

RENEE RICHARDSON
November 28, 2018,

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

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

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ORAL DEPOSITION OF RENEE R. RICHARDSON
November 28, 2018
San Antonio, Texas

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APPEARANCES:

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RENEE R. RICHARDSON,
The Witness; and

BARBARA DURAND-HOLLIS,
Certified Shorthand Reporter.

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DEPOSITION upon oral examination of the witness, RENEE R. RICHARDSON, taken on behalf of the Defendants, pending in the United States District Court, for the Western District of Texas, San Antonio Division, before BARBARA DURAND-HOLLIS, a Certified Shorthand Reporter in and for the State of Texas, on the 28th day of November, 2018, in the United States Attorney's Office, 601 N.W. Loop 410, Suite 600, San Antonio, Bexar County, Texas, beginning at 2:00 p.m. Central Time, pursuant to due Notice.

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Signature and Changes:
Reporter's Certificate:

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1 (November 28, 2018 - 2:00 PM)

2 RENE R. RICHARDSON,
3 having been first duly sworn, testified as follows:

4 EXAMINATION

5 QUESTIONS BY MR. THORP:

6 Q. Good afternoon, Ms. Richardson. My name is
7 Galen Thorp, counsel for Defendants. And we are here
8 for the deposition in Patterson versus DPAA in the
9 Western District of Texas. You've been asked by
10 Plaintiffs to provide expert testimony in this case.
11 Is that correct?

12 A. That is correct.

13 Q. And you've prepared an expert report dated
14 July 18, 2018?

15 A. I did.

16 Q. Have you been deposed before?

17 A. I have not.

18 Q. Do you understand the basic process of a
19 deposition?

20 A. You ask me questions and I answer them in the
21 most forthright manner I can.

22 Q. Yes. And your answers are under oath, thus,
23 the oath at the beginning.

24 A. Yes.

25 Q. And I'll ask the questions, you can answer.

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1 If your counsel representing you sees a problem with the
2 question, he may interpose an objection.

3 A. Okay.

4 Q. But then, you can continue to answer the
5 question unless he instructs you not to.

6 A. All right.

7 Q. Is there any reason you cannot provide full and
8 accurate answers today?

9 A. I don't believe there is any reason that I
10 cannot.

11 Q. And if you don't understand my question, please
12 ask me to rephrase it and I'll do my best to ask a
13 question that you understand. Is that fair?

14 A. That's fair.

15 Q. Are you under the influence of any substances
16 or medicines that could impair your ability to
17 understand my questions or give full and accurate
18 answers today?

19 A. I am not.

20 Q. Did you do anything to prepare for your
21 deposition?

22 A. Other than the initial reading of the IDPF
23 cases, and then looking at them again briefly, I have
24 done no other preparation.

25 Q. In preparing for this deposition, did you

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1 notice any errors in your report?

2 A. There are quite a few grammar errors, yes.

3 Q. But nothing of substance?

4 A. A couple of P's. No, I think that the
5 substance of the concerns, I mean, obviously IDPFs are
6 difficult when they're taken contemporarily in trying to
7 work through something. And to move this many years
8 forward, I see that there is conflicting data but that
9 in its own way strengthens my belief that the only
10 resolution for the three particular cases is a negative
11 report. Either the person is or is not, and DNA testing
12 is really the best manner to resolve that.

13 Q. Okay. We'll get into some of those details in
14 a little bit.

15 A. Okay.

16 Q. Let's take a step back and talk about you are
17 being proffered as an expert. So, in what fields
18 relevant to this case do you have expertise?

19 A. As a naval intelligence officer, I worked at
20 the what is now DPAA, formally DPMO, including in the
21 World War II Division, but specifically the reason that
22 I was asked in is the work that I did in assisting Jeff
23 Henry and the Lawrence Gordon family in recovering
24 Private Lawrence Gordon. And that was, we did their
25 final, we were able to get the remains in 2014 and

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1 working through with the University of the Wisconsin,
2 their DNA Department in trying to comprehend the
3 differences between mitochondrial and nuclear DNA, and
4 the processes that can be used. They work primary with
5 ancient remains, mummies and older but it was my work
6 with that case which is post-retirement that I was being
7 asked to address because of the work I did with them.

8 Q. So, that gives us some context. How would you
9 the describe the nature of your expertise? Like is
10 there a field that it could be labeled as? Like when
11 you're serving as an expert witness, there is a field of
12 expertise generally. So, I'm trying to get to how you
13 would describe the expertise that you are providing?

14 A. A familiarity with the internal working of the
15 Department of Defense's Preserved War Missing Personnel
16 Office, specifically the World War II one. I spent two
17 years going through IDPFs, some cases, writing them up,
18 working through the research and development of cases.
19 I served as an investigator with the Joint Team that was
20 the JPAC and DPMO, as well as our Russian Division.

21 We did the investigations in 2010. We had
22 ten cases, five countries, 21 days going out into the
23 field, actually laying out the grid, doing all the
24 detecting, writing down soil samples, and preparing for
25 decisions on whether or not that site would be feasible

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1 for an archeological dig to do recovery of remains.

2 So, I went through the training at JPAC in
3 Hawaii for how to do a field site and how do a recovery.
4 And when working on the Lawrence Gordon case, went
5 through the labs and working through the concepts and
6 familiarity with the techniques and the technology to do
7 about DNA and the recovery process.

8 I was permitted to re-articulate the
9 skeletal remains of Lawrence Gordon with the State
10 Forensic Officer in Wisconsin when we brought the
11 remains back and worked with the forensic dentist as
12 well.

13 So, I would say that my expertise is
14 actually more of a general working knowledge to
15 specifically these kinds of cases and not one of a
16 scientific background because I am an intelligence
17 linguist. So, I'm a language by training and a poli psy
18 philosophy. So, I am not a scientific background
19 person. And so, it's more that general knowledge comes
20 from actually hands-on working through cases.

21 Q. Thank you. Are you offering any opinions today
22 about DNA testing, kind of the science as you just
23 referenced?

24 A. Not unless I'm asked.

25 Q. You referenced a role in the World War II

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1 Division in reviewing IDPFs.

2 A. Yes.

3 Q. That was for Vietnam and Cambodia. Is that
4 correct?

5 A. No. That was my first assignment at DPMO. My
6 second assignment was as a Branch Chief in World War II,
7 as a Branch Chief in World War, II yes.

8 Q. And your role there was to conduct outreach for
9 non-governmental historians and researchers, right?

10 A. That was my primary goal, yes, along with
11 cataloging and scanning all the IDPFs that we were
12 taking from the Suitland facility to go through all the
13 IDPFs, scan them, catalog them, put them into the
14 system. And then, as I said, I was part of the joint
15 team that went out to do the actual investigation of
16 sites using the IDPFs of various cases to determine
17 whether or not those locations would be viable for
18 disinterment and to look for remains.

19 So, we all kind of multitasked in that
20 division. Certainly, the historians did much more of
21 the development of cases but we were all basically
22 trained in how to do each others' jobs, especially since
23 the cases you had, you had to write them up, and then
24 you met with the families. I had the great honor to
25 represent DPMO in Hawaii and do the World War II cases

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1 and in Korea because the Korea analysts had to be pulled
2 back, I believe it was a death in the family, but I
3 don't recall at this point. But we all learned each
4 others' jobs because you never knew when you had to get
5 called upon to do one another's assignment and help each
6 other out.

7 And they're very different. The Vietnam
8 era remains and World War II era remains, very different
9 context. The soil pH, just being one example, in
10 Vietnam the acidity of the soil is truly disintegrating
11 the remains much faster than we have been able to
12 recover, whereas in World War II even in some of the
13 places in the Pacific, the soil has actually helped
14 retain the quality of the remains.

15 Q. But did you work specifically on remains from
16 the Philippines?

17 A. I did not work specifically on remains from the
18 Philippines.

19 Q. So, what you just referenced about the soil
20 quality in the Pacific is not specific to the
21 Philippines or based on your direct knowledge?

22 A. Actually, it is based in my direct knowledge.
23 I was born on Guam, I was raised on Pohnpei Palay in
24 Madras. I am very familiar with all of those islands.
25 My Godmother and her sisters were involved in helping

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1 socialize some of the Japanese prisoners, the last ones
2 that came out of hiding in Taipan and other places. I
3 am very familiar with the soil of Atolls as well as the
4 individual islands, including the Philippines. And
5 then, we moved it to Hawaii.

6 Q. I'm still struggling a little bit to quantify
7 exactly what you are claiming expertise in. I guess I
8 heard you say essentially that you are an expert in the
9 internal workings of DOD, specifically the World War II
10 Division. Is that the expertise that you are claiming
11 in a nutshell?

12 A. Well, not DOD.

13 Q. I'm sorry. DPMO?

14 A. DMPO, now DPAA. So, I can't claim any
15 knowledge of internal workings of DPAA. I can only
16 speak to the past.

17 Q. And when did you retire from the government?

18 A. 2014.

19 Q. Which was a year before the creation of DPAA.
20 Is that right?

21 A. Correct. The reorganization of DPMO into DPAA
22 consolidating various division throughout the country,
23 yes.

24 Q. Let's turn now to, if I may, could you state
25 for us each opinion that you are asserting in your

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1 capacity as an expert witness in this case. And then,
2 we will take each one after we get a list and go through
3 the basis for it.

4 A. So, in the three cases, you have Stewart, you
5 have Brigadier General Fort, and you have Nininger. And
6 in all three of those cases, the researchers and those
7 trying to quantify and recover remains have, in essence,
8 hit a stopping point where they could go no further with
9 the technology at hand.

10 There is only one technology that can sort
11 that out and it is a very binary technology. The
12 remains either are or they are not the individual that
13 the families feel that they are. And that's DNA
14 testing.

15 Q. Can I pause you for a second?

16 A. Sure.

17 Q. So, you're jumping into some of your reasoning
18 to get to the conclusions. So, perhaps it might be
19 easier if I just report you to your report and we talk
20 it through this way. I just want to make sure I
21 understand the opinions before I get to sort of the
22 reasoning.

23 So, if you turn to Tab 2 in your binder of
24 Volume 1, I think that's your Expert Report. Is that
25 right?

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1 A. It is.

2 (Exhibit No. 1 marked.)

3 Q. And we will, for purpose of the deposition,
4 document this as Exhibit 1. So, in Section II labeled
5 Opinions, I see three numbered opinions there. It is my
6 opinion that.

7 A. Yes.

8 Q. And is it fair to say that the opinions stated
9 there 1, 2, 3 are the bottom line opinions for what you
10 were just describing?

11 A. Yes.

12 Q. Okay. So, essentially, your first opinion is
13 that the remains designated as X-1130 are likely those
14 of U.S. Army First Lieutenant Alexander R. Nininger.
15 Is that right?

16 A. That's correct.

17 Q. And your second opinion is that the remains
18 designated as X-618 --

19 A. 618.

20 Q. Are likely those of U.S. Army Brigadier General
21 Guy O. Fort. Is that correct?

22 A. Yes.

23 Q. And your third opinion is that the remains
24 designated as X-3629 are likely those of U.S. Army
25 Colonel Loren P. Stewart. Is that correct?

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1 A. Yes.

2 Q. And then, down at the bottom of that paragraph
3 not numbered it says, "It is also my opinion." And can
4 you just read that sentence for us?

5 A. Yes. It is my opinion that the best
6 interests --

7 Q. I'm sorry. Where are you reading from?

8 A. I'm reading from, "It is my opinion," after the
9 three X's, the cases stated. Where did you want me to
10 read from?

11 Q. Oh, in the same paragraph. I'm sorry.

12 MR. SPRAGUE: The part about Private Hansen.

13 Q. Yes. Sorry to jumble things but in the same
14 paragraph that we were looking at before.

15 A. "It is also my opinion that Private First Class
16 David Hansen's remains were buried in the Cabanatuan
17 Common Grave 407, and are currently buried in Manila
18 American Cemetery. My findings are based, in part, on
19 the relevant IDPFs and burial records," and things that
20 I had available to review.

21 Q. So, it would be fair to characterize that as a
22 bottom line kind of fourth opinion? So, we have the
23 one, two, three. One for Nininger, Fort, Stewart, and
24 this is another opinion for Hansen?

25 A. Yes.

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1 Q. And is it fair to say that the bullet points
2 that follow with regard to Nininger, Fort and Stewart
3 kind of summarize your reasoning?

4 A. Yes.

5 Q. And then, the paragraph that you started to
6 read a moment ago about best interests, is that an
7 additional sort of opinion that you are offering as an
8 expert?

9 A. That is based on my dealings with the various
10 families when I did the family updates and the cases
11 that I had to work on both for the Vietnam Division,
12 Southeast Asia Division, and for the World War II
13 Division when we would do updates and the various cases
14 we worked. Yes, I think that the best interests of the
15 families as well as the government are served by going
16 to binary solution which is DNA testing because they
17 either are or they are not the individual that the
18 families are presumed.

19 Q. So, you are offering that as essentially a
20 fifth opinion as an expert witness?

21 A. Yes.

22 Q. Because that's kind of a general opinion kind
23 of separate from the individuals?

24 A. That's the general opinion. That is a general
25 opinion rolling up all. My opinion was at DMPO and

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1 remains that the anthropologically centric resolution
2 methodology that we use is flawed, and that it really
3 should be moved to a DNA centric resolution.

4 The case work that was done in The Balkans
5 is a testimony to that. We are using the anthropologic
6 method. The cases were coming a few a year of 5,000 in
7 mass graves commingled, in many cases even charred and
8 badly damaged. And when they moved, the State
9 Department brought in individuals to help train locals
10 and use a DNA centric approach, they began moving out
11 several families a week in the tens and hundreds a
12 month.

