

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.)	

SECOND DECLARATION OF GREGORY L. GARDNER

I, Gregory L. Gardner, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am the Branch Chief, U.S. Army Past Conflict Repatriations Branch (PCRB), Ft Knox, KY, and have served in that position since June 2010. I am responsible for the Army’s support to the Department of Defense (DoD)’s program to recover and identify unaccounted-for Service Members from past conflicts.

2. 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.

3. In this declaration, I will address the PCRB’s contacts with the Plaintiffs in this lawsuit and their families. I have not included the PCRB’s routine communications inviting all known family members within a 350 mile radius to attend each of DoD’s Family Member Updates.

4. After February 6, 2018, the PCRB limited its contacts with Plaintiffs and their

families because Plaintiffs' counsel sent an email and attached letter requesting that the PCRB not contact plaintiffs or their family members without his express prior permission. See Exhibit 1.

5. As I explained in my first declaration, the PCRB is the primary point of contact for relatives of unidentified World War II servicemembers. This is a substantial obligation that takes up significant time among our staff of 10 people. For example, in FY 2018, the PCRB had contact with over 10,400 individuals in reference to World War II, the Korean War, and Vietnam War servicemembers.

Plaintiff John Patterson

6. The individual deceased personnel file (IDPF) for First Lieutenant Alexander Nininger records that John Patterson's first contact with the Army regarding his uncle was a letter dated October 20, 1966, expressing the hope that his remains could be located. On October 31, 1966, the Chief of the Memorial Division of the Quartermaster Corp responded, explaining that 1LT Nininger's remains had not been identified and that the Army had explained the circumstances to 1LT Nininger's father by letter and in person in 1951.

7. Mr. Patterson again contacted the Army in 1985, and the Army's Memorial Affairs and Casualty Support Division sent him 1LT Nininger's IDPF and the IDPF for First Lieutenant Ira Cheaney. That office also spoke with him by phone, explaining the role of the Army division and the complexity of efforts to locate unidentified servicemembers.

8. In March 1986, Mr. Patterson requested that 1LT Nininger's case be reopened based on information he believed suggested additional locations to search for unrecovered remains. That request did not proceed because the Army's Central Identification Laboratory – Hawaii (CILHI) recommended against it.

9. In 1992, Mr. Patterson took his own exploratory trip to the Philippines and described his efforts in correspondence with CILHI. Mr. Patterson ultimately requested that the remains designated X-1130 be disinterred for identification as 1LT Nininger and in October 1993, after a series of communications with Mr. Patterson, CILHI explained that they could not support his request.

10. John Patterson's first recorded contact with the PCRFB occurred on November 12, 2010, when he called to request a copy of the IDPF for his uncle, First Lieutenant Alexander Nininger. The PCRFB requested a copy of the IDPF and forwarded FRS kits to Mr. Patterson and his sister.

11. On August 11, 2011, Mr. Patterson attended the Providence, Rhode Island Family Member Update. I attended a meeting with him, along with DPMO historian Heather Harris and other DoD officials. At the meeting, he presented information and requested additional records but did not request disinterment.

12. In early 2014, Mr. Patterson contacted Michael Lumpkin, the acting Undersecretary of Defense for Policy, who called and spoke with Mr. Patterson personally. On March 28, 2014, Mr. Patterson sent an email to Mr. Lumpkin asking for a renewed and thorough review of 1LT Nininger's files.

13. On February 2, 2015, at a time when Mr. Patterson was seeking to join Mr. John Eakin's lawsuit, Mr. Patterson requested that the PCRFB contact him. That same day, the PCRFB called Mr. Patterson and learned that he was again requesting disinterment of X-1130 for comparison to 1LT Nininger. The PCRFB forwarded the disinterment request to the Joint POW/MIA Accounting Command (now DPAA) for processing.

14. On June 5, 2015, I spoke with Mr. Patterson regarding the status of his

disinterment request and his interest in speaking with Heather Harris. I explained that DPAA had recently reorganized and that the PCRB was not part of that reorganization.

15. On January 12, 2016, Mr. Patterson requested an updated case summary for 1LT Nininger. The PCRB forwarded the request to DPAA. He followed up on the request on February 10, 2016, but the PCRB had not received an updated case summary from DPAA.

16. On March 28, 2016, the PCRB sent Mr. Patterson the March 4, 2016 decision of the Deputy Assistant Secretary of the Army (Manpower and Reserve Affairs) on his disinterment request, along with the underlying memoranda.

17. On April 7, 2016, Mr. Patterson called to ask questions about the denial of his disinterment request. On April 11, 2016, the PCRB called him back and discussed his questions.

18. On December 20, 2017, the PCRB called Mr. Patterson to offer a call with DPAA for an update on the status of 1LT Nininger's case. Mr. Patterson wanted to schedule the call after he recovered from hip surgery. Mr. Patterson informed the PCRB that he had a new attorney and provided John Smithee's contact information.

19. On January 30, 2018, the PCRB mailed Mr. Patterson an updated case summary and followed up with him regarding a time for the update call. On February 1, 2018, Mr. Patterson left a voicemail explaining that he did not want to participate in a call with DPAA at this time but would wait and see what the government filed in the lawsuit in March.

20. On February 29, 2018, Mr. Patterson called the PCRB to request that a copy of the updated case summary be sent to his sister. The PCRB sent the information that same day.

21. On August 1, 2018, Mr. Patterson called to say that due to his hip surgery he would be unable to attend the Philadelphia Family Member Update on September 8, 2018. On September 11, 2018, the PCRB sent Mr. Patterson the updated case summary and briefing slides

he would have received if he had been able to attend.

22. On October 15, 2018, Mr. Patterson called to confirm that the PCRB had his correct contact information. Everything was correct.

23. On January 4, 2019, Michael Maynard sent an email to me at the PCRB requesting disinterment of 1LT Cheaney from West Point on the ground that his remains had been misidentified. Mr. Maynard indicated that Mr. Patterson and two others were copied on the email. I acknowledged receipt of the email that same day, and a followup email on January 18, 2019. On January 23, 2019, after receiving necessary information, I explained what was required for a disinterment request from a cemetery administered by the Army. As explained in my first declaration, a formal disinterment request was submitted and approved.

Plaintiff John Boyt and Family

24. The IDPF for Colonel Loren Stewart records that John Boyt's first contact with the Army regarding his grandfather was telephone call on June 18, 1981 to Army Headquarters.

25. By letter dated June 19, 1981, Mr. Boyt forwarded to the Army his letter to the National Personnel Records Center seeking assistance reconstructing COL Stewart's service record and the circumstances surrounding his death.

26. On February 5, 1982, Mr. Boyt wrote a letter to Army Headquarters attaching a copy of his June 22, 1981 letter from Master Sergeant Abie Abraham and inquiring how DoD followed up when Sgt. Abraham submitted recovered remains as probably COL Stewart.

27. On February 25, 1982, the Army's Memorial Affairs Division responded, attaching portions of the IDPF and explaining how COL Stewart was determined to be unrecoverable.

28. The PCRB has no record of additional contacts between Mr. Boyt and the Army

until July 26, 2012, when Mr. Boyt sent an email to the PCRB requesting any available information regarding his grandfather, Colonel Loren Stewart. On July 30, 2012, the PCRB called him and sent him an email explaining that it would request COL Stewart's IDPF and a case summary and would send him an FRS kit.

29. On July 30, 2012, Mr. Boyt emailed the PCRB to discuss his effort to locate eligible FRS donors and inquire about DoD's use of DNA. On August 1, 2012, the PCRB responded, explaining that both mtDNA and Y-DNA were relevant.

30. On October 23, 2012, the PCRB sent Mr. Boyt electronic versions of the information he had requested regarding COL Stewart.

31. On January 12, 2013, Mr. Boyt attended the San Diego Family Member Update, and asked some questions that the PCRB latter followed up on.

32. There are no recorded contacts with Mr. Boyt after 2013 until November 2017. However, it appears that in 2015, the PCRB established contact with another relative, Scott Stewart, who submitted an FRS kit.

33. By letter dated November 7, 2017, Mr. Boyt requested that X-3629 Manila No. 2 be disinterred for comparison to COL Stewart. See Exhibit 2.

34. On November 29, 2017, I responded to Mr. Boyt on behalf of the PCRB, acknowledging the disinterment request and explaining the disinterment request process. See Exhibit 3. I explained that the PCRB would be in contact with him every 90 days or when there is a major change in status.

35. Because of Mr. Boyt's attorney's February 2018 directive that the PCRB not contact Plaintiffs, I have not contacted Mr. Boyt as planned. Because the disinterment request has remained under review at DPAA, there has been no major change in status to report.

Plaintiff Douglas Kelder and Family

36. On November 17, 2009, the PCRB was first contacted by John Eakin regarding the status of his cousin, Private Arthur Kelder. The PCRB explained the FRS collection process and family updates. Mr. Eakin provided contact information for Allen Grube, another cousin of PVT Kelder who could provide a DNA sample. On November 18, 2009, the PCRB sent an FRS kit to Mr. Grube.

37. On March 20, 2010, Mr. Eakin and his wife attended the San Antonio Family Member Update and met one-on-one with DPMO historian Heather Harris.

38. On October 10, 2010, the PCRB sent an FRS kit to Ronald Kelder, another family member identified by Mr. Eakin.

39. On October 14, 2010, Mr. Eakin contacted the PCRB again to inquire about the status of PVT Kelder's case.

40. On November 4, 2010, the PCRB sent a DPMO research memorandum regarding PVT Kelder to Mr. Eakin and Mr. Grube. Mr. Eakin followed up with a series of emails addressing material he believed should be supplemented and additionally considered.

