

Exhibit 12

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

VIETNAM VETERANS OF)	
AMERICA, et al.,)	Case No. CV 09-0037-CW
Plaintiffs,)	
vs.)	
CENTRAL INTELLIGENCE)	
AGENCY, et al.,)	
Defendants.)	

DEPOSITION OF LLOYD ROBERTS

Washington, DC

Thursday, June 9, 2011

REPORTED BY:

CARMEN SMITH

PAGES 1 - 131

1 sciences do you deal with as biological scientist at
2 ICD?

3 A Well, when -- primarily, you know, we're
4 dealing with exploring the effects of chemical
5 agents, the mode of action, possible ways to
6 intervene in their effects and their actions.
7 Countermeasure, you know, sorts of research.

8 Q Has anybody ever called you an expert in
9 this field?

10 A Well, no, not really.

11 Q Do you consider yourself an expert in the
12 field?

13 A No, no.

14 Q Okay. And I think you also said that you
15 act as the Freedom of Information Act officer or the
16 FOIA officer for ICD; is that correct?

17 A That's correct.

18 Q And remind me again how long you've held
19 that position for.

20 A 1999.

21 Q You've held it since 1999, yes?

22 A Yes, sir.

23 Q What are your duties as FOIA officer?

24 A Well, to -- to try to adhere to the FOIA
25 guidance that we're given by our higher authorities,

1 which is, you know, the -- which we receive a
2 request for information concerning some aspect of
3 the institute for which FOIA is either declared or
4 which it's implied, I try to answer that.

5 And since I also have the public affairs
6 hat there, it probably is a little conceptual
7 overlap in my mind. But if it appears to be, you
8 know, or states that it's a FOIA, then I handle it
9 as a FOIA matter and not a public affairs matter.

10 Q And so ICD has predecessor organizations;
11 is that right?

12 A All the way back to World War I, actually.

13 Q So if you receive an information request
14 about one of those predecessor organizations, then
15 you're going to respond to those requests as well;
16 is that right?

17 A I try to, yeah.

18 Q And in your position as FOIA officer, have
19 you responded to requests from participants in the
20 Edgewood Arsenal Testing Program?

21 A Yes.

22 Q And can you estimate about how many
23 requests you've received for information from
24 Edgewood test veterans?

25 A Well, we've been keeping track in a

1 database since the end of 2005, really covers 2006
2 on. And that seems to have about 114 names. So I
3 think that's -- that time frame it would be about
4 22, 23 years, something like that.

5 Q 22 or 23 year.

6 A Yeah.

7 Q Since when?

8 A Since the database has been kept, since
9 2006 really.

10 Q Can you remind me of the name of the
11 database again?

12 A FOIAXpress, F-O-I-A-X-p-r-e-s-s. It's a
13 MEDCOM level, surgeon general level database which
14 we all contribute to.

15 Q Do you know roundabout how many people
16 were used as test subjects in the Edgewood test
17 program?

18 A Approximately 6700 servicemen, I believe,
19 and there were approximately 8700, I want to say,
20 about 900 more, that were institute personnel and
21 Holmesburg prison personnel under contract.

22 Q And so any of those people, if they wanted
23 information about their tests, they would contact
24 you?

25 A Uh-huh. Yes, yes, sorry.

1 MR. LITTLETON: So we're clear, I think
2 you said 8700, 900 more than 6700. Did you mean
3 7800?

4 THE WITNESS: Right, 7800, I'm sorry.

5 MR. LITTLETON: Just for clarity of the
6 record.

7 BY MR. SHAPIRO:

8 Q Thank you. So it's your testimony that
9 115 people have requested information of the
10 approximately 7800 people that were used in these
11 testing programs?

12 A Over the past five years, yes.

13 Q And more than five years ago, do you have
14 any estimates of how many people requested their
15 records?

16 A I haven't counted up the numbers, so I
17 don't.

18 Q Do you know if it would be larger than 114
19 or less than 114?

20 A My impression is that the rate is higher
21 now. I would think in five-year increments it would
22 be lower going back at least through the 20 years
23 I've been there.

24 Q Okay. So I understand that you haven't
25 counted up all of the numbers, but best estimate,

1 Q If you will turn your attention to page 2
2 of the document, it says in paragraph E of Exhibit
3 186, "Mr. Lloyd Roberts, U.S. Army Medical Research
4 Institute of Chemical Defense, has information
5 regarding the human testing programs at Edgewood."

6 Is this an accurate statement?

7 A Yes.

8 Q And what information do you have about the
9 human testing programs at Edgewood?

10 A I have a copy of their microfiched
11 research medical records. I have printouts from an
12 old database apparently that were generated in the
13 early '80s, listing the volunteers in various modes.

14 I have some historical information which I
15 retained for use as a public affairs officer
16 primarily, to answer general questions about the
17 program.

18 I have -- although we didn't regard this
19 as part of the actual records themselves, I have
20 some tapes and videos that may have medical research
21 volunteer segments on them.

22 And again, although we didn't regard this
23 as part of the original records, I didn't, I have
24 some office correspondence relating to the FOIAs,
25 privacy acts, regarding these folks.

Page 25

1 THE WITNESS: I don't have details on it,
2 no.

3 BY MR. SHAPIRO:

4 Q Okay. Have you ever seen an uptick in the
5 number of requests from Edgewood veterans for their
6 records?

7 A Well, I noticed in looking over the
8 FOIAXpress report that I referred to earlier, it
9 looked like 2007, I think, we had about double the
10 normal number.

11 Q Okay.

12 A And I don't know why that is, but it
13 clearly was an exceptional year.

14 Q Okay. And so you had testified that you
15 had probably seen this sometime after it came out.
16 You had seen Exhibit 125 sometime in 1993 or
17 sometime shortly thereafter; is that right?

18 A Yes.

19 Q How did you come to see it?

20 A I don't recall.

21 Q Did you see it published in the newspaper?

22 A No, I saw a copy in an office situation,
23 I'm sure. But I don't recall the details of how it
24 came to be.

25 Q Okay. So to the best of your knowledge,

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CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, CARMEN SMITH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Notary Public in and for the
District of Columbia

Commission Expires: MARCH 14, 2013

Exhibit 13

DEPARTMENT OF DEFENSE (DoD) MEETING ON OUTREACH TO EDGEWOOD ARSENAL VETERANS JUNE 13, 2006

For the last several years, the Department of Veterans Affairs (VA) has maintained a working relationship with the Department of Defense's Deployment Health Support Directorate (DHSD) regarding chemical and biological-exposure issues. During this time, VA and DoD collaborated on a series of notification efforts involving veterans with active duty participation in Project 112 and Project Shipboard Hazard and Defense (Project 112/SHAD) and mustard agents testing.

Since November 2004, VA and DoD have held five meetings to discuss notification efforts involving declassified chemical and biological agent testing programs at American military facilities, including Edgewood Arsenal, Maryland. In support of this collaboration, a sixth meeting is scheduled for 9:30AM on June 14, 2006, at DHSD's office in Fall Church, VA.

The focal point of discussion will be the joint VA/DoD effort to issue notification letters to Edgewood Arsenal veterans by July 4, 2006. On February 2, 2006, staffers from the House Veterans Affairs Committee (HVAC) mandated that both VA and DoD expedite their Edgewood Arsenal database analyses, and that VA release notification letters by Independence Day.

Both the Veterans Benefits Administration (VBA) and DHSD are finalizing their respective documents for the notification effort. Of the 4,446 certified Edgewood Arsenal participants, VBA has been able to locate an address for approximately 2,000 presumed living veterans. VA anticipates mailing notification letters to these veterans before July 4, 2006, brief HVAC staffers on the notification effort, and issue follow-up responses to the following stakeholders: American Legion (338481), Senator Craig (327196 and 327197), and Congressmen Hyde (348905), Evans (310183) and Strickland (301310, 310183 and 305746).

Joe Salvatore (008A)
June 13, 2006

VVA-VA023393

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VVA-VA023393

Exhibit 14

DEPARTMENT OF DEFENSE'S CHEMICAL AND BIOLOGICAL TEST RELEASE PROJECT MEETING NOVEMBER 29, 2004

On November 15, 2004, the Department of Veterans Affairs' (VA's) Compensation and Pension (C&P) Service participated in a Department of Defense (DoD) project kick-off meeting. DoD and its contractor outlined data collection and disclosure plans for approximately 200 to 1,000 previously unreleased chemical and biological tests. The exact amount of affected veterans is unknown.

This meeting was the result of Government Accountability Office (GAO) report 04-410, *Chemical and Biological Defense: DoD Needs to Continue to Collect and Provide Information on Tests and Potentially Exposed Personnel*. The May 2004 report recommended that DoD completely declassify and disclose its chemical and biological testing records involving service members.

PARTICIPANTS

The meeting included the following participants:

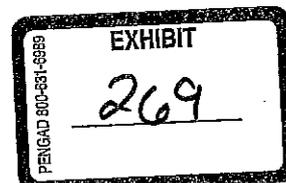
- **DoD's Deployment Health Support Directorate (DHSD):** Dee Morris (lead), Barbara Goodno, Tony Denicola, Roxana Baylor, Roy Finno, and Lionel West.
- **Department of the Army:** Colonel Debra Thedford, Director of Chemical and Biological Defense Programs.
- **Battelle Corporation's Chemical and Biological Defense Information Analysis Center (CBIAC):** Donald McGonigle and Andrew Blackburn.
- **C&P Service:** Glen Wallick, Joe Salvatore, and, via conference call, Tom Pamperin.

TEAM STRUCTURE

The Secretary of Defense tasked the Army with complete oversight over DoD's entire data gathering and disclosure processes. The Army contracted with CBIAC for data collection and database creation.

DHSD will facilitate the Army's entire process as in past activities with VA on Project 112 and Project Shipboard Hazard and Defense (SHAD) tests. Ultimately, VA will receive rosters and select data from DoD's discoveries.

*Compensation and Pension Service (212)
November 29, 2004*



1

RECORDS SEARCH

The Army agreed to search select military repositories, National Archives and Records Administration facilities, and military base holdings for classified and unclassified chemical and biological test information from 1942 to present.

The record search includes mustard gas but excludes radiation-related tests.

a. Repositories

Targeted data collections will focus on repositories at Fort Detrick, Naval Surface Warfare Center Dahlgren, Dugway Proving Ground, Aberdeen Proving Ground and Edgewood Arsenal. DHSD and VA provided input on other known records locations.

b. Prioritized Records Searches

Given the infinite possibility of searchable variables and limited time, DHSD, Army, and CBIAC requested that VA prioritize their claims processing data needs. VA provided all parties with the following list of variables deemed as absolutely required from researchers, where possible:

- Test name
- Test site
- Test start date
- Test end date
- Test agent/simulant/ decontaminant used
- Test dose estimate sensor readings per individual and group
- Human participant name (servicemembers, civilians, contractors, foreign workers with country)
- Social security number
- Service number
- Branch of service
- Date of birth
- Treatment facility name (if medical treatment was rendered)
- Treatment details
- Details of any exposure injuries

Note: VA has developed a list of secondary data which may still be useful for statistical and claims purposes. This list has not yet been shared with DoD but can be found in Attachment A: *Secondary List of Variables*.

PRIORITIES

CBIAC outlined the following priorities:

- Compilation of names and personal identifiers for all servicemembers and participants
- Identification of proposed and actual human exposure events with test program names (i.e. fact sheets)
- Creation of electronic databases containing all names and supporting documents

MEETINGS

DHSD will meet monthly with VA to discuss the project.

KEY POINTS

- All tests will be examined, regardless of location – CONUS and international
- Some classified documents will remain even after this effort
- Tests include both civilians and servicemembers
- DoD must respond by March 2005 to GAO's report 04-410, *Chemical and Biological Defense*
- Names of civilians may be routed to the Department of Labor

POINTS OF AGREEMENT

- VA is the ultimate customer
- AT&L finds information, declassifies it, and sends it to DHSD in the form of a database
- DHSD imports the database, creates fact sheets on chunks of tests, and updates its website as appropriate
- VA notifies veterans as appropriate

RECOMMENDATIONS

- Ensure that DoD provides a comprehensive veteran database with specific test information for claims processing purposes
- Brief VA leadership on DoD's project, VA's role, and expected deliverables
- Document all DoD/VA interactions to address internal and external stakeholder reviews
- Consider creating a specialized office to handle all chemical and biological test activities

Joe Salvatore (212)

ATTACHMENT A SECONDARY LIST OF VARIABLES

Upon a thorough DoD search for all "absolutely required" data needs, VA would also appreciate the following variables for veterans only:

- Type of exposure:
 - a. Disposal/destruction of substance
 - b. Manufacturing of substance
 - c. Production: Manufacturing and handling of substance
 - d. Research and development of substance (includes volunteer participants)
 - e. Testing (CONUS, includes Alaskan and Hawaiian islands prior to statehood)
 - f. Testing (foreign soil)
 - g. Training exercises
 - h. Transportation of substance (i.e. air, rail, ship, truck)
 - i. Warfare I (Battlefield conditions)
 - j. Warfare II (Direct result of incoming enemy munitions)

- Type of test activity
 - a. Atmospheric (i.e. aerial drop, aerial spray)
 - b. Body part exposure [i.e. body location (arm) with type of test (patch, drops, or injection)]
 - c. Full body exposure (i.e. sealed gas chamber)
 - d. Surface-level (disposal, destruction, wind tunnel)
 - e. Inhalation, non-sealed chamber (i.e. open room)
 - f. Oceanographic (i.e. above or below water)
 - g. Space
 - h. Underground
 - i. Oral

- Autopsy reports
- Death certificates

JS: jsalvatore x6948 11/26/04 212B___ 212___ 211___ 210___ 21___
h/cap-21/212/ChemBio/DOD Mtg Summary Final 11_26_04.doc

Exhibit 15

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

VIETNAM VETERANS OF AMERICA,
et al.,
Plaintiffs, Civil Action No.
v. CV 09-0037-CW
CENTRAL INTELLIGENCE AGENCY,
et al.,
Defendants.

Friday, January 27, 2012
Washington, D.C.

CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

Videotaped deposition of ROY S. FINNO, commencing
at 9:01 a.m., held at the offices of Morrison &
Foerster, 2000 Pennsylvania Avenue, N.W., Washington,
D.C., before Keith Wilkerson, a notary public in and for
the District of Columbia.

Job No. SD129160
PAGES 1 - 196

1 Battelle. 01:43:05

2 A. Battelle basically did the research at all these 01:43:06

3 facilities and they provided the names. 01:43:11

4 Q. And who did they provide them to? 01:43:13

5 A. Us. 01:43:15

6 Q. Your office? 01:43:15

7 A. Our office. That's right. I did quality control 01:43:16

8 to make sure there was some document that supported 01:43:19

9 adding a name to the database. 01:43:24

10 Q. So what was your role when you were doing quality 01:43:26

11 control? 01:43:30

12 A. To do quality control. I mean, I made sure that 01:43:31

13 the names were correct. If I found something wrong I 01:43:35

14 went back and asked them. And if there was some issue 01:43:39

15 that revolved around are we going to count this guy or 01:43:44

16 not we got Dee Morris involved, and we had a monthly 01:43:47

17 meeting with Battelle where we discussed with them how 01:43:52

18 we were going to handle it. 01:43:55

19 Q. So how did you go about QC'ing? What were you 01:43:57

20 comparing the names against? 01:44:01

21 A. Any time Battelle gave me a name they gave me 01:44:02

22 document that the name was in, so I went to that 01:44:09

23 document, I looked at the document and I made sure that 01:44:10

24 what Battelle gave me was correct. 01:44:12

25 Q. And what do you mean by documents that Battelle 01:44:14

1 gave you? 01:44:17

2 A. They could have been lab notebooks. They could 01:44:17

3 have been a document that somebody wrote saying, I 01:44:20

4 conducted this test and here are the people who were in 01:44:24

5 it. They were closing the Edgewood list, the 6,700 name 01:44:31

6 Edgewood list. Whatever document they found the name in, 01:44:31

7 they provided me with that document, and I went through 01:44:34

8 and I looked at that document and made sure that what 01:44:36

9 they said matched what was in the document. 01:44:40

10 Q. So you would get from Battelle a list of names 01:44:42

11 and then documents? 01:44:47

12 A. No. A list of names, exposures, the test data, 01:44:49

13 service numbers et cetera, and at the end there would be 01:44:53

14 the document that they found that information in, and 01:44:58

15 I'd get a copy of that document. 01:45:00

16 Q. And then after you QC'ed it, would you then 01:45:02

17 provide that information to anyone? 01:45:10

18 A. It would go into the database. After it was 01:45:12

19 okayed it would go into the database, and after the 01:45:15

20 names were added to the database the database would go 01:45:19

21 to the VA. 01:45:20

22 Q. Were there separate databases provided to the VA 01:45:21

23 or did the VA have access to a live database or was it 01:45:31

24 something -- 01:45:35

25 MR. BOWEN: Objection. Compound. 01:45:36

1 Q. What did your office provide to the VA in terms 01:45:37
2 of the database? 01:45:41
3 MR. BOWEN: Objection. Vague. 01:45:42
4 A. The latest updated database that I loaded. Every 01:45:43
5 month when I loaded a database, or every two months, 01:45:49
6 whatever it was, that database was given to the VA. 01:45:53
7 This is the latest database. 01:45:58
8 Q. So would it include prior names that had been 01:46:00
9 given to you already? 01:46:04
10 A. Yes. Just every time we added the database got 01:46:04
11 bigger, so they had the latest complete database. 01:46:08
12 Q. And who were you sending the database to? 01:46:12
13 A. Dave Abbot when he was there, and his successors 01:46:17
14 after he left. 01:46:23
15 Q. David Abbot? 01:46:26
16 A. He was the first one, and then his successors. 01:46:28
17 Q. Did anyone else work with you on that project 01:46:42
18 regarding Battelle and the database? 01:46:45
19 A. Lionel West started out helping me doing quality 01:46:48
20 control, but he left, and I was doing the quality 01:46:52
21 control all by myself. 01:46:55
22 Q. Anyone else? 01:46:57
23 A. No. 01:46:57
24 Q. Did you actually input data into the database or 01:47:03
25 did somebody else do that? 01:47:07

1 Q. So on page 3, which is on Bates 6756 under Data 01:55:44
2 Issues is Certification. It says: DoD has sole 01:56:04
3 authority to verify participation in chemical and 01:56:08
4 biological tests. 01:56:10

5 Do you know what is meant by sole authority? 01:56:12

6 A. Sole authority means we were the only ones who 01:56:14
7 could do it. 01:56:18

8 Q. So what was DoD doing with respect to verifying 01:56:19
9 participation? 01:56:27

10 A. It's what I told you before. We'd get the names 01:56:27
11 and we'd make sure the names -- that there was 01:56:29
12 documentation to support the names before it went in the 01:56:31
13 database. 01:56:34

14 Q. Then it says: DHSD must physically retain the 01:56:37
15 source document for every veteran record. 01:56:42

16 A. Right. 01:56:44

17 Q. Is this referring to the source documents that 01:56:45
18 you were getting from Battelle? 01:56:47

19 A. Yes. We maintained them. At least when I was 01:56:48
20 there I maintained them all. 01:56:55

21 Q. How did you maintain them? 01:56:56

22 A. They were on a CD, and then I printed the CD out. 01:56:57
23 They had the "Roy Finno Memorial Cabinet" in the hallway 01:57:04
24 with 600 plus documents in it in order. I'm told it's 01:57:08
25 still there. 01:57:12

1 speculation. 06:20:06

2 Q. That you know of. 06:20:07

3 A. Why we did the study? Because we did the SHAD 06:20:08

4 study. Somebody would say we got the rose pinned on us 06:20:12

5 because we did the SHAD study. I'd say we were the 06:20:16

6 stuckees because we did the SHAD study. We did the SHAD 06:20:19

7 study, so we were going to do the next study. I think 06:20:19

8 that was the logic: "You did this one, do the next 06:20:22

9 one." We would have given it away. 06:20:25

10 Q. And then that same paragraph goes down: In 2006, 06:20:34

11 DoD completed its investigations of tests that took 06:20:39

12 place at Edgewood, Maryland, and sent the names of 6,700 06:20:42

13 participants to VA. 06:20:47

14 Is it accurate that the investigations were 06:20:50

15 completed in 2006 for Edgewood? 06:20:52

16 A. It's probably correct, yes, for the 6,700 names 06:20:54

17 in that document. I think most of them were there by 06:21:03

18 that time. There might have been -- we might have been 06:21:06

19 doing some cleanup. Because what I did is I took the 06:21:07

20 alpha list of everybody who was at Edgewood and went 06:21:10

21 through the database and went through every single guy 06:21:14

22 that was in the database that was on that alpha list, 06:21:17

23 and that was done late in 2006. 06:21:17

24 Q. And that's the -- when you say alpha list, is 06:21:19

25 that the list that came from the congressional staffer? 06:21:24

1 A. Yeah. There's two lists. There's a list that 06:21:28
2 just says Jones, Ralph B., service number, and a couple 06:21:31
3 of other bits of information on them. It's about this 06:21:34
4 thick (indicating) alphabetically of everybody who was 06:21:36
5 there. 06:21:39

6 The second list is alphabetical. It's about that 06:21:40
7 thick (indicating): Jones, on this date he did this 06:21:41
8 test, on this date he did this test, on this date he did 06:21:43
9 this test. There are four or five or six tests listed
10 on it, so obviously the document got six or seven times 06:21:47
11 as big as the original document. So after everything 06:21:51
12 was in the database, I went down and checked to see that 06:21:53
13 every name in that alphabetical roster was in the 06:21:56
14 database, and it was. 06:22:02

15 Q. So where did you get the two lists? 06:22:02

16 A. Originally they came from -- I think they came 06:22:12
17 from the VA staffer, but Battelle found a list. They're 06:22:17
18 all over the place. So we had that original list, and 06:22:22
19 then Battelle gave us two scanned lists so we had them 06:22:26
20 electronically. 06:22:29

21 Q. And do you know where Battelle got those lists? 06:22:30

22 A. I assume they got them from the VA or the 06:22:34
23 congressional staffer, whoever they got them from. The 06:22:37
24 list multiplied. People had the list, and it just 06:22:40
25 seemed that everyone came to have it at that point. 06:22:48

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CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, KEITH WILKERSON, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Notary Public in and for the
District of Columbia

Commission Expires: NOVEMBER 2, 2014

Exhibit 16

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 10 Veterans Rights Organization; Bruce Price; Franklin D.
 Rochelle; Larry Meirow; Eric P. Muth; David C. Dufrane;
 11 Tim Michael Josephs; and William Blazinski

12
 13 UNITED STATES DISTRICT COURT
 14 NOTHERN DISTRICT OF CALIFORNIA
 15 OAKLAND DIVISION

16 VIETNAM VETERANS OF AMERICA, *et al.*,
 17
 Plaintiffs,
 18
 v.
 19
 20 CENTRAL INTELLIGENCE AGENCY, *et al.*,
 Defendants.
 21

Case No. CV 09-0037-CW

**PLAINTIFFS' NOTICE OF
 DEPOSITIONS TO
 DEPARTMENT OF VETERANS
 AFFAIRS PURSUANT TO FED.
 R. CIV. P. 30(b)(6)**

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1 TO THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS AND ITS
2 ATTORNEY(S) OF RECORD:

3 PLEASE TAKE NOTICE THAT, pursuant to Rule 30(b)(6) of the Federal Rules of Civil
4 Procedure, plaintiffs Vietnam Veterans of America (“VVA”) and six individual veterans will
5 conduct depositions upon oral examination of Defendant United States department of Veterans
6 Affairs (“DVA”) beginning April 19, 2011, commencing at 9:30 a.m., and continuing from that
7 time until complete, at the law offices of Morrison & Foerster LLP, 2000 Pennsylvania Avenue,
8 NW, Suite 6000, Washington, DC 20006. The depositions will be recorded stenographically,
9 and will be taken before a court reporter or other person authorized to administer oaths, and will
10 be conducted in accordance with the Federal Rules of Civil Procedure. Please be advised that
11 the depositions may be recorded on video and/or audio tape and/or LiveNote in addition to
12 stenographic recording. The depositions will continue from day to day, Saturday, Sundays, and
13 holidays excepted until completed or adjourned.

14 Pursuant to the provisions of Rule 30(b)(6), Defendant DVA is hereby directed to
15 designate one or more of its officers, directors, managing agents, employees, or agents who
16 consent to testify and who are the most knowledgeable and competent to testify regarding the
17 topics set forth below. Please provide such designations for each subject matter no later than
18 twenty days of service of this request.

19 Plaintiffs reserve the right to take subsequent depositions, not just on all material issues,
20 but also on those issues raised by documents produced by Defendant DVA and witnesses
21 identified in discovery.

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DEFINITIONS

Unless otherwise indicated, the following definitions shall apply:

1. “COMMUNICATION” or “COMMUNICATIONS” means, unless otherwise specified, any of the following: (a) any written letter, memorandum, DOCUMENT or any other writing; (b) any telephone call between two or more PERSONS, whether or not such call was by chance or prearranged, formal, or informal; and (c) any conversation or MEETING between two or more PERSONS, whether or not such contact was by chance or prearranged, formal, or informal, including without limitation, conversations or MEETINGS occurring via telephone, teleconference, video conference, electronic mail (e-mail), or instant electronic messenger.

2. “CONCERNING” means constituting, summarizing, memorializing, referring to, regarding and/or relating to.

3. “DOCUMENT” or “DOCUMENTS” means any tangible thing upon which any expression, COMMUNICATION or representation has been recorded by any means, including but not limited to, handwriting, typewriting, printing, photostatting, photographing, magnetic impulse or mechanical or electronic recording and any non-identical copies (whether different from the original because of notes made on such copies, because of indications that said copies were sent to different individuals than were the originals or because of any other reason), including but not limited to, working papers, preliminary, intermediate or final drafts, correspondence, memoranda, charts, notes, records of any sort of MEETINGS, invoices, financial statements, financial calculations, diaries, reports of telephone or other oral conversations, desk calendars, appointment books, audio or video tape recordings, e-mail or electronic mail, electronic folders, microfilm, microfiche, computer tape, computer disk, computer printout, computer card and all other writings and recordings of every kind that are in YOUR actual or constructive possession, custody or control.

4. “IDENTIFY” or “IDENTITY” means:

a. with respect to a PERSON, to state the PERSON’s full name, current or last known employer, that employer’s address and telephone number, the PERSON’s title and/or

1 position with that employer, and the PERSON's current or last known home address and
2 telephone number;

3 b. with respect to a DOCUMENT, to state the type of DOCUMENT (i.e.,
4 letter, memorandum, telephone note, computer floppy or hard disk, magnetic tape, etc.), the title
5 of the DOCUMENT (if any), the date it was created, the author, all intended recipients including
6 the addressee and any and all copyees, a brief description of the subject matter of the
7 DOCUMENT, the present and/or last known location of the DOCUMENT, and to IDENTIFY all
8 present or last known person in possession, custody or control of the DOCUMENT;

9 c. with respect to a COMMUNICATION to state the name and affiliation of
10 all PERSONS participating in, or present for, the COMMUNICATION, the date of the
11 COMMUNICATION, and whether it was conducted in person or by other means (such as
12 telephone, correspondence, e-mail), and whether it was recorded (e.g., stenographically or by
13 audio or videotape);

14 d. with respect to a MEETING to state the names and affiliations of all
15 PERSONS participating in, or present for, the MEETING, the date of the MEETING, and the
16 location of the MEETING and the purpose of the MEETING.

17 5. "MEETING" or "MEETINGS" means any coincidence of, or presence of, or
18 telephone, television, video teleconferencing, radio or other electronic communication between
19 or among persons, whether such was by chance or prearranged, informal or formal, as well as the
20 results of or actions to be taken following such communication.

21 6. "PERSON" or "PERSONS" means, unless otherwise specified, any natural
22 person, firm, entity, corporation, partnership, proprietorship, association, joint venture, other
23 form of organization or arrangement and government and government agency of every nature
24 and type.

25 7. "YOU" or "YOUR" means DEFENDANT the United States Department of
26 Veterans Affairs, and all of its past and present offices, departments, organizations,
27 administrations, boards, commissions, task forces, management, and past and present employees
28

1 and service members. These terms also include any representatives or agents acting on YOUR
2 behalf, including without limitation, attorneys, investigators or consultants.

3 8. "DEFENDANTS" means the Defendants in this action, and all of their past and
4 present offices, departments, organizations, administrations, boards, commissions, task forces,
5 management, and past and present employees and service members.

6 **SPECIAL DEFINITIONS**
7

8 Unless otherwise indicated, the following special definitions shall apply:

9 1. "CIA" means the Central Intelligence Agency of the United States, and all its
10 offices, departments, organizations, administrations, boards, commissions, task forces,
11 management, and past and present employees and service members.

12 2. "DEPARTMENT OF DEFENSE" or "DoD" means the United States Department of
13 Defense, and all its offices, departments, organizations, administrations, boards, commissions,
14 task forces, management, and past and present employees and service members.

15 3. "DEPARTMENT OF THE ARMY" or "DoA" means the United States Department
16 of the Army, and all its offices, departments, organizations, administrations, boards,
17 commissions, task forces, management, and past and present employees and service members.

18 4. "IOM" means the Institute of Medicine, a branch of the National Academies, and all
19 its predecessors, offices, departments, organizations, administrations, boards, commissions, task
20 forces, management, and past and present employees.

21 5. "NRC" means the National Research Council, a branch of the National Academies,
22 and all its predecessors, offices, departments, organizations, administrations, boards,
23 commissions, task forces, management, and past and present employees.

24 6. "NAS" means the National Academy of Sciences, a branch of the National
25 Academies, and all its predecessors, offices, departments, organizations, administrations, boards,
26 commissions, task forces, management, and past and present employees.

- 1 1. "All" or "each" shall be construed as "all and each."
- 2 2. "Any" should be understood to include and encompass "all;" "all" should be
3 understood to include and encompass "any."
- 4 3. "And" or "or" shall be construed either disjunctively or conjunctively as
5 necessary to bring within the scope of the discovery request all responses that might otherwise be
6 construed to be outside of its scope.
- 7 4. The use of the singular form of any word shall include the plural and vice versa.

8 TOPICS

9 Pursuant to Federal Rule of Civil Procedure 30(b)(6), Defendant's designee(s) shall be
10 prepared to testify regarding the following subjects:.

11
12 1. YOUR involvement with any of the EDGEWOOD TEST PROGRAMS or any
13 other testing of the chemical or biological substances that were part of the EDGEWOOD TEST
14 PROGRAMS, including but not limited to YOUR participation in any of the EDGEWOOD
15 TEST PROGRAMS or any other testing of the chemical or biological substances that were part
16 of the EDGEWOOD TEST PROGRAMS, YOUR presence at any of the EDGEWOOD TEST
17 PROGRAMS or any other testing of the chemical or biological substances that were part of the
18 EDGEWOOD TEST PROGRAMS, YOUR monitoring of any of the EDGEWOOD TEST
19 PROGRAMS or any other testing of the chemical or biological substances that were part of the
20 EDGEWOOD TEST PROGRAMS, YOUR funding of any of the EDGEWOOD TEST
21 PROGRAMS or any other testing of the chemical or biological substances that were part of the
22 EDGEWOOD TEST PROGRAMS, and YOUR provision of or suggestion of candidates for
23 chemical or biological substances to be used in any of the EDGEWOOD TEST PROGRAMS or
24 any other testing of the chemical or biological substances that were part of the EDGEWOOD
25 TEST PROGRAMS.

26 2. The types, properties, and health effects of all substances tested or used on human
27 subjects in the EDGEWOOD TEST PROGRAMS, including but not limited to the health effects
28 from participation in the EDGEWOOD TEST PROGRAMS, the steps taken by YOU to identify

1 such types, properties, and health effects, and YOUR knowledge of, involvement with, and the
2 findings of any study or studies undertaken by any entity or individual, including but not limited
3 to the NRC, IOM, or NAS, regarding the short-term or long-term health effects, including but
4 not limited to the psychological effects, of exposure to any of the substances used in the
5 EDGEWOOD TEST PROGAMS or participation in the EDGEWOOD TEST PROGRAMS or
6 any other testing of chemical or biological substances on human test subjects, and
7 COMMUNICATIONS or MEETINGS between or among YOU and any other DEFENDANT or
8 DEFENDANTS respecting these topics.

9 3. The ratings procedures YOU use for the determination of whether any TEST
10 SUBJECT is entitled to service-connected disability or death compensation, including any
11 applicable provisions of the M21-1 Manual, other VA Manuals, compacts, arrangements or
12 understandings between YOU and DOD or any other DEFENDANT, policies, fast letters,
13 training letters, and Compensation & Pension Exam procedures, and the creation or revision of
14 such procedures, manuals, policies, fast letters, and training letters, and all MEETINGS and
15 COMMUNICATIONS between or among YOU and any other DEFENDANT or
16 DEFENDANTS CONCERNING the same topics.

17 4. Any COMMUNICATIONS or DOCUMENTS YOU provided to, distributed or
18 otherwise made available to DVA Regional Office claims adjudicators, Compensation & Pension
19 Exam providers, or DVA doctors or medical personnel and/or received from the same
20 CONCERNING the EDGEWOOD TEST PROGRAMS, the adjudication of claims on behalf of
21 TEST SUBJECTS, or the medical evaluation of TEST SUBJECTS, including but not limited to
22 ratings procedures, fast letters, training letters, and training manuals, and the creation or revision
23 of such DOCUMENTS.

