

The original documents are located in Box 25, folder “MIA's (3)” of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

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M/A

Friday 1/24/75

Meeting
1/24/75
5:15 p. m.

5:10 I checked with Nell -- Mr. Rumsfeld is already
in with the President, so she feels everyone should
come on down for the 5:15 meeting.



Friday 1/24/75

**Meeting
1/24/75
5:15 p. m.**

**4:00 You are invited to a meeting in the Oval Office at
5:15 this afternoon (Friday 1/24) on MIA --
others to be included are Marsh, Marrs, Rumsfeld
and Hartmann.**



MAY 21 1975



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

file

May 20, 1975

MEMORANDUM FOR: JOHN O. MARSH
FROM: DONALD G. OGILVIE
SUBJECT: Vietnam POW claims

The Foreign Claims Settlement Commission has requested our informal guidance on whether to seek a change in their legislation which would allow them to pay POW benefits to MIA survivors. Under current law, POW benefits cannot be paid to the families of soldiers missing in action, unless they are officially certified by Defense as having been a POW.

If the law is changed, the Commission would pay POW benefits to MIA survivors at an average rate of about \$10,000 per family. If the law is not amended, there are not likely to be further POW claims and the President could defer or rescind at least \$10 million remaining in the program.

The attachment describes the proposed change in detail. On balance, I believe we should informally advise the Commission not to seek a change in the law at this time. I would appreciate your views.

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VIETNAM CONFLICT PRISONER OF WAR CLAIMS

J. Raymond Bell, Chairman of the Foreign Claims Settlement Commission (FCSC) is seeking informal Administration guidance on an amendment to the War Claims Act of 1948 proposed by Lyle S. Garlock, former Chairman of the FCSC and now one of its three Commissioners. This amendment would expand the definition of prisoners of war (POWs) under Section 6(f) of the Act to include American military personnel reported missing in action (MIAs) during the Vietnam conflict, thus providing for the payment of POW benefits to the survivors of MIAs.

Section 6(f) of the War Claims Act authorizes the Commission to provide for the payment of claims filed by American POWs or their survivors. It also entitles Americans who were POWs in Indochina, or their survivors, to \$5 for each day held prisoner after January 27, 1961, in view of the North Vietnamese violations of the terms of the Geneva Convention of 1949 regarding food and health care.

Before claims by POWs can be certified for payment by the Commission, however, the appropriate military service must determine the individual's POW status. Before claims by survivors of MIAs who may have been POWs can be certified for payment by the Commission, the appropriate military service must also determine the individual's actual or presumptive date of death.

The Commission now has completed its adjudication of all claims in which the Department of Defense has made a determination of POW status. Claims filed by survivors of MIAs for whom POW status has not yet been determined have been returned by the Commission as ineligible, since under existing legislation the Commission is not authorized to certify these claims for payments. This decision is consistent with the law but conflicts with a 1972 decision of President Nixon. The Commission's chairman at that time (Lyle Garlock) recommended to the President that for political and compassionate reasons the Commission presume that all MIAs were also POWs since the Administration was not differentiating much between POW and MIA concerns. President Nixon decided to seek sufficient appropriations (\$16.2 million) to pay claims of MIA survivors, and a legislative



record was made by the Commission in appropriation committee hearings that MIAs would be presumed to also have been POWs, making their survivors eligible for payments.

Commissioner Garlock has now proposed in Commission discussions that the law be changed to authorize POW benefits to survivors of MIAs for the period from the time each man was reported missing to the date of his presumptive death but in no case later than April 1, 1973, the date the last known POW was released.

The principal arguments against the proposed amendment are:

First, a more restrictive approach was used after the Korean War when MIA survivorship awards were limited to cases with clear evidence of POW status.

Second, the proposed amendment could set an expensive precedent if veterans' organizations sought to include survivors of World War II and Korean MIAs either in this proposal or subsequently.

Third, the War Claims Act was originally intended to recompense only for the hardships suffered as a POW and not for MIA families, who receive substantial benefits under other laws.

