

EXHIBIT 3

JOHN J. EAKIN
November 29, 2018,

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JOHN A. PATTERSON, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 5:17-CV-00467
)	
DEFENSE POW/MIA ACCOUNTING)	
AGENCY, et al.,)	
)	
Defendants.)	

ORAL DEPOSITION OF

JOHN J. EAKIN

NOVEMBER 29, 2018

ORAL DEPOSITION OF JOHN J. EAKIN, produced as a witness at the instance of the Defendant and duly sworn, was taken in the above-styled and numbered cause on the 29th day of November, 2018, from 9:00 a.m. to 2:15 p.m., before Vanessa P. Pompa, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the offices of United States Attorney's Office, 601 N.W. Loop 410, Suite 600, San Antonio, Bexar County, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

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1 APPEARANCES

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FOR PLAINTIFF:

3

Mr. Ron A. Sprague
Gendry & Sprague, P.C.
900 Isom, Suite 300
San Antonio, Texas 78216

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FOR DEFENDANT:

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Mr. Galen N. Thorp
Senior Counsel
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, N.W., Rm 11220
Washington, D.C. 20005

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10

11

and

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Ms. Jacquelyn M. Christilles
Assistant United States Attorney
601 N.W. Loop 410, Suite 610
San Antonio, Texas 78216

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14

ALSO PRESENT:

15

Theodore Lorenz,

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John J. Eakin,
the Witness; and

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Vanessa P. Pompa, CSR

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1 JOHN J. EAKIN,
2 having been first duly sworn, testified as follows:

3 EXAMINATION

4 By Mr. Thorp:

5 Q. Good morning, Mr. Eakin. Can you state your
6 name for the record.

7 A. John Eakin.

8 Q. Thank you. I did it wrong again.

9 A. Don't worry about it. Whatever you want to
10 call me.

11 Q. You've been asked by plaintiffs to provide
12 expert testimony in this case, correct?

13 A. That's right.

14 Q. And you prepared an expert reported dated
15 September 14, 2018?

16 A. Yes, sir.

17 Q. How many times have you been deposed before?

18 A. I have no idea. Dozens.

19 Q. So you understand the procedure for a
20 deposition?

21 A. I do.

22 Q. I'll ask questions, you respond to your best
23 ability to understand the question. Your counsel may
24 interpose objections but go ahead and answer it unless
25 he tells you not to. Do you have any reason that you

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1 Q. -- go through. You're being proffered by
2 plaintiffs as an expert. In what fields relevant to
3 this case do you have expertise?

4 A. I've been an investigator working for various
5 law firms, underwriters, government agencies for the
6 last 30 years. I've been doing primarily aviation
7 accident analysis but it's very similar to what's
8 involved here. And then for the last -- well, since
9 2009 I have studied the X-file IDPFs on World War II
10 MIAs. Originally I got into it because a family member
11 was an MIA. Over the course of that, I guess nine
12 years, this is the fourth litigation that I've been
13 involved in. The first three I did it pro se, two FOIA
14 cases to get the documents that bring us here today.
15 And another case which I guess we'd term it a mandamus
16 case to retrieve the remains of my family member and
17 some others. Out of this work I've dealt with a number
18 of real experts on the issue. And along the way from
19 time to time, for instance, Judge Biery termed me an
20 expert in the Kelder case. So I think I have pretty
21 significant expertise in this particular area because
22 it's so similar to what I've been doing in my day job
23 for the last 30 years.

24 Q. So how would you characterize the field of your
25 expertise? You've described some of the pieces of your

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1 expertise. I'm just trying to get a label for the
2 field. I mean it's not aviation accidents. Like when
3 you were providing analysis there that was the field of
4 your expertise as an investigator there. So what's the
5 filed of your expertise?

6 A. I think the similarity here is whenever you're
7 dealing with an investigation you're peeling back the
8 onion to get to the truth and that's what I'm best at.
9 My aviation expertise deals primarily with building and
10 searching data bases to retrieve factual data on
11 aircraft accidents. And it's no different than in this
12 case, there's a lot of data that's relevant and a lot of
13 data that's not so relevant.

14 Q. So you view your expertise as an investigator
15 to be able to distinguish between relevant and
16 irrelevant information then, to correlate --

17 A. For want of a better term I like yours.

18 Q. So you've talked about building a data base.
19 So you have a data base of IDPFs that you've built out
20 of your FOIA requests and additional research. Is that
21 what you were describing?

