UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-2177
(C.A. No. 23-01124)

MICHAEL DRIGGS, *et al*., Appellants,)
)
v.)
)
CENTRAL INTELLIGENCE AGENCY,)
Appellee.)
)
)

JOINT APPENDIX

VOLUME 2 OF 2

On Appeal from the United States District Court for the
Eastern District of Virginia, Hon. David J. Novak, District Judge

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TABLE OF CONTENTS

VOLUME 1 OF 2

Date	Docket No.		Page
		Docket Sheet.	1
8/24/2023	1	Complaint.	9
		Exhibit A FOIA Request.	23
		Exhibit B Affidavit of Bob Smith.	67
		Exhibit C Affidavit of Kevin Shipp.	118
4/5/24	21-3	*Moore et al. v. CIA*, Memorandum Order. .	121
	21-4	*Moore et al. v. CIA*, Affidavit of Kevin Shipp.	128
4/5/24	22	Transcript of March 13, 2025 proceedings.	131
5/21/2024	25	Memorandum Order Denying Search of Operational Files.	145
4/23/25	38-1	Declaration of Mary C. Williams.	156
		Exhibit A *Review of the Charges II*, redacted pages. .	181
		Exhibit B *Moore et al. v. CIA*, Declaration of Vanna Blaine.	206
		Exhibit C March 1, 2024 response to July 12, 2023 FOIA request.	232
		Exhibit D May 23, 2024 CIA interim response cover letter.	239

		Exhibit E July 15, 2024 CIA interim response cover letter. 241
		Exhibit F September 26, 2024 CIA interim response cover letter. 243
		Exhibit G November 26, 2024 CIA interim response cover letter. 245
		Exhibit H December 3, 2024 CIA interim response cover letter. 247
		Exhibit I January 10, 2025 CIA final response cover letter. 249
		Exhibit J *Moore et al. v. CIA*, Vaughn index excerpt. 251
5/21/2025	41-1	Affidavit of Bob Smith. 253
	41-2	Affidavit of John Clarke. 260
		Exhibit A *Critical Assessment of the 1998 National Intelligence Estimate (NIE) on Vietnamese Intentions, Capabilities, and Performance Concerning the POW/MIA Issue*. 282
		Attachments 1205 Document. . . . . .443 735 Document. 469

VOLUME 2 OF 2

	41-2 & 41-3	Exhibit B Challenged Redactions to *Critical Assessment of the 1998 National Intelligence Estimate (NIE) on Vietnamese Intentions, Capabilities, and Performance Concerning the POW/MIA Issue*. 494

		Exhibit C Challenged Redactions to *A Review of the 1998 National Intelligence Estimate on POW/MIA Issues and the charges Levied by A Critical Assessment of the Estimate ("Review of the Charges II")*. 511
	41-2 & 41-3	Exhibit D CIA's February 2000 *Review of the 1998 National Intelligence Estimate on POW/MIA Issues and the Charges Levied by A Critical Assessment of the Estimate,* released June 25, 2021 *("Review of the Charges I")*.. . . . 540
	41-3 & 41-4 & 41-5	Exhibit E CIA's February 2000 *Review of the 1998 National Intelligence Estimate on POW/MIA Issues and the Charges Levied by A Critical Assessment of the the Estimate,* released December 3, 2024 *("Review of the Charges II")*. 716
	41-6	Affidavit Norman Kass 908
6/4/25	50-1	Presidential Decision Directive/NSC-8. . . 910
	50-2	Supplemental Declaration of Mary C. Williams . . . . . 912 Attachment A *Review of the Charges II*, redacted pages. . 926
8/06/2025	55	Memorandum Opinion re Parties' Cross Motions for Summary Judgment and Plaintiffs' Motion for *In Camera* inspection. 959
	56	Order granting Defendant's Motion for Summary Judgment, denying Plaintiffs' motion for *In Camera* inspection. 994
10/2/25	58	Notice of Appeal. 996

Plaintiffs' Exhibit B

Challenged Redactions to *Critical Assessment of the 1998 National Intelligence Estimate (NIE) on Vietnamese Intentions, Capabilities, and Performance Concerning the POW/MIA Issue*

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A CRITICAL ASSESSMENT

of the

1998 National Intelligence Estimate (NIE)

on Vietnamese Intentions,

Capabilities, and Performance

Concerning the POW/MIA Issue

Prepared and Submitted by the Office of U.S. Senator Bob Smith[1].

November, 1998

[1] Sen. Smith is the U.S. Chairman of the Vietnam War Working Group of the U.S.-Russia Joint Commission on POWs and MIAs. He is also a senior Member of the Senate Committee on Armed Services and the former Co-Chairman of the Senate Select Committee on POW/MIA Affairs (1991–1993).

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A Critical Assessment
of the 1998 National Intelligence Estimate (NIE) on Vietnamese Intentions, Capabilities, and Performance Concerning the POW/MIA Issue (U)

TABLE OF CONTENTS

		Page
I	Executive Summary	3
II	Background	6
III	Detailed Assessment of NIE Statements	9
	Scope Note	9
	Key Judgments	12
	Discussion	40
	Part One: The Question of Vietnamese Cooperation	40
	Part Two: Intelligence Community Assessment of the "1205" and "735" Documents	55
IV	The Politicizing of Intelligence	149
V	Conclusion	158
VI	Annex	160
	English translation of the so-called 1205 Document, based on translation from Vietnamese into Russian by Soviet GRU in 1972.	
	English translation of the so-called 735 Document, based on translation from Vietnamese into Russian by Soviet GRU in 1971.	

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claimed *to American officials and the press at large* that the 1205 document is a 'complete fabrication,[73]' they have apparently ***not*** made any such claim in the course of several discussions on the matter *with Russian officials*, the contents of which have been reliably reported to US officials.

(b)(1)

[73] See Interim Analysis of 1205 Document, by Sen. Smith to Amb. Toon, July 21, 1993, section entitled "Reaction by Vietnamese Officials" contains extensive quotes in media by Vietnamese officials, along with commentary by Hanoi publications. The most recent reported denial took place during a meeting between Deputy Assistant Secretary of Defense (POW/Missing Personnel Affairs) Robert Jones and Vietnam's Vice Minister of Defense, Tran Hanh, during a luncheon in the Executive Dining Room, Lounge 1, at the Pentagon, on October 5, 1998. Hanh reportedly stated that "the Russian documents are complete fabrications." (U)

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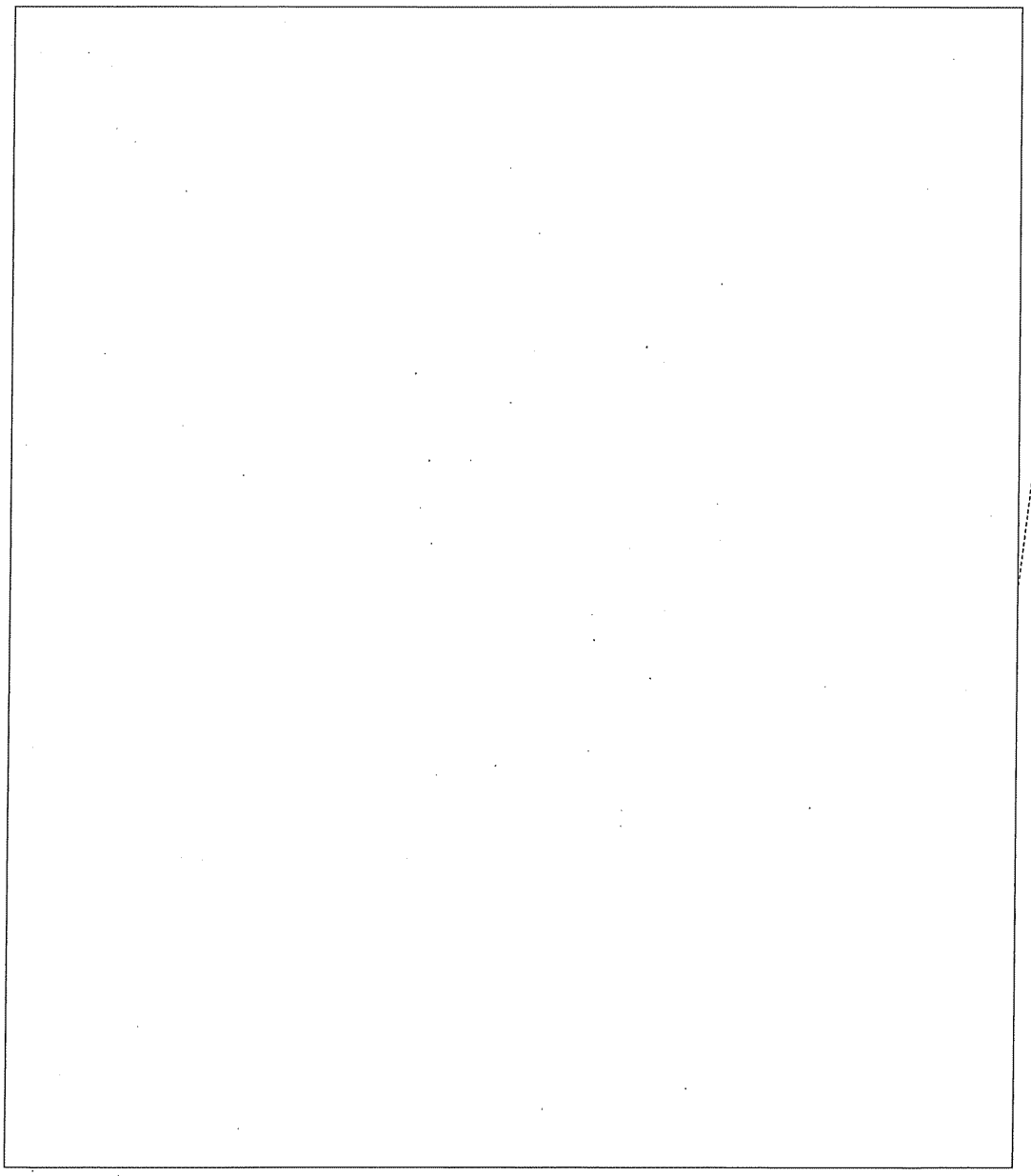

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NIE STATEMENT: *"None of the new information helps to confirm the accuracy of the 1205 report."* (p.27) (~~S~~)

ASSESSMENT: (b)(1) (b)(3) NatSecAct

This statement is factually inaccurate. As previously demonstrated, the information provided by GRU Capt. A.I. Sivets [redacted] briefly referenced in the NIE under the heading "*New Information*" — does, in fact, *help to confirm* that the 1205 document was an *accurate* representation of the political-military situation in North Vietnam in 1972. So does the information provided by former USSR Central Committee Secretary Katushev, and two Chiefs of the GRU -- Generals Ladygin and Korabelnikov -- in 1994 and 1997. In short, since 1994, the GRU has expressed its confidence in both the authenticity and the reliability of the information in the 1205 report. To ignore this evidence implies that the GRU being confident enough in the information it acquired in 1972 to forward it to the Soviet Central Committee (whose own official viewed it with confidence) is somehow *not* helpful information in judging whether the 1205 report could have

[redacted]

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been accurate. For the NIE to assert such an argument is absurd. (S)

NIE STATEMENT: *"Quang's[75] responsibilities as a battlefield commander in a combat situation make it unlikely that he would be brought to Hanoi to report on issues that were not within his scope of responsibility...Quang claims he remained with his troops during the (Easter Offensive) period and could not have been in Hanoi for a 15 September Politburo meeting...He (Quang) argues plausibly that he would not have been the one to deliver such a report because the issue would not have been handled by a regional military commander."* (p.27-28) (S)

ASSESSMENT:

This NIE judgment is ***contradicted*** by substantial evidence originated by or made available to the Intelligence Community prior to and during the drafting of this estimate. This includes information which indicates Quang was hardly just a battlefield commander with a scope of responsibilities limited to his battlefield command position, (who would have had to have been "brought to Hanoi") but rather was a top leader in the communist North Vietnamese hierarchy during the Vietnam War. As examples — (b)(1) (b)(3) NatSecAct

- [redacted] Quang was elected a secret alternate member of the Lao Dong (North Vietnam's Communist) Party Central Committee and of the Central

[75] North Vietnamese Lt. General Tran Van Quang, now Chairman of the Vietnamese War Veterans Association (elected in November, 1992), was reported by the Russian GRU in 1972 to be the North Vietnamese author of the "1205" report acquired by the GRU and dated September 15, 1972. (U)

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(b)(3) NatSecAct

NIE STATEMENT:

ASSESSMENT:

(b)(1)
(b)(3) NatSecAct

This statement's choice of words is extremely incomplete and misleading to the NIE reader in several important respects —

•

crewmembers currently in captivity, 9 such personnel previously released, and 20 such personnel listed as dead. Based on Department of Defense POW/MIA lists, only 335 Air Force and Navy pilots and crewmembers captured in North Vietnam prior to November 15, 1970 were later repatriated to the United States (one in Sept. 72, and the remainder following the signing of the Peace Accords in 1973 (Jan-Apr). (U)

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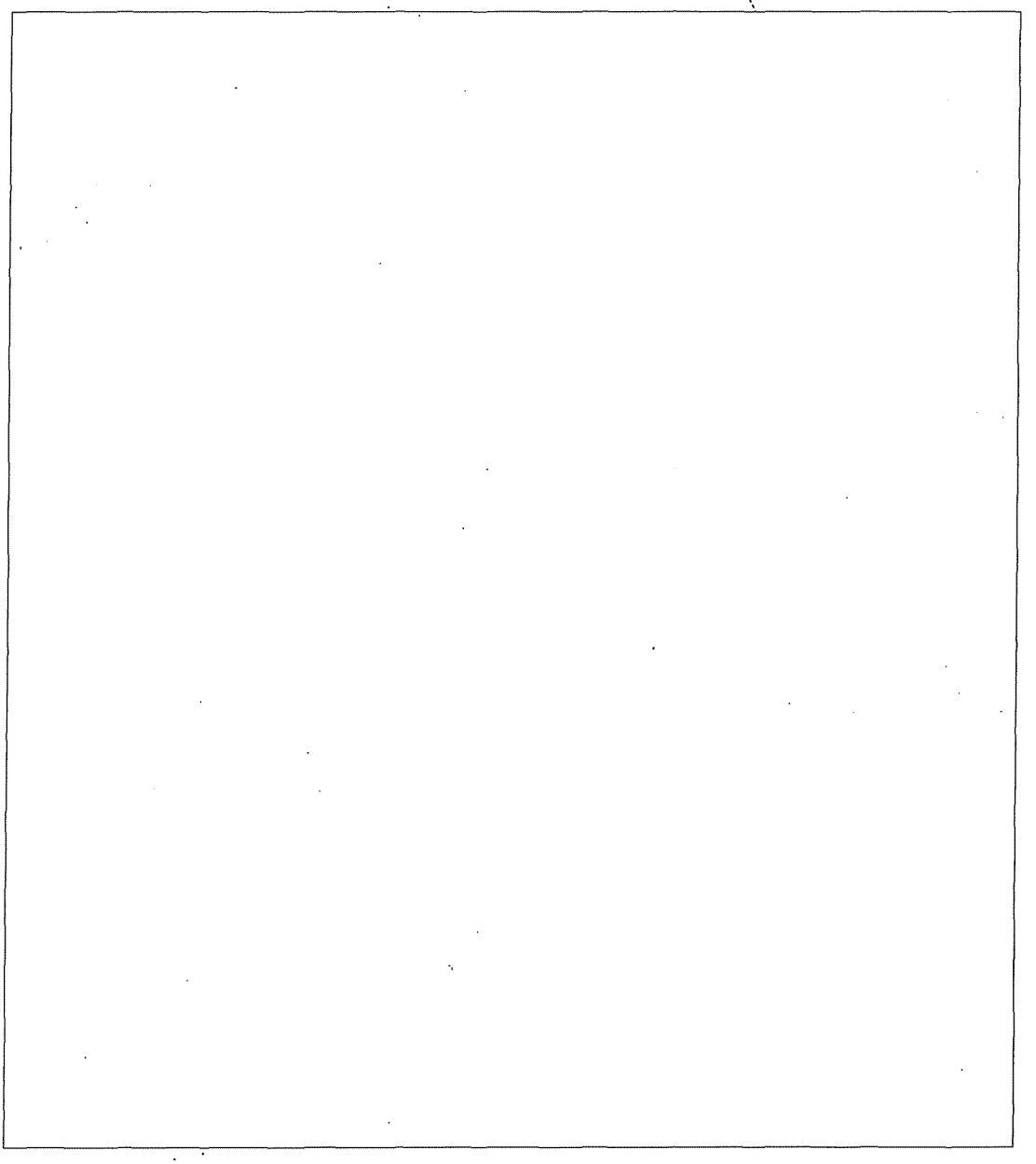

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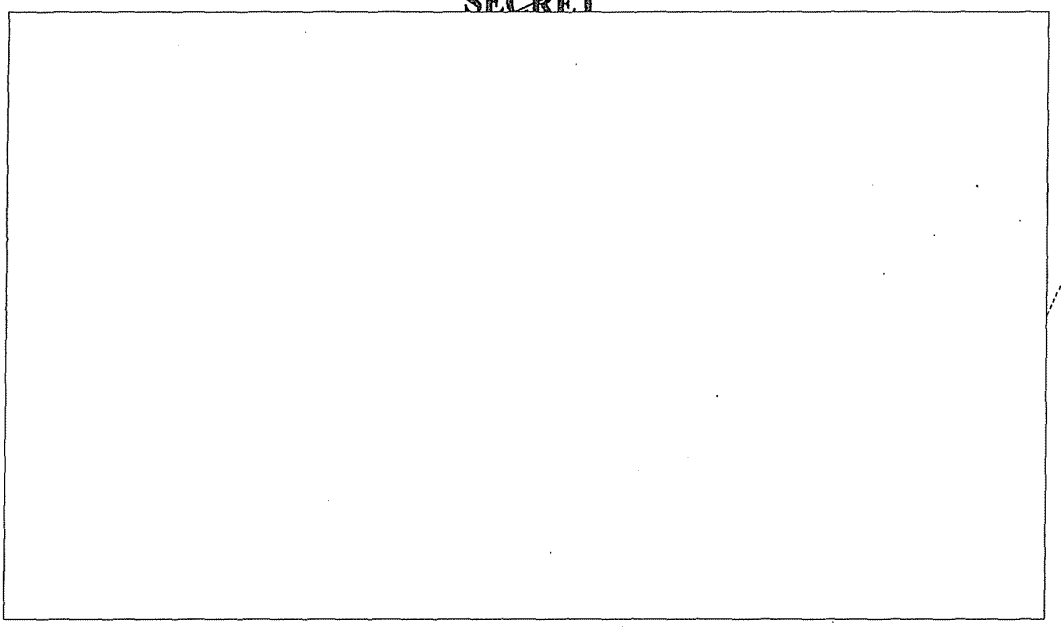

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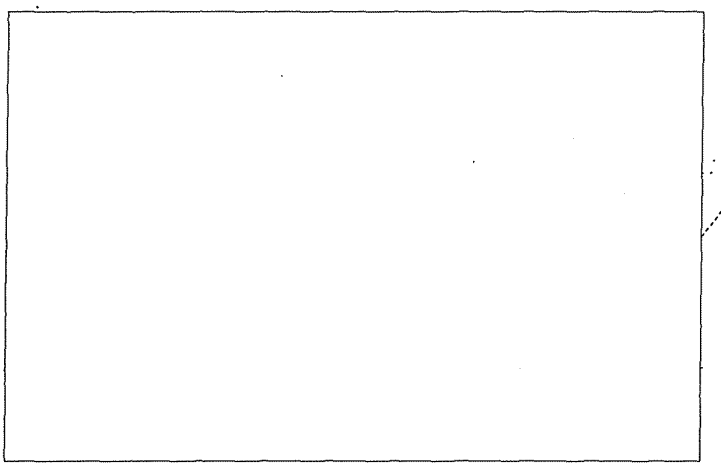

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ASSESSMENT:

[186] Ibid. (S)

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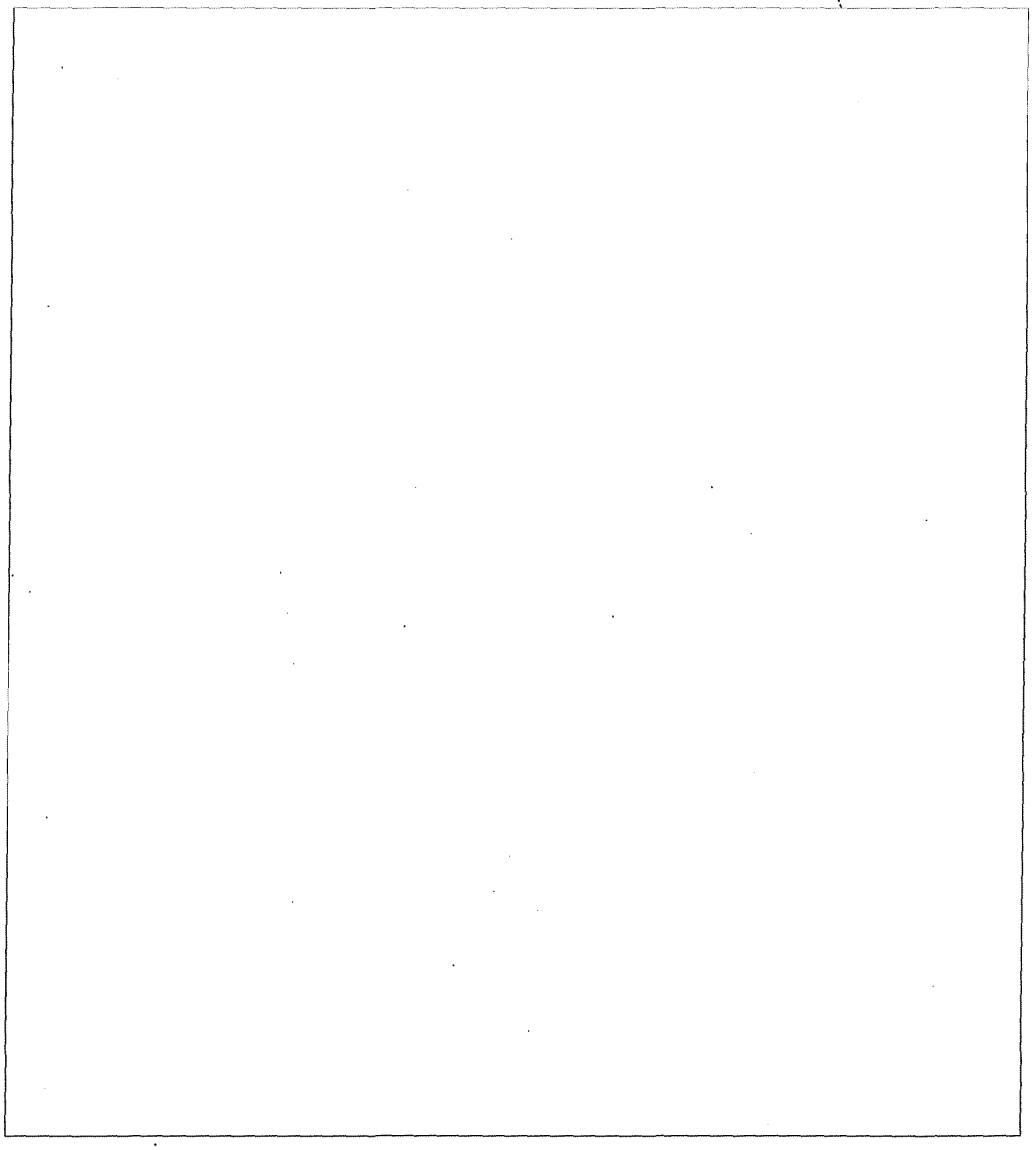

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[redacted] (b)(1)

But even more disturbing is the NIO's claim that the "allegations" in the report are "uncorroborated by any other intelligence reporting." According to a Defense Intelligence Agency Directorate for Intelligence Research published study in 1977, a report was received in the Fall of 1976 indicating that two North Vietnamese officials who had recently come to southern Vietnam had told a "high PRG official" that 235 US POWs were executed in northern Vietnam in July, 1976[188] [redacted] (b)(1)

[redacted] (S)

[redacted] (b)(1)

- Former National Security Advisor to President Carter (1977-1980), Zbigniew Brzezinski, provided the following assessment, [redacted] when [redacted] (b)(1)

[188] Recent Reports of U.S. PWs and Collaborators in Southeast Asia, Defense Intelligence Agency, information cut-off date April 1, 1977, see pages 65, and 69-70. The person who had actually learned of the above information and then passed it to U.S. intelligence had been an American left behind in the Fall of Saigon who was released on August 1, 1976. (U)

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in order to blackmail us, they would have at some point produced them. Whether they though this was no longer necessary after Saigon collapsed...after that they might have believed that there was no longer any negotiating tool.[190] (U)

- [redacted] (b)(1)

- A DIA contract agent reported being privately told in 1993 by a Vietnamese PAVN General Political Directorate (GPD) officer in Hanoi that "perhaps hundreds" of the unreturned U.S POWs had been executed by North Vietnam, and that this was "Hanoi's darkest and worst secret."[192] (U)

- [redacted]

[190] Ibid.

[191] Department of Defense JCRC Liaison, Bangkok, TH, priority message, info to DIA Washington, USCINCPAC, SECDEF, P 080156Z March, 1985. (U)

[192] See *Inside Hanoi's Secret Archives* by Malcolm McConnell with Theodore "Ted" Schweitzer, 1995, p. 268-270. (U)

[193] Letter from Director of Central Intelligence James Woolsey to Sen. Bob Smith, dated July

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- Russian Presidential Advisor and Co-Chairman of the Joint U.S.-Russia Commission on POW/MIAs, General Volkogonov, told President Clinton's Special POW/MIA Emissary to Hanoi, General Vessey, in 1993, that "he feared" some of the alleged 465 US POWs with reactionary views referenced in the September, 1972 1205 report "may have been later executed."[194] (U)

- [redacted] (b)(1)

[redacted] (b)(1)

- Earlier that same month, The Washington Post reported, in a front page article, entitled "*No Hope, MIA Families Told*," that Congressman Sonny Montgomery, Chairman of the House Select Committee on Missing Persons, had told POW/MIA family members gathered in (b)(3) NatSecAct

26, 1993 (see enclosures). *Note*: [redacted] (U)

[194] Memorandum for the Record, Subject: Conversation between GEN Volkogonov and GEN Vessey during visit at Walter Reed Medical Center, dated June 22, 1993. (U)

[195] See Memorandum to Assistant to the President for National Security Affairs Anthony Lake from National Intelligence Officer for East Asia Robert Suettinger, dated December 13, 1993. (S)

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"died in captivity" by the Provisional Revolutionary Government (PRG) in their POW list turned over in Paris in January, 1973, and their remains, as of 1998, have still not been repatriated to the United States. (As noted earlier, Quang had also served as the PRG Defense Minister following its establishment in 1969, and would have logically prepared or approved, under that leadership capacity, the PRG US POW list presented in Paris. (U)

[redacted] (b)(1)

Following the return of acknowledged US POWs in 1973, there remained over 1,300 U.S. personnel in a missing in action status, and DoD could not say whether those individuals "were alive or dead." Moreover, U.S. officials at the time had expected a higher number of US POWs to be returned, as earlier indicated in this assessment. Finally, the figures referenced by the NIE itself (p.19) show that, as of 1998, there remain 370 unaccounted for U.S. personnel, in the judgment of DoD, whose fate has not been determined, including 48 on the "priority" last known alive list. (S)

[redacted] (b)(1)

[redacted] (b)(1)

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(b)(3) NatSecAct

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[redacted]

NIE STATEMENT: [redacted] (b)(1)

[redacted] (b)(1)

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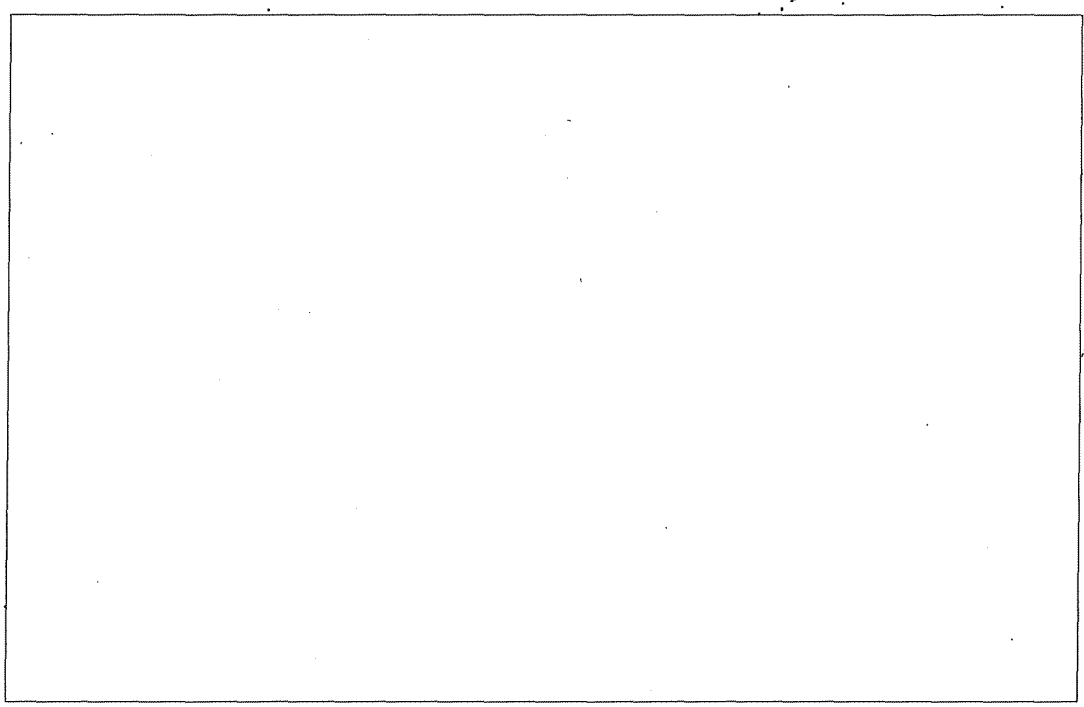

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Plaintiffs' Exhibit C

Challenged Redactions to *A Review of the 1998 National Intelligence Estimate on POW/MIA Issues and the charges Levied by A Critical Assessment of the Estimate*

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DEPARTMENT OF DEFENSE
AND
CENTRAL INTELLIGENCE AGENCY

A JOINT REPORT

A REVIEW OF THE 1998 NATIONAL INTELLIGENCE ESTIMATE ON POW/MIA ISSUES AND THE CHARGES LEVIED BY *A CRITICAL ASSESSMENT* OF THE ESTIMATE
(1999-5974-IG)
(00-OIR-04)

29 February 2000

Donald Mancuso
Deputy Inspector General
Department of Defense

L. Britt Snider
Inspector General
Central Intelligence Agency

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Dec 3, 2024
Approved for Release: 2024/12/03 C06898860

~~SECRET~~ Approved for Release: 2024/12/03 C06898860 (b)(3) NatSecAct

Role of DPMO 28

Policy/Analytic Dichotomy 28

DPMO Withdraws from Process 29

(b)(3) NatSecAct 29

Examining the DO Files 30

Other Contributors of Data 30

REVIEW AND COORDINATION (FEBRUARY-MARCH 1998) 31

First and Second Drafts (6 and 20 February 1998) 31

Third Draft (17 March 1998) 32

Fourth Draft (23 March 1998) 33

Outside Readers 34

IC Coordination Meeting 35

Fifth Draft (31 March 1998) 36

MIB AND NFIB MEETINGS (APRIL 1998) 36

ANOTHER ROUND OF REVIEW 38

The SSCI Documents 38

Two More Outside Readers 39

DCI Input 40

CRITICISM OF ESTIMATE 41

Senator Smith Meets With NIO/EA (June 1998) 41

Release of Critical Assessment *(November 1998)* 42

MIB AND NFIB MEETINGS (JANUARY 1999) 43

PART IV: *CRITICAL ASSESSMENT* CHARGES: SUBSTANCE 45

RELEVANT DOCUMENTATION 46

~~SECRET~~ Dec 3, 2024 (b)(3) NatSecAct

Approved for Release: 2024/12/03 C06898860

JA 513

SECRET Approved for Release: 2024/12/03 C06898860 (b)(3) NatSecAct

VIETNAMESE COOPERATION....49
A Question of Political Sensitivity....51
Refusal to Cooperate....52
MISTREATMENT OF POWS....53
RECOVERY AND REPATRIATION OF REMAINS....55
Manipulation of Witnesses....56
Repatriation of Remains....57
THE SAGA OF THE MORTICIAN....59
NUMBERS OF POW/MIA: THE 735 AND 1205 DOCUMENTS....65
Two Distinct Methodologies....65
The Documents....68
Historical Setting of the 735 Document....68
Historical Setting of the 1205 Document....73
A Point of Logic....77
ASSESSMENT OF COMMENTS BY RUSSIAN SOURCES ON THE 735 AND 1205 DOCUMENTS....77
(b)(1) (b)(3) NatSecAct *Our Approach*....78
Validity and Credibility....79
[redacted]....81
SEPARATE OR SECOND PRISON SYSTEM....89
ALLEGED TRANSFERS OF POWS FROM VIETNAM TO THE USSR....94
General D. A. Volkogonov....95
K.F. Katushev....97
CASE ASSESSMENTS....99
Our Methodology....100

SECRET [redacted] Dec 3, 2024 (b)(3) NatSecAct
Approved for Release: 2024/12/03 C06898860

~~SECRET~~ Approved for Release: 2024/12/03 C06898860 (b)(3) NatSecAct

ANNEXES:

A - Methodology

B - Summary of Selected Prior Reports

C - Methodology Used in Examining Charges in the *Critical Assessment*

D - Intelligence Community Publications Reviewed by National Intelligence Estimate Drafter

E - Recovery and Remains Documentation Reviewed by NIE Drafter

F - Comments by Russian Sources

G - Case Review Methodology

H - Results of Compelling Case Review

I - Captain McDonnell Case Review

J - Distribution List

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number of American POWs in the 1205 document because the information "was not essential" to the Soviets. His successor, General Korabelnikov, said that he had nothing more to add to the statement made by Ladygin.

(b)(3) NatSecAct

[redacted] The *Critical Assessment* claims that the GRU "has expressed its confidence in both the authenticity and the reliability of the information on the 1205 report." It does not mention, however, that the GRU sources do not support the POW-related content of the documents.

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(b)(3) NatSecAct

[redacted]

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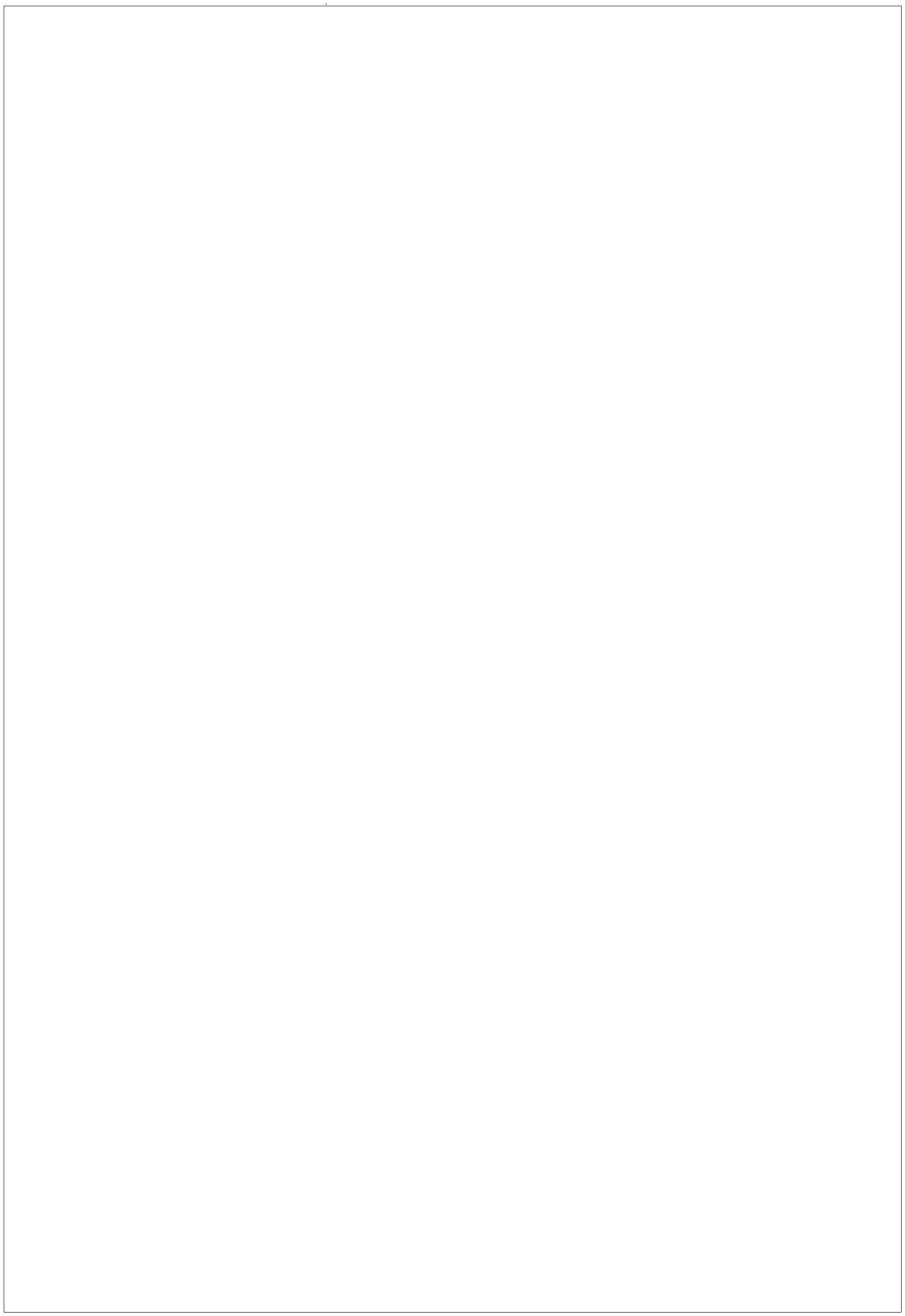

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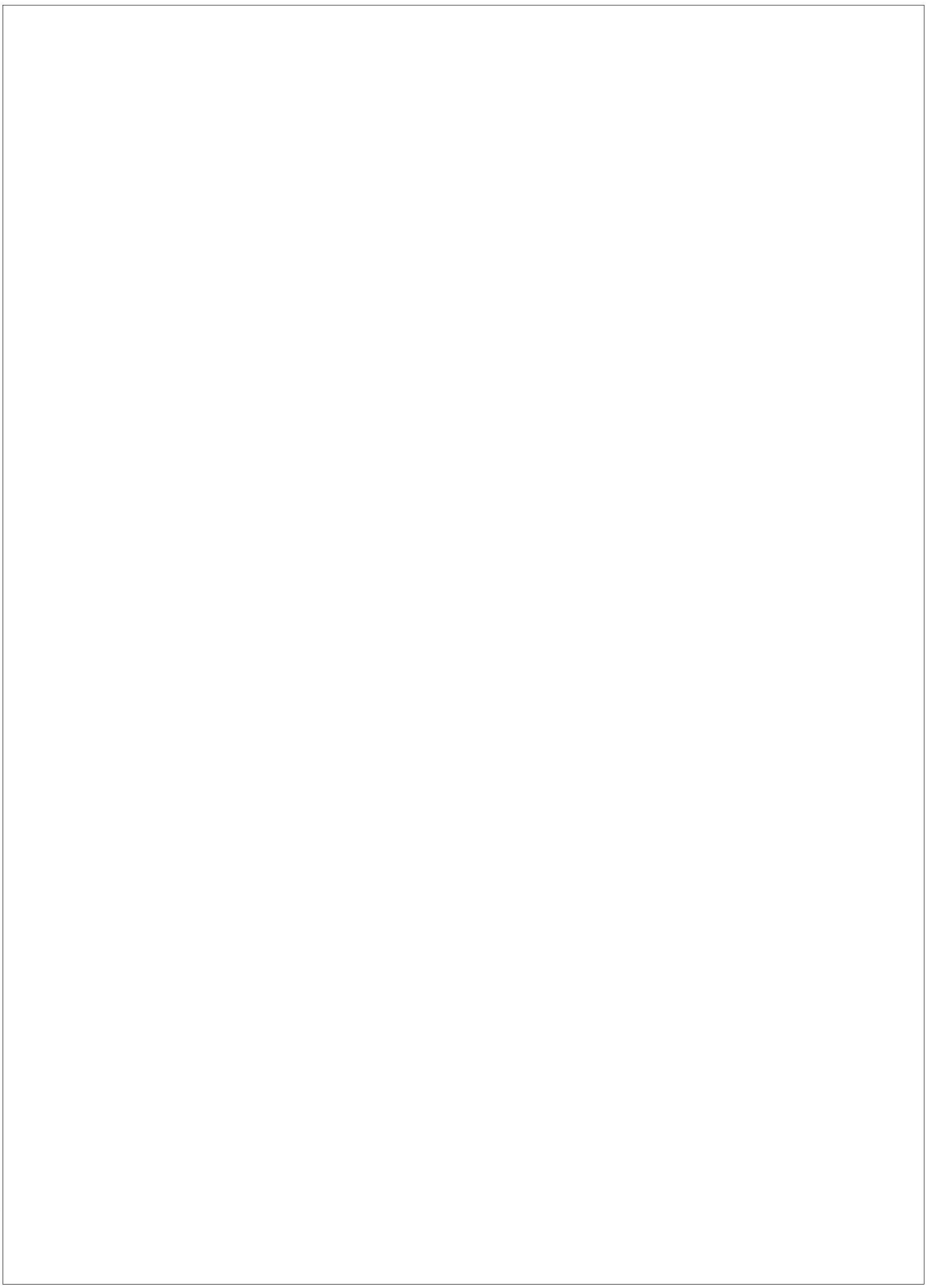

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Approved for Release: 2024/12/03 C06898860

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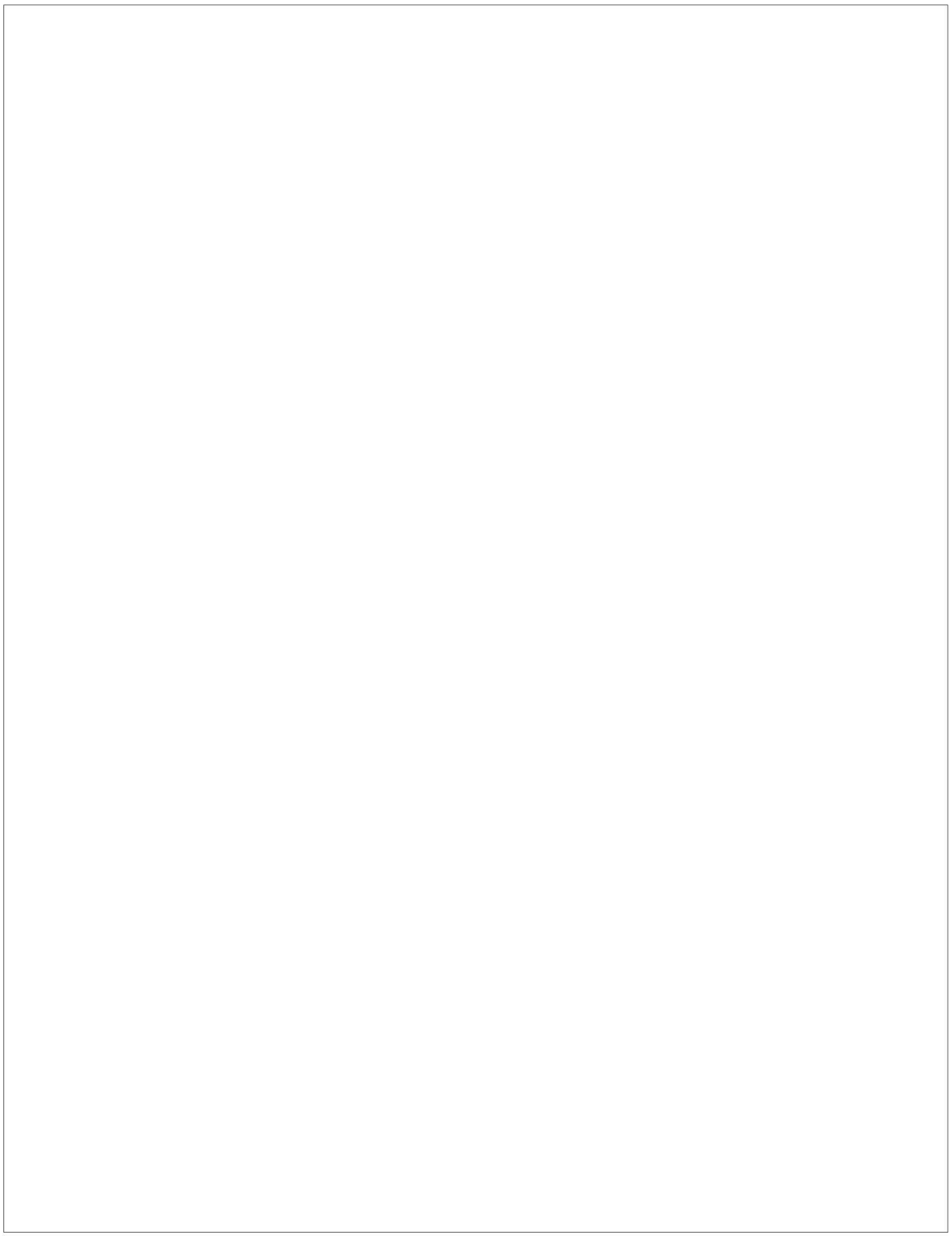

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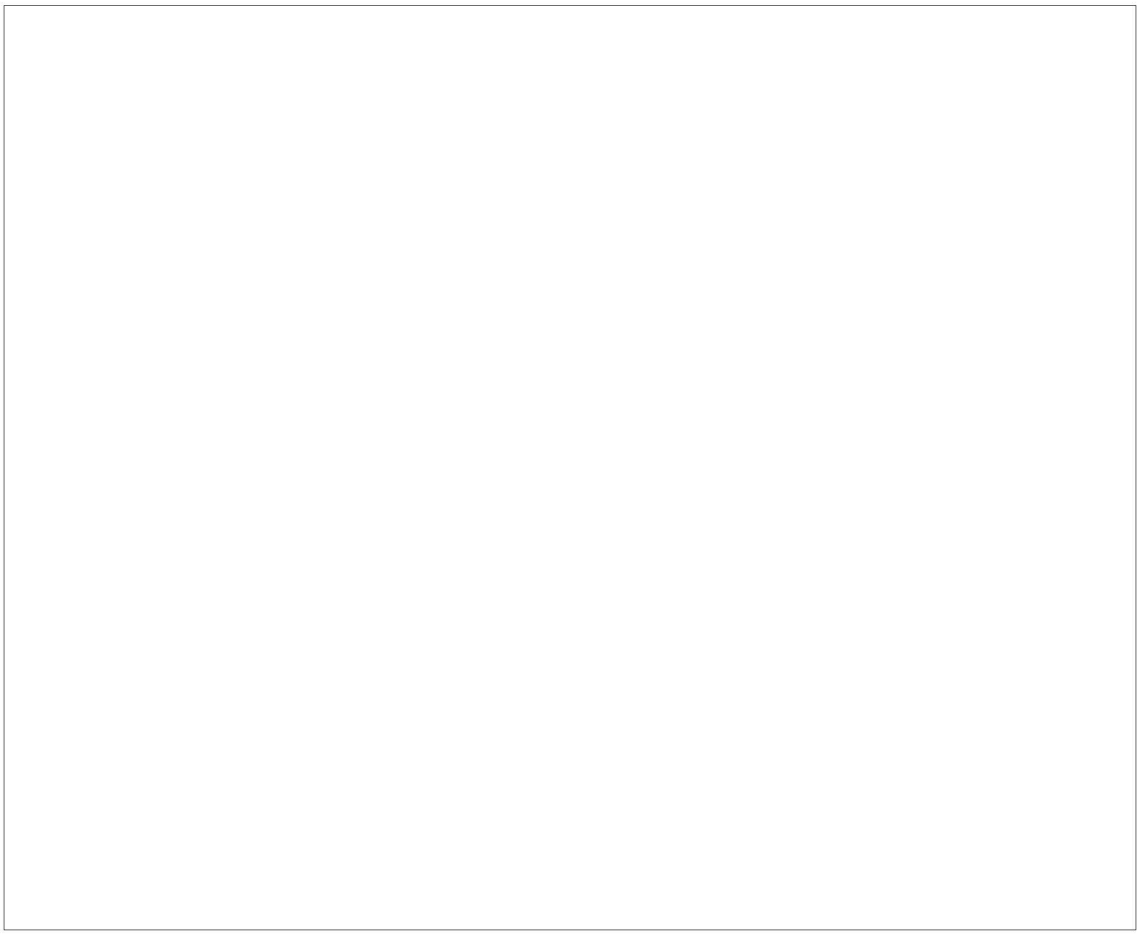

SEPARATE OR SECOND PRISON SYSTEM

(b)(3) NatSecAct

The NIE stated that, if there were additional POWs, the IC would have known of them unless Vietnam maintained a separate prison unknown to the POWs who returned in 1973. The estimate concluded that, "we have uncovered no reliable evidence that a separate prison system existed for certain POWs; nor do we have such indicators as plausible site locations."

(b)(3) NatSecAct

Concerning the issue of a separate or second prison system, the *Critical Assessment* refers to "substantial information and evaluations originated by or made available to the U.S. Intelligence Community both during and/or after the Vietnam War." The assessment asserts that, based on the 735 and 1205 documents, the large number of

Dec 3, 2024
Approved for Release: 2024/12/03 C06898860

ANNEX F: Comments by Russian Sources

(b)(1) (b)(3) NatSecAct	Overall Access	735/ 1205 Valid			735/1205 Credible			Position / Function
		Yes	Unk	No	Yes	Unk	No	
	High		1			1		National Security Advisor to Russian President
	High		1				1	Ambassador to Vietnam (1974-86)
	High		1			1		KGB General
	High	1			1			CPSU Central Committee Secretary Maintaining Ties to Socialist Countries (70s)
	High		1			1		Ambassador to Vietnam (1990-96)
	High	1				1		GRU, Chief (1997-99)
	High	1				1		GRU Chief, (1994-96)
	High	1				1		Consultant, Russian Defense Council, former head of the MFA Archives
	High	1				1		Deputy Foreign Minister (1977-99)
	High	1				1		KGB, FCD, Head Southeast Asia Dept (during the war)
	High		1				1	CPSU Central Committee Political Issues on Vietnam (1963-86)
	High	1			1			GRU in Embassy in Hanoi (1968-72)
Sub-Total	12	7	5	0	2	8	2	
(b)(1) (b)(3) NatSecAct	Med		1			1		Interpreter and Advisor Embassy in Hanoi (1970-80)
	Med	1					1	Political Counselor for Reporting on Vietnam Foreign Policy
	Med		1			1		Embassy in Hanoi (1962-65 - Junior Diplomat - and 1974-78 - Advisor to Ambassador)
	Med	1				1		CPSU Central Committee, Head International Dept Indonesia-Malaysia (1968-73)
	Med	1				1		CPSU Central Committee, International Dept, Vietnam (1962-77); Embassy in Hanoi (1960-62; 77-83)
	Med	1			1			Previous GRU Representative on the USRJC
	Med	1			1			KGB Representataive in Hanoi (1975-79)
	Med		1			1		Embassy in Hanoi (1972-76 and 1982-88 - 1st Secretary then later Counselor)
	Med	1			1			KGB, FCD, Tracking CIA operatives worldwide (32 year veteran)
Sub-Total	9	6	3	0	3	5	1	
(b)(1) (b)(3) NatSecAct	Low		1			1		Prominent Military Journalist
	Low		1			1		Russian Author and Researcher
	Low		1			1		Air Defense Instructor (1973-74)
	Low		1			1		Engineer Advisor in Vietnam (1973-74)
	Low		1			1		Journalist in Vietnam (1972-76)
	Low		1			1		Air Defense Radio/Radar Engineer, in Vietnam (1966-67)
	Low		1			1		Air Defense Advisor in Vietnam (1966-67)
	Low		1			1		Air Defense Technical Advisor and Researcher in North Vietnam (1968-69)
	Low		1			1		Journalist in Laos (1966), Vietnam for much of the 1970s
	Low		1			1		Air Defense Advisor (1966)
Sub-Total	10	0	10	0	0	10	0	
TOTAL	31	13	18	0	5	23	3	

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Following are excerpts of comments made by current and former Russian officials regarding the 735 or 1205 documents at various meetings or during interviews (b)(1) (b)(3) NatSecAct

- Vyacheslav Dukhin served as Political Counselor at the Russian Embassy in Hanoi (1992-95). He has no first-hand knowledge of the 1205 document but became aware of it in 1993. Dukhin recalled that a former co-worker at the Embassy who served as Deputy Chief of Mission, Igor Novikov, was aware of the 1205 document when it was acquired in 1972. According to Dukhin, Novikov characterized the GRU's acquisition of the 1205 document as slipshod and not a very conscientious effort. (b)(1) (b)(3) NatSecAct

Novikov did not elaborate but intimated that the GRU agent was not reliable. (b)(1) (b)(3) NatSecAct

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Dec 3, 2024

Approved for Release: 2024/12/03 C06898860

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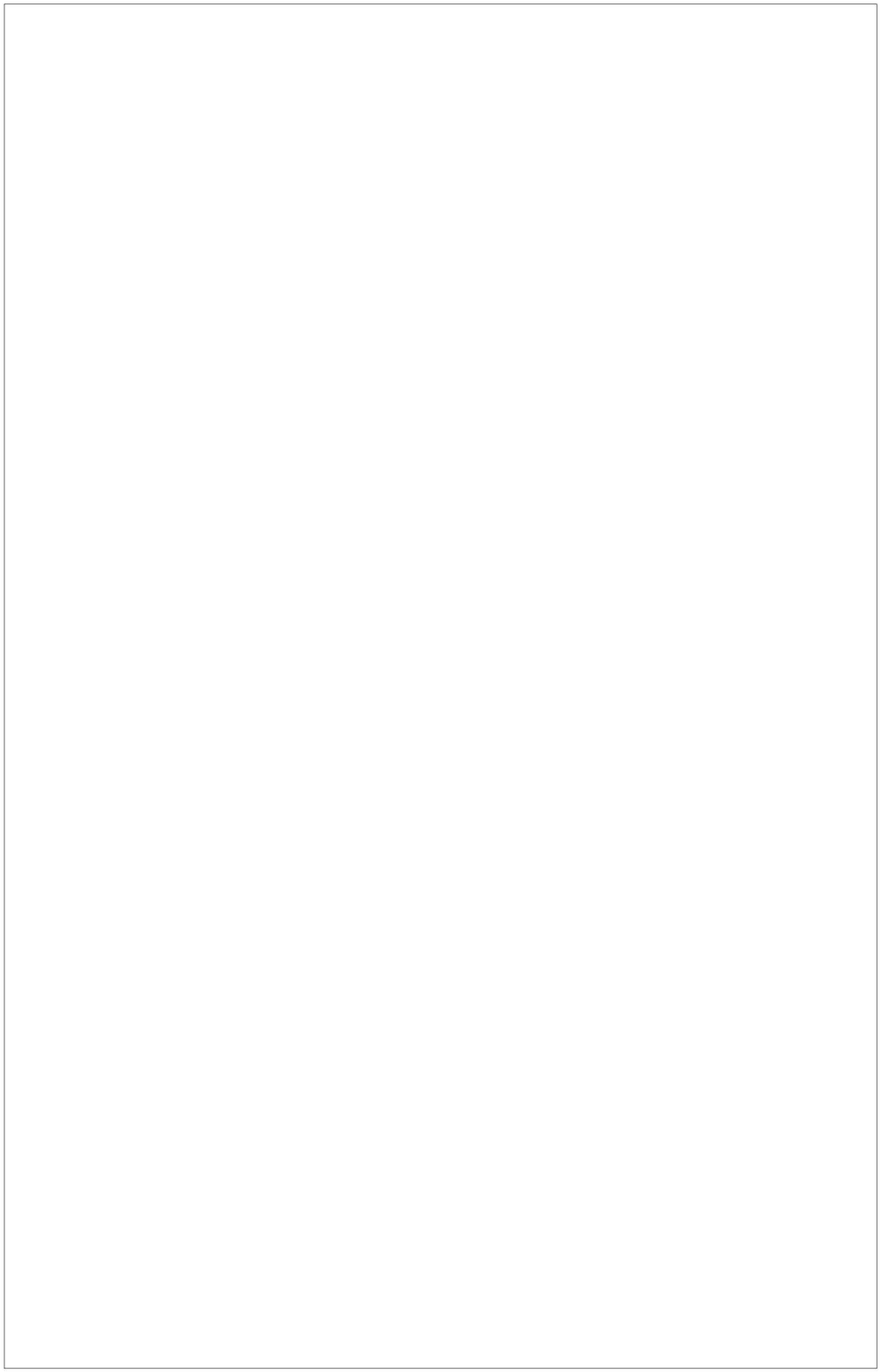

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- Yevgeniy Glazunov served as a junior diplomat/interpreter at the Soviet Embassy in Hanoi (1962-65) and as a senior advisor to the Ambassador (1974-78). Between these assignments, he worked on Vietnamese issues in the International Department of the Central Committee. (b)(1) (b)(3) NatSecAct

Although aware of the existence of the 1205 document when in the Central Committee, he never saw the document.

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Dec 3, 2024

Approved for Release: 2024/12/03 C06898860

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- Konstantin Katushev served in the early 1970s as the Central Committee Secretary responsible for maintaining ties with other socialist countries such as North Vietnam.

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(b)(3) NatSecAct

As to the reliability of the 1205 document, Katushev says that, insofar as he signed the document and the GRU had good channels and connections to receive information, he had no reason to doubt that the document was what it purported to be, i.e., a report given by General Tran Van Quang. Katushev says that, since this was new information that had never been seen before, it was worthy of the attention of the Communist Party leadership.

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Dec 3, 2024

Approved for Release: 2024/12/03 C06898860

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Approved for Release: 2024/12/03 C06898860

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(b)(1)
(b)(3) NatSecAct [redacted]

- General Korabelnikov, Chief of the GRU, in a meeting with Senators Smith and Shelby at the Russian Ministry of Defense,

(b)(1)
(b)(3) NatSecAct [redacted]

[redacted] He reminded everyone of the letter sent to Senator Smith by General Ladygin (see below), noting that all should pay close attention to that letter. He then proceeded to read it and concluded that he had nothing more to add concerning what General Ladygin wrote.

(b)(1)
(b)(3) NatSecAct [redacted]

[redacted] When Senator Smith asked the General if he could confirm that the translation of the 1205 document was a valid translation of a reliable document, Korabelnikov said he had already confirmed that the translation was performed in the GRU in Moscow in 1972 but that the original Vietnamese language version of the document no longer existed.

- General F. Ladygin, former Chief of the GRU, states in a letter to Senator Smith regarding an analysis made by the GRU of the 1205 document, that: the translation of the document was done by the GRU and forwarded to the Central Committee; given his position in the military-political leadership, General Tran Van Quang could have been fully competent on the subjects of the report and able to speak at Politburo meetings; the GRU cannot confirm the accuracy of the number of American POWs in the report (1205), since this information was not essential for the Soviets and not reexamined; and the original report in the

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Dec 3, 2024
Approved for Release: 2024/12/03 C06898860

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Vietnamese language was destroyed after being translated in accordance with existing GRU regulations on handling documents.

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Approved for Release: 2024/12/03 C06898860

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♦ Captain First Rank A. Sivets, a GRU officer,

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revealed that

(a Vietnamese) is the source of

the 1205 document that this source provided a number of materials to the GRU, and that two GRU assessments of this

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Dec 3, 2024

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source concluded that he was reliable. [redacted] He emphatically stated that the North Vietnamese would not have deceived themselves at a closed Politburo session, noting that they might have provided inaccurate information in press releases or in their negotiations with the Americans, but they would have had no reason to do so in closed sessions of their own political leadership. Sivets acknowledged that this was his personal opinion. Sivets says the GRU performed two assessments of the source's reliability. The agent was judged to be reliable, everything about this agent was in order, and the agent was working for the GRU. The assessment determined that the information received from the agent was first-hand information and accurately reflected the internal political situation in North Vietnam. The GRU would never have sent this information to the Central Committee if there had been any doubt about the reliability of the information.

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[redacted]

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Dec 3, 2024

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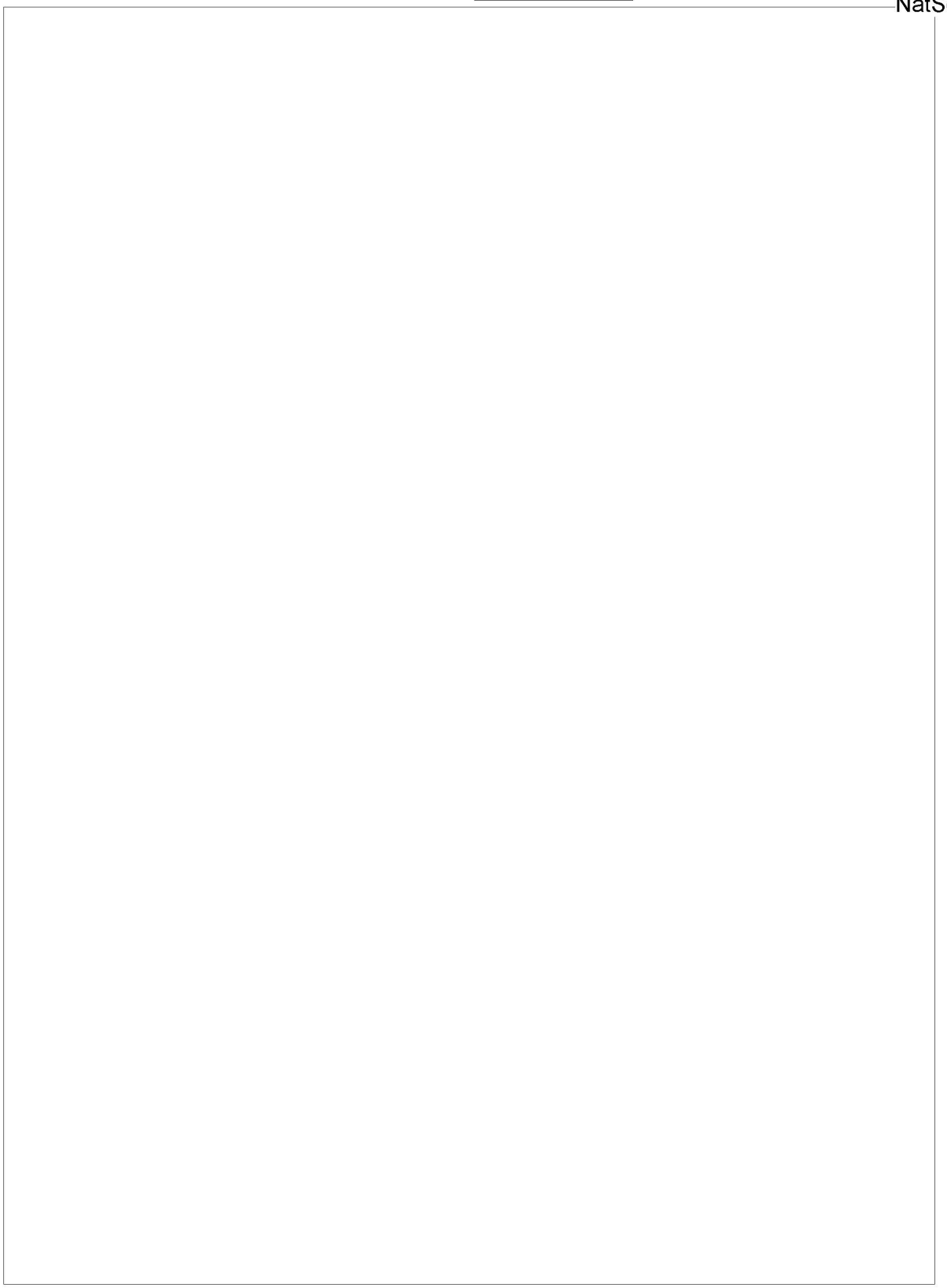

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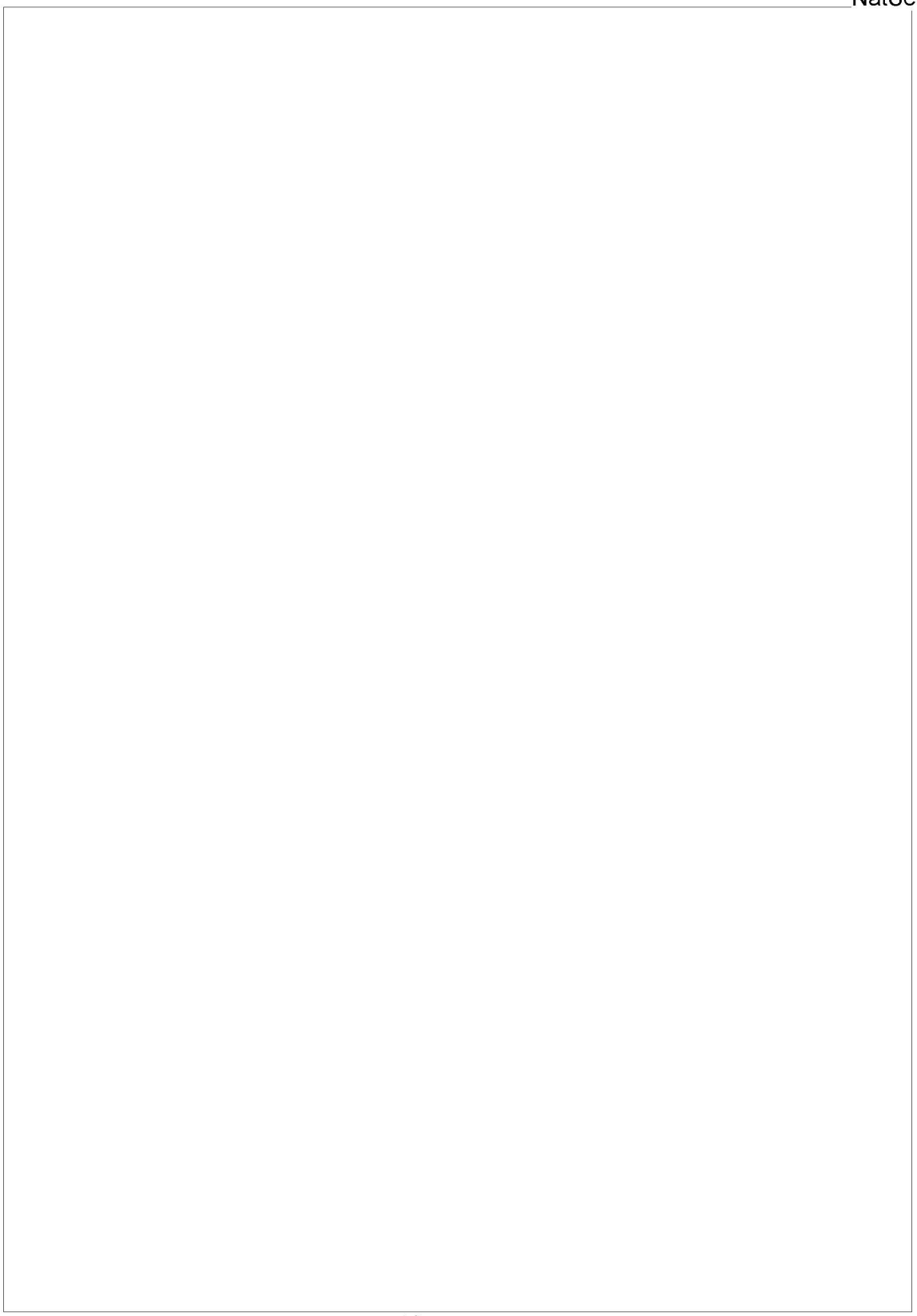

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Approved for Release: 2024/12/03 C06898860

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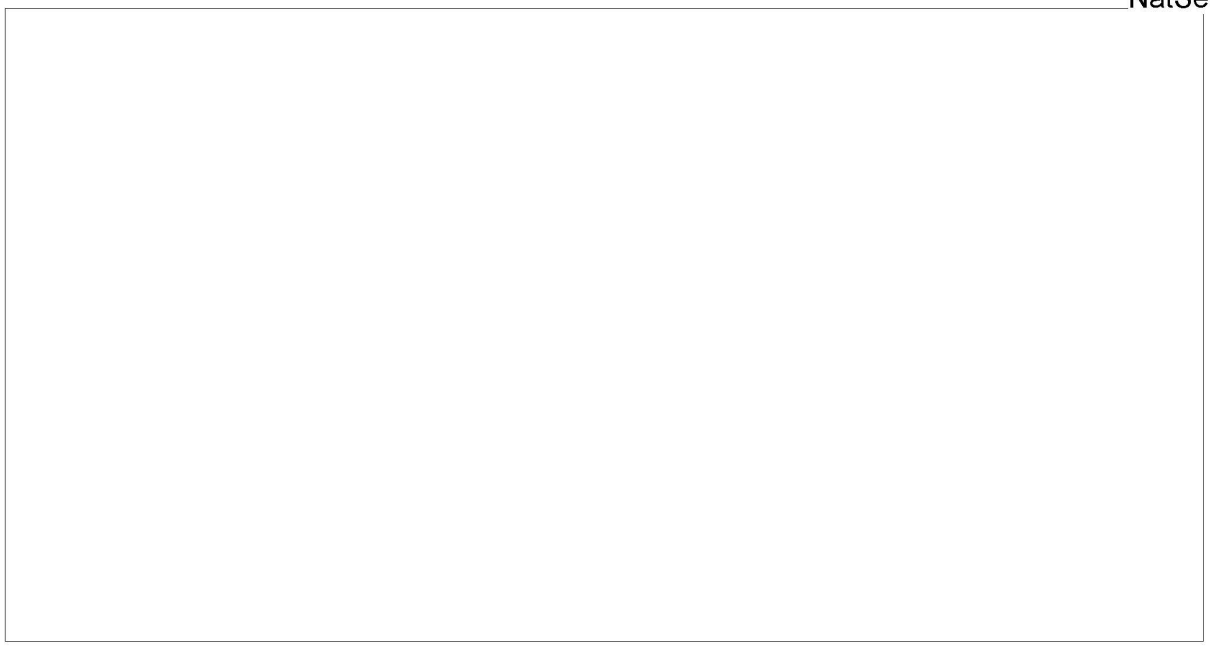

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Annex G

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Plaintiffs' Exhibit D

CIA's February 2000 *Review of the 1998 National Intelligence Estimate on POW/MIA Issues and the Charges Levied by A Critical Assessment of the Estimate*, released June 25, 2021 ("*Review of the Charges I*")

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DEPARTMENT OF DEFENSE
AND
CENTRAL INTELLIGENCE AGENCY

A JOINT REPORT

A REVIEW OF THE 1998 NATIONAL INTELLIGENCE ESTIMATE ON POW/MIA ISSUES AND THE CHARGES LEVIED BY *A CRITICAL ASSESSMENT* OF THE ESTIMATE

(1999-5974-IG)
(00-OIR-04)

29 February 2000

Donald Mancuso
Deputy Inspector General
Department of Defense

L. Britt Snider
Inspector General
Central Intelligence Agency

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Approved for Release: 2024/06/25 C00500205

TABLE OF CONTENTS

Page

GLOSSARY OF TERMS.....vii

EXECUTIVE SUMMARY.....ix

PART I: INTRODUCTION.....1

BACKGROUND.....1

OBJECTIVE.....2

STRUCTURE OF REPORT.....2

PART II: HISTORICAL PERSPECTIVE.....4

OPERATION HOMECOMING AND THE END OF THE WAR.....4

THE HOUSE SELECT COMMITTEE ON MISSING PERSONS IN SOUTHEAST ASIA.....5

PROGRESS ON POW/MIA ISSUE.....5

Carter Years (1977-1980).....5

Reagan Years (1981-1988).....6

Bush Years (1989-1992).....7

The Road Map.....8

Senate Select Committee.....8

Clinton Years (1993 to date).....9

Four Key Areas.....9

Normalization.....9

Certification/Determination Of Cooperation.....10

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

INTELLIGENCE COMMUNITY CAPABILITY 11
CIA Turns to Department of Defense.....11
Intelligence Priorities and Standing Requirements.....12
EVOLUTION OF THE DEFENSE POW/MISSING PERSONNEL OFFICE 12
DOD AGENCIES SUPPORTING POW/MIA MISSION.....15
Joint Task Force-Full Accounting.....15
Central Identification Laboratory, Hawaii 15
Stony Beach 15
ROLE OF U.S.-RUSSIA JOINT COMMISSION ON POW/MIAS 16
PRIVATE GROUPS 16
PART III: POW/MIA ESTIMATE PROCESS 18
STANDARD NIE PROCESS 18
Intelligence/Policy Nexus.....19
Interagency Participants.....19
REQUEST FOR POW/MIA ESTIMATE: POLITICAL ENVIRONMENT.....19
NEGOTIATION OF TERMS OF REFERENCE (APRIL-NOVEMBER 1997) ...20
Initial Drafts 20
SSCI Delays 23
Changing Actors.....23
SSCI Response and Final TOR 23
The Issue of Timing 25
SENATOR SMITH MEETING WITH NIO/EA 25
RESEARCH, ANALYSIS, AND DRAFTING (NOVEMBER 1997-FEBRUARY 1998).....26
Role of DPMO.....27

Nov 26, 2024 000013
Approved for Release: 2021/06/25 C00500205
JA 543

Approved for Release: 2021/06/25 C00500205

Policy/Analytic Dichotomy 27
DPMO Withdraws from Process 28
Meetings with DPMO Analyst 28
Examining the DO Files 29
Other Contributors of Data 29

REVIEW AND COORDINATION (FEBRUARY-MARCH 1998) 30
First and Second Drafts (6 and 20 February 1998) 30
Third Draft (17 March 1998) 31
Fourth Draft (23 March 1998) 32
Outside Readers 33
IC Coordination Meeting 34
Fifth Draft (31 March 1998) 35

MIB AND NFIB MEETINGS (APRIL 1998) 35

ANOTHER ROUND OF REVIEW 36
The SSCI Documents 36
Two More Outside Readers 37
DCI Input 38

CRITICISM OF ESTIMATE 40
Senator Smith Meets With NIO/EA (June 1998) 40
Release of Critical Assessment *(November 1998)* 40

MIB AND NFIB MEETINGS (JANUARY 1999) 41

PART IV: *CRITICAL ASSESSMENT* CHARGES: SUBSTANCE 44

RELEVANT DOCUMENTATION 45

VIETNAMESE COOPERATION 48

Nov 26, 2024 000014
Approved for Release: 2021/06/25 C00500205
JA 544

Approved for Release: 2021/06/25 C00500205

A Question of Political Sensitivity 49
Refusal to Cooperate 50

MISTREATMENT OF POWS 51

RECOVERY AND REPATRIATION OF REMAINS 53
Manipulation of Witnesses 54
Repatriation of Remains 55

THE SAGA OF THE MORTICIAN 57

NUMBERS OF POW/MIA: THE 735 AND 1205 DOCUMENTS 62
Two Distinct Methodologies 62
The Documents 65
Historical Setting of the 735 Document 65
Historical Setting of the 1205 Document 69
A Point of Logic 74

ASSESSMENT OF COMMENTS BY RUSSIAN SOURCES ON THE 735 AND 1205 DOCUMENTS 75
Our Approach 75
Validity and Credibility 76

SEPARATE OR SECOND PRISON SYSTEM 78

ALLEGED TRANSFERS OF POWS FROM VIETNAM TO THE USSR 83
The Russian General 84
The Central Committee Secretary 86

CASE ASSESSMENTS 88
Our Methodology 89
The McDonnell Case 91
Facts 93
Circumstances of Loss 93

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

The Vietnamese Account 94
Captain McDonnell's Status Changes 95
Three Times a Discrepancy Case 95
Our Assessment 96

PART V: *CRITICAL ASSESSMENT* CHARGES: POLITICIZATION **98**

SPECIFIC ALLEGATIONS OF POLITICIZATION 99
DoD Testimony (March and June 1998) 99
Outside Readers 102
Policy Contacts 104
Charges of Politicization in 1993/94 105
NSC Tasking 106
IC Analysis: Timing of Release 107
Charges of Improper Direction 110

GENERAL CHARGE OF POLITICIZATION 112

PART VI: CONCLUSIONS **116**

RELEVANT DOCUMENTATION 117

QUALITY OF NIE ANALYSIS 118

POLITICIZATION 122

A FINAL NOTE 123

Nov 26, 2024 000016
Approved for Release: 2021/06/25 C00500205
JA 546

Approved for Release: 2021/06/25 C00500205

ANNEXES:

A - Methodology

B - Summary of Selected Prior Reports

C - Methodology Used in Examining Charges in the *Critical Assessment*

D - Intelligence Community Publications Reviewed by National Intelligence Estimate Drafter

E - Recovery and Remains Documentation Reviewed by NIE Drafter

F - Comments by Russian Sources

G - Case Review Methodology

H - Results of Compelling Case Review

I - Captain McDonnell Case Review

J - Distribution List

Approved for Release: 2021/06/25 C00500205

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GLOSSARY OF TERMS

Acronym	
AG	Analytic Group (National Intelligence Council)
AII POW-MIA	Advocacy and Intelligence Index for Prisoners of War-Missing in Action
ASD (C^3I)	Assistant Secretary of Defense (Command, Control, Communications, and Intelligence)
CIA	Central Intelligence Agency
CILHI	Central Identification Laboratory, Hawaii
DCI	Director of Central Intelligence
DDCI	Deputy Director of Central Intelligence
DI	Directorate of Intelligence (CIA)
DIA	Defense Intelligence Agency
DO	Directorate of Operations (CIA)
DoD	Department of Defense
DoS	Department of State
DPMO	Defense Prisoner of War/Missing Personnel Office
FBI	Federal Bureau of Investigation
FBIS	Foreign Broadcast Information Service
GRU	Soviet Military Intelligence
IC	Intelligence Community
IG	Inspector General
INR	Bureau of Intelligence and Research (DoS)
ISS	Interrepublic Security Service
JCRC	Joint Casualty Resolution Center
JCSD	Joint Commission Support Directorate (DPMO)
JTF-FA	Joint Task Force-Full Accounting
KIA-BNR	Killed in Action-Body Not Recovered
KGB	Soviet Intelligence and Security Service
MIB	Military Intelligence Board
NFIB	National Foreign Intelligence Board
NIC	National Intelligence Council
NIE	National Intelligence Estimate
NIMA	National Imagery and Mapping Agency
NIO	National Intelligence Officer
NIO/EA	National Intelligence Officer for East Asia

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

NRO	National Reconnaissance Office
NSA	National Security Agency
NSC	National Security Council
OCA	Office of Congressional Affairs (CIA)
OIA	Office of Imagery Analysis (CIA)
PDD	Presidential Decision Directive
PFOD	Presumptive Finding of Death
POW/MIA	Prisoner of War/Missing in Action
RA	Research and Analysis Division (DPMO)
SNIE	Special National Intelligence Estimate
SRV	Socialist Republic of Vietnam
SSCI	Senate Select Committee on Intelligence
TFR	Task Force Russia
TOR	Terms of Reference
USSR	Union of Soviet Socialist Republics
USPACOM	U.S. Pacific Command
VNOSMP	Vietnam Office for Seeking Missing Persons
VWWG	Vietnam War Working Group (U.S.-Russia Joint Commission on POW/MIAs)

Nov 26, 2024 000019
Approved for Release: 2021/06/25 C00500205
JA 549

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EXECUTIVE SUMMARY

Introduction

On 10 April 1997, the President's National Security Adviser indicated in a letter to the Senate Majority Leader that he would direct the Intelligence Community to prepare a National Intelligence Estimate (NIE) on Vietnam's cooperation with the United States on Prisoner of War/Missing in Action (POW/MIA) issues. Terms of Reference for the estimate were formulated by the National Intelligence Council and coordinated with members of the Intelligence Community and the Senate Select Committee on Intelligence. The draft estimate was presented to the Military Intelligence Board and the National Foreign Intelligence Board for approval in April 1998, and NIE 98-03, "Vietnamese Intentions, Capabilities, and Performance Concerning the POW/MIA Issue," was published in May 1998.[1]

Senator Robert C. Smith issued *A Critical Assessment* of the NIE in November 1998 and asked that the Military Intelligence Board and the National Foreign Intelligence Board retract the estimate for reasons cited in his assessment. In January 1999, the Director of Central Intelligence advised Senator Smith that both boards had voted unanimously to let the estimate stand, describing it as an accurate assessment of current knowledge and understanding of the POW/MIA issue. Senator Smith continued to demand that the estimate be retracted and, on 18 March 1999, the Senate Select Committee on Intelligence requested that the Inspectors General of the Central Intelligence Agency and the Department of Defense examine the estimate and the charges made in the *Critical Assessment*. We began a joint inquiry in mid-April 1999.

The Intelligence Community was asked to address two key issues in NIE 98-03—the extent to which Vietnam has cooperated with the United States since 1987 to achieve the fullest possible accounting of American personnel missing in action during the Vietnam conflict and the credibility of the 735 and 1205 documents, acquired from Russian archives, which raised questions about whether all American prisoners of war were released

[1] The NIE has been declassified for release and is available on the CIA public website at http://www.foia.ucia.gov or by writing to Information and Privacy Coordinator, Central Intelligence Agency, Washington, D.C. 20505.

Nov 26, 2024 000020

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by Vietnam in 1973.[2] The estimate stated that Vietnam has become more helpful in assisting U.S. efforts to achieve the fullest possible accounting, but that unresolved issues suggest the need for continued close attention by the U.S. Government. It concluded that the 735 and 1205 documents probably had been acquired in Vietnam by Soviet military intelligence, but that many of the details in the documents are implausible, particularly those dealing with the numbers of prisoners of war allegedly held by Hanoi in the early 1970s.

Senator Smith's *Critical Assessment* challenged the estimate's conclusions on both key issues. On the subject of Vietnamese cooperation, it cited numerous instances where the estimate's analysis was "factually inaccurate, misleading, incomplete, shallow, and seriously flawed." With respect to the 735 and 1205 documents, the *Critical Assessment* stated that the estimate's judgment cannot be accepted because it is "replete with inaccurate and misleading statements, and lacks a reasonably thorough and objective foundation on which to base its judgment." The *Critical Assessment* urged Congress and the Intelligence Community to examine the role policymakers responsible for advancing the Clinton Administration's normalization agenda with Vietnam may have played in influencing judgments in the estimate.

Objective

The Senate Select Committee on Intelligence asked us to examine the *Critical Assessment*'s charges that the estimate reflected a premeditated effort to discredit relevant information, inadequate analysis, and possible politicization. Our objective was to assess the validity of those charges in order to evaluate the estimate's analytical vigor, objectivity, accuracy, and completeness.

[2] For a more detailed description of these documents, see page 21 of the report.

Approved for Release: 2021/06/25 C00500205

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Results

Based on our review, we conclude that:

- The estimate drafter and members of the Intelligence Community who participated in the preparation of the estimate made no effort to discredit relevant information. The drafter had access to and reviewed relevant documentation.
  - The estimate drafter is vulnerable to criticism that he did not pay sufficient attention to pre-1987 documentation, relying on finished intelligence products for analysis of pre-1987 data. The issue of the period of time the estimate would cover was never resolved.
  - Delay in the completion of the Terms of Reference from July to October 1997; the Senate Select Committee's additional requirement that the estimate reassess the 735 and 1205 documents; and the introduction of both a new National Intelligence Officer for East Asia and a new drafter contributed to misunderstandings about estimate objectives.
  - We searched for documentation as far back as the document trail allowed. None of the information we reviewed contradicted the conclusions or changed the judgments reached by the estimate.
- The overall quality of the estimate is high. The argumentation is vigorous and logical, and the conclusions are well-documented. At the same time:
  - The withdrawal of the Defense Prisoner of War/Missing Personnel Office from the estimate process inhibited analysis. While not a member of the Intelligence Community, that office possesses most of the U.S. Government's data and expertise on POW/MIA issues.

Nov 26, 2024 000022
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JA 552

Approved for Release: 2021/06/25 C00500205

- Several analytical mistakes made in the estimate could have been prevented had the Defense Prisoner of War/Missing Personnel Office reviewed the draft estimate. None of these mistakes affected the conclusions or judgments of the estimate, however.

- The estimate's judgment that Vietnam's performance in dealing with POW/MIA issues has been good in recent years is properly cautious, particularly given the caveat that unresolved areas of Vietnamese cooperation warrant continued close attention by the U.S. Government.

- The Intelligence Community did not conduct an in-depth re-evaluation of the 735 and 1205 documents. The Intelligence Community also did not undertake an independent review of the numbers of prisoners of war held by the Vietnamese. Instead, the estimate accepted both the 1994 Intelligence Community position related to the legitimacy and accuracy of the documents and the U.S. Government analysis of the numbers of prisoners of war and missing in action. We reviewed both in considerable depth.

  - We determined that the estimate's evaluation of the 735 and 1205 documents remains valid. The documents are genuine, but the information contained in them related to numbers of prisoners of war held by the Vietnamese is inaccurate.

  - Our analysis of discrepancy or compelling cases for which verified remains have not been returned determined that, at most, three of the cases and, in all likelihood, none on a list of 324 provided by Senator Smith to the Senate Select Committee on POW/MIA Affairs in 1992 remain compelling today.

- The estimate failed to capture the intricacies of the story of the mortician who worked on the remains of American prisoners of war in Vietnam. It mislabeled the mortician an unreliable source when in fact he was reliable with respect to remains he had actually worked on; his estimate of stored remains that he had not worked on was less accurate.

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- The estimate overstated its case that there is no evidence the Vietnamese currently are storing the remains of American prisoners of war.
  - The estimate did mention, however, that a Department of Defense study on the subject would provide additional information.
  - That study, issued in June 1999, more than a year after publication of the estimate, concluded that there is strong evidence in two cases involving five remains that remains were collected and taken to Hanoi, but not repatriated. Investigation continues.
- We found no credible evidence to support the thesis that a second prison camp system for prisoners of war existed or that American prisoners of war were transported out of Vietnam to the former Soviet Union or elsewhere.
- We found no credible evidence that any member of the Clinton Administration tried to influence the estimate or that the Administration tried to influence intelligence reporting on POW/MIA issues related to the 735 and 1205 documents. On the contrary, the concern expressed by policymakers was that the Intelligence Community not appear to be dismissing or debunking information from those documents.
  - Senator Smith and his staff did have an impact on the estimate. They played a role in framing the final Terms of Reference. Senator Smith expressed his opinion on issues to be addressed in the estimate to members of the Intelligence Community, and he said that he was not confident that the Clinton Administration would not interfere in the estimate process.

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- Members of the Intelligence Community as well as outside readers of the draft estimate were keenly aware that the estimate would be criticized by those who believed the Vietnamese were not cooperating in good faith on POW/MIA matters and those who believed that American prisoners of war were left behind in Vietnam and elsewhere in 1973. At numerous stages in the production of the estimate, these intelligence officials and outside readers successfully urged a softening of the tone to placate those who might be critical. These interventions did not change the judgments of the estimate.

Finally, while we were not asked to address this issue, we did not find a single factual thread that supports a finding contrary to that reported to the Speaker of the House of Representatives by Congressman G. V. (Sonny) Montgomery in December 1976, following his Committee's investigation of POW/MIA issues. He conveyed the committee's belief that "no Americans are still being held alive as prisoners in Indochina, or elsewhere, as a result of the war in Indochina." Every U.S. Administration since 1976 has agreed with this conclusion, and we found nothing in the course of this inquiry that suggests otherwise.

Approved for Release: 2021/06/25 C00500205

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PART I: INTRODUCTION

BACKGROUND

On 10 April 1997, in a letter to the Senate Majority Leader, the President's National Security Adviser indicated that he would direct the Intelligence Community (IC)[3] to prepare a National Intelligence Estimate (NIE)[4] on Vietnam's cooperation with the United States on Prisoner of War/Missing in Action (POW/MIA) issues.[5] He said that the IC should "consult" with the Chairman and Vice Chairman of the Senate Select Committee on Intelligence (SSCI) on the estimate's Terms of Reference (TOR). The TOR were formulated by the National Intelligence Council (NIC) and coordinated with the IC and the SSCI. The NIE draft report was presented to the Military Intelligence Board (MIB) and the National Foreign Intelligence Board (NFIB) for approval in April 1998. NIE 98-03, "Vietnamese Intentions, Capabilities, and Performance Concerning the POW/MIA Issue," dated April 1998, was issued in May 1998.

Senator Robert C. Smith published *A Critical Assessment* of NIE 98-03 in November 1998. In a letter accompanying the *Critical Assessment*, he requested the Director of Central Intelligence (DCI) and the Director, Defense Intelligence Agency (DIA) to convene meetings of the NFIB and the MIB, respectively, to consider his request that the NIE be retracted for reasons cited in the *Critical Assessment*. The MIB met on 15 January 1999 to review the matter in detail and the NFIB convened four days later. The DCI advised Senator Smith that IC members had voted unanimously to let the estimate stand, describing it as an accurate assessment of current knowledge and understanding of the POW/MIA issue.

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[3] The IC is composed of the Central Intelligence Agency (CIA), the National Security Agency (NSA), the Defense Intelligence Agency, the Department of State's Bureau of Intelligence and Research (INR), the National Reconnaissance Office (NRO), the National Imagery and Mapping Agency (NIMA), and intelligence elements of the Department of Justice, the Department of the Treasury, the Department of Energy, and the Military Services.

[4] NIEs are produced by the NIC. They are prepared for the President and other senior policymakers on issues that have strategic implications for the United States. They are the most authoritative written assessments of the DCI and the IC because they present the coordinated views of senior officers of the IC.

[5] POWs are persons known to be, or to have been, held by the enemy as live prisoners or last seen under enemy control. MIAs are persons removed from control of U.S. forces due to enemy action, but not known to be either prisoners of war or dead.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

On 18 March 1999, the SSCI informed the Inspectors General (IG) of the Central Intelligence Agency (CIA) and the Department of Defense (DoD) that Senator Smith "continues to assert that NIE 98-03 is a product of either 'shoddy' research or possible politicization, which may reflect a premeditated and deliberate effort to discredit relevant information." Further, the SSCI said, Senator Smith believes the NIE should be retracted and that policymakers should disregard the conclusions. The SSCI requested that the IGs conduct an inquiry to determine the NIE's "analytical vigor, objectivity, accuracy and completeness." A joint CIA/DoD inquiry began in mid-April 1999.

OBJECTIVE

Our objective was to examine NIE 98-03 and address the charges levied in the *Critical Assessment* that there had been:

- A premeditated effort to discredit relevant information;
- Inadequate analysis; or
- Possible politicization.

Our approach was to review the process of producing the estimate and assess the validity of the *Critical Assessment*'s specific charges. By so doing, we could evaluate the NIE's analytical vigor, objectivity, accuracy, and completeness.

STRUCTURE OF REPORT

Our report is presented in six parts, including the Introduction (Part I). Part II provides an historical perspective of the Vietnam War POW/MIA issue. Part III describes the standard NIE process and the process followed for NIE 98-03. Part IV examines the specific, substantive charges levied in the *Critical Assessment*. Part V addresses the *Critical Assessment*'s charges of politicization. In Part VI, we provide our conclusions. Annex A describes the methodology we used in preparing our report, and Annex B provides a summary of previous reports and reviews related to topics addressed in this report. Annex C describes our methodology in addressing the *Critical Assessment*'s charges against the NIE. Annexes D and E list U.S. Government publications reviewed by the drafter of the NIE. Annex F summarizes the interviews of Russian officials

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

concerning the validity of the 735 and 1205 documents found in the archives of Soviet military intelligence (GRU) and the credibility of the information in those documents relating to numbers of POWs held by the Vietnamese. Annex G describes the methodology we used in conducting our review of selected discrepancy cases, and Annex H supplies the supporting matrix of information relating to that review. In Annex I, we detail the process used to examine a single case of a U.S. MIA. Annex J contains our distribution list. A list of commonly used acronyms is at the front of our report.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

PART II: HISTORICAL PERSPECTIVE

OPERATION HOMECOMING AND THE END OF THE WAR

During the period of U.S. military involvement in Southeast Asia, nearly three million American military personnel served in-theater.[6] More than 58,000 were killed and another 300,000 were wounded. At the time of Operation Homecoming in February/March 1973, 591 U.S. prisoners were repatriated. The fate of more than 2,500 service personnel, however, had not been determined. U.S. efforts to resolve cases involving those still missing have continued and have been the subject of considerable debate, ranging from high praise to strong criticism. The issue of the number of servicemen still unaccounted for also has remained controversial.[7]

On 27 January 1973, representatives from the United States, the Republic of Vietnam, the Democratic Republic of Vietnam (North Vietnam), and the Provisional Revolutionary Government of the Republic of South Vietnam ("Viet Cong"), signed "The Agreement on Ending the War and Restoring Peace in Vietnam," also known as the Paris Peace Accords. Article 8(b) of the Accord stated:

> The parties shall help each other to get information about those military personnel and foreign civilians of the parties missing in action, to determine the location and take care of the graves of the dead so as to facilitate the exhumation and repatriation of the remains, and to take any such other measure as may be required to get information about those still considered missing in action.

The Joint Casualty Resolution Center (JCRC) was established in 1973 to help the Military Services:

> . . . resolve the status of United States missing/body not recovered personnel through the conduct of operations to locate and investigate crash/grave sites and recover remains, as appropriate, throughout Southeast Asia . . . .

[6] The Indochina War Era covers the period from 8 July 1959 through 15 May 1975.

[7] The term "unaccounted for" is an all-inclusive term which includes Americans initially listed as POW/MIA, Killed in Action—Body Not Recovered (KIA-BNR), or as having a Presumptive Finding of Death (PFOD).

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Approved for Release: 2021/06/25 C00500205

The JCRC formed a relationship with the U.S. Army Central Identification Laboratory, which was charged to examine and identify any remains recovered as a result of JCRC searches or unilateral repatriation of remains by the North Vietnamese. The JCRC and the Army Central Identification Laboratory moved to Hawaii in 1976; the latter became the Central Identification Laboratory, Hawaii (CILHI).

THE HOUSE SELECT COMMITTEE ON MISSING PERSONS IN SOUTHEAST ASIA

In September 1975, the U.S. House of Representatives formed a Select Committee on Missing Persons in Southeast Asia, headed by Congressman G.V. (Sonny) Montgomery; the committee was tasked to conduct a full and complete investigation and study of:

- The problem of U.S. servicemen still identified as missing in action, as well as those known dead whose bodies have not been recovered, as a result of military operations in Indochina; and

- The need for additional international inspection teams to determine whether there are servicemen still held as prisoners of war or civilians held captive or unwillingly detained.

The committee conducted a comprehensive, 15-month investigation. Its final report, issued in December 1976, concluded that "no Americans are still being held alive as prisoners in Indochina, or elsewhere, as a result of the war in Indochina." Half of the ten committee members voiced displeasure with that conclusion as well as other judgments and recommendations in the report.

PROGRESS ON POW/MIA ISSUE

Carter Years (1977-1980)

Early in his Administration, President Carter created a Presidential Commission headed by Leonard Woodcock, the President of the United Auto Workers. The purpose of the Commission was ". . . to obtain the best possible accounting for MIAs and the return of the remains of our dead." The report of the Presidential Commission concluded, ". . . there is no evidence to indicate that any American POWs from the Indochina conflict

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Approved for Release: 2021/06/25 C00500205

remain alive." The commission recommended that normalization of relations with the Vietnamese should be pursued through the resumption of talks in Paris. Several members of the House International Relations Subcommittee on Asia and Pacific Affairs strongly criticized the report in hearings conducted in March 1977.

Direct talks aimed at normalization between the United States and Vietnam took place in Paris in May 1977. Little progress on the issue of missing Americans was made, however. Several congressional delegations traveled to Hanoi and members of the JCRC visited Hanoi in 1980 for technical discussions with officials from the Vietnam Office for Seeking Missing Persons (VNOSMP), but the exchanges were largely unproductive. In January 1980, an interagency group was established "to review and assess current events and policies [and] to consider future direction/policy to resolve the POW/MIA problem." Members of the group included representatives from the Departments of State (DoS) and Defense, the National Security Council (NSC), the Joint Chiefs of Staff, and the National League of Families of American Prisoners and Missing in Southeast Asia.

