

**The original documents are located in Box 21, folder “MIA/POW - General (3)” of the John Marsh Files at the Gerald R. Ford Presidential Library.**

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[6176?]

As to the question of availability of intelligence reports on individual POW/MIA's, the President has decided to make all such reports available to immediate family members, subject to approval of the primary next of kin. This will be accomplished within legal limitations and with proper consideration of security factors.

*Roger Shields brought this -*



had been some thought  
scrubbed -

Mary/NS of Mil. air/

statement when he returns

Defense - <sup>files</sup> available



DUVAL-MIA STATEMENT? (Cheney)  
ADVISE MARKS

1. Name U.S. negotiator to Paris & call upon DRV to do likewise.  
(NSC doing)

2. Advise DRV that U.S. will lift trade embargo when DRV provides info. they have on POW/MIA's.

3. Advise DRV that U.S. will not veto their admission to U.N. & since DRV admits U.N. inspection teams (check sites, spare site inspection etc.)

4. Stopping change of status (MIA to KIA) actions (Logans checking)

5. Seeking classification downgrading - & making available to families  
(OK)

6. Executive Order

Cheney  
Kneff





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THE WHITE HOUSE  
WASHINGTON

May 21, 1976

TO: RUSS ROURKE

FROM: JOHN O. MARSH, JR.



           For Direct Reply

           For Draft Response

  X   For Your Information

           Please Advise

---



THE WHITE HOUSE

WASHINGTON

May 21, 1976

MR. MARSH:

Ann Griffiths called (Bus Mills' daughter) re the MIA situation. She said she's concerned that Governor Reagan is going to make an "adverse statement" re the MIA situation, and she'd be happy to hold a press conference this weekend to "counter-act" anything that Reagan might say -- in support of the President's statements.

She has discussed this with McCloskey.

She'd like to know what she should be doing.

Connie

PH: (714) 826-3110 - today  
(714) 328-4979 - weekend

---

THE WHITE HOUSE  
WASHINGTON

May 20, 1976

RUSS:

Per your request -- the  
Dermott Foley letter.

Connie



09

May 3, 1976

MEMORANDUM FOR: THE ATTORNEY GENERAL  
FROM: TED MARRS  
SUBJECT: DERMOT FOLEY LETTER 4-30-76  
X

For your information.

Note comment in regard to Susan Linden.

Enclosure: DFoley ltr 4-30-76

TCM:mcp



May 3, 1976

MEMORANDUM FOR: BRENT SCOWCROFT  
FROM: TED MARRS  
SUBJECT: FOREIGN AID AUTHORIZATION BILL

I thought you should know of this.

Enclosure: DGFoley ltr 4-30-76

TCM:mcp

May 3, 1976

MEMORANDUM FOR: JACK MARSH  
FROM: TED MARRS  
SUBJECT: FOREIGN AID AUTHORIZATION BILL

This letter from Dermot Foley -- attorney  
for League of Families -- will interest  
you.

Enclosure: DGFoley ltr 4-30-76

TCM:mcp

KAPLAN, KILSHEIMER & FOLEY

ATTORNEYS AT LAW

LEO KAPLAN  
JAMES B. KILSHEIMER, III  
DERMOT G. FOLEY  
HAROLD SIMON  
ROBERT N. KAPLAN

122 EAST 42<sup>ND</sup> STREET  
NEW YORK, N.Y. 10017  
MURRAY HILL 7-1980

April 30, 1976

Dr. Theodore Marrs  
Room 103  
Executive Office Building  
Washington, D. C. 20006

Re: Foreign Aid Authorization Bill

Dear Dr. Marrs:

As always, it was a pleasure speaking with you last evening. The purpose of this letter and the enclosed materials is to elaborate slightly on some of the matters we discussed.

Essentially, I wish to add my voice to those who urge the President to veto the foreign aid authorization bill. I enclose a letter to the President urging this, and a memorandum describing a possible alternative approach to the trade matter. I would sincerely appreciate it if you could have these materials drawn to the President's attention before he makes a decision on the legislation.

A brief word on another matter. As you know, the summary judgment and class certification motions in Crone v. U.S. were argued on March 31. From some of our previous discussions, I am sure you are aware of my respect and faith in the courts, particularly in the Federal courts, when both sides of a case are well presented. Orderliness and our way of living depend heavily on this. In Crone, the government was represented by Miss Susan Linden of the Department of Justice and, I must say, she did a fine job. Neither she nor I created the facts of the case and each of us had to take the law as we found it. However, she made her points intelligently and with dignity. Now we can only await the results.

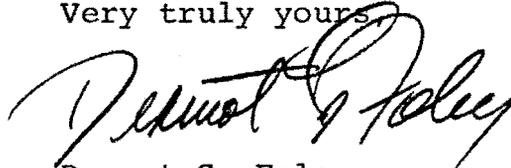
Dr. Theodore Marrs

2.

April 30, 1976

Again, it was a pleasure speaking with you last evening. Please contact me if any comments in this letter or in the enclosed materials are viewed as warranting discussion.

Very truly yours,

A handwritten signature in cursive script, reading "Dermot G. Foley". The signature is written in dark ink and is positioned above the typed name.

Dermot G. Foley

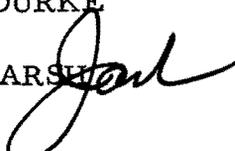
DGF:mw  
Encl.

THE WHITE HOUSE

WASHINGTON

May 12, 1976

MEMORANDUM FOR: RUSS ROURKE

FROM: JACK MARSH 

I want you to take over this MIA situation and see what you can do to get it in the best possible shape. I recognize you will not be able to reach a satisfactory conclusion to everyone and many of the demands of the families are not capable of being met because of circumstances well beyond our control.

However, I think it would be helpful if you would assemble some key people in Defense, such as Roger Shields, Alan Woods, and get Rumsfeld on board on providing a more adequate inspection and review of the files of these individuals. This review could be broken down into two distinct parts: (1) A review by the Congressional Committee, which could be very extensive; (2) A review by the family which may not be quite as extensive, but would be more than they are currently able to have. Some thought should be given to the possibility that a thorough Congressional review could be in the nature of a certification for the families.

