

## Colonel and Mrs. Earl P. Hopper, Sr.

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This is an appeal of the ruling dated 16 January 2002 of the AFIRB declaring our son, Lt. Col. Earl P. Hopper, Jr., remains recovered and identified. This appeal is based on the following:

Reference A, Operating Procedures for the Armed Forces Identification Review Board for Identification of Remains pre-2001:

Because the CIL-HI briefing book was presented to us in 1999, Lt. Col. Hopper's case falls under the old guidelines, for evaluation by the AFIRB. Those requirements clearly state that the Board will review all pertinent documents and material regarding the case under review including all intelligence reports including those documenting survival. The AFIRB chose to ignore all intelligence questions stating those questions were outside of the scope of the Board's purview. Under the old guidelines, they most certainly are within the Board guidelines. The reality is the Board members are mandatorily required to examine all intelligence documents pertaining to the man/men's loss incident and subsequent intelligence in its entirety. The Board cannot randomly pick and choose what information to consider and what to ignore so that the facts can be tailored to match the US military's preconceived notion and findings.

Reference B, Operating Procedures for the Armed Forces Identification Review Board for Identification of Remains, DODI2310.5

If the Board chooses to waive the old guidelines, and consider this case under the new guidelines, then we appeal under the provisions of the new guidelines wherein families, with legal council should they choose to provide their own, have the right to appear before the Board in person to represent their missing man. On three occasions we have been denied the right to appear before the AFIRB. We also appeal under the new guidelines under the provision that the Board is still required to examine all intelligence documents in its review of a case before it. While the wording in the new guidelines may leave much more "wiggle room" for interpretation of this specific requirement, the requirement is still present in written form within the directives in Reference B and the Board is still charged with the responsibility of examining all intelligence documents associated with the case before it.

Areas that were ignored, but must be thoroughly examined by the AFIRB as required in both References A and B, include all of the hardcopy documentation referenced in the family's Rebuttal Package. This is a requirement of the AFIRB's directive that must be met before the AFIRB completes its work in the case of Lt. Col. Earl P. Hopper, Jr. (or any other case that is brought before the AFIRB). In Earl Hopper's specific case this includes, but not necessarily limited to:

1. USG generated intelligence from date of loss through end of war that supports Lt. Col. Hopper successfully surviving the loss of his aircraft. In addition to the witness statements from the other members of Rematch flight, witness debriefing statements that supports the fact that Earl Hopper survived include:
  - A. The A-1 Sandy pilot(s) who heard emergency beepers from both Earl Hopper and Keith Hall; and using directional finding equipment on board his/their aircraft, isolated the two separate locations from which signals were being emitted – documented in Col. Henehan's letter, dated 16 January 1968. Col. Henehan was the Squadron Commander and this letter is in the family's Rebuttal Package now in your possession.
  - B. In addition to the Sandy pilots, the rescue helicopter(s) aircrews also heard the two beepers – documented in Col. Henehan's letter. Note: Col. Henehan had to have had either direct contact with all the aircrews in the SAR operation and/or had their debriefing statements in his possession at the time he wrote his 16 January 1968 letter to this family.
  - C. The Airborne Battlefield Command and Control Aircraft's audiotapes, logs, reports, records, debriefing statements, etc., recorded the entire mission of Rematch flight as well as the complete Search and Rescue operation for Rematch 3 including all the details of how it all fit together. The formal visual

and electronic SAR operation lasted a minimum of 3 consecutive days, with the informal electronic search effort continuing over an undetermined length of time.

