

HJR

9

Alaska State Legislature

REPRESENTATIVE
JEANNETTE JAMES

P.O. Box 56622
North Pole, Alaska 99705
(907) 488-1546
FAX (907) 488-9006



White in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-3743
FAX (907) 465-2381

House of Representatives

House District 34

SPONSOR STATEMENT

3-10-95

HJR 9

**Requesting the Governor to file suit against the U.S.
and others over POW/MIA's from Alaska**

There is continuing controversy concerning the presence of American servicemen, who were listed as Prisoners of War or Missing in Action and may be being held against their will in the Southeast Asian nations of Vietnam, Laos, and Kampuchea (formerly Cambodia).

The United States government has stated that all of our Prisoners of War have been returned from Vietnam. A top secret Vietnamese report, dated 1972, by General Tran Von Kwang, Deputy Chief of Staff for the North Vietnamese Army, reported that in September of 1972 Hanoi held 1,205 American prisoners. Only 591 American Prisoners of War have been released under the 1973 Peace Settlement.

There are two missing and unaccounted for servicemen in Southeast Asia from Alaska.

I request that the Alaska State Legislature hereby require the Governor of the state of Alaska, on behalf of the people of this state, to file in the United States Supreme Court a cause of action against the government of the United States. Defendants in this suit would include the Department of Defense and the intelligence agencies, the ambassadors or other public ministers and consuls of the governments of Vietnam, Laos, Kampuchea, Russia, and China, alleging violation of civil rights of the people of Alaska. Especially, alleging the violation of the right to life, liberty and the pursuit of happiness of the following named citizens of the State of Alaska.

Thomas E. Anderson, U.S.M.C. Spenard and Howard M.
Koslosky U.S.N. Anchorage.

FISCAL NOTE

No. 1
 Bill Version: CSHJR 9 (M.L.V)
 (H) Publish Date: 3/22/95

**STATE OF ALASKA
 1995 LEGISLATIVE SESSION**

Revision Date: _____ Dept. Affected: Department of Law
 Title: "Requesting the governor to file suit in the BRU: Legal Services
United States Supreme Court..." Component: Operations
 Sponsor: Representative James
 Requester: Representative James COMPONENT SERIAL NO. 0093

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 GF	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL						

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

HJR 9 requests the governor to file suit in the United States Supreme Court against the United States government alleging violations of the civil rights of Americans listed as prisoners of war or missing in action in Southeast Asia. The resolution further requests that the suit demand that the Department of Defense, the intelligence agencies, and the governments of Vietnam, Laos, Kampuchea, Russia, North Korea, and China be ordered to turn over all documents concerning Americans listed as POWs or MIAs as a result of the Vietnam War. It is a purpose of the resolution that the lawsuit is not intended to solicit a ruling or an opinion definitively declaring the POW/MIA issue moot, but rather that it is intended to mandate that the fate or location of all Americans listed as POWs or MIAs be determined as missing beyond a reasonable doubt and on an individual basis. The resolution also requests that other states to join in the suit.

The Department of Law has no comment to offer concerning the merits of the resolution. However, we do note that if the intent of the resolution is carried out it will be necessary to hire outside counsel skilled in

Prepared by: Richard T. Pegues, Director Phone: 485-3672
 Division: Administrative Services Division Date: 3/17/95
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 3/17/95
 Agency: Department of Law

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HJR 9

ANALYSIS CONTINUATION:

U.S. Supreme Court proceedings. Outside counsel would be needed to advise the state concerning preparation of the suit, requirements of federal and international jurisdiction, to provide liaison with the National Association of Attorneys General and the other states, and to represent the state in formal proceedings before the U.S. Supreme Court. At this early juncture we cannot determine what costs might be required. We caution, however, that the U.S. Supreme Court costs could eventually reach \$50,000 or more.

EXCERPTS FROM:

United States Senate
An Examination of U.S. Policy Toward POW/MIAs

By the U.S. Senate Committee on Foreign Relations Republican Staff
Thursday, May 23, 1991

(Part I; THE AEF AND WORLD WAR I):

August 20, 1921, a formal agreement between the Soviet Union and the United States, the "Riga Agreement," was concluded...Among the conditions for U.S. aid to the Soviets was....The United States expected the repatriation of approximately 20 U.S. citizens; but, in fact, more than 100 Americans were repatriated as a result of this agreement.

As Herbert Hoover wrote in his autobiography: The provision for release of American prisoners was suggested by Secretary Hughes, who informed me that the Department knew that there were about 20 of them. More than a hundred American prisoners in Russian dungeons were released on Sept 1, (1921).

Even so, reports continued to be received by the Department of State that more Americans were still held in Russia. The discrepancy between the official information in the hands of the U.S. government..20 Americans held, and the actual number of more than one hundred released..gave the U.S. Government its first taste of negotiating for Americans held against their will by Communists.

(World War II):

World War II was a great military victory for the United States Armed Forces. In both the European and the Pacific theaters, the enemy unconditionally surrendered. However, despite the total victory in Europe by Allied forces, thousands and thousands of U.S. soldiers..perhaps as many as 20,000..were never repatriated from prisoner of war (POW) camps, prisons and forced labor and concentration camps.

