

# **Exhibit 14**

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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, )  
vs. ) No. CV 09-0037-CW  
CENTRAL INTELLIGENCE )  
AGENCY, et al., ) Volume I  
Defendants. )  
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Videotaped deposition of MICHAEL E. KILPATRICK,  
M.D., taken at 2000 Pennsylvania Avenue Northwest,  
Washington, DC, commencing at 9:30 a.m.,  
Wednesday, July 6, 2011, before Nancy J. Martin,  
California CSR No. 9504, RPR.

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1 an area that we had to work through quite diligently  
2 to make sure that we were accurate because of where we  
3 stood at that point in time with the permission to  
4 have people released from a real or perceived secrecy  
5 oath.

6 Q. Were you aware at the time that participants 11:40:13  
7 had signed a participation agreement?

8 A. I was aware that individuals either recalled  
9 they had signed or had an oral secrecy oath. In  
10 trying to look for that -- and it didn't apply in SHAD  
11 because those individuals weren't test subjects. In  
12 trying to look at the others, we were never able to  
13 find a hard copy of a written secrecy oath, and we  
14 even talked to individuals who said, "I know I signed  
15 one, and I think I've got it."

16 "If you could share it with us, we'd like to  
17 see it." We never got one. So that's -- I had too  
18 many people tell me that they were sworn to secrecy  
19 either in writing or verbally to say that it didn't  
20 happen, but nothing that I've looked at in preparing  
21 for this documented that it was required, and I've  
22 never come across a document that would be a template  
23 for such a secrecy oath.

24 Q. Do you recall a term in the participation 11:41:26  
25 agreements that generally said that the participants

1 A. And I don't know about dates in that. So I  
2 know the dates as a research protocol was that period.

3 Q. I'm not trying to put words in your mouth. 12:06:28  
4 I'm trying to understand whether these numbers of  
5 12,000, roughly 2,000 and 7,000 for the three parts of  
6 the program, whether they include veterans who receive  
7 substances other than Mustard Gas and Lewisite before  
8 1955.

9 A. And as I understand it, at this point I would  
10 say they do not because they reflect people who were  
11 in research protocols. I guess what I'm trying to say  
12 is if they received those not in protocols, then that  
13 possibly could be a reason that they would not be in  
14 this database.

15 Q. Are there any other populations of veterans 12:07:15  
16 exposed to chemical agents or biological substances  
17 that you have not counted in the database that are not  
18 reflected in the counts of the database?

19 MR. GARDNER: Objection. Vague. Lack of  
20 foundation. Overbroad.

21 THE WITNESS: Again, let me just say as we  
22 designed the databases, they were very focused on  
23 recognized research testing. There was a lot of  
24 chemical agent exposure done as part of training.  
25 Most people gas mask training today, they use tear

1 gas. That's not always been the case as you go back  
2 in time. Now, that would not have been a research  
3 protocol, and there would not be any rosters that  
4 would have been necessarily kept of people going  
5 through training.

6 BY MR. ERSPAMER:

7 Q. You were aware, in reviewing documents and in 12:08:22  
8 preparing for this deposition, that field tests were  
9 done on various chemicals like BZ, for example; right?

10 A. Right. Because they were looking at  
11 effective range, yes.

12 Q. Right. And the field tests for BZ were done 12:08:36  
13 at the Dugway Proving Grounds, the main ones; right?

14 A. That's correct.

15 Q. And that was called Project DORK? 12:08:45

16 A. I'm not exactly sure of the name. I'd have  
17 to go back and look at the document.

18 Q. Does your database encompass the soldiers who 12:08:52  
19 were exposed to BZ at Project DORK, or whatever it was  
20 called, the field test for BZ?

21 A. To fully answer that, I would have to query  
22 the database to find out because the information put  
23 in there that if that was there, it would be in the  
24 database and I'd be able to answer that, but I --

25 Q. You're just not sure one way or the other? 12:09:25

1 MR. GARDNER: That's correct.

2 BY MR. ERSPAMER:

3 Q. So with all that introductions, have you had 14:12:59  
4 a chance to read the letter, the memo?

5 A. Yes.

6 Q. Have you ever seen Exhibit 310 before? 14:13:03

7 A. Again, I've looked at a lot of documents.  
8 The content of this is very much like either another  
9 one I've seen or I've seen this one because it was  
10 followed by a chief of staff of the Army memo. And I  
11 think I saw this as a payer, or this explains the  
12 chief of staff of the Army memo which directs the  
13 surgeon general of the Army to do a review.

