

1 IAN GERSHENGORN
 Deputy Assistant Attorney General
 2 JOSEPH P. RUSSONIELLO
 United States Attorney
 3 VINCENT M. GARVEY
 Deputy Branch Director
 4 CAROLINE LEWIS WOLVERTON, District of Columbia Bar No. 496433
 Senior Counsel
 5 KIMBERLY L. HERB
 Trial Attorney
 6 Civil Division, Federal Programs Branch
 U.S. Department of Justice
 7 P.O. Box 883
 Washington, D.C. 20044
 8 Telephone: (202) 514-0265
 Facsimile: (202) 616-8470
 9 E-mail: caroline.lewis-wolverton@usdoj.gov

10 Attorneys for DEFENDANTS

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 OAKLAND DIVISION

14
 15 VIETNAM VETERANS OF AMERICA, *et al.*,
 16 Plaintiffs,
 17 v.
 18 CENTRAL INTELLIGENCE AGENCY, *et al.*,
 19 Defendants.

Case No. CV 09-0037-CW

**DEFENDANTS' RESPONSE TO
 PLAINTIFFS' NOTICE TO ALL
 DEFENDANTS PURSUANT TO FED.
 R. CIV. P. 30(b)(6)**

20
 21 Defendants in this civil action, by and through undersigned counsel, hereby submit the
 22 following responses to Plaintiffs' Notice To All Defendants Pursuant to Fed. R. Civ. P. 30(b)(6):
 23

24 **GENERAL RESPONSE**

25 1. The information submitted herewith is being provided in accordance with the
 26 Federal Rules of Civil Procedure which permit the discovery of any matter not privileged that is
 27 relevant to the subject matter of this civil action. Fed. R. Civ. P. 26(b)(1). Accordingly,
 28

NO. C 09-37 CW
 DEFENDANTS' RESPONSE TO PLAINTIFFS' NOTICE PURSUANT TO FED. R. CIV. P. 30(b)(6)

1 Defendants do not, by providing such information, waive any objection to its admissibility on the
2 grounds of relevance, materiality, or other appropriate ground.

3 2. The responses supplied herein are not based solely on the knowledge of the
4 executing party, but include the knowledge of the Defendants, their agents, employees,
5 representatives, and attorneys, unless privileged.
6

7 3. To the extent that Defendants produce witnesses in response to Plaintiffs' notice to
8 all Defendants pursuant to Fed. R. Civ. P. 30(b)(6) ("Notice"), Defendants do not concede that
9 the testimony requested is relevant to this action. Defendants expressly reserve the right to object
10 to further discovery of the subject matter of the request for testimony and the introduction into
11 evidence of any testimony in response to this Notice.
12

13 GENERAL OBJECTIONS

14 1. Defendants object to Plaintiffs' Notice, including all definitions and instructions
15 contained therein, to the extent they seek to impose obligations beyond those specified under the
16 Federal Rules of Civil Procedure or other applicable rules. All of Defendant's responses to the
17 Notice herein are subject to and without waiver of this objection.

18 2. Defendants object to Plaintiffs' definition of "DOCUMENTS" to the extent that it
19 encompasses electronic mail or other electronic records that are not in word-searchable format,
20 including, but not limited to, any computer backup tapes. Such a definition renders any
21 corresponding requests unduly burdensome and not reasonably calculated to lead to the discovery
22 of admissible evidence, and the burden of any such proposed discovery outweighs its likely
23 benefit.
24

25 3. Defendants object to Plaintiffs' definition of "TEST PROGRAMS" as overly
26 broad. The term "TEST PROGRAM" is defined to include, "without limitation," specifically
27 identified test programs "and any other program of experimentation involving human testing of
28

1 any substance[.]” Such a definition renders any corresponding requests unduly burdensome and
2 not reasonably calculated to lead to the discovery of admissible evidence, as this definition has
3 the potential to encompass clinical trials and other human tests in any setting, under any
4 circumstances, and within any time frame. As most literally responsive records are wholly
5 unrelated to the subjects of this litigation, Defendants have limited their document production to
6 relevant documents pertaining to the specified test programs and other chemical or biological
7 testing involving service members conducted in conjunction with the Edgewood Arsenal area of
8 Aberdeen Proving Ground, Maryland, Fort Detrick, Maryland and Fort Ord, California.
9

10 4. Defendants object to Plaintiffs’ Notice to the extent it requests information that is
11 not reasonably calculated to lead to the discovery of admissible evidence.
12

13 5. Defendants object to providing any files, records, reports, and any other papers and
14 documents pertaining to any individual other than the individually named Plaintiffs to the extent
15 that such information is protected by the Privacy Act, 5 U.S.C. § 552a, the Health Insurance
16 Portability and Accountability Act of 1996 (“HIPAA”), 42 U.S.C. § 1320d-2, the HIPAA Privacy
17 Rule, and/or 45 C.F.R. parts 160 and 164. Defendants further object to Plaintiffs’ Notice to the
18 extent it seeks information protected from disclosure by the attorney-client privilege, the work
19 product doctrine, deliberative process, or any other applicable privilege or immunity recognized
20 under statute, regulation or applicable case law.
21

22 6. Defendants object to Plaintiffs’ Notice to the extent it seeks information not
23 known or reasonably available to Defendants or to the extent they seeks information that is
24 publicly available, and/or that is equally or more readily available to Plaintiffs.
25

26 7. Defendants object to Plaintiffs’ Notice to the extent that it seeks information that is
27 classified pursuant to Executive Order 12,958 and subject to the state secrets privilege or
28 otherwise subject to the state secrets privilege.

