

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MOHOMMAD ZAHIR,

Petitioner,

v.

GEORGE W. BUSH, *et al.*,

Respondents.

Civil Action No. 05-2367 (RWR)

DECLARATION OF DAVID N. COOPER

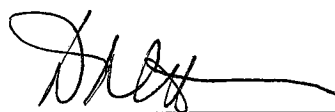
Pursuant to 28 U.S.C. § 1746, I, Lieutenant Colonel David N. Cooper, Judge Advocate General's Corps, United States Air Force Reserve, hereby state that to the best of my knowledge, information, and belief, the following is true, accurate and correct:

1. I am the Legal Advisor to the Office for the Administrative Review of the Detention of Enemy Combatants at U.S. Naval Base Guantanamo Bay, Cuba (OARDEC). In that capacity I am an advisor to the Director, Combatant Status Review Tribunals.

2. I hereby certify that the documents attached hereto constitute a true and accurate copy of the portions of the record of proceedings before the Combatant Status Review Tribunal related to petitioner Mohammad Zahir that are suitable for public release. The portions of the record that are classified or considered law enforcement sensitive are not attached hereto or were redacted by an OARDEC staff member. This staff member also redacted information that would personally identify certain U.S. Government personnel in order to protect the personal privacy and security of those individuals.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 10 August 2004



David N. Cooper
Lt Col, JAG Corps, USAFR



Department of Defense
Director, Combatant Status Review Tribunals

OARDEC/Ser: 0361
08 NOV 2004

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From: Director, Combatant Status Review Tribunal

Subj: **REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL FOR
DETAINEE ISN # 1103**

Ref: (a) Deputy Secretary of Defense Order of 7 July 2004
(b) Secretary of the Navy Order of 29 July 2004

1. I concur in the decision of the Combatant Status Review Tribunal that Detainee ISN #1103 meets the criteria for designation as an Enemy Combatant, in accordance with references (a) and (b).
2. This case is now considered final and the detainee will be scheduled for an Administrative Review Board.

J. M. McGARRAH
RADM, CEC, USN

Distribution:

NSC (Mr. John Bellinger)
DoS (Ambassador Prosper)
DASD-DA
JCS (J5)
SOUTHCOM (CoS)
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OARDEC (Fwd)
CITF Ft Belvoir

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5 Nov 04

MEMORANDUM

From: Legal Advisor

To: Director, Combatant Status Review Tribunal

Subj: LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL
FOR DETAINEE ISN # 1103

Ref: (a) Deputy Secretary of Defense Order of 7 July 2004
(b) Secretary of the Navy Implementation Directive of 29 July 2004

Encl: (1) Appointing Order for Tribunal #5 of 17 August 2004
(2) Record of Tribunal Proceedings

1. Legal sufficiency review has been completed on the subject Combatant Status Review Tribunal in accordance with references (a) and (b). After reviewing the record of the Tribunal, I find that:

- a. The detainee was properly notified of the Tribunal process and made a sworn statement at the Tribunal.
- b. The Tribunal was properly convened and constituted by enclosure (1).
- c. The Tribunal substantially complied with all provisions of references (a) and (b).
- d. The detainee requested that three witnesses be produced to testify at the Tribunal. They were identified as three teachers who could testify that the detainee had been a schoolteacher and was not in the Taliban. According to the Tribunal President, the witnesses had no information regarding the detainee's activities during the reign of the Taliban. Therefore, the President denied the request because the witnesses' expected testimony about the detainee's activities *after* the fall of the Taliban was not relevant to the Tribunal determination of what the detainee did *before* the fall of the Taliban. In my opinion, the Tribunal President's decisions were not an abuse of discretion.

The detainee made no other requests for witnesses or evidence.

- e. The Tribunal's decision that detainee # 1103 is properly classified as an enemy combatant was unanimous.
- f. The detainee's Personal Representative was given the opportunity to review the record of proceedings and declined to submit comments to the Tribunal.