41. In June 2011, Mr. Eakin asked the Army to convene a board to review the determination of non-recoverability for PVT Kelder. In November 2011, the Army responded, explaining that the Army Casualty and Mortuary Affairs office did not have jurisdiction to review PVT Kelder's case due to changes in federal law.

42. In June 2011, the PCRB received the results of a genealogical report and found that Douglas Kelder, PVT Kelder's nephew, was the primary next of kin.

43. On June 27, 2011, the PCRB established contact with Douglas Kelder (Mr. Kelder), who requested various information, including PVT Kelder's IDPF and a replacement set

of medals. The PCRB again spoke with Mr. Kelder on August 2, 2011 and November 8, 2011.

44. On February 25, 2012, Mr. Eakin and his wife attended the Dallas Family Member Update and met with individuals from JPAC, DPMO, and the PCRB. JPAC explained that its historians and scientists would review the evidence and then recommend whether or not disinterment was warranted.

45. While Douglas Kelder did not attend the Minnesota Family Update in 2014, after the event, the PCRB sent him an updated case summary and information packet that he would have received if he had attended.

46. On June 5, 2014, the PCRB spoke with Dianne Larrimore, a first cousin once removed to PVT Kelder, and explained the status of his case and emailed her PVT Kelder's IDPF.

47. On June 25, 2014, the PCRB notified Mr. Kelder that the Deputy Assistant Secretary of the Army had approved disinterment of ten sets of remains associated with Cabanatuan Common Grave 717.

48. On September 13, 2014, Mrs. Larrimore and her husband attended the Pittsburg Family Member Update and met one-on-one with officials from DPMO, JPAC, AFDIL, and the PCRB.

49. The PCRB mailed a series of update letters to Mr. Kelder and Mr. Eakin on October 16, November 13, December 17, 2014 and January 14, 2015.

50. On January 22, 2015, the PCRB called Mr. Kelder and informed him that PVT Kelder had been identified on January 17, 2015. Many communications followed to answer Mr. Kelder's questions.

51. On May 26, 2015, the PCRB conducted an identification briefing by telephone.

On January 24, 2015, the PCRB has provided an electronic copy of the identification briefing package, at Mr. Kelder's and Mr. Eakin's request.

52. Additional communications followed to plan Mr. Kelder's July 2015 trip to accompany the remains from Hawaii to Chicago as a special escort and for burial arrangements.

53. On December 18, 2017, the PCRB sent an email to Mr. Kelder explaining that DoD was still working with the U.S. Attorney's Office in New Mexico to seek court approval for disinterment of the last set of remains associated with Common Grave 717.

54. On May 6, 2019, the PCRB called Mr. Kelder to inform him that DPAA had identified additional portions of PVT Kelder and that the documentation would be forwarded to him once received.

Plaintiff Raymond Bruntmyer

55. The PCRB's first recorded contact with Raymond Bruntmyer occurred on October 4, 2011, when he called the PCRB and asked for a one-on-one meeting with DoD officials regarding why he believed the remains designated X-675 Manila No. 2 were those of TEC4 Lloyd Bruntmyer; he also requested an awards listing.

56. On October 18 2011, Raymond Bruntmyer attended the Wichita Family Member Update and participated in a one-on-one appointment with DoD officials regarding the status of his brother, Technician Fourth Class Lloyd R. Bruntmyer.

57. On November 28, 2011, the PCRB mailed a copy of TEC4 Bruntmyer's awards listing.

58. On February 25, 2012, Mr. Bruntmyer attended the Dallas Family Member Update, and again asked for information about TEC4 Bruntmyer's awards.

59. On April 25, 2012, the PCRB forwarded the Awards Branch's response to Mr.

Bruntmyer regarding his awards question.

60. On December 14, 2016, the PCRB received an email from Mr. Bruntmyer asking for an update on TEC4 Bruntmyer's status.

61. On December 21, 2016, the PCRB called Mr. Bruntmyer and explained that, while DoD could not provide a precise timeline for a disinterment, DPAA was heavily focused on Cabanatuan and that the remains were significantly commingled and he would be notified once TEC4 Bruntmyer's remains were identified.

62. The PCRB received Mr. Bruntmyer's letter dated November 24, 2017, requesting that DoD identify Technician Fourth Class Lloyd R. Bruntmyer and return his remains to her family for burial. Mr. Bruntmyer attached no information to his request, stating only "I am confident [that TEC4 Bruntmyer's remains] are those shown on page 21 of XFile #675, buried in Manila American Cemetery." See Exhibit 4.

63. On December 13, 2017, the PCRB responded to Mr. Bruntmyer's request, explaining the disinterment request process and stating that the PCRB would seek to follow up every 180 days or when there was a major change in status. See Exhibit 5. In the letter, the PCRB inadvertently transposed a number in his address, so it is not clear whether Mr. Bruntmyer received the letter.

64. On February 22, 2018, the PCRB by email responded to Mr. Bruntmyer, again acknowledging his request and explaining that it had been forwarded to DPAA for review. The PCRB employee stated that he would try to follow up in about 90 days or when the status changed.

65. On May 13, 2018, Mr. Bruntmyer sent an email asking for an update on the status. On May 14, 2018, the PCRB responded, explaining that the status was still "in review."

66. On August 13, 2018, the PCRB emailed Mr. Bruntmyer to explain that his disinterment request had been rolled up with DPAA's recommendation to disinter eight sets of remains associated with Cabanatuan Common Grave 704, including X-675, that the disinterment had been approved on July 6, 2018, and that the disinterment would likely occur within the next ninety days.

67. On November 28, 2018, Mr. Bruntmyer sent an email asking for an update on the status. On November 29, 2018, the PCRB responded, explaining that the remains associated with Cabanatuan Common Grave 704 had been disinterred on November 18, 2018 and were now at the DPAA Laboratory undergoing forensic analysis.

68. On February 26, 2019, the PCRB sent Mr. Bruntmyer another email explaining that the status was unchanged and that no identifications had yet been made.

Plaintiff Ruby Alsbury and Family

69. On October 2, 2014, the PCRB received an email and call from Debbie Christian, a niece of Private Robert Morgan. The PCRB explained that no next of kin was recorded for PVT Morgan and Mrs. Christian asked for his IDPF and an FRS kit.

70. On November 18 2014, the PCRB received a call from Mrs. Christian providing contact information for a nephew of PVT Morgan, William Morgan. The PCRB called William Morgan, who asked for an FRS kit.

71. On January 26, 2015, the PCRB sent Mrs. Christian a copy of the IDPF and other records.

72. There is no record of Ruby Alsbury, PVT Morgan's sister, or her son David Alsbury, ever contacting the PCRB. The PCRB recorded their connection to PVT Morgan solely based on the complaint filed in this lawsuit.

Plaintiff Janis Fort and Family

73. The PCRB has no record of any contact by Plaintiff Janis Fort or members of her family before this lawsuit was filed in May 2017.

74. On May 26, 2017, Janis Fort called the PCRB to inquire about the status of her grandfather, Brigadier General Guy Fort. This is the PCRB's first recorded contact with the Fort family. The PCRB obtained her contact information along with information about other relatives and offered to provide her Brig. Gen. Fort's IDPF.

75. On May 31, 2017, the PCRB mailed Brig. Gen. Fort's IDPF to Ms. Fort.

76. On December 12, 2017, the PCRB received a letter from Ms. Fort requesting identification of Brig. Gen. Fort and return of his remains to her family for burial. On December 15, 2017, the PCRB sent her an email asking for more information about her request. On December 15, 2017, Ms. Fort replied, explaining her request as follows:

First Guy O Fort is my grandfather, and yes I am asking that X618 be disinterred. I have a signed statement and other papers by the then provincial governor (also a prisoner) who witness the execution. In 1947 the remains were recovered and delivered to the US Army. The family did not know that any remains had been recovered they were told the remains were unrecoverable. I only found out recently and received the papers through a third party.

Ms. Fort did not attach any documents or provide any additional information.

77. On December 18, 2017, the PCRB replied to Ms. Fort's December 15, 2017 email, explaining the disinterment request process and asking if she had a brother who could provide Y-DNA or knew of a female descendent of Brig. Gen. Fort's mother who could provide mtDNA.

78. On December 19, 2017, the PCRB received a letter from Ms. Fort dated December 13, 2017, which she characterized as her second attempt to request disinterment of X-618 to identify Brig. Gen. Fort. See Exhibit 6. That same day the PCRB called and spoke with

her by phone and sent her an email confirming receipt of her request and explaining the disinterment request process. On December 20, 2017, the PCRB followed up with a formal letter covering the same topics. See Exhibit 7.

79. On December 22, 2017, the PCRB called Ms. Fort to offer her a call with DPAA to discuss the status of Brig. Gen. Fort's case. She asked that the call be scheduled for January 4, 2018. On January 3, 2018, the PCRB called Ms. Fort to explain that the call would need to be postponed because John Smithee, new litigation counsel for plaintiffs, wanted to participate and it would need to be rescheduled.

80. On July 9, 2018, Ms. Fort emailed the PCRB to request an FRS kit be sent to her and her sister. On July 18, 2018, the PCRB responded, stating that FRS kits would be sent in the next few days, and explaining that while Ms. Fort and her sister were not currently eligible FRS donors, scientific advances might make their DNA useable in the future.