- D. Crown 2, the US Navy Early Warning vessel located in the Gulf of Tonkin above the 18<sup>th</sup> parallel also monitored Rematch flight's mission and the subsequent SAR effort for Rematch 3. The ship's audiotapes, logs, reports, records, debriefing statements, etc., would also document all details of the day's operations, in the same basic manner as the ABCCC aircraft. By reviewing all of Crown 2 and the ABCCC audiotapes, logs, reports, records, debriefing statements, etc.; as well as the continuing SAR activities over the next several days, a much more complete and accurate picture of the day's missions and the loss of Rematch 3 could be developed.
  - E. Two beepers heard by 5 of the 6 pilots of Rematch flight – documented in the debriefing statements of those flight members.
  - F. Second beeper overriding voice transmission made by Keith Hall – per debriefing statement of pilot(s).
  - G. F-4C aircrew from Ubon having a positive beeper contact and authenticator response from Lt. Col. Hopper on the day after loss – documented in Col. Henhan's letter. Note: Col. Henhan had to have had either direct contact with that aircrew and/or had their debriefing statements in his possession at the time he wrote his 16 January 1968 letter to this family.
  - H. Keith Hall's interrogation for only personal information about Earl Hopper 2 ½ years after loss – Keith Hall post-Operation Homecoming debriefing.
2. USG generated intelligence between the end of the war and the PFOOD status change – 14 July 1982.
- A. The military's Status Review Hearing record including the documented US Air Force admission of classified documents included in the hearing re: USG knowledge of live POWs in Southeast Asia long after Operation Homecoming and, at a bare minimum, Earl Hopper being documented as one of them.
  - B. Returned Prisoner of War PFC Bobby Garwood's intelligence about a POW he had contact with in Hanoi some time between 1973 and 1979 by the last name of Hopper or Hepper – See debriefing file or call Bobby Garwood for direct confirmation of his first-hand information regarding Earl P. Hopper, Jr. Note: if the Board does not know where to contact Mr. Garwood, we do.
  - C. Initial information/intelligence generated by Special Forces Detachment Korea (SFDK) between 1981 and 14 July 1982, the date Earl Hopper was reclassified Killed in Action under a Presumptive Finding of Death. Obtain the classified files, intelligence reports (IRs), weekly summaries, and all other documentation pertaining to first-hand reports generated by SFDK regarding American Prisoners of War in general and Earl P. Hopper, Jr. in particular. The intelligence reports would include those sent through their military chain of command as well as through the separate intelligence channel.
3. USG generated intelligence between 14 July 1982 to current date.
- A. The Justice Department review of the Status Review Hearing records, and their determination that Earl Hopper survived his loss incident and was alive until the arbitrary cutoff date for the last POW to return from captivity – see the record of Earl Hopper's Status Review Hearing and the Department of Justice letter, both of which were provided previously to you in our Rebuttal Package.
  - B. Special Forces Detachment Korea collecting hard intelligence about a prisoner in Laos by the name of "Earl P. Hopper/Earl P. Hopper, Jr." and/or "Earl P. Hepper/Earl P. Hepper, Jr." Obtain the classified files, intelligence reports (IRs), weekly summaries, and all other documentation pertaining to first-hand reports generated by SFDK regarding American Prisoners of War in general and Earl P. Hopper, Jr. in particular. The intelligence reports would include those sent through their military chain of command as well as through the separate intelligence channel. Further, submitted to the Board is a letter from Major Mark Smith, the Commander of SFDK, concerning the identity Earl P. Hopper, Jr. and the fact that he was expected to be one of three men to be returned on 11 May 1984.

