

Exhibit 1



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May 18, 2010

Via Email & First Class Mail

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

RE: *Vietnam Veterans of America, et al. v. CIA, et al.*, No. CV 09 0037-CW (N.D. Cal.)

Dear Mr. Erspamer:

I write in response to your letter of April 30, 2010 regarding Defendants' March 4, 2010 Response to Plaintiffs' First Request for Production of Documents ("RFPs") and April 19, 2010 Privilege Log.

As an initial and overarching matter, your letter fails to account for the Court's narrowing of the claims at issue. In the January 19, 2010 Order on Defendants' motion to dismiss or, in the alternative, for summary judgment, the Court identified three claims that will proceed: "the lawfulness of the consent forms, to the extent that they required the individual Plaintiffs to take a secrecy oath," (Order of Jan. 19, 2010 at 12-13); whether testing participants are entitled to notice of test details and associated health risks, and available documentation concerning the tests (*id.* at 14-16); and whether testing participants are entitled to Army-provided medical care (*id.* at 16-18). Thus, the questions before the Court are: Are the consent forms that servicemember testing participants signed lawful? Are servicemember testing participants entitled to notice of test details and associated health risks, and available documentation concerning the tests? And are servicemember testing participants entitled to Army-provided medical care? Where individual RFPs do not bear on the claims that remain before the Court and these questions, Defendants have objected for lack of relevance.

Defendants have produced over 14,000 pages of documents, many of which respond to requests that arguably do not bear on the issues that are before the Court.¹ Without waiving relevance and other applicable objections, in responding to Plaintiffs' first set of document requests Defendants have erred on the side of production in the interest of disclosure where information about the tests underlying this lawsuit is reasonably available. Where we have objected to a request in full or in part, we have done so because the request or, part of the request, is not reasonably calculated to lead to the discovery of admissible evidence bearing on the questions that, following the Court's ruling on Defendants' motion to dismiss, are at issue.

Your letter also asserts in several places that Plaintiffs in good faith have attempted to stipulate to entry of a protective order and suggests that Defendants have not reciprocated. However, the last communication the parties had regarding a possible protective order was a February 3, 2010 letter from your colleague Mr. Adriano Hrvatin in which he stated that "Plaintiffs will circulate a revised proposed protective order under separate cover." To date, we have not received a revised proposed protective order from Plaintiffs.

I respond to each of the specific sections of your letter below.

A. Consolidated Responses

Your letter asserts that each individual Defendant is obligated to prepare a separate set of responses to Plaintiffs' single set of document requests. However, it cites no authority in support of the assertion, nor am I aware of any such authority. Further, individual responses to each of Plaintiffs' 77 document requests from each of the eight named Defendants would be unduly burdensome. In response to Plaintiffs' document requests, each of the named Defendants has searched for documents it has reason to believe are in its possession and, subject to the objections made to specific requests, has produced the responsive documents that were found or referenced them in the privilege log. Defendants have thus satisfied their obligation under Fed. R. Civ. P. 34.

B. General Objections

Your letter incorrectly characterizes Defendants' general objections to Plaintiffs' document requests as "boilerplate." The objections set forth in the "General Objections" section of Defendants' Response apply to many of Plaintiffs' 77 document requests. Rather than copy the same objection each time that it applies to a particular request, Defendants have referred to the objection by number in responding to the particular request. Additionally, all of Defendants' general objections apply to each RFP in order to cover the possibility that documents might be identified in the course of document searches that Defendants did not reasonably anticipate in

¹The Department of Veterans Affairs also produced over 14,000 pages in response to Plaintiffs' rule 45 subpoena.

formulating their written response to the RFPs. This use of general objections is not the sort of blanket use of general objections that *M2 Software, Inc. v. M2 Communications, L.L.C.*, 217 F.R.D. 499, 501 (C.D. Cal. 2003), and the cases it cites describe as improper. As stated above, Defendants have searched for documents they has reason to believe are in their possession, and subject to the objections to specific requests, Defendants have produced the documents that they have found or referenced them in the privilege log.

1. General Privileges Objections & Privilege Log

In response to your characterization of Defendants' objections based on the privileges listed in Defendants' General Objection No. 5, for the reasons identified above and immediately below, Defendants disagree that their assertion of the objection constitutes an improper boilerplate objection. With respect to your observation that some of Defendants' RFP objections do not identify a particular privilege, we observe that, as General Objection No. 5 specifies, Defendants' privilege log describes the documents that have been withheld as privileged or subject to attorney work product protection. Defendants have added one entry to the privilege log to identify the redactions to the compilation "Historical Documentation of the [CIA's] Role in the Human Subject Test Program at Edgewood Arsenal Research Laboratories" (Oct. 21, 1994) that was included with Defendants' initial disclosures. With that addition, the privilege log is complete as of this time. In accordance with continuing discovery obligations, Defendants will update the log if they become aware of additional documents that should be included. We further observe that, for many of the requests to which Defendants have objected on privilege grounds, Defendants have also asserted other objections, including relevance and undue burden. With respect to Privilege Log Entry Nos. 11 and 13, which are described as responsive to RFP No. 6 and for which your letter asserts that Defendants waived privilege-based objections, Defendants note that neither document is reasonably calculated to lead to the discovery of admissible evidence, which is one of the grounds on which Defendants objected to that RFP. Further, as set forth above, all of Defendants' General Objections, including General Objection No. 5, apply to each RFPs in order to cover instances where a document was identified in the course of a document search that, like Entry Nos. 11 and 13, Defendants reasonably did not anticipate in formulating their written responses to the RFPs. With respect to Entry No. 13, the Privacy Act's protections may not be waived by the omission of a document from a privilege log. *See, e.g., Byrd v. Reno*, 1998 WL 429676, at *5 (D.D.C. 1998). Thus, no waiver has occurred.

a. 50 U.S.C. § 403g

Your letter challenges Defendants' withholdings based on 50 U.S.C. § 403g and asserts that Defendants' privilege log does not indicate the reason that the withholdings are covered by that section. Defendants disagree. The privilege log's descriptions of the withheld documents make clear that they contain names of CIA personnel, which section 403g on its face protects.

The section provides an absolute disclosure exemption for the categories of information it enumerates, including the names of CIA personnel. 50 U.S.C. § 403g. Further, none of the withheld documents would appear relevant to any of the claims before the Court. Accordingly, in the absence of a reason to intrude on the interests protected by the statute, there is no basis and no reason for considering a protective order concerning information covered by 50 U.S.C. § 403g.

b. Congressional Approval

Your letter takes issue with the privilege log's reference to the need for Congressional approval with respect to certain documents. Those documents are no longer subject to such approval and the privilege log has been revised accordingly.

c. Deliberative Process

Your letter asserts that Defendants' withholdings based on the deliberative process privilege are improper in the absence of a formal claim by the head of the department with control over the requested information. Your assertion is incorrect. A formal invocation of privilege is not required in advance of a motion to compel. *See, e.g., In re Sealed Case*, 121 F.3d 729, 741 (D.C. Cir. 1997); *Tri-State Hosp. Supply Corp. v. United States*, 226 F.R.D. 118, 134 n.13 (D.D.C. 2005). Further, to require a department head to formally invoke an applicable privilege every time any discovery request in any lawsuit encompasses privileged information, and in advance of possible narrowing of the information sought through the parties' meet and confer, would impose an unreasonable burden on high-level agency officials who are charged with substantial responsibilities. *Landry v. FDIC*, 204 F.3d 1125 (D.C. Cir. 2000), which you cite, does not hold otherwise. Rather, it simply restates the requirements for formal invocation of the privilege. *Id.* at 1135. With respect to Privilege Log Entry No. 10's description of that withholding as "Recommendation redacted," you are incorrect in asserting that this description does not sufficiently describe the basis for withholding based on the deliberative process privilege. *See, e.g., In re Sealed Case*, 121 F.3d at 737 (recommendations are among materials protected by deliberative process privilege). Further, as we have produced a copy of the document with only the recommendation redacted, the applicability of the privilege should be clear from the context within which the recommendation is made.

d. Privacy Act

With regard to Defendants' objection to providing records covered by the Privacy Act that pertain to servicemembers who are not named plaintiffs, you indicate that release of such records pursuant to the Privacy Act's provision for disclosure of covered records to be disclosed "pursuant to the order of a court of competent jurisdiction," 5 U.S.C. § 552a(b)(11), would be appropriate. Defendants disagree. Test records of servicemembers who are not named Plaintiffs in this suit are not relevant to the three claims that remain before the Court. Indeed, none of the

remaining claims depends on the details of tests at all. Further, no class has been certified in this case. If any servicemember wishes to obtain a copy of his/her records and share them with you, that can be accomplished through a release authorization much like those that each of the named Plaintiffs has signed. Accordingly, there is no justification for impinging on the privacy interests protected by the Privacy Act. Regarding the parties' negotiations concerning a protective order, as set forth above, the last communication we received from Plaintiffs was Mr. Hrvatin's statement on February 3, 2000 that Plaintiffs would be sending us a revised proposed order, which we have not received. In any event, however, in the absence of any showing of relevance sufficient to outweigh the interests protected by the Privacy Act, a protective order allowing access to information covered by that Act would not be appropriate.

e. Attorney-Client Privilege & Work Product Doctrine

Your letter asserts that Defendants' privilege log does not sufficiently describe Entry Nos. 35 and 37 to show the basis for the attorney-client privilege and attorney work product protection with respect to those documents. Specifically, the privilege log does not include the author, recipient, and attorney and client associated with those two documents. That information, however, is protected by 403g, which is listed as an additional basis for withholding. Further, it does not appear in any event that those documents would be relevant to the claims before the Court. Indeed, Defendants objected to RFP No. 14 (to which entry nos. 35 and 37 are responsive) as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

f. HIPAA

Similar to your letter's assertions regarding Defendants' objections to producing third-party information covered by the Privacy Act, the letter suggests that a protective order allowing production of third-party information that is covered by Health Insurance Portability and Accountability Act of 1996 ("HIPAA") is warranted in this case. Defendants disagree for the same reasons that we disagree that production of third-party Privacy Act-covered information would be appropriate. Moreover, health information covered by HIPAA is particularly sensitive and, given the lack of relevance to the claims before the Court, disclosure of such information concerning individuals who are not party to this case would be especially improper. Again, any servicemember wishing to access any HIPAA-covered information pertaining to him/her and share it with you can do so by completing the appropriate release authorization. With regard to a protective order, while we have not received a revised proposed protective order such as Mr. Hrvatin stated Plaintiffs would be sending, in the absence of justification for impinging on the privacy interests protected by HIPAA, a protective order allowing access to information covered by that statute would not be appropriate.

2. General State Secrets Objection

As set forth above and contrary to your letter's assertion, formal invocation of the state secrets privilege is not required before a motion to compel. Further, as you may be aware, a formal invocation of the state secrets privilege must be made by the head of the agency with control of the information. To require the relevant agency head to formally invoke the state secrets privilege every time a discovery request in any lawsuit encompasses classified information, and in advance of possible narrowing of the information relevant to the litigation through the parties' meet and confer, would be unduly burdensome. *See, e.g., Freeman v. Seligson*, 405 F.2d 1326, 1338 (D.C. Cir. 1968) ("matters of privilege can appropriately be deferred for definitive ruling until after the production demand has been adequately bolstered by a general showing of relevance and good cause, and at least the rough dimensions of the Secretary[of Agriculture's] burden have been set") (citing cases). Indeed, one of the functions of the meet-and-confer requirement of the Federal Rules and this Court's Local Rules is to narrow discovery disputes. Moreover, with the exception of redactions to the "Historical Documentation of the [CIA's] Role in the Human Subject Test Program at Edgewood Arsenal Research Laboratories" (Oct. 21, 1994), provided as part of Defendants' initial disclosures, Defendants have not identified materials covered by the state secrets privilege that are relevant to the issues before the Court or reasonably calculated to lead to the discovery of admissible evidence. In any event, a protective order allowing access to information protected by the state secrets privilege in a civil case such as this would not be appropriate. *See, e.g., Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988) (authority to determine who may have access to classified information "is committed by law to the appropriate agency of the Executive Branch"); *Ellsberg v. Mitchell*, 709 F.2d 51, 61 (D.C. Cir. 1983) (rule denying counsel access to classified information is "well settled"; "our nation's security is too important to be entrusted to the good faith and circumspection of a litigant's lawyer . . . or to the coercive power of a protective order").

3. Definition of "Test Programs"

Your letter takes issue with Defendants' objection to the definition of "Test Programs" set forth in Plaintiffs' first set of document requests. "Test Programs" is defined to include, "without limitation," specifically identified test programs "and any other program of experimentation involving human testing of any substance." As we explained in General Objection 3, that definition is overly broad. It encompasses clinical trials and other human tests in any setting, under any circumstances, and within any time frame. Such an overly broad definition renders any corresponding requests unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence, as this definition has the potential to encompass clinical trials and other human tests in any setting, under any circumstances, and within any time frame. The unbounded search that Plaintiffs request would be extraordinarily time- and resource-consuming. That the definition of "Test Programs" of the document requests parallels

the definition of “test programs” in the Second Amended Complaint does not obligate Defendants to undertake that search. As described above, the Court has narrowed the scope of the case. In light of the discrete nature of the questions that remain before the Court – Are the consent forms that servicemember testing participants signed lawful? Are servicemember testing participants entitled notice of test details and associated health risks, and available documentation concerning the tests? And are servicemember testing participants entitled to Army-provided medical care? -- the extremely burdensome search necessitated by Plaintiffs’ definition of “Test Programs” is not warranted or appropriate under the Federal Rules.

4. Burdensome Objections

Defendants have made a general objection to Plaintiffs’ document requests insofar as they are unduly burdensome and not reasonably calculated to lead to discovery of admissible evidence, and have also objected to specific requests to the extent that they are unduly burdensome and not reasonably calculated to lead to discovery of admissible evidence. Notwithstanding those objections, Defendants have produced documents that they identified through reasonable search efforts in response to most of the RFPs your letter references. Contrary to your letter’s suggestion, Defendants have produced rosters identifying the service personnel who participated in testing with a substituted ID number in response to RFP 11, a list of FOIA requests from persons who participated in test programs and other documents reflecting such requests, with names and other identifying information redacted, and copies of the named Plaintiffs’ FOIA requests in response to RFP 13, and a large number of documents that identify the definitive technical name as well as the chemical make-up for each identifiable substance used in the tests at Edgewood and Ft. Detrick in response to RFP 60. *See* Productions of Nov. 11, 2009, Mar. 25, 2010 and Apr. 9, 2010 and accompanying cover letters identifying produced documents responsive to particular RFPs by Bates range.

5. Relevance Objections

As described above, Defendants have objected to Plaintiffs’ requests insofar as they do not bear on the issues that are before the Court. Contrary to your letter’s characterization, this objection is not boilerplate for the reasons previously set forth. Indeed, your letter recognizes that the objection is not made for every request. Rather, Defendants assert the objection where an RFP is not related to any of the issues remaining in the case and/or is broader than what can be reasonably calculated to lead to the discovery of admissible evidence. Nevertheless, we have produced documents in response to many of those RFPs. With respect to RFP No. 11, contrary to your letter’s suggestion, we have produced service personnel rosters as described immediately above. For the reasons previously stated, providing the names of individuals who are not party to this lawsuit would not be appropriate. With respect to RFP No. 20, you assert that studies, reports, surveys or other analysis of the health effects of any exposure to substances used or administered in the test programs is “critical in establishing the harms suffered by the plaintiffs

as a result of their participation in the test programs.” What, if any, harms the plaintiffs suffered as a result of test participation is not a question remaining before the Court. Nevertheless, Defendants have produced documents addressing health effects of exposure to substances that were tested at Edgewood Arsenal in response to RFP 20.

6. RFPs that Do Not Identify Any Documents

The requests to which we have objected on the ground that they do not identify any document on their face do not indicate that they seek documents. Nevertheless, subject to Defendants’ objections, Defendants have produced the documents identified after reasonable search that respond to the subjects identified in those RFPs. Accordingly, our production is consistent with your letter’s clarification that those RFPs sought only documents concerning the subjects identified in the individual RFPs.

7. Objection to Requests to the Extent They Concern Non- Military Servicemembers

As explained above, the allegations of the Second Amended Complaint are concerned with testing that involved military servicemembers. Defendants disagree that information concerning tests on prison inmates and non- military servicemembers is relevant to the questions that are before the Court or is reasonably calculated to lead to the discovery of admissible evidence. With respect to the example your letter provides of how such information could be relevant – any negative health effects associated with civilian tests could bear on Plaintiffs’ health care needs – Defendants disagree that the details of the type of any health care that individual Plaintiffs might need bears on the claims before the Court. The Court identified whether there is a duty to provide care as a claim that may proceed. Exhaustive information regarding health effects that may be associated with sets of tests entirely separate from the tests that Plaintiffs underwent at Edgewood Arsenal is not reasonably calculated to lead to the discovery of admissible evidence. Even if there were some minimal relevance, it would be outweighed by the burden associated with gathering information about health effects associated with every human test involving any substance that Defendants may have conducted at any time.

C. Specific Burdensome and Vagueness Objections

Your letter challenges Defendants’ objection of undue burden with respect to RFP Nos. 25, 29, 34, 51, 61, 63 and 64. Each of the undue burden objections, except as to RFP No. 51, is a partial objection. Defendants have objected to the extent that the request is unduly burdensome, and Defendants have produced documents responsive to the request that could be obtained without undue burden and expense.² Because those RFPs, with the exception of RFP No. 51,

² With respect to RFP No. 29, as Defendants’ written responses reflect, Defendants did not identify any responsive documents concerning military servicemembers or veterans after reasonable search. With respect to RFP 64, please note that my March 25 cover letter

request "all documents" concerning events that began over 50 years ago, they could encompass a large volume of material that was created far in the past. Given the limited scope of the case and questions remaining before the Court as discussed above, it would be unduly burdensome for Defendants to search for and produce additional documents in response to those requests. With respect to RFP No. 51, which seeks consent forms pertaining to all experiments involving human subjects over the last five years, Defendants objected on relevance grounds, as well as undue burden and the other objections listed in Defendants' response. That RFP does not bear on the issues before the Court. Even if there were any minimal bearing, it would be outweighed by the burden and privacy invasions identified in Defendants' response. (And any responsive information that is covered by the states secrets privilege would be unavailable for the reasons discussed above.)

Your letter asserts that Defendants have not explained why RFP Nos. 61 and 64 are vague and unclear. RFP No. 61 seeks "All DOCUMENTS that CONCERN the quantity of each nerve gas, psychochemical, toxic chemical and biological substance used in the TEST PROGRAMS at the EDGEWOOD ARSENAL or any other project identified in the Complaint." The request does not indicate whether it seeks the total amount of each of substance involved in the tests or the amount administered to individual test subjects. Defendants nevertheless have produced responsive documents. Specifically, the copy of the chem-bio database that we produced identifies the amount (dose) of each substance given to the test subjects who have been entered in the database. RFP No. 64 seeks "All DOCUMENTS that CONCERN the toxicity of all nerve gas, psychochemical, toxic chemical and biological substance used in the TEST PROGRAMS at the EDGEWOOD ARSENAL or any other project identified in the Complaint." The term "toxicity" is not defined. Defendants nevertheless have produced in response general information about the toxicity of substances tested at Edgewood Arsenal. If you are able to provide a clear description of any further information that is sought by RFP Nos. 61 and 64 Defendants will of course consider the clarified requests. However, it would appear that information about quantity and toxicity beyond what Defendants have already produced would not bear on the claims that remain before the Court.

We look forward to the telephone conference regarding these issues that is scheduled for tomorrow, May 19.

Sincerely,



Caroline Lewis Wolverton

inadvertently omitted referring to VVA 0024597-0024696 as responsive to RFP No. 64 as well as to RFP No. 57. Additionally, the cover letter's reference to that bates-range incorrectly begins VVA002497 instead of VVA 0024597. I apologize for those errors.

Exhibit 2

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Re: *Vietnam Veterans of America, et al. v. CIA, et al.*, No. CV 09 0037-CW (N.D. Cal.)

Dear Mr. Gardner,

I write in response to your June 13 letter concerning our conversation last Thursday about the current schedule governing this case.

As you know, the concern I expressed about the case schedule stems from the fact that Defendants will not complete their document productions in time to permit the parties to meet the current July 15, 2011 fact discovery deadline. Indeed, during our call, you confirmed that defendant Department of Veterans Affairs ("DVA") would not be able to complete production of responsive documents until the end of August. And, as we discussed, that production would include only those documents that the DVA has agreed to produce; it likely would take additional time for the DVA to produce documents responsive to Plaintiffs' document requests that the DVA has, to this point, objected to producing. Of course, as I mentioned and as you recognized, it would be unfair and inefficient to require Plaintiffs to proceed with depositions of DVA personnel until those documents have been produced and Plaintiffs have had an opportunity to review them. (We also discussed that Plaintiffs are moving forward with depositions of the DVA on topics that are less dependent on Plaintiffs' review of DVA's documents, including the upcoming June 29 and 30 depositions of Messrs. Salvatore and Black.)

As we also discussed, although the parties have made some progress in resolving discovery issues, there remain significant discovery disputes between the parties, including the refusal of the Department of Defense and the Department of the Army to provide Rule 30(b)(6) testimony concerning the involvement of the Central Intelligence Agency ("CIA") in the test programs at issue and discovery relevant to a potential *TRAC* factors analysis under the Administrative Procedures Act. Other outstanding disputes include the proper method for

producing material identified in Defendants' queries of the DTIC databases, Defendants' search for and production of email responsive to Plaintiffs' document requests, and whether Defendants have searched for and produced documents for the entire relevant period. While I believe that the parties may be able to resolve some of these disputes given appropriate time (perhaps with the aid of Judge Corley's informal discovery dispute resolution process) others will have to be submitted to the Court for resolution. Much of the outstanding discovery — including discovery from the DVA — is critical for Plaintiffs' claims.

In light of these facts, the purpose of my call on Thursday was to have a frank conversation with you about what is realistic with respect to the current case schedule. That a modification is necessary is undisputed: you have confirmed that Defendants cannot complete their document productions under the current deadlines, and Plaintiffs cannot complete their depositions of Defendant witnesses and other discovery tasks without first receiving and reviewing Defendants' documents. Accordingly, my proposal for a three-month extension of the case schedule was an attempt to find a solution that would reasonably permit Defendants time to complete their document productions, permit time for the resolution of the parties' outstanding discovery disputes (through informal means and/or with the Court's assistance) and the production of additional materials that may flow from the resolution of those disputes, and permit Plaintiffs time to complete deposition (and appropriate follow-up) discovery of Defendants following the production of documents.

With this background, it is my belief that the parties should be able to agree to an appropriately modified case schedule that will permit the orderly completion of discovery. It appears that you share the same belief, and I hope that we will be able to work together to devise an appropriate solution without requiring Court intervention.

Your letter proposes a three-month extension for the "limited purposes" of (1) completing depositions of DVA individuals; and (2) attempting to resolve "existing, outstanding discovery disputes." Under your proposal, "additional written discovery" would not be permitted. Although Plaintiffs are willing to discuss appropriate limitations on discovery during any extended discovery period, Plaintiffs believe that your proposed limitations go too far, for several reasons.