Fourth, the proposed amendment would cause serious inequities between survivors of MIAs and the survivors of men killed in action (KIAs). The survivors of MIAs receive each man's pay and allowances until a determination of death is made by his military service. At that time they also receive certain death benefits. The survivors of KIAs, on the other hand, receive only the death benefits. Last year, this inequity was further aggravated by a U.S. District Court ruling which prevents the military services from making a finding of death determination to change the status of an MIA without affording the right of due process to survivors who would be affected by the loss of monetary and other benefits. The required review process takes considerable time, during which all pay and allowances of MIAs continues to be paid to their survivors. The liberal monetary benefits received by MIA families during this time, weakens considerably the argument that some special recompense should be provided MIA families for their extended mental anguish.

Fifth, while Congress in 1972 appropriated sufficient funds to pay POW benefits to all MIA survivors, there has been no



Congressional initiative to introduce legislation such as the Garlock proposal, that would make this possible. As a result, last September OMB reported a \$10.5M deferral of these funds under the requirements of the Congressional Budget and Impoundment Control Act. The Congress has not challenged this deferral action.

Finally, only 44 of the survivors of the 938 MIAs have sought POW benefits and claims are not being received regularly by the Commission. The Commission's letters to survivor claimants indicating their ineligibility are not being challenged.

There are two major alternatives. The Commission could either seek a change in the law or it could continue to notify MIA claimants that under the law they are ineligible for a POW benefit payment. If the law were changed, the Commission would pay POW benefits to MIA survivors averaging \$10,000 for each family from the remaining balances of the \$16.2 million appropriation. If the law were left as is, activity in the POW claims program would for all practical purposes cease. At least \$10.5M of funds would remain in deferral status until the President sought a rescission of them.



Wednesday 5/28/75

9:15 Attached is the latest chronology on Mary McGrory's article concerning David Earl Ganger.

Jay has spoken to Ted Marrs concerning Donald Ogilvie's memo of 5/20 to John Marsh re Vietnam POW Claims and is available to discuss further whenever you are available. +

* attached



*Vietnam
POW claims*

May 27, 1975

To: Jay

From: Phil Buchen

Attached is a copy of a memo on
Vietnam POW claims. You can
get more information from Ted Marrs.

Please get in touch with me tomorrow
on this.



MAY 21 1975



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
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May 20, 1975

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THE WHITE HOUSE

WASHINGTON

May 28, 1975

MEMORANDUM FOR:

JOHN O. MARSH, JR.

FROM:

PHILIP W. BUCHEN

P.W.B.

At your request I reviewed the attached memo from Don Ogilvie concerning the proposed amendment of the War Claims Act to permit the payment of MIA claims by the Foreign Claims Settlement Commission ("Commission").

The Commission is an independent adjudicatory body created by Reorganization Plan No. 1 of 1954, eff. July 1, 1954, 19 F.R. 3985, 68 Stat. 1279. By Public Law 91-289, enacted on June 24, 1970, the Commission's authority was amended to authorize the receipt and determination of the amount and validity of claims filed by prisoners of war for compensation for inhumane treatment. See 50 App. § 2005.

Adoption of this proposed amendment would substantially alter the original purpose of the War Claims Act. Also, it appears that the survivors of MIA's have received substantial benefits already. Accordingly, I concur with Don Ogilvie's recommendation not to seek any change in this law.

Because the Commission has informally requested the Administration's opinion on this legislative proposal, it is proper for Don Ogilvie to formally (or informally) respond.



MAY 21 1975

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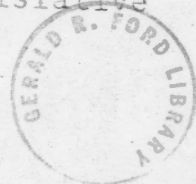
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THE WHITE HOUSE
WASHINGTON

May 27, 1975

To: Jay

From: Phil Buchen

Attached is a copy of a memo on Vietnam POW claims. You can get more information from Ted Marrs.

Please get in touch with me tomorrow on this.



THE WHITE HOUSE
WASHINGTON

6/12

Phil:

Ted Marrs asked me to let you know that Marty Hoffman will be calling you today or tomorrow regarding DOD's forthcoming announcement that they will resume proceedings to declare MIA's presumptively dead.

Barry



THE WHITE HOUSE
WASHINGTON

Dear Burch:
From Goldwater &
Pohdes
Under Nixon

See Marsh



THE WHITE HOUSE

WASHINGTON

June 13, 1975

Call Mr. Hoffmann

MEMORANDUM FOR: PHIL BUCHEN
FROM: BARRY ROTH *BR*
SUBJECT: MIA's

Ted Marrs advised me that Marty Hoffmann will be calling you today with respect to DOD's forthcoming announcement that they are going to resume proceedings to declare MIA's in Indochina presumptively dead. This position is being taken in settlement of litigation to force DOD to resume these proceedings. We can expect MIA families to be quite vocal in their protests of this change and that they will request the President to intercede with DOD.