- C. All of Major Smith's sworn testimony is verified by Lt. Col. Robert Howard, his immediate commander, in sworn testimony to the Senate Veterans Affairs committee on 28 January 1986. Lt. Col. Howard, a professional soldier and Congressional Medal of Honor recipient, retired from the US Army with the rank of Colonel. The transcript of Lt. Col. Howard's testimony was also provided in the family's Rebuttal Package. Note: In the question and answer portion of Lt. Col. Howard's testimony, he is asked specifically about Earl P. Hopper, Jr. being one of the men documented by SFDK as being a prisoner in Laos, and Lt. Col. Howard forcefully replied that yes, Earl Hopper definitely was one of those prisoners. He added, "Hopper is a name you don't forget."
- D. Lt. Col. Howard and Major Smith's testimony is also supported by SFC Mel McIntire's sworn testimony. SFC McIntire was SFDK's intelligence sergeant. In addition to Lt. Col. Howard's transcript, the family provided a video tape of Major Smith's, Lt. Col. Howard's and SFC McIntire's testimony before the Senate Veterans Affairs Committee's unclassified hearing, which was aired on C-Span, from the time they were sworn in to the time they were released by the committee.
- E. The Soviet/Russian intelligence interview with American POWs in Sam Neua, Laos in "1973 or shortly thereafter" contained the name "Earl P. Hepper" or "Earl P. Hepper, Jr." The Soviet/Russian intelligence interview contains the same name of a prisoner as collected by SFDK personnel. DIA analysts found that report in the Russian archives after the collapse of the Soviet Union. This document is undoubtedly still classified and under the direct control of the Defense Intelligence Agency today, but would be available to the AFIRB.
- F. Since the AFIRB is required by both References A and B to research and review all intelligence pertaining to a case before it, it should review the holdings of all US government agencies that would hold information pertaining to live Prisoners of War. These agencies would include, but not be limited to, the Central Intelligence Agency, the National Security Agency, the Department of Defense, State Department, the Defense Intelligence Agency, the Defense Prisoner and Missing Office, and the National Reconnaissance Organization. It is imperative that the classified material/documents under the control of these agencies be obtained/reviewed by the AFIRB before the Board would be able to weigh all the evidence required in References A and B, and render a complete and an unbiased determination.

CIL-HI was appointed the agency responsible to gather information from other agencies by the AFIRB, to respond to all questions posed in our Rebuttal document and then at the same time, CIL-HI was directed to answer only select questions posed in our Rebuttal document. Interestingly, the CIL-HI collected responses were not supported by any form of hardcopy documentation, just statements referencing obscure reports, documents, technical manuals or books that may or may not be readily available within the scientific forensic community, but not the general public. We found it interesting that the AFIRB charged the Central Identification Laboratory with the responsibility of answering all of our questions, including intelligence questions, then directed – ordered – them to address only specific questions dealing with non-survival.

CIL-HI has been put in a unique position of not only determining that the 5 teeth/parts of teeth constitute Earl Hopper's total mortal remains while investigating it's own work along with that of JTFFA and LSEL. This smacks of putting the proverbial fox in charge of the hen house. It is also an excellent example of the lack of necessary checks and balances within the US government's system of dealing with the entire Prisoner of War/Missing in Action issue.

Further, CIL-HI does not have the knowledge or ability to seek out, collect, analyze or evaluate the intelligence information the AFIRB chose to ignore. CIL-HI's personnel also are not trained or experienced in that field so by dropping our entire Rebuttal document on them, you placed them in an untenable position. None of this serves Earl Hopper's best interest in any way.

Further, the remains identification procedures employed by the US government certainly are not perfect and are not always correct. Examples of this fact include, but are not limited to:

1. The initial inability to identify the recovered remains of 1<sup>st</sup> Lt. Michael Blassie before political manipulations were applied to entomb them into the Vietnam space in the Tomb of the Unknown Soldiers in Arlington National Cemetery. Under political pressure, this failure allowed his remains to be buried in spite of strong circumstantial evidence that the remains were in fact Michael Blassie's and they could be identified in time through refining mt-DNA capabilities. Forcing the burial of those remains through political interference that was interjected into the identification process of this man's remains caused his family and friends additional years of unnecessary

torment. This was all done in the name of political expediency in demonstrating the lowest level of devotion our government had in honoring those who fought and died in the Vietnam War.