The daughter of one U.S. Army officer..Major Wirt Thompson..was never told that in 1955 a German POW repatriated from the Soviet concentration camp system reported to the United States Government that while he was in prison, he met her father. The German repatriate told American officials that Thompson told him that he had been imprisoned at Budenskaya prison near Moscow, and also in the Tayshet labor camp after World War II. Not only was Thompson's daughter "overwhelmed" when when she found out early in 1991 that this information existed, but she wondered how her family could have been told by the United States government in 1944 that Thompson had been killed in action, body not recovered.

(Korean War):

Unlike the result in World War II, Allied forces did not achieve a military victory in Korea. The Korean War ended at the negotiating table between Communist North Korean representatives and United Nations representatives. With regard to POW repatriation, the North Koreans initially demanded an "all-for-all" prisoner exchange. The United States was reluctant to agree to this formula based on its World War II experience with the Yalta agreement and mandatory repatriation, knowing that thousands of those forced to return to the Soviet Union were either shot or interned in slave labor camps, where most of them died. After two long years of negotiations, the North Koreans agreed to the principle of voluntary or "non-forcible" repatriation." This agreement stated that each side would release only those prisoners who wished to return to their respective countries.

Operation BIG SWITCH was the name given to the largest and final exchange of prisoners between the North Koreans and the U.N. forces, which occurred over a one-month period from August 5, 1953 to September 6, 1953. Chinese and North Korean POWs were returned to North Korea, and U.S. and other U.N. troops were returned to South Korea. Approximately 14,200 Communist Chinese POWs elected not to return to the Peoples Republic of China; while 21 American POWs elected to stay with the Communist forces, and likely went to China. These 21 Americans are defectors and obviously are not considered as repatriated U.S. POWs. However, U.S. government documents state that the U.S. government knew that nearly one thousand U.S. POWs..and an undetermined number of some 8,000 U.S. MIAs..were still held captive after Operation BIG SWITCH and were not repatriated at the end of the Korean War. These U.S. POWs were never repatriated. Three days after the start of operation BIG SWITCH, the New York Times reported that Gen. James A. Van Fleet, retired commander of the United States Eighth Army in Korea, estimated tonight that a large percentage of the 8,000 American soldiers listed as missing in Korea were still alive. A report by the U.N. Combined Command for Reconnaissance Activity, Korea, five days into operation BIG SWITCH, stated: "Figures show that the total number of MIAs, plus known captives, less those to be repatriated, leaves a balance of 9,000 unaccounted for."

(Vietnam War)

The war widely known as the Vietnam War was the second war fought by the Communist forces in Vietnam and in Southeast Asia. The Vietnamese forces, after defeating the French, fought the Second Indochina war against the United States and the U.S.-backed forces. In the final analysis, however, this war was a political and moral defeat for the United States.

As a result, the United States was forced at the Paris Peace Conference to negotiate its withdrawal from Southeast Asia from a military and political position. Internal divisions in the United States and mounting political pressure to extricate from the war, exacerbated this weak negotiating position. As a result, the United States, as in World War I, World War II, and the Korean War, found itself, once again, unable to guarantee the repatriation of all U.S. POWs and MIAs who were alive and held captive.

The United States' chief negotiator at the Paris Peace Conference, Henry Kissinger, admitted as much in his book, Years of Upheaval, published in 1982. Kissinger wrote: Equally frustrating were our discussions of the American soldiers and airmen who were prisoners of war or missing in action. We knew of at least eighty instances in which an American serviceman had been captured

alive and subsequently disappeared. The evidence consisted of either voice communications from the ground in advance of capture or photographs and names published by the Communists.

Operation HOMECOMING, the name given to the last repatriation of U.S. POWs by the North Vietnamese began February 12, 1973, and ended March 29, 1973. A grand total of 591 United States servicemen were repatriated.

However, news reports and other documentation stated that the United States Government knowingly left men..perhaps thousands of men..in the captivity of Communist forces in Southeast Asia.

On January 27, 1973, an agreement to end the war and restore peace in Vietnam was signed in Paris, France. Signatories to this agreement were the United States, North Vietnam, South Vietnam, and the South Vietnam Provisional Government(PRG). This agreement consisted of a preamble, and nine chapters, covering 23 Articles and four protocols. The Paris accord stated that the return of prisoners of war, would be carried out simultaneously with and completed not later than the same day as the troop withdrawal.

The United States did not receive the list of American POWs the whom the North Vietnamese admitted they were holding in captivity until after the peace accords were signed. Significantly, the list included only nine Americans captured in Laos. While these men were captured in Laos, they were not prisoners of the Pathet Lao, but were handed over to, and held by, the North Vietnamese after their capture. In fact, it was widely known that the Pathet Lao were holding many other U.S. POWs. On March 25, one news report stated: U.S. sources believe that a substantial number of the missing(in Laos)..perhaps as many as 100..still may be alive. These conclusions are based inspections of crash sites by search teams and on intelligence reports.

The absence of names on the U.S. POW list handed over by the North Vietnamese of Americans captured in Laos and held by the Pathet Lao was one of the great blunders of the Paris Peace Accord negotiations and caused great confusion and emotional duress among family members of missing and captured personnel.

The Department of Defense (DOD) has been gathering reports on live sightings of American prisoners since the United States became involved in the war in Southeast Asia. Live sighting reports are defined as first-hand eye-witness accounts of a person or persons whom the witness believes to be an American POW or American POWs seen in captivity in Southeast Asia. The DOD states that it has received in excess of 1,400 first-hand live-sighting reports since the end of the Second Indochina War(1955-1975).

