

Exhibit F

Exhibit F

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September 24, 2010

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By E-Mail

Brigham J. Bowen
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
P.O. Box 883
Washington, D.C. 20044

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

Dear Brigham:

I write to memorialize yesterday's meet-and-confer telephone conference, and to confirm certain commitments made during our call.

Deposition Scheduling

In recognition of outstanding discovery disputes that are set for hearing before the Magistrate in late October, and the fact that Defendants' document searches (as described in the declarations accompanying Defendants' discovery submissions) are ongoing without a date certain for completion, Defendants proposed the following dates for depositions called for by Plaintiffs' November 16, 2009 Rule 30(b)(6) notice:

- Martha Hamed (Topics 29, 33) – December 7, 2010
- Anthony Lee (Topic 30) – December 9, 2010
- Patricia Cameresi (Topic 6) – any business day between December 8 and December 15, 2010
- Arthur Anderson (Topics 1, 9, 12, 16, 38, 39, 57) – date to be determined in December 2010 or January 2011

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Defendants stated that they are in the process of obtaining proposed dates for other witnesses. Defendants explained that these proposed dates should permit sufficient time for the production of additional documents, if warranted, following the resolution of discovery matters currently pending before the Court. Plaintiffs also noted the possibility that Defendants would designate at least some of these witnesses to testify on additional topics if the Magistrate rules in Plaintiffs' favor on the pending motion to compel.

Plaintiffs should be able to make these dates work, and we will confirm for you shortly. Defendants also indicated that they are available on December 10, 2010, for the deposition of non-party Dr. Edward Pelikan. We will work to confirm that date, internally and with Dr. Pelikan's counsel, and will get back to you as soon as we can.

Rule 30(b)(6) Witness Designations

We discussed Plaintiffs' expressed concerns about Defendants' designation of Dr. Michael Kilpatrick to testify on Rule 30(b)(6) Topic Nos. 4, 15, 31, and 55. As noted previously, Plaintiffs are concerned that Dr. Kilpatrick's background in public relations may not give him the knowledge base necessary to answer questions regarding these topics. Defendants responded that they may designate Rule 30(b)(6) witnesses at their discretion, and that they will prepare those witnesses, but that witnesses with first-hand knowledge about these topics as of 1975 may no longer exist. Plaintiffs stated that they are entitled to testimony about any new information that has come to light since 1975 about the possible health effects of the drugs used in the testing programs.

Defendants stated that they may change their Rule 30(b)(6) designees at some point, if necessary, due to deployments, changes in staffing, or other reasons. Plaintiffs, of course, do not disagree with this principle, but ask that Defendants provide notice of any such changes well in advance of the depositions once they are scheduled. Plaintiffs asked Defendants to consider revisiting their responses to Topics Nos. 32 and 54 of Plaintiffs' 30(b)(6) notice in light of the Magistrate's July 13, 2010 Order and Defendants' ongoing document searches.¹ Defendants agreed to consider updating their response if necessary to, among other things, account for any changes warranted by the Magistrate's July 13 Order. For clarity of the record, Plaintiffs encourage Defendants to do so.

¹ Topic 32 addresses attempts by test subjects to withdraw consent and Topic 54 addresses the Confidential Army Memorandum entitled "The Use of Volunteers in Research" (CS: 385). During the call, Plaintiffs offered to provide Defendants with a copy of this document, which Defendants apparently have been unable to locate. It is enclosed with this letter. We note that this document was the subject of testimony during the hearings chaired by Senator Kennedy, and also is discussed at page 35 of the 1976 DAIG report.

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Document Searches

As noted above, Defendants were not able to provide a date certain by which they would produce documents located through the ongoing searches described in Defendants' discovery submissions. Defendants assured Plaintiffs, however, that good faith, diligent searches are ongoing. Plaintiffs asked whether Defendants contend that the MKULTRA FOIA release provided by the CIA outside of discovery includes all documents in the CIA's possession relevant to MKULTRA. Defendants stated that the declaration of Patricia Cameresi explained their searches for and production of CIA documents.

Separately, Plaintiffs have reviewed Lloyd Roberts' declaration regarding records requests sent to National Records Center. Plaintiffs request that Defendants confirm whether documents sent to the National Archives in Suiteland, Maryland in 1982 have been included in their search efforts. *See* VVA-VA023674-75.