2. Another glaring example is the case of Spectre 17, an AC-130 shot down in December 1972 with 13 men listed as Missing in Action. Because there was substantial US government intelligence developed by Special Forces Detachment, Korea between 1981 and mid-1984 that at least two, and probably three if not more, men onboard that aircraft were Prisoners of War in Laos and that one of these men was believed to be one of three POWs that could have been returned to US control on 11 May 1984. In its rush to negate this absolute live POW data, the gunship's crash site was hurriedly excavated in February 1985. The outcome of that excavation was CIL-HI miraculously recovered and identified the remains of all 13 men lost in this incident. The families of George Macdonald and Tom Hart sued the US government over the fictitious identification of their men's remains and won forcing the USG to rescind its positive identification of the those remains.
3. The first man shot down during the Gulf War, Cmdr. Michael Speicher, has suffered a similar fate. Initially listed as Missing in Action, Cmdr. Speicher's status was changed to Killed in Action/Body Not Recovered under a Presumptive Finding of Death. In 1994, during a flurry of live POW intelligence about him, the USG reverted to its previous practices in containing information regarding living Prisoners of War. A US military team was granted permission to visit the "newly found" F-18 crash site in the middle of the Iraqi desert. While there, the team found the aircraft's canopy and ejection seat some 2 miles away from the wreckage field. They also "found" Michael Speicher's flight suit in pristine condition on the desert floor. The whole situation was more than just highly suspicious.
4. Today, in light of the fact that in December 2000, Secretary of the Navy Danzig announced the USG was upgrading Cmdr. Speicher's status from KIA/BNR-PFOD to Missing in Action and the Bush administration is "looking into upgrading his status from MIA to Prisoner of War, there is no question that that man is alive today. Our government knows it and, God willing, President Bush is working to obtain his freedom.

Frequently the answers presented in the CIL-HI response were rather arrogant, cavalier and demeaning while artfully sidestepping the real questions with official/scientific sounding non-answers. The AFIRB, in its infinite wisdom, chose to accept those answers at face value as an easy out in closing our son's case as remains recovered without weighing all the facts and evidence or requiring CIL-HI to provide documents, etc., to support their statements. Likewise, the AFIRB chose to ignore all intelligence information provided by the family that documented the reality that Earl P. Hopper, Jr. did not die in his loss incident and the USG has known that fact for years.

For Example:

1. In the United States, "truth" is often defined after an adversarial proceeding in which opposing parties face off to express two sides of a case. Each side has the opportunity to cross examine the other side's point of view in order to probe for weaknesses and outright fabrications. The AFIRB's former proceeding was flawed from the beginning in that when the Board summarily dismissed all evidence of survival, along with every point of possible survival that was subtly ignored, only one point of view was considered that made the preconceived conclusion inevitable.
2. During Lt. Col. Earl P. Hopper's Status Review Hearing, which was held in February 1980, the presiding US Air Force Legal Officer ordered the statement "the Phantom broke into three large pieces before entering a 5,000-foot undercast of clouds" be removed from the "Facts and Circumstances" of loss. He made this ruling because other pilots in Rematch flight did not support it. During the last 10 years or so, someone within the US government resurrected this statement and it has now become the linchpin in the government's case that Earl Hopper could not have survived his loss incident. The other 5 pilots' debriefing statements reported seeing 2 to 3 objects leaving the aircraft and hearing two emergency beeper signals, or believing they detected two separate beepers, with one of them being strong and the other weak and both on the same, or nearly the same, cycle. At least one of the pilots reported that at one point he heard the weak beeper overriding a voice transmission from Keith Hall, the aircraft commander of Rematch 3. It is unbelievable that the multiple statements documenting more than one emergency beeper being heard and the two signals were emanating from separate locations have been ignored in favor of a single statement indicating the aircraft broke apart thereby downplaying the potential for our son's survival.
3. CIL-HI/JTFFA raised the point that farmers disturbed the site only a few years after the F-4D went down – beginning in 1977. The CIL-HI prepared response implied that the villagers/farmers scavenged the site and moved aircraft wreckage around to such a degree that all analysis of the circumstance of loss was rendered

useless. In other words, they could draw only the conclusions that supported their premise that one person rode the aircraft into the ground and died in it, case closed. They ignore the fact that this is an extremely shallow excavation site no matter how heavily the area was scavenged or how much the wreckage was moved around. They also ignore the fact that this type of crash landing is survivable in spite of the stress markings on material examined by LSEL. The substantial USG generated intelligence supports the reality of Earl Hopper's survival, not his death.

