

EXHIBIT D

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 11

12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

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

CV 09-0037-CW

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

1 TO THE UNITED STATES DEPARTMENT OF DEFENSE AND ITS ATTORNEY(S)
2 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”), Swords to Plowshares: Veterans
5 Rights Organization (“Swords”), and six individual veterans will conduct depositions upon oral
6 examination of the United States Defendant Department of Defense (“DOD”) beginning August
7 3, 2010, commencing at 9:30 a.m., and continuing from that time until complete, at the law
8 offices of Morrison & Foerster LLP, 2000 Pennsylvania Avenue, NW, Suite 6000, Washington,
9 DC 20006. The depositions will be recorded stenographically, and will be taken before a court
10 reporter or other person authorized to administer oaths, and will be conducted in accordance with
11 the Federal Rules of Civil Procedure. Please be advised that the depositions may be recorded on
12 video and/or audio tape and/or LiveNote in addition to stenographic recording. The depositions
13 will continue from day to day, Saturday, Sundays, and holidays excepted until completed or
14 adjourned.

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

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

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. "IDENTIFY" or "IDENTITY" means:

20 a. with respect to a PERSON, to state the PERSON's full name, current or
21 last known employer, that employer's address and telephone number, the PERSON's title and/or
22 position with that employer, and the PERSON's current or last known home address and
23 telephone number;

24 b. with respect to a DOCUMENT, to state the type of DOCUMENT (i.e.,
25 letter, memorandum, telephone note, computer floppy or hard disk, magnetic tape, etc.), the title
26 of the DOCUMENT (if any), the date it was created, the author, all intended recipients including
27 the addressee and any and all copyees, a brief description of the subject matter of the
28

1 DOCUMENT, the present and/or last known location of the DOCUMENT, and to IDENTIFY all
2 present or last known person in possession, custody or control of the DOCUMENT;

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

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

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

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

18 7. "YOU" or "YOUR" means the Defendant agency in this action, and all of its past
19 and present offices, departments, organizations, administrations, boards, commissions, task
20 forces, management, and past and present employees and service members. These terms also
21 include any representatives or agents acting on YOUR behalf, including without limitation,
22 attorneys, investigators or consultants.

23 SPECIAL DEFINITIONS

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

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

1 2. “DAIG” means the Department of the Army Inspector General, and all its past and
2 present offices, departments, organizations, administrations, boards, commissions, task forces,
3 management, and past and present employees.

4 3. “DEPARTMENT OF DEFENSE” or “DoD” means the United States Department
5 of Defense, and all its past and present offices, departments, organizations, administrations,
6 boards, commissions, task forces, management, and past and present employees and service
7 members.

8 4. “DEPARTMENT OF THE ARMY” or “DoA” means the United States
9 Department of the Army, and all its past and present offices, departments, organizations,
10 administrations, boards, commissions, task forces, management, and past and present employees
11 and service members.

12 5. “EDGEWOOD ARSENAL” means the southern sector of the military installation
13 located northeast of Baltimore, Maryland, in the Northern Chesapeake Bay along a neck of land
14 between the Gunpowder and Bush rivers.

15 6. “GAO” means the United States Government Accountability Office and all its
16 predecessors, offices, departments, organizations, administrations, boards, commissions, task
17 forces, management, and past and present employees.

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

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

24 9. “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.

27 10. “VA” or “DVA” means the United States Department of Veterans Affairs, and all
28 its predecessors (including the Veterans Administration) and its past and present offices,

1 departments, organizations, administrations, boards, consultants, commissions, task forces,
2 management, and past and present employees.

3 11. "TEST PROGRAMS" means each of the projects identified in the First Amended
4 Complaint, including without limitation, the Human Test Series identified in Paragraph 140 of the
5 First Amended Complaint, including Projects "BLUEBIRD," "ARTICHOKE," "MKDELTA,"
6 "MKULTRA," "MKNAOMI," "MKSEARCH," "MKCHICKWIT," "MKOFTEN," and any
7 other program of experimentation involving human testing of any substance, including but not
8 limited to, "MATERIAL TESTING PROGRAM EA 1729." TEST PROGRAMS shall include
9 any and all sub-projects related to any program of human testing conducted by YOU.

10 a. "BLUEBIRD" means, including without limitation, the official code name
11 given in or around 1950 to the secret test program conducted by one or
12 more of YOU CONCERNING special interrogation methods, including the
13 use of drugs, hypnosis and isolation upon human test subjects.

