The original documents are located in Box 24, folder "MIA's (1)" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

For Foley

THE WHITE HOUSE

WASHINGTON

September 4, 1974

MEMORANDUM FOR: Howard Kerr

FROM: Bill Casselman /S/

SUBJECT: MIA Litigation

In reference to your request, there is no legal action necessary to followup on the attached letter. I defer to you and Jack Marsh as to the necessity of replying to Mr. Foley's letter to the President.

Generally, it is the view of this office that intervention by the White House in ongoing litigation is not desirable, except perhaps from the standpoint of clarifying the policy underlying the government's position. While it is not necessary for him to do so, should Jack wish to intercede with the Department of Defense with respect to the policy decisions concerned in the MIA controversy, that would be proper for him to do. However, any contemplated policy changes should be promptly brought to the attention of the appropriate officials within the Department of Justice to avoid prejudicing the government's position in this litigation absent an agreement among the parties to settle this dispute.

Enclosure

cc: Phil Buchen

THE WHITE HOUSE

WASHINGTON

August 20, 1974

MEMORANDUM FOR BILL CASSELMAN

FROM: Commander Kerr

The attached looks like a follow-up to your 8/3/74 memo.

Is there any action necessary on Mr. Marsh's part?

OFFICE OF THE VICE PRESIDENT
WASHINGTON, D.C.

To: Jack Marsh

From: Bill Casselman

Date: 8/3/74 Time a.m. p.m.

I have briefly reviewed the materials provided by D. G. Foley, Esq., regarding Segal v. Gordon. I intend to file the materials unless there is something else I should be doing with them.

ACTION

KAPLAN, KILSHEIMER & FOLEY
ATTORNEYS AT LAW

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

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

August 8, 1974

Hon. John O. Marsh,Jr.
Room 295
Executive Office Building
Washington, D. C.,20501.

Dear Mr. Marsh:

At our meeting with Mr. Ford on August 2nd, there was discussion of the pending MIA litigation. There was no time to go into certain details then and I am somewhat concerned over the possibility that inconsistency will be suspected between my statements of August 2nd and the fact that, since then,I have filed a new but related lawsuit in the Court of Claims. Accordingly, I have prepared the enclosed letter to Mr. Ford with some supporting materials. I would be most obliged if you would arrange to bring them to his attention.

Very Truly Yours,

Dermot G. Foley

Dermot G. Foley.

DGF:mm

Enc.

KAPLAN, KILSHEIMER & FOLEY
ATTORNEYS AT LAW

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

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

August 8, 1974

Hon. Gerald R. Ford
Executive Office Building
Washington, D.C.

Dear Mr. Ford:

On August 2, 1974, I was one of a group of MIA family members who met with you in the Executive Office Building. During our discussion of measures which could be of assistance in the MIA matter, you inquired about the impact which currently pending litigation may have on steps which you might take. As the attorney prosecuting that litigation, I indicated that if a solution to our problems was developed out of Court I would expect to discontinue the litigation.

I regretted that there was not time for more discussion of the point and I wish to remedy that now.

Since our meeting I have filed another related lawsuit. This does not represent a substantive change in the position which I have been maintaining for the past year. Rather, it is essentially a technical adjustment designed to preserve the status quo.

Our original complaint, among other things, sought restoration to missing status of those men who have had status changes which we contend are unconstitutional and void. We always recognized that there was a problem of jurisdiction in District Court on this aspect of our action because of provisions of the Tucker Act. As time went by these difficulties were complicated by considerations of laches, limitations and such. It became obvious that another action must be brought in the Court of Claims so that our rights would be preserved. As a matter of professional responsibility, I was compelled to attend to this.

Before filing a new complaint I sought to accomplish what was needed through a direct request to Defense Department officials. The gist of this approach was that now while everyone seemed to recognize the need for notice and hearing before a status can be changed, the cases, where there was no notice or hearing, should be rectified. I enclose a copy of my letter to

Dr. Roger Shields dated April 19, 1974. No response has been received to that letter beyond a report that it had been referred to Counsel.

As time passed without progress my options necessarily became more restricted. Finally, this week, I filed our new lawsuit. A comparison of the new complaint with our earlier complaint will show that we are simply trying to preserve a position and not breaking new ground. I enclose, for purposes of such comparison, a copy of our new Complaint (Crone et al. v. McLucas et al.) and a copy of our Jurisdictional Statement and Appendix in McDonald et al. v. McLucas et al. which, at Appendix "C", contains our original complaint.

I am offering the foregoing details as to what we are doing because of the high value which I place on your sincerity and assistance. For the sake of the men there is a need to build bridges rather than walls and, toward this end, I would not want even the suspicion of bad faith to mar out efforts. I trust that this letter will be a contribution in that direction.

Respectfully yours,

Dermot G. Foley

Dermot G. Foley

DGF:mm

Enc.

P.S. Dear Mr. President:

After this letter was signed but before it was mailed, the resignation of Mr. Nixon became a reality. I sincerely hope and pray that you, your Administration, and our Nation will be blessed with calm seas and a prosperous voyage.

Dermot G. Foley

April 19, 1974

Dr. Roger Shields
Assistant to the Deputy Secretary
of Defense (I.S.A.)
Room 4E825
Pentagon,
Washington, D.C. 20301

Re: MIA/POW Status Changes

Dear Dr. Shields:

This letter is in furtherance of the subject of our telephone discussion on April 8, 1974.