4. In regard to CIL-HI's rationale regarding three Soviet shell casings being recovered from the excavation site, there is nothing in the US government's position that logically or remotely explains how those expended rounds found their way to the site. Further, there was no indication in the CIL-HI/JTFFA/LSEL response that supports their statement that communist officials and/or troops visited the area of the crash site at some other point in time previous to or after 10 January 1968.
5. CIL-HI/JTFFA statement that this region was an active combat zone over many years and different wars is pure speculation on their part and not supportable by facts. The local villagers who now inhabit the area did not verify that the area was an active combat zone. Likewise, 3 Soviet manufactured shell casings and 35 .38 caliber casings and projectiles, or parts thereof, do not support this area being an active combat zone either. On the contrary, if they support any premise at all, they support one outlining a brief encounter wherein a surviving crewman was captured by communist forces of some type.
6. CIL-HI/JTFFA also made the statement that the region was/is heavily populated. That is an easily provable misstatement in as much as all maps of the region going back over many years that show both terrain features and the location of hamlets/villages/ towns/cities are readily accessible. These maps also show the locations of abandoned hamlets/villages/towns/cities and US firebases along with frequently used landing zone (LZs) that supported larger American/ARVN facilities so they are comprehensive in that respect. USG agencies have these maps, so do we.
7. JTFFA prides itself on following through every investigative lead including archival research. The Vietnamese are well known for documenting everything possible, particularly situations such as this where there is physical evidence – the three expended Soviet shell casings – that prove a ranking communist official and/or military troops visited this site and found something worthwhile to fire at thus expending those rounds, and for which the unit would likely have kept a record. Did JTFFA personnel ever consider that possibility and follow through with investigating the possibility since it is well known that communist unit record keeping would require the unit to keep this specific type of information. For example, did JTFFA personnel ever question any of the villagers, especially their witnesses, about communist officials/troops being in the area of the downed aircraft around the time of loss? We have no record of this action being done by JTFFA/USG personnel.
8. In conjunction with points #5 and #6, the USG provided this family with an account of “a red headed pilot (reportedly associated with this loss) being captured and taken away by communist troops.” This report of capture was covered at length in our Rebuttal document. If CIL-HI/JTFFA considered it to be substantial enough to provide to us, then they are also aware that the communists would have supporting documents in their archives, specifically in the unit's records and reports to higher headquarters. Question: Did JTFFA personnel ever pursue investigating the communist archives for additional information regarding this report of capture?
9. We find the CIL-HI responses to our questions really do not answer them in a manner that adds clarity and facts, just fills up space. We asked legitimate questions that have been asked many times over many years. In some cases, we still do not have answers. For example, in regard to the engines and engine plates, we have repeatedly asked two questions: 1) Did anyone take the engine plate that was found on the ground over to the engines to verify that the tear markings on it matched – yes or no? And if yes, did it match, or reasonably match? 2) Was there an engine plate on the second engine – yes or no? If yes, did it have a serial number on it? If yes, was the number readable? What was it? We continue to get excuses about how dangerous the area is, how unsafe the conditions are to check the engines including after the engine(s) are moved to a safer location down hill and out of the way. As with other points made in the CIL-HI response to our Rebuttal document, those non-answers are just so much crap.
10. One of the CIL-HI side comments in their response dealt with a conversation our Grandson had with two of the JTFFA Sergeants regarding the Vietnamese official's comment in reference to the “ancient Vietnamese bones” incident. Clearly understand this: We asked CIL-HI/JTFFA personnel about that encounter on several occasions over the years and received no response or explanation at all. Why would we pursue a “second-hand report of an incident that happened during the excavation process?” Because we chose to pursue the

veracity of it directly with the personnel who were there! The truly amazing aspect of this specific issue is that the only way we could obtain an answer to that particular question was through this process. We can't help but wonder what will it take to get real answers to our other real questions.