104-11-1995 15:45 111 1111 11 77 19072225-45511 F.OI

United States Senate

WASHINGTON, DC 20510

January 24, 1995

The Honorable William J. Clinton
President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. President:

We are writing to request that you not open diplomatic liaison offices with the Socialist Republic of Vietnam (SRV) without first giving the Congress the opportunity to review the information on POWs and MIAs required within 45 days under Section 1034 of Public Law 103-337.

As you know, the Secretary of Defense is required under Section 1034 to provide us with a complete listing by name of all missing and otherwise unaccounted for U.S. personnel about whom it is possible that Vietnamese and Laotian officials can produce additional information or remains. This information was required by November 17, 1994. However, the Department of Defense subsequently requested an extension to February 17, 1995 to which we did not object. We now understand that there is a possibility the Department of Defense may not fully comply with this requirement by February 17th.

We are, therefore, concerned with Assistant Secretary of State Winston Lord's announcement on January 12, 1995 that U.S. and GRV diplomatic liaison offices in Hanoi and Washington would be opened "within a few weeks." While we are aware that an agreement on this matter was initialed in December between Vietnam and the United States, we trust that you will not allow this agreement to take effect without first fulfilling the straightforward requirement contained in Section 1034 of Public Law 103-337. We wish to emphasize that we would be extremely concerned if any level of diplomatic relations was established with Vietnam before the 104th Congress has had the opportunity to review the information required under Section 1034.

During the Congressional debate on lifting the trade embargo against Vietnam last year, there was sharp division on whether Vietnamese officials are being fully forthcoming on the POW/MIA issue (a 14 vote difference in the House on the Snowe amendment, and a 16 vote difference in the Senate on the Dole/Smith amendment). Since that time, we understand that Vietnamese

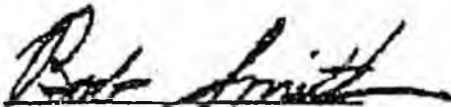
The Honorable William J. Clinton
January 24, 1995
page 2

officials have refused, as recently as last October, to further discuss U.S. concerns about relevant documents from Russian archives. We further understand that they have continued to withhold key politburo and Ministry of Defense records in Hanoi.

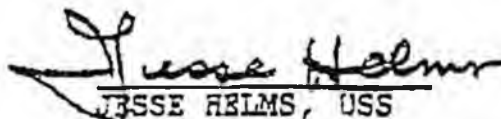
Finally, we have been made aware that a detailed account of POW/MIA information being withheld by Vietnamese officials was recently disclosed to the press by a former DIA contract agent. Given these revelations, we believe most members of the new 104th Congress would be concerned about the level of cooperation we are receiving from Vietnamese officials. We also believe that these disclosures, and the apparent Vietnamese unwillingness to provide key information, underscores the need for your Administration to fully comply with Section 1034 of Public Law 103-337 before proceeding on the diplomatic front with Vietnam.

We thank you for your assistance on this matter.

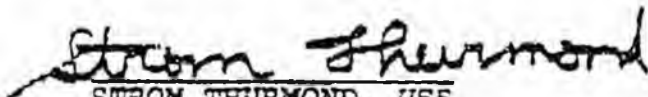
Sincerely,




BOB SMITH, USS
Member, Committee on
Armed Services



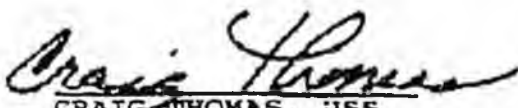
JESSE HELMS, USS
Chairman, Committee on
Foreign Relations



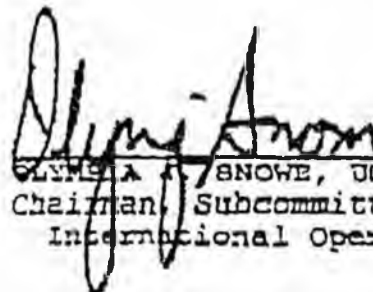
STROM THURMOND, USS
Chairman, Committee on
Armed Services



ARLEN SPECTER, USS
Chairman, Select Committee
on Intelligence

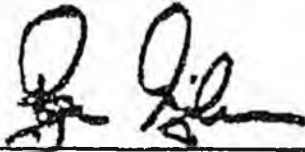


CRAIG THOMAS, USS
Chairman, Subcommittee on
East Asian and Pacific Affairs

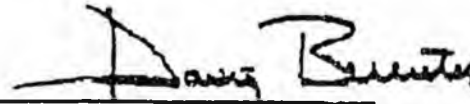


CLEMENT A. SNOWE, USS
Chairman, Subcommittee on
International Operations

The Honorable William J. Clinton
January 24, 1995
page 3



BENJAMIN A. GILMAN, MC
Chairman, Committee on
International Relations



DOUG BEREUTER, MC
Chairman, International
Relations Subcommittee on
Asia and the Pacific



ROBERT K. DORNAN
Chairman, National Security
Subcommittee on Military Personnel

United States Senate

WASHINGTON, DC 20510-2102


January 26, 1995

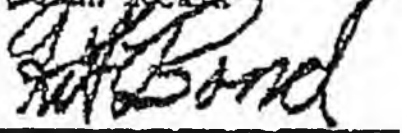
Dear Mr. President:


Last May the United States and Vietnam announced that liaison offices would be opened in Washington and Hanoi. We understand that these offices will be opened at the end of this week, with the signing in Hanoi of agreements on diplomatic properties, claims and frozen assets.


