grown exponentially, and critical skills have been jeopardized through layoffs, hiring freezes, and the retirement of skilled scientists and technicians who earlier were able to fully exercise the full set of nuclear weapons-related skills. In FY2010, the Obama administration invested only \$6.4 billion in the National Nuclear Security Administration Weapons Activities funding line, a 20 percent loss in purchasing power from FY2005 alone. It is no longer possible to continue deferring maintenance of either the facilities or the weapons. As a result, the 2010 Nuclear Posture Review set forth a broad range of modernization and sustainment requirements that would be impossible without additional budget support.

A detailed explanation of these concepts is located in the appendix to this memo; but to help understand the current situation, imagine an automotive expert working in a garage built in 1942. The roof leaks and his tools are becoming outdated. Moreover, he has responsibility for a fleet of eight racing Ferraris, which have been sitting in storage for about 30 years. The last time any engine was turned on was 1992, but this "steward" is responsible for assuring that, at any given moment, each of the eight finely-tuned cars will respond to the key turn. To do this, he is allowed to assess components of the cars for aging—leaks, cracks, rust, etc. (though he isn't able to look at the components often enough and in sufficient detail because of his maintenance budget).

Even on a shoe-string budget, he is beginning to see signs of age throughout the fleet, and realizes that each and every car will require a complete overhaul (a "life extension" program). To be successful, he needs a new garage, updated tools, and skilled assistants (because truthfully, the expert will be retir-

ing long before the overhauls are complete, assuming his pension fund is still solvent). He will have to replace some of the parts (especially the electronics—some of his fleet of Ferraris still have vacuum tubes), because they just aren't available anymore; but some parts will have to be reused, or manufactured to be as close to the original as possible. Some of the original parts contained materials that are now illegal for safety or environmental reasons. To add to the problem, the owner is asking for air bags, anti-lock brakes and anti-theft technology. Each overhaul will take about a decade, from planning through execution and without a new garage, he will be unable to finish the overhauls on time. And at the end of the day, the mechanic is fairly certain that he will not be allowed to turn the ignition to check his work.

This is the state of our nuclear deterrent today, except, we're dealing not with cars, but with the most sophisticated and dangerous weapons ever devised by man.

## SECTION 1251 PLAN AND FY2011 BUDGET—A RESPONSE TO THE NUCLEAR POSTURE REVIEW

The initial section 1251 report showed a ten-year budget plan for Weapons Activities totaling \$80 billion. But most of that \$80 billion is not directed at modernization activities called for in the NPR—it is mostly consumed in "keeping the lights on" at the laboratories and plants, including safety, security, facility upkeep (which is difficult on very old facilities that would have been replaced long ago in the private sector), and routine warhead maintenance.

Only about \$10 billion of that ten year number was for new weapons activity, about half of it coming from DOD and half from "savings" assumed from low inflation projections. We doubt such savings can be realized and the DOD funding is not enough to cover everything that needs to be done. It provides for a small increase to stockpile surveillance for warhead evaluation, funding for the W76 life extension program and the B61 and W78 life extension studies, and partial funding for badly-needed design, engineering and a modest investment for construction of new plutonium and uranium processing facilities—the Chemistry and Metallurgy Research Replacement (CMRR) nuclear facility and the Uranium Processing Facility (UPF). These new facilities will replace Manhattan Project-era buildings that are a substantial maintenance burden and are becoming increasingly challenging to maintain in a safe and operable condition.

Recognizing that more money was needed up front, the administration's FY2011 budget request of \$7.0 billion for Weapons Activities improved the FY2010 budget by \$624 million. The \$624 million was included as a budget "anomaly" in the two month C.R. we passed before the October recess, but will have to be maintained in the longer-term C.R. or Omnibus we will pass in December.

