

**EXPERT OPINION REPORT
OF CDR RENEE R. RICHARDSON (USN/RET)**

Court: United States District Court – Western District of Texas
Case Number: 5:17-CV-00467
Case Name: *John A. Patterson, et al., v. Defense POW/MIA Accounting Agency, et al.*
Date: July 18, 2018

I. Qualifications

My name is Renee R. Richardson. My opinion was sought based on my 2008 to 2011 assignment to Defense Prisoner of War Missing Personnel Office (DPMO) now Defense POW/MIA Accounting Agency (DPAA). As a Navy Commander I served as a Branch Chief in the WWII Division of DPMO from 2010 to 2011. That assignment provided me intimate knowledge of procedures and policies of the WWII Division as well as in depth familiarity with the information contained within Individual Deceased Personnel Files (IDPF). Additionally, as part of the Joint DPMO Investigation Team in Europe 2010, I gained understanding of basic investigation methodology. From 2011 to 2014, shortly after leaving DPMO, I advised on the recovery and ultimate return of WWII MIA PFC Lawrence Gordon. That experience gave me insight into contemporary errors made, and the diligence and tenacity it takes for a family to reach resolution; especially in the face of official information to the contrary and Governmental reluctance to further explore options that included DNA testing. I have attached a copy of my resume.

II. Opinions/Subject Matter of Testimony

It is my 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. I agree with the DPAA's recommendation to disinter the remains associated with Cabanatuan Common Graves 704 and 822. It is also my opinion that Private First Class David Hansen's remains were buried in Cabanatuan Common Grave 407, and are currently buried in Manila American Cemetery. My findings are based, in part, on the relevant IDPFs and burial records.

- X-1130: (Nininger) Using the extensive case notes within the IDPF my conclusion is that there are no other options remaining for closure of this case except disinterment and DNA testing. There are the conflicting contemporary statements of survivors, given both to the family and to the government. Potential errors in processing, the reviewing the remains due to the elevated nature of the case and the push for resolution. Given the confusion surrounding this case, and the fact that all other avenues for resolution have been exhausted by the government except DNA testing; the only resolution for the family and for the government left is disinterment and DNA testing.

- X-618: (BG Fort) There are few case notes in this IDPF. Condition of remains in 1947 are listed as 'Good'. Three different estimated of heights are given ranging from ~5'1" to ~5'6". In 1950 the records note a comparison to dental records and excluded X-618 remains based on lack of match as well as the examiners' statement that the remains were likely not Caucasian. In spite of these discrepancies the sworn statement of the Hon. Ignacio S. Cruz attesting to his belief that the remains he turned over were in fact the remains of BG Fort should not be discounted. This is again a circumstance where negative proof is needed by the family to ensure that the government has done everything possible to account for their missing loved one. At the time of initial recovery 14 July 1947 DNA testing was not possible, therefore other modes were used in an attempt to identify, or exclude the remains. Disinterment and DNA testing is the only way this case can be resolved.
- X-3629: (Stewart) In reviewing the IDPF one cannot help but notice that COL Stewart, (the Regimental Commander in question) is referred throughout as 'COL Stuart'. When a comparison of one 'COL Stuart's' dental record with those of the remains (potentially COL Stewart) did not match; the remains were re-interred as 'Unidentified'. Governmental resistance to disinterment in the case is understandable. However if errors were made, especially if the 'Stuart' versus 'Stewart' inaccuracy denied a family the return of their loved one, the only remedy is disinterment and DNA testing.

It is my opinion that the best interests are served both for the families of the missing, and for the government, by disinterring the remains at issue in this case for DNA testing as requested. DNA testing will lay to rest the confusion and angst currently surrounding these cases. Additionally, because this involves a discrete number of individuals the results are binary; either the remains are or are not the person in question. If the DNA shows the remains are not who the family believes them to be, the results are still useful. A negative result for one family is a positive result for another. There can still be only a small number of other(s) to whom the remains belong--others the government may obtain family reference samples for allowing future case resolution.

The DPAA mission statement is to provide: "The Fullest Possible Accounting" the government's original efforts on behalf of the WWII families do not yet meet that DPAA axiom. The government's efforts were necessarily hindered by reliance upon memory, battle altered locations, physical evidence and anthropological measurements of remains. Any errors that were made can now only be resolved by DNA testing. All other approaches are flawed even in the best of times, which contemporary recovery and reexamination efforts were not. DNA testing can be done on degraded, comingled even ancient remains with excellent results. The government loses nothing by agreeing to the disinterment and DNA testing for the requested remains, yet gains a substantial amount of goodwill and restoration of public trust.

In support of my opinion I also cite the DoD Memorandum dated April 14 2015 Subject: Disinterment of Unknowns from the National Memorial Cemetery of the Pacific, attached as part of my statement. This Memorandum sets in clear language and no uncertain terms, that the Deputy Secretary of Defense is in favor of all measures that lead to the identification of remains including disinterment and DNA testing.