In reference to a Congressional review, in light of the extensive materials that were furnished on highly sensitive matters in the intelligence investigation by the Defense Department, CIA and other intelligence agencies, I see no reason why a Congressional Committee on a matter of this type should not have a broad access to nearly anything they would like to see.

The Second Phase is the Executive Order question. I think you should get Phil Buchen to set up a Task Force headed by Ken Lazarus on the legal side to coordinate with Dick Wiley, the Defense Department Counsel, together they can scrub it down and see what the status is. My guess is that the bottom line will require an amendment to legislation in order to accomplish what they wish to have accomplished. There is also some counter forces involved in this and as Ted pointed out, there may be some families who do not concur in all of the things the League wants to do.

There was also a question about the order of the casualty officers. I believe this will shake out as you address the other two items, particularly the declassification issue.

Finally, as you have probably surmised, the main thing is to let these people know we are attentive to their problems, that we are endeavoring to do something about them and to demonstrate some meaningful progress, aware that we can never completely satisfy all their requests.

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THE WHITE HOUSE  
WASHINGTON

May 25, 1976

RUSS:

The meeting today with  
Marrs/JOM is 5:00 Marsh's  
office re MIA's.

Donna was going to call  
Marrs -- it'll be 1/2 hour,  
as JOM has another meeting.

con

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[6/76?]

As to the question of availability of intelligence reports on individual POW/MIA's, the President has decided to make all such reports available to immediate family members, subject to approval of the primary next of kin. This will be accomplished within legal limitations and with proper consideration of security factors.



THE WHITE HOUSE  
WASHINGTON

Cathy -

Please send  
FYI copy of  
attached to  
Mittler -



JUN 22 1976

THE WHITE HOUSE

WASHINGTON

June 21, 1976



MEMORANDUM FOR:

JACK MARSH  
MAX FRIEDERSDORF

FROM:

CHARLES LEPPERT, JR. *CLJ*

SUBJECT:

Rep. G. V. "Sonny" Montgomery  
(D. - Miss.)

At your request I spoke with Rep. Montgomery on the status of the Select Committee on MIAs. Montgomery wants the Committee to write a report of its findings and close out the Committee by September 11, 1976.

Montgomery states that he believes that the Committee has consolidated all the information available on the MIAs from the intelligence agencies, the International Red Cross, and the other international agencies or groups working in this field. Montgomery also says that some Members of the Committee may not want to close out the Committee, but he feels strongly that since no new information on MIAs is coming in the Committee should close up its operations.

Montgomery states that there is some concern over what should happen to the Committee's records. He feels that the Select Committee records could be transferred to the following House Committees: International Relations, Armed Services, or Veterans' Affairs.



July 14, 1976

MEMORANDUM TO: MILT MITLER  
FROM: RUSS ROURKE

Milt, please coordinate response with regard to Executive Order with NSC.

FYI, Connors' memo re the President refers to item number 9 on the Presidential Congressional mail summary of July 2 (attached). In view of John Rhodes' expressed interest, we might have to tighten up the language suggested by Ken Lazarus re Executive Order.

Many thanks.

RAR:cb

THE WHITE HOUSE  
WASHINGTON

July 7, 1976

*Max  
Rourke is  
working this  
Prob*

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR:

MAX FRIEDERSDORF

FROM:

JAMES E. CONNOR *JEC*

SUBJECT:

Congressional Mail  
for July 2, 1976

The President reviewed your memorandum of July 2 on the above subject and made the following notation in connection with item #9.

"? " "Also says he has been contacted by representatives of the League, who would like "a definite 'Yes' or 'No' on their request for an Executive Order to stop the change in status of the men still missing in action from MIA to KIA until after the report of the Montgomery Select Committee is issued."

Please follow-up with appropriate action.

cc: Dick Cheney

July 2, 1976

Dear John:

Thank you for your June 29 letter to the President recommending that he accept the invitation to greet the participants of the annual meeting of the National League of Families of American Prisoners and Missing in Southeast Asia between July 22 and 25.

I have also noted your recommendations with respect to an Executive Order dealing with the status of these men.

Please be assured I shall call your letter promptly to the President's attention. I know he will appreciate having your recommendations.

With kindest regards,

Sincerely,

Charles Leppert, Jr.  
Deputy Assistant  
to the President

The Honorable John J. Rhodes  
Minority Leader  
House of Representatives  
Washington, D. C. 20515

bcc: w/incoming to Bill Nicholson for handling invitation portion  
bcc: w/incoming to General Scowcroft for handling in re E. O.

CL:JEB:VO:vo



JOHN J. RHODES  
1ST DISTRICT, ARIZONA

*Handwritten:*  
July 22-25 1976  
Alam

Congress of the United States  
House of Representatives  
Washington, D.C. 20515

ADMINISTRATIVE ASSISTANT  
ALMA A. ALKIRE  
LEGISLATIVE ASSISTANT  
JAMES R. FELTHAM  
DISTRICT OFFICES:  
6040 FEDERAL BUILDING  
PHOENIX, ARIZONA 85025  
ROBERT J. SCANLAN  
SUITE C-20  
1801 JEN TILLY LANE  
TEMPE, ARIZONA 85281  
JAMES F. WYMORE

June 29, 1976

Dear Mr. President:

*MF*  
I urge you to stop by the Statler Hilton at your convenience between July 22 to July 25 to greet the MIA families gathered there for the annual meeting of the National League of Families of American Prisoners and Missing in Southeast Asia. I encourage you to accept their invitation because a visit by yourself would mean so much to them.

Secondly, I have been contacted by representatives of these families to make a request. They would like a definite "Yes" or "No" on their request for an Executive Order to stop the change in status of the men still missing in action from MIA to KIA until after the report of the Montgomery Select Committee is issued. A definite answer would remove the anxiety that these families are now living with over this matter.

Again, I want to stress how important I believe your appearance at this meeting is for these families.

