

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 (JL)

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

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

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

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

6. Based upon my review and personal consideration of each document, I hereby formally assert the deliberative process privilege on behalf of VA for the following 705 documents, which are potentially responsive to Plaintiffs' requests for production of documents.

Documents Concerning SECVA Executive Correspondence (Category 2):

7. The following 82 documents include drafts of letters for signature by the Secretary of Veterans Affairs and senior VA management to members of Congress, Veterans Service Organizations, and heads of other U.S. government agencies and supporting materials, which outline the issues raised by, and ramifications of, the proposed draft correspondence. The Secretary of Veterans Affairs and senior VA leaders must be allowed to gather information and deliberate about the available options before responding in full to Members of Congress, Veterans Service Organizations, and secretaries of other Departments in the Executive Branch of the U.S. Government without the fear that their predecisional ideas will be subject to public scrutiny.

While the Department considers many ideas from many employees and stakeholders in formulating policy, the ideas considered are merely the opinions of individuals, and not the Department's official policy. It would greatly chill the policymaking process if these tentative views could be subject to public scrutiny.

8. The documents stamped DVA0078 000209, 000263, 000264-000265, 000266, 000418-000420, 000434-000436, 000437-000441, 000442-000444, 000445-000446, 000447-000449, 000450-000451, 000565-000566, 001331, 001752, 001753, 001755-001756, 001757-001758, 001759-001760, 002252-002262, 002351-002354, 002436-002439, 002455-002458, 002576, 002953-002955, 002956-002959, 002973-002975, 002976-002979, 003608, 003609, 003610, 003611, 003612, 003613, 004258-004259, 004406-004410, 004661-004662, 004663-004664, 004718-004720, 004721-004723, 004724-004726, 005710, 005711, 005712-005713, 005714, 005715, 005716, 005717, 005718-005719, 005720, 005741, are duplicates, various draft versions of letters, or emails discussing the content of such letters for signature by the Secretary of Veterans Affairs to Members of Congress regarding VA's efforts to notify veterans in the Department of Defense ("DoD") database ("Chem-Bio Database") of their participation in testing of chemical and biological test substances and papers and memoranda identifying the implications of various means that VA could employ to provide the notice. These drafts are works-in-progress assembled for consideration and editing by VA managers, not final versions of the letters. If released, these documents would inhibit the candid exchange of ideas necessary to develop sufficiently well-considered and thorough responses to the inquiries of Members of Congress. Disclosure of these documents would expose their drafters to potential criticism for suggestions that may never have been adopted by management, thereby discouraging these individual from sharing their insights in the future. This category of documents also is comprised of memoranda identifying the implications of various types of notice that VA could employ,

editorial commentary, and contemplation of the risks for these options. If disclosed, these documents would reveal preliminary judgments subject to further refinement and revision. Also, if such preliminary material was publicly disclosed, VA employees would hesitate to provide candid advice to the Secretary regarding available options, thereby hindering the Secretary's decisionmaking as well. These documents pre-date the final version of these letters that were produced to Plaintiffs. (VET001_000007, VET001_000008, VET001_000012, VET001_000013, VET001_000014-000016, VET001_015098, VET001-015101-03, VET001_015333, VET001_015336, VET001_015335, VET001_015334, VVA-VA023448, VVA-VA 023447, VET001_015327).

9. The documents stamped DVA0078 005709, 005750, 005828-005829, 005830-005831, 005832, 005834-005835, 005929-005930 are draft versions of letters for signature by the VA Chief Public Health and Environmental Hazards Officer to several Members of Congress regarding constituent inquiries about testing of chemical and biological test substances of Edgewood Arsenal and a written notation about which agency officials should participate in responding to the inquiry. If released, these documents would inhibit the candid exchange of ideas necessary to develop sufficiently well-considered and thorough responses by the Department to the inquiries of Members of Congress. These documents pre-date a final version of these letters that was produced to Plaintiffs. (DVA003 021513)

