

## **EXHIBIT D**



**U.S. Department of Justice**

Civil Division  
Federal Programs Branch

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July 12, 2010

Via Email

Mr. Gordon Erspamer, Esq.  
Mr. Daniel Vecchio, 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 Messrs. Erspamer and Vecchio:

Following our discussion June 30 about outstanding discovery issues and as we agreed during that discussion, we have developed a proposal for resolving the parties' disputes concerning the scope of discovery and Defendants' request for a stay of further discovery.

We understand that the central focus of Plaintiffs' discovery efforts is obtaining documents related to known and possible health effects of chemical and biological agents tested on Army servicemembers. Defendants have objected to Plaintiffs' document requests to the extent that they seek wide-ranging searches of documents dating back as far as 60 years that would be extremely time-consuming and costly and would exceed the scope of the issues before the Court. To address these interests and without agreeing that discovery concerning servicemembers other than the named Plaintiffs is relevant to the remaining issues of the case, we propose that additional document discovery of Defendants proceed as follows:

1. The Department of Defense ("DoD") and Department of Army ("DA") will make available to Plaintiffs a list of all of the substances that DoD has identified to date in its Chemical and Biological Test Repository as having been administered to servicemember participants in chemical and biological agent tests at any Army installation.
2. DA, on behalf of itself and DoD, will then search the records stored at Edgewood Arsenal and Ft. Detrick, which were the Army's primary research centers for chemical and biological agents and where documents addressing health effects or possible health effects of substances that it tested on humans are expected to reside, for all documents other than records of

individual servicemember tests that were created by DoD, DA, any other entity or any individual that describe or discuss (i) physical or psychological side effects (short term or long term) associated with any of those substances or (ii) possible physical or psychological side effects (short term or long term) associated with any of those substances.<sup>1</sup>

3. DA will produce to Plaintiffs all documents identified by the search that are not protected from disclosure by the deliberative process privilege, attorney-client privilege, attorney work product doctrine, state secrets or any other applicable privilege or immunity recognized under statute, regulation or applicable case law. DA will provide a log describing any documents withheld based on privilege or other protection. Because of the substantial passage of time since the documents at issue were created and the substantial span of time over which the documents were created, the search is expected to be time-consuming. DA will exercise best efforts to complete the search as expeditiously as possible.
4. The Central Intelligence Agency ("CIA") will refer to DoD for classification review the six documents it referenced in Defendants' Response to Plaintiffs' Interrogatory No. 5 as possibly responsive to the Interrogatory's request for identification of documents that reflect test results.

Defendants will undertake these efforts in lieu of responding to Plaintiffs' second and third sets of requests for production of documents, and Plaintiffs will not serve Defendants with additional requests for documents under Fed. R. Civ. P. 34. Defendants will consider discrete requests from Plaintiffs for specific documents in Defendants' possession, custody or control that Plaintiffs identify by name, and will endeavor in good faith to provide such documents where they can be located through reasonable search efforts and are not protected from disclosure by the deliberative process privilege, attorney-client privilege, attorney work product doctrine, state secrets or any other applicable privilege or immunity recognized under statute, regulation or applicable case law.

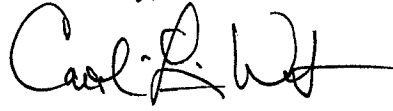
Any Fed. R. Civ. P. 30(b)(6) deposition notices concerning DoD and DA document searches will follow completion of the searches described above. Defendants reserve all rights with respect to objections to any such notices. With respect to the Department of Justice, as set forth in my letters of June 15 and 28, because your complaint names the Attorney General only "in connection with" what you allege is "the Attorney General's assumption of responsibility to notify the victims of biological and chemical weapons tests," (Second Am. Compl. ¶ 98), and your First Set of Document Requests did not seek documents concerning the alleged assumption, there is no basis for the 30(b)(6) deposition you have noticed of DOJ, and we therefore continue to request that you withdraw that notice. With respect to the Central Intelligence Agency, for the reasons set forth in my June 28 letter we continue to propose a written description of its searches as more efficient than a deposition.

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<sup>1</sup> The Chemical and Biological Test Repository contains well over 10,000 servicemember test records, which precludes review of individual test records in any manner that would be practical for the progress of this litigation. DoD's examination of individual servicemember test records in order to identify servicemember test participants and their exposure information for the Chemical and Biological Test Repository has taken years and cost millions of dollars.

We look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Caroline Lewis Wolverton". The signature is written in a cursive style with a long horizontal stroke at the end.

Caroline Lewis Wolverton