24 5. The success rates of TEST SUBJECTS CONCERNING claims for death and/or
25 disability compensation, including at the Regional Office level, the Board of Veterans Appeals,
26 and appeals to the Court of Appeals for Veterans Claims, and MEETINGS and
27 COMMUNICATIONS between or among YOU and any other DEFENDANT or
28 DEFENDANTS CONCERNING the same topics.

1 6. The diseases or conditions reported, claimed, or experienced by TEST
2 SUBJECTS, including, without limitation, summaries, tables, stored data, and/or computer
3 printouts, and all COMMUNICATIONS and MEETINGS CONCERNING the same.

4 7. The doses received by TEST SUBJECTS and all COMMUNICATIONS and
5 MEETINGS CONCERNING the same.

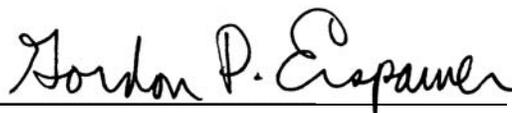
6 8. YOUR publicity and/or outreach efforts to TEST SUBJECTS, including but not
7 limited to YOUR involvement with the DOD's efforts to notify TEST SUBJECTS regarding
8 their participation in any of the EDGEWOOD TEST PROGRAMS, the impetus for YOUR
9 outreach or publicity efforts, and YOUR COMMUNICATIONS with DOD or any
10 DEFENDANT regarding such efforts, YOUR notification letters and all attachments, including
11 but not limited to fact sheets and frequently asked questions, that YOU sent to TEST
12 SUBJECTS, the statistics regarding YOUR outreach efforts as set forth in the document Bates
13 labeled VVA-VA 023302-11, and any updated statistics regarding outreach activities by YOU or
14 any other DEFENDANT and adjudication of claims for TEST SUBJECTS.

15
16 Plaintiffs reserve the right to supplement these topics following receipt and review of
17 Defendants' responses to Interrogatories and Requests for Production propounded by Plaintiffs.

18
19 Dated: March 21, 2011

GORDON P. ERSPAMER
TIMOTHY W. BLAKELY
STACEY M. SPRENKEL
DANIEL J. VECCHIO
DIANA LUO

MORRISON & FOERSTER LLP

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23 By: 

24 Attorneys for Plaintiffs
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PROOF OF SERVICE

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California 94105. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on March 21, 2011, I served a copy of:

PLAINTIFFS’ NOTICE OF DEPOSITIONS TO DEPARTMENT OF VETERANS AFFAIRS PURSUANT TO FED. R. CIV. P. 30(B)(6)

BY U.S. MAIL [Fed. R. Civ. Proc. Rule 5(b)] by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as follows, for collection and mailing at Morrison & Foerster LLP, 425 Market Street, San Francisco, California 94105-2482 in accordance with Morrison & Foerster LLP’s ordinary business practices.

I am readily familiar with Morrison & Foerster LLP’s practice for collection and processing of correspondence for mailing with the United States Postal Service, and know that in the ordinary course of Morrison & Foerster LLP’s business practice the document(s) described above will be deposited with the United States Postal Service on the same date that it (they) is (are) placed at Morrison & Foerster LLP with postage thereon fully prepaid for collection and mailing.

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

I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Francisco, California, this 21st day of March, 2011.

Kathy Beaudoin
(typed)

Kathy Beaudoin
(signature)

Exhibit 17

1 GORDON P. ERSPAMER (CA SBN 83364)
 GErspamer@mofocom
 2 TIMOTHY W. BLAKELY (CA SBN 242178)
 TBlakely@mofocom
 3 STACEY M. SPRENKEL (CA SBN 241689)
 AHrvatin@mofocom
 4 DIANA LUO (CA SBN 233712)
 SSprenkel@mofocom
 5 MORRISON & FOERSTER LLP
 425 Market Street
 6 San Francisco, California 94105-2482
 Telephone: 415.268.7000
 7 Facsimile: 415.268.7522

8 Attorneys for Plaintiffs
 Vietnam Veterans of America; Swords to Plowshares;
 9 Veterans Rights Organization; Bruce Price; Franklin D.
 Rochelle; Larry Meirrow; Eric P. Muth; David C. Dufrane;
 10 Tim Michael Josephs; and William Blazinski

11
 12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14 OAKLAND DIVISION

15 VIETNAM VETERANS OF AMERICA, *et al.*,
 16
 Plaintiffs,
 17
 v.
 18 CENTRAL INTELLIGENCE AGENCY, *et al.*,
 19
 Defendants.
 20

CV 09-0037-CW

**PLAINTIFFS' NOTICE OF
 DEPOSITION TO THE DEPARTMENT
 OF DEFENSE AND UNITED STATES
 DEPARTMENT OF THE ARMY
 PURSUANT TO FED. R. CIV. P. 30(b)(6)**

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1 TO ALL DEFENDANTS AND THEIR ATTORNEY(S) OF RECORD:

2 PLEASE TAKE NOTICE THAT, pursuant to Rule 30(b)(6) of the Federal Rules of Civil
3 Procedure, and as agreed by counsel for the parties, Plaintiffs, Vietnam Veterans of America;
4 Swords to Plowshares: Veterans Rights Organization; Bruce Price; Franklin D. Rochelle; Larry
5 Meirow; Eric P. Muth; David C. Dufrane; Tim Michael Josephs; and William Blazinski
6 (“Plaintiffs”), by and through their attorneys, Morrison & Foerster LLP, will take the deposition
7 upon oral examination of Defendants Department of Defense and Department of the Army,
8 through their designated witness, Dr. James Kilpatrick, at the offices of Morrison & Foerster
9 LLP, located at 2000 Pennsylvania Avenue, NW, Suite 6000, Washington, D.C. 20006-1888, on
10 July 6, 7, and 8, 2011, beginning at 9:30 a.m. on July 6. The deposition will be recorded
11 stenographically, and will be taken before a court reporter or other person authorized to
12 administer oaths, and will be conducted in accordance with the Federal Rules of Civil Procedure.
13 Please be advised that the deposition may be recorded on video and/or audio tape and/or
14 LiveNote in addition to stenographic recording. The deposition will continue from day to day,
15 Saturdays, Sundays, and holidays excepted, until completed or adjourned.

16 Pursuant to the provisions of Rule 30(b)(6), the Department of Defense and Department of
17 the Army are hereby directed to designate one or more of their officers, directors, managing
18 agents, employees, or agents who consent to testify and who are the most knowledgeable and
19 competent to testify regarding any of the following topics to which Defendants have not already
20 designated Dr. Kilpatrick to testify — *i.e.*, a portion of Topic 1, and Topics 6 and 7. Please
21 provide such designations for each of these subject matters no later than five days of service of
22 this request.

23 DEFINITIONS

24 Unless otherwise indicated, the following definitions shall apply:

25 1. “COMMUNICATION” or “COMMUNICATIONS” means, unless otherwise
26 specified, any of the following: (a) any written letter, memorandum, DOCUMENT or any other
27 writing; (b) any telephone call between two or more PERSONS, whether or not such call was by
28 chance or prearranged, formal or informal; and (c) any conversation or MEETING between two

1 or more PERSONS, whether or not such contact was by chance or prearranged, formal or
2 informal, including without limitation, conversations or MEETINGS occurring via telephone,
3 teleconference, video conference, electronic mail (e-mail) or instant electronic messenger.

4 2. "CONCERNING" means constituting, summarizing, memorializing, referring to,
5 regarding and/or relating to.

6 3. "DOCUMENT" or "DOCUMENTS" means any tangible thing upon which any
7 expression, COMMUNICATION or representation has been recorded by any means, including
8 but not limited to, handwriting, typewriting, printing, photostatting, photographing, magnetic
9 impulse or mechanical or electronic recording and any non-identical copies (whether different
10 from the original because of notes made on such copies, because of indications that said copies
11 were sent to different individuals than were the originals or because of any other reason),
12 including but not limited to, working papers, preliminary, intermediate or final drafts,
13 correspondence, memoranda, charts, notes, records of any sort of MEETINGS, invoices, financial
14 statements, financial calculations, diaries, reports of telephone or other oral conversations, desk
15 calendars, appointment books, audio or video tape recordings, e-mail or electronic mail,
16 electronic folders, microfilm, microfiche, computer tape, computer disk, computer printout,
17 computer card and all other writings and recordings of every kind that are in YOUR actual or
18 constructive possession, custody or control.

19 4. "MEETING" or "MEETINGS" means any coincidence of, or presence of, or
20 telephone, television, radio or other electronic communication between or among persons,
21 whether such was by chance or prearranged, informal or formal, as well as the results of or
22 actions to be taken following such communication.

23 5. "PERSON" or "PERSONS" means, unless otherwise specified, any natural person,
24 firm, entity, corporation, partnership, proprietorship, association, joint venture, other form of
25 organization or arrangement and government and government agency of every nature and type.

26 6. "YOU" or "YOUR" means the Defendants in this action, and all of their past and
27 present offices, departments, organizations, administrations, boards, commissions, task forces,
28 management, and past and present employees and service members. These terms also include

1 any representatives or agents acting on YOUR behalf, including without limitation, attorneys,
2 investigators or consultants.

3 SPECIAL DEFINITIONS

4 Unless otherwise indicated, the following special definitions shall apply:

5 1. "CIA" means the Central Intelligence Agency of the United States, and all its past
6 and present offices, departments, organizations, administrations, boards, commissions, task
7 forces, management, and past and present employees and service members.

8 2. "DEPARTMENT OF DEFENSE" or "DoD" means the United States Department of
9 Defense, and all its past and present offices, departments, organizations, administrations, boards,
10 commissions, task forces, management, and past and present employees and service members.

11 3. "DEPARTMENT OF ARMY" or "Army" means the United States Department of
12 the Army, and all its past and present offices, departments, organizations, administrations, boards,
13 commissions, task forces, management, and past and present employees and service members.

14 4. "VA" or "DVA" means the United States Department of Veterans Affairs, and all its
15 predecessors (including the Veterans Administration) and its past and present offices,
16 departments, organizations, administrations, boards, consultants, commissions, task forces,
17 management, and past and present employees.

18 5. "TEST PROGRAMS" means each of the projects identified in the Third Amended
19 Complaint, including without limitation, the Human Test Series identified in Paragraph 147 of the
20 Third Amended Complaint, including Projects "BLUEBIRD," "ARTICHOKE," "MKDELTA,"
21 "MKULTRA," "MKNAOMI," "MKSEARCH," "MKCHICKWIT," "MKOFTEN," and any
22 other program of experimentation involving human testing of any substance, including but not
23 limited to, "MATERIAL TESTING PROGRAM EA 1729." TEST PROGRAMS shall include
24 any and all sub-projects related to any program of human testing conducted by YOU.

25 6. "TEST SUBJECT" or "TEST SUBJECTS" means, unless otherwise specified, any
26 person who, while an active duty member of the U.S. Military or a member of the reserves of any
27 branch of the U.S. Military, participated in any experiment that was part of, or related to, the
28 TEST PROGRAMS. For purposes of this definition, TEST SUBJECTS shall be deemed to have

1 participated in an experiment even if the TEST SUBJECT received only a placebo or if the TEST
2 SUBJECT declined to participate or withdrew “consent” after being initially selected for
3 participation. “TEST SUBJECTS” shall not, unless otherwise specified, include civilians who
4 participated in the TEST PROGRAMS.

5 CONSTRUCTION

6 The following rules of construction shall also apply:

- 7 1. “All” or “each” shall be construed as “all and each.”
- 8 2. “Any” should be understood to include and encompass “all,” “all” should be
9 understood to include and encompass “any.”
- 10 3. “And” or “or” shall be construed either disjunctively or conjunctively as necessary to
11 bring within the scope of the discovery request all responses that might otherwise be construed to
12 be outside of its scope.
- 13 4. The use of the singular form of any word shall include the plural and vice versa.

14 TOPICS

15 1. YOUR Obligation to Provide Notice and Health Care: Plaintiffs seek information
16 CONCERNING YOUR duties to provide notice and healthcare to TEST SUBJECTS. To that
17 end, Plaintiffs seek information CONCERNING the meaning, interpretation, application,
18 enactment, implementation, and modification of the directives, policies, and regulations
19 governing notice and health care related to the testing at issue. Consistent with YOUR amended
20 and supplemental responses to Plaintiffs’ Interrogatory No. 22, these include — but are not
21 limited to — the Wilson Memorandum, CS: 385, AR 70-25 (and its various amendments), as well
22 as any relevant internal plans, policies, letters to the field, instructional memoranda, or directives.
23 Plaintiffs also seek information CONCERNING YOUR efforts (if any) to meet these duties,
24 including by providing: (a) information to TEST SUBJECTS about the tests in which they were
25 involved and the possible effects on the health or person of the TEST SUBJECTS from
26 participation in these tests, including the sources and amounts of funding for any notification and
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1 outreach efforts conducted or directed by YOU¹; and (b) medical treatment of any kind at any
2 time to the TEST SUBJECTS, including YOUR systems for providing health care or medical
3 treatment to current or former service members, including YOUR agreements with any federal or
4 state agencies or private organizations to provide health care or medical treatment on YOUR
5 behalf.

6 2. Possible Health Effects Related to TEST PROGRAMS: Plaintiffs seek
7 information — learned by YOU at any time — CONCERNING the possible health effects of
8 participation in YOUR TEST PROGRAMS, including physical, psychological, mental,
9 emotional, or other effects from exposure to the substances administered during the testing or any
10 possible health effects otherwise arising from participation in the TEST PROGRAMS.

11 3. Secrecy Oaths: Plaintiffs seek information CONCERNING the secrecy oaths
12 administered to TEST SUBJECTS (or other non-disclosure obligations imposed on TEST
13 SUBJECTS), including the content, nature, and duration of the secrecy oaths or non-disclosure
14 obligations, YOUR policies and practices with respect to the same, and any contemplated or
15 actual release of TEST SUBJECTS from any secrecy or non-disclosure obligation. These
16 releases include the information disclosed in YOUR amended and supplemental responses to
17 Plaintiffs' Interrogatory No. 11, including the 1993 Perry Memorandum (VET001_011181-82)
18 and the January 2011 DoD Memorandum (VET021_000001-2).

19 4. Databases and Information Gathering: Plaintiffs seek information CONCERNING
20 YOUR sources of information CONCERNING participants in the TEST PROGRAMS, such as
21 information obtained from TEST SUBJECTS and any information compiled in any database,
22 including but not limited to the Chem-Bio database being compiled by DoD with the assistance of
23

24 ¹ Based on the parties' meet-and-confer discussions over the past two months, Plaintiffs
25 understand that the DoD and the Army object to providing testimony concerning the sources and
26 amounts of funding, for the same reason that the DoD and the Army object to providing
27 testimony concerning Topic 6 below. We also understand that the DoD and the Army object to
28 providing testimony concerning Topic 7 below. As the parties have discussed, Plaintiffs intend to
raise these issues with the Court. As the parties have agreed, the deposition of the DoD's and the
Army's designee on all remaining topics (Dr. Kilpatrick) will proceed on July 6-8, 2011, subject
to resumption pending the Court's resolution of these issues.

1 Battelle, including the purpose of the database, scope of information included in the database,
2 status and timing for completion of the database, and cost of the database.

3 5. Interaction With DVA: Plaintiffs seek information CONCERNING YOUR
4 interactions and COMMUNICATIONS with DVA CONCERNING claims asserted by TEST
5 SUBJECTS or the use of DVA patients in testing conducted or funded by YOU related to
6 chemical and/or biological weapons.

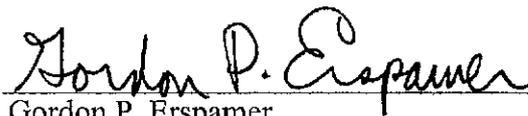
7 6. Resources and Capacities: Plaintiffs seek information CONCERNING the source
8 and amount of funding for any notification or outreach efforts that potentially could apply to the
9 TEST SUBJECTS, the source and amount of funding for YOUR health care or medical treatment
10 systems, and YOUR budget since 2006 and any annual budget surplus since 2006.

11 7. CIA Involvement: Plaintiffs seek information CONCERNING the CIA's
12 involvement (whether direct or through financial support) in the TEST PROGRAMS,
13 including — but not limited to — CIA involvement of any kind in any test or experiments
14 involving TEST SUBJECTS, for example, as reflected in the December 3, 1955 memorandum
15 produced at MKULTRA0000146141_002-03, and any CIA experimentation involving substances
16 identified on Plaintiffs' March 21, 2011 narrowed list also administered to any TEST SUBJECT
17 as part of the TEST PROGRAMS. Plaintiffs also seek testimony CONCERNING the content,
18 compilation, and certification of the "Administrative Record" filed with the Court on February
19 18, 2011, and on the CIA's Victims Task Force.

20
21 Dated: May 27, 2011

GORDON P. ERSPAMER
TIMOTHY W. BLAKELY
STACEY M. SPRENKEL
DIANA LUO
MORRISON & FOERSTER LLP

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By:


Gordon P. Erspamer
[Gerspamer@mofo.com]

Attorneys for Plaintiffs

PROOF OF SERVICE

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California 94105. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on May 27, 2011, I served a copy of:

PLAINTIFFS' NOTICE OF DEPOSITION TO THE DEPARTMENT OF DEFENSE AND UNITED STATES DEPARTMENT OF THE ARMY PURSUANT TO FED. R. CIV. P. 30(b)(6)

BY U.S. MAIL [Code Civ. Proc sec. 1013(a)] by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as follows, for collection and mailing at Morrison & Foerster llp, 425 Market St., San Francisco, California 94105-2482 in accordance with Morrison & Foerster llp's ordinary business practices. I am readily familiar with Morrison & Foerster llp's practice for collection and processing of correspondence for mailing with the United States Postal Service, and know that in the ordinary course of Morrison & Foerster llp's business practice the document(s) described above will be deposited with the United States Postal Service on the same date that it (they) is (are) placed at Morrison & Foerster llp with postage thereon fully prepaid for collection and mailing.

BY ELECTRONIC SERVICE [Code Civ. Proc sec. 1010.6] by electronically mailing a true and correct copy through Morrison & Foerster llp's electronic mail system to the e-mail address(s) set forth below, or as stated on the attached service list per agreement in accordance with Code of Civil Procedure section 1010.6.

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

I declare under penalty of perjury that the foregoing is true and correct.

Executed in San Francisco, California, this 27th day of May, 2011.

Robin Sexton
(typed)

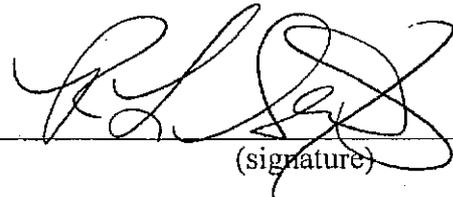

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Exhibit 18

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

VIETNAM VETERANS OF)	
AMERICA, et al.,)	Case No. CV 09-0037-CW
Plaintiffs,)	
vs.)	
CENTRAL INTELLIGENCE)	
AGENCY, et al.,)	
Defendants.)	

DEPOSITION OF PAUL R. BLACK

WASHINGTON, DC

Thursday, June 30, 2011

REPORTED BY:

JULIE BAKER, RPR CRR

PAGES 1 - 211

1 MS. FAREL: In his capacity as a 30(b)(6)
2 witness speaking on behalf of the agency?

3 MS. O'NEILL: I'd like to establish his
4 background and knowledge about the topics for which
5 he's been noticed.

6 MS. FAREL: Okay.

7 THE WITNESS: The duties that I do daily,
8 I come in and I review the products that the staff
9 develops, like manual changes. I review those.
10 Form changes, I review those. Data sharing
11 agreements, I review those. I make assignments of
12 work for different projects. The innovation
13 initiatives that our agency is involved with, I'm
14 responsible for ensuring that those are carried out
15 properly and appropriately.

16 So I go out and I visit with folks, and I
17 check on projects. I supervise people, the four
18 chiefs and the management analysts that reports to
19 me. I'm not sure if I answered your question fully.

20 BY MS. O'NEILL:

21 Q Gives me a flavor for what your work is
22 like. Topic 8 is about notice efforts on the part
23 of the VA. Are you familiar with the term "CBRNE"?

24 A Yes. CBRNE is chemical, biological,
25 radiological, nuclear and explosive. It's just an

1 acronym that stands for those different types of
2 things.

3 MS. FAREL: For the record, again, and to
4 the extent you're going to continue the questioning
5 on topic 8, I would note that Mr. Black has been
6 designated to testify regarding these outreach
7 efforts from July 1, 2006 to present but not prior
8 to July 1, 2006. My objection is just for the
9 record, that there's a temporal limitation to his
10 designation.

11 MS. O'NEILL: I want to note for the
12 record that yesterday -- can we go off the record
13 for just a second.

14 (Discussion off the record.)

15 BY MS. O'NEILL:

16 Q Has the VA provided any kind of notice to
17 CBRNE veterans?

18 A Yes.

19 Q What is your understanding of who those
20 veterans are, the CBRNE veterans?

21 MS. FAREL: Objection; vague.

22 THE WITNESS: My understanding of CBRNE
23 veterans, are veterans that have been exposed to
24 those different things, to chemical, biological,
25 radiation. We track people that were test

1 participants and keep track of them. But for
2 example, if an Army veteran in Germany was exposed
3 to battery acid today, that would fall into that
4 category.

5 BY MS. O'NEILL:

6 Q What is your understanding of why the VA
7 has undertaken the effort to notify CBRNE veterans?

8 MS. FAREL: Objection; speculation.

9 THE WITNESS: We're making notice to
10 people that we get in a database from DOD that were
11 test participants to some human testing that were
12 done. And I'm not sure. Could you repeat the
13 question?

14 BY MS. O'NEILL:

15 Q What is your understanding of why the VA
16 has undertaken the effort to notify CBRNE veterans?

17 MS. FAREL: Same objection.

18 THE WITNESS: We're trying to notify
19 people so that they can file a claim if they feel
20 like that there are benefits that they're entitled
21 to receive. Our notice letter is designed to reach
22 out to people that we cannot find an address for and
23 tell them that there may be benefits that they're
24 entitled to if they can contact us or the Department
25 of Defense.

1 BY MS. O'NEILL:

2 Q Do you know if the VA has been asked to
3 provide this notice?

4 MS. FAREL: Objection; vague.

5 THE WITNESS: I don't know that we've been
6 asked to provide a notice.

7 BY MS. O'NEILL:

8 Q Have you ever heard any discussion about
9 whether the VA is obligated to provide this notice?

10 MS. FAREL: Objection; calls for a legal
11 conclusion.

12 THE WITNESS: I don't believe that we are
13 obligated to provide the notice. I believe that
14 we're trying to provide a notice to veterans that we
15 feel were exposed and the reason we feel they were
16 exposed is because we got a database from DOD that
17 says they used people in that database for human
18 testing experiments that they did, and we're trying
19 to notify them so that if they have some health
20 issues that are going on that they feel like are
21 associated with that, they can contact us.

22 BY MS. O'NEILL:

23 Q Does the VA have any kind of agreement
24 with the Department of Defense about providing
25 notice?

1 A I'm not aware that we have any type of
2 agreement, memorandum or anything like that. I
3 haven't seen that.

4 MS. O'NEILL: I'm going to mark an exhibit
5 and show it to you. I'm going to mark a document as
6 Exhibit 289. This is an e-mail from Allegra Long.

7 (Exhibit 289 identified.)

8 BY MS. O'NEILL:

9 Q Have you ever seen this document before?

10 MS. FAREL: Counsel, I see one document
11 containing a string of e-mails and another document.
12 Is this second page supposed to be attached to the
13 exhibit?

14 MS. O'NEILL: I think that's a copying
15 mistake. For the record, when this exhibit was
16 copied, it was accidentally attached to another
17 exhibit, so we're going to separate the two
18 documents. Thank you for bringing that to my
19 attention.

20 MS. FAREL: Of course.

21 BY MS. O'NEILL:

22 Q Mr. Black, have you ever seen this
23 document? You might not have. I don't see your
24 name on here.

25 A I don't know about this particular

1 document, but I've seen the substance of this
2 document.

3 Q I'll represent to you that it's an e-mail
4 exchange between Allegra Long and Kelley Brix. What
5 I'm interested in showing you is at the bottom of
6 the page in the third-to-last paragraph at the
7 bottom of the page, it begins with "I need this
8 data," Ms. Brix refers to something she calls the
9 VA/DOD joint strategic plan. Do you see that
10 paragraph?

11 A Yes.

12 Q Do you know what the VA/DOD joint
13 strategic plan is?

14 A Yes.

15 Q Can you explain it to me?

16 A There are some issues that VA works on
17 with DOD, and they have a joint executive council
18 that's chaired by the two deputy secretaries for the
19 agencies. Under that joint executive counsel, there
20 is a joint strategic plan that is written that talks
21 about some targets for certain things that DOD and
22 VA will do together.

23 For example, the Benefits Delivery at
24 Discharge program is one of those targets that they
25 have targets on, participation rates and that sort

1 of thing. I don't know if that fully answers your
2 question or --

3 Q It gives me information, and I'd like to
4 ask a follow-up question, which is does the VA/DOD
5 joint strategic plan speak to notification efforts
6 by the VA regarding CBRNE veterans?

7 MS. FAREL: Objection; vague.

8 THE WITNESS: I'm not aware that it does.
9 I would need to look at the plan to see. I guess
10 maybe I'm not prepared to answer that question.

11 BY MS. O'NEILL:

12 Q What is the main goal of the effort to
13 notify CBRNE veterans?

14 MS. FAREL: Objection; calls for
15 speculation and vague.

16 THE WITNESS: We're trying to provide a
17 notice to the veterans so that if they feel like
18 they have health issues associated with that
19 testing, they can contact us to try to file a claim
20 or to get treatment for those conditions.

21 BY MS. O'NEILL:

22 Q Who is included -- strike that. What is
23 the Department of Defense role in providing notice
24 to veterans?

25 MS. FAREL: Objection; vague.

1 THE WITNESS: I'm really not sure how the
2 Department of Defense would present their role. I
3 haven't had conversations with anyone about that. I
4 feel that their role is to provide us with enough
5 information so that we can find an address. And
6 once we find an address, then we make a notification
7 to that address.

8 BY MS. O'NEILL:

9 Q Does the DOD provide the VA with a
10 database of information regarding CBRNE veterans?

11 A Yes.

12 Q What is included in that database?

13 A They include records of people's names
14 that sometimes are incomplete, like they may have an
15 initial instead of a name. They have -- sometimes
16 there's a Social Security number. It shows --
17 sometimes there's not. Sometimes there's a service
18 number. It shows participation in tests. Some of
19 the records will show substances that they were
20 exposed to during those tests.

21 Q Why are the records incomplete?

22 MS. FAREL: Objection; calls for
23 speculation and outside the scope of the 30(b)(6)
24 notice.

25 THE WITNESS: I don't know why the records

1 are incomplete.

2 BY MS. O'NEILL:

3 Q Who is included in the database?

4 MS. FAREL: Objection; vague.

5 THE WITNESS: I think that there's people
6 in the database that were exposed to these testings,
7 and I'm not sure who else might be included in it,
8 but I believe there have been people included in the
9 database like the example I gave of a soldier in
10 Germany that was exposed to battery-acid-type
11 things.

12 BY MS. O'NEILL:

13 Q Do you have an understanding about whether
14 or not the Department of Defense has an obligation
15 to provide notice?

16 MS. FAREL: Objection; outside the scope
17 of the 30(b)(6) notice, calls for a legal
18 conclusion.

19 THE WITNESS: I don't know the answer to
20 that.

21 BY MS. O'NEILL:

22 Q Which department in the VA is responsible
23 for sending letters to CBRNE veterans?

24 A People that work for me are the ones that
25 send out the letters.

1 Q Your department -- can you state again
2 what your department is?

3 A It's the procedures staff for compensation
4 service.

5 Q Why is it that the procedures staff and
6 the compensation and pension service is responsible
7 for sending these letters?

8 A Because our leadership decided that that
9 was the staff that they wanted to do this work.

10 Q The VA receives information from the
11 database provided by the Department of Defense;
12 correct?

13 A Yes.

14 Q What does the VA do with that information
15 in order to get a letter out the door to veterans?

16 A The first check that we do is we check
17 against our records to see if we can find the person
18 in our records with an address. Some of the people,
19 if they have an address in our records, they may be
20 receiving benefits, and we would have an address
21 that we use for that benefit delivery to them.

22 We check -- we have used contractors in
23 the past, a contract with ChoicePoint, I believe is
24 the name of the company that we go to to try to get
25 addresses. I think there's a contract with

1 Lexis-Nexis that has been used. It's a similar type
2 thing you go to and try get addresses with. I mean,
3 they do a lot of different things. I think our
4 current contract is with Lexis-Nexis for achieving
5 addresses.

6 We send over to a VA contact to get
7 addresses from our -- I think it's the BOSS system
8 is the name of it, with the National Cemetery
9 Administration to see if they have records of the
10 veteran. And there of course, if we find out that
11 the veteran is deceased, then there's no letter that
12 we would send to that veteran. And we --

13 Q So there's no letter sent to survivors of
14 CBRNE veterans?

15 A Currently we're not sending letters to any
16 survivors. We have not tried to determine if any of
17 these service members have survivors or not yet.

18 Q Are there discussions about the
19 possibility of doing so?

20 MS. FAREL: Objection; vague.

21 THE WITNESS: I'm not really sure what you
22 mean about discussions. I have not talked to anyone
23 about sending letters to survivors.

24 BY MS. O'NEILL:

25 Q No one has proposed that letters be sent

1 to survivors, to your knowledge?

2 A I'm not aware that there's any proposals
3 to send letters to survivors. We -- back to the
4 other question, we use our contact in VA to check
5 with the Internal Revenue Service for addresses in
6 order to send out letters.

7 Q You check with the IRS?

8 A That's correct.

9 Q What happens when -- you mentioned that
10 sometimes records are incomplete. What happens when
11 the records from DOD are incomplete?

12 MS. FAREL: Objection; vague.

13 THE WITNESS: If we don't have enough
14 information to get an address, then we can't mail a
15 letter. That's what happens.

16 BY MS. O'NEILL:

17 Q Does the VA have any ability to update the
18 database based on information it learns in its
19 efforts to obtain contact information?

20 A I'm not sure what you mean by update the
21 database. This is more of a read-only-type thing
22 that we use. Any updates we do, we do to our
23 records, not to DOD records.

24 Q Does the VA have a separate recordkeeping
25 system for keeping track of information that the VA

1 gathers with respect to these veterans?

2 MS. FAREL: Objection; vague.

3 THE WITNESS: Our records are our benefits
4 delivery system. I mean, we have the VETSNET
5 system. I mean, it doesn't track much of -- I guess
6 I'm really not understanding the question. If
7 you're asking do we have a place where we put all
8 these names and keep them in a database, no, we do
9 not.

10 BY MS. O'NEILL:

11 Q You mentioned the information you receive
12 or the database you receive from the DOD is
13 read-only; is that correct?

14 A I'm not sure that it's read-only. I just
15 don't know that there was any reason that we update
16 that because it's not our data.

17 Q Once information is obtained about a
18 particular veteran, for example, a Social Security
19 number is obtained or an address is obtained, where
20 is that information filed by the VA?

21 A The Social Security number, we would use
22 that to look in our BIRLS records. We would use it
23 to look in our master record to see if we -- like I
24 said, if we're paying benefits, we would look in our
25 corporate records to see if we have records of the

1 veteran.

2 Q Where does the VA record that information?
3 Does each CBRNE veteran have a file if the VA
4 doesn't have its own database?

5 A No. We would probably put that in a
6 spreadsheet, so -- I mean, the spreadsheet for
7 tracking that we had made a notice to that person if
8 we get an address.

9 Q Is that the general practice, that there
10 are spreadsheets maintained regarding CBRNE
11 veterans?

12 MS. FAREL: Objection; vague.

13 THE WITNESS: Yeah, I may need some help
14 answering that question. Can we come back to that
15 later?

16 BY MS. O'NEILL:

17 Q Sure.

18 A Like maybe after a break.

19 MS. FAREL: Counsel, can you repeat the
20 question just for the record so I'm clear on the
21 question.

22 MS. O'NEILL: Sure.

23 BY MS. O'NEILL:

24 Q What I'm interested in learning is what
25 the VA does with all the information that they

1 gather regarding identifying information for
2 particular veterans so they receive incomplete
3 records. It seems like they contact various third
4 parties to learn addresses, Social Security
5 numbers --

6 A No. We contact those other parties to
7 learn addresses.

8 Q To learn addresses?

9 A Right. If we don't get the Social
10 Security number from the Department of Defense, then
11 it's unlikely we're going to have a Social Security
12 number. We're looking for addresses.

13 MS. FAREL: Counsel, I'm going to cross
14 through some notes that were written on the back of
15 Exhibit 289 by the witness.

16 MS. O'NEILL: Yes.

17 MS. FAREL: I just want to make sure that
18 we understand this is just taking notes on the
19 question you just asked. I just want to make sure
20 if there's a scratch-through on the exhibit --

21 MS. O'NEILL: That you understand where it
22 comes from.

23 MS. FAREL: Exactly. So we don't presume
24 that was part of your original exhibit.

25 MS. O'NEILL: Excellent. I think that's a

1 good plan.

2 BY MS. O'NEILL:

3 Q Mr. Black, I think it's better for you to
4 keep notes on the notepad there than on the
5 exhibits.

6 A Okay. I thought you gave me that for me
7 to keep.

8 Q I'm sorry.

9 MS. FAREL: These will become part of the
10 official record.

11 MS. O'NEILL: I'm not sure -- I want to
12 state for the record, Mr. Black, it seemed like he
13 put a piece of paper close to Ms. Farel.