1 OBJECTIONS AND RESPONSE

2 Defendants object to Topic 1 insofar as it calls for a legal opinion, encompasses
3 information that is as irrelevant and seeks information not reasonably calculated to lead to the
4 discovery of admissible evidence, and is cumulative of Topic 39.

5 Subject to this objection and Defendants' General Objections, Defendants designate Dr.
6 Arthur Anderson, who will testify regarding the Nuremberg Code, Wilson Directive, Army Reg,
7 70-25 and ethics of human testing.
8

9
10 Topic 2:

11 The interface between and representatives involved in contacts between YOU and the
12 DVA regarding death and disability claims brought by TEST SUBJECTS.

13
14 OBJECTIONS

15 Defendants object to Topic 2 on the ground that it is irrelevant and seeks information not
16 reasonably calculated to lead to the discovery of admissible evidence.

17
18 Topic 3:

19 Each instance in which a veteran claimed to be involved in one or more of the TEST
20 PROGRAMS, but YOU informed anyone, including the DVA, that YOU had no record of
21 such participation.

22 OBJECTIONS

23 Defendants object to Topic 3 on the ground that it is irrelevant and seeks information not
24 reasonably calculated to lead to the discovery of admissible evidence, and seeks information not
25 known or reasonably available to Defendants.
26
27
28

1 Topic 4:

2 Studies of and other information CONCERNING the potential health effects of exposure
3 to chemical and/or biological weapons tested as part of the TEST PROGRAMS, and each
4 of them.

5 OBJECTIONS AND RESPONSE

6 Defendants object to Topic 4 to the extent it seeks information not known or reasonably
7 available to Defendants.

8 Subject to this objection and Defendants' General Objections, Defendants designate Dr.
9 Michael Kilpatrick, OSD (HA/TMA) (Strategic Communications), who will testify as to the fact
10 sheets that DoD has generated as to health effects of some of the substances used during the
11 chemical and biological testing programs at Edgewood and Ft. Detrick.

12
13
14 Topic 5:

15 The protocols, conduct, administered doses, dose-response data, and mode of exposure for
16 each of the TEST PROGRAMS, including sub-projects.

17 OBJECTIONS AND RESPONSE

18 Defendants object to Topic 5 to the extent that it seeks information that is irrelevant and
19 not reasonably calculated to lead to the discovery of admissible evidence and that it seeks
20 information not known or reasonably available to Defendants.

21 Subject to this objection and Defendants' General Objections, Defendants designate Dr.
22 Dr. James A. Baker, Associate Director of Edgewood Chemical Biological Center, who will
23 testify regarding information reasonably available in the Edgewood Arsenal technical library.

24
25
26 Topic 6

27 CIA involvement in the TEST PROGRAMS, including without limitation, identification
28 of chemical or biological agents, use of undercover agents, financial support, direction,

1 field testing, operations, and the results of any evaluation of each chemical substance or
2 biological agent.

3 OBJECTIONS AND RESPONSE

4 Defendants objects to Topic 6 as overly broad for the reasons stated in Defendants'
5 objection to the definition of "TEST PROGRAMS." Defendants further object to the topic as
6 overly broad as well as unduly burdensome insofar as CIA "involvement" is defined to include
7 "without limitation, identification of chemical or biological weapons, use of undercover agents,
8 financial support, direction, field testing, operations and the results of any evaluation of each
9 chemical substance or biological agent" and encompasses information that is irrelevant and seeks
10 information not reasonably calculated to lead to the discovery of admissible evidence, and may be
11 subject to the state secrets or other privilege. Defendants further object insofar as the topic
12 encompasses information that is not known or reasonably available to Defendants. In addition to
13 the passage of more than thirty-five years, the CIA's relationship with Edgewood Arsenal and
14 Fort Detrick was unusually tightly compartmented, and as Plaintiff's complaint notes, personnel
15 involved maintained a policy against the creation of written records. Given these limitations and
16 that those individuals with percipient knowledge are deceased or retired, there is no basis on
17 which a CIA designee could fully educate himself or herself regarding agency participation
18 beyond the documents produced or to be produced in this litigation.

