

Report of the

U.S. Senate Select Committee on

POW/MIA Affairs

January 25, 1993

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Acknowledgments

In acknowledging those who have contributed to the Senate's investigation, we owe a special thanks to the professional staff who have helped us examine tens of thousands of documents, interview hundreds of sources, depose nearly 200 witnesses, prepare for public hearings, and provide the advocacy on both sides of the POW/MIA issue that has been lacking in other examinations of this matter. Their work represents more than a commitment to the job; it is an abiding commitment to the POW/MIA issue.

The Committee selected its non-partisan staff based on their investigative skills, and based on their abilities to argue opposing sides of the central arguments: Were Americans left behind? Are any alive today? What more can be done to find answers about their fate? Their work has been tremendous, but it is their insights that we value in particular because they have helped us sort through the myriad of issues by giving us the strongest arguments on every side of the issues.

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Bill Woodward - The Chairman's designee deserves special credit for eloquently expressing the complex issues surrounding POW/MIA questions. His work late into the nights, at times with failing computers, gave voice to our conclusions; throughout the year, his insight into the broader issues helped the Committee in its work.

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TABLE OF CONTENTS

	<u>Page</u>
Acknowledgments	1
Executive Summary	3
Dedication	
To POWs	
To the Families	
To those who Remembered	
The Committee's Purpose	
The Committee's Methods and Approach	
Summary of Findings and Recommendations	
Americans "Last Known Alive" in Southeast Asia	
Investigation of Issues Related to Paris Peace Accords	
Obstacles Faced by U.S. Negotiators	
American Protests	
Post-Homecoming	
Conclusions	
Investigation of the Accounting Process	
Investigation of Intelligence Activities	
Overall Intelligence Community Support	
The Role of the Defense Intelligence Agency	
Criticisms of DIA Operations	
Live-Sighting Reports	
DIA Assessment	
Committee View	
The Role of the National Security Agency	
Pilot Distress Symbols	
Covert Operations	
Intelligence Support in Laos During the War	
Cooperation from Governments in Southeast Asia	
Vietnam	
Laos	
Cambodia	
Government Policies and Actions	
Declassification	
Inter-Agency Group	
Government-to-Government Offers	
Review of Private Activities	
Information from Russia and Eastern Europe	
Gen. Volkogonov's Assessment	
World War II	
Cold War	
Korean Conflict	
Vietnam War	
Information from North Korea and China	
Families	

Conclusion

Chapter 1 : Introduction

55

- Creation of the Senate Select Committee
- The Committee's Mission
 - De-Mystifying the Process
 - Accountability and Response
 - Building a Public Record
 - The Investigation
 - Cooperation by Southeast Asian Governments
 - Vietnam
 - Laos
 - Cambodia
 - Previous Wars
 - Previous Investigations
 - The Montgomery Committee
 - The Woodcock Commission
 - Live-Sighting Reports
 - Internal DIA Inquiries
 - Reagan Inter-Agency Group
 - Challenge for the Senate Select Committee
- Baseline Hearings, November 1991

Chapter 2 : The Paris Peace Accords

73

- Key Questions and Key Issues
 - Obstacles to Resolution
 - Purpose
 - Investigative Approach
- Background
 - Outline of the Negotiations
 - Public Sessions
 - Secret Talks
 - The Issue of Prisoners
 - Timing of POW Release
 - Exchange of Lists
 - Linkage to Release of Civilian Prisoners
 - Application to Prisoners Captured Outside Vietnam
 - The Issue of U.S. Aid
 - The Agreement
- Implementation of the Accords: The First 60 Days
 - General Expectations
 - Expectations about Laos
 - Pathet Lao Statements
 - DIA Background Paper - 1992
 - January 27, 1973: The Lists are Exchanged
 - U.S. Reaction: Disappointment and Dismay
 - U.S. Protests

- Reactions to DRV/Laos List
 - Nixon's Cable to Pham Van Dong
- Kissinger's February 1973 Visit to Hanoi
 - Discrepancy Cases
- Enforcing the Indochina Understanding
 - The Laos Cease-fire Agreement
 - The Problems Gets Worse
 - U.S. Intelligence Assessment
 - Admiral Moorer's March 22 Cable
 - Ambassador Godley's March 22 Cable
 - Admiral Moorer's March 23 Cable
 - Summary
 - Homecoming Complete, Laos Unresolved

- Post Homecoming
 - Presidential Statements
 - The Clements/Shields Meeting
 - The Nixon/Shields Meeting
 - Shields' Press Conference
 - Shields Memo to Ambassador Hill
 - Effect of Administration's Statements

- Kissinger-Le Duc Tho Meetings, May-June 1973
- Status Change Policy
- Phase-Out of POW/MIA Task Force
- Joint Economic Commission
- Four-Party Joint Military Team
- Efforts to Gain an Accounting in Laos

Discussion

- Orchestrated Confusion: The DRV and Pathet Lao
- What Could the Administration Have Done?
 - Diplomatic Efforts
 - Military Options
 - Restraints on Use of Force
 - Balancing Concerns
- Congress
- Watergate

- Pro and Con: Were POWs Left Behind?
 - Indications that Americans May Have Been Left Behind
 - Witness Assessments
 - Laos: Complicating Factors

- Questions of Continued Links Between U.S. Aid and POW/MIAs

Conclusions

Chapter 3 : Accounting for Missing Servicemen

158

- Overview
 - Records Search
 - Civilian Accounting: Department of State

Civilian Accounting: Central Intelligence Agency
Deserters

War-Time Accounting

- The Process
- Early Losses
- DIA's Involvement
- Cross-Border Operations
- Databases and Accounting Terms
- Casualty Status Determinations
- War-Time Lists
- The Sullivan Report
- Preparations for Repatriation
- Operation Homecoming Accounting
 - POW Numbers
 - Information from Debriefings

Post-Homecoming Accountability: April 1973-April 1975

- Live Americans
- Status Reviews
- Shifts in Intelligence Priorities
- Disposition of Records

Post-War Accountability: April 1975 - Present

- Accounting Efforts
- Carter Administration Policies
- Reagan Administration Efforts
- Redefining "Unaccounted For"
- Laos: the DIA View
- Discrepancy Cases
- The Vice Chairman's List

Criticisms of U.S. Government Accounting
Committee Findings

Chapter 4 : Intelligence

207

Overview

- Intelligence and Intelligence Analysis
- Investigating the Intelligence Agencies' Performance
- Intelligence Community Support of the POW Effort
- Priority
 - Analytical Priorities

Central Intelligence Agency Actions

- Management Actions
- Collection and Special Operations After Homecoming
- CIA Primacy in Laos and Information-Sharing
- Analysis or Lack of It
- Current Role

The Role of the Defense Intelligence Agency
Background

DIA's Management Issues
DIA Internal criticisms
Discussion

Live-Sighting Reports

- Background
- Current Operations
- Committee Investigation
 - Cluster Analysis Methodology
 - Review of Files and DIA Source Evaluations
 - Key Events in the Investigation
 - Other Analyses
 - Source analysis versus content analysis
- Minority View
- Majority View
- DIA View

Analysis of Clusters

- Hanoi Ministry of Defense (Vietnam)
- Viengxay (Laos)
- Son La Area (Vietnam)
- Oudomsai (Laos)
- Summary
- Other Live-Sighting Reports
- Current Status of Live-Sighting Investigations
 - Example: Pleiku, November 1992
- Discussion

Pilot Distress Symbols

- Background
- Military Escape & Evasion Program
- Investigation Procedures
- Possible POW Signals
- Intelligence Community Assessment
 - JSSA Findings
 - Intelligence Community Search for Evader Symbols
 - DIA Investigation
 - "1973 TH" Symbol
 - "USA and Possible K" Symbol
 - Changing DIA Analysis
 - Committee Imagery Analysis
 - Independent Consultants

Discussion
Recommendations

Covert Operations

- Investigative Procedures
- Discussion
- Private Operations With Official Support

The Role of the National Security Agency

- Background
- NSA's Responsibilities

SIGINT and DIA Case Files
 Post-1973 Reports of Intercepts on Possible POWs
 An NSA Analyst's View
 NSA and Baron 52
 Intelligence Support in Laos
 Other NSA Sources

Chapter 5 : Government Policies and Actions

287

Presidents Nixon, Ford, Carter and Reagan

Declassification

Overview
 Existing Law: Executive Order 1236
 Prior Disclosure Efforts
 Senate Joint Resolution 125
 Committee Task Force
 Senate Resolution 400
 Members' Letter to President Bush
 Senate Resolution 324
 Executive Order 12812
 Central Documentation Office
 Discussion
 Summary

Public Awareness Campaign

Nixon Administration
 Laird Initiative
 Search for Allies
 H. Ross Perot
 POW Bracelets
 Son Tay Raid

Operation Homecoming

POWs' View
 Debriefings
 Debriefing Results
 Life in Captivity
 The Prison System
 Information about Unaccounted-for Servicemen

Other Indications

Were Specialists Kept Behind?
 Possibility of POWs Outside Returnees' Knowledge
 Mulligan

Sponeyberger and Wilson
 Col. Donald "Digger" Odell

DIA Assessment

Committee Review of Debriefing Reports
 Discussion

Inter-Agency Group

History of IAGs
 Creation of the IAG on POW/MIA Affairs

Public Accountability
 Current IAG Practices
 Policies Affected by the IAG
 The League's Influence Over Government Policy
 Discussion of the League's Role
 Discussion

Government-to-Government Offers

The 1981 Alleged Offer
 ASEAN Country

Remains Recovery Efforts

Recoverable Remains
 Vessey "Sensibility Check"
 Warehousing Remains
 Vietnamese Amnesty Program
 Excavations
 Current Operations
 Future Plans

Remains Repatriation Efforts

GAO's Investigation of CIL-HI
 GAO Findings
 Outside Experts' Findings
 On-Going Work at CIL-HI
 Discussion

Conclusions: Conspiracy Theory and Other Myths

Conspiracy Theory
 Myths
 Island of Syphilitic Souls Theory
 Systematic Lie Theory
 "Black Ops" Theory
 "Crazies and Amputees" Theory

Chapter 6 : Private Efforts

377

Overview

Public Awareness Campaigns
 Reconnaissance/Rescue Missions
 Photographs
 Fundraising

Public-Private Alliances

Lao Resistance
 Questions about U.S. Gov't Involvement with
 Private Efforts to fund Lao Resistance
 Other Efforts Related to Lao Resistance Forces

Recent Reconnaissance and Rescue Missions

Team Falcon
 1988 Mission to Southeast Asia
 James "Bo" Gritz

Dissemination of Unreliable Information
Col. Jack Bailey
Col. Albert Shinkle
Khambang Sibounheuang

Photographs
The Rowley Photo
The Borah Photo
The Carr Photo
The Robertson-Stevens-Lundy Photo

Dog Tag Reports
Discussion

Reward Offers

Fundraising
Amounts Raised
Professional Fundraising Techniques
Operation Rescue, Inc.
Skyhook II
Veterans of the Vietnam War, Inc.
DIA's Analysis of the Fundraising Solicitations
Use of Proceeds: Fundraising vs. Program Expenses
Disclosure of Fundraising Expenses

Other POW/MIA Groups
BRAVO
Georgia Committee for POW/MIA, Inc.
The Lima (Ohio) Area MIA-POW
MN League of Families/MN Won't Forget POW/MIA
POW Network
Prisoner of War Committee of Michigan
Red River Valley Fighter Pilots Association

Discussion

Chapter 7 : Families

431

Missing a Loved One
Families' Views and Experience
Families' Central Role in Committee's Work
The Search for Answers

U.S. Government Actions During the War
War-Time Secrecy
Secrecy's Effects
Mis-Reporting
When Evidence Suggested Death
When Evidence Pointed to Life
Public Relations Campaign

Post-War Government Policies
Presumed Findings of Death
Changing Definitions
Live-Sighting Reports
Repatriation of Remains
Casualty Officers

Families Turn Elsewhere for Help
National League of Families
National Alliance of Families
Fellow Combat Veterans
Private Groups

Discussion
Recommendations

Chapter 8 : Gauging Cooperation of Governments in Southeast Asia

464

Vietnam
From Operation Homecoming Until 1982
Reagan Administration Initiatives (1982-1987)
General Vessey's Contributions (1987-1991)
1991: The Pace of Activity Quickens
1992: Administration and Committee Efforts
to Encourage Cooperation
April 1992: Select Committee Delegation
Meetings in Hanoi
"Breakthrough" Guarantees
Inspection of Thanh Liet Prison
HCM, Da Nang and Mekong Delta Visits
Recent Developments
Committee Hearings
December 1992: Kerry-Smith Trip

Laos

Cambodia

Chapter 9 : Information from Russia, North Korea and China

494

The U.S.-Russia Joint Commission
Task Force Russia
Investigation in Progress

Committee Hearings
Volkogonov Testimony
Volkogonov's Dec. 17, 1992 Letter

U.S. POWs and Korea
Official Assessments
Assessment of Committee Investigator

- RAND Project / Cole Testimony
- Volkogonov Testimony
- Corso Testimony
- Simpson Testimony
- Kiba Testimony
- State Department Testimony
- Dumas Testimony
- Oprica Testimony
- U.S. POWs and World War II
 - RAND Project / Cole Testimony
 - Sanders, Sauter and Brown
- Cold War Incidents
 - Joint Staff Report
 - Defense Department View
 - Joint Commission Visit to Ukraine
 - RAND Project / Cole Testimony
 - Family Members and Task Force Russia
- Vietnam War
 - Defense Department Testimony
 - Assessment of Committee Investigator
 - Bui Tin Testimony
 - Other Reports
 - Mooney Testimony
- Activities in Moscow
 - Joint U.S.-Russia Commission
 - U.S. Delegation
 - Russian Delegation
 - Plenary Meetings
 - December 1992 Meeting
 - Task Force Russia
 - Organization and Mission
 - Personnel
 - Mission
 - Objectives
 - Russian Joint Office
 - Joint Interview Program
 - Interviews with Russian Officials
 - Interviews with Russian Citizens
 - Retired Military Officers
 - Walk-Ins
 - Write-Ins
 - Call-Ins
 - Summary of Requests to Russians
 - Correspondence Files
 - Archives
 - Structure of Archives
 - Visits to Archives
 - Archival Research Agreements
 - Documents Requested
 - World War II

- Korean War
- Cold War
- Vietnam War
- Documents Received
- Assessment of Archival Research
- POW/MIA Family Member Efforts in Russia
- Repatriation of U.S. Citizens Buried in Russia
- Mutual Cooperation
 - Russian Inquiries on Afghanistan Veterans
 - Soviet Submarine Incident
- The Case of "David Markin"

- Future Actions
 - Levels of Cooperation
 - Trips and Visits
 - Planned Interviews
 - Follow-Up Action Leads
 - Investigation of Individual Leads

- Conclusions
 - Russian Involvement with U.S. POWs
 - Recommendation on Joint Commission
 - Information from North Korea and China
 - Findings and Recommendations

Chapter 10 : Conclusions and a Look Ahead

557

- Russia
- Vietnam, Laos and Cambodia
- China and North Korea
- Defense Department
- Justice Department
- Watergate Tapes
- Progress on Declassification
- Information About the Committee

Annex: Committee Members' Floor Statements

562

Appendices

Volume 2

- Appendix 1 : Chronology
- Appendix 2 : Individual POW, MIA, and KIA-BNR Cases
 - 135 Discrepancy Cases
 - Sen. Smith List of 324

- Appendix 3 : Prior Investigations
- Appendix 4 : Witnesses
- Appendix 5 : Excerpts from Selected Documents
- Appendix 6 : Selected Excerpts from Hearing Testimony

Executive Summary

EXECUTIVE SUMMARY

Dedication

To POWs

This report begins with three tributes, the first to those Americans who have been imprisoned in any war. Each person who has worn the uniform and fought the battle understands the nature of sacrifice. And there is a sense in which anyone caught in a firefight, flying through flak, patrolling the jungle while sensing ambush or working desperately to perform triage in a make-shift hospital, is a prisoner of war. But we owe a special debt of respect and gratitude to those who were captured and yet still kept faith, even while deprived of their freedom, victimized by brutal tortures, and forced to battle not only their captors, but the temptation to yield to self-pity and despair.

In the words of former POW, Admiral James Stockdale:

Young Americans in Hanoi learned fast. They made no deals. (In the end) the prisoner learns he can't be hurt and he can't be had as long as he tells the truth and clings to that forgiving hand of the brothers who are becoming his country, his family...

What does it all come down to? It does not come down to coping or supplication or hatred or strength beyond the grasp of any normal person. It comes down to comradeship, and it comes down to pride, dignity, an enduring sense of self-worth and to that enigmatic mixture of conscience and egoism called personal honor.¹

To The Families

America's POWs and servicemen have met the test of personal honor, and so have the families of those still missing from past American wars. For these families, the wounds of conflict have been especially slow to heal. For them, there have been no joyous reunions, nor even the solace of certainty ratified by a flag-draped casket and the solemn sound of taps. There has been no grave to visit and often no peace from gnawing doubt. For them, there has been only the search for answers through years when they did not have active and visible support from their own government to the present day when our ability to get real answers has finally been enhanced. Their search for answers is truly understandable because to them, POW/MIA is not merely an issue or a symbolic figure on a black and white flag, it is a brother, a husband, a father or a

¹ "Perot's Veep: From Hanoi to the Debate", Wall Street Journal, Oct. 13, 1992

son. These families, too, deserve our nation's gratitude and to them, as to their loved ones, we pay tribute.

To Those Who Remembered

We salute, as well, the veterans and responsible activist groups who have never stopped pushing for answers. These are the people who fought against the forgetting; who persisted in their questioning; and whose concerns led directly to the creation of the Select Committee. The Committee's investigation has validated their efforts, for they had good reason to argue that the full story was not being told, to suggest that there was more to learn and to insist that a renewed focus on the issue would produce greater pressure and yield new results.

It is to these Americans, therefore, to the POWs who returned and to all those who did not, to the families and veterans who kept the memory alive, that we pay tribute, and to whom we have dedicated the work of this Committee, including this final report.

The Committee's Purpose

The most basic principle of personal honor in America's armed forces is never willingly to leave a fellow serviceman behind. The black granite wall on the Mall in Washington is filled with the names of those who died in the effort to save their comrades in arms. That bond of loyalty and obligation which spurred so many soldiers to sacrifice themselves is mirrored by the obligation owed to every soldier by our nation, in whose name those sacrifices were made.

Amidst the uncertainties of war, every soldier is entitled to one certainty--that he will not be forgotten. As former POW Eugene "Red" McDaniel put it, as an American asked to serve:

I was prepared to fight, to be wounded, to be captured, and even prepared to die, but I was not prepared to be abandoned.

The Senate Select Committee on POW/MIA Affairs was created to ensure that our nation meets its obligation to the missing and to the families of those still listed as unaccounted for from the war in Southeast Asia or prior conflicts. As past years have shown, that obligation cannot fully be paid with sympathy, monuments, medals, benefits or flags. It is an obligation--a solemn duty--that can be met only with the best and most complete answers that are within our power to provide.

Tragically, and for reasons found both at home and abroad, those answers have been slow in coming. Our nation has been haunted by the possibility that some of the missing may have survived and that, somewhere in Southeast Asia, brave men remain in captivity.

Although we know that the circumstances of war make it impossible for us to learn what happened to all the missing, we have been haunted, as well, by our knowledge that there are some answers from Southeast Asia we could have had long ago, but have been denied.

Because our wartime adversaries in Vietnam and Laos have been so slow to provide the answers, the American people turned to the U.S. Government for help, but events over the past 20 years have undermined the public's trust. The Indochina war, itself, was partly a secret war and records were falsified at the time to maintain that secrecy. The Paris Peace Accords promised answers to POW/MIA families, but the war between North and South Vietnam did not stop, and for the families of many, the answers did not come. Ever-changing Defense Department policies confused families and others about the official status of the missing and obscured even the number of men who might possibly have remained alive. The official penchant for secrecy left many families, activists and even Members of Congress unable to share fully in their own government's knowledge about the fate of fellow citizens and loved ones and this, more than anything, contributed to the atmosphere of suspicion and doubt.

Underpinning all this, the POW/MIA issue is alive today because of a fundamental conflict between the laws of probability and the dictates of human nature. On a subject as personal and emotional as the survival of a family member, there is nothing more difficult than to be asked to accept the probability of death when the possibility of life remains. Since Operation Homecoming, the U.S. Government has sought to avoid raising the hopes of POW/MIA families; it has talked about the need to maintain perspective and about the lack of convincing evidence that Americans remain alive. But U.S. officials cannot produce evidence that all of the missing are dead; and because they have been so careful not to raise false hopes, they have left themselves open to the charge that they have given up hope. This, too, has contributed to public and family mistrust.

Many of the factors that led to controversy surrounding the fates of Vietnam-era POW/MIAs are present, as well, with respect to the missing from World War II, Korea and the Cold War. Here, too, there have been barriers to gaining information from foreign governments; excessive secrecy on the part of our own government; and provocative reports--official and unofficial--about what might have happened to those left behind.

The Select Committee was created because of the need to re-establish trust between our government and our people on this most painful and emotional of issues. It was created to investigate and tell publicly the complete story about what our government knows and has known, and what it is doing and has done on behalf of our POW/MIAs. It was created to examine the possibility that unaccounted for Americans might have survived in captivity after

POW repatriations at Odessa in World War II, after Operation Big Switch in Korea in 1953, after Cold War incidents, and particularly after Operation Homecoming in Vietnam in 1973. It was created to ensure that accounting for missing Americans will be a matter of highest national priority, not only in word but in practice. It was created to encourage real cooperation from foreign governments. It was created, in short, to pursue the truth, at home and overseas.

