

# Exhibit H

UNITED STATES DISTRICT COURT

for the District of Columbia

Vietnam Veterans of America, et al.,
Plaintiff

v.

Central Intelligence Agency, et al.,
Defendant

Civil Action No. CV 09-0037-CW
Northern District of California,
Oakland Division

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES

To: Custodian of Records
United States Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, District of Columbia 20420

[X] Production: YOU ARE COMMANDED to produce at the time, date and place set forth below the following documents, electronically stored information or objects, and permit their inspection, copying, testing or sampling of the material: See attached Exhibit A.

Place: Morrison & Foerster LLP, 2000 Pennsylvania Avenue, NW, Suite 5500, Washington, District of Columbia 20006-1888
Date and Time: August 26, 2009 at 10:00 a.m.

[ ] Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:
Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: July 27, 2009

CLERK OF COURT

OR

Gordon P. Erspamer [Signature]

Signature of Clerk or Deputy Clerk

Attorney's signature
Gordon P. Erspamer, Esq.

The name, address, e-mail, and telephone number of the attorney representing (name of party) Plaintiffs, who issues or requests this subpoena, are:
Gordon P. Erspamer, Esq., Morrison & Foerster LLP, 425 Market Street, San Francisco, California 94105, gerspamer@mofo.com, 415.268.6411

Civil Action No. CV 09-0037-CW

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* Custodian of Records, U.S. Department of Veterans Affairs,  
was received by me on *(date)* July 27, 2009.

I personally served the subpoena on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the subpoena to *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the subpoena unexecuted because \_\_\_\_\_; or

other *(specify)*:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

**(ii)** disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

**(iii)** a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

**(ii)** ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

**(i)** expressly make the claim; and

**(ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

1 **EXHIBIT A TO SUBPOENA**

2 TO THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS: Pursuant to  
3 Rule 45 of the Federal Rules of Civil Procedure, YOU are hereby requested to produce and  
4 permit the inspection and copying of the DOCUMENTS described below that are in YOUR  
5 possession, custody or control, or in the possession, custody or control of anyone acting on  
6 YOUR behalf, including without limitation, YOUR present and former employees, agents,  
7 representatives, accountants, attorneys, investigators or consultants. The production shall take  
8 place on August 26, 2009 at 10:00 a.m., at the law offices of Morrison & Foerster LLP, 2000  
9 Pennsylvania Avenue, NW, Suite 5500, Washington, District of Columbia 20006-1888, or  
10 another place as may be mutually agreed upon.

11 **DEFINITIONS**

12 Unless otherwise indicated, the following definitions shall apply:

13 1. "ARTICHOKE" means, including without limitation, the official code name given in  
14 or around 1951 to the secret test program conducted by one or more of DEFENDANTS  
15 CONCERNING the study of special interrogation techniques and the use of chemicals, among  
16 other methods, to produce amnesia and other vulnerable states in human test subjects.

17 2. "BLUEBIRD" means, including without limitation, the official code name given in  
18 or around 1950 to the secret test program conducted by one or more of DEFENDANTS  
19 CONCERNING special interrogation methods, including the use of drugs, hypnosis, and  
20 isolation, upon human test subjects.

21 3. "COMMUNICATION" or "COMMUNICATIONS" means, unless otherwise  
22 specified, any of the following: (a) any written letter, memorandum, DOCUMENT or any other  
23 writing; (b) any telephone call between two or more PERSONS, whether or not such call was by  
24 chance or prearranged, formal or informal; and (c) any conversation or MEETING between two  
25 or more PERSONS, whether or not such contact was by chance or prearranged, formal or  
26 informal, including without limitation, conversations or MEETINGS occurring via telephone,  
27 teleconference, video conference, electronic mail (e-mail) or instant electronic messenger.  
28

1           4. “CONCERNING” means constituting, summarizing, memorializing, referring to,  
2 regarding and/or relating to.

3           5. “DEFENDANTS” means the Central Intelligence Agency; Leon Panetta, Director of  
4 the Central Intelligence Agency; the United States Department of Defense; Dr. Robert M. Gates,  
5 Secretary of Defense; the United States Department of the Army; Pete Geren, United States  
6 Secretary of the Army; the United States of America; and Eric H. Holder, Jr., Attorney General of  
7 the United States.