Interrogatories

The parties discussed Plaintiffs' concerns with Defendants' amended interrogatory responses. Plaintiffs reiterated that Defendants' responses — which are largely unchanged from the prior responses given to the Magistrate at the June 30 hearing — do not account for or comply with the Magistrate's July 13 Order granting Plaintiffs' motion to compel. As a global matter, Plaintiffs explained that many of Defendants' responses merely refer to Defendants' document production rather than providing stand-alone responses to the questions posed. In particular, we discussed deficiencies in the responses to Interrogatories 8 and 25. Defendants expressed their belief that the Magistrate did not rule on the sufficiency of Defendants' initial responses, and stated that their amended responses largely did not change because the searches for documents cited in the responses did not change.

In an effort to avoid further motion practice on this issue, Defendants agreed (as noted in your September 22 letter) to review their responses in light of Plaintiffs' global concern and to supplement those responses as Defendants deem appropriate. Plaintiffs agreed to send a letter by October 1 further discussing their concerns and identifying specific responses that Plaintiffs do not believe Defendants need to revisit or revise. Defendants committed to providing amended interrogatory responses within 30 days of Plaintiffs' letter. If those responses still are inadequate, Plaintiffs will seek relief from the Court.

Protective Order

The parties discussed Defendants' proposed protective order, submitted with Defendants' response to Plaintiffs' pending motion for a protective order. We discussed Plaintiffs' global concern that Defendants' proposal does not acknowledge the right of *Plaintiffs* and non-parties to produce information subject to confidentiality protection. Defendants stated that

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they did not understand that Plaintiffs also intended to seek confidentiality protection under the order. We also discussed Plaintiffs' concerns with sections 7.3 and 7.4 of the proposed order, which contain (in Plaintiffs' view) unnecessarily burdensome requirements for the use of covered information produced by Defendants. Defendants stated that these provisions were required by the Department of Veterans Affairs to protect select types of information (*i.e.*, information subject to 38 U.S.C. § 5701). We asked Defendants to identify the source of this requirement and to describe the affected information. Defendants agreed to follow-up with the VA on this issue. We look forward to your response. Plaintiffs also agreed to outline in a letter further comments on Defendants' proposed order, in the hope that the parties can resolve any dispute before the matter is heard by the Magistrate. Defendants agreed to consider the letter with that goal in mind.

Other Issues

Plaintiffs asked for Defendants' response to Plaintiffs' September 13, 2010 letter concerning the format for document productions and specific issues identified with the VA's production and privilege log. You stated that Caroline Lewis Wolverton (who was not on the phone) was responsible for responding to these concerns, and agreed to raise these issues with her. Given Defendants' ongoing document searches and upcoming productions, it is important that the parties address these issues quickly. In light of the contemplated timing for Plaintiffs' document production (discussed below), we ask that Defendants provide a response on the format issue by next Tuesday, September 28.

Plaintiffs asked whether Defendants have communicated with Battelle Memorial Institute about Plaintiffs' subpoena to the Institute. You indicated that you were not aware of whether Defendants had been in contact with Battelle about the subpoena, could not state Defendants' position on the subpoena, and did not know whether the Department of Justice would represent Battelle in this matter. We explained that this information is important so that Plaintiffs can appropriately confer with Defendants in advance of a motion to compel compliance with the subpoena. You stated that Caroline Lewis-Wolverton would be more knowledgeable about this issue, and agreed to refer the issue to her. We look forward to Defendants' response.

Defendants asked about the status of Plaintiffs' document production. We explained that — as noted previously — Plaintiffs are prepared to produce documents, but certain documents contain confidential information and should be subject to a protective order. We agreed to confirm whether Plaintiffs could produce non-confidential documents by the end of next week. I can confirm that Plaintiffs expect to produce non-privileged, non-confidential documents by the end of next week, assuming there is agreement on the format for production.

