

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 OAKLAND DIVISION
4

5 VIETNAM VETERANS OF AMERICA, *et al.*,
6 Plaintiffs,
7 v.
8 CENTRAL INTELLIGENCE AGENCY, *et al.*,
9 Defendants.

Case No. CV 09-0037-CW

DECLARATION OF MICHAEL
KILPATRICK DIRECTOR,
STRATEGIC COMMUNICATIONS
OFFICE OF THE UNDER
SECRETARY OF DEFENSE FOR
HEALTH AFFAIRS

10
11 I, Michael Kilpatrick, am familiar with the complaint in this case and declare the
12 following under the penalty of perjury:

13 1. I am the Director of Strategic Communications for the Office of the Under Secretary
14 of Defense for Health Affairs. I am familiar with the chemical and biological test programs the
15 Department of Defense implemented from 1953 through 1975. I make this statement based on
16 my personal knowledge and information provided to me in my official capacity.

17 2. Since 1976, the Department of Defense has thoroughly investigated the Army's test
18 programs. The investigations have spanned years and cost millions of dollars. The
19 investigations have addressed both the authorizations and procedures governing the testing
20 programs, and the health effects of participation in the programs.

21 3. Two key investigations have examined the authorizations and procedures governing
22 the chemical and biological testing programs. Addressing the U.S. Army's chemical testing
23 programs between 1950 and 1975 in response to congressional and public inquiry, the Inspector
24 General ("IG") for the Department of the Army ("DA") conducted a seven-month investigation
25 in 1975 and 1976 and published the results in a March 1976 report titled, "Use of Volunteers in
26 Chemical Agent Research." It is my understanding that the report has been produced to
27 Plaintiffs. This report remains the best single-source document describing the use of
28 servicemember test volunteers in Army chemical and biological testing programs. It describes

1 the history of chemical and biological warfare, the perceived threat that gave rise to the testing
2 programs, the authorities enacted for the testing programs, implementation of those authorities,
3 and specific tests conducted at Edgewood Arsenal and elsewhere. It also outlines tests that
4 deviated from the established authorities. It is thorough and well documented. In addition to the
5 detailed document review, the investigators noted that they interviewed 65 witnesses in 32 cities
6 and travelled in excess of 160,000 passenger miles.

7 A year after the IG's investigation of the Army's chemical testing programs, the Army
8 published a report concerning the biological testing program at Fort Detrick, Maryland, "U.S.
9 Army Activity in the U.S. Biological Warfare Programs." The purpose of that report was to
10 provide a comprehensive review of the Army's role in biological warfare programs. The report
11 details biological testing activities from 1942-1977. It is my understanding that the report has
12 been produced to Plaintiffs.

13 4. In addition to these comprehensive examinations of the authorizations and procedures
14 governing the Army's chemical and biological testing programs, DOD has expended
15 considerable resources to determine the long-term health effects on the test volunteers. In 1980,
16 the Army's Medical Command published a report on its follow-up study on the test volunteers
17 exposed to LSD during testing. The investigators determined that 741 test volunteers had been
18 exposed to LSD. The investigators conducted a pilot study between 1975 and 1976 and then
19 began the full follow-up study in 1978. The investigators examined 320 test volunteers as part
20 of the follow-up study. The volunteers had the option of a medical exam that required one week
21 of in-patient evaluation or they could submit responses to a questionnaire. 220 participated in
22 the in-patient evaluation, while 100 submitted responses to written questionnaires. The report
23 following the investigation, "LSD Follow-Up Study Report," fully detailed the health status of
24 the responding test volunteers. It is my understanding that the report has been produced to
25 Plaintiffs.

26 5. Between 1982 and 1985, working under contract with the Army, the National
27 Research Council conducted a broader examination of 6,720 test volunteers from the chemical
28 test program at Edgewood Arsenal to identify possible long-term health effects of participation
in the tests. Of that group, the investigators received 4,085 responses. This research effort

1 resulted in a three volume publication detailing the health effects of participation in the chemical
2 testing programs, "Possible Long-Term Health Effects of Short-Term Exposure to Chemical
3 Agents," which is available publicly.

4 6. In 2003, the National Research Council, working under an Army contract, conducted
5 a review of the 1985 report to confirm the long-term health effects for Sarin and other
6 Anticholinesterase agents. Titled "Long-Term health Effects of Exposure to Sarin and Other
7 Anticholinesterase Chemical Warfare Agents," the report is also available publicly. The
8 investigation sought to confirm the findings discussed in the 1985 NRC report discussed above.
9 The investigators in this study identified 4,022 test volunteers and either interviewed or received
10 written responses from 2,748. Like the original NRC report, this follow-up details the health
11 status of the responding test volunteers.

12 7. In 1993, the National Institute of Health published a Department of Veterans Affairs
13 ("VA")-contracted study of the potential long-term health effects arising from participation in
14 Mustard Gas and Lewisite testing. Titled, "Veterans at Risk: The Health Effects of Mustard
15 Gas and Lewisite," also available publicly, the results of the study gave rise to additional DoD
16 investigation into the chemical and biological testing programs.

17 Specifically, in 1993, DoD initiated the Chemical Weapons Exposure Study with the
18 primary purpose of identifying test volunteers who had participated in Mustard Gas or Lewisite
19 testing. The study, conducted primarily from 1993 through 1995, reviewed thousands of
20 documents at multiple locations in an effort to identify test volunteers involved in Mustard Gas
21 and Lewisite testing.