As you will recall, I suggested that there is no way of reading the decision of the Three-Judge Court in McDonald v. McLucas without concluding that it is a violation of the Constitution to change status under Sections 555 and 556 of Title 37 of the U.S. Code unless there is a prior hearing respecting which next-of-kin received notice and at which such next-of-kin were given access to evidence and a meaningful opportunity to participate in the proceedings.

As you know, these due process criteria were not met in the status changes made to date, in which MIA's of the Vietnam War were determined or presumed to have died. The conclusion that such status changes were unconstitutional and unlawful, is unavoidable.

The question presented by these facts is equally obvious: what is to be done about these unconstitutional determinations? Families of a number of the men involved have sought legal assistance from me in an effort to have missing status restored nunc pro tunc. Obviously, I believe it should be.

Before taking any steps, however, I thought it would be decent to ask the Department of Defense whether or not we agree on this matter and whether such retroactive restoration of status would be made voluntarily by the Department. A definitive answer, whether positive or negative, would be most helpful. If the Department is willing to voluntarily restore missing status retroactively on the sole ground that the prior change was unconstitutional by reason of the absence of notice and hearing, this will simplify matters considerably. If, on the other hand, the Department will not effect retroactive missing status restorations on this ground and a clear policy statement to this effect is made, then, at least, we will know where we stand and it will be known, by all concerned, that applications to the Department for such restoration would be an exercise in futility.

I would appreciate authoritative clarification of the Department's position on this matter as quickly as is convenientl possible so that I can give appropriate advise to those family members who have sought my advise on the subject as an attorney. In addition, I believe that the families as a whole should be informed.

If I can be of any assistance in expediting a response or in the consideration of this matter, please let me know. I would appreciate hearing from you or the Department as early as possible.

Very truly yours,

Dermot G. Foley

DGF:mw

UNITED STATES COURT OF CLAIMS

---

1. VELMA L. CRONE
2. PAUL E. CRONE
3. PATRICIA HEIDEMAN
4. MILDRED L. LODGE
5. RAYMOND J. LODGE
6. MARGORIE J. PICKETT
7. SUSAN SULLIVAN
8. ADELINE B. WESTWOOD
9. NORMAN P. WESTWOOD
10. IVAN WILEY
11. BETTY WILEY

Plaintiffs,

- against -

JOHN McLUCAS, Secretary of the Air Force, HOWARD H. CALLAWAY, Secretary of the Army, and J. WILLIAM MIDDENDORF II, Secretary of the Navy,

Defendants.

PETITION - CLASS ACTION

TO THE HONORABLE, THE COURT OF CLAIMS:

Plaintiffs, by their attorney, allege:

JURISDICTION

1. This Court has jurisdiction based on the statutory provisions of 28 U.S.C. § 1491. The matter in controversy exceeds the sum or value of $10,000.00, exclusive of interest and costs, and arises under the Constitution, laws and treaties of the United States, including the Fifth Amendment; Chapter 10, Title 37, United States Code; and the Paris Agreement on Ending the War and Restoring Peace in Vietnam signed January 27, 1973 (the Paris Agreement).

DEFINITIONS

2. In this petition, the following definitions apply:

MIA--means a "member" who, at any time during the period beginning January 1, 1961 to final judgment in this action, was in a "missing status" while on active duty in Indochina (whether on land or in the territorial, adjacent or surrounding airspace, seas and waters) in connection with hostilities and military operations and who was the subject of a determination of death (as hereinafter defined).

Next-of-kin--means the spouse, children, parents, brothers, sisters, and persons officially designated as primary and secondary next-of-kin (in records of the defendant Secretary concerned) of MIA's, if such persons exist, and if they do not, in any particular case, then the persons who share the closest degree of blood relationship to such MIA. The legal representatives of MIA's are also included in "next-of-kin" for purposes of representing the rights of MIA's.

Member--means a person appointed or enlisted in, or conscripted into, a uniformed service of the United States and under the jurisdiction of a "Secretary concerned" who is a defendant in this suit. (See 37 U.S.C. § 101(23))

Missing status--means the status of a member who is or has been officially determined to be absent in a status of:

a. missing;

b. missing in action;

c. interned in a foreign country;

d. captured, beleaguered, or beseiged by a hostile force; or

e. detained in a foreign country against his will. (See 37 U.S.C. § 551 (2))

Secretary concerned--means:

a. the defendant Secretary of the Army, or his designee, with respect to matters concerning members serving in the Army;

b. the defendant Secretary of the Navy, or his designee, with respect to matters concerning members serving in the Navy and the Marine Corps; and

c. the defendant Secretary of the Air Force, or his designee, with respect to matters concerning members serving in the Air Force. (See 37 U.S.C. § 101(5))

Determination of death--means any determination by the Secretary concerned pursuant to Chapter 10 of Title 37, United States Code, "Payments to Missing Persons," that a member has died. Included in this term are "official reports of death," "presumptive findings of death," and every other such determination regardless of how denominated.

Continuance of missing status--means any determination by the Secretary concerned pursuant to Chapter 10 of Title 37 that member in missing status is presumed to be living.

Evidence--means probative matter which is admissible under the rules of evidence in courts of the United States.

Information--means probative matter which is admissible in proceedings before administrative agencies of the United States regardless of whether it would be admissible as "evidence" in court.

Period--means the period from January 1, 1961 to the date of final judgment in this action.

Next friend--means the next-of-kin of an MIA who, during the absence of such MIA and his inability to appear and represent his own interests, object on his behalf to the wrongs of the defendants complained of herein.