Whether the Committee has succeeded in its assigned tasks will be a matter for the public and for history to judge. Clearly, we cannot claim, nor could we have hoped, to have learned everything. We had neither the authority nor the resources to make case by case determinations with respect to the status of the missing. The job of negotiating, conducting interviews, visiting prisons, excavating crash sites, investigating live-sighting reports and evaluating archival materials can only be completed by the Executive branch. This job, long frustrated by the intransigence of foreign governments, will take time to complete notwithstanding the recent improvements in cooperation, especially from Vietnam. The Committee takes considerable pride, however, in its contribution, through oversight, to improvements in the accountability process, and in the record of information and accomplishment it leaves behind.

That record includes the most rapid and extensive declassification of public files and documents on a single issue in American history. It includes a set of hearings and Committee files in which virtually every part of the POW/MIA controversy has been examined. It includes disclosure after disclosure about aspects of U.S. policy and actions that have never before been made public. It includes a rigorous, public examination of relevant U.S. intelligence information. It includes an exposure of the activities of some private groups who have sought inexcusably to exploit the anguish of POW/MIA families for their own gain. It includes a contribution to changed policies that is reflected on the ground in Vietnam in the form of unprecedented access to prisons, military bases, government buildings, documents, photographs, archives and material objects that bear on the fate of our missing servicemen. And it includes encouraging the Executive branch to establish a process of live-sighting response, investigation and evaluation that is more extensive and professional than ever before.

How then, one might ask, does this issue get brought to a close? There is no simple answer to that question. Clearly, the desire for closure cannot override the obligation to pursue promising leads. Just as clearly, our future expectations must be confined within the borders of what the chaotic circumstances of war, the passage of time, the evidence of survival and the logic of human motivation allow.

We want to make clear that this report is not intended to close the door on this issue. It is meant to open it. We knew at the outset that we could never answer all the questions that exist. In fact,

some questions may never be answered or are more properly answered by other branches of government.

What we set out to accomplish, however, was to guarantee that the doors and windows of government were opened so that Americans would know where to go for information, so that the information would, to the greatest degree possible, be available, so that an unparalleled record would exist on which to base judgments, and so that a process of accountability would be in place to provide answers over time. We have accomplished our goal.

The Committee believes that a process is now in place that, over time, will provide additional answers. Americans can have confidence that our current efforts can ultimately resolve this painful issue. As this Committee's investigation of World War II and Korea shows, new information can come unexpectedly, years after the fact. That is why our goal must not be to put the issue to rest, but to press the search for answers and, in this case, to go to the source for those answers in Southeast Asia and elsewhere.

We must build on recent progress to guarantee that we reach the limits of what is knowable through an accounting process that is professional, open, genuine and unrestricted. We must constantly measure whether the promises and commitments of foreign governments are being fulfilled. We must maintain the momentum that has built at the highest levels within our own country to continue the search for new information. And we must ensure that as long as there is good reason to hope for more answers, our national obligation to pursue those answers continues, as a matter of honor, and as a duty to all those who have or who someday will put their lives at risk in service to our country.

The Committee's Methods and Approach

The POW/MIA issue has proven almost as emotional and controversial as the Vietnam War itself. As mentioned above, vigorous disagreements have caused some to be accused of conspiracy and betrayal; and others to be accused of allowing their hopes to obscure their reason. The Committee has sought to transform this troubled atmosphere by encouraging all participants in the debate to join forces in an objective search for the truth.

Because the overriding hope and objective of the Committee was to identify information that would lead to the rescue or release of one or more live U.S. POWS, the Committee gave first priority to investigation of issues related to our most recent war, the conflict in Vietnam. Nevertheless, substantial resources were devoted to seeking and reviewing information concerning Americans missing from World War II, the Korean War and the Cold War.

To ensure credibility, the Committee has operated on a nonpartisan basis, with a nonpartisan staff, directed by Members equally divided between the two parties.

To ensure perspective, the Committee sought the guidance of family members, activists, veterans' organizations and many others about how to conduct the investigation, where to focus, whom to consult and what issues to address. Every single individual or group that has claimed to have information on the issue has been invited--and in a few cases repeatedly invited--to provide it. Former U.S. POWs from the Indochina War were contacted and asked to share their knowledge and all previous inquiries and investigations on the subject were reviewed.

To ensure thoroughness, the Committee requested, and received, access to the records of a wide range of U.S. Government agencies, including intelligence agencies and the White House. Unlike previous investigators, we refused to accept "national security" as grounds for denying information and obtained assurances from the highest levels of government that no relevant information would be withheld.² We traveled overseas to Moscow, Pyongyang, and several times to Southeast Asia for face to face talks with foreign officials and gained access to long-secret archives and facilities in Russia, Vietnam and North Korea. And we solicited the sworn testimonies of virtually every living U.S. military and civilian official or former official who has played a major role in POW/MIA affairs over the past 20 years.

To ensure openness, the Committee's hearings were held almost entirely in public session. Among these were first-ever public hearings on POW-related signal and photographic intelligence and thorough discussions of live-sighting reports. Also, the Committee has worked with the Executive branch to declassify and make public more than one million pages of Committee, Defense Department, State Department, intelligence community and White House documents, including Committee depositions, related to POW/MIA matters. The Committee believes that this process must--and will--continue until all relevant documents are declassified.³

² There were a few instances where the Executive branch denied the Committee access to specific intelligence sources. The Committee has been assured, however, that the information that could have been provided by those sources has not been withheld. Also, access to the debriefings of returned POWs was granted only to the Chairman and Vice-Chairman.

³ Subject only to the deletion of specific information that, if made public, would compromise intelligence sources and methods.

We believe that the Select Committee's hearing and investigatory process provide grounds for pride on the part of every American. The Committee's very existence was a testament to the effectiveness of public action. And although offensive to a few and painful to some, the rigorous examination of current and former high government officials and some private citizens on a matter of public interest is what democratic accountability is all about. Members of the Committee asked difficult and probing questions in order to ensure the fullest possible exploration of the issue. And, indeed, the Committee's own work has been subject to rigorous public questioning and that, too, has been healthy and appropriate.

Summary of Findings and Recommendations

Americans "Last Known Alive" in Southeast Asia

Information available to our negotiators and government officials responsible for the repatriation of prisoners indicated that a group of approximately 100 American civilians and servicemen expected to return at Operation Homecoming did not.⁴ Some of these men were known to have been taken captive; some were known only to have survived their incidents; others were thought likely to have survived. The White House expected that these individuals would be accounted for by our adversaries, either as alive or dead, when the war came to an end. Because they were not accounted for then, despite our protests, nor in the period immediately following when the trail was freshest and the evidence strongest, twenty years of agony over this issue began. This was the moment when the POW/MIA controversy was born.

The failure of our Vietnam war adversaries to account for these "last known alive" Americans meant that families who had had good reason to expect the return of their loved ones instead had cause for renewed grief. Amidst their sorrow, the nation hailed the war's end; the President said that all our POWs are "on the way home";⁵ and the Defense Department, following standard procedures, began declaring missing men dead. Still, the governments in Southeast Asia did not cooperate, and the answers that these families deserved did not come. In 1976, the Montgomery Committee concluded that because there was no evidence that missing Americans had

⁴ On January 29, 1973, at a meeting of the Washington Special Action Group, a DOD representative told Dr. Henry Kissinger that "We have only six known prisoners in Laos, although we hope there may be forty or forty-one." On February 1, 1973, DIA statistics listed 80 Americans as POWs who were not accounted for on the lists provided by the North Vietnamese or Viet Cong.

⁵ Richard M. Nixon, Address of the President to the nation, March 29, 1973.

survived, they must be dead.⁶ In 1977, a Defense Department official said that the distinction between Americans still listed as "POW" and those listed as "missing" had become "academic".⁷ Nixon, Ford and Carter Administration officials all dismissed the possibility that American POWs had survived in Southeast Asia after Operation Homecoming.⁸

This Committee has uncovered evidence that precludes it from taking the same view. We acknowledge that there is no proof that U.S. POWs survived, but neither is there proof that all of those who did not return had died. There is evidence, moreover, that indicates the possibility of survival, at least for a small number, after Operation Homecoming:

- . First, there are the Americans known or thought possibly to have been alive in captivity who did not come back; we cannot dismiss the chance that some of these known prisoners remained captive past Operation Homecoming.
- . Second, leaders of the Pathet Lao claimed throughout the war that they were holding American prisoners in Laos. Those claims were believed--and, up to a point, validated--at the time; they cannot be dismissed summarily today.
- . Third, U.S. defense and intelligence officials hoped that forty or forty-one prisoners captured in Laos would be released at Operation Homecoming, instead of the twelve who were actually repatriated. These reports were taken seriously enough at the time to prompt recommendations by some officials for military action aimed at gaining the release of the additional prisoners thought to be held.
- . Fourth, information collected by U.S. intelligence agencies during the last 19 years, in the form of live-sighting, hearsay, and other intelligence reports, raises questions

⁶ Final Report of the House Committee on Missing Persons in Southeast Asia, 12/13/76.

⁷ Dr. Roger Shields, head of the Defense Department's POW/MIA Task Force, briefing of the Woodcock Commission, February, 1977

⁸ This discussion refers to U.S. POWs who were captured prior to Operation Homecoming. One civilian pilot, Emmet Kay, was known to have been taken captive after Operation Homecoming and was held prisoner from May, 1973 until his release in September, 1974. In addition, a small number of other Americans, including Private Robert Garwood, USMC, are known to have remained in Southeast Asia after the end of the war.

about the possibility that a small number of unidentified U.S. POWs who did not return may have survived in captivity.

Finally, even after Operation Homecoming and returnee debriefs, more than 70 Americans were officially listed as POWs based on information gathered prior to the signing of the peace agreement; while the remains of many of these Americans have been repatriated, the fates of some continue unknown to this day.

Given the Committee's findings, the question arises as to whether it is fair to say that American POWs were knowingly abandoned in Southeast Asia after the war. The answer to that question is clearly no. American officials did not have certain knowledge that any specific prisoner or prisoners were being left behind. But there remains the troubling question of whether the Americans who were expected to return but did not were, as a group, shunted aside and discounted by government and population alike. The answer to that question is essentially yes.

Inevitably the question will be asked: who is responsible for that? The answer goes beyond any one agency, Administration or faction. By the time the peace agreement was signed, a decade of division, demonstrations and debate had left our entire nation weary of killing and tired of involvement in an inconclusive and morally complex war. The psychology of the times, from rural kitchens to the Halls of Congress to the Oval Office, was to move on; to put the war out of mind; and to focus again on other things. The President said, and our nation wanted to believe, that all of our American POWs were on the way home.⁹ Watergate loomed; other crises seized our attention. Amidst it all, the question of POW/MIA accountability faded. In a sense, it, too, became a casualty of war.

The record does indicate that efforts to gain accountability were made. Dr. Henry Kissinger personally raised the issue and lodged protests with Le Duc Tho and leaders of the Pathet Lao. Defense and

⁹ In an address to the nation on March 29, 1973, President Nixon said:

For the first time in 12 years, no American military forces are in Vietnam. All of our American POWs are on their way home...

There are still some problem areas. The provisions of the agreement requiring an accounting for all missing in action in Indochina, the provisions with regard to Laos and Cambodia, the provisions concerning infiltration from North Vietnam into South Vietnam have not been complied with...

State Department spokesmen told Congress of their continuing dissatisfaction with the accounting process; stressed their view that the POW/MIA lists received were not complete, and referred to the cases of Americans last known alive as the "most agonizing and frustrating of all."¹⁰

However, compared to the high-level, high-visibility protests about prisoners made public during the war, post-Homecoming Administration efforts and efforts to inform the American public were primarily low-level and low-key.

Before the peace agreement was signed, those "last known alive," were referred to as "POWs;" afterward, they were publicly, although not technically, lumped together with all of the others called "missing."

Before the agreement, Secretary of Defense Melvin Laird and other Administration officials had berated the North Vietnamese for their failure to disclose the status of these "last known alive" cases, while citing their dramatic case histories and distributing photographs to the press. After Homecoming, Administration criticisms were less vociferous and names and case histories cited only rarely and, even then, not publicly by cabinet officials, but by their assistants and their assistants' assistants.¹¹

When the war shut down, so, too, did much of the POW/MIA related intelligence operations. Bureaucratic priorities shifted rapidly and, before long, the POW/MIA accounting operation had become more of a bureaucratic backwater than an operations center for matters of life and death.

From the fall of Saigon in 1975 through the early 1980's, efforts to gain answers from the Government of Vietnam and the other communist governments of Southeast Asia bore little fruit. In 1982, President Reagan wisely raised the issue of accounting for our missing to a "matter of highest national priority." In 1987, a Special Presidential Emissary to Vietnam was named and serious discussions resumed. More recently, the disintegration of the Soviet empire has opened new doors and created compelling new incentives for foreign cooperation -- almost 20 years after the

¹⁰ Testimony of Dr. Roger Shields, head of the DOD Task Force on POW/MIA, before the House Committee on Foreign Affairs, May 31, 1973

¹¹ Sen. Brown wishes to stress his view that, based on testimony received by the Committee, when the Administration discussed those missing in action, they were referring to prisoners of war and those last known alive; and that significant efforts were made to raise these issues as a matter of public concern.

last American soldier was withdrawn. Today, the U.S. spends at least \$100 million each year on POW/MIA efforts.

Still, the families wait for answers and, still, the question haunts, is there anyone left alive? The search for a definitive answer to that question prompted the creation of this Committee.

As much as we would hope that no American has had to endure twenty years of captivity, if one or more were in fact doing so, there is nothing the Members of the Committee would have liked more than to be able to prove this fact. We would have recommended the use of all available resources to respond to such evidence if it had been found, for nothing would have been more rewarding than to have been able to re-unite a long-captive American with family and country.

Unfortunately, our hopes have not been realized. This disappointment does not reflect a failure of the investigation, but rather a confrontation with reality. While the Committee has some evidence suggesting the possibility a POW may have survived to the present, and while some information remains yet to be investigated, there is, at this time, no compelling evidence that proves that any American remains alive in captivity in Southeast Asia.

The Committee cannot prove a negative, nor have we entirely given up hope that one or more U.S. POWs may have survived. As mentioned above, some reports remain to be investigated and new information could be forthcoming. But neither live-sighting reports nor other sources of intelligence have provided grounds for encouragement,¹² particularly over the past decade. The live-sighting reports that have been resolved have not checked out; alleged pictures of POWs have proven false; purported leads have come up empty; and photographic intelligence has been inconclusive, at best.

In addition to the lack of compelling evidence proving that Americans are alive, the majority of Committee Members believes there is also the question of motive. These Members assert that it is one thing to believe that the Pathet Lao or North Vietnamese might have seen reason to hold back American prisoners in 1973 or for a short period thereafter; it is quite another to discern a motive for holding prisoners alive in captivity for another 19 years. The Vietnamese and Lao have been given a multitude of opportunities to demand money in exchange for the prisoners some allege they hold but our investigation has uncovered no credible evidence that they have ever done so.

¹² Senators Smith and Grassley dissent from this statement because they believe that live-sighting reports and other sources of intelligence are evidence that POWs may have survived to the present.

Yes, it is possible even as these countries become more and more open that a prisoner or prisoners could be held deep within a jungle or behind some locked door under conditions of the greatest security. That possibility argues for a live-sighting followup capability that is alert, aggressive and predicated on the assumption that a U.S. prisoner or prisoners continue to be held. But, sadly, the Committee cannot provide compelling evidence to support that possibility today.

Finally, there is the question of numbers. Part of the pain caused by this issue has resulted from rumors about hundreds or thousands of Americans languishing in camps or bamboo cages. The circumstances surrounding the losses of missing Americans render these reports arithmetically impossible. In order for Americans to judge for themselves, we will append to this report a summary of the facts surrounding each known discrepancy case¹³. An analysis of these incidents will show that:

- . only in a few cases did the U.S. Government know for certain that someone was captured;
- . in many of the cases, there is only an indication of the potential of capture; and
- . in a large number of the cases, there is a strong indication that the individual was killed.

The Committee emphasizes that simply because someone was listed as missing in action does not mean that there was any evidence, such as a radio contact, an open parachute or a sighting on the ground, of survival. We may make a presumption that an individual could have survived, and that is the right basis upon which to operate. But a presumption is very different from knowledge or fact, and cannot lead us--in the absence of evidence--to conclude that someone is alive. Even some of the cases about which we know the most and which show the strongest indication that someone was a prisoner of war leave us with certain doubts as to what the

¹³ The Defense Intelligence Agency defines a "discrepancy case" as including three categories of missing Americans:

- . individuals who were carried as POWs by their respective services during the war but did not return during Operation Homecoming;
- . individuals who were known or suspected to have survived their loss incidents and might have been taken prisoner; and
- . other cases in which intelligence indicates the Indochinese government may know the fate of a missing man.

circumstances were. The bottom line is that there remain only a few cases where we know an unreturned POW was alive in captivity and we do not have evidence that the individual also died while in captivity.

There is at least one aspect of the POW/MIA controversy that should be laid to rest conclusively with this investigation and that is the issue of conspiracy. Allegations have been made in the past that our government has had a "mindset to debunk" reports that American prisoners have been sighted in Southeast Asia. Our Committee found reason to take those allegations seriously. But we also found in some quarters a "mindset to accuse" that has given birth to vast and implausible theories of conspiracy and conscious betrayal. Those theories are without foundation.

Yes, there have been failures of policy, priority and process. Over the years, until this investigation, the Executive branch's penchant for secrecy and classification contributed greatly to perceptions of conspiracy. In retrospect, a more open policy would have been better. But America's government too closely reflects America's people to have permitted the knowing and willful abandonment of U.S. POWs and a subsequent coverup spanning almost 20 years and involving literally thousands of people.

The POW/MIA issue is too important and too personal for us to allow it to be driven by theory; it must be driven by fact. Witness after witness was asked by our Committee if they believed in, or had evidence of, a conspiracy either to leave POWs behind or to conceal knowledge of their fates--and no evidence was produced. The isolated bits of information out of which some have constructed whole labyrinths of intrigue and deception have not withstood the tests of objective investigation; and the vast archives of secret U.S. documents that some felt contained incriminating evidence have been thoroughly examined by the Committee only to find that the conspiracy cupboard is bare.

The quest for the fullest possible accounting of our Vietnam-era POW/MIAs must continue, but if our efforts are to be effective and fair to families, they must go forward within the context of reality, not fiction.

Investigation of Issues Related to Paris Peace Accords

Most of the questions and controversies that still surround the POW/MIA issue can be traced back to the Paris Peace Accords and their immediate aftermath. If that agreement had been implemented in good faith by North Vietnam and with necessary cooperation from Cambodia and Laos, the fullest possible accounting of missing Americans would have been achieved long ago.

During negotiations, the American team, headed by Dr. Henry Kissinger, had sought an agreement that would provide explicitly

for the release of American prisoners and an accounting for missing American servicemen throughout Indochina. The U.S. negotiators said, when the agreement was signed, that they had "unconditional guarantees" that these goals would be achieved.

The great accomplishment of the peace agreement was that it resulted in the release of 591 American POWs, of whom 566 were military and 25 civilian. It also established a framework for cooperation in resolving POW/MIA related questions that remains of value today. Unfortunately, efforts to implement the agreement failed, for a number of reasons, to resolve the POW/MIA issue.

Obstacles Faced by U.S. Negotiators

During its investigation, the Committee identified several factors that handicapped U.S. officials during the negotiation of the peace agreement, and during the critical first months of implementation.

The first and most obvious obstacle to a fully effective agreement was the approach taken to the POW/MIA issue by North Vietnam (DRV) and its allies. During the war, the DRV violated its obligations under the Geneva Convention by refusing to provide complete lists of prisoners, and by prohibiting or severely restricting the right of prisoners to exchange mail or receive visits from international humanitarian agencies.

During negotiations, the DRV insisted that the release of prisoners could not be completed prior to the withdrawal of all U.S. forces, and consistently linked cooperation on the POW/MIA issue to other issues, including a demand for reconstruction aid from the United States. Once the agreement was signed, the DRV was slow to provide a list of prisoners captured in Laos. Following Operation Homecoming, the North Vietnamese refused to cooperate in providing an accounting for missing Americans, including some who were known to have been held captive at one time within the DRV prison system. Perhaps most important of all, the DRV's continued pursuit of a military conquest of South Vietnam dissipated prospects for cooperation on POW/MIA issues.

A second factor inhibiting the achievement of U.S. objectives was the limited leverage enjoyed by U.S. negotiators. It was U.S. policy, fully known to the North Vietnamese, that the U.S. sought to disengage from the war. President Nixon was elected on a platform calling for an end to U.S. involvement; support was building rapidly within the Congress for measures that would have mandated a withdrawal conditioned on the return of prisoners; and the American public had become increasingly divided and war-weary as the conflict continued. These same factors, along with the debilitating effects of the Watergate scandal on the Nixon Presidency, weakened the U.S. hand in responding to DRV violations after the peace agreement was signed.

A third factor limiting the success of the agreement was the absence of Lao and Cambodian representatives from the peace table. Although the U.S. negotiators pressed the DRV for commitments concerning the release of prisoners and an accounting for the missing throughout Indochina, the peace accords technically apply only to Vietnam. Although the DRV, in a side understanding, assured Dr. Kissinger that it would cooperate in obtaining the release of U.S. prisoners in Laos, the fact is that the prisoners captured in Laos who were actually released had long since been transferred to Hanoi. No Americans held captive in Laos for a significant period of time have ever been returned. Neither the peace agreement, nor the assurances provided by North Vietnam to Dr. Kissinger, established procedures to account for missing Americans in Cambodia or Laos.