Reagan Years (1981-1988)

In February 1982, after President Reagan designated the POW/MIA issue a matter of the highest national priority, the Deputy Assistant Secretary of Defense led a delegation to Vietnam to discuss cooperation. Vietnamese officials indicated that there was a connection between their cooperation on the MIA issue and the U.S. attitude toward Vietnam. Between 1982 and 1986, several additional U.S. Government delegations visited Vietnam to discuss expanded cooperation, and technical meetings between JCRC, CILHI and the Vietnamese were conducted.

By 1987, nearly 15 years after Operation Homecoming, resolution of the POW/MIA issue remained a distant possibility. In an effort to energize the issue, President Reagan appointed General John W. Vessey, Jr. (USA Ret.) as his special emissary to Vietnam in February 1987. In August 1987, General Vessey met with the Vietnamese Foreign Minister for three days of talks in Hanoi. The Foreign Minister committed the Socialist Republic of Vietnam (SRV) to resuming efforts to resolve the MIA issue and agreed to address the most urgent cases, those in which the missing person was last known by the United States to be alive but who did not return during Operation Homecoming. These became known as the Vessey discrepancy

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

cases. Both parties also agreed to resume technical talks. The result was a series of technical meetings in Hanoi between JCRC/CILHI members and the VNOSMP to work on casualty resolution and other meetings to discuss the provision of prosthetics with SRV public health and social affairs officials. In June 1988, General Vessey met the SRV Foreign Minister in New York to review the progress made since their initial meeting in 1987. The level of cooperation improved to the extent that six technical meetings were conducted in Hanoi during 1988, and U.S. teams participated for the first time in joint investigative activity in Vietnam. In October 1989, General Vessey visited Hanoi a second time to discuss casualty resolution progress.

An "Inter-Agency Report of the Reagan Administration on the POW/MIA Issue in Southeast Asia," issued on 19 January 1989, 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." The report went on to say that:

> 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.

Bush Years (1989-1992)

In an exchange of letters between General Vessey and the SRV Foreign Minister in July 1990, the General pointed out that, after some initial positive results regarding the POW/MIA issue, "progress has become painfully slow, in fact, almost non-existent," and that there was "a real need for progress." The Foreign Minister disputed the General's assessment. He stated that more than 20 years had elapsed since the war ended and that "Vietnam continues its efforts to solve this humanitarian issue, including the seeking of war-time records." The Foreign Minister invited General Vessey to return to Vietnam to clarify remaining issues. General Vessey did not return to Vietnam until April 1991, but that visit was noteworthy because agreement was reached to open a U.S. liaison office in Hanoi. The purpose of the office was to improve the coordination between SRV casualty resolution officials and the United States and to speed joint investigative fieldwork. The liaison office opened in May 1991.

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Approved for Release: 2021/06/25 C00500205

The Road Map

As a result of U.S.-SRV meetings in April 1991, the Bush Administration adopted a policy of reciprocal U.S.-Vietnamese actions in accordance with a road map that had three major sets of U.S. objectives:

- Support for the United Nations peace process in Cambodia;
- Release of re-education camp detainees; and
- Assistance in achieving the fullest possible accounting of POW/MIAs.

At intermediate points along the "road," both parties would take specific actions, such as the lifting of U.S. restrictions on the travel of American business and veterans groups to Vietnam. Later, the U.S. trade embargo would be lifted and U.S. opposition to international lending to Vietnam would be halted. Vietnam would accelerate its efforts to account for missing U.S. personnel.

Senate Select Committee

On 2 August 1991, a Senate resolution established the Senate Select Committee on POW/MIA Affairs. The committee requested and received unprecedented access to the records of a wide range of U.S. Government agencies, including intelligence agencies and the White House. It 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." The committee reviewed procedures for accounting for POW/MIA and investigated U.S. intelligence activities in relation to these issues. Its report, issued on 13 January 1993, acknowledged 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." The report suggested that there was evidence that indicated the possibility of survival, at least for a small number after Operation Homecoming.

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Approved for Release: 2021/06/25 C00500205

Clinton Years (1993 to date)

Four Key Areas

Although the Clinton Administration does not use the term, its policy has been based on the road map developed by the Bush Administration. President Clinton asked General Vessey to conduct another mission to Vietnam in April 1993 to seek further progress. On 2 July 1993, President Clinton announced that:

> Progress [on POW/MIA] to date is simply not sufficient to warrant any change in our trade embargo or any further steps toward normalization. Any further steps in U.S.-Vietnamese relations will strictly depend on further progress by the Vietnamese on the POW/MIA issue.

President Clinton's statement set out four key areas in which the United States expected to see greater efforts by Vietnam:

- Concrete results from efforts by Vietnam to recover and repatriate American remains;
- Continued resolution of the remaining discrepancy cases, and continued live sighting investigations and field activities;
- Further assistance in implementing trilateral investigations with the Lao of POW/MIA cases along the Lao-Vietnam border; and
- Accelerated efforts to provide all POW/MIA-related documents that will help lead to genuine answers.

Normalization

A Presidential delegation that visited Vietnam later in July 1993 reinforced the commitment to the fullest possible accounting for POW/MIAs and made it clear that the United States must see tangible progress in the four key areas. Vietnam representatives indicated that they were committed to helping the United States resolve the issue and pledged

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Approved for Release: 2021/06/25 C00500205

to make every effort to achieve progress, but cautioned not to expect dramatic breakthroughs. In January 1994, the Senate approved a non-binding resolution urging the President to lift the trade embargo against Vietnam, a move supporters hoped would assist in getting a full accounting of Americans still listed as missing in the Vietnam War. On 3 February 1994, President Clinton announced the lifting of the trade embargo and, on 11 July 1995, he announced normalization of relations with Vietnam, saying that the time had come to move forward and bind up the wounds from the war. The U.S. Embassy in Hanoi was opened in August 1995. In April 1997, Congressman Douglas "Pete" Peterson, a former POW, was confirmed as the first U.S. Ambassador to Vietnam since the end of the war and the first to be posted to Hanoi.

Certification/Determination Of Cooperation

In 1996, Congress prohibited the use of appropriated funds to open a new U.S. diplomatic post in Vietnam or increase the number of personnel assigned to the mission beyond the level existing on 11 July 1995 unless the President certified within 60 days, based upon all information available to the United States Government, that the Government of the SRV was "cooperating in full faith" with the United States in the four areas related to achieving the fullest possible accounting for American POW/MIAs from the Vietnam War. The four areas were those laid out by President Clinton in 1993.[8] In the 1998 iteration of that law, Congress changed the wording to certification that Vietnam is "fully cooperating in good faith."

President Clinton issued Presidential Determinations on 29 May 1996 and 3 December 1996 that Vietnam was cooperating "in full faith." Presidential Determinations of 4 March 1998, and 3 February 1999 declared that Vietnam was "fully cooperating in good faith." The President issued determinations in lieu of certifications, stating that the Department of Justice had advised him that it was unconstitutional for Congress to require him to certify because it "purports to use a condition on appropriations as a means to direct my execution of responsibilities that the Constitution commits exclusively to the President." The President

[8] Title VI, Section 609, of the Departments of Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Act, as contained in the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104-134), and the Omnibus Consolidated Appropriations Act of 1997 (Public Law 104-208).

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

stated that he had decided to issue the determinations not because he was legally required to do so but rather as a matter of inter-branch "comity."

The decision to certify or to determine that Vietnam is cooperating "in full faith" or "fully cooperating in good faith" on the four key issues related to POW/MIAs is a policy decision. While the IC does not participate in that decision, the responsible policy agencies have available to them all the relevant intelligence information. Two policy directorates, the Defense Prisoner of War/Missing Personnel Office (DPMO), in coordination with the Joint Task Force-Full Accounting (JTF-FA), and the DoS, Office of East Asia and Pacific Affairs, are the major contributors to the NSC on this issue. The DoS establishes the policy position for annual certification (determination), and the DPMO reviews the proposal for accuracy after consultation with JTF-FA. The Director for Indochina, Thailand, and Burma, Office of the Assistant Secretary of Defense (International Security Affairs) also coordinates on the draft certification (determination) proposal. DoS, Bureau of Intelligence and Research (INR), an IC member, reviews the draft proposal for accuracy only.

INTELLIGENCE COMMUNITY CAPABILITY

CIA Turns to Department of Defense

In November 1985, the then-DCI sent a memorandum to the NFIB, stating that he was establishing an Interagency Committee on Vietnam POW/MIAs under the aegis of DIA. The purpose of the committee would be to:

> . . . exhaust all intelligence within the Community regarding the location and identification of Americans who might be held or interned [sic] in Southeast Asia.

The DCI asked that the appropriate NFIB agencies nominate representatives to serve on the committee and that all intelligence "presently held within the Intelligence Community" be given to the committee. In the years that followed, the DCI memorandum was interpreted to mean that DIA had been designated the lead agency for POW/MIA affairs and that other agencies would play a supporting role in that effort.

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Approved for Release: 2021/06/25 C00500205

Subsequently, the DIA Special Office for POW/MIA Affairs assumed a higher profile. The Special Office handled technical investigations or specific cases and debriefings of refugees and other sources; it collated the information, then disseminated reports. Other government agencies provided support.

In 1993, the DPMO was established as a separate office outside of DIA. DPMO was designed to consolidate POW/MIA issues (analytic, policy, and operations) under one umbrella. While this arrangement is unusual, it is not unique. DoS and DoD have both policy and operational missions, but they maintain elements that perform intelligence analysis. In that regard, elements of the IC that address the Vietnam POW/MIA issue include the analytical components of DPMO and analysts in other agencies who are experts on Vietnam and who have worked the issue in the past.

Intelligence Priorities and Standing Requirements

Presidential Decision Directive-35 (PDD-35), dated 2 March 1995, which provides overall guidance for the IC, does not explicitly include POW/MIA issues. The DCI Guidance on Intelligence Priorities, dated 10 February 1997, builds on PDD-35 by addressing worldwide priorities in the context of the President's guidance. POW/MIA issues are included under support to military operations, and the IC has standing requirements that cover POW/MIA issues.

EVOLUTION OF THE DEFENSE POW/MISSING PERSONNEL OFFICE

The Secretary of Defense established the Defense Prisoner of War/Missing Personnel Office (DPMO) in July 1993 to provide centralized management of POW/MIA affairs within the DoD. The DPMO was headed by the Deputy Assistant Secretary of Defense (Regional Security Affairs), now the Assistant Secretary of Defense (International Security Affairs). Creation of the office brought together four disparate DoD offices that had been working POW/MIA issues:

- **Deputy Assistant Secretary of Defense (POW/MIA)**. This office was established in 1991 within the office of the Secretary of

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Approved for Release: 2021/06/25 C00500205

Defense to develop U.S. and DoD policies on POW/MIA issues. The Deputy Assistant Secretary continued as the Director, DPMO, reporting to the Assistant Secretary of Defense (International Security Affairs), Office of the Under Secretary of Defense for Policy;

- **DIA Special Office for POW/MIAs.** This office was established during the Vietnam conflict to support operational commanders by collecting information on American service members classified as POWs or MIAs;

- **Central Documentation Office**. This office was established by the Secretary of Defense in 1991 to review and declassify materials pertaining to American POWs and MIAs lost in Southeast Asia. The office reported to the Assistant Secretary of Defense (Command, Control, Communications, and Intelligence [ASD C^{3}I]); and

- **Task Force Russia (TFR)**. This office was established by the Army in 1992 to support the U.S.-Russia Joint Commission on POW/MIAs.

The 1996 Defense Authorization Act directed that DoD establish an office for missing persons. The Deputy Assistant Secretary of Defense for Prisoner of War/Missing Personnel Affairs was designated as the Director of the newly restructured and renamed Defense Prisoner of War/Missing Personnel Office (DPMO). The DPMO mission is to exercise policy, control and oversight within the DoD of the entire process for investigation and recovery related to missing persons (including matters related to search, rescue, escape and evasion); coordinate for the DoD with other departments and agencies of the United States on all matters concerning missing persons; and establish procedures to be followed by DoD boards of inquiry and by officials reviewing the reports of such boards. The DPMO maintains and gathers data on POW/MIA affairs for World War II, the Korean War, Vietnam, and the Cold War. The Under Secretary of Defense for Policy provides authority, direction and control over the Deputy Assistant Secretary of Defense for POW/MIA Affairs. The Deputy Assistant Secretary of Defense reports through the Assistant Secretary of Defense for

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

International Security Affairs and serves as the principal assistant to the Under Secretary of Defense for Policy for all prisoner of war and missing in action matters. The primary responsibility of the Deputy Assistant Secretary of Defense is developing and coordinating policy on such matters and representing the DoD in interagency processes. The Deputy Assistant Secretary of Defense also ensures that the DoD effectively conducts efforts to achieve the fullest possible accounting for U.S. personnel not yet accounted for from the Vietnam conflict.

The Deputy Assistant Secretary of Defense for POW/MIA Affairs is assigned the collateral responsibility to serve as the Director, DPMO. This was done to ensure that the activities of the DPMO are fully integrated with the Office of the Secretary of Defense POW/MIA policy direction. The Director serves as the DoD focal point for all POW/MIA matters including representing the DoD during negotiations with foreign governments. DPMO customers include the DoD, the Congress, POW/MIA families, and veterans organizations.

While the DPMO is not an intelligence organization, it incorporates intelligence reporting into its all-source analysis of POW/MIA issues and individual cases. DPMO systematically requests that CIA, DIA, NSA, and the National Imagery and Mapping Agency (NIMA) provide required information. In fact, the National Defense Authorization Act for 1998 (Public Law 105-85), Section 934, states that:

> The Director of Central Intelligence, in consultation with the Secretary of Defense, shall provide intelligence analysis on matters concerning prisoners of war and missing persons . . . to all departments and agencies of the Federal Government involved in such matters.

Further, the Act directs the Secretary of Defense to:

> . . . ensure that the Defense Prisoner of War/Missing Personnel Office takes into full account all intelligence regarding matters concerning . . . prisoners of war and missing persons . . . in analyzing cases involving such persons.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

DoD Agencies Supporting POW/MIA Mission

Joint Task Force-Full Accounting

In January 1992, the Commander in Chief, U.S. Pacific Command (USPACOM) formed the JTF-FA, at Camp H.M. Smith, Hawaii. The JTF-FA replaced the JCRC as the primary organization focused on full accounting for missing U.S. personnel. The JTF-FA mission is to resolve the cases of Americans still unaccounted for as a result of the Indochina War through investigations, archival research, and remains recovery operations. The JTF-FA is structured to conduct the wide range of operations necessary to obtain the fullest possible accounting in Southeast Asia. The JTF-FA has four permanently deployed detachments in Southeast Asia to support JTF-FA teams that perform investigations and recovery efforts: Detachment 1 in Thailand, Detachment 2 in Vietnam, Detachment 3 in Laos, and Detachment 4 in Cambodia.

Central Identification Laboratory, Hawaii

The Department of the Army is designated as the executive agent for the Joint Mortuary Affairs Program. As the executive agent, the Army maintains a Central Mortuary Affairs Office and CILHI for processing remains from past conflicts. The CILHI mission is foremost humanitarian and requires deployment of its personnel throughout the world. CILHI supports the full accounting mission by providing the personnel who make up the remains recovery teams deploying to Southeast Asia and by conducting forensic analysis of recovered remains.

Stony Beach

In 1987, DIA supplemented the JCRC effort by assigning a small group of language-qualified personnel the task of gathering information related to possible live sightings of American POW/MIAs in Indochina. The Stony Beach program collects information and performs analyses on alleged live sightings of U.S. POW/MIAs. Stony Beach operations are conducted exclusively in support of the POW/MIA issue.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

ROLE OF U.S.-RUSSIA JOINT COMMISSION ON POW/MIAS

The DPMO supports the U.S.-Russia Joint Commission on POW/MIAs, established in 1992 by direction of the Presidents of the United States and the Russian Federation. The commission serves as a forum through which both nations seek to determine the fates of their missing service personnel, Americans missing from the Vietnam, Korean and Cold Wars and Russians lost in Afghanistan. The commission consists of representatives from the executive and legislative branches of the U.S. and Russian Governments. The U.S. side of the commission includes members of Congress, senior DoS and DoD personnel, and a representative from the U.S. National Archives. Within the DPMO, the Joint Commission Support Directorate (JCSD) functions as the sole collection, research, analytical, and administrative support element to the U.S. side of the U.S.-Russia Joint Commission.

PRIVATE GROUPS

The wife of a POW held captive in North Vietnam formed the National League of Families of Prisoners and Missing in Southeast Asia in 1966. In 1970, the League was formally structured as a "tax-free, non-profit, nonpartisan, humanitarian organization." The League's bylaws specified that only family members of prisoners, missing, or killed-in-action personnel were eligible for membership. In the beginning, most leadership positions were held by wives of POWs and MIAs. Operation Homecoming changed the composition and character of the League. A new Executive Director liberalized membership requirements, and leadership evolved to parents away from the wives. The category of family members eligible for membership was expanded to include blood or lawful relatives of an American who was a prisoner or missing in Southeast Asia.

In 1979, the Executive Director of the League was given access to POW/MIA classified information. In 1982, for the first time, a League delegation traveled to Vietnam and Laos to meet with government officials. The Executive Director was made a full member of the U.S. interagency group that discussed POW/MIA issues. The Executive Director has testified before congressional committees and has been

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included in numerous government proceedings with Southeast Asia government officials.

Traditional veterans' organizations have shared interest in the POW/MIA issue, including the American Legion, the Veterans of Foreign Wars, the Disabled American Veterans, and the Vietnam Veterans of America. The 1990s brought the emergence of a new organization, the National Alliance of Families for the Return of America's Missing Servicemen, World War II-Korea-Cold War-Vietnam. It is the only organization representing U.S. servicemen from all wars and their families.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

PART III: POW/MIA ESTIMATE PROCESS

A National Intelligence Estimate is a compendium of basic judgments, accompanied by some supporting detail, that represent the collective viewpoint of the Intelligence Community. It is not an exhaustive compendium of every conceivable alternative explanation on every point of detail, slanted to support a particular point of view. The operative word is "judgments," over which disagreements are common.

Senior DIA official

STANDARD NIE PROCESS

The National Intelligence Council (NIC) is an Intelligence Community (IC) entity, responsible for producing coordinated interagency papers. The NIC, which reports to the DCI in his capacity as head of the IC, consists of a Chairman, Vice Chairman, National Intelligence Officers (NIO), and several staffs and production committees. The NIOs interact regularly with senior intelligence consumers to assess and support their long-term needs. In addition, they actively consult with experts from academia, the corporate world, and think tanks in producing estimates and other coordinated IC products.

The NIC manages the IC's estimate process, bringing together expertise from inside and outside the government. The NIC is one of the few bodies which speaks authoritatively on substantive issues for the IC as a whole. National Intelligence Estimates (NIE) are prepared for the President and other senior policymakers on issues that have strategic implications for the United States. They are the most authoritative written assessments of the DCI and the IC because they present the coordinated views of the senior officers of the IC.

Typically, an NIO presents a proposal for an estimate to the Chairman of the NIC, who presents it to the DCI for approval. The NIO prepares Terms of Reference (TOR) that are reviewed by the NIC, coordinated with IC representatives, then submitted to the National Foreign Intelligence Board (NFIB) principals.[9] The NIO may serve as the drafter for the estimate or may select a drafter from CIA or another IC

[9] The NFIB principals are the DCI; the Deputy Director, CIA; Director, DIA; Director, DoS, INR; Director, NSA; Director, FBI; Director, NIMA; and Director, NRO.

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member. The NIO and the drafter prepare an outline of the prospective NIE, meet to coordinate both the TOR and the outline with IC representatives, then send the final TOR to the NFIB principals. The drafter conducts research for the topic and drafts the report, frequently with support from members of the IC. The draft is then coordinated by IC representatives and sent to the NFIB for final approval.

Intelligence/Policy Nexus

To reduce the possibility that policy considerations will influence intelligence analysis, the estimate process is kept separate from its consumers in the policy community. Members of the policy community may request an estimate and may convey interest in having certain issues addressed; the drafter may even consult with the customer to ensure that all customer concerns are being addressed. During the research phase, policymakers may be asked to provide input in areas where they have specific knowledge or expertise. To ensure that they do not influence the judgments or conclusions of the estimate, policymakers do not have a role in coordinating either the TOR or the report itself. Permitting such close involvement would increase the risk of politicization of intelligence.

Interagency Participants

All IC agencies may be involved in the production and/or coordination of an estimate. In practice, agencies having no stake in the issue often withdraw from the process. On occasion, agencies outside the IC may be asked to participate in the process, either by contributing information or by attending coordination sessions as "back benchers" whose input is considered relevant and useful but who have no vote at the table.

REQUEST FOR POW/MIA ESTIMATE: POLITICAL ENVIRONMENT

A number of aspects of the process followed in the production of the NIE addressing the Vietnamese POW/MIA issue were unusual, reflecting the political environment that spawned it. The estimate had its genesis in the policy debate concerning normalization of relations with Vietnam. President Clinton announced his intention to normalize relations in July 1995, and the U.S. Embassy in Hanoi opened the following month. In May and December 1996, the President issued "determinations" that the

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Vietnamese were "cooperating in full faith" on POW/MIA matters. By so doing, the President opened the way for increasing the personnel assigned to the U.S. Embassy in Hanoi, including the appointment of an ambassador. He nominated Congressman Peterson for that post.

In March 1997, the SSCI asked the CIA to provide a copy of the IC assessment that had informed the Presidential determinations. CIA responded that, because the DPMO was responsible for intelligence bearing on the issue, other elements of the IC had not been formally involved in the process leading to the determinations. Several Senators, including the Majority Leader, indicated that they would hold up Congressman Peterson's confirmation unless the IC undertook its own, independent, analysis of Vietnamese cooperation on POW/MIA issues. In a letter to the Majority Leader on 10 April 1997, the President's National Security Adviser stated that he would direct the IC to prepare a special NIE on the subject. He also agreed to ask for an "updated assessment from the Intelligence Community" on the 735 and 1205 documents acquired from the Russian archives. The National Security Adviser went on to say that "we will consult" with the Chairman and Vice Chairman of the SSCI on the TOR for the estimate. He expressed hope that the Senate would confirm Congressman Peterson as soon as possible. Ambassador Peterson was confirmed the same day.

NEGOTIATION OF TERMS OF REFERENCE (APRIL-NOVEMBER 1997)

Initial Drafts

From the start, Senator Smith and his staff played a key role in shaping the TOR, using the SSCI to funnel requirements to the NIC. According to one of Senator Smith's legislative assistants, the Senator particularly wanted an updated assessment of the "Russian documents" because he did not believe the IC assessment of the documents, released in 1994, was thorough. The Senator wanted the IC to look at the 735 and 1205 documents and wanted that assessment to be part of the estimate. In a memorandum that he sent to an SSCI staff member on 24 April, Senator Smith's legislative assistant with responsibility for POW/MIA matters wrote that:

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Approved for Release: 2021/06/25 C00500205

Per our discussion, I'm forwarding to you input to consider during the required consultation between SSCI and NSC and IC on tasking, which, as you know, was coordinated with Senator Smith.

The 735 and 1205 Documents

In 1993, the United States received copies of two documents discovered in the archives of Soviet military intelligence (GRU) in Moscow. The documents are Russian translations of purported policy speeches delivered by senior Vietnamese officials in the early 1970s. The original Vietnamese language documents have not been located. The two documents received a great deal of attention because they indicated that the number of American POWs held in North Vietnam was greater than the number officially acknowledged by Hanoi. The documents are known as the 735 and 1205 documents.

The 735 document, dating from late December 1970 or early January 1971, stated that the number of American pilots imprisoned in North Vietnam was 735, not the 368 acknowledged by the Vietnamese Government. The document implied that the unreported POWs would be used as leverage during peace negotiations with the United States. The 1205 document, dating from September 1972, stated that 1205 American POWs were being held in North Vietnam. The document indicated that the officially published list of 368 American pilots was part of the 1205 figure and stated that the "rest are not acknowledged."

The IC issued an assessment of the 735 and 1205 documents in 1994, discounting Hanoi's claims that the documents were fabrications and concluding that the documents appeared to be genuine. The assessment made the distinction between the documents being genuine (i.e., a GRU translation of a Vietnamese speech) and the information in those documents being accurate. The IC assessment stated that the numbers given in the 735 and 1205 documents were "inconsistent with our understanding of how many Americans would have survived the events in which they were lost to become captives."

At the time of its assessment, the IC had the entire 1205 document but only two pages of the 735 document—those that contained the references to U.S. POWs. Thus, the *Critical Assessment* stated that the remainder of the 735 report had "never been formally assessed by the Community."

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Approved for Release: 2021/06/25 C00500205

The NIO for East Asia (NIO/EA), who served from July 1995 until August 1997, began work on the TOR after being notified by the Chairman of the NIC and the NSC about the agreement to produce an estimate. His draft TOR focused on the commitment of the Vietnamese leadership to cooperate with the United States to achieve the fullest possible accounting of American personnel missing in action and the extent to which Hanoi was able to deliver on its commitment. The NIO/EA envisioned separating Vietnamese cooperation from the issue of the Russian documents; he planned to ask a small group of Vietnam analysts to examine whether the IC conclusions reached on the documents in 1994 were still valid. The draft TOR dealt with the issue by posing the general question, "Has there been any change in the assessment of the so-called '735 document' and '1205 document' from the Russian archives?"

On 8 May, the NIO/EA took the draft TOR to a meeting that included the SSCI Staff Director and Minority Staff Director as well as majority and minority staff members. Agreement was reached that the SSCI staff would provide questions and comments for consideration by the NIO/EA in fulfillment of the agreement to consult with the SSCI. On 29 May, the SSCI suggested changes to the TOR, asking that the NIE address numerous additional points relating to the POW/MIA issue. The points raised were extensive and appeared to require more substantial research than did the original TOR.

The NIO/EA was concerned that the suggested changes would require months of detailed research as well as a review of the work done by DPMO and other agencies. He revised the TOR, then coordinated them with the NSA, INR, the CIA's Directorate of Intelligence (DI), DPMO, and the DIA. The revised draft TOR were forwarded to the SSCI on 3 July 1997. The NIO/EA told the SSCI that he had tried "to accommodate as much as possible the suggestions in your letter of 29 May." He stated that he had expanded his original estimate question to include the issue of performance but that "it would be inappropriate" for an NIE to establish a standard for "the fullest possible accounting" against which to identify measures the SRV could take; he argued that that was a policy decision. He went on to say that he had collapsed the various questions on SRV personnel, records, and artifacts into two secondary questions in the TOR and expressed confidence that these questions would cover all the issues raised in the SSCI letter of 29 May.

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Approved for Release: 2021/06/25 C00500205

SSCI Delays

Despite repeated requests by the NIO/EA, conveyed by the CIA's Office of Congressional Affairs (OCA), the SSCI did not provide its formal response to the draft TOR until late October 1997. OCA indicated that the initial delay was caused by the fact that the SSCI Chairman, who wanted to look at the TOR and discuss them with senior staff, had departed on a world tour and would not return until the end of August. The SSCI staff reported to OCA that it was working on the issue during September and October. During this period, NIO/EA research on the estimate was put on hold, pending approval of the TOR.

Changing Actors

Between July and November 1997, all of the major actors involved in the POW/MIA estimate at the CIA and the NIC changed. Both the NIO/EA and a DI analyst who was to have provided support in research and drafting departed in August. A new Chairman of the NIC arrived in October and was briefed on the background of the estimate by the Deputy NIO/EA, who had been designated to carry on the project; the deputy left in November.

The new participants in the process arrived with different backgrounds and perceptions. The newly appointed NIO/EA returned from the NSC in November 1997. As the Deputy NIO/EA in the early 1990s, he had been the drafter of the 1994 IC assessment of the 735 and 1205 documents. Senator Smith, who disagreed with that assessment, expressed his displeasure with the NIO/EA's involvement in the NIE during a meeting in November. No Deputy NIO/EA would be appointed during the drafting of the estimate, and the DI would not provide another analyst to support the project. In November 1997, the NIO/EA appointed a CIA East Asian specialist and veteran NIE drafter to draft the NIE.

SSCI Response and Final TOR

In its letter of 27 October responding to the TOR sent on 3 July, the SSCI requested an expansion of the TOR question, "Has there been any change in the assessment of the so-called '735 document' and '1205 document' from the Russian archives?" The SSCI suggested that the issue

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Approved for Release: 2021/06/25 C00500205

be rephrased and added to the "Key Questions" portion of the TOR as follows: "What is the intelligence community assessment of the so-called '735' document and the '1205' document from the Russian archives?" The SSCI went on to say that:

> . . . if the intelligence community judges these documents to be accurate . . . in their characterization of the number of American POWs held by North Vietnam, then it should answer the following question: "What is the likely range of numbers of American POWs under the control of the communist side when the Paris Peace Accords were signed in January 1973?"

The SSCI's suggested change represented a significant shift in parameters for the estimate. The original task had been limited to determining if the IC had changed its assessment of the documents since 1994. The new phrasing required that the IC assess the documents (i.e., start from the beginning and evaluate their credibility). The SSCI then stipulated that, if the IC determined the documents to be accurate in assessing the numbers of POWs held in North Vietnam, the estimate should address the number of POWs held in Vietnam in 1973. These were the issues that the former NIO/EA originally had intended to assign to a separate group of analysts for in-depth research.

The CIA responded to the SSCI on 21 November 1997, enclosing the "final terms of reference" for the NIE. The draft TOR had been revised to reflect the SSCI suggestions, thus expanding the scope of the estimate. At the same time, the number of individuals supporting the project had decreased from two to one, and the time allocated to complete the estimate had remained the same (about 90 days). The final TOR were approved at a 26 November IC coordination meeting, and the NFIB concurred at its meeting on 19 December 1997.

This level of involvement in the estimate process by both the SSCI and a U.S. Senator, not a member of the SSCI, in the negotiation of the TOR is unprecedented. The SSCI was given coordination authority over the TOR, implicitly by the President's National Security Adviser and, *de facto*, by the NIC. The then-NIO/EA believed that he could not proceed with the estimate until the SSCI had responded to each version of his TOR, resulting in accumulated delays of almost six months. None of the more than 80 individuals we interviewed knew of an instance, other than this one, in

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Approved for Release: 2021/06/25 C00500205

which coordination of a TOR by an organization not a member of the IC had occurred.

The Issue of Timing

The issue of the period of time the estimate would cover arose early in the process. The original TOR explicitly stated that the estimate would cover the period from 1987-1998, that is, the period since the most recent estimate on the subject (Special National Intelligence Estimate [SNIE]: "Hanoi and the POW/MIA Issue," published in September 1987). The original TOR had not included a re-evaluation of the Russian documents; rather, it had asked as a secondary question whether there had been any changes to the analysis of those documents. When a re-evaluation (as opposed to an updated evaluation) of the documents was included in the TOR, the parameters shifted because the documents dated from the early 1970s. At the TOR coordination session in November 1997, the INR representative suggested that a search for new materials might need to go back before 1987. The NIE drafter never focused on this shift.

The introduction to the estimate indicated that it would cover the period after 1987. In fact, the drafter used 1992 as the cut-off date, explaining that the period from 1987-1992 was covered extensively in a 1992 CIA study, "Vietnam: Adjusting Its Strategy on the POW/MIA Issue." The NIE drafter said that the IC "will be asked to accept that study as definitive." The IC would do as he asked, but the *Critical Assessment* would take him to task for not having covered the time period as defined in the TOR.

SENATOR SMITH MEETING WITH NIO/EA

Before the final approval of the TOR, Senator Smith met with the new NIO/EA on 7 November 1997. The purpose of the meeting was to have the NIO/EA provide an update on the NIE process to Senator Smith. According to notes taken at the meeting, Senator Smith expressed his views on POW/MIA issues. He criticized the Clinton Administration for its POW/MIA policy and for its failure to fully analyze the documents found in the Russian archives. He stated that the documents had surfaced at a time when they could have complicated policy and claimed that "we all know" the documents are legitimate. He accused the NIO/EA, who

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had written the 1994 analysis of these documents, of having treated him poorly.

The NIO/EA assured Senator Smith that an analysis of the 735 and 1205 documents would be included in the estimate. He also stated that, because of his past service at the NSC and his previous work on POW/MIA issues, he would leave substantive responsibility for the NIE to the drafter so there would be no doubt about the integrity of the process. The NIO/EA said that he would not impose his views and would indicate his input in footnotes should he differ from the drafter. He pledged that the estimate would be "fair and honest." Senator Smith again emphasized his views of the Russian documents and said he was not confident that the Clinton Administration would not interfere in the estimate process.

Senator Smith suggested that it would help if the SSCI and other staff were involved in the estimate process. Senator Smith's legislative assistant urged the NIO/EA to "reach out" to the Senate, warning that the DPMO has a "mindset." The NIO/EA said that the analytic process needs distance from both the policy community and the Congress. The legislative assistant stated that the U.S.-Russia Joint Commission on POW/MIA Affairs was also an "intelligence repository" and that the drafter should talk to the Senate as well as to DPMO. The SSCI majority staff member who attended the meeting told the NIO/EA that the SSCI planned to "review" the estimate.

RESEARCH, ANALYSIS, AND DRAFTING (NOVEMBER 1997-FEBRUARY 1998)

The NIC is not a repository of data. The drafter of an estimate must rely on other elements of the IC to provide information and analysis, and this was true in the case of the POW/MIA estimate. A considerable number of documents had been turned over to the former NIO/EA during the six-month period when the TOR were being negotiated. The CIA analyst assigned to help the NIO/EA had provided DI files, and DPMO had provided a package of material. At the 26 November 1997 IC coordination meeting, the consensus was that much of the material the NIE drafter would need was located in DPMO files. Other potential sources of information included the CIA; DoD organizations involved in POW/MIA matters (e.g., JTF-FA and CILHI); INR; NSA; DIA, to include Stony Beach; and policymakers dealing with Vietnam to resolve POW/MIA issues. In

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Approved for Release: 2021/06/25 C00500205

addition, Senator Smith and the SSCI held documents that were relevant to the project.

Role of DPMO

Policy/Analytic Dichotomy

DPMO is the primary organization responsible for supporting policy on POW/MIA matters and is also the primary repository of information concerning POW/MIA matters. Analysts familiar with that information reside in DPMO, having moved there from DIA when DPMO was created in 1993. Because of this policy/analysis connection, critics question DPMO's analytic objectivity and argue that the IC should refocus on the POW/MIA issue in order to provide an independent view.

Within DPMO, JCSD functions as the sole collection, research, analytical, and administrative support element to the U.S. side of the U.S.-Russia Joint Commission on POW/MIAs. JCSD's position and responsibilities are unusual because it reports to two distinct organizations with two distinct missions. While JCSD is within the DoD chain of command, its officials respond to the requests and interests of the members of the commission, which focuses on collecting information in Russia on U.S. POWs and MIAs. This dichotomy has created tension between JCSD and the rest of the DPMO, particularly its Research and Analysis (RA) Division.

A major source of contention between JCSD and RA has been the analysis of the documents found in the Russian archives (the 735 and the 1205 documents) that refer to numbers of POWs held by North Vietnam before Operation Homecoming in 1973. RA has argued that, no matter what the validity of the documents, the numbers are wrong because they are far higher than the numbers of POWs that could have been held. JCSD has focused on trying to determine the credibility of the documents, arguing that, if the documents are valid, the numbers contained in them must be taken seriously and the RA analysis of the numbers should be reviewed.

Many critics of U.S. policy toward Vietnam argue that Vietnam may have continued to hold U.S. POWs after Operation Homecoming and that some may still be alive or may have been held alive for a number of years.

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Some maintain that POWs may have been transferred to the former Soviet Union. These critics question the U.S. Government's assessments of the numbers of POWs held by the Vietnamese. Because DPMO, RA is the government organization responsible for these assessments, they question the reliability and objectivity of RA analysis. One of Senator Smith's objectives in seeking an intelligence estimate on the issue was to gain an independent IC review of the Russian documents, followed by an independent analysis of the numbers of POWs held by Vietnam. Neither the NIC nor other members of the IC conducted such an independent review and analysis. Instead, they accepted the IC assessment of 1994 as the basis of their review of the Russian documents, and they accepted DPMO's analysis of the numbers of POWs held by Vietnam.

DPMO Withdraws from Process

DPMO leadership decided that it would not participate formally in the estimate process because of challenges to its ability to produce objective analysis. When the estimate was proposed, the DIA official with responsibility for the issue told the Acting Director, DPMO that DPMO should draft the estimate because DIA did not have the capability. The Acting Director declined, arguing that, if DPMO were to take the lead, the issue would quickly become political. He said DPMO would cooperate by providing information and support as needed; by remaining uninvolved, he argued, DPMO would benefit from an outside, objective review that would test its analysis. Thus, the organization that was the repository for information on POW/MIA matters and had the main corps of analysts dedicated to the issue was removed from the formal NIE process.

Meetings with DPMO Analysts

The NIE drafter held a number of meetings with DPMO analysts, both in RA and in JCSD; he received briefings from both groups and collected a considerable amount of data. The meetings began in November 1997 and continued into February 1998, when the initial NIE draft was completed. During these sessions, the drafter encountered and had to deal with the commonly held perception within RA and the DPMO that JCSD may not have been abiding by applicable security procedures in providing classified information to the Joint Commission. The drafter experienced this problem first-hand. A JCSD analyst responsible for Vietnam matters insisted that he must report on meetings with the drafter to the Joint

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Approved for Release: 2021/06/25 C00500205

Commission. The drafter disagreed, stating that JCSD should not be sharing discussions and information with outside parties, particularly before the estimate was finished. The JCSD analyst indicated that he would figure out a way to discharge his obligations to the commission without compromising sensitive information.

Examining the DO Files

The Directorate of Operations (DO) is the CIA component responsible for maintaining records of all clandestine foreign intelligence and counterintelligence activities and operations conducted by the CIA involving human assets. In the early 1990s, in accordance with Executive Order 12812 ("Declassification and Release of Material Pertaining to Prisoners of War and Missing in Action," 22 July 1992) that ordered declassification of POW/MIA records, the DO conducted an unprecedented search of its files. It declassified and released most of the CIA holdings on POW/MIA issues in 1993. These documents were funneled through DPMO to the Library of Congress.

A number of documents were not declassified for a variety of reasons. The NIE drafter told us that he had reviewed these documents, and the DO continued to provide him with reports collected since 1993. According to the DO officers and managers we interviewed, the NIE drafter had access to all DO reporting on the POW/MIA issue. The drafter told us that he is confident he had access to all these documents. We reviewed the available material as well as the material in the drafter's possession at the time the estimate was drafted. We believe that the drafter did have access to the relevant DO documentation.

Other Contributors of Data

In the course of his research, the drafter visited organizations within the Office of the Secretary of Defense, DIA, DPMO, INR, and NSA and interviewed key officials associated with and knowledgeable of POW/MIA affairs. He also traveled to Hawaii and Southeast Asia, where he held discussions with U.S. officials.

Nov 26, 2024 000054
Approved for Release: 2021/06/25 C00500205
JA 584

Approved for Release: 2021/06/25 C00500205

REVIEW AND COORDINATION (FEBRUARY-MARCH 1998)

First and Second Drafts (6 and 20 February 1998)

The NIE drafter finished the first draft of the estimate in early February 1998. While he indicated that both the NIO/EA and the Chief of the NIC's Analytic Group (AG) had the draft for review, only the latter commented in writing. If the NIO/EA did review the first draft, his views either coincided with those of the Chief, AG or were not factored into the changes made to the second draft. Noting that he had read the draft from "the perspective of a hostile critic," the Chief, AG indicated that, "from that vantage point, there are some points of vulnerability" that should be addressed. These included assessments that appear to be inadequately supported by evidence and judgments that could give rise to suggestions that "we have been unjustifiably credulous" about the motivations behind Vietnamese actions. Each modification to the second draft introduced language that was more skeptical of Vietnam's motives and behavior. For example:

- Removal of "*humanitarian grounds*" as a driving factor in Hanoi's increasing cooperation with the United States on POW/MIA issues;

- Introduction of language conveying skepticism about Vietnam's explanations for instances of non-cooperation (e.g., less acceptance of "*sovereignty*" as a valid rationale); and

- Qualification of judgments. After stating that "our research suggests" that areas where Vietnam refuses to conduct joint field activities are genuine sensitive facilities, the new draft adds, "*We cannot be sure, however.*" Whereas the first draft had stated that, "We think Vietnam has *been fully cooperative* on these cases," the later version reads, "We think Vietnam has, *for the most part, been cooperative* on these cases."

On 20 February, the NIC sent the revised draft estimate to U.S. officials in Hawaii and Southeast Asia. The drafter then traveled to those locations, holding discussions with relevant officials and sending comments back to Washington for consideration in the next stage of drafting. The NIO/EA accompanied him on part of this trip.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

Third Draft (17 March 1998)

Numerous changes were made to the next draft. Most were factual additions rather than modifications of data. While many of the changes are difficult to evaluate in terms of their impact on the tone of the NIE, a number served to further reinforce skepticism about Vietnamese cooperation. For example, in the section of the draft dealing with "Instances of Vietnamese Non-Cooperation:"

- The lead sentence had said that "We found *no* instances in which Vietnamese authorities have flatly refused US requests . . . ." The new version was changed to, "We found *few* instances . . . ;" and

- Sentences were added to a series of instances dealing with Vietnamese explanations for non-cooperation to the effect that "*We cannot ensure they have provided everything;*" and "*We cannot absolutely verify such claims;*" and "*We cannot verify this information.*"

Some changes tended to strengthen judgments challenging the credibility of the 735 and 1205 documents; the alleged transfers of POWs to the Soviet Union; and the alleged interrogation of POWs by Soviet officials. For example:

- The 20 February draft stated that, while the documents are probably authentic GRU-collected intelligence reports, "*We nevertheless also concluded that the documents were factually inaccurate.*" The 17 March draft states that they are probably authentic GRU-collected intelligence reports, "*but they are not what they purport to be. We concluded that the documents contain significant inaccuracies and anomalies;*"

- The original text stated that, "*In view of . . . contradictions, we cannot definitively conclude that US POWs were not interrogated by Soviets.*" The new language states, "*We doubt that American POWs were directly questioned by Russians;*" and

Nov 26, 2024 000056
Approved for Release: 2021/06/25 C00500205
JA 586

Approved for Release: 2021/06/25 C00500205

- The original text said that, "we have *equally* convincing reports that claim US POWs were not transferred out of Vietnam." The new language says that, "we have *more* convincing reports . . . ."

The drafter met with the U.S. Ambassador to discuss the draft. In the section of the draft dealing with Vietnamese refusal to provide Politburo documents, a phrase indicated that Vietnam would not provide such documents, "*any more than foreign governments, such as the United States, would open their sensitive records to Vietnamese officials.*" A handwritten note by the drafter indicates that "the Ambassador wants this emphasized." Not only was the Ambassador's request rejected, the entire phrase eventually was deleted.

The NIO/EA showed the 17 March draft to the Acting Director, DPMO on 20 March. The drafter recalls that the Acting Director read the draft, disagreed with language in one section of the report, and provided written comments. The Acting Director recalls reading part of the draft at the request of the NIO/EA, but told us that he made no comments. The NIO/EA recalls that the Acting Director read part of the draft, but does not recall what his reaction was or whether he provided comments to the drafter. We found neither written comments nor an annotated draft attributable to the Acting Director, DPMO. No changes were made in the text of the section mentioned by the drafter.

Fourth Draft (23 March 1998)

The changes made to the 23 March version of the estimate are modest and do not move the tone of the draft in any consistent direction. In the "Key Judgments," the comparison of Vietnamese sensitivities to those of the United States (previously mentioned) is removed as is a sentence stating that, "*We think US high-level attention to the POW/MIA issue as one component of the overall relationship will be helpful.*" Changes in the "Discussion" section also are minimal:

- At several points dealing with Vietnamese non-compliance with U.S. requests for documents, a modifying phrase has been added that emphasizes the positive in terms of cooperation: "*Although Vietnam has provided thousands of documents to the US side. . . .*" and "*Vietnam has provided over 28,000 documents to US officials . . . ;*"

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

- In several places, language questioning Vietnamese claims that had been added to the 17 March version has been removed: "*We cannot absolutely verify such claims*," and "*Again, we cannot absolutely verify this information*;"

- In one area, language has been toughened: rather than "some elements of Vietnam's bureaucracy *fell short of* a desire for full engagement," the text now reads, "some elements . . . *did not favor* full engagement;" and

- The much-changed language dealing with reports that POWs had not been transferred to the Soviet Union has been changed from, "we have *more convincing* reports . . ." to "we have *credible* reports . . . ."

These changes do not provide a clear indication of an effort to shift tone or judgment.

Outside Readers

The 23 March draft was sent to the IC representatives, with notification that a coordination meeting would be held on 27 March. At the same time, the draft was provided for comment to two outside readers: a former Deputy Chairman of the NIC and East Asia specialist and a former National Security Adviser, who had held that position in 1993, when the original analysis of the Russian documents was undertaken. We found written comments from the NIC Deputy Chairman, but not from the former National Security Adviser in the NIC files.

The primary concern expressed by the former Deputy Chairman of the NIC, who provided his comments on 24 March, was that the tone of the "Key Judgments" was "overly rosy." That created two problems, he said. The first was that, before having read the body of the estimate, those readers "who are already doubters will turn off." He said that some of the adjectives could be softened and the NIE would still carry the message that there has been improvement in Hanoi's performance. The second problem was that the draft identifies many cases of non-compliance, thus undercutting the "rosy hue" of the "Key Judgments." He went on to raise several other issues, particularly the degree to which Hanoi's senior leaders have delegated authority for POW/MIA issues. He said that, if true, this is

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Approved for Release: 2021/06/25 C00500205

one of the chief changes for the better and should be in the "Key Judgments;" he noted, however, that this judgment rests on the testimony of one listed source. He also recommended that the draft highlight the fact that the principal cause of Vietnamese non-compliance is the regime's wish not to reveal past brutalities.

In responding to the comments of the outside readers, the NIE drafter referred to the recommendations of the former Deputy Chairman, NIC; these included changing adjectives throughout to say that Vietnam has become "*more*" cooperative rather than "*increasingly*" cooperative and putting more emphasis on the reasons why the Vietnamese have not cooperated more completely, such as "their sensitivity about the historical record on their handling of POWs." His only specific reference to comments made by the former National Security Adviser was to say that he was concerned that a list of SRV officials involved in the POW/MIA issue did not include any officials who were not cooperative.

IC Coordination Meeting

The IC representatives met on 27 and 30 March to coordinate the estimate, working with the 23 March version of the draft. In their reports of the sessions, they indicated that there was little disagreement and that no major problems had emerged. They noted that both the outside readers and DIA had argued that, in a few instances, the draft was "too apologetic" to the Vietnamese or "unduly charitable in rating Vietnam's performance." Therefore, a more circumspect, but still basically positive, appraisal had emerged from the coordination sessions. One representative stated that both outside readers had suggested that modifying the language would "make for a more persuasive paper" and "would not immediately set off critics of Vietnam's record of cooperation on this issue." Another indicated that the new language would stress that Vietnam cooperates mainly because to do so is in its larger interest, but that "long-standing secretiveness and suspicion of the United States will continue to limit its cooperation." The NIO/EA suggested several changes to the draft that reflected the suggestions of the former Deputy Chairman of the NIC and the recommendations of the IC representatives; these changes reinforced skepticism of Vietnam's motives and performance.

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Fifth Draft (31 March 1998)

The 31 March draft reflected these suggestions. Vietnam's "*increasing cooperation*" was changed to "*more cooperative approach*" and showing "*increasing*" flexibility was changed to showing "*more*" flexibility. The conclusion that Vietnam's performance on the U.S. POW/MIA issue "*has improved significantly*" was changed to "*has definitely improved.*" A number of additional, but minor, changes served to further reduce the "overly rosy" tone criticized by the former Deputy Chairman of the NIC.

MIB AND NFIB MEETINGS (APRIL 1998)

The Director, DIA convenes the MIB to be certain that he is representing the coordinated military intelligence view when he attends an NFIB meeting to approve an estimate. On 26 March, the DIA Associate Director for Estimates suggested that the Director convene a MIB in this instance because of the "politically-charged nature of this particular estimate." He further recommended that, while DPMO should not be part of the coordination process, a DPMO official might attend the meeting to help "clarify issues" relating to POW/MIA matters. The background paper prepared for the Director, DIA noted that the estimate "will almost certainly be judged inadequate by some SSCI members and staff, Senator Smith, and POW/MIA activists." It also said that a DPMO official would attend the MIB session to address questions "on the POW/MIA issue as a whole, but not issues specifically related to the SNIE [sic]."

When the MIB met on 9 April, the Director, DIA began by mentioning that he had received a call two hours earlier from Senator Smith. The Senator asserted that he wanted the Director to be aware of his concerns, which were significant. Senator Smith charged that the IC had not done a good job of examining all the documents and attendant information on the POW/MIA issue. He claimed that there were 300 to 350 documents available at the SSCI, but that no one had come to review them. If the IC published the NIE without reviewing those documents, Senator Smith said, then "I can't believe in it." In addition, the Director said that he had received a fax from the Executive Director of the National League of Families of American Prisoners and Missing in Southeast Asia, in which she said that she looked "forward to reviewing the results" of the estimate and that the League was relying on him to ensure its "objectivity and thoroughness." The Director said that POW/MIA issues were

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emotional, but that the important thing was to "deal as objectively as possible with the intelligence facts at hand." The MIB recommended approval of the estimate by the NFIB; all members concurred. The DPMO official said that, while he had not read the estimate, he had no problem with the major judgments as they had been presented. He said that it did seem that the IC was being a little hard on the Vietnamese on the issue of their cooperation with live sighting investigations.

The NFIB, chaired by the DCI, met on 13 April to discuss the estimate. The Chairman of the NIC reported that there were no major substantive differences within the IC on the NIE. The NIO/EA stated that he had removed himself from the process because of accusations that he had "politicized the 1993 [sic] report to which Senator Smith takes exception." He said that the IC had agreed to the main judgments of the estimate and there had been no controversies. After the Deputy Director, DIA raised the issue of Senator Smith and the documents, the DCI directed that a team visit the SSCI to read the documents before the estimate was published.

The NFIB members debated language concerning the alleged transfer of POWs to the USSR. The DCI did not like the use of the word "doubt;" he argued that, because the IC does not know whether these events occurred, it should not make the judgment that it doubted this had occurred. It should use language indicating that there are contradictory reports and that the matter requires further investigation. Both the NIO/EA and the drafter argued that evidence that transfers did not occur was persuasive. The principals agreed to change the language to, "*Although we doubt that POWs were transferred to the USSR, we also conclude that the books remain open on this.*" The net effect of the debate on these issues, initiated by the DCI, was to further modify the judgment made in the NIE on alleged transfers.

ANOTHER ROUND OF REVIEW

The SSCI Documents

In early December 1997, the SSCI had sent a letter to the CIA, OCA, offering to provide material for the estimate and listing the documents in its possession. In early January 1998, the NIE drafter noted that, while most of the material was already in the possession of the IC, he would like

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Approved for Release: 2021/06/25 C00500221

copies of 17 of the documents; this request was passed to the SSCI. That was where this issue stood at the time of Senator Smith's call to the Director, DIA on 9 April and the DCI's directive on 13 April that a team review the SSCI holdings.

When the CIA, OCA contacted the SSCI majority staff member holding the documents on 14 April to set up an appointment to review the documents, the staff member asked that the NIE drafter call him personally. He subsequently told the drafter that he would give him access to specific documents but not to the entire collection which, he said, was not in a single location. He suggested that the drafter review the list again. After consulting with the DIA representative, the drafter added 18 documents to the original list of 17 he had requested in January 1998. In a memorandum for the record, he explained in detail why more documents had not been selected. On 17 April, the drafter and the DIA representative visited the SSCI to review the additional documents. In reporting back to the DCI on 23 April, the NIO/EA explained that the team had reviewed the documents and found that the vast majority of the documents in the SSCI files had been seen in other IC archives and that the review "did not uncover any new information bearing on judgments or analysis in the Estimate" (details of the SSCI document issue are discussed in Part IV, *Critical Assessment* Charges: Substance, under "Relevant Documentation").

Two More Outside Readers

Following the NFIB meeting, at the direction of the DCI, the NIC provided the draft to two more outside readers, a former Assistant Secretary of Defense for International Security Policy and a former DCI . Both commended the draft and said they had no major problems with it; each had a few suggestions. The former Defense official recommended that the draft provide more quantitative data to demonstrate the improvement in Vietnam's performance; that it emphasize the weaknesses of GRU reporting and sourcing; and that it analyze what it would take to reverse the current positive trend in Vietnamese behavior. In the end, none of these suggestions was taken.

The former DCI said his suggestions were "intended to strengthen our case against the minority of readers who would be reflexively critical." He recommended that the estimate acknowledge that Vietnam's archival capabilities were probably not good; that the estimate speculate on the

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origins of the Russian documents and why the Vietnamese prepared them; and that the drafter remedy the fact that the characterization of the Russian documents was different in the text and the annex. He said that the above points, if addressed, "would simply strengthen the text against criticism." In the end, the draft was revised to incorporate several of his revisions for clarity.

Neither of these readers made suggestions designed to alter the substance or judgments of the NIE draft. While the former DCI indicated that his comments would help deflect criticism, his suggestions were modest and probably not sufficient to have had an impact on the tone of the estimate or on reaction to it.

DCI Input

In early April, the NIC sent the DCI talking points on the NIE, laying out the key judgments: that the Vietnamese are cooperating to help the United States achieve full accounting of POW/MIAs and that the 735 and 1205 documents are neither accurate nor a good foundation for judging Vietnamese performance on the POW/MIA issue. The talking points indicated that the judgments would be politically controversial because some elements within DPMO believe that Vietnam is withholding material and believe the CIA is part of a U.S. Government cover-up on the POW/MIA issue. Furthermore, the talking points stated, Senator Smith probably will not like the conclusions because he and members of his staff have been strongly critical of U.S. Government handling of the issue.

After seeing a copy of the estimate on 17 April, the DCI indicated that he wanted to delete sentences that included the phrase, "We doubt…." He instructed the NIE drafter simply to state what we do and do not know. He also indicated that he wanted to see a revised draft that included the comments of the second set of readers. In his reaction to this note, the NIE drafter stated that, while the DCI was not remembering accurately what had been agreed to at the NFIB about language expressing doubt, it would be best to reword the language to say that "there is no persuasive evidence that POWs were transferred to Russia or other countries."

The NIC sent a revised copy of the draft to the DCI on 23 April, describing the comments made by the additional readers and explaining why most of their suggestions had not been adopted. In his response on

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Approved for Release: 2021/06/25 C00500205

26 April, the DCI indicated that he did not necessarily agree that the suggestions of the outside readers should not be incorporated; he was particularly interested in the recommendations to add quantitative information and more speculation regarding the "inaccurate" Russian documents. In the end, however, he was persuaded that it was not advisable to add either. He did argue strongly and successfully, however, that the order of paragraphs in the "Key Judgments" be shifted; he wanted to put the relevant evidence first, rather than leading with the judgment that Vietnamese cooperation had improved. Neither the Deputy Chairman of the NIC nor the NIO/EA agreed with this change in the ordering, but both recommended accommodating the DCI.

In the draft that went back to the DCI on 28 April, the evidence was put first, followed by the judgment that the Vietnamese were cooperating. On 29 April, the DCI returned the "Key Judgments" to the NIC with a handwritten comment saying that the paragraph regarding Vietnamese cooperation should be removed because it was "too subjective." The paragraph read:

> Consequently, we judge that Vietnam has become more helpful in assisting U.S. efforts to achieve the fullest possible accounting of American personnel missing in action during the Vietnam conflict.

In the end, the DCI was persuaded that, because this paragraph specifically answered one of the two key questions in the TOR and was a key judgment of the estimate, it should remain. The effect of the change recommended by the DCI would have been to further modify the language of the "Key Judgments."

On 1 May 1998, the DCI approved the NIE. Although the date on the NIE is April 1998, it was not published and disseminated until early May. On 21 May, the NIE drafter met with members of the SSCI staff to brief them on the NIE. The SSCI majority staff member challenged the analytic techniques used by the drafter; he particularly wanted to know why the estimate had not analyzed the number of POWs held by the Vietnamese. The drafter responded that this had not been part of the TOR and that the IC does not have the resources or capability to conduct that analysis.

Approved for Release: 2021/06/25 C00500205

Criticism of Estimate

Senator Smith Meets With NIO/EA (June 1998)

NIE 98-03 was provided to the SSCI and then to Senator Smith's office in mid-May 1998. On 17 June 1998, the Chairman of the NIC and the NIO/EA were invited to speak about the estimate to members of the U.S. side of the U.S.-Russia Joint Commission on POW/MIAs; among the participants was Senator Smith. The Chairman of the NIC outlined the origins of the estimate, describing the NIE as "unconventional" because it looked to the past rather than the future and required a review of archival materials. The NIO/EA then provided a background briefing on the methodology used by the NIE drafter and the IC coordination process.

Senator Smith directed a series of questions to the NIO/EA, challenging the judgments of the estimate and indicating that it was not a credible intelligence product. He provided his own views, including the question, "so does that not mean that there are still 370 cases of Americans where we do not have evidence that they died in their incident?" As a result, he said, you cannot dismiss the 1205 document based on the numbers as "they are trying to do here in this estimate." He charged that the estimate was "totally misleading and frankly it is an effort to discredit the 1,205 number." Senator Smith went on to say that, "This is a terrible job and not an intelligence estimate at all . . . . It is full of erroneous information . . . ."

Release of Critical Assessment *(November 1998)*

Senator Smith issued his *Critical Assessment* in November 1998. He sent the assessment with an accompanying cover letter to members of the MIB and the NFIB, with a request that those boards meet to consider and approve his request that the NIE be retracted. He sent copies to Congressional leaders, with a request that oversight hearings concerning the NIE be conducted. In addition, he sent copies to officials:

> . . . who may rely on the NIE, such as U.S. policy-makers with responsibility for U.S. relations with the Government of the Socialist Republic of Vietnam (SRV) and U.S. military officials with responsibility for POW/MIA accounting efforts in Southeast Asia with the admonition that they not rely on the judgments of the estimate for the reasons cited in the *Critical Assessment*.

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Approved for Release: 2021/06/25 C00500205

The *Critical Assessment* took issue with all the major judgments of the estimate. It stated that, because the NIE had failed to distinguish between Vietnam's improved assistance with field operations and its stonewalling in providing full disclosure of documents, the judgment of an overall "good" SRV performance on the POW/MIA problem is not reliable. Moreover, it states:

> . . . there are ***numerous*** [emphasis in original] instances, also detailed in this critical assessment, where the analysis in support of the NIE's judgments of SRV cooperation is factually inaccurate, misleading, incomplete, shallow, and seriously flawed.

The *Critical Assessment* states that:

> . . . the NIE's judgment on the 1205/735 documents cannot be accepted with confidence because it is ***replete*** [emphasis in original] with inaccurate and misleading statements, and lacks a reasonably thorough and objective foundation on which to base its judgment. I further conclude, based on a review of relevant U.S. data, that many of the statements contained in the 1205/735 documents…are indeed supported or plausible. . . .

Finally, with respect to the politicizing of intelligence, the *Critical Assessment* says that:

> Congress and the leaders of the U.S. Intelligence Community (IC) need to examine what role the White House, its National Security Council, and certain U.S. policymakers responsible for advancing the Administration's normalization agenda with Vietnam may have played in influencing or otherwise affecting the judgments of the IC as reflected in the NIE.

MIB AND NFIB MEETINGS (JANUARY 1999)

The DCI responded to Senator Smith's letter on 17 December 1998, stating that he had directed that the evaluation of the NIE be put on the NFIB agenda scheduled for January 1999. The MIB met on 15 January, before the NFIB, and recommended that:

- The IC stand by the NIE and reject the request for retraction;

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Approved for Release: 2021/06/25 C00500205

- The DCI reject charges of "politicization;"
- The IC avoid point-by-point rebuttals of the *Critical Assessment*; and
- The IC be prepared for congressional hearings.

All MIB members concurred with the recommendations.[10]

The NFIB convened on 19 January 1999 to consider Senator Smith's criticism of the estimate and made several decisions:

- The Board would not engage in a point-by-point rebuttal of the critique;
- The DCI would respond to Senator Smith on behalf of the IC, stating that the NFIB principals stand firmly behind the NIE. He would acknowledge that there are "unresolved mysteries with respect to the POW/MIA issue and that the Intelligence Community will continue to work to resolve them." Finally, in his letter, the DCI would refute Senator Smith's claim that the NIE reflected "shoddy research" or a "pre-determined strategy to discredit relevant information;" and
- The Director, DIA, speaking on behalf of the uniformed military, would send a separate letter to Senator Smith in concert with the DCI letter.

[10] The MIB consists of DIA; the Military Departments to include the Marine Corps; the Unified Commands; NSA; NIMA; NRO; Joint Staff; Deputy Assistant Secretary of Defense (Intelligence); U.S. Forces Korea; Coast Guard; Associate, DCI for Military Support; and Defense Information Systems Agency.

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Approved for Release: 2021/06/25 C00500205

In his response to Senator Smith, dated 1 February 1999, the DCI reported that the NFIB had voted unanimously to let the estimate stand. He acknowledged critical gaps in intelligence and assured the Senator that NFIB members would provide any new information collected to those responsible for dealing with the POW/MIA issue. He stated that NFIB members had again commended the analyst who drafted the NIE and the "rigorous interagency process" that made the NIE an IC product, not the work of a single author. He said that he accepted the word of those who worked on the draft and coordinated it that "there was at no time any effort to distort judgments from outside or inside the Community."

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

PART IV: *CRITICAL ASSESSMENT* CHARGES: SUBSTANCE

We evaluated NIE 98-03 and the *Critical Assessment* using a comparative approach (see Annex C for discussion of the methodology used in this section). The *Critical Assessment* took issue with 51 NIE statements (excluding politicization issues). We examined the criticisms levied against the NIE and grouped them into specific topics for discussion as follows:

- Relevant Documentation;
- Vietnamese Cooperation;
- Mistreatment of POWs;
- Recovery and Repatriation of Remains;
- The Saga of the Mortician;
- Numbers of POW/MIA: the 735 and 1205 Documents;
- Assessment of Comments by Russian Sources on the 735 and 1205 Documents;
- Separate or Second Prison System; and
- Alleged Transfers of POWs from Vietnam to the USSR.

In addition to these topics, we reviewed two issues not specifically addressed in either the NIE or the *Critical Assessment*. We evaluated each of the cases of U.S. personnel listed by Senator Smith in 1992 for whom verified remains have not been returned by Vietnam. We undertook this task because, according to Senator Smith's legislative assistant, the Senator had expected the drafter of the NIE to do so and he did not; we agreed with Senator Smith that such a review is relevant to an analysis of the POW/MIA issue and that it should be conducted by independent analysts. In addition, we examined one particular MIA case, that of Captain John T.

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Approved for Release: 2021/06/25 C00500205

McDonnell, U.S. Army, to demonstrate both the polarized nature of the MIA issue and the difficulty of making determinations of fate.

RELEVANT DOCUMENTATION

The *Critical Assessment* questions why any NIE:

> . . . would make judgments in areas if there is no sizable body of intelligence reporting within the U.S. Intelligence Community . . . .

It goes on to say that:

> . . . based on a listing of documents compiled by my [Senator Smith's] office, scanning [sic] thirty-plus years, there does, in fact, appear to be significant intelligence reporting.

The assessment repeatedly criticizes the NIE drafter for failing to use information made available to the IC and cites several letters that address "a listing of documents" that contain "significant intelligence reporting." We begin our discussion of the use of relevant documentation and the alleged discrediting of relevant information by the NIE drafter with an examination of those letters.

On 2 December 1997, Senator Smith, through his legislative assistant, transferred document holdings to the SSCI as a "complete response to meet his pledge to make any relevant information available to the drafter of the NIE, from his holdings and from the Senate Select Committee, POW/MIA." The next day, the SSCI Chairman and Vice Chairman forwarded a list of those holdings to the drafter of the NIE. That list consisted of 317 line items (the term "line items" is more accurate than the term "documents" since one line item may contain one or more documents) in two parts. The first part included 134 line items held in binders by the JCSD to assist its work in support of the VWWG of the U.S.-Russia Joint Commission. Senator Smith chairs that working group. The second part included 183 line items that represented the contents of the growing files of Senator Smith as held for him by the SSCI as of 3 December. That list of 317 line items represents what the NIE drafter thought was the relevant material held by the SSCI.

Nov 26, 2024 000070
Approved for Release: 2021/06/25 C00500205
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Approved for Release: 2021/06/25 C00500205

On 6 February 1998, Senator Smith sent a letter to the Director, DIA, in which he stated:

> I believe there are currently over 350 documents on the POW/MIA topic . . . . I hope you will not hesitate to ask SSCI to review any of this material that may not already be readily available to DIA.

Senator Smith is referring to an expanded list that included 80 line items passed directly to the NIE drafter by the JCSD during the course of several joint discussions and an additional 84 line items added to the growing Smith files during the period December 1997-January 1998.

On 9 April 1998, Senator Smith called the Director, DIA, and referred to "300-350 documents available at the SSCI for people that want to review them." Senator Smith stated that "no one has ever come to review these documents. If the IC published the NIE without having reviewed these documents, I can't believe in it." Senator Smith's call caused the DCI to halt the NIE process and direct the NIE drafter and a DIA representative to visit the SSCI to review documents of concern to Senator Smith.

The body of information Senator Smith referred to in his 9 April call differs from the body of information officially made available to the drafter of the NIE. Moreover, the body of information to which Senator Smith referred contained considerable information already reviewed by the drafter well before the Senator's call. By the time of Senator Smith's call, the drafter of the NIE had considered, at a minimum, 97 documents on Senator Smith's new list: the 80 passed to him by JCSD and 17 that he had selected from the list passed to him by the SSCI on 3 December 1997.

The *Critical Assessment* refers to a 15 April 1998 letter from Senator Smith to the Director, DIA, in which he refers to the documents held by the SSCI. We have been unable to locate this letter. According to Senator Smith's legislative assistant, there was a 15 April 1998 memorandum from him (the legislative assistant) to the Director, DIA, which a SSCI staff member was to deliver the next day. The legislative assistant gave us a copy of that memorandum. The SSCI staff member told us that he took the memorandum to DIA on or about 16 April 1998. Neither the Director, DIA's executive correspondence office nor his POW/MIA policy office has

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

a record of any correspondence from Senator Smith or his staff dated 15 April 1998.

The SSCI staff member did hand the updated document list, without a cover memorandum, to the drafter of the NIE and the DIA representative on 16 April 1998, during their document review visit to the SSCI. According to the NIE drafter, "on arrival, the staff assistant handed us a new list of documents in SSCI's possession that he said we should look at." We did not find a copy of the 15 April 1998 cover memorandum in the NIE drafter's files. Further, on 9 September 1999 we showed the drafter a copy of the memorandum and he stated that he had never seen it.

We reviewed the SSCI holdings related to the 3 December 1997 letter. We also reviewed the document holdings of the NIE drafter. The drafter's holdings, coupled with files provided to him by other organizations far exceeded the SSCI holdings. Moreover, the NIE drafter had extensive folders pertaining to specific topics. Not only did the drafter have access to relevant intelligence information but he also made multiple visits to DPMO, both RA and the JCSD, to acquire documents held by those two key offices. Further, he had an extensive network of informal sources including academia. We found that the NIE drafter considered relevant intelligence information from 1987 onwards, as specified in the TOR. Based on his reading of previous IC publications, however, he did not specifically review raw data dating from before 1987 (see Annex D for a listing of IC publications reviewed by the estimate drafter).

In our review of CIA, DO files, centrally gathered for the government-wide POW/MIA document declassification effort in the early 1990s, we found that relevant intelligence information concerning the POW/MIA issue prior to that time was available and that the NIE drafter had reviewed those files. Further, the DO manager responsible for those documents told us that he personally assisted the drafter, a process that included a review of the draft report. We also found that the drafter's boxes of information contained documentation going back to the 1950s. We believe that the NIE drafter considered relevant information but, by design, focused on the decade 1987 through 1997.

Senator Smith's legislative assistant told us that, given the emergence of a re-evaluation of the 735 and 1205 documents as a key

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Approved for Release: 2021/06/25 C00500205

question, the TOR obligated the NIE drafter to consider information back to the 1960s. We cannot reconcile these two divergent points of view. We note, however, the delay in the completion of the TOR; the addition of the 735 and 1205 documents to the "Key Questions" of the TOR; and the introduction of a new NIO/EA and a new NIE drafter, neither of whom had been involved in the negotiations of the TOR. Whereas the former NIO/EA had intended to treat the 735 and 1205 documents as a separate project, the new NIO/EA and drafter accepted the final TOR with its expanded focus without changing the time frame on which the research should focus. In conducting this review of the NIE and the *Critical Assessment*, we found it necessary to search as far back as the document trail allowed.

VIETNAMESE COOPERATION

The *Critical Assessment* claims that the NIE did not consider information available to the IC in assessing Vietnamese cooperation on POW/MIA matters. At issue are the NIE statements that "Vietnam has become more helpful in assisting U.S. efforts to achieve the fullest possible accounting of American personnel missing in action during the Vietnam conflict" and that Vietnam's overall performance in dealing with the POW/MIA issue "has been good in recent years." The *Critical Assessment* asserts that the NIE judgment of Vietnam performance as "good" is not reliable and argues that the judgments on cooperation are "factually inaccurate, misleading, incomplete, shallow, and seriously flawed."

For example, one of the key questions in the NIE TOR and "Scope Note" is:

> To what extent since 1987 has the leadership of the SRV demonstrated a commitment to cooperating with the United States to achieve the fullest possible accounting of American prisoners missing in action during the Vietnam conflict?

The *Critical Assessment* claims that the NIE makes no mention of SRV leadership intentions, performance and capabilities on the POW/MIA issue between 1987 and the early 1990s, as required by the key question in the TOR. It is a fact that the "Key Judgments" of the NIE address only the period since the early 1990s, stating that, since the early 1990s, there has been evidence of increased Vietnamese cooperation in terms of strengthened

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

staffing, increased responsiveness, and growing professionalism. In its "Discussion" section, however, the NIE addresses the question of Vietnamese cooperation since 1987 in some detail. It includes highlights from the "Key Judgments" of the February 1992 CIA Assessment, "Vietnam: Adjusting Its Strategy on the POW/MIA Issue," that describe Vietnamese cooperative gestures during the period 1987 through 1991.

The *Critical Assessment* argues that the NIE "Key Judgments" "glaringly fails to define what constitutes progress on the POW/MIA issue from Hanoi's standpoint . . . . " The Vietnamese define progress on the POW/MIA issue almost solely in terms of progress in improving the political relationship between the United States and Vietnam and the amount of money the United States is investing in Vietnam. While the estimate does not say this in so direct a way, the "Key Judgments" state that ". . . better ties to the United States are in Vietnam's own security and economic development interests and that normalization requires progress on the POW/MIA issue." The "Discussion" asserts that Vietnam has become more cooperative for a variety of reasons, including a desire for engagement with Washington, particularly since the collapse of the Soviet Union, which had been a key ally of Vietnam. Further, the NIE contends that Vietnam considers cooperation with the United States essential to enhancement of its economic and security objectives, explaining that Vietnamese leaders recognize that Washington will be a key power in the region and that American business is a potential major source of investment. Also, the NIE mentions that the Vietnamese understand that cooperation on POW/MIA issues is likely to foster a better bilateral relationship with Washington.

The *Critical Assessment's* charges with respect to the NIE's treatment of Vietnam's cooperation on POW/MIA issues are not supported by the facts. The assessment asserts that the NIE does not deal with certain issues when it does, albeit not necessarily in the manner or in the terms preferred by the *Critical Assessment.*

A Question of Political Sensitivity

In another area related to Vietnamese cooperation, the *Critical Assessment* disputes the NIE claim that the POW/MIA issue no longer has the political sensitivity that it once had within the Vietnamese leadership. The assessment argues that, if anything, the issue has become more

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Approved for Release: 2021/06/25 C00500205

politically sensitive, not less, because of intensified U.S. interest. The *Critical Assessment* indicates that the appointment of General Vessey as the Special Emissary to Hanoi, the establishment of a Senate Select Committee on POW/MIA Affairs, and creation of the 1991 road map to normalization of relations demonstrate intense U.S. interest.

The February 1992 CIA assessment, cited in the NIE, argues that the Vietnamese were wrestling with their foreign policy in the early 1990s. The report states that there was a growing body of evidence that suggested Hanoi's leadership was debating the pace and scope of improving relations with the United States. Using the 1992 CIA assessment as a backdrop, the NIE drafter researched documentation and discussed Vietnamese political sensitivity with both members of the IC and operational entities that work POW/MIA issues on a regular basis. A senior U.S. military official stated that the President of Vietnam clearly understood that the POW/MIA issue remained a matter of high priority for the United States. Another senior official indicated that, as operations became more routine, the Vietnamese had become more comfortable with the United States. Thus, over time, a more trusting relationship developed between the two countries and the need for high-level interaction on POW/MIA issues diminished. The NIE drafter was told that operational POW/MIA issues have long been entrusted by the Vietnamese leadership to the VNOSMP and the Ministry of Foreign Affairs. The drafter of the estimate had sufficient evidence to conclude that the POW/MIA issue no longer has the political sensitivity it once had in the Vietnamese leadership.

Refusal to Cooperate

The *Critical Assessment* takes issue with the NIE regarding additional statements related to cooperation, including the NIE claim that incidents of outright Vietnamese refusal to cooperate with U.S. investigators have decreased and instances wherein the Vietnamese raise objections to POW/MIA activities have diminished. The NIE drafter reviewed DoS documents; the results and impending actions of the Presidential Special Emissary to Vietnam (General Vessey); FBIS reporting; DPMO records; and USPACOM, JTF-FA, CILHI, and Stony Beach documentation. He also conducted interviews with numerous government officials who had knowledge of Vietnamese cooperation on POW/MIA issues. Using the time frame mandated in the TOR, the NIE concludes that, even though instances of refusal to cooperate with U.S. investigators have decreased, the

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Vietnamese continue to object to U.S. POW/MIA activities on occasion. The NIE explains that Vietnam's political system is secretive and distrustful of foreign influences and that Vietnamese officials fear that divulging information could undermine governmental authority. Also, according to the NIE, defending its sovereignty and protecting its secrets might be the major reasons why Vietnam has not been completely forthcoming with respect to POW/MIA issues.

Given that background, the NIE cites several "significant examples" where Vietnam has hindered activities, including refusing requests to see Politburo documents; denying interviews with some senior retired military officials; and refusing to allow joint field activities in "classified" military areas. Even though several documents reviewed by the NIE drafter and interviews he conducted revealed that significant progress had been made in Vietnamese cooperation, the NIE concludes that there are limits to what the United States could expect to achieve.

The NIE suggests that much remains to be accomplished in terms of Vietnamese cooperation on the POW/MIA issue. We believe that the NIE drafter appropriately used both relevant documentation and interviews with knowledgeable officials in reaching the conclusion that Vietnam's performance in dealing with the POW/MIA issue has been good in recent years and that incidents of refusal to cooperate have declined. That conclusion did not come easily, but, taken in the aggregate and coupled with the chronicle of continuing cases of uncooperative behavior, we believe the overall NIE judgment is sufficiently balanced and cautious, particularly given the caveat that the unresolved areas of Vietnamese cooperation "suggest the need for continued close attention by the U.S. Government."

MISTREATMENT OF POWS

The *Critical Assessment* discussed mistreatment of POWs as part of the record of Vietnamese cooperation; we treat it separately here because of its importance. The assessment claims that the NIE used a poor example of Vietnam's lack of forthrightness on certain POW/MIA issues by stating that Vietnam continues to deny that U.S. POWs were mistreated while in captivity and that full disclosure of that information would prove embarrassing to the regime. The *Critical Assessment* argues that other

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embarrassing examples, such as "the holding back of any unacknowledged American POWs after Operation Homecoming in 1973," would have been more relevant. Use of the mistreatment example, according to the assessment, "is not only disappointing, but very misleading to the NIE reader concerning the scope of knowledge the SRV may still possess concerning unaccounted for POW/MIAs."

During the 17 June 1998 briefing on the NIE provided to the U.S. side of the U.S.-Russia Joint Commission on POW/MIAs, Senator Smith posed a question to the NIO/EA: if the Vietnamese regime would be embarrassed to provide torture information, he asked, would it not be just as embarrassed to admit that American POWs were held back after the war? The response was "I suppose it would." The two issues are very different in nature, however.

There are countless, first-hand accounts of Vietnamese mistreatment of U.S. POWs. The U.S. Ambassador to Hanoi, a former POW, told the NIE drafter that during a discussion with a Vietnamese official he had described how he had been dragged around like a dog with a rope around his neck. The Vietnamese official denied that the incident occurred. Congressman Sam Johnson's 1992 book, Captive Warriors, and the 1998 book, Honor Bound – The History of American Prisoners of War in Southeast Asia 1961-1973, prepared at the request of a former Deputy Secretary of Defense, graphically describe POW mistreatment at the hands of Vietnamese captors. The NIE states that Vietnam would never provide documents to the United States that reveal mistreatment of POWs because such disclosure would be extremely embarrassing. The DPMO has never raised the issue of mistreatment of POWs because that office considers the issue particularly sensitive; if the issue were raised, DPMO believes, it would "provoke a counterproductive Vietnamese reaction." The DPMO claims that the subject of mistreatment is irrelevant to "our accounting effort, and we have not requested documents that might bear directly on these matters." While requests for such information may not be relevant to the DPMO, the NIE raises the issue to advise the reader that Vietnam has not been forthcoming because divulgence would prove embarrassing to the regime.

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While instances of torture are well documented, virtually all studies, dating back to the 1976 report of the House Select Committee on Missing Persons in Southeast Asia, conclude that there is no evidence to indicate that any American POWs from the Indochina conflict remain alive. The January 1993 Senate Select Committee on POW/MIA Affairs report concluded that there was no proof U.S. POWs had survived in North Vietnam after Operation Homecoming, while acknowledging that there also was no proof that all of those who did not return had died. The committee report indicated that it could not prove a negative, but concluded that there is "no compelling evidence that proves that any American remains alive in captivity in Southeast Asia."

The NIE indicates that 120 live sighting investigations have been conducted and none has generated any credible evidence of American POWs left in Vietnam. We confirmed this with U.S. officials who work with the refugee program. The Senate Select Committee report of 1993 suggests that, if efforts to achieve the fullest possible accounting of Vietnam-era POW/MIAs are to be effective and fair to the families, "they must go forward within the context of reality, not fiction." The reality is that there is no credible evidence that American POWs remained behind in 1973. The alleged holding back of POWs is not an appropriate example of Vietnam's lack of forthrightness on POW/MIA issues.

RECOVERY AND REPATRIATION OF REMAINS

As with other topics discussed under cooperation, the *Critical Assessment*, in discussing repatriation, refers to information available to the IC that allegedly was not used. The assessment takes issue with the NIE judgment that Vietnamese cooperation on the recovery and repatriation of remains of U.S. personnel is excellent. Charging that the NIE judgment is based solely on information provided by a non-IC organization, the *Critical Assessment* contends that additional evidence was not factored into the judgment. The drafter of the NIE collected documentation on recovery and repatriation of remains and interviewed key officials in organizations involved in POW/MIA matters. While these organizations are not all members of the IC, they are consumers of information from the IC. The IC gathers and analyzes information from all sources, including non-intelligence entities to provide comprehensive assessments and judgments to decisionmakers. The JTF-FA and CILHI are the U.S. Government organizations most closely associated with recovery and repatriation of

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Approved for Release: 2021/06/25 C00500205

remains and, even though not part of the IC, their documented experiences were of legitimate import to the NIE drafter.

In December 1997, the drafter of the NIE met with U.S. officials dealing directly with POW/MIA issues. During those sessions, participants stated that the Vietnamese had approached the issue of repatriation more seriously after 1992 and that Vietnamese cooperation in recovery and repatriation of remains since 1992 has been excellent. The NIE drafter took those views into consideration, balancing them with document holdings. In addition, he examined numerous publications that addressed recovery and repatriation of remains (see Annex E).

Manipulation of Witnesses

The *Critical Assessment* describes NIE judgments regarding recovery and repatriation of remains as "especially disturbing," because, it says, there is evidence that Vietnam has manipulated witnesses and evidence at crash sites and has recovered remains that have not been repatriated. The NIE drafter was told by knowledgeable U.S. officials that, in the past, an unknown number of witnesses had been coached, but that this no longer occurs. Similarly, other officials indicated that they were aware of only one where a witness was coached. We also conferred with these U.S. officials and learned that, between 1988 and 1992, the team leader for 18 of the first 20 joint field investigations saw no evidence of witness manipulation and did not see tampering with any crash site. The team leader told us that Vietnamese national level officials wanted to know what a witness would say before meeting the Americans because they did not want to be surprised, but in no way did Vietnamese officials interfere with the recovery process. The team leader said that, during early joint investigations, Vietnamese officials were suspicious of U.S. intentions because they believed the investigations were related to intelligence collection activities. After those initial suspicions were allayed, however, they became more supportive.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

Repatriation of Remains

The NIE states that there is no evidence the Vietnamese "presently are storing remains of American dead." It indicates that the Vietnamese did collect and store remains during the war, but "we do not know how many." The *Critical Assessment* argues that it is misleading to say "categorically that there is no evidence" the Vietnamese are storing remains, citing discrepancies in numbers of collected and stored remains provided by DPMO and CILHI; a "review of evidence available to the IC;" and the testimony of the "mortician."

The NIE overstated its case that there is no evidence that the Vietnamese currently are storing the remains of American POWs. The DPMO's 1995 zero-based comprehensive review concluded that there had been some cases indicating that specific remains recovered by the Vietnamese Government had not been turned over. The Deputy Assistant Secretary of Defense for POW/Missing Personnel Affairs report, "Vietnam's Collection and Repatriation of American Remains," published in June 1999 and reviewed by knowledgeable senior analysts in the IC, concludes that, "Based on available information, it is not possible to confirm independently whether Vietnam has repatriated all the American remains it collected." According to the report, Vietnam last repatriated stored remains in September 1990. The 1999 report indicates that there is strong evidence in two cases involving five remains that the remains were collected and taken to Hanoi but not repatriated. Discussions on those cases with the Vietnamese Government continue. Furthermore, the report states that, on two occasions, Vietnamese officials provided information that it had remains that had not been repatriated. While the events cannot be refuted or confirmed, investigation continues.

The *Critical Assessment* mentions that, in September 1998 (the NIE is dated April 1998), CILHI reported that approximately 170 U.S. remains repatriated by Hanoi since the end of the war showed signs of storage. The assessment then concludes that, based on the DPMO estimate that "Vietnam collected and stored some 300 remains, vice the 400 to 600 asserted by the 1987 Special National Intelligence Estimate," the resulting discrepancy (170 versus 300) makes the NIE assertion that Vietnam's repatriation record is excellent "extremely inaccurate."

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

CILHI found that 219 remains, returned unilaterally by the Vietnamese, exhibited forensic evidence of storage. As of 1 April 1999, it had identified 172 of those and continued to analyze the others. Independent of the CILHI determination, DPMO identified 274 remains that had signs of storage. Of those, DPMO said that 249 had been identified and that CILHI was analyzing the others. The disparity in numbers is the result of the different criteria and methods used by DPMO and CILHI. While DPMO analyzes documentation, testimony, and other source reporting to reach its findings, CILHI bases its numbers on the examination of remains. In the 1999 remains study, CILHI states that, "the examination of skeletal remains can yield considerable information . . . but not as much as desired. There are real limitations to the data that can be obtained." Further, CILHI cautions that its judgments on storage are subjective and imprecise because there are no tests, measurements, or means of standardization to arrive at determinations.

The estimate mentioned that DPMO, in conjunction with CILHI, was investigating the question of Vietnamese storage of remains and that further conclusions had to await the results of that investigation. The 1999 remains report, issued more than one year after publication of the estimate, determined that a case-by-case analysis of all remains repatriated revealed that, between 1970 and 1993, Vietnamese central authorities had collected and stored 270 to 280 sets of remains. The report claims the disparity of 20 to 30 between that number and the number estimated to have been collected (300) is smaller than had been thought previously and that "we will continue to seek more data about the extent and limits of Vietnam's effort to collect American remains."

The NIE overstated its case on the lack of evidence regarding storage of American remains; it did not factor in the evidence suggesting that remains may not have been repatriated in two cases involving five remains. It did, however, indicate that an in-depth study on the issue was being prepared and that conclusions should await publication of that report.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

THE SAGA OF THE MORTICIAN

The NIE makes no claim regarding the number of stored remains. It does report that the 1987 SNIE had suggested that there was evidence Vietnam was storing "about 400-600 sets of remains." That judgment was retracted in October 1996 by IC Assessment 96-05, "Vietnamese Storage of Remains of Unaccounted U.S. Personnel." The NIE states that the 1987 judgment was retracted by the 1996 Assessment because it was based on "the unsupported testimony of a single unreliable source," the mortician.

The *Critical Assessment* takes the NIE to task on the subject of the mortician, calling for "an accurate review of evidence available to the IC." The assessment argues that the NIE rationale regarding the 1996 IC Assessment retraction of a judgment made in the September 1987 SNIE about the storage of 400 to 600 sets of remains, is "egregious" and misrepresents the facts. While the NIE correctly cites the 1996 Assessment as the basis for the retraction, we do not agree with the NIE rationale that the retraction was made because the source of the information was unreliable and his testimony insupportable. Our judgment is based on a comprehensive examination of the source of the storage of remains issue, the mortician.

The mortician, an ethnic Chinese, Vietnamese citizen, worked in his family's funeral business in Hanoi. In the late 1950s, the government assigned mortuary personnel to public service and the mortician worked for the Director of Cemeteries, where he was responsible for grave digging as well as preparing and interring remains. Beginning in 1969, he was assigned the duties of preparing skeletal remains of Americans. In 1979, he was arrested and deported to Hong Kong. While residing in a refugee camp in Hong Kong, he attracted the attention of the U.S. Defense Liaison Office by alleging that he personally had inspected the remains of over 400 U.S. military personnel that were in secret storage in Hanoi.

The U.S. Government conducted a polygraph examination of the mortician prior to expediting his resettlement to the United States. His responses to the following three relevant questions resulted in an indication of deception:

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Approved for Release: 2021/06/25 C00500205

- Between 1974 and 1977, did you inspect the remains of more than 400 Americans? – Yes;

- Did you make up the story about the remains of 400 Americans being stored in Hanoi? – No; and

- Did you personally see three live American soldiers in Hanoi after 1976? – Yes.

The U.S. Government adjudicated the results of the polygraph examination and determined that the examiner had made the "correct call." The mortician was brought to Washington, where he was interviewed and given another polygraph examination, this time administered by a private company. We could not determine why a private examiner was hired to perform the second examination. The responses to the following three relevant questions in the second polygraph examination indicated no deception:

- When you left Hanoi, Vietnam, were skeletal remains of Americans being kept there?—Yes;

- At the time you left Vietnam, was the Vietnam Government keeping skeletal remains of U.S. military personnel at Hanoi like you say?—Yes; and

- Did the Vietnam Government force you to leave Vietnam like you say?—Yes.

The private company conducted a third polygraph examination. The relevant questions focused on whether the mortician had seen three Americans between 1974 and 1979 in Hanoi. He responded affirmatively and no deception was indicated.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

The mortician's claim to have seen three Americans was investigated as a live sighting report. One of the individuals, always seen with a Vietnamese escort, was determined to be Robert Garwood.[11] The other two individuals, seen unescorted, were determined to be either journalists or Russian military advisers. In January 1984, the U.S. Government addressed the inconsistencies in the previous polygraph examinations of the mortician. Its assessment concluded that the polygraph examination results should not have been the sole or primary basis for assessing the mortician's story and that the mortician's story was true.

The number of remains of U.S. military personnel stored in Vietnam and the veracity of the mortician's statements remain subjects of continuing debate. During his June 1980 testimony before the House Subcommittee on Asian and Pacific Affairs of the Committee on Foreign Affairs, the mortician claimed to have processed "some 400, some 452 of these remains, that 26 were turned over to the United States; that leaves about 400 plus. I have seen them." Between 1980 and 1983, senior U.S. officials used the more than/over 400 figure in public statements. The 13 January 1993 report of the Senate Select Committee on POW/MIA Affairs states that, in 1980, the mortician testified that he had processed 452 sets of remains.

The 1987 SNIE addressed the storage of remains of U.S. military personnel. Without further explanation, it states that, "We estimate that the Vietnamese have already recovered and are warehousing between 400 and 600 remains." The 1996 IC Assessment mentions that IC participants in the 1987 SNIE deferred to the principal drafter on the number of warehoused remains because the drafter's agency (DIA) had the responsibility and expertise for assessing technical aspects of the remains issue. The drafter of the 1987 SNIE, since retired, told us that he could not recall using the 400 to 600 figure. He said that, while he was convinced that storage of remains had occurred, he was not certain there was sufficient evidence to determine the numbers involved. Both the Director and Deputy Director, Special Office for POW/MIA Affairs, DIA at the time, told us that they had no direct knowledge as to the rationale for using

[11] Marine Corps PFC Robert Garwood was first listed as a POW by U.S. authorities—but never by the Vietnamese — in 1965. He returned to the United States voluntarily in 1979. He was convicted of collaborating with the enemy.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

the 400 to 600 figure in the 1987 SNIE. Both speculated that the numbers were extrapolated from the mortician's estimate on the number of boxes he believed he saw.

The 1996 IC Assessment states that the mortician:

> . . . carefully differentiated between the sets of remains he *said* [emphasis in original] he worked on (280 to 310) and what he *believed* [emphasis in original] was the total number of boxes (400). He arrived at a figure of 426 by combining the 400 boxes he estimated in the room (warehouse) in 1977 and two other groups of remains (26 sets) that he worked on that could not have been in the room . . . .

These figures coincide with those in the detailed interview DIA conducted with the mortician in November 1979, just prior to the second polygraph examination. The 1996 Assessment concludes that the 1987 SNIE statement regarding warehousing 400 to 600 sets of remains was based on limited direct evidence whose reliability was open to question. It further concludes that the 400 figure was not "a precise point estimate" and the 600 figure was based on "uncorroborated hearsay evidence or . . . the result of questionable extrapolation."

The drafter of the 1998 NIE grappled with the differences of opinion on the mortician and discussed those differences at length during IC coordination sessions leading up to formulation of the draft report. IC participants agreed with the language that appeared in the NIE that the storage of 400 to 600 sets of remains was retracted from the 1987 SNIE by the 1996 IC Assessment because the information turned out to have been based on the "unsupported testimony of a single unreliable source." Many factors, including possible mistranslation of testimony and interviews; confusion on the part of the mortician and interviewers and translators; diverse polygraph examination questions; differences in what the mortician actually observed (remains he worked on) and what he speculated; and the drafter's contention that the information provided by the mortician that appeared in the 1987 SNIE was erroneous convinced the NIE drafter that the mortician and his information were unreliable. According to the drafter, the 1998 NIE did not discuss the numbers of warehoused remains because the mortician was considered an unreliable source. The 1996 IC Assessment did not discredit the mortician and his

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

information, however. It claimed that the 1987 SNIE numbers were based on limited direct evidence whose reliability was open to question.

In a 30 June 1998 memorandum for the Director, DIA, the DPMO argued that the 1996 Assessment characterized the evidence rather than the source as unreliable, describing the figures (400 to 600) as rough estimates not firm enough to serve as a baseline for U.S. policy. The DPMO found information provided by the mortician reliable, and, "dueling polygraphs aside," estimated that the number of remains collected and stored in Hanoi is "well within the range of acceptable error for the rough firsthand estimates provided by this source." DPMO analysts explained that the "range of acceptable error" was the 280 to 310 figure detailed in the 1996 Assessment. Those were the numbers that the mortician processed or worked on rather than the more than 400 he perceived or believed to have been stored. The DPMO concludes that Vietnam collected and stored some 300 U.S. remains rather than the 400 to 600 described in the 1987 SNIE.

We believe that the NIE language reflects misunderstanding of the meaning of the 1996 IC Assessment. That assessment outlined the rationale behind the decision to judge the 1987 SNIE statement that Hanoi had warehoused 400 to 600 sets of remains as based on "limited direct evidence whose reliability was open to question." We believe that the mortician was truthful in explaining his knowledge of warehoused remains, but that his information regarding the numbers of remains was not accurate. The second polygraph examination, in-depth interviews, a comprehensive post-polygraph investigation, and the U.S. Government's conclusion in January 1984 concerning the mortician's truthfulness provide ample evidence and justification for our position. Had the DPMO been involved in coordinating the 1998 NIE, the "unreliable" and "unsupported" language might have been challenged and the statement on the mortician might have been explained more fully.

We cannot explain why the U.S. Government contracted for two private commercial polygraph examinations of the mortician. Nor can we explain why the U.S. Government believed additional polygraph examinations of the mortician were necessary. We are confident that the 1984 acceptance of comprehensive post-polygraph investigation of the

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

mortician are sufficient justification to conclude that he was truthful, but not completely accurate in his assessment of the number of remains in question. We agree with the 1996 IC Assessment claim that the mortician "carefully differentiated between the sets of remains he *said* he worked on and what he *believed* was the total number of boxes."

The NIE incorrectly claimed that the 1996 IC Assessment retracted the statement in the 1987 SNIE that Vietnam was storing 400 to 600 sets of remains because the information was based on the unsupported testimony of a single unreliable source, the mortician. The misreading of the 1996 IC Assessment on the mortician does not change the basic thrust or key judgments of the NIE nor does the misread make the NIE statement regarding the source of stored remains an "egregious and unsupported misrepresentation of facts . . ." as claimed by the *Critical Assessment.*

NUMBERS OF POW/MIA: THE 735 AND 1205 DOCUMENTS

Two Distinct Methodologies

On the issue of numbers of American POWs in Vietnam, the *Critical Assessment* claims that the IC has not reviewed all relevant documentation. In addition, it asserts that, "It is simply unacceptable that a detailed analysis of the numbers is not presented in the NIE." Before we address the issue of the numbers specifically, it is important to understand that two different accounting methodologies have been used to support arguments that there either are or are not U.S. MIAs still alive in Southeast Asia. Since Operation Homecoming in 1973, the U.S. Government has based its accounting on the cases of individuals who were expected to be repatriated, but were not. Over the years, these have been termed discrepancy or priority cases. The Senate Select Committee summarized 135 of those as the "Vessey Discrepancy Cases." The 35-year, DoD accounting history has focused on these discrepancy cases in the remains recovery effort; as of August 1999, the cases DoD considered to be still unresolved had been reduced to 43.

The alternate methodology, which has run parallel to the DoD accounting system in at least rudimentary form since Operation

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

Homecoming, considers all MIA, regardless of sub-category (e.g., Killed in Action-Body not Recovered (KIA-BNR),[12] over water, non-hostile) to be potentially alive, unless "fullest possible accounting" has occurred. Fullest possible accounting is defined as either verified repatriation of remains or return of a live person. Based on that approach there remain over 2,000 persons not accounted for, all potentially live MIA. Supporters of this methodology do, however, tend to accept the U.S. Government's KIA-BNR accounting. Accepting KIA-BNR reduces the number of potential MIA to 1,172 as of December 1992.

The 1993 Senate Select Committee POW/MIA report stated that Senator Smith had compiled a list of "compelling" cases, reducing the number of MIA from 1,172 to "324 still unaccounted for U.S. personnel from the Vietnam conflict." Senator Smith did not describe his methodology but did say that he considered his list "a working document" and "at best conservative." Based on verified remains returned of those on his list of 324, the list has been reduced to 289 names.

The dichotomy between the two methodologies was not resolved during the work of the Senate Select Committee, POW/MIA Affairs. In its final report, the Committee created an "Appendix of Case Summaries," and simply reported two lists of cases, the government's discrepancy list and Senator Smith's list of compelling cases.

The U. S. Government's case methodology factors out both those cases that the DoD determined to be KIA-BNR and those cases in which there was evidence of death. The methodology also factors out cases that are considered to be over water or off-the-scope.[13] The total number is reduced as remains are recovered and identified or when individuals are released.[14] The methodology considers only the remaining cases to be MIA. There is no POW category in this methodology because the U.S. Government believes there are no remaining POWs.

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[12] KIA-BNR refers to persons known to have been killed in action, but body or remains not recovered by U.S. forces, e.g., an aircraft exploding in midair or crashing, or a person with unquestionably terminal wounds and not recovered due to enemy action, or being lost at sea.
[13] Off-the-scope is a term used to refer to aircraft losses in Southeast Asia, primarily in Laos, where the aircraft loss occurred outside of radar coverage and the location is unknown.
[14] Since 1973, only one U.S. military member, Robert Garwood, has returned alive from Vietnam.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

The alternate methodology considers the above methodology to be flawed and bases its accounting on total numbers. While it also factors out KIA-BNR, returnees, and remains recovered and identified, it includes cases in which there is evidence of death, over water cases, and off-the-scope cases. The methodology considers all remaining cases to be potential POW as well as MIA and uses the terminology POW/MIA.

