No. 13-17430

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

VIETNAM VETERANS OF AMERICA, ET AL.,

Plaintiffs-Appellants,

vs.

CENTRAL INTELLIGENCE AGENCY, ET AL.,

Defendants-Appellees.

On Appeal from the United States District Court,
Northern District of California
D.C. No. CV-09-0037-CW
The Honorable Claudia Wilken, Judge Presiding

EXCERPTS OF RECORD IN SUPPORT OF APPELLANTS' OPENING BRIEF, VOL. 2, PP. 286–578

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DATE FILED	DOCUMENT DESCRIPTION	DISTRICT COURT DOCKET NO.	PAGE NO.
10/3/2012	Fourth Amended Complaint for Declaratory and Injunctive Relief Under United States Constitution and Federal Statutes and Regulations, with exhibits	486	397
3/30/2012	Declaration of Stacey M. Sprenkel in Support of Plaintiffs' Reply in Support of Motion for Class Certification	389	550
3/30/2012	Exhibit 84 to Sprenkel Reply Declaration, article entitled, "TRICARE Eligibility"	389-10	554
2/28/2012	Declaration of Stacey M. Sprenkel in Support of Plaintiffs' Motion for Class Certification, Public Redacted Version	359	559
2/28/2012	Exhibit 14 to Sprenkel Declaration, Redacted Version, Letter from John Josselson to Colonel McClure, dated August 8, 1975	359-14	571
2/28/2012	Excerpts of Exhibit 61 to Sprenkel Declaration, Defendants Department of Defense and Department of Army's Objections and Responses to Plaintiffs' Amended Set of Requests for Admission, served on August 15, 2011	359-61	574

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

VIETNAM VETERANS OF AMERICA *et al.*,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY *et al.*,

Defendants.

Case No. CV 09-0037-CW

DECLARATION OF BEN PATTERSON IN SUPPORT OF PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AND OPPOSITION TO DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT

Hearing Date: March 14, 2013
Time: 2:00 p.m.
Courtroom: 2, 4th Floor
Judge: Hon. Claudia Wilken

Complaint filed January 7, 2009

I, Ben Patterson, declare as follows:

1. I am an attorney licensed to practice law in the State of California and am admitted to practice before this Court. I am an associate with the law firm of Morrison & Foerster LLP, counsel of record for Vietnam Veterans of America, Swords to Plowshares: Veterans Rights Organization, Bruce Price, Franklin D. Rochelle, Larry Meirow, Eric P. Muth, David C. Dufrane, Kathryn McMillan-Forrest, Tim Michael Josephs, and William Blazinski ("Plaintiffs") in this action. I submit this Declaration in support of Plaintiffs' Reply in Support of Motion for Partial Summary Judgment and Opposition to Defendants' Cross-Motion for Summary Judgment. I make this Declaration based on my personal knowledge and discussions with support staff working under my direction. If called as a witness, I would testify to the facts set forth below.

2. Attached hereto as **Exhibit 14** is a true and correct copy of excerpts from the transcript of the July 6, 2011 deposition of Dee Dodson Morris.

3. Attached hereto as **Exhibit 15** is a true and correct copy of excerpts from the transcript of the July 6, 2011 deposition of Michael Kilpatrick.

4. Attached hereto as **Exhibit 16** is a true and correct copy of excerpts from the transcript of the July 7, 2011 deposition of Martha Hamed.

5. Attached hereto as **Exhibit 17** is a true and correct copy of what I am informed and believe is a 1964 article by Samuel B. Lyerly, et al. titled, *Drugs and Placebos: The Effects of Instructions upon Performance and Mood under Amphetamine Sulphate and Chloral Hydrate*, contained in the Journal of Abnormal and Social Psychology, Volume 68, No. 3, at pages 321-327.

6. Attached hereto as **Exhibit 18** is a true and correct copy of what I am informed and believe is an August 6, 1975 dated document titled, "Jerry Baulch inquires re: use of LSD in VAHs," produced by Defendants at Bates labels DVA078 00041 through DVA078 00043 and identified as Deposition Exhibit 853 in this case.

7. Attached hereto as **Exhibit 19** is a true and correct copy of what I am informed and believe is a 1957 study by Lincoln D. Clark and Eugene L. Bliss titled, *Psychopharmacological Studies of Lysergic Acid Diethylamide (LSD-25) Intoxication*, contained

in the A.M.A. Archives of Neurology and Psychiatry, Volume 78, at pages 653-655, accessed on June 13, 2012, at http://archneurpsyc.jamanetwork.com.

8. Attached hereto as **Exhibit 20** is a true and correct copy of what I am informed and believe are excerpts from eight reports to Congress regarding Medical Research in the Veterans' Administration, prepared by the Department of Medicine and Surgery of the Veterans' Administration, dated April 26, 1957; May 6, 1958; January 30, 1959; May 29, 1959; December 13, 1961; January 15, 1970; January 21, 1972; and January 25, 1974.

9. Attached hereto as **Exhibit 21** is a true and correct copy of what I am informed and believe is a March 3, 1983 dated document titled, "Veterans Administration Studies on Lysergic Acid Diethylamide (LSD)," produced by Defendants at Bates label DVA135 000063 and identified as Deposition Exhibit 854 in this case.

10. Attached hereto as **Exhibit 22** is a true and correct copy of what I am informed and believe is an August 28, 1992 dated document authored by J. Gary Hickman titled, "Recognized Residuals of Exposure to LSD," produced by Defendants at Bates label DVA135 000062 and identified as Deposition Exhibit 852 in this case.

11. Attached hereto as **Exhibit 23** is a true and correct copy of what I am informed and believe is an outreach letter from Daniel Cooper, Acting Under Secretary for Benefits, dated June 30, 2006, and produced by Defendants at Bates labels VET001_014266 through VET001_014271 and identified as Deposition Exhibit 264 in this case.

12. Attached hereto as **Exhibit 24** is a true and correct copy of what I am informed and believe is a June 29, 2006 email from Mark Brown to Kenneth Hyams and others, produced by Defendants at Bates labels DVA052 000113 through DVA052 000114 and identified as Deposition Exhibit 727 in this case.

13. Attached hereto as **Exhibit 25** is a true and correct copy of what I am informed and believe is the August 14, 2006 Under Secretary for Health Information Letter regarding "Potential Health Effects Among Veterans Involved in Military Chemical Warfare Agent Experiments Conducted from 1955 to 1975," produced by Defendants at Bates labels VET001_015606 through VET001_015609 and identified as Deposition Exhibit 275 in this case.

14. Attached hereto as **Exhibit 26** is a true and correct copy of what I am informed and believe is Training Letter 06-04, dated September 12, 2006, produced by Defendants at Bates labels VET001_015121 through VET001_015134 and identified as Deposition Exhibit 296 in this case.

15. Attached hereto as **Exhibit 27** is a true and correct copy of what I am informed and believe is a draft of Training Letter 06-04, dated July 2006, produced by Defendants at Bates labels DVA083 002631 through DVA083 002638 and identified as Deposition Exhibit 849 in this case.

16. Attached hereto as **Exhibit 28** is a true and correct copy of what I am informed and believe is a string of emails between Mark Brown and Kelley Brix and others, dated July 7 and July 10, 2006, produced by Defendants at Bates label VET140-000723 and identified as Deposition Exhibit 751 in this case.

17. Attached hereto as **Exhibit 29** is a true and correct copy of excerpts from the transcript of the September 4, 2012 deposition of Joseph Salvatore.

18. Attached hereto as **Exhibit 30** is a true and correct copy of excerpts from the transcript of the June 29, 2011 deposition of Joseph Salvatore.

19. Attached hereto as **Exhibit 31** is a true and correct copy of excerpts from the transcript of the August 23, 2012 deposition of David Abbot.

20. Attached hereto as **Exhibit 32** is a true and correct redacted copy of what I am informed and believe is a string of emails between David Abbot and Melissa Hill dated March 6, 2006 and June 20, 2005, produced by Defendants at DVA095 003342, and the unredacted version of which was identified as Deposition Exhibit 859 in this case.

21. Attached hereto as **Exhibit 33** is a true and correct copy of what I am informed and believe is a February 5, 2010 document titled, “Outreach Efforts of Project 112/SHAD, Mustard Gas and Chemical Biological Programs as of January 31, 2010,” prepared by Procedures Staff, Compensation and Pension Service, produced by Defendants at Bates labels DVA004 014448 through DVA004 014452 and identified as Deposition Exhibit 581 in this case.

22. Attached hereto as **Exhibit 34** is a true and correct copy of what I am informed and believe is a report on Outreach Activities prepared by the Department of Veterans Affairs, produced by Defendants with the Bates labels DVA003 013242 through DVA003 013253 and identified as Deposition Exhibit 299 in this case.

23. Attached hereto as **Exhibit 35** is a true and correct copy of what I am informed and believe is a document titled, "Outreach Activities, Compensation and Pension Service," dated September 2009, produced by Defendants at Bates labels VET001_000410 through VET001_000420 and identified as Deposition Exhibit 286 in this case.

24. Attached hereto as **Exhibit 36** is a true and correct copy of excerpts from the transcript of the November 4, 2011 deposition of Paul Black.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed in San Francisco, California on this 1st day of February, 2013.

/s/ Ben Patterson
Ben Patterson

Attestation Pursuant to Civil Local Rule 5-1

I, Eugene Illovsky, am the ECF User whose ID and password are being used to file this document. I hereby attest that Ben Patterson concurs in this filing.

/s/ Eugene Illovsky
EUGENE ILLOVSKY

EXHIBIT 33

Outreach Efforts of Project 112/SHAD, Mustard Gas and Chemical Biological Programs as of January 31, 2010

Prepared by
Procedures Staff
Compensation and Pension Service
February 5, 2010

Background: Project 112/SHAD was part of the joint service chemical and biological warfare test program conducted during the 1960s and early 1970s. Project SHAD encompassed tests designed to identify U.S. warships' vulnerabilities to attacks with chemical or biological warfare agents and to develop procedures to respond to such attacks while maintaining a war-fighting capability.

On June 30, 2003, the Department of Defense (DoD) completed its investigation of the Project 112/SHAD operational tests. DoD planned 134 tests but conducted only 50. As of July 2008, DoD has provided VA with the names of 6,442 Veterans who participated in Project 112/SHAD tests.

Most Recent Updates: In June 2008, it was noted that VBA had received 752 claims initially identified as Project 112/SHAD claims. We adjusted this number by 111 claims found not to be Project 112/SHAD claims. The number of actual Project 112/SHAD claims received from Veterans claiming disabilities related to exposure to chemical/biological agents/substances used in testing, since the adjustment is 641.

The table below shows the number of claims pending and the number VBA has decided as of January 31, 2010. The total number of Project 112/SHAD cases granted is 39 out of 753 cases that have been decided.

Monthly	Pending	Decided	Total
January 2010	16	753	769

There are three requirements to service connect a disability: (1) evidence of a disease, injury, or event that occurred during active duty service, (2) evidence of a current disability, and (3) medical evidence establishing a nexus or link between the in-service disease, injury, or event, and the current disability. VA affords the Veteran reasonable doubt in any decision where the evidence weighs equally in favor of grant or denial of the claim. VA assists the Veteran in obtaining the required evidence.

Project 112/SHAD calls to the Helpline are below.

Number of Interviews	Period
969	FY 2003
475	FY 2004

180	FY 2005
324	FY 2006
407	FY 2007
145	FY 2008
411	FY 2009
29	FYTD 2010 (January 2010)

Mustard Agents and Lewisite (Mustard Gas)

Since January 2006, there have been no additions to the 4,495 Veterans who had been exposed to Mustard Gas or Lewisite. From matches against BIRLS, VHA, and NCA, we found that 2,120 test participants were deceased. Of the remaining presumed living Veterans, only 371 addresses were found. The following is a breakdown of identified master records by exposure and status:

Exposure	Unique Veterans	Living Veterans	Deceased Veterans
Full-Body	330	167	163
Partial-Body	41	25	16
Total	**371**	**192**	**179**

Of the 179 deceased Veteran records:

- 68 surviving spouses are receiving DIC
- 50 surviving spouses are receiving non-service connected death pension
- 55 known spouses with Social Security numbers are not in receipt of DIC nor death pension
- 6 records did not have a spouse identified on the award

The RMC in St. Louis reviewed a list of 168 retired folders in May 2006 and found only 15 social security numbers, which were forwarded to C&P Service in June 2006; however, addresses for these Veterans were not found.

To date, VBA has received 1,578 claims from Veterans alleging disabilities related to exposure to Mustard Gas. The table below shows the number of these claims currently pending and the number VBA has decided.

Mustard Gas Claims/ FYTD 2010			
Month	**Pending**	**Decided**	**Total**
January 2010	100	1478	1578

Mustard Gas calls to the Helpline are below.

Number of Interviews	Period
311	FY 2005

118	FY 2006
270	FY 2007
61	FY 2008
94	FY 2009
03	FYTD 2010 (January 2010)

Chem – Bio Exposures

In December 2005, Veterans Benefits Administration (VBA) received a list of names of 1,012 participants used in tests conducted at Edgewood Arsenal. The tests consisted of 140 known agents at the time. This was the beginning of the Chemical, Biological, Radiological, Nuclear and Explosives (CBRNE) database. The Department of Defense (DoD) met with VBA staff in February 2006, to share a draft copy of a DoD fact sheet entitled "Edgewood Arsenal Chemical Agent Exposure Studies: 1955-1975." In April 2006, VBA's Compensation and Pension Service (C&P) staff received an updated CBRNE database with an additional 3,434 names for a total of 4,446 names.

In an effort to obtain addresses for the test participants, C&P Service contacted Office of Performance Analysis & Integrity (OPA&I) in May 2006, for them to conduct a data match between the CBRNE database with BIRLS and the C&P master record. This match provided social security numbers for a limited number of test participants, 1,818 were a match. For those participants where an address was not found, C&P Service contacted Choice Point, an agency used to obtain current mailing addresses.

In June 2006, C&P Service began mailing notification letters to Veterans from the CBRNE database. In early July 2006, C&P Service sent a list of names of CBRNE test participants to Veterans Health Administration's (VHA) Eligibility Center, in order to help them determine which Veterans were eligible for medical treatment. By the end of July 2006, C&P Service mailed out 1,818 notification letters to test participants.

In early September 2006, C&P Service received an additional 2,261 names from DoD to add to the CBRNE database. This updated information brought the amount of names in the CBRNE database to 6,707. Additional notification letters were mailed to 758 test participants in March 2007 and 338 were mailed in mid September 2007. C&P Service has sent out another 15 individual notification letters since mid September 2007.

In June 2008, C&P Service received 3,821 new names to be added to the CBRNE database, bringing the total to 10,528 names. C&P Service was able to identify and obtain current addresses for 304 of the 3,821 newly referred test participants. In March 2009, C&P Service sent out 304 notification letters with DoD's updated fact sheet to those Veterans. *In August 2009, DoD brought 2,239 new names in the CBRNE database to VA (bringing total in database to 12,767). VA requested a data*

match from PA&I against the list, which returned incomplete information needed to accurately contact Veterans involved in this database. DoD was notified in September 2009 at a joint meeting for VA and DoD of the incomplete data that was furnished to VA. DoD also sent a list of all chemical agents and non-agents that were used for CBRNE testing for a total of 427 agents.

During September 2006, VBA provided the field with Training Letter 06-04, Department of Defense (DoD) Identifies Additional Service Members Who Participated in the Testing of Chemical and Biological Warfare Agents During Service, with special procedures for processing and controlling claims related to these tests.

VBA has received 87 claims from Veterans alleging disabilities related to exposure to chemical/biological agents/substances. The table below shows the number of these claims pending and the number VBA has decided.

Chem-Bio Claims for FYTD 2010			
Month	**Pending**	**Decided**	**Total**
January 2010	1	86	87

To date, two of the 86 decisions listed above include a grant of service connection.

Notification Efforts (SHAD, MG, and CBRNE): As of March 31, 2009, VBA has mailed a total of 8,053 outreach letters to Veterans who were participants in Project 112/Shipboard Hazard and Defense (SHAD), Mustard Gas (MG), and Chemical Biological Radiological Nuclear Explosives (CBRNE) tests. VBA enclosed a DoD Fact Sheet with each notification letter depending on the tests in which the Veteran participated. VBA has completed outreach efforts to Project 112/SHAD and MG participants. Outreach efforts will continue to Chem-Bio test participants because of the additional listing of names anticipated from DoD.

Data Base	Returned Mail	New SSNs	Previously Mailed	Total Letters Mailed
SHAD	459	0	4,439	4,441
Mustard Gas	22	164	318	321
CBRNE	313	775	2,649	3,291
Totals	794	939	7,406	8,053

VA Outreach Efforts Made Since October 1, 2009

DoD informed VA that Project 112/SHAD and Mustard Gas programs have been officially closed as of June 2008. Chemical Biological (also known as Edgewood Arsenal) remains open at this time, as DoD continues to identify Veterans who were "test participants" in the program. There have been no outreach letters mailed since March 31, 2009. VA is currently locating accurate addresses of Veterans whose notification letters were returned from the last outreach effort in March 2009.

Prepared by: Procedures Staff/ Compensation and Pension Service
February 5, 2010

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

VIETNAM VETERANS OF AMERICA, *et al.*, Plaintiffs, v. CENTRAL INTELLIGENCE AGENCY, *et al.*, Defendants.	Case No. CV 09-0037-CW **DECLARATION OF JOSHUA E. GARDNER IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND CROSS-MOTION FOR SUMMARY JUDGMENT**

I, Joshua E. Gardner, declare as follows:

1. I am a Senior Counsel in the Federal Programs Branch, Civil Division of the United States Department of Justice. I represent Defendants in this case. I submit this declaration in support of Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment and Cross-Motion for Summary Judgment. This declaration is based on my personal knowledge and my review of documents provided to me in my official capacity as counsel in this litigation.
2. Attached hereto as **Exhibit 1** is a true and accurate copy of a report from the National Research Council entitled *Possible Long-Term Health Effects of Short-Term Exposure to Chemical Agents*, Vol. 1 (1982), Bates labeled PLTF 014140-430. A copy of this document was identified as Deposition Exhibit No. 911 in this case.
3. Attached hereto as **Exhibit 2** is a true and accurate copy of excerpts from the transcript of the July 6, 7 and 8, 2011 deposition of Dr. Michael Kilpatrick, the Department of Defense and Department of the Army's Rule 30(b)(6) designee.
4. Attached hereto as **Exhibit 3** is a true and accurate copy of excerpts from the transcript of the January 27, 2012 deposition of former Department of Defense contractor Roy Finno.
5. Attached hereto as **Exhibit 4** is a true and accurate copy of excerpts from the transcript of the June 10, 2011 deposition of Department of Defense employee Anthony Lee.
6. Attached hereto as **Exhibit 5** is a true and accurate copy of excerpts from the 1976 report from Department of the Army Inspector General, *Use of Volunteers in Chemical Agent Research*, Bates labeled VET004_001665.
7. Attached hereto as **Exhibit 6** is a true and accurate copy of a report from the National Research Council entitled *Possible Long Term Health Effects of Short Term Exposure to Chemical Agents*, Vol 2 (1984), Bates labeled PLTF 014432-778. A copy of this document was identified as Deposition Exhibit No. 911 in this case.
8. Attached hereto as **Exhibit 7** is a true and accurate copy of the September 15, 2010 declaration of Lloyd Roberts, which was previously filed in this case at Dkt. 143.4.

9. Attached hereto as **Exhibit 8** is a true and accurate copy of the March 1972 report by Klapper, et al., entitled *Long Term Follow Up of Medical Volunteers*, Bates labeled VET147-002353-64.

10. Attached hereto as **Exhibit 9** is a true and accurate copy of excerpts from the September 21, 1977 hearing before the United States Senate Subcommittee on Health and Scientific Research of the Committee on Human Resources on S.1893, entitled "Human Drug Testing by the CIA," 95th Congress.

11. Attached hereto as **Exhibit 10** is a true and accurate copy of an October 1980 report by McFarling entitled *LSD Follow-Up Study Report*, Bates labeled VET001_009579-748. A copy of this document was identified as Deposition Exhibit No. 553 in this case.

12. Attached hereto as **Exhibit 11** is a true and accurate copy of a report from the National Research Council report entitled *Possible Long Term Health Effects of Short Term Exposure to Chemical Agents*, Vol 3 (1985), Bates labeled VET013-004999-5104. A copy of this document was identified as Deposition Exhibit No. 912 in this case.

13. Attached hereto as **Exhibit 12** is a true and accurate copy of a March 2005 study published in Military Medicine by Pittman, *et al.* entitled *An Assessment of Health Status Among Medical Research Volunteers Who Served in the Project Whitecoat Program at Fort Detrick, Maryland*. A copy of this document was identified as Deposition Exhibit No. 976 in this case.

14. Attached hereto as **Exhibit 13** is a true and accurate copy of a March 2003 study published in Military Medicine by Page entitled *Long Term Health Effects of Exposure to Sarin and Other Anticholinesterase Chemical Warfare Agents*, Bates labeled JK23 0028309-16, and identified as Deposition Exhibit No. 992 in this case.

15. Attached hereto as **Exhibit 14** is a true and accurate copy of a July 2000 study by Bullman & Kang entitled *A Fifty Year Mortality Follow-Up Study of Veterans Exposed to Low Level Chemical Warfare Agent, Mustard Gas*, Bates labeled DVA012 001497-1502. A copy of this document was identified as Deposition Exhibit No. 909 in this case.

16. Attached hereto as **Exhibit 15** is a true and accurate copy of a Department of Veterans Affairs' document entitled "Mustard Gas Notification Schedule," Bates label DVA014 001257-59, and previously identified as Deposition Exhibit No. 844 in this case.
17. Attached hereto as **Exhibit 16** is a true and accurate copy of excerpts from the 1993 Institute of Medicine publication *Veterans at Risk: The Health Effects of Mustard Gas and Lewisite*. A full copy of this document was identified as Deposition Exhibit No. 895 in this case.
18. Attached hereto as **Exhibit 17** is a true and accurate copy of excerpts from the transcript of the July 7, 2011 deposition of former Department of Defense employee and contractor Martha Hamed.
19. Attached hereto as **Exhibit 18** is a true and accurate copy of a February 2008 report from the Government Accountability Office entitled *Chemical and Biological Defense, DoD and VA Need to Improve Efforts to Identify and Notify Individuals Potentially Exposed During Chemical and Biological Tests*, Bates labeled VET001_014978-5026.
20. Attached hereto as **Exhibit 19** is a true and accurate copy of excerpts from the transcript of the December 12, 2011 deposition of former Department of Defense contractor Fred Kolbrener.
21. Attached hereto as **Exhibit 20** is a true and accurate copy of a redacted version of September 20, 2005 Department of Veterans Affairs' notification letter to World War II-era test participants, Bates labeled DVA006 108759-61, and identified as Deposition Exhibit No. 816 in this case.
22. Attached hereto as **Exhibit 21** is a true and accurate copy of excerpts from the transcript of the January 24 and 25, 2012 deposition of former Department of Veterans Affairs employee Dave Abbot.
23. Attached hereto as **Exhibit 22** is a true and accurate copy of excerpts from the transcript of the June 29, 2011 deposition of Department of Veterans Affairs employee Joe Salvatore.

24. Attached hereto as **Exhibit 23** is a true and accurate copy of excerpts from the transcript of the July 6, 2011 deposition of Department of Defense employee Dee Dodson Morris.

25. Attached hereto as **Exhibit 24** is a true and accurate copy of Section 709 of the National Defense Authorization Act for Fiscal Year 2003 ("Bob Stump Act").

26. Attached hereto as **Exhibit 25** is a true and accurate copy of a May 2004 report from the General Accounting Office entitled *Chemical and Biological Defense, DoD Needs to Continue to Collect and Provide Information on Tests and Potentially Exposed Personnel* (2004), Bates labeled VET001_015053-94. A copy of this document was identified as Deposition Exhibit No. 200 in this case.

27. Attached hereto as **Exhibit 26** is true and accurate copy of excerpts from the Department of Veterans Affairs' July 15, 2011 Responses to Plaintiffs' Second Set of Interrogatories Nos. 16, 19 and 20.

28. Attached hereto as **Exhibit 27** is a true and accurate copy of a summary prepared by Department of Veterans Affairs employee Joe Salvatore entitled "Department of Defense (DoD) Meeting on Outreach to Edgewood Arsenal Veterans," (June 13, 2006), Bates labeled VET001_014012.

29. Attached hereto as **Exhibit 28** is a true and accurate copy of a summary of a November 29, 2004 meeting between the Department of Defense and the Department of Veterans Affairs entitled "Department of Defense's Chemical and Biological Test Release Project Meeting November 29, 2004," Bates labeled DVA003 006436-40, and identified as Deposition Exhibit No.795 in this case.

30. Attached hereto as **Exhibit 29** is a true and accurate copy of excerpts from the transcript of the June 9, 2011 deposition of Department of Army employee Lloyd Roberts.

31. Attached hereto as **Exhibit 30** is a true and accurate copy of a summary of a March 30, 2006 meeting between the Department of Defense and the Department of Veterans Affairs prepared by former Veterans Affairs employee David Abbot and entitled "The Edgewood Arsenal Database," Bates labeled VET007_001419-20. A copy of this document was identified as Deposition Exhibit No. 288 in this case.

32. Attached hereto as **Exhibit 31** is a true and accurate copy of a February 2, 2006 document entitled "Memorandum for the Record, Meeting on Follow-Up to Information Provided by House Veterans' Affairs Committee on Veterans Possible Exposed to Chemical/Biological Agents," Bates labeled VET001_014046.

33. Attached hereto as **Exhibit 32** is a true and accurate copy of a news release from Congressman Lane Evans, in his capacity as the ranking Democratic member of the United States House of Representatives Committee On Veterans' Affairs, Bates labeled VET001_014045.

34. Attached hereto as **Exhibit 33** is a true and accurate copy of June 26, 2006 memorandum prepared by Department of Veterans Affairs employee Joe Salvatore entitled "Probable Inability to Meet Congressional Deadline for Edgewood Arsenal Notification Effort," Bates labeled VET007_000094-95, and identified as Deposition Exhibit No. 349 in this case.

35. Attached hereto as **Exhibit 34** is a true and accurate copy of a Department of Veterans Affairs' notification letter for Cold War-era test participants and the accompanying Department of Defense and Department of the Army attachments, Bates labeled VET001_014266-71, and identified as Deposition Exhibit No. 264 in this case.

36. Attached hereto as **Exhibit 35** is a true and accurate copy of the Department of Defense and Department of Veterans Affairs Deployment Health Work Group Meeting Minutes for June 21, 2007, Bates labeled VET103_000063-69. A redacted version of this document was identified as Deposition Exhibit No. 744 in this case.

37. Attached hereto as **Exhibit 36** is a true and accurate copy of a December 11, 2006 letter from Department of Veterans Affairs Secretary Nicholson to Peter S. Gaytan, Bates labeled VET001_014009.

38. Attached hereto as **Exhibit 37** is a true and accurate copy of call-in logs reflecting calls made to the Department of Defense's 1-800 number that it established for test participants, Bates labeled VET001_011998–12052.

39. Attached hereto as **Exhibit 38** is a true and accurate copy of an August 8, 1979 Memorandum from Army General Counsel Jill Wine-Volner, Bates labeled VET123_004994-95, and identified as Deposition Exhibit No. 710 in this case.

40. Attached hereto as **Exhibit 39** is a true and accurate copy of a September 24, 1979 Memorandum from Army General Counsel Jill Wine-Volner, Bates labeled VET017_000279-80. A copy of this exhibit was identified as Deposition Exhibit No. 310 in this case.

41. Attached hereto as **Exhibit 40** is a true and accurate copy of an October 25, 1979 Memorandum from Army Lieutenant Colonel John R. McGiffert, Bates labeled VET030_022686-91. A copy of this exhibit was identified as Deposition Exhibit No. 465 in this csae.

42. Attached hereto as **Exhibit 41** is a true and accurate copy of a November 2, 1979 Memorandum from Army, Office Chief of Legislative Liaison, Bates labeled VET030_022692-96. A copy of this exhibit was identified as Deposition Exhibit No. 318 in this case.

43. Attached hereto as **Exhibit 42** is a true and accurate copy of a March 9, 1993 Memorandum from Deputy Secretary of Defense William J. Perry ("Perry Memo."), Bates label VET001_011171-72. A copy of this exhibit was identified as Deposition Exhibit No. 235 in this case.

44. Attached hereto as **Exhibit 43** is a true and accurate copy of an excerpt from the March/April 2008 edition of the Vietnam Veterans of America publication *The Veteran.*

45. Attached hereto as **Exhibit 44** is a true and accurate copy of an excerpt from the November/December 2008 edition of the Vietnam Veterans of America publication *The Veteran*.

46. Attached hereto as **Exhibit 45** is a true and accurate copy of a February 26, 1953 Memorandum from C.E. Wilson, "Use of Human Volunteers in Experimental Research" ("Wilson Memo"), and identified as Deposition Exhibit No. 95 in this case.

47. Attached hereto as **Exhibit 46** is a true and accurate copy of June 1953 Army Chief of Staff Memo 385, "Use of Volunteers in Research" ("CS: 385"). A copy of this document was identified as Deposition Exhibit No. 96 in this case.

48. Attached hereto as **Exhibit 47** is a true and accurate copy of the 1962 version of Army Regulation 70-25, and identified as Deposition Exhibit No. 94 in this case.

49. Attached hereto as **Exhibit 48** is a true and accurate copy of the 1974 version of Army Regulation 70-25.

50. Attached hereto as **Exhibit 49** is a true and accurate copy of the 1990 version of Army Regulation 70-25, and identified as Deposition Exhibit No. 311 in this case.

51. Attached hereto as **Exhibit 50** is a true and accurate copy of Defendants Department of Defense and Department of the Army's August 15, 2011 Objections and Responses to Plaintiffs' Amended Set of Requests for Admission No. 1.

52. Attached hereto as **Exhibit 51** is a true and accurate copy of the June 28, 2011 declaration of Patricia Cameresi.

53. Attached hereto as **Exhibit 52** is a true and accurate copy of Plaintiffs' March 11, 2011 Amended Interrogatory Response to Defendants' Interrogatory No. 7.

54. Attached hereto as **Exhibit 53** is a true and accurate copy of the January 11, 2011 memorandum from the Deputy Secrecy of Defense entitled, *Release from Secrecy Oaths Under Chemical & Biological Weapons Human Subject Research Programs*, Bates labeled VET021_000001-2. A copy of this exhibit was identified as Deposition Exhibit No. 332 in this case.

55. Attached hereto as **Exhibit 54** is a true and accurate copy of excerpts from the transcript of the July 7, 2011 deposition of Plaintiff Eric Muth.

56. Attached hereto as **Exhibit 55** is a true and accurate copy of excerpts from the transcript of the June 3, 2011 deposition of Plaintiff William Blazinski.

57. Attached hereto as **Exhibit 56** is a true and accurate copy of excerpts from the transcript of the June 13, 2011 deposition of Plaintiff David Dufrane.

58. Attached hereto as **Exhibit 57** is a true and accurate copy of excerpts from the transcript of the June 1, 2011 deposition of Plaintiff Tim Josephs.

59. Attached hereto as **Exhibit 58** is a true and accurate copy of excerpts from the transcript of the June 13, 2011 deposition of Plaintiff Larry Meirow.

60. Attached hereto as **Exhibit 59** is a true and accurate copy of excerpts from the transcript of the June 8, 2011 deposition of Plaintiff Franklin Rochelle.

61. Attached hereto as **Exhibit 60** is a true and accurate copy of excerpts from the transcript of the May 24, 2011 deposition of Plaintiff Bruce Price.

62. Attached hereto as **Exhibit 67** is a true and accurate copy of a Plaintiff David Dufrane's Volunteer Participation Agreement, Bates labeled VET001_006421.

63. Attached hereto as **Exhibit 68** is a true and accurate copy of Plaintiffs' July 27, 2012 Supplemental Response to Defendants' Interrogatory No. 18.

64. Attached hereto as **Exhibit 69** is a true and accurate copy of Plaintiffs' August 24, 2011 Response to Defendants' Interrogatory No. 3.

65. Attached hereto as **Exhibit 70** is a true and accurate copy of the Department of Veterans Affairs' July 15, 2011 Responses to Plaintiffs' Second Set of Requests for Admissions Nos. 38-41.

66. Attached hereto as **Exhibit 71** is a true and accurate copy of a Central Intelligence Agency memorandum entitled "Behavioral Drugs, and Testing," Bates labeled VET001_009261-265. A copy of this exhibit was identified as Deposition Exhibit No. 543 in this case.

67. Attached hereto as **Exhibit 72** is a true and accurate copy of a Central Intelligence Agency Office of Inspector General memorandum dated January 31, 1975, and entitled "ORD Research And Development for Intelligence Applications of Drugs," Bates labeled VET001_009239-47. A copy of this exhibit was identified as Deposition Exhibit 542 in this case.

68. Attached hereto as **Exhibit 73** is a true and accurate copy of a Central Intelligence Agency memorandum entitled "Records About Drug Experimentation," Bates labeled VET022_000075-77.

69. Attached hereto as **Exhibit 74** is a true and accurate copy of a Central Intelligence Agency document entitled, "Sub-Project No. 125," Bates labeled VET001_004680.

70. Attached hereto as **Exhibit 75** is a true and accurate copy of an October 2008 "Concept of Operations Plan," prepared for the Office of the Deputy Assistant to the Secretary of Defense for Chemical and Biological Defense and Chemical Demilitarization Programs, Bates labeled VET001_000353-000377.

71. Attached hereto as **Exhibit 76** is a true and accurate copy of excerpts of the transcript of the June 30, 2011 deposition of Department of Veterans Affairs employee Paul Black.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Washington, D.C. on January 4, 2013.

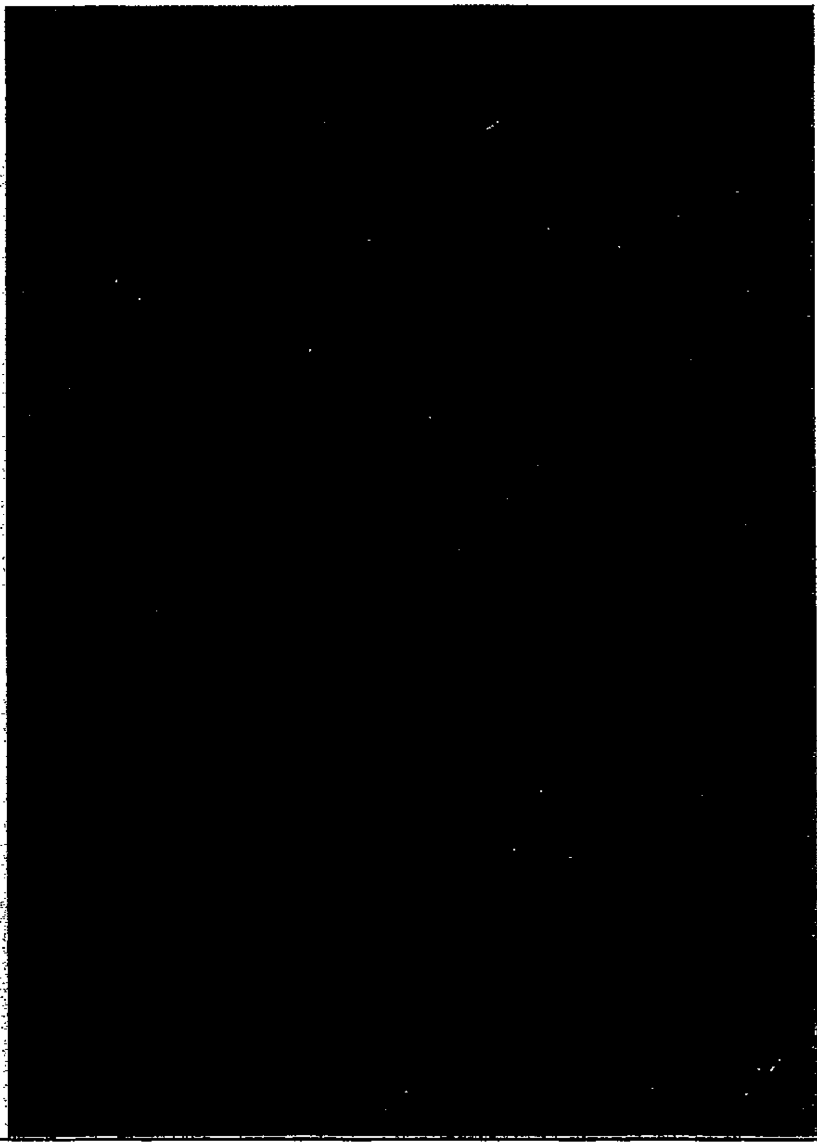
/s/Joshua E. Gardner
Joshua E. Gardner

Exhibit 1

(Part 1 of 3)

POSSIBLE LONG-TERM HEALTH EFFECTS OF SHORT-TERM EXPOSURE TO CHEMICAL AGENTS

Volume 1
Anticholinesterases and Anticholinergics



POSSIBLE LONG-TERM HEALTH EFFECTS OF SHORT-TERM EXPOSURE TO CHEMICAL AGENTS

Volume 1
Anticholinesterases and Anticholinergics

prepared by the

Panel on Anticholinesterase Chemicals
Panel on Anticholinergic Chemicals

Committee on Toxicology
Board on Toxicology and Environmental Health Hazards
Assembly of Life Sciences

National Academy Press
Washington, D.C.

June 1982

INTRODUCTION

HISTORY OF THE EDGEWOOD TESTING PROGRAM

Human experimentation appears to have been an integral part of the history of the U.S. Army chemical warfare (CW) research efforts until its suspension in 1975. On June 28, 1918, the President directed the establishment of the Chemical Warfare Service (CWS). Four years later, in October 1922, the CWS created a Medical Research Division to conduct research directed at providing a defense against chemical agents. No matter how exhaustively an agent was tested in animals, it was felt that its efficacy in humans also had to be studied.

In early 1941, the threat of war increased the urgency of the development of protection against CW agents and, consequently, engendered a need for a larger source of volunteers. Formal authority to recruit and use volunteer subjects in CW experiments was initiated in 1942. The Secretary of War was asked to rule on the permissibility of using enlisted men for testing agents of the mustard-gas type. In July 1943, the CWS was assigned responsibility for all medical research related to CW. This extension of the CWS mission included toxicologic research and the study of hazards to the health of personnel in the CWS.

The issue of the use of human volunteers was considered by the Armed Forces Medical Policy Council during the early 1950's. The Council concluded that essential data could not be obtained unless human volunteers were used, and the use of humans in medical research was authorized. By 1954, the Chemical Corps (formerly CWS) had established a framework within which to conduct human experimentation, but it lacked an adequate pool of volunteers. In 1955, it was decided that the most practical source of volunteers would be enlisted men stationed at Army installations in the vicinity of Edgewood Arsenal. It was emphasized that voluntary consent of each human subject was absolutely essential. It was also stated that, in all experiments involving volunteer subjects, the subjects would be thoroughly informed of all procedures and of what might be expected as a result of each test. Furthermore, each volunteer would be free to determine whether he desired to participate in a given experiment. In October 1959, approval was granted for the conduct of research on volunteers to investigate defense against incapacitating CW agents.

The search for incapacitating agents intensified when the Kennedy administration took office. The involvement with incapacitating agents represented a departure from an earlier period, begun in 1946, when interest in highly toxic (acute) anticholinesterase chemicals resulted from their development in Germany during World War II. The basic purpose of a military incapacitating agent is to produce temporary ineffectiveness without permanent injury or death. Incapacitating agents (anticholinergic chemicals) and highly toxic (acute) anticholinesterase chemicals produce functional and structural effects on the nervous system which cause rapid or delayed effects on an individual's performance and behavior.

Exhibit 2

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.	)	Volume I

Videotaped deposition of MICHAEL E. KILPATRICK, M.D., taken at 2000 Pennsylvania Avenue Northwest, Washington, DC, commencing at 9:30 a.m., Wednesday, July 6, 2011, before Nancy J. Martin, California CSR No. 9504, RPR.

PAGES 1 - 257

and care for that medical condition free at the Department of Veterans' Affairs.

Q. One more question before the break. Veterans can't get both TRICARE and VA healthcare -- right? -- at the same time? 10:58:43

A. Actually, they can. As a military retiree, I can get care from the VA, and I can get care from DoD.

Q. You get to pick? 10:59:00

A. (Nods head.) And for my VA care with income, I probably go above their line. So it would not be free. I would have to pay --

Q. Unless you were service connected? 10:59:13

A. Only if I were service connected would it be free.

MR. ERSPAMER: The tape needs to be changed.

MR. GARDNER: Now would be a good time for a break.

THE VIDEOGRAPHER: This marks the end of Tape No. 1 of the deposition of Michael Kilpatrick. We're going off the record. The time is 11:00 o'clock a.m.

(A recess was taken from 11:00 a.m to 11:11 a.m.)

THE VIDEOGRAPHER: We're back on the record. This marks the beginning of Tape No. 2 of Volume I of the deposition of Dr. Michael Kilpatrick, and the time

Exhibit 50

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Attorneys for Defendants

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

VIETNAM VETERANS OF AMERICA, *et al.*, Plaintiffs, v. CENTRAL INTELLIGENCE AGENCY, *et al.*, Defendants.	Case No. CV 09-0037-CW **DEFENDANTS DEPARTMENT OF DEFENSE AND DEPARTMENT OF THE ARMYS' OBJECTIONS AND RESPONSES TO PLAINTIFFS' AMENDED SET OF REQUESTS FOR ADMISSION**

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, and in accordance with the parties' agreement of July 12, 2011, as memorialized in email between counsel of that date, Defendants Department of Defense and Department of the Army (collectively, "DoD"), by and

through undersigned counsel, hereby submit the following responses to Plaintiffs' "Amended Set of Requests for Admissions":

GENERAL OBJECTIONS

1. DoD objects to the definition of "VA" or "DVA" to the extent it includes consultants.

2. DoD objects to the definition of "TEST PROGRAMS" as overly broad, as a number of the locations identified in the definition do not appear in Plaintiffs' Third Amended Complaint and/or they have no nexus to the testing of volunteer service members. DoD further objects to the definition of "TEST PROGRAMS" to the extent it seeks to include pre-1953 testing because it is beyond the scope of this litigation. DoD further objects to the definition of "TEST PROGRAMS" to the extent it includes non-service members – testing that is beyond the scope of this litigation.

3. DoD objects to the definition of "TEST SUBSTANCES" as exceeding the agreed-upon scope of test substances at issue in this case, as reflected in Plaintiffs' March 21, 2011 letter and attached list. DoD also objects to the definition of "TEST SUBSTANCES" to the extent it incorporates the phrase "TEST PROGRAMS" and "TEST SUBJECTS," which are objectionable for the reasons stated above.

4. DoD objects to the definition of "TEST SUBJECT" or "TEST SUBJECTS" to the extent it incorporates the definition of "TEST PROGRAMS," which is objectionable for the reasons stated above. DoD further objects to the term "TEST SUBJECT" or "TEST SUBJECTS" to the extent it includes non-service members, as such a definition exceeds the proper scope of the claims in this case.

5. DoD further objects to the extent that Plaintiffs have failed to specify a time limitation in their requests for admissions. DoD's responses shall be limited to the time period 1953 to the present, unless otherwise specified in its responses.

OBJECTIONS TO INSTRUCTIONS

1. DoD objects to Instruction 1 as imposing an obligation in excess of those required by the Federal Rules of Civil Procedures and the Local Rules of the United States District Court for the Northern District of California to the extent that it requires that, "[i]f information is not known, then state and describe the efforts made to obtain it."

SPECIFIC OBJECTIONS AND RESPONSES TO PLAINTIFFS' AMENDED REQUESTS FOR ADMISSION

Each of the foregoing statements and/or objections is incorporated by reference into each and every specific response set forth below, and DoD's response below is not a waiver of any of its General Objections.

REQUEST TO ADMIT NO. 1:

Admit that neither DOD nor DOA has provided health care to TEST SUBJECTS for health effects possibly resulting from their participation in and/or exposures during the TEST PROGRAMS.

RESPONSE: DoD objects to the phrases "TEST SUBJECTS" and "TEST PROGRAMS" for the reasons stated in General Objections 2 and 4. Notwithstanding and without waiving these objections, DoD admits in part, and denies in part Plaintiffs' request for admission no. 1. Denied to the extent that, as reflected in the volunteer test participants' service files, DoD has provided health care to test participants in need of such care during the course of, or immediately after, the testing while those participants were still on active duty. Admitted to the extent that DoD is not aware of having provided health care to veterans who participated in the TEST PROGRAMS in the absence of those participants being retirees of the military, medical retires, reservists or active duty military.

Current animal studies show that this pharmacologic class is unlikely to have induced malignancies among the Edgewood subjects . . . ." The 2003 follow-on study concerning anticholinesterases agents did not identify any increased risk of hospitalization for malignant neoplasms for the volunteer test subjects. Admitted to the extent that DoD has not provided notification to volunteer test participants concerning any alleged causal relationship between anticholinesterases and hospitalizations for malignant neoplasms.

Dated: August 15, 2011

IAN GERSHENGORN
Deputy Assistant Attorney General
MELINDA L. HAAG
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VINCENT M. GARVEY
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Attorneys for Defendants

PROOF OF SERVICE

I declare that I am over the age of eighteen and not a party to the above captioned action. My business address is 20 Massachusetts Avenue, NW, P.O. Box 883, Washington, DC 20530.

I further declare that on August 15, 2011, I served a copy of:

DEFENDANTS DEPARTMENT OF DEFENSE AND DEPARTMENT OF THE ARMYS' OBJETIONS AND RESPONSES TO PLAINTIFFS' AMENDED SET OF REQUESTS FOR ADMISSION

on counsel for Plaintiffs, as addressed below:

Gordon Erspamer
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105

(X) By overnight delivery: I placed a true copy in a sealed envelope, with delivery provided, to the address and person stated above and, pursuant to the usual business practice of the Department of Justice for collection and processing of mail, deposited on the same day in a collection box regularly maintained by Federal Express.

(X) By electronic mail: I caused said document to be delivered to the above named individual by electronic mail.

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

Executed on August 15, 2011 in Washington, DC.

JOSHUA E. GARDNER

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Attorneys for Plaintiffs Vietnam Veterans of America; Swords to Plowshares: Veterans Rights Organization; Bruce Price; Franklin D. Rochelle; Larry Meirow; Eric P. Muth; David C. Dufrane; Kathryn McMillan-Forrest; Tim Michael Josephs; and William Blazinski

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

VIETNAM VETERANS OF AMERICA, *et al.*, Plaintiffs, v. CENTRAL INTELLIGENCE AGENCY, *et al.*, Defendants.	Case No. CV 09-0037-CW **DECLARATION OF BEN PATTERSON IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT** Complaint filed January 7, 2009

I, Ben Patterson, declare as follows:

1. I am an attorney licensed to practice law in the State of California and am admitted to practice before this Court. I am an associate with the law firm of Morrison & Foerster LLP, counsel of record for Vietnam Veterans of America, Swords to Plowshares: Veterans Rights Organization, Bruce Price, Franklin D. Rochelle, Larry Meirow, Eric P. Muth, David C. Dufrane, Kathryn McMillan-Forrest, Tim Michael Josephs, and William Blazinski ("Plaintiffs") in this action. I submit this Declaration in Support of Plaintiffs' Motion for Partial Summary Judgment. I make this Declaration based on personal knowledge and discussions with support staff working under my direction. If called as a witness, I would testify to the facts set forth below.

2. Attached hereto as **Exhibit 1** is a true and correct copy of what I am informed and believe is Army Regulation 70-25 ("AR 70-25") "Use of Volunteers as Subjects of Research," dated March 26, 1962, and identified as Deposition Exhibit No. 94 in this case.

3. Attached hereto as **Exhibit 2** is a true and correct copy of what I am informed and believe is Army Regulation 70-25 ("AR 70-25") "Use of Volunteers as Subjects in Research," dated January 25, 1990, and identified as Deposition Exhibit No. 311 in this case.

4. Attached hereto as **Exhibit 3** is a true and correct copy of what I am informed and believe is a document entitled, "Chemical Warfare Agent Experiments Among U.S. Service Members," produced by Defendants with Bates numbers VET001_015675 through VET001_015707, and identified as Deposition Exhibit No. 554 in this case.

5. Attached hereto as **Exhibit 4** is a true and correct copy of what I am informed and believe is a Memorandum with the subject, "Use of Human Volunteers in Experimental Research," dated February 26, 1953, and signed by C. E. Wilson, identified by Bates numbers C001 through C003 and as Deposition Exhibit No. 95 in this case.

6. Attached hereto as **Exhibit 5** is a true and correct copy of what I am informed and believe is a Memorandum with the subject "Use of Volunteers of Research," dated June 30, 1953, sent by Chief of Staff John C. Oakes, produced by Defendants with Bates numbers VVA 024538 through VVA 024549, and identified as Deposition Exhibit No. 96 in this case.

7. Attached hereto as **Exhibit 6** is a true and correct copy of what I am informed and believe is a Memorandum from Army General Counsel Jill Wine-Volner with the subject, "Notification of Participants in Drug or Chemical/Biological Agent Research," dated August 8, 1979, produced by Defendants with Bates numbers VET123_004994 through VET123_004995 and identified as Deposition Exhibit No. 710 in this case.

8. Attached hereto as **Exhibit 7** is a true and correct copy of what I am informed and believe is a Memorandum from Army General Counsel Jill Wine-Volner with the subject, "Notification of Participants in Drug or Chemical/Biological Agent Research," dated September 24, 1979, produced by Defendants with Bates numbers VET017-000279 through VET017-000280 and identified as Deposition Exhibit No. 310 in this case.