14 MR. GARDNER: And for the record, Mr. Erspamer,  
15 we did provide the three binders that Martha Hamed  
16 prepared and the witness did review. I believe this  
17 document, Exhibit 310, is within those binders, and to  
18 that extent, the witness did review it. And I have  
19 them right here, here being next to me, by my side  
20 (indicating).

21 BY MR. ERSPAMER:

22 Q. Well, let me just ask you, first of all, 14:14:02  
23 whether you know whether or not there are any rosters  
24 or lists of participants that were prepared in  
25 connection with Exhibit 310.

1           A. I'm not aware of any rosters having been  
2 generated on that. I know that the Army did take a  
3 look again at some of the follow-up studies of  
4 individuals. I'm just trying to put that together as  
5 to where they are, and I think that the result, the  
6 chronology that I saw in the documents was this  
7 followed by the chief of staff of the Army memo and  
8 then the Army surgeon general's office contracting  
9 with National Research Center to do essentially a  
10 series of four studies on chemical agent review.

11           Q. Let's try to break this down. If you could           14:15:15  
12 try to focus just on my question and answer that, I  
13 think this will go a lot faster rather than going into  
14 other areas. Please try to focus on my question. Let  
15 me make it a little more focused.

16           In paragraph "e" on the back, small "e," it  
17 says, "With respect to research conducted by  
18 contractors, the contractor should be notified of the  
19 information available to the Army and of the Army  
20 commitment to an appropriate notification program, and  
21 asked to undertake an effort to notify, as necessary,  
22 those participants in the contract research." Do you  
23 know whether or not that was ever done?

24           A. I don't think that it was done in the  
25 proximity to this letter. I know that there was an

1 that was prepared in this time frame regarding the  
2 names or other identifying information regarding  
3 participants in the research programs?

4 A. Other than the list that was provided to the  
5 National Research Council for their review for  
6 chemical agent review.

7 Q. Did you understand that was a complete list 14:23:01  
8 of all the participants in the chemical and biological  
9 weapons testing program?

10 A. What I understood is that it was a list, and  
11 the number was 6,720 to which 4,085 responded.

12 Q. And that was a survey, was it not? 14:23:16

13 A. That was a survey.

14 Q. Yeah. But are you aware of any -- well, 14:23:20  
15 17 years elapsed between Exhibit 310 and the  
16 notification program that you participated in that we  
17 talked about, Exhibit 296, earlier today dated  
18 September 12, 2006. Do you have any understanding, as  
19 a designee of the Army and the Department of Defense,  
20 why the notification program is not yet complete even  
21 after that passage of time?

22 A. And I think from the Army's standpoint, the  
23 information that they got was that there was no  
24 untoward long-term health effect noted, and so further  
25 notification was not believed to be a requisite. And



1           A.   It's Colonel Brosch.  I think it's  
2   B-r-o-s-c-h.

3           MR. WOLF:  Dr. Laura Brosch.

4           THE WITNESS:  Laura Brosch at Fort Detrick.  And  
5   under this policy they have identified and followed up  
6   four individuals who were injured during research  
7   studies done after 1990.

8   BY MR. ERSPAMER:

9           Q.  Okay.  It says in the very next sentence --           14:37:05  
10   "To accomplish" -- let me ask you my question again.  
11   I don't think I got an answer.  I'll make it more  
12   specific.  With respect to this Army regulation, are  
13   you aware of any action by the Army to notify research  
14   volunteers involved in the chemical and biological  
15   weapons tests of information regarding the risk  
16   associated with substances to which they were exposed?

17           MR. GARDNER:  Objection.  Mischaracterizes the  
18   document.

19           THE WITNESS:  To be able to effect a duty to warn  
20   at the time a research program is being established,  
21   this process would have to be established, and I think  
22   that that is very clearly stated in the sections that  
23   you have already pointed out.  What the MACOM  
24   commander's responsibility is is to establish a system  
25   to do that, to develop the roster and the location of

1 those individuals.