81. On August 6 and 23, 2018, Ms. Fort emailed the PCRB to inquire whether Brig. Gen. Fort's personal effects could yield useable DNA. On August 24, 2018, the PCRB responded, explaining the alternative reference process.

82. On December 3, 2018, the PCRB became aware that Ms. Fort's disinterment request had been disapproved by the Assistant Secretary of Defense for Manpower and Reserve Affairs. It informed Defendants' litigation counsel so that Ms. Fort could be notified.

83. In January 2019, Ms. Fort and her sister registered to attend the San Jose Family Member Update on February 23, 2019. The PCRB contacted her several times to discuss logistics. On February 23, 2019, Ms. Fort and her sister attended the Family Update and met one-on-one with DPAA historian Gregory Kupsky who explained the current status of Brig. Gen. Fort's case and provided her with a current case summary. See Exhibit 8.

84. On March 20, 2019, the PCRB sent Ms. Fort an email attaching the awards documents she requested at the Family Member Update, and notifying her that replacement awards had been requested.

Plaintiff Judy Hensley & Family

85. The PCRB has no record of any contact by Plaintiff Judy Hensley or members of her family before this lawsuit was filed in May 2017.

86. The first contact in PCRB records occurred on November 24, 2017, when the PCRB received a request—which had originally been directed to the American Battle Monuments Commission—from Jennifer Russell, Plaintiff Judy Hensley’s daughter, requesting that DoD identify PFC David C. Hansen and return his remains to her family for burial. The PCRB construed this as a disinterment request for remains associated with Cabanatuan Common Grave 407. See Exhibit 9.

87. That same day, the PCRB called Jennifer Russell, and invited her to submit a family reference sample (FRS). Mrs. Russell also stated that she would provide contact information so that her mother, Judy Hensley, and her brother, Ryan Hensley, could provide FRS. That same day, the PCRB mailed an FRS kit to Mrs. Russell.

88. On November 27, 2017, the PCRB called Ryan Hensley and Judy Hensley, and mailed each of them a copy of PFC Hansen’s individual deceased personnel file (IDPF) and an FRS kit.

89. In December 2017, the PCRB confirmed that the Armed Forces DNA Identification Laboratory (AFDIL) had received FRS from Judy Hensley and Jennifer Russell. However, because Judy Hensley is a paternal niece, neither she nor her daughter are eligible FRS donors.

90. On December 22, 2017, the PCRB called Jennifer Russell to invite her family to participate in a January 5, 2018 conference call with DPAA regarding the status of PFC Hansen's case. This call was postponed when Plaintiffs retained a new lawyer. On February 2, 2018, the PCRB offered additional dates for a call, and Jennifer Russell rescheduled the call for February 7, 2018, stating that she was interested in participating in the call even if the new lawyer, John Smithee, was not available. On February 6, 2018, John Smithee sent an email requesting that the PCRB not contact plaintiffs or their family members without his express prior permission. The PCRB cancelled the scheduled call.

91. On January 11, 2018, Judy Hensley contacted the PCRB to request to attend the San Diego Family Update on January 20, 2018. When the PCRB called her back that same day to confirm her request, she requested a one-on-one appointment with a DPAA analyst regarding the status of PFC Hansen's case. Mrs. Hensley did not attend the Family Update, so on January 22, 2018, the PCRB sent her an information packet containing material that would have been provided if she had attended—a case summary and briefing slides.

92. On February 6, 2018, the PCRB left Jennifer Russell a voicemail and sent an email regarding locating additional family members who might be viable candidates for submitting DNA samples. That same day, the PCRB called Judy Hensley, who stated that she did not know of any family members on the maternal side of the family but would contact her son, Ryan Hensley, to check on the status of the FRS kit he had received. Mrs. Hensley thanked the PCRB for the information packet it had sent her. That same day, the PCRB called Ryan Hensley, who stated that he did not remember receiving an FRS kit and requested another one for himself and for his son, Shane Hensley.

93. On February 6, 2018, the PCRB ordered a genealogical report to attempt to

identify eligible FRS donors. The PCRB also sent FRS kits to Ryan Hensley and Shane Hensley. On February 21, February 27, March 6, and March 12, 2018, the PCRB followed up with both individuals to confirm they received the kits and would submit them in the near future. On April 9, 2018, the PCRB confirmed that Ryan Hensley and Shane Hensley were descended from a paternal niece, Judy Hensley, and therefore were not eligible FRS donors.

94. On November 26, 2018, the PCRB received the genealogical report which identified a different primary next of kin—Lynda Withbroe, the daughter of PFC Hansen’s brother—and several eligible FRS donors. The next day, the PCRB contacted Mrs. Withbroe, a maternal second cousin once removed, and a maternal second cousin twice removed. Two of them were interested in additional information, so the PCRB sent copies of PFC Hansen’s IDPF. The maternal second cousin twice removed requested an FRS kit for himself and for his mother, which the PCRB sent the same day.

95. On December 13, 2018, after two prior unsuccessful attempts, the PCRB contacted David K. Hansen, a paternal nephew, and sent him a copy of PFC Hansen’s IDPF and an FRS kit.

96. By January 17, 2019, the PCRB confirmed that all three FRS kits from eligible relatives had been received by the Armed Forces DNA Identification Laboratory.

* * * * *

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

Executed this 5 th day of June, 2019.


Gregory L. Gardner

Branch Chief, Past Conflict Repatriations
Branch/U.S. Army Casualty and Mortuary Affairs
Operations Division

From: [Jones, Laurie A CIV USARMY HRC \(US\)](#)
To: [Gardner, Gregory L CIV USARMY HRC \(US\)](#)
Cc: [Green, Ollie E CIV USARMY HRC \(US\)](#)
Subject: FW: [Non-DoD Source] John A. Patterson, et al. v. Defense POW/MIA Accounting Agency, et al.; Civil Action No. SA-17-CV-467-XR (UNCLASSIFIED)
Date: Wednesday, February 7, 2018 9:23:35 AM
Attachments: [Letter to Army Casualty Office Regarding Communications.pdf](#)

CLASSIFICATION: UNCLASSIFIED

Good Morning,

Please see the email (below) received from Mr. Smithee.

Thank you.

V/r,
Laurie

-----Original Message-----

From: John Smithee [<mailto:jts@smitheelaw.com>]
Sent: Tuesday, February 6, 2018 4:30 PM
To: Jones, Laurie A CIV USARMY HRC (US) <laurie.a.jones20.civ@mail.mil>
Cc: pattj <pattj@cox.net>
Subject: [Non-DoD Source] John A. Patterson, et al. v. Defense POW/MIA Accounting Agency, et al.; Civil Action No. SA-17-CV-467-XR

Ms. Jones,

Attached is a letter addressed to the Casualty and Mortuary Affairs Operations Division ("CMAOD") concerning the above-referenced case.

I have previously tried calling you but received no response. As indicated in the letter, we respectfully request that you not directly contact any of the plaintiffs or their family members about any matter related to the above-referenced case without my prior express written permission. If you would like to communicate with my clients, please contact my office. I am happy to speak with you about any information that you are offering to provide. Also, I am happy to speak with you about scheduling a potential conference call. However, if you continue to contact my clients or their family members without my permission, we will be forced to seek appropriate relief from the court.

Please feel free to share the attached letter with any other CMAOD personnel.

Sincerely,

John T. Smithee, Jr.

Law Office of John True Smithee, Jr.
1600 McGavock St., Suite 214 <<https://maps.google.com/?q=1600+McGavock+St.,+Suite+214+Nashville,+TN+37203&entry=gmail&source=g>> Nashville, TN 37203 <<https://maps.google.com/>>



[q=1600+McGavock+St.,+Suite+214Nashville,+TN+37203&entry=gmail&source=g](https://www.google.com/search?q=1600+McGavock+St.,+Suite+214Nashville,+TN+37203&entry=gmail&source=g) >

(806) 206-6364 <tel:(806)%20206-6364 >

jts@smitheelaw.com < Caution-<mailto:jts@smitheelaw.com> >

Caution-www.smitheelaw.com < Caution-<http://www.smitheelaw.com/> >

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CLASSIFICATION: UNCLASSIFIED

**LAW OFFICE
OF
JOHN TRUE SMITHEE, JR.**

JOHN T. SMITHEE, JR.
TELEPHONE: 806-206-6364
E-MAIL: JTS@SMITHEELAW.COM

ADDRESS:
1600 MCGAVOCK ST., SUITE 214
NASHVILLE, TN 37203

February 6, 2018

ATTN: Casualty & Mortuary Affairs Operations Division
U.S. Army Human Resources Command
1600 Spearhead Div. Ave.
Fort Knox, KY 40122-5400

RE: John A. Patterson, et al. v. Defense POW/MIA Accounting Agency, et al.; Civil Action No. SA-17-CV-467-XR

To Whom It May Concern:

This law firm represents John A. Patterson, John Boyt, Janis Fort, Ruby Alsbury, Raymond Bruntmyer, Judy Hensley, and Douglas Kelder in the above-referenced case. Please direct all future correspondence and communications regarding this matter to my attention.

I have been notified that Army Casualty & Mortuary Affairs Operations Division ("CMAOD") personnel have been contacting my clients and their agents on behalf of the Defense POW/MIA Accounting Agency (the "DPAA") to set up a meeting to discuss the ongoing litigation between my clients and the DPAA. We respectfully request that the CMAOD not contact my clients or their agents either orally or in writing without my prior express written permission. If CMAOD personnel would like to communicate with my clients about a matter related to the above-referenced case or schedule a conference call, please contact my office. If the DPAA or CMAOD continues contacting my clients directly, we will be forced to seek appropriate protection from the court.