PARTIES

3. Each of the plaintiffs is related to and is suing as next-of-kin, and as next friend of an MIA and, in addition, is the spouse, parent, dependent, and/or designated beneficiary of such MIA.

Plaintiffs:

a. Plaintiffs VELMA L. CRONE and PAUL E. CRONE are the parents of Sp.4 DONALD E. CRONE, United States Army, who became MIA on February 15, 1971 and who was declared dead on April 20, 1971.

b. Plaintiff PARTICIA HEIDEMAN is the wife of M/Sgt. THOMAS E. HEIDEMAN, United States Air Force, who became MIA on October 24, 1970 and who was declared dead within one day thereafter.

c. Plaintiffs MILDRED L. LODGE and RAYMOND J. LODGE are the parents of Maj. ROBERT A. LODGE, United States Air Force, who became MIA on May 10, 1972 and who was declared dead on May 9, 1973.

d. Plaintiff MARGORIE J. PICKETT is the mother of Corporal ROBERT E. GRANTHAM, United States Army, who became MIA on March 8, 1971 and who was declared dead on May 14, 1971.

e. Plaintiff SUSAN SULLIVAN is the wife of Lt. Col. FARRELL J. SULLIVAN, United States Air Force, who became MIA on June 27, 1972 and who was declared dead on June 25, 1973.

f. Plaintiffs ADELINE B. WESTWOOD and NORMAN P. WESTWOOD are the parents of Lt. NORMAN PHILIP WESTWOOD, United States Navy, who became MIA on May 17, 1970 and who was declared dead on May 18, 1970.

g. Plaintiffs IVAN WILEY and BETTY WILEY are the parents of Sp.4 RICHARD DENIS WILEY, United States Army, who became MIA on June 12, 1972 and who was declared dead on August 26, 1972.

4. The defendants respectively are:

a. Defendant JOHN McLUCAS is the Secretary of the Air Force and is sued in his official capacity as an officer of the United States.

b. Defendant HOWARD H. CALLAWAY is the Secretary of the Army and is sued in his official capacity as an officer of the United States.

c. Defendant J. WILLIAM MIDDENDORF II is the Secretary of the Navy and is sued in his official capacity as an officer of the United States.

d. Reference to the Secretary of any branch of the Armed Forces includes reference to his predecessors in office during the period.

CLASS ACTION ALLEGATIONS

5. Plaintiffs request this Court to enter an order permitting this action to be maintained as a class action.

6. Description of class. The class which plaintiffs seek to represent is composed of all next-of-kin and next friends, both in their capacity as representatives of the respective MIA's and with respect to their individual interests.

7. The prerequisites to a class action are met as follows:

a. The class which plaintiffs seek to

represent is so numerous that joinder of all members is impracticable. There are more than 2,500 persons in the proposed class.

b. There are predominating questions of law or fact common to the class which plaintiff seek to represent, including:

(1) Whether the statutory provisions for determinations of death, 37 U.S.C. §§ 555 and 556, are unconstitutional and void on their face as a denial of due process under the Fifth Amendment to the United States Constitution;

(2) Whether the statutory provisions for determinations of death, 37 U.S.C. §§ 555 and 556, are unconstitutional and void in their application as a denial of due process under the Fifth Amendment to the United States Constitution;

(3) Whether by reason of the unconstitutional and void nature of 37 U.S.C. §§ 555 and 556, on its face, determinations of death purported to be made thereunder were made without authority and are, hence, null and void;

(4) Whether by reason of the unconstitutional and void application of 37 U.S.C. §§ 555 and 556, determinations of death purported to be made thereunder were made without authority and are, hence, null and void;

(5) Whether by reason of the unconstitutional and void determinations of death, the status of each MIA who has been the subject of such determination of death

must be restored retroactively to missing status.

c. The claims of plaintiffs are typical of and identical to the claims of the class which they seek to represent. Plaintiffs do not have any special relationship with defendants.

d. Plaintiffs will fairly and adequately protect the interests of the plaintiff class. Plaintiffs' claims are typical and representative of the claims of the class. There do not now appear to be any defenses of a unique variety which may be asserted against plaintiffs. Plaintiffs do not have any interest which is antagonistic to the plaintiff class. Plaintiffs' attorneys are experienced in the class action litigation.

COUNT 1: UNCONSTITUTIONALITY OF STATUTE

8. Sections 555 and 556 of Title 37, United States Code, are on their face unconstitutional delegations of administrative power to defendants in their official capacities to make conclusive determinations of death.

9. Each of the four following defects, standing alone, renders the statutory provisions, §§ 555 and 556, unconstitutional on its face:

a. there are, and have been, throughout the period, no statutory criteria, or even a statutory policy, to guide or govern the Secretary concerned in his decision

whether or not to make a determination of death;

b. there is, and has been, throughout the period, no statutory rulemaking authority delegated to the Secretary concerned with respect to determinations of death, and therefore the Secretary concerned may proceed and has proceeded only on a case-by-case basis, thus merging the rulemaking and adjudicative functions;

c. the statutory provisions, §§ 555 and 556, do not provide and, throughout the period, have not provided for, or required, the giving of notice to the respective next-of-kin, next friend or person adversely affected by each particular determination, of the pendency of the statutory review; and also fail to provide for, require, or afford such persons an opportunity to participate meaningfully in such review, thereby denying a full and fair hearing; and each plaintiff, and each member of the plaintiff class, has been denied such notice and hearing;

d. the statutory provisions, §§ 555 and 556, permit the Secretary concerned to make a determination of death in the total absence of any evidence or information whatsoever.