Yours sincerely,



The President

The White House

House

1. Harold Johnson Sends telegram urging that S. 391, the Federal Coal Leasing Amendments Act, be signed.
2. Tom Bevill Writes on behalf of several constituents in the coal mining business to request a veto of S. 391, due to "the cost to the taxpayers as well as the delays which will be created by this legislation in the mining of coal."
3. William Hughes Sends detailed letter urging the signing of S. 586, the Coastal Zone Management Act Amendments of 1976.
4. Charles Grassley Urges the signing of the Public Works Appropriations bill for FY 77.
5. Lee Hamilton Writes on behalf of Mrs. Albert R. Stryker, who recently sent a telegram to the President with regard to the adjudication of a bankruptcy case.
6. Mario Biaggi Encloses petitions from his constituents urging that the government hold to "the goal of the Marine Mammal Protection Act to reduce Dolphin deaths in the tuna nets to levels 'approaching zero.' "
7. Gene Synder Forwards material from a constituent regarding busing.
8. Helen Meyner Forwards a "congratulatory birthday card to Uncle Sam" she received from constituents.
9. John Rhodes Urges the President to stop by the Statler Hilton July 22-25 to greet the MIA families at the annual meeting of the National League of Families of American Prisoners and Missing in Southeast Asia. Also says he has been contacted by representatives of the League, who would like "a definite 'Yes' or 'No' on their request for an Executive Order to stop the change in status of the men still missing in action from MIA to KIA until after the report of the Montgomery Select Committee is issued."
10. James Hanley Requests greetings for Fred D. Miller on his 100th birthday July 14.
11. James Hanley Requests greetings for Mrs. Pauline Denk on her 100th birthday August 22.
12. Don Clausen Urges signing of S. 391, the Federal Coal Leasing Amendments Act.



MIA MEETING -- Friday, July 23, 1976, 11:00 Roosevelt Room

Participants

Jack Marsh

Milt Mitler

Ed Schmults

General Scowcroft (or an NSC representative probably <sup>Ken</sup>~~Quinn~~)

Bobbie Kilberg (Counsel's Office)

Dick Wiley, DOD

Jackson Eaton (Dick Wiley's expert on this subject--DOD)

Roger Shields -- DOD

Frank Sievert -- State Department

SUBJECTS: Possible change in Executive Order re Status of MIAs and  
President's possible participation in the MIA Conference



July 23

THE WHITE HOUSE  
WASHINGTON

*Lewis*

Milt:

Because of the date, I'm  
sure this must have been  
handled or in the works.

Anyway, I'm forwarding it  
to you with Mr. Marsh's  
note.

Thanks.

Donna

RECEIVED

JUL 20 1976

July 13, 1976

Dear Ms. Lewis:

Mr. Gil Carmichael very kindly delivered your letter to the President to me when he visited the White House today.

I wanted you to know that I do have your letter and will be happy to see that it receives proper attention.

Best regards,

Sincerely,

Richard B. Cheney  
Assistant to the President

Ms. Mary Jane Lewis  
National League of Families  
of American Prisoners and  
Missing in Southeast Asia  
5813 Cherokee Road  
Meridian, Mississippi 39301

bcc: Gil Carmichael, fyi

bcc: Jack Marsh for appropriate followup.

✓  
D  
TO MIT  
E



NATIONAL LEAGUE OF FAMILIES  
OF AMERICAN PRISONERS AND MISSING IN SOUTHEAST ASIA

MISSISSIPPI CHAPTER  
5813 CHEROKEE ROAD, MERIDIAN, MISSISSIPPI 39301 (601) 482-6155

July 8, 1976

The President  
The White House  
Washington, D. C.

Dear Mr. President:

I am the only sister of Lt./Col. James W. Lewis, MIA over Laos since April, 1965. When you spoke to the National League of Families last July, I had the privilege of standing directly in front of you. As you spoke, I looked directly into your eyes, asking myself how can I convince our President that we must have his help in obtaining an accounting of our men, the return of our prisoners, and the return of remains for burial. It was then that I decided to strike up the singing of "God Bless America" to let you know that despite all of the hardships, frustrations, and anxieties, we were still loyal Americans who loved our country and our President but who are still waiting for the United States Government to honor its commitment to the servicemen and civilians who did not return after the cessation of hostilities in Southeast Asia.

It has long been the policy of the National League of Families that negotiations must be undertaken with the governments in Southeast Asia to settle the fate of our men. We feel that until a real effort has been made by you and our government to obtain information, there is virtually no likelihood that information will be received. Mr. President, as Commander-in-Chief of these men, there can be no logical or explanatory reason why you should not take positive, affirmative steps beyond those you have already taken to open talks with the Communist governments of Southeast Asia to obtain the fullest possible accounting of those Prisoners of War and those Missing-in-Action and repatriation of remains of those who died while serving our country. We realize, sir, that the solution to this complex problem is not easy but that the solution must be honorable. We feel that it is your responsibility as the Commander-in-Chief to stand behind these dedicated men who loyally and willingly served their country.

We are not unrealistic in our request, but we are talking about honor and commitment and with many of us, this is the crux of the entire matter. I am a high school teacher of American History. How can I teach the ideals of our democratic way of life when I see them violated by leaders of our own government? We realize that you inherited this tremendous responsibility when you became the President of the United States. The responsibility is yours and yours alone.

I appeal to you in the name of honor, commitment and all that is sacred.  
Will you help us?

Most respectfully,

*Mary Jane Lewis*  
Mary Jane Lewis

See Hopper

NATIONAL LEAGUE OF FAMILIES OF AMERICAN PRISONERS AND MISSING IN SOUTHEAST ASIA  
1608 K STREET, N.W., WASHINGTON, D. C. 20006

MIA.

August 9, 1976

Dear Earl:

Many thanks for your letter of July 30 and your very kind remarks concerning our recent efforts in behalf of the National League of Families.

I know both Milt and Russ will appreciate your generous comments.

Let me also take this opportunity to convey my own personal appreciation to you for the outstanding job you have done during the past year.

I sincerely hope we have an opportunity to meet again in the not too distant future.

With warmest regards, I remain,

Sincerely,

John O. Marsh, Jr.  
Counsellor to the President

Colonel Earl P. Hopper, Sr., A1S-Pet.  
Executive Director  
National League of Families  
of American Prisoners and Missing  
in Southeast Asia  
1608 K Street, N.W.  
Washington, D. C. 20006  
JOM:RAR:cb  
cc: Miltler



d.

