

**KANTROWITZ & PHILLIPPI, LLC**

ATTORNEYS AT LAW

1880 JOHN F. KENNEDY BOULEVARD

SUITE 1101

PHILADELPHIA, PA 19103

(215) 496-9400

FAX: (215) 496-9089

NEW JERSEY OFFICE

1194 Parkway Avenue

Ewing, New Jersey 08628

(609) 530-1919

FAX: (609) 530-0722

May 28, 2010

*Via First-Class Mail and Fax*

Susan Dein Bricklin

Assistant United States Attorney

United States Attorney's Office

Eastern District of Pennsylvania

615 Chestnut Street, Suite 1250

Philadelphia, PA 19106

**RE USS Forrest Sherman DD-931 Foundation, Inc. v. United States, et al.  
United States District Court, E.D. Pa., 2:10-cv-02174-JD  
Our File: 0931-59429**

Dear Ms. Bricklin:

We are in receipt of the copy of the Administrative Record you filed with the court today. Although we have not yet had the opportunity to fully examine and analyze all ninety (90) exhibits contained therein, it is abundantly clear from a cursory review of the table of contents that the United States made a clear misrepresentation to the court during the May 11, 2010, hearing in Judge DuBois' chambers on the Temporary Restraining Order.

At that time you informed the court that the Navy had completed the required section 106 review required by the National Historic Preservation Act. It is blatantly obvious from your submissions that that statement was inaccurate. Consultation with the State Historical Preservation Officer (SHPO), as well as others, is an integral and essential element of the section 106 review process. It is clear from your submissions that there was no consultation with the SHPO prior to the Navy's (inadequate) determination of eligibility with respect to the Forrest Sherman. In fact, your submission indicates that the first contact with the SHPO was on May 20, 2010, more than one week after you informed the court that the section 106 review was complete. We demand that you immediately notify the court of the previous misrepresentation and take all other appropriate steps.

Additionally, as is clear from your submission, the government at least misled, if not misrepresented, its position with respect to the status of the Administrative Record. Both prior to and during the conference call with Judge DuBois on May 20, 2010, you indicated that the Navy was still in the process of compiling the Administrative Record and would not be able to comply with the court's Order requiring that the Administrative Record be filed by May 21, 2010. It is clear from exhibit 90 in your submission that the government was not in the process of compiling the Administrative Record. Rather, the government was in the process of creating the Administrative Record.

Again, we demand that you immediately notify Judge DuBois of the misrepresentation and again take all other appropriate steps.

Very truly yours,

Steven B. Kantrowitz

SBK/wda

cc: Mr. Gregory B. David

Assistant United States Attorney (via fax & first-class mail)

Susan Dein Bricklin – U.S. Attorney Office  
May 28, 2010  
Page 3