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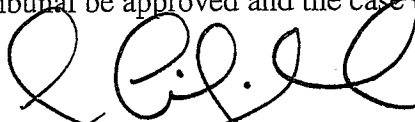
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Subj: LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL
FOR DETAINEE ISN # 1103

2. The proceedings and decision of the Tribunal are legally sufficient and no corrective action is required.

3. I recommend that the decision of the Tribunal be approved and the case be considered final.

A handwritten signature in black ink, appearing to read "J. R. Crissfield Jr.", is written over the printed name and title.

JAMES R. CRISFIELD JR.
CDR, JAGC, USN

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Department of Defense
Director, Combatant Status Review Tribunals

17 Aug 04

From: Director, Combatant Status Review Tribunals

Subj: APPOINTMENT OF COMBATANT STATUS REVIEW TRIBUNAL #5

Ref: (a) Convening Authority Appointment Letter of 9 July 2004

By the authority given to me in reference (a), a Combatant Status Review Tribunal established by "Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base, Cuba" dated 29 July 2004 is hereby convened. It shall hear such cases as shall be brought before it without further action of referral or otherwise.

The following commissioned officers shall serve as members of the Tribunal:

MEMBERS:

[REDACTED] Colonel, U.S. Air Force; President

[REDACTED], Lieutenant Colonel, U.S. Air Force; Member
(JAG)

[REDACTED] Lieutenant Commander, U.S. Navy; Member

J. M. McGARRAH
Rear Admiral
Civil Engineer Corps
United States Naval Reserve



HEADQUARTERS, OARDEC FORWARD
GUANTANAMO BAY, CUBA
APO AE 09360

8 October 2004

MEMORANDUM FOR DIRECTOR, CSRT

FROM: OARDEC FORWARD Commander

SUBJECT: CSRT Record of Proceedings ICO ISN# 1103

1. Pursuant to Enclosure (1), paragraph (I)(5) of the *Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base, Cuba* dated 29 July 2004, I am forwarding the Combatant Status Review Tribunal Decision Report for the above mentioned ISN for review and action.

2. If there are any questions regarding this package, point of contact on this matter is the undersigned at DSN [REDACTED]


DAVID L. TAYLOR
Colonel, USAF

(U) Combatant Status Review Tribunal Decision Report Cover Sheet

(U) This Document is UNCLASSIFIED Upon Removal of Enclosures (2) and (4).

(U) TRIBUNAL PANEL: #5

(U) ISN#: 1103

Ref: (a) (U) Convening Order for Tribunal #5 of 17 August 2004 (U)
(b) (U) CSRT Implementation Directive of 29 July 2004 (U)
(c) (U) DEPSECDEF Memo of 7 July 2004 (U)

Encl: (1) (U) Unclassified Summary of Basis For Tribunal Decision (U)
(2) (U) Classified Summary of Basis for Tribunal Decision (S/NF)
(3) (U) Summary of Detainee/Witness Testimony (U/~~FOUO~~)
(4) (U) Copies of Documentary Evidence Presented (S/NF)
(5) (U) Personal Representative's Record Review (U)

1. (U) This Tribunal was convened by references (a) and (b) to make a determination as to whether the detainee meets the criteria to be designated as an enemy combatant as defined in reference (c).

2. (U) On 4 October 2004 the Tribunal determined, by a preponderance of the evidence, that Detainee #1103 is properly designated as an enemy combatant as defined in reference (c).

3. (U) In particular, the Tribunal finds that this detainee is a member of, or affiliated with, the Taliban, as more fully discussed in the enclosures.

4. (U) Enclosure (1) provides an unclassified account of the basis for the Tribunal's decision. A detailed account of the evidence considered by the Tribunal and its findings of fact are contained in enclosures (1) and (2).



Tribunal President

Colonel, USAF

**UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL
DECISION**

(Enclosure (1) to Combatant Status Review Tribunal Decision Report)

TRIBUNAL PANEL: #5
ISN #: 1103

1. Introduction

As the Combatant Status Review Tribunal (CSRT) Decision Report indicates, the Tribunal has determined that this detainee is properly classified as an enemy combatant and is a member of, or affiliated with, the Taliban. In reaching its conclusions, the Tribunal considered both classified and unclassified information. The following is an account of the unclassified evidence considered by the Tribunal and other pertinent information. Classified evidence considered by the Tribunal is discussed in Enclosure (2) to the CSRT Decision Report.