10. The effect of the four constitutional defects stated in paragraph 9 has been to deprive the plaintiffs and the plaintiff class and their respective MIA's of their rights to due process under the Fifth Amendment to the United States Constitution.

11. As a result of the determinations of death made pursuant to the foregoing unconstitutional and void circumstances,

each of the subject MIA's was deprived of all pay and allowances which should have accrued during the period following his respective determination of death and was further deprived of the benefits of search and accounting procedures pursuant to Article 8(b) of the Paris Agreement. In addition, his next-of-kin as represented by the plaintiff class herein, have sustained, and are sustaining, pecuniary losses resulting from the said loss of pay and allowances.

COUNT 2: UNCONSTITUTIONAL APPLICATION OF STATUTE

12. Sections 555 and 556 of Title 37, United States Code, have been applied throughout the period in a manner which constitutes an unconstitutional delegation of administrative power to defendants in their official capacities to make conclusive determinations of death.

13. Each of the four following defects, standing alone, renders the statutory provisions, §§ 555 and 556, unconstitutional as applied:

a. no criteria, standards or policies have been issued to guide or govern the Secretary concerned in his decision whether or not to make a determination of death and the Secretary concerned has only proceeded on a case-by-case basis;

b. there is, and there has been, no procedure or requirement for the giving of notice to the respective next friend, next-of-kin or persons adversely affected, of the pendency of the statutory review; in fact, such notice has been withheld

and such persons and/or their counsel have been intentionally excluded from any participation in the review;

c. the Secretary concerned has not convened, conducted or participated in any hearing or review whatsoever prior to making determinations of death; and

d. the Secretary concerned, as a matter of course, has made determinations of death in the absence of any evidence or information respecting the fact of death.

14. The effect of the four constitutional defects stated in paragraph 13 is to deprive the plaintiffs and the plaintiff class and their respective MIA's of their rights to due process under the Fifth Amendment to the United States Constitution.

15. As a result of the determinations of death made pursuant to the foregoing unconstitutional and void circumstances, each of the subject MIA's was deprived of all pay and allowances which should have accrued during the period following his respective determination of death and was further deprived of the benefits of search and accounting procedures pursuant to Article 8(b)of the Paris Agreement. In addition, his next-of-kin, as represented by the plaintiff class herein, have sustained, and are sustaining, pecuniary losses resulting from the said loss of pay and allowances.

RELIEF REQUESTED

16. There is no administrative remedy available to

plaintiffs and the plaintiff class and their respective MIA's to prevent or correct the wrongs set forth in Counts 1 and 2. The questions of law which are completely despositive of this action, are inappropriate for determination by administrative agencies and are appropriate for determination by this Court. Consequently, there are no administrative remedies to exhaust.

17. There is no adequate legal remedy available to plaintiffs and the plaintiff class and their respective MIA's to prevent or correct or compensate the wrongs set forth in Counts 1 and 2 unless the defendants are enjoined and restrained from such wrongful conduct, and are compelled to restore the said MIA's to missing status retroactively to the dates of their respective determinations of death; otherwise plaintiffs and the plaintiff class and their respective MIA's will suffer irreparable injury.

WHEREFORE, plaintiffs request:

a. a judgment finding §§ 555 and 556 of Title 37, United States Code, unconstitutional and void, on their face and in their application, and requiring the defendants to restore the MIA's to missing status retroactively to the dates of their respective determinations of death;

b. a judgment requiring resumption of all pay and allowances of the MIA's and awarding them all pay and allowances withheld since the dates of their respective determinations of death;

c. judgment in favor of plaintiffs and the class and their respective MIA's adversely affected by determinations of

death heretofore made, for all losses and damages they sustained;

d. an award of costs, disbursements and reasonable counsel fees; and

e. such other relief as is just.

KAPLAN, KILSHEIMER & FOLEY

Dermot G. Foley

DERMOT G. FOLEY

A Member of the Firm

Attorneys for Plaintiffs

122 East 42nd Street
New York, New York 10017
(212) 687-1980

MIA.

THE WHITE HOUSE
WASHINGTON

Jay:.
Please review these and, if possible, report to me by Friday or after that to Phil A.
Consider among other matters by what authority (or with what propriety) we can influence the result in such a case as this.
T.

THE WHITE HOUSE

WASHINGTON

December 16, 1974

MEMORANDUM FOR: PHIL BUCHEN

FROM: TED MARRS

Phil - I would appreciate your having the appropriate person review these decisions as to legality and appropriateness. I do not understand the palatability factor referenced by Mr. Bell.

Enclosure

OFFICE
OF THE CHAIRMAN

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

December 9, 1974

Honorable Theodore Marrs
Special Assistant to
the President
The White House
Washington, D. C. 20500

Dear Ted:

Here are the two decisions I mentioned to you -- one for payment and one for denial.

We can live with and justify either one. The question, however, is which would be more palatable in today's climate.

Please see if you can get some reaction just as quickly as possible because we must issue some decisions very soon.

Cordially,

J. Raymond Bell
Chairman

Enclosures

M/A 20

For Jay French

THE WHITE HOUSE

WASHINGTON

December 16, 1974

MEMORANDUM FOR: GENERAL LAWSON

FROM: DR. MARRS

Dick - the attached letter from Ann Mills Griffiths is characteristic of the thinking of a number of families of MIAs. Few have been quite as reserved however.

The establishment of a committee would be a welcome indicator of interest to all - and announcement of such before Christmas would be particularly appreciated. By the way, December 27 or 28th is date considered as MIA "anniversary."