14 b. "ARTICHOKE" means, including without limitation, the official code
15 name given in or around 1951 to the secret test program conducted by one
16 or more of YOU CONCERNING the study of special interrogation
17 techniques and the use of chemicals, among other methods, to produce
18 amnesia and other vulnerable states in human test subjects.

19 c. "MKDELTA" means, including without limitation, the official code name
20 given in or around 1952 to the secret test program conducted by one or
21 more of YOU CONCERNING the use of biochemicals in clandestine
22 military operations.

23 d. "MKULTRA" means, including without limitation, the official code name
24 given in or around 1953 to the secret test program conducted by one or
25 more of YOU CONCERNING the surreptitious use of many types of
26 drugs, as well as other methods, to manipulate individual mental states and
27 to alter brain function, and that continued at least through the late 1960s.
28

- 1 e. "MKNAOMI" means, including without limitation, the official code name
2 given to the secret test program conducted by one or more of YOU
3 CONCERNING the stockpiling of severely incapacitating and lethal
4 materials and the development of gadgetry for the dissemination of these
5 materials.
- 6 f. "MKSEARCH" means, including without limitation, the official code
7 name given in or around 1964 to the secret test program conducted by one
8 or more of YOU CONCERNING the development of methods to
9 manipulate human behavior through the use of drugs and other chemical
10 substances.
- 11 g. "MKCHICKWIT" or "CHICKWIT" means, including without limitation,
12 the official code name given to the secret test program conducted by one or
13 more of YOU CONCERNING the identification of new drugs in Europe
14 and Asia and collection of information and samples CONCERNING same.
- 15 h. "MKOFTEN" means, including without limitation, the official code name
16 given to the secret test program conducted by one or more of YOU
17 CONCERNING the behavioral and toxicological effects of certain drugs
18 on animals and humans.
- 19 i. "MATERIAL TESTING PROGRAM EA 1729" means, including without
20 limitation, the official code name given to the secret test program by one or
21 more of YOU CONCERNING the testing of lysergic acid diethylamide
22 ("LSD") as an intelligence-gathering technique.

23 12. "TEST SUBJECT" or "TEST SUBJECTS" means, unless otherwise specified, any
24 person who, while an active duty member of the U.S. Military or a member of the reserves of any
25 branch of the U.S. Military, participated in any experiment that was part of, or related to, the
26 TEST PROGRAMS. For purposes of this definition, TEST SUBJECTS shall be deemed to have
27 participated in an experiment even if the TEST SUBJECT received only a placebo or if the TEST
28 SUBJECT declined to participate or withdrew "consent" after being initially selected for

1 participation. "TEST SUBJECTS" shall not, unless otherwise specified, include civilians who
2 participated in the TEST PROGRAMS.

3 CONSTRUCTION

4 The following rules of construction shall also apply:

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

12 TOPICS

13 Pursuant to Federal Rule of Civil Procedure 30(b)(6), Defendant's designee(s) shall be
14 prepared to testify regarding the following subjects, all with respect to Defendant's search for and
15 production of DOCUMENTS:

- 16 1. YOUR policy for retaining DOCUMENTS relating to the TEST PROGRAMS.
- 17 2. YOUR destruction of DOCUMENTS prior to the inception of this lawsuit, and the
18 IDENTITY of DOCUMENTS destroyed.
- 19 3. The scope of YOUR collection of documents relating to all experiments, field
20 testing, or other activities that were part of the TEST PROGRAMS.
- 21 4. The scope of YOUR search for documents relating to all experiments, field testing,
22 or other activities that were part of the TEST PROGRAMS.
- 23 5. The scope of YOUR production of documents relating to all experiments, field
24 testing, or other activities that were part of the TEST PROGRAMS.
- 25 6. YOUR policy for retaining handbooks, guidelines, and memoranda distributed to
26 "volunteers" who participated in the TEST PROGRAMS, including but not limited to, all
27 versions and drafts of the DOCUMENTS titled "Medical Research Volunteer Program" and
28 "Medical Volunteer Handbook."

1 7. Steps taken to identify handbooks, guidelines, and memoranda distributed to
2 “volunteers” who participated in the TEST PROGRAMS, including but not limited to, all
3 versions and drafts of the DOCUMENTS titled “Medical Research Volunteer Program” and
4 “Medical Volunteer Handbook.”

5 8. Steps taken to identify fields, data, printouts, information and instructions
6 concerning the database identified in the May 6, 1974 CIA Inspector General Report.

7 9. Steps taken to identify the types, properties and health effects of all substances
8 tested or used on human subjects, including without limitation, the projects identified in the
9 Second Amended Complaint at or in connection with any of the military facilities in the Second
10 Amended Complaint, including but not limited to, at the EDGEWOOD ARSENAL.