2. Synopsis of Proceedings

The unclassified summary of evidence presented to the Tribunal by the Recorder indicated that the detainee:

- a. Was captured in July 2003 because of his association with the Taliban. The Detainee possessed information associated with weapons caches, arms dealings, and Taliban personalities.
- b. Was captured with a map of San Manuel, Cuba, phone books, entries of personnel in the CJTF-180 targeting cell tracker, business cards, passports and pictures.
- c. Was employed by the Taliban in the Secret Information Office in Ghazni, Afghanistan. Detainee also performed as a servant to the commanders in Ghazni, Afghanistan until the fall of the Taliban.

The detainee chose to participate in the Tribunal process. He requested three witnesses and made a sworn, verbal statement. The Tribunal President found the requested witness not relevant to this Tribunal. The Tribunal President's witness rulings are explained below.

3. Evidence Considered by the Tribunal

The Tribunal considered the following evidence in reaching its conclusions:

- a. Exhibits: D-a and R-1 through R-11.
- b. Sworn statement of the detainee.

4. Rulings by the Tribunal on Detainee Requests for Evidence or Witnesses

The Detainee requested the following witnesses be produced for the hearing:

<u>Witness</u>	<u>President's Decision</u>	<u>Testified?</u>
Ghulam Sadig	Not Relevant	No*
Mohammad Yasin	Not Relevant	No*
Yar Khan	Not Relevant	No*

* The Detainee stated the three witnesses requested would testify that he had been a schoolteacher since the fall of the Taliban Government. However, the three witnesses knew nothing about what the Detainee had done while the Taliban was in control. As this was the significant time in the determination of this Detainee's status as an Enemy Combatant, the President ruled the witnesses were not relevant and therefore denied the witness request.

The Detainee requested no additional evidence be produced.

5. Discussion of Unclassified Evidence

The Tribunal considered the following unclassified evidence in making its determinations:

a. The recorder offered Exhibit R-1 into evidence during the unclassified portion of the proceeding. Exhibit R-1 is the Unclassified Summary of Evidence. While this summary is helpful in that it provides a broad outline of what the Tribunal can expect to see, it is not persuasive in that it provides conclusory statements without supporting unclassified evidence. Accordingly, the Tribunal had to look to classified exhibits for support of the Unclassified Summary of Evidence.

b. Essentially the only unclassified evidence the Tribunal had to consider was the detainee's sworn testimony. A summarized transcript of the detainee's sworn testimony is attached as CSRT Decision Report Enclosure (3). In sum, the detainee testified that at the time of his capture he was a schoolteacher. The Detainee stated the materials found in his house were left there when a Taliban member's vehicle got stuck in the mud in front of his house. The Taliban member left the materials with the Detainee's wife, stating that he would return the next day to retrieve them. The Detainee had traveled to Iran at this time to find work. When he returned, he stated that he was angry that his wife had accepted the items. He went to the Governor and turned in the vehicle and weapons, and offered to turn in the paperwork the Taliban had left behind. The Governor told him not to worry about the paperwork so the Detainee stated that he simply threw them out

into the bushes near his house. Some time later, the soldiers came and arrested him for being in possession of the papers. The Detainee did admit that the Taliban had forcibly conscripted him. He was told to pay 100,000 rupees or he would be forced to serve with the Taliban. He further stated that because of his high education level, the Taliban looked him down upon him so they made him a cook. He served in this capacity for 3 months until the Taliban fell. After the Taliban Government fell, he became a schoolteacher under the new government and never worked with the Taliban again. Overall, the Tribunal did not believe the Detainee's story regarding how the documents came into his possession, especially in light of the classified evidence presented later in the hearing.

The Tribunal also relied on certain classified evidence in reaching its decision. A discussion of the classified evidence is found in Enclosure (2) to the Combatant Status Review Tribunal Decision Report.

