

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

VIETNAM VETERANS OF AMERICA, *et al.*,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY, *et al.*,

Defendants.

Case No. CV 09-0037-CW

DECLARATION OF LLOYD
ROBERTS, U.S. ARMY MEDICAL
RESEARCH INSTITUTE OF
CHEMICAL DEFENSE

I, Lloyd Roberts, am familiar with the complaint in this case and declare the following under penalty of perjury:

1. I am a Biological Scientist in the Safety, Surety, Security and Intelligence Office of the US Army Medical Research Institute of Chemical Defense. I serve as the USAMRICD Freedom of Information Act ("FOIA") officer. I am also the USAMRICD public affairs officer, and additionally I am responsible for operations security, foreign disclosure, and international programs. I am familiar with the documents USAMRICD maintains concerning servicemembers who participated as volunteers in chemical agent testing and I searched for documents responsive to the first request for production of documents in this case. I am also involved in the continuing search for documents responsive to plaintiffs' discovery requests.

2. USAMRICD, located at the Edgewood Area of Aberdeen Proving Ground, Maryland, is responsible for medical chemical countermeasures research and development. USAMRICD is the successor organization to the units that conducted chemical agent testing using servicemember volunteers in the Medical Research Volunteer Program and, as such, maintains some documents related to the Army's use of human volunteers. Specifically, my office maintains a group of historical files related to the conduct of the Medical Research Volunteer Program, hard-copy lists of the volunteers involved in chemical testing printed in the

1 late 1970s, and microfiche files for 7,839 volunteers who participated in the chemical agent
2 testing program.

3 3. My office is responsible for responding to individual requests for records from
4 veterans who participated in the chemical test programs. This responsibility is mandated most
5 recently by System of Records Notice A0040-31b DASG, published in the Federal Register
6 (Vol. 68, No. 65 / Friday, April 4, 2003 / Notices). I am aware that the Department of Defense
7 Force Health Protection Directorate also maintains a database of individuals who participated in
8 chemical or biological agent testing or who might have been exposed to chemical or biological
9 agents. Other than that database I am not aware of any office that maintains lists of veterans
10 who participated in the chemical test programs. These records have been maintained at
11 USAMRICD (and at its predecessor facility, Biomedical Laboratory) since 22 September 1977
12 when the Department of the Army ordered that all records pertaining to Army Bacteriological
13 and Chemical testing programs in which human subjects participated be identified and protected.

14 4. The microfiche files in my office are records of the 7,839 human volunteers who
15 participated in Army tests of potential chemical agents only (no biological agents) and antidotes
16 and protective equipment from 1951 to 1979. The last human testing of drugs/chemicals at
17 Biomedical Laboratory occurred on 25 July 1975. Acting Secretary of the Army Norman R.
18 Augustine suspended testing of chemical compounds on human volunteers at Edgewood Arsenal
19 on 28 July 1976 (referenced in the 1976 Department of the Army Inspector General's report,
20 page 55). Physical exam records for 52 volunteers who participated in protective suit tests from
21 1976 to 1979 are also part of the collected records.

22 5. I have searched USAMRICD's records for documents responsive to plaintiffs'
23 requests for production, documents related to potential health effects associated with
24 participation in the test programs, and documents related to the consent of the test volunteers.
25 The volunteer records are unclassified but are protected under the Privacy Act and the Health
26 Insurance Portability and Accountability Act of 1996 ("HIPAA"). The original hard copy
27 records were transferred for permanent retention to the National Archives in Suitland, MD in
28 1982. Of the 7,839 personnel records maintained at USAMRICD, 6,723 relate to the Medical
Research Volunteer Program testing involving active duty servicemembers conducted at

1 Edgewood Arsenal. The remaining servicemember records relate to testing conducted at other
2 installations, as follows:

3 --108 records from Fort Bragg, NC (Sep-Oct 1958)

4 --41 records from Fort Benning, GA (Jan 1960)

5 --192 records from Fort McClellan, AL (May and Oct 1959)

6 --4 records from Dugway Proving Ground (Mar 1960)

7 These military personnel files comprise a record of each veteran's test program
8 participation, including information recorded at the time of testing about doses and particular
9 substance involved in each test. These records also contain the volunteers' consent forms.