13 That is a contractor that the government
14 has used. It is a methodology that is approved already
15 by the government. So, I have held that opinion when I
16 was at DPMO, and I continue to hold that opinion that
17 moving to a DNA centric resolution methodology is in the
18 best interest of the government, and then secondarily
19 it's also in the best interest of the families.

20 Q. And what's the basis for your knowledge about
21 the recovery effort in The Balkans?

22 A. I was a watch officer for The Balkan Wars, and
23 that was in 1994 through '97. And my personal friends
24 were State Department employees who worked there as well
25 as one of the senior scientist now at Bode Corporation

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1 for DNA testing. And I got to speak with him personally
2 when we walked through the process at the University of
3 Wisconsin.

4 So, it is anecdotal in that sense. It was
5 via friends and their firsthand knowledge on the ground
6 and not me standing there observing, but I made those
7 contacts and those friends during my time as a watch
8 officer in The Balkans 1994 through 1997.

9 Q. Have you read any formal research or analysis
10 about the testing process in The Balkans?

11 A. Yes, I have.

12 Q. In preparation --

13 A. In preparation for this, no. Out of general
14 knowledge when I was at DPMO, yes. It helped form my
15 opinion that we should, as an organization, we ought to
16 have moved towards a DNA centric model rather than the
17 anthropologic centric with DNA as the key.

18 Q. Let me just note that I think we're talking
19 over a little bit.

20 A. Okay.

21 Q. So, it would certainly help the court reporter
22 if you let me finish a question before you start
23 answering, and I'll try not jump in and talk over you
24 either. Thank you for that answer. Let me just check
25 on a few more things about what you're opining on.

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1 Are you offering an opinion that the remains of
2 Nininger, Fort, Stewart and Hansen have already been
3 identified?

4 A. No.

5 Q. Why not?

6 A. Because I don't know that.

7 Q. Do you see any reason in the records to think
8 that they have already been identified?

9 A. No.

10 Q. Are you offering any opinion about the
11 processing remains after disinterment other than your
12 general point?

13 A. Other than my experience reading the IDPFs of
14 the grave registrations and all of the subsequent ones
15 and the hundreds and hundreds of cases that we went
16 through in which the recoveries were often difficult,
17 the burials were made in very hard circumstances. You
18 know, in talking with my father as an example who was in
19 Bougainville, Gauadalcanal and some major stall in
20 island campaigns about what happened to the dead and the
21 disposition and how rapidly the battle lines changed in
22 the Pacific during that time, it is clear that that it's
23 a very difficult circumstance.

24 I did not read anything in the IDPFs that
25 were provided to me to suggest that those people had

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1 already been identified. That is not to say the remains
2 have not been recovered.

3 Q. Are you offering an opinion that DOD's
4 facilities and techniques are inadequate to properly
5 reassociate and timely return remains to their families?

6 A. No.

7 Q. Why not?

8 A. My opinion, well, because I think they're doing
9 the best they can given the constraints of the
10 anthropologic centric methodology. When you have to
11 re-articulate the skeletal remains first and do your
12 measurements that way, it takes a very long time, it
13 takes table space, and it takes much more -- it would
14 require much more funding than unfortunately can be
15 given to this particularly very valuable mission.

16 And they do the best they can but were they
17 allowed to do a DNA testing first and have potential
18 family members come forward with reference samples, then
19 the skeletal re-articulation could happen afterwards
20 sort of as a confirmation but once you have -- there are
21 very few cases.

22 Perhaps the remains in Kwajalein would be
23 an example of that where ordinary mitochondrial DNA is
24 inadequate because all of the young men are
25 approximately the same height, all of them come from

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1 Eastern European ancestry, all of them were
2 approximately the same age, and that's the only thing
3 that the bones were telling them.

4 With DNA, they might have been able to
5 better differentiate them but that would probably have
6 to have been nuclear DNA, not mitochondrial DNA. And
7 currently, I believe that we currently continue to use
8 mitochondrial as the primary. I know that the labs
9 there at Dover Air Force Base, that they had been
10 looking at doing various other methodologies and
11 techniques as they come up. It's a rapidly advancing
12 science.

13 Q. But you don't have expertise in what Dover's
14 processes and capabilities are, right?

15 A. Unless they have significantly changed since
16 Rockville when I was walking through them with the then
17 commander of JPAC, I would say I have a very good
18 understanding of the process, and the timelines it
19 takes, and the number of lab technicians they had, and
20 the space available.

21 Q. And when was that?

22 A. 2008, right prior before they began to ship
23 over to Dover. My understanding is that they have been
24 expanded at Dover which is wonderful, they should be and
25 they have more --

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1 Q. So, let me just pause you.

2 A. Yes.

3 Q. So, your knowledge is from ten years ago. Is
4 that correct?

5 A. My knowledge is from --

6 Q. Your knowledge about the Armed Forces DNA
7 Identification Laboratory?

8 A. 2014 was the last time that I had any contact
9 with all of my friend who remain in those location,
10 yes, 2014. So, four years.

11 Q. But your expertise is not in DNA identification
12 and you're talking about a walk-through of the lab that
13 you did for general information purposes. Is that
14 right?

15 A. And then, extensive reading to understand how
16 it's done, why it's done, and the methods that are used.
17 And at the University of Wisconsin when we were doing
18 the case for Lawrence Gordon, we were given more and
19 provided much more of an insight into how forensic
20 scientists, how the forensic anthropologists do their
21 work, how the DNA labs assist in that work but you're
22 right. My knowledge is much more general and is
23 certainly not current to today.

24 Q. We will get into the specifics of each of these
25 opinions and your bases for them but at a broad level,

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1 are there any other opinions or conclusions that you are
2 offering as an expert witness in this case?

3 A. No.

4 Q. Do you expect to do any additional work to
5 support the proffered opinions that we have already
6 talked about in this case?

7 A. Unless I'm asked to, no.

8 Q. Speaking of that, can you briefly describe what
9 your assignment was in this case from counsel?

10 A. They asked me to look at the IDPFs that I was
11 provided and to read through them. And based on my work
12 that I did at the time and my knowledge from having
13 winding our way through the Lawrence Gordon case, to
14 state whether or not it seemed reasonable for
15 disinterment and DNA testing.

16 Q. Did Plaintiffs' counsel provide you with any
17 assumptions to operate under in your analysis?

18 A. No, they did not.

19 Q. In preparing your report, was there any
20 information that you would have liked to have had but
21 did not?

22 A. I would have liked to have been able to get to
23 the actual case files, whether they were in the College
24 Park facility or over in Suitland, and see if I was
25 missing anything. Normally when they do, it looks like

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1 those were from the ones that JPAC had processed and
2 they were very thorough. So I suspect that what I had
3 was probably pretty thorough.

4 I might not have had the cases -- it would
5 would have been nice to have historian case notes
6 because I do trust and value the opinions of my
7 colleagues, my former colleagues. I note in here
8 Heather Harris' work on the Banatan Cemetery and I have
9 great respect for Heather Harris.

10 Q. Do you know a Gregory Kupski at the agency?

11 A. That name is not familiar to me.

12 Q. Okay.

13 A. I think that's a new person or one of the
14 people that came with consolidation.

15 Q. So you referenced looking at IDPFs.

16 A. Yes.

17 Q. So, that's the individual deceased personnel
18 file for each of the named people we have talked about?

19 A. Yes.

20 Q. And also the X file for certain unknown
21 remains. Is that right?

22 A. Yes.

23 Q. Did you look at any X files other than the ones
24 that Plaintiffs have suggested that the lawsuit are
25 associated with their relatives?

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1 A. I did not have all of the X files for each of
2 the cases but only the ones for the consideration within
3 the case. And it would have been nice, it would be
4 useful to anyone to have the graves to the left and to
5 the right and the IDPFs for them. You know, having gone
6 through Crosses in the Wind, I'm very familiar with the
7 errors that can take place in the rapid state of trying
8 to bury people, the second burial is not necessarily
9 complete either.

10 Q. I think we'll get into that, I'd like to get
11 into that in moment but you referenced something,
12 Crosses in the Wind. Is that a book?

13 A. That is a book but one of the original Graves
14 Registration officers, he was the officer who built the
15 Margraten Cemetery in the Netherlands. And it is
16 probably one of the best firsthand accounts of the
17 difficulty that Graves Registration worked with from '44
18 onward to the close of the war and afterwards until '58
19 when the program was closed down.

20 Q. Okay. Thank you. In conducting your
21 analysis, was there a methodology that you would say you
22 used in reviewing the IDPFs?

23 A. Yes. You go through the initial IDPF,
24 obviously the first one, look at all the notes, compare
25 it with the second set because there is often the first

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1 burial, the second burial, sometimes a third, even a
2 fourth burial, so you go through all of them
3 chronologically first. Following that, then obviously
4 the correspondence, matching any correspondence that are
5 included within the IDPFs.

6 Often, between Graves Registration and
7 family members, sometimes between Graves Registration
8 and witnesses, we are trying to make certain that their
9 memories and their remembrances of what might have taken
10 place or what they think took place are properly
11 annotated.

12 Many of the survivors have feelings of
13 guilt of, why did I live and my comrade did not. So,
14 many of them were very involved in either contacting the
15 families of their deceased buddy or Graves Registration.
16 Sometimes, many years after the event which obviously is
17 problematic as an analyst or a historian because we all
18 color and bias our understanding of history as it goes
19 past often to what we want it to have been and not what
20 it was.

21 So, I try to look at all of those different
22 things, taking any conflicting opinions, and looking at
23 them. I was particularly struck with the Nininger case
24 and the number of inherent contradictions between the
25 various statements given contemporarily to the family

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1 and close to contemporarily to Graves Registration, and
2 later the Department of Defense in trying to resolve the
3 case. You go through it chronologically, go through it
4 for the correspondence, any notes, any field notes that
5 might have been provided, and you basically try to build
6 up an understanding of the circumstance.

7 I had previously done a lot of reading,
8 not in response to this case but in response to better
9 understanding my father's experience during the war.
10 And he is still alive, going on 95. And so, trying to
11 understand the circumstance under which the people were
12 recovered or not recovered, reburied, taken out of those
13 sites, moved to Manila, moved to the Punch Bowl. And
14 then, you try to make sense of it from that chronology,
15 from the correspondence, and looking through to find the
16 threads that follow through. Where is the core
17 consistency in a particular case?

18 Q. And so, what standard are you applying to get
19 to your conclusion?

20 A. The standard that I was taught at DPMO which is
21 basically using -- you use analysis and reading through
22 the IDPFs, making sure that you have your timelines
23 straight, making sure that you have looked at all the
24 annotations and notes that are included in the IDPFs.
25 You sort of break it out for yourself.

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1 The way I was taught by Dr. Chambers and
2 the other historians is to break it into the timeline,
3 and then, the major events of what was taking place in
4 and around that event because that often dictates what
5 may have gone wrong or what could be right. And you can
6 say, okay, these guys consistently used this processing
7 method.

8 So, you had to become familiar with the
9 individual grave registration teams or groups of teams
10 because they all did have different methods. Some had a
11 nice core of people that regularly did it. Others just
12 grabbed whoever was around and said, help us do this.

13 So, knowing whether it was a very sort of
14 logical, metered process can help you understand. And
15 if it wasn't, it was just chaos, which unfortunately
16 much of the situation in the Philippines and some of the
17 other battle locations in the Pacific were, helps you go
18 through the case and look at it historically and
19 analytically.

20 Q. So, basically, you are looking through it
21 historically and analytically, chronologically and
22 analyzing the various pieces as you've said and reaching
23 a conclusion?

24 A. Yes.

25 Q. But the standard you described yourself as

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1 applying just sounds like the same thing. The standard
2 you are applying was to analyze things carefully. Is
3 that what you're saying?

4 A. That's what all of us did, yes, and then put it
5 forward.

6 Q. Did you have any experience in applying the
7 Department of Defense's Standard for Disinterment of
8 Remains from Permanent U.S. Military Cemeteries?

9 A. From Permanent U.S. Cemeteries I did not need
10 to do that because all of my cases were cases that were
11 either being looked at to be investigated, and then
12 considered for disinterment or in the case of the
13 Lawrence case, we were told that who we thought it was.
14 It couldn't possibly be. And even if it was that
15 person, that person was a German.

16 So, we basically bypassed the U.S.
17 government and went straight to the Germans and asked
18 permission to disinter the ossuary in which we believed
19 the remains had been placed in error because on the
20 third disinterment and consolidation, the doctor noted
21 that the remains had some German clothes articles. And
22 so, they concluded that it was a German, and they passed
23 it to the German Unknown Cemetery.

24 Q. Okay. I don't think we need to go through the
25 details. Can I pause you there?

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1 A. Yes. Going through the U.S. process, I have
2 not had to go through the U.S. process for disinterment.
3 It was cumbersome at the time. And I understand that it
4 has changed, though I don't know to what extent.

5 Q. Okay. And to circle back to something you said
6 a moment ago, is there a difference between the standard
7 applicable to recommending excavation in the field and
8 disinterment at a permanent U.S. military cemetery?

9 A. Yes, unfortunately.

10 Q. You don't believe there should be a difference?

11 A. I believe that the differences that currently
12 exist are, to some extent, artificial because many of
13 those graves belong to the American Battle Monuments.
14 And while that is an official entity, they do not fall
15 under the DOD purview. And when we spoke to them on
16 various occasions during the investigation in 2010, the
17 opinions of the caretakers was that disinterring made
18 the lawns look ugly.

19 So, unless you could find a way to disinter
20 without disturbing the beauty and the serenity that have
21 now been established in those places as places of
22 reflection and contemplation of a loss, it will be very,
23 very difficult to try and get disinterment of unknowns
24 for DNA testing.