The initial 1251 plan left a lot of questions about how all the work articulated in the NPR would be funded. Numerous experts expressed concerns about obvious shortfalls in funding and about restrictions placed on designers that will constrain their ability to work through stockpile issues. The funding levels for CMRR and UPF were of significant concern, as was the funding for Life Extension Programs—especially to incorporate improved safety, security and reliability in these warheads. And of great concern to the directors of the national weapons laboratories, much of the promised budget increase for modernization was not pledged until FY 16, by which point the Administration's commitment (if it is still in office) may have waned. As a result, we requested an update to the 1251 plan that would answer the ques-

tions we raised and that would show a stronger commitment to modernization.

## UNDATED 1251 PLAN

After reviewing our questions, and with further review of the requirements imposed by the NPR, the Administration agreed that updated budgets were required. Thus, on November 17, 2010, an updated 1251 report was provided to the Senate, including an early FY12 budget projection with White House approval. The 1251 update, and the briefing provided as part of the update, satisfied many, but not all, of the initial questions we had earlier expressed.

The 1251 plan update increases the FY2012 budget request by an additional \$600 million, increases the FY2012 five-year plan by \$4.1 billion, and adds to the total FY11 ten-year plan between \$5.4 and \$62 billion. We are told that the new increases will not be taken from the DOD budget line. This update brings the ten-year plan (from FY11) to between \$85.4 and \$86.2 billion. Again, approximately \$70 billion of the original pledge of \$80 billion was needed just to maintain current operations of the nuclear weapons complex, without covering the expense of the needed modernization of the stockpile or infrastructure. This update also includes revised cost estimates for CMRR and UPF; those estimates now range from \$3.7 to \$5.8 billion for CMRR and \$4.2 to \$6.5 billion for UPF.

The new \$4.1 billion for the five years of the FY2012 FYNPS is divided as follows:

\$340 million for design and engineering and modest construction activity for CMRR and UPF (see below for more detail);

\$1.7 billion (approximately) for other facility construction and maintenance requirements, including the High Explosive Pressing Facility at Pantex and test facilities at Sandia National Laboratories;

\$1.0 billion (approximately) for stockpile work, with added funding for life extension programs, stockpile surveillance and other design and research activities, though some of this funding (\$255 million for the W76) is only needed because one life extension program will take longer due to the capacity bottleneck in the complex;

\$1.1 billion for contractor pension obligations spread through Weapons Activities accounts (which, while needed, does not support modernization).

## REMAINING CONCERNS

Despite this new increase, there remain a few substantial concerns about the adequacy of the proposed budget. For one, the Administration is attempting to address the enormous increases in the cost estimates for CMRR and UPF by delaying the full operation of those facilities by one to two years. This would stretch the final completion of CMRR to 2023 and UPF to 2024, although the Administration states that some operational capability would be established (as required) in 2020. If extended, hundreds of millions of dollars would be needed annually to maintain Manhattan Project-era facilities at LANL & Y-12. Additional funding could be applied to accelerate the construction of these facilities to ensure on schedule completion and prevent wasted investments in maintaining an securing facilities that are being replaced anyway.

Furthermore, the Administration is ignoring the benefits of ensuring funding commitments for these facilities early in the budget process. Responsible advance funding mechanisms exist, such as a FY12 request for three-year rolling funding (recommended by some NNSA budget specialists), or alternatively, an Administration commitment to seek advanced funding in FY13 following the completion of the 90 percent design cost estimate. Further Administration effort to advance funding is the best path to successful completion of these facilities.

Given the need to live with our currently aging stockpile until an adequate production capability is established (after 2020), accurate assessment of the state of the current stockpile is paramount. The 1251 plan update shows a doubling of surveillance funding from FY09 to FY11—which is commendable—but is our understanding that the NNSA is reviewing an updated surveillance plan that could lead to greater budget requirements. NNSA should affirm that this review has been completed and the budget request will reflect updated requirements.