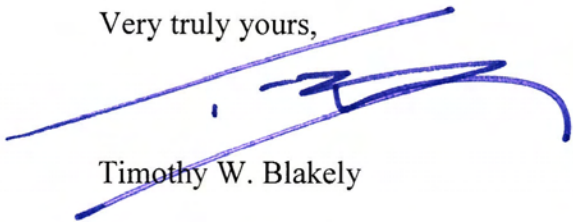
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* * *

Please let me know if you believe that this letter inaccurately describes yesterday's meet-and-confer teleconference or any of the commitments made by the parties. As noted above, we will be providing Defendants with additional information next week. We look forward to receiving additional information from Defendants as well.

Very truly yours,



Timothy W. Blakely

cc: Caroline Lewis Wolverton, Esq.
Kimberly L. Herb, Esq.
Lily Farel, Esq.
Gordon P. Erspamer, Esq.

C O N F I D E N T I A L

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DEPARTMENT OF THE ARMY
Office of the Chief of Staff
Washington 25, D. C.

CS: 385 (30 Jun 53)

30 June 1953

MEMORANDUM THRU: ASSISTANT CHIEF OF STAFF, G-4

FOR: CHIEF CHEMICAL OFFICER
THE SURGEON GENERAL

SUBJECT: Use of Volunteers in Research

1. This directive prescribes policies and procedures governing the use of volunteers in research in defense against atomic, biological and chemical warfare. The purpose of this research is to permit a realistic evaluation and/or development of effective preventive measures of defense against atomic, biological or chemical agents.

2. Certain basic principles must be observed in order to satisfy moral, ethical and legal concepts. These basic principles are:

a. The voluntary consent of the human subject is absolutely essential.

(1) This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior form of constrain or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him to make an understanding and enlightened decision. This latter element required that before the acceptance of an affirmative decision by the experimental subject the should be made known to him the nature, duration, and purpose of the experiment; the method and means by which it is to be conducted; all inconveniences and hazards reasonably to be expected; and the effects upon his health or person which may possibly come from his participation in the experiment.

(2) The consent of the human subject shall be in writing, his signature shall be affixed to a written instrument setting forth substantially the aforementioned requirements and shall be signed in the presence of at least one witness who shall attest to such signature in writing.

(a) In experiments where personnel from more than one Service are involved, the Secretary of the Service which is exercising primary responsibility for conducting the experiment is designated to prepare such an instrument and coordinate it for use by all the Services having human volunteers involved in the experiment.

ATTACHMENT TO CBC 200/15, 12 June 56

as per. 4.

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(3) The duty and responsibility for ascertaining the quality of the consent rests upon each individual who initiates, directs or engages in the experiment. It is a personal duty and responsibility which may not be delegated to another with impunity.

b. The experiment should be such as to yield fruitful results for the good of society, unprocurable by other methods or means of study, and not random and unnecessary in nature.

c. The number of volunteers used shall be kept at a minimum consistent with item b, above.

d. The experiment should be so designed and based on the results of animal experimentation and a knowledge of the natural history of the disease or other problem under study that the anticipated results will justify the performance of the experiment.

e. The experiment should be so conducted as to avoid all unnecessary physical and mental suffering and injury.

f. No experiment should be conducted where there is a prior reason to believe that death or disabling injury will occur.

g. The degree of risk to be taken should never exceed that determined by the humanitarian importance of the problem to be solved by the experiment.

h. Proper preparations should be made and adequate facilities provided to protect the experimental subject against even remote possibilities of injury, disability, or death.

i. The experiment should be conducted only by scientifically qualified persons. The highest degree of skill and care should be required through all stages of the experiment of those who conduct or engage in the experiment.

j. During the course of the experiment the human subject should be at liberty to bring the experiment to an end if he has reached the physical or mental state where continuation of the experiment seems to him to be impossible.

k. During the course of the experiment the scientist in charge must be prepared to terminate the experiment at any stage, if he has probable cause to believe, in the exercise of the good faith, superior skill and careful judgment required of him that a continuation of the experiment is likely to result in injury, disability, or death to the experimental subject.

(1) The established policy, which prohibits the use of prisoner of war in human experimentation, is continued and they will not be used under any circumstances.