I suggest, and Ted agrees, that the timing of this announcement should be simultaneous with an announcement through the White House that the President is renewing efforts to obtain information with respect to the MIA's, (perhaps including a directive that Ambassador Moynihan raise this issue in the United Nations). NSC is re-evaluating our efforts concerning the MIA's, and has circulated within the White House a draft letter to be signed by the President that would commit the Administration to undertaking all possible efforts to gain this information, as provided by the Paris Peace Treaty.

This situation is further complicated by an announcement this morning from Hanoi that no further searches for MIA's would be allowed until the United States provides financial aid to both North and South Vietnam. While this office does not have prime responsibility for this issue, it is important that the announcement of DOD's policy change be closely coordinated with the appropriate persons within the White House and NSC.



THE WHITE HOUSE

WASHINGTON

July 10, 1975

*MIA
Issue*

MEMORANDUM FOR: GENERAL SCOWCROFT
FROM: PHILIP BUCHEN *P.W.B.*
SUBJECT: MIA Issue

I would appreciate your thoughts on the attached draft memorandum from DOD concerning the MIA issue. In addition, I am interested in any renewed efforts that could be announced when DOD unveils its new policy, e. g., referral of the issue to the United Nations, etc.

As the MIA Families will meet in Washington beginning on July 17 and with the President on July 22, I hope that I could get your initial thoughts by c. o. b. July 11.

Thank you.



Draft -- 9 July 1975

MEMORANDUM FOR: Honorable Theodore Marrs

SUBJECT: MIA Issue

SUMMARY

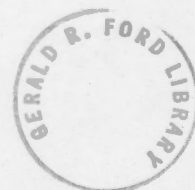
With the end of American involvement in Vietnam, and given the exhaustion of possibilities by the Executive Branch to resolve the status of the pending MIA cases, it is recommended that steps be taken having as its objective the eventual resolution of these cases under the law.

This paper outlines a plan which would accomplish the following:

1. It would be announced that the Executive Branch has exhausted all immediate avenues and was prepared to proceed to resolution of MIA cases in accordance with the law.
2. The pendency of legislation to designate a Congressional body to review the MIA situation would be acknowledged and gently endorsed in principle.
3. The Executive would indicate that reclassifications would be suspended for a period of 60/90 days anticipating Congressional action.

PRESENT SITUATION:

The need to address the MIA issue definitively is pressed by two factors. First, there is a convention of families of MIAs due to convene in Washington on 18 July. Additionally, there is presently pending a



lawsuit in which both the parents and former spouse of a missing American are seeking relief in the courts; the parents urging that no reclassification take place and the former spouse urging that the individual be declared dead. The case is a hard one on its facts; the plaintiffs are pressing to begin discovery (deposition of government witness) so that the outline of the present status of MIA resolutions will soon go public.

§556(b),

The relevant law, 37 U.S. Code is very clear. It provides as follows:

"(b) When the Secretary concerned receives information that he considers establishes conclusively the death of a member of a uniformed service, he shall, notwithstanding any earlier action relating to death or other status of the member, act on it as an official report of death. After the end of the 12-month period in a missing status prescribed by section 555 of this title, the Secretary concerned, or his designee, shall, when he considers that the information received, or a lapse of time without information, establishes a reasonable presumption that a member in a missing status is dead, make a finding of death." (Emphasis Supplied.)

For more than two years since the signing of the Paris Agreement the United States attempted through the Four-Party Joint Military Team (FPJMT) to obtain an accounting for our missing men and effect the return of the remains of those who are deceased. These continuous efforts have resulted only in the return to us in March 1974 by the DRV of the remains of 23 US servicemen reported to have died in captivity. Since



the recent fall of South Vietnam, we no longer have contact with the DRV and PRG through that forum, and its future operation is questionable. It should be noted that the DRV has, through a monitored radio broadcast, linked its participation in efforts to account for the missing to implementation by the United States of Article 21 of the Ceasefire Agreement (economic aid).