9. Attached hereto as **Exhibit 8** is a true and correct copy of what I am informed and believe is a Memorandum from Army Chief of Staff John McGiffert with the subject, "Notification of Participants in Drug or Chemical/Biological Agent Research," dated October 25, 1979, produced by Defendants with Bates numbers VET030-022686 through VET030-022691 and identified as Deposition Exhibit No. 465 in this case.

10. Attached hereto as **Exhibit 9** is a true and correct copy of what I am informed and believe is a Memorandum with the subject, "Notification of Participants in Drug or Chemical/Biological Agent Research," dated November 2, 1979, produced by Defendants with Bates numbers VET030-022692 through VET030-022696 and identified as Deposition Exhibit No. 318 in this case.

11. Attached hereto as **Exhibit 10** is a true and correct copy of what I am informed and believe is a Memorandum with the subject, "Chemical Weapons Research Programs Using Human Test Subjects," dated March 9, 1993, and signed by William Perry, produced by Defendants with Bates numbers VET001_011181 through VET001_011182 and identified as Deposition Exhibit No. 235 in this case.

12. Attached hereto as **Exhibit 11** is a true and correct copy of what I am informed and believe is a document with the subject, "Implementation Plan for U.S. Chemical and Biological (CB) Tests Repository Program," approved by Jean Reed, produced by Defendants

with Bates numbers DVA002 004549 through DVA002 004551 and identified as Deposition Exhibit No. 199 in this case.

13. Attached hereto as **Exhibit 12** is a true and correct copy of excerpts from the transcript of the January 20, 2012, deposition of Mark Brown.

14. Attached hereto as **Exhibit 13** is a true and correct copy of what I am informed and believe are Compensation and Pension Service meeting minutes dated November 29, 2004, produced by Defendants with Bates numbers DVA003 006436 through DVA003 006440 and identified as Deposition Exhibit No. 269 in this case.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed in San Francisco, California on this 4th day of December, 2012.

/s/ Ben Patterson
Ben Patterson

CIVIL LOCAL RULE 5-1 ATTESTATION

I hereby attest that I have on file all holograph signatures for any signatures indicated by a "conformed" signature (/S/) within this e-filed document.

/s/ GORDON P. ERSPAMER

Gordon P. Erspamer

Exhibit 3

EXHIBIT 3

DEPOSITION EXHIBIT
No. 554
11-1-11 an

CHEMICAL WARFARE AGENT EXPERIMENTS AMONG U.S. SERVICE MEMBERS

TABLE OF CONTENTS

CHEMICAL WARFARE AGENT EXPERIMENTS AMONG U.S. SERVICE MEMBERS

Military experiments using service member as subjects have been an integral part of the U.S. chemical weapons program, producing tens of thousands of "soldier volunteers" experimentally exposed to a wide range of chemical agents from World War 1 to about 1975. By the end of World War 2, nearly 60,000 U.S. service members were experimentally exposed mainly to mustard agent and Lewisite (NAS 1993). From 1955 to 1975, thousands of U.S. service members were experimentally treated with a wide range of agents, primarily at U.S. Army Laboratories at Edgewood Arsenal, Maryland. Veteran and others have become increasingly concerned about long-term health effects potentially related to participation in these experiments. Even service members who were not experimental subjects but were involved only in carrying out military testing have expressed concerns about potentially related long-term health consequences, for example, tests evaluating ship vulnerability to attacks with chemical and biological agents conducted during the 1960s. Veterans and their supporters are also responding to a perception that participating veterans were the unwitting and unwilling subjects of secret military experimentation.

In response, VA with support from the U.S. Department of Defense (DoD) has made significant efforts to identify participants in the Edgewood/Aberdeen experiments conducted from 1955 to 1975 (as well as earlier testing), notify them of their involvement, offer them access to VA health care, and to evaluate potential long-term health consequences. Such efforts are significantly hampered by lack of military records on subject identity, and about the identity and magnitude of the agents they were exposed to. Many subjects were involved in multiple experiments with exposure to many different agents. These experiments were conducted decades in the past, further confounding modern efforts to piece together what happened. Today we appreciate that concerns about long-term health consequences among experimental subject are inevitable, earlier military researchers failed to anticipate this issue. During the height of the Cold War, researchers probably gave little thought of future interest in identifying and tracking down subjects to evaluate potential long-term health consequences and for outreach purposes. To address these problems in the future, study protocols and institutional review board approvals of human subjects research involving military personnel should require careful documentation of experimental exposures and of the identity of experimental subjects.

HISTORY OF U.S. CHEMICAL WARFARE AGENT HUMAN EXPERIMENTS.

The U.S. has had an active chemical warfare program since World War 1, with large-scale testing, manufacture and stockpiling of chemical agents and munitions. By the early 1990s, this stockpile included an estimated 25,000 tons of chemical warfare agents, including nerve agents such as sarin and VX, and vesicant (blister) agents including mustard and Lewisite. Today, this stockpile is considered obsolete, and federal law and international agreements require that it be destroyed.

A significant part of this program involved experimentation with U.S. service member "soldier volunteers," which ended only in 1975. Many experiments were intended to enhance defensive capabilities, such as improved protective clothing and respiratory masks. Others evaluated the impact on military personnel operational readiness, and the efficacy of new materials such as potential riot control agents. Other experiments evaluated the effectiveness of incapacitating and "brainwashing" agents such as cannabinoids and LSD. Human subjects were part of this program from the beginning, but the number of service members involved and the chemical warfare agents

tested has changed greatly over time. Although originally conducted in secret, today a great deal of information about them is available in the open literature.

Experiments Through World-War 2. The chemical warfare agent sulfur mustard (or just "mustard agent") caused nearly 400,000 casualties during World War 1 -- more than from any other chemical agent used during that conflict (NAS 1993). German use of mustard agent against Polish citizens in 1939 led U.S. military planners to respond in kind. U.S. military planners ultimately concluded that animal studies were not an adequate substitute for human studies, and in 1942, U.S. chemical weapons program managers were given authority to recruit and use volunteer subjects (NAS 1993). By the end of World War 2, over 60,000 U.S. service members had been used as human subjects in the U.S. chemical warfare defense research program (NAS 1993).

Research focused primarily on improving weapons and means of protection. "Soldier volunteers" were exposed commonly to acutely toxic levels (i.e., levels resulting in immediate signs and symptoms of poisoning) of agents via small drops applied to the arm or to clothing, or in gas chambers, sometimes without protective clothing (NAS 1993). In some experiments, subjects were repeatedly placed in gas chambers and exposed to mustard agent or Lewisite vapor sufficient to cause erythema (skin reddening) (NAS 1993). Field tests involved subjects passing through areas of land treated with sulfur mustard or Lewisite (NAS 1993). Gas chamber experiments evaluated the effectiveness of protective clothing including gas masks. Subjects exposed in chambers for 1 to 4 hours were evaluated twenty-four hours later for erythema as evidence of protective clothing failure (NAS 1993). Subjects often repeated this procedure every day or every other day until they developed moderate to intense erythema (NAS 1993). Most test subjects experienced intense, widespread erythema, especially in moist areas of skin folds, such as behind the knees and under the arms, in large areas of the chest and shoulders, and on their arms and legs (NAS 1993). Some experiments apparently involved less protected subjects who were reported to have experienced severe burns to the genital areas, including cases of crusted lesions to the scrotum (NAS 1993). Documented injuries among experimental subjects using various exposure routes was initially "quite high" -- one study of accidental injuries identified over 1,000 cases of acute mustard agent toxicity resulting in eye, ear, nose and throat symptoms occurred at Edgewood Arsenal over a 2-year period (NAS 1993).

By the end of the World War 2, the U.S. had produced more than 87,000 tons of sulfur mustard, 20,000 tons of Lewisite, and 100 tons of nitrogen mustard, at Edgewood Arsenal, MD, Huntsville Arsenal, AL, Pine Bluff Arsenal, AR, and Rocky Mountain Arsenal, CO (NAS 1993). Tens of thousands of military and civilian workers were involved in production of these agents, and some accidents were inevitable these individuals trained or otherwise came into contact with these materials. Similarly, a German bombing attack in December 1943 on U.S. ships loaded with mustard agent in the Italian harbor of Bari, Italy, released mustard agent into the air and water, which caused thousands of injuries and hundreds of deaths among U.S. service members and others in the area. Over 600 victims were treated from the harbor area alone, of which 83 died (NAS 1993). Close to 1,000 civilians from the town also died. Ironically, this was the only incident involving military use of mustard agent (or Lewisite) during World War 2 (NAS 1993).

Post World-War 2 – Edgewood/Aberdeen Experiments. The close of World War 2 led initially to reduced interest in human experimentation with mustard and Lewisite (NAS 1993). However, by the 1950s, DoD again saw a need for human experiments, although on a much

smaller scale, and with a focus on newer and potentially more effective chemical warfare agents, including the organophosphorus (OP) military nerve agents, nerve agent antidotes, incapacitating agents such as tear gas, and psychoactive agents such as LSD, PCP and synthetic cannabinoid (derived from marijuana) analogs (NAS 1993, NRC 1982).

From the 1955 to 1975, approximately 6,720 soldiers took part in experiments involving exposure to more than 250 different chemicals administered by various routes at U.S. Army Laboratories (formerly Army Chemical Center) at Edgewood Arsenal, Maryland (NRC 1982, NRC 1984, NAS 1993). Many of these experiments were designed to evaluate acute human toxic effects (NRC 1982). Some involved exposures to placebos or common agents such as caffeine and alcohol. Related testing also occurred at other military facilities during this period, and other agencies, including the CIA and the Special Operations Division of the Department of the Army, also reportedly were involved in these studies (NAS 1993). Congressional hearings about these experiments in 1974 and 1975 resulted in significant disclosures and the notification of some subjects about their participation, and compensation of a few families of subjects who had died during these experiments (NAS 1993).

The more than 250 agents tested represented about half a dozen pharmacological agent classes, including common approved pharmaceutical agents (Table 1), anticholinesterase nerve agents (e.g. sarin and common OP and carbamate pesticides), glycolate anticholinergic agents (e.g., nerve agent antidotes atropine, scopolamine, and BZ), nerve agent reactivators (e.g., the common OP antidote 2-PAM and related compounds), psychoactive compounds (e.g., LSD and PCP), cannabinoids (related to the active ingredient of marijuana), and irritants (e.g., tear gases) (Tables 2 - 4). Table 5 shows the agent class and median year for the Edgewood/Aberdeen experiments.

Anticholinesterase and anticholinergic agents were administered to approximately 3,200 subjects, or "almost half of some 6,700 subjects were exposed at Edgewood" (NRC 1984). Subsequent attempts to evaluate potential long-term health effects uncovered limited information on 750 subjects exposed to four cholinesterase reactivators (i.e., anticholinesterase antidotes such as 2-PAM), 260 subjects exposed to phencyclidine (PCP or "Angel Dust") or to 10 cannibinoid psychochemicals, and 1,500 subjects exposed to irritants and vesicants including CN, CS, other "tear gas" type irritants, and mustard agent. Anticholinesterases and anticholinergic agents were also purposefully tested in combination, since members of each are used as treatment for overexposure to the other (NRC 1982).

<u>**SHAD and Project 112 Tests.**</u> From 1963 through the early 1970s, DoD conducted tests known as "Project 112," with chemical and biological warfare agents as well as less hazardous simulants, to evaluate the effectiveness of various protective and detection measures on both land and at sea. The shipboard tests were called "Shipboard Hazard and Defense," or simply "SHAD." In 2000, responding to a request from Secretary of Veterans Affairs, DoD began declassifying and sharing what information was still available with VA about the medical aspects of these tests, and the identities of those involved. Unlike many such experiments before or since, Navy ship rosters have turned out to be an excellent source for determining who was actually involved in these tests, although data about individual exposures is more typically poor or non-existent. Since May 2002, using declassified information provided by DoD, VA has been notifying veterans who took part in these tests, and encouraging them to come to VA medical facilities if they have any related health concerns.

DoD has stated that the military personnel involved in these tests were not actually test subjects, but rather were only involved as test conductors Further, DoD offered the reassurance that procedures were taken during the tests to protect these test conductors from hazardous exposures, and that no veteran became ill during these experiments. Despite these assurances, there has been a perception by some that military personnel may have been in some cases the unwitting subjects of secret military experiments involving their deliberate exposure to hazardous agents.

Based on DoD's declassification efforts, today we know that a wide range of chemical and biological warfare agents, less hazardous simulants, and disinfectant agents were used in SHAD and Project 112. Tested biological warfare agents included *Coxiella burnetii, Francisella tularensis*, and Staphylococcal Enterotoxin B. Biological agent simulants were also tested as relatively non-toxic substitutes with similar physical properties as actual biowarfare agents. These included *Bacillus globigii* (BG), *E. coli*, *Serratia marcscens* and zinc cadmium sulfide. Although these biological agent simulants were considered to be safe at the time they were used, we understand today that they can be opportunistic pathogens under certain unusual circumstances – circumstances that are probably not relevant to most active duty personnel.

SHAD and Project 112 tests also involved most of the organophosphorus chemical warfare nerve agents in the U.S. arsenal at that time, including Sarin, VX, Tabun and Soman. The majority of tests involved chemical warfare agent simulants such as methylacetoacetate or sulfur dioxide, which had similar physical properties such as vapor pressure, but without the acute lethal toxicity of the actual chemical warfare agents. DoD also used a number of common agents for sterilizing surfaces, presumably following experiments with biological agents. These included β-propiolactone, ethyl alcohol, Lysol, peracetic acid, potassium and sodium hydroxide, and sodium hypochlorite (common bleach).

Literature on long-term health effects from biological agents used in Project 112 indicates such effects are unlikely in the absence of observable health problems at the time of exposure (VA 2002). These infectious agents are not associated with latent infections in the absence of acute and symptomatic illness. Similarly, in general, the chemical agents used in project SHAD are most likely to have produced long-term health effects only if they caused clinically significant effects during or shortly after exposure. However, there are few good, long-term studies of the health effects of exposure to low levels of the agents used in these tests. Consequently, VA has contracted with the Institute of Medicine to conduct a comprehensive study of potential long-term health effects among SHAD test conductors (VA 2002).

CALLS FOR INDEPENDENT EVALUATION

Public attention about these military human subjects experiments increased considerably when affected veterans began to seek compensation from VA for health problems they believed had been caused by their involvement. Veterans faced significant hurdles in establishing such claims because typically little or no supporting documentation was available. For example, generally the time spent as subjects in the World War 2 mustard agent and Lewisite experiments were unaccounted for in official service records (NAS 1993). Compounding veterans' difficulties, there was little scientific or medical information on long-term health effects from these exposures – existing literature focused nearly exclusively upon short-term effects.

Exhibit 4

EXHIBIT 4

196

COPY

SECRETARY OF DEFENSE
Washington

26 Feb 1953

MEMORANDUM FOR THE SECRETARY OF THE ARMY
SECRETARY OF THE NAVY
SECRETARY OF THE AIR FORCE

SUBJECT: Use of Human Volunteers in Experimental Research

1. Based upon a recommendation of the Armed Forces Medical Policy Council, that human subjects be employed, under recognized safeguards, as the only feasible means for realistic evaluation and/or development of effective preventive measures of defense against atomic, biological or chemical agents, the policy set forth below will govern the use of human volunteers by the Department of Defense in experimental research in the fields of atomic, biological and/or chemical warfare.

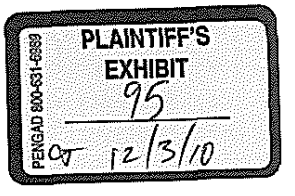
2. By reason of the basic medical responsibility in connection with the development of defense of all types against atomic, biological and/or chemical warfare agents, Armed Services personnel and/or civilians on duty at installations engaged in such research shall be permitted to actively participate in all phases of the program, such participation shall be subject to the following conditions:

a. The voluntary consent of the human subject is absolutely essential.

(1) This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him to make an understanding and enlightened decision. This latter element requires that before the acceptance of an affirmative decision by the experimental subject there should be made known to him the nature, duration, and purpose of the experiment; the method and means by

TOP SECRET

Downgraded to
UNCLASSIFIED 22 Aug 75
per S. Clements
DDR&E OSD(PA)



C-001

COPY

which it is to be conducted; all inconveniences and hazards reasonably to be expected; and the effects upon his health or person which may possibly come from his participation in the experiment.

(2) The concept of the human subject shall be in writing, his signature shall be affixed to a written instument setting forth substantially the aforementioned requirements and shall be signed in the presence of at least one witness who shall attest to such signature in writing.

(a) In experiments where personnel from more than one Service are involved the Secretary of the Service which is exercising primary responsibility for conducting the experiment is designated to prepare such an instrument and coordinate it for use by all the Services having human volunteers involved in the experiment.

(3) The duty and responsibility for ascertaining the quality of the consent rests upon each individual who initiates, directs or engages in the experiment. It is a personal duty and responsibility which may not be delegated to another with impunity.

b. The experiment should be such as to yield fruitful results for the good of society, unprocurable by other methods or means of study, and not random and unnecessary in nature.

c. The number of volunteers used shall be kept at a minimum consistent with item b., above.

d. The experiment should be so designed and based on the results of animal experimentation and a knowledge of the natural history of the disease or other problem under study that the anticipated results will justify the performance of the experiment.

e. The experiment should be so conducted as to avoid all unnecessary physical and mental suffering and injury.

f. No experiment should be conducted where there is an a priori reason to believe that death or disabling injury will occur.

g. The degree of risk to be taken should never exceed that determined by the humanitarian importance of the problem to be solved by the experiment.

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C-002

C O P Y

h. Proper preparation should be made and adequate facilities provided to protect the experimental subject against even remote possibilities of injury, disability, or death.

i. The experiment should be conducted only by scientifically qualified persons. The highest degree of skill and care should be required through all stages of the experiment of those who conduct or engage in the experiment.

j. During the course of the experiment the human subject should be at liberty to bring the experiment to an end if he has reached the physical or mental state where continuation of the experiment seems to him to be impossible.

k. During the course of the experiment the scientist in charge must be prepared to terminate the experiment at any stage, if he has probable cause to believe, in the exercise of the good faith, superior skill and careful judgment required of him that a continuation of the experiment is likely to result in injury, disability, or death to the experimental subject.

l. The established policy, which prohibits the use of prisoners of war in human experimentation, is continued and they will not be used under any circumstances.

3. The Secretaries of the Army, Navy and Air Force are authorized to conduct experiments in connection with the development of defenses of all types against atomic, biological and/or chemical warfare agents involving the use of human subjects within the limits prescribed above.

4. In each instance in which an experiment is proposed pursuant to this memorandum, the nature and purpose of the proposed experiment and the name of the person who will be in charge of such experiment shall be submitted for approval to the Secretary of the military department in which the proposed experiment is to be conducted. No such experiment shall be undertaken until such Secretary has approved in writing the experiment proposed, the person who will be in charge of conducting it, as well as informing the Secretary of Defense.

5. The addresses will be responsible for insuring compliance with the provisions of this memorandum within their respective Services.

/signed/
C.E. WILSON

Copies furnished:
Joint Chiefs of Staff
Research and Development Board

Downgraded to UNCLASSIFIED
22 Aug 75

C-003

Exhibit 5

EXHIBIT 5

UNCLASSIFIED

Regraded UNCLASSIFIED by authority of DDRS/BG KENNETH R. DYKES, MC by Neil Hartson on 26 Mar 76

DEPARTMENT OF THE ARMY
Office of the Chief of Staff
Washington 25, D. C.

REVIEWED BY:

CS: 385 (30 Jun 53)

30 June 1953

MEMORANDUM THRU: ASSISTANT CHIEF OF STAFF, G-4 — Signature — Date

FOR: CHIEF CHEMICAL OFFICER
THE SURGEON GENERAL

SUBJECT: Use of Volunteers in Research

1. This directive prescribes policies and procedures governing the use of volunteers in research in defense against atomic, biological and chemical warfare. The purpose of this research is to permit a realistic evaluation and/or development of effective preventive measures of defense against atomic biological or chemical agents.

2. Certain basic principles must be observed in order to satisfy moral, ethical and legal concepts. These basic principles are:

a. The voluntary consent of the human subject is absolutely essential.

(1) This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior form of constraint or coercion; and should have sufficient knowlege and comprehension of the elements of the subject matter involved as to enable him to make an understanding and enlightened decision. This latter element requires that before the acceptance of an affirmative decision by the experimental subject there should be made known to him the nature, duration, and purpose of the experiment; the method and means by which it is to be conducted; all inconveniences and hazards reasonably to be expected; and the effects upon his health or person which may possibly come from his participation in the experiment.

(2) The consent of the human subject shall be in writing, his signature shall be affixed to a written instrument setting forth substantially the aforementioned requirements and shall be signed in the presence of at least one witness who shall attest to such signature in writing.

(a) In experiments where personnel from more than one Service are involved, the Secretary of the Service which is exercising primary responsibility for conducting the experiment is designated to prepare such an instrument and coordinate it for use by all the Services having human volunteers involved in the experiment.

(3) The duty and responsibility for ascertaining the quality of the consent rests upon each individual who initiates, directs or engages in the experiment. It is a personal duty and responsibility which may not be delegated to another with impunity.

UNCLASSIFIED

Regrading data cannot be determined. DEC

PLAINTIFF'S EXHIBIT 96 CT 12/3/10

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SUBJECT: Use of Volunteers in Research

b. The experiment should be such as to yield fruitful results for the good of society, unprocurable by other methods or means of study, and not random and unnecessary in nature.

c. The number of volunteers used shall be kept at a minimum consistent with item b, above.

d. The experiment should be so designed and based on the results of animal experimentation and a knowledge of the natural history of the disease or other problem under study that the anticipated results will justify the performance of the experiment.

e. The experiment should be so conducted as to avoid all unnecessary physical and mental suffering and injury.

f. No experiment should be conducted where there is an a priori reason to believe that death or disabling injury will occur.

g. The degree of risk to be taken should never exceed that determined by the humanitarian importance of the problem to be solved by the experiment.

h. Proper preparations should be made and adequate facilities provided to protect the experimental subject against even remote possibilities of injury, disability, or death.

i. The experiment should be conducted only by scientifically qualified persons. The highest degree of skill and care should be required through all stages of the experiment of those who conduct or engage in the experiment.

j. During the course of the experiment the human subject should be at liberty to bring the experiment to an end if he has reached the physical or mental state where continuation of the experiment seems to him to be impossible.

k. During the course of the experiment the scientist in charge must be prepared to terminate the experiment at any stage, if he has probable cause to believe, in the exercise of the good faith, superior skill and careful judgement required of him that a continuation of the experiment is likely to result in injury, disability, or death to the experimental subject.

(1) The established policy, which prohibits the use of prisoners of war in human experimentation, is continued and they will not be used under any circumstances.

3. The following opinions of the Judge Advocate General furnish specific guidance for all participants in research in atomic, biological and/or chemical warfare defense using volunteers.

a. Legality of accepting volunteers. The authority of the Secretary of the Army to conduct research and development activities is contained in section 104 of the act of 10 July 1950 (64 Stat. 322; 5 U.S.C. 235a) which provides:

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VVA 024539

SUBJECT: Use of Volunteers in Research

> "The Secretary of the Army is authorized to conduct, engage, and participate in research and development programs related to activities of the Army of the United States and to procure, or contract for the use of, such facilities, equipment, services, and supplies as may be required to effectuate such programs."

Section 101 of the Army Organization Act of 1950 (64 Stat. 264; 5 U.S.C. 181-4) provides in part as follows:

> "Except as otherwise prescribed by law, the Secretary of the Army may make such assignments and details of members of the Army and civilian personnel as he thinks proper, and may prescribe the duties of the members and civilian personnel so assigned; and such members and civilian personnel shall be responsible for, and shall have the authority necessary to perform, such duties as may be so prescribed for them."

b. Military Personnel and Department of the Army Civilian Employees. Compensation for the disability or death of a civilian employee resulting from personal injury or disease proximately caused by his employment is payable under the Federal Employees Compensation Act (39 Stat. 742 et seq.), as amended (5 U.S.C. 751 et seq.), regardless of whether his employment was of a hazardous nature. The amount and type of disability compensation or other benefits payable by reason of the death or disability of a member of the Army resulting from injury or disease incident to service depends upon the individual status of each member, and is covered by various provisions of law. It may be stated generally that under present laws no additional rights against the Government will result from the death or disability of military and civilian personnel participating in experiments by reason of the hazardous nature of the operations, although it is possible that the Congress may confer benefits or grant relief by general or special legislation subsequently enacted. Even should the injury or disease result from a negligent or wrongful act, the recovery of any compensation or benefit under present law in addition to those noted above is doubtful.

c. Use of Appropriated Funds for the Purchase of Life Insurance. In effect, the payment of insurance premiums on the life of an officer or employee is a form of compensation (Commissioner of Internal Revenue v. Bonwit, 87 F. 2d 764 (2nd Cir., 1937), cert. den, 302 U.S. 694, 82 L. Ed. 536; Canaday v. Guitteau, 86 F. 2d 303 (6th Cir., 1936)). In this regard, section 1765 of the Revised Statutes (5 U.S.C. 70) provides as follows:

> "No officer in any branch of the public service, or any other person whose salary, pay, or emoluments are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law, and the appropriation therefore explicitly states that it is for such additional pay, extra allowance, or compensation."

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SUBJECT: Use of Volunteers in Research

There is no statutory authority for the payment of premiums for insuring the lives of military and civilian personnel, and current appropriations for military and civilian pay and allowances do not expressly provide therefor. It follows that the payment of such premiums from appropriated funds is prohibited by the quoted section. The statutory provision in question is applicable to all military and civilian personnel of the Army "whose salary, pay, or emoluments are fixed by law or regulations" (24 Comp. Gen. 648 (1945).

d. Private Citizen. Section 3679 of the Revised Statutes, as amended (31 U.S.C. 665(b)), provides:

> "No officer or employee of the United States shall accept voluntary service for the United States or employ personal service in excess of that authorized by law, except in cases of emergency involving the safety of human life or the protection of property."

It is the policy of the quoted statute to prohibit the acceptance of voluntary services which may provide a basis for future claims against the Government. The stated policy applies not only where legal claims for compensation may arise from performance of the services, but also where the circumstances surrounding the proffer support a reasonable possibility that the services may provide the basis for seeking remedial legislation from the Congress. The JAG is therefore of the opinion that the services in question should not be accepted by the Department of the Army. In view of this conclusion, it is unnecessary to consider the extent to which such persons could exert claims against the Government by reason of disability or death resulting from participation in the proposed experiments, or whether premiums on life insurance for the said participants may be paid from appropriated funds.

e. Contractors' Employees. The applicability of the foregoing considerations to contractors' employees is considered below:

(1) Legality of employment. The authority of the Secretary of the Army to contract for services necessary to effectuate research and development activities is contained in section 104 of the act of 10 July 1950 (64 Stat. 322; 5 U.S.C. 235a), quoted in subparagraph a, above. There appears to be no provision of law which would prevent a contractor from employing his personnel upon experiments of the nature contemplated. In the literal sense, no question of "acceptance" of the services in question by the Government is involved, as the private relation of such an employee is with the contractor rather than the Government. It devolves upon the contracting officer to ascertain whether the terms are sufficiently broad to permit the participation of contractor employees in the experiment. The terms of the contract must insure that the contractor will observe the conditions and safeguards set forth in this directive.

(2) Claims against the Government. Generally benefits to which a private employee may become entitled by reason of death or disability resulting from his employment are payable under State, rather than Federal, laws, with the exception of persons covered by the Survivor's insurance provisions of the Social Security Act (49 Stat. 623), as amended (42 U.S.C. 402). In some situations the employee may have remedies against his employer

SUBJECT: Use of Volunteers in Research

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under State workmen's compensation or other laws. It is not possible to generalize upon the right of such an employer, where he is a Government contractor, to claim reimbursement from the Government for additional costs by reason of liability to his employees incurred in this regard, as this depends upon the terms of each individual contract. The question of whether any additional rights against the employer-contractor may result from the death or disability of employees participating in experiments, by reason of the hazardous nature of the experiments, is likewise not susceptible of any general statement, due to the numerous factors involved. Such persons would not be disqualified from prosecuting claims against the Government under the Federal Tort Claims Act (28 U.S.C. 2671 et seq.). (See also AR 25-70, 2 March 1951.)

(3) Purchase of life insurance. In cost-reimbursable type contracts, the expense of maintaining group accident and life insurance plans may be an allowable item of cost under the contract (ASPR 15-204(p)). Group life insurance plans provided voluntarily to contractors' employees on a reimbursable basis are subject to review by heads of procuring activities to determine that greater benefits are not being extended under the cost-reimbursement type contract than those granted to employees under the contractor's regular commercial operations (APP 10-351). In special cases, life insurance for employees may be authorized by heads of procuring activities (ASPR 10-302) even in fixed-price contracts (APP 10-301). In order to be applicable, cost principles must be set forth or incorporated in a cost-reimbursable contract (ASPR 15-102). It will be seen from the above that, if a contractor obtains insurance on the lives of his employees while participating in the proposed experiments, he may be reimbursed for the expenses involved only where the contract is of a type allowing reimbursement and the terms thereof allow recovery as an item of cost.

f. Irregular and Fee-basis Employees. The stated category comprehends all persons paid from appropriated funds for intermittent services, as distinguished from regular, full-time employees. For example, the Secretary of the Army may procure the temporary or intermittent services of experts or consultants, including stenographic reporting services, without regard to civil service and classification laws at rates not to exceed $50 per diem (sec. 15, act of 2 Aug 1946 (60 Stat. 810; 5 U.S.C. 55a); sec. 601, Department of Defense Appropriation Act, 1953 (Pub. Law 488, 82d Cong.); see CPR A7.6, par. 6-3). The employment of experts and consultants either on a per diem basis or without compensation is also authorized by section 710, Defense Production Act of 1950 (64 Stat. 819; 50 U.S.C. App. 2160). (See CPR A7.6, par. 6-3.) The Secretary of the Army may

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SUBJECT: Use of Volunteers in Research

also employ architects, engineers, and other technical and professional personnel on a fee basis, without regard to classification laws (sec 2, act of 7 Aug 1939 (53 Stat. 1240, 5 U.S.C. 221).

In general, the employment status of such persons must be determined individually from the statutory authority under which they are employed and the terms and conditions of their employment agreements. In some cases it will be found that their status is not that of employees, but of contractors furnishing services to the Government at agreed contract prices. The following observations are made upon the applicability of the three questions considered in subparagraph e, above, to the category of persons under consideration:

(1) Legality of accepting volunteers. The terms of the statutory authority for the employment and the provisions of the employment agreement must be inspected in each case to determine whether the particular individual is an employee subject to detail or assignment upon the proposed experiments, or whether his employment is limited to other specific objects. If his employment upon the project is not so authorized, it would appear that acceptance of his services for this purpose on a voluntary basis would be prohibited by the considerations discussed in subparagraph d, above.

(2) Claims against the Government. The Federal Employees Compensation Act (39 Stat. 742 et seq.), as amended (5 U.S.C. 751 et seq.), is applicable to "all civil officers and employees" of the Government and all "persons rendering personal services of a kind similar to those of civilian officers or employees of the United States *** without compensation or for nominal compensation, in any case in which acceptance or use of such services is authorized by an Act of Congress or in which provision is made by law for payment of the travel or other expenses of such person." The foregoing broad coverage of the act would appear to include most irregular and fee-basis employees. However, the administration of the benefits in question are within the province of the Bureau of Employees Compensation, Department of Labor, and only that agency may provide a definitive ruling with respect to coverage of the individuals in question. With the foregoing reservation, the views of this office set forth in subparagraph b, above, would appear equally applicable to irregular and fee-basis employees.

(3) Purchase of life insurance. The Comptroller General has approved the payment of surgical and hospitalization expenses of a field employee injured while engaged upon flood

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SUBJECT: Use of Volunteers in Research

control work (3 Comp. Gen. 57 (1923)), on the ground that "the employee's compensation was not fixed by law but was subject to administrative discretion, since, otherwise, payment of the expense by the Government would constitute payment of additional compensation, which is prohibited by section 1765, Revised Statutes" (28 Comp. Gen. 175 (1948)). Subject to such restrictions and limitations as may appear in the statutory authority under which he is employed, it would appear from the foregoing that the Government may legally bear the expense of premiums upon the life of an irregular or fee-basis employee whose rate of compensation is not fixed by law or regulations. In this regard, it may be advisable for the Government to provide an additional allowance to the employee for financing such private insurance arrangements as he may wish to make rather than to undertake direct negotiations with insurance carriers for the desired coverage.

4. Subject to the above conditions, Armed Forces personnel and/or civilians on duty at installations engaged in research in subject fields shall be permitted to actively participate in all phases of the program. As a general rule, volunteer subjects should be males under 35 years of age, with no physical or mental diseases.

5. Agents used in research must have the following limiting characteristics:

a. Controllable lethality.

b. No serious chronicity anticipated.

c. Effective therapy available.

d. Adequate background of animal experimentation.

6. As added protection for volunteers, the following safeguards will be provided:

a. Direct responsibility for the planning and conduct of the investigations and for the medical care will rest with one adequately trained physician.

b. All apparatus and instruments necessary to deal with any emergency situations must be available, e.g., Drinker respirator, Mine Safety Pneophor, oxygen apparatus, etc.

c. Medical treatment and hospitalization will be provided for all casualties of the experimentation as required.

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SUBJECT: Use of Volunteers in Research

d. The physician in charge will have available to him on short notice throughout the investigation competent consultants representing any of the specialties to be encountered.

7. Due to the specialized nature of biological agents, the following procedures in addition to the foregoing policies and procedures will be observed in regard to this phase of the program:

a. In selecting agents for investigation, priority should be given to those which possess a high probability of successful infection under operational conditions against U. S. forces.

b. The effectiveness of available defensive measures, either immunization or chemoprophylaxis, will determine the necessity for study of the agent considered.

c. Use enlarged (4X) Henderson or other suitable apparatus for exposure.

d. First experiments will be designed to determine level of susceptibility. The investigation should utilize the minimum number of volunteers which will yield statistically valid data at low levels of dosage.

e. Increase number of persons to that level which will give significance.

f. Then use immunized persons and persons on prophylactic chemotherapy.

g. Determine and apply details of immunologic study.

h. From the foregoing the final step will be to use volunteer subjects, or if there exists a good correlation with a particular animal for a particular micro-organism, then use that animal, on a proving ground, downwind far enough from the munition so that the concentration will be known to be approximately equal to the level required to induce infection. (This will rule out subjecting volunteers to "crash" concentrations.)

8. No research in atomic, biological and/or chemical agents using volunteers will be undertaken until the Secretary of the Army has stated his approval in writing. The Surgeon General of the Army will review and comment on all proposals for the use of volunteers. When appropriate, he will seek the advice of the Surgeon General of the Navy, Air Force and/or the

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SUBJECT: Use of Volunteers in Research

U. S. Public Health Service. The sponsoring Army agency will submit its proposal, together with the Surgeon General's review and comment thereon, to the Secretary of the Army through this office. As a minimum, the proposal will state the nature and purpose of the experiment and the name of the person who will be in charge.

BY DIRECTION OF THE CHIEF OF STAFF:

/s/
JOHN G. OAKES
Brigadier General, GS
Secretary of the General Staff

Copies furnished:
Asst. Chief of Staff, G-4 - 5
Chief Chemical Officer - 5
The Surgeon General - 5
The Judge Advocate General - 2
Chief of Research and Development, OCS - 5

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VVA 024546

C O P Y

SECRETARY OF DEFENSE
Washington

RCC 1-561024.052

26 Feb 1953

MEMORANDUM FOR THE SECRETARY OF THE ARMY
SECRETARY OF THE NAVY
SECRETARY OF THE AIR FORCE

SUBJECT: Use of Human Volunteers in Experimental Research

1. Based upon a recommendation of the Armed Forces Medical Policy Council, that human subjects be employed, under recognized safeguards, as the only feasible means for realistic evaluation and/or development of effective preventive measures of defense against atomic, biological or chemical agents, the policy set forth below will govern the use of human volunteers by the Department of Defense in experimental research in the fields of atomic, biological and/or chemical warfare.

2. By reason of the basic medical responsibility in connection with the development of defense of all types against atomic, biological and/or chemical warfare agents, Armed Services personnel and/or civilians on duty at installations engaged in such research shall be permitted to actively participate in all phases of the program, such participation shall be subject to the following conditions:

a. The voluntary consent of the human subject is absolutely essential.

(1) This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him to make an understanding and enlightened decision. This latter element requires that before the acceptance of an affirmative decision by the experimental subject there should be made known to him the nature, duration, and purpose of the experiment; the method and means by

[illegible]

Downgraded to
UNCLASSIFIED 22 Aug 7[illegible]
per R. Clements
[illegible] USD(P)

VVA 024547

C O P Y

which it is to be conducted; all inconveniences and hazards reasonably to be expected; and the effects upon his health or person which may possibly come from his participation in the experiment.

(2) The consent of the human subject shall be in writing, his signature shall be affixed to a written instrument setting forth substantially the aforementioned requirements and shall be signed in the presence of at least one witness who shall attest to such signature in writing.

(a) In experiments where personnel from more than one Service are involved the Secretary of the Service which is exercising primary responsibility for conducting the experiment is designated to prepare such an instrument and coordinate it for use by all the Services having human volunteers involved in the experiment.

(3) The duty and responsibility for ascertaining the quality of the consent rests upon each individual who initiates, directs or engages in the experiment. It is a personal duty and responsibility which may not be delegated to another with impunity.

b. The experiment should be such as to yield fruitful results for the good of society, unprocurable by other methods or means of study, and not random and unnecessary in nature.

c. The number of volunteers used shall be kept at a minimum consistent with item b., above.

d. The experiment should be so designed and based on the results of animal experimentation and a knowledge of the natural history of the disease or other problem under study that the anticipated results will justify the performance of the experiment.

e. The experiment should be so conducted as to avoid all unnecessary physical and mental suffering and injury.

f. No experiment should be conducted where there is an a priori reason to believe that death or disabling injury will occur.

g. The degree of risk to be taken should never exceed that determined by the humanitarian importance of the problem to be solved by the experiment.

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h. Proper preparation should be made and adequate facilities provided to protect the experimental subject against even remote possibilities of injury, disability, or death.

i. The experiment should be conducted only by scientifically qualified persons. The highest degree of skill and care should be required through all stages of the experiment of those who conduct or engage in the experiment.

j. During the course of the experiment the human subject should be at liberty to bring the experiment to an end if he has reached the physical or mental stage where continuation of the experiment seems to him to be impossible.

k. During the course of the experiment the scientist in charge must be prepared to terminate the experiment at any stage, if he has probable cause to believe, in the exercise of the good faith, superior skill and careful judgment required of him that a continuation of the experiment is likely to result in injury, disability, or death to the experimental subject.

l. The aforementioned policy, which prohibits the use of prisoners of war in human experimentation, is continued and they will not be used under any circumstances.

3. The Secretaries of the Army, Navy, and Air Force are authorized to conduct experiments in connection with the development of defenses of all types against atomic, biological, and/or chemical warfare agents involving the use of human subjects within the limits prescribed above.

4. In each instance in which an experiment is proposed pursuant to this memorandum, the nature and purpose of the proposed experiment and the name of the person who will be in charge of such experiment shall be submitted for approval to the Secretary of the military department in which the proposed experiment is to be conducted. No such experiment shall be undertaken until such Secretary has approved in writing the experiment proposed, the person who will be in charge of conducting it, as well as informing the Secretary of Defense.

5. The addressees will be responsible for insuring compliance with the provisions of this memorandum within their respective services.

/signed/
C.R. Wilson

Copies furnished:
Joint Chiefs of Staff
Research and Development Board

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

VIETNAM VETERANS OF AMERICA, *et al.*, Plaintiffs, v. CENTRAL INTELLIGENCE AGENCY, *et al.*, Defendants.	Case No. CV 09-0037-CW **DEFENDANTS' ANSWER TO FOURTH AMENDED COMPLAINT**

Defendants in this action, by and through undersigned counsel, hereby answer the numbered paragraphs of Plaintiffs' Third Amended Complaint ("Complaint") as follows:[1]

1. Paragraph 1 of the Complaint contains Plaintiffs characterization of the nature of this action, argument, and conclusions of law, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations contained in the paragraph.

2. First sentence: Defendant Department of Defense ("DOD") admits. Second sentence: this sentence contains Plaintiffs' characterization of DOD's research of chemical and biological weapons, argument, and conclusions of law regarding the extent of such programs, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations contained in this sentence except to admit that DOD and the Central Intelligence Agency ("CIA") studied chemical and biological weapons. Third sentence: this sentence contains Plaintiffs' characterization of the CIA's work with the Federal Bureau of Narcotics ("FBN"), to which no response is required; to the extent a response is deemed required, Defendants deny the allegations contained in this sentence except to admit that the CIA had a relationship with the FBN for a drug research program that involved human subjects. Fourth sentence: this sentence contains Plaintiffs' characterization of the research of chemical and biological weapons, argument, and legal conclusions regarding the extent of such programs, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations contained in this sentence except to admit that DOD's experimentation program involving human subjects was centered at Edgewood Arsenal and Fort Detrick. Fifth sentence: this sentence contains a conclusion of law, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations contained in this sentence. Sixth sentence: Defendants deny. Seventh and ninth sentences: these sentences contain Plaintiffs' characterization of DOD's research programs and argument, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations. Eighth sentence: this

[1] Plaintiffs' headings and prefatory quote are argument and do not constitute allegations requiring an answer.

sentence constitutes argument, to which no response is required; to the extent a response is deemed required, Defendants deny these allegations..

3. First sentence, including subparts a–q: this sentence contains Plaintiffs' characterization of government research of chemical and biological weapons, to which no response is required; to the extent that a response is deemed required, Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this paragraph except to admit that DOD's research program had many purposes. Defendants aver that the purpose of the program at Fort Detrick from 1943–73 was twofold: develop defensive mechanism against biological attack and develop weapons with which the United States could respond "in kind" if attacked by an enemy that used biological weapons. Defendants further aver that the purpose of the studies at Edgewood Arsenal was to ensure that the U.S. military could adequately protect its service members from possible wartime exposures to chemical warfare agents. The Central Intelligence Agency ("CIA") avers that it researched behavior modification. Second sentence: The last sentence of paragraph 3 contains Plaintiffs' characterization of DOD's research programs, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations.

4. Paragraph 4 constitutes Plaintiffs' characterization of the cited 1976 Army IG Report and the 1975 Memorandum from Army Office of the Adjutant General. Defendants respectfully refer the Court to that report and memorandum, which speak for themselves, and deny Paragraph 4 to the extent that the allegations are inconsistent with those documents.

5. First sentence: Defendants deny the allegations in this sentence except to admit that DOD used approximately 7,800 armed services personnel in the experimentation program at Edgewood Arsenal, most of whom were from the Army, although DOD also used troops from the Air Force and Marines. Second sentence: Defendants admit that DoD administered 250 to 400 chemical and biological agents during the course of its research at Edgewood Arsenal involving human subjects. Defendants deny that certain service members were not informed about the true identity of the substances that they were tested with at the time of the test program, and further

deny these allegations to the extent that DOD has disclosed to certain test participants the identity of the substances, as well as the doses, that they were tested with since the conclusion of the test programs. Defendants otherwise are without knowledge or information sufficient to admit or deny the remaining allegations in this sentence. Third sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence. Fourth sentence, including the bulleted list: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence except that DOD admits that, of those agents listed in this sentence, its records reflect that DOD used the following agents at Edgewood Arsenal: mylaxen, VX, GB, GA, GD, G agents, atropine, scopolamine, BZ (3-quinuclidinyl benzilate), CAR 302,688, EA 3580, 2-PAM (pralidoxime), toxogonin (obidoxim) irritant, CA (Bromobenzylcyanide), CS (ortho-chlorobenzalmalononitrile), CN (chloroacetophenone), EA 1778, mustard gas, mustard agents, Lewisite, CX (phosgene oxime), LSD, DMHP, EA 1476, EA 2233, valium, thorazine, secobarbitol, P2S, and TMB-4.

6. Defendants deny the allegations except to admit that DOD videotaped many experiments involving human subjects at Edgewood.

7. First sentence: Defendants deny the allegations except to admit that DOD administered varying doses of substances through multiple pathways, including through intravenous, inhalation, oral, and percutaneous. Second sentence: this sentence contains argument, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations in this sentence and aver that DOD used placebos in some studies as part of the scientific method to provide a control group.

8. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 8.

9. Paragraph 9 constitutes Plaintiffs' characterization of the 1976 Army IG Report. Defendants respectfully refer the Court to that report, which speaks for itself, and deny Paragraph 9 to the extent that the allegations are inconsistent with that report.

10. First sentence: this sentence contains Plaintiffs' characterization of government research of chemical and biological weapons, to which no response is required; to the extent a response is deemed required, Defendants lack knowledge or information sufficient to admit or deny the allegations contained in this sentence except to aver that CIA obtained materials from commercial drug manufacturers. Second sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence except that DOD admits its research program at Edgewood used the substances listed in this sentence. Third sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence.

11. First through third sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in the first, second, and third sentences of paragraph 11. Fourth sentence: Defendants deny. Fifth sentence: this sentence contains Plaintiffs' characterization of this case and DOD's research of chemical and biological weapons, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations contained in this sentence except to admit that DOD's research program had defensive and offensive purposes.

12. Paragraph 12 contains Plaintiffs' characterization of this case, argument, and conclusions of law, to which no response is required; to the extent a response is deemed required, Defendants deny this paragraph.

13. First sentence: this sentence contains Plaintiffs' characterization of this case and argument, to which no response is required; to the extent a response is deemed required, Defendants are without knowledge or information sufficient to admit or deny the allegations contained in the first sentence of paragraph 13. Second sentence: Defendants admit that Congress convened hearings in 1975 and 1977 that, among other things, concerned activities at Edgewood Arsenal; Defendants are without knowledge or information sufficient to admit or deny the remaining allegations in this sentence. Third through fifth sentences: these sentences constitutes Plaintiffs' characterizations of Admiral Turner's testimony. Defendants respectfully

refer the Court to that testimony, which speaks for itself, and deny the fourth and fifth sentences to the extent they are inconsistent with that testimony. Sixth sentence: Defendants deny the allegations contained in this sentence. Seventh sentence: this sentence contains Plaintiffs' characterization of Defendants' efforts to locate participants, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations.

14. First and second sentences: these sentences constitute Plaintiffs' characterization of the cited DOJ letter and memorandum. Defendants respectfully refer the Court to that letter and memorandum, which speak for themselves, and deny the first and second sentences to the extent they are inconsistent with those documents. Third sentence: this sentence contains Plaintiffs' characterization of the cited memorandum. Defendants respectfully refer the Court to that document, which speaks for itself, and deny the third sentence to the extent it is inconsistent with that memorandum. Fourth sentence: Defendants admit.

15. First through third sentences: these sentences contain Plaintiffs' characterization of this case and argument, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations. Fourth a sentence: this sentence contains Plaintiffs' characterization of a July 6, 2004 letter. Defendants respectfully refer the Court to that document, which speaks for itself, and deny the fourth sentence to the extent it is inconsistent with that letter. Fifth sentence: Defendants aver that the CIA received magnetic computer tapes from Edgewood Arsenal in the early 1970s and that these tapes may contain information about human testing, though the CIA has been unable to read the tapes to confirm their contents; Defendants are without knowledge or information sufficient to admit or deny the remaining allegations contained in this sentence. Sixth sentence: Defendants aver that DoD has largely completed its work in compiling a registry of participants. The remainder of the sentence constitutes argument, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations. Seventh sentence: this sentence constitutes Plaintiffs' characterization of the cited website. Defendants respectfully refer the Court to that website, which speaks for itself, and deny the seventh sentence to the extent it is inconsistent with the website.

16. Paragraph 16 contains Plaintiffs' characterization of this case and argument, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations.

17. First and second sentences: these sentences constitute Plaintiffs' characterization of Army regulations. Defendants respectfully refer the Court to those regulations, which speak for themselves, and deny the first and second sentences to the extent they are inconsistent with the regulations. Third sentence: this sentence contains Plaintiffs' characterization of this case, argument, and legal conclusions, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations.

18. First sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence. Second sentence: Defendants admit that, on April 28, 2005, Congressmen Lane Evans and Ted Strickland provided VA with a list of participants in chemical and biological testing and requested that VA provide written notice to the living veterans on the lists; Defendants deny the remaining allegations in this sentence. Third sentence: Defendants admit that VA's notice letter offered a clinical examination to participants in the chemical and biological tests and that ongoing medical care was provided to veterans who qualified for such care under VA statutes and regulations; Defendants deny the remaining allegations in this sentence. Fourth sentence: this sentence contains Plaintiffs' characterization of this case and argument, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations.

19. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this paragraph except that DOD admits that it has given many volunteers access to their available Edgewood files.

20. Paragraph 20 contains Plaintiffs' characterization of this case, argument, and legal conclusions and prayer for relief, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations and that Plaintiffs are entitled to the relief requested, or to any relief whatsoever.

21. Paragraph 21 contains Plaintiffs' characterization of the nature of this action and its claims to relief, to which no response is required; to the extent a response is deemed required, Defendants deny that Plaintiffs are entitled to the relief requested, or to any relief whatsoever.

22. Paragraph 22 contains Plaintiffs' allegations concerning jurisdiction, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations in paragraph 22.