25 In those places where the government does

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1 own the cemetery, in Arlington or places like that, it's
2 less cumbersome than dealing with the American Battle
3 Monuments folks. And that's places like Manila, and
4 Punch Bowl, and all of the ones in Normandy and
5 throughout the Netherlands.

6 I think it is an overly cumbersome process.
7 I don't think there should be a difference established.
8 Obviously, the difficulty is that you are dealing with
9 families' feelings and other families' feelings. So,
10 probably that difficulty is there for a reason. It
11 would be disturbing to just go around digging people up
12 without good reason, so there is a difference in the
13 approach, yes.

14 Q. And the trip you described in 2010 was a field
15 investigation trip. Is that right?

16 A. Yes.

17 Q. Have you ever completed or participated in a
18 formal recommendation to disinter from a U.S. military
19 cemetery?

20 A. There were none on the table during my tenure,
21 so, no. And there were none on the table because we
22 were told it was impossible to happen.

23 Q. Can you turn to --

24 A. So, don't bother asking.

25 (Exhibit No. 2 marked.)

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1 Q. Can you turn to Tab 6. We will treat this as
2 Exhibit 2. I believe this is a document you reference
3 in your report.

4 A. Yes.

5 Q. Let me just describe it for the record, and
6 then I'll let you talk about it. This is the April 14,
7 2015 Memorandum from the Deputy Secretary of Defense
8 titled Subject: Disinterment of Unknowns from the
9 National Memorial Cemetery of the Pacific. Are we
10 looking at the same thing?

11 A. Yes.

12 Q. This Memorandum establishes a threshold for
13 disinterment from permanent U.S. military cemeteries,
14 correct?

15 A. Correct.

16 Q. And that's on the second page, I think, because
17 the first page largely deals with the USS Oklahoma.

18 So, the policy stated is, I believe,
19 quoting, "For cases of commingled remains, research must
20 indicate that at least 60 percent of the Service members
21 associated with the group can be individually
22 identified. For individual unknowns, there must be at
23 least 50 percent likelihood to make an identification
24 before disinterring the remains?"

25 Is that the policy stated here?

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1 A. That's what policy says, yes.

2 Q. Did you ever apply this standard?

3 A. Inasmuch as it happened a year after my time at
4 DPMO, no.

5 Q. Are you applying this standard in your expert
6 opinion today?

7 A. No. I have cited it as an example that,
8 obviously, the Secretaries of the Military Department
9 are four, have moved their positions forward, being more
10 positive towards disinterment. They remain at a high
11 threshold which is probably appropriate. I disagree
12 with that threshold but because in many cases, the only
13 way that the family can be told either yea or nay in the
14 particular set of remains that they have come to believe
15 is their loved one is through DNA testing because it's
16 binary; either the remains are who the family thinks
17 they are or they are not.

18 And if they are not, then the families
19 have, you know, their recourse basically has been
20 completed because the government has complied. It has
21 done a DNA testing and said, I'm sorry, this is not your
22 son, husband, cousin, uncle, grandfather.

23 Q. Okay.

24 A. But I understand the level.

25 Q. So, you understand the threshold but you

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1 disagree with the policy established by the Deputy
2 Secretary of Defense?

3 A. I do.

4 Q. Okay.

5 A. Policies are made by people, and they can be
6 changed by people.

7 Q. I'm just making sure that things are clear for
8 the deposition.

9 A. Yes.

10 Q. So, in advance of writing your report, with
11 whom did you discuss this case?

12 A. I did not discuss it with anyone other than
13 with the lawyers who sent me the material, asked me if I
14 had what I needed, and gave me a deadline for when I
15 should provide the information.

16 Q. Okay. Did you consult with John Eakin in
17 advance of preparing your report?

18 A. I have never met John Eakin. So, no, I have
19 not conferred with him.

20 Q. And we have already discussed the materials you
21 considered. I think your report references burial
22 records. Did that include anything other than the IDPFs
23 and X files we have discussed?

24 A. Only the IDPF and X files.

25 Q. Okay. So, you did not independently review,

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1 for example, the Cabanatuan burial rosters, or histories
2 of the Cabanatuan Disinterment Project, or any of that?

3 A. Not for this case, no. I was very familiar
4 with those when I was there. Heather Harris was working
5 those, but I did not review them for this case.

6 (Exhibit No. 3 marked.)

7 Q. If you turn over one tab to Tab 7, this is
8 entitled "World War II Division Memo" Heather Harris and
9 Lisa Beckinbaugh.

10 A. Beckinbaugh, yes.

11 Q. Last Edited: 24 September, 2014, titled
12 "Casualties of Cabanatuan War Camp #1 and the history of
13 their burials." Let's make this Exhibit 3. Have you
14 seen this document before?

15 A. I have not until today.

16 Q. Okay.

17 A. I am familiar with many of the thing that she
18 cites, though. I've read a lot of these books.

19 Q. Okay. So, you've said that you respect Heather
20 Harris?

21 A. I do.

22 Q. And you had talked to her about Cabanatuan but
23 you hadn't seen this particular work product?

24 A. No. This was a year after I retired. And
25 while we still remain friends, we don't remain

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1 professional colleagues.

2 Q. Okay. The opinion stated in your report is
3 that PFC Hansen was buried in Cabanatuan Common Grave
4 407, and is currently buried in Manila American
5 Cemetery. Is that right?

6 A. Based on the information I received, yes, I
7 believe that.

8 Q. Are you aware of how many service members are
9 associated with Common Grave 407?

10 A. Many.

11 Q. Somewhere, like I think the number I have is
12 like 26. Does that sound roughly correct?

13 A. Twenty-five, correct.

14 Q. When you state that he was buried in Manila
15 American Cemetery, do you mean buried in one of the nine
16 graves of unidentified service members currently
17 associated with Grave 407?

18 A. Yes, that's correct, because they separated
19 them and buried them into the individuals, but those
20 aren't necessarily the remains of each individual. And
21 unfortunately, with commingling of individuals, you
22 could have one guy's head and it's problematic.

23 Q. Yeah. So, let's break down your opinion and
24 talk about each piece. On what basis do you conclude
25 that PFC Hansen was buried in Common Grave 407?

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1 A. That's where the ones that he was originally
2 associated with were moved to.

3 Q. I'm sorry. The common grave was the original
4 location, right?

5 A. Oh, are you talking about the movement or the
6 first burial?

7 Q. I think was buried in the common grave is your
8 opinion. So, I'm trying to go over that piece first.

9 A. Okay.

10 Q. So, what's your basis for concluding that he
11 was buried in Common Grave 407 at Cabanatuan?

12 A. As I recall on the IDPF on the statements,
13 those he was associated with were appeared to all have
14 been put in that same place. So, it is reasonable to
15 assume that without witness statement saying he was
16 placed somewhere else by himself, that he was probably
17 with those that he died with around the same time frame.

18 Q. Now, you're talking about the idea that at
19 Cabanatuan there were multiple deaths per day?

20 A. There were.

21 Q. And only people within a given 24-hour window,
22 though it wasn't always --

23 A. Were replaced in a particular, right.

24 Q. -- were placed in a common grave?

25 A. Right. They weren't always necessarily from

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1 the same hut but if you break it out by the 24-hour
2 period or day-and-a-half period, he would have fit into
3 that group.

4 Q. Are you aware that one of the individuals
5 recorded as buried in Common Grave 407 was actually
6 identified in another common grave buried a day later?

7 A. I can believe that. I was not aware of it.

8 Q. So, the basis for your opinion that PFC Hansen
9 was buried in Common Grave 407 initially is simply the
10 burial record that's included in the IDPF. Is that
11 right?

12 A. That is correct. Based on the material I
13 received, that is my opinion.

14 Q. So, essentially, you are simply reporting that
15 the burial roster associates PFC Hansen's name with this
16 common grave?

17 A. And it's a reasonable assumption this he's
18 probably in it, but not conclusive.

19 Q. Isn't it possible that he didn't die on the day
20 that was indicated in this reconstructive record?

21 A. Absolutely. If you talk to some of the
22 historians who deal with that, it was a well-known fact
23 that people often passed their dog tags as they were
24 getting sick to other people, left their artifacts in
25 the hands of others. There is a lot of

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1 misidentifications or timeline misidentifications.
2 Merely based on his IDPF, which is the material I was
3 given, it was that is a reasonable assumption. It is
4 not conclusive.

5 He could be buried on graves on either
6 side. He could have not died on the day that they
7 thought he died. He could be five graves over but based
8 on what is in the IDPF, there is a reasonable assumption
9 for his burial in that locale.

10 Q. On what basis do you conclude that he is
11 currently buried in Manila American Cemetery as one of
12 these, amongst these nine unknown graves?

13 A. The individuals that were in that common grave.
14 So, if he were in that original common grave, that
15 original common grave was moved to the Manila Cemetery.
16 Now, if he were in different common grave or an isolated
17 grave, then he would not be in the Manila Cemetery. So,
18 based on the material provided, the reasonable
19 assumption is that he is.

20 Q. Now, it's possible that the recovery team, the
21 grave registration team didn't match the precise
22 contours of Common Grave 407 when they dug up the
23 remains, right?

24 A. Absolutely, in which case we've got work to do
25 and go back and dig on either side or top or bottom.

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1 Q. And it's possible that -- so, there are only
2 nine unidentified, 16 identified from this grave.

3 A. Correct.

4 Q. So, it's also possible that his remains were
5 misidentified as someone else and sent home for burial
6 in the 1940's?

7 A. Absolutely.

8 Q. So, your opinion is just that there is a
9 reasonable likelihood that PFC Hansen is among these
10 nine remains that we have left?

11 A. Correct. And DNA testing will show that he
12 either is among them or he is not among them.

13 Q. And it's also possible that further commingling
14 at the mausoleum during the identification effort in the
15 late 1940's could have also led to his remains being
16 separated from these that are now associated with Common
17 Grave 407. Is that right?

18 A. Very possibly. He could have only one bone
19 there, and the other bones don't belong to him. This is
20 what I'm saying that the negative response in a binary
21 solution is the only way you can know that he is not
22 there is by DNA testing. The only way you can know that
23 he is there is by DNA testing because it either is or is
24 not him.

25 Q. So, let's talk a little bit more about that.

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1 Do you agree that DPAA should not disinter remains until
2 it has family DNA samples sufficient to identify
3 60 percent or some sufficient number of the service
4 members likely to be located in the common grave?

5 A. No, I don't believe that.

6 Q. What do you think the standard should be?

7 A. I think that all of the remains should be
8 disinterred, DNA tested, cataloged, libraried, and set
9 aside for when we can pull family records in, and then
10 carefully placed back in containers that all of the ones
11 that are in that container are the same, just as they
12 did The Balkans and that was 5,000 people.

13 Q. Are you aware that DOD has received no family
14 reference samples that would permit DNA testing for
15 comparison to PFC Hansen?

16 A. That's probably true.

17 Q. Do you think DOD should be disinterring these
18 remains even though they don't have a family reference
19 sample for Hansen?

20 A. I do because it might not be him. It might be
21 someone else.

22 Q. But you won't be able to tell whether it's
23 Hansen not. So, why should be be digging up this set of
24 remains now?

25 A. Because it could be someone else, and then one

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1 of those other nine family members can come forward.
2 DOD has a limited amount of time and effort to be able
3 to collect the family reference samples. If they have
4 the team that they should have for World War II, quite
5 frankly, there would be 25 people per service reaching
6 out and trying to find family members and get their
7 family reference samples.

8 We can barely keep up, excuse me, they can
9 barely keep up with the work that they have now. And
10 they're completely underfunded, especially in World War
11 II. So, DOD has to set constraints and limits because
12 they have limited manpower and limited capacity to go
13 out and do the research.

14 They're unwilling to farm that research out
15 to others to find family members and get the reference
16 samples, and that is philosophical. The entities that
17 formally provide JPAC, DPMO, and all the various
18 individual services don't want amateurs digging around,
19 but don't have the time or resources to train people up
20 to the level they expect. The government has very high
21 standards of expectation.

22 So, philosophically, I disagree with the
23 government. I believe that we should be cataloging
24 these into reference samples in a referenced DNA library
25 and holding them until such time that we do have a

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1 family reference sample for whoever they are, Hansen,
2 John Doe, it doesn't matter. We have an obligation to
3 return these remains to their families and to close the
4 cases out off of DOD's dockets. We can't do that if we
5 sit around waiting for the services to find the families
6 to pull the family reference sample.

7 Q. Let's turn to talking about First Lieutenant
8 Nininger. It's your opinion that the remains designated
9 as X-1130 are likely those of U.S. Army first Lieutenant
10 Alexander Nininger. Is that correct?

11 A. Yes.

12 Q. Did you review any X files other than X-1130 in
13 reaching this conclusion?

14 A. I did not.

15 Q. What did you conclude links X-1130 and
16 Nininger?

17 A. I'm trying to follow. It was a very obviously
18 convoluted case with a lot of confliction but if you
19 look at who got dug up when and moved to where, it
20 seemed to follow that the X-1130 could likely be. So,
21 these are opinions, not fact, these are opinions, not
22 what ultimately will be shown.

23 But when you follow the trail of what was
24 dug, who they were dug, and the various contemporary
25 witness statements to the graves registration, there is

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1 a likely trail that leads to that particular X file.

2 Q. But you didn't look at the files for other
3 remains that were dug up from around this period. You
4 only looked at this file, right?

5 A. Yes, which is what I was given.

6 Q. So, you don't know the circumstances of all the
7 other remains that were dug up around the same time
8 period or from around the same location?

9 A. No. They do have a lot of case notes in the
10 correspondence going back and forth between all of the
11 different entities on government side discussing who it
12 was likely, because we go through the Quarter Master
13 lists that do list the other X files, all the Quarter
14 Master lists and the correspondence, intra-government
15 agency correspondence continue to suggest this the
16 X-1130 is most probably Nininger.