American Protests

The Paris Peace Accords provided for the exchange of prisoner lists on the day the agreement was signed and for the return of all prisoners of war within 60 days. It also required the parties to assist each other in obtaining information about those missing in action and to determine the location of graves for the purpose of recovering and repatriating remains.

U.S. officials, especially in the Department of Defense, were disappointed that more live American prisoners were not included on the lists exchanged when the peace agreement was signed or--with respect to prisoners captured in Laos--four days after the agreement was signed. The record uncovered by the Committee's investigation indicates that high level Defense Department and Defense Intelligence Agency officials were especially concerned about the incompleteness of the list of prisoners captured in Laos.

This concern was based on intelligence that some Americans had been held captive by the Pathet Lao, on repeated Pathet Lao claims that prisoners were being held, and on the large number of American pilots who were listed as missing in action in Laos compared to the number being proposed for return. Top military and intelligence officials expressed the hope, at the time the peace agreement was signed, that as many as 41 servicemen lost in Laos would be returned. However, only ten men (7 U.S. military, 2 U.S. civilian and a Canadian) were on the list of prisoners captured in Laos that was turned over by the DRV.

During the first 60 days, while the American troop withdrawal was underway, the Nixon Administration contacted North Vietnamese officials repeatedly to express concern about the incomplete nature of the prisoner lists that had been received. In early February, President Nixon sent a message to the DRV Prime Minister saying, with respect to the list of only ten POWs from Laos, that:

U.S. records show there are 317 American military men unaccounted for in Laos and it is inconceivable that only ten of these men would be held prisoner in Laos.¹⁴

Soon thereafter, Dr. Kissinger presented DRV officials with 19 case folders of Americans who should have been accounted for, but who were not. The U.S. protests continued¹⁵ and in mid-March, the U.S. threatened briefly to halt the withdrawal of American troops if information about the nine American prisoners on the DRV/Laos list and about prisoners actually held by the Pathet Lao were not provided.¹⁶ By the end of the month, top Defense Department officials were recommending a series of diplomatic and military options aimed at achieving an accounting for U.S. prisoners thought to be held in Laos.

Ultimately, the Nixon Administration proceeded with the withdrawal of troops in return for the release of prisoners on the lists provided by the North Vietnamese and Viet Cong.

Post-Homecoming

The public statements made by President Nixon and by high Defense Department officials following the end of Operation Homecoming did not fully reflect the Administration's prior concern that live U.S. prisoners may have been kept behind. Administration officials did, however, continue to stress publicly the need for Vietnam to meet its obligations under the peace agreement, and U.S. diplomats pressed both the North Vietnamese and the Pathet Lao for information concerning missing Americans. Unfortunately, due to the intransigence of our adversaries, those efforts were largely unavailing.

During the Committee's hearings, it was contended by Dr. Kissinger and some Members of the Committee that Congressional attitudes would have precluded any Administration effort to respond

¹⁴ Cable from President Nixon to Pham Van Dong, February 2, 1973

¹⁵ For example, Dr. Kissinger sent a cable to Le Duc Tho on March 20, 1973 saying, in part: "The U.S. side has become increasingly disturbed about the question of American prisoners held or missing in Laos...the U.S. side has made clear on many occasions that the list of only nine American prisoners presented belatedly by the Pathet Lao is clearly incomplete."

¹⁶ Some Members of the Select Committee believe that the U.S. threat to halt troop withdrawals referred only to the prisoners on the DRV/Laos list, and have cited testimony by some former Nixon Administration officials and some contemporary press accounts to support that view.

forcefully to the DRV's failure to provide an accounting for missing American servicemen. These Members of the Committee contend that their view is supported by the Senate's rejection on May 31, 1973 of an amendment offered by U.S. Sen. Robert Dole that would have permitted the continued bombing of Laos and Cambodia if the President certified that North Vietnam "is not making an accounting, to the best of its ability, of all missing in action personnel in Southeast Asia."¹⁷

Conclusions

The Committee believes that its investigation contributed significantly to the public record of the negotiating history of the POW/MIA provisions of the Paris Peace Accords, and of the complications that arose during efforts to implement those provisions both before and after the completion of Operation Homecoming. That record indicates that there existed a higher degree of concern within the Administration about the possibility that prisoners were being left behind in Laos than had been known previously, and that various options for responding to that concern were discussed at the highest levels of government.

The Committee notes that some Administration statements at the time the agreement was signed expressed greater certainty about the completeness of the POW return than they should have and that other statements may have understated the problems that would arise during implementation and that--taken together, these statements may have raised public and family expectations too high. The Committee further notes that statements made after the agreement was signed may have understated U.S. concerns about the possibility that live prisoners remained, thereby contributing in subsequent years to public suspicion and distrust. However, the Committee concludes that the phrasing of these statements was designed to avoid raising what were believed to be false hopes among POW/MIA families, rather than to mislead the American people.

Investigation of the Accounting Process

The Committee investigation included a comprehensive review of the procedures used by the U.S. Government to account for American prisoners and missing from the beginning of the war in Southeast Asia until the present day. The purposes were:

¹⁷ Other Committee Members believe that this second degree amendment to an amendment offered by Sen. Mark Hatfield was aimed far more at authorizing President Nixon to continue prosecuting the war in Southeast Asia than to gain an accounting for missing Americans.

- to determine accurately the number of Americans who served in Southeast Asia during the war who did not return, either alive or dead;
- to evaluate the accuracy of the U.S. Government's own past and current process for determining the likely status and fate of missing Americans;
- to learn what the casualty data and intelligence information have to tell us about the number of Americans whose fates are truly "unaccounted for" from the war in Vietnam; and
- to consider whether efforts to obtain the fullest possible accounting of our POW/MIAs was treated, as claimed, as a matter of "highest national priority" by the Executive branch;
- to assess the extent to which Defense Department and DIA accounting policies and practices contributed to the confusion, suspicion and distrust that has characterized the POW/MIA issue for the past 20 years; and
- to determine what changes need to be made to policies and procedures in order to instill public confidence in the government's POW/MIA accounting process with respect to past and future conflicts.

Although 2,264 Americans currently are listed as "unaccounted for" from the war in Indochina, the number of Americans whose fate is truly unknown is far smaller. Even during the war, the U.S. Government knew and the families involved knew that, in many of these cases, there was certainty that the soldier or airman was killed at the time of the incident. These are generally cases involving individuals who were killed when their airplanes crashed into the sea and no parachutes were sighted, or where others witnessed the death of a serviceman in combat but were unable to recover the body.

Of the 2,264 Americans now listed as unaccounted for, 1,095 fall into this category. These individuals were listed as "killed in action/body not recovered" (KIA/BNR) and were not included on the lists of POW/MIAs that were released publicly by the Defense and State Departments during the war or for several years thereafter. It was not until the late 1970's that KIA/BNRs were added to the official lists of "missing" Americans.

The next largest group of Americans now on the list of 2,264 as originally was listed by the military services or by DIA as "missing in action." These are individuals who became missing either in combat or in non-combat circumstances, but who were not known for certain either to have been killed or to have been taken into captivity. In most, but not all, of these cases, the circumstances of disappearance coupled with the lack of evidence of

survival make it highly probable that the individual died at the time the incident occurred.

Approximately 1,172 of the still unaccounted for Americans were originally listed either as MIA or as POW. Of these, 333 were lost in Laos, 348 in North Vietnam, 450 in South Vietnam, 37 in Cambodia and 4 in China. Since before the war ended, the POW/MIA accounting effort has focused, for good reason, on a relatively small number of these 1,172 Americans, that is, those who were either known to have been taken captive, or who were lost in circumstances under which survival was deemed likely or at least reasonably possible. These cases, in addition to others in which intelligence indicates a Southeast Asian Government may have known the fate of the missing man, are currently referred to as "discrepancy cases."

In 1987, Gen. John W. Vessey, Jr. (USA-Ret.) was appointed Presidential Emissary to Vietnam on POW/MIA matters. Gen. Vessey subsequently persuaded Vietnam to allow in-country investigations by the U.S. Government of high-priority discrepancy cases. The DIA and DOD's Joint Task Force-Full Accounting (JTF-FA) have identified a total of 305 discrepancy cases, of which 196 are in Vietnam, 90 are in Laos, and 19 are in Cambodia.¹⁸

In 61 of the cases in Vietnam, the fate of the individual has been determined through investigation, and the Committee finds that Gen. Vessey correctly states that the evidence JTF-FA has gathered in each of these cases indicates that the individuals had died prior to Operation Homecoming. The first round of investigation of the 135 remaining cases in Vietnam is expected to be completed by January 18, 1993. A second round of investigation, which will proceed geographically on a district by district basis, will commence in February, 1993.

None of the discrepancy cases in Laos and Cambodia has been resolved. Because many of the Americans lost in those countries disappeared in areas that were under the control of North Vietnamese forces at the time, resolution of the majority of Laos/Cambodia cases will depend on a process of tripartite cooperation that has barely begun. The Committee further finds that, in addition to the past reluctance of the Vietnamese and Lao to agree to a series of tripartite talks with the United States, both the Department of State and the Department of Defense have been slow to push such a process forward.

¹⁸ Gen. Vessey's responsibilities are limited to Vietnam. The investigation of discrepancy cases in Laos and Cambodia is the responsibility of the Joint Task Force-Full Accounting, established January 23, 1992, as a successor to the Joint Casualty Resolution Center.

As mentioned above, the Committee will append a case by case description of the circumstances of loss of each unresolved discrepancy case to this report. Those descriptions demonstrate that the U.S. Government has knowledge in only a small number of cases that the individuals involved were held captive and strong indications in only a small number more.

However, that is not to say that the Governments of Vietnam and Laos do not have knowledge pertaining to these or other MIA cases which may indicate survival. Answers to these troublesome questions will best be obtained through an accounting process that enjoys full cooperation from those governments.

The findings of this phase of the Committee's investigation include:

- . By far the greatest obstacle to a successful accounting effort over the past twenty years has been the refusal of the foreign governments involved, until recently, to allow the U.S. access to key files or to carry out in-country, on-site investigations.
- . The U.S. Government's process for accounting for Americans missing in Southeast Asia has been flawed by a lack of resources, organizational clarity, coordination and consistency. These problems had their roots during the war and worsened after the war as frustration about the ability to gain access and answers from Southeast Asian Governments increased. Through the mid-1980's, accounting for our POW/MIAs was viewed officially more as a bureaucratic exercise than as a matter of "highest national priority."
- . The accounting process has improved dramatically in recent years as a result of the high priority attached to it by Presidents Reagan and Bush; because of the success of Gen. Vessey and the JTF-FA in gaining permission for the U.S. to conduct investigations on the ground in Southeast Asia; because of an increase in resources; and because of the Committee's own efforts, in association with the Executive branch, to gain greater cooperation from the Governments of Vietnam, Laos and Cambodia.
- . After an exhaustive review of official and unofficial lists of captive and missing Americans from wartime years to the present, the Committee uncovered numerous errors in data entry and numerous discrepancies between DIA records and those of other military offices. The errors that have been identified, however, have since been corrected. As a result, the Committee finds no grounds to question the accuracy of the current, official list of those unaccounted for from the war in Southeast Asia. This list includes 2,222 missing servicemen except deserters and 42 missing civilians who were lost while

performing services for the United States Government. The Committee has found no evidence to support the existence of rumored "secret lists" of additional missing Americans.

- . The decision by the U.S. Government to falsify "location of loss" data for American casualties in Cambodia and Laos during much of the war contributed significantly both to public distrust and to the difficulties experienced by the DIA and others in trying to establish what happened to the individuals involved.
- . The failure of the Executive branch to establish and maintain a consistent, sustainable set of categories and criteria governing the status of missing Americans during and after the war in Southeast Asia contributed substantially to public confusion and mistrust. During the war, a number of individuals listed as "prisoner" by DIA were listed as "missing in action" by the military services. After the war, the legal process for settling status determinations was plagued by interference from the Secretary of Defense, undermined by financial and other considerations affecting some POW/MIA families and challenged in court. Later, the question of how many Americans remain truly "unaccounted for" was muddled by the Defense Department's decision to include "KIA/BNR's"--those known to have been killed, but with bodies not recovered--in their listings. This created the anomalous situation of having more Americans considered unaccounted for today than we had immediately after the war.

The Committee's recommendations for this phase of its investigation include:

- . Accounting for missing Americans from the war in Southeast Asia should continue to be treated as a "matter of highest national priority" by our diplomats, by those participating in the accounting process, by all elements of our intelligence community and by the nation, as a whole.
- . Continued, best efforts should be made to investigate the remaining, unresolved discrepancy cases in Vietnam, Laos and Cambodia.
- . The United States should make a continuing effort, at a high level, to arrange regular tri-partite meetings with the Governments of Laos and Vietnam to seek information on the possible control and movement of unaccounted for U.S. personnel by Pathet Lao and North Vietnamese forces in Laos during the Southeast Asia war.
- . The President and Secretary of Defense should order regular, independent reviews of the efficiency and professionalism of

the DOD's POW/MIA accounting process for Americans still listed as missing from the war in Southeast Asia.

A clear hierarchy of responsibility for handling POW/MIA related issues that may regrettably arise as a result of future conflicts must be established. This requires full and rapid coordination between and among the intelligence agencies involved and the military services. It requires the integration of missing civilians and suspected deserters into the overall accounting process. It requires a clear liaison between those responsible for the accounting (and related intelligence) and those responsible for negotiating with our adversaries about the terms for peace. It requires procedures for the full, honest and prompt disclosure of information to next of kin, at the time of incident and as other information becomes available. And it requires, above all, the designation within the Executive branch of an individual who is clearly responsible and fully accountable for making certain that the process works as it should.

In the future, clear categories should be established and consistently maintained in accounting for Americans missing during time of war. At one end of the listings should be Americans known with certainty to have been taken prisoner; at the other should be Americans known dead with bodies not recovered. The categories should be carefully separated in official summaries and discussions of the accounting process and should be applied consistently and uniformly.

Present law needs to be reviewed to minimize distortions in the status determination process that may result from the financial considerations of the families involved.

Wartime search and rescue (SAR) missions have an urgent operational value, but they are also crucial for the purposes of accounting for POW/MIAs. The records concerning many Vietnam era SAR missions have been lost or destroyed. In the future, all information obtained during any unsuccessful or partially successful military search and rescue mission should be shared with the agency responsible for accounting for POW/MIAs from that conflict and should be retained by that agency.

Investigation of POW/MIA-related Intelligence Activities

The Committee undertook an investigation of U.S. intelligence agency activities in relation to POW/MIA issues. This included a review of the DIA's primary role in investigating and evaluating reports that Americans missing from the Vietnam war were or are being held against their will since the end of the war in Southeast Asia. The investigation also included a review of signals intelligence (SIGINT) obtained by the National Security Agency

(NSA), a review of imagery intelligence (IMINT) obtained by aerial photography and a review of covert U.S. Government activities associated with POW/MIA concerns.

In the area of intelligence, more than any other, the Committee and the Executive branch had to balance concerns about the public's right to know with a legitimate national need to maintain secrecy about intelligence sources and methods. The Committee insisted, however, that the fullest possible accounting of government activities in the intelligence field be made public and that no substantive information bearing directly on the question of whether there are live American POWs in Southeast Asia be withheld.

As a result of Executive branch cooperation, especially from CIA Director Robert Gates and National Security Adviser Brent Scowcroft, the Committee gained unprecedented access to closely-held government documents, including access to relevant operational files, the President's Daily briefs, the Executive Registry and the debriefs of returning POWs. Unfortunately, the limited number of individuals affiliated with the Committee who were given access to these materials prevented as thorough a review as the Committee would have preferred.

At the Committee's insistence, and despite the reservations of the Executive branch, public hearings were held for the first time on the products of satellite imagery related to the POW/MIA issue. Two former employees of the National Security Agency testified in public about information they gathered while working as specialists in the field of signal intelligence. And two days of hearings culminated an exhaustive Committee investigation of reports that American captives had been seen in Southeast Asia during the post-war period. In addition, thousands of pages of live-sighting reports have been declassified and made available to the public.

The Committee understands that the process of analyzing intelligence information is complicated and subjective. In most instances, the quality and source of information is such that it can be interpreted in more than one way and isolated bits of information may easily be misinterpreted. As a result, the Committee believes in the importance of taking all sources of information and intelligence into account when judging the validity of a report or category of data.

Overall Intelligence Community Support

During the Committee's investigation, all DIA directors since the late 1970's testified that the POW effort lacked national-level Intelligence Community support in terms of establishing a high priority for collection, in funding, in the allocation of personnel and in high-level attention. None of the former directors recalled attending national-level management meetings to discuss the POW/MIA issue prior to the mid-1980's, and only one national intelligence

estimate was produced on this issue during the first 17 years after the end of the war.

Senior CIA officials told the Committee that there was no written collection requirement on POWs, but that everyone understood that POW information was important when obtained. CIA officials also asserted that this issue was the near exclusive preserve of the Department of Defense and that the CIA played only a supporting role.

Former NSA Director, Admiral Bobby Inman, testified that the NSA signals intelligence collection efforts in Southeast Asia were dismantled after the war and was not resumed until at least 1978.

Over the past decade, the Reagan and Bush Administrations have raised the priority of POW/MIA intelligence collection, have increased resources and improved policy level management. The basic structure of responsibilities, however, has not changed.

The Role of the Defense Intelligence Agency

The DIA has had a central, two-pronged, role in U.S. efforts to account for our POW/MIAs. First, the DIA is responsible for investigating and analyzing reports of live-sightings or other evidence that American prisoners may still be held. Second, the Department of Defense relies heavily on DIA's analysis to reach conclusions about the fate of missing servicemen.

In addition to these responsibilities, the DIA's prominent role in the POW/MIA issue over the years has caused it to become a focal point for family, Congressional, press and public questions on the subject.

Criticisms of DIA Operations. The Committee identified and arranged for the declassification of a series of internal reviews of the DIA's POW/MIA operations that were conducted during the mid-1980's. A principal concern raised by these reviews were the agency's procedures for evaluating and responding to reports that U.S. POWs had been seen alive after the conclusion of the war.¹⁹

The Committee agrees that the DIA's POW/MIA Office has historically been

- . plagued by a lack of resources;

¹⁹The reviews included Inspector General reports in 1983 and 1984/5; a 1985 inter-agency review; a September, 1985 review by Rear Admiral Thomas Brooks (USN-Ret.); and Task Force reports conducted in 1986 by Gen. Eugene Tighe (USAF-Ret.) and Col. Kimball Gaines (USAF-Ret.)

- . guilty of over-classification;
- . defensive toward criticism;
- . handicapped by poor coordination with other elements of the intelligence community;
- . slow to follow-up on live-sighting and other reports; and
- . frequently distracted from its basic mission by the need to respond to outside pressures and requests.

In addition, several of those who reviewed the workings of DIA during this period also faulted DIA's analytical process and referred to a "mindset to debunk" live-sighting reports.

Several Committee Members express concern and disappointment that, on occasion, individuals within DIA have been evasive, unresponsive and disturbingly incorrect and cavalier. Several Members of the Committee also note that other individuals within DIA have performed their work with great professionalism and under extraordinarily difficult circumstances both at home and abroad.

The Committee recommends that the Secretary of Defense ensure the regular review and evaluation of the DIA's POW/MIA office to ensure that intelligence information is acted upon quickly and that information is shared with families promptly.

The Committee also believes that a central coordinating mechanism for pooling and acting upon POW/MIA-related intelligence information should be created as one of the Intelligence Community's Interagency Coordination Centers.

The Committee notes that the focus of the POW/MIA accounting process is in Southeast Asia. As a result, DIA analysts are spending more and more of their time traveling back and forth between Washington and the region or to Hawaii. The Committee believes that this would be an opportune time to move the DIA's POW/MIA office to Hawaii where it could be closer to JTF-FA and CINCPAC, which it supports. A number of tasks now sometimes performed by the office involving public and family relations can be handled, and handled more capably and appropriately, by the office of the Deputy Assistant Secretary of Defense for POW/MIA Affairs.

Live-sighting Reports. For the past 20 years, there has been nothing more tantalizing for POW/MIA families than reports that Americans have been seen alive in Southeast Asia and nothing more frustrating than the failure of these reports to become manifest in the form of a returning American--with the single exception of Marine Private Robert Garwood in 1979.

A live-sighting report is just that--a report that an American has been seen alive in Southeast Asia in circumstances which are not readily explained. The report could come from a refugee, boat person, traveler or anyone else in a position to make such an observation. The information could be first-hand or hearsay; it could involve one American or many; it could be detailed or vague; it could be recent or as far back as the end of the war.

The sheer number of first-hand live sighting reports, almost 1600 since the end of the war, has convinced many Americans that U.S. POWs must have been kept behind and may still be alive. Other Americans have concluded sadly that our failure, after repeated efforts, to locate any of these alleged POWs means the reports are probably not true. It is the Committee's view that every live-sighting report is important as a potential source of information about the fate of our POW/MIAs.

Accordingly, the review and analysis of live-sighting reports consumed more time and staff resources than any other single issue. The Committee investigation used a method of analysis that was based on the content of a carefully screened set of reports that dealt only with men allegedly seen in captivity after Operation Homecoming. The Committee took into account past criticisms and assessed current procedures while examining and testing DIA's methodology for evaluating live-sighting reports. In so doing, Committee investigators examined more than 2000 hearsay and first-hand live-sighting files while compiling a list of 928 reports for "content" analysis. These reports were plotted on a map and grouped into geographic "clusters". During briefings and public hearings, the Committee reviewed the most significant "clusters" for the purpose of determining whether they would, taken together, constitute evidence of the presence of U.S. POWs in certain locations after Operation Homecoming.