14 THE WITNESS: That was what she marked up
15 there.

16 MS. O'NEILL: Just so it's clear, all
17 communications that happen in this room need to be
18 stated orally for the record, so it's important --
19 you might see some attorneys in this room passing
20 notes to each other. That's fine. But any
21 communication with you needs to be on the record.

22 MS. FAREL: I'll take good notes for you.

23 MS. O'NEILL: If I see a paper being
24 passed, I'm going to draw attention to it.

25 THE WITNESS: Do you want it?

1 BY MS. O'NEILL:

2 Q No. I appreciate you're keeping careful
3 track of the topics we're discussing. Mr. Black,
4 you've been designated to speak to notice provided
5 to the VA for the period of time up until --
6 starting July 1, 2006; correct?

7 A Yes.

8 Q As of July 1, 2006, how many letters had
9 the VA sent to CBRNE veterans?

10 MS. FAREL: Counsel, would a general
11 number be acceptable?

12 MS. O'NEILL: A general number is
13 acceptable, yes. Thank you.

14 MS. FAREL: To the best of your ability to
15 recall.

16 BY MS. O'NEILL:

17 Q To the best of your ability.

18 A Approximately 2000. I'm not sure exactly
19 what those numbers were back then.

20 Q Based on the documents, I think that seems
21 like a pretty good estimate.

22 A I don't -- I'm not for sure. I'm just
23 guessing.

24 Q I'm going to show you a document that's
25 been previously marked as an exhibit.

1 MS. FAREL: Mr. Black, I'm going to keep
2 the exhibits that we've discussed today that are
3 marked by the court reporter in a pile. This is
4 just sort of a legal procedure of it, but I won't
5 write on it. I'm making them in a pile --

6 THE WITNESS: Stop writing on stuff that
7 they hand me.

8 MS. FAREL: Can you tell me the exhibit
9 number.

10 BY MS. O'NEILL:

11 Q This has previously been marked as Exhibit
12 261. Mr. Black, do you recognize this document?

13 A I have seen this before.

14 Q Are you familiar with the contents?

15 A Yes, somewhat.

16 Q For the record, this document is titled
17 "TIMELINE for CBRNE." Mr. Black, if you could look
18 at the entry for June 30, 2006 to establish as of
19 July 1 how many letters had been sent. It says here
20 the CMP service mailed 58 CBRNE letters as of that
21 date. It says as of July 31, that the VA had mailed
22 1818 letters to CBRNE veterans.

23 MS. FAREL: Counsel, this is not a huge
24 point, but just for clarification of the record, I
25 believe that this document reflects that 58 CBRNE

1 letters were sent to veterans on June 30 and an
2 additional 1818 notification letters were sent on
3 July 31. The 1818 is a separate number. It doesn't
4 include the 58.

5 MS. O'NEILL: That's my understanding,
6 too. Thank you.

7 BY MS. O'NEILL:

8 Q It's fair to say as of July 31, 2006,
9 roughly between 1850 and less than 1900 letters had
10 been sent; is that correct?

11 A Yes.

12 Q I'm going to hand you an exhibit that's
13 been previously marked as Exhibit 262. The title of
14 the first page is "Project 112/SHAD," although I'll
15 represent to you if you look more closely, the
16 document, in fact, discusses information related to
17 notification letters sent to CBRNE veterans.

18 If you could turn your attention to page
19 5.

20 MS. FAREL: You can take time to review
21 this document if you'd like.

22 BY MS. O'NEILL:

23 Q Yes. Please take a moment to review it.

24 MS. FAREL: Just to confirm, this is
25 Exhibit 268?

1 MS. O'NEILL: I think I had 262.

2 MS. FAREL: 262. I apologize.

3 MS. O'NEILL: Can we go off the record for
4 just a moment. Is that okay with you?

5 MS. FAREL: Sure.

6 (Discussion off the record.)

7 BY MS. O'NEILL:

8 Q Mr. Black, are you familiar with this
9 document?

10 A It looks like a briefing slide to me.

11 Q Have you ever seen it before?

12 A I wouldn't say that I haven't, but I don't
13 remember the document.

14 Q I want to draw your attention to the
15 bottom of page 5. Here it says as of August 2009,
16 13,055 test participants had been identified in the
17 CBRNE program. Does that comport with your
18 recollection of the progress at that point in time
19 in identifying CBRNE veterans in the database?

20 A When you say "identifying," I -- I mean,
21 this looks like to me that's probably how many were
22 in the database at that time if that's what you're
23 asking.

24 Q That's exactly what I mean. There were
25 13,055 names in the database at that point in time?

1 A I don't know if -- records in the database
2 might be a more accurate statement.

3 Q Does that comport with your recollection
4 of the state of progress?

5 A That looks about right to me.

6 Q On the next page, if you could look at the
7 first bullet point. It says as of July 2009, the VA
8 has mailed 3291 letters to test participants in the
9 program. Does that also comport with your
10 recollection of the progress the VA was making at
11 that point in time in notifying CBRNE veterans?

12 A That's probably fairly accurate. I would
13 not say that some of those weren't duplicates, that
14 at that time some of those may have gone -- been, of
15 the 3291, some of those letters may have been to the
16 same veteran. I'm not sure about that.

17 Q Is it possible or likely that some
18 veterans received two of the same letter?

19 A It is possible because I instructed my
20 people if they could not determine we had sent a
21 letter to someone, that I would rather them get a
22 duplicate letter than to not get a letter at all.

23 Q Does the VA have a system for recording
24 when a letter has been sent --

25 MS. FAREL: Objection; vague.

1 MS. O'NEILL: -- to CBRNE veterans?

2 THE WITNESS: We do now. There's a
3 spreadsheet that is kept by the people on my staff
4 to show that we've sent a letter and the day we sent
5 it on.

6 BY MS. O'NEILL:

7 Q When was the spreadsheet created -- let me
8 restate the question.

9 When did the VA begin to maintain that
10 spreadsheet as a record of what letters had been
11 sent?

12 A I'm not certain of that date, probably in
13 2010 sometime.

14 Q Prior to that time, how did the VA keep
15 track of what letters it had sent to veterans?

16 MS. FAREL: Objection; vague.

17 THE WITNESS: I think there were multiple
18 people with multiple spreadsheets, trying to track
19 that data.

20 BY MS. O'NEILL:

21 Q When the new spreadsheet was created in
22 2010, was there an effort to consolidate the prior
23 spreadsheets?

24 A What I had instructed my people to do was
25 to go through and determine where we knew we had

1 sent letters, and where we could not determine that
2 they had sent letters, to send letters to those
3 people if we had addresses for them.

4 Q Do you have confidence now that the
5 spreadsheet accurately represents who has been sent
6 letters to this point in time?

7 MS. FAREL: Objection; vague.

8 THE WITNESS: I'm confident that if we
9 have an address on someone, that they're reflected
10 in that spreadsheet that we sent letters to, and
11 even in that spreadsheet, I think there's a couple
12 of them that shows where we sent more than one
13 letter, like two letters to some of the people.

14 BY MS. O'NEILL:

15 Q I'm going to hand you a document titled
16 "Biannual Report to Congress on VA's Outreach
17 Activities." This document has been previously
18 marked as Exhibit 263. Take a moment and just
19 browse through the document. I'm going to direct
20 your attention to one particular paragraph, but if
21 you could look at it in order to tell me if you're
22 familiar with the document or if you've ever seen
23 the document before.

24 A I'm not normally involved with outreach
25 other than with these letters. I've seen something

1 like this report before, I guess. It may be this
2 one or it may be something else, but I've seen
3 something like this.

4 Q Who prepares these types of reports?

5 A Multiple people prepare these from
6 different sections, different services. I'm sure
7 probably education service would be involved with
8 it, insurance service, it looks like would be
9 involved possibly. I'm not sure. This may just be
10 the outreach staff from the benefits assistance
11 service that prepared this.

12 Q This type of report is prepared on a
13 periodic basis?

14 A Yes. Do we know the date of this report?

15 Q I have not found a date in this document.
16 There are dates mentioned, so it clearly -- based on
17 events described in the report, it was clear it was
18 drafted after August 2010.

19 A So we don't know if this was just a draft
20 or if this was an actual report?

21 Q That's right.

22 A It looks to me like a draft because it has
23 like a track change here.

24 Q I agree. Is this type of report prepared
25 in the regular course of business, to your

1 knowledge?

2 A Yes. Usually, these -- once it's
3 formalized, it would have a date on it. Like I
4 said, this looks like a draft because it had a
5 couple of track changes that I saw.

6 Q If I could draw your attention to page 14.
7 If you could read the paragraph that begins
8 "Chem-bio exposures."

9 MS. FAREL: For the record or to himself?

10 BY MS. O'NEILL:

11 Q To yourself, if you can review it. This
12 paragraph states as of August 2010, VBA had mailed
13 notification letters to 3291 CBRNE veterans. Do you
14 see that sentence?

15 A I see that.

16 Q Does this generally comport with your
17 recollection of the progress that the VA had made in
18 its notification efforts at that point in time?

19 A Yes.

20 Q If you could refer back to Exhibit 262,
21 I'll point out that this document, which we
22 discussed, states as of July 2009, the VA had mailed
23 3291 letters as of July 2009. Do you see that?

24 A I see that.

25 Q According to these documents, the VA had

1 not sent any additional letters between July 2009
2 and August 2010; is that right?

3 A That seems correct to me, yes.

4 Q That comports with your recollection?

5 A Yes. Through that year there probably was
6 not -- from July 2009 to August of 2010, I'm not
7 aware that any letters went out.

8 Q Why is it that no letters were sent during
9 that time period?

10 MS. FAREL: Objection; vague.

11 THE WITNESS: We didn't have an address to
12 send them to.

13 BY MS. O'NEILL:

14 Q What was the VA doing during that period
15 of time to locate addresses for veterans?

16 MS. FAREL: Counsel, I'll object as vague,
17 but just as clarification, are you talking about
18 veterans are contained in the CBRNE database?

19 MS. O'NEILL: Yes.

20 BY MS. O'NEILL:

21 Q What was the VA doing during that point in
22 time to identify addresses for CBRNE veterans in
23 order to send them notification letters?

24 A We probably were just waiting for more
25 information from DOD so that we could identify

1 enough information to gain an address.

2 Q Had work halted on the VA's efforts to
3 identify addresses?

4 MS. FAREL: Objection; vague.

5 THE WITNESS: I'm not sure what you mean
6 by "halted." I mean, if you're asking do we every
7 day go and try to find addresses, the answer is no.
8 But when we have additional data that we can use to
9 try to find addresses, then we use that data to try
10 to find addresses. So I mean -- like today I don't
11 think there's any efforts going on today to try to
12 find address because we don't have any new data to
13 use to try to find addresses.

14 So until we get new data to use, there's,
15 you know, there's not much use to go back to the
16 IRS, for example, and say well, you know the last
17 time we sent you a list, you couldn't find these.
18 We're sending you the same list again, can you find
19 something? That's kind of futile.

20 BY MS. O'NEILL:

21 Q The VA had attempted to find addresses on
22 all of the CBRNE records in the database in its
23 estimation, exhausted avenues for identifying
24 addresses and then had stopped attempting to
25 identify addresses; is that correct?

1 MS. FAREL: Objection; compound and also
2 to the extent it mischaracterizes the witness's
3 prior testimony.

4 THE WITNESS: I'm really not sure what
5 you're trying to ask me here. If we have
6 information, we try to go out and find the
7 addresses. If we don't have new information, then
8 we don't go look for those addresses. So --

9 BY MS. O'NEILL:

10 Q Let me ask you this: At what point does
11 the VA feel that it has tried everything it can do
12 to identify an address?

13 MS. FAREL: Objection; vague.

14 BY MS. O'NEILL:

15 Q We can run through some of the avenues
16 that you previously mentioned.

17 A Right. That's what I meant. The steps
18 that we take is we, when we get new information, we
19 check it against our records to say do we have an
20 address in our current payment systems. And if we
21 don't have an address in our current payment
22 systems, part of what we try to do with that is to
23 see can we even identify this person as a veteran in
24 our system? And that's really the first step that
25 we take.

1 If we can identify it, then that gives us
2 sometimes information that okay, look, if we
3 identify a veteran by their service number, for
4 example, we might be able to have a Social Security
5 number in our system that we can use to try to get
6 that information for an address even if we don't
7 have the address.

8 If we can't identify some type of
9 personally identifiable data in our systems, then we
10 don't have an avenue. I can't go to the Internal
11 Revenue Service and say can you give me the address
12 for John Smith because the Internal Revenue Service
13 is going to come back and say which John Smith are
14 you talking about?

15 And if I can't personally identify those
16 people, I can't send the list for them to check it.
17 And that's our first check, is do we have enough
18 personally identifiable information to even glean an
19 address from someone else or not.

20 And if we can get that information, then
21 we go through the process of trying to find -- we
22 check, like I said, with the National Cemetery
23 Service. Do we have -- is this a person that's
24 deceased? If they're deceased, then we're not going
25 to send to the IRS saying, can you give me a

1 deceased person's address. Once we found what we
2 can find and checked on those addresses, there's not
3 a lot more we can do to try to get an address for a
4 person.

5 Q Does the VA consult the Social Security
6 Administration in its effort to identify addresses
7 for CBRNE veterans?

8 MS. FAREL: Objection; vague.

9 THE WITNESS: We have a SHARE application
10 that is -- we use to check with Social Security on
11 individual veterans, but you have to have enough
12 personally identifiable information in there. You
13 have to have not just a Social Security number but a
14 date of birth and the name so the Social Security
15 Administration knows which that person we're trying
16 to check on. And through that SHARE application,
17 individually we can check.

18 BY MS. O'NEILL:

19 Q If you have the date of birth, the Social
20 Security number and the name, you would be able to
21 obtain any address that the Social Security
22 Administration has for a CBRNE veteran; correct?

23 MS. FAREL: Objection; vague.

24 THE WITNESS: If we had that information,
25 we would be able to ask the Social Security

1 Administration if they had an address.

2 BY MS. O'NEILL:

3 Q Is it the regular practice of the VA to
4 ask the Social Security Administration for the
5 address?

6 A I don't know that we go to them on a
7 regular basis. I think we use more the Internal
8 Revenue Service route.

9 Q So the SHARE app, when is that used?

10 A It's used when we have a few cases that we
11 have enough information on to check because they're
12 done individually. It's a person sitting there at
13 the one end and typing that information in
14 individually for that case to look for it.

15 Q Is there any kind of checklist for the
16 individual person to follow in that person's efforts
17 to locate an address?

18 A I'm not aware that we have a checklist.

19 Q Is there any record kept of what efforts
20 the individual who's been given the task of looking
21 for the address, is there any kind of record that
22 that person keeps to keep track of when they've
23 contacted the IRS, whether they've contacted the
24 Social Security Administration?

25 MS. FAREL: Objection; vague.

1 THE WITNESS: Just the spreadsheet of
2 whether we've sent a letter or not. If we've sent a
3 letter to them, then we've done what we were trying
4 to do. We've sent that letter.

5 BY MS. O'NEILL:

6 Q At what point is it decided that the
7 person who's been tasked with looking for an address
8 can stop looking for the address?

9 MS. FAREL: Same objection.

10 THE WITNESS: I don't know that we have
11 any instruction to ever stop looking for an address.
12 It's just that if we don't have new data, there' s--
13 like I said, it's kind of futile to go back through
14 a process you've already gone through. But to say
15 we're going to give up on finding an address is -- I
16 don't know if that's the right characterization.

17 BY MS. O'NEILL:

18 Q You mentioned that it's futile to go back
19 to the same -- I forget the language that you used?

20 A Through that same process.

21 Q It was futile to go through the same
22 process. If there isn't a record of what process
23 has been followed to locate the addresses, how can
24 you be sure that it's been accomplished?

25 MS. FAREL: Vague.

1 THE WITNESS: I trust the people that I
2 have assigned this to to give due diligence to try
3 to find these veterans and send them addresses.
4 We're trying to notify people that there may be some
5 conditions, if they have them, that they would want
6 to contact us for claims. And if we can find these
7 people, we're going to do that. And the people that
8 do this take their jobs very seriously.

9 BY MS. O'NEILL:

10 Q I understand that you've communicated --
11 you appear to work with really great people, but to
12 understand, it's left to their discretion to seek
13 the addresses -- to look for the addresses of CBRNE
14 veterans; is that correct?

15 A I don't know that it's left to their
16 discretion if that's what you're asking. These
17 individuals have a process that we use. I don't
18 know that that process is listed anywhere, but we're
19 all familiar with the process of going to our
20 records to look for these addresses to try to
21 identify these people.

22 If they come back from the National
23 Cemetery Service and the person is deceased, we try
24 to keep track of that so that we don't continue
25 looking for a deceased person's address. We go to

1 the Internal Revenue Service to try to get an
2 address. We use our -- the contracting system that
3 we use.

4 Like I said, in the past, I believe it was
5 ChoicePoint. It was a dead or discovery program,
6 and I think the name of the program now is
7 Lexis-Nexis, but I'm not sure. We go to those
8 people and try to find an address.

9 If we get new information from the
10 Department of Defense that's personally identifiable
11 for some of these records, then we go through that
12 process again.

13 MS. FAREL: Counsel, we've been going for
14 a little over an hour. Would this be a good time
15 for a break?

16 MS. O'NEILL: Sure. That sounds good.
17 Let's go off the record.

18 (Recess.)

19 MS. O'NEILL: Let's go back on the record.

20 THE WITNESS: There was a couple of things
21 I told you I would get back with you on.

22 BY MS. O'NEILL:

23 Q Sure.

24 A The DOD database comes to us read-only.
25 That's the way it comes to us, is read-only. And

1 the spreadsheet was created by Allegra Long in 2010
2 when I instructed her to do that when we were not
3 able to identify who we had sent letters to off of
4 multiple databases that were scattered.

5 Q To confirm, this was the spreadsheet we
6 discussed that the VA uses to keep track --

7 A Who we've notified, that's correct. I'm
8 sorry. I talked over you and you asked me not to do
9 that. But that's what I found out on the break.

10 Q How did you find that information -- how
11 did you learn that information?

12 A I asked a member of my staff, Erik
13 Shepherd, and he had texted Allegra about that.

14 Q Okay. Thank you. Mr. Black, we were
15 looking earlier at Exhibit 263, which is the
16 biannual report to outreach activities, and we had
17 looked at page 14, the paragraph titled "Chem-Bio
18 Exposures." I want to look back at that.

19 The paragraph contains numbers that are
20 current as of August 2010. The numbers are -- at
21 that point in time there were 16,647 CBRNE records
22 in the database, and the paragraph states that 8556
23 were complete enough for identification.

24 Can you explain to me a little bit about
25 what these numbers mean?

1 A My understanding is that this 16,647,
2 that's the number of records in the database, and
3 that there may even be some of those that are
4 duplicates, and I'm not saying a lot, but there are
5 some that are duplicates. Some contain information,
6 like I was saying earlier, that just has initials or
7 test subject number that is in there.

8 I believe that the 8556 were ones that had
9 some type of identifier on them, like a -- either a
10 service number or Social Security number or had a
11 full name in the record. That's what I think is
12 what they mean by they were complete enough to
13 identify.

14 Q Correct me if I'm wrong, but I think
15 earlier you indicated that in order to obtain an
16 address, the VA needs a Social Security number; is
17 that correct?

18 A WE -- for the information that we go to
19 try to find, we need to have enough identifying
20 information. And I believe that the IRS requires
21 like a 5-point match, like the Social Security
22 number, the date of birth, the full name type thing,
23 that they require what we go to them to try to get
24 an address. So even though we say that these are
25 complete enough to identify, they are not complete

1 enough for the IRS to give us an address for these
2 people, so --

3 Q If a record only has the service number,
4 is the VA able to in some cases identify or obtain
5 an address?

6 A In some cases, we are. If we have a --

7 Q How does that happen?

8 A In our current systems, some of the
9 records have the veteran's service number in there.
10 If it's a record that has that service number and we
11 can match that service number and then we have
12 enough information in there to see that okay, yeah,
13 this is the same person, then we can identify them
14 sometimes on our system.

15 Our BIRLS record does not contain
16 addresses. That's where we have the most veterans
17 records, and that's information about their service,
18 but it's not used for payment. It's not the payment
19 system. It's just -- BIRLS is how we locate our
20 records. It just has like service data in it, that
21 sort of thing like the veterans, if it's in there,
22 their service number, and their date of discharge.
23 It contains up to three periods of service. If the
24 veteran has more than three periods of service, it
25 won't contain more than those periods of service in

1 the BIRLS record.

2 But where we have addresses is in our
3 master record, our corporate record. There's very
4 few in the BDN, which is the Benefits Delivery
5 Network. It's an old legacy system that we're
6 migrating off of and most of the records are out of
7 that system. There's only a few thousand records
8 left in that system.

9 I'm not sure exactly how many are left,
10 but in that system, we have a master record, if
11 we're paying benefits, and that master record has an
12 address that we have of a record for paying those
13 benefits, and then our corporate database is the one
14 we're migrating to for VETSNET, V-E-T-S-N-E-T, all
15 caps. It's an acronym for Veterans Network, I
16 believe is what that stands for. But it's our
17 current payment system that we use to process awards
18 through and that system would have an address in it
19 if we have enough to identify someone in that
20 system.

21 Q The last sentence of the paragraph on page
22 14 says "Additional identification efforts are
23 ongoing with the remaining 3200 records which do not
24 contain identity confirming information." What does
25 that sentence mean? What do you understand that

1 sentence to mean?

2 MS. FAREL: Objection; vague.

3 THE WITNESS: That would be the records
4 that we're trying to look in our system, like BIRLS,
5 to see if we have a data request to see if there's
6 some information in there or to see if we could get
7 some information from the National Cemetery Service.
8 You know, sometimes they will have records of
9 veterans, and we check with them on records to try
10 to identify.

11 BY MS. O'NEILL:

12 Q If a record does not contain any
13 identity-confirming information, what does that
14 mean?

15 A It could mean that they have just like a
16 first initial of their first name and no Social
17 Security number to go with that or other identifying
18 data to go with it. It could be like some of those
19 that we said are the test subject number. You know,
20 that's really about the least helpful ones that are
21 in that database, are the ones that are either
22 vacant for having information or, say, test subject
23 number.

24 Q So the VA attempts to obtain the address
25 with respect to records if there's any kind of

1 information in the record -- let me rephrase the
2 question.

3 Is there any situation in which a record
4 is too incomplete and the VA will not pursue efforts
5 to locate an address for it?

6 A Right. Those -- the best example I can
7 give you is one that says test subject number. If
8 that's all the information we have, I mean, that's
9 like going out into the public and saying can you
10 tell me test subject number 10, where do they live.
11 It's just too vague for us to even try to get some
12 information.

13 Q Even if there's a full name --

14 A If there's a full name, we would run
15 that against our BIRLS -- we would do a search.
16 Even if there's initials, we try to do a data
17 request through our BIRLS system. But they become
18 more likely -- the less data we have to look, the
19 more unlikely it becomes --

20 MS. FAREL: Do you want to finish? You
21 had more to say in your answer.

22 THE WITNESS: No. I think I was through.

23 BY MS. O'NEILL:

24 Q Sorry to cut you off.

25 A I don't think you did. I think I talked

1 over you.

2 Q If a record -- there are some records that
3 only contain a test subject number?

4 A I believe that's accurate.

5 Q Earlier we talked about documents that
6 said as of July 2009, 3291 letters had been sent and
7 as of August 2010, 3291 documents had been sent so
8 there had been no progress between July 2009 and
9 August 2010?

10 MS. FAREL: Objection to the extent that
11 it mischaracterizes the testimony and the contents
12 of the documents we've looked at thus far.

13 BY MS. O'NEILL:

14 Q Do you remember talking about those
15 numbers --

16 A Could you repeat that question? I'm
17 sorry.

18 Q Sure. I hadn't gotten to the question
19 part, but I had said earlier we talked about how the
20 documents we looked at indicated that as of July
21 2009, 3291 letters had been sent and the same number
22 had been sent as of August 2010. Do you remember
23 talking about that?

24 A Right. Yes.

25 MS. FAREL: Same objection.

1 BY MS. O'NEILL:

2 Q And we talked about -- you stated that
3 that comported with your recollection of the state
4 of progress at that point in time; is that correct?

5 A Right. I don't recall that there were any
6 letters that went out between the thing that was on
7 that spreadsheet, July 2009, I believe, and August
8 of 2010. I'm not aware that any letters went out if
9 that's what you're asking.

10 Q Do you know how many letters have been
11 sent out as of this point in time, as of June 30,
12 2011?

13 A It's not going to be much more than this.
14 There may have been few others sent. I think
15 there's been a few other letters sent, but I don't
16 know how many, but it's a few. It's not a lot.

17 Q We've talked about some of the challenges
18 of identifying addresses in order to actually send
19 letters, but I need to ask you about the state of
20 progress. Do you think that the progress in sending
21 letters is sufficient for the CBRNE program?

22 A I think the progress is what it is based
23 on the information that we've been able to get. I
24 mean, sufficient would be that we could notify
25 16,647 if that's how many actual people that were

1 tested, but we don't have the data to do that.

2 MS. O'NEILL: I want to introduce an
3 exhibit that has previously been introduced. If we
4 can go off the record for a moment, so we can
5 identify the number of the previously introduced
6 exhibit.

7 (Discussion off the record.)

8 BY MS. O'NEILL:

9 Q I'm going to hand you a document that's
10 been marked Exhibit 270 for the record. I'll state
11 the title, which is "CHEMICAL AND BIOLOGICAL
12 DEFENSE," "DOD and VA Need to Improve Efforts to
13 Identify and Notify Individuals Potentially Exposed
14 during Chemical and Biological Tests."

15 Mr. Black, have you ever seen this
16 document?

17 A I don't recall reading this report.

18 Q Have you heard about the Government
19 Accountability Office's 2008 report regarding
20 efforts to identify and notify individuals
21 potentially exposed during chemical and biological
22 tests?

23 A I'm not sure what you're asking me. This
24 February 2008 report?

25 Q Have you ever heard discussion of this

1 report?

2 A I don't recall reading this report.

3 Q Have you ever heard anybody else at the VA
4 discuss the report?

5 MS. FAREL: Objection; vague.

6 THE WITNESS: I have not discussed this
7 report with people, to my knowledge.

8 BY MS. O'NEILL:

9 Q Mr. Black, how long have you been involved
10 in the efforts to notify CBRNE veterans? When did
11 your involvement commence?

12 MS. FAREL: Are you asking him in his
13 individual capacity? Is this just background?

14 MS. O'NEILL: No. This is Rule 30(b)(6).

15 THE WITNESS: When you say "you," you mean
16 VA?

17 BY MS. O'NEILL:

18 Q I'm trying to understand your knowledge
19 and ability to speak to this particular topic,
20 notice 8.

21 MS. FAREL: Based on his personal
22 experience or based on VA's designation of him as a
23 30(b)(6) topic?

24 MS. O'NEILL: Based on the VA's
25 designation of him as a 30(b)(6) topic.

1 Can we go off the record.

2 (Discussion off the record.)

3 BY MS. O'NEILL:

4 Q We're going to go back on the record.

5 Mr. Black, as we discussed earlier, you've been
6 designated to speak about topic 8, about the VA's
7 notification efforts. My question to you is, when
8 did you begin to be involved in efforts to notify
9 CBRNE veterans?

10 MS. FAREL: And I'll object to that as
11 being outside the scope of the 30(b)(6) notice.

12 But you can answer the question.

13 THE WITNESS: You're talking about me
14 personally, when did I --

15 BY MS. O'NEILL:

16 Q Yes.

17 A I don't know the exact date, but it was
18 around August, September, I think, of 2009 when this
19 came into my jurisdiction.

20 Q Was there a person who had the same
21 responsibilities prior to when this program came
22 under your jurisdiction?

23 MS. FAREL: Same objection.

24 THE WITNESS: When -- before it came to my
25 jurisdiction, it was with our outreach staff, which

1 does not exist anymore. That was changed to a
2 different service. I think they have a benefits
3 assistant service now. It's not part of the
4 compensation service.

5 BY MS. O'NEILL:

6 Q Do you know who some of the people who
7 were responsible for the notification effort at that
8 point in time?

9 MS. FAREL: Same objection.

10 THE WITNESS: The assistant director for
11 the outreach staff was Christine Alfrod, and I'm not
12 really sure how to spell her name, but I can try,
13 A-l-f-r-o-d, I think, but I'm not certain of the
14 spelling. She was the assistant director for the
15 outreach staff. The individual that came to my
16 staff was Tan Johnson, and I believe it's Tan Brown
17 now. She no longer works in CO. She works at the
18 Winston-Salem regional office in North Carolina.

19 BY MS. O'NEILL:

20 Q We're looking at Exhibit Number 270. If I
21 can ask you to turn to page 23 and if you can take a
22 few moments to review pages 23 to 26, and in
23 particular, I'm going to draw your attention to the
24 last paragraph of 26.

25 MS. FAREL: Starting with the heading "DOD

1 and VA have had limited success in notifying
2 potentially exposed individuals"?

3 MS. O'NEILL: That's correct.

4 BY MS. O'NEILL:

5 Q If you could start looking on page 23 with
6 the section titled "DOD and VA have had limited
7 success in identifying potentially exposed
8 individuals."

9 Can I draw your attention to page 26 --
10 actually, if you can look at page 24, in the section
11 that starts in the middle of the paragraph. It
12 states "VA has not used certain available resources
13 to obtain contact information for and to notify
14 veterans who are identified as having been
15 potentially exposed to chemical or biological
16 substances."

17 As of 2008 when this report was published,
18 do you think this was an accurate statement?

19 MS. FAREL: Objection; vague.

20 THE WITNESS: It looks accurate to me.

21 BY MS. O'NEILL:

22 Q If I can turn your attention to page 26,
23 the middle paragraph on this page, which begins
24 "However, VA is not using other available resources
25 to obtain contact information to notify veterans,"

1 this paragraph, the GAO concludes that the VA had
2 not coordinated with the Social Security
3 Administration to obtain contact information for
4 veterans.

5 As of 2008, do you think this was an
6 accurate statement?

7 A It looks accurate to me.

8 Q Then it goes on to say that the VA had not
9 used the Social Security Administration's death
10 index to identify deceased veterans. Is that true
11 as of 2008 when the report was published?

12 A I believe that's accurate.

13 Q It also says that the VA had not regularly
14 used the Internal Revenue Service's information to
15 identify contact information for relevant veterans.
16 As of 2008 when this report was published, was that
17 a true statement?

18 A I believe that's accurate.

19 Q I'll draw your attention to page 41 of the
20 same document. This page contains an image of a
21 letter signed by the Secretary of the Veterans
22 Affairs. Have you seen this letter before?

23 A When you say have you seen this, are you
24 talking about me or the Agency?

25 Q You personally.

1 A No, I have not.

2 MS. FAREL: Counsel, a point of
3 clarification. It looks like this is a cover letter
4 for what's on page 42, the comments.

5 MS. O'NEILL: That's correct.

6 MS. FAREL: Do you want him to review both
7 sides?

8 MS. O'NEILL: Sure.

9 BY MS. O'NEILL:

10 Q You can review both sides if you'd like. I
11 want to draw your attention to the second sentence
12 of the first paragraph of the core letter which says
13 VA agrees with GAO's conclusions and concurs in part
14 with GAO's recommendations that are addressed to VA.
15 Has there ever been any discussion, to your
16 recollection, about the conclusions of this -- and
17 recommendations of this report within the VA?

18 MS. FAREL: Objection; vague.

19 THE WITNESS: I'm sure there were probably
20 conversations in VA about this, but I'm not aware of
21 those conversations.

22 BY MS. O'NEILL:

23 Q Do you know if the VA had changed its
24 approach to identifying and obtaining contact
25 information for CBRNE veterans since this report was

1 issued in February 2008?

2 A Yes. Going to the National Cemetery
3 Service and contacting the IRS with our information.
4 Contacting the IRS with our information is something
5 that we continue to do with regards to trying to be
6 in compliance with this. We -- since I started,
7 actually, on this, I've asked my people to make sure
8 we use IRS any time we can't find an address to make
9 sure those go to the IRS before we stop if we have
10 enough information to contact them.

11 Q We spoke earlier about efforts to contact
12 the Social Security Administration, but to revisit
13 that topic, when does the VA contact the Social
14 Security Administration for address information?

15 MS. FAREL: Objection; vague. Arguably
16 outside the scope of the 30(b)(6) notice.

17 THE WITNESS: Sometimes if we get just
18 like a record, and we have one or two records that
19 have enough information for us to use SHARE, we use
20 that SHARE application.

21 BY MS. O'NEILL:

22 Q Does the VA think it would be worthwhile
23 to contact the Social Security Administration more
24 often?

25 MS. FAREL: Objection. Outside the scope

1 of the 30(b)(6) topic.

2 THE WITNESS: I think our position is that
3 we contact the Internal Revenue Service and that is
4 sufficient.

5 BY MS. O'NEILL:

6 Q Is it possible the Social Security
7 Administration has information that the IRS not
8 possess?

9 MS. FAREL: Same objection. Also calling
10 for speculation.

11 THE WITNESS: You mean is it possible?

12 BY MS. O'NEILL:

13 Q Yes.

14 A I think almost anything is possible. To
15 go between two separate federal agencies and have
16 those kind of records -- Social Security and the IRS
17 work very closely together, probably closer than any
18 other agencies I'm aware of, with people's
19 information, so their records are fairly consistent.

20 Q You said the people tasked with the
21 responsibility of located addresses work very hard
22 to locate those addresses. What's the downside to
23 contacting the Social Security Administration?