17 So, while I didn't have the luxury of
18 looking at the other IDPF on file, I did have the
19 correspondence from the government tracking each of the
20 X files that surrounded and around the same time as they
21 were dug, as they were moved en mass and singularly.

22 Q. The correspondence in the late 1940's and early
23 50's you're talking about?

24 A. Yes, everything that's in the IDPF.

25 Q. In your report you state that all other avenues

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1 for resolution have been exhausted. Do you recall
2 writing that?

3 A. Yes, I do.

4 Q. Without looking at other IDPFs, do you have
5 sufficient information to conclude that all other
6 avenues for resolution have been exhausted?

7 A. For the family, yes. The family has come to
8 the conclusion that none of the other X files could
9 possibly be their lost loved one.

10 Q. Let me pause you there. What's your basis for
11 that statement, that the family has reached this
12 conclusion?

13 A. That was in reading the Plaintiffs' report in
14 how they are approaching it and how they filed it. So,
15 looking at the --

16 Q. Let me pause you. I just want to make sure
17 we're clear on what we're talking about. You mean the
18 complaint filed in this lawsuit?

19 A. Yes, which is how the family feels.

20 Q. Or at least how somebody feels. It could be
21 the lawyer but you didn't talk directly to the family
22 about their analysis and conclusion about Nininger?
23 You did not talk to John Patterson, I presume?

24 A. No. So, it is based on the court record, you
25 are correct.

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1 Q. And did you see notes in the IDPF of
2 correspondence with John Patterson? Was that in the
3 version of the IDPF that you reviewed?

4 A. I don't believe so.

5 Q. Are you aware that John Patterson at one point
6 in the 1980's thought that X-1130 was unlikely to be his
7 relative?

8 A. I can believe that but I was not aware of it.

9 Q. Okay. Now, let's return to your answers, like
10 this is necessary for the family's conclusion. Go ahead
11 with that.

12 A. Well, in the case that you are reaching that
13 binary where whether it's analysts who have moved it
14 away more towards a particular case, the only way you
15 can resolve whether it is or isn't is through DNA
16 testing. So, if the government believes that this is
17 not him and they have family reference samples, which I
18 believe in this case they do, and they test it and it
19 doesn't meet that, then it's not him, then that is
20 resolved.

21 Q. Okay.

22 A. And now, you have a new family to potentially
23 reach out of the nine, five officers that were lost
24 during that time frame.

25 Q. But it's also possible that historical analysis

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1 alone could rule out a given set of remains, right?

2 Let's talk abstractly from this.

3 A. Yes. Abstractly, absolutely, in the same way
4 that it ruled out any possibility that the remains set
5 that we recovered of Lawrence Gordon could possibly be
6 Lawrence Gordon.

7 Q. It take it that's tongue and cheek?

8 A. No, I'm not being tongue and cheek. I'm saying
9 that analysts and historians, we all have biases. And
10 therefore, the people ruling it out, even as those who
11 rule it in, can be in error. It could be in error that
12 this conclusion is reached on X-1130 based on reading
13 the file in the same way I did reading that
14 correspondence at that time. That's absolutely a
15 possibility, but it's a possibility that it could be.

16 And in the case of the Gordon case, it was
17 felt very strongly by the individual who had done the
18 work and historical analysis that it was. Therefore,
19 they disregarded the official presentation of DPMO and
20 had the DNA testing done and showed that, in fact, it
21 was the individual.

22 So, to say that you have my expert opinion
23 is only as good as my opinion of the reading of what we
24 have read, just as the historian's opinion, whether
25 they're for or against a particular case being that, are

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1 only as good as their own experience. It doesn't make
2 it fact. The only thing that is fact is science-based
3 DNA testing.

4 Q. So, you would recommend DNA testing no matter
5 what the historical analysis show?

6 A. Yes.

7 Q. In your experience, how common, in reviewing
8 lots of IDPFs, how common was it for recovery teams to
9 associate remains with a possible service member?

10 A. Very possible.

11 Q. Does that association provide any certainty
12 about who those remains ultimately are?

13 A. At the time when the graves registration
14 processors would process, they always started with the
15 absolute knowns. So, if a truckload of 20 bodies came
16 in, the body that was wearing a dog tag, the body with
17 that dog tag that also had their name on their uniform,
18 had stuff written down, had the wallet of that said
19 person, met the description they were looking for, that
20 person was immediately identified and set aside, buried
21 that person.

22 And they would winnow down until you had
23 the guy who had no markings on their clothes, wasn't
24 wearing their dog tag, probably because they didn't have
25 a head, whatever the reason, didn't have full

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1 identification. If they had dentia associated with it
2 and had teeth, then they would try to find civilian
3 dental records. If they still had thumbprints
4 available, they would take the thumbprints and send it
5 off to the FBI, but our recruit processing at the time
6 of World War II was not particularly thorough nor
7 systematic, nor the same in every location. So, that
8 did not necessarily reveal results.

9 Consequently, you have an entire group of
10 people where the processor says, all the witnesses say
11 that this is so and so but we have no identification.
12 They get buried as "X" and they stay as "X" even though
13 at the time, they may have had more than 50 percent
14 surety that that individual was, in fact, John or Bob or
15 Joe.

16 So, we in the modern context you try to
17 make sense of that but if a historian or an analyst look
18 at it, there is only one scientific methodology to show
19 that an "X" individual is who they might be, and that is
20 DNA testing. The DNA testing based on my opinion here
21 is a negative response. And I obviously did not make
22 that clear enough in this survey.

23 Q. No, I think it's clear and it's definitely
24 clear today. What do you mean in your report in
25 connection with Nininger about potential errors in

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1 processing? What were you referring to there?

2 A. Potential errors in processing always exist any
3 time you were dealing with statements where you felt
4 that something. This is a highly visible individual
5 because of being that first Medal of Honor winner. So,
6 there is political pressure that's put on for processors
7 potentially to move faster than they ought to have with
8 anyone associated with this group.

9 The errors I'm talking about are the
10 general kinds of errors that happen any time you are
11 rapidly processing something and don't have the time to
12 do it more thoroughly. And I believe in this case with
13 all the pushing and shoving and different aspects and
14 all the people who were involved providing statements of
15 what I saw, people who may or may not have actually seen
16 it, that there is potential that there were errors in
17 processing the case. It is as likely that he is not
18 X-1130 and has already been recovered and buried as
19 someone else as it is that this is him.

20 Q. Can you say that again.

21 A. Yes. It is as likely that he was already
22 recovered and buried as someone else as it is that this
23 is still him.

24 Q. Were you referring to any specific indications
25 of error that you saw in the report or were you speaking

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1 generally to what you know about the possibility in this
2 sort of case or particularly one of this prominence?

3 A. I was speaking generally based on this process,
4 generally speaking to it.

5 Q. Okay. And in your report you also referenced
6 the elevated nature of the case and the push for
7 resolution. Those are the things you were just talking
8 about?

9 A. Yes.

10 Q. What did you mean in your report when you
11 reference conflicting contemporary statements of
12 survivors?

13 A. Then, what you have with the family, what the
14 family were told when -- and I forget the gentleman who
15 visited.

16 Q. Are you speaking of Colonel Clark?

17 A. Colonel Clark. Thank you. And what they then
18 provided to Graves Registration, so the statements don't
19 match. Now, they could be that they don't match because
20 of time and time changes memory, that's very possible.
21 There's a potential that you want to help resolve that
22 family's grief when you sit across the table, especially
23 with many of the Vietnam families. And you can hear
24 that longing for resolution that they carry with them.
25 I can easily understand how someone wanted to be a

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1 witness to an event that they may or may not have been
2 witness to.

3 So, when you go through the correspondence
4 and you look at the letters that Graves Registration
5 received of, this is my statement about this case, and
6 you look at either what the families think they heard,
7 or in the cases where they got a letter of what they
8 got, those don't mesh up with the events. You know,
9 they're kind of off kilter to each other.

10 I think this is an extremely complicated
11 case and that it lends itself to errors having been
12 committed, not purposeful, not negligence, or
13 malignantly but simply because it was a very complicated
14 time. And you don't necessarily remember exactly, you
15 know, they're looking into this after the original
16 event. And any time we do that as historians, as
17 analysts, anthropologists, you are subject to the
18 possibility of error.

19 And when you're dealing with conflicting
20 statements of who got buried when and where and you have
21 a bombing of the church area, the church yard, you have
22 disinterment and maltreatment on part of some of the
23 Japanese soldiers to American graves, you know, this is
24 not the only location where such things happen, I think
25 that the likelihood for error is higher than the

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1 likelihood for lack of error. And again, when you are
2 dealing with a fluid memory and conflicting statements,
3 there is only one binary resolution and that's DNA
4 testing.

5 Q. So, you reference Colonel Clark's
6 correspondence with the family. I think you're
7 referencing a letter in which he said that Nininger was
8 buried in Grave No. 9?

9 A. Yes, by the south wall.

10 Q. Are you also aware that Colonel Clark had been
11 relieved of command and was no longer present in the
12 area at the time of the burial?

13 A. Yes. So, he is either providing hearsay or, I
14 mean, it's most likely hearsay on his part. And it is a
15 desire to counsel the bereavement of that loss.

16 Q. Are you aware that Colonel Clark told another
17 family that Lieutenant Chaney was buried 12 steps south
18 of the church door in the same general location even
19 though Lieutenant Chaney died a week later, long after
20 this location had been lost to the Japanese?

21 A. That sounds like part of the conflicting
22 stories, absolutely.

23 Q. Is that something you were specifically
24 familiar with?

25 A. No.

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1 Q. Would that affect your opinion about the
2 reliability of the association with Grave No. 9?

3 A. Not necessarily because if he received it from
4 hearsay, then potentially the hearsay he got was
5 completely wrong in both cases, and you're still looking
6 at what remains that were in and around the area were
7 removed and placed. So, the possibility is still,
8 again, the only resolution is a negative resolution of a
9 binary, it is or it isn't. And DNA testing is the
10 solution in that case.

11 Q. So, if the government -- are you aware that the
12 government is currently looking at all of the X files
13 for losses around the Abucay area?

14 A. That's wonderful. That's excellent. No, I was
15 not aware.

16 Q. If the government had other X files that were
17 more likely candidates for Nininger, your view is that
18 basically everything should be disinterred and DNA
19 tested all at once? Is that what you're essentially
20 suggesting?

21 A. If they have a particular grave that they
22 believe is more likely to be Nininger, then it would be
23 foolish not to disinter that one and test it before they
24 did 1130. In either case --

25 Q. I'm sorry. If I may, in reviewing the file,

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1 was it your understanding that essentially all of the
2 witnesses recall Nininger being buried in or around the
3 church yard?

4 A. Yes.

5 Q. So, does your analysis depend on the assumption
6 that X-1130 was recovered from the church yard?

7 A. It does.

8 Q. Would your opinion change if it could be
9 established that X-1130 came from a location about half
10 a mile away from the church yard?

11 A. It would depend on how they processed it
12 because the sense of distance for the Filipinos is very
13 much like the sense of distance for the Marshalees, in
14 which case they would say, yeah, yeah, yeah, it's around
15 the biggest thing that was there. So, you would be
16 dealing with a hearsay analysis even though in reality
17 you're dealing with recovery that was far away from the
18 actual location.

19 Q. Are you --

20 A. So, I think it would depend on how those
21 remains came about being processed and who processed
22 them.

23 Q. Okay.

24 A. But if there is a greater likelihood that these
25 are Nininger, then it's the greater likelihood that

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1 those should be tested. The resolution is to find
2 Nininger.

3 Q. Are you aware that there is a separate cemetery
4 in Abucay about half a mile from the church?

5 A. Yes. And that's the conflicting part with
6 Clark where I say that that is a very conflicted -- the
7 statements are very conflicting because had he received
8 it hearsay, he may actually have been talking about the
9 other grave site and not the one at the church.

10 So, how he received it would make a
11 deference in my opinion but my opinion would remain the
12 same. Whichever set of remains the government perceives
13 to be most likely aligned with Nininger is the set that
14 they should disinter and test first. And then, if it's
15 not him, well then you fall back on the secondary one.
16 But based on the information I had been given, it was my
17 opinion that his remains are as likely and X-1130 as
18 not.

19 Q. In your analysis and search, are you familiar
20 with the way Graves Registration mapped coordinates for
21 the location they retrieved bodies from?

22 A. They tended to do it by grid but not all of
23 them followed the same thing. So, I would have to say
24 that, no, I am not completely familiar with each of the
25 team's methodology.

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1 Q. Is it fair to say that in general they were
2 working from an official government map of the area and
3 tried to plot the coordinates on that map?

4 A. Yes, unfortunately.

5 Q. Why do you say unfortunately?

6 A. Because the government maps of the islands were
7 not as precise as they ought to have been at that time.
8 The modern maps now are obviously significantly much
9 better but knowing what my father and his colleagues
10 were working with from the Maps Divisions, they often
11 left out entire portions because we simply were not
12 aware of it. And that was especially true when they
13 moved in to Papua New Guinea in that area.

14 Q. But probably less likely for Bataan?

15 A. Plus, it was less likely in the Philippines but
16 even in the Philippines the contemporary maps at the
17 time were not the best. And, of course, Graves
18 Registration was moving rapidly and they were using a
19 grid system. And they were relying, in some cases, on
20 witnesses of locals and the locals did not conform to an
21 understanding of the grid system. And they had a much
22 more sensuous comprehension of topography.

23 So, having worked as a linguist for many
24 years, I would say if any of the statements came from
25 locals, I would be worried that they might have been

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1 misinterpreted by the U.S. working with them. That
2 would be my concern in the broader sense of when we map
3 things out and try to find people, who buried them and
4 where.