First, given the fact that the DVA cannot complete its document production before the current fact discovery deadline, the extension of the discovery schedule must permit for the completion of document *and* deposition discovery of the DVA. We trust that this is uncontroversial.

Second, although Plaintiffs do not intend to propound a significant amount of written discovery after the current fact discovery deadline, they cannot agree to forego any "additional written discovery" during any extended period. As you know, depositions often are the source of additional information concerning relevant and important documents and information that may not have been produced but that should be considered as part of the Court's resolution of the matters at hand. Because the primary depositions of Defendants

(including depositions of the DVA and the Rule 30(b)(6) depositions of the remaining defendants) have yet to occur, and may not take place until after the current fact discovery deadline, Plaintiffs must retain the ability to serve appropriate written discovery concerning information disclosed during depositions. Similarly, Plaintiffs must retain the ability to seek appropriate additional discovery based on the documents and information that has not yet been produced.

Third, although this may be implicit in your proposal, expert discovery should go forward in the normal course, as permitted by the federal rules.

Given these considerations, Plaintiffs propose that the parties agree to extend the current case deadlines by three months, subject to the following conditions. First, during the extended period for fact discovery (July 16 through October 14), the parties will be permitted to serve no more than 25 additional requests for production per party, absent a showing of good cause. Second, these limitations will not apply to: (a) discovery of the DVA, which is in its early stages; (b) expert discovery, which will go forward in the normal course under the modified schedule; (c) reasonable requests for specific documents, which should not pose an undue burden; (d) requests for documents identified during depositions that take place during the extended fact discovery period; or (e) appropriate requests for admission, as permitted by the federal rules, which will help narrow the issues for summary judgment and trial. In addition, the parties will (of course) be required to comply with any Court order compelling additional discovery in resolving any of the parties' discovery disputes.

We believe that this proposal strikes an appropriate balance between the evident need for additional time for the parties to complete discovery in this matter and Defendants' concern about the potential burden of additional discovery. Please let me know your thoughts; I am available to discuss at your convenience. If the parties are unable to agree, Plaintiffs will seek an extension from the Court without limitations on additional discovery going forward.

Very truly yours,



Timothy W. Blakely

Exhibit 3

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Re: *Vietnam Veterans of America, et al. v. Central Intelligence Agency, et al.*,
No. CV 09-0037 CW (N.D. Cal.)

Dear Mr. Gardner:

This letter responds to certain issues addressed in your April 1, 2011 letter. Specifically, this letter addresses your updates on the status of Defendants' document production, Defendants' responses to Plaintiffs' updated Rule 30(b)(6) topics, and your report on the availability of Defendant individual witnesses for deposition. This letter also addresses the current schedule governing this case.

Defendants' Document Production

Our current understanding of the status of Defendants' document production, based on your letter and Ms. Herb's March 25, 2011 letter, follows below. I also include questions based on our current understanding.

Department of Defense ("DOD"):

- Service member test files: will be produced by April 30, 2011. Please confirm the universe of test files encompassed by this production. Does it include only testing done at Edgewood Arsenal? If it also includes testing done at other locations, which other locations? Is Fort Detrick testing included?
- Documents obtained from National Archives: will be produced by early May, 2011. Are Defendants reviewing this information for responsiveness or will the DOD produce all documents in the identified archive files?

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- Battelle search results and reports: those received by DOD to date have been produced (subject to confirmation) and DOD will continue to produce responsive documents as they are received from Battelle. Is the DOD producing any of its email or other written communications with Battelle concerning the implementation and execution of the DOD contract concerning the data to be included in the chem.-bio database? If not, why not?
- DTIC database searches: Defendants have produced bibliographies that identify potentially responsive documents identified through key-word searching, but have not reviewed the documents identified through the DTIC searches for responsiveness and have not produced the responsive documents identified on the bibliographies. We were surprised to learn that Defendants intend for Plaintiffs to bear the burden of identifying potentially responsive documents based only on the document titles and vague abstracts (where available) included in the DTIC bibliographies. Our understanding was that Defendants' offer to produce DTIC search results meant that Defendants would review the documents identified through key-word searching and produce the resulting responsive documents — as is the normal practice in litigation. Nevertheless, in a spirit of compromise and to avoid further delay, Plaintiffs are in the process of reviewing the DTIC bibliographies produced by Defendants and either will identify documents for production or will inform Defendants that this approach will not work. Your letter indicates that Defendants intend to search the DTIC database for the substances identified in my March 21, 2001 letter, and will provide us with “the bibliographies for” review. Please remember that the substances list includes only common names not EA code numbers or analogues, of which there are many. When do you anticipate that those bibliographies will be ready for review? How are Defendants going about conducting these searches?
- Magnetic computer tapes and computer printout from Central Intelligence Agency (“CIA”): currently in the process of classification review by DOD. When do you expect this review to be complete?

Ms. Herb's letter also indicated that DOD's search for other responsive documents is continuing. What is the ongoing nature of those searches, and when do you anticipate that the DOD's production will be complete? Have Defendants been able to locate the 1942 and 1943 records requested in Mr. Vecchio's March 16 letter and discussed in Mr. Bowen's March 22 letter? If so, when will they be produced?

Department of the Army (“Army”): We assume that the Army's production efforts are co-extensive with the DOD's efforts. If that assumption is incorrect, please let us know right

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away. Are there any efforts to search for and produce documents by the Army that are not co-extensive with the DOD's efforts?

Central Intelligence Agency: Ms. Herb's letter states that the CIA "has largely completed" its production. Other than the tapes and printout that have been turned over to the DOD for classification review, what additional categories of items does the CIA still intend to produce? Your letter also indicates that the CIA is willing to search for substances other than EA 3167 and "the Boomer," which leads us to believe that the CIA has *not* searched for documents related to other chemicals that were part of the DOD's testing programs involving military personnel. Please confirm that this is correct. Also, your letter states that the CIA has not searched — and refuses to search — for documents reflecting possible health effects related to substances administered as part of the testing programs on military personnel. Although you state the CIA's position that these documents are not relevant to the claims against the CIA (a position which Plaintiffs dispute), they clearly *are* relevant to Plaintiffs' claims against the Army and the DOD. If the CIA continues to refuse to search for health effects associated with exposure to substances administered as part of Defendants testing programs, notwithstanding Plaintiffs' good-faith narrowing of the test substances at issue, Plaintiffs intend to raise this issue with the Court, and believe that the meet-and-confer process is complete.

Department of Veterans' Affairs ("DVA"): Ms. Herb's letter indicates that the DVA continues to search for documents responsive to Plaintiffs' initial document requests and that the agency will respond to the March 21, 2001 set of discovery by separate letter. What is the anticipated timing for the completion of the DVA's production?

Rule 30(b)(6) Depositions

It appears that Defendants have agreed in principle to the approach to Rule 30(b)(6) depositions described in my March 21 letter. Below, I respond to several issues you raise with respect to each topic in the hope that we can come to agreement concerning the scope of these depositions so that we can proceed with them in due course.

Topic 1: Defendants' Obligations to Provide Notice and Health Care. We appreciate Defendants' designation of Dr. Kilpatrick to testify concerning this topic on behalf of the DOD. We want to respond to four issues raised by your letter.

First, we presume that Dr. Kilpatrick also will testify on behalf of the Army (for this and other topics for which Dr. Kilpatrick has been designated). Please let us know if that is not the case.

Second, your letter indicates that Dr. Kilpatrick will be prepared to testify about the Wilson Memorandum, CS: 385, and AR 70-25 only. Although your letter objects

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that Defendants are not in a position to identify additional “documents” that Plaintiffs believe are relevant, we trust that Dr. Kilpatrick will be prepared to testify about the implementation, application, and modification of these identified regulations even if they were implemented through internal plans, policies, letters to the field, instructional memoranda, or other directives. In addition, as a Rule 30(b)(6) designee on the duty to notify and provide health care, we would expect Dr. Kilpatrick to be prepared to answer questions concerning the DOD’s obligations — from whatever source — to provide notice and healthcare to the Test Subjects, and its efforts (if any) to meet those obligations. It may be that Dr. Kilpatrick’s testimony will be that the DOD has no such obligations and therefore has done nothing to fulfill them; regardless, we expect him to be fully prepared to answer this type of question. Please let us know if you disagree.

Third, in response to Plaintiffs’ request for testimony concerning “the sources and amounts of funding” for notification and outreach efforts, your letter requests an explanation as to why these issues are relevant. Information concerning Defendants’ funding, resources, and capacity is relevant to Plaintiffs’ APA Section 706(1) claims to the extent that the Court determines that a “TRAC factors” analysis is appropriate to address those claims. *See, e.g., Brower v. Evans*, 257 F.3d 1058, 1068 (9th Cir. 2001)(quoting *Independence Mining Co., Inc. v. Babbitt*, 105 F.3d 502, 507 n.7 (9th Cir. 1997)). In particular, this information would be relevant for the fourth TRAC factor regarding the effect of relief on competing or higher agency priorities. Given the possibility that the Court will consider this type of information in its analysis of Plaintiffs’ APA claims, Plaintiffs are entitled to discovery on this topic. With that explanation, please confirm that Defendants will designate a witness to testify about the sources and amounts of funding as requested.

Fourth, unless the Court grants the CIA’s motion to dismiss Plaintiffs’ notice claim against it, we would expect the CIA also to identify a witness to testify concerning the CIA’s duty to provide notification to Test Subjects. As with Dr. Kilpatrick, it may be that the CIA’s designee will testify that it has no obligation and has done nothing to fulfill it, but Plaintiffs are entitled to that testimony. We would expect that the CIA’s designee would be prepared to testify about the DOJ Opinion letter cited in your letter and in the complaint, but we would not expect the CIA designee to testify about Army Regulations or CS: 385.

Topic 2: Possible Health Effects Related to Test Programs. We appreciate Defendants’ designation of Dr. Kilpatrick to testify on behalf of the DOD. You state that Dr. Kilpatrick will be prepared to testify concerning the DOD’s position that there are no long-term health effects associated with the testing agents; this limitation is unacceptable and we expect to be able to explore all sources of the DOD’s

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knowledge about all health effects and its efforts (if any) to investigate those sources. It may be that Dr. Kilpatrick will say that the agency's position is based exclusively on the studies you referenced, but we want to be clear that Plaintiffs are not limiting the scope of this topic to those studies. With respect to the CIA, Plaintiffs are entitled to seek testimony concerning the health effects associated with exposure to substances utilized by the CIA that also were used during the test programs — from whatever source. This information is, of course, relevant regardless of how the Court resolves the CIA's motion to dismiss Plaintiffs' healthcare claims against the agency. Plaintiffs are willing to discuss limiting the scope of this topic to the narrowed list of substances identified in my March 21 letter, but we are not prepared to agree that the CIA need not provide any testimony on this topic.

Topic 3: Secrecy Oaths. We appreciate Defendants' designation of Dr. Kilpatrick to testify on this topic on behalf of the DOD. We understand that Dr. Kilpatrick will be unable to testify on this topic until after Defendants have completed their document production. With respect to the CIA, it may be that the CIA's designee will testify that the CIA did not use secrecy oaths and that secrecy oaths were not part of any program funded or sponsored by the agency, but Plaintiffs are entitled to explore that issue through deposition testimony. As such, we ask that the CIA identify an appropriate designee on this topic.

Topic 4: Databases and Information Gathering. The parties also appear to be in agreement on Topic 4. Defendants have designated Dr. Kilpatrick to testify on this topic as described in my March 21 letter, and Plaintiffs do not seek testimony from the CIA on this topic.

Topic 5: Interaction with DVA. We appreciate DOD's designation of Dr. Kilpatrick to testify concerning interaction with the DVA concerning claims asserted by Test Subjects and do not seek testimony from the CIA on that issue. With respect to the use of DVA patients as part of Defendants' testing programs, we disagree with your letter's assertion that this issue is not relevant to this action. Although it may or may not be relevant "to the claims against the CIA or DOD," this information is relevant to Plaintiffs' claims against the DVA. As such, Plaintiffs are entitled to testimony on this issue on behalf of the DOD and CIA.

Topic 6: Resources and Capacities. As noted above, this topic potentially is relevant to the Court's legal analysis of Plaintiffs' claims under the APA. As such, Plaintiffs expect testimony on this topic from the DOD and the Army, and unless the Court dismisses Plaintiffs' APA claims against the CIA, from the CIA as well.

Topic 7: CIA Involvement. At the outset, I should clarify that Plaintiffs seek testimony from the CIA and the DOD/Army on this topic. Perhaps the DOD/Army

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designee can truthfully limit the particular agency's testimony to reference the 1977 testimony of Deanne Siemers, but Plaintiffs are entitled to explore that issue and others described in this topic. Second, in response to your stated concerns about the scope of the testimony requested from the CIA, Plaintiffs are entitled to testimony concerning CIA involvement (whether direct or through direct or indirect sponsorship or financing) in Defendants' testing on service members. It does not appear that Defendants disagree. In fact, documents substantiate the CIA's broader role in the DOD/Army testing at issue. *See, e.g.*, MKULTRA0000146141_0002-03 (Memorandum For: The Secretary of Defense Regarding Research on Psychochemicals, dated 3 Dec. 1955 (acknowledging that the CIA has "maintained close and effective liaison with various research and development groups in the Department of Defense" and "has provided financial support for certain projects in the field of psychochemicals being conducted by the Chemical Corps and the Office of Naval Research.")). Moreover, CIA information concerning its own use of substances that also were used on military personnel as part of the Test Programs is, as discussed above, relevant to Plaintiffs' claims against other Defendants. Plaintiffs have endeavored to narrow the scope of the substances at issue, which we believe addresses CIA's concerns about the scope of this topic. On the issue of the CIA's designation of its "administrative record," we are entitled to testimony concerning what material was reviewed in selecting the "administrative record" submitted to the Court, which necessarily may require questioning about materials that may *not* have been reviewed for inclusion. We don't think that concept should be controversial. Please let us know if you disagree.

With respect to scheduling, we will agree to defer Dr. Kilpatrick's testimony until after the DOD and Army have completed their document productions, assuming those productions are completed in May as you have indicated. We also note that because Defendants have designated Dr. Kilpatrick on each of these topics, the deposition necessarily will last more than one day. Your letter did not identify a designee for the CIA, nor did it propose times for the Rule 30(b)(6) deposition of that agency. Please provide this information.

Individual Depositions

Thank you for providing dates for individual depositions. We note that Michael Peterson, Paul Black and Joe Salvatore all have been identified by the DVA as Rule 30(b)(6) designees. Consistent with the parties' prior discussions, with the exception of Mr. Black, we propose that the individual depositions of these witnesses take place concurrently with their Rule 30(b)(6) testimony. With respect to Mr. Black, he has been designated by the DVA to testify on that agency's behalf concerning Topics 3, 4, and 5. Plaintiffs would like to take testimony concerning these topics soon. Your letter indicates that Mr. Black is available at the end of May. Please let us know if Defendants will agree to produce Mr.

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Black as a Rule 30(b)(6) designee at that time, with the understanding that Plaintiffs may elect to depose Mr. Black in his individual capacity at a later time once we have had the opportunity to review the DVA's upcoming document productions. Given the fact that the DVA still has not responded to Plaintiffs' document requests directed to the Fourth Claim for Relief — let alone provided a time table for completing its production — we believe that it is premature to schedule the remaining Rule 30(b)(6) depositions at this time. We should revisit the scheduling of these depositions once you provide further information about the timing of the DVA's document production.

Your April 6 letter indicates that Lloyd Roberts is available for deposition on May 4, 5, and 6. Given Defendants' ongoing document productions, which will not be complete by that time, does Mr. Roberts have any additional availability after the first week of May? Your letter also indicated that you would get back to us about Len Sistik's availability. Do you have an update on that item? Finally, Mr. Anthony Lee is identified in Defendants' initial disclosures but no longer is a Rule 30(b)(6) designee. Accordingly, Plaintiffs would like to add him to the list of individual deponents. Please provide dates on which Mr. Lee would be available for deposition.

Case Schedule

As we have discussed before, it has become increasingly apparent that the current May 31, 2011 fact discovery deadline is unrealistic. Defendants still are in the process of producing documents and additional productions may be warranted based on Plaintiffs' evaluation of the DTIC bibliographies produced by Defendants and the parties' ongoing discussions. For example, it seems likely that the CIA will produce additional documents based on the narrowed list of test substances and the parties may come to further agreements concerning the scope of that aspect of discovery. Your letter acknowledges the importance of the DOD completing its document production so that Defendants can prepare Dr. Kilpatrick for his Rule 30(b)(6) testimony. Plaintiffs also need the benefit of Defendants' production prior to conducting depositions, and Plaintiffs' experts cannot complete their analysis until Defendants have completed the production of key information. Moreover, the DVA has yet to begin producing documents related to the Fourth Claim for Relief in the Complaint. Accordingly, Plaintiffs believe that the parties should come to an agreement modifying the current case schedule.

To avoid undue disruption to the current schedule, Plaintiffs propose that the fact discovery deadline (and concurrent disclosure of expert reports) be moved from May 31 to July 15, 2011. Plaintiffs believe that this modification should permit Defendants to complete their document productions in advance of the depositions of Defendants' witnesses and should permit sufficient time for the parties' experts to consider that discovery in the development of expert reports. Our hope is that extending the fact discovery deadline in this way would not require the modification of any other current deadline governing this litigation, and that

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the current dispositive motion and trial schedule could remain intact. Of course, the ability of the parties to complete fact discovery in this proposed timeframe is dependent on Defendants' — including the DVA's — ability and willingness to promptly complete the production of documents. Accordingly, it is critical that Defendants keep us informed about the ongoing status of their productions. Please let us know your thoughts on this proposal as soon as possible.

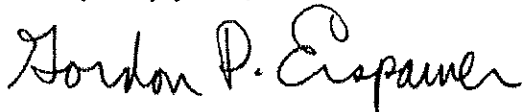
Miscellaneous Issues

We have received Defendants' "Supplemental Rule 26(a)(1) Disclosures." We assume that these supplemental disclosures replace rather than augment Defendants' prior Rule 26(a)(1) disclosures, and that Defendants' prior disclosures no longer are operative. If you could confirm or correct that belief we would appreciate it.

* * *

I look forward to Defendants' response to the issues raised in this letter. As always, please reach out with any questions.

Very truly yours,



Gordon P. Erspamer

cc: Kimberly Herb
Brigham Bowen
Lily Farel
Judson O. Littleton

Exhibit 4

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

**CERTIFIED
TRANSCRIPT**

VIETNAM VETERANS OF)	
AMERICA, et al.,)	Case No. CV 09-0037-CW
Plaintiffs,)	
vs.)	
CENTRAL INTELLIGENCE)	
AGENCY, et al.,)	
Defendants.)	

A PORTION OF THIS TRANSCRIPT IS CONFIDENTIAL

DEPOSITION OF DEE DODSON MORRIS

Washington, DC

Wednesday, July 6, 2011

REPORTED BY:

CARMEN SMITH

PAGES 1 - 254

PAGES 248 - 249 ARE CONFIDENTIAL

AND ARE BOUND SEPARATELY

1 I did quality control, primarily in
2 recordkeeping. I also did a significant amount of
3 the research into the various exposures that service
4 members could receive while on the battlefield and
5 specifically concentrated on some of the testing and
6 experimentation and various exposures to what I'd
7 like to call substances, as opposed to weapons.

8 Q Could you explain a little bit more what
9 you mean by tests and experiments involving
10 substances?

11 A Well, I mean, primarily, the reason I'm
12 here is because I was doing or at least overseeing a
13 lot of the research on people who were involved in
14 chemical and biological experiments that were being
15 conducted by the Department of Defense.

16 Q And during which time were those
17 experiments being conducted?

18 MS. FAREL: Objection; vague.

19 BY MR. PATTERSON:

20 Q The experiments you just described, what
21 was the time frame of those experiments?

22 A I did research on two specific cohorts.
23 The cohort that is relevant to this case would be
24 the Edgewood volunteers, which goes from 1955 to
25 1975. And then I also was the principal

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1 Q What about for callers who were at
2 Edgewood Arsenal?

3 A Ultimately, a fact sheet was written for
4 the Edgewood experience. And it talked to the
5 recruiting process, the types of things that people
6 would have participated in. And then we would
7 essentially go into the database and extract out
8 what an individual had been exposed to.

9 Q So information about individual exposures
10 were customized for these fact sheets?

11 A No, not for the fact sheets but for
12 individuals. If an individual sought information,
13 we would customize the information we had for what
14 they had participated in and been exposed to.

15 The fact sheets for Edgewood and some of
16 the other sites were more into describing the -- the
17 general experience that was going on, what was
18 happening. We didn't get into any particular test
19 in those. We were able to do it more diverse for
20 the SHAD/112 because they were discrete tests, they
21 had names, people remembered those names. They were
22 associated with a certain number of vessels or
23 things like that.

24 And so it -- and different things were
25 done in different -- on different tests.

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1 Edgewood was, you know, sort of we're
2 going to bring some folks in, and we're going to do
3 a variety of administration of various substances.
4 Maybe they were going to do equipment tests, you
5 know, and things like that.

6 And so we described that generally, and
7 then we would provide them with the information on
8 what they had personally been exposed to.

9 Q So the individual exposures themselves
10 were not included in the fact sheets for Edgewood
11 veterans?

12 A And they weren't -- individual exposures
13 weren't included in any fact sheet. It was just
14 that we did, to a certain extent, talk in the
15 SHAD/112 fact sheets about the substances that were
16 used for the entire test or trial, simply because it
17 was a one-time thing, and everybody was likely -- or
18 potentially exposed to what was being used.

19 Edgewood was far more diverse.

20 Q But you had said earlier that you would
21 give individual information about exposures to the
22 veterans.

23 A Uh-huh.

24 Q How would you do that if it wasn't
25 included in the fact sheet?

1 essentially an office sanctioned explanation of the
2 substance and what its either -- its acute and
3 potentially chronic effects would be. And we took
4 that from the medical literature.

5 Q Do you know who wrote the fact sheets?

6 MS. FAREL: Objection; calls for
7 speculation, vague.

8 THE WITNESS: I participated in the
9 writing of all the SHAD/112 fact sheets and the
10 initial version of the Edgewood fact sheet. And we
11 had several physicians on staff who were the ones
12 who wrote the health effects summaries.

13 BY MR. PATTERSON:

14 Q So let's start with the SHAD fact sheets.
15 Who else participated with you in writing them?

16 MS. FAREL: Objection; relevance.

17 THE WITNESS: Let's see. Initially, I
18 started out with an individual by the name of Terry
19 Garner. He didn't stay with the organization very
20 long after that. And I had an individual by the
21 name of Walt Lynch. And these are all contractor
22 personnel.

23 And then my final primary assistance came
24 from an individual by the name of Roy Finno. And I
25 would get assistance from various other people in

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1 And then we eventually went back out to Dugway.

2 Q And for which investigation were you going
3 to these locations?

4 A SHAD/112. Once we started looking at
5 Edgewood volunteers, I was involved in suggesting
6 places that we might want to expand beyond Edgewood.
7 But I didn't specifically go on any of those trips.