THE WHITE HOUSE  
WASHINGTON

Jack -

As you know,  
Milt is already  
into this.... proposed  
language has been  
suggested to our  
people in Kansas  
City. Russ

AUG 11 1976

THE WHITE HOUSE

WASHINGTON

August 10, 1976

MEMORANDUM FOR: JACK MARSH  
DICK CHENEY

FROM: MAX FRIEDERSDORF *m.b.*

SUBJECT: MIAs/Platform

Rep. Tennyson Guyer (R-Ohio) urges that a provision be put into the GOP platform re: the MIA/POW subject.

Guyer said that Reagan has tried to capitalize on the issue by writing all the families planning to pursue the matter if elected.

The House has extended the life of the MIA/POW Committee, despite the objections of Sonny Montgomery, and with the support of Guyer and Ben Gilman, until January 3.

Guyer said the Democrats sloughed off the issue in their platform.

He recommends language be adopted along the following lines: "The Republican Party expresses determination to pursue through every avenue a full accounting, return and repatriation of all living and dead MIAs and POWs in Southeast Asia."



MIA

THE WHITE HOUSE  
WASHINGTON

R -  
FYI



AUG 11 1976  
NATIONAL SECURITY COUNCIL

August 10, 1976

MEMO FOR: JACK MARSH

I thought you would find this cable of interest. These reports seem too vague to be reliable. The photos for sale sounds like an attempt to make a quick buck.

  
Ken Quinn



Department of State

TELEGRAM

LIMITED OFFICIAL USE 0435

PAGE 01 BANGKO 22504 10120Z

*φPW*

16  
ACTION DPH-01

INFO OCT-01 EUR-12 EA-07 IO-13 ISG-00 DHA-02 SCS-03 SCA-01  
CIAE-00 DODF-00 PM-04 H-02 INR-07 L-03 NSAF-00 NSC-05  
PA-01 PRS-01 SP-02 SS-15 USIA-06 /086 W  
----- 070262

R 100916Z AUG 76  
FM AMEMBASSY BANGKOK  
TO SFCSTATE WASHDC 1915  
INFO USMISSION GENEVA  
AMCUNGEN HONG KONG  
AMEMBASSY PARIS  
AMEMBASSY VIENTIANE

LIMITED OFFICIAL USE BANGKOK 22504

F.O. 11652: N/A  
TAGS: PINT, CASC, VS  
SUBJECT: INTERVIEW WITH AMERICAN CITIZENS FROM SAIGON, MIA MATTERS

1. FOLLOWING INFO WAS GLEANED FROM INTERVIEWS WITH AMERICANS WHO DEPARTED SAIGON ON AUGUST 1. INFOR HAS BEEN REPORTED TO JCPC AND CINCPAC, BUT MAY NOT HAVE BEEN REPEATED TO ADDRESSEES.

2. MIA/POW RELATED RUMORS PERIODICALLY MAKE THE ROUNDS IN SAIGON. OCCASIONAL MENTION OF THIS ISSUE ON VOA OR BBC TENDS TO KEEP THESE RUMORS ALIVE. MOST OF THOSE AMERICANS RETURNED FROM SAIGON FRANKLY ADMIT NO KNOWLEDGE OF IMPORT TO THE MIA SITUATION. THOSE WITH INFO INDICATE THAT IT IS THIRD-HAND AT BEST AND OF QUESTIONABLE VALIDITY. NO ONE HAS YET REPORTED ANY ORGANIZED ATTEMPT BY VIETNAMESE AUTHORITIES TO SOLICIT INFO FROM THE POLULACE CONCERNING AMERICAN MIAS.

3. MOST DETAILED RUMORS RPT RUMORS REPORTED THUSFAR INCLUDE:



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*4*



Department of State

TELEGRAM

LIMITED OFFICIAL USE

PAGE 02

BANGKO 22504 101220Z

A. INFO CAME TO AMERICAN FROM VIETNAMESE FRIEND WHOSE FATHER-IN-LAW IS HIGH "PRG" OFFICIAL. ORIGINAL SOURCE IS REPORTED TO BE 2 NVA WHO RECENTLY CAME SOUTH. RUMOR IS THAT LARGE GROUP (235) OF AMERICAN PRISONERS WERE "DONE IN" LESS THAN THREE WEEKS AGO AT HA TAY, REPORTED AS A NEW PROVINCE TO THE NORTHWEST OF HANOI.

B. SAME VIETNAMESE FRIEND AS ABOVE (WHO USED TO WORK AS A CAMERAMAN FOR FRENCH NEWS MEDIA) REPORTED A CONTACT WITH A FELLOW CAMERAMAN FROM THE NORTH WHOSE JOB IT WAS TO TAKE PHOTOS OF POWS. THIS CAMERAMAN FROM THE NORTH CLAIMS TO POSSESS APPROXIMATELY 20 FRAMES OF FILM WHICH HE TOOK IN FEBRUARY 76 CONTAINING PICURES OF AMERICAN POWS IN THE NORTH. CAMERAMAN REPORTEDLY SPIRITED THESE FRAMES AWAY FOR 5 MONTHS TO FIRST SEE IF THEY WOULD BE MISSED. HIS CONFIDENCE HAVING RETURNED, HE IS NOW READY TO SELL THESE FRAMES FOR A PRICE THRU HIS SOUTH VIETNAMESE FRIEND. ATTEMPTS TO ESTABLISH THE VALIDITY OF THIS STORY AND THE AUTHENTICITY OF THE PHOTOS WERE INTERRUPTED BY THE AMERICAN'S DEPARTURE FROM VIET-NAM. AMERICAN HAS TURNED THIS PROJECT OVER TO ANOTHER FRIENDLY FOREIGNER STILL IN VIET-NAM FOR FOLLOW UP. AUTHENTICITY OF THIS FILM WILL SUPPOSEDLY BE SIGNALLED BY A CODED TELEGRAM FROM THE FRIENDLY FOREIGNER IN SAIGON TO THE AMERICAN HERE IN BANGKOK.