5 Q. If I could have you turn to Tab 12, this is
6 Nininger's IDPF, correct?

7 A. Yes.

8 Q. If you flip forward in the lower right-hand
9 you'll see a Bates number at the bottom. So, flip
10 forward over an inch in the document to Bates number
11 that ends 2247. Let me know when you've found it. And
12 we'll treat this single page as from Nininger's file as
13 Exhibit 4. Have you found it?

14 A. Yes.

15 (Exhibit No. 4 marked.)

16 Q. Do you notice this document when you were
17 reviewing the file?

18 A. Yes.

19 Q. Do you see a square marked "Cemetery"?

20 A. Cemetery, yes.

21 Q. And are you familiar with where the church was
22 in relation to that cemetery?

23 A. Before it was blown up?

24 Q. Yes.

25 A. Yeah. You have a tower in the grid above it

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1 basically.

2 Q. Is it possible that the text there is referring
3 to something more concentrated in the downtown area of
4 Abucay?

5 A. That's very possible, absolutely.

6 Q. So, in your analysis you were not relying on a
7 specific analysis of how this area fit together?

8 A. I was looking at how the witness statements
9 were made. Again, the reality of the witness
10 statements, those witness statements conflicted most
11 probably because they were based on hearsay.
12 Consequently --

13 Q. Well, let me pause you there. I thought you
14 said a moment ago that the witness statements
15 essentially agreed on Nininger being buried in or around
16 the church yard.

17 A. Yes, but church yard is sort of that could be
18 nebulous.

19 Q. Including a different cemetery half a mile
20 away?

21 A. Absolutely. Anything that belonged to the
22 religious order from an island perspective and from even
23 the people who were there, they will be calling it in
24 the church area, in the church yard. The cemetery is a
25 church yard. It may not be attached to the church but

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1 it's still the church yard.

2 Q. Would your opinion change if the references
3 were being made by AGRS personnel rather than locals?

4 A. If they got it themselves and they didn't get
5 it from locals, perhaps but unless we could know that at
6 the time.

7 Q. So if, for example, government records show
8 that the Graves Registration team went in and did a
9 bunch of disinterments from the town cemetery in a given
10 week ended up some disinterments from the church yard at
11 another time weeks or months separated, you would be
12 more comfortable treating those as separate locations?

13 A. Did they all get put together in the other end?

14 Q. I'm just asking a hypothetical with those facts
15 and you can respond however you see.

16 A. Yeah. Those could be considered separate
17 locations but if they get consolidated at the other end,
18 it doesn't matter if they came from separate locations
19 because people we will start consolidating them together
20 as one place.

21 Q. So, they could have been at some point in
22 history, people could have thought it was one place even
23 though they were actually two different places?

24 A. Yes.

25 Q. And that could lead to further confusion?

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1 A. Yes.

2 Q. Do you recall seeing in the file at Quarter
3 Master General's Office asking AGRS if there were two
4 locations or one?

5 A. Yes.

6 Q. And that AGRS responded that they were --

7 A. Said two.

8 Q. -- that they were two locations.

9 MR. THORP: Let's take a short break at
10 this point. Let's reconvene in five minutes.

11 MR. SPRAGUE: Okay.

12 (Break at 3:36-3:45 p.m.)

13 MR. THORP: We will go back on the record.

14 Q. (BY MR. THORP) Ms. Richardson, let's talk
15 about General Fort now. It's your opinion that the
16 remains designated as X-618 are likely those of
17 Brigadier General Guy Fort. Is that correct?

18 A. Yes.

19 Q. On what specific basis have you reached that
20 conclusion?

21 A. Looking at the IDPF.

22 Q. Could you be more specific? What in the IDPF
23 particularly associates this X file with General Fort?

24 A. When you look through the processing of where
25 they dug and what got moved, that is a likely scenario

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1 for him. Obviously it's not completely conclusive.

2 Q. Is it fair to say that the association is
3 exclusively based on the sworn statement of Ignacio
4 Cruz, Mr. Cruz?

5 A. Yes.

6 Q. Attesting to his belief that the remains were
7 General Fort?

8 A. Yes.

9 Q. Are you aware of anything linking X-618 to
10 General Fort other than Mr. Cruz's statement?

11 A. No.

12 Q. Did Mr. Cruz have personal knowledge of General
13 Fort's execution in -- let me pause there. Are you
14 aware of where these remains were recovered from?

15 A. I'm sure I read it in the IDPF but they came to
16 us --

17 Q. Does the name Cagayan sound familiar?

18 A. Cagayan, yes, but they came to us. We did not
19 recover them.

20 Q. They were provided by Mr. Cruz?

21 A. Correct.

22 Q. And it was stated that they were recovered from
23 Cagayan?

24 A. Cagayan. But they could have potentially been
25 recovered from elsewhere. That's one of the

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1 difficulties when remains are turned over to the
2 government from other sources is you are completely
3 reliant on that written statement of where they came
4 from.

5 Q. Right. But there is also a statement of a
6 caretaker of the school or the location where they were
7 recovered from as well, right?

8 A. Yes.

9 Q. So, it's reasonable to conclude that X-618 was
10 recovered from Cagayan?

11 A. Yes.

12 Q. And associated with General Fort because --

13 A. And associated with General Fort.

14 Q. -- because of Mr. Cruz's statement?

15 A. Right.

16 Q. Now, did Mr. Cruz have personal knowledge of
17 General Fort's execution in Cagayan?

18 A. I do not recall that at this moment.

19 Q. Okay.

20 A. I can look at the IDPF.

21 Q. Yeah. Let's turn to Tab 19. And if you turn
22 forward to 3016, let's mark 3106 through 3107 as
23 Exhibit 5. Is this the statement you are recalling?

24 A. Yes, this is the statement I am recalling.

25 (Exhibit No. 5 marked.)

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1 Q. I'll let you --

2 A. His word is hearsay basically.

3 Q. Okay. So, I'll let you read through it. Tell
4 me when you're done.

5 A. He did not witness it. It was hearsay.

6 Q. Okay. So, this statement is a statement
7 provided in July of 1947?

8 A. Correct.

9 Q. About events occurring five years earlier?

10 A. Correct.

11 Q. And reporting his recollection of a variety of
12 conversations he had with other people?

13 A. Who were reporting their recollections.

14 Q. And maybe even thinks that they heard from yet
15 other people?

16 A. Correct.

17 Q. Are you aware of any facts that are
18 inconsistent with or limit your confidence in your
19 opinion associating this X file with General Fort?

20 A. You always doubt your opinion. Again, though,
21 based on the information that was provided, it is likely
22 him but again it's a negative that's going to the
23 options are it is either him or it is not him, and only
24 DNA can tell.

25 Q. Well, I asked you a different question. I

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1 understand your position about why you have your
2 conclusion.

3 A. Right.

4 Q. My question is are you aware of any facts that
5 are inconsistent with or limit your confidence in your
6 opinion? If you need to look at your report, that's
7 fine too.

8 A. I'm just trying to remember when I went through
9 the file there was some bone or dentia that I wasn't
10 pleased with.

11 Q. It might be easier to look at your report for
12 it. That's in the other volume, Tab 2.

13 A. Yeah, the bones. The dental records they were
14 concluding that you were dealing with a Mongol rather
15 than Caucasian. That is a concern I think but also
16 there are some things that identify, like the teeth and
17 if he had any Native American in him, his teeth may have
18 shown up in a different way than purely Caucasian.

19 Q. Are you mixing two different things? I thought
20 it was the indication not that the teeth looked like
21 they were of a different ethnicity but just the skeletal
22 remains as a whole?

23 A. The skeletal remains as a whole but
24 specifically the dental records.

25 Q. For this one, didn't the dental records

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1 specifically conflict that they had teeth present that
2 it was indicated General Fort had had pulled years ago?

3 A. Yes. Lack of match on the examiner's
4 statement, and it was the teeth specifically.

5 Q. So, it seems unlikely that the government
6 records are wrong in indicating that Fort had two teeth
7 pulled, right?

8 A. But my opinion for DNA testing is based on you
9 either have to disprove it is them or prove it is them.

10 Q. But couldn't other records disprove without DNA
11 testing?

12 A. If those other records are correct. If the
13 particular person who was articulating the skeleton
14 didn't mix up his skeleton. They were doing a lot all
15 at the same time. So, my concern is that errors could
16 have been made in the original documentation, not just
17 in our reviewing it but in the original work that was
18 done.

19 Q. So, circling back, a conflict in dental records
20 and anthropologist note that the remains are probably
21 not Caucasian decrease your certainty of a connection?

22 A. Yes.

23 Q. But do not eliminate hit?

24 A. Absolutely.

25 Q. But do not rule it out?

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1 A. Correct.

2 Q. And again, you didn't review X files for this
3 whole area around Cagayan to see whether there were any
4 other candidates who were more likely?

5 A. Just X-618.

6 Q. Are you aware that there is a companion grave
7 from the same location, X-169?

8 A. That I know that there is a companion grave but
9 I did not have the record to review.

10 Q. And again, I guess perhaps like you discussed
11 with the other one, if X-169 was more likely for some
12 reason --

13 A. Well, then that's the one that should be
14 tested.

15 Q. Okay. Does your opinion that X-618 should be
16 tested depend on General Fort dying near Cagayan?

17 A. No. His being recovered in the location --
18 well, the remains that are there may or may not be him.
19 They are as likely him as not put only DNA testing can
20 resolve that.

21 Q. Would your opinion be different if it could be
22 established that General Fort was executed at Dansalan
23 more than about 50 miles away?

24 A. Yes. Then, I would consider that the remains
25 that were recovered for that area should be considered

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1 first.

2 Q. Have you done any historical analysis of the
3 time period of Fort's execution and what was going on
4 around the whole?

5 A. The whole place was in chaos, it was awful.
6 But I haven't done it specific to this case, no.

7 Q. Or know how likely it would be that the
8 Japanese would travel from Dansalan to Cagayan in this
9 time period or how long it took?

10 A. I wouldn't venture an opinion on that, no.

11 Q. Would you go so far as to say that if he was
12 executed in Dansalan or let's just say executed 50 miles
13 away, it would be unlikely that X-618 would be his
14 remains?

15 A. I wouldn't be able to say either way knowing
16 that oftentimes senior people were paraded but it would
17 certainly decrease, it would decrease the sense that it
18 had to be him.

19 Q. In reviewing the IDPF for General Fort, did you
20 read the statements from Japanese officials at their War
21 Crimes Tribunals?

22 A. I did review some of them, yes.

23 Q. Did you correlate their statement to locations?

24 A. Their statements correlate to the other locale,
25 not to the one where Cruz says that he was recovered and

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1 based on his statements.

2 Q. Do you have any reason to think that the
3 Japanese officials facing War Crimes Tribunals would
4 admit to the General being executed in Dansalan if that
5 didn't actually occur?

6 A. I don't think that I could speak to that either
7 way.

8 Q. You don't have expertise on the Japanese War
9 Crimes Tribunals, the reliability of Japanese officers?

10 A. The reliability unreliability of witnesses, I
11 don't have a knowledge of the reliability of those
12 witness statements.

13 Q. Because you don't have the specific background
14 in that, those facts?

15 A. No.

16 Q. Let's go ahead and talk about Colonel Stewart.
17 It's your opinion that the remains designated as X-3629
18 are likely those of U.S. Army Colonel Loren Stewart. Is
19 that correct?

20 A. Yes.

21 Q. Spelled L-O-R-E-N, S-T-E-W-A-R-T.

22 A. A-R-T rather than U-A-R-T, yes.

23 Q. On what basis have you reached that conclusion?

24 A. Well, looking at the IDPF and the continued
25 misstatement of the name, it seemed very likely that

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1 they were comparing the wrong skeletal remains for
2 identification with the dental records that they ought
3 to have been comparing. So, they would have concluded
4 that it not that individual, but that individual was not
5 the same Stewart. So, they did not have --

6 Q. So, let me pause you there. So, the first step
7 is that the dental records conflict between whatever
8 sets they were comparing?

9 A. Yes, correct.

10 Q. Did you, to test your hypothesis about a
11 problem, compare the dental records from Loren Stewart's
12 IDPF to the dental records for X-3629?

13 A. I did look at them. I don't think I did an
14 overlay.

15 Q. But that would sort of test your hypothesis,
16 right?

17 A. Yes, that would. Right.

18 Q. No need to do it right now. I'm just asking
19 what you did in preparation of your report?

20 A. Yeah. I'm just remembering whether I did an
21 overlay or just looked at them and counted. They
22 compare more fairly but they're not an exact match
23 either.

24 Q. Do you have a background in comparing dental
25 records?

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1 A. Only what I learned at the University of
2 Wisconsin going through with the forensic dental
3 specialists as we reconstructed Lawrence Gordon. So,
4 no, I do not.

5 Q. Okay. When I ask the basis for the association
6 between the two, you jumped to sort of the counter
7 point, the potential conflict. But let's start with the
8 first step of what associates this X file with Colonel
9 Stewart?

10 A. The locations that were gathered at the same
11 time and placed into that file, it has the whole list of
12 the reference findings identified for the deceased and
13 where they pulled them from, and then where they were
14 located.

15 Q. I'm sorry. If you're referencing specific
16 documents, I'm going to need the Bates numbers at the
17 bottom.

18 A. Oh, I'm sorry. Yes. So, when you go through
19 the AGR, so that's 4048.

20 Q. So, you're looking in what tab?

21 A. That's Tab 23.

22 Q. Okay. Tab 23. And then, Bates number, which
23 Bates number were you talking about?

24 A. This 4048.

25 Q. So, the document on Bates 4048 is dated the

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1 26th of August, 1949?

2 A. Correct.

3 Q. And it's the Approval of --

4 A. Of Unidentifiability.

5 Q. But it doesn't mean that these are all
6 associated with each other, right?

7 A. No, it doesn't. It means that those cases were
8 reviewed at the same time for whether or not they were
9 identifiable.

