

# Exhibit W

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February 7, 2012

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Via E-Mail

Kimberly Herb, Esq.  
United States Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Avenue NW  
Washington, DC 20530

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

Dear Ms. Herb:

In light of the concerns you raised during our January 5, 2012 meet and confer call, and based on your representations to Plaintiffs and the Court, Plaintiffs — for a third time — propose to narrow our request for documents from the MKULTRA FOIA Set. If this proposal is not acceptable, we reserve the right to seek broader relief from the Court. Plaintiffs request that Defendants produce or justify redactions for the following documents, listed by beginning MORI ID:

- 17383 – only pages 2, 13, 15-18, 20-22, 26, 28, 35-38
- 17755
- 145893
- 146172
- 146195
- 184548
- 184606

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The seven documents above contain material redactions and appear to be highly relevant to Plaintiffs' claims. For instance, No. 184548 refers to individuals who thought LSD was "dangerous material," but the three preceding paragraphs (about half an entire page) are redacted. These redactions are likely to contain important information regarding *why* the individuals thought LSD was "dangerous" — *i.e.*, health effects observed after LSD administration. Such information is clearly relevant to Plaintiffs' claims.

Plaintiffs' proposal represents a miniscule portion of the more than 1,800 documents (17,000 pages) in the Set. Locating and reviewing redactions for just seven documents should not present a substantial burden, especially in light of the Court's statement during the December 15 Hearing that Plaintiffs' December 6 request was "not a huge universe of documents, not in this case." (Transcript at 51:4-5.)

As for the MKULTRA Briefing Book, during the January 5 call, Defendants offered to file a Declaration stating that, after reviewing the unredacted version of the Briefing Book: (1) none of the principal researchers or testing locations listed in the Briefing Book subprojects are military institutions and (2) the Briefing Book subprojects did not involve any service members. Upon receipt of this sworn Declaration with this form and content of someone with personal knowledge, Plaintiffs will withdraw our requests for the Briefing Book documents.

Given the considerable concessions Plaintiffs propose in order to narrow our list of requests for a third time in light of your concerns, we assume that the CIA will produce in unredacted form (or log redactions for) all documents requested. If that is not the case, please let us know, as the Court's intervention would then likely become necessary.

Please let us know when Plaintiffs can expect the CIA's production of these documents and the Declaration. Upon our review of these documents, Plaintiffs reserve the right to request additional documents.

Finally, during the January 5 call, you agreed to follow-up with Plaintiffs regarding the CIA's involvement in the following programs: 1) Project Chatter, 2) Project Derby Hat, 3) Project Third Chance, and 4) Material Testing Program EA 1729. We have yet to receive any information from you regarding these programs. Please update Plaintiffs as soon as possible regarding Defendants' findings concerning these programs.

In this regard, you have consistently represented to the Court that the CIA was only involved in testing on service members as part of Project Often and with only two substances (EA 3167 and the "Boomer"). We have previously directed your attention to, *inter alia*, the *Thornwell* case and the Department of Veterans' Affairs' documents identified in my previous letter (*see* DVA052 000030), which indicate CIA-Army involvement in testing on service members abroad. In addition, Dr. Ketchum produced an email sent to Margaret

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Filbert (Army), which states that the Army in fact discussed LSD testing “in full detail with the CIA” and that the Army worked with the CIA to test LSD on “overseas unwitting subjects.” (JK09 0015341 – 15343.) I enclose Dr. Ketchum’s email for your convenience. We ask that you also investigate these issues and report back to Plaintiffs, and suggest, moreover, that you correct any representations made to the Court that now appear to be mistaken.

Sincerely,



Ben Patterson

cc: Joshua E. Gardner  
Brigham Bowen  
Lily Farel  
Judson O. Littleton

Enclosure