Since 1991 the United States and Vietnam have made much progress on the POW/MIA issue. Your decision in February 1994 to lift the trade embargo contributed to even greater cooperation on this issue. We believe that the opening of liaison offices will bring us closer to a resolution not only of the POW/MIA issue but also to other issues including human rights that stand in the way of normal relations between the United States and Vietnam.

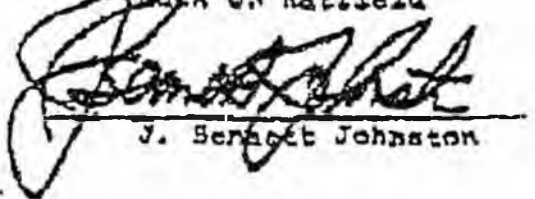
Sincerely,

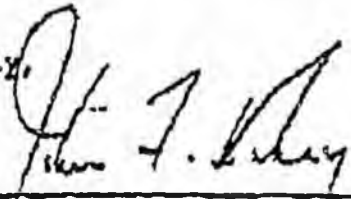

John McCain

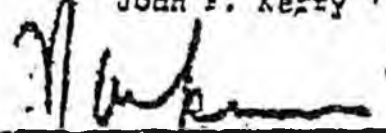

Christopher Bond

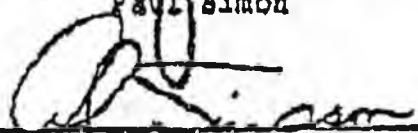

Chuck Robb



Mark O. Hatfield

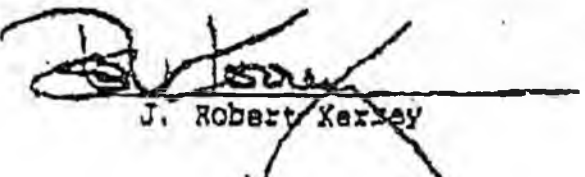

J. Bennett Johnston


John F. Kerry


Paul Simon


Alan K. Simpson


Frank H. Murkowski


J. Robert Kersey

The President
The White House

P.O.Box 3-2977
Fairbanks, Alaska 99703
26 February, 1996

The Honorable Jeannette James
Alaska State Legislature
State Capitol
Juneau, Alaska 99802-1132

Dear Mrs. James:

Thank you for sponsoring House Joint Resolution No. 9, in support of our Prisoners of War and Missing in Action from the war in Southeast Asia. So far, twelve states have already passed similar resolutions, and sixteen others have one under consideration.

As you know, the Interior Alaska Veterans Committee, with representatives from all the major veterans service organizations, is following the progress of HJR 9 with special interest, and several members have already communicated their support to the Legislature. The Committee will be tracking the Resolution through the House and Senate, and will keep advised of hearings through the Legislative Information Office. The records on our POW/MIA's must be opened, and the government's policy of abandonment for convenience must be changed.

There are several excellent references on POW/MIA's, particularly

"The Men We Left Behind", by Mark Sauter & Jim Sanders, National Press Books, 1993

"Moscow Bound", by John M.G. Brown (a former Alaskan), Veteran Press, 1993

"An Examination of U.S. Policy Toward POW/MIAs", by U.S. Senate Committee on Foreign Relations, Minority Staff, 1991

There are also several documentaries on video cassette; probably the best summary of the issue is "Americans Abandoned", by American Defense Institute, 1992. There should be a copy of it in Representative Therriault's office (from 1994 - HJR 51), or I could send you mine. It runs about 58 minutes, and is tentatively scheduled to air next month on KJNP.

In further support of HJR 9, copies of selected pages from the listed books are attached:

Moscow Bound

Pages 8 - 9: Origin of U.S. policy on American prisoners/hostages.

Pages 900-901: Excerpts from the "1205 Report".

26 February, 1995

The Men We Left Behind

Pages 326 - 327: Confirmation of Lt. Gen. Kwang's "1205 Report"
and related North Vietnamese policy considerations.

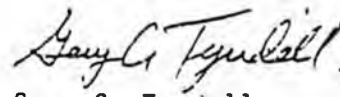
Pages 328 - 329: POW files shredded that had been requested by
U.S. Senate.

Page 330 : The crux of the issue, and hope.

Please let me know if you would like any additional information, and how
we in the Interior can help expedite approval of HJR 9.

Thank you.

Sincerely,



Gary C. Tyndall

Attachments: As stated

INTRODUCTION

**"YE SHALL KNOW THE TRUTH
AND THE TRUTH WILL MAKE YOU FREE"**

(Motto cut in stone at CIA Headquarters, Langley, Virginia)

It has long remained official US policy to refuse public payment of ransom to Communist nations holding American prisoners of war (POWs) or civilians as hostages. This policy evolved from Soviet conduct with U.S. POWs and missing in action (MIAs) of the 1918-1920 American Intervention in Russia, the Allied response to Lenin's withdrawal of Russia from WW I, after the 1917 Bolshevik Revolution. Subsequent Soviet actions in retaining thousands of missing U.S. POWs of WW II, Korea and Vietnam for intelligence purposes, and as forced-labor were dictated by Russian national interests in what became a death-struggle between Soviet Communism and western democratic Capitalism, led by the United States. This example was followed by subsequent Soviet-surrogate regimes in eastern Europe, Communist China, North Korea, Cuba, Vietnam and Laos. The announced ending of the Cold War may ultimately reveal the fate of many of these lost American POWs and could result in the return of survivors to the United States.

