

Approved: 2-3-94
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Clyde Graeber at 1:30 p.m. on February 2, 1994 in Room 526-S of the Capitol.

All members were present except: Representative Darlene Cornfield, Excused

Committee staff present: Mary Galligan, Legislative Research Department
June Evans, Committee Secretary

Others attending: See attached list

Conferees appearing before the committee: Representative Betty Jo Charlton
Janet Chubb, Executive Director, Kansas Racing Comm.
Ray Calore, Chairman, POW/MIA Committee
Carol Hrdlicker, Wichita
Chuck Yunker, American Legion
Arthur Solis, American GI Forum
Richard Charlton, Sunflower Sub Chapter, PVA
Kyle G. Smith, Assistant Attorney General, KBI

The Chairperson announced Representative Betty Jo Charlton had a bill request.

Representative Charlton stated that Douglas County Humane Society would like to change the misdemeanor charges for animals. The Humane Society needs to receive compensation and/or some time limit for keeping animals before disposing of them humanely.

Representative Weinhold moved and Representative Wiard seconded to accept request as a committee bill. The motion carried.

Janet Chubb, Executive Director, Kansas Racing Commission, requested a bill amending the Kansas parimutuel racing act; relating to simulcast races; amending K.S.A. 74-8802 and 74-8836 and repealing the existing sections. (See Attachment #1)

Representative Cox moved and Representative Wilk seconded to accept request as a committee bill. The motion carried.

The Chairperson opened the hearing on HCR 5031.

Ray Calore, POW/MIA Chairman, Department of Kansas, Veterans of Foreign Wars, testified in favor of HCR 5031, stating while the personal and political impact of this issue is certainly not without controversy, the solution is as simple as can be. The truth. The primary purpose of HCR 5031 is to act on behalf of the citizens of Kansas, in conjunction with at least 5 other states (MI, AL, CN, FL, VA) to instruct our Attorney General to join in filing suit with the U.S. Supreme Court, in order to wrench the truth about our POW/MIAs from the classified files of the Defense Intelligence Agency, the Central Intelligence Agency, the National Security Council, and others, along with the foreign governments who collaborate in keeping this information from those who deserve access to it. This has proven to be a difficult task. Believe me, we've tried. And now, the importance of HCR 5031 becomes even more apparent. (See Attachment #2)

Carol Hrdlicker, Wichita, testified in support of HCR 5031. Ms. Hrdlicker stated there is one thing the American people know it is that their Federal Government has lied to them about virtually everything they were originally told concerning Vietnam, Laos and Cambodia. Families have been repeatedly lied to about their missing or imprisoned loved ones and she has lived with that reality for 28 years. (See Attachments 3 and 4)

Charles M. Yunker, Adjutant, Kansas American Legion, testified in support of HCR 5031, stating Vietnam is

not doing all it can to provide a full accounting of American POW/MIAs. Hanoi must provide the fullest possible accounting which has been defined as turning over live prisoners, repatriating the remains of those who were killed in action or died in captivity, or by providing a valid conclusive report why neither is possible. (See Attachment #5)

Arthur W. Solis, Commander, American GI Forum of Kansas City, testified as a proponent for HCR 5031, stating the American GI Forum of the United States has reiterated its opposition to the lifting of the trade embargo against Vietnam until all Americans are accounted for. Thus, consistent with our national organization's position regarding POWS/MIAS, the American GI Forum of Kansas City endorses and supports HCR 5031, a concurrent resolution requesting the Kansas Attorney General to commence action in the United States Supreme Court to obtain information about Kansas POW/MIAS in Southeast Asia. (See Attachment #6)

Richard Charlton, Sunflower Sub Chapter, Paralyzed Veterans of America, supports and encourages passage of HCR 5031.

Representative Robinette moved and Representative Sebelius seconded that HCR 5031 be moved out favorably. The motion carried.

Kyle G. Smith, Assistant Attorney General, Kansas Bureau of Investigation, requested introduction of a bill clarifying the authority of the Kansas Bureau of Investigation Gaming Agents to investigate not only criminal acts occurring at race tracks, but violations of the rules and regulations of the Kansas Racing Commission. (See Attachment #7)

Representative Wilk moved and Representative Cox seconded to accept request as a committee bill. The motion carried.

Kyle G. Smith, Assistant Attorney General, Kansas Bureau of Investigation, requested introduction of a bill amending KSA 74-8810, which is the list of prohibited acts involving parimutuel racing. In particular, requesting amendment to Section (h) (5) which prohibits the use of electrical buzzers or devices at race tracks so that possession of these devices at race tracks would also be made illegal, as they have no legitimate function. (See Attachment #8)

Representative Lahti moved and Representative Robinette seconded to accept request as a committee bill. The motion carried.

Representative Lahti stated that he had a request from Assistant District Attorney Richard L. Schodorf, Wichita, to request legislation involving consumer protection of health club transactions.

Representative Lahti moved and Representative Kline seconded to introduce consumer protection of health club transactions as a committee bill. The motion carried.

The Chairperson announced that Governor Finney will introduce Initiative and Referendum at the Committee meeting tomorrow, February 3. He also announced that the Agendas were sent out and on Monday the death penalty that was previously Tabled would be brought back for consideration and possible final action.

The meeting adjourned at 3:10 PM and the next meeting will be February 3, 1994.

Date:

FEDERAL and STATE AFFAIRS COMMITTEE

[illegible]

PROPOSED BILL NO. _____

By xx

AN ACT amending the Kansas parimutuel racing act; relating to simulcast races; amending K.S.A. 74-8802 and 74-8836 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 74-8802 is hereby amended to read as follows: 74-8802. As used in this act unless the context otherwise requires:

(a) "Breakage" means the odd cents by which the amount payable on each dollar wagered exceeds:

(1) A multiple of \$.10, for parimutuel pools from races conducted in this state; and

(2) a multiple of such other number of cents as provided by law of the host jurisdiction, for interstate combined wagering pools.

(b) "Commission" means the Kansas racing commission created by this act.

(c) "Concessionaire licensee" means a person, partnership, corporation or association licensed by the commission to utilize a space or privilege within a racetrack facility to sell goods.

(d) "Dual racetrack facility" means a racetrack facility for the racing of both horses and greyhounds or two immediately adjacent racetrack facilities, owned by the same licensee, one for racing horses and one for racing greyhounds.

(e) "Executive director" means the executive director of the commission.

(f) "Facility manager licensee" means a person, partnership, corporation or association licensed by the commission and having a contract with an organization licensee to manage a racetrack facility.

(g) "Facility owner licensee" means a person, partnership,

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corporation or association, or the state of Kansas or any political subdivision thereof, licensed by the commission to construct or own a racetrack facility but does not mean an organization licensee which owns the racetrack facility in which it conducts horse or greyhound racing.

(h) "Financial interest" means an interest that could result directly or indirectly in receiving a pecuniary gain or sustaining a pecuniary loss as a result of ownership or interest in a business entity or activity or as a result of a salary, gratuity or other compensation or remuneration from any person.

(i) "Greyhound" means any greyhound breed of dog properly registered with the national greyhound association of Abilene, Kansas.

(j) "Horsemen's association" means any association or corporation:

(1) All officers, directors, members and shareholders of which are licensed owners of horses or licensed trainers of horses, or both;

(2) which is applying for or has been issued a facility owner license authorizing ownership of Eureka Downs; and

(3) none of the officers, directors, members or shareholders of which holds another facility owner license or is an officer, director, member or shareholder of another facility owner licensee.

(k) "Horsemen's nonprofit organization" means any nonprofit organization:

(1) All officers, directors, members or shareholders of which are licensed owners of horses or licensed trainers of horses, or both; and

(2) which is applying for or has been issued an organization license authorizing the conduct of horse races at Eureka Downs.

(l) "Host facility" means the racetrack at which the race is run or, if the race is run in a jurisdiction which is not participating in the interstate combined wagering pool, the racetrack or other facility which is designated as the host

facility.

(m) "Host jurisdiction" means the jurisdiction where the host facility is located.

(n) "Interstate combined wagering pool" means a parimutuel pool established in one jurisdiction which is combined with comparable parimutuel pools from one or more racing jurisdictions for the purpose of establishing the amount of money returned on a successful wager in the participating jurisdictions.

(o) "Intertrack wagering" means wagering on a simulcast race at a licensed racetrack facility or at a facility which is licensed in its racing jurisdiction to conduct live races.

(p) "Intrastate combined wagering pool" means a parimutuel pool which is combined with comparable parimutuel pools from one or more racetrack facilities for the purpose of establishing the amount of money returned on a successful wager at the participating racetrack facilities.

(q) "Kansas-whelped greyhound" means a greyhound whelped and raised in Kansas for the first six months of its life.

(r) "Minus pool" means a parimutuel pool in which, after deducting the takeout, not enough money remains in the pool to pay the legally prescribed minimum return to those placing winning wagers, and in which the organization licensee would be required to pay the remaining amount due.

(s) "Nonprofit organization" means:

(1) A corporation which is incorporated in Kansas as a not-for-profit corporation pursuant to the Kansas general corporation code and the net earnings of which do not inure to the benefit of any shareholder, individual member or person; or

(2) a county fair association organized pursuant to K.S.A. 2-125 et seq. and amendments thereto.

(t) "Occupation licensee" means a person licensed by the commission to perform an occupation or provide services which the commission has identified as requiring a license pursuant to this act.

(u) "Off-track wagering" means wagering on a simulcast race

at a facility which is not licensed in its jurisdiction to conduct live races.

(v) "Organization licensee" means a nonprofit organization licensed by the commission to conduct races pursuant to this act and, if the license so provides, to construct or own a racetrack facility.

(w) "Parimutuel pool" means the total money wagered by individuals on one or more horses or greyhounds in a particular horse or greyhound race to win, place or show, or combinations thereof, as established by the commission, and, except in the case of an interstate or intrastate combined wagering pool, held by the organization licensee pursuant to the parimutuel system of wagering. There is a separate parimutuel pool for win, for place, for show and for each of the other forms of betting provided for by the rules and regulations of the commission.

(x) "Parimutuel wagering" means a form of wagering on the outcome of horse and greyhound races in which those who wager purchase tickets of various denominations on one or more horses or greyhounds and all wagers for each race are pooled and the winning ticket holders are paid prizes from such pool in amounts proportional to the total receipts in the pool.

(y) "Race meeting" means the entire period of time for which an organization licensee has been approved by the commission to hold live or simulcast horse or greyhound races at which parimutuel wagering is conducted or to hold horse races at which parimutuel wagering is not conducted, including such additional time as designated by the commission for the conduct of official business before and after the races.

(z) "Racing jurisdiction" or "jurisdiction" means a governmental authority which is responsible for the regulation of live or simulcast racing in its jurisdiction.

(aa) "Racetrack facility" means a racetrack within Kansas used for the racing of horses or greyhounds, or both, including the track surface, grandstands, clubhouse, all animal housing and handling areas, other areas in which a person may enter only upon

payment of an admission fee or upon presentation of authorized credentials and such additional areas as designated by the commission.

(bb) "Recognized greyhound owners' group" means the duly recognized group elected in accordance with rules and regulations of the commission by a majority of the Kansas licensed greyhound owners at the racetrack facility voting in the election. The commission may designate an organization such as the national greyhound association of Abilene, Kansas, to conduct the election.

(cc) "Recognized horsemen's group" means the duly recognized group, representing the breeds of horses running at a racetrack facility, elected by a majority of the licensed owners and trainers at the racetrack facility voting in the election. If the licensee does not have a recognized horsemen's group, the commission shall designate as the recognized horsemen's group one that serves another organization licensee, but not one that serves a county fair association organization licensee.

(dd) "Simulcast" means a live audio-visual broadcast of an actual horse or greyhound race at the time it is run.

(ee) "Takeout" means the total amount of money withheld from each parimutuel pool for the payment of purses, taxes and the share to be kept by the organization licensee. Takeout does not include the breakage. The balance of each pool less the breakage is distributed to the holders of winning parimutuel tickets.

(ff) "Totalisator licensee" means any person, partnership, corporation or association licensed by the commission to provide totalisator equipment or services to an organization licensee.