21 Subject to this objection and Defendants' General Objections, Defendants state that they
22 designate Patricia Cameresi, Associate Information Review Officer, CIA, to testify regarding the
23 CIA's involvement, if any, in the specified test programs and other chemical or biological testing
24 involving service members conducted at Edgewood Arsenal or Fort Detrick, based solely upon
25 non-privileged, unclassified information contained in the documents produced in this litigation.
26

1 Topic 7

2 The Recruitment of German and/or Japanese scientists or experts to participate in the
3 TEST PROGRAMS in any capacity, including each sub-project.

4 OBJECTIONS

5 Defendants object to Topic 7 on the ground that it is irrelevant and seeks information not
6 reasonably calculated to lead to the discovery of admissible evidence.

7
8 Topic 8

9 The incidence of death and disease for participants in the TEST PROGRAMS, and each of
10 them, including each sub-project. See Medline, medical publications, handbooks, IOM
11 study and NRC reports, Borden Handbooks and CRC Press books.

12 OBJECTIONS AND RESPONSE

13 Defendants object to Topic 8 on the ground that it is overbroad insofar as it is not limited
14 to military servicemembers or veterans and encompasses information not known or reasonably
15 available to Defendants.

16 Subject to this objection and Defendants' General Objections, Defendants state that they
17 have no knowledge of military servicemembers or veterans whose death has been attributed to
18 participation in chemical or biological testing by the military.

19
20
21 Topic 9

22 The legal and other requirements associated with informed consent, and/or their
23 application to military personnel.

24 OBJECTIONS AND RESPONSE:

25 Defendants object to Topic 9 to the extent that it calls for a legal opinion.
26
27
28

1 Subject to this objection and Defendants' General Objections, Defendants designate Dr.
2 Arthur Anderson, MD, of the U.S. Army Medical Research Institute of Infectious Disease
3 ("USAMRIID"), Office of Human Use and Ethics, to testify on the ethics of human testing.
4

5
6 Topic 10

7 The authorship, creation, and approval of the 1963 Report of Inspection of MKULTRA by
8 CIA Inspector General J.S. Earman ("1963 CIA IG Report"), identified in Paragraph 107
9 of the First Amended Complaint and attached to the First Amended Complaint as Exhibit
10 B.

11 OBJECTIONS

12 Defendants object to Topic 10 on the ground that it is irrelevant and seeks information not
13 reasonably calculated to lead to the discovery of admissible evidence, and seeks information
14 protected pursuant to the Central Intelligence Agency Act of 1949, 50 U.S.C. § 403g.

15
16 Topic 11

17 The PERSONS contacted or interviewed in connection with the 1963 CIA IG Report and,
18 the notes, comments, analysis or other writing CONCERNING its contents.

19 OBJECTIONS

20 Defendants object to Topic 11 on the ground that it is irrelevant and seeks information not
21 reasonably calculated to lead to the discovery of admissible evidence, and seeks information
22 protected pursuant to the Central Intelligence Agency Act of 1949, 50 U.S.C. § 403g.

23
24 Topic 12

25 The provisions of the Nuremberg Code and its application to the TEST PROGRAMS.
26
27
28

1 OBJECTIONS AND RESPONSE:

2 Defendants object to Topic 12 insofar as it calls for a legal opinion, encompasses
3 information that is as irrelevant and seeks information not reasonably calculated to lead to the
4 discovery of admissible evidence.

5 Subject to this objection and Defendants' General Objections, Defendants designate Dr.
6 Arthur Anderson, who will testify regarding the Nuremberg Code and ethics of human testing.
7

8
9
10 Topic 13

11 The medical files and databases CONCERNING each participant in the TEST
12 PROGRAMS.

13 OBJECTIONS AND RESPONSE:

14 Defendants object to Topic 13 insofar as it encompasses information not reasonably
15 known to Defendants and information is protected by the Privacy Act, 5 U.S.C. § 552a, the
16 Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. § 1320d-2,
17 the HIPAA Privacy Rule, and/or 45 C.F.R. parts 160 and 164.

18 Subject to this objection and Defendants' General Objections, Defendants designate Mr.
19 Lloyd Roberts (USAMRICD), who will testify about medical files and databases at Edgewood.
20

21 Topic 14

22 The scope and conduct of the search for documents pursuant to requests from Congress in
23 connection with hearings of the Church Committee in 1975 (see Final Report of the Select
24 Committee to Study Governmental Operations with Respect to Intelligence Activities, S.
25 Rep. No. 94-755, 94th Cong., 2d Sess., Book I, § XVII ("Foreign and Military
26 Intelligence: Testing and Use of Chemical and Biological Agents by the Intelligence
27 Community") (1976)), the Pike Committee in 1975-1976 (House Select Committee on
28 Intelligence) and other committees and subcommittees in 1975-1977 related in any way to
the TEST PROGRAMS (see, e.g., Biomedical and Behavioral Research, 1975: Joint
Hearings Before the Subcomm. On Health of the S. Comm. On Labor and Public Welfare
and the Subcomm. On Admin. Practice and Procedure of the S. Comm. On the Judiciary,

1 94th Cong., 1st Sess. (Sept. 10, 12 and Nov. 7, 1975); Biological Testing Involving
2 Human Subjects by the Department of Defense, 1977: Hearings Before the Subcomm. On
3 Health and Scientific Research of the U.S. Comm. On Human Resources, 95th Cong., 1st
4 Sess. (March 8 and May 23, 1977); Project MKULTRA, The CIA's Program of Research
5 in Behavioral Modification: Joint Hearing Before the S. Select Comm. On Intelligence
6 and the Subcomm. On Health and Scientific Research of the S. Comm. on Human
7 Resources, 95th Cong., 1st Sess. (Sept. 20-21, 1977), including all supplemental requests
8 and the content of all correspondence back and forth.