Finally, the 1251 update made clear that NNSA will not restore a production capability adequate to maintain our current stockpile levels (declassified as 5,113 weapons total), and instead allow up to 1,500 warheads to be retired or held with no maintenance unless funding increases are sought and obtained. Failing to maintain hedge weapons will increase the risk that the U.S. cannot respond to a problem in our aging stockpile. The Administration should not engage in further cuts to our deployed or non-deployed stockpile without first determining if such cuts are in our national security interest and then obtaining corresponding reductions in other nations' nuclear weapons stockpiles, such as Russia's large stockpile of weapons not limited by New START (e.g., its tactical nuclear weapons).

#### MODERNIZATION OF U.S. STRATEGIC DELIVERY SYSTEMS

The 1251 update deals not only with our nuclear weapons, but the delivery systems that are part of our TRIAD. The update indicates somewhat clearer intent by the Administration to pursue a follow-on heavy bomber (though not specifically nuclear) and air-launched cruise missile (ALCM), though development costs beyond FY 2015 are yet to be determined. While the update notes that estimated costs for a follow-on bomber for FY 2011 through FY 2015 are \$1.7 billion, there are still no costs or funding commitments beyond FY 2015. It is the same for the ALCM: \$800 million programmed over the FYDP, but no cost estimates are included beyond FY 2015. We should have a better idea of these estimated costs over the full ten years of the 1251 plan, and know whether the Administration intends to make this new heavy bomber and ALCM nuclear capable.

Decision-making for an ICBM follow-on is unlikely before FY 2015, at the completion of an ongoing analysis of alternatives. The update notes: "While a decision on an ICBM follow-on is not needed for several years, preparatory analysis is needed and is in fact now underway. This work will consider a range of deployment options, with the objective of defining a cost-effective approach for an ICBM follow-on that supports continued reductions in U.S. nuclear weapons while promoting stable deterrence." (emphasis added) We think it important to understand what the Administration intends when it suggests that a decision regarding a follow-on ICBM must be guided, in part, by whether it "supports continued reductions" in U.S. nuclear weapons—especially since we seriously doubt it's in our interests to pursue reductions beyond the New START treaty. One logical inference from this criterion is that a follow-on ICBM is no longer needed because the U.S. is moving to drastically lower numbers of nuclear weapons. We continue to press for a letter from the DOD confirming its commitment to follow-on nuclear-capable delivery systems.

#### CONCLUSION

Until these issues are resolved, it will be difficult to adequately assess the updated 1251 plan, despite the welcome increases in proposed spending. And as has always been clear, assurances from the appropriate au-

thorizers and appropriators must be obtained to ensure that the enacted budget reflects the President's request.

#### APPENDIX

Briefly, some of the stockpile programs most affected by the lack of Administration support for modernization include:

**Replacing Manhattan Project-era Facilities:** Since the closure of the Rocky Flat Plant in 1989, the U.S. has had only a limited capability to produce the core component of our stockpile weapons: the plutonium pit. To establish a pit production capability, a 60-year-old research laboratory must be replaced by the Chemistry and Metallurgy Research Replacement (CMRR) nuclear facility at Los Alamos. Likewise, producing uranium components at the 70-year-old facility at Y-12 in Oak Ridge is an increasing risk that requires construction of a new Uranium Processing Facility (UPF). Completion of these new facilities will be essential in meeting life extension program requirements starting in 2020.

**Production Capacity:** As Secretary Gates stated, "Currently, the United States is the only declared nuclear power that is neither modernizing its nuclear arsenal nor has the capability to produce a new nuclear warhead." The United States requires a nuclear weapon production capability with sufficient capacity to satisfy the life extension requirement of our aging weapons, as well as to provide a "hedge" against future technical or political problems. Currently, we are limited to producing a handful of plutonium pits a year for one weapon, but are unprepared to produce most of the remaining pieces of that weapon. Modernization of the NNSA laboratories and plants is required to correct this issue, with the stated goal of establishing a "capability-based" production capacity. Without this capacity, there can be no stockpile reductions. In fact, General Chilton argues the stockpile might have to be increased: "I would say because of the lack of a production capacity there's a fear that you might need to increase your deployed numbers because of the changing and uncertain strategic environment in the future."