DIA Assessment. It is DIA's position that the live-sighting reports evaluated to date do not constitute evidence that currently unaccounted for U.S. POWs remained behind in Southeast Asia after the end of the war. Of the 1638 first-hand reports received since 1975, DIA considers 1,553 to be resolved.²⁰

²⁰ According to DIA, 1111 (68%) first-hand live-sighting reports correlate to Americans who are accounted for (returned POWs, missionaries, civilian jailed for reasons unrelated to the war etc); 45 (3%) of the reports were correlated to wartime sightings of military personnel or pre-1975 sightings of civilians who remain unaccounted for; and 397 (24%) of the reports were found to be fabrications. Of the 85 reports that remain under investigation, 54 pertain to Americans allegedly seen in a captive environment.

Committee View. The Committee notes that 40 first-hand live-sighting reports remain under active investigation and that the nature of the analytical process precludes certainty that all past DIA evaluations are correct. Accordingly, the Committee recommends a strong emphasis on the rapid and thorough follow-up and evaluation of current unresolved and future live-sighting reports. The DIA is urged to make a continued and conscious effort to maintain an attitude among analysts that presumes the possible survival of U.S. POWs. The Executive branch is also urged to continue working with the governments of Southeast Asia to expand our ability to conduct on the ground, on-site investigation and inspections throughout the region.

The Role of the National Security Agency (Signals Intelligence)

The responsibility for monitoring and collecting signals (including communications) intelligence rests with the National Security Agency (NSA). During the Vietnam War, the NSA monitored all available sources of signals intelligence bearing on the loss, capture or condition of American personnel. Such information would sometimes provide a basis for concluding whether or not a missing American had survived his incident and, if so, possibly been taken prisoner.

During its investigation, the Committee was disturbed to learn that the NSA and its Vietnam branch were never asked to provide an overall assessment of the status of POW/MIA personnel prior to Operation Homecoming. The Committee believes that this information would have been useful both for the U.S. negotiating team and for those preparing for the repatriation of American POWs. The Committee also found that neither DIA nor any other agency within the Intelligence Community placed a formal requirement for collection with NSA concerning POW/MIA related information. In fact, the Committee found that NSA end product reports were not used regularly to evaluate the POW/MIA situation until 1977. It was not until 1984 that the collection of information on POW/MIAs was formally established as a matter of highest priority for SIGINT.

After the fall of Saigon, the National Security Agency and the military service components that support it largely dismantled their collection efforts in Southeast Asia. The elaborate collection capabilities that supported the war essentially ceased or were relocated to other trouble spots around the world. The analytical organizations that monitored signals intelligence in the region were also disbanded or sharply reduced as personnel were transferred to other assignments.

U.S. collection capabilities were further diminished during this period as Vietnam and Laos developed secure landline communications to replace the radio networks used during time of war. If officials in either country were communicating about live U.S. POWs, the likelihood that these communications would be detected by the U.S.

had become remote. However, during this period, the NSA did receive third party intercepts concerning the reported presence of American POWs in Laos.²¹

In conducting its review of NSA files, the Committee examined more than 3,000 postwar reports and 90 boxes of wartime files. The Committee discovered that previous surveys of NSA files for POW/MIA related information had been limited to the agency's automated data base. Hundreds of thousands of hard copy documents, memoranda, raw reports, operational messages and possibly tapes from both the wartime and post-war periods remain unreviewed in various archives and storage facilities. Most troubling, NSA failed to locate for investigators any wartime analyst files related specifically to tracking POWs, despite the fact that tracking POWs was a known priority at the time. This failure made it impossible for the Committee to confirm some information on downed pilots that was provided by NSA employee Jerry Mooney.

At the Committee's request, the NSA and DIA are conducting a review of past SIGINT reports that appear relevant to the POW/MIA issue for the purpose of adding to the all-source database used in the accounting process. Thousands of such reports have been identified. Although it is not clear that the reports will succeed in resolving questions about missing American servicemen, they have raised questions about an individual's status in several cases and will, at a minimum, add to the context in which other POW/MIA information is considered.

The Committee benefitted from the insights of a retired NSA SIGINT analyst, Senior Master Sergeant Jerry Mooney (USAF-retired). During the war, SMSgt. Mooney maintained detailed personal files concerning losses of aircraft and downed airmen. Unfortunately, those personal files did not become part of the archived files maintained by the NSA and have been lost. Although SMSgt. Mooney has sought to reconstruct some of that information from personal memory, the loss of the files makes it impossible to check those recollections against the contemporaneous information.

The Committee found no evidence to substantiate claims that signals intelligence gathered during the war constitute evidence that U.S. POWs were transferred to the Soviet Union from Vietnam.

Pilot Distress Symbols

The Committee's investigation of pilot distress symbols as a possible source of evidence of live POWs after 1973 was the first such investigation conducted by any body of Congress.

²¹A description of these intercepts is contained in Chapter 4 of the Committee's final report.

During the war, the military services gave many pilots who flew combat missions individual authenticator numbers to identify themselves by radio or other means in the event their airplanes were shot down or crashed. During their pre-flight training, pilots were also given Escape and Evasion (E&E) signals to employ either as an evader or POW to facilitate their eventual recovery. Most pilots received training in methods of constructing these E&E symbols in survival courses, prior to assignment to Vietnam. Both E&E symbols and authenticator numbers were classified.

It was expected that these symbols would be used to attract rescuers and would be deployed in ways which would avoid ground detection and yet be visible to overhead collecting sources. Consequently, intelligence analysts have been encumbered with the difficult task of searching for signals which could be extremely faint, or a clever blend of natural and man-made features.

The Committee became interested in this area while looking into intelligence concerning the reported presence of POWs at a camp near Nhom Marrott, Laos, in 1980. This intelligence included the discovery of what appeared to be a "52", possibly followed by a "K" in the prison garden. It was learned that "K" was a pilot distress signal used during the war.

The Committee discovered that the intelligence community had other overhead photographs, taken by both airborne and satellite collection platforms, showing what appeared to be symbols or unexplained markings.

The earliest example was a four digit set of numbers followed by what appeared to be the letters "TH" found on a May, 1973 photograph of an area in central Laos. According to the Joint Service SERE Agency (JSSA)²², the four digit number could be an authenticator number followed by the primary and back-up distress symbols of a downed pilot. Another example was a 1975 photograph of a prison facility in Vietnam, in which the CIA noted unusual markings on the roof of one of the buildings. Although the CIA analysts assessed as remote the possibility that this represented a signal from a POW, they noted that the markings might be transposed to the letter "K" in Morse code. The Committee also learned of a 1988 photograph of a valley near Sam Neua, Laos, showing what clearly was a "USA" dug into a rice paddy. Beneath the "USA", DIA also noted a possible "K" created by "ground scarring."

During its investigation, the Committee was surprised by statements from DIA and CIA imagery analysts directly involved in POW/MIA work that they were not very knowledgeable about the military's E&E

²² The JSSA is the service proponent agency for pilot distress symbols, code of conduct, survival training and POW assistance training.

signals or, in some cases, even aware of the program. These analysts were not even tasked to look for such information prior to April, 1992. The Committee concluded that there had not been a purposeful effort to search for distress signals, or a written formal requirement for symbols, after the end of the war. The Committee is confident, however, that if a symbol appeared clearly on imagery, it would be identified by imagery analysts, as was the case with the 1988 "USA" symbol.

The Committee recommends that the search for possible POW distress symbols in Southeast Asia be a written intelligence requirement and that imagery analysts be educated fully about JSSA training. This is because a prisoner under detention is not likely to have the opportunity to construct distress signals that are blatant or elaborate; they are, in fact, trained to use discreet methods to avoid detection. The more familiar imagery analysts are with JSSA training, the more likely it is that they will be able to detect such a discreet signal. Also, given the possibility that past signals could have been missed, the Committee recommends that past photography of suspect detention sites be reviewed to the extent that resources permit.²³

The Committee notes that JSSA officials had not been consulted previously with respect to the suspected symbols, except for the 1973 "TH" photograph, which was shown to them in the mid-1980's. Accordingly, the Committee asked JSSA to evaluate a number of possible symbols and markings to see if they were consistent with JSSA training methods and distress symbols used during the war. JSSA concluded that the "USA, possible K", the "52 possible K", the "TH", the roof top markings and one other symbol were consistent with the methods taught to pilots downed in Laos.²⁴ JSSA analysis of the "USA possible K" concluded that this should be considered a valid distress symbol until proven otherwise. It should be emphasized, however, that JSSA officials are not trained in photo analysis, and are not qualified to determine whether, in fact, symbols that may seem to appear in imagery actually exist.

The Committee notes that imagery anomalies are caused by regularly occurring natural phenomena and that JSSA originally identified 150

²³Some members note DIA's contention that many DIA analysts are well aware of E&E signals and have worked with the agency's analysts for years, searching for E&E signals. The DIA also points out that the two alleged E&E signals given most prominence in this report were discovered by U.S. government imagery analysts.

²⁴Some members note DIA's contention that the symbols in question are consistent with expected actions only because they are symbols; they do not relate to any evader signal in use during the Vietnam War.

such numbers during its review of photography, of which 19 appeared to match the four-digit authenticator numbers of U.S. airmen. It was later demonstrated to the satisfaction of all parties that none of these numbers were man-made, and all were naturally occurring phenomena such as shadows, ridges, or trees, with the exception of one additional symbol identified by one consultant in an altogether different location.

The DIA does not dispute that two of the possible symbols, the "USA" in 1988, and the 1973 "TH" are intentionally-constructed man-made symbols. In a message to the Committee received in January, 1993, however, the agency stated that the "'USA' symbol was not a distress symbol and had nothing to do with missing Americans." This finding was based on a December, 1992 on-site investigation which "determined that the symbol was made by Hmong tribe members." In the same message, the DIA raised the possibility that the 1973 "TH" symbol may have been made by a Hmong tribesman whose name started with the English letters "TH" and who was a passenger on an aircraft piloted by the American Emmet Kay which went down in May, 1973, "a few kilometers" away from where the symbol appeared.

DIA now contends that the "52", possible "K" seen at Nhom Marrott is the result of shadowing and in no way represents a pilot distress symbol. The Committee notes, however, that DIA had earlier discounted the possibility that the symbol was caused by shadowing because of the constant shape of the figures over a period of days and at different times of the day. In fact, the intelligence community had concluded in 1980 that this symbol had been dug into the ground intentionally.

Due to the complexity of interpreting symbols obtained through imagery, the Committee decided to hire two independent imagery consultants. Each consultant was given access to the necessary equipment and each submitted independently a report to the Committee. The consultants' reports, which differed on only the one symbol referred to earlier, were subsequently provided to the intelligence community for its comments and evaluation.

A joint task group of DIA, CIA and NPIC imagery analysts found that an unresolved symbol found by one consultant was "probably not man-made." This consultant had detected, with "100 percent confidence" a faint "GX 2527" in a photograph of a prison facility in Vietnam taken in June, 1992. This number correlates to the primary and back-up distress symbols and authenticator number of a pilot lost in Laos in 1969. The joint agency team agreed that there were visible markings that could be interpreted as letters and numbers, but concluded that the marking "appeared" too "haphazard and ill-defined" to be man-made distress symbols.

Disagreement arose within the Committee about the interpretation of some of the possible symbols, including the question of whether there is reason to believe that the "GX 2527" symbol is man-made,

rather than the result of natural phenomena. However, the Committee agrees that the benefit of the doubt should go to the individual in this case, because the apparent number corresponds to a particular authenticator number and because it was identified by one analyst with 100 percent confidence. Accordingly, the Committee urges the appropriate officials in the Executive branch to request information about the serviceman involved from the Government of Vietnam.

Although the Committee cannot rule out the possibility that U.S. POWs have attempted to signal their status to aerial observers, the Committee cannot conclude, based on its own investigation and the guidance of imagery experts, that this has definitely happened. Although there is now an adequate collection process in place, the Committee investigators found unacceptable lapses in time between the point of collection and evaluation; and between evaluation and follow-up. The Committee recommends better integration among the various intelligence agencies, including improved training and a better system for collecting and acting on information gathered through imagery.

Covert Operations

The Committee investigated whether the United States Government may have undertaken or supported covert operations in order to confirm the presence of U.S. POWs in Southeast Asia after Operation Homecoming and, if so, to review the intelligence information upon which those operations were based.

The Committee has identified only one operation of this type mounted after 1973. Although operational details remain classified, the fact that the operation took place has been reported publicly. The operation was prompted by a combination of human, photographic and signals intelligence concerning the possible presence of as many as 30 American POWs at a detention camp near the village of Nhom Marrot in Laos from 1979 until early 1981. The intelligence resulted in extensive and highest-level efforts by the U.S. Government to confirm the information. Unfortunately, the results of the covert operation were inconclusive and subsequent efforts were rendered impossible by press leaks.²⁵

Intelligence Support in Laos During the Vietnam War

During the Vietnam war, intelligence support for the U.S. effort in Laos was handicapped because Administration policy, at the

²⁵Some members note DIA's contention that U.S. intelligence has interviewed former Royal Laotian officials held at Nhom Marrott for a number of years, including the time period in question. These individuals stated that no Americans were held at Nhom Marrott.

insistence of the State Department, excluded the significant use of military intelligence assets. This was true despite the fact that accounting for missing military personnel in Laos was the responsibility of the respective military services, and despite strenuous efforts made by Secretary of Defense Melvin Laird to gain support for an improved POW/MIA related military intelligence effort. The Committee believes that an expanded wartime military intelligence effort in Laos might have increased significantly our ability to account for the Americans lost in that country.

Cooperation from Governments in Southeast Asia

It is not possible to account for the Americans who are missing from the war in Southeast Asia without cooperation from the governments of the region, especially Vietnam. The U.S. has requested this cooperation in four forms. First, we have requested information concerning live American prisoners, former prisoners or deserters. Second, we have asked for the return of any recovered or recoverable remains of missing American servicemen. Third, we have sought access to files, records, documents and other materials that are relevant to the fate of missing Americans. Finally, we have asked for permission to visit certain locations within these countries for the purpose of investigating live-sighting reports and searching actual or suspected airplane crash sites.

The Committee has done everything it could to complement the diplomatic and political initiatives of the Executive branch in seeking to encourage a greater degree of cooperation on POW/MIA issues from the governments of Southeast Asia.

Vietnam

The U.S. has long suspected that the North Vietnamese have been withholding a considerable amount of information bearing on the fate of missing Americans. The North Vietnamese maintained detailed records of U.S. servicemen who came within their prison system during the war, including many lost in North Vietnamese-controlled areas of South Vietnam, Cambodia and Laos. U.S. intelligence agencies are convinced, moreover, that the Government of Vietnam recovered and stored an unknown quantity of remains of American servicemen for release at politically strategic points in time.

The level of U.S.-Vietnamese cooperation in accounting for missing Americans has varied over the years depending on bilateral and global political conditions and on the degree of emphasis placed on the issue by officials of the United States. At the time the Select Committee was created, there was considerable progress being made in the investigation of discrepancy cases. In addition, an agreement had been reached with Vietnam to allow an official Defense Department investigating presence to be established in Hanoi. These steps were directly attributable to the work of Gen.

John Vessey, the President's Special Emissary to Vietnam on POW/MIA issues.

The impetus for Vietnam's cooperation has come from several directions. Gen. Vessey has provided the Vietnamese with a respected and influential source of contact within our government. Bush Administration policies have established a clear linkage between different levels of Vietnamese cooperation and American response. The disintegration of the Soviet empire has deprived Vietnam of many external sources of economic assistance and political comfort. The rapid economic growth of other Southeast Asian nations has given younger Vietnamese leaders a strong incentive to establish their own contacts with the west. And the creation of the Select Committee has demonstrated anew the high priority attached to the POW/MIA issue by the American people and government. Obviously, the Committee does not know precisely how all of these matters have been factored into the calculations of the Vietnamese Government, but clearly the overall trends are hopeful.

Over the past year, Committee Members have visited Vietnam on four occasions to press for further information. Committee delegations met with a wide range of high-level Vietnamese officials, including those in charge of administering the wartime prisoner of war system. The Committee visits, coupled with ongoing efforts from the Executive branch, have yielded substantial results.

These results include:

- . permission for U.S. investigators to carry out short-notice investigations of many live-sighting reports;
- . permission for U.S. investigators to use U.S.-owned, maintained and operated helicopters in the course of investigations within Vietnam;
- . grants of access to certain highly-secure prison and defense ministry buildings for the purpose of investigating live-sighting reports;
- . guarantees of full access for JTF-FA investigators to political and military archives containing POW/MIA related information;
- . access to certain key archival documents and personnel that had been long-requested, and long-denied by Vietnam;
- . the provision of thousands of photographs of American wartime casualties;

- . access to Vietnam's military museum, including hundreds of material objects once owned by American servicemen that might contain clues about the fate of missing Americans;
- . declaration of an amnesty for any Vietnamese citizens illegally holding American remains to come forward with them without fear of punishment;
- . a commitment to cooperate in the conduct of an "oral history" program that would seek to record information from Vietnamese military officials, soldiers and civilians who might have information about the fate of missing Americans;
- . promises of full cooperation from Vietnam in working with Laos and Cambodia to investigate discrepancy cases involving servicemen lost in parts of those countries controlled by North Vietnamese forces during the war; and
- . permission for POW/MIA families, if they so desire, to come to Vietnam and evaluate the investigation process.

The Committee welcomes the very substantial strides towards full cooperation on the POW/MIA issue that the Government of Vietnam has made in recent months. The Committee looks forward to the implementation of those steps in the hope that they will yield significant additional information concerning missing Americans and encourages the Executive branch to do all it can to see that the promises and commitments made by Vietnam are fulfilled.

In noting recent progress, the Committee does not wish to understate the fact that the progress is coming very late--almost 20 years after the signing of the peace agreement, and after two decades of noncooperation, stalling and deception on the part of Vietnam's leaders. The Committee also recognizes that the recent changes in policy appear to be the result primarily of Vietnam's desire for economic contacts with the west. The closed and nondemocratic nature of the government in Vietnam argues for caution in accepting Vietnamese promises, for pledges given by a government unwilling to be open with its own people can hardly be taken at face value. Nonetheless, the Committee remains hopeful that recent improvements in POW/MIA cooperation are symptomatic of a trend in Vietnam that will lead ultimately to dramatic improvements in human rights, and political, economic and religious freedoms.

United States policy towards Vietnam should reflect the importance of freedoms that are central to American society and which have been central to our investigation. Without a free press or representative government, the American people would not have learned the full extent of our own government's knowledge about our POW/MIAs. Our policy towards Vietnam, as towards the other nations

of Southeast Asia, should be predicated on a vision of the same freedoms for the people of that region that we enjoy here at home.

Laos

More than 500 Americans are still listed as unaccounted for in Laos, including 335 who were originally considered either POW or MIA. Accordingly, the Committee has attached a high priority to gaining greater cooperation from the Lao Government. The current leaders of Laos, who are successors to the Pathet Lao forces that contended for power during the war, almost certainly have some information concerning missing Americans that they have not yet shared. At a minimum, they should be able to provide specific information about the fates of a small number of U.S. POWs known to have been held by the Pathet Lao during the early stages of the war. Unfortunately, Lao leaders have been significantly less cooperative than those in Vietnam. The Lao have denied any knowledge of U.S. POWs; they have refused access to some requested sources of information; and they have been even more reluctant than the Vietnamese to grant U.S. access to their territory for conducting live-sighting investigations and inspecting crash sights. The atmosphere has improved to some extent in recent months, however. As a result, some discrepancy case investigations are underway and negotiations are ongoing for the establishment of a permanent POW/MIA investigation office in Vientiane.

Cambodia

The present government of war-ravaged Cambodia cannot be expected to possess documentary information relevant to the fate of missing American servicemen. Nonetheless, the Committee met with Cambodian President Hun Sen, who expressed his government's full cooperation with the U.S. in efforts to resolve discrepancy cases. Unfortunately, the Cambodian Government is unable to guarantee security in areas controlled by the brutal and lawless Khmer Rouge. The Committee is grateful to President Hun Sen for his help on this issue, given the scope and urgency of the other perils faced by his government and his country.

Government Policies and Actions

Declassification

The Committee believes that much of the controversy surrounding the U.S. Government's handling of the POW/MIA issue could have been avoided if relevant documents had been declassified and made available to the public long ago. Unnecessary secrecy breeds the suspicion that important information is being withheld, while fueling speculation about what that information may be.

From its inception, the Committee has urged the Executive branch to identify and declassify all documents and other materials within

its possession that are related to POW/MIA issues, with the single exception of information bearing directly on intelligence sources and methods.

A Task Force of the Select Committee, led by Senators Charles Robb and Chuck Grassley, formulated specific requests and recommendations upon which the Committee acted. For example, the President was asked, and agreed, to order the expeditious declassification of POW/MIA records from the Vietnam War, and the U.S. Senate unanimously approved a resolution calling for the declassification of POW/MIA materials. A series of letters sent, requests made and meetings held resulted in a high degree of cooperation and understanding between the Committee and the Executive branch on this issue.

The result of the Committee's efforts has been the most rapid and comprehensive declassification of materials on a single subject in American history. More than one million pages have already been declassified and the Committee is confident that remaining documents will be made available. The Committee believes that President Bush and National Security Adviser Brent Scowcroft should be congratulated for their cooperation on this issue.

Although the Committee was generally very satisfied with the degree of understanding and help it received from the Executive branch, its request for the release of relevant CIA operational files has, to date, been denied.

The Committee recommends that the process of declassification of current POW/MIA related materials go forward rapidly until completion and that the relevant CIA operations files be included.

The Committee also recommends that policies be put in place to assure the rapid declassification of POW/MIA related information from possible future conflicts. It should be enshrined in both attitude and law that the right of a POW/MIA family to know what the government knows about its loved one is as inalienable a right as any spelled out in the Constitution.