9
10
11 OBJECTIONS:

12 Defendants object to Topic 14 on the ground that it encompasses information not known
13 or reasonably available to Defendants.

14
15
16 Topic 15

17 The health effects associated with external or internal exposures to the chemical and
18 biological substances administered as part of the TEST PROGRAMS, and each sub-
19 project, including without limitation, mental health effects, short and long-term health
20 effects, and the effects associated with each pathway of exposure, including, without
21 limitation, external, inhalation, absorption, or dermal.

22
23 OBJECTIONS AND RESPONSE

24 Defendants object to Topic 15 to the extent it seeks information not known or reasonably
25 available to Defendants.

26 Subject to this objection and Defendants' General Objections, Defendants designate Dr.
27 Kipatrick, who will testify generally about the health effects described in the topic and to the
28 extent that such information is known or reasonably available to Defendants.

Topic 16

The content of all handbooks, handouts, paperwork, forms of any kind (including
medical history forms, consent forms and release forms) given to prospective volunteers
in the human experiments between 1943 and the present.

1 OBJECTIONS AND RESPONSE

2 Defendants object to Topic 16 to the extent it seeks information not known or reasonably
3 available to Defendants.

4 Subject to this objection and Defendants' General Objections, Defendants designate Dr.
5 Arthur Anderson, who will testify regarding ethics of human testing.
6

7
8 Topic 17

9 The doses administered to TEST SUBJECTS during the TEST PROGRAMS, and each of
10 them, and the benchmarks or levels of dose where specific types of effects are apparent,
11 such as sleep, disorientation, adverse impacts on cognition or speech, and others, the dose-
12 response relationship, and the estimated dose that would induce death, the so-called "man-
break" dose.

13 OBJECTIONS

14 Defendants object to Topic 17 on the ground that it seeks information not known or
15 reasonably available to Defendants.
16

17
18 Topic 18

19 Interviews, discussions, conversations, e-mails, and other COMMUNICATIONS between
20 YOU and any TEST SUBJECT or other military personnel or veteran who claimed to
have participated in the TEST PROGRAMS, including each sub-project.

21 OBJECTIONS AND RESPONSE

22 Defendants object to Topic 18 to the extent that it seeks information not known or
23 reasonably available to Defendants, seeks information that is protected by the Privacy Act, 5
24 U.S.C. § 552a, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42
25 U.S.C. § 1320d-2, the HIPAA Privacy Rule, and/or 45 C.F.R. parts 160 and 164.
26
27
28

1 Subject to this objection and Defendants' General Objections, Defendants designate Dr.
2 Michael Kilpatrick, who will testify regarding the policy and procedures and the hotline and
3 associated referral process.
4

5
6 Topic 19

7 The Memorandum for the Record identified in Paragraph 162 of the First Amended
8 Complaint.

9 OBJECTIONS

10 Defendants object to Topic 19 on the ground that it is irrelevant and seeks information not
11 reasonably calculated to lead to the discovery of admissible evidence, and seeks information
12 protected pursuant to the Central Intelligence Agency Act of 1949, 50 U.S.C. § 403g.
13

14 Topic 20

15 Contracts, contract proposals, contract approvals, and payments for each task or role
16 performed by a third party (such as a contractor or university researcher) CONCERNING
17 the TEST PROGRAMS, including each sub-project.

18 OBJECTIONS

19 Defendants object to Topic 20 on the ground that it is irrelevant and seeks information not
20 reasonably calculated to lead to the discovery of admissible evidence, and seeks information
21 protected pursuant to the Central Intelligence Agency Act of 1949, 50 U.S.C. § 403g.
22

23 Topic 21

24 Liaison or contacts of any kind between YOU and Congress (including Congressional
25 staffs) and all COMMUNICATIONS CONCERNING the TEST PROGRAMS including
26 each sub-project.
27
28

1 OBJECTIONS AND RESPONSE

2 Defendants object to Topic 21 to the extent that it seeks information that is irrelevant and
3 not reasonably calculated to lead to the discovery of admissible evidence, and seeks information
4 not known or reasonably available to Defendants.

5 Subject to this objection and Defendants' General Objections, Defendants designate Major
6 Runo Richardson of OCLL [KELLY: WHAT DOES OCLL STAND FOR?], who will testify
7 generally regarding communications between DoD and Congress concerning military chemical
8 and biological testing.
9

10
11 Topic 22

12 The IDENTITY of all cut-outs (as defined in Paragraph 130(a) of the First Amended
13 Complaint) used in connection with the TEST PROGRAMS, including each sub-project.