24 MS. FAREL: Same objection.

25 THE WITNESS: Of the people that we have

1 enough identifiable information to go out and look
2 for addresses, we usually get the address. And when
3 we don't have enough information, going to the
4 Social Security Administration doesn't change the
5 fact we don't have enough information for them to
6 identify the person to find an address.

7 MS. O'NEILL: I'm going to hand you a
8 document which I'll mark as Exhibit 290.

9 (Exhibit 290 identified.)

10 BY MS. O'NEILL:

11 Q Part of the title on this document is
12 blocked by the VA's seal, but at the bottom it reads
13 "Shipboard Hazard and Defense (Project SHAD),
14 Chemical, Biological, Radiological, Nuclear, and
15 Explosives (CBRNE), Mustard Gas, May 11, 2010."

16 Have you ever seen this document,
17 Mr. Black?

18 A I'm not familiar with this, but it looks
19 like a PowerPoint presentation that someone was
20 preparing.

21 Q Since you haven't seen this document
22 before, I'm going to direct your attention to a
23 statement and ask you two questions about the
24 statement. The statement is on page 7, the first
25 bullet point reads "Accountability on behalf of VA

1 MS. O'NEILL: The one that starts with
2 "Other discussions," please.

3 BY MS. O'NEILL:

4 Q This document appears to summarize a
5 meeting with at least one staff member, Dr. Brix, of
6 the Department of Defense. According to this
7 document, at the meeting it was discussed whether
8 the VBA would make efforts to re-identify all
9 database participants and rerelease notification
10 letters, and that's the first sentence of paragraph
11 4. Do you see that?

12 A Yes.

13 Q Are you aware of a discussion -- are you
14 aware of the possibility of VBA making efforts to
15 re-identify all database participants and rerelease
16 notification letters?

17 MS. FAREL: Objection; vague.

18 THE WITNESS: That's the information that
19 I think we discussed earlier about the spreadsheet
20 that I instructed to be created. And I told my
21 people at that time that if we could not identify
22 that we for certain had sent a letter to the people
23 that I wanted them to send a letter that we had
24 addresses for, and I told them I didn't care if we
25 had already sent letters to them or not. If we

1 couldn't identify absolutely that we had sent them a
2 letter, I wanted them to mail a letter to those
3 people.

4 BY MS. O'NEILL:

5 Q And that was what was accomplished?

6 MS. FAREL: Objection; vague.

7 THE WITNESS: Yes.

8 BY MS. O'NEILL:

9 Q Here it says Glen Wallick was against that
10 idea, but --

11 A I don't think that's a proper
12 characterization of what Glen Wallick was against.
13 You said "against that idea." He was against
14 sending letters to people that had already received
15 them. We didn't send letters if we knew people had
16 already received them. I don't know what we would
17 gain by doing that.

18 It would be like you coming to me and
19 telling me something today that you had already sent
20 me a letter for two weeks ago. What benefit would
21 that be to me? I don't understand that. And I
22 think that was Mr. Wallick's point.

23 Q In the second paragraph, as the summary
24 discusses a pro and a con of --

25 MS. FAREL: Sorry, just for clarification,

1 the second sentence of the fourth paragraph.

2 BY MS. O'NEILL:

3 Q Sorry. The second sentence of the fourth
4 paragraph discusses a pro and a con for attempting
5 to re-identify database participants and rereleasing
6 notification letters, and it states that the "con
7 would be that it may give the appearance that the
8 VBA did not make every effort to identify the
9 participants the first time around."

10 Do you think this would be a proper basis
11 for deciding not to send notification letters?

12 A They expressed that to me, and I told them
13 I don't care what it looks like. If we didn't send
14 a letter, I want to send the letter. I don't do
15 business for veterans based on what other people may
16 think about us or say about us because you can go
17 all across the board with that. We do it based on
18 what's the best thing to do for the veterans and the
19 taxpayers. We have a responsibility to both.

20 Q Has there ever been any other time when
21 the VA has made decisions based on what it looks
22 like to others with respect to the notification
23 effort?

24 MS. FAREL: Object to the extent you're
25 mischaracterizing the witness's prior testimony.

1 THE WITNESS: I'm not aware that our
2 agency ever makes decisions based on what other
3 people think about what we're doing. We have laws
4 that we administer, and we administer them to the
5 best ability of the organization, and we have
6 policies that are set by our leadership that are out
7 there and that policy is just like our mission.

8 Our mission says that we're to care for
9 him who shall have borne the battle and for his
10 widow and for his orphan. Our organization exists
11 to tell veterans that America is grateful to them
12 for what they've done for our country, and I think
13 we do a really good job of that.

14 I'm not going to tell you there's not been
15 instances where a veteran has not received the
16 benefits that they were entitled to, but those are
17 not near as broad as some people would paint a
18 brush. Our organization was created for veterans.
19 We exist for veterans, and we make our decisions
20 based on what we can do for veterans and within
21 those laws that we're given to administer.

22 BY MS. O'NEILL:

23 Q What are the current goals for the CBRNE
24 notification effort?

25 MS. FAREL: Objection; vague.

1 THE WITNESS: Our goal is to notify
2 everybody that we can identify an address for.
3 That's what our goal is.

4 BY MS. O'NEILL:

5 Q Do you expect to release a new round of
6 letters soon?

7 MS. FAREL: Objection; vague.

8 THE WITNESS: When we can get enough
9 information to identify more addresses, we will
10 release another round of letters. Most of those
11 will probably be small. I think we're doing like
12 onesies and twosies right now.

13 MS. O'NEILL: I'm going to hand you a
14 document that I'm going to mark as Exhibit 293.
15 This document is entitled "Requirement for a second
16 Chem-Bio Letter."

17 (Exhibit 293 identified.)

18 BY MS. O'NEILL:

19 Q Do you recognize this document?

20 A I have not seen this before.

21 Q Are you aware of any discussions about the
22 potential for a second chem-bio letter?

23 MS. FAREL: Objection; vague.

24 THE WITNESS: I'm not aware of that, but
25 it would make sense to me that if we had a letter

1 that was sent to veterans to talk about Edgewood and
2 now we're trying to make notification to veterans
3 from other places at other times and they weren't
4 actually at Edgewood, but it was the same material,
5 that we would want to change the letter so that it
6 was pertinent to what those people were exposed to.

7 BY MS. O'NEILL:

8 Q The bottom of the document, I see the name
9 "Abbot." Does that tell you anything about who
10 drafted this document?

11 A Dave Abbot used to work on this project.
12 He never worked for me.

13 Q Are you aware of the existence of a second
14 notification letter for locations other than the
15 Edgewood Arsenal?

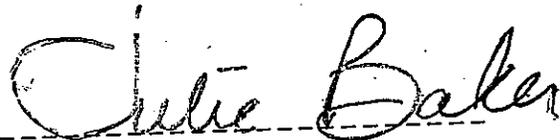
16 A I'm only aware of the letter that we do
17 right now. It's a letter that goes out to people
18 for this project.

19 Q Let me ask you to look at a document. I'm
20 going to hand you a document that was previously
21 marked as Exhibit 264. This is a notification
22 letter that is date stamped June 30, 2006. Is this
23 the letter that you just mentioned, the only letter
24 that you're aware of regarding notification efforts?

25 A This looks like a letter that I've read.

CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, JULIE BAKER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



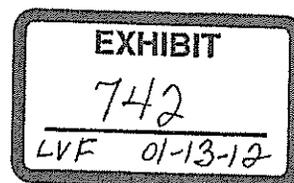
Handwritten signature of Julie Baker in cursive script, positioned above a dashed horizontal line.

Notary Public in and for the
District of Columbia

My Commission Expires OCTOBER 14, 2012

Exhibit 19

Veterans Health Administration
Legislative Proposals
For the 110TH Congress, First Session



EXPIRING AUTHORITY (EA)

EA-1.	Homeless Programs – Permanent Authority	Pg. 4
EA-2.	Homeless Programs – Special Needs	Pg. 7
EA-3.	Joint Incentive Fund (JIF)	Pg. 10
EA-4.	Special Treatment Authority	Pg. 12
EA-5.	Co-Payments for Hospital Care	Pg. 15
EA-6.	Third Party Health Insurance Plans	Pg. 17
EA-7.	Special Treatment Authority Herbicide-Exposure	Pg. 19

RESUBMISSION (RS)

RS-1.	Hybrid Positions in VHA	Pg. 22
RS-2.	Special Pay Initiatives for Pharmacists	Pg. 26
RS-3.	Special Pay for VHA Optometrists and Podiatrists	Pg. 35
RS-4.	Social Security Number and Private Health Insurance	Pg. 45
RS-6.	Leasing Authority	Pg. 47
RS-8.	Provide Care to Newborns	Pg. 49
RS-10.	Primary Payer Status – Children of Vietnam Veterans	Pg. 56
RS-13.	Priority 1 Medal of Honor Recipients	Pg. 57
NP-3.	Third to First Party Offset Elimination	Pg. 61

NEW PROPOSALS (NP)

NP-1.	Authority to Release Patient Information to Providers	Pg. 65
NP-4.	Updating HIV Testing Policy	Pg. 69
NP-5.	Emergent Care Coverage	Pg. 74
NP-6.	Co-pay Exemption for Hospice Care	Pg. 78
NP-9.	Homeless Programs – Technical Assistance Grants	Pg. 81
NP-12.	Annual Gulf War Research Report	Pg. 83

EXPIRING AUTHORITY (EA)

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EA-6.	Third Party Health Insurance Plans	Pg. 17
EA-7.	Special Treatment Authority Herbicide-Exposure	Pg. 19

Number: Expiring Authority (EA -1)

**VA's Homeless Providers Grant and Per Diem (GPD) Program -
Permanent Authority**

Proposal: This proposal would amend title 38 U.S.C. Subchapter II - Comprehensive Service Programs, Sections (2011) Grants and (2012) Per Diem Payments, previously authorized in the Homeless Veterans Assistance Act of 2001, P.L. 107-95 which authorizes VA's Homeless Providers Grant and Per Diem Program. As set forth in this Act, the Homeless Providers Grant and Per Diem Program is authorized until September 30, 2006, and the authorized spending level is limited to \$99 million. The purpose of this proposal is to request permanent authority for the Homeless Providers Grant and Per Diem Program.

Justification: The mission of VA's Homeless Providers Grant and Per Diem Program is to assist eligible entities in establishing new community-based programs to furnish outreach, supportive services, and transitional housing for homeless veterans.

This national program is a collaborative effort between VA and non-profit organizations or local and state government agencies. Through a competitive award process the program provides partial capital and operating funds to create and support community-based facilities in their efforts to meet the needs of homeless veterans. The intent of the Grant and Per Diem Program is to inspire collaborative partnerships that create new and innovative community-based services for veterans who are homeless. The Grant and Per Diem Program is designed to respect the community providers' expertise in delivering homeless services. It also recognizes the importance of local planning and awards funding so that programs can address gaps in local communities' continuums of care.

Since GPD was authorized in 1992, VA has obligated more than \$300 million to the program. These funds have helped develop close to 10,000 transitional housing beds and 23 independent service centers and to purchase approximately 180 vans to provide transportation for outreach and connections with services.

Currently the Grant and Per Diem Program is providing funding to operational organizations that care for homeless veterans in most states and the District of Columbia. The mission of the service providers varies widely, ranging from residential treatment to transitional housing.

Affected Strategic Objectives: The Grant and Per Diem Program gives VA authority to collaborate with community providers to provide care to assist homeless veterans. This proposal supports the first objective under VHA's Strategic Direction: "Maximize the independent function of veterans in the least restrictive setting."

- The availability of supportive housing for homeless veterans gives VA medical centers the opportunity to provide outpatient treatment coupled with supportive residential services which minimizes the need for more costly inpatient treatment.
- A primary service component necessary for community providers funded under the Grant and Per Diem Program is "targeting" veterans that would not usually have access to VA care. These outreach endeavors increase new-user access.

In FY 2005 alone, these programs served over 15,000 veterans. On average, 81 percent of the veterans discharged were either housed at discharge or went on to continued treatment in another residential setting. Over 70 percent of the veterans discharged in FY 2005 were either employed or receiving VA or other disability payments. More than 55 percent of these formerly homeless veterans received mental health follow-up visits (including follow-up by homeless program staff) within 30 days after they left the program.

Cost projections from the Grant and Per Diem Program suggest that spending will increase to approximately \$99 million by FY 2009. This is a cost neutral proposal in view of the fact that \$99 million is our current level of appropriated funding.

VA projects spending increases for the program based on both an increased number of grant-funded beds that will phase in and become operational over the next several years and will be eligible for per diem payments and annual inflation increases associated with per diem payments. An 80% bed occupancy rate is used to project costs for the program. Cost projections for the Grant and Per Diem Program from FY 2007 through FY 2011 are identified in the chart below.

HCHV Grant and Per Diem Program: Forecasted Funding for FY 07-09

Fiscal Year	Operational Beds by End of FY	Bed Occupancy Rate	Projected Per Diem Rate	Total Funding	Notes
2007	9485	80%	\$28.17	\$65,350,000	Total funding includes \$10 million Capital Grant round, Per Diem Only round, and continuation of Special Need funding to VAMC's
2008	10885	80%	\$30.09	\$93,930,000	Total funding includes a Per Diem Only round and continuation of Special Need funding to VAMC's
2009	11485	80%	\$32.13	\$99,000,000	
2010	11485	80%	\$32.13	\$99,000,000	
2011	11485	80%	\$32.13	\$99,000,000	

Cost Benefit Analysis: Funding for this program is from existing appropriations. The availability of community based beds partially funded through VA's Homeless Grant and Per Diem Program gives VA medical centers the ability to appropriately discharge homeless veterans from expensive acute inpatient care to less costly residential programs managed by state or local governments or non-profit organizations. These programs also provide a safe and adequate housing alternative for those patients that are currently enrolled in outpatient programs at VA medical centers. Savings are realized through reduced medical center inpatient costs, providing secure housing settings for those enrolled in outpatient programs, and increased new-user access.

Through the Grant and Per Diem Program, a supportive housing bed can be created for approximately \$15,000. Once activated, funds are made available to community agencies in the form of per diem payments to offset operational expenses for these beds at the rate of approximate \$10,000 per bed, per year. These figures include all administrative, personnel, equipment, and travel costs for these community-based programs.

Contact: Paul Smits, Associate Chief Consultant, Homeless and Residential Rehabilitation and Treatment Services, VHA Office of Mental Health (116E). 202-273-8446

Number: Expiring Authority (EA-2)

VA's Homeless Providers Grant and Per Diem (GPD) Program - Authority to offer capital grants and per diem to programs that create new transitional housing and services for homeless veterans with special needs and remove the requirement to provide grants to VA health care facilities.

Proposal: This proposal would amend title 38 U.S.C. Subchapter VII, Section 2061 Grant program for homeless veterans with special needs authorized in the Homeless Veterans Assistance Act of 2001, P.L.107-95, which authorizes VA's Homeless Providers Grant and Per Diem (GPD) Program (authorization for permanent program authority is requested under a separate legislative proposal). The purpose of this proposal is to obtain statutory authority to offer both capital grants and enhanced per diem payments to eligible community-based entities who serve special needs veterans including female homeless veterans, homeless veterans diagnosed with a chronic mental illness, and those veterans who are frail and/or terminally ill. Capital grant procedures would be similar to grants awarded under the previous GPD Program authority for non-special needs populations. Per diem payments would be calculated and administered similar to per diem under GPD Program authority, however, payment amounts would be enhanced to compensate for the needs of these special populations.

Justification: The mission of the GPD Program is to assist eligible entities in establishing new community-based programs to furnish outreach, supportive services, and transitional housing for homeless veterans. Section 2061, authority to award special need grants, expired September 30, 2005. The statute allowed VA to offer special need grants to VA health care facilities as well as to grant and per diem awarded entities in order to encourage development of community-based services for identified subpopulations of homeless veterans.

The previously awarded and obligated community-based grant funding under special needs will end December 31, 2007. Many community-based providers will seek to continue this funding. VA believes that continued funding of the community-based special needs providers is essential as this funding offers assistance for the additional operational costs that would not otherwise be incurred but for the fact that the recipient is providing beds or services in supportive housing and at service centers for the women, frail elderly, terminally ill or chronically mentally ill homeless veterans.

Previous authority gave VA the ability to offer funding to VA health care facilities that work in partnership with community-based organizations operating special needs programs. Rather than continue to fund both VA health care facilities and community-based organizations, VA believes that community-based providers have the administrative structure and capacity to develop and operate these programs on their own. In addition, for FY 2005 and FY 2006, VA has hired 92 dedicated field staff at health care facilities to assist community-based GPD grant awardees. This additional staff would provide the program oversight and facilitate the provision of VA health care

services to those eligible special need veterans, eliminating the need for additional grants to the individual VA medical centers.

Affected Strategic Objectives: The Grant and Per Diem Program gives VA authority to collaborate with community providers to provide care to assist homeless veterans. This proposal supports the first objective under VHA's Strategic Direction: "Maximize the independent function of veterans in the least restrictive setting."

- The availability of supportive housing for homeless veterans gives VA medical centers the opportunity to provide outpatient treatment coupled with supportive residential services which minimizes the need for more costly inpatient treatment.
- A primary service component necessary for community providers funded under the Grant and Per Diem Program is "targeting" veterans that would not usually have access to VA care. These outreach endeavors increase new-user access.

Cost Benefit Analysis: Funding for this program would come from existing appropriations. The availability of community-based beds partially funded through the GPD Program gives VA medical centers the ability to appropriately discharge homeless veterans from expensive acute inpatient care to less costly community-based residential settings. These programs also provide a safe and adequate housing alternative for those patients that are currently enrolled in outpatient programs at VA medical centers. Savings are realized through reduced medical center inpatient costs, providing secure housing settings for those enrolled in outpatient programs, and increased new-user access.

By awarding capital grants for special needs, community-based entities could create new projects and beds specifically for these special need populations, opening existing beds to other homeless veterans populations. The calculation of per diem for special need programs should be changed to pay at 100% of the cost of care, minus any other sources of income, not to exceed double the state home rate for domiciliary care.

Fiscal Year	Operational Beds by End of FY	Bed Occupancy Rate	Projected Per Diem Rate	Total Funding (million)	Notes
2008	0	90%	\$66.86	\$1.0	Offer a \$10 million capital grant/ PDO round to create 500 new Special Need beds
2009	250	90%	\$71.40	\$5.9	
2010	400	90%	\$76.26	\$15.0	Offer a \$5 million capital grant/ PDO round to create 250 new Special Need beds
2011	650	90%	\$81.44	\$17.4	
2012	750	90%	\$86.98	\$26.2	Offer a \$5 million capital grant/ PDO round to create 250 new Special Need beds
2013	900	90%	\$92.90	\$27.5	
2014	1000	90%	\$99.22	\$32.6	
2015	1000	90%	\$105.96	\$34.8	
2016	1000	90%	\$113.16	\$37.2	
2017	1000	90%	TBD	TBD	

Methodology: Per diem rate was calculated as twice projected VA State Home rate to ensure services needs for these populations could be funded. FY 2008 funding would include a capital grant to create projects. Once projects are funded in the initial year, a second and third capital grant would be offered in 2010 and 2012. Bed numbers would sequentially increase for the 10-year period.

Contact: Paul Smits, Associate Chief Consultant, Homeless and Residential Rehabilitation and Treatment Services, VHA Office of Mental Health (116E). 202-273-8446.

Number: Expiring Authority (EA-3)

Extension of the Joint Incentive Fund (JIF) Authority

Justification: VA supports an extension of current legislative authority due to expire at the end of FY 2007.

In the National Defense Authorization Act for FY 2003, Section 721, Congress included a provision that DoD and VA implement the DoD/VA Health Care Sharing Incentive Fund, known as the Joint Incentive Fund (JIF). The purpose of the provision was to carry out a program to identify and provide incentives to implement, fund and evaluate creative coordination and sharing initiatives at the facility, intra-regional, and nationwide level.

The JIF is scheduled to sunset on September 30, 2007. Unless the program is extended by Congress, VA and DoD will stop developing and selecting these collaborative projects in the very near future. The Veterans Health Administration was recently informed that without obtaining an extension of this program, we will not be able to make obligations beyond September 2007. The program has fulfilled the desired result of increasing sharing between VA and DoD. VA fully supports the intent and success of the JIF program.

Because little excess capacity exists in either department, seed money such as that provided by the JIF program is needed for new collaborative ventures. It also provides incentive for the two departments to explore areas where a joint funding initiative would be worth undertaking.

If JIF legislation is extended, VA intends to pursue a more aggressive system-wide approach to JIF projects. To that end we will develop JIF projects that support integrated, top-level VA and DoD management goals and the goals of the Joint Executive Council such as those contained in the Joint Strategic Plan (JSP). An example of this would be projects that support future integrated federal medical care models or the JSP objective to establish a common electronic catalog for all items under contract by both Departments.

Affected Strategic Objectives: This legislative proposal will assure the continued development and implementation of joint projects that will benefit the delivery of care to beneficiaries of both Departments.

Cost Benefit Analysis: A comprehensive financial assessment of currently funded JIF projects at this time would be difficult. However, the potential impact is very promising and the proposals have been innovative and in pursuit of enhanced service to VA and DoD beneficiaries. Initial indications are that improved access, cost avoidance and increased utilization of joint capacity will be common outcomes with these projects.

Fiscal Year	Caseload or Workload (as appropriate)	Costs (in thousands or millions, as appropriate)
2008	Average of 14 joint projects	VA & DoD \$15 million each
2009	Average of 14 joint projects	VA & DoD \$15 million each
2010	Average of 14 joint projects	VA & DoD \$15 million each
2011	Average of 14 joint projects	VA & DoD \$15 million each
2012	Average of 14 joint projects	VA & DoD \$15 million each
5-Year Total	Average of 70 joint projects	VA & DoD \$75 million each
2013	Average of 14 joint projects	VA & DoD \$15 million each
2014	Average of 14 joint projects	VA & DoD \$15 million each
2015	Average of 14 joint projects	VA & DoD \$15 million each
2016	Average of 14 joint projects	VA & DoD \$15 million each
2017	Average of 14 joint projects	VA & DoD \$15 million each
10-Year Total	Average of 140 joint projects	VA & DoD \$150 million each

Methodology: Each project is required to submit a Business Case Analysis (BCA), which includes a Return on Investment (ROI) estimate. Given the nature and importance of our collaborative healthcare mission, the ROI is only one factor used to evaluate the benefit of joint projects. Most of the initial JIF projects have only just gotten under way and have not been able to validate the ROI estimate made at project submission. However, the results to date are very encouraging. In addition to BCAs, each project must certify that they will be financially self-sustaining beyond the initial funding, which can be up to two years.

Contact: Karen Ott, Acting VA/DoD Liaison Officer, VA/DoD Office (10B4), 202-273-6840, or John Bradley, Program Analyst, 202-273-8228.

Number: Expiring Authority (EA-4)

To Make Permanent the Special Treatment Authority for the Care of Certain Veterans who participated in Tests Conducted by DOD

Proposal: The provision would amend section 1710(e)(3) (D) by striking the sunset dates that apply to VA's authority to provide hospital care, medical services, and nursing home care to veterans participating in tests to include Project Shipboard Hazard and Defense (SHAD), and extend authority to cover under section 1710 (e) (1) (E) to other veterans who have been notified by VA, based upon data provided by DoD, of their involvement as experimental subjects while they were on active military duty in tests conducted by DoD using chemical, biological and radiological warfare agents, from 1950 to 1975, for any conditions that may be associated with such tests. For SHAD veterans, this authority expired after December 31, 2005. The provision would continue this treatment program for SHAD veterans and include other veterans determined to have been involved in similar experiments, as well as effectively ratify VA's continuance of those programs after December 31, 2005.

Justification: Congress granted special eligibility for the provision of VA care to qualifying veterans who participated in a test conducted by the Department of Defense Deseret Test Center as part of a program for chemical and biological warfare testing from 1962 through 1973 (including the program designated as SHAD) and related land-based tests. These veterans were eligible for hospital care, medical services, and nursing home care for any disability, notwithstanding that there was insufficient medical evidence to conclude that such disability may have been associated with such testing. Under this special treatment authority, qualifying veterans are enrolled into Priority Group 6 if not otherwise qualified for a higher enrollment priority assignment. They are exempt from medical care, medication, and long-term care co-payments for treatment of conditions determined possibly related to their participation in these tests.

The legislative authority for this program expired on December 31, 2005. VA believes it is important to continue this special authority for these deserving veterans, who may have disorders possibly associated with their participation in these tests.

VA has received additional information from DoD about other veterans who while on active military duty were involved in the testing of chemical, biological and radiological weapons by DoD, from about 1950 to 1975. Once updated information from DoD is received allowing notification to these newly identified veterans, VA should also have the extended health care authority to offer these veterans who would not have eligibility as SHAD veterans. Estimates provided by the office of Environment Agents Services include approximately 6,720 veterans from Edgewood/Aberdeen in which human experimentation is known to taken place and up to 70,000 service members potentially exposed to some experimentation since WWII.

Affected Strategic Objectives:

VA Strategic Goal #1: Restore the capability of veterans with disabilities to the greatest extent possible and improving the quality of their lives and that of their families. #3: Honor and serve veterans in life and memorialize them in death for their sacrifices on behalf of the Nation.

VA Enabling Goal: Deliver world-class services to veterans and their families by applying sound business practices that result in effective management of people, communications, technology and governance.

VHA Goals: #1: Maximize the physical, mental and social functioning of veterans with disabilities and be recognized as a leader in the provision of specialized health care services. #3: Provide high quality, reliable, accessible, timely and efficient health care that maximizes the health and functional status for all enrolled veterans with special focus on veterans with service-connected conditions, those unable to defray the cost and those statutorily eligible for care.

Cost Benefit Analysis:

Fiscal Year	Average PG 6 User Cost	Increase in Workload	Costs
2008	2,646	1,053	\$2,786,238
2009	2,752	1,620	\$4,458,240
2010	2,862	2,187	\$6,259,194
2011	2,977	2,754	\$8,198,658
2012	3,099	3,321	\$10,291,779
5-Year Total			\$31,994,109
2013	3,226	3,888	\$12,542,688
2014	3,358	4,455	\$14,959,890
2015	3,496	5,022	\$17,556,912
2016	3,639	5,589	\$20,338,371
2017	3,788	6,156	\$23,318,928
10-Year Total			\$120,710,898

Methodology: This costing is based on the estimated new "SHAD" users times the average Priority 6 user cost in the out years. In addition, estimated workload has been identified by the office of Environment Agents Services as consisting of approximately 6,720 veterans from Edgewood/Aberdeen in which human experimentation is known to taken place (for costing purposes, a 9 percent enrollment rate is projected based on VA's SHAD experience). Finally, estimates are provided for an additional 70,000 service members potentially exposed to some experimentation since WWII. Again, the same utilization rate is used and applied to enrollment out years beginning FY 2009 (to allow development of identification and notification requirements). An inflation factor of

4 percent was added in the out years 2008 through 2011 and 4.1 percent in out years 2012 through 2017 to the average PG 6 user cost.

Point of Contact: Mark Brown, MD, Director, Environmental Agents Service, 202-273-8579 or Tony Guagliardo, Director, Business Policy, Chief Business Office, 202-254-0406.

Exhibit 20

Number:

TO MAKE PERMANENT THE SPECIAL TREATMENT AUTHORITY FOR THE CARE OF CERTAIN VETERANS WHO PARTICIPATED IN TESTS CONDUCTED BY DOD.

Proposal: The provision would amend section 1710(e)(3) (D) by striking the sunset dates that apply to VA's authority to provide hospital care, medical services, and nursing home care to veterans participating in tests to include Project Shipboard Hazard and Defense (SHAD), and extend authority to cover under section 1710 (e) (1) (E) to other veterans who have been notified by VA, based upon data provided by DoD, of their involvement as experimental subjects while they were on active military duty in tests conducted by DoD using chemical, biological and radiological warfare agents, from 1950 to 1975, for any conditions that may be associated with such tests. For SHAD veterans, this authority expired after December 31, 2005. The provision would continue this treatment program for SHAD veterans and include other veterans determined to have been involved in similar experiments, as well as effectively ratify VA's continuance of those programs after December 31, 2005.

Justification: Congress granted special eligibility for the provision of VA care to qualifying veterans who participated in a test conducted by the Department of Defense Deseret Test Center as part of a program for chemical and biological warfare testing from 1962 through 1973 (including the program designated as SHAD) and related land-based tests. These veterans were eligible for hospital care, medical services, and nursing home care for any disability, notwithstanding that there was insufficient medical evidence to conclude that such disability may have been associated with such testing. Under this special treatment authority, qualifying veterans are enrolled into Priority Group 6 if not otherwise qualified for a higher enrollment priority assignment. They are exempt from medical care, medication, and long-term care co-payments for treatment of conditions determined possibly related to their participation in these tests.

The legislative authority for this program expired on December 31, 2005. VA believes it is important to continue this special authority for these deserving veterans, who may have disorders possibly associated with their participation in these tests.

VA has received additional information from DoD about other veterans who while on active military duty were involved in the testing of chemical, biological and radiological weapons by DoD, from about 1950 to 1975. Once updated information from DoD is received allowing notification to these newly identified veterans, VA should also have the extended health care authority to offer these veterans who would not have eligibility as SHAD veterans. Estimates provided by the office of Environment Agents Services include approximately 6,720 veterans from the Edgewood Arsenal/Aberdeen Proving Grounds in which

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human experimentation is known to taken place and up to 70,000 service members potentially exposed to some experimentation since WWII.

Affected Strategic Objectives:

VA Strategic Goal #1: Restore the capability of veterans with disabilities to the greatest extent possible and improving the quality of their lives and that of their families. #3: Honor and serve veterans in life and memorialize them in death for their sacrifices on behalf of the Nation.

VA Enabling Goal: Deliver world-class services to veterans and their families by applying sound business practices that result in effective management of people, communications, technology and governance.

VHA Goals: #1: Maximize the physical, mental and social functioning of veterans with disabilities and be recognized as a leader in the provision of specialized health care services. #3: Provide high quality, reliable, accessible, timely and efficient health care that maximizes the health and functional status for all enrolled veterans with special focus on veterans with service-connected conditions, those unable to defray the cost and those statutorily eligible for care and those statutorily eligible for care.

Cost Benefit Analysis:

Fiscal Year	Average PG 6 User Cost	Increase in Workload	Costs
2008	2,646	1,053	\$ 2,786,238
2009	2,752	1,620	\$ 4,458,240
2010	2,862	2,187	\$ 6,259,194
2011	2,977	2,754	\$ 8,198,658
2012	3,099	3,321	\$ 10,291,779
5-Year Total			\$ 31,994,109
2013	3,226	3,888	\$ 12,542,688
2014	3,358	4,455	\$ 14,959,890
2015	3,496	5,022	\$ 17,556,912
2016	3,639	5,589	\$ 20,338,371
2017	3,788	6,156	\$ 23,318,928
10-Year Total			\$ 120,710,898

Methodology:

This costing is based on the estimated new "SHAD" users times the average Priority 6 user cost in the out years. In addition, estimated workload has been identified by the office of Environment Agents Services as consisting of approximately 6,720 veterans from the Edgewood Arsenal/Aberdeen Proving

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Grounds in which human experimentation is known to taken place (for costing purposes, a 9 percent enrollment rate is projected based on VA's SHAD experience). Finally, estimates are provided for an additional 70,000 service members potentially exposed to some experimentation since WWII. Again, the same utilization rate is used and applied to enrollment out years beginning FY 2009 (to allow development of identification and notification requirements). An inflation factor of 4 percent was added in the out years 2008 through 2011 and 4.1 percent in out years 2012 through 2017 to the average PG 6 user cost.

Point of Contact: Mark Brown, MD, Director, Environmental Agents Service, (202) 273-8579 or Tony Guagliardo, Director, Business Policy, Chief Business Office, (202) 254-0406.

004125

Exhibit 21

Number:

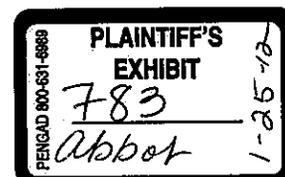
TO MAKE PERMANENT THE SPECIAL TREATMENT AUTHORITY FOR THE CARE OF CERTAIN VETERANS WHO PARTICIPATED IN TESTS CONDUCTED BY DOD.

Proposal: The provision would amend section 1710(e)(3) (D) by striking the sunset dates that apply to VA's authority to provide hospital care, medical services, and nursing home care to veterans participating in tests to include Project Shipboard Hazard and Defense (SHAD), and extend authority to cover under section 1710 (e) (1) (E) to other veterans who have been notified by VA, based upon data provided by DoD, of their involvement as experimental subjects while they were on active military duty in tests conducted by DoD using chemical, biological and radiological warfare agents, from 1950 to 1975, for any conditions that may be associated with such tests. For SHAD veterans, this authority expired after December 31, 2005. The provision would continue this treatment program for SHAD veterans and include other veterans determined to have been involved in similar experiments, as well as effectively ratify VA's continuance of those programs after December 31, 2005.

Justification: Congress granted special eligibility for the provision of VA care to qualifying veterans who participated in a test conducted by the Department of Defense Deseret Test Center as part of a program for chemical and biological warfare testing from 1962 through 1973 (including the program designated as SHAD) and related land-based tests. These veterans were eligible for hospital care, medical services, and nursing home care for any disability, notwithstanding that there was insufficient medical evidence to conclude that such disability may have been associated with such testing. Under this special treatment authority, qualifying veterans are enrolled into Priority Group 6 if not otherwise qualified for a higher enrollment priority assignment. They are exempt from medical care, medication, and long-term care co-payments for treatment of conditions determined possibly related to their participation in these tests.