8           6. “DOCUMENT” or “DOCUMENTS” means any tangible thing upon which any  
9 expression, COMMUNICATION or representation has been recorded by any means, including  
10 but not limited to, handwriting, typewriting, printing, photostatting, photographing, magnetic  
11 impulse or mechanical or electronic recording and any non-identical copies (whether different  
12 from the original because of notes made on such copies, because of indications that said copies  
13 were sent to different individuals than were the originals, or because of any other reason),  
14 including but not limited to, working papers, preliminary, intermediate or final drafts,  
15 correspondence, memoranda, charts, notes, records of any sort of MEETINGS, invoices, financial  
16 statements, financial calculations, diaries, reports of telephone or other oral conversations, desk  
17 calendars, appointment books, audio or video tape recordings, e-mail or electronic mail,  
18 electronic folders, microfilm, microfiche, computer tape, computer disk, computer printout,  
19 computer card and all other writings and recordings of every kind that are in YOUR actual or  
20 constructive possession, custody or control.

21           7. “EDGEWOOD ARSENAL” means the southern sector of the military installation  
22 located northeast of Baltimore, Maryland, in the Northern Chesapeake Bay along a neck of land  
23 between the Gunpowder and Bush rivers.

24           8. “INDIVIDUAL PLAINTIFFS” means Bruce Price, Franklin D. Rochelle, Larry  
25 Meirow, Eric P. Muth, David C. Dufrane and Wray C. Forrest.

26           9. “MATERIAL TESTING PROGRAM EA 1729” means, including without limitation,  
27 the official code name given to the secret test program conducted by one or more of  
28

1 DEFENDANTS CONCERNING the testing of lysergic acid diethylamide (“LSD”) as, among  
2 other purposes, an intelligence-gathering technique.

3 10. “MEETING” or “MEETINGS” means any coincidence of, or presence of, or  
4 telephone, television, radio or other electronic communication between or among persons,  
5 whether such was by chance or prearranged, informal or formal.

6 11. “MKCHICKWIT” or “CHICKWIT” means, including without limitation, the  
7 official code name given to the secret test program conducted by one or more of DEFENDANTS  
8 CONCERNING the identification of new drugs in Europe and Asia and collection of information  
9 and samples CONCERNING same.

10 12. “MKDELTA” means, including without limitation, the official code name given in  
11 or around 1952 to the secret test program conducted by one or more of DEFENDANTS  
12 CONCERNING the use of biochemicals in clandestine military operations.

13 13. “MKNAOMI” means, including without limitation, the official code name given to  
14 the secret test program conducted by one or more of DEFENDANTS CONCERNING the  
15 stockpiling of severely incapacitating and lethal materials and the development of gadgetry for  
16 the dissemination of these materials.

17 14. “MKOFTEN” means, including without limitation, the official code name given to  
18 the secret test program conducted by one or more of DEFENDANTS CONCERNING the  
19 behavioral and toxicological effects of certain drugs on animals and humans.

20 15. “MKSEARCH” means, including without limitation, the official code name given  
21 in or around 1964 to the secret test program conducted by one or more of DEFENDANTS  
22 CONCERNING the development of methods to manipulate human behavior through the use of  
23 drugs and other chemical substances.

24 16. “MKULTRA” means, including without limitation, the official code name given in  
25 or around 1953 to the secret test program conducted by one or more of DEFENDANTS  
26 CONCERNING the surreptitious use of many types of drugs, as well as other methods, to  
27 manipulate individual mental states and to alter brain function, and that continued at least through  
28 the late 1960s.



1 17. "TEST PROGRAMS" means, without limitation, Projects "BLUEBIRD,"  
2 "ARTICHOKE," "MKDELTA," "MKULTRA," "MKNAOMI," "MKSEARCH,"  
3 "MKCHICKWIT," "MKOFTEN," and any other program of experimentation involving human  
4 testing of any substance, including but not limited to, "MATERIAL TESTING PROGRAM EA  
5 1729."

6 18. "YOU" or "YOUR" means the United States Department of Veterans Affairs and  
7 any representative or agent acting on YOUR behalf, including without limitation, any present or  
8 former employees, accountants, attorneys, investigators or consultants.

### 9 CONSTRUCTION

10 The following rules of construction shall also apply:

- 11 1. "All" or "each" shall be construed as "all and each."
- 12 2. "Any" should be understood to include and encompass "all"; "all" should be  
13 understood to include and encompass "any."
- 14 3. "And" or "or" shall be construed either disjunctively or conjunctively as necessary to  
15 bring within the scope of the discovery request all responses that might otherwise be construed to  
16 be outside of its scope.
- 17 4. The use of the singular form of any word shall include the plural, and vice versa.