14 OBJECTIONS

15 Defendants object to Topic 22 on the ground that it is irrelevant and seeks information not
16 reasonably calculated to lead to the discovery of admissible evidence, and seeks information
17 protected pursuant to the Central Intelligence Agency Act of 1949, 50 U.S.C. § 403g.
18

19
20 Topic 23

21 The activities of each PERSON used as a cut-out (as defined in Paragraph 130(a) of the
22 First Amended Complaint) for CIA activities CONCERNING the TEST PROGRAMS,
23 such as Geschickter Fund for Medical Research identified in Paragraph 130(a) of the First
Amended Complaint.

24 OBJECTIONS

25 Defendants object to Topic 23 on the ground that it is irrelevant and seeks information not
26 reasonably calculated to lead to the discovery of admissible evidence, and seeks information
27 protected pursuant to the Central Intelligence Agency Act of 1949, 50 U.S.C. § 403g.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Topic 24

The projects in the TEST PROGRAMS that were funded, directed or controlled by YOU through front organizations, including but not limited to, the Society for the Investigation of Human Ecology, and all COMMUNICATIONS and MEETINGS between YOU any such front organization.

OBJECTIONS

Defendants object to Topic 24 on the ground that it is irrelevant and seeks information not reasonably calculated to lead to the discovery of admissible evidence, and seeks information protected pursuant to the Central Intelligence Agency Act of 1949, 50 U.S.C. § 403g.

Topic 25

Approvals sought and/or given by anyone in connection with the TEST PROGRAMS, including each sub-project.

OBJECTIONS

Defendants object to Topic 25 on the ground that it is irrelevant and seeks information not reasonably calculated to lead to the discovery of admissible evidence.

Topic 26

The report CONCERNING covert activities of the CIA identified in Paragraph 111 of the First Amended Complaint.

OBJECTIONS

Defendants object to Topic 26 on the ground that it is irrelevant and seeks information not reasonably calculated to lead to the discovery of admissible evidence, and seeks information protected pursuant to the Central Intelligence Agency Act of 1949, 50 U.S.C. § 403g.

1 Topic 27

2 The general design, development, planning, methodology, operation, and use of mind
3 control techniques or substances by YOU or anyone acting under YOUR control,
4 supervision, financing or direction.

5 OBJECTIONS

6 Defendants object to Topic 27 on the ground that it is irrelevant and seeks information not
7 reasonably calculated to lead to the discovery of admissible evidence, and seeks information
8 protected pursuant to the Central Intelligence Agency Act of 1949, 50 U.S.C. § 403g.

9
10 Topic 28

11 Experiments conducted by YOU or anyone acting under your supervision, financing or
12 direction involving the release of chemical or biological substances into domestic
13 environments such as cities, the atmosphere, rivers or lakes, or any other place.

14 OBJECTIONS

15 Defendants object to Topic 28 on the ground that it is irrelevant and seeks information not
16 reasonably calculated to lead to the discovery of admissible evidence.

17
18 Topic 29

19 The identity and location of all PERSONS, including without limitation, doctors,
20 scientists, officers, managers, or other personnel who, either directly or indirectly,
21 designed, financed, planned, participated in, analyzed or reviewed the results of the TEST
22 PROGRAMS, including each sub-project, and whether each such PERSON is alive or
23 dead and his/her last known address.

24 OBJECTIONS AND RESPONSE

25 Defendants object to Topic 29 to the extent that it seeks information not known or
26 reasonably available to Defendants, and seeks information not reasonably calculated to lead to the
27 discovery of admissible evidence.

1 Subject to this objection and Defendants' General Objections, Defendants designate Ms.
2 Martha Hamed, who will testify regarding names of some of the personnel involved in the testing,
3 which are contained in records collected by Ms. Hamed.
4

5
6 Topic 30

7 Databases of any kind CONCERNING the participants in the TEST PROGRAMS,
8 including each sub-project.

9 OBJECTIONS AND RESPONSE

10 Defendants object to Topic 30 to the extent that it seeks information not known or
11 reasonably available to Defendants, and information protected by the Privacy Act, 5 U.S.C. §
12 552a, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. §
13 1320d-2, the HIPAA Privacy Rule, and/or 45 C.F.R. parts 160 and 164.

14 Subject to this objection and Defendants' General Objections, Defendants designate Mr.
15 Anthony Lee, Office of the Under Secretary of Defense for Acquisition, Technology, and
16 Logistics (USD(ATL)), who will testify generally about the database developed by the contractor
17 Battelle [hereinafter "DoD database"].
18

19
20 Topic 31

21 Each experiment conducted of each of the individual Plaintiffs, including the protocols,
22 actions, conduct, and results of each experiment.