Apart from consistent treatment of KIA-BNR and remains recovered and identified, the two methodologies have different evidentiary bases. The discrepancy-based methodology relies on real-time incident reporting; results of search and rescue efforts; chain-of-command actions; the Presumptive Finding of Death (PFOD), which is a Military Services and DoD process;[15] and the ongoing work of JTF-FA. It is driven by operational reporting.

The total numbers-based methodology is also based on real-time incident reporting and results of search and rescue efforts. It discounts chain-of-command actions and PFOD determinations, however. It is driven by single-source intelligence, interviews, and other one-time reports. In order to account for its numbers of missing personnel, it hypothesizes a second prison system and the transfer of individuals to the former Soviet Union. Since the work of the Senate Select Committee in 1992, it has relied heavily on the two Russian archival documents, the 735 and 1205 documents, which were acquired after the Select Committee finished its work.

We opted neither to compare the two methodologies further nor to accept one over the other. Instead, we went back to an unfinished thread in the 1994 IC report, "Recent Reports on American POWs in Indochina: An Assessment." That assessment contained the following statement, without amplification:

[15] PFOD is an administrative finding by the appropriate Military Service Secretary, after statutory review procedures, that there is no current evidence to indicate that a person previously listed as MIA or POW could still be alive.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

> Finally, analysts noted that the "735 Document" and the "1205 Document" are inconsistent with each other by any accounting. To have had 1,205 US pilots in captivity by late 1972, Hanoi would have to have held far more than 735 by early 1971.

That incomplete analysis, combined with the Senate Select Committee's decision not to take a position on the two methodologies, persuaded us to evaluate those sections of the 735 and 1205 documents dealing with numbers of U.S. POWs.

The Documents

We compared the 735 and 1205 documents to each other using the Fulbright/Kennedy and Vessey lists as a basis (the lists will be described as discussed). We focused on those sections of the documents that address the number of POWs held by the Vietnamese because it is those sections that are relevant to the POW/MIA issue. This methodology allowed us to proceed without questioning either the authenticity of the documents or the accuracy of those sections in each document that are not relevant to the POW issue. This approach precludes questions concerning the *bona fides* of either purported author, his location and position at the time of each report, or the intended audience. It also sets aside consideration of South Vietnam, Laos or Cambodia and focuses solely on the North Vietnamese prison system. A close examination of the portions of the 735 and 1205 documents that address the POW issue reveals that both cannot be true. They are mutually exclusive—as the 1994 IC assessment concluded. The relevant portion of at least one of these documents, if not both, is demonstrably false.

Historical Setting of the 735 Document

On 22 December 1970, a U.S. official representing Senators William Fulbright and Edward Kennedy was handed a list: "Hanoi, November 15, 1970." The cover sheet was headed, Ministry of National Defense, Democratic Republic of Vietnam, and titled, "US Pilots Captured in the Democratic Republic of Vietnam from August 5, 1964, to November 15, 1970." The list totaled 368 names: 339 in the North Vietnamese prison system, 20 deceased and nine released.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

We can assume that senior Vietnamese officials familiar with the issue would have been aware of both the numbers provided to the United States in the Fulbright/Kennedy list and the breakdown of those numbers (i.e., 339 living POWs and 29 individuals who had died or had been released). Both the 735 and the 1205 documents are attributed to senior Vietnamese officials. Both documents, in referring to the number of living American POWs that the Vietnamese had "acknowledged" to be in captivity, used the number 368. This was not the true number of live POWs, and these officials would have known it.

In late 1970 or early 1971, a Vietnamese agricultural official purportedly authored a primarily agricultural report that was found in GRU archives in the summer of 1993. That report became known as the 735 document. The GRU-acquired document indicates that the Vietnamese official briefly addressed the POW issue twice in the report. In a section titled "Situation in the Vietnamese Workers' Party," the report states that, "... we published the names of 368 American pilots who were shot down and taken captive in the territory of the D.R.V." Later, in a section titled, "Situation in South Vietnam, Laos, and Cambodia," the report states that:

> The overall number of American pilots imprisoned in the D.R.V. is 735. As I already stated, we published the names of 368 pilots. This is our diplomatic move. If the Americans agree to withdraw their troops from South Vietnam, as a start we will return these 368 men to them.

If the reporting official (or any other senior Vietnamese official) had been in a position to give an authoritative report on this subject and to use the number 368, he also would have known that 29 of the men whose names were on the published list could not be returned to the United States because they had either been released previously or died in captivity. The acknowledged number of live POWs who could have been returned was 339.

In the meantime, however, U.S. officials were unintentionally institutionalizing the incorrect number. On 2 September 1971, the Secretary of Defense forwarded the Fulbright/Kennedy list in a memorandum, "December 1970 PW List from NVN" to the Secretaries of the Military Departments. In the text, the Secretary referred to "a list of 368 servicemen who are or have been prisoners of war." In his 1995 book,

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Imprisoned or Missing in Vietnam, Lewis M. Stern, commenting on the 735 document stated, "The document, which stated that Vietnam held 735 U.S. aviators as POWs in 1971 instead of the 368 whose names the Vietnamese had publicly released . . . ." Stern has been involved with DoD policymaking on the POW/MIA issue since September 1989 and accompanied General Vessey to Hanoi five times. Currently he is the Director for Indochina, Thailand and Burma, International Security Affairs, Office of the Secretary of Defense. He did not question the 368 figure in the 735 document when we interviewed him.

On the other hand, the figure cited by the Vietnamese in 1970 has been accurately reported, implicitly if not explicitly, at least five times: twice in the POW/MIA literature, twice by Senator Smith, and once by the IC. In his 1976 book, P.O.W., A Definitive History of the American Prisoner-of-War Experience in Vietnam, 1964-1973, John G. Hubbell stated, "In mid-December, 1970, members of Hanoi's delegation to the Paris Peace talks handed over to representatives of Senators William Fulbright and Edward Kennedy a list of 339 American POWs in North Vietnam." In his 1993 book, M.I.A. or Mythmaking in America, (expanded and updated edition) H. Bruce Franklin stated that, "The following month [December] North Vietnam . . . provided what it officially certified as the 'full and complete' list of all 339 prisoners it held . . . ."

Senator Smith has accurately referred to the number of living POWs cited in the Fulbright/Kennedy document on two occasions. In his 21 July 1993, "An Interim Analysis of the 1972 Translation of [the 1205 document]," he stated, "On December 22, 1970, the North Vietnamese delegate to the Paris Peace talks, Mai Van Bo, released to representatives of U.S. Senators Kennedy and Fulbright a list of the names of 368 POWs, 20 of whom were listed as having died, and nine of whom had previously been released." Senator Smith repeated that same information later in his analysis.

In the *Critical Assessment,* Senator Smith stated, "The 368 list itself consisted of 339 Air Force and Navy pilots and crew members currently in captivity, 9 such personnel previously released, and 20 such personnel listed as dead." He went on to say that, "The status of the 339 men listed as captives was already known to the Pentagon . . . , although this was the first 'official' acknowledgment of their status by Hanoi." He repeated the

Approved for Release: 2021/06/25 C00500205

information again in a *Critical Assessment* footnote (180), over 100 pages later.

In the *Critical Assessment*, Senator Smith hypothesized that only one of two conclusions could be drawn; either the Vietnamese had made a full accounting or they had decided not to make a full accounting, as the 735 document alleges. Senator Smith referred back to The Secretary of Defense's memorandum and stated that, "I do not accept it [the 368 list] as a complete list of all the prisoners held in North Vietnam."

In 1993, the IC was on the verge of focusing on the Vietnamese figure of 339 living POWs and the implications of that number, but missed the opportunity. In a 13 September 1993 DoS memorandum, " Vietnam–INR Comment on the '735' Document," the Acting Chief, INR stated:

> The report says Hanoi had "published the names of 368 fliers shot down and captured on the territory of the DRV" and that these would be returned "as a start" when the US "agreed" to withdraw. There . . . are inconsistencies in this statement. True, in December 1970, Hanoi passed to Senators Fulbright and Kennedy a list—the first ever—of 368 names purporting to be all the airmen captured over Vietnam. But only 339 were still living prisoners—20 were deceased, and 9 had been released years earlier. [The author's] purported statement that once the US had agreed to withdraw "we will, as a start, return to them these 368 people" is curious since only 339 prisoners remained.

Finally, handwritten notes taken during an IC discussion (DoS, DIA, Task Force Russia, CIA, NIO) after the surfacing of the 735 document contain two illuminating comments. First, "INR—. . . Number is peculiar," and second, "DIA—. . . Numbers 735 and 1205 can't both be right." There is no evidence that these INR and DIA comments were ever pursued. Neither the drafter of the 1994 IC assessment nor the drafter of NIE 98-03 picked up on this discrepancy.

The 368 figure cited in the second relevant section of the 735 document cannot be an informed North Vietnamese statement. For internal consumption, the figure had to be 339 because the Vietnamese knew that 29 of the 368 servicemen they were referring to had either died or been released. For external consumption, the figure could accurately have been no more than 359 (368 less the nine known by the world to have

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

been released). Based on the actual makeup of the "368" list as known to both the U.S. and North Vietnamese Governments in December 1970, the second paragraph in the 735 document relating to American POWs provides a false number.

Historical Setting of the 1205 Document

On 31 March 1968, a U.S. bombing halt north of the 20th parallel went into effect. On 31 October 1968, a complete bombing halt was ordered. That halt, excepting sporadic retaliatory strikes in 1969 and 1970 and again from February to September 1971, remained in effect until authorization was given for attacks on southern North Vietnam MiG bases on 7-8 November 1971. Operation Linebacker, including mining of North Vietnamese ports, began on 8 May 1972 and lasted until October 1972.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

Accounting of U.S. Military Personnel Lost in Southeast Asia

1 January 1971-September 1972

Two sets of statistics provide comprehensive lists of U.S. military personnel lost in Southeast Asia by date of loss. One is a chronological name list that was maintained by the Assistant Secretary of Defense (Comptroller), based on information provided by the military services. The other is a chronological reference document maintained by DPMO. The January 1975 Comptroller's list and the May 1997 DPMO list provide a range of all possible U.S. losses in Southeast Asia between the dates of the 735 and 1205 documents, the end of December 1970 and 15 September 1972 respectively. The Comptroller's list is limited to military personnel unaccounted for in specific categories, such as KIA-BNR, while the DPMO list accounts for every loss regardless of category and includes returnees. We deleted foreign nationals and U.S. civilians from the DPMO list to maintain consistency with both the Comptroller's list and the contents of the 735 and 1205 documents.

The January 1975 Comptroller list includes 131 military personnel who were either captured or missing in Southeast Asia during the period from 1 January 1971 through 15 September 1972. Based on these figures, the 735 and 1205 documents cannot both be accurate; the addition of 131 names is far less than the 470 difference between the 735 and the 1205 numbers.

A higher figure is provided in the May 1997 DPMO list which includes 455 military personnel whose date of incident/loss occurred during the period from 1 January 1971 to 15 September 1972. Assuming that the 735 document is accurate and given the impossibility that all 455 personnel became POWs,[16] the highest possible POW total at the time of the 1205 document would have been 1190. Conversely, assuming that the 1205 document is accurate, the lowest possible total at the time of the 735 document would have been 750.

[16] The United States unilaterally recovered the bodies of 16 personnel, 11 of those in 1972.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

Thus, opportunities for the U.S. pilot population in the North Vietnam prison system to grow were limited between the release of the 368 list in December 1970 and the purported 15 September 1972 date of the 1205 report.

The U.S. Government, just prior to the surfacing of the 1205 document in February 1993, acknowledged the detailed makeup of the 368 names on the Fulbright/Kennedy list and its relationship to what the United States knew. In its final report, released in January 1993, the Senate Select Committee on POW/MIA Affairs stated that:

> By September 1970, the number of confirmed American prisoners had risen to 335 [three months before the 735 speech]. On December 22, 1970, North Vietnam provided Senator Edward Kennedy with a list of 368 . . . . In mid-1972, the [Japanese news Agency] released a list of 390 U.S. POWs. DIA analysis found that 339 of the names on this list had been acknowledged previously as POWs by the DRV, 9 were individuals already released, 20 were servicemen the DRV had reported earlier as dead, and 22 were new names, all airmen lost over North Vietnam between December 1970 and May 1972 . . . . By the fall of 1972 [the time of the 1205 document], the list of confirmed U.S. POWs held by North Vietnam had risen to more than 400.

The Vessey documents are germane at this point. The Vietnamese provided General Vessey seven documents in 1993. Two of those documents are lists of American prisoners. The first of these is a copy of a handwritten spreadsheet in the Vietnamese language that accounts for American accessions into the North Vietnamese prison system since the capture of Lieutenant Everett Alvarez, U.S. Navy, who was shot down over North Vietnam in August 1964 and became the first entry on the list. The second document is a listing in English that is probably a continuation of the list of 368 names provided to Senators Fulbright and Kennedy in December 1970. The Vessey documents provide a way to extrapolate the number of Americans in the North Vietnamese prison system relevant to the 1205 document, as shown in Table 1.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

Table 1. Status of U.S. Personnel Once in the North Vietnamese Prison System

Category	December 1970	December 1971	September 1972
POW	339	345	404
Deceased	20	20	22
Released	9	9	12
Total	368	374	438

Source: Fulbright/Kennedy list of December 1970 and Vessey Documents

The list of 368 Americans who the North Vietnamese claimed had entered their prison system remained static until December 1971, when six additional U.S. prisoners entered the system. Beginning on 16 February 1972, the list increased rapidly, reaching a figure of 438 by the date of the 1205 document. During that time, however, three more prisoners were released and two more died. Therefore, the figure relevant to the 1205 document of U.S. prisoners in the North Vietnam prison system was 404 (438 minus 22 deceased and 12 returnees), not 368. That is the figure that knowledgeable North Vietnamese would have used for internal consumption.

Concerning the number 368, the 1205 document states:

> The 1205 American POWs kept in the prisons of North Vietnam represent a large number. For now, we have officially published a list of only 368 POWs. The rest are not acknowledged.

As discussed earlier, the figure of living U.S. POWs cited by a senior Vietnamese official to his leadership at this time should have been either 339 for consistency with the 735 document or 404 to be consistent with the numbers in the Vessey documents—because at least 29 POWs had either died or been released. Therefore, the reference in the 1205 document to 368 POWs is inaccurate. The 1205 document also notes that, "The work with American prisoners of war has always been within the field of vision of the Politburo and has been reflected in its decisions." If that is true, then the Politburo would have been aware of the increases and attrition cited previously.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

Further, the 1205 document states, "We have captured 624 aviators in North Vietnam." That figure directly contradicts the 735 figure. By September 1972, the 735 figure would have increased to at least 805 (735 plus the 70-name increase to the 368 list, including deceased and released names). In sum, the 1205 document does not track with the 735 document, and it perpetuates a static 368 figure that knowledgeable Vietnamese would have known was inaccurate. Therefore, in our judgment, the POW/MIA section of the 1205 document is also false.

The Russian position on the numbers in the 1205 document has been communicated to the U.S.-Russia Joint Commission on at least two occasions. In a 30 June 1994 letter to Senator Smith, the Chief of the GRU stated that, "We cannot confirm the correctness of the number of American prisoners (1205) mentioned in the report, inasmuch as this data was not relevant for us and was not rechecked." On 1 July 1997, the new Chief of the GRU repeated that statement to Senators Smith and Shelby and Representative Johnson during a Joint Commission meeting at the Russian Ministry of Defense. He concluded by saying that, "I do not have anything more to add concerning what [my predecessor] said."

A DoS analysis of the 1205 document in April 1993 raised two additional points that should have been addressed by the author of the 1205 document but were not. DoS argued that the document should have referred to a decision made two weeks earlier by the Vietnamese to release three additional pilots whose families were due in Hanoi on 16 September 1972. Secondly, DoS noted that the 1205 document did not address the increased number of prisoners as a result of the heavy U.S. bombing campaign of May-October 1972 and the resultant Vietnamese propaganda exploitation of POWs.

The JCSD files support the assessment that Vietnamese leaders would have been accurately informed about the numbers of American POWs being held. Those files contain a TFR (JCSD's predecessor) undated assessment, "Vis-a-vis the Russians: Analysis of the 1205 Document." In reference to the author of the 1205 document, the TFR document states that, he "cited the continued interest of the Politburo in the question of American prisoners of war." His speech strongly suggested ongoing discussion and debate within the Politburo regarding the disposition of American POWs.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

Therefore, updated information on the number and disposition of POWs must have been discussed by the Vietnamese Politburo within the time frame of the 1205 document. The TFR analysis also states that:

> Given the many inconsistencies and contradictions of the 1205 document, this type of analysis will allow the burden of proof to be placed on those who are holding back information, i.e., the Russians and Vietnamese. This may alleviate the need for the U.S. Government to derive a definitive truth from a partial piece of evidence—we do not have enough information to know what the 1205 document really means.

The *Critical Assessment* supports the view that accurate information would have been provided to the Vietnamese Politburo by senior Vietnamese officials. In addressing the NIE statement that "none of the Russians claimed that the figure of 1205 POWs was accurate," the assessment cites a GRU officer (as of October 1977) as stating during an interview that:

> . . . the Vietnamese would not have deceived themselves at a closed Politburo session; they might have provided inaccurate information in press releases on their negotiations with the Americans, but they would have no reason to do so within closed sessions of their political leadership.

A Point of Logic

It does not matter whether the 735 and 1205 documents are genuine GRU documents or whether the contents not dealing with POW numbers are accurate. An analysis of the statements in the *Critical Assessment* devoted to proving that, because the documents are genuine and elsewhere accurate, the sections about POW matters are accurate as well is not warranted. It does not necessarily follow that because a document is genuine and two of its three parts are plausible that the third part is also plausible. Conversely, because one of three parts of a document is not plausible does not necessarily mean that the other two parts are also not plausible or that the document itself is not genuine.

Much effort has been expended to prove the *bona fides* of the 735 and 1205 documents and their respective authors. The pursuit thus far has been fruitless. As one member of the JCSD team conducting interviews

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

with Russians on the documents told us, "the process is more important than the results because there are no results." Nor does it matter. We accept the authenticity of the two documents, and we accept the accuracy of some of the contents of the documents. We do not accept references in the documents to the numbers of POWs held by the Vietnamese.

Nevertheless, because so much has been made of the testimony of and interviews with Russian sources, we reviewed the statements of Russian sources who have been interviewed by JCSD, including those mentioned in both the NIE and the *Critical Assessment*, to determine their opinions of the 735 and 1205 documents.

ASSESSMENT OF COMMENTS BY RUSSIAN SOURCES ON THE 735 AND 1205 DOCUMENTS

The NIE uses the results of five Russian interviews in its discussion of the IC's assessment of the 735 and 1205 documents. Based in part on those interviews, which the NIE categorizes as "new information," the NIE concludes that "none of the new information helps to confirm the accuracy of the 1205 report" and that the IC assessment of the 735 and 1205 documents released in January 1994 "remains valid."

A large portion of the *Critical Assessment* is a detailed analysis of the NIE's assessment of the 735 and 1205 documents. The *Critical Assessment* refers to four of the five Russian sources cited in the NIE and concludes that:

> . . . the NIE's judgment on the 1205/735 documents cannot be accepted with confidence because it is **replete** [emphasis in original] with inaccurate and misleading statements and lacks a reasonably thorough and objective analytical foundation on which to base its judgment.

Our Approach

Both the NIE and the *Critical Assessment* refer to Russian sources, but cite them differently. We reviewed statements of 31 Russians made during interviews with JCSD analysts or in meetings with U.S. personnel. To assess the statements, we first defined the level of access that each individual had. We established three levels of access based on the

Nov 26, 2024 000100
Approved for Release: 2021/06/25 C00500205
JA 630

Approved for Release: 2021/06/25 C00500205

individual's level of responsibility and the nature of his assignments as follows:

- High—Reasonable expectation that the official had knowledge of policy and could have had access to documentation;
- Medium—Some expectation that the official had knowledge of policy and could have had access to documentation; and
- Low—Limited or no expectation that the official had knowledge of policy and could have had access to documentation.

We next reviewed the statements to establish how each Russian source rated the validity of the 735 and 1205 documents as genuine GRU acquisitions and the credibility of the information in each document concerning POW numbers.

Validity and Credibility

Thirteen of the 31 Russian sources (42 percent) considered the documents valid. Further, when only medium and high access levels are considered, 13 of 21 (62 percent) considered the documents valid. None of the Russian sources considered them not valid, and some had no opinion.

Five of the 31 Russian sources (16 percent) considered the documents credible. Three (10 percent) considered them not credible. Thus, 23 of 31 (74 percent) made no judgment. Only two of 12 individuals with a high level of access believed that the information in the 735 and 1205 documents was credible. One individual based his judgment on his belief that the GRU had the means to collect such information—not on validation of the information by other means. The other said that, if the Vietnamese claimed they held 735 American POWs, that was more than the Soviets had estimated. Three of nine individuals with medium access thought the information was credible. One, a Navy Captain in the GRU who had no direct knowledge of the 735 and 1205 documents, stated that the numbers cited in them could not be confirmed; he believed that Russia had no interest in having these numbers confirmed. The second individual, a 32-year veteran of the Soviet intelligence and security service (KGB), had no direct

Nov 26, 2024 000101
Approved for Release: 2021/06/25 C00500205
JA 631

Approved for Release: 2021/06/25 C00500205

knowledge of the documentation and said he never saw any information indicating POWs were detained after the Vietnam War. The third individual, the sole KGB representative to the Soviet Embassy in Hanoi between 1975 and 1979, commented that the documents confirmed his personal opinion that not all POWs were released. Not one of the five Russians who found the information credible had any independent means of verification.

Two Russian sources with high access believed the information was not credible. The Russian Ambassador in Hanoi between 1974 and 1986 questioned the credibility of the information because at no time during his tenure as Ambassador did he learn of any American POWs being held after the war. Another highly placed diplomat who worked on political issues concerning Vietnam at the Central Committee between 1963 and 1986 never saw or was made aware of the existence of the 735 and 1205 documents. One source with medium access who served in the Russian Embassy in Hanoi when the two documents surfaced stated that the 1205 document could be in error due to inaccurate GRU reporting, translation errors, or mistakes by the purported author and his staff.

Previously, we stated that we accept that the 735 and 1205 documents were genuine acquisitions. Statements made by Russian sources reinforce that acceptance. Furthermore, we found that one section of the 735 document and the section of the 1205 document pertaining to POW numbers were both false. Based on the statements made by 31 Russian sources, that finding stands. No estimate of credibility concerning numbers of U.S. POWs cited in the 735 and 1205 documents can be made based on the 31 Russian sources.

The *Critical Assessment* claims that the NIE statement that the new information from the Russian interviews does not help to confirm the accuracy of the 735 and 1205 documents is "factually inaccurate." The assessment indicates that the information provided by a number of GRU officers helps to confirm that the 1205 document was "an accurate representation of the political military situation in North Vietnam in 1972." Further, the assessment states that, "since 1994, the GRU has expressed its confidence in both the authenticity and the reliability of the information in the 1205 report." We reviewed the statements made by the GRU officials and found that none of them supports the POW-related contents of the 1205 document.

Nov 26, 2024 000102
Approved for Release: 2021/06/25 C00500205
JA 632

Approved for Release: 2021/06/25 C00500205

The Navy Captain claimed that the GRU had no interest in the POW issue nor did it perform an analysis of the 1205 document. In his opinion, the only value in the 735 and 1205 documents was the description of North Vietnam's internal political situation. Another GRU officer claimed that the Soviet estimate of the number of U.S. POWs in Southeast Asia in 1972 was far short of the purported figure in the 1205 document. JCSD concluded that, "the Soviet assessment supports the POW-related content of neither the 735 nor the 1205 document." The former Chief of the GRU said that the GRU could not confirm the accuracy of the number of American POWs in the 1205 document because the information "was not essential" to the Soviets. His successor said that he had nothing more to add to that statement.

The *Critical Assessment* claims that the GRU "has expressed its confidence in both the authenticity and the reliability of the information on the 1205 report." It does not mention, however, that the GRU sources do not support the POW-related content of the documents.

SEPARATE OR SECOND PRISON SYSTEM

The NIE stated that, if there were additional POWs, the IC would have known of them unless Vietnam maintained a separate prison unknown to the POWs who returned in 1973. The estimate concluded that, "we have uncovered no reliable evidence that a separate prison system existed for certain POWs; nor do we have such indicators as plausible site locations."

Concerning the issue of a separate or second prison system, the *Critical Assessment* refers to "substantial information and evaluations originated by or made available to the U.S. Intelligence Community both during and/or after the Vietnam War." The assessment asserts that, based on the 735 and 1205 documents, the large number of POWs not repatriated had to have been held in a separate or second prison system. Included in the evidence cited in the *Critical Assessment* is a reference to a CIA study in

Nov 26, 2024 000103
Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

early 1976 that concluded, "the possibility of a second prison system for the detention of American POWs in North Vietnam cannot be disregarded."

A more expansive quotation from the so-called CIA study appeared in a 1998 book, Code-Name Bright Light, The Untold Story of U.S. POW Rescue Efforts During the Vietnam War, by George Veith:

> An analysis of 19 camps not known to have contained Americans revealed inconsistencies in the various camps' reaction to the Son Tay raid . . . . Some camps reacted defensively to the raid, others did not . . . . Only selected camps reacted initially to the raid . . . . The reason for this inconsistency in the various camps' reactions to the raid is not known. Because of this inconsistency . . . the possibility of a second prison system for the detention of American POWs cannot be disregarded.

In an end note, Veith sourced his quote to the:

> Senate *Congressional Record*, January 26, 1994, p. S-163, Senator Bob Smith of New Hampshire is quoting from a just-declassified CIA photographic study of selected prison facilities in North Vietnam. The study was done in 1976.

We obtained a copy of the CIA prison camp study referred to by the *Critical Assessment* from the SSCI's holdings. The "study" is an untitled, undated, handwritten draft, apparently contained in a file folder titled "CIA PW Camp Study." The draft somehow survived the archival process and was included as a line item on page 119 of a 130-page transmittal record dated 4 May 1984, forwarded by the DIA POW/MIA Office to the Federal Archives and Records Center. An extract of the transmittal record and a copy of the handwritten draft were forwarded to Senator Smith on 12 November 1993 by the Acting Deputy Director, DPMO.

We located a second copy of the handwritten draft in the archives of the DIA Special Office for POW/MIA Affairs. Included with that undated draft marked "Working Paper" was a six-page, undated DIA informal review of the draft. The DIA conclusion was that:

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

> None of the finding [sic] presented in this study provide [sic] any evidence to support the presence of U.S. PWs in the "Other Camps" or that a second prison system was maintained in North Vietnam for the purpose of holding U.S. PWs not released at Homecoming.

DPMO analysts told us that, in the 1980s, DIA pursued the possibility of a second prison system, ruling out the possibility for three reasons:

- Returned POWs did not describe a system of collection and evacuation that would split a segment of the POW flow from the North Vietnamese prison system;
- Extensive source reporting in the 1970s and 1980s did not validate a second prison system; and
- Reporting from former South Vietnamese commando returnees asked about contact with or observation of American POWs in the prison system in which they were held. There was no such contact or observation.

We found work relevant to the draft "study" in the holdings of CIA's DO-held POW/MIA-related information. Two folders in that collection contained documents associated with the search for POW camp information. None of the documents we reviewed drew a conclusion about the presence of American POWs at a particular camp based on imagery alone. For example, a typical document entry was, "Imagery alone cannot determine camp schedules, patterns of activity and nationality and dress of prisoners and guards." Positive identification of the presence of American POWs was made only when human source information was also factored in. Typically, the imagery analytical conclusion was either, "there is no sign of any activity indicating [that] the buildings are being used to house American POWs," or "There is no sign of any activity that could be associated with a POW detention camp."

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

The DO documents revealed that CIA, Office of Imagery Analysis (OIA) had systematically searched for POW camp information since at least 12 September 1966. Beginning in at least 1966, a formal standing requirement was levied each year, worded, "Identification of Installations in Southeast Asia Which May Contain American Prisoners."

Relevant work for the CIA prison camp study mentioned in the *Critical Assessment* was done by three individuals whose signatures were on several project-related memoranda. We interviewed the action officer for the study; he verified that he was the author of the handwritten draft that survived the archival process. He could not confirm which draft (first, second, final) had been archived because his practice had been to rewrite by hand each draft after management review. He said the task had been based on the premise that we "knew about the 'known camps'," (i.e., the camps that held Americans) and had identified a number of detention facilities not known to hold Americans. The requirement was to determine, using imagery, additional camps that might hold Americans. The methodology was to use the aftermath of the November 1970 Son Tay raid to determine what changes in security had taken place at the camps not known to hold Americans. Having determined those changes, the analytical question became, "could we use that change to provide evidence of American presence?" Although he drafted the wording quoted by the *Critical Assessment*, the action officer said that:

> there was no way I could prove it; the change as determined from imagery was in itself not proof. There were no other sources of information.

The Director, OIA provided a status report on the study in a late December 1976 memorandum to the CIA, Deputy Director for Intelligence, that stated:

> . . . we have performed a study of 25 prisons/POW Camps in northern Vietnam in an attempt to identify some method of analysis or signature to indicate the presence of U.S. POWs. Our study consisted of a comparative analysis of six confirmed American POW camps and 19 other prisons using photography dated prior to and after the 21 November 1970 raid on Son Tay. We found that all six of the known POW camps and 14 of the 19 prisons had new defenses added between

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

> November 1970 and December 1972. Although this may be a possible indicator, it is not conclusive evidence of an American presence.

The Chief, Land Forces Division signed the completed study as a CIA internal memorandum on 7 February 1977. The study was based solely on imagery and focused primarily on the presence or absence of defensive positions. The handwritten draft which the *Critical Assessment* cited contained the following statement, in context:

> This inconsistency [different patterns of post-reaction to the Son Tay raid] and the fact that several reports have been received recently stating that Americans are still being held in North Vietnam, the possibility of a second prison system for the detention of American POWs cannot be disregarded.

That statement did not survive the CIA review process. The final assessment made in the CIA internal memorandum was:

> Although these may be possible indicators, it is not conclusive evidence of an American presence. We searched the official DoD files on the 19 prisons to correlate any reporting of an American presence with our photographic analysis. No correlation could be made.

In other words, the CIA, OIA, in the aggregate, followed the same logic it had used for individual camp assessments. Imagery alone (without all-source reporting, in this case the addition of human source information) cannot be used as a determinant.

In critiquing the original language, the Deputy Division Chief, OIA asked the imagery analyst if he was trying to sway the reader to a certain conclusion, perhaps not supported by the evidence. The analyst told us that, "maybe I wanted to find some new camps," and in consultation with the supervisor he recalled that perhaps he had not been "standing back and taking an unbiased look." He said he was a junior analyst at the time and might have been off the analytical track. He summarized by saying that, "I will have to say that [his] work, based solely on imagery, is even today, inconclusive." With one exception he never saw anything in his entire career that supported the statement he had made in the draft of the memorandum. The one exception was that he thought at one time there

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

"might be something" at a camp called Dong Ha that he recalled was in the Haiphong area. Nothing was ever substantiated. The imagery analyst was shown the signed internal memorandum; he said it accurately reflected his unbiased analysis.

We interviewed the CIA, DO counterintelligence analyst responsible for evaluation of the North Vietnamese security services and the North Vietnamese prison system. He held that analytical account continuously from 1965 to 1992, the first seven of those years working for the Chief of Station in Saigon. He stated that he was constantly attuned to the thesis that there might be a separate or second prison system, and he continuously looked for such a system. He never found any evidence of the existence of such a system.

In sum, there never was an all-source CIA "Prison Camp Study." Instead, the CIA, OIA provided an internal, imagery-based assessment to the DO. The coordination of a handwritten draft of that assessment with DIA resulted in the archiving of the handwritten draft by the DoD. That archived draft was assumed, erroneously, by researchers in the 1990s to be an IC product. It was neither an IC product nor a CIA product; it was the preliminary work of a junior imagery analyst that stated that the evidence from imagery was inconclusive.

ALLEGED TRANSFERS OF POWS FROM VIETNAM TO THE USSR

On the issue of the alleged transfers of POWs to Russia or elsewhere, the *Critical Assessment* states that:

> . . . the books must definitely remain open on the transfer issue based on more pressing information previously made available to the IC but inexplicably not referenced in the NIE under the heading of unresolved transfer reports . . . .

The assessment differs with the NIE, particularly with respect to statements made by a late Russian General, who served as a military adviser to President Yeltsin and was the Co-Chairman of the Russian side of the U.S.-Russia Joint Commission on POW/MIAs, and a former USSR Central

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500225

Committee Secretary. The *Critical Assessment* claims that the NIE accounts of information provided by the two officials are "inaccurate or lacking in important detail." We reviewed the statements made by those individuals and other Russian officials, and we examined evidence associated with the possible existence of a second prison camp system. We agree with the NIE assertion that, because of a lack of conclusive evidence disproving transfers, the "books should remain open" on the issue. To date, however, most, if not all, reporting avenues have been explored with negative results. Our review of the transfer issue, with particular emphasis on the comments of the late Russian General and the former Central Committee Secretary, follows.

The Russian General

The NIE states that the General told the U.S.-Russia Joint Commission on POW/MIA Affairs that his delegation had uncovered no evidence that U.S. prisoners had been transported from Vietnam to the USSR. The *Critical Assessment* argues that the fact that the General did not uncover evidence of transfer does not constitute proof that such an event did not occur. The assessment cites as evidence a statement the General made to the Senate Select Committee on POW/MIA Affairs on 11 November 1992, in which he said, "Hypothetically, we cannot dismiss the possibility that several individual American servicemen were taken to the Soviet Union from Vietnam." The *Critical Assessment* does not mention, however, that, in concluding that thought, the General said, "But, again, we have no precise information about such cases. It can only be called a possibility and I believe not a very strong possibility." In the same testimony, he claimed that there were no archives in Russia that he did not have access to and added:

> No U.S. citizens are currently being detained within the territory of the former USSR. The conclusion is based on a thorough analysis of all archival documents, interviews with witnesses, and on-site inspections of possible American housing sites.

We examined several documents issued prior to this testimony that support the General's statement that no U.S. citizens were being detained. On 3 December 1991, the Interrepublic Security Service, successor to the former KGB Second Chief Directorate, told the U.S. Government that it had undertaken "an exhaustive search of available information and resources,

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and had come up with no indication of such presence in the USSR past or present." On 6 December 1991, the Interrepublic Security Service advised the U.S. Government that, "On our part, we also do not have any information about American military personnel located on the territory of the USSR who were missing in action during the course of military activities in Indochina." Finally, in a 20 May 1992 letter to President Yeltsin, the Russian Minister of Security said that:

> The Security Ministry, the Foreign Intelligence Service, the Ministry of Internal Affairs, and the Russian Communist Party Archive do not have materials about the retention of American POWs on the territory of the former USSR. An analogous response was received from the Ministry of Defense and the GRU of the General Staff, OVS (Unified Armed Forces), SNG (Commonwealth of Independent States).

In spite of that, when asked in a 16 June 1992 "Dateline" interview about rumors that American POWs from the Vietnam War were transferred to the former Soviet Union, President Yeltsin responded that:

> Our archives have shown that this is true. Some of them were transferred to the former Soviet Union and were kept in labor camps. We don't have complete data and can only surmise that some of them may still be alive. That is why our investigations are continuing. Some of them may have ended up in psychiatric asylums.

President Yeltsin's statement contradicts information provided to him by his Minister of Security barely one month prior to his "Dateline" interview. In late June 1992, the U.S. Co-Chairman of the U.S.-Russia Joint Commission said that President Yeltsin "misspoke" when he said U.S. POWs might still be in the former Soviet Union. And, on 30 June 1992, following a meeting with President Bush, the Co-Chairman said that he had found no evidence in Moscow that any living American POW was being held against his will in the former Soviet Union.

In a July 1992 interview with the Russian newspaper, Nezavisimaya Gazeta, the General said that President Yeltsin had been mistaken and that archives showed no sign of any such prisoners ever being held in the former Soviet Union. During November 1992 hearings before the Senate Select Committee on POW/MIA Affairs, a letter signed by President

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Yeltsin was entered into the record. The letter mentions evidence of Americans "staying in camps and prisoners of the former USSR," and says that some had been executed by the Stalin regime (1924-1953) and that others may still reside in the former Soviet Union. Yeltsin concluded that there were no Americans being held against their will in Russia. The IC has no information to support the claim made by President Yeltsin that U.S. POWs from the Vietnam War were held in Soviet prison camps; certainly, none was executed during the regime of Stalin, who died in 1953.

The *Critical Assessment* asserts that, after his November 1992 testimony before the Senate Select Committee, the Russian General said in an August 1994 autobiographical sketch that he had received a "very serious indication" that a transfer of U.S. POWs to the USSR may have taken place in the late 1960s. The *Critical Assessment* does not mention, however, that he goes on to say that, after discovering the "sensational document" about such a transfer, he immediately brought it to the attention of the Director of Foreign Intelligence. The Director's staff searched for any indication that the plan referred to in the document had been implemented. The General then said, "As I expected, they did not find the indications. They said the mission was not carried out." The autobiographical sketch concludes by stating, "The regime (Soviet) was such at the time that it was possible to contemplate the wildest scenarios."

The Central Committee Secretary

The NIE uses a former Central Committee Secretary for Maintaining Ties with Other Socialist Countries as an example of an official who served in Vietnam during the war and would have reason to know whether U.S. POWs were transferred to the USSR. The NIE reports that the Secretary served in Vietnam and told interviewers that he would have known if transfers had occurred; he believed no such transfers had taken place.

The *Critical Assessment* asserts that, although the Secretary traveled to Hanoi once to negotiate an agreement with North Vietnam, he did not serve in Vietnam. We found no information suggesting that the Secretary served in Vietnam. The *Critical Assessment* also states that the U.S. side of the U.S.-Russia Joint Commission frequently hears the claim, "I would have known" during routine interviews with former Soviet officials who display

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an inflated view of their importance. We agree. We found several statements by former Soviet officials who claimed to be in a position to know about certain events, but whose claims we cannot prove or disprove without more evidence.

The NIE used the interview with the Secretary to point out that certain former Soviet officials did not believe that transfers of POWs to the USSR had occurred. The Secretary was just one of several possible examples. The NIE could have used a better example than the Secretary. For example, one official served in Vietnam from 1960-1962 and again from 1977-1983, when he was an adviser to the Soviet Ambassador; he worked for the Central Committee of the Communist Party of the Soviet Union in the International Department dealing exclusively with Vietnamese issues from 1962-1977. In a March 1997 interview, the official stated that such transfers would not have taken place without the Politburo's knowledge and consent, and that if such a decision had been made, he would have known about it. The NIE also could have cited a career GRU Colonel who served in Hanoi from 1968-1972. During a December 1996 interview, the Colonel, commenting on the credibility of reports of transfers, said, "I will tell you quite frankly that the staff of the military attaché was not involved in such a thing. I do not know of a single incident." He added, "I never heard of this during my four years there. I also knew people in other services, and they would have told me."

Despite the statements of Soviet officials who had served in Vietnam, which the NIE drafter might have cited, the lack of conclusive evidence disproving transfers led to the NIE's conclusion that "the books should remain open on this issue" and, that "until some of the reporting . . . is clarified, we cannot say definitively that no POWs were transferred from Vietnam." The 17 June 1996 "Comprehensive Report of the U.S. Side of the U.S.-Russia Joint Commission on POW/MIAs" bolsters the argument that while the "books should remain open" on the issue, most, if not all, avenues have been explored with negative results. The report states that:

> A four-year investigation into the activities of Soviet officials in Southeast Asia during the years of the Vietnam War has found no first-hand, substantiated evidence that American prisoners of war were taken from Southeast Asia to the Former Soviet Union.

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The 1996 report reveals that the American side of the commission had been told "in definitive terms" that the Soviets "did not at any time" transfer American POWs to the Soviet Union. The report went on to state that the commission had interviewed more than 200 Soviets who had served in Southeast Asia during the war and that:

> . . . every witness, without exception, stated that he had not known or heard of any operation to transport American prisoners to the Soviet Union.

According to the report, every senior Soviet official interviewed said that, if transfers had occurred, he "would have known about it." The report also mentions that, during debriefings of the nearly 600 returned POWs, none suggested that American POWs were transferred to the Soviet Union. Finally, among the documents collected by the commission, none contained information on transfers of American POWs to the Soviet Union.

CASE ASSESSMENTS

The final TOR for NIE 98-03 stipulated that:

> . . . if the intelligence community judges these documents [the 735 and 1205 documents] to be accurate . . . in their characterization of the number of American POWs held by North Vietnam, then it should answer the following question: "What is the likely range of numbers of American POWs under the control of the communist side when the Paris Peace Accords were signed in January 1973?"

The IC determined that the 735 and 1205 documents were not accurate in their characterization of the number of POWs held by North Vietnam and therefore did not pursue the issue of numbers of POWs held by North Vietnam at the time of Operation Homecoming. Senator Smith and staff members of the SSCI had anticipated that NIE 98-03 would address the issue of the number of POWs held by the Vietnamese at the time of Operation Homecoming and that it would look at the related issue of MIAs still unaccounted for from the war in Southeast Asia. It did not do so.

The 1993 report of the Senate Select Committee on POW/MIA Affairs left the issue of the discrepancy cases unresolved. Senator Smith

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had continuing questions about the cases and developed a listing of 324 names which he titled, "U.S. POW/MIAs Who May Have Survived in Captivity," dated 1 December 1992. Repatriated remains reduced the number of names to 289 as of our review. In the 1995 time frame, DPMO prepared case assessments (two- to four-page summaries) of each missing person file.

Senator Smith's legislative assistant told us he had expected that the drafter of the NIE would review the case assessments pertaining to Senator Smith's compelling cases. No one reviewed those cases. DPMO confirmed that the drafter of the NIE did not review the case assessments and no one—other than DPMO—has validated or attempted to validate Senator Smith's list. We obtained from DPMO the case assessments for the 289 cases on Senator Smith's list of 324 names for which verified remains have not been returned. We undertook the task of reviewing these cases, and we have provided a framework that others can use to assess them (see Annex G for a discussion of our case assessment methodology).

Our Methodology

We believe that these cases are at the heart of the controversy over POWs in Vietnam and that an effort to evaluate them is essential. We therefore conducted our own assessment of the cases in a manner that can be replicated. Each member of our three-person review team independently evaluated the 289 cases without consultation or collaboration. The team was unconstrained in the time required to make an informed assessment and score each of the cases (see Annex H for results of our compelling case review). The six factors evaluated were:

- Is there evidence the individual survived the incident?
- Is there evidence the individual could have been taken captive?
- Is there evidence the individual entered a prison system?
- Can any of three governments (Vietnam, Laos, and Cambodia) account for the individual?

Nov 26, 2024 000114
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JA 644

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- Was the case compelling prior to December 1992 (date of Senator Smith list) based on information available at that time?

- Is the case compelling today based on information received since December 1992?

Other than to simply make "yes," "no" or "inconclusive" entries in each of the six columns for each case, no further scoring was done until the three individual assessments were completed. We judged "compelling" twice, because the files available to us contained updated information since the publication of Senator Smith's list in December 1992. The word "compelling" needs to be clarified because it was undefined by Senator Smith. We accepted the term as being similar to the term "discrepancy" as used in the Vessey cases.[17] For our purposes, compelling meant that there was something more to be known about the fate of the individual.

We decided to present the data in a way that provides the strongest possible support for Senator Smith's list of U.S. POWs who may have survived in captivity. We extended the range of each of the six factors listed above by scoring the data as follows:

- If all three reviewers scored a factor "yes" for a given case, we counted that as a unanimous group response; and

- If one reviewer scored a factor "yes" and at least one other reviewer scored that same factor either "yes" or "inconclusive" we counted that as a consensus group response.

Based on that two-fold scoring, the results for the first four factors of our independent review of 289 cases listed as compelling by Senator Smith are:

- At least 40 and as many as 91 of the 289 individuals could have survived the incident of loss;

[17] General Vessey's discrepancy cases are those POWs who were expected to be repatriated, but were not. In August 1992, that number was 135; as of August 1999, the cases still not resolved had been reduced to 43. Senator Smith's list of cases has been referred to as "compelling" by Advocacy and Intelligence Index for Prisoners of War-Missing in Action (AII POW-MIA), and we use it here to distinguish it from the Vessey list. Based on verified remains recovery, the compelling case list had been reduced to 289 names at the time of our review.

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- At least 13 and as many as 34 of those individuals could have been captured;
- At least six and as many as nine of those individuals could have entered a prison system; and
- One of the current Southeast Asia governments may be able to account for at least 25 and as many as 114 of the 289 individuals.

Further, concerning the "compelling" factor both in 1992 and today, the results of our independent review of the 289 cases are:

- At least one and as many as 19 of the 289 cases was compelling based on information available in late 1992; and
- At most, three cases are compelling today, none unanimously. None of these losses occurred in Cambodia, Laos, or North Vietnam; all occurred in South Vietnam.

Each member of the review team evaluated the files for each of these cases and made independent evaluations. These evaluations are intuitive, but the methodology can be replicated by others. We describe one particular case, that of Captain John McDonnell, that illustrates the difficulty of making such evaluations.

The McDonnell Case

The case of U.S. Army Captain John T. McDonnell (Case 1402) is complicated and has been reviewed repeatedly since his helicopter went down in 1969. The case reflects the polarization that exists concerning the MIA issue. A detailed discussion of our rationale for selecting the case and the steps we took to understand it is in Annex I.

The 1993 Senate Select Committee POW/MIA report portrayed the McDonnell case as follows:

> On March 6, 1969, Captain McDonnell was the pilot [sic] of an AH-1G Cobra helicopter hit and downed by hostile fire in Thua Thien Province.

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Approved for Release: 2021/06/25 C00500205

> His crew member, a First Lieutenant, was rescued alive on March 7, but was unable to provide any information on the fate of Captain McDonnell. A search mission was also unsuccessful.
>
> Captain McDonnell was declared missing and, in February 1977, was declared dead/body not recovered. Returning U.S. POWs were unable to shed any light on his fate.
>
> U.S. investigators in Vietnam during January 1991 interviewed witnesses who described the capture of an American pilot in the area where Captain McDonnell disappeared. They reported he had a broken and bleeding arm when taken prisoner and brought to a People's Army of Vietnam regimental headquarters which received instructions to transport him to the Tri Thien Hue Military Region Headquarters. He died en route, was buried, and the U.S. field team was shown his purported burial site. The site was excavated but no remains were located.

A different story was contained in a 12 September 1999 posting on the Internet by the Advocacy and Intelligence Index for Prisoners of War-Missing in Action (AII POW-MIA). An article entitled, "Captain John T. McDonnell United States Army, ONE OF THE MEN WE LEFT BEHIND," began:

> The next time someone asks you to name one American serviceman left behind in Southeast Asia, name just one . . . . Look them straight in the eye and say Capt. John T. McDonnell, United States Army, last known duty station Vietnamese Prison Camp Location Ba To, Quang Ngai Province, South Vietnam. Last seen in mid to late February 1973.

The AII POW-MIA analysis observed that:

- Examination of the downed helicopter revealed that Capt. [sic] McDonnell's seat belt and harness were open and placed neatly on the seat;
- On 16 February 1973 a North Vietnamese rallier reported that he observed two U.S. Prisoners of War with the North Vietnamese Army in Laos on three different occasions, between May and July 1971;

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Approved for Release: 2021/06/25 C00500205

- On 10 April 1973 a North Vietnamese defector reported that in 1972 he saw an American Captain at the MR-5 PW Camp who was "a captured American artillery officer;" and

- A Project X study concluded there is a possibility that as many as 57 Americans could be alive. Captain McDonnell is included among the 57.

Facts

There are only two verifiable facts concerning this case. First, Captain McDonnell was last seen alive on 6 March 1969 entering aircraft 845, a Cobra AH-IG helicopter. Second, on 17 May 1992, Captain McDonnell's military identification card was located in the Hue Military Museum. All other information related to determining his fate is contained in the results of interviews. No intelligence information or other official reporting factually correlates to Captain McDonnell.

Circumstances of Loss

Sworn testimony taken by a Missing Person Board convened shortly after the loss revealed that Captain McDonnell was the team leader of a flight of two helicopter gunships, the Aircraft Commander of his gunship, and sat in the gunner's position on the day of his incident. He was not the pilot that day. His pilot executed a rocket run from which he could not recover and the gunship crashed into the side of a mountain. There was initial confusion as to whether the loss was due to hostile fire. The pilot of the other gunship reported no hostile fire. In an unsigned statement, Captain McDonnell's pilot reported hostile fire.

According to a certified extract of the Official Log, 1st Battalion, 327th Infantry, 101st Airborne Division (Airmobile), the wreckage was found on 8 March 1969 and appeared not to have been disturbed. The front seat and safety harness were intact. An officer of the ground troops conducting the search reported that the wreckage had not been disturbed by the enemy. The position of the seat belts and safety harness indicated that the gunner [McDonnell] unbuckled himself and left the wreckage.

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Approved for Release: 2021/06/25 C00500225

Additional sworn testimony taken by the board indicated that Captain McDonnell's commanding officer thoroughly searched the wreckage and the immediate area. The gunner's compartment was completely open with no evidence of damage to the seat. (According to the 1969 edition of Jane's All The World's Aircraft, the gunner's position of an AH-1G Cobra helicopter is located in the front, lower compartment. The aircraft is flyable from both positions, however). The shoulder harness was not broken and the seat belt was unlatched. The commanding officer said that:

> . . . it was not possible to establish that the helicopter had been hit by ground fire. Although portions of the tail boom and main body showed no evidence of being penetrated, so much damage was inflicted by the crash that a positive determination could not be made.

The Vietnamese Account

JTF-FA reports of interviews with Vietnamese indicate that Captain McDonnell survived the crash and, while attempting to evade the enemy, was shot in the arm and captured. He was taken to the command post of the People's Army of Vietnam 4th Regiment. The regiment contacted the region headquarters for instructions and was directed to evacuate Captain McDonnell to the region hospital. Captain McDonnell did not survive the evacuation. The regimental commander forwarded Captain McDonnell's identification card to higher headquarters with a report concerning his capture and death. A senior district party official received the report and the identification card and forwarded them to province authorities. A Hue museum curator stated that Captain McDonnell's identification card was turned over to him by the senior district party official sometime after 30 April 1975.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

Captain McDonnell's Status Changes

Initially, the Missing Person Board determined that Captain McDonnell was missing, not missing in action. The board apparently did not consider the helicopter pilot's unsigned statement about hostile fire persuasive. In a later signed statement, the pilot said that:

> I broke left, we received fire and simultaneously entered the low clouds. The cyclic went limp and I could not turn the helicopter. I remember pulling pitch, then awoke laying [sic] on the ground on my chest protector.

Based on that statement, Captain McDonnell's status was changed from missing to missing in action.

In late 1976, Captain McDonnell's next of kin petitioned the Department of the Army to issue a death certificate. On 18 February 1977, the Army's Adjutant General found Captain McDonnell "to be dead." On 6 June 1994, a flag/general officer-level review convened by the Deputy Assistant Secretary of Defense for POW/MIA Affairs, assisted by two DPMO analysts and the Intelligence Officer, JTF-FA, voted 3-0 for a "confirmation of fate." The Deputy Assistant Secretary of Defense voted for the confirmation, despite advice from DPMO analysts to the contrary, and the case was removed from the discrepancy list.

Three Times a Discrepancy Case

The 1994 removal of Captain McDonnell from the discrepancy list culminated a near 20-year history of that case having been singled out three times as unresolved.

- **PROJECT X:** PROJECT X was a study initiated in August 1975 by the Commanding Officer, JCRC to "evaluate the possibility of any of the unaccounted for being alive." Captain McDonnell was included in the resultant list of 57 individuals. The Commanding Officer concluded that, "There is a possibility that as many as 57 Americans could be alive, although it is highly probable that the number is much smaller, possibly zero;"

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- **Discrepancy Case:** Because Captain McDonnell was last seen alive—sworn testimony included in the Missing Person Board review confirmed that he entered the gunship the day of the incident—his case became a discrepancy case, consistent with the U.S. Government's methodology; and

- **Compelling Case:** Because Captain McDonnell was allegedly correlated to two separate live sighting intelligence reports, his case became a compelling case, consistent with the full accounting methodology.

Our Assessment

Viet Cong policy, based on U.S. POW returnee experience and information in CIA files, was that any American who survived his immediate capture and transport would have entered the prison system or, if wounded, the hospital system. The report of the evacuation of Captain McDonnell is consistent with that policy. Intelligence reports from at least 1966 consistently state that Viet Cong policy concerning American captives was to evacuate them expeditiously to higher headquarters. While an evacuation of Captain McDonnell was ordered, he was never seen in the Vietnamese detention system.

AII POW-MIA argues that two live sighting reports—one filed with a JCRC tag line that "records indicate the source probably observed CAPT John T. McDonnell, USA,"—document Captain McDonnell's status as POW/MIA. The other report was possibly correlated to Captain McDonnell or one other individual, but no JCRC determination was made. There is no reason to link either of the two reports to Captain McDonnell. Both reports describe an American in collaborative circumstances. None of the files we reviewed suggest that Captain McDonnell was a collaborator. He was a multiple-tour, decorated Vietnam veteran, *post-facto* promoted to the rank of Major.

We believe there is no factual information to support the contention that Captain McDonnell was left behind alive in Southeast Asia. There is, however, circumstantial evidence of his fate (see Annex I). Because that evidence is circumstantial, the case is likely to remain controversial—a continuing example of the polarization that has consumed the POW/MIA

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

issue. The DoD believes that all POWs are accounted for. AII POW-MIA does not.

The McDonnell case is typical of several that we reviewed. Despite 30 years of continuous effort, there is no independently verifiable evidence of Captain McDonnell's fate. The information that has been collected, however, supports the conclusion that Captain McDonnell died in Vietnam after his capture.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

PART V: *CRITICAL ASSESSMENT* CHARGES: POLITICIZATION

In addressing assertions of possible politicization made in the *Critical Assessment*, we have examined both the assessment's specific charges and its overarching implication that political pressure was applied to the estimate process by the Clinton Administration. The general charge of politicization is the more serious allegation because such a charge, even if vague and unsubstantiated, tends to gain credibility if it is repeated frequently. Indeed, the fact that many within the community of POW/MIA families believe that politicization exists is reflected in letters and memoranda written to government officials by the Executive Director of the National League of Families of Prisoners and Missing in Southeast Asia.[18] This perception has been fed over the years by accusations of a government conspiracy to cover up the contention that American POWs were abandoned in Vietnam after Operation Homecoming in 1973.

We have examined each phase of the production of NIE 98-03, from the time it was requested in April 1997 through its publication in May 1998, to determine whether parties outside the IC attempted to influence the estimate's substance, judgments, or tone and, if they did, to what extent they succeeded. Because the *Critical Assessment* also implies that there was politicization of a prior IC publication (the 1994 assessment of the 735 and 1205 documents), we have reviewed the process of producing and releasing that document, looking for similar evidence of political pressure.

Attempts by policymakers to influence intelligence analysis are risky because they contradict the stated mission of intelligence and the professional ethic of the intelligence officer. Intelligence managers and analysts may react strongly if they believe that they are being pressured to slant or repress intelligence. We have made the assumption that it would be extremely difficult, if not impossible, for a policymaker to exert influence on the IC over a period of time without producing, at the very least, resistance and resentment by those intelligence analysts and managers whose analysis was being manipulated. For that reason, in our

[18] In a letter to the DCI on 29 July 1997, the Executive Director said that the product of DPMO analysts had been "spun, covered with political documents, distorted in public statements and unconscionably delayed due to political considerations related to normalization of relations with Vietnam. This is all documentable and well known." The Executive Director urged the DCI to produce another NIE that is "clear, objective, and does not pull punches."

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Approved for Release: 2021/06/25 C00500205

interviews with those involved in the production of NIE 98-03, we raised both the question of political pressure and the issue of the integrity of the process and the product.

The general reference to possible politicization made by Senator Smith in the *Critical Assessment* is that:

> Congress and the leaders of the U.S. Intelligence Community (IC) need to examine what role the White House, its National Security Council, and certain US policymakers responsible for advancing the Administration's normalization agenda with Vietnam may have played in influencing or otherwise affecting the judgments of the IC as reflected in the NIE.

The assessment states that, if improper communication or influence took place, immediate steps should be taken "to determine how this could have occurred." Such a review is critical, it says, to ensure "that the IC is providing objective and independent analysis to its customers." Our review will look first at the specific charges made in the assessment to support this general allegation, then return to a discussion of the broader assertion of politicization of NIE 98-03.

SPECIFIC ALLEGATIONS OF POLITICIZATION

DoD Testimony (March and June 1998)

The *Critical Assessment* connects the timing of the NIE's preparation and publication and the Clinton Administration's determination in March 1998 that Vietnam was "fully cooperating in good faith" with the United States on the POW/MIA issue. President Clinton, it says, told Senator Smith that the results of the NIE "would be taken into account as we continue to advance our agenda with Vietnam." But, the assessment states, the President issued his 1998 determination that Vietnam was fully cooperating in good faith on 4 March 1998—"one month *prior* to the NIE's official dissemination."

Having established a juxtaposition of events, the *Critical Assessment* describes several incidents that imply that political influence was exerted on the estimate process through the DoD. This presumed chain of influence runs from the Under Secretary of Defense for Policy through the Assistant Secretary of Defense for International Security Affairs through his Principal Deputy through DPMO to the NIC. The evidence supporting the

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

implication involves congressional testimony given by the Under Secretary on 5 March 1998, the day after the President issued his determination, and by the Principal Deputy on 17 June 1998. The assessment states that the testimony of the Principal Deputy undermined assurances provided by the Under Secretary and casts doubts on assurances from the DCI that "at no stage was there higher level or other intervention to change or shape the body or judgments of the NIE."

On 5 March, the Under Secretary appeared before the Senate Committee on Armed Services (of which Senator Smith is a member). In response to questions posed by Senator Smith, the Under Secretary said that he was aware that the POW/MIA estimate was being prepared, but that he was "not in a position to comment on what information was obtained from the IC in connection with the determination." In his interview with us, the Under Secretary re-confirmed his testimony. He said that he had had no association with the NIE—that he never saw it in draft, was never asked to comment on it, and never talked with anyone about it. He reaffirmed that he did not know what information the DoD may have provided the President on the issue of certification. Furthermore, he stated, his testimony on 5 March had nothing to do with POW/MIA affairs; rather, Senator Smith had "branched off" into that subject.[19]

In his appearance before the House Committee on International Relations on 17 June to testify on POW/MIA matters, the Principal Deputy was asked by the Chairman of the Committee what role the DoD had played in the Presidential determination. When the Principal Deputy responded that the Department had indicated that Vietnam was fully cooperating, the Chairman asked whether the Principal Deputy had before him the NIE on POW/MIA affairs at that time. The latter responded that, "We were actually working on it at the same time, because we were working with the Central Intelligence Agency on that issue, and so it was concurrent, simultaneous." He went on to say that the estimate was not issued until April 1998 and that, while he did not have the final estimate before him in March, "we certainly knew what was in it, and we were involved in the preparation of the estimate." The Chairman then asked him

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[19] The Under Secretary was testifying before the Committee on Armed Services; the subject was "The Role of the Department of Defense in Countering the Transnational Threats to the 21st Century, Including Terrorism, Narco-Trafficking, and Weapons of Mass Destruction."

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if "he would have had the occasion to see what the report said at the time you made your decision;" the Principal Deputy responded, "Yes."

The Principal Deputy's testimony reveals that he did have knowledge of the contents of the draft NIE by early March 1998. In our interview with him, however, he indicated that he had not actually seen the estimate prior to its publication in April 1998 and that his positive response to the question of his having seen it had been "hasty." He stated that he was not directly involved in the estimate, but knew that the process was ongoing and that the NIC was working with DPMO. When he testified that "we" were working on the NIE, he meant that DoD analysts were working with the drafter. He stated that the Acting Director, DPMO kept him advised of the progress being made; when the certification issue came up in March, he asked the Acting Director, DPMO if the developing NIE was consistent with certification and was told that it was. He said he thought he would have known what the key judgments were going to be and what the findings might be, although he did not see them in the drafting phase.

The Assistant Secretary of Defense for International Security Affairs, to whom the Principal Deputy reports, does not remember being involved in the estimate process. He was aware the NIE was being done and remembers seeing it when it was finished, but he is positive that he did not see it in draft. He told us that DPMO would almost certainly have helped prepare both the Under Secretary and the Principal Deputy for testimony that involved POW/MIA issues. As noted previously, however, the Under Secretary had not expected to be testifying about POW/MIA issues before the Senate Committee on Armed Services.

The *Critical Assessment* asserts that the testimony of the Principal Deputy casts doubt on the reliability of assurances that there was no higher level intervention to change the substance or judgments of the NIE. In fact, the testimony does not imply that there was intervention to shape the judgments of the NIE. At the most, it reveals that the Principal Deputy had knowledge of the contents of the estimate before it was published. It is very likely and hardly surprising that he did have such knowledge and that his information came from the DPMO, as he explains. The first draft of the estimate had been completed by early February, and the drafter had been communicating with DPMO analysts since the beginning of the process. Furthermore, the draft had been sent to organizations that work

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closely with the DPMO. There is little doubt that DPMO had knowledge of the basic judgments of the draft estimate by early March. The draft report was not forwarded to the DPMO, however. We believe that the draft estimate was seen for the first time by a DPMO official on 20 March, when the Acting Director was shown a copy by the NIO/EA. We found no information suggesting that the draft was seen by DoD policymakers in DoD before it was released. Nor did we find information to support the charge that any intervention was made on the part of DoD policymakers to influence the estimate.

The *Critical Assessment* makes one more assertion of a linkage between the DoD and the preparation of the NIE. It states that the NIO/EA, in his briefing to the U.S. side of the U.S.-Russia Joint Commission on POW/MIAs, and the Principal Deputy, in his testimony before the House Committee on International Relations, both of which occurred on 17 June, used the same phrase to characterize Vietnamese cooperation on POW/MIA matters. Both indicated that there had been "improved cooperation." Because this "exact phraseology" is not found in the NIE, the assessment charges, and because these two individuals used the same language "on the same day in response to the same question," this raises "more questions about additional collaboration between the National Intelligence Council and the Office of the Under Secretary of Defense for Policy." The phrase "improved cooperation" is commonly used phrasing, however, and is so close to other language used to define Vietnam's performance ("more" cooperation or "increased" cooperation) that the *Critical Assessment* charge is unconvincing.

Outside Readers

The *Critical Assessment* states that the NIC selected four individuals from outside the IC "with expertise on the Vietnam POW/MIA issue" to review the draft and provide commentary. The assessment cites as its source the briefing provided by the NIC to the U.S. side of the U.S.-Russia Joint Commission on POW/MIAs on 17 June 1998. In that briefing, the NIO/EA stated that the NIC had reached out to people outside the IC who had expertise "in this area." Of the four outside readers, two had expertise in Southeast Asia issues ; none had specific expertise on the Vietnam POW/MIA issue; and two had no expertise in either Southeast Asia or the POW/MIA issue.

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Approved for Release: 2021/06/25 C00500205

The *Critical Assessment* asks whether one or more of these individuals may have been employed in the Office of the Under Secretary of Defense for Policy, which includes DPMO—an "office which supports U.S. policy that Vietnam is fully cooperating in good faith on the POW/MIA issue." None of the four outside readers was from DPMO or from any other DoD office, although one had served as Assistant Secretary of Defense for International Security Policy during the Bush Administration. The draft estimate was shown to a fifth "outside" reader, however, the Acting Director, DPMO.

To determine what impact the outside readers may have had on the substance, judgments, and tone of the NIE, we examined annotated copies of draft reports as well as messages and memoranda addressing the comments and suggestions of various readers. In addition, we reviewed the draft reports, comparing them for changes that affected substance, judgments, or tone. Because the assessment expressed particular concern that DPMO may have influenced the NIE, we have included an analysis of the changes made to the draft after the Acting Director, DPMO reviewed it.

The NIO/EA showed a copy of the 17 March draft estimate to the Acting Director, DPMO on 20 March. The Acting Director was not one of the four outside readers; rather, he was shown the draft because of his background knowledge of the POW/MIA issue. The Acting Director reportedly expressed an opinion on the draft's language concerning Vietnamese mistreatment of POWs. As indicated previously, the DPMO position on this issue differed from that reflected in the NIE. No changes were made in the text on this subject. Changes made to the 23 March version of the estimate are modest and do not move the estimate in any consistent direction. There is no indication that the review by the Acting Director, DPMO resulted in any changes to the draft.

The 23 March NIE draft was provided for comment to two outside readers. The suggestion of the first, a former Deputy Chairman of the NIC, was to soften the tone of the estimate, which he called "overly rosy," in order to avoid antagonizing those "who are already doubters." We have some concern about the selection of the second reader, both because he had been National Security Adviser in 1993, when the original IC analysis of the 735 and 1205 documents was undertaken, and because he had been involved in the Clinton Administration's policy of normalizing relations with Vietnam. He had little comment on the draft, however; he did

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

express concern that the box listing SRV officials involved in the POW/MIA issue did not include any officials who were not cooperative.

There was little disagreement at the IC coordination sessions, held in late March. According to the accounts of representatives to the meetings, the first two outside readers and DIA had indicated that, in a few instances, the draft was "too apologetic" to the Vietnamese or "unduly charitable in rating Vietnam's performance." Both outside readers had suggested that making the language more modest would "make for a more persuasive paper" and "would not immediately set off critics of Vietnam's record of cooperation on this issue." As a result, a more circumspect, but still basically positive, appraisal of Vietnam's performance emerged from the coordination sessions.

Following the NFIB meeting on 13 April 1998, at the request of the DCI, the NIC provided the draft to two more outside readers. In his comments, the former DCI said his suggestions were "intended to strengthen our case against the minority of readers who would be reflexively critical." The suggestions he made included adding data and analysis to bolster judgments made in the estimate. In the end, however, the suggestions of these readers were not reflected in the draft.

The *Critical Assessment*'s implication that the outside readers influenced either the body or judgments of the NIE is unfounded. None of the outside readers made suggestions designed to alter either. Several readers did, however, recommend changes designed to modify the tone of the language to deflect the anticipated negative reaction of those who were critical of Vietnam's record of cooperation on the POW/MIA issue.

Policy Contacts

The *Critical Assessment* emphasizes that, in the course of preparing the estimate, the NIE drafter interviewed the U.S. Ambassador to Vietnam and the Director for Indochina, Thailand, and Burma, Office of the Assistant Secretary of Defense for International Security Affairs. The assessment describes these two men as the Clinton Administration's "biggest advocates for continued expansion of US relations with Hanoi." The implication is that these two officials may have influenced the views of the drafter and the judgments in the NIE.

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Approved for Release: 2021/06/25 C00500205

The drafter met with the U.S. Ambassador to Vietnam in February 1998. The only clear indication of a point the Ambassador wanted to make occurred in the section of the NIE draft dealing with Vietnamese refusal to provide Politburo documents. A phrase in the 20 February draft that was reviewed by the Ambassador indicated that Vietnam would not provide such documents "*any more than foreign governments, such as the United States, would open their sensitive records to Vietnamese officials.*" A handwritten note by the drafter states that "the Ambassador wants this emphasized." While the Ambassador did try to influence the draft in this instance, his request was rejected; in fact, the entire phrase was deleted from the estimate. The 17 March version of the estimate, which would have reflected the Ambassador's views, showed no change in language that could be considered more supportive of Administration policy; in fact, the changes tended to reinforce skepticism about Vietnamese cooperation.

The drafter met with the Director for Indochina, Thailand, and Burma, Office of the Assistant Secretary of Defense for International Security Affairs early in the research phase of the process. The Director told us that they discussed the early history of the issue; key decision points for both the Vietnamese and U.S. leadership; specific questions concerning the 735 and 1205 documents; and the structure of Vietnamese organizations dealing with the POW/MIA issue. Other than providing background information and suggesting documents that the drafter should read, the Director stated that he had no contact with the drafter and did not contribute to the NIE; nor did he see the estimate until it was released. Interviewing policymakers who have specific knowledge or expertise is neither unusual nor out of line during the research phase of an estimate. In the case of this estimate, the drafter makes it clear that he consulted with U.S. policymakers in order to gather information on Vietnamese cooperation.

Charges of Politicization in 1993/94

The *Critical Assessment* maintains that the questions it has raised about the politicizing of intelligence with respect to the NIE are relevant in view of "indications suggesting that such actions took place during the current Administration on the same issues being reviewed in the current NIE." It then makes a number of assertions about the events leading up to the DoD release in January 1994 of an unclassified interagency intelligence analysis of the 735 and 1205 documents.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

NSC Tasking

The *Critical Assessment* states that, on 12 February 1993, the then-Deputy National Security Adviser, having been briefed on the discovery of the 1205 document, tasked the IC to analyze the implications of the following hypothetical scenario:

> Assume that a document from a senior North Vietnamese Army official established that on September 15, 1972, the North Vietnamese were holding 1205 American prisoners of war . . . ; the North Vietnamese were deliberately concealing the true number of prisoners they were holding from the outside world; the fate of these prisoners was under consideration by the Hanoi Politburo . . . if such a document were deemed reliable . . . what are the implications of this information generally, what are the implications in light of Vietnam's obligations under the Paris Peace Agreement?

The assessment goes on to say that:

> . . . the phrasing of this White House tasking, i.e., if such a document were deemed reliable, what are the implications . . . , can be interpreted as politicizing of intelligence, because it opens the door for an Administration judgment that a document is *not* reliable if it is deemed to have *negative* implications for planned U.S. policy toward Vietnamese if it is judged to *be* [emphases in original] reliable.

By omitting a key portion of the tasking (in bold below) and creating a false continuous sentence, the *Critical Assessment* has created an out-of-context quotation that distorts the meaning of the language. In fact, the tasking listed the various conditions of the document (i.e., the North Vietnamese were holding 1205 American POWs, concealing the true numbers, and deliberating their fate). The tasking then began a new paragraph which asked:

> If such a document were deemed reliable**, how would this information conform with our existing knowledge of American POWs?** [emphasis added] What are the implications of this information generally? What are the implications in light of Vietnam's obligations under the Paris Peace Agreement?

While the wording of the tasking may be awkward, it is not asking what the implications are for U.S. policy as the *Critical Assessment* implies. It

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Approved for Release: 2021/06/25 C00500205

does not appear to be pre-judging the conclusions of the analysis it is requesting. Nor does it imply that the Administration plans to judge the document as *not reliable* if it is deemed to have *negative* implications for planned U.S. policy. The tasking appears to be raising questions of legitimate interest and concern to policymakers, particularly during a period when the Clinton Administration was trying to establish its policy toward Vietnam. In any event, it is the prerogative of policymakers both to task the IC and then to do what they want with the information and analysis they receive.

In its response to the tasking, the DIA Office for POW/MIA (the predecessor to DPMO) discussed the implications of such a claim, i.e., that the North Vietnamese were holding 1205 American POWs in September 1972. As cited in the *Critical Assessment*, the DIA response provides hypothetical conditions such a fact might imply (e.g., that the Vietnamese would have been holding 665 more POWs than we were aware of at that time; that these POWs would have to have been spirited away from the point of capture and placed in a completely separate prison camp; and that some of these men would have survived to the present). In addition, the DIA response analyzes these hypotheses and conditions, concluding that, "the undisputed evidence provided by 30 years of intelligence collection refutes the hypothesis."

IC Analysis: Timing of Release

The *Critical Assessment* states that the interagency analysis of the 735 and 1205 documents was disseminated to the media on 24 January 1994, "three days prior to a U.S. Senate vote on whether to urge the lifting of the U.S. trade embargo on Hanoi, and one week prior to the President's announcement of his determination to lift the embargo." It terms the timing of the release suspicious, because the study had been prepared and forwarded to the Under Secretary of Defense for Policy in an unclassified format seven months earlier and because the President had stated on 10 December 1993 that he intended to release the analysis as soon as possible. According to the *Critical Assessment*:

> Clearly, the release of this unclassified document of information prepared with major input by elements of the Intelligence Community, had been delayed for political purposes in order to obtain maximum effect on decisions being made and/or announced within the Congress and the White House.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

The *Critical Assessment* is correct in asserting that there was an unexplained delay in the release of the report and that it may have occurred for political reasons. The delay was not as long as the assessment implies, however. On 21 May 1993, the Acting Deputy Assistant Secretary of Defense for POW/MIA Affairs requested that an interagency study of the 1205 document be prepared; he noted that several agencies had done analyses of the document and published initial findings, but that the findings should be combined into a coordinated document. He noted that the outcome of the meeting would be a final paper that DoD could release and that would serve as a position paper for testimony, media inquiry, and other scrutiny. The Deputy NIO/EA agreed to chair an IC panel to assess the 1205 document.

Much of the work for the interagency study already had been done. DIA, INR, and the Deputy NIO/EA (drawing on both the DI and the DO) had analyzed the 1205 document separately. Each had concluded independently that, while it probably was a valid GRU document, the information it contained on American POWs was not valid. The Deputy NIO/EA prepared a draft and sent it to the IC representatives in early June 1993. The draft's "bottom line judgment" was that "the document is not what it claims to be, and the information suggesting more than 600 additional POWs were held in Vietnam is not accurate." This judgment would not be disputed by any IC member and would be the judgment of the paper released to the public in January 1994 by the DoD. Two coordination meetings were held to discuss the study, and minor changes were made.

The coordinated study was sent to the Acting Deputy Assistant Secretary of Defense for POW/MIA Affairs in late June 1993. He did not release it publicly at that time. The Acting Deputy told us that he thought the assessment was fair and straightforward, but that he knew it would draw criticism because it had political implications. He said that politics might have been a consideration in his reluctance to release it to the public.

On 2 September 1993, portions of the second GRU document, the 735, were made public, and DoD again requested an IC assessment. The Deputy NIO/EA gathered the same interagency group and updated the original study to include an analysis of the available portions of the 735 document. The study was sent to the Acting Deputy, who "again chose not

Approved for Release: 2021/06/25 C00500205

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to release it," according to the Deputy NIO/EA, who went on to say that the Acting Deputy "had complained that some of the points were a bit to [sic] sharp....

The study also raised concerns in the NSC. The Acting Deputy was not alone in arguing that the analysis of the documents was too sharp. According to several accounts, the National Security Adviser indicated that he wanted the analysis "flattened" in the study that was going to be released to the public. A member of the NSC staff confirmed that the National Security Adviser considered the study "too dismissive" of the 735 and 1205 documents and wanted the drafter to state that the books would not be closed on these reports. The Deputy NIO/EA wrote on 19 January 1994 that:

> . . . the White House is perhaps oversensitive to charges that we are "debunking" these reports (the 735 and 1205) and appears to want to hold out at least the possibility that they may be valid.

According to the Deputy NIO/EA, the Acting Deputy believed that "we have to call them as we see them." In addition, the Acting Deputy indicated that DPMO analysts were resisting the changes that "flattened" the language and might insist that they be restored. The Deputy NIO/EA would have had no problem restoring the original language; he argued that the critics are going to "dive bomb the Administration no matter what and cannot be assuaged with word-noodling." The political issue that held up release of the unclassified study, at least at this stage, appears to have been pressure from the National Security Adviser to "flatten" the tone of the language to make it more palatable to those who accepted the validity of the 735 and 1205 information, combined with reluctance on the part of the Acting Deputy to release a study that would be attacked by critics of Administration policy. We found no evidence that the delay was linked to a decision on lifting the trade embargo as the *Critical Assessment* alleges.

The unclassified interagency analysis of the Russian documents was released by the DoD on 24 January 1994. The analysis and conclusions were the same as those in the separate DIA, INR, and Deputy NIO/EA studies as well as those in the coordinated draft studies. The tone of the study, however, is somewhat more conciliatory; the door is open to new information that may shed more light on the validity of the information in the documents. While the drafter of the IC study did not feel political

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

pressure from the Clinton Administration to change judgments, he did feel pressure to soften the tone of the report to make it more compatible with the views of those who believed that the 735 and 1205 documents contained valid information on the number of American POWs held by the Vietnamese in 1972.

Charges of Improper Direction

At the end of its section on politicization of the 1993/94 process, the *Critical Assessment* implies that, on several occasions, improper comments were made or directions given that constituted politicization. The first is said to have occurred at a White House meeting with the President, Vice-President, National Security Adviser, and two other DoD and DoS officials involved with POW/MIA accounting efforts. The assessment indicates that this meeting occurred before the Under Secretary of Defense for Policy formally requested that an assessment of the 1205 document be prepared for release to the public (the DoD request was made in May 1993). During the meeting, according to the *Critical Assessment*, the President reportedly stated that he "did not want the 1205 document to get in the way of normalization of relations with Vietnam." The implication is that the President's statement precipitated a decision to produce and release to the public a politicized study that would dismiss the 1205 document.

We interviewed two senior officials who met with President Clinton on 15 April 1993 to discuss the POW/MIA issue. One indicated that he had heard the President utter the statement exactly as quoted above, but that it would be inappropriate for him to comment further about the meeting. The other senior official, read the following excerpt from his notes of the meeting:

> He [the President] wanted to move forward [with normalization], but Vietnam had to take the initiative with the fullest possible accounting of MIAs; must have tangible progress to resolve the 1205 document [sic].

This official said that he did not recall the President saying anything about not letting the 1205 document get in the way of normalization or any words to that effect.

In the aftermath of the meeting of 15 April, the President's Special Emissary to Vietnam, General John Vessey, traveled to Hanoi. Both his talking points in preparation for the trip and his news briefing after the trip

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

indicate that resolution of questions related to the 1205 document was a major issue during his trip. At his news briefing on 21 April, General Vessey stated that he had come away from meetings with the President before his trip and after his return from Vietnam with the view that, "the fullest possible accounting for missing Americans is a high priority issue." He said that the President had "made it clear to me before I went to Vietnam, he made it clear to me today [sic]." A senior official who served on the NSC during this period told us that, while there was natural concern that the 1205 document would have an impact on policy, there was never any indication that we should not do everything necessary to follow up on it.

In the months that followed, the Clinton Administration reaffirmed its commitment to the fullest possible accounting for POW/MIAs and continued the trade embargo against Vietnam pending further progress on POW/MIA accounting. President Clinton announced the lifting of the trade embargo in February 1994, after the Senate approved a non-binding resolution urging that he do so. In July 1995 (more than two years after his alleged comments on the 1205 document), President Clinton announced the normalization of relations with Vietnam.

We found no credible evidence that the Clinton Administration tried to pressure the IC to ignore or dismiss the 1205 document in 1993. Rather, the evidence available to us suggests that the Administration's political concern was just the opposite—that it not appear to be dismissing or debunking the 1205 document; this concern would be expressed again in 1998 as NIE 98-03 was being prepared.

The final allegation in the *Critical Assessment* is that, at the first meeting to discuss preparation of the 1994 assessment of the 1205 document, the Deputy NIO/EA:

> . . . reportedly announced to those gathered that the 1205 was not reliable with respect to U.S. POWs, and that was the operating assumption under which the 1993/94 DoD-released product was consequently prepared.

This charge is not supported by the facts. The first meeting to discuss the interagency study was held on 4 June 1993, after the Deputy NIO/EA had disseminated his rough draft which included the analysis that the 1205 document was not reliable with respect to numbers of U.S. POWs and after each of the participating agencies had disseminated separate reports that

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

independently arrived at the same conclusion on POWs. All participants had reached the conclusion that the information on POWs in the 1205 document was not reliable before coming to the interagency meeting; it was not a conclusion dictated to them by the Deputy NIO/EA.

The *Critical Assessment* acknowledges that the evidence brought to bear on specific charges of politicization is "circumstantial." We found only one incident raised by the *Critical Assessment* that is supported by our evidence and that suggests political considerations affected intelligence reporting on the POW/MIA issue; that instance is the DoD delay in releasing the unclassified interagency study on the 735 and 1205 documents in 1993-94. While it is not the right of the policymaker to change the substance or judgments of an intelligence product, it is the prerogative of a policymaker to request that an intelligence product be declassified for release and to decide whether and when to release such a product. While the decision of the Acting Deputy Assistant Secretary of Defense for POW/MIA Affairs to delay publication probably was influenced by political considerations, it was within his authority to make. The handling of the matter did not affect the findings of the intelligence product.

GENERAL CHARGE OF POLITICIZATION

The general allegation that the Clinton Administration has politicized intelligence on the POW/MIA issue and specifically on NIE 98-03 certainly will persist. It stems from the belief that the U.S. Government is covering up the fact that American POWs were abandoned in Vietnam after Operation Homecoming in 1973. In this section, we will address the allegation that NIE 98-03 was politicized by reviewing instances of attempted influence on the process.

We interviewed more than 80 individuals in the IC and the policy side of the Executive Branch to understand the steps involved in the process of preparing, coordinating, and approving NIE 98-03. These interviews uncovered no instances of pressure from the Executive Branch of the U.S. Government to influence the body or judgments of the estimate. The National Security Adviser requested that the NIC produce the estimate and that the TOR be coordinated with the SSCI. After that, neither he nor any other member of the NSC played any role in the production of the NIE. The DoD's involvement included the data and

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

analysis from DPMO, CILHI, Stony Beach, and JTF-FA and draft coordination by DIA and the members of the MIB. At no time did any DoD policymaker attempt to influence the body or substance of the estimate. At the DoS, the INR analyst played a role in coordinating the draft estimate. Aside from the request by the U.S. Ambassador to Vietnam that a point in the draft estimate be emphasized, there was no attempt by DoS policymakers to influence the body or substance of the estimate. Similarly, in its meeting to approve the NIE, the NFIB, which is made up of the most senior members of the IC, made no attempt to influence the body or substance of the estimate.

We found unusual interest and involvement in the estimate process by parties outside the IC, however. Both the SSCI and Senator Smith had an impact on the estimate process, beginning with the negotiation of the TOR. The NIO/EA believed that he could not proceed until the SSCI had responded to each version of his TOR. This resulted in accumulated delays of almost six months. It also resulted in some confusion about the actual scope of the estimate and the time frame it would cover. None of the individuals we interviewed knew of an instance, other than this one, in which coordination of TOR by a non-IC organization had occurred.

Senator Smith and his staff also played a key role in shaping the TOR. The NIO/EA at the time the TOR were being negotiated intended that a re-evaluation of the 735 and 1205 documents would be a separate research study. Senator Smith wanted the re-evaluation to be part of the NIE and this view was conveyed to the SSCI staff; the SSCI suggested changes to the TOR in late October 1997 that included a re-evaluation of the 735 and 1205 documents as one of the two key questions to be addressed in the estimate.

In his November 1997 meeting with the NIO/EA, Senator Smith went further, telling the NIO/EA what conclusions he thought the NIE should reach. He expressed his views about the key issues involved, particularly on the subject of the 735 and 1205 documents, and he said that he was not confident that the Clinton Administration would not interfere in the estimate process. His legislative assistant offered to participate in the estimate process itself.

On the eve of the MIB and NFIB meetings of April 1998, Senator Smith raised the issue of the documents held at the SSCI, stating that no

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

one had reviewed them and that, if the IC published the NIE without such a review, he could not "believe in it." His concern resulted in a delay in publication of the estimate. The DCI directed that a team visit the SSCI to read the documents and that two more outside readers review the draft NIE. In addition, the DCI became more involved in questioning the language of the estimate.

While we found no evidence that any member of the Clinton Administration made any effort to influence the substance, conclusions, or judgments of NIE 98-03, members of the IC as well as outside readers of the estimate were keenly aware that the NIE would be criticized by those who believed that the Vietnamese were not cooperating in good faith on POW/MIA matters and those who believed that American POWs were left behind in 1973. At numerous stages in the production of the estimate, readers urged that the tone of the estimate, but not its fundamental conclusions, be softened to placate potential critics. The result was an estimate which softened its language on issues involving Vietnamese cooperation; the alleged transfer of American POWs to the USSR; the assessment of the 735 and 1205 documents; and the charge that American POWs were left behind following Operation Homecoming.

From the beginning, Senator Smith had an impact on the estimate process:

- The TOR process was delayed;
- Confusion over the scope of the estimate and the time frame it would cover was never fully resolved;
- Both DPMO and the NIO/EA, who had been criticized by Senator Smith, withdrew from formal participation in the preparation of the estimate. These decisions weakened the substantive and analytic expertise brought to bear on the subject; and
- Senator Smith's insistence that the SSCI documents be reviewed delayed final NFIB approval and release of the NIE.

In addition, while Senator Smith's interventions did not directly affect the substance or fundamental judgments of the estimate, concern about his

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

reaction and that of other Administration critics did have an impact on the tone of the report. The language of the estimate was repeatedly modified, thus conveying less confidence about certain issues than the IC actually had.

If politicization of NIE 98-03 occurred, it was in softening the tone of the NIE to placate likely critics, rather than in supporting the foreign policy objectives of the Clinton Administration. The IC responded to Senator Smith's expressions of his position and to the cumulative advice from members of the IC, including the DCI, and from outside readers to modify the language of the estimate to avoid criticism. The body and the fundamental judgments did not change, but repeated modifications of language did soften the tone of the NIE.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

PART VI: CONCLUSIONS

We have studied NIE 98-03 and its production to determine whether the drafter of the NIE failed to use all relevant documentation, sought to discredit relevant information, or engaged in faulty analysis. We have examined the process of producing the estimate to determine whether politicization occurred or was attempted. Finally, we have analyzed the specific charges made in the *Critical Assessment*, cross-walking those charges to the relevant NIE statements in order to assess their validity. These approaches have enabled us to assess the NIE's analytical vigor, objectivity, accuracy, and completeness, as requested by the SSCI.

We conclude that:

- The drafter had access to and reviewed relevant documentation;
- There was no attempt to discredit relevant information;
- The drafter used appropriate methodology and sound analysis in producing the estimate;
- No official of the Clinton Administration put pressure on either the drafter or other members of the IC to influence the substance or fundamental judgments of the estimate;
- Senator Smith and his staff had an influence on the tone of the estimate:
  - Members of the IC reacted to their perception that Senator Smith and other critics of Administration policy would be critical of the NIE. Concerned that the estimate might appear to be dismissive of the concerns of critics, reviewers at all levels recommended modifying the language of the NIE;
  - These modifications produced softer language than the NIE drafter and the IC originally had proposed;
  - The fundamental substantive judgments of the NIE were not altered;

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

- Overall, the NIE demonstrates analytical vigor, objectivity, accuracy, and completeness; and

- Several decisions made by the NIC and the NIE drafter created openings for criticism, and some of the analysis in the NIE is flawed. Neither these decisions nor the analytic shortcomings affected the judgments of the estimate.

RELEVANT DOCUMENTATION

No effort was made by either the NIE drafter or other members of the IC to discredit relevant information, and no repository of information was overlooked. On the contrary, the NIE drafter pursued relevant information and was given complete access to that information. This included documents and/or complete lists of documents from DPMO, both RA and JCSD; CIA; organizations within the Office of the Secretary of Defense; DoS; DIA; NSA; JTF-FA; and CILHI. In addition, the drafter met with knowledgeable officials to review the information and make sure he was not missing anything. Given the amount of time he had to complete the estimate, the NIE drafter did a credible job of reviewing available information held by the IC, in particular, and the U.S. Government, in general.

The NIE drafter is vulnerable, however, to criticism that he did not pay attention to pre-1987 documentation. The issue of the period of time the estimate would cover arose early in the process and was never resolved. The drafter made it clear to us that his understanding of the tasking and the TOR was that he should cover the period since 1987. In addition, he and the IC agreed to accept a 1992 CIA study as having covered the period from 1987 to 1992 in its analysis. While the original TOR explicitly stated that the estimate would cover the period since 1987, they did not include a re-evaluation of the 735 and 1205 documents. When re-evaluation, as opposed to an update of the 1994 assessment of the documents, was included in the TOR, the parameters shifted. Senator Smith's legislative assistant told us that re-evaluation of the 735 and 1205 documents as a key question for the NIE obligated the drafter to search as far back as the document trail allowed.

Nov 26, 2024 000142
Approved for Release: 2021/06/25 C00500205
JA 672

Approved for Release: 2021/06/25 C00500205

We have not attempted to reconcile these two divergent points of view, which reflect a legitimate disagreement based on differing perceptions of the tasking. We note, however, the delay in the completion of the TOR (the SSCI held the draft TOR from early July 1997 until the end of October 1997); the addition of the 735 and 1205 documents to the "Key Questions" of the TOR; and the introduction of a new NIO/EA and a new NIE drafter, neither of whom had been involved in the negotiations of the TOR. The former NIO/EA had intended to treat the 735 and 1205 documents as a separate research project. The new NIO/EA and the NIE drafter accepted the final TOR with their expanded focus without changing the time allocated to complete the NIE, the time frame on which the research would focus, or their perception of the scope of the project.

In our review of the NIE and the *Critical Assessment*, we did find it necessary to search for documentation as far back as the document trail allowed. The information we reviewed provided new insights into many of the issues treated in the NIE and the *Critical Assessment*. None of this information contradicted the conclusions or changed the judgments reached by the NIE drafter and the IC.

QUALITY OF NIE ANALYSIS

We found the overall quality of analysis in the NIE to be good. The argumentation is vigorous and logical, and the conclusions are balanced and well-documented. On the subject of Vietnamese cooperation on POW/MIA matters, the drafter used relevant information and interviews with knowledgeable officials in reaching the conclusion that Vietnam's performance in dealing with the POW/MIA issue has been good in recent years. The NIE judgment is properly cautious, particularly given the caveat that unresolved areas of Vietnamese cooperation warrant continued close attention by the U.S. Government.

On the subject of the NIE's re-evaluation of the 735 and 1205 documents, a basic misunderstanding developed about what the NIE was to accomplish. Whereas the former NIO/EA planned to address the 735 and 1205 documents in a separate research study, Senator Smith wanted these issues addressed in the NIE; according to his legislative assistant, he wanted an independent review of the 735 and 1205 documents as well as an independent analysis of the numbers of POWs held by Vietnam.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

Whereas Senator Smith expected an in-depth analysis of the 735 and 1205 documents and related issues, the assumptions of the NIC, the NIE drafter, and the IC were quite different. They assumed that the NIE would reflect the best judgments of the IC as developed by knowledgeable analysts; they did not plan to undertake basic research and analysis. As a result of his perception of the task, the drafter of the NIE did not undertake an in-depth re-evaluation of the 735 and 1205 documents. Instead, he accepted the IC position on the legitimacy and accuracy of the documents as well as the U.S. Government's position on the basic question of numbers of POWs held by the Vietnamese. The combination of this acceptance of previous positions and the limited time allocated to completing the project prevented the NIE drafter from taking a fresh look at a number of contentious issues.

The NIE did not come to grips with the issue of the numbers of POW/MIAs not accounted for and the impact of the 735 and 1205 documents on that issue. No organization or person felt compelled to do the research and analysis necessary to illuminate and challenge the polarized interpretations that have developed over the years. We took on that task, an unusual undertaking for statutory oversight organizations, because we wanted to determine whether there was evidence that might have affected the NIE if it had been taken into account. It took us nearly three months of research and analysis to understand that neither of the mutually-exclusive accounting methodologies was sufficient. That being said, the NIE's judgments on this issue remain valid; the 735 and 1205 documents are genuine GRU documents, but the information contained in them related to numbers of POWs held by the Vietnamese cannot be relied upon. The two documents are mutually inconsistent in that regard.

As a result of our analysis, we can conclude with far greater confidence than did the NIE that the numbers of POWs reported in the 735 and 1205 documents are inaccurate. We accept that the documents are genuine and that other information contained in them is valid. But the information on the numbers cannot be accurate.

Because of the existence of competing methodologies and polarized positions, we also undertook an independent analysis of the discrepancy or compelling cases. This issue had been avoided by the Senate Select Committee in 1993, and only DPMO had analyzed the cases. Senator Smith's legislative assistant told us that he had assumed that the NIE

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

drafter would conduct such an analysis, but he did not. Once again, we believed that it was our responsibility to determine whether relevant information existed that might have affected the judgments of the NIE. We obtained the case assessments for the 289 cases on Senator Smith's list of 324 names for which verified remains have not been returned. Our review suggests that, at most, three of the cases (and, in all likelihood, none) remain compelling today. We do not claim to have resolved any of these cases. We believe, however, that our methodology can be replicated and that a far better understanding of the remaining number of compelling cases might be achieved.

The withdrawal of DPMO from the estimate process inhibited analysis of POW/MIA issues. Several of the mistakes made by the drafter could have been prevented had DPMO analysts been more closely involved in coordinating the estimate. While not a member of the IC, DPMO possesses most of the U.S. Government's data and analytic expertise on POW/MIA issues. NIE deliberations frequently include the participation of non-IC members who are particularly knowledgeable as "back benchers." In our view, the decision by DPMO management, accepted by the IC, to exclude DPMO was unfortunate.

One of the mistakes DPMO could have prevented was the NIE's characterization of the mortician and his information. The NIE failed to capture the intricacies of the mortician's story and its implications. Since that story was a major point of disagreement between the SNIE of 1987 and the NIE of 1998, the story had to be told accurately and completely. The NIE did not do that and exacerbated the issue by not taking into account the conclusion reached in the 1996 IC Assessment. The IC Assessment did not discredit the mortician. It claimed that the numbers in the 1987 SNIE were based on limited direct evidence whose reliability was open to question. The NIE mislabeled the mortician an unreliable source. The DPMO argues that the mortician was reliable with respect to the remains he had actually worked on, but that his estimate of stored remains that he did not work on was less accurate. We agree with the conclusions of the 1996 IC study and the DPMO.

Another area in which DPMO might have helped the NIE drafter is on the issue of Vietnamese mistreatment of POWs. The NIE's approach to this issue is limited and does not directly address the problem the issue causes for both Vietnamese and U.S. policymakers. There is substantial

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

evidence that mistreatment occurred; there also is substantial evidence that the Vietnamese will not admit that mistreatment occurred. U.S. policymakers are concerned that emphasizing this point to the Vietnamese can only undermine efforts to achieve full accounting.

The NIE overstated its case that there is no evidence that the Vietnamese currently are storing the remains of American POWs. The NIE did indicate, however, that the DPMO in conjunction with CILHI was investigating the question and that further conclusions had to await publication of that study. The DPMO remains report was issued in June 1999, more than one year after the NIE was published. The study concludes that remains may not have been repatriated in two cases involving five sets of remains. That conclusion was not factored into the NIE, but those preparing the remains study may not have made that determination by the time the NIE was published. In addition, the DPMO's 1995 zero-based comprehensive review concluded that there were some cases where the Vietnamese Government did not turn over recovered remains. That conclusion also was not factored into the NIE.

The *Critical Assessment* challenges the NIE's judgments with respect to the possible existence of a separate prison camp and/or the possible transfer of U.S. POWs to the former Soviet Union. The assessment cites a 1976 CIA "study" that concluded that the possibility of a second prison system "cannot be disregarded." We found the alleged study and determined that it was an internal CIA draft based solely on the preliminary work of a junior imagery analyst. The junior analyst hoped to find evidence of live POWs and a second prison camp system, but that hope was not realized. The CIA desk officer who had responsibility for evaluating the North Vietnamese prison system from 1965 to 1992 never found credible evidence of the existence of such a system. In our review of documents and statements made by Russian officials and others, we found no credible evidence to support either the existence of a second prison camp system or the transfer of American POWs from Vietnam to the former Soviet Union or elsewhere.

None of our criticisms of the estimate affects its basic substance and judgments; these stood up to rigorous examination. We found that the IC understanding of the issues was sound and that the NIE judgments were accurate.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

POLITICIZATION

We found no indication that any member of the Clinton Administration attempted to influence the NIE in any way. Nor did we find support for charges that the Clinton Administration tried to influence intelligence reporting on issues relating to POW/MIA during 1993-1994, when the first IC analysis of the 735 and 1205 documents occurred, with the exception of the efforts of some to make the tone more acceptable to anticipated critics. The concern expressed by Administration policymakers was that the IC not appear to be dismissing or debunking the information contained in those documents.

We did find that Senator Smith had an impact on the estimate process and the tone of the estimate. He played a role in framing the final TOR, ensuring that a re-evaluation of the 735 and 1205 documents was included as one of the key questions. In his meeting with the NIO/EA in early November 1997, he expressed his opinion on issues to be addressed in the estimate and implied that any differing conclusion would be the result of pressure from the Clinton Administration. He and his legislative assistant tried to insert themselves into the estimate process. Senator Smith called the Director, DIA before the MIB meeting of April 1998, stating that the NIE drafter had failed to review documents held by the SSCI and indicating that he could not accept the estimate if the documents were not reviewed.