10 Q. So, what conclusion are you drawing from that
11 document? Sorry. What conclusion are you drawing from
12 that document?

13 A. That these were done at a same time. They were
14 reprocessed at a same time.

15 Q. And that tells you what about this case?

16 A. When the batch was done, they were all done
17 together. And then, hold on, the plots that were next
18 to each other. So, when he was first interred, they
19 were in U.S. Cemetery No. 2.

20 Q. Let me pause you. Instead of sort of seaming
21 through the documents, let me understand what you're
22 looking for. You're looking for answers to my question
23 about what associated the remains? Is that what we're
24 doing?

25 A. Yes, because the identification checklists

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1 associated his name with that x-ray.

2 Q. Well, let's just walk through this
3 systematically. If you turn to the very back page of
4 this same X file, back two pages, you have a statement
5 from Ruben Caragay. Do you see that?

6 A. Yes.

7 Q. And he says that he saw Philippine Scouts
8 burying someone whom they said was a deceased American
9 Colonel.

10 A. Yes.

11 Q. And the recovery is an isolated burial near the
12 Abucay school?

13 A. Correct.

14 Q. Or near Abucay Hacienda?

15 A. Right.

16 Q. Okay. So, Mr. Caragay's recollection that they
17 stated an American Colonel was being buried is the basis
18 for the association with Colonel Stewart, correct?

19 A. And the name of the deceased, yes.

20 Q. So, the name is listed at the top but is there
21 an indication that Mr. Caragay provided the specific
22 name or could that also have been --

23 A. Well, they do the interrogation, they walk
24 through those numbers asking those questions. And then,
25 they take the statement of how they saw the killed in

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1 action or how they saw whatever happened. And if they
2 don't know, they will say they don't know.

3 Q. Is it also possible --

4 A. And if they do know, they place it down but
5 there was only one Colonel Stewart associated with the
6 57th Infantry that was killed that day, and that was the
7 S-T-E-W, not A-U-R-T.

8 Q. Yeah. So is it possible that Colonel Stewart's
9 name appears on this document because the Graves
10 Registration folks were associating the only Colonel
11 from the 57th with the reference to a colonel?

12 A. That is possible.

13 Q. So, it's possible that Mr. Caragay did not
14 remember the name of the colonel that was allegedly
15 being buried?

16 A. Yes, that's possible.

17 Q. And so, it's also possible that Mr. Cayagay
18 misremembered the rank of the person being buried? He's
19 a civilian from the area.

20 A. That is possible.

21 Q. And you didn't review X files for the broader
22 area of Abucay Hacienda or just the whole Abucay area to
23 see whether there were any better candidates for Colonel
24 Stewart?

25 A. By their teeth, no.

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1 Q. Or any other X files other than the ones in --

2 A. Or other X files, no.

3 Q. And you are not aware of whether other soldiers
4 missing from the area could be more likely to be X-3629?

5 A. From the 57th, probably not but there were
6 other soldiers. I mean, you're right, it's possible
7 that they could have gotten the rank wrong and any
8 number of errors could have happened. So, based on the
9 name conflict is what I am basing it on. I'm going to
10 the negative directly. I am not aware of the other
11 circumstances.

12 Based on the case that I reviewed, though,
13 the name error is adequate to have to force it into,
14 again, negative confirmation which is it is either him
15 or it is not him, and the only conclusive way to do that
16 is DNA testing. If the government has a more likely
17 candidate for Colonel Stewart which they can show is
18 historically proven that 50 percent that they need for
19 the disinterment, then that would be a more likely
20 candidate and that's the candidate they should be doing.

21 Q. So, the inconsistency in the spelling of the
22 name Stewart seems to be triggering a lot for you, but
23 it's also possible that even though Stewart was
24 misspelled quite a bit through the file, that it was
25 known by everyone who was transcribing it and reviewing

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1 the file that we were talking about Colonel Stewart,
2 Colonel Loren Stewart? That's possible, too, right?

3 A. It is possible. I mean, I can't speak to what
4 they were doing, you know, what they thought they were
5 doing then or whether they thought Stewart was Stewart,
6 was the only Colonel Stewart. That is possible too,
7 yes.

8 Q. Since we're --

9 A. The possibility of lots of errors exist in this
10 case. And the only resolving conclusion is DNA testing.

11 Q. Let's go ahead, since we've talked quite a bit
12 about this file, mark this whole X file, Tab 23 as
13 Exhibit 6.

14 A. Okay.

15 (Exhibit No. 6 marked.)

16 Q. Let's circle back to your best interest
17 opinion.

18 A. Yes.

19 Q. I think as stated in your report, I'll quote,
20 "It is my opinion that the best interests are served
21 both for the families of the missing, and for the
22 government, by disinterring the remains at issue in this
23 case for DNA testing as requested." Why are you opining
24 on a best interest standard?

25 A. Well, our mission statement, at least when I

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1 was there, is that we are serving the families'
2 interests. And in some cases the families say, we don't
3 care, just leave them where they are, but the government
4 has cases to close. And since the changes in
5 Congressional requirement up to 200 cases per year was
6 levied upon DPMO, well, levied upon the accounting
7 community at large, all of the organizations involved in
8 the accounting community, not just DPAA but all of them,
9 with that standard mark, you are putting a burden on the
10 government for case resolution.

11 The case resolution was supposed to be that
12 we are doing the best accounting possible and it is in
13 the interest of the family for closure. We serve the
14 families, the families of the deceased. Even when the
15 families of the deceased say, we don't care, we don't
16 want them accounted for, we still continue to account
17 for them. They may not be -- we might remove them from
18 top priority but they continue to be accounted for. And
19 the accounting for is the purpose. That's the whole
20 mission of the accounting community is to account for
21 the dead and to resolve them in the best possible ways.

22 Since the advent really of more scientific
23 methodology which when JPAC adopted it, they were the
24 cutting edge. JPAC and its labs, the CIL were the
25 cutting edge of the technology. They were ahead of

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1 everyone else.

2 So, the interest of the government and the
3 interest of the family should align together. The
4 resolution for the family reinstates the trust in your
5 government institutions. It reinstates the trust that
6 our current soldiers have that should they die on behalf
7 of our country in some far off hell hole, that they will
8 be brought home if at all possible, that we will not
9 abandon them.

10 That mission statement is critical for
11 recruiting purposes of current active duty forces. And
12 it is to the families that we're making that promise,
13 not just to the soldiers but to the families.

14 So, when I'm speaking to that, I am
15 speaking to that from a philosophical standpoint. And
16 in the cases where you have conflicted emotional turmoil
17 surrounding particular cases, a resolution, either a
18 negative resolution which is, I'm sorry but these
19 remains that you keep insisting are your loved ones are
20 not, or they are and now you can close that and lay it
21 to rest, the DNA testing is a best case scenario
22 resolution for both parties.

23 But the DNA testing may not necessarily
24 resolve these because these cases may be that it is not
25 the individual that they believe it to be but the

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1 government will then have DNA. And there are a limited
2 number of individuals associated with each of these X
3 files, the potentiality.

4 Q. Let me pause you right there because I saw that
5 in your report and I wanted to speak specifically to
6 that. When you say a limited number of individuals,
7 are you speaking in the abstract or specifically to
8 these sets of unknowns?

9 A. In the abstract, in general. And specifics in
10 Nininger's case, you are limiting to probably less than
11 50 even if you presume different locations got mixed up
12 together.

13 Q. And what's the basis for that?

14 A. Looking at the different locations where you go
15 through the correspondence and it says, all of these
16 different recoveries but these are the ones that have
17 been identified, identified, identified from a
18 particular group. But even if you're talking --

19 Q. I'm sorry. I want to just walk through this
20 methodically.

21 MR. SPRAGUE: Let the witness complete her
22 statement, and then you can join in.

23 MR. THORP: Okay.

24 A. Even if we were talking about a thousand cases
25 however, I would consider that to be limited. So, we

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1 might want to -- you know, you need to focus perhaps on
2 my understanding of what limited is.

3 Q. That's helpful. And just to make sure I
4 understand, in your view, there are less than 50 people
5 who are plausibly associated with X-1130, the X files
6 associated with Nininger?

7 A. Yes, sir.

8 Q. And your basis for that is looking at that X
9 file?

10 A. Is looking through the Quarter Master when it
11 says, this person was resolved, this person was
12 resolved, and then, the cases that were not resolved
13 that were looked at, at the same time which means they
14 came from the same plot for the secondary review. This
15 is not the first review but the secondary review.

16 So, if that skeletal remains that might be
17 Nininger's was in that group, and again that's an if,
18 you are looking at a group for your secondary review of
19 however many people are listed in the Quarter Master's
20 review. So, they did X number of cases on a particular
21 day. They took them out of one location, they did a
22 secondary review. In some cases, it resulted in an
23 identification. And in more cases, it resulted in
24 reinterment and remained as an X. So, the secondary
25 review and the IDPF.

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1 Q. Are you sure that the Quarter Master General's
2 sort of like final conclusion only dealt with graves
3 that fit together rather than just an administrative
4 batch of unidentifiabiles that were closing that could
5 have been from various parts of the Philippines?

6 A. They could have been but they weren't usually.
7 They usually went section by section.

8 Q. But you're not aware specifically of what was
9 going on with these particular reviews?

10 A. No, but again, a thousand is what I would
11 consider limited, so --

12 Q. Is the best interest standard that you've
13 articulated and would like to see applied reflected in
14 the statute governing the accounting community?

15 A. In the statute in the Charter, I always felt
16 that it was but I'm not sure legally if it is.

17 Q. Why should the government disinter for negative
18 proof if it does not establish the likelihood that the
19 remains can be identified?

20 A. Well, and this is a personal opinion, then they
21 wouldn't be wasting time and money on what seem to be to
22 them annoying cases or people constantly nagging and
23 banging on their door and making them stop all the work
24 they're doing so they can address something that if they
25 just did a DNA testing which said yes or no, they

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1 wouldn't have to deal with it and could get back to
2 doing their own work. That's my personal opinion is
3 that if you didn't, someone says, I really believe
4 this, here is my proof. And you say, well, here's our
5 proof that it is not, that's a loggerhead. That's a
6 loggerhead of opinions that only scientific fact can
7 disprove one or the other.

8 Q. How many unidentified service members from
9 World War II onward are there?

10 A. From World War II we are dealing with
11 approximately 78,000, I think. Half in the Pacific,
12 half in the European theatre. You're probably looking
13 at 10,000 recovered already that are in the various
14 graves sites around the world. Another four or 5,000 of
15 those are considered permanently unrecoverable.

16 In many cases, those are with ships. And
17 on our Navy Opinion, we always consider in the Navy that
18 where you went down is your grave. That's your grave
19 site. We know who you are, we know where you are, we
20 know you're dead, and we know you're in the ship. So,
21 we don't consider that to be a recover issue.

22 So, we are dealing in the tens of thousands
23 of entities that still need to be recovered but we have
24 10,000 unknowns who have been recovered and who are in
25 graves around the world.

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1 Q. But it's also possible that some of these
2 unknowns are not any U.S. Service member but were local
3 Philippine Scouts or just --

4 A. Absolutely. And you cannot prove that if you
5 don't take care of it, but they were serving with the
6 U.S. at the time and we therefore have an obligation.

7 Q. But I mean they even could just be parishioners
8 of the church that were unassociated with U.S. Forces
9 but were just recovered inaccurately from a grave,
10 right?

11 A. True. So, they should be culled out from our
12 unknowns so that they no longer, you know, clog up our
13 system.

14 Q. But you can't cull them out by DNA testing, can
15 you?

16 A. Yes, you can. You most certainty can.

17 Q. How so?

18 A. If you've got a grave and it's a parishioner
19 who is a female, well, chances are unless you have a
20 female nurse who is missing on that site, it's not an
21 American Service person. If you have someone there, you
22 know, who is a different extract, you know, that's not a
23 Caucasian, well, then it probably is. And if you have
24 someone there who is less than 17 in skeletal remains,
25 they probably aren't a U.S. Service person.

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1 They might be one of the 16-year-olds that
2 went in with my dad who lied about their age, but you
3 can differentiate that from the service records of the
4 individuals who are missing. You know, the skeletal
5 remains of a 70-year-old are going to be very, very
6 different. And we probably didn't inter any of those.

7 So, the likelihood is that they are
8 Forces associated with the Americans, probably Filipino
9 guerilla forces that fought with us and our behalf. The
10 missing parishioners, that's going to be a death spec of
11 conflicting data for DNA testing.

12 Q. Well, let's talk a little bit more about your
13 best interest standard. Shouldn't such a standard also
14 weigh the interest of families of other unidentified
15 Service members so that the Agency can prioritize the
16 most likely to be identified?

17 A. You can prioritize that way. It won't work
18 because by saying, well, we're only going to recover
19 Mrs. Smith's son because we believe 90 percent that
20 that's him, and so we're going to recover him but we're
21 not going to recover that other site because we don't
22 know who it is but we know there's a crash there but,
23 yeah, we don't know who it is, so we don't care, it
24 comes across very callous.

25 I do think there should be a level playing

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1 field and I do think there should be an ability to
2 address them. There are obviously limited resources.
3 DPAA is not funded to the level that it should be funded
4 in order to accomplish all the things that are being
5 demanded of it. The entire accounting community is
6 completely underfunded.

7 So, there does have to be a measured
8 approached by the government. When the families feel
9 that that measured approach is inadequate, then they're
10 going to do this, they're going to take it to a lawsuit.
11 The only final way of disproving or proving that these
12 cases are or are not who they say they are is DNA
13 testing. And DNA testing is actually probably a
14 significantly cheaper approach to resolving the case
15 than trying to find a way around it. That's my opinion
16 in approaching it as a negative.