23. Paragraph 23 contains Plaintiffs' allegations and conclusions of law concerning venue and Plaintiffs' beliefs concerning discovery, to which no response is required; to the extent a response is deemed required, Defendants admit that plaintiffs Swords to Plowshares has a presence in the District, but deny the remainder of paragraph 23.

24. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 24.

25. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 25.

26. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 26.

27. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 27.

28. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 28.

29. Defendants admit paragraph 29.

30. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 30.

31. First sentence: Defendants admit that Bruce Price signed a consent form that did not provide information about the drugs to be given. The remainder of the sentence constitutes Plaintiffs' characterization of the consent form, to which no response is required. To the extent that a response is deemed required, Defendants respectfully refer the Court to that form, which

speaks for itself, and deny the first sentence to the extent it is inconsistent with the form. Second and third sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in these sentences.

32. First sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence except to admit that Bruce Price participated in approximately four experiments. Second, fourth, and fifth sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in these sentences. Third sentence: Defendants are without knowledge or information concerning what Mr. Price believes, but Defendants aver that Bruce Price has been provided with his Edgewood Arsenal medical file, which he, in turn, has shared with other governmental bodies. That medical file contains information concerning some of the substances on which he was tested and the doses used, and Defendants deny the allegations in this sentence to the extent they are inconsistent with that medical file.

33. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 33.

34. First sentence: Defendants deny. Second sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence.

35. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 35.

36. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 36.

37. First sentence, first clause: Defendants admit that Bruce Price received an honorable discharge. First sentence, second clause through third sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this clause and these sentences.

38. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 38.

39. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 39.

40. First and third sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in these sentences. Second sentence: Defendants admit that Bruce Price is rated 100% for post-traumatic stress disorder ("PTSD") by the Veterans Administration ("VA"), but Defendants are without knowledge or information sufficient to admit or deny the remainder of the allegations in this sentence.

41. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in these sentences.

42. First through third sentences: Defendants admit. Fourth sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence except to admit that Eric Muth served in the National Guard from 1960 to 1969.

43. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 43.

44. First, third, fifth, and sixth sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in these sentences. Second sentence: Defendants deny that Mr. Muth was given a security non-disclosure form as a participant in the test programs, but admit that he signed a Volunteer Participation Agreement. Fourth sentence: this sentence contains Plaintiffs' characterization of the role of service members, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations except to admit that service members are expected to follow lawful orders.

45. First, second, and fourth sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in these sentences. Third sentence: Defendants admit Eric Muth was enrolled as a medical volunteer at Edgewood. The remaining allegations contained in the third sentence are Plaintiffs' characterization of the case, to

which no answer is required; to the extent a response is deemed required, Defendants deny the allegations.

46. First sentence: Defendants admit. Second sentence: Defendants admit Eric Muth was involved in at least five tests during his tours at Edgewood. Defendants are without knowledge or information sufficient to admit or deny the remaining allegations contained in this sentence. Third through sixth sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in these sentences.

47. First sentence, first and second clauses: Defendants admit Eric Muth volunteered for a second tour at Edgewood from November to December 1958. The remainder of the first and second clauses constitutes Plaintiffs' characterization of this case and argument, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations. First sentence, third clause through fourth sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this clause and these sentences.

48. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 48 except to admit that Eric Muth was exposed to EA 1476.

49. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 49.

50. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 50 except to admit that Eric Muth has been assigned a 100% disability rating by the VA for PTSD.

51. First, second, and fifth sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in these sentences. Third and fourth sentences: Defendants admit.

52. First sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence: Second and third sentences: Defendants admit.

53. First and second sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in these sentences. Third sentence: Defendants admit.

54. First through fourth and seventh through tenth sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in these sentences. Fifth and sixth sentences: Defendants admit.

55. First sentence: Defendants admit. Second and third sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in these sentences.

56. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 56 except that DOD admits that Frank Rochelle was exposed to Compound 302,668.

57. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 57 except that DOD admits that Frank Rochelle was exposed to EA 2233-1 and EA 2233-2.

58. First and second sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in these sentences. Third sentence: Defendants admit that Frank Rochelle served in Vietnam. The remainder of the sentence constitutes argument, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations.

59. First through third sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in these sentences. Fourth sentence: Defendants deny that Frank Rochelle currently receives 80% VA disability compensation, and Defendants aver that VA records show that Mr. Rochelle currently receives 100% VA disability compensation

60. First sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence except to the extent that Defendants admit

that Frank Rochelle received a certificate and a letter of commendation on June 2, 1958. Second sentence: Defendants admit. Third sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence.

61. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 61.

62. Defendants admit.

63. First sentence: Defendants admit. Second through fifth sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in these sentences.

64. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 64 except that DOD admits that Larry Meirow reported to Edgewood on November 3, 1972.

65. First through third sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in these sentences. Fourth sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence except that DOD admits that Larry Meirow was given a medical exam.

66. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 66.

67. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 67.

68. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 68.

69. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 69.

70. First and fourth sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in these sentences. Second and third sentence: Defendants admit.

71. Defendants admit.

72. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 72.

73. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 73 except admit that David Dufrane was given physical and written tests at Edgewood.

74. First and third sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in these sentences. Second sentence: Defendants admit.

75. First sentence: Defendants admit. Second through seventh sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in these sentences.

76. First sentence: Defendants deny the allegations contained in this sentence except to admit that David Dufrane served at Edgewood in April and May 1965. Second sentence: Defendants deny. Third and fourth sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in these sentences.

77. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 77. To the extent that sentences three through six refer to the discussed releases, Defendants respectfully refer the Court to those documents, which speak for themselves, and deny the allegations in these sentences to the extent they are inconsistent with the documents to which they refer.

78. First sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence. Second and third sentences: Defendants deny the allegations contained in these sentences.

79. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 79.

80. First through sixth sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in these sentences. Seventh sentence: Defendants admit. Eighth sentence: Defendants deny the allegation in this sentence except to admit that the VA granted David Dufrane a 30% rating for PTSD and a 40% rating for chronic pain, headaches, dysthesia in the arms and legs, and arthralgia in all joints, for an overall rating of 60%.

81. Defendants admit paragraph 81.

82. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 82.

83. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 83.

84. First through sixth sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in these sentences. Seventh sentence: Defendants admit.

85. First sentence: Defendants admit. Second and third sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in these sentences.

86. First sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence. Second sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations in this sentence except to admit that Wray Forrest did not receive a medal for his service at Edgewood and to deny that he did not receive any other recognition. Defendants aver Wray Forrest received a letter of commendation on August 31, 1973. Third sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence. Fourth sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence except to admit that a VA outreach letter was sent to Wray Forrest on May 17, 2007.

87. First sentence: Defendants admit that Mr, Forrest is deceased, but lack information sufficient to admit or deny the remainder of the allegations in that sentence. Second sentence: Defendants admit that Kathryn McMillan-Forrest has filed a claim with the VA for accrued disability benefits and dependency and indemnity compensation, and that VA has granted her substitution for Wray Forrest as a surviving spouse of Wray Forrest The remainder of this sentence constitutes a characterization of an order of the Court, to which no response is required.

88. First sentence: this sentence contains Plaintiffs' characterization of this case, argument, and conclusions of law, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations. Second sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence except to admit that none of the named Plaintiffs are currently active duty service members.

89. First sentence: Defendants admit that VA and DoD are aware of two private laws passed to compensate two participants for injuries suffered as a result of testing with lysergic acid diethylamide by the Department of the Army. Defendants are without knowledge or information sufficient to admit or deny the remaining allegations contained in this sentence. Second and third sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in these sentences. Fourth sentence: this sentence contains Plaintiffs' characterization of this case, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations except to admit that the CIA has provided some compensation associated with participation in MKULTRA research and that the VA has provided some individuals health care related to their service at Edgewood Arsenal.

90. First sentence: this sentence contains Plaintiffs' characterization of this case, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations. Second and third sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in these sentences.

91. Paragraph 91 contains Plaintiffs' characterization of this case and the relief they seek, to which no response is required; to the extent a response is deemed required, Defendants

deny the allegations and that Plaintiffs are entitled to the relief requested, or to any relief whatsoever.

92. First through fourth sentences: The first four sentences of this paragraph constitute Plaintiffs' characterization of the National Security Act. Defendants respectfully refer the Court to that Act, which speaks for itself, and deny the first four sentences of this paragraph to the extent they are inconsistent with that Act. Fifth sentence: Defendants deny. Sixth sentence: this sentence contains argument and legal conclusions, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations.

93. First sentence: Defendants deny the allegations in the first sentence of paragraph 93 and aver that Michael J. Morell is the current Acting Director of the CIA. Second sentence through the remainder of the paragraph: these sentences constitute Plaintiffs' characterization of the National Security Act and the Intelligence Reform and Terrorism Prevention Act. Defendants respectfully refer the Court to those Acts, which speak for themselves, and deny the remainder of paragraph 93 to the extent it is inconsistent with those Acts.

94. Defendants admit paragraph 94.

95. First through fourth sentences: Defendants deny the allegations in the first sentence of paragraph 95 and aver that Leon Panetta is the current Secretary of Defense. Fifth sentence: this sentence contains Plaintiffs' characterization of this case, argument, and legal conclusions, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations except to admit that DOD Instruction 5030.29 in 1964 stated, "DOD assumes full responsibility for humans involved in research under its sponsorship, whether this involves investigational drugs or other hazards." Sixth sentence: this sentence contains Plaintiffs' characterization of this case, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations except to admit that Defendants agreed to supply the VA with information to help service members with their claims to the VA. Seventh and eighth sentences: these sentences constitute Plaintiffs' characterizations of the Bob Stump National Defense Authorization Act for Fiscal Year 2003. Defendants respectfully refer the

Court to that Act, which speaks for itself, and deny the seventh and eighth sentences to the extent they are inconsistent with the Act. Ninth sentence: this sentence constitutes Plaintiffs' characterizations of the report of the Government Accountability Office ("GAO"). Defendants respectfully refer the Court to the GAO report, which speaks for itself, and deny the ninth sentence to the extent it is inconsistent with that report. Tenth sentence: this sentence contains Plaintiffs' characterization of this case, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations.

96. Defendants admit paragraph 96.

97. Defendants deny the allegations in paragraph 97 and aver that John M. McHugh is the current U.S. Secretary of the Army. Replacing McHugh's name for Geren's throughout paragraph 97, Defendants aver to the remaining allegations in this paragraph.

98. First and second clauses: Defendants admit that Eric Holder, Jr. is the current U.S. Attorney General and was named in this suit in his official capacity. Third clause: the allegations concerning "the Attorney General's assumption of responsibility" are Plaintiffs' characterization of this case and call for legal conclusions, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations. Defendants further deny that Eric Holder currently is a defendant in this case because he has been dismissed from this lawsuit.

99. Paragraph 99 contains Plaintiffs' characterization of this case, argument, and legal conclusions, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations.

100. Defendants admit paragraph 100.

101. Defendants admit paragraph 101.

102. First sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence. Second sentence: Defendants admit.

103. Paragraph 103 constitutes Plaintiffs' characterizations of the 1976 Army IG Report. Defendants respectfully refer the Court to that report, which speaks for itself, and deny paragraph 103 to the extent that it is inconsistent with that report.

104. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 104.

105. First through fourth sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in these sentences except to admit the existence of the cited legal authority, which speaks for itself and to which the Court is respectfully referred for a full and accurate statement of its contents. Fifth and sixth sentences: these sentences constitute Plaintiffs' characterizations of the cited appendix to Congressional testimony. Defendants respectfully refer the Court to that appendix, which speaks for itself, and deny the fifth and sixth sentences to the extent they are inconsistent with that appendix.

106. First and second sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in these sentences. Third and fourth sentences: Defendants deny except to admit the allegations with respect to DOD. Fifth through seventh and eleventh sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in these sentences. Eighth through tenth sentences: these sentences contain Plaintiffs' characterization of this case and DOD's research programs, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations except that Defendants admit that DOD's research programs shifted from offensive to defensive purposes.

107. First sentence: Defendants admit. Second through seventh sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in these sentences. Eighth sentence: Defendants deny the allegations except to admit that DOD's research programs involving human subjects included tests on possible vaccines for biological warfare agents.

108. First sentence: this sentence contains Plaintiffs' characterization of this case, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations except that Defendants are without knowledge or information sufficient to admit or deny the allegations concerning other government agencies. Second sentence: this sentence

contains Plaintiffs' characterization of this case and argument, to which no response is required; to the extent a response is deemed required, VA denies the allegations in this sentence except to admit that, in an August 14, 2006 Undersecretary for Health Information Letter, VA noted that "[t]he Edgewood-Aberdeen experiments involved at least 6,700 'soldier volunteers' exposed from about 1955 to 1975 to more than 250 different agents." Defendants aver that DOD has provided the VA with over 6,000 names of service members who participated in research programs at Edgewood Arsenal that involved over 254 substances. Third sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence.

109. Defendants deny the allegations in paragraph 109 except to admit that DOD tested newer chemical agents including LSD, PCP, and synthetic cannabis analogs. Defendants aver that DOD's objectives with regards to its activities at Edgewood and Fort Detrick included understanding both the offensive and defensive uses of LSD.

110. First sentence: Defendants deny except to admit that DOD's Edgewood research program involving human subjects included research on mustard agents. Second sentence: Defendants deny the allegations except to admit that DoD tested riot control agents at Edgewood and further admit that, as stated in Volume II of the National Research Council's report entitled "Possible Long-Term Health Effects of Short-Term Exposure to Chemical Agents," "[f]rom 1958 to 1973, at least 1,366 human subjects underwent experimental exposures to CS at Edgewood. For 1,073 subjects, there was some type of aerosol exposure, 180 subjects had skin applications, 82 subjects had both skin applications and aerosol exposures, and 31 underwent CS applications to their eyes." .

111. First sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence except to admit that DOD performed field tests as part of its research program. Second sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence.

112. First sentence: Defendants deny the allegations except to admit that DOD conducted field tests at Ford Ord using military personnel. Second through fourth sentences:

Defendants are without knowledge or information sufficient to admit or deny the allegations contained in these sentences; to the extent that Plaintiffs' allegations rest on the cited Congressional testimony, Defendants respectfully refer the Court to that testimony, which speaks for itself, and deny the second, third, and fourth sentences to the extent they are inconsistent with that testimony.

113. First sentence: this sentence contains Plaintiffs' characterization of this case and government research programs, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations except that DOD and CIA admit involvement in research programs involving human subjects. Second sentence: this sentence constitutes argument and a legal conclusion, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations except that, to the extent that Plaintiffs' allegations rest on 50 U.S.C. § 403-3(d)(1), Defendants respectfully refer the Court to that statute, which speaks for itself, and deny the sentence to the extent it is inconsistent with that statute.

114. First sentence: this sentence contains Plaintiffs' characterization of this case, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations. Second sentence: this sentence constitutes Plaintiffs' characterizations of the Memorandum from Richard Helms. Defendants respectfully refer the Court to that Memorandum, which speaks for itself, and deny this sentence to the extent it is inconsistent with that Memorandum. Third sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence except that CIA admits Richard Helms was convicted of a crime.

115. First sentence: this sentence constitutes Plaintiffs' characterization of the cited Memorandum from Allen Dulles, to which no response is required; to the extent a response is deemed required, Defendants respectfully refer the Court to the Memorandum, which speaks for itself, and deny the first sentence to the extent it is inconsistent with the Memorandum. Second sentence: this sentence constitutes Plaintiffs' characterizations of the cited Advisory Committee on Human Radiation Experiments ("ACHRE"), Interim Report. Defendants respectfully refer the

Court to the Interim Report, which contains the opinion of ACHRE and speaks for itself, and deny the second sentence to the extent it is inconsistent with the Interim Report. Third and fourth sentences: Defendants deny.

116. First sentence: Defendants deny. Second sentence: Defendants admit. Third and fourth sentences: these sentences constitute Plaintiffs' characterizations of Dr. Gottlieb's Congressional testimony. Defendants respectfully refer the Court to that testimony, which speaks for itself, and deny the third and fourth sentences to the extent they are inconsistent with that testimony.

117. First sentence: Defendants neither admit nor deny on the basis of privilege. Second sentence: this sentence constitutes Plaintiffs' characterizations of Exhibit B to the Second Amended Complaint. Defendants respectfully refer the Court to that document, which speaks for itself, and deny the second sentence to the extent it is inconsistent with the exhibit. Third sentence: Defendants deny the allegations in this sentence except to admit that MKULTRA is believed to have had 149 research subprojects. Fourth sentence: this sentence contains Plaintiffs' characterizations of this case, to which no response is require; to the extent a response is deemed required, Defendants deny the allegations except to admit that CIA had relationships with research organizations. These allegations are subject to privileges. Fifth sentence: this sentence contains Plaintiffs' characterization of this case, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations.

118. Paragraph 118 constitutes Plaintiffs' characterizations of the cited Report on the Covert Activities of the Central Intelligence Agency. Defendants respectfully refer the Court to that report, which speaks for itself, and deny paragraph 118 to the extent it is inconsistent with that report.

119. First sentence: to the extent the sentence constitutes Plaintiffs' characterization of the cited Wilson memorandum, the sentence requires no response; to the extent a response is deemed required and as to the remainder of the sentence, Defendants deny the allegations in this sentence, and aver that on February 26, 1953, the Secretary of Defense issued a memorandum,

also known as the Wilson memorandum, to the service secretaries that incorporated the principles of the 1947 Nuremberg Code on medical research. Defendants respectfully refer the Court to the Wilson memorandum, which speaks for itself, and deny the first sentence to the extent it is inconsistent with the Wilson memorandum. Second sentence, including subparts a–g: this sentence and its subparts constitute Plaintiffs' characterizations of Exhibit C to the Second Amended Complaint. Defendants respectfully refer the Court to the exhibit, which speaks for itself, and deny the second sentence and its subparts to the extent that they are inconsistent with the exhibit.

120. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

121. First sentence, first clause: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in the first clause of this sentence concerning the reasons for the President's issuance of Executive Order 11905. First sentence, second clause: this clause constitutes Plaintiffs' characterizations of Executive Order 11905. Defendants respectfully refer the Court to Executive Order 11905, which speaks for itself, and deny the second clause to the extent it is inconsistent with Executive Order 11905.

122. Paragraph 122 constitutes Plaintiffs' characterizations of the cited report from the National Commission for the Protection of Human Subjects of Biomedical Research. Defendants respectfully refer the Court to that report, which speaks for itself, and deny paragraph 122 to the extent it is inconsistent with that report.

123. Paragraph 123 constitutes Plaintiffs' characterizations of Executive Order 12333. Defendants respectfully refer the Court to Executive Order 12333, which speaks for itself, and deny paragraph 123 to the extent it is inconsistent with Executive Order 12333.

124. Paragraph 124 constitutes Plaintiffs' characterizations of Directive No. 3216.2. Defendants respectfully refer the Court to Directive No. 3216.2, which speaks for itself, and deny paragraph 124 to the extent it is inconsistent with Directive No. 3216.2.

125. Paragraph 125 constitutes Plaintiffs' characterizations of Confidential Memorandum 3247. Defendants respectfully refer the Court to Confidential Memorandum 3247, which speaks for itself, and deny paragraph 125 to the extent it is inconsistent with Confidential Memorandum 3247.

126. Paragraph 126 constitutes Plaintiffs' characterizations of Army Regulation 70-25. Defendants respectfully refer the Court to Army Regulation 70-25, which speaks for itself, and deny paragraph 126 to the extent it is inconsistent with that regulation.

127. Paragraph 127 constitutes Plaintiffs' characterizations of Army Regulation 70-25. Defendants respectfully refer the Court to Army Regulation 70-25, which speaks for itself, and deny paragraph 127 to the extent it is inconsistent with that regulation.

128. Paragraph 128 constitutes Plaintiffs' characterizations of Army Regulation 70-25. Defendants respectfully refer the Court to Army Regulation 70-25, which speaks for itself, and deny paragraph 128 to the extent it is inconsistent with that regulation.

129. First sentence: this sentence constitutes Plaintiffs' characterizations of 32 C.F.R. Part 219. Defendants respectfully refer the Court to 32 C.F.R. Part 219, which speaks for itself, and deny paragraph 129 to the extent it is inconsistent with 32 C.F.R. Part 219. Second sentence: Defendants admit.

130. First sentence: Defendants admit. Second sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence. Third and fourth sentences: these sentences contain Plaintiffs' characterization of this case and argument, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations and aver the existence of standards governing the ethical use of human subjects as discussed above in paragraphs 119–129 of this Answer.

131. Paragraph 131 constitutes Plaintiffs' characterization of this case and argument, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations except to admit the existence of the quoted memorandum, which speaks for itself and to which the Court is respectfully referred for a full and accurate statement of its contents;

Defendants deny the allegations to the extent that they are inconsistent with the quoted memorandum.

132. First sentence: this sentence contains Plaintiffs' characterization of this case, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations. Second sentence: this sentence contains Plaintiffs' characterization of this case, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations except to admit that the CIA employed Dr. Treichler and to state that Defendants are without knowledge or information sufficient to admit or deny allegations concerning his place of employment. Third sentence: Defendants deny. Fourth sentence: this sentence contains Plaintiffs' characterization of this case, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations. CIA avers that it provided funding to a research project at Edgewood as a part of Project OFTEN. Fifth sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence. Sixth sentence: this sentence contains Plaintiffs' characterization of this case, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations. Seventh and eighth sentences: these sentences contain Plaintiffs' characterization of this case, argument, and legal conclusion, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations.

133. Paragraph 133 constitutes Plaintiffs' characterizations of the cited 1963 CIA IG Report. Defendants respectfully refer the Court to the 1963 CIA IG Report, which speaks for itself, and deny paragraph 133 to the extent that it is inconsistent with that report.

134. First sentence: this sentence contains Plaintiffs' characterization of this case, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations. Second sentence: this sentence constitutes Plaintiffs' characterizations of the 1963 CIA IG Report. Defendants respectfully refer the Court to the 1963 CIA IG Report, which speaks for itself, and deny this sentence to the extent that it is inconsistent with that report.

135. Paragraph 135 contains Plaintiffs' characterizations of the cited 1963 CIA IG Report. Defendants respectfully refer the Court to the 1963 CIA IG Report, which speaks for itself, and deny paragraph 135 to the extent that it is inconsistent with that report.

136. Paragraph 136 constitutes Plaintiffs' characterizations of Exhibit B to the Complaint. Defendants respectfully refer the Court to that exhibit, which speaks for itself, and deny paragraph 136 to the extent that it is inconsistent with that exhibit.

137. First sentence, first and second clause: these clauses constitute Plaintiffs' characterizations of Exhibit B to the Complaint. Defendants respectfully refer the Court to that exhibit, which speaks for itself, and deny this sentence to the extent that it is inconsistent with that exhibit. Subpart a: this subpart constitutes Plaintiffs' characterizations of Exhibit B to the Complaint, the cited ACHRE Interim Report, and the cited Memorandum from Allen Dulles. Defendants respectfully refer the Court to that exhibit and those reports, which speak for themselves, and deny subpart a to the extent that it is inconsistent with the cited exhibit and reports. Subpart b: Defendants are without knowledge or information sufficient to admit or deny the allegations in this subpart except CIA admits that it provided a small grant to Dr. Cameron. Subparts c–f: these subparts constitute Plaintiffs' characterizations of Exhibit B to the Complaint. Defendants respectfully refer the Court to that exhibit, which speaks for itself, and deny subparts c–f to the extent that they are inconsistent with that exhibit.

138. First sentence: this sentence contains Plaintiffs' characterization of MKULTRA, to which no response is required; to the extent a response is deemed required, Defendants deny. Second sentence: this sentence constitutes Plaintiffs' characterizations of Exhibit B to the Complaint and the cited report "Project MKULTRA, The CIA's Program of Research in Behavior Modification." Defendants respectfully refer the Court to that exhibit and report, which speak for themselves, and deny the second sentence to the extent that it is inconsistent with that exhibit and report. Third and fourth sentences: these sentences constitute Plaintiffs' characterizations of Exhibit B to the Complaint. Defendants respectfully refer the Court to that

exhibit, which speaks for itself, and deny the third and fourth sentences to the extent that they are inconsistent with that exhibit.

139. First sentence: Defendants deny. Second and third sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in these sentences except to admit that Dr. Van Sim was involved in experiments at Edgewood.

140. First sentence: this sentence contains Plaintiffs' characterization of this case, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations except to admit that DOD administered LSD and other drugs to test subjects at Edgewood and other locations. Second sentence: Defendants deny that certain test subjects were not given specific information about the nature of the drugs they were receiving, and otherwise are without knowledge or information sufficient to admit or deny the allegations contained in the remainder of this sentence.

141. First sentence: Defendants deny. Second and third sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations in these sentences except that CIA denies employing Paul Hoch as a CIA consultant; to the extent that Plaintiffs' allegations rest on the cited legal authority, Defendants respectfully refer the Court to that authority, which speaks for itself, and deny the sentences to the extent they are inconsistent with that authority. Fourth sentence, first clause: this clause contains a legal conclusion, to which no response is required; to the extent a response is deemed required, Defendants deny. Fourth sentence, second clause: this clause contains Plaintiffs' characterization of Dr. Olson's death, to which no response is required; to the extent a response is deemed required, CIA admits that Dr. Olson jumped out of a window to his death subsequent to receiving a dose of LSD. Fifth sentence: this sentence constitutes Plaintiffs' characterizations of the cited 1994 GAO Report. Defendants respectfully refer the Court to the 1994 GAO Report, which speaks for itself, and deny the fifth sentence to the extent that it is inconsistent with that report.

142. First sentence: Defendants are without knowledge or information sufficient to admit or deny whether sporadic information regarding Defendants activities began to circulate.

The remainder of this sentence constitutes Plaintiffs' characterization of the cited 1963 CIA IG Report. Defendants respectfully refer the Court to the 1963 CIA IG Report, which speaks for itself, and deny the first sentence to the extent it is inconsistent with that report. Second sentence: Defendants deny the allegations in this sentence except to admit the existence of MKSEARCH. Third sentence: Defendants deny.

143. First sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence, except that DOD denies the allegations that it adopted a policy to create only "sparse documentation" of its test programs. Second sentence: this sentence contains Plaintiffs' characterization of this case and conclusions of law, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations. Third sentence: this sentence constitutes Plaintiffs' characterization of Exhibit B to the Complaint. Defendants respectfully refer the Court to that exhibit, which speaks for itself, and deny the third sentence to the extent it is inconsistent with that exhibit. Fourth sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence. Fifth sentence: Defendants deny the allegations in this sentence except to admit that Director Helms authorized the destruction of certain documents relating to MKULTRA in 1973. Sixth sentence: this sentence contains Plaintiffs' characterization of this case, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations except to admit that many documents relating to MKULTRA were destroyed in 1973.

144. Paragraph 144 contains legal conclusions, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations.

145. First sentence: this sentence constitutes Plaintiffs' characterizations of the cited 1947 Haywood memo. Defendants respectfully refer the Court to the 1947 Haywood memo, which speaks for itself, and deny the first sentence to the extent it is inconsistent with that memo. Second sentence: this sentence constitutes Plaintiffs' characterizations of the cited CIA Inspector General's Survey of Technical Services Division. Defendants respectfully refer the Court to the

CIA Inspector General's Survey of Technical Services Division, which speaks for itself, and deny the second sentence to the extent it is inconsistent with that survey. Third sentence: this sentence constitutes Plaintiffs' characterizations of the cited July 26, 1963 Memorandum. Defendants respectfully refer the Court to the July 26, 1963 Memorandum, which speaks for itself, and deny the third sentence to the extent it is inconsistent with that Memorandum.

146. Paragraph 146 constitutes Plaintiffs' characterizations of the cited CIA's Memorandum from WVB. Defendants respectfully refer the Court to the CIA's Memorandum from WVB, which speaks for itself, and deny paragraph 146 to the extent it is inconsistent with that Memorandum.

147. First sentence, introductory language: this sentence contains Plaintiffs' characterization of this case and argument, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations. Subpart a: Defendants deny the allegations in this subparagraph except to admit the existence of the MKULTRA and MKSEARCH projects. Subpart b: Defendants deny the allegations in this subparagraph except to admit the existence of the OFTEN and CHICKWIT projects. Subpart c: Defendants deny the allegations in this subparagraph except to admit the existence of the BLUEBIRD and ARTICHOKE projects. Subpart d: Defendants deny the allegations in this subparagraph except to admit the existence of the MKDELTA project. Subpart e: Defendants deny the allegations in this subparagraph except to admit the existence of the MKNAOMI project. Subpart f: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this subparagraph. Subpart g, first sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence. Subpart g, second sentence: this sentence contains Plaintiffs' characterization of this case, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations.

148. Defendants deny.

149. First sentence: this sentence constitutes Plaintiffs' characterization of the cited Memorandum for the Record re MKULTRA Subproject 119. Defendants respectfully refer the Court to the Memorandum for the Record re MKULTRA Subproject 119, which speaks for itself, and deny the first sentence to the extent it is inconsistent with that Memorandum. Second sentence: this sentence constitutes Plaintiffs' characterization of the cited Proposal Materials. Defendants respectfully refer the Court to the Proposal Materials, which speak for themselves, and deny the second sentence to the extent it is inconsistent with those materials. Third sentence: this sentence constitutes Plaintiffs' characterization of the cited U.S. Army Med. Dep't, LSD Follow-Up Study Report. Defendants respectfully refer the Court to that Report, which speaks for itself, and deny the third sentence to the extent it is inconsistent with that report. Fourth sentence: Defendants deny. Fifth sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations concerning "Agency Top Secret" classification, and Defendants deny the remaining allegations in this sentence.

150. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 150.

151. Paragraph 151 contains Plaintiffs' characterizations of the book "Physical Control of the Mind, Toward a Psychocivilized Society," which speaks for itself, and deny paragraph 151 to the extent it is inconsistent with that book.

152. Defendants deny the allegations in paragraph 152 except that the CIA admits it provided a small grant to Dr. Cameron.

153. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 153.

154. Defendants are without knowledge or information sufficient to admit or deny the allegations in paragraph 154 except to admit that the CIA financed some MKULTRA research at Stanford University.

155. Paragraph 155 contains Plaintiffs' characterization of this case, argument, and conclusions of law, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations.

156. First sentence: Defendants deny the allegations in this paragraph to the extent it pertains to volunteer service members who participated in the test programs at issue in this case, but are without knowledge or information sufficient to admit or deny whether other service members were asked to sign an agreement containing the quoted text. Defendants further aver that most of the named volunteer service members who participated in the test programs signed a volunteer participation agreement, but that agreement does not contain any information or reference to an alleged secrecy oath. Second sentence: Defendants deny the allegations in this sentence except to admit that plaintiffs' personnel records contain copies of signed forms consenting to the videotaping of experiments.

157. Paragraph 157 contains Plaintiffs' characterization of this case, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations.

158. First sentence: this sentence contains Plaintiffs' characterization of this case and legal conclusions, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations in this sentence and further aver that some of the named Plaintiffs have sought medical care and other services for more than a decade. Second and third sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in these sentences.

159. Defendants admit that Plaintiffs have quoted a portion of a document that VA published in 2003 and refer the Court to that document for a full and complete statement of its content. Defendants deny this allegation to the extent that there are inconsistencies in the quote.

160. First sentence: Defendants admit. Second sentence: this sentence contains Plaintiffs' characterization of this case, to which no response is required; to the extent a response

is deemed required, Defendants deny the allegations except to admit that DOD maintains a website regarding its research programs involving human subjects.

161. Paragraph 161 contains Plaintiffs' characterization of this case, argument, and legal conclusions, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations.

162. First sentence: this sentence contains Plaintiffs' characterization of this case and legal conclusions, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations. Second sentence: Defendants deny the allegations contained in this sentence and aver that many service members, including the named Plaintiffs, have requested and received their Edgewood medical records.

163. First sentence: this sentence constitutes Plaintiffs' characterization of the cited 1958 Army publication. Defendants respectfully refer the Court to that publication, which speaks for itself, and deny the allegations to the extent that they are inconsistent with that publication. Second sentence: this sentence constitutes Plaintiffs' characterization of the cited 1972 Army publication. Defendants respectfully refer the Court to that publication, which speaks for itself, and deny the allegations to the extent that they are inconsistent with that publication.

164. Paragraph 164 constitutes Plaintiffs' characterization of the 1976 Army IG Report. Defendants respectfully refer the Court to the 1976 Army IG Report, which speaks for itself, and deny paragraph 164 to the extent that it is inconsistent with that report.

165. First through fourth sentences: these sentences constitute Plaintiffs' characterization of the 1976 Army IG Report. Defendants respectfully refer the Court to the 1976 Army IG Report, which speaks for itself, and deny the first four sentences to the extent that they are inconsistent with that report. Fifth sentence: this sentence contains Plaintiffs' characterizations of this case, argument, and legal conclusions, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations in this sentence.

166. First through fourth sentences: these sentences constitute Plaintiffs' characterization of the 1976 Army IG Report. Defendants respectfully refer the Court to the 1976

Army IG Report, which speaks for itself, and deny the first four sentences to the extent that they are inconsistent with that report. Fifth sentence: Defendants admit.

167. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 167.

168. First through third sentences: these sentences constitute Plaintiffs' characterizations of the 1976 Army IG Report. Defendants respectfully refer the Court to the 1976 Army IG Report, which speaks for itself, and deny the first three sentences to the extent that they are inconsistent with that report. Fourth sentence: this sentence contains Plaintiffs' characterizations of this case and conclusions of law, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations in this sentence. Fifth sentence: Defendants deny except to admit that DOD drew volunteers from Army bases throughout the country. Sixth sentence: this sentence contains Plaintiffs' characterizations of this case and its expectations with regard to discovery, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations in this sentence except that they are without knowledge or information regarding Plaintiffs' expectations with regard to discovery. Seventh sentence: Defendants admit that VA sent 135 letters dated September 14, 2006, to identifiable test subjects residing in California.

169. Paragraph 169 constitutes Plaintiffs' characterizations of the cited 1993 GAO Report. Defendants respectfully refer the Court to the 1993 GAO Report, which speaks for itself, and deny paragraph 169 to the extent it is inconsistent with that report.

170. Defendants admit that Plaintiffs have quoted a portion of a document that VA published in 2003 and refer the Court to that document for a full and complete statement of its content. Defendants deny this allegation to the extent that there are inconsistencies in the quote.

171. Paragraph 171 constitutes Plaintiffs' characterization of the cited CIA's Memorandum for the Record from William V. Broe. Defendants respectfully refer the Court to the CIA's Memorandum for the Record from William V. Broe, which speaks for itself, and deny paragraph 171 to the extent it is inconsistent with that memorandum.

172. First sentence: this sentence contains Plaintiffs' characterization of this case and conclusions of law, to which no response is required; to the extent a response is deemed required, Defendants deny this sentence. Second sentence: Defendants deny that certain test participants were not told, both before and after the tests, the chemical or biological agents they would be administered and the potential side effects they might experience; otherwise Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence.

173. Paragraph 173 contains Plaintiffs' characterization of this case and conclusions of law, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations.

174. Paragraph 174 contains Plaintiffs' allegations regarding the proposed class, to which no response is required; to the extent a response is deemed required, Defendants state that Plaintiffs' allegations concerning a proposed class are moot in light of the Court's Order concerning class certification.

175. Paragraph 175 contains Plaintiffs' allegations regarding the proposed class representatives, to which no response is required; to the extent a response is deemed required, Defendants state that Plaintiffs' allegations concerning a proposed class are moot in light of the Court's Order concerning class certification.

176. Paragraph 176 contains Plaintiffs' characterization of this case and a legal conclusion, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations.

177. Paragraph 177 contains legal conclusions, to which no response is required; to the extent a response is deemed required, Plaintiffs' allegations concerning a proposed class are moot in light of the Court's Order concerning class certification.

178. Paragraph 178 contains Plaintiffs' characterization of this case and legal conclusions, to which no response is required; to the extent a response is deemed required,

Plaintiffs' allegations concerning a proposed class are moot in light of the Court's Order concerning class certification.

179. Paragraph 179 contains legal conclusions, to which no response is required; to the extent a response is deemed required, Plaintiffs' allegations concerning a proposed class are moot in light of the Court's Order concerning class certification.

180. Paragraph 180 contains legal conclusions, to which no response is required; to the extent a response is deemed required, Plaintiffs' allegations concerning a proposed class are moot in light of the Court's Order concerning class certification.

181. Paragraph 181 contains legal conclusions, to which no response is required; to the extent a response is deemed required, Plaintiffs' allegations concerning a proposed class are moot in light of the Court's Order concerning class certification.

182. Defendants incorporate by reference the responses set forth in paragraphs 1 through 181, inclusive.

183. Paragraph 183 constitutes Plaintiffs' prayer for relief on their first claim for relief, to which no response is required. To the extent a response is required, the paragraph is denied.

184. Paragraph 184 consists of conclusions of law and/or statements of Plaintiffs' case to which no response is required. To the extent a response is deemed necessary, the paragraph is denied.

185. Paragraph 185 consists of conclusions of law and/or statements of Plaintiffs' case to which no response is required. To the extent a response is deemed necessary, the paragraph is denied.

186. Paragraph 186 consists of conclusions of law and/or statements of Plaintiffs' case to which no response is required. To the extent a response is deemed necessary, the paragraph is denied.

187. Paragraph 187 constitutes Plaintiffs' prayer for relief on their first claim for relief, to which no response is required. To the extent a response is required, the paragraph is denied.

188. Defendants incorporate by reference the responses set forth in paragraphs 1 through 187, inclusive.

189. Paragraph 189 constitutes Plaintiffs' prayer for relief on their second claim for relief, to which no response is required. To the extent a response is required, the paragraph is denied.

190. Defendants incorporate by reference the responses set forth in paragraphs 1 through 189, inclusive.

191. First sentence: Defendants admit that Wray Forrest is deceased, but are without knowledge or information sufficient to admit or deny the remainder of the allegations contained in the first sentence. Second sentence: the second sentence constitutes a characterization of Plaintiffs' claim and of this Court's Order, to which no response is required.

192. Defendants admit.

193. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 193 except to the extent that Defendants admit that Mr. Josephs was assigned to Fort Benning after Officer Candidate School.

194. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 194.

195. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence except to admit that Mr. Josephs received a letter of commendation signed by Dr. Frederick R. Sidell.

196. First sentence: Defendants admit that Mr. Josephs signed a document titled "Volunteer's Participation Agreement" on January 3, 1968. Defendants admit that the "Volunteer's Participation Agreement" does not list the "drugs or substances to be given." Second and fourth sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in these sentences. Third sentence: Defendants deny the allegations contained in this sentence.

197. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 197.

198. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 198 except that Mr. Josephs was given physical tests on January 4, 1968 and written screening questionnaires on November 14, 1967.

199. First sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in the first sentence except to admit that as a test volunteer Mr. Josephs participated in chemical agent tests while assigned to Edgewood Arsenal. Second and third sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in these sentences.

200. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 200.

201. Defendants admit that on 17 September 1975 an official assigned to Edgewood Arsenal responded to correspondence from Mr. Josephs and informed Mr. Josephs that he had been exposed to the following substances: pyridine-2-aldoxime methane sulfate, scopolamine, and Prolixin. Plaintiffs further admit that information contained in the Chemical and Biological Tests Repository indicates Mr. Josephs was exposed to Artane, Cogentin, and saline. Defendants are without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 201.

202. Defendants admit that information contained in the Chemical and Biological Tests Repository indicates Mr. Josephs received 9.0 grams of P2S-RA on February 1, 1968. Defendants are without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 202.

203. First sentence: Defendants admit that Mr. Josephs received prolixin on 20 February 1968. Defendants further admit that Mr. Josephs experienced "muscle spasms" after receiving prolixin. Second sentence: Defendants admit that Mr. Josephs received Cogentin and Artane. Defendants further admit that Mr. Josephs' symptoms subsided. Defendants are without

knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 203.

204. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 204.

205. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 205.

206. First sentence: Defendants admit. Second sentence: Defendants admit that Mr. Josephs was treated for "nerves" at Fort Benning, Georgia on 4 March 1968. First sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence.

207. First sentence: Defendants admit that Mr. Josephs served in Thailand between August 1968 and August 1969. Defendants further admit that Mr. Josephs was honorably discharged in August 1969. Defendants are without knowledge or information sufficient to admit or deny the remaining allegations contained in this sentence. Second sentence: Defendants deny the allegations contained in this sentence.

208. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 208.

209. First sentence: Defendants admit that officials at Edgewood received a letter from Mr. Josephs concerning his participation in "drug experiments at Edgewood Arsenal, Maryland." Defendants are without knowledge or information sufficient to admit or deny the allegations contained in the remainder of the first sentence. Second sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in the second sentence, except to admit that Dr. C. McClure sent Mr. Josephs a letter dated 17 September 1975 informing Mr. Josephs that he had been exposed to pyridine-2-aldoxime methane sulfate, scopolamine, and prolixin during his service at Edgewood Arsenal. Third and fourth sentences: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in these sentences.

210. First sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence. Second sentence: Defendants admit that Mr. Josephs' was exposed to Cogentin and Artane while at Edgewood Arsenal. Defendants deny that Mr. Josephs was given any substances other than those listed in paragraph 201 of Defendants answer. Third sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence.

211. Defendants admit that Mr. Josephs received 9 grams of P2S-RA while at Edgewood Arsenal. Defendants are without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 211.

212. First sentence: Defendants admit that Mr. Josephs applied for enrollment in the VA health care system on November 5, 2009, and that VA denied enrollment in a November 16, 2009, letter because Mr. Josephs' income exceeded the threshold amount for Priority Group 8, as provided in 38 C.F.R. § 17.36(b)(8)(iv). Defendants further admit that VA granted service connection for disabilities related to Parkinson's Disease rated at 40%, effective March 31, 2010, and that Mr. Josephs is enrolled in Priority Category 2 for VA medical care. Second sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence.

213. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 213.

214. First sentence: Defendants admit. Second sentence: Defendants deny except to admit that Mr. Blazinski reported to Edgewood Arsenal for temporary duty on 29 February 1968 and remained at Edgewood for temporary duty until 30 April 1968. Third and fourth sentences: Defendants admit.

215. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in paragraph 215.

216. First sentence: Defendants admit that Mr. Blazinski completed a "Medical Volunteer Information" form on 11 January 1968 before his duty at Edgewood began.

Defendants further admit that Mr. Blazinski completed the Minnesota Multiphasic Personality Inventory on 25 January 1968 before his duty at Edgewood began. Defendants are without knowledge or information sufficient to admit or deny the remaining allegations contained in this sentence. Second sentence: Defendants admit that Mr. Blazinski completed a "Volunteer's Participation Agreement" on 1 March 1968. Defendants are without knowledge or information sufficient to admit or deny the remaining allegations contained in this sentence. Third sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence. Fourth sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence. Fifth sentence: Defendants admit that Mr. Blazinski was assigned volunteer number 5031.

217. First sentence: Defendants admit that Mr. Blazinski participated in five experiments while on temporary duty at Edgewood Arsenal. Second sentence: Defendants admit that Mr. Blazinski was exposed to CS during three tests. Third sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence. Fourth sentence: Defendants admit that volunteers were instructed to remain in the exposure facility for as long as tolerable, but no longer than 600 seconds. Fifth sentence: Defendants admit that Mr. Blazinski remained in the exposure facility for 600 seconds for each of the three tests. Defendants are without knowledge or information sufficient to admit or deny the remaining allegations in this sentence.

218. First sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence. Second sentence: Defendants admit that Mr. Blazinski participated in a test during which he received scolpolamine and physostigmine. Defendants further admit that part of the test occurred in a padded area. Defendants are without knowledge or information sufficient to admit or deny the remaining allegations contained in this sentence. Third sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence. Fourth sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence.

Fifth sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence. Six sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence. Seventh sentence: This sentence contains characterizations to which no answer is required except to admit that Mr. Blazinski wore glasses to help him see during the test. Eighth sentence: Defendants admit that Mr. Blazinski at lunch during the test. Ninth sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence.

219. First sentence: This sentence contains characterizations to which no response is required except to admit that Mr. Blazinski participated in a Cutaneous Communications test in which he had electrodes attached to his forearms. Defendants further admit that current was applied to the electrodes so that the stimulation pulse was increased to the level of feeling. Defendants further admit that the current level was then increased 25% and then reduced to the point of no feeling. Second sentence: Defendants admit that some test participants received "drugs" on their forearms before the electrodes were applied. Defendants are without knowledge or information sufficient to admit or deny the remaining allegations contained in this sentence.

220. Defendants admit.

221 First sentence: Defendants admit that Mr. Blazinski has been diagnosed with chronic lymphocytic leukemia and ulcerative colitis. Second sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence. Third sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence. Fourth sentence: Defendants admit that in 2008, VA notified Mr. Blazinski that his claim for service connection for colitis and leukemia was denied.

222. Paragraph 222 contains a characterization and a legal conclusion to which no response is required. To the extent a response is required, Defendants deny.

223. First sentence: Defendants incorporate by reference the responses set forth in paragraphs 1 through 222, inclusive, subject to this Court's rulings in its January 19, 2010, Order Granting in Part and Denying in Part Defendants' Motions to Dismiss and Denying Defendants'

Alternative Motion for Summary Judgment (Docket No. 59) and its Order Granting in Part and Denying in Part Defendants' Motion to Dismiss in Part Plaintiffs' Third Amended Complaint and Denying Plaintiffs' Motion to Strike (Docket No. 233).

224. First sentence: This sentence constitutes Plaintiffs' characterizations of 38 U.S.C. §§ 301, 1110, 1131, 1310, and 1710. Defendants respectfully refer the Court to 38 U.S.C. §§ 301, 1110, 1131, 1310, and 1710, which speak for themselves, and deny these sentences to the extent they are inconsistent with those statutes. Second sentence: this sentence constitutes Plaintiffs' characterizations of 38 U.S.C. §§ 1710, 7301, 7701, and 7703. Defendants respectfully refer the Court to 38 U.S.C. §§ 1710, 7301, 7701, and 7703, which speak for themselves, and deny these sentences to the extent they are inconsistent with those statutes. Third sentence: Defendants admit.

225. First sentence: Defendants deny. Second sentence: This sentence constitutes Plaintiffs' characterization of documents produced in discovery; those documents speak for themselves. To the extent a response is required, because Plaintiffs have failed to identify the specific documents that they are referring to in this sentence, Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence. Third sentence: This sentence contains Plaintiffs' characterization of this case and argument, to which no response is required; to the extent a response is deemed required, Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence. Fourth sentence: Defendants deny. Fifth sentence: Defendants deny. Sixth sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence.

226. First sentence: This sentence contains Plaintiffs' characterization of this case and argument, to which no response is required; to the extent a response is deemed required, Defendants admit that VA regularly conducts extensive medical research pursuant to 38 U.S.C. § 7303, and that VHA Handbook 1200.06 contains safety and security protocols that envision the possibility of handling substances similar to those used in the Army's testing program;

Defendants are otherwise without knowledge or information sufficient to admit or deny the allegations contained in this sentence. Second sentence: Defendants admit that VA tested LSD on veterans in the past, outside of the Army's test program, dating back at least to the late 1950s. Third sentence: Defendants neither admit nor deny on the basis of privilege. Fourth sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence. Fifth sentence: Defendants admit that tests conducted in VHA research facilities include anthrax. Defendants are without knowledge or information sufficient to admit or deny the other allegations contained in this sentence.

227. First sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence except to admit that, in approximately 2005-2006, VA became involved in outreach activities and notification concerning a DoD database containing the names of veterans who had participated in chemical and biological testing programs at Edgewood Arsenal. Second sentence: Defendants deny. Third sentence: This sentence contains characterizations to which no response is required. To the extent a response is required, Defendants admit that, according to the September 2009 report on outreach activities by the VA Compensation and Pension Service, there were 4,495 veterans in a mustard gas and lewisite database provided by DoD to VA. Fourth sentence: This sentence contains characterizations to which no response is required. To the extent a response is required, Defendants deny that VA compiled a database of veterans exposed to chemical or biological substances at Edgewood Arsenal. Defendants admit that VA was provided with a DoD database of 10,528 individuals, some of whom were test participants who were exposed to chemical or biological substances at Edgewood Arsenal. Fifth sentence: Defendants deny that VA knew that the DoD database omitted all veterans exposed before 1954. Defendants are without knowledge or information sufficient to admit or deny the allegation regarding the number of veterans exposed before 1954.

228. First sentence: Defendants deny. Second sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence.

Third sentence: Defendants deny the generalized assertion that VA has not contacted survivors of deceased veterans who may be entitled to DIC. Defendants admit that VA has not initiated a separate process to contact the survivors of deceased veterans whose names were included in the DoD database of veterans exposed to chemical and biological agents at Edgewood Arsenal, although such contacts may have occurred in the processing of claims and death notices in individual cases. Fourth sentence: This sentence contains Plaintiffs' characterization of this case and argument, to which no response is required; to the extent a response is deemed required, VA is without knowledge or information sufficient to admit or deny the allegations contained in this sentence.

229. First sentence: Defendants admit that, according to the September 2009 report on outreach activities by the VA Compensation and Pension Service, almost half of the Veterans in the Mustard Gas database were deceased. Defendants deny the remaining allegations in the first sentence. Second sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence except to admit that, as of the release of the September 2009 report on outreach activities by the VA Compensation and Pension Service, VA had found addresses of 371 Veterans in the Mustard Gas Group. Third sentence: Defendants admit that, as reflected in the September 2009 report on outreach activities by the VA Compensation and Pension Service, VA had received 1518 mustard gas claims, 142 of which were pending. Fourth sentence: Defendants admit. Fifth sentence: Defendants deny.