C. SOURCE OF FOLLOWING INFO IS REPORTEDLY EX-HAMLET PRINTER OF BUNG HAMLET WHO IS UNCLE OF VIETNAMESE FRIEND OF AMERICAN: EIGHT BODIES WERE EXHUMED FROM A COMMON GRAVE NEAR BUNG HAMLET IN VICINITY OF BINH DUONG NORTH OF SAIGON. BODIES REPORTED AS SIX VC AND TWO AMERICANS. EXHUMATION TOOK PLACE APPROXIMATELY APRIL-MAY 1976. REASON FOR EXHUMATION AND HOW THE VC/AMERICAN DETERMINATION WAS MADE COULD NOT BE DETERMINED. SAME SOURCE REPORTED THAT DURING SAME TIME PERIOD, TWO OTHER AMERICAN BODIES WERE DISCOVERED UNDER MONDS OF DIRT IN THE JUNGLE NEAR BEN CAT DISCOVERY MADE BY PERSONS ON WOOD HUNTING EXPEDITION.

4. ANY OTHER SIGNIFICANT MIA-RELATED INTO WILL BE REPORTED AS IT BECOMES AVAILABLE.

WHITEHOUSE

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THE WHITE HOUSE  
WASHINGTON

Jack -

I asked Mill to  
look over the attached  
packet from OMB -  
attached is multi response  
I suggested memo to  
Tom Frey -  
Rum

AUG 25 1976



OFFICE OF MANAGEMENT AND BUDGET

Date: 8-25-76

TO : John Marsh - White House.

FROM: James M. Frey  
Assistant Director for  
Legislative Reference

Jack - Before we take any  
further action on this matter,  
may I have your advice  
and guidance.

8/27/76

THE WHITE HOUSE

WASHINGTON

August 27, 1976

MEMORANDUM FOR: JACK MARSH

FROM: MILT MITLER *MM*

Jack, I have gone over the OMB and DoD papers concerning the extension of certain income tax provisions relating to members of the Armed Forces who are listed as missing in action and fully agree with both Dave Sitrin's and the DoD position.

For the very obvious reasons cited, these provisions should be extended for another two years.

Attached is a suggested memo from you to Jim Frey establishing your advice and guidance.

Attachment (Suggested memo for Mr. Marsh's signature prepared by M. Mitler - dtd 8/27/76)

THE WHITE HOUSE

WASHINGTON

August 27, 1976

MEMORANDUM FOR: JAMES M. FREY

FROM: JOHN O. MARSH, Jr.

SUBJECT: Extension of certain Income Tax provisions pertaining to missing-in-action members.

I believe the Department of Defense makes a good case for the extension of the Income Tax benefits now afforded members of the Armed Forces who are missing-in-action.

For all the reasons they point out and in agreement with Dave Sitrin's evaluation concerning a final extension and resolution of the remaining cases, I think we should go ahead with the extension without a caveat.

## EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503DATE: AUG 25 1976  
REPLY TO:  
ATTN OF: NSD (Stanners)  
SUBJECT: DOD 94-127

• Mr. James Frey, LRD

DOD 94-127 would extend for two years the duration of certain income tax provisions relating to members of the armed forces who are missing in action.

Assistant Secretary Walker, in an August 19, 1976 letter, stated the Treasury Department's opposition to submitting this proposal until such time as the DOD provided a showing of:

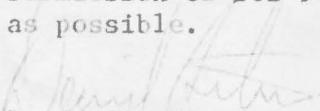
- the number of persons affected, and
- the extent to which the relief is needed.

The DOD responded to this request in an August 20, 1976 letter from the Deputy Assistant Secretary (M&RA) which provided the number of persons affected (795 military and 26 civilian) and specified the consequences of failing to extend the cut-off period.

The DOD response was provided to Assistant Secretary Walker who subsequently discussed the issue with this office. Walker made two points. First that this should be the last extension, and second that Defense should have a specific plan for resolving the final 800 cases. He concluded that if we were satisfied on those two points he would defer to our judgment on clearance of the proposal.

Clearly the DOD preference would be to not have to request any further extension and to have all of these cases resolved in the near future. However, it appears that many of these cases will be completed only after an extensive judicial process. It is thus difficult to fully comply with Walker's request. We are satisfied that there exists a good faith attitude in DOD on this issue and that we should clear this proposal.

I recommend that we advise DOD that there is no objection to their submission of DOD 94-127 to the Congress and that we do this as soon as possible.

  
David Sitrin  
Deputy Associate Director  
National Security Division





ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D. C. 20301

MANPOWER AND  
RESERVE AFFAIRS

(Military Personnel Policy)

20 AUG 1976

Mr. David Sitrin  
Deputy Associate Director  
National Security Division  
Office of Management and Budget  
Room 10001, New Executive Office Building  
Washington, D. C. 20503

Dear Mr. Sitrin:

This is in response to the verbal request of Mr. Tom Stanners, of your office, for additional information and justification on legislative proposal DoD 94-127, "To amend the Internal Revenue Code of 1954 to extend the duration of certain provisions relating to members of the armed forces of the United States and civilian employees who are missing in action or hospitalized as a result of wounds, disease, or injury incurred in the Vietnam conflict."

In a recent letter commenting on this proposal, the Department of the Treasury questioned the advisability of the Administration supporting such legislation without further information as to the number of persons affected and the extent to which such relief is needed. These are the items of additional information and justification which Mr. Stanners suggested we address.

In April 1973, after repatriation of the POWs returned to our control, there were 1374 military members and 34 civilians continued in a missing status as the result of the Vietnam conflict. As of July 31, 1976, there were still 795 military members and 26 civilians carried in such status.

Public Law 93-597, enacted January 2, 1975, provided that the latest date for making determinations for qualification for certain advantageous tax treatment of taxpayers listed as missing in Vietnam would be two years after enactment, or January 2, 1977. In considering the bill later enacted as Public Law 93-597, the Chairman of the House Ways and



Means Committee indicated that he did not believe the tax provisions being considered for amendment should be left open-ended and suggested a two year cut-off. He further indicated that if there were members still carried in a missing status at that time the Act could be amended by extending the date. This was the origin of the cut-off period.