Members of the IC, as well as outside readers of the estimate, were aware that the NIE would be criticized by those who believed that the Vietnamese were not cooperating in good faith on POW/MIA matters and those who believed that American POWs were left behind in 1973. At numerous stages in the production of the estimate, they urged that the tone of the estimate be softened to placate those who might be critical. The result was an estimate with modified language on issues relating to Vietnamese cooperation and to the 735 and 1205 documents.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

A FINAL NOTE

We are concerned by the *Critical Assessment*'s overarching implication that political pressure has been applied to the intelligence process by the Clinton Administration. Such a charge, even if vague and unsubstantiated, tends to gain credibility if it is repeated. Many in the community of POW/MIA families have come to believe that politicization exists. This perception has been fed by persistent accusations of a government conspiracy to cover up the contention that American POWs were abandoned in Vietnam after Operation Homecoming in 1973. No such conspiracy exists.

We found caring and sensitive people working on the POW/MIA issue at all levels of the government. Addressing the issue is especially difficult for those who must put emotion and personal considerations aside in pursuit of factual information. To demonstrate the difficulty in doing so, we cite two of these professionals: the recently retired Director, DIA and an imagery analyst who worked on the prison camp issue as a junior analyst in the 1970s.

The Director, DIA told us that, after meeting with Senator Smith in June 1997, he was convinced that the U.S. Government had not done enough. He said that he wanted to believe that American POWs had been left behind after Operation Homecoming. DIA senior staff officers confirmed that the Director was persistent, persuasive, and personally driven to ensure that analysis of the POW/MIA issue was correct. Ultimately, as Chief of the MIB, responsible for the analytical position of the entire military intelligence structure, he concluded that the facts demonstrated that he was "wrong in his heart." There was no credible evidence to support the position that live POWs had been left behind in Vietnam. Similarly, the then-junior imagery analyst told us he had wanted to find Americans alive after Operation Homecoming and that he never lost that personal focus during his nearly 30-year career. He never found evidence to support what his heart told him. The facts simply were otherwise.

Altogether we formally interviewed more than 80 individuals and contacted about 20 others who had relevant information. Without exception, we found dedicated professionals searching for the truth as best

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

they could. We found diligent Senate staff members who wanted the government and especially the IC to hide nothing. We found dedicated support personnel who held nothing from us. We found experienced intelligence operatives who had worked the POW/MIA issue their entire careers; they had asked the hard questions over and over again but had found no information to support the hypothesis that live American POWs remained in North Vietnam after Operation Homecoming. We found analysts committed to two sound analytical propositions—leaving no stone unturned and letting the facts speak for themselves. We found policymakers attempting as best they could to deal openly and in a straightforward manner with an emotional and difficult issue.

We had a unique platform from which to review the relevant policy and intelligence information. No document in its original form was withheld from us. No document in its entirety was refused us. No marginalia, desk note, sticky, or other scrap of information was excluded from files we asked for, to include those held by the SSCI.

We were not asked to determine whether there was a government conspiracy to cover up the contention that American POWs were abandoned in Vietnam after Operation Homecoming in 1973. Given the fact that there are those who continue to believe such a conspiracy exists, however, we emphasize that we found not one factual thread in all the thousands of pages of documentation we reviewed to indicate that such a conspiracy exists today or ever existed. To the contrary, we found no reason to challenge the finding reported by Congressman Sonny Montgomery to the Speaker of the House of Representatives nearly a quarter century ago:

> …the results of the investigations and information gathered during its 15-month tenure have led this committee to the belief that no Americans are still being held alive as prisoners in Indochina, or elsewhere, as a result of the war in Indochina.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

ANNEX A: Methodology

We used an historical research design, a methodology that seeks to reconstruct the past objectively and accurately. We augmented that approach with contrast and comparison, and quantitative and replication methodologies where appropriate. Our design had 12 components:

- Review all the research files of the drafter of the National Intelligence Estimate (NIE);
- Identify and review previous studies, in particular those conducted by non-Executive Branch entities;
- Review other relevant document holdings, including those of Senator Smith and the CIA, the Directorate of Operations, to include construction of data bases;
- Interview persons with first-hand information or expert knowledge;
- Review contemporary literature. The Defense Technical Information Center conducted a tailored search of its various databases at our request to identify relevant documents and publications;
- Search the world wide web;
- Conduct our own analysis of the data collected because the drafters of the NIE and the *Critical Assessment* used fundamentally different and mutually exclusive approaches;
- Analyze and compare the content of each draft of the NIE to assess the impact or influence on the text of various readers;
- Evaluate a structured sample of official case assessments of persons unaccounted for in Southeast Asia as maintained by the Defense Prisoner of War/Missing Personnel Office (DPMO);

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

- Conduct a zero-based review of a Missing in Action (MIA) case;

- Contrast and compare interviews and statements of Russian sources from the perspective of both the NIE and the *Critical Assessment*; and

- Retranslate from the Russian language portions of the 735 and 1205 documents relevant to the POW/MIA issue.

We used an iterative approach to synthesize the data and other information collected. Interviews were primarily open-ended narrative accounts with follow-on questions and sessions, if required. For example, we met three times with the drafter of the NIE and three times with Senator Smith's legislative assistant for the *Critical Assessment*. We met with the Senate Select Committee on Intelligence (SSCI) staff point of contact on four different occasions, twice to review relevant documents. We reviewed on several occasions the material provided to us by the drafter of the NIE. We requested specific document searches by the Office of the Director, Defense Intelligence Agency (DIA), the DPMO, various offices of the Under Secretary of Defense for Policy, and the Department of State (DoS), Bureau of Intelligence and Research (INR). To assimilate documents obtained from diverse sources, we created a master database and then constructed analytical files in two ways, one chronologically and one functionally. As a cross check, each agency (CIA and Department of Defense (DoD)) built its own functional files and performed parallel analysis of key issues. We reviewed over 20,000 pages of responsive information.

We interviewed more than 80 current and former officials of DoS and DoD, the National Security Council (NSC); the CIA, the DIA, the National Security Agency (NSA), the SSCI, and the office of Senator Smith. Specifically, we interviewed:

- **At DoS:** the current U.S. Ambassadors to Vietnam and Cambodia; the Assistant Secretary of State, Bureau of East Asia and Pacific Affairs; the Director, Office of East Asia Analysis, INR; and a former member of INR;

- **At DoD:** the Under Secretary of Defense for Policy; the Assistant Secretary and the Principal Deputy Assistant Secretary of Defense

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

for International Security Affairs; two former and the current Deputy Assistant Secretary of Defense for POW/MIA Affairs; the Director, Indochina, Thailand, Burma, Office of the Assistant Secretary of Defense, International Security Affairs; and the Assistant Director for Polygraphs, Office of the Assistant Secretary of Defense (Command, Control, Communications, and Intelligence);

- **At CIA:** the Chairman and Vice Chairman of the National Intelligence Council; two former National Intelligence Officers for East Asia, and a former Deputy NIO for East Asia; former and current senior officials, reports officers, and analysts from the Directorates of Operations and Intelligence, the Office of Congressional Affairs, and the National Counterintelligence Center; and the drafter of NIE 98-03;

- **At DIA:** a former Director; a former and the current Director and the Vice Deputy Director, Policy Support; the Deputy Intelligence Officer for East Asia and Pacific; the former Director and former Deputy Director, Special Office for POW/MIA Affairs; the Chief, Security, Investigations and Polygraph Branch; and representatives from the Office of the Executive Secretariat;

- **At DPMO:** the Director; the Deputy Director; Chief of Staff; Chief, Plans and Policy; Director, Research and Analysis (RA) Directorate; the Chief, Joint Commission Support Directorate (JCSD); and senior officials and analysts within RA and JCSD;

- Former Presidential emissary to Vietnam and former Chairman of the Joint Chiefs of Staff;

- The Chief, Central Identification Laboratory, Hawaii (CILHI), and other CILHI officials;

- The Chief, Special Projects, Joint Task Force–Full Accounting;

- The former Chairman of the U.S. side of the U.S.-Russia Joint Commission on POW/MIAs;

- The Chief, U.S. Air Force Polygraph Program;

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

- Representatives from NSA;
- Current and former staff members from the SSCI; and
- Senator Robert C. Smith's legislative assistant.

In addition, we met with Senator Smith to discuss his views on the issue.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

ANNEX B: Summary of Selected Prior Reports

Since the conclusion of Operation Homecoming in 1973, the Prisoner of War/Missing in Action (POW/MIA) issue has been the subject of numerous reports. Listed below, in chronological order, are those reports that were relevant to our research.

13 December 1976

Americans Missing in Southeast Asia—Final Report Together with Additional and Separate Views of the Select Committee on Missing Persons in Southeast Asia, 13 December 1976, U.S. House of Representatives (94th Congress, 2nd session, House Report No. 94-1764) (The report was reprinted on 5 August 1988, House Committee Print No. 15, 100th Congress, 2nd Session). This House Select Committee sought to conduct a full and complete investigation and study of the problem of United States servicemen still identified as missing in action and those known dead whose bodies have not been recovered. The report concludes that no Americans are still being held as prisoners and that a total accounting is not possible and should not be expected. Finally, the report suggests that a partial accounting is possible and that the most effective means of obtaining this accounting is through direct governmental discussions.

23 March 1977

Presidential Commission on Americans Missing and Unaccounted for in Southeast Asia Report on Trip to Vietnam and Laos March 16-20, 1977, 23 March 1977, Office of the White House Press Secretary. The Commission's mandate focuses on obtaining an accounting of missing Americans in Southeast Asia. The report concludes that the resumption of talks in Paris between U.S. and Vietnam officials and the normalization of relations are required in order to afford the best prospect for obtaining a fuller accounting of missing personnel.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

27 May 1986

The Tighe Task Force Examination Review of DIA Intelligence Holdings Surrounding Unaccounted for United States Military Personnel in Southeast Asia, 27 May 1986. The Director, Defense Intelligence Agency (DIA) asked the Task Force to evaluate the evidence regarding unaccounted for U.S. military personnel in Southeast Asia and to provide an evaluation of DIA conclusions on the POW/MIA issue. The Task Force also reviewed pertinent files and the handling of those files, looking for any indication or "COVER-UP" [emphasis in original]. Among its conclusions, the Task Force found no evidence of a "cover-up" by DIA. The Task Force also concluded that:

- A large number of MIAs may never be properly accounted for and that ". . . false hope should not be offered to those seeking a total accounting of POW/MIAs;"
- DIA holds information that establishes a "strong possibility" of POWs being held in Laos and Vietnam; and
- The U.S. Government's handling of the POW/MIA issue is "constantly harassed by phonies and profiteers," which probably jeopardizes the lives of Americans.

September 1987

SNIE 14.3-87, Hanoi and the POW/MIA Issue, 1987, Special National Intelligence Estimate (SNIE). The resolution of the fate of the 2,413 American servicemen still unaccounted for in Indochina remains a priority humanitarian issue for the U.S. Government, which believes that the fate of the servicemen should be treated separately from other political and economic concerns. The report states that Vietnam publicly characterizes the accounting of servicemen as a humanitarian issue, but also uses the POW/MIA issue as a means to influence public opinion in the United States to achieve broader political objectives. The report concludes that Hanoi sees the solution to the POW/MIA issue to be in its greater long-term interest, but sees tactical benefits in manipulating the issue in the interim.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

23 May 1991

An Examination of U.S. Policy Towards POW/MIAs by the U.S. Senate Committee on Foreign Relations Republican Staff, 23 May 1991, U.S. Senate, Committee on Foreign Relations. The minority staff interim report concludes that the "internal policy" of the U.S. Government is to act upon the presumption that all MIAs are dead. The report charges that "any evidence" indicating a MIA might be alive is "uniformly and arbitrarily rejected." Furthermore, the report charges that all efforts are directed towards finding and identifying remains of dead personnel, even though U.S. Government techniques of identification are "inadequate and flawed."

February 1992

Vietnam: Adjusting Its Strategy on the POW/MIA Issue, EA 92-10004, February 1992, Directorate of Intelligence. This Central Intelligence Agency report examines Hanoi's evolving attitude toward the POW/MIA issue. The report concludes that, since 1988,Vietnam has become "more cooperative" in resolving questions concerning U.S. military personnel reported as possible POWs/MIAs during the Vietnam War.

13 January 1993

POW/MIAs, 13 January 1993, U.S. Senate, The Senate Select Committee on POW/MIA Affairs (103rd Congress First Session, Report No.103-1). The Senate Select Committee on POW/MIA Affairs wants the United States to meet its obligation to the missing and to the families of those yet to be accounted. The report details testimony and evidence regarding POW/MIA accountability issues involving World War II, the Korean Conflict, the Cold War, and Vietnam. The report states that the Committee's work helped to create the Joint Task Force-Full Accounting and the U.S.-Russia Joint Commission. The report stresses that the quest for the fullest possible accounting of Vietnam-era POW/MIAs must continue but to be effective and fair to families, these accounting efforts must go forward within the "context of reality, not fiction."

Nov 26, 2024 000156
Approved for Release: 2021/06/25 C00500205
JA 686

Approved for Release: 2021/06/25 C00500205

21 July 1993

Report to Ambassador Malcolm Toon, Chairman of the U.S. Side of the Joint U.S./Russian Commission on POW/MIAs from U.S. Senator Bob Smith, Commissioner, 21 July 1993, Office of U.S. Senator Bob Smith. The report is subtitled "An Interim Analysis of the 1972 Translation of a North Vietnamese Report Concerning U.S. POWs Discovered in 1993 in the Archives of the Former Soviet Union and Subsequently Provided to the U.S. Side of the Joint U.S./Russian Commission on POW/MIAs." This report asserts that North Vietnam "withheld the total [emphasis in original] number and identity of American POWs in Vietnam, Laos, and Cambodia over whom it had direct control." Furthermore, the report rejects Vietnam's claim that the Russian translation is "pure fabrication" and states the "U.S. Government should stop believing that it knows the fate of just about everybody." Finally the report asks the American public to study the facts, even if it means revisiting old issues.

24 January 1994

Recent Reports on American POWs in Indochina: An Assessment, is an unclassified, coordinated, interagency intelligence analysis of the 735, 1205, and Dang Tan Reports documents. The assessment concludes that the 1205 document, discovered in a Soviet archive by an American researcher, may be a "genuine" Russian document, but the accuracy of its rendering of the POW situation in 1972 is outweighed by errors, omissions, and propaganda. The 735 document, also discovered in another Soviet archive, asserts that there were 735 American fliers held in Hanoi in January 1971, and is also determined to be a genuine Russian document. As with the 1205 document, similar questions are raised regarding the accuracy of the 735 accounting. Furthermore, the 735 and the 1205 documents are inconsistent with each other. The Dang Tan Reports, which document the claims of a North Vietnamese defector that in late 1967 Hanoi held "more than 800" pilots as POWs, are assessed to be "embellished" with hearsay and rumor. In an overall statement, the assessment, in reviewing all three documents, encountered the same problems experienced since the beginning of the conflict in Vietnam—inaccuracies, inconsistencies, exaggerations, and fabrications.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

13 November 1995

A Zero-Based Comprehensive Review of Cases Involving Unaccounted for Americans In Southeast Asia, 13 November 1995, Department of Defense. The report provides the results of a zero-based comprehensive review of all cases involving unaccounted for Americans in Vietnam, Laos, and Cambodia resulting from the Vietnam War. Leaving "no stone unturned," using evidence as well as Southeast Asian cultural and historical practices and operational realities, the report concludes that of the 2,202 cases under consideration 1,476 still have investigative leads to pursue. The report concludes that the acquired conclusions and judgments make it possible to develop a work plan comprised of the best steps to move cases toward resolution.

17 June 1996

Comprehensive Report of the U.S. Side of the U.S.-Russia Joint Commission on POW/MIAs, 17 June 1996. Established on 26 March 1992, the U.S.-Russia Joint Commission on POW/MIAs focuses on determining:

- If any American POW/MIAs are still being held in the former Soviet Union against their will;
- The fate of unaccounted-for members of the U.S. Armed Forces who were located on the territory of the Soviet Union or about whom the Russian Government may have information; and
- Facts pertaining to Soviet personnel missing from the war in Afghanistan and from the Cold War-era loss incidents.

The report states that no U.S. citizens are currently being detained within the territory of the former USSR. This conclusion is based on a thorough analysis of all archival documents, interviews with witnesses, and on-site inspections of possible American housing sites.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

October 1996

Vietnamese Storage of Remains of Unaccounted U.S. Personnel, ICA 96-05, October 1996, Intelligence Community Assessment. The report was prepared in conjunction with the declassification review for the 1987 SNIE on POW/MIA issues. The report reviews what was stated in the 1987 report and how the authors determined that Hanoi had collected and stored between 400 and 600 remains. The report concludes that although the Vietnamese Government collected and stored remains it is not possible to estimate the number of American remains involved. Furthermore, the range of 400-600 remains contained in the 1987 SNIE is not supported by subsequent evidence.

June 1999

Vietnam's Collection and Repatriation of American Remains, June 1999, Defense POW/Missing Personnel Office. The report provides an analysis of Vietnam's remains collection and repatriation process. The report examines questions such as, "How many remains did Vietnam collect?; How many remains has Vietnam repatriated?; and Are there any more remains still stored?" The report concludes that the Vietnamese authorities collected and stored approximately 300 remains, of which 270 to 280 have been repatriated. The report draws no conclusion regarding the "discrepancy" of 20 to 30 remains, but it does suggest that the discrepancy may be attributable to incomplete data used to formulate the storage of "approximately 300" remains.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

ANNEX C: Methodology Used in Examining Charges in the *Critical Assessment*

We studied each of the 51 exceptions taken by the *Critical Assessment* to determine if we could identify actionable criticisms against the National Intelligence Estimate (NIE), i.e., criticisms with enough clarity to be assessed. There was, however, no one-to-one correlation between each NIE statement at issue and criticism of that statement. Further, with minor exceptions, arguments against a specific NIE statement did not readily lead to actionable criticisms. For example, an argument against a particular NIE statement might contain no specific criticism or it might contain the thread of several criticisms. We decided that an approach based on specific criticisms by the *Critical Assessment* was insufficient. Next, we cross-walked, line-by-line, the NIE statements at issue in the *Critical Assessment* back to the NIE. Initially, we noted that the NIE statements selected for argument in the assessment appeared to lend themselves to grouping or categorization. This approach was not fruitful either, once again because there was no one-to-one correlation.

In pursuing our line-by-line comparison, however, we found that the *Critical Assessment* contained significant methodological shortcomings. Some of its arguments on their face have little merit, and nearly all of the NIE statements at issue had been taken out of context, which distorted their meaning. While these observations did not produce an effective evaluation approach, we believe it is important to document what we found. Following are examples of arguments that lack merit:

- "*The NIE contains only two photographs, both provided by the U.S. Army Central Identification Laboratory (CILHI) in Hawaii . . . .*" The Critical Assessment questions why:

> . . . we are treated to pictures which hardly seem directly germane to the estimate's terms of reference. I find such action by the NIC troubling, especially when there is no precedent for such action with respect to other NIEs.

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We cannot comment. The inclusions (or exclusions) of such photographs are an author's prerogative. The second such argument is:

- "*In some instances, Vietnamese on recovery teams have willingly worked beyond the terms of their contracts to successfully complete operations. Cultural reasons contribute to this record.*" And, "*. . . for local officials, participation in joint field activities can be financially profitable. People in their villages can earn* ***much*** [emphasis added by *Critical Assessment*] *more by working on the activity than they could in their normal work.*" The *Critical Assessment* says that these statements conflict and questions why they are cited in the NIE as indicators of Vietnam's cooperative intentions. Again, we have no comment except to note that the emphasis on the word "much" was not in the NIE.

We selected one out-of-context argument as illustrative. [Note: One complete NIE section is provided; it includes the two *Critical Assessment* extracts at issue. One extract is ***bolded and italicized***; the other is **bolded and underlined**. Original NIE text not extracted by the *Critical Assessment* is not bolded, italicized, or underlined].

Moreover, although ***Vietnam's performance generally has improved with respect to the US POW/MIA issue,*** **we think Hanoi has not been completely forthcoming on certain POW/MIA matters:**

- **In some instances, we believe full disclosure would prove embarrassing to the regime. For example, Hanoi continues to deny that US POWs were mistreated while in captivity in the North.**

- **We think Vietnam still has records it could make available to US investigators but which would discredit its denials of mistreatment.**

A few reports of transfers of US POWs to Russia and other countries are unexplained, and the books remain open.

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Approved for Release: 2021/06/25 C00500205

> Although 120 live-sighting investigations have been carried out by US teams, none has generated any credible evidence of American POWs left in Vietnam. Hanoi protests having to investigate such cases, but reports appear regularly and established procedures for resolving them continue to be in effect.
>
> Although ***Vietnam's overall performance in dealing with the POW/MIA problem has been good in recent years,*** the unresolved issues noted above suggest the need for continued close attention by the US Government.

This out-of-context extraction is so convoluted that it needs to be repeated for clarity. The two resultant statements in the *Critical Assessment* are:

> ***. . . Vietnam's performance generally has improved with respect to the US POW/MIA issue . . . . Vietnam's overall performance in dealing with the POW/MIA problem has been good in recent year . . ." and***
>
> **". . . we think Hanoi has not been completely forthcoming on certain POW/MIA matters: In some instances, we believe full disclosure would prove embarrassing to the regime. For example, Hanoi continues to deny that US POWs were mistreated while in captivity in the North. We think Vietnam still has records it could make available to US investigators but which would discredit its denials of mistreatment. A few reports of transfers of US POWs to Russia and other countries are unexplained, and the books remain open."**

The first out-of-context extract contains two qualified clauses that are prefaced with the word "although" in the original; the second extract is lifted from the NIE text between those two qualified clauses. We cannot address any argument that derives from that type of selective quotation. While we selected only one such example of an out-of-context quotation, similar methodology is used throughout the *Critical Assessment* and was noted as it applied to specific issues.

We considered several approaches based on sampling to evaluate the *Critical Assessment*'s arguments against the NIE statements. We rejected a universal approach which would have involved evaluating each of the arguments against all 51 NIE statements; this would have been a

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massive undertaking with the net result being "point-counterpoint," an approach already shunned by the National Foreign Intelligence Board and the Military Intelligence Board as counterproductive. Moreover, as previously discussed, the approach was not doable in any rigorous sense. We also rejected a random approach because we did not want to risk omitting important substantive issues.

In the end, we selected a structured approach that involved evaluating a subset of the arguments against the 51 NIE statements. To assist in defining that approach, we scanned the *Critical Assessment* and the NIE into databases that we could search. That step revealed an underlying structure to the *Critical Assessment* that we could evaluate effectively. The persistent, repetitive theme of the *Critical Assessment* is that its arguments are based on information provided to or made available to both the drafter of the NIE and the Intelligence Community. In three instances, the *Critical Assessment* makes footnote references to specific letters of transmittal of that information. For clarity, we referred to the persistent messages in the *Critical Assessment* and its footnotes as "thematic statements."

Overall, we identified thematic statements involving 27 of the 51 NIE statements at issue in the *Critical Assessment*. Even though there were no explicit thematic expressions related to the other 24 NIE statements at issue, the repetitive theme that the drafter did not review relevant documentation is implicit in the *Critical Assessment*'s language on those statements as well.

Nov 26, 2024 000163
Approved for Release: 2021/06/25 C00500205
JA 693

Approved for Release: 2021/06/25 C00500205

ANNEX D: Intelligence Community Publications Reviewed by National Intelligence Estimate Drafter

- Special National Intelligence Estimate 14.3.87, "Hanoi and the POW/MIA Issue," September 1987.
- Central Intelligence Study, "Vietnam: Adjusting Its Strategy on the POW/MIA Issue," February 1992.
- Senate Select Committee, POW/MIA Affairs Report, "POW/MIAs," 13 January 1993.
- Intelligence Community (IC) Assessment, "Recent Reports on American POWs in Indochina: An Assessment," 24 January 1994.
- A Zero-Based Comprehensive Review of Cases Involving "Unaccounted for Americans in Southeast Asia," 13 November 1995.
- IC Assessment ICA 96-05, "Vietnamese Storage of Remains of Unaccounted US Personnel," October 1996.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

ANNEX E: Recovery and Remains Documentation Reviewed by National Intelligence Estimate Drafter

- The February 1992 CIA Intelligence Assessment, "Vietnam: Adjusting Its Strategy on the Prisoner of War/Missing in Action (POW/MIA) Issue.

- A 1993 Interagency Working Group on Vietnam policy review paper stating that cooperation on witness interviews, area searches and site excavations had increased dramatically since 1988 and that, since 1992, Vietnam had allowed expanded geographic coverage and frequency of joint field activities.

- The 1993 Defense Prisoner of War/Missing Personnel Office assessments that conclude, "the return of remains from Vietnam, while increasing, has not kept up with U.S. expectations." However, overall, "when compared to the absence of progress that was the norm previously, Vietnam cooperation is to be commended."

- A 1993 National Security Council (NSC) Principals Committee meeting report.

- A 1995 letter from the Secretary of Defense to the Chairman, House National Security Committee that states that during the first two years of the Clinton Administration, 204 sets of remains had been repatriated from Vietnam and Laos and 49 sets had been identified.

- The 13 November 1995 Department of Defense Zero-Based Comprehensive Review that mentions that Vietnam has shared the results of its own investigations; provided wartime records on POWs, aircraft downings, and other engagements in which Americans became unaccounted for; and turned over records of deaths and burials, and photographs.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

- The Department of State input to the NSC for the 1998 Presidential Determination on Vietnamese cooperation stating that 28 joint field activities had been conducted that resulted in 221 sets of remains recovered. Twenty-two sets of remains were returned in 1997.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

ANNEX F: Comments by Russian Sources

	Overall Access	735/1305 Valid			735/1205 Creditable			Position / Function
		Yes	Unk	No	Yes	Unk	No	
	High		1			1		National Security Advisor to Russian President
	High		1				1	Ambassador to Vietnam (1974-86)
	High		1			1		KGB General
	High	1			1			CPSU Central Committee Secretary Maintaining Ties to Socialist Countries (70s)
	High		1			1		Ambassador to Vietnam (1990-96)
	High	1				1		GRU, Chief (1997-99)
	High	1				1		GRU Chief, (1984-96)
	High	1				1		Consultant, Russian Defense Council, former head of the MFA Archives
	High	1				1		Deputy Foreign Minister (1977-95)
	High	1				1		KGB, FCD, Head Southeast Asia Dept (during the war)
	High		1				1	CPSU Central Committee Political Issues on Vietnam (1965-86)
	High	1			1			GRU in Embassy in Hanoi (1968-72)
Sub-Total	12	7	5	0	2	8	2	
	Med		1			1		Interpreter and Adviser Embassy in Hanoi (1970-80)
	Med	1					1	Political Counselor for Reporting on Vietnam Foreign Policy
	Med		1			1		Embassy in Hanoi (1962-65 - Junior Diplomat - and 1974-78 - Advisor to Ambassador)
	Med	1				1		CPSU Central Committee, Head International Dept Indonesia-Malaysia (1963-73)
	Med	1				1		CPSU Central Committee, International Dept Vietnam (1962-77); Embassy in Hanoi (1960-62; 77-83)
	Med	1						Previous GRU Representative on the USRJC
	Med	1						KGB Representative in Hanoi (1975-76)
	Med		1			1		Embassy in Hanoi (1972-76 and 1982-88 - 1st Secretary Then Later Counselor)
	Med	1						KGB, FCD, Tracking CIA operatives worldwide (32 year veteran)
Sub-Total	9	6	3	0	3	5	1	
	Low		1			1		Prominent Military Journalist
	Low		1			1		Russian Author and Researcher
	Low		1			1		Air Defense Instructor (1973-74)
	Low		1			1		Engineer Advisor in Vietnam (1973-74)
	Low		1			1		Journalist in Vietnam (1972-76)
	Low		1			1		Air Defense Radio/Radar Engineer, in Vietnam (1966-67)
	Low		1			1		Air Defense Advisor in Vietnam (1966-67)
	Low		1			1		Air Defense Technical Advisor and Researcher in North Vietnam (1968-69)
	Low		1			1		Journalist in Laos (1966), Vietnam for much of the 1970s
	Low		1			1		Air Defense Advisor (1966)
Sub-Total	10	0	10	0	0	10	0	
TOTAL	31	13	18	0	5	23	3	

Approved for Release: 2021/06/25 C00500205

ANNEX G: Case Review Methodology

For each case answer the following questions Y (yes) N (no) or I (inconclusive):

A. Is there evidence the individual survived the incident (e.g. aircraft loss, fire fight, or accident)?

B. Is there evidence the individual could have been taken captive?

C. Is there evidence the individual entered a prison system?

D. Can any of three governments (Vietnam, Laos, and Cambodia) account for the individual (e.g. documentary or physical evidence)?

Record responses on the attached spreadsheet by case [REFNO] and Name.

Case #	Last Name	YY MM	Country	A	B	C	D	Compelling Dec 92	Compelling Post 92	Aircrew

Case # - DPMO Reference Number.
Last Name -
YY MM – Year and Month of incident
Country – As specified in the case assessment
A – Question A
B – Question B
C – Question C
D – Question D
Compelling Dec 92 – Case considered compelling prior December 1992 Smith list.

Compelling Post Dec 92 - Case considered compelling after December 1992 Smith list.

Aircrew - Yes or No

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

For each question the answer is "**Y**," "**N**," or "**I.**" For example:

Case #	Last Name	YY MM	Country	A	B	C	D	Compelling Dec 92	Compelling Post 92	Aircrew
0001	Adams	6806	VN	I	N	N	Y	N	N	Y

There is inconclusive evidence that Adams, an aircrew member, survived a June 1968 combat incident and there is no evidence that he was taken captive or entered a prison system. Documentary evidence has been provided which establishes his fate prior to the December 1992 Smith list beyond a reasonable doubt, thus the case is not compelling.

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

ANNEX H: Results of Compelling Case Review

The results of the three independent reviews of the "compelling cases" are summarized in this annex. A case number can refer to more than one individual; accordingly there may be more than one entry per case number. For each case number, six areas of concern were addressed. For each area of concern, each reviewer's response was noted. "1" indicates a yes; "IN" indicates inconclusive, and a blank indicates no.

For each area of concern, the scoring was tabulated to determine whether there was a consensus "C" or a unanimous "U" response. A consensus required one of three reviewers to vote yes and at least one other reviewer to score the same factor either as a "yes" or as "inconclusive." A "U" required all three reviewers to vote "yes."

Approved for Release: 2021/06/25 C00500205

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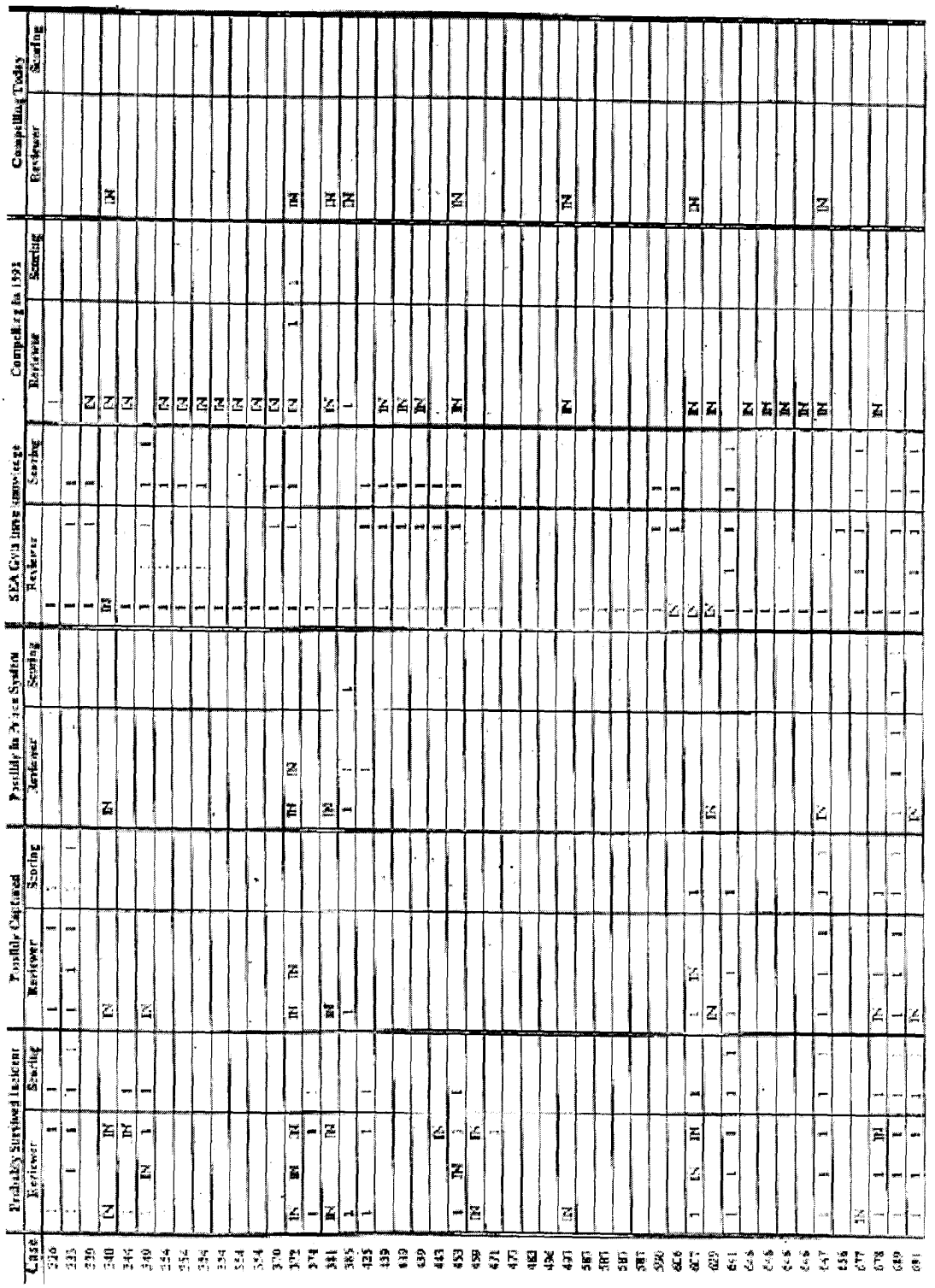
Approved for Release: 2021/06/25 C00500205

ANNEX H: Results of Compelling Case Review

Case	Probably Survived Incident					Possibly Captured					Possibly In Prison System					SEA Civs have knowledge					Compelling in 1992					Compelling Today				
	Reviewer			Scoring		Reviewer			Scoring		Reviewer			Scoring		Reviewer			Scoring		Reviewer			Scoring		Reviewer			Scoring	
	1	2	3	C	U	1	2	3	C	U	1	2	3	C	U	1	2	3	C	U	1	2	3	C	U	1	2	3	C	U
15	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1		1					1			
51			IN																											
51			IN																											
53			1													1	1	1	1	1										
54	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1										
72			IN													1	IN		1		1									
73			IN													1	IN		1		1									
79		1	1		1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1										
84		1	1		1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1										
91																1														
94																1														
96																														
98	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1		1	1	1											
108																IN		1	1		IN					IN				
108																IN		1	1		IN					IN				
109	1	IN	IN	1		1										1		1	1		1									
109	1	1	IN	1		1										1		1	1		1									
114	1	IN	1	1		1										1			1		1									
124	1	IN	1	1		1											1	1	1											
135																	1	1	1											
158	IN		1	1												1	1	1	1	1										
158	IN		IN													1	1	1	1	1										
162	IN		IN			IN										1	1	1	1	1	1					IN				
213			IN																											
223	IN					IN										1	IN		1		1					IN				
225	1		1	1				1										1												
243																														
248			IN																											
250			IN													1														
250			IN													1														
253	1	IN	1	1		1	IN		1		IN					1					1					IN				
258	1	1	1	1	1	1	1	1	1	1	IN					1														
267	1	1	1	1	1							1						1												
274			IN													1		1	1											
275																														
279																1		1	1											
287	1	IN	1	1												1		1	1		1									
287	1	IN	1	1												1		1	1		1									
290																IN	1	1	1											
292																IN	1	1	1											
293																IN	1	1	1											
304																														
307																														
323	1		1	1		1										1	IN		1		1									

Approved for Release: 2021/06/25 C00500205



Approved for Release: 2021/06/25 C00500205

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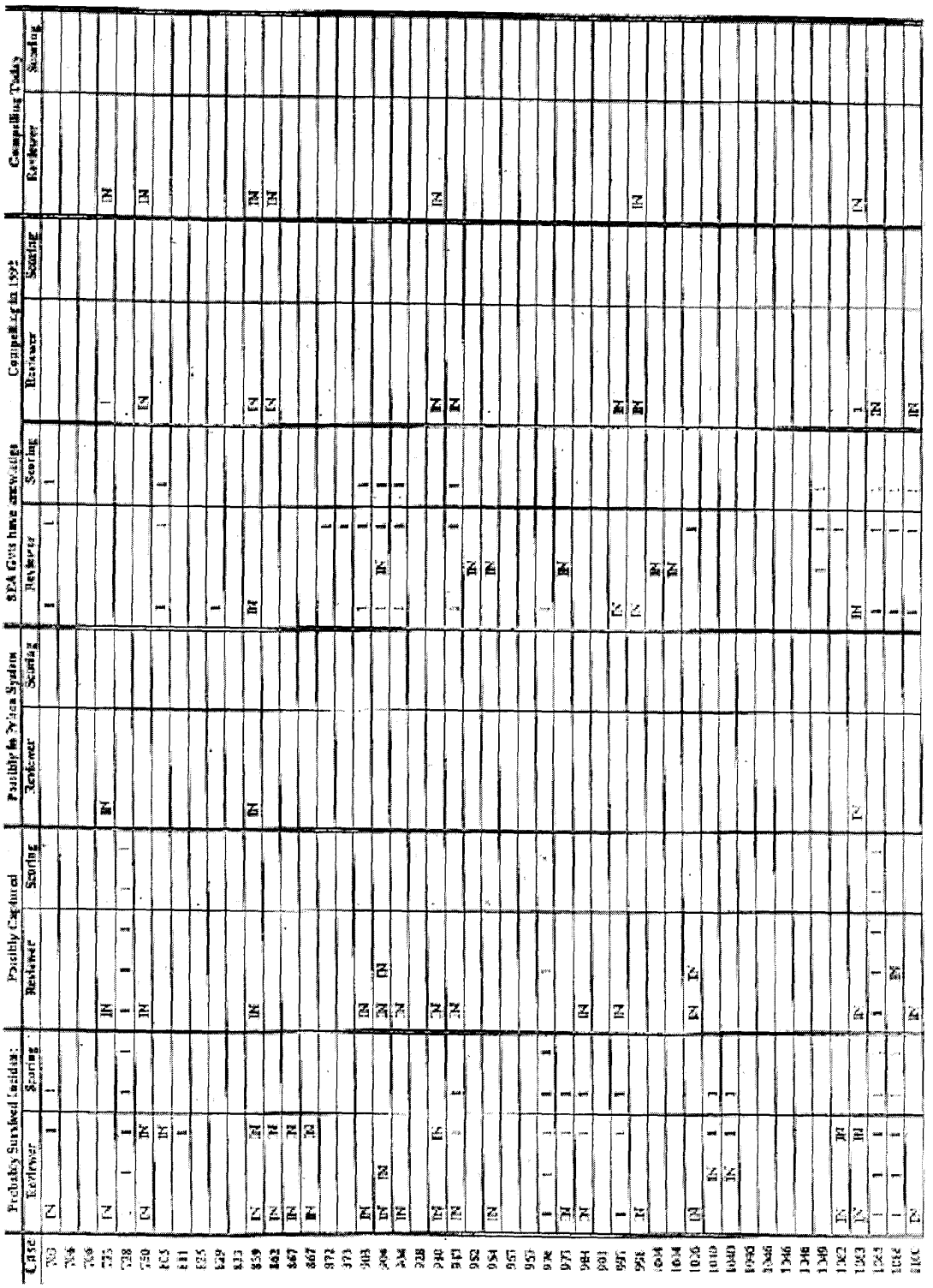

Case	Probably Surveilled Inside: Reviewer	Scoring	Possibly Captured Reviewer	Scoring	Possibly in Prison System Reviewer	Scoring	SDA Gets Same Answers Reviewer	Scoring	Compelling in 1992 Reviewer	Scoring	Compelling Today Reviewer	Scoring
703	IN	1					1	1				
708												
709			IN	1	IN							
725	IN	1	1	1					1			
728	1	1	1	1								
730	IN	IN	IN				1	1	IN			
805												
811	1	1										
825												
829							1					
833												
859	IN	IN	IN		IN		IN		IN			
862	IN	IN							IN			
867	IN	IN										
867	IN											
872												
873							1	1				
903			IN	1			1	1				
906			IN				IN					
934			IN									
938												
940	IN	IN	IN				IN		IN			
943							1	1	IN			
952	IN	1							IN			
954												
955												
955												
956												
957	1	1										
964	IN	1										
981												
995	1	1	IN						IN			
998	IN								IN			
1004												
1004												
1010	IN	1	IN									
1010	IN	1										
1040	IN	1										
1040												
1046												
1046												
1048												
1062							1	1				
1063	IN	IN	IN				IN		1		IN	
1064	1	1	1	1			1	1	IN			
1064	1	1	EN				1	1				
1066	IN	IN	IN				1	1	IN			

Approved for Release: 2021/06/25 C00500205

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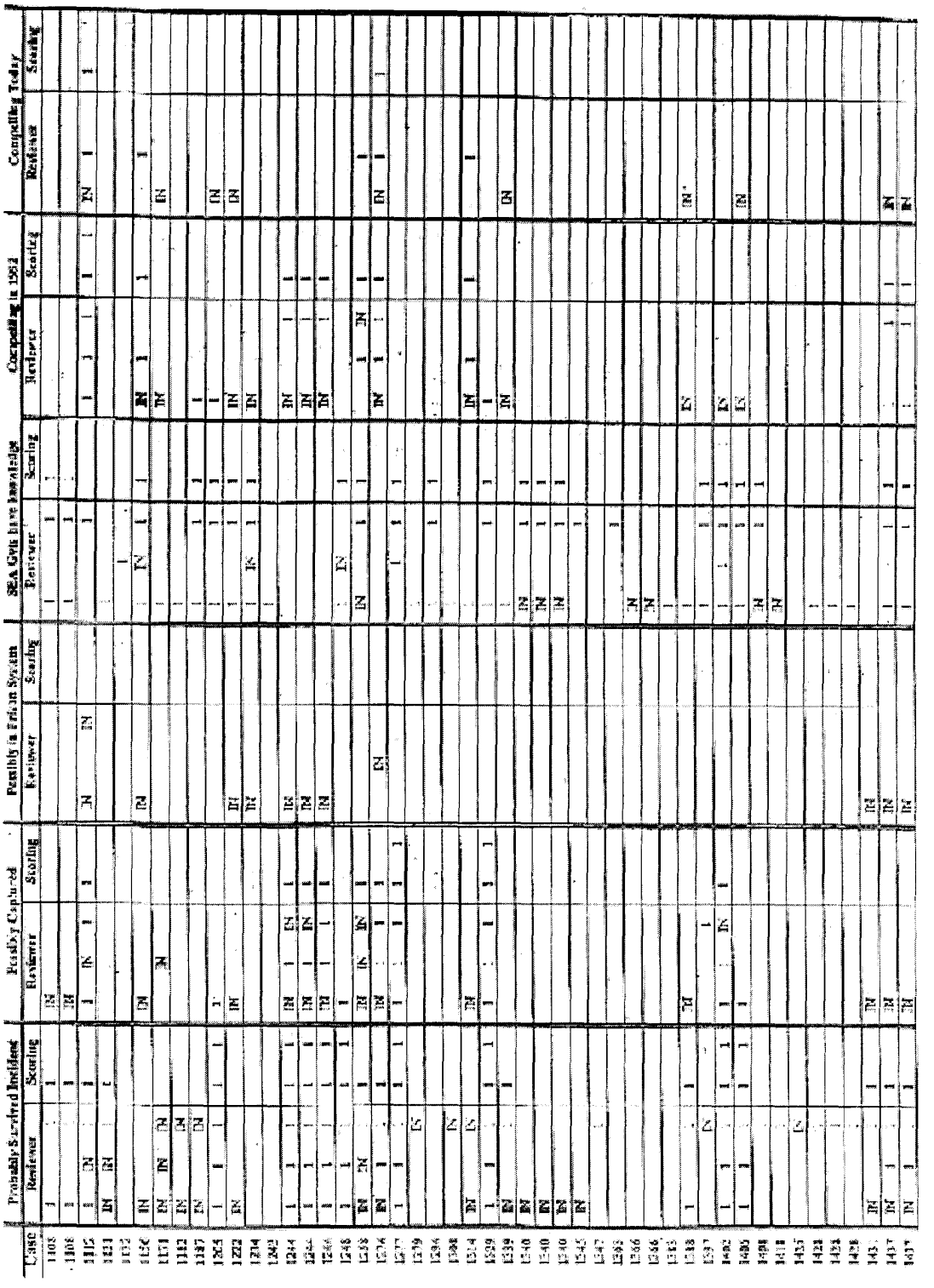

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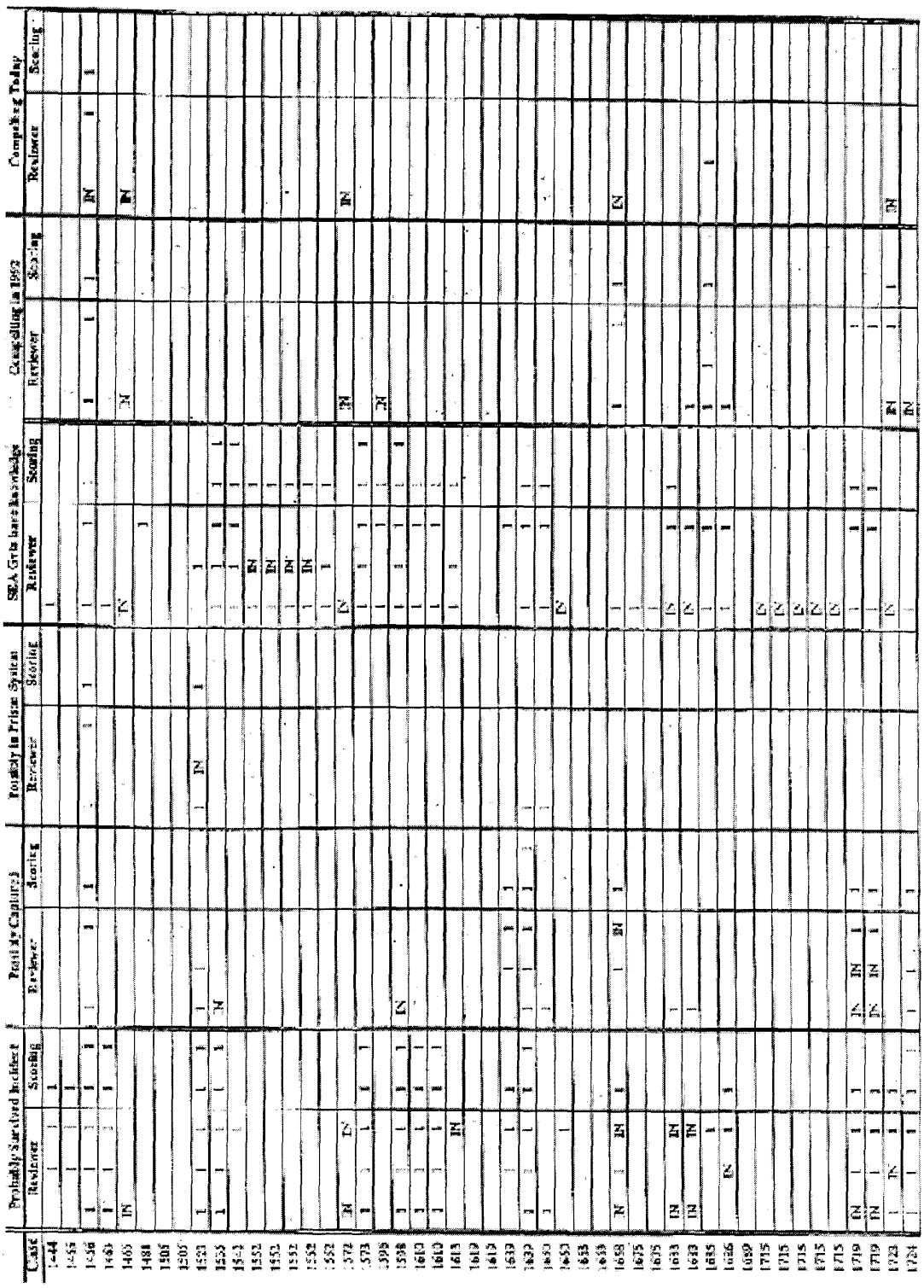

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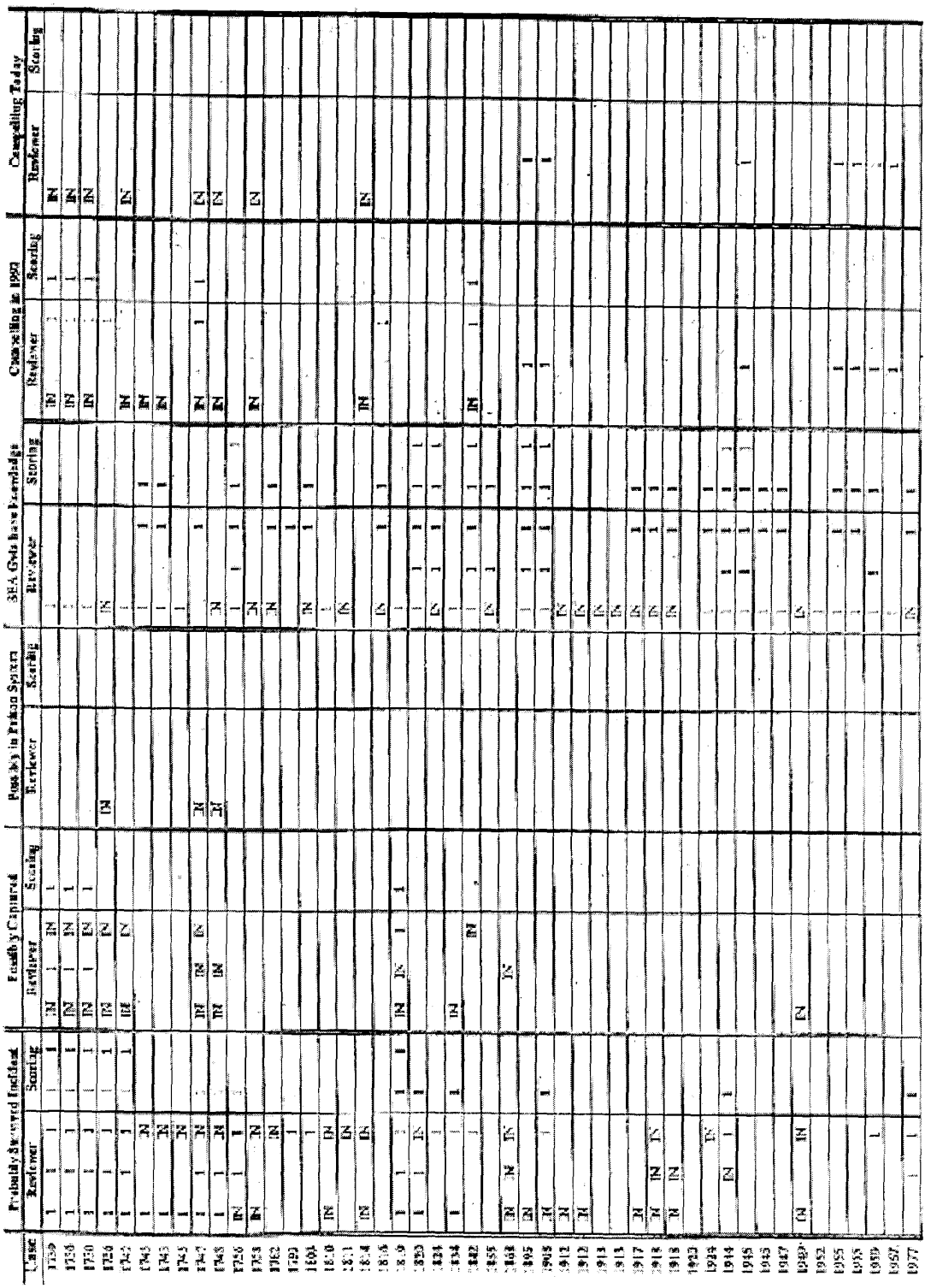

Nov 26, 2024

Approved for Release: 2021/06/25 C00500205

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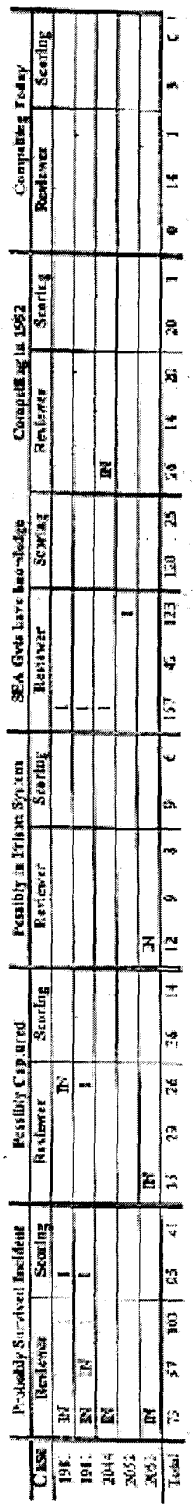

Case	Possibly Survived Incident		Possibly Captured		Possibly in Enemy System		SEA Gvts have knowledge		Compatible in 1982		Compatible Today	
	Reviewer	Scoring	Reviewer	Scoring	Reviewer	Scoring	Reviewer	Scoring	Reviewer	Scoring	Reviewer	Scoring
918	[redacted]	1					1					
991	[redacted]	1	1				1					
2044	[redacted]							1	[redacted]			
2053	[redacted]											
2055	[redacted]		[redacted]		[redacted]							
Total	72	57	103	63	33	29	26	36	14	9	6	3
					12	9	3	9	6	157	45	123
										120	25	
										58	14	26
										20	1	
										9	14	1
											1	3
												6

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

ANNEX I: Captain McDonnell Case Review

We specifically selected Captain McDonnell's case for review because the Advocacy and Intelligence Index for Prisoners of War-Missing in Action (AII POW-MIA) posted its version of the case on the Internet concurrent with our review of the Defense Prisoner of War/Missing Personnel Office (DPMO) assessments of Senator Smith's compelling cases. That juxtaposition of events became the *raison d'être* for adding one case review to our methodology.

We initially understood that DPMO was established to be the "one-stop shop" for POW/MIA issues. The Deputy Director, DPMO, told us the Senate Select Committee issued a "definitive finding" in its 1993 report that the process for keeping the families informed was not adequately supported. The families had to query too many places to obtain information. The committee report recommended creation of a one-stop organization—DPMO.

The DPMO is chartered by the Department of Defense Directive 5110.10, "Defense Prisoner of War/Missing Personnel Office (DPMO)," dated 16 July 1993. Part of the DPMO mission is to "exercise policy, control and oversight of the entire process for investigation and recovery related to missing persons and to establish procedures to be followed by Department of Defense boards of inquiry and by officials reviewing the reports of such boards." DPMO functions include:

- Serving as the DoD focal point for POW/MIA matters;
- Assembling and analyzing information on U.S. military and civilian personnel who are, or were, prisoners of war or missing in action; and
- Maintaining data bases on U.S. military and civilian personnel who are, or were, prisoners of war or missing in action.

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We found that DPMO is not a one-stop repository. Further, no one organization maintains a repository of information necessary to understand this particular case. We reviewed the files of three organizations—DPMO, Army Casualty Affairs Office, Joint Task Force-Full Accounting (JTF-FA)—and consulted three additional holdings before we understood the case sufficiently to write credibly about it.

The DPMO file only goes back to April 1969. Captain McDonnell was lost on 6 March 1969. The first item in the file is a report of interview with the executive officer of McDonnell's unit. That report established a misunderstanding that exists to this day—that McDonnell's seat belt was "neately [sic] undone." We found that, with respect to the McDonnell case, the DPMO file primarily holds intelligence information and some administrative information; it lacks operational information.

The U.S. Army Casualty Affairs file holds two relevant folders. One folder contains relevant correspondence because the Army's appointed casualty assistance officer is the family's official point of contact for case matters. The second folder holds original operational information concerning the search to locate Captain McDonnell. That folder contains original sworn testimony taken by a Missing Person Board convened to determine Captain McDonnell's status. We found that, with respect to this case, the Army file holds primarily administrative information and original operational information; it lacks intelligence information.

The JTF-FA file is the most complete and includes a summary of information prepared for the June 1994 flag/general officer review of the McDonnell case. The following quoted information is relevant:

- **JTF-FA Level of Effort**: The case was investigated during four joint [U.S.-Vietnam] operations. The teams pursued all witnesses and archival leads identified by Headquarters JTF-FA and DPMO. They conducted 20 witness interviews and two excavations. The Oral History Program team interviewed two former Peoples' Army of Vietnam officers and two authors identified as possible sources for the case. Joint teams visited the Hue Military Museum three times in an attempt to determine the provenance of Captain McDonnell's military identification card;

Approved for Release: 2021/06/25 C00500205

Approved for Release: 2021/06/25 C00500205

- **13th Joint Field Activity**: Officers interviewed three witnesses who provided consistent, credible information concerning the capture of an injured American helicopter pilot in March 1969. The pilot later died while being evacuated to higher headquarters. The American's body was reportedly buried near a stream. One of the witnesses claimed to have participated in the burial; and

- **JTF-FA Recommendation**: Fate determined for Captain McDonnell.

We found two additional aspects of the JTF-FA files noteworthy. First was the summation of the interviews about Captain McDonnell's fate and the chain-of-custody of his identification card. Second was the inclusion of two documents updating information from individuals who had testified during the Missing Person Board in 1969. Neither document was found in the DPMO or Army files; both provide new perspective:

- In April 1990, the gunship pilot was re-interviewed. He said that "Captain McDonnell probably removed [him] from his seat and placed him next to the aircraft." Captain McDonnell was not present when the pilot woke up four or five hours later; and

- In January 1993, the pilot who coordinated the air search for McDonnell and who provided a sworn statement to the Missing Persons Board recalled that "[Captain McDonnell] had told me in safety briefings that he believed the best solution was to E&E [evade and escape] from a crash site. Our battery policy was to get away from the crash site." The pilot, now a general officer concluded that McDonnell "was a brave officer who I believe was killed by the enemy shortly after he was captured."

We found that, for this case, the JTF-FA file holds all operational and most intelligence information; it lacks administrative information.

The comprehensiveness of the JTF-FA files caused us to review the DPMO files a second time to ensure we had not overlooked information important to the McDonnell case. During that review, we examined color photographs of Captain McDonnell's identification card and determined

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that the card in the Hue museum is *bona fide*. We also reconfirmed that no SIGINT reporting pertained to the case.

We examined three additional holdings. First, we reviewed the microfiche file maintained by the Library of Congress, a review which revealed that DPMO files were not sufficient to understand the McDonnell case. Second, because AII POW-MIA mentioned intelligence information reports that we had not previously seen, we reviewed the 15 volumes of uncorrelated intelligence reports held by the Pentagon library and found the referenced reports. Finally, we reviewed the CIA Directorate of Operations files for information on Viet Cong policy concerning the handling of POWs.

Information in the JTF-FA file supports the June 1994 decision to remove Captain McDonnell from the discrepancy list. Information in the DPMO files does not. We believe that explains why the Director, DPMO voted against his analysts' recommendation in the June 1994 review of the McDonnell case. The JTF-FA position was based on operational and intelligence files; the DPMO position was based primarily on intelligence files. We found the DPMO files not suitable for a complete and accurate understanding of the McDonnell case.

Approved for Release: 2021/06/25 C00500205

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ANNEX J: Distribution List

Chairman and ranking minority member of each of the following congressional committees:

- Senate Appropriations Committee
- Senate Armed Services Committee
- Senate Foreign Relations Committee
- Senate Select Committee on Intelligence
- House Appropriations Committee
- House Armed Services Committee
- House International Relations Committee
- House Permanent Select Committee on Intelligence

Assistant to the President for National Security Affairs

Chairman, President's Foreign Intelligence Advisory Board

Office of the Secretary of Defense:

- Secretary of Defense
- Deputy Secretary of Defense
- Under Secretary of Defense for Policy
- Assistant Secretary of Defense (Command, Control, Communications, and Intelligence)
- Assistant Secretary of Defense (International Security Affairs)
- Assistant Secretary of Defense (Legislative Affairs)
- Assistant Secretary of Defense (Public Affairs)
- General Counsel of the Department of Defense
- Deputy Assistant Secretary of Defense (Intelligence)
- Deputy Assistant Secretary of Defense (Prisoner of War/Missing Personnel Affairs)
- Special Assistant to the Secretary and Deputy Secretary of Defense
- Assistant to the Secretary of Defense (Intelligence Oversight)

Secretary of the Army
- Deputy Chief of Staff for Intelligence, Department of the Army

Secretary of the Navy
- Director of Naval Intelligence

Secretary of the Air Force

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Director of Intelligence, U.S. European Command

Commander in Chief, U.S. Pacific Command
Director for Intelligence, U.S. Pacific Command
Commander, Central Identification Laboratory, Hawaii
Commander, Joint Task Force-Full Accounting
Inspector General

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Director of Intelligence, U.S. Forces Command

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Deputy Director for Policy Support
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Central Intelligence Agency:
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Deputy Director of Central Intelligence
Associate Director of Central Intelligence for Military Support
Chairman, National Intelligence Council
Vice Chairman, National Intelligence Council
Deputy Director of Central Intelligence for Community Management
Executive Director
Deputy Executive Director
General Counsel
Director of Congressional Affairs
Director of Public Affairs
Deputy Director for Intelligence (DI)
Deputy Director for Operations (DO)
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DI/ Politicization Ombudsman
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Chief, East Asia Division, DO

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Assistant Secretary of State, Bureau of Intelligence and Research
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American Embassy, Hanoi
American Embassy, Moscow
American Embassy, Phnom Penh
American Embassy, Vientiane
Inspector General

Director, Federal Bureau of Investigation

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Plaintiffs' Exhibit E

CIA's February 2000 *Review of the 1998 National Intelligence Estimate on POW/MIA Issues and the Charges Levied by A Critical Assessment of the Estimate*, released December 3, 2024 ("*Review of the Charges II*")

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DEPARTMENT OF DEFENSE
AND
CENTRAL INTELLIGENCE AGENCY

A JOINT REPORT

A REVIEW OF THE 1998 NATIONAL INTELLIGENCE ESTIMATE ON POW/MIA ISSUES AND THE CHARGES LEVIED BY *A CRITICAL ASSESSMENT* OF THE ESTIMATE
(1999-5974-IG)
(00-OIR-04)

29 February 2000

Donald Mancuso
Deputy Inspector General
Department of Defense

L. Britt Snider
Inspector General
Central Intelligence Agency

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Dec 26, 2024

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TABLE OF CONTENTS

Page

GLOSSARY OF TERMS vii

EXECUTIVE SUMMARY ix

PART I: INTRODUCTION 1

BACKGROUND 1

OBJECTIVE 2

STRUCTURE OF REPORT 2

PART II: HISTORICAL PERSPECTIVE 4

OPERATION HOMECOMING AND THE END OF THE WAR 4

THE HOUSE SELECT COMMITTEE ON MISSING PERSONS IN SOUTHEAST ASIA 5

PROGRESS ON POW/MIA ISSUE 5

Carter Years (1977-1980) 5

Reagan Years (1981-1988) 6

Bush Years (1989-1992) 7

The Road Map 8

Senate Select Committee 8

Clinton Years (1993 to date) 9

Four Key Areas 9

Normalization 9

Certification/Determination Of Cooperation 10

~~SECRET~~ Dec 26, 2024 (b)(3) NatSecAct

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~~SECRET~~ Approved for Release: 2024/12/03 C06898860 (b)(3) NatSecAct

INTELLIGENCE COMMUNITY CAPABILITY 11
CIA Turns to Department of Defense 11
Intelligence Priorities and Standing Requirements 12
EVOLUTION OF THE DEFENSE POW/MISSING PERSONNEL OFFICE 14
DOD AGENCIES SUPPORTING POW/MIA MISSION 16
Joint Task Force–Full Accounting 16
Central Identification Laboratory, Hawaii 16
Stony Beach 17
ROLE OF U.S.-RUSSIA JOINT COMMISSION ON POW/MIAS 17
PRIVATE GROUPS 17

PART III: POW/MIA ESTIMATE PROCESS 19

STANDARD NIE PROCESS 19
Intelligence/Policy Nexus 20
Interagency Participants 20
REQUEST FOR POW/MIA ESTIMATE: POLITICAL ENVIRONMENT 20
NEGOTIATION OF TERMS OF REFERENCE (APRIL-NOVEMBER 1997) 21
Initial Drafts 21
SSCI Delays 24
Changing Actors 24
SSCI Response and Final TOR 24
The Issue of Timing 26
SENATOR SMITH MEETING WITH NIO/EA 26
RESEARCH, ANALYSIS, AND DRAFTING (NOVEMBER 1997-FEBRUARY 1998) 27

~~SECRET~~ Dec 26, 2024 (b)(3) NatSecAct
Approved for Release: 2024/12/03 C06898860

SECRET [redacted] Approved for Release: 2024/12/03 C06898860 (b)(3) NatSecAct

Role of DPMO 28
Policy/Analytic Dichotomy 28
DPMO Withdraws from Process 29
(b)(3) NatSecAct [redacted] 29
Examining the DO Files 30
Other Contributors of Data 30

REVIEW AND COORDINATION (FEBRUARY-MARCH 1998) 31
First and Second Drafts (6 and 20 February 1998) 31
Third Draft (17 March 1998) 32
Fourth Draft (23 March 1998) 33
Outside Readers 34
IC Coordination Meeting 35
Fifth Draft (31 March 1998) 36

MIB AND NFIB MEETINGS (APRIL 1998) 36

ANOTHER ROUND OF REVIEW 38
The SSCI Documents 38
Two More Outside Readers 39
DCI Input 40

CRITICISM OF ESTIMATE 41
Senator Smith Meets With NIO/EA (June 1998) 41
Release of Critical Assessment *(November 1998)* 42

MIB AND NFIB MEETINGS (JANUARY 1999) 43

PART IV: *CRITICAL ASSESSMENT* CHARGES: SUBSTANCE 45

RELEVANT DOCUMENTATION 46

SECRET [redacted] Dec 26, 2024 (b)(3) NatSecAct
Approved for Release: 2024/12/03 C06898860

SECRET Approved for Release: 2024/12/03 C06898860 (b)(3) NatSecAct

VIETNAMESE COOPERATION....49
A Question of Political Sensitivity....51
Refusal to Cooperate....52
MISTREATMENT OF POWS....53
RECOVERY AND REPATRIATION OF REMAINS....55
Manipulation of Witnesses....56
Repatriation of Remains....57
THE SAGA OF THE MORTICIAN....59
NUMBERS OF POW/MIA: THE 735 AND 1205 DOCUMENTS....65
Two Distinct Methodologies....65
The Documents....68
Historical Setting of the 735 Document....68
Historical Setting of the 1205 Document....73
A Point of Logic....77
ASSESSMENT OF COMMENTS BY RUSSIAN SOURCES ON THE 735 AND 1205 DOCUMENTS....77
(b)(1) (b)(3) NatSecAct *Our Approach*....78
Validity and Credibility....79
[redacted]....81
SEPARATE OR SECOND PRISON SYSTEM....89
ALLEGED TRANSFERS OF POWS FROM VIETNAM TO THE USSR....94
General D. A. Volkogonov....95
K.F. Katushev....97
CASE ASSESSMENTS....99
Our Methodology....100

SECRET [redacted] Dec 26, 2024 (b)(3) NatSecAct
Approved for Release: 2024/12/03 C06898860

~~SECRET~~ Approved for Release: 2024/12/03 C06898860 (b)(3) NatSecAct

The McDonnell Case 103
Facts 104
Circumstances of Loss 105
The Vietnamese Account 105
Captain McDonnell's Status Changes 106
Three Times a Discrepancy Case 107
Our Assessment 107

PART V: *CRITICAL ASSESSMENT* CHARGES: POLITICIZATION 109

SPECIFIC ALLEGATIONS OF POLITICIZATION 110
DoD Testimony (March and June 1998) 110
Outside Readers 113
Policy Contacts 115
Charges of Politicization in 1993/94 116
NSC Tasking 117
IC Analysis: Timing of Release 118
Charges of Improper Direction 121

GENERAL CHARGE OF POLITICIZATION 123

PART VI: CONCLUSIONS 127

RELEVANT DOCUMENTATION 128

QUALITY OF NIE ANALYSIS 129

POLITICIZATION 133

A FINAL NOTE 134

~~SECRET~~ Dec 26, 2024 (b)(3) NatSecAct
Approved for Release: 2024/12/03 C06898860

~~SECRET~~ Approved for Release: 2024/12/03 C06898860 (b)(3) NatSecAct

ANNEXES:

A - Methodology

B - Summary of Selected Prior Reports

C - Methodology Used in Examining Charges in the *Critical Assessment*

D - Intelligence Community Publications Reviewed by National Intelligence Estimate Drafter

E - Recovery and Remains Documentation Reviewed by NIE Drafter

F - Comments by Russian Sources

G - Case Review Methodology

H - Results of Compelling Case Review

I - Captain McDonnell Case Review

J - Distribution List

~~SECRET~~ Dec 26, 2024 (b)(3) NatSecAct
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GLOSSARY OF TERMS

Acronym	
AG	Analytic Group (National Intelligence Council)
AII POW-MIA	Advocacy and Intelligence Index for Prisoners of War-Missing in Action
ASD (C^3I)	Assistant Secretary of Defense (Command, Control, Communications, and Intelligence)
CIA	Central Intelligence Agency
CILHI	Central Identification Laboratory, Hawaii
DCI	Director of Central Intelligence
DDCI	Deputy Director of Central Intelligence
DI	Directorate of Intelligence (CIA)
DIA	Defense Intelligence Agency
DO	Directorate of Operations (CIA)
DoD	Department of Defense
DoS	Department of State
DPMO	Defense Prisoner of War/Missing Personnel Office
FBI	Federal Bureau of Investigation
FBIS	Foreign Broadcast Information Service
GRU	Soviet Military Intelligence
IC	Intelligence Community
IG	Inspector General
INR	Bureau of Intelligence and Research (DoS)
ISS	Interrepublic Security Service
JCRC	Joint Casualty Resolution Center
JCSD	Joint Commission Support Directorate (DPMO)
JTF-FA	Joint Task Force-Full Accounting
KIA-BNR	Killed in Action-Body Not Recovered
KGB	Soviet Intelligence and Security Service
MIB	Military Intelligence Board
NFIB	National Foreign Intelligence Board
NIC	National Intelligence Council
NIE	National Intelligence Estimate
NIMA	National Imagery and Mapping Agency
NIO	National Intelligence Officer

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NIO/EA	National Intelligence Officer for East Asia
NRO	National Reconnaissance Office
NSA	National Security Agency
NSC	National Security Council
OCA	Office of Congressional Affairs (CIA)
OIA	Office of Imagery Analysis (CIA)
PDD	Presidential Decision Directive
PFOD	Presumptive Finding of Death
POW/MIA	Prisoner of War/Missing in Action
RA	Research and Analysis Division (DPMO)
SNIE	Special National Intelligence Estimate
SRV	Socialist Republic of Vietnam
SSCI	Senate Select Committee on Intelligence
TFR	Task Force Russia
TOR	Terms of Reference
USSR	Union of Soviet Socialist Republics
USPACOM	U.S. Pacific Command
VNOSMP	Vietnam Office for Seeking Missing Persons
VWWG	Vietnam War Working Group (U.S.-Russia Joint Commission on POW/MIAs)

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EXECUTIVE SUMMARY

Introduction

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On 10 April 1997, the President's National Security Advisor indicated in a letter to the Senate Majority Leader that he would direct the Intelligence Community to prepare a National Intelligence Estimate (NIE) on Vietnam's cooperation with the United States on Prisoner of War/Missing in Action (POW/MIA) issues. Terms of Reference for the estimate were formulated by the National Intelligence Council and coordinated with members of the Intelligence Community and the Senate Select Committee on Intelligence. The draft estimate was presented to the Military Intelligence Board and the National Foreign Intelligence Board for approval in April 1998, and NIE 98-03, "Vietnamese Intentions, Capabilities, and Performance Concerning the POW/MIA Issue," was published in May 1998.

(b)(3) NatSecAct

Senator Robert C. Smith issued *A Critical Assessment* of the NIE in November 1998 and asked that the Military Intelligence Board and the National Foreign Intelligence Board retract the estimate for reasons cited in his assessment.[1] In January 1999, the Director of Central Intelligence advised Senator Smith that both boards had voted unanimously to let the estimate stand, describing it as an accurate assessment of current knowledge and understanding of the POW/MIA issue. Senator Smith continued to demand that the estimate be retracted and, on 18 March 1999, the Senate Select Committee on Intelligence requested that the Inspectors General of the Central Intelligence Agency and the Department of Defense examine the estimate and the charges made in the *Critical Assessment*. We began a joint inquiry in mid-April 1999.

(b)(3) NatSecAct

The Intelligence Community was asked to address two key issues in NIE 98-03—the extent to which Vietnam has cooperated with the United States since 1987 to achieve the fullest possible accounting of American personnel missing in action during the Vietnam conflict and the credibility of the 735 and 1205 documents, acquired from Russian archives, which raised questions about whether all American prisoners of war were

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[1] Copies of the NIE can be obtained from the National Intelligence Council. Copies of the *Critical Assessment* can be obtained from the Office of Inspector General at the Central Intelligence Agency. Relevant portions of each will be cited throughout the report.

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released by Vietnam in 1973.[2] The estimate stated that Vietnam has become more helpful in assisting U.S. efforts to achieve the fullest possible accounting, but that unresolved issues suggest the need for continued close attention by the U.S. Government. It concluded that the 735 and 1205 documents probably had been acquired in Vietnam by Soviet military intelligence, but that many of the details in the documents are implausible, particularly those dealing with the numbers of prisoners of war allegedly held by Hanoi in the early 1970s.

(b)(3) NatSecAct

Senator Smith's *Critical Assessment* challenged the estimate's conclusions on both key issues. On the subject of Vietnamese cooperation, it cited numerous instances where the estimate's analysis was "factually inaccurate, misleading, incomplete, shallow, and seriously flawed." With respect to the 735 and 1205 documents, the *Critical Assessment* stated that the estimate's judgment cannot be accepted because it is "replete with inaccurate and misleading statements, and lacks a reasonably thorough and objective foundation on which to base its judgment." The *Critical Assessment* urged Congress and the Intelligence Community to examine the role policymakers responsible for advancing the Clinton Administration's normalization agenda with Vietnam may have played in influencing judgments in the estimate.

Objective

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The Senate Select Committee on Intelligence asked us to examine the *Critical Assessment*'s charges that the estimate reflected a premeditated effort to discredit relevant information, inadequate analysis, and possible politicization. Our objective was to assess the validity of those charges in order to evaluate the estimate's analytical vigor, objectivity, accuracy, and completeness.

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[2] For a more detailed description of these documents, see page 22 of the report.

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Results

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Based on our review, we conclude that:

- The estimate drafter and members of the Intelligence Community who participated in the preparation of the estimate made no effort to discredit relevant information. The drafter had access to and reviewed relevant documentation.
  - The estimate drafter is vulnerable to criticism that he did not pay sufficient attention to pre-1987 documentation, relying on finished intelligence products for analysis of pre-1987 data. The issue of the period of time the estimate would cover was never resolved.
  - Delay in the completion of the Terms of Reference from July to October 1997; the Senate Select Committee's additional requirement that the estimate reassess the 735 and 1205 documents; and the introduction of both a new National Intelligence Officer for East Asia and a new drafter contributed to misunderstandings about estimate objectives.
  - We searched for documentation as far back as the document trail allowed. None of the information we reviewed contradicted the conclusions or changed the judgments reached by the estimate.
- The overall quality of the estimate is high. The argumentation is vigorous and logical, and the conclusions are well-documented. At the same time:
  - The withdrawal of the Defense Prisoner of War/Missing Personnel Office from the estimate process inhibited analysis. While not a member of the Intelligence Community, that office possesses most of the U.S. Government's data and expertise on POW/MIA issues.
  - Several analytical mistakes made in the estimate could have been prevented had the Defense Prisoner of War/Missing

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Personnel Office reviewed the draft estimate. None of these mistakes affected the conclusions or judgments of the estimate, however.

- The estimate's judgment that Vietnam's performance in dealing with POW/MIA issues has been good in recent years is properly cautious, particularly given the caveat that unresolved areas of Vietnamese cooperation warrant continued close attention by the U.S. Government.

- The Intelligence Community did not conduct an in-depth re-evaluation of the 735 and 1205 documents. The Intelligence Community also did not undertake an independent review of the numbers of prisoners of war held by the Vietnamese. Instead, the estimate accepted both the 1994 Intelligence Community position related to the legitimacy and accuracy of the documents and the U.S. Government analysis of the numbers of prisoners of war and missing in action. We reviewed both in considerable depth.

  - We determined that the estimate's evaluation of the 735 and 1205 documents remains valid. The documents are genuine, but the information contained in them related to numbers of prisoners of war held by the Vietnamese is inaccurate.

  - Our analysis of discrepancy or compelling cases for which verified remains have not been returned determined that, at most, three of the cases and, in all likelihood, none on a list of 324 provided by Senator Smith to the Senate Select Committee on POW/MIA Affairs in 1992 remain compelling today.

- The estimate failed to capture the intricacies of the story of the mortician who worked on the remains of American prisoners of war in Vietnam. It mislabeled the mortician an unreliable source when in fact he was reliable with respect to remains he had actually worked on; his estimate of stored remains that he had not worked on was less accurate.

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- The estimate's approach to the issue of Vietnamese mistreatment of prisoners of war is limited and does not directly address the problems the issue causes for both Vietnamese and U.S. policymakers.

- The estimate overstated its case that there is no evidence the Vietnamese currently are storing the remains of American prisoners of war.

  - The estimate did mention, however, that a Department of Defense study on the subject would provide additional information.

  - That study, issued in June 1999, more than a year after publication of the estimate, concluded that there is strong evidence in two cases involving five remains that remains were collected and taken to Hanoi, but not repatriated. Investigation continues.

[redacted] (b)(1) (b)(3) NatSecAct

- We found no credible evidence to support the thesis that a second prison camp system for prisoners of war existed or that American prisoners of war were transported out of Vietnam to the former Soviet Union or elsewhere.

- We found no credible evidence that any member of the Clinton Administration tried to influence the estimate or that the Administration tried to influence intelligence reporting on POW/MIA issues related to the 735 and 1205 documents. On the contrary, the concern expressed by policymakers was that the Intelligence Community not appear to be dismissing or debunking information from those documents.

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- Senator Smith and his staff did have an impact on the estimate. They played a role in framing the final Terms of Reference. Senator Smith expressed his opinion on issues to be addressed in the estimate to members of the Intelligence Community, and he said that he was not confident that the Clinton Administration would not interfere in the estimate process.

- Members of the Intelligence Community as well as outside readers of the draft estimate were keenly aware that the estimate would be criticized by those who believed the Vietnamese were not cooperating in good faith on POW/MIA matters and those who believed that American prisoners of war were left behind in Vietnam and elsewhere in 1973. At numerous stages in the production of the estimate, these intelligence officials and outside readers successfully urged a softening of the tone to placate those who might be critical. These interventions did not change the judgments of the estimate.

(b)(3) NatSecAct

[redacted] Finally, while we were not asked to address this issue, we did not find a single factual thread that supports a finding contrary to that reported to the Speaker of the House of Representatives by Congressman G. V. (Sonny) Montgomery in December 1976, following his Committee's investigation of POW/MIA issues. He conveyed the committee's belief that "no Americans are still being held alive as prisoners in Indochina, or elsewhere, as a result of the war in Indochina." Every U.S. Administration since 1976 has agreed with this conclusion, and we found nothing in the course of this inquiry that suggests otherwise.

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PART I: INTRODUCTION

BACKGROUND

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On 10 April 1997, in a letter to the Senate Majority Leader, the President's National Security Advisor indicated that he would direct the Intelligence Community (IC)[3] to prepare a National Intelligence Estimate (NIE)[4] on Vietnam's cooperation with the United States on Prisoner of War/Missing in Action (POW/MIA) issues.[5] He said that the IC should "consult" with the Chairman and Vice Chairman of the Senate Select Committee on Intelligence (SSCI) on the estimate's Terms of Reference (TOR). The TOR were formulated by the National Intelligence Council (NIC) and coordinated with the IC and the SSCI. The NIE draft report was presented to the Military Intelligence Board (MIB) and the National Foreign Intelligence Board (NFIB) for approval in April 1998. NIE 98-03, "Vietnamese Intentions, Capabilities, and Performance Concerning the POW/MIA Issue," dated April 1998, was issued in May 1998.

(b)(3) NatSecAct

Senator Robert C. Smith published *A Critical Assessment* of NIE 98-03 in November 1998. In a letter accompanying the *Critical Assessment*, he requested the Director of Central Intelligence (DCI) and the Director, Defense Intelligence Agency (DIA) to convene meetings of the NFIB and the MIB, respectively, to consider his request that the NIE be retracted for reasons cited in the *Critical Assessment*. The MIB met on 15 January 1999 to review the matter in detail and the NFIB convened four days later. The DCI advised Senator Smith that IC members had voted

(b)(3) NatSecAct

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[3] The IC is composed of the Central Intelligence Agency (CIA), the National Security Agency (NSA), the Defense Intelligence Agency, the Department of State's Bureau of Intelligence and Research (INR), the National Reconnaissance Office (NRO), the National Imagery and Mapping Agency (NIMA), and intelligence elements of the Department of Justice, the Department of the Treasury, the Department of Energy, and the Military Services. (b)(3) NatSecAct

[4] NIEs are produced by the NIC. They are prepared for the President and other senior policymakers on issues that have strategic implications for the United States. They are the most authoritative written assessments of the DCI and the IC because they present the coordinated views of senior officers of the IC.

[5] POWs are persons known to be, or to have been, held by the enemy as live prisoners or last seen under enemy control. MIAs are persons removed from control of U.S. forces due to enemy action, but not known to be either prisoners of war or dead.

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unanimously to let the estimate stand, describing it as an accurate assessment of current knowledge and understanding of the POW/MIA issue.

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On 18 March 1999, the SSCI informed the Inspectors General (IG) of the Central Intelligence Agency (CIA) and the Department of Defense (DoD) that Senator Smith "continues to assert that NIE 98-03 is a product of either 'shoddy' research or possible politicization, which may reflect a premeditated and deliberate effort to discredit relevant information." Further, the SSCI said, Senator Smith believes the NIE should be retracted and that policymakers should disregard the conclusions. The SSCI requested that the IGs conduct an inquiry to determine the NIE's "analytical vigor, objectivity, accuracy and completeness." A joint CIA/DoD inquiry began in mid-April 1999.

OBJECTIVE

(b)(3) NatSecAct

Our objective was to examine NIE 98-03 and address the charges levied in the *Critical Assessment* that there had been:

- A premeditated effort to discredit relevant information;
- Inadequate analysis; or
- Possible politicization.

Our approach was to review the process of producing the estimate and assess the validity of the *Critical Assessment*'s specific charges. By so doing, we could evaluate the NIE's analytical vigor, objectivity, accuracy, and completeness.

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STRUCTURE OF REPORT

Our report is presented in six parts, including the Introduction (Part I). Part II provides an historical perspective of the Vietnam War POW/MIA issue. Part III describes the standard NIE process and the process followed for NIE 98-03. Part IV examines the specific, substantive charges levied in the *Critical Assessment*. Part V addresses the *Critical Assessment*'s charges of politicization. In Part VI, we provide our conclusions. Annex A describes the methodology we used in preparing our report, and Annex B provides a summary of previous reports and reviews related to topics addressed in this report. Annex C describes our

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methodology in addressing the *Critical Assessment*'s charges against the NIE. Annexes D and E list U.S. Government publications reviewed by the drafter of the NIE. Annex F summarizes the interviews of Russian officials concerning the validity of the 735 and 1205 documents found in the archives of Russian military intelligence and the credibility of the information in those documents relating to numbers of POWs held by the Vietnamese. Annex G describes the methodology we used in conducting our review of selected discrepancy cases, and Annex H supplies the supporting matrix of information relating to that review. In Annex I, we detail the process used to examine a single case of a U.S. MIA. Annex J contains our distribution list. A list of commonly used acronyms is at the front of our report.

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PART II: HISTORICAL PERSPECTIVE

OPERATION HOMECOMING AND THE END OF THE WAR

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During the period of U.S. military involvement in Southeast Asia, nearly three million American military personnel served in-theater.[6] More than 58,000 were killed and another 300,000 were wounded. At the time of Operation Homecoming in February/March 1973, 591 U.S. prisoners were repatriated. The fate of more than 2,500 service personnel, however, had not been determined. U.S. efforts to resolve cases involving those still missing have continued and have been the subject of considerable debate, ranging from high praise to strong criticism. The issue of the number of servicemen still unaccounted for also has remained controversial.[7]

(b)(3) NatSecAct

On 27 January 1973, representatives from the United States, the Republic of Vietnam, the Democratic Republic of Vietnam (North Vietnam), and the Provisional Revolutionary Government of the Republic of South Vietnam ("Viet Cong"), signed "The Agreement on Ending the War and Restoring Peace in Vietnam," also known as the Paris Peace Accords. Article 8(b) of the Accord stated:

> The parties shall help each other to get information about those military personnel and foreign civilians of the parties missing in action, to determine the location and take care of the graves of the dead so as to facilitate the exhumation and repatriation of the remains, and to take any such other measure as may be required to get information about those still considered missing in action.

The Joint Casualty Resolution Center (JCRC) was established in 1973 to help the Military Services:

(b)(3) NatSecAct

> . . . resolve the status of United States missing/body not recovered personnel through the conduct of operations to locate and investigate crash/grave sites and recover remains, as appropriate, throughout Southeast Asia . . . .

(b)(3) NatSecAct

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6 The Indochina War Era covers the period from 8 July 1959 through 15 May 1975.

7 The term "unaccounted for" is an all-inclusive term which includes Americans initially listed as POW/MIA, Killed in Action—Body Not Recovered (KIA-BNR), or as having a Presumptive Finding of Death (PFOD).

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SECRET Dec 26, 2024 (b)(3) NatSecAct

Approved for Release: 2024/12/03 C06898860

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The JCRC formed a relationship with the U.S. Army Central Identification Laboratory, which was charged to examine and identify any remains recovered as a result of JCRC searches or unilateral repatriation of remains by the North Vietnamese. The JCRC and the Army Central Identification Laboratory moved to Hawaii in 1976; the latter became the Central Identification Laboratory, Hawaii (CILHI).

THE HOUSE SELECT COMMITTEE ON MISSING PERSONS IN SOUTHEAST ASIA

(b)(3) NatSecAct

In September 1975, the U.S. House of Representatives formed a Select Committee on Missing Persons in Southeast Asia, headed by Congressman G.V. (Sonny) Montgomery; the committee was tasked to conduct a full and complete investigation and study of:

- The problem of U.S. servicemen still identified as missing in action, as well as those known dead whose bodies have not been recovered, as a result of military operations in Indochina; and
- The need for additional international inspection teams to determine whether there are servicemen still held as prisoners of war or civilians held captive or unwillingly detained.

The committee conducted a comprehensive, 15-month investigation. Its final report, issued in December 1976, concluded that "no Americans are still being held alive as prisoners in Indochina, or elsewhere, as a result of the war in Indochina." Half of the ten committee members voiced displeasure with that conclusion as well as other judgments and recommendations in the report.

PROGRESS ON POW/MIA ISSUE

Carter Years (1977-1980)

(b)(3) NatSecAct

Early in his Administration, President Carter created a Presidential Commission headed by Leonard Woodcock, the President of the United Auto Workers. The purpose of the Commission was ". . . to obtain the best possible accounting for MIAs and the return of the remains of our dead." The report of the Presidential Commission concluded,

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". . . there is no evidence to indicate that any American POWs from the Indochina conflict remain alive." The commission recommended that normalization of relations with the Vietnamese should be pursued through the resumption of talks in Paris. Several members of the House International Relations Subcommittee on Asia and Pacific Affairs strongly criticized the report in hearings conducted in March 1977.

(b)(3) NatSecAct

Direct talks aimed at normalization between the United States and Vietnam took place in Paris in May 1977. Little progress on the issue of missing Americans was made, however. Several congressional delegations traveled to Hanoi and members of the JCRC visited Hanoi in 1980 for technical discussions with officials from the Vietnam Office for Seeking Missing Persons (VNOSMP), but the exchanges were largely unproductive. In January 1980, an interagency group was established "to review and assess current events and policies [and] to consider future direction/policy to resolve the POW/MIA problem." Members of the group included representatives from the Departments of State (DoS) and Defense, the National Security Council (NSC), the Joint Chiefs of Staff, and the National League of Families of American Prisoners and Missing in Southeast Asia.

Reagan Years (1981-1988)

(b)(3) NatSecAct

In February 1982, after President Reagan designated the POW/MIA issue a matter of the highest national priority, the Deputy Assistant Secretary of Defense led a delegation to Vietnam to discuss cooperation. Vietnamese officials indicated that there was a connection between their cooperation on the MIA issue and the U.S. attitude toward Vietnam. Between 1982 and 1986, several additional U.S. Government delegations visited Vietnam to discuss expanded cooperation, and technical meetings between JCRC, CILHI and the Vietnamese were conducted.

(b)(3) NatSecAct

By 1987, nearly 15 years after Operation Homecoming, resolution of the POW/MIA issue remained a distant possibility. In an effort to energize the issue, President Reagan appointed General John W. Vessey, Jr. (USA Ret.) as his special emissary to Vietnam in February 1987. In August 1987, General Vessey met with the Vietnamese Foreign Minister for three days of talks in Hanoi. The Foreign Minister committed the Socialist Republic of Vietnam (SRV) to resuming efforts to resolve the MIA issue and agreed to address the most urgent cases, those in which the

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Approved for Release: 2024/12/03 C06898860

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missing person was last known by the United States to be alive but who did not return during Operation Homecoming. These became known as the Vessey discrepancy cases. Both parties also agreed to resume technical talks. The result was a series of technical meetings in Hanoi between JCRC/CILHI members and the VNOSMP to work on casualty resolution and other meetings to discuss the provision of prosthetics with SRV public health and social affairs officials. In June 1988, General Vessey met the SRV Foreign Minister in New York to review the progress made since their initial meeting in 1987. The level of cooperation improved to the extent that six technical meetings were conducted in Hanoi during 1988, and U.S. teams participated for the first time in joint investigative activity in Vietnam. In October 1989, General Vessey visited Hanoi a second time to discuss casualty resolution progress.

(b)(3) NatSecAct

An "Inter-Agency Report of the Reagan Administration on the POW/MIA Issue in Southeast Asia," issued on 19 January 1989, 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." The report went on to say that:

> 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.

Bush Years (1989-1992)

(b)(3) NatSecAct

In an exchange of letters between General Vessey and the SRV Foreign Minister in July 1990, the General pointed out that, after some initial positive results regarding the POW/MIA issue, "progress has become painfully slow, in fact, almost non-existent," and that there was "a real need for progress." The Foreign Minister disputed the General's assessment. He stated that more than 20 years had elapsed since the war ended and that "Vietnam continues its efforts to solve this humanitarian issue, including the seeking of war-time records." The Foreign Minister invited General Vessey to return to Vietnam to clarify remaining issues. General Vessey did not return to Vietnam until April 1991, but that visit was noteworthy because agreement was reached to open a U.S. liaison

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office in Hanoi. The purpose of the office was to improve the coordination between SRV casualty resolution officials and the United States and to speed joint investigative fieldwork. The liaison office opened in May 1991.

(b)(3) NatSecAct ***The Road Map***

As a result of U.S.-SRV meetings in April 1991, the Bush Administration adopted a policy of reciprocal U.S.-Vietnamese actions in accordance with a road map that had three major sets of U.S. objectives:

- Support for the United Nations peace process in Cambodia;
- Release of re-education camp detainees; and
- Assistance in achieving the fullest possible accounting of POW/MIAs.

At intermediate points along the "road," both parties would take specific actions, such as the lifting of U.S. restrictions on the travel of American business and veterans groups to Vietnam. Later, the U.S. trade embargo would be lifted and U.S. opposition to international lending to Vietnam would be halted. Vietnam would accelerate its efforts to account for missing U.S. personnel.

(b)(3) NatSecAct ***Senate Select Committee***

On 2 August 1991, a Senate resolution established the Senate Select Committee on POW/MIA Affairs. The committee requested and received unprecedented access to the records of a wide range of U.S. Government agencies, including intelligence agencies and the White House. It 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." The committee reviewed procedures for accounting for POW/MIA and investigated U.S. intelligence activities in relation to these issues. Its report, issued on 13 January 1993, acknowledged 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." The report suggested that there was evidence that indicated the possibility of survival, at least for a small number after Operation Homecoming.

Approved for Release: 2024/12/03 C06898860

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Clinton Years (1993 to date)

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Four Key Areas

Although the Clinton Administration does not use the term, its policy has been based on the road map developed by the Bush Administration. President Clinton asked General Vessey to conduct another mission to Vietnam in April 1993 to seek further progress. On 2 July 1993, President Clinton announced that:

> Progress [on POW/MIA] to date is simply not sufficient to warrant any change in our trade embargo or any further steps toward normalization. Any further steps in U.S.-Vietnamese relations will strictly depend on further progress by the Vietnamese on the POW/MIA issue.

President Clinton's statement set out four key areas in which the United States expected to see greater efforts by Vietnam:

- Concrete results from efforts by Vietnam to recover and repatriate American remains;
- Continued resolution of the remaining discrepancy cases, and continued live sighting investigations and field activities;
- Further assistance in implementing trilateral investigations with the Lao of POW/MIA cases along the Lao-Vietnam border; and
- Accelerated efforts to provide all POW/MIA-related documents that will help lead to genuine answers.

(b)(3) NatSecAct

Normalization

A Presidential delegation that visited Vietnam later in July 1993 reinforced the commitment to the fullest possible accounting for POW/MIAs and made it clear that the United States must see tangible progress in the four key areas. Vietnam representatives indicated that they were committed to helping the United States resolve the issue and pledged

~~SECRET~~ Dec 26, 2024 (b)(3) NatSecAct

Approved for Release: 2024/12/03 C06898860

~~SECRET~~ Approved for Release: 2024/12/03 C06898860 (b)(3) NatSecAct

to make every effort to achieve progress, but cautioned not to expect dramatic breakthroughs. In January 1994, the Senate approved a non-binding resolution urging the President to lift the trade embargo against Vietnam, a move supporters hoped would assist in getting a full accounting of Americans still listed as missing in the Vietnam War. On 3 February 1994, President Clinton announced the lifting of the trade embargo and, on 11 July 1995, he announced normalization of relations with Vietnam, saying that the time had come to move forward and bind up the wounds from the war. The U.S. Embassy in Hanoi was opened in August 1995. In April 1997, Congressman Douglas "Pete" Peterson, a former POW, was confirmed as the first U.S. Ambassador to Vietnam since the end of the war and the first to be posted to Hanoi.

(b)(3) NatSecAct ***Certification/Determination Of Cooperation***

In 1996, Congress prohibited the use of appropriated funds to open a new U.S. diplomatic post in Vietnam or increase the number of personnel assigned to the mission beyond the level existing on 11 July 1995 unless the President certified within 60 days, based upon all information available to the United States Government, that the Government of the SRV was "cooperating in full faith" with the United States in the four areas related to achieving the fullest possible accounting for American POW/MIAs from the Vietnam War. The four areas were those laid out by President Clinton in 1993.[8] In the 1998 iteration of that law, Congress changed the wording to certification that Vietnam is "fully cooperating in good faith."

(b)(3) NatSecAct

President Clinton issued Presidential Determinations on 29 May 1996 and 3 December 1996 that Vietnam was cooperating "in full faith." Presidential Determinations of 4 March 1998, and 3 February 1999 declared that Vietnam was "fully cooperating in good faith." The President issued determinations in lieu of certifications, stating that the Department of Justice had advised him that it was unconstitutional for Congress to require him to certify because it "purports to use a condition on appropriations as a means to direct my execution of responsibilities that

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[8] Title VI, Section 609, of the Departments of Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Act, as contained in the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104-134), and the Omnibus Consolidated Appropriations Act of 1997 (Public Law 104-208).