Sincerely yours,

/s/ John True Smithee, Jr.

John True Smithee, Jr.

TRUE LAW

JOHN T. BOYT
Seven El Portal
Palos Verdes Estates, CA 90274

November 7, 2017

Mr. Greg Gardner, Chief
Past Conflict Repatriations Branch
AHRC-PDC-R Dept 450 1600 Spearhead Division Ave
Fort Knox, KY 40122

RE: Loren Prescott Stewart
Colonel, U. S. Army, 05881
X3629 Manila #2, and X1298
Reported at American Manila Cemetery grave N 15 19

Dear Mr. Gardiner:

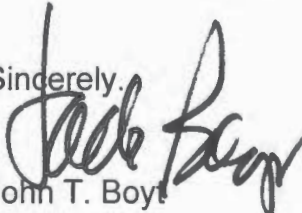
It has come to my attention that certain additional administrative requirements may have been added in recent years and that a new process may exist to formally request that Colonel Stewart's remains be identified and returned to the United States for burial.

Records previously provided to me indicate that Colonel Stewart, despite substantial evidence to the contrary, is still registered by your organization as non-recoverable.

That history notwithstanding I would request the remains be identified – using the DNA sample provided two years ago by Scott Stewart - to supplement the first person accounts previously provided.

This request is being made in my role as both Colonel Stewart's grandson and the designated Next of Kin. My first request was made June 19, 1981

Please contact me should you have questions regarding this material.

Sincerely,

John T. Boyt

Contact information:

Mailing address
Seven El Portal
Palos Verdes Estates, CA 90274

telephone
cell – (213) 700-1400

email
jtboyt@theboytcompany.com

EXHIBIT
2



DEPARTMENT OF THE ARMY
U.S. ARMY HUMAN RESOURCES COMMAND
1600 SPEARHEAD DIVISION AVENUE
FORT KNOX, KENTUCKY 40122-5405

November 29, 2017

Past Conflict Repatriations Branch

Mr. John T. Boyt
7 El Portal
Palos Verdes Estates, California 90274-2079

Dear Mr. Boyt:

The Past Conflict Repatriations Branch has received your request for the disinterment of Colonel Loren P. Stewart. We have forwarded this request to the Defense POW/MIA Accounting Agency (DPAA).

I would like to explain the process for a disinterment request so you will know what to expect. The Army Casualty Office forwards the request to the DPAA who will task the appropriate sections to analyze the request and make a recommendation regarding disinterment. DPAA consolidates all recommendations and forwards the request and coordinated recommendations to the Assistant Secretary of Defense (Manpower and Reserve Affairs). The Assistant Secretary of Defense (Manpower and Reserve Affairs) is the final consenting authority.

DPAA's goal for working this request is 150 days. Army Casualty will be in contact you every 90 days, or when there is a major change in status. Please contact us at any time if you would like an update.

If you have any questions regarding this action please contact Mr. Rick Barcenas at 1-800-892-2490 extension 35113.

Sincerely,

A handwritten signature in black ink that reads "Greg Gardner".

Greg Gardner
Chief, Past Conflict Repatriations Branch
Casualty and Mortuary Affairs
Operations Center

Enclosures

EXHIBIT
3

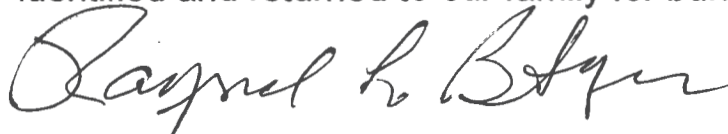
24 November 2017

Mr. Greg Gardner, Chief
Past Conflict Repatriations Branch
AHRC-PDC-R Dept 450
1600 Spearhead Div Ave
Fort Knox, KY 40122-5405

I am the the primary next-of-kin of my brother Technician Fourth Class Lloyd R. Bruntmyer, U.S. Army Air Forces, service number 19 048 974, U.S. Army Air Corps, at Fort Mac Arthur, San Pedro, CA, on 4 Oct. 1940 and 7th Materiel Squadron, 4th Air Base Group, 19th Bombardment Group, 4th Air Corps, U. S. Army Air Corps in the Pacific Theater during the Second World War.

Technician Fourth Class Bruntmyer died on 1 November 1942 while being held as a prisoner of war by the Japanese. His remains were not identified. Today he is commemorated on the Tablets of the Missing at Manila American Cemetery, Manila, Philippines. The details of Tec 4 Bruntmyer's loss are recorded in the Philippine Archive Collection at the U.S. National Archives, his Individual Deceased Personnel File (IDPF), and memorandum the "Casualties of Cabanatuan Prisoner of War Camp #1 and the History of Their Burials" included with this case summary.

I am asking that the remains, which I am confident are those shown on page 21 of XFile #675, buried in the Manila American Cemetery be formally identified and returned to our family for burial in the U.S.



Raymond L. Bruntmyer, RLA, GS14 retired
520 E. Debbie Lane Apt 5210
Mansfield, TX 76063
sanraylo1@att.net
817 225 2274





DEPARTMENT OF THE ARMY
U.S. ARMY HUMAN RESOURCES COMMAND
1600 SPEARHEAD DIVISION AVENUE
FORT KNOX, KENTUCKY 40122-5405

December 13, 2017

Past Conflict Repatriations Branch

Mr. Raymond L. Bruntmyer
520 East Debbie Lane
Apartment 5210
Mansfield, Texas 76063-1082

Dear Mr. Bruntmyer:

The Past Conflict Repatriations Branch has received your request for the disinterment of Colonel Loren P. Stewart. We have forwarded this request to the Defense POW/MIA Accounting Agency (DPAA).

I would like to explain the process for a disinterment request so you will know what to expect. The Army Casualty Office forwards the request to the DPAA who will task the appropriate sections to analyze the request and make a recommendation regarding disinterment. DPAA consolidates all recommendations and forwards the request and coordinated recommendations to the Assistant Secretary of Defense (Manpower and Reserve Affairs). The Assistant Secretary of Defense (Manpower and Reserve Affairs) is the final consenting authority.

DPAA's goal for working this request is 240 days. Army Casualty will be in contact you every 180 days, or when there is a major change in status. Please contact us at any time if you would like an update.

If you have any questions regarding this action please contact Mr. Rick Barcenas at 1-800-892-2490 extension 35113.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Gardner", with a long horizontal flourish extending to the right.

Greg Gardner
Chief, Past Conflict Repatriations Branch
Casualty and Mortuary Affairs
Operations Center

Enclosures

EXHIBIT
5

December 13, 2017

Mr. Greg Gardner, Chief
Past Conflict Repatriations Branch
AHRC-PDC-R Dept. 450
1600 Spearhead Div. Ave.
Fort Knox, KY 40122-5405

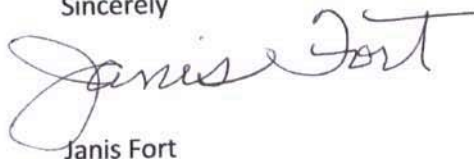
Dear Mr. Gardner,

This is my 2nd attempt to contact you regarding my grandfather Brigadier General Guy O. Fort serial number 0-952305 who was executed by the Japanese in November of 1942, and is buried in the Manila American Cemetery. I am the primary next-of-kin and I am requested that the remains be formally identified and returned to me for burial in the U. S.

Please get back to me ASAP, with whatever the next steps would be in order to have this resolved as quickly as humanly possible.

Thank you

Sincerely


Janis Fort

EXHIBIT

6



DEPARTMENT OF THE ARMY
U.S. ARMY HUMAN RESOURCES COMMAND
1600 SPEARHEAD DIVISION AVENUE
FORT KNOX, KENTUCKY 40122-5405

December 20, 2017

Past Conflict Repatriations Branch

Ms. Janis S. Fort
29272 Providence Way
Hayward, California 94544-6412

Dear Ms. Fort:

The Past Conflict Repatriations Branch has received your request for the disinterment of Brigadier General Guy O. Fort. We have forwarded this request to the Defense POW/MIA Accounting Agency (DPAA).

I would like to explain the process for a disinterment request so you will know what to expect. The Army Casualty Office forwards the request to the DPAA who will task the appropriate sections to analyze the request and make a recommendation regarding disinterment. DPAA consolidates all recommendations and forwards the request and coordinated recommendations to the Assistant Secretary of Defense (Manpower and Reserve Affairs). The Assistant Secretary of Defense (Manpower and Reserve Affairs) is the final consenting authority.

DPAA's goal for working this request is 240 days. Army Casualty will be in contact you every 180 days, or when there is a major change in status. Please contact us at any time if you would like an update.

If you have any questions regarding this action please contact Mr. Rick Barcenas at 1-800-892-2490 extension 35113.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Gardner", written over a horizontal line.