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3. The following opinions of the Judge Advocate General furnish specific guidance for all participants in research in atomic, biological and/or chemical warfare defense using volunteers.

a. Legality of accepting volunteers. The authority of the Secretary of the Army to conduct research and development activities is contained in section 104 of the act of 10 July 1950 (64 Stat. 322; 5 U.S.C. 235a) which provides:

"The Secretary of the Army is authorized to conduct, engage and participate in research and development programs related to activities of the Army of the United States and to procure, or contract for the use of, such facilities, equipment, services, and supplies as may be required to effectuate such programs."

Section 101 of the Army Organization Act of 1950 (64 Stat. 264; 5 U.S.C. 181-4) provides in part as follows:

"Except as otherwise prescribed by law, the Secretary of the Army may make such assignments and details of members of the army and civilian personnel as he thinks proper, and may prescribe the duties of the members and civilian personnel so assigned; and such members and civilian personnel shall be responsible for, and shall have the authority necessary to perform, such duties as may be so prescribed for them."

b. Military Personnel and Department of the Army Civilian Employees. Compensation for the disability or death of a civilian employee resulting from personal injury or disease proximately caused by his employment is payable under the Federal Employees Compensation Act (30 Stat. 742 et seq.), as amended (5 U.S.C. 751 et seq.), regardless of whether his employment was of a hazardous nature. The amount, and type of disability compensation or other benefits payable by reason of the death or disability of a member of the Army resulting from injury or disease incident to service depends upon the individual status of each member, and is covered by various provisions of law. It may be stated generally that under present laws no additional rights against the Government will result from the death or disability of military and civilian personnel participating in experiments by reason of the hazardous nature of the operations, although it is possible that the Congress may confer benefits or grant relief by general or special legislation subsequently enacted. Even should the injury or disease result from a negligent or wrongful act, the recovery of any compensation or benefit under present law in addition to these noted above is doubtful.

c. Use of Appropriated Funds for the Purchase of Life Insurance. In effect, the payment of insurance premiums on the life of an officer or employee is a form of compensation (Commissioner of Internal Revenue vs. Bonwit, 87 F. 2d 764 (2nd Cir. 1937), cert. den.

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"No officer in any branch of the public service, or any other person whose salary, pay, or emoluments are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law, and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation

There is no statutory authority for the payment of premiums for insuring the lives of military and civilian personnel, and current appropriations for military and civilian pay and allowances do not expressly provide therefor. It follows that the payment of such premiums from appropriated funds is prohibited by the quoted section. The statutory provision in question is applicable to all military and civilian personnel of the Army "whose salary, pay, or emoluments are fixed by law or regulations" (24 Comp. Gen. 646 (1945)).

d. Private Citizens. Section 3679 of the Revised Statutes, as amended (31 U.S.C. 665(b)), provides:

"No officer or employee of the United States shall accept voluntary service for the United States or employ personal service in excess of that authorized by law, except in cases of emergency involving the safety of human life or the protection of property."

It is the policy of the quoted statute to prohibit the acceptance of voluntary services which may provide a basis for future claims against the Government. The stated policy applies not only where legal claims for compensation may arise from performance of the services, but also where the circumstances surrounding the proffer support a reasonable possibility that the services may provide the basis for seeking remedial legislation from the Congress. The JAG is therefore of the opinion that the services in question should not be accepted by the Department of the Army. In view of this conclusion, it is unnecessary to consider the extent to which such persons could exert claims against the Government by reason of disability or death resulting from participation in the proposed experiments, or whether premiums on life insurance for the said participants may be paid from appropriated funds.

e. Contractors' Employees. The applicability of the foregoing considerations to contractors' employees is considered below:

(1) Legality of employment. The authority of the Secretary of the Army to contract for services necessary to effectuate research and development activities is contained in section 104 of the act of 10 July 1950 (64 Stat. 322; 5 U.S.C. 235a), quoted in subparagraph a, above. There appears to be no provision of law which would prevent a contractor from employing his personnel upon experiments of the nature contemplated. In the literal sense, no question of "acceptance" of the services in question by the Government is involved, as the private relation of such a

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upon the contracting officer to ascertain whether the terms are sufficient broad to permit the participation of contractor employees in the experiment. The terms of the contract must insure that the contractor will observe the conditions and safeguards set forth in this directive.