Recently introduced have been a number of pieces of proposed legislation aimed at slowing or halting entirely the action by the Secretaries of the Military Departments in making changes in the status of their missing members to deceased. Although the language varies, most contain contingencies which would be unacceptable changes to the existing statutory flexibility embodied in 37 USC. These bills are quite similar to those which were introduced unsuccessfully in the last period of the 93d Congress.

Additionally, Representative Montgomery has introduced H. Res. 335, which now has over 250 co-sponsors, calling for the establishment in the House of a select committee to be charged with a complete investigation of all aspects of the PW/MIA issue. At the moment, there is a disposition by Congressman Madden (Rules Committee) to consign such a study to the House Armed Services Committee.



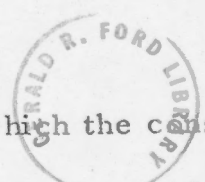
The Services are continuing to conduct reviews of the cases of their missing members when warranted by such events as the return of identified remains or as the receipt of additional substantive information of a relevant nature. Additionally, as in the past, the Services continue to honor requests for reviews received from the primary next of kin of their missing relative. A number of reviews by these circumstances are currently in process, one of which has resulted from the recovery and identification of the remains of the crew of an F4 aircraft lost in South Vietnam on 12 May 1972.

PROPOSED COURSE OF ACTION:

The recommendation is contained in the summary to this memorandum. It will require Executive Branch agreement to conclude that the Executive has made exhaustive and unprecedented efforts to account for the missing but with minimal results and that, accordingly, in conformance with the law, the Services must proceed pursuant to statute.

Early Congressional contacts must be made soon therefollowing in order to brief the leadership and those chiefly interested in the issue (particularly Senator Goldwater and Congressman Rhodes) and to indicate to them support for the creation of a Congressional body to provide a review and overview of the situation.

The DoD should develop a plan pursuant to which the consideration of cases for review would be conducted. This would be roughly as follows:

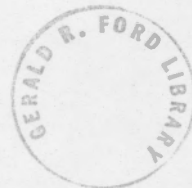


- Incidents which involve multiple personnel losses through same circumstances and in which one or more other individuals either survive or have been declared deceased.
- General chronological order by dates of loss.
- Cases in which reviews are requested by primary next of kin (reviews to be conducted as received, without regard to categories above).
- Cases in which significant new information is uncovered or in which remains are recovered and identified would continue to be reviewed on a priority basis.

The Executive Branch position would be required to be communicated to the league convention, 17-25 July 1975. This might be accomplished by Presidential announcement which would include the following points:

- The U.S. will continue to seek accounting of our men, whether missing or deceased, through all available avenues - some specific actions should be outlined.
- Status of individuals does not affect obligation of other side nor our determination.
- Conditions in SEA have necessitated a change in approach through which to forward resolution.

It should be recognized, however, that there are potential problems to this course of action. They include:



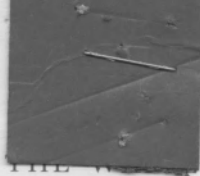
- Congress may intervene and change the law, precluding resolution of the missing status of many individuals for a long time into the future. Arguments may be made that the statutes need to be modernized, but how that can be done to benefit the presently missing without creating problems of retroactivity is not clear.
- Certain members of Congress and a number of family members will doubtless see this as an attempt to "write-off the missing in action". While the basic answer to this that the Executive is attempting to do what the law requires, this will not be wholly satisfactory in view of the year's delay following the resolution of the lawsuit in which the Executive could have but has not proceeded with the status reviews.



THE WHITE HOUSE
WASHINGTON

MIA





*cy sent
to Barry
7/19*

ADMINISTRATIVELY CONFIDENTIAL

July 18, 1975

MEMORANDUM FOR: PHILIP BUCHEN
FROM: BRENT SCOWCROFT *BS*
SUBJECT: DOD Memorandum on MIA Issue

There are a number of problems in the approach proposed in the draft DOD memorandum on the MIA issue (Tab A), some of which are acknowledged in the memo:

-- An announcement that the Executive Branch was going to resolve MIA cases "in accordance with the law" (i. e., hold hearings and declare MIA's dead) would certainly arouse a storm of protest from many MIA families. The families would undoubtedly urge -- possibly with quick success -- rapid passage of presently proposed legislation to slow or halt any action by the Service Secretaries to declare MIA's dead.

