

EXHIBIT 81

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

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VIETNAM VETERANS OF :
AMERICA, et al., :
Plaintiffs, : Civil Action Number
vs. : CV 09-0037-CW
CENTRAL INTELLIGENCE :
AGENCY, et al., :
Defendants. :
-----x

CONFIDENTIAL VIDEOTAPED DEPOSITION OF MARK BROWN

Washington, DC
Friday, January 20, 2012

REPORTED BY:
CARMEN SMITH

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Page 49

1 Can you elaborate on what the purpose of
2 these internal VA expert groups was?

3 MS. FAREL: Counsel, I'm going to ask you
4 one -- just again to orient us to where you're
5 referring.

6 MR. HASSANEIN: The last sentence on page
7 1 of the paragraph beginning with "Most of the
8 environmental and occupational health concerns."

9 MS. FAREL: Thank you.

10 BY MR. HASSANEIN:

11 Q I'll just ask you again, Dr. Brown, what
12 was the purpose of the internal VA expert groups
13 that you assembled?

14 A A lot of the purpose for doing evaluations
15 of long-term health effects -- let me use an
16 example, the Agent Orange, because that's an
17 illustrative one -- actually, there are specific
18 statutes that required VA to look at scientific
19 literature about long-term health effects, for
20 example, from Agent Orange.

21 But even if there hadn't been such
22 statutes, we would have probably pursued this to try
23 and -- if there's evidence to support a connection
24 between an environmental -- a herbicide exposure,
25 Agent Orange exposure, and some specific health

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Page 50

1 outcome amongst veterans, we could use that
2 information to develop what we called a presumptive
3 connection to service, so that the veteran wouldn't
4 have to prove, which otherwise could be quite
5 difficult or impossible, that their particular case
6 of whatever the disease was was caused by that
7 exposure.

8 And so these were matters of policy based
9 on some scientific evidence. So these internal work
10 groups would involve, you know, other internal VA
11 experts, physicians, researchers, our attorneys,
12 others, who would -- who would collectively look at
13 a piece of scientific information or a review of
14 scientific information and then come up with a
15 recommendation about whether a connection to service
16 was warranted or not.

17 And those recommendations, when they go up
18 to -- eventually to our management, up to the
19 secretary for a decision about whether or not to
20 promulgate a presumptive or not.

21 So that's what that's referring to.

22 Q So you're advising the secretary on
23 whether or not the scientific evidence supported a
24 presumption of service connection?

25 MS. FAREL: Objection to the extent that

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Page 262

1 do everything we can to give -- give information out
2 in this otherwise difficult situation where not all
3 information is available that you would want to
4 support a claim, to put the information out there
5 that would allow a veteran the greatest chance to
6 support a claim like this.

7 That was kind of the goal of the exercise
8 of producing that kind of documentation, one of the
9 goals, is to give a veteran all the information that
10 he, it's almost always he, could use to then form
11 the basis of a defensible -- of a successful claim.

12 BY MR. HASSANEIN:

13 Q What about veterans for whom there is no
14 exposure information?

15 MS. FAREL: Objection; calls for a
16 hypothetical, calls for speculation.

17 BY MR. HASSANEIN:

18 Q Have you discussed with your colleagues
19 and other officials at VA or DOD how a veteran can
20 go about meeting this standard of at least as likely
21 as not if there is no exposure information available
22 for that veteran?

23 MS. FAREL: Same objections.

24 THE WITNESS: Well, a veteran under that
25 circumstance is at a severe disadvantage, that's

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Page 263

1 true. And, you know, in the long run, maybe the
2 right policy decision, once this -- as this unfolds,
3 maybe even -- you know, I've been away from VA for
4 2-1/2 years.

5 At the point that I left it, I don't
6 remember that we'd got to that level of discussion
7 yet, because it wasn't clear that there was -- that
8 there were veterans in that -- in that particular
9 situation that were going to be left -- that were
10 going to be at a -- at a real terrible disadvantage
11 for filing claims.

12 But it is quite -- I can easily imagine
13 that the long-term solution would be to develop
14 presumptives, as you were discussing in that paper I
15 wrote, the solution in a case like that, where
16 there's no real opportunity for the veteran to --
17 it's just impossible to prove exposure because of --
18 for various reasons. One solution is to develop
19 presumptives.

20 I don't think that the time was -- when I
21 left VA was ripe for that kind of decision to be
22 made, but I can easily imagine that that could be
23 the outcome from this.

24 MR. HASSANEIN: All right. I've been told
25 we have to change tapes. So let's do that.

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1 I HEREBY CERTIFY that I have read this
2 transcript of my deposition and that this transcript
3 accurately states the testimony given by me, with
4 the changes or corrections, if any, as noted.

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Subscribed and sworn to before me this day of
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CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, CARMEN SMITH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Notary Public in and for the
District of Columbia

Commission Expires: MARCH 14, 2013