230. First sentence: This sentence contains characterizations to which no response is required. To the extent a response is required, Defendants deny except to aver that as the September 2009 report on outreach activities by the VA Compensation and Pension Service reflects, VA had notified 3,218 of the 10,528 individuals contained in DoD's database, some of whom were test subjects exposed to chemical or biological substances at Edgewood Arsenal. Second sentence: Defendants are without knowledge or information sufficient to admit or deny the allegations contained in this sentence except to admit that VA has attempted to notify veterans whose names were included in the database compiled by DoD. Third sentence: Defendants deny

except to admit that, according to the September 2009 report on outreach activities by the VA Compensation and Pension Service: VA had received 87 chem-bio claims and VA had issued two decisions granting service connection. Fourth sentence: This sentence contains characterizations to which no response is required. To the extent a response is required, Defendants deny.

231. First sentence: Defendants admit that the VA notice letter included Frequently Asked Questions (FAQs) and a DOD Deployment Health Support Directorate Fact Sheet. Second sentence: This sentence contains Plaintiffs' characterization of this case and argument, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations. Third sentence: This sentence constitutes argument and Plaintiffs' characterization of the VA notice letter, FAQs, and DoD Deployment Health Support Directorate Fact Sheet to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to the notice letter, FAQs, and Fact Sheet, which speak for themselves, and deny this sentence to the extent it is inconsistent with the letter, FAQs, or Fact Sheet. To the extent this sentence alleges that such statements are misrepresentations, Defendants deny. Fourth sentence: This sentence constitutes Plaintiffs' characterization of the FAQs. Defendants respectfully refer the Court to the FAQs, which speak for themselves, and deny this sentence to the extent it is inconsistent with the FAQs. Fifth sentence: Defendants deny.

232. Paragraph 232 contains Plaintiffs' characterization of this case, argument, and legal conclusions, to which no response is required; to the extent a response is deemed required, Defendants deny the allegations.

233. Paragraph 233 contains Plaintiffs' characterization of this case, argument, and legal conclusions, to which no response is required; to the extent a response is deemed required, Defendants deny.

234. Paragraph 234 contains Plaintiffs' characterization of this case, argument, and legal conclusions, to which no response is required; to the extent a response is deemed required, Defendants deny.

Defendants hereby deny all allegations in Plaintiffs' Complaint not expressly admitted or denied or otherwise responded to.

AFFIRMATIVE AND OTHER DEFENSES

First Affirmative Defense

The Court lacks subject matter jurisdiction.

Second Affirmative Defense

The Fourth Amended Complaint fails to state a claim upon which relief can be granted.

Third Affirmative Defense

One or more Plaintiffs are barred from asserting any claims against DoD or CIA by virtue of the applicable statute of limitations, 28 U.S.C. § 2401(a). One or more Plaintiffs have been aware of the facts underlying such claims for more than six years prior to the filing of the Complaint.

Fourth Affirmative Defense

Plaintiffs are barred from asserting any claims by laches. One or more Plaintiffs have been aware of the facts underlying their claims for an unreasonable period of time, and in some circumstances, decades, without timely bringing a lawsuit. Given the staleness of such claims, and the difficulty in identifying and obtaining potentially relevant information, Defendants have been, and continue to be, prejudiced by Plaintiffs unreasonable delay in bringing their lawsuit.

Fifth Affirmative Defense

Plaintiff Bruce Price is barred from asserting any causes of action against the CIA and DoD by res judicata because he has previously brought claims against the United States. The claims in his prior action are the same as those in the present one; the prior suit resulted in final judgment on the merits; and both suits involved the same parties or their privities.

WHEREFORE, having fully answered, Defendants deny that Plaintiff are entitled to the relief requested or to any relief whatsoever, and request that this action be dismissed in its entirety with prejudice and that Defendants be given such other relief as this Court deems proper, including costs and disbursements.

Dated: November 16, 2012

Respectfully submitted,

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

VIETNAM VETERANS OF AMERICA, a Non-Profit Corporation; SWORDS TO PLOWSHARES: VETERANS RIGHTS ORGANIZATION, a California Non-Profit Corporation; BRUCE PRICE; FRANKLIN D. ROCHELLE; LARRY MEIROW; ERIC P. MUTH; DAVID C. DUFRANE; KATHRYN MCMILLAN-FORREST; TIM MICHAEL JOSEPHS; and WILLIAM BLAZINSKI, individually, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY; DAVID H. PETRAEUS, Director of the Central Intelligence Agency; UNITED STATES DEPARTMENT OF DEFENSE; LEON E. PANETTA, Secretary of Defense; UNITED STATES DEPARTMENT OF THE ARMY; JOHN MCHUGH, United States Secretary of the Army; UNITED STATES OF AMERICA; ERIC H. HOLDER, JR., Attorney General of the United States; UNITED STATES DEPARTMENT OF VETERANS AFFAIRS; and ERIC K. SHINSEKI, UNITED STATES SECRETARY OF VETERANS AFFAIRS,

Defendants.

Case No. CV 09-0037-CW

FOURTH AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF UNDER UNITED STATES CONSTITUTION AND FEDERAL STATUTES AND REGULATIONS

(Class Action)

I. INTRODUCTION[1]

"When we assumed the soldier, we did not lay aside the citizen." — George Washington.

A. The Plight of the "Volunteers"

1. This action chronicles a chilling tale of human experimentation, covert military operations, and heretofore unchecked abuses of power by our own government. Ironically, one of the main facilitating events for this debacle was action by a court. In 1950, during the height of the Cold War, the U.S. Supreme Court issued its decision in *Feres v. United States*, 340 U.S. 135 (1950) (hereafter, "*Feres*"), which in effect ruled that the government is immune from damages claims brought by Armed Forces personnel arising from DEFENDANTS' own torts. The Supreme Court's decision to absolve DEFENDANTS of legal responsibility for damages caused by the tortious acts committed by the government upon our nation's military personnel quickly led DEFENDANTS to undertake an expansive, multi-faceted program of secret experimentation on human subjects, diverting our own troops from military assignments for use as test subjects. In virtually all cases, troops served in the same capacity as laboratory rats or guinea pigs. DEFENDANTS were able to capitalize on the inherently coercive relationship of a soldier's commanding officers to their soldiers, as military orders can be enforced by a strong set of formal and informal sanctions or punishment.

2. In 1942, the War Department — the present day Department of Defense ("DOD") — authorized the first experiment on military personnel which used mustard gas, and various additional experiments were conducted during and following World War II. Beginning in the early 1950s, the human experiment program was greatly expanded, as the Central Intelligence Agency ("CIA") and United States Army planned, organized and executed an extensive series of experiments involving potential chemical and biological weapons. The CIA also sponsored

[1] On January 19, 2010, the Court dismissed with prejudice the "organization Plaintiffs' claim for declaratory relief that the *Feres* doctrine is unconstitutional" and "Plaintiffs' claim for declaratory relief on the lawfulness of the testing program." (*See* Docket No. 59 at 19-20.) Plaintiffs do not intend to reassert those dismissed claims as part of this pleading and do not expect Defendants to respond to or answer any claim that the Court has dismissed. Plaintiffs reserve their appellate rights with respect to those dismissed claims.

human drug experimentation by the Federal Bureau of Narcotics ("FBN"), now the Drug Enforcement Administration ("DEA"). This vast program of human experimentation — shrouded in secrecy — was centered at the Army's compounds at Edgewood Arsenal and Fort Detrick, Maryland. The human experimentation was conducted without the informed consent of its subjects and in direct contravention of applicable legal standards and principles of international law. Representatives of DEFENDANTS had also, on many occasions, promised the test participants ("volunteers") that they would receive medals for volunteering, as well as health care, but they instead abandoned Plaintiffs and the other participants, hiding behind the insulating walls of government bureaucracies and security classifications. Indeed, DEFENDANTS actively concealed the existence of the human experimentation tests and the test results from the outside world, and destroyed most of the documentation of the tests once their existence began to leak. As a result, Plaintiffs and the other service personnel, many of whom are debilitated, have been left to fight their demons alone for decades without health monitoring, follow-up, or medical treatment from DEFENDANTS. Instead, DEFENDANTS' tactic and strategy have been to ignore the victims and delay action with the expectation that their problems will disappear as the victim population ages and dies.

3. DEFENDANTS' human experimentation program was far-ranging and had many purposes, including by way of example the following:

a. To develop non-lethal but incapacitating agents that could be disseminated by airplanes in all environments;

b. To explore what levels of various chemicals would produce casualties (the so-called "man-break" tests);

c. To research techniques to impose control over the will of an individual, including neuron-surgery, electric shock, drugs, and hypnosis;

d. To design and test septal electrodes that would enable DEFENDANTS directly to control human behavior;

e. To produce a "knockout" pill that could surreptitiously be dropped into drinks or added into food;

f. To develop a substance that could produce "pure euphoria" with no subsequent let-down;

g. To derive an undetectable substance that would lower the ambition and general working efficiency of humans;

h. To develop a substance that would cause mental confusion and make it more difficult to fabricate answers under questioning;

i. To create a substance that would alter personality structure and induce dependency on another person;

j. To develop a substance that would promote weakness or temporarily compromise hearing or eyesight;

k. To perfect a substance that could be administered surreptitiously, which would prevent someone from performing any physical activity;

l. To identify a substance that would promote illogical thinking or impulsiveness;

m. To develop a substance that would increase, prevent or counteract the intoxicating effects of alcohol;

n. To create materials that would facilitate the induction of hypnosis or enhance its usefulness;

o. To identify substances that would enhance an individual's ability to withstand torture, privation, interrogation or brain-washing;

p. To derive substances that would produce physical disablement, paralysis, or acute anemia; and

q. To find a substance capable of producing extended periods of shock, mania and stress, and confusion or amnesia.

In short, under this program of human experimentation, the roles of military doctors were reversed from healing to purposely exposing their patients to harm in violation of their Hippocratic oaths.

4. In the early stages of DEFENDANTS' experimentation program at Edgewood Arsenal, DEFENDANTS recruited armed services personnel from relatively close military facilities such as Fort Knox, Kentucky, Fort Meade, Maryland, and Fort Monmouth, New Jersey. By late 1956, however, DEFENDANTS' psychochemical compound experiments had begun and DEFENDANTS were unable to procure enough "volunteers" from nearby military facilities. In April 1957, the Department of the Army directed Army commanders to assist in the recruitment of "volunteers" from military facilities from across the nation. (*See* Office of the Inspector General and Auditor General, U.S. Dep't of Army, Use of Volunteers in Chemical Agent Research, Report DAIG-IN 21-75 (1976) (hereinafter "1976 Army IG Report") at 68-70.) Each of the commanders of the six armies was required to provide a minimum of thirty "volunteers" per month on a rotating basis, with each commander responsible for providing "volunteers" for two months each year. For example, the Sixth U.S. Army, headquartered at the Presidio in San Francisco, California, was responsible for providing "volunteers" in the months of June and December of each year. The Army commanders were directed to the June 30, 1953 Memorandum setting forth Army policy on the Use of Volunteers in Research (*see* paragraph 125), were instructed that "the voluntary consent of the human subject is absolutely essential," and were assured that all human test subjects would be "thoroughly informed about all procedures, and what can be expected during each test." (*See* Memorandum from Army Office of the Adjutant General to Commanding Generals ZI Armies, Subject: "Use of Volunteers in Research" (Apr. 18, 1957).)

5. DEFENDANTS used at least 7,800 armed services personnel in the experimentation program at the Edgewood Arsenal alone, the vast majority of which were troops from the Army, although troops from the Air Force and Marines also were used. DEFENDANTS used code names to refer to the substances administered to soldiers, and the true identities, doses, and properties of at least 250, but as many as 400, chemical and biological agents administered to soldiers at the Edgewood Arsenal, or to other "volunteers" under contract to the Edgewood Arsenal, were not disclosed. For example, in 1970, DEFENDANTS provided Congress with an alphabetical list showing that they had tested 145 drugs during Projects Bluebird, Artichoke,

MKULTRA and MKDELTA. Among the broader group of substances or agents tested were the following:

- **amphetamines**;
- **anticholinesterase chemicals** such as the "reversible" inhibitors physostigmine (eserine), tacrine, and mylaxen; and more lethal nerve agents such as VX (Edgewood Arsenal designation EA 1701) (a V-series agent developed in England in the early 1950s that is one of the most deadly chemicals known to man) and sarin (military designation GB; EA 1208), tabun (GA; EA 1205) and soman (GD; EA 1210) (G-series nerve agents, all of which were developed in Germany in the 1930s and 1940s), and other lethal compounds such as cyanide;
- **anticholinergic drugs** such as atropine, scopolamine and nonlethal, though potentially harmful, incapacitating agents such as BZ (EA 2277), CAR302,688, and other glycolate compounds such as EA 3580;
- **barbiturates** such as secobarbitol;
- **biochemicals** such as thiols, hydrogenated quinolines, and indole alkaloids;
- **cholinesterase reactivators**, such as the pralidoxime chloride (2-PAM or EA 2170) and its methyl methanesulfonate derivate P2S, toxogonin (EA 3475) and TMB-4 (EA 1814) (all of which are oximes);
- **irritants** such as chloropicrin (PS), the riot control agents brombenzyl cyanide (CA), o-chlorobenzylidene malononitrile (CS or EA 1779), chloroacetophenone (CN or Mace), nonanoyl morpholide (EA 1778) and disphenylaminochlorasine (DM, an arsenic, or Adamsite); and vesicants (blister agents) such as mustard gas (H) and mustard agents, and Lewisite;
- **narcotic antagonists** such as N-Allil Murmorphine and other drugs to counteract the effects of morphine, methadone, and other narcotics;
- **nettle agents** such as phosgene, also known as dichloroformoxime or CX, a highly toxic, irritating, and corrosive gas that was first used as a chemical weapon during World War I;
- **psychochemicals** such as LSD and its analogues, phencyclidine (SNA or Sernyl, also known as PCP) (commonly referred to using the code name "L-Fields" or "K-Agents"), THC and synthetic analogs of cannabis (about 50 times the then street strength of marijuana) such as

dimethylheptylpran (DMHP or EA 1476) and its acetate form EA 2233; and mescaline and mescaline derivatives; and

- **tranquilizers** such as valium, trilafon, and thorazine.

6. DEFENDANTS videotaped many of the experiments involving "volunteers" at Edgewood, as evidenced by releases signed by many of the "volunteers."

7. Varying doses of each substance were administered to the "volunteers," typically through multiple pathways, including through intravenous, inhalation, oral and percutaneous. Placebos were used in only some, but not all of the studies, in an effort to defray costs.

8. The experiments involving human subjects were one of the key beneficiaries of the recruitment of over 1,500 scientists and technicians from Nazi Germany in "Project Paperclip," some of whom played a pivotal role in, *e.g.*, the testing of psychochemicals and development of a new truth serum. Over half of these recruits had been members of the SS or Nazi Party. The "Paperclip" name was chosen because so many of the employment applications were clipped to immigration papers.

9. In addition to the human experimentation using military personnel that took place at Edgewood Arsenal and Fort Detrick, DEFENDANTS also contracted with outside researchers at hospitals, universities, consultants, and prisons to conduct additional human tests of chemical and biological substances. The Army Inspector General reported that such contracts were an "important and integral" part of DEFENDANTS' human experimentation program and typically included provisions requiring the contractors to observe basic army policies for Use of Volunteers in Research as set forth in the June 30, 1953 policy Memorandum described in paragraph 125 below. In 1975, the Commander at Edgewood Arsenal reported to the Army Inspector General the results of a study designed to identify and quantify Army expenditures related to the development of chemical incapacitating agents. That study identified numerous contracts from 1958 to 1965 between DEFENDANTS and outside research institutions, including multiple contracts (for tens of thousands of dollars) with the University of California, the Regents of the University of California, and with Stanford Research Institute, which was founded in 1946 by the trustees of Stanford University in Palo Alto, California. In a follow up study completed in 1976,

the Comptroller at Edgewood Arsenal identified additional contracts worth more than $2 million with Stanford Research Institute between 1964 and 1968 related to DEFENDANTS' experimentation program. (*See* 1976 Army IG Report, Chapter X "Contracts with Civilian Institutions," Chapter XI "Incapacitating Agents Cost Review," & Section III "Contract Costs.")

10. DEFENDANTS obtained materials from major pharmaceutical companies, which included drugs found to be commercially non-viable due to hazards and undesirable side effects (the so-called "rejects"), such as phenylbenzeacetic acid or "brown acid." Other test substances included amphetamines, anticholinergic drugs, including glycolate types of anticholinergic compounds, dimethyltryptamine (a drug similar to LSD), glycolate compounds such as EA 3580 (the prefix "EA" indicating an Edgewood Arsenal substance), mescaline and mescaline derivatives, oximes such as pralidoxime chloride, phosgene, secobarbitol, and many others. These experiments also used civilian "volunteers" such as college students, who were paid small sums to participate, or prisoners.

11. The doses of these chemicals administered to the service members were at times several multiples above the known toxic threshold, causing excruciating pain, blackouts, memory loss, hallucinations, flashbacks, trauma, psychotic disorders, and other lasting health problems. Indeed, a 2007 study found that PTSD rates amongst veterans exposed to chemicals in research projects were higher than those of combat veterans. In some instances, the "volunteers" suffered grand mal seizures, epileptic seizures or acute paranoia. In at least a few instances, the victims died. Initially, the research program was limited to "defensive" purposes such as the testing of gas masks or development of antidotes, but it quickly was expanded to offensive uses with no practical limits and blatant disregard of required procedures.

12. Not only did DEFENDANTS repeatedly violate principles of ethics and human decency, as established by international law and convention through, among other pronouncements, the Nuremberg Code and the Declaration of Helsinki, but they also violated their own regulations and the U.S. Constitution.

13. The expansive scope of DEFENDANTS' undertakings resulted in *ad hoc* leaks of bits of information about their nefarious activities. Eventually, Congress convened hearings in

1975 to 1977 in an attempt to shed some light on the top-secret Edgewood and other experiments. During these hearings, the "pass the buck" strategy began. Admiral Stansfield Turner, the CIA Director, promised to locate participants in the tests and compensate those whose conditions or diseases were linked to their exposures during the programs of human experimentation. Turner assured a joint Congressional Committee that the CIA was working with both the Attorney General and the Secretary of Health, Education and Welfare "to determine whether it is practicable . . . to attempt to identify any of the persons to whom drugs may have been administered unwittingly," and was "working to determine if there are adequate clues to lead to their identification, and if so, how to go about fulfilling the Government's responsibilities in the matter." (*Project MKULTRA, The CIA's Program of Research in Behavioral Modification: Joint Hearing Before the S. Select Comm. on Intelligence and the Subcomm. on Health and Scientific Research of the S. Comm. on Human Resources*, 95th Cong. (1977) at 8.) Thereafter, the Attorney General assumed responsibility for the overall governmental effort to locate "volunteers," with the other DEFENDANTS providing a supporting role. On January 10, 1979, Director Turner passed off responsibility for finding and compensating the victims of certain MK-related programs to the Department of the Army.

14. On July 17, 1978, in response to an opinion request from the CIA, the Department of Justice issued a twenty-five page opinion (the "DOJ Opinion") that concluded:

> [T]he **CIA may well be held to have a legal duty to notify those MKULTRA drug-testing subjects whose health the CIA has reason to believe may still be adversely affected by their prior involvement in the MKULTRA drug-testing program** [and] that an effort should thus be made to notify these subjects . . . .

(Emphasis added.) A true copy of the DOJ Opinion is attached as Exhibit A hereto, and incorporated by this reference. (*See* Exh. A at A-006.) However, CIA General Counsel Anthony Lapham reinterpreted the DOJ Opinion in a July 24, 1978 memorandum to CIA Director Turner, which undermined the recommendations and conclusions in the DOJ Opinion. Turner approved the recommendations in Lapham's memorandum on July 26, 1978.

15. DEFENDANTS' promise in the 1970s to locate the victims of their human experimentation program, and to provide compensation and health care, proved to be hollow.

DEFENDANTS never made a sincere effort to locate the survivors. Rather, DEFENDANTS quickly adopted a variety of artificial means to limit the number and scope of the population entitled to notice, including eliminating "witting" participants (conveniently defined to include anyone who had signed a general consent form); requiring that it first be established that the CIA should bear "primary responsibility" for the conduct of the tests (taking advantage of the fact that the CIA funded and controlled, but did not actually conduct most of the tests); eliminating tests of substances that arguably did not qualify as "drugs," and eliminating drugs that at the time of the test were considered "not likely to produce long-term aftereffects." On July 6, 2004, Admiral Stansfield Turner confirmed in private correspondence that the CIA effort to locate the victims of human experimentation did not yield any results other than confirming the death of one individual. Yet, despite the CIA's repeated representations over multiple decades that they could not find any living persons who participated in Edgewood experiments and others, the CIA had in fact secretly obtained a "large data base" from Edgewood Arsenal in 1974, which contained the names and personal information of all the "volunteers." Currently, at a point in time 35 years later, the DOD claims to be still working to compile a registry of participants and does not expect to complete work until 2011. "DoD plans to complete its active investigation of potential exposures by 2011." (*See* http://fhp.osd.mil/CBexposures/.)

16. As a result, DEFENDANTS failed timely to locate or notify test subjects, and refused to provide compensation or medical screening or treatment to those participants who contacted DEFENDANTS.

17. On or about January 25, 1990, DEFENDANT United States Department of the Army issued updated regulations formally acknowledging its "Duty to Warn" research subject volunteers. Those regulations provide:

> *Duty to warn*. Commanders **have an obligation** to ensure that research volunteers are adequately informed concerning the risks involved with their participation in research, and **to provide them with any newly acquired information that may affect their well-being** when that information becomes available. **The duty to warn exists even after the individual volunteer has completed his or her participation** in research.

See Army Regulation 70-25, *Use of Volunteers as Subjects of Research*, Chapter 3-2(h) (Jan. 25, 1990) (emphasis added). DEFENDANTS' failure to timely locate or notify test subjects about information that has come into DEFENDANTS' possession concerning the human experimentation program flies in the face of this clear mandate.

18. Congressional efforts to locate the "volunteers" and to require medical follow-up achieved only limited success. In 2005, two United States Congressmen acquired and sent a list of "volunteers" to the Department of Veterans Affairs ("VA") to facilitate delivery of the much-needed, and long-denied, follow-up care. Although the VA offered follow-up medical *examinations* to some, ongoing medical *care* was not provided. DEFENDANTS' failure and refusal to fulfill their promise and duty to provide the "volunteers" with the information and health care that many of them so desperately need continued.

19. Beginning at a time unknown to Plaintiffs, DEFENDANTS began to give some of the "volunteers" access to portions of their available Edgewood files, although the records were not available, incomplete, or heavily redacted in many cases. In addition to the redaction of entire paragraphs or pages, DEFENDANTS redacted the names of virtually all the perpetrators from documents prior to release. Some participants learned for the first time that they had been exposed to chemical agents, including hallucinogenic and psychotropic drugs. These files provided the first hints regarding a possible relationship between patients' ailments and the chemical and biological exposures from Edgewood Arsenal. Other "volunteers" have never been notified at all.

20. Plaintiffs have repeatedly petitioned Congress and DEFENDANTS to honor the promises made to them, but DEFENDANTS have done nothing and have renounced any duty to Plaintiffs, thereby depriving Plaintiffs of their lives and health, their property, and their honor. Although wary of government retaliation, and believing that their health has been compromised by DEFENDANTS' actions, Plaintiffs, all of whom were victims of the Edgewood tests, have now come forward to challenge DEFENDANTS for needlessly exposing them to known toxins and failing to fulfill their obligations and promises to make amends. Plaintiffs ask the Court to use its equitable powers to check flagrant abuses of government power, and seek to avail

themselves of the Court's truth-seeking function so that they can finally discover and expose the embarrassing and painful history of America's human experimentation on its own. This is their story.

B. Summary of Action

21. This is a lawsuit for declaratory and injunctive relief in which Plaintiffs seek the following equitable relief:

a. A declaration that any consent forms signed by Plaintiffs and members of the class are not valid or enforceable; that Plaintiffs and the class members are released from any further obligations under their secrecy oaths; that DEFENDANTS are obligated to notify Plaintiffs and class members of all available information concerning the nature of the substances, experimental procedures used, doses, health effects, and other available information; that DEFENDANTS have violated the rights of Plaintiffs under the due process clause of the Fifth Amendment; that DEFENDANTS' human testing program violated the applicable government directives; and other declaratory relief, as prayed for below; and

b. Injunctive relief enjoining DEFENDANTS, and anyone in concert with them, from failing and refusing promptly to notify and provide medical care to Plaintiffs and class members, and various other forms of injunctive relief, as prayed for below.

C. Jurisdiction and Venue

22. The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, and 5 U.S.C. § 702. The action arises out of the Constitution of the United States, and Plaintiffs seek to redress violations of the First and Fifth Amendments to the United States Constitution and other constitutional provisions recited herein. Plaintiffs also seek a declaratory judgment pursuant to 28 U.S.C. § 2201, and seek to compel agency action unlawfully withheld or unreasonably delayed pursuant to 5 U.S.C. § 706.

23. Venue is proper under 28 U.S.C. §§ 1402(a) and 1391(e), based on plaintiff Swords to Plowshares: Veterans Rights Organization's presence in this District, and because a substantial part of the relevant events giving rise to Plaintiffs' claims took place in this District, as alleged herein, including in paragraphs 4, 9, 105-107, 111, 112, 137(e), 148, 154, and 168.

Plaintiffs believe that discovery will confirm that additional relevant events or omissions giving rise to Plaintiffs' claims took place in this District as well.

D. The Organizational Plaintiffs

24. Plaintiff VIETNAM VETERANS OF AMERICA ("VVA"), founded in 1978, is a national non-profit organization primarily dedicated to the interests of Vietnam era veterans and their families. The VVA's founding principle is "Never again shall one generation of veterans abandon another." VVA has over 50,000 members, 46 state councils and 630 local chapters. VVA's principal goals are to promote veterans' access to quality health care, to insure that veterans receive mandated compensation for diseases or conditions that they have incurred during or as a result of military service, to support the next generation of America's veterans, including Operation Iraqi Freedom and Operation Enduring Freedom ("OIF/OEF") veterans, and to hold government agencies accountable for their legal, ethical, and moral obligations to its veterans.

25. The purposes of the VVA, its State Councils, and its Chapters are:

> A. To help foster, encourage, and promote the improvement of the condition of the Vietnam-era veteran.
>
> B. To promote physical and cultural improvement, growth and development, self-respect, self-confidence, and usefulness of Vietnam-era veterans and others.
>
> C. To eliminate discrimination suffered by Vietnam-era veterans and to develop channels of communication which will assist Vietnam-era veterans to maximize self-realization and enrichment of their lives and enhance life-fulfillment.
>
> D. To study, on a non-partisan basis, proposed legislation, rules, or regulations introduced in any Federal, State, or local legislative or administrative body which may affect the social, economic, educational, or physical welfare of the Vietnam-era veteran or others; and to develop public policy proposals designed to improve the quality of life of the Vietnam-era veteran and others, especially in the areas of employment, education, training, and health.
>
> E. To conduct and publish research, on a non-partisan basis, pertaining to the relationship between Vietnam-era veterans and the American society, the Vietnam War experience, the role of the United States in securing peaceful co-existence for the world community, and other matters which affect the social, economic, educational, or physical welfare of the Vietnam-era veteran or others.

F. To assist disabled and needy military veterans including, but not limited to, Vietnam-era veterans and their dependents, and the widows and orphans of deceased veterans.

26. Among VVA's members are former members of our armed services who participated in DEFENDANTS' programs of human experimentation into drugs, chemicals, and other substances, and have suffered or continue to suffer from the after-effects of such experiments, as described in this Complaint, and have been barred from asserting or deterred from asserting damages claims. Several of the Individual Plaintiffs are VVA members.

27. Plaintiff SWORDS TO PLOWSHARES: VETERANS RIGHTS ORGANIZATION ("Swords" or "Swords to Plowshares"), is a California non-profit service organization whose principal administrative office is in the South of Market District in San Francisco. Swords also operates veterans housing projects at the Presidio and on Treasure Island. Founded in 1974, Swords is a community-based, not-for-profit organization that provides counseling and case management, employment and training, housing, and advocacy/legal assistance to more than 1500 homeless and low-income veterans annually in the San Francisco Bay Area and beyond. Swords promotes and protects the rights of veterans through advocacy, public education, and partnerships with local, state, and national entities. For example, Swords' Executive Director was appointed to the VA's Advisory Committee on Homeless Veterans in 2002, and Swords advocates for veterans by, among other things, providing assistance with VA disability claims and discharge upgrades, and through legislative comments and analysis.

28. Swords' mission of service to veterans includes the sub-population of veterans who served as guinea pigs in the testing of biological and chemical weapons. As a direct result of DEFENDANTS' actions and failures to act in connection with their human testing programs as alleged herein, Swords has diverted and devoted, and expects to continue to divert and devote, already scarce resources to provide additional services to veterans harmed by DEFENDANTS' actions and failures to act. For example, Swords provided referral services to a U.S. Army Vietnam veteran who reported that while in the military he had been "used as a guinea-pig in Canada for chemical warfare testing new gas masks." In addition, as part of its advocacy program, Swords has provided initial counseling services during telephone counseling hours to

multiple Vietnam-era veterans who were not willing to disclose information related to potential VA claims due to perceived secrecy obligations. As of December 2009, Swords is providing legal services to a U.S. Army veteran located in Hanford, California, who was a test subject in DEFENDANTS' human experimentation program at Edgewood Arsenal. Swords believes that it has in the past provided services to additional veterans who participated in DEFENDANTS' chemical and biological weapons testing programs and Swords expects to continue providing services to such veterans into the future.

E. The Individual Plaintiffs

Bruce Price

29. Plaintiff BRUCE PRICE ("Bruce") joined the U.S. Army in May 1965. Bruce was assigned to duty at Edgewood Arsenal for approximately two months in 1966 — from February 27, 1966, to April 28, 1966. Before being assigned to Edgewood Arsenal, Bruce was stationed at Ft. George G. Meade and that was where he returned until he was discharged in May 1967. Bruce was trained as a helicopter crew chief, and also had other assignments, such as a door gunner.

30. Bruce first went through a battery of physical and mental evaluations at Edgewood before being used as a test subject. Bruce and three other volunteers were taken into a room where four doctors were present. Two of the doctors were dressed in civilian garb and two were military doctors, including a colonel. The colonel, who seemed to be in charge, described the program and in substance said: "We know you have heard rumors we use drugs here. Well I am here to tell you that is true. We cannot tell you what they are. We do not know if the drugs will have any harmful effects on you. But we have the finest medical facilities. Now, we can't force you to take these drugs, but if you do not, you will be sent back to your home unit with a bad recommendation and it will be put in your DD Form 201 file and follow you for the rest of your life."

31. At some point, Bruce was asked to sign a general consent form that did not state any information about the drugs to be given. When he started to read the forms, Bruce was

berated and told to hurry up and sign them. Bruce never received a Volunteer Booklet explaining the details of the Edgewood assignment.

32. Bruce participated in several different experiments involving unknown substances. Many decades later, he heard that some of the substances he was administered included BZ, LSD, sarin, and ethanol. He is still not sure what he was given or in what doses. One of the drugs that was administered to Bruce was given on a Monday, and Bruce did not begin to recover from the drug's effect until Friday. He thought it was still Monday.

33. At one point, Bruce was ordered to visit a building with a chain link fence that housed test animals, including dogs, cats, guinea pigs and monkeys. After reporting, Bruce was strapped across his chest, his wrists, and his ankles to a gurney. Bruce occasionally would regain consciousness for brief moments. On one such instance, he remembers being covered with a great deal of blood, and assumed it was his own, but did not really know the source. Also portions of his arms and the backs of his hand were blue. His wrist and ankles were bruised and sore at the points where he had been strapped to the gurney. Bruce believes that this is the time period during which a septal implant was placed in his brain.

34. DEFENDANTS placed some sort of an implant in Bruce's right ethmoid sinus near the frontal lobe of his brain. The implant appears on CT scans as a "foreign body" of undetermined composition (perhaps plastic or some composite material) in Bruce's right ethmoid, as confirmed in a radiology report dated June 30, 2004.

35. Upon leaving Edgewood Arsenal, Bruce was debriefed by government personnel. Bruce was told to never talk about his experiences at Edgewood, and to forget about everything that he ever did, said or heard at Edgewood.

36. Within days or weeks of returning to Ft. George G. Meade, Bruce began to have trouble with his memory. For example, things as simple as filling out a maintenance report on his chopper and how to spell certain words suddenly became troublesome.

37. After being discharged from the service with an honorable discharge, Bruce returned home to rural Tennessee. Within a few days Bruce suddenly left for the mountains with

a gun with intentions of killing himself. Bruce's brother finally found him, and talked Bruce into returning home.

38. Before Bruce revealed his experiences at Edgewood Arsenal, his family did not know why he acted so strangely at certain times. Bruce finally told his wife about Edgewood, and the fact that he would have flashbacks or visions where the road suddenly changed colors and how he would get lost while trying to go to work. Bruce disclosed to his wife that he gets lost easily, and did not remember places he had been to hundreds of times previously. Bruce's wife suggested that he avoid being close to radio waves, and when he did so, his symptoms seemed to improve. Bruce's wife also helped him to find out more about what was going on at Edgewood Arsenal. A VA medical diagnostics test ruled out the possibility of Alzheimer's Disease and dementia.

39. In addition to memory problems, Bruce also suffers from PTSD, and at times is suicidal. He has experienced uncontrolled fits of anger and loss of control, as well as flashbacks. Although Bruce worked intermittently after Edgewood Arsenal, his entire life has been ruined.

40. Bruce has been completely disabled for many years, and received social security disability payments from the age of 62 until he turned 66 in June, 2009, when he qualified for full social security benefits. Bruce has been rated by the VA as 100% service-connected for PTSD related to his service at Edgewood since 2005. He depends on his wife for much of his day-to-day care, and his social security and VA compensation are his only means of financial support.

41. The account in this Complaint is pieced together from fragments of Bruce's own recollection, things he has told his wife in the past, and the results of his wife's research, which includes reviewing portions of Bruce's military records. To this day, Bruce continues to be haunted by nightmares and dreams about the doctors and what they did to him at Edgewood.

Eric P. Muth

42. Plaintiff ERIC P. MUTH ("Eric") was 17 years old when he enlisted in the United States Army on September 15, 1957. He was based in Missouri after completing his training and some service, and was promoted to Specialist Fourth Class. In 1959, he entered the Army

Reserves. In 1960, Eric joined the National Guard where he remained until 1969 as Staff Sergeant with top-secret clearance.

43. Early in his Army Career, Eric saw a notice on a bulletin board asking volunteers to help the Army test protective equipment and to test riot gas. Eric signed up for the tour and in May 1958 attended an orientation at Edgewood Arsenal. At this orientation, an officer spoke to the enlisted soldiers, telling them that they would be testing military gear and riot gas. There was no mention of any possible medical or health risks, and the soldiers were promised medical care and either the Soldier's Medal or a special Congressional Medal, which was then under consideration by Congress.

44. Following the orientation speech, the soldiers were given various forms to sign. Included in these forms were a participation agreement and a security non-disclosure form. Eric was warned that his Edgewood tour was top-secret and that he would be punished if he ever discussed or disclosed any part of it to anyone. It is the mark of a good soldier to follow the orders and instructions of officers without question or hesitation. Seventeen-year-old Eric, wanting to show courage and to help his country, signed the forms without a second thought. However, he never received a Volunteer Booklet that was supposed to be distributed to participants.

45. The pre-experimentation physicals, x-rays, blood work, and psychological medical tests run by the Army at the time indicated that Eric had heart problems, was paranoid and manic. There were concerns about his mental condition and stability, making him an unsuitable candidate for human experimentation according to DEFENDANTS' own guidelines. This, however, did not stop the Army from enrolling Eric as a human guinea pig in its tests. (In fact, Edgewood had no psychiatrist until 1961, when James S. Ketchum, M.D., assumed that position.)

46. Eric became Medical Volunteer Number 781. From May to June 1958, Eric was exposed at least to seven different rounds of chemical agents. He would enter a chamber with several other "volunteers" all of whom wore chemical masks — the equipment Eric believed he was testing — and the chamber would suddenly fill with gas. The so-called "protective gear" was always entirely inadequate, and Eric felt searing pain before losing consciousness. Eric and the

other soldiers were unaware that the masks were a charade of deception: they were designed to fail so that the subject soldiers would inhale the highly dangerous and toxic chemicals. The undisclosed purpose of the tests was to determine the impact of these biological and chemical agents upon human beings.

47. Eric "volunteered" for a second tour at Edgewood, which occurred from November to December 1958, during which period Eric was exposed to three or four rounds of chemical agents. Although doing his best to be brave, Eric had no idea of what they were doing, and he did experience some fear and knee buckling. One such test was conducted by injecting a chemical substance intravenously in one arm while simultaneously withdrawing blood from the other arm. Exposure to DM ("Adamsite," an arsenic compound) caused him to fall to the floor vomiting.

48. In another test, Eric was given an unidentified pill to swallow. After being exposed to what he much later learned was EA 1476, he remembers being delirious, arms and legs flailing, unable to stand or walk and crawling to the water fountain to drink, falling, and being ordered to void in jars. As a result of another exposure, Eric lost consciousness for approximately three days, had an extremely low blood pressure, and suffered severe hallucinations. His exposures record contains lines doctored by a magic marker so that they cannot be read. He also has a reoccurring dream with an "out of body experience."

49. To this day, Eric continues to have flashbacks of his nightmares, and received a dual diagnosis of both PTSD and bipolar disorder. He is anxious and high strung. At times, he has been suicidal. Being confined in small spaces, such as an elevator, terrifies him because it reminds him of a gas chamber, and he finds himself planning escape routes for any building, store, or space he frequents. He is fixated on keeping doorways within view. Eric's list of physical ailments is long: he has heart problems; post-surgery for aneurisms in both legs; allergies; sinus issues; emphysema; gastro-intestinal disorders; hearing loss; tinnitus; vestibular dysfunction; brain ischemia; and spinal degeneration. Notwithstanding these problems, Eric pursued a successful career as an optician.

50. Due to the security non-disclosure, the warnings that his Edgewood experience was top-secret, and the threats of punishment for telling his tale, Eric did not seek medical attention for many of his ailments until around 1997, when he sought care from VA doctors. Even then, he kept secret the details of his Edgewood past. More recently, Eric's physicians were able to link certain of his ailments and problems to the agents to which he was unwittingly exposed at Edgewood. The Social Security Administration has found Eric to be disabled, and the VA also found that Eric was 100% disabled based upon the VA's rating schedule, a portion of which was attributable to his service at Edgewood.

51. In 2002, Eric underwent an occupational and environmental medicine health and safety exam offered by the VA. The VA told him that his exposures at Edgewood did not produce any long-term health impacts, but also stated that the agents he had been exposed to had not been well studied or remained classified, and that this precluded further assessment. In 2006, Eric received a letter from the VA offering him the opportunity to undertake another health examination as a follow-up to his Edgewood service. Eric took a copy of the letter to his local VA eligibility office in West Haven, Connecticut. However, the VA Eligibility Technician told Eric that they knew nothing about any such offer.

Franklin D. Rochelle

52. Plaintiff FRANKLIN D. ROCHELLE ("Frank") was raised in rural North Carolina. In 1968, at the age of 20, he was drafted into the Army. He attended boot camp at Fort Bragg, North Carolina, and was then based at Fort Lee, Virginia.

53. While at Fort Lee, Frank saw posted notices asking for servicemen to test military equipment, clothing, and gas masks. The opportunity appealed to Frank in part because the signs promised no guard duty, no KP ("Kitchen Police") duty, and the freedom to wear civilian clothes instead of his uniform. Frank submitted his name for the assignment.

54. Upon arriving at Edgewood Arsenal, Frank attended an orientation meeting where he was told that some servicemen might be given the opportunity to test therapeutic drugs currently under development. The servicemen selected for this would be given Fridays off and would receive special recognition in the form of a medal. The presenters assured Frank and the

attendees that they would not be harmed, that the tests were risk free, and that the drugs given would not be above normal doses. Frank never was told what he would be testing, nor was Frank warned of any hazards. Frank signed up for the program. He was given a number of tasks and quizzes to test his competency. He also was asked to sign various forms, including a release form. A self-described "country boy" who had never been exposed to street drugs, let alone heard of chemical and other hazardous substances used by the Army, Frank had no clue of what he was in for. He simply signed the form handed to him. Frank was never given a Volunteer Booklet.

55. Frank was stationed at Edgewood Arsenal for a 60-day tour from September 1, 1968, to the end of October 1968. Although he does not remember ever signing a security non-disclosure form, he was instructed to never talk about any of his tests. As his first test, he was given an injection that had no discernable effect on him, possibly because it may have been a placebo.

56. The second experiment on Frank, however, proved to be an entirely different story. Frank was taken into a chamber by two individuals in white coats. He was placed in front of a face mask and told to breathe normally. Frank did so, at which point he heard a valve click and smelled some gas. Within one breath, Frank began to lose consciousness. He struggled to breathe and had difficulty seeing. He felt dizzy, drunk, nauseous, and had the acute sensation that his legs were falling through the floor. He vaguely recalls being carried out of the chamber by two men in white coats. Over the next two to three days, Frank was hallucinating and high: he thought he was three feet tall, saw animals on the walls, thought he was being pursued by a 6-foot tall white rabbit, heard people calling his name, thought that all his freckles were bugs under his skin, and used a razor to try to cut these bugs out. No one from the clinical staff intervened on his behalf even though he was told that the test subjects would be under constant supervision. However, when questioned afterwards about the source of the blood, Frank told them that he dropped his razor while shaving. He was too embarrassed to tell them the truth about what had happened. Frank's records show that on that day he was given the glycolate, CAR 302668, an

anticholinergic with properties identical to atropine, at a dose above the calculated incapacitating amount.

57. Frank's available records from Edgewood indicate that he participated in a third round of testing during his tenure at Edgewood. To this day, he is unable to recall a single detail from this period of time. However, Frank's records suggest that the substances he received were code-named EA 2233-1 and EA 2233-2. Frank knows nothing about these substances, but internet research has revealed that EA 2233 is a non-lethal incapacitating agent that is actually DMHP, and is related in structure to THC. It has eight stereoisomers, which differ markedly in potency, and the most potent stereoisomer was EA 2233-2. DHMP produces sedation and hallucinogenic effects similar to THC, but also is known to cause hypotension (low blood pressure), severe dizziness, fainting, ataxia and muscle weakness.

58. When he was released from Edgewood, Frank was promised follow-up medical care. However, the Army never checked in or followed up with Frank. Instead, they sent Frank to fight in Vietnam.

59. Today, Frank suffers from memory loss, anxiety, vision problems, difficulty breathing, and sleep apnea. He still has nightmares about his time at Edgewood, has a short temper, and is highly distrustful of authority figures. Because he believed that his Edgewood service was top-secret and because he feared punishment for disclosure, Frank did not even tell his own doctor what he had been through until around 2006. He currently receives 80% VA disability compensation for obstructive lung defect, anxiety disorder, hearing loss and tinnitus.

60. During his assignment to Edgewood, Frank received $1.50 per day in pay for travel and a certificate saying that he was an Edgewood participant. He never received any award or medal. Further, Frank did not receive any follow-up check-ups, care or treatment.

61. Recently, Frank's medical problems have worsened and his health has deteriorated. As a result, Frank is no longer able to work the job that he held for over 28 years.

Larry Meirow

62. Plaintiff LARRY MEIROW ("Larry") was called up to the United States Army in the last draft call of the Vietnam Era. He was 19 when he entered the Army as a Private in

June 1972. Larry served on active duty until March 1974 when he joined the National Guard. He returned to active duty in 1975 for 45 days to fulfill his military commitment.

63. After being called up in the draft, Larry entered basic training which he completed in August 1972. Shortly thereafter, in October 1972, his Company Commander came out to the morning formation and asked for volunteers to go to Edgewood. The members of the company were told that they would be testing military equipment and would be given 3-day weekends and extra pay of $2.00 per day. Still standing in morning formation, the soldiers were asked to raise their hands if they were interested. Larry raised his hand.

64. When morning formation was dismissed, Larry asked the officer for more details about Edgewood. Larry was told that those who were selected would learn more once at Edgewood. Larry soon received orders to report to Edgewood by November 3, 1972.

65. Upon reporting to Edgewood, Larry was given paperwork to sign, but was not given the advance opportunity to read or review the contents. He was not given a Volunteer Booklet. Instead, he was berated and ordered to hurry up and complete the forms. Larry was also given psychological and medical exams and was examined by a psychiatrist.

66. During a group presentation, the soldiers were promised a commendation medal and health care should anything go wrong. They also were ordered to never disclose any details of their Edgewood experience and were told that if they disobeyed they would be imprisoned. After this orientation, the soldiers were released to the camp where they would go into the day room to play ping pong and wait for their names to be called up.

67. Sometime around November 11, 1972, Larry was called out of the day room and driven to another building. He was ordered to put on a hospital gown and told to lie down on a table. The people in charge attached leg and arm straps to buckle him down and hold him in place. He was told that he was going to be injected with a harmless substance.

68. Instead, they injected Larry with a substance that caused a burning sensation through his veins and made his head feel like it was going to explode. Larry felt like he was on fire and blacked out from the pain. He cannot recall what happened next, but only remembers regaining consciousness in a bunk bed in a recovery area. While in the recovery area, he was

given urine tests every 24 hours. He was told that he would have to continue to have frequent urine tests even after returning to his permanent base and that he should continue to have them done even after he had been discharged.

69. For over 30 years since Edgewood, Larry has had ongoing symptoms of fibromyalgia, joint pain, tremors, and numbness. He has suffered from a splitting headache on the right side of his head, with blurred vision and difficulty swallowing. His head often feels numb and at times he has uncontrollable drooling. He has hearing loss in both ears and wears a hearing aid in one ear. He has almost completely lost his short-term memory, and some loss of his long-term memory. He has been worked up by multiple specialists and diagnosed with cysts on both kidneys, and pre-cancerous polyps of the colon. His EMG tests were positive for polyneuropathies and pathology in both upper and lower extremities, and he has demonstrated persistent problems with balance and fine motor skills. He has severe stomach aches and his gallbladder had to be removed. He has fatty tissue surrounding his liver. He has been unable to sleep a full night for over three decades. He has had periods where sobriety became an issue, has been arrested several times, and has had difficulty holding down jobs for long periods of time. Larry was so fearful of disobeying the confidentiality order and so traumatized by recalling the events that he did not tell his spouse of 37 years or his doctors what he had been through until approximately 2003.

70. When he was 49 years old, Larry had to quit working due to his health condition, and he has been receiving Social Security disability payments since 2004. On Larry's behalf, the VA requested his medical papers from Edgewood. However, Edgewood Arsenal sent a letter to the VA dated May 24, 2005 confirming that Larry had been assigned to serve at Edgewood, but denying that Larry had actually participated in any of their experiments. Larry has never received the health care or medal of commendation that he was promised.

David C. Dufrane

71. The day after Plaintiff DAVID C. DUFRANE ("David") graduated from high school in June 1964, he enlisted in the United States Army as a Private E1. David was 17 years old. He served in the Army until June 1967. He served in both Thailand and Edgewood.

72. In March 1965, while based at Fort Knox, Kentucky, David saw a flyer looking for volunteers to test clothing and equipment. David asked his Platoon Sergeant what the Edgewood program was about. David's Platoon Sergeant responded that he did not know, but that since it was located near some testing grounds, the volunteers might be testing military equipment. David decided to go to an informational meeting.

73. At the informational meeting, David was told that volunteers would be testing clothing and military equipment. David was also told that they would not have guard duty, would not have KP, would be granted increased amounts of vacation, and would receive a special commendation. Following the information session, David was given a battery of physical and written tests. Like the others, he did not receive the Volunteer Booklet.

74. Shortly thereafter, David received orders to report to Edgewood in April 1965. He reported for duty at Edgewood on April 4, 1965. After completing a questionnaire regarding routine medical data, David waited for his name to be called.

75. In all, David was used as a human test subject in at least eight experiments. He is able to remember only four of them. Gas was sprayed directly onto his face, causing extreme burning and blindness that lasted for eight hours. Chemicals were sprayed on his body that, when exposed to black light, turned his body purple. While held in padded rooms, David was injected with substances that made him hallucinate for days. He believed that he was eating entire cities and vomited from the taste of the concrete in his mouth. He also was forced to drink liquids that made him think objects that he held in his hand had disappeared or were invisible.

76. David was held at Edgewood from early April to the end of May 1965. He spent most of that time entirely incapacitated. As soon as he was finished with one test — and sometimes when he was still under the influence of unknown chemical substances — he would be assigned to participate in another test. He cannot remember much of what happened during that time.

77. David was later told by the Army that he had signed releases for every test in which he had participated. However, he does not remember ever seeing or signing any release. Edgewood provided him with three examples of his supposed releases. One of these releases was

dated in June 1964, *prior to his entry into the armed services* and at a time when he was still in high school. Another was dated in 1969, *after he had already left the Army*. None of these supposed releases contain any specific information or details as to what he was allegedly agreeing to do.

78. At his exit interview in 1965, David was told that his service at Edgewood was top secret. He was directed to sign a confidentiality agreement, which he complied with. He also was told that he should not speak with either a private doctor or the VA about his Edgewood experience, and that the Army or Edgewood would provide him with any follow-up care he might need.