(2) Claims against the Government. Generally, benefits to which a private employee may become entitled by reason of death or disability resulting from his employment are payable under State, rather than Federal, laws, with the exception of persons covered by the survivor's insurance provisions of the Social Security Act (49 Stat. 623), as amended (42 U.S.C. 402). In some situations the employee may have remedies against his employer under State workmen's compensation or other laws. It is not possible to generalize upon the right of such an employer, when he is a Government contractor, to claim reimbursement from the Government for additional costs by reason of liability to his employees incurred in this regard, as this depends upon the terms of each individual contract. The question of whether any additional rights against the employer-contractor may result from the death or disability of employees participating in experiments, by reason of the hazardous nature of the experiments, is likewise not susceptible of any general statement, due to the numerous factors involved. Such persons would not be disqualified from prosecuting claims against the Government under the Federal Tort Claims Act (28 U.S.C. 2671 et seq.). (See also AR 25-70, 2 March 1951)

(3) Purchase of life insurance. In cost-reimbursable type contracts, the expense of maintaining group accident and life insurance plans may be an allowable item of cost under the contract (ASPR 15-204(p)). Group life insurance plans provided voluntarily to contractors' employees on a reimbursable basis are subject to review by heads of procuring activities to determine that greater benefits are not being extended under the cost-reimbursement type contract than those granted to employees under the contractor's regular commercial operations (APP 10-351). In special cases, life insurance for employees may be authorized by heads of procuring activities (ASPR 10-302; APP 302) even in fixed-price contracts (APP 10-01). In order to be applicable, cost principles must be set forth or incorporated in a cost-reimbursable contract (ASPR 15-102). It will be seen from the above that, if a contractor obtains insurance on the lives of his employees while participating in the proposed experiments, he may be reimbursed for the expenses involved only where the contract is of a type allowing reimbursement and the terms thereof allow recovery as an item of cost.

f. Irregular and Fee-basis Employees. The stated category comprehends all persons paid from appropriated funds for intermittent services, as distinguished from regular, full-time employees. For example, the Secretary of the Army may procure the temporary or intermittent services of experts or consultants, including stenographic reporting services, without regard to civil service and classification laws at rate not to exceed \$50 per diem (sec. 15, act of 2 Aug 1946 (60 Stat. 810; 5 U.S.C. 55a); sec. 601, Department of Defense Appropriation Act, 1953 (Pub. Law 488, 82nd Cong.); see CFR A7.6, par. 6-3). The employment of experts and consultants either on a per diem basis or without compensation

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is also authorized by section 710, Defense Production Act of 1950 (64 Stat. 819; 50 U.S.C. App. 2160). (See CFR A7.6, par. 6-3). The Secretary of the Army may also employ architects, engineers, and other technical and professional personnel on a fee basis, without regard to classification laws (sec. 2, act of 7 Aug 1939 (53 Stat. 1240; 5 U.S.C. 221)).

In general, the employment status of such persons must be determined individually from the statutory authority under which they are employed and the terms and conditions of their employment agreements. In some cases it will be found that their status is not that of employees but of contractors furnishing services to the Government at agreed contract prices. The following observations are made upon the applicability of the three questions considered in subparagraph e, above, to the category of persons under considerations:

(1) Legality of accepting volunteers. The terms of the statutory authority for the employment and the provisions of the employment agreement must be inspected in each case to determine whether the particular individual is an employee subject to detail or assignment upon the proposed experiments, or whether his employment is limited to other specific objects. If his employment upon the project is not so authorized it would appear that acceptance of his services for this purpose on a voluntary basis would be prohibited by the considerations discussed in subparagraph d, above.

(2) Claims against the Government. The Federal Employees Compensation Act (39 Stat. 742 et seq.), as amended (5 U.S.C. 751 et seq.) is applicable to "all civil officers and employees" of the Government and all "persons rendering personal services of a kind similar to those of civilian officers or employees of the United States***without compensation or for nominal compensation, in any case in which acceptance or use of such services is authorized by an Act of Congress or in which provision is made by law for payment of the travel or other expenses of such person." The foregoing broad coverage of the act would appear to include most irregular and fee-basis employees. However, the administration of the benefits in question are within the province of the Bureau of Employees Compensation, Department of Labor, and only that agency may provide a definitive ruling with respect to coverage of the individuals in question. With the foregoing reservation, the views of this office set forth in subparagraph b, above, would appear equally applicable to irregular and fee-basis employees.