Sec. 2. K.S.A. 74-8836 is hereby amended to read as follows: 74-8836. (a) Any organization licensee that conducts at least 150 days of live racing during a calendar year or a county fair association that conducts fewer than 22 days of live racing during a calendar year may apply to the commission for a simulcasting license to display simulcast horse or greyhound races and to conduct intertrack parimutuel wagering thereon. If

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the organization licensee conducts races at a racetrack facility that is owned by a facility owner licensee, both licensees shall join in the application. A simulcasting license granted to a county fair association that conducts fewer than 22 days of live racing shall restrict the county fair association's display of simulcast races to a number of days, including days on which it conducts live horse races, equal to not more than twice the number of days on which it conducts live races.

(b) (1) A simulcasting license granted to an organization licensee other than a county fair association shall authorize the display of simulcast races at the racetrack facility where the live races are conducted. If a simulcasting licensee conducts live horse races on a day when simulcast races are displayed by the licensee and the licensee conducts fewer than 10 live horse races on such day, not less than 80% of the races on which wagers are taken by the licensee during such day shall be live races conducted by the licensee. If a simulcast licensee conducts live greyhound races on a day when simulcast races are displayed by the licensee and the licensee conducts fewer than 13 live greyhound races during a performance on such day, not less than 80% of the races on which wagers are taken by the licensee during such performance shall be live races conducted by the licensee.

(2) A simulcasting license granted to a county fair association shall authorize the display of simulcast races at the racetrack facility where the races are conducted only if live races are scheduled for two or more days of the same calendar week, except that the licensee may conduct simulcast races in the week immediately before and immediately after a live meeting if the total number of days on which simulcast races are displayed does not exceed the total authorized in subsection (a). In no case shall the live meet or simulcast races allowed under this subsection exceed nine consecutive weeks. For purposes of this subsection, a calendar week shall be measured from Monday through the following Sunday.

(3) Notwithstanding the provisions of subsection (a), (b)(1)

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or (b)(2), a county fair association may apply to the commission for not more than five additional days of simulcasting of special events. In addition, the commission may authorize a county fair association to display additional simulcast races but, if such county fair association is less than 100 miles from an organization licensee that is not a county fair association, it must also secure written consent from that organization licensee.

(4) Notwithstanding the provisions of subsection (b)(1), if an emergency causes the cancellation of all or any live races scheduled for a day or performance by a simulcasting licensee, the commission or the commission's designee may authorize the licensee to display any simulcast races previously scheduled for such day or performance.

(5) Notwithstanding the provisions of subsection (b)(1), the commission may authorize the licensee to display simulcast special racing events as designated by the commission.

(c) The application for a simulcasting license shall be filed with the commission at a time and place prescribed by rules and regulations of the commission. The application shall be in a form and include such information as the commission prescribes.

(d) To qualify for a simulcasting license the applicant shall:

(1) Comply with the interstate horse racing act of 1978 (15 U.S.C. 3001 et seq.) as in effect December 31, 1991;

(2) submit with the application a written approval of the proposed simulcasting schedule signed by: (A) The recognized horsemen's group for the track, if the applicant is licensed to conduct only horse races; (B) the recognized greyhound owners' group, if the applicant is licensed to conduct only greyhound races and only greyhound races are to be simulcast; (C) both the recognized greyhound owners' group and a recognized horsemen's group, if the applicant is licensed to conduct only greyhound races and horse races are to be simulcast; (D) the recognized greyhound owners' group, if the applicant is licensed to conduct both greyhound and horse races, only greyhound races are to be

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simulcast and races are to be simulcast only while the applicant is conducting live greyhound races; (E) the recognized horsemen's group for the track, if the applicant is licensed to conduct both greyhound and horse races, only horse races are to be simulcast and races are to be simulcast only while the applicant is conducting live horse races; or (F) both the recognized greyhound owners' group and the recognized horsemen's group for the track, if the applicant is licensed to conduct both greyhound races and horse races and horse races are to be simulcast while the applicant is conducting live greyhound races or greyhound races are to be simulcast while the applicant is conducting live horse races; and

(3) submit, in accordance with rules and regulations of the commission and before the simulcasting of a race, a written copy of each contract or agreement which the applicant proposes to enter into with regard to such race, and any proposed modification of any such contract or agreement.

(e) The term of a simulcasting license shall be one year.

(f) A simulcasting licensee may apply to the commission or its designee for changes in the licensee's approved simulcasting schedule if such changes are approved by the respective recognized greyhound owners' group or recognized horsemen's group needed throughout the term of the license. Application shall be made upon forms furnished by the commission and shall contain such information as the commission prescribes.

(g) Except as provided by subsection (j), the takeout for simulcast horse and greyhound races shall be the same as it is for the live horse and greyhound races conducted during the current or next live race meeting at the racetrack facility where the simulcast races are displayed. For simulcast races the tax imposed on amounts wagered shall be as provided by K.S.A. 74-8823 and amendments thereto. The simulcasting licensee shall be entitled to retain sufficient revenue to pay expenses directly related to the simulcast race or performance. The commission, by rules and regulations, shall define what constitutes such

expenses. Of the balance of the takeout remaining after deduction of taxes and expenses, 50% shall be paid to the simulcasting licensee. The remainder shall be used for purses, as follows:

(1) For purses for greyhound races conducted by the licensee, if the simulcast race is a greyhound race and the licensee conducts only live greyhound races;

(2) for purses for horse races conducted by the licensee, if the simulcast race is a horse race and the licensee conducts only live horse races;

(3) for purses, as determined by both the recognized horsemen's group and the recognized greyhound owners' group, if the simulcast race is a greyhound race and the licensee does not conduct or is not currently conducting live greyhound races; or

(4) for purses, as determined by both the recognized horsemen's group and the recognized greyhound owners' group, if the simulcast is a horse race and the licensee does not conduct or is not currently conducting live horse races.

(h) Except as provided by subsection (j):

(1) If a simulcasting licensee has a license to conduct live horse races and the licensee displays a simulcast horse race, breakage and unclaimed winning ticket proceeds shall be distributed in the manner provided by K.S.A. 74-8821 and 74-8822, and amendments thereto, for breakage and unclaimed winning ticket proceeds from live horse races.

(2) If a simulcasting licensee has a license to conduct live greyhound races and the licensee displays a simulcast greyhound race, breakage and unclaimed winning ticket proceeds shall be distributed in the manner provided by K.S.A. 74-8821 and 74-8822, and amendments thereto, for breakage and unclaimed winning ticket proceeds from live greyhound races.

(3) If a simulcasting licensee has a license to conduct live racing of only horses and the licensee displays a simulcast greyhound race, unclaimed winning ticket proceeds shall be distributed in the manner provided by K.S.A. 74-8822, and amendments thereto, for unclaimed winning ticket proceeds from

live greyhound races. Breakage for such races shall be distributed for use to benefit greyhound racing as determined by the commission.

(4) If a simulcasting licensee has a license to conduct live racing of only greyhounds and the licensee displays a simulcast horse race, breakage and unclaimed winning ticket proceeds shall be distributed in the manner provided by K.S.A. 74-8821 and 74-8822, and amendments thereto, for breakage and unclaimed winning ticket proceeds from live horse races.

(i) The commission may approve a request by two or more simulcasting licensees to combine wagering pools within the state of Kansas pursuant to rules and regulations adopted by the commission.

(j) (1) The commission may authorize any simulcasting licensee to participate in an interstate combined wagering pool with one or more other racing jurisdictions.

(2) If a licensee participates in an interstate pool, the licensee may adopt the takeout of the host jurisdiction or facility, except that the takeout shall not be more than 20% on win, place and show bets and not more than 25% on all other bets. The amount and manner of paying purses from the takeout in an interstate pool shall be as provided by subsection (g).

(3) The tax imposed on amounts wagered in an interstate pool shall be as provided by K.S.A. 74-8823 and amendments thereto. Parimutuel taxes may not be imposed on any amounts wagered in an interstate combined wagering pool other than amounts wagered within this jurisdiction.

(4) Breakage for interstate combined wagering pools shall be calculated in accordance with the statutes and rules and regulations of the host jurisdiction and shall be allocated among the participating jurisdictions in a manner agreed to among the jurisdictions. Breakage allocated to this jurisdiction shall be distributed as provided by subsection (h).

(5) Upon approval of the respective recognized greyhound owners' group or recognized horsemen's group, the commission may

expenses. Of the balance of the takeout remaining after deduction of taxes and expenses, 50% shall be paid to the simulcasting licensee. The remainder shall be used for purses, as follows:

(1) For purses for greyhound races conducted by the licensee, if the simulcast race is a greyhound race and the licensee conducts only live greyhound races;

(2) for purses for horse races conducted by the licensee, if the simulcast race is a horse race and the licensee conducts only live horse races;

(3) for purses, as determined by both the recognized horsemen's group and the recognized greyhound owners' group, if the simulcast race is a greyhound race and the licensee does not conduct or is not currently conducting live greyhound races; or

(4) for purses, as determined by both the recognized horsemen's group and the recognized greyhound owners' group, if the simulcast is a horse race and the licensee does not conduct or is not currently conducting live horse races.

(h) Except as provided by subsection (j):

(1) If a simulcasting licensee has a license to conduct live horse races and the licensee displays a simulcast horse race, breakage and unclaimed winning ticket proceeds shall be distributed in the manner provided by K.S.A. 74-8821 and 74-8822, and amendments thereto, for breakage and unclaimed winning ticket proceeds from live horse races.

(2) If a simulcasting licensee has a license to conduct live greyhound races and the licensee displays a simulcast greyhound race, breakage and unclaimed winning ticket proceeds shall be distributed in the manner provided by K.S.A. 74-8821 and 74-8822, and amendments thereto, for breakage and unclaimed winning ticket proceeds from live greyhound races.

(3) If a simulcasting licensee has a license to conduct live racing of only horses and the licensee displays a simulcast greyhound race, unclaimed winning ticket proceeds shall be distributed in the manner provided by K.S.A. 74-8822, and amendments thereto, for unclaimed winning ticket proceeds from

live greyhound races. Breakage for such races shall be distributed for use to benefit greyhound racing as determined by the commission.

(4) If a simulcasting licensee has a license to conduct live racing of only greyhounds and the licensee displays a simulcast horse race, breakage and unclaimed winning ticket proceeds shall be distributed in the manner provided by K.S.A. 74-8821 and 74-8822, and amendments thereto, for breakage and unclaimed winning ticket proceeds from live horse races.

(i) The commission may approve a request by two or more simulcasting licensees to combine wagering pools within the state of Kansas pursuant to rules and regulations adopted by the commission.

(j) (1) The commission may authorize any simulcasting licensee to participate in an interstate combined wagering pool with one or more other racing jurisdictions.

(2) If a licensee participates in an interstate pool, the licensee may adopt the takeout of the host jurisdiction or facility, except that the takeout shall not be more than 20% on win, place and show bets and not more than 25% on all other bets. The amount and manner of paying purses from the takeout in an interstate pool shall be as provided by subsection (g).

(3) The tax imposed on amounts wagered in an interstate pool shall be as provided by K.S.A. 74-8823 and amendments thereto. Parimutuel taxes may not be imposed on any amounts wagered in an interstate combined wagering pool other than amounts wagered within this jurisdiction.

(4) Breakage for interstate combined wagering pools shall be calculated in accordance with the statutes and rules and regulations of the host jurisdiction and shall be allocated among the participating jurisdictions in a manner agreed to among the jurisdictions. Breakage allocated to this jurisdiction shall be distributed as provided by subsection (h).

(5) Upon approval of the respective recognized greyhound owners' group or recognized horsemen's group, the commission may

permit an organization licensee to simulcast to other racetrack facilities or off-track wagering or intertrack wagering facilities in other jurisdictions one or more races conducted by such licensee, use one or more races conducted by such licensee for an intrastate combined wagering pool or use one or more races conducted by such licensee for an interstate combined wagering pool at off-track wagering or intertrack wagering locations outside the commission's jurisdiction and may allow parimutuel pools in other jurisdictions to be combined with parimutuel pools in the commission's jurisdiction for the purpose of establishing an interstate combined wagering pool.