6. Consultations with the CSRT Legal Advisor

No issues arose during the course of this hearing that required consultation with the CSRT legal advisor.

7. Conclusions of the Tribunal

Upon careful review of all the evidence presented in this matter, the Tribunal makes the following determinations:

- a. The detainee was mentally and physically capable of participating in the proceeding. No medical or mental health evaluation was deemed necessary.
- b. The Detainee understood the Tribunal proceedings. He asked reasonable questions regarding his rights that were explained to his satisfaction by the Tribunal President. The Detainee actively participated in the hearing.
- c. The detainee is properly classified as an enemy combatant and is a member of, or affiliated with, the Taliban.

8. Dissenting Tribunal Member's report

None. The Tribunal reached a unanimous decision.

Respectfully submitted,


Tribunal President

Colonel, USAF

Summarized Sworn Detainee Statement

[The Tribunal President asked the detainee if he understand the CSRT process.]

Detainee: I heard it.

[The Tribunal President asked the detainee if he had any questions concerning the Tribunal process.]

Detainee: What kind of questions?

Tribunal President: Do you have any questions about why you are here and why we are doing what we are doing today?

Detainee: Yes.

Tribunal President: What questions do you have?

Detainee: Why did this Tribunal start, what is the purpose of it?

Tribunal President: You have been classified as an enemy combatant by the government of the United States. The purpose of this Tribunal is to determine whether that classification is right or not. We will listen to you statements and we will review written evidence that the government has. Base upon that information we will determine whether or not you have been proper classified as an enemy combatant. Do you have any other questions?

Detainee: What type of person is considered an enemy of the United States or United Nations?

Tribunal President: For the purposes of this Tribunal, an enemy combatant means an individual who is part of or supporting Taliban or Al-Qaida forces or associated forces who are engaged in hostilities against the United States or it's coalition partners. This includes any person who has committed a belligerent act or who has directly supported hostilities in aid of enemy armed forces.

Tribunal President: That is the definition we will use to measure whether or not you have been properly classified as an enemy combatant.

Detainee: If you could really focus on the issue of the Taliban. I have never been associated with them. The Taliban usually forces people. Especially at that time.

Tribunal President: As we go through the Tribunal process you will have an opportunity to present your statement to us.

Tribunal President: Do you have any other questions about the process?

Detainee: I don't have any more questions; I'll follow the process as long as you will listen.

Tribunal President: Do you wish to make a statement to this Tribunal?

Detainee: Yes.

Tribunal President: Would you like to make your statement under oath?

Detainee: Yes.

[The Detainee was sworn.]

Tribunal President: Please begin.

Detainee: I was a teacher and have always been in the teaching profession. How can I be processed as an enemy combatant?

Tribunal President: That is what we are here to determine.

Detainee: I brought my diploma with me. The telephone, maps and the passport pictures; I was in Iran when the Taliban forcefully put those in my house. The Taliban's car got stuck in the mud in front of my house. They took the papers and gave them to my wife. They told her to leave them there and they would be back the next morning to pick them up. If I had been there I would not have accepted the papers. When I came back from Iran the woman told me the Taliban stopped and left the papers. I was very upset and angry and asked why she took the documents. I went to the governor and told him about the documents. The car and the weapons were surrendered to the governor. The governor took the car and the weapons and told me not to worry about the paperwork to throw it away; the Taliban was finished. I surrendered the car to the present government, the Karsi government. The government told me several times not to worry about the paperwork; the Taliban government was finished. I fought the Russians when they were there I was use to weapons. When the Russians left I sold the weapons I had. After the Russians left, I swear, I never saw the Taliban or associated with them. The only fighting I did was when the Russians were there. If you have any evidence that I have seen or been associated with the Taliban, kill me. There was a time when the Taliban forcefully took me. I had to pay 100,000 rupees or serve them. At that time everyone was under Taliban control, I was taken forcefully. After the Taliban was finished I never saw them or associated with them.

Tribunal President: Is there anything else you would like to say.