Finally, the Committee's records will be sent to the National Archives, with specific instructions that they be made available for public review. We caution, however, that these records include staff materials, memoranda of conversation, notes and other documents that may reflect raw opinion, incorrect data, discredited theories, or bits of fact that may mislead unless placed within a proper context. The Committee emphasizes that judgments reached by the Committee, after consideration of all available evidence, are reflected in this report. Other information and judgments should not be accorded credibility simply because of their presence in the Committee's working files.

Inter-Agency Group

Since January, 1980, Executive branch policy-making has been coordinated by the Interagency Group on POW/MIA Affairs (IAG). Agencies and organizations represented on the IAG include the Departments of State and Defense, the Joint Chiefs of Staff, the National Security Council and the National League of POW/MIA Families (the League). In recent years, IAG meetings have occurred every two to three weeks on the average. Meetings are characterized by informal discussions of policy options; decisions are reached by consensus; and no formal minutes of the meetings are maintained.

The scope of IAG discussion covers a broad spectrum of POW/MIA related matters including intelligence collection, communications with families, diplomatic initiatives and public awareness activities. A major focus of attention over the past two years has been U.S. policy towards Vietnam.

The presence of League President Ann Mills Griffiths on the IAG is controversial. During Committee hearings, Members of the IAG said Griffiths was a highly constructive and energetic member of the group who has contributed significantly to improvements in U.S. policy. It is, however, extremely unusual for a private citizen to serve on a high-level panel such as the IAG, and to have access to sensitive intelligence information without the kind of accountability and official responsibility demanded of government representatives on that group.

During the summer of 1991, for example, Griffiths actively discouraged the Defense Department from granting access to classified POW/MIA materials to Senate staff investigators with appropriate clearances. The Committee finds it anomalous that a private citizen representing POW/MIA families would be in a position to try to deny Senate investigators the same right to review sensitive materials that she herself has been granted.

The Committee believes that an interagency coordinating body for POW/MIA policies is needed and that the IAG ably fulfills this role. However, the Committee is disturbed by the lack of formality in IAG record-keeping and believes that, at a minimum, that the minutes of discussions at such meetings should be maintained.

Second, although the IAG should consult regularly with the League and other POW/MIA family organizations, the Committee believes that the role of the IAG and issues of membership on it should be reviewed by the new Administration.

Government-to-Government Offers

The Committee investigated the possibility that Vietnam or Laos had approached U.S. officials at any time since the end of the war in Southeast Asia with a proposal that live U.S. POWs be returned in exchange for money or some other consideration. The Committee found

no convincing evidence of any such offer being made. There were, however, two incidents which require further explanation.

The Committee received information that the Reagan Administration may have received an offer from Vietnam in 1981, transmitted through a third country, to exchange live POWs for \$4.5 billion. The source of the information was a Secret Service agent who reported that he had overheard a discussion in the White House concerning this subject. The Committee deposed one of the individuals, former National Security Adviser Richard Allen, said to have been involved in the discussion, and several individuals who were said to have been in the area of the discussion. The Secret Service agent was not willing to provide testimony to the Committee voluntarily, and the Committee voted 7-4 not to subpoena that testimony. A complete description of the investigation and the subpoena issue is contained in Chapter 6 of this report.

The Committee also received a report concerning a possible approach by Vietnam in 1984, through officials in an ASEAN nation, concerning the exchange of American remains and possibly live POWs. According to the report, the Vietnamese had indicated that they would welcome an offer from the U.S. on the subject. U.S. officials traveled to Vietnam late in 1984, but were reportedly told by Vietnamese officials that there were no live POWs and that the only issue that could be discussed involved remains. Select Committee investigators traveled to the ASEAN nation to interview officials in an effort to determine whether an approach from Vietnam concerning live U.S. POWs had, in fact, been made. The results were inconclusive. Two secondary sources disagreed about whether an exchange involving live POWs had been discussed. The individual who had initially discussed the subject with Vietnamese officials later told the State Department that the issue of live American POWs had not been raised. This investigation is also described in greater detail in chapter 6.

Review of Private Activities

A major part of the Committee's investigation entailed the review of private activities related to the POW/MIA issue. This review focused on efforts by such organizations to educate the public about the issue, to influence government policy, to raise funds and to recover information concerning possible American POWs.

In its review, the Committee asked more than 50 POW/MIA-related organizations to provide information, on a voluntary basis, concerning their activities. Committee staff also interviewed or took formal testimony from organization officials and from the family members of some POW/MIAs.

The Committee found that the vast majority of POW/MIA related organizations are modest, local groups of volunteers operating on small budgets and dedicated to public education, grassroots

lobbying, mutual assistance and remembrance activities. These organizations, and those who support them, have performed an important service for the nation in maintaining a strong national spotlight on the need for the fullest possible accounting of our POW/MIAs.

The Committee investigated several privately-organized operations aimed at physically rescuing or recovering information concerning possible American POWs. These included: 1) the Team Falcon operation in 1991-1992; 2) a 1988 effort to locate prisoners in Laos; 3) Operation Skyhook II, an early 1980's initiative also aimed at finding prisoners in Laos; and 4) the efforts of retired Army Lt. Col. Bo Gritz. None of these operations have been successful in rescuing prisoners or in uncovering evidence that prisoners are being held.

The Committee also investigated a number of photographs of individuals purported to be of U.S. POWs. In the cases investigated, we found that such photographs are sometimes used by private organizations as a means of attracting financial support for "rescue" or "reconnaissance" operations. The Committee concluded, based on investigative work done by the DIA, that photographs circulated in 1991 allegedly depicting missing Americans Donald Carr, Daniel V. Borah, John L. Robertson, Larry J. Stevens and Albrow Lundy are fraudulent. (The Committee respects the fact that the Robertson, Stevens and Lundy families have not accepted the DIA analysis).

In contrast to the large number of small, voluntary POW/MIA organizations, there are a few private POW organizations that are relatively large, have paid staff and use professional fundraisers to prepare and distribute solicitation materials to millions of actual or potential contributors. These solicitations have yielded tens of millions of dollars in contributions since the end of the war. The Committee was concerned about a number of issues, including the extent to which some groups have diverted funds for purposes other than those advertised, the possibility that misleading or false information has been included in solicitations, the failure of fundraisers' to disclose information to potential donors and the impact that these solicitations may have had on the emotions and expectations of POW/MIA families.

The Committee's principal findings are:

- The vast majority of private organizations engaged in POW/MIA related activities reflect the highest standards of voluntary, public service and deserve the nation's gratitude and praise.

- Private initiatives aimed at the "rescue" of U.S. prisoners have failed in the past and are problematic for several reasons. In general, such operations are dependent on sources of information in Southeast Asia that have a very poor record

of reliability and, in some cases, a consistent track record of fraud. Second, it is unrealistic to believe that such efforts will have a better chance of success than official efforts. Third, the possibility exists that such operations might jeopardize ongoing U.S. diplomatic and intelligence activities. Fourth, such activities sometimes involve the violation of U.S. and/or foreign law.

The manufacture of fraudulent POW/MIA related materials, including photographs, dog tags and other purported evidence of live Americans has become a cottage industry in certain parts of Southeast Asia, and particularly Thailand. Sadly, these activities have been spurred by well-intentioned private offers of large rewards for information leading to the return of live U.S. POWs. The Committee is angered and repulsed by activities that exploit the anguish of POW/MIA families for private gain.

The Committee's examination of POW/MIA-related fundraising activities has created serious reason for concern. In some instances, an excessive percentage of funds raised has been retained by the fundraising organization. In others, the fundraising solicitations have over-stated to the point of distortion the weight of evidence indicating that live U.S. POWs continue to be held in Southeast Asia.

Information from Russia and Eastern Europe

Although the Committee's investigation focused primarily on efforts to account for Americans missing from the war in Southeast Asia, the principle of accounting for lost American servicemen is the same, whether the war occurred 20 years ago or 50 years ago. Accordingly, the Committee undertook a review of information and allegations concerning Americans missing from earlier conflicts and hired a full time investigator to work in Moscow on this and related issues.

The Committee's effort was facilitated greatly by the lifting of the Iron Curtain and by the policies of openness and cooperation advocated by Russian President Boris Yeltsin. In February, 1992, the Committee's Chairman, Sen. John Kerry, and Vice-chairman, Sen. Bob Smith, met with Russian officials and veterans in Moscow to discuss cooperation on the POW/MIA issue. This visit laid the groundwork for the creation of the U.S.-Russia Joint Commission (Commission) on POW/MIA Affairs under the leadership of Col. Gen. Dimitri Volkogonov and Malcolm Toon, former U.S. Ambassador to the Soviet Union.²⁶ The objectives of the Commission are 1) to gain access to people and documents in Russia that could shed light on

²⁶ Senators Kerry and Smith were appointed to serve as the Senate's representatives on the joint commission.

the fate of missing Americans; 2) to pursue reports that current or former U.S. POWs may be alive within the borders of the former Soviet Union; and 3) to establish a means by which remains identified as American may be repatriated. Investigative work by the U.S. side to the Joint Commission is carried out by the Defense Department's Task Force Russia (TFR), under the leadership of Gen. Bernard Loeffke.

The Committee's investigation was conducted, in large part, through the staff investigator assigned to work with the Commission in Moscow. In Washington, the Committee reviewed documents obtained from the National Archives and from private researchers. We also conducted interviews with former officials of the Eisenhower Administration and others possessing information on the subject.

In June, 1992, the Committee hosted a meeting of the Commission with Gen. Volkogonov following Russian President Yeltsin's public statements on the POW/MIA issue. In November, 1992, two days of public hearings were held during which both U.S. investigators and Gen. Volkogonov testified. Finally, in December, 1992, Committee investigators participated in fact-finding trips to Czechoslovakia and Ukraine, and attended a formal meeting of the Commission in Moscow.

The Committee emphasizes that firm or precise judgments about the number and circumstances under which American military and civilian personnel may have found themselves detained within the former Soviet Union in the past cannot yet be made. Large quantities of records, both in Moscow and elsewhere, remain to be reviewed. There are also many well-informed former military and intelligence officers and diplomatic personnel who have not yet been interviewed. It is possible that evidence will be uncovered indicating greater involvement of former Soviet officials in the interrogation, transportation or detention of U.S. POWs from the Vietnam War and prior conflicts. Thus, the findings below, which are based on work to date, must be considered as preliminary in nature:

Gen. Volkogonov's Assessment

Gen. Volkogonov contends that, to his knowledge, no Americans are currently being held against their will within the borders of the former Soviet Union.²⁷ Although the Committee has found evidence that some U.S. POWs were held in the former Soviet Union after WW II, the Korean War and Cold War incidents, we have found no proof

²⁷ Gen. Volkogonov did not mean to include in this contention any Americans who might legitimately be under arrest for recent violations of civil or criminal law. For example, at the time of the Select Committee hearing, one American was under arrest for dealing in contraband religious icons.

that would contradict Gen. Volkogonov's contention with respect to the present. However, the Committee cannot, based on its investigation to date, rule out the possibility that one or more U.S. POWs from past wars or incidents are still being held somewhere within the borders of the former Soviet Union.

World War II

The Committee found that the Russians have been particularly successful in producing World War II archival documents, and is pleased to report that the fate of some American military and civilian personnel from the World War II era has been determined through recent investigations in Russia. Moreover, archival documents provided by Russia indicate that several hundred U.S. POWs were held against their will on Soviet territory at the end of World War II. In almost all cases, these were individuals who had been born in, or who had previously lived in, the Soviet Union, and who could, therefore, be considered Soviet citizens by the Soviet Government. Many of these individuals served in the Armed Forces of Germany, fought against the Soviet Army and were captured in combat. Some U.S. civilians from this era survived terms in concentration camps and are still alive today, living freely either in one of the former Soviet Republics or in the United States.

Cold War

There is evidence, some of which has been confirmed to the Committee by President Yeltsin, that some U.S. personnel, still unaccounted for from the Cold War, were taken captive and held within the former Soviet Union. This information involves several incidents stretching across the former Soviet Union from the Baltic Sea to the Sea of Japan.

The Committee is pleased to report that Task Force Russia has been actively investigating these cases and is keeping surviving family members fully apprised of its progress to date. The Committee notes, however, that progress is, in large part, dependent on cooperation from Russian authorities. In the Committee's November, 1992 hearings, our investigator in Moscow testified that the U.S. was "intentionally being stonewalled" by the Russians on the subject of Cold War incidents, despite pledges of cooperation from President Yeltsin and Gen. Volkogonov. The Committee, therefore, urges the Joint Commission to place special attention and focus on obtaining further information on the fate of those U.S. personnel who are believed to have been taken captive during the Cold War.

Korean Conflict

There is strong evidence, both from archived U.S. intelligence reports and from recent interviews in Russia, that Soviet military and intelligence officials were involved in the interrogation of American POWs during the Korean Conflict, notwithstanding recent

official statements from the Russian side that this did not happen. Additionally, the Committee has reviewed information and heard testimony which we believe constitutes strong evidence that some unaccounted for American POWs from the Korean Conflict were transferred to the former Soviet Union in the early 1950's. While the identity of these POWs has not yet been determined, the Committee notes that Task Force Russia concurs in our assessment concerning the transfers. We are pleased that this subject was raised by the U.S. side in December, 1992 at the plenary session of the Joint Commission in Moscow.

The Committee further believes it is possible that one or more POWs from the Korean Conflict could still be alive on the territory of the former Soviet Union. The most notable case in this regard concerns a USAF pilot named David "Markham" or "Markin", who was reportedly shot down during the Korean Conflict. According to several sources, this pilot was reportedly alive in detention facilities in Russia as late as 1991. Although Task Force Russia has thus far been unable to confirm these reports, we note that the investigation is continuing.

Vietnam War

The Committee is aware of several reports that U.S. POWs may have been transferred to the Soviet Union during the Vietnam War. Information about this possibility that was provided by a former employee of the National Security Agency (NSA), Mr. Jerry Mooney, was thoroughly investigated and could not be substantiated. The Committee notes that Mr. Mooney testified that he personally believed prisoners were transferred to the Soviet Union but that he had "no direct information" that this took place.²⁸ Other reports concerning the possibility that U.S. POWs were transferred from Vietnam to the former Soviet Union deserve further investigation and followup.

With respect to interrogations, the Committee has confirmed that one KGB officer participated directly in the questioning of an American POW during the Vietnam Conflict. More generally, Soviet military officers have told the Committee that they received intelligence from North Vietnamese interrogations of American POWs and that the Soviets "participated" in interrogations through the preparation of questions and through their presence during some of the interrogations. It is possible that American POWs would not have been aware of the presence of Soviet officers during these interrogations. The Committee has also received information that Soviet personnel operated certain SAM sites in Vietnam which shot down American aircraft during the war.

²⁸Committee hearing, Jan. 22, 1992

The Committee notes that the cooperation received to date from Russia on POW/MIA matters has been due largely to the leadership of President Boris Yeltsin. During a visit to Washington last summer, President Yeltsin declared that "each and every document in each and every archive will be examined to investigate the fate of every American unaccounted for." Although there is still much work to be done, Russian officials deserve credit for providing access to archival material, for cooperating in efforts to solicit testimony from Russian veterans and other citizens and for their willingness to disclose certain previously undisclosed aspects of the historical record. The ultimate success of the Joint Commission will be judged, however, on whether the U.S. side is able to obtain full support for its interview program and archival research from all levels of power and authority throughout the former Soviet Union.

President Yeltsin has made a heroic effort to demonstrate his own commitment to full cooperation and Gen. Volkogonov has done a great deal, with limited resources, to meet this standard. Unfortunately, the level of cooperation from within the Russian military and intelligence bureaucracy has been less extensive and has, at times, seemed intentionally obstructive. This may well be due to the uncertainty of the current political situation in Russia. It is vital, therefore, that U.S. officials, both in Congress and the Executive branch, continue to demonstrate to Russian authorities that America attaches a high priority to cooperation on this issue and to ensure that any problems that might develop are raised with the Russians promptly and at a senior level.

The Committee also recommends strongly that the U.S.-Russia Joint Commission be continued and that efforts be made to gain the full cooperation, as needed and appropriate, of the other Republics of the former Soviet Union.

Information from North Korea and China

As part of the Committee's investigation into the fate of those Americans still missing from the Korean Conflict, the Committee Vice-Chairman traveled to Pyongyang, North Korea from December 19-21, 1992. This trip was especially significant in that it was the first time a United States Senator had traveled to the North Korean capital. Also, for the first time, a State Department official traveled with Senator Smith to Pyongyang, in addition to two staff members working with the Committee. The trip itself was a follow-on to an earlier trip made by Senator Smith to Korea in June, 1991.

The timing of the trip was important in that just a few weeks earlier, the Committee had held the first in-depth Congressional hearings on American POW/MIAs from the Korean Conflict in more than 35 years. In view of the fact that the North Korean Government has provided virtually no information on 8,177 unaccounted for

Americans in the last 40 years,²⁹ the goal of the trip was to establish a dialogue which would encourage North Korea to move the accounting process forward on a humanitarian basis. A second goal of the fact-finding trip was to gain information from North Korea on reports which had surfaced during the Committee's November hearings on the fate of some American POWs.

The Committee is pleased to report that Senator Smith was successful in achieving both of these goals during the trip. Meetings were held with Supreme Assembly Speaker Yang Hyong Sop, Deputy Foreign Minister Kang Sok Ju, and a staff of ministry officials who appeared knowledgeable on POW/MIA issues. The atmosphere was cooperative and it was the sense of Senator Smith and his delegation that North Korea is prepared and willing to move forward on this humanitarian issue without any preconditions. As a sign of good faith, the North Koreans allowed Senator Smith and his delegation to visit their war museum in Pyongyang, although the request had been made only hours earlier. This was the first time any American official had visited the museum. At the museum, Senator Smith was able to view photographs of POWs, documents, letters, personal effects and captured weaponry from U.S. servicemen. Senator Smith's delegation was also permitted to photograph and take notes concerning many of the items in the museum. Important new information was also learned from North Korean officials concerning China's involvement with American POWs.

The principal Committee findings and recommendations concerning this trip are:

Although the North Korean officials with whom Senator Smith met denied that any American POWs had survived to the present day in North Korea, the Committee cannot exclude the possibility in view of intelligence information which has been received by the United States in recent years. Specifically, the Committee shares Senator Smith's frustration during his trip at not being able to investigate unconfirmed reports that a small number of American POWs may be teaching English at a military language school on the outskirts of Pyongyang. The Committee, therefore, urges the Government of the Democratic People's Republic of Korea to cooperate fully in the investigation of these recent reports, in addition to other live-sighting reports which have been received by the United States during the last few decades.

It is likely that a large number of possible MIA remains can be repatriated and several records and documents on

²⁹ The Committee notes, however, that over the past two and one-half years, North Korea has repatriated the remains of 41 American servicemen.

unaccounted for POWs and MIAs can be provided from North Korea once a joint working level commission is set up under the leadership of the United States. Accordingly, the Committee strongly urges the Departments of State and Defense to take immediate steps to form this commission through the United Nations Command at Panmunjom, Korea. The Committee also encourages President-elect Clinton, upon taking office, to appoint a high level representative to sit on the commission. The Committee further believes that the proposed joint commission should have a strictly humanitarian mission and should not be tied to political developments on the Korean peninsula.

Comments made by North Korean officials during the trip substantiated indications that many American POWs had been held in China during the Korean Conflict and that foreign POW camps in both China and North Korea were run by Chinese officials. In addition, North Korean officials confirmed that propaganda photos showing POW camps with large numbers of U.S. personnel had, in fact, been taken in China, not in North Korea as purported by the propaganda publications. The Committee notes that other information from both high level Russian intelligence sources and from several U.S. intelligence reports corroborates the comments made by the North Koreans.

Given the fact that only 26 Army and 15 Air Force personnel returned from China following the war, the Committee can now firmly conclude that the People's Republic of China surely has information on the fate of other unaccounted for American POWs. The Committee, therefore, strongly urges the Departments of State and Defense to form a POW/MIA task force on China similar to Task Force Russia. The Committee also strongly urges the Department of State to raise this matter at the highest levels in Beijing. In this regard, we are pleased that the first round of talks was held in January, 1993. We believe that a proposed POW Task Force on China will need to have several additional rounds of talks with the Chinese in order to search for and receive POW information in China over the coming months.

For the surviving families of those Americans still missing from the Korean Conflict, the perception has been that determining the fate of their loved ones is a task that has not been vigorously pursued by their government. We note that this perception has been fueled by past intransigence and lack of information from North Korea and China. In addition, accounting for POWs and MIAs from the Vietnam Conflict has received far greater media attention in America. The Committee can therefore understand why the Korean Conflict has often been labeled the "Forgotten War" by veterans and POW/MIA family members.

However, in view of the Vice-Chairman's recent trip to North Korea, the Committee believes that a dramatic breakthrough has been achieved in terms of establishing a dialogue and gaining access to new information on POWs and MIAs. Consequently, there is now a window of opportunity which the Committee believes should be fully exploited by the United States on behalf of the families of those Americans still missing from the Korean Conflict.

Families

By its nature, war claims victims and produces suffering. Some are killed, and their loved ones mourn. Some become missing, and their loved ones both mourn and hope. When a loved one is in danger, the state of "not knowing" is emotionally the most difficult; and for many POW/MIA families, that state has now stretched on for two decades or more.

The Committee understands that it is difficult to generalize accurately about POW/MIA families, whether from the Vietnam era or from prior wars. The families are diverse in their views, in the particular circumstances surrounding the loss of their loved one, and in the experiences they have had in dealing with their government. Some believe the government has generally done all it could; others believe it has bungled inexcusably. Some believe we should put this part of our history behind us; others are convinced live Americans remain in captivity. None among us can attack the validity of any one of these points of view; for on this question, every POW/MIA family member has fair claim to be considered an expert in the truest sense of that word.