79. David suffers from frequent flashbacks. His arms and legs are numb and tingle almost all of the time. He has a chronic headache on the left side of his head, and has broken all of the teeth on the left side of his jaw due to grinding from the always-present pain. He has severe breathing and lung problems and almost always hears a hissing noise in his ears.

80. David tried to get medical care in 1986. When he approached his VA for assistance, he was told that he was hallucinating and making things up — he was told that Edgewood never happened and that he had never served there. For the next 6 years, David did not seek medical care, fearful that no one would believe him and unable to back up his claims. After his daughter discovered his Edgewood release papers in the attic, David was able to return to the VA with proof of his Edgewood service. Doctors have since linked his ailments to his chemical exposure while at Edgewood. However, he has never been given the follow-up medical care or medal of commendation that he was promised. David recently was awarded the Vietnam Service Medal with two Bronze Service Stars for the Vietnam Defense Campaign and the Vietnam Counter-Offensive Campaign. David currently receives 60% VA disability compensation for post-traumatic stress disorder.

Former Individual Plaintiff Wray C. Forrest

81. Former Plaintiff WRAY C. FORREST ("Wray") was 17 years old when he enlisted in the United States Air Force. He served in the Air Force from 1967 to 1969 and then, at the age of 19 in January 1969, enlisted in the Army. He served in the Army for 14 years and

was honorably discharged in 1982 at the grade of E-7 (Sgt. First Class). He was discharged for alleged personality disorders.

82. While posted at Fort Stewart, Georgia, Wray saw flyers announcing tours of duty at Edgewood. A meeting was being held at the local post theater. Out of curiosity, Wray attended. At the meeting representatives from Edgewood announced that they were looking for soldiers to test Army equipment, vehicles, military combat equipment, and the like. The representatives said that soldiers selected to participate would have a 4-day work week, with a guaranteed 3-day pass, and would receive a Commendation Medal for their service. There was no mention of testing drugs, nor was there any disclosure of hazards or potential risks.

83. Soldiers interested in the opportunity to serve at Edgewood were invited to remain at the post theater to participate in a number of screening interviews. Wray was asked to sign forms saying that he was interested in serving at Edgewood and was then given written and psychiatric tests. Eight to ten weeks later, Wray received notification to report to personnel to pick up his Temporary Duty Orders. He was one of two people from his post ordered to Edgewood Arsenal.

84. After Wray arrived at Edgewood in 1973, he remembers signing some sort of form consenting to test aircraft equipment. He was ordered to report for testing early Monday morning. It was only at this point — after he had been ordered to serve at Edgewood, after he had reported for duty at Edgewood, after he had signed the consent forms to perform tests on aircraft, and after he showed up on Monday morning for testing — that he was verbally informed that he would be used to test drugs. He never received a Volunteer Booklet. He was issued a special identification card to present in the event that he were ever arrested for drug use based upon the track marks that would soon appear on his arms. At that point, because he was a soldier following the orders of his officers, he felt that he did not have any real opportunity to back out or return to his post. Wray became Medical Volunteer Number 6692.

85. Wray was a human subject in at least five Edgewood tests. The tests were conducted in various places: the ward, an aircraft, a dark room with no light, and a classroom

setting. He was injected with various substances, and was then asked to describe his side effects, which included dizziness, blurred vision, difficulty speaking, and a rapid heart rate.

86. Following his service at Edgewood, Wray has suffered traumatic stress disorder and pulmonary and cardiac problems that has led to a 100% Social Security Disability rating. He never received the Commendation Medal he was promised, nor recognition of any other kind. Although still an active service member when the Army was requested to provide the names of all soldier subjects during the Congressional Hearings in 1977, the Army never notified or contacted Wray. In fact, the only time Wray has been contacted regarding his Edgewood service was by a VA outreach survey in 2007, three decades after he completed his tour at Edgewood.

87. On August 31, 2010, after suffering with terminal lung, throat and lymphatic cancer, Wray passed away. Plaintiff Kathryn McMillan-Forrest is the surviving spouse of Wray Forrest, has filed a claim for accrued disability benefits and dependency and indemnity compensation, and is substituted in Wray Forrest's place as named Plaintiff, except as to the APA claim for notice, the secrecy oath claims and claims for medical care.

Common Issues Among Individual Plaintiffs

88. None of the activities of Plaintiffs described herein constituted participation in what can properly be considered to be military activities or implicated questions of military discipline. None of the Plaintiffs or members of the proposed class are currently active members of the military.

89. Except for a handful of veterans compensated by the passage of private bills, DEFENDANTS have not compensated Plaintiffs or any class members for any of the damages suffered as the proximate result of DEFENDANTS' actions or reimbursed Plaintiffs or class members for the private medical care and treatment they have received. In contrast, the British government in January 2008 provided full compensation to the participants in a parallel set of human experiments on troops assigned to serve at Porton Down, near Salisbury, England. Similarly, in 2004, the Canadian government adopted a payment program to recognize the service of Canadian veterans who participated in chemical warfare experiments at Suffield, Alberta, and Chemical Warfare Laboratories, Ottawa, from 1941 through the mid-1970s. The vast majority of

Edgewood participants have never received any notice from DEFENDANTS and at most a small handful have ever received any health care or compensation from DEFENDANTS associated with their participation in the MKULTRA experiments.

90. DEFENDANTS acquired esoteric and unique knowledge and information, most of which was never made public, concerning the properties, doses, and health effects, both immediate and latent, of the substances they tested. Most private physicians lack the background and experience properly to treat many of the health effects of such substances, some of which DEFENDANTS have never identified. As a result, the ability of the "volunteers" to obtain suitable medical care has in many instances been, and continues to be, adversely impacted or compromised.

91. Nothing herein is intended or should be construed as an attempt to obtain review of any decision relating to benefits sought by any veteran or to challenge any benefits decisions made by the Secretary of the VA. Likewise, nothing herein is intended or should be construed as a request for money damages.

F. DEFENDANTS

92. Defendant CENTRAL INTELLIGENCE AGENCY ("CIA") was created in 1947 by the National Security Act, which also established the Department of Defense and the National Security Council ("NSC"). CIA was modeled largely after the Office of Strategic Services, which served as the principal U.S. intelligence organization during World War II. The newly created agency was authorized to engage in foreign intelligence collection (*i.e.*, espionage), analysis, and covert actions. It was, however, prohibited from engaging in domestic police or internal security functions. The CIA has publicly stated that no U.S. citizens should be the object of CIA operations. Nonetheless, CIA engaged in a surreptitious, illegal program of domestic human experimentation from the 1950s at least well into the 1970s.

93. Defendant LEON PANETTA, is the current Director of the CIA, and is named solely in his official capacity. The Director of the CIA serves as the head of the CIA and reports to the Director of National Intelligence. (The Intelligence Reform and Terrorism Prevention Act of 2004 amended the National Security Act to provide for a Director of National Intelligence who

would assume some of the roles formerly fulfilled by the Director of Central Intelligence ("DCI"), with a separate Director of the CIA.) The CIA Director's responsibilities include: (a) collecting intelligence through human sources and by other appropriate means, except that he shall have no police, subpoena, or law enforcement powers or internal security functions; (b) correlating and evaluating intelligence related to the national security and providing appropriate dissemination of such intelligence; (c) providing overall direction for and coordination of the collection of national intelligence outside the United States through human sources by elements of the intelligence community authorized to undertake such collection and, in coordination with other departments, agencies, or elements of the United States Government that are authorized to undertake such collection, ensuring that the most effective use is made of resources and that appropriate account is taken of the risks to the United States and those involved in such collection; and (d) performing such other functions and duties related to intelligence affecting the national security as the President or the Director of National Intelligence may direct.

94. Defendant the DEPARTMENT OF DEFENSE ("DOD" or "DoD") is the federal department charged with coordinating and supervising all agencies and functions of the government relating directly to national security and the military. The organization and functions of the DOD are set forth in Title 10 of the United States Code. The DOD is the major tenant of the Pentagon building near Washington, D.C., and has three major components — the Department of the Army, the Department of the Navy, and the Department of the Air Force. Among the many DOD agencies are the Missile Defense Agency, the Defense Advanced Research Projects Agency ("DARPA"), the Pentagon Force Protection Agency ("PFPA"), the Defense Intelligence Agency ("DIA"), the National Geospatial-Intelligence Agency ("NGA"), and the National Security Agency ("NSA"). The department also operates several joint service schools, including the National War College.

95. Defendant DR. ROBERT M. GATES is the current Secretary of Defense, and is named solely in his official capacity. The Secretary of Defense is the principal defense policy advisor to the President and is responsible for the formulation of general defense policy and

policy related to all matters of direct concern to the DOD, and for the execution of approved policy. Under the direction of the President, the Secretary of Defense exercises authority, direction and control over the DOD. The Secretary of Defense is a member of the President's Cabinet and of the National Security Council. In 1964, the DOD took primary responsibility for the human experimentation "volunteers." In 1993, the DOD promised to supply VA with information to help "volunteers" with claims; however, the DOD did not fulfill that promise. On December 2, 2002, Congress passed the Bob Stump National Defense Authorization Act for Fiscal Year 2003. In that Act, Congress directed the Secretary of Defense to "work with veterans and veterans service organizations" to identify "projects or tests conducted by the Department of Defense that may have exposed members of the Armed Forces to chemical or biological agents." In February 2008, the U.S. Government Accountability Office reported to Congress that the DOD had not met this duty, and that the DOD "has not kept Congress and veterans service organizations fully informed about its efforts." Indeed, for decades the DOD resisted release of the names of the "volunteers" to the VA, as well as other available information.

96. Defendant UNITED STATES DEPARTMENT OF THE ARMY (the "Department of the Army") is one of three service departments of the Department of Defense. It has responsibility for the administration of, control, and operation of the United States Army (the "Army"), a military organization whose primary responsibility is for land-based military operations. The civilian head of the Department of the Army is the Secretary of the Army, and the highest ranking military officer in the department is the Chief of Staff, unless the Chairman of the Joint Chiefs of Staff or Vice Chairman of the Joint Chiefs of Staff is an Army officer. The Army is made up of three components: the active component, the Regular Army, and two reserve components, the Army National Guard and the Army Reserve. As of October 31, 2008, the Regular Army reported just under 546,000 soldiers. The Army National Guard (the "ARNG") reported 350,000 personnel and the United States Army Reserve (the "USAR") reported 189,000 personnel, putting the approximate combined total at 1,085,000 personnel.

97. Defendant PETE GEREN is the current United States Secretary of the Army, and is named solely in his official capacity. Secretary GEREN has statutory responsibility for all

matters relating to the United States Army: manpower, personnel, reserve affairs, installations, environmental issues, weapons systems and equipment acquisition, communications, and financial management. Additionally, Secretary GEREN is responsible for the Department of the Army's annual budget and supplemental budget of $170 billion. He leads a work force of over one million active duty, Army National Guard, and Army Reserve soldiers, 230,000 Department of the Army civilian employees and 280,000 contracted service personnel.

98. Defendant ERIC H. HOLDER, JR. is the current Attorney General of the UNITED STATES OF AMERICA, and is named solely in his official capacity, and in connection with the Attorney General's assumption of responsibility to notify the victims of biological and chemical weapons tests.

99. The inclusion of each defendant named herein is necessary to afford complete relief, and to avoid a multiplicity of actions and the possibility of inconsistent results.

II. THE HISTORY OF THE GOVERNMENT'S USE OF CITIZENS AS TEST SUBJECTS IN EXPERIMENTS INVOLVING RADIOACTIVE ISOTOPES, CHEMICALS AND BIOLOGICAL AGENTS

A. DEFENDANTS' Use of Soldiers to Test Toxic Chemical and Biological Warfare Agents

1. Overview of Testing Programs

100. Edgewood Arsenal was originally established on October 20, 1917, six months after the United States entered World War I, and one of its responsibilities was to conduct chemical weapons research, development and testing. Edgewood also provided chemical production and artillery shell filling facilities to respond to the chemical weapons that were being used in the fighting in Europe. The main chemicals produced were phosgene, chloropicrin and mustard. Edgewood offered a military facility where design and testing of ordnance material could be carried out in close proximity to the nation's industrial and shipping centers. The installation comprises two principal areas, separated by the Bush River. The Northern area was known as the Aberdeen Proving Ground area. The southern sector, Edgewood Arsenal — formerly called the U.S. Army Chemical Warfare Center — was located northeast of Baltimore,

Maryland, in the Northern Chesapeake Bay along a neck of land between the Gunpowder and Bush rivers. The two areas were administratively combined in 1971.

101. During the 1930s, Edgewood Arsenal served as the center of the military's Chemical Warfare Service activities. Workers developed gas masks and protective clothing, tested chemical agent dispersal methods, and trained Army and Navy personnel. During World War II, Edgewood Arsenal continued to produce chemical agents and plans for countermeasures in case it became necessary to use them. Workers at Edgewood also tested and developed flame thrower weapons and smoke screens. The Army Chemical and Biological Defense Command ("CBDCOM") is home to the Army's non-medical chemical and biological defense activities, including research, development, acquisition, and remediation issues associated with chemical and biological defense.

102. By the end of World War II, the U.S. had produced more than 87,000 tons of sulfur mustard, 20,000 tons of Lewisite, and 100 tons of nitrogen mustard at Edgewood Arsenal and three other military facilities. In addition to producing chemical materials, Edgewood became the first American military installation to test lethal agents on humans.

103. In 1942, DEFENDANTS for the first time sought formal authority to recruit and use human subjects in a chemical warfare experiment involving mustard agents. (1976 Army IG Report at 29-30.) The Acting Secretary of War authorized in principle the use of enlisted men as subjects for testing of mustard agent on soldiers. Initially, volunteer investigators at Edgewood Arsenal were used to test mustard, phosgene, and other known chemical agents. DEFENDANTS continued to rely upon this same mustard gas authorization to conduct human experimentation into the 1950s at Camp Siebert, Alabama, Bushnell, Florida, Dugway Proving Ground, Utah, and off the coast of Panama near the Panama Canal Zone. (1976 Army IG Report at 30.)

104. On or about January 21, 1944, DEFENDANTS carried out a mission to test the effects of mustard gas bombs on American prisoners who had volunteered for the assignment on the understanding that they would be released from prison after it was concluded. These volunteers were placed in underground fortified bunkers on an island off the coast of Australia. In an effort to cover their tracks, DEFENDANTS used Australian pilots in American Air Force

planes to conduct an air strike on the fortified bunkers, hoping to gain information to plan the invasion of Pacific Islands held by Japan. The secret mission was headed by Lt. Col. Jess Crowther of the 5th U.S. Air Force. The prisoners were killed in the bombing, and DEFENDANTS suppressed or destroyed information concerning the mission and its results.

105. From approximately 1949 to 1968, DEFENDANTS conducted open air field tests of anti-personnel biological stimulants in numerous U.S. cities. For example, in 1950, DEFENDANTS exposed the city of San Francisco to an aerosolized live bacteria called *serratia marcescens*. On information and belief, this field test exposed military personnel and civilians alike to *serratia marcescens*. *See, e.g.*, *Nevin v. United States*, 696 F.2d 1229 (9th Cir. 1983). The bacterium *bacillus globigii* also was used in the 1950 San Francisco test. Additional anti-personnel field testing of *bacillus globigii* took place at Edgewood Arsenal in 1959. (*See, e.g.*, U.S. Army Activity In the U.S. Biological Warfare Programs, Volume 2, Annex E, Appendix III & Annex F (Feb. 24, 1977), included in *Biological Testing Involving Human Subjects by the Department of Defense: Hearing Before the Subcomm. on Health and Scientific Research of the S. Comm. on Human Resources*, 95th Cong. (1977).) DEFENDANTS also entered into numerous Biological Warfare Research, Development, Test, & Evaluation ("RDTE") Contracts with private research institutions through Fort Detrick, including more than 20 contracts from 1950 to 1966 with the State of California, the University of California, Stanford University, and Stanford Research Institute. (*See id.* at 80-100.)

106. In early 1952, the CIA effected an agreement with the Army Chemical Corps for the performance of certain chemical and biological warfare research and development work by the Army Chemical Corps at the Army's laboratory facilities at Fort Detrick. CIA funding for this program continued until the 1970s. Fort Detrick was the parent research and pilot plant center for DEFENDANTS' biological warfare programs, and became heavily involved in cancer research after President Nixon declared a war on cancer in 1971. The National Cancer Institute ("NCI") spearheaded that effort. The Naval Biosciences Laboratory ("NBL"), in Oakland, California, collaborated in open-air tests of biological warfare stimulants in the San Francisco Bay Area in the 1950s, including by supplying personnel, lab facilities, and equipment for the

secret biological warfare stimulant exercise in San Francisco. The University of California ("UC") helped manage the NBL — earlier called the Naval Biological Laboratory. From approximately 1953 to 1968, UC, while involved with the NBL, also had biological warfare contracts with the U.S. Army. After U.S. treaty obligations prohibited open research on mass production of dangerous viruses as a result of the Biological Weapons Convention (1972), this program, at least officially, shifted its focus to defensive measures. A focus of the Fort Detrick facility after the ban on offensive viruses was the large scale production of oncogenic (cancer-causing) and suspected oncogenic viruses. Within about a year, DEFENDANTS had produced a stockpile of approximately 60,000 liters of oncogenic and immunosuppressive viruses. In addition, a research engineer at NBL who was a member of the NCI Biohazards Work Group from the NBL, conducted research concerning the stability, virulence, and biological characteristics of viral aerosols in the early 1970s.

107. Throughout the 1970s, the U.S. "defensive" biological warfare programs increasingly focused on the research and development of viral disease agents. The seed stocks for virus production came from the Cell Culture Laboratory ("CCL"), which was housed at the NBL. The laboratory was partially funded by the NCI and connected to UC and it became a repository for potentially cancer-causing tissues and tissues that might contain them. After the ban, the NBL continued experimenting with biological agents, but as "defensive" research. The NBL contract was concurrent with NBL projects with bubonic plague, Rift Valley and meningitis. The NBL did additional research for Fort Detrick before the 1972 ban. The NBL also performed much of the original research into biological warfare during World War II. During this same period of time, DEFENDANTS began to test the effectiveness of possible vaccines for biological warfare agents on military personnel, using, for example, troops at Army installations such as Fort Dix, N.J., where soldier "volunteers" were used to test a vaccine for meningitis.

108. DEFENDANTS and other government agencies have reported conflicting estimates regarding the total number of armed services members exposed at Edgewood Arsenal and other locations. The VA has reported that, between 1950 and 1975, approximately 6,720 soldiers were used as human guinea pigs for experiments involving exposure to at least 254 toxic

biological and chemical warfare agents at the U.S. Army's laboratories at Edgewood Arsenal. These tests were conducted jointly by the U.S. Army Intelligence Board and the Chemical Warfare Laboratories at Edgewood Arsenal's research facility.

109. One of the principal objectives of activities at Edgewood and Fort Detrick was to research and test drugs that could be used for "psychological warfare." In accordance with this policy, the United States government began human testing of newer chemical agents, including LSD, PCP, and synthetic cannabis analogs.

110. DEFENDANTS also tested mustard agents on soldiers at Edgewood. From 1958 to 1974, the government conducted tests of the riot control agent CS on at least 1,366 human subjects at Edgewood, including skin applications, aerosol exposures, and direct application to the individuals' eyes.

111. As part of DEFENDANTS' human experimentation program, DEFENDANTS determined that field tests of psychochemicals were necessary and should be performed to follow up on laboratory experiments. The former Fort Ord, approximately five miles north of Monterey, California, was suggested as a field test site because the low ground fog was considered "good weather" for such tests.

112. DEFENDANTS conducted field tests at Fort Ord using military personnel. These field tests included a 1964 test entitled "Road Operations in a Toxic Environment" and a 1975 test code named "Grand Plot III," which was concerned with twelve common chemical defense tasks. One purpose of these tests appears to have been to test nuclear, biological, and chemical protective clothing. Reports, some classified as SECRET, detailing the results of the Grand Plot III tests contain specific data concerning how much a soldier's performance is degraded while operating in a chemical environment. (*See, e.g.*, *Biomedical and Behavioral Research, 1975: Joint Hearings Before the Subcomm. on Health of the S. Comm. on Labor and Public Welfare and the Subcomm. on Admin. Practice and Procedure of the S. Comm. on the Judiciary, First Session of Human-Use Experimentation Programs of the Department of Defense and Central Intelligence Agency*, 94th Cong. (1975) at 621; Office of the Surgeon General, U.S. Army, Medical Aspects of Harsh Environments, Vol. I (2001) at 12).

113. The CIA, which referred to Edgewood as EARL (Edgewood Arsenal Research Labs), Department of Defense, and Special Operations Division of the U.S. Army were actively involved in human experimentation, which used soldiers as test subjects. The CIA's involvement violated its Charter, which restricts or forbids domestic CIA activities. *See* 50 U.S.C. § 403-3(d)(1).

2. The CIA and Other DEFENDANTS Hatch Project MKULTRA

114. The U.S. Supreme Court's decision in *Feres* emboldened DEFENDANTS dramatically to expand the use of military personnel as test subjects, confident that they would be insulated from liability. In April 1953, Richard Helms, the CIA's Acting Deputy Director of Plans, proposed that the CIA institute a program for the "covert use of biological and chemical materials" on an ultra-sensitive basis, meaning that knowledge of its existence would be limited to senior CIA officers and that its activities and budget would be exempt from normal budget, accounting, and legislative oversight requirements. (Memorandum from Richard Helms, Acting Deputy Dir. of Plans, to Allen Dulles, Dir. of Cent. Intelligence (Apr. 3, 1953) (copy attached at Tab A to a 1963 Report of Inspection of MKULTRA by CIA Inspector General J.S. Earman (the "1963 CIA IG Report," a true copy of which is attached as Exhibit B hereto)); *see* Exh. B at B-029-B-042.) (Helms was later convicted of lying to Congress regarding the CIA's role in the attempted overthrow of President Salvador Allende in Chile.)

115. On or around April 13, 1953, CIA Director Allen Dulles approved Helms's proposal and a covert CIA mind-control and chemical interrogation research program known as "MKULTRA" was created. (Memorandum from Allen Dulles, Dir. of Cent. Intelligence, to Deputy Dir. of Admin. (Apr. 13, 1953); *see* Exh. B at B-038-B-039; *see also* Exh. B at B-040.) "Through the course of MKULTRA, CIA sponsored numerous experiments on unwitting humans." (The Advisory Committee on Human Radiation Experiments (ACHRE), Interim Report of ACHRE (Oct. 21, 1994) at App. E.) MKULTRA testing was conducted at Edgewood Arsenal together with other sites such as Fort McClellan, Alabama, Fort Benning, Georgia, and Fort Bragg, North Carolina. The CIA also contracted with Fort Detrick, which conducted a series of experiments using human subjects, one of which was known as "Project White Coat."

116. The MKULTRA projects were under the control of the Chemical Division, within the Technical Services Division of the CIA. Beginning in 1951, Dr. Sidney Gottlieb became the director of the Chemical Division. During testimony he gave to Congress in 1977, Dr. Gottlieb claimed that the creation of MKULTRA was inspired by reports of mind-control work in the Soviet Union and China. He stated that the mission was "to investigate whether and how it was possible to modify an individual's behavior by covert means." (*Human Drug Testing by the CIA, 1977: Hearings on S. 1893 Before the Subcomm. on Health and Scientific Research of the S. Comm. on Human Resources*, 95th Cong. (1977) at 169.)

117. A secret arrangement devoted a percentage of the CIA budget to MKULTRA. For instance, in 1953, the MKULTRA Director, Dr. Sidney Gottlieb, was granted six percent of the Technical Services Section's research and development budget without any meaningful oversight or accounting. (Exh. B at B-030, B-034.) MKULTRA, the "funding vehicle," soon established over 149 subprojects that involved experiments using drugs on human behavior, lie detectors, hypnosis, and electric shock. The CIA also enlisted the cooperation of over 44 colleges and universities, 15 research foundations, 12 clinics or hospitals, and 3 prisons. The CIA established front organizations to channel funds to institutions conducting or assisting in the experiments using benign, descriptive names such as the "Society for the Investigation of Human Ecology."

118. The calculating mindset behind MKULTRA was revealed in a national security assessment prepared for President Eisenhower in 1954 entitled "Report on the Covert Activities of the Central Intelligence Agency," which urged:

> If the United States is to survive, long-standing American concepts of "fair play" must be reconsidered. We must . . . learn to subvert, sabotage, and destroy our enemies by more clever, more sophisticated, and more effective methods than those used against us. It may become necessary that the American people will be acquainted with, understand and support this fundamentally repugnant philosophy.

(James H. Doolittle, et al., Report on the Covert Activities of the Central Intelligence Agency (Sept. 30, 1954) at 2-3.)

119. On February 26, 1953 — during the same year that MKULTRA began — the CIA and DOD prepared and issued a directive that purported to bring the U.S. government in

compliance with the 1947 Nuremberg Code on medical research (the "1953 Wilson Directive"). The 1953 Wilson Directive, a true copy of which is attached as Exhibit C hereto, initially was classified as "top secret" and provided in relevant part that:

a. "The voluntary consent of the human subject is absolutely essential," and that "the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior forms of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him to make an understanding and enlightened decision," [which requires that he know] "the nature, duration, and purpose of the experiment; the method and means by which it is to be conducted; all inconvenience and hazards reasonably to be expected; and the effects upon his health or person which may possibly come from his participation in the experiment" (Exh. C at C-001-C-002);

b. "The number of volunteers used shall be kept to a minimum . . ." (Exh. C at C-002);

c. "The experiment should be so designed and based on the results of animal experimentation and a knowledge of the natural history of the disease or other problem under study . . ." (Exh. C at C-002);

d. "The experiment should be so conducted as to avoid all unnecessary physical and mental suffering and injury" (Exh. C at C-002);

e. "The experiment should be conducted only by scientifically qualified persons. The highest degree of skill and care should be required through all stages of the experiment . . ." (Exh. C at C-003);

f. "During the course of the experiment the human subject should be at liberty to bring the experiment to an end if he has reached the physical or mental state where continuation of the experiment seems to him to be impossible," and "the scientist in charge must be prepared to terminate the experiment at any stage . . ." (Exh. C at C-003); and

g. "In each instance in which an experiment is proposed . . ., the nature and purpose of the proposed experiment and the name of the person who will be in charge of such experiment shall be submitted for approval to the Secretary of the military department in which the proposed experiment is to be conducted," and no experiment "shall be undertaken until such Secretary has approved in writing the experiment proposed . . ." (Exh. C at C-003).

120. The classification of the 1953 Wilson Directive as "Top Secret" and later "Secret" rendered it unknown to Plaintiffs, other "volunteers," and the vast majority of the managers of the human experimentation program. In fact, the existence of the 1953 Wilson Directive was kept secret from researchers, subjects and policymakers for over two decades, and the implementing instructions to the field for the 1953 Wilson Directive were delayed, and monitoring and enforcement of the directive were almost non-existent.

121. Following a series of revelations concerning MKULTRA and other unethical CIA practices, President Gerald Ford issued Executive Order 11905 on Foreign Intelligence Activities in February 1976, which prohibited "experimentation with drugs on human subjects, except with the informed consent, in writing and witnessed by a disinterested third party." (Exec. Order 11905 §5(d).)

122. On or about April 19, 1979, the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, Department of Health, Education and Welfare published a report pursuant to the National Research Act, which set forth basic ethical principles and guidelines for the protection of human subjects in biomedical and behavioral research (the "Belmont Report").

123. On or about December 4, 1981, President Reagan issued Executive Order 12333, which governed the conduct of U.S. intelligence activities. Section 2.10 of which, entitled "Human Experimentation," provided:

> No agency within the Intelligence Community shall sponsor, contract for or conduct research on human subjects except in accordance with guidelines issued by the Department of Health and Human Services. The subject's informed consent shall be documented as required by those guidelines.

124. On or about January 7, 1983, DEFENDANT DOD issued Directive No. 3216.2 regarding the Protection of Human Subjects in DOD-Supported Research, which extended basic procedures of the 1953 Wilson Directive and applied to all DOD-supported research, development, tests, evaluations, and clinical investigations by DOD and DOD contractors.

125. On June 30, 1953, the Department of the Army Office of the Chief of Staff issued a CONFIDENTIAL Memorandum, numbered Item 3247, concerning Use of Volunteers in Research. This Memorandum echoed the Wilson Directive and set forth opinions of the Judge Advocate General that furnished "specific guidance for all participants in research in atomic, biological and/or chemical warfare defense using volunteers." Among other things, the guidelines established in this Memorandum provided that:

a. Agents used in research must have several "limiting characteristics," including "[n]o serious chronicity anticipated," "[e]ffective therapy available," and an "[a]dequate background of animal experimentation."

b. "As added protection for the volunteers, the following safeguards *will be provided*: . . . . Medical treatment and hospitalization *will be provided* for all casualties of the experiments as required." (Emphasis added.)

126. On or about March 26, 1962, the Department of the Army issued Army Regulation 70-25, concerning the Use of Volunteers as Subjects in Research ("AR 70-25"). AR 70-25 prescribed policies "governing the use of volunteers as subjects in Department of Army research, including research in nuclear, biological and chemical warfare, wherein human beings are deliberately exposed to unusual or potentially hazardous conditions." AR 70-25 set forth certain "basic principles" that "must be observed to satisfy moral, ethical, and legal concepts." The first basic principle listed is that "Voluntary consent i[s] absolutely essential." In furtherance of that basic principle, AR 70-25 instructs (among other things) that:

a. the volunteer "must have sufficient understanding of the implications of his participation to enable him to make an informed decision, so far as such knowledge does not compromise the experiment"; and

b. the volunteer "will be fully informed of the effects upon his health or person which may possibly come from his participation in the experiment."

127. Another basic principle set forth by AR 70-25 is that volunteers "will have no physical or mental diseases which will make the proposed experiment more hazardous for them than for normal healthy persons."

128. AR 70-25 also mandates that "[a]s added protection for volunteers, the following safeguards *will be provided*: . . . Required medical treatment and hospitalization *will be provided* for all casualties." (Emphasis added.)

129. In June 1991, the same basic principles contained in the 1953 Wilson Memorandum were propounded in regulations issued by DEFENDANT DOD. *See* 32 C.F.R. Part 219. This set of regulations is generally referred to as the "Common Rule," a denomination that is also used in this Complaint.

130. DEFENDANT DOD issued a series of directives adopting or certifying the Common Rule in Directives 3216.02 ("Protection of Human Subjects and Adherence to Ethical Standards in DOD-Supported Research," March 25, 2002) and 6200.2 ("Use of Investigational New Drugs for Force Health Protection," August 1, 2000). The directives, regulations (including, but not limited to, AR 70-25) and other governmental actions regarding the Common Rule, the Belmont Report and the 1953 Wilson Memorandum are sometimes referred to collectively as the "Official Directives." Throughout the period of time encompassed by this Complaint, the basic ethical principles memorialized in the Official Directives did not change. However, what did markedly change is the willingness of government officials to ignore or depart from ethical norms or circumvent procedures or mechanisms to patrol or monitor compliance with such norms.

131. The rationale for DEFENDANTS' policy of secrecy regarding its human experimentation program was summarized by Atomic Energy Commission's Colonel O. G. Haywood: "It is desired that no document be released which refers to experiments with humans and might have adverse effect upon on public opinion or result in legal suits. Documents covering such work field should be classified 'secret.'" (Memorandum from Col. O.G. Haywood,

Jr., U.S. Army Corps of Eng'rs, U.S. Atomic Energy Comm'n, to U.S. Atomic Energy Comm'n (Apr. 17, 1947).)

132. The links between the Army's Edgewood Arsenal and the CIA were close. Many scientists who worked at Edgewood, such as Dr. Ray Treichler, or under Edgewood contracts were on the CIA's payroll. Importantly, the CIA funded Edgewood research for over 20 years. The CIA financed, directed, and used the information derived from the tests at Edgewood for their own purposes. At least three CIA officers were members of DOD's Committee on Medical Sciences ("CMS") from 1948 until 1953. Reputedly, many of the Army officers running the Edgewood experiments were actually CIA agents. DEFENDANTS did not comply with the protocols established in the 1953 Wilson Directive or the Official Directives in their conduct of the human experimentation program. Rather, DEFENDANTS continued to flagrantly, repeatedly and deliberately flout the safeguards in the Official Directives and international law, depending on secrecy to operate with impunity.

133. The 1963 CIA IG Report by J.S. Earman (*see supra* ¶ 114) listed the following activities as having been "appropriate [for] investigation" under the MKULTRA charter: radiation, electro-shock, various fields of psychology, psychiatry, sociology, anthropology, graphology, harassment substances, and paramilitary devices and materials. (Exh. B at B-006.) Ongoing activities as of 1963 included "projects in offensive/defensive [categories] BW, CW [biological and chemical weapons] and radiation," "petroleum sabotage," "defoliants," and "devices for remote measurement of physiological processes." (Exh. B at B-024.) The 1963 CIA IG Report noted that "original charter documents specified that TSD [Technical Services Division] maintain exacting control of MKULTRA activities," but that "redefinition of the scope of MKULTRA is now appropriate." (Exh. B at B-006.)

134. Major program elements of MKULTRA and its progeny have never been publicly revealed. For example, key parts of the 1963 CIA IG Report were redacted, including all information concerning one of the two major MKULTRA programs. (Exh. B at B-003, B-005, B-030, and B-033.)

135. The 1963 CIA IG Report found that DEFENDANTS had pursued a policy of "minimum documentation," which "precluded use of routine inspection procedures." (Exh. B at B-007.) Only two individuals in TSD had "full substantive knowledge of the program, and most of that knowledge is unrecorded." (Exh. B at B-008.)

136. The managers of MKULTRA concluded in 1955 that the "testing of materials under accepted scientific procedures" would "fail[] to disclose the full pattern of reactions and attributions that may occur in operational situations." Therefore, DEFENDANTS initiated a "program for covert testing of materials on unwitting U.S. Citizens" in 1955. (Exh. B at B-008-B-009.)

137. By the early 1960s MKULTRA had evolved into a "highly elaborated and stabilized . . . structure" (Exh. B at B-009), which was divided into the following key parts:

a. Securing new materials through "standing arrangements with specialists in universities, pharmaceutical houses, hospitals, state and federal institutions, and private research organizations." (Exh. B at B-009.) For example, using Dr. Charles F. Geschickter as a cover under Subproject 35, the CIA secretly arranged for the financing and construction of a wing of the Georgetown University Hospital in 1950 to provide a secure locale for clinical testing of biological, radiological and chemical substances on human beings. (Advisory Committee on Human Radiation Experiments (ACHRE), Interim Report of ACHRE (Oct. 21, 1994) at App. E.) The so-called "Geschickter Fund for Medical Research" served as the "principal 'cut-out source' for CIA's secret funding of numerous MKULTRA human experiment projects" (*id.* at FN 6), and insured that the "Agency's [CIA's] sponsorship of sensitive research projects would be completely deniable since no connection would exist between the University and Agency." (Memorandum from Chief, Deputy Dir., Plans, Technical Servs. Section, CIA, to Dir. of Cent. Intelligence (Allen Dulles) (Nov. 15, 1954) at Tab A (Subproject 35 - Project MKULTRA, T.S. 101077A).) A "cut-out" is a straw man or cover mechanism designed to hide the true ownership or financing of an operation, project or activity. This arrangement became necessary when researchers complained that existing cover mechanisms exposed scientists and other researchers

to "unnecessary and highly undesirable personal risk[s]" as their connection to the projects "might seriously jeopardize their professional reputations." (*Id.*)

b. The CIA also financed studies by Dr. D. Ewen Cameron at the Department of Psychiatry, McGill University, in the 1950s, which explored methods to erase memory and rewrite the psyche, using patients being treated for conditions such as post-partum depression, marital problems, and anxiety. Dr. Cameron used a combination of intense electro-shocks, sensory deprivation, isolation, drugs such as LSD and insulin (to induce extended sleep). Eventually, the subjects regressed to a vegetative, pre-verbal or infantile state. Once this "depatterning" had occurred, Dr. Cameron forced patients to listen to repetitive pre-recorded messages that contained principles intended to guide future behavior such as, "You are a good mother," which he referred to as "psychic driving." Most of Dr. Cameron's patients emerged from his therapies with more serious symptoms and problems, including memory loss, hallucinations, intense anxiety, and loss of touch with reality.

c. Grants of funds were made "under ostensible research foundation auspices to the specialists located in the public or quasi-public institutions," therefore "conceal[ing] from the institution the interest of [the] CIA." (Exh. B at B-009.) "The system in effect 'buys a piece' of the specialist in order to enlist his aid in pursuing the intelligence implications of his research," including "systematic search of the scientific literature, procurement of materials, their propagation, and the application of test dosages to animals and under some circumstances to volunteer human subjects." (Exh. B at B-010.) This "funding of sensitive MKULTRA projects by sterile grants in aid . . . [was] one of the principal controversial aspects of this program." (Exh. B at B-010.) In addition to the CIA, the Department of Health, Education and Welfare, and the Law Enforcement Assistance Administration provided funding for experiments involving behavior modification and mind control.

d. The intensive testing of substances on human subjects by "physicians, toxicologists, and other specialists in mental, narcotics and general hospitals and in prisons, who are provided the products and findings of the basic research projects . . . . Where health permits, test subjects are voluntary participants in the program." (Exh. B at B-011-B-012.). One series of

experiments on prisoners took place at the California Medical Facility at Vacaville, where psychiatrists administered anectine, a strong muscle relaxant which deprives the victim of all muscular control and arrests breathing, and induces strong sensations of suffocation and drowning.

e. The "final phase of testing of MKULTRA materials involves their application to unwitting subjects in normal life settings." (Exh. B at B-012.) To accomplish this, the CIA entered into an "informal arrangement" with individuals in the Bureau of Narcotics ("FBN" - ("DEA")) in 1955 with the understanding that the FBN would "disclaim all knowledge and responsibility in the event of a compromise." (Exh. B at B-013.) FBN operated safehouses in both San Francisco and New York where they secretly administered experimental substances to the patrons of prostitutes. (Exh. B at B-013-B-014; *see also Project MKULTRA, The CIA's Program of Research in Behavioral Modification*, 95th Cong. (1977) at 57 (J. Gittinger), 115 (R. Lashbrook, M.D.), and 184 (S. Gottlieb, M.D.).) The FBN maintained "close working relations with local police authorities which could be utilized to protect the activity in critical situations." (Exh. B at B-015.) The brothel experiments were code-named "Operation Midnight Climax."

f. The final step in the "research and development sequence" was to "deliver[] MKULTRA materials into the MKDELTA control system governing their employment in clandestine operations." (Exh. B at B-015.) "The final stage of covert testing of materials on unwitting subjects is clearly the most sensitive aspect of MKULTRA." (Exh. B at B-016.) "Present practice is to maintain no records of the planning and approval of test programs." (Exh. B at B-016.)

138. Ironically, the operational returns of MKULTRA were scanty. The products were rarely used in field operations, and had limited success where used. (Exh. B at B-018-B-019; *see also Project MKULTRA, The CIA's Program of Research in Behavioral Modification*, 95th Cong. (1977) at 43.) "There is an extremely low rate of operational use of the controlled materials." (Exh. B at B-023.) One of the reasons for nonuse was that "some case officers have basic moral objections to the concept of MKDELTA and therefore refuse to use the materials." (Exh. B at B-021-B-022.)

139. Under MKULTRA and its progeny, at least 1,000 "volunteers" were given up to 20 doses of LSD to test the drug as an interrogation weapon, even though the tests were known by Edgewood scientists to result in serious physical and psychological problems. Dr. Van Sim, a physician responsible for the human subjects used at Edgewood, previously worked at the British Chemical Defense Establishment at Porton Down, where similar experiments had been conducted on humans. After returning to the United States, Dr. Van Sim warned that the British experiments had shown that "during acute LSD intoxication the subject is a potential danger to himself and to others; in some instances a delayed and exceptionally severe response may take place and be followed by serious after effects lasting several days."

140. Despite this knowledge, test subjects at Edgewood and elsewhere were given LSD and other drugs and then sometimes subjected to hostile questioning. Moreover, the test subjects were not given any specific information about the nature of the drugs they were receiving, which exacerbated the state of the victims' anxiety while on mind-altering agents.

141. Some of the experiments at Edgewood and other sites were designed to replicate some of those that were conducted by Nazi doctors in concentration camps. American psychiatrist Paul Hoch's experiments on mental patients in New York, where he was working on Edgewood projects supervised by DEFENDANTS and as a CIA consultant, killed one patient with a mescaline injection (Harold Blauer) and seriously injured another. As the federal judge concluded in a case brought by Mr. Blauer's daughter, "the real reason Blauer died was not medical incompetence in the administration of a therapeutic or diagnostic drug, but the fact that he was used as a human guinea pig." *Barrett v. United States*, 660 F. Supp. 1291, 1308 (S.D.N.Y. 1987). MKULTRA's experiments also resulted in the death of Frank Olson, an Army scientist who mysteriously fell out of a hotel window after members of the CIA secretly slipped LSD into his drink. A 1994 GAO publication also notes that during the course of the extensive radiological, chemical, and biological research programs conducted or sponsored by DEFENDANTS, some participants died. (Frank C. Conahan, Assistant Comptroller Gen., U.S. Gen. Accounting Office, Human Experimentation: An Overview on Cold War Era Programs,

Testimony Before The Legis. and National Security Subcomm. of the H. Comm. on Government Operations, GAO/T-NSIAD-94-266 (Sept. 28, 1994) at 1.)

142. Sporadic information regarding DEFENDANTS' activities began to circulate and the 1963 CIA IG Report recommended termination of unwitting testing. However, the CIA's Deputy Director for Research, Richard Helms, who later became the CIA Director, surreptitiously continued the program under a new name in 1964: MKSEARCH. The MKSEARCH project attempted, among other things, to produce a perfect truth serum for use in interrogating suspected Soviet spies during the Cold War, and generally to explore any other possibilities of mind control.

143. DEFENDANTS adopted a policy to create only "sparse documentation" of the projects, with a preference that results of experiments be "conveyed verbally." Nor did DEFENDANTS prepare adequate documentation of the medical records of test participants or follow-up to determine long-term health effects. "Present [CIA] practice is to maintain no records of the planning and approval of test programs." (Exh. B at B-016.) Medical records regarding the exposure of hundreds of "volunteers" that were maintained by the Medical Research Laboratory mysteriously disappeared in the 1960s. And, shortly before he left office in 1973, CIA Director Richard Helms authorized the destruction of the CIA's files regarding human experimentation and Dr. Gottlieb's drug files, the intent of which was to prevent discovery of the embarrassing and indefensible details of their crimes. As a result, most of the records documenting the human experimentation program are not available.

144. The Court should draw adverse inferences from DEFENDANTS' document destruction, redactions, spoliations, and other wrongful acts described herein.

145. DEFENDANTS also developed a protocol to classify any documents that referred to the human experimentation program based upon concerns that they might have "an adverse effect on public opinion or result in legal suits." (*See* 1947 Haywood memo, *supra* ¶ 131.) DEFENDANTS also ordered that:

> Precautions must be taken not only to protect operations from exposure to enemy forces but also to conceal these activities from the American public in general. The knowledge that the Agency [CIA] is engaging in unethical and illicit activities would have

> serious repercussions in political and diplomatic circles and would be detrimental to the accomplishment of its mission.

(CIA Inspector General's Survey of Technical Servs. Div., 1957, as cited in S. Rep. No. 94-755 ("Church Committee Report"), Book 1, §XVII (1976) at 394; *see Project MKULTRA, The CIA's Program of Research in Behavioral Modifications*, 95th Cong. (1977) at 74.) A July 26, 1963 Memorandum to the CIA Director also concluded that "[t]he concepts involved in manipulating human behavior are found by many people both within and outside the Agency [CIA] to be distasteful and unethical." (Memorandum from J.S. Earman, Inspector General, CIA, to Dir. of Cent. Intelligence (July 26, 1963) (attaching the 1963 CIA IG Report); *see* Exh. B at B-002.)

146. Documents from the CIA's "Family Jewels" declassified file establish that drugs that had been rejected by private manufacturers were tested on soldiers at Edgewood. Specifically, as explained in the CIA's own documents: "the reported [behavioral] drug was part of a larger program in which the Agency had relations with commercial drug manufacturers, whereby they passed on drugs rejected because of unfavorable side effects. The drugs were screened with the use of ADP equipment, and those selected for experimentation were tested at [redacted] using monkeys and mice. Materials of having [sic] further interest, as demonstrated by this testing, were then tested at Edgewood, using volunteer members of the Armed Forces." (Memorandum from WVB to Executive Sec'y, CIA Mgmt. Comm. (undated), "CIA Family Jewels" at 00413.)

147. In the decades following the 1953 Wilson Directive, DEFENDANTS' human experimentation program continued and rapidly expanded under a shifting series of secret code names, changes that usually were adopted to facilitate statements by DEFENDANTS denying that recent or earlier programs such as MKULTRA were ongoing, including the following:

a. DEFENDANTS changed the program name from MKULTRA to MKSEARCH after release of the CIA IG's 1963 Report, which was highly critical of MKULTRA;

b. the OFTEN and CHICKWIT projects, jointly conducted by the Army and CIA at the Edgewood Arsenal, but also funded by the CIA, which involved the collection of information about foreign pharmaceuticals and experiments with human subjects;

c. the BLUEBIRD and ARTICHOKE projects, where DEFENDANTS researched hypnosis, drugs such as sodium pentothal, the stimulant Desoxyn (methamphetamine), and bulbocapnine (an alkaloid), which facilitate recovery of information under hypnosis, and other substances that might aid in the interrogation of prisoners of war and defectors;

d. the MKDELTA project, a mind control research and development program devised by DEFENDANTS that concentrated upon the use of biochemicals in clandestine operations;

e. the MKNAOMI project, a successor to MKDELTA, which focused on the research, testing, manufacture and means of diffusion or distribution of lethal and non-lethal biological agents and materials;

f. the CHATTER project, which focused on the development and use of truth serum and other interrogation drugs such as anabasis, aphylla, scopolamine, and mescaline; and

g. a series of related or follow-on projects with code names including "PANDORA," "SPELLBINDER," "MONARCH," "SLEEPING BEAUTY," as well as others. Hereinafter, DEFENDANTS' group of experiments and programs involving human subjects, including DEFENDANTS' human experimentation conducted at Edgewood or under the direction of Edgewood personnel, shall collectively be referred to as the "Human Test Series."

148. The MKULTRA and MKSEARCH project sponsors operated "safe houses" in New York City and San Francisco, where drugs were surreptitiously administered to human subjects lured to the site by prostitutes, and the effects were witnessed and/or recorded on film as part of Subprojects 3, 16, 42, 132, and 149. Ray Treichler was a CIA Monitor for this operation. On information and belief, DEFENDANTS "were engaged in the involuntary drugging of unwitting suspects in San Francisco" in settings outside of these "safe houses" as well. *See, e.g.*, *Ritchie v. United States*, No. C 00-03940 MHP, 2004 WL 1161171, at *1-2 (N.D. Cal. May 24, 2004). DEFENDANTS also operated in Mill Valley, California, as part of Subproject 42.

Experiments also were conducted on aged veterans in VA domiciliaries. DEFENDANTS often used surrogates in the private sector to perform many of these experiments.

149. DEFENDANTS formally launched Sub-Project 119 in 1960, the purpose of which was to research, study, and interpret "bioelectric signals from the human organism, and activation of human behavior by remote means." (Memorandum for the Record re MKLUTRA Subproject 119 from Technical Servs. Div., Research Branch, CIA (Aug. 17, 1960).) This Sub-Project involved the installation of "permanent septal electrodes . . . to determine the locus in which stimulations will produce specific reactions," first in animals and later in humans. (Proposal Materials re MKULTRA Subproject 106, CIA (Jan. 1961) at 106-1.) The Army's own report of the health effects of LSD experiments concluded in 1980 that: "Early experimental studies by Monroe and Heath and associates using electrodes implanted deeply in the brains of human subjects demonstrated the occurrence of spiking (epileptiform) activity in portions of the limbic system (hippocampus, amygadala [sic] and septal area) in response to LSD administration." (U.S. Army Med. Dep't, LSD Follow-Up Study Report (Oct. 1980) at 34-35.) DEFENDANTS' research program continued under various other code names, including Subproject 106 (in 1962), and others, and DEFENDANTS used an unidentified "cut-out and cover" to run the program and to camouflage their role. DEFENDANTS classified this work as "Agency Top Secret," and DEFENDANTS have either destroyed or classified the results of the Sub-Project 119 and 106 studies, as well as their progeny.

150. Dr. Jose Delgado began to research the use of pain and pleasure for mind control during WWII. Later, as Director of Neuropsychiatry at Yale University Medical School, he refined the design of his "transdermal stimulator," a computer controlled, remote neurologic transceiver and aversion stimulator. Dr. Delgado was especially interested in Electronic Stimulation of the Brain. Dr. Delgado discovered that he could wield enormous power over his subject by implanting a small probe into the brain. Using a device he called the "stimoceiver," which operated by FM radio waves, he was able to electrically orchestrate a wide range of human emotions, including rage, pleasant sensations, elation, deep thoughtful concentration, odd feelings, super relaxation (an essential precursor for deep hypnosis), colored visions or

hallucinations, lust, fatigue and various other responses. Dr. Delgado researched and perfected many of his devices under the auspices of MKULTRA Sub-Project 95, in which he was joined by Dr. Louis Jolyon West, who had mastered a technology called "RHIC-EDOM." RHIC means "Radio Hypnotic Intracerebral Control," and EDOM means "Electronic Dissolution of Memory." These implants could be stimulated to induce a post-hypnotic state. EDOM involves the creation of "Missing Time" or the loss of memory.

