

cemetery. I remember from my childhood the pain of my parents and grandparents in the loss of this family member and set out to fully account for him and ensure his honorable burial.

4. I am frequently asked by members of the media and other MIA families how I obtained the records pertaining to the burial of my Cousin, Private Arthur H. "Bud" Kelder and what it took to obtain his remains for burial with his family. When I tell them that the U.S. Government fought me every step of the way, they are shocked as the agency responsible for this work claims to leave no man behind and vigorously advertises their successes.

5. I tell them that I believe it is because the identification process after WWII was so inept, inefficient and corrupt that many, perhaps most, of the cases in which identity of remains was in question were misidentified. The U.S. Government has much to be ashamed of and works to obstruct any outside inquiry. And while that occurred more than seventy years ago, the government has diligently worked ever since to conceal their participation in this shameful episode.

6. Through litigation, I have obtained hundreds of thousands of government documents pertaining to WWII era burials. Many of these documents show that erroneous identifications of remains often occurred while others show deliberate concealment of errors and deliberate misidentifications. In many of these files, government wrongdoing was concealed by classifying the documents as pertaining to national security.

7. Specific to Cabanatuan Common Grave #717, I have found evidence, much of which has been confirmed by defense filings in this case, (*Anthropologist's Memo* ECF No. 128-3 and *Berg Decl* ECF No. 137-4 ¶ 17) which show that remains were assembled from unrelated bones so that a complete set of remains could be shipped to families in the continental U.S. for burial. DNA from remains recovered from the Cabanatuan Common Grave #717

caskets indicated that there were remains from at least four extra individuals. These documents show that the standard practice was to pack any “extra” remains in caskets filled to capacity with “CIL portions” and conceal them as the burial of a single Unknown. It is likely that some of the remains of Private Kelder and others in the Cabanatuan Common Grave #717 group were concealed and buried as CIL portions.

8. Perhaps one of the most egregious examples of government misdeeds that I have found is their deliberate use of an inappropriate type of DNA testing. Defendants cite a 1995 report by the Defense Science Board¹ as their scientific authority for the use of DNA for identification of remains. However, rather than use the nuclear DNA technology suggested by the Defense Science Board, Defendants use outdated mitochondrial DNA technology. The ramifications of this are subtle, but enormous in practice. Defendants practice is extremely burdensome to families requesting disinterment and identification of a family member and it substantially limits the number of Unknowns who can be identified. It also limits the number of erroneous identifications by Defendants that will be revealed.

9. Defendants’ laboratory capability and capacity are limited and, as Defendants have demonstrated, not adequate for severely commingled remains such as those recovered from Cabanatuan Common Grave #717. Because of Defendants’ antiquated laboratory techniques, they have been unable to fully identify the Cabanatuan Common Grave #717 remains after nearly nine years.

10. In public meetings with MIA family members, Defendants have claimed that they cannot use modern nuclear DNA technology because they cannot extract and sequence

¹ Defense Science Board,
http://bataanmissing.com/DNA/DoD_ScienceBoard_UseOfDNA_ADA301521.pdf,
last viewed Jan 24, 2025

this type of DNA from the unidentified remains. To test their excuse, I sent a sample from the 2019 bone that Defendants had identified using mtDNA as belonging to Private Kelder to Bode Technology, a civilian DNA testing laboratory. They were able to extract and sequence nuclear DNA from this sample without extraordinary effort. The Bode report further included a statement from a board-certified genealogist that she had conducted a blind study and, using public DNA databases, was able to determine that the DNA sample belonged to Arthur H. Kelder (1916-1942).²

11. The obvious conclusion is that Defendants inability to identify the Cabanatuan Common Grave #717 remains is intentional.

12. While, as a *pro se*, I cannot represent the rights of others, the ramifications of this case have extended far beyond just the family of Private Kelder. This litigation, while pertaining to only Private Kelder, has led to the identification and honorable burial of hundreds of American heroes and provided closure to their families.³

13. Through vacating this judgment and allowing the resumption of discovery, the government's excuses for not aggressively identifying the missing will be further eliminated

² Bode Technology, 10430 Furnace Road, Lorton, VA 22079, Forensic Genealogy Report, January 21, 2022, Case #: HMG1913-0036. "Sample . . . is a first cousin once removed of both high test takers John James Eakin and Donna Sanger (married Fowl). Based on circumstances, ages, and dates, he is most likely Arthur H. Kelder (1916-1942).

³ In a hearing before Judge Rodriguez (*The Patterson Case*) on July 22, 2019, AUSA Galen Thorp stated, accusingly, "That because of Mr. Eakin, [the government] has had to disinter more than three hundred of these men." In response, Judge Rodriguez asked if that wasn't a good thing? To which counsel for the government reluctantly concurred. Plaintiff understands that the number of disinterments to date is currently well over six hundred. These disinterments and identifications of Unknowns are a direct result of this litigation involving Private Kelder.

and it is likely that, in addition to Private Kelder's remains, the remains of tens of thousands of other missing servicemembers will be accounted for and receive an honorable burial.

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 27th day of January, 2024.

/s/ John Eakin

John Eakin, Plaintiff *pro se*