~~SECRET~~ Dec 26, 2024 (b)(3) NatSecAct

Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

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the Constitution commits exclusively to the President." The President stated that he had decided to issue the determinations not because he was legally required to do so but rather as a matter of inter-branch "comity."

(b)(3) NatSecAct

The decision to certify or to determine that Vietnam is cooperating "in full faith" or "fully cooperating in good faith" on the four key issues related to POW/MIAs is a policy decision. While the IC does not participate in that decision, the responsible policy agencies have available to them all the relevant intelligence information. Two policy directorates, the Defense Prisoner of War/Missing Personnel Office (DPMO), in coordination with the Joint Task Force-Full Accounting (JTF-FA), and the DoS, Office of East Asia and Pacific Affairs, are the major contributors to the NSC on this issue. The DoS establishes the policy position for annual certification (determination), and the DPMO reviews the proposal for accuracy after consultation with JTF-FA. The Director for Indochina, Thailand, and Burma, Office of the Assistant Secretary of Defense (International Security Affairs) also coordinates on the draft certification (determination) proposal. DoS, Bureau of Intelligence and Research (INR), an IC member, reviews the draft proposal for accuracy only.

INTELLIGENCE COMMUNITY CAPABILITY

(b)(3) NatSecAct

CIA Turns to Department of Defense

In November 1985, the then-DCI sent a memorandum to the NFIB, stating that he was establishing an Interagency Committee on Vietnam POW/MIAs under the aegis of DIA. The purpose of the committee would be to:

> . . . exhaust all intelligence within the Community regarding the location and identification of Americans who might be held or interned [sic] in Southeast Asia.

The DCI asked that the appropriate NFIB agencies nominate representatives to serve on the committee and that all intelligence "presently held within the Intelligence Community" be given to the committee. In the years that followed, the DCI memorandum was interpreted to mean that DIA had been designated the lead agency for POW/MIA affairs and that other agencies would play a supporting role in that effort.

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Approved for Release: 2024/12/03 C06898860

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Subsequently, the DIA Special Office for POW/MIA Affairs assumed a higher profile. The Special Office handled technical investigations or specific cases and debriefings of refugees and other sources; it collated the information, then disseminated reports.

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(b)(3) NatSecAct In 1993, the DPMO was established as a separate office outside of DIA. DPMO was designed to consolidate POW/MIA issues (analytic, policy, and operations) under one umbrella. While this arrangement is unusual, it is not unique. DoS and DoD have both policy and operational missions, but they maintain elements that perform intelligence analysis. In that regard, elements of the IC that address the Vietnam POW/MIA issue include the analytical components of DPMO and analysts in other agencies who are experts on Vietnam and who have worked the issue in the past.

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Intelligence Priorities and Standing Requirements

(b)(3) NatSecAct

Presidential Decision Directive-35 (PDD-35), dated 2 March 1995, which provides overall guidance for the IC, does not explicitly include POW/MIA issues. The DCI Guidance on Intelligence Priorities, dated 10 February 1997, builds on PDD-35 by addressing worldwide priorities in the context of the President's

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Approved for Release: 2024/12/03 C06898860

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POW/MIA issues are listed under "Support to Military Operations."

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In addition, the IC has standing requirements that cover POW/MIA issues

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Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

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EVOLUTION OF THE DEFENSE POW/MISSING PERSONNEL OFFICE

(b)(3) NatSecAct

The Secretary of Defense established the Defense Prisoner of War/Missing Personnel Office (DPMO) in July 1993 to provide centralized management of POW/MIA affairs within the DoD. The DPMO was headed by the Deputy Assistant Secretary of Defense (Regional Security Affairs), now the Assistant Secretary of Defense (International Security Affairs). Creation of the office brought together four disparate DoD offices that had been working POW/MIA issues:

- **Deputy Assistant Secretary of Defense (POW/MIA).** This office was established in 1991 within the office of the Secretary of Defense to develop U.S. and DoD policies on POW/MIA issues. The Deputy Assistant Secretary continued as the Director, DPMO, reporting to the Assistant Secretary of Defense (International Security Affairs), Office of the Under Secretary of Defense for Policy;

- **DIA Special Office for POW/MIAs.** This office was established during the Vietnam conflict to support operational commanders by collecting information on American service members classified as POWs or MIAs;

- **Central Documentation Office.** This office was established by the Secretary of Defense in 1991 to review and declassify materials pertaining to American POWs and MIAs lost in Southeast Asia. The office reported to the Assistant Secretary of Defense (Command, Control, Communications, and Intelligence [ASD C^3I]); and

Approved for Release: 2024/12/03 C06898860

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- **Task Force Russia (TFR).** This office was established by the Army in 1992 to support the U.S.-Russia Joint Commission on POW/MIAs.

(b)(3) NatSecAct

The 1996 Defense Authorization Act directed that DoD establish an office for missing persons. The Deputy Assistant Secretary of Defense for Prisoner of War/Missing Personnel Affairs was designated as the Director of the newly restructured and renamed Defense Prisoner of War/Missing Personnel Office (DPMO). The DPMO mission is to exercise policy, control and oversight within the DoD of the entire process for investigation and recovery related to missing persons (including matters related to search, rescue, escape and evasion); coordinate for the DoD with other departments and agencies of the United States on all matters concerning missing persons; and establish procedures to be followed by DoD boards of inquiry and by officials reviewing the reports of such boards. The DPMO maintains and gathers data on POW/MIA affairs for World War II, the Korean War, Vietnam, and the Cold War. The Under Secretary of Defense for Policy provides authority, direction and control over the Deputy Assistant Secretary of Defense for POW/MIA Affairs. The Deputy Assistant Secretary of Defense reports through the Assistant Secretary of Defense for International Security Affairs and serves as the principal assistant to the Under Secretary of Defense for Policy for all prisoner of war and missing in action matters. The primary responsibility of the Deputy Assistant Secretary of Defense is developing and coordinating policy on such matters and representing the DoD in interagency processes. The Deputy Assistant Secretary of Defense also ensures that the DoD effectively conducts efforts to achieve the fullest possible accounting for U.S. personnel not yet accounted for from the Vietnam conflict.

(b)(3) NatSecAct

The Deputy Assistant Secretary of Defense for POW/MIA Affairs is assigned the collateral responsibility to serve as the Director, DPMO. This was done to ensure that the activities of the DPMO are fully integrated with the Office of the Secretary of Defense POW/MIA policy direction. The Director serves as the DoD focal point for all POW/MIA matters including representing the DoD during negotiations with foreign governments. DPMO customers include the DoD, the Congress, POW/MIA families, and veterans organizations.

~~SECRET~~ Dec 26, 2024 (b)(3) NatSecAct

Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

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While the DPMO is not an intelligence organization, it incorporates intelligence reporting into its all-source analysis of POW/MIA issues and individual cases. DPMO systematically requests that CIA, DIA, NSA, and the National Imagery and Mapping Agency (NIMA) provide required information. In fact, the National Defense Authorization Act for 1998 (Public Law 105-85), Section 934, states that:

> The Director of Central Intelligence, in consultation with the Secretary of Defense, shall provide intelligence analysis on matters concerning prisoners of war and missing persons . . . to all departments and agencies of the Federal Government involved in such matters.

Further, the Act directs the Secretary of Defense to:

> . . . ensure that the Defense Prisoner of War/Missing Personnel Office takes into full account all intelligence regarding matters concerning . . . prisoners of war and missing persons . . . in analyzing cases involving such persons.

DoD Agencies Supporting POW/MIA Mission

Joint Task Force-Full Accounting

(b)(3) NatSecAct

In January 1992, the Commander in Chief, U.S. Pacific Command (USPACOM) formed the JTF-FA, at Camp H.M. Smith, Hawaii. The JTF-FA replaced the JCRC as the primary organization focused on full accounting for missing U.S. personnel. The JTF-FA mission is to resolve the cases of Americans still unaccounted for as a result of the Indochina War through investigations, archival research, and remains recovery operations. The JTF-FA is structured to conduct the wide range of operations necessary to obtain the fullest possible accounting in Southeast Asia. The JTF-FA has four permanently deployed detachments in Southeast Asia to support JTF-FA teams that perform investigations and recovery efforts: Detachment 1 in Thailand, Detachment 2 in Vietnam, Detachment 3 in Laos, and Detachment 4 in Cambodia.

Central Identification Laboratory, Hawaii

(b)(3) NatSecAct

The Department of the Army is designated as the executive agent for the Joint Mortuary Affairs Program. As the executive agent, the Army maintains a Central Mortuary Affairs Office and CILHI for processing remains from past conflicts. The CILHI mission is foremost

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humanitarian and requires deployment of its personnel throughout the world. CILHI supports the full accounting mission by providing the personnel who make up the remains recovery teams deploying to Southeast Asia and by conducting forensic analysis of recovered remains.

Stony Beach

(b)(3) NatSecAct

In 1987, DIA supplemented the JCRC effort by assigning a small group of language-qualified personnel the task of gathering information related to possible live sightings of American POW/MIAs in Indochina. The Stony Beach program collects information and performs analyses on alleged live sightings of U.S. POW/MIAs. Stony Beach operations are conducted exclusively in support of the POW/MIA issue.

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ROLE OF U.S.-RUSSIA JOINT COMMISSION ON POW/MIAS

(b)(3) NatSecAct

The DPMO supports the U.S.-Russia Joint Commission on POW/MIAs, established in 1992 by direction of the Presidents of the United States and the Russian Federation. The commission serves as a forum through which both nations seek to determine the fates of their missing service personnel, Americans missing from the Vietnam, Korean and Cold Wars and Russians lost in Afghanistan. The commission consists of representatives from the executive and legislative branches of the U.S. and Russian Governments. The U.S. side of the commission includes members of Congress, senior DoS and DoD personnel, and a representative from the U.S. National Archives. Within the DPMO, the Joint Commission Support Directorate (JCSD) functions as the sole collection, research, analytical, and administrative support element to the U.S. side of the U.S.-Russia Joint Commission.

PRIVATE GROUPS

(b)(3) NatSecAct

The wife of a POW held captive in North Vietnam formed the National League of Families of Prisoners and Missing in Southeast Asia in 1966. In 1970, the League was formally structured as a "tax-free, non-profit, nonpartisan, humanitarian organization." The League's bylaws specified that only family members of prisoners, missing,

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Approved for Release: 2024/12/03 C06898860

~~SECRET~~ (b)(3) NatSecAct

or killed-in-action personnel were eligible for membership. In the beginning, most leadership positions were held by wives of POWs and MIAs. Operation Homecoming changed the composition and character of the League. A new Executive Director liberalized membership requirements, and leadership evolved to parents away from the wives. The category of family members eligible for membership was expanded to include blood or lawful relatives of an American who was a prisoner or missing in Southeast Asia.

(b)(3) NatSecAct

In 1979, the Executive Director of the League was given access to POW/MIA classified information. In 1982, for the first time, a League delegation traveled to Vietnam and Laos to meet with government officials. The Executive Director was made a full member of the U.S. interagency group that discussed POW/MIA issues. The Executive Director has testified before congressional committees and has been included in numerous government proceedings with Southeast Asia government officials.

(b)(3) NatSecAct

Traditional veterans' organizations have shared interest in the POW/MIA issue, including the American Legion, the Veterans of Foreign Wars, the Disabled American Veterans, and the Vietnam Veterans of America. The 1990s brought the emergence of a new organization, the National Alliance of Families for the Return of America's Missing Servicemen, World War II-Korea-Cold War-Vietnam. It is the only organization representing U.S. servicemen from all wars and their families.

~~SECRET~~ Dec 26, 2024 (b)(3) NatSecAct

Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

PART III: POW/MIA ESTIMATE PROCESS

A National Intelligence Estimate is a compendium of basic judgments, accompanied by some supporting detail, that represent the collective viewpoint of the Intelligence Community. It is not an exhaustive compendium of every conceivable alternative explanation on every point of detail, slanted to support a particular point of view. The operative word is "judgments," over which disagreements are common.

Senior DIA official

STANDARD NIE PROCESS

(b)(3) NatSecAct

The National Intelligence Council (NIC) is an Intelligence Community (IC) entity, responsible for producing coordinated interagency papers. The NIC, which reports to the DCI in his capacity as head of the IC, consists of a Chairman, Vice Chairman, National Intelligence Officers (NIO), and several staffs and production committees. The NIOs interact regularly with senior intelligence consumers to assess and support their long-term needs. In addition, they actively consult with experts from academia, the corporate world, and think tanks in producing estimates and other coordinated IC products.

(b)(3) NatSecAct

The NIC manages the IC's estimate process, bringing together expertise from inside and outside the government. The NIC is one of the few bodies which speaks authoritatively on substantive issues for the IC as a whole. National Intelligence Estimates (NIE) are prepared for the President and other senior policymakers on issues that have strategic implications for the United States. They are the most authoritative written assessments of the DCI and the IC because they present the coordinated views of the senior officers of the IC.

(b)(3) NatSecAct

Typically, an NIO presents a proposal for an estimate to the Chairman of the NIC, who presents it to the DCI for approval. The NIO prepares Terms of Reference (TOR) that are reviewed by the NIC, coordinated with IC representatives, then submitted to the National Foreign Intelligence Board (NFIB) principals.[9] The NIO may serve as the drafter for the estimate or may select a drafter from CIA or another IC member. The NIO and the drafter prepare an outline of the prospective

[9] The NFIB principals are the DCI; the Deputy Director, CIA; Director, DIA; Director, DoS, INR; Director, NSA; Director, FBI; Director, NIMA; and Director, NRO.

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NIE, meet to coordinate both the TOR and the outline with IC representatives, then send the final TOR to the NFIB principals. The drafter conducts research for the topic and drafts the report, frequently with support from members of the IC. The draft is then coordinated by IC representatives and sent to the NFIB for final approval.

Intelligence/Policy Nexus

(b)(3) NatSecAct

To reduce the possibility that policy considerations will influence intelligence analysis, the estimate process is kept separate from its consumers in the policy community. Members of the policy community may request an estimate and may convey interest in having certain issues addressed; the drafter may even consult with the customer to ensure that all customer concerns are being addressed. During the research phase, policymakers may be asked to provide input in areas where they have specific knowledge or expertise. To ensure that they do not influence the judgments or conclusions of the estimate, policymakers do not have a role in coordinating either the TOR or the report itself. Permitting such close involvement would increase the risk of politicization of intelligence.

Interagency Participants

(b)(3) NatSecAct

All IC agencies may be involved in the production and/or coordination of an estimate. In practice, agencies having no stake in the issue often withdraw from the process. On occasion, agencies outside the IC may be asked to participate in the process, either by contributing information or by attending coordination sessions as "back benchers" whose input is considered relevant and useful but who have no vote at the table.

REQUEST FOR POW/MIA ESTIMATE: POLITICAL ENVIRONMENT

(b)(3) NatSecAct

A number of aspects of the process followed in the production of the NIE addressing the Vietnamese POW/MIA issue were unusual, reflecting the political environment that spawned it. The estimate had its genesis in the policy debate concerning normalization of relations with Vietnam. President Clinton announced his intention to normalize relations in July 1995, and the U.S. Embassy in Hanoi opened the following month. In May and December 1996, the President issued "determinations" that the Vietnamese were "cooperating in full faith" on POW/MIA matters.

Approved for Release: 2024/12/03 C06898860

~~SECRET~~ Approved for Release: 2024/12/03 C06898860 (b)(3) NatSecAct

By so doing, the President opened the way for increasing the personnel assigned to the U.S. Embassy in Hanoi, including the appointment of an ambassador. He nominated Congressman Peterson for that post.

(b)(3) NatSecAct

In March 1997, the SSCI asked the CIA to provide a copy of the IC assessment that had informed the Presidential determinations. CIA responded that, because the DPMO was responsible for intelligence bearing on the issue, other elements of the IC had not been formally involved in the process leading to the determinations. Several Senators, including the Majority Leader, indicated that they would hold up Congressman Peterson's confirmation unless the IC undertook its own, independent, analysis of Vietnamese cooperation on POW/MIA issues. In a letter to the Majority Leader on 10 April 1997, the President's National Security Advisor stated that he would direct the IC to prepare a special NIE on the subject. He also agreed to ask for an "updated assessment from the Intelligence Community" on the 735 and 1205 documents acquired from the Russian archives. The National Security Advisor went on to say that "we will consult" with the Chairman and Vice Chairman of the SSCI on the TOR for the estimate. He expressed hope that the Senate would confirm Congressman Peterson as soon as possible. Ambassador Peterson was confirmed the same day.

NEGOTIATION OF TERMS OF REFERENCE (APRIL-NOVEMBER 1997)

Initial Drafts

(b)(3) NatSecAct

From the start, Senator Smith and his staff played a key role in shaping the TOR, using the SSCI to funnel requirements to the NIC. According to one of Senator Smith's legislative assistants, the Senator particularly wanted an updated assessment of the "Russian documents" because he did not believe the IC assessment of the documents, released in 1994, was thorough. The Senator wanted the IC to look at the 735 and 1205 documents and wanted that assessment to be part of the estimate. In a memorandum that he sent to an SSCI staff member on 24 April, Senator Smith's legislative assistant with responsibility for POW/MIA matters wrote that:

> Per our discussion, I'm forwarding to you input to consider during the required consultation between SSCI and NSC and IC on tasking, which, as you know, was coordinated with Senator Smith.

~~SECRET~~ Dec 26, 2024 (b)(3) NatSecAct

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The 735 and 1205 Documents

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In 1993, the United States received copies of two documents discovered in the GRU archives in Moscow. The documents are Russian translations of purported policy speeches delivered by senior Vietnamese officials in the early 1970s. The original Vietnamese language documents have not been located. The two documents received a great deal of attention because they indicated that the number of American POWs held in North Vietnam was greater than the number officially acknowledged by Hanoi. The documents are known as the 735 and 1205 documents.

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The 735 document, dating from late December 1970 or early January 1971, stated that the number of American pilots imprisoned in North Vietnam was 735, not the 368 acknowledged by the Vietnamese Government. The document implied that the unreported POWs would be used as leverage during peace negotiations with the United States. The 1205 document, dating from September 1972, stated that 1205 American POWs were being held in North Vietnam. The document indicated that the officially published list of 368 American pilots was part of the 1205 figure and stated that the "rest are not acknowledged."

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The IC issued an assessment of the 735 and 1205 documents in 1994, discounting Hanoi's claims that the documents were fabrications and concluding that the documents appeared to be genuine. The assessment made the distinction between the documents being genuine (i.e., a GRU translation of a Vietnamese speech) and the information in those documents being accurate. The IC assessment stated that the numbers given in the 735 and 1205 documents were "inconsistent with our understanding of how many Americans would have survived the events in which they were lost to become captives."

(b)(3) NatSecAct

At the time of its assessment, the IC had the entire 1205 document but only two pages of the 735 document—those that contained the references to U.S. POWs. Thus, the *Critical Assessment* stated that the remainder of the 735 report had "never been formally assessed by the Community."

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The NIO for East Asia (NIO/EA), who served from July 1995 until August 1997, began work on the TOR after being notified by the Chairman of the NIC and the NSC about the agreement to produce an estimate. His draft TOR focused on the commitment of the Vietnamese leadership to cooperate with the United States to achieve the fullest possible accounting of American personnel missing in action and the extent to which Hanoi was able to deliver on its commitment. The NIO/EA envisioned separating Vietnamese cooperation from the issue of the Russian documents; he planned to ask a small group of Vietnam analysts to examine whether the IC conclusions reached on the documents in 1994 were still valid. The draft TOR dealt with the issue by posing the general question, "Has there been any change in the assessment of the so-called '735 document' and '1205 document' from the Russian archives?"

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On 8 May, the NIO/EA took the draft TOR to a meeting that included the SSCI Staff Director and Minority Staff Director as well as majority and minority staff members. Agreement was reached that the SSCI staff would provide questions and comments for consideration by the NIO/EA in fulfillment of the agreement to consult with the SSCI. On 29 May, the SSCI suggested changes to the TOR, asking that the NIE address numerous additional points relating to the POW/MIA issue. The points raised were extensive and appeared to require more substantial research than did the original TOR.

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The NIO/EA was concerned that the suggested changes would require months of detailed research as well as a review of the work done by DPMO and other agencies. He revised the TOR, then coordinated them with the NSA, INR, the CIA's Directorate of Intelligence (DI), DPMO, and the DIA. The revised draft TOR were forwarded to the SSCI on 3 July 1997. The NIO/EA told the SSCI that he had tried "to accommodate as much as possible the suggestions in your letter of 29 May." He stated that he had expanded his original estimate question to include the issue of performance but that "it would be inappropriate" for an NIE to establish a standard for "the fullest possible accounting" against which to identify measures the SRV could take; he argued that that was a policy decision. He went on to say that he had collapsed the various questions on SRV personnel, records, and artifacts into two secondary questions in the TOR and expressed confidence that these questions would cover all the issues raised in the SSCI letter of 29 May.

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SSCI Delays

Despite repeated requests by the NIO/EA, conveyed by the CIA's Office of Congressional Affairs (OCA), the SSCI did not provide its formal response to the draft TOR until late October 1997. OCA indicated that the initial delay was caused by the fact that the SSCI Chairman, who wanted to look at the TOR and discuss them with senior staff, had departed on a world tour and would not return until the end of August. The SSCI staff reported to OCA that it was working on the issue during September and October. During this period, NIO/EA research on the estimate was put on hold, pending approval of the TOR.

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Changing Actors

Between July and November 1997, all of the major actors involved in the POW/MIA estimate at the CIA and the NIC changed. Both the NIO/EA and a DI analyst who was to have provided support in research and drafting departed in August. A new Chairman of the NIC arrived in October and was briefed on the background of the estimate by the Deputy NIO/EA, who had been designated to carry on the project; the deputy left in November.

(b)(3) NatSecAct

The new participants in the process arrived with different backgrounds and perceptions. The newly appointed NIO/EA returned from the NSC in November 1997. As the Deputy NIO/EA in the early 1990s, he had been the drafter of the 1994 IC assessment of the 735 and 1205 documents. Senator Smith, who disagreed with that assessment, expressed his displeasure with the NIO/EA's involvement in the NIE during a meeting in November. No Deputy NIO/EA would be appointed during the drafting of the estimate, and the DI would not provide another analyst to support the project. In November 1997, the NIO/EA appointed a CIA East Asian specialist and veteran NIE drafter to draft the NIE.

SSCI Response and Final TOR

(b)(3) NatSecAct

In its letter of 27 October responding to the TOR sent on 3 July, the SSCI requested an expansion of the TOR question, "Has there been any change in the assessment of the so-called '735 document' and '1205 document' from the Russian archives?" The SSCI suggested that the

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issue be rephrased and added to the "Key Questions" portion of the TOR as follows: "What is the intelligence community assessment of the so-called '735' document and the '1205' document from the Russian archives?" The SSCI went on to say that:

> . . . if the intelligence community judges these documents to be accurate . . . in their characterization of the number of American POWs held by North Vietnam, then it should answer the following question: "What is the likely range of numbers of American POWs under the control of the communist side when the Paris Peace Accords were signed in January 1973?"

(b)(3) NatSecAct

The SSCI's suggested change represented a significant shift in parameters for the estimate. The original task had been limited to determining if the IC had changed its assessment of the documents since 1994. The new phrasing required that the IC assess the documents (i.e., start from the beginning and evaluate their credibility). The SSCI then stipulated that, if the IC determined the documents to be accurate in assessing the numbers of POWs held in North Vietnam, the estimate should address the number of POWs held in Vietnam in 1973. These were the issues that the former NIO/EA originally had intended to assign to a separate group of analysts for in-depth research.

(b)(3) NatSecAct

The CIA responded to the SSCI on 21 November 1997, enclosing the "final terms of reference" for the NIE. The draft TOR had been revised to reflect the SSCI suggestions, thus expanding the scope of the estimate. At the same time, the number of individuals supporting the project had decreased from two to one, and the time allocated to complete the estimate had remained the same (about 90 days). The final TOR were approved at a 26 November IC coordination meeting, and the NFIB concurred at its meeting on 19 December 1997.

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This level of involvement in the estimate process by both the SSCI and a U.S. Senator, not a member of the SSCI, in the negotiation of the TOR is unprecedented. The SSCI was given coordination authority over the TOR, implicitly by the President's National Security Advisor and, *de facto*, by the NIC. The then-NIO/EA believed that he could not proceed with the estimate until the SSCI had responded to each version of his TOR, resulting in accumulated delays of almost six months. None of the more than 80 individuals we interviewed knew of an instance, other than this one, in which coordination of a TOR by an organization not a member of the IC had occurred.

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The Issue of Timing

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The issue of the period of time the estimate would cover arose early in the process. The original TOR explicitly stated that the estimate would cover the period from 1987-1998, that is, the period since the most recent estimate on the subject (Special National Intelligence Estimate [SNIE]: "Hanoi and the POW/MIA Issue," published in September 1987). That TOR had not included a re-evaluation of the Russian documents; rather, it had asked as a secondary question whether there had been any changes to the analysis of those documents. When a re-evaluation (as opposed to an updated evaluation) of the documents was included in the TOR, the parameters shifted because the documents dated from the early 1970s. At the TOR coordination session in November 1997, the INR representative suggested that a search for new materials might need to go back before 1987. The NIE drafter never focused on this shift.

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The introduction to the estimate indicated that it would cover the period after 1987. In fact, the drafter used 1992 as the cut-off date, explaining that the period from 1987-1992 was covered extensively in a 1992 CIA study, "Vietnam: Adjusting Its Strategy on the POW/MIA Issue." The NIE drafter said that the IC "will be asked to accept that study as definitive." The IC would do as he asked, but the *Critical Assessment* would take him to task for not having covered the time period as defined in the TOR.

SENATOR SMITH MEETING WITH NIO/EA

(b)(3) NatSecAct

Before the final approval of the TOR, Senator Smith met with the new NIO/EA on 7 November 1997. The purpose of the meeting was to have the NIO/EA provide an update on the NIE process to Senator Smith. At the outset, Senator Smith expressed his views on the estimate. He denounced the Clinton Administration for its POW/MIA policy and for its failure to fully analyze the documents found in the Russian archives. He stated that "everybody knows" the documents surfaced at a time when they could have complicated policy and went on to say that "we all know" the documents are legitimate. He accused the NIO/EA, who had written the 1994 analysis of these documents, of having treated him poorly.

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Approved for Release: 2024/12/03 C06898860

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The NIO/EA assured Senator Smith that an analysis of the 735 and 1205 documents would be included in the estimate. He also stated that, because of his past service at the NSC and his previous work on POW/MIA issues, he would leave substantive responsibility for the NIE to the drafter so there would be no doubt about the integrity of the process. The NIO/EA said that he would not impose his views and would indicate his input in footnotes should he differ from the drafter. He pledged that the estimate would be "fair and honest." Senator Smith again emphasized his views of the Russian documents and said he was not confident that the Clinton Administration would not interfere in the estimate process.

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Senator Smith suggested that it would help to assuage "hard feelings" if the SSCI and other staff were involved in the estimate process. Senator Smith's legislative assistant urged the NIO/EA to "reach out" to the Senate, warning that the DPMO has a "mindset." The NIO/EA said that the analytic process needs distance from both the policy community and the Congress. The legislative assistant stated that the U.S.-Russia Joint Commission on POW/MIA Affairs was also an "intelligence repository" and that the drafter should talk to the Senate as well as to DPMO. The SSCI majority staff member who attended the meeting told the NIO/EA that the SSCI planned to "review" the estimate.

RESEARCH, ANALYSIS, AND DRAFTING (NOVEMBER 1997-FEBRUARY 1998)

(b)(3) NatSecAct

The NIC is not a repository of data. The drafter of an estimate must rely on other elements of the IC to provide information and analysis, and this was true in the case of the POW/MIA estimate. A considerable number of documents had been turned over to the former NIO/EA during the six-month period when the TOR were being negotiated. The CIA analyst assigned to help the NIO/EA had provided DI files, and DPMO had provided a package of material. At the 26 November 1997 IC coordination meeting, the consensus was that much of the material the NIE drafter would need was located in DPMO files. Other potential sources of information included the CIA, DO; DoD organizations involved in POW/MIA matters (e.g., JTF-FA and CILHI); INR; NSA; DIA, to include Stony Beach; and policymakers dealing with Vietnam to resolve POW/MIA issues. In addition, Senator Smith and the SSCI held documents that were relevant to the project.

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Role of DPMO

Policy/Analytic Dichotomy

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DPMO is the primary organization responsible for supporting policy on POW/MIA matters and is also the primary repository of information concerning POW/MIA matters. Analysts familiar with that information reside in DPMO, having moved there from DIA when DPMO was created in 1993. Because of this policy/analysis connection, critics question DPMO's analytic objectivity and argue that the IC should refocus on the POW/MIA issue in order to provide an independent view.

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Within DPMO, JCSD functions as the sole collection, research, analytical, and administrative support element to the U.S. side of the U.S.-Russia Joint Commission on POW/MIAs. JCSD's position and responsibilities are unusual because it reports to two distinct organizations with two distinct missions. While JCSD is within the DoD chain of command, its officials respond to the requests and interests of the members of the commission, which focuses on collecting information in Russia on U.S. POWs and MIAs. This dichotomy has created tension between JCSD and the rest of the DPMO, particularly its Research and Analysis (RA) Division.

(b)(3) NatSecAct

A major source of contention between JCSD and RA has been the analysis of the documents found in the Russian archives (the 735 and the 1205 documents) that refer to numbers of POWs held by North Vietnam before Operation Homecoming in 1973. RA has argued that, no matter what the validity of the documents, the numbers are wrong because they are far higher than the numbers of POWs that could have been held. JCSD has focused on trying to determine the credibility of the documents, arguing that, if the documents are valid, the numbers contained in them must be taken seriously and the RA analysis of the numbers should be reviewed.

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Many critics of U.S. policy toward Vietnam argue that Vietnam may have continued to hold U.S. POWs after Operation Homecoming and that some may still be alive or may have been held alive for a number of years. Some maintain that POWs may have been transferred to the former Soviet Union. These critics question the U.S. Government's assessments of the numbers of POWs held by the Vietnamese. Because DPMO, RA is the government organization responsible for these assessments, they question

~~SECRET~~ Dec 26, 2024 (b)(3) NatSecAct

Approved for Release: 2024/12/03 C06898860

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the reliability and objectivity of RA analysis. One of Senator Smith's objectives in seeking an intelligence estimate on the issue was to gain an independent IC review of the Russian documents, followed by an independent analysis of the numbers of POWs held by Vietnam. Neither the NIC nor other members of the IC conducted such an independent review and analysis. Instead, they accepted the IC assessment of 1994 as the basis of their review of the Russian documents, and they accepted DPMO's analysis of the numbers of POWs held by Vietnam.

(b)(3) NatSecAct ***DPMO Withdraws from Process***

[redacted] DPMO leadership decided that it would not participate formally in the estimate process because of challenges to its ability to produce objective analysis. When the estimate was proposed, the DIA official with responsibility for the issue told the Acting Director, DPMO that DPMO should draft the estimate because DIA did not have the capability. The Acting Director declined, arguing that, if DPMO were to take the lead, the issue would quickly become political. He said DPMO would cooperate by providing information and support as needed; by remaining uninvolved, he argued, DPMO would benefit from an outside, objective review that would test its analysis. Thus, the organization that was the repository for information on POW/MIA matters and had the main corps of analysts dedicated to the issue was removed from the formal NIE process.

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[redacted] The NIE drafter held a number of meetings with DPMO analysts, both in RA and in JCSD; he received briefings from both groups and collected a considerable amount of data. The meetings began in November 1997 and continued into February 1998, when the initial NIE draft was completed. During these sessions, the drafter encountered and had to deal with [redacted]

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[redacted] the RA belief that JCSD could not be trusted to protect classified information [redacted]

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[redacted] The drafter experienced this problem first-hand. [redacted] JCSD analyst [redacted] insisted that he must report on meetings with the drafter to the commission [redacted] The drafter disagreed, stating that he should not be sharing discussions [redacted]

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Approved for Release: 2024/12/03 C06898860

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before the estimate was finished. The analyst indicated that he would figure out a way to discharge his obligations to the commission without compromising sensitive information.

Examining the DO Files

(b)(3) NatSecAct

The DO is the CIA component responsible for maintaining records of all clandestine foreign intelligence and counterintelligence activities and operations conducted by the CIA involving human assets. In the early 1990s, in accordance with Executive Order 12812 ("Declassification and Release of Material Pertaining to Prisoners of War and Missing in Action," 22 July 1992) that ordered declassification of POW/MIA records, the DO conducted an unprecedented search of its files. It declassified and released most of the CIA holdings on POW/MIA issues in 1993.

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These documents were funneled through DPMO to the Library of Congress.

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documents were not declassified for a variety of reasons,

The NIE drafter told us that he had reviewed these holdings, but that only a few documents were relevant to the estimate. The DO continued to provide to the drafter reports that had been collected since 1993

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According to the DO officers and managers we interviewed, the NIE drafter had access to all DO reporting on the POW/MIA issue. The drafter told us that he is confident he had access to all these documents. We reviewed the available material as well as the material in the drafter's possession at the time the estimate was drafted. We believe that the drafter did have access to the relevant DO documentation.

Other Contributors of Data

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In the course of his research, the drafter visited organizations within the Office of the Secretary of Defense, DIA, DPMO, INR, and NSA and interviewed key officials associated with and knowledgeable of

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POW/MIA affairs. He also traveled to Hawaii and Southeast Asia, where he held discussions with U.S. officials

REVIEW AND COORDINATION (FEBRUARY-MARCH 1998)

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First and Second Drafts (6 and 20 February 1998)

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The NIE drafter finished the first draft of the estimate in early February 1998. While he indicated that both the NIO/EA and the Chief of the NIC's Analytic Group (AG) had the draft for review, only the latter commented in writing. If the NIO/EA did review the first draft, his views either coincided with those of the Chief, AG or were not factored into the changes made to the second draft. Noting that he had read the draft from "the perspective of a hostile critic," the Chief, AG indicated that, "from that vantage point, there are some points of vulnerability" that should be addressed. These included assessments that appear to be inadequately supported by evidence and judgments that could give rise to suggestions that "we have been unjustifiably credulous" about the motivations behind Vietnamese actions. Each modification to the second draft introduced language that was more skeptical of Vietnam's motives and behavior. For example:

- Removal of "*humanitarian grounds*" as a driving factor in Hanoi's increasing cooperation with the United States on POW/MIA issues;
- Introduction of language conveying skepticism about Vietnam's explanations for instances of non-cooperation (e.g., less acceptance of "*sovereignty*" as a valid rationale); and
- Qualification of judgments. After stating that "our research suggests" that areas where Vietnam refuses to conduct joint field activities are genuine sensitive facilities, the new draft adds, "*We cannot be sure, however.*" Whereas the first draft had stated that, "We think Vietnam has *been fully cooperative* on these cases," the later version reads, "We think Vietnam has, *for the most part, been cooperative* on these cases."

Approved for Release: 2024/12/03 C06898860

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On 20 February, the NIC sent the revised draft estimate to The drafter then traveled holding discussions with relevant officials and sending comments back to Washington for consideration in the next stage of drafting. The NIO/EA accompanied him on part of this trip.

Third Draft (17 March 1998)

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Numerous changes were made to the next draft. Most were factual additions rather than modifications of data. While many of the changes are difficult to evaluate in terms of their impact on the tone of the NIE, a number served to further reinforce skepticism about Vietnamese cooperation. For example, in the section of the draft dealing with "Instances of Vietnamese Non-Cooperation":

- The lead sentence had said that "We found *no* instances in which Vietnamese authorities have flatly refused US requests . . . ." The new version was changed to, "We found *few* instances . . . "; and

- Sentences were added to a series of instances dealing with Vietnamese explanations for non-cooperation to the effect that "*We cannot ensure they have provided everything*"; and "*We cannot absolutely verify such claims*"; and "*We cannot verify this information.*"

Some changes tended to strengthen judgments challenging the credibility of the 735 and 1205 documents; the alleged transfers of POWs to the Soviet Union; and the alleged interrogation of POWs by Soviet officials. For example:

- The 20 February draft stated that, while the documents are probably authentic GRU-collected intelligence reports, "*We nevertheless also concluded that the documents were factually inaccurate.*" The 17 March draft states that they are probably authentic GRU-collected intelligence reports, "*but they are not what they purport to be. We concluded that the documents contain significant inaccuracies and anomalies*";

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- The original text stated that, "*In view of . . . contradictions, we cannot definitively conclude that US POWs were not interrogated by Soviets.*" The new language states, "*We doubt that American POWs were directly questioned by Russians*"; and

- The original text said that, "we have *equally* convincing reports that claim US POWs were not transferred out of Vietnam." The new language says that, "we have *more* convincing reports . . . ."

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(b)(3) NatSecAct the drafter met with the U.S. Ambassador to discuss the draft. In the section of the draft dealing with Vietnamese refusal to provide Politburo documents, a phrase indicated that Vietnam would not provide such documents, "*any more than foreign governments, such as the United States, would open their sensitive records to Vietnamese officials.*" A handwritten note by the drafter indicates that "the Ambassador wants this emphasized." Not only was the Ambassador's request rejected, the entire phrase eventually was deleted.

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The NIO/EA showed the 17 March draft to the Acting Director, DPMO on 20 March. The drafter recalls that the Acting Director read the draft, disagreed with language dealing with Vietnamese mistreatment of POWs, and provided written comments. The Acting Director recalls reading part of the draft at the request of the NIO/EA, but told us that he made no comments. The NIO/EA recalls that the Acting Director read part of the draft, but does not recall what his reaction was or whether he provided comments to the drafter. We found neither written comments nor an annotated draft attributable to the Acting Director, DPMO. No changes were made in the text on the subject of Vietnamese mistreatment of POWs.

Fourth Draft (23 March 1998)

(b)(3) NatSecAct

The changes made to the 23 March version of the estimate are modest and do not move the tone of the draft in any consistent direction. In the "Key Judgments," the comparison of Vietnamese sensitivities to those of the United States (previously mentioned) is removed as is a

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sentence stating that, "*We think US high-level attention to the POW/MIA issue as one component of the overall relationship will be helpful.*" Changes in the "Discussion" section also are minimal:

- At several points dealing with Vietnamese non-compliance with U.S. requests for documents, a modifying phrase has been added that emphasizes the positive in terms of cooperation: "*Although Vietnam has provided thousands of documents to the US side. . . .*" and "*Vietnam has provided over 28,000 documents to US officials . . .* ";

- In several places, language questioning Vietnamese claims that had been added to the 17 March version has been removed: "*We cannot absolutely verify such claims*," and "*Again, we cannot absolutely verify this information*";

- In one area, language has been toughened: rather than "some elements of Vietnam's bureaucracy *fell short of* a desire for full engagement," the text now reads, "some elements . . . *did not favor* full engagement"; and

- The much-changed language dealing with reports that POWs had not been transferred to the Soviet Union has been changed from, "we have *more convincing* reports . . ." to "we have *credible* reports . . . ."

These changes do not provide a clear indication of an effort to shift tone or judgment.

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Outside Readers

[redacted] The 23 March draft was sent to the IC representatives, with notification that a coordination meeting would be held on 27 March. At the same time, the draft was provided for comment to two outside readers: a former Deputy Chairman of the NIC and East Asia specialist [redacted], and a former National Security Advisor and East Asia specialist [redacted] had been National Security Advisor in 1993, when the original analysis of the Russian documents was undertaken. We found written comments from [redacted] but not from [redacted] in the NIC files.

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Declassified on: Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

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The primary concern expressed by the former Deputy Chairman of the NIC, who provided his comments on 24 March, was that the tone of the "Key Judgments" was "overly rosy." That created two problems, he said. The first was that, before having read the body of the estimate, those readers "who are already doubters will turn off." He said that some of the adjectives could be softened and the NIE would still carry the message that there has been improvement in Hanoi's performance. The second problem was that the draft identifies many cases of non-compliance, thus undercutting the "rosy hue" of the "Key Judgments." He went on to raise several other issues, particularly the degree to which Hanoi's senior leaders have delegated authority for POW/MIA issues. He said that, if true, this is one of the chief changes for the better and should be in the "Key Judgments"; he noted, however, that this judgment rests on the testimony of one listed source. He also recommended that the draft highlight the fact that the principal cause of Vietnamese non-compliance is the regime's wish not to reveal past brutalities.

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In a note the NIE drafter referred to the comments of both outside readers. For the most part, he discussed changes to accommodate the recommendations of the former Deputy Chairman, NIC, including changing adjectives throughout to say that Vietnam has become "*more*" cooperative rather than "*increasingly*" cooperative and putting more emphasis on the reasons why the Vietnamese have not cooperated more completely, such as "their sensitivity about the historical record on their handling of POWs." His only specific reference to comments was to say that he was concerned that the listing of SRV officials involved in the POW/MIA issue did not include any officials who were not cooperative.

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IC Coordination Meeting

The IC representatives met on 27 and 30 March to coordinate the estimate, working with the 23 March version of the draft. In memoranda to their respective senior management, representatives detailed results of the meetings. All reported that there was little disagreement and that no major problems had emerged. They noted that both the outside readers and DIA had argued that, in a few instances, the draft was "too apologetic" to the Vietnamese or "unduly charitable in rating Vietnam's performance." Therefore, a more circumspect, but still basically positive, appraisal had emerged from the coordination sessions. representative stated that both outside

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readers had suggested that modifying the language would "make for a more persuasive paper" and "would not immediately set off critics of Vietnam's record of cooperation on this issue." representative indicated that the new language would stress that Vietnam cooperates mainly because to do so is in its larger interest, but that "long-standing secretiveness and suspicion of the United States will continue to limit its cooperation." The NIO/EA sent a note to the drafter on 27 March with two suggested "fixes" to the draft. These changes reflected the suggestions of the former Deputy Chairman of the NIC and the recommendations of the IC representatives; they reinforced skepticism of Vietnam's motives and performance.

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Fifth Draft (31 March 1998)

(b)(3) NatSecAct

The 31 March draft reflected these suggestions. Vietnam's "*increasing cooperation*" was changed to "*more cooperative approach*" and showing "*increasing*" flexibility was changed to showing "*more*" flexibility. The conclusion that Vietnam's performance on the U.S. POW/MIA issue "*has improved significantly*" was changed to "*has definitely improved.*" A number of additional, but minor, changes served to further reduce the "overly rosy" tone criticized by the former Deputy Chairman of the NIC.

(b)(1)
(b)(3) NatSecAct

This draft was sent to the NFIB principals in preparation for their meeting on 13 April.

MIB AND NFIB MEETINGS (APRIL 1998)

(b)(3) NatSecAct

The Director, DIA convenes the MIB to be certain that he is representing the coordinated military intelligence view when he attends an NFIB meeting to approve an estimate. On 26 March, the DIA Associate Director for Estimates suggested that the Director convene a MIB in this instance because of the "politically-charged nature of this particular

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estimate." He further recommended that, while DPMO should not be part of the coordination process, a DPMO official might attend the meeting to help "clarify issues" relating to POW/MIA matters. The background paper prepared for the Director, DIA noted that the estimate "will almost certainly be judged inadequate by some SSCI members and staff, Senator Smith, and POW/MIA activists." It also said that a DPMO official would attend the MIB session to address questions "on the POW/MIA issue as a whole, but not issues specifically related to the SNIE [sic]."

(b)(3) NatSecAct

When the MIB met on 9 April, the Director, DIA began by mentioning that he had received a call two hours earlier from Senator Smith. The Senator asserted that he wanted the Director to be aware of his concerns, which were significant. Senator Smith charged that the IC had not done a good job of examining all the documents and attendant information on the POW/MIA issue. He claimed that there were 300 to 350 documents available at the SSCI, but that no one had come to review them. If the IC published the NIE without reviewing those documents, Senator Smith said, then "I can't believe in it." In addition, the Director said that he had received a fax from the Executive Director of the National League of Families of American Prisoners and Missing in Southeast Asia, in which she said that she looked "forward to reviewing the results" of the estimate and that the League was relying on him to ensure its "objectivity and thoroughness." The Director said that POW/MIA issues were emotional, but that the important thing was to "deal as objectively as possible with the intelligence facts at hand." The MIB recommended approval of the estimate by the NFIB; all members concurred. The DPMO official said that, while he had not read the estimate, he had no problem with the major judgments as they had been presented. He said that it did seem that the IC was being a little hard on the Vietnamese on the issue of their cooperation with live sighting investigations.

(b)(3) NatSecAct

The NFIB, chaired by the DCI, met on 13 April to discuss the estimate. The Chairman of the NIC reported that there were no major substantive differences within the IC on the NIE. The NIO/EA stated that he had removed himself from the process because of accusations that he had "politicized the 1993 [sic] report to which Senator Smith takes exception." He said that the IC had agreed to the main judgments of the estimate and there had been no controversies. After the Deputy Director, DIA raised the issue of Senator Smith and the documents, the DCI directed that a team visit the SSCI to read the documents before the estimate was published.

SECRET Dec 26, 2024 (b)(3) NatSecAct
Approved for Release: 2024/12/03 C06898860

(b)(3) NatSecAct

The NFIB members debated language concerning the alleged transfer of POWs to the USSR. The DCI did not like the use of the word "doubt"; he argued that, because the IC does not know whether these events occurred, it should not make the judgment that it doubted this had occurred. It should use language indicating that there are contradictory reports and that the matter requires further investigation. Both the NIO/EA and the drafter argued that evidence that transfers did not occur was persuasive. The principals agreed to change the language to, "*Although we doubt that POWs were transferred to the USSR, we also conclude that the books remain open on this.*" The net effect of the debate on these issues, initiated by the DCI, was to further modify the judgment made in the NIE on alleged transfers.

ANOTHER ROUND OF REVIEW

The SSCI Documents

(b)(3) NatSecAct

In early December 1997, the SSCI had sent a letter to the CIA, OCA, offering to provide material for the estimate and listing the documents in its possession. In early January 1998, the NIE drafter noted that, while most of the material was already in the possession of the IC, he would like copies of 17 of the documents; this request was passed to the SSCI. That was where this issue stood at the time of Senator Smith's call to the Director, DIA on 9 April and the DCI's directive on 13 April that a team review the SSCI holdings.

(b)(3) NatSecAct

The CIA, OCA contacted the SSCI majority staff member holding the documents on 14 April to set up an appointment to review the documents. According to an OCA officer, the staff member asked that the NIE drafter call him personally. When the NIE drafter called, the staff member agreed to give him access to specific documents but not to the entire collection which, he said, was not in a single location. He suggested that the drafter review the list again. After consulting with the DIA representative, the drafter added 18 documents to the original list of 17 he had requested in January 1998. In a memorandum for the record, he explained in detail why more documents had not been selected. On 17 April, the drafter and the DIA representative visited the SSCI to review the additional documents. In reporting back to the DCI on 23 April, the NIO/EA explained that the team had reviewed the documents and found

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that the vast majority of the documents in the SSCI files had been seen in other IC archives and that the review "did not uncover any new information bearing on judgments or analysis in the Estimate" (details of the SSCI document issue are discussed in Part IV, *Critical Assessment* Charges: Substance, under "Relevant Documentation").

Two More Outside Readers

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(b)(3) NatSecAct

Following the NFIB meeting, at the direction of the DCI, the NIC provided the draft to two more outside readers, a former Assistant Secretary of Defense for International Security Policy and a former DCI Both commended the draft and said they had no major problems with it; each had a few suggestions. recommended that the draft provide more quantitative data to demonstrate the improvement in Vietnam's performance; that it emphasize the weaknesses of GRU reporting and sourcing; and that it analyze what it would take to reverse the current positive trend in Vietnamese behavior. In the end, none of these suggestions was taken.

(b)(3) NatSecAct

(b)(1)
(b)(3) NatSecAct

said his suggestions were "intended to strengthen our case against the minority of readers who would be reflexively critical." He recommended that the estimate acknowledge that Vietnam's archival capabilities were probably not good; that the estimate speculate on the origins of the Russian documents and why the Vietnamese prepared them; and that the drafter remedy the fact that the characterization of the Russian documents was different in the text and the annex. Gates said that the above points, if addressed, "would simply strengthen the text against criticism." In the end, the draft was revised to incorporate several of his revisions for clarity.

(b)(3) NatSecAct

Neither of these readers made suggestions designed to alter the substance or judgments of the NIE draft. While the former DCI indicated that his comments would help deflect criticism, his suggestions were modest and probably not sufficient to have had an impact on the tone of the estimate or on reaction to it.

(b)(3) NatSecAct

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DCI Input

(b)(3) NatSecAct

In early April, the NIC sent the DCI talking points on the NIE, laying out the key judgments: that the Vietnamese are cooperating to help the United States achieve full accounting of POW/MIAs and that the 735 and 1205 documents are neither accurate nor a good foundation for judging Vietnamese performance on the POW/MIA issue. The talking points indicated that the judgments would be politically controversial because some elements within DPMO believe that Vietnam is withholding material and believe the CIA is part of a U.S. Government cover-up on the POW/MIA issue. Furthermore, the talking points stated, Senator Smith probably will not like the conclusions because he and members of his staff have been strongly critical of U.S. Government handling of the issue.

(b)(3) NatSecAct

After seeing a copy of the estimate on 17 April, the DCI indicated that he wanted to delete sentences that included the phrase, "We doubt . . . ." He instructed the NIE drafter simply to state what we do and do not know. He also indicated that he wanted to see a revised draft that included the comments of the second set of readers. In his reaction to this note, the NIE drafter stated that, while the DCI was not remembering accurately what had been agreed to at the NFIB about language expressing doubt, it would be best to reword the language to say that "there is no persuasive evidence that POWs were transferred to Russia or other countries."

(b)(3) NatSecAct

The NIC sent a revised copy of the draft to the DCI on 23 April, describing the comments made by the additional readers and explaining why most of their suggestions had not been adopted. In his response on 26 April, the DCI indicated that he did not necessarily agree that the suggestions of the outside readers should not be incorporated; he was particularly interested in the recommendations to add quantitative information and more speculation regarding the "inaccurate" Russian documents. In the end, however, he was persuaded that it was not advisable to add either. He did argue strongly and successfully, however, that the order of paragraphs in the "Key Judgments" be shifted; he wanted to put the relevant evidence first, rather than leading with the judgment that Vietnamese cooperation had improved. Neither the Deputy Chairman of the NIC nor the NIO/EA agreed with this change in the ordering, but both recommended accommodating the DCI.

Approved for Release: 2024/12/03 C06898860

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In the draft that went back to the DCI on 28 April, the evidence was put first, followed by the judgment that the Vietnamese were cooperating. On 29 April, the DCI returned the "Key Judgments" to the NIC with a handwritten comment saying that the paragraph regarding Vietnamese cooperation should be removed because it was "too subjective." The paragraph read:

> Consequently, we judge that Vietnam has become more helpful in assisting U.S. efforts to achieve the fullest possible accounting of American personnel missing in action during the Vietnam conflict.

In the end, the DCI was persuaded that, because this paragraph specifically answered one of the two key questions in the TOR and was a key judgment of the estimate, it should remain. The effect of the change recommended by the DCI would have been to further modify the language of the "Key Judgments."

(b)(3) NatSecAct

On 1 May 1998, the DCI approved the NIE. Although the date on the NIE is April 1998, it was not published and disseminated until early May. On 21 May, the NIE drafter met with members of the SSCI staff to brief them on the NIE. The SSCI majority staff member challenged the analytic techniques used by the drafter; he particularly wanted to know why the estimate had not analyzed the number of POWs held by the Vietnamese. The drafter responded that this had not been part of the TOR and that the IC does not have the resources or capability to conduct that analysis.

CRITICISM OF ESTIMATE

Senator Smith Meets With NIO/EA (June 1998)

(b)(3) NatSecAct

NIE 98-03 was provided to the SSCI and then to Senator Smith's office in mid-May 1998. On 17 June 1998, the Chairman of the NIC and the NIO/EA were invited to speak about the estimate to members of the U.S. side of the U.S.-Russia Joint Commission on POW/MIAs; among the participants was Senator Smith. The Chairman of the NIC outlined the origins of the estimate, describing the NIE as "unconventional" because it looked to the past rather than the future and required a review of archival materials. The NIO/EA then provided a background briefing on the methodology used by the NIE drafter and the IC coordination process.

Declassified on: Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

(b)(3) NatSecAct

Senator Smith directed a series of questions to the NIO/EA, challenging the judgments of the estimate and indicating that it was not a credible intelligence product. He provided his own views, including the question, "so does that not mean that there are still 370 cases of Americans where we do not have evidence that they died in their incident?" As a result, he said, you cannot dismiss the 1205 document based on the numbers as "they are trying to do here in this estimate." He charged that the estimate was "totally misleading and frankly it is an effort to discredit the 1,205 number." Senator Smith went on to say that, "This is a terrible job and not an intelligence estimate at all . . . . It is full of erroneous information . . . ."

Release of* Critical Assessment *(November 1998)

(b)(3) NatSecAct

Senator Smith issued his *Critical Assessment* in November 1998. He sent the assessment with an accompanying cover letter to members of the MIB and the NFIB, with a request that those boards meet to consider and approve his request that the NIE be retracted. He sent copies to Congressional leaders, with a request that oversight hearings concerning the NIE be conducted. In addition, he sent copies to officials:

> . . . who may rely on the NIE, such as U.S. policy-makers with responsibility for U.S. relations with the Government of the Socialist Republic of Vietnam (SRV) and U.S. military officials with responsibility for POW/MIA accounting efforts in Southeast Asia with the admonition that they not rely on the judgments of the estimate for the reasons cited in the *Critical Assessment*.

(b)(3) NatSecAct

The *Critical Assessment* took issue with all the major judgments of the estimate. It stated that, because the NIE had failed to distinguish between Vietnam's improved assistance with field operations and its stonewalling in providing full disclosure of documents, the judgment of an overall "good" SRV performance on the POW/MIA problem is not reliable. Moreover, it states:

> . . . there are ***numerous*** [emphasis in original] instances, also detailed in this critical assessment, where the analysis in support of the NIE's judgments of SRV cooperation is factually inaccurate, misleading, incomplete, shallow, and seriously flawed.

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Approved for Release: 2024/12/03 C06898860

The *Critical Assessment* states that:

> . . . the NIE's judgment on the 1205/735 documents cannot be accepted with confidence because it is ***replete*** [emphasis in original] with inaccurate and misleading statements, and lacks a reasonably thorough and objective foundation on which to base its judgment. I further conclude, based on a review of relevant U.S. data, that many of the statements contained in both the 1205/735 documents [redacted] are indeed supported or plausible . . . . (b)(1) (b)(3) NatSecAct

Finally, with respect to the politicizing of intelligence, the *Critical Assessment* says that:

> Congress and the leaders of the U.S. Intelligence Community (IC) need to examine what role the White House, its National Security Council, and certain U.S. policymakers responsible for advancing the Administration's normalization agenda with Vietnam may have played in influencing or otherwise affecting the judgments of the IC as reflected in the NIE.

MIB AND NFIB MEETINGS (JANUARY 1999)

(b)(3) NatSecAct

[redacted] The DCI responded to Senator Smith's letter on 17 December 1998, stating that he had directed that the evaluation of the NIE be put on the NFIB agenda scheduled for January 1999. The MIB met on 15 January, before the NFIB, and recommended that:

- The IC stand by the NIE and reject the request for retraction;
- The DCI reject charges of "politicization";
- The IC avoid point-by-point rebuttals of the *Critical Assessment*; and
- The IC be prepared for congressional hearings.

All MIB members concurred with the recommendations.[10]

(b)(3) NatSecAct

[10] [redacted] The MIB consists of DIA; the Military Departments to include the Marine Corps; the Unified Commands; NSA; the NIMA; the NRO; Joint Staff; Deputy Assistant Secretary of Defense (Intelligence); U.S. Forces Korea; Coast Guard; Associate, DCI for Military Support; and Defense Information Systems Agency.

Doc: 26, 2024

Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

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The NFIB convened on 19 January 1999 to consider Senator Smith's criticism of the estimate and made several decisions:

- The Board would not engage in a point-by-point rebuttal of the critique;
- The DCI would respond to Senator Smith on behalf of the IC, stating that the NFIB principals stand firmly behind the NIE. He would acknowledge that there are "unresolved mysteries with respect to the POW/MIA issue and that the Intelligence Community will continue to work to resolve them." Finally, in his letter, the DCI would refute Senator Smith's claim that the NIE reflected "shoddy research" or a "pre-determined strategy to discredit relevant information"; and
- The Director, DIA, speaking on behalf of the uniformed military, would send a separate letter to Senator Smith in concert with the DCI letter.

(b)(3) NatSecAct

In his response to Senator Smith, dated 1 February 1999, the DCI reported that the NFIB had voted unanimously to let the estimate stand. He acknowledged critical gaps in intelligence and assured the Senator that NFIB members would provide any new information collected to those responsible for dealing with the POW/MIA issue. He stated that NFIB members had again commended the analyst who drafted the NIE and the "rigorous interagency process" that made the NIE an IC product, not the work of a single author. He said that he accepted the word of those who worked on the draft and coordinated it that "there was at no time any effort to distort judgments from outside or inside the Community."

Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

PART IV: *CRITICAL ASSESSMENT* CHARGES: SUBSTANCE

(b)(3) NatSecAct

[redacted] We evaluated NIE 98-03 and the *Critical Assessment* using a comparative approach (see Annex C for discussion of the methodology used in this section). The *Critical Assessment* took issue with 51 NIE statements (excluding politicization issues). We examined the criticisms levied against the NIE and grouped them into specific topics for discussion as follows:

- Relevant Documentation;
- Vietnamese Cooperation;
- Mistreatment of POWs;
- Recovery and Repatriation of Remains;
- The Saga of the Mortician;
- Numbers of POW/MIA: the 735 and 1205 Documents;
- Assessment of Comments by Russian Sources on the 735 and 1205 Documents;

[redacted] (b)(1) (b)(3) NatSecAct

- Separate or Second Prison System; and
- Alleged Transfers of POWs from Vietnam to the USSR.

In addition to these topics, we reviewed two issues not specifically addressed in either the NIE or the *Critical Assessment*. We evaluated each of the cases of U.S. personnel listed by Senator Smith in 1992 for whom verified remains have not been returned by Vietnam. We undertook this task because, according to Senator Smith's legislative assistant, the Senator had expected the drafter of the NIE to do so and he did not; we agreed with Senator Smith that such a review is relevant to an analysis of the POW/MIA issue and that it should be conducted by independent analysts.

Declassified, Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

In addition, we examined one particular MIA case, that of Captain John T. McDonnell, U.S. Army, to demonstrate both the polarized nature of the MIA issue and the difficulty of making determinations of fate.

(b)(3) NatSecAct

RELEVANT DOCUMENTATION

The *Critical Assessment* questions why any NIE:

> . . . would make judgments in areas if there is no sizable body of intelligence reporting within the U.S. Intelligence Community . . . .

It goes on to say that:

> . . . based on a listing of documents compiled by my [Senator Smith's] office, scanning [sic] thirty-plus years, there does, in fact, appear to be significant intelligence reporting.

The assessment repeatedly criticizes the NIE drafter for failing to use information made available to the IC and cites several letters that address "a listing of documents" that contain "significant intelligence reporting." We begin our discussion of the use of relevant documentation and the alleged discrediting of relevant information by the NIE drafter with an examination of those letters.

(b)(3) NatSecAct

On 2 December 1997, Senator Smith, through his legislative assistant, transferred document holdings to the SSCI as a "complete response to meet his pledge to make any relevant information available to the drafter of the NIE, from his holdings and from the Senate Select Committee, POW/MIA." The next day, the SSCI Chairman and Vice Chairman forwarded a list of those holdings to the drafter of the NIE. That list consisted of 317 line items (the term "line items" is more accurate than the term "documents" since one line item may contain one or more documents) in two parts. The first part included 134 line items held in binders by the JCSD to assist its work in support of the VWWG of the U.S.-Russia Joint Commission. Senator Smith chairs that working group. The second part included 183 line items that represented the contents of the growing files of Senator Smith as held for him by the SSCI as of 3 December. That list of 317 line items represents what the NIE drafter thought was the relevant material held by the SSCI.

Approved for Release: 2024/12/03 C06898860

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On 6 February 1998, Senator Smith sent a letter to the Director, DIA, in which he stated:

> I believe there are currently over 350 documents on the POW/MIA topic . . . . I hope you will not hesitate to ask SSCI to review any of this material that may not already be readily available to DIA.

Senator Smith is referring to an expanded list that included 80 line items passed directly to the NIE drafter by the JCSD during the course of several joint discussions and an additional 84 line items added to the growing Smith files during the period December 1997-January 1998.

(b)(3) NatSecAct

On 9 April 1998, Senator Smith called the Director, DIA, and referred to "300-350 documents available at the SSCI for people that want to review them." Senator Smith stated that "no one has ever come to review these documents. If the IC published the NIE without having reviewed these documents, I can't believe in it." Senator Smith's call caused the DCI to halt the NIE process and direct the NIE drafter and a DIA representative to visit the SSCI to review documents of concern to Senator Smith.

(b)(3) NatSecAct

The body of information Senator Smith referred to in his 9 April call differs from the body of information officially made available to the drafter of the NIE. Moreover, the body of information to which Senator Smith referred contained considerable information already reviewed by the drafter well before the Senator's call. By the time of Senator Smith's call, the drafter of the NIE had considered, at a minimum, 97 documents on Senator Smith's new list: the 80 passed to him by JCSD and 17 that he had selected from the list passed to him by the SSCI on 3 December 1997.

(b)(3) NatSecAct

The *Critical Assessment* refers to a 15 April 1998 letter from Senator Smith to the Director, DIA, in which he refers to the documents held by the SSCI. We have been unable to locate this letter. According to Senator Smith's legislative assistant, there was a 15 April 1998 memorandum from him (the legislative assistant) to the Director, DIA, which a SSCI staff member was to deliver the next day. The legislative assistant gave us a copy of that memorandum. The SSCI staff

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Declassified on: Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

member told us that he took the memorandum to DIA on or about 16 April 1998. Neither the Director, DIA's executive correspondence office nor his POW/MIA policy office has a record of any correspondence from Senator Smith or his staff dated 15 April 1998.

(b)(3) NatSecAct

The SSCI staff member did hand the updated document list, without a cover memorandum, to the drafter of the NIE and the DIA representative on 16 April 1998, during their document review visit to the SSCI. According to the NIE drafter, "on arrival, the staff assistant handed us a new list of documents in SSCI's possession that he said we should look at." We did not find a copy of the 15 April 1998 cover memorandum in the NIE drafter's files. Further, on 9 September 1999 we showed the drafter a copy of the memorandum and he stated that he had never seen it.

(b)(3) NatSecAct

We reviewed the SSCI holdings related to the 3 December 1997 letter. We also reviewed the document holdings of the NIE drafter. The drafter's holdings, coupled with files provided to him by

far exceeded the SSCI holdings. Moreover, the NIE drafter had extensive folders pertaining to specific topics

Not only did the drafter have access to relevant intelligence information but he also made multiple visits to DPMO, both RA and the JCSD, to acquire documents held by those two key offices. Further, he had an extensive network of informal sources including academia. We found that the NIE drafter considered relevant intelligence information from 1987 onwards, as specified in the TOR. Based on his reading of previous IC publications, however, he did not specifically review raw data dating from before 1987 (see Annex D for a listing of IC publications reviewed by the estimate drafter).

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(b)(3) NatSecAct

In our review of CIA, DO files, centrally gathered for the government-wide POW/MIA document declassification effort in the early 1990s, we found that relevant intelligence information concerning the POW/MIA issue prior to that time was available and that the NIE drafter had reviewed those files. Further, the DO manager responsible for those documents told us that he personally assisted the drafter, a process that included a review of the draft report. We also found that the drafter's

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Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

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boxes of information contained documentation going back to the 1950s. We believe that the NIE drafter considered relevant information but, by design, focused on the decade 1987 through 1997.

(b)(3) NatSecAct

Senator Smith's legislative assistant told us that, given the emergence of a re-evaluation of the 735 and 1205 documents as a key question, the TOR obligated the NIE drafter to consider information back to the 1960s. We cannot reconcile these two divergent points of view. We note, however, the delay in the completion of the TOR; the addition of the 735 and 1205 documents to the "Key Questions" of the TOR; and the introduction of a new NIO/EA and a new NIE drafter, neither of whom had been involved in the negotiations of the TOR. Whereas the former NIO/EA had intended to treat the 735 and 1205 documents as a separate project, the new NIO/EA and drafter accepted the final TOR with its expanded focus without changing the time frame on which the research should focus. In conducting this review of the NIE and the *Critical Assessment*, we found it necessary to search as far back as the document trail allowed.

(b)(3) NatSecAct

VIETNAMESE COOPERATION

The *Critical Assessment* claims that the NIE did not consider information available to the IC in assessing Vietnamese cooperation on POW/MIA matters. At issue are the NIE statements that "Vietnam has become more helpful in assisting U.S. efforts to achieve the fullest possible accounting of American personnel missing in action during the Vietnam conflict" and that Vietnam's overall performance in dealing with the POW/MIA issue "has been good in recent years." The *Critical Assessment* asserts that the NIE judgment of Vietnam performance as "good" is not reliable and argues that the judgments on cooperation are "factually inaccurate, misleading, incomplete, shallow, and seriously flawed."

(b)(3) NatSecAct

For example, one of the key questions in the NIE TOR and "Scope Note" is:

> To what extent since 1987 has the leadership of the SRV demonstrated a commitment to cooperating with the United States to achieve the fullest possible accounting of American prisoners missing in action during the Vietnam conflict?

Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

The *Critical Assessment* claims that the NIE makes no mention of SRV leadership intentions, performance and capabilities on the POW/MIA issue between 1987 and the early 1990s, as required by the key question in the TOR. It is a fact that the "Key Judgments" of the NIE address only the period since the early 1990s, stating that, since the early 1990s, there has been evidence of increased Vietnamese cooperation in terms of strengthened staffing, increased responsiveness, and growing professionalism. In its "Discussion" section, however, the NIE addresses the question of Vietnamese cooperation since 1987 in some detail. It includes highlights from the "Key Judgments" of the February 1992 CIA Assessment, "Vietnam: Adjusting Its Strategy on the POW/MIA Issue," that describe Vietnamese cooperative gestures during the period 1987 through 1991.

(b)(3) NatSecAct

[redacted] In another criticism dealing with Vietnamese cooperation, the *Critical Assessment* claims that, with the exception of "working level" SRV staff support provided to U.S. officials, the NIE "Key Judgments" do not discuss the capability of Vietnamese leaders to disclose additional documentation that would have a bearing on the POW/MIA issue. The NIE states that "strengthened staffing, increased responsiveness, and growing professionalism" have contributed to the increase in Vietnamese POW/MIA cooperation. The estimate concludes that cooperation regarding the provision of documents is "good," explaining that the Vietnamese cite sovereignty in refusing to make internal Politburo documents accessible and technical problems that make it difficult to locate documents and records. The "Key Judgments" point to shortcomings related to the provision of documentation, suggesting that full disclosure would prove embarrassing to the SRV regime. Finally, the "Key Judgments" state that document retrieval remains an obstacle that requires "close attention by the U.S. Government." Thus, the estimate discusses the issue of the provision of documentation in some detail, but does not specifically focus on the role of the Vietnamese leadership.

(b)(3) NatSecAct

[redacted] The *Critical Assessment* argues that the NIE "Key Judgments" "glaringly fails to define what constitutes progress on the POW/MIA issue from Hanoi's standpoint . . . . " The Vietnamese define progress on the POW/MIA issue almost solely in terms of progress in improving the political relationship between the United States and Vietnam and the amount of money the United States is investing in Vietnam. While the estimate does not say this in so direct a way, the "Key Judgments" state that ". . . better ties to the United States are in Vietnam's own security and economic development interests and that normalization requires progress

Declassified, Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

on the POW/MIA issue." The "Discussion" asserts that Vietnam has become more cooperative for a variety of reasons, including a desire for engagement with Washington, particularly since the collapse of the Soviet Union, which had been a key ally of Vietnam. Further, the NIE contends that Vietnam considers cooperation with the United States essential to enhancement of its economic and security objectives, explaining that Vietnamese leaders recognize that Washington will be a key power in the region and that American business is a potential major source of investment. Also, the NIE mentions that the Vietnamese understand that cooperation on POW/MIA issues is likely to foster a better bilateral relationship with Washington.

(b)(3) NatSecAct

[redacted] The *Critical Assessment's* charges with respect to the NIE's treatment of Vietnam's cooperation on POW/MIA issues are not supported by the facts. The assessment asserts that the NIE does not deal with certain issues when it does, albeit not necessarily in the manner or in the terms preferred by the *Critical Assessment*.

A Question of Political Sensitivity

(b)(3) NatSecAct

[redacted] In another area related to Vietnamese cooperation, the *Critical Assessment* disputes the NIE claim that the POW/MIA issue no longer has the political sensitivity that it once had within the Vietnamese leadership. The assessment argues that, if anything, the issue has become more politically sensitive, not less, because of intensified U.S. interest. The *Critical Assessment* indicates that the appointment of General Vessey as the Special Emissary to Hanoi, the establishment of a Senate Select Committee on POW/MIA Affairs, and creation of the 1991 road map to normalization of relations demonstrate intense U.S. interest.

(b)(3) NatSecAct

[redacted] The February 1992 CIA assessment, cited in the NIE, argues that the Vietnamese were wrestling with their foreign policy in the early 1990s. The report states that there was a growing body of evidence that suggested Hanoi's leadership was debating the pace and scope of improving relations with the United States. Using the 1992 CIA assessment as a backdrop, the NIE drafter researched documentation and discussed Vietnamese political sensitivity with both members of the IC and operational entities that work POW/MIA issues [redacted] on a regular basis. [redacted] stated that the President of Vietnam clearly understood that the POW/MIA issue remained a matter of high priority for the United States. At the same time,

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Declassified on: Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

as operations became more routine, the Vietnamese became more comfortable with the United States. Thus, over time, a more trusting relationship developed between the two countries and the need for high-level interaction on POW/MIA issues diminished. advised the NIE drafter that operational POW/MIA issues are and have long been entrusted to the VNOSMP and the Ministry of Foreign Affairs. (b)(1) (b)(3) NatSecAct

The drafter of the estimate had sufficient evidence to conclude that the POW/MIA issue no longer has the political sensitivity it once had in the Vietnamese leadership.

(b)(3) NatSecAct

Refusal to Cooperate

The *Critical Assessment* takes issue with the NIE regarding additional statements related to cooperation, including the NIE claim that incidents of outright Vietnamese refusal to cooperate with U.S. investigators have decreased and instances wherein the Vietnamese raise objections to POW/MIA activities have diminished. The NIE drafter reviewed DoS documents; the results and impending actions of the Presidential Special Emissary to Vietnam (General Vessey); FBIS reporting; DPMO records; and USPACOM, JTF-FA, CILHI, and Stony Beach documentation. He also conducted interviews with numerous government officials who had knowledge of Vietnamese cooperation on POW/MIA issues. (b)(1) (b)(3) NatSecAct

Using the time frame mandated in the TOR, the NIE concludes that, even though instances of refusal to cooperate with U.S. investigators have decreased, the Vietnamese continue to object to U.S. POW/MIA activities on occasion. The NIE explains that Vietnam's political system is secretive and distrustful of foreign influences and that Vietnamese officials fear that divulging information could undermine governmental authority. Also, according to the NIE, defending its sovereignty and protecting its secrets might be the major reasons why Vietnam has not been completely forthcoming with respect to POW/MIA issues.

(b)(3) NatSecAct

Given that background, the NIE cites several "significant examples" where Vietnam has hindered activities, including refusing requests to see Politburo documents; denying interviews with some senior

Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

retired military officials; and refusing to allow joint field activities in "classified" military areas. Even though several documents reviewed by the NIE drafter and interviews he conducted revealed that significant progress had been made in Vietnamese cooperation, the NIE repeats the conclusion of the February 1992 CIA Intelligence Assessment that, "under the best of circumstances, there are limits to what the United States could expect to achieve."

(b)(3) NatSecAct (b)(1) (b)(3) NatSecAct

The NIE suggests that much remains to be accomplished in terms of Vietnamese cooperation on the POW/MIA issue. We believe that the NIE drafter appropriately used both relevant documentation and interviews with knowledgeable officials in reaching the conclusion that Vietnam's performance in dealing with the POW/MIA issue has been good in recent years and that incidents of refusal to cooperate have declined. That conclusion did not come easily, but, taken in the aggregate and coupled with the chronicle of continuing cases of uncooperative behavior, we believe the overall NIE judgment is sufficiently balanced and cautious, particularly given the caveat that the unresolved areas of Vietnamese cooperation "suggest the need for continued close attention by the U.S. Government."

MISTREATMENT OF POWS

(b)(3) NatSecAct

The *Critical Assessment* discussed mistreatment of POWs as part of the record of Vietnamese cooperation; we treat it separately here because of its importance. The assessment claims that the NIE used a poor example of Vietnam's lack of forthrightness on certain POW/MIA issues by stating that Vietnam continues to deny that U.S. POWs were mistreated while in captivity and that full disclosure of that information would prove embarrassing to the regime. The *Critical Assessment* argues that other embarrassing examples, such as "the holding back of any unacknowledged American POWs after Operation Homecoming in 1973," would have been more relevant. Use of the

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Approved for Release: 2024/12/03 C06898860

mistreatment example, according to the assessment, "is not only disappointing, but very misleading to the NIE reader concerning the scope of knowledge the SRV may still possess concerning unaccounted for POW/MIAs."

(b)(3) NatSecAct

During the 17 June 1998 briefing on the NIE provided to the U.S. side of the U.S.-Russia Joint Commission on POW/MIAs, Senator Smith posed a question to the NIO/EA: if the Vietnamese regime would be embarrassed to provide torture information, he asked, would it not be just as embarrassed to admit that American POWs were held back after the war? The response was "I suppose it would." The two issues are very different in nature, however.

(b)(3) NatSecAct

There are countless, first-hand accounts of Vietnamese mistreatment of U.S. POWs. Ambassador Peterson, a former POW, told the NIE drafter that during a discussion with a Vietnamese official he had described how he had been dragged around like a dog with a rope around his neck. The Vietnamese official denied that the incident occurred. Congressman Sam Johnson's 1992 book, Captive Warriors, and the 1998 book, Honor Bound – The History of American Prisoners of War in Southeast Asia 1961-1973, prepared at the request of a former Deputy Secretary of Defense, graphically describe POW mistreatment at the hands of Vietnamese captors. The NIE states that Vietnam would never provide documents to the United States that reveal mistreatment of POWs because such disclosure would be extremely embarrassing. The DPMO has never raised the issue of mistreatment of POWs because that office considers the issue particularly sensitive; if the issue were raised, DPMO believes, it would "provoke a counterproductive Vietnamese reaction." The DPMO claims that the subject of mistreatment is irrelevant to "our accounting effort, and we have not requested documents that might bear directly on these matters." While requests for such information may not be relevant to the DPMO, the NIE raises the issue to advise the reader that Vietnam has not been forthcoming because divulgence would prove embarrassing to the regime.

(b)(3) NatSecAct

While instances of torture are well documented, virtually all studies, dating back to the 1976 report of the House Select Committee on Missing Persons in Southeast Asia, conclude that there is no evidence to indicate that any American POWs from the Indochina conflict

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Approved for Release: 2024/12/03 C06898860

remain alive. The January 1993 Senate Select Committee on POW/MIA Affairs report concluded that there was no proof U.S. POWs had survived in North Vietnam after Operation Homecoming, while acknowledging that there also was no proof that all of those who did not return had died. The committee report indicated that it could not prove a negative, but concluded that there is "no compelling evidence that proves that any American remains alive in captivity in Southeast Asia." (b)(1) (b)(3) NatSecAct (b)(3) NatSecAct

The NIE indicates that 120 live sighting investigations have been conducted and none has generated any credible evidence of American POWs left in Vietnam.

Finally, the Senate Select Committee report of 1993 suggests that, if efforts to achieve the fullest possible accounting of Vietnam-era POW/MIAs are to be effective and fair to the families, "they must go forward within the context of reality, not fiction." The reality is that there is no credible evidence that American POWs remained behind in 1973. The alleged holding back of POWs is not an appropriate example of Vietnam's lack of forthrightness on POW/MIA issues.

RECOVERY AND REPATRIATION OF REMAINS

(b)(3) NatSecAct

As with other topics discussed under cooperation, the *Critical Assessment*, in discussing repatriation, refers to information available to the IC that allegedly was not used. The assessment takes issue with the NIE judgment that Vietnamese cooperation on the recovery and repatriation of remains of U.S. personnel is excellent. Charging that the NIE judgment is based solely on information provided by a non-IC organization, in this case the JTF-FA, the *Critical Assessment* contends that additional evidence was not factored into the judgment. The drafter of the NIE collected documentation on recovery and repatriation of remains and interviewed key officials While (b)(1) (b)(3) NatSecAct

Declassified on: Dec 26, 2024
Approved for Release: 2024/12/03 C06898860

none of these organizations is a member of the IC, each is a consumer of information from the IC. The IC gathers and analyzes information from all sources, including non-intelligence entities to provide comprehensive assessments and judgments to decisionmakers. The JTF-FA and CILHI are the U.S. Government organizations most closely associated with recovery and repatriation of remains and, even though not part of the IC, their expert observations and experiences were of legitimate import to the NIE drafter.

(b)(3) NatSecAct

In December 1997, the drafter of the NIE met with (b)(1) (b)(3) NatSecAct officials During those sessions, participants stated that the Vietnamese had approached the issue of repatriation more seriously after 1992. judged Vietnamese cooperation in recovery and repatriation of remains since 1992 as excellent. The NIE drafter took those views into consideration, balancing them with document holdings. In addition, he examined numerous publications that addressed recovery and repatriation of remains (see Annex E).

Manipulation of Witnesses

(b)(3) NatSecAct

The *Critical Assessment* describes NIE judgments regarding recovery and repatriation of remains as "especially disturbing," because, it says, there is evidence that Vietnam has manipulated witnesses and evidence at crash sites and has recovered remains that have not b repatriated. officials told the NIE drafter that, in the past, an (b)(1) (b)(3) NatSecAct unknown number of witnesses had been coached, but that this no longer occurs. The NIE drafter also discussed the issue with (b)(1) (b)(3) NatSecAct who advised him that the organization was aware of one instance where a witness was coached. We conferred with and learned that, between 1988 and 1992, the team leader for 18 of the first 20 joint field investigations saw no evidence of witness manipulation and did not see tampering with any crash site. The team leader told us that Vietnamese national level officials wanted to know what a witness would say before meeting the Americans because they did not want to be surprised, but in no way did Vietnamese officials interfere with the recovery process. The team leader said that, during early joint investigations, Vietnamese officials were suspicious of U.S. intentions because they believed the investigations were related to intelligence collection activities. After those initial suspicions were allayed, however, they became more supportive.

Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

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Repatriation of Remains

(b)(3) NatSecAct

The NIE states that there is no evidence the Vietnamese "presently are storing remains of American dead." It indicates that the Vietnamese did collect and store remains during the war, but "we do not know how many." The *Critical Assessment* argues that it is misleading to say "categorically that there is no evidence" the Vietnamese are storing remains, citing discrepancies in numbers of collected and stored remains provided by DPMO and CILHI; a "review of evidence available to the IC"; and the testimony of the "mortician."

(b)(3) NatSecAct

The NIE overstated its case that there is no evidence that the Vietnamese currently are storing the remains of American POWs. The DPMO's 1995 zero-based comprehensive review concluded that there had been some cases indicating that specific remains recovered by the Vietnamese Government had not been turned over. The Deputy Assistant Secretary of Defense for POW/Missing Personnel Affairs report, "Vietnam's Collection and Repatriation of American Remains," published in June 1999 and reviewed by knowledgeable senior analysts in the IC, concludes that, "Based on available information, it is not possible to confirm independently whether Vietnam has repatriated all the American remains it collected." According to the report, Vietnam last repatriated stored remains in September 1990. The 1999 report indicates that there is strong evidence in two cases involving five remains that the remains were collected and taken to Hanoi but not repatriated. Discussions on those cases with the Vietnamese Government continue. Furthermore, the report states that, on two occasions, Vietnamese officials provided information that it had remains that had not been repatriated. While the events cannot be refuted or confirmed, investigation continues.

(b)(3) NatSecAct

The *Critical Assessment* mentions that, in September 1998 (the NIE is dated April 1998), CILHI reported that approximately 170 U.S. remains repatriated by Hanoi since the end of the war showed signs of storage. The assessment then concludes that, based on the DPMO estimate that "Vietnam collected and stored some 300 remains, vice the 400 to 600 asserted by the 1987 Special National Intelligence Estimate," the resulting discrepancy (170 versus 300) makes the NIE assertion that Vietnam's repatriation record is excellent "extremely inaccurate."

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Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

(b)(3) NatSecAct

[redacted] CILHI found that 219 remains, returned unilaterally by the Vietnamese, exhibited forensic evidence of storage. As of 1 April 1999, it had identified 172 of those and continued to analyze the others. Independent of the CILHI determination, DPMO identified 274 remains that had signs of storage. Of those, DPMO said that 249 had been identified and that CILHI was analyzing the others. The disparity in numbers is the result of the different criteria and methods used by DPMO and CILHI. While DPMO analyzes documentation, testimony, and other source reporting to reach its findings, CILHI bases its numbers on the examination of remains. In the 1999 remains study, CILHI states that, "the examination of skeletal remains can yield considerable information . . . but not as much as desired. There are real limitations to the data that can be obtained." Further, the CILHI cautions that its judgments on storage are subjective and imprecise because there are no tests, measurements, or means of standardization to arrive at determinations.

(b)(3) NatSecAct

[redacted] The estimate mentioned that the DPMO, in conjunction with CILHI, was investigating the question of Vietnamese storage of remains and that further conclusions had to await the results of that investigation. The 1999 remains report, issued more than one year after publication of the estimate, determined that a case-by-case analysis of all remains repatriated revealed that, between 1970 and 1993, Vietnamese central authorities had collected and stored 270 to 280 sets of remains. The report claims the disparity of 20 to 30 between that number and the number estimated to have been collected (300) is smaller than had been thought previously and that "we will continue to seek more data about the extent and limits of Vietnam's effort to collect American remains."

(b)(3) NatSecAct

[redacted] The NIE overstated its case on the lack of evidence regarding storage of American remains; it did not factor in the evidence suggesting that remains may not have been repatriated in two cases involving five remains. It did, however, indicate that an in-depth study on the issue was being prepared and that conclusions should await publication of that report.

Approved for Release: 2024/12/03 C06898860

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THE SAGA OF THE MORTICIAN

(b)(3) NatSecAct

[redacted] The NIE makes no claim regarding the number of stored remains. It does report that the 1987 SNIE had suggested that there was evidence Vietnam was storing "about 400-600 sets of remains." That judgment was retracted in October 1996 by IC Assessment 96-05, "Vietnamese Storage of Remains of Unaccounted U.S. Personnel." The NIE states that the 1987 judgment was retracted by the 1996 Assessment because it was based on "the unsupported testimony of a single unreliable source," the mortician.

(b)(3) NatSecAct

[redacted] The *Critical Assessment* takes the NIE to task on the subject of the mortician, calling for "an accurate review of evidence available to the IC." The assessment argues that the NIE rationale regarding the 1996 IC Assessment retraction of a judgment made in the September 1987 SNIE about the storage of 400 to 600 sets of remains, is "egregious" and misrepresents the facts. While the NIE correctly cites the 1996 Assessment as the basis for the retraction, we do not agree with the NIE rationale that the retraction was made because the source of the information was unreliable and his testimony insupportable. Our judgment is based on a comprehensive examination of the source of the storage of remains issue, the mortician.

(b)(3) NatSecAct

[redacted] The mortician, an ethnic Chinese, Vietnamese citizen, worked in his family's funeral business in Hanoi. In the late 1950s, the government assigned mortuary personnel to public service and the mortician worked for the Director of Cemeteries, where he was responsible for grave digging as well as preparing and interring remains. Beginning in 1969, he was assigned the duties of preparing skeletal remains of Americans. In 1979, he was arrested and deported to Hong Kong. While residing in a refugee camp in Hong Kong, he attracted the attention of the U.S. Defense Liaison Office by alleging that he personally had inspected the remains of over 400 U.S. military personnel that were in secret storage in Hanoi.

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polygraph [redacted] prior to expediting his resettlement to the United States. [redacted]

(b)(1)
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(b)(3) NatSecAct

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Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

(b)(3) NatSecAct

(b)(1)
(b)(3) NatSecAct

The responses to the following three relevant questions resulted in an indication of deception:

- Between 1974 and 1977, did you inspect the remains of more than 400 Americans? – Yes;
- Did you make up the story about the remains of 400 Americans being stored in Hanoi? – No; and
- Did you personally see three live American soldiers in Hanoi after 1976? – Yes.

(b)(1)
(b)(3) NatSecAct

adjudicated the results of the polygraph examination and determined that the examiner had made the "correct call."

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(b)(3) NatSecAct

the mortician was brought to Washington, where he was interviewed given another polygraph examination, this time administered by a private company

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We could not determine why a private examiner was hired to perform the second examination,

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Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

(b)(3) NatSecAct

The responses to the following three relevant questions in the second polygraph examination indicated no deception:

- When you left Hanoi, Vietnam, were skeletal remains of Americans being kept there?—Yes;
- At the time you left Vietnam, was the Vietnam Government keeping skeletal remains of U.S. military personnel at Hanoi like you say?—Yes; and
- Did the Vietnam Government force you to leave Vietnam like you say?—Yes.

(b)(1)
(b)(3) NatSecAct

conducted a third polygraph examination of the mortician (b)(3) NatSecAct The relevant questions focused on whether the mortician had seen three Americans between 1974 and 1979 in Hanoi. He responded affirmatively and no deception was indicated.

(b)(3) NatSecAct

The mortician's claim to have seen three Americans was investigated as a live sighting report. One of the individuals, always seen with a Vietnamese escort, was determined to be Robert Garwood.[12] The other two individuals, seen unescorted, were determined to be either journalists or Russian military advisers.

(b)(1)
(b)(3) NatSecAct

In a 5 January 1984 a statement regarding the inconsistent mortician polygraph examination results.

(b)(3) NatSecAct

[12] Marine Corps PFC Robert Garwood was first listed as a POW by U.S. authorities—but never by the Vietnamese — in 1965. He returned to the United States voluntarily in 1979. He was convicted of collaborating with the enemy.

Approved for Release: 2024/12/03 C06898860

(b)(1) (b)(3) NatSecAct

that polygraph examination results should not have been the sole or primary basis for assessing the mortician's story. concluded that the mortician's story was true.

(b)(3) NatSecAct

The number of remains of U.S. military personnel stored in Vietnam and the veracity of the mortician's statements remain subjects of continuing debate. During his June 1980 testimony before the House Subcommittee on Asian and Pacific Affairs of the Committee on Foreign Affairs, the mortician claimed to have processed "some 400, some 452 of these remains, that 26 were turned over to the United States; that leaves about 400 plus. I have seen them." Between 1980 and 1983, senior U.S. officials used the more than/over 400 figure in public statements. The 13 January 1993 report of the Senate Select Committee on POW/MIA Affairs states that, in 1980, the mortician testified that he had processed 452 sets of remains.

(b)(3) NatSecAct

The 1987 SNIE addressed the storage of remains of U.S. military personnel. Without further explanation, it states that, "We estimate that the Vietnamese have already recovered and are warehousing between 400 and 600 remains." The 1996 IC Assessment mentions that IC participants in the 1987 SNIE deferred to the principal drafter on the number of warehoused remains because the drafter's agency (DIA) had the responsibility and expertise for assessing technical aspects of the remains issue. The drafter of the 1987 SNIE, since retired, told us that he could not recall using the 400 to 600 figure. He said that, while he was convinced that storage of remains had occurred, he was not certain there was sufficient evidence to determine the numbers involved. Both the Director and Deputy Director, Special Office for POW/MIA Affairs, DIA at the time, told us that they had no direct knowledge as to the rationale for using the 400 to 600 figure in the 1987 SNIE. Both speculated that the numbers were extrapolated from the mortician's estimate on the number of boxes he believed he saw.

Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

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The 1996 IC Assessment states that the mortician:

> . . . carefully differentiated between the sets of remains he *said* [emphasis in original] he worked on (280 to 310) and what he *believed* [emphasis in original] was the total number of boxes (400). He arrived at a figure of 426 by combining the 400 boxes he estimated in the room (warehouse) in 1977 and two other groups of remains (26 sets) that he worked on that could not have been in the room . . . .

These figures coincide with those in the detailed interview DIA conducted with the mortician in November 1979, just prior to the second polygraph examination. The 1996 Assessment concludes that the 1987 SNIE statement regarding warehousing 400 to 600 sets of remains was based on limited direct evidence whose reliability was open to question. It further concludes that the 400 figure was not "a precise point estimate" and the 600 figure was based on "uncorroborated hearsay evidence or . . . the result of questionable extrapolation."

(b)(3) NatSecAct

The drafter of the 1998 NIE grappled with the differences of opinion on the mortician and discussed those differences at length during IC coordination sessions leading up to formulation of the draft report. IC participants agreed with the language that appeared in the NIE that the storage of 400 to 600 sets of remains was retracted from the 1987 SNIE by the 1996 IC Assessment because the information turned out to have been based on the "unsupported testimony of a single unreliable source." Many factors, including possible mistranslation of testimony and interviews; confusion on the part of the mortician and interviewers and translators; diverse polygraph examination questions; differences in what the mortician actually observed (remains he worked on) and what he speculated; and the drafter's contention that the information provided by the mortician that appeared in the 1987 SNIE was erroneous convinced the NIE drafter that the mortician and his information were unreliable. According to the drafter, the 1998 NIE did not discuss the numbers of warehoused remains because the mortician was considered an unreliable source. The 1996 IC Assessment did not discredit the mortician and his information, however. It claimed that the 1987 SNIE numbers were based on limited direct evidence whose reliability was open to question.

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Dec 26, 2024

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Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

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In a 30 June 1998 memorandum for the Director, DIA, the DPMO argued that the 1996 Assessment characterized the evidence rather than the source as unreliable, describing the figures (400 to 600) as rough estimates not firm enough to serve as a baseline for U.S. policy. The DPMO found information provided by the mortician reliable, and, "dueling polygraphs aside," estimated that the number of remains collected and stored in Hanoi is "well within the range of acceptable error for the rough firsthand estimates provided by this source." DPMO analysts explained that the "range of acceptable error" was the 280 to 310 figure detailed in the 1996 Assessment. Those were the numbers that the mortician processed or worked on rather than the more than 400 he perceived or believed to have been stored. The DPMO concludes that Vietnam collected and stored some 300 U.S. remains rather than the 400 to 600 described in the 1987 SNIE.

(b)(3) NatSecAct

We believe that the NIE language reflects misunderstanding of the meaning of the 1996 IC Assessment. That assessment outlined the rationale behind the decision to judge the 1987 SNIE statement that Hanoi had warehoused 400 to 600 sets of remains as based on "limited direct evidence whose reliability was open to question." We believe that the mortician was truthful in explaining his knowledge of warehoused remains, but that his information regarding the numbers of remains was not accurate. The second polygraph examination, in-depth interviews, a comprehensive post-polygraph investigation, and the (b)(1) January 1984 memorandum for (b)(3) NatSecAct mortician truthfulness provide ample evidence and justification for our position. Had the DPMO been involved in coordinating the 1998 NIE, the "unreliable" and "unsupported" language might have been challenged and the statement on the mortician might have been explained more fully.

(b)(3) NatSecAct

(b)(1)
(b)(3) NatSecAct

We cannot explain why contracted for two private commercial polygraph examinations of the mortician We also cannot explain why believed additional polygraph examinations of the mortician were necessary,

(b)(1)
(b)(3) NatSecAct

We are confident that the 1984 acceptance of (b)(1) comprehensive post-polygraph investigation of the (b)(3) NatSecAct mortician are sufficient justification to conclude that he was truthful, but not completely accurate in his assessment of the number of remains in

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Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

question. We agree with the 1996 IC Assessment claim that the mortician "carefully differentiated between the sets of remains he *said* he worked on and what he *believed* was the total number of boxes."

(b)(3) NatSecAct

The NIE incorrectly claimed that the 1996 IC Assessment retracted the statement in the 1987 SNIE that Vietnam was storing 400 to 600 sets of remains because the information was based on the unsupported testimony of a single unreliable source, the mortician. The misreading of the 1996 IC Assessment on the mortician does not change the basic thrust or key judgments of the NIE nor does the misread make the NIE statement regarding the source of stored remains an "egregious and unsupported misrepresentation of facts . . ." as claimed by the *Critical Assessment*.

NUMBERS OF POW/MIA: THE 735 AND 1205 DOCUMENTS

(b)(3) NatSecAct

Two Distinct Methodologies

On the issue of numbers of American POWs in Vietnam, the *Critical Assessment* claims that the IC has not reviewed all relevant documentation. In addition, it asserts that, "It is simply unacceptable that a detailed analysis of the numbers is not presented in the NIE." Before we address the issue of the numbers specifically, it is important to understand that two different accounting methodologies have been used to support arguments that there either are or are not U.S. MIAs still alive in Southeast Asia. Since Operation Homecoming in 1973, the U.S. Government has based its accounting on the cases of individuals who were expected to be repatriated, but were not. Over the years, these have been termed discrepancy or priority cases. The Senate Select Committee summarized 135 of those as the "Vessey Discrepancy Cases." The 35-year, DoD accounting history has focused on these discrepancy cases in the remains recovery effort; as of August 1999, the cases DoD considered to be still unresolved had been reduced to 43.

(b)(3) NatSecAct

The alternate methodology, which has run parallel to the DoD accounting system in at least rudimentary form since Operation Homecoming, considers all MIA, regardless of sub-category (e.g., Killed in

Approved for Release: 2024/12/03 C06898860

Action-Body not Recovered (KIA-BNR),[13] over water, non-hostile) to be potentially alive, unless "fullest possible accounting" has occurred. Fullest possible accounting is defined as either verified repatriation of remains or return of a live person. Based on that approach there remain over 2,000 persons not accounted for, all potentially live MIA. Supporters of this methodology do, however, tend to accept the U.S. Government's KIA-BNR accounting. Accepting KIA-BNR reduces the number of potential MIA to 1,172 as of December 1992.

(b)(3) NatSecAct

The 1993 Senate Select Committee POW/MIA report stated that Senator Smith had compiled a list of "compelling" cases, reducing the number of MIA from 1,172 to "324 still unaccounted for U.S. personnel from the Vietnam conflict." Senator Smith did not describe his methodology but did say that he considered his list "a working document" and "at best conservative." Based on verified remains returned of those on his list of 324, the list has been reduced to 289 names.

(b)(3) NatSecAct

The dichotomy between the two methodologies was not resolved during the work of the Senate Select Committee, POW/MIA Affairs. In its final report, the Committee created an "Appendix of Case Summaries," and simply reported two lists of cases, the government's discrepancy list and Senator Smith's list of compelling cases.

(b)(3) NatSecAct

The U. S. Government's case methodology factors out both those cases that the DoD determined to be KIA-BNR and those cases in which there was evidence of death. The methodology also factors out cases that are considered to be over water or off-the-scope.[14] The total number is reduced as remains are recovered and identified or when individuals are released.[15] The methodology considers only the remaining cases to be MIA. There is no POW category in this methodology because the U.S. Government believes there are no remaining POWs.

(b)(3) NatSecAct

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13 KIA-BNR refers to persons known to have been killed in action, but body or remains not recovered by U.S. forces, e.g., an aircraft exploding in midair or crashing, or a person with unquestionably terminal wounds and not recovered due to enemy action, or being lost at sea.

14 Off-the-scope is a term used to refer to aircraft losses in Southeast Asia, primarily in Laos, where the aircraft loss occurred outside of radar coverage and the location is unknown.

15 Since 1973, only one U.S. military member, Robert Garwood, has returned alive from Vietnam.

(b)(3) NatSecAct

Approved for Release: 2024/12/03 C06898860

~~SECRET~~ Approved for Release: 2024/12/03 C06898860

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The alternate methodology considers the above methodology to be flawed and bases its accounting on total numbers. While it also factors out KIA-BNR, returnees, and remains recovered and identified, it includes cases in which there is evidence of death, over water cases, and off-the-scope cases. The methodology considers all remaining cases to be potential POW as well as MIA and uses the terminology POW/MIA.

(b)(3) NatSecAct

Apart from consistent treatment of KIA-BNR and remains recovered and identified, the two methodologies have different evidentiary bases. The discrepancy-based methodology relies on real-time incident reporting, results of search and rescue efforts, chain-of-command actions, the presumptive finding of death (Military Services and DoD) process,[16] and the on-going work of JTF-FA. It is driven by operational reporting.