17 Q. But let me --

18 A. A negative conclusion is necessary.

19 Q. But are treating DNA testing as a sure thing.
20 Are you aware that most of the remains that went through
21 the Mausoleum at Manila were treated with chemicals
22 to --

23 A. With formaldehyde which tangled them up. The
24 problem with that is that we are so heavily reliant on
25 mitochondrial DNA which was totally contaminated by

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1 that, that our current procedure within DOD we have no
2 capacity for untangling that. When you contain any --

3 Q. Can I pause you there?

4 A. Yes.

5 Q. What is your basis for speaking to the current
6 capacity of AFDIL?

7 A. Well, if AFDIL has capacity to their potential,
8 then it's a problem, right?

9 Q. I'm asking --

10 A. Previously they had noted, so previously is
11 four years ago, they had noted that it was still a
12 problem to disentangle the DNA and that there was a
13 possibility of contamination between the DNA samples.

14 Now, we do get that with other kinds of
15 remains, especially ancient remains. And in most of the
16 cases where the mitochondrial DNA is still extant, so
17 too is the nuclear DNA. And the nuclear DNA is less
18 likely to have been contaminated by any external forces
19 than the mitochondrial. The mitochondrial is very
20 sensitive to external contaminations. So, I'm not --

21 Q. And your --

22 A. So, I'm not aware of current capacity but if
23 their current capacity is capable of disentangling it,
24 then it's a non-issue and it's moot.

25 Q. But you don't know AFDIL's current

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1 capabilities?

2 A. I don't.

3 Q. And the opinions that you've shared about the
4 capabilities of DNA testing are not in your report,
5 right?

6 A. That is correct.

7 Q. And your opinions about various types of DNA
8 testing and their efficacy are based on the information
9 you learned by observation and conversation at the
10 University of Wisconsin?

11 A. Yes. And with the Bode Lab people when we were
12 considering using them to test the remains of Lawrence
13 Gordon.

14 Q. So, you have no formal education in --

15 A. I have no proof. I have no proof. I have no
16 scientific proof as a scientist. I have only my reason
17 to trust when a scientist tells me that this is a
18 capability that they are able to do, that I believe them
19 just as when the AFDIL people said, this is a capability
20 we do not have, I believed them.

21 Q. I would appreciate it if you would listen to
22 the question I'm asking and just answer that question.
23 You don't have any formal education that would give you
24 expertise to speak to DNA testing methods or efficacy of
25 different methods. Is that correct?

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1 A. I don't have training in that, no.

2 Q. So, no formal education or training, no work
3 experience in conducting DNA testing?

4 A. No.

5 Q. So, your exclusive basis for the opinions
6 you've offered today about DNA testing and the way it
7 should be done come from your conversations with experts
8 at Bode and experts at the University of Wisconsin?

9 A. Yes.

10 Q. So, are you offering yourself as an expert on
11 DNA, on these DNA issues in this lawsuit?

12 A. No.

13 Q. You are just relying on what you've heard about
14 DNA testing in reaching your other opinions in the case?

15 A. Correct.

16 Q. When you read the complaint, I think you
17 referenced that you read the complaint in this case, you
18 saw the allegations with regard to Private Arthur
19 Kelder, I presume?

20 A. Yes, but I did not focus or look anything at
21 that.

22 Q. So, Private Kelder was in a common grave. The
23 remains from the common grave were dug up and Private
24 Kelder was identified by DNA testing from among those
25 remains. The family in the lawsuit, according to the

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1 complaint, is frustrated that they did not receive all
2 the remains. How would your best interest standard
3 apply to additional remains from a common grave after a
4 Service member has been identified?

5 A. That's philosophically complicated. DOD
6 considers if you get DNA results on a very small amount
7 of remains, that that can be conclusively considered
8 closure on the case because of identification. And in
9 cases of mass graves and commingling, it is obviously
10 extremely difficult to test every bone.

11 So, the family's frustration is
12 understandable but the family in that case, they have
13 proof that at least a portion because, again, you can't
14 speak to the entire skeletal remains unless you do
15 testing on all the individual viable pieces which DOD is
16 loathed to do, they don't have the ability from a cost
17 standpoint to be able to do that, and the family, you
18 are always going to have some families who will be
19 dissatisfied.

20 You also have families who will refuse to
21 provide their reference samples. We had some of those
22 in Vietnam because they do not want the individuals that
23 you are presenting to them as their Service member to be
24 that Service member. Obviously, in cases like these,
25 these are emotionally fraught situations.

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1 Now, as long the government's own standard
2 is a very small amount, then that family unfortunately
3 will likely be dissatisfied unless the judge says, go
4 back and get the rest of the bones. That's up to a
5 judge. My opinion on that is it's complicated because I
6 understand the emotions that drive the individual
7 families to desire entire skeleton, but I also recognize
8 the practical and pragmatic realities of what you are
9 able to test.

10 And sometimes, you're going to have only a
11 small amount of the ossuary tissue that will provide
12 that reference, but that is a locking down at least of
13 location if you can follow within the IDPF back to where
14 the person was originally taken from, it should provide
15 a narrative and closure. So, for those families, I
16 don't think the government will ever be able to satisfy
17 them unless they were able to provide them with all of
18 those remains. That's very complicated.

19 We have dig sites that also reach that
20 problem where you have, say, the hand bones of the pilot
21 and you know that the rest of the remains are there in
22 the nose of the plane but DOD is able to identify them
23 through that small amount of matter, those actually are
24 going to be policy issues. And as with other policies
25 that the government has, I might not agree with them and

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1 that's what, in essence, legal cases are is to push the
2 policies and change them or reinforce and adhere to
3 them. I don't think you're going to be able to satisfy
4 a family who has been given identification but wants a
5 body for their closure.

6 Q. Thank you for providing that context. You
7 proposed a best interest standard here for these
8 disinterments. I just would like to hear specifically
9 how -- Your best interest standard is focused on the
10 interest of the government and the interest of all the
11 families of missing Service members, right?

12 A. Correct.

13 Q. Not just the family that's coming to the
14 government with a particular request?

15 A. No.

16 Q. Okay. So, in your answer, am I correct in
17 hearing that you think the best interest standard that
18 you would like applied could involve not testing every
19 bone?

20 A. I think that the government would probably
21 reach that conclusion. I would prefer that every bone
22 could be tested but the government is constrained by
23 resources. And while I may believe that greater amounts
24 of money and resources should be dedicated to this
25 mission which I consider to be a more important mission

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1 than, I don't know, something on the southern border of
2 America, that's not my place within this whole context.

3 So, when I am saying the best interest, I
4 am saying it as a balance between what the government
5 can do, what they want to do, and what they should do.
6 It's truly improbable that they can at this moment in
7 time test every single bone to satisfy that if a family
8 is unwilling to accept a single bone identification that
9 proves that their loved one is dead and was at that
10 location, I don't think that the government has the
11 capacity right now to satisfy that desire.

12 Q. One more question. You've talked about DNA
13 testing as conclusive. It will either show, it will
14 answer one way or another but it's possible that you can
15 disinter a remains, conduct DNA testing on every viable
16 specimen and get no usable DNA result, correct?

17 A. That is very true with mitochondrial and less
18 true with nuclear.

19 Q. Based on your rudimentary understanding from
20 conversations with the experts?

21 MR. SPRAGUE: Objection, form.

22 A. Based on my readings of scientific journals
23 about this subject and my in-depth conversations with
24 various scientists associated within the DNA center
25 there at University of Wisconsin and at Bode, yes.

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1 Q. Would you be able to list the scientific
2 journals or the articles you're talking about?

3 A. I've have to go back and pull them. They're in
4 Science magazine. There is another one on genetics.
5 There are many of them, recent works on stuff to do with
6 our ability to test ancient fossils which we never
7 thought we'd have the capacity to dig down into but, I
8 mean, I can go through and pull a list for you of things
9 I've read.

10 The greater portion of it is sitting down
11 and having very deep conversations of why does that
12 work? Why doesn't that work? Why do you do it that
13 way? How do you extract it? When it is not viable?

14 You're right, I mean, I'm not a DNA
15 scientist but I'm not an idiot. And from a very
16 practical general standpoint when you look at what the
17 DNA matter is in mitochondrial versus what the DNA
18 matter in the nucleus of the cell is, you can understand
19 why if, and that's if, if either one of those are
20 viable.

21 Mitochondrial DNA can reduce it down. And
22 that's the case in Quadulant to where you're down to
23 they're all about the same age, they're all about the
24 same height, we know approximately where in Eastern
25 Europe they came from but we can't do much more than

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1 that, but nuclear DNA can go further than that.

2 Nuclear DNA can take it down so that you
3 can practically pinpoint them to a particular village in
4 Eastern Europe or a particular place in the United
5 States they came from but you're right, I'm not a
6 scientist.

7 So, it is possible that you could do DNA
8 testing on items, whether they have been contaminated,
9 burned or charred, or as in the case of Vietnam with a
10 high pH, practically dissolved into the soil where they
11 were and leave nothing that's viable in the testing, but
12 you can't know that until you disinter it and look at it
13 to see whether or not it's viable.

14 So, to conclusively say, well, we're not
15 going to DNA test it because the likelihood that it's no
16 good, they're just stalling. Sooner or later, it's
17 going to have to be DNA tested.

18 MR. THORP: I think we'll stop there.

19 MR. SPRAGUE: Okay. Are you passing the
20 witness?

21 MR. THORP: Yeah, I think I'm going to
22 pass. We can step out.

23 COURT REPORTER: Off the record?

24 MR. SPRAGUE: No, let's stay on record. I
25 think I'm good with what I have to do.

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1 EXAMINATION

2 QUESTIONS BY MR. SPRAGUE:

3 Q. Ms. Richardson, let me pick up on whether you
4 are a DNA scientist or not. In lay language, how would
5 you describe what it is that you do with regard to the
6 identification of missing Servicemen? What can I call
7 you? Are you an anthropologist or --

8 A. An analyst.

9 Q. You're an analyst. Okay. In the analyst
10 business, is the type of information that you learned
11 from the people you've consulted with at Bode and the
12 people you've consulted with at University of Wisconsin
13 or the information you've received from the various
14 medical articles that you've reviewed, is that the type
15 of information that you would typically rely upon in
16 doing your work as an analyst?

17 A. If I felt that DNA testing was the only route
18 to go, yes, I would completely rely on that when I was
19 in the government.

20 Q. Okay.

21 A. As I would have relied on talking to Doc Hollin
22 when he was at the CIL or the other forensic
23 anthropologists that worked at JPAC, they understood
24 very well but policy-wise for the government, the
25 reliance has been heavily upon an anthropological

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1 centric approach, which means that you have to make all
2 of the circumstances fit the remains, and then you seal
3 it with a final conclusion of DNA when you can.

4 DNA centric approach says you do the DNA
5 first and it will tell you, okay, I have, say, a
6 Hispanic lad of 20 years old, you know, lost in the
7 Hurtgen Forest in this battle. You can then back out
8 and say, well, there were only four Hispanics associated
9 with that particular unit that are still missing in
10 action.

11 So, DNA can whittle down who you are
12 looking for much more rapidly than the anthropologic
13 approach to one set of remains can. So, that's why I
14 have always, even when I was there, advocated for it.
15 And, yes, I would have relied up DNA scientists external
16 to our department for their learned opinions on how to
17 approach a particular case.

18 Q. Okay. Based on your experience in this field
19 as an analyst on these kind of cases, you've received
20 an opinion on whether it is likely that the remains in
21 grave designated X-1130 are those of Lieutenant
22 Nininger, have you not?

23 A. Yes.

24 Q. And in a nutshell, what is your opinion in that
25 regard?

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1 A. I think that based on contrary, albeit
2 conflicting narration of what took place, that it is
3 very likely that it is that he is in that grave.

4 Q. Okay. Assuming that you have family DNA
5 samples to compare to Lieutenant Nininger, do you have
6 an opinion on whether or not disinterment and DNA
7 testing will decide yes or no on whether those remains
8 belong to our Medal of Honor winner Lieutenant Nininger?

9 A. Absolutely. They either are him or they aren't
10 him.

11 Q. All right. Same question regarding General
12 Fort. Based on your analysis and everything that you
13 normally would reply upon and everything you've
14 reviewed, what is your opinion on whether or not the
15 remains that are currently in the designated grave X-618
16 are those of Brigadier General Fort?

17 A. It is likely that they are but, again, only DNA
18 testing will give a negative or positive.

19 Q. So, let me ask you that follow-up question
20 then. Assume that we have DNA reference samples for his
21 family to compare, do you have an opinion on whether or
22 not disinterment of grave X-618 and DNA testing on those
23 remains would confirm one way or the other whether or
24 not that is Brigadier General Fort?

25 A. Yes. DNA testing would confirm that either

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1 X-618 is or X-618 is not him.

2 Q. All right. And with regards to Colonel
3 Stewart, the remains that are in currently designated
4 grave X-3629, based on your review of the IDPF and other
5 information, have you concluded or have you reached an
6 opinion as to the likelihood that those remains are
7 those of Lieutenant Colonel Loren Stewart?

8 A. They likely could be, yes.

9 Q. And again, given if we have DNA reference
10 samples from the family to compare DNA from those
11 remains, do you have an opinion on whether disinterment
12 of those remains and DNA testing will confirm one way or
13 the other whether or not we have successfully located
14 the remains of Lieutenant Colonel Stewart?

15 A. Yes. DNA testing will confirm that it is of
16 him or it is not him.

17 Q. Do you have any information on why the
18 government has not disinterred these individual remains
19 for DNA testing?

20 A. Well, my information is, as pointed out, at
21 this point about four years old. Although, I do keep in
22 touch with the others, conversations I'd had with them
23 since that four years are not conversations that I can
24 open here.