23 OBJECTIONS AND RESPONSE

24 Defendants object to Topic 31 on the ground that it is vague and unclear, and to the extent
25 that it seeks information protected by the Privacy Act, 5 U.S.C. § 552a, the Health Insurance
26 Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. § 1320d-2, the HIPAA Privacy
27 Rule, and/or 45 C.F.R. parts 160 and 164.
28

1 Subject to this objection and Defendants' General Objections, Defendants designate Dr.
2 Michael Kilpatrick OSD(HA/TMA) (Strategic Communications Officer), who will testify
3 generally about the military's chemical and biological agent experiments involvement
4 servicememebers.
5

6
7 Topic 32

8 The circumstances involving an attempt, by any TEST SUBJECT to withdraw consent or
9 refuse to participate in an experiment or experiment conducted in the TEST PROGRAMS.

10 OBJECTIONS

11 Defendants object to Topic 32 to the extent that it seeks information not known or
12 reasonably available to Defendants.
13

14 Topic 33

15 The content or language of each variation of the secrecy oath's described in Paragraph
16 148 of the First Amended Complaint, as well as YOUR policy and/or practice with respect
17 to the administration of such oaths.

18 OBJECTIONS AND RESPONSE

19 Defendants object to Topic 33 to the extent that it seeks information not known or
20 reasonably available to Defendants.

21 Subject to this objection and Defendants' General Objections, Defendants designate Ms.
22 Martha Hamed (CTR), who will testify generally regarding the secrecy oaths.
23

24
25 Topic 34

26 Experiments or tests CONCERNING existing or potential chemical or biological weapons
27 done on veterans from 1975 to date.
28

1 OBJECTIONS

2 Defendants object to Topic 34 on the ground that it is irrelevant and seeks information not
3 reasonably calculated to lead to the discovery of admissible evidence.

4
5
6 Topic 35

7 The mission described in Paragraph 102 of the First Amended Complaint, and its results.

8 OBJECTIONS

9 Defendants object to Topic 35 on the ground that it is irrelevant and seeks information not
10 reasonably calculated to lead to the discovery of admissible evidence.

11
12
13 Topic 36

14 The use of patients from DVA medical facilities, including hospitals, clinics, CBOCs, etc.,
15 as subjects for experiments involving the testing of potential chemical and/or biological
16 weapons between 1943 and the present.

17 OBJECTIONS

18 Defendants object to Topic 36 on the ground that it is irrelevant and seeks information not
19 reasonably calculated to lead to the discovery of admissible evidence, and seeks information not
20 known or reasonably available to Defendants.

21
22
23 Topic 37

24 Input into or comments upon the protocols or tests administered by DVA, either directly
25 or indirectly, upon veterans or YOUR receipt of the results of experiments conducted by
26 DVA using veteran subjects.

1 OBJECTIONS

2 Defendants object to Topic 37 on the ground that it is irrelevant and seeks information not
3 reasonably calculated to lead to the discovery of admissible evidence, and seeks information not
4 known or reasonably available to Defendants.

7 Topic 38

8 The meaning, interpretation or application of YOUR duty to warn participants in the
9 TEST PROGRAMS, including the content, implementation, and failure to implement the
10 DOJ Opinion identified in Paragraph 12 of and Exhibit A to the first Amended Complaint.

11 OBJECTIONS AND RESPONSE:

12 Defendants object to Topic 38 insofar as it calls for a legal opinion and legal conclusions,
13 and seeks information not known or reasonably available to Defendants.

14 Subject to this objection and Defendants' General Objections, Defendants designate Dr.
15 Arthur Anderson, who will testify regarding the ethics of human testing.

18 Topic 39

19 The Wilson Directive, as identified in Paragraph 112 of and attached as Exhibit C to the
20 First Amended Complaint.

21 OBJECTIONS AND RESPONSE:

22 Defendants object to Topic 39 insofar as it calls for a legal opinion and is cumulative of
23 Topic 1.

24 Subject to this objection and Defendants' General Objections, Defendants designate Dr.
25 Arthur Anderson, who will testify regarding the Wilson Directive.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Topic 40

COMMUNICATIONS and/or MEETINGS between YOU and personnel working on experiments using human subjects at Porton Down, England, and the information YOU obtained from or exchanged with personnel CONCERNING activities at Porton Down.

OBJECTIONS

Defendants object to Topic 40 on the ground that it is irrelevant and seeks information not reasonably calculated to lead to the discovery of admissible evidence, and seeks information protected pursuant to the Central Intelligence Agency Act of 1949, 50 U.S.C. § 403g.

Topic 41

COMMUNICATIONS and/or MEETINGS between YOU and personnel working on experiments using human subjects in Manchuria in the period leading up to and following the Japanese surrender in World War II, and/or and the information you obtained from or exchanged with personnel performing experiments with human subjects in Manchuria or Japan, including, without limitation, those performed under the auspices of Colonel Takao Ito.

OBJECTIONS

Defendants object to Topic 41 on the ground that it is irrelevant and seeks information not reasonably calculated to lead to the discovery of admissible evidence, and seeks information protected pursuant to the Central Intelligence Agency Act of 1949, 50 U.S.C. § 403g.