(6) The participation by a simulcasting licensee in a combined interstate wagering pool does not cause that licensee to be considered to be doing business in any jurisdiction other than the jurisdiction which the licensee is physically located.

(k) If the simulcasting licensee and the recognized horsemen's group or recognized greyhound owners' group are unable to agree concerning a simulcasting question, the matter may be submitted to the commission for determination at the written request of any party in accordance with rules and regulations of the commission.

(1) This section shall be part of and supplemental to the Kansas parimutuel racing act.

Sec. 3. K.S.A. 74-8802 and 74-8836 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.

STATEMENT

by

RAY CALORE
POW/MIA CHAIRMAN
DEPARTMENT OF KANSAS
VETERANS OF FOREIGN WARS

February 2, 1994

Hearings by the
Kansas House of Representatives
Committee on Federal and State Affairs
on
House Concurrent Resolution 5031

Rep. Clyde Graeber
Chairman

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Good Afternoon.....Representative Graeber, and members of the committee.....

Thank you for the opportunity to address you in discussing the merits and importance of H.C.R. 5031. I know that you've had a chance to review this proposed resolution, and I for one deeply appreciate your concern.

I'm not unlike many others in saying that if you allow me to speak for an hour on a subject, I can do that with no problem. But ten minutes is much more difficult, so I'll choose my words very carefully.

It's amazing how, whenever we allow ourselves to contemplate the fate of American prisoners of war, and those who remain missing in action, we evoke a complex series of emotions, from sadness to rage. From quiet hopefulness to a rigid determination to finally secure the truth from those who withhold it from us -- whether those adversaries of the truth be in Southeast Asia, North Korea, China, Russia, or indeed in the stone-cold halls of Washington, D.C. While the personal and political impact of this issue is certainly not without controversy, the solution is as simple as can be. The truth. Why, in this many years, have we not yet reached the truth. It's NOT because the truth is unattainable. The truth has always been available, but not to us. Not to you in the Kansas legislature, not to the veterans whose buddies were left behind, and certainly not to the families on whose behalf we continue this struggle. This is an American crisis that transcends policies and personalities, but which will continue to erode the fabric of our national credibility and national honor until it is resolved.

The primary purpose of H.C.R. 5031 is to act on behalf of the citizens of Kansas, in conjunction with at least 5 other states (MI, AL, CN, FL, VA) to instruct our Attorney General to join in filing suit with the U.S. Supreme Court, in order to wrench the truth about our POW/MIAs from the classified files of the Defense Intelligence Agency, the Central Intelligence Agency, the National Security Council, and others, along with the foreign governments who collaborate in keeping this information from those who deserve access to it. This has proven to be a difficult task. Believe me, we've tried. And now, the importance of H.C.R. 5031 becomes even more apparent.

The declassification of information is tricky business, and until now is controlled by those who hold the key and safeguard the secrets -- whether they be in Hanoi, Moscow, or Washington. Agencies of our own government continue to tell us only what they want us to know, and have manipulated the pieces to fit their own agenda.

A FEW EXAMPLES: This declassified CIA document, dated March 9, 1976 -- three years after the official end of the Vietnam War, and one year after the fall of Saigon. Stating in no uncertain terms that -- QUOTE: "As of December 1975 some Americans were being held as prisoners of war in North Vietnam -- these Americans are to be used for bargaining purposes by the Democratic Republic of Vietnam in any future negotiations with the U.S." To support that statement, a report recently discovered by a Harvard researcher in Moscow indicates that in September 1972, only 4 months before the end of the war, Hanoi held 1205 Americans in North Vietnam. Yet, at Operation Homecoming, they gave us back only 591. The other 600? No remains, no information, no men. No answers.

And as always, we come back to the question of Laos, the secret illegal war in Laos run by the CIA. Where are the men who ran black-ops, or the pilots who ejected from disabled aircraft over the Ho Chi Minh Trail? This CIA document, again dated years after the war, indicates the precise locations of POW camps in Laos and the number of American POWs held in them. On this page, 68 Americans. Here, in Sam Nakay Neua, 28. 40 Americans held in a cave complex, northern Laos. AMERICANS, alive. And the kicker in this document is that QUOTE "Items of information are limited to those reported by two or more independent sources." The Department of Defense states that 505 of our men are POW or MIA in Laos -- yet, at Operation Homecoming, only 9 returned, and they were returned through Hanoi, because we never negotiated with Laos for the return of the rest.

On January 10, 1994, three weeks ago, the U.S. State Department said, QUOTE: "More than 80 percent of the persons unaccounted for in Laos were actually lost in areas under the control of the North Vietnamese." Since the war, our government admitted to only 2 men having been alive in Laos.....Charles Shelton and David Hrdlicka (whose wife Carol is a resident of Kansas and is here with us this afternoon). Now, according to this Washington Post article of January 2, 1994, "new" evidence brings that number up from 2 to 41. How long do they expect us to play the numbers game? What's the real number.....75? 190? 310? Hanoi is certainly responsible for the return of those men, and Moscow played a major role in their interrogation, transport, and imprisonment. The evidence indicates that intelligence agencies of our own government have collaborated with the enemy for economic and political purposes, and we -- here today -- need to put a stop to it. We need to take the fate of our own missing Kansans into our own hands and finally get to the truth.

In the past two years we've witnessed the divisiveness of the U.S. Senate in this issue, and the media circus that tries to tell us that everything is all right ----- that Vietnam and the governments of Southeast Asia are "cooperating" in the POW/MIA issue, while in the hearts of every one of us, we know that's not true. This is our opportunity to change it.

This afternoon, I have referred to a mere handful of information concerning our missing men. Information that presents us with question after question after question. But with the passage of H.C.R. 5031, we will have a prime opportunity to finally uncover the answers. No matter what our individual role within the State of Kansas, THIS is our highest priority.

On behalf of the membership of the Kansas Veterans of Foreign Wars, and our families, and our friends, thank you for your concern and for your aggressive support.

RAY CALORE
POW/MIA Chairman
Department of Kansas
Veterans of Foreign Wars

(913) 492-6131



POST-CAPTURE PHOTOGRAPHY OF
CAPTAIN DAVID L. HRDLICKA, USAF

May 18, 1965

David was stationed at 4th Cos, 251
Wichita Co.

FISA
2-2-94

Atch #3

U.S. says American servicemen may still be held in ...

UPn 1/11/94 11:12 AM

U.S. says American servicemen may still be held in Laos

WASHINGTON (UPI) -- The State Department said on Tuesday that it can "not rule out the possibility" that Americans missing since the Vietnam war are alive and being held against their will in Laos. The department said that a Senate Committee investigating missing Vietnam-era servicemen last year uncovered no evidence revealing "any specific prisoner or prisoners were left behind." The State Department said it does not necessarily agree with the Senate findings since most U.S. prisoners captured in Laos were taken by North Vietnamese troops. The Clinton administration cannot say with confidence that no Americans are still held in Laos until Vietnam shares all information it possesses on the matter. "We cannot rule out the possibility that live Americans may be held in Laos," the State Department said in a prepared statement.

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STATEMENT OF CAROL HRDLICKA ON FEBRUARY 2, 1994

IF THERE IS ONE THING THE AMERICAN PEOPLE KNOW, IT IS THAT THEIR FEDERAL GOVERNMENT HAS LIED TO THEM ABOUT VIRTUALLY EVERYTHING THEY WERE ORIGINALLY TOLD CONCERNING VIETNAM, LAOS AND CAMBODIA. IF THERE IS ONE THING THE PEOPLE AND STATE GOVERNMENT OF KANSAS SHOULD KNOW, IT IS THAT THE FAMILIES OF KANSAS HAVE BEEN REPEATEDLY LIED TO ABOUT THEIR MISSING OR IMPRISONED LOVED ONES AND I AM A 28 YEAR LIVING WITNESS TO THAT REALITY.

THE FEDERAL GOVERNMENT SAYS MY HUSBAND WAS IMPRISONED IN LAOS IN 1965. THEY EXPECTED HIM TO BE RELEASED IN 1973. THEY CAN SHOW NO PROOF HE IS DEAD; THEY CAN'T EVEN AGREE ON WHAT YEAR HE MIGHT HAVE DIED ACCORDING TO THEIR BEST INTELLIGENCE WHICH THEY LIED TO ME ABOUT FOR YEARS, AND CONTINUE TO, THIS VERY DAY. NIXON AND KISSINGER WERE PURSUING AN INTERNATIONALLY ILLEGAL WAR IN LAOS AND CAMBODIA. THEY WERE VIOLATING OUR SIGNATURE TO THE 1962 GENEVA ACCORDS ON LAOS NEUTRALITY. THEY LIED TO THE PEOPLE, THEY LIED TO THE CONGRESS, THEY LIED TO THE FAMILIES AND THAT IS PROVEN IN THAT ONE OF THE FIRST AND CHIEF ARTICLES OF IMPEACHMENT FINALLY BROUGHT AGAINST RICHARD NIXON IN THE HOUSE OF REPRESENTATIVES IN 1974 WAS HIS CONDUCT OF THE ILLEGAL, UNCONSTITUTIONAL AND CONTINUING WAR IN LAOS WE SPONSORED AND DIRECTLY PARTICIPATED IN FOR OVER 15 YEARS. THE GOVERNMENT OF THE STATE OF KANSAS CANNOT ALLOW HER SONS' SQUANDERED IN THIS DISGRACEFUL DEBACLE TO GO UNCHALLENGED...IF YOU DO, YOU FAIL THE MEN, THE FAMILIES, ALL SERVICEPERSONS IN UNIFORM FROM THIS GREAT STATE NOW AND IN THE FUTURE, AND YOU FAIL THE LEGACY OF THE MEN ABANDONED. THE MEN WERE ABANDONED TO PRESERVE A FAILED AND CORRUPT PRESIDENCY...TO PRESERVE A FICTION. THE ESSENCE OF AMERICAN BIRTHRIGHT DEMANDS THIS GRIEVANCE BE CHALLENGED AND IT SHALL FALL TO YOU TO ADVANCE THAT RIGHT, AGAINST 30 YEARS OF WRONGS HISTORY HAS REVEALED. IF THIS STATE WILL ALLOW THE FEDERAL GOVERNMENT TO ABUSE THE NATIONAL SECURITY EXCUSE TO PRESERVE FAILED REPUTATIONS AND AVOID ACCOUNTABILITY FOR THE ABUSE OF ITS CITIZENS AND SONS GONE IN HARM'S WAY IN SERVICE TO THE NATION, AND YOU FAIL

TO TAKE THE CAUSE OF US, THE FAMILIES, THEN WE HAVE NO REPRESENTATIVE DEMOCRACY...WE HAVE SPINELESS CAVING-IN TO DECEIT AND LIES RESULTING IN SONS OF KANSAS BEING RELEGATED TO A FATE WORSE THAN HELL. ...A HELL THE STATE DEPARTMENT JUST ADMITTED THEY MAY BE STILL ENDURING WHEN THEY ADMITTED LAST MONTH THAT 'WE CANNOT RULE OUT THE POSSIBILITY THAT MEN REMAIN ALIVE IN LAOS TODAY' AND THAT MEN WERE INDEED LEFT BEHIND.

HERE ARE SOME IRREFUTABLE FACTS ESTABLISHED BY THE RECORD OF THE SENATE SELECT COMMITTEE'S INVESTIGATION THAT CLEARLY SHOW HOW THE ABANDONMENT OF THESE MEN PROCEEDED:

1/21/73 In a national TV press conference, Nixon again lies and says there are not any combat forces in Laos. The secret war in Laos at that time, has over 590 Americans missing from it. My husband is one of them. Our "highest probability" intelligence says 350 of them are alive and held prisoner there. In 1974, one considered Article of Impeachment against Nixon is his conduct of the Secret War in Laos. Nixon knew if he admitted this, he would have been impeached then and there would have been no Nobel Peace Prize, or Peace With Honor, for Henry Kissinger.