10. The documents stamped DVA0078 000567-000568, 001833-001835, 001868, and 003564 are duplicates or various draft versions of letters for signature by the Secretary of Veterans Affairs to the Director of The American Legion regarding VA's efforts to notify veterans in the Chem-Bio Database of their participation in testing of chemical and biological test substances and papers. These drafts are works-in-progress assembled for consideration and editing by VA managers, not final versions of the letters. If released, these documents would inhibit the candid

exchange of ideas necessary to develop sufficiently well-considered and thorough responses to the inquiries of organizations representing VA's veteran constituency. Disclosure of these documents would expose their drafters to potential criticism and scrutiny for suggestions that may never have been adopted by management, thereby discouraging these individuals from sharing their insights in the future. This category of documents also is comprised of memoranda identifying the implications of various types of notice that VA could employ, editorial commentary, and contemplation of the risks for these options. If disclosed these documents would reveal preliminary judgments subject to further refinement and revision. Also, VA employees would hesitate to provide candid advice to the Secretary regarding available options, thereby hindering the Secretary's decisionmaking as well. These documents pre-date the final version of the letter to the Director of The American Legion that was produced to Plaintiffs.

(VET001-015273, VET001_015137)

11. The documents stamped DVA0078 000508, 000509, 001367, 001751, 001754, 001830-001832, 001836-001838, 001839, 002767, 002768, 003565, 003780-003781, are duplicates, emails discussing draft letters, or various draft versions of letters for signature by the Secretary of Veterans Affairs to the Secretary of Defense and Director of the Central Intelligence Agency ("CIA"), requesting their assistance in VA's efforts to notify veterans in the DoD Chem-Bio database of their participation in testing of chemical and biological test substances and papers. These drafts are works-in-progress assembled for consideration and editing by VA managers, not final versions of the letters, and pre-date the final versions of the correspondence which was provided to Plaintiffs. (VVA-VA 029878, VVA 029879, VVA-VA 029881, VVA-VA 029883). If released, these documents would inhibit the candid exchange of ideas necessary to implement VA programs. Disclosure of these documents would expose their drafters to potential criticism and scrutiny for suggestions that may never have been adopted by management, thereby

discouraging these individuals from sharing their insights in the future. If released, these documents would inhibit employees in providing candid advice and analysis to the Secretary and the decisionmaking of the Secretary of Veterans Affairs. Release of the documents would also adversely impact the exchange of information between members of the Executive Branch.

12. The documents stamped DVA0078 000005, 000019-000020, 003585-003676, 003688-003779, 003782-003878, 003879-003986, 003987-004083, 004084-004178, 005319-005335 are draft briefs and reports provided to the Secretary of Veterans Affairs by VA employees to prepare the Secretary for upcoming meetings with Members of Congress about veterans exposed to chemical and biological agents during their military service. The briefings were intended to identify potential issues about the VA benefits and services being provided to these veterans that might be raised by the Members and to suggest responses to their inquiries. The agency employees who met with the Secretary need to be able to provide their input with the understanding that they could provide straight-forward, unvarnished advice that would remain part of the predecisional, deliberative process that would be protected from further disclosure. If released, this document would inhibit VA employees from providing candid advice and analysis to the Secretary of Veterans Affairs and would impact the exchange of information between the Secretary and Members of Congress. These documents pre-date the Secretary of Veterans Affairs's final decisions regarding his responses to Members of Congress about veterans exposed to chemical and biological substances during service.

Documents Concerning Collaboration Between DoD and VA (Category 3):

13. The following 72 documents include reports on meetings between VA and DoD regarding efforts to notify veterans exposed to chemical and biological substances and presentations during the meetings, and briefings for VA employees about the meetings. VA must be allowed to gather information, consult, and deliberate with other Executive Branch agencies about the best means to

carry out this important Department mission without fear that those preliminary deliberations would be subject to public scrutiny. While the Department considers many ideas from many employees and stakeholders in formulating policy, the ideas considered are merely the opinions of individuals, and not the Department's policy. It would greatly chill the policymaking process if these tentative views were subject to public scrutiny.

14. The documents stamped DVA0078 000024-000026, 000093-000094, 000106-000117, 000124-000129, 000188-000195, 000288-000289, 000299, 000371-000372, 000328-000330, 000364-000369, 002335-002339, 002646, 002658-002659, 003151-003157, 003173-003174, 003175-003176, 004264-004265, 004268-004371, 004532-004561, 004696-004707, 004739-004746, 005855-005860 and 005875-005893 are draft reports and slides/presentations regarding collaborative efforts between DoD and VA to identify the test subjects and notify them of exposure to chemical and biological substances during their service. The documents discuss DoD's efforts to compile the Chem-Bio Database, each Department's requirements for the Database, and the content of VA's draft notice letter and DoD's draft Fact Sheet. These documents include discussion about allocation of responsibilities between the Departments, analysis of the Chem-Bio Database, recommendations about how to potentially improve the Database for VA purposes, suggestions about how VA should proceed to provide notice, and suggested timelines for completing projects. The documents, which are works-in-progress, not final versions, were prepared to enable VA management to make decisions about how to provide notice to veterans who were exposed to chemical and biological substances and to identify the implications of various options. Disclosure of the documents would reveal preliminary judgments subject to further refinement and revision. If the documents were released, VA employees would hesitate to participate in the exchange of ideas and discussion necessary to address how these types of projects should be undertaken. As a result, disclosure would