Were the cut-off period not extended, as proposed by this Department, it could have the following consequences with respect to Secretarial determinations of death or possible repatriation of any missing member returned on and after January 2, 1977:

- o The surviving spouse would lose the benefit of filing for two years as a surviving spouse at joint tax rates and instead would be compelled to file as head of household, providing there are surviving children, at higher tax rates.
- o The spouse could no longer file a joint return, which accords a more advantageous tax rate, for such period as the service-member is continued thereafter in a missing status.
- o Should any member be repatriated thereafter and require hospitalization, all benefits of the combat zone tax exclusion provision would be lost to him. Had repatriation been earlier, his pay would have been excluded from taxation, as provided under 26 USC 112, for such period of hospitalization as required.
- o The surviving spouse or beneficiary would lose the benefit of the abatement of taxes in the year death is determined and the abatement of any unpaid taxes for any time after January 2, 1977 until the date such determination is made.
- o The surviving spouse or any member thereafter repatriated would lose the right to pursue certain tax actions which could previously be postponed, such as filing an action in a tax court and filing an application for a tax refund.

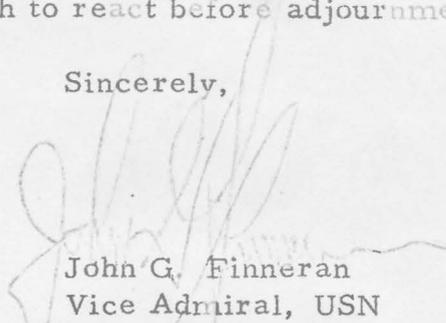
From the viewpoint of equity, it is believed that those continued in a missing status on and after January 2, 1977 should have their survivors or beneficiaries treated no differently, with respect to Federal taxation, than those of missing members whose status was changed prior to that date. Further, on the chance that any additional missing should be repatriated, tax treatment should be comparable to that accorded those previously repatriated.



Failure to extend the tax benefits considered herein would likely be construed as an indication that no further or continuing initiatives will be undertaken to seek an accounting for those missing as a result of the Vietnam conflict. We defer to OMB on the assessment of the political ramifications of this.

All factors considered, the Department strongly reaffirms its request for clearance on legislative proposal DoD 94-127. It is believed that such action should be undertaken promptly in order to provide the Congress sufficient time in which to react before adjournment.

Sincerely,



John G. Finneran  
Vice Admiral, USN  
Deputy Assistant Secretary of Defense





DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

AUG 19 1976

Dear Sir:

You have requested the views of this Department on a legislative proposal of the Department of Defense entitled A Bill "To Amend the Internal Revenue Code of 1954 to extend the duration of certain provisions relating to members of the armed forces of the United States and civilian employees who are missing in action or hospitalized as a result of wounds, disease or injury incurred in the Vietnam conflict." Generally, the proposed legislation extends benefits originally enacted as Public Law 93-597 on January 2, 1975.

Section 1 of the Bill amends section 2(a)(3)(B) of the Internal Revenue Code of 1954 to extend for two years, until January 2, 1979, the last date on which a person who is in missing status as the result of service in the combat Vietnam conflict combat zone may be treated as having died for purposes of determining the eligibility of that person's spouse for the special tax rates applicable to surviving spouses.

Section 2 of the Bill amends section 112 of the Internal Revenue Code of 1954 to extend for two years, until January 2, 1979, the period during which certain compensation is excluded from gross income, where such compensation is received by a member of the armed forces while hospitalized as the result of wounds, disease, or injury incurred while serving in the Vietnam conflict combat zone.

Section 3 of the Bill would amend section 692 of the Internal Revenue Code. Generally, this section provides for forgiveness of taxes for the taxable year during which a member of the armed forces died while on active duty in a combat zone and for any prior taxable year which ended after the member first served in a combat zone. As to members which are considered as missing in action, current law provides that the date of death shall be treated as being not earlier than the official determination of death pursuant to 37 U.S.C. §556. In the case of Vietnam conflict veterans, the law provides that in no event will section 692 apply to any year beginning after January 2, 1977. The Bill would extend this limit to January 2, 1979 (i.e., the forgiveness would apply through the 1979 taxable year).

Section 4 of the Bill amends section 6013(f) of the Internal Revenue Code of 1954 to extend for two more years, through the 1979 taxable year, the period during which the spouses of individuals in missing status as a result of serving in the Vietnam conflict combat zone may elect to file joint returns.

Section 5 of the Bill would amend section 7508(b) of the Internal Revenue Code of 1954 to extend for two more years, until January 2, 1979, the period during which the spouse of an individual serving in the armed forces or serving in support of such armed forces in the Vietnam conflict combat zone is entitled to postpone certain acts required by the Internal Revenue Code, including the filing of income tax returns.

The tax benefits provided by the sections that would be amended by the bill recognize the contribution and great personal sacrifice of the families of members of our armed forces who are wounded or missing in action in a combat zone. In the case of the Vietnam conflict, this is particularly appropriate because the individuals became members of the armed forces during the draft and, in many instances, had no choice whether to serve in the combat zone. However, many other families who suffer similar losses, for example families of wage earners who suffer premature death as a result of accident or illness, do not receive similar benefits. Thus, the legislation must be examined with reference to the competing claims of tax equity and a humane concern for the families of Vietnam MIAs and POWs.

During 1973, a number of questions arose with respect to the application of these special tax benefits to members of the armed forces serving in the Vietnam conflict combat zone and to their families. First, certain of the tax benefits terminate with the death of the member of the armed forces. The Department of Defense was determining that certain individuals who were then classified as missing in action or a prisoner of war had, in fact, died at an earlier date. It was not clear whether the termination of tax benefits applied as of the actual date of death or the date of the determination that death had occurred. Second, most of the tax benefits applied only "during an induction period," and the termination of the draft through the expiration of the military Selective Service Act of 1967 would render those tax benefits inapplicable.

Accordingly, the Administration submitted legislation to remedy these problems, and the result was Public Law 93-597, which was enacted on January 2, 1975. The major difference between the Administration proposal and the enacted law was that the latter limited the tax benefits for a period of two years following the date of the termination of combatant activities. In the case of the Vietnam conflict, the benefits were limited to a period ending two years after the date of enactment of the bill (i. e., ending January 2, 1977).