151. Dr. Delgado ominously wrote: "*The individual may think that the most important reality is his own existence, but this is only his personal point of view. . . . This self-importance . . . lacks historical perspective. [The notion that man has]* ***the right to develop his own mind*** *. . . . [is a] kind of liberal orientation [that] has great appeal, but . . . its assumptions are not supported . . . by . . . studies."* (Jose M.R. Delgado, M.D., *Physical Control of the Mind, Toward a Psychocivilized Society* (1969) at 236, 239 (emphasis added).)

152. Additional studies, conducted by Dr. Ewen Cameron and funded by the CIA, were directed towards erasing memory and imposing new personalities on unwilling patients. Cameron discovered that electroshock treatment caused amnesia. He set about a program that he called "de-patterning," which had the effect of erasing the memory of selected patients. Further work revealed that subjects could be transformed into a virtual blank machine (Tabula Rasa) and then be re-programmed with a technique which he termed "psychic driving."

153. From 1965 through to 1970, Defense Advanced Projects Research Agency (DARPA), with up to 70-80% funding provided by the military, set in motion operation PANDORA to study the health and psychological effects of low intensity microwaves with regard to the so-called "Moscow signal." This project appears to have been quite extensive and included (under U.S. Navy funding) studies demonstrating how to induce heart seizures, create leaks in the blood/brain barrier and production of auditory hallucinations. Despite attempts to render the Pandora program invisible to scrutiny, FOIA filings revealed memoranda of Richard Cesaro, Director of DARPA, which confirmed that the program's initial goal was to discover whether a carefully controlled microwave signal could control the mind. Cesaro urged that these studies be made for potential weapons applications.

154. The CIA financed further studies and subprojects under Project MKULTRA that took place at Stanford University in Palo Alto, California, between 1953 and at least 1962. These studies included:

- Subproject 2 (1953-1958): to study the "synergistic action of drugs which may be appropriate for use in abolishing consciousness through animal experimentation" (referred to as the "knockout" problem) and a "survey of methods to enable the administration of drugs to patients without their knowledge." Animal testing was indicated in Subproject 2 proposals "as a precondition to human testing."
- Subproject 56 (1956-1960): to study the "effectiveness of sympathominetic drugs in delaying" alcohol absorption.
- Subproject 70 (1957-1961): to develop a "temporary incapacitating drug" and "define mechanisms involved in producing involuntary sleep and related unconscious states" (referred to as the "K problem"). Ray Treichler served as a CIA Monitor for Subproject 70.
- Subproject 71 (1957-1961): to conduct "clinical testing and evaluation of anti-interrogation drugs" and develop a "miniaturized polygraph."
- Subproject 72 (1956-57): to study "neurophysiologic and pharmacological effects of central nervous system antagonists and synergists."
- Subproject 85 (1958-1959): to establish and substantiate the "true identity" of individuals through blood groupings.
- Subproject 86 (1958-1959): to design and build miniature polygraph machines for potential use on unwitting subjects.
- Subproject 91 (1959-1962): to perform "pre-clinical pharmacological studies required to develop new psychochemicals and to test the promising drugs" on animals. Ray Treichler was a CIA Monitor for Subproject 91.

The CIA spent more than half a million dollars funding these projects. On information and belief, additional MKULTRA projects funded by the CIA took place at St. Francis Memorial Hospital in San Francisco (Subprojects 124 and 140) and at Menlo Park Veterans Hospital.

155. Notwithstanding the international standards identified above, DEFENDANTS' experiments on human subjects were conducted shrouded in secrecy, and have been characterized by stealth, evasion, treachery, and deceit. Most of the subjects have been collected under programs that operate under the umbrella of "non-lethal" or "less than lethal" weapons, and include a wide assortment of different technologies based upon electro-magnetic radiation, microwaves, lasers, infrasound, acoustic and polysound generators, and others.

3. Secrecy Oaths

156. "Volunteers" in the Edgewood and other experiments were in most instances required to sign a statement agreeing that they would:

> not divulge or make available any information related to U.S. Army Intelligence Center interest or participation in the [volunteer program] to any individual, nation, organization, business, association, or other group or entity, not officially authorized to receive such information. I understand that any action contrary to the promises of this statement will render me liable to punishment under the provisions of the Uniform Code of Military Justice.

The "volunteers," including many or all of the Individual Plaintiffs, were also generally forced to sign forms consenting to the videotaping of the experiments.

157. In fact, DEFENDANTS' form misled the "volunteers" by implying that the Uniform Code of Military Justice applied to them after their discharge from service.

158. The existence of their secrecy oaths not only interfered with participants' ability to obtain health care and other necessary services, but to seek redress or assert claims. For example, during telephone counseling hours over the years, Swords has provided initial counseling services to multiple Vietnam-era veterans who were unwilling to share information relevant to possible VA claims because of perceived secrecy obligations. In many cases, these secrecy obligations hindered Swords' efforts to provide — and in some cases prevented Swords from being able to provide — comprehensive legal services to these veterans.

159. In 2003, the VA concluded that "most of the volunteer subjects of these experiments conducted by the U.S. Military were told at the time that they should never reveal the nature of the experiments, and apparently, almost to a man, they kept this secret for the next 40 or more years."

160. In approximately September 2006, some, but not all, Edgewood recipients, received form letters from the VA advising them that notwithstanding their secrecy oaths, the DOD had authorized them to discuss exposure information with their health care providers, but warning them not to "discuss anything that relates to operational information that might reveal chemical or biological warfare vulnerabilities or capabilities." In addition, the DOD has maintained a web site that contains incomplete and misleading information concerning the human experimentation program.

4. Purported "Consent" by Human Test Subjects

161. Many "volunteers" used as test subjects at Edgewood and elsewhere were duped into volunteering to test chemical warfare clothing and gas masks and instead were secretly given nerve gas, psychochemicals, incapacitating agents, and hundreds of other dangerous drugs. The "volunteers" were given no information about the chemicals used on them in the experiments, no warning as to the potential health risks, and no or inadequate follow-up health care to determine the effects (and resulting injuries) caused by the tests — despite the government's knowledge and conclusion that informed, voluntary consent was necessary.

162. Indeed, informed consent was precluded by DEFENDANTS' own plan, which noted that "[c]are should be exercised not to mention to the prospect the exact properties of the material that lends itself to intelligence application." Moreover, DEFENDANTS withheld information from the "volunteers" concerning health problems that they had discovered from examinations and tests at Edgewood, and Edgewood medical records for participants were separated from the participants' service medical files, and kept under lock and key.

163. The Medical Volunteer Handbook of the U.S. Army purportedly given to test participants in the late 1950s and 1960s falsely represented that the tests involved "non-hazardous exposure to compounds as well as the evaluation of methods, procedures and equipment utilized by the soldier in the field." (U.S. Army Chemical Warfare Labs., U.S. Army Chemical Center, MD, The Medical Research Volunteer Program (U), CWL Special Pub. 2-13 (June 1958) at 1.) DEFENDANTS' policy toward uncooperative "volunteers" was reflected in a publication

distributed to the "volunteers" entitled "What is Expected of a Volunteer," the 1972 edition of which stated:

> It is essential that you show up on time for admission to the wards and for testing . . . . As for the testing, this of course is what you are here for . . . . Failure to show up on time for admission or the test will usually result in your being returned to your permanent duty station.

164. The Army's Inspector General concluded that although there was evidence that some form of the informed consent policy was eventually made known to commanders and investigators working with human subjects, often in practice "consent was relegated to a simple, all-purpose statement to be signed by the volunteer." (1976 Army IG Report at 78.) Further, even in instances where a more detailed form was used, "the intent of the informed consent policy did not appear to have been fulfilled, since the revised form did not require disclosure of the chemical agent to be used or the full effects of the drug, nor did the publication appended to the volunteer agreement form contain that information." (*Id.* at 80.)

165. The Inspector General noted that although, with few exceptions, human subjects who were used for chemical testing had technically "volunteered," the issue was "not whether the subjects volunteered, but whether they were provided sufficient information to permit an enlightened decision." (*Id.* at 82.) On this point, the Inspector General's report concluded: "volunteers were not fully informed, as required, prior to their participation; and the methods for procuring their services, in many cases, appeared not to have been in accord with the intent of the Department of the Army policies governing the use of volunteers in research." (*Id.* at 87.) Indeed, "in spite of the clear guidelines concerning the necessity for 'informed consent,' there was a willingness to dilute and in some cases negate the intent of the policy." (*Id.* at 40.) The consents signed by "volunteers" included the words "I certify that . . . I [am] completely aware of all hazards." Yet, DEFENDANTS have admitted that even they were not aware of such hazards.

166. Further, the Army Inspector General's findings regarding consent at Edgewood were even more troubling. The report noted that "in most cases the [participation] agreement was signed prior to arrival at Edgewood Arsenal, or on the first day after arrival. In either case, it was

usually signed before the subject was selected for a specific agent test. Therefore, it was not likely that meaningful information regarding all hazards to his health were provided the volunteer prior to his signing the participation agreement." (*Id.* at 84.) Indeed, one of the purposes of the experimentation was to learn about health effects on humans, in areas which were previously unknown.

167. Indeed, in designing their LSD studies in 1956, the Army attempted to avoid the impact of "suggestion" or "placebo" effect on the observed effects by insuring that at least one control group administered LSD-25 be neither given a training lecture nor provided any information on the drug being administered.

168. Another problem with the purported "consent" by volunteers was that "inducements were offered to persuade the soldier[s] to volunteer." (*Id.* at 85.) The Inspector General identified examples of such inducements, including: a promise of a 3-day pass each weekend; better living and recreational accommodations than normally available; a guaranteed letter of commendation that would be placed in the volunteer's official personnel file; and a sense of patriotic contribution to the nation's national security. (*Id.* at 85.) The report noted that such inducements "represented substantial rewards" in the 1950s and 1960s. (*Id.* at 85.) These inducements were used to influence the prospective subject's decision by offering special privileges or rewards and thus, were contrary to the guidelines, which stated that informed consent should be given without influence over the volunteer's free choice. The "volunteers" were drawn from troops located at Army bases throughout the country. Plaintiffs believe, and expect that discovery will confirm, that these inducements were offered to — and material misstatements of fact concerning DEFENDANTS' human experimentation program were made to — troops located within this District and that DEFENDANTS drew "volunteers" from this District for their human experimentation programs. For instance, discovery to-date has revealed that in 2006 the VA sent 135 notification letters to California veterans of DEFENDANTS' human experimentation programs.

169. A 1993 GAO Report acknowledged that "[m]ilitary procedures have long required that the volunteers be fully informed of the nature of the studies in which they participate and the

foreseeable risks. However, prior to 1975, these procedures were not always followed." (U.S. Gen. Accounting Office, Veterans Disability: Information from the Military May help VA Assess Claims Related to Secret Tests, GAO/NSIAD-93-89 (Feb. 1993) at 2; *see also* Frank C. Conahan, Assistant Comptroller Gen., U.S. Gen. Accounting Office, Human Experimentation: An Overview on Cold War Era Programs, Testimony Before The Legis. and National Security Subcomm. of the H. Comm. on Government Operations, GAO/T-NSIAD-94-266 (Sept. 28, 1994) at 2, 10.)

170. In 2003, the VA admitted that "[i]t would be naive to assume that there will be no lapses in compliance with human subjects protections in future studies involving human subjects."

171. DEFENDANTS have admitted that a number of their research projects were conducted "without knowledge of the host system or on unwitting subjects." (Memorandum for the Record from William V. Broe, Inspector General, CIA, to Dir. of Cent. Intelligence (May 23, 1973), "CIA Family Jewels" at 00402.)

172. The consents purportedly signed by "volunteer" soldiers were ineffective for multiple reasons including fraud in the inducement, lack of disclosure of the substances involved in the experiments, lack of specificity, duress and others. These purported "volunteer" test subjects were not told which drugs and the drug doses that they were given, what side effects to expect, and were never fully informed of the extreme physical and psychological effects these drugs would have on them.

173. DEFENDANTS have failed and refused to supply all available information to the VA concerning the exposures of "volunteers" who have filed or whose survivors have filed claims for service-connected death or disability compensation, or advised the VA that relevant records of participation had been destroyed, thereby thwarting or compromising the success of many claims.

III. CLASS ACTION ALLEGATIONS

A. Class Definition

174. The proposed Plaintiff class for purposes of all claims includes all veterans who were involved in the Human Test Series (hereinafter the "Proposed Class Members"). The proposed class does not include participants in Project 112/SHAD ("Shipboard and Hazard Defense), a separate program directed by the U.S. Army Deseret Test Center. Project 112/SHAD was conducted on ships and land to test the vulnerability of ships to chemical and biological attacks, and, with respect to tests on land, to determine how biological and chemical weapons would be affected by climate. Although members of the military were exposed to hazardous biological and chemical substances during Project 112/SHAD, the principal purpose of the program was not to test the effects of biological and chemical weapons upon human subjects, as were the veterans involved in the Human Test Series.

175. The proposed class representatives are Plaintiffs VVA and Swords to Plowshares, the Organizational Plaintiffs in this action.

176. Plaintiffs reserve the right to amend this Complaint to add additional class representatives, either before or after a Motion to Certify the Class, subject to the provisions of Rule 15 of the Federal Rules of Civil Procedure.

B. Presence of Common Issues of Fact or Law

177. The members of the Proposed Class are so numerous that joinder of all members is impracticable.

178. There are material questions of law and fact common to the proposed class, including but not limited to the following:

a. The constitutionality of DEFENDANTS' actions and activities recited above;

b. DEFENDANTS' failures to notify and timely provide medical care to the Proposed Class Members;

c. Whether DEFENDANTS have complied with the Official Directives and/or international law;

d. Whether the consent forms signed by the Proposed Class Members respecting the Human Test Series were effective or not;

e. Whether the Proposed Class Members are bound by secrecy oaths;

f. Whether DEFENDANTS are currently conducting human experiments with human subjects in violation of the Official Directives and/or international law, and, to the extent they are, whether injunctive relief should be awarded to Plaintiffs; and,

g. The applicability and effectiveness of certain defenses asserted by DEFENDANTS to the claims raised in this action, including subject matter jurisdiction, standing, sovereign immunity, statute of limitations, and others, and applicability of the doctrine of equitable estoppel and any other arguments advanced by Plaintiffs.

179. The claims of the members of or constituencies served by the Organizational Plaintiffs are typical of the claims of the Proposed Class Members, and the proposed class representatives will fairly and adequately protect the interests of the class.

180. The prosecution of separate actions by various members of the class would create a risk:

a. of inconsistent or varying adjudications with respect to Proposed Class Members that would establish incompatible standards of conduct for DEFENDANTS; and

b. that adjudications with respect to individual Proposed Class Members would, as a practical matter, be dispositive of the interests of Proposed Class Members who are not parties to such adjudications or substantially impair or impede their ability to protect their interests.

181. DEFENDANTS have acted and/or refused to act on grounds generally applicable to the Proposed Class Members, thereby making appropriate final injunctive relief and/or declaratory relief with respect to the Proposed Class Members as a whole.

FIRST CLAIM FOR RELIEF
(Declaratory Relief as to All Plaintiffs)

182. Plaintiffs reallege and incorporate herein by reference as though fully set forth, each and every allegation contained in Paragraphs 1 through 181 of this Complaint, subject to this

Court's rulings in its January 19, 2010 Order Granting in Part and Denying in Part Defendants' Motions to Dismiss and Denying Defendants' Alternative Motion for Summary Judgment (Docket No. 59).

183. Plaintiffs seek a declaration that the consent forms signed by Plaintiffs are not valid or enforceable; that Plaintiffs are released from any obligations or penalties under their secrecy oaths; that DEFENDANTS are obligated to notify Plaintiffs and other test participants and provide all available documents and evidence concerning their exposures and known health effects; and, finally, that DEFENDANTS are obligated to confer the medical care promised to Plaintiffs, and the other relief prayed for above.

184. A present controversy exists between Plaintiffs and DEFENDANTS concerning the foregoing, and Plaintiffs contend and DEFENDANTS deny that:

a. DEFENDANTS have unconstitutionally infringed on Plaintiffs' life, property and liberty rights protected by the Due Process Clause of the Fifth Amendment to the United States Constitution, which provides that "No person shall . . . be deprived of life, liberty or property without due process of law," and upon Plaintiffs' right to privacy;

b. DEFENDANTS have failed to comply with the 1953 Wilson Directive and the Official Directives;

c. The "consents," if any, obtained from Plaintiffs and other test subjects were invalid or not enforceable;

d. Plaintiffs are not bound by the secrecy oaths they took, and that such oaths are invalid; and

e. DEFENDANTS must fully comply with their duty to locate and warn all test participants.

185. A present controversy exists between Plaintiffs and DEFENDANTS in that Plaintiffs contend and DEFENDANTS deny that DEFENDANTS violated Plaintiffs' rights under the First, Fourth, Fifth and Ninth Amendments by committing the wrongful acts alleged herein.

186. A present controversy exists between Plaintiffs and DEFENDANTS in that Plaintiffs contend and DEFENDANTS deny that DEFENDANTS violated Plaintiffs' property

and liberty rights protected by the Due Process Clause of the Fifth Amendment to the United States Constitution by concealing (and continuing to conceal) the extent and nature of the tests conducted on Plaintiffs and the known or suspected effects of such experiments, and failing to provide adequate medical treatment to Plaintiffs after Plaintiffs were discharged from the military.

187. The Court should issue a declaration stating that DEFENDANTS must fully disclose to Plaintiffs complete medical information concerning all tests conducted on Plaintiffs (including any results thereof), as well as the other relief prayed for above, and stating that DEFENDANTS' duty to provide Plaintiffs with all necessary medical treatment on an ongoing basis is mandatory.

SECOND CLAIM FOR RELIEF
(Injunctive Relief as to All Plaintiffs)

188. Plaintiffs reallege and incorporate herein by reference as though fully set forth, each and every allegation contained in Paragraphs 1 through 187 of this Complaint, subject to this Court's rulings in its January 19, 2010 Order Granting in Part and Denying in Part Defendants' Motions to Dismiss and Denying Defendants' Alternative Motion for Summary Judgment (Docket No. 59).

189. Plaintiffs seek injunctive relief enjoining DEFENDANTS, and anyone in concert with them, from failing and refusing to do the following:

a. Notify Plaintiffs and all "volunteers" of the details of their participation in human experimentation programs and provide them with full documentation of the experiments done on them and all known or suspected health effects;

b. Conduct a thorough search of all available document repositories and archives, and other sources, and provide victims with all available documentation concerning the details and conduct of the human experimentation program and known or suspected health effects;

c. Provide examinations and medical care and treatment to all participants in the MKULTRA, Edgewood, and other human experiments with respect to any disease or condition that may be linked to their exposures;

d. Supply all available information to the VA with respect to any past, existing or future claims for service-connected death or disability compensation based on DEFENDANTS' human experimentation programs; and

e. To the extent violations have continued, to cease committing any violations of the Official Directives or international law.

THIRD CLAIM FOR RELIEF BY ADDITIONAL INDIVIDUAL PLAINTIFFS AGAINST ORIGINAL DEFENDANTS
(Declaratory and Injunctive Relief)

190. Plaintiffs reallege and incorporate herein by reference as though fully set forth, each and every allegation contained in Paragraphs 1 through 189 of this Complaint, subject to this Court's rulings in its January 19, 2010 Order Granting in Part and Denying in Part Defendants' Motions to Dismiss and Denying Defendants' Alternative Motion for Summary Judgment (Docket No. 59), and in its November 15, 2010 Order Granting in Part and Denying in Part Plaintiffs' Motion for Leave to File Third Amended Complaint (Docket No. 177).

Wray C. Forrest

191. Former Plaintiff Wray Forrest passed away on August 31, 2010. By leave of this Court, as set forth in its November 15, 2010 Order, two additional Plaintiffs are being added.

Tim Michael Josephs

192. Plaintiff TIM MICHAEL JOSEPHS ("Mr. Josephs") joined the U.S. Army in January 1967, after graduating from high school. Mr. Josephs was assigned to duty at Edgewood Arsenal for approximately two months in 1968 — from January 1, 1968, to February 29, 1968. Before being assigned to Edgewood Arsenal, Mr. Josephs went through basic training and advanced infantry training, and then attended Officer Candidate School for a few months.

193. After Officer Candidate School, Mr. Josephs was assigned to a holding company, which is a temporary assignment, at Fort Benning, but he anticipated the likelihood that he would be deployed to Vietnam.

194. In late 1967, Mr. Josephs saw a flyer looking for volunteers to serve at Edgewood. He was told, via an announcement at his morning formation, that volunteers at Edgewood would be testing gas masks, boots, and other clothing, and there were no risks associated with the assignment. In fact, he was told that service at Edgewood was an "elite" opportunity that he would have to apply for and not necessarily be accepted. Because Edgewood was relatively close to his hometown of Pittsburgh, Pennsylvania, Mr. Josephs believed that service there would allow him to visit home more often.

195. He was promised weekends off, but does not recall other benefits that might have been promised. However, he later received a letter of commendation from Dr. Frederick Sidell, presumably upon completion of his assignment at Edgewood.

196. Once he arrived at Edgewood, Mr. Josephs was asked to sign a participation agreement on January 3, 1968, which is a general consent form that did not state any information about the drugs or substances to be given. He was also never warned of any potentially detrimental health effects associated with the testing. Although the agreement references a document entitled "Medical Research Volunteer Program" that was purportedly "annexed" to the agreement, no such document existed. Mr. Josephs never received any documents explaining the details of the Edgewood assignment.

197. In fact, the instructions Mr. Josephs did receive were that he would "pay for it" if he ever tried to quit his assignment at Edgewood, and that he was not ever to talk about Edgewood with anyone.

198. The day after Mr. Josephs signed his agreement, he went through a battery of physical and mental evaluations before being used as a test subject, although he no longer recalls the details surrounding those initial evaluations.

199. While at Edgewood, Mr. Josephs was subjected to tests approximately once per week. During some tests, he was injected with substances that were unknown to him at the time.

Following the injections, the Edgewood staff personnel typically would observe him for a period of time, often several hours and sometimes it would span multiple days. Mr. Josephs may have participated in tests that required him to wear gas masks while being exposed to chemicals in gas chambers.

200. Mr. Josephs was required to carry a special card that provided instructions to call Edgewood if he experienced a medical emergency while off base during weekends. However, he does not recall what he told his family and friends during his visits to them on the weekends about what he was doing at Edgewood, or why he had to carry a card with instructions regarding potential medical emergencies.

201. Long after the completion of his assignment at Edgewood, Mr. Josephs first discovered that he received at least the following chemicals and/or derivatives thereof, as indicated in his medical records and/or correspondence from the government: pyridine-2-aldoxime methane sulfate (a derivative of 2-PAM), also known as P2S, scopolamine, Prolixin, Congentin, and Artane.

202. Moreover, Mr. Josephs' medical files indicated that the experiment in which he was given 9 grams of P2S on February 1, 1968, was to treat "organophosphorous poisoning," which results from exposure to anticholinesterase agents such as nerve gas and pesticides. This indicates that Mr. Josephs likely received injections of nerve gas such as sarin, and/or pesticides such as dioxin, prior to receiving a high dose of P2S.

203. During one of the experiments on February 19-21, 1968, after Mr. Josephs was given Prolixin, he had an apparent reaction that produced symptoms akin to those of Parkinson's disease, including tremors. According to his medical files, the doctor on staff used drugs that were normally used to treat Parkinson's disease (i.e., Congentin and Artane) to treat him, and his symptoms subsided.

204. Upon leaving Edgewood Arsenal at the end of February 1968, Mr. Josephs was debriefed by government personnel. Mr. Josephs was warned to never talk about his experiences at Edgewood, and to forget about everything that he ever did, said, or heard at Edgewood.

205. Mr. Josephs has a copy of a "class picture" from Edgewood, consisting of volunteers who served at Edgewood at or around the same time he did. He recognizes the volunteer seated next to him in the picture, but does not recall his name. He also does not remember anyone else in the picture.

206. A few days after leaving Edgewood, Mr. Josephs returned to Fort Benning. His medical records show that he required medication for "nerves." He also recalls "not feeling himself," nervous and "shaky" for a while after returning to Fort Benning.

207. After a short stint at Fort Benning, Mr. Josephs served in Thailand for about one year, prior to being honorably discharged from the service in August of 1969, at which time Mr. Josephs returned home to Pittsburgh. Based upon his instructions, Mr. Josephs did not tell anyone about what happened at Edgewood.

208. Since being discharged from the military, Mr. Josephs has been contacted by the government representatives on several occasions. For example, in 1975, he was contacted by the government for the completion of a questionnaire to assess his general health.

209. Mr. Josephs decided to try to find out more about his experiences at Edgewood and what actually happened there, so he drafted a letter to the government to find out what substances he was exposed to while at Edgewood. On September 17, 1975, Mr. Josephs received a letter from Dr. C. McClure, Director of Biomedical Laboratory, informing him of the names of three of the substances to which he was exposed, none of which he had ever heard of: pyridine-2-aldoxime methane sulfate, scopolamine, and Prolixin. As Mr. Josephs was still in good health at the time, he did not follow up with the government further. Mr. Josephs' records do not show any contacts between the government and him regarding his services at Edgewood between 1976 and 2000.

210. However, in 2000 and then 2001, Mr. Josephs received additional surveys from the government which asked questions about his state of health. It was then Mr. Josephs requested his file relating to the experiments he had undergone at Edgewood, which discussed various other substances (i.e., Congentin and Artane, and possibly also nerve gas and/or pesticides) to which he

was exposed during his time at Edgewood. The government never warned him, at any time, about the possible health effects of his exposures at Edgewood.

211. Mr. Josephs' health has deteriorated rapidly in the last several years, which has made it difficult for him to investigate what happened at Edgewood, and to assess possible links to his health problems. In 2004, he was diagnosed with Parkinson's disease, which he recently learned has some sort of an association with the chemicals he was exposed to at Edgewood. He also suffered two "small strokes" (as told by his doctor, Dr. Nicolaas Bohnen), which may have resulted from exposure to the chemicals at Edgewood. In addition, he currently suffers from hypertension, which may have been caused by his exposure to P2S. Mr. Josephs' medical records show that he had received a very high dose (9 grams) of P2S while at Edgewood, a dose much higher than the low doses (of 2 PAM, of which P2S is a derivative) found to cause hypertension in recent studies.

212. Mr. Josephs sought benefits through the VA in the fall of 2009, but was notified via mail by the VA regional office in Baltimore that he was not eligible because his family income was too high. However, the substantial out-of-pocket medical expenses, including cost of his treatments and prescription drugs, has been a financial burden to Mr. Josephs and his wife.

213. The account in this Fourth Amended Complaint has been compiled from memories and fragments of Mr. Josephs' own recollection, earlier discussions with his wife, the results of his wife's research, as well as portions of his available military records.

William Blazinski

214. Plaintiff WILLIAM BLAZINSKI ("Mr. Blazinski") was drafted into the Army and began service on October 4, 1966, at the age of 19. He was stationed at Edgewood Arsenal for a 60-day tour from March 1, 1968, to April 30, 1968. Before being assigned to Edgewood, Mr. Blazinski was stationed at Fort Sill, Oklahoma. He was trained as an infantryman, but also served in the 85th Missile Detachment.

215. While stationed at Fort Sill, Mr. Blazinski attended a presentation by personnel from Edgewood, who were recruiting test subjects to test substances and/or equipment. In exchange for participating, volunteers were promised that they would have three-day weekend

passes and no duties (i.e., guard or KP duties) beyond participation in tests. Mr. Blazinski agreed to participate, believing that he was "doing the right thing" by doing so.

216. After volunteering, Mr. Blazinski underwent a "mental stability" test and a physical at Fort Sill. At that time or shortly after arriving at Edgewood, he completed numerous forms, including a "participation agreement." To his recollection, Mr. Blazinski never received a Volunteer Handbook. While Mr. Blazinski does not remember signing a security non-disclosure form, he was told repeatedly that the experiments were top-secret and that he could not disclose anything about what happened there to anyone. He became Volunteer Number 5031.

217. Mr. Blazinski participated in at least five experiments at Edgewood. During three of them, he was gassed with types of chlorobenzylidene malononitrile ("CS," commonly known as tear gas). Mr. Blazinski was told that the gas was being deployed in Vietnam and that, after being dropped in enemy tunnels, "nobody was coming out." During these gas experiments, Mr. Blazinski and other participants were instructed to remain in a gas chamber for as long as possible while being exposed to CS gas. During each CS test, he managed to tolerate the exposure for ten minutes as his eyes watered, his nose burned, and he choked before being removed from the chamber.

218. In another experiment, Mr. Blazinski was told that he was testing an agent and its antidote and that he would lose his eyesight temporarily during the test. Instead, he was placed in a padded room and given scopolamine, an experimental antidote for nerve-agent poisoning that causes harmful side effects, and another drug, physostigmine, to test its ability to reverse scopolamine's effects. After a short time, he suddenly noticed that the wall was "fluttering" like a flag in the sky, and he began having severe vision problems. He could not distinguish between his fingers when holding his hand in front of his face; his hand looked "webbed." He was then taken to another room where he was given math and mechanical tests that he had previously taken. Mr. Blazinski lacked the focus to perform the math test and the dexterity to perform the mechanical test. He was given thick glasses to help him see. Mr. Blazinski was then taken to lunch. When given a plate of peas, the peas looked like one green mass, and he was unable to feed himself without assistance.

219. During a fifth experiment, described to him at the time as a "communications system" test, electrodes were attached to Mr. Blazinski and electrical charges ran through his body, causing pain like pinpricks. Years later, Mr. Blazinski would learn that it had actually been a drug experiment and that he may have been part of a control group.

220. Mr. Blazinski returned to Fort Sill to complete his military obligation and was discharged from the Army on October 3, 1968.

221. In 2008, Mr. Blazinski was diagnosed with chronic lymphocytic leukemia and ulcerative colitis. He never told any doctor about his time at Edgewood until after those diagnoses. He also suffers from high blood pressure and eczema. Mr. Blazinski applied for VA disability benefits in 2008, but was denied.

222. The additional individual Plaintiffs in this Claim for Relief seek the same forms of relief as the original Plaintiffs. Together with one or more of the original Plaintiffs, Plaintiffs may seek court approval for the Additional Plaintiffs to serve as class representatives.

FOURTH CLAIM FOR RELIEF BY VVA AND ALL INDIVIDUAL PLAINTIFFS AGAINST DVA AND SECRETARY SHINSEKI
(Declaratory and Injunctive Relief)

223. Plaintiffs reallege and incorporate herein by reference as though fully set forth, each and every allegation contained in Paragraphs 1 through 222 of this Complaint, subject to this Court's rulings in its January 19, 2010, Order Granting in Part and Denying in Part Defendants' Motions to Dismiss and Denying Defendants' Alternative Motion for Summary Judgment (Docket No. 59).

Defendant Department of Veterans Affairs

224. Defendant DEPARTMENT OF VETERANS AFFAIRS ("DVA") is the federal agency responsible for providing service-connected death and disability compensation ("SCDDC") and free, priority health care for our nation's veterans (and their survivors) who become disabled or die in their service to our country. The Veterans Benefits Administration ("VBA") is the branch of DVA responsible for the administration of veterans' benefits, including SCDDC, while the Veterans Health Administration ("VHA") is responsible for providing free

health care to disabled veterans on a priority basis. Defendant ERIC K. SHINSEKI is the United States Secretary of Veterans Affairs, and is named herein solely in his official capacity.

225. Defendants have actively concealed the DVA's actual participation in the chemical and biological weapons program. Defendants have recently produced documents in discovery that reveal that the Army, DOD, and CIA procured from DVA some of the substances, including samples of drugs and chemicals, that the Army and CIA used to conduct experiments on military personnel or veterans. The adverse information that made such substances unsuitable for treatment or use were the exact same properties that made them attractive as candidates for use in chemical or biological weapons, yet the DVA either failed to advise the other defendants of the known or suspected risks or failed to ensure that those known or suspected risks were disclosed to the military personnel whom the DVA knew would be tested with the substances. Defendants never shared any information about known or suspected risks with the subjects of the experiments. DVA assumed an independent obligation of full disclosure and notification to the military personnel exposed to substances that it provided to Defendants, but DVA has failed to fulfill that obligation. Plaintiffs have been unable to obtain information from Defendants as to what substances were actually supplied by DVA, and which were used on the Individual Plaintiffs or other class members.

226. Moreover, during the long period of time that the DVA has been involved in deciding whether affected veterans obtain free, priority health care and SCDDC, as well as conducting the outreach activities described above, the DVA has been conducting its own experiments using human subjects (veterans) that involve many of the same chemical and biological weapons that were the subject of the Army and CIA programs, and many of which also failed to comply with the Official Directives. For example, the DVA has tested LSD-25 on veterans dating back to at least the late 1950s. The DVA also conducted studies at its own medical facilities in the early 1960s using veterans residing at a VA domiciliary as guinea pigs, which were sponsored by the CIA and used CIA cut-outs for funding; for example MKULTRA Subproject 125, conducted at the VA Center in Martinsburg, West Virginia, involved studies of differential effects of drugs such as meprobamate and dextro-amphetamine on behavior, including

the placebo effect, utilized unwitting subjects, and used the Society for the Investigation of Human Ecology as a cover for funding and security purposes. Based upon recent VHA filings concerning its Research Laboratory Hazardous Agents Control Program, the common chemicals/drugs tested by the DVA and the other Defendants include BZ (3-quinuclidinyl benzialate), Lewisite, LSD, mustard gas, phosgene, sarin, soman (GD), tabun (GA), VX (nerve gas), and others. Tests conducted in VHA research facilities also include a long litany of biological agents such has botulism, anthrax, ebola virus, brucella, and many others.

227. In approximately 2005-06, the DVA became involved in outreach activities and notification concerning veterans who had participated in the chemical and biological experiments program. DVA divided the exposed veterans relevant to this action into two groups. First, based upon information received from DOD, the DVA ultimately identified approximately 4,495 veterans who had been exposed to mustard agents and lewisite (mustard gas) (the "Mustard Gas Group"). Second, DVA received or compiled a database of 10,528 veterans who were exposed to other chemical or biological substances at the Edgewood Arsenal (the "Chemical/Biological Weapons Group"). As known by the DVA, the DOD list received by the DVA omitted the names of all veterans exposed before 1954, which likely numbered in the tens of thousands.

228. Neither the DVA nor other Defendants have made even a semblance of a comprehensive effort to identify or notify veterans exposed to chemical and biological weapons at other locations than the Edgewood Arsenal. Likewise, the DVA has not compiled any information concerning veterans who were the subject of brain implants or mind control experiments. Moreover, the DVA has made no effort to contact survivors of dead veterans, who would be eligible for Dependency and Indemnity compensation ("DIC") if the death of the veteran's spouse were service connected. As a result, Defendants' notification program began with a truncated list of names representing only a small fraction of the veterans exposed to chemical weapons, biological weapons, and mind control experiments and even a smaller fraction of persons potentially eligible for SCDDC, including DIC.

229. Of the 4,495 veterans in the Mustard Gas Group, the DVA concluded that almost half (2,120) were dead; as to them, the notification efforts ceased, despite the survivors' potential

eligibility for DIC. Of the remaining 2,375 veterans in the Mustard Gas Group, the DVA has found addresses of only 371, or 15.6%. As of September 2009, the DVA had received 1,518 SCDDC claims by veterans based upon mustard gas exposure, 142 of which were still pending. The DVA's 2009 report does not reveal how many of the remaining 1,376 mustard gas claims were granted, but a VBA data summary from January 2006 reported that 11 SCDDC claims in the Mustard Gas Group had been granted, or approximately 0.8%. VBA abandoned any further efforts to notify Mustard Gas Group veterans in 2009, and, as noted above, has never notified survivors of veterans whose deaths were or may have been service connected of their potential eligibility of DIC.

230. Of the 10,528 names of veterans that DVA received from DOD concerning the Chemical/Biological Weapons Group, the DVA has notified only 3,218, or 30.6%, and appears to have made no effort to expand the original group of veteran names based upon defects, gaps, or omissions in the original list. Moreover, it appears that the DVA has made no effort to notify veterans with "possible exposures" or to identify military personnel exposed to toxic agents during "protective suit physicals" at Edgewood unless the soldier had actually sought aid at the "Toxic Aid Exposure Station." The DVA has received 87 SCDDC claims from veterans in the Chemical/Biological Weapons Group, of which only 2, less than 3%, have been granted. It is unclear whether the DVA has continued or abandoned efforts to notify veterans whose names are actually listed in the Chemical/Biological Weapons Group.

231. The notification letters sent by the DVA to veterans enclose so-called "Fact Sheets" and Answers to "Frequently Asked Questions". The notification letters and other materials sent by DVA, together with other information prepared or circulated as part of the DVA outreach efforts, contain a series of misrepresentations of material fact and other information intended and calculated to discourage veterans from applying for SCDDC or seeking health care from the VHA. Among these misrepresentations and other statements were the following: (a) falsely representing that the chemical and biological weapons tests had begun in the mid-1950s, a misstatement intended to justify the decision not to notify participants tested before 1954 and to hide the fact that such tests did not conform to the Nuremburg Law; (b) falsely

representing that scientific studies had been conducted showing that exposed veterans did not have any significant adverse health effects and that "available evidence and follow-up" studies had been conducted which "[did] not support significant long-term physical harm among subjects exposed to acutely toxic amounts of [these] agents other than mustard gas and Lewisite;" (c) falsely representing that the doses and safety of the test substances had been pre-confirmed in animal tests and that doses were increased only where there was "a low risk of serious side effects;" (d) falsely representing that the participants in the tests had received low doses; (e) falsely representing that the participants in the tests had voluntarily consented to them and the consent was informed because the Army had "provided study information to each volunteer;" (f) falsely representing that the tests were defensive in nature and purpose; (g) describing the drugs administered as "common approved pharmaceuticals," and that long-term health effects from psychochemicals were limited to LSD; (h) the omission of known, material information about the adverse physical and mental health effects of the chemicals and biological substances derived from earlier studies or incidents involving humans, past studies of industrial accidents, animals studies, and other sources; (i) falsely representing that the tests were conducted in "great care" and that details were recorded as to the date and type of study, the specific chemicals used, the amount of each chemical, the observed health effects, and any treatment provided, and that all participants had received treatment for all adverse health effects; (j) placing an undue and disproportionate emphasis on the inclusion of placebos and benign substances, particularly given the average number of tests of different chemicals each veteran was exposed to; (k) omitting information concerning DIC claims that could be brought by survivors of veterans who participated in the chemical and biological weapons tests; (l) withholding data concerning the incidence of diseases or conditions experienced by veterans that had been exposed to chemicals and drugs in experiments and the known dangers of interactions between or among different chemicals or substances administered to veterans; and (m) falsely representing that no specific medical tests or evaluations were available for the types of exposures experienced by veterans and emphasizing that medical examinations only were available from the DVA, and that the fact of notification did not suggest eligibility for health care or compensation, when in fact the DVA

knew or should have known that some of the veterans receiving notice were eligible for one or both. The FAQs also represent that the DOD does not conduct any human experimentation involving chemical agents today, although appears to contradict itself in a later sentence where it states that the DOD continues to test agents that protect against chemical weapons, which implies that chemicals are still being administered to service personnel in order to test the protective agents. Moreover, the DVA has failed to adequately obtain exposure and test information available from the Army and DOD concerning the identity, properties, doses, mode of exposure, and other fundamental information relating to service connection, and to train adjudicators and medical personnel to fairly evaluate and process SCDDC claims based upon exposure to substances used in chemical and biological weapons or the program of mind-control experimentation.

232. The Fifth Amendment due process clause guarantees that decision makers respecting eligibility for health care and SCDDC be neutral and unbiased, and that they lack an interest in the subject matter of their determinations or some undisclosed conflict of interest. The DVA's decisions described above, including the interminable delays in providing and misleading contents of the notice, the incomplete rosters of veterans selected to receive notice, the small percentage of veterans located, the nature of the information imparted to exposed veterans, and the shockingly low success rate on claims are all reflections, manifestations, or the results of bias and the violations of the due process rights of Plaintiffs and members of the proposed class.

233. Plaintiffs are entitled to a declaration from this Court stating that decisions made by the DVA respecting entitlement to SCDDC and/or eligibility for free and/or medical care based upon service connection are null and void due to violations of the due process clause of the Fifth Amendment to the U.S. Constitution.

234. Plaintiffs are also entitled to a preliminary and permanent injunction forbidding defendants from continuing to use biased decision makers to decide their eligibility for free, priority health care and for SCDDC, including DIC. Plaintiffs also request that this Court enter an order directing the DVA to propose a plan to remedy denials of affected claims for SCDDC and/or eligibility for medical care based upon service connection and to devise procedures for

resolving such claims that comply with the due process clause, which involve, at a minimum, an independent decision maker, all to be submitted to the Court for advance approval.

PRAYER FOR RELIEF

WHEREFORE, subject to this Court's rulings in its January 19, 2010 Order Granting in Part and Denying in Part Defendants' Motions to Dismiss and Denying Defendants' Alternative Motion for Summary Judgment (Docket No. 59), Plaintiffs pray for judgment against DEFENDANTS as follows:

1. On the First Claim for Relief, for declaratory relief as prayed for above.

2. On the Second Claim for Relief, for a preliminary and permanent injunction as prayed for above.

3. On the Third Claim for Relief, for declaratory and injunctive relief as prayed for above.

4. On the Fourth Claim for Relief, for declaratory and injunctive relief as prayed for above.

5. On all claims for relief, for Plaintiffs' reasonable attorneys' fees and costs incurred herein pursuant to 28 U.S.C. § 2412 and any other applicable law.

6. For such other relief as the Court deems just and proper.

Dated: October 3, 2012

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Exhibit A

Assistant Attorney General
Office of Legal Counsel

Department of Justice
Washington, D.C. 20530

17 JUL 1979

Mr. Anthony A. Lapham
General Counsel
Central Intelligence Agency
Washington, D.C. 20505

Dear Mr. Lapham:

Re: MKULTRA Drug-testing Program

This letter will set forth the conclusions and underlying rationale adopted in the attached memorandum on the CIA's obligations to the subjects of the Project MKULTRA drug-testing activities. In brief, our conclusions are that the CIA may be held to have a legal obligation to notify those subjects where it can be reasonably determined that their health may still be adversely affected by their prior involvement in the MKULTRA drug-testing program; that an effort should thus be made to notify these subjects; that legal constraints and a concern for the subjects' privacy mandate that any notification effort be a limited and circumspect one; and, while the CIA might lawfully ask another agency to undertake the notification effort in this instance, the CIA also has lawful authority to carry out this task on its own.

The first question we have addressed is whether there is a legal duty to notify those MKULTRA subjects who can be reasonably determined to have a continuing risk of suffering adverse effects on their health as a consequence of their earlier involvement. While there is no legal authority specifically addressing this question, we believe that, under the best view of general legal principles and analogous case law, a duty to notify such individuals exists in this instance. As a general matter of tort law, the courts and other legal authorities have found a duty to exist where one party puts another in danger; even if the former party's conduct is without fault, he is under a duty to give assistance and to

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prevent further harm. See, e.g., Restatement (Second) of Torts §§ 321-22 (1965). As applied here, this principle would appear to require the CIA, having created the harm or risk thereof, to notify the individuals as an effort directed at rendering assistance and preventing further harm.

The court decisions in the area of dissemination of potentially harmful drugs to the public support this result. The decisions make clear that those involved in the distribution of potentially harmful drugs are under a continuing duty to the users of the drugs to keep them apprised of the dangers. See Basko v. Sterling Drug, 416 F.2d 417, 426 (2nd Cir. 1969). This principle would appear to require notification even after the drugs have been administered. The decision in Schwartz v. United States, 230 F.Supp. 536, 540 (E.D. Pa. 1964), perhaps the case closest to this particular situation, bears this point out. In that case a serviceman had been treated by a military doctor with umbrathor, which was later found to be "an extremely dangerous drug"; the court stated:

> The Government should have reviewed the records of all patients to whom umbrathor had been given and warned them of the danger of its retention in their bodies. Accordingly, even if the plaintiff had never returned to a Government physician after his discharge from military service, there was a duty resting on the Government to follow up those cases in which umbrathor had been installed. The Government must be charged with knowledge that umbrathor had been used by its physicians at an earlier date, and its roentgenologists must have known of the danger of umbrathor. The negligence here is not in its installation, but rather in not having affirmatively sought out those who had been endangered after there was knowledge of the danger in order to warn them that in the supposedly innocent treatment there had now been found to lurk the risk of devastating injury.

In light of these general legal principles, we think the government would be held to be under a continuing duty to seek out and warn those whose health may still be impaired.

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This duty to notify the MKULTRA subjects may be obviated by several circumstances. First, under the principle that it "is not a tort for government to govern," it is possible that no duty to notify may exist where there are sound governmental reasons for not doing so. Second, no obligation may devolve on the CIA in this regard if it in fact is not responsible for the dangers which might still affect the MKULTRA subjects. This could occur if the CIA was unaware of the tests being conducted by the private institutions or if the CIA was only minimally involved in a particular project. Finally, no notification effort need be made if the subjects are already aware of their involvement in a MKULTRA project.

The situation is somewhat different with regard to those subjects whose health may no longer be adversely affected by reason of their participation in the MKULTRA drug-testing program. If there were a duty to notify these individuals, it would have to be based on the fact that the CIA engaged in some form of surreptitious intrusion into their lives; we do not think the law as yet has developed to this point. We know of no statute or principle of common law which would impose any such obligation on the CIA. Any duty in this regard must thus come, if at all, from the Constitution. The only decisions addressing the question of notice of surreptitious intrusion in a constitutional context are in the Fourth Amendment area. The most recent decision to address this issue flatly states that the failure to give notice is not a violation of the Fourth Amendment. United States v. Harrigan, 557 F.2d 879, 883 (1st Cir. 1977). While other decisions suggest in dicta that subsequent notice of an intrusion into an individual's privacy is a constitutional requirement, they do so in a context much different than that presented here and for purposes which would not be served by a notification effort in this instance. Moreover, these decisions also recognize that certain considerations present here--actual notice, impracticability or impossibility, or a concern for the individual's privacy--may preclude a need to give notice. We thus conclude that no notice is required under the Constitution to those whose health is no longer subject to harm arising out of the MKULTRA drug-testing program.

While we thus believe that notification should be given in certain instances, we also recognize that any notification effort will encounter serious difficulties. A concern for the subjects' privacy, the requirements of law, and other factors will require that this process be conducted in a limited and circumspect manner. Problems will arise in the following areas:

(a) Identification: Since the CIA has few records which, by themselves, identify the MKULTRA subjects, identification will have to be accomplished largely through the records of the participating institutions. These institutions may be precluded by law or privilege from cooperating with the CIA, or they may be reluctant to do so in view of their potential liability.

(b) Location: We believe that, insofar as possible, the process of locating identified MKULTRA subjects should be conducted so that no further harm occurs. This will require that, to the greatest extent practicable, the location process be conducted without interviews of those who knew the subject. Any process of location, then, should be largely conducted through records, but legal restrictions on the availability of pertinent documents may hamper even this approach.

(c) Notification and further assistance: We believe that the CIA's obligations will be fulfilled by a simple notification to the subject of his involvement in the MKULTRA program and an offer to supply available data. We doubt whether the CIA has legal authority to offer medical assistance to members of the general public, even if they were initially harmed by the CIA's conduct; but some forms of assistance might be possible through coordination with the Department of Health, Education, and Welfare.

The final issue--which agency should be vested with the responsibility for the notification effort--raises questions of both law and policy. As a matter of policy, we believe this is a question for the CIA to determine along with other agencies that might be authorized and equipped to handle this task. As a matter of law, we

believe that the CIA may legitimately ask such agencies to undertake this effort. See 31 U.S.C. § 686(a). If, however, the CIA does not wish to refer this matter to another agency (or if it is unable to do so), we believe that the CIA has the lawful authority to undertake this task on its own under Executive Order 12036, section 1-8. Further, we do not believe that any of the applicable restrictions on the CIA's activities will preclude this effort by the CIA. The prohibition on the performance by the CIA of law enforcement or internal security functions, 50 U.S.C. § 403(d)(3), cannot legitimately be deemed to preclude a narrow-effort to notify those whose rights may have been violated or whose health may have been impaired. The restriction in Executive Order 12036 on the collection of information on United States persons, section 2-208, is intended to preclude intelligence activities directed at United States persons, and should not be deemed to apply to the task at hand either.

We recognize that, due to the legal problems and other considerations discussed above, any effort at notification may be largely unproductive. Nevertheless, we believe that a notification program should at least be initiated and carried out as far as the law and a concern for the subjects' privacy will allow. If impediments are found to preclude an effective notification program, it will then be necessary to re-examine the available alternatives.

We will, of course, be pleased to provide whatever continuing assistance we can on this matter.

Sincerely,

John M. Harmon
Assistant Attorney General
Office of Legal Counsel

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Department of Justice
Washington, D.C. 20530

MEMORANDUM FOR ANTHONY A. LAPHAM
- General Counsel
Central Intelligence Agency

Re: MKULTRA Drug-testing Program

This is in response to your request for the views of the Department of Justice on several questions concerning the CIA's obligations to the subjects of the Project MKULTRA drug-testing activities sponsored by the CIA in the 1950s and 1960s. In brief, our conclusions are that the CIA may well be held to have a legal duty to notify those MKULTRA drug-testing subjects whose health the CIA has reason to believe may still be adversely affected by their prior involvement in the MKULTRA drug-testing program; that an effort should thus be made to notify these subjects; that legal constraints and a concern for these subjects' privacy mandate that any notification effort be a limited and circumspect one; and, while the CIA might lawfully ask another agency to undertake the notification effort in this instance, the CIA also has lawful authority to carry out this task on its own.