Greg Gardner
Chief, Past Conflict Repatriations Branch
Casualty and Mortuary Affairs
Operations Center

Enclosures

EXHIBIT
7



GUY O. FORT
Brigadier General, United States Army

PERSONAL INFORMATION: Brigadier General (Brig Gen) Guy O. Fort, service number O-952305, enlisted in the United States Army in 1899. He served as an officer in the Philippine Constabulary from 1904 until 1941, when he was promoted to Brigadier General and placed in command of the Philippine Army's 81st Division. Brigadier General Fort surrendered to the Japanese on 27 May 1942 and is believed to have been executed by the Japanese at Dansalan City on the island of Mindanao in November 1942. His remains were never recovered, and his name appears on the Tablets of the Missing at Manila American Cemetery. Details of Brig Gen Fort's loss can be found in his Individual Deceased Personnel File and in war crimes records at the National Archives and Records Administration.¹

CIRCUMSTANCES OF LOSS: In 1901, the U.S. civil government in the Philippines created the Philippine Constabulary "for the purpose of maintaining order, preventing and defeating crime, and enforcing the laws" throughout the islands. The Constabulary recruited officers from among the American participants in the now-concluded Fil-American War. In each province, the Constabulary would provide a small core of officers, and it filled the rank and file with local residents who would rely on their local connections to help establish their unit's authority.² This appears to be the means by which then-Lieutenant Guy Fort received a commission in the Constabulary in 1904. In the years that followed, Fort rose steadily through the ranks while stationed in the Lake Lanao area of Mindanao. According to a 1930s history of the Constabulary, then-Colonel Fort was "a regular Daniel Boone who spoke every native dialect of Mindanao," a fact that strengthened his relationships with local residents.³

Following the Japanese attack on Pearl Harbor on 8 December 1941 (Philippines time), the 81st Division, Philippine Army (PA), was activated under the command of Brig Gen Fort, as part of the Visayas-Mindanao Command (Figure 1). The Division would be responsible for the defense of the Lanao sector of Mindanao (Figure 2). Making use of his strong ties with local leaders, Brig Gen Fort organized the Moro Bolo Battalion as an auxiliary of the Philippine Army. It supported the U.S. Army Forces Far East (USAFFE) in the first months of the war, and would later become a guerrilla force in central Mindanao.⁴

¹ Individual Deceased Personnel File for Fort, Guy O., Brig Gen, O-952305, Record Group (RG) 92: Records of the Office of the Quartermaster General, National Personnel Records Center, St. Louis, MO.

² Ricardo Jose, *The Philippine Army, 1935-1942* (Manila: Ateneo de Manila University Press, 1992), 16-17.

³ Vic Hurley, *Jungle Patrol: The Story of the Philippine Constabulary, 1901-1936* (Salem, Oregon: Cerberus Books, 2011), 289. This work was originally published in 1938 by E. P. Dutton & Co.

⁴ E. Jamboy, "The Resistance Movement in Lanao, 1942-1945," in *Proceedings of the Fifth National Conference on Local History*, p. 63.



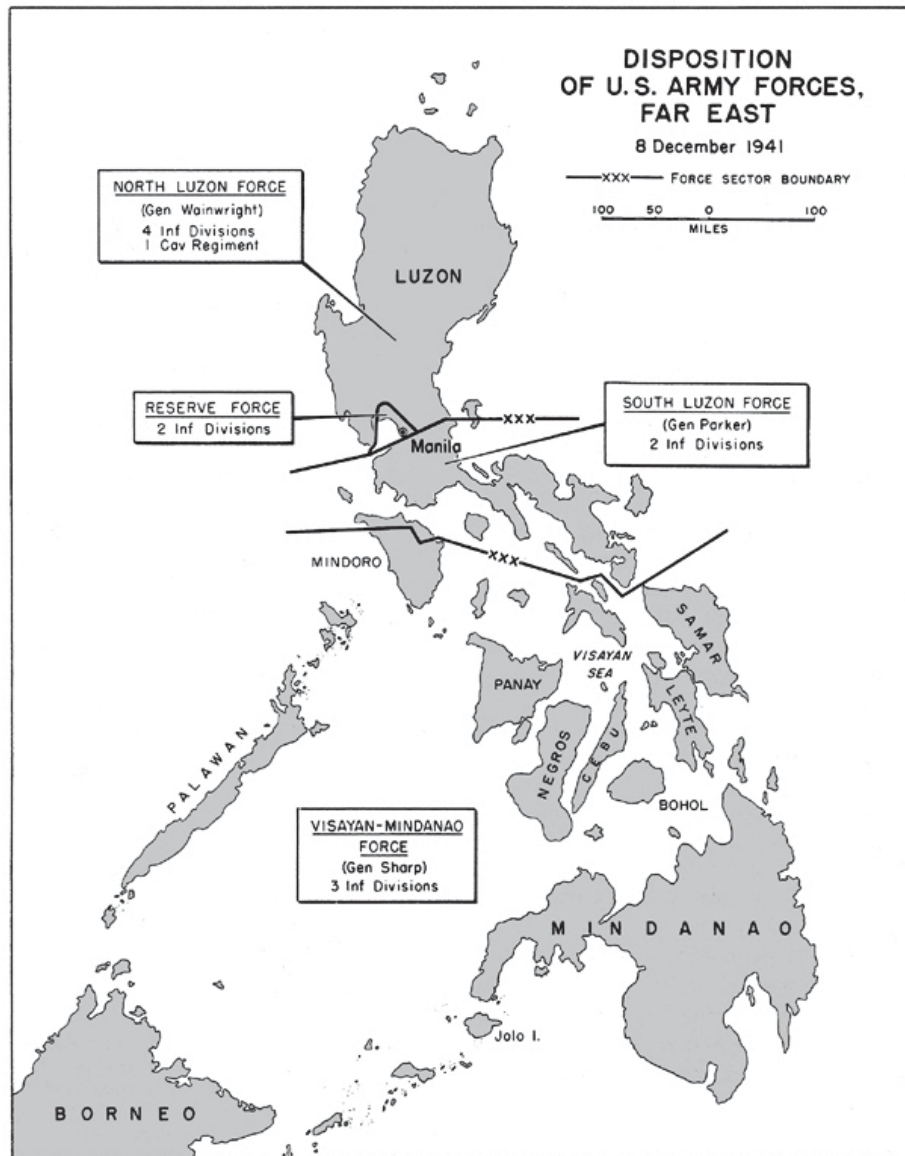


Figure 1. Map of the Philippines showing the disposition of U.S. forces at the time of U.S. entry into World War II. Source: Louis Morton, *The Fall of the Philippines*, United States Army in World War II Series (Washington: Center of Military History, 1953), 68.

The bulk of USAFFE forces surrendered on the Bataan peninsula on the island of Luzon on 9 April 1942. On 6 May, with the surrender of Corregidor Island, General Jonathan Wainwright ordered the surrender of all U.S. forces in the Philippines. The Visayas-Mindanao Command complied on 12 May, though word did not yet reach Brig Gen Fort, who had moved inland to prepare defenses against Japanese invasion. Brigadier General Fort complied with the surrender order on 27 May 1942, although a section of the Moro Bolo Battalion transformed into a guerrilla operation, with Brig Gen Fort's blessing.⁵

⁵ Letter of Fort to Sharp, n.d., V-MF Report of Operations, pp. 285-286. Cited by Louis Morton, *The War in the Pacific: The Fall of the Philippines* (Washington, DC: Center for Military History United States Army, 1953), pp. 577-578; E. Jamboy, *The Resistance Movement in Lanao, 1942-1945*, 1985, p. 27.

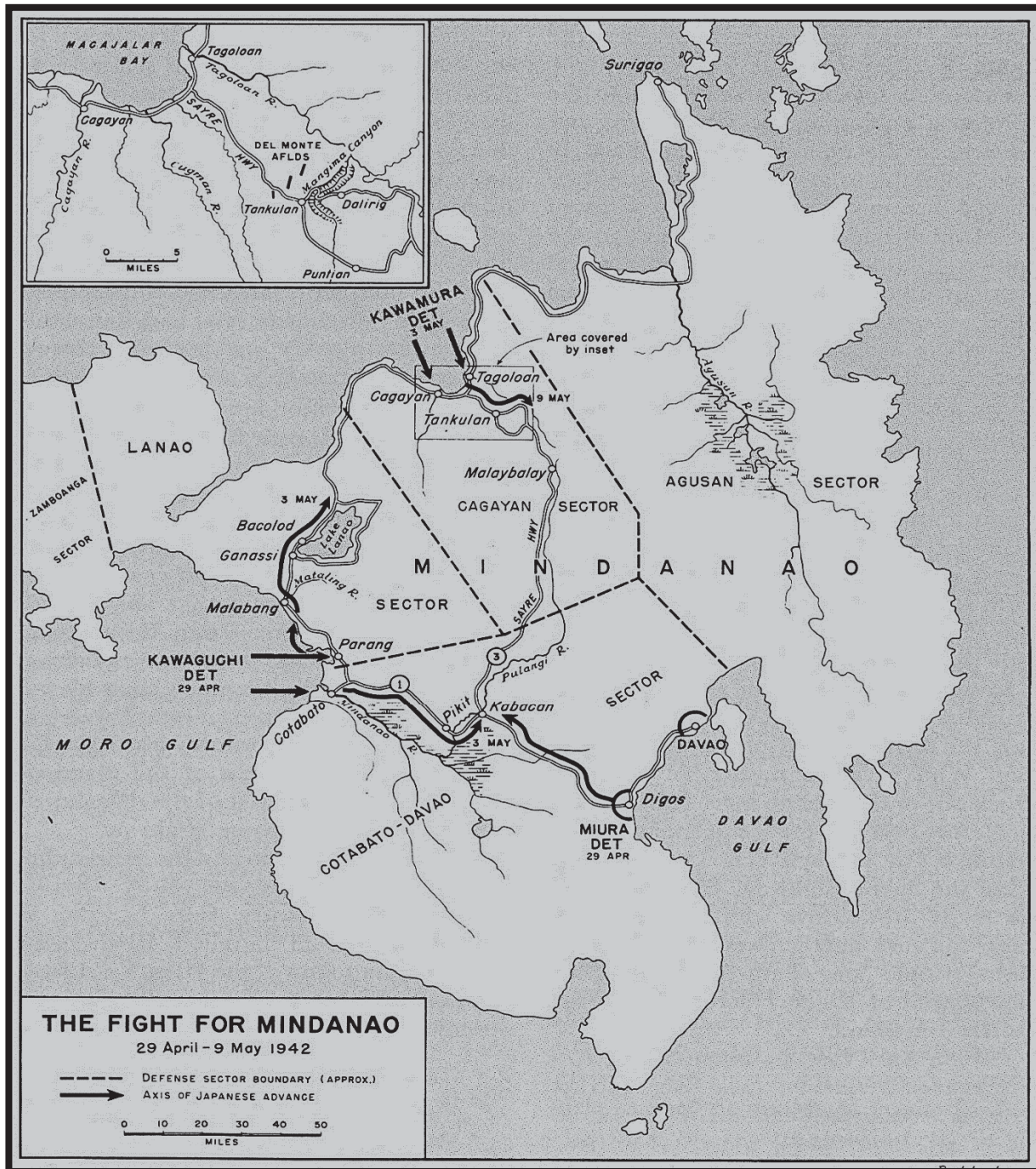


Figure 2: U.S. Army Map of Mindanao, 29 April-9 May 1942.

