

# Exhibit J

**Exhibit J**



**U.S. Department of Justice**

Civil Division  
Federal Programs Branch

**Mailing Address**

P.O. Box 883  
Washington, D.C. 20044

**Overnight Delivery Address**

20 Massachusetts Ave., N.W.  
Washington, D.C. 20001

---

Tel: (202) 305-8356  
Fax: (202) 616-8470  
Kimberly.L.Herb@usdoj.gov

November 5, 2010

Via E-mail

Mr. Timothy W. Blakely, Esq.  
Morrison & Foerster, LLP  
425 Market Street  
San Francisco, CA 94105-2482

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

Dear Mr. Blakely:

I write in response to your letter of September 29, 2010 identifying concerns related to Defendants' amended interrogatory responses.

As Mr. Bowen has discussed with you, we are working diligently to respond to your questions and have been attempting to revisit Defendants' interrogatory responses in light of your requests and pursuant to our ongoing duties under Federal Rule of Civil Procedure 26(e). In doing so, we have encountered difficulty in preparing useful, relevant, and complete responses in light of numerous contingencies, including the outstanding discovery motions, the pendency of Defendants' planned release of numerous responsive documents (after the entry of an appropriate protective order), and the lack of information presently available to Defendants. While we have endeavored to prepare amended responses for release in short order that will be satisfactory to all parties, the numerous contingencies mentioned above render this possibility unlikely. In light of these difficulties, we would like to confer by telephone with you regarding a mutually agreeable plan for this and other matters, including the schedule for depositions. You should expect to hear from us shortly.

In the meantime, we are prepared to respond to a number of specific matters you raise in your September 29, 2010 letter. With regard to the other concerns identified under the heading of "specific issues," Defendants respond as follows:

- You requested information on "the classification of six documents that were in the possession of the" Central Intelligence Agency ("CIA"). We wish to clarify that there are seven such documents rather than six. CIA has referred all seven documents to DoD for a classification review. Three of the documents have been declassified; because they contain information that is both sensitive and technical in nature, DoD will produce them once the Court enters a protective order. The remaining four documents continue to be classified. Defendants will update their privilege log to reflect these additional four documents.

- You inquired into the status of the “magnetic tapes and a printout” that had been in the possession of the CIA. The CIA has transmitted the tapes and printout, both of which are classified, to DoD. Once DoD has reviewed those items, it will determine whether the materials remain classified. This process may be time consuming, particularly with regard to the magnetic tapes, as DoD will need to first determine whether it has the capability to open and read the contents.
- You asked for the basis of Defendants’ withholding of a document titled “The Search for Toxic Chemical Agents.” This is a DoD document that contains information that is both sensitive and technical in nature. It will be produced once the Court enters a protective order.
- Finally, you requested that DoD revise its response to Interrogatory No. 12 concerning DoD’s knowledge of CIA involvement in service member testing. DoD has been unable to identify any current employee with personal knowledge of CIA involvement in DoD’s test programs. Defendants have produced documents to Plaintiffs that reflect on this issue: VVA 023882-023899, a draft memorandum to the Secretary of DoD concerning CIA involvement in DoD research programs; VVA 023900- 02302, a memorandum from the CIA concerning the draft memorandum to the Secretary of DoD; VVA 023903-023919, a memorandum from the DoD General Counsel to the DoD Secretary concerning CIA involvement in DoD research programs; VVA023920-023923, a CIA memorandum regarding DoD materials submitted pursuant to a congressional investigation; VVA023924-023939, statement of Deanne Siemer, General Counsel, DoD; and VVA 023940-023944, a memorandum from the CIA concerning Ms. Siemer’s testimony.

As stated, we will be in touch soon regarding the interrogatories. We hope this conversation will be productive for both sides and will assist in moving discovery forward. In the interim, please do not hesitate to contact me if you have any questions on the above.

Sincerely,

/s/

Kimberly L. Herb