8 Q So you did go to Edgewood Arsenal to
9 review documents?

10 A Yes.

11 MS. FAREL: Objection; vague.

12 BY MR. PATTERSON:

13 Q Did you go anywhere else?

14 MS. FAREL: Same objection.

15 THE WITNESS: For?

16 BY MR. PATTERSON:

17 Q For the Edgewood Arsenal test veterans
18 investigation.

19 A No.

20 Q When you were searching for documents
21 during the investigation for Edgewood Arsenal
22 testing veterans, what were the testing locations
23 that were coming up?

24 A Well, there were a number of people who
25 were sent to Fort Detrick. We started to get some

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1 indication of some of the stuff at Bragg and Eglin.

2 Q Fort Bragg?

3 A Fort Bragg, Eglin Air Force Base,
4 McClellan, things like that. So we started trying
5 to pull the string to figure out where any extant
6 records might be at those installations.

7 Q So during your investigation into Edgewood
8 Arsenal testing veterans, you were also looking for
9 records for testing that occurred at those locations
10 as well?

11 MS. FAREL: Objection; vague.

12 THE WITNESS: Yes, yes.

13 BY MR. PATTERSON:

14 Q Were there any other testing locations
15 included in your search?

16 A There was a long list of testing locations
17 included in our search. Because we were -- you
18 would go one place, and that would refer you to
19 someplace else. And so we would -- we would go and,
20 you know, ask questions of folks who still might be
21 employed there and say, well, where else should we
22 go? Things like that.

23 That was more the folks that were actually
24 doing the pulling of the records and going through
25 and seeing what they could find.

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1 Q And do you know who that was? Do you
2 remember any of the names?

3 A Andy Blackburn was the lead contractor
4 when I was dealing with this. And he worked for
5 Batelle.

6 Q Anyone other than Andy Blackburn?

7 A No.

8 Q And what is Batelle?

9 A Batelle is a company. Its formal name is
10 Batelle Memorial Institute. It's based in Columbus,
11 Ohio. And they are involved in research and
12 development of a number of things but have a
13 historic connection with the Army Chemical Corps and
14 dealing with biological and emerging diseases.

15 Q And what is this historical connection?

16 A Well, a lot of it is -- a lot of people
17 believe there's a revolving door between the Army
18 Chemical Corps and Battelle, that when Army chemical
19 officers retire, they go to work for Battelle.
20 That's not quite as common anymore. It used to be
21 pretty common.

22 Q So when you say that some people say
23 there's a revolving door, are you referring to
24 merely Battelle hiring former Army officers?

25 A Uh-huh. Yes, uh-huh.

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1 Q Do you know of any former Army officers
2 who were hired by Battelle?

3 MS. FAREL: Objection; relevance.

4 THE WITNESS: I know a lot.

5 BY MR. PATTERSON:

6 Q Who?

7 A Well, now we're crossing into my current
8 job.

9 MS. FAREL: I have objected on the grounds
10 of relevance.

11 THE WITNESS: Yeah, okay. Because I've
12 got people -- Battelle is one of my contractors now.

13 MS. FAREL: You can just answer to the
14 best of your ability.

15 THE WITNESS: Okay. Ron Evans, Jim King.
16 That's going way back. Those are the ones I can
17 place right now.

18 They're expanding who they hire these
19 days, so --

20 BY MR. PATTERSON:

21 Q And so what was Battelle's function as the
22 lead contractor?

23 MS. FAREL: Objection; vague.

24 THE WITNESS: They were doing the actual
25 record searches.

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1 earlier?

2 MR. PATTERSON: Sure.

3 BY MR. PATTERSON:

4 Q So when you would see in the records that
5 a particular veteran who was at Edgewood, but the
6 records indicate that they were not exposed to a
7 particular substance, but they then contact DOD,
8 saying that they were exposed to something, how was
9 is handled?

10 A We would fall back on the records that we
11 had available at the time and essentially make a
12 statement that after thorough review of Department
13 of Defense records, we were unable to identify that
14 the veteran was exposed to any substance while
15 assigned to Edgewood. But we would then flag the
16 name in our database so that if something later got
17 added, that we could correct ourselves.

18 Q If they requested a printout, would you
19 send them something?

20 MS. FAREL: Objection; vague.

21 THE WITNESS: Yes, because we did have
22 data -- we did have line entries that, you know,
23 actually, you know, identified the individual and
24 then said no tests. We could send them that.

25 BY MR. PATTERSON:

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1 Sometimes we were given the actual compound that was
2 the placebo, and so there was a difference between
3 the placebo people and the no-test people.

4 Q And how were the placebo people handled
5 differently than the no-test people?

6 A Well, it would depend upon whether they
7 were consistently placebo people or whether they
8 actually did get some of the test substances.
9 Because the folks were there from 30 to 60 days, and
10 so they could have been participating in multiple
11 tests. And placebo person could be considered a no
12 test, but we wanted to break them apart simply
13 because the service member believed he'd been given
14 something. The no-test people, the records we had
15 was they just weren't involved in a test at all.

16 And so it was important to acknowledge for
17 the benefit of the service member that they had
18 participated in something, that that was, in fact,
19 the truth, that -- you know, but that the records
20 indicated they had gotten a placebo or they -- a
21 specific substance that was being used as a placebo.
22 Sometimes they were very specific.

23 Because it -- it validated the fact that
24 they had participated in a test, and that was very
25 important for a number of the veterans, was just

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1 that somebody was validating the fact that they had
2 done something.

3 Q And were placebos by name listed in the
4 letters that were sent by your office?

5 MS. FAREL: Objection to the extent it
6 mischaracterizes prior testimony.

7 BY MR. PATTERSON:

8 Q When an Edgewood test veteran would
9 request that you would send them a printout and a
10 letter, would you include the names of the placebos
11 in that letter?

12 A If we had them, yes.

13 Q The fact sheets that we discussed earlier
14 that you were involved in, at least the initial
15 drafting of for Edgewood test veterans, did any of
16 those fact sheets discuss the possibility of
17 psychological health effects?

18 A I don't believe that they did, but the
19 reason that we wanted to segregate the no-test from
20 the placebo was the fact that we did acknowledge
21 that there was a potential for a psychological
22 effect, just by participating. We had seen similar
23 things in the SHAD information.

24 Q So did you send any of the placebo
25 veterans information about potential psychological

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1 Q So are you following your counsel's
2 instruction not to answer?

3 A Yes, I am.

4 Q Ms. Morris, earlier, we were talking about
5 a database that was being created that would include
6 information about Edgewood test veterans?

7 A Yes.

8 Q Could you explain what exactly that
9 database is?

10 A Well, it's a computerized file. But it
11 was being created with a software known as Access,
12 which makes it something called a relational
13 database, where you can, through a series of
14 linkages and keys, pull out, I guess, customized
15 reports.

16 And so you would have a file on a veteran.
17 You would have a file that would then link to that
18 veteran about everything that you knew about a
19 particular test or a series of tests or a substance.
20 You might have a file that would include the acute
21 and chronic health effects.

22 And so what that would then allow you to
23 do is to go in and query the database with whatever
24 information you had and get a report.

25 And, you know, maybe you wanted to find

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1 out everybody who had been exposed to a particular
2 substance, everybody who came from a particular
3 unit, age, gender. Although I think the vast
4 majority of these were men.

5 And so that's what I mean by a database.
6 It's essentially a framework for information where
7 appropriate things are linked and so you can ask it
8 questions, in the form of a query, and it will give
9 you an answer.

10 Q And are there different databases for
11 different test programs or different years?

12 A At the time that I was in the
13 organization, there were three databases. There was
14 the mustard-lewisite database, there was the
15 SHAD/112 database, and then we were building the
16 chem-bio exposures database. I've heard that they
17 have been combined, but I can't speak to that
18 directly.

19 Q So when you left, they were still three
20 separate databases, then?

21 A Yes.

22 Q And was there a certain criteria to decide
23 which test veterans' test records would be sent to
24 which database?

25 A Basically, the mustard-lewisite database

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1 we weren't adding anybody to. That was considered a
2 legacy database that was useful for information but
3 it wasn't something that we wanted to tamper with.

4 The SHAD/112 database, if the exposure
5 could be tied to a known test as part of the
6 SHAD/112 series, they would then go on that one.

7 Everybody else went on the exposures
8 database. So it would have included people, not
9 only the Edgewood volunteers but other people who,
10 you know, might have participated in some other type
11 of activity and gotten an exposure.

12 Q So what other types of activities would
13 that be that were included in the -- we should
14 probably define that database with a good name.
15 What were you using?

16 A The chem-bio exposures database.

17 Q The chem-bio exposures database. What
18 other types of activities were included in there
19 that you just referenced?

20 A I believe that we added the information
21 that we got on the Bari, Italy, World War II,
22 because it wasn't in the mustard-lewisite database.
23 We also found some information about ammunition
24 handlers in the Southeast Asia theater during World
25 War II, where some chemical agents were, in fact,

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1 looks like it goes here or here (indicating).

2 Q So there was at least an informal
3 procedure?

4 A Uh-huh.

5 Q And what was that?

6 A It was to look at the time frame, the
7 circumstances, location. We had SHAD -- or
8 potential SHAD participants coming out of the
9 woodwork for years, as it got a little bit more
10 exposure and publicity.

11 So we did have to sort of see. Because if
12 we felt that, you know, an exposure could fit within
13 the other two, we thought it needed to stay within
14 its cohort, rather than go into this larger database
15 that didn't necessarily have as many linkages and
16 could, in fact, have held multiple cohorts of
17 people.

18 Q So what was the particular guideline you
19 would use in that situation?

20 MS. FAREL: Objection; vague.

21 THE WITNESS: If it -- if the story that
22 came in sounded like the mustard exposures that we
23 had veteran recollections of and everything like
24 that, it went there. If it fit either time or boat
25 or land test or anything like that for the SHAD/112,
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1 we'd put it there. Largely because those are
2 studied groups, and you want to make sure that
3 you've got as many true members of the group
4 documented with the group, and then the rest would
5 go into the chem-bio exposure database.

6 BY MR. PATTERSON:

7 Q So if it was a close call, would the
8 default be to put it in the mustard and lewisite or
9 the SHAD/112 databases?

10 MS. FAREL: Objection; calls for
11 speculation, vague.

12 THE WITNESS: I don't know that we had any
13 that were that close. There was -- there was
14 almost -- I mean, as I recall, there was enough
15 information to say, okay, it's going to go into one
16 of these three slots, and it fits best here.

17 BY MR. PATTERSON:

18 Q And who was making these decisions on
19 which database to put information into?

20 A I was.

21 Q Were you the only person?

22 A If -- I mean, I would discuss it with the
23 folks who were working with me, but for the most
24 part, I was the one who was deciding which database
25 to put things in.

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1 petitioning veteran's information in the database.
2 We would also add everybody else on the list.

3 If they sent us a list of 25 people who
4 went off to do something that we were able to
5 connect with the conduct of a test, the veteran who
6 asked us to went on the list. We assumed everybody
7 else was with him, and so we added them too.

8 BY MR. PATTERSON:

9 Q So just to be clear, these are veterans
10 that that particular veteran said were with them?

11 A No, these were people who were on the
12 document that we were accepting as a record of
13 something associated with the test occurring.

14 Q And what about the chemical-biological
15 exposure database?

16 MS. FAREL: Objection; vague.

17 BY MR. PATTERSON:

18 Q The same question I stated before. How
19 did you decide who to include?

20 A It was again somewhat open. Basically,
21 what we were doing was reviewing the documentation
22 that we could find to determine if something had
23 occurred that would create an exposure. And if we
24 felt that it did, we added them.

25 We were following at that time the VA's

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1 rule of the veteran has the benefit of the doubt.

2 Q So what exactly does that rule entail?

3 A Well, if a call could go one way or the
4 other, the veteran is presumed to be the weaker of
5 the two parties. It's much like in contract law,
6 where if it has to go one way or the other, the
7 judgment is usually against the drafter.

8 In this case the rules are written by the
9 VA. If they could be interpreted one of two ways,
10 the way that is most favorable to the veteran is the
11 one that they are to use.

12 Q So in applying that rule to this
13 situation, you would include more veterans?

14 A Yes.

15 Q Did you ever exclude veterans from the
16 database?

17 MS. FAREL: Objection; vague.

18 THE WITNESS: I don't recall doing it. At
19 least not in the chem weapons one -- or chem-bio
20 exposures one.

21 There were a few in the land-based tests
22 up in Alaska, where we -- well, let's see. There
23 was a couple in Alaska and one of them on the big
24 island of Hawaii. We found test officers' logs. So
25 we were able to pinpoint in some cases down to the

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1 Q What about the veterans who you referred
2 to as the no-test veterans?

3 MS. FAREL: Objection; vague.

4 THE WITNESS: They would have been in the
5 database -- excuse me. They would have been in the
6 database as no test.

7 BY MR. PATTERSON:

8 Q Would veterans who were a test subject for
9 one day be included?

10 A If we had the records that indicated that
11 they had been at the test site during an active
12 testing period and nothing to exclude them, they
13 would have been.

14 Q So what reasons would there be to exclude
15 them?

16 A Again, it would be the limited instances
17 when we had very detailed information about what was
18 going on on a given day, and we would also have
19 similarly detailed information about the person's
20 arrival and departure.

21 We didn't have that very frequently, and
22 so we consequently would not have excluded a lot of
23 people.

24 Q Were field tests included in the database?

25 MS. FAREL: Objection; vague.

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1 BY MR. PATTERSON:

2 Q Do you understand what I mean by field
3 tests?

4 A I'd like a little bit more of an
5 explanation of what type of field tests you're
6 asking about.

7 MS. FAREL: Are you going to go through
8 each database individually again?

9 BY MR. PATTERSON:

10 Q Let's focus right now on the
11 chemical-biological exposure database.

12 A Got it, okay.

13 Q So do you have any familiarity with the
14 term "field testing"?

15 A Yes, that would have been testing that
16 occurred other than at Edgewood.

17 Q Okay. So that's what I'm referring to.

18 A Okay.

19 Q Would that testing be included in the
20 database?

21 A Yes. Once we found records on it, we
22 would include it.

23 Q And where did you search for those
24 records?

25 A We found an awful lot of them at Edgewood.
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1 A The Department of Defense.

2 Q And then what would happen? Would you
3 review it?

4 A We actually reviewed it before we imported
5 it. And, you know, made sure that it was the kind
6 of stuff we were looking for. And then we would go
7 ahead and import it into the database.

8 And if there were any additional linkages
9 that we thought we saw, we'd, you know, make those
10 and go from there. And then essentially, we
11 sneaker-netted CDs over to the VA. We hand-carried
12 disks. Sorry, new jargon.

13 Q So you were giving the VA CDs of the
14 database?

15 A We were giving them CDs of each addition
16 to the database, so that they would essentially have
17 the information in toto with the collection.

18 They were doing all sorts of things about
19 how they wanted to keep a database and everything
20 like that. And it was just easier to give them the
21 information. We would run a few queries for them if
22 it was something complicated.

23 But they weren't ready to handle a
24 database as late as 2007.

25 Q Did you ever send the VA the actual test

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1 records that were being found?

2 A The CDs had images of the test records.

3 Q Is there anything else that was included
4 on the CDs?

5 A No.

6 Q So it was the addition to the database and
7 images of the records?

8 A And images from the additions.

9 Q Who was creating the CDs?

10 A Battelle as a deliverable of their
11 contract would create two CDs, one of which we got
12 and one of which we gave to the VA.

13 Q Were there ever any problems in the CD
14 creation with Battelle?

15 MS. FAREL: Objection; vague, relevance.

16 THE WITNESS: Not that I'm aware of.

17 BY MR. PATTERSON:

18 Q Were there any procedures in place to
19 address any problems that might arise with the
20 relationship with Battelle?

21 MS. FAREL: Same objection.

22 THE WITNESS: Other than essentially
23 enforcing the statement of work in their contract,
24 no.

25 BY MR. PATTERSON:

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1 finding in numbers and that type of thing.

2 Q And when did this investigation into the
3 Edgewood Arsenal-related testing start for your
4 office?

5 A It would have been within the year after
6 we quit doing the active investigation for SHAD/112,
7 which we did that -- we ended active investigation
8 SHAD/112 at the end of June 2003, and we started
9 working with Mr. Lee's organization to try and get
10 the contract in place and everything like that. And
11 then once that was in place, we were able to, you
12 know, send them out to do this.

13 So probably about 2004.

14 Q And why did you start that investigation?

15 MS. FAREL: Objection; vague.

16 THE WITNESS: Because the law that had
17 required us to essentially complete the SHAD/112
18 investigation, I mean, we would have finished it
19 anyway, but there was a law on the books at that
20 point. And the GAO had done a very thorough review
21 of our process at that point in time.

22 The law indicated that we needed to
23 continue beyond SHAD/112.

24 BY MR. PATTERSON:

25 Q And what law is that?

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1 A It was part of the Stump Authorization
2 Act. Because we were required to report to Congress
3 under it too. I just remember it was section 709 of
4 that law.

5 Q What did that section require the DOD to
6 do?

7 A To work with veterans organizations to
8 identify other people who were perhaps similarly
9 exposed, I think was the way it read.

10 Q And so you've read this law?

11 A Yes. I just can't remember what PL it is
12 right now.

13 Q So is that essentially the time when the
14 investigation began?

15 A It's the time when we started, you know,
16 really rolling forward. When we were doing
17 SHAD/112, we knew about the records that were up at
18 MRICD, and we referred people to them. But -- you
19 know, so that was sort of where we started.

20 And then we built on that. So 2003 to
21 2004, about that time frame, is when we could
22 dedicate the resources to it.

23 Q Were there any initial memos circulated
24 regarding that legislation?

25 A I don't recall any. I mean, there was a

1 at Edgewood?

2 A Every one that we could actually identify
3 by its chemical name.

4 Q And who wrote these descriptions?

5 A They tended to be written by our staff
6 physicians, using commonly available medical texts.
7 We got a lot of information from the agency for
8 toxic disease substances registry. There's other
9 words in there. They're part of the Centers for
10 Disease Control.

11 Q Did those physicians review the test
12 records that you were retrieving?

13 A Not necessarily, unless they were curious
14 as to how something might have been administered and
15 if that route of administration made a difference in
16 what the acute and chronic effects would be.

17 Q Would information about the effects
18 experienced at the time of the test be included?

19 MS. FAREL: Objection; vague.

20 THE WITNESS: We did not tend to include
21 the information that might be in test records. We
22 just acknowledge whether or not test records
23 existed.

24 BY MR. PATTERSON:

25 Q So short-term effects indicated in the

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1 test records would not be included in these
2 descriptions?

3 A Unless there was a note off to the side
4 that -- but these letters tended to be not alarmist.
5 You know, the idea is, you know, we've been going
6 through these records, we've determined that you
7 were exposed to such and such about this time. You
8 know, we'd like to offer you a free checkup at your
9 local VA, please bring the letter with you. And
10 then we would have given the information to the VA
11 for distribution through health channels.

12 Q And why weren't the letters being drafted
13 to be alarmist?

14 MS. FAREL: Objection; calls for
15 speculation.

16 BY MR. PATTERSON:

17 Q If you know.

18 A That's pretty much good public relations,
19 especially when we had no indications that the
20 people receiving them were significantly affected by
21 the exposures. You know, you can scare the living
22 daylights out of somebody telling them medical
23 information that they don't understand, and over the
24 years, both the VA and our office in DOD had gotten
25 a considerable amount of experience in how to give

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1 people information to which they were entitled,
2 without scaring them to death, and then making
3 available to them somebody who could talk to them
4 intelligently about their concerns, if they had
5 them. That's one of the reasons we kept the hotline
6 open.

7 MR. PATTERSON: All right. Why don't we
8 take a break.

9 (Recess.)

10 BY MR. PATTERSON:

11 Q Ms. Morris, did you speak with anyone
12 during the break?

13 A Just counsel, and we were noting the time
14 and how much time was left.

15 Q Did you discuss the subject matter of your
16 deposition with counsel during the break?

17 A Briefly.

18 Q What did you discuss?

19 MS. FAREL: I'll object to the extent -- I
20 will instruct you not to answer, but you can answer
21 if we discussed the substance of the deposition. I
22 think that is what counsel is asking.

23 BY MR. PATTERSON:

24 Q Yes?

25 A I don't think so. I think what I did was

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1 wouldn't say I was the sole author, but I was one of
2 them.

3 Q Let me direct your attention to the last
4 sentence of the first paragraph, which says, "The
5 study did not detect any significant long-term
6 health effects in Edgewood Arsenal volunteers."

7 A Okay. Which paragraph?

8 Q The first paragraph.

9 A Oh, here, okay. Okay. Right.

10 Q And which study is this referring to?

11 A This would have been an Institute -- the
12 Institute of Medicine studies that were published
13 between 1982 and 1985 on various participants at --
14 in Edgewood studies. This was a follow-up series of
15 reports that IOM did based on what agents people
16 were exposed to.

17 Q Let me -- keep that handy, but please
18 refer to Exhibit 463, the second page. This is the
19 sentence we discussed earlier regarding the IOM
20 documenting an increased rate of sleeping problems.

21 Is this the same study referred to in the
22 fact sheet at exhibit -- at previously marked
23 Exhibit 296?

24 A Likely is the same study or series of
25 studies.

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1 MS. FAREL: 463.

2 THE WITNESS: 463. So I have no idea, you
3 know, which one came first.

4 BY MR. PATTERSON:

5 Q Do you know why the sentence "The study
6 did not detect any significant long-term health
7 effects in Edgewood Arsenal volunteers" was included
8 in the fact sheet at previously marked Exhibit 296?

9 A That was the view that we held. The key
10 word here is "significant."

11 Q What do you mean by that?

12 MS. FAREL: Objection; vague, calls for
13 speculation.

14 BY MR. PATTERSON:

15 Q You just testified that it depends on the
16 word "significant."

17 A Right. Those of us that have worked with
18 agent have always taken the position that if it
19 doesn't kill you, you're going to be fine.

20 Q So you would define "significant" as it
21 would kill you?

22 MS. FAREL: I'm going to object as a
23 mischaracterization of prior testimony.

24 BY MR. PATTERSON:

25 Q How would you define the word

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CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, CARMEN SMITH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

A handwritten signature in cursive script, reading "Carmen Smith", is written over a horizontal dashed line.

Notary Public in and for the
District of Columbia

Commission Expires: MARCH 14, 2013

Exhibit 5

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

VIETNAM VETERANS OF)
AMERICA, et al.,)
Plaintiffs,)
vs.) No. CV 09-0037-CW
CENTRAL INTELLIGENCE)
AGENCY, et al.,) Volume I
Defendants.)

Videotaped deposition of MICHAEL E. KILPATRICK,
M.D., taken at 2000 Pennsylvania Avenue Northwest,
Washington, DC, commencing at 9:30 a.m.,
Wednesday, July 6, 2011, before Nancy J. Martin,
California CSR No. 9504, RPR.

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1 benefits decisions or healthcare decisions, and the
2 database being constructed on a DoD website was not
3 terribly easy to have it interactive with the VA, IT
4 system.

5 So with that agreement, that the DoD would
6 provide what I've gone through, the VA said that they
7 would build whatever they needed for their healthcare
8 delivery or decision, disability decision processes on
9 their side, and DoD really had no need to have
10 awareness of that information.