22 A. Well, we have a number of data bases. If you
23 think -- it depends on how you're gonna define data
24 base, of course. We have several terabytes of these
25 data files, but then in addition I've been through all

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1 of the files primarily from Manila but also from some of
2 the other mortuary facilities. And I've been through
3 those files and cataloged them so I can go in and, you
4 know, if we're looking for all of the records on someone
5 who is buried in Cabanatuan grave 717 we can pull them
6 up without going through several terabytes of data.

7 Q. You catalog them electronically?

8 A. Well, mainly we enter them into an electronic
9 data base.

10 Q. So your expertise is as an investigator
11 generally, and you've worked with these IDPFs, I think
12 your report also references talking to family members
13 about other researchers?

14 A. Yes.

15 Q. Were there any other researchers that you
16 consulted in connection with this report or with these
17 seven cases?

18 A. Not in conjunction with this report.

19 Q. Investigators who would have information
20 relevant to these seven cases?

21 A. I talk to so many people every day I can't say
22 who I talked to specifically on these cases here.

23 Q. Do you have any education or training that
24 specifically supports the expertise you've asserted
25 here?

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1 A. The last fifty years of investigations and
2 military service and everything else has gone into what
3 I do.

4 Q. You referenced earlier that a judge referred to
5 you as an expert. Were you specifically qualified an
6 expert -- as an expert by that judge using formal legal
7 factors?

8 A. I don't think so. He just referred to me as an
9 expert. I don't remember exactly what his question was
10 but he called me up to the lectern and said Mr. Eakin,
11 you're the expert on these files, and we discussed 'em
12 at length.

13 Q. So how does your expertise go beyond repeating
14 what the documents themselves say?

15 A. We --

16 Q. Because it seems as you've described that
17 you're --

18 A. Sure.

19 Q. Part of what you've done is gotten a fast way
20 to get to the right documents?

21 A. Right.

22 Q. So how does your expertise go beyond -- once
23 we've got to the right documents how does your expertise
24 go beyond sort of repeating what the documents say?

25 A. I think the real skill in any investigation is

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1 after you have the data sorting out the good data from
2 the not so good data.

3 Q. And how do you do that?

4 A. Very slowly. You just have to compare it with
5 the known facts.

6 Q. Do you have any expertise as a historian of the
7 Philippine Campaign?

8 A. Just as an amateur.

9 Q. Have you read specific books about it?

10 A. I have quite a collection of books on the
11 Philippine Campaign.

12 Q. Could you name any that come to mind?

13 A. The first two, the obvious ones in this regard
14 would be The Ghost of Bataan and The Ghost of Bataan
15 speaks by Abie Abraham who is the guy who retrieved the
16 X-1130 remains.

17 Q. Anything else that comes to mind?

18 A. Those are probably the obvious ones that --

19 Q. In addition to IDPFs have you reviewed general
20 files on Cabanatuan graves -- yeah, on --

21 A. Everything I could get.

22 Q. Could you describe that, what does that
23 involve?

24 A. I'm not trying to be evasive but there's --

25 Q. Yeah, I understand. I'm just trying to pare it

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1 down.

2 A. Yeah. There's a lot of material online,
3 there's various forums, you know, online forums that the
4 history of the Philippine Campaign is discussed.
5 There's some people online that are pretty sharp and
6 know a lot in the way of details.

7 Q. In your request for files have you requested --
8 have you received files in addition to IDPFs that are
9 more generally about the recovery process in the
10 Philippines or Cabanatuan in particular or anything like
11 that?

12 A. I have. I'm trying to think what I've got.
13 There were several FOIAs over the years and offhand I
14 can't tell you what was contained in them.

15 Q. Do you recall specifically consulting any of
16 those more general files in preparing this report?

17 A. Not specifically.

18 Q. Does your expertise include odontology?

19 A. No.

20 Q. So you have no expertise in reading and
21 comparing dental charts?

22 A. No.

23 Q. Does your expertise include forensic
24 anthropology?

25 A. Absolutely not.

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1 Q. So you don't have expertise in examining or
2 identifying human remains?

3 A. No.

4 Q. Does your expertise include laboratory
5 accreditation?

6 A. We've done some research on that but I can't
7 claim to be an expert.

8 Q. Laboratory design?

9 A. No.

10 Q. Organizational efficiency?

11 A. No.

12 Q. Does your expertise include DNA analysis?

13 A. No.

14 Q. So you don't have expertise regarding DNA
15 testing methodology?

16 A. I know just enough to be dangerous.

17 Q. Selection of samples?

18 A. No.

19 Q. Selection of testing methods?

20 A. No.

21 Q. So you referenced four lawsuits. How is
22 that -- which I think is the three FOIA -- or two FOIA
23 and the mandamus action in this lawsuit, right?