The two year rule on the Vietnam conflict was the result of a compromise suggested by the staff of the Joint Committee on Internal Revenue Taxation. Congress wished to provide relief for the families of those involved in the Vietnam conflict but did not want to leave the period of tax benefits open-ended. The two-year period was adopted to prevent just such an indeterminate period of application. The Treasury Department agreed to this compromise on behalf of the Administration.

We understand from discussions with representatives of the Department of Defense that Chairman Mills indicated during the consideration of this issue that it would be a simple matter to extend the period if problems still existed at the end of the two years. However, the general thrust of the Committee discussion and the legislative reports is that two years would be a reasonable period. It should also be noted that the Ways and Means Committee considered the legislation in 1973, and it was not passed by the Congress until 1974. In addition, the fact that the bill was signed on January 2, 1975, rather than in 1974, had the effect of extending many of the special relief provisions an additional year, in all two years beyond the period contemplated when the Ways and Means Committee had the bill under consideration.

Under all the circumstance, the Treasury Department believes that a further prolongation of these tax benefits would be appropriate only upon a showing of the number of persons affected and the extent to which the relief is needed. The Department of Defense's legislative materials do not contain such a showing and, accordingly, as presently advised the Treasury Department would oppose the submission of the legislation.

Sincerely yours,

/s/ Charles M. Walker

Charles M. Walker  
Assistant Secretary

The Honorable  
James T. Lynn  
Director, Office of Management  
and Budget  
Washington, D.C. 20503



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE  
WASHINGTON, D. C. 20301

2 July 1976

Honorable James T. Lynn  
Director, Office of Management  
and Budget  
Washington, D. C. 20503

Dear Mr. Lynn:

The attached legislative proposal, DOD 94-127, "To amend the Internal Revenue Code of 1954 to extend the duration of certain provisions relating to members of the armed forces of the United States and civilian employees who are missing in action or hospitalized as a result of wounds, disease, or injury incurred in the Vietnam conflict," has been included in the Department of Defense Legislative Program for the 94th Congress.

Advice is requested as to the relationship of the proposal to the program of the Administration.

Sincerely,

A handwritten signature in cursive script that reads "Richard A. Wiley".

Richard A. Wiley

Enclosure



OFFICE OF THE SECRETARY

Dear Mr. Speaker:

There is enclosed herewith a draft of a proposed bill "To amend the Internal Revenue Code of 1954 to extend the duration of certain provisions relating to members of the Armed Forces of the United States and civilian employees who are missing in action or hospitalized as a result of wounds, disease, or injury incurred in the Vietnam conflict."

This proposal is part of the Department of Defense Legislative Program for the 94th Congress and the Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this proposal for the consideration of the Congress. The Department of the Air Force has been designated as the representative of the Department of Defense for this legislation. It is recommended that this proposal be enacted by the Congress.

Purpose of the Legislation

The purpose of this proposed legislation is to extend for two additional years certain provisions of the Internal Revenue Code which provide tax advantages for members of the Armed Forces or civilian employees of the United States who are listed as missing in the Vietnam conflict or hospitalized as a result of the Vietnam conflict.

As to those listed as missing, the provisions of current law generally extend the time during which taxpayers listed as missing in any conflict may qualify for certain tax advantages to two years after the formal cessation of hostilities (i.e., the date designated under section 112 of the Internal Revenue Code of 1954 (26 USC 112) as the date of termination of combatant activities). At the time of enactment of the current provisions (Public Law 93-597, January 2, 1975), there were



still significant numbers of personnel listed in a missing status in the Vietnam conflict. Consequently, the 1975 amendments provided that the latest date for making determination for qualification for certain tax treatment of taxpayers listed as missing in Vietnam would be two years after enactment of the amendments (i.e., January 2, 1977).

The continuing problems with the final determinations of the status of those members currently in a missing status in Vietnam lead the Department of Defense to believe that the question of all missing members will not be settled by January 3, 1977. It is considered advisable, therefore that the current tax treatment of members in a missing status in Vietnam be extended for two additional years until January 2, 1979.

Additionally, section 692 of the Internal Revenue Code provides for forgiveness of taxes for the taxable year during which that member died while on active duty in a combat zone and for any prior taxable year which ended after the member first served in a combat zone. With respect to members in a missing status, the current law provides that the date of death shall be treated as being not earlier than the official determination of death pursuant to section 556 of title 37, United States Code. In the case of the Vietnam conflict missing members, however, the law provides that in no event will the tax forgiveness provision apply to any year beginning after January 2, 1977. The proposed bill extends this limit to January 2, 1979.

This bill would also amend provisions relating to the election by the spouse of a missing member to file a joint return. The current law provides that in the case of the spouse of a missing Vietnam member, the election by the spouse to file a joint return cannot be exercised for a taxable year beginning after January 2, 1977. This bill would extend this option until taxable years beginning after January 2, 1979. Additionally, current law (section 7508) allows a spouse of a missing member to take advantage of certain postponements of tax obligation. Currently, the law limits this advantage to tax years beginning before January 2, 1977. The proposal will extend this time to include taxable years beginning before January 2, 1979.

As to those persons hospitalized as a result of the Vietnam conflict, the proposed bill deals with sections 112(a) and (b) which exclude from gross income the pay of a member received in any month in which the member was serving in a combat zone or in which he was hospitalized as a result of disease, wounds or injuries received while so serving, (subsection (a) pertains to enlisted members and subsection (b) to commissioned officers). The current law provides that the exclusion will not pertain, in the case of hospitalization as a result of Vietnam service, to a month which begins after January 2, 1977 (two years after enactment). The proposed bill would extend the exclusion of pay from gross income for those Vietnam conflict members who are hospitalized through January 31, 1979.

In summary, the proposed legislation will extend time periods during which those in a missing status (and their spouses), as well as those hospitalized as a result of the Vietnam conflict, may qualify for certain tax advantages.