The Committee owes its creation to the activism of family members and, from the beginning, sought to work closely with the families and with their representatives. Fitting, family members were represented at the Committee's first set of hearings and the last. The Committee asked not only for public testimony about individual cases, but directly contacted each of the POW/MIA families from the Vietnam era seeking their advice and participation.

Largely in response to Committee and family requests, the President appointed a Deputy Assistant Secretary of Defense for POW/MIA Affairs in January, 1992 to serve as a central coordinator and point of contact for families and for the bureaucracy. Even more importantly, the Committee's drive for the declassification and public release of POW/MIA related documents was a direct result of past family frustration in seeking answers to legitimate questions about their loved ones and about the government's overall knowledge of the issue.

The Committee's review of past family experiences reflect an array of problems in dealing with our government that never should have happened and that can--with proper organization and planning--be avoided in the future.

Accordingly, the Committee recommends:

- . Those actually working on POW/MIA accounting in the field in Southeast Asia should be made available, when schedules permit, to meet with families in the United States.
- . Military service casualty offices should be headed by civilians who are not subject to the kind of routine duty rotations experienced by military personnel. Individuals in these sensitive positions must have experience and a base of institutional memory if they are to deal effectively and knowledgeably with family members.
- . The resumed publication of a regular newsletter containing POW/MIA related information would be a useful means of sharing new developments with the families.
- . Guidelines should be established immediately for the creation of a central computerized data base within the Executive branch with information on all unaccounted for U.S. personnel from past military conflicts, to include World War II, Korea, the Cold War and Vietnam. All relevant casualty and intelligence data, in addition to any recently obtained information potentially correlating to a specific case should be made readily available to family members and researchers through the central data base. On-line access to the central data base should be made available through an easily accessible modem system.

Procedures also should be developed to ensure that requests for information contained in the data base can be processed easily so that family members receive prompt, printed responses when necessary. Additionally, procedures should be established by the Department of Defense and the Department of State to ensure that the data base is updated regularly. The Committee further recommends that the Secretary of Defense authorize the DOD family liaison officer to work with the service casualty officers to develop a data base program which meets the needs of families and researchers who need to use the system.

- . Family members of Vietnam era POW/MIAs who would like to travel to Southeast Asia for direct discussions with appropriate U.S. and foreign government officials should be encouraged and helped to do so.

Conclusion

This executive summary began with three well-deserved tributes--to our POWs, to POW/MIA families, and to veterans and other responsible activist groups. The efforts and contributions of others deserve recognition, as well. The investigatory

responsibilities of this Committee caused it to place enormous demands on the Executive branch for information, for the processing and declassification of documents, and for access to archived files.

Committee Members questioned current and former Executive branch officials rigorously, repeatedly and, at times, very bluntly about important issues of judgment and fact. These requests and questions were an essential part of the Committee's job, but the demands placed on the time and energies, especially of current officials, was very real.

Accordingly, the Committee wishes to acknowledge the truly extraordinary level of cooperation it received from President George Bush, Secretary of Defense Dick Cheney, Secretaries of State James Baker and Lawrence Eagleburger, National Security Adviser Brent Scowcroft, and many others in the Executive branch.

Further, the Committee must respond to the frequently-heard criticism that our government is "not doing enough" in behalf of our missing Americans. There is no question that such criticisms have been valid at points in the past. Although the answers we seek are in Vietnam and Laos and other foreign lands, this Committee was created not so much because other governments have failed to cooperate, but because our people did not believe our own government was doing enough.

We believe that, over the past 15 months, our Committee has played a major role in remedying past problems. Building on the efforts of family and veterans groups, we urged creation of the JTF-FA. We have complemented the heroic efforts made by Gen. John Vessey to gain greater access to Vietnam so that our investigations of live-sighting reports and discrepancy cases in that country will yield credible results. We helped spark creation of the U.S.-Russia Joint Commission and took steps to open the doors of cooperation with North Korea.

Today, the improvements are visible on the ground throughout Southeast Asia and in Moscow. The level of commitment at the highest levels of our government has never been greater, and our Committee has witnessed first-hand the dedication that exists within the rank and file of the JCRC and the DIA. These are people who have worked in extremely difficult conditions in Southeast Asia, often for weeks at a time in remote and hostile locations, searching for remains, following up live-sighting reports or pursuing other evidence about what happened to missing Americans. These individuals have earned our admiration and are symptomatic of a revived national effort to gain the fullest possible accounting for our POW/MIAs.

This Committee was created to remedy the atmosphere of suspicion and distrust that has so long pervaded this issue. It is our hope

that this report, and the record of our work, will in fact help to repair the bonds of trust between our government and the public, and heal the wounds caused by past allegations and anger.

The bitterness surrounding the U.S. Government's effort to account for Americans missing from past wars has gone on long enough. It is time to move beyond past differences to a unified and informed commitment to seek further answers within the bounds of what time and the circumstances of war realistically permit.

Our people, and especially our POW/MIA families, have a right to know all that it is possible to know about the fate of their fellow countrymen and loved ones. This Committee, with strong public support, has pressed both our government and foreign governments to add to that knowledge--through the declassification of documents, response to hard questions, access to archives and eyewitness accounts. A process has been established that will permit timely, in-country investigations of evidence that live Americans remain in captivity. The search for remains and other evidence that could bring certainty to families is ongoing. More people are now employed and working full time on the POW/MIA issue than at any time since the end of the war, almost 20 years ago. America is finally being allowed to do what it should have been able to do long ago.

Unfortunately, the existence of a strong "accountability process" cannot stop the pain in a family member's heart, nor can it substitute for the gut belief held by some that one or more U.S. POWs survive. The qualities of love and faith reflect what is best about us, and are not answerable to laws of probability or perspective. That is why some of us will always bring to the evidence a different level of passion and a different standard for judging evidence than others. But this Committee's investigation demonstrates that these kinds of differences need not lead to differences of goal. It does not matter with what emotions we proceed at this point to seek further answers; it is important only that we continue looking as long as there is good reason to believe that additional answers may be found.

The Committee's investigation has answered a host of questions about the past, while opening the door to future progress. With this final report, the Committee will cease to exist. But that does not mean that our own work on this issue will also end. To the extent that there remain questions outstanding that are not adequately dealt with by the Executive branch, we will ensure that these questions are pursued through the normal Committee structure of the Congress. We will also work with officials in the Clinton Administration to see that the major recommendations of the Select Committee are implemented and that needed, additional diplomatic steps are taken.

We undertook our assignments as Members of this Committee not only out of official duty, but as a personal commitment; a commitment founded variously on prior military service or a concern for families in our respective states or out of a simple desire to pursue the truth. For each of us, that commitment has grown over the past year as we have worked with the families and agonized with them in trying to sort out the facts. Now, having completed our work as Members of the Select Committee, we move to a different stage of our effort but with no change of goal. We remain committed, and will ensure that our nation remains dedicated, to obtaining the fullest possible accounting of missing Americans. We owe no less to our POW/MIA families; nor can we accept less and be at peace with ourselves.

Chapter 1

Introduction

INTRODUCTION

Creation of the Senate Select Committee

The Senate Select Committee on POW/MIA Affairs was created because in 1991, almost nineteen years after the formal termination of U.S. participation in the Vietnam War, a part of the war remained very much with us as a nation. For almost two decades, the questions of whether American prisoners were left behind and, if so, whether they remained alive somewhere in captivity had haunted America. The failure to resolve these questions had raised doubts about the good faith of our government, about whether a real commitment had been made to the issue, about the wisdom of past actions taken or not taken and about realistic options for the future.

The durability of the debate surrounding the POW/MIA issue caused--it did not result from--creation of the Select Committee. The committee began its work at a time of swirling controversy and doubt about whether official U.S. handling of the issue matched the high priority the government claimed it received.

The Committee was established on August 2, 1991 when the Senate approved a Resolution introduced by Sen. Bob Smith providing for the creation of a Select Committee on POW/MIA Affairs to serve during the remainder of the 102nd Congress. By October, 1991, a Chairman, Vice-chairman and ten additional Members had been appointed to the Committee and a Resolution providing funding had been approved.

Despite the passage of time, the work of previous Committees and commissions, the efforts of countless officials to clarify and explain and the public status throughout the past decade of this issue as one of highest national priority, a Wall Street Journal poll, taken shortly before the Committee was created, found that 69 percent of Americans believed that U.S. servicemen were still being held against their will in Southeast Asia and that of those, three-fourths felt the U.S. Government was not doing enough to bring the prisoners home.

As these numbers indicate, the POW/MIA issue has had a life of its own. The simple explanation for this is that although no American prisoners are known for certain to be alive, 2,264 continue to be officially "unaccounted for" and therefore not proven dead. In addition, the U.S. Government has continued to receive reports alleging that some Americans remain alive in captivity. It is only human nature to hope, in the absence of contrary proof, that a loved one has survived. And it is only to be expected, in such circumstances, that the American people, would demand the fullest possible effort to establish the truth.

The evidence of the past 20 years is that on a subject as personal and emotional as the survival of a husband, brother or son, it is

simply not enough to talk of probabilities and the need for perspective. It means little to the family and friends of a missing serviceman to be told by some that the percentage of U.S. forces missing after Vietnam is lower than in previous wars or that it is inevitable that there will be a certain number unaccounted for in any major armed conflict and that the opposing side has far more MIAs than the U.S. The search for answers to POW/MIA questions is not about mathematics; it is about the fate of individual human beings who went to Indochina to fight for their country and who did not come back. Something very real happened to each of those brave men, and our country will not be at peace with itself until we are morally certain we have done all we could to find out what.

In addition to the emotional concerns of families, a second impetus for establishing the Committee was provided by legitimate unresolved questions of fact. Why, Americans asked, did so few of the U.S. airmen downed in Laos return home? How do we explain the dozens of unresolved, first-hand reports of Americans being sighted in captivity in Southeast Asia after the end of the war? Were the hundreds of resolved reports adequately investigated? How can we trust the assurances of Vietnam that it holds no prisoners when we have strong evidence that it has stockpiled American remains? What about the Tighe Commission's 1986 conclusion that "there is a strong possibility of U.S. prisoners being held?" And what about the steady drumbeat of rumors about conspiracy, cover-ups, photographs, failed rescue missions and mysterious videotapes?

All of this controversy was fueled in the period just prior to the Committee's creation by the February 12, 1991 resignation of Colonel Millard Peck as Director of DIA's Special Office for POW/MIA Affairs. In his letter of resignation, Col. Peck criticized what he called a "mindset to debunk" information that U.S. POWs might be alive and suggested that a "'cover-up' may be in progress."

Even more dramatic was the identification by family members in mid-1991 of individuals in three photographs that appeared to depict American POWs in Southeast Asia. The photographs generated enormous publicity and sparked demands for an immediate government response.

Interest in the issue was stimulated, as well, by discussions of conditions for establishing normal diplomatic and economic relations between the United States and Vietnam. The U.S. State Department's "Road Map" to normalization required, among other things, full cooperation by Vietnam in resolving last known alive discrepancy cases, implementing a plan to resolve expeditiously live-sighting reports on which the U.S. requests assistance and the rapid repatriation of all recovered and recoverable American remains.

The Committee's Mission

Obviously, even the fullest possible accounting for U.S. POW/MIAs will leave some questions unanswered. Investigations can uncover information, but not create it. If, for example, neither friend nor foe had certain knowledge at the time about the fate of a pilot lost over water, there is little likelihood that the Committee or any other investigative unit could, at this distance in time, establish that certainty.

But the Committee was not created with the expectation of final, definitive, case-by-case answers. That is a task that may well be beyond mortal power to achieve, and that only the Executive branch has the resources to attempt. Rather, the Committee's job was to investigate the events, policies and knowledge that have guided U.S. Government POW/MIA related actions over the past 20 years and to do so in order to advance the following goals:

- . to determine whether there is evidence that American POWs survived Operation Homecoming and, if so, whether there is evidence that some may remain alive in captivity;
- . to ensure the adequacy of government procedures for following up on live-sighting reports and other POW/MIA related information;
- . to de-mystify the POW/MIA accounting process so that the families and the public can better understand the meaning behind the numbers and statistics used in discussions of the issue;
- . to establish an open, comprehensive record, and to provide for the broad declassification of POW/MIA materials in order to enable both the Committee and the public to make informed judgments about questions of policy, process and fact;
- . to lend added weight to Executive branch efforts to obtain cooperation from foreign governments in Southeast Asia and elsewhere in accounting for missing Americans;
- . to review the activities of private organizations who participate in fundraising and educational efforts related to the POW/MIA issue; and
- . to examine, to the extent time and resources permit, unresolved issues pertaining to missing Americans from World War II, Korea and the Cold War.

De-Mystifying the Process

Nothing has done more to fuel suspicion about the government's handling of the POW/MIA issue than the fact that so many documents related to those efforts have remained classified for so long. Rightly or wrongly, the secrecy--especially about live-sighting

reports and critical internal reviews of Defense Intelligence Agency procedures--have fed the perception that government officials have something to hide. This perception increased in the months prior to the Committee's creation because of evidence that some Congressional inquiries may have been responded to with inaccurate or incomplete information and because then Congressman Bob Smith and Senator Charles Grassley had enormous difficulty in prior years in gaining DOD permission to review classified POW/MIA related materials.

As a result, the Committee sought from the beginning to work with the Executive Branch to make public all information relevant to the POW/MIA issue, except that related directly to the sources and methods of gathering intelligence. The Committee agreed that "source and methods" must be kept confidential in order to maintain America's ability to gather new information and track leads in the future. The Committee's goal was to "de-mystify" the POW/MIA issue and to lay before the public a complete picture of what the U.S. Government knows. The Committee generally succeeded in this objective. A full description of the efforts made to obtain the declassification and public release of documents is included in chapter entitled "Declassification."

Accountability and Response

A major investigative priority of the Committee was to examine the U.S. Government's ability and willingness to respond rapidly to possible evidence that live Americans may still be held against their will in Southeast Asia. The Committee also sought to gain greater cooperation from the governments of Southeast Asia in efforts to obtain answers to questions about specific missing Americans. These "process-oriented" issues go to the heart of U.S. priorities. For example, a bureaucracy that assumes that all American POWs are dead may not respond as energetically to an unconfirmed, but possibly credible, report that a POW has been sighted as a bureaucracy that assumes Americans may still be alive. Similarly, an Administration that attaches a genuinely high priority to POW/MIA issues is likely to devote greater resources of intelligence and response than an Administration that does not. The evolution of U.S. government policies and procedures from Operation Homecoming to the present are discussed in the "Accountability" chapter of this report.

Building a Public Record

Beyond the questions of process, there exist the fundamental questions of fact. The Committee understood from the outset that it could not expect to answer every question, but that it had a responsibility to pursue as comprehensive an investigation as possible. To this end, the Committee conducted more than 1000 interviews; took more than 200 sworn depositions; held more 200 hours of public hearings; reviewed tens of thousands of pages of

documents, files, and reports; studied large quantities of intelligence information, including raw intelligence; posted a full-time investigator to Moscow; and sent Member delegations to Russia, North Korea and four times to Southeast Asia.

The Committee's goal was to identify and explore every promising avenue of investigation. To this end, the Chairman and Vice-chairman sent personal letters to the primary next of kin of all Vietnam-era POW/MIAs, and to all returned POWs, seeking information and advice. During televised public hearings, Members of the Committee have repeatedly invited all those with information concerning a POW/MIA related matter to come forward and share that information with the Committee. The Committee has also solicited suggestions from veterans organizations, activist and family groups, current and former U.S. officials and from the public at large with respect to possible witnesses and areas of investigation.

The final judge and jury of U.S. Government actions on the POW/MIA issue is not this Committee; it is the American people. As previous POW/MIA related inquiries have shown, it does not matter much what the official view is if the public does not generally understand and share that view. As a result, the Committee made a conscious effort to combine its behind-the-scenes investigative work with public hearings so that the public would learn--almost contemporaneously with the Committee--about various aspects of the POW/MIA issue. For the same reason, the Committee made every effort to avoid holding hearings in executive session and to provide for the declassification of Committee-generated documents, such as depositions. The goal from the outset has been to create a comprehensive and unbiased public record that would be available for families, journalists, historians and citizens to review and make their own best judgments about the facts. This report is an important part of that record.

The Investigation

The Committee investigation began by tracing the history of the issue back to its war-time beginnings. Clearly, the chance that American POWs are alive in Southeast Asia today depends on whether some were left behind after Operation Homecoming. The chapters in this report entitled "The Paris Peace Accords" and "Accountability" focus in detail on this possibility.

The largest share of Committee efforts was devoted to examining information concerning the possible survival of Americans during the post-war period and up to the present day. This required the review of vast quantities of first, second and third-hand "live-sighting" reports; the analysis of a wide range of intelligence; examination of the methods that DIA uses to evaluate information; and the consideration of indications that POWs may have been transferred to the former Soviet Union or to China during or after

the Korean or Vietnamese conflicts. Chapters 4 and 9 describe this aspect of the Committee's investigation.

Cooperation of Southeast Asia Governments

It will be extremely difficult for our government to obtain additional solid information concerning the fate of our POW/MIAs without the cooperation of Vietnam, Laos and Cambodia.

Accordingly, the Committee has sought to use its review of POW/MIA issues to encourage recent trends towards greater cooperation between and among these governments and the United States. Members of the Committee traveled to Southeast Asia in April, October, November and December, 1992 for talks with foreign officials and U.S. personnel deployed there. In addition, Committee Members have met from time to time in the United States with representatives of the foreign governments to exchange information and clarify outstanding questions.

Below is a very brief summary of the situation that existed in each of these three countries at the time the Committee's work began. A full description of the issue is contained in the "Vietnam, Laos and Cambodia" chapter of this report.

Vietnam

When the Committee was formed, 1656 Americans were listed as unaccounted for in Vietnam. Since the end of U.S. involvement in hostilities on January 27, 1973, the remains of 266 Americans have been returned and identified.

Most of the Americans lost or captured in North Vietnam during the war were Air Force or Navy airmen who crashed in populated areas accessible to Vietnamese authorities. The North Vietnamese made a systematic effort to investigate crash sites, capture and process American POWs, bury and preserve remains and maintain centralized records.

About two-thirds of the Americans lost in South Vietnam were enlisted Army and Marine Corps personnel. U.S. officials have found that records and information concerning American prisoners held in the south are less complete than for those held in the north.

Since the war, Vietnamese officials have steadfastly denied that any Americans are held captive or that the remains of American servicemen are being knowingly withheld.

Cooperation from Vietnam is essential to the resolution not only of cases involving Americans lost or captured in Vietnam, but in Cambodia and Laos, as well. This is because the vast majority of Americans missing in those countries were believed to have become missing in areas under the control of North Vietnamese military

forces at the time. Thus, Vietnam's military archives and other records are an important potential source of information concerning the fates of these men.

Since 1973, the degree of cooperation received from Vietnam has varied widely depending on the international political situation. A good working relationship was impossible during the years immediately after Operation Homecoming because of disputes over violations of the Paris Peace Accords. After the fall of Saigon in 1975, some efforts were made on both sides to pave the way for more normal political and diplomatic relations. That progress came to an abrupt halt in late 1978, however, following Vietnam's invasion of Cambodia, which the United States strongly opposed. Significant bilateral discussions did not resume until the early 1980's, but have since grown steadily in their frequency and depth.

One of the most positive outgrowths of recent talks was the appointment in 1987 of Gen. John W. Vessey, Jr. (USA Ret.), as the President's special envoy to Vietnam. As a result of Gen. Vessey's discussions with then-Vietnamese Foreign Minister Nguyen Co Thach, the U.S. established a POW/MIA liaison office in Hanoi in July, 1991. The purposes of the office are to investigate live-sighting reports, to conduct joint searches for the remains of American servicemen and to seek access to the relevant Vietnamese records.

The Vessey team has placed a major emphasis on the investigation and resolution of the "discrepancy" cases. Discrepancy cases are those where U.S. officials believe there is the highest probability that additional information concerning a missing American can, with the proper degree of cooperation and investigation, be found. Currently, 135 discrepancy cases involving Americans lost in Vietnam are under investigation and a preliminary investigation in Vietnam of each case is to be completed by January 1993.

Laos

At the time of the Committee's creation, 528 Americans were listed as unaccounted for in Laos, of whom 335 were considered POW/MIA. Only 12 U.S. POWs captured in Laos returned during Operation Homecoming and one, Emmet Kay, who was captured after the cease-fire returned in September 1974. Since the end of the Vietnam conflict, the remains of 42 servicemen have been repatriated.

U.S. efforts to obtain information from Lao authorities have been complicated by the facts that Laos was not a party to the Paris Peace Accords and the United States was not a party to the 1973 Laos cease-fire agreement that pledged all sides to return captive personnel. In addition, the Defense Department estimates that at least 75 percent of the Americans missing in Laos were lost in areas controlled at the time by North Vietnamese armed forces. These losses were generally in eastern Laos along the border with Vietnam and near the Ho Chi Minh Trail.

Although the POW/MIA records kept by the Lao have been judged to be less extensive than those kept by Vietnam, there is credible evidence that at least a few unaccounted for Americans were actually held by Pathet Lao forces during the war. Therefore, the Lao can be expected to have knowledge concerning the fate of these individuals. Additionally, there is strong reason to believe that North Vietnamese military were instructed to recover and record all they could about downed U.S. aircraft and killed or captured pilots. Thus, efforts to account for many Americans will ultimately require tri-lateral cooperation involving not only the U.S. and Laos, but Vietnam as well.

In recent years, Lao authorities have been more cooperative with the U.S. in planning and carrying out investigations at known U.S. aircraft crash sites, often in remote and virtually inaccessible locations. The government has also cooperated in efforts to evaluate photographs alleged to depict American POWs.