(3) Purchase of life insurance. The Comptroller General has approved the payment of surgical and hospitalization expenses of a field employee injured while engaged upon flood control work (3 Comp. Gen. 57 (1923)), on the ground that "the employee's compensation was not fixed by law but was subject to administrative discretion, since, otherwise, payment of the expense by the Government would constitute payment of additional compensation, which is prohibited by section 1765, Revised Statutes" (28 Comp. Gen. 175 (1948)). Subject to such restrictions and

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of compensation is not fixed by law or regulations. In this regard, it may be advisable for the Government to provide an additional allowance to the employee for financing such private insurance arrangements as he may wish to make rather than to undertake direct negotiations with insurance carriers for the desired coverages.

4. Subject to the above conditions, Armed Forces personnel and/or civilians on duty at installations engaged in research in subject fields shall be permitted to actively participate in all phases of the program. As a general rule, volunteer subjects should be males under 35 years of age, with no physical or mental diseases.

5. Agents used in research must have the following limiting characteristics:

- a. Controllable lethality.
- b. No serious chronicity anticipated.
- c. Effective therapy available.
- d. Adequate background of animal experimentation.

6. As added protection for volunteers, the following safeguards will be provided:

- a. Direct responsibility for the planning and conduct of the investigations and for the medical care will rest with one adequately trained physician.
- b. All apparatus and instruments necessary to deal with any emergency situations must be available, e.g., Drinker respirator, Mine Safety Pneophore, oxygen apparatus, etc.
- c. Medical treatment and hospitalization will be provided for all casualties of the experimentation as required.
- d. The physician in charge will have available to him on short notice throughout the investigation competent consultants representing any of the specialties to be encountered.

7. Due to the specialized nature of biological agents, the following procedures in addition to the foregoing policies and procedures will be observed in regard to this phase of the program.

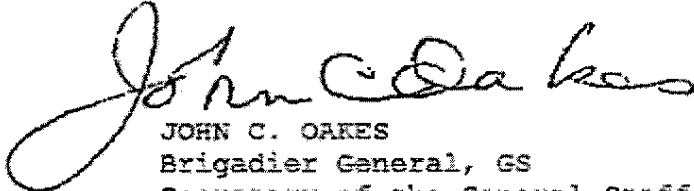
- a. In selecting agents for investigation, priority should be given to those which possess a high probability of successful infection under operational conditions against U. S. forces.
- b. The effectiveness of available defensive measures, either immunization or chemoprophylaxis, will determine the necessity for study of the agent considered.

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- c. Use enlarged (4X) Henderson or other suitable apparatus for exposure.
- d. First experiments will be designed to determine level of susceptibility. The investigation should utilize the minimum number of volunteers which will yield statistically valid data at low levels of dosage.
- e. Increase number of persons to that level which will give significance.
- f. Then use immunized persons and persons on prophylactic chemotherapy.
- g. Determine and apply details of immunologic study.
- h. From the foregoing the final step will be to use volunteer subjects, or if there exists a good correlation with a particular animal for a particular micro-organism, then use that animal, on a proving ground downwind far enough from the munition so that the concentration will be known to be approximately equal to the level required to induce infection (This will rule out subjecting volunteers to "crash" concentrations.)
8. No research in atomic, biological and/or chemical agents using volunteers will be undertaken until the Secretary of the Army has stated his approval in writing. The Surgeon General of the Army will review and comment on all proposals for the use of volunteers. When appropriate, he will seek the advice of The Surgeon General of the Navy, Air Force and/or the U. S. Public Health Service. The sponsoring Army agency will submit its proposal, together with the Surgeon General's review and comment thereon, to the Secretary of the Army through this office. As a minimum, the proposal will state the nature and purpose of the experiment and the name of the person who will be in charge.

BY DIRECTION OF THE CHIEF OF STAFF:


JOHN C. OAKES
Brigadier General, GS
Secretary of the General Staff

Copies furnished:

Asst. Chief of Staff, G-4