

EXHIBIT 88

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

VIETNAM VETERANS OF)
 AMERICA, et al.,)
 Plaintiffs,)
 vs.) No. CV 09-0037-CW
 CENTRAL INTELLIGENCE)
 AGENCY, et al.,) Volume II
 Defendants.)

Continued videotaped deposition of MICHAEL E. KILPATRICK, M.D., taken at 2000 Pennsylvania Avenue Northwest, Washington, DC, commencing at 9:27 a.m., Thursday, July 7, 2011, before Nancy J. Martin, California CSR No. 9504, RPR.

PAGES 258 - 506

1 to believe that death or disabling injury will occur."

2 F talks about "The degree of risk will never
3 exceed that determined by the urgency or importance of
4 the program."

5 G, "Proper preparations will be made,
6 adequate facilities provided to protect the volunteer
7 against all foreseeable possibilities of injury,
8 disability or death."

9 H, "Scientifically qualified person."

10 I is "Volunteer informed that he has a right
11 to withdraw." So I think that those issues are listed
12 in that. So that's, again, why they were familiar.

13 Q. Are you generally familiar with the 15:49:24
14 substances that were used in the human experimentation
15 program both under the chemical and biological side?

16 A. Yes.

17 MR. GARDNER: Objection. Vague.

18 BY MR. ERSPAMER:

19 Q. And they included things such as nerve gas? 15:49:34

20 A. Correct.

21 Q. Is nerve gas potentially lethal? 15:49:40

22 A. Absolutely.

23 Q. And one of the purposes of nerve gas as a 15:49:43
24 chemical weapon is to kill people; right?

25 A. In an offensive mode, that's correct.

Page 441

1 multiple books I've seen that are called Textbook of
2 Military Medicine, but they tend to vary as to what
3 their content is.

4 Q. Well, let me read to you from the Textbook of 15:54:10
5 Military Medicine, Chapter 4, "Medical Aspects of
6 Chemical and Biological Warfare," another definition
7 of, this time, chemical agent. "A working definition
8 of a chemical agent is 'a chemical which is intended
9 for use in military operations to kill, seriously
10 injure or incapacitate man because of its
11 physiological effects.'"

12 Are you familiar with that working
13 definition generally?

14 A. I am and I'm not -- I'm surprised that
15 they're calling it a chemical agent versus a chemical
16 warfare agent, which is a distinction, I think.

17 Q. Now, they divide chemical agents into -- and 15:55:03
18 I think probably you may be right in terms of the use.
19 But they divide chemical agents into five categories,
20 "nerve agents, vesicants, choking agents, blood agents
21 and incapacitants." Are you familiar with that
22 categorization, so to speak?

23 A. Yes. Yes.

24 Q. Were any of the chemicals used at Edgewood on 15:55:25
25 human volunteers intended for therapeutic treatment of

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DECLARATION

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 2011,
at _____, _____.

MICHAEL E. KILPATRICK, M.D.

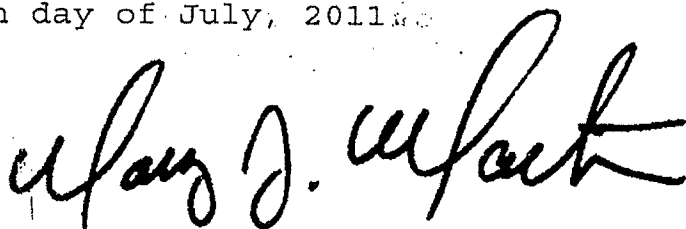
1 I, NANCY J. MARTIN, CSR No. 9504, do hereby
2 certify:

3 That the foregoing deposition testimony of
4 MICHAEL E. KILPATRICK, M.D. was taken before me at the
5 time and place therein set forth, at which time the
6 witness, in accordance with CCP Section 2094, was
7 placed under oath and was sworn by me to tell the
8 truth, the whole truth, and nothing but the truth;

9 That the testimony of the witness and all
10 objections made by counsel at the time of the
11 examination were recorded stenographically by me, and
12 were thereafter transcribed under my direction and
13 supervision, and that the foregoing pages contain a
14 full, true and accurate record of all proceedings and
15 testimony to the best of my skill and ability.

16 I further certify that I am neither counsel for
17 any party to said action, nor am I related to any
18 party to said action, nor am I in any way interested
19 in the outcome thereof.

20 IN WITNESS WHEREOF, I have subscribed my name
21 this 11th day of July, 2011.

22
23
24 

25 _____
NANCY J. MARTIN, CSR No. 9504

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

VIETNAM VETERANS OF)
AMERICA, et al.,)
Plaintiffs,)
vs.) No. CV 09-0037-CW
CENTRAL INTELLIGENCE)
AGENCY, et al.,) Volume III
Defendants.)