### 18 INSTRUCTIONS

19 The following instructions shall apply:

- 20 1. In the event YOU produce original DOCUMENTS for inspection and copying, such  
21 production shall be as the DOCUMENTS are kept in the usual course of business.
- 22 2. In lieu of production for inspection and copying, YOU may produce the requested  
23 DOCUMENTS by mail or delivery of true copies thereof to Morrison & Foerster LLP at the  
24 address identified above, or make the originals available for inspection and copying at a mutually  
25 agreed-upon location, during normal business hours and upon reasonable notice. The  
26 DOCUMENTS copied shall be copied as they are kept in the normal course of business, and any  
27 titles, labels or other descriptions on any box, folder, binder, file cabinet or other container shall  
28 be copied as well.



1           3. Each DOCUMENT is to be produced, along with all non-identical copies, drafts,  
2 alterations and translations thereof, in its entirety, without abbreviations or redactions.

3           4. If any part of a DOCUMENT is responsive to any of the following requests, the  
4 entire DOCUMENT shall be produced.

5           5. If YOU withhold any of the requested DOCUMENTS from production under a claim  
6 of privilege or other protection, YOU must serve within thirty (30) days of the service of this  
7 request a list of such withheld DOCUMENTS (“privilege log”) indicating, for each DOCUMENT  
8 withheld, the following information if known or available to YOU: (i) the date composed or date  
9 appearing on the DOCUMENT; (ii) the author; (iii) the number of pages; (iv) the number of  
10 copies made; (v) the identity of all PERSONS or entities who saw the original DOCUMENT or  
11 saw or received a copy of such DOCUMENT, and the job titles of each such PERSON; (vi) the  
12 subject matter; and (vii) the basis for claim of privilege or other immunity asserted. The privilege  
13 log should be sufficiently detailed to permit Plaintiffs to determine whether to make a motion  
14 with respect thereto.

15           6. If YOU are aware of the existence of any requested items that YOU are unable to  
16 produce, specify in writing and serve upon the undersigned a list indicating the identity of such  
17 DOCUMENTS within thirty (30) days of the service of this subpoena. Such identification  
18 should, for each such DOCUMENT, set forth whether the DOCUMENT: (i) has been destroyed;  
19 (ii) has been lost, misplaced or stolen; or (iii) has never been or is no longer, in the possession,  
20 custody or control of the responding party, in which case the name and address of any PERSON  
21 or entity known or believed by YOU to have possession, custody or control of that DOCUMENT  
22 or category of DOCUMENTS should be identified. In each such instance, YOU are to identify  
23 the DOCUMENT by author, addressee, date, subject matter, number of pages, attachments or  
24 appendices, all PERSONS to whom it was distributed, shown or explained, date and manner of  
25 destruction or other disposition, the reason for destruction or other disposition and PERSONS  
26 destroying or disposing of the DOCUMENT.

27           7. If YOU contend that any of the following requests is objectionable in whole or in  
28 part, YOU shall state with particularity each objection, the basis for it and the categories of

1 information and DOCUMENTS to which the objection applies, and YOU shall respond to the  
2 request insofar as it is not deemed objectionable.

3 8. If YOU find the meaning of any term in these requests unclear, YOU shall assume a  
4 reasonable meaning, state what the assumed meaning is and respond to the request according to  
5 the assumed meaning.

6 9. Unless otherwise specified, each request calls for all DOCUMENTS created,  
7 received or dated between January 1, 1940 and the date of YOUR response.

### 8 **DOCUMENTS TO BE PRODUCED**

9 1. All lists identifying veterans who participated in the TEST PROGRAMS.

10 2. All DOCUMENTS CONCERNING the consent of participants, including but not  
11 limited to, the INDIVIDUAL PLAINTIFFS, in the TEST PROGRAMS at the EDGEWOOD  
12 ARSENAL, including but not limited to, all participation agreements, consent forms and  
13 “volunteer handbooks” prepared for, given to, received from or signed by any test participant.

14 3. All DOCUMENTS CONCERNING any notices provided to any participants in the  
15 TEST PROGRAMS at the EDGEWOOD ARSENAL, including the INDIVIDUAL  
16 PLAINTIFFS, CONCERNING the nature of the TEST PROGRAMS at the EDGEWOOD  
17 ARSENAL and/or possible health effects resulting from their participation in the TEST  
18 PROGRAMS at the EDGEWOOD ARSENAL.

19 4. All DOCUMENTS CONCERNING any correspondence or notice sent by YOU to  
20 veterans who claimed to have participated in the TEST PROGRAMS regardless of whether their  
21 participation was confirmed by YOU.