The legislative authority for this program expired on December 31, 2005. VA believes it is important to continue this special authority for these deserving veterans, who may have disorders possibly associated with their participation in these tests.

VA has received additional information from DoD about other veterans who while on active military duty were involved in the testing of chemical, biological and radiological weapons by DoD, from about 1950 to 1975. Once updated information from DoD is received allowing notification to these newly identified veterans, VA should also have the extended health care authority to offer these veterans who would not have eligibility as SHAD veterans. Estimates provided by the office of Environment Agents Services include approximately 6,720 veterans from Edgewood/Aberdeen in which human experimentation is known to



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taken place and up to 70,000 service members potentially exposed to some experimentation since WWII.

Affected Strategic Objectives:

VA Strategic Goal #1: Restore the capability of veterans with disabilities to the greatest extent possible and improving the quality of their lives and that of their families. #3: Honor and serve veterans in life and memorialize them in death for their sacrifices on behalf of the Nation.

VA Enabling Goal: Deliver world-class services to veterans and their families by applying sound business practices that result in effective management of people, communications, technology and governance.

VHA Goals: #1: Maximize the physical, mental and social functioning of veterans with disabilities and be recognized as a leader in the provision of specialized health care services. #3: Provide high quality, reliable, accessible, timely and efficient health care that maximizes the health and functional status for all enrolled veterans with special focus on veterans with service-connected conditions, those unable to defray the cost and those statutorily eligible for care and those statutorily eligible for care.

Cost Benefit Analysis:

Fiscal Year	Workload	Costs
2008	1053	\$ 2,694,885
2009	1620	\$ 4,249,627
20010	2187	\$ 5,880,421
20011	2754	\$ 7,590,099
2012	3321	\$ 9,381,586
5-Year Total		\$ 29,796,619
2013	3888	\$ 11,257,903
2014	4455	\$ 13,222,173
2015	5022	\$ 15,277,620
2016	5589	\$ 17,427,575
2017	6156	\$ 19,675,480
2018	3888	\$ 11,257,903
10-Year Total		\$ 106,657,369

Methodology:

This costing is based on the estimated new "SHAD" users times the average Priority 6 user cost in the out years. In addition, estimated workload has been identified by the office of Environment Agents Services as consisting of approximately 6,720 veterans from Edgewood/Aberdeen in which human

experimentation is known to taken place (for costing purposes, a 9 percent enrollment rate is projected based on VA's SHAD experience). Finally, estimates are provided for an additional 70,000 service members potentially exposed to some experimentation since WWII. Again, the same utilization rate is used and applied to enrollment out years beginning FY 2009 (to allow development of identification and notification requirements). An inflation factor of .025 percent was added in the out years.

Point of Contact: Mark Brown, MD, Director, Environmental Agents Service, (202) 273-8579 or Tony Guagliardo, Director, Business Policy, Chief Business Office, (202) 254-0406.

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Exhibit 22

Number: VHA-28 RS (16)

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**TO MAKE PERMANENT VA'S SHAD AUTHORITY AND:
TO FURTHER "EXPAND" THIS SPECIAL TREATMENT AUTHORITY FOR
THE CARE OF CERTAIN VETERANS WHO PARTICIPATED IN TESTS
CONDUCTED BY DOD.**

Proposal: The provision would amend section 1710(e)(3) (D) by striking the sunset dates that apply to VA's authority to provide hospital care, medical services, and nursing home care to veterans participating in tests to include Project Shipboard Hazard and Defense (SHAD), and extend authority to cover under section 1710 (e) (1) (E) to other veterans who have been notified by VA, based upon data provided by DoD, of their involvement as experimental subjects while they were on active military duty in tests conducted by DoD using chemical, biological and radiological warfare agents, from 1950 to 1975, for any conditions that may be associated with such tests. For SHAD veterans, this authority expired after December 31, 2005. The provision would continue this treatment program for SHAD veterans and include other veterans determined to have been involved in similar experiments.

Justification: Congress granted special eligibility for the provision of VA care to qualifying veterans who participated in a test conducted by the Department of Defense Deseret Test Center as part of a program for chemical and biological warfare testing from 1962 through 1973 (including the program designated as SHAD) and related land-based tests. These veterans were eligible for hospital care, medical services, and nursing home care for any disability, notwithstanding that there was insufficient medical evidence to conclude that such disability may have been associated with such testing. Under this special treatment authority, qualifying veterans are enrolled into Priority Group 6 if not otherwise qualified for a higher enrollment priority assignment. They are exempt from medical care, medication, and long-term care co-payments for treatment of conditions determined possibly related to their participation in these tests.

The legislative authority for this program will expire on December 31, 2007. VA believes it is important to continue this special authority for these deserving veterans, who may have disorders possibly associated with their participation in these tests.

VA has received additional information from DoD about other veterans who while on active military duty were involved in the testing of chemical, biological and radiological weapons by DoD, from about 1950 to 1975. Once updated information from DoD is received allowing notification to these newly identified veterans, VA should also have the extended health care authority to offer these veterans who would not have eligibility as SHAD veterans. Estimates provided by the office of Environment Agents Services include approximately 6,720 veterans from the Edgewood Arsenal/Aberdeen Proving Grounds in which



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human experimentation is known to taken place and up to 70,000 service members potentially exposed to some experimentation since WWII.

Affected Strategic Objectives:

VA Strategic Goal #1: Restore the capability of veterans with disabilities to the greatest extent possible and improving the quality of their lives and that of their families. #3: Honor and serve veterans in life and memorialize them in death for their sacrifices on behalf of the Nation.

VA Enabling Goal: Deliver world-class services to veterans and their families by applying sound business practices that result in effective management of people, communications, technology and governance.

VHA Goals: #1: Maximize the physical, mental and social functioning of veterans with disabilities and be recognized as a leader in the provision of specialized health care services. #3: Provide high quality, reliable, accessible, timely and efficient health care that maximizes the health and functional status for all enrolled veterans with special focus on veterans with service-connected conditions, those unable to defray the coast and those statutorily eligible for care and those statutorily eligible for care.

Cost Benefit Analysis:

Fiscal Year	Average PG 6 User Cost	Increase in Workload	Costs
2009	2,752	1,620	\$ 4,458,240
2010	2,862	2,187	\$ 6,259,194
2011	2,977	2,754	\$ 8,198,658
2012	3,099	3,321	\$ 10,291,779
2013	3,228	3888	\$ 12,542,688
5-Year Total			\$ 41,750,559
2014	3,358	4,455	\$ 14,959,890
2015	3,496	5,022	\$ 17,556,912
2016	3,639	5,589	\$ 20,338,371
2017	3,788	6,156	\$ 23,318,928
2018	3,943	6723	\$ 26,510,860
10-Year Total			\$ 144,435,520

Methodology:

This costing is based on the estimated new "SHAD" users times the average Priority 6 user cost in the out years. In addition, estimated workload has been

identified by the office of Environment Agents Services as consisting of approximately 6,720 veterans from the Edgewood Arsenal/Aberdeen Proving Grounds in which human experimentation is known to taken place (for costing purposes, a 9 percent enrollment rate is projected based on VA's SHAD experience). Finally, estimates are provided for an additional 70,000 service members potentially exposed to some experimentation since WWII. Again, the same utilization rate is used and applied to enrollment out years beginning FY 2009 (to allow development of identification and notification requirements). An inflation factor of 4 percent was added in the out years 2009 through 2011 and 4.1 percent in out years 2012 through 2018 to the average PG 6 user cost.

Point of Contact: Mark Brown, MD, Director, Environmental Agents Service, (202) 273-8579 or Tony Guagliardo, Director, Business Policy, Chief Business Office, (202) 254-0406.

The SHAD authority is to sunset December 31, 2007. This proposal would extend this authority to cover other veterans who have been notified by VA, based upon data provided by DoD, of their involvement as experimental subjects while they were on active military duty in tests conducted by DoD using chemical, biological and radiological warfare agents, from 1950 to 1975, for any conditions that may be associated with such tests. Estimates provided by the office of Environment Agents Services include approximately 6,720 veterans from the Edgewood Arsenal/Aberdeen Proving Grounds. To date, VHA is without authority to provide care or exams unless these veterans meet current eligibility criteria and are subject to the Enrollment Restriction of January 16, 2003.

Deleted: Additional Information
provided to the Legislative Review
Panel (May 2007):
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Exhibit 23

Number:

Title: Special Treatment Authority for Certain Veterans who Participated in DoD Tests

Date Cleared by 17: 03/07/2008

Note: This proposal was included in the FY 09 OMB Submission

TO "EXPAND" SPECIAL TREATMENT AUTHORITY FOR THE CARE OF CERTAIN VETERANS WHO PARTICIPATED IN TESTS CONDUCTED BY DOD.

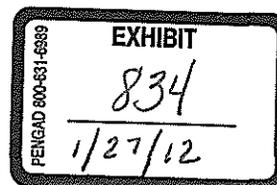
Proposal: The provision would amend section 1710 (e) (1) (E) to provide coverage to veterans who have been notified by VA, based upon data provided by DoD, of their involvement as experimental subjects while they were on active military duty in tests conducted by DoD using chemical, biological and radiological warfare agents, from 1950 to 1975, for any conditions that may be associated with such tests.

Status: New Proposal

Justification: Congress granted special eligibility for the provision of VA care to qualifying veterans who participated in a test conducted by the Department of Defense Deseret Test Center as part of a program for chemical and biological warfare testing from 1962 through 1973 (including the program designated as SHAD) and related land-based tests. These veterans are eligible for hospital care, medical services, and nursing home care for any disability, notwithstanding that there was insufficient medical evidence to conclude that such disability may have been associated with such testing. Under this special treatment authority, qualifying veterans are enrolled into Priority Group 6 if not otherwise qualified for a higher enrollment priority assignment. They are exempt from medical care, medication, and long-term care co-payments for treatment of conditions determined possibly related to their participation in these tests.

VA has received additional information from DoD about other veterans who while on active military duty were involved in the testing of chemical, biological and radiological weapons by DoD, from about 1950 to 1975. Once updated information from DoD is received allowing notification to these newly identified veterans, VA should have the extended health care authority to offer these veterans who would not have eligibility as SHAD veterans. Good health care policy generally requires that when individuals are informed of a potential health risk, a method is provided to quickly and readily obtain expert health evaluation to address concerns created in the individual. VA should therefore be prepared to offer a health care examination to all veterans notified specifically of a potential health problem.

Estimates provided by the office of Environment Agents Services include approximately 6,720 veterans from the Edgewood Arsenal/Aberdeen Proving Grounds in which human experimentation is known to taken place and up to



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70,000 service members potentially exposed to some experimentation since WWII.

Affected Strategic Objectives:

VA Strategic Goal #1: Restore the capability of veterans with disabilities to the greatest extent possible and improving the quality of their lives and that of their families. #3: Honor and serve veterans in life and memorialize them in death for their sacrifices on behalf of the Nation.

VA Enabling Goal: Deliver world-class services to veterans and their families by applying sound business practices that result in effective management of people, communications, technology and governance.

VHA Goals: #1: Maximize the physical, mental and social functioning of veterans with disabilities and be recognized as a leader in the provision of specialized health care services. #3: Provide high quality, reliable, accessible, timely and efficient health care that maximizes the health and functional status for all enrolled veterans with special focus on veterans with service-connected conditions, those unable to defray the cost and those statutorily eligible for care and those statutorily eligible for care.

Cost Benefit Analysis:

Fiscal Year	Average PG 6 User Cost	Estimated Workload	Costs (000's)
2010	\$3,079	6,904	\$21,257
2011	\$3,199	7,534	\$24,101
2012	\$3,324	8,164	\$27,137
2013	\$3,453	8,794	\$30,366
2014	\$3,588	9,424	\$33,813
5-Year Total			\$136,675
2015	\$3,728	10,054	\$37,481
2016	\$3,873	10,684	\$41,379
2017	\$4,025	11,314	\$45,539
2018	\$4,182	11,944	\$49,950
2019	\$4,345	12,574	\$54,634
10-Year Total			\$365,658

02618

Exhibit 24

Volume 1

Pages 1 - 81

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE JACQUELINE SCOTT CORLEY, MAGISTRATE JUDGE

VIETNAM VETERANS OF AMERICA,)
et al.,)
)
Plaintiffs,)

VS.)

NO. C 09-00037 CW (JSC)

CENTRAL INTELLIGENCE AGENCY,)
et al.,)
)
Defendants.)

San Francisco, California
Thursday
December 15, 2011
9:06 a.m.

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiffs: MORRISON & FOERSTER, LLP
425 Market Street
San Francisco, California 94105-2482
BY: GORDON ERSPAMER, ESQ.
BEN PATTERSON, ESQ.
STACEY M. SPRENKEL, ESQ.

For Defendants: UNITED STATES DEPARTMENT OF JUSTICE
Civil Division
20 Massachusetts Avenue, N.W.
Washington, D.C. 20530
BY: JOSHUA E. GARDNER, ESQ.
LILY S. FAREL, ESQ.
KIMBERLY L. HERB, ESQ.

Reported by: BELLE BALL, CSR #8785, RMR, CRR
Official Reporter, U.S. District Court

1 Court characterizing our claims as Ms. Farel continues to
2 characterize them. There's been -- an artificial distinction
3 is being made between various test programs, and I would just
4 represent to the Court that it is relevant to our claim of bias
5 against the VA, as well as our claims against the other
6 defendants.

7 **THE COURT:** So, just spin that out for me.

8 **MS. SPRENKEL:** So our argument is that VA, not just
9 because of its involvement in Edgewood, but because it has
10 conducted recently more than 250 tests of the very same
11 substances that were tested in various government test
12 programs, is a biased adjudicator of claims of test
13 participants who are subjected to tests of the same substances.

14 And whether the test occurred before 1953 or after
15 1953 seems to me to be just an arbitrary distinction that's
16 being drawn by VA. It's certainly not a distinction that is
17 clear on the face of our complaint. There hasn't been briefing
18 on this issue before the Court. The Court hasn't ruled this
19 those claims are irrelevant. They are clearly in the case.

20 So the fact that the VA, you know, has a narrow
21 construction of what's relevant in this case, it doesn't seem
22 to me it should be the basis, you know, of what's governing
23 discovery in this matter.

24 **THE COURT:** Why can't you at least run the search and
25 figure out what names you can find, and match? Right? Do your

CERTIFICATE OF REPORTER

I, BELLE BALL, Official Reporter for the United States Court, Northern District of California, hereby certify that the foregoing proceedings in NO. C 09-00037 CW (JSC), Vietnam Veterans of America v. Central Intelligence Agency, were reported by me, a certified shorthand reporter, and were thereafter transcribed under my direction into typewriting; that the foregoing is a full, complete and true record of said proceedings as bound by me at the time of filing.

The validity of the reporter's certification of said transcript may be void upon disassembly and/or removal from the court file.

_____/s/ Belle Ball_____

Belle Ball, CSR 8785, RMR, CRR

Wednesday, December 28, 2011

Exhibit 25

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,
SACRAMENTO, SAN DIEGO,
DENVER, NORTHERN VIRGINIA,
WASHINGTON, D.C.
TOKYO, LONDON, BRUSSELS,
BEIJING, SHANGHAI, HONG KONG

November 22, 2011

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
20 Massachusetts Avenue NW
Washington, DC 20530

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 am writing regarding Judge Corley's November 17, 2011 order granting Plaintiffs leave to take eight additional depositions, and the status of Defendants' e-mail production.

Deposition Scheduling

Plaintiffs seek testimony from the following witnesses: Norma St. Claire, Roy Finno, David Abbott, Dr. Mark Brown, Dr. Kenneth Hyams, Col. Fred Kolbrenner, Brad Flohr, and Glen Wallick. In light of the court's pending *in camera* review of documents from the Department of Veterans Affairs, please provide available dates for the depositions of Mr. Abbott, Mr. Wallick, Dr. Brown, and Dr. Hyams during the week of December 19, 2011. Judge Corley granted Plaintiffs leave to depose Mr. Abbott for up to ten hours, so please schedule accordingly. For the depositions of Ms. St. Claire, Mr. Finno, Mr. Flohr, and Col. Kolbrenner, please provide available dates during the week of December 12, 2011. Plaintiffs' formal deposition notices will follow.

Plaintiffs will notice the depositions to occur in Morrison & Foerster's Washington, D.C. office, unless you advise us that witnesses are not located in the D.C. area.

E-mail Production

As we indicated in the November 7, 2011 joint discovery letter, Plaintiffs have significant concerns with respect to the anticipated e-mail production date of December 14, particularly for the depositions of e-mail custodians Roy Finno, Norma St. Claire, and Col. Kolbrenner.

MORRISON | FOERSTER

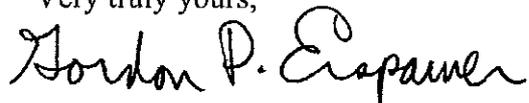
Joshua E. Gardner, Esq.
November 22, 2011
Page Two

That date gives Plaintiffs very little time to review the e-mails before the depositions. Have Defendants completed each custodian search, or at least the search of these deponents' e-mails? How many e-mails will you produce for each custodian (not just the deponents)? In light of the time constraints, Plaintiffs request that Defendants produce these e-mails as soon as you have them available, and on a rolling basis.

Pursuant to the court's order, the parties should meet and confer early next week regarding deposition scheduling and Defendants' e-mail production. Does Monday, November 29, at 11 a.m. (PT) work for Defendants?

Thank you for your time and attention.

Very truly yours,

A handwritten signature in cursive script that reads "Gordon P. Erspamer".

Gordon P. Erspamer

cc: Kimberly Herb
Brigham Bowen
Lily Farel
Judson O. Littleton

Exhibit 26

MORRISON | FOERSTER

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CALIFORNIA 94105-2482

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WASHINGTON, D.C.

TOKYO, LONDON, BRUSSELS,
BEIJING, SHANGHAI, HONG KONG

February 28, 2012

Writer's Direct Contact
415.268.6818
BPatterson@mofo.com

Via E-Mail

Joshua E. Gardner, Esq.
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue NW
Washington, DC 20530

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

Dear Mr. Gardner:

As we have previously mentioned during the meet and confer process and in Plaintiffs' draft Joint Statement section, Plaintiffs plan to raise the issue of additional depositions with the Court. As events evolve and Plaintiffs continue our review of recently or newly produced discovery, this request may change, but at this time, Plaintiffs plan to request to depose Dr. Kelley Brix and resume the depositions of Dee Dodson Morris and Joe Salvatore.

Based on prior conversations, we assume that Defendants will not agree to produce these witnesses for deposition absent a Court order, but I am writing to confirm. Please let us know by close of business on Wednesday, February 29.

Sincerely,



Ben Patterson

cc: Lily Farel

Exhibit 27

U.S. Department of Justice

Civil Division

Federal Programs Branch



Mailing Address
P.O. Box 883
Washington, D.C. 20044

Overnight Delivery Address
20 Massachusetts Ave., N.W.
Washington, D.C. 20001

Joshua E. Gardner
Trial Attorney
Tel: (202) 305-7583
Fax: (202) 616-8202
Joshua.e.gardner@usdoj.gov

February 29, 2012

Via Email

Mr. Ben Patterson, Esq.
Morrison & Foerster, LLP
425 Market Street
San Francisco, CA 94105-2482

RE: *Vietnam Veterans of America, et al. v. CIA, et al.*, No. CV 09 0037-CW (N.D. Cal.)

Dear Mr. Patterson:

I am writing in response to your February 28, 2012 letter, which was received after work hours, concerning your request to depose Dr. Kelley Brix and to re-depose Dee Dodson Morris and Joe Salvatore. Your letter is the first time you have mentioned your desire to take these depositions.

As an initial matter, as you are undoubtedly aware, with respect to Dr. Brix, Plaintiffs made the strategic decision not to depose her. On October 12, 2011, Plaintiffs filed a joint statement seeking an additional 16 depositions of current and former government employees and contractors (on top of the 16 depositions Plaintiffs had already taken or had scheduled to take). *See* dkt. 299. This included Dr. Brix. *See id.* Plaintiffs filed a supplemental brief on October 21, 2011, which detailed the claimed need to depose each individual, including Dr. Brix. *See* dkt. 307. On November 17, 2011, the Court permitted Plaintiffs to depose only 8 of the requested 16 depositions, but provided Plaintiffs with the discretion to select which 8 depositions they wished to pursue. *See* dkt. 325. Plaintiffs did not seek relief from that Order with the District Court, as Plaintiffs have done with other matters in this case. *See, e.g.*, dkt. 310. Instead, consistent with the Magistrate Judge's November 17 Order, Plaintiffs selected the eight individuals whom they wished to depose, and did not include Dr. Brix on that list. You have provided no explanation in your letter, or at any other point, as to why you believe that you can disregard the Magistrate Judge's November 17 Order, which is law of the case, and seek depositions beyond the 8 you were permitted to take.

Beyond that, Plaintiffs have once again failed to meaningfully meet and confer. As we have previously explained to you, it is axiomatic that, to meet and confer meaningfully, the parties must have a complete understanding of the scope of the discovery dispute. "[M]eet and confer requirements are imposed, consistent with the overall purpose of the federal rules 'to secure the just, speedy, and inexpensive determination of every action.'" *Guillen v. Bank of Am.*, No. C-10-05825, 2011 WL

6779310, at *3 (N.D. Cal. Dec. 27, 2011) (quoting Fed. R. Civ. P. 1). As one court in the Ninth Circuit recently explained:

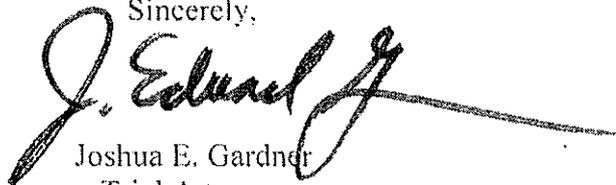
For the meet-and-confer obligations to serve their purpose, it is essential “that parties treat the informal negotiation process as a substitute for, and not simply a formal prerequisite to, judicial review of discovery disputes.” *Id.* To accomplish this requirement,

[t]he parties must present to each other the merits of their respective positions with the same candor, specificity, and support during informal negotiations as during the briefing of discovery motions. Only after all the cards have been laid on the table, and a party has meaningfully assessed the relative strengths and weaknesses of its position in light of all available information, can there be “a sincere effort” to resolve the matter.

Liberty Mut. Ins. Grp. v. Panelized Structures, Inc., No. 2:10-cv-01951, 2011 WL 4527399, at *3 (D. Nev. Sept. 27, 2011) (quoting *Nev. Power v. Monsanto*, 151 F.R.D. 118, 121 (D. Nev. 1993)).

At no point, including in your letter from last night, do you explain why you believe you need to re-open fact discovery (which closed more than 2 months ago) to take these three depositions. You have not explained what specific facts you believe these witnesses possess that you do not have from the approximately 40 depositions taken by the parties and the approximately 2 million pages of discovery produced in this case, let alone why you believe you need to re-open the depositions of Joe Salvatore and Dee Dodson Morris – depositions taken over 6 months ago. Nor have you explained the amount of time you wish to depose each of these individuals. Accordingly, before Defendants can even consider your requests, made for the first time late last night, we would need answers to these basic threshold questions. I look forward to hearing from you on these issues so that the parties can meaningfully meet and confer.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Edward G.", with a long horizontal flourish extending to the right.

Joshua E. Gardner
Trial Attorney
Federal Programs Branch

Exhibit 28

DECLASSIFICATION OF CHEMICAL AND BIOLOGICAL TESTS JUNE 3, 2005

On June 1, 2005, the Department of Defense (DoD) briefed the Department of Veterans Affairs' (VA's) Compensation and Pension (C&P) Service and Office of Policy, Programs, and Preparedness (008) on its project to release information on chemical and biological tests.

This meeting, the third on this issue between both agencies, was the result of Government Accountability Office (GAO) report 04-410, *Chemical and Biological Defense: DoD Needs to Continue to Collect and Provide Information on Tests and Potentially Exposed Personnel*. The May 2004 report recommended that DoD completely declassify and disclose its chemical and biological testing records involving service members.

PARTICIPANTS

The meeting included the following participants:

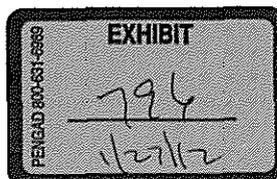
- **DoD's Deployment Health Support Directorate (DHSD):** Dee Morris (lead), Roxana Baylor, Roy Finno, and Lionel West.
- **Department of the Army's Office of Acquisitions, Technology and Logistics (AT&L):** Colonel Debra Thedford, Director of Chemical and Biological Defense Programs.
- **Battelle Corporation's Chemical and Biological Defense Information Analysis Center (CBIAC):** Andrew Blackburn, and an assistant
- **C&P Service:** Joe Salvatore and David Abbott
- **008:** Mike McLendon and Dat Tran

PRESENTATION OVERVIEW

The primary presenters were Mr. Blackburn of Battelle and Lionel West of DHSD.

On a high-level, Mr. Blackburn discussed project objectives, progress updates, primary research needs, prototype layout designs, and future activities. Mr. West outlined procedural needs and data exchanges between AT&L/Battelle, DHSD, and VA.

Please reference the left-hand side of the folder for each presenter's handout.



PROJECT MANAGEMENT

Upon Mr. McLendon's direct questioning, DHSD, Battelle, and AT&L were unable to provide actual or anticipated project timelines and research data (e.g. number of tests and participants). Mr. McLendon requested that Ms. Morris provide a systematic plan for research, repository searches, data pushes and deliverables.

RESEARCH SOURCES

a. Electronic Databases

Mr. Blackburn and staff intend to data-mine government and corporate chemical and biological test release databases for veteran data from 1942 to present. Additionally, data gathered from Battelle's past research will be incorporated into the current effort.

b. Repositories

The primary focus of their upcoming physical searches would be limited to Aberdeen Proving Ground -Edgewood Arsenal, Fort Detrick, Dahlgren Naval Surface Warfare Center, and Dugway Proving Ground. However, Mr. Blackburn mentioned that these "low-hanging fruit" sites are a sub-set of a master list, which contains 15 locations.

c. Literature

Mr. Blackburn informed VA that Battelle has completed a review of bibliographic databases such as the Edgewood Chemical Biological Center Technical Library.

d. National Archives

Mr. Blackburn stated that Battelle has not completed research efforts with the National Archives Records Administration.

e. CD-ROMs

Edgewood Arsenal provided Battelle with CD-ROM copies of records entitled, "Edgewood Arsenal Medical Volunteers 1955-1975," and "Edgewood Toxic Exposure Aid Station Cases."

Mr. Salvatore and Mr. McLendon noted that VA recently received such documents from Edgewood Arsenal. Additionally, Mr. McLendon informed DHSD of VA's possession of Fort Detrick databases.

DATA ISSUES

a. Certification

DoD has sole authority to verify participation in chemical and biological tests. DHSD must physically retain the source document for every veteran record. This process is called certification. Therefore, VA cannot utilize any of its Edgewood Arsenal or Fort Detrick records until the data is certified by DHSD.

Ms. Morris informed VA to submit any received electronic and textual records to DHSD. Mr. McLendon tasked Mr. Salvatore to e-mail the Fort Detrick records to DHSD.

b. Non-Recognized Tests

Mr. West and Ms. Morris informed VA that the following types of chemical and biological exposure tests do not count as exposures. Ms. Morris explained that these "confidence tests" were utilized in basic training as late as 1975.

- Gas mask or chamber exercises involving chlorine
- Sniff tests
- Three-drop test on forearms

c. Procedures

Using a flowchart, Mr. West outlined the transfer of data from Battelle to VA.

d. Operating Procedures

Mr. McLendon requested that Ms. Morris create standard operating procedures for VA's review.

e. System of Records

Both agencies stated that their system of records were sufficient to address the new chemical and biological exposure records.

f. Data Pushes

Mr. McLendon requested that Ms. Morris provide a schedule of anticipated data pushes within one week's time.

g. Declassifications

Mr. McLendon asked whether DoD's declassification schedule would be impacted by DHSD's chemical and biological exposure test release project. Ms. Morris mentioned that both efforts are separate.

h. Hallucinogenic Tests

VA informed Mr. Blackburn that records involving any hallucinogenic tests should be researched.

i. Photographs

Battelle and DHSD will present VA with photographs and movies that clearly identify individual veterans by name and service number. Photographs and movies containing non-identifiable records will be catalogued

PRIMARY RECORDS SEARCHES

Mr. Blackburn outlined the primary information being retrieved from records searches at repositories. Privately, Mr. Salvatore informed Ms. Morris that VA retains a different list based upon a VA/Battelle/DHSD exercise in November 2004.

Mr. Salvatore promised to provide Ms. Morris a list of primary variables, wherever possible.

- Test name
- Test site
- Test start date
- Test end date
- Test agent/simulant/ decontaminant used
- Test dose estimate sensor readings per individual and group
- Human participant name (servicemembers, civilians, contractors, foreign workers with country)
- Social security number
- Service number
- Branch of service
- Date of birth
- Treatment facility name (if medical treatment was rendered)
- Treatment details
- Details of any exposure injuries

Note: VA developed a list of secondary data which may still be useful for statistical and claims purposes. This list, as outlined in Attachment A: *Secondary List of Variables*, will also be presented to DHSD.

PROJECT 112/SHAD

a. New Records

Ms. Morris announced that DHSD will provide VA with a new test and 20 associated veteran records. Of the 20 names, only nine of the names will be new.

Upon Mr. Abbott's inquiring about a new test fact sheet, Ms. Morris clarified that the test was previously announced.

b. Non-Project 112/SHAD Database Inquiries

DHSD and VA pledged to continue existing procedures regarding VA Regional Office inquiries from non-Project 112/SHAD database veterans claiming Project 112/SHAD test participation.

c. Data Pass

Mr. Abbot provided Ms. Baylor with a copy of VA's Project 112/SHAD database for record upkeep and maintenance.

MUSTARD AGENTS AND LEWISITE

a. DHSD Research

Currently, DHSD is reviewing all electronic and printed records, including 13 boxes of program records, retrieved from the Defense Manpower Data Center (DMDC) in Arlington, VA. Until recently, DMDC retained jurisdiction over DoD's mustard gas records.

b. DMDC Database

Ms. Morris informed VA that veteran records identified in DMDC's electronic mustard gas database are questionable. Upon VA's request for an explanation, Ms. Morris explained that DHSD cannot locate source documents, which support every veteran's verification of participation. Without these records, DHSD stated that DMDC's mustard gas database cannot be certified.

Mr. Salvatore informed the group that VA erred on the side of caution when issuing the initial batch of mustard gas letters on March 9, 2005. In order for letter to be released, Mr. Salvatore stated the veteran's database record must have shown the following:

- Issuance of DoD's chemical exposure commendation certificate
- Identification of exposed agent (e.g. Lewisite, sulfur mustard, nitrogen mustard)
- Record of type of exposure (e.g. full-body or partial-body)
- Current address

Ms. Morris concurred that Mr. Salvatore's approach was correct. Mr. Salvatore requested that DoD notify VA if there was a change to any record selection requirements.

c. Data Pass

Mr. Salvatore provided Ms. Baylor with a copy of VA's Mustard Gas database for DHSD research purposes. Additionally, Mr. Salvatore noted that VA had organized the DMDC database for DHSD.

BATTELLE'S LIASION AT DHSD

In the coming months, Battelle will have a physical presence at DHSD. This liaison will assist DHSD in research efforts.

MEETINGS

Mr. McLendon requested that VA-DHSD meetings be held on a regular basis. Additionally, Mr. McLendon informed Ms. Morris that she would be invited to present before VA's "Project 112/SHAD, Mustard Gas, and Other Chemical and Biological Exposure Test" Task Force.

POINTS OF AGREEMENT

- VA is the ultimate customer
- Battelle/AT&L finds information, images and catalogues documents, creates a database, and sends it to DHSD
- DHSD declassifies data if possible
- DHSD imports the database, creates fact sheets on chunks of tests, and updates its website as appropriate
- DHSD replicates Project 112/SHAD process for new tests
- DHSD provides VA with timeline of next data push

RECOMMENDATIONS

- Ensure that DHSD provides a comprehensive veteran database with specific test information for claims processing purposes
- Brief VA leadership on DoD's project, VA's role, and expected deliverables
- Document all DoD/VA interactions to address internal and external stakeholder reviews
- Consider creating or contracting a specialized office to handle all chemical and biological test activities

Joe Salvatore (212)

ATTACHMENT A SECONDARY LIST OF VARIABLES

Upon a thorough DoD search for all primary data needs, VA would also appreciate the following variables:

- Type of exposure:
 - a. Disposal/destruction of substance
 - b. Manufacturing of substance
 - c. Production: Manufacturing and handling of substance
 - d. Research and development of substance (includes volunteer participants)
 - e. Testing (CONUS, Alaska and Hawaii (pre and post-statehood))
 - f. Testing (foreign soil)
 - g. Training exercises
 - h. Transportation of substance (i.e. air, rail, ship, truck)
 - i. Warfare I (battlefield conditions)
 - j. Warfare II (Bari, Italy)

- Type of test activity
 - a. Atmospheric (e.g., aerial drop, aerial spray)
 - b. Body part exposure [e.g., body location (arm) with type of test (patch, drops, or injection)]
 - c. Inhalation, non-sealed chamber (e.g., open room)
 - d. Ingestion
 - e. Full body exposure (e.g., sealed gas chamber)
 - f. Surface-level (e.g., disposal, destruction, wind tunnel)
 - g. Oceanographic (e.g., above or below water)
 - h. Space
 - i. Underground

- Autopsy reports
- Death certificates

JS: jsalvatore x6948 06/03/05 212B__ 212__ 21O__ 21____
h/cap-21/212/ChemBio/DOD Mtg Summary 06_03_05.doc

Exhibit 29

DEPARTMENT OF DEFENSE'S CHEMICAL AND BIOLOGICAL (CB) TEST RELEASE PROJECT MEETING OF March 30, 2006

PARTICIPANTS

The meeting included the following participants:

- **DoD's Deployment Health Support Directorate (DHSD):** Dee Morris (lead) and Roy Finno.
- **VA's Office of Policy, Planning, and Preparedness (008):** Mike McClendon and Joe Salvatore
- **C&P Service:** Glen Wallick and David Abbot,

On March 30, 2006, the Department of Veterans Affairs' (VA's) Compensation and Pension (C&P) Service participated in the Department of Defense's (DoD's) meeting regarding CB exposures at Edgewood Arsenal.