Source: <http://www.history.army.mil/books/wwii/5-2/Notes/509sm.jpg>.

From June 1942 to July 4, 1942, all USAFFE soldiers and officers who surrendered were interned at Camp Keithley in Dansalan (Figure 3), where they had to endure hardships and abuses from their Japanese captors. Prior to the mass exodus of Prisoners of War (POW)s to Camp Casisang (also referred to as Camp Malaybalay) in Malaybalay, Bukidnon province, three US officers were executed by the Japanese as a result of a successful escape of four Americans from Camp Keithley. After the transfer to Malaybalay, the Japanese transported all U.S. high-ranking officials

to Manila on 5 September 1942; they arrived at Bilibid Military Prison on 14 September. A Filipino eyewitness wrote in his diary the following entry: “Monday, September 14 – We were suddenly wakened [sic] around mid-night by the opening of our cell-door [cell no. 10] and none other but Gen. Guy O. Fort, Commanding Officer of the USAFFE, Mindanao Area, was unceremoniously pushed in. Just as abruptly, he was brought out before day-break and, presumably shipped to Tokyo with other American Prisoners of War. His parting words were, “Keep up your chin, boys.”⁶

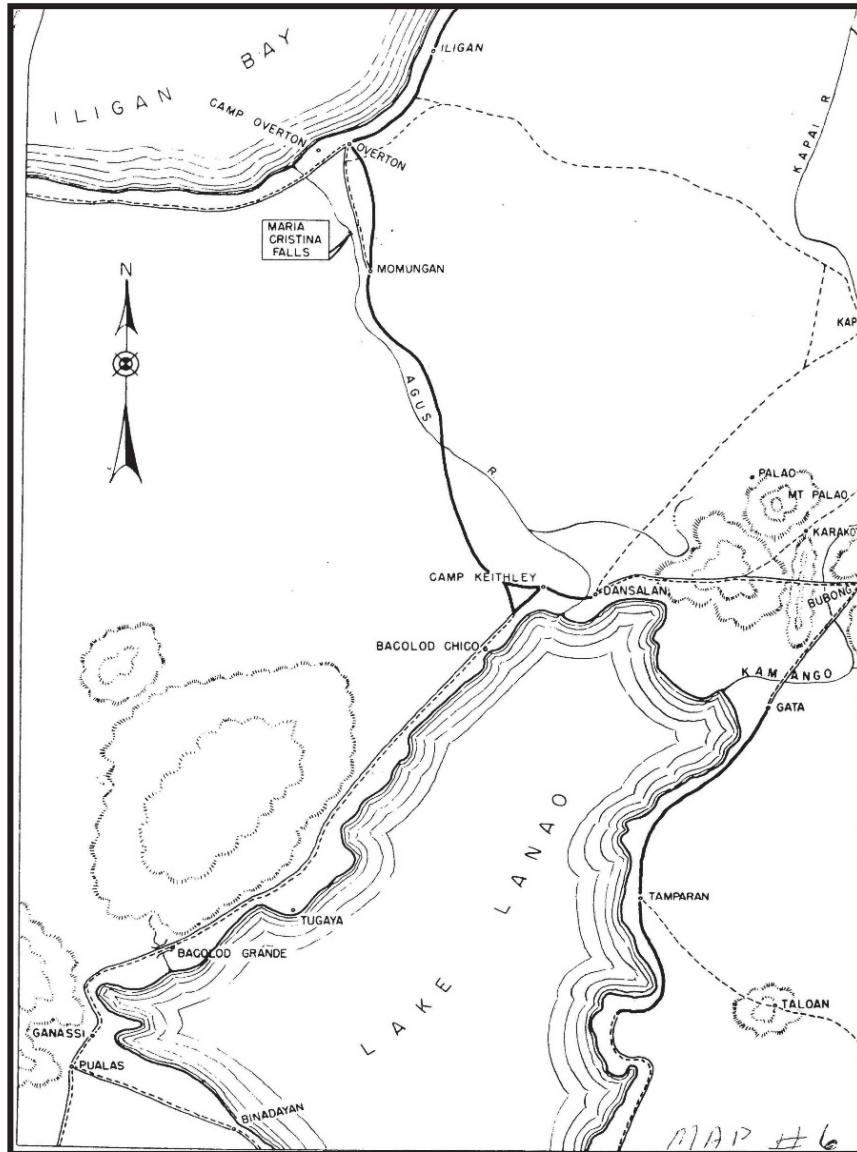


Figure 2. Map of the area north of Lake Lanao, with Camp Keithley and Dansalan to the right of center. Source: Colonel Hiram W. Tarkington, “There Were Others,” unpublished manuscript on the Family and Friends of West Point webpage, <http://www.west-point.org/family/japanese-pow/ThereWereOthers/ManuscriptLinks.htm>.

⁶ Conrado Gar. Agustin, *Men and Memories in Confinement, Excerpts from a diary written in prison during the Japanese Occupation, June 21, 1942 – February 5, 1945* (Manila: MCS Enterprises Inc., 1973), p. 6.

When the Japanese transferred other high-ranking officers from the Philippines to a camp in Formosa (present-day Taiwan), in October 1942 they returned Brig Gen Fort to Mindanao where they directed him to order the surrender of guerrilla forces. Sources are inconsistent on the exact details of subsequent events, but the preponderance of evidence suggests that, when Brig Gen Fort refused to cooperate, Japanese soldiers executed him in the vicinity of Dansalan City between 11 and 13 November 1942 (Figure 3).

SEARCH AND RECOVERY: The American Graves Registration Service (AGRS), U.S. Army Quartermaster Corps, was the organization charged with recovering and identifying fallen U.S. personnel in the Pacific Theater. During and after the war, the AGRS, the legal section of the Supreme Commander for the Allied Powers (SCAP), and other entities attempted to determine the fate of Brig Gen Fort. As late as April 1946, the case of Brig Gen Fort was still being treated as a disappearance due to lack of evidence regarding his fate.⁷ There are numerous accounts, many second- and third-hand, about the fate of Brig Gen Fort. While they point to different specific locations and times, the most credible point to the vicinity of Dansalan City (present-day Marawi), on the northern edge of Lake Lanao.⁸

The earliest report indicating the circumstances as well as the location and date of General Fort's death was a memo dated February 24, 1943. Under the subject of 'Mistreatment of POW and Internee by Japs,' the memo states that "General Fort was executed in the concentration camp at Dansalan in November 1942, when he refused to aid the Japanese in pacification of the Moros."⁹ Unfortunately, no additional information is included in the memo.

On 28-30 June 1948, investigators interviewed Lieutenant Colonel (Lt Col) Yoshinari Tanaka, formerly the commander of the 31st Independent Infantry Battalion in Dansalan City and commanding officer of Camp Keithley. He stated that his commander, Major General Ikuta, ordered him to execute General Fort in retaliation for the escape of three POWs. The general suggested that it might be made to appear that General Fort "died in battle while being taken on operations to subdue the Moro tribes." Because he was "afraid to let too many days lapse," Tanaka ordered the execution. He stated that Brig Gen Fort was blindfolded, and that two soldiers fired. He was buried at the scene, "flowers were placed on his grave and prayers were offered as a final farewell."¹⁰

On 13 and 15 July 1948, investigators spoke with Lt Col Nobuhiko Jimbo, who had served in the garrison at Davao, Mindanao in 1942. He stated that the original POW camp at Dansalan was closed in July and consolidated into Malaybalay, but after a Japanese defeat at the hands of the Moros in September, the Mindanao military governor suggested that General Fort be brought in to

⁷ Report No. 286 "Disappearance of Brig Gen. Guy O. Fort" (also known as Case C-88-c in other files), RG 331: SCAP Legal Section, UD 1214 "War Crime Files, 1946-50," Box 1131, National Archives-College Park.

⁸ The narrative in this Case Summary provides the key statements in reconstructing possible locations for Brig Gen Fort's execution. A summary of all testimony found is available in the DPAA internal case summary for 1922-G, which encompasses the deaths of Brig Gen Fort and other prisoners on Mindanao.