undermine VA's ability to notify veterans of exposure to potentially hazardous substances during active military service. These documents are pre-decisional to the final notice letter, dated June 30, 2006, and DOD Fact Sheet, both of which were previously produced to Plaintiffs. (VVA-VA 023275-80).

15. The documents stamped DVA0078 000001-000004, 000063, 000064-000065, 000068, 000069, 000070-000072, 000075, 000077, 000079-000081, 000096-000098, 000104, 000118-000121, 000122-000123, 000151-000153, 000158, 000276-000279, 000280-000281, 000296-000297, 000300-000301, 000315-000327, 000370, 002312, 002313-002314, 002315-002316, 002334, 002356, 002619, 002700-002703, 003093, 003094, 003179, 003180, 003242, 003566, 003607, 004210, 004216, 004217, 004218, 004219, 004246-004247, 004248-004249, 004752-004753, 004754-004765, 005755, 005761, 005873, 005895-005897 and 005898-005918 are emails, meeting notes and briefs regarding communications between VA employees and between VA and DoD containing analysis of the DoD Database and information provided by the CIA in response to correspondence from the Secretary of Veterans Affairs, recommendations about how to potentially improve the Database for VA purposes, and suggestions for responding to congressional inquiries about VA notice efforts, and formulation of VA's policy with regard to the content of the notice and to which test subjects notice would be provided. Disclosure of the documents would reveal preliminary judgments subject to further refinement and revision. If these documents were released, it would expose VA's and DoD's decisionmaking process and would discourage candid discussion within VA and between VA and DoD, and VA employees would hesitate to participate in the exchange of ideas and discussion necessary to address how these types of projects should be undertaken. These documents predate the final version of the notice letter, dated June 30, 2006, and DOD Fact Sheet, both of which were previously produced to Plaintiffs. (VVA-VA 023275-80).

Documents Concerning Content of VA Notice Letter within the Veterans Health

Administration (Category 4)

16. The following 37 documents are emails between VA employees, including VA attorneys, and duplicates and slides/presentations discussing what information VA's draft notice letter should contain regarding the provision of VA health care and examinations to test subjects. VA must be allowed to gather information, consult, and deliberate about the means legally available to carry out a Department mission. While the Department considers many ideas from many employees and stakeholders in formulating policy, the ideas considered are merely the opinions of individuals, and not the Department's policy. It would greatly chill the policymaking process if these tentative views could be subject to public scrutiny.

17. The documents stamped DVA0078 000008, 000009-000018, 000022-000023, 000063, 000064-000065, 000076, 000078, 000082-000083, 000095, 000099-000103, 000167-000169, 000170-000172, 000244-000245, 000249-000253, 000291-000292, 001867, 002780-002784, 002785-002788, 002789-002792, 002793-002794, 002795-002798, 003127, 003349, 003362-003365, 003554-003563, 004215, 004262-004263, 004266-004267, 004379-004381, 004396-004400, 004401-004405, are duplicates, drafts, and emails between VA employees, including VA attorneys, discussing whether legal authority exists for providing VA health care and examinations to test subjects and the content of VA's draft notice letter regarding the medical care VA will offer to provide and regarding the possible health effects of the biological and chemical substances to which they were exposed. The documents include email discussions about the content of the draft VA notice letter and draft DoD Fact Sheet and suggested revisions to the letter and Fact Sheet, and reflect deliberations and editorial commentary about the content of the letter to be sent by VA to veterans. Release of these documents would infringe upon VA's deliberative process by hindering its ability to obtain candid input from its employees about how

to resolve critical health-care issues, which is necessary for informed decisionmaking by VA senior leaders. These documents predate the final version of the notice letter, dated June 30, 2006, which was previously produced to Plaintiffs. (VVA-VA 023275-76).