1/27/73: "Peace With Honor" Accords signed in Paris

2/1/73 Nixon presents Top Secret promissory letter in Paris to the Vietnamese, guaranteeing 3.25 Billion in "reconstruction aid" in direct exchange for the Laos POW list. We expect hundreds; only nine names are on it.

3/21/73: Admiral Moorer, Chairman JCS, orders a "Halt!" to the Vietnam withdrawal, citing a Top Secret order over men still held in Laos. Admiral Moorer, according to former SECDEF and Director of CIA James Schlesinger screams "The bastards have still got our men!"

3/22/73 Nixon, in another Top Secret order, countermands Moorer's order.

Witnesses have testified that the atmosphere in the JCS was "near mutinous" over these events being hidden from the American people and the Congress.

3/28/73 A later SECSTATE (1992) Lawrence Eagleburger writes a memo for the SECDEF and White House, urging re-starting of the war, citing "350" Americans believed being held back in Laos according to our "Highest Probability Intelligence". He recommends massive B-52 bombing immediately, and an aircraft carrier task group be sent in to bomb Laos. This document remains hidden from this nation until 1992.

3/28/73 "Watergate" tapes show Nixon tells Haldeman, Ehrlichman and Ziegler

"...I don't believe that I should go out on national television like tonight or tomorrow and go out on the Watergate Commission and then come on the next day on national television on Vietnam...My view would be to, get the Vietnam out of the way." Nixon then goes on national TV and tells the public "All our American POWs are on their way home tonight".

4/1/73: Acting SECDEF Clements calls Roger Shields, his assistant for POW/MIA matters, into his office to discuss an upcoming POW/MIA press conference. Clements says "...the rest are dead". Shields says "you cannot say that!", Clements says "You didn't hear me!...the rest are dead!".

4/11/73 Shields meets with Clements, Brent Scowcroft and Nixon in the Oval Office. The transcript of this tape, and notes in the NSC, were refused to the SSC's investigation. The next day, Shields at the press conference says words to the effect that "we got them all....the rest are dead".

5/26/73: In continuing secret talks with the Vietnamese, Kissinger begs Vietnam "not contradict" any U.S. public statements that article 8(b) (POWs/MIAs) of the Paris accords applies to all of Indochina. He then states..."Now we should still like a sentence from you which I don't understand why you can't give us...(a letter) -- that all the prisoners held in Laos have been released. It would be very important for us."

The Congress refused to give the 3.25 billion and they were lied to, and never told of the 2 February 73 secret promise by Nixon to the Vietnamese to do so. That letter remained hidden until 1986 when the Vietnamese finally released it.

There it is, for even an Ostrich to see...a national disgrace long hidden. We must restore the national integrity on this matter and the legacy of the men abandoned must be exposed. I call upon the State Of Kansas to proceed singularly, or join with the other States, to sue the Federal Government on behalf of the men left behind, and my husband. Honor, allows no other course. Justice, can serve no higher purpose. A State, can serve its citizens with no greater integrity. For who shall speak for these men? We, the Families have forced some of the truth out after 25 years of fighting...now we desperately need your help and resources and I am here on behalf of David Hrdlicka to plead with you to proceed to join suit and force the truth to be told, and in so doing, we will help insure, this terrible wrong, is never done again. I close with one thought written by Ella Wheeler Wilcox long ago as it is most appropriate to this matter ""To sin by silence when we should protest makes cowards out of men"

CAROL HRDLICKA

CONWAY SPRINGS, KANSAS

1993: Army Intelligence says it never heard of President Clinton's order to release records on American servicemen missing from the Vietnam War. So documents that researchers say should be open remain locked up.

But one government office that holds Vietnam documents, the Army Intelligence and Security Command, told a researcher last month it had not even heard of Clinton's order, issued May 31 at Memorial Day ceremonies at the Vietnam Veterans Memorial.

In an Oct. 8 letter to author Mark Sauter, an official at Army Intelligence's Freedom of Information Office referred to Sauter's previous conversation with another official, "informing you that this office is not aware of any executive order issued by President Clinton regarding declassification of POW-MIA records."

"Those files are still locked up," said Ted Sampley, executive director of a Vietnam veterans archives project.

Dolores Apodaca Alfond, who heads the POW activist group National Alliance of Families, said she had been told of numerous instances in which family members and researchers were unable to gain access to files.

"They still won't give me the stuff that I requested six months ago," said Roger Hall, a University of Maryland graduate student writing a paper on American POWs.

WASHINGTON (UPI) -- President Clinton Friday issued a proclamation designating Sept. 10 for Americans to remember prisoners of war and servicemen missing in action and vowed to continue the search for them.

In his proclamation, Clinton acknowledged "a continuing obligation to these casualties of war, America's missing service members and civilians."

"Our nation remains committed to this cause, a matter of highest national priority," he said.

He pledged to obtain the answers that "the family members of these heroes deserve, recognizing the profound loss they have endured and their steadfast resolve to gain the peace of certainty."

Washington Plays Softball With Hanoi

NEWSDAY, FRIDAY, DECEMBER 10, 1993

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SENDING A high-level delegation to another government usually suggests acceptance of that government and its policies. On the other hand, a message of dissatisfaction can be carried by a low-level functionary, whose secondary status reinforces the reproach.

My reference is to Washington's gentle dealings with the government in Hanoi, which has for years told a steady stream of face-saving lies about the prisoners it kept from the Vietnam War and never returned.

The latest demonstration of willingness to overlook those lies will be made next week, when Assistant Secretary of State Winston Lord leads a delegation to the Vietnamese capital.

For public consumption, the State Department's advance rhetoric searched for a firm tone. A spokesperson said that Lord, in his talks with the Vietnamese, "would reiterate that any further steps in U.S.-Vietnamese relations will depend strictly on tangible progress in the POW-MIA accounting."

But Lord himself, while stressing the need for a full accounting, gave the Hanoi regime high marks. "They have been going all out," said the assistant secretary of state. "I think it's fair to say this is the single best year in terms of . . . cooperation and so on that we've had since the war. The prospect is, on the basis of continued Vietnam cooperation, you will continue to see an incremental approach to better relations."

This is the language of softball diplomacy, not hardball demarche.

President Bill Clinton, in his brief time at the helm, has already further relaxed the 18-year-old economic embargo against Vietnam. This carries on a tradition begun by George Bush that seems based on the theory of history that you can put a national trauma behind you by pretending that the truth has been told and the questions answered.

This pretense, regrettably for the White House, runs smack in the face of the hard evidence of unreturned prisoners, evidence that has surfaced and multiplied so markedly in recent years that no shred of credibility remains of the contention by the cover-uppers that all prisoners came home in 1973.

The question has never been whether men were held back by Hanoi as bargaining pieces for economic reparations but rather what happened to them. Highly credible sources report that very recent intelligence, including Washington's own satellite photography, suggests that some may still be alive, if not on Vietnamese soil itself, then in Hanoi-dominated Laos.

The lies have not been told by Vietnam alone. Washington has known since the signing of the peace accords in 1973 that the 591 men sent back represented a list that was short by several hundred of the numbers held by Hanoi. But just as North Vietnam could never admit it had kept these men, neither could Washington tell the American people that in its haste to extricate itself from that war, it had broken faith with captured soldiers. As time passed, the truth became even harder to tell, for



Sydney H.
Schanberg

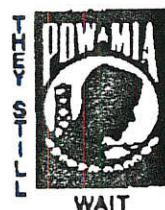
short of admitting a hostage situation and reviving the war, there was nothing to do but engage in eventually futile covert cross-border probes and pretend there was nothing wrong. Hanoi wanted reparations money and Washington steadfastly refused to pay ransom. History offered a different model, one provided by the French who had failed before us in Vietnam and who bought back their prisoners over the years. In five successive White Houses, from Richard Nixon through Bush, ransom was viewed as an option that could make a president look weak and cripple his political future.

And now we wait to see whether Bill Clinton can stand up to history and take on its political risks. The signs are not encouraging.

I offer you today but one of those signs — the makeup of the Winston Lord delegation to Hanoi. He is taking along, among others, Edward Ross, a man from the Pentagon who has made a career out of keeping the prisoner evidence out of public view.

He has not been punished for this. On the contrary, he has risen. His latest promotion came under Clinton's defense secretary, Les Aspin. Ross was put in charge of the Pentagon policy office that supervises the prisoner issue — the DPMO — the Defense POW/MIA Office.

Most recently, he tried to discredit what is known as the Quang report, a document found in Soviet archives dated Sept. 12, 1972, just six months before the 591-man prisoner return. Described by the Russians as a Vietnamese general's report to the Hanoi politburo, it said the Vietnamese were actually holding 1,205 American prisoners.



Ross, who is acting deputy assistant secretary of defense, also tried unsuccessfully to keep hidden a Pentagon research report that said a number of American servicemen taken prisoner during the Korean War had been transferred to the Soviet Union and never released. The evidence, this report said, "is so broad and convincing that we cannot dismiss it."

When the report got out despite his efforts, Ross defied its contents, saying there was not "one shred of evidence."

Ross' unit is a policy office, yet he has been allowed to put the Pentagon's POW intelligence operation under his controlling umbrella, violating a fundamental canon against making an intelligence apparatus vulnerable to political pressures.

This is but a small sampling of Ross' activities, and yet he was chosen to represent the Pentagon at the upcoming Hanoi talks.

As long as men like him, and there are many, are running Washington's POW/MIA operation, we are never going to get the truth. And without the truth, how in the world can we put Vietnam to rest?

WHEN ONE AMERICAN IS NOT WORTH THE EFFORT TO BE FOUND,
WE AS AMERICANS HAVE LOST

FISA
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Arch #4

Making 'Negatives' in the POW/MIA Case

1-4-94

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WHY WOULD the executive assistant to the United States ambassador at the United Nations seek to interfere with a family's quest to get information from the Pentagon about their missing relative, an Air Force major named Henry Serex, whose plane went down in Vietnam in 1972?

That is the subject of today's column — and of my next column on Friday. This tale is emblematic of how the Pentagon has misled and deceived MIA families for 20 years.

Frances Zwenig, chief aide to UN Ambassador Madeleine Albright, made a phone call in early December to Carroll Lucas, a private photo-imagery analyst who once worked for the CIA.

Lucas has nothing remotely to do with the United Nations. He showed up in 1992 as part of the government's efforts to debunk satellite photos that appeared quite clearly to show ground markings of known distress signals assigned to pilots. The person who invited him then to join the debunking campaign was Frances Zwenig.

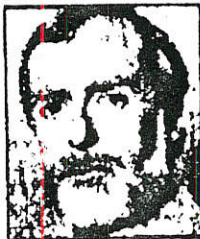
At the time, Zwenig was staff director of the Senate Select Committee on POW/MIA Affairs, working for the chairman, Sen. John Kerry. During her committee tenure, Zwenig compiled a record of trying to suppress all evidence showing that prisoners had been left behind and trying to breathe credibility into the Pentagon's statements that no such evidence existed. When the committee's final report was being written, Zwenig became the Pentagon's conduit for slipping in a number of key debunking inserts, many of them patent falsehoods. None of the inserts identified the material as coming from the Pentagon; it looked like the committee's own conclusions.

Zwenig searched out Lucas in the fall of 1992 in order to protect the Pentagon's public position on satellite imagery, which was that the markings were nothing more than shadows and vegetation. Dozens of these images were examined by the committee. No matter how clear the distress symbols, the Pentagon parroted the same explanation: shadows and vegetation.

Some members of the committee wanted an independent opinion, and a highly regarded expert was found — Larry Burroughs, a retired Air Force colonel who had received the nation's highest medal for intelligence work and became acting director of the highly secret National Photographic Interpretation Center. Burroughs also has a reputation of being truly independent.

This caused such nervousness within the debunking cabal that Zwenig was sent to find someone to counter Burroughs. She came up with Lucas, who works for a company called Autometric. When she found him, she wrote a memo to her boss, Kerry, saying: "Looks like Auto Metrics (sic) fills bill for expert on imagery — I am working on the script w/DIA."