Legal Obligation to Notify MKULTRA Subjects

The question of the government's duty to give notice to the MKULTRA drug-testing subjects raises two different

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problems. There exists, first, the question whether the government is obliged to give notice when it engages in some form of surreptitious intrusion into an individual's life; there also exists the question whether there is such an obligation where, as may be the case here, the government's prior conduct might give rise to continuing adverse effects on an individual's health. For the reasons that follow, it is our conclusion that no duty to notify arises in the former instance. While there is no legal authority specifically applicable to the latter situation, we believe that, under the best view of general legal principles and analogous case law, a duty to notify exists in such instances.

A.

The extent to which the federal government is legally obligated to notify individuals whose lives have been subject to some form of surreptitious governmental intrusion is not a matter which has received a great deal of treatment in the law. While Congress has enacted a statutory requirement of notice with respect to certain forms of governmental intrusions, see 18 U.S.C. § 2518(8)(d) (electronic surveillance), Fed. R. Crim. Pro. 41(d) (physical searches), neither these laws nor any others known to us would require notice for the sort of surreptitious intrusions which occurred in the MKULTRA drug-testing program. Nor are we aware of any common law principle which would impose a duty on the federal government in this regard. A legal obligation to notify the subjects of the intrusions involved here must thus be derived, if at all, from the Constitution. Our study of the pertinent cases construing the Constitution's requirements in this area leads us to conclude that there is no constitutional requirement of notice arising out of the surreptitious intrusions occurring in the MKULTRA drug-testing program.

The only decisions we have found addressing the question of notice of surreptitious intrusion are in the

Fourth Amendment area. 1/ In this context, several decisions indicate, at least by way of dictum, that subsequent notice of a surreptitious electronic surveillance must be given in order to meet constitutional requirements. See United States v. Donovan, 429 U.S. 413, 429 n.19 (1977); Zweibon v. Mitchell, 516 F.2d 594, 668 (D. C. Cir. 1975); United States v. Bernstein, 509 F.2d 996, 1000-01 (4th Cir. 1975) vacated for further consideration of other grounds, 430 U.S. 902, reversed on other grounds, 556 F.2d 244 (4th Cir. 1977); United States v. Eastman, 465 F.2d 1057, 1063-64 (3rd Cir. 1972). 2/ The issue of notice has received less attention in the area of physical searches, but here too it has been suggested that notice may be constitutionally required. See United States v. Whitaker, 343 F. Supp. 358, 369 (E.D. Pa. 1972), reversed

1/ The drug-testing activities conducted here, of course, do not fall within the usual parameters of what is thought to be a "search" or a "seizure" within the Fourth Amendment. However, the involuntary or surreptitious administration of a drug for testing purposes could, under a broad reading of the Fourth Amendment, be deemed to be a "seizure" of the subject to "search" for that individual's reactions to that drug. Cf. Schmerber v. California, 384 U.S. 757, 767 (1966) (relating to the Fourth Amendment's applicability to the administration of a blood test). This broad reading would appear particularly justified in view of the events which transpired in the MKULTRA drug-testing program and the Fourth Amendment's underlying purpose of protecting the privacy of individuals from governmental intrusion. The drug-testing program could thereby become subject to whatever notice requirements are imposed by the Fourth Amendment.

2/ In fact, Congress acted at least in part on this belief in providing for notice after an electronic surveillance subject to Title III had been completed. See 114 Cong. Rec. 14485 (1968) (remarks of Senator Hart).

on other grounds 474 F.2d 1246 (3rd Cir. 1973). Cf. United States v. Cafero, 473 F.2d 489, 499 (3rd Cir. 1973).

Substantial reasons of policy could support a legal requirement on the part of the government to give notice in instances where it surreptitiously intrudes into an individual's life. In the Fourth Amendment context, notice serves a need to supply a defendant with information necessary to his defense. See United States v. Chun, 503 F.2d 533, 536-38 & n.6 (9th Cir. 1974). The notice requirement has purposes broader than this, however. It eliminates the possibility of secret government action, see United States v. Bernstein, supra at 1000-01; United States v. LaGorga, 336 F. Supp. 190, 194 (W.D. Pa. 1971); it also affords the person involved an opportunity to seek redress. United States v. Eastman, 326 F. Supp. 1038, 1039 (M.D. Pa. 1971), aff'd, 465 F.2d 1057, 1063 n.13 (3rd Cir. 1972). The notification provision is thus a substantial factor in assuring the public that investigative techniques are reasonably employed. See United States v. Donovan, supra at 439.

In spite of the case law and substantial reasons of policy supporting a requirement of notice, we believe that a substantial case may be made for the proposition that such a requirement does not exist here. It should first be noted that the principal purposes underlying a notification requirement may not be applicable in this context. This is not a situation in which there is any real likelihood that the Government would use the fruits of its surreptitious activity in any criminal proceeding. The program, as it has been described to us, was never designed either to gather or to transmit evidence of wrongdoing for possible criminal action. The statute of limitations has certainly run on any criminal conduct discovered during the course of the experiments. Moreover, notification is no longer needed to prevent government secrecy, since the MKULTRA program has already been revealed. Nor is notification needed to assure the public that the MKULTRA program is being reasonably conducted; the program has long since terminated, and Congress and the

press are presently investigating how the program was conducted in the past. Finally, although it might be contended that notification would provide a means toward allowing individuals to seek redress, we doubt that there is any genuine vitality to this notion. The passage of time, coupled with the availability of defenses against any actions that might be filed, suggest that notice in most cases would be a hollow act.

In any event, we do not believe that the case law, even as it has developed in recent years in the Fourth Amendment context, provides a foundation for finding a legal obligation for the government to notify the subjects of the MKULTRA program. First, most of the decisions that have touched upon the constitutional requirement have generally done so only in dicta. 3/ None of the cases have examined the notice requirement in the kind of detail that would demonstrate that the constitutional issue has received careful scrutiny. In fact, many decisions simply rely on the Supreme Court's decisions in Berger v. New York, 388 U.S. 41, 60 (1967) and Katz v. United States, 389 U.S. 347, 355-56 n.16 (1967), a reliance that we regard as misplaced. Although both Berger and Katz discuss the question of notice, they do so in the context of the justification to avoid giving prior notice and of the requirements which must be met before such notice may be avoided; nothing is specifically said to require a subsequent notice.

3/ The one decision whose holding may go so far as to hold notice constitutionally required is United States v. Eastman, supra, and any constitutional aspects of that holding were later limited to deliberate attempts initiated prior to search to avoid mandatory statutory procedures after the search. United States v. Cafero, supra at 499-500.

Finally, we would note that the latest decision on this subject, United States v. Harrigan, 557 F.2d 879, 883 (1st Cir. 1977), refutes the proposition that notice of surreptitious government intrusions is constitutionally required. The court, in an opinion by Judge Coffin, there stated:

> we think that Donovan [429 U.S. 413] and other Supreme Court opinions refute any suggestion that the failure to serve the statutory post interception notice upon defendant was a violation of the Fourth Amendment.

In view of this pronouncement, 4/ and for the other reasons discussed above, we do not believe that there is a legal obligation on the part of the government to notify those individuals subjected to surreptitious governmental intrusions into their lives. 5/

4/ It should be noted that in Harrigan the defendants did receive notice within a short time after they were indicted. This was, of course, also the case in Donovan. It is possible, then, that these cases may be read to say that the timing of notice is not constitutionally critical so long as some notice preceeds any formal governmental action based on the information surreptitiously obtained. We could find much to support such a requirement. So long, however, as no use is to be made--or has been made--to the detriment of the individuals involved, we doubt whether the case law would support a requirement of notice.

5/ This same conclusion, in our view, would also apply to the question whether notification of electronic surveillance for foreign intelligence or counterintelligence purposes is required in S. 1566. Indeed, the very recent opinion by Judge Bryan in United States v. Humphrey, Crim. No. 78-25-A (E.D. Va. 1978), the Vietnam spy case, assumes that notice would not be required where a bona fide counterintelligence surveillance has been undertaken. Slip op. at 4-5.

Assuming, however, that either the case law or the purposes underlying notification would require that notification normally be given to the target of surreptitious governmental action, we do not believe that notification would be required in this instance. The pertinent case law indicates that notice is not an absolute constitutional requirement, and that on occasion other considerations might justify a result in which no notice is given. For instance, formal notification may not be required if the subject already has actual notice. See United States v. Alfonso, 552 F.2d 605, 614 (5th Cir. 1977); United States v. Wolk, 466 F.2d 1143 (8th Cir. 1972). In addition, the impracticability or impossibility of giving notice may relieve the government of such an obligation. Cf. United States v. Whitaker, supra at 1247. However, the major countervailing factor here appears to be that considerations of privacy may warrant nondisclosure in certain instances. For example, Congress, in drafting Title III, allowed the court discretion in determining whether disclosure should be made to untargeted individuals whose communications have been intercepted. 18 U.S.C. § 2518(8)(d). The prime consideration advanced for nondisclosure was protection of the individual. See 114 Cong. Rec. 14476, 14485-86 (1968)(remarks of Senators Long & Hart). Several courts have paid heed to this underlying concern of privacy in upholding the constitutionality of this approach. See United States v. Whitaker, supra at 1247; United States v. Cafero, supra at 501-02.

We believe that the factors just mentioned would legally justify a decision not to give notice here. First, many of the subjects may already have actual notice of the fact that drugs were administered to them; this notice may have been given to them in conjunction with the administration of the drugs, or it may arise out of the recent publicity given to the MKULTRA program. Second, notification of the subjects will be extremely difficult, if not impossible. The CIA intentionally did not keep extensive records of the MKULTRA program, and many of the records

which it did keep have now been destroyed. As we understand it, the records which remain do not generally reveal the names of subjects, but simply disclose the identities of the institutions participating in the program. While it may be possible to learn the subjects' identities from these institutions, it is also possible that their records will not be helpful. Moreover, the institutions' participation in a notification program could subject them to liability for their part in MKULTRA, and it can be reasonably expected that some of them will be reluctant to cooperate; cooperation might also be precluded by requirements of law mandating confidentiality of the subjects' identities. Even if the institutions cooperate and reveal the subjects' identities, it will be difficult to locate the subjects in view of the lengthy period since the program ended.

More important, however, is a factor which we suspect is unique to this particular situation. Any effort to identify and locate the subjects could well result in a further and greater invasion of their privacy. This process will necessarily involve the compilation of lists of the names of the individuals; inquiries among friends, relatives, employers, etc; and the formulation of a case file which may well recount much of the person's life over the past years. It is reasonable to assume that many of the individuals involved would not want this sort of inquiry conducted. Indeed, it was for this reason that only a limited investigation was allowed in connection with the FBI's COINTELPRO notification program. Any fair analysis under the Fourth Amendment, founded as it is on notions of reasonableness, would surely take these considerations into account. We thus conclude that, due both to practical considerations and to a concern for the privacy of the subjects of the MKULTRA program, it is unlikely that a court would hold that notice of surreptitious governmental activity is legally required under the facts here.

B.

Even though notice need not be given to every individual subjected to the MKULTRA drug-testing program, we believe a different situation exists where an individual's involvement in the program can reasonably be determined to have resulted in continuing adverse effects on his health. While there are no decisions specifically applicable to this situation, we believe that, under the best view of general legal principles and analogous case law, an obligation to notify the subjects arises on the part of the United States and its officials.

The concept of duty under the common law of torts is, in many ways, an elusive one. A determination that a duty exists is often conclusory, and is merely a decision that considerations of policy warrant granting a particular plaintiff the protection of the law. Prosser, Law of Torts § 53 at 325-26 (4th ed. 1971). The considerations underlying such a decision may vary. As a guiding principle in this area, it has been stated that a duty exists where reasonable men would recognize it and agree that it exists. Id. at 327. Another way of stating the same principle is that a duty arises where, in the general level of moral judgment of the community, some action ordinarily ought to be done. 2 Harper & James, The Law of Torts § 16.2 at 903 (1956).

Under this standard, we believe that a duty would be found to exist on the part of the government to notify those subjects of the MKULTRA program whose health can be reasonably determined to be still adversely affected by their prior involvement in MKULTRA drug-testing. The government most probably impaired the health of some subjects in the course of the program. It is quite possible that the deleterious effects on the health of these individuals are continuing; it also seems possible that notification of the individual's participation in the MKULTRA program may provide guidance as to a course of treatment and thus alleviate the results of the original conduct of the

MKULTRA program. We believe that notice to the individuals, as an action which might alleviate the initial harm caused by the government, is an action which reasonable men would say the government ought to undertake. As such, a duty would arise on the part of the government to undertake a notification program.

This conclusion is supported by principles of tort law which impose on a party a duty to aid one in peril. While one is generally not under an obligation to aid another person in danger, the law has created such a duty in situations in which some special relation between the parties justifies it. One such situation exists where the danger to one person is created by another; in such instances, the party creating the danger, even if his conduct is without fault, is under a duty to give assistance and to avoid any further harm to the injured party. Several sources of authority support this duty; the courts, first, have recognized and applied it in a variety of situations. See, e.g., Ward v. Morehead City Sea Food Co., 87 S.E. 958 (S.C. N.C. 1916) (requiring notice of contaminated fish sold by defendant); Simonsen v. Thorin, 234 N.W. 628 (S.C. Neb. 1931) (duty to warn of obstruction in street caused by defendant). The duty is also accepted as one of general applicability by the commentators on tort law. The Restatement (Second) of Torts §§ 321-22 (1965) provides:

> § 321. Duty to Act When Prior Conduct is Found to be Dangerous
>
> (1) If the actor does an act, and subsequently realizes or should realize that it has created an unreasonable risk of causing physical harm to another, he is under a duty to exercise reasonable care to prevent the risk from taking effect.
>
> (2) The rule stated in Subsection (1) applies even though at the time of the act the actor has no reason to believe that it will involve such a risk.

§ 322. Duty to Aid Another Harmed by Actor's Conduct

> If the actor knows or has reason to know that by his conduct, whether tortious or innocent, he has caused such bodily harm to another as to make him helpless and in danger of further harm, the actor is under a duty to exercise reasonable care to prevent such further harm.

Dean Prosser also has acknowledged that this duty generally prevails:

> It also is recognized that if the defendant's own negligence has been responsible for the plaintiff's situation, a relation has arisen which imposes a duty to make a reasonable effort to give assistance, and avoid any further harm. Where the original danger is created by innocent conduct, involving no fault on the part of the defendant, it was formerly the rule that no such duty arose; but this appears to have given way, in recent decisions, to a recognition of the duty to take action, both where the prior innocent conduct has created an unreasonable risk of harm to the plaintiff, and where it already injured him.

Prosser, Law of Torts § 56 at 342-43 (4th ed. 1971). See also 2 Harper & James, The Law of Torts § 18.6 at 1047-48 (1956). We think that these authorities indicate that in this instance notification be given to the individuals who may be reasonably determined to suffer adverse effects from their participation in the MKULTRA program. The government, having created the harm or risk thereof, is under a duty to render aid and prevent further harm, and this necessarily requires notification so that medical treatment may be adjusted to take account of whatever occurred in the MKULTRA program.

This same conclusion also seems to follow from various court decisions involving the duties imposed on those who disseminate potentially harmful drugs to the public. The

law holds drug manufacturers and druggists to a high degree of care commensurate with the potential harm of a particular drug, see, e.g., Henderson v. National Drug Co., 23 A.2d 743, 748 (S.C. Pa. 1942), and we think this same duty devolved upon the CIA when it undertook to dispense drugs to the public. One responsibility imposed by the courts in this regard is a duty to warn of the dangers inherent in a drug made available to the public. See e.g., Salmon v. Parke, Davis and Company, 520 F.2d 1359, 1362 (4th Cir. 1975); Sterling Drug, Inc. v. Yarrow, 408 F.2d 978, 992-93 (8th Cir. 1969); Davis v. Wyeth Laboratories, Inc., 339 F.2d 121, 130 (9th Cir. 1968). It is our understanding that in many cases the CIA did not do this; in fact, in many instances the CIA did not even inform the individuals involved that they were being given drugs. See S. Rep. No. 755, 94th Cong., 2d Sess., Book I at 389-403 (1976). The fact that the CIA at one time felt impelled to withhold notice and disclosure cannot, in our view, justify a continued failure to give notice and a warning as to the dangers involved. The courts have made clear that those involved in the distribution of potentially harmful drugs are under a continuing duty to the foreseeable users of the drug to keep them apprised of the dangers. See Schenebeck v. Sterling Drug, Inc., 423 F.2d 919, 922 (8th Cir. 1970). For this reason, drug manufacturers are obliged to give notice after discovering risks of drugs already placed on the market. See Basko v. Sterling Drug, 416 F.2d 417, 426 (2nd Cir. 1969); Tinnerholm v. Parke, Davis & Co., 285 F. Supp. 432, 451 (S.D.N.Y. 1968), modified on other grounds and aff'd, 411 F.2d 48 (2nd Cir. 1969). Similarly, the continuing nature of this duty would appear to require that, once the CIA's need for non-disclosure in the first instance subsided, notice and a warning of the dangers be given. Even though this situation differs somewhat in that the drugs have already been administered, the underlying concern of the law in this area--that of the potential harm that the drugs may cause--would appear to require notice in order to prevent or mitigate further adverse consequences.

The decision in Schwartz v. United States, 230 F. Supp. 536, 540 (E.D. Pa. 1964), bears this point out. In that case, during military service the plaintiff had been treated by a military doctor, for medical purposes, with umbrathor, "an extremely dangerous drug." The district court found that the government should have been aware of its dangerous propensities long before the drug made radical surgery necessary. The court further stated:

> The Government should have reviewed the records of all patients to whom umbrathor had been given and warned them of the danger of its retention in their bodies. Accordingly, even if the plaintiff had never returned to a Government physician after his discharge from military service, there was a duty resting on the Government to follow up those cases in which umbrathor had been installed. The Government must be charged with knowledge that umbrathor had been used by its physicians at an earlier date, and its roentgenologists must have known of the danger of umbrathor. The negligence here is not in its installation, but rather in not having affirmatively sought out those who had been endangered after there was knowledge of the danger in order to warn them that in the supposedly innocent treatment there had now been found to lurk the risk of devastating injury.

The court thus made clear that the government cannot avoid a duty to notify merely due to the fact that the drugs were administered long ago. Rather, the government, having administered the drugs in the first instance, was held to be under a continuing duty to seek out and warn those whose health may still be impaired.

It may, of course, be argued that the responsibilities imposed by tort law are inapplicable to the United States, on the ground that the sovereign has no underlying obligations in this regard. This theory finds some support in

the case law, primarily in the opinions of Mr. Justice Holmes. In Kawananakoa v. Polyblank, 205 U.S. 349, 353 (1907), he stated:

> A sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends.

See also The Western Maid, 257 U.S. 419, 432-34 (1922); Commissioners of the State Insurance Fund v. United States, 72 F. Supp. 549, 554 (S.D.N.Y. 1947). If this is true, then the duties normally imposed by the common law of torts would have no application here.

We do not, however, believe this to be the case. It should first be noted that Mr. Justice Holmes' views do not represent the consistent position of the Supreme Court on this matter. Other decisions of the Court have recognized that the sovereign may have underlying obligations vis-a-vis its citizens, but is simply shielded from liability by the bar of sovereign immunity. See, e.g., The Siren, 74 U.S. 152, 155-56 (1868). Cf. Hart & Wechsler, The Federal Courts and the Federal System 1342-43 (2nd ed. 1973). In Langford v. United States, 101 U.S. 341, 342-43 (1879), the Court explicitly rejected the notion that the government could do no wrong and recognized that the government could commit a tort; implicit in this recognition there is an admission that the government had responsibilities towards its own citizens. The existence of these Supreme Court decisions raises questions as to the legal validity of Mr. Justice Holmes' views, and at least serve to deprive his views of controlling force here.

The passage of time may also have served to undermine Mr. Justice Holmes' conclusion. Numerous legal scholars have challenged Holmes' theory, largely on the ground that it has no validity in a country where the people, and not the government, are sovereign. See , e.g.,

Street, Governmental Liability 9 (1953); Borchard, Governmental Responsibility in Tort, 36 Yale L. J. 757, 1039 (1927). The recent court decisions abrogating the doctrine of sovereign immunity of the states also would impliedly reject Holmes' concept. Those decisions recognize that a state, acting through its agents, may commit a tort, see, e.g., Muskopf v. Corning Hospital District, 359 P.2d 457, 462 (S.C. Cal. 1961), and necessarily inherent in any such determination is a recognition that the sovereign has obligations to its citizens under tort law. We thus believe that, no matter how Holmes' legal proposition would be viewed in his day, it is not an acceptable tenet today to say that the federal government, which after all exists to act on behalf of the people, may conduct activities without regard to principles of law designed to protect the interests of the people, even if those principles are not founded on the Constitution or federal statutes.

In any event, the passage of the Federal Tort Claims Act (FTCA), and the court decisions applying that Act, render Mr. Justice Holmes' views inapplicable here. His view is that no legal obligation attaches to the United States in the absence of consent, and the enactment of the FTCA constitutes this sort of consent. The Act in its explicit terms refers to negligent or wrongful acts or omissions of employees of the government, and not to torts of the government itself. 28 U.S.C. § 1346(b). The Act could thus be viewed as not imposing any substantive duties on the government, other than to pay for the torts of its employees. See H.R. Rep. No. 2800, 71st Cong., 3rd Sess. 7-10 (1931). H. R. Rep. No. 286, 70th Cong., 1st Sess. 1-3 (1928). We do not believe, however, that this distinction is of much significance here. The courts, in applying the FTCA, commonly speak of the government's obligations under state law, see, e.g., Smith v. United States, 546 F.2d 872, 877 (10th Cir. 1976), and would most likely do so in this case. More importantly, the FTCA recognizes that federal employees, acting within the scope of their employment, may commit torts upon individual citizens. Implicit in this recognition is an admission that federal employees are bound to adhere to each state's tort law in the performance of their duties;

the same obligation would also appear to devolve upon each employee in view of the rather obvious need not to create liabilities on the part of the United States. We thus believe that the FTCA imposes on the appropriate government officials the duty to adhere to the tenets of tort law as set forth above. 6/

6/ The FTCA does not, of course, impose liability on the United States for certain sorts of torts. 28 U.S.C. § 2680 (h). By reason of this limitation, the United States might avoid liability under the FTCA if its employees' failure to give notice was deemed to constitute deceit or misrepresentation. See National Mfg. Co. v. United States, 210 F.2d 263, 276 (8th Cir. 1954); Kilduff v. United States, 248 F. Supp. 310, 313-14 (E.D. Va. 1960). We would note, initially, that it is unclear whether the courts would extend these exceptions of the FTCA to this particular case. The decisions indicate that the torts of deceit and misrepresentation are very largely confined to invasions of a financial or commercial character in the course of business dealings. See United States v. Neustadt, 366 U.S. 696, 711 n.26 (1961). But see Lloyd v. Cessna Aircraft Company, 429 F. Supp. 181, 187 (E.D. Tenn. 1977). In addition, the courts also have a tendency, in assessing failures to warn of health hazards, to deem them as a negligent performance of an operational duty rather than misrepresentation. See Ingham v. Eastern Airlines, Inc., 373 F.2d 227, 238-39 (2nd Cir. 1967); Betesh v. United States, 400 F. Supp. 238, 241 n.2 (D.D.C. 1974). But see Bartie v. United States, 216 F. Supp. 10, 20-21 (W.D. La. 1963), aff'd, 326 F.2d 754 (5th Cir. 1964). This approach might be particularly appealing to the judiciary where, as here, the underlying duty is a duty to warn and any breach of that duty could be termed a misrepresentation. Cf. Hicks v. United States, 511 F.2d 407, 414 (D.C. Cir. 1975); Wenninger v. United States, 234 F. Supp. 499, 505 (D. Del. 1964), aff'd, 352 F.2d 523 (3rd Cir. 1965).

In any event, even if the government's failure to notify would fall within one of the exceptions to (cont'd)

C.

While we thus generally conclude that the government and its agents would be held to be under a duty to notify those MKULTRA subjects who may still suffer adverse effects from their participation in the MKULTRA drug-testing program, this duty may not attach in certain circumstances. We shall briefly discuss each of these separate circumstances; however, a final determination as to these exceptions must depend on the pertinent facts and circumstances.

(a) Policy decisions. It is possible that no duty to notify may exist where there are sound government reasons for not doing so. It has been recognized that it "is not a tort for government to govern," Dalehite v. United States, 346 U.S. 15, 57 (1953) (Jackson, J., dissenting), and that therefore the basic policy decisions of government, within constitutional limitations, are necessarily nontortious. Muskopf v. Corning Hospital District, supra at 462. See also 3 Davis, Administrative Law Treatise § 25.13 at 490 (1958). While Congress' intent in enacting the "discretionary function" exception to the FTCA is somewhat unclear, the courts have followed this same general approach in exempting from the scope of the FTCA governmental decisions made at the planning, as opposed to the operational, levels of government. Dalehite v. United States, supra at 42; Driscoll v. United States, 525 F.2d 136, 138 (9th Cir. 1975). It may thus be that, if there are valid reasons of government policy not to notify the MKULTRA subjects, there may be no duty to do so.

6/ (cont'd) the FTCA, we do not believe that this means there is no duty to notify. The fact that sovereign immunity has not been waived as to a particular course of conduct does not, in our view, mean that the government is free to adopt that conduct without regard to the interests of its citizens or the general principles of law protecting those interests.

Of course, there are limits to the extent to which a "policy" decision may vitiate all of the government's responsibilities, and the courts are likely to impose some checks on governmental decision in this regard. For example, even though the "discretionary function" exception extends even to an abuse of discretion, a "discretionary" decision not to abide by state tort law could vitiate the entire FTCA and the courts would be unlikely to uphold this result. Cf. Smith v. United States, supra at 877 (10th Cir. 1976). An example of this, with particular applicability to the question of notification, is the decision in Bulloch v. United States, 133 F. Supp. 885, 888-89 (D. Utah 1955). There the court had no trouble concluding that a decision to conduct nuclear tests, and decisions as to the time and manner of those tests, were within the discretionary function exception. The court was more troubled, however, by the fact that no notice of the impending detonation had been given, and indicated that the decision not to give notice may not be within the discretionary function exception unless it was founded on a good reason. See also Smith v. United States, supra at 877; United States v. White, 211 F.2d 79, 82-83 (9th Cir. 1954). But see Bartie v. United States, supra.

At present we know of no such reason that would justify a failure to initiate a notification program here. If, however, the CIA believes that valid reasons for non-notification exist and wishes to avail itself of this possible exception to a duty under tort law, we shall be happy to consider its justification in light of the applicable law.

(b) Lack of governmental responsibility. There may also be no responsibility on the government to notify MKULTRA subjects if, under current law, it would not be held responsible for the dangers which might still affect the MKULTRA subjects. This circumstance could come about in light of the fact that most of the MKULTRA programs were not conducted directly by the CIA, but by private institutions. As such, the CIA itself could conceivably have been

so peripherally involved in a particular project, or so unaware of the tests actually being conducted, that it would not be held liable for putting the MKULTRA subjects into danger; no duty of notification would therefore devolve on the CIA. However, since these issues will most probably present close questions, and since we do not believe that an administrative decision should easily preclude notice, a determination on this matter should be made only after a thorough evaluation of the law and the facts pertinent to a particular project and a decision that the CIA could not arguably be held responsible for that project.

(c) Actual notice. Finally, we do not believe that there exists a duty to notify MKULTRA subjects if they already have actual notice of the activity in which they were involved. The duty to give notice here is predicated on the possibility that notice would be helpful, and little benefit would be achieved by giving a subject notice of something about which he is already aware. However, if there is any doubt as to an individual's actual notice of his participation in the MKULTRA program, or of the particular testing that he underwent, such information should be conveyed to that individual.

The Notification Process

While the disadvantages inherent in notification are not sufficient, in our view, to preclude a notification effort, we believe that these disadvantages, together with other factors, will influence how the notification process is conducted. Where notification is to be given, a concern for the subjects' privacy, the requirements of law, and other factors will require that the identification, location, and notification process be conducted in a limited and circumspect manner.

a. Identification. It is our understanding that the CIA at present has few records which, by themselves, could identify the MKULTRA subjects. Any identification of these subjects, therefore, will have to be accomplished largely through an examination of the records of the participating institutions. The need to approach these institutions in order to identify the MKULTRA subjects may cause substantial problems in implementing any sort of notification program.

Two different sorts of considerations will pose problems here. First, the institutions may be precluded by law or privilege from divulging the identity of the MKULTRA subjects to the CIA. For example, such disclosure could be prohibited by federal statute, see, e.g., 20 U.S.C. § 1232g(b), 21 U.S.C. § 1175, 7/ federal agency regulations, state statutes or regulations, or the doctor-patient privilege. A determination whether such legal impediments to disclosure exist will depend on the facts surrounding a particular project, the institution involved, and the applicable laws. The decision as to legality thus cannot be generically made here, but must be made as each specific problem arises.

Second, even if the institutions could legally cooperate with the CIA, they may refuse to do so since their cooperation in notification could lead to litigation and potential liability on their part for the role they played in the underlying activities. To preclude this possibility, your letter suggests that the institutions be promised indemnification by the federal government. However, we do not believe that, under current law, the CIA is authorized to enter contracts of indemnification. The pertinent statutes allow federal agencies to enter indemnification contracts only if they are authorized to do so by law or appropriation. 31 U.S.C. § 665(a); 41 U.S.C. § 11(a). See California-Pacific Utilities Company v. United States, 194 Ct. Cl. 703, 714-16 (1971); 16 Comp. Gen. 803 (1937); 7 Comp. Gen. 507 (1928). We know of no provision of law or any appropriation which authorizes the CIA to indemnify any institution for what would be the misdeeds of the institution itself.

These obstacles, however, may be overcome, at least in some instances. The laws mandating confidentiality of

7/ In addition, the Privacy Act, 5 U.S.C. § 552a, or other statutes might prohibit government agencies which participated in MKULTRA from disclosing information to the CIA.

information may be found not to apply to this particular sort of situation. Moreover, even if the pertinent institutions cannot disclose the subjects' names to the CIA, they might be legally authorized to notify the subjects directly.8/ And while some institutions may be unwilling to cooperate in view of their potential liability, others may well believe that there is no possibility of potential liability or may be willing to risk this possibility in order to notify the subjects.

b. Location. If the CIA succeeds in obtaining the identities of the MKULTRA subjects, the question then remains how it can go about locating them. The limitations of the law will impose certain restrictions here, and a concern for the privacy of the individuals involved will mandate further restrictions on the location process.

We believe that, insofar as possible, the location process should be conducted so that no further harm occurs to the MKULTRA subjects. This would require that, to the greatest extent practicable, the location process should be conducted without interviews so as to prevent the subjects from becoming publicly associated with the CIA or with the MKULTRA program. Such interviews would necessarily be with those who knew the subject, and this in turn may cause harm or embarrassment to the subject.

This means that the process of location will have to be largely conducted through records, and problems also arise here. Again, private institutions may not be able to cooperate due to legal prohibitions, see, e.g., 20 U.S.C. § 1232g(b), and there are also restraints imposed by the law on the use of government records. See 5 U.S.C. § 552a (Privacy Act); 26 U.S.C. § 6103 (pertaining to tax records). The CIA, however, may be able to take advantage of exceptions to the Privacy Act, particularly the one pertaining to the health of the individual, see 5 U.S.C. § 552a(b)(8), or it might even request various federal agencies to undertake location and notification--particularly if those

8/ It is questionable, however, how effective such a notification process would be if the institutions made no great effort to ascertain the subject's present location.

agencies took part in the underlying MKULTRA activities. In addition, the CIA would also remain free to examine documents which are not subject to restrictions on disclosure--such as, for example, voter registration lists, telephone books, etc.

c. Notification. Your letter also asks what steps should be taken after the MKULTRA subjects have been identified and located. We believe that, as an initial matter, a simple notification that the subject may have been involved in the MKULTRA program will suffice. The subject could also be advised that medical attention may be advisable or necessary, and that the CIA was willing to cooperate in any way to provide the necessary information to the subject's doctors.

The CIA's authority to do more than this--i.e., provide actual medical treatment--is more open to question. The CIA's statutory authority to provide medical treatment or to pay the direct costs of medical treatment is limited to its own officers and employees, 50 U.S.C. § 403e(5), and that provision's legislative history is to this same effect. See H.R. Rep. No. 160, 81st Cong., 1st Sess. 4 (1949); S. Rep. No. 106, 81st Cong., 1st Sess. 3 (1949). We thus think it doubtful that the CIA has authority to perform such functions for the members of the general public, even where harm has resulted to such individuals through the CIA's actions.9/ Rather, the procedure apparently contemplated by Congress in such situations is that the injured individuals will obtain their own medical treatment, and then file claims to recover their damages under the Federal Tort Claims Act. In the event that the particular conduct falls within one of the exceptions to the FTCA, see, e.g., 28 U.S.C. § 2680(a) or (h), the individual's only recourse may be by way of legislation.

9/ Since the duties under tort law here devolve not only upon the CIA, but also upon the federal government, we have also looked into the question whether any other federal agency has authority to provide medical treatment to members of the general public injured by federal governmental action. We have found no agency which generally has such authority. However, in our conversations with staff of the Public Health

(Cont. on p. 23)

Responsible Federal Agency

Your letter asks what federal agency should be vested with the responsibility to identify, locate, and notify the victims, and to take whatever other steps may be necessary. In our view, this is a question involving conflicting policy considerations which should be determined by the CIA itself and the other agencies which might be available to perform this task. If the CIA wishes another federal agency to carry out the notification project, we believe that it may legitimately approach any such agency that is authorized and equipped to undertake such a task. See 31 U.S.C. § 686(a). If, however, the CIA does not wish to refer this matter to another agency (or if it is unable to do so), we believe that the CIA has lawful authority to carry out this task on its own.

Executive Order 12036 authorizes the CIA to "produce . . . foreign intelligence relating to the national security," including "scientific" or "technical" intelligence. Section 1-802. In essence, the MKULTRA program was an effort in this direction, since it was designed to produce resources which could support foreign intelligence operations and to ascertain the "enemy's theoretical potential" in this area. See S. Rep. 755, 94th Cong., 2d Sess., Book I at 390 (1976). As such, since the CIA is empowered to take action "related to" this activity, section 1-8, we believe it has authority to undertake a notification program intended to redress the wrongs which may have occurred in connection with this activity.

The fact that the drug-testing itself may be beyond the terms of the present Executive order, or otherwise in

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9/ (Cont.)
Service General Counsel Office, we have been informed that it might be possible for federal agencies to provide medical assistance in a follow-up research program or to provide a free medical examination for purposes of preparing for litigation. Further inquiries along this line should be addressed either to the Secretary of the Department of Health, Education, and Welfare or to the Surgeon General. Informal inquiries might be made to Mr. Sidney Edelman, Assistant General Counsel for Public Health.

violation of law, cannot be regarded as divesting the CIA of authority to act in this area. Even if the drug-testing were illegal, the institution of remedial action "related to" such activity cannot itself be illegal or unauthorized. A primary purpose of the Executive order is to ensure adherence to the law, and to say that the CIA is precluded from taking corrective action on testing that may be unlawful would stand that purpose on its head.

Nor do we believe that any of the applicable restrictions on the CIA's authority lead to a contrary result. A notification process, first, would not appear to come within the statutory prohibition "the Agency shall have no police, subpoena, law-enforcement powers, or internal security functions." 50 U.S.C. § 403(d)(3). While such a process may involve an inquiry into the affairs of the MKULTRA subjects, that inquiry, as described above, will of necessity be a limited and circumscribed one. It is difficult to see how such a narrow approach, for the sole purpose of notifying those whose rights may have been violated or whose health may have been impaired, could be construed as an attempt to assume "police or law-enforcement powers" or to engage in "internal security functions."

The decision in Weissman v. Central Intelligence Agency, 565 F.2d 692 (D.C. Cir. 1977) does not undermine this conclusion. As we indicated in our previous opinions to you on this matter, that decision does not prohibit every sort of investigation of Americans by the CIA. Rather, the decision focuses on intrusive investigations of those who have no connection with the CIA. These underlying concerns are simply not present in the investigation contemplated here. The inquiry is to be a limited one and will be concerned only with aiding those who have had some connection with the CIA's MKULTRA program, albeit perhaps unwittingly. More importantly, the inquiry will not be conducted covertly.

Nor would the limitations imposed by Executive Order 12036 preclude the CIA from partaking in a notification program. The limitation most applicable here is section 2-208, which forbids any intelligence agency to "collect, disseminate, or store information concerning the activities of United States persons that is not available publicly," except in cases of consent or in cases allowed by established procedures. While the literal language of this provision

might apply to some of the activities inherent in a notification process, we do not believe that this provision was designed to preclude the activities here. As is evident from the overall caption to section 2 ("Restrictions on Intelligence Activities"), the purposes set forth in section 2-101 (relating to the gathering of foreign intelligence information), the foreign intelligence agencies to whom section 2-208 applies, and the exceptions to section 2-208, the provision is directed at precluding intelligence activities directed at United States persons. As such, it should not be deemed to apply to an activity directed exclusively at redressing possible violations of law or rectifying the continuing adverse effects of past actions.

Conclusion

We recognize that, because of the legal problems and other considerations discussed above, any effort at notification may be largely unproductive. However, we cannot know whether this is in fact the case until the CIA at least initiates the process. We therefore recommend that the CIA begin this process, and carry it out as far as the law and a concern for the subjects' privacy will allow. If the legal restrictions turn out in fact to preclude an effective notification program, it will then be necessary to re-examine our alternatives, which might possibly include legislation to correct whatever legal impediments are found to exist.

We believe that this letter responds to the questions of law set forth in your request. If any such questions remain unanswered, or if this letter raises additional questions, we will be happy to advise you on these matters as they arise.

John M. Harmon

John M. Harmon
Assistant Attorney General
Office of Legal Counsel

Exhibit B

26 July 1963

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT : Report of Inspection of MKULTRA

1. In connection with our survey of Technical Services Division, DD/P, it was deemed advisable to prepare the report of the MKULTRA program in one copy only, in view of its unusual sensitivity.

2. This report is forwarded herewith.

3. The MKULTRA activity is concerned with the research and development of chemical, biological, and radiological materials capable of employment in clandestine operations to control human behavior. The end products of such research are subject to very strict controls including a requirement for the personal approval of the Deputy Director/Plans for any operational use made of these end products.

4. The cryptonym MKULTRA encompasses the R&D phase and a second cryptonym MKDELTA denotes the DD/P system for control of the operational employment of such materials. The provisions of the MKULTRA authority also cover [redacted] The administration and control of this latter activity were found to be generally satisfactory and are discussed in greater detail in the main body of the report on TSD.

5. MKULTRA was authorized by the then Director of Central Intelligence, Mr. Allen W. Dulles, in 1953. The TSD was assigned responsibility thereby to employ a portion of its R&D budget, eventually set at 20%, for research in behavioral materials and [redacted] under purely internal and compartmented controls, (further details are provided in paragraph 3 of the attached report). Normal procedures for project approval, funding, and accounting were waived. However, special arrangements for audit of expenditures have been evolved in subsequent years.

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6. The scope of MKULTRA is comprehensive and ranges from the search for and procurement of botanical and chemical substances, through programs for their analysis in scientific laboratories, to progressive testing for effect on animals and human beings. The testing on individuals begins under laboratory conditions employing every safeguard and progresses gradually to more and more realistic operational simulations. The program requires and obtains the services of a number of highly specialized authorities in many fields of the natural sciences.

7. The concepts involved in manipulating human behavior are found by many people both within and outside the Agency to be distasteful and unethical. There is considerable evidence that opposition intelligence services are active and highly proficient in this field. The experience of TSD to date indicates that both the research and the employment of the materials are expensive and often unpredictable in results. Nevertheless, there have been major accomplishments both in research and operational employment.

8. The principal conclusions of the inspection are that the structure and operational controls over this activity need strengthening; improvements are needed in the administration of the research projects; and some of the testing of substances under simulated operational conditions was judged to involve excessive risk to the Agency.

9. Attached for the signature of the Deputy Director of Central Intelligence is a memorandum transmitting the report to the Deputy Director/Plans requesting a summary of action taken or comments on the recommendations contained therein.

J. S. Earman
Inspector General

Attachments - as stated

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REPORT OF INSPECTION OF MKULTRA/TSD

I. Introduction

1. Technical Services Division (TSD), (then Technical Support Staff), received authorization from the then Director of Central Intelligence, Mr. Allen W. Dulles, on 3 April 1953 to develop and maintain continuing operational capabilities in the fields of a) [ ] and b) chemical and biological materials capable of producing human behavioral and physiological changes, (see Tab A). The cryptonym MKULTRA was assigned to encompass TSD's research, development and equipment activities in these two fields. The cryptonym MKDELTA had already been assigned by DD/P Notice No. 220-1 on 20 October 1952 (since revised - see Tab B) as the indicator covering DD/P policy and procedure for the use of biochemicals in clandestine operations.

2. The MKULTRA charter provides only a brief presentation of the rationale of the authorized activities. The sensitive aspects of the program as it has evolved over the ensuing ten years are the following:

a. Research in the manipulation of human behavior is considered by many authorities in medicine and related fields

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to be professionally unethical, therefore the reputations of professional participants in the MKULTRA program are on occasion in jeopardy.

b. Some MKULTRA activities raise questions of legality implicit in the original charter.

c. A final phase of the testing of MKULTRA products places the rights and interests of U. S. citizens in jeopardy.

d. Public disclosure of some aspects of MKULTRA activity could induce serious adverse reaction in U. S. public opinion, as well as stimulate offensive and defensive action in this field on the part of foreign intelligence services.

3. In recognition of the sensitivity of MKULTRA, TSD was authorized exclusive control of the administration, records, and financial accountings of the program. Simple statements of certification were all that were required of TSD to obtain advances of funds from Finance Division. The DCI's memorandum also exempted MKULTRA from audit, but this provision was modified to permit limited audit before the end of the first year. Funding of MKULTRA was eventually stabilized at 20 percent of TSD's annual research and development budget. It has fallen in the neighborhood of [redacted] per year over the ten-year history of the program, of which about 30 percent has been allocated to

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support of the [redacted] cf. Tab C for MKULTRA funding record FY 60-63.

4. The inspection of TSD activities in the field of [redacted] while chartered under MKULTRA is discussed for reasons noted below in the section of the Inspector General's Survey dealing with the [redacted] of TSD, cf. discussions beginning with paragraphs [redacted] The security considerations applying to [redacted] were found to be significantly different from those governing manipulation of human behavior. a) Many [redacted] external projects in support of the [redacted] are being funded and managed securely outside the MKULTRA mechanism. b) Chief, Support, TSD, believes that it may also be possible in the future to fund [redacted] MKULTRA projects by secure methods more compatible with DD/S responsibilities. c) The very nature of the [redacted] requires that a high percentage of its staff contribute and be witting of each operation. Security practices are tight and the Inspector General's survey recommends further refinements in security procedures.

5. The inspection of MKULTRA projects in biochemical controls of human behavior raised questions in the following area of policy and management which are dealt with in the balance of this report:

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a. Scope of the MKULTRA charter:

(1) Over the ten-year life of the program many additional avenues to the control of human behavior have been designated by the TSD management as appropriate to investigation under the MKULTRA charter, including radiation, electro-shock, various fields of psychology, psychiatry, sociology, and anthropology, graphology, harrassment substanc s, and paramilitary devices and materials.

(2) Various projects do not appear to have been sufficiently sensitive to warrant waiver of normal Agency procedures for authorization and control.

(3) Other secure channels for establishment and funding of Agency-sterile activities have been evolved over the past ten years by Deputy Director/Support (DD/S) and in some cases could reasonably be employed by TSD in lieu of MKULTRA procedures.

In view of these developments there is substantial agreement among all parties concerned that redefinition of the scope of MKULTRA is now appropriate.

b. MKULTRA management policies:

(1) The original charter documents specified that TSD maintain exacting control of MKULTRA activities.

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In so doing, however, TSD has pursued a philosophy of minimum documentation in keeping with the high sensitivity of some of the projects. Some files were found to present a reasonably complete record, including most sensitive matters, while others with parallel objectives contained little or no data at all. The lack of consistent records precluded use of routine inspection procedures and raised a variety of questions concerning management and fiscal controls.

(2) Lack of records essential to inspection of MKULTRA moved to the forefront among issues as the present survey proceeded. Under normal circumstances the inspectors would have examined an inventory of discrediting, disabling, and lethal substances perfected or procured from whatever sources. The records on representative items would have been reviewed according to such standard criteria as:

(a) How were the substance and its properties identified?

(b) What researcher was selected to perform the research, and why?

(c) When was the work begun, where, involving what costs, at what rate of progress, based on what tests?

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(d) What are the present capabilities and limitations of the substance for clandesinte operations?

(e) What further research is being conducted on this and related substances and how does this reflect existing TSD capabilities, operational requirements and budget factors?

(3) MKULTRA records afforded no such approach to inspection. There are just two individuals in TSD who have full substantive knowledge of the program and most of that knowledge is unrecorded. Both are highly skilled, highly motivated, professionally competent individuals. Part of their competence lies in their command of intelligence tradecraft. In protecting the sensitive nature of the American intelligence capability to manipulate human behavior, they apply "need to know" doctrine to their professional associates and to their clerical assistants to a maximum degree. Confidence in their competence and discretion has been a vital feature of the management of MKULTRA.

c. Advanced testing of MKULTRA materials:

It is the firm doctrine in TSD that testing of materials under accepted scientific procedures fails to disclose the full pattern of reactions and attributions that may occur

in operational situations. TSD initiated a program for covert testing of materials on unwitting U. S. citizens in 1955. The present report reviews the rationale and risks attending this activity and recommends termination of such testing in the United States, cf. paragraphs 10-18 below.

II. Modus Operandi

6. The research and development of materials capable of producing behavioral or physiological change in humans is now performed within a highly elaborated and stabilized MKULTRA structure. The search for new materials; e.g., psilocybin from Mexican mushrooms, or a fungi occurring in agricultural crops, is conducted through standing arrangements with specialists in universities, pharmaceutical houses, hospitals, state and federal institutions, and private research organizations who are authorities in the given field of investigation in their own right. Annual grants of funds are made under ostensible research foundation auspices to the specialists located in the public or quasi-public institutions. This approach conceals from the institution the interest of CIA and permits the recipient to proceed with his investigation, publish his findings (excluding intelligence implications), and account for his expenditures in a manner normal to his institution. A number of the grants have included funds for the construction and equipping of research

facilities and for the employment of research assistants. Key individuals must qualify for top secret clearance and are made witting of Agency sponsorship. As a rule each specialist is managed unilaterally and is not witting of Agency support of parallel MKULTRA research in his field. The system in effect "buys a piece" of the specialist in order to enlist his aid in pursuing the intelligence implications of his research. His services typically include systematic search of the scientific literature, procurement of materials, their propagation, and the application of test dosages to animals and under some circumstances to volunteer human subjects. No quarrel is found with the rationale of this program to the extent that it fits the original MKULTRA charter. However, for inspection purposes, there were lacking records, year by year, of the progress of each project and the recorded judgments of the project monitors on operational benefits vis-a-vis costs.

7. The funding of sensitive MKULTRA projects by sterile grants in aid as noted in the preceding paragraph disclosed one of the principal controversial aspects of this program. The original charter of MKULTRA assumed that the sensitivity of activities would be sufficient to justify both a) special protection for the researcher; and b) compartmentation of MKULTRA knowledge within the Agency. On this basis the inherent safeguards of DD/S procedures were waived, the DD/S was not consulted in the design of the MKULTRA management system, and established Agency

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audit procedures were waived. In the subsequent administration of the program, however, TSD has found it feasible to contract for some of the research on MKULTRA objectives in accordance with prescribed DD/S procedures. The DD/S, in turn, has evolved various secure systems for the funding of sensitive activities. It appears feasible and appropriate, therefore, to propose that the DD/S be consulted during the re-chartering of MKULTRA in the design of an administrative system that does justice to his responsibilities as well as to the management and security requirements of TSD. The Inspector General accordingly has recommended at the end of this report that the DD/S be consulted in the re-design of the system; that the Chief, Support, TSD, be assigned responsibility for the day-to-day support of MKULTRA; and that the latter constitute a bridge to the DD/S for monitoring the future evolution of the system.

8. The next phase of the MKULTRA program involves physicians, toxicologists, and other specialists in mental, narcotics, and general hospitals and in prisons, who are provided the products and findings of the basic research projects and proceed with intensive testing on human subjects. These specialists are also recipients for testing purposes of the flow of new products from pharmaceutical laboratories. Materials and procedures with intelligence potential may be identified through this

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relationship. The testing programs are conducted under accepted scientific procedures including the use of control populations, the employment of placebos, and the detailed observation, measurement, recording, analysis, and publication of findings. Where health permits, test subjects are voluntary participants in the program.

9. A current development in the testing of new products is the tightening of controls over dosages and procedures by the U. S. Food and Drug Administration. Since MKULTRA files contained no documentation on this subject, it was not possible to appraise the significance of this development for MKULTRA objectives. However, interviews with the TSD officers concerned indicated that the new rules are affecting procedures and causing controversy in research hospitals and pharmaceutical houses. The TSD officers have close relationships with key individuals in many of the leading U. S. pharmaceutical houses and count on their continued close cooperation in obtaining materials and services deemed vital to U. S. intelligence.