Cost and Budget Data

Enactment of this proposed legislation will not affect the budget of the Department of Defense, though it will result in a reduction of taxes paid to the United States, in an amount not known to this Department.

Sincerely,

Attachment

Honorable Carl Albert

Speaker of the House of Representatives

A B I L L

To amend the Internal Revenue Code of 1954 to extend the duration of certain provisions relating to members of the armed forces of the United States and civilian employees who are missing in action or hospitalized as a result of wounds, disease, or injury incurred in the Vietnam conflict.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.) is amended as follows:

(1) Surviving Spouse. -- Section 2(a)(3)(B) (relating to the special rule where a deceased spouse was in a missing status) is amended to read as follows:

"(B) the date which is --

"(i) January 2, 1979, in the case of service in the combat zone designated for purposes of the Vietnam conflict, or

"(ii) 2 years after the date designated under section 112 as the date of termination of combatant activities in that zone, in the case of any combat zone other than that referred to in clause (i)."

(2) Certain Pay of Members of the Armed Forces Hospitalized as a Result of the Vietnam Conflict. -- The last sentence of section 112(a) (relating to certain combat pay of enlisted members of the Armed Forces) and the last sentence of section 112(b) (relating to certain combat pay of commissioned officers of the armed forces) are each amended by striking out "beginning more than 2 years after the date of the enactment of this sentence" and inserting in lieu thereof "after January 1979".

(3) Income Taxes of Members of Armed Forces on Death in Missing Status. -- The second sentence of section 692(b) (relating to income taxes of members of the armed forces on death in a missing status) is amended to read as follows:

"The preceding sentence shall not cause subsection (a)(1) to apply for any taxable year beginning --

"(1) after January 2, 1979, in the case of service in the combat zone designated for purposes of the Vietnam conflict, or

"(2) more than 2 years after the date designated under section 112 as the date of termination of combatant activities in that zone, in the case of any combat zone other than that referred to in paragraph (1)."

(4) Joint Return Where Individual is in Missing Status as a Result of Vietnam Conflict. -- The last sentence of section 6013(f)(1) (relating to joint returns where individual is in missing status as a result of the Vietnam conflict) is amended by striking out "more than 2 years after the date of the enactment of this sentence" and inserting in lieu thereof "after January 2, 1979".

(5) Time for Performing Certain Acts Postponed by Reason of Vietnam Conflict. -- The second sentence of section 7508(b) (relating to the application to a spouse of provision relating to the time for performing certain acts postponed by reason of war) is amended to read as follows:

"The preceding sentence shall not cause this section to apply to any spouse for any taxable year beginning --

"(1) after January 2, 1979, in the case of service in the combat zone designated for purposes of the Vietnam conflict, or

"(2) more than 2 years after the date designated under section 112 as the date of termination of combatant activities in that zone, in the case of any combat zone other than that referred to in paragraph (1)."

## SECTIONAL ANALYSIS

This bill contains only one section, which amends five sections of the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.), as follows:

Paragraph (1), Surviving Spouse, amends section 2(a)(3)(B) to substitute "January 2, 1979" for language which indicates a termination date of January 2, 1977 (§2(a)(3)(B) of the Internal Revenue Code of 1954 was enacted by Act of January 2, 1975, Pub. L. 93-597). This substitution extends for two years the last date on which a person who is in a missing status as defined in section 6013(f)(3) (in effect, entitled to pay and allowances under 5 U.S.C. 5562 as a civilian employee of the United States or under 37 U.S.C. 552 as a member of a uniformed service) as a result of service in a combat zone designated for the purpose of the Vietnam conflict, and has not been determined under 5 U.S.C. 5566 or 37 U.S.C. 556 to have died in that status may be treated as having died for the purpose of determining the eligibility of that person's spouse for the special provisions related to surviving spouses.

Paragraph (2), Certain Pay of Members of the Armed Forces Hospitalized as a Result of the Vietnam Conflict, amends section 112 of the Internal Revenue Code of 1954 (26 U.S.C. 112) by substituting, in the identical last sentences of subsections (a) and (b) of that section, "after January 1979" for language indicating a termination date of February 1977 (the identical last sentences of section 112(a) and (b) of the Internal Revenue Code of 1954 were enacted by Act of January 2, 1975, Pub. L. 93-597). This substitution extends for two years the period in respect of which certain compensation as a member of the Armed Forces, hospitalized as a result of wounds, disease, or injury incurred while serving in a combat zone designated for the purpose of the Vietnam conflict, is excluded from gross income.

Paragraph (3), Income Taxes of Members of Armed Forces on Death in Missing Status, amends the second sentence of section 692(b) (26 U.S.C. 692(b)) by substituting "January 2, 1979" for language indicating a termination date of January 2, 1977 (section 692(b) of the Internal Revenue Code of 1954 was enacted by

Act of January 2, 1975, Pub. L. 93-597). This substitution extends for two more years the period during which the death of a member in a missing status in a combat zone results in the forgiveness of income taxes for years after the member first served in a combat zone designated for the purpose of the Vietnam conflict.

Paragraph (4), Joint Return Where Individual is in Missing Status as a Result of Vietnam Conflict, amends section 6013(f) (1) of the Internal Revenue Code of 1954 (26 U.S.C. 6013(f) (1)) by substituting "January 2, 1979" for language indicating a termination date of January 2, 1977 (section 6013(f) was enacted by Act of January 2, 1975, Pub. L. 93-597). This substitution extends for two more years the period during which certain spouses of individuals in a missing status as a result of serving in a combat zone designated for the purpose of the Vietnam conflict may elect to file joint returns.

Paragraph (5), Time for Performing Certain Acts Postponed by Reason of Vietnam Conflict, amends the second sentence of section 7508(b) of the Internal Revenue Code of 1954 (26 U.S.C. 7508(b)) by substituting "January 2, 1979" for language indicating a termination date of January 2, 1977 (section 7508(b) was enacted by Act of January 2, 1975, Pub. L. 93-597). This substitution extends for two more years the period during which the spouse of an individual serving in the Armed Forces of the United States, or serving in support of such Armed Forces, in a combat zone designated for the purpose of the Vietnam conflict is entitled to that individual's extension of time for performing certain acts under the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.).