(b)(3) NatSecAct

The total numbers-based methodology is also based on real-time incident reporting and results of search and rescue efforts. It discounts chain-of-command actions and Presumptive Finding of Death (PFOD) determinations, however. It is driven by single-source intelligence, interviews, and other one-time reports. In order to account for its numbers of missing personnel, it hypothesizes a second prison system and the transfer of individuals to the former Soviet Union. Since the work of the Senate Select Committee in 1992, it has relied heavily on the two Russian archival documents, the
735 and 1205 documents, which were acquired after the Select Committee finished its work.

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We opted neither to compare the two methodologies further nor to accept one over the other. Instead, we went back to an

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[16] PFOD is an administrative finding by the appropriate Military Service Secretary, after statutory review procedures, that there is no current evidence to indicate that a person previously listed as MIA or POW could still be alive.

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unfinished thread in the 1994 IC report, "Recent Reports on American POWs in Indochina: An Assessment." That assessment contained the following statement, without amplification:

> Finally, analysts noted that the "735 Document" and the "1205 Document" are inconsistent with each other by any accounting. To have had 1,205 US pilots in captivity by late 1972, Hanoi would have to have held far more than 735 by early 1971.

That incomplete analysis, combined with the Senate Select Committee's decision not to take a position on the two methodologies, persuaded us to evaluate those sections of the 735 and 1205 documents dealing with numbers of U.S. POWs.

The Documents

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We compared the 735 and 1205 documents to each other using the Fulbright/Kennedy and Vessey lists as a basis (the lists will be described as discussed). We focused on those sections of the documents that address the number of POWs held by the Vietnamese because it is those sections that are relevant to the POW/MIA issue. This methodology allowed us to proceed without questioning either the authenticity of the documents or the accuracy of those sections in each document that are not relevant to the POW issue. This approach precludes questions concerning the *bona fides* of either purported author, his location and position at the time of each report, or the intended audience. It also sets aside consideration of South Vietnam, Laos or Cambodia and focuses solely on the North Vietnamese prison system. A close examination of the portions of the 735 and 1205 documents that address the POW issue reveals that both cannot be true; they are mutually exclusive—as the 1994 IC assessment concluded. The relevant portion of at least one of the two documents, if not both, is demonstrably false.

(b)(3) NatSecAct ***Historical Setting of the 735 Document***

On 22 December 1970, a U.S. official representing Senators William Fulbright and Edward Kennedy was handed a list: "Hanoi, November 15, 1970." The cover sheet was headed, Ministry of National Defense, Democratic Republic of Vietnam, and titled, "US Pilots

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Captured in the Democratic Republic of Vietnam from August 5, 1964, to November 15, 1970." The list totaled 368 names: 339 in the North Vietnamese prison system, 20 deceased and nine released.

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[redacted] We can assume that senior Vietnamese officials familiar with the issue would have been aware of both the numbers provided to the United States in the Fulbright/Kennedy list and the breakdown of those numbers (i.e., 339 living POWs and 29 individuals who had died or had been released). Both the 735 and the 1205 documents are attributed to senior Vietnamese officials. Both documents, in referring to the number of living American POWs that the Vietnamese had "acknowledged" to be in captivity, used the number 368. This was not the true number of live POWs, and these officials would have known it.

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[redacted] In late 1970 or early 1971, Hoang Anh, a Vietnamese agricultural official purportedly authored a primarily agricultural report that was found in Soviet Military Intelligence (GRU) archives in the summer of 1993. That report became known as the 735 document. The GRU-acquired document indicates that Anh briefly addressed the POW issue twice in the report. In a section titled "Situation in the Vietnamese Workers' Party," the report states that, ". . . we published the names of 368 American pilots who were shot down and taken captive in the territory of the D.R.V." Later, in a section titled, "Situation in South Vietnam, Laos, and Cambodia," the report states that:

> The overall number of American pilots imprisoned in the D.R.V. is 735. As I already stated, we published the names of 368 pilots. This is our diplomatic move. If the Americans agree to withdraw their troops from South Vietnam, as a start we will return these 368 men to them.

If Anh (or any other senior Vietnamese official) had been in a position to give an authoritative report on this subject and to use the number 368, he also would have known that 29 of the men whose names were on the published list could not be returned to the United States because they had either been released previously or died in captivity. The acknowledged number of live POWs who could have been returned was 339.

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Approved for Release: 2024/12/03 C06898860

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[redacted] In the meantime, however, U.S. officials were unintentionally institutionalizing the incorrect number. On 2 September 1971, then-Secretary of Defense Melvin Laird forwarded the Fulbright/Kennedy list in a memorandum, "December 1970 PW List from NVN" to the Secretaries of the Military Departments. In the text Secretary Laird referred to "a list of 368 servicemen who are or have been prisoners of war." In his 1995 book, Imprisoned or Missing in Vietnam, Lewis M. Stern, commenting on the 735 document stated, "The document, which stated that Vietnam held 735 U.S. aviators as POWs in 1971 instead of the 368 whose names the Vietnamese had publicly released . . . ." Stern has been involved with DoD policymaking on the POW/MIA issue since September 1989 and accompanied General Vessey to Hanoi five times. Currently he is the Director for Indochina, Thailand and Burma, International Security Affairs, Office of the Secretary of Defense. He did not question the 368 figure in the 735 document when we interviewed him.

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[redacted] On the other hand, the figure cited by the Vietnamese in 1970 has been accurately reported, implicitly if not explicitly, at least five times: twice in the POW/MIA literature, twice by Senator Smith, and once by the IC. In his 1976 book, P.O.W., A Definitive History of the American Prisoner-of-War Experience in Vietnam, 1964-1973, John G. Hubbell stated, "In mid-December, 1970, members of Hanoi's delegation to the Paris peace talks handed over to representatives of Senators William Fulbright and Edward Kennedy a list of 339 American POWs in North Vietnam." In his 1993 book, M.I.A. or Mythmaking in America, (expanded and updated edition) H. Bruce Franklin stated that, "The following month [December] North Vietnam . . . provided what it officially certified as the 'full and complete' list of all 339 prisoners it held . . . ."

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[redacted] Senator Smith has accurately referred to the number of living POWs cited in the Fulbright/Kennedy document on two occasions. In his 21 July 1993, "An Interim Analysis of the 1972 Translation of [the 1205 document]," he stated, "On December 22, 1970, the North Vietnamese delegate to the Paris Peace talks, Mai Van Bo, released to representatives of U.S. Senators Kennedy and Fulbright a list of the names of 368 POWs, 20 of whom were listed as having died, and nine of whom had previously been released." Senator Smith repeated that same information later in his analysis.

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In the *Critical Assessment*, Senator Smith stated, "The 368 list itself consisted of 339 Air Force and Navy pilots and crew members currently in captivity, 9 such personnel previously released, and 20 such personnel listed as dead." He went on to say that, "The status of the 339 men listed as captives was already known to the Pentagon . . . , although this was the first 'official' acknowledgment of their status by Hanoi." He repeated the information again in a *Critical Assessment* footnote (180), over 100 pages later.

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In the *Critical Assessment*, Senator Smith hypothesized that only one of two conclusions could be drawn; either the Vietnamese had made a full accounting or they had decided not to make a full accounting, as the 735 document alleges. Senator Smith referred back to then-Secretary of Defense Laird's memorandum stating that, "I do not accept it [the 368 list] as a complete list of all the prisoners held in North Vietnam."

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In 1993, the IC was on the verge of focusing on the Vietnamese figure of 339 living POWs and the implications of that number, but missed the opportunity. In a 13 September 1993 DoS memorandum, " Vietnam–INR Comment on the '735' Document," the Acting Chief, INR stated:

> The report says Hanoi had 'published the names of 368 fliers shot down and captured on the territory of the DRV' and that these would be returned 'as a start' when the US 'agreed' to withdraw. There . . . are inconsistencies in this statement. True, in December 1970, Hanoi passed to Senators Fulbright and Kennedy a list—the first ever—of 368 names purporting to be all the airmen captured over Vietnam. But only 339 were still living prisoners—20 were deceased, and 9 had been released years earlier. [The author's] purported statement that once the US had agreed to withdraw 'we will, as a start, return to them these 368 people' is curious since only 339 prisoners remained.

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Finally, handwritten notes taken during an IC discussion (DoS, DIA, Task Force Russia, CIA, NIO) after the surfacing of the 735 document contain two illuminating comments. First, "INR—. . . Number is peculiar," and second, "DIA—. . . Numbers 735 and 1205 can't both be right." There is no evidence that these INR and DIA comments were ever pursued. Neither the drafter of the 1994 IC assessment nor the drafter of NIE 98-03 picked up on this discrepancy.

~~SECRET~~ Dec 26, 2024 (b)(3) NatSecAct
Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

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Accounting of U.S. Military Personnel Lost in Southeast Asia

1 January 1971-September 1972

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[redacted] Two sets of statistics provide comprehensive lists of U.S. military personnel lost in Southeast Asia by date of loss. One is a chronological name list that was maintained by the Assistant Secretary of Defense (Comptroller), based on information provided by the military services. The other is a chronological reference document maintained by DPMO. The January 1975 Comptroller's list and the May 1997 DPMO list provide a range of all possible U.S. losses in Southeast Asia between the dates of the 735 and 1205 documents, the end of December 1970 and 15 September 1972 respectively. The Comptroller's list is limited to military personnel unaccounted for in specific categories, such as KIA-BNR, while the DPMO list accounts for every loss regardless of category and includes returnees. We deleted foreign nationals and U.S. civilians from the DPMO list to maintain consistency with both the Comptroller's list and the contents of the 735 and 1205 documents.

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[redacted] The January 1975 Comptroller list includes 131 military personnel who were either captured or missing in Southeast Asia during the period from 1 January 1971 through 15 September 1972. Based on these figures, the 735 and 1205 documents cannot both be accurate; the addition of 131 names is far less than the 470 difference between the 735 and the 1205 numbers.

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[redacted] A higher figure is provided in the May 1997 DPMO list which includes 455 military personnel whose date of incident/loss occurred during the period from 1 January 1971 to 15 September 1972. Assuming that the 735 document is accurate and given the impossibility that all 455 personnel became POWs,[17] the highest possible POW total at the time of the 1205 document would have been 1190. Conversely, assuming that the 1205 document is accurate, the lowest possible total at the time of the 735 document would have been 750.

(b)(3) NatSecAct

[17] [redacted] The United States unilaterally recovered the bodies of 16 personnel, 11 of those in 1972.

~~SECRET~~ [redacted] Dec 26, 2024 (b)(3) NatSecAct

Approved for Release: 2024/12/03 C06898860

(b)(3) NatSecAct

The 368 figure cited in the second relevant section of the 735 document cannot be an informed North Vietnamese statement. For internal consumption, the figure had to be 339 because the Vietnamese knew that 29 of the 368 servicemen they were referring to had either died or been released. For external consumption, the figure could accurately have been no more than 359 (368 less the nine known by the world to have been released). Based on the actual makeup of the "368" list as known to both the U.S. and North Vietnamese Governments in December 1970, the second paragraph in the 735 document relating to American POWs provides a false number.

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Historical Setting of the 1205 Document

On 31 March 1968, a U.S. bombing halt north of the 20th parallel went into effect. On 31 October 1968, a complete bombing halt was ordered. That halt, excepting sporadic retaliatory strikes in 1969 and 1970 and again from February to September 1971, remained in effect until authorization was given for attacks on southern North Vietnam MiG bases on 7-8 November 1971. Operation Linebacker, including mining of North Vietnamese ports, began on 8 May 1972 and lasted until October 1972. Thus, opportunities for the U.S. pilot population in the North Vietnam prison system to grow were limited between the release of the 368 list in December 1970 and the purported 15 September 1972 date of the 1205 report.

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The U.S. Government, just prior to the surfacing of the 1205 document in February 1993, acknowledged the detailed makeup of the 368 names on the Fulbright/Kennedy list and its relationship to what the United States knew. In its final report, released in January 1993, the Senate Select Committee on POW/MIA Affairs stated that:

> By September 1970, the number of confirmed American prisoners had risen to 335 [three months before the 735 speech]. On December 22, 1970, North Vietnam provided Senator Edward Kennedy with a list of 368 . . . . In mid-1972, the [Japanese news Agency] released a list of 390 U.S. POWs. DIA analysis found that 339 of the names on this list had been acknowledged previously as POWs by the DRV, 9 were individuals already released, 20 were servicemen the DRV had reported earlier as dead, and 22 were new names, all airmen lost over North Vietnam

between December 1970 and May 1972 . . . . By the fall of 1972 [the time of the 1205 document], the list of confirmed U.S. POWs held by North Vietnam had risen to more than 400.

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The Vessey documents are germane at this point. The Vietnamese provided General Vessey seven documents in 1993. Two of those documents are lists of American prisoners. The first of these is a copy of a handwritten spreadsheet in the Vietnamese language that accounts for American accessions into the North Vietnamese prison system since the capture of Lieutenant Everett Alvarez, U.S. Navy, who was shot down over North Vietnam in August 1964 and became the first entry on the list. The second document is a listing in English that is probably a continuation of the list of 368 names provided to Senators Fulbright and Kennedy in December 1970. The Vessey documents provide a way to extrapolate the number of Americans in the North Vietnamese prison system relevant to the 1205 document, as shown in Table 1.

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Table 1. Status of U.S. Personnel Once in the North Vietnamese Prison System

Category	December 1970	December 1971	September 1972
POW	339	345	404
Deceased	20	20	22
Released	9	9	12
Total	368	374	438

Source: Fulbright/Kennedy list of December 1970 and Vessey Documents

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The list of 368 Americans who the North Vietnamese claimed had entered their prison system remained static until December 1971, when six additional U.S. prisoners entered the system. Beginning on 16 February 1972, the list increased rapidly, reaching a figure of 438 by the date of the 1205 document. During that time, however, three more prisoners were released and two more died. Therefore, the figure relevant to the 1205 document of U.S. prisoners in the North Vietnam prison system was 404 (438 minus 22 deceased and 12 returnees), not 368. That is the figure that knowledgeable North Vietnamese would have used for internal consumption.

Approved for Release: 2024/12/03 C06898860

~~SECRET~~ Approved for Release: 2024/12/03 C06898860

(b)(3) NatSecAct

(b)(3) NatSecAct

Concerning the number 368, the 1205 document states:

> The 1205 American POWs kept in the prisons of North Vietnam represent a large number. For now, we have officially published a list of only 368 POWs. The rest are not acknowledged.

As discussed earlier, the figure of living U.S. POWs cited by a senior Vietnamese official to his leadership at this time should have been either 339 for consistency with the 735 document or 404 to be consistent with the numbers in the Vessey documents—because at least 29 POWs had either died or been released. Therefore, the reference in the 1205 document to 368 POWs is inaccurate. The 1205 document also notes that, "The work with American prisoners of war has always been within the field of vision of the Politburo and has been reflected in its decisions." If that is true, then the Politburo would have been aware of the increases and attrition cited previously.

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Further, the 1205 document states, "We have captured 624 aviators in North Vietnam." That figure directly contradicts the 735 figure in the Anh document. By September 1972, the 735 figure would have increased to at least 805 (735 plus the 70-name increase to the 368 list, including deceased and released names). In sum, the 1205 document does not track with the 735 document, and it perpetuates a static 368 figure that knowledgeable Vietnamese would have known was inaccurate. Therefore, in our judgment, the POW/MIA section of the 1205 document is also false.

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The Russian position on the numbers in the 1205 document has been communicated to the U.S.-Russia Joint Commission on at least two occasions. In a 30 June 1994 letter to Senator Smith, the then-Chief of the GRU, General Ladygin, stated, "We cannot confirm the correctness of the number of American prisoners (1205) mentioned in the report, inasmuch as this data was not relevant for us and was not rechecked." On 1 July 1997, Ladygin's successor, General Korabelnikov, repeated that statement to Senators Smith and Shelby and Representative Johnson during a Joint Commission meeting at the Russian Ministry of Defense. Korabelnikov concluded by saying, "I do not have anything more to add concerning what General Ladygin said."

(b)(3) NatSecAct

Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

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(b)(3) NatSecAct

A DoS analysis of the 1205 document in April 1993 raised two additional points that should have been addressed by the author of the 1205 document but were not. DoS argued that the document should have referred to a decision made two weeks earlier by the Vietnamese to release three additional pilots whose families were due in Hanoi on 16 September 1972. Secondly, DoS noted that the 1205 document did not address the increased number of prisoners as a result of the heavy U.S. bombing campaign of May-October 1972 and the resultant Vietnamese propaganda exploitation of POWs.

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The JCSD files support the assessment that Vietnamese leaders would have been accurately informed about the numbers of American POWs being held. Those files contain a TFR (JCSD's predecessor) undated assessment, "Vis-a-vis the Russians: Analysis of the 1205 Document." In reference to the author of the 1205 document, the TFR document states that, "Quang cited the continued interest of the Politburo in the question of American prisoners of war." His speech strongly suggested on-going discussion and debate within the Politburo regarding the disposition of American POWs. Therefore, updated information on the number and disposition of POWs must have been discussed by the Vietnamese Politburo within the time frame of the 1205 document. The TFR analysis also states that:

> Given the many inconsistencies and contradictions of the 1205 document, this type of analysis will allow the burden of proof to be placed on those who are holding back information, i.e., the Russians and Vietnamese. This may alleviate the need for the U.S. Government to derive a definitive truth from a partial piece of evidence—we do not have enough information to know what the 1205 document really means.

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The *Critical Assessment* supports the view that accurate information would have been provided to the Vietnamese Politburo by senior Vietnamese officials. In addressing the NIE statement that "none of the Russians claimed that the figure of 1205 POWs was accurate," the assessment cites a GRU officer (as of October 1977) as stating during an interview that:

> . . . the Vietnamese would not have deceived themselves at a closed Politburo session; they might have provided inaccurate information in

Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

press releases on their negotiations with the Americans, but they would have no reason to do so within closed sessions of their political leadership.

A Point of Logic

(b)(3) NatSecAct

It does not matter whether the 735 and 1205 documents are genuine GRU documents or whether the contents not dealing with POW numbers are accurate. An analysis of the statements in the *Critical Assessment* devoted to proving that, because the documents are genuine and elsewhere accurate, the sections about POW matters are accurate as well is not warranted. It does not necessarily follow that because a document is genuine and two of its three parts are plausible that the third part is also plausible. Conversely, because one of three parts of a document is not plausible does not necessarily mean that the other two parts are also not plausible or that the document itself is not genuine.

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Much effort has been expended to prove the *bona fides* of the 735 and 1205 documents and their respective authors. The pursuit thus far has been fruitless. As one member of the JCSD team conducting interviews with Russians on the documents told us, "the process is more important than the results because there are no results." Nor does it matter. We accept the authenticity of the two documents, and we accept the accuracy of some of the contents of the documents. We do not accept references in the documents to the numbers of POWs held by the Vietnamese.

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Nevertheless, because so much has been made of the testimony of and interviews with Russian sources, we reviewed the statements of Russian sources who have been interviewed by JCSD, including those mentioned in both the NIE and the *Critical Assessment*, to determine their opinions of the 735 and 1205 documents.

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ASSESSMENT OF COMMENTS BY RUSSIAN SOURCES ON THE 735 AND 1205 DOCUMENTS

The NIE uses the results of five Russian interviews in its discussion of the IC's assessment of the 735 and 1205 documents. Based in part on those interviews, which the NIE categorizes as "new information,"

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the NIE concludes that "none of the new information helps to confirm the accuracy of the 1205 report" and that the IC assessment of the 735 and 1205 documents released in January 1994 "remains valid."

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A large portion of the *Critical Assessment* is a detailed analysis of the NIE's assessment of the 735 and 1205 documents. The *Critical Assessment* refers to four of the five Russian sources cited in the NIE and concludes that:

> . . . the NIE's judgment on the 1205/735 documents cannot be accepted with confidence because it is **replete** [emphasis in original] with inaccurate and misleading statements and lacks a reasonably thorough and objective analytical foundation on which to base its judgment.

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Our Approach

Both the NIE and the *Critical Assessment* refer to Russian sources, but cite them differently. We reviewed statements of 31 Russians made during interviews with JCSD analysts or in meetings with U.S. personnel

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(b)(3) NatSecAct

To assess the statements, we first defined the level of access that each individual had. We established three levels of access based on the individual's level of responsibility and the nature of his assignments as follows:

- High—Reasonable expectation that the official had knowledge of policy and could have had access to documentation;
- Medium—Some expectation that the official had knowledge of policy and could have had access to documentation; and
- Low—Limited or no expectation that the official had knowledge of policy and could have had access to documentation.

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We next reviewed the statements to establish how each Russian source rated the validity of the 735 and 1205 documents as genuine GRU acquisitions and the credibility of the information in each document concerning POW numbers.

~~SECRET~~ Dec 26, 2024 (b)(3) NatSecAct

Approved for Release: 2024/12/03 C06898860

Validity and Credibility

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Thirteen of the 31 Russian sources (42 percent) considered the documents valid. Further, when only medium and high access levels are considered, 13 of 21 (62 percent) considered the documents valid. None of the Russian sources considered them not valid, and some had no opinion.

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Five of the 31 Russian sources (16 percent) considered the documents credible. Three (10 percent) considered them not credible. Thus, 23 of 31 (74 percent) made no judgment. Only two of 12 individuals with a high level of access believed that the information in the 735 and 1205 documents was credible. One individual served in the 1970s as a Central Committee Secretary. He based his judgment on his belief that the GRU had the means to collect such information—not on validation of the information by other means. The other

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(b)(3) NatSecAct

said that, if the Vietnamese claimed they held 735 American POWs, that was more than the Soviets had estimated. Three of nine individuals with medium access thought the information was credible. One, a Captain First Rank in the GRU who had no direct knowledge of the 735 and 1205 documents, stated that the numbers cited in them could not be confirmed; he believed that Russia had no interest in having these numbers confirmed. The second individual, a
32-year veteran of the KGB's First Chief Directorate, had no direct knowledge of the documentation and said he never saw any information indicating POWs were detained after the Vietnam War. The third individual, the sole KGB representative to the Soviet Embassy in Hanoi between 1975 and 1979, commented that the documents confirmed his personal opinion that not all POWs were released. Not one of the five Russians who found the information credible had any independent means of verification.

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Two Russian sources with high access believed the information was not credible. The Russian Ambassador in Hanoi between 1974 and 1986 questioned the credibility of the information because at no time during his tenure as Ambassador did he learn of any American POWs being held after the war. Another highly placed diplomat who worked on political issues concerning Vietnam at the Central Committee between 1963 and 1986 never saw or was made aware of the existence of the 735 and 1205 documents. One source with medium access who served in the

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Russian Embassy in Hanoi when the two documents surfaced stated that the 1205 document could be in error due to inaccurate GRU reporting, translation errors, or mistakes by the purported author and his staff.

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Previously, we stated that we accept that the 735 and 1205 documents were genuine acquisitions. Statements made by Russian sources reinforce that acceptance. Furthermore, we found that one section of the 735 document and the section of the 1205 document pertaining to POW numbers were both false. Based on the statements made by 31 Russian sources, that finding stands. No estimate of credibility concerning numbers of U.S. POWs cited in the 735 and 1205 documents can be made based on the 31 Russian sources.

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The *Critical Assessment* claims that the NIE statement that the new information from the Russian interviews does not help to confirm the accuracy of the 735 and 1205 documents is "factually inaccurate." The assessment indicates that the information provided by GRU Captain First Rank Sivets, and two Chiefs of the GRU, Generals Ladygin and Korabelnikov, helps to confirm that the 1205 document was "an accurate representation of the political military situation in North Vietnam in 1972." Further, the assessment states that, "since 1994, the GRU has expressed its confidence in both the authenticity and the reliability of the information in the 1205 report." We reviewed the statements made by the GRU officials and found that none of them supports the POW-related contents of the 1205 document.

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Captain First Rank Sivets claimed that the GRU had no interest in the POW issue nor did it perform an analysis of the 1205 document. In his opinion, the only value in the 735 and 1205 documents was the description of North Vietnam's internal political situation. claimed that

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the Soviet POW figure was far short of the purported figure in the 1205 document." JCSD concluded that, "the Soviet assessment supports the POW-related content of neither the 735 nor the 1205 document." General Ladygin, a former Chief of the GRU, said that the GRU could not confirm the accuracy of the

Declassified on: Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

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number of American POWs in the 1205 document because the information "was not essential" to the Soviets. His successor, General Korabelnikov, said that he had nothing more to add to the statement made by Ladygin.

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[redacted] The *Critical Assessment* claims that the GRU "has expressed its confidence in both the authenticity and the reliability of the information on the 1205 report." It does not mention, however, that the GRU sources do not support the POW-related content of the documents.

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Declassified: Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

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Dec 26, 2024

(b)(3)
NatSecAct

Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

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Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

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Approved for Release: 2024/12/03 C06898860

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NatSecAct

Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

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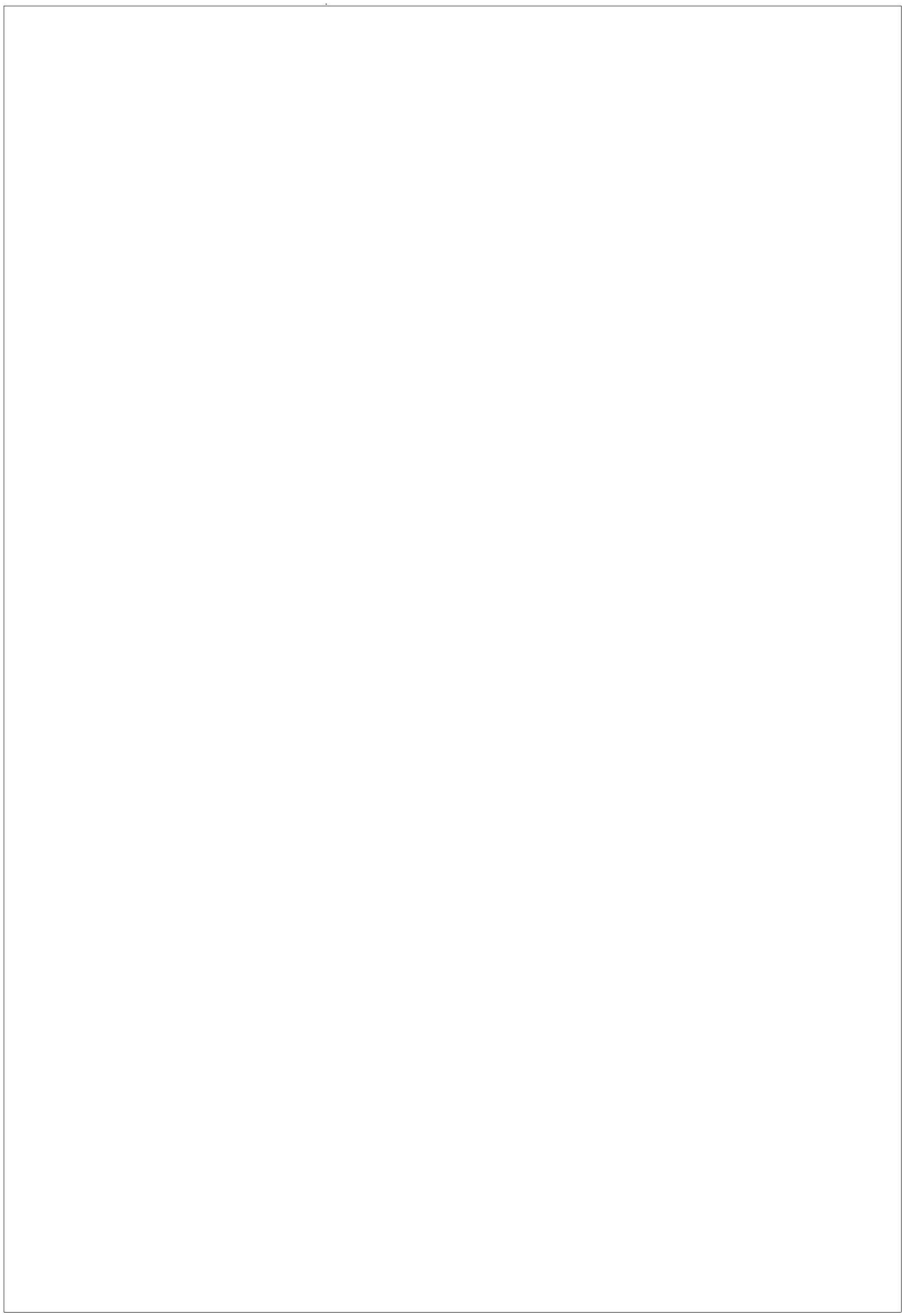

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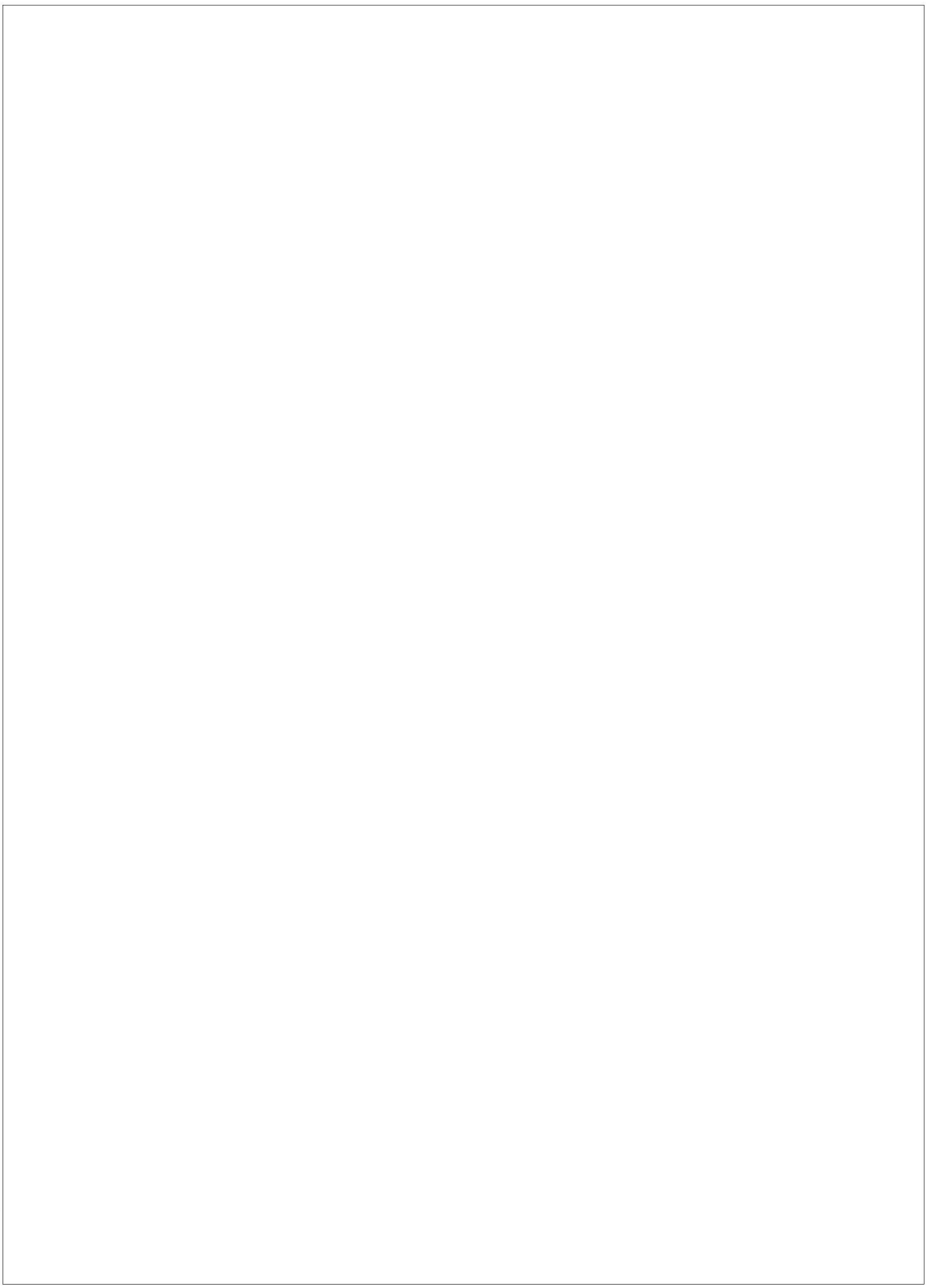

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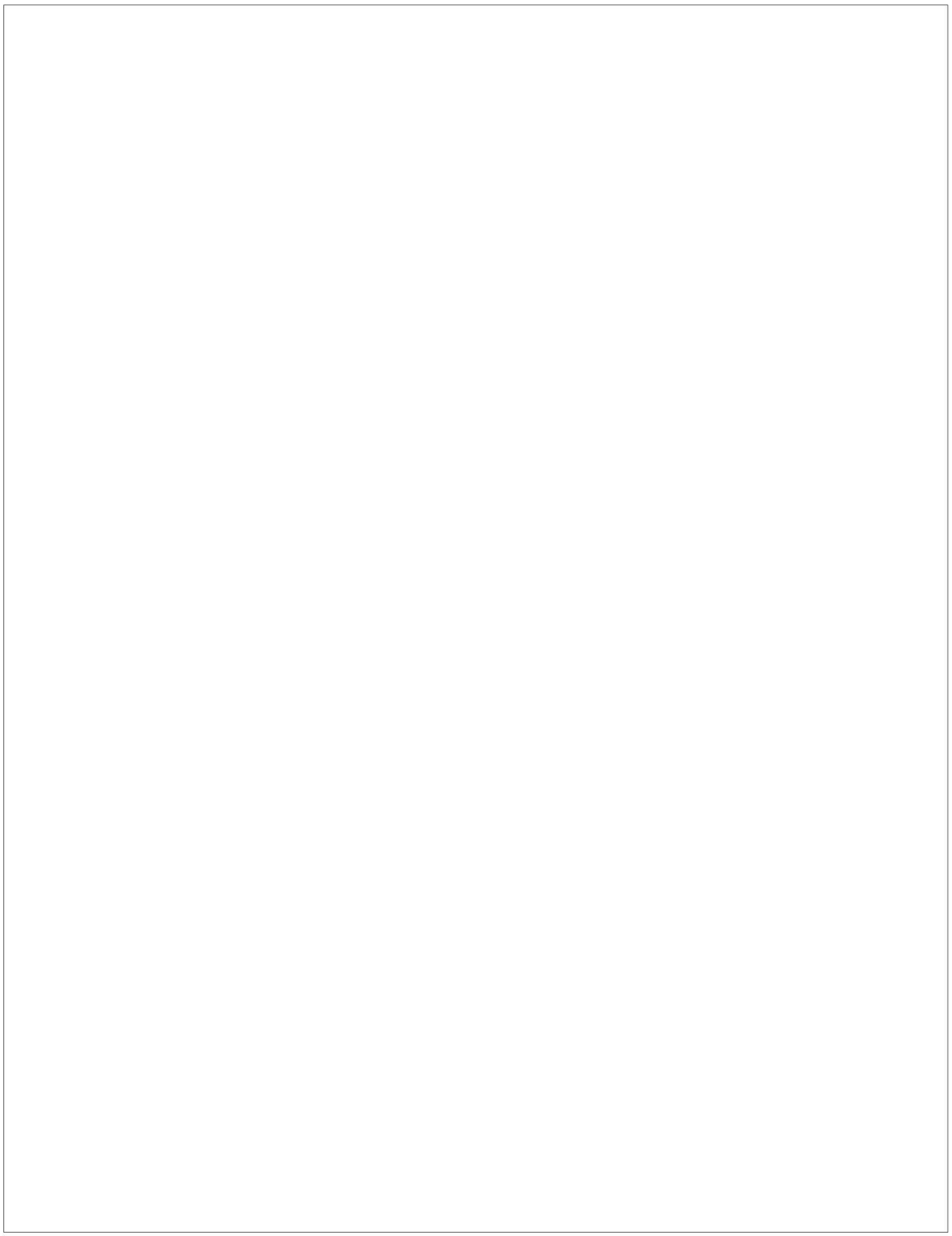

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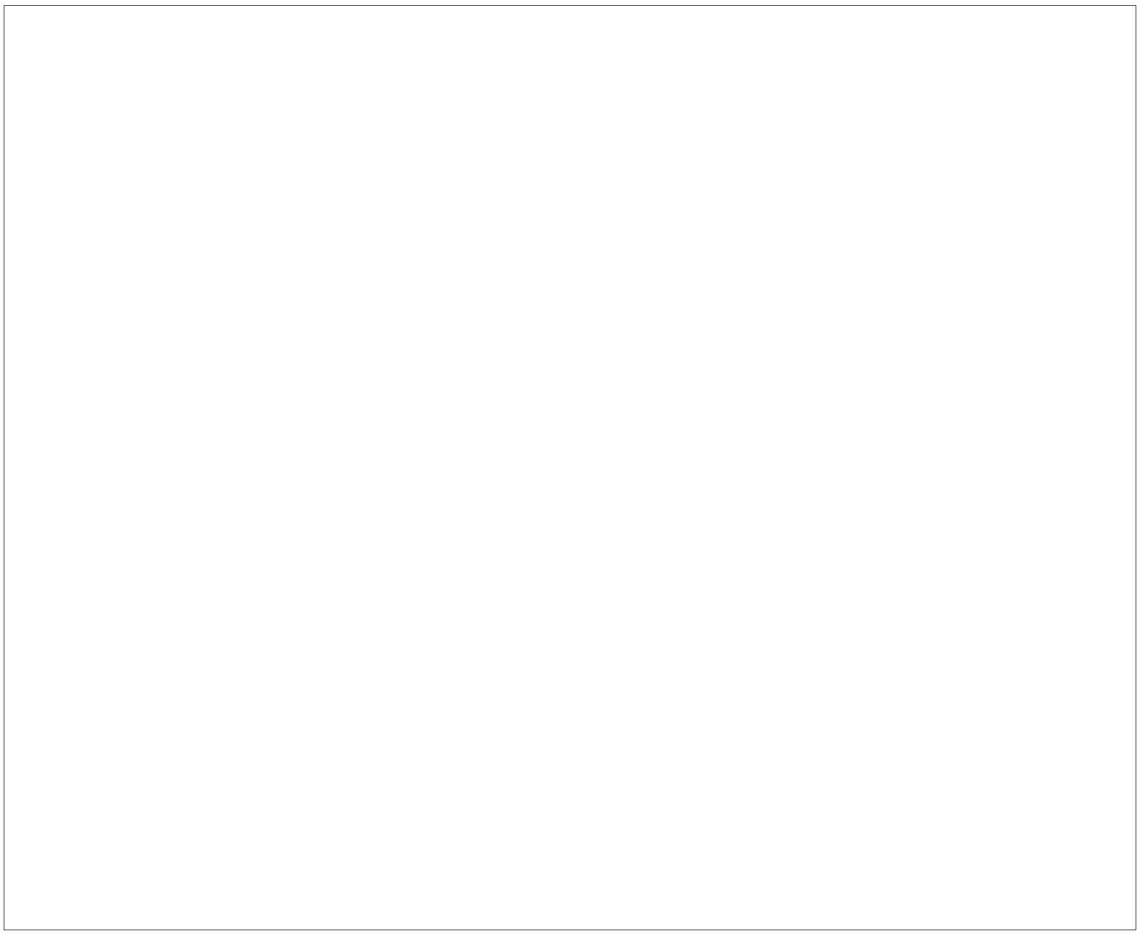

SEPARATE OR SECOND PRISON SYSTEM

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The NIE stated that, if there were additional POWs, the IC would have known of them unless Vietnam maintained a separate prison unknown to the POWs who returned in 1973. The estimate concluded that, "we have uncovered no reliable evidence that a separate prison system existed for certain POWs; nor do we have such indicators as plausible site locations."

(b)(3) NatSecAct

Concerning the issue of a separate or second prison system, the *Critical Assessment* refers to "substantial information and evaluations originated by or made available to the U.S. Intelligence Community both during and/or after the Vietnam War." The assessment asserts that, based on the 735 and 1205 documents, the large number of

POWs not repatriated had to have been held in a separate or second prison system. Included in the evidence cited in the *Critical Assessment* is a reference to a CIA study in early 1976 that concluded, "the possibility of a second prison system for the detention of American POWs in North Vietnam cannot be disregarded."

(b)(3) NatSecAct

A more expansive quotation from the so-called CIA study appeared in a 1998 book, Code-Name Bright Light, The Untold Story of U.S. POW Rescue Efforts During the Vietnam War, by George Veith:

> An analysis of 19 camps not known to have contained Americans revealed inconsistencies in the various camps' reaction to the Son Tay raid . . . . Some camps reacted defensively to the raid, others did not . . . . Only selected camps reacted initially to the raid . . . . The reason for this inconsistency in the various camps' reactions to the raid is not known. Because of this inconsistency . . . the possibility of a second prison system for the detention of American POWs cannot be disregarded.

In an end note, Veith sourced his quote to the:

> Senate *Congressional Record*, January 26, 1994, p. S-163, Senator Bob Smith of New Hampshire is quoting from a just-declassified CIA photographic study of selected prison facilities in North Vietnam. The study was done in 1976.

(b)(3) NatSecAct

We obtained a copy of the CIA prison camp study referred to by the *Critical Assessment* from the SSCI's holdings. The "study" is an untitled, undated, handwritten draft, apparently contained in a file folder titled "CIA PW Camp Study." The draft somehow survived the archival process and was included as a line item on page 119 of a 130-page transmittal record dated 4 May 1984, forwarded by the DIA POW/MIA Office to the Federal Archives and Records Center. An extract of the transmittal record and a copy of the handwritten draft were forwarded to Senator Smith on 12 November 1993 by the Acting Deputy Director, DPMO.

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[redacted] We located a second copy of the handwritten draft in the archives of the DIA Special Office for POW/MIA Affairs. Included with that undated draft marked "Working Paper" was a six-page, undated DIA informal review of the draft. The DIA conclusion was that:

> None of the finding [sic] presented in this study provide [sic] any evidence to support the presence of U.S. PWs in the 'Other Camps' or that a second prison system was maintained in North Vietnam for the purpose of holding U.S. PWs not released at Homecoming.

(b)(3) NatSecAct

[redacted] DPMO analysts told us that, in the 1980s, DIA pursued the possibility of a second prison system, ruling out the possibility for three reasons:

- Returned POWs did not describe a system of collection and evacuation that would split a segment of the POW flow from the North Vietnamese prison system;
- Extensive source reporting in the 1970s and 1980s did not validate a second prison system; and
- Reporting from former South Vietnamese commando returnees asked about contact with or observation of American POWs in the prison system in which they were held. There was no such contact or observation.

(b)(3) NatSecAct

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[redacted] We found work relevant to the draft "study" in the [redacted] CIA, DO-held POW/MIA-related information. Two folders in that collection contained documents associated with the search for POW camp information. None of the documents we reviewed drew a conclusion about the presence of American POWs at a particular camp based on imagery alone. For example, a typical document entry was, "Imagery alone cannot determine camp schedules, patterns of activity and nationality and dress of prisoners and guards." Positive identification of the presence of American POWs was made only when HUMINT information was also factored in. Typically, the IMINT analytical

Declassified, Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

conclusion was either, "there is no sign of any activity indicating [that] the buildings are being used to house American POWs," or "There is no sign of any activity that could be associated with a POW detention camp."

(b)(3) NatSecAct

[redacted] The DO documents revealed that CIA, Office of Imagery Analysis (OIA) had systematically searched for POW camp information since at least 12 September 1966. Beginning in at least 1966, a formal standing requirement was levied each year, worded, "Identification of Installations in Southeast Asia Which May Contain American Prisoners."

(b)(3) NatSecAct

[redacted] Relevant work for the CIA prison camp study mentioned in the *Critical Assessment* was done by three individuals whose signatures were on several project-related memoranda. We interviewed the action officer for the study; he verified that he was the author of the handwritten draft that survived the archival process. He could not confirm which draft (first, second, final) had been archived because his practice had been to rewrite by hand each draft after management review. He said the task had been based on the premise that we "knew about the 'known camps'," (i.e., the camps that held Americans) and had identified a number of detention facilities not known to hold Americans. The requirement was to determine, using imagery, additional camps that might hold Americans. The methodology was to use the aftermath of the November 1970 Son Tay raid to determine what changes in security had taken place at the camps not known to hold Americans. Having determined those changes, the analytical question became, "could we use that change to provide evidence of American presence?" Although he drafted the wording quoted by the *Critical Assessment*, the action officer said that:

> there was no way I could prove it; the change as determined from imagery was in itself not proof. There were no other sources of information.

(b)(3) NatSecAct

[redacted] The Director, OIA provided a status report on the study in a late December 1976 memorandum to the CIA, Deputy Director for Intelligence, that stated:

> . . . we have performed a study of 25 prisons/POW Camps in northern Vietnam in an attempt to identify some method of analysis or signature to indicate the presence of U.S. POWs. Our study consisted of a

Declassified, Dec 26, 2024
Approved for Release: 2024/12/03 C06898860

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> comparative analysis of six confirmed American POW camps and 19 other prisons using photography dated prior to and after the 21 November 1970 raid on Son Tay. We found that all six of the known POW camps and 14 of the 19 prisons had new defenses added between November 1970 and December 1972. Although this may be a possible indicator, it is not conclusive evidence of an American presence.

(b)(3) NatSecAct

[redacted] The Chief, Land Forces Division signed the completed study as a CIA internal memorandum on 7 February 1977. The study was based solely on IMINT and focused primarily on the presence or absence of defensive positions. The handwritten draft which the *Critical Assessment* cited contained the following statement, in context:

> This inconsistency [different patterns of post-reaction to the Son Tay raid] and the fact that several reports have been received recently stating that Americans are still being held in North Vietnam, the possibility of a second prison system for the detention of American POWs cannot be disregarded.

That statement did not survive the CIA review process. The final assessment made in the CIA internal memorandum was:

> Although these may be possible indicators, it is not conclusive evidence of an American presence. We searched the official DoD files on the 19 prisons to correlate any reporting of an American presence with our photographic analysis. No correlation could be made.

In other words, the CIA, OIA, in the aggregate, followed the same logic it had used for individual camp assessments. Imagery alone (without all-source reporting, in this case the addition of HUMINT) cannot be used as a determinant.

(b)(3) NatSecAct

[redacted] In critiquing the original language, the Deputy Division Chief, OIA asked the imagery analyst if he was trying to sway the reader to a certain conclusion, perhaps not supported by the evidence. The analyst told us that, "maybe I wanted to find some new camps," and in consultation with the supervisor he recalled that perhaps he had not been "standing back and taking an unbiased look." He said he was a junior analyst at the time and might have been off the analytical track. He summarized by saying that, "I will have to say that [his] work, based solely

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Declassified, Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

on IMINT, is even today, inconclusive." With one exception he never saw anything in his entire career that supported the statement he had made in the draft of the memorandum. The one exception was that he thought at one time there "might be something" at a camp called Dong Ha that he recalled was in the Haiphong area. Nothing was ever substantiated. The imagery analyst was shown the signed internal memorandum; he said it accurately reflected his unbiased analysis.

(b)(3) NatSecAct

We interviewed the CIA, DO counterintelligence analyst responsible for evaluation of the North Vietnamese security services and the North Vietnamese prison system. He held that analytical account continuously from 1965 to 1992, the first seven of those years working for the Chief of Station in Saigon. He stated that he was constantly attuned to the thesis that there might be a separate or second prison system, and he continuously looked for such a system. He never found any evidence of the existence of such a system.

(b)(3) NatSecAct

In sum, there never was an all-source CIA "Prison Camp Study." Instead, the CIA, OIA provided an internal, IMINT-based assessment to the DO. The coordination of a handwritten draft of that assessment with DIA resulted in the archiving of the handwritten draft by the DoD. That archived draft was assumed, erroneously, by researchers in the 1990s to be an IC product. It was neither an IC product nor a CIA product; it was the preliminary work of a junior imagery analyst that stated that the evidence from imagery was inconclusive.

ALLEGED TRANSFERS OF POWS FROM VIETNAM TO THE USSR

(b)(3) NatSecAct

On the issue of the alleged transfers of POWs to Russia or elsewhere, the *Critical Assessment* states that:

> . . . the books must definitely remain open on the transfer issue based on more pressing information previously made available to the IC but inexplicably not referenced in the NIE under the heading of unresolved transfer reports . . . .

The assessment differs with the NIE, particularly with respect to statements made by the late Russian General D. A. Volkogonov, who served as a military advisor to President Yeltsin and was the Co-Chairman of the

Approved for Release: 2024/12/03 C06898860

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Russian side of the U.S.-Russia Joint Commission on POW/MIAs, and K. F. Katushev, a former USSR Central Committee Secretary. The *Critical Assessment* claims that the NIE accounts of information provided by the two officials are "inaccurate or lacking in important detail." We reviewed the statements made by Volkogonov and Katushev and other Russian officials, and we examined evidence associated with the possible existence of a second prison camp system. We agree with the NIE assertion that, because of a lack of conclusive evidence disproving transfers, the "books should remain open" on the issue. To date, however, most, if not all, reporting avenues have been explored with negative results. Our review of the transfer issue, with particular emphasis on Volkogonov and Katushev, follows.

General D. A. Volkogonov

(b)(3) NatSecAct

[redacted]The NIE states that General Volkogonov told the U.S.-Russia Joint Commission on POW/MIA Affairs that his delegation had uncovered no evidence that U.S. prisoners had been transported from Vietnam to the USSR. The *Critical Assessment* argues that the fact that Volkogonov did not uncover evidence of transfer does not constitute proof that such an event did not occur. The assessment cites as evidence a statement Volkogonov made to the Senate Select Committee on POW/MIA Affairs on 11 November 1992, in which he said, "Hypothetically, we cannot dismiss the possibility that several individual American servicemen were taken to the Soviet Union from Vietnam." The *Critical Assessment* does not mention, however, that, in concluding that thought, Volkogonov said, "But, again, we have no precise information about such cases. It can only be called a possibility and I believe not a very strong possibility." In the same testimony, Volkogonov claimed that there were no archives in Russia that he did not have access to and added:

> No U.S. citizens are currently being detained within the territory of the former USSR. The conclusion is based on a thorough analysis of all archival documents, interviews with witnesses, and on-site inspections of possible American housing sites.

(b)(3) NatSecAct

[redacted]We examined several documents issued prior to Volkogonov's testimony that support his statement that no U.S. citizens were being detained. On 3 December 1991, the Interrepublic Security Service, successor to the former KGB Second Chief Directorate, [redacted] (b)(1) (b)(3) NatSecAct

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Declassified, Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

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[redacted] had undertaken "an exhaustive search of available information and resources, and had come up with no indication of such presence in the USSR past or present." On 6 December 1991, the Interrepublic Security Service advised [redacted] that, "On our part, we also do not have any information about American military personnel located on the territory of the USSR who were missing in action during the course of military activities in Indochina." Finally, in a 20 May 1992 letter to President Yeltsin, the Russian Minister of Security said that:

> The Security Ministry, the Foreign Intelligence Service, the Ministry of Internal Affairs, and the Russian Communist Party Archive do not have materials about the retention of American POWs on the territory of the former USSR. An analogous response was received from the Ministry of Defense and the GRU of the General Staff, OVS (Unified Armed Forces), SNG (Commonwealth of Independent States).

(b)(3) NatSecAct

[redacted] In spite of that, when asked in a 16 June 1992 "Dateline" interview about rumors that American POWs from the Vietnam War were transferred to the former Soviet Union, President Yeltsin responded that:

> Our archives have shown that this is true. Some of them were transferred to the former Soviet Union and were kept in labor camps. We don't have complete data and can only surmise that some of them may still be alive. That is why our investigations are continuing. Some of them may have ended up in psychiatric asylums.

President Yeltsin's statement contradicts information provided to him by his Minister of Security barely one month prior to his "Dateline" interview. In late June 1992, the U.S. Co-Chairman of the U.S.-Russia Joint Commission said that President Yeltsin "misspoke" when he said U.S. POWs might still be in the former Soviet Union. And, on 30 June 1992, following a meeting with President Bush, the Co-Chairman said that he had found no evidence in Moscow that any living American POW was being held against his will in the former Soviet Union.

(b)(3) NatSecAct

[redacted] In a July 1992 interview with the Russian newspaper, Nezavisimaya Gazeta, General Volkogonov said that President Yeltsin had been mistaken and that archives showed no sign of any such prisoners

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Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

ever being held in the former Soviet Union. During November 1992 hearings before the Senate Select Committee on POW/MIA Affairs, a letter signed by President Yeltsin was entered into the record. The letter mentions evidence of Americans "staying in camps and prisoners of the former USSR," and says that some had been executed by the Stalin regime (1924-1953) and that others may still reside in the former Soviet Union. Yeltsin concluded that there were no Americans being held against their will in Russia. The IC has no information to support the claim made by President Yeltsin that U.S. POWs from the Vietnam War were held in Soviet prison camps; certainly, none was executed during the regime of Stalin, who died in 1953.

(b)(3) NatSecAct

[redacted] The *Critical Assessment* asserts that, after his November 1992 testimony before the Senate Select Committee, Volkogonov said in an August 1994 autobiographical sketch that he had received a "very serious indication" that a transfer of U.S. POWs to the USSR may have taken place in the late 1960s. The *Critical Assessment* does not mention, however, that Volkogonov goes on to say that, after discovering the "sensational document" about such a transfer, he immediately brought it to the attention of the Director of Foreign Intelligence. The Director's staff searched for any indication that the plan referred to in the document had been implemented. Volkogonov then said, "As I expected, they did not find the indications. They said the mission was not carried out." The Volkogonov autobiographical sketch concludes by stating, "The regime (Soviet) was such at the time that it was possible to contemplate the wildest scenarios."

K.F. Katushev

(b)(3) NatSecAct

[redacted] The NIE uses K. F. Katushev, a former Central Committee Secretary for Maintaining Ties with Other Socialist Countries, as an example of an official who served in Vietnam during the war and would have reason to know whether U.S. POWs were transferred to the USSR. The NIE reports that Katushev served in Vietnam and told interviewers that he would have known if transfers had occurred; he believed no such transfers had taken place.

Approved for Release: 2024/12/03 C06898860

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The *Critical Assessment* asserts that, although Katushev traveled to Hanoi once to negotiate an agreement with North Vietnam, he did not serve in Vietnam. We found no information suggesting that Katushev served in Vietnam. The *Critical Assessment* also states that the U.S. side of the U.S.-Russia Joint Commission frequently hears the claim, "I would have known" during routine interviews with former Soviet officials who display an inflated view of their importance. We agree. We found several statements by former Soviet officials who claimed to be in a position to know about certain events, but whose claims we cannot prove or disprove without more evidence.

(b)(3) NatSecAct

The NIE used the Katushev interview to point out that certain former Soviet officials did not believe that transfers of POWs to the USSR had occurred. Katushev was just one of several possible examples. The NIE "Methodology Annex"

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The NIE could have used a better example than Katushev. for example, served in Vietnam from 1960-1962 and again from 1977-1983, when he was an advisor to the Soviet Ambassador; he worked for the Central Committee of the Communist Party of the Soviet Union in the International Department dealing exclusively with Vietnamese issues from 1962-1977. In a March 1997 interview, stated that such transfers would not have taken place without the Politburo's knowledge and consent, and that if such a decision had been made, he would have known about it. The NIE also could have cited a career GRU officer who served in Hanoi from 1968-1972. During a December 1996 interview, , commenting on the credibility of reports of transfers, said, "I will tell you quite frankly that the staff of the military attaché was not involved in such a thing. I do not know of a single incident." He added, "I never heard of this during my four years there. I also knew people in other services, and they would have told me."

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Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

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[redacted] Despite the [redacted] statements which the NIE drafter might have cited, the lack of conclusive evidence disproving transfers led to the NIE's conclusion that "the books should remain open on this issue" and, that "until some of the reporting . . . is clarified, we cannot say definitively that no POWs were transferred from Vietnam." The 17 June 1996 "Comprehensive Report of the U.S. Side of the U.S.-Russia Joint Commission on POW/MIAs" bolsters the argument that while the "books should remain open" on the issue, most, if not all, avenues have been explored with negative results. The report states that:

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> A four-year investigation into the activities of Soviet officials in Southeast Asia during the years of the Vietnam War has found no first-hand, substantiated evidence that American prisoners of war were taken from Southeast Asia to the Former Soviet Union.

The 1996 report reveals that the American side of the commission had been told "in definitive terms" that the Soviets "did not at any time" transfer American POWs to the Soviet Union. The report went on to state that the commission had interviewed more than 200 Soviets who had served in Southeast Asia during the war and that:

> . . . every witness, without exception, stated that he had not known or heard of any operation to transport American prisoners to the Soviet Union.

According to the report, every senior Soviet official interviewed said that, if transfers had occurred, he "would have known about it." The report also mentions that, during debriefings of the nearly 600 returned POWs, none suggested that American POWs were transferred to the Soviet Union. Finally, among the documents collected by the commission, none contained information on transfers of American POWs to the Soviet Union.

CASE ASSESSMENTS

(b)(3) NatSecAct

[redacted] The final TOR for NIE 98-03 stipulated that:

> . . . if the intelligence community judges these documents [the 735 and 1205 documents] to be accurate . . . in their characterization of the number of American POWs held by North Vietnam, then it should

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Declassified on: Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

answer the following question: "What is the likely range of numbers of American POWs under the control of the communist side when the Paris Peace Accords were signed in January 1973?"

The IC determined that the 735 and 1205 documents were not accurate in their characterization of the number of POWs held by North Vietnam and therefore did not pursue the issue of numbers of POWs held by North Vietnam at the time of Operation Homecoming. Senator Smith and staff members of the SSCI had anticipated that NIE 98-03 would address the issue of the number of POWs held by the Vietnamese at the time of Operation Homecoming and that it would look at the related issue of MIAs still unaccounted for from the war in Southeast Asia. It did not do so.

(b)(3) NatSecAct

The 1993 report of the Senate Select Committee on POW/MIA Affairs left the issue of the discrepancy cases unresolved. Senator Smith had continuing questions about the cases and developed a listing of 324 names which he titled, "U.S. POW/MIAs Who May Have Survived in Captivity," dated 1 December 1992. Repatriated remains reduced the number of names to 289 as of our review. In the 1995 time frame, DPMO prepared case assessments (two- to four-page summaries) of each missing person file.

(b)(3) NatSecAct

Senator Smith's legislative assistant told us he had expected that the drafter of the NIE would review the case assessments pertaining to Senator Smith's compelling cases. No one reviewed those cases. DPMO confirmed that the drafter of the NIE did not review the case assessments and no one—other than DPMO—has validated or attempted to validate Senator Smith's list. We obtained from DPMO the case assessments for the 289 cases on Senator Smith's list of 324 names for which verified remains have not been returned. We undertook the task of reviewing these cases, and we have provided a framework that others can use to assess them (see Annex G for a discussion of our case assessment methodology).

Our Methodology

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We believe that these cases are at the heart of the controversy over POWs in Vietnam and that an effort to evaluate them is essential. We therefore conducted our own assessment of the cases in a manner that can be replicated. Each member of our three-person review

Approved for Release: 2024/12/03 C06898860

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team independently evaluated the 289 cases without consultation or collaboration. The team was unconstrained in the time required to make an informed assessment and score each of the cases (see Annex H for results of our compelling case review). The six factors evaluated were:

- Is there evidence the individual survived the incident?
- Is there evidence the individual could have been taken captive?
- Is there evidence the individual entered a prison system?
- Can any of three governments (Vietnam, Laos, and Cambodia) account for the individual?
- Was the case compelling prior to December 1992 (date of Senator Smith list) based on information available at that time?
- Is the case compelling today based on information received since December 1992?

Other than to simply make "yes," "no" or "inconclusive" entries in each of the six columns for each case, no further scoring was done until the three individual assessments were completed. We judged "compelling" twice, because the files available to us contained updated information since the publication of Senator Smith's list in December 1992. The word "compelling" needs to be clarified because it was undefined by Senator Smith. We accepted the term as being similar to the term "discrepancy" as used in the Vessey cases.[18] For our purposes, compelling meant that there was something more to be known about the fate of the individual.

(b)(3) NatSecAct

[18] [redacted] General Vessey's discrepancy cases are those POWs who were expected to be repatriated but were not. In August 1992, that number was 135; as of August 1999, the cases still not resolved had been reduced to 43. Senator Smith's list of cases has been referred to as "compelling" by Advocacy and Intelligence Index for Prisoners of War-Missing in Action (AII POW-MIA), and we use it here to distinguish it from the Vessey list. Based on verified remains recovery, the compelling case list had been reduced to 289 names at the time of our review.

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Approved for Release: 2024/12/03 C06898860

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We decided to present the data in a way that provides the strongest possible support for Senator Smith's list of U.S. POWs who may have survived in captivity. We extended the range of each of the six factors listed above by scoring the data as follows:

- If all three reviewers scored a factor "yes" for a given case, we counted that as a unanimous group response; and
- If one reviewer scored a factor "yes" and at least one other reviewer scored that same factor either "yes" or "inconclusive" we counted that as a consensus group response.

Based on that two-fold scoring, the results for the first four factors of our independent review of 289 cases listed as compelling by Senator Smith are:

- At least 40 and as many as 91 of the 289 individuals could have survived the incident of loss;
- At least 13 and as many as 34 of those individuals could have been captured;
- At least six and as many as nine of those individuals could have entered a prison system; and

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- One of the current Southeast Asia governments may be able to account for at least 25 and as many as 114 of the 289 individuals.

Further, concerning the "compelling" factor both in 1992 and today, the results of our independent review of the 289 cases are:

- At least one and as many as 19 of the 289 cases was compelling based on information available in late 1992; and
- At most, three cases are compelling today, none unanimously. None of these losses occurred in Cambodia, Laos, or North Vietnam; all occurred in South Vietnam.

Each member of the review team evaluated the files for each of these cases and made independent evaluations. These evaluations are intuitive, but

~~SECRET~~ Dec 26, 2024

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Approved for Release: 2024/12/03 C06898860

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the methodology can be replicated by others. We describe one particular case, that of Captain John McDonnell, that illustrates the difficulty of making such evaluations.

The McDonnell Case

(b)(3) NatSecAct

The case of U.S. Army Captain John T. McDonnell (Case 1402) is complicated and has been reviewed repeatedly since his helicopter went down in 1969. The case reflects the polarization that exists concerning the MIA issue. A detailed discussion of our rationale for selecting the case and the steps we took to understand it is in Annex I.

(b)(3) NatSecAct

The 1993 Senate Select Committee POW/MIA report portrayed the McDonnell case as follows:

> On March 6, 1969, Captain McDonnell was the pilot [sic] of an AH-1G Cobra helicopter hit and downed by hostile fire in Thua Thien Province. His crew member, a First Lieutenant, was rescued alive on March 7, but was unable to provide any information on the fate of Captain McDonnell. A search mission was also unsuccessful.
>
> Captain McDonnell was declared missing and, in February 1977, was declared dead/body not recovered. Returning U.S. POWs were unable to shed any light on his fate.
>
> U.S. investigators in Vietnam during January 1991 interviewed witnesses who described the capture of an American pilot in the area where Captain McDonnell disappeared. They reported he had a broken and bleeding arm when taken prisoner and brought to a People's Army of Vietnam regimental headquarters which received instructions to transport him to the Tri Thien Hue Military Region Headquarters. He died en route, was buried, and the U.S. field team was shown his purported burial site. The site was excavated but no remains were located.

(b)(3) NatSecAct

A different story was contained in a 12 September 1999 posting on the Internet by the Advocacy and Intelligence Index for Prisoners

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of War-Missing in Action (AII POW-MIA). An article entitled, "Captain John T. McDonnell United States Army, ONE OF THE MEN WE LEFT BEHIND," began:

> The next time someone asks you to name one American serviceman left behind in Southeast Asia, name just one . . . . Look them straight in the eye and say Capt. John T. McDonnell, United States Army, last known duty station Vietnamese Prison Camp Location Ba To, Quang Ngai Province, South Vietnam. Last seen in mid to late February 1973.

(b)(3) NatSecAct

The AII POW-MIA analysis observed that:

- Examination of the downed helicopter revealed that Capt. [sic] McDonnell's seat belt and harness were open and placed neatly on the seat;
- On 16 February 1973 a North Vietnamese rallier reported that he observed two U.S. Prisoners of War with the North Vietnamese Army in Laos on three different occasions, between May and July of 1971;
- On 10 April 1973 a North Vietnamese defector reported that in 1972 he saw an American Captain at the MR-5 PW Camp who was "a captured American artillery officer"; and
- A Project X study concluded there is a possibility that as many as 57 Americans could be alive. Captain McDonnell is included among the 57.

(b)(3) NatSecAct

Facts

There are only two verifiable facts concerning this case. First, Captain McDonnell was last seen alive on 6 March 1969 entering aircraft 845, a Cobra AH-IG helicopter. Second, on 17 May 1992, Captain McDonnell's military identification card was located in the Hue Military Museum. All other information related to determining his fate is contained in the results of interviews. No intelligence information or other official reporting factually correlates to Captain McDonnell.

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Circumstances of Loss

(b)(3) NatSecAct

Sworn testimony taken by a Missing Person Board convened shortly after the loss revealed that Captain McDonnell was the team leader of a flight of two helicopter gunships, the Aircraft Commander of his gunship, and sat in the gunner's position on the day of his incident. He was not the pilot that day. His pilot executed a rocket run from which he could not recover and the gunship crashed into the side of a mountain. There was initial confusion as to whether the loss was due to hostile fire. The pilot of the other gunship reported no hostile fire. In an unsigned statement, Captain McDonnell's pilot reported hostile fire.

(b)(3) NatSecAct

According to a certified extract of the Official Log, 1st Battalion, 327th Infantry, 101st Airborne Division (Airmobile), the wreckage was found on 8 March 1969 and appeared not to have been disturbed. The front seat and safety harness were intact. An officer of the ground troops conducting the search reported that the wreckage had not been disturbed by the enemy. The position of the seat belts and safety harness indicated that the gunner [McDonnell] unbuckled himself and left the wreckage.

(b)(3) NatSecAct

Additional sworn testimony taken by the board indicated that Captain McDonnell's commanding officer thoroughly searched the wreckage and the immediate area. The gunner's compartment was completely open with no evidence of damage to the seat. (According to the 1969 edition of Jane's All The World's Aircraft, the gunner's position of an AH-1G Cobra helicopter is located in the front, lower compartment. The aircraft is flyable from both positions, however). The shoulder harness was not broken and the seat belt was unlatched. The commanding officer said that:

> . . . it was not possible to establish that the helicopter had been hit by ground fire. Although portions of the tail boom and main body showed no evidence of being penetrated, so much damage was inflicted by the crash that a positive determination could not be made.

The Vietnamese Account

(b)(3) NatSecAct

JTF-FA reports of interviews with Vietnamese indicate that Captain McDonnell survived the crash and, while attempting to evade

~~SECRET~~ Dec 26, 2024 (b)(3) NatSecAct

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the enemy, was shot in the arm and captured. He was taken to the command post of the People's Army of Vietnam 4th Regiment. The regiment contacted the region headquarters for instructions and was directed to evacuate Captain McDonnell to the region hospital. Captain McDonnell did not survive the evacuation. The regimental commander forwarded Captain McDonnell's identification card to higher headquarters with a report concerning his capture and death. A senior district party official received the report and the identification card and forwarded them to province authorities. A Hue museum curator stated that Captain McDonnell's identification card was turned over to him by the senior district party official sometime after 30 April 1975.

(b)(3) NatSecAct ***Captain McDonnell's Status Changes***

[redacted] Initially, the Missing Person Board determined that Captain McDonnell was missing, not missing in action. The board apparently did not consider the helicopter pilot's unsigned statement about hostile fire persuasive. In a later signed statement, the pilot said that:

> I broke left, we received fire and simultaneously entered the low clouds. The cyclic went limp and I could not turn the helicopter. I remember pulling pitch, then awoke laying [sic] on the ground on my chest protector.

Based on that statement, Captain McDonnell's status was changed from missing to missing in action.

(b)(3) NatSecAct

[redacted] In late 1976, Captain McDonnell's next of kin petitioned the Department of the Army to issue a death certificate. On 18 February 1977, the Army's Adjutant General found Captain McDonnell "to be dead." On 6 June 1994, a flag/general officer-level review convened by the Deputy Assistant Secretary of Defense for POW/MIA Affairs, assisted by two DPMO analysts and the Intelligence Officer, JTF-FA, voted 3-0 for a "confirmation of fate." The Deputy Assistant Secretary of Defense voted for the confirmation, despite advice from DPMO analysts to the contrary, and the case was removed from the discrepancy list.

Approved for Release: 2024/12/03 C06898860

Three Times a Discrepancy Case

(b)(3) NatSecAct

The 1994 removal of Captain McDonnell from the discrepancy list culminated a near 20-year history of that case having been singled out three times as unresolved.

- **PROJECT X:** PROJECT X was a study initiated in August 1975 by the Commanding Officer, JCRC to "evaluate the possibility of any of the unaccounted for being alive." Captain McDonnell was included in the resultant list of 57 individuals. The Commanding Officer concluded that, "There is a possibility that as many as 57 Americans could be alive, although it is highly probable that the number is much smaller, possibly zero";

- **Discrepancy Case:** Because Captain McDonnell was last seen alive—sworn testimony included in the Missing Person Board review confirmed that he entered the gunship the day of the incident—his case became a discrepancy case, consistent with the U.S. Government's methodology; and

- **Compelling Case:** Because Captain McDonnell was allegedly correlated to two separate live sighting intelligence reports, his case became a compelling case, consistent with the full accounting methodology.

Our Assessment

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(b)(3) NatSecAct

Viet Cong policy, based on U.S. POW returnee experience and information in CIA files, was that any American who survived his immediate capture and transport would have entered the prison system or, if wounded, the hospital system. The report of the evacuation of Captain McDonnell is consistent with that policy. Intelligence reports from at least 1966 consistently state that Viet Cong policy concerning American captives was to evacuate them expeditiously to higher headquarters. While an evacuation of Captain McDonnell was ordered, he was never seen in the Vietnamese detention system.

(b)(3) NatSecAct

AII POW-MIA argues that two live sighting reports—one filed with a JCRC tag line that "records indicate the source probably observed CAPT John T. McDonnell, USA,"—document Captain

Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

McDonnell's status as POW/MIA. The other report was possibly correlated to Captain McDonnell or one other individual but no JCRC determination was made. There is no reason to link either of the two reports to Captain McDonnell. Both reports describe an American in collaborative circumstances. None of the files we reviewed suggests that Captain McDonnell was a collaborator. He was a multiple-tour, decorated Vietnam veteran, *post-facto* promoted to the rank of Major.

(b)(3) NatSecAct

[redacted] We believe there is no factual information to support the contention that Captain McDonnell was left behind alive in Southeast Asia. There is, however, circumstantial evidence of his fate (see Annex I). Because that evidence is circumstantial, the case is likely to remain controversial—a continuing example of the polarization that has consumed the POW/MIA issue. The DoD believes that all POWs are accounted for. AII POW-MIA does not.

(b)(3) NatSecAct

[redacted] The McDonnell case is typical of several that we reviewed. Despite 30 years of continuous effort, there is no independently verifiable evidence of Captain McDonnell's fate. The information that has been collected, however, supports the conclusion that Captain McDonnell died in Vietnam after his capture.

Declassified: Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

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We have not attempted to reconcile these two divergent points of view, which reflect a legitimate disagreement based on differing perceptions of the tasking. We note, however, the delay in the completion of the TOR (the SSCI held the draft TOR from early July 1997 until the end of October 1997); the addition of the 735 and 1205 documents to the "Key Questions" of the TOR; and the introduction of a new NIO/EA and a new NIE drafter, neither of whom had been involved in the negotiations of the TOR. The former NIO/EA had intended to treat the 735 and 1205 documents as a separate research project. The new NIO/EA and the NIE drafter accepted the final TOR with their expanded focus without changing the time allocated to complete the NIE, the time frame on which the research would focus, or their perception of the scope of the project.

(b)(3) NatSecAct

In our review of the NIE and the *Critical Assessment*, we did find it necessary to search for documentation as far back as the document trail allowed. The information we reviewed provided new insights into many of the issues treated in the NIE and the *Critical Assessment*. None of this information contradicted the conclusions or changed the judgments reached by the NIE drafter and the IC.

QUALITY OF NIE ANALYSIS

(b)(3) NatSecAct

We found the overall quality of analysis in the NIE to be good. The argumentation is vigorous and logical, and the conclusions are balanced and well-documented. On the subject of Vietnamese cooperation on POW/MIA matters, the drafter used relevant information and interviews with knowledgeable officials in reaching the conclusion that Vietnam's performance in dealing with the POW/MIA issue has been good in recent years. The NIE judgment is properly cautious, particularly given the caveat that unresolved areas of Vietnamese cooperation warrant continued close attention by the U.S. Government.

(b)(3) NatSecAct

On the subject of the NIE's re-evaluation of the 735 and 1205 documents, a basic misunderstanding developed about what the NIE was to accomplish. Whereas the former NIO/EA planned to address the 735 and 1205 documents in a separate research study, Senator Smith wanted these issues addressed in the NIE; according to his legislative

Declassified on: Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

assistant, he wanted an independent review of the 735 and 1205 documents as well as an independent analysis of the numbers of POWs held by Vietnam.

(b)(3) NatSecAct

[redacted] Whereas Senator Smith expected an in-depth analysis of the 735 and 1205 documents and related issues, the assumptions of the NIC, the NIE drafter, and the IC were quite different. They assumed that the NIE would reflect the best judgments of the IC as developed by knowledgeable analysts; they did not plan to undertake basic research and analysis. As a result of his perception of the task, the drafter of the NIE did not undertake an in-depth re-evaluation of the 735 and 1205 documents. Instead, he accepted the IC position on the legitimacy and accuracy of the documents as well as the U.S. Government's position on the basic question of numbers of POWs held by the Vietnamese. The combination of this acceptance of previous positions and the limited time allocated to completing the project prevented the NIE drafter from taking a fresh look at a number of contentious issues.

(b)(3) NatSecAct

[redacted] The NIE did not come to grips with the issue of the numbers of POW/MIAs not accounted for and the impact of the 735 and 1205 documents on that issue. No organization or person felt compelled to do the research and analysis necessary to illuminate and challenge the polarized interpretations that have developed over the years. We took on that task, an unusual undertaking for statutory oversight organizations, because we wanted to determine whether there was evidence that might have affected the NIE if it had been taken into account. It took us nearly three months of research and analysis to understand that neither of the mutually-exclusive accounting methodologies was sufficient. That being said, the NIE's judgments on this issue remain valid; the 735 and 1205 documents are genuine GRU documents, but the information contained in them related to numbers of POWs held by the Vietnamese cannot be relied upon. The two documents are mutually inconsistent in that regard.

(b)(3) NatSecAct

[redacted] As a result of our analysis, we can conclude with far greater confidence than did the NIE that the numbers of POWs reported in the 735 and 1205 documents are inaccurate. We accept that the documents are genuine and that other information contained in them is valid. But the information on the numbers cannot be accurate.

Declassified on: Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

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Because of the existence of competing methodologies and polarized positions, we also undertook an independent analysis of the discrepancy or compelling cases. This issue had been avoided by the Senate Select Committee in 1993, and only DPMO had analyzed the cases. Senator Smith's legislative assistant told us that he had assumed that the NIE drafter would conduct such an analysis, but he did not. Once again, we believed that it was our responsibility to determine whether relevant information existed that might have affected the judgments of the NIE. We obtained the case assessments for the 289 cases on Senator Smith's list of 324 names for which verified remains have not been returned. Our review suggests that, at most, three of the cases (and, in all likelihood, none) remain compelling today. We do not claim to have resolved any of these cases. We believe, however, that our methodology can be replicated and that a far better understanding of the remaining number of compelling cases might be achieved.

(b)(3) NatSecAct

The withdrawal of DPMO from the estimate process inhibited analysis of POW/MIA issues. Several of the mistakes made by the drafter could have been prevented had DPMO analysts been more closely involved in coordinating the estimate. While not a member of the IC, DPMO possesses most of the U.S. Government's data and analytic expertise on POW/MIA issues. NIE deliberations frequently include the participation of non-IC members who are particularly knowledgeable as "back benchers." In our view, the decision by DPMO management, accepted by the IC, to exclude DPMO was unfortunate.

(b)(3) NatSecAct

One of the mistakes DPMO could have prevented was the NIE's characterization of the mortician and his information. The NIE failed to capture the intricacies of the mortician's story and its implications. Since that story was a major point of disagreement between the SNIE of 1987 and the NIE of 1998, the story had to be told accurately and completely. The NIE did not do that and exacerbated the issue by not taking into account the conclusion reached in the 1996 IC Assessment. The IC Assessment did not discredit the mortician. It claimed that the numbers in the 1987 SNIE were based on limited direct evidence whose reliability was open to question. The NIE mislabeled the mortician an unreliable source. The DPMO argues that the mortician was reliable with respect to the remains he had actually worked on, but that his estimate of stored remains that he did not work on was less accurate. We agree with the conclusions of the 1996 IC study and the DPMO.

Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

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Another area in which DPMO might have helped the NIE drafter is on the issue of Vietnamese mistreatment of POWs. The NIE's approach to this issue is limited and does not directly address the problem the issue causes for both Vietnamese and U.S. policymakers. There is substantial evidence that mistreatment occurred; there also is substantial evidence that the Vietnamese will not admit that mistreatment occurred. U.S. policymakers are concerned that emphasizing this point to the Vietnamese can only undermine efforts to achieve full accounting.

(b)(3) NatSecAct

The NIE overstated its case that there is no evidence that the Vietnamese currently are storing the remains of American POWs. The NIE did indicate, however, that the DPMO in conjunction with CILHI was investigating the question and that further conclusions had to await publication of that study. The DPMO remains report was issued in June 1999, more than one year after the NIE was published. The study concludes that remains may not have been repatriated in two cases involving five sets of remains. That conclusion was not factored into the NIE, but those preparing the remains study may not have made that determination by the time the NIE was published. In addition, the DPMO's 1995 zero-based comprehensive review concluded that there were some cases where the Vietnamese Government did not turn over recovered remains. That conclusion also was not factored into the NIE.

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The *Critical Assessment* challenges the NIE's judgments with respect to the possible existence of a separate prison camp and/or the possible transfer of U.S. POWs to the former Soviet Union. The assessment cites a 1976 CIA "study" that concluded that the possibility of a second prison system "cannot be disregarded." We found the alleged study and determined that it was an internal CIA draft based solely on the

preliminary work of a junior imagery analyst. The junior analyst hoped to find evidence of live POWs and a second prison camp system, but that hope was not realized. The CIA desk officer who had responsibility for evaluating the North Vietnamese prison system from 1965 to 1992 never found credible evidence of the existence of such a system. In our review of documents and statements made by Russian officials and others, we found no credible evidence to support either the existence of a second prison camp system or the transfer of American POWs from Vietnam to the former Soviet Union or elsewhere.

(b)(3) NatSecAct

None of our criticisms of the estimate affects its basic substance and judgments; these stood up to rigorous examination. We found that the IC understanding of the issues was sound and that the NIE judgments were accurate.

POLITICIZATION

(b)(3) NatSecAct

We found no indication that any member of the Clinton Administration attempted to influence the NIE in any way. Nor did we find support for charges that the Clinton Administration tried to influence intelligence reporting on issues relating to POW/MIA during 1993-1994, when the first IC analysis of the 735 and 1205 documents occurred, with the exception of the efforts of some to make the tone more acceptable to anticipated critics. The concern expressed by Administration policymakers was that the IC not appear to be dismissing or debunking the information contained in those documents.

(b)(3) NatSecAct

We did find that Senator Smith had an impact on the estimate process and the tone of the estimate. He played a role in framing the final TOR, ensuring that a re-evaluation of the 735 and 1205 documents was included as one of the key questions. In his meeting with the NIO/EA in early November 1997, he expressed his opinion on issues to be addressed in the estimate and implied that any differing conclusion would be the result of pressure from the Clinton Administration. He and his legislative assistant tried to insert themselves into the estimate process. Senator Smith called the Director, DIA before the MIB meeting of April 1998, stating that the NIE drafter had failed to review documents held by the SSCI and indicating that he could not accept the estimate if the documents were not reviewed.

Approved for Release: 2024/12/03 C06898860

(b)(3) NatSecAct

Members of the IC, as well as outside readers of the estimate, were aware that the NIE would be criticized by those who believed that the Vietnamese were not cooperating in good faith on POW/MIA matters and those who believed that American POWs were left behind in 1973. At numerous stages in the production of the estimate, they urged that the tone of the estimate be softened to placate those who might be critical. The result was an estimate with modified language on issues relating to Vietnamese cooperation and to the 735 and 1205 documents.

A FINAL NOTE

(b)(3) NatSecAct

We are concerned by the *Critical Assessment*'s overarching implication that political pressure has been applied to the intelligence process by the Clinton Administration. Such a charge, even if vague and unsubstantiated, tends to gain credibility if it is repeated. Many in the community of POW/MIA families have come to believe that politicization exists. This perception has been fed by persistent accusations of a government conspiracy to cover up the contention that American POWs were abandoned in Vietnam after Operation Homecoming in 1973. No such conspiracy exists.

(b)(3) NatSecAct

We found caring and sensitive people working on the POW/MIA issue at all levels of the government. Addressing the issue is especially difficult for those who must put emotion and personal considerations aside in pursuit of factual information. To demonstrate the difficulty in doing so, we cite two of these professionals: the recently retired Director, DIA and an imagery analyst who worked on the prison camp issue as a junior analyst in the 1970s.

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The Director, DIA told us that, after meeting with Senator Smith in June 1997, he was convinced that the U.S. Government had not done enough. He said that he wanted to believe that American POWs had been left behind after Operation Homecoming. DIA senior staff officers confirmed that the Director was persistent, persuasive, and personally driven to ensure that analysis of the POW/MIA issue was correct. Ultimately, as Chief of the MIB, responsible for the analytical position of the entire military intelligence structure, he concluded that the facts demonstrated that he was "wrong in his heart." There was no credible evidence to support the position that live POWs had been left behind in Vietnam. Similarly, the then-junior imagery analyst told us he

Declassified: Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

had wanted to find Americans alive after Operation Homecoming and that he never lost that personal focus during his nearly 30-year career. He never found evidence to support what his heart told him. The facts simply were otherwise.

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Altogether we formally interviewed more than 80 individuals and contacted about 20 others who had relevant information. Without exception, we found dedicated professionals searching for the truth as best they could. We found diligent Senate staff members who wanted the government and especially the IC to hide nothing. We found dedicated support personnel who held nothing from us. We found experienced intelligence operatives who had worked the POW/MIA issue their entire careers; they had asked the hard questions over and over again but had found no information to support the hypothesis that live American POWs remained in North Vietnam after Operation Homecoming. We found analysts committed to two sound analytical propositions—leaving no stone unturned and letting the facts speak for themselves. We found policymakers attempting as best they could to deal openly and in a straightforward manner with an emotional and difficult issue.

(b)(3) NatSecAct

We had a unique platform from which to review the relevant policy and intelligence information. No document in its original form was withheld from us. No document in its entirety was refused us. No marginalia, desk note, sticky, or other scrap of information was excluded from files we asked for, to include those held by the SSCI.

(b)(3) NatSecAct

We were not asked to determine whether there was a government conspiracy to cover up the contention that American POWs were abandoned in Vietnam after Operation Homecoming in 1973. Given the fact that there are those who continue to believe such a conspiracy exists, however, we emphasize that we found not one factual thread in all the thousands of pages of documentation we reviewed to indicate that such a conspiracy exists today or ever existed. To the contrary, we found no reason to challenge the finding reported by Congressman Sonny Montgomery to the Speaker of the House of Representatives nearly a quarter century ago:

> …the results of the investigations and information gathered during its 15-month tenure have led this committee to the belief that no Americans are still being held alive as prisoners in Indochina, or elsewhere, as a result of the war in Indochina.

Approved for Release: 2024/12/03 C06898860

Annex A

Approved for Release: 2024/12/03 C06898860

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ANNEX A: Methodology

We used an historical research design, a methodology that seeks to reconstruct the past objectively and accurately. We augmented that approach with contrast and comparison, and quantitative and replication methodologies where appropriate. Our design had 12 components:

- Review all the research files of the drafter of the National Intelligence Estimate (NIE);
- Identify and review previous studies, in particular those conducted by non-Executive Branch entities;
- Review other relevant document holdings, including those of Senator Smith and the CIA, the Directorate of Operations, to include construction of data bases;
- Interview persons with first-hand information or expert knowledge;
- Review contemporary literature. The Defense Technical Information Center conducted a tailored search of its various databases at our request to identify relevant documents and publications;
- Search the world wide web;
- Conduct our own analysis of the data collected because the drafters of the NIE and the *Critical Assessment* used fundamentally different and mutually exclusive approaches;
- Analyze and compare the content of each draft of the NIE to assess the impact or influence on the text of various readers;
- Evaluate a structured sample of official case assessments of persons unaccounted for in Southeast Asia as maintained by the Defense Prisoner of War/Missing Personnel Office (DPMO);

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Dec 26, 2024
Approved for Release: 2024/12/03 C06898860

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- Conduct a zero-based review of a Missing in Action (MIA) case;

- Contrast and compare interviews and statements of Russian sources from the perspective of both the NIE and the *Critical Assessment*; and

- Retranslate from the Russian language portions of the 735 and 1205 documents relevant to the POW/MIA issue.

We used an iterative approach to synthesize the data and other information collected. Interviews were primarily open-ended narrative accounts with follow-on questions and sessions, if required. For example, we met three times with the drafter of the NIE and three times with Senator Smith's legislative assistant for the *Critical Assessment*. We met with the Senate Select Committee on Intelligence (SSCI) staff point of contact on four different occasions, twice to review relevant documents. We reviewed on several occasions the material provided to us by the drafter of the NIE. We requested specific document searches by the Office of the Director, Defense Intelligence Agency (DIA), the DPMO, various offices of the Under Secretary of Defense for Policy, and the Department of State (DoS), Bureau of Intelligence and Research (INR). To assimilate documents obtained from diverse sources, we created a master database and then constructed analytical files in two ways, one chronologically and one functionally. As a cross check, each agency (CIA and Department of Defense (DoD)) built its own functional files and performed parallel analysis of key issues. We reviewed over 20,000 pages of responsive information.

We interviewed more than 80 current and former officials of DoS and DoD, the National Security Council (NSC); the CIA, the DIA, the National Security Agency (NSA), the SSCI, and the office of Senator Smith. Specifically, we interviewed:

- **At DoS:** the current U.S. Ambassadors to Vietnam and Cambodia; the Assistant Secretary of State, Bureau of East Asia and Pacific Affairs; the Director, Office of East Asia Analysis, INR; and a former member of INR;

~~UNCLASSIFIED~~ Dec 26, 2024 (b)(3) NatSecAct

Approved for Release: 2024/12/03 C06898860

- **At DoD:** the Under Secretary of Defense for Policy; the Assistant Secretary and the Principal Deputy Assistant Secretary of Defense for International Security Affairs; two former and the current Deputy Assistant Secretary of Defense for POW/MIA Affairs; the Director, Indochina, Thailand, Burma, Office of the Assistant Secretary of Defense, International Security Affairs; and the Assistant Director for Polygraphs, Office of the Assistant Secretary of Defense (Command, Control, Communications, and Intelligence);

- **At CIA:** the Chairman and Vice Chairman of the National Intelligence Council; two former National Intelligence Officers for East Asia, and a former Deputy NIO for East Asia; former and current senior officials, reports officers, and analysts from the Directorates of Operations and Intelligence, the Office of Congressional Affairs, and the National Counterintelligence Center; and the drafter of NIE 98-03;

- **At DIA:** a former Director; a former and the current Director and the Vice Deputy Director, Policy Support; the Deputy Intelligence Officer for East Asia and Pacific; the former Director and former Deputy Director, Special Office for POW/MIA Affairs; the Chief, Security, Investigations and Polygraph Branch; and representatives from the Office of the Executive Secretariat;

- **At DPMO:** the Director; the Deputy Director; Chief of Staff; Chief, Plans and Policy; Director, Research and Analysis (RA) Directorate; the Chief, Joint Commission Support Directorate (JCSD); and senior officials and analysts within RA and JCSD;

- Former Presidential emissary to Vietnam and former Chairman of the Joint Chiefs of Staff;

- The Chief, Central Identification Laboratory, Hawaii (CILHI), and other CILHI officials;

- The Chief, Special Projects, Joint Task Force–Full Accounting;

- The former Chairman of the U.S. side of the U.S.-Russia Joint Commission on POW/MIAs;

Approved for Release: 2024/12/03 C06898860

UNCLASSIFIED
(b)(3) NatSecAct

- The Chief, U.S. Air Force Polygraph Program;
- Representatives from NSA;
- Current and former staff members from the SSCI; and
- Senator Robert C. Smith's legislative assistant.

In addition, we met with Senator Smith to discuss his views on the issue.

UNCLASSIFIED
(b)(3) NatSecAct
Dec 26, 2024
Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

Annex B

Approved for Release: 2024/12/03 C06898860

SECRET/ Approved for Release: 2024/12/03 C06898860 (b)(3) NatSecAct

ANNEX B: Summary of Selected Prior Reports

(b)(3) NatSecAct

Since the conclusion of Operation Homecoming in 1973, the Prisoner of War/Missing in Action (POW/MIA) issue has been the subject of numerous reports. Listed below, in chronological order, are those reports that were relevant to our research.

13 December 1976

(b)(3) NatSecAct

Americans Missing in Southeast Asia—Final Report Together with Additional and Separate Views of the Select Committee on Missing Persons in Southeast Asia, 13 December 1976, U.S. House of Representatives (94th Congress, 2nd session, House Report No. 94-1764) (The report was reprinted on 5 August 1988, House Committee Print No. 15, 100th Congress, 2nd Session). This House Select Committee sought to conduct a full and complete investigation and study of the problem of United States servicemen still identified as missing in action and those known dead whose bodies have not been recovered. The report concludes that no Americans are still being held as prisoners and that a total accounting is not possible and should not be expected. Finally, the report suggests that a partial accounting is possible and that the most effective means of obtaining this accounting is through direct governmental discussions.

23 March 1977

(b)(3) NatSecAct

Presidential Commission on Americans Missing and Unaccounted for in Southeast Asia Report on Trip to Vietnam and Laos March 16-20, 1977, 23 March 1977, Office of the White House Press Secretary. The Commission's mandate focuses on obtaining an accounting of missing Americans in Southeast Asia. The report concludes that the resumption of talks in Paris between U.S. and Vietnam officials and the normalization of relations are required in order to afford the best prospect for obtaining a fuller accounting of missing personnel.

SECRET/ Dec 26, 2024 (b)(3) NatSecAct

Approved for Release: 2024/12/03 C06898860

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(b)(3) NatSecAct

27 May 1986

[redacted] *The Tighe Task Force Examination Review of DIA Intelligence Holdings Surrounding Unaccounted for United States Military Personnel in Southeast Asia*, 27 May 1986. The Director, Defense Intelligence Agency (DIA) asked the Task Force to evaluate the evidence regarding unaccounted for U.S. military personnel in Southeast Asia and to provide an evaluation of DIA conclusions on the POW/MIA issue. The Task Force also reviewed pertinent files and the handling of those files, looking for any indication or "COVER-UP" [emphasis in original]. Among its conclusions, the Task Force found no evidence of a "cover-up" by DIA. The Task Force also concluded that:

- A large number of MIAs may never be properly accounted for and that ". . . false hope should not be offered to those seeking a total accounting of POW/MIAs."
- DIA holds information that establishes a "strong possibility" of POWs being held in Laos and Vietnam.
- The U.S. Government's handling of the POW/MIA issue is "constantly harassed by phonies and profiteers," which probably jeopardizes the lives of Americans.

(b)(3) NatSecAct

September 1987

(b)(3) NatSecAct

[redacted] *SNIE 14.3-87, Hanoi and the POW/MIA Issue* [redacted] *1987*, Special National Intelligence Estimate (SNIE). The resolution of the fate of the 2,413 American servicemen still unaccounted for in Indochina remains a priority humanitarian issue for the U.S. Government, which believes that the fate of the servicemen should be treated separately from other political and economic concerns. The report states that Vietnam publicly characterizes the accounting of servicemen as a humanitarian issue, but also uses the POW/MIA issue as a means to influence public opinion in the United States to achieve broader political objectives. The report concludes that Hanoi sees the solution to the POW/MIA issue to be in its greater long-term interest, but sees tactical benefits in manipulating the issue in the interim.

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Approved for Release: 2024/12/03 C06898860

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23 May 1991

(b)(3) NatSecAct

[redacted] *An Examination of U.S. Policy Towards POW/MIAs by the U.S. Senate Committee on Foreign Relations Republican Staff*, 23 May 1991, U.S. Senate, Committee on Foreign Relations. The minority staff interim report concludes that the "internal policy" of the U.S. Government is to act upon the presumption that all MIAs are dead. The report charges that "any evidence" indicating a MIA might be alive is "uniformly and arbitrarily rejected." Furthermore, the report charges that all efforts are directed towards finding and identifying remains of dead personnel, even though U.S. Government techniques of identification are "inadequate and flawed."

February 1992

(b)(3) NatSecAct

[redacted] *Vietnam: Adjusting Its Strategy on the POW/MIA Issue* [redacted] EA 92-10004, February 1992, Directorate of Intelligence. This Central Intelligence Agency report examines Hanoi's evolving attitude toward the POW/MIA issue and concludes that since 1988 Vietnam has become "more cooperative" in resolving questions concerning U.S. military personnel reported as possible POWs/MIAs during the Vietnam War. The report comments that Vietnam will adhere to its policy of limited accommodation as long as it believes it will eventually gain economic benefits. The report cautions that even under the best of circumstances, there are limits to what the United States can expect to achieve.

13 January 1993

(b)(3) NatSecAct

[redacted] *POW/MIAs*, 13 January 1993, U.S. Senate, The Senate Select Committee on POW/MIA Affairs (103rd Congress First Session, Report No.103-1). The Senate Select Committee on POW/MIA Affairs wants the United States to meet its obligation to the missing and to the families of those yet to be accounted. The report details testimony and evidence regarding POW/MIA accountability issues involving World War II, the Korean Conflict, the Cold War, and Vietnam. The report states that the Committee's work helped to create the Joint Task Force-Full Accounting and the U.S.-Russia Joint Commission. The report stresses that the quest for the fullest possible accounting of Vietnam-era POW/MIAs must continue but to be effective and fair to families, these accounting efforts must go forward within the "context of reality, not fiction."

~~SECRET~~ [redacted] Dec 26, 2024 (b)(3) NatSecAct

Approved for Release: 2024/12/03 C06898860

SECRET, Approved for Release: 2024/12/03 C06898860 (b)(3) NatSecAct

21 July 1993

(b)(3) NatSecAct

[redacted] *Report to Ambassador Malcolm Toon, Chairman of the U.S. Side of the Joint U.S./Russian Commission on POW/MIAs from U.S. Senator Bob Smith, Commissioner*, 21 July 1993, Office of U.S. Senator Bob Smith. The report is subtitled "An Interim Analysis of the 1972 Translation of a North Vietnamese Report Concerning U.S. POWs Discovered in 1993 in the Archives of the Former Soviet Union and Subsequently Provided to the U.S. Side of the Joint U.S./Russian Commission on POW/MIAs." This report asserts that North Vietnam "withheld the total [emphasis in original] number and identity of American POWs in Vietnam, Laos, and Cambodia over whom it had direct control." Furthermore, the report rejects Vietnam's claim that the Russian translation is "pure fabrication" and states the "U.S. Government should stop believing that it knows the fate of just about everybody." Finally the report asks the American public to study the facts, even if it means revisiting old issues.

24 January 1994

(b)(3) NatSecAct

[redacted] *Recent Reports on American POWs in Indochina: An Assessment*, is an unclassified, coordinated, interagency intelligence analysis of the 735, 1205, and Dang Tan Reports documents. The assessment concludes that the 1205 document, discovered in a Soviet archive by an American researcher, may be a "genuine" Russian document, but the accuracy of its rendering of the POW situation in 1972 is outweighed by errors, omissions, and propaganda. The 735 document, also discovered in another Soviet archive, asserts that there were 735 American fliers held in Hanoi in January 1971, and is also determined to be a genuine Russian document. As with the 1205 document, similar questions are raised regarding the accuracy of the 735 accounting. Furthermore, the 735 and the 1205 documents are inconsistent with each other. The Dang Tan Reports, which document the claims of a North Vietnamese defector that in late 1967 Hanoi held "more than 800" pilots as POWs, are assessed to be "embellished" with hearsay and rumor. In an overall statement, the assessment, in reviewing all three documents, encountered the same problems experienced since the beginning of the conflict in Vietnam—inaccuracies, inconsistencies, exaggerations, and fabrications.