18. The documents stamped DVA0078 000485-000495, 000510-000564, 001797-001829, 001840-001866, 002045-002055, and 004415-004441 are drafts and other versions of an informative brief by the VA Office of Policy regarding VA efforts to notify veterans exposed to chemical and biological substances. The brief discusses the proposed content of VA's letter to these veterans, including claims for VA compensation and provision of health care, potential weaknesses of various options presented in the brief, anticipated demand as a result of VA notification, and suggested VA actions. It would greatly chill the policymaking process if these tentative views and suggestions of VA employees could be subject to public scrutiny. These documents all pre-date the final notice letter, dated June 30, 2006, produced to Plaintiffs. (VVA-VA 023275-76).

19. In addition, because some of these documents also contain communication between VA attorneys and VA employees and the provision of legal advice, I have been advised that the following documents also qualify as privileged under the attorney-client privilege: DVA0078 000167-000169, 000170-000172, 002789-002792, and 002795-002798. I further understand that Plaintiffs are not challenging VA's assertion of the attorney-client privilege.

Documents Concerning the DoD Fact Sheet Regarding VA Health Care and

Examination (Category 5):

20. The following 5 documents stamped DVA0078 002219-002220, 002810-002811, 002812-002813, 003098-003099, 005762-005763, discuss drafts of the DoD Fact Sheet and related health care discussions for the intended population of chem-bio veterans who would receive the VA notification letter and DoD Fact Sheet. The documents, which are works-in-progress, not final

versions, were prepared to enable VA management to make decisions about how to provide notice to veterans who were exposed to chemical and biological substances and to identify the implications of various options. Disclosure of the documents would reveal preliminary judgments subject to further refinement and revision. If the documents were released, VA employees would hesitate to participate in the exchange of ideas and discussion necessary to address how these types of projects should be undertaken. As a result, disclosure would undermine VA's ability to notify veterans of exposure to potentially hazardous substances during active military service. These documents predate the final version of the notice letter, dated June 30, 2006, and DOD Fact Sheet, both of which were previously produced to Plaintiffs. (VVA-VA 023275-80).

Documents Concerning Legislative Proposals, Including Drafts and Discussion of Legislative Proposals (Category 6):

21. The following 28 documents stamped DVA0078 000027-000028, 000196-000197, 000198-000201, 000202-000204, 000205-000206, 000232-000240, 000241-000243, 000254-000257, 000282-000284, 002327-002329, 002775-002779, 003348, 003361, 003369-003371, 003372-003373, 004208, 004209, 004225-004227 and 004239-004240, address potential legislative proposals developed and discussed within VA relating to the various possibilities of healthcare coverage offered to veterans who have been exposed to chemical and biological testing. These initiatives have been developed by individuals at the Department and reflect internal deliberations and analysis about veterans' legislative healthcare issues. VA decision-makers must be allowed to develop and pursue legislative issues, and to consider alternatives, without fear of public scrutiny before submitting matters to Congress for its consideration. It is critical to a proper functioning of the VA that it be able to examine all viable options and to consider ramifications associated with legislation before making a final proposal. Further, the

premature release of such information would confuse the public to the extent that proposals developed and discussed by VA were not enacted or differ from any final legislation. VA notes that this Court has previously ordered release of documents that pertain to the same or a related legislative proposal as the above documents, and not as to others.

22. The documents in the privilege log DVA0078 002263, 002264, 003338-003345, 003350-003355, 003356-003360, 003366-003368, 003377-003378, 004179-004181 and 004183-004184 are lists, duplicates or different versions of draft legislative proposals and analyses of those proposals that reflect deliberations concerning healthcare coverage for veterans who have been exposed to chemical or biological testing. The specific decisions at issue relate to whether to expand special treatment authority for veterans who had participated in the Department of Defense's chemical and biological testing programs. Such legislation never became law. These documents were prepared for the Under Secretary for Health and VA Chief Business Office. Release of these documents would infringe upon VA's deliberative process by hindering its ability to obtain candid input from its employees regarding legislative healthcare proposals. VA notes that this Court has previously ordered release of documents that pertain to the same or a related legislative proposal as the above documents.

23. In addition, because some of these documents also contain communication between VA attorneys and VA employees, and the provision of legal advice, I have been advised that the following document also qualifies as privileged under the attorney-client privilege: DVA0078 000232-000240 and 003369-003371. I further understand that Plaintiffs are not challenging VA's assertion of the attorney-client privilege.