11 Q. Well, was it your understanding that at the 10:53:58
12 time this database was compiled, with respect to the
13 chem-bio exposures, that the DoD was under any
14 obligation or instructions to notify the participants
15 with respect to the tests they were involved in?

16 A. The agreement that we had from the beginning
17 of Project 112/SHAD with the VA was that DoD would
18 identify the individual, the test, the location, the
19 time, the agent, and provide that information to the
20 VA. The VA would then make every effort to be able to
21 get an address for that individual, notify the
22 individual and essentially inform the individual of
23 what is known and ask if they had any health concerns,
24 that they should contact the VA.

25 This was done, again, as we started with

1 receive mode for this information and able to take
2 action to work to notify the veterans who were being
3 identified.

4 Q. And can you explain why the Department of 11:15:05
5 Defense itself did not undertake the notification
6 responsibility?

7 A. Again, the discussion that we had very early
8 on -- and "we," I mean myself and mainly Mr. Tom
9 Pamperin from the VA, from the disability side, and
10 Dr. Susan Mather, who was my counterpart on the DoD/VA
11 deployment health work group co-chair -- she's on the
12 VA clinical side -- was that DoD would do the work to
13 identify the individuals, agent, date, chemical
14 exposed, all that information, provide that to the VA.
15 The VA would then work to notify the individual
16 because the notification was going to include an offer
17 to come to the VA for evaluation.

18 Q. Did you have discussion with the VA about 11:16:08
19 which of you had a legal obligation to do the
20 notification?

21 A. The discussion did not discuss a legal
22 responsibility but it discussed the notifying -- it
23 was logical that the notifying agency would be the one
24 that would have the legal authority to provide care to
25 that individual. And for the majority of these

1 Q. So it's your belief that for the vast
2 majority of the test participants, they would have
3 needed either a regulation change or a statute change
4 to be entitled to TRICARE?

11:18:19

5 A. Yes.

6 MR. GARDNER: Objection to the extent it calls
7 for a legal conclusion.

8 BY MR. ERSPAMER:

9 Q. And did you ever attempt to determine what
10 percentage might be eligible for TRICARE?

11:18:40

11 MR. GARDNER: Objection. Compound.

12 THE WITNESS: The majority of the individuals,
13 again, when we started under Project 112/SHAD, were
14 identified by service number. And so it was very
15 difficult to know who these individuals were because
16 current records are not organized by service number
17 but by social security number, and there's no Rosetta
18 Stone translation between service number and social
19 security number. So it would have been another huge
20 undertaking to try to determine if any of these
21 individuals were eligible for care in the DoD system.

22 I think that as we put information out, and
23 certainly in the notification letter that the VA sent
24 out, we referenced information on the DoD website
25 about the testing, and there was an ability for

1 individuals to call and talk to a help desk operator,
2 if you will, a call center for further information.
3 So we believe that we had multiple ways of people who
4 felt they were eligible for care in DoD could contact
5 DoD, and we could deal with them on an individual
6 basis.

7 But as we're dealing with 1,000 -- or
8 thousands of individuals, we're looking at what made
9 sense for the process to be started.

10 BY MR. ERSPAMER:

11 Q. Isn't it the case that TRICARE is generally 11:20:17
12 acknowledged to be a higher quality healthcare system
13 than the VA healthcare system?

14 MR. GARDNER: Objection. Vague. Objection.
15 Calls for speculation. Objection. Lack of
16 foundation.

17 THE WITNESS: VA has been rated one of the top
18 healthcare systems in the nation in a very recent
19 poll, and Dr. Ken Kaiser, who worked to turn around VA
20 healthcare, probably some 20 years ago, has been
21 heralded as a real dynamic leader. So I think that,
22 while there may be a perception of VA healthcare is
23 not high quality, the reality is that it's one of the
24 best healthcare systems in the nation.

25 BY MR. ERSPAMER:

1 wanted to call DoD.

2 Q. You personally made comments on these draft 11:36:43
3 documents; correct?

4 A. I know that I looked at them on multiple
5 occasions. I mean it was a routine process of --

6 Q. And you had -- you were the person that gave 11:36:55
7 ultimate permission from the Department of Defense
8 with respect to the final edition of these documents;
9 right?

10 A. In the DoD chop chain, if you will, I was the
11 final chop on that chain.

12 Q. So the buck stopped here? 11:37:14

13 A. That's right. If I said it was good to go,
14 then the VA was happy with it.

15 Q. Do you recall particular issues coming up 11:37:21
16 with respect to the content of the notice to go out to
17 veterans? And I would include the FAQs and any other
18 documents that were to go to the veteran.

19 MR. GARDNER: Objection. Vague. Overbroad.

20 THE WITNESS: The challenge on all of these is to
21 give enough information that the individual looking at
22 it would know what it is we're talking about and not
23 to go terribly long or in depth so that they would
24 lose interest and not complete reading the area, and
25 that was always a difficult area because we used to

1 human subjects, and, you know, what an informed
2 consent must contain as medical ethics have evolved
3 over the years has changed too.

4 Q. And there's a generally accepted meaning in 11:49:15
5 your -- in the medical industry about what informed
6 consent means, although it might have changed over
7 time; is that correct?

8 MR. GARDNER: Objection. Vague. Lack of
9 foundation.

10 THE WITNESS: And if you're talking about
11 informed consent for research -- and I think it's
12 probably better to try to focus that because informed
13 consent, as I said, is multiple other uses -- I think
14 that the key element is -- is that the patient -- the
15 study subject needs to be aware of the risks and
16 benefits of participating in that study.

17 BY MR. ERSPAMER:

18 Q. And in your review of documents, I take it 11:49:59
19 you've seen some statements made that the -- at least
20 some of the tests were not conducted with informed
21 consent; correct?

22 A. All of the materials that I looked at had a
23 requirement for -- had an informed consent form, and
24 I've looked at some patient study files that all of
25 them had an informed consent signed by the patient and

1 THE WITNESS: If there's a product that would be
2 useful to apply to the healthcare for DoD eligible
3 people today, then we certainly wouldn't base getting
4 or not getting that product on cost alone. I think as
5 we take a look at health outcomes of some of those
6 categories of patients you're talking about, there
7 would be no application of that knowledge within the
8 DoD system today. So it wouldn't be a product that
9 DoD would request be able to produce for us.

10 MR. GARDNER: Would now be a good time for lunch?

11 MR. ERSPAMER: I just want to finish this off,
12 and I think I'm just about done.

13 Q. Have you ever asked Battelle, when it goes 12:22:42
14 through its process of researching records around the
15 country, to compile information that captures diseases
16 or conditions of veterans who were exposed to chemical
17 or biological weapons during the tests?

18 A. Part of what Battelle is asked to bring back
19 is is there any indication of any untoward health
20 event, an unexpected health event at the time of that
21 testing, and I specifically ask Mr. Dupuy about that
22 because he is an individual who works in that database
23 on almost a daily basis. And he said that they have
24 had really nothing that has been entered in there of
25 something that looked to be out of the ordinary or

1 unexpected from the agents to which people were
2 exposed.

3 I also looked at some health medical records
4 of individuals who were tested, and it clearly had, as
5 part of that medical record, information about that
6 individual care that was provided at the time, and
7 obviously, our agreement with the VA is that those
8 records are available to the VA when it comes to
9 either providing care or making a determination. It
10 isn't just the name in the database is the only
11 information DoD provides.

12 Q. Do you have any information that the VA is 12:24:30
13 actually following up and looking at the database and
14 determining service connection or health needs for
15 veterans?

16 MR. GARDNER: Objection. Beyond the scope of the
17 Rule 30(b)(6) deposition. Lack of foundation.

18 THE WITNESS: I know that, again, Mr. Dupuy gets
19 from the VA one to three times a week, inquiries for
20 validation of a veteran that they have looked and
21 don't see them on the database. I know that we get
22 phone calls on our call center that veterans are
23 asking for information, probably one or two a week,
24 and they're wanting to know if they're in the database
25 or not, and if they are, they are referred to the VA

1 agents, nothing that we've been able to see in medical
2 literature indicates that there should be expected,
3 untoward medical events in these individuals, and that
4 is looking at, again, very small amounts of medical
5 literature. There really are no studies on long-term
6 health effects, say, of BZ or even LSD, if you will,
7 because they've just not been done in the civilian
8 side, and mainly because many of these agent civilians
9 we've not had access to.

10 So while somewhat reassuring that the
11 medical literature doesn't say there are recognized
12 health effects from this sort of exposure, that does
13 not mean that individuals exposed may not have an
14 unusual or an individual response that is an untoward
15 medical event. The only way that can be diagnosed is
16 to look at those individuals one at a time and
17 evaluate them completely.

18 And so telling people what they were exposed
19 to, which is the project that we have under way with
20 the VA, is an attempt to bring them in and to look at
21 them one at a time to say, "Is there a medical
22 condition that a preponderance of evidence, which is
23 50 percent or more, would indicate it's service
24 connected," and if so, then the VA has a system to
25 provide them not only care but disability if they are

1 in fact disabled.

2 BY MR. ERSPAMER:

3 Q. Well, you said a lot of things -- are you 14:59:55
4 done?

5 A. I'm finished with that.

6 Q. You said a lot of different things. Let me 14:59:59
7 see if I can try to follow up on that answer. Try to
8 actually focus in on the question specifically that
9 I'm asking. It would help us move along.

10 I take it, then, that you're not aware of
11 the studies that show that individuals who merely
12 participated in the tests were subject to an increased
13 risk of developing posttraumatic stress disorder?

14 A. I've read the study on posttraumatic stress
15 disorder in test subjects. Dr. Paula Schnurr is
16 really a world respected researcher. I've been in
17 several meetings with her, looking at developing
18 research protocols for PTSD treatment for returned
19 OEF/OIF veterans with the VA, and I've read her two
20 studies in fairly small numbers of veterans who were
21 test participants. And very clear if they didn't know
22 what they were exposed to, believed that there was a
23 requirement for secrecy, that those were predictors
24 for subsequent PTSD.

25 Medically to have PTSD -- and I'm sure

1 (A recess was taken from 3:19 p.m.

2 to 3:23 p.m.)

3 THE VIDEOGRAPHER: Here marks the beginning of
4 Tape 4 of Volume I of the deposition of Dr. Michael
5 Kilpatrick, and the time is 3:23 p.m.

6 BY MR. ERSPAMER:

7 Q. Getting back to the 1990 regulation for a 15:22:20
8 moment, the elements in the database for the chem-bio
9 exposures include identifying information regarding
10 the veteran; correct?

11 A. Correct.

12 Q. They include the substance to which the 15:22:37
13 veteran was exposed; correct?

14 A. Correct.

15 Q. And they include the doses, at least on the 15:22:42
16 records that are available, the doses that the veteran
17 got of a particular substance; correct?

18 A. Correct.

19 Q. Did it include the mode of administration, 15:22:51
20 whether it was by injection or inhalation or some
21 other mode of exposure; correct?

22 A. Correct.

23 Q. Did it include, for example, intraspinal 15:23:01
24 injections?

25 A. I'm hesitating because the only thing that I

1 I've seen in the National Academy review of
2 literature, again, that was the process that followed
3 this memorandum, and this memorandum was not a
4 directive for, essentially, the search that we
5 conducted starting in the mid 2000s.

6 BY MR. ERSPAMER:

7 Q. Okay. Does the task of work that you 10:07:21
8 assigned to Battelle include only military subjects of
9 the chemical and biological tests?

10 A. The scope of work is to identify military
11 personnel who were involved, yes.

12 Q. And you understand, in looking at 10:07:36
13 Exhibit 317, that the Chemical Corps Medical
14 Laboratories was involved in the private contractor
15 work using chemicals and drugs on individuals;
16 correct?

17 MR. GARDNER: Objection. Vague. Objection.
18 Beyond the scope of the Rule 30(b)(6) deposition
19 notice. Objection. Relevance.

20 THE WITNESS: Again, not having seen this
21 document until this point, my read of it is that these
22 were not military personnel who were the test
23 subjects. I would have to confirm that with other
24 documents than what's here, and that probably would be
25 the contract that was written would have to be

1 THE WITNESS: All the information we have about
2 the agents is listed, and that would include the EA
3 numbers as well as the, if you will, the generic name
4 of the agent.

5 BY MR. ERSPAMER:

6 Q. And how do you handle a variance of a 11:07:37
7 chemical, like the amaliyite form of LSD versus other
8 forms of LSD?

9 A. Again, it's whatever information would be
10 available that if it was there, that would be listed
11 in the search that was done to identify the people and
12 what they were exposed to. Any variation of that
13 information would be put into the database.

14 Q. Separately? 11:08:10

15 A. It would be under agent area. So it would be
16 by individual. We don't, in the database, have a
17 separate cheat sheet. So all this information would
18 be under individual. It would be what were they
19 exposed to, and then that exposure would list that
20 information, and then it would get into dose if that's
21 available.

22 Q. And the dose information that's available 11:08:32
23 that's contained in the database is drawn from the
24 individual files of the veterans?

25 A. Yes, it is.

1 show all the doses of individuals in a database for a
2 given substance? Like EA 1729, for example.

3 A. If the database is arranged -- and I'm not a
4 really good IT person, but the database is set up that
5 if you put in an EA number, you will get a listing of
6 all the individuals who were given that agent. So
7 organized by agent. You could then go individual by
8 individual to see what dose they were. It would not
9 give you the range of, say, if they were 20 people, of
10 what they were. You would have to look at each
11 individual record to see each individual dose.

12 Q. So you'd have to manually look up the dose 11:11:02
13 ranges for a particular substance?

14 A. Right. You would have to do that. Again,
15 the database is designed for making determination --
16 healthcare determinations or disability, service
17 connected determinations for an individual.

18 Q. And with respect to your quality control 11:11:20
19 process for the database, did you make any attempt to
20 compare the numbers, dose numbers in the individual
21 files with the dose numbers reported in the reports
22 and other more generic documents?

23 MR. GARDNER: Objection. Vague.

24 THE WITNESS: Again, I would depend on -- from
25 the analyst. I have that that was in fact done. I

1 process we learned about the concern on
2 Mustard-Lewisite from the VA. We also learned the VA
3 was concerned about other chemical agents, and our
4 information at that time was that nobody is doing
5 this. It looked like a good process to go forward.

6 In fact, the 2004 GAO report really
7 validated what we were suggesting to the Department of
8 Defense, that as an office, that there should be one
9 portal between DoD and VA to transition the
10 information of individuals and what they were exposed
11 to, and we offered Force Health Protection and
12 Readiness to be that to the Department of Defense, and
13 that was part of the deal that was struck with
14 acquisition technology and logistics because they were
15 the existing agency today at that time when that
16 report came out that was involved with chem-bio
17 testing and research in the Department of Defense back
18 from, essentially, World War II forward.

19 So that really was the foundation for the
20 contract with Battelle.

21 Q. Who were the GAO representatives that were in 11:19:54
22 your office for -- I think you said for approximately
23 a year?

24 A. You know, I don't remember their names. I'm
25 sure they're on the GAO report.

1 THE WITNESS: There may have been multiple
2 letters. I think for SHAD, for example, there were
3 letters for specific tests that were developed and
4 fact sheets for individual tests. And so there was
5 much more ability to individualize because we knew
6 what the location was of the individuals that were
7 identified. For these other chem tests in particular,
8 it's a little bit more generic. And so I think that
9 the personalization of the letters were in the
10 categories of Mustard-Lewisite, chem-bio, and there
11 would be more general information.

12 Part of the issue was, particularly on the
13 chemical side, there was so many various chemicals
14 used, and trying to put that in a single letter to
15 people couldn't personalize it, almost too much
16 information, and so those letters would say, you know,
17 "Please call us for specific information in your
18 case."

19 BY MR. ERSPAMER:

20 Q. Okay. And do you recognize these exposure 13:27:22
21 locations as locations that were encompassed within
22 the Mustard Gas portion of the Mustard Gas database?

23 MR. GARDNER: Objection. Beyond the scope of the
24 Rule 30(b)(6) deposition notice.

25 THE WITNESS: These are sites that have been

1 research facilities. I think that under the chemical
2 side, that is separate, and it would be a sponsoring
3 agency, if you would. So I think that it leaves it
4 open, not to just one specific research area but
5 wherever that research may be done.

6 BY MR. ERSPAMER:

7 Q. And I think I probably know the answer to 15:35:17
8 this, but have you seen any approval documents with
9 respect to the secretary of the Army's approval of any
10 specific proposal for human research?

11 MR. GARDNER: Objection. Beyond the scope of the
12 Rule 30(b)(6) deposition notice.

13 THE WITNESS: No, I've not seen any of those
14 documents, nor did I search for those.

15 BY MR. ERSPAMER:

16 Q. Okay. Now, returning to Paragraph 2 -- a.(2) 15:35:41
17 of Exhibit 96-A on the first page, with respect to the
18 topic of consent. It says, first of all, you'll see
19 that "the human subject shall be in writing," and then
20 at the end of that sentence it says that the consent
21 "shall be signed in the presence of at least one
22 witness who shall attest to such signature in
23 writing."

24 Have you ever seen a consent form with
25 respect to a participant in a human experimentation

1 which was witnessed by someone who signed it?

2 MR. GARDNER: Objection. Beyond the scope of the
3 Rule 30(b)(6) deposition notice.

4 THE WITNESS: Yes, I have, and most often the
5 witness tends to be the researcher who is explaining
6 the study to the individual. So -- and in preparing
7 for this, I've looked at documents from Edgewood of
8 informed consent forms as we discussed and looked at
9 yesterday, signed by the individual participant and
10 signed by another individual that was my presumption
11 was the researcher.

12 BY MR. ERSPAMER:

13 Q. And are those consent documents part of any 15:37:30
14 of the records that you maintain, such as a database
15 and related documents?

16 A. Those records have not been maintained by
17 Force Health Protection and Readiness. They are
18 actually maintained at the research facility. We have
19 documents from Mr. Lloyd Roberts is his name who has
20 provided those documents to individuals when they've
21 written him under a FOIA, Freedom of Information Act,
22 request or a request for documents of what is it that
23 they were exposed to during their research. His
24 comments were that he has done a large number of
25 these. I don't have a specific number. I'd have to

1 BY MR. ERSPAMER:

2 Q. Well, isn't it a fact that the VA commented 09:43:54
3 on the fact sheet?

4 A. We would share that and allow them to
5 comment. But, again, since it's our fact sheet, it
6 would be our final decision on what would be there.

7 Q. And it was you who communicated the DoD's 09:44:05
8 views about the fact sheet back to the Department of
9 Veterans' Affairs; right?

10 A. You know, there were a lot of back-and-forth.
11 I'm not sure I specifically remember. If there's an
12 E-mail that says that, then certainly -- I mean I know
13 I communicated a lot with them. There were others who
14 also worked these issues. So I wasn't the only one.

15 Q. We'll go back to that, but the third 09:44:30
16 paragraph has highlighted on the two words "low dose
17 exposures."

18 A. Uh-huh.

19 Q. Do you remember insisting to the Department 09:44:45
20 of Veterans' Affairs that the fact sheet used the
21 words, the term "low dosage" in front of "exposures"?

22 A. I can't specifically remember that
23 insistence, but I know that I was -- you know, we had
24 a lot of dialogue about what constitutes a low dose.
25 It wasn't just for chem-bio areas, but it was for

1 multiple other exposure levels, and I think that as we
2 talk about low dose, a lot of that was derived from my
3 talking with researchers who were involved with
4 chemical and biological exposures, asking particularly
5 as they were looking for what were effects of agents,
6 as you do animal studies, low dose are those that
7 cause effect but do not have a lethal dose effect on
8 the animal, and that, I think, is a definition. We
9 had some dialogue. I was trying to stay with the
10 scientific definition of low doses that was used by
11 researchers of the chemical-biological area.

12 BY MR. ERSPAMER:

13 Q. Well, as a matter of fact, you never reviewed 09:46:03
14 the dose information of the actual doses administered
15 to participants in the chem-bio tests as of the time
16 this letter was written?

17 MR. GARDNER: Objection. Vague. Are you asking
18 as a 30(b)(6) designee, "you" meaning the Department
19 of Defense or he as --

20 BY MR. ERSPAMER:

21 Q. No. I'm asking you as an individual. At the 09:46:26
22 time the fact sheet was prepared in 2006, you had not
23 actually reviewed the actual doses of the -- relating
24 to the participants in the chem-bio tests; correct?

25 A. I had not seen the documents that I read in

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1 60,000 people.

2 BY MR. ERSPAMER:

3 Q. Did you, at any time before this fact sheet 09:49:23
4 was compiled, actually go through all the available
5 exposure records relating to participants in the
6 chem-bio experiments including Mustard Gas and
7 Lewisite?

8 MR. GARDNER: Objection. Vague. And, once
9 again, Mr. Erspamer, do you mean Dr. Kilpatrick as an
10 individual or DoD?

11 MR. ERSPAMER: It's very clear. "You."

12 MR. GARDNER: No, that's not clear. Okay. Then
13 I will object to the extent you're asking as an
14 individual. Lack of foundation. To the extent you're
15 asking as DoD, go ahead.

16 THE WITNESS: Again, the documents that were
17 looked at by me at the time that this fact sheet was
18 prepared certainly was the information that we had
19 from the Project 112/SHAD database, and I was very
20 familiar with that and had looked at all those
21 pertinent documents.

22 As we took a look at the Edgewood data, it
23 really was the Institute of Medicine studies that I
24 had looked at in understanding those health effects,
25 and that's why that reference is certainly in here.

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1 This was a point where we were working and had an
2 approximate number of 7,000. I certainly did not have
3 all of the records to provide to the VA, but that was
4 a fact sheet that was being developed for that
5 purpose.

6 BY MR. ERSPAMER:

7 Q. Had you personally reviewed any of the 09:50:46
8 results of the animal tests regarding the test
9 substances at the time the fact sheet was prepared?

10 A. I had not looked at the animal testing, no.

11 Q. Were you aware from any source that the 09:51:02
12 EA-3167, which is a BZ variant test in lab animals,
13 had resulted in deaths?

14 MR. GARDNER: Objection. Vague. Objection to
15 the extent it mischaracterizes the evidence.

16 THE WITNESS: Again, in talking to -- and I would
17 have to go back and look at some of the documents I
18 have. I talked with a senior researcher, director of
19 research who was involved with chemical-biological
20 testing, particularly in animals, and I was really
21 told very clearly that studies would start with a dose
22 that would essentially produce death in those animals.
23 That's considered high dose.

24 They would then move down where there was
25 not an LD-50, and they would, you know, not try to

1 bother doing research where there was no effect on the
2 animal. So low dose, as I said, the scientific
3 definition of that is getting at those areas below the
4 LD-50.

5 BY MR. ERSPAMER:

6 Q. Where is that scientific definition laid out 09:52:19
7 with respect to low dose that you just described?

8 A. Again, that is in the documents in the
9 research papers that were produced by researchers
10 working these issues, and I could work to try to find
11 those for you, but their operational definition is
12 that high dose is one that has an LD-50. Low dose is
13 things below that.

14 Q. And as you sit here today, you can't identify 09:52:55
15 any specific documents which define low dose in the
16 fashion you just described; correct?