11. The CIL-HI identification of Earl Hopper as remains recovered and identified rests on only 5 teeth/parts of teeth. The identification of those teeth belonging to our son is not in question. However, what is in question is the meaning and significance of recovering those teeth. In this case finding the teeth during the crash site excavation does not equate to him riding the aircraft to the ground and dying in it. According to a recognized Forensic Anthropologist, 4 of the 5 teeth show chipping and fracturing consistent with, but not exclusive to, an aircraft crash. After reviewing the CIL-HI dental documents, he stated, "I certainly won't say that the fractures/chips had to occur perimortem." The reality is antemortem, perimortem and postmortem fractures of teeth are difficult to determine because of the composition of material that teeth are made of – particularly between perimortem and postmortem. CIL-HI does not have a crystal ball in which to gaze to confirm the teeth were lost "at or close to the time of death."
12. In reality, the only thing that can be stated about the condition of the teeth and how they were knocked out of our son's mouth with any degree of certainty is that it was consistent with a "tremendous force applied quickly." There is no way to determine if that tremendous force was from an aircraft crash, a butt stroke from a weapon, a severe beating, a fall from an undetermined height striking his mouth against a hard surface or a combination thereof. Based on the documented military generated intelligence, the reality is that the teeth were probably knocked out during a post-capture beating and left where they fell.
13. The fact that the teeth were "literally raked out of shale-like rock" has no relevance to how the teeth got there or what significance it has to his survival. Shale-like rock – what the search and recovery report calls "schistose" rock – may take thousands of years to develop. But, according to experts, the nature of schistose rock is that it fractures readily, and naturally, and the plate-like fragments work their way up through the soil. At this crash site, the soil mantle is relatively thin and contains numerous rock inclusions. We are told that this is what the anthropologist meant when describing the soil as a loam "mixed with gravel-, cobble-, and boulder-sized schistose rock." In other words, how old the bedrock is may be of interest to geologists, but in practical terms, it is irrelevant since the rock fragments are continuously working their way to the surface. This is another example of the USG's smoke and mirror tactics used in its dealings with POW/MIA families. It is also reminiscent of the old adage: If you can't dazzle them with your brilliance, then baffle them with your ---- well, you get the picture.
14. Government personnel, including the President of the United States, promised the families of POW/MIAs within the first few years after the end of the war that they would leave no stone unturned in pursuit of our missing men. That included the pledge/promise that all information, and sufficient information, would be considered before determinations of death were made. This pledge/promise was extended to include the remains identification process. One of these "promises" was memorialized in the fifth volume of the Montgomery Hearings, page 253, "Handbook for the Next of Kin of Prisoners of War, Missing in Action." Although developed by the US Army, it was an official pamphlet introduced by the government to show the "care" and "concern" that was to guide the accounting process. It was presented as evidence to a Committee of the US Congress. Time and the USG lack of action have proved it was only rhetoric and not truthful.
15. By ignoring evidence of survival, the traditional adversarial process has been swept away, replaced by arbitrary definitions, processes and decisions, all detrimental to the missing men and their families. By ignoring the classified evidence of survival, and indeed the survival for many years in captivity, the AFIRB is blatantly disregarding every promise ever made to these men and their families as well as violating every tradecraft rule of professional military service and replacing it with the very real appearance of command interference in order to arrive at a predetermined conclusion – that all the men are dead – regardless of the evidence presented to show that some men were alive at the end of the war and the possibility/probability that some are alive today, including our son.
16. At this time, legitimately classified information means that the information contained therein is necessary to protect the national security of the United States, and that revealing the contents of the document would severely damage or irreparably harm the security interest of this country. In regard to the POW/MIA issue, that could only mean that living POWs in Southeast Asia – or any other part of the world for that matter including Cmdr. Michael Scott Speicher – constitute a threat to this nation. This is a ridiculous policy since there is no way that discovery of a live Prisoner of War would threaten the national security of the United States no matter who it is and from which war, as long as sources and methods of collection are protected.

17. Embarrassment to the US government over its inability to return live POW/MIAs is no excuse for the continued unprofessional manner government agencies, including the AFIRB, goes about solving the POW/MIA issue, particularly the live POW issue. Manipulation of the remains identification process to remove men from the rolls of the unaccounted for expressly for the purpose of getting the numbers down and/or leaving the false impression that an American serviceman is dead and has had his remains recovered, identified and buried in the United States is a violation of every moral and legal standard this nation holds dear. This practice is particularly abhorrent when the USG has the hard intelligence documenting that man was alive and may still be alive today.
18. The intelligence of survival of Earl P. Hopper, Jr. has already gone through a process known as the intelligence cycle in which information was evaluated and the preponderance of the evidence determined the outcome. The intelligence in this case has been evaluated multiple times, including by an independent neutral commission under the Department of Justice, that determined that Earl P. Hopper, Jr. survived his loss, was alive in captivity for years, and is likely alive today along with other American Prisoners of War. Make no mistake, a person who is dead does not answer/respond to radio calls. A person who is dead does not walk, talk and breathe in captivity as documented by US military intelligence. A person who was dead is not entitled to the 5 dollar-a-day POW compensation pay as determined by the Department of Justice.

