UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

VIETNAM VETERANS OF AMERICA, *et al.*, Plaintiffs, v. CENTRAL INTELLIGENCE AGENCY, *et al.*, Defendants.	Case No. CV 09-0037-CW (JC) **DECLARATION OF DEE DODSON MORRIS**

DECLARATION OF DEE DODSON MORRIS

I, Dee Dodson Morris, declare as follows:

1. I am the Chief of Staff for the Joint Requirements Office (JRO) for Chemical, Biological, Radiological and Nuclear Defense (CBRND) of the Joint Staff, J-8. I am responsible for the day-to-day operations of the JRO.

a. I was commissioned into the Army from the Virginia Tech Corps of Cadets in June 1976, graduating with a Bachelor of Science degree in Textiles.

b. Upon commissioning, I was detailed and later transferred to the U.S. Army Chemical Corps, where I served until September 1998. My military career began as an Escort and Disposal Officer in the U.S. Army Technical Escort Unit at Aberdeen Proving Ground, Maryland. I served in a variety of staff and leadership positions in Texas and Germany including activating commander of the 181st Chemical Company (Decon).

c. While serving in Detroit, Michigan, I was the Chemical Corps Branch Advisor to the Army National Guard and Reserve in the state, followed by an acquisition tour at the U.S. Army Tank and Automotive Command, where I was the warranted Weapons System Manager for the Nuclear, Biological and Chemical Reconnaissance System (Fox) Chassis. I served twice on Johnston Island, first as the Chemical Surety Officer managing the then largest Chemical Personnel Reliability Program, and later as Executive Officer of the US Army

Chemical Activity, Pacific. I supervised the destruction of chemical weapons and escorted recovered World War II mustard projectiles between Mbanika, Solomon Islands and Johnston Island.

d. Between my Johnston Island tours, I was a Conventional Armed Forces in Europe Treaty Liaison Officer and Chemical Weapons Agreements Mission Commander at the On-Site Inspection Agency located at Dulles International Airport, where I participated in humanitarian aid deliveries to Russia and Ukraine, escorted Russian inspectors for the first inspections of the United States' stationed forces in Europe, and led the first bilateral challenge inspection of a Russian chemical weapons storage facility. Upon my final return to the United States, I was the Independent Operational Evaluator for chemical, ordnance, military police and medical equipment at the Army Evaluation Command.

e. I completed my Army career as the Deputy Director, Investigations and Analysis of the Office of the Special Assistant for Gulf War Illnesses. I was appointed to the civil service in September 1998 and held several positions within the Office of the Special Assistant and the Office of the Deputy Assistant Secretary of Defense for Force Health Protection and Readiness before moving to the Joint Staff in December 2007. During this time, I was the principal investigator and exposure certification official for service members involved in chemical and biological tests and experimentation, including the test programs at issue in this case, and worked closely with the Department of Veterans Affairs (VA) on these matters.

f. More specifically, I was personally and directly involved in the search and outreach efforts associated with the chemical agent program at issue in this case during the early-to-mid 2000s. As discussed above, from 2000 to 2007, I was assigned to the Office of the Assistant Secretary of Defense for Health Affairs and held a variety of positions in that office. In that position, I conducted research into the exposures that test participants had undergone during the chemical and biological test program at issue in this case. In addition, my office was responsible for receiving information from Battelle Memorial Institute concerning the test programs, and developing the database shared between DoD and VA concerning the test program. I participated in numerous meetings with VA and DoD officials to discuss the implementation and

coordination of notification efforts, and assisted in the management of a call center that was used by test participants to obtain additional information about their tests. During this time period, I reported to Dr. Michael E. Kilpatrick who, at the time, was the Deputy Director, Force Health Protection and Readiness Programs. My understanding is that Dr. Kilpatrick was deposed for three days in this case and served as DoD and the Army's Rule 30(b)(6) designee. In addition, Plaintiffs took my deposition in this case.

g. In connection with my job responsibilities, I am familiar with this litigation brought by Plaintiffs as well as the government's efforts to identify and notify test participants. I base this declaration on both my personal knowledge and knowledge that has been made known to me during the course of this litigation in my official capacity.

2. The purpose of this declaration is to describe the efforts the government understands would be necessary to comply with the Court's injunction. As I understand the Court's injunction, the Army must search for and notify test participants of any "Newly Acquired Information" since 2006, as defined in paragraphs 2a-d of that injunction. I understand the "Newly Acquired Information" to fall into two broad categories: (1) information concerning the conduct of the test programs which ended more than 35 years ago (*i.e.*, the substances used during the test program, the doses used, the modes of administration); and (2) information concerning long-term health effects resulting from the test program.

3. Below I describe the efforts the government believes would be necessary to comply with the Court's injunction in three separate categories: (1) identification of additional information concerning the conduct of the program; (2) identification of new information concerning health effects of the program; and (3) the process of notifying participants of any new health effects.