Information to Date:

On January 31, 2006, DoD passed a database of 1,012 participants to VBA listing 144 different agents. Due to the nature of the agents, which includes LSD, VX gas, other poisonous gases, and deliriants, questions were raised on how to change the notification letter.

1. What are layman's terms for the agents?
2. Should we include the name of the agent in the notification letters?
3. What will DoD share with VA about the basis, reason for the tests.
4. Who will explain to callers about the agents?
5. Do we continue to include a paragraph about what a participant can discuss?
6. Will VA continue to grant a one-time hospital exam to participants, as with SHAD veterans?

C&P Service has been identifying SSNs of participants so that when a letter has concurrence, a mail merge would be processed easily. The initial database from DoD only contained 210 SSNs out of the 1,012 name listing (20%).

Information Shared at Meeting

Background of CBRNE tests: Dee Morris shared that based on our request, they have codes (text) for all but 5 of the agents listed in the database. [Note that the list was e-mailed later in the day. I found the list of no value because it still did not contain layman's language for agents.] The coded compounds will be added to the

database, but such changes will not effect additions to personal data, such as address or date of death data, which we may have made.

Dee Morris passed out a draft document, currently being reviewed by Risk Communications, entitled Edgewood Arsenal Chemical Agent Exposure Studies: 1955-1975. She pointed out the use of the terms nerve agents, antidotes, and hallucinogenic drugs, indicating some broader terms which might be used. She also noted that a Senate Sub-Committee concluded that the voluntary consent form used for the tests was inadequate.

Dee shared that of the 7000 CBRNE participants, VA should anticipate receiving from 3,500 to 5000 names by the end of May 2006, and all the names by the end of August 2006.

Mike McClendon shared that he wanted to be able to send a preemptive response to HVAC in June.

DATABASE

a. Verification of Participation

DHSD, supported by CBIAC research, maintains sole authority in verifying participation in all CB tests.

Given secret test recordkeeping practices, Dee Morris explained that DHSD would liberally verify participation. Morris emphasized that judgment calls would be exercised with collateral association, especially using buddy letters and rosters. This practice was widely utilized for DHSD's Project 112/SHAD efforts.

To the extent possible, DHSD will attempt to separate the unwilling test participant population from those individuals who were compensated by DoD for their participation.

PROJECT DOCUMENTS

b. Timeline

KEY POINTS

- A
- A
- DHSD

POINTS OF AGREEMENT (VA – DoD)

- VBA notification letters will not contain the name of the agents
- DoD will handle caller questions about the agents

Additional Points

-

RECOMMENDATIONS

-
-
-

MEETING AFTER THE MEETING

In the van, driving back from DoD, Mike, Joe, Glen, and Dave discussed the notification letter and related issues.

- VBA notification letters will not contain the name of the agents
- DoD will handle caller questions about the agents
- VA has requested that for all instances where DoD forwards exposure information about service members, those member should be granted a one-time physical examination at a VA hospital. Verification of approval is pending.

JS: jsalvatore x6948 02/05/05 212B____ 212____ 21O____ 21____
h/cap-21/212/ChemBio/DOD Mtg Summary 01_14_05.doc

Paragraph for USB Weekly Report

On March 30, 2006, Mike McClendon, and Joe Salvatore of VA's Office of Policy, Planning, and Preparedness, Glen Wallick and David Abbot from C&P Service, met with staff members of DoD's Deployment Health Support Directorate (DHSD) to discuss the Chem-Bio, Radiological, Nuclear, Explosive database. DoD handed out draft copies of Edgewood Arsenal Chemical Agent Exposure Studies: 1955-1975. This document explains basic information needed to write a notification letter to those service members exposed to various agents at Edgewood Arsenal. DHSD said that they anticipate adding between 3500 and 5000 names to the current database of 1012 test participants by the end of May 2006.

Exhibit 30

From: "Finno, Roy, CTR, OASD(HA)/TMA" <Roy.Finno.ctr@tma.osd.mil>

To: "Blackburn, Andrew R" <blackbua@battelle.org>

CC: "McKim, William" <McKimW@battelle.org>
kevin.baxter.ctr@deploymenthealth.osd.mil

Date: 8/20/2008 1:52:03 PM

Subject: Exposures

Andy

1. I spoke to Dr. Kilpatrick about WRAIR and infectious diseases. He made the following points:

a. We are concentrating on CB testing exposures to veterans. Infectious disease research overseas where we are using the indigenous population doesn't meet this criterion. He would like to stay away from any infectious disease work WRAIR is doing.

b. Vaccines are a different story. If WRAIR gave veterans experimental vaccines we should record the fact. I know that WRAIR provided vaccines to Pine Bluff for use by individuals in the Biological Production Facility. There is also a possibility that they vaccinated some of the sailors on Project SHAD.

2. Regarding foreign nationals potentially exposed to CB agents during testing. If a member of a foreign military was exposed to CB agents during testing at a facility in the U.S. we should note the fact. We should treat them as we do US civilians. If we find them, we'll identify them but we should not go out of our way to look for them.

3. We are looking for veterans exposed during CB testing not training. Consequently exposure to mustard (three drop test) or tear agents during training does not count as a testing exposure.

Hope this clarifies the issues. We can chat more on Tuesday.

Roy Finno
Senior Analyst
Northrop Grumman Corporation
Contractor to Force Health Protection and Readiness Programs Tricare
Management Activity, Office of the Assistant Secretary of Defense
(Health Affairs)
703 845 3328



Exhibit 31

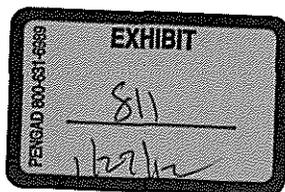
From: Lionel West [Llone1.West.CTR@deploymenthealth.osd.mil]
Sent: Friday, May 27, 2005 11:36:21 AM
To: joe.salvatore@vba.va.gov; blackbua@BATTELLE.ORG; Dee Morris; Roy S. Finno; Roxana Baylor
Subject: Sample issues going to be discussed for meeting

Attachments: June 1st meeting.ppt

ALCON,

Here are the agenda slides with rough sketch process diagrams.

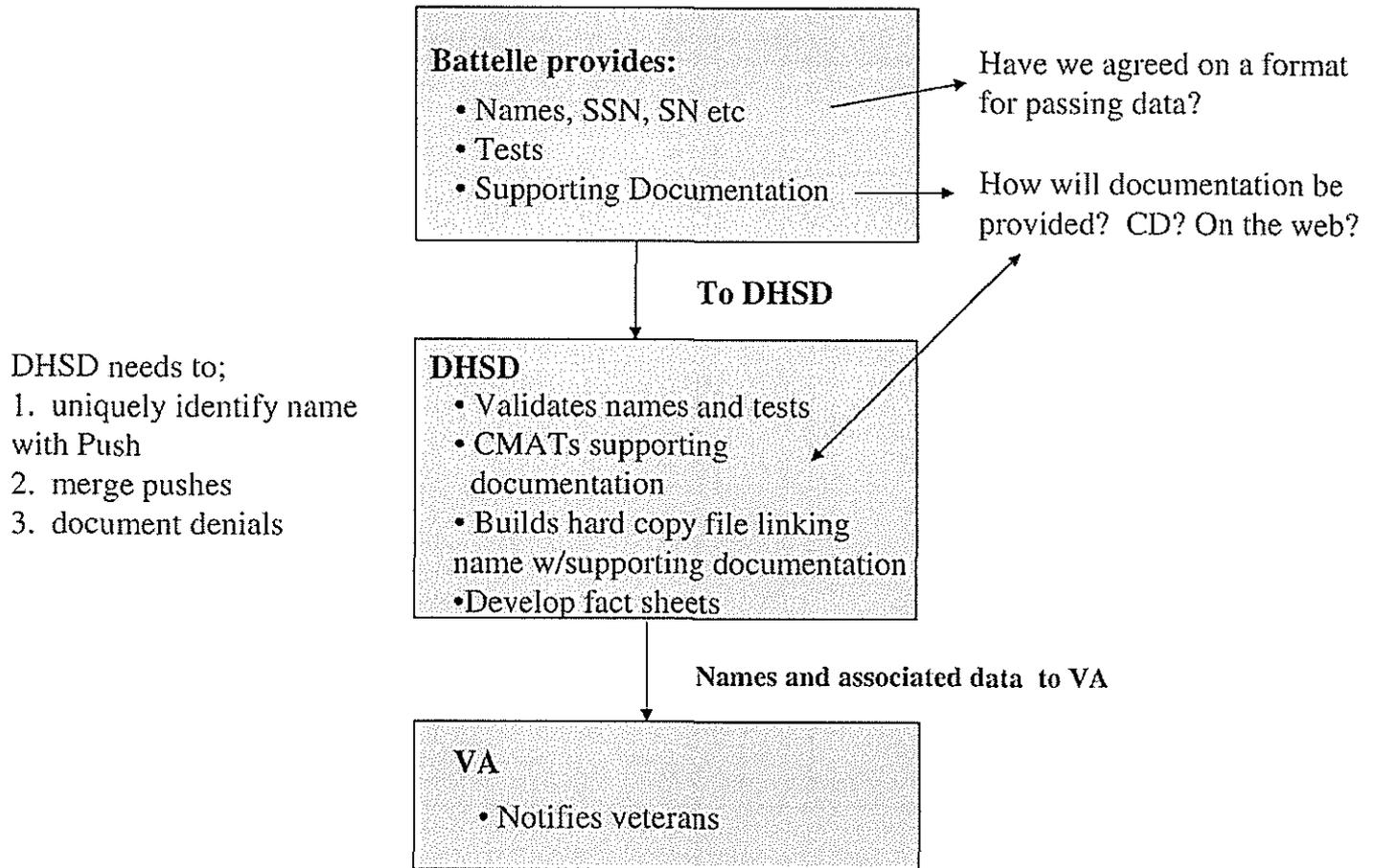
Lionel West
Chemical Biological Investigative Analyst
Deployment Health Support Directorate
703 575-2682



Objective

- To work out process and procedure associated with CB Test Repository Effort
- Resolve any outstanding issues
- Provide critical input
- Define liaison role

Data Pushes



Out of Cycle Inputs

- Calls/letters to DHSD
 - Investigate claims – Battelle, DHSD
 - Adjudicate - DHSD
 - Document
 - Include approvals in next Data Push to VA

- VA inputs
 - Investigate claims – Battelle, DHSD
 - Adjudicate - DHSD
 - Document
 - Notify VA of results - DHSD
 - Include approvals in next Data Push to VA

Outstanding Issues/Problems

- Procedures for moving documents from Battelle to DHSD for CMATing. SIPRNET; CD etc?
- Out of cycle inputs
 - Procedures for handling
 - Tracking
- What information will be passed to VA
 - Essential - Name, SSN, SN, location, test name, date, agent
 - Nice to have – DOB, POB, address
 - IT requirements for data
- SHAD/112 procedures

Outstanding Issues/Problems – con't

- Liaison person
 - Procedures/SOP
- What we are not including
 - CS chamber exercises
 - Three drop tests
 - Anything else?

Exhibit 32

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

- - - - -x
VIETNAM VETERANS OF :
AMERICA, et al., :
Plaintiffs, : Civil Action Number
vs. : CV 09-0037-CW
CENTRAL INTELLIGENCE :
AGENCY, et al., :
Defendants. :
- - - - -x

CONFIDENTIAL VIDEOTAPED DEPOSITION OF MARK BROWN

Washington, DC
Friday, January 20, 2012

REPORTED BY:
CARMEN SMITH

1 Q In the next paragraph, the last sentence
2 says, "The study objectives were to determine
3 specific health effects associated with exposure
4 (particularly at low dosages), to assess various
5 pre- and post-exposure medical treatments, and to
6 evaluate the effectiveness of personal protective
7 equipment in preventing exposure."

8 Do you see that?

9 A I do.

10 Q The next paragraph goes on and reiterates
11 that "The program evaluated the effects of low-dose
12 exposures to chemical agents and their treatments."

13 Do you see that?

14 A I do, yeah.

15 MR. HASSANEIN: I'm going to hand you
16 another document previously marked as Exhibit Number
17 727.

18 THE WITNESS: Thank you.

19 (Previously marked Exhibit 727 presented.)

20 BY MR. HASSANEIN:

21 Q This is an e-mail exchange dated June 29,
22 2006. I'll give you a minute to review that
23 document.

24 (Witness reviewed the document.)

25 A Okay. Uh-huh.

1 Q Well, I guess my first question is, do you
2 recognize this document?

3 A No. But I acknowledge that it's something
4 I would have written, yeah.

5 Q And I'm just going to start from the
6 beginning, which is the final e-mail of the chain
7 on --

8 A Second page, gotcha.

9 Q Yes, on page 2. And that's from
10 Mr. Salvatore, dated June 29, 2006, at 9:25 a.m.?

11 A Right.

12 Q And he sends an e-mail to a group of
13 individuals that includes yourself, and the subject
14 line of which is "EDMS 352753 - Edgewood Arsenal
15 Notification Letter - Expedite."

16 Do you see that?

17 A I do.

18 Q It's marked with an importance level of
19 high.

20 Do you see that?

21 A Hmm. I do.

22 Q And the EDMS number, as we discussed
23 before, is a number associated with the VA's
24 tracking system of -- to get the -- to go through
25 the various levels of concurrence that we were

1 discussing; right?

2 A Correct.

3 Q And Mr. Salvatore writes, "I need your
4 assistance in ensuring that our partners in VBA
5 receive all business line concurrences for EDMS
6 352753 as soon as possible, but no later than" close
7 of business "today."

8 "Your expected assistance will afford VBA
9 exactly one business day to generate and issue some
10 notification letters to Edgewood Arsenal veterans by
11 July 4, 2006. In doing so, VBA can meet a
12 verbally-mandated request from" the House veteran
13 affairs committee. "Additionally, your actions will
14 prevent this office from explaining to HVAC staffers
15 why VA and DoD could not meet the deadline," so on
16 and so forth.

17 Do you see that?

18 A I do, yeah.

19 Q And then the first person to respond to
20 Mr. Salvatore's e-mail is your boss, Dr. Hyams.

21 Do you see that?

22 A I do, yeah.

23 Q Mr. Hyams wrote, "The letter looks good to
24 us in VHA Public Health. We will approve the letter
25 portion of this package today but would prefer (not

1 require) two things."

2 "1. The phrase 'particularly at low
3 dosages' be taken out of the second paragraph
4 because some veterans were exposed to high doses of
5 chemical agents."

6 Do you see that?

7 A I do.

8 Q "2. Add 'DoD' to this phrase in the
9 second paragraph 'Please see the enclosed (DoD) fact
10 sheet...' because it is not clear that this is DoD's
11 fact sheet/interpretation and not VA's."

12 Do you see that?

13 A I do, yeah.

14 Q And then moving to the first page of
15 Exhibit 727, you then add, at 10:44 a.m. of the same
16 day, June 29, 2006, about 14 minutes after your
17 boss, Dr. Hyams, responded to Mr. Salvatore's
18 e-mail, "I think the DoD fact sheet has some
19 significant inaccuracies -- the problem of course is
20 that putting in a letter from VA appears to endorse
21 its accuracy."

22 "Unfortunately, this is the first time
23 I've seen" the "fact sheet, and provide any comments
24 about it."

25 Do you see that?

1 A Uh-huh. Oh, yes.

2 Q And the first aspect of the fact sheet
3 that you call out in your e-mail, Dr. Brown, is in
4 paragraph 1, last sentence, "The study did not
5 detect any significant long-term health effects in
6 Edgewood Arsenal volunteers."

7 Do you see that?

8 A I do.

9 Q Moving down three paragraphs, you note, "I
10 think a more accurate wording for the fact sheet
11 would be 'The study detected few significant
12 long-term health effects in Edgewood Arsenal
13 volunteers.' To say that there were no effects is
14 clearly not correct and easily refutable."

15 Do you see that?

16 A I do.

17 Q Do you still agree with that statement?

18 A I guess I do agree with it, yeah. But
19 just to clarify, I would have said few significant
20 long-term health effects rather than no significant
21 health effects. Uh-huh.

22 Q And then moving on to the second half of
23 your e-mail, you then call out the last sentence of
24 paragraph 2 and quote it. "The study objectives
25 were to determine specific health effects associated

1 with exposure (particularly with low dosages...)."

2 A Right.

3 Q Do you see that?

4 A I do.

5 Q You write, "The phrase 'particularly at
6 low dosages' is not really accurate and is
7 misleading."

8 A Uh-huh. Well, I don't think I say
9 misleading here -- oh, yeah, misleading. Yeah,
10 you're right. Okay. Yeah.

11 Q "The term 'low dose' is a term of art that
12 refers or implies exposure to sub clinical doses --
13 that is, doses causing no clinical poisoning signs
14 and symptoms.

15 "Review of the extensive literature on
16 these tests clearly demonstrates that a great deal
17 of experiments, perhaps the majority, were actually
18 designed to cause clinical poisoning signs and
19 symptoms among experimental subjects, and therefore,
20 not 'low dose.'

21 "Many subjects had all sorts of immediate
22 poisoning" "including blistering, cholinergic
23 poisoning, intense tearing, etc. and some subjects
24 required medical attention."

25 "I would suggest simply" eliminating "this

1 phrase from the Fact Sheet, and also from the VBA
2 letter, where apparently" it "was copied."

3 Do you see all that?

4 A I do, yeah.

5 Q Do you still agree with all of that today?

6 A Yeah. I would agree with that, yeah.

7 Q After you wrote this e-mail on June 29,
8 2006 at 10:44 a.m., did you have any discussions
9 that you recall with anybody regarding the -- what
10 you viewed to be inaccuracies in the DOD fact sheet?

11 A I don't recall any such discussions, no.

12 Q The next document I'm going to hand you --

13 A Excuse me. Before you move on, I think
14 there's a couple of things you left out when you
15 went over this that I would draw your attention to
16 to make it a complete analysis here. Is that -- can
17 I draw your attention to them or --

18 Q To be honest, I think the document speaks
19 for itself.

20 MS. FAREL: You should feel free to
21 supplement your answer.

22 THE WITNESS: It does speak for itself,
23 but you didn't address the part that I think also
24 speaks and pertains.

25 The -- in the top of my e-mail here, it

1 says -- "Paragraph 1 DOD Fact Sheet," says "'The
2 study did not detect any significant long-term
3 health effects.'" And then you read the statement
4 about that the report, they did find malignant --
5 some significant increase in malignant neoplasms.

6 So my argument here was -- the point I was
7 trying to make was that to say that malignant --
8 this seems to imply that malignant neoplasms aren't
9 important, which no one could possibly support such
10 a contention, all right.

11 But if you read -- the key is the next
12 paragraph which you didn't address. It says, "In
13 fairness, they did note," that is to say the NRC
14 study, "did note that admission numbers were small,"
15 looking at a very tiny population to get the
16 significant increase in malignant neoplasms. They
17 couldn't find a dose relationship, no dose
18 relationship were observed, which is a real red flag
19 for a study like this. That's a real problem for
20 that finding.

21 And finally, the subjects who were exposed
22 to anticholinesterases, which is the population of
23 concern, that the neoplasms occurred at various
24 sites with no consistent pattern or correlation to a
25 specific chemical.

1 So taking all those things, I think that
2 there was some significant limitations in the NRC's
3 finding, and I think the NRC in their own language
4 describing this, they didn't -- they didn't push
5 this as very likely to be a real finding. It was a
6 finding, but because of these limitations, those
7 limitations suggest that there were severe
8 limitations in the ability to interpret that as an
9 actual finding, okay.

10 So my objection wasn't that there were
11 real observed -- there were real -- that malignant
12 neoplasms were a real outcome amongst individuals
13 exposed to these agents. It was mischaracterizing
14 to say there was nothing found. They did find
15 something.

16 You could argue from a professional or
17 scientific viewpoint that what they found probably
18 didn't mean very much, but they did find something.

19 My objection was to the DOD's
20 characterization that they found nothing. They did
21 find something. You could perfectly well argue, and
22 I assume that that's probably what DOD meant, that
23 what they found was not -- not -- not real. I think
24 that -- and that would be a fair characterization.

25 What I objected to is just I think they

1 over -- as a matter of nuance, by saying -- by
2 saying that there's nothing there, they overstated
3 the case. If that makes sense.

4 BY MR. HASSANEIN:

5 Q I -- we discussed earlier this morning the
6 limitations in the IOM study at length, and, you
7 know, I am not quibbling with your pointing out, as
8 you did earlier when I asked my question, that the
9 word change, the suggested change you wanted to
10 make, was from no long-term health effects to few
11 long-term health effects. And that is duly noted in
12 your e-mail and as you've just pointed out again
13 just now.

14 A Okay. I just think it was -- to get the
15 sense of this e-mail, you have to read the whole
16 e-mail. You can't just read the parts of it that
17 are pointing towards one point, that's all.

18 MR. HASSANEIN: The next document we're
19 going to mark as Exhibit 759.

20 (Exhibit 759 identified.)

21 BY MR. HASSANEIN:

22 Q At the very top of the document, it says,
23 "Reprinted from Gulf War Review, Vol. 9, No. 1,
24 October 2000," "A Publication of the U.S. Department
25 of Veterans Affairs," and it's entitled "Chemical

CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, CARMEN SMITH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Notary Public in and for the
District of Columbia

Commission Expires: MARCH 14, 2013

Exhibit 33

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BEFORE THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

- - - - -x
VIETNAM VETERANS OF AMERICA, :
et. al., :
 Plaintiffs, : Civil Action Number
 vs. : CV-09-0037-CW
CENTRAL INTELLIGENCE AGENCY, :
et al., :
 Defendants. :
- - - - -x

VIDEOTAPED DEPOSITION OF GLEN WALLICK

Washington, D.C.
Tuesday, January 31, 2012

REPORTED BY:
SARA A. WICK, RPR, CRR

1 THE WITNESS: I would have, yes. I have
2 no reason to call into question anything that they
3 submitted to me.

4 BY MS. SPRENKEL:

5 Q VHA does have experts in chemical agent 11:56:02
6 exposure; right?

7 A That's right.

8 Q Would that be Mark Brown?

9 A He was one of the guys, yes.

10 Q Were there other guys that you considered 11:56:15
11 experts?

12 A Dr. Hyams that I recall.

13 MS. FAREL: Again, please let her finish
14 her question. At the end of seven hours, you will
15 be an expert. 11:56:26

16 BY MS. SPRENKEL:

17 Q So Dr. Hyams is another person that you
18 considered to be expert --

19 A Yes.

20 (Exhibit 727 previously identified.) 11:56:40

21 BY MS. SPRENKEL:

22 Q I'm going to give you a document that's
23 previously been marked as Exhibit 727. For the
24 record, this is an e-mail dated June 29th, 2006,
25 from Mark Brown to various people, including Glen 11:57:04

1 Wallick, subject "EDMS 352753 Edgewood Arsenal
2 notification letter expedited."

3 A Okay.

4 Q Do you recognize this document?

5 A Define "recognize." 11:59:03

6 Q Do you -- is this document familiar to
7 you?

8 A Well, it is now.

9 Q Do you remember receiving it?

10 A No, not really. 11:59:14

11 Q Do you have any reason to believe that you
12 didn't receive this e-mail?

13 A I do not have a reason to believe that.

14 Q Okay. And Mark Brown is the person we
15 were just discussing; right? 11:59:23

16 A Yes, ma'am.

17 Q He's a chemical agent exposure expert --

18 A Uh-huh.

19 Q -- at VHA; is that right?

20 A I believe so. 11:59:33

21 Q So Mark Brown says "I think the DoD fact
22 sheet has some significant inaccuracies. The
23 problem, of course, is that putting it in a letter
24 from VA appears to endorse its accuracy."

25 Do you see that? 11:59:49

1 A Yes, ma'am.

2 Q He says "Unfortunately, this is the first
3 time I've seen this fact sheet and provided any
4 comments about it."

5 And then he goes on, "Paragraph 1, DoD 11:59:59
6 fact sheet, last sentence. The study did not detect
7 any significant long-term health effects in Edgewood
8 Arsenal volunteers."

9 Do you see that? Do you see that,
10 Mr. Wallick? 12:00:10

11 A Got it. Uh-huh.

12 Q He says "This statement is not a correct
13 representation of the relevant NRC reports. In
14 fact, in their review of hospital admission records
15 for Army from 1958 to 1983 and VA from 1963 to 1981, 12:00:18
16 the NRC investigators reported a fairly
17 statistically significant increase in admissions to
18 VA hospitals for malignant neoplasms among men
19 exposed to anticholinesterase and a statistically
20 significant increase in admissions to VA hospitals 12:00:40
21 and Army hospitals for nervous systems and sense
22 organ disorders among men exposed to LSD. In
23 fairness, they did note that the admission numbers
24 were small, no dose relationships were observed, and
25 for subjects exposed to anticholinesterase, 12:00:53

1 neoplasms occurred at various sites with no
2 consistent pattern or correlation to a specific
3 chemical. I think a more accurate wording for the
4 fact sheet would be the study detected few
5 significant long-term health effects in Edgewood 12:01:06
6 Arsenal volunteers. To say that there were no
7 effects is clearly not correct and easily
8 refutable."

9 Do you see that?

10 A Yes, ma'am. 12:01:15

11 Q Looking back at the fact sheet, Exhibit
12 264, the final sentence of the first paragraph
13 says "The study did not detect any significant
14 long-term health effects in Edgewood Arsenal
15 volunteers." 12:01:35

16 Do you see that?

17 A Yes, ma'am.

18 Q So VHA's expert on chemical agent
19 exposures found that this was -- that this statement
20 was clearly not correct and easily refutable; yet, 12:01:44
21 the statement in the document didn't change before
22 VA sent it out to veterans? Right?

23 MS. FAREL: Objection to the extent that
24 you mischaracterized the witness's prior testimony.

25 THE WITNESS: I would say it didn't 12:01:58

1 change, and the first e-mail explains why, I think.
2 I mean, I don't know why it wasn't changed. Again,
3 things were happening very quickly. I'm surprised
4 that we gave VHA only one day to look at this.

5 BY MS. SPRENKEL:

6 Q And why does that surprise you?

7 A Because the surest way to screw something
8 up is to hurry it. And apparently, we were under a
9 deadline, apparently from HVAC, to get this stuff
10 out. 12:02:26

11 Q And is that why the document wasn't edited
12 before it was sent out to veterans?

13 MS. FAREL: Objection; mischaracterizes
14 the document, mischaracterizes the witness's prior
15 testimony, calls for speculation. 12:02:36

16 THE WITNESS: I don't know. It might be
17 one reason.

18 BY MS. SPRENKEL:

19 Q As the chief of procedures staff
20 overseeing this effort to notify veterans, doesn't 12:02:51
21 it trouble you that you are sending out a fact sheet
22 to veterans that contains a statement that your
23 chemical agent exposure expert says is clearly not
24 correct and easily refutable?

25 MS. FAREL: Objection to the extent it 12:03:06

1 mischaracterizes the document, calls for
2 speculation, lack of foundation.

3 THE WITNESS: I would always prefer an
4 accurate document.

5 BY MS. SPRENKEL: 12:03:16

6 Q And moving on to Mr. Brown's second
7 comment on the fact sheet, he says "Paragraph 2, DoD
8 fact sheet, last sentence. The study objectives
9 were to determine specific health effects associated
10 with exposure, particularly with low dosages." 12:03:31

11 Do you see that?

12 A Yes.

13 Q He says "The phrase particularly at low
14 dosages is not really accurate and is misleading.
15 The term low dose is a term of art that infers or 12:03:42
16 implies exposure to subclinical doses, that is,
17 doses causing no clinical poisoning signs and
18 symptoms. Review of the extensive literature on
19 these tests clearly demonstrates that a great deal
20 of the experiments, perhaps the majority, were 12:03:55
21 actually designed to cause clinical poisoning signs
22 and symptoms among experimental subjects and,
23 therefore, not low dose."

24 Do you see that?

25 A Yes, ma'am. 12:04:05

1 Q Mr. Brown says "Many subjects had all
2 sorts of immediate poisoning S&S, including
3 blistering, cholinergic poisoning, intense tearing,
4 et cetera, and some subjects required medical
5 attention. I would suggest simply eliminating this 12:04:15
6 phrase from the fact sheet and also from the VBA
7 letter where it apparently was copied."

8 Do you see that?

9 A Yes, ma'am.

10 Q Turning back to the fact sheet, the final 12:04:28
11 sentence in the second paragraph, you will see that
12 it says, continues to say "The study objectives were
13 to determine specific health effects associated with
14 exposure, particularly at low dosages."

15 Do you see that? 12:04:41

16 A Second paragraph, you said?

17 Q Yeah, the final sentence.

18 A Do this again.

19 Q It says "The study objectives." Are you
20 with me? It's a long sentence. 12:04:57

21 A Oh, there it is. I got it. Yeah, you're
22 right, it is a long sentence.

23 Q "The study objectives were to determine
24 specific health effects associated with exposure,
25 particularly at low dosages." 12:05:06

1 A Right.

2 Q And if you look at the third paragraph,
3 the first sentence says "The program evaluated the
4 effects of low dose exposures to chemical agents and
5 their treatments." 12:05:16

6 Do you see that?

7 A Yeah.

8 Q So again, VHA's chemical agent exposure
9 expert identified a statement that he characterized
10 as not really accurate and misleading, but it ended 12:05:30
11 up in the fact sheet that you sent out to veterans;
12 right?

13 MS. FAREL: Objection to the extent it
14 mischaracterizes the witness's prior testimony.

15 THE WITNESS: It apparently did go out, 12:05:41
16 yes.

17 BY MS. SPRENKEL:

18 Q Do you recall whether there was discussion
19 about editing the fact sheet to reflect the concerns
20 pressed by Mr. Brown? 12:05:54

21 A I recall no such discussion.

22 Q Do you know why VA sent out the fact sheet
23 containing inaccuracies as addressed by Mr. Brown in
24 his e-mail?

25 MS. FAREL: Objection; mischaracterizes 12:06:09

1 the document, calls for speculation, lack of
2 foundation.

3 THE WITNESS: I do not know why we sent
4 out the draft that we sent out.

5 BY MS. SPRENKEL: 12:06:23

6 Q But again, you agree that an accurate fact
7 sheet would have been preferable?

8 A Absolutely. I am kind of disheartened
9 here actually we didn't send out the right fact
10 sheet. Again, I can maybe speculate as to what 12:06:33

11 happened. But again, I don't know why -- the whole
12 point of concurrence is to get intelligent feedback
13 on your material. And if you don't do anything with
14 that material, with that intelligent feedback,
15 you've defeated the entire purpose of the 12:06:49
16 concurrence process.

17 (Exhibit 345 previously identified.)

18 BY MS. SPRENKEL:

19 Q I'm going to show you a document that's
20 previously been marked as Exhibit 345. And for the 12:07:10
21 record, this is a draft of the outreach letter that
22 we were just reviewing dated June 1, 2006.

23 A Okay.

24 Q Are you ready? Do you recognize this
25 document? 12:08:35

CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, SARA WICK, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Notary Public in and for the
District of Columbia

Commission Expires: NOVEMBER 14, 2012

Exhibit 34

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

VIETNAM VETERANS OF :
AMERICA, et al., :
Plaintiffs :
vs : CIVIL ACTION NUMBER
CENTRAL INTELLIGENCE :
AGENCY, et al., : CV 09-0037-CW
Defendants :

CONFIDENTIAL

Videotaped Deposition of KENNETH CRAIG
HYAMS, M.D., taken at 2000 Pennsylvania
Avenue, N.W., Suite 6000, Washington, D.C.,
commencing at 9:04 a.m., Friday, January 13,
2012, before Lisa V. Feissner, RDR, CRR,
CLR, Registered Diplomate Reporter and
Notary Public.