Continued Videotaped Deposition of MICHAEL E.
KILPATRICK, M.D., taken at 2000 Pennsylvania Avenue
Northwest, Washington, DC, commencing at 9:29 a.m.,
Friday, July 8, 2011, before Nancy J. Martin,
California CSR No. 9504, RPR.

PAGES 507 - 743

1 MR. ERSPAMER: I believe so, yeah. That's the
2 one with the fact sheet.

3 MR. GARDNER: No. No. No. We know. There's a
4 lot of documents, and those are not in order because,
5 obviously, they were previously marked.

6 (A discussion was held off the record.)

7 MR. ERSPAMER: So let me ask the question again.

8 Q. As questions came up between the Veterans' 09:40:23
9 Administration, Department of Veterans' Affairs, now
10 called, and the DoD concerning the content of the
11 letter, how did you resolve those?

12 A. Because it's a VA document, we would make
13 recommendations, suggestions, and whatever the VA
14 accepted of that was how it was resolved. If we
15 didn't totally agree 100 percent, then it was not a
16 requirement for concurrence, the VA had to essentially
17 believe that, since this is their letter, they stood
18 behind it and it needed to reflect their position, and
19 if that was at odds with the Department of Defense,
20 that's just the way it was.

21 Q. Well, the draft of the letter was sent to you 09:41:11
22 for approval; correct?

23 MR. GARDNER: Objection. Mischaracterizes the
24 document and Dr. Kilpatrick's testimony.

25 THE WITNESS: It wouldn't be approval. It would

1 be to look at, to review, and to comment on, and those
2 comments could be taken or not taken by the Department
3 of Veterans' Affairs.

4 BY MR. ERSPAMER:

5 Q. Well, based upon the interaction you had, did 09:41:29
6 you believe at the time that the Department of
7 Veterans' Affairs acknowledged that fact, understood
8 that fact?

9 MR. GARDNER: Objection. Vague as to which fact.

10 BY MR. ERSPAMER:

11 Q. That it was the ultimate decision maker and 09:41:42
12 your comments were advisory?

13 MR. GARDNER: Objection.

14 THE WITNESS: Absolutely. And that's been the
15 working relationship we've had ever since I've been
16 involved personally with the VA.

17 BY MR. ERSPAMER:

18 Q. Well, you don't recall making some very 09:41:55
19 specific comments quite vocally with respect to
20 certain content in the letter?

21 A. You're asking me to recall a conversation.
22 2006. I'm not sure that I -- I mean if I had a strong
23 opinion, I would certainly let it be known, but the
24 decision is the VA's decision.

25 Q. Well, let's just pick one thing out. The 09:42:23

1 They did provide back, when they were able
2 to, people who were deceased. Those numbers. So we
3 have that. But the VA was using the DoD fact sheet.
4 They had access to it. They never provided any input
5 or modifications, suggestions to us.

6 BY MR. ERSPAMER:

7 Q. So as far as you can recall in all the back 14:21:31
8 and forth, and the record, when we get through all of
9 them, the drafts will show how long that took. But
10 during the period of time this letter was under
11 discussion, you don't recall any instance in which
12 anyone suggested, from either side suggested,
13 "Shouldn't we look at the VA medical records for these
14 volunteers to see whether or not any of them are
15 experiencing flashbacks"?

16 A. No, there was never that discussion.

17 Q. And I take it there was no discussion either 14:22:01
18 of "Shouldn't we look at the medical records from
19 Edgewood to see whether or not any of the test
20 participants who received hallucinogenic compounds
21 were experiencing flashbacks while they were still at
22 Edgewood"?

23 A. No, there wasn't. Again, the focus was to
24 provide VA this information. They knew that the
25 medical records existed, and they could access those

Page 659

1 if they were going to be evaluating a veteran. So...

2 Q. Did anyone offer the comment in the 14:22:35
3 discussions of this Q and A, the last one, again,
4 about hallucinogenic compounds, that a veteran reading
5 this might be led -- might be misdirected to draw the
6 conclusion that hallucinogenic compounds don't cause a
7 problem with flashbacks?

8 A. I can't suppose what somebody would interpret
9 this. I don't interpret it that way. I think it says
10 flashbacks have been associated in the medical
11 literature with exposure to hallucinogenic agents like
12 LSD. I think most people recognize that LSD does
13 cause flashbacks, just if you're aware of its use in
14 the general public.