During the Revolutionary War of 1775 to 1783, American prisoners of war had been held in appalling conditions on British prison ships or in dungeons and many American POWs, denied the most basic necessities and care, died in British captivity. This contributed to the great bitterness felt in the newly-free nation towards British-American loyalists, who were subsequently mistreated and expelled from their communities in the 13 former colonies. During the American Civil War, from 1861-1865, both Union and Confederate prisoners of war were mistreated, starved and even murdered by their guards, but at the end of that war the survivors were released. As the victors, U.S. authorities subsequently conducted investigations of Confederate war crimes against Union prisoners of war, and carried out reprisal executions.

Official American policy toward military and civilian hostages seized by a foreign state, for use in diplomatic or monetary blackmail, may be said to descend from U.S. reaction to the Barbary pirates of North Africa illegally seizing American prisoners and hoarding of it. At first, from 1795 to 1801, large amounts of money were paid by the United States for protection against the pirates and as ransom, but under President Thomas Jefferson, the U.S. went to

war against Tripoli from 1801 to 1805, and subsequently against Algeria. After this, the seizing of American sailors on the high seas by Great Britain led to the War of 1812. These attitudes reflected more than two centuries of American experience at frontier Indian wars, conducted by descendents of European immigrants on the margins a vast continent, in which the often rude and unlettered settlers were actually outnumbered by the indigenous inhabitants and sometimes, as at the time of the 1675-1678 Narragansett, or King Phillip's War, were in danger of being driven into the sea by the natives. In one Indian war after another that followed, from the 1600's to the late 1800's, known American captives had been ransomed whenever possible, or tracked down and liberated by the regular army or volunteer citizen-scouts, if they could be found.

Subsequent experiences in America's minor foreign wars of the late 19th century, in Cuba and the Philippines, did not call for implementation of a different policy. The natural American reaction to public knowledge of U.S. prisoners being held hostage was expressed by President Theodore Roosevelt during the turn of the-century era when he quoted a West African proverb: "Speak softly and carry a big stick." Roosevelt believed in using the threat of American military force to carry out U.S. foreign policies. In it's youth and vigor as a new nation that had achieved world power status by the early 20th century, America had bypassed some hard-learned lessons which had resulted in the subtleties of European and Asian diplomacy regarding prisoners of war and hostages. These experiences extended back over two millenniums, from the time of the Persians, Greeks, Romans and Muslims, and Europe had since gone through other evolutions in the treatment of war prisoners from the Dark and Middle ages, through the Renaissance.

The Russian Revolution and subsequent Bolshevik triumph in the civil war resulted in a return to a bygone age in which all war prisoners became hostages, to be secretly held for future use. Since the time of Czar Ivan the Terrible, who created the Oprichnina political police in 1565, state-imposed terror had been a fact of life in Russia. Carrying a dog's head and broom, representing their authority to sweep away traitors, thousands of these agents, dressed in black and riding black horses, roamed Russia in the 1570's, administering death sentences under authority of the Czar. Secret confinement, torture and execution of suspects became commonplace in Russia. This traditional oppression of the landed peasants and city dwellers was continued by Czar Peter the Great and his Romanov successors up until the time of Nicholas II. Under the Communists after 1918, the state terror apparatus was enormously expanded to levels of persecution and mass-death never equaled, before or since, in human history. The American prisoners of war, from the fabled and far-away continent of emigrant dreams,

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thousands of files about American POWs and MIAs, which contained numerous refugee live-sighting reports of Americans in captivity long after the war, and years of hand-written notes and comments from investigators. The mass-shredding was conducted by Brigadier General Thomas Needham, commander of "Joint Task Force Full Accounting", a Navy Commander identified as Dale Hayes and an 'unidentified' CIA officer. The destruction of these documents made the task of analyzing which of the POWs and MIAs may have survived in captivity for years, more difficult, and appeared to be an effort to destroy critical evidence that could be used to prove criminal negligence on the part of DIA and JCRC analysts who had for decades been responsible for resolving the fate of over 2,500 missing American servicemen. It is noteworthy that the United States Ambassador to Thailand at this time was David Lambertson, who as a Deputy Assistant Secretary of State, six years before, had denied to the author in a meeting at the Department of State, that any evidence existed concerning American POWs who remained in Communist control after Operation Homecoming in 1973, or that any POW/MIAs had survived in captivity years after the war's end.

On April 9th, the Russian member of the US-Russian Commission on POWs, General Volkogonov, claimed that there was no evidence of any American prisoners of war alive in Russia, but Ambassador Malcolm Toon said that some Russians were hampering efforts to account for missing U.S. soldiers, and reported that he had given the Russians details on the shootdowns of ten U.S. aircraft. He was quoted by the press as saying: "We cannot understand why the Russian government cannot give definitive information about the shootdowns, or whether there were any survivors."⁹ The Clinton Administration announced on the same day that General John Vessey would travel to Hanoi again on a fact-finding mission, and that the President would make no decision on relaxing U.S. pressure on Vietnam until he felt convinced that Hanoi was actually cooperating on resolving the fate of American MIAs. It was reported that the International Monetary Fund would decide in late April whether to resume lending to Vietnam, a move supported by France, Germany and Japan.¹⁰ Meanwhile, American business interests, led by major oil companies, kept up pressure for normalization of relations with Vietnam's Communist government, irregardless of the fate of U.S. prisoners. At this point a major story on the missing Americans again brought the issue to national prominence.