25 So, based on the information that I had up

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1 to four years ago, the resistance on the part of the
2 government to the disinterment is not just on these
3 particular cases. The government is disinclined to
4 disinter. And this goes all the way back to the
5 original forming of the POW/MIA mission. And in part,
6 it stems from the fact that they are supposed to recover
7 the missing. And the League of Families and the other
8 proponents on behalf of the families of the mission and
9 their political push have always pushed the whole
10 accounting community towards recovery.

11 Now, remains that are unknowns in unknown
12 graves are remains that have been recovered. They are
13 not yet knowns, they have not been identified but they
14 have been recovered. And we still have, I think last I
15 looked at the website, just under 1,000 or so in
16 Vietnam. And I think we went under 8,000 something in
17 Korea. There is still 126 missing from the Cold War.
18 And we have approximately 74,000 potential recovery or
19 potential missing, 10,000 of which have been recovered
20 for World War II.

21 So, if you expand the extremely limited
22 resources that the accounting community has been given
23 to disinter and do testing, those are monies and
24 resources that are then being denied from the missions
25 to recover the missing and bring them home. And I think

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1 that for people who are outside of the community and
2 don't understand these very, very subtle
3 differentiations, that's resources that's being taken
4 away from the potential of your loved one being found.

5 DOD, the government as a whole within
6 this mission set has been very resistant to bringing on
7 that political backlash if they spend monies in ways
8 that the more recent wars -- so, we have to remember
9 that it was 2010 before World War II became an active
10 mission. World War II mission at that point was ongoing
11 but they weren't going out actively looking for sites.

12 If we would come upon a site that we felt
13 that this was a really good potential, then we would do
14 it. If a farmer unearthed remains, you know, if someone
15 found something that linked it to a case, then the
16 historians would immediately become active and involved,
17 but it was not until 2010 when Congress enacted the 200
18 identifications per year that the World War II mission
19 even became an active outreaching mission doing the same
20 kind of family losses to the same extent that Vietnam
21 and Korea were doing.

22 And Korea was added very grudgingly by the
23 Vietnam families because when the Charter for this whole
24 organization collective which is the accounting
25 community was set up, it was set up to actively recover

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1 POWs and Missing in Action, living people at that time
2 that they felt were still alive.

3 The groups, the civilians family groups
4 actually split between those who began acknowledging the
5 word "remains" were allowed to be used in the
6 documentation and the reporting, and those who continued
7 to demand POWs as if potentially their loved ones are
8 still alive. Any resources that were detracting from
9 that recovery mission were considered to be wasted
10 resources.

11 So, unfortunately, as the other conflicts
12 have been added on, and that even includes the 120 from
13 the Cold War, you have internally a conflict of what is
14 the best way to spend our limited resources. And
15 consequently, the government has always sided, has
16 leaned more towards the conservative approach that we
17 continue to look for remains that have not yet been
18 recovered rather than to pursue identification of those
19 that have already been recovered.

20 It is changing and I suspect that it will
21 continue to change as you have an influx of younger case
22 officers and younger people coming into it, especially
23 for the Vietnam ones. Many of the people who
24 transferred over came from DIA. They came from the
25 Defense Intelligence Agency's billet to create the

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1 POW/MIA organization. And they carried with them the
2 behind the green door intelligence aspect of keeping
3 secret what you were doing and not telling things, and
4 so, we don't have to tell you why we're not
5 disinterring.

6 With the creation of DPAA, the organization
7 has become significantly more transparent. And I do
8 believe that changes are being made, hopeful changes but
9 that doesn't mean that the families aren't still facing
10 a very cumbersome machine that has decision-making in
11 different parts of it.

12 So, it's Department of the Army folks that
13 make the decisions on disinterment. You've got the
14 Air Force folks holding this. You have each piece is
15 its own command under its own Secretary, whether it
16 falls under the Air Force, or Army, or DOD and you still
17 have communication problems.

18 So, I think that the government's
19 resistance is it's not disingenuous to the families but
20 it is because it is a cumbersome bureaucratic policy
21 that's based in deep, deep roots and deep histories
22 stemming from the Vietnam era.

23 Q. Okay. Let me ask you this. With regards to
24 Lieutenant Nininger, Colonel Stewart and General Fort,
25 if the families are willing to pay for the disinterment

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1 and DNA testing, do you see any downside to the
2 government allowing that to be done?

3 A. I wish I could say that there wasn't a downside
4 to that because I would love to see a more collaborative
5 and partnership between the government and families
6 being able to allocate resources such that those things
7 could take place, but the fear and the concern on the
8 part of the government in the past, at least, has been
9 legitimate in that you get people who do not know what
10 they're doing and who will go out and dig up a site,
11 then they can contaminate to the left and the right.

12 So, if the individual citizens, the
13 families were willing to provide the resources in order
14 for it to be done properly and the government had
15 neither the teams nor the time because those teams and
16 times are allocated somewhere else, there has to be a
17 middle ground where the government and private
18 partnership can come together.

19 I do know that DPAA is working on those
20 kinds of concepts where private entities can work to do
21 that work, but that work has to be done in conjunction
22 with the DOD. Not allowing the DOD to have, at least, a
23 training aspect or an oversight aspect, even if the
24 money is coming from somewhere else, is inappropriate.
25 The government is the final deciding factor in those

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1 kinds of arrangements.

2 Q. Sure.

3 A. But I would say that that would be a good thing
4 if it were feasible. And if it's feasible, it would be
5 good but the danger is that you open it up to everybody
6 just going around digging up graves.

7 Q. Do you know of any reason that the government
8 would refuse to cooperate in a joint effort if the
9 family said, look, we want you to supervise and we want
10 you to approve the procedures, we want to come up with
11 an agreed protocol to do all this? Do you have any
12 knowledge of why the government might not be willing to
13 do that?

14 A. I don't know why the government might not be
15 willing to do that other than they're constrained by
16 policies right now that might not allow them to do the
17 outreach or do the training that would be necessary. I
18 think the government would actually consider that a
19 benefit if they were able to get private resources in
20 order to accomplish a mission.

21 I don't believe there would be a legal
22 conflict but I can't actually speak to that. That would
23 have to be addressed by DPAA or the accounting community
24 at large's legal teams as to what can and can't be done.
25 And again, those things may be changing even now.

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1 I'm not aware of why the government would
2 not want to work in a collaborative way, assuming that
3 they have oversight and are able to -- there has to be a
4 chain of custody. I think that's the other thing that
5 when you're stepping into this, that people don't
6 understand. It is less likely for a problem when you're
7 extracting a single person or a single grave but you
8 have -- it's like a crime scene. And it has to be
9 approached so that you don't contaminate evidence to the
10 left and the right, because the evidence to the left and
11 the right might be evidence that is critical or crucial
12 to another family.

13 And this is what you were speaking to, sir,
14 about what is that balance between the other families
15 and his families, but I do think that a private/public
16 collaboration is something that the government has been
17 trying to work towards all these years now, at least in
18 the last five that I've been aware of.

19 Q. Okay. At the very start of your deposition,
20 there was some discussion about this Memorandum for the
21 Secretary of the Military Department from 2015?

22 A. April '15, yes.

23 Q. Yes. The standard that is established in that
24 section if it were to be applied to Lieutenant Nininger,
25 Colonel Stewart and General Fort would be that if based

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1 on the things that are available now, the analyst
2 concluded that, at least, there's a 50 percent
3 likelihood of making an identification before
4 disinterring the remains. You're telling me we
5 basically have a hundred percent likelihood of
6 identifying the remains if we disinter and use DNA
7 testing, right?

8 A. No. We have a hundred percent possibility of
9 not identifying.

10 Q. I see. We will know if it is or isn't?

11 A. Correct.

12 Q. Okay.

13 A. But if let us say that it is not Nininger, then
14 we will know, we have a hundred percent chance at that
15 point of knowing that it's not, but you then have not
16 identified those remains. You have merely now created a
17 DNA source that a family reference sample have to come.
18 So, it's a fifty-fifty of if it's Nininger on the DNA,
19 it either is him or it's not him but you don't have a
20 hundred percent chance of identifying him.

21 Q. I understand what you're saying.

22 A. If that helps. So, it's negative confirmation.

23 MR. THORP: Can I pause you for a second.
24 We've been told that they're closing the office and
25 we've got about five minutes left.

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1 MR. SPRAGUE: Okay. This will be my last
2 question then.

3 Q. Based on the analysis that you've done which
4 you say that there is a 50 percent chance likelihood of
5 identifying Lieutenant Nininger, Colonel Stewart, and
6 Brigadier General Fort if they are disinterred and DNA
7 tested, given the information you have plus the DNA
8 testing?

9 A. I would say given the informational as allowed,
10 you have a binary hundred percent it is either them or
11 it is not.

12 Q. Okay.

13 A. But it's not a 50 percent chance that it is
14 them. That's the difficulty with negative confirmation
15 is it will be them or it won't be them. And I am not
16 doing a riddle like Schrodinger's Cat here.

17 Q. Fair enough.

18 A. But if it's not them, then you potentially have
19 no identification because there is no family reference.
20 If the DNA comes back and the family reference matches,
21 then it is them but you will know yes or no with DNA
22 testing.

23 Q. Do you think we should do that testing?

24 A. I do and I did. That was my position at DPMO
25 and I continue to hold that position even given the

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1 constraint resources the government has.

2 MR. SPRAGUE: All right. Thank you. I
3 understand that we're done one way or the other because
4 they're closing the office. I appreciate your time,
5 ma'am. Thank you very much.

6 THE WITNESS: I'm sorry I took so long.
7 If there were other questions, I do apologize for not
8 getting to them.

9 MR. SPRAGUE: Legally we could have kept
10 you here for six hours, so you did good.

11 MR. THORP: Thank you. Off the record.

12

13

14 (Deposition Concluded at 5:00 p.m.)

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RENEE RICHARDSON
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1 ERRATA SHEET
2 CHANGES AND SIGNATURE

3 Oral Deposition of: RENEE R. RICHARDSON

4 Date: November 28, 2018

5 PAGE LINE CHANGE REASON

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RENEE RICHARDSON
November 28, 2018,

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I, RENEE R. RICHARDSON, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

RENEE R. RICHARDSON

STATE OF _____:

COUNTY OF _____:

Before me, _____, on this day personally appeared RENEE R. RICHARDSON, known to me, or proved to me under oath or through ID or other document, to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, A.D., 2019.

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

My Commission Expires: _____

RENEE RICHARDSON
November 28, 2018,

IN THE UNITED STATES DISTRICT COURT
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.)

REPORTER'S CERTIFICATION
DEPOSITION OF RENEE R. RICHARDSON
November 28, 2018

THE ORIGINAL OF THIS DEPOSITION
IS IN THE CUSTODY OF:

GALEN N. THORP
UNITED STATES DEPARTMENT OF JUSTICE
CIVIL DIVISION, FEDERAL PROGRAMS BRANCH
1100 L STREET, N.W., ROOM 11220
WASHINGTON, DC 20005

Date: _____

Taxable Court Costs: \$_____

DUE AND OWING FROM: GALEN N. THORP, ESQUIRE

* * * * *

I, BARBARA DURAND-HOLLIS, Certified Shorthand
Reporter in and for the State of Texas, hereby certify
to the following:

That the witness, RENEE R. RICHARDSON, was duly
sworn by the officer and that the transcript of the oral
deposition is a true record of the testimony given by
the witness;

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1 That the deposition transcript was submitted on
2 _____, 2019 to the witness or to the
3 attorney for witness for examination, signature, and
4 return to FEDERAL COURT REPORTERS OF SAN ANTONIO by
5 _____, 2019;

6 That the amount of time used by each party at the
7 deposition is as follows:

8 RON A. SPRAGUE -(0 hours: 20 minutes)

9 GALEN N. THORP -(2 hours: 40 minutes)

10 JOHN SMITHEE, JR.-(0 hours: 0 minutes)

11 That pursuant to information given to the
12 deposition officer at the time said testimony was taken,
13 the following includes counsel for all parties of
14 record:

15 JOHN SMITHEE, JR. Appearing for Plaintiff;

16 RON A. SPRAGUE Appearing for Witness;

17 GALEN N. THORP Appearing for Defendant;

18 I further certify that I am neither counsel for,
19 related to, nor employed by any of the parties or
20 attorneys to the action in which this proceeding was
21 taken, and further that I am not financially not
22 otherwise interested in the outcome of the action.

23 Further certification requirements pursuant to Rule
24 30(e) & (f)(1) of FRCP will be certified to after they
25 have occurred.

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Certified to by me on the 25th day of
January, 2019.

/s/ Barbara Durand-Hollis
BARBARA DURAND-HOLLIS, CSR, PR
CSR No. 2349 - Expires 12/31/19
RPR No. 20068- Expires 12/31/19

Firm Registration #79

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1 FURTHER CERTIFICATION UNDER RULE 30 FRCP

2

3 The original deposition was / was not returned to
4 the deposition officer in accordance with Rule 30(e) of
5 the FRCP.

6 If returned, the attached Changes and Signature
7 page contains any changes and the reasons therefor;

8 If returned, the original deposition was delivered
9 to GALEN N. THORP, Custodial Attorney, on _____;

10 That \$_____ is the deposition officer's
11 charges to the Defendants for preparing the original
12 deposition transcript and any copies of exhibits;

13 That the deposition was delivered in accordance
14 with Rule 30(e) & (f)(1) of the FRCP, and that a copy of
15 this certificate was served on all parties shown herein
16 and filed with the Clerk.

17

18 Certified to by me on the _____ day of
19 _____, 2019.

20

21

BARBARA DURAND-HOLLIS, CSR, RPR
CSR No. 2349 - Expires 12/31/19
RPR No. 20068- Expires 12/31/19

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23 Firm Registration #79

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