

THE POW INVESTIGATIVE)
PROJECT, INC.)
A Maryland Corporation,)
)
Plaintiffs,)
)
v.)
)
NATIONAL ARCHIVES AND)
RECORDS ADMINISTRATION)
National Archives at College Park)
8601 Adelphi Road)
College Park, MD 20740,)
)
Defendant.)
_____)

AMENDED COMPLAINT
(Freedom of Information Act, 5 U.S.C. § 552, as amended)

This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.*, as amended, for the disclosure of records improperly withheld from plaintiffs.

Preliminary Statement

Captain Eugene "Red" McDaniel. On May 19, 1967, Captain McDaniel piloted an A-6 Intruder over North Vietnam, accompanied by his navigator, James Kelly Patterson. It was their 81st mission. Attacked by surface-to-air missiles, they dodged one, but were hit by another, and ejected a second apart from one another, into the jungle. As a POW, Captain McDaniel would suffer brutal and barbaric torture for almost six years. While Red never saw him again, Patterson had survived, and had been taken prisoner. An expert in the use of his aircraft's state-of-the-art electronic system being used to defeat Vietnam's Russian-made missile defense system, Patterson was shipped to the Soviet Union, where, as late as 1991, he was held in a military missile research facility that was developing technology to circumvent the American countermeasures.

In 1978, as Director of Navy/Marine Corps Liaison to the U.S. House of Representatives, Red had viewed several aerial photographs, and read reports of first-hand sightings of POWs who had not been repatriated. In 1986, after retiring from the Navy, Red began to speak out publicly about our missing men. The National Security Council reacted by telling him that we had living American POWs in Southeast Asia, but advised him to be patient, as the government expected their repatriation in two or three more years. Captain McDaniel's story is chronicled in his book, *Scars & Stripes: The True Story of One Man's Courage in Facing Death as a Vietnam POW*, and in his wife's book, *After the Hero's Welcome*, by Dorothy McDaniel.

Carol Hrdlicka. On May 18, 1965, Carol's husband, Air Force Captain David Hrdlicka, piloted an F-105 over Laos, when it was shot down. He was captured. David was held in Sam Neua, Laos, at the Pathet Lao Headquarters. Over the years, the government repeatedly told Carol that David was dead. During this time, multiple intelligence records discussed his situation, including an escape, and recapture. The Pathet Lao displayed David at a press briefing and thereafter released a letter that David had written. 1988 Satellite imagery displayed a POW distress symbol in the area where David had been held. (Carol learned of this imagery in 1992 when it was leaked and published by *US News and World Report*.) In her book, *Finding David*, Carol recounts her decades-long efforts to seek information on David's whereabouts, and to secure his release.

The Moore family. Three of the plaintiffs are family members of an aviator serving in the U.S. Air Force during the Korean War—Captain Harry Cecil Moore. Captain Moore piloted an F-51 Mustang night fighter, part of the 67th Fighter Bomber Squadron. On June 1, 1951, Harry flew one of six F-51's that had been enroute to conduct reconnaissance over North Korea when the Squadron was ordered to proceed north to provide close air support for a B-29 Bomber crew that had bailed out in enemy territory near the mouth of the Yalu River. Flying at about 5,000 feet, the Squadron was attacked by six MiG-15 aircraft of the Soviet 303rd Fighter Aviation Division that had been patrolling along the river. The Mustangs descended and split up into pairs and single flights. Harry and another Mustang flew south along the coast trying to evade the MiGs. One Mustang turned east and continued inland, while three MiGs chased Harry, hit his Mustang, which smoked, dropped, and landed gently in the Korean Gulf less than 100 feet from shore.

On February 27, 1952—eight months after the shoot-down—the Chief of Naval Personnel wrote to the Judge Advocate General "that there is a possibility that Captain Moore survived and is now a prisoner of war." But the government did not reveal to his wife, Lois Moore, or his brother, plaintiff Bob Moore, that Harry may have been alive. Instead, in December of 1953, it wrote them that Harry had been reclassified, from Missing-in-Action, to Killed-in-Action.

Fifty years later, in 2002, the Pentagon informed Lois and Bob that evidence had been discovered by the US–Russia Joint Commission on POW/MIAs, indicating that communist forces had taken him prisoner and transported to the Soviet Union. A decade later, in 2013, the Department of Defense provided Louis and Bob with a copy of the Chief of Naval Personnel's February 1952 memorandum relating that Harry may "now be a prisoner of war." In November of 2019, a researcher discovered a November 1953 report that "Lt Moore, fighter pilot, was interrogated at the interrogation center," in North Korea's Camp 5.