The New York Times published a report on April 12th, revealing that a top-secret report on U.S. POWs, written by General Tran Van Quang, Deputy Chief of Staff of the North Vietnamese Army, on September 12, 1972 had been uncovered in the archives of the Soviet Communist party in Moscow, which stated that there were:

" 1,205 AMERICAN PRISONERS OF WAR LOCATED IN THE PRISONS

OF NORTH VIETNAM. THIS IS A BIG NUMBER. OFFICIALLY, UNTIL NOW, WE PUBLISHED A LIST OF ONLY 368 PRISONERS OF WAR, THE REST WE HAVE NOT REVEALED. THE GOVERNMENT OF THE U.S.A KNOWS THIS WELL, BUT IT DOES NOT KNOW THE EXACT NUMBER OF PRISONERS OF WAR, AND CAN ONLY MAKE GUESSES BASED ON ITS LOSSES. THAT IS WHY WE ARE KEEPING THE NUMBER OF PRISONERS OF WAR SECRET, IN ACCORDANCE WITH THE POLITBURO'S INSTRUCTIONS." The U.S. POWs were held in 11 North Vietnamese prisons in the fall of 1972 before the Paris peace agreement was signed. Since more Americans were captured between September 1972 and February 1973 and a total of 591 American POWs were released, the figures indicated that some 700 American POWs were secretly withheld by Hanoi after Operation Homecoming in 1973. (This number closely conforms to the author's estimates for two U.S. Senate investigations of 1990-1993, based on the research for this book. It would not include those Americans already transported to the USSR (or China) from 1965- September 1972, and would not necessarily include all those held in Laos, South Vietnam or Cambodia at that time.)

Consisting of both a Russian translation of Tran Van Quang's report marked "top secret" in Russian, and a summary of it by the Soviet Army Intelligence, the document was found in February 1993 by Stephen J. Morris, an Australian researcher for the Harvard Center for International Affairs and the Russian Research Center at Harvard University, who stated he had first showed it to senior White House officials of the Clinton Administration in February. According to the New York Times, copies of it were subsequently circulated among U.S. Government officials, and on the first page of the summary are handwritten instructions for a 'brief note...on the prisoners of war,' to be sent to the Soviet Politburo. The newspaper reported that General Quang said in the report that the American POWs could only be freed as part of an overall peace settlement, and they could be "used as leverage to obtain compensation for the devastation caused by the war." Members of the U.S. Russian Commission on POWs said that the document was authentic and some experts were quoted by the newspaper as calling it a "smoking gun." The Russian newspaper Izvestia had reported on April 10th that the document on the U.S. POWs and other recently declassified files had been a topic of a closed meeting of the Commission.

The New York Times said that a report on the Soviet document was provided to President Clinton just before the Vancouver summit with Boris Yeltsin, and quoted an unnamed Clinton Administration official saying of the report of the document, 'We are pursuing it very seriously but are not in a position to evaluate it.' The spokesman said that the researcher had informed the Government of the discovery but 'he would not give us the document,' that former Ambassador Malcolm Toon had been requested to follow up on the

And Le Dinh had told the DIA in early 1980 that about 700 Americans continued to be held hostage after Homecoming. DIA admitted Le Dinh had "access to PW/MIA information within this ministry [North Vietnam's Ministry of Defense]." DIA also knew the report out of the Soviet archive closely correlated to Le Dinh's debriefing.

The Le Dinh and Russian reports agree on the number and location of Americans not repatriated. The Russian report indicates more than 600 extra POWs were being held on September 15, 1972. Counting those Americans lost after that date, the number matches the Le Dinh figure of 'about 700' U.S. prisoners captured but not repatriated at the end of the war. In addition, both Le Dinh and the Russian document indicate there are more Vietnamese POW camps than known by the U.S. Le Dinh said there were 12 Vietnamese POW camps by the end of the war, with the Russian document putting the number at 11.

Most importantly, Le Dinh and the Russian document agreed on the motives behind Hanoi's POW policy. One Pentagon POW expert told the authors that the Soviet report alone cannot prove the number of Americans retained by Hanoi. But it does appear to be conclusive evidence of Hanoi's policy of secretly retaining U.S. POWs. This is the critical message of the Soviet document.

Le Dinh and the Russian report agree on the following policy issues:

- The categorization of American POWs. Both the Russian and Le Dinh reports say Americans were placed into various categories, with one of them being "progressives," or those who accepted communism and/or Vietnam's views on the war. Both sources imply the Vietnamese had a plan to withhold POWs from wealthy families. Le Dinh called them "the sons of rich families," and the Russian document referred to them as the "products of rich families."
- Both reports agree on the Vietnamese motive for retaining American POWs. The Russian document quotes the Vietnamese as saying they would hold U.S. POWs for political "concessions" and to obtain U.S. war reparations. According to the Russian report, the Vietnamese general wrote:

"Nixon must compensate North Vietnam for the great damage inflicted on it by this destructive war."