2 MR. ERSPAMER: I'll strike the answer as  
3 nonresponsive.

4 MR. GARDNER: I object. He is answering your  
5 question. You don't like the answer. He's answering  
6 it. He's in the middle of an answer. Let him finish  
7 his answer.

8 THE WITNESS: If there is no such system in  
9 place, I don't see how it's possible for anyone to  
10 effect a duty to warn for events that happened when  
11 such a system was not established. In other words,  
12 prior to 1990.

13 BY MR. ERSPAMER:

14 Q. Well, isn't the notification effort and 14:38:54  
15 database that you're working on related to the  
16 chem-bio exposures an example of what you can do after  
17 the fact to identify people who participated in  
18 atomic -- I'm sorry -- in chemical-biological  
19 research?

20 MR. GARDNER: Objection. Mischaracterizes  
21 Dr. Kilpatrick's testimony.

22 You can answer.

23 THE WITNESS: Again, the program that was put  
24 into place, starting on Project 112/SHAD, was to  
25 respond to veteran's concerns expressed to the VA for

1           A. It follows "a" under which heads this whole  
2 area, as I understand it, and duties of "organization  
3 heads conducting," which is present tense. And so --  
4 and my read of this, it has to be part of the informed  
5 consent process at the beginning of any research  
6 study.

7           Q. So that's your personal interpretation of the       14:43:11  
8 regulation; is that correct?

9           MR. GARDNER: Objection. Mischaracterizes the  
10 testimony. He's here as the DoD's 30(b)(6) witness.

11 BY MR. ERSPAMER:

12           Q. You may answer.                                       14:43:25

13           A. I do not see how you can retrofit this  
14 requirement in completed studies.

15           Q. There's a reference here to -- it says, "Such       14:43:39  
16 a system will be established in accordance with  
17 340-21. (Appendix" A "describes data elements which  
18 could comprise such a system.)" So if we look at  
19 AR 340-21 in Appendix H, which I think is on Page 13  
20 or 14, H-3, let's just start there. That states,  
21 "Selected items of personal information are  
22 perishable; for example, local address and telephone  
23 number. A method should be established, which is  
24 consistent with potential for long-term risks of the  
25 test or protocol, to update this information. For

1 believe that is actually the one I wanted to talk to  
2 you about next. They're under "a". There are 1  
3 through 9 specified with respect to "Records of the  
4 study." Isn't that -- essentially what's listed there  
5 what you've tasked Battelle to do with respect to the  
6 chemical and biological weapons test program?

7 A. That is exactly what we're asking to be  
8 derived so we can inform VA of what people were  
9 exposed to, recognizing that those are important  
10 elements to be able to take a look at an individual,  
11 and if they have health issues, be able to say,  
12 "Relationship, no relationship, uncertain  
13 relationship."

14 Q. And Battelle has been tasked to do this back 14:46:50  
15 to 1942, I believe you stated?

16 A. That's right.

17 Q. And Battelle is still in the process of 14:47:00  
18 working on that project; correct?

19 A. That's correct. They are. I think the last  
20 report I got, some 95 to 97 percent complete.

21 Q. And there's been talk about extending the 14:47:10  
22 Battelle contract or renewing it for an additional  
23 period?

24 A. The period of performance was through, I  
25 think, September 11, if I recall the month.

1 apply to volunteers who are exposed after the  
2 effective date of the regulation?

3 MR. GARDNER: Objection to the extent it calls  
4 for a legal conclusion.

5 You may answer.

6 THE WITNESS: It is my understanding that this  
7 change in AR 70-25 has an effective date of 1990, and  
8 it was not meant to retroactively go back for all Army  
9 research conducted prior to that date primarily  
10 because the system to effect duty to warn would have  
11 to be done at the time of research being conducted.