Cambodia

At the time of the Committee's creation, 83 Americans were listed as unaccounted for in Cambodia and no prisoners or identified remains had been repatriated during the post-war period until recently.³⁰ Cambodia was not a party to the Paris Peace Accords and no separate cease-fire agreement on repatriation was reached in the aftermath of the war. The recovery of American POWs or remains in Cambodia was made virtually impossible after 1975 when the Khmer Rouge seized power and embarked on a bloody reign of terror directed at Cambodians and foreigners alike. Throughout much of the past 20 years, the U.S. has had either difficult or non-existent diplomatic contacts with the Cambodian Government. The years of struggle and chaos leave little hope that documents or records have survived that would reveal additional information about U.S. personnel.

As in Laos, however, most of the Americans unaccounted for in Cambodia were lost near the border with Vietnam in areas where North Vietnamese forces were dominant. Thus, the best potential sources of documentary information concerning those lost in Cambodia may be in Hanoi, not in Phnom Penh.

Fortunately, the current government in Cambodia has demonstrated a willingness to cooperate with the U.S. in joint field investigations and other efforts to obtain accurate information concerning American POW/MIAs. Cambodia's Prime Minister Hun Sen has been particularly helpful in this effort.

Previous Wars

³⁰The remains of several people that have been returned from Cambodia were being examined at publication time.

The seeds of the Cold War were sown by the Red Army as it pursued the Wehrmacht across Eastern Europe. The Kremlin imposed Communist regimes on the war-ravaged nations of the region and war-time alliances were replaced by a deadly rivalry: NATO versus the Warsaw Pact. The Soviet Union and its client states, from Europe to the Bering Sea, from the Arctic to the tropics, became the theater of operations for the far-flung activities of U.S. intelligence agencies and units of each service.

To no one's surprise, the Soviet Union reacted. It kidnapped intelligence agents and "attaches." It shot down U.S. intelligence aircraft and the air crews disappeared. These were America's "Cold War losses."

Another tragic outcome of the rapid advance of the Red Army was the "liberation" of American and Allied POWs from German POW camps by the Red Army. Rather than moving these hapless soldiers westward toward their own advancing armies, the Soviets took thousands of them eastward to Odessa. Some boarded ships and eventually reached their homes safely. Others, and we may never know how many, became prisoners -- not of war, but of the Soviet gulag.

During the Korean War, thousands of American fighting men were captured by North Korean and Chinese forces. Estimates vary, but clearly hundreds were not returned after the armistice and prisoner exchange. Intelligence information, collected during and after the war, indicated that many POWs were held in China, and some were sent to the Soviet Union. Therefore, accounting for the Korean War missing involves not only North Korea, but China and Russia as well.³¹

The problems the United States faces in recovering soldiers who have fallen into Communist hands predates even World War II. We note that the Bolsheviks captured American soldiers on the Archangel and Siberian fronts during the Intervention of 1918-19. Additionally, the U.S. is not alone in trying to account fully for missing and captured soldiers in the period immediately following past wars. Many of our allies from the Korean conflict still have unaccounted for servicemen.

Because the Committee's focus concerned the possibility that American POWs could still be alive, our resources were devoted primarily to investigating the relatively recent conflict in Vietnam. Nevertheless, the Committee did focus considerable attention on investigating previous wars and conflicts. A discussion of this phase of the Committee's investigation is contained in Chapter 9 of this report.

³¹ A chronological summary of policy and intelligence matters pertaining to Korean War POWs is included as an appendix to this report.

Previous Investigations

The Select Committee began its work in October, 1991 fully aware that the POW/MIA issue had been examined and investigated by Congress and the Department of Defense many times in the past. One of the challenges facing the Committee was whether it could uncover significant information that previous investigations into the subject had not.

The Committee's approach has been to learn from, and build on, those previous investigations, without necessarily accepting as valid either the methods or the findings of those inquiries. The Committee's review of earlier studies has helped to focus resources and attention on areas that had not been thoroughly examined before or where still unanswered questions had been raised.

It should be noted that earlier investigations have varied widely in content, method, purpose and work product. Most previous efforts have consisted simply of Congressional hearings or single-purpose studies into the workings of the Defense Intelligence Agency. The only previous study that was comparable in its original mandate to that of the Senate Select Committee was that of the Montgomery Committee in 1975-1976. A summary of prior investigations and hearings is included as an appendix to this report.

The Montgomery Committee

The most extensive and influential of prior Congressional investigations into the POW/MIA issue was conducted by the House Select Committee on Missing Persons in Southeast Asia, known as the "Montgomery Commission report" after Committee chairman, U.S. Rep. G.V. "Sonny" Montgomery. The investigation included public hearings, private meetings with U.S. officials, including President Ford and Secretary of State Henry Kissinger, and direct talks with key government officials in Vietnam and Laos. The Montgomery Committee reviewed many of the same issues that would be considered by the Senate Select Committee 16 years later. These included the implementation of the Paris Peace Accords, the possibility that U.S. POWs may have survived in Laos and DIA procedures for obtaining the fullest possible accounting of POW/MIAs.

The most significant and widely-quoted finding in the Montgomery Committee's December 13, 1976 final report was its conclusion that "no Americans are being held alive as prisoners in Indochina, or elsewhere, as a result of the war in Indochina." The Committee did not, however, exclude the possibility that some American servicemen might have remained behind voluntarily, citing specifically one deserter and one defector (then listed officially as a POW) who "were alive in Indochina in the early 1970's and may still be alive."

During its investigation, the Committee reviewed the files of the 33 U.S. servicemen still listed as POW in 1976. The Committee concluded that six of the 33 had been classified improperly as POWs, and that there was no evidence that 16 others had ever been taken prisoner. The Committee identified only 11 POWs who had not been accounted for by the Vietnamese.

Although the Committee found no "dereliction or malfeasance of duty on the part of U.S. Government officials," it did cite the military security classification system for contributing to "unnecessary confusion, bitterness and rancor" among POW/MIA families. It also found that the DOD's decision to conceal actual loss sites during the secret wars in Laos and Cambodia "contributed to the mistrust expressed by some next of kin."

The Montgomery Committee's report strengthened the view of those who felt that no American POWs had been left behind, but failed to persuade others. Representatives Joe Moakley, Benjamin Gilman and Tennyson Guyer, all Members of the Committee, questioned the Committee's basis for concluding that no American prisoners were alive in Indochina and the National League of Families released a 25 page report criticizing the Committee's methodology and its overwhelming reliance on data provided by the U.S. Government.

During its own investigation, the Select Committee interviewed Angus MacDonald, who served as staff director for the Montgomery Committee. Mr. MacDonald said that the Montgomery Committee's inquiry was focused almost solely on the question of whether American POWs remained alive at that time (1975-1976) and not on whether some may have been left behind after Operation Homecoming in 1973. Mr. MacDonald also confirmed that the Montgomery Committee did not receive access to many of the Executive branch documents made available to the Select Committee, particularly intelligence information and those dealing with the negotiation and aftermath of the Paris Peace Accords.

The Woodcock Commission

In February, 1977, shortly after taking office, President Carter appointed a Presidential Commission on Americans Missing and Unaccounted for in Southeast Asia. The five member Commission was chaired by Leonard Woodcock, President of the United Auto Workers, and was designed to help the President gain greater cooperation on the POW/MIA issue from the governments of Southeast Asia.

Although the Commission was not empowered to negotiate, it was instructed to seek all available information from the Governments of Vietnam and Laos and to listen carefully to the concerns of those governments on other matters of interest, including possible U.S. economic aid. The hope was that the Lao and Vietnamese would be more forthcoming on POW/MIA matters if they sensed a willingness

on the part of the U.S. to consider such issues as normalization of relations and reconstruction aid.

The centerpiece of Woodcock Commission activities was a visit of several days in mid-March, 1977 to Vietnam and Laos. The delegation was told by leaders in both countries that they were willing to cooperate on POW/MIA matters, but that the United States should also take steps concerning economic aid and reconstruction. In Vietnam, the Commission received the remains of 12 U.S. airmen and was informed that a specialized office would be established by the government to receive information on POW/MIA related matters. In Vientiane, government officials emphasized the difficulty of looking for the remains of MIAs in a nation as rugged, remote and impoverished as Laos, and said that all U.S. POWs captured in Laos had already been returned.

Like the Montgomery Committee, the Woodcock Commission concluded that "there is no evidence to indicate that any American POWs from the Indochina conflict remain alive." The Commission found that the Vietnamese "have not given us all the information they probably have," but cited "a clear, formal assurance" from the Vietnamese that they would look for MIA information and remains. The Commission also concluded, pessimistically, that "for reasons of terrain, climate, circumstances of loss, and passage of time, it is probable that no accounting will ever be possible for most of the Americans lost in Indochina. Even where information may once have been available, it may no longer be recoverable due to the ravages of time and physical changes."

It is worth noting that the Woodcock Commission's task was more diplomatic than investigatory. It did not seek to replicate the work of the Montgomery Committee, to review files, hold hearings or develop new sources of information. Instead, it relied almost entirely on briefings from U.S. agencies, POW/MIA activists and others. The Commission clearly operated on the assumption that further POW/MIA information could not be gathered without cooperation especially from the Vietnamese, and that cooperation would most likely be forthcoming if overall U.S.-Vietnamese relations were improved.

Live-Sighting Reports

Neither the Montgomery Committee nor the Woodcock Commission had the benefit of the flood of reports from refugees fleeing Southeast Asia, especially Vietnam and Cambodia, following the Communist takeover of those two countries. First-hand and hearsay accounts about live Americans being sighted did much to revive hopes among families and others that some U.S. POWs might have survived, but few reports were received before 1979.

Live-sighting reports, and the U.S. response to them, dominated much of the POW/MIA discussion during the late 1970's and 1980's.

In the early 1980's, George Brooks of the National League of Families conducted a study in which he found considerable fault with the way live-sighting reports were analyzed by the DIA. In Congress, however, the House Task Force on American Prisoners and Missing in Southeast Asia reviewed 80 "live-sighting" case files and concluded that "all options available to DIA were exercised" in responding to them. The following year, the House Permanent Select Committee on Intelligence concluded that the "DIA performs unbiased, professional and thorough analyses of POW-MIA live-sighting cases," and rejected suggestions that credible information about live Americans had been covered up. It should be noted that this was a limited inquiry into DIA procedures and that no public hearings were held.

During this same period, Commodore Thomas A. Brooks (USN) of the DIA wrote an extremely critical internal memorandum on DIA's performance in evaluating live-sighting cases. According to the memo, Admiral Brooks further sought to "damage limit" Members of Congress who wanted to review POW/MIA files which were acknowledged to be "sloppy" and "unprofessional".

During the first six months of 1986, the Senate Veterans Affairs Committee, chaired by Senator Frank Murkowski, conducted seven days of hearings on the POW/MIA issue, focusing primarily on "live-sighting" reports and other information that U.S. POWs were being held. The Committee received a bewildering array of allegations, claims and counter-claims from agency officials, family members, former POWs, retired military officers and Members of Congress. The Committee issued no report, but the range of testimony indicated that divisions over whether the U.S. Government was doing enough in behalf of POW/MIAs and their families were widening, rather than narrowing.

Also in 1986, two other critical reviews were written at the Defense Department concerning DIA's POW/MIA efforts. One internal review concluded that it was a "mystery" that prior Congressional reports had generally praised these efforts. A summary of all three reviews is discussed below, and the entire reports are included as an appendix.

Internal DIA Inquiries

Meanwhile, several internal Defense Intelligence Agency reviews were conducted during this period.

- On September 25, 1985, Commodore Thomas A. Brooks (USN), DIA's Assistant Deputy Director for Collection Management, reported on his review of the operations and analysis of the DIA's POW/MIA Office. Commodore Brooks was critical of some DIA procedures and concluded that there was an element of truth to the allegation that the DIA had a "mindset to debunk" reports of live Americans in Southeast Asia.

- On March 18, 1986, Col. Kimball Gaines (USAF), reported to the Director of the DIA on a review of the POW/MIA Office that he had conducted as head of a five member task force. The Gaines Task Force concluded that it had "no confidence that the current analytical process has adequately addressed all relevant factors and has drawn totally reliable conclusions."
- On May 27, 1986, a survey of DIA's PW/MIA Analysis Center was discussed in a report by a Task Force headed by Lt. Gen. Eugene F. Tighe, Jr. (USAF-Ret.)

Although the body of the Tighe report was classified until mid-1992, some of the conclusions and recommendations were not. The report recommended a "complete overhaul" of the activities of the DIA PW/MIA Center in order improve the quality and thoroughness of intelligence evaluation related to the POW/MIA issue. The principal conclusions were that:

We have found no evidence of a cover-up by DIA.

It is self-evident that a large number of MIA's may never be properly accounted for. Therefore, false hope should not be offered to those seeking a total accounting of PW/MIA's.

DIA holds information that establishes the strong possibility of American prisoners of war being held in Laos and Vietnam.

The Socialist Republic of Vietnam holds a large number of remains, some 400 at least, of U.S. military personnel solely for continued bargaining power.

. . . . Major improvements in procedures and resources are required for the DIA PW/MIA Center to evaluate information properly.

The report's finding that live U.S. POWs were possibly being held in Laos and Vietnam was based on live-sighting reports provided primarily by the refugee community which the Task Force found to be "possibly the finest human intelligence database in the U.S. post-World War II experience," and on judgments made about the likelihood, based on intelligence and history, that Vietnam would seek to retain prisoners as bargaining chips.

Reagan Inter-Agency Group

On January 19, 1989, the last day of President Reagan's second term, an "Inter-Agency Report of the Reagan Administration on the POW/MIA Issue in Southeast Asia" was released.

The report credited President Reagan for designating the issue a matter of "highest national priority," re-opening bilateral discussions with Vietnam and Laos, upgrading intelligence priorities, and discouraging "irresponsible" private activities.

The report concluded that "we have yet to find conclusive evidence of the existence of live prisoners, and returnees at Operation Homecoming in 1973 knew of no Americans who were left behind in captivity. Nevertheless, based upon circumstances of loss and other information, we know of a few instances where Americans were captured and the governments involved acknowledge that some Americans died in captivity, but there has been no accounting of them."

Challenge for the Select Committee

Aside from the Montgomery Committee, no full scale Congressional investigation of the issues to be dealt with by the Select Committee had ever been conducted. However, the Select Committee would have the advantage of new information that had become available since the mid-1970's, including potential access to information and cooperation from nations of the former Soviet bloc.

The Committee was determined from the outset to do as thorough a job as possible. Unlike previous inquiries, the Committee would focus not on a single issue or a particular point in time, but on the entire chain of custody of the POW/MIA issue from the war to the Paris Peace Talks to the present day.

The Committee's investigative methods also differ from previous inquiries in several ways. First, the Committee required sworn testimony from government officials and private citizens alike and felt compelled to use its subpoena authority on some occasions. Second, the Committee made a vigorous effort to solicit testimony not only from policy-makers in Washington, but from professionals in the field, many of whom have worked on the issue for more than a decade. Third, the Committee requested, and received, cooperation from the Executive branch, but also attempted whenever possible, to analyze information and evidence independently from the Executive branch. On several occasions, the Committee asked officials from the Defense Intelligence Agency to respond to alternative theories or interpretations of available information. The purpose was to test the "conventional wisdom" and to allow a free-flowing exchange of views for the benefit of Committee Members and the public.

Finally, the Committee sought access to all POW/MIA related materials in the possession of the Executive branch, including Presidential papers, National Security Council documents and the records of the White House-based Washington Special Action Group. Much of this material had never before been made available to Congressional or other investigators of the issue.

Baseline Hearings -- November, 1991

During the initial round of hearings on November 5, 6, 7 and 15, 1991, the Committee sought to establish a baseline of belief and knowledge about the POW/MIA issue, and to obtain guidance from family, veterans and activist groups about the areas on which it should concentrate its work.

The testimony of the first witness, Secretary of Defense Richard Cheney, marked the first time that a Secretary of Defense had testified before Congress exclusively on the subject of POW/MIA affairs. The Secretary told the Committee that "to date, we have no conclusive evidence proving that Americans are being held against their will in Indochina. Nonetheless, the importance of the issue makes investigating live-sighting reports our first priority."

The Secretary and subsequent Defense Department witnesses set forth in detail the process DOD uses to seek POW/MIA related information throughout Southeast Asia, including efforts to increase cooperation with governments of the region. In that connection, Secretary Cheney testified that:

Vietnamese cooperation on these joint investigations has improved, but despite these improvements, we are still not satisfied with Vietnam's performance. Too often, our office finds that public pronouncements of increased cooperation by Hanoi do not produce satisfactory arrangements on the ground. Promises to cooperate on live-sightings, improved helicopter transportation and complete access to historical records remain only partially fulfilled. Vietnam's foot-dragging on unilateral repatriation of remains is especially frustrating, especially if we ever hope to achieve the fullest possible accounting in a reasonable period of time, Vietnamese unilateral efforts, as well as their participation in joint activities, will have to dramatically improve.

Secretary Cheney also described Defense Department efforts to evaluate the validity of recent photographs purporting to show U.S. POWs, and alluded to the "cruel actions by some fast operators who play on the hopes of families and friends of POWs and MIAs:

We must naturally pursue every lead that comes our way.

. . . .

But each time we rush to answer. . . false alarms, our resources are diverted from solid leads and productive lines of inquiry. Individuals who repeatedly provide false information, well intentioned or not, should be called to account for their actions.

General John W. Vessey, Jr. (USA Ret.), the Special Presidential Emissary for POW/MIA Matters, reviewed the status of his efforts to gain a fuller accounting of missing Americans. In describing the U.S. and Vietnamese approaches to the issue, General Vessey told the Committee:

The United States has quite consistently urged that the POW/MIA matter be approached as a humanitarian issue. We have regularly told the Vietnamese that resolution of the issue is not a requirement for discussing normalization of diplomatic relations. We have, however, consistently said that the pace and scope of any normalization discussions will be affected by the level of Vietnam's cooperation in resolving the POW/MIA issues.

With respect to the issue of live Americans, General Vessey said:

We know through extensive debriefings and subsequent investigations that all Americans seen by U.S. prisoners of war who did return in the Vietnamese prison system have been accounted for either as returned POWs or through the return of remains or having been reported as died in captivity.

In the years since 1973, other than the 100 or so unresolved first-hand live-sighting reports under investigation, we have gathered no other intelligence that has been reported to me. . . . which indicates that the Vietnamese are holding live prisoners or that there was another POW system other than the one in which our returned prisoners were held.

Of particular interest to the Committee was the advice and guidance that POW/MIA families, veterans and activist groups had concerning various aspects of the issue and the most appropriate focus for the Committee's work.

For example, Robert Wallace, Commander-in-Chief of the Veterans of Foreign Wars, cited a series of resolutions approved by his organization calling for accelerated government to government contacts with the nations of Southeast Asia, the establishment of a non-diplomatic U.S. Government presence in Vietnam, the appropriate declassification of POW/MIA information and more active efforts to resolve questions about Korean War POW/MIAs.

John F. Sommer, Jr., Executive Director of the American Legion, recommended the review of 1) live-sighting reports and the methods used by DIA to evaluate them; 2) relevant satellite photographs; 3) the 1986 Tighe Commission report; 4) document classification procedures; 5) operation of the Central Identification Laboratory in Hawaii; and 6) the allegations of former DIA official, Col. Millard Peck.

J. Thomas Burch, chairman of the National Vietnam Veterans Coalition, expressed concern about statements that U.S. officials have made discounting the possibility that U.S. POWs are still being held. "It is difficult to understand," Mr. Burch told the Committee, "how the Government can effectively negotiate for the return of live prisoners when it lacks the confidence of its own negotiating position. Basically, they're telling the Vietnamese they want information about live Americans at the same time they're publicly saying that they're all dead."

Bill Duker, Chairman of the Vietnam Veterans of America's standing committee on POW/MIA, also testified that the highest priority should be given to the repatriation of live Americans and expressed support for the declassification of POW/MIA information, "as long as that declassification protects the privacy of the families and safeguards U.S. intelligence methods and sources."

Joseph E. Andry, past National Commander of the Disabled American Veterans, urged the Select Committee to carry out a dual mission: "The first part of the mission should focus on an aggressive pursuit of live sightings in Southeast Asia. The second part. . . . should be an encompassing investigation into why our government still has not accounted for 90,000 soldiers, sailors, airmen and Marines since the end of World War II."

The Committee also received testimony from the National League of POW/MIA Families and from individual family members.

Ann Mills Griffith, Executive Director of the National League of Families, credited the Reagan Administration with efforts to raise public consciousness of the POW/MIA issue, to upgrade functioning of the POW/MIA Inter-Agency Group, and for developing a strategy aimed at gaining increased cooperation from the governments in Southeast Asia. Griffiths said that, unlike the past, the current process has "integrity and priority."

Other family members who testified during the November hearings included Dr. Jeffrey C. Donahue, brother of Maj. Morgan Jefferson Donahue, lost in Laos in 1968; Mrs. Gladys Stevens Fleckenstein, mother of Lt. Cmdr. Larry Stevens, lost in Laos, 1969; Ms. Shelby Robertson Quast and Ms. Deborah Robertson Bardsley, daughters of Col. John Robertson, lost or captured in Vietnam in 1966; and Mr. Albro Lundy III, son of Major Albro Lundy, Jr., lost in Vietnam in 1970; Captian Robert Apodaca, son of Major Victor Apodaca, lost in North Vietnam in 1967; and Dr. Patricia Ann O'Grady, daughter of Col. John O'Grady, lost in North Vietnam in 1967. Each raised serious questions about the U.S. Government's handling of the POW/MIA issue as it affected the investigation into the status of their missing family member.