Documents Concerning the Under Secretary for Health's Information Letter

(Category 7):

24. The following 9 documents in the privilege log stamped DVA0078 000061, 000147, 000496-000499, 002056-002059, 002428-002431, 002681, 004388-004391, 004581-004588 and 005871-005872 are drafts, emails and memoranda among the Under Secretary for Health, the Acting Assistant Secretary for Policy, Planning, and Preparedness, and other VHA employees. These documents discuss comments, suggestions, and edits to drafts of the Under Secretary for Health's Information Letter Regarding Potential Health Effects Among Veterans Involved in Military Chemical Warfare Agent Experiments Conducted From The 1950s To 1975. All of these documents predate the Information Letter that was publicly disseminated, the final version of which was previously produced to Plaintiffs (VVA-VA 009880-009883). Disclosure of the documents would stifle the free exchange of ideas and suggestions by VA subordinates which are necessary to informed decision-making by management.

Documents Concerning the Veterans Benefits Administration (Category 8):

25. The following 366 documents address the potential options the Veterans Benefits Administration ("VBA") has considered for notifying and conducting outreach to veterans exposed to chemical or biological substances during Army testing, and informing VA field offices about the population of "Chem-Bio" veterans. Release of these pre-decisional, deliberative documents would lead to extensive and confused questioning of VA personnel by the public. Here, VBA asked its employees to think creatively about the goals of clearly communicating notice and outreach to Chem-Bio veterans. If VBA employees are questioned or otherwise scrutinized about this work, it would discourage their willingness to freely provide feedback and recommendations in response to future requests from policy makers.

26. The following 45 documents in the privilege log stamped DVA0078 000148, 000176-000179, 000500-000507, 002374-002381, 002382-002391, 002392-002400, 002401-002411, 002412-002422, 002478-002485, 002486-002493, 002494-002503, 002504-002513, 002514-

002521, 002522-002531, 002532-002539, 002540-002548, 002549-002558, 002559-002566, 002567-002574, 002575, 002623-002633, 002835-002855, 002856-002876, 002877-002894, 002895-002915, 002918-002925, 002994-003001, 003002-003009, 003010-003017, 003018-003027, 003028-003037, 003038-003045, 003046-003055, 003056-003063, 003064-003072, 003073-003082, 003083-003090, 003218-003225, 003231-003241, 003254-003274, 003275-003295, 004220, 004669-004676, 004677-004685 and 004686-004695 are discussions about or different drafts of the Training Letter circulated within the Compensation and Pension Service of the Veterans Benefits Administration. These documents discuss comments, suggestions, and edits to drafts of the Compensation and Pension Service Director's Training Letter directed toward VA field offices. The purpose of the Training Letter was to educate and inform VA field personnel about claims stemming from DoD's release of the Chem-Bio Database. Disclosure of such documents would stifle the free exchange of ideas and suggestions by VA subordinates which are necessary to informed decision-making by management. These documents predate the final version of the Training Letter, dated September 12, 2006, which was previously produced to Plaintiffs. (VVA-VA 009395-009408).

27. The following 128 documents in the privilege log stamped DVA0078 000006-000007, 000074, 000089-000090, 000091-000092, 000095, 000130-000133, 000134-000136, 000137-000138, 000139-000141, 000146, 000149-000150, 000157, 000173-000175, 000185-000187, 000210, 000211, 000212, 000246-000247, 000262, 000268-000271, 000272-000275, 000290, 000331-000335, 000337, 000373-000376, 000381-000414, 000452, 000453-000454, 000455-000484, 000569-000570, 000571-000658, 000659-000790, 000791-000877, 000878-000970, 000971-001054, 001055-001144, 001145-001236, 001237-001330, 001334-001366, 001368-001371, 001372, 001373-001414, 001415-001501, 001502-001546, 001547-001641, 001642-001671, 001672-001750, 001869-002004, 002008-002010, 002011-002044, 002060-002181,