4. The government has already undertaken exhaustive steps to identify all reasonably identifiable test participants for the test programs at issue in this case. Specifically, the government has conducted a voluminous search over the course of many decades and at the cost of millions of dollars, provided that information to the VA and the VA has provided notice to all test participants for whom contact information could be found. I am unaware of any "Newly

Acquired Information" to provide to class members that falls into the first category of Newly Acquired Information regarding the conduct of the test program. For this reason, the government believes this aspect of the Court's injunction should not impose any new additional burdens because nothing more could reasonably be done to comply.

5. The burdens the Court's injunction likely will impose with respect to the identification of new information concerning health effects of past programs and notifying participants of any new health effects are difficult to quantify with precision given the lack of clarity as to precisely what the injunction requires the Army to do. For example, the injunction does not specify what efforts are required to obtain new information about possible new health effects from the hundreds of substances at issue in this case or how often (and for how long) those efforts must be continued. Despite this uncertainty, however, I am confident that even a minimum level of compliance with the Court's injunction will impose substantial monetary and manpower burdens on the Army and may cause harm by unnecessarily alarming past test participants with additional notifications of minimal value to them. Assuming certain minimum parameters necessary to comply with the injunction, I outline the principal costs, burdens and concerns below.

6. My estimate of the costs and efforts necessary to comply with the aspect of the Court's injunction concerning health effects is based on my personal knowledge, as well as communications with other knowledgeable individuals within the Department of Defense, including Anthony Lee, Larry Sipos, and Dr. Phillip R. Pittman. Mr. Lee is a program analyst in the Office of the Assistant Secretary of Defense for Nuclear and Chemical Biological Programs. He has responsibility for managing and funding the U.S. chemical and biological test repository that is shared with VA to provide notifications to them, for reviewing monthly reports and data submissions from Battelle Memorial Institute, and conducting quarterly program reviews. Mr. Sipos is the Executive Officer to the Deputy Assistant Secretary of Defense for Force Health Protection & Readiness, the office primarily responsible for the service branches' search efforts related to the test programs at issue in this case. Dr. Pittman is Chief of the Department of Clinical Research at United States Army Medical Research Institute for Infectious Diseases

("USAMRIID"), Fort Detrick, and has been involved in conducting retrospective medical research studies concerning Project Whitecoat, which involved the military's biological test program at issue in this case.

7. With respect to the Court's requirement that the government locate, collect and disseminate, on an ongoing basis indefinitely, "Newly Acquired Information" pertaining to 1) inconveniences and hazards reasonably to be expected by test subjects as a result of their participation in the testing and 2) effects upon their health which may possibly come from such participation, it is my assessment that such compliance will impose significant costs burdens upon the government.

8. As an initial matter, I am unaware of any information discovered since June 30, 2006, that may affect the well-being of the test subjects that has not already been made available to class members. Nevertheless, there are several possible options for complying with this aspect of the Court's injunction, and each presents substantial costs and burdens.

9. One option would be to contract with the Institute of Medicine ("IOM"), or some other private contractor, to conduct new literature searches related to the pertinent test substances and compare the results of those comprehensive searches previously conducted by the IOM to determine whether there has been any material change in the state of the scientific literature. In the 1980s, the Department of the Army contracted with the National Research Council ("NRC") to conduct an extensive review of the Edgewood test program and assess the possible long-term health effects of exposure to the approximately 254 chemical substances used during the test program. The results of that study were reported in three voluminous reports between 1982 and 1985. In conducting its study, the NRC formed committees to review Edgewood reports, and extensive extracts were prepared of preclinical animal and human protocols and technical reports at Edgewood libraries and other Edgewood facilities where records of subjects and details of exposure conditions and clinical findings were maintained. Digests of the entire available literature, both classified and unclassified, were prepared by consultant pharmacologists. The NRC staff also organized the tests into several pharmacological classes and established two expert panels to evaluate potential adverse health effects. The panels then met on several

occasions to discuss the results of their findings. In addition, as reflected in volume 3 of the NRC study, the NRC conducted a mortality study based on questionnaires provided to all the living test participants who the NRC was able to locate.

10. Contracting with the NRC to re-evaluate or update the results of its 1980s studies would be both costly and time consuming. The original NRC study took five years to complete. And, while it is probable that an updated literature search and assessment of health effects may not take as long as the original study, there is no basis to conclude that it could be completed in ninety days, or even six months. Rather, consistent with the prior study, it is likely that such an effort would run into a year, if not years. In addition, once the NRC reaches its conclusions, those conclusions would still need to be reviewed and assessed by the Army to determine whether, in its judgment, any information exists that may adversely affect the well-being of the class members.