Harry Moore's story is memorialized in the documentary, *Keeping the Promise Alive*. See <https://www.youtube.com/watch?v=kma3hwFRJ1w>. Sadly, on July 24, 2021, Harry's wife, Lois Moore, passed away. Since 2002, Lois, along with their extended family, had advocated for information on Harry's fate. "Thus began a new chapter in the lives of Lois and Bob as they began the search for Harry, attending meetings of the Defense POW/MIA Accounting Agency (DPAA) all over the nation, ultimately becoming prominent advocates

for families of the over 7,500 service personnel still missing from the Korean War." See <https://www.legacy.com/us/obituaries/idahostatesman/name/lois-moore-obituary?pid=199638364>.

John Zimmerlee. Air Force 1st Lieutenant John Henry Zimmerlee served as navigator aboard a B26C light bomber. Sometime after 9:00 p.m. on March 21, 1952, it crashed, after three of its five crewmembers successfully parachuted out. They were taken prisoner, and last seen in the custody North Korean and Chinese guards. His son, John, is the founder and Executive Director of the *Korean War POW/MIA Network*. He has helped hundreds of the families of missing men, utilizing his databases that assembled over the course of his 20 years of research.

Mark Sauter. Mark Sauter is an investigative journalist and author. He is founder of *The POW Investigative Project, Inc.*, which is devoted to investigating the fates of United States POWs and MIAs last reported alive in communist captivity but never returned after the Korean, Cold, and Vietnam Wars. See <https://www.powinvestigativeproject.org/>.

Jurisdiction and Venue

1. The FOIA provides this Court jurisdiction over this matter. Venue is appropriate under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391. Defendant consented to this pleading, under Rule 15 (a)(2) of the Federal Rules of Civil Procedure.

Parties

2. Captain Eugene B. McDaniel, U.S. Navy (Ret.) is an individual who resides in Arlington, Virginia.

3. Carol Hrdlicka is an individual who resides in Conway Springs, Kansas.

4. Plaintiff Robert Moore is an individual residing in Eagle, Idaho. He is Harry Moore's brother.

5. Plaintiff Jana Orear is an individual who resides in Genoa, Nevada. She is Harry Moore's daughter.

6. Plaintiff Christianne O'Malley is an individual who resides in Reno, Nevada. Ms. O'Malley is Harry Moore's granddaughter.

7. Plaintiff Mark Sauter is an investigative journalist and author. He lives in Bethesda, Maryland.

8. Plaintiff John Henry Zimmerlee is an individual who resides in Marietta, Georgia. He is Lieutenant John Henry Zimmerlee's son.

9. Plaintiff *The POW Investigative Project, Inc.*, is a nonprofit entity duly organized and existing under the laws of Maryland. It is devoted to investigating the fates of United States POWs and MIAs last reported alive in communist captivity but never returned after the Korean, Cold, and Vietnam Wars.

10. Defendant National Archives and Records Administration ("Archives") is an agency within the meaning of 5 U.S.C. § 552(f) of the FOIA, and is in possession and control of the records which are the subject of this action.

Facts

11. On April 20, 2020, plaintiffs, Robert Moore, Jana Orear, Christianne O'Malley, Michael Driggs, John Zimmerlee, Mark Sauter, and *The POW Investigative Project, Inc.*, submitted a FOIA request to the Archives, seeking disclosure of 27 items, plus records associated with twenty "Withdrawal Notices," restricting public access.

12. By letter dated December 14, 2020, Plaintiffs narrowed their request to exclude records on American prisoners or missing personnel who had been repatriated, and withdrew portions of the request.

13. On May 5, 2021, the aforementioned plaintiffs submitted a second FOIA request to the Archives. This request included two more individuals—plaintiffs Eugene McDaniel and Carol Hrdlicka. That correspondence is attached hereto as Exhibit 1.

14. The items identified in plaintiffs' April 20, 2001 FOIA request, not otherwise withdrawn, are:

Request 1

All records regarding the June 1, 1951 shoot down and capture over North Korea of the American F-51 piloted by U.S. Air Force Captain Harry Cecil Moore, his incarceration, interrogation, transportation from North Korea to the Soviet Union, his locations in the Soviet Union, including all evidence that he "may have been interrogated by Soviet officials." Captain Moore's service number is AO 711850. His date of birth is February 11, 1924.

Request 3

All POW records concerning Air Force 1st Lieutenant John Henry Zimmerlee, Jr. Lieutenant Zimmerlee served as navigator aboard a B26C (No. 44-34417) in the Air Force 730th Bomb Squadron. That aircraft was downed on March 21, 1952. His service number is AO-1998932, and he was born on December 6, 1911.

CIA Records

Request 5

All CIA POW records concerning the activities of the Joint Advisory Commission Korea (JACK).

National Security Agency Records

Request 6

National Security Agency POW records in Record Group 457, including the names of POWs appearing below in Appendix A, and the incidents listed below in Appendix B. This is to include records from the NSA predecessor, the Armed Forces Security Agency.

Department of Defense—Records of Joint Chiefs of Staff

Request 7

All POW records in Record Group 218, Records of the U.S. Joint Chiefs of Staff.