PAGES 1 - 323

1 VIDEOGRAPHER: We are back on the 11:33:17
2 record. The time is approximately 11:35 a.m. 11:33:25
3 This is the beginning of tape number three. 11:33:29
4 MS. SPRENKEL: I'm going to mark this 11:33:35
5 exhibit as 727. 11:33:37
6 * * * 11:33:39
7 (Whereupon, Exhibit 727 was marked for
8 identification.)
9 * * *
10 (Whereupon, a discussion was held off
11 the record.)
12 * * * 11:34:02
13 BY MS. SPRENKEL: 11:34:02
14 Q. And for the record, what's been marked 11:34:04
15 as Exhibit 727 is an e-mail string; Bates label is 11:34:06
16 DVA052 000113 to 114, DVA052 000114. It's an 11:34:12
17 e-mail from Mark Brown to Dr. Kenneth Craig Hyams 11:34:27
18 dated June 29th, 2006, also to several other 11:34:31
19 individuals. 11:34:35
20 So you can take a minute and read this. 11:34:35
21 A. So you're looking at the first e-mail? 11:34:38
22 Q. You -- if you want, you're welcome to 11:34:41
23 start from the back and read up. 11:34:43
24 A. Okay. But just keep in mind, I mean, 11:34:45
25 it was to me, but it was also to Joe Salvatore, 11:34:47

1 which is Office of Policy and Planning, which 11:34:50
2 was -- seemed to be, from what I've read here, 11:34:52
3 coordinating these activities. 11:34:54
4 Q. Right. 11:34:56
5 A. Louise Van Diepen was the staff person 11:34:56
6 in the Central Office who would have staffed this 11:35:00
7 through the Deputy Under Secretary. So this was -- 11:35:03
8 she's two levels above me. And it also has VBA on 11:35:06
9 here, you know, who was actually staffing the 11:35:13
10 letter for Admiral Cooper. So this really includes 11:35:15
11 all the major players. And then if you look at 11:35:21
12 Lawrence Deyton here, he was probably my supervisor 11:35:25
13 at this time; Susan had probably left. I can't 11:35:28
14 imagine why he would be on here without Dr. Deyton 11:35:30
15 being on the letter. So just to put it in context, 11:35:35
16 this went to me and two levels above me. 11:35:38
17 Q. Okay. 11:35:42
18 A. And also the VBA. 11:35:43
19 Q. All right. Why don't you go ahead 11:35:44
20 and -- you might want to start from the back and 11:35:46
21 read up. 11:35:49
22 A. I need your assistance in -- I'm back 11:36:01
23 one -- in ensuring that our partners in VBA 11:36:04
24 receive -- 11:36:06
25 Q. Well, you don't have to read it aloud. 11:36:06

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1 said, this e-mail is referring to the DoD fact 11:39:17
2 sheet that we were just looking at; is that right? 11:39:23
3 A. Uh-huh. 11:39:25
4 Q. And in your e-mail you said, the letter 11:39:27
5 looks good to us in VHA Public Health. We will 11:39:30
6 approve the letter portion of this package today 11:39:33
7 but would prefer (not require) two things. 11:39:36
8 The first was, the phrase "particularly 11:39:41
9 at low dosages" be taken out of the second 11:39:46
10 paragraph because some veterans were exposed to 11:39:50
11 high doses of chemical agents. 11:39:52
12 Do you see that? 11:39:55
13 A. Uh-huh. 11:39:56
14 Q. Why did you want the phrase 11:39:56
15 "particularly at low dosages" taken out of the fact 11:39:58
16 sheet? 11:40:01
17 A. Well, I mean, I don't remember 11:40:01
18 specifically, but I say right here it's because 11:40:02
19 some veterans were exposed to high doses, and so I 11:40:06
20 must have assumed it was not accurate, or as 11:40:09
21 accurate as it should be. 11:40:13
22 Q. And it's important to provide accurate 11:40:14
23 information to veterans? 11:40:16
24 A. Yes. But I mean, keep in mind, 11:40:17
25 "particularly at low doses [sic]" implies there was 11:40:19

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1 something other than low doses. And so I might 11:40:22
2 have been seeking accuracy. I might have just been 11:40:24
3 seeking clarity here that this -- you know, I found 11:40:27
4 this phrase, you know, not particularly clear. I 11:40:30
5 mean, I just don't remember. 11:40:32

6 Q. In any event, you felt that 11:40:35
7 "particularly at low dosages" was either inaccurate 11:40:37
8 or unclear? 11:40:41

9 A. Right. 11:40:41

10 Q. And you wanted to provide accurate and 11:40:42
11 clear information to veterans? 11:40:45

12 A. Uh-huh. 11:40:46

13 Q. Why were you willing to approve the 11:40:48
14 letter even if the inaccurate or unclear statement 11:40:53
15 wasn't removed from the fact sheet? 11:40:57

16 A. Well, I didn't give final approval. 11:40:59
17 This had already gone -- if you look at the line up 11:41:01
18 here, it had already gone up to our VHA Front 11:41:03
19 Office. And we had a turn-around time of close of 11:41:07
20 the business day, and so I was just trying to not 11:41:11
21 tie the people's hands in the Front Office in VBA 11:41:14
22 and be accused of not meeting some Congressional 11:41:19
23 deadline. And so, you know, I thought it -- I 11:41:23
24 thought it would be useful to change this, but I 11:41:26
25 didn't think it was critical enough to not meet the 11:41:27

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1 deadline. 11:41:32

2 Also, you have to remember, in the sort 11:41:33

3 of bureaucracy we worked in, tying people's hands 11:41:35

4 got their backs up. If you sort of left the door 11:41:39

5 open, you were more likely to get what you wanted. 11:41:43

6 Q. And your second requirement or request 11:41:45

7 was to add "DoD" to this phrase in the second 11:41:48

8 paragraph so that it said, please see the enclosed 11:41:51

9 DoD fact sheet, because it is not clear that this 11:41:54

10 is DoD's fact sheet and interpretation and not 11:41:57

11 VA's. 11:42:00

12 A. Uh-huh. 11:42:00

13 Q. Do you see that? 11:42:01

14 A. Uh-huh. 11:42:02

15 Q. Why was that important to you? 11:42:02

16 A. Well, it -- that's just a general rule 11:42:03

17 in our office and mostly through VHA, from what I 11:42:06

18 could tell, is we just wanted to make sure, you 11:42:10

19 know, that we distinguish between what was DoD and 11:42:13

20 what was VA. We're different departments, you 11:42:15

21 know, with different responsibilities. And, you 11:42:17

22 know, veterans, you know, are interested in whether 11:42:19

23 they're dealing with DoD or VA. I mean, naturally. 11:42:22

24 And so we always tried to make that distinction. 11:42:26

25 This is a pretty routine request, actually. 11:42:28

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1 Q. Is it because you don't want to take 11:42:30
2 responsibility for the things that the DoD says? 11:42:33
3 MS. FAREL: Objection, calls for 11:42:35
4 speculation, argumentative. 11:42:36
5 THE WITNESS: You know, I'm not sure 11:42:38
6 that's an accurate way to put it. We just 11:42:40
7 wanted to make sure that people understood what 11:42:42
8 was DoD and what was VA, just as a matter of, 11:42:44
9 you know, routine accuracy. 11:42:47
10 BY MS. SPRENKEL: 11:42:49
11 Q. Is -- and if a letter like this goes 11:42:50
12 out with a fact sheet attached and it's not clear 11:42:53
13 that it comes from DoD, veterans will assume that 11:42:56
14 it's from the VA, right? 11:42:59
15 MS. FAREL: Objection, calls for a 11:43:00
16 hypothetical, calls for speculation. 11:43:03
17 THE WITNESS: I mean, I don't know. 11:43:04
18 That's certainly possible. 11:43:07
19 BY MS. SPRENKEL: 11:43:15
20 Q. And looking back at Exhibit 264, it 11:43:15
21 looks as though one of your suggestions was 11:43:26
22 incorporated. 11:43:30
23 A. Was it? 11:43:30
24 Q. On the first page. 11:43:31
25 A. Good. Which one was that? 11:43:33

1 MS. FAREL: Belated affirmation. 11:43:39

2 THE WITNESS: I'm not at the top of the 11:43:41

3 food chain at VA and VHA, you've got to 11:43:43

4 remember that, you know, and I have to, you 11:43:46

5 know, be nice, you know, and -- 11:43:48

6 BY MS. SPRENKEL: 11:43:48

7 Q. Right. But ultimately, it's your job 11:43:49

8 and responsibility to make sure that veterans are 11:43:51

9 getting the best information available to help them 11:43:53

10 get health care? 11:43:55

11 A. I wish I could have won every war, and 11:43:56

12 I tried. 11:43:59

13 Q. But isn't that -- that was your role 11:44:00

14 as -- 11:44:01

15 A. Yes, yes. But where -- so where does 11:44:01

16 it say -- 11:44:03

17 Q. You can see at the end of the second 11:44:04

18 paragraph, it says, Please see the enclosed DoD 11:44:05

19 fact sheet. 11:44:08

20 A. Okay, well, good. Well, see, that was 11:44:08

21 something that we had control over, okay, because 11:44:11

22 this -- this letter was the Cooper letter. 11:44:13

23 Q. Right. 11:44:13

24 A. So it was easy for them to incorporate 11:44:16

25 my suggestion, wasn't it? Lovely. I'm glad you 11:44:18

1 pointed that out, actually. 11:44:21

2 Q. But what I'm interested in is your 11:44:23

3 first suggestion. The phrase "particularly at low 11:44:27

4 dosages" was not taken out of the fact sheet. And 11:44:30

5 that's at VET 001-014268. Do you see that? It's 11:44:35

6 in the middle of the page, the next page. 11:44:41

7 A. Oh, yeah. Okay. Yeah, I see it's 11:44:44

8 still in there. 11:44:50

9 Q. So the fact sheet as it went out was 11:44:51

10 inaccurate, or at least unclear? 11:44:57

11 MS. FAREL: Objection to the extent 11:45:00

12 that you mischaracterized the witness's prior 11:45:01

13 testimony, calls for speculation. 11:45:05

14 THE WITNESS: I mean, I just didn't 11:45:06

15 think -- I thought it could be more clear, 11:45:07

16 okay, but it was not my fact sheet. And so I 11:45:09

17 don't know what negotiations took place after I 11:45:11

18 gave my suggestions. I mean, this had to go 11:45:13

19 out within a few hours, so I don't know what 11:45:16

20 happened after that. 11:45:18

21 BY MS. SPRENKEL: 11:45:19

22 Q. Do you recall why it had to go out 11:45:19

23 within a fewer hours? 11:45:21

24 A. No, I don't. It's just that -- you 11:45:22

25 know, and I was probably miffed at the time that 11:45:24

1 Joe was sending me a message saying something like 11:45:26
2 this had to go out the door within, you know, six 11:45:29
3 hours or something. But -- I don't remember being 11:45:32
4 unhappy with it, but we had a very short time 11:45:33
5 frame. 11:45:36
6 Q. Do you think it's important to get 11:45:36
7 information like this correct for veterans? 11:45:39
8 MS. FAREL: Objection, calls for 11:45:41
9 speculation. 11:45:46
10 THE WITNESS: Well, you know, I gave my 11:45:46
11 opinion. I wasn't the deciding factor here. 11:45:49
12 It went to our Front Office and then it went to 11:45:51
13 Admiral Cooper. I mean, they certainly had the 11:45:55
14 final decision. They could have done with my 11:45:56
15 suggestions whatever they wanted. 11:45:58
16 BY MS. SPRENKEL: 11:46:00
17 Q. But from your perspective, is it 11:46:00
18 important to have the most accurate information 11:46:02
19 available in communications to veterans? 11:46:04
20 MS. FAREL: Objection, calls for 11:46:06
21 speculation. 11:46:07
22 THE WITNESS: I mean, you're asking a 11:46:07
23 very general question. I don't know what to 11:46:09
24 say. I didn't -- I obviously didn't feel that 11:46:11
25 this should not -- we should miss the 11:46:14

1 deadlines, you know, based on the two comments 11:46:17
2 I made. 11:46:20
3 BY MS. SPRENKEL: 11:46:21
4 Q. But in general, do you feel that it's 11:46:21
5 important to get the most accurate information 11:46:23
6 possible to veterans? 11:46:25
7 A. Yes. But, you know, my opinion is 11:46:26
8 not -- not only not decisive but also is not 11:46:31
9 necessarily correct, you know. Once the other 11:46:33
10 people looked at this before it went out, they may 11:46:37
11 have decided that my suggestion was not valid. I 11:46:40
12 don't remember. 11:46:43
13 MS. SPRENKEL: I'll just move to strike 11:46:43
14 everything after "yes" as nonresponsive to my 11:46:44
15 question. 11:46:47
16 BY MS. SPRENKEL: 11:46:50
17 Q. So I'd like to take a look at Mark 11:46:50
18 Brown's e-mail to you, Joe Salvatore and various 11:46:56
19 others on the first page of this. 11:47:01
20 Do you recall receiving this e-mail? 11:47:03
21 A. No, I do not remember this. 11:47:04
22 Q. And Mark Brown was -- what was his 11:47:06
23 role? 11:47:11
24 A. Head of Environmental Agent Service. 11:47:11
25 And he really knew the chemical stuff. I mean, he 11:47:15

1 was an expert. 11:47:18

2 Q. So he was an expert with regard to 11:47:19

3 chemical and biological agent exposures? 11:47:21

4 A. Mainly chemical exposures, but yeah, he 11:47:23

5 was an expert. 11:47:26

6 Q. Did you generally defer to his opinion 11:47:26

7 on issues related to chemical and biological agent 11:47:29

8 exposures? 11:47:32

9 MS. FAREL: Objection, vague. 11:47:33

10 THE WITNESS: You know, I don't know if 11:47:36

11 "deferred" is the word I would use. I 11:47:38

12 certainly gave a lot of credence to anything 11:47:40

13 Mark said. 11:47:42

14 BY MS. SPRENKEL: 11:47:43

15 Q. So you respected his opinion -- 11:47:43

16 A. I respected -- 11:47:43

17 Q. -- about the topic? 11:47:44

18 A. I respected his opinion, yes. 11:47:45

19 Q. Okay. Let's read what Mark had to say 11:47:47

20 about the DoD fact sheet, which was Exhibit 264 11:47:49

21 that we were just looking at. Mark says, I think 11:47:53

22 the DoD fact sheet has some significant 11:47:56

23 inaccuracies. 11:48:00

24 Do you see that? 11:48:01

25 A. Uh-huh. 11:48:02

1 Q. He says, The problem, of course, is 11:48:02
2 that putting in a letter form -- in a letter from 11:48:04
3 VA appears to endorse its accuracy. 11:48:08
4 Do you see that? 11:48:10
5 A. Uh-huh. 11:48:11
6 Q. Do you agree with that? 11:48:11
7 A. I mean, I don't know. It's possible. 11:48:13
8 Q. It's possible that having it in a 11:48:16
9 letter from VA appears to endorse its accuracy? 11:48:19
10 MS. FAREL: Objection, calls for 11:48:22
11 speculation, lack of foundation. 11:48:24
12 THE WITNESS: I mean, I requested that 11:48:25
13 we put additional language in there indicating 11:48:26
14 it was from DoD to prevent that -- that 11:48:28
15 eventuality. 11:48:31
16 BY MS. SPRENKEL: 11:48:34
17 Q. But it's being sent out from VA. 11:48:34
18 A. Uh-huh, and I had them put in there it 11:48:36
19 was a DoD fact sheet. So, you know -- what is Mark 11:48:39
20 saying? "The problem, of course, is that putting 11:48:43
21 it in a letter from VA appears to endorse its 11:48:49
22 accuracy." You know, I'm not sure I agree with 11:48:52
23 that. Once we got in the language that it was a 11:48:54
24 DoD fact sheet, I don't think that that necessarily 11:48:57
25 endorses its accuracy, as long as it's clear it 11:49:01

1 comes from them. 11:49:05

2 Q. So you think that VA -- it's okay for 11:49:06

3 VA to send out information from another agency 11:49:12

4 that's inaccurate? 11:49:15

5 MS. FAREL: Objection, calls for 11:49:16

6 speculation, argumentative, mischaracterizes 11:49:18

7 the prior testimony of the witness. 11:49:20

8 THE WITNESS: Well, I mean, there's a 11:49:23

9 difference of opinion probably on whether this 11:49:28

10 is accurate or not. I don't remember -- okay, 11:49:30

11 I didn't -- I didn't question its accuracy at 11:49:33

12 the time. So I just don't remember whether I 11:49:36

13 thought it was inaccurate or not. Mark spoke. 11:49:37

14 He's an expert on this. And the people who had 11:49:41

15 to make a final decision had his input. And at 11:49:44

16 that point, you know, I was satisfied, I'm 11:49:49

17 sure. 11:49:51

18 BY MS. SPRENKEL: 11:49:51

19 Q. So even once you learned that Mark, the 11:49:51

20 expert in chemical and biological agents, whose 11:49:54

21 opinion you respected, thought that there were 11:49:58

22 significant inaccuracies, you still thought that it 11:50:01

23 was fine to send out the fact sheet from the VA? 11:50:04

24 MS. FAREL: Objection, calls for 11:50:07

25 speculation, lack of foundation. 11:50:08

1 THE WITNESS: You know, I don't 11:50:11
2 remember whether it went out or not. I was 11:50:12
3 satisfied that it went to our Front Office and 11:50:14
4 they had this input. I mean, that's my job, is 11:50:16
5 to make sure that the people making these 11:50:19
6 decisions have all the information. And when 11:50:21
7 Mark sent this to them, I knew they had it. So 11:50:23
8 that was enough for me. I don't remember 11:50:26
9 whether the letter finally went out in the end, 11:50:28
10 so I -- 11:50:31
11 BY MS. SPRENKEL: 11:50:31
12 Q. I can represent to you this is the 11:50:31
13 letter that is still going out. 11:50:33
14 A. Okay. But I mean, you're asking about 11:50:35
15 the time when these e-mails went out. And at this 11:50:37
16 time, I was okay because they were informed. 11:50:41
17 Q. So as long as DoD was informed that the 11:50:43
18 letter had inaccuracies, it didn't matter to you 11:50:46
19 whether they ultimately fixed the inaccuracies 11:50:50
20 before VA sent the letter to veterans? 11:50:53
21 MS. FAREL: Objection to the extent you 11:50:55
22 mischaracterized the witness's prior testimony. 11:50:57
23 Calls for speculation, argumentative. 11:51:01
24 BY MS. SPRENKEL: 11:51:02
25 Q. I'm just trying to understand because, 11:51:02

1 you know, we talked about your role as 11:51:04
2 Environmental -- Chief Consultant For Environmental 11:51:06
3 Health and the goal of getting accurate information 11:51:08
4 to veterans and how it's important to inform 11:51:10
5 veterans and provide them information, and here we 11:51:13
6 have a letter from VA, attaching a DoD fact sheet, 11:51:15
7 and your expert in chemical and biological agent 11:51:22
8 exposures is saying that there are significant 11:51:25
9 inaccuracies in that letter. So I'm trying to 11:51:27
10 understand why, in your role in charge of outreach, 11:51:30
11 it wasn't important to you that the DoD fact sheet 11:51:37
12 be accurate. 11:51:42
13 MS. FAREL: Objection, asked and 11:51:44
14 answered, argumentative, calls for speculation, 11:51:46
15 mischaracterizes the witness's prior testimony. 11:51:49
16 THE WITNESS: You know, I'm getting a 11:51:52
17 little confused. You mentioned informing DoD. 11:51:53
18 This set of memos was informing our Front 11:51:56
19 Office and VBA. It wasn't informing DoD. My 11:51:59
20 job was to make sure my Front Office had all 11:52:02
21 the information they needed to make an informed 11:52:04
22 decision themselves about this. We did that, 11:52:07
23 okay? Now, what happened afterwards, I 11:52:10
24 don't -- I don't remember, you know. But 11:52:14
25 certainly at this point, at this point, before 11:52:15

1 the letter went out with this input, I would 11:52:18
2 have been happy -- I would have been satisfied 11:52:21
3 that we had let them know exactly what we 11:52:24
4 thought in my office. 11:52:26
5 BY MS. SPRENKEL: 11:52:27
6 Q. Who is "them"? 11:52:27
7 A. Louise Van Diepen and VBA would have 11:52:28
8 been -- the two VBA people would have been the main 11:52:32
9 ones. 11:52:35
10 Q. So -- 11:52:35
11 A. And then my supervisor, Dr. Deyton. I 11:52:37
12 mean, we virtually covered the waterfront here on 11:52:40
13 this. 11:52:43
14 Q. Do you feel comfortable with VA sending 11:52:45
15 out an inaccurate fact sheet from DoD? 11:52:48
16 MS. FAREL: Objection, vague, 11:52:51
17 mischaracterizes the testimony. 11:52:52
18 THE WITNESS: I mean, I don't know that 11:52:54
19 it's inaccurate. I mean, I have Mark's 11:52:55
20 opinion, which I highly respect. If I had to 11:52:58
21 give you a definitive answer, was it inaccurate 11:53:00
22 or not, I'd have to look at the studies he 11:53:03
23 mentions, I'd have to look at the IOM reports, 11:53:06
24 I would have to, you know, review closely what 11:53:10
25 DoD said, what Mark said, and then I could give 11:53:12

1 you an answer, was this inaccurate or was it 11:53:14
2 not? I'd also have to answer the question, was 11:53:17
3 it, you know, significant inaccuracies or just 11:53:19
4 a difference of opinion? 11:53:21
5 BY MS. SPRENKEL: 11:53:22
6 Q. Well, if it were inaccurate, would you 11:53:22
7 be comfortable with VA sending out an inaccurate 11:53:24
8 fact sheet from DoD? 11:53:28
9 MS. FAREL: Objection, calls for a 11:53:29
10 hypothetical, speculation. 11:53:30
11 THE WITNESS: Again, I don't know if it 11:53:32
12 was inaccurate or not. I would not be happy 11:53:33
13 sending anything inaccurate out to veterans on 11:53:36
14 any issue. 11:53:38
15 BY MS. SPRENKEL: 11:53:39
16 Q. Okay. Let's look at what Mark says. 11:53:40
17 He says -- he points to paragraph one of the DoD 11:53:43
18 fact sheet, last sentence, The study did not detect 11:53:46
19 any significant long-term health effects in 11:53:49
20 Edgewood Arsenal volunteers. 11:53:53
21 Mark says, This statement is not a 11:53:55
22 correct representation of the relevant NRC reports. 11:53:57
23 In fact, in their review of hospital admission 11:54:00
24 records for Army from 1958 to 1983, and VA from 11:54:02
25 1963 to 1981, the NRC investigators reported a 11:54:09

1 "barely statistically significant increase in 11:54:13
2 admissions to VA hospitals for malignant neoplasms 11:54:17
3 among men exposed to anticholinesterases and a 11:54:20
4 statistically significant increase in admissions to 11:54:22
5 VA hospitals and Army hospitals for nervous system 11:54:26
6 and sense organ disorders among men exposed to 11:54:28
7 LSD." 11:54:36
8 Do you see that? 11:54:36
9 A. Uh-huh. 11:54:36
10 Q. And moving down to the final two 11:54:37
11 paragraphs, he says, I think a more accurate 11:54:38
12 wording for the fact sheet would be "The study 11:54:41
13 detected few significant long-term health effects 11:54:43
14 in Edgewood Arsenal volunteers." To say that there 11:54:46
15 were no health effects is clearly not correct and 11:54:50
16 easily refutable. 11:54:52
17 Do you see that? 11:54:55
18 A. Uh-huh. 11:54:55
19 Q. Assuming that he is correct, would you 11:54:56
20 agree that the wording of the DoD fact sheet is not 11:54:58
21 correct? 11:55:03
22 MS. FAREL: Objection, calls for a 11:55:04
23 hypothetical. 11:55:06
24 And you can take your time to read that 11:55:06
25 whole e-mail. I know she didn't read the whole 11:55:08

1 e-mail, so -- 11:55:12

2 I think the witness can have some time 11:55:12

3 to review the document. 11:55:14

4 THE WITNESS: Okay, restate the 11:55:16

5 question. 11:55:17

6 MS. SPRENKEL: Can you read it back? 11:55:37

7 * * * 11:55:37

8 (Whereupon, the court reporter read 11:55:37

9 from the record.) 11:55:37

10 * * * 11:55:38

11 MS. FAREL: And I'll object as calling 11:55:38

12 for a hypothetical and as calling for 11:55:39

13 speculation. 11:55:41

14 THE WITNESS: I mean, I'd have to 11:55:43

15 review everything to give you a definitive 11:55:44

16 answer. But if Mark's correct in everything he 11:55:46

17 says here and there's not that much difference 11:55:49

18 of opinion, I would say it -- it could be more 11:55:51

19 accurate than it is. It could be better 11:55:53

20 worded. 11:55:57

21 Part of the problem I'm having with all 11:55:58

22 this is, I don't -- I don't remember and I 11:55:59

23 don't understand why this DoD material was 11:56:03

24 added to a letter from Admiral Cooper. I mean, 11:56:06

25 I just don't know. I mean, I know we did that 11:56:10

1 occasionally, but that was just not routine to 11:56:13
2 put DoD stuff into our letters. And if I had 11:56:15
3 some idea of why we were doing this, you know, 11:56:18
4 my answers would be much more clear because -- 11:56:22
5 you know, some of this is just a mystery to me. 11:56:24
6 And I don't -- also don't understand why we had 11:56:26
7 such a short timeline, too. 11:56:29
8 BY MS. SPRENKEL: 11:56:32
9 Q. Well, presumably the goal of the 11:56:33
10 outreach effort was to provide information to 11:56:34
11 veterans about exposures, right? 11:56:37
12 A. (Witness nods head.) Uh-huh. 11:56:38
13 MS. FAREL: Objection, calls for 11:56:39
14 speculation, lack of foundation. 11:56:41
15 BY MS. SPRENKEL: 11:56:43
16 Q. And I think you said before -- oh, did 11:56:43
17 you answer? 11:56:45
18 THE COURT REPORTER: He said "uh-huh." 11:56:52
19 BY MS. SPRENKEL: 11:56:54
20 Q. Okay. And you said before that in some 11:56:55
21 instances when DoD had the information, you would 11:56:56
22 provide information from DoD? 11:56:59
23 A. Yes. 11:57:01
24 Q. But it would still be important to you 11:57:06
25 that the information provided from DoD be accurate? 11:57:08

1 A. Yes. Let me just add -- you know, I'm 11:57:11
2 not supposed to do this -- this is very technical 11:57:22
3 stuff, and there's differences of professional 11:57:25
4 opinion on some of this. It's not necessarily 11:57:28
5 black and white, you know, they're being 11:57:32
6 inaccurate, we're being accurate. In some cases, 11:57:35
7 it's just a difference in professional opinion. 11:57:37
8 You get two chemical warfare agent experts talking 11:57:39
9 about this stuff, one may say, you know, there's 11:57:43
10 nothing here. The other one may say, well, yeah, 11:57:46
11 there's definitely something here. That doesn't 11:57:49
12 mean one of them's trying to be inaccurate and the 11:57:51
13 other one's not. It may just be a professional 11:57:55
14 difference in opinion. And in this case, I really 11:57:58
15 don't know. 11:58:00
16 Q. Well, are there professional 11:58:01
17 differences in opinion that you can recall 11:58:02
18 regarding whether there were any long-term health 11:58:04
19 effects arising out of chemical and biological 11:58:07
20 weapons testing? 11:58:10
21 A. I don't remember conversations specific 11:58:11
22 to that, but I do know that chemical agent experts 11:58:12
23 from time to time would argue very vigorously about 11:58:16
24 these issues. I don't remember the specifics of 11:58:18
25 it. But they would argue. 11:58:20

1 Q. And this fact sheet refers to one set 11:58:23
2 of studies and concludes that the study -- this 11:58:29
3 study in question did not detect any significant 11:58:35
4 long-term health effects in Edgewood Arsenal 11:58:37
5 volunteers; is that right? 11:58:40
6 A. Okay. You're talking about the DoD 11:58:41
7 fact sheet? 11:58:44
8 Q. Yeah. 11:58:44
9 A. And which sentence are you referring 11:58:45
10 to? 11:58:47
11 Q. I'm referring to -- I think it's the 11:58:49
12 last sentence of the first paragraph. This is 11:58:52
13 Exhibit 264. 11:58:54
14 A. Okay, the study did not detect any 11:58:55
15 significant long-term health effects in Edgewood 11:58:57
16 Arsenal volunteers? 11:59:00
17 Q. Uh-huh. 11:59:00
18 A. Okay, well, that's a DoD fact sheet, 11:59:02
19 and this is their interpretation of the IOM study. 11:59:04
20 Q. It's their interpretation of one study? 11:59:08
21 A. There was -- I thought they mentioned 11:59:10
22 three here, but -- 11:59:12
23 Q. I think it was three -- three volumes. 11:59:13
24 "A three-volume study." 11:59:17
25 A. Oh, okay. So it was one study with 11:59:20

1 three aspects to it published over '82 to '85. 11:59:23

2 So that's their interpretation of it. 11:59:28

3 And then when you look at Mark -- you know, Mark 11:59:29

4 disagrees with that. 11:59:35

5 Q. Uh-huh. And you just mentioned that 11:59:37

6 with regard to the effects of chemical and 11:59:40

7 biological weapons exposure, there's a lot of 11:59:43

8 disagreement over the effects of those exposures, 11:59:47

9 right? 11:59:50

10 MS. FAREL: Objection to the extent you 11:59:51

11 mischaracterized the witness's prior testimony. 11:59:53

12 THE WITNESS: Well, there certainly is 11:59:55

13 disagreement. You know, I don't know what you 11:59:58

14 mean by "a lot." But they do disagree. 12:00:00

15 BY MS. SPRENKEL: 12:00:02

16 Q. Well, doesn't the letter imply that 12:00:03

17 there's no health effects from exposure -- 12:00:05

18 A. No. 12:00:09

19 Q. -- to the testing? 12:00:09

20 A. It does not. 12:00:10

21 MS. FAREL: Objection, calls for 12:00:11

22 speculation. 12:00:12

23 Sorry. You can answer. 12:00:13

24 THE WITNESS: Go ahead and ask your 12:00:15

25 question again. 12:00:16

1 BY MS. SPRENKEL: 12:00:17

2 Q. Doesn't the letter, by referring only 12:00:17

3 to one study and concluding that no significant 12:00:19

4 health effects were found from that study, imply to 12:00:22

5 veterans that there were no health effects from 12:00:26

6 their exposures at Edgewood Arsenal? 12:00:28

7 MS. FAREL: Same objection. 12:00:30

8 THE WITNESS: No. It said the study 12:00:31

9 did not detect. It doesn't mean that there's 12:00:35

10 absolutely no possibility that there's any 12:00:37

11 long-term effects. It's just talking about the 12:00:39

12 study. 12:00:42

13 BY MS. SPRENKEL: 12:00:43

14 Q. Well, does the fact sheet provide any 12:00:43

15 information about other studies or other possible 12:00:45

16 long-term health effects? 12:00:50

17 A. Well, what I'm look -- seeing here by 12:00:55

18 my perusal of this is they're just referring to the 12:01:19

19 IOM study. But they don't make a statement saying 12:01:22

20 there's definitely no long-term health effects. 12:01:25

21 They're just saying the study did not detect any. 12:01:29

22 So they're just referring to the study and its 12:01:31

23 conclusions. 12:01:34

24 Q. Uh-huh. But as you -- earlier you said 12:01:36

25 that you thought there was significant information 12:01:40

1 available about the effects of some of these agents 12:01:43
2 at this time; is that right? 12:01:47
3 MS. FAREL: Objection to the extent you 12:01:48
4 mischaracterized the witness's prior testimony, 12:01:49
5 and calls for speculation. 12:01:51
6 BY MS. SPRENKEL: 12:01:53
7 Q. Well, let me -- let me just ask you the 12:01:54
8 question. Was information known about the health 12:01:55
9 effects of the exposure to some of the substances 12:01:58
10 that were -- that veterans were exposed to in the 12:02:01
11 chemical and biological weapons testing programs at 12:02:05
12 this time? 12:02:05
13 A. Yes. 12:02:09
14 MS. FAREL: Objection, vague, calls for 12:02:09
15 speculation. 12:02:10
16 THE WITNESS: Well, yes. I mean, we're 12:02:10
17 referring to the IOM studies that studied that. 12:02:12
18 They provided information in this. So there 12:02:15
19 was information there, of course. It refers to 12:02:17
20 it in all these documents. 12:02:19
21 BY MS. SPRENKEL: 12:02:19
22 Q. Was other information known in addition 12:02:19
23 to the IOM study? 12:02:21
24 MS. FAREL: Objection, vague, calls for 12:02:23
25 speculation, lack of foundation. 12:02:24

1 THE WITNESS: There's a whole 12:02:25
2 literature of general information about these 12:02:27
3 particular type agents and their potential 12:02:29
4 health effects that may have been included in 12:02:31
5 the IOM study and may not have been. There's a 12:02:33
6 lot of literature out there. 12:02:36
7 BY MS. SPRENKEL: 12:02:38
8 Q. Some of that literature suggests that 12:02:39
9 there may be long-term health effects from exposure 12:02:41
10 to certain agents, right? 12:02:44
11 A. Yes. 12:02:46
12 Q. For example, which agents? 12:02:47
13 A. You know, I don't -- I don't remember. 12:02:49
14 I mean, I can remember at least one study of people 12:02:52
15 spraying pesticides on farms who may have had 12:02:59
16 long-term health effects. I don't know if the 12:03:03
17 study was ever verified or anything like that. 12:03:05
18 But, you know, from time to time you see studies 12:03:08
19 that find there may be a potential effect from 12:03:10
20 exposure. Let me think just a second. I saw a 12:03:18
21 study today on the BBC when I got up, I read the 12:03:26
22 newspapers when I get up, and this study found that 12:03:30
23 people who ate processed meat, bacon and sausage, 12:03:32
24 may have a higher risk of breast cancer -- of 12:03:37
25 pancreatic cancer. So you see studies like that, 12:03:38