11. Although costs are difficult to estimate with precision, the federal government has contracted with IOM for scientific and medical evaluations of the literature and an assessment of the long-term health effects associated with certain exposures in comparable circumstances. For example, in 1998, the government contracted with the IOM to review the scientific and medical literature on the long-term adverse health effects to which Gulf War veterans may have been exposed. The results of that study were published in a multi-volume report entitled "Gulf War and Health." In 2000, the IOM released the first volume of the results of that study, which covered only four categories of substances: depleted uranium, pyridostigmine bromide, sarin, and vaccines. Additional volumes have been released covering different chemical substances in the following years. It is my understanding that volume two of that multi-volume study, which was released in 2003 and which focused on approximately 30 insecticide and solvents, involved the retrieval of approximately 30,000 abstracts, the review of approximately 3,000 peer reviewed publications, and took approximately five years to complete at a cost in excess of $1 million.

12. At my request, Mr. Lee asked the IOM for an informal estimate of the cost necessary to conduct a renewed evaluation of the scientific and medical literature concerning the potential health effects associated with the hundreds of substances used during the test program

involving the class members. The IOM's informal estimate reflected the following costs and time frames:

Year 1 . . . . . $ 2,000,000

Year 2 . . . . . $ 2,000,000

Year 3 . . . . . $ 2,000,000

Year 4 . . . . . $ 1,400,000

Year 5 . . . . . $ 1,400,000

Total for Years 1-5 . . . $ 8,800,000.

13. These figures are necessarily quite tentative at this stage, but reflect an initial good faith estimate of the potential costs involved in attempting to conduct a new evaluation of the medical literature on the substances used during the test program. In addition, this estimate does not include the additional time and cost necessary for the Army to evaluate the results of the IOM's findings and conduct any follow-on analyses that may be appropriate. Also, because the Court's injunction mandates updates to this effort on a continuing basis indefinitely into the future, the total cost of compliance with this aspect of the Court's injunction necessarily will be much greater.

14. As illustrated by the "Gulf War and Health" multi-volume study, the government often contracts with entities like the IOM to study the potential health effects associated with certain exposures, many times at the request of Congress. To the extent such studies reveal information that is germane to the long-term health of the test participants in this case, that information would be made available to test participants.

15. A second possible option for complying with this aspect of the Court's injunction is for the Government itself to conduct scientific and medical literature searches pertaining to the hundreds of substances at issue. This option also presents substantial burdens and costs to the government.

16. For example, I requested that Dr. Pittman estimate the costs associated with reviewing and evaluating the medical and scientific literature associated with just the

approximately twelve biological substances and vaccines used during the test program. Dr. Pittman estimates that conducting an in-depth literature search using a group of scientists and assistants would be as follows:

Two researchers	$640,000
Two administrative assistants	$180,000
Supplies	$40,000
Total	$860,000

17. In addition to identifying what, if any, additional research is out there, to meaningfully assess whether this additional literature is pertinent will require a comparison of the literature to the specific circumstances of the test programs at issue in this case. By that, I mean that health effects associated with exposure to a particular substance typically turns upon factors such as the substance or substances the individual was exposed to, the dose or doses administered, and the mode of administration. Accordingly, the government would need to compare the circumstances discussed in the literature to the specific circumstances of the thousands of test participants to determine, on an individualized basis, whether there is an increased risk of adverse health effects. While I cannot estimate such an undertaking with any precision, it is clear that such an effort would be extremely labor- and cost-intensive.

18. These costs identified above necessarily would be substantially greater if these literature reviews included all of the hundreds of test substances used during the test programs, and had to be continuously updated, as may be required by the Court's injunction.

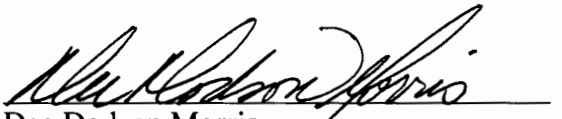
19. Regardless of which option is chosen, substantial efforts also would be necessary to effectively communicate the results of such additional scientific and medical literature searches should the results suggest that there is information that may affect the well-being of the test participants. Effective communication under these circumstances is critical because there is a substantial danger that the notifications contemplated by the injunction could create more harm than it prevents by unduly alarming test participants. More specifically, receipt of official notification by a test subject that he was exposed to a substance that the government has now

determined to be potentially harmful, if not communicated appropriately, is highly likely to cause anxiety, at least until the test subject has an opportunity to consult with his physician about the information he just received.

20. To minimize creating unnecessary anxiety, the government would need to carefully develop an appropriate risk communication plan for every communication that will potentially be disseminated to test subjects. When the DoD and VA sent notice letters with attachments to test participants previously, an extremely labor intensive risk communication review was undertaken to balance the need to provide pertinent information with the desire to avoid overly alarming recipients. This process took approximately five months, with extensive coordination between DoD and VA. Should additional notification efforts be undertaken, each new communication will have to be authored and packaged so as to avoid unnecessarily frightening recipients, including those who are not experiencing health problems. The information transmissions must be detailed enough to jog decades-old memories, but not so detailed as to possibly prompt fabrication of experiences. The language used must be clear and not subject to misinterpretation.

21. Given that this risk communication review effort took approximately five months for general notifications, providing a number of different notices based upon possible different health risks associated with a wide variety of different substances would necessarily require substantially more time, at additional cost and use of manpower.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Washington, D.C., on January 21, 2014.



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