11 10. Steps taken to identify DOCUMENTS sent, loaned, or shown to any
12 Congressional Committee, member of Congress, or Congressional staff CONCERNING the
13 TEST PROGRAMS.

14 11. Steps taken to identify DOCUMENTS concerning the installation or use of septal
15 implants upon human subjects, including but not limited to Bruce Price.

16 12. YOUR destruction of DOCUMENTS as described in Paragraph 143 of the Second
17 Amended Complaint, and the IDENTITY of DOCUMENTS destroyed, and all MEETINGS and
18 COMMUNICATIONS CONCERNING the same that mention any one or more of the individual
19 plaintiffs.

20 13. Steps taken to identify ALL DOCUMENTS CONCERNING any TEST
21 SUBJECT, including but not limited to, military service records, physical or mental health
22 records, correspondence and records CONCERNING all COMMUNICATIONS with any TEST
23 SUBJECT.

24 14. Steps taken to identify ALL DOCUMENTS CONCERNING any of the individual
25 plaintiffs, including but not limited to, military service records, physical or mental health records,
26 correspondence and records CONCERNING all COMMUNICATIONS with any individual
27 plaintiff.

1 15. Method used and records searched to identify all deaths, injuries, and negative
2 health effects, or suspected deaths, injuries, and negative health effects attributable in whole or in
3 part to the effects of any substance administered during the TEST PROGRAMS.

4 16. Steps taken to identify studies, reports, surveys, or other analyses of the health
5 effects of any exposure to substances used or administered during the TEST PROGRAMS.

6 17. Steps taken to identify copies of all participant agreements and consent forms
7 prepared for, given to or received from TEST SUBJECTS in the TEST PROGRAMS, including
8 but not limited to, all participant agreements or consent forms signed by participants in the TEST
9 PROGRAMS.

10 18. Steps taken to identify all tabulations, summaries, analyses or descriptions of the
11 types of medical problems (both physical and mental) experienced by participants in the TEST
12 PROGRAMS.

13 19. Steps taken to identify all analyses, discussions or summaries CONCERNING the
14 frequency with which particular medical problems or conditions (whether physical or mental)
15 occur amongst participants in the TEST PROGRAMS and/or the cause and effect relationship
16 between exposures and particular diseases or conditions.

17 20. Steps taken to identify the dose-relationship CONCERNING drugs, chemicals
18 and/or biological substances tested upon human subjects at the EDGEWOOD ARSENAL or
19 under YOUR control, funding, supervision or direction.

20 21. Steps taken to identify all DOCUMENTS CONCERNING the statement issued on
21 or about October 3, 1995 by former President William J. Clinton CONCERNING human
22 experimentation conducted during the Cold War, as well as MEETINGS and
23 COMMUNICATIONS CONCERNING the same.

24 22. The scope of information protected by the Privacy Act, 5 U.S.C. § 552a, the
25 Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), 42 U.S.C. § 1320d-2,
26 the HIPAA Privacy Rule, and/or 45 C.F.R. parts 160 and 164.

1 23. The scope of information protected by the attorney-client privilege, the work
2 product doctrine, deliberative process, or any other applicable privilege or immunity recognized
3 under statute, regulation or applicable case law.

4 24. The scope of information classified pursuant to Executive Order 12,958 and
5 subject to the state secrets privilege or otherwise subject to the state secrets privilege.

6 25. The scope of information protected pursuant to the Central Intelligence Agency
7 Act of 1949, 50 U.S.C. § 403g.

8 26. YOUR efforts to redact documents CONCERNING the TEST PROGRAMS.

9 27. YOUR efforts to log documents CONCERNING the TEST PROGRAMS withheld
10 on grounds of privilege or work product.

11 28. YOUR efforts to collect, review, produce, or log any DOCUMENTS created by,
12 maintained by, or transmitted to YOU that relate to the TEST PROGRAMS.

13 29. Deletion or destruction of any DOCUMENTS since the lawsuit commenced or
14 since deponent received notification about litigation or pending litigation.

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.

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19 Dated: June 16, 2010

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

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23 By: 
24 Gordon P. Erspamer
25 [Gerspamer@mof.com]

26 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 94105-2482. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on June 16, 2010, I served a copy of:

**NOTICE OF DEPOSITION OF UNITED STATES
DEPARTMENT OF DEFENSE**

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 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.

Caroline Lewis-Wolverton, Esq.
Kimberly L. Herb, 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 under the laws of the State of California that the foregoing is true and correct.

Executed at San Francisco, California, this 16th day of June, 2010.

N.E. Marcus


(signature)