10 6. The volunteers' test records are catalogued by name and my office can locate
11 individual records on named test volunteers relatively easily. However, the USAMRICD
12 records consist of paper and microfiche files and unless previously sorted, for example to list
13 volunteers exposed to a particular substance, new questions can only be answered by reviewing
14 the existing papers and individual microfiche records. If the information is not in the database,
15 someone must search the individual volunteer records by hand.

16 7. I am aware that plaintiffs have requested records concerning withdrawal of
17 consent to testing and test participant hospitalization or death. USAMRICD maintains the
18 individual test participant records but does not maintain a record of test volunteers who, having
19 consented to testing, withdrew their consent or otherwise refused to participate in testing. I am
20 aware that a Department of the Army Inspector General investigation published in 1976
21 indicates six volunteers refused to participate in testing after arriving at Edgewood Arsenal. The
22 only potential method to identify those six individuals is to individually review 6,723 personnel
23 files to determine if those individuals' refusal was noted in their record. Such a review would
24 require individual, by-hand analysis of each record. Records average approximately 70 pages
25 and reviewing each record would take approximately 15 minutes. Searching all records would
26 encompass approximately 1680 man-hours of effort. Under present staffing, I would be the
27 person to conduct the searches. Were I required to do this and if our staffing remained
28 unchanged, my other major duties would essentially go undone for 10 months. This would cause

1 other matters for which I am responsible, including issues concerning FOIA, public affairs, our
2 international collaborative efforts and operations security, to suffer greatly.

3 8. While USAMRICD has a listing of individuals seen at the Toxic Exposure Aid
4 Station, no disposition information on the cases is available. Consequently, USAMRICD does
5 not maintain a record of any hospitalizations, emergency room visits, diseases, long-term
6 medical conditions, or deaths related to participation in the test programs. Determining whether
7 a test volunteer was hospitalized, taken to the emergency room, or required other medical
8 attention as a result of participation in the test program would require review of individual
9 records to determine if the records contained that information. USAMRICD does not have a
10 record of any test volunteer dying during testing.

11 9. I am aware that plaintiffs have asked for information related to the National
12 Research Council reports from 1982-1985 concerning the potential long-term health effects of
13 short-term exposure to chemical agents. Other than the reports themselves, I have not identified
14 documents at USAMRICD related to these reports.

15 10. Other than the microfiche copies of individual test records, all other hard copy
16 materials unique to the Medical Research Volunteer Program were transferred to the Washington
17 National Records Center in 1999 and are presently stored at the National Archives College Park
18 facility. These primarily consist of contract information, test plans, and daily reports. These
19 documents might contain references to individual officials involved in planning or implementing
20 tests; however, USAMRICD does not maintain a list of personnel who supervised testing or
21 rosters of personnel assigned to Edgewood Arsenal while the test programs were on-going.

22 11. The contract documentation totals 16 linear feet and is stored in 13 boxes.
23 Research plans from 1957 to 1977 are stored in 3 boxes. Volunteer schedules, assignment orders
24 and reports from 1955 to 1978 are stored in an additional 2 boxes. For the purposes of document
25 searches for this litigation, I have requested copies of these documents from the Washington
26 National Records Center.

27 12. USAMRICD does not have a historical office. Apart from this litigation,
28 USAMRICD's responsibilities with regard to the medical research volunteer program records
has been limited to a requirement that we provide a copy of an individual's medical records in

1 response to that person's FOIA/Privacy Act request. None of the medical research volunteer
2 program information is in digitized form. With little cross-indexed information available,
3 searching for specific historical information in response to production requests requires literature
4 searches and reviewing by hand all available documents to determine whether they contain
5 relevant information.

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7 I hereby declare under penalty of perjury that the foregoing is true and correct. Executed
8 this 15th day of September, 2010.

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11 _____
12 Lloyd Roberts
13 U.S. Army Medical Research Institute of
14 Chemical Defense
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