-- MIA families would claim that the Executive Branch's decision on resolving MIA cases is further evidence that it wants to write off the MIA's. They would be strongly seconded by, among others, Congressman Rhodes, who will be a principal speaker at the Convention, and Senator Goldwater who also opposes an early resolution.

-- We will be in a stronger political position to resolve these cases after the Congress has reviewed the whole issue either in a Select Committee (proposed in Sonny Montgomery's bill) or an Armed Services Standing Committee (proposed by Madden and which I consider a preferable approach).

-- We should not, however, as the memorandum proposes, tell the Congress we are waiting to follow its lead and are putting the monkey on its back with 60/90 days deadline for recommendations. The Congress would resent this and probably could not come up with recommendations in this short a time. As far as Hill action is concerned, we should let nature take its course.



-- The Davis case (referred to on page 2 of the memorandum) is not sufficient justification for early resolutions. It is a sticky case, but we would do better to await the court's verdict. In any case, the relevant law does not seem to require early action or set any time limit on delaying resolution. If this is not so, there will eventually be court rulings to the contrary.

-- It may not be true that the Executive Branch has exhausted possibilities to resolve pending MIA cases; although we consider it unlikely that Communist authorities will cooperate with us on this issue.

-- The Defense Department is understandably anxious to resolve the status changes issue. However, the impact, so far as the President is concerned, would be wholly negative. We would be far better off to try to get Congress on record on this before putting the President on record on such an emotion-packed issue. The money involved is not that substantial any more and a little extra compassion, I think, is warranted.

In sum, I am opposed to the DOD draft memorandum.



TAB A



4757

THE WHITE HOUSE

WASHINGTON

July 10, 1975

MEMORANDUM FOR: GENERAL SCOWCROFT
FROM: PHILIP BUCHEN *P.W.B.*
SUBJECT: MIA Issue

I would appreciate your thoughts on the attached draft memorandum from DOD concerning the MIA issue. In addition, I am interested in any renewed efforts that could be announced when DOD unveils its new policy, e.g., referral of the issue to the United Nations, etc.

As the MIA Families will meet in Washington beginning on July 17 and with the President on July 22, I hope that I could get your initial thoughts by c.o.b. July 11.

Thank you.



Draft -- 9 July 1975

MEMORANDUM FOR: Honorable Theodore Marrs

SUBJECT: MIA Issue

SUMMARY

With the end of American involvement in Vietnam, and given the exhaustion of possibilities by the Executive Branch to resolve the status of the pending MIA cases, it is recommended that steps be taken having as its objective the eventual resolution of these cases under the law.

This paper outlines a plan which would accomplish the following:

1. It would be announced that the Executive Branch has exhausted all immediate avenues and was prepared to proceed to resolution of MIA cases in accordance with the law.
2. The pendency of legislation to designate a Congressional body to review the MIA situation would be acknowledged and gently endorsed in principle.
3. The Executive would indicate that reclassifications would be suspended for a period of 60/90 days anticipating Congressional action.

PRESENT SITUATION:

The need to address the MIA issue definitively is pressed by two factors. First, there is a convention of families of MIAs due to convene in Washington on 18 July. Additionally, there is presently pending a



lawsuit in which both the parents and former spouse of a missing American are seeking relief in the courts; the parents urging that no reclassification take place and the former spouse urging that the individual be declared dead. The case is a hard one on its facts; the plaintiffs are pressing to begin discovery (deposition of government witness) so that the outline of the present status of MIA resolutions will soon go public.

§556(b),

The relevant law, 37 U.S. Code is very clear. It provides as follows:

"(b) When the Secretary concerned receives information that he considers establishes conclusively the death of a member of a uniformed service, he shall, notwithstanding any earlier action relating to death or other status of the member, act on it as an official report of death. After the end of the 12-month period in a missing status prescribed by section 555 of this title, the Secretary concerned, or his designee, shall, when he considers that the information received, or a lapse of time without information, establishes a reasonable presumption that a member in a missing status is dead, make a finding of death." (Emphasis Supplied.)