17 MR. GARDNER: Objection. Mischaracterizes
18 Dr. Kilpatrick's prior testimony.

19 THE WITNESS: No. There are research papers
20 which I reviewed that had to do primarily with anthrax
21 and botulism because that was an area of concern and
22 as we were looking at high dose versus low dose
23 exposures, those were the operational definitions in
24 those research papers.

25 BY MR. ERSPAMER:

1 MR. ERSPAMER: His service file or VA file.

2 MR. GARDNER: Objection. Compound.

3 THE WITNESS: I can tell you I've not reviewed
4 any VA files of any individuals. The individuals that
5 I looked at were in the binder, and as I said, I
6 wasn't looking for names. I was looking for content
7 of the information.

8 BY MR. ERSPAMER:

9 Q. Let's look at this letter in a little more 13:40:14
10 detail.

11 A. Uh-huh.

12 Q. On "Information About the Tests," the first 13:40:20
13 sentence says, "The tests at Edgewood Arsenal exposed
14 participants, with their consent, to a number of
15 different chemicals." Was there disagreement or
16 discussion about using the statement "with their
17 consent" in this letter?

18 MR. GARDNER: Objection. Vague.

19 THE WITNESS: Again, we were trying to reflect
20 what we had documentation of, and at that point we had
21 the consent form signed by individuals. So I think
22 that's why that was included.

23 BY MR. ERSPAMER:

24 Q. Okay. You were aware that various government 13:40:58
25 entities had made determinations as of 2006, this

1 point in time in 2006, that there had not been
2 informed consent, were you not?

3 MR. GARDNER: Objection. Mischaracterizes the
4 record.

5 THE WITNESS: Again, reviewing the records that I
6 saw, it was an informed consent form that had been
7 signed. This says, "with their consent," not informed
8 consent. So maybe there's some wordplay here, but I
9 think that the focus was whether they were knowingly
10 involved or not.

11 BY MR. ERSPAMER:

12 Q. Were you aware of a point in time when 13:41:43
13 General Creasy issued an order requiring various Army
14 organizations to produce a quota of volunteers every
15 month for the tests?

16 A. I'm not aware of that order. I know that
17 there was recruiting processes that went on for
18 volunteers.

19 Q. Were you aware there came a point in time 13:42:08
20 where they could not get enough volunteers and a quota
21 was imposed?

22 MR. GARDNER: Objection. Compound.

23 THE WITNESS: No, I'm not.

24 BY MR. ERSPAMER:

25 Q. Why was -- let me ask it a different way. 13:42:39

1 Q. And in the second paragraph, the language 13:56:09
2 about participants being exposed "with their consent,"
3 does the appearance of that same language in the DoD
4 fact sheet cause you to rethink your earlier testimony
5 that that came from the VA rather than from the DoD?

6 MR. GARDNER: Objection. Lack of foundation.

7 THE WITNESS: I think developing this fact sheet
8 would be based upon the information available to the
9 Department of Defense. Again, looking at the tests
10 and the individuals we were able to identify, there
11 was a signed informed consent. So that's why that was
12 inserted there.

13 BY MR. ERSPAMER:

14 Q. Are you aware that the defendants in this 13:56:59
15 case have dropped their affirmative defense of
16 consent --

17 MR. GARDNER: That's based upon the fact --

18 MR. ERSPAMER: -- in the pleadings?

19 MR. GARDNER: And that's because informed consent
20 is not in this case anymore. The courts dismissed
21 that claim.

22 THE WITNESS: I'm not aware of that. I'm just
23 talking to --

24 MR. ERSPAMER: Thanks for your testimony,
25 Counsel.

1 blinded studies so that there would not be bias
2 introduced by a patient knowing what they were getting
3 or knowing what that side effect would be to either
4 augment or decrement the expression of experiencing
5 those events.

6 So I think we're in agreement here that
7 there wasn't that kind of information given. I don't
8 know what the decision points were for the researcher
9 to either divulge or not divulge that.

10 BY MR. ERSPAMER:

11 Q. When you reviewed the Army inspector general 14:05:05
12 report, did you see any criticism of the consent
13 procedures?

14 A. Yes, I think there were criticisms of that.
15 There have been criticisms of it as this has been
16 looked at in a retrospective way, and I think that by
17 today's standards, those informed consent forms would
18 never pass a human use committee.

19 Q. With respect to these letters -- I believe I 14:05:44
20 just asked you generally -- did you have procedures in
21 place for handling responses you may get back from the
22 veterans who received these letters, such as
23 Exhibit 160?

24 A. I can't speak for VA. I don't know. I know
25 that the area that this was directed to in Force

1 Health Protection and Readiness had a call center
2 where a number was -- that they could talk to an
3 individual, information collected. There was also a
4 website for them to ask questions and to have
5 response. That process was in place then, and it's in
6 place today.

7 Q. And you acknowledge, do you not, that there 14:06:30
8 were some veterans who claimed that they had
9 participated in the tests, chemical and biological
10 tests, for which DoD was unable to find or the Army
11 were unable to find records; correct?

12 A. Yes, that's true. I mean people have said,
13 "I was in this test," and we cannot find documentation
14 that they were. That's not meant to be DoD saying
15 they were not. It's just we can't find documentation
16 they in fact were.

17 Q. And DoD/Army acknowledged that some of the 14:07:00
18 records of the tests were lost or misplaced at some
19 point in time?

20 MR. GARDNER: Objection. Lack of foundation.

21 THE WITNESS: I think explanations would be so
22 variable, depending on where those records should have
23 been stored, could have been stored. So whether they
24 were lost, I mean I know we talked earlier about the
25 fire in St. Louis. Whether there were in fact

1 that -- granted, it's a draft, but that wasn't
2 accurate either, was it?

3 A. Again, this was built upon the information
4 that we had in trying to gather, again, names and
5 exposures, and that was without looking at the medical
6 records that were present at Edgewood.

7 Q. It doesn't give any indication that the 15:17:10
8 search of medical records was incomplete, does it?

9 A. No, it doesn't explain that.

10 Q. And it doesn't explain that the flashback 15:17:18
11 information was available in the scientific reports
12 generated at the time from Edgewood; correct?

13 A. Correct.

14 Q. I may have asked you this before, but having 15:17:41
15 looked at this, do you have any better idea who
16 actually drafted this Edgewood Arsenal chemical agent
17 exposure studies fact sheet?

18 MR. GARDNER: Objection. Asked and answered.

19 THE WITNESS: I don't know -- if you take a look
20 at -- as you said, you were comparing it to the fact
21 sheet in Exhibit 160. It's quite a bit longer. It
22 has a lot of other information in it. It's nearly two
23 full pages compared to one. Normally, fact sheets, we
24 try to get to one page so as not to provide too much
25 confusing or extraneous information for individuals.

1 And so I think that this probably would have
2 been written by the people involved in doing the
3 investigation led by Dee Morris. Whether she, Roy
4 Finno, or others wrote it, I don't know for sure.
5 Obviously, going through a process and then getting it
6 trimmed down from a risk communication standpoint and
7 then having it looked at by communicators to make sure
8 that it's at the right grade level, which normally, we
9 try to shoot for about fifth or sixth grade grade
10 level so it's understandable. So, no, I don't know
11 who wrote this.

12 MR. ERSPAMER: Okay. The last sentence of
13 Exhibit 463 on the second page, it says, "Once the
14 database is developed, the DoD will provide the
15 database to the Department of Veterans' Affairs so
16 they may notify veterans of their exposures and the
17 availability of VA medical care, if needed."

18 Q. Was your intent at this time to provide the 15:19:21
19 entire database to the VA?

20 A. Our intent from the beginning with Project
21 112/SHAD and through this was to provide the VA with
22 information as we got it so that it -- we would not
23 wait to be complete. We realized it might be a two-,
24 three-, four-year process. And so if we had 100 names
25 at the beginning, we would want to provide that and

1 about mental health effects. It might be good to just
2 look back at it for a second. It's Exhibit 160.

3 A. Right.

4 (The witness reviewed Exhibit 160.)

5 BY MR. ERSPAMER:

6 Q. I can't remember where it was or if it was in 16:21:12
7 the other document. Let me see here.

8 (Pause in proceedings.)

9 MR. ERSPAMER: Well, actually, I'm not finding
10 it. It might have been in the draft.

11 Q. Did the final letter have any disclosure or 16:21:22
12 treatment of mental health effects with respect to
13 participation in the chemical-biological tests?

14 A. And as I read this and others, it's much more
15 generic if you have health concerns and not
16 specifically physiological versus psychological.

17 Q. We saw -- we don't need to repeat this, but 16:21:49
18 we saw there was a specific statement about mental
19 health effects in one of the drafts of the notice
20 letter -- correct? -- earlier today?

21 A. I think that was, perhaps, in the fact sheet
22 that was being developed, yes.

23 Q. And why was it taken out of the final? 16:22:07

24 MR. GARDNER: Objection to the extent it calls
25 for speculation.

1 THE WITNESS: Again, on the fact sheet, as I said
2 at the time we were discussing it, that the goal was
3 to get it to one page with as clear information as
4 encouraging the recipient to contact VA and make an
5 appointment to be evaluated. There was no attempt to
6 try to withhold information but to encourage people to
7 seek care, and I think that's why in the notification
8 letter any health concerns was the focus. There's
9 still a tremendous stigma against seeking care for
10 psychological health issues.

11 BY MR. ERSPAMER:

12 Q. In your view, would leaving out the mental 16:22:56
13 healthcare area help or hinder the stigma factor?

14 A. I think our experience in DoD has been over
15 the last 10 years, encouraging healthcare seeking
16 behavior for any medical problem has been helpful, and
17 to encourage that to be done in the general medical
18 setting rather than a specialized mental health or
19 behavioral health setting has been very helpful. The
20 Army won't even use the term "mental health." It's
21 "behavioral health."

22 Q. Was there discussion of the issue of whether 16:23:40
23 or not the final notice letter ought to or ought not
24 to include specific discussion of mental healthcare
25 effects, participation in the chemical and biological

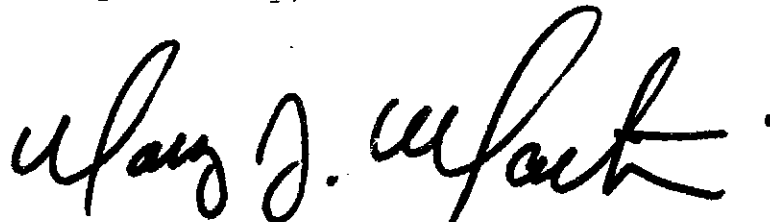
1 I, NANCY J. MARTIN, CSR No. 9504, do hereby
2 certify:

3 That the foregoing deposition testimony of
4 MICHAEL E. KILPATRICK, M.D., was taken before me at
5 the time and place therein set forth, at which time
6 the witness, in accordance with CCP Section 2094, was
7 placed under oath and was sworn by me to tell the
8 truth, the whole truth, and nothing but the truth;

9 That the testimony of the witness and all
10 objections made by counsel at the time of the
11 examination were recorded stenographically by me, and
12 were thereafter transcribed under my direction and
13 supervision, and that the foregoing pages contain a
14 full, true and accurate record of all proceedings and
15 testimony to the best of my skill and ability.

16 I further certify that I am neither counsel for
17 any party to said action, nor am I related to any
18 party to said action, nor am I in any way interested
19 in the outcome thereof.

20 IN WITNESS WHEREOF, I have subscribed my name
21 this 21th day of July, 2011.

22
23 A handwritten signature in black ink, appearing to read "Nancy J. Martin". The signature is written in a cursive, flowing style with a period at the end.

24
25 Nancy J. Martin, CSR No. 9504

Exhibit 6



DEPARTMENT OF VETERANS AFFAIRS
Veterans Health Administration
Washington DC 20420

IL 10-2006-010

In Reply Refer To: 13

August 14, 2006

UNDER SECRETARY FOR HEALTH INFORMATION LETTER

POTENTIAL HEALTH EFFECTS AMONG VETERANS INVOLVED IN
MILITARY CHEMICAL WARFARE AGENT EXPERIMENTS
CONDUCTED FROM 1955 TO 1975

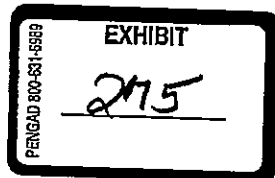
1. This Under Secretary for Health's Information Letter (IL) provides information to clinicians who examine and provide care to veterans who may have been exposed to various chemical warfare agents as part of human experiments conducted by the Department of Defense (DOD) from 1955 to 1975.

2. Background

a. On June 30, 2006, the Veterans Benefits Administration (VBA) released the first in a series of notification letters to DOD-identified veterans who were exposed to chemical warfare and related agents as test subjects in military experiments. These experiments took place primarily at military facilities in Edgewood, MD, from 1955 to 1975. The letter informs veterans of benefits to which they may be entitled and advises them to discuss any health concerns they may have with their VA health care providers.

b. The United States (U.S.) military has had an active chemical warfare program since World War I that included experiments using "soldier volunteers" to test protective clothing and masks, and the potential impact of chemical warfare agents on military personnel. In earlier experiments concluded by the end of World War II, about 60,000 U.S. service members had been experimentally exposed to mustard and Lewisite blister agents. *NOTE: Veterans Health Administration (VHA) policy, historical background and relevant clinical information on the military mustard and Lewisite experiments, is available at: http://www.va.gov/EnvironAgents/docs/USHInfoLetterIL10-2005-004_March_14_2005.pdf.*

c. More recently, the focus has been on experiments conducted by DOD with a wide range of newer chemical warfare agents, conducted at the U.S. Army Laboratories, Aberdeen Proving Ground, Edgewood, MD (Edgewood-Aberdeen) and other military facilities, from about 1955 to 1975. Potential long-term health effects among the veterans affected by these experiments are the focus of the current VBA outreach letter writing campaign.



RFP 5

VVA-VAJ09880

00169

VET001_015606

VVA-VA 009880

IL 10-2006-010
August 14, 2006

d. The Edgewood-Aberdeen experiments involved at least 6,700 "soldier volunteers" exposed from about 1955 to 1975 to more than 250 different agents. The agents tested involved about half a dozen pharmacological classes, including common approved pharmaceuticals or similar compounds, anticholinesterase nerve agents (e.g., sarin and common organophosphorus (OP) and carbamate pesticides), glycolate anticholinergic agents (e.g., nerve agent antidotes atropine and scopolamine), nerve agent reactivators (e.g., the common OP antidote 2-PAM [2-pyridine aldoxime methyl chloride] and related compounds), psychoactive compounds (e.g., LSD [D-lysergic acid diethylamide] and PCP [phencyclidine]), cannabinoids (related to the active ingredient of marijuana), and irritants (e.g., tear gases). Although records are poor and often incomplete, some veterans were exposed only to placebos such as saline, or other common substances such as alcohol or caffeine.

e. Originally conducted in secret, there is a great deal of information today describing these experiments in open literature, including congressional hearings, media accounts, and reviews and epidemiological studies from scientific organizations, including the National Academy of Sciences and others. Importantly, DOD has declassified many of the details of these experiments that are relevant to benefits claims of the veterans who participated.

f. Although no longer secret, many health care providers are not aware of this history and how these experiments may have affected the health of veteran patients today. This Under Secretary for Health Information Letter is intended to inform health care providers who may see such veterans as patients.

3. Guidance

a. VA health care providers can be assisted when they are providing care to veterans who may have been exposed to chemical warfare agents as part of human experiments conducted by DOD, by referring to www.va.gov/EnvironAgents/docs/Fact_Sheet_Edgewood-aberdeen_Chemical_Agent_Experiments_Information_Paper.pdf. There are no tests available today that can confirm exposure to these agents decades in the past. Therefore, medical care providers need to focus upon the current health of the veteran, *i.e.*, taking a thorough military and medical history, including information on participation in chemical warfare agent experiments, along with a basic medical examination that includes appropriate laboratory tests relating to the veteran's complaints and medical findings. *NOTE: A VA pocket card on taking a military service history is available at www.va.gov/oa/pocketcard/.*

b. Review of the literature and VA policy (described more fully at www.va.gov/EnvironAgents/docs/Fact_Sheet_Edgewood-Aberdeen_Chemical_Agent_Experiments_Information_Paper.pdf) does recognize a number of illnesses as presumptively service-connected among veterans with "full-body" exposure to mustard agents (used in some of the Edgewood-Aberdeen experiments) and Lewisite (used in early experiments through the end of World War II), which should be considered during a medical examination. These include:

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(1) Chronic conjunctivitis, keratitis, corneal opacities, scar formation, or the following cancers: nasopharyngeal, laryngeal, lung (except mesothelioma), or squamous cell carcinoma of the skin (from exposure to nitrogen and sulfur mustard agents only).

(2) Chronic laryngitis, bronchitis, emphysema, asthma or chronic obstructive pulmonary disease (from exposure to nitrogen and sulfur mustard agents and to Lewisite).

(3) Acute non-lymphocytic leukemia (from exposure to nitrogen mustard only).

c. Veterans need to be informed that seeking care for conditions possibly related to exposure to mustard agents and Lewisite does not constitute a claim for compensation, although the findings of clinical examinations can aid in the adjudication of compensation claims. *NOTE: Veterans wishing to file a compensation claim need to be referred to a Veterans Benefits Counselor, or be advised to contact the appropriate VA Regional Office at 1-800-827-1000.*

d. Treatment of the diseases VA presumes to be from the long-term consequences of mustard agents and Lewisite exposure, such as bronchitis, cataracts, etc. is the same as the treatment of those same diseases from other causes.

e. VA does not presumptively recognize any long-term health consequences from exposure to other classes of agents tested in the Edgewood-Aberdeen experiments including conventional pharmaceuticals, anticholinesterase nerve agents such as sarin and common organophosphorus pesticides, glycolate anticholinergic agents such as atropine and scopolamine, nerve agent reactivators such as 2-PAM, psychoactive compounds such as LSD and PCP, cannabinoids, or irritants such as tear gases. However, specific health problems may be linked to service-related chemical exposures on an individual basis when there is evidence of a causal link to military service.

f. Review of the literature (described in the document "Chemical Warfare Agent Experiments Among U.S. Service Members," available at www.va.gov/EnvironAgents/docs/Fact_Sheet_Edgewood-Aberdeen_Chemical_Agent_Experiments_Information_Paper.pdf) indicates that many veterans involved in the Edgewood-Aberdeen experiments exhibited signs and symptoms of acute toxicity when experimentally exposed to these agents. Available evidence and follow-up study in general does not support significant long-term, physical harm among subjects exposed to acutely toxic amounts of these agents other than mustard agents and Lewisite. Long-term psychological consequences, however, are possible from the trauma associated with being a human test subject. Consequently, veterans presenting with health concerns should be handled on a case-by-case basis, supported by the relevant history, relevant epidemiological evidence and clinical information for long-term health concerns related to these experiments and described in the on-line document.

g. For more information, veterans can be informed about DOD's hotline number at 1- 800-497-6261, which is also included in the letter that they are receiving from VBA.

3

RFP 5

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4. Contact. Questions regarding this information letter may be addressed to the Environmental Agents Service (131) at (202) 273-8579.

Michael J. Kussman, MD, MS, MACP
Acting Under Secretary for Health

DISTRIBUTION: CO: E-mailed 8/15/06
FLD: VISN, MA, DO, OC, OCRO, and 200 – E-mailed 8/15/06

Exhibit 7

From: Brown, Mark A \ (VHACO\) [mbrown1@va.gov]
Sent: Monday, July 10, 2006 9:33:28 AM
To: "Kelley Brix/CTR/OSAGWI"
CC: "Kilpatrick, Michael"; "Larry Sipos/CTR/OSAGWI"; "Dee Morris/OSAGWI"; "Roy S. Finno/CTR/OSAGWI"
Subject: RE: DoD review of Under Secretary Letter and Attachment related to veterans who were in chemical tests at Edgewood, 1955-1975

A major rewrite is unlikely since the letter writing campaign has already started, but thanks very much for the input!

Mark Brown

-----Original Message-----

From: Kelley Brix/CTR/OSAGWI
[mailto:Kelley.brix.CTR@deploymenthealth.osd.mil]
Sent: Friday, July 07, 2006 5:56 PM
To: Brown, Mark A (VHACO)
Cc: Kelley Brix/CTR/OSAGWI; Kilpatrick, Michael; Larry Sipos/CTR/OSAGWI;
Dee Morris/OSAGWI; Roy S. Finno/CTR/OSAGWI
Subject: DoD review of Under Secretary Letter and Attachment related to veterans who were in chemical tests at Edgewood, 1955-1975

Mike Kilpatrick asked Dee Morris and me to review the VA Under Secretary for Health Information Letter and Attachment A, related to veterans who were involved in the chemical testing at Edgewood in 1955-1975. Roy Finno, who works for Ms. Morris, and I carefully reviewed both documents.

We found several recurrent issues with the cover letter and the attachment.
We suggest that a major rewrite is required.

Two documents are attached. The first is a list of major comments on recurrent issues with the letter and attachment. Most importantly, a major reorganization of the attachment is recommended. The second document is a revised version of the cover letter, including track changes.

We would be pleased to review another draft of these documents, if Mark Brown has adequate time.

We also reviewed Attachment A, and can discuss it with Mark, if he desires.
My number is 703-575-2671.

(See attached file: USH Info Letter Edgewood-Aberdeen DoD review July 7 2006.doc)

(See attached file: rev VA USH Information Letter and Attachment A July 7 06.doc)



Exhibit 8

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

VIETNAM VETERANS OF)
AMERICA, et al.,)
Plaintiffs,)
vs.) Case No.
CENTRAL INTELLIGENCE) CV 09-0037-CW
AGENCY, et al.,)
Defendants.)

INDIVIDUAL AND 30(b)(6) Deposition of
JOE SALVATORE, taken at 2000 Pennsylvania
Avenue Northwest, Washington, DC, commencing
at 8:56 a.m., Wednesday, June 29, 2011,
before Julie Baker, RPR CRR, Notary Public.

PAGES 1 - 237

1 Q Do you know what year that was?

2 A I can't recall the specific year as I was
3 working on multiple chemical and biological agent
4 portfolios.

5 Q Do you recall when you first heard about
6 the prospect of providing some sort of notice to
7 veterans who participated in chemical and biological
8 testing?

9 MS. FAREL: Counsel, are you asking the
10 deponent in his individual capacity when he heard or
11 when VA heard?

12 MS. O'NEILL: In his individual capacity
13 when he heard.

14 THE WITNESS: Can you define "prospect"
15 for me?

16 BY MS. O'NEILL:

17 Q When did you hear that the VA might
18 provide notice to such veterans?

19 A There was never --

20 MS. FAREL: Objection; vague.

21 MS. O'NEILL:

22 Q Throughout the deposition, it might be
23 that Ms. Farel objects to certain questions. I'm
24 going to have you go ahead and answer the question.
25 I might restate the question, but I'd ask you to go

1 ahead and answer the question. I'll repeat it.

2 A Go ahead.

3 Q When did you first hear that the VA might
4 provide some sort of notice to veterans who had
5 participated in chemical and biological testing?

6 A There was never a question that the
7 Department of Veterans Affairs would not provide
8 notification.

9 Q When was it first discussed that the VA
10 would provide notification to them?

11 MS. FAREL: Objection; vague.

12 BY MS. O'NEILL:

13 Q Go ahead and answer. Should a restate the
14 question?

15 A Please do.

16 MS. O'NEILL: Can you restate it.

17 (Record read by the court reporter as
18 follows: "Q: When was it first discussed
19 that the VA would provide notification to
20 them?")