The DIA is the Defense Intelligence Agency, an



Sydney H.
Schanberg

arm of the Pentagon. For the record, all of the citations in this column come from documents in the National Archives, where the committee sent its papers after closing down in January, 1993.

Burroughs and Lucas each did his own analysis of more than 40 photos taken in the years after Operation Homecoming in 1973, when Hanoi returned 591 prisoners and the White House said all the prisoners were home. Burroughs, in his report, concluded that several of the images were authentic distress markings. Lucas found not a single distress marking. Lucas' findings and the Pentagon's were identical.

More damaging, the committee's documents show that Lucas, even before he had begun his examination of the imagery, told a committee staffer that he thought most of the symbols were "hoaxes." The shocked staffer immediately composed a "memorandum for the record."

A few days later, as Lucas was just starting his work, he stated to two staffers that he "should have all the symbols negated within the time frame desired by the committee." Another memo went into the record. Lucas must have believed that the entire committee staff was in on the rigging.

Now we can shift to the latest Zwenig-Lucas chapter. Nine months ago, the family of Maj. Henry Serex learned — not from the Pentagon, but from the "Larry King Live" television show — of the existence of a satellite photo that showed what appeared to be the letters S E R E X written into a field near a prison in North Vietnam. Also in this field appear the markings "72TA88." T and A were distress letters that pilots were assigned in 1972, the year that Serex' radar-jamming ER-66 was downed in Quang Tri province. The Pentagon lists Serex as presumed killed-in-action/body-not-recovered. The date of the satellite imagery was June 5, 1992. The Pentagon says there is nothing on the imagery but shadows and vegetation.

After months of holding off the Serex family, the Pentagon agreed to let them view some of the imagery taken that day. The session is set for next Monday. It's not clear they're going to be shown the frames that have the markings.

Zwenig, meanwhile, from her UN post, phoned Lucas and, according to people Lucas spoke to about the call, told him she was going to arrange for him to be at the Serex session. Again they were stacking the deck. Zwenig doesn't deny the call. She says, cryptically, that she got involved "at the request of the [Clinton] administration" — without saying who asked her or what the purpose was.

The story continues on Friday.



WHEN ONE AMERICAN IS NOT WORTH THE EFFORT TO BE FOUND.

4.2



ADVOCACY and INTELLIGENCE INDEX
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"THE POW/MIA FAX NETWORK"

The Photo: Shadow or MIA Signal?

THIS IS the story of what has become known in the world of Vietnam MIA evidence as the SEREX satellite photo, a picture the Pentagon has tried mightily, and with much artifice, to discredit.

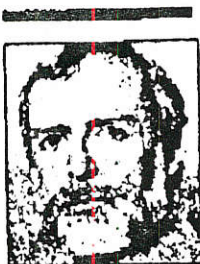
As mentioned in my last column, Henry (Mick) Serex was an Air Force major with the job description of electronic warfare officer. While on a radar-jamming mission over the DMZ on April 2, 1972, his EB-66 communications plane, with crew of six, was hit and downed by a ground-to-air missile. Only one survivor was rescued at the time, the navigator, Lt. Col. Icaal Hambleton. The Pentagon listed the five other crewmen, including Serex, first as missing in action and then, after six years, as dead.

Like so many MIA families, Serex's wife, Barbara, and two daughters, Jennifer and Katheryn, received short shrift from the Pentagon, which gave them only the barest bits of information.

That was still the state of the family's knowledge when a Senate select committee began looking into the MIA issue in late 1991. At a hearing in 1992, the committee took up the evidence of satellite photos that showed apparent MIA distress signals marked into the ground in both Vietnam and Laos. One such photo showed what appeared to be an MIA's name. This testimony came from Robert Dussault, a government expert who devises distress symbols and trains pilots in how to use them. In his public appearance before the committee in October, 1992, Dussault was specifically asked not to give the name of the MIA he found on the photo. The name, drawn on the ground in capital letters, did not get out for another six months. It was S-E-R-E-X.

The Pentagon never told the Serex family about this photo, which had been recorded by satellite on June 5, 1992, four months before the committee hearings. What the Pentagon did do, however, was to say that Dussault didn't know what he was talking about. Its experts at the Defense Intelligence Agency, said the Pentagon, had found conclusively that the distress markings Dussault thought he had seen were only shadows and vegetation.

But grass and furrows and shadows are exactly the explanations the Pentagon has been giving for 20 years, ever since the war ended amid compelling evidence that a large number of American prisoners had not been returned. Every time the satellite imagery seems to show a name or a distress symbol or the secret four-digit authenticator number of a particular pilot, the DIA immediately steps in to say that it's only shadows and natural contours. Sometimes they call the distress symbols a "photo anomaly" — meaning something you see but really isn't there. Independent experts in photo analysis consider this a bad joke, saying that when you see something it's usually real.



Sydney H.
Schanberg

Dussault came across the SEREX photo on Aug. 13, 1992, while at the Central Intelligence Agency's headquarters. He had been invited there to brief CIA photo interpreters on his area of expertise — distress signals. Early in his career, Dussault was also schooled in photo imagery. Now he is the deputy director of a Pentagon unit called JSSA — Joint Services SERE Agency. The SERE stands for Survival, Evasion, Resistance and Escape.

While he was briefing the CIA men, they brought out several satellite photos to show him some of the areas they had photographed. Among the photos was a blown-up print, about 2 feet by 2½, of a piece of a field alongside the Dong Vai prison in North Vietnam. "My eyebrows went way up," Dussault told someone later.

On the photo, he saw not only the letters S-E-R-E-X but a string of nine or 10 numbers above it and a legend below it that read "72TA88." T and A, said

Dussault, were distress letters assigned to pilots in 1972, the year Serex went down. Struck hard by the photo, he circled the symbols in red ink.

At first, Dussault didn't realize SEREX could be a name. He thought it might be a pilot using the JSSA's survival acronym, SERE. It nagged at him, though, so he went and checked the list of missing men. And there was Henry Muir Serex.

But then, suddenly, the CIA fell in line with the Pentagon. A month or so after his briefing, it told Dussault that what he had seen was a mirage.

Dussault described the before and after in testimony to the Senate committee: "The CIA guys . . . said look, we saw the numbers. They admitted seeing the same numbers I did.

When I circled it, they were right there and they said yeah, we saw it. But when we met a week ago, two weeks ago . . . they briefed the fact that they tried to go back to the original . . . they did a digital on this thing, looked at it on a light table, and it wasn't there . . . that stuff wasn't there." The CIA told him, he said, "It must have been an anomaly, photographic anomaly."

This same division over what was there and what was an "anomaly" extended to all the satellite evidence brought before the Senate committee — more than 40 different sets of ground markings. The panel sought to defuse the controversy by bringing in an independent expert. They found Larry Burroughs, retired from Washington service where he had headed the government's main imagery lab, the National Photographic Interpretation Center, an arm of the CIA. The Pentagon sympathizers on the committee, however, wanted someone more to their liking and hired Carroll Lucas, a private analyst who had done a lot of work for the Pentagon.

— Continued on Next Page

Newsday

FRIDAY, JAN. 7, 1994

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NOW!

The Photo: Shadow or MIA Distress Code?

— Continued from Previous Page

The results were not surprising. Burroughs found several authentic distress markings. Lucas said they were all shadows and vegetation.

The SEREX photo was not among the 40 or so images they were given to examine, perhaps because the particular image that showed the SEREX markings was not provided by the CIA or Pentagon. As experts will tell you, a satellite, as it scans over an area, will record many images of the same section over a period of time, say an hour. Differences in angle and time of day will produce quite different images, and all of the images are authentic. Just because a shape or marking does not show in one frame does not mean it doesn't exist.

In any event, though Burroughs and Lucas were not shown the specific image Dussault saw, they did examine a number of images from fields close by. Lucas found only shadows and vegetation. Burroughs found several markings, including one — "GX2527" — that matched the distress letters and secret four-digit number of Air Force Col. Peter Matthes, missing since 1969. Burroughs said a number of the symbols around Dong Vai prison seemed to be old, and he recommended the use of special photo processing techniques. The Dong Vai prison is no longer being used, but in the late 1970s — long after 1973, when Hanoi said it had returned all prisoners — U.S. intelligence received reports from local sources in that area who said Americans were being held in that facility.

While none of Dussault's or Burroughs' findings on the SEREX or other photos prove conclusively that the specific men indicated in the markings actually made the distress symbols themselves or that they are alive today, these markings, if authentic, had to have been made by men familiar with the assigned symbols and code numbers —

that is, by American prisoners.

Despite all the official activity on the SEREX photo, the family was still given no information. It was not until April 15, 1993, nearly a year after the image was recorded, that they learned of its existence — not from the Pentagon but from a television talk show where the photo was cited by former congressman Billy Hendon, an MIA activist.

From that moment, this distressed family — the two now-grown daughters and their mother, Barbara, who remarried after the Pentagon declared her husband dead — has been pushing Washington for a chance to view the satellite imagery.

Helping the family deal with the Pentagon is Sen. Bob Smith of New Hampshire, who was vice chairman of the Senate committee and is the most active member of Congress in trying to pry MIA information out of the intelligence establishment. Smith himself viewed the SEREX imagery and saw the distress signals on a visit to a government imagery center in November 1992.

Yet even with Smith demanding that the family requests be granted, the Pentagon dug in its heels.

For example, the family, in letters and phone calls, asked the Pentagon to let them view the precise blown-up SEREX print on which Robert Dussault circled the symbols in red ink. They also asked to see all digital satellite imagery plus negatives and positives related to that exact photo.

The Pentagon agreed to a meeting — set for next Monday — but it completely ignored the family's requests to view this photo. Instead, Edward Ross, who heads the Pentagon's POW/MIA office, and his deputy, Col. Joseph Schlatter, both of whom have spent years in efforts to debunk MIA evidence, responded in a Dec. 30 memo sent to the family that "photo analysts do not use 'positives or negatives' or prints when analyzing imagery" because these

'Grass and shadows are exactly the explanations the Pentagon has been giving for 20 years.'

"are not suitable for serious analytical work." They said they would be showing the family only "the Primary Imagery Record and computer-assisted enhancements." This primary record is a reference to the satellite's system of transforming light signals into digital signals, which are then displayed and enhanced at high-resolution workstations that are like very advanced television units.

The memo's edict about what materials were not usable for analysis was as close to a flat-out lie as any gobbledygook can get. What Ross and Schlatter, neither of whom has any training in photo imagery, forgot to mention was that analysts use not only the digital images on high-resolution workstations but concurrently transform the digital images into negatives and positives and 3-D images and view these film images on light tables. They also forgot to mention that specialists who might be hostile to their visitors' goals can, on those workstations, change the color and contrast and fix it through massive enlargement so that all the markings suddenly blur and disappear.

Ross and Schlatter apparently also forgot the testimony that then-Assistant Secretary of Defense Duane Andrews, a trained photo interpreter, gave to the Senate committee on Oct. 15, 1992. Andrews explained that imagery experts need and work with precisely the materials the Serex family had asked for — film negatives, film positives and 3-D images. He said that the digital signals produced these materials by projecting "laser light onto a film negative," with other techniques being used "to view the image as if it were in three dimensions."

In short, imagery-trained Andrews defined as important all the materials that Ross and Schlatter, untrained, said "are not suitable for serious analytical work."

In the last few days, pressure on the Pentagon has increased — from the family and Sen. Smith. There has also been fallout from my earlier column, which triggered other press queries.

Thus, on Tuesday, only five days after the Dec. 30 rejection, Schlatter called Jennifer Serex-Helwig and told her the family would be shown all the materials they had asked for.

The meeting is scheduled for Monday afternoon in Washington, with the Serex family flying in from the West Coast. Smith and Dussault and Burroughs will be there at the request of the family. The Pentagon will produce an array of officials. Schlatter also told Jennifer Serex-Helwig that Lucas, the photo interpreter who does consulting for the Pentagon and who always finds nothing but shadows and vegetation, was being invited as well.