12 BY MR. ERSPAMER:

13 Q. Well, you have the substances that the 14:55:55  
14 individuals were exposed to. You have a list of  
15 substances, do you not --

16 MR. GARDNER: Objection. Vague.

17 BY MR. ERSPAMER:

18 Q. -- with respect to the exposures before 1990? 14:56:03

19 MR. GARDNER: Objection. Vague. Objection.  
20 Compound.

21 THE WITNESS: The list of substances in and of  
22 themselves from a medical standpoint would, on rare  
23 occasion -- and because there's so many substances, I  
24 mean I'm going to try to stay vague and then maybe try  
25 to hone down. In general, to say there's a medical

1 (A recess was taken from 3:19 p.m.  
2 to 3:23 p.m.)

3 THE VIDEOGRAPHER: Here marks the beginning of  
4 Tape 4 of Volume I of the deposition of Dr. Michael  
5 Kilpatrick, and the time is 3:23 p.m.

6 BY MR. ERSPAMER:

7 Q. Getting back to the 1990 regulation for a 15:22:20  
8 moment, the elements in the database for the chem-bio  
9 exposures include identifying information regarding  
10 the veteran; correct?

11 A. Correct.

12 Q. They include the substance to which the 15:22:37  
13 veteran was exposed; correct?

14 A. Correct.

15 Q. And they include the doses, at least on the 15:22:42  
16 records that are available, the doses that the veteran  
17 got of a particular substance; correct?

18 A. Correct.

19 Q. Did it include the mode of administration, 15:22:51  
20 whether it was by injection or inhalation or some  
21 other mode of exposure; correct?

22 A. Correct.

23 Q. Did it include, for example, intraspinal 15:23:01  
24 injections?

25 A. I'm hesitating because the only thing that I

1 BY MR. ERSPAMER:

2 Q. What process did you understand is in place? 15:24:59

3 A. That they have the list of the people, what  
4 their research involvement was and the date and time  
5 and this sort of thing, address, and a way to try to  
6 notify the people as far as a permanent address. The  
7 Army has now gone to an E-mail address that the  
8 individual can keep even after leaving the military as  
9 another way to try to stay in touch.

10 But that said, this does not apply to  
11 chem-bio research, which, from what she's saying, is  
12 that there's no chem-bio research that's undergoing at  
13 this point.

14 Q. So as I understand your testimony, with 15:25:45  
15 respect to chem-bio research and the regulation that's  
16 been marked as Exhibit 311, there is no ongoing system  
17 with respect to the duty to warn that relates to  
18 chem-bio exposures, whether incurred before 1990 or  
19 after 1990?

20 MR. GARDNER: Objection. Compound. And  
21 objection, mischaracterizes Dr. Kilpatrick's testimony  
22 slightly.

23 THE WITNESS: There's nothing in place for  
24 testing chem-bio or other testing done prior to 1990.  
25 Subsequent to 1990 there is a process in place for

1 maintaining the informed consent, maintaining the  
2 patient information, information about the test, all  
3 of the criteria that we saw in the data elements.

4 BY MR. ERSPAMER:

5 Q. But none of those items in place after 1990 15:26:45  
6 relate to chem-bio exposures; correct?

7 A. Correct.

8 Q. And there's no system in place for obtaining 15:26:56  
9 information about current medical problems that might  
10 be experienced by anyone that was in the chem-bio test  
11 program; correct?

12 MR. GARDNER: Objection. Mischaracterizes the  
13 testimony.

14 BY MR. ERSPAMER:

15 Q. Before 1990 or after. 15:27:12

16 MR. GARDNER: Objection. Mischaracterizes the  
17 testimony.

18 THE WITNESS: The only program in place is what  
19 DoD and VA put together for, essentially, the three  
20 test areas as we've talked about, the SHAD/112, the  
21 Mustard-Lewisite, the chem-bio, and the names that  
22 have been provided to VA and the information on a  
23 website, on the Force Health Protection website that  
24 talks about those studies.

25 BY MR. ERSPAMER:



1 they know the agent and seeking medical care. As late  
2 as January of this year, DoD has put out yet another  
3 memo saying that veteran service members should feel  
4 free to discuss their involvement on this for anything  
5 medically related.

6 BY MR. ERSPAMER:

7 Q. Yeah. I saw that. We're going to mark that 15:49:22  
8 as an exhibit later. And I also saw that the original  
9 lead counsel for the defendants' name was copied on  
10 that. Was that particular regulation a product of  
11 this litigation?