As you know, prior to my opportunity to sample the sincerity and depth of pained feelings in regard to the Clemency Board I did not support such a Committee. Now I am convinced it is a moral obligation.

If there is any way I can be of assistance let me know.

I still cannot guarantee specific recommendations or whitewash - and don't expect the latter. Good selection of the committee can preclude a disaster type product.

Enclosure

cc: Mr. Marsh
Mr. Buchen
Mr. Baroody
General Scowcroft

NATIONAL LEAGUE OF FAMILIES
OF AMERICAN PRISONERS AND MISSING IN SOUTHEAST ASIA
Mrs. Ann Griffiths, State Coordinator, Southern California
6575 Christine Circle, Buena Park, CA 90620

November 14, 1974

Dr. Theodore Marrs
Special Assistant to the President
The Whitehouse
Washington, D.C.

Dear Dr. Marrs:

I wanted to thank you for taking the time to discuss what I know to be our mutual concern of obtaining the accounting. I greatly appreciated our very frank discussion of this situation and related matters.

In attempting to convince the families that bitterness should not be aimed at our current President, I have to say that most families feel President Ford is the only one who actually can help us obtain the information we must have in order to feel any real peace within ourselves. It really would not matter who occupied the presidency, the frustration would still be vented upon that person. They would consider it irrelevant that President Ford was not initially to blame, only that he can help us now and has not yet acted with the strength and determination they feel is mandatory.

I share your view that there is no person who can negotiate from a position with nothing to offer. The leverage must be there. What can we do to help our leaders gain the leverage? We must have suggestions before we can attempt to help. So many of the families have already waited so long that their patience has worn quite thin. Almost to a member, the families were relieved and happy when Mr. Ford became the President and they all shared the expectancy that now, finally, something would be done. It is imperative that we have an all-out effort for a solution immediately, and I know you certainly share the urgency we all feel.

We anxiously await further word from General Lawson on the formation of a special committee of qualified persons who might be able to advise the President in a positive manner. Until then I know we must maintain patience in spite of the impatience which often engulfs us. Again, thank you for your concern, efforts and time.

Sincerely,

Ann Mills Griffiths

Ann Mills Griffiths
(714) 826-3110 or (714) 893-7531

Dec. 18, 1974

MIA/POW Matters

To: Jay

From: Eva

Attached is a copy of the memo Mr. Buchen just received. FYI

THE WHITE HOUSE

WASHINGTON

I sent a copy to Jay

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

December 18, 1974

MEMORANDUM FOR: DR. TED MARRS

FROM: GENERAL LAWSON

SUBJECT: MIA/POW Matters

The attached draft proposal to the President has been forwarded to Defense, State and NSC for approval, change, comment and coordination. Defense has concurred. Neither State or NSC has formally responded, although I have been informally advised that some resistance to the proposal is developing. I am pressing for a decision in time to make an announcement on 27 January 1975 - the second anniversary of our POW release. I will keep you advised.

1 Attachment
Draft Proposal

cc:
Mr. Marsh
Mr. Buchen
Mr. Baroody

DRAFT

MEMORANDUM FOR THE PRESIDENT

FROM: MAJOR GENERAL LAWSON

SUBJECT: Designation of a Presidential Task Force for MIA/POW Matters

For several months the MIA/POW families have been searching for a responsible means of realizing their objectives. After careful and intense study, they have come forward with a request for the establishment of a "Presidential MIA/POW Task Force", modeled along the lines of the Presidential Amnesty Commission. (Tab A)

Upon receipt of the request, a study group was formed to evaluate the proposal. We have now completed a series of meetings with members of the National League of Families, Congress, the Departments of State and Defense, and various other interested individuals. From these discussions, the following general observations were formulated:

(1) Family members are generally optimistic about the potential value of such a commission. Although they are realisti enough to understand that a commission cannot perform "acts of magic," they do believe that the combined power of the legislative and executive branches of government united under a Presidentially directed organization could achieve some measure of success.

At the minimum, they believe the commission would focus international attention upon the failure of the North Vietnamese to comply with the provisions of the Paris Peace Accords.

(2) Members of Congress have already issued statements suggesting creation of either a Presidential Task Force or a Congressional Task Force to "investigate and make recommendations regarding the conduct of the MIA/POW program." (Tab B) Congressional interest in the MIA/POW issue has increased in the past six months. Amend[redacted]ments to the Foreign Trade Bill and the Military Construction Bill were initiated and only narrowly missed enactment. Both State and Defense have registered concern for the impact which these amendments could have had upon existing programs (Tab C and Tab D).

(3) The Supreme Court decision which upheld the lower courts' actions in the McDonald versus McLucas case (permitting the redesignation of certain MIA/POW's to that of Presumptive Finding of Death [PFOD]) gives the green light to service secretaries to hold independent hearings and reviews on all MIA/POW cases immediately if they so desire. This issue is one of the most controversial aspects of the entire MIA/POW program. Currently, because of White House guidance, redesignation hearings are only held when requested by a family member. Some members (primarily wives) would privately prefer to have the redesignation program proceed - but,

they cannot bring themselves to be the initiating factor. Others (primarily parents) have and will continue to use every possible means of delay to obstruct redesignation action. By law, this action cannot be held up much longer. A commission would be a most useful means to publicly illuminate all aspects of this very difficult question.