We provided hardcopy documents/tapes gathered over the years from several USG agencies and first-hand contact with members of the US intelligence community in our Rebuttal Package documenting the fact that:

- Lt. Col. Hopper survived his loss, was communicating through beeper signals with other aircraft in his flight as well as with the SAR contingent.
- He was also communicating through beeper signals with an F-4C out of Ubon the day after loss.
- Keith Hall's interrogation by a guard only for personal information about Earl Hopper's life before entering the war zone is yet another example that Earl Hopper was a Prisoner of War that the communists had under their control. They were obviously searching for information about his past in order to use it as a weapon against him. The communists would not be interested in or waste their time in obtaining personal information about a pilot who had been dead for over 2 ½ years.
- This is also confirmed by the positive classified intelligence admitted into evidence during Earl Hopper's status review hearing in February 1980 that forced the USG to maintain him in the Missing in Action status until July 1982, a period of 2 ½ years. Note: This was during the period of time when other men's statuses were being changed within 60 to 90 days of the status review hearing – the length of time necessary to process the paperwork to accomplish the status change.
- Earl Hopper's survival is also documented in the Justice Department's review of this case, which included classified documents presented to them as part of their review process. The Justice Department finding confirmed that Earl Hopper was in fact "a Prisoner of War from date of loss through 4 April 1973" – the arbitrary cutoff date for the last known POW to be released to US control.
- The fact is the US intelligence community through Special Forces Detachment, Korea tracked Earl Hopper by name and prison camp location in Laos at least through May 1984. At this time members of SFDK confirmed that Earl Hopper was expected to be one of the three Prisoners of War they were arranging to accept control of on 11 May 1984. Question: How many other government agencies were tracking Earl Hopper at the same time as SFDK?

The AFIRB has many supporting documents/records/tapes provided by this family documenting these facts. It is the AFIRB's responsibility to secure those documents and records that are referenced in the family's Rebuttal document and this Appeal document that are still being withheld from this family by agencies of the USG including US military services.

The members of the AFIRB cannot complete their work properly and completely without obtaining and reviewing this critical information independently. Each one of you knows that to be true. Now it is incumbent upon you to follow through with your assignment in the honorable manner you as military officers and gentlemen know to be true.

Additionally, in a matter involving the AFIRB and the release of its decision regarding Earl P. Hopper, Jr., dated 16 January 2002, someone within one of the USG agencies who received that information from you violated the Privacy Act and the McCain Bill by taking the Board's single paragraph notification and attaching it to an existing JTFFA press release announcing its 10<sup>th</sup> Anniversary celebration. In turn, it was sent out through a large USG e-mail distribution list and sent to some individuals/organizations twice. The information contained in the original JTFFA press release and the AFIRB notification paragraph regarding our son, has absolutely no relationship to each other.

This action was taken in opposition to the family's decision to keep the information private until the family had an opportunity to review the Board's report. Our decision to hold this information private had been communicated to the appropriate government agencies involved through the Air Force Mortuary Affairs office. It is apparent someone within JTFFA attached the notification paragraph to the original JTFFA press release without proper authority. Not only is this action a violation of the Privacy Act and the McCain Bill, it was a blatant illegal act due to the release of Earl Hopper's Social Security Number, which was contained within that notification paragraph.

Enclosed are three documents that provide the referenced AFIRB notification paragraph that was released to USG and private sector individuals/organizations against our express wishes.