- According to the Le Dinh report, he said "the SRV (Vietnam) retained a 'strategic asset' of over 700 American prisoners that could be used to force the U.S. to pay reparations."

A close reading of the general's documents indicates that two North Vietnamese Politburo decisions made in March and April 1972 caused dissention within the Communist Party. "Both of these [Politburo] decisions touch on the questions of exploiting these American POWs captured in time of war. This disturbs the public opinion of the whole world and the USA. There are various thoughts on the question of American POWs . . . but even among us there is a group of comrades whose opinions differ from the opinion of the Politburo."

The Politburo had decided to use American POWs as a counter-balance to the vastly superior U.S. military and industrial power—in other words, as hostages to manipulate the Nixon Administration. This decision was apparently questioned or actively opposed by elements within Hanoi's ruling elite who were strong enough to make the Politburo defend its decision.

The general's report was a clear message to the dissenters to get in line with the Politburo decision:

... The question of American POWs has great significance for the resolution of the South Vietnamese problem. . . . We intend to resolve the question of American POWs in the following manner: 1. The government of the USA must demonstrate concessions, in other words, a cease fire and the removal [of] Nguyen Van Thieu, and then both sides can begin discussing the question of repatriating POWs to the Nixon government. 2. . . . we can free some more pilots from the number who are progressively inclined. Nixon should not hinder the return of these pilots to their homeland and not undertake any disciplinary measures toward them. 3. Nixon must compensate North Vietnam for the great damage inflicted on it by this destructive war. . . . If we take a path of concession toward Americans and liberate POWs we would be at a great loss.

Lieutenant General Tran Van Quang in this report accurately outlined the strategy that was followed by the North Vietnamese. Within a week of the report's appearance, three American pilots were released, and the North Vietnamese did warn the U.S. not to take "any disciplinary measures toward them." And they did demand reparations—as we have shown, it had in fact been an essential part of their negotiating posture since 1968.

But North Vietnam would concede their number one point at the bargaining table that same month—the removal of South Vietnam's President Thieu. This made even more important the use of American POW hostages as leverage in the final negotiating stages and the implementation of the Paris Agreement.

The United States was forced to place \$3.25 billion on the table in advance of any POW release just to get the repatriations started—but the North Vietnamese held back the majority of the POWs to ensure the actual delivery of promised "reconstruction" aid. As we have seen, however, the money wasn't delivered and the hostages were not returned.

As of this writing, there is still not enough evidence in to make a final determination about the accuracy of the Soviet document. But one thing can be said for sure: the DIA is not telling the truth when it says the report's numbers are totally inconsistent with the facts.

In reality, the reports give numbers that closely match the number of POW/MIAs that many Pentagon experts believed Hanoi possessed during the war.

A former Director of the DIA, retired Lieutenant General Eugene F. Tighe, recently said what the DIA already knew: "We had a list [of POWs in 1973] that was really significantly larger than those who came back . . . we had been expecting a lot more people. It was terribly shocking. Finally, we are getting proof of what we said—the numbers [in the Soviet report] don't surprise me at all."

The Shredding Party

Perhaps it was just a coincidence. But soon after the DIA found out about the Soviet POW report, Pentagon POW/MIA officials quietly ran thousands of POW files through a refrigerator-sized shredder at the U.S. Embassy in Bangkok, the military later admitted. By the time the U.S. Ambassador to Thailand learned of the shredding, which took place during March 25 through 27,

1993, it was too late. The original files of the Joint Casualty Resolution Center, the agency which looked for U.S. POWs during the war, were gone.

Major General Thomas Needham, Commander of Hawaii's Joint Task Force Full Accounting, reportedly claimed the shredding was simply a "consolidation" of records. But POW experts said otherwise.

While copies of the shredded reports themselves existed elsewhere, the hand-written notes and additions to the files in Thailand were irreplaceable. "They were basically informational notes and memoranda—the meat of actual investigations," retired Major George Petrie was quoted as saying. The major, a former POW investigator, said the DoD may have destroyed the original files to "simplify case files as much as possible, declare them [the POWs] dead and move on."¹³

Senator Bob Smith complained about the shredding, which apparently involved files the Senate POW committee had requested but never received. So the Pentagon was forced to initiate an "investigation," conducted by none other than the office of the Commander-in-Chief, Pacific Command, an office closely tied to the fortunes of Joint Task Force Full Accounting.

While POW activists hoped for a fair investigation, it didn't really matter. Documents requested by the Senate, and by the authors of this book, and by many POW family members—documents that hundreds of American citizens would gladly have removed from the government's hands if there had been a need to "consolidate" them for reasons of saving space—had been shredded. And there was really nothing anyone could do about it.

Government shredding = 11/3/10

issue. And bringing the boys home from Vietnam might help him deal with the fact that he never went to war there.

Clinton certainly claims commitment to the issue. In a prepared statement released April 2, 1993 he said:

I truly believe that the power of the Presidency could resolve this issue. As the Chief Executive Officer of all federal agencies, the President should not just state that the resolution of this issue is a "national priority"; he should make it the national priority, and direct that all agencies to cooperate and resolve it [sic]. Before I would normalize relations or provide assistance to any of the countries [sic] involved, they would be required to open their files and actively assist in solving this issue. I firmly believe that America should never leave its warriors on the battlefield. This is not a political issue; it is a moral test of those values and traits that made America great.