⁹ Extract of Memo re: Mistreatment of POW and Internees by Japs, 24 February 1943, Case file 42-12 "Killing of General Fort, Dansalan (AP 131)," RG 153: War Crimes Office, Judge Advocate General's Office-Army, Entry 143, Box 1327, National Archives-College Park.

¹⁰ Statement of Yoshinari Tanaka, IDPF for Fort.

tell the Moros to lay down their arms. The next he heard of General Fort was the report to General Ikuda that Tanaka had had him executed, some time after September. According to Lt Col Jimbo, once General Ikuta learned of the execution, he flew to Dansalan and reprimanded Lt Col Tanaka for the execution. Lieutenant Colonel Tanaka then told General Ikuta that someone in his intelligence section was responsible. Lieutenant Colonel Tanaka said that the execution took place close to his headquarters. Lieutenant Colonel Jimbo received General Fort's belongings, which he shipped to 14th Army Headquarters in Manila with the message that General Fort was shot while trying to escape.¹¹

Around the same time, Captain (Capt) Hifumi Hiramatsu, formerly an intelligence officer under Colonel Tanaka, testified. He stated that he arrived at Dansalan in September 1942 but was suffering from malaria and not on duty until after General Fort's execution. He stated that, in September, the Yoshioka Company was ambushed with the loss of 130, including Yoshioka, after which First Lieutenant Nakamura became company commander. Captain Hiramatsu recalled that, in September or October while he was ill, a brigadier general was brought to the Intelligence Office in Dansalan. Nakamura notified him that the general was to be shot for trying to escape. Still sick, Capt Hiramatsu watched the execution from a distance of 50 meters. He stated that Nakamura shot General Fort with a rifle. He also provided a sketch of the location (Figure 4).¹²

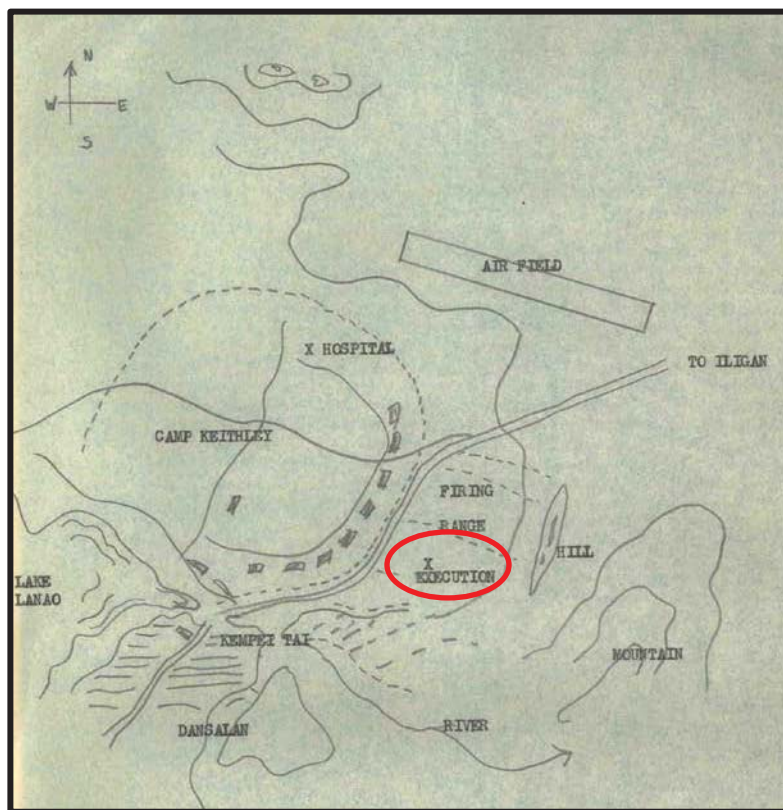


Figure 4: Map by Capt Hifumi Hiramatsu indicating the location of Brig Gen Fort's execution (red circle). Source: IDPF for Brig Gen Fort.

¹¹ Statement of Nobuhiko Jimbo, 13-15 July 1948, IDPF for Fort.

¹² Statements of Hifumi Hiramatsu, July 1948, IDPF for Fort.

Another reported eyewitness was Petronio Encabo, formerly a corporal in the Philippine Army, who was captured on 28 July 1942 while he was secretly sending Allied news via radio. On approximately 11 November, he saw Brig Gen Fort going toward Banggolo from the *Kempeitai* (Japanese secret police) station with several Japanese soldiers. Around 1700, he was sweeping a room in the Japanese headquarters when he saw a typed appeal to the guerrillas to surrender, with a signature that was purportedly that of Brig Gen Fort. Shortly thereafter, he saw Major Hiramatsu's command car and a truck departing the camp, and he saw Brig Gen Fort, his hands bound, with the group. Mr. Encabo said that the Japanese would not go far because of guerrilla activity. The two vehicles departed with Brig Gen Fort, and they returned two hours later without him. The following day, a guard told him that they had executed a general the night before. The guards said that Colonel Tanaka read a statement, then soldiers shot Brig Gen Fort twice. He fell, but not into the grave that had been dug. Major Hiramatsu then stabbed the General, "causing his immediate death." Mr. Encabo tried unsuccessfully to locate the execution site.¹³

Second Lieutenant Jack Hoffman of the 14th Bombardment Squadron evaded capture and, while ill, managed to escape to the hills of Mindanao and reside with the Moros for much of the war. Second Lieutenant Hoffman heard from a Major Thomas that the Moros saw Brig Gen Fort bayoneted and shot at Camp Keithley, after which the Moros successfully took his remains to bury them. Major Thomas reportedly had service ribbons that he claimed belonged to Brig Gen Fort.¹⁴

War crimes investigators did not have all of these accounts in February 1946, when they visited the Dansalan area. Investigators spoke to multiple witnesses but concluded that the testimony was "no more than a compilation of circumstantial and hearsay evidence regarding the mysterious disappearance and death of General FORT." An excavation of the area of Camp Keithley where Brig Gen Fort was rumored to be executed did not yield any remains.¹⁵ Therefore, other possible locations were considered. They received a statement from Artemio Dizon, who recalled seeing Brig Gen Fort in Cagayan in February 1943 for a few days before learning he was executed. It is worth noting that this date was approximately three months after the likely date of execution of Brig Gen Fort.¹⁶

The most authoritative statement on Cagayan as the location of the execution comes from Ignacio Cruz, governor of Misamis Oriental Province after the war. On 14 July 1947, Governor Cruz turned over a set of remains to the AGRS along with a statement. He had surrendered with USAFFE forces in May 1942 and was a prisoner in the city of Cagayan until he escaped in November 1942. Captain Yamada of the Japanese garrison in Cagayan told him that Brig Gen Fort was brought to the city in September 1942, and Father Isaias Edralin told him that Brig Gen Fort was held at the provincial jail, then taken to Dansalan for a few days before returning. Governor Cruz was asked in late September to interpret for an American officer, but

¹³ Statement of Petronio Encabo, 14 November 1946, IDPF for Fort; Also see Statement of Petronio Encabo, 22 October 1946, Record Group 331: SCAP Legal Section, UD 1213 "Prisoner of War File (201 File)," Box 1094, National Archives-College Park.

¹⁴ Statement of Jack Hoffman, 1 March 1945, IDPF for Fort. Notably, another individual named Antonio Reyes gave Hoffman a different account of Fort's execution that took place in Cagayan instead of Dansalan.

¹⁵ Capt Robert Klase, Investigation of Case C-88c, IDPF for Fort.

¹⁶ Statement of Artemio Dizon, 14 February 1946, IDPF for Fort.

then was told he was not needed because the officer was to be executed. Later, a Filipino soldier told Governor Cruz that he had seen Brig Gen Fort bayoneted to death behind the Lourdes Academy in Cagayan. A Filipino cook told him that he saw “the body of a big American” being loaded in a truck and taken from Lourdes Academy. Later, the caretaker of the Ateneo de Cagayan school told Governor Cruz that he saw “a big American” being buried under a mango tree at the Ateneo de Cagayan campus. Assisted by Governor Cruz, the AGRS disinterred two sets of remains from the area.¹⁷ The remains, as yet unidentified, were designated as “unknowns.”

Thousands of unidentified remains like these were collected in the effort to recover the American dead from the Second World War. Investigators compared their physical identification features and circumstances of loss to missing individuals from the area. Unidentified remains, often consisting of only partial bodies or skeletons, were labeled with their cemetery name, an “X” and a number. In the case of the remains from Cagayan, they received the designation Leyte #1 X-618 (X-618) and X-619 (X-619).¹⁸

In its recovery of X-618, the AGRS noted that Governor Cruz believed them to be Brig Gen Fort. Subsequently, the temporary interment report after processing noted that X-618 “could be Gen Guy O. Fort.” The height estimate at the time of recovery in July 1947 was 5 feet 1 3/8 inches. Upon reprocessing at the Manila Mausoleum in December 1947, the height estimate was 5 feet 6 inches. During a third analysis on 4 March 1950, the estimated height was 5 feet 3 1/8 inches, age 23-28 years, estimated weight 122-142 pounds, and race was listed as “very probably Filipino.” For basis of comparison, Brig Gen Fort’s IDPF states that he was 5 feet 8 1/2 inches tall, and 151 pounds prior to the war.¹⁹

The X-619 interment report includes the same notation that it “could be General Guy O. Fort,” likely based on the testimony of Governor Cruz. Included with the remains was a belt buckle with “a spread Eagle” and the year 1940. The July 1947 height estimate was 4 feet 11 inches, while the December 1947 and September 1949 processings recorded 5 feet 5 inches. There was no conclusion as to possible race.²⁰

An AGRS board of review examined the case of Brig Gen Fort on 4 June 1949. Citing negative results during a July 1948 search in Dansalan, and a negative comparison to “all practicable unknowns,” the AGRS recommended that Brig Gen Fort be declared non-recoverable.²¹

¹⁷ Statement of Ignacio Cruz, 14 July 1947, IDPF for Fort.