Jennifer Serex-Helwig, a mother of three who also works, says the struggle with the Pentagon has left her very stressed. "I have a hard time sleeping," she said by phone from Sacramento. "I wake up composing letters to the president. I find myself in the shower at six in the morning bawling my eyes out and talking to my dad, saying I'm sorry for what happened to him. It's been very hard."



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THE POW/MIA FAX NETWORK

Laos May Hold the Key to Missing MIAs

ON TUESDAY, the State Department opened the door to the possibility that American POWs from the Vietnam War could be alive in Laos. Yet no major newspaper carried the story.

Thus, today, we take up one more facet of the MIA scandal — the ability of the mainstream press to ignore the evidence that a large number of American prisoners, perhaps hundreds, were not returned by Hanoi at the end of the war — and that some of them may still be alive.

What happened on Tuesday was that the State Department released its answer to questions that had been posed the day before by reporters at a regular briefing. They had asked a department spokeswoman for the agency's comments about recent reports, based on archival documents, that prisoners had been left behind in Laos.

The department's answer first quoted from a 1993 Senate report that said "American officials did not have certain knowledge that any specific prisoner or prisoners were being left behind."

The State Department followed this with its own new, divergent comment: "However, we cannot rule out the possibility that live Americans may be held in Laos."

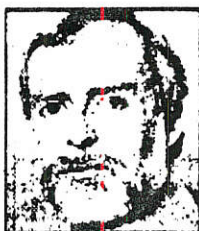
Then came another stunner, in which the State Department pointed its finger directly at Hanoi. It was a response that went beyond what the reporters had asked about at the briefing. It said: "505 Americans remain unaccounted for in Laos. . . . However, more than 80 percent of the persons unaccounted for in Laos were actually lost in areas under the control of the North Vietnamese."

This is the strongest language about unreturned POWs to emerge from official Washington since Operation Homecoming 21 years ago. That was in early 1973, when the peace agreements were signed and Hanoi sent back 591 men, contending these were the only prisoners they had. President Richard Nixon publicly accepted that explanation, in the face of powerful contradictory evidence. At the time, Nixon was caught in the toils of Watergate and was trying frantically to dump the Vietnam issue so he could focus on his cover-up troubles.

Since then, official Washington — in particular the intelligence community — has insisted there is no credible evidence that any men were left behind or are alive there today.

Here is a statement made only two months ago by Edward Ross, who heads the Pentagon's MIA office, in a reference to Operation Homecoming: "The U.S. Government is confident that the 591 POWs and 30-something bodies of men who died in captivity were all the prisoners held in North Vietnam."

It's worth noting that Ross, perhaps as an "out," narrows it to "held in North Vietnam." Like all Pentagon statements in recent years on MIAs, his comment carefully says nothing about the possibility of prisoners in Laos. But back in 1973, amid Operation Homecoming, U.S. military intelligence publicly listed 311 men as missing in Laos and said most of them were believed to be living prisoners.



Sydney H.
Schanberg

The Vietnamese returned nine of these men. The Laotians returned none.

Laos has always been known as the "black hole." One reason for the name was that, unlike Vietnam, the war there was covert and CIA-run. Another reason was the belief that, in addition to the men who specifically went missing in Laos, other prisoners were moved into the small, Hanoi-dominated country by the North Vietnamese to preserve the technical accuracy of Hanoi's contention that no prisoners were being held on its soil.

I have digressed, for history's sake, to underscore the unusualness of the State Department declaration that "we cannot rule out the possibility that live Americans may be held in Laos." The statement is even more unusual for pointing out that 80 percent of the missing in Laos were lost "in areas under the control of the North Vietnamese." This clearly suggests that Hanoi is the responsible party, and it belies all the recent Washington statements that Hanoi has been cooperating impressively on the MIA issue.

In short, the State Department declaration had all the obvious earmarks of an important news story, or at least one that needed reporting for the record.

My researcher, Carolina Miranda, made a database search of the leading newspapers. None of them, including Newsday, ran this story — not The New York Times, not The Washington Post, not the Los Angeles Times and not The Wall Street Journal.

Not a word.

The only story we could find was the piece filed by the diplomatic correspondent for United Press International, Sid Balman Jr. His dispatch plainly noted the statement's significance.

"It leaped out at me," said Balman. "Clearly, they went out of their way to make these points about Laos — and about Hanoi."

Yet no major paper picked up his dispatch. Not only that, but Balman's colleagues at the other wire services ignored the story completely.

Alan Elsner of Reuters said he didn't file anything because "I didn't think it was a story in its own right." George Gedda of the Associated Press said, "It must have just fallen through the cracks."

These journalists are hardly alone. With but a few exceptions, the mainstream press — especially the Washington corps — has been ignoring this story vigorously for 20 years. Maybe it's out of embarrassment; they might feel that picking it up now would be a mortifying admission of earlier failure.

Strange, isn't it, that the press sent hundreds upon hundreds of reporters to cover the war in Vietnam and yet can't find even a few to look into what happened to the men who went missing there.



WAIT



NOW!

Newsday

FRIDAY, JAN. 14, 1994

*'Of the leading newspapers,
none of them ran this story.
Not a word.'*

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"THE POW/MIA FAX NETWORK"

A Loss for Honesty

NEWSDAY, FRIDAY, JANUARY 28, 1994

on the Senate Floor

WHEN RUMPLED Sen. Bob Smith of New Hampshire presented the Senate on Wednesday night with new evidence of American servicemen who were prisoners but never returned by Vietnam, his opponent on the MIA issue, the lean and sartorially polished Sen. John Kerry of Massachusetts rose in reply, struck a Kennedyesque pose and put on display his ignoble side.

Emoting disdain, he tried to brush off Smith's very tangible evidence, some of it based on newly exposed CIA and Pentagon intelligence reports, as "a lot of allegations" that Smith had "thrown out" to the Senate. Without refuting a single piece of Smith's core information, Kerry dismissed it as "intelligence reports or some old reports taken out of context or something . . . but it is not real evidence."

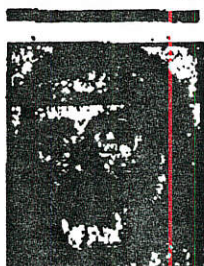
The issue on the Senate floor was whether to pass a Kerry-sponsored amendment calling on President Bill Clinton to lift the U.S. trade embargo against Vietnam "expeditiously" or instead pass a Smith amendment requiring the president, before ending the embargo, to certify that Vietnam has provided the United States "with the fullest possible unilateral resolution of all cases" of missing men.

Kerry's resolution won, by a vote of 62-38, but the real issue on the Senate floor was not about an embargo. It was about being honest.

For 20 years, as all the evidence now shows, our government has known that a significant number of prisoners were held back by Hanoi at the end of the war, probably as bargaining chips for reparations. And for 20 years, no president has had the courage to say out loud — and risk the ensuing embarrassment — that we left men behind and it was shameful. To admit such a thing, it must have seemed to the White House, could damage or even destroy the careers and reputations of all those men in high Washington places who, administration after administration, felt it necessary to try — to maintain this tragic secret.

John Kerry, himself, despite the mountain of confirming intelligence data that came before him in 1992 as chairman of the Senate Select Committee on POW/MIA Affairs, somehow could not manage to say forthrightly, in the committee's final report, the one simple truth — that men had been left behind in our haste to get out of Vietnam in 1973.

And now, the less polished Bob Smith, vice-chairman and dissenter on the committee whom Kerry had mocked in private and who has fought for full disclosure on the prisoners for 10 years, was standing on the Senate floor and putting evidence on the table where Kerry could only place his rhetoric.



Sydney H. Schanberg

Smith was also reminding the urbane Kerry that his main argument for passage of the embargo-lifting resolution — that it would encourage Vietnam to come forward with more information on prisoners — was hardly the argument he had given in a letter that he and seven other senators had

sent to President George Bush three years ago. "We urge you promptly to lift the U.S. trade embargo on Vietnam," said the letter. "The time has come to stop penalizing American business interests. Trade with Vietnam would foster American interests across the board."

Perhaps this is what turned Kerry into his mean-spirited mode. He does not like having others point out his habit of double-talk and slick shifts of position.

Instead of responding to Smith's solid intelligence data about prisoners in Vietnam and

Laos "from which no American POWs ever returned" and about other prisons where witnesses reported that Americans had died long after the war and were buried in marked cemeteries alongside the buildings, Kerry launched into a diatribe about every "fake" report of prisoner sightings he could dredge from his memory. "This process," he declaimed, "has been led by a certain number of charlatans and exploiters, and we should not allow fiction to cloud what we are trying to do here."

Are you talking about me? Smith asked his colleague.

"No," replied a sarcastic Kerry, "I referred to the people on the outside who have been raising moneys. Has the senator been raising money?"

Badly for Kerry, the passage of 10 thousand, or even 10 million, resolutions cannot make up for wants in a man's character.

This is not to suggest that no men of character voted for John Kerry's resolution. Such was not the case. Bob Kerrey of Nebraska, for example, always impresses as a person of integrity. He happens not to view the issue from the same perspective as Smith. In his speech, he said he felt it was time to move on. "The [MIA] families have suffered not only the lies of this government but of the Vietnamese government as well," he said, expressing the opinion that the families would benefit from an opening up of relations. But none of it would mean anything, he argued, unless we went back to Vietnam with the same message we said we were fighting for, a commitment to democratic freedoms and multiparty government. "I find this missing in our policy," he said.

Smith can equally claim the field of honor. He believes that before we can come to terms with our loss in Vietnam and put it behind us, we need the truth about what happened to the prisoners who didn't come home. Only then, he says, can their spirits be put to rest.

"Do you want to drill for oil," Smith asked in the Senate debate, "before we find out what happened to those guys?"

That question still needs answering.

*'Kerry does not like
having others point out
his habit of double-talk.'*

WHEN ONE AMERICAN IS NOT WORTH THE EFFORT TO BE FOUND.
WE AS AMERICANS HAVE LOST

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"THE POW/MIA FAX NETWORK"

POW/MIA Facts: Just Too Troublesome

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TODAY WE WILL examine a number of intelligence reports about American POWs held in North Vietnamese prisons from which no live prisoner was ever returned.

All of these recently declassified reports, from both the Central Intelligence Agency and the Pentagon's Defense Intelligence Agency, discuss sightings of prisoners in the late 1970s, long after the peace accords of 1973, when Hanoi returned 591 prisoners and claimed these were all the POWs it was holding. Some of the reports tell of Vietnamese sources who say they witnessed burials of American prisoners who died of disease, starvation and harrowing labor conditions. The sources were deemed credible by the intelligence investigators. Some were given polygraph tests; they passed.

Here are excerpts from reports on one of the prisons — in Quyet Tien, near Vietnam's northern border with China:

"Source [a Vietnamese who was interned there] claims to have observed 50 or more American prisoners. These prisoners were brought to Quyet Tien as a group in late 1973-early 1974 and were still there when source was moved to another camp in mid-1977.

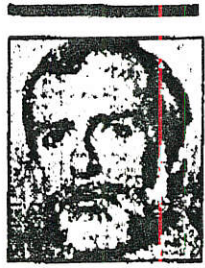
"Source had no specific information about these prisoners whom he claims to have observed from a distance of 30 to 50 meters on a daily basis . . .

"Based on analysis of polygraph charts, it was the opinion of the examiners that there was no deception in the answers to questions concerning his observations of prisoners he was told were Americans."

Another report on Quyet Tien, from a Vietnamese source who was part of a circus group sent in to entertain the cadre at this remote camp, said that the "source claimed that she also observed [in addition to South Vietnamese military prisoners] a small group of male Caucasian prisoners (six to seven) . . . Source heard from the camp commander . . . that the Caucasians were U.S. pilots . . ."

When I tried to discuss this and other reports like it with Sen. John McCain (R-Ariz.) on the Larry King radio show last Friday, McCain, who has sought to debunk all data about prisoners who were not returned, quickly dismissed it as "raw files." Without having examined the documents or spoken to the intelligence investigators who gathered them, McCain said there couldn't have been a camp near the Chinese border with American POWs in it "because we would have known about it."