22 8. Between September 2002 and March 2007, researchers from the Institute of Medicine,
23 working under a VA contract identified and contacted veterans who had participated in Project
24 112/SHAD (Shipboard Hazard and Defense), a series of tests conducted between 1962 to 1973 at
25 the Deseret Test Center, headquartered at Fort Douglas, Utah. The purpose of the research was
26 to determine the health effects of the veterans' participation in that testing program. The
27 investigators identified 5,741 SHAD test participants. Of those, the investigators successfully
28 contacted and received responses from 2,684. The investigators used surveys to determine the
health status of the test participants. The investigators published the results in "Long-Term

1 Health Effects of Participation in Project SHAD (Shipboard Hazard and Defense),” which is
2 publicly available.

3 9. The Army has also analyzed the long term health effects of participation in the
4 biological agent test program. Army researchers contacted 358 biological test program
5 participants who had been exposed to infectious agents during the test program and an additional
6 164 participants who had not been exposed to act as a control group. The researchers used a
7 self-administered questionnaire to assess the respondents’ health and published the results in
8 “An Assessment of Health Status Among Medical Research Volunteers Who Served in the
9 Project Whitecoat Program at Fort Detrick, Maryland,” Colonel Phillip R. Pittman et al., in
10 2005, which is also publicly available.

11 10. There have also been multiple Congressional and public inquiries into U.S.
12 Government chemical and biological tests since the 1970s. The history of the Army’s testing
13 programs has been summarized in several reports from the Government Accountability Office,
14 including “Human Experimentation: An Overview of Cold War Era Programs” (1994);
15 “Chemical and Biological Defense: DOD Needs to Continue to Collect and Provide Information
16 on Tests and Potentially Exposed Personnel” (2004); and “Chemical and Biological Defense:
17 DOD and VA Need to Improve Efforts to Identify and Notify Individuals Potentially Exposed
18 During Chemical and Biological Tests” (2008). The U.S. Senate Committee on Veterans’
19 Affairs issued in 1994 a report titled “Is Military Research Hazardous to Veterans’ Health?
20 Lessons Spanning Half a Century”. These reports provide background on both the history of the
21 Army’s testing programs and the extensive efforts to locate veterans who participated in the
22 tests.

23 11. As a result of these investigations and congressional and public inquiries, the subject
24 of the Army’s chemical and biological agent tests involving human subjects has been aired
25 extensively. I therefore do not have reason to believe that there exists a significant amount of
26 critical information about those testing programs that is not already publicly known.

27 12. The Department of Defense has continued its efforts to identify all test volunteers
28 involved in chemical or biological agent testing programs. Those efforts have involved three
categories of test volunteers: those involved in Mustard Gas or Lewisite testing, those involved

1 in Project 112 / SHAD, and all other test programs. Test volunteers involved in the first two
2 categories have been identified through previous investigations.

3 13. DoD continues to search for test volunteers in the Army's chemical and biological
4 agent tests other than Mustard Gas, Lewisite and Project 112/SHAD under a contract with the
5 Battelle Memorial Institute. The contract provides for Battelle to identify all test volunteers
6 involved in chemical or biological testing programs other than Mustard Gas / Lewisite and
7 Project 112 / SHAD from 1942 through present. A copy of the pertinent Statement of Work is
8 attached as Exhibit 1. This task requires researchers to review individual test records and other
9 sources for veterans' identifying information and details about the tests they underwent. In some
10 cases the test records do not identify test volunteers by name. Therefore, the researchers must
11 piece together information from a variety of records to identify test volunteers. In many cases
12 the most pertinent records are archived hard-copy lab notebooks researchers used to record
13 information about the tests. The intended result of the project is to consolidate as much
14 information as possible about the test volunteers, including their names, the chemical or
15 biological agent each was exposed to, and the amount administered and route of administration
16 (e.g., oral) where available.

17 14. Battelle's search is all-encompassing. The search requires a laborious by-hand
18 search of hard copy records that must be conducted by individual researchers. Battelle transmits
19 test volunteer identifying data to the Office of the Assistant Secretary of Defense for Health
20 Affairs (OASD (HA)) for inclusion in a database of test volunteers maintained by DoD, the
21 "Chemical and Biological Tests Repository" ("Chem-Bio Database"). The search is projected to
22 last until September of 2011. Battelle's effort has cost millions of dollars.

23 15. A primary objective of the investigation is to enable test participants to receive
24 pertinent information about the tests. Once the test information is gathered for a given
25 participant and entered into the Chem-Bio database, DoD transmits it to VA so that VA may
26 notify the participant of the potential exposure and, in case the individual has health concerns,
27 provide guidance on scheduling a free clinical examination at a VA health care facility, applying
28 for VA health care benefits, and filing a VA disability claim.

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16. DoD and the Army have already searched for and produced a large number of documents in this litigation. DoD and the Army continue to search for documents related to the Army's chemical and biological agent testing, including the documents listed in the footnotes and bibliography of the original DA IG investigation, documents pertaining to health effects of tested substances, and documents relating to test volunteers' consent to the tests.

17. The previous investigations into DOD's chemical and biological testing programs have clearly delineated the purpose, authorities, conduct of the programs. Additionally, previous investigations have analyzed the potential long-term health effects of participation in the testing programs. Finally, DOD is actively working to identify all test volunteers. As illustrated by these previous investigations, and the level of effort expended to date to identify test volunteers and the fact that the Army's chemical and biological testing programs began over 60 years ago and spanned more than 20 years, there are an enormous number of very old records concerning the tests. Searching through all of those records – many of which are not digitized and would require by-hand review – for documents responsive to all of the requests that Plaintiffs have served would require an enormous amount of time and resources. By way of example, Battelle's on-going investigation to identify test volunteers, covering only a portion of these documents, has spanned years and cost millions of dollars.

I hereby declare under penalty of perjury that the foregoing is true and correct. Executed this 27th day of August, 2010.



Michael Kilpatrick
Director, Strategic Communications
Office of the Under Secretary of Defense
Health Affairs