15 So, again, I think that there's nothing in
16 here that says LSD does not cause flashbacks.

17 Q. Well, in fact, if you look at the results of 14:23:30
18 the tests done at Edgewood, the Army concluded that
19 LSD does cause flashbacks --

20 MR. GARDNER: Objection --

21 BY MR. ERSPAMER:

22 Q. -- in its reports of the results of the LSD 14:23:41
23 experiments; right?

24 MR. GARDNER: Objection. Mischaracterizes the
25 follow-up study.

1 THE WITNESS: I think every study looking at LSD
2 recognizes that it causes flashbacks. I think the
3 Army study looked at the duration of those flashbacks
4 and saw that it was of a shorter time than a long
5 period of time and that there were some other --

6 MR. ERSPAMER: Counsel, before you hand that to
7 him, I'm not asking about the LSD follow-up study.
8 Your objection was incorrect.

9 Q. I'm asking you with respect to the tests done 14:24:15
10 at Edgewood, you realize that there were reports drawn
11 up with the results of the Edgewood studies of
12 hallucinogenic compounds?

13 A. Yes, there were.

14 Q. And as you sit here today, isn't it correct 14:24:29
15 that the Army's own test results from Edgewood
16 reported flashbacks among persons exposed to LSD?

17 A. Yes, I do.

18 Q. Okay. And so you didn't even need to go to 14:24:42
19 the individual medical records to know that Edgewood
20 participants experienced flashbacks. You could look
21 at the general reports; right?

22 MR. GARDNER: Objection. Argumentative.

23 THE WITNESS: Again, it would be nice to be all
24 knowing and to know all the documents that are out
25 there. The focus of the program to identify

1 individuals was not to search for the kinds of
2 documents you're talking about. That comes in kind of
3 a secondary and tertiary and quaternary waves of
4 evaluation.

5 BY MR. ERSPAMER:

6 Q. Well, you made reference to current medical 14:25:16
7 literature indicating that such exposure may have some
8 long lasting effects among some individuals. So you
9 at least looked at the medical literature about
10 flashbacks; right?

11 A. Yes, the general medical literature.

12 Q. Can you explain why no one looked at -- 14:25:33
13 strike that.

14 Why didn't you look at the actual LSD test
15 result reports from Edgewood to see whether Edgewood
16 participants had experienced flashbacks?

17 MR. GARDNER: Objection. Asked and answered
18 multiple times now.

19 THE WITNESS: Again, to take a very focused
20 program, trying to identify individuals and provide
21 information to the VA and start to expand it to be the
22 scientific, essentially, summary of information would
23 have changed that program dramatically. So the effort
24 was kept on track to identify individuals and provide
25 names to the VA.

1 counsel to go off the record, at this time this
2 concludes Volume III of the deposition of Dr. Michael
3 Kilpatrick consisting of four tapes. The time is
4 4:48 p.m., and we're now off the record.

5 (TIME NOTED: 4:48 P.M.)
6
7
8
9

10 DECLARATION
11

12 I declare under penalty of perjury under the
13 laws of the State of California that the
14 foregoing is true and correct.

15 Executed on _____, 2011,
16 at _____.

17
18 _____
19 MICHAEL E. KILPATRICK, M.D.
20
21
22
23
24
25

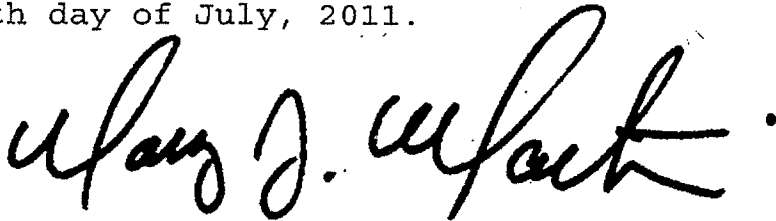
1 I, NANCY J. MARTIN, CSR No. 9504, do hereby
2 certify:

3 That the foregoing deposition testimony of
4 MICHAEL E. KILPATRICK, M.D., was taken before me at
5 the time and place therein set forth, at which time
6 the witness, in accordance with CCP Section 2094, was
7 placed under oath and was sworn by me to tell the
8 truth, the whole truth, and nothing but the truth;

9 That the testimony of the witness and all
10 objections made by counsel at the time of the
11 examination were recorded stenographically by me, and
12 were thereafter transcribed under my direction and
13 supervision, and that the foregoing pages contain a
14 full, true and accurate record of all proceedings and
15 testimony to the best of my skill and ability.

16 I further certify that I am neither counsel for
17 any party to said action, nor am I related to any
18 party to said action, nor am I in any way interested
19 in the outcome thereof.

20 IN WITNESS WHEREOF, I have subscribed my name
21 this 21th day of July, 2011.

22 
23
24

25 Nancy J. Martin, CSR No. 9504