

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

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

DECLARATION OF PHILIP J. BERRAN

I, Colonel Philip J. Berran, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am an active duty Colonel, U.S. Army, and the Science Director/Medical Examiner for the Defense POW/MIA Accounting Agency’s (DPAA) Laboratory in Hawaii. I have served in that position since May 2017.

2. I previously served as Director of the Office of the Armed Forces Medical Examiner from September 2015 to May 2017. From 2012 to 2015, I served as the Regional Armed Forces Medical Examiner for the 65th Medical Brigade. I have been an active duty pathologist in the U.S. Army since 2001, serving in numerous positions. I earned my M.D. in 2000 and am board certified in forensic, anatomic and clinical pathology.

3. The statements contained in this declaration are based on my personal knowledge and Department of Defense records and information made available to me in my official capacity.



4. It is my responsibility to exercise the Department of Defense's (DoD) scientific identification authority for unidentified remains from designated past conflicts processed by the DPAA Laboratory in Hawaii. *See* 10 U.S.C. §§ 1501(a)(2)(B), 1509(b)(2); DoD Directive 5110.10 § 2(f); DoD Instruction 5154.30 § 1.2(b)(2), 2.4(e).

5. I render an identification finding only when I conclude that the identification meets a clear and convincing burden of proof standard.

6. "Clear and convincing" means that the identity is established with a high probability or degree of certainty. This standard is met when:

- The historical evidence and laboratory-derived evidence agree with the known antemortem facts of the case.
- All reasonable alternatives are eliminated.
- There are no unexplainable or irreconcilable discrepancies between the antemortem facts of the case and the postmortem evidence that would preclude the identification.

7. Identifications are formalized through a Medical Examiner Summary Report (MESR). As a proposed identification nears completion, I (or another medical examiner to whom I have delegated authority) draft an MESR that summarizes the scientific findings of the case and also evaluates and accounts for all information pertaining to it, including biological, historical, physical, and/or circumstantial information. The MESR typically is composed of the following sections:

- Background: Summarizes the historical evidentiary line and establishes the chain of custody for the remains and related material evidence.
- Summary of Identification: Summarizes the relevant analyses, which typically include a historical analysis, DNA analysis, odontological analysis, anthropological analysis, and material evidence analysis.
- Opinion: Incorporates the individual analytical findings into a comprehensive conclusion.

8. Because each case presents a unique set of potential lines of evidence, each with its own probative value, there is no formulaic way to describe an “identification.” Instead, each case is evaluated on its own merits. In drafting an MESR, I rely on individual reports prepared by subject matter experts (anthropology, odontology, DNA, etc.). As a forensic pathologist, I have expertise in the analysis and interpretation of laboratory reports and routinely assimilate consultative reports to arrive at a conclusion (in this case identification).

9. When the burden of proof is met, I make the identification. All MESRs are sent for peer review by the Armed Forces Medical Examiner (AFME) or his or her designee. No identifications are finalized without the AFME peer review.

10. No servicemember from a past conflict is considered identified solely on the basis of an association in the historical record between that servicemember and specific human remains. Such an association does not eliminate reasonable alternatives or address all of the historical and laboratory-derived evidence. Only a formal identification by the appropriate DoD authority, employing whatever legacy identification process was in effect at the time, leads to a servicemember being considered identified. Remains that were not identified under such legacy identification processes can *now* be identified only under the contemporary standards described in this declaration.

11. In past accounting cases, servicemembers are generally not identified by means of DNA analysis standing alone. Because the types of DNA comparisons that are generally available (e.g., mitochondrial DNA) only narrow the possibilities, rather than definitively establishing individual identity, all of the factors described above are required to reach the requisite level of certainty.

12. After an individual has been identified, there are occasions when it is appropriate to make an “individual identification of additional portions” of human remains. When a specific individual was previously identified by the DPAA Laboratory, additional research, recovery efforts, or testing may enable the identification of more portions of that specific individual. Additional portions are identified using the same process described above.

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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 17th day of April, 2019.

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SEPH.1022745197⁹⁷
Date: 2019.04.17 08:49:20 -10'00'

Philip J. Berran, COL, MC
Science Director / Medical Examiner
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