McCain instead changed the subject and lapsed into name-calling against POW/MIA activists, a tactic he resorts to frequently when the facts get in his way. For example, in last Wednesday's Senate debate on a McCain-sponsored resolution seeking an end to the economic embargo against Vietnam, the senator ignored the hard evidence and went into a diatribe against "the professional malcontents, conspiracy mongers, con artists and dime store Rambos who attend this issue . . ."



Sydney H. Schanberg

In order to knock down intelligence reports such as those on Quyet Tien prison, one cannot simply wave them off as "raw files." Rather, you need to produce further information showing compellingly that the earlier reports were not credible. No such further reports have surfaced.

Let us look at some of this other intelligence. A former inmate at the Thanh Phong camp told American investigators that "the American prisoners who were on work detail were not allowed to go further than 100 meters from their enclosures. Source said that a farmer, Hoan, had shown him the site of a cemetery for American prisoners of war. Hoan said that there were 40 bodies in the cemetery. Source said . . . he could see the mounds of about 30 graves. Source said that from October, 1979, through November, 1980, he saw the funerals of 10 American prisoners of war."

Another report, obtained in 1981 about an event in 1978: "Viet female refugee, former school teacher . . . observed 15-20 Americans at location approximately 10-15 kilometers west of An Thuon railroad station . . . under guard, on a work detail." The intelligence interviewer wrote that he "believes that [the] report is credible."

And about Ha Son Binh prison, a source in 1982 told of 20 POW graves there. The source said that in 1979, he "and three other persons had buried an American pilot" who had died of malaria.

This is but a sampling. There is much more. Yet not one of the prison sites mentioned above has been visited by the American military search teams now operating in Vietnam. Still, the Pentagon blindly contends there is no body of evidence that there were prisoners held after 1973. And senators like McCain and Democrat John Kerry of Massachusetts (cosponsor of the embargo-lifting resolution, which passed) insist that Vietnam's cooperation in the MIA search has been impressive.

The prison intelligence data were part of a larger body of evidence produced two weeks ago by the American Legion and other veterans' organizations. It was presented in a meeting with White House officials, since the Senate resolution is non-binding and it is the president who must decide whether to lift the embargo.

Kerry reacted to the veterans' groups by sneering at them. Said Kerry: "I think it was Jack Kennedy who said of the American Legion back in the 1960s they had not had an original idea in 25 years. Well, now maybe it is 50."

It's an old and hallowed tradition of knaves. If the facts aren't on your side, ignore them and smear the other guy.

Newsday

TUESDAY, FEB. 1, 1994

POW Pilots Left in Laos, Files Suggest

Evidence Emerging
That Officials Knew
Locations of Prisons

By Thomas W. Lippman
Washington Post Staff Writer

From a huge archive of documents about the Vietnam War declassified in recent months, new evidence is emerging that some American pilots held prisoner in Laos were not released at the end of the war, and that U.S. intelligence officials might have known where some of them were.

The Defense Department lists 330 Americans, almost all pilots and crew, as missing in action in Laos. Most were certainly killed when their planes crashed in the remote jungles of the mountainous, sparsely populated country.

Officially, only two American fliers, Col. Charles Shelton and Lt. Col. David Hrdlicka, are known for certain to have been alive in custody of pro-communist Pathet Lao rebels. Shelton and Hrdlicka died in captivity in the 1960s, Pentagon officials believe. No other reports, whether from human sources or aerial photographs, of Americans held prisoner by the Pathet Lao have ever been verified, according to the Defense Department.

But declassified documents from the State Department, the Central Intelligence Agency and the Defense Intelligence Agency provide some support for those who argue that the number of prisoners was considerably higher, perhaps as high as 41 Americans.

Some military intelligence specialists and prisoner of war activists have believed for years that U.S. prisoners may have been left behind in Laos. Senior officials of the Nixon administration, in anguished testimony before a Senate committee in September 1992, acknowledged that they feared it was true at the time but said they decided then there was little they could do.

The truth about Laos has eluded military specialists and diplomats for two decades, and Laos remains the black hole of the long, bitter story of the more than 2,200 American ser-

A30 SUNDAY, JANUARY 2, 1994

SUNDAY, JANUARY 2, 1994

THE WASHINGTON POST

The Washington Post

U.S. May Have Known Locations of Some POWs in Laos After War

LAOS, From A1

vice personnel still unaccounted for. Of the 591 Americans released by North Vietnam in "Operation Homecoming" in 1973, only nine had been captured in Laos, and they were in custody of North Vietnam, not the Laotians. None had been held by the Pathet Lao in areas of northeast Laos where, according to some intelligence documents, groups of downed U.S. fliers were kept prisoner. Aside from Shelton and Hrdlicka, the identities of such fliers taken prisoner, if in fact that occurred, and their fates remain unknown.

In the negotiations with North Vietnam that produced the Paris Peace Agreement and ended U.S. involvement in the war in January 1973, President Richard M. Nixon's national security adviser, Henry A. Kissinger, repeatedly sought assurances from the North Vietnamese that they would deliver all U.S. prisoners "throughout Indochina" in the postwar prisoner exchanges.

The United States never acknowledged officially participating in a war in Laos, and Laos was not a party to the Paris accord. U.S. negotiators believed, however, that the Pathet Lao communists were, in Kissinger's term, "stooges" of the North Vietnamese, and would deliver their prisoners if ordered to by Hanoi.

U.S. officials were shocked when only nine were delivered from Laos, according to declassified documents and testimony at the 1992 hearings.

Lawrence S. Eagleburger, then a senior Pentagon official and later secretary of state in the final months of the Bush administration, wrote in a memo to his then-boss, Defense Secretary Elliot L. Richardson, that after the last of the acknowledged prisoners had been released the United States should stage a "démarche," or diplomatic initiative, on the Laotians about the rest.

"This initiative should plainly and forcefully assert that the U.S. will no longer play games with the POW issue in Laos," said the memo, written a week before the final prisoner release. The Laotian communists "should be told that we have reason to believe they hold additional U.S. prisoners, and we demand their immediate release, as well as an accounting and information on all those who may have died."

But the United States had little leverage over Laos or North Vietnam. Kissinger, furious at being accused, in effect, at the 1992 hearings of having knowingly abandoned U.S. prisoners, argued that Congress would not have permitted a resumption of the air war in a campaign to force the release of prisoners whose location and identities were unknown, if such prisoners existed.

Nixon, in an address at the end of Operation Homecoming, said, "All of our American POWs are on their way home." Later in the same speech, he said provisions of the Paris agreement regarding Laos "have not been complied with," but he did not indicate there might still be U.S. prisoners there. Several times in the next few months of 1973, he repeated that all prisoners had come home.

But the declassified documents show there was intelligence information that the Pathet Lao held some U.S. fliers in caves near Pathet Lao headquarters in Sam Neua, in northeastern Laos, near the border with Vietnam.

Asked by a House panel in 1976 how it could be that none of more than 300 Americans lost in Laos could be a prisoner, Vernon E. Walters Jr., then CIA deputy director, wrote, "this question has been very disconcerting to the intelligence community also. We have information that some of these 300 individuals survived their shootdown incident. Admittedly, the number is small."

If any of the intelligence information was correct, the apparently inescapable conclusion is that some men were abandoned to their fates when the last U.S. troops left Indochina, unless the Pathet Lao killed them, as some U.S. officials believe.

Among the documents supporting this view:

■ A January 1973 CIA listing of "confirmed enemy prisons" in Laos, with locations. Several of these carry descriptions of the likely inmates: "American prisoners," "American pilots (possibly 20)," "approximately 15 American prisoners" and "American pilots (possibly in a cave)."

■ Minutes of a Washington inter-agency meeting, about the same time, in which the Defense Department representative is recorded as saying, "We don't know what we will get from Laos [in postwar prisoner exchanges]. We have only six known prisoners in Laos, although we hope there may be 40 or 41. We have known very little about the caves where they keep the prisoners in Laos. We just got the first photos of those caves recently and our impression is they are pretty big. We think they are holding a lot more than six prisoners there."

■ A Defense Intelligence Agency account of a Laotian communist soldier, described as "cooperative... intelligent... sincere... has a good memory," who entered a cave in northeastern Laos in March 1972 to replace the batteries in a field telephone. There, he said, he encountered three American, four Thai and four royalist Laotian prisoners, all said to be healthy and adequately fed. They had books and a guitar for entertainment.

■ A 1970 CIA report saying that "until recently, the Ban Nakay Neua [a location] prison complex was the only prison facility in Laos known to contain American POWs."

Ban Nakay Neua was the region of northern Laos where prisoners were believed to have been held in caves. None of the Americans released from Laos in Operation Homecoming had been held there, so what happened to the prisoners "known" to have been in the caves?

■ A 1992 deposition given to Senate investigators by Bobby R. Inman, now President Clinton's nominee to be secretary of defense and a senior naval intelligence officer at the time of the 1973 prisoner releases, in which he testified that "in '73 a large number of us thought there were [prisoners in Laos], simply because we had known people had gotten to the ground, that there were substantial prisoners in Laos that were unaccounted for...."

Inman added, however, that he later changed his opinion. When none of those men ever surfaced or was found, he said, he decided that either the original assumption of their safe landing was incorrect or the Pathet Lao shot the prisoners rather than keep them.

Also in the files is a 1992 CIA memo saying that "photographs taken by a reconnaissance aircraft in October 1969 show what may be as many as 20 non-Asians accompanied by Pathet Lao guards near caves" at Ban Nakay Neua.

This was a reference to the "volleyball photos," a subject of furious disagreement in the intelligence and MIA activist community since their existence became known almost a decade ago.

To the untrained eye, these aerial photographs of a jungle clearing appear to show 20 non-Asian men in identical clothing, surrounded by armed men in the black uniforms often worn by the Pathet Lao. In some of the prints, the non-Asian men appear to be playing volleyball.

Defense Department officials



long have insisted that expert analysis of these photos shows they are not what they appear to be. But activists who believe the Pentagon has a "mindset to debunk" such information, including Sen. Robert C. Smith (R-N.H.), are citing the CIA memo as validation of their belief that the photos show American prisoners who never came home.

None of the evidence is conclusive. The DIA repeatedly has argued that no information has ever been verified that would show specific American individuals at specific locations, aside from Shelton and Hrdlicka. But if that is true, the MIA activists and family groups ask, why did the CIA organize a clandestine rescue mission into Laos in 1981?

As with Vietnam, the nearly 500 reels of microfilmed documents

made available at the Library of Congress in recent months contain many reports that American prisoners were seen in Laos after the end of the war. According to these "live sighting" reports has ever been verified except for those dealing with Marine Pfc. Robert Garwood, who stayed in Vietnam after 1973 and returned in 1979.

But in preparation for a 1981 meeting with the Laotian ambassador to the United Nations, the State Department prepared "talking points" that said:

"In 1973, the Pathet Lao representative in Vientiane conveyed to U.S. a message from Sam Neua in reply to our request for information on the U.S. POWs captured in Laos. The message stated, 'The POWs will be released by [the Lao communists] in Laos, and not by the North Vietnamese in Hanoi.' The release of from Hanoi can hardly be considered an accounting by the Lao government. Request your government as to the number and identity of Americans that were held and how many are still held."

Even today, revelation of a State Department request for information about "how many are still held" in 1981 is like waving a red flag before the activists who believe prisoners still may be alive.

One of them is David Hrdlicka's wife, Carol, who never accepted the Pentagon's assertion that her husband died in captivity in the 1960s. "They want to know, where's the proof he's alive," she said. "I say, you look at this stuff that's coming out, and I want to know, where's the proof he's dead?"

For symbolic reasons, St. the only American still listed as a prisoner of war in Indochina, although the Pentagon believes he too died 25 years ago

HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
TESTIMONY BY CHARLES M. YUNKER, ADJUTANT
KANSAS AMERICAN LEGION
ON HOUSE CONCURRENT RESOLUTION 5031

On behalf of the more than 90,000 members of The Kansas American Legion, American Legion Auxiliary and Sons of The American Legion, I deeply appreciate the opportunity to testify today in favor of House Concurrent Resolution 5031.