SECRET, [redacted] Dec 26, 2024 (b)(3) NatSecAct

Approved for Release: 2024/12/03 C06898860

SECRET Approved for Release: 2024/12/03 C06898860 (b)(3) NatSecAct

13 November 1995

(b)(3) NatSecAct

A Zero-Based Comprehensive Review of Cases Involving Unaccounted for Americans In Southeast Asia, 13 November 1995, Department of Defense. The report provides the results of a zero-based comprehensive review of all cases involving unaccounted for Americans in Vietnam, Laos, and Cambodia resulting from the Vietnam War. Leaving "no stone unturned," using evidence as well as Southeast Asian cultural and historical practices and operational realities, the report concludes that of the 2,202 cases under consideration 1,476 still have investigative leads to pursue. The report concludes that the acquired conclusions and judgments make it possible to develop a work plan comprised of the best steps to move cases toward resolution.

17 June 1996

(b)(3) NatSecAct

Comprehensive Report of the U.S. Side of the U.S.-Russia Joint Commission on POW/MIAs, 17 June 1996. Established on 26 March 1992, the U.S.-Russia Joint Commission on POW/MIAs focuses on determining:

- If any American POW/MIAs are still being held in the former Soviet Union against their will;
- The fate of unaccounted-for members of the U.S. Armed Forces who were located on the territory of the Soviet Union or about whom the Russian Government may have information; and
- Facts pertaining to Soviet personnel missing from the war in Afghanistan and from the Cold War-era loss incidents.

The report states that no U.S. citizens are currently being detained within the territory of the former USSR. This conclusion is based on a thorough analysis of all archival documents, interviews with witnesses, and on-site inspections of possible American housing sites.

(b)(3) NatSecAct

SECRET Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

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October 1996

(b)(3) NatSecAct

[redacted] *Vietnamese Storage of Remains of Unaccounted U.S. Personnel*, ICA 96-05, October 1996, Intelligence Community Assessment. The report was prepared in conjunction with the declassification review for the 1987 SNIE on POW/MIA issues. The report reviews what was stated in the 1987 report and how the authors determined that Hanoi had collected and stored between 400 and 600 remains. The report concludes that although the Vietnamese Government collected and stored remains it is not possible to estimate the number of American remains involved. Furthermore, the range of 400-600 remains contained in the 1987 SNIE is not supported by subsequent evidence.

June 1999

(b)(3) NatSecAct

[redacted] *Vietnam's Collection and Repatriation of American Remains*, June 1999, Defense POW/Missing Personnel Office. The report provides an analysis of Vietnam's remains collection and repatriation process. The report examines questions such as, "How many remains did Vietnam collect?; How many remains has Vietnam repatriated?; and Are there any more remains still stored?" The report concludes that the Vietnamese authorities collected and stored approximately 300 remains, of which 270 to 280 have been repatriated. The report draws no conclusion regarding the "discrepancy" of 20 to 30 remains, but it does suggest that the discrepancy may be attributable to incomplete data used to formulate the storage of "approximately 300" remains.

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Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

Annex C

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ANNEX C: Methodology Used in Examining Charges in the *Critical Assessment*

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We studied each of the 51 exceptions taken by the *Critical Assessment* to determine if we could identify actionable criticisms against the National Intelligence Estimate (NIE), i.e., criticisms with enough clarity to be assessed. There was, however, no one-to-one correlation between each NIE statement at issue and criticism of that statement. Further, with minor exceptions, arguments against a specific NIE statement did not readily lead to actionable criticisms. For example, an argument against a particular NIE statement might contain no specific criticism or it might contain the thread of several criticisms. We decided that an approach based on specific criticisms by the *Critical Assessment* was insufficient. Next, we cross-walked, line-by-line, the NIE statements at issue in the *Critical Assessment* back to the NIE. Initially, we noted that the NIE statements selected for argument in the assessment appeared to lend themselves to grouping or categorization. This approach was not fruitful either, once again because there was no one-to-one correlation.

(b)(3) NatSecAct

In pursuing our line-by-line comparison, however, we found that the *Critical Assessment* contained significant methodological shortcomings. Some of its arguments on their face have little merit, and nearly all of the NIE statements at issue had been taken out of context, which distorted their meaning. While these observations did not produce an effective evaluation approach, we believe it is important to document what we found. Following are examples of arguments that lack merit:

- *"The NIE contains only two photographs, both provided by the U.S. Army Central Identification Laboratory (CILHI) in Hawaii . . . ."* The Critical Assessment questions why:

> . . . we are treated to pictures which hardly seem directly germane to the estimate's terms of reference. I find such action by the NIC troubling, especially when there is no precedent for such action with respect to other NIEs.

We cannot comment. The inclusions (or exclusions) of such photographs are an author's prerogative; and

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Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860
(b)(3) NatSecAct

- *"In some instances, Vietnamese on recovery teams have willingly worked beyond the terms of their contracts to successfully complete operations. Cultural reasons contribute to this record."* And, *". . . for local officials, participation in joint field activities can be financially profitable. People in their villages can earn* ***much*** [emphasis added by *Critical Assessment*] *more by working on the activity than they could in their normal work.* (b)(1) (b)(3) NatSecAct

The *Critical Assessment* says that these statements conflict and questions why they are cited in the NIE as indicators of Vietnam's cooperative intentions. Again, we have no comment except to note that the emphasis on the word "much" was not in the NIE.

(b)(3) NatSecAct

We selected one out-of-context argument as illustrative. [Note: One complete NIE section is provided; it includes the two *Critical Assessment* extracts at issue. One extract is ***bolded and italicized***; the other is **bolded and underlined**. Original NIE text not extracted by the *Critical Assessment* is not bolded, italicized, or underlined].

> Moreover, although ***Vietnam's performance generally has improved with respect to the US POW/MIA issue,*** **we think Hanoi has not been completely forthcoming on certain POW/MIA matters:**
>
> - **In some instances, we believe full disclosure would prove embarrassing to the regime. For example, Hanoi continues to deny that US POWs were mistreated while in captivity in the North.**
> - **We think Vietnam still has records it could make available to US investigators but which would discredit its denials of mistreatment.**

~~SECRET~~ (b)(3) NatSecAct

Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

- **A few reports of transfers of US POWs to Russia and other countries are unexplained, and the books remain open. (S NF)**

Although 120 live-sighting investigations have been carried out by US teams, none has generated any credible evidence of American POWs left in Vietnam. Hanoi protests having to investigate such cases, but reports appear regularly—most recently on five POWs possibly being held in Laos—and established procedures for resolving them continue to be in effect. [redacted] (b)(3) NatSecAct

Although ***Vietnam's overall performance in dealing with the POW/MIA problem has been good in recent years,*** the unresolved issues noted above suggest the need for continued close attention by the US Government. [redacted] (b)(3) NatSecAct

(b)(3) NatSecAct

[redacted] This out-of-context extraction is so convoluted that it needs to be repeated for clarity. The two resultant statements in the *Critical Assessment* are:

> ***. . . Vietnam's performance generally has improved with respect to the US POW/MIA issue . . . . Vietnam's overall performance in dealing with the POW/MIA problem has been good in recent year . . ." and***
>
> **". . . we think Hanoi has not been completely forthcoming on certain POW/MIA matters: In some instances, we believe full disclosure would prove embarrassing to the regime. For example, Hanoi continues to deny that US POWs were mistreated while in captivity in the North. We think Vietnam still has records it could make available to US investigators but which would discredit its denials of mistreatment. A few reports of transfers of US POWs to Russia and other countries are unexplained, and the books remain open."**

The first out-of-context extract contains two qualified clauses that are prefaced with the word "although" in the original; the second extract is lifted from the NIE text between those two qualified clauses. We cannot address any argument that derives from that type of selective quotation. While we selected only one such example of an out-of-context quotation, similar methodology is used throughout the *Critical Assessment* and was noted as it applied to specific issues.

Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

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[redacted] We considered several approaches based on sampling to evaluate the *Critical Assessment*'s arguments against the NIE statements. We rejected a universal approach which would have involved evaluating each of the arguments against all 51 NIE statements; this would have been a massive undertaking with the net result being "point-counterpoint," an approach already shunned by the National Foreign Intelligence Board and the Military Intelligence Board as counterproductive. Moreover, as previously discussed, the approach was not doable in any rigorous sense. We also rejected a random approach because we did not want to risk omitting important substantive issues.

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[redacted] In the end, we selected a structured approach that involved evaluating a subset of the arguments against the 51 NIE statements. To assist in defining that approach, we scanned the *Critical Assessment* and the NIE into databases that we could search. That step revealed an underlying structure to the *Critical Assessment* that we could evaluate effectively. The persistent, repetitive theme of the *Critical Assessment* is that its arguments are based on information provided to or made available to both the drafter of the NIE and the Intelligence Community. In three instances, the *Critical Assessment* makes footnote references to specific letters of transmittal of that information. For clarity, we referred to the persistent messages in the *Critical Assessment* and its footnotes as "thematic statements."

(b)(3) NatSecAct

[redacted] Overall, we identified thematic statements involving 27 of the 51 NIE statements at issue in the *Critical Assessment*. Even though there were no explicit thematic expressions related to the other 24 NIE statements at issue, the repetitive theme that the drafter did not review relevant documentation is implicit in the *Critical Assessment*'s language on those statements as well.

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Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

Annex D

Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

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ANNEX D: Intelligence Community Publications Reviewed by National Intelligence Estimate Drafter

- Special National Intelligence Estimate 14.3.87, "Hanoi and the POW/MIA Issue," September 1987, (b)(3) NatSecAct
- Central Intelligence Study, "Vietnam: Adjusting Its Strategy on the POW/MIA Issue, February 1992," (b)(3) NatSecAct
- Senate Select Committee, POW/MIA Affairs Report, "POW/MIAs," 13 January 1993, (b)(3) NatSecAct

(b)(3) NatSecAct

- Intelligence Community (IC) Assessment, "Recent Reports on American POWs in Indochina: An Assessment," 24 January 1994,
- A Zero-Based Comprehensive Review of Cases Involving "Unaccounted for Americans in Southeast Asia," 13 November 1995, (b)(3) NatSecAct
- IC Assessment ICA 96-05, "Vietnamese Storage of Remains of Unaccounted US Personnel," October 1996, (b)(3) NatSecAct

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Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

Annex E

Approved for Release: 2024/12/03 C06898860

SECRET Approved for Release: 2024/12/03 C06898860 (b)(3) NatSecAct

ANNEX E: Recovery and Remains Documentation Reviewed by National Intelligence Estimate Drafter

(b)(3) NatSecAct

- [redacted] The February 1992 CIA Intelligence Assessment, "Vietnam: Adjusting Its Strategy on the Prisoner of War/Missing in Action (POW/MIA) Issue," that concludes that the Vietnamese had turned over more remains between 1988 and 1992 than in the preceding 13 years.

(b)(3) NatSecAct

- [redacted] A 1993 Interagency Working Group on Vietnam policy review paper stating that the number of remains repatriated since 1987 was more than twice the number repatriated before that time. Further, cooperation on witness interviews, area searches and site excavations had increased dramatically since 1988 and, since 1992, Vietnam had allowed expanded geographic coverage and frequency of joint field activities.

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- [redacted] The 1993 Defense Prisoner of War/Missing Personnel Office assessments that conclude, "the return of remains from Vietnam, while increasing, has not kept up with U.S. expectations." However, overall, "when compared to the absence of progress that was the norm previously, Vietnam cooperation is to be commended."

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- [redacted] A 1993 National Security Council (NSC) Principals Committee meeting report that indicates that 67 sets of remains were repatriated in 1993, more than twice the number returned in 1992 and the third highest number for a single year since the war.

(b)(3) NatSecAct

- [redacted] A 1995 letter from the Secretary of Defense to the Chairman, House National Security Committee that states that during the first two years of the Clinton Administration, 204 sets of remains had been repatriated from Vietnam and Laos and 49 sets had been identified.

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Approved for Release: 2024/12/03 C06898860

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- [redacted] The 13 November 1995 Department of Defense Zero-Based Comprehensive Review that mentions that Vietnam has shared the results of its own investigations; provided wartime records on POWs, aircraft downings, and other engagements in which Americans became unaccounted for; and turned over records of deaths and burials, and photographs.

(b)(3) NatSecAct

- [redacted] The Department of State input to the NSC for the 1998 Presidential Determination on Vietnamese cooperation stating that 28 joint field activities had been conducted that resulted in 221 sets of remains recovered. Twenty-two sets of remains were returned in 1997.

Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

Annex F

Approved for Release: 2024/12/03 C06898860

ANNEX F: Comments by Russian Sources

(b)(1) (b)(3) NatSecAct	Overall Access	735/ 1205 Valid			735/1205 Credible			Position / Function
		Yes	Unk	No	Yes	Unk	No	
	High		1			1		National Security Advisor to Russian President
	High		1				1	Ambassador to Vietnam (1974-86)
	High		1			1		KGB General
	High	1			1			CPSU Central Committee Secretary Maintaining Ties to Socialist Countries (70s)
	High		1			1		Ambassador to Vietnam (1990-96)
	High	1				1		GRU, Chief (1997-99)
	High	1				1		GRU Chief, (1994-96)
	High	1				1		Consultant, Russian Defense Council, former head of the MFA Archives
	High	1				1		Deputy Foreign Minister (1977-99)
	High	1				1		KGB, FCD, Head Southeast Asia Dept (during the war)
	High		1				1	CPSU Central Committee Political Issues on Vietnam (1963-86)
	High	1			1			GRU in Embassy in Hanoi (1968-72)
Sub-Total	**12**	**7**	**5**	**0**	**2**	**8**	**2**	
(b)(1) (b)(3) NatSecAct	Med		1			1		Interpreter and Advisor Embassy in Hanoi (1970-80)
	Med	1					1	Political Counselor for Reporting on Vietnam Foreign Policy
	Med		1			1		Embassy in Hanoi (1962-65 - Junior Diplomat - and 1974-78 - Advisor to Ambassador)
	Med	1				1		CPSU Central Committee, Head International Dept Indonesia-Malaysia (1968-73)
	Med	1				1		CPSU Central Committee, International Dept, Vietnam (1962-77); Embassy in Hanoi (1960-62; 77-83)
	Med	1			1			Previous GRU Representative on the USRJC
	Med	1			1			KGB Representataive in Hanoi (1975-79)
	Med		1			1		Embassy in Hanoi (1972-76 and 1982-88 - 1st Secretary then later Counselor)
	Med	1			1			KGB, FCD, Tracking CIA operatives worldwide (32 year veteran)
Sub-Total	**9**	**6**	**3**	**0**	**3**	**5**	**1**	
(b)(1) (b)(3) NatSecAct	Low		1			1		Prominent Military Journalist
	Low		1			1		Russian Author and Researcher
	Low		1			1		Air Defense Instructor (1973-74)
	Low		1			1		Engineer Advisor in Vietnam (1973-74)
	Low		1			1		Journalist in Vietnam (1972-76)
	Low		1			1		Air Defense Radio/Radar Engineer, in Vietnam (1966-67)
	Low		1			1		Air Defense Advisor in Vietnam (1966-67)
	Low		1			1		Air Defense Technical Advisor and Researcher in North Vietnam (1968-69)
	Low		1			1		Journalist in Laos (1966), Vietnam for much of the 1970s
	Low		1			1		Air Defense Advisor (1966)
Sub-Total	**10**	**0**	**10**	**0**	**0**	**10**	**0**	
TOTAL	**31**	**13**	**18**	**0**	**5**	**23**	**3**	

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(b)(3) NatSecAct

Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

Following are excerpts of comments made by current and former Russian officials regarding the 735 or 1205 documents at various meetings or during interviews

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- Vyacheslav Dukhin served as Political Counselor at the Russian Embassy in Hanoi (1992-95). He has no first-hand knowledge of the 1205 document but became aware of it in 1993. Dukhin recalled that a former co-worker at the Embassy who served as Deputy Chief of Mission, Igor Novikov, was aware of the 1205 document when it was acquired in 1972. According to Dukhin, Novikov characterized the GRU's acquisition of the 1205 document as slipshod and not a very conscientious effort.

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Novikov did not elaborate but intimated that the GRU agent was not reliable.

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Declassified on: Dec 26, 2024
Approved for Release: 2024/12/03 C06898860

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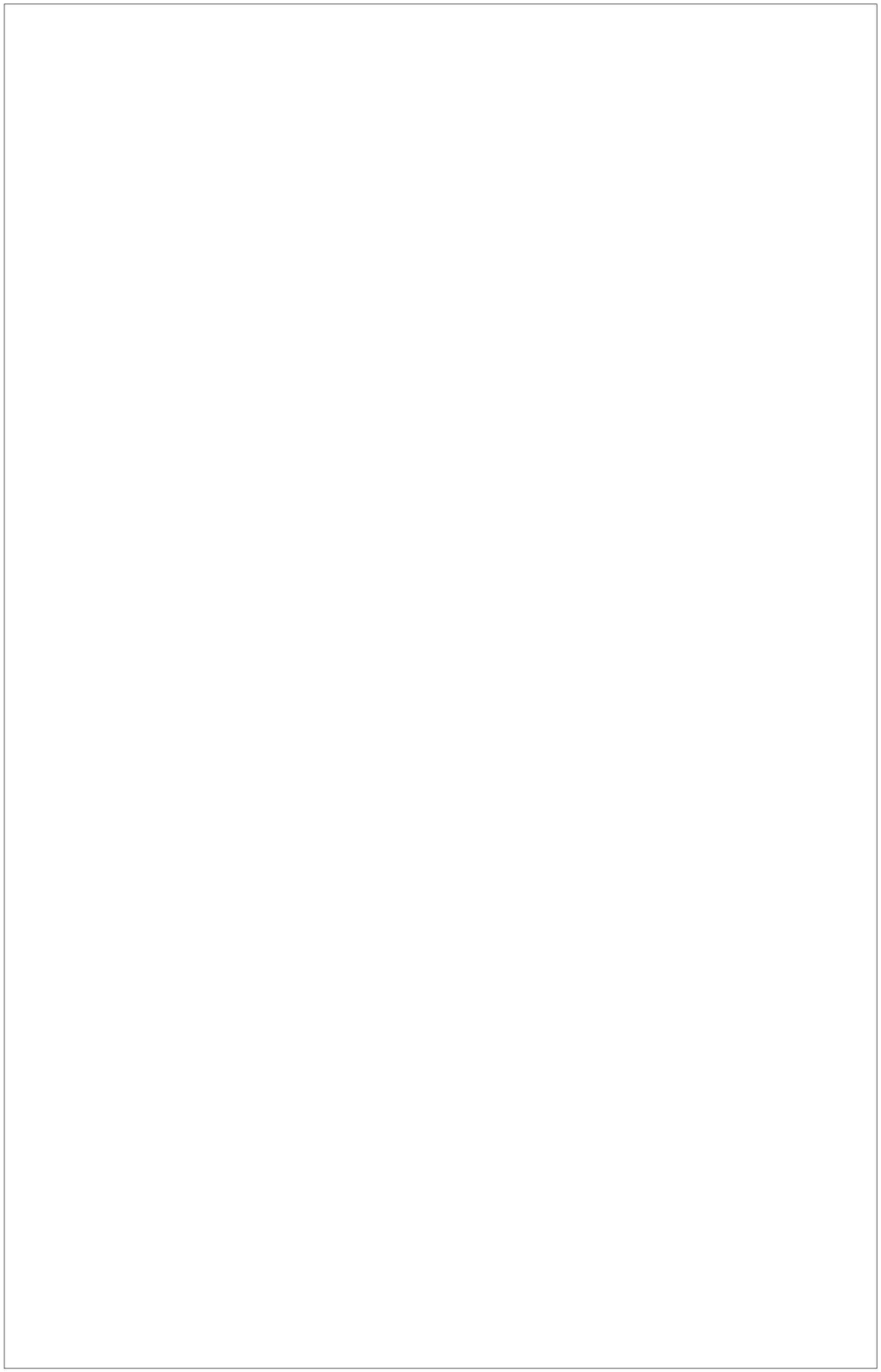

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(b)(3) NatSecAct

Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

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(b)(3) NatSecAct

- Yevgeniy Glazunov served as a junior diplomat/interpreter at the Soviet Embassy in Hanoi (1962-65) and as a senior advisor to the Ambassador (1974-78). Between these assignments, he worked on Vietnamese issues in the International Department of the Central Committee.

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Although aware of the existence of the 1205 document when in the Central Committee, he never saw the document.

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(b)(3) NatSecAct

Declassified on: Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

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- Konstantin Katushev served in the early 1970s as the Central Committee Secretary responsible for maintaining ties with other socialist countries such as North Vietnam.

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As to the reliability of the 1205 document, Katushev says that, insofar as he signed the document and the GRU had good channels and connections to receive information, he had no reason to doubt that the document was what it purported to be, i.e., a report given by General Tran Van Quang. Katushev says that, since this was new information that had never been seen before, it was worthy of the attention of the Communist Party leadership.

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Declassified on: Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

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NatSecAct

Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

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(b)(1)
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- General Korabelnikov, Chief of the GRU, in a meeting with Senators Smith and Shelby at the Russian Ministry of Defense,

(b)(1)
(b)(3) NatSecAct [redacted]

[redacted] He reminded everyone of the letter sent to Senator Smith by General Ladygin (see below), noting that all should pay close attention to that letter. He then proceeded to read it and concluded that he had nothing more to add concerning what General Ladygin wrote.

(b)(1)
(b)(3) NatSecAct [redacted]

[redacted] When Senator Smith asked the General if he could confirm that the translation of the 1205 document was a valid translation of a reliable document, Korabelnikov said he had already confirmed that the translation was performed in the GRU in Moscow in 1972 but that the original Vietnamese language version of the document no longer existed.

- General F. Ladygin, former Chief of the GRU, states in a letter to Senator Smith regarding an analysis made by the GRU of the 1205 document, that: the translation of the document was done by the GRU and forwarded to the Central Committee; given his position in the military-political leadership, General Tran Van Quang could have been fully competent on the subjects of the report and able to speak at Politburo meetings; the GRU cannot confirm the accuracy of the number of American POWs in the report (1205), since this information was not essential for the Soviets and not reexamined; and the original report in the

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Vietnamese language was destroyed after being translated in accordance with existing GRU regulations on handling documents.

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Declassified: Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

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Approved for Release: 2024/12/03 C06898860

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- Captain First Rank A. Sivets, a GRU officer,

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(b)(3) NatSecAct

revealed that (a Vietnamese) is the source of the 1205 document that this source provided a number of materials to the GRU, and that two GRU assessments of this

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(b)(3) NatSecAct

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Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

(b)(1)
(b)(3) NatSecAct

(b)(3)
NatSecAct

source concluded that he was reliable. He emphatically stated that the North Vietnamese would not have deceived themselves at a closed Politburo session, noting that they might have provided inaccurate information in press releases or in their negotiations with the Americans, but they would have had no reason to do so in closed sessions of their own political leadership. Sivets acknowledged that this was his personal opinion. Sivets says the GRU performed two assessments of the source's reliability. The agent was judged to be reliable, everything about this agent was in order, and the agent was working for the GRU. The assessment determined that the information received from the agent was first-hand information and accurately reflected the internal political situation in North Vietnam. The GRU would never have sent this information to the Central Committee if there had been any doubt about the reliability of the information.

(b)(1)
(b)(3) NatSecAct

(b)(3) NatSecAct

Declassified on: Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

(b)(1)
(b)(3) NatSecAct

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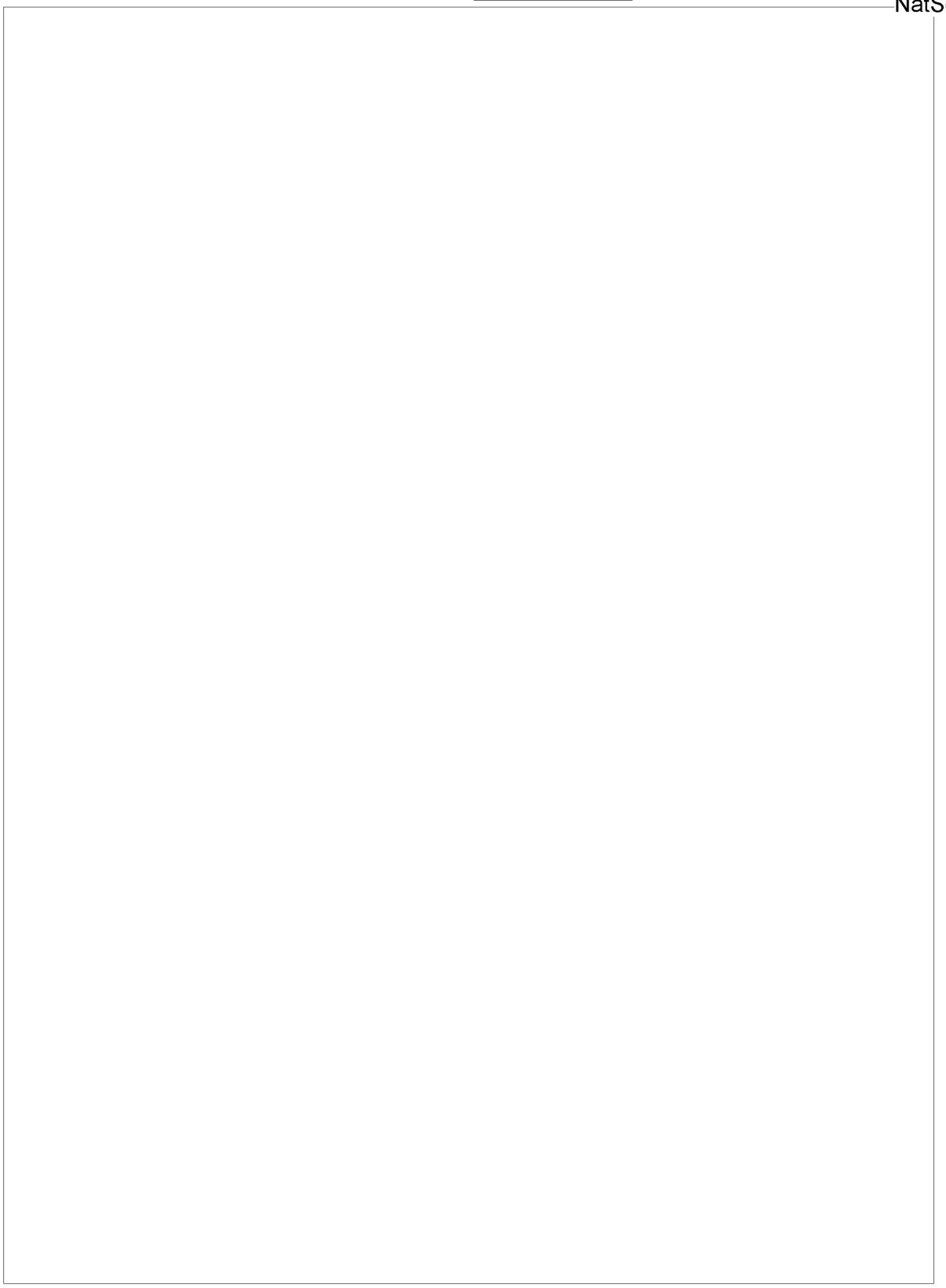

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Approved for Release: 2024/12/03 C06898860

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(b)(3) NatSecAct

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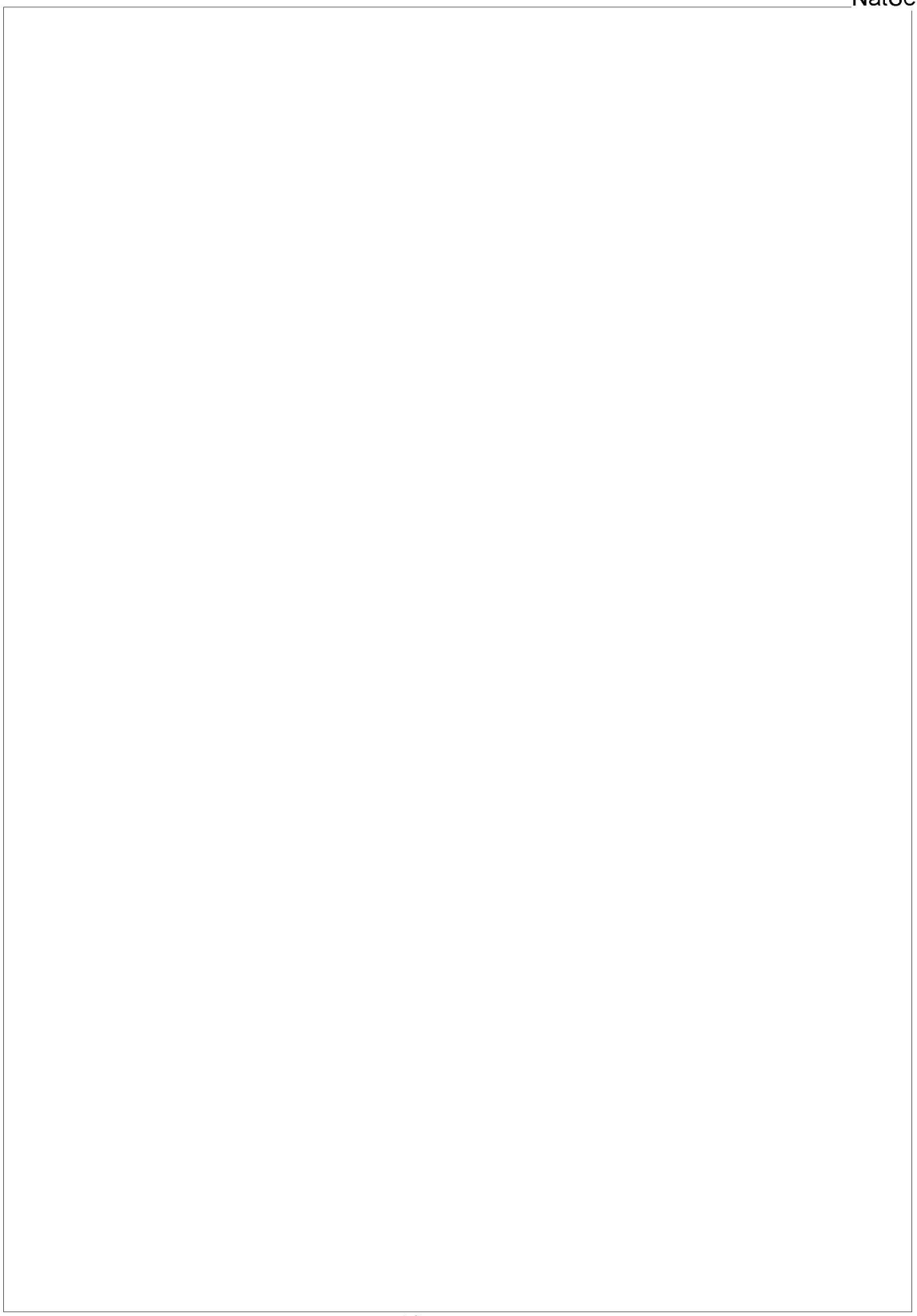
NatSecAct



13

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(b)(3)
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Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

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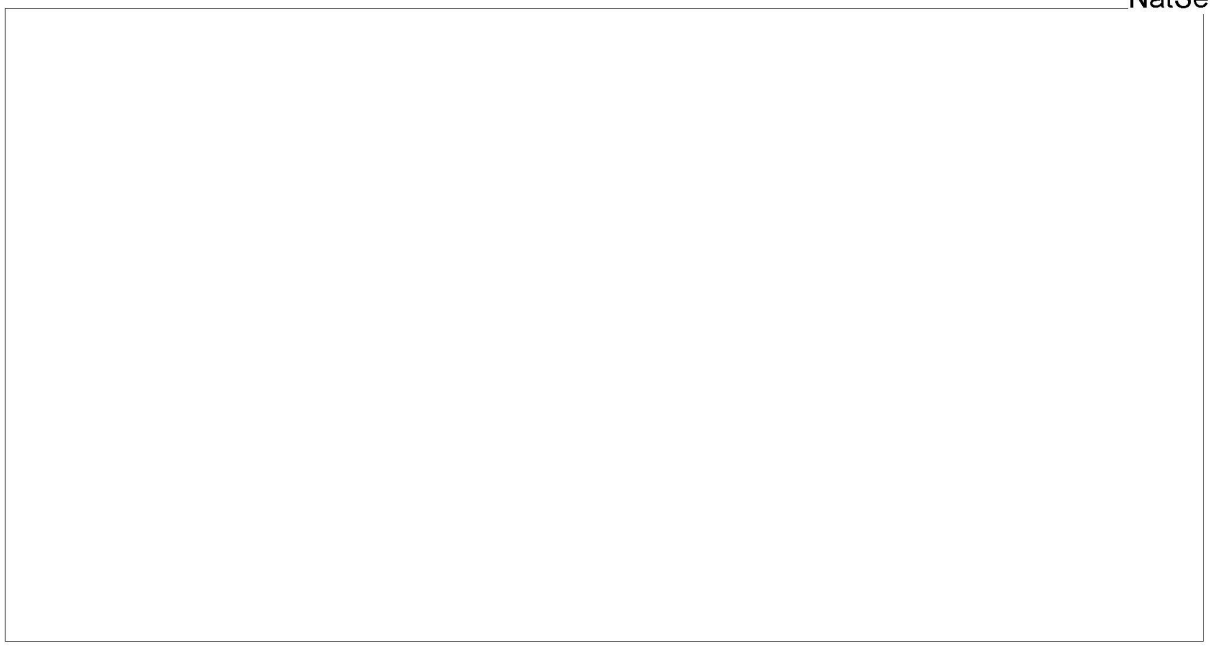

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Annex G

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Approved for Release: 2024/12/03 C06898860
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ANNEX G: Case Review Methodology

For each case answer the following questions Y (yes) N (no) or I (inconclusive):

A. Is there evidence the individual survived the incident (e.g. aircraft loss, fire fight, or accident)?

B. Is there evidence the individual could have been taken captive?

C. Is there evidence the individual entered a prison system?

D. Can any of three governments (Vietnam, Laos, and Cambodia) account for the individual (e.g. documentary or physical evidence)?

Record responses on the attached spreadsheet by case [REFNO] and Name.

Case #	Last Name	YY MM	Country	A	B	C	D	Compelling Dec 92	Compelling Post 92	Aircrew

Case # - DPMO Reference Number.
Last Name -
YY MM – Year and Month of incident
Country – As specified in the case assessment
A – Question A
B – Question B
C – Question C
D – Question D
Compelling Dec 92 – Case considered compelling prior December 1992 Smith list.

Compelling Post Dec 92 - Case considered compelling after December 1992 Smith list.

Aircrew - Yes or No

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Dec 26, 2024
(b)(3) NatSecAct
Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860

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For each question the answer is "**Y**," "**N**," or "**I.**" For example:

Case #	Last Name	YY MM	Country	A	B	C	D	Compelling Dec 92	Compelling Post 92	Aircrew
0001	Adams	6806	VN	I	N	N	Y	N	N	Y

There is inconclusive evidence that Adams, an aircrew member, survived a June 1968 combat incident and there is no evidence that he was taken captive or entered a prison system. Documentary evidence has been provided which establishes his fate prior to the December 1992 Smith list beyond a reasonable doubt, thus the case is not compelling.

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Dec 26, 2024

(b)(3) NatSecAct

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Annex H

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ANNEX H: Results of Compelling Case Review

The results of the three independent reviews of the "compelling cases" are summarized in this annex. A case number can refer to more than one individual; accordingly there may be more than one entry per case number. For each case number, six areas of concern were addressed. For each area of concern, each reviewer's response was noted. "1" indicates a yes; "IN" indicates inconclusive, and a blank indicates no.

For each area of concern, the scoring was tabulated to determine whether there was a consensus "C" or a unanimous "U" response. A consensus required one of three reviewers to vote yes and at least one other reviewer to score the same factor either as a "yes" or as "inconclusive." A "U" required all three reviewers to vote "yes."

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Dec 26, 2024

(b)(3) NatSecAct

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ANNEX H: Results of Compelling Case Review

Case	Probably Survived Incident					Possibly Captured					Possibly in Prison System					SEA Gvts have knowledge					Compelling in 1992					Compelling Today				
	Reviewer			Scoring		Reviewer			Scoring		Reviewer			Scoring		Reviewer			Scoring		Reviewer			Scoring		Reviewer			Scoring	
	1	2	3	C	U	1	2	3	C	U	1	2	3	C	U	1	2	3	C	U	1	2	3	C	U	1	2	3	C	U
18	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1		1					1			
51			IN																											
51			IN																											
53			1													1	1	1	1	1										
54	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1										
70			IN													1	IN		1		1									
70			IN													1	IN		1		1									
79	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1										
84	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1										
94																1														
94																1														
96																														
99	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1		1	1	1											
108																IN		1	1		IN					IN				
108																IN		1	1		IN					IN				
109	1	IN	IN	1		1										1		1	1		1									
109	1	1	IN	1		1										1		1	1		1									
114	1	IN	1	1		1										1					1									
124	1	IN	1	1		1											1	1	1											
135																	1	1	1											
158	IN		1	1												1	1	1	1	1										
158	IN		IN													1	1	1	1	1										
162	IN		IN			IN										1	1	1	1	1	1					IN				
213			IN																											
233	IN					IN										1	IN		1		1					IN				
235	1		1	1				1										1												
242																														
248			IN																											
250			IN													1														
250			IN													1														
253	1	IN	1	1		1	IN		1		IN					1					1					IN				
258	1	1	1	1	1	1	1	1	1	1	IN					1														
267	1	1	1	1	1							1						1												
274			IN													1		1	1											
275																														
279																1		1	1											
297	1	IN	1	1												1		1	1		1									
297	1	IN	1	1												1		1	1		1									
299																IN	1	1	1											
299																IN	1	1	1											
299																IN	1	1	1											
304																														
307																		1												
323	1		1	1		1										1	IN		1		1									

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	Probably Survived Incident			Possibly Captured			Possibly in Prison System			SEA Gvts have knowledge			Compelling in 1992			Compelling Today		
Case	Reviewer		Scoring	Reviewer		Scoring	Reviewer		Scoring	Reviewer		Scoring	Reviewer		Scoring	Reviewer		Scoring
326	1	1	1	1	1	1				1			1					
333	1 1	1	1 1	1 1	1	1 1		1		1	1	1						
339										1	1	1	IN					
340	IN	IN		IN			IN			IN			IN			IN		
344	1	IN	1							1			IN					
349	1 IN	1	1	IN						1 1	1	1 1						
354										1 1		1	IN					
354										1 1		1	IN					
354										1 1		1	IN					
354										1			IN					
354										1			IN					
354										1			IN					
370										1	1	1	IN					
372	IN IN	IN		IN IN			IN IN			1	1	1	IN	1	1	IN		
374	1	1	1							1								
381	IN	IN		IN			IN			1			IN			IN		
386	1			1			1 1		1	1			1			IN		
425	1	1	1				1			1	1	1						
439										1	1	1	IN					
439										1	1	1	IN					
439										1	1	1	IN					
443		IN								1	1	1						
453	1 IN	1	1							1	1	1	IN			IN		
459	IN	IN								1								
471		1								1								
477																		
483																		
496																		
497	IN												IN			IN		
587										1								
587										1								
587										1								
587										1								
590										1	1	1						
606										IN	1	1						
607	1 IN	IN	1	1 IN		1				IN			IN			IN		
629				IN			IN			IN			IN					
641	1 1	1	1 1	1 1		1				1 1	1	1 1						
646										1			IN					
646										1			IN					
646										1			IN					
646										1			IN					
647	1 1	1	1 1	1 1	1	1 1	IN			1			IN			IN		
656											1							
677	IN									1 1	1	1 1						
678	1 1	IN	1	IN 1		1				1			IN					
689	1 1	1	1 1	1 1	1	1 1	1 1	1	1 1	1	1	1						
691	1 1	1	1 1	IN			IN			1 1	1	1 1						

	Probably Survived Incident				Possibly Captured				Possibly in Prison System		SEA Gvts have knowledge		Compelling in 1992		Compelling Today	
Case	Reviewer			Scoring	Reviewer			Scoring	Reviewer	Scoring	Reviewer	Scoring	Reviewer	Scoring	Reviewer	Scoring
703	IN		1	1							1 1	1				
706																
706																
723	IN				IN				IN				1		IN	
728	1 1	1		1 1	1 1	1		1 1								
750	IN		IN		IN								IN		IN	
805			IN								1 1	1				
811			1													
825																
829											1					
833																
839	IN		IN		IN				IN		IN		IN		IN	
862	IN		IN										IN		IN	
867	IN		IN													
867	IN		IN													
872											1					
873											1					
903	IN				IN						1 1	1				
904	IN	IN			IN IN						1 IN	1				
904	IN				IN						1 1	1				
928																
930	IN		IN		IN								IN		IN	
947	IN		1	1	IN						1 1	1	IN			
952											IN					
954	IN										IN					
967																
967																
976	1 1	1		1 1	1						1					
977	IN		1	1							IN					
984	IN		1	1	IN											
991																
997	1		1	1	IN						IN		IN			
998	IN										IN		IN		IN	
1004											IN					
1004											IN					
1006	IN				IN IN						1					
1040	IN		1	1												
1040	IN		1	1												
1046																
1046																
1046																
1046																
1049											1 1	1				
1062	IN		IN								1					
1063	IN		IN		IN				IN		IN		1		IN	
1065	1 1	1		1 1	1 1	1		1 1			1	1	IN			
1086	1 1	1		1 1	IN						1	1				
1100	IN				IN						1	1	IN			

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Case	Probably Survived Incident				Possibly Captured				Possibly in Prison System				SEA Gvts have knowledge				Compelling in 1992				Compelling Today			
	Reviewer			Scoring	Reviewer			Scoring	Reviewer		Scoring		Reviewer			Scoring	Reviewer			Scoring	Reviewer		Scoring	
1108	1		1	1	IN								1		1	1								
1108	1		1	1	IN								1		1	1								
1112	1	IN	1	1	1	IN	1	1	IN	IN					1		1	1	1	1	1	IN	1	1
1131	IN	IN	1	1									1											
1132														1										
1156	IN				IN				IN				1	IN	1	1	IN	1		1		1		
1171	IN	IN	IN			IN							1				IN				IN			
1182	IN		IN										1											
1187	IN		IN										1		1	1	1							
1205	1	1	1	1	1								1		1	1	1				IN			
1222	IN				IN				IN				1		1	1	IN				IN			
1234									IN				1	IN	1	1	IN							
1243													1											
1244	1	1	1	1	IN	1	IN	1	IN								IN		1	1				
1244	1	1	1	1	IN	1	IN	1	IN								IN		1	1				
1244	1	1	1	1	IN	1	1	1	IN								IN		1	1				
1248	1	1	1	1	1								1	IN		1								
1258	IN	IN	1	1	IN	IN	IN	1					IN		1	1		1	IN	1		1		
1274	IN	1	1	1	IN	1	1	1	IN								IN	1	1	1	IN	1	1	
1277	1	1	1	1	1	1	1	1						1	1	1								
1279			IN										1											
1294													1		1	1								
1308			IN										1											
1314	IN		IN		IN								1				IN	1		1		1		
1329	1	1	1	1	1	1	1	1					1		1	1	1							
1339	IN		1	1									1				IN				IN			
1340	IN												IN		1	1								
1340	IN												IN		1	1								
1340	IN												IN		1	1								
1345	IN														1									
1347			1																					
1363															1									
1366													IN											
1366													IN											
1383													1											
1388	1		1	1	IN								1				IN				IN			
1397			IN				1						1		1	1								
1402	1	1	1	1	1	1	IN	1					1	1	1	1	IN							
1405	1	1	1	1	1								1		1	1	IN				IN			
1408			1										IN		1	1								
1418			1										IN											
1425			IN																					
1428			1										1											
1428			1										1											
1428			1										1											
1431	IN		1	1	IN				IN															
1437	IN	1	1	1	IN				IN				1		1	1	1		1	1	IN			
1437	IN	1	1	1	IN				IN				1		1	1	1		1	1	IN			

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	Probably Survived Incident				Possibly Captured				Possibly in Prison System				SEA Gvts have knowledge				Compelling in 1992				Compelling Today			
Case	Reviewer			Scoring	Reviewer		Scoring		Reviewer		Scoring		Reviewer		Scoring		Reviewer		Scoring		Reviewer		Scoring	
1444		1	1	1									1											
1455		1	1	1																				
1456	1	1	1	1 1	1	1	1		1	1	1		1	1	1		1	1	1		IN	1	1	
1463	1	1	1	1 1									1											
1465	IN												IN				IN				IN			
1488														1										
1505																								
1505																								
1523	1	1	1	1 1	1	1			1	IN	1			1										
1535	1	1	1	1 1	IN								1	1	1	1 1								
1542			1										1	1	1	1 1								
1552													1	IN		1								
1552													1	IN		1								
1552													1	IN		1								
1552													1	IN		1								
1552													1	1		1								
1572	IN		IN										IN				IN				IN			
1573	1	1	1	1 1									1	1	1	1 1								
1596													1		1	1	IN							
1598	1	1	1	1 1	IN								1	1	1	1 1								
1610	1	1	1	1 1									1		1	1								
1610	1	1	1	1 1									1		1	1								
1613			IN										1	1		1								
1619																								
1619																								
1639		1	1	1		1	1	1							1									
1639	1	1	1	1 1	1	1	1	1 1	1				1		1	1								
1650	1				1				1				1		1	1								
1660			1										IN											
1663																								
1663																								
1668	IN	1	IN	1		1	IN	1					1				1		1	1	IN			
1675													1											
1675													1											
1683	IN		IN		1								IN	1	1									
1683	IN		IN		1								IN	1			1							
1685			1										1	1			1	1	1			1		
1686		IN	1	1									1	1			1							
1689																								
1715													IN											
1715													IN											
1715													IN											
1715													IN											
1715													IN											
1719	IN	1	1	1	IN	IN	1	1					1	1	1			1						
1719	IN	1	1	1	IN	IN	1	1					1	1	1			1						
1723	1	IN	1	1									IN				IN	1	1		IN			
1724	1	1	1	1 1	1	1		1	1				1				IN							

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	Probably Survived Incident					Possibly Captured				Possibly in Prison System		SEA Gvts have knowledge				Compelling in 1992				Compelling Today	
Case	Reviewer			Scoring		Reviewer			Scoring	Reviewer	Scoring	Reviewer			Scoring		Reviewer			Scoring	Reviewer	Scoring
1730	1	1	1	1	1	IN	1	IN	1			1					IN		1	1	IN	
1730	1	1	1	1	1	IN	1	IN	1			1					IN		1	1	IN	
1730	1	1	1	1	1	IN	1	IN	1			1					IN		1	1	IN	
1736	1	1	1	1	1	IN		IN		IN		IN							1			
1742	1	1	1	1	1	IN		IN				1					IN				IN	
1743	1		IN									1		1	1		IN					
1743	1		IN									1		1	1		IN					
1745	1		IN									1										
1747	1	1	IN	1		IN	IN	IN		IN				1			IN		1	1	IN	
1748	1	1	IN	1		IN	IN			IN		IN					IN				IN	
1756	IN	1	1	1								1	1	1	1	1						
1758	IN		IN									IN					IN				IN	
1782			IN									IN		1	1							
1793			1											1								
1803			1									IN		1	1							
1810	IN		IN									1										
1811			IN									IN										
1814	IN		IN														IN				IN	
1816												IN		1	1				1			
1819	1	1	1	1	1	IN	IN	1	1			1										
1820	1	1	IN	1								1	1	1	1	1						
1824			1									IN	1	1	1	1						
1834	1		1	1		IN						1										
1842			1					IN				1	1	1	1	1	IN		1	1		
1855												IN	1		1							
1868	IN	IN	IN				IN															
1895	IN											1	1	1	1	1		1			1	
1908	IN		1	1								1	1	1	1	1		1			1	
1912	IN											IN										
1912	IN											IN										
1913												IN										
1913												IN										
1917	IN											IN		1	1							
1918	IN	IN	IN									IN		1	1							
1918	IN	IN										IN		1	1							
1920																						
1924			IN									1		1	1							
1944		IN	1	1								1	1	1	1	1						
1945												1	1	1	1	1		1			1	
1945												1		1	1							
1947												1		1	1							
1949	IN		IN			IN						IN										
1952												1										
1955												1		1	1		1				1	
1955												1		1	1		1				1	
1959			1									1	1		1		1				1	
1967												1					1				1	
1977		1	1	1								IN		1	1							

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Case	Probably Survived Incident					Possibly Captured				Possibly in Prison System				SEA Gvts have knowledge				Compelling in 1992				Compelling Today				
	Reviewer			Scoring		Reviewer		Scoring		Reviewer		Scoring		Reviewer			Scoring	Reviewer			Scoring	Reviewer			Scoring	
1981	IN		1	1			IN							1												
1981	IN	IN	1	1			1							1												
2044	IN													1				IN								
2052																1										
2053	IN					IN				IN																
Total	73	57	103	95	41	35	29	26	36	14	12	9	8	9	6	157	42	123	120	25	26	14	20	20	1	0	14	1	3	0

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Annex I

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ANNEX I: Captain McDonnell Case Review

We specifically selected Captain McDonnell's case for review because the Advocacy and Intelligence Index for Prisoners of War-Missing in Action (AII POW-MIA) posted its version of the case on the Internet concurrent with our review of the Defense Prisoner of War/Missing Personnel Office (DPMO) assessments of Senator Smith's compelling cases. That juxtaposition of events became the *raison d'être* for adding one case review to our methodology.

We initially understood that DPMO was established to be the "one-stop shop" for POW/MIA issues. The Deputy Director, DPMO, told us the Senate Select Committee issued a "definitive finding" in its 1993 report that the process for keeping the families informed was not adequately supported. The families had to query too many places to obtain information. The committee report recommended creation of a one-stop organization—DPMO.

The DPMO is chartered by the Department of Defense Directive 5110.10, "Defense Prisoner of War/Missing Personnel Office (DPMO)," dated 16 July 1993. Part of the DPMO mission is to "exercise policy, control and oversight of the entire process for investigation and recovery related to missing persons and to establish procedures to be followed by Department of Defense boards of inquiry and by officials reviewing the reports of such boards." DPMO functions include:

- Serving as the DoD focal point for POW/MIA matters;
- Assembling and analyzing information on U.S. military and civilian personnel who are, or were, prisoners of war or missing in action; and
- Maintaining data bases on U.S. military and civilian personnel who are, or were, prisoners of war or missing in action.

We found that DPMO is not a one-stop repository. Further, no one organization maintains a repository of information necessary to understand this particular case. We reviewed the files of three

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organizations—DPMO, Army Casualty Affairs Office, Joint Task Force-Full Accounting (JTF-FA)—and consulted three additional holdings before we understood the case sufficiently to write credibly about it.

The DPMO file only goes back to April 1969. Captain McDonnell was lost on 6 March 1969. The first item in the file is a report of interview with the executive officer of McDonnell's unit. That report established a misunderstanding that exists to this day—that McDonnell's seat belt was "neately [sic] undone." We found that, with respect to the McDonnell case, the DPMO file primarily holds intelligence information and some administrative information; it lacks operational information.

The U.S. Army Casualty Affairs file holds two relevant folders. One folder contains relevant correspondence because the Army's appointed casualty assistance officer is the family's official point of contact for case matters. The second folder holds original operational information concerning the search to locate Captain McDonnell. That folder contains original sworn testimony taken by a Missing Person Board convened to determine Captain McDonnell's status. We found that, with respect to this case, the Army file holds primarily administrative information and original operational information; it lacks intelligence information.

The JTF-FA file is the most complete and includes a summary of information prepared for the June 1994 flag/general officer review of the McDonnell case. The following quoted information is relevant:

- **JTF-FA Level of Effort**: The case was investigated during four joint [U.S.-Vietnam] operations. The teams pursued all witnesses and archival leads identified by Headquarters JTF-FA and DPMO. They conducted 20 witness interviews and two excavations. The Oral History Program team interviewed two former Peoples' Army of Vietnam officers and two authors identified as possible sources for the case. Joint teams visited the Hue Military Museum three times in an attempt to determine the provenance of Captain McDonnell's military identification card;

- **13th Joint Field Activity**: Officers interviewed three witnesses who provided consistent, credible information concerning the capture of an injured American helicopter pilot in March 1969. The pilot later died while being evacuated to higher

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headquarters. The American's body was reportedly buried near a stream. One of the witnesses claimed to have participated in the burial; and

- **JTF-FA Recommendation**: Fate determined for Captain McDonnell.

We found two additional aspects of the JTF-FA files noteworthy. First was the summation of the interviews about Captain McDonnell's fate and the chain-of-custody of his identification card. Second was the inclusion of two documents updating information from individuals who had testified during the Missing Person Board in 1969. Neither document was found in the DPMO or Army files; both provide new perspective:

- In April 1990, the gunship pilot was re-interviewed. He said that "Captain McDonnell probably removed [him] from his seat and placed him next to the aircraft." Captain McDonnell was not present when the pilot woke up four or five hours later; and

- In January 1993, the pilot who coordinated the air search for McDonnell and who provided a sworn statement to the Missing Persons Board recalled that "[Captain McDonnell] had told me in safety briefings that he believed the best solution was to E&E [evade and escape] from a crash site. Our battery policy was to get away from the crash site." The pilot, now a general officer concluded that McDonnell "was a brave officer who I believe was killed by the enemy shortly after he was captured."

We found that, for this case, the JTF-FA file holds all operational and most intelligence information; it lacks administrative information.

The comprehensiveness of the JTF-FA files caused us to review the DPMO files a second time to ensure we had not overlooked information important to the McDonnell case. During that review, we examined color photographs of Captain McDonnell's identification card and determined that the card in the Hue museum is *bona fide*. We also reconfirmed that no SIGINT reporting pertained to the case.

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We examined three additional holdings. First, we reviewed the microfiche file maintained by the Library of Congress, a review which revealed that DPMO files were not sufficient to understand the McDonnell case. Second, because AII POW-MIA mentioned intelligence information reports that we had not previously seen, we reviewed the 15 volumes of uncorrelated intelligence reports held by the Pentagon library and found the referenced reports. Finally, we reviewed the CIA Directorate of Operations files for information on Viet Cong policy concerning the handling of POWs.

Information in the JTF-FA file supports the June 1994 decision to remove Captain McDonnell from the discrepancy list. Information in the DPMO files does not. We believe that explains why the Director, DPMO voted against his analysts' recommendation in the June 1994 review of the McDonnell case. The JTF-FA position was based on operational and intelligence files; the DPMO position was based primarily on intelligence files. We found the DPMO files not suitable for a complete and accurate understanding of the McDonnell case.

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Annex J

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ANNEX J: Distribution List

Chairman and ranking minority member of each of the following congressional committees:

Senate Appropriations Committee
Senate Armed Services Committee
Senate Foreign Relations Committee
Senate Select Committee on Intelligence
House Appropriations Committee
House Armed Services Committee
House International Relations Committee
House Permanent Select Committee on Intelligence

Assistant to the President for National Security Affairs

Chairman, President's Foreign Intelligence Advisory Board

Office of the Secretary of Defense:

Secretary of Defense
Deputy Secretary of Defense
Under Secretary of Defense for Policy
Assistant Secretary of Defense (Command, Control, Communications, and Intelligence)
Assistant Secretary of Defense (International Security Affairs)
Assistant Secretary of Defense (Legislative Affairs)
Assistant Secretary of Defense (Public Affairs)
General Counsel of the Department of Defense
Deputy Assistant Secretary of Defense (Intelligence)
Deputy Assistant Secretary of Defense (Prisoner of War/Missing Personnel Affairs)
Special Assistant to the Secretary and Deputy Secretary of Defense
Assistant to the Secretary of Defense (Intelligence Oversight)

Secretary of the Army
Deputy Chief of Staff for Intelligence, Department of the Army

Secretary of the Navy
Director of Naval Intelligence

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Secretary of the Air Force
Director of Intelligence, Surveillance and Reconnaissance, U.S. Air Force

Commandant, U.S. Marine Corps
Assistant Chief of Staff for C41, U.S. Marine Corps

Commander in Chief, U.S. European Command
Director of Intelligence, U.S. European Command

Commander in Chief, U.S. Pacific Command
Director for Intelligence, U.S. Pacific Command
Commander, Central Identification Laboratory, Hawaii
Commander, Joint Task Force-Full Accounting
Inspector General

Commander in Chief, U.S. Forces Command
Director of Intelligence, U.S. Forces Command

Commander in Chief, U.S. Southern Command
Director for Intelligence, U.S. Southern Command

Commander in Chief, U.S. Central Command
Director of Intelligence, U.S. Central Command

Chairman, Joint Chiefs of Staff
Director Joint Staff
Director for Intelligence
Director for Command, Control, Communications and Computers, Joint Staff
Inspector General

Director, Defense Intelligence Agency
Deputy Director for Policy Support
Director for Intelligence Operations
Chief, Stony Beach
Inspector General

Director, National Imagery and Mapping Agency

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Dec 26, 2024

Approved for Release: 2024/12/03 C06898860

Approved for Release: 2024/12/03 C06898860
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Director, National Reconnaissance Office
Inspector General

Director, National Security Agency
Inspector General

Director of Intelligence, U.S. Special Operations Command

Director of Intelligence, U.S. Space Command

Director of Intelligence, U.S. Strategic Command

Director of Intelligence, U.S. Transportation Command

Assistant Chief of Staff, J2, U.S. Forces Korea

Assistant Commandant for Operations, U.S. Coast Guard

Deputy Director of Operations, Defense Information Systems Agency

Central Intelligence Agency:
Director of Central Intelligence
Deputy Director of Central Intelligence
Associate Director of Central Intelligence for Military Support
Chairman, National Intelligence Council
Vice Chairman, National Intelligence Council
Deputy Director of Central Intelligence for Community Management
Executive Director
Deputy Executive Director
General Counsel
Director of Congressional Affairs
Director of Public Affairs
Deputy Director for Intelligence (DI)
Deputy Director for Operations (DO)
National Intelligence Officer, East Asia
Director of Asian Pacific and Latin American Analysis, DI
DI/ Politicization Ombudsman
Chief, Central Eurasia Division, DO
Chief, East Asia Division, DO

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Department of State:

Secretary of State
Assistant Secretary of State, Bureau of East Asian and Pacific Affairs
Assistant Secretary of State, Bureau of Intelligence and Research
American Embassy, Bangkok
American Embassy, Hanoi
American Embassy, Moscow
American Embassy, Phnom Penh
American Embassy, Vientiane
Inspector General

Director, Federal Bureau of Investigation

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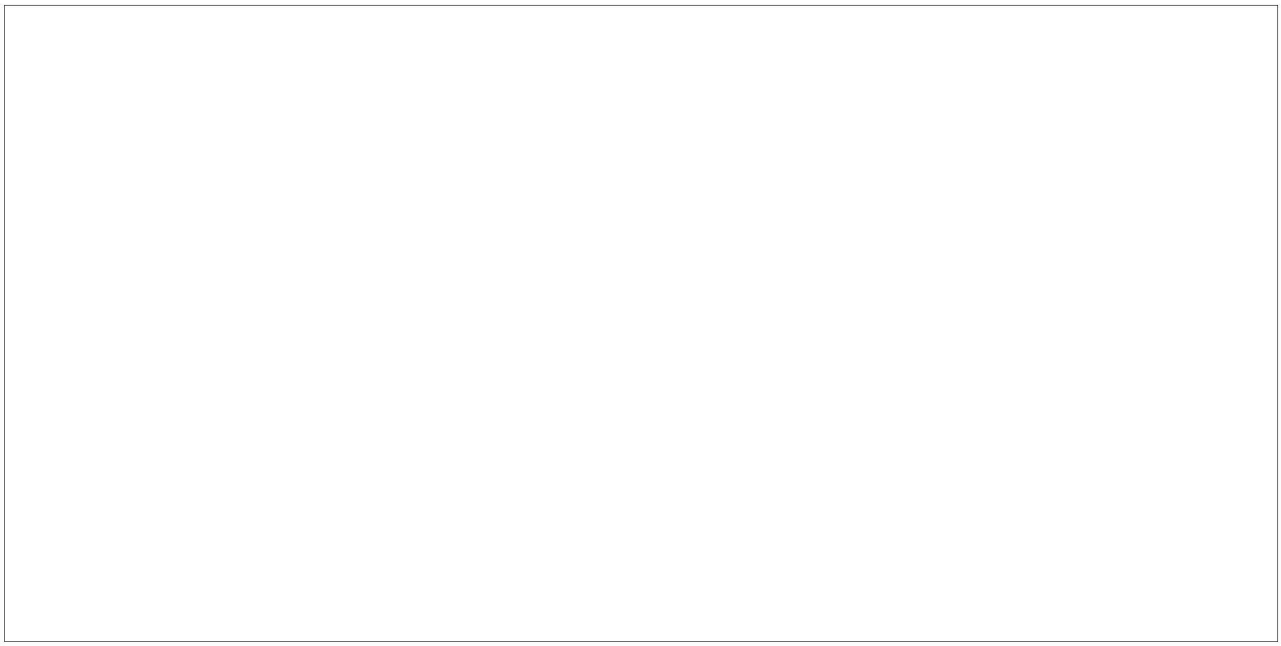
(b)(3) NatSecAct



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Dec 26, 2024

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

MICHAEL DRIGGS, *et al.*	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:23-cv-1124 (DJN)
	)	
CENTRAL INTELLIGENCE AGENCY,	)	
	)	
Defendant.	)	
	)	

AFFIDAVIT OF NORMAN D. KASS

Norman D. Kass herby declares and states:

1. The U.S.–Russia Joint Commission on POWs/MIAs (USRJC) was established in 1992 by the Presidents of the United States and the Russian Federation, George H. W. Bush and Boris Yeltsin. The USRJC was established to determine the fates of the United States's and the Soviet Union's unaccounted-for service personnel from World War II, the Korean War, the Cold War, and the Vietnam conflict (Vietnam, Laos and Cambodia).

2. I served as the Executive Secretary of the U.S. side of the USRJC. My total length of service extended from June 1992 through December 2010. Senator Bob Smith served as U.S. Chairman of the Vietnam War Working Group of the USRJC.

3. The USRJC probed a range of issues that involve prisoners-of-war and missing-in-action. In an effort to account for missing service members, Commission Members and researchers interviewed former military personnel, civilians, and former Internees. Information exchanged between the two parties was then investigated by a spectrum of governmental entities.

4. Over the course of my 18 years of service I was involved with developing research programs and overseeing and directly participating in interviews with individuals

having knowledge of unaccounted-for U.S. military personnel. I have participated in well over 100 such interviews. The interviewees included former and active-duty civilian and military personnel, veterans of past military engagements, archivists, officials of the Russian government, members of the press and others.

5. I have been asked whether any Russian Intelligence official or American Intelligence or other official had ever expressed any concerns or reservations to the USRJC about the public release of any information provided by the Russians.

6. Only once were the Russians reluctant to provide unrestricted access to information regarding POWs. Regarding interrogation reports of some 50 or so Korean War American POWs, the Russians asked the USRJC that the names of these POWs not be publicly released.

7. That was the only time that a Russian Intelligence official or American Intelligence or other official expressed any concerns or reservations to me or to the USRJC about the public release of any information provided by the Russians.

I hereby declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge information and belief. Executed this 17th day of May, 2025.

Norman D. Kass
5031 34th Road N.
Arlington, Virginia 22207

DEX 2

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THE WHITE HOUSE

WASHINGTON

June 10, 1993

PRESIDENTIAL DECISION DIRECTIVE/NSC-8

MEMORANDUM FOR THE VICE PRESIDENT
THE SECRETARY OF STATE
THE SECRETARY OF TREASURY
THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL
THE SECRETARY OF VETERANS AFFAIRS
THE DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET
THE CHIEF OF STAFF TO THE PRESIDENT
THE DIRECTOR OF CENTRAL INTELLIGENCE
THE REPRESENTATIVE OF THE UNITED STATES TO THE UNITED NATIONS
THE CHAIRMAN OF THE JOINT CHIEFS OF STAFF
THE DIRECTOR OF THE UNITED STATES INFORMATION AGENCY
THE DIRECTOR OF THE NATIONAL SECURITY AGENCY
THE DIRECTOR OF THE DEFENSE INTELLIGENCE AGENCY

SUBJECT: Declassification of POW/MIA Records

In accordance with my Memorial Day Announcement of May 31, 1993, all executive agencies and departments are directed to complete by Veterans Day, November 11, 1993, their review, declassification and release of all relevant documents, files pertaining to American POW's and MIA's missing in Southeast Asia in accordance with Executive Order 12812.

Bill Clinton

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WJC HANDWRITING

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LE/LM 2014-004

DEX 3

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

MICHAEL DRIGGS, *et al.*,	)	
Plaintiffs,	)	
v.	)	Case No. 1:23-cv-1124 (DJN)
CENTRAL INTELLIGENCE AGENCY	)	
Defendant.	)	

SUPPLEMENTAL DECLARATION OF MARY C. WILLIAMS,
LITIGATION INFORMATION REVIEW OFFICER,
INFORMATION REVIEW AND RELEASE DIVISION,
CENTRAL INTELLIGENCE AGENCY

I, Mary C. Williams, hereby declare and state:

I. INTRODUCTION

A. Purpose of this Declaration

1. This supplemental declaration is provided in support of the Department of Justice's ("Government") Combined Reply Memorandum of Law in Support of its Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment ("Reply") to explain and justify, to the greatest extent possible on the public record, the Central Intelligence Agency's ("CIA" or "Agency") newly-contested redactions to an additional document produced in response to Plaintiffs' Request 28, as set forth below.

B. My Professional Background

2. I continue to serve as the Litigation Information Review Officer ("LIRO") for the Information Review and Release Division at the CIA. I respectfully refer the Court to CIA's declaration, dated 23 April 2025 ("Williams Declaration"), for information concerning my work experience.[1] As described in the Williams Declaration, through the exercise of my official duties, I have become and remain familiar with: the information described in my previous declaration and this declaration; relevant documents; and Plaintiffs' FOIA requests. I make the following statements based upon my personal knowledge and information made available to me in my official capacity.

II. PLAINTIFFS' FOIA REQUESTS

3. As previously set out in the Williams Declaration, Plaintiffs' FOIA request at issue in the instant case sought disclosure of 28 categories of information.[2] I understand that Plaintiffs now challenge redactions to the document produced in response to Request 28, which sought "the redacted portions of

[1] ECF No. 38-1.

[2] As noted in the Williams Declaration, the classified Department of Defense and CIA Joint Report (C06898860) is responsive to Request 27 in this matter, as it was responsive to Request 19 in *Moore, et al. v. Central Intelligence Agency*, 1:20-cv-01027-RCL (D.D.C.). See Williams Declaration, Exhibit J (Vaughn Index reflecting C06898860, which is the classified version of C00311210 that was produced in *Moore* as well as in this matter). The redactions to the classified Joint Report were addressed in the Williams Declaration.

the November 1998 Critical Assessment of the 1998 National Intelligence Estimate (NIE) on Vietnamese Intentions, Capabilities, and Performance Concerning the POW/MIA Issue, by Senator Bob Smith" ("Critical Assessment"). Plaintiffs challenge 14 pages of the document identified as No. C06548527.[3] The CIA did not produce C06548527 in this matter.[4] Instead, on 23 May 2024, the CIA produced C00313431, which is a duplicate of C06548527 but on which the redactions differ. Consequently, the Critical Assessment produced by the CIA in this matter does not fully align with the redactions challenged by the Plaintiffs.[5] In its production in this case, the CIA lifted a significant quantity of redactions from C00313431 that remain on C06548527.[6] In only a few places does C00313431 reflect redactions over

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[3] See Plaintiffs' Exhibit B, *Challenged Redactions to Critical Assessment of the 1998 National Intelligence Estimate (NIE) on Vietnamese Intentions, Capabilities, and Performance Concerning the POW/MIA* Issue (ECF 41-2). Plaintiffs' Exhibit B contains 16 of the 209 pages from the Critical Assessment, but only 14 of those pages contain redactions.

[4] Document No. C06548527 was produced 9 years ago on 25 May 2016 via hard copy to the U.S. Attorney's Office for the District of Columbia for dissemination to the attorneys of record in *Roger Hall, et al. v. Central Intelligence Agency*, 1:04-cv-0081-RCL (D.D.C.), which included Mr. Clarke. The CIA provided the document in response to F-2014-00185, which was one of the FOIA requests at issue in that case.

[5] See Plaintiff's Memorandum of Points and Authorities in Support of their Cross-Motion for Summary Judgment and in Opposition to Defendant's Motion for Summary Judgment ("Plaintiff's Memo" or "Memo"), ECF 42 at 15.

[6] See Attachment A, which extracts comparable pages from C00313431 and provides a side-by-side comparison with C06548527.

information that is visible on C06548527, for example: 1) with regard to portion markings on .pdf pages 000073, 000137, 000139, and 000146; 2) portions of text on .pdf pages 000074 and 000142; and 3) a footnote on .pdf page 000142. To the extent that portions of C00313431 contain redactions to information that is unredacted in C06548527, the CIA withdraws those specific redactions and will re-produce C00313431 with those redactions lifted. However, to the remaining portions – i.e., information redacted in C00313431 and C06548527, the CIA continues to apply FOIA exemptions (b)(1), (b)(3), and (b)(6).

III. EXEMPTIONS CLAIMED

A. FOIA Exemption (b)(1)

4. I respectfully refer the Court to Paragraphs 14 and 15 of the Williams Declaration, which describe Exemption (b)(1) of the FOIA and Section 1.1(a) of Executive Order 13526 regarding classification. Here, the information redacted in the Critical Assessment pursuant to Exemption (b)(1) satisfies the procedural and the substantive requirements of E.O. 13526, which governs classification. See E.O. 13526 § 1.1(a), § 1.4(c)-(d).

5. As a current, original classification authority, I have determined that the challenged portions of the Critical Assessment are currently and properly classified and that the information is owned and controlled by the U.S. Government. Unauthorized disclosure of this information could reasonably be

expected to result in damage to national security. Additionally, the information falls under classification categories § 1.4(c) and § 1.4(d) of E.O. 13526 because it concerns "intelligence activities (including covert action), [or] intelligence sources or methods" and "foreign relations or foreign activities of the United States." The information's unauthorized disclosure could reasonably be expected to result in damage to national security. Further, the responsive document contains classified information that is properly marked pursuant to § 1.6. In accordance with E.O. § 1.7(a), none of the information at issue has been classified in order to conceal violations of law, inefficiency or administrative error; prevent embarrassment to a person, organization or agency; restrain competition; or prevent or delay the release of information that does not require protection in the interests of national security.

6. The challenged portions of the Critical Assessment cover a range of Agency functions and operations and contain classified information related to: the priority of intelligence activities and targets; methods of collection; and classified relationships. For these reasons, the CIA has applied Exemption (b)(1) to the currently and properly classified information. Despite the passage of time, this information remains currently and properly classified because the release of this information could significantly impair the CIA's ability to protect its human

sources and carry out its core missions of gathering and analyzing foreign intelligence and counterintelligence and conducting intelligence operations, thereby damaging the national security.

7. *Intelligence Activities.* Intelligence activities refer to the CIA's targets and operations, including the means the CIA utilizes to collect intelligence. Here, redactions conceal the means, policies, and processes used to collect and analyze certain CIA intelligence interests and activities. Although it is widely acknowledged that the CIA is responsible for conducting intelligence collection and analysis for the United States, the CIA generally does not disclose the targets of specific intelligence collection activities or the operations it conducts or supports. Such disclosure would allow intelligence targets to circumvent the CIA's collection efforts, damaging the Agency's ability to carry out its intelligence mission. The Critical Assessment reflects certain priorities regarding specific U.S. intelligence targets, the locations of CIA activities, the targets of specific CIA operations and analysis, and Agency processes for handling intelligence information. Disclosing this type of detail reasonably could be expected to damage national security because it could impair effective collection of foreign intelligence.

8. *Intelligence Methods.* Intelligence methods are the means by which an intelligence agency accomplishes its objectives. Intelligence methods must be protected to prevent foreign adversaries, hostile actors, terrorist organizations, and others from learning the ways in which the CIA operates, which would allow them to take measures to hide their activities from the CIA or target Agency officers. The more information the CIA discloses about its tradecraft, the more difficult it becomes for the CIA to actually collect and analyze foreign intelligence from around the world. Intelligence collection methods are valuable from an intelligence-gathering perspective only so long as they remain unknown and unsuspected. Once the nature of an intelligence method or the fact of its use in a certain situation is discovered, its usefulness in that situation is neutralized, and the CIA's ability to apply that method in other situations is significantly degraded or terminated. Here, the redactions obfuscate specific types of intelligence methods, as well as policies and processes for utilizing those intelligence methods and the information obtained therefrom. Disclosure of these details reasonably could be expected to damage national security because it could impair the CIA's ability to continue to collect and analyze intelligence and conduct operations.

9. *Classified Relationships.* The CIA also protects the nature and details of classified relationships to protect

specific intelligence sources, methods, and activities used operationally, which includes the identities of individuals and foreign partners who assist the Agency. The redactions here protect the process and policies for working with foreign services, foreign individuals, and/or clandestine assets and cooperative sources who aided the CIA in its intelligence gathering mission. These details have been withheld because their disclosure would reveal intelligence priorities and the CIA's information-sharing relationships with specific foreign individuals and governments. This information constitutes "foreign government information" and "information pertaining to the foreign relations or activities of the United States" under Executive Order 13526. Revelation of these relationships could hurt the Agency's relationship with these entities — entities that often agree to cooperate with the CIA on the understanding that the relationship will remain secret. Disclosing the details of these relationships reasonably could be expected to harm national security because it would reveal certain interests and activities of the U.S. Government and could lead to the deterioration of relationships, thereby decreasing the CIA's access to information and potentially impacting U.S. diplomatic relations.

B. FOIA Exemption (b)(3)

10. FOIA Exemption (b)(3) provides that FOIA does not apply to matters that are:

> Specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld...

5 U.S.C. § 552(b)(3).

11. Section 102A(i)(1) of the National Security Act of 1947, as amended, 50 U.S.C. § 3024(i)(1) (the "National Security Act"), and the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. § 3507 ("the CIA Act"), apply to redactions to information in the Critical Assessment.

12. The National Security Act provides that the Director of National Intelligence ("DNI"), "shall protect intelligence sources and methods from unauthorized disclosure." Accordingly, it is well-established that the National Security Act constitutes a federal statute that "requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue." 5 U.S.C. § 552(b)(3). Under the direction of the DNI pursuant to section 102A, and consistent with section 1.6(d) of Executive Order 12333, the CIA is required to protect CIA intelligence sources and methods from unauthorized disclosure. As addressed above, the Critical Assessment contains information

related to intelligence sources and methods. I respectfully refer the Court to Paragraphs 6—11 for a discussion of the damage to national security, and intelligence sources and methods.

13. Further, section 6 of the CIA Act provides that the CIA shall be exempted from the provisions of any law which requires the publication or disclosure of the "organization or functions of the Agency, or of the names, official titles, salaries, or numbers of personnel employed by CIA." The CIA Act therefore constitutes a federal statute which "establishes particular criteria for withholding or refers to particular types of matters to be withheld." 5 U.S.C. § 552(b)(3). Section 6 of the CIA Act supports the CIA's withholding of information from the Critical Assessment such as titles, names, identification numbers, functions, and organizational information related to CIA employees.

14. In contrast to Exemption (b)(1), Exemption 3 does not require the CIA to identify and describe the damage to national security that reasonably could be expected to result in harm should the CIA disclose the information. Nonetheless, I refer the Court to Paragraphs 6—11 above for a description of the damage to national security that reasonably could be likely to occur should disclosure take place. FOIA Exemptions (b)(1) and (b)(3) thus apply independently and co-extensively to the challenged portions of the Critical Assessment.

C. FOIA Exemption (b)(6)

15. The Agency invoked Exemption (b)(6) to withhold identifying information of U.S. Government officials and third-party individuals unaffiliated with the Agency that were named in the document. The third-party individuals consisted of private citizens not affiliated with the U.S. Government. The Agency invoked this exemption to protect the personally identifying information of individuals named in the responsive record in order to protect their privacy interests and avoid subjecting them and/or their families to unwanted contact and publicity, harassment or embarrassment.

16. For example, CIA personnel participating in the intelligence collection and/or analysis surrounding this request could face unwanted contact or harassment by press and other interested parties for information related to this or other similar inquiries. Exposing CIA or U.S. Government affiliation also potentially exposes the individuals and their families to general unwanted contact or harassment based on this affiliation. Similarly, releasing the personally identifiable information of third-party individuals opens them up to potentially unwanted contact and questioning by members of the press and other inquiring parties.

17. Consequently, the Agency determined that both U.S. Government-affiliated and third-party individuals retain a

privacy interest and redacted their names pursuant to Exemption (b)(6).

18. Importantly, Plaintiff has failed to identify - and I am unaware of - any qualifying countervailing public interest in such disclosure. Specifically, the disclosure of the personally identifying information in the Critical Assessment would not shed any light on the activities or operations of the Federal Government related to this request. As a result, I have determined that the release of this information would constitute a clearly unwarranted invasion of these individuals' personal privacy.

IV. SEGREGABILITY

19. In evaluating the Critical Assessment, the CIA released all reasonably segregable non-exempt information. With respect to the single document at issue here, I have determined that only the previously released information from C06548527 that is being challenged and was redacted from C0313431 may also be disclosed. The remaining redactions pertain to information that continues to be protected by Exemptions (b)(1), (b)(3), (b)(6).

***

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed this 4th day of June 2025.

Mary C. Williams
Litigation Information Review Office
Information Review and Release Division
Central Intelligence Agency

WILLIAMS SUPPLEMENTAL DECLARATION

ATTACHMENT A

C06548527

SECRET

A CRITICAL ASSESSMENT

of the

1998 National Intelligence Estimate (NIE)

on Vietnamese Intentions,

Capabilities, and Performance

Concerning the POW/MIA Issue

Prepared and Submitted by the Office of U.S. Senator Bob Smith[1].
November, 1998

[1] Sen. Smith is the U.S. Chairman of the Vietnam War Working Group of the U.S.-Russia Joint Commission on POWs and MIAs. He is also a senior Member of the Senate Committee on Armed Services and the former Co-Chairman of the Senate Select Committee on POW/MIA Affairs (1991–1993).

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Case 1:23-cv-01124-DJN-JFA Document 50-2 Filed 06/04/25 Page 17 of 47 PageID# 2002
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A Critical Assessment
of the 1998 National Intelligence Estimate (NIE) on Vietnamese Intentions, Capabilities, and Performance Concerning the POW/MIA Issue (U)

TABLE OF CONTENTS

		Page
I	Executive Summary	3
II	Background	6
III	Detailed Assessment of NIE Statements	9
	Scope Note	9
	Key Judgments	12
	Discussion	40
	Part One: The Question of Vietnamese Cooperation	40
	Part Two: Intelligence Community Assessment of the "1205" and "735" Documents	55
IV	The Politicizing of Intelligence	149
V	Conclusion	158
VI	Annex	160
	English translation of the so-called 1205 Document, based on translation from Vietnamese into Russian by Soviet GRU in 1972.	
	English translation of the so-called 735 Document, based on translation from Vietnamese into Russian by Soviet GRU in 1971.	

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A Critical Assessment of the 1998 National Intelligence Estimate (NIE) on Vietnamese Intentions, Capabilities, and Performance Concerning the POW/MIA Issue (U)

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claimed *to American officials and the press at large* that the 1205 document is a 'complete fabrication,[73]' they have apparently ***not*** made any such claim in the course of several discussions on the matter *with Russian officials*, the contents of which have been reliably reported to US officials.

(b)(1)

[73] See Interim Analysis of 1205 Document, by Sen. Smith to Amb. Toon, July 21, 1993, section entitled "Reaction by Vietnamese Officials" contains extensive quotes in media by Vietnamese officials, along with commentary by Hanoi publications. The most recent reported denial took place during a meeting between Deputy Assistant Secretary of Defense (POW/Missing Personnel Affairs) Robert Jones and Vietnam's Vice Minister of Defense, Tran Hanh, during a luncheon in the Executive Dining Room, Lounge 1, at the Pentagon, on October 5, 1998. Hanh reportedly stated that "the Russian documents are complete fabrications." (U)

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(b)(3) NatSecAct

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(b)(1)
(b)(3) NatSecAct

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claimed *to American officials and the press at large* that the 1205 document is a 'complete fabrication,[73]' they have apparently ***not*** made any such claim in the course of several discussions on the matter *with Russian officials,* the contents of which have been reliably reported to US officials.

a recent admission to me, that Russia and Vietnam signed an agreement in October, 1993 to ensure that no further documents were released without consultations with Hanoi. If Hanoi truly believed the documents were fabrications,

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(b)(3) NatSecAct

why would they have insisted on an agreement being signed to prevent any further releases of information?[74] The

[73] See Interim Analysis of 1205 Document, by Sen. Smith to Amb. Toon, July 21, 1993, section entitled "Reaction by Vietnamese Officials" contains extensive quotes in media by Vietnamese officials, along with commentary by Hanoi publications. The most recent reported denial took place during a meeting between Deputy Assistant Secretary of Defense (POW/Missing Personnel Affairs) Robert Jones and Vietnam's Vice Minister of Defense, Tran Hanh, during a luncheon in the Executive Dining Room, Lounge 1, at the Pentagon, on October 5, 1998. Hanh reportedly stated that "the Russian documents are complete fabrications." (U)

[74] Vietnam's Foreign Minister, Nguyen Manh Cam (a Communist Party Central Committee Member since 1986)

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arrived in Moscow on October 28, 1993 for two days of talks with Russian Foreign Minister Andrey Kozyrev and other senior Russian officials.

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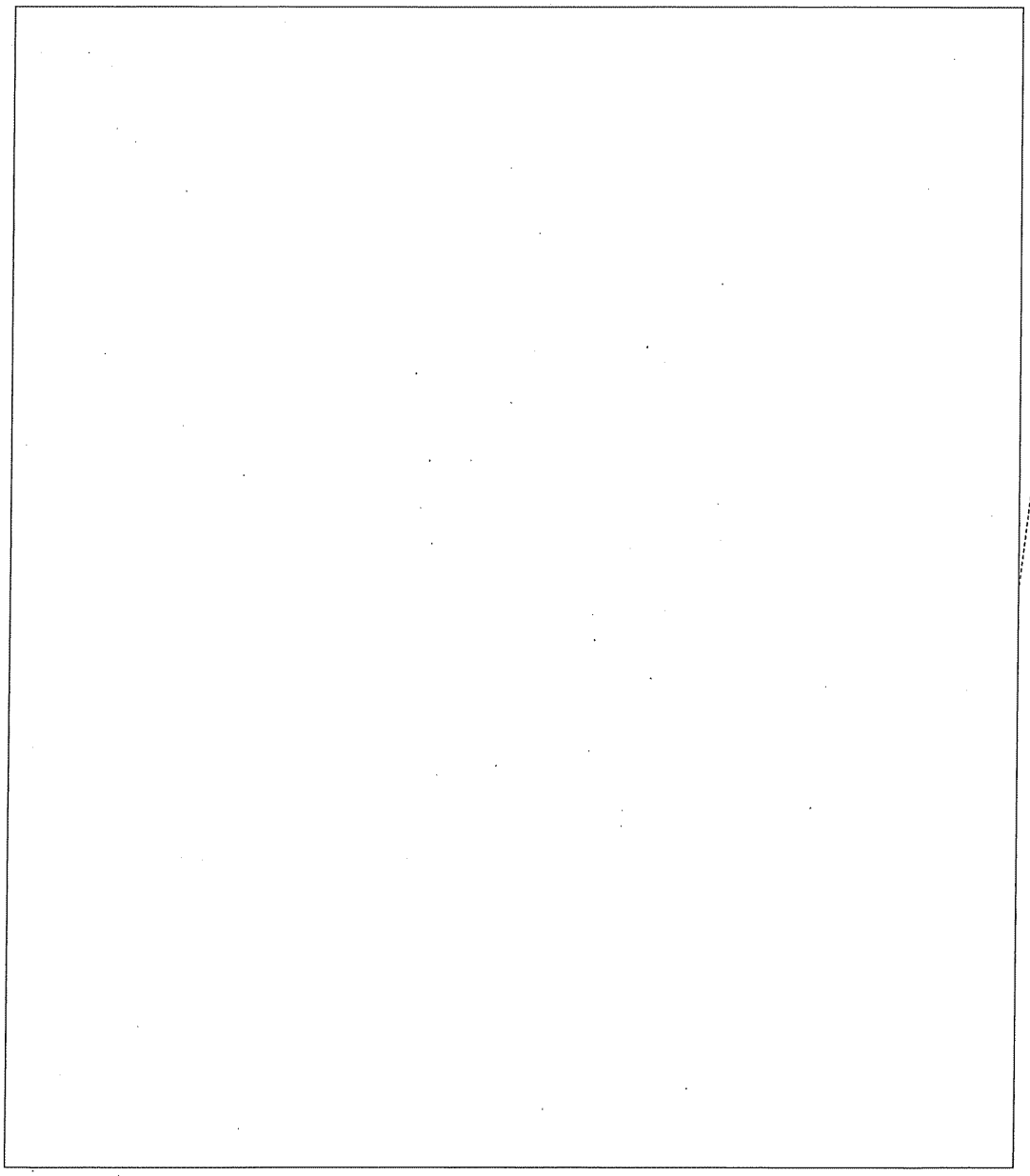

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[redacted]

The Russian press report on this same visit [redacted] stated: "...Kozyrev acknowledged that the Russian Foreign Ministry had nothing to do with sending to the United States secret documents from CPSU and former Soviet military intelligence archives which maintained that far more American pilots were imprisoned in Vietnamese prisoners during the war than figured on the official lists. The head of the Russian Federation's foreign policy department assured his Vietnamese colleague that henceforth documents of a similar nature would be examined in Moscow and would not go abroad *without consultations with the Vietnamese side*. The sides *agreed* to consider the event a 'misunderstanding' which must not affect the development of friendly relations between the two countries...the Vietnamese minister mentioned that the unexpected appearance of the so-called 'Russian documents' has adversely affected the normalization of Vietnam's relations with the United States. This humanitarian problem requires delicate treatment, the minister pointed out." Based on the above, it is possible, if not likely, that the unspecified *agreement* [redacted] "*on consultations between the two foreign ministries*" signed by Cam and Kozyrev, pertained, at least in part, to the 1205/735 documents. (There is also little doubt that Hanoi's leaders were pleased with Cam's performance as Foreign Minister, including the results of his October, 1993 trip to Russia and his work to convince the U.S. to lift its trade embargo on Vietnam, which was done in early February, 1994 — Cam was made a full Member of the Politburo of Vietnam's Communist Party, which was announced publicly in 1994.)

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(b)(3) NatSecAct

[redacted] In addition to this meeting, other Russian officials have also indicated that the Vietnamese were and continue to be angry at Russian officials, in addition to being adamantly opposed to any further release of documents bearing on "1205/735" issues. For instance, in a meeting with me on May 13, 1997 (the notes of which were provided to the NIC earlier this year), Dr. Igor Vladimirovich Lebedev, Chief, Department of Historical Documentation, Russian Ministry of Foreign Affairs, described "how he

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[redacted] (b)(1)

NIE STATEMENT: *"None of the new information helps to confirm the accuracy of the 1205 report."* (p.27) (S)

ASSESSMENT: (b)(1)
(b)(3) NatSecAct

This statement is factually inaccurate. As previously demonstrated, the information provided by GRU Capt. A.I. Sivets [redacted] briefly referenced in the NIE under the heading "*New Information*" — does, in fact, *help to confirm* that the 1205 document was an *accurate* representation of the political-military situation in North Vietnam in 1972. So does the information provided by former USSR Central Committee Secretary Katushev, and two Chiefs of the GRU -- Generals Ladygin and Korabelnikov -- in 1994 and 1997. In short, since 1994, the GRU has expressed its confidence in both the authenticity and the reliability of the information in the 1205 report. To ignore this evidence implies that the GRU being confident enough in the information it acquired in 1972 to forward it to the Soviet Central Committee (whose own official viewed it with confidence) is somehow *not* helpful information in judging whether the 1205 report could have

[redacted]

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NIE completely fails to analyze the implications of this apparent reality. (b)(3) NatSecAct

NIE STATEMENT: *"None of the new information helps to confirm the accuracy of the 1205 report."* (p.27) (b)(3) NatSecAct (b)(1) (b)(3) NatSecAct

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had personally come under fire by the Vietnamese who spoke in harsh terms in discussing this situation with him" following the release of the 1205 document to the U.S. At no time, did Dr. Lebedev indicate that Vietnamese officials had accused the Russians of having fabricated the 1205 document.