For more than two years since the signing of the Paris Agreement the United States attempted through the Four-Party Joint Military Team (FPJMT) to obtain an accounting for our missing men and effect the return of the remains of those who are deceased. These continuous efforts have resulted only in the return to us in March 1974 by the DRV of the remains of 23 US servicemen reported to have died in captivity. Since



the recent fall of South Vietnam, we no longer have contact with the DRV and PRG through that forum, and its future operation is questionable. It should be noted that the DRV has, through a monitored radio broadcast, linked its participation in efforts to account for the missing to implementation by the United States of Article 21 of the Ceasefire Agreement (economic aid).

Recently introduced have been a number of pieces of proposed legislation aimed at slowing or halting entirely the action by the Secretaries of the Military Departments in making changes in the status of their missing members to deceased. Although the language varies, most contain contingencies which would be unacceptable changes to the existing statutory flexibility embodied in 37 USC. These bills are quite similar to those which were introduced unsuccessfully in the last period of the 93d Congress.

Additionally, Representative Montgomery has introduced H. Res. 335, which now has over 250 co-sponsors, calling for the establishment in the House of a select committee to be charged with a complete investigation of all aspects of the PW/MIA issue. At the moment, there is a disposition by Congressman Madden (Rules Committee) to consign such a study to the House Armed Services Committee.



The Services are continuing to conduct reviews of the cases of their missing members when warranted by such events as the return of identified remains or as the receipt of additional substantive information of a relevant nature. Additionally, as in the past, the Services continue to honor requests for reviews received from the primary next of kin of their missing relative. A number of reviews by these circumstances are currently in process, one of which has resulted from the recovery and identification of the remains of the crew of an F4 aircraft lost in South Vietnam on 12 May 1972.

PROPOSED COURSE OF ACTION:

The recommendation is contained in the summary to this memorandum. It will require Executive Branch agreement to conclude that the Executive has made exhaustive and unprecedented efforts to account for the missing but with minimal results and that, accordingly, in conformance with the law, the Services must proceed pursuant to statute.

Early Congressional contacts must be made soon therefollowing in order to brief the leadership and those chiefly interested in the issue (particularly Senator Goldwater and Congressman Rhodes) and to indicate to them support for the creation of a Congressional body to provide a review and overview of the situation.

The DoD should develop a plan pursuant to which the consideration of cases for review would be conducted. This would be roughly as follows:

- Incidents which involve multiple personnel losses through same circumstances and in which one or more other individuals either survive or have been declared deceased.
- General chronological order by dates of loss.
- Cases in which reviews are requested by primary next of kin (reviews to be conducted as received, without regard to categories above).
- Cases in which significant new information is uncovered or in which remains are recovered and identified would continue to be reviewed on a priority basis.

The Executive Branch position would be required to be communicated to the league convention, 17-25 July 1975. This might be accomplished by Presidential announcement which would include the following points:

- The U.S. will continue to seek accounting of our men, whether missing or deceased, through all available avenues - some specific actions should be outlined.
- Status of individuals does not affect obligation of other side nor our determination.
- Conditions in SEA have necessitated a change in approach through which to forward resolution.

It should be recognized, however, that there are potential problems to this course of action. They include:



- Congress may intervene and change the law, precluding resolution of the missing status of many individuals for a long time into the future. Arguments may be made that the statutes need to be modernized, but how that can be done to benefit the presently missing without creating problems of retroactivity is not clear.
- Certain members of Congress and a number of family members will doubtless see this as an attempt to "write-off the missing in action". While the basic answer to this that the Executive is attempting to do what the law requires, this will not be wholly satisfactory in view of the year's delay following the resolution of the lawsuit in which the Executive could have but has not proceeded with the status reviews.



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

MIA

15 July 1975

MEMORANDUM FOR: Honorable Philip W. Buchen

SUBJECT: MIA Issue

SUMMARY

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This paper outlines a plan which would accomplish the following:

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PRESENT SITUATION

The need to address the MIA issue definitively is pressed by two factors. First, there is a convention of families of MIAs due to convene in Washington on 18 July. Additionally, there is presently pending a lawsuit in which the former spouse of a missing American



is seeking relief in the courts, urging that the individual be declared dead; the parents are expected to intervene in the suit, urging that no reclassification take place. The case is a hard one on its facts - involving an airplane crash, with the other crewman already declared dead; the plaintiffs are pressing to begin discovery (deposition of government witness) so that the outline of the present status of MIA resolutions will soon go public.

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Signed Martin R. Hoffmann

Martin R. Hoffmann