12 MR. GARDNER: Objection. Beyond the scope of the  
13 deposition notice. Objection. Calls for speculation.

14 THE WITNESS: I know that we started the process  
15 of trying to get that signed probably toward the end  
16 of the Project 112/SHAD work, which was about 2004.  
17 We were told we didn't need it. When I moved on to  
18 other issues, the process continued, and my assumption  
19 was that this was just a very delayed outcome. I have  
20 no knowledge that it was related to a suit or not  
21 related to a suit, but we know that the VA continues  
22 to have concerns that people come in and won't talk  
23 about their military experience, and they didn't feel  
24 comfortable with a document that said, "prior to  
25 1968." So I think that's my understanding of why this

1 persisted.

2 BY MR. ERSPAMER:

3 Q. Okay. I'm going to ask you, then, about the 15:50:39  
4 items on that same page, 9. First of all, it says,  
5 "Individual exposures were not recorded or were not  
6 provided." Is that accurate to the best of your  
7 knowledge or information?

8 MR. GARDNER: Objection. Calls for speculation.  
9 Lack of foundation.

10 THE WITNESS: Again, I'm not sure what Joe  
11 Salvatore is using for the source of that. As we've  
12 gone back, we've been able to identify individual  
13 exposures, and they're on the list of what we're  
14 providing to the VA. There are some areas where,  
15 again, doses we were not able to get on the Project  
16 112/SHAD because it was not a human test. But where  
17 we had doses in the chem-bio area, we were able to  
18 provide that. So I don't see that as totally factual.

19 BY MR. ERSPAMER:

20 Q. Well, in approximately what percent of the 15:52:16  
21 database records for individuals on the chem-bio area  
22 are exposures available?

23 A. My understanding in looking at it, we have  
24 exposures for everyone, and that includes people who  
25 were not exposed, indicated if they were a control, if

1 I've seen in the National Academy review of  
2 literature, again, that was the process that followed  
3 this memorandum, and this memorandum was not a  
4 directive for, essentially, the search that we  
5 conducted starting in the mid 2000s.

6 BY MR. ERSPAMER:

7 Q. Okay. Does the task of work that you 10:07:21  
8 assigned to Battelle include only military subjects of  
9 the chemical and biological tests?

10 A. The scope of work is to identify military  
11 personnel who were involved, yes.

12 Q. And you understand, in looking at 10:07:36  
13 Exhibit 317, that the Chemical Corps Medical  
14 Laboratories was involved in the private contractor  
15 work using chemicals and drugs on individuals;  
16 correct?

17 MR. GARDNER: Objection. Vague. Objection.  
18 Beyond the scope of the Rule 30(b)(6) deposition  
19 notice. Objection. Relevance.

20 THE WITNESS: Again, not having seen this  
21 document until this point, my read of it is that these  
22 were not military personnel who were the test  
23 subjects. I would have to confirm that with other  
24 documents than what's here, and that probably would be  
25 the contract that was written would have to be

1 they didn't have duplicate names and to try to  
2 consolidate those, but if there was not the ability to  
3 do that, that they would leave them as individuals,  
4 maybe recognizing they might have an individual there  
5 three or four times.

6 So I know that there's a quality control  
7 program. I have, in the last couple years, not had a  
8 hands-on look at that.

9 BY MR. ERSPAMER:

10 Q. Was one of the reasons why the chem-bio 11:17:19  
11 database was developed the release of a GAO report  
12 critical of the process of obtaining documentation  
13 relating to the chemical and biological weapons test?

14 A. I'll start if you have a GA report, you have  
15 something that's critical to start with. But the GAO  
16 audit was welcomed. We knew that there would be a GA  
17 report on Project 112/SHAD. The individuals  
18 essentially had an office space in Sky 4, on the ninth  
19 floor with us, were there for about a year, had total  
20 access to all the documents and information, and I  
21 think that, you know, there was total transparency in  
22 providing them information.

23 As I said yesterday, when we began, the  
24 objective was to answer three tests. We ended up  
25 doing a whole Project 112/SHAD program. During that

1 process we learned about the concern on  
2 Mustard-Lewisite from the VA. We also learned the VA  
3 was concerned about other chemical agents, and our  
4 information at that time was that nobody is doing  
5 this. It looked like a good process to go forward.