1. Bill Bell's POW/MIA e-mail mailing dated 18 January 2002.
2. Bill Bell's answer to us dated 18 January 2002, with attachments to our enquiry of where he obtained the information about our son. The attachments are the JTFFA Fact Sheet #1,947 and Statcard (short) #1,947.
3. The response to us from Bruce Linnell, the Vietnam Veterans of America National POW/MIA Chairman, dated 22 January 2002.

Note that Mr. Linnell forwarded the separate e-mail mailing of the AFIRB notification with its distribution list in tact. This document was also dated 16 January 2002, the same day your determination was made, and was also sent from Lt. Col. O'Hara's computer. This actually constitutes two separate violations of the Privacy Act and the McCain Bill in direct opposition to this family's expressed wishes.

We find it extremely interesting that when the USG prefers to keep information hidden from the public, it hides behind both the Privacy Act and the McCain Bill as the legal reasons for not providing the requested information. However, when desired, the USG has absolutely no qualms in disregarding those laws if it meets their own agenda to do so.

A friend of ours, Larry O'Daniel, uses a Macintosh computer. Because of this, he was able to print out the computer tracking of the press release containing your notification paragraph. All thirteen pages of the tracking data are included for your review. As you will read, it appears that either Barbara A. Claypool or G. T. Brewer, both of whom were/are employees of JTFFA, is the person(s) who cut and pasted your paragraph to the bottom of the JTFFA press release, and then re-released it for public consumption.

I asked Mr. O'Daniel to please check the other documents sent to him regarding the release of privileged information about our son. Those two follow up e-mail documents from Mr. O'Daniel are also enclosed since each one adds a few more details regarding the tracking data.

The release of this private and privileged information is an unconscionable action. It is an obvious, blatant attempt by one or more individuals within the USG to take away our rights as the PNOK to determine what is best for our son.

- a. It attempted to take away the time we wished to have to review your determination in an atmosphere of privacy.
- b. It was an attempt to influence and/or deprive us of the right to make our own decision in this case.
- c. It attempted to force us into accepting your determination regardless of how we felt about it.
- d. It was a blatant attempt to give a false impression to the public that we have accepted your determination without question and have buried Earl's mortal remains.

- e. Likewise, it attempted to effectively bury our son in the eyes of those who read the bastardized press release.

Someone within the USG has chosen to play this vicious game at the expense of Earl P. Hopper, Jr. Whoever it is, has committed criminal acts and needs to be held accountable for them. Since it is the AFIRB's information that was illegally released, it is incumbent upon the AFIRB to take action to ferret out the culprit/culprits and take appropriate legal action against him/her/them.

Since the AFIRB has not satisfactorily completed its review of all relevant material in this case as outlined in the AFIRB written guidelines/regulations, it is incumbent upon the Board to suspend its determination issued on 16 January 2002.

We request that the Board take immediate action to:

- 1) Return Earl P. Hopper, Jr. to the roles of Unaccounted for POW/MIAs from the Vietnam War, and
- 2) Remove his name from all USG generated lists of Remains Returned/Recovered and Identified until such time as the Board has obtained all classified and declassified intelligence records including, but not limited to, those referenced above.
- 3) Notify all parties, military and civilian, who received the original 16 January 2002 notification, either directly from the Board or through the bastardized mailings, stating that Earl P. Hopper, Jr. has been returned to the roll of unaccounted for and removed from the list of remains recovered and identified. The updated notification should acknowledge that Earl Hopper will continue to be considered "unaccounted for" until such time as the AFIRB has properly and completely concluded its work regarding this case as required in References A and B.

In conclusion, once again we respectfully request to appear in person before the AFIRB at any subsequent meeting and/or hearing regarding our son that is held prior to the AFIRB rendering a determination based upon a complete review of all material evidence in this case. We make this request because every individual – military or civilian – is entitled to and authorized to be represented at any hearing of any Court/Board whose ultimate decision affects his or her legal rights. The right of an individual to have representation has been repeatedly upheld by both military and civilian courts to guarantee that those individual rights are represented and protected. In regard to POW/MIAs, this was the ruling of the New York Federal Court in McDonald vs. McLucas in 1976.

Earl P. Hopper, Sr.

Patricia B. Hopper