002182-002183, 002184-002216, 002221, 002265, 002309-002311, 002317-002318, 002340-002342, 002348-002350, 002355, 002357-002359, 002360-002364, 002366-002368, 002369-002373, 002453-002454, 002463-002465, 002466-002468, 002469-002471, 002472-002474, 002475-002477, 002577-002579, 002620-002622, 002635-002645, 002647-002657, 002660-002664, 002691, 002692, 002693-002695, 002699, 002766, 002926-002930, 002931-002935, 002967-002969, 002970-002972, 002980-002982, 002983-002985, 002986-002988, 002989-002991, 003095-003097, 003100-003104, 003181-003217, 003228-003230, 003243-003253, 003309-003312, 003567-003602, 003603-003606, 003677-003687, 004204-004206, 004214, 004222, 004238, 004260-004261, 004458-004469, 004562-004571, 004572-004580, 004610-004617, 004735-004736, 004747, 004748-004751, 005721-005722, 005743-005744, 005745-005746, 005747-005749, 005751-005754, 005756-005760, 005764-005765, 005766-005768, 005769-005771, 005788-005789, 005794, 005799, 005833, 005849-005853, 005854, 005861-005862, 005864-005865, 005874, 005919-005928 are emails, draft letters, reports and memoranda, draft briefs, meeting summaries, and redacted outreach reports related to identifying, locating and communicating with veterans who have been exposed to chemical or biological testing. These documents have been released so as to include factual information, but have been redacted to protect public disclosure of discussions of recommendations by VA employees in the course of formulating VA's approach to conducting outreach to Chem-Bio veterans. If these currently redacted discussions were released, it would inhibit VA employees from openly expressing their ideas, and to creatively developing policy for notifying veterans of a chemical or biological exposure. If such discussions were halted by being subject to public release, VA would be prevented from developing, through input and open discussion with its employees, the best and most appropriate services possible to our nation's veterans.

28. The following 9 documents in the privilege log stamped DVA0078 000044, 000045, 000046-000048, 000056, 000105, 000154, 000155-000156, 000294-000295, 004223-004224, are email discussions about outstanding issues in a draft chem-bio paper for Secretary of Veterans Affairs prior to final submitted chem-bio paper. If these currently redacted discussions were released, it would inhibit VA employees from openly expressing their ideas, and to creatively develop policy for notifying veterans of a chemical or biological exposure. If such discussions were halted by being subject to public release, VA would be prevented from developing, through input and open discussion with its employees, the best and most appropriate services possible to our nation's veterans.

29. The following 44 documents in the privilege log stamped DVA0078 000049-000051, 000052-000053, 000054-000055, 000159-000163, 000164-000166, 000214-000231, 000302-000314, 000377-000380, 002266-002308, 002447-002448, 002449-002452, 002665-002680, 002684-002687, 002688-002690, 002696-002698, 002704-002706, 002707-002749, 002750-002765, 003132-003147, 003148-003150, 003158-003159, 003160-003162, 003163-003165, 003166-003168, 003169-003171, 003172, 003322-003337, 004182, 004442-004457, 004489-004531, 004733-004734, 005762-005773, 005774, 005775-005776, 005777-005778, 005779, 005780, 005781-005782, 005783, 005784-005785, 005786-005787, 005790-005793, 005795-005798 and 005803-005818 are emails, draft reports and memoranda discussing VA's response to draft GAO report and responsibility for preparing that GAO report, pre-dating the final GAO report, which is publicly available at: <http://www.gao.gov/new.items/d08366.pdf>. Disclosure of these documents would unduly chill the open and candid exchange of ideas and suggestions necessary to the development of sufficiently well-considered and thorough strategies for conducting outreach to veterans. It is important to the proper functioning of the VA that it be able

to fully and freely consider all options suggested by VA employees in the continuing development of the notification and outreach program to Chem-Bio veterans.

30. The following 14 documents in the privilege log stamped DVA0078 000029-000031, 000032-000036, 000037, 000038-000040, 000041-000043, 000285-000287, 000421-000427, 000428-000433, 002222, 003307-003308, 004250, 004251, 004392-004395 and 004708-004711 are emails and discussions predating VA's decisions on how to respond to media and FOIA requests relating to the test programs. Similar to the outreach reports and meeting summaries, disclosure of these documents would unduly chill the open and candid exchange of ideas and suggestions necessary to the development of sufficiently well-considered and thorough strategies for conducting outreach to veterans. It is important to the proper functioning of the VA that it be able to fully and freely consider all options suggested by VA employees in the continuing development of the notification and outreach program to Chem-Bio veterans. Release of these documents would chill the contributions necessary to such consideration.

31. In addition, because some of these documents also contain communication between VA attorneys and VA employees and the provision of legal advice, I have been advised that the following documents also qualify as privileged under the attorney-client privilege: DVA0078 000029-000031, 000032-000036, 000037 and 000038-000040. I further understand that Plaintiffs are not challenging VA's assertion of the attorney-client privilege.