But there are certainly plenty of people in the bureaucracy urging the President to stick with the status quo. There are certainly many reasons to avoid pushing the POW issue. And making the return of America's POWs truly the "highest national priority" wouldn't be easy.

"See, that's not the issue," Perot said. "The issue is they're our men, they went into combat for us, we left them, we owe it to them to bring them home. It won't look pretty back here, but we can build a consensus here that it's the right thing to do."²

Perhaps. But many who know the POW issue best have lost faith that the U.S. government will ever willingly do what is needed to bring the prisoners home.

With no faith left in their government, many POW/MIA family members and activists have belief only in a justice far beyond the petty political concerns of Washington, D.C.

They place their faith in a promise much stronger than the long-abandoned pledges of successive Presidents. They rely on the words of *Jeremiah 31: 16-17*:

Thus saith the Lord: Refrain thy voice from weeping, and thine eyes from tears; for thy work shall be rewarded, saith the Lord: and they shall come again from the land of the enemy; and there is hope in thine end, saith the Lord, that thy children shall come again to their own border.

Endnotes

Chapter 1

- 1) Nov. 23, 1979, memo for the Chairman, U.S. Library of Congress POW/MIA Memorandum Line 55. Hereafter referred to as "line."
- 2) *Ibid*
- 3) Garwood deposition to the Senate Select Committee on POW/MIA Affairs. Hereafter referred to as "Garwood deposition." All information concerning Garwood is from the deposition unless otherwise noted.
- 4) Pentagon's "Uncorrelated Information Relating to Missing Americans in South-east Asia" Volume 15, page 434. Hereafter referred to only by volume, (vol.), and page, (p.), numbers.
- 5) Vol 15, p. 434
- 6) Vol 7, pp. 311-313
- 7) June 30, 1975, speech as quoted in *National Review*, Aug. 21, 1981
- 8) Jan. 1969 memo RM 5729-1-ARPA "Prisoners of War in Indochina"
- 9) Jan. 9, 1990, DIA Memo "Possible American Stay-Behinds in Vietnam"
- 10) *New York Times*, March 25, 1993, p. A 4
- 11) Oct. 25, 1988, Pentagon intelligence report HR 6 024 006 89

Chapter 2

- 1) 15 April, 1976 State Department telegram, "Subject: Information on French POWs"
- 2) See 20 times. 8 April 1976 State telegram "Subject: Repatriation of French Remains from North Vietnam and Information on French POWs." Also 4 March 1976 State Department telegram "Subject: Repatriation of French Remains from North Vietnam"
- 3) Jan. 1969 Rand memo RM 5729-1-ARPA "Prisoners of War in Indochina" by Anita Louise Nutt, and statement of Anita Louise in House Select Committee on Missing Persons in SEA, 7 April 1976 as reported in "Americans in Southeast Asia: The POW/MIA Issue" William Honolka, New World Books, NY, 1986
- 4) *Newswatch*, Jan. 4, 1985, p. 24
- 5) May 19, 1976 Department of State telegram, "Subject: More Information on French POW/MIA"
- 6) Vol. 10, p. 250
- 7) 5 June 1971 State Department telegram, "Subject: Repatriation of French PW in 1951"
- 8) 24 February 1972 DIA memo, "Subject: Debrief of Moroccan Personnel Recently Returned from North Vietnam"
- 9) 25 March 1983 State Department telegram, "Subject: POW/MIA Affairs/Former French Servicemen" 8 April 1983 State Department telegram "Subject: POW/MIA Affairs/Former French Servicemen"
- 10) From files of Tracy Hays
- 11) 22 April 1981 State Dept. telegram "Subject: POW/MIA Affairs: Report of Possible Americans in Vietnam"

Chapter 3

- 1) "Treatment and Induction of U.S. Prisoners Held by the Viet Minh" November 1951 USAI Technical Memorandum OERI-TM-54-1
- 2) Undated INSCOM record, from FOIA
- 3) June 17 1955 Pentagon record from the Defense Advisory Committee on Prisoners of War "Recovery of Unrepatriated Prisoners of War"
- 4) *Ibid*
- 5) Gutterman remembers the title "On Limited War." In Kissinger's 1957 book *Nuclear Weapons and Foreign Policy*, Chapter 5 is entitled "What Price Difference? The Problems of Limited War." This appears to be the declassified version of the paper Gutterman remembers.
- 6) Henry Kissinger, *Nuclear Weapons and Foreign Policy* (New York, 1957). Southeast Asia, Indochina, and North Vietnam were all mentioned as potential points of conflict.

Chapter 4

- 1) Vol 7, p. 361
- 2) As quoted by Bobby Garwood
- 3) As quoted by a Top Secret Soviet document (Dec. 1, 1972, Top Secret Report for the Central Committee of the Communist Party of the Soviet Union. Hereafter the "Dec. 1, 1972, Soviet Report")
- 4) *Ibid*
- 5) *Ibid*
- 6) Uncorrelated info. Vol 7, page 331
- 7) HR 317/09165 78

Chapter 5

- 1) June 24-25 1992 hearings of the Senate Select Committee on POW/MIA Affairs