21 THE WITNESS: VA had been working on a
22 series of chemical and biological agent portfolios.
23 As mentioned earlier, there was never a question
24 that VA was going to provide. When there were a
25 series of meetings between the Department of

1 Veterans Affairs and the Department of Defense
2 regarding the possession -- DOD's possession and
3 potential declassification of the Edgewood Arsenal
4 database, that is when it was discussed.

5 BY MS. O'NEILL:

6 Q To confirm, this testing happened -- there
7 was testing that occurred in the 1950s, the 1960s
8 and the 1970s, testing on veterans --

9 A Testing on service members.

10 Q Sorry, on service members. Thank you for
11 the correction. Between 1950, 1960 and 1970 and
12 2005, was there notice provided to these veterans by
13 the VA about the testing that they participated in?

14 A You said between those decades.
15 Obviously, the period in question is from 1955 to
16 1975.

17 Q Prior to 2005, was notice provided to the
18 chem/bio veterans?

19 MS. FAREL: Objection; vague.

20 THE WITNESS: Can you clarify chem/bio
21 veterans as there are multiple programs that are
22 being discussed.

23 BY MS. O'NEILL:

24 Q I'm interested in learning whether the VA
25 provided notice to veterans who participated in

1 chemical and biological testing from 1955 to 1975?

2 MS. FAREL: I'm going to object to that
3 question to the extent it exceeds the scope of the
4 30(b)(6). I believe the 30(b)(6) is only asking
5 about those participants and the DOD era testing of
6 1955 to 1975. To the extent your question asks
7 about notification to soldiers who participated in
8 other testing programs, I would object to that as
9 beyond the scope.

10 BY MS. O'NEILL:

11 Q I'll ask you to go ahead and answer the
12 question, though.

13 A Could you rephrase it.

14 Q Did the VA provide notice to veterans who
15 participated in chemical and biological testing that
16 occurred from 1955 to 1975, did the VA provide
17 notice to these veterans prior to 2005?

18 MS. FAREL: Again, I'm going to object as
19 being outside the scope of the 30(b)(6) notice.

20 BY MS. O'NEILL:

21 Q Since I'm deposing you also in your
22 individual capacity, please answer the question.

23 A Upon receipt of declassified rosters from
24 the Department of Defense, which received in pushes,
25 not batches, the Department of Veterans Affairs

1 conducted a series of events that resulted in the
2 release of notification letters to veterans, again,
3 DOD identified veterans who were allegedly exposed
4 to some substance during their active military
5 service.

6 Q Prior to the declassification, did the VA
7 provide notice to those veterans?

8 MS. FAREL: Again, I'm going to object to
9 that question as being outside the scope of the
10 30(b)(6) or frankly the topic of this lawsuit to the
11 extent you're asking about tests that DOD may have
12 performed that are outside the scope of the lawsuit.

13 BY MS. O'NEILL:

14 Q Mr. Salvatore, to make sure it's clear,
15 Ms. Farel will make an objection. It's noted for
16 the record. That's important down the line. But
17 for the purposes of this deposition, please go ahead
18 and answer the question even if she objects.

19 A I'm going to ask you to repeat the
20 question once again.

21 Q Prior to the time that the Department of
22 Defense declassified information, did the VA notify
23 veterans who participated in the chemical and
24 biological testing that occurred between 1955 and
25 1975?

1 THE WITNESS: The Department of Defense
2 and the Department of Veterans Affairs had
3 communications prior to 2006 on a variety of
4 chemical and biological agent declassification
5 efforts. To answer your question, there were
6 discussions prior to 2006, but they obviously were
7 for many programs.

8 BY MS. O'NEILL:

9 Q Did the VA begin to send letters to
10 veterans who participated in biological and chemical
11 testing in the -- from 1955 to 1975, did the VA
12 begin to provide or send notice letters to these
13 veterans in 2006?

14 MS. FAREL: Are you asking him in his
15 individual capacity still?

16 MS. O'NEILL: No, 30(b)(6).

17 BY MS. O'NEILL:

18 Q Let's move back to 30(b)(6) territory,
19 which means you'll be speaking for the agency.

20 A For the veterans who are identified as
21 having been participants in Edgewood Arsenal Testing
22 Program between 1955 and 1975, VA issued its first
23 communications to select participants in February of
24 2006.

25 Q Why did the VA begin to provide -- strike

1 that. Why did the VA begin to send letters to --

2 A I'm sorry. I have to change the date.
3 The date was June 2006.

4 Q Okay. Thank you. Why did the VA begin to
5 send letters to veterans who had participated in
6 chemical and biological testing at that time?

7 A The answer is twofold. First, the
8 department had an established practice to notify
9 veterans upon receipt of declassified information
10 and conduct the necessary activities, which resulted
11 in the notification of veterans who were allegedly
12 exposed to chemical and biological agents.

13 Second, there were discussions with the
14 House Veterans Affairs Committee and several other
15 entities which resulted in the delivery of the
16 initial notification letters to this cohort before
17 July 4, 2006. That delivery occurred in late June
18 2006.

19 Q Do you know why the Department of Defense
20 began declassifying information related to the
21 testing?

22 MS. FAREL: Counsel, are you asking him in
23 his 30(b)(6) capacity or in his individual capacity?

24 MS. O'NEILL: I think this relates to the
25 30(b)(6) topic.

1 THE WITNESS: As you know, the Department
2 of Defense routinely declassifies information. With
3 respect to the chemical and biological agent
4 exposures, there had been a history of declassifying
5 information. There was also a history of the
6 General Accounting Office, GAO, Government
7 Accountability Office -- they had two names at the
8 time -- to encourage DOD to hasten the
9 declassification of those data sets.

10 BY MS. O'NEILL:

11 Q Did the VA ever request that the
12 Department of Defense declassify information
13 regarding the testing that occurred in 1950s, '60s
14 and '70s?

15 A Are you speaking collusively 1955 to 1975?

16 Q Correct, 1955 to 1975.

17 A The Department of Veterans Affairs and the
18 Department of Defense had a collaborative
19 relationship with respect to ongoing communications
20 to encourage and facilitate the Department of
21 Defense's release of these data sets for that
22 particular and other cohorts.

23 Q Did the Department of Defense request that
24 the VA provide notice to veterans?

25 MS. FAREL: Objection; vague.

1 THE WITNESS: As these individuals were no
2 longer service members, which is the jurisdiction of
3 the Department of Defense and were now veterans,
4 which under the jurisdiction of the Department of
5 Veterans Affairs, it was incumbent upon VA to
6 provide notification.

7 BY MS. O'NEILL:

8 Q Did the Department of Defense specify what
9 kind of notice the VA should provide to testing
10 veterans?

11 MS. FAREL: Objection; vague.

12 THE WITNESS: They did not communicate as
13 to whether it should be a digital, telephonic or
14 textual communication, no.

15 BY MS. O'NEILL:

16 Q Did they provide direction about the
17 contents of the notification?

18 MS. FAREL: Objection; vague.

19 THE WITNESS: The notification letter,
20 standardized notification letter that was issued to
21 the identified veterans for whom we had valid
22 addresses was constructed by the Department of
23 Veterans Affairs.

24 BY MS. O'NEILL:

25 Q To your knowledge, did the Department of

1 Defense ever request that the VA provide notice
2 regarding what substances the testing veterans were
3 exposed to during the testing that occurred between
4 1955 and 1975?

5 A During the discussion between the two
6 agencies, obviously with the content of the letter,
7 yes, we mentioned that they were exposed to
8 substances or agents.

9 Q Did the Department of Defense ever request
10 that the VA provide notice of the particular
11 substances that veterans were exposed to in the
12 notice letter?

13 A The VA provided a notification that
14 contained information that they were exposed to
15 substances and the letter also included the
16 Department of Defense's toll-free number, which was
17 placed there to have the participants contact the
18 DOD to get in-depth information regarding the
19 precise substances or agents that they were exposed
20 to.

21 Now, understand that not all participants
22 were exposed to agents or substances.

23 MS. FAREL: Counsel, do you have a copy of
24 a notification letter so we're all talking about the
25 same piece of paper?

1 MS. O'NEILL: Yes, I do. I'm going to
2 introduce it in just a few minutes. I want to ask
3 an additional question.

4 BY MS. O'NEILL:

5 Q Is it correct that the Department of
6 Defense provided the VA with a database of
7 information concerning testing information?

8 MS. FAREL: Objection; vague.

9 THE WITNESS: It is correct that the
10 Department of Veterans Affairs received declassified
11 information not in one fell swoop but in pushes or
12 incremental releases. It was done so because the
13 information had to be declassified. In that
14 database there was information relative to their
15 time at Edgewood Arsenal.

16 BY MS. O'NEILL:

17 Q I've seen that database referred to as the
18 CBRNE database. Are you familiar with that acronym?

19 A I am familiar with that acronym.

20 Q What does it stand for?

21 A Chemical, biological, radiation, nuclear
22 and explosives.

23 Q And the VA obtained information from that
24 database in order to send letters to veterans;
25 correct?

1 MS. FAREL: Objection; vague.

2 THE WITNESS: That is not correct. The
3 Department of Veterans Affairs received a
4 declassified data sets in pushes from the
5 department. It did not contain valid addresses.
6 Most importantly, it contained information that they
7 were -- that were personal identifiers. With that
8 in mind, VA utilized the identifiers to match
9 against records in its databases. From that
10 activity, addresses were secured and then
11 notification letters were issued.

12 BY MS. O'NEILL:

13 Q So the VA did obtain some information from
14 the CBRNE database despite the fact that the
15 information was not complete. They did receive some
16 information about the veterans and the testing from
17 that database; correct?

18 MS. FAREL: Same objection. It's vague.

19 BY MS. O'NEILL:

20 Q Go ahead and answer.

21 A The initial data set contained
22 approximately 1000 records, so yes, it was a portion
23 of the overall total.

24 Q Thank you. Do you know how the Department
25 of Defense decided -- strike that.

1 Do you know how the Department of Defense
2 decided to include veterans in the CBRNE database?

3 MS. FAREL: Objection; calls for
4 speculation. Are you asking him in his 30(b)(6)
5 capacity or in his individual capacity?

6 MS. O'NEILL: I think this relates to
7 30(b)(6).

8 MS. FAREL: I'll object to it as outside
9 the scope of the 30(b)(6).

10 THE WITNESS: I was not a participant in
11 the Department of Defense's efforts to declassify
12 the Vietnam data. That belongs to the Department of
13 Defense.

14 BY MS. O'NEILL:

15 Q Did you overhear a description of who was
16 included in the database specifically for what
17 period of time, what testing programs were covered
18 by the database?

19 MS. FAREL: Objection; vague. I'm not
20 sure I understand. Would you mind rephrasing for my
21 benefit?

22 BY MS. O'NEILL:

23 Q Sure. Do you know which testing programs
24 were included in the database?

25 MS. FAREL: Objection; vague.

1 THE WITNESS: We've established that the
2 data set contained exposures from 1955 to 1975,
3 those are the inclusive years. We've always
4 established that the testing was under the
5 auspices -- excuse me, was mainly conducted at
6 Edgewood Arsenal. Do you mind if I take a walk?

7 MS. O'NEILL: Sure. We'll take a short
8 break.

9 (Recess.)

10 MS. O'NEILL: I'm going to mark this
11 document as Exhibit 261.

12 (Exhibit 261 identified.)

13 BY MS. O'NEILL:

14 Q Mr. Salvatore, do you recognize this
15 document?

16 A Yes.

17 Q Did you prepare this document?

18 A No, I did not.

19 Q Do you know who prepared this document?

20 A I don't see the author's name on it.

21 Q Is it your understanding that this
22 document was prepared in the regular course of
23 business?

24 A Yes. It was a running time line.

25 Q I want to just bring your attention to a

1 few items. The title is "TIMELINE for CBRNE." What
2 does that mean?

3 MS. FAREL: Objection; vague.

4 THE WITNESS: One, I didn't craft the
5 title, so I can't talk to the true intent, but
6 obviously, seeing a list of dates and events that
7 are relative to CBRNE, it's my conclusion that is a
8 time line that discusses the history of the
9 Department of Veterans Affairs's efforts with the
10 CBRNE.

11 BY MS. O'NEILL:

12 Q Excellent. If you can look at the date,
13 June 30, 2006.

14 A Okay.

15 Q You had mentioned that the VA first sent
16 letters in June of 2006; is that correct?

17 A That is correct, to the Edgewood
18 Arsenal -- to the veterans identified in the
19 Edgewood Arsenal database.

20 Q Edgewood Arsenal database is the same
21 database as the CBRNE database?

22 A Those are synonymous, yes.

23 Q It looks like 58 letters were sent on June
24 30; is that correct?

25 A That is correct.

1 Q Let's jump down to July 31, 2006 --

2 MS. FAREL: Objection. Outside the scope
3 of the 30(b)(6) notice. Are you asking him in his
4 individual capacity?

5 MS. O'NEILL: In his individual capacity.

6 BY MS. O'NEILL:

7 Q As we move down this time line, you'll
8 speak in your individual capacity. July 31, 2006,
9 this time line says 1818 notification letters were
10 sent. Is that your recollection as well?

11 A I'm reading the entry which says CMP
12 service mailed 1818 notification letters, yes.

13 Q On September 14, 2006, 58 letters were
14 sent?

15 MS. FAREL: Objection; outside the scope
16 of the 30(b)(6) notice.

17 You can answer in your individual capacity
18 of what you personally know.

19 THE WITNESS: Based upon the entry here,
20 yes, VA mailed 58 notification letters.

21 BY MS. O'NEILL:

22 Q And then on March 17, this time line
23 indicates that another 758 notification letters were
24 sent and then on September 18, 2007, 338 additional
25 notification letters were sent?

1 MS. FAREL: Counsel, do you have a
2 question about those entries?

3 MS. O'NEILL: Yeah. It's coming.

4 MS. FAREL: Sorry.

5 BY MS. O'NEILL:

6 Q This time line indicates that from
7 September 18, 2007 until March 12, 2009, no letters
8 were sent; is that correct?

9 MS. FAREL: Counsel, a point of
10 clarification. Are you asking the witness whether
11 this document reflects that information?

12 MS. O'NEILL: Yes.

13 BY MS. O'NEILL:

14 Q If you could review the document and
15 confirm that the time line indicates that no letters
16 were sent between September 18, 2007 and March 12,
17 2009?

18 A Between the inclusive dates that you
19 mentioned, there was not an entry that reflects the
20 release of notification letters to the cohort.

21 Q And is it your recollection that no
22 letters were sent during that time period?

23 MS. FAREL: Again, Counsel, you're asking
24 in his individual capacity what he personally knows;
25 is that correct?

1 MS. O'NEILL: Correct.

2 THE WITNESS: It is my recollection that
3 no notification letters were released to veterans
4 who were listed in the declassified CBRNE database.

5 BY MS. O'NEILL:

6 Q During which period of time?

7 A During the inclusive dates that you asked
8 me.

9 Q So between September 18, 2007 and March
10 12, 2009; correct?

11 A Correct. Let me add for clarification,
12 again, this statement applies only to the veterans
13 in the CBRNE database. It does not preclude that we
14 issued notification letters to other cohorts.

15 Q Thank you.

16 MS. O'NEILL: I'm going to mark this
17 document as Exhibit 262.

18 (Exhibit 262 identified.)

19 BY MS. O'NEILL:

20 Q Mr. Salvatore, do you recognize this
21 document?

22 MS. FAREL: I'm going to object to this as
23 being outside the scope of the 30(b)(6) deposition.
24 Are you asking him in his individual capacity or his
25 30(b)(6) capacity?

1 MS. O'NEILL: Correct. I'm asking him in
2 his individual capacity.

3 THE WITNESS: I recognize this as a
4 PowerPoint slide deck produced by the Veterans
5 Benefits Administration which has titles that are
6 related to chemical and biological agent exposures.

7 BY MS. O'NEILL:

8 Q Have you seen this document before?

9 A I have not.

10 Q You have not seen this document before?

11 A Correct.

12 Q I'll bring your attention to page 5, at
13 the bottom of the document. It says that as of
14 August 2009, there were 13,055 test participants
15 identified in the CBRNE program. If I could also
16 direct your attention to the following page, it says
17 as of July 2009, VA had mailed 3291 letters to test
18 participants. Do you have any reason to believe
19 that these numbers are incorrect?

20 MS. FAREL: Objection; calls for
21 speculation.

22 BY MS. O'NEILL:

23 Q Go ahead and answer.

24 A I believe this to be a factual account of
25 the historic events that occurred.

1 Q Do you know how many letters had been
2 issued as of July 2009?

3 MS. FAREL: Are you asking him in his
4 individual capacity?

5 BY MS. O'NEILL:

6 Q Individual capacity.

7 A Relative to the CBRNE database?

8 Q Uh-huh.

9 A I do not have a precise number except what
10 appears in front of me.

11 Q Does this generally comport with your
12 recollection of letter writing efforts as of this
13 point in time?

14 MS. FAREL: Again, you're asking him in
15 his individual capacity?

16 MS. O'NEILL: Yes.

17 MS. FAREL: I object to the extent it
18 calls for speculation. He's never seen this
19 document before.

20 THE WITNESS: The statement you've just
21 mentioned falls in line with the standard procedure
22 that when a data push is received from the
23 Department of Defense, that the Department of
24 Veterans Affairs follows with the release of
25 notification letters when valid addresses are

1 located.

2 MS. O'NEILL: I'm going to introduce
3 another document. I'll mark this Exhibit 263.

4 (Exhibit 263 identified.)

5 MS. O'NEILL:

6 Q Have you ever seen this document?

7 MS. FAREL: Counsel, are you asking him in
8 his individual capacity again?

9 MS. O'NEILL: I'm asking him in his
10 individual capacity, correct.

11 THE WITNESS: Yes, I have seen this
12 document.

13 BY MS. O'NEILL:

14 Q Did you ever review this document?

15 MS. FAREL: Counsel, I object as being
16 vague.

17 BY MS. O'NEILL:

18 Q You can go ahead and answer.

19 A I did not.

20 Q Did you ever revise this document?

21 A I did not.

22 Q You never drafted the document?

23 A I did not.

24 Q Is it your understanding that this
25 document is a document that was prepared in the

1 regular course of business?

2 MS. FAREL: Again, you're asking him in
3 his individual capacity?

4 THE WITNESS: It was prepared at the
5 behest of Congress.

6 BY MS. O'NEILL:

7 Q Thank you. Can you please turn to page
8 14. It says in the paragraph titled "Chem-Bio's
9 Exposures," it indicates that as of August 2010, the
10 VA had mailed notification letters to 3291 test
11 participants. Do you see that?

12 A Yes, I do.

13 Q Assuming that this number is correct and
14 assuming that the number provided in Exhibit 262, if
15 you can look at that --

16 A What page?

17 Q Page 6. Assuming that the numbers
18 provided in the documents are correct, is it correct
19 to assume between July 2009 and August 2010, the VA
20 did not send any letters to CBRNE veterans?

21 MS. FAREL: Objection; vague. Objection;
22 calls for speculation.

23 THE WITNESS: In the absence of
24 documentation to state otherwise, yes.

25 BY MS. O'NEILL:

1 Q From 2006 to 2010, what was your role with
2 respect to the letter writing campaign, the CBRNE
3 letter writing campaign? What was your role?

4 MS. FAREL: Objection; vague. Letter
5 writing campaign, I'm not sure we've talked about
6 that.

7 BY MS. O'NEILL:

8 Q Go ahead and answer to the extent you can.

9 A From 2006 to 2010, I was not an employee
10 of the Veterans Benefits Administration.

11 Q I'm sorry. You were not an employee?

12 A Of the Veterans Benefits Administration.
13 However, I was -- I did provide information when
14 requested by staff in the Veterans Benefits
15 Administration regarding my successful notification
16 effort campaigns to historic chemical and biological
17 agent exposure groups with consultory.

18 Q Can you explain a little bit more about
19 the structure of the VA? What department were you
20 employed by from 2006 to 2010?

21 MS. FAREL: Counsel, you're asking him in
22 his individual capacity?

23 MS. O'NEILL: Yes.

24 THE WITNESS: From 2006 to 2010, I was
25 employed by the Department of Veterans Affairs

1 Office of Policy and Planning.

2 BY MS. O'NEILL:

3 Q That is not a part of the Veterans
4 Benefits Administration?

5 A That is not.

6 Q In the first part of 2006, were you
7 employed by the VBA?

8 A I started my work with the Office of
9 Policy and Planning in September 2005.

10 Q So the Office of Policy and Planning is
11 not a part of the VBA?

12 A That is correct.

13 Q Which department of the VA was responsible
14 for sending letters to CBRNE veterans?

15 MS. FAREL: Again, are you asking him in
16 his individual capacity?

17 MS. O'NEILL: In his 30(b)(6) capacity.

18 THE WITNESS: The duty fell upon the
19 Veterans Benefits Administration.

20 MS. O'NEILL:

21 Q In 2006, however, you were not employed by
22 the Veterans Benefits Administration; is that
23 correct?

24 A I did not work for the Veterans Benefits
25 Administration. I worked for the Office of Policy

1 and Planning.

2 Q If the VBA was responsible for sending
3 letters to CBRNE veterans, why were you involved in
4 efforts to send these letters, given that you
5 actually were a part of the Office of Policy and
6 Planning?

7 MS. FAREL: Now you're asking him in his
8 individual capacity?

9 MS. O'NEILL: No. 30(b)(6).

10 MS. FAREL: Can you clarify the question.
11 I believe it's outside the scope if you're asking
12 him as to his role after June 30, 2006.

13 MS. O'NEILL: I'm asking about his role in
14 2006 --

15 MS. FAREL: In his individual capacity or
16 30(b)(6)?

17 MS. O'NEILL: 30(b)(6).

18 THE WITNESS: As mentioned earlier, I led
19 successful notification efforts while working for
20 the Veterans Benefits Administration. Given that I
21 had assumed a new position with the Office of Policy
22 and Planning, staffers within the Veterans Benefits
23 Administration sought me out for information and
24 consultation regarding my historic experiences.

25 BY MS. O'NEILL:

1 Q Did you play a consulting role, or did you
2 have responsibility for the efforts to send letters
3 to CBRNE veterans?

4 MS. FAREL: I'm going to object as vague.
5 Are you asking him in his individual capacity or
6 30(b)(6) capacity?

7 MS. O'NEILL: No 2006, so his 30(b)(6)
8 capacity.

9 MS. FAREL: His 30(b)(6) capacity covers
10 until June 30, 2006, so your question is directed at
11 Mr. Salvatore, in his 30(b)(6) capacity.

12 MS. O'NEILL: Uh-huh. Can we take a break
13 from the record for a second.

14 (Discussion off the record.)

15 BY MS. O'NEILL:

16 Q Mr. Salvatore, you mentioned that VBA
17 asked you to provide some sort of assistance to VBA
18 with respect to their efforts to send letters to
19 CBRNE veterans; is that correct?

20 MS. FAREL: Objection to the extent it
21 mischaracterizes prior testimony.

22 THE WITNESS: I did not provide physical
23 assistance. I provided verbal input or consultation
24 regarding my historic efforts.