Topic 42

COMMUNICATIONS and/or MEETINGS between YOU and personnel working on experiments using human subjects as Suffield, Alberta, and at Chemical Warfare Laboratories, Ottawa, from 1941 through the mid-1970s and the information YOU obtained from or exchanged with personnel CONCERNING activities at Suffield, Alberta and Chemical Warfare Laboratories, Ottawa.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

OBJECTIONS

Defendants object to Topic 42 on the ground that it is irrelevant and seeks information not reasonably calculated to lead to the discovery of admissible evidence, and seeks information protected pursuant to the Central Intelligence Agency Act of 1949, 50 U.S.C. § 403g.

Topic 43

YOUR use of any of the information you obtained in connection with the contacts or programs described in Topic Nos. 40-42.

OBJECTIONS

Defendants object to Topic 43 on the ground that it is irrelevant and seeks information not reasonably calculated to lead to the discovery of admissible evidence, and seeks information protected pursuant to the Central Intelligence Agency Act of 1949, 50 U.S.C. § 403g.

Topic 44

The design, purpose, function, use and effects of all septal implants CONCERNING the TEST PROGRAMS, including, without limitation, the septal implant placed into Individual Plaintiff Bruce Price.

OBJECTIONS AND RESPONSE

Defendants object to Topic 44 as overbroad insofar as it is not limited to military servicemembers and on the ground that the term "septal implant" is not defined.

Subject to this objection and Defendants' General Objections, Defendants state that they have no knowledge or record of any implant used on Bruce Price and other military servicemembers apart from nasal implants used in the 1950s to treat pilots for disease and radiation contamination.

1 Topic 45

2 The PERSON(S) who performed any operation on Individual Plaintiff Bruce Price and/or
3 installed an implant in his body.

4 OBJECTIONS AND RESPONSE

5 Defendants object to Topic 45 on the ground that the term “implant” is not defined.

6 Subject to this objection and Defendants’ General Objections, Defendants state that they
7 have no knowledge or record of any operation performed on Bruce Price or any installed in his
8 body.

11 Topic 46

12 The design, planning, conduct, participants, and results of any experiment(s) as part of the
13 TEST PROGRAMS involving the insertion of any implant, device, or foreign body into a
14 TEST SUBJECT.

14 OBJECTIONS AND RESPONSE

15 Defendants object to Topic 46 as overbroad insofar as it is not limited to military
16 servicemembers and on the ground that the term “implant” and “device” are not defined.

17 Subject to this objection and Defendants’ General Objections, Defendants state that they
18 have no knowledge or record of any implant used on other military servicemembers apart from
19 nasal implants used in the 1950s to treat pilots for disease and radiation contamination.
20

22 Topic 47

23 The known or anticipated health effects, or impact on the well-being of the patient,
24 associated with the removal of septal implants in connection with the TEST
25 PROGRAMS.

26 OBJECTIONS AND RESPONSE

27 Defendants object to Topic 47 as overbroad insofar as it is not limited to military
28 servicemembers and on the ground that the term “septal implant” is not defined.

1 Subject to this objection and Defendants' General Objections, Defendants state that they
2 have no knowledge or record of any implant used on other military servicemembers apart from
3 nasal implants used in the 1950s to treat pilots for disease and radiation contamination.
4

5
6 Topic 48

7 The identity of, and health effects experienced by, TEST SUBJECTS who received septal
8 implants from YOU in connection with the TEST PROGRAMS.

9 OBJECTIONS AND RESPONSE

10 Defendants object to Topic 48 as overbroad insofar as it is not limited to military
11 servicemembers and on the ground that the term "septal implant" is not defined.

12 Subject to this objection and Defendants' General Objections, Defendants state that they
13 have no knowledge or record of any implant used on other military servicemembers apart from
14 nasal implants used in the 1950s to treat pilots for disease and radiation contamination.
15

16 Topic 49

17 COMMUNICATIONS and MEETINGS between YOU and Dr. Ewen Cameron
18 CONCERNING the studies or experiments identified in Paragraph 130(b) of the First
19 Amended Complaint, and all DOCUMENTS CONCERNING the same.

20 OBJECTIONS

21 Defendants object to Topic 49 on the ground that it is irrelevant and seeks information not
22 reasonably calculated to lead to the discovery of admissible evidence, and seeks information
23 protected under 50 U.S.C. § 403g and information that is classified pursuant to Executive Order
24 No. 12,958 and subject to state secrets privilege or otherwise subject to the state secrets privilege.
25
26
27
28

1 Topic 50

2 The final testing of MKULTRA materials or substances referred to in Paragraph 130(e) of
3 and Exhibit B to the First Amended Complaint, and all COMMUNICATIONS,
4 MEETINGS and DOCUMENTS CONCERNING the same.

5 OBJECTIONS

6 Defendants object to Topic 50 on the ground that it is irrelevant and seeks information not
7 reasonably calculated to lead to the discovery of admissible evidence, and seeks information
8 protected under 50 U.S.C. § 403g and information that is classified pursuant to Executive Order
9 No. 12,958 and subject to state secrets privilege or otherwise subject to the state secrets privilege.