24 A. Right.

25 Q. How did those lawsuits contribute to your

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1 expertise?

2 A. Well, they -- they obtained the documents that
3 are why we're here today. Without those documents I
4 don't think grave 717 would have been litigated and I
5 don't think we'd be here today.

6 Q. I'm gonna mark this as Exhibit 1. That's your
7 report.

8 MR. THORP: Here's a copy for you.

9 (Exhibit 1 marked)

10 Q. On the last page of your report -- If you'll
11 turn to the last page -- you state: I have not served
12 as an expert witness at trial or by deposition in any
13 other case in the last four years.

14 A. I don't think that's completely accurate as --

15 Q. I wanted to ask, you referenced --

16 A. Earlier on --

17 Q. -- on your resume --

18 A. -- we disclosed.

19 Q. -- on the first page -- so I just wanted you to
20 explain. Just provide --

21 A. I think that was just poorly worded.

22 Q. Okay. So turning to the first page on the
23 bottom bullet on your resume you reference a 2014 case
24 in which you served as an expert.

25 A. Right.

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1 said it's my opinion the remains designated X-1130 are
2 likely those of Lieutenant Nininger. I'm just trying to
3 understand how that likelihood relates to the assertion
4 in the litigation that the remains have already been
5 identified.

6 A. I think I could write that same sentence with
7 or without the word likely. And I'm not trying to be
8 argumentative --

9 Q. Yeah.

10 A. -- and I'm not trying to put too fine a point
11 on it but that's the way I wrote it that day but you're
12 asking me how certain I am. I'm about as certain as can
13 be. Now, I think there -- anything can happen. It can
14 be Santa Clause in that grave but I think it's very,
15 very, very likely that that's Nininger in that grave.

16 Q. You maintain a website called the Bataan
17 Missing, is that right?

18 A. That's right.

19 Q. On there you have written that these remains
20 are obviously those of Nininger, Stewart and Fort?

21 A. I don't know if I have but I certainly could
22 use those words. They're obvious to me.

23 Q. It's obvious even though it could be Santa
24 Clause in that grave?

25 A. Well, the sun may shine today too, you know, we

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1 don't know for sure.

2 Q. So the -- so the likelihoods and certainty of
3 obviousness is not a hundred percent?

4 A. You're splitting hairs with me now. I'm as
5 certain as I can be, as I said, short of actually
6 disinterring those remains and examining them.

7 Q. How surprised would you be if we disinterred --
8 if one of these remains were disinterred and found out
9 not to be the service member you've indicated?

10 A. I'd be very surprised.

11 Q. Do you expect to do any additional work to
12 support the proffered opinions and conclusions you've
13 asserted in your report?

14 A. If it's needed.

15 Q. Have you been asked to do any additional work
16 to buttress your expert report in the future in this
17 case?

18 A. We've caught up as of this morning.

19 Q. Could you describe your assignment in this case
20 from plaintiffs' counsel.

21 A. I don't know that there was ever a distinct
22 assignment but I've tried to assist wherever I can and
23 share whatever information I have with counsel.

24 Q. Did you instigate this lawsuit?

25 A. I did my best to find the best cases and put

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1 the people together. These family members have gotten
2 to be my friends. And when a lot of people found out
3 that I've been successful in recovering the remains of
4 Bud Kelder, my cousin, they came to me and asked me what
5 they could do. And I can't count the number of people
6 that want to do the same thing. But these cases in
7 particular I recommended because I think they're
8 excellent cases to resolve some of the -- some of the
9 issues involved in the MIA campaign.

10 Q. Do you also draft filings in the case?

11 MR. SPRAGUE: Does he do what? I'm sorry.

12 Q. Do you also draft filings in the case?

13 MR. SPRAGUE: Draft filings?

14 A. Such as?

15 Q. The legal filings that were put on the
16 documents.

17 A. No.

18 MR. SPRAGUE: The pleadings.

19 A. You flatter me but we've got some pros involved
20 here.

21 Q. Did plaintiffs' counsel provide you with any
22 assumptions to use as an expert?

23 A. No.

24 Q. This may feel a little redundant but certainly
25 we talked about your field --