6 In fact, the 2004 GAO report really  
7 validated what we were suggesting to the Department of  
8 Defense, that as an office, that there should be one  
9 portal between DoD and VA to transition the  
10 information of individuals and what they were exposed  
11 to, and we offered Force Health Protection and  
12 Readiness to be that to the Department of Defense, and  
13 that was part of the deal that was struck with  
14 acquisition technology and logistics because they were  
15 the existing agency today at that time when that  
16 report came out that was involved with chem-bio  
17 testing and research in the Department of Defense back  
18 from, essentially, World War II forward.

19 So that really was the foundation for the  
20 contract with Battelle.

21 Q. Who were the GAO representatives that were in 11:19:54  
22 your office for -- I think you said for approximately  
23 a year?

24 A. You know, I don't remember their names. I'm  
25 sure they're on the GAO report.

1 regulations regarding use of human subjects in  
2 research.

3 BY MR. ERSPAMER:

4 Q. And just to put this in context, do you 15:16:40  
5 understand that Exhibit 96-A, which often is called  
6 the "chief of staff memo" or the chief of staff 385 --  
7 CS: 385, why don't we just call that "CS: 385" for  
8 short, Exhibit 96-A. Can we work with that?

9 A. Yes.

10 Q. And CS: 385 was an attempt to translate the 15:17:09  
11 Wilson memorandum into the activities of the Army;  
12 correct?

13 MR. GARDNER: Objection to the extent it  
14 mischaracterizes the document.

15 THE WITNESS: It is a directive that use of  
16 volunteers in research in defense against atomic,  
17 biological or chemical warfare.

18 BY MR. ERSPAMER:

19 Q. And it's a Department of the Army regulation 15:17:44  
20 as opposed to the Wilson memorandum, which applied to  
21 the Army, the Navy, and the Air Force; correct?

22 A. That is correct.

23 Q. And to what extent does Exhibit 96-A adopt 15:17:56  
24 rules that were part of the Wilson memorandum?

25 MR. GARDNER: Objection. Vague.

1 technical reports or operational information  
2 concerning research results, which should  
3 appropriately remain classified"; right?

4 A. That's correct.

5 Q. And so as I understand this, a veteran can 16:22:33  
6 tell his doctor or healthcare provider information  
7 about his participation of the test, and he can talk  
8 to -- I'm sorry. He can file a claim with the  
9 Veterans' Administration and provide information about  
10 the test, but that's it?

11 MR. GARDNER: Objection. Mischaracterizes  
12 Exhibit 332.

13 THE WITNESS: What you described as being able to  
14 share participation in a test, that sort of thing is  
15 clearly what this is addressing. I think the last  
16 sentence in that third paragraph has been a difficult  
17 one for the layperson to perhaps understand, but from  
18 a review process for the deputy secretary of defense  
19 to sign this, there are still some information,  
20 particularly on the delivery of chemical or biological  
21 agents, that in the hands of the wrong people would  
22 essentially be a cookbook on how to do it because the  
23 information came from the period of time when there  
24 was an offensive program.

25 That information would have nothing to do

1 with an individual's health. It would have more to do  
2 with nozzle size, altitudes for delivery, that sort of  
3 thing. So that's what that's trying to get at.

4 BY MR. ERSPAMER:

5 Q. Is your interpretation of this document based 16:24:10  
6 on anything other than your own reading of the  
7 document?

8 A. No. That has to do with my involvement as we  
9 were dealing with the Project 112/SHAD individuals who  
10 were not test subjects specifically, but in talking to  
11 them and talking to people at the VA who they were  
12 seeing, there was a concern that they were sworn to  
13 secrecy because their ship participated in a  
14 classified experiment, and we worked to try to get  
15 this done.

16 We were aware, as I said earlier, of the  
17 prior to 1968 release, felt that we really needed  
18 something for the Project 112 because many of this was  
19 up into the '70's that that program was going on. We  
20 kind of slogged at this for about three years, and  
21 then I lost track of where this was. I know that  
22 legal advice was "We already have the release. We  
23 don't need to do it again." Obviously, this continued  
24 to work its way into the department, and it came out  
25 in January of this year.