**Life Extension Programs:** Under current policy, the laboratories and plants are constrained to extending the life of existing warheads to keep them in the stockpile for much longer than originally expected. Thus, as the weapons age and concerns are observed, the laboratories and plants determine how best to repair the weapons. Aging components are replaced, remanufactured or inspected for reuse in the stockpile. In performing life extension for the W87 and the ongoing W76, our experts have discovered that it is very difficult to reconstitute processes and capabilities that have been allowed to atrophy. Currently, the W76 warhead is in LEP production, the B61 LEP study is underway and the NPR called for an FY2011 start to a W78/W88 LEP study that will research if the two warheads can be life-extended simultaneously.

**Surveillance:** The average age of our current nuclear weapons is approaching 30 years. To ensure that each warhead remains reliable, each year approximately 11 warheads per type should be returned from the military for dismantlement and evaluation. Components are inspected and tested to ensure reliable operation. This program aids in the annual assessment of the stockpile performed by the laboratories and is the lead mechanism for identifying potential stockpile issues. Due to inadequate funding, surveillance requirements have not been met for many years, raising concerns about confidence in the stockpile.

**Deferring Maintenance, Creating Chokepoints:** In addition to the CMRR and

UPF construction projects to replace aging facilities, a significant number of buildings in our laboratories and plants have been accumulating a backlog of maintenance. This deferred maintenance creates a substantial number of facilities that could (and occasionally do) become a choke point in the progress of a life extension program. Maintenance can only be deferred for so long, until, eventually, something breaks; and when it does break, it is usually much more expensive to replace than routine maintenance would have cost. Reducing deferred maintenance is a demonstration that we are moving from a nuclear weapons complex in decline, to a revitalized and robust capability.

**Critical Skills:** Perhaps the most significant attribute of a strong deterrent is the scientific and technical capability that is present in our laboratories and military complex. Maintaining those skills, especially as most nuclear-test experienced weapon designers are past retirement age, is a growing challenge within the NNSA laboratories and plants.

**Hedging:** Without a robust production capability, the U.S. maintains a large non-deployed stockpile as a technical hedge against stockpile concerns and a political hedge that allows rapid upload should another nation become increasingly adversarial. With the technical hedge, if one weapon type were discovered to have an urgent issue requiring replacement, alternate components in the force structure theoretically could be used to compensate for that loss of capability. For example, W78 warheads on Minuteman III might be replaced by W87 warheads maintained in storage, and vice-versa.

**Delivery Systems:** Nuclear weapon delivery systems require replacement within the next thirty years. These systems include:

The B-52H bomber, first deployed in 1961 and scheduled to be sustained through 2035;

The B-2 penetrating bomber, deployed in 1993 is currently being updated for long-term sustenance;

The Air-Launched Cruise Missile (ALCM), deployed in 1981 and scheduled to be sustained through 2030;

The Minuteman III ICBM, deployed in 1970, undergoing life extension and scheduled for replacement by 2030;

And the ballistic missile submarines and missiles. Ohio-class SSBNs were first deployed in 1981 and commence retirement in 2027. The Trident II Submarine Launched Ballistic Missile (SLBM), deployed in 1990, will be sustained through at least 2042, following a life extension.

Mr. SPECTER. I thank the Chair and yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Nebraska.

#### 1099 REPEAL

Mr. JOHANNES. Mr. President, we have a distinct opportunity to take what I regard as very clear and decisive action to uphold two very important principles. We as a Senate, No. 1, support enabling job creation. In this regard, repealing the 1099 paperwork mandate helps fulfill our promise to clear Federal roadblocks that are stopping small businesses from expanding and putting Americans to work.

Small businesses want to expand. They want to hire more workers. Millions of Americans want to get back to work. Yet the tax paperwork mandate hidden in the health care law requires businesses to file a mountain of additional 1099 tax forms. It will consume