(b)(1) (b)(3) NatSecAct

as this critical assessment was being drafted, a Russian official from the Foreign Ministry in Moscow confirmed to me that there had, in fact, (as I suspected) been a signed agreement between Vietnam and Russia in October, 1993, restricting release of additional documents. (b)(3) NatSecAct

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been accurate. For the NIE to assert such an argument is absurd. (S)

NIE STATEMENT: *"Quang's[75] responsibilities as a battlefield commander in a combat situation make it unlikely that he would be brought to Hanoi to report on issues that were not within his scope of responsibility...Quang claims he remained with his troops during the (Easter Offensive) period and could not have been in Hanoi for a 15 September Politburo meeting...He (Quang) argues plausibly that he would not have been the one to deliver such a report because the issue would not have been handled by a regional military commander."* (p.27-28) (S)

ASSESSMENT:

This NIE judgment is ***contradicted*** by substantial evidence originated by or made available to the Intelligence Community prior to and during the drafting of this estimate. This includes information which indicates Quang was hardly just a battlefield commander with a scope of responsibilities limited to his battlefield command position, (who would have had to have been "brought to Hanoi") but rather was a top leader in the communist North Vietnamese hierarchy during the Vietnam War. As examples — (b)(1) (b)(3) NatSecAct

- [redacted] Quang was elected a secret alternate member of the Lao Dong (North Vietnam's Communist) Party Central Committee and of the Central

[75] North Vietnamese Lt. General Tran Van Quang, now Chairman of the Vietnamese War Veterans Association (elected in November, 1992), was reported by the Russian GRU in 1972 to be the North Vietnamese author of the "1205" report acquired by the GRU and dated September 15, 1972. (U)

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(b)(1)
(b)(3) NatSecAct

(p.27-

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(b)(1)
(b)(3) NatSecAct

NIE STATEMENT:

ASSESSMENT:

(b)(1)
(b)(3) NatSecAct

This statement's choice of words is extremely incomplete and misleading to the NIE reader in several important respects —

•

crewmembers currently in captivity, 9 such personnel previously released, and 20 such personnel listed as dead. Based on Department of Defense POW/MIA lists, only 335 Air Force and Navy pilots and crewmembers captured in North Vietnam prior to November 15, 1970 were later repatriated to the United States (one in Sept. 72, and the remainder following the signing of the Peace Accords in 1973 (Jan-Apr). (U)

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(b)(3) NatSecAct

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NIE STATEMENT:

ASSESSMENT:

This statement's choice of words is extremely incomplete and misleading to the NIE reader in several important respects —

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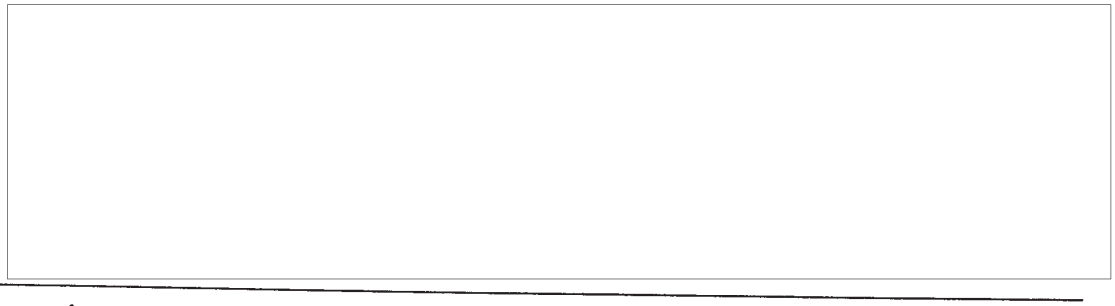

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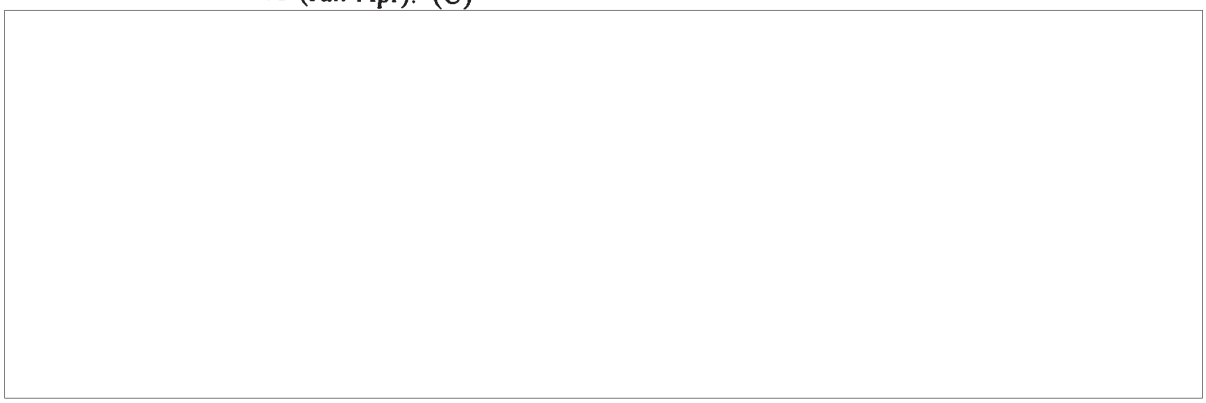

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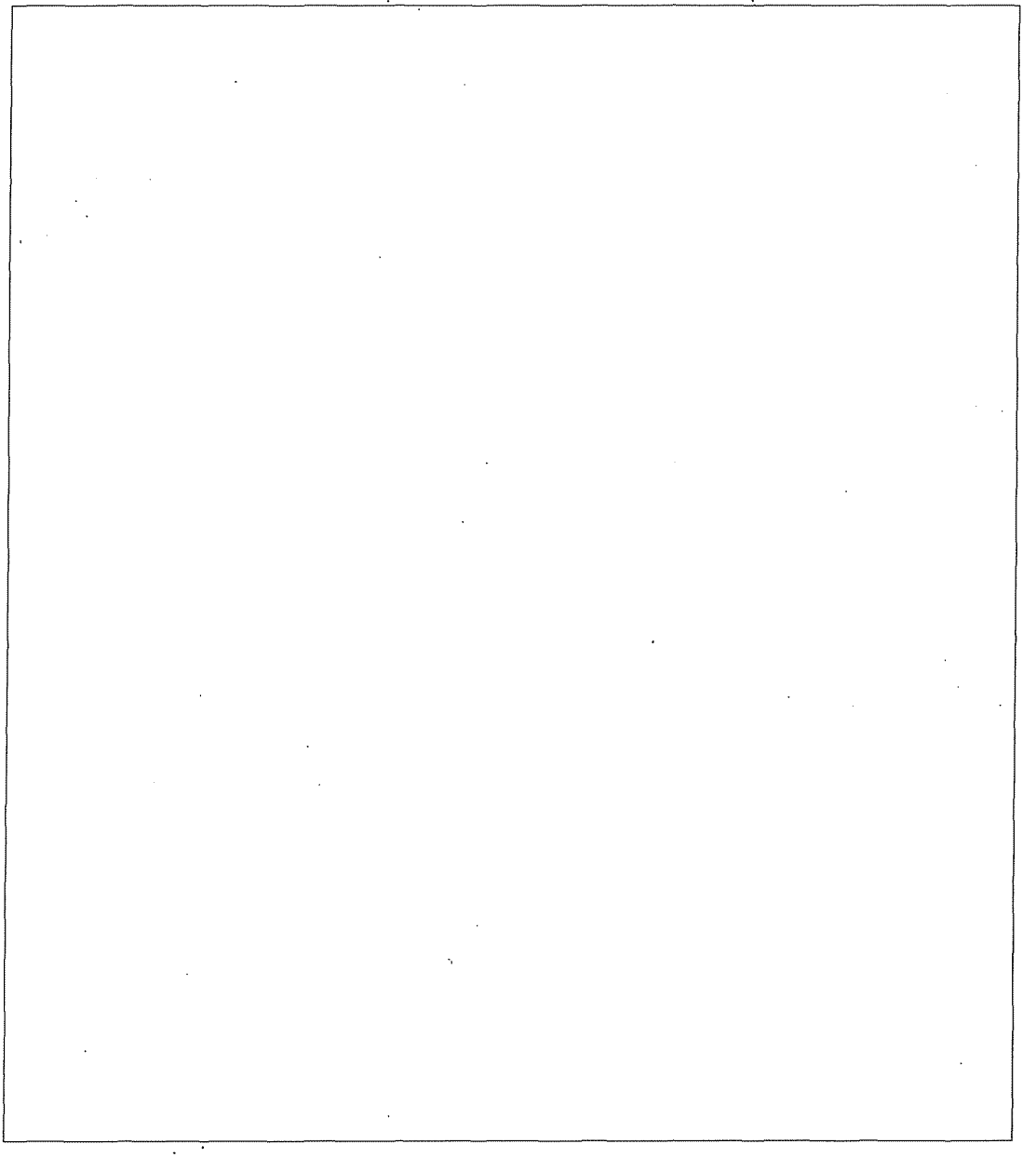

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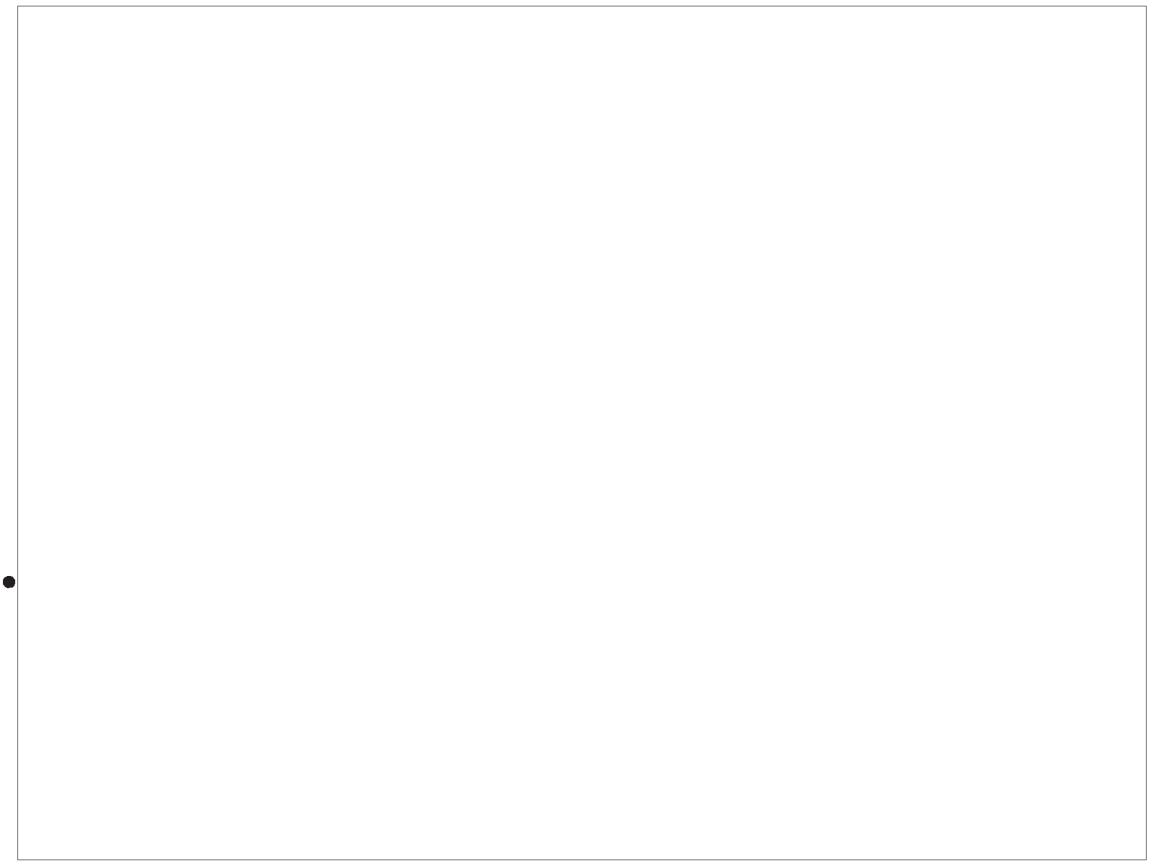

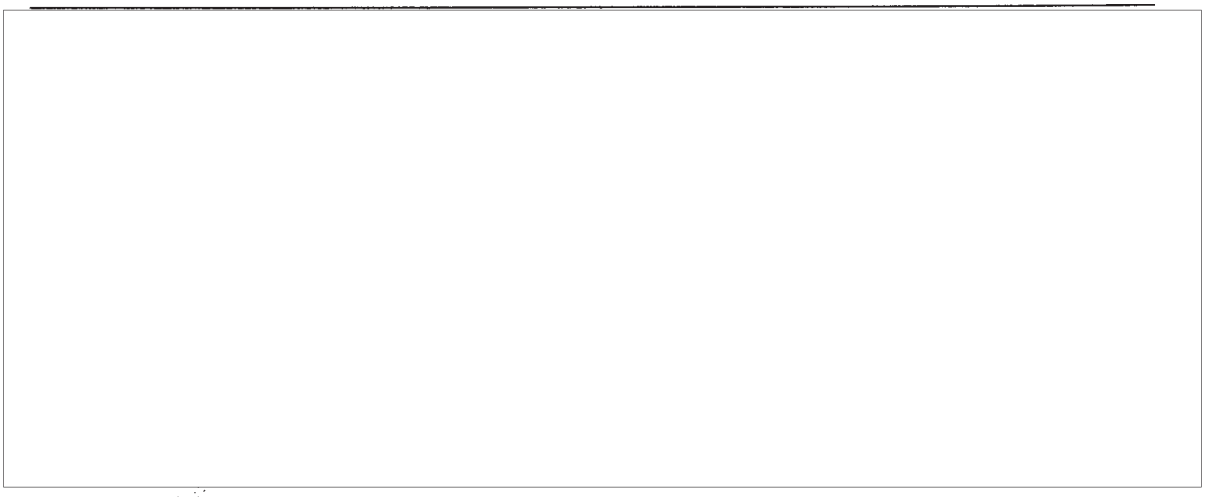

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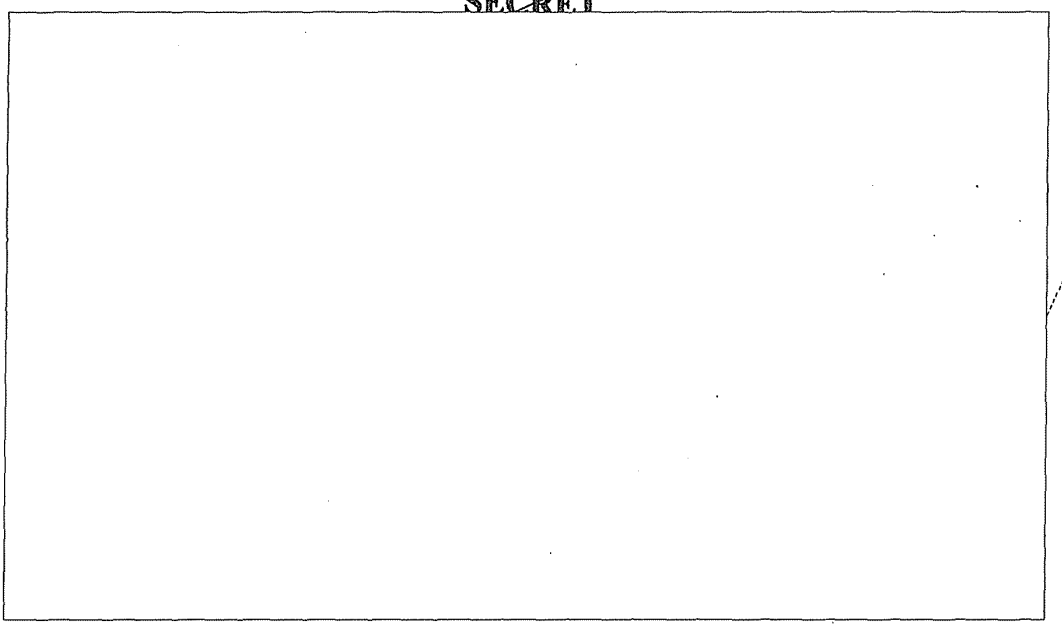

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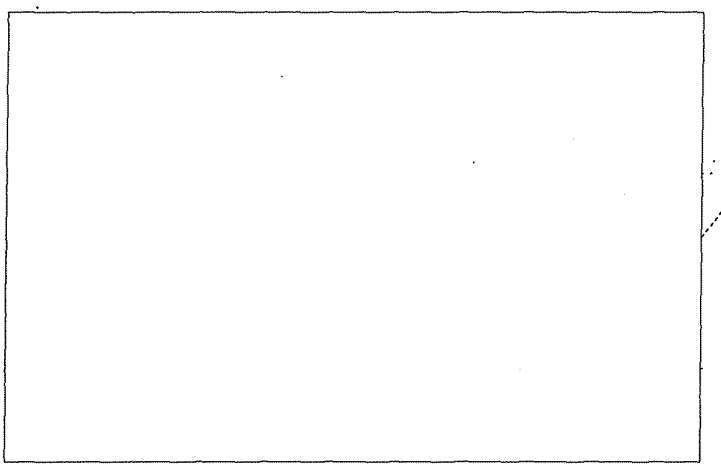

ASSESSMENT:

[186] Ibid. (S)

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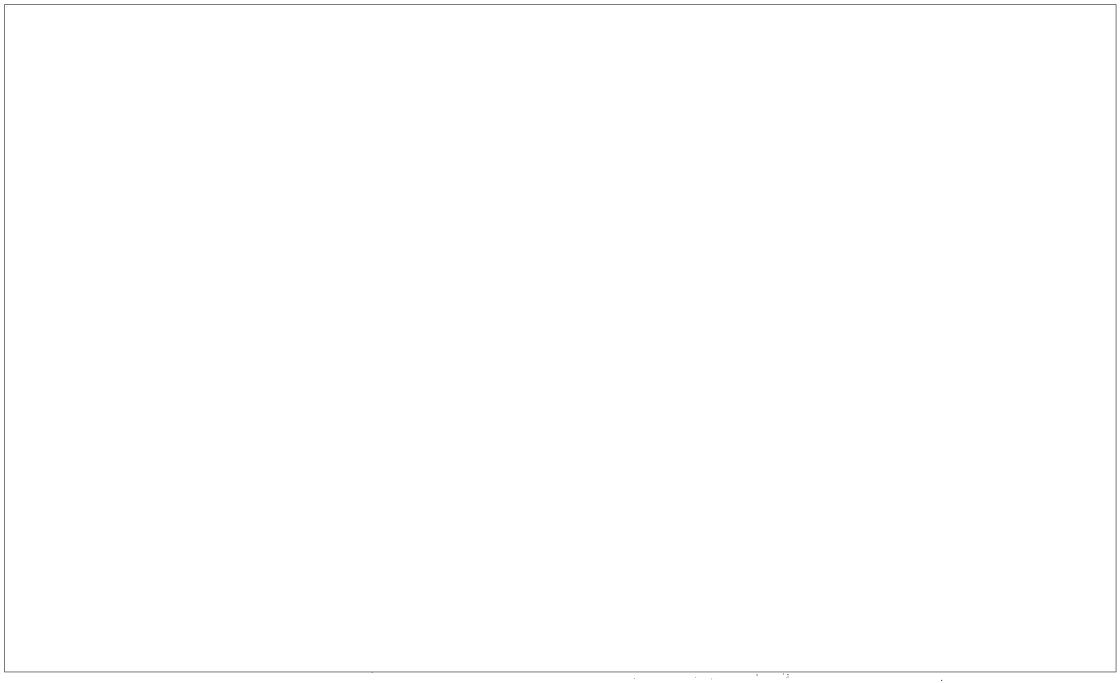
- 

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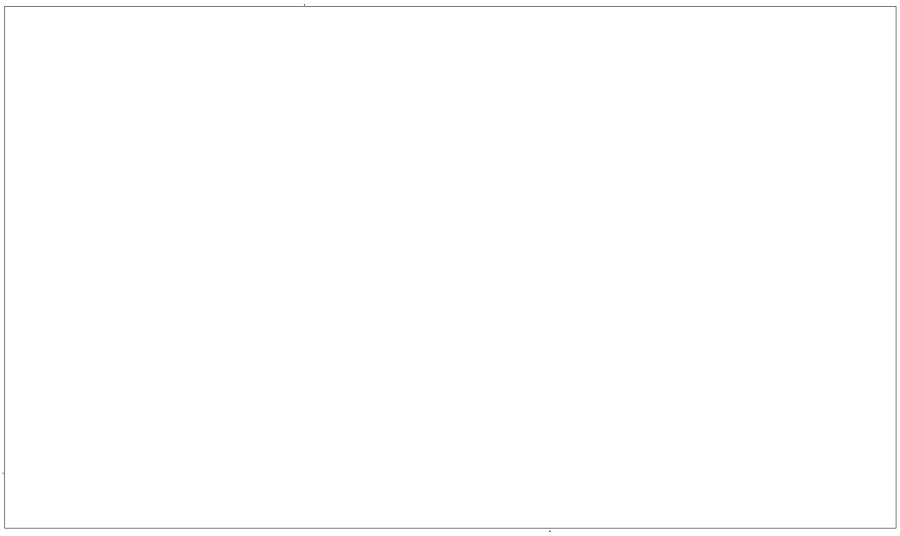

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[186] Ibid.

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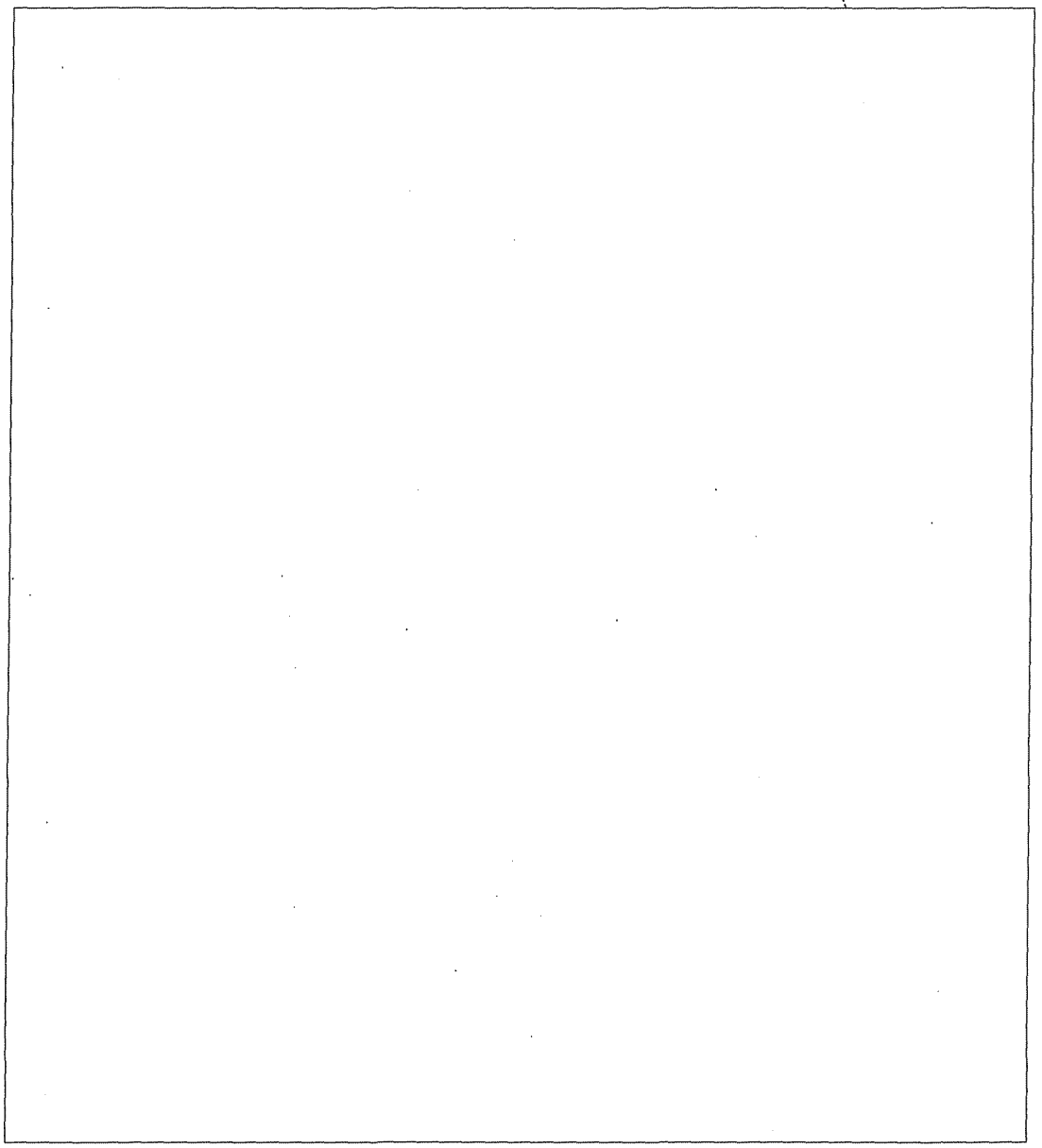

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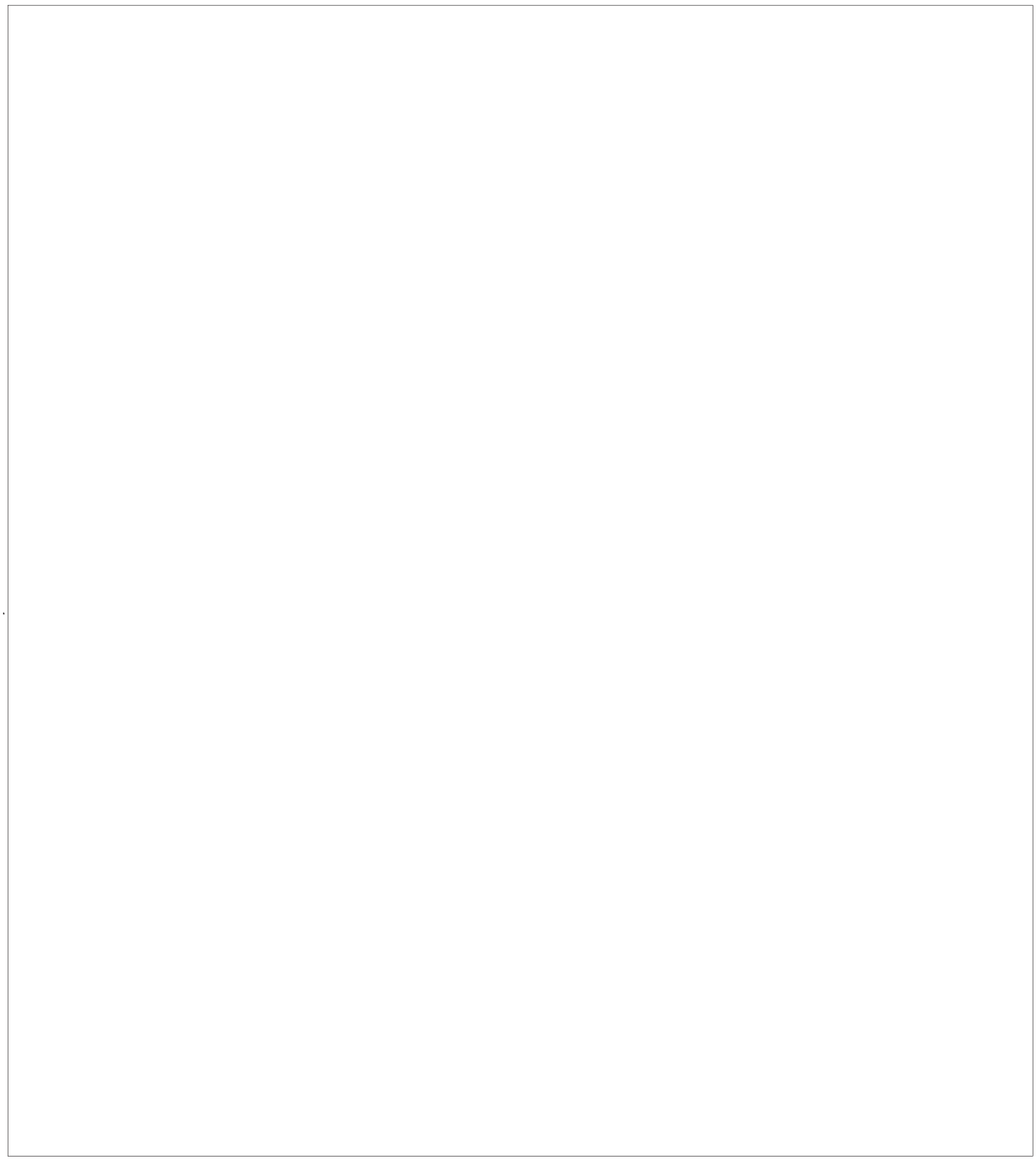

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[redacted] (b)(1)

But even more disturbing is the NIO's claim that the "allegations" in the report are "uncorroborated by any other intelligence reporting." According to a Defense Intelligence Agency Directorate for Intelligence Research published study in 1977, a report was received in the Fall of 1976 indicating that two North Vietnamese officials who had recently come to southern Vietnam had told a "high PRG official" that 235 US POWs were executed in northern Vietnam in July, 1976[188] [redacted] (b)(1)

[redacted] (S)

[redacted] (b)(1)

Former National Security Advisor to President Carter (1977-1980), Zbigniew Brzezinski, provided the following assessment [redacted] when (b)(1)

[188] Recent Reports of U.S. PWs and Collaborators in Southeast Asia, Defense Intelligence Agency, information cut-off date April 1, 1977, see pages 65, and 69-70. The person who had actually learned of the above information and then passed it to U.S. intelligence had been an American left behind in the Fall of Saigon who was released on August 1, 1976. (U)

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[redacted]

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in order to blackmail us, they would have at some point produced them. Whether they though this was no longer necessary after Saigon collapsed...after that they might have believed that there was no longer any negotiating tool.[190] (U)

- [redacted] (b)(1)

- A DIA contract agent reported being privately told in 1993 by a Vietnamese PAVN General Political Directorate (GPD) officer in Hanoi that "perhaps hundreds" of the unreturned U.S POWs had been executed by North Vietnam, and that this was "Hanoi's darkest and worst secret."[192] (U)

- [redacted]

[190] Ibid.

[191] Department of Defense JCRC Liaison, Bangkok, TH, priority message, info to DIA Washington, USCINCPAC, SECDEF, P 080156Z March, 1985. (U)

[192] See *Inside Hanoi's Secret Archives* by Malcolm McConnell with Theodore "Ted" Schweitzer, 1995, p. 268-270. (U)

[193] Letter from Director of Central Intelligence James Woolsey to Sen. Bob Smith, dated July

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(b)(3) NatSecAct

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- A 1985 Department of Defense report from Bangkok, Thailand provided information from a source, as obtained from a North Vietnamese military cadre, that during the time-frame "between April and July, 1976," North Vietnam "was holding 180 US POWs who were not released in 1973." The objective in holding them had back had been to "obtain an advantage in future dealings with the U.S.[191]"

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(b)(3) NatSecAct

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[192] See *Inside Hanoi's Secret Archives* by Malcolm McConnell with Theodore "Ted" Schweitzer, 1995, p. 268-270. (U)

[193] Letter from Director of Central Intelligence James Woolsey to Sen. Bob Smith, dated July

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- Russian Presidential Advisor and Co-Chairman of the Joint U.S.-Russia Commission on POW/MIAs, General Volkogonov, told President Clinton's Special POW/MIA Emissary to Hanoi, General Vessey, in 1993, that "he feared" some of the alleged 465 US POWs with reactionary views referenced in the September, 1972 1205 report "may have been later executed."[194] (U)

- [redacted] (b)(1)

[redacted] (b)(1)

- Earlier that same month, The Washington Post reported, in a front page article, entitled "*No Hope, MIA Families Told*," that Congressman Sonny Montgomery, Chairman of the House Select Committee on Missing Persons, had told POW/MIA family members gathered in (b)(3) NatSecAct

26, 1993 (see enclosures). *Note*: [redacted] (U)

[194] Memorandum for the Record, Subject: Conversation between GEN Volkogonov and GEN Vessey during visit at Walter Reed Medical Center, dated June 22, 1993. (U)

[195] See Memorandum to Assistant to the President for National Security Affairs Anthony Lake from National Intelligence Officer for East Asia Robert Suettinger, dated December 13, 1993. (S)

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- Russian Presidential Advisor and Co-Chairman of the Joint U.S.-Russia Commission on POW/MIAs, General Volkogonov, told President Clinton's Special POW/MIA Emissary to Hanoi, General Vessey, in 1993, that "he feared" some of the alleged 465 US POWs with reactionary views referenced in the September, 1972 1205 report "may have been later executed."[194] (U)

- [redacted]

There is also additional evidence that North Vietnam may have had a motive, appropriate opportunity, and a perception in July, 1976 that promised US aid would not be forthcoming and US POWs were, therefore, no longer a bargaining chip [redacted] and thus, North Vietnam decided to secretly and quietly execute them in [redacted] July, 1976, during what was a clearly documented hostile period of US-Vietnam relations [redacted] —

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"died in captivity" by the Provisional Revolutionary Government (PRG) in their POW list turned over in Paris in January, 1973, and their remains, as of 1998, have still not been repatriated to the United States. (As noted earlier, Quang had also served as the PRG Defense Minister following its establishment in 1969, and would have logically prepared or approved, under that leadership capacity, the PRG US POW list presented in Paris. (U)

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Following the return of acknowledged US POWs in 1973, there remained over 1,300 U.S. personnel in a missing in action status, and DoD could not say whether those individuals "were alive or dead." Moreover, U.S. officials at the time had expected a higher number of US POWs to be returned, as earlier indicated in this assessment. Finally, the figures referenced by the NIE itself (p.19) show that, as of 1998, there remain 370 unaccounted for U.S. personnel, in the judgment of DoD, whose fate has not been determined, including 48 on the "priority" last known alive list. (S)

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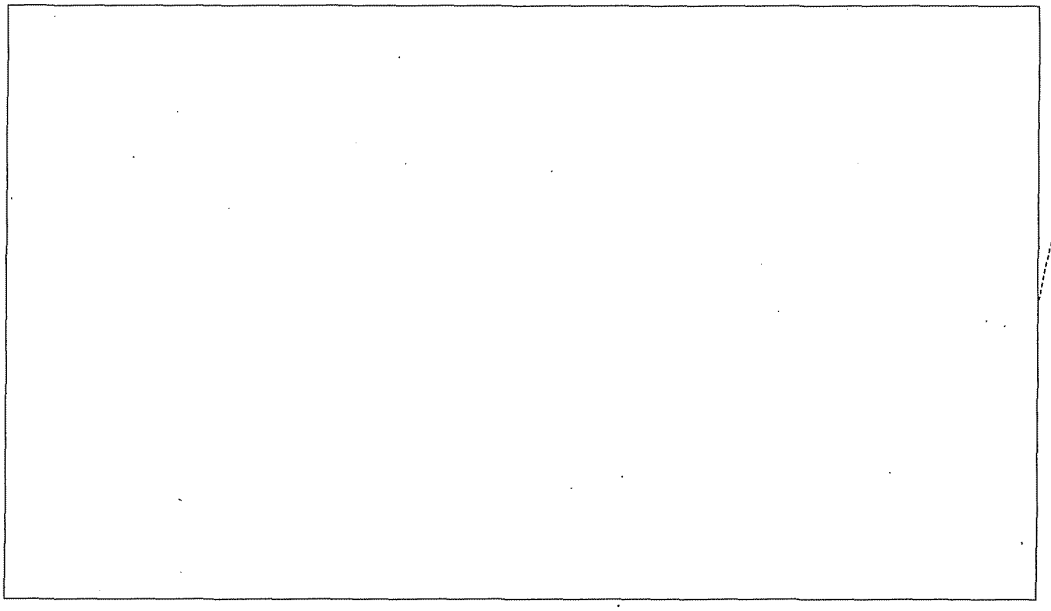

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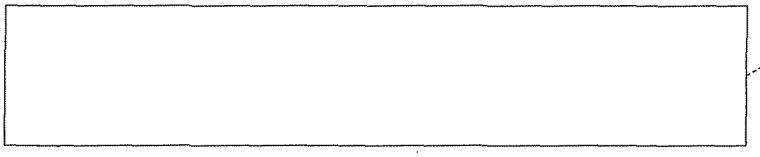

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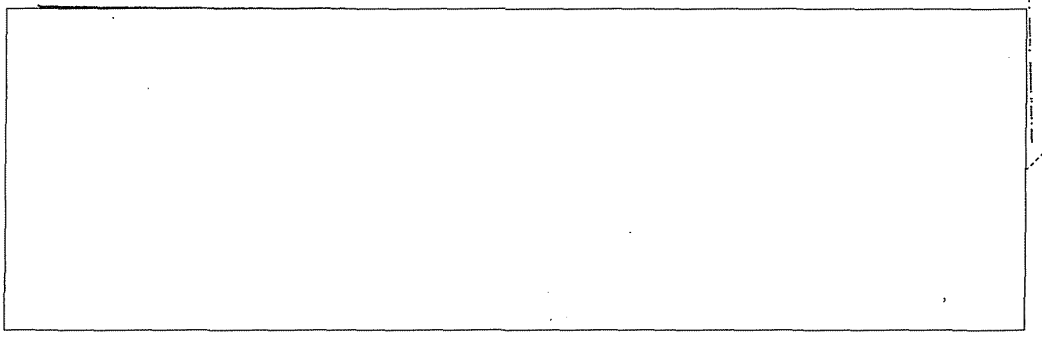

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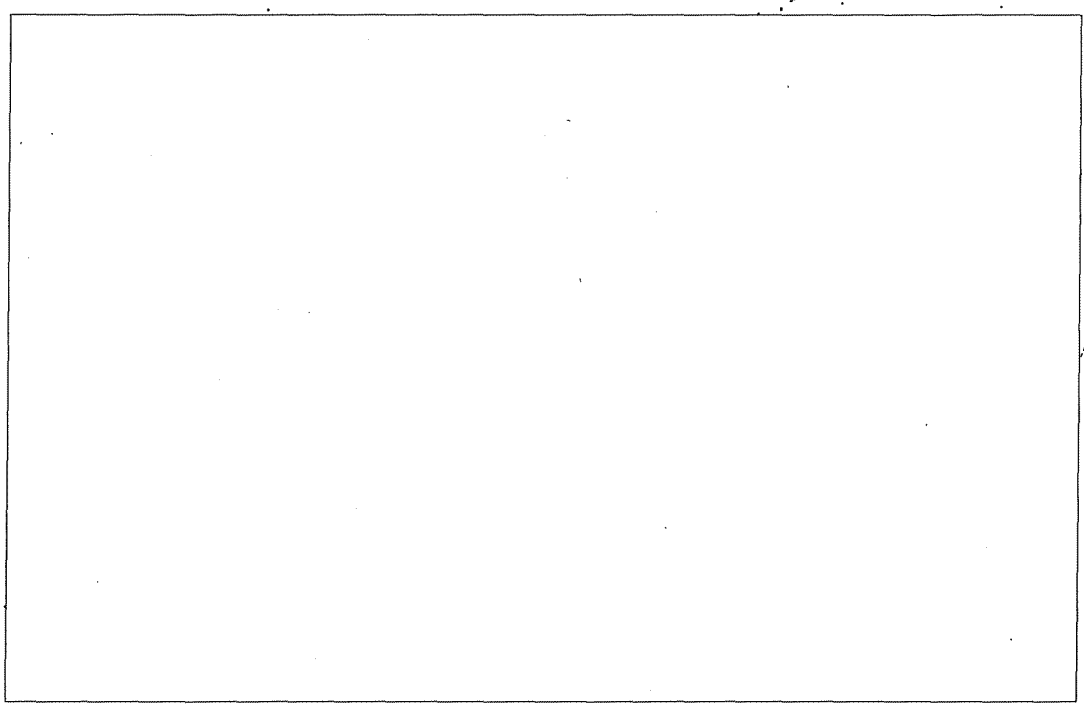

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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

MICHAEL DRIGGS, *et al.*,
Plaintiffs,

v. Civil No. 1:23cv1124 (DJN)

CENTRAL INTELLIGENCE AGENCY,
Defendant.

MEMORANDUM OPINION

This matter comes before the Court on the parties' cross-motions for summary judgment and Plaintiffs' Motion for *In Camera* Inspection. (ECF Nos. 37, 41, 46.) Plaintiffs challenge the propriety of the Central Intelligence Agency's ("Defendant" or "CIA") redactions to two documents provided to Plaintiffs in response to Freedom of Information Act ("FOIA") requests filed with the agency. For the reasons set forth below, the Court will DENY Plaintiffs' Motions for Summary Judgment and *In Camera* Inspection (ECF Nos. 41, 46) and GRANT the CIA's Motion for Summary Judgment (ECF No. 37).

I. BACKGROUND

Because summary judgment requires an assessment of the undisputed facts, Local Civil Rule 56(B) directs a movant to include a list of undisputed material facts, to which the opposing party may respond. Local Civ. R. 56(B). The Court draws the following facts from the parties' briefs and from the record.

A. Historical Context

This FOIA suit seeks CIA records on Americans allegedly held as prisoners of war ("POWs") following the Korean and Vietnam Wars.[1] Operation Homecoming, conducted by the United States in 1973, repatriated 591 American POWs at the end of the Vietnam War. (ECF No. 42 ("Pl. Brief") at 2.) Later that year, the Department of Defense ("DoD") reported to Congress that 1,300 soldiers listed as missing in action ("MIA") remained unaccounted for. (ECF No. 41-2 ¶ 12 n.2.)

Nineteen years later, in 1992, a Harvard professor examining Soviet archives discovered the "1,205 Document." (FOIA Request at 12.) This document — a Soviet transcript of a Vietnamese general's debriefing — reports that 1,205 American POWs were held in Southeast Asia prior to Operation Homecoming, a figure more than double the number of POWs ultimately repatriated as part of that operation. (*Id.*) In 1993, after the fall of the Soviet Union, Russia provided the United States with a Vietnamese wartime report (the "735 Document"). (Pl. Brief at 2.) This document states that North Vietnam held 735 American pilot POWs around January 1971. (*Id.*) The discrepancy between the contents of these documents and the number of POWs brought home through Operation Homecoming has raised doubts as to the success of the United States' attempt to repatriate all Vietnam War POWs. (ECF No. 41-2 at 14.)

In 1997, the Assistant to the President for National Security Affairs directed the United States Intelligence Community ("IC") to evaluate Vietnamese compliance with American POW retrieval efforts in the aftermath of the Vietnam War. (Pl. Brief at 2.) The following year, the CIA and DoD co-authored the National Intelligence Estimate ("NIE") in response to this request.

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[1] While the documents whose redactions Plaintiffs challenge for purposes of this action pertain solely to the aftermath of the Vietnam War, some of Plaintiffs' other FOIA requests also concern records related to the Korean War. (*See, e.g.*, ECF No. 1-1 ("FOIA Request") at 6–9.)

(*Id.*) The NIE's authors doubted the accuracy of the 1205 and 735 Documents and voiced these doubts in the NIE. (ECF No. 50 ("CIA Reply Brief") at 14; ECF No. 41-5 at 2.)

United States Senator Robert Smith, who possessed significant working knowledge of the Vietnam POW issue,[2] responded with a 160-page report (the "Critical Assessment") criticizing the NIE and insisting on the veracity of the 1205 and 735 Documents. (Pl. Brief at 3.) In response to this critique, the CIA and DoD co-authored *A Review of the 1998 National Intelligence Estimate on POW/MIA Issues and the Charges Levied by A Critical Assessment of the Estimate* ("Review of the Charges"), which provided greater analysis and explanation in support of the NIE's conclusions. (*Id.*; CIA Reply Brief at 14.) To this day, the CIA has not fully declassified either of the documents. (CIA Reply Brief at 1–2 (acknowledging the redactions to the documents giving rise to the instant suit).)

B. Parties and Venue

Lead plaintiff Michael Driggs is the nephew of Master Sergeant Robert Bibb, who "may have been captured" early in the Korean War. (ECF No. 1 ("Compl.") ¶ 9.) Robert Moore, Jana Orear, Christianne O'Malley, Thomas Logan, David Logan, Megan Marx, Terri Mumley, John Zimmerlee, Carol Hrdlicka, George Patterson, Mark Sauter and the POW Investigative Project, Inc., join in the suit. (*Id.* ¶¶ 2–14.) All but one of the individual plaintiffs lost a family member in the Korean or Vietnam Wars. (*Id.* ¶¶ 2–12.) Plaintiff POW Investigative Project, Inc., founded by Plaintiff Mark Sauter, is a nonprofit dedicated to "investigating the fates of United States POWs and MIAs." (*Id.* ¶¶ 13–14.)

The Central Intelligence Agency remains headquartered in Arlington County, Virginia.

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[2] Senator Smith served as Chairman of the Vietnam War Working Group of the U.S.-Russia Joint Commission of POWs and MIAs in the 1990s. (Pl. Brief at 3.)

The Eastern District of Virginia thus constitutes proper venue for these proceedings under 5 U.S.C. § 552(a)(4)(B).

C. Prior FOIA Proceedings

Not all Plaintiffs are new to this cause. Plaintiffs Moore, Orear, O'Malley and Sauter (together, the "Moore Plaintiffs") have been litigating FOIA cases regarding American POWs for at least seven years. *See Sauter v. Dep't of State*, No. 1:17-cv-1596, 2019 WL 3431153 (D.D.C. July 30, 2019) (filed in 2017); *Moore v. CIA*, No. 1:20-cv-1027, 2022 WL 2983419 (D.D.C. July 28, 2022) (filed in 2020).

As part of these pursuits, the Moore Plaintiffs sued the CIA in April 2020 to compel the production of records concerning American soldiers held captive after the Korean War. Complaint, *Moore* (D.D.C. Apr. 20, 2020), ECF No. 1. Over the next year and a half, the CIA produced records. The agency identified the Review of the Charges as a responsive document during its record search, but it withheld the document in full. (ECF No. 38-1 ¶ 8; ECF No. 53 ("Pl. Reply Brief") at 3.) In July 2022, Judge Royce C. Lamberth granted summary judgment to the CIA on the applicability of FOIA Exemptions 1, 3, and 6 to the responsive documents at issue, including the Review of the Charges, but denied summary judgment to both parties on the adequacy of the CIA's search, requesting more information. *Moore*, 2022 WL 2983419, at *1.

Nearly a month later, the Moore Plaintiffs moved to amend their complaint, which Judge Lamberth denied. Memorandum Order at 3, *Moore* (D.D.C. Mar. 30, 2023), ECF No. 46. Following Judge Lamberth's adverse rulings, the Moore Plaintiffs jointly stipulated with the CIA to dismiss their case pursuant to Federal Rule of Civil Procedure 41(a)(l)(A)(ii). Joint Stipulation, *Moore* (D.D.C. Apr. 24, 2023), ECF No. 49.

D. The Instant Litigation

Less than three months later, on July 12, 2023, the Moore Plaintiffs and Plaintiffs Driggs, Thomas Logan, David Logan, Marx, Mumley, Zimmerlee, Hrdlicka, Patterson and the POW Investigative Project, Inc. (collectively, "Plaintiffs") filed a new FOIA request with the CIA. (FOIA Request at 1; Compl. ¶ 14.) That FOIA Request sought disclosure of twenty-eight items, many of which were duplicative of the requests at issue in *Moore*. (FOIA Request at 6–11; ECF No. 38 ("CIA Brief") at 3.)

On August 16, 2023, having constructively exhausted their remedies under FOIA, Plaintiffs filed suit in this District. (Compl. ¶¶ 18–20.) The CIA answered Plaintiffs' Complaint on October 12, 2023. (ECF No. 8.) During a pretrial conference on March 13, 2024, the Court directed the parties to craft a schedule for "rolling production" of the CIA's records that would facilitate efficient resolution of the case and requested that the parties determine the issues remaining in dispute. (ECF No. 22 ("Hr'g Tr.") 4:21–25; 5:8–12.) Counsel for Plaintiffs noted that the parties had reached an impasse regarding the CIA's obligation to search its operational records and asked for permission to file Plaintiffs' position on that issue, which the Court granted. (*Id.* 10:6–9; 10:14.) In an order issued later that day, the Court directed the parties to provide briefing on the issue preclusive effect, if any, of the *Moore* case upon the instant litigation. (ECF No. 18 at 1–2.) In a subsequent order, the Court also directed the parties to file periodic joint status reports on the action's progress towards summary judgment. (ECF No. 26.)

Plaintiffs filed a Memorandum briefing the issue of the CIA's obligation to search its operational records (ECF No. 19), to which the CIA responded (ECF No. 23). The Court construed Plaintiffs' Memorandum as a motion to compel a search of the CIA's operational files pursuant to the CIA Information Act of 1984, 50 U.S.C. § 3141, and denied it, finding that

Plaintiffs failed to meet their legal burden under the CIA Information Act.[3] (ECF No. 25 at 9–11.)

Over the course of this litigation, the CIA identified 130 records responsive to Plaintiffs' requests, totaling 1,578 pages. (CIA Brief at 7; Pl. Brief at 10.) The agency identified these records by selecting three different record systems and crafting individually tailored search terms. (CIA Brief at 4–7.) The CIA "conducted a document-by-document and line-by-line review" of the documents. (ECF No. 38-1 ¶ 26.) Ultimately, it released thirty-five records in full and eighty-five records in part, while withholding ten records entirely. (CIA Brief at 7.) Mary Williams, an original classification authority as specified by Executive Order ("E.O.") 13,526,[4] reviewed the redactions and affirmed their propriety, given their relation to "the priority of intelligence activities and targets, methods of collection, and classified relationships." (*Id.* at 8–9.) Ms. Williams submitted two affidavits detailing the justifications for the redactions.[5] (ECF Nos. 38-1 ("First Affidavit"), 50-2.)

The parties' penultimate joint status report, dated February 10, 2025, indicated that the parties had narrowed the issues to (1) the propriety of the "redactions made under FOIA exemption (b)(1) and (b)(3) for one of the records released on December 3, 2024" and (2) the adequacy of the CIA's search, although Plaintiffs "may not challenge Defendant's search for

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[3] The Court provided a detailed overview and legal analysis of the CIA Information Act in its May 21, 2024 Memorandum Order. (ECF No. 25 at 1–5.)

[4] E.O. 13,526 specifies the circumstances under which agencies may classify information related to national security. *See infra*, Sections II, III.D.1.

[5] The Court primarily relies on Ms. Williams's first affidavit (ECF No. 38-1), since her second affidavit largely restates the same arguments. To the extent that Ms. Williams's second affidavit lays out new arguments on the propriety of the redactions to the Critical Assessment, these prove irrelevant to the Court's inquiry, since Plaintiffs have waived their claims concerning these redactions. *See infra*, Section III.A.

records." (ECF No. 34 ¶ 3.) In their final joint status report, dated February 28, 2025, the parties stated that, in light of their inability to resolve all disputed issues, they would move for summary judgment, and that Plaintiffs might also "move for *in camera* review of the released record to which Plaintiffs seek to challenge the redactions." (ECF No. 35 ¶ 2.)

On April 23, 2025, the CIA moved for summary judgment on the adequacy of its search and the applicability of FOIA Exemptions 1 and 3 to its redactions to one document, the Review of the Charges. (ECF No. 37.) On May 21, 2025, Plaintiffs cross-moved for summary judgment to compel the disclosure of the redactions to two documents, the Review of the Charges and the Critical Assessment. (ECF No. 41.) On the same date, Plaintiffs moved for *in camera* inspection of the documents at issue. (ECF No. 46). The CIA filed responses to both motions on June 4, 2025. (ECF Nos. 51, 52.) Plaintiffs filed replies on June 18, 2025, rendering the motions ripe for review. (ECF Nos. 53, 54.)

II. STANDARD OF REVIEW

The "basic thrust" of the Freedom of Information Act, 5 U.S.C. § 552, was to "pierce the veil of administrative secrecy and open agency action to the light of public scrutiny." *Dep't of Air Force v. Rose*, 425 U.S. 352, 360 (1976) (quotation omitted). To that end, FOIA generally requires federal agencies to provide their internal records to the public upon request. 5 U.S.C. § 552(a)(3)(A). But, because "legitimate governmental and private interests could be harmed by the release of certain types of information," FOIA contains nine enumerated exemptions from disclosure, which "should be narrowly construed to favor disclosure." *Hanson v. U.S. Agency for Int'l Dev.*, 372 F.3d 286, 290 (4th Cir. 2004). The Act provides for de novo judicial review of an agency's response to a FOIA request, allowing courts "to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B).

In the instant action, the CIA asserts that FOIA Exemptions 1 and 3 apply. Exemption 1 protects from disclosure any documents that are "(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order." 5 U.S.C. § 552(b)(1). When invoking FOIA Exemption 1, agencies typically rely on E.O. 13,526, issued on December 29, 2009, which lays out the procedures necessary to classify information impinging on national security. Exec. Order No. 13,526, 75 Fed. Reg. 707 (Dec. 29, 2009); *see, e.g.*, *Schaerr v. U.S. Dep't of Just.*, 69 F.4th 924, 929 (D.C. Cir. 2023) (noting that "[t]he Agencies all relied on Executive Order 13,526" to support their arguments for non-production or redaction of documents under FOIA Exemption 1).

By contrast, FOIA Exemption 3 protects matters that have been specifically exempted from disclosure by statute, if that statute "(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld." 5 U.S.C. § 552(b)(3). It is well established that the National Security Act of 1947, 50 U.S.C. §§ 3001–3244, and the CIA Act of 1949, 50 U.S.C. §§ 3501–3533, "are considered exemption statutes for the purposes of [FOIA] Exemption 3." *Moore*, 2022 WL 2983419, at *9 (citing *DiBaccio v. Dep't of Army*, 926 F.3d 827, 834 (D.C. Cir. 2019)).

In a FOIA suit, the "strong presumption in favor of disclosure places the burden on the agency to justify the withholding of any requested documents." *U.S. Dep't of State v. Ray*, 502 U.S. 164, 173 (1991). The relevant agency "can meet this burden by describing the withheld material with reasonable specificity and explaining how it falls under one of the enumerated exceptions." *Hanson*, 372 F.3d at 290. Agencies normally fulfill this burden by submitting

affidavits. A court "is entitled to accept the credibility of the affidavits, so long as it has no reason to question the good faith of the agency." *Spannaus v. U.S. Dep't of Justice*, 813 F.2d 1285, 1289 (4th Cir. 1987) (quotations omitted).

To determine whether agencies have complied with their obligations under FOIA, courts have discretion to examine agency records *in camera*. 5 U.S.C. § 552(a)(4)(B). Courts exercise this discretion primarily when an agency has failed to carry its burden to justify withholding documents or information. *Simmons v. U.S. Dep't of Just.*, 796 F.2d 709, 712 (4th Cir. 1986); *see Young v. CIA*, 972 F.2d 536, 539 (4th Cir. 1992) (affirming grant of summary judgment to the CIA without *in camera* review when the agency met its burden through affidavits).

Summary judgment is appropriate where the "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In evaluating a motion for summary judgment, the Court "construe[s] the evidence in the light most favorable" to the nonmovant and "draw[s] all reasonable inferences in their favor." *Rein v. U.S. Patent & Trademark Office*, 553 F.3d 353, 358 (4th Cir. 2009). "When faced with cross-motions for summary judgment, the court must review each motion separately on its own merits to determine whether either of the parties deserves judgment as a matter of law." *Rossignol v. Voorhaar*, 316 F.3d 516, 523 (4th Cir. 2003) (internal quotation omitted). In the FOIA context, "cases are generally resolved on summary judgment once the documents at issue have been properly identified." *Wickwire Gavin, P.C. v. U.S. Postal Serv.*, 356 F.3d 588, 591 (4th Cir. 2004). Summary judgment usually constitutes the proper mechanism for such cases, because "[w]hether a document fits within one of FOIA's prescribed exemptions is . . . a matter of law." *Hunton & Williams v. U.S. Dep't of Justice*, 590 F.3d 272, 276 (4th Cir. 2010). "[S]ummary judgment on the basis of . . . agency affidavits is warranted if the affidavits

describe the documents and the justifications for nondisclosure with reasonably specific detail, demonstrate that the information withheld logically falls within the claimed exemption, and are not controverted by either contrary evidence in the record nor by evidence of agency bad faith." *Military Audit Project v. Casey*, 656 F.2d 724, 738 (D.C. Cir. 1981).

III. ANALYSIS

At the outset, the Court notes that the parties appear to disagree on what precisely remains at issue. The CIA, filing first, briefed the question of collateral estoppel, the propriety of redactions to the Review of the Charges, and the sufficiency of its search and segregability analysis. (CIA Brief at 12–25.) Plaintiffs' brief did not challenge the search,[6] but it challenged the redactions to both the Review of the Charges and the Critical Assessment. (Pl. Brief at 11.) The Court begins by providing a brief summary of the parties' respective arguments before considering the relevant claims put forward by the parties.

Plaintiffs raise multiple arguments in favor of summary judgment and *in camera* review. As a threshold matter, Plaintiffs allege that the CIA exhibited bad faith in the drafting of the National Intelligence Estimate, which, in their view, rebuts any presumption of good faith for the CIA. (*Id.* at 11–13.) They proceed to argue that in the specific context of this case, given the age of the records, the manner in which the IC received this information and the CIA's alleged practice of overclassification, no justification exists to withhold the redacted portions of the Review of the Charges and the Critical Assessment. (*Id.* at 16, 20; Pl. Reply Brief at 8–9.) Plaintiffs further argue that the withholdings violate Executive Order 12,812, which directed the review of documents "pertaining to American POWs and MIAs lost in Southeast Asia for the

[6] Because Defendant seeks summary judgment on the sufficiency of its search and because Plaintiffs fail to contest this issue, the Court's grant of summary judgment to Defendant encompasses this issue as well.

purposes of declassification," Exec. Order No. 12,812, 57 Fed. Reg. 32,879 (July 22, 1992), and both Section 1.7 and the automatic declassification provision of Executive Order 13,526. (Pl. Brief at 16–18.) Finally, they assert that the CIA's affidavits lack the specificity required to carry the agency's burden on summary judgment, and they request that the Court conduct *in camera* review to ensure that the CIA is not improperly withholding information. (*Id.* at 15–20.) Regarding Defendant's collateral estoppel claim, Plaintiffs cite to FOIA Requests 27 (the Review of the Charges) and 28 (the Critical Assessment), which constitute new requests beyond the scope of anything settled in *Moore*, and which are therefore not precluded by this prior litigation. (Pl. Brief at 4–11.) For all these reasons, Plaintiffs request that the Court either order the CIA to disclose the challenged redacted material or conduct *in camera* review of the redactions to determine whether the CIA has complied with its obligations under FOIA. (*Id.* at 20.)

The CIA advances several arguments for summary judgment in its favor. The agency makes two procedural arguments: that collateral estoppel bars the Moore Plaintiffs from bringing this suit,[7] (CIA Brief at 12–15), and that Plaintiffs forfeited their right to challenge the withholding of the Critical Assessment based on the representations that they made in the joint status reports. (CIA Reply Brief at 20–21.) On the merits, the CIA argues that the affidavits provided by Ms. Williams, the CIA's classification authority, satisfy the requirements for an

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[7] Based on its own concerns about potential procedural gamesmanship by Plaintiffs, the Court raised the question of collateral estoppel in the March 13, 2024 pretrial conference and expressed its view that Plaintiffs shall not secure "a second bite at the apple." (Hr'g Tr. 7:22–23.)

The CIA also raised arguments concerning the potential issue-preclusive effect of *Moore* on Plaintiffs' claims concerning the adequacy of the CIA's search for documents. (CIA Brief at 16–18.) Since Plaintiffs no longer appear to challenge the adequacy of the search, however, the Court need not address those arguments.

award of summary judgment based on FOIA Exemptions 1 and 3. (*Id.* at 18–22.) Concerning Plaintiffs' arguments alleging bad faith, Defendant submits that the necessary showing to overcome the presumption of good faith must be a showing of bad faith *in the ongoing FOIA action*, not during earlier, underlying agency action that led to the generation of the records at issue. (CIA Reply Brief at 12–14.) In any event, the CIA argues that the NIE was not drafted in bad faith. (*Id.* at 14–15.) Defendant likewise contests Plaintiffs' arguments concerning the specific context of this case, the age of the documents, and compliance with various Executive Orders, arguing that neither the context nor the age of the documents are legally cognizable facts as presented, and that the Executive Orders' declassification obligations do not apply, since the documents are exemptible from E.O. 13,526's automatic declassification provision and E.O. 12,812 predates the genesis of the Review of the Charges. (*Id.* at 15–19.)

The Court begins by addressing Defendant's arguments on waiver and collateral estoppel. Then, the Court will address the threshold question of bad faith and the central question of the CIA's burden on a summary judgment motion pursuant to FOIA Exemptions 1 and 3. The bad faith inquiry and the question of whether the CIA has met its summary judgment burden intertwine, because if Plaintiffs fail to allege cognizable bad faith, the CIA affidavits retain their good faith presumption and will suffice to carry the CIA's burden for summary judgment. Finally, the Court assesses whether *in camera* review is proper.

A. Waiver

The CIA contends that Plaintiffs have forfeited their right to challenge the redactions to the Critical Assessment, because they represented — in joint status reports and in an email exchange with CIA counsel — that they were challenging only the Review of the Charges. (CIA Reply Brief at 20–21.) Plaintiffs concede that they "inadvertently neglected" to inform the CIA

of their challenge to the redactions to the Critical Assessment, but they distinguish the present case from other FOIA cases where joint status reports were held to bind the parties by pointing to "the unusual circumstance [that] the challenged record was written in response to the omitted record." (Pl. Brief at 11; Pl. Reply Brief at 14.)

When parties in a FOIA litigation agree to narrow the issues in a written status report, "they generally may be held to their agreement under traditional waiver principles."[8] *Am. Ctr. for L. & Just. v. U.S. Dep't of Just.*, 325 F. Supp. 3d 162, 168 (D.D.C. 2018).[9] This approach stands consonant with civil practice and the Federal Rules of Civil Procedure, which rely on the routine narrowing of issues between litigants through means like pretrial conferences to provide for the "just, speedy, and inexpensive determination of every action." *Id.* (quoting Fed. R. Civ. P. 1 and citing Fed. R. Civ. P. 16(c)(2)(A)); *see also id.* (noting that written stipulations can waive the right to a jury trial or dismiss the action with prejudice and citing Federal Rules of Civil Procedure 39(a)(1) and 41(a)(1)(A)(ii) in support). In the FOIA context, courts have repeatedly found joint status reports to bind the parties. *Id.* ("[W]ritten status reports often play the same role in FOIA cases as pretrial conferences do in other civil litigation."); *DeFraia v. CIA*, 311 F. Supp. 3d 42, 47 (D.D.C. 2018) ("But it is the Joint Status Report, not Mr. DeFraia's original request, that controls."); *Gilman v. U.S. Dep't of Homeland Sec.*, 32 F. Supp. 3d 1, 22 (D.D.C.

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[8] While the CIA argued for forfeiture, the Court finds that waiver constitutes the proper procedural mechanism here. *See Am. Ctr. for L. & Just. v. U.S. Dep't of Just.*, 325 F. Supp. 3d 162, 167–69 (D.D.C. 2018) (finding waiver rather than forfeiture in FOIA litigation).

[9] A brief survey of FOIA cases demonstrates that the Fourth Circuit and this Court often treat D.C. Circuit and D.C. District Court opinions as persuasive authority in such litigation, based on these courts' extensive experience with the statute. *See, e.g., Empower Oversight Whistleblowers & Research v. Nat'l Insts. of Health*, 122 F.4th 92, 101 (4th Cir. 2024) (citing as authoritative D.C. Circuit and D.D.C. cases); *Hanson v. U.S. Agency for Int'l Dev.*, 372 F.3d 286, 292-93 (4th Cir. 2004) (citing D.C. Circuit cases); *City of Va. Beach v. U.S. Dep't of Commerce*, 995 F.2d 1247, 1253 (4th Cir. 1993) (same); *Carter, Fullerton & Hayes, LLC v. FTC*, 601 F. Supp. 2d 728, 735 (E.D.Va. 2009) (same).

2014) (finding "[t]he plain meaning of the joint status report" controlling). FOIA's text itself, which provides that the requestor may later "limit the scope of the request," supports this conclusion. *DeFraia*, 311 F. Supp. 3d at 47 (quoting 5 U.S.C. § 552(4)(A)(viii)(II)(bb), (6)(B)(ii)).

Accordingly, the Court finds that Plaintiffs have waived their right to challenge the redactions to the Critical Assessment. An email from Plaintiffs' attorney, dated February 2, 2025, identifies the redactions to the Review of the Charges as "the only redactions that the plaintiffs will challenge." (ECF No. 51-3 at 77.) Meanwhile, the February 10, 2025 Joint Status Report, signed by attorneys for both parties, contains a paragraph setting forth "the issues that Plaintiffs intend to continue to pursue in this action." (ECF No. 34 ¶ 3.) That paragraph discusses only two issues: parameters for the search for records and Plaintiffs' desire "to understand the basis for redactions . . . *for one of the records.*" (*Id.* (emphasis added).) Finally, the parties' February 28, 2025 Joint Status Report relates that "the parties will cross move for summary judgment and Plaintiffs may move for *in camera* review of the released *record* to which Plaintiffs seek to challenge the redactions." (ECF No. 35 ¶ 2 (emphasis added).) Indeed, Plaintiffs' summary judgment brief concedes that "the undersigned inadvertently neglected to inform defendant that plaintiffs also challenge the redactions to Senator Smith's *Critical Assessment*." (Pl. Brief at 11.) The Court holds Plaintiffs to their representations in the two joint status reports. As such, the Court determines that Plaintiffs waived their right to challenge the redactions to the Critical Assessment, leaving only Defendant's redactions to the Review of the Charges at issue in this case.[10]

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[10] The Court notes that, while Judge Lamberth in *Moore* required specific language such as "narrow" or "withdraw" to indicate waiver, the status report in *Moore* was not a *joint* status

B. Collateral Estoppel

The doctrine of collateral estoppel dictates that when "an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." *B & B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 148 (2015). Collateral estoppel constitutes an affirmative defense on which the party asserting the defense bears the burden of proof. Fed. R. Civ. P. 8(c)(1); *see Taylor v. Sturgell*, 553 U.S. 880, 907 (2008) ("[A] party asserting preclusion must carry the burden of establishing all necessary elements.") (quoting 18 C. Wright, A. Miller, & E. Cooper, *Federal Practice and Procedure*, § 4405 (2d ed. 2002)). While collateral estoppel can, in rare circumstances, preclude individuals who were not parties to the original litigation, the party asserting such nonmutual estoppel must demonstrate that the nonparty falls into one of the six categories outlined in *Taylor v. Sturgell*, 553 U.S. at 893–95.

Plaintiffs and the CIA disagree on whether the issues in the instant case present identical issues of fact or law as in the *Moore* litigation. Plaintiffs argue against this identity for several reasons. First, Plaintiffs submit that Requests 27 (for the Review of the Charges) and 28 (for the Critical Assessment) were not made in *Moore*. (Pl. Brief at 5–6.) Second, while the version of the Review of the Charges that the CIA released during the *Moore* litigation in June 2021 omitted numerous pages in their entirety, it technically did not contain any redactions; as such,

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report. *Moore*, 2022 WL 2983419, at *3. Further, *American Center*, which *Moore* cites approvingly, relies on language similar to that present in the February 10, 2025 Joint Status Report. *Compare Am. Ctr.*, 325 F. Supp. 3d at 169 ("to address the *remaining unsolved issues*") (emphasis added in original), *with* ECF No. 34 ¶ 2 ("the parties have been discussing *the issues that remain in this case*") (emphasis added). *Moore*, therefore, does not alter the Court's outcome here.

"the propriety of the redactions . . . is not an issue that has been before any court." (*Id.* at 6–7.) Third, Plaintiffs argue that the identification of the Review of the Charges in *Moore* as a responsive document was erroneous, as the requests in *Moore* concerned Korean War POWs, whereas the Review of the Charges relates only to the Vietnam War. (*Id.* at 6.) And finally, Plaintiffs point to the production of differing records in this litigation. (*Id.* at 7–8.) Beyond the question of whether the litigation presents an identical issue of law or fact, Plaintiffs also contend that the participation of new parties in the instant litigation defeats any collateral estoppel argument. (*Id.* at 8–9.)

Plaintiffs' arguments on identity of the issues focus on distinctions that make no legal difference. In *Moore*'s partial summary judgment opinion, Judge Lamberth issued a final ruling granting summary judgment to the CIA on the propriety of withholding the Review of the Charges — the same document that Plaintiffs seek in the instant litigation — pursuant to FOIA Exemptions 1 and 3. *Moore*, 2022 WL 2983419, at *1. The CIA in *Moore* expressly invoked these FOIA Exemptions to justify withholding the Review of the Charges in full. (*Id.* at *3 n.2.) If Exemptions 1 and 3 justify withholding the document in full, then they also, of logical necessity, justify withholding whatever portions of the document that the CIA subsequently redacted in the context of this litigation. Plaintiffs' argument concerning an identical issue of fact or law therefore falls flat.

The *Moore* litigation also satisfies the other required showings for a finding of collateral estoppel in the instant case. Because the CIA's motion for summary judgment hinged on the applicability of the FOIA Exemptions, that issue was clearly "essential to the judgment." *B & B*

Hardware, 575 U.S. at 148. Summary judgment constitutes "a final and valid judgment".[11] *Id.* And the record demonstrates that both sides fully briefed the applicability of the FOIA Exemptions to the Review of the Charges in *Moore*, rendering the issue "actually litigated." *Id.*; *see* Vaughn Index at 26–27, *Moore* (D.D.C. Dec. 29, 2021), ECF No. 22-1 (describing a document withheld pursuant to Exemptions 1 and 3 as "the classified version of the joint Department of Defense and CIA report of POW/MIA issues"); Motion for Summary Judgment by CIA at 6–11, *Moore* (D.D.C. Dec. 10, 2021), ECF No. 21 (briefing the applicability of Exemptions 1 and 3); Cross Motion for Summary Judgment at 23–26, *Moore* (D.D.C. Jan. 17, 2022), ECF No. 25 (same).

However, Plaintiffs are correct that collateral estoppel only bars the Moore Plaintiffs in this case. The CIA, bearing the burden of proof, fails to advance any arguments that the remaining plaintiffs ought to be barred under one of the exceptions to the rule of nonparty preclusion set out in *Taylor v. Sturgell*, 553 U.S. at 893–95. Indeed, it "only contends that issue preclusion prevents the *overlapping* Plaintiffs" from relitigating the issue. (CIA Reply Brief at 8 n.5.) As such, the non-overlapping Plaintiffs stand entitled to pursue this litigation without the *Moore* litigation providing a procedural bar.

In sum, the Court finds that collateral estoppel bars Robert Moore, Jana Orear, Christianne O'Malley, and Mark Sauter from this suit. The Court will therefore dismiss those Plaintiffs. The Court proceeds to analyze the remaining arguments concerning the Review of the Charges as to Plaintiffs Driggs, Thomas Logan, David Logan, Marx, Mumley, Zimmerlee, Hrdlicka, Patterson, and the POW Investigative Project, Inc., only.

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[11] Plaintiffs do not contest this prong of the collateral estoppel test. The Court notes that Plaintiffs did not appeal Judge Lamberth's grant of partial summary judgment on these issues, rendering the judgment final and valid.

C. Bad Faith

Moving from procedure to substance, the Court considers the critical question underlying this litigation: whether the remaining Plaintiffs have adequately alleged bad faith by the CIA to render the agency's affidavits insufficient. For the reasons that follow, the Court finds that they have not.

Allegations of bad faith are relevant to the assessment of a FOIA claim for impermissible withholding of documents, because they speak to the sufficiency of an agency's affidavits in meeting that agency's burden, which in turn allows the agency to prevail on summary judgment. *See Schaerr*, 69 F.4th at 929 ("[C]ourts must grant summary judgment for an agency if its affidavit: (1) describes the justifications for nondisclosure with reasonably specific detail; and (2) is not substantially called into question by contrary record evidence or evidence of agency bad faith." (quotation omitted). Agency affidavits receive a presumption of good faith. *Spannaus*, 813 F.2d at 1289 (holding that a court "is entitled to accept the credibility of the affidavits, so long as it has no reason to question the good faith of the agency."). The deference attendant on this presumption applies especially in the national security context. *See Bowers v. U.S. Dep't of Just.*, 930 F.2d 350, 357 (4th Cir. 1991) ("What fact or bit of information may compromise national security is best left to the intelligence experts. If there is no reason to question the credibility of the experts and the plaintiff makes no showing in response to that of the government, a court should hesitate to substitute its judgment of the sensitivity of the information for that of the agency."); *see also Schaerr*, 69 F.4th at 929 ("Because withholding national security information is a uniquely executive purview, we exercise great caution before compelling an agency to release such information." (internal quotation omitted)); *Simmons*, 796 F.2d at 711 ("In judging agency decisions and affidavits in the area of national security,

however, courts have given substantial weight to the expertise of the agencies charged with determining what information the government may properly release."). Mere allegations of bad faith, however, will not suffice to overcome the presumption of good faith. *Hayden v. Nat'l Sec. Agency/Cent. Sec. Serv.*, 608 F.2d 1381, 1387 (D.C. Cir. 1979) ("The sufficiency of the affidavits is not undermined by a mere allegation of agency misrepresentation or bad faith, nor by past agency misconduct in other unrelated cases."). Rather, plaintiffs must provide "tangible evidence of bad faith" to overcome the presumption. *Carter v. U.S. Dep't of Commerce*, 830 F.2d 388, 393 (D.C. Cir. 1987).

Plaintiffs argue that the drafting of the NIE demonstrates bad faith on the part of the CIA, and that this bad faith sufficiently tinges the Review of the Charges to overcome the presumption of good faith as to the CIA's representations in this case and render *in camera* review of the documents in question proper. (Pl. Reply Brief at 12–14.) Specifically, Plaintiffs submit:

> The NIE misrepresents, and omits, evidence corroborating the 1205/735 numbers. The NIE falsely portrays Vietnamese cooperation as excellent. It unjustifiably impugns the credibility of sources. It ignores, and omits, evidence of POW transfers to the USSR. It misrepresents, and omits, evidence of second prison [sic] system. It misrepresents, and omits, corroborative accounts by Russian sources. The NIE disparages the genuineness of the documents, neglecting to reveal that numerous intelligence reports attest to their authenticity. It posits that the date is wrong, and the length is wrong. And it even questions whether there ever existed a transcript in the Vietnamese language.

(Pl. Brief at 12–13 (citations omitted).)

Plaintiffs cite this alleged bad faith drafting to argue that the CIA is engaging in a cover up *today* by not disclosing the challenged redactions. (*See* Pl. Brief at 25 ("Plaintiffs opine that the redactions are made to conceal the veracity of the numbers in the 1205/735 Documents…"); *id.* at 20 ("While the CIA claims that its withholdings are made in good faith, Senator Smith's account is to the contrary…").) In support of their contention that a showing of bad faith during

the *generation* of a record constitutes legally cognizable bad faith in the context of a FOIA suit, Plaintiffs cite one out-of-circuit case: *Rugiero v. U.S. Department of Justice*, 257 F.3d 534, 544 (6th Cir. 2001) ("Evidence of bad faith on the part of the agency can overcome this presumption [of good faith], even when the bad faith concerns the underlying activities that generated the FOIA request rather than the agency's conduct in the FOIA action itself.").

The CIA rejects Plaintiffs' argument for several reasons. First, the CIA argues that Plaintiffs' theory — that agency misconduct in the generation of the relevant records defeats the agency's good faith presumption — has never been recognized in the Fourth Circuit. (CIA Reply Brief at 12–13.) Furthermore, it argues that, even if the Fourth Circuit recognized this theory, the evidence in the record demonstrates that the agency acted only in good faith. (*Id.* at 14–15.) As the released portion of the Review of the Charges indicates, the NIE did not closely scrutinize the 735 and 1205 Documents; rather, its author "assumed that the NIE would reflect the best judgments of the IC as developed by knowledgeable analysts," who found the documents to be unreliable. (ECF No. 41-5 at 1–2.) Indeed, addressing the 735 and 1205 Documents in detail was to be "a separate research project." (*Id.* at 1.) Senator Smith's scathing critique reacted, on this read, to a misperception of the NIE's purpose. (*Id.* at 2.)

As to the question of whether agency misconduct in the generation of records defeats the agency's good faith presumption, the overwhelming weight of the case law supports the CIA's position. In *Schaerr v. U.S. Department of Justice*, for example, the plaintiff sued six intelligence agencies to compel production of documents relating to the "unmasking" of members of President Trump's election campaign.[12] 69 F.4th at 931. The plaintiff alleged two

[12] When conducting electronic surveillance on foreign targets, intelligence agencies will, as a matter of course, incidentally collect some communications between the target and American

instances of agency bad faith to overcome the agency affidavits' presumption of good faith. *Id.* First, a former United Nations Ambassador had allegedly requested the "unmasking" of many members of President Trump's team. *Id.* Second, the plaintiff claimed that the agencies spied on the President's campaign and transition teams. *Id.* The D.C. Circuit held that the allegations were "either too generalized or too attenuated from the specific classification decisions at issue to constitute the kind of 'tangible evidence of bad faith' we have required to overcome agency affidavits." *Id.* (quoting *Carter*, 830 F.2d at 393). In other words, the bad faith had to be related to "the specific classification decisions at issue." *Schaerr*, 69 F.4th at 931; *see also Hayden*, 608 F.2d at 1387 ("The sufficiency of the affidavits is not undermined by . . . past agency misconduct in other unrelated cases."). Similarly, in *Larson v. Department of State*, the CIA withheld intelligence cables that the plaintiff sought to obtain through a FOIA request. 565 F.3d 857, 863 (D.C. Cir. 2009). In affirming the district court's grant of summary judgment for the CIA, the D.C. Circuit found that "[t]he parties present us with no evidence . . . suggesting bad faith on the part of the CIA *in withholding the cables*." *Id.* at 864 (emphasis added).

While fewer examples abound in the Fourth Circuit, *Young v. CIA* explicitly tied the bad faith inquiry to the FOIA declarations, stating that the plaintiff "does not allege that the CIA acted in bad faith *in its declarations*." 972 F.2d at 539 (emphasis added).[13] Similarly, in *Simmons v. United States Department of Justice*, the Fourth Circuit adopted the D.C. Circuit's rule emphasizing that the good faith in question relates to the *affidavits*. *See Simmons*, 796 F.2d

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citizens. *Schaerr*, 69 F.4th at 927. Because the Foreign Intelligence Surveillance Act requires minimizing the collection of data on Americans, agencies substitute the identifying information of individuals with generic labels. *Id.* This process is known as "masking." *Id.*

[13] While Plaintiffs correctly point out that *Young* was applying an abuse of discretion standard to the district court's decision to skip *in camera* review, the case nonetheless indicates that the "bad faith" in FOIA inquiries must relate to the agency's actions while producing the documents, not earlier agency activity.

at 712 ("The agency's affidavits, naturally, must be relatively detailed and nonconclusory and submitted in good faith. But if these requirements are met, the district judge has discretion to forgo discovery and award summary judgment on the basis of affidavits.") (quoting *Goland v. CIA*, 607 F.2d 339, 352 (D.C. Cir. 1978)).

Plaintiffs' invocation of the Sixth Circuit's *Rugiero* case is unavailing — neither its reasoning nor its underlying factual predicate sway the Court. In *Rugiero*, the plaintiff claimed a host of bad faith actions by various defendants and argued that these earlier actions defeated the presumption of good faith for agency affidavits. *Rugiero*, 257 F.3d at 546. The plaintiff relied on an earlier case, *Jones v. FBI*, 41 F.3d 238 (6th Cir. 1994), where the Sixth Circuit had found that, "[e]ven where there is no evidence that the agency acted in bad faith with regard to the FOIA action itself[,] there may be evidence of bad faith or illegality with regard to the underlying activities which generated the documents at issue." *Rugiero*, 257 F.3d at 546 (quoting *Jones*, 41 F.3d at 242). In ultimately rejecting the plaintiff's bad faith argument, the Sixth Circuit found that "Rugiero misunderstands our discussion of bad faith in *Jones*." *Rugiero*, 257 F.3d at 546. Because the FBI investigation in *Jones* "went beyond the ordinary detection and prevention of criminal activity to well-documented infringements of civil liberties whose disclosure threatened public embarrassment of the FBI," the Sixth Circuit indicated that *Jones* "presented an unusual case and defined the collateral nature of bad faith in FOIA actions according to a very high standard that would infrequently be met"; the "routine investigation" in *Rugiero* did not meet this standard. *Rugiero*, 257 F.3d at 546–47. Even in the Sixth Circuit, then, the bar for collateral bad faith requires "well-documented infringements of civil liberties" or something of that ilk. *Id.* The Fourth Circuit has never adopted this test, nor is it likely that Plaintiffs meet the high standard specified therein.

Based on the weight of the case law, the Court finds that agency bad faith must relate to the present FOIA action in order to defeat the presumption of good faith afforded to agency affidavits. As such, Plaintiffs' allegations concerning the drafting of the NIE over twenty-five years ago cannot, as a matter of law, overcome the presumption of good faith in the CIA's affidavits.

Nor do Plaintiffs adequately allege bad faith in the CIA's present-day actions. The CIA's alleged "bad faith" in 1998 makes Plaintiffs suspicious of the agency's forthrightness today. (*See* Pl. Brief at 25 ("Plaintiffs opine that the redactions are made to conceal the veracity of the numbers in the 1205/735 Documents . . . .").) But to the extent that they allege a CIA cover-up in *this* litigation to avoid potential embarrassment to the agency *today*, Plaintiffs provide no more than conclusory allegations. (Pl. Brief at 11 ("Plaintiffs submit evidence that the CIA's NIE was written in bad faith. Thus, the Plaintiffs have good cause to believe that the CIA redacted information because it corroborates the numbers appearing in the 1205/735 Documents.").) Plaintiffs' "evidence" consists of Senator Smith's characterization of the NIE, as well as a statement in a 2016 affidavit that he "personally ha[s] seen hundreds of classified documents that could and should be released as they pose no national security risk" and that "[w]hat is really at risk are the reputations and careers of the intelligence officials who participated in and perpetrated this sorry chapter in American history." (Pl. Brief at 12–13 (citations omitted); ECF No. 41-1 ¶ 8.) This "evidence" — from 1998 and 2016, respectively — cannot speak to the CIA's response to the instant FOIA requests, which were made in 2023. Plaintiffs' conclusory allegations, then, do not undermine the affidavits' presumption of good faith.[14] As such, the

[14] Because the Court finds that agency bad faith must relate to the present FOIA action and cannot be based on past behavior, it need not consider the question of whether the CIA acted in

Court rejects Plaintiffs' arguments as to bad faith on the part of the CIA and finds that the presumption of good faith applies to the CIA's affidavits in this case.

D. The CIA's Burden Under Exemptions 1 and 3

Having found that the presumption of good faith applies, the Court turns next to assessing whether the CIA has satisfied its burden to demonstrate that the redacted information falls within FOIA Exemptions 1 and 3. The Court finds that it has.

To prevail on summary judgment in a FOIA action, the agency seeking to withhold information bears the burden of showing that the withheld material falls within a FOIA Exemption. *Hanson*, 372 F.3d at 290. Agencies "can meet this burden by describing the withheld material with reasonable specificity and explaining how it falls under one of the enumerated exceptions." *Id.* Courts grant summary judgment "if the affidavits describe the documents and the justifications for nondisclosure with reasonably specific detail, demonstrate that the information withheld logically falls within the claimed exemption, and are not controverted by either contrary evidence in the record nor by evidence of agency bad faith." *Military Audit Project*, 656 F.2d at 738.

Here, the CIA has invoked Exemptions 1 and 3 to justify its redactions to the Review of the Charges. The Court proceeds to analyze the showings required under both exemptions and whether the CIA has successfully made those showings.

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bad faith during the drafting of the NIE. It bears mentioning, however, that Plaintiffs' key piece of evidence allegedly supporting their claim of bad faith — the redacted version of the Critical Assessment — is in Plaintiffs' possession only because the CIA released it in 2016. (Pl. Brief at 11–13; FOIA Request at 26.) The fact that the CIA provided the document that Plaintiffs are using as evidence to suggest a cover-up further supports a finding that the CIA is acting in good faith for the purposes of this litigation. *See Turse v. U.S. Dep't of Defense*, No. 1:22-cv-2970, 2025 WL 588203, at *4 (D.D.C. 2025) ("That Defendants have disclosed facts causing Plaintiff to question the legality of the drone strike, if anything, supports the good faith of the declarants.").

1. Exemption 1

The CIA invoked Exemption 1 to justify some of its redactions to the Review of the Charges. This Exemption requires the CIA to establish that the redactions are (a) specifically authorized to be kept secret in the interest of national defense or foreign policy under criteria established by an Executive Order and (b) have been properly classified pursuant to that Order. 5 U.S.C. § 552(b)(1).

The CIA invokes Executive Order 13,526 as the relevant order authorizing its redactions. (CIA Brief at 8.) This Order permits classification of documents if:

> (1) an original classification authority is classifying the information; (2) the information is owned by, produced by or for, or is under the control of the United States Government; (3) the information falls within one or more of the categories of information listed in section 1.4 of this order; and (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, which includes defense against transnational terrorism, and the original classification authority is able to identify or describe that damage.

E.O. 13,526 § 1.1(a)(1–4).

The CIA contends that it fulfills all of the procedural requirements set forth in E.O. 13,526 and that the information in question was properly classified pursuant to that Order. For the reasons set forth below, the Court agrees.

a. Ms. Williams Has Original Classification Authority and the United States Government Owns the Information.

Section 1.3 of E.O. 13,526 grants "authority to classify information originally" to the President, Vice President, "agency heads and officials designated by the President" and "United States Government officials delegated this authority pursuant to paragraph (c) of this section." *Id.* § 1.3(a). Paragraph (c) indicates that "'Top Secret' original classification authority may be delegated only by the President, the Vice President, or an agency head or official designated

pursuant to paragraph (a)(2) of this section." *Id.* § 1.3(c)(2). "Each delegation of original classification authority shall be in writing and the authority shall not be redelegated except as provided in this order." *Id.* § 1.3(c)(4). Ms. Williams' first affidavit testifies that she is "a senior CIA official and hold[s] original classification authority at the TOP SECRET level under written delegation of authority pursuant to section 1.3(c) of Executive Order ('E.O.') 13526." (First Affidavit ¶ 3.) Plaintiffs do not challenge these assertions.

Ms. Williams likewise states "that the information is owned and controlled by the U.S. Government." (*Id.* ¶ 16.) As such, and applying the presumption of good faith to Ms. Williams' statements, the Court finds that the CIA has satisfied requirements (1) and (2) for classification under E.O. 13,526.

b. The Information Falls Within One or More of the Categories Listed in Section 1.4.

The CIA further claims that the redacted information falls within categories (c) and (d) as listed in Section 1.4 of E.O. 13,526. That section sets forth an exhaustive list of classification categories. As relevant here, Section 1.4(c) allows classification of information that pertains to "intelligence activities (including covert action), intelligence sources or methods, or cryptology," while Section 1.4(d) permits classification of information pertaining to "foreign relations or foreign activities of the United States, including confidential sources." E.O. 13,526 § 1.4(c), (d). The CIA identifies these categories as the types of information legally relevant under the Order. (CIA Brief at 8.)

Plaintiffs contest this claim, arguing that the CIA opines instead of offering facts. (Pl. Brief at 24.) Plaintiffs opine, in turn, that the redacted information does not pertain to these categories and that the redactions were made purely "to conceal the veracity of the numbers in the 1205/735 Documents, in violation of Executive Order 13,526." (*Id.* at 24–25.)

Yet, Plaintiffs only "evidence" in support of this assertion consists of their allegation of bad faith in the drafting of the NIE. Setting aside the contested nature of this allegation, the Court reiterates its earlier finding that evidence of former bad faith action does not suffice to overcome the good faith presumption accorded to the CIA affidavits. As such, the Court finds that the CIA sufficiently establishes that the redacted information falls into the claimed categories.

c. Ms. Williams Determined That Disclosure Could Reasonably Be Expected to Harm National Security and Adequately Described That Harm.

Ms. Williams's initial affidavit states that the CIA's redactions protect "the priority of intelligence activities and targets; methods of collection; and classified relationships" and that "the release of this information could significantly impair the CIA's ability to carry out its core missions of gathering and analyzing foreign intelligence and counterintelligence and conducting intelligence operations, thereby damaging national security." (First Affidavit ¶ 17.) Regarding intelligence activities, the affidavit declares that the

> redactions conceal the means, policies, and processes used to collect and analyze certain CIA intelligence interests and activities. Although it is widely acknowledged that the CIA is responsible for conducting intelligence collection and analysis for the United States, the CIA generally does not disclose the targets of specific intelligence collection activities or the operations it conducts or supports. Such disclosure would allow intelligence targets to circumvent the CIA's collection efforts, damaging the Agency's ability to carry out its intelligence mission. The [Review of the Charges] reflects certain priorities of specific U.S. intelligence targets, the locations of CIA activities, the targets of specific CIA operations and analysis, and Agency processes for handling intelligence information. Disclosing this type of detail could reasonably be expected to damage national security because it would greatly impair effective collection of foreign intelligence.

(*Id.* ¶ 18.)

The affidavit provides a similarly detailed account concerning the need to protect intelligence methods:

> Intelligence methods must be protected to prevent foreign adversaries, terrorist organizations, and others from learning the ways in which the CIA operates, which would allow them to take measures to hide their activities from the CIA or target Agency officers. The more information the CIA discloses about its operational tradecraft, the more difficult it becomes for the CIA to actually collect foreign intelligence around the world. Clandestine information collection methods are valuable from an intelligence-gathering perspective only so long as they remain unknown and unsuspected. Once the nature of an intelligence method or the fact of its use in a certain situation is discovered, its usefulness in that situation is neutralized and the CIA's ability to apply that method in other situations is significantly degraded. Here, the documents contain specific types of intelligence methods, as well as policies and processes for utilizing those intelligence methods. Disclosure of these details would likely impair the CIA's ability to continue to collect intelligence and conduct operations.

(*Id.* ¶ 19.)

Finally, regarding the need to protect classified relationships, the affidavit describes the following:

> The redactions here protect the process and policies for working with foreign services, foreign individuals, and/or clandestine assets and cooperative sources who aided the CIA in its intelligence gathering mission These details have been withheld because their disclosure would reveal intelligence priorities, and the CIA's information-sharing relationships with specific foreign individuals and governments . . . . Revelation of these relationships could hurt the Agency's relationship with these entities — entities that often agree to cooperate with the CIA on the understanding that the relationship will remain secret. Disclosing the details of these relationships could reasonably be expected to harm National security because it would reveal certain interests and activities of the U.S. Government, and could lead to the deterioration of relationships, thereby decreasing the CIA's access to information and potentially impacting U.S. diplomatic relations.

(*Id.* ¶ 20.)

The Court finds that the determinations made by Ms. Williams and the level of detail offered in the First Affidavit easily satisfy the CIA's burden under E.O. 13,526. *See Spannaus*, 813 F.2d at 1289 ("If the Government fairly describes the content of the material withheld and adequately states its grounds for nondisclosure, and if those grounds are reasonable and applicable with the applicable law, the district court should uphold the Government's position."

(quoting *Barney v. Internal Revenue Serv.*, 618 F.2d 1268, 1272 (8th Cir. 1980))). Courts routinely arrive at the same conclusion when considering affidavits that proffer similar detail. *See, e.g.*, *Moore*, 2022 WL 2983419, at *5 (granting summary judgment based on a similar affidavit); *Va.-Pilot Media Cos. v. Dep't of Just.*, 147 F. Supp. 3d 437, 447–48 (E.D.Va. 2015) (same).

Plaintiffs, unsatisfied, assert that Ms. Williams's "claims are conclusory, and merely recite statutory standards," and that greater detail concerning the redacted information is required. (Pl. Brief at 16.) However, as is evident from the sections of the affidavit cited above, Ms. Williams provides far more than a recitation of statutory standards, explaining in detail why the documents in question meet these standards. Meanwhile, the level of precision sought by Plaintiffs would likely disclose the sensitive information specifically protected under FOIA, running contrary to Congress's express intent in crafting the various FOIA exemptions. Because the CIA's affidavit meets the standard that the Executive Order and the case law require, and because "[w]hat fact or bit of information may compromise national security is best left to the intelligence experts," the Court finds the affidavit's detail sufficient for purposes of this inquiry. *Bowers*, 930 F.2d at 357.

d. Plaintiffs' Additional Objections Fail.

Plaintiffs bring three additional arguments why the CIA's redactions fail to qualify under FOIA Exemption 1: (1) the CIA has failed to follow the automatic declassification requirements of E.O. 13,526, § 3.3; (2) the CIA has failed to follow E.O. 13,526, § 1.7; and (3) E.O. 12,812 requires the CIA to lift these redactions. (Pl. Brief at 12, 17–18.) The Court rejects these arguments.

Plaintiffs allege that EO 13,526's automatic declassification provision mandates that the documents in question be declassified, rendering the CIA's continued insistence on redactions improper. (Pl. Brief at 17.) E.O. 13,526, § 3.3 sets out the standard for "Automatic Declassification." Under that provision, if a record is over twenty-five years old and has been determined to possess historical value, it "shall be automatically declassified on December 31 of the year that is 25 years from the date of origin, except as provided in paragraphs (b)–(d) and (g)–(j) of this section." E.O. 13,526 § 3.3(a).

The CIA and DoD authored the Review of the Charges in 2000. (First Affidavit ¶ 7 n.11.) As such, EO 13,526's automatic declassification provision will not apply until December 31 of this year.[15] Plaintiffs' claim of improper redactions on the basis of automatic declassification therefore fails.

Second, Plaintiffs argue that the CIA's redactions violate E.O. 13,526, § 1.7. (Pl. Brief at 12.) Section 1.7 directs that "[i]n no case shall information be classified, continue to be classified, or fail to be declassified in order to: (1) conceal violations of law, inefficiency, or administrative error; [or] (2) prevent embarrassment to a person, organization, or agency." E.O. 13,526 § 1.7(a)(1–2). As explained above, Plaintiffs have failed to provide more than conclusory allegations suggesting that a cover-up motivates the CIA's redactions. This argument therefore fails as well.

Finally, Plaintiffs allege that nondisclosure of the redactions to the Review of the Charges violates E.O. 12,812, which previously directed all executive departments and agencies to "expeditiously review all documents, files, and other materials pertaining to American POWs

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[15] While the CIA also argues that the records are "properly exemptible from the automatic declassification provision," the Court need not consider this argument, given that insufficient time has elapsed to trigger automatic declassification. (CIA Reply Brief at 17.)

and MIAs lost in Southeast Asia for the purposes of declassification." E.O. 12,812, § 2. As the CIA indicates, however, the directive implementing E.O. 12,812 required completion of these declassification efforts by November 11, 1993. (CIA Brief at 17.) The Review of the Charges, meanwhile, was not authored until 2000. (First Affidavit ¶ 7 n.11.) As such, EO 12,812's directive toward declassification of POW-related materials by 1993 plainly does not apply to the Review of the Charges, rendering Plaintiffs' argument meritless.

2. Exemption 3

The CIA also invoked FOIA Exemption 3 to justify the redactions to the Review of the Charges. This exemption, which protects matters specifically exempted by statute, requires the CIA to establish "the existence of a relevant statute and the inclusion of withheld material within the statute's coverage." *Morley v. CIA*, 508 F.3d 1108, 1126 (D.C. Cir. 2007) (internal quotation omitted). Its applicability does not "depend[] on the detailed factual contents of specific documents." *Id.*

Here, the CIA invokes the National Security Act of 1947, 50 U.S.C. §§ 3001–3244, and the CIA Act of 1949, 50 U.S.C. §§ 3501–3533, both of which "are considered exemption statutes for the purposes of [FOIA] Exemption 3." *Moore*, 2022 WL 2983419, at *9 (citing *DiBaccio,*, 926 F.3d at 834). The National Security Act directs that "[t]he Director of National Intelligence shall protect, and shall establish and enforce policies to protect, intelligence sources and methods from unauthorized disclosure." 50 U.S.C. § 3024(i)(1). The CIA Act, meanwhile, exempts the CIA from "the provisions of any other law which require the publication or disclosure of the organization or functions of the Agency, or of the names, official titles, salaries, of numbers or personnel employed by the Agency." 50 U.S.C. § 3507. Case law establishes that the CIA Act's protections apply to both past and current personnel of the agency. *See DiBaccio*, 926 F.3d at

835–36 ("we reject DiBaccio's argument that the CIA Act only applies to information referencing current intelligence personnel"); *Moore*, 2022 WL 2983419, at *9 (applying *DiBaccio*).

As their text reveals, the statutes cited by the CIA protect the exact sort of information that the CIA's First Affidavit asserts the redacted documents to contain: "intelligence sources and methods," 50 U.S.C. § 3024(i)(1), and "the organization and functions of the Agency," 50 U.S.C. § 3507. The CIA's affidavit describes how disclosure could compromise those types of information. (First Affidavit ¶¶ 18–25.) Given the Court's earlier finding of no bad faith, the Court finds that the CIA has met its burden to show that FOIA Exemption 3 applies. *See Schaerr*, 69 F.4th at 930 ("[G]ranting Schaerr's request would force the Agencies to reveal potentially sensitive intelligence information, interfering with their 'sweeping power to protect [their] intelligence sources and methods' under the Act. Divulging such information is 'specifically exempted' under the National Security Act and is therefore shielded from disclosure by FOIA Exemption Three." (alteration in original) (quoting *CIA v. Sims*, 471 U.S. 159, 169 (1985))); *Moore*, 2022 WL 2983419, at *10 ("Given that the CIA has provided an uncontradicted affidavit . . . [the records] are properly withheld under the National Security Act. This Court will not compel their disclosure."); *Larson*, 565 F.3d at 865 (Because the National Security Act is an exemption statute, "our only remaining inquiry is whether the withheld material relates to intelligence sources and methods . . . . [A]ccording substantial weight to the CIA's affidavits, we easily conclude that it does.").

Plaintiffs do not contest the statutes' applicability, but they argue that the CIA has provided an insufficient connection between the redacted comments and national security, and that intelligence officials were not concerned with public disclosure of POW information. (Pl.

Brief at 19–20.) But Exemption 3 requires no more than to establish that the redacted information falls within the statutes' coverage — something that the CIA's affidavit, whose good faith the Court must presume, easily accomplishes.

Plaintiffs' other objections are similarly irrelevant to the legal framework governing FOIA Exemption 3. Plaintiffs claim that the "context of the Russians' information," given in "a cooperative effort," counsels disclosure. (Pl. Reply Brief at 8–9.) They also provide an affidavit from Norman Kass, former Executive Secretary of the U.S.-Russian Joint Commission on POWs/MIAs, asserting that neither Russian nor American officials expressed concerns about public disclosure of information. (Pl. Brief at 19–20.) In addition, Plaintiffs assert that the age of the documents favors disclosure. (*Id.* at 16–17.) And finally, they quote Senator Smith's claim that he "personally ha[s] seen hundreds of classified documents that could and should be released as they pose no national security risk" and that "[w]hat is really at risk are the reputations and careers of the intelligence officials who participated in and perpetrated this sorry chapter in American history." (ECF No. 41-1 ¶ 8.)

Plaintiffs' assertions of historical context and the Kass affidavit fail to move the needle on the applicability of FOIA Exemption 3, which focuses solely on the availability and applicability of relevant protective statutes. And while the age of the documents might, in theory, favor disclosure, "[t]he judiciary is in an extremely poor position to second-guess the predictive judgments made by the government's intelligence agencies." *Larson*, 565 F.3d at 865 (internal citation omitted). In the absence of anything like E.O. 13,526's explicit guidelines for age as a factor in declassifying documents, the Court thus defers to the CIA on the issue of whether the relevant portions of the requested documents are properly classified. Finally, the Smith Affidavit speaks of overclassification generally and does not concern itself with the

redactions of the Review of the Charges in the instant FOIA action — the only issue presently before the Court. Nor could it, seeing as it was authored in August 2016, seven years before Plaintiffs initiated this FOIA proceeding.

In sum, the Court finds that Ms. Williams' affidavits sufficiently demonstrate that FOIA Exemptions 1 and 3 apply to the redactions to the Review of the Charges. As such, and given the absence of bad faith, the CIA meets its burden to receive summary judgment, which the Court will grant.

E. *In Camera* Review is Unnecessary

Having found that the CIA has met its burden in establishing the applicability of the FOIA Exemptions to the document in question, the Court turns to Plaintiffs' request for *in camera* review. (ECF No. 46.) As Plaintiffs correctly point out, courts resort to *in camera* review where an agency fails to meet its burden for summary judgment through affidavits. (ECF No. 47 at 1); *see Ethyl Corp. v. EPA*, 25 F.3d 1241, 1249 (4th Cir. 1994) ("[*In camera* review] need not be automatic. *An agency should be given the opportunity, by means of detailed affidavits or oral testimony*, to establish to the satisfaction of the District Court that the documents sought fall clearly beyond the range of material that would be available to a private party in litigation with the agency.") (quoting *EPA v. Mink*, 410 U.S. 73, 93 (1973)[16]) (emphasis in original). Conversely, where an agency meets its burden, a court need not use its discretion to order *in camera* review. *Young*, 972 F.2d at 539; *see also Hayden*, 608 F.2d at 1387 ("When the agency meets its burden by means of affidavits, In camera [sic] review is neither necessary nor

[16] While *Mink*'s deferential treatment towards the 1973 iteration of FOIA Exemption 1 was changed by statute, the Fourth Circuit endorsed *Mink*'s standard for *in camera* review in 1994, well after the 1974 change to FOIA. *See CIA v. Sims*, 471 U.S. 159, 189 (1985) (Marshall, J., concurring) (recounting the reaction to *Mink*). *Mink*'s statutory rebuke, then, does not alter the legal standard for *in camera* review.

appropriate."). Having already found that the CIA met its burden here, the Court sees no need for *in camera* inspection of the redacted documents. The Court therefore declines Plaintiffs' request for *in camera* review.

IV. CONCLUSION

For the foregoing reasons, the Court will DISMISS Plaintiffs Moore, Orear, O'Malley, and Sauter from the suit, DENY remaining Plaintiffs' Motions for Summary Judgment and *In Camera* Inspection (ECF Nos. 41, 46), GRANT the CIA's Motion for Summary Judgment (ECF No. 37) and enter judgment in the CIA's favor.

An appropriate Order shall issue.

Let the Clerk file a copy of this Memorandum Opinion electronically and notify all counsel of record.

/s/
David J. Novak
United States District Judge

Alexandria, Virginia
Date: August 6, 2025

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

MICHAEL DRIGGS, *et al.*,
Plaintiffs,

v. Civil No. 1:23cv1124 (DJN)

CENTRAL INTELLIGENCE AGENCY,
Defendant.

ORDER
(Dismissing Plaintiffs; Granting Defendant's Motion for Summary Judgment)

This matter comes before the Court on the parties' cross-motions for summary judgment and Plaintiffs' Motion for *In Camera* Inspection. (ECF Nos. 37, 41, 46.) For the reasons set forth in the accompanying Memorandum Opinion (ECF No. 55), the Court hereby ORDERS that:

1. Plaintiffs Robert Moore, Jana Orear, Christianne O'Malley and Mark Sauter are DISMISSED from this action;

2. Plaintiffs' Motions for Summary Judgment and *In Camera* Inspection (ECF Nos. 41, 46) are DENIED; and

3. Defendant's Motion for Summary Judgment (ECF No. 37) is GRANTED.

The Court DIRECTS the Clerk of Court to enter a Rule 58 Judgment in favor of Defendants.

This case is now CLOSED.

Let the Clerk file a copy of this Order and notify all counsel of record.

It is so ORDERED.

/s/
David J. Novak
United States District Judge

Alexandria, Virginia
Date: August 6, 2025

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

MICHAEL DRIGGS, *et al.*	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:23-cv-1124 (DJN)
	)	
CENTRAL INTELLIGENCE AGENCY,	)	
	)	
Defendant.	)	
	)	

NOTICE OF APPEAL

Notice is hereby given this 2nd day of October, 2025, that Plaintiffs hereby appeal to the United States Court of Appeals for the Fourth Circuit from the final judgment of this Court entered on the 6th day of August, 2025, and the prior order entered on May 21, 2025, in favor of Defendant, and against Plaintiffs.

DATE: October 2, 2025.

Respectfully submitted,

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