25 BY MS. O'NEILL:

1 Q Were you -- was your role a consulting
2 role, or did you have responsibility for the
3 undertaking?

4 MS. FAREL: Objection; vague. To clarify,
5 are you asking him in his 30(b)(6) capacity?

6 MS. O'NEILL: 30(b)(6) capacity.

7 THE WITNESS: As a member of the Office of
8 Policy and Planning, my duties were to facilitate
9 the department's chemical and biological agent
10 effort.

11 BY MS. O'NEILL:

12 Q I'm trying to get at whether you are the
13 person most knowledgeable about this topic, given
14 that he has just stated that the VBA was responsible
15 for the letter writing, and he was not a part of the
16 VBA.

17 Let me restate the question. Did you have
18 responsibility for the efforts to send letters to
19 CBRNE veterans?

20 MS. FAREL: Are you asking him in his
21 personal capacity?

22 BY MS. O'NEILL:

23 Q In your 30(b)(6) capacity?

24 Did you have responsibility for the
25 undertaking to send letters to CBRNE veterans?

1 MS. FAREL: Counsel, I'm going to object
2 to that as outside the scope of the 30(b)(6).
3 You've noticed the 30(b)(6) topic and VA has
4 provided you an individual who can speak for VA on a
5 topic regardless of his or her personal knowledge on
6 that topic.

7 MS. O'NEILL: We are entitled to be
8 reassured he is the person most knowledgeable and
9 has the knowledge to speak to this topic so I'll go
10 ahead and rephrase the question.

11 BY MS. O'NEILL:

12 Q Did you have responsibility for the
13 undertaking of sending letters to CBRNE veterans?

14 MS. FAREL: In your personal capacity or
15 in his 30(b)(6) capacity?

16 MS. O'NEILL: In your 30(b)(6) capacity.

17 MS. FAREL: If he's testifying he's
18 speaking on behalf of VA as to what VA's
19 responsibility was.

20 MS. O'NEILL: What his personal
21 responsibility was.

22 MS. FAREL: Can we go off the record for a
23 second.

24 MS. O'NEILL: Sure.

25 (Discussion off the record.)

1 THE WITNESS: And the question is?

2 MS. O'NEILL:

3 Q The question is, did you have
4 responsibility for the VA's undertaking to send
5 letters to CBRNE veterans?

6 A I did not have responsibilities to execute
7 the task of releasing the notification letters. I
8 had responsibilities for ensuring that the
9 department facilitated efforts to release letters.

10 Q You attended many of the meetings with the
11 Department of Defense about efforts to declassify,
12 collect and communicate information about the CBRNE
13 testing; is that correct?

14 A I attended several, but not all meetings.

15 Q In 2006, was there any point where you
16 stepped back in terms of your involvement with the
17 letter writing campaign?

18 MS. FAREL: Objection; vague.

19 THE WITNESS: If you're asking me if I
20 ever physically assisted with the development
21 execution of tasks associated with the notification
22 effort, the answer is no.

23 BY MS. O'NEILL:

24 Q What I'm curious about is why you've been
25 designated up until June 30, 2006 to speak as a

1 30(b)(6) deponent. Was there anything that changed
2 at that point? Did your role with respect to
3 sending letters to veterans, did it change at that
4 point, or did you continue to be involved through
5 2010 or through the present time?

6 MS. FAREL: Objection; calls for
7 speculation.

8 You can answer to the extent you may know
9 why you've been designated as a 30(b)(6) witness.

10 THE WITNESS: You have to understand, in
11 my role with the Office of Policy and Planning, we
12 do not have a singular focus on a particular
13 business line. Rather, the scope is on the entire
14 department. That is the role, to look at issues
15 from the entire perspective.

16 Given my historic efforts with VBA, given
17 that DOD acknowledges that my efforts were
18 successful and given the perspective that I needed
19 to secure while with the Office of Policy and
20 Planning, I continually was brought in or attended
21 efforts relative to chemical and biological agent
22 exposures.

23 MS. O'NEILL: Okay. Thank you. I'm going
24 to introduce a document that I will mark as Exhibit
25 264. The Bates range on this document is VET

1 001_014266 to VET 001_014271.

2 (Exhibit 264 identified.)

3 BY MS. O'NEILL:

4 Q Do you recognize this document?

5 A Yes, I do.

6 Q What is this document?

7 A This document is a draft notification
8 letter issued by the Veterans Benefits
9 Administration to identified participants at
10 Edgewood Arsenal.

11 Q When you say "draft", what do you mean?
12 It has a date stamp that says June 30, 2006; is that
13 correct?

14 A I do not see an address here.

15 MS. FAREL: Counsel, are you asking in his
16 individual capacity because this is June 30, 2006?

17 MS. O'NEILL: Up until June 30. Okay.
18 I'm asking him in his Rule 30(b)(6) capacity.

19 MS. FAREL: I would object to it as being
20 outside the scope of the 30(b)(6) notice which says
21 Mr. Salvatore will testify up until June 30, 2006.

22 BY MS. O'NEILL:

23 Q What do you mean by "draft"? Is this the
24 final version of the letter but for the missing
25 address?

1 prior testimony.

2 THE WITNESS: The paragraph informs the
3 veteran that if they have questions about the tests
4 and the tests in the broad term includes substances,
5 location, dates, then yes, they could get an answer
6 so long as the information is available in DOD's
7 records.

8 BY MS. O'NEILL:

9 Q Do you think it's clear here that veterans
10 could obtain this information by calling that 1-800
11 number, that they would be able to receive
12 information about the substances to which they were
13 exposed?

14 MS. FAREL: Objection; speculation.
15 You're asking him in his 30(b)(6) capacity as a
16 representative of VA?

17 MS. O'NEILL: That's right.

18 THE WITNESS: As written, yes, it is clear
19 that the Department of Defense has placed content in
20 this letter -- a Department of Veterans Affairs
21 letter which will serve as the vehicle to get
22 additional answers or learn additional information
23 about their testing experience.

24 BY MS. O'NEILL:

25 Q So why was it decided that this letter

1 would not contain the information about the test
2 substances to which veterans were exposed?

3 MS. FAREL: Objection; mischaracterizes
4 prior testimony, vague.

5 THE WITNESS: The Department of Defense
6 developed a singular fact sheet with Q and As that
7 talked about the studies from '55 to '75. This fact
8 sheet was developed and released in time for VA to
9 release the notification letters by July 4, 2006,
10 which was a mandate imposed by staff members of the
11 House Veterans Affairs Committee.

12 In order to meet that deadline, this fact
13 sheet, singular fact sheet was developed.
14 Understand there were 400-plus agents, substances
15 there, and there would not have been time to
16 generate an individual fact sheet for each of these
17 substances in order to meet the Congressionally
18 mandated it deadline.

19 BY MS. O'NEILL:

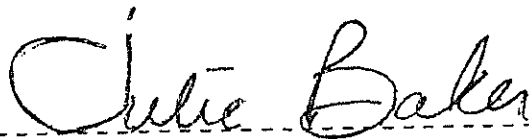
20 Q I'm going to ask you a question in your
21 individual capacity. Mr. Salvatore, if you were a
22 CBRNE veteran, would you have wanted this letter to
23 have contained information about the substances to
24 which you were exposed?

25 MS. FAREL: Objection; calls for

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CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, JULIE BAKER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Notary Public in and for the
District of Columbia

My Commission Expires OCTOBER 14, 2012

Exhibit 9

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION
VIETNAM VETERANS OF
AMERICA, et al.,
Plaintiffs,
NO. CV 09 0037-CW
vs.
CENTRAL INTELLIGENCE AGENCY, et al.,
Defendants.

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

VIDEOTAPED DEPOSITION OF DAVID ABBOT

VOLUME I

January 24, 2012

8:56 a.m.

Holiday Inn

Longstreet Conference Room

440 E.E. Butler Parkway

Gainesville, Georgia 30501

Maureen S. Kreimer, RPR, CCR-B-1379

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Page 1

1 together a lengthy document about each of the items 11:51:19
2 and forwarded the document to Mark. 11:51:25
3 BY MS. SPRENKEL: 11:51:30
4 Q. Mm-hmm. 11:51:31
5 A. That was the extent of it. But I just 11:51:32
6 wanted to inform myself so that I would have some 11:51:35
7 knowledge of what was -- what was involved in the 11:51:39
8 test, because the list was huge -- 11:51:42
9 Q. Mm-hmm. 11:51:44
10 A. -- and -- well, let's put it this way. 11:51:45
11 There were conversations at one point about whether 11:51:49
12 we should distinguish -- would we send a letter to 11:51:55
13 those who had been exposed -- assumed exposed, I 11:52:04
14 don't know, to hallucinogens, would that letter be 11:52:10
15 different from someone exposed to water? Because 11:52:14
16 water was on the list. Should we even send a letter 11:52:16
17 to someone exposed to water, or caffeine? 11:52:19
18 And knowing that someone even had posed 11:52:30
19 the question, that required a huge investigation into 11:52:32
20 that list. 11:52:34
21 The conclusion was it was -- it was too 11:52:37
22 presumptuous to think that the VA could make any type 11:52:44
23 of decision about who had got what, you know, simply 11:52:47
24 send a letter to everybody and explain to everyone 11:52:51
25 because we don't know the details of what each person 11:52:53

1 went through, and it was too presumptuous to think 11:52:58
2 that we could make a decision about that. 11:53:02
3 So the early thoughts caused me to do a 11:53:04
4 lot of personal study. But it didn't have any 11:53:08
5 meaning, other than my personal knowledge about them, 11:53:12
6 because eventually -- I say eventually, it was rather 11:53:15
7 quickly decided that everybody should get full 11:53:19
8 knowledge of the entire affair. 11:53:24
9 Q. And why did you decide that everybody 11:53:26
10 should get full knowledge of the entire affair? 11:53:29
11 A. Well, as I said, it would be unfair to do 11:53:32
12 otherwise. We're presuming to know something about 11:53:39
13 something. 11:53:41
14 Q. And what would you have been presuming to 11:53:42
15 know about that you didn't know about? 11:53:44
16 A. The exposures, what somebody went through 11:53:45
17 while in service. If the DoD had them on the list, 11:53:48
18 they should be properly informed about everything 11:53:55
19 that went on. 11:53:56
20 Q. Mm-hmm. 11:53:57
21 A. But let's put it this way: DoD was making 11:53:58
22 changes to that list. How could VA presume to know 11:54:02
23 what any future changes would be? If we sent a 11:54:09
24 letter to a person, and it had only been related to a 11:54:13
25 particular substance and then later we find out, oh, 11:54:18

1 they had been involved in other substances, then we 11:54:22
2 were wrong. We'd have to send -- it was the only 11:54:25
3 right thing to do was send a letter to everyone and 11:54:28
4 let them know about everything. 11:54:30

5 Does that make sense? 11:54:47

6 Q. Mm-hmm. 11:54:47

7 But in some instances you did have 11:54:47
8 information about what particular veterans were 11:54:51
9 exposed to; right? 11:54:58

10 A. Yes. But there was no way of knowing if 11:54:59
11 that was the complete picture. 11:55:01

12 Q. But a decision was made not to inform 11:55:03
13 veterans about what specifically they were exposed 11:55:05
14 to; right? 11:55:09

15 A. Right. That's why it's a general letter. 11:55:11
16 Otherwise, every person would have got a different 11:55:18
17 letter. 11:55:21

18 Q. Mm-hmm. 11:55:22

19 A. And that letter might have been inaccurate 11:55:24
20 because we might not have had the entire picture. 11:55:29

21 Q. Did you consider sending a different 11:55:35
22 letter to every individual person? 11:55:37

23 MR. GARDNER: Objection, asked and 11:55:39
24 answered. 11:55:41

25 A. Yeah, that -- that was probably a 11:55:41

1 needed to know specific information. 12:07:21

2 At some point that has to have changed 12:07:24

3 because the letters did not go out with specific 12:07:28

4 information about a specific veteran. 12:07:31

5 Q. Did you think that veterans needed to know 12:07:33

6 the specific information about their specific 12:07:36

7 exposure and dosage? 12:07:41

8 A. Well, as I said, that is not a simple 12:07:42

9 issue since the letters were -- included things that 12:07:45

10 were non-toxic. And if there were changes to the 12:07:49

11 database, it meant multiple letters one time saying 12:07:52

12 you weren't exposed, or one time saying that you had 12:07:55

13 something really bad, and then another one time -- it 12:07:58

14 just didn't seem -- the result was that the decision 12:08:01

15 was that the best way to handle it was this general 12:08:07

16 letter that included all the information with 12:08:10

17 questions and answers. 12:08:13

18 I do not remember the process that -- 12:08:14

19 where that became the decision. 12:08:24

20 Q. For veterans where the VA knew that they 12:08:30

21 were exposed to a harmful substance, do you think 12:08:33

22 that they should have been told in the letter what 12:08:36

23 they were exposed to and the dosage? 12:08:39

24 MR. GARDNER: Objection. Lack of 12:08:42

25 foundation. 12:08:43

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1 A. I don't think we -- I don't know exactly 12:08:53
2 how to answer. It would be nice to be able to have 12:08:56
3 the best information in the letter. But that also 12:08:59
4 drove additional questions. If you're going to tell 12:09:02
5 a person he was exposed to sarin at such and such a 12:09:05
6 dosage, you would also have to have more information 12:09:09
7 about the significance. And you would have to have 12:09:13
8 information that would help them understand the 12:09:17
9 magnitude of what had taken place. 12:09:25

10 We didn't have the -- I didn't have the -- 12:09:28
11 certainly, I didn't have the capability of even 12:09:31
12 beginning to think like that. I couldn't put a 12:09:33
13 letter together like that. 12:09:36

14 BY MS. SPRENKEL: 12:09:38

15 Q. There were people at VHA that could have 12:09:38
16 put a letter together like that; right? 12:09:41

17 MR. GARDNER: Objection. Calls for 12:09:43
18 speculation. Lack of foundation. 12:09:45

19 A. Yeah. I would have to -- I couldn't 12:09:55
20 speculate exactly whether they could put a letter 12:09:59
21 together with all that information. 12:10:02

22 BY MS. SPRENKEL: 12:10:03

23 Q. If you were a veteran who was exposed to 12:10:04
24 sarin gas, would you want to know? 12:10:07

25 MR. GARDNER: Objection, hypothetical. 12:10:09

1 never heard anything other than "it's a good letter." 15:15:34

2 BY MS. SPRENKEL: 15:15:38

3 Q. What about the fact sheet, did you ever 15:15:38

4 hear any comments about the quality or content or 15:15:40

5 accuracy or tone of the fact sheet? 15:15:43

6 MR. GARDNER: Again, chronologically, 15:15:45

7 you're asking after the fact sheet was issued, the 15:15:47

8 final? 15:15:50

9 MS. SPRENKEL: Yes. 15:15:51

10 MR. GARDNER: You can answer that 15:15:51

11 question. 15:15:53

12 A. I have to think actually. My belief is 15:15:53

13 that after decisions were made about what was going 15:16:08

14 to be sent to the public that there weren't further 15:16:11

15 discussions about content, or complaints, or -- I 15:16:15

16 mean, I just -- I don't remember that at all as being 15:16:19

17 a part of anything. 15:16:22

18 The concern then was, okay, now we've got 15:16:24

19 to get these letters out, and that was the drive. 15:16:27

20 BY MS. SPRENKEL: 15:16:33

21 Q. Okay. I'm going to show you a document 15:16:34

22 that's been previously marked as Exhibit 727. 15:16:51

23 And for the record, this is an e-mail from 15:17:20

24 Mark Brown to David Abbot, among others, dated 15:17:23

25 June 29th, 2006. Bates-labeled DVA052000113 to 114. 15:17:27

1 A. Okay. Yes. 15:17:57

2 Q. Do you recognize this document? 15:18:00

3 A. In a way I do, but in a way I don't. 15:18:02

4 Q. What do you mean by that? 15:18:16

5 A. Well, some of them I completely forgot 15:18:17

6 about, but I kind of remember seeing this in the 15:18:24

7 process of getting the letter developed. But that's 15:18:27

8 what I mean. 15:18:32

9 Q. Any reason to think you didn't receive 15:18:32

10 this e-mail? 15:18:34

11 A. Beg your pardon? 15:18:34

12 Q. Do you have any reason to think you didn't 15:18:35

13 receive this e-mail? 15:18:37

14 A. Oh, no, I got it. 15:18:38

15 Q. Do you generally recall that Mark Brown 15:18:41

16 was dissatisfied with the content of the fact sheet? 15:18:43

17 MR. GARDNER: Objection to the extent 15:18:46

18 mischaracterizes the document. 15:18:48

19 A. I can only read this and remember based 15:18:50

20 upon his comments here. 15:18:55

21 BY MS. SPRENKEL: 15:19:00

22 Q. Well, what further do you remember? 15:19:00

23 A. Not further; but that obviously he had 15:19:02

24 concerns about a couple of sentences. 15:19:08

25 Q. Mr. Brown says: "I think the DoD fact 15:19:14

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1 sheet has some significant inaccuracies. The 15:19:18
2 problem, of course, is that putting it in a letter 15:19:21
3 from VA appears to endorse its accuracy." 15:19:23
4 Do you see that? 15:19:26
5 A. Yes. 15:19:27
6 Q. And he notes: "Unfortunately, this is the 15:19:27
7 first time I've seen this fact sheet to provide any 15:19:35
8 comment of it." 15:19:37
9 Do you see that? 15:19:39
10 A. Mm-hmm. 15:19:39
11 Q. Do you recall that you had difficulty 15:19:40
12 getting the fact sheet from DoD so that you could 15:19:43
13 review it? 15:19:47
14 A. Difficulty getting the fact sheet would 15:19:48
15 not probably be the fairest of terms. We simply 15:19:56
16 didn't have access to the fact sheet until the letter 15:20:03
17 was about done. 15:20:06
18 And that's why -- because you'll notice 15:20:09
19 the date is June 29th of 2006, and that's about the 15:20:12
20 same time that we had finished the letter and 15:20:19
21 about -- that's when we had the fact sheet. 15:20:22
22 Q. Do you recall -- go ahead. 15:20:27
23 A. No, I'll wait on your question, as counsel 15:20:30
24 so wisely has asked me to do. 15:20:33
25 MS. SPRENKEL: Darn, counsel. 15:20:37

1 MR. GARDNER: No punches to me. 15:20:40

2 BY MS. SPRENKEL: 15:20:50

3 Q. Do you recall if there was concern about 15:20:51

4 whether VA was going to meet the Congressional 15:20:52

5 deadline set for meeting the notification letters 15:20:55

6 because of the delay in receiving the fact sheet? 15:20:57

7 A. Not necessarily delay in reading the fact 15:21:02

8 sheets, delay in the whole process. It was taking 15:21:06

9 too long -- well, in order to meet the deadline I 15:21:10

10 believe was July 1, if I remember right. 15:21:15

11 Q. Mm-hmm. 15:21:17

12 A. And here it was June 30. And that was 15:21:18

13 just getting our letter concurred in. 15:21:24

14 So it wasn't just the fact sheets. We 15:21:28

15 were having our own iterative process, and I do 15:21:31

16 remember that we did ask for the fact sheet earlier. 15:21:37

17 And I believe we were concerned about the fact that 15:21:49

18 we just hadn't got it yet and hadn't seen it yet, and 15:21:52

19 he was valid in being concerned that it took so long 15:21:56

20 before they had a chance to review it. 15:21:59

21 Q. Were there other issues at VA with the 15:22:02

22 process of completing the letter, or finding 15:22:09

23 addresses, or were there other issues that led you to 15:22:15

24 be concerned about your ability to meet the July 1st 15:22:18

25 deadline? 15:22:21

1 MR. GARDNER: Objection, compound. 15:22:22
2 Objection, vague. 15:22:23
3 A. So is the question what were the things 15:22:31
4 delaying the process? 15:22:34
5 BY MS. SPRENKEL: 15:22:35
6 Q. Yes. I like that question, Mr. Abbot. 15:22:36
7 Mr. Abbot, what were the things delaying 15:22:38
8 your ability to -- 15:22:43
9 A. To get it out on time? 15:22:45
10 Q. -- to get the letter out on time? 15:22:47
11 A. I knew I could help you with the question. 15:22:49
12 Q. Thank you. I appreciate that. 15:22:52
13 A. I don't remember where we were in the 15:23:03
14 process of the addresses. 15:23:04
15 I think the entire process was taking too 15:23:06
16 long; too long to get the addresses, too long to get 15:23:09
17 the letter through, too long -- you know, it wasn't 15:23:15
18 one thing, the whole process was too long. 15:23:19
19 Q. Was there also a delay in getting a 15:23:21
20 decoded list of agents from the DoD? 15:23:25
21 A. I don't -- I don't think that was the 15:23:30
22 problem. But we couldn't -- we couldn't send 15:23:43
23 anything out until we had the letters and 15:23:50
24 attachments, and you couldn't do that without the 15:23:53
25 addresses. 15:23:56

1 To get more information added to the 15:23:57
2 database, or improvements to the database could 15:24:02
3 actually come a week or two later. But we had to get 15:24:05
4 the letters out. 15:24:08
5 Q. So you don't recall any delay in getting a 15:24:09
6 decoded list of agents from the DoD? 15:24:13
7 MR. GARDNER: Objection, mischaracterizes 15:24:16
8 the witness's prior testimony. 15:24:17
9 BY MS. SPRENKEL: 15:24:19
10 Q. Well, do you recall any delay in getting a 15:24:19
11 decoded list of agents from the DoD? 15:24:22
12 A. If there was one, I don't remember it. 15:24:25
13 Q. Okay. I'm going to give you a document 15:24:27
14 that's previously marked as Exhibit 349. 15:24:29
15 And for the record, this document is 15:24:51
16 entitled Probable Inability to Meet Congressional 15:24:52
17 Deadline for Edgewood Arsenal Notification Effort 15:24:56
18 June 26, 2006. Bates-labeled VET007000094 to 95. 15:25:02
19 Do you recognize this document? 15:25:14
20 A. No. 15:25:15
21 Q. I'm going to draw your attention to the 15:25:24
22 third paragraph under Background, or actually the 15:25:29
23 second paragraph under Background, the final sentence 15:25:34
24 says: However, the USB and other business line 15:25:37
25 executives cannot concur on the final version until 15:25:42

1 DoD's fact sheet is in VA's possession. 15:25:46

2 Do you see that? 15:25:49

3 A. Yes. 15:25:50

4 Q. And the next sentence says: "Out of fear 15:25:51

5 of missing HVAC's deadline, VA has repeatedly 15:25:53

6 requested within the past three months that DoD 15:26:00

7 hasten their compilation of concurrence of their fact 15:26:01

8 sheet." 15:26:04

9 Do you see that? 15:26:05

10 A. Yeah. 15:26:05

11 Q. Is that consistent with your recollection? 15:26:06

12 A. Well, as I say, I don't remember. We 15:26:12

13 obviously had a problem getting the fact sheet, no 15:26:17

14 question about that. I didn't remember how much of a 15:26:20

15 problem that was. 15:26:23

16 Q. All right. Turning back to Exhibit 727, 15:26:29

17 which is is Mark Brown's e-mail. He says -- he 15:26:50

18 identifies two sentences that he takes issue with. 15:26:57

19 And so first he says, Paragraph 1, DoD 15:27:04

20 fact sheet, last sentence: "The study did not detect 15:27:07

21 any significant long-term health effects in Edgewood 15:27:10

22 Arsenal volunteers." 15:27:14

23 He says: "This statement is not a correct 15:27:15

24 representation of the relevant NRC reports. In fact, 15:27:18

25 in the review of hospital admissions records for Army 15:27:23

1 from 1958 to 1983 and VA from 1963 to 1981, the NRC 15:27:26
2 investigators reported a 'barely statistically 15:27:32
3 significant increase in admissions to VA hospitals 15:27:32
4 from malignant neoplasms among men exposed to 15:27:37
5 anticholinesterases and a statistically significant 15:27:41
6 increase in admissions to VA hospitals and Army 15:27:45
7 hospitals for nervous system and sense organ 15:27:49
8 disorders among men exposed to LSD.'" 15:27:50