Department of Defense—Army records

Request 8

All records concerning Korean and Cold War POW in the files including but not limited to:

* * *

- (2) The Combined Command Reconnaissance Activities Korea (CCRAK).
- (3) Records in the Record Group 554 for General Headquarters, Far East Command.

* * *

- (5) All classified documents contained in Record Group 319, Records of the Army Staff, dated after September 1953.

Department of Defense—Air Force records

Request 9

All POW records generated from the 6004th and 6006th Air Intelligence Squadrons (AISS), including but is not limited to all files regarding *Project American*. *Project American* was the repository file for all U.S. Air Force personnel missing in the Far East.

Request 10

All POW records in Record Group 341, *Records of Headquarters U.S. Air Force (Air Staff)*.

Request 11

All Air Force POW records in Record Group 342, *Records of U.S. Air Force Commands, Activities, and Organizations*. (See, e.g. <https://www.archives.gov/research/guidedef-records/groups/342.html>)

Request 12

All POW records produced by the U.S. Air Force Security Service.

Department of Defense—Navy

Request 13

All Bureau of Naval Personnel POW records in Record Group 24.

Request 14

All POW records of the *Office of the Chief of Naval Operations* in Record Group 38.

Request 15

Record Group 38, all completed Naval forms, *Identification data on missing U.S. Naval and Marine Personnel*, from February of 1956, regarding Korean POWs believed to be in the Soviet Union.

Request 16

All Navy records in Record Group 38, the *Case Files of American Prisoners of War During the Korean War, 1952-1956*.

State Department

Request 17

All POW records in Record Group 59, *General Records of the Department of State, Central Foreign Policy File*, including but not

limited to Central Files 1958-1963, Record Group 59, Boxes 157-161, lot files 63D168, 65D93, 65D235, 66D224, and 66D245.

Withdrawal Notices

Requests 28 through 48 seek disclosure of records associated with twenty "Withdrawal Notices," restricting public access. These requests are set forth below, together with the Withdrawal Notices to which they refer.

15. Plaintiffs' May 5, 2021 FOIA request seeks disclosure of five items:

Request 1

All records regarding James Kelly Patterson, shot down and captured over North Vietnam on May 19, 1967 while serving as navigator of the American F-51 piloted by Captain Eugene McDaniel, including Patterson's incarceration, interrogation, transportation from North Vietnam to the Soviet Union, where he was held as late as 1991.

Request 2

All records regarding David Louis Hrdlicka, shot down and captured over Laos on May 18, 1965 while piloting an F-105, incarcerated in Sam Neua, Laos, at the Pathet Lao Headquarters, where he was held as late as 1988.

Request 3

All indices, lists, or any other records describing of the contents of all boxes in the following Record Groups:

Record Group 263

Record Group 457

Record Group 218

Decimal Correspondence Files, 1942-1958

Geographic Correspondence Files, 1942-1958

Declassified Incoming and Outgoing Messages Relating to Operations in the Far East, 5/29/1950 - 8/2/1953

Classified Incoming and Outgoing Messages Relating to Operations in the Far East, 1950-1953

Monograph "History of the Korean Conflict: Korean Armistice Negotiations, May 1952-July 1953," 1953-1955

Correspondence, Memorandums, Reports, and Other Records, 1953-1970

Records Relating to the Korean War, 1951-1953

Record Group 319

Prisoner of War, Missing in Action, and Detainee Intelligence Files, 1948-1967

Prisoner of War, Missing in Action, and Detainee Intelligence

Files, 1948-1967
Korean Conflict Prisoners of War (POW), Missing In Action (MIA) and Detainee Intelligence Files, 1944-1986
Prisoners of War (POW), Missing in Action (MIA), Detainee Intelligence, and Intelligence/Counterintelligence Source Files, 1947-1974
Intelligence Reports and Files, 1950-1958
Record Group 38
Records Relating to Prisoners of War, 1949-1954

Request 4

All correspondence between NARA and the Agency that transferred the records identified in the Record groups identified above in Request 3, regarding those transfers.

Request 5

All correspondence, memoranda, or other writing, including communications with, or by, transferring Agencies, regarding adherence to, or implementation of, the McCain Bill, including any records of review and identification of records responsive to the McCain Bill, whether by the transferring Agency, or by NARA.

Count I
(Prompt Disclosure)

16. Plaintiffs restate paragraphs 1-15 as if fully repeated here.
17. Plaintiffs have a statutory right to the records they seek, and there is no legal basis for the CIA's refusal to disclose them.

Count II
(News Media Status)

18. Plaintiffs restate paragraphs 1-17 as if fully repeated here.
19. Plaintiffs' letters requested status as a representative of the news media, and the administrative record demonstrates that plaintiff Mark Sauter is entitled to a waiver of search and review fees under 5 U.S.C. § 552 (a)(4)(A)(ii)(II).