¹⁸ These unknown files later underwent reprocessing at Manila Mausoleum and received the designations Mausoleum X-2322 and X-2323. For the purpose of simplicity, they will be cited throughout this case summary under their Leyte #1 designations.

¹⁹ Search and Recovery Report, 14 July 1947; Report of Interment of X-2322, 3 December 1947; Identification Check Lists, 14 July 1947 and 1 December 1947; Identification Data, 4 March 1950, Leyte #1 X-618 File; Data on Remains Not Yet Recovered or Identified, IDPF for Fort.

²⁰ Report of Interment of X-2323, 3 December 1947; Identification Check Lists, 11 July 1947 and 1 December 1947; Identification Data, 27 September 1949.

²¹ Case History for Remains Considered Non-Recoverable, 4 June 1949, IDPF for Fort.

The Identification Section of the Memorial Division, Office of the Quartermaster General, reviewed both unknowns in September 1949 for comparison to Brig Gen Fort. The findings state that “Dental Records of General Fort reveal extractions of teeth, Right and Left 5, whereas neither of the Unknowns in question indicate such extractions.” As a result, the Identification Section recommended no subsequent action.²² On 12 October 1949, the Office of the Quartermaster General upheld a finding of non-recoverability for Brig Gen Fort.²³

NEXT STEPS: The Defense POW/MIA Accounting Agency (DPAA) has conducted extensive research on the possible whereabouts of Brig Gen Fort and has concluded that his execution and burial most likely took place in the vicinity of Dansalan (present-day Marawi), Lanao Province, on the island of Mindanao. This conclusion rests on the following arguments:

1. Japanese officials who admitted involvement in Brig Gen Fort’s execution stated that it took place in the Dansalan area, and it is unlikely that they would fabricate their involvement while speaking with war crimes investigators.
2. Dansalan City, where Brig Gen Fort is believed to have been held, is 45 miles from Cagayan de Oro, the location mentioned by Governor Cruz. The roads between Dansalan and Cagayan were frequent scenes of guerrilla activity, and it is unlikely that the Japanese would have taken Brig Gen Fort such a great distance, through guerrilla territory, to execute him.
3. Governor Cruz’s testimony is based on second-hand knowledge of the execution. Even his own statement refers to X-618 as “the supposed remains of Gen Guy O. Fort.”²⁴
4. As noted by the AGRS, there are apparent dental discrepancies between Brig Gen Fort and X-618 and X-619. Odontologists at DPAA agree with this assessment.

The efforts of DPAA thus focus on the likelihood that the execution took place in Dansalan (present-day Marawi). There is also the possibility that, per the testimony of 2d Lt Hoffman described above, local Moro residents removed his remains to an unknown location. Unfortunately, Marawi has been the site of large-scale violence as the result of combat between Philippine government and insurgent forces, and as a result, field investigation is not an option.

Researchers at DPAA are exploring the possibility that unknowns recovered from the Dansalan area may be associated with Brig Gen Fort. Between April and July 1947, the AGRS recovered remains from the Dansalan area on three occasions. The recoveries were across the Agus River from Camp Keithley, near where Japanese officers said the execution occurred (Figure 5). The AGRS believed the remains may be associated with three individuals executed by the Japanese in July 1945, but did not compare them with Brig Gen Fort because the AGRS did not yet have the Japanese officers’ testimony. The three unknowns—X-629 Leyte #1, X-633 Leyte #1, and X-3815 Manila #2—describe similar recovery locations that could in fact overlap.²⁵

²² Identification Section memorandum, dated 29 September 1949, X-618 Leyte #1 File.

²³ Non-Recoverable Case Record of Review and Approval, IDPF for Fort.

²⁴ Statement of Ignacio S. Cruz, 14 July 1947, X-618 Leyte #1 File.

²⁵ Lieutenant Clark, “Interrogation, Search and Recovery Report,” 16 June 1947, X-629 Leyte #1 File; Charles Waple, “Interrogation, Search and Recovery Report,” 4 July 1947, X-633 Leyte #1 File; Charles Waple, “Interrogation, Search and Recovery Report,” n. D., X-3185 Manila #2 File.

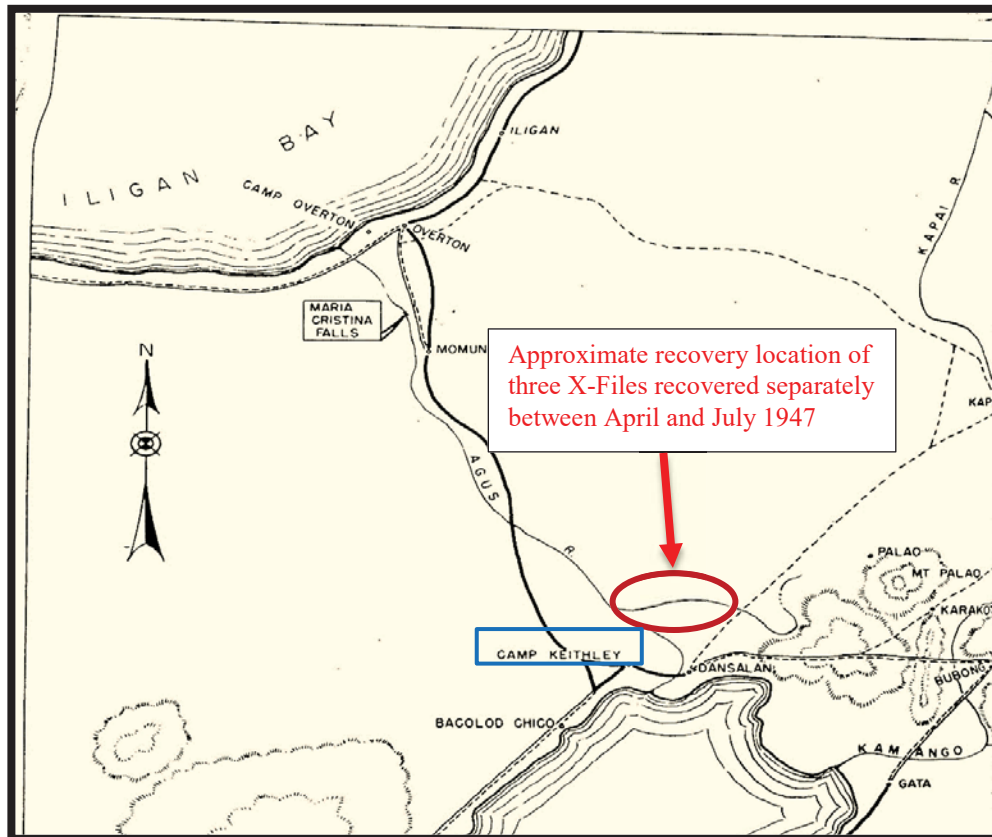


Figure 5: Map of Dansalan area showing the unknowns' recovery location in relation to Camp Keithley. Source: Tarkington, "There Were Others."

Researchers at DPAA have drafted a proposal to disinter X-629 Leyte #1, X-633 Leyte #1, and X-3815 Manila #2 for comparison to Brig Gen Fort and three other individuals known to have been executed in the vicinity of Camp Keithley. To submit a proposal to the Undersecretary of Defense for Personnel and Readiness, the Defense Department must have DNA Family Reference Samples (FRS) for over 60% of potentially-associated individuals. In this case, the requirement would be FRS for 3 of the 4 individuals. As of 6 February 2019, an FRS has been received only for Brig Gen Fort; the Army Casualty Office is working to acquire the other samples. Once two more samples have been received, DPAA will route its proposal to the decision authority.

February 2019
GJK



Figure 6: Inscription on the back of the photo: “(L-R) Brigadier Gen. FORT (PA); Brigadier Gen. Joseph P. VACHON (101st Div, PA); Major General William F. SHARP (Comdg Gen. Mindanao Forces); Lt. MORI, Shiguo (Commanding Camp Casisang, Malaybalay, Mindanao); Brigadier Gen. Carl H. SEALS (AGD, AG of USAFFE). Photo received from Col. Archibald M. Mixon 07600.”

Source: Case File ‘Z’ (‘Malaybalay Camp’) Vol. I, RG 331: SCAP Legal Section, UD 1211 “Closed Case Files, 1945-46,” Box 1074, U.S. National Archives-College Park.

November 21, 2017

Mr. Merrill A. McPeak, Chairman
ABMC
2300 Clarendon Boulevard
Arlington, VA 22201

IN RE: DAVID C. HANSEN, PFC US ARMY AIR CORPS SA#16006593
HQ, HQ 27th Bombardment Group L
Milwaukee, WI POW/MIA 28 June 1942 Cabanatuan POW Camp
Buried as Unknown in Manila American Cemetery

Dear Mr. McPeak,

I am the primary next of kin for my great Uncle David mentioned above. I am writing to request David's remains be formally identified and returned to me and my family for burial in the US.

Please do not hesitate to contact me with any questions.

V/r,

Jennifer E. Russell
PO BOX 174
11 View Drive
Cedar Crest, NM 87008
505.934.6671
jen@eagletechnology.com

cc/Ryan Hensley