1 Q. Well, this earlier document we looked at, 16:25:29  
2 Exhibit 125-A, was that ever announced publicly?

3 A. I know that it was put on the website that we  
4 did for the chem-bio program when we put it up. When  
5 you take a look at the distribution, there would be  
6 quite a bit of information there, and I know that,  
7 again, we talked with the media about it but -- when  
8 we were doing Project 112/SHAD, but there wasn't that  
9 much of it that was prior to 1968, the first part of  
10 it.

11 So as far as broad announcement, again,  
12 within the DoD there was, but how would you get this  
13 out to individuals. We shared this document with the  
14 veterans service organizations or a meeting with Force  
15 Health Protection and Readiness. As I said, I was  
16 involved in doing that until I turned that over to  
17 Dr. Brix. So that they had that, and we even wrote  
18 some brief statements hoping that they would put them  
19 in their monthly magazine or quarterly magazine to  
20 their constituents to try to spread the word. So  
21 those were all methods we used to try to get the  
22 information out.

23 Q. And with respect to Exhibit 332, are you 16:27:03  
24 involved in the distribution of this, publication of  
25 this particular directive?

1 officer physicians, American physicians in Cairo. I  
2 would often see family members or active duty members  
3 who were assigned to the medical research unit. I was  
4 a senior physician there, and I would work with the  
5 senior physician at the American Embassy consulting on  
6 any difficult cases, and then I rounded routinely on  
7 Egyptian patients who were in the Abbassia Fever  
8 Hospital, which is a 1,000-bed fever hospital next to  
9 the medical research unit.

10 We had an agreement, the Navy did, with the  
11 government of Egypt to provide care for and at times  
12 to evaluate different antibiotic therapies for  
13 infected patients.

14 BY MR. ERSPAMER:

15 Q. So approximately how much of your time was 09:32:44  
16 spent on administrative duties at that time?

17 A. I would say it was probably 80 percent was  
18 the management administrative duties.

19 Q. Okay. I've put back in front of you 09:32:54  
20 Exhibit 311, which is this Army regulation, and since  
21 you're designated as both an Army witness and a  
22 Department of Defense witness, I thought I would ask  
23 you kind of a basic question. Does the Department of  
24 Defense believe itself to be bound by Army  
25 regulations?

1 MR. GARDNER: Objection. Calls for a legal  
2 conclusion.

3 THE WITNESS: Army regulations are implementation  
4 instructions to the Army which flow from Department of  
5 Defense directives. So if there is something that has  
6 to do with use of volunteers, the subject and research  
7 would come from the Department of Defense, then each  
8 of the services would have their implementing  
9 instructions. So the Army regulation is directed to  
10 the Army.

11 BY MR. ERSPAMER:

12 Q. Okay. It's not directed to the Department of 09:33:53  
13 Defense?

14 A. No.

15 Q. Just help me understand this, this 09:33:57  
16 organizational structure. In the organizational  
17 structure, is the Department of Defense above each of  
18 the Department of the Army, the Navy, and so on?

19 MR. GARDNER: Objection. Vague.

20 THE WITNESS: The organizational structure is  
21 each of the services, Army, Navy, Air Force, have  
22 secretaries who are political appointees. Those  
23 secretaries answer to the secretary of defense. And  
24 so that is the organization element. The office of  
25 the secretary of defense is the overall head of the

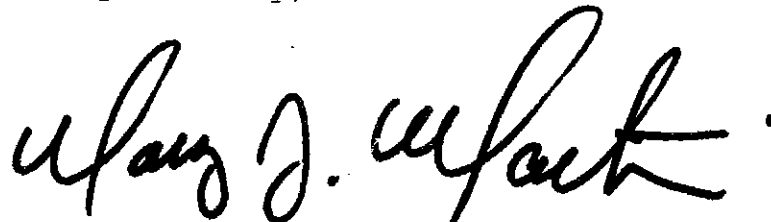
1 I, NANCY J. MARTIN, CSR No. 9504, do hereby  
2 certify:

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 A handwritten signature in black ink, appearing to read "Nancy J. Martin". The signature is written in a cursive, flowing style with a period at the end.

24  
25 Nancy J. Martin, CSR No. 9504