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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

Case No. CV 09-0037-CW

VIETNAM VETERANS OF AMERICA, *et al.*,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY, *et al.*,

Defendants.

DECLARATION OF JOHN J. SPINELLI

I, John J. Spinelli, declare as follows:

1. I am a Senior Advisor to the Secretary of the Department of Veterans Affairs ("VA"). I was appointed to this position on January 21, 2009. Prior to that, I served as Deputy Director of the U.S. Army Center of Military History.

2. As a Senior Advisor, I am responsible for, among other things, advising the Secretary of Veterans Affairs on a range of strategy and policy issues regarding VA transformation, operations, and activities. I assist VA leadership in identifying, articulating, and disseminating vision, strategic guidance, operational priorities, and strategies for communication and legislative and public affairs. In this capacity, I supervise approximately six employees in the analysis and formulation of written documents and broad strategy regarding the VA budget, health and benefits programs, and other key business lines associated with VA transformation and operations for senior VA leadership. As Senior Advisor to the Secretary, I report to the Chief of Staff for the Department of Veterans Affairs.

3. In connection with my responsibilities as a Senior Advisor, I am generally familiar with this litigation brought by plaintiffs against various federal agencies, including VA, and I am able

1 to determine whether certain predecisional documents contain deliberative process materials, the
2 public disclosure of which would chill the decision-making process.

3 4. By delegation executed by the Secretary of Veterans Affairs, dated August 30, 2011, I
4 have been delegated responsibility to assert the deliberative process privilege over these
5 documents. That delegation is attached as Exhibit A.
6

7 5. During my tenure at VA, VA's efforts to notify veterans of the potential hazards to which
8 they were exposed during active service and adjudication of claims for disability compensation
9 and dependency and indemnity compensation have been of significant interest to many different
10 parties, including Congress, other Executive Branch agencies, the VA Inspector General's office,
11 Veterans Service Organizations, and others. As part of this interest, VA policy makers are often
12 called to explain decisions and actions taken by the Department in its notice and adjudication
13 efforts.
14

15 6. Based upon my review and personal consideration of each document, I hereby formally
16 assert the deliberative process privilege on behalf of VA for the following 8 documents, which
17 are potentially responsive to Plaintiffs' requests for production of documents.

18 **Documents Concerning Modifications of VA Procedures for Verifying Exposure:**

19 7. The documents stamped DVA132 0001-0002, 0003, 0007-0008, 0012-0014, and DVA134
20 0236 are emails, an email with an attachment, and a memorandum regarding potential
21 modifications to VA procedures for verifying chemical or biological exposure. They reflect
22 deliberative discussions pertaining to potential updates to VA exposure verification guidance and
23 pre-date a final decision on modifications and the issuance of final guidance on such
24 modifications. I understand that VA made a final decision not to modify these procedures, and
25 the unmodified procedures are reflected in the final M21-1 manual, which is publicly available.
26 These documents are internal deliberations that, if subject to public release, would both chill
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1 productive agency discussion and could confuse the public. I understand that the attachment
2 contained in DVA132 0003 is DVA134 0236. I further understand that DVA132 0012-0014 and
3 DVA134 0236 are working documents used by VBA employees to agree upon final language for
4 the memorandum. DVA132 0003 is an email discussion pertaining to that memorandum. The
5 final version of that memorandum was produced at DVA093 0032-0033.
6

7 **Documents Concerning Modifications to Chem-Bio/SHAD/Mustard Gas Guidance:**

8 8. The documents stamped DVA132 0005-0006 and 0009-0011 are emails discussing
9 alternative options for modifying guidance concerning the development of claims based on chem-
10 bio, Project SHAD, or mustard gas exposure. They reflect deliberative discussions pertaining to
11 the substance and form of such modifications and pre-date a decision on these modifications and
12 the issuance of final guidance. If such discussions were halted by being subject to public release,
13 VA would be prevented from developing, through input and open discussion with its employees,
14 the best and most appropriate services possible to our nation's veterans. It would chill the
15 policymaking process if these tentative views and suggestions of VA employees could be subject
16 to public scrutiny. As stated in paragraph 7, above, the final version of the guidance concerning
17 the modification of procedures for chem-bio claims was produced as DVA093 0032-0033.
18

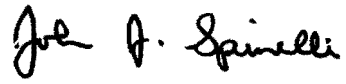
19
20 **Documents Concerning Outreach and Identification of Test Participants:**

21 9. The document stamped DVA132 0034-0068 is an email with partially redacted
22 attachments containing recommendations regarding outreach efforts, identification of test
23 participants, notice letter revisions, and disability determinations, which pre-dates decisions on
24 those recommendations. Disclosure of these recommendations would unduly chill the open and
25 candid exchange of ideas and suggestions necessary to the development of sufficiently well-
26 considered and thorough strategies for communicating notification of test exposure to veteran
27 populations. I understand that the redactions on the attachments are identical or substantively
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similar to documents that were previously reviewed by the Magistrate Judge and over which the assertions of privilege were upheld. The previously reviewed documents were identified as DVA078 000130-000133 and 000134-000136.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Washington, D.C. on July 26, 2012.



John J. Spinelli
Senior Advisor to the Secretary
U.S. Department of Veterans Affairs

Department of
Veterans Affairs

Memorandum

Date: AUG 30 2011
From: Secretary of Veterans Affairs
Subj: Delegation of Authority to Assert Deliberative Process Privilege
To: Senior Advisor to the Secretary of Veterans Affairs, John J. Spinelli

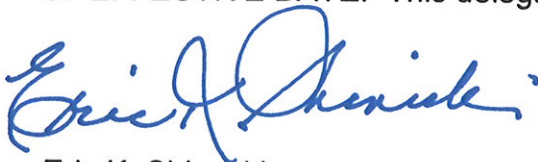
1. PURPOSE OF DELEGATION. The Department of Veterans Affairs (VA) has been named a defendant in Vietnam Veterans of Am. v. Central Intelligence Agency, No. CV 09-0037-CW (N.D. Cal.). Plaintiffs in that case seek to compel discovery of numerous documents that may include pre-decisional advice and deliberations of VA personnel. To invoke the deliberative process privilege applicable to such documents in litigation, Federal courts generally require a declaration, from the head of the Department or an officer of the Department to whom appropriate authority has been delegated, that is made after personal consideration of the documents at issue and that specifies the reasons for invoking the privilege.

2. DELEGATION. This memorandum delegates to John J. Spinelli, Senior Advisor to the Secretary of Veterans Affairs, the authority to assert the deliberate process privilege on behalf of VA in the case of Vietnam Veterans of Am. v. Central Intelligence Agency, No. CV 09-0037-CW (N.D. Cal.), based on his personal consideration of the relevant documents. This delegation includes the authority to determine whether the privilege should be invoked with respect to each document and to attest to the reasons for asserting confidentiality over the information withheld.

3. AUTHORITY. 38 U.S.C. § 512.

4. RESTRICTIONS. None.

5. EFFECTIVE DATE. This delegation of authority is effective upon signature.



Eric K. Shinseki