After careful consideration of all aspects of the National League of Families proposal, the study group has concluded that the formation of a Presidential Task Force for MIA/POW Matters is timely and could serve an extremely useful function in the final resolution of the Vietnam era MIA/POW issue. It is recognized that there are certain inherent dangers associated with the establishment of Presidentially appointed commissions, in that occasionally their recommendations tend to be narrowly focused and cannot be implemented when viewed in the context of national policy. However, in this case, the question does not appear to be - "Will there be a commission?", but "Who will initiate a commission." The mood of Congress is quite clear. If the Executive Branch does not initiate action fairly quickly, a Congressional task force will almost certainly be appointed to accomplish the study. Neither the families nor the representatives of Defense or State Departments favor that action. Considering all aspects of the current situation, it is recommended that you establish a Presidential Task Force for MIA/POW matters.

The Department of State and the Department of Defense concur with this recommendation.

If you agree, a working group consisting of White House, Defense and State Department personnel will be established in order to develope the specific guidelines for the task force in order that you might present this information to the National League of Families at the earliest possible date.

APPROVE _____

DISAPPROVE _____

LET'S DISCUSS _____

4 Attachments


GERALD R. FORD LIBRARY

NATIONAL LEAGUE OF FAMILIES
OF AMERICAN PRISONERS AND MISSING IN SOUTHEAST ASIA
1608 K STREET, N.W., WASHINGTON, D. C. 20006 (202) 628-6811

September 30, 1974

PRESIDENTIAL TASK FORCE -- POW/MIA

I. Why a Task Force?

The responsibility for obtaining a successful resolution of the POW/MIA issue should be centralized. Previously the issue has been a concern of the Executive Branch including State Department, Defense Department, and the Congress. It has lacked the cohesiveness that a commission directly responsible to the President would have. Therefore, it seems desirable--even imperative--that a Presidential Task Force be established.

II. Make Up of Task Force

Of course the President would determine the make up. But, because we so fervently desire an acceptable determination of the fate of our men, we are bold enough to make these suggestions:

1. Someone from the Executive Branch to chair the commission.

2. Senate representation.

3. House representation.

4. State Department representation.

5. Department of Defense representation.

6. National League of Families representation.

7. Members of other agencies could be used as consultants as the need arises; i.e., Justice Department, J. C. R. C. Team, Four Party Joint Military Team, Red Cross, etc.

III. Purpose, Objectives, and Responsibilities of Task Force

1. Very simply to develop, coordinate and execute a plan for obtaining an honorable resolution of the POW/MIA issue as quickly as possible.

2. It is easy to state simply and succinctly the purposes and objectives. The difficulty is in developing a plan and then in executing such a plan. This will require diligent

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thinking and rethinking, but the following might be used as a base which may be altered and enlarged upon as we proceed towards the goal.

The Task Force, as an arm of the government and directly responsible to the President shoud:

2.1 Seek ways to bring world-wide attention to the fact that the government of North Vietnam and the leaders of the Provisional Revolutionary Government (Viet Cong) are not abiding by international agreements which were witnessed by and attested to by other governments.

2.2 Use the United Nations and other world forums to call upon other governments of the world that are signatory to the Geneva Convention, to demand publicly and through official government channels that the DRV and PRG abide by international agreements.

2.3 Observe closely the coalition government in Laos and use all the means available to us to get cooperation and assistance in obtaining an acceptable accounting and return of all POW's according to the Laotian protocols.

2.4 Use all available means to obtain an acceptable accounting and return of all POW's who may be in areas outside of North Vietnam, South Vietnam, and Laos. These would include but not be limited to Red China and Cambodia.

2.5 Study the possibility of applying economic pressure in obtaining an acceptable accounting, not only to North Vietnam but to any country that has not to our government's satisfaction pressured the DRV, PRG, Pathet Lao, and Khner Rouge to honor their commitments.

2.6 Send a high ranking U. S. envoy to Southeast Asia to go from capital to capital (from Saigon to Phnom Penh to Vientiane to Hanoi to Peking) to try to gain entry into areas presently controlled by Communists for our J. C. R. C. Team, the International Red Cross, or neutral countries, so such teams could search out crash and incident sites, talk with natives, and try to obtain the honorable accounting we desire.

2.7 Seek out governments from neutral countries that would volunteer to send in teams to inspect crash and incident sites if such arrangements could be negotiated.

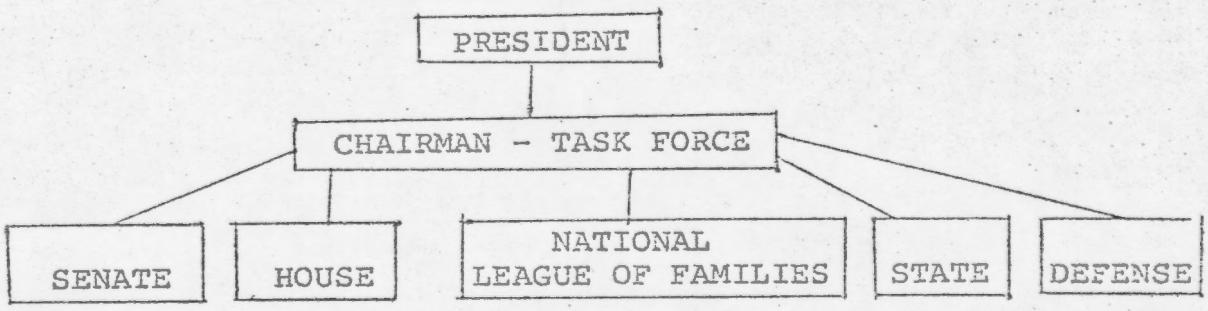
2.8 Work closely with our J. C. R. C. Team, the Four Party Joint Military Team, and other existing agencies engaged in Southeast Asia that could help in the POW/MIA issue.