10
11 Topic 51

12 COMMUNICATIONS and MEETINGS between YOU and Dr. Paul Hoch
13 CONCERNING the studies or experiments identified in Paragraph 134 of the First
14 Amended Complaint, and all DOCUMENTS CONCERNING the same.

15 OBJECTIONS

16 Defendants object to Topic 51 on the ground that it is irrelevant and seeks information not
17 reasonably calculated to lead to the discovery of admissible evidence, and seeks information
18 protected under 50 U.S.C. § 403g and information that is classified pursuant to Executive Order
19 No. 12,958 and subject to state secrets privilege or otherwise subject to the state secrets privilege.

20
21
22 Topic 52

23 The basis for each redaction on the 1963 CIA IG Report, as shown on Exhibit B to and
24 discussed in Paragraph 127 of the First Amended Complaint.

25 OBJECTIONS

26 Defendants object to Topic 52 on the ground that it is irrelevant and seeks information not
27 reasonably calculated to lead to the discovery of admissible evidence.

1 Topic 53

2 Memoranda, reports, analyses or other DOCUMENTS CONCERNING the *Feres*
3 Doctrine, including without limitation, the basis for it, the effect of it or its removal, and
4 its impact upon military personnel and/or their families or survivors, and all MEETINGS
 and COMMUNICATIONS CONCERNING the same.

5 OBJECTIONS

6 Defendants object to Topic 53 on the ground that it is irrelevant and seeks information not
7 reasonably calculated to lead to the discovery of admissible evidence.

8
9
10 Topic 54

11 The CONFIDENTIAL Memorandum numbered Item 3247 identified in Paragraph 118 of
12 the First Amended Complaint.

13 OBJECTIONS

14 Defendants object to Topic 54 on the ground that the information is not known or
15 reasonably available to Defendants.

16
17 Topic 55

18 The impact or potential impact on the well being of TEST SUBJECTS of participation in
19 the TEST PROGRAMS, including all information learned by YOU CONCERNING the
20 impact or potential impact at any time from the inception of the TEST PROGRAMS to the
 present.

21 OBJECTIONS AND RESPONSE

22 Defendants object to Topic 55 as vague and unclear and to the extent it seeks information
23 not known or reasonably available to Defendants.

24 Subject to this objection and Defendants' General Objections, Defendants designate Dr.
25 Michael Kilpatrick, who will testify generally regarding responsive information known or
26 reasonably available to Defendants.
27

1 Topic 56

2 Any effort to locate, notify, or warn any TEST SUBJECT about information
3 CONCERNING his or her participation in the TEST PROGRAMS, including any newly
4 acquired information that may affect the well-being of any TEST SUBJECT, including the
 date and result of any such effort, and any efforts that are ongoing.

5 OBJECTIONS AND RESPONSE

6 Defendants object to Topic 56 to the extent that the information is not known or
7 reasonably available to Defendants.

8 Subject to this objection and Defendants' General Objections, Defendants designate Dr.
9 Michael Kilpatrick, OSD(HA/TMA) (Strategic Communications Officer), who will testify
10 regarding DoD's provision of information relating to the military's chemical and biological agent
11 testing involving servicemembers to the VA.
12

13
14 Topic 57

15 The identity and applicability of every statute, regulation, directive, policy, or instruction
16 governing YOUR conduct and execution of the TEST PROGRAMS, including, without
17 limitation, with respect to the provision of information to TEST SUBJECTS concerning
18 any risks associated with their participation in the TEST PROGRAMS, the procurement
19 or evaluation of the informed consent of any PERSON participating in the TEST
 PROGRAMS, and the provision of medical evaluations and treatment for any PERSON
 participating in the TEST PROGRAMS.

20 OBJECTIONS AND RESPONSE

21 Defendants object to Topic 57 to the extent that it seeks legal opinions and legal
22 conclusion, and seeks information that is not known or reasonably available to Defendants.

23 Subject to this objection and Defendants' General Objections, Defendants designate Dr.
24 Arthur Anderson, who will testify regarding past regulations and policies applicable to the
25 military's chemical and biological agent testing involving servicemembers.
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: March 4, 2010



CAROLINE LEWIS WOLVERTON
Senior Counsel
KIMBERLY L. HERB
Trial Attorney
Federal Programs Branch, Civil Division
United States Department of Justice
P.O. Box 883
Washington, D.C. 20044
Tel: (202) 514-0265
Fax: (202) 616-8470
Email: caroline.lewis-wolverton@usdoj.gov

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2010, I served a copy of the foregoing via electronic mail and Federal Express on counsel for Plaintiffs as follows:

CStadecker@mofa.com

Mr. Gordon P. Erspamer, Esq.
Morrison & Foerster, LLP
425 Market Street
San Francisco, CA 94105-2482



CAROLINE LEWIS WOLVERTON