1 you know, but you don't know when you see them 12:03:41
2 whether they've been verified or if they have any 12:03:43
3 basis. But that was just today. 12:03:45
4 Q. Okay. But talking about the kind of 12:03:47
5 chemical and biological weapons agents that 12:03:50
6 military service personnel were exposed to in the 12:03:54
7 human testing programs, there's information known 12:03:57
8 that suggests that some of those agents have 12:04:01
9 harmful health effects, right? 12:04:03
10 MS. FAREL: Objection to the extent 12:04:06
11 you're mischaracterizing the witness's prior 12:04:07
12 testimony, and calls for speculation. 12:04:10
13 THE WITNESS: I believe there are 12:04:11
14 studies like that. I just haven't followed the 12:04:12
15 literature in a long time. 12:04:14
16 BY MS. SPRENKEL: 12:04:15
17 Q. What about like sarin gas, are there 12:04:16
18 studies that show that there's harmful -- 12:04:18
19 A. As I remember -- 12:04:21
20 MS. FAREL: Sorry. Just give me one 12:04:22
21 pause. 12:04:23
22 THE WITNESS: Sure. 12:04:23
23 MS. FAREL: Objection, vague, calls for 12:04:24
24 speculation. 12:04:25
25 THE WITNESS: Okay. As I remember, 12:04:26

1 there certainly are effects from immediate 12:04:28
2 exposure, no doubt. You get enough sarin gas, 12:04:30
3 you know, it causes a lot of health problems at 12:04:34
4 that time. As to whether or not it causes 12:04:36
5 long-term health effects, I don't know what the 12:04:41
6 literature shows. I just don't remember. 12:04:43
7 BY MS. SPRENKEL: 12:04:46
8 Q. What about mustard gas at this time, 12:04:46
9 was there information available showing that there 12:04:48
10 were significant long-term health effects as a 12:04:54
11 result of exposure to mustard gas? 12:04:57
12 MS. FAREL: Same objection. 12:04:59
13 THE WITNESS: Definitely. Mustard gas 12:05:00
14 is a blister agent, okay? It causes burn-like 12:05:01
15 lesions on your skin. It also causes 12:05:05
16 destruction of your lung tissue. There are no 12:05:07
17 doubt that World War I veterans who were 12:05:10
18 exposed to lewisite and mustard agents, you 12:05:15
19 know, a year later or ten years later, 50 years 12:05:18
20 later, they still have the burn scars and the 12:05:19
21 problems with their breathing from those 12:05:21
22 agents. Those are readily detectable. So when 12:05:24
23 you talk about long-term health effects from 12:05:26
24 mustard gas, lewisite, any kind of blister 12:05:30
25 agent, there is no doubt in anyone's mind that 12:05:33

1 Environmental Health at VHA. Could you tell me 13:03:34
2 what your responsibilities included? 13:03:37
3 A. I mean, a lot of stuff crossed our 13:03:41
4 desk, but it was basically to provide -- to try to 13:03:46
5 improve the health care of the veterans. So let me 13:03:51
6 see if I can give an example. With like the Gulf 13:03:56
7 War I veterans, there were a lot of issues that 13:04:00
8 arose after the first Gulf War, and we evaluated 13:04:01
9 them to see whether or not they were a major factor 13:04:06
10 in potentially causing health problems. And so 13:04:08
11 like there were a lot of complaints amongst the 13:04:12
12 troops in the first Gulf War about blowing sand, 13:04:14
13 you know, could that cause long-term health 13:04:17
14 problems? And so we spent time looking at what 13:04:20
15 studies were done and what other work had been done 13:04:23
16 in related areas about being exposed to these sort 13:04:27
17 of, you know, sand particles and things. 13:04:30
18 So, you know, we would look at things 13:04:32
19 like that, and then we would make a determination 13:04:34
20 as to whether or not health care should be altered 13:04:37
21 or whether doctors should know about it to look at 13:04:39
22 these particular types of health problems. 13:04:42
23 So we did -- I mean, as the name 13:04:44
24 implies, you know, we looked at environmental 13:04:47
25 health issues. But there was a whole lot of other 13:04:49

1 issues, too. There was things in the United States 13:04:52
2 as well. You know, like in training exercises and 13:04:54
3 how people are billeted in their billets and how 13:05:00
4 close their bunks are, whether they're at risk of 13:05:06
5 infectious diseases, that sort of thing. We looked 13:05:08
6 at any sort of health risk that might have arisen 13:05:10
7 and be unique to military service. We -- you know, 13:05:13
8 that was part of our purview. 13:05:16

9 Q. So when you say "we," who do you mean? 13:05:18

10 A. Well, that would be my office and that 13:05:21
11 would be Mark Brown as far as toxicological issues, 13:05:22
12 and then Dr. Han Kang -- Han Kang was -- he did 13:05:26
13 epidemiologic analysis, in-house analysis. He was 13:05:32
14 separate from Research. And what other things did 13:05:36
15 we deal with? I mean, we dealt with a lot of 13:05:40
16 issues like that. 13:05:45

17 We also, as you said, we dealt with 13:05:47
18 outreach, letting veterans know about, you know, 13:05:49
19 potential health problems they may have 13:05:51
20 encountered, or to reassure them. We would send 13:05:53
21 outreach letters out saying, you know, that, you 13:05:57
22 know, there's some concerns about this particular, 13:05:59
23 you know, experience in the military service and, 13:06:01
24 you know, so far we haven't found this to be a 13:06:04
25 major issue, but if you have questions, come in. 13:06:08

1 And we almost always encouraged them to come in if 13:06:10
2 they had questions, regardless. 13:06:14
3 And then -- so we did that evaluation, 13:06:16
4 we did outreach, and we did basically consulting 13:06:18
5 with other aspects of VA when they had questions 13:06:21
6 about environmental health issues. We didn't 13:06:28
7 deal -- we didn't deal so much with the health 13:06:31
8 threats that were associated with our hospitals in 13:06:34
9 the United States or the health care clinics. That 13:06:36
10 was usually -- Dr. Deyton's office did more of 13:06:38
11 that. So it was more the military aspects of 13:06:41
12 health risks. 13:06:46
13 Q. So you said -- before I thought you 13:06:47
14 said that Mark Brown wasn't in your office. Was he 13:06:50
15 in your office? 13:06:54
16 A. Mark reported to me. I was his 13:06:55
17 supervisor. 13:06:58
18 Q. Okay. So -- but you don't remember 13:06:58
19 what your office was called? 13:06:59
20 A. Office of -- I was a Chief Consultant 13:07:01
21 For Environmental Health. 13:07:03
22 Q. Right. 13:07:05
23 A. But what the office itself was, that's 13:07:06
24 Susan Mather's office, Office of Environmental 13:07:08
25 Health and -- oh, Lord, Office of -- I can't 13:07:12

1 would not necessarily have been the one putting 13:15:01
2 it together. 13:15:03
3 BY MS. SPRENKEL: 13:15:04
4 Q. Who else might have put it together? 13:15:04
5 A. Dr. Kang might have been involved 13:15:06
6 because he was our database person. But again, I 13:15:07
7 mean, we're asking a hypothetical here. I don't 13:15:12
8 remember us doing that. 13:15:15
9 Q. Okay. 13:15:16
10 A. And I don't know if it was done 13:15:17
11 afterwards either. 13:15:18
12 Q. But you don't know that it wasn't done 13:15:19
13 either? 13:15:22
14 A. No, I don't. I don't know what 13:15:22
15 happened after I left VA. 13:15:23
16 Q. So you're -- you know that it was not 13:15:25
17 done while you were at VA? 13:15:27
18 A. I just don't remember. 13:15:29
19 Q. Okay. So it may have been done while 13:15:30
20 you were at VA but you don't remember? 13:15:33
21 A. I don't remember. 13:15:35
22 Q. Okay. Let's go back to Exhibit 264 and 13:15:35
23 also Exhibit 727, which we were looking at 13:16:20
24 together. So on Exhibit 727, going back to Mark 13:16:26
25 Brown's e-mail at DVA052 000113, the second 13:16:40

1 inaccuracy that Mark Brown identified, and I'll 13:16:48
2 just read it to you, he says, paragraph two DoD 13:16:54
3 fact sheet last sentence: "The study objectives 13:16:57
4 were to determine specific health effects 13:17:00
5 associated with exposure (particularly with low 13:17:03
6 dosages...)." 13:17:05
7 Do you see that? 13:17:06
8 A. Uh-huh. 13:17:06
9 Q. And that was the same sentence that you 13:17:07
10 also thought was inaccurate as written, right? 13:17:12
11 A. I don't know if it was inaccurate. I 13:17:15
12 might have thought it was just not clear. I just 13:17:17
13 don't remember. 13:17:20
14 Q. Okay. But it was either inaccurate or 13:17:21
15 unclear? 13:17:26
16 A. You know, I don't remember. That would 13:17:28
17 be my speculation. 13:17:30
18 Q. Well, you don't remember what you 13:17:32
19 thought at the time? 13:17:35
20 A. No, I do not. 13:17:36
21 Q. But looking at it today, to say 13:17:37
22 "particularly low dosages" when you know that some 13:17:40
23 veterans were exposed to high doses of chemical 13:17:44
24 agents, would you call that inaccurate? 13:17:47
25 MS. FAREL: Objection, mischaracterizes 13:17:50

1 the witness's prior testimony and assumes facts 13:17:52
2 not in evidence. 13:17:54
3 THE WITNESS: I mean, I don't remember. 13:17:55
4 I mean, according to my e-mail, I did assume, 13:17:57
5 for whatever reason, that they were exposed to 13:18:00
6 higher doses in some instances. 13:18:03
7 BY MS. SPRENKEL: 13:18:07
8 Q. And -- 13:18:08
9 A. So -- but I don't remember what I based 13:18:08
10 that statement on. 13:18:10
11 Q. Okay. But if veterans were exposed to 13:18:11
12 higher doses in some instances, then is the 13:18:13
13 statement "particularly with low dosages" 13:18:16
14 misleading? 13:18:20
15 MS. FAREL: Objection, calls for a 13:18:20
16 hypothetical, calls for speculation. 13:18:22
17 THE WITNESS: I don't know if it's 13:18:24
18 misleading. It -- you know, it seems unclear 13:18:25
19 to me today. I mean "particularly at low 13:18:29
20 doses" implies there were some nonparticular 13:18:32
21 exposures, you know. I mean, just on the face 13:18:36
22 of the words themselves, I mean, you can infer 13:18:39
23 that there was something other than low dosages 13:18:43
24 here. But I just don't remember. And so I 13:18:45
25 find -- even today looking at it, I don't find 13:18:48

1 Doesn't seem misleading, no. If they evaluated 13:20:11
2 low-dose exposure, this is what they said they 13:20:15
3 did, then it's not misleading. 13:20:17
4 BY MS. SPRENKEL: 13:20:19
5 Q. If they also evaluated high-dose 13:20:19
6 exposure, it's not misleading to leave that out of 13:20:23
7 that letter? 13:20:25
8 MS. FAREL: Objection, calls for 13:20:26
9 speculation, asks for a hypothetical, 13:20:27
10 argumentative. 13:20:30
11 THE WITNESS: I mean, I just don't know 13:20:33
12 without talking to people who put this thing 13:20:34
13 together. I just don't remember. I don't 13:20:38
14 remember all the facts from the IOM studies, 13:20:39
15 so... 13:20:42
16 BY MS. SPRENKEL: 13:20:42
17 Q. Right, but setting aside the facts of 13:20:42
18 the IOM studies, I mean, you're a doctor, right? 13:20:45
19 A. Uh-huh. 13:20:46
20 Q. And your goal is to communicate 13:20:47
21 honestly with patients? 13:20:49
22 A. Uh-huh. 13:20:52
23 Q. Is that right? And you want to provide 13:20:52
24 them the best information that you have available 13:20:57
25 to you? 13:20:59

1 A. And I would tend to defer to Mark. But 13:23:15
2 for me personally, I simply do not remember what 13:23:18
3 the IOM studies showed. 13:23:20

4 Q. Well, if you were to defer to Mark and 13:23:22
5 he was an expert in this area, and his review of 13:23:24
6 the extensive literature on these tests 13:23:28
7 demonstrated that a great deal of the experiments, 13:23:30
8 perhaps the majority, were designed to cause 13:23:32
9 clinical poisoning signs and symptoms among 13:23:34
10 experimental subjects and therefore were not low 13:23:37
11 dose, does that lead you to conclude that the 13:23:40
12 phrase "particularly at low dosages" is not 13:23:44
13 accurate? 13:23:48

14 MS. FAREL: Objection, calls for 13:23:48
15 speculation, asks for a hypothetical, lack of 13:23:50
16 foundation. 13:23:53

17 THE WITNESS: I don't understand your 13:23:53
18 question. Where do you find majority were 13:23:54
19 exposed to high dose? 13:23:56

20 BY MS. SPRENKEL: 13:23:58

21 Q. I'm reading the paragraph starting at 13:23:58
22 "review." It says, Review of the extensive 13:24:01
23 literature on these tests clearly demonstrates that 13:24:03
24 a great deal of experiments, perhaps the majority, 13:24:06
25 were actually designed to cause clinical poisoning 13:24:09

1 signs and symptoms among experimental subjects, and 13:24:13
2 therefore, not low dose. 13:24:16
3 A. I mean, I can't tell from this. Even 13:24:17
4 if the great majority of the experiments were 13:24:19
5 designed this way, if those particular experiments 13:24:21
6 employed a very small number of veterans compared 13:24:23
7 to the other experiments, then the numbers, you 13:24:26
8 know, might still show that most of them were 13:24:29
9 exposed to low dose. And that's not outside the 13:24:31
10 realm of possibility. I'm not trying to -- I'm 13:24:34
11 just speculating now. But when you're exposing 13:24:37
12 someone to high doses of toxic agents, you would 13:24:40
13 tend to be -- you would tend to do that in a much 13:24:44
14 smaller group than if you were exposing veterans to 13:24:47
15 low doses of agents that you didn't think would 13:24:50
16 cause them any effects. You would be much more 13:24:53
17 careful in high-dose experiments. You would 13:24:56
18 generally use fewer subjects. But I don't know. 13:24:58
19 I'm just speculating. I have no idea. But based 13:25:00
20 on that sentence, I can't determine how many are in 13:25:03
21 each group. Okay? All I can determine from what 13:25:06
22 Mark said is he thinks, you know, that the majority 13:25:09
23 of experiments may have been in that group. He 13:25:11
24 doesn't say the majority of subjects. 13:25:15
25 Q. Okay. But he does think that there are 13:25:17

1 a great deal of experiments that involved high 13:25:20
2 doses. 13:25:23

3 A. Well, I mean, you'll have to ask Mark 13:25:25
4 what he means. I can only speculate here. But he 13:25:28
5 says, Review of the extensive literature on these 13:25:31
6 tests clearly demonstrates that a great deal of the 13:25:34
7 experiments, perhaps the majority, were actually 13:25:36
8 designed to cause clinical poisoning signs. I 13:25:38
9 mean, just based on the face of this, without 13:25:42
10 knowing what Mark's thinking, that suggests that, 13:25:44
11 but I'm speculating here. 13:25:47

12 Q. Well, and it's consistent with what you 13:25:49
13 said in your e-mail where you said, the phrase 13:25:51
14 "particularly at low dosages," you requested that 13:25:54
15 it be taken out of the second paragraph because 13:25:57
16 some veterans were exposed to high doses of 13:26:00
17 chemical agents, right? 13:26:03

18 A. Uh-huh. And -- but I just don't 13:26:03
19 remember what the basis of that statement was that 13:26:06
20 I made. 13:26:09

21 Q. I understand that you don't remember 13:26:10
22 the basis of your statement at that time. 13:26:11

23 A. But that's what I said. 13:26:13

24 Q. That's what you said. And isn't that 13:26:14
25 inconsistent with telling veterans that the tests 13:26:16

1 evaluated the effects of low doses? 13:26:21

2 MS. FAREL: Objection, asked and 13:26:23

3 answered, argumentative, calls for speculation, 13:26:25

4 lack of foundation. 13:26:27

5 THE WITNESS: Did they say that or say 13:26:30

6 "particularly at low doses"? 13:26:31

7 BY MS. SPRENKEL: 13:26:47

8 Q. It says -- and this is on VET 13:26:48

9 001-014268, the top of the third sentence. This is 13:26:53

10 Exhibit 264. You may have it. 13:26:56

11 A. 264, okay. 13:27:02

12 Q. On the third page. 13:27:04

13 A. Got it. 13:27:07

14 Q. It says, The program evaluated the 13:27:08

15 effects of low-dose exposures to chemical agents. 13:27:11

16 A. And the question? 13:27:16

17 MS. SPRENKEL: What was my question? 13:27:30

18 * * * 13:27:31

19 (Whereupon, the court reporter read 13:27:31

20 from the record.) 13:27:31

21 * * * 13:27:32

22 MS. FAREL: And I'll make the same 13:27:32

23 objections. 13:27:33

24 THE WITNESS: It doesn't say they only 13:27:34

25 evaluated the effects of low dose. It just 13:27:36

1 said they did do low dose. So I don't find 13:27:39
2 anything inconsistent in this statement. 13:27:42
3 BY MS. SPRENKEL: 13:27:44
4 Q. Well, it's at least unclear. You can 13:27:44
5 agree with that, right? 13:27:46
6 MS. FAREL: Objection, calls for 13:27:47
7 speculation, asked and answered. 13:27:48
8 THE WITNESS: You know, I don't know if 13:27:52
9 it's unclear. I found the "particularly at low 13:27:54
10 doses" -- there was some problem with that. 13:27:57
11 But I don't remember, you know, thinking this 13:28:01
12 other statement was unclear. 13:28:04
13 BY MS. SPRENKEL: 13:28:05
14 Q. So you think that "particularly with 13:28:06
15 low doses" was unclear, though? 13:28:08
16 A. Well, there was something -- I had some 13:28:10
17 objection to it. I just don't remember what it 13:28:12
18 was. What I did say was, is because they were also 13:28:14
19 exposed -- what did I say -- were exposed to high 13:28:17
20 doses. And I don't know where I got that 13:28:21
21 information, I can't remember now, but I thought 13:28:23
22 the "particularly at low doses" was not a good 13:28:25
23 phrase to use, knowing that they were also exposed 13:28:27
24 to high doses. 13:28:31
25 Q. Okay. All right. So to be clear, the 13:28:31

1 notice letter in Exhibit 264 does not provide any 13:29:07
2 information about the health effects of exposures; 13:29:11
3 is that right? 13:29:16
4 MS. FAREL: Objection, calls for 13:29:16
5 speculation, vague, lack of foundation. 13:29:19
6 THE WITNESS: So are you asking if it 13:29:24
7 provides specific information about health 13:29:26
8 effects? 13:29:27
9 BY MS. SPRENKEL: 13:29:28
10 Q. Yes. 13:29:28
11 * * * 13:30:03
12 (Pause.) 13:30:03
13 * * * 13:30:04
14 A. Okay, I don't see anything in here 13:30:04
15 specific. 13:30:06
16 Q. Okay. And the letters do not state 13:30:08
17 that long-term psychological consequences are 13:30:10
18 possible from participating in human testing 13:30:14
19 programs, right? 13:30:16
20 A. Well, it says, If you have health 13:30:21
21 concerns. It doesn't delineate which concerns. 13:30:23
22 Q. So it doesn't inform veterans that 13:30:28
23 long-term psychological consequences are possible 13:30:31
24 from participating in human testing programs, 13:30:34
25 right? 13:30:36

1 MS. FAREL: Asked and answered. 13:30:37

2 THE WITNESS: Okay, but it also says, 13:30:38

3 Additional medical information about potential 13:30:40

4 exposures is available through the 13:30:42

5 "Environmental Health Coordinators," who are 13:30:44

6 located in every VA medical center. So we did 13:30:46

7 give the veterans a point of contact for any of 13:30:48

8 these sort of questions. 13:30:52

9 BY MS. SPRENKEL: 13:30:53

10 Q. Right. But does the letter itself say 13:30:54

11 that long-term psychological consequences are 13:30:56

12 possible from participating in human testing 13:31:01

13 programs? 13:31:03

14 MS. FAREL: Asked and answered. 13:31:03

15 THE WITNESS: I don't see that. 13:31:04

16 BY MS. SPRENKEL: 13:31:14

17 Q. Do you recall discussions of the 13:31:16

18 possibility of informing veterans regarding the 13:31:17

19 chemicals that they were exposed to? 13:31:20

20 A. As part of this particular -- the 13:31:22

21 Edgewood? 13:31:25

22 Q. Yes. 13:31:25

23 A. I don't remember specific -- I don't 13:31:27

24 remember discussions about the specific agents. I 13:31:30

25 don't remember those discussions. That could have 13:31:35

1 easily occurred, but I don't remember. 13:31:37

2 MS. SPRENKEL: Let me give you a 13:31:47

3 document that we will mark -- what are we, 728? 13:31:49

4 * * * 13:31:52

5 (Whereupon, Exhibit 728 was marked for 13:31:52

6 identification.) 13:31:52

7 * * * 13:32:09

8 BY MS. SPRENKEL: 13:32:09

9 Q. And for the record, Exhibit 728 is an 13:32:10

10 e-mail from Dr. Kenneth Craig Hyams to Joe 13:32:15

11 Salvatore and other folks; Bates labeled DVA014 13:32:21

12 000707 to DVA014 000709. 13:32:30

13 * * * 13:33:11

14 (Pause.) 13:33:11

15 * * * 13:35:18

16 A. Okay, I glanced at it. 13:35:18

17 Q. Okay. I'd like to turn your attention 13:35:22

18 to the third page ending in 709. 13:35:23

19 A. Okay. 13:35:30

20 Q. The fourth paragraph down, it says, In 13:35:31

21 the notification letters, Pamperin said, veterans 13:35:41

22 will be told the chemical they were exposed to and 13:35:44

23 the dosage, and be encouraged to seek hospital 13:35:46

24 tests to determine if they suffered related 13:35:49

25 injuries. 13:35:52

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C E R T I F I C A T E

I, Lisa V. Feissner, RDR, CRR, CLR,
Registered Diplomate Reporter and Notary Public in
and for the Commonwealth of Pennsylvania, certify
that the foregoing is a true and accurate
transcript of the deposition of said witness, who
was first duly sworn on the date and place
hereinbefore set forth.

I further certify that I am neither
attorney nor counsel for, nor related to or
employed by, any of the parties to the action in
which this deposition was taken, and further, that
I am not a relative or employee of any attorney or
counsel employed in this action, nor am I
financially interested in this case.

Lisa V. Feissner, RDR, CRR, CLR
Notary Public

Exhibit 35

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

VIETNAM VETERANS OF AMERICA,)
et al,)
)
Plaintiffs,)
)
v.)
)
CENTRAL INTELLIGENCE)
AGENCY, et al,)
)
Defendants.)
_____)

CERTIFIED
COPY

No. CV 09-0037-CW

CONFIDENTIAL

VIDEOTAPED DEPOSITION OF JAMES S. KETCHUM, M.D.
Wednesday, July 14, 2010

THE SOUZA GROUP
Certified Shorthand Reporters
4615 First Street, Suite 200
Pleasanton, California 94566

Reported by:
KARLA MARTIN, CSR
LICENSE NO. 12025
Videographer: Aline Mayer

1 yes.

2 Q. In terms of that caper are you referring to the
3 dosing of an officer with LSD?

4 A. No, I wasn't referring to that caper. I was
5 referring to one that took place overseas and which I
6 knew nothing about at the time.

7 Q. What was that caper that took place overseas?

8 A. From what I have read in the reports evidently
9 Dr. Sim and Ernie Clovis -- at least that was my
10 conclusion -- had formed a special purpose team without
11 any coordination with the CIA and gone over to Europe to
12 administer LSD to suspected spies to see if it might
13 elicit confessions.

14 Q. What was the result of that caper? Was it
15 successful?

16 A. Not very. There were more missteps than
17 successes.

18 Q. Okay. Have you ever seen this paper by --
19 report by Dr. Green called Psychological Warfare, a New
20 Concept of War?

21 A. No, I haven't but I can recall.

22 Q. Paragraph 3: Since 1951 this agency has
23 carried out a program of research which has provided
24 important information on the nature of the abnormal
25 behavior produced by LSD by the way this effect varies

1 Q. You know that today. Correct?

2 A. I have read that.

3 Q. You were aware also that Dr. Sydney Gottlieb
4 with the CIA ordered destruction of the CIA records with
5 respect to MK Ultra and several other programs?

6 A. So I understand.

7 Q. You don't condone that, do you?

8 A. Destruction of records?

9 Q. Yes.

10 A. Not generally.

11 Q. The next thing you say: Testing was discussed
12 in full detail with the CIA.

13 A. I'm not sure of the timeframe I had in mind.
14 It wasn't discussed by me with the CIA.

15 Q. What were you referring to when you said the
16 testing was discussed in full detail with the CIA?

17 A. I presume someone else had such a discussion.

18 Q. Did you presume or were you aware of those
19 discussions --

20 A. I was not aware of it.

21 Q. You were not aware of --

22 A. Not at the time.

23 Q. Not in 2005?

24 A. In 2005, yes, I had read additional material
25 and was more aware of the extent of Dr. Sim's testing

Exhibit 36

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

VIETNAM VETERANS OF AMERICA,)
et al.,)
Plaintiffs,)
vs.) No. CV 09-0037-CW
CENTRAL INTELLIGENCE AGENCY)
et al.,)
Defendants.)

Videotaped Deposition of the CENTRAL
INTELLIGENCE AGENCY, through its
representative, PATRICIA B. CAMERESI,
taken at 2000 Pennsylvania Avenue,
Northwest, Washington, D.C., commencing
at 9:52 a.m., Wednesday, November 9,
2011, before Karen Young, Notary Public.

PAGES 1 - 317

1 predated MKULTRA, but again, when we did our 18:09:45
2 searches related to this and other inquiries, we did 18:09:48
3 not make a distinction between MKULTRA, MKDELTA, 18:09:51
4 MKSEARCH, MKChickwit, whatever you want to call it. 18:09:55
5 We -- we considered them all as part of this effort 18:09:59
6 and looked at all records related. 18:10:01

7 Q. Are you familiar with MKNAOMI, 18:10:05
8 M-K-N-A-O-M-I? 18:10:07

9 MS. HERB: Objection as to scope. 18:10:10

10 A. I'm aware of MKNAOMI. 18:10:12

11 Q. What was MKNAOMI? 18:10:14

12 MS. HERB: Objection, scope. 18:10:17

13 A. I believe one of your exhibits 18:10:18
14 demonstrated what MKNAOMI was. It was a project 18:10:20
15 that we had with Fort Detrick to amass chemical and 18:10:25
16 biological substances for potential use, and also to 18:10:33
17 try and come up with certain ways of delivering 18:10:39
18 these substances. 18:10:43

19 Q. Were any military service members tested 18:10:44
20 on in connection with MKNAOMI? 18:10:47

21 A. To my knowledge, no human beings were 18:10:50
22 tested upon. 18:10:52

23 Q. Are you familiar with Project Bluebird? 18:10:53

24 MS. HERB: Object as to scope. 18:10:57

25 A. I'm aware of it. 18:10:58

1 Q. And what is Project Bluebird? 18:10:59

2 A. Just refresh my memory. Bluebird, often 18:11:02

3 associated with Artichoke, was a program to find 18:11:13

4 information about interrogation supplements, 18:11:20

5 primarily hypnosis, but drugs that were used were 18:11:22

6 used on foreign nationals only, POWs and defectors, 18:11:28

7 and are not likely to have produced long-term after- 18:11:32

8 effects. 18:11:35

9 Q. And what document are you reading from? 18:11:35

10 A. And that was the same tab from earlier. 18:11:40

11 Q. Tab 5 in the administrative record? 18:11:42

12 A. Tab 5, last three digits, 036. 18:11:45

13 Q. Okay. And were any military members 18:11:47

14 tested on in connection with Project Bluebird or 18:11:49

15 Project Artichoke? 18:11:52

16 A. No U.S. persons were tested. 18:11:53

17 MR. GERARD: That's all the questions I 18:12:13

18 have. Thank you very much, Ms. Cameresi, for your 18:12:14

19 time. 18:12:16

20 THE WITNESS: Thank you. 18:12:17

21 MS. HERB: I have a couple follow-up 18:12:17

22 questions. We're going to take a two-minute break. 18:12:19

23 Ms. Cameresi, you can stay in the room. I just need 18:12:29

24 to confer with counsel. 18:12:32

25 THE VIDEOGRAPHER: The time is 6:12. 18:12:34

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CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

I, Karen Young, the officer before whom the forgoing deposition was taken, do hereby certify that the forgoing transcript is a true and correct record of the testimony given; that said testimony was taken by me stenographically and thereafter reduced to typewriting under my supervision; and that I am neither counsel for or related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 11th day of November, 2011.

NOTARY PUBLIC IN AND FOR
THE DISTRICT OF COLUMBIA

My commission expires:
July 31, 2014

Exhibit 37

Salvatore, Joe

From: Brown, Mark A (VHACO)
Sent: Thursday, June 29, 2006 10:44 AM
To: Hyams, Kenneth Craig, Dr., MPH, MD; Salvatore, Joe; Van Diepen, Louise R; Moore, Michael A; Pringle, Karla; Wallick, Glen, VBAVACO; Abbot, David, VBAVACO
Cc: Allen, Martaineous L.; Jeter, Theriska; Pham, Katherine; Dembling, Doug; Dayton, Lawrence R., MSPH, MD
Subject: RE: EDMS 352753 - Edgewood Arsenal Notification Letter - Expedite

I think the DoD fact sheet has some significant inaccuracies -- the problem of course is that putting in a letter from VA appears to endorse its accuracy.

Unfortunately, this is the first time I've seen this fact sheet, and provide any comments about it.

Paragraph 1 DOD Fact Sheet last sentence: "The study did not detect any significant long-term health effects in Edgewood Arsenal volunteers."

This statement is not a correct representation of the relevant NRC reports. In fact, in their review of hospital admissions records for Army from 1958 to 1983, and VA from 1963 to 1981, the NRC investigators reported a "barely statistically significant increase in admissions to VA hospitals for malignant neoplasms among men exposed to anticholinesterases and a statistically significant increase in admissions to VA hospitals and Army hospitals for nervous system and sense organ disorders among men exposed to LSD" (NRC 1985).

In fairness, they did note that admission numbers were small, no dose relationships were observed, and, for subjects exposed to anticholinesterases, neoplasms occurred at various sites with no consistent pattern or correlation to a specific chemical (NRC 1985).

I think a more accurate wording for the fact sheet would be "The study detected few significant long-term health effects in Edgewood Arsenal volunteers." To say that there were no effects is clearly not correct and easily refutable.

Paragraph 2 DOD Fact Sheet last sentence: "The study objectives were to determine specific health effects associated with exposure (particularly with low dosages . . .)"

The phrase "particularly at low dosages" is not really accurate and is misleading.

The term "low dose" is a term of art that refers or implies exposure to sub clinical doses -- that is, doses causing no clinical poisoning signs and symptoms.

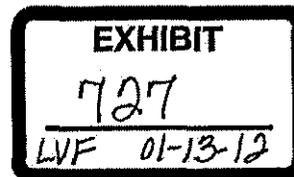
Review of the extensive literature on these tests clearly demonstrates that a great deal of the experiments, perhaps the majority, were actually designed to cause clinical poisoning signs and symptoms among experimental subjects, and therefore, not "low dose."

Many subjects had all sorts of immediate poisoning s&s including blistering, cholinergic poisoning, intense tearing, etc. and some subjects required medical attention.

I would suggest simply eliminated this phrase from the Fact Sheet, and also from the VBA letter, where apparently was copied.

From: Hyams, Kenneth Craig, Dr., MPH, MD
Sent: Thursday, June 29, 2006 10:32 AM
To: Salvatore, Joe; Brown, Mark A (VHACO); Van Diepen, Louise R; Moore, Michael A; Pringle, Karla; Wallick, Glen, VBAVACO; Abbot, David, VBAVACO

6/29/2006



01446

Cc: Allen, Martaineous L.; Jeter, Theriska; Pham, Katherine; Dembling, Doug; Deyton, Lawrence R., MSPH, MD
Subject: RE: EDMS 352753 - Edgewood Arsenal Notification Letter - Expedite

The letter looks good to us in VHA Public Health. We will approve the letter portion of this package today but would prefer (not require) two things:

1. The phrase "particularly at low dosages" be taken out of the second paragraph because some veterans were exposed to high doses of chemical agents
2. Add "DoD" to this phrase in the second paragraph "Please see the enclosed [DoD] fact sheet..." because it is not clear that this is DoD's fact sheet/interpretation and not VA's.

I would still like the VHA business office to look over this letter and relayed it to them.

thanks all -- great effort, Craig

From: Salvatore, Joe

Sent: Thursday, June 29, 2006 9:25 AM

To: Hyams, Kenneth Craig, Dr., MPH, MD; Brown, Mark A (VHACO); Van Diepen, Louise R; Moore, Michael A; Salvatore, Joe; Pringle, Karla; Wallck, Glen, VBAVACO; Abbot, David, VBAVACO

Cc: Allen, Martaineous L.; Jeter, Theriska; Pham, Katherine

Subject: EDMS 352753 - Edgewood Arsenal Notification Letter - Expedite

Importance: High

I need your assistance in ensuring that our partners in VBA receive all business line concurrences for EDMS 352753 as soon as possible, but no later than COB today.

Your expedited assistance will afford VBA exactly one business day to generate and issue some notification letters to Edgewood Arsenal veterans by July 4, 2006. In doing so, VBA can meet a verbally-mandated request from HVAC. Additionally, your actions will prevent this office from explaining to HVAC staffers why VA and DoD could not meet the deadline.

I apologize for the tight turnaround but another federal agency delayed VA's letter roll-out. Please contact me if you have any questions regarding my request. Thank you in advance.

Joe

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6/29/2006

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