9 Do you see that? 15:27:52

10 A. Yes. 15:27:53

11 Q. He says: "In fairness, they did note that 15:27:53
12 admission numbers were small, no dose relationships 15:27:56
13 were observed, and for subjects exposed to 15:27:58
14 anticholinesterases neoplasms occurred at various 15:28:01
15 sites with no consistent pattern or correlation to a 15:28:05
16 specific chemical. I think a more accurate wording 15:28:08
17 for the fact sheet would be the study detected few 15:28:11
18 significant long-term health effects in Edgewood 15:28:15
19 Arsenal volunteers. To say that there were no 15:28:19
20 effects is clearly not correct and easily refutable." 15:28:21

21 Do you see that? 15:28:23

22 A. I do. 15:28:24

23 Q. I'll your attention back to Exhibit 264. 15:28:24

24 A. Mm-hmm. 15:28:36

25 Q. On the fact sheet, which is the third page 15:28:36

1 of the document. Final sentence of the first 15:28:39
2 paragraph says: "The study did not detect any 15:28:42
3 significant long-term health effects in Edgewood 15:28:45
4 Arsenal volunteers." 15:28:49
5 Do you see that? 15:28:50
6 A. Oh, right. Got it. 15:28:51
7 Q. Okay. So despite Mark Brown's 15:28:54
8 characterization of that statement as inaccurate, it 15:28:59
9 remained in the fact sheet. 15:29:01
10 Do you see that? 15:29:05
11 A. Yes. 15:29:05
12 Q. Why is that so? 15:29:06
13 MR. GARDNER: Objection. Calls for 15:29:07
14 speculation. Lack of foundation, also vague. 15:29:09
15 BY MS. SPRENKEL: 15:29:13
16 Q. Why did the sentence that Mark Brown 15:29:13
17 characterized as inaccurate remain in the fact sheet? 15:29:16
18 MR. GARDNER: Same objections. Calls for 15:29:20
19 speculation. Lack of foundation. 15:29:22
20 A. That would be better answered by the folks 15:29:29
21 at DoD who would have received Mark's disagreement 15:29:32
22 and their decision process to change or not change 15:29:36
23 the sentence. 15:29:39
24 BY MS. SPRENKEL: 15:29:43
25 Q. And how do you know that Mark's comments 15:29:43

1 were communicated to DoD? 15:29:46

2 A. You know, in fact, they may not have. I 15:29:48

3 do not know the answer to that. I was looking on 15:30:01

4 this other sheet to see if they were copied in his -- 15:30:04

5 in his response. I don't know all the names of these 15:30:10

6 people here, so I don't -- I don't know. They may 15:30:19

7 have not have. I would have a hard time believing 15:30:22

8 that anything Mark disagreed with would not get 15:30:25

9 traveled over to DoD. 15:30:28

10 Q. And what's your basis for that belief? 15:30:29

11 A. My knowledge and my good friend Mark. 15:30:31

12 Q. And your knowledge of your good friend 15:30:37

13 Mark tells you that he lets his concerns be heard? 15:30:39

14 A. He lets his concerns be heard, and it 15:30:43

15 doesn't bother him the level in the agency with which 15:30:45

16 he expresses those concerns. 15:30:51

17 Q. Mark Brown -- 15:30:54

18 A. He's a very strong individual. 15:30:55

19 Q. Mm-hmm. 15:30:57

20 A. Comfortable with his opinions. 15:30:58

21 Q. We've met. 15:31:00

22 A. Yeah. I would have a hard time believing 15:31:02

23 they didn't know. I would even go further to say 15:31:08

24 that somewhere in the back of my mind I think there 15:31:15

25 were conversations with DoD about this sentence, but 15:31:20

1 I do not remember, obviously, because it was left in 15:31:25
2 as it was and no changes made. That was DoD's 15:31:31
3 decision. But it's hard for me to come up with any 15:31:35
4 further commentary about it. 15:31:42

5 Q. Mark Brown is an expert in chemical agent 15:31:44
6 exposure; right? 15:31:48

7 A. Right. 15:31:49

8 Q. And VA sent out the fact sheet to veterans 15:31:50
9 attached to the notice letter? 15:32:04

10 A. Yes. 15:32:06

11 Q. Are you comfortable with the fact that VA 15:32:07
12 sent out a fact sheet containing a sentence that Mark 15:32:14
13 Brown characterized as "a significant inaccuracy" 15:32:19
14 about whether a study detected any long-term, 15:32:23
15 significant long-term health effects in Edgewood 15:32:25
16 Arsenal volunteers? 15:32:29

17 MR. GARDNER: Objection to the extent it 15:32:30
18 mischaracterizes Exhibit 727. Also objection, vague. 15:32:33

19 A. I might have preferred a change in the 15:32:39
20 language, but ultimately that would not have changed 15:32:59
21 the process or results. In other words, this is just 15:33:10
22 notification of an issue, and I agree that if I had 15:33:15
23 my druthers, I probably would go with Mark's 15:33:22
24 comments. 15:33:26

25 BY MS. SPRENKEL: 15:33:30

1 Q. And that's because you believe it's -- 15:33:30

2 MR. GARDNER: He was in the middle of an 15:33:32

3 answer, I believe. 15:33:34

4 BY MS. SPRENKEL: 15:33:35

5 Q. Okay. Go ahead. 15:33:36

6 MR. GARDNER: To the extent you weren't 15:33:36

7 done. 15:33:38

8 A. I would go along with Mark's comments. 15:33:39

9 But as I say, but again, it's just a notification 15:33:44

10 letter. It's not a decision letter. It's not 15:33:50

11 more -- it doesn't pretend to be more than what it 15:33:54

12 is. 15:33:57

13 BY MS. SPRENKEL: 15:33:58

14 Q. But to a veteran who's learning for the 15:33:58

15 first time that they were exposed, or potentially 15:34:01

16 exposed, to hazardous chemicals, the letter is quite 15:34:04

17 important; right? 15:34:08

18 MR. GARDNER: Objection. Calls for 15:34:08

19 speculation. 15:34:09

20 A. It would be important regardless of the 15:34:10

21 sentence. Even if the sentence was completely taken 15:34:17

22 out, it was still important. 15:34:29

23 BY MS. SPRENKEL: 15:34:32

24 Q. Would it be better if the sentence were 15:34:32

25 completely taken out? 15:34:34

1 A. I'm not saying better or worse. All I'm 15:34:35
2 saying is that for a person to learn that there was 15:34:38
3 an exposure in service that might have had some 15:34:40
4 effects upon his life is an important issue, period. 15:34:43

5 Q. Right. But implying to them that there 15:34:48
6 are no long-term health effects from their exposure 15:34:52
7 doesn't seem to be very helpful information; correct, 15:34:55
8 for a veteran? 15:34:58

9 MR. GARDNER: Objection, mischaracterizes 15:35:00
10 the fact sheet. 15:35:01

11 BY MS. SPRENKEL: 15:35:02

12 Q. Would you agree? 15:35:03

13 A. I don't know. I'll stick with things 15:35:04
14 that, as we've said, it's a -- as I said, I probably 15:35:34
15 would go with Mark's comments. 15:35:41

16 But it's also true that DoD must have had 15:35:46
17 a basis for saying what they said as well, and I 15:35:50
18 don't -- I'm not in a position to -- to justify 15:35:53
19 either position. 15:36:01

20 I personally would just like -- I like the 15:36:02
21 way Mark viewed things. But I'm not in a position to 15:36:07
22 criticize DoD, because I really don't know the facts. 15:36:12

23 Q. But you did feel in general that it was 15:36:16
24 important to communicate to veterans with clarity and 15:36:19
25 accuracy? 15:36:23

1 A. Absolutely. 15:36:24

2 Q. And Mark Brown thought that that sentence 15:36:25

3 was inaccurate and misleading; right? 15:36:27

4 MR. GARDNER: Objection, mischaracterizes 15:36:30

5 Dr. Brown's e-mail. 15:36:31

6 A. Yeah, his stands for itself. 15:36:34

7 BY MS. SPRENKEL: 15:36:37

8 Q. Yeah, I think it does. I guess it'd be 15:36:38

9 more fair to say, "clearly not correct and easily 15:36:43

10 refutable", those are the words he used; right? 15:36:47

11 A. There they are indeed. 15:36:51

12 Q. Turning to the second comment that he 15:36:52

13 provided, paragraph two DoD fact sheet, and we're 15:36:59

14 back to Exhibit 727: "The study objectives were to 15:37:03

15 determine the specific health effects associated with 15:37:06

16 exposure particularly with low dosages." 15:37:08

17 Do you see that? 15:37:11

18 A. Yes. 15:37:13

19 Q. And Mark says the phrase "particularly at 15:37:14

20 low dosages" is not really accurate and is 15:37:17

21 misleading. The term low dose is a term of art that 15:37:20

22 refers or implies exposure to subclinical doses, that 15:37:25

23 is, doses causing no clinical poisoning signs and 15:37:29

24 symptoms, review of the extensive literature on these 15:37:31

25 tests clearly demonstrates that a great deal of the 15:37:35

1 experiment, perhaps the majority, were actually 15:37:37
2 designed to cause clinical poisoning signs and 15:37:41
3 symptoms among experimental subjects and, therefore, 15:37:43
4 not low dose. 15:37:50

5 Do you see that? 15:37:51

6 A. Yes. 15:37:52

7 Q. He says: "Many subjects had all sorts of 15:37:54
8 immediate poisoning S&S including blistering 15:37:56
9 cholinergic poisoning, intense tearing, et cetera, 15:38:00
10 and some subjects required medical attention. I 15:38:02
11 would suggest simply eliminate this phrase from the 15:38:05
12 fact sheet and also from the VBA letter where 15:38:07
13 apparently it was copied." 15:38:10

14 Do you see that? 15:38:13

15 A. Yes. 15:38:13

16 Q. And then turning back to the fact sheet, 15:38:14
17 which is the third page of Exhibit 264, if you look 15:38:16
18 at the second paragraph, the final sentence says: 15:38:21
19 "The study objectives were to determine specific 15:38:29
20 health effects associated with exposure, particularly 15:38:32
21 at low dosages." 15:38:36

22 Do you see that? 15:38:37

23 A. Yes. 15:38:37

24 Q. So, again, Mark's comment was not -- did 15:38:38
25 not result in an edit of the fact sheet; right? 15:38:42

1 BY MS. SPRENKEL: 15:46:42

2 Q. Should they have been? 15:46:45

3 A. Good question. There is a difference 15:46:47

4 between my personal preference and the experts, 15:47:06

5 whether they are VA experts or DoD experts, and I 15:47:14

6 don't know which one is the better expert. 15:47:18

7 Personally, I would have adopted both 15:47:20

8 Mark's comments, but whose ever choice it was, they 15:47:22

9 weren't. But that's a personal opinion, probably 15:47:29

10 doesn't belong here. 15:47:34

11 Q. But you do view Mark as an expert on 15:47:37

12 chemical agent exposure? 15:47:41

13 A. He is the expert. 15:47:42

14 Q. Mm-hmm. Right. Do you recall 15:47:43

15 conversations about whether this phrase "particularly 15:48:00

16 with low dosages" should remain in the fact sheet? 15:48:03

17 A. Apart from this e-mail and remembering 15:48:07

18 that it did stimulate some conversation, between that 15:48:14

19 conversation and the actual release of this document, 15:48:20

20 I don't remember -- I don't remember much generated. 15:48:25

21 And part of that is the fact that the date 15:48:32

22 of the release of the letters was very quick after 15:48:36

23 this. 15:48:40

24 Q. So you recall that there was some 15:48:41

25 discussion, but you don't recall the content of the 15:48:43

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1 when the case ends? 09:12:02

2 A. Yes. 09:12:05

3 Q. Okay. 09:12:05

4 A. There might be one distinction here that 09:12:09

5 is missed perhaps. 09:12:13

6 Q. Mm-hmm. 09:12:14

7 A. When a veteran comes in and does claim a 09:12:20

8 disability but is not on the list, he may have other 09:12:29

9 information -- even though he's not on the list, he 09:12:33

10 may have other information that we end up forwarding 09:12:36

11 to Dee Morris or Roy Finno, in which case he ends up 09:12:40

12 getting added to the list, even though he's not on 09:12:48

13 the list. 09:12:52

14 So just because somebody is not on the 09:12:53

15 list doesn't mean they don't get added after research 09:12:54

16 by Dee Finno -- or I mean, Dee Morris. 09:12:59

17 Q. But you mean that he might get added to 09:13:02

18 the list if Dee Morris is able to verify that he's a 09:13:04

19 participant based on the new information provided; 09:13:09

20 right? 09:13:12

21 A. Right. 09:13:12

22 Q. Okay. We'll get to that. It's the next 09:13:12

23 section of this. 09:13:19

24 So the next -- the second paragraph under 09:13:20

25 end product control says -- are you with me? 09:13:24

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CERTIFICATE

STATE OF GEORGIA:

COUNTY OF FULTON:

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the colloquies, questions and answers were reduced to typewriting under my direction; that the transcript is a true and correct record of the evidence given upon said proceeding.

I further certify that I am not a relative or employee or attorney of any party, nor am I financially interested in the outcome of this action.

This, the 6th day of February, 2012.

MAUREEN KREIMER, CCR-B-1379
Notary Public in and for the
State of Georgia. My Commission
expires August 14, 2012.

Exhibit 10



DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Washington, D.C. 20420

JUN 30 2006

<<FNAME>> <<MI>> <<LNAME>>
<<ADDRESS>>
<<CITY>>, <<STATE>> <<ZIP>>

SSN # <<SSN>>

Dear Mr. <<LNAME>>:

According to records recently released by the Department of Defense (DoD), you participated in tests at Edgewood Arsenal in Maryland during your tour of service in the <<Branch>>. The purpose of this letter is to inform you about the tests and what to do if you have related health concerns.

Information About the Tests

The tests at Edgewood Arsenal exposed participants, with their consent, to a number of different chemicals. The tests' objectives were to determine specific health effects associated with exposure, to assess various pre-and post-exposure medical treatments, and to evaluate the effectiveness of personal protective equipment. Not all volunteers were exposed to chemical agents; some received placebos (harmless substances with no health risks). Others performed stress tests without exposure to chemicals. Please see the enclosed DoD fact sheet, *Edgewood Arsenal Chemical Agent Exposure Studies: 1955-1975*, for additional information.

What You Can Discuss About the Tests

You may be concerned about releasing classified test information to your health care provider when discussing your health concerns. To former service members who participated in these tests, DoD has stated:

"You may provide details that affect your health to your health care provider. For example, you may discuss what you believe your exposure was at the time, reactions, treatment you sought or received, and the general location and time of the tests. On the other hand, you should not discuss anything that relates to operational information that might reveal chemical or biological warfare vulnerabilities or capabilities."



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<<LNAME>>, <<FNAME>> <<MI>>
SSN # <<SSN>>

If You Have Questions About the Tests

If you have questions about chemical or biological agent tests, or concerns about releasing classified information, contact DoD at (800) 497-6261, Monday through Friday, 9 a.m. to 9 p.m. Eastern time.

If You Have Health Concerns

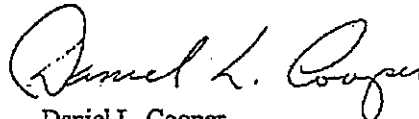
Although there is no specific medical test or evaluation for the types of exposures you might have experienced more than 30 years ago, VA is offering a clinical examination to veterans who receive this notification letter. If you have health concerns and wish to be medically evaluated, PLEASE BRING THIS LETTER WITH YOU TO THE NEAREST VA HEALTH CARE FACILITY. This letter will help you apply for the examination by providing needed documentation. Additional medical information about potential exposures is available through the "Environmental Health Coordinators," who are located in every VA medical center.

Note: The examination itself does not constitute, or provide eligibility for, enrollment in the VA health care system. If you are not already enrolled, you are encouraged to apply for VA health care benefits at the time you apply for the examination.

In addition to this clinical examination, if you think that you suffer from chronic health problems as a result of these tests, contact VA toll free at (800) 827-1000 to speak to a VA representative about filing a disability claim. You may also contact your local veterans service organization for assistance.

Scientists know much about many of the agents used in these tests. In order to best serve veterans and their families, VA continues to study the possibility of long-term health effects associated with in-service exposure to chemical and biological agents. If the medical community identifies such health effects, I assure you that we will share this information with you and other veterans as it becomes available to us.

Sincerely yours,



Daniel L. Cooper
Acting Under Secretary for Benefits

Enclosure

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FACT SHEET
Deployment Health Support Directorate

For more information,
1-800 497-6261

Version 07-01-2006

Edgewood Arsenal Chemical Agent Exposure Studies: 1955 – 1975

The Department of Defense is committed to share with the Department of Veterans' Affairs the databases it compiles on military personnel who participated in prior military chemical and biological operational testing. During the 1990s, the Defense Department compiled the Mustard Participant Database and from 2000 to 2003, the Projects 112/SHAD Database. The Department is currently working to catalogue tests conducted since 1942 that were not included in the earlier databases. As part of this effort, the Defense Department is cataloguing the tests that were conducted at Edgewood Arsenal, Maryland from 1955 to 1975. The Institute of Medicine (IOM) published a three-volume study between 1982 and 1985 on the long-term health effects of exposure to the chemicals tested.¹ The study did not detect any significant long-term health effects in Edgewood Arsenal volunteers.

During the 1955-1975 Edgewood Arsenal testing, the Army Chemical Corps Medical Department conducted classified medical studies involving nerve agents, nerve agent treatments (antidotes), psychochemicals (hallucinogenic drugs), irritants, and blistering agents. The purpose of the studies was to ensure that the U.S. military could adequately protect its servicemembers from possible wartime exposures to chemical warfare agents. As part of this effort, the Army conducted testing on approximately 7,000 volunteers at Edgewood Arsenal. These studies exposed participants, with their consent, to a number of different chemicals. The study objectives were to determine specific health effects associated with exposure (particularly at low dosages), to assess various pre- and post-exposure medical treatments, and to evaluate the effectiveness of personal protective equipment in preventing exposure.

The program evaluated the effects of low-dose exposures to chemical agents and their treatments, how well personnel performed mentally and physically following exposure, how easily some chemicals were absorbed into the body through the skin, and the effectiveness of personal protective equipment. Not all volunteers were exposed to chemical agents. Some only received placebos (harmless substances with no health risks) or performed stress tests without any exposure to chemicals.

Initially investigators determined exposure levels based on known safe levels in laboratory animals. They increased exposure levels only when there was a low risk of

¹ Institute of Medicine, Possible Long-Term Health Effects of Short-Term Exposure To Chemical Agents, Volumes 1-3, 1982, 1984, 1985.

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serious side effects. The study investigators assured that the exposure levels administered would not result in serious or life-threatening side effects. If required, the volunteers received treatment for any adverse health effects.

Frequently Asked Questions
Edgewood Arsenal Chemical Agent Exposure Studies: 1955 – 1975

Q: Where did the Army get its test participants?

A: Army enlisted men assigned to installations near Edgewood Arsenal were the initial source of volunteers. Over time, the Army recruited volunteers from throughout the United States and from other Services. About 75 service members participated during each 30-60 day testing period. As a group, the volunteers selected to participate in the studies were above average in physical and mental qualifications when compared to other service members.

Q: Were study participants true volunteers?

A: The Army obtained the voluntary consent of volunteers and provided them with study information.

Q: Does the Department of Defense still conduct human experimentation with chemical agents?

A: No. Current medical chemical defense programs involving human subjects do not involve the exposure of these subjects to chemical agents.

There are medical chemical defense programs that involve the use of human subjects in controlled clinical trials to test and evaluate the safety and effectiveness, of medical products (drugs, therapies, *etc.*) to protect against chemical agents. The use of human subjects in these trials involves volunteers who have provided informed consent. All use of human subjects in these trials is in full compliance with the "Common Rule," Federal Policy for the Protection of Human Subjects, Food and Drug Administration (FDA) regulations, Federal Acquisition Regulations (FAR), DOD Directives and Instructions, and *all* other applicable laws, regulations, issuances, and requirements.

Q: What databases are the Department of Defense maintaining on veterans exposed to chemical and biological agents?

A: DoD maintains a Project 112/SHAD (Shipboard Hazard and Defense) database. This database contains the names of veterans who were participated in Project 112/SHAD testing in the 1960s and 1970s. It contains more than 6,000 names and is updated as needed when we discover additional veterans who were part of this testing. We also maintain a database containing the names of veterans who participated in mustard agent tests during World War II. We are currently in the process of populating our third exposure database, the Edgewood Arsenal Chemical Agent Exposure Studies database (1955-1975). The Edgewood Arsenal Chemical Agent Exposure Studies Database (1955-1975) is part of the database of all other chemical and biological testing since World War II.

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Q: Besides names and service numbers, what other information does the DoD database contain on the Edgewood volunteers?

A: For each individual, the database will contain the following:

- Type of test (i.e., performance, equipment etc.)
- Type of exposure (i.e., injection, intravenous (IV) etc.)
- Date of exposure
- Agent/simulant name
- Agent/simulant amount if recorded
- Treatments required as a result of the exposure
- Documents describing the test procedures, if available.

Q: Who maintains the database for veterans exposed to radiation?

A: The Defense Threat Reduction Agency maintains information on veterans exposed to radiation during the Nuclear Test Personnel Review (NTPR) Program.

Q: What types of tests were conducted at Edgewood?

A: Table 1 provides a rough breakout of volunteer hours against various experimental categories:

Incapacitating compounds (i.e. vomiting agent)	29.9%
Lethal compounds (i.e. sarin)	14.5 %
Riot control compounds (i.e. CS)	14.2%
Protective equipment and clothing (masks, rubber suits, etc.)	13.2%
Development evaluation and test procedures	12.5%
Effects of drugs and environmental stress on human physiological mechanisms (i.e. wakefulness)	6.4%
Human factors tests (ability to follow instructions)	2.1%
Other (visual studies, sleep deprivation, etc.)	7.2%

Q: Did the Army expose the volunteers to hallucinogenic compounds?

A: Yes, there were studies at Edgewood that exposed volunteers to hallucinogenic drugs like LSD. Although the current medical literature indicates that such exposure may have some long-lasting effects among some individuals, such as "flashbacks" (visual hallucinations without new drug exposure), the volunteer records from the times of the Edgewood studies did not record these kinds of after effects among the Edgewood study volunteers.

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