Exhibit L

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MORRISON | FOERSTER

425 MARKET STREET
SAN FRANCISCO
CALIFORNIA 94105-2482

TELEPHONE: 415.268.7000
FACSIMILE: 415.268.7522

WWW.MOFO.COM

MORRISON & FOERSTER LLP

NEW YORK, SAN FRANCISCO,
LOS ANGELES, PALO ALTO,
SAN DIEGO, WASHINGTON, D.C.

NORTHERN VIRGINIA, DENVER,
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TOKYO, LONDON, BRUSSELS,
BEIJING, SHANGHAI, HONG KONG

December 10, 2010

Writer's Direct Contact
415.268.6411
GErspamer@mofo.com

Via E-Mail

Joshua E. Gardner, Esq.
United States Department of Justice
Civil Division, Federal Programs Branch
P.O. Box 883
Washington, D.C. 20044

Re: *Vietnam Veterans of America, et al. v. Central Intelligence Agency, et al.*, No. CV 09-0037 CW (N.D. Cal.)

Dear Mr. Gardner:

I write in response to your December 7, 2010 letter to my colleague, Tim Blakely.

Your accusation that Plaintiffs are "withholding information" is both inaccurate and ironic, given that Defendants' practice throughout this litigation has been to actively resist producing documents, designating witnesses for deposition, agreeing to a protective order, providing substantive answers to interrogatories, or otherwise earnestly participating in discovery. To wit, you are surely aware that Plaintiffs have not been able to take a single deposition of Defendants yet, despite noticing depositions over a year ago, and you now seek to elevate depositions you want to take to the front of the line. As to documents, after forcing Plaintiffs to resort to extensive motion practice involving multiple motions, rounds of briefing, and hearings — spanning months on end — Defendants have only recently begun to produce tens of thousands of pages of relevant documents they previously refused even to search for.

The irony of your accusation is further underscored by the fact that Defendants also have failed to provide meaningful answers to the subset of interrogatories identified by Plaintiffs in their letter dated September 29, 2010, despite Defendants' *explicit agreement to do so within 30 days of that letter*. It now has been over five months since Magistrate Judge Larson issued his July 13, 2010 Order directing Defendants to answer Plaintiffs' interrogatories (which were originally served over a year ago). Defendants' initial revised responses failed to cure the deficiencies noted by the Court. In our subsequent meet-and-confer discussions, Plaintiffs agreed to provide a letter outlining the problems with the current responses, as well as a list of interrogatories to which no further responses were

required, and Defendants agreed to provide amended responses within 30 days of that letter. It is worth noting that it was Defendants who proposed the 30-day response date. Plaintiffs duly provided their letter on September 29, 2010.

On October 27, 2010 — two days before the amended responses were due — your colleague Brigham Bowen informed Plaintiffs' counsel just prior to the hearing on the parties' discovery motions that Defendants' amended responses would be delayed due to travel schedules. He assured us that Defendants' counsel were working diligently to provide these agreed-upon responses and to obtain proper verifications. Mr. Bowen followed up with an e-mail the following day, reiterating that Defendants could not meet their obligation due to "travel schedules and other impediments," and assuring us that Defendants would "endeavor to provide them by the end of next week." On November 5, 2010, your colleague Kimberly Herb sent a letter indicating that although Defendants were "working diligently" to provide amended answers, they had "encountered difficulty" and would be unable to do so. In your call with Mr. Blakely on November 10, 2010, you again reiterated that Defendants had encountered "difficulties" in preparing meaningful responses — purportedly because Defendants have yet to finish collecting (let alone reviewing) information responsive to document requests that were served *last year*. We still have not received Defendants' promised updated responses.

It is now clear that these oft-referenced "difficulties" were merely a ruse to stall for time in order to allow Defendants to prepare their own extensive set of interrogatories and document requests, which you served on December 6, 2010. The timing of Defendants' discovery requests is particularly questionable in light of the fact that Plaintiffs recently agreed to provide Defendants with extra time to meet their compliance obligations under Judge Larson's November 12 discovery order, and given the parties' agreement to hold a meeting in a few weeks concerning case management issues and to plan for discovery going forward. Once again, it is apparent that Defendants have shirked their obligations in this litigation in order to proceed with the case only at their convenience. Please let me know a time next week when you are available to meet and confer concerning the schedule for depositions and other discovery going forward.