Detainee: An enemy is one that goes to the field and prepares for war, but I was sleeping at home. What kind of enemy sleeps at home? The Taliban government left and I was doing my only duty, teaching. Under the new government I was a teacher I have the papers. When the new government came I supported them, but I was threatened, as were others that supported them. People were against me because I started a new school they wanted a religious school. Think about this and use your best knowledge. I never associated with the Taliban. I have never seen a Taliban, when they left that was it. Also, you should know that anybody who is educated in Afghanistan are called infidels or not on the right track by the religious people. As a Muslim I feel as though I have nobody here. The other day I received a letter that my brother died. I have ten children at home to worry about. I am in debt and have no money, but I want you to make the best decision.

Summarized Answers in Response to Questions by the Personal Representative

- Q. You mentioned that you took the papers to the governor and he told you to throw them out, how did they get back in your home?
- A. I mentioned them to the governor but never took them to him. He told me not to worry about it and to throw them away. He had never seen the documents, the only time he saw them was when the soldiers saw them.
- Q. Prior to the current government, how did you support yourself?
- A. I had a cart and grew my own stuff. I would push the cart and sell fruit.

Summarized Answers in Response to Questions by the Tribunal Members

- Q. Where were you captured or arrested?
- A. At my house and then taken to Kardiz. I was sold.
- Q. Who captured or arrested you?
- A. Soldiers came during early Morning Prayer.
- Q. American soldiers or Afghani soldiers?
- A. They were Afghan but they were speaking English.
- Q. Did they tell you why they were arresting you?
- A. Till this day I have not been told.

Q. Did they ask anything about why you had the documents or did you tell them why you had the documents?

A. They asked, I told them I was in Iran when the Taliban gave them to the woman. When the Taliban was fleeing their car broke down in front of the house and they left the documents.

Q. Why did you go to Iran?

A. I was working and trying to make money. There was no government or economy at the time and I was trying to make extra money.

Q. When did you become a teacher?

A. After the Karsi government was installed, I came back to Afghanistan.

Q. So, you were a teacher when you were captured?

A. Yes.

Q. But you also went to Iran to support yourself?

A. I was never a teacher when the Taliban was in power.

Q. So when the Taliban left the car by your house and until the time you were captured, how long was that?

A. It was a long time.

Q. Where were the documents kept in your house?

A. They were thrown on the side in the bushes.

Q. Why didn't you destroy them?

A. I wish I would have but the governor insured me nothing would come of them, the Taliban government was finished.

Q. When the Taliban was in power, where you a teacher?

A. No at that time the schools were not there. The only thing allowed was religious schools.

Q. But you stayed and you did work for the Taliban?

- A. I forcefully taken, I was told to pay them 100,000 rupees or work for them.
- Q. Did you fight for the Taliban when you were conscripted?
- A. I was a cook for three months.
- Q. Where did you cook?
- A. In Kabul and the surrounding areas. When the Russians were there I helped the mujahidine rebels.
- Q. So, you cooked for the Taliban when they were fighting the Russians, is that right?
- A. No, the Taliban did not fight the Russians.
- Q. Okay were talking about the Taliban, follow me here.
- A. I cooked for the Taliban for three months that's it.
- Q. When you cooked for the Taliban, did you cook for commanders or soldiers, were you on the front lines?
- A. They told me to fight and I told them I didn't know how. They told me if I couldn't fight then cook.
- Q. You don't know how to fight even though you were with the mujahidine?
- A. I didn't want to be with them, so I excused myself.
- Q. You said earlier that you brought your diploma with you, is that somewhere in your file?
- A. It's in the files with the soldiers.
- Q. What year was it that the Taliban took you and forced you to work?
- A. The same year they were overthrown.
- Q. When they were fighting the Americans?
- A. No there were no Americans.
- Q. So when they were just fighting the Northern Alliance?

- A. Yes they were fighting the North and three months later they were overthrown.
- Q. You said there was a long time between the time the car got stuck in the mud outside your house and the time you got captured, when you say a longtime do you mean, many days, many months or years? What do you mean by a longtime?
- A. Six months from when I returned from Iran.
- Q. So, the documents were in the bushes by your house for almost a year?
- A. After given the insurance by the governor I didn't give it a second thought. I just threw them there and never paid attention to them.