32. The following 61 documents in the privilege log stamped DVA0078 002217-002218, 002426-002427, 002432-002433, 002459-2460, 002582-002583, 002584-002585, 002586-002587, 002588-002589, 002590-002591, 002592-002593, 002594-002595, 002596-002597, 002598-002599, 002600-002601, 002602-002603, 002604-002605, 002606-002607, 002608-002609, 002610-002612, 002613, 002615-002616, 002617-002618, 002682-002683, 002769-002771, 002772-002774, 002916-002917, 002939-002940, 002941-002942, 002943-002945,

002946-002947, 002948-002950, 002951-002952, 002992-002993, 003091-003092, 003107-003108, 003109-003110, 003111-003112, 003113-003115, 003116-003117, 003118-003119, 003120-003121, 003122-003123, 003124-003126, 003128-003129, 003130-003131, 003226-003227, 003313-003315, 003316-003318, 003319-003321, 003346-003347, 004382-004384, 004385-004387, 004665-004666, 004667-004668, 005742, 005800-005802, 005836-005841, 005866, 005867, 005868 and 005869-005870 are duplicates or similar drafts of the notification letter that was sent to veterans who, as identified through the Chem-Bio Database, have been potentially exposed to chemical or biological testing. The draft notification letters and accompanying memoranda discuss variations of how to communicate to veterans the nature of the testing, the availability of VA healthcare and medical exams, and the several ways the veteran could contact the VA if they have follow up questions or health concerns. These documents are works-in-progress, not final versions. As such, they contain deliberative material assembled for consideration and editing by VBA personnel and senior managers. Disclosure of such revisions would stifle the candid exchange of thinking necessary to develop sufficiently well-considered and thorough strategies for communicating notification of test exposure to veteran populations. These documents are internal deliberations that if subject to public release, would both chill productive agency discussion and confuse the public. These documents all pre-date the final notification letter issued by VA, dated June 30, 2006, which has been produced to Plaintiffs. (VVA-VA 023647-023652).

33. The following 35 documents in the privilege log stamped DVA0078 000021, 000057, 000058, 000059-000060, 000062, 000066, 000073, 000142-000145, 000148, 000180-000183, 000184, 000248, 000258-000261, 000267, 000293, 000336, 001332-001333, 001761-001796, 002322-002324, 002325-002326, 002330-002333, 002343-002347, 002365, 002461-002462, 002580-002581, 002614, 002634, 003105-003106, 003177-003178, 003566, 004207, 004221,

004372-004378, 004766-004767 and 005894, are emails and/or notes discussing the development of the notification letter, and pre-date the final notice letter, dated June 30, 2006, which was previously produced to Plaintiffs. (VVA-VA 023275-76). Disclosure of these emails would unduly chill the open and candid exchange of ideas and suggestions necessary to the development of sufficiently well-considered and thorough strategies for communicating notification of test exposure to veteran populations. These documents are internal deliberations that, if subject to public release, would both chill productive agency discussion and confuse the public.

34. In addition, because some of these documents also contain communication between VA attorneys and VA employees and the provision of legal advice, I have been advised that the following documents also qualify as privileged under the attorney-client privilege: DVA0078 000258-000261. I further understand that Plaintiffs are not challenging VA's assertion of the attorney-client privilege.

35. The following 29 documents in the privilege log stamped DVA0078 000207, 000208, 000213, 000298, 000338-000350, 000351-000363, 000414-000417, 002005-002007, 002423-002425, 002434-002435, 002814-002817, 002818-002820, 002821-002824, 002825-002828, 002829-002831, 002936-002938, 003296-003298, 003299-03306, 003374-003376, 003584, 004185-004192, 004193-004200, 004201-004203, 004211, 004212, 004213, 004411-004414, 004727-004729 and 004730-004732 are emails and/or memoranda discussing the development and proposed content of the mustard gas database, mustard gas outreach plans, and draft VA notice letter to mustard gas veterans pre-dating the final VA notice letter to mustard gas veterans, which was previously produced to Plaintiffs. (VVA-VA 009384-009386). These documents are internal deliberations that, if subject to public release, would both chill productive agency discussion and confuse the public.

36. The document in the privilege log stamped DVA0078 005724-005740 is a draft Board of Veterans Appeals (BVA) decision with edits, before the BVA finalized the decision for publication. This document reflects internal adjudicatory deliberations that, if subject to public release, would both chill productive agency discussion and confuse the public. The final BVA decision is publicly available at: Bd. Vet. App. 9718244, 1997 WL 3373008.