IV. Funding

The Task Force should be specially funded for a given period of time--say four months. During this time the Task Force would exert maximum effort in developing and executing a plan. The 120 days would end about January 27, 1975, which is the second anniversary of the signing of the Paris Peace Agreements.

V. Reporting

The Task Force should issue reports periodically, the first report to be issued within one month from its organizational meeting and monthly thereafter or more frequently if deemed necessary. The final report should be given approximately January 27, 1975, at which time the commission could assess the situation and recommend that the Task Force be disbanded or continued depending on the situation at that time.



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SEP 30 1974

OFFICE OF U.S. SENATOR ALAN CRANSTON

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September 25, 1974

FOR IMMEDIATE RELEASE

U.S. Senator Alan Cranston announced today that he will ask President Ford to create a special board of inquiry to review all existing government procedures and policies relating to Americans still missing-in-action in Southeast Asia.

Cranston said that if the President cannot create such a board by executive order, he will initiate legislation establishing the board.

"Many Americans," said Cranston, "have already begun to forget the war in Vietnam. But for wives and families of those men whose fate is still uncertain, the memory of that cruel and tragic conflict is very fresh indeed. For them, the anguished uncertainty continues day after day."

"I believe that a board of inquiry would be able to make badly-needed comprehensive recommendations as to what the federal government can do to settle once and for all the question of the fate of those Americans who are still missing and unaccounted for.

"The board should include in its review of existing policies and procedures a thorough examination of Department of Defense practices with regard to MIAs and POWs, as well as recommendations for needed legislative and executive action.

"Specifically, the board should:

"1. Determine if the State Department is actively seeking an end to the war in Vietnam so that search teams may conclude--by examining crash and grave sites--whether any Americans remain alive in Communist-controlled territory.

"2. Review Department of Defense policies and regulations on determining the status of missing-in-action.

"3. Recommend to the Administration and the Congress any legislation needed to correct current problems regarding DOD policies and regulations."

Cranston noted that the Senate Committee on Finance has adopted, as Title IV of the Trade Reform Act, language which reflects amendments offered by

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Senators Chiles and Gurney of Florida conditioning the extension of most-favored-nation treatment and government credits to non-market economies upon a Presidential determination that such countries had undertaken to obtain the cooperation of the pertinent governments in Southeast Asia in locating U.S. personnel missing in action, repatriating those who are alive, and in recovering the remains of those who are dead.

Earlier the Senate adopted, as part of the Military Construction Authorization Act, a provision--of which Cranston was the prime cosponsor--stating that:

No change in the status of any member of the uniformed services who is in a missing status may be made unless and until two provisions have been fulfilled. First, the President must determine and notify the Congress in writing that all reasonable actions have been taken to account for such members, and that all reasonable actions have been made to enforce the provisions of Article 8 (b) of the Paris Peace Accord. Second, the service Secretary concerned must notify that person's next-of-kin in writing of the proposed change in status. The next-of-kin then has 60 days after receipt of notification of the proposed change in status to file an objection to the change.

"These are important steps toward resolving the question of MIAs and POWs fairly and compassionately," Cranston said.

"Creation of a board of inquiry would be another important step toward demonstrating to the long-suffering relatives of our men that the government is giving priority to this tragic problem."

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DEPARTMENT OF STATE

Washington, D.C. 20520

December 7, 1974

Honorable Russell B. Long
Chairman, Committee on Finance
United States Senate

Dear Mr. Chairman:

This letter responds further to questions from several Members of the Committee during the Secretary's testimony December 3 concerning the Gurney-Chiles amendment (Sec. 403) to the Trade Reform Act, which calls on the Soviet Union and other nonmarket economy countries to help us achieve an accounting for Americans who are missing in action in Southeast Asia, including the repatriation of any men who may still be alive and the return of the remains of the dead.

It goes without saying that the Administration shares the concern expressed by this amendment about North Vietnam's failure to account adequately for our men lost in Southeast Asia. We have pressed the communist authorities in Indochina repeatedly on this subject, and the Secretary has raised it personally with the Soviet and Chinese leaders. We have stated that there can be no consideration of economic assistance or other forms of accommodation with Hanoi until there is satisfactory compliance with the provisions of the Paris Agreement, including its missing in action requirement. When the Secretary met at the United Nations with the Foreign Minister of Laos, who represents the Pathet Lao side in the coalition government, he made clear the importance we attach to search efforts for our men missing in that country. The U.S. took the initiative at the United Nations to sponsor a resolution on accounting for the missing and dead in armed conflicts, which was overwhelmingly approved by the General Assembly on November 6. Our actions will continue with serious determination until we have obtained the fullest possible information on our men.

Although we agree with the aim of the Gurney-Chiles amendment, we are concerned that its reporting requirements will hinder, rather than advance, achievement of that objective. As the Secretary indicated in his response to questions, it is simply unrealistic to expect progress in this important matter on the basis of efforts which are publicly disclosed. We assure the Committee we will continue our efforts to enlist Soviet cooperation on this subject, but to give this any chance of success, we hope the amendment can be stated as the Sense of the Congress, and that the reporting requirement can be removed. We of course do not wish to have the bill delayed by amendments on the floor but would hope this section could be adjusted in Conference.

If we can provide further information on this subject, I hope you will let me know.