Tribunal President: Do you have any other evidence or statements to present to this Tribunal?

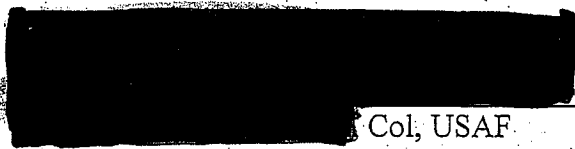
Detainee: A lot of the evidence I have is in Afghanistan. What type of evidence do you want?

Tribunal President: Any other statements you would like to make to the Tribunal.

Detainee: The only statement I have is why am I in prison? Evidence can be brought to prove my innocents. I was trying to help out the new government and further education. I was being threatened and now the Americans are holding me. I swear I am telling the truth. I helped out Karsi and was being paid money for six months. I had 400 students I was teaching. Why would I go against the Americans? My family has no one to support them or my ten children. My children were crying when the soldiers took me.

AUTHENTICATION

I certify the material contained in this transcript is a true and accurate summary of the testimony given during the proceedings.


Col, USAF
Tribunal President

DETAINEE ELECTION FORMDate: 29 Sept 2004Start Time: 1500End Time: 1610ISN#: 1103Personal Representative: [REDACTED] LT COL, USAF
(Name/Rank)Translator Required? YESLanguage? PASHTOCSRT Procedure Read to Detainee or Written Copy Read by Detainee? READ TO DETAINEE**Detainee Election:**

- ☒ Wants to Participate in Tribunal
- ☐ Affirmatively Declines to Participate in Tribunal
- ☐ Uncooperative or Unresponsive

Personal Representative Comments:Detainee 1103 will participate in the Tribunal. Detainee request three out of camp witnesses:
Ghulam Sadig, Mohammad Yasin and Yar Khan they're teachers and can testify that he a school
teacher and he's not Taliban. They all can be reached at Ghazni Afghaistan-Khogeynay Dist.,
School Mirzakhel.
Personal Representative: [REDACTED]

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Combatant Status Review Board

TO: Personal Representative

FROM: OIC, CSRT (13 September 2004)

Subject: Summary of Evidence for Combatant Status Review Tribunal – ZAHIR, Mohommad.

1. Under the provisions of the Secretary of the Navy Memorandum, dated 29 July 2004, *Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base Cuba*, a Tribunal has been appointed to review the detainee's designation as an enemy combatant.
2. An enemy combatant has been defined as "an individual who was part of or supporting the Taliban or al Qaeda forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who committed a belligerent act or has directly supported hostilities in aid of enemy armed forces."
3. The United States Government has previously determined that the detainee is an enemy combatant. This determination is based on information possessed by the United States that indicates that the detainee was part of, or supporting the Taliban.
 - a. The detainee is a Taliban member.
 1. Detainee was captured in July 03 because of his association with the Taliban. Detainee possessed information associated with weapons caches, arms dealings, and Taliban personalities.
 2. Detainee was captured with a map of San Manuel, Cuba, phone books, with entries of personnel in the CJTF-180 targeting cell tracker, business cards, passports, and pictures.
 3. Detainee was employed by the Taliban in the Secret Information Office in Ghazni, Afghanistan. Detainee also performed as a servant to the commanders in Ghazni, Afghanistan, until the fall of the Taliban.
4. The detainee has the opportunity to contest his designation as an enemy combatant. The Tribunal will endeavor to arrange for the presence of any reasonably available witnesses or evidence that the detainee desires to call or introduce to prove that he is not an enemy combatant. The Tribunal President will determine the reasonable availability of evidence or witnesses.

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Exhibit 121

Personal Representative Review of the Record of Proceedings

I acknowledge that on 7 October 2004 I was provided the opportunity to review the record of proceedings for the Combatant Status Review Tribunal involving ISN #1103.


☒ I have no comments.

☐ My comments are attached.


Name

Lt Col USAF

7 Oct 2004
Date


Signature