THE PARIS PEACE ACCORDS

Key Questions and Key Issues

Most of the questions and controversies that still surround the POW/MIA issue can be traced back to the Paris Peace Accords and their immediate aftermath. If that agreement had been implemented in good faith by North Vietnam and with necessary cooperation from Cambodia and Laos, the fullest possible accounting of missing Americans would have been achieved long ago.

Obstacles to Resolution

The great accomplishment of the peace agreement was that it resulted in the release of 591 Americans, of whom 566 were military and 25 civilian. It also established a framework for cooperation in resolving POW/MIA related questions that remains of value today. Unfortunately, implementation of the agreement failed, for a number of reasons, to resolve the POW/MIA issue.

During its investigation, the Committee identified several factors that handicapped U.S. officials during the negotiation of the peace agreement, and during the critical first months of implementation.

The first and most obvious obstacle to a fully effective agreement was the approach taken to the POW/MIA issue by North Vietnam (DRV) and its allies. During the war, the DRV violated its obligations under the Geneva Convention by refusing to provide complete lists of prisoners, and by prohibiting or severely restricting the right of prisoners to exchange mail or receive visits from international humanitarian agencies. During negotiations, the DRV insisted that the release of prisoners could not be completed prior to the withdrawal of all U.S. forces, and consistently linked cooperation on the POW/MIA issue to other issues, including a demand for reconstruction aid from the United States. Once the agreement was signed, the DRV was slow to provide a list of prisoners captured in Laos. Following Operation Homecoming, the North Vietnamese refused to cooperate in providing an accounting for missing Americans, including some who were known to have been held captive at one time within the DRV prison system. Perhaps most important of all, the DRV's continued pursuit of a military conquest of the south dissipated prospects for cooperation on POW/MIA issues.

A second factor inhibiting the achievement of U.S. objectives was the limited leverage enjoyed by U.S. negotiators. It was U.S. policy, fully known to the North Vietnamese, that the U.S. sought to disengage from what had become the longest war in American history. President Nixon, who had inherited the war from his predecessors, was elected on a platform calling for an end to U.S. involvement; support was building rapidly within the Congress for measures that would have mandated a withdrawal conditioned solely on the return of prisoners; the antiwar movement had become more

Chapter 2

The Paris Peace Accords

active and visible; and the American public had become increasingly divided and war-weary as the conflict continued. These same factors, along with the debilitating effects of the Watergate scandal on the Nixon Presidency, weakened the U.S. hand in responding to DRV violations after the peace agreement was signed.

A third factor limiting the success of the agreement was the absence of Lao and Cambodian representatives from the peace table. Although the U.S. negotiators pressed the DRV for commitments concerning the release of prisoners and an accounting for the missing throughout Indochina, the peace accords technically applied only to Vietnam. Although the DRV assured Dr. Kissinger that it would ensure the release of U.S. prisoners in Laos, the prisoners captured in Laos who were actually released had long since been transferred to Hanoi. No Americans held captive in Laos for a significant period of time were returned at Operation Homecoming. Neither the peace agreement, nor the assurances provided by the North Vietnam to Dr. Kissinger, established procedures to account for missing Americans in Cambodia or Laos.

Purpose

The overall purpose of the Committee's investigation of the Paris Peace Accords was to uncover information bearing on the likelihood that U.S. POWs were kept behind in Southeast Asia after Operation Homecoming. A secondary purpose was to determine whether there were factors involved in the negotiation of the agreement, in the agreement itself, or in the subsequent public characterizations of the agreement by U.S. officials that affected our ability to obtain the fullest possible accounting of our POW/MIAs or that otherwise contributed to the ongoing controversy over the POW/MIA issue.

In order to make judgments about these larger issues, the Committee considered a number of more specific issues and questions.

First, the Committee reviewed the negotiating history to determine the priority attached by the U.S. side to the POW/MIA issue, the obstacles to a favorable agreement raised by the other side, and the compromises made before a final agreement could be reached.

Second, the Committee reviewed the POW/MIA provisions of the agreement itself to determine both their scope and enforceability. Of particular interest in this regard was the "side understanding" between the United States and the DRV which obligated the North Vietnamese to arrange for the release of U.S. POWs in Laos.

Third, the Committee examined the relationship between negotiations over the POW/MIA issue and discussions concerning possible U.S. reconstruction aid to North Vietnam.

Fourth, the Committee compared official American expectations with results in terms of the number and identities of prisoners

released. Related to this was an examination of the basis for U.S. expectations. Clearly, if the U.S. had good reason to expect Americans to come home who did not come home, the possibility that some prisoners were intentionally withheld by the DRV or by communist forces in Laos would increase.

Finally, the Committee examined allegations concerning the apparent disparity in substance and tone between internal U.S. communications during the 60 days after the peace agreement was signed and official public statements made subsequent to the completion of Operation Homecoming.

Investigative Approach

The Committee began its investigation of the Paris Peace Accords and related matters determined to go beyond the public record to the private record of negotiations, internal U.S. agency communications and the sworn testimony of those who participated in shaping and implementing the agreement.

The Committee requested, and obtained, access to nearly all Executive branch materials dealing with the POW/MIA related aspects of the peace negotiations, including Presidential papers, the papers of then-National Security Adviser, Dr. Henry Kissinger, and the minutes of meetings conducted by the Washington Special Action Group (WSAG). A large quantity of these materials were then declassified and made available to the public at the Committee's request.

Committee staff investigators took a "bottom-up" approach to interviewing participants in the Paris Peace negotiations beginning with staff members and those with peripheral roles and continuing through the deposition of Dr. Kissinger and other senior Nixon Administration officials.

Among those interviewed and deposed with respect to this issue were the following (affiliations indicated below refer to the 1970-1973 time period):

National Security Council Staff:

Dr. Henry Kissinger
Gen. Alexander Haig
Mr. Winston Lord
Mr. John Negroponte
Mr. Peter Rodman
Mr. John Holdridge
Gen. Brent Scowcroft
Mr. Richard Kennedy

Department of Defense:

Mr. Melvin Laird
Mr. Elliot Richardson
Mr. James Schlesinger
Mr. William Clements
Admiral Daniel Murphy
Dr. Roger Shields
Mr. Lawrence Eagleburger
Maj. Gen. Richard Secord
Lt.Gen. Vernon Walters
B.Gen. George Guay
Admiral Thomas Moorer
Mr. Jerry Friedheim
M.Gen. John R. Deane, Jr.

Department of State:

Mr. William Rogers
Ambassador William Sullivan
Mr. George Aldrich
Mr. Heyward Isham
Ambassador McMurtrie Godley
Mr. Frank Sieverts

Central Intelligence Agency:

Mr. James Schlesinger
Mr. George Carver
Lt.Gen. Vernon Walters

US Delegation to Four-Party Joint Military Commission:

Gen. John Wickham
Col. Paul Miles
Col. Lawrence Robson
Col. Bernard Russell
Lt.Gen. Larry Budge
M.Gen. O'Connor

These interviews and depositions were supplemented by public hearings on September 21, 22 and 24, 1992.

Background

Outline of the Negotiations

The United States and the Democratic Republic of Vietnam (DRV) conducted peace negotiations through two channels. The public channel began in May, 1968 with bilateral discussions between the United States and the DRV in Paris, France. In January, 1969, the Paris Conference on Vietnam convened with representatives from

those two countries and from the Government of South Vietnam (GVN) and the Viet Cong (Provisional Revolutionary Government (PRG)). The second channel consisted of secret talks, which began in August, 1969, between Dr. Henry Kissinger, Assistant to President Nixon for National Security Affairs, and Xuan Thuy, the chief of the North Vietnamese Delegations to the Paris Peace Conference. In February, 1970, Le Duc Tho, a senior member of the North Vietnamese Politburo, replaced Thuy as North Vietnam's top participant in the talks.

Public Sessions

The Paris Conference on Vietnam held meetings on almost a weekly basis between January, 1969 and the end of the war. Throughout most of this period, the Conference served not as a forum for negotiations, but for propaganda campaigns on all sides. Minister Xuan Thuy, head of the North Vietnamese delegation, regularly lambasted the United States for its bombing campaigns, its "aggression" against Cambodia and Laos, its "neo-colonialist" policy towards Vietnam and its support for the "dictatorial, bellicist and corrupt Thieu" regime.³²

On January 21, 1971, at the 100th session of the conference, DRV Minister Xuan Thuy argued that:

. . . . the Nixon Administration has ceaselessly clamored about the so-called question of "prisoners of war" to stir up public opinion, particularly in the United States. Once again, we think it necessary to state that, although the American pilots were captured in the act of committing crimes when bombing the Democratic Republic of Vietnam, our government has treated them with leniency and humanity. If the Nixon Administration is really concerned about Americans captured in the war, it should announce the total withdrawal from South Vietnam of U.S. troops and those of the other foreign countries in the U.S. camp by June 30, 1971. . . . so that discussion may immediately begin on the question of releasing captured militarymen. . . .³³

The American delegation, headed by Ambassador David K.E. Bruce, concentrated much of its rhetorical fire on the failure of the DRV to live up to its obligations under the 1949 Geneva Convention regarding the treatment of prisoners of war. The POW issue was

³²Statement by Minister Xuan Thuy, Chief of the Delegation of the Government of the Democratic Republic of Vietnam, 100th Plenary Session of the Paris Peace Conference on Vietnam, January 21, 1971.

³³Ibid.

raised by the U.S. at more than half the sessions and often was the sole subject of American statements. Ambassador Bruce criticized, in particular, North Vietnam's refusal to identify all prisoners held, including those in South Vietnam and Laos; its refusal to allow regular correspondence to families; its failure to permit inspections by the Red Cross and its unwillingness to release the sick and badly injured. The U.S. delegation also challenged the DRV, without success, to accept an October 7, 1970 Nixon Administration proposal for the immediate and unconditional release of all prisoners of war.

Secret Talks

Until October, 1972, the U.S. negotiating team for the secret talks consisted exclusively of National Security Adviser Henry Kissinger and several of his staff. Dr. Kissinger's primary assistants during various periods of the negotiations were NSC staff members Winston Lord, John Negroponte, Dick Smyser and Peter Rodman. General Alexander Haig, Dr. Kissinger's deputy, also attended several of the negotiating sessions and played a major role in convincing the South Vietnamese Government to accept the agreement. General Vernon Walters, the Army Attache at the U.S. Embassy in Paris and later Deputy Director of the CIA, arranged and acted as translator at the early meetings. The Defense Department had no representative on the team, while the State Department was not included until late October, 1972, when William Sullivan, Deputy Assistant Secretary of State for Pacific and East Asian Affairs, and George Aldrich, a Deputy Legal Adviser, were recruited.

By the time the secret talks began, the Nixon Administration had withdrawn 60,000 American troops from Vietnam and adopted the policy of "Vietnamization" of the war. The goal of this policy was to shore up the GVN through a massive infusion of military and economic assistance to enable it to survive despite the gradual withdrawal of American troops. The policy also called for greater use of American air power in order to induce the DRV to negotiate and to interdict supply lines running through Cambodia and Laos to the south. This policy, aimed explicitly at achieving "peace with honor," provided the context for U.S. negotiating objectives.

The U.S. entered the negotiations with three goals foremost in mind. The first was to obtain the fullest possible accounting of American POW/MIAs. The second was to ensure that the Government of South Vietnam's President Nguyen Van Thieu could stand alone after U.S. withdrawal. And the third was to establish a framework for the future political self-determination of the South Vietnamese people. In order to achieve these ends, U.S. negotiators sought: 1) the unconditional release of prisoners and a means to account for the missing throughout Indochina; 2) an internationally supervised ceasefire throughout Indochina; 3) the right to continue supplying military aid, including training and advisers, to South Vietnam; 4)

the withdrawal of North Vietnamese forces from the south; and 5) a plan for free and fair elections in South Vietnam.

The overriding goal of the DRV, on the other hand, was to establish the conditions that would make a Communist military takeover in the south more likely. Thus, North Vietnamese negotiators insisted on the total withdrawal of U.S. troops (including advisers), the end of U.S. aid to South Vietnam, the release of Viet Cong prisoners by the GVN, and the replacement of President Thieu with a coalition government. North Vietnam also demanded reparations from the U.S. as compensation for war-related damage.

Neither the weekly public talks in Paris, nor the sporadically-held secret talks, resulted in progress until mid-1971. Until then, the U.S. insisted on an agreement that dealt only with the military issues of returning prisoners, a ceasefire and the withdrawal of forces. DRV officials, meanwhile, demanded both the removal of President Thieu and the unconditional withdrawal of American forces, while refusing to acknowledge the presence of their own troops in South Vietnam.

On May 31, 1971, with U.S. troop levels down from a peak of 540,000 to 270,000, Dr. Kissinger offered to negotiate a deadline for withdrawal of U.S. forces in exchange for a ceasefire and the release of American POWs. This triggered an exchange of comprehensive proposals that would ultimately lead to an agreement. Throughout 1971, however, Le Duc Tho held firm to his insistence that President Thieu be removed and no breakthrough occurred.

On January 25, 1972, President Nixon revealed publicly that secret talks with North Vietnam had been taking place. There followed a period of increased tensions marked by a major DRV offensive and a U.S. response which included the bombing of North Vietnam and the mining of Haiphong Harbor. Despite the fighting, or perhaps because of it, the momentum on both sides for an agreement built rapidly. As a result, discussions between Dr. Kissinger and Le Duc Tho were held on July 19, August 1, August 15, September 15 and daily between October 8 and October 11. By the end of those sessions, the outline of an agreement had taken shape. The key concession from the American side was the willingness to accept a ceasefire that did not require DRV withdrawal from the south. The key DRV concession was a willingness not to demand the prior removal from office of President Thieu.

Prospects for an agreement by the end of October were dashed, however, when President Thieu objected bitterly to the proposed draft. Negotiations resumed between November 20 and December 14, 1972 but did not narrow remaining differences. This was followed by President Nixon's decision to order ten days of intensive bombing of the north. Negotiations started again in early January and concluded when Dr. Kissinger and Le Duc Tho initialed the "Agreement on Ending the war and Restoring Peace in Vietnam."

The Agreement was signed formally in Paris on January 27, 1973.

The Issue of the Prisoners

A major U.S. goal entering the negotiations was to guarantee the release of all Americans held captive throughout Indochina. This was repeatedly stated as an absolute condition for reaching agreement. When the agreement was announced, U.S. negotiators said, without reservation, that this vital American objective had been achieved. On January 23, 1973, the day the agreement was initialed, President Nixon announced that:

Within 60 days from this Saturday (the day the agreement was to be signed), all Americans held prisoner of war throughout Indochina will be released. There will be the fullest possible accounting for all of those who are missing in action. . . .³⁴

The following day, Dr. Kissinger told reporters that:

"We have been told that no American prisoners are held in Cambodia. American prisoners held in Laos and North Vietnam will be returned to us in Hanoi."³⁵

Three years later, in 1976, the Montgomery Committee concluded that:

the provisions of the Paris Peace Agreement relative to POW's and MIA's and the Protocol on Prisoners and Detainees appear, at first glance and after more thoughtful consideration, not only adequate, but excellent. . . . These provisions constitute an achievement of which the American negotiators and the American people could be proud. Their true success, however, depended on their implementation, and their implementation depended on the cooperation of all parties.³⁶

Although the POW/MIA provisions may well have been the best achievable given the circumstances, it is clear from an examination of the negotiating record that there were significant differences between the original U.S. position and the final agreement on several key points. This is not surprising, given the nature of the

³⁴Statement of President Richard M. Nixon, White House, January 23, 1973.

³⁵Dr. Henry Kissinger, press conference, January 24, 1973.

³⁶Final Report of House Select Committee on Missing Persons in Southeast Asia, December 13, 1976, p. 112.

negotiation process. The Montgomery Committee was surely correct, moreover, in stating that the success of the agreement depended on its implementation which, in turn, hinged on the cooperation of all parties. A review of the issues involved in the negotiation provides a useful introduction to the problems of implementation that would follow.

Timing of POW Release

A key issue early in the negotiations involved the timing of the release of U.S. POWs. On October 7, 1970, President Nixon proposed that prisoners be returned as part of an overall agreement requiring a regionwide ceasefire and a timetable for the withdrawal of all foreign troops, including the withdrawal of North Vietnamese troops from Cambodia, Laos and South Vietnam. The U.S. maintained this position until May 31, 1971 when Dr. Kissinger told the DRV that the U.S. would agree to a deadline for the withdrawal of all U.S. forces in exchange for a ceasefire and the release of U.S. POWs. Both proposals envisioned the return of U.S. POWs prior to the withdrawal of American troops. North Vietnam, on the other hand, was insisting that POWs be returned after U.S. troops had been withdrawn.

In July, 1971, the DRV proposed that the prisoner release occur concurrently with the U.S. troop withdrawal. This concept was accepted by the U.S. side and was incorporated in subsequent proposals. Gradually, the period for the combined troop withdrawal/prisoner release was negotiated down from the six months proposed by the U.S. in October, 1971 to the 60 days of the final agreement.

Exchange of Lists

The timing of the exchange of POW lists was an important issue because the United States had ample reason to question whether the North Vietnamese would provide a complete and accurate list.

One reason for concern about the likelihood of DRV trustworthiness on the issue of returning POWs stems from the experience of France after its defeat at Dien Bien Phu in 1954. Although the 1954 Geneva Accords called for the release of all prisoners of war and civilian detainees, more than 20,000 French Union Forces have never been accounted for. Because of disputes between the Viet Minh guerrilla forces and the French about the evacuation of prisoners captured at Dien Bien Phu, a large number of the French POWs were forced to march 600 kilometers to their point of release. General Vernon Walters told the Committee that a senior intelligence officer in the French Army with whom he had spoken characterized this as "a death march" during which many POWs died. General Walters said that the French officer had told him that "something like half the prisoners that were known to have been captured alive never came back to France after they reached a deal with the Vietnamese." The

vast majority of the known French Union prisoners who were not returned, more than 9000, were Vietnamese Army personnel who had been allied with the French.

A second reason for serious American concern about whether the DRV would meet obligations entered into with respect to the POW issue arose after the release of a supposedly comprehensive list of U.S. POWs in December 1970. The list, which was given to U.S. Senator Edward Kennedy, included 368 names, with 339 listed as live prisoners and 29 as having died in captivity. The U.S. quickly and repeatedly characterized the list as incomplete because it excluded prisoners captured outside of North Vietnam and because it did not include some Americans thought to have been captured alive by the DRV.

On April 6, 1971, G. Warren Nutter, Assistant Secretary of Defense for International Security Affairs, told the House Foreign Affairs Committee that:

We cannot accept the list as definitive. . . we. . . know that the other side holds or has held many men not included on the list.³⁷

He also said in response to a question about what the United States would seek in negotiations in return for troop withdrawal:

. . . let me suggest to you some of the problems we have. We don't even know the names of all our prisoners yet. We would have to negotiate on that question. We would have to get a list that would be definitive.³⁸

On January 20, 1972, Heyward Isham, acting head of the U.S. delegation to the Paris meetings criticized the DRV for characterizing the list as "'complete and final' despite clear evidence that you have further information which you could provide." Ambassador Isham then listed the cases of 14 downed airmen "who were known to have been alive on the ground in North Vietnam, or who were at one time actually identified by you as having been captured. None of these men appear on your so-called 'complete' list."³⁹

Secretary of Defense Melvin Laird was also active during this period in denouncing the inadequacies of the December, 1970 list and in highlighting the cases of Americans believed to be POWs who

³⁷House Foreign Affairs Committee hearing, April 6, 1971.

³⁸Ibid.

³⁹Isham testimony before House Foreign Affairs Committee, September 28, 1972, p. 138.

were not included in that list. Secretary Laird specifically urged Dr. Kissinger to question the DRV concerning the shortcomings of the December, 1970 list and to insist on an exchange of lists prior to the signing of a peace agreement. Secretary Laird expressed confidence in his testimony before the Select Committee that his advice on these matters had been heeded:

I'm sure they were asking for specific names and numbers. They had the various lists that the North Vietnamese had been putting out, which were incomplete. (135)⁴⁰

In reality, the timing of the exchange of lists was one of the first POW-related issues settled during the negotiations. During the Kissinger-Le Duc Tho meeting on August 16, 1971, the DRV proposed that "the two sides will produce the complete lists of military personnel and civilians captured during the war on the day an agreement is signed."⁴¹ This formulation was accepted by the U.S. side and thereafter appeared--in substantially identical form--in proposals by both sides and in the final agreement. Despite the concerns expressed at the time by Secretary Laird and others about whether the DRV could be trusted on this issue, the U.S. side made no effort to re-open the matter in later negotiations or proposals.

During his testimony before the Select Committee, Dr. Kissinger expressed the view that the U.S. lacked the leverage at the time of the negotiations that would have been necessary to gain DRV agreement to an earlier exchange of lists. He also cited the repeated and unsuccessful efforts by the U.S. during the public peace negotiations to obtain a complete list of U.S. prisoners.

Linkage to Release of Civilian Prisoners

One of the most difficult issues facing the negotiators concerned the possible release of civilians detained by the Thieu Government in South Vietnam. To the DRV and Viet Cong, these were the equivalent of prisoners of war. The Government of South Vietnam, however, considered many of these prisoners to be either common criminals or political criminals who had violated the law through subversive activity. In neither case, argued the South Vietnamese, should these prisoners be treated the same as POWs.

Dr. Kissinger and other U.S. negotiators were determined to avoid linking the release of U.S. POWs to the complex questions involved in negotiating the release of the civilians in the south. They feared, quite logically, that such linkage would leave U.S. prisoners hostage to what would certainly be a highly contentious

⁴⁰Select Committee hearing, September 21, 1992.

⁴¹Memorandum of Conversation, with Xuan Thuy, Vo Van Sung, Phan Hien, and Henry Kissinger, Paris, August 16, 1971.