Cordially,

Linwood Holton
Assistant Secretary
for Congressional Relations

ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

INTERNATIONAL SECURITY AFFAIRS

6 DEC 1974

MEMORANDUM FOR GENERAL LAWSON

SUBJECT: Accounting for Missing Servicemen

The Vietnam Ceasefire Agreement, signed in January 1973, in addition to providing for the return of prisoners of war and civilian detainees, made provision for an accounting for those missing U. S. servicemen and civilians who did not return. Now, almost two years later, that accounting has not been accomplished and the Military Services continue to carry over 900 men in a missing status. The inability of the Military Services and our government to obtain compliance from North Vietnam and its allies with Article 8(b) of the Ceasefire Agreement, which obligates the signatories to cooperate in efforts to account for the missing, has resulted in great frustration and continued anxiety for the families of those who did not return from Southeast Asia. Much of this frustration has been directed at the Department of Defense. The resulting situation in which we find ourselves, and which will be described below, pleases no one.

Some next of kin are vehemently opposed to the change in status of their loved one from missing in action or prisoner to deceased. Others would like the Services to continue with status reviews but cannot bring themselves to comply with current Service procedures which have evolved as a result of the sensitivity of this issue. Congress has also consistently expressed great interest in the issue of accounting. This interest has recently been expressed by the introduction in Congress of measures which would severely restrict the ability of the Military Services to deal with the problem of their members who become missing in either wartime or peacetime.

As you are well aware, the majority of our efforts to obtain an accounting for our men who did not return have been put forth by our delegates to the Four-Party Joint Military Team in Saigon. Although we have continually pressed the other side in that forum on their clear obligation under Article 8(b) of the Paris Agreement concerning this purely humanitarian issue, we have achieved only minimal results. The only substantive response has been the return to us last March of the remains of 23 American servicemen whom the DRV reported as having died in captivity. The remains of some 17 other

Americans have been recovered through the activities of our Joint Casualty Resolution Center which is based in Thailand. Thus far, the Center has been restricted to uncontested areas of South Vietnam in conducting field searches.

When our men returned from enemy captivity in early 1973, they were able to provide information which allowed resolution of fewer than 100 cases of the 1363 servicemen who had remained unaccounted for at the time the repatriation was completed. On 20 July 1973, a law suit (McDonald v. McLucas) was filed against the Secretaries of the Military Departments in an effort to halt changes from missing status to deceased. The resultant Temporary Restraining Order handed down by the Court restricted the Secretaries to reviews of and changes to the status of missing servicemen to only cases in which the primary next of kin requested the appropriate Secretary in writing that he not delay action on the case based on information in his possession. The final decree in McDonald v. McLucas, entered on 11 March 1974, required that the Secretaries afford certain rights, including that of a hearing, to those next of kin currently receiving governmental financial benefits prior to a review of their missing service member relative's case which could result in a finding of death. By early April 1974, the Services had developed and implemented regulations to conform with the requirements of the decree. Additionally, at that time, we were informed that the decision would be appealed to the Supreme Court by plaintiffs' counsel. The appeal was subsequently filed, and the Supreme Court affirmed the decision of the lower court on 11 November 1974. We have been informed that the deadline for an appeal for a rehearing by the Supreme Court is 6 December 1974, and that as of yet, it has not been filed. The case remains technically active in that regard, although we believe that the granting of such an appeal is unlikely.

With these legal entanglements now practically behind us, I believe it is time for a look at where we have been and where we should go. An assessment should be made now of our efforts to achieve the accounting required by Article 8(b), together with consideration of further status reviews and changes. The mechanism exists in the Services to proceed in an orderly fashion in accordance with the requirements of the decree with those cases which warrant review. Some reviews will continue to be made based on the recovery and identification of remains. Others will be warranted because of the receipt of new information, or information which verifies that which is currently possessed. Still other cases may warrant review simply because of the dim prospect for the survivability of the incident itself, the fact that our returnees could add nothing to known information which would

indicate survival, and even the receipt of additional information, which might be given by the other side in some future compliance with Article 8(b), would not include additional data in a number of cases.

Although the obligation for the other side to account for our men is clear in application to both the missing and the dead, the interpretation made by many is that once a change is made to deceased, the other side is relieved of their accounting responsibilities. Recent proposed legislation reflecting this view attempts to attach unreasonable constraints on the statutory authority of the Secretaries under 37 United States Code to make findings of death, and based on the hope that somehow, if there is a halt in status changes, the other side will come forth with an accounting. Our review of the past plenary sessions of the Four-Party Joint Military Team reveals that the other side fully realizes the importance we place on the accounting for our missing and the return of the remains of the dead; therefore, they will continue to stall and rebuff our efforts in this area until internal pressure here will result in their achievement of political and military concessions which they have previously been unable to gain.

I believe the Services have proceeded thus far in an extremely conservative fashion in their reviews of the cases of their missing servicemen. They have continued, as in the past, to honor family requests for reviews. At the present time, no hearings or reviews are being scheduled by the Services except in those cases where the primary next of kin requests a hearing, or where new and significant information, such as the recovery and identification of remains, is forthcoming. As you know, the views of next of kin vary on this issue, and often have caused dissention within the same family. We know there are cases which warrant review and the request for which would never be sent by the wife. Many feel they could accept a change, but not if a need existed for them to initiate the action. Testimony to this effect was recently given by family members before the House Armed Services Committee in connection with consideration by Subcommittee Number Two of proposed legislation to restrict status changes.

In summary, I believe the situation should be studied in light of the current and foreseen environment so that we can chart a proper course of action.

Roger E. Shields

ROGER E. SHIELDS
Deputy Assistant Secretary