Although we would prefer to resolve discovery differences informally, we are not averse to engaging in motion practice where necessary to require Defendants to comply with their discovery obligations. Defendants now have been on notice of the deficiencies in their interrogatory responses for many months. Defendants repeatedly have failed to live up to their repeated commitment to address those deficiencies and provide updated responses. If we do not receive full responses within seven calendar days, we will file a further motion with the Court.

In regard to the initial disclosures, it is surprising that you cite a newspaper article for authority instead of just calling me. Had you called, I would have advised you that the story

did not accurately state what I told the reporter. During our discussion, he asked for names of CIA participants whom he might contact. I informed him that I was not in a position to give him any names, but that several witnesses with knowledge of the CIA's involvement had been publicly identified. I was referring to Dr. James Ketchum, Dr. George Aghajanian, and Dr. Edward Pelikan — but he did not follow up or ask me to identify anyone. Nor did I allude to the existence of other, unnamed witnesses.

It is also puzzling, to say the least, that you request the identities of individuals from the organizational Plaintiffs with information regarding three specific topics — the test programs, health effects, and Defendants' provision of notice to test subjects — that are wholly within *Defendants'* sphere of personal knowledge. Defendants' historical (and continuing) lack of transparency regarding these issues goes to the core of Plaintiffs' case; for decades Defendants have refused to provide information regarding the health effects of the substances Defendants administered to service members and have refused to notify the test subjects regarding their exposures. Throughout this litigation Defendants have refused to produce information bearing on these topics, yet now would apparently ask *Plaintiffs* to provide it.

With respect to the issue of initial disclosures, I note that Defendants' disclosures are completely inadequate, including the small parcel of documents that were produced, which consisted of two letters and a single grouping of one document and attachments regarding MKOFTEN. As to witnesses, Plaintiffs note that during the extensive discovery motion practice, Defendants relied heavily on declarations testimony of numerous individuals, such as Patricia Camaresi (who offered substantive testimony regarding the Congressional investigation of the CIA's human testing efforts), Lt. Colonel Raymond Laurel, and Patsy A. D'Eramo, who are nowhere identified in Defendants' initial disclosures.

Plaintiffs are quite willing to discuss a joint date for the parties to make any necessary updates to their initial disclosures. Plaintiffs propose that the parties agree to exchange updated disclosures at a mutually agreeable time. We should add this item to the agenda for our call next week.

You also asked for Plaintiffs to provide deposition dates for the individual named Plaintiffs beginning in January. Again, however, I note that Defendants have failed to provide *any* deposition witnesses in response to Plaintiffs' notices, **which date back to November 16, 2009,** and include both 30(b)(6) and depositions by name. Plaintiffs' *noticed depositions* take priority over any contemplated depositions by Defendants, as they have now been pending for well over a year, and I do not think the Court will be very pleased to learn that you want to insert your depositions into the first dates on the schedule. Nevertheless, Plaintiffs are willing to work with you to fashion a comprehensive schedule for depositions of all witnesses, assuming that you not raise the claim that you are not available or do not have sufficient attorneys to staff depositions that we previously noticed. This likely will

require multiple tracks of depositions. Deposition scheduling and sites should be addressed in the context of a discovery plan for the case going forward.

I have to candidly state that your repeated assurances communicated to Mr. Blakely to expect a more cooperative approach from Defendants going forward in discovery is proving so soon to be so hollow. Defendants' numerous instructions to third-party witnesses not to answer questions — even foundational questions — certainly does not signal a favorable change in tactics, but a distinct degradation. Please call me so that we can clear a block of time to discuss these continuing problems.

Very Truly Yours,

Gordon P. Erspamer

Gordon P. Erspamer

cc: Kimberly L. Herb, Esq.
Timothy Blakely, Esq.