Documents Concerning VA Response to Congressional Inquiries (Category 9)

37. The following 35 documents address VA and its contemplation of how to respond to an several apparent inquiries regarding veterans who had been tested at Edgewood Arsenal.

38. The following documents in the privilege log stamped DVA0078 002223-002226, 002227-002232, 002233-002239, 002240, 002241-002242, 002243, 002244, 002245, 002246, 002247-002248, 002249, 002250-002251, 002319-002321, 002440-002446, 002799-002803, 002804-002809, 002832-002834, 002960-002966, 003379-003384, 003517-003553, 004228-004232, 004233-004237, 004241-004245, 004252-004253, 004254-004255, 004256-004257, 004712-004714, 004715-004717, 004737-004738, 005336-005400, 005723, 005819, 005820, 005821-005827 and 005842-005848 are emails, notes, draft letters, reports and memoranda among VA employees discussing how to respond to Congressional inquiries, draft Congressional reports, preparing for VA testimony at congressional hearings about claims for VA benefits based on participation in chemical or biological testing, including LSD testing, and the status of VA and DoD efforts to notify veterans who had participated in any testing at Edgewood Arsenal. These documents contain deliberative discussions concerning a decision regarding the proper response to Congressional inquiries, and drafts to a final briefing paper on VA claims based on LSD testing by government. It is important to the proper functioning of the VA that it be able to fully and freely consider all options suggested by VA employees in the continuing development of the

notification and outreach program to Chem-Bio veterans. Release of these documents would chill the contributions necessary to such consideration.

39. In addition, because some of these documents also contain communication between VA attorneys and VA employees and include the provision of legal advice, I have been advised that the following documents also qualify as privileged under the attorney-client privilege: DVA0078 002227-002232, 002241-002242, 002243, 002244, 002245, 002246, 002247-002248, 002249, 002250-002251, 002799-002803 and 002804-002809.

Documents Concerning Research and Health Information published by the Veterans

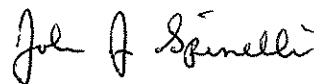
Health Administration (Category 10)

40. The following 71 documents, stamped DVA0078 003385-003516, 004470-004488, 004589-004609, 004768-004777, 004778-004780, 004781-004782, 004783-004784, 004785, 004786, 004787, 004788, 004789-004815, 004816-004842; 004843-004874, 004875-004919, 004920-004937, 004938-004968, 004969-005000, 005001-005032, 005033-005064, 005065-005097, 005098-005130, 005131-005140, 005141-005149, 005150, 005151-005152, 005153-005158, 005159, 005160, 005161, 005162, 005163-005164, 005165-005179, 005180, 005181, 005182, 005183, 005184, 005185, 005186, 005187, 005188-005189, 005190-005191, 005192-005201, 005202-005203, 005204-005205, 005206-005211, 005212-05214, 05215-05216, 005217-05218, 005219-005225, 005226, 005227-005232, 005233-005235, 005236-005237, 005238-005275, 005276, 005277, 005278-005286, 005287-005296, 005297-005306, 005307-05316, 005317-005318, 005407-005409, 005410-005412, 005413-005415, 005416-005436, 005437-005580, 005581-005702, 005703-005704 and 005705-005708, address VHA and its research into a variety of subjects, including some of the test substances at issue in the test programs. These preliminary and deliberative research materials and drafts are works-in-progress assembled for consideration and editing by VHA. If released, these documents would inhibit the

candid exchange of ideas necessary for developing sufficiently well-considered and thorough health research relevant to veterans. Disclosure of these documents would expose their drafters to potential criticism for suggestions that may never have been adopted, thereby discouraging these individual from sharing their scientific insights in the future. Further, the premature release of such information would confuse the public to the extent that research developed and discussed by VHA differs from any final research publications.

41. The following 6 documents, stamped DVA0078 004260-004261, 004610-004617, 004618-004629, 004630-004642, 004643-004650 and 004651-004660, address VHA's website content and its discussions and explorations of which content was appropriate to put on the website. . The VHA website has been developed by individuals at the Department and reflect internal deliberations and analysis about veterans' healthcare issues. VA decision-makers must be allowed to develop and pursue different options for how to publicize health information, without fear of public scrutiny prior to publication. The current website is publicly available to Plaintiffs at: <http://www.publichealth.va.gov/exposures/>.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Chapel Hill, North Carolina on March 14, 2012.



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