22 5. All DOCUMENTS CONCERNING any notice YOU provided to health care  
23 providers or personnel, including without limitation, the Veterans Health Administration,  
24 CONCERNING the nature of the TEST PROGRAMS at the EDGEWOOD ARSENAL and/or  
25 possible health effects resulting from test subjects’ participation in the TEST PROGRAMS at the  
26 EDGEWOOD ARSENAL.

27 6. All DOCUMENTS CONCERNING any of the INDIVIDUAL PLAINTIFFS,  
28 including but not limited to, military service records, medical, physical or mental health records,

1 correspondence and records CONCERNING all COMMUNICATIONS with any INDIVIDUAL  
2 PLAINTIFF.

3 7. All letters, correspondence, inquiries, FOIA requests or other DOCUMENTS YOU  
4 received from any participant, including the INDIVIDUAL PLAINTIFFS, in the TEST  
5 PROGRAMS at the EDGEWOOD ARSENAL.

6 8. ALL DOCUMENTS CONCERNING YOUR efforts, if any, to identify and notify  
7 participants, including the INDIVIDUAL PLAINTIFFS, of their involvement in the TEST  
8 PROGRAMS at the EDGEWOOD ARSENAL.

9 9. All DOCUMENTS CONCERNING MEETINGS or COMMUNICATIONS between  
10 YOU and (i) DEFENDANTS named in this action; and (ii) any participant, including the  
11 INDIVIDUAL PLAINTIFFS, in the TEST PROGRAMS CONCERNING the TEST  
12 PROGRAMS.

13 10. All requests received by YOU for any DOCUMENTS CONCERNING any of the  
14 INDIVIDUAL PLAINTIFFS, and all DOCUMENTS that YOU produced pursuant to any such  
15 request.

16 11. All DOCUMENTS CONCERNING any complaint, claim, allegation or notice by  
17 any participant, including the INDIVIDUAL PLAINTIFFS, in the TEST PROGRAMS  
18 CONCERNING physical and/or mental harm attributable in whole or in part to the administration  
19 of the TEST PROGRAMS.

20 12. Studies, reports, surveys or other analyses of the health effects of any exposure to  
21 substances used or administered during the TEST PROGRAMS at the EDGEWOOD ARSENAL.

22 13. All unpublished papers, reports or manuscripts CONCERNING the results of the  
23 TEST PROGRAMS.

24 14. All tabulations, summaries, analyses or descriptions of the types of medical  
25 problems (both physical and mental) experienced by participants, including the INDIVIDUAL  
26 PLAINTIFFS, in the TEST PROGRAMS at the EDGEWOOD ARSENAL.

1 15. Mortality data and/or statistics CONCERNING participants in the TEST  
2 PROGRAMS, including but not limited to, at the EDGEWOOD ARSENAL, and comparisons to  
3 the general population and/or an unexposed population group or groups.

4 16. DOCUMENTS CONCERNING the types of diseases or conditions experienced by  
5 veterans who participated in the TEST PROGRAMS, including without limitation, all medical  
6 studies CONCERNING the same.

7 17. All DOCUMENTS and MEETINGS CONCERNING YOUR Report No. 08-02725-  
8 127, dated May 15, 2009, entitled *Healthcare Inspection, Review of Informed Consent in the*  
9 *Department of Veterans Affairs Human Subjects Research.*

10 18. All DOCUMENTS, including but not limited to, reports, studies or other analyses  
11 submitted by YOU to any Congressional Committee CONCERNING the TEST PROGRAMS,  
12 including without limitation, efforts, if any, to identify and notify participants.

13 19. DOCUMENTS CONCERNING violations or suspected violations reported to YOU  
14 CONCERNING the 1947 Nuremberg Code, the directive — known as the “Wilson Directive” —  
15 prepared and issued by the Central Intelligence Agency and the Department of Defense on  
16 February 26, 1953 that purported to bring the U.S. government in compliance with the 1947  
17 Nuremberg Code on medical research, or any other law, regulation, rule or policy  
18 CONCERNING the need for informed consent from human test research subjects, as well as  
19 MEETINGS and COMMUNICATIONS CONCERNING the same.

20 20. Statistics CONCERNING the success rates and/or the disposition of claims filed  
21 with YOU by participants in any of the TEST PROGRAMS.

22 21. Statistics CONCERNING the nature and type of health care provided by YOU to  
23 the participants in any of the TEST PROGRAMS.

24 22. DOCUMENTS CONCERNING the priority class for health care of veterans who  
25 participated in the TEST PROGRAMS, and all MEETINGS and COMMUNICATIONS  
26 CONCERNING the same.