III. Prior Testimony/Publications/Compensation

I state for the record that I have not served as an expert witness at trial or by deposition to any other case in the past four years. No publications authored by me have been published in the last ten years. I am not receiving any compensations for the testimony in this case.


Renee R. Richardson



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APR 14 2015

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
 CHAIRMAN OF THE JOINT CHIEFS OF STAFF
 UNDER SECRETARIES OF DEFENSE
 DEPUTY CHIEF MANAGEMENT OFFICER
 CHIEF OF THE NATIONAL GUARD BUREAU
 COMMANDERS OF THE COMBATANT COMMANDS
 GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
 DIRECTOR, COST ASSESSMENT AND PROGRAM EVALUATION
 INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
 DIRECTOR, OPERATIONAL TEST AND EVALUATION
 DEPARTMENT OF DEFENSE CHIEF INFORMATION OFFICER
 ASSISTANT SECRETARY OF DEFENSE FOR LEGISLATIVE
 AFFAIRS
 ASSISTANT TO THE SECRETARY OF DEFENSE FOR PUBLIC
 AFFAIRS
 DIRECTOR, NET ASSESSMENT
 DIRECTORS OF THE DEFENSE AGENCIES
 DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Disinterment of Unknowns from the National Memorial Cemetery of the Pacific

The DoD remains committed to fulfilling its sacred obligation to achieve the fullest possible accounting for U.S. personnel lost in past conflicts. For several years, the Department has considered the complexities of a decision to disinter unknowns buried as groups where the remains are commingled. Recent advances in forensic science and technology, as well as family member assistance in providing genealogical information, have now made it possible to make individual identifications for many Service members long-buried in graves marked "unknown." I therefore direct the Defense POW/MIA Accounting Agency to analyze all information pertaining to unknowns buried at the National Memorial Cemetery of the Pacific (NMCP) and when defined thresholds (see below) for effecting individual identifications of those remains are met, to disinter the remains for the purpose of making individual identifications and returning these venerable heroes to their families for the honored burial they so richly deserve.

The NMCP, which is administered by the Department of Veteran Affairs, is the dignified resting place for 2,760 unknown Service members. Of these, 1,988 unknowns are from World War II and 772 are from the Korean War. Included in the number from World War II are 1,061 unknowns associated with ships attacked at Pearl Harbor and subsequent maritime losses suffered during World War II. In many cases, the human remains from these ship losses were buried in group caskets in a commingled state. For example, the 388 unaccounted-for Sailors and Marines who died on December 7, 1941, in the sinking of USS *Oklahoma* (BB-37) are buried in 61 caskets at 45 grave sites at the NMCP. Since 2003, the Department has contacted families, collected and analyzed DNA from 84 percent of applicable USS *Oklahoma* family members, and has collected



90 percent of *antemortem* medical and dental records from the ship's crew. Analysis of all available evidence indicates that most *Oklahoma* crew members could be identified individually if the caskets associated with the ship were disinterred. I thereby direct DoD to coordinate with the Department of Veteran Affairs for the disinterment and individual identification, to the extent practical, of all unknowns associated with *Oklahoma* within the next five years.

In addition to my decision to disinter the unknowns associated with *Oklahoma*, I am establishing a broader DoD disinterment policy that applies to all unidentified human remains from the NMCP and other permanent U.S. military cemeteries from which we conduct disinterment to effect identifications. Effective immediately, the following thresholds must be met in order for the Department to proceed with disinterment. For cases of commingled remains, research must indicate that at least 60 percent of the Service members associated with the group can be individually identified. For individual unknowns, there must be at least 50 percent likelihood to make an identification before disinterring the remains. To meet these thresholds, DoD must conduct the research necessary to determine the list of possible missing Service members who could be among the unknowns, collect the relevant family reference samples for comparison with any DNA obtained from sampling the remains, obtain the necessary *antemortem* medical and dental records, and have the scientific and technological ability and capacity to identify the personnel in a timely manner. These standards are meant to clarify and support existing policies established by the Under Secretary of Defense for Personnel and Readiness.

I make this decision knowing that not all families will receive an individual identification as a result of these efforts. But I accept as a matter of principle that DoD must strive to provide resolution through individual identification to as many families as possible and to the reasonable limits of our scientific abilities.

This policy does not extend to unaccounted-for Service members who were lost at sea. It also does not extend to remains entombed in U.S. Navy vessels that currently serve as national memorials. However, if there are remains affiliated with losses from national memorial Navy vessels that are buried in a national cemetery and those remains meet the criteria established above, then those remains may be disinterred.

The Department's efforts to identify and account for missing Service members will require close coordination across DoD and with other Federal departments and agencies, families, Members of Congress, and external stakeholders. Accordingly, the Under Secretary of Defense for Policy, in coordination with the Under Secretary of Defense for Personnel and Readiness and the Assistant to the Secretary of Defense for Public Affairs, will ensure our efforts are clearly coordinated and communicated, particularly with the families of these heroes from our Nation's past conflicts.