Given the recent 62-38 vote by the United States Senate which urges the Administration to lift the U.S. Economic Embargo against Vietnam there are four major pressures on the President to lift the embargo: the U.S. Senate; Commander in Chief of the Pacific Command Admiral Larson; various White House Advisors and many American business firms. The American Legion urges expedient passage of HCR 5031 as a meaningful step in obtaining a full accounting of not only those Kansas citizens listed as POW/MIA, but all Americans who served this nation in southeast Asia.

Whether you served in the military during the Vietnam War or protested against it; whether you were in favor or against United States policy at that time or now, we should not, can not, turn our backs on those who served in the military. If we do, what kind of message are we sending the POW/MIA's, their families, and our nation's past, present and future adversaries? That the United States will forget its military personnel for the sake of economic gain by a few. Economic growth is important to the future of our nation but at what cost? What kind of nation turns its back on those who serve it by carrying out its policies?

If there are live American POW's in Southeast Asia imagine their thoughts when they are told America has truly and totally forgotten

FLSA
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Atch #5

them. Please remember in the late 1960's and early 1970's Vietnam released French POW's they denied holding since the early 1950's. Documents obtained from Russia substantiate that Vietnam held hundreds more American POW's than Hanoi ever publicly acknowledged.

Despite what some would have you believe, Vietnam is not doing all it can to provide a full accounting of American POW/MIA's. I make that statement based on several conversations I have had with Mr. John Sommer of The American Legion's National Office in Washington, D.C. Mr. Sommer has followed the POW/MIA issue very closely for several years and has made three fact finding trips to Vietnam in the last three years on behalf of The American Legion. Mr. Sommer also conferred privately before and after two Topeka Vietnam veterans travelled with Governor Finney's representatives to Vietnam. I know both of these Vietnam Veterans and one, Mr. Ward Downey, has told me Mr. Sommer was both helpful and knew what he was talking about. My point is I choose to believe John Sommer.

In closing I want to thank each sponsor of HCR 5031 and urge your immediate passage by this Committee and ask that it be placed before the full House as soon as possible. We must keep faith with American POW/MIA's and their families until Hanoi provides the fullest possible accounting which has been defined as turning over live prisoners, repatriating the remains of those who were killed in action or died in captivity, or by providing a valid conclusive report why neither is possible.



Arthur W. Solis, Commander
KANSAS CITY FORUM CHAPTER

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WRITTEN TESTIMONY
OF
ARTHUR W. SOLIS, COMMANDER
AMERICAN GI FORUM OF KANSAS CITY
TO THE
HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS
FEBRUARY 2, 1994

INTRODUCTION

The AMERICAN GI FORUM OF KANSAS CITY is a duly chartered local chapter of the *American GI Forum of the United States*, a national veterans family organization. The American GI Forum of Kansas City is one of several local chapters of the State of Kansas American GI Forum. Though predominately Hispanic, membership in the American GI Forum includes individuals of all ethnic and racial groups.

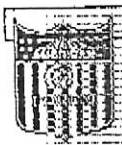
Hispanic Americans who are veterans have played an important role in every one of our Nations's conflicts. Indeed, Hispanic veterans have been awarded more *Medals of Honor* per capita than any other group represented in the veteran population. Hispanic veterans have been consistently overrepresented as a percentage of wartime casualties.

HOUSE CONCURRENT RESOLUTION NO. 5031

The *American GI Forum of the United States* has reiterated its opposition to the lifting of the trade embargo against Vietnam until all Americans are accounted for. Thus, consistent with our national organization's position regarding POWS/MIAS, the *AMERICAN GI FORUM OF KANSAS CITY* endorses and supports HCR No. 5031, a concurrent resolution requesting the Kansas Attorney General to commence action in the United States Supreme Court to obtain information about Kansas POWS/MIAS in Southeast Asia.

We, as Americans, are deeply indebted to all those who have sacrificed. While there may be differing opinions whether to lift the trade embargo against Vietnam — with many feeling the U.S. should not make any concessions until all American are accounted for — the *AMERICAN GI FORUM OF KANSAS CITY* suggests that HCR No. 5031 provides a meaningful and necessary effort to resolve the POW/MIA issue.

The *AMERICAN GI FORUM OF KANSAS* respectfully requests this committee act favorably and promptly on HCR No. 5031.



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Drive to Open Business Ties to Vietnam Troubles Vet Leaders

SAN ANTONIO, TX— The National Commander of the American GI Forum, Juan Mireles is supporting the stand of other veterans groups in finding out the fate of POW's MIA's before opening the doors to trade with Vietnam.

"Where the fate of our Vietnam POWs and the feelings of their families are concerned, business interests are beginning to

optimistic, at best, and deliberately deceptive, at worst."

Those reports are being used by some within the administration and by some U.S. businesses to justify lifting the 19-year-old ban against trading with Vietnam.

"In 1993, we received from the Vietnamese the remains of only two service men that could be identified," he said. "American investigators in Vietnam, despite reports by their



We must for the sake of all those people concerned, find out what's happened to all those still missing."

—Mireles

overshadow the interests of simple decency," said Bruce Thiesen, national commander of The American Legion.

"We must assure the American people, especially those who still have husbands, fathers, brothers, and sisters that are still unaccounted for," said Mireles, "that we must exhaust all our efforts before we can open up trade with a former enemy. We must for the sake of all those people concerned, find out what's happened to all those still missing."

Thiesen said reports of improved cooperation by the Vietnamese government in resolving the fate of missing POWs are "overly

leaders of improved cooperation with the Vietnamese, are hindered by the presence of official 'handlers' wherever they go."

Thiesen, and other Veteran group leaders are particularly troubled by the reluctance of the administration to follow-up on reports that former U.S. service men are still being held in Vietnam or Laos.

"It's become politically correct to believe that all live-sighting reports are bogus," Thiesen said. "The reality is that we don't know what happened to 2,248 Americans. We shouldn't close any doors until we've explored every hallway."

AGIF National Commander,

Juan Mireles echoes the National Commander of the American Legion in calling for "no-holds-barred, call-in-every-clip, twist-every-arm campaign" by veterans to stop the U.S. government from lifting the trade embargo with Vietnam.

"It's sad when American businesses, will be allowed to make

Continued on page 7

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Vet Leaders Fight to Stop Vietnam Trade

Continued from Page 1.

the final decision on the fate of 2,239 service men missing from the Vietnam War," said Mireles, top officer in the largest member Hispanic veterans group. "We have to call in all our chips, write letters to our representatives, our senator in every state where we have chapters and put a stop to this until the MIA problem is resolved."

Thiesen, Commander of the American Legion, in an unprecedented call for action, has also ordered the 16,000 local posts

"Economic pressure is the only leverage we have to move Vietnam toward a full accounting of our missing service members."

belonging to the nation's largest veterans group to begin mobilizing letter-writing and telephone campaigns.

Legion officials in Washington have begun laying down the foundation for a coordinated effort with the nation's other veterans groups, large and small. Meantime, the American GI Forum, the largest Hispanic veterans group has also begun plans for an all out effort at the Austin, Texas National Headquarters.

"This is one of the Hottest items in our agenda, and we as veterans owe it to all those who served, who gave their lives not to forget their comrades that are still unaccounted for—we must continue the fight to find and identify every American that ever served in Vietnam," Mireles said. "I'm urging every member to write or call their congressman, their senators, the White House and anyone that might help us with this effort."

"Economic pressure is the only leverage we have to move Vietnam toward a full accounting of our missing service members." Thiesen said. "American's veterans aren't going to forgive—or forget—about the businesses that put their profit margins ahead of the interests of our POWs or their families."



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KANSAS BUREAU OF INVESTIGATION
BEFORE THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
BILL REQUEST
FEBRUARY 2, 1994

Mr. Chairman and Members of the Committee:

On behalf of the Kansas Bureau of Investigation I am here today to request this Committee introduce legislation clarifying the authority of the Kansas Bureau of Investigation Gaming Agents to investigate not only criminal acts occurring at race tracks, but violations of the rules and regulations of the Kansas Racing Commission.

As the Committee will remember, this was House Bill 2427 last year which actually passed both the House and the Senate, but was accidentally deleted out of a conference committee report at the end of last year's session. A copy of HB 2427 is attached and we are asking for no amendments, just what was passed last year.

Thank you for your consideration.

#123

FISA
2-2-94

Atch #7

Ryle
Smith

Session of 1993

HOUSE BILL No. 2427

By Committee on Federal and State Affairs

2-10

8 AN ACT amending the Kansas parimutuel racing act; relating to
9 investigations of certain violations; amending K.S.A. 74-8807 and
10 repealing the existing section.

11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. K.S.A. 74-8807 is hereby amended to read as follows:
13 74-8807. (a) Employees of the Kansas racing commission designated
14 by the executive director, with the approval of the commission, are
15 hereby vested with the power and authority of law enforcement
16 officers in the execution of the duties imposed upon the commission
17 by the provisions of this act.

18 (b) Employees designated pursuant to subsection (a) shall have
19 the authority to:

20 (1) Make arrests, conduct searches and seizures and carry fire-
21 arms while investigating violations of this act and during routine
22 conduct of their duties as determined by the executive director;

23 (2) make arrests, conduct searches and seizures and generally
24 enforce all criminal laws of the state as violations of such laws are
25 encountered by such employees during the routine performance of
26 their duties; and

27 (3) issue notices to appear pursuant to K.S.A. 22-2408 and
28 amendments thereto.

29 (c) No employee of the commission shall be certified to carry
30 firearms under the provisions of this section without having first
31 successfully completed the firearms training course or courses pre-
32 scribed for law enforcement officers under subsection (a) of K.S.A.
33 74-5604a and amendments thereto. ~~(d)~~ The commission may adopt
34 rules and regulations prescribing other training required for such
35 employees.

36 (d) *It shall be the duty of the Kansas bureau of investigation to*
37 *be an investigative agency of criminal violations of this act, and*
38 *violations of the rules and regulations adopted hereunder. Such duty*
39 *may be performed independently of or in conjunction with employees*
40 *of the commission designated pursuant to this section. Employees of*
41 *the commission shall report immediately any criminal violations of*
42 *this act or other suspected criminal activity at a racetrack facility*
43

1 *to the Kansas bureau of investigation. Employees of the Kansas*
2 *bureau of investigation shall report any violations or suspected vi-*
3 *olations of the rules and regulations adopted pursuant to this act*
4 *to the executive director or to employees of the commission designated*
5 *pursuant to this section.*

6 Sec. 2. K.S.A. 74-8807 is hereby repealed.

7 Sec. 3. This act shall take effect and be in force from and after
8 its publication in the Kansas register.



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KANSAS BUREAU OF INVESTIGATION
BEFORE THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
BILL REQUEST
FEBRUARY 2, 1994

Mr. Chairman and Members of the Committee:

I appear today on behalf of the Kansas Bureau of Investigation to request legislation amending K.S.A. 74-8810, which is the list of prohibited acts involving parimutuel racing. In particular, we are requesting amendment to Section (h)(5) which prohibits the use of electrical buzzers or devices at race tracks so that possession of these devices at race tracks would also be made illegal, as they have no legitimate function.

Thank you for your consideration.

#124

FUSA
2-2-94

Atch #8

74-8810. Prohibited acts. (a) It is a class A misdemeanor for any person to have a financial interest, directly or indirectly, in any racetrack facility within the state of Kansas or in any host facility for a simulcast race displayed in this state:

.

- (i) It is a class E felony for any person to:
- (1) Sell a parimutuel ticket or an interest in such a ticket to a person knowing such person to be under 18 years of age, upon conviction of the second or a subsequent offense;

.

Possess,

- (5) use or conspire to use any device, other than an ordinary whip for horses or a mechanical lure for greyhounds, for the purpose of affecting the speed of any horse or greyhound at any time during a race conducted by

.

~~(k) Possession of any device described in subsection (i)(5) by anyone within the confines of a racetrack facility shall be prima facie evidence of intent to use such device.~~

History: L. 1987, ch. 112, § 10; L. 1990, ch. 146, § 1; L. 1991, ch. 247, § 1; L. 1992, ch. 27, § 4; L. 1992, ch. 286, § 3; July 1.