

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

JOHN A. PATTERSON, et al.,

Plaintiffs,

v.

DEFENSE POW/MIA ACCOUNTING
AGENCY, et al.,

Defendants.

§
§
§
§
§
§
§
§
§
§

Civil Action No. SA-17-CV-467-XR

**PLAINTIFFS’ DESIGNATION OF EXPERTS AND
DISCLOSURE OF EXPERT TESTIMONY**

The Plaintiffs, through undersigned counsel, hereby designate their expert witnesses in accordance with the Federal Rules of Civil Procedure and the Local Rules of this Court and state that the following persons may be called to provide expert testimony or present evidence at trial on behalf of the Plaintiffs.

I. RETAINED EXPERTS

- 1. Bode Cellmark Forensics, Inc.
c/o Jonathan Davoren, Director of Applied Research
c/o Adrienne Borges, Senior DNA Analyst and Mitochondrial DNA Technical Leader
10430 Furnace Road, Suite 107
Lorton, VA 22079
Phone: (703) 646-9740

A representative from Bode Cellmark Forensics, Inc. (“Bode”) may be called to testify as to (1) whether the remains at issue in this case are eligible for DNA testing; (2) whether Bode has the capability to complete testing in this case in an effort to aid the investigation into the identity of the remains; (3) the results of any inspection and DNA testing performed on the remains at issue during discovery in this case; (4) why DNA testing is often the most informative piece of information in the identification process; and (5) any other subjects or opinions referenced in its report or in subsequent deposition testimony, including reasonable inferences arising therein. The likely representative that will be testifying is either Jonathan Davoren, the Director of Applied Research at Bode, or Adrienne Borges, a Senior DNA Analyst and Mitochondrial DNA Technical Leader at Bode. As discovery continues, it may become necessary for Plaintiffs to supplement this designation further.

Any necessary report, curriculum vitae, and testifying history will be produced to Defendants.

2. Renee Rivard Richardson
270 Overlea Rd.
Bennington, VT 05201
Phone: (202) 232-2998

Ms. Richardson may be called to testify as to (1) why the remains at issue are capable of being identified by Defendants; (2) whether the identify and location of the remains at issue in this case are already known; (3) why it is in the best interests of all parties in this suit to perform DNA testing on the remains at issue; (4) the procedures and policies used to identify service members; (5) whether Defendants should and/or must order the disinterment of the remains at issue for DNA testing and identification; and (6) any other subjects or opinions referenced in her report or in subsequent deposition testimony, including reasonable inferences arising therein.

Any necessary report, curriculum vitae, and testifying history will be produced to Defendants.

II. NONRETAINED TESTIFYING EXPERT

Plaintiffs also designate the following individual who is not retained or specially employed to provide expert testimony but who may be called to offer opinions at trial.

1. John Eakin
9865 Tower View
Helotes, Texas 78023
Phone: (210) 695-2204

Mr. Eakin may be called to testify as to (1) the process and policies used by Defendants to identify service members; (2) the deficiencies in the Defendants' current methods used to identify service members; (3) why the identify and/or location of the remains at issue is known; (4) the information contained within any relevant Individual Deceased Personnel Files; (5) Defendants' inadequate capacity and capability to identify service members; and (6) any other subjects or opinions referenced in the pleadings or expert reports prepared in this case, including reasonable inferences arising therein. Mr. Eakin may also be called to testify that it is his opinion that (1) the remains designated as X-1130, which are currently buried in Manila American Cemetery Grave J-7-20, are likely those of U.S. Army First Lieutenant Alexander R. Nininger; (2) the remains designated as X-618, which are currently buried in Manila American Cemetery Grave L-8-113, are likely those of U.S. Army Brigadier General Guy O. Fort; and (3) the remains designated as X-3629, which are currently buried in Manila American Cemetery Grave N-15-19, are likely those of U.S. Army Colonel Loren P. Stewart. Additionally, he may be called to testify regarding the DPAA's recommendation to disinter the remains associated with Cabanatuan Common Graves

704 and 822. Mr. Eakin may also testify that it is his opinion that Private First Class David Hansen's remains were buried in Cabanatuan Common Grave 407, and are currently buried in Manila American Cemetery. He may also testify that the Defendants' policies and procedures require them to disinter the remains at issue and conduct DNA testing. Mr. Eakin is relying, in part, upon factual information contained within public records, relevant Individual Deceased Personnel Files, and burial records.

Mr. Eakin may still be called as a fact witness in this case.

Plaintiffs do not concede that any expert designation, report, or disclosure is required for the potential testimony of the nonretained person identified above, either under the Rules or any order of this Court, but such designation is provided out of an abundance of caution.

Plaintiffs reserve the right to call any expert designated by Defendants or called by Defendants at hearing or trial.

Plaintiffs further reserve the right to solicit testimony from any person identified by any party as a fact witness in this case, which may require such witness to rely upon their specialized knowledge, training, experience, education, or expertise in a particular filed or which may be considered "opinion" testimony. It is expected that such persons and any nonretained persons would provide testimony consistent with any and all records they have generated and/or any testimony or statements provided to any person or party and within the realm of their expertise and training.

Plaintiffs may also solicit expert testimony from any party in this case. It is expected that any opinions solicited from such parties would be opinions provided within the realm of their expertise and consistent with their business records and/or consistent with deposition testimony or statements provided on such subjects.

Plaintiffs reserve the right to supplement this designation. Plaintiffs reserve the right to designate additional experts and Plaintiffs' experts reserve the right to supplement, amend, or modify any of the opinions expressed in their reports as additional information may become available through discovery and at trial.

Plaintiffs reserve the right to solicit testimony from any witness, lay or otherwise, who may have relevant opinions within the realms of their expertise.

Dated: July 31, 2018

Respectfully submitted,

/s/ John T. Smithee, Jr.

JOHN T. SMITHEE, JR. (*admitted pro hac vice*)
TX State Bar No. 24098449
TN State Bar No. 36211
LAW OFFICE OF JOHN TRUE SMITHEE, JR.
1600 McGavock St.
Suite 214
Nashville, TN 37203
(806) 206-6364
jts@smitheelaw.com

GENDRY & SPRAGUE, PC

RON A. SPRAGUE
TX State Bar No. 18962100
Gendry & Sprague, PC
900 Isom Road, Suite 300
San Antonio, TX 78216
Rsprague@gendrysprague.com
(210) 349-0511

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 31st day of July 2018, a true and correct copy was delivered as follows:

<p>Galen Thorp U.S. Department of Justice Civil Division, Federal Programs Branch 950 Pennsylvania Ave., NW Washington, DC 20530 202-514-4781 Email: galen.thorp@usdoj.gov ATTORNEY FOR DEFENDANTS</p>	<p>Via Electronic Delivery: X Certified Mail, Return Receipt Requested: United States Regular Mail: Overnight Mail: Via Facsimile Transmission: Via Hand-Delivery:</p>
<p>Mary F. Kruger United States Attorneys Office 601 NW Loop 410, Suite 600 San Antonio, TX 78216 210-384-7300 Fax: 210/384-7322 Email: mary.kruger@usdoj.gov ATTORNEY FOR DEFENDANTS</p>	<p>Via Electronic Delivery: X Certified Mail, Return Receipt Requested: United States Regular Mail: Overnight Mail: Via Facsimile Transmission: Via Hand-Delivery:</p>

/s/ John T. Smithee, Jr.

 John T. Smithee, Jr.