10. The final phase of testing of MKULTRA materials involves their application to unwitting subjects in normal life settings. It was noted earlier that the capabilities of MKULTRA substances to produce disabling or discrediting effects or to increase the effectiveness of interrogation of hostile subjects cannot be established solely through testing on volunteer populations. Reaction and attribution patterns are

clearly affected when the testing is conducted in an atmosphere of confidence under skilled medical supervision.

11. TSD, therefore, entered into an informal arrangement with certain cleared and witting individuals in the Bureau of Narcotics in 1955 which provided for the release of MKULTRA materials for such testing as those individuals deemed desirable and feasible. The initial arrangement obtained the services of a senior representative of the Bureau and one of his assistants on the West Coast. A parallel arrangement was established on the East Coast in 1961. The Director of the Bureau has been briefed on the activity, but the Deputy Chief, TSD, who has guided MKULTRA from its inception, is of the opinion that the former would disclaim all knowledge and responsibility in the event of compromise. The MKULTRA program director has, in fact, provided close supervision of the testing program from the beginning and makes periodic visits to the sites. The sum of $10,000 has been provided annually to each of the two projects to cover cost of cultivation of targets and of maintenance of a safehouse in each area for the observation of effects of substances on selected test individuals.

12. The particular advantage of these arrangements with the Bureau of Narcotics officials has been that test subjects could be sought and cultivated within the setting of narcotics control. Some subjects

have been informers or members of suspect criminal elements from whom the Bureau has obtained results of operational value through the tests. On the other hand, the effectiveness of the substances on individuals at all social levels, high and low, native American and foreign, is of great significance and testing has been performed on a variety of individuals within these categories.

13. A significant limitation on the effectiveness of such testing is the infeasibility of performing scientific observation of results. The Bureau agents are not qualified scientific observers. Their subjects are seldom accessible beyond the first hours of the test. The testing may be useful in perfecting delivery techniques, and in identifying surface characteristics of onset, reaction, attribution, and side-effect. In a number of instances, however, the test subject has become ill for hours or days, including hospitalization in at least one case, and the agent could only follow-up by guarded inquiry after the test subject's return to normal life. Possible sickness and attendant economic loss are inherent contingent effects of the testing.

14. The MKULTRA program officer stated that the objectives of covert testing concern the field of toxicology rather than medicine; further, that the program is not intended to harm test individuals, and that the medical consultation and assistance is obtained when appropriate through separate MKULTRA arrangements. The risk of compromise of

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the program through correct diagnosis of an illness by an unwitting medical specialist is regularly considered and is stated to be a governing factor in the decision to conduct the given test. The Bureau officials also maintain close working relations with local police authorities which could be utilized to protect the activity in critical situations.

15. There have been several discussions in the public press in recent months on the use of certain MKULTRA-type drugs to influence human behavior. Broadly speaking, these have argued that research knowledge of possible adverse effects of such substances on human beings is inadequate, that some applications have done serious harm, and that professional researchers in medicine and psychiatry are split on the ethics of performing such research. Increasing public attention to this subject is to be expected.

16. The final step in the research and development sequence is the delivery of MKULTRA materials into the MKDELTA control system governing their employment in clandestine operations. The subject is discussed further in the next section; however, it is appropriate here to note that the employment of MKDELTA materials remains an art rather than a scientific procedure. A significant number of variables in the target individual, including age, sex, weight, general health, social status, and personality structure, may account for widely varying and unpredictable reactions to a given drug in a given dosage.

17. The final stage of covert testing of materials on unwitting subjects is clearly the most sensitive aspect of MKULTRA. No effective cover story appears to be available. TSD officials state that responsibility for covert testing is transferred to the Bureau of Narcotics. Yet they also predict that the Chief of the Bureau would disclaim any knowledge of the activity. Present practice is to maintain no records of the planning and approval of test programs. The principal responsibility for the propriety of such testing rests with the MKULTRA program director and the Deputy Chief of TSD. The handling of test subjects in the last analysis rests with the Narcotics agent working alone. Suppression of knowledge of critical results from the top TSD and CIA management is an inherent risk in these operations.

18. Final phase testing of MKULTRA substances or devices on unwitting subjects is recognized to be an activity of genuine importance in the development of some but not all MKULTRA products. Termination of such testing would have some, but an essentially indeterminate, effect on the development of operational capability in this field. Of more critical significance, however, is the risk of serious damage to the Agency in the event of compromise of the true nature of this activity. As now performed under Bureau of Narcotics auspices, non-Agency personnel are necessarily fully witting of the true nature and signficance of their assignments, and of the sponsorship of CIA. Compromise of

B-016

this information intentionally or unwittingly by these individuals at some time in the future is a hazard that cannot be ruled out. A test subject may on some occasion in the future correctly attribute the cause of his reaction and secure independent professional medical assistance in identifying the exact nature of the substance employed, and by whom. An extreme reaction to a test substance could lead to a Bureau request for cooperation from local authorities in suppressing information of the situation. This would in turn broaden the circle of individuals who possessed at least circumstantial evidence of the nature of the activity. Weighing possible benefits of such testing against the risks of compromise and of resulting damage to CIA has led the Inspector General to recommend termination of this phase of the MKULTRA program. Existing checks and balances on the working level management of such testing do not afford the senior command of CIA adequate protection against the high risks involved.

19. [It does not follow that termination of covert testing of MKULTRA materials on unwitting U. S. citizens will bring the program to a halt. Some testing on foreign nationals has been occurring under the present arrangements. Various U. S. deep cover agents overseas would appear to be more favorably situated than the U. S. narcotics agents to perform realistic testing.] Finally, the operational use of the substances clearly serves the testing function in view of the lack of predictability of human reactions.

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III. Current estimate of the MKULTRA/MKDELTA capability

20. The present Deputy Chief of TSD, Dr. Sidney Gottlieb, in his then capacity of scientific advisor to the Deputy Director/Plans (DD/P), released a study (hereafter referred to as the Gottlieb report) on 21 April 1960, covering his six-month investigation of "Scientific and Technical Problems in Covert Action Operations". Appendix B of the report was entitled, "The Applicability of Special Chemicals and Biologicals to Clandestine Operations". The inspectors found this Appendix to be a carefully prepared and very useful treatment of the subject. The remaining paragraphs draw on the Gottlieb report, take account of developments since that date, and discuss management and funding aspects of MKULTRA.

21. The author opened his discussion with the question of what the operational returns had been from an eight-year program involving an investment of approximately ______ // He observed that the Clandestine Services had encouraged TSD on various occasions to develop and maintain the operational capability in special drugs and chemicals, but that TSD had received little or no guidance in directing the work and that the Clandestine Services had up to that time shown little inclination to use the end products operationally. He indicated that there had been approximately 100 operations over the eight years

employing harrassment materials (not controlled under the MKDELTA regulation) and only nine operations employing disabling drugs. (NB: two-thirds of these involved the use of drugs in interrogations). No use of lethal substances was reported.

22. The factors accounting for the low rate of use of this capability were considered to be the following:

a. the technical shortcomings of the drugs
b. the problem of testing in realistic pilot operations
c. limitations on the dissemination of pertinent information to operations officers
d. organizational and administrative restrictions on operations
e. negative attitudes toward the use of MKDELTA materials
f. problems in the training of case officers in this field
g. the risk of stimulating increased use of MKDELTA materials by opposition intelligence services

23. Technical shortcomings of the drugs:

As of 1960 no effective knockout pill, truth serum, aphrodisiac, or recruitment pill was known to exist. MKDELTA was described as inherently a high-risk, low-yield field of operations. Three years later the situation remains substantially unchanged, with the exception that real progress has been made in the use of drugs in support of interrogation. Ironically, however, the progress here has occurred in the development of a total psychological theory of interrogation, in which the use of drugs has been relegated to a support role.

24. The problem of testing in realistic pilot operations:

This subject has been discussed above, beginning with paragraph 10. It should also be noted that testing on operational targets overseas is considered by some operations officers to be quite impracticable. Unilateral operations are imperative which substantially complicates the delivery problem. The possibilities of unexpected or critical reactions in test subjects and of ensuing compromise of the activity make most senior command personnel unwilling to take the risks involved.

25. Limitations on the dissemination of pertinent information to case officers; organizational and administrative restrictions on operations:

The present-day situation concerning both of these problem areas is improved over 1960. TSD now regularly briefs a variety

of senior officers on its MKDELTA capability. Approval of the use of MKDELTA materials is now accomplished within the chain of command of the DD/P. The DD/P may consult, for example, with the Chief, Medical Staff, concerning medical risks involved in MKDELTA operations, but the latter surely would not expect to exercise final authority for the disapproval of operations.

26. TSD has found that TDY visits of MKULTRA officers to the field in support of specific operations increases the awareness of the MKDELTA capability and stimulates proposals for additional projects. Of equal significance, however, has been the TSD decision in 1961 to station in the [redacted] officer who is informed on MKDELTA matters. A second officer is scheduled to move PCS to [redacted] during the summer of 1963 to support [redacted] and adjacent stations. While the principal responsibility of these officers lies in the field [redacted] the arrangement in th[redacted] has proved useful in the MKDELTA field--notably in interrogation--as well. It now appears that increased reliance can be placed on this approach to promoting responsible use of the MKDELTA capabilities.

27. Negative attitudes toward the use of MKDELTA materials; problems in the training of case officers in this field:

The 1960 Gottlieb report observed that some case officers have basic moral objections to the concept of MKDELTA and

therefore refuse to use the materials. Some senior officers were reported to believe that the proper employment of the capability required more sophistication than most case officers possessed and that there would be a tendency toward over-reliance on and misuse of drugs in lieu of perfecting classic espionage techniques. Finally, it was suggested that MKDELTA controls were so restrictive as to have generated a general defeatism among case officers concerning the chances of getting approval for use of materials in routine rather than extreme situations. These matters will be reviewed in future field inspections of DD/P area divisions. In the meanwhile, the stationing of qualified TSD consultants in the field and increasing operational experience will tend to develop over time a category of case officers who have acquired direct appreciation of the potential and limitations of the MKDELTA capability.

28. The risk of stimulating increased use of MKDELTA materials by opposition intelligence services:

The Gottlieb report stated that opposition intelligence services are active in the MKDELTA field and recommended that the CI Staff of the DD/P conduct a systematic study of the evidence. This recommendation has not been implemented. It is a subject of increasing significance as new materials and techniques become available.

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It is recommended that:

Deputy Director/Plans instruct Chief, CI Staff, to perform a study of the evidence of use of MKDELTA materials by opposition intelligence services and recommend appropriate measures for training DD/P case officers to recognize and counter hostile activity in this area.

29. In summary, present evidence concerning the operational value of the MKDELTA capability would appear to confirm the principal judgments of the 1960 Gottlieb report. There is an extremely low rate of operational use of the controlled materials. On the other hand, significant progress has been achieved in the development of an interrogation theory employing chemical substances, and in providing competent guidance to the field in MKDELTA matters through TSD officers working overseas.

IV. Management of MKULTRA

30. TSD has initiated 144 projects relating to the control of human behavior; i.e., [illegible] during the ten years of operation of the MKULTRA program. Twenty-five (25) of these projects remain in existence at the present time, while a number of others are in various stages of termination.

31. Active projects may be grouped under the following arbitrary

headings. Many projects involve activity in two or more of the areas listed.

a. basic research in materials and processes
b. procurement of research materials
c. testing of substances on animals and human beings
d. development of delivery techniques
e. projects in offensive/defensive BW, CW, and radiation
f. miscellaneous projects; e.g. (1) petroleum sabotage, (2) defoliants, (3) devices for remote measurement of physiological processes

32. The current management of TSD has initiated a policy of directing the activities of MKULTRA and of the Behavioral Activities Branch towards operations and away from long-range research. Prior to this change in policy which occurred in 1962, MKULTRA sponsored a large number of projects in the fields of applied psychology, sociology, anthropology, and graphology. The present management is unlikely to return to these fields of research under the MKULTRA charter. The inspectors concluded that many of these projects were of insufficient sensitivity to justify waiver of normal Agency control procedures. It is recommended at the end of this report that projects falling outside the authorized scope of MKULTRA henceforth require the prior written approval of the DD/P to qualify for MKULTRA processing.

33. The TSD chain of command for administration of the MKULTRA program comprises the following:

a. Chief, TSD providing overall management
b. Deputy Chief, TSD, (a trained scientist) providing top substantive guidance for the MKULTRA program
c. Assistant Chief, TSD, for Research and Development, contributing management but not substantive guidance

d. Chief Scientist (reporting to c., above), (a trained scientist), contributing substantive guidance in some areas and responsible for the technical administrative processes of MKULTRA. He is supported by a GS-12 budget officer.

e. program manager for MKULTRA, also serves as Chief of Biology Branch, (a trained scientist)

f. project monitors located in various branches of TSD and specialized in the subject fields of the specific projects for which they are assigned responsibility

To date this chain of command has relied primarily on oral communication in the management of MKULTRA. Files are notably incomplete, poorly organized, and lacking in evaluative statements that might give perspective to management policies over time. A substantial portion of the MKULTRA record appears to rest in the memories of the principal officers and is therefore almost certain to be lost with their departures. The senior officers in the MKULTRA chain of command who are not substantively qualified need better records to measure the validity of projects through time and to identify key areas in which to require detailed periodic briefings from working specialists.

34. It will be noted that the Chief of Support, TSD, does not participate in the MKULTRA administration. The predecessor of the present Chief of Support served in TSD throughout the life of the program until 1962 without ever being associated with its management. In his stead, the Chief Scientist and a GS-12 budget officer have provided administrative support. The Chief Scientist has set policy on the funding of MKULTRA

projects in all respects including salaries, overhead rates, fees, material, equipment, facilities, travel, and the like. The support officer was only added in 1962 under pressure of critical audit findings. This use of the Chief Scientist in a field where Chief of Support possesses superior qualifications and facilities constitutes a misuse of talent. The proposed new charter for MKULTRA should take account of this anomaly and also provide that Chief of Support advise in the future on decisions to fund projects under the MKULTRA authority and thereby to waive the application of DD/S procedures.

It is recommended that:

Deputy Director/Plans draft and submit for the approval of the Director of Central Intelligence a revision and re-confirmation of the authority granted him in 1953 (Tab A) to operate the MKULTRA program, incorporating the following provisions:

a. Deputy Director/Plans assign Chief, Technical Services Division, to operate MKULTRA as a program for research and development of chemical, biological, and radioactive materials, and of techniques for the employment of electro-shock, capable of producing human behavioral or physiological change. Subsequent changes in scope of MKULTRA shall require the written approval of the Deputy Director/Plans.

b. Deputy Director/Plans arrange with Deputy Director/ Research for the coordination of research relating to MKULTRA objectives to control duplication of effort and to provide for exchange of information of new capabilities.

c. Chief, Technical Services Division, consistent with established policy, may negotiate for research in MKULTRA materials and techniques to be conducted by Deputy Director/Research and by other component offices of CIA. He shall consult regularly with the appropriate officers of such components to control duplication of effort.

d. Chief, Technical Services Division shall approve the addition of MKULTRA developed materials to the list of operationally available MKDELTA substances, and keep the Deputy Director/Plans advised of such additions. (cf. Clandestine Services Instruction No. 220-10, MKDELTA MATERIALS, dated 22 July 1960--Tab B--which governs the employment of behavioral control materials in clandestine operations.)

e. Deputy Director/Plans, jointly with the Deputy Director/ Support, establish policy for the administration of support functions under MKULTRA. Such policy shall seek to limit to the maximum the waiver of established Agency support procedures for activities of unusual sensitivity.

f. Chief, Technical Services Division shall maintain exacting internal controls and records of all substantive and support matters within each MKULTRA project. Records shall include:

(1) A plan of the research and development to be performed.

(2) An administrative annex setting forth security, budget and accounting arrangements agreed to by the parties to the project. Chief of Support, TSD, shall then certify to the DD/S for each such project that this annex is in accord with the agreed DDS/DDP policy. Pursuant to this

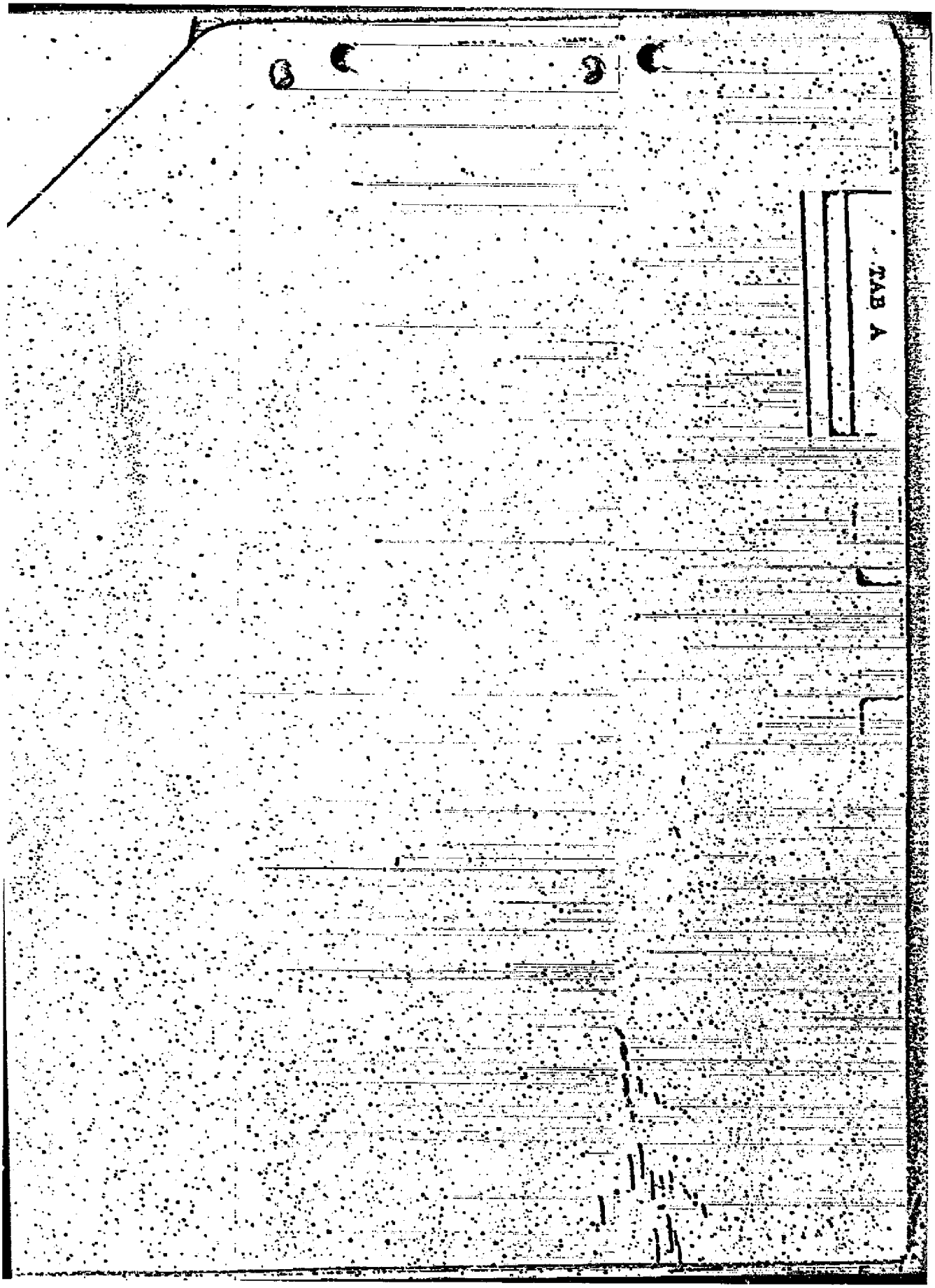
responsibility, Chief of Support, TSD, shall have right of unlimited access to the substantive and administrative records of MKULTRA.

(3) An annual written review by the project monitor setting forth in reasonable detail the nature of the work performed, the prospects for results of eventual operational significance, and a recommendation for continuance or termination of the project.

g. Testing of MKULTRA materials and devices shall only be performed in accredited research institutions under accepted scientific procedures.

h. Chief, Technical Services Division, shall brief the Deputy Director/Plans at least semi-annually on MKULTRA activities. The Deputy Director/Plans after each briefing shall promptly notify the Deputy Director of Central Intelligence that he has personally conducted a semi-annual review of the program.

i. The MKULTRA program be audited in accordance with the provisions of HR 31-1, including auditor access to substantive as well as administrative records.



B-029

3 April 1953

MEMORANDUM FOR: Director, Central Intelligence

SUBJECT: Two Extremely Sensitive Research Programs

1. Approximately 6% of the TSS research and development effort lies in two highly sensitive fields in which it is not possible to conduct the work through the customary contracts for security reasons and other considerations.

2. These two sensitive fields are:

a) Covert studies of biological and chemical warfare
b)

3. Permission of the DCI is requested to handle work in these two fields in the manner outlined in Tab A without contracts and with reimbursement to be made against invoices properly certified by TSS.

4. All controls established in the PRC approval of the original Research Program (other than signing of a contract) would remain unchanged. Periodic financial and progress reports will be made. All documents will be retained by TSS.

5. No new funds are involved. This procedure would apply to funds previously approved for research.

6. Tab B is a memorandum to the Deputy Director (Administration) for your signature authorizing this procedure.

Richard Helms 7GW

Richard Helms
Acting Deputy Director (Plans)

Attachments: (2)
Tab A - Description of Project MKULTRA and the controls which will be exercised over its execution
Tab B - Suggested Memorandum from DCI to DD/A authorizing payment of invoices under Project MKULTRA

Distribution:
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TAB A

PROJECT MKULTRA

Extremely Sensitive Research and Development Programs

1. On 6 June 1952, the Project Review Committee approved the TSS Research Program for Fiscal Year 1953.

2. The PRC approval authorized the Director of Research, at his discretion and with the approval of the Research Chairman, to apportion and obligate the research funds among individual projects, such projects to be subject to the usual Agency procedures and administrative controls.

3. This Research Program has been actively underway since the middle of 1952 and has gathered considerable momentum during the past few months. It is now evident on the basis of work currently underway that approximately 94% of the projects contemplated can be handled through regular procurement channels by means of the customary contracts signed jointly by the Agency and the organization undertaking to carry out the work. It has also become apparent that approximately 6% of the projects are of such an ultra-sensitive nature that they cannot and should not be handled by means of contracts which would associate CIA or the Government with the work in question. This 6% of the current research effort now lies entirely within two well-defined fields of endeavor, namely:

(a) Research to develop a capability in the covert use of biological and chemical materials. This area involves the production of various physiological conditions which could support present or future clandestine operations. Aside from the offensive potential, the development of a comprehensive capability in this field of covert chemical and biological warfare gives us a thorough knowledge of the enemy's theoretical potential, thus enabling us to defend ourselves against a foe who might not be as restrained in the use of

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these techniques as we are. For example: we intend to investigate the development of a chemical material which causes a reversible non-toxic aberrant mental state, the specific nature of which can be reasonably well predicted for each individual. This material could potentially aid in discrediting individuals, eliciting information, implanting suggestion and other forms of mental control;

(b)

4. It is highly undesirable from a policy and security point of view that contracts should be signed indicating Agency or Government interest in either of these two fields. In a great many instances the work in field (a) must be conducted by individuals who are not and should not be aware of our interest. In all cases dealing with field (b), it is mandatory that any connection with the Agency should be known only to an absolute minimum number of people who have been specifically cleared for this purpose. In no case should any manufacturer or supplier be aware of Government interest.

5. In many cases in field (a) where the researcher can be cleared and may be aware of our interest in the program, he is unwilling to have his name on a contract which remains out of his control in our files. Experience has shown that qualified, competent individuals in the field of pharmacological, physiological, psychiatric and other biological sciences are most reluctant to enter into signed agreements of any sort which connect them with this activity since such a connection would jeopardize their professional reputations.

6. Even internally in CIA, as few individuals as possible should be aware of our interest in these fields and of the identity of those who are working for us. At present this results in ridiculous contracts, often with cut-outs, which do not spell out the scope or intent of the work

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and which contain terms which the cut-out cannot incorporate in his contract with the researcher without revealing Government interest. Complete Government audits of such contracts are impossible for the same reason.

7. It is, therefore, requested that the DCI authorize TSS to handle 6% of the previously approved research budget for FY '53 without the establishment of formal contractual relations. This program will be known as Project MKULTRA.

8. It is suggested that payment of invoices under Project MKULTRA forwarded by TSS be authorized, provided that:

(a) the total of such invoices does not exceed 6% for Fiscal Year 1953;

(b) the invoices carry a certification by the TSS Research Director that payment of funds is authorized and that the invoices represent work accomplished within the program approved by the DCI under Project MKULTRA as outlined in this memorandum;

(c) the invoices carry the certification of the Executive Secretary of the Research Board that the scope of the program has been approved;

(d) the invoices carry the certification of the cognizant TSS Division Chief that the work has been satisfactory from a technical point of view.

9. It should be emphasized that this authorization does not involve any new allocation of funds, but merely applies to a portion of a previously approved budget. The TSS certifications mentioned above will mean that:

(a) the project is being handled under the conditions set forth in this description and specifically falls within one of the two ultra-sensitive fields mentioned above;

(b) the project has been approved in the manner provided for in the PRC document which originally set up and approved the over-all TSS Research Program. Each project will thus have been presented by the Chief of the Division monitoring

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the work to the Research Director and to the Research Chairman and will have, as in the past, to be approved by both before any expenditures are made;

(c) technical control over the project will be exercised by the TSS Division Chief and Project Engineers to the same extent now applying to projects handled in the normal fashion. Technical reports will be rendered when necessary and advisable and will be available for inspection in TSS files at any time;

(d) in the case of each project, TSS will reach an understanding with the individuals who will perform the work as to the conditions under which the work will be performed and reimbursement arranged. No standard contract will be signed. In some cases when possible, a memorandum of agreement will be signed and retained in the TSS files. Under no circumstances would copies of such agreements leave TSS files where they will be kept available for inspection;

(e) the manner in which the work will be handled and methods of maintaining Agency and Government sterility will be worked out with the Inspection & Security Office as in the past, and clearance of individuals to the extent deemed necessary by TSS and I & SO will be obtained;

(f) invoices, when received by TSS, will be forwarded to Finance Division for payment and will be certified as outlined in Paragraph 8 above. Whenever documents are available supporting a portion or all of a given invoice, such as cancelled checks, receipted bills, etc., these will be requested by TSS and retained in the TSS files in support of the invoice, where they will at all times be available for inspection. They will not be forwarded with the invoices. Such documents at best will only cover a portion of the total expenditures, and regular audit procedures will not be followed;

(g) other provisions and controls over the Research Program specified in the original PRC approval will remain unaltered. Technical progress under the separate projects handled under Project MKULTRA will be included whenever necessary in

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the regular progress reports now submitted by the Director of Research. The monthly budget and financial report being submitted by TSS to DD/A will include full financial information on these projects, including how much of the 6% has been committed, how much has been spent and how much remains.

10. The establishment and approval of Project MKULTRA will allow TSS to undertake highly desirable and necessary research in these two sensitive fields which would not be possible unless the work can be handled in this manner.

Distribution:
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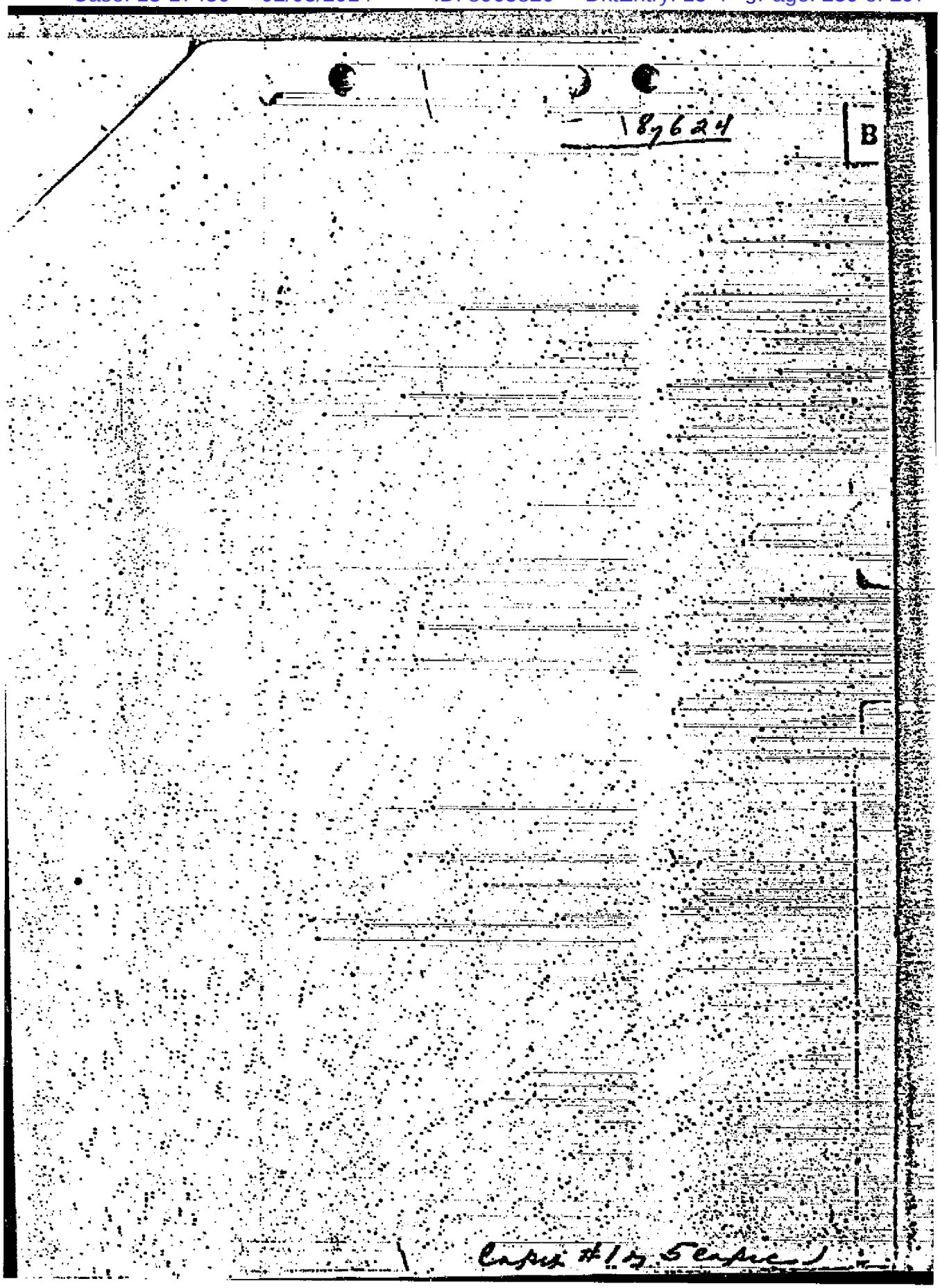

B-037

CENTRAL INTELLIGENCE AGENCY

WASHINGTON 25, D. C.

OFFICE OF THE DIRECTOR

APR 10 1953

MEMORANDUM FOR: DEPUTY DIRECTOR (ADMINISTRATION)

SUBJECT : Project MKULTRA - Extremely Sensitive Research and Development Program

1. On 6 June 1952, the Project Review Committee approved the DD/P/TSS Research Program for Fiscal Year 1953.

2. The PRC approval authorized the Director of Research, at his discretion and with the approval of the Research Chairman, to obligate the research funds and apportion them among individual projects, such projects to be subject to the usual Agency procedures and administrative controls.

3. A small part of the Research Program contemplated by TSS and discussed with me consists of ultra-sensitive work. The nature of the research and the security considerations involved preclude handling the projects by means of the usual contractual agreements.

4. I have, therefore, approved the obligation and expenditure by TSS of 6% of the total budget already approved by the PRC for research for FY '53 without the signing of the usual contracts or other written agreements.

5. This 6% will be handled as Project MKULTRA. Would you please make the necessary arrangements so that invoices forwarded by TSS applying to MKULTRA will be paid, provided that:

a) In the aggregate, they do not exceed 6% for FY '53 without further authorization from me;

b) each invoice is to bear a certification by the Chief,

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DD/P/TSS, as the Research Director, that the invoice applies to Project MKULTRA and that the conditions outlined in the DD/P memorandum for DCI dated 3 April have been complied with. The certification will also request that payment be made;

c) the invoice shall bear the certification of the Executive Secretary of the Research Board that the scope of the program has been approved;

d) the invoice shall bear the certification of the cognizant TSS Division Chief that the work has been satisfactorily performed from a technical point of view and has been carried out in accordance with the understandings reached between TSS and the individual or concern doing the work.

6. No further documents will be required to justify payment of the invoices. Exacting control will be maintained over the Project by TSS. Although no formal contract will be signed, it will occasionally be possible for TSS to sign an informal agreement with the individual or concern performing the work. In such cases, TSS will retain in its files all documents. TSS will endeavor wherever possible to obtain documentary support of invoices, such as cancelled checks, receipted bills, etc., and these will remain in TSS files. Such documents at best will only cover a portion of the total expenditures, and the regular audit procedure will not be followed.

7. Other provisions and control over the Research Program specified in the original IRC approval remain unaltered. The monthly budget and financial record being submitted by TSS to DD/A will include financial information on the work being conducted under Project MKULTRA, showing how much of the 6% has been committed, how much has been spent, and how much remains.

/s/
ALLEN W. DULLES
Director, Central Intelligence

Distribution:
Addressee - Orig. & 1
DD/P - 1
TSS/OC - 1
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- 2 -

B-039

21 April 1953

MEMORANDUM FOR THE FILE

SUBJECT : Project MKULTRA

1. Project MKULTRA was established by means of a memorandum dated 3 April 1953 from DD/P to DCI as a result of which on 13 April 1953, DCI wrote to DD/A approving the project subject to certain controls and limitations which TSS has agreed to maintain.

2. In order to comply with these controls, subprojects under MKULTRA will be handled as outlined in the DD/P memorandum to the DCI dated 3 April 1953. In brief:

(a) A separate file will be kept on each subproject. The foundation of each file will be an agreement between TSS and the contractor outlining the work to be done, the conditions under which it will be accomplished, the estimated costs of so doing, etc. Wherever possible, this agreement will be signed by both parties, but in extreme cases need not be signed by the contractor. In such an event, it is still necessary to prepare such a document outlining the verbal agreement and listing dates and places when meetings took place.

(b) At the same time, the Division Chief will prepare a memorandum for file outlining the scope of the program, the reasons for its activation, etc., and containing all pertinent information. This memorandum will bear the following:

PROGRAM APPROVED AND RECOMMENDED:

Research Chairman

Date:

APPROVED FOR OBLIGATION OF FUNDS:

Research Director

Date:

B-040

(c) When preparing (b), the Division Chief will also prepare a memorandum addressed to the Comptroller, Attention: Finance Division. This memorandum will state that subproject ____ has been approved, and $________ of the over-all project MKULTRA funds have been obligated to cover the project's expenses. This memorandum will be signed by the Division Chief and will provide space for the approval of the Research Director and the Research Chairman as outlined above. This memorandum will allow Finance to obligate funds so they will not be lost at the end of the Fiscal Year and will provide a document against which action can be taken when invoices are later presented for payment. This memorandum should contain absolutely no technical details or information as to the scope of the work. Copies of the memorandum will be prepared for:

Comptroller, Original and # 2
Exec. Sec'y., Res. Board - 1
TSS/Budget - 1
TSS Registry - 1
Initiating Division, whatever number is required

(d) Memoranda (b) and (c) will be presented together to the Research Director and the Research Chairman for signature. Memorandum (b) will be returned for inclusion in the project file, and memorandum (c) will be routed to TSS/Budget, TSS/Supply & Services, TSS Registry and Comptroller.

(e) It will be the responsibility of the Division Chief handling the project to see that the Research Director is kept informed of progress and that reports, correspondence with the contractor and other documents are kept in the project file.

(f) When an invoice is received by the Division, it shall be forwarded to Chief, Finance Division, via TSS/Budget Officer, with a memorandum stating it applies to subproject ____ under Project MKULTRA. The memorandum should provide any special instructions involving method of payment, i.e., whether by check or cash, etc. The following certifications must appear on the invoice or be

attached to it:

(1) "It is hereby certified that this is Invoice No. ___ applying to subproject ___ of Project MKULTRA, that technical performance by (name of the contractor) has been satisfactory, that the work was accomplished in accordance with the mutual agreement reached with (name of contractor), that this bill is just and correct and that payment thereof has not yet been made.

Date: ______________ ______________ (Division Chief)"

(2) "It is hereby certified that this invoice applies to subproject ___ under Project MKULTRA which was duly approved and that the project has been carried out in accordance with the DD/P memorandum to DCI dated 3 April 1953 and the DCI memorandum to DD/A dated 13 April 1953. Payment is authorized and requested.

Date: ______________ ______________

Research Director"

(3) "It is hereby certified that the scope of the program of subproject ___ of Project MKULTRA has been approved.

Date: ______________ ______________

Exec. Sec'y., Res. Bd."

TSS/OC:cvsr/jel (20 April 1953)

Distribution:
TSS/OC - Orig. & 1
TSS/CD - 1
TSS/ADMIN - 1

Exhibit C

C O P Y

SECRETARY OF DEFENSE
Washington

26 Feb 1953

MEMORANDUM FOR THE SECRETARY OF THE ARMY
SECRETARY OF THE NAVY
SECRETARY OF THE AIR FORCE

SUBJECT: Use of Human Volunteers in Experimental Research

1. Based upon a recommendation of the Armed Forces Medical Policy Council, that human subjects be employed, under recognized safeguards, as the only feasible means for realistic evaluation and/or development of effective preventive measures of defense against atomic, biological or chemical agents, the policy set forth below will govern the use of human volunteers by the Department of Defense in experimental research in the fields of atomic, biological and/or chemical warfare.

2. By reason of the basic medical responsibility in connection with the development of defense of all types against atomic, biological and/or chemical warfare agents, Armed Services personnel and/or civilians on duty at installations engaged in such research shall be permitted to actively participate in all phases of the program, such participation shall be subject to the following conditions:

a. The voluntary consent of the human subject is absolutely essential.

(1) This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him to make an understanding and enlightened decision. This latter element requires that before the acceptance of an affirmative decision by the experimental subject there should be made known to him the nature, duration, and purpose of the experiment; the method and means by

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UNCLASSIFIED 22 Aug 75
per S. Clements
DDR&E OSD(PA)

C-001

C O P Y

which it is to be conducted; all inconveniences and hazards reasonably to be expected; and the effects upon his health or person which may possibly come from his participation in the experiment.

(2) The concept of the human subject shall be in writing, his signature shall be affixed to a written instument setting forth substantially the aforementioned requirements and shall be signed in the presence of at least one witness who shall attest to such signature in writing.

(a) In experiments where personnel from more than one Service are involved the Secretary of the Service which is exercising primary responsibility for conducting the experiment is designated to prepare such an instrument and coordinate it for use by all the Services having human volunteers involved in the experiment.

(3) The duty and responsibility for ascertaining the quality of the consent rests upon each individual who initiates, directs or engages in the experiment. It is a personal duty and responsibility which may not be delegated to another with impunity.

b. The experiment should be such as to yield fruitful results for the good of society, unprocurable by other methods or means of study, and not random and unnecessary in nature.

c. The number of volunteers used shall be kept at a minimum consistent with item b., above.

d. The experiment should be so designed and based on the results of animal experimentation and a knowledge of the natural history of the disease or other problem under study that the anticipated results will justify the performance of the experiment.

e. The experiment should be so conducted as to avoid all unnecessary physical and mental suffering and injury.

f. No experiment should be conducted where there is an a priori reason to believe that death or disabling injury will occur.

g. The degree of risk to be taken should never exceed that determined by the humanitarian importance of the problem to be solved by the experiment.

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UNCLASSIFIED 22 Aug 75

C-002

C O P Y

h. Proper preparation should be made and adequate facilities provided to protect the experimental subject against even remote possibilities of injury, disability, or death.

i. The experiment should be conducted only by scientifically qualified persons. The highest degree of skill and care should be required through all stages of the experiment of those who conduct or engage in the experiment.

j. During the course of the experiment the human subject should be at liberty to bring the experiment to an end if he has reached the physical or mental state where continuation of the experiment seems to him to be impossible.

k. During the course of the experiment the scientist in charge must be prepared to terminate the experiment at any stage, if he has probable cause to believe, in the exercise of the good faith, superior skill and careful judgment required of him that a continuation of the experiment is likely to result in injury, disability, or death to the experimental subject.

l. The established policy, which prohibits the use of prisoners of war in human experimentation, is continued and they will not be used under any circumstances.

3. The Secretaries of the Army, Navy and Air Force are authorized to conduct experiments in connection with the development of defenses of all types against atomic, biological and/or chemical warfare agents involving the use of human subjects within the limits prescribed above.

4. In each instance in which an experiment is proposed pursuant to this memorandum, the nature and purpose of the proposed experiment and the name of the person who will be in charge of such experiment shall be submitted for approval to the Secretary of the military department in which the proposed experiment is to be conducted. No such experiment shall be undertaken until such Secretary has approved in writing the experiment proposed, the person who will be in charge of conducting it, as well as informing the Secretary of Defense.

5. The addresses will be responsible for insuring compliance with the provisions of this memorandum within their respective Services.

/signed/
C.E. WILSON

Copies furnished:
Joint Chiefs of Staff
Research and Development Board

Downgraded to UNCLASSIFIED
22 Aug 75

C-003

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

VIETNAM VETERANS OF AMERICA *et al.*,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY *et al.*,

Defendants.

Case No. CV 09-0037-CW

DECLARATION OF STACEY M. SPRENKEL IN SUPPORT OF PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

[AMENDED VERSION PURSUANT TO MARCH 29, 2012 ORDER]

Hearing Date: April 5, 2012
Time: 2:00 p.m.
Courtroom: 2, 4th Floor
Judge: Hon. Claudia Wilken

Complaint filed January 7, 2009

EXHIBIT 79 REDACTED

EXHIBIT 87 FILED UNDER SEAL

I, STACEY M. SPRENKEL, declare as follows:

1. I am an attorney licensed to practice law in the State of California and am admitted to practice before this Court. I am an associate with the law firm of Morrison & Foerster LLP, counsel of record for Vietnam Veterans of America, Swords to Plowshares: Veterans Rights Organization, Bruce Price, Franklin D. Rochelle, Larry Meirow, Eric P. Muth, David C. Dufrane, Wray C. Forrest, Tim Michael Josephs, and William Blazinski ("Plaintiffs") in this action. I submit this Declaration in Support of Plaintiffs' Reply in Support of Motion for Class Certification. I make this Declaration based on personal knowledge and discussions with support staff working under my direction. If called as a witness, I would testify to the facts set forth below.

2. Attached hereto as Exhibit 75 is a true and correct copy of the transcript of the September 1, 2011 hearing before Judge Wilken regarding the CIA's Motion for Judgment on the Pleadings and Motion to Amend the Scheduling Order.

3. Attached hereto as Exhibit 76 is a true and correct copy of excerpts from the transcript of the June 3, 2011 deposition of William Blazinski.

4. Attached hereto as Exhibit 77 is a redacted true and correct copy of the outreach letter sent by Defendant Department of Veterans Affair to William Blazinski, produced by Plaintiffs with Bates labels PLTF 006296 through PLTF 006301.

5. Attached hereto as Exhibit 78 is a true and correct copy of excerpts from the transcript of the June 1, 2011 deposition of Tim Michael Josephs.

6. Attached hereto as Exhibit 79 is a redacted true and correct copy of excerpts from the transcript of the June 13, 2011 deposition of David Dufrane.

7. Attached hereto as Exhibit 80 is a true and correct copy of what I am informed and believe is a National Academies report titled, "Health Effects of Perceived Exposure to Biochemical Warfare Agents," which is Deposition Exhibit 354 in this case.

8. Attached hereto as Exhibit 81 is a true and correct copy of excerpts from the transcript of the January 20, 2012 deposition of Mark Brown.

9. Attached hereto as Exhibit 82 is a redacted true and correct copy of what I am informed and believe is a document titled Military History Institute Relevance Review Procedures, produced by non-party Battelle Memorial Institute at Bates labels Battelle_0000032621 through Battelle_0000032635 and Deposition Exhibit 642 in this case.

10. Attached hereto as Exhibit 83 is a true and correct copy of excerpts from the transcript of the November 18, 2011 deposition of William McKim.

11. Attached hereto as Exhibit 84 is a true and correct copy of an article titled, "TRICARE Eligibility," available at http://www.military.com/benefits/tricare/tricare-eligibility.

12. Attached hereto as Exhibit 85 is a true and correct copy of a February 24, 2012 letter from Lily Farel, counsel for Defendants, to Ben Patterson, counsel for Plaintiffs.

13. Attached hereto as Exhibit 86 are true and correct copies of what I am informed and believe are: (1) an April 7, 1942 letter to Secretary of the Navy Frank Knox, produced by Defendants with Bates label VET017-000696; (2) a May 8, 1942 letter from Acting Secretary of the Navy James Forrestal, produced by Defendants with Bates label VET017-000695; and (3) an April 11, 1944 Memorandum titled "Procurement of Enlisted Volunteers," produced by Defendants with Bates label VET017-000694.

14. Attached hereto as Exhibit 87 is a true and correct copy of excerpts from the transcript of the October 12, 2011 deposition of Veteran A, whose identity is protected because he is a third-party putative class member and not a named plaintiff.

15. Attached hereto as Exhibit 88 is a true and correct copy of excerpts from the transcript of the July 6-8, 2011 deposition of Michael Kilpatrick.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed in San Francisco, California on this 22nd day of March, 2012.

/s/ Stacey M. Sprenkel
Stacey M. Sprenkel

Attestation Pursuant to General Order 45, section X.B

I hereby attest that I have on file all holograph signatures for any signatures indicated by a "conformed" signature (/S/) within this e-filed document.

/s/ Gordon P. Erspamer
GORDON P. ERSPAMER

EXHIBIT 84

TRICARE Eligibility

TRICARE is a health benefit program for all seven uniformed services: the Army, Navy, Marine Corps, Air Force, Coast Guard, Public Health Service, and the National Oceanic and Atmospheric Administration. To use TRICARE, you must be listed in DEERS as being eligible for military health care benefits. If you don 't find answers to your eligibility questions in this section, check with your military service personnel office for specific information.

TRICARE-eligible persons include the following:

- Active duty service members
  Note: Active duty service members and activated National Guard or Reserve Members must enroll in one of the TRICARE Prime options:
  - TRICARE Prime
  - TRICARE Prime Remote
  - TRICARE Prime Overseas
  - TRICARE Global Remote Overseas
- Spouses and unmarried children of active duty service members
- Uniformed service retirees, their spouses, and unmarried children
- Medal of Honor (MOH) recipients and/or their families.
- Un-remarried former spouse and unmarried children of active duty or retired service members who have died Note: Family members of active duty service members who died while on active duty, and who were on active duty for at least 31 days before death, will continue to be treated as active duty family members for TRICARE cost-sharing purposes for 3 years after their active duty sponsor dies.
- Spouses and unmarried children of reservists and National Guard who are ordered to active duty for more than 30 consecutive days (they are covered only during the reservist 's active duty tour) or of reservists and National Guard who die on active duty.
- Spouses and unmarried children of reservists and National Guard who die as a result of a line of duty condition may be eligible for health care.
- Persons who have received the Medal of Honor, and their family members, who are not otherwise TRICARE eligible. These persons will be able to obtain health care benefits under TRICARE in the same manner as if they were entitled to retired pay.
- Unmarried children up to age 21 (including stepchildren who are adopted by the sponsor) are still covered by TRICARE even if the spouse gets divorced or remarried. But in the case of a stepchild who was not adopted by the sponsor and the marriage ends in divorce, the stepchild loses eligibility on the date the divorce decree is final. It should be emphasized that stepchildren don 't have to be adopted by the sponsor to be covered by TRICARE while the sponsor and the mother or father of the stepchildren remains married. A child aged 21 or over may be covered if he or she is severely disabled and the condition existed prior to the child 's 21st birthday —or, if the condition occurred between the ages of 21 and 23 while the child was enrolled in a full-time course of study in an approved institution of higher learning and is, or was at the time of the sponsor 's death, dependent on the sponsor for more than one-half of his or her support. A child may also be covered up to the 23rd birthday if he or she is in school full-time.
- Children placed in the custody of a service member or former member, by a court of law; or by a recognized adoption agency in anticipation of legal adoption by the member. TRICARE eligibility is effective July 1, 1994, if a court of law places the child. A child placed by a recognized adoption agency is eligible effective October 5, 1994.
- Children of current or former service members or their spouses born out of wedlock may be eligible for TRICARE benefits under certain conditions. Check with your Beneficiary Counseling and Assistance Coordinator (BCAC)/Health Benefits Adviser (HBA), or TRICARE Service Center (TSC).
- Certain family members of active duty service members who were court-martialed and separated for spouse or child abuse. The victims of the abuse within the family are eligible for health benefits for the period that the abused family member is receiving “transitional compensation ” under Section 1059 of Title 10, U.S. Code. Cost sharing will be the same as for other active duty families.
- Certain abused spouses, former spouses, and dependent children of service members who were eligible for retirement, but had that eligibility taken away as a result of abuse of the spouse or child. This benefit is effective for medically necessary services and supplies provided under TRICARE Standard (CHAMPUS) on or after October 23, 1992.

- Spouses and children of North Atlantic Treaty Organization (NATO) and "Partners for Peace" (PFP) nation representatives who are officially accompanying the NATO or PFP nation representatives while stationed in, or passing through, the United States on official business. These family members are eligible for

outpatient benefits only (including ambulatory surgery). They are not listed in the DEERS files, and should check with a BCAC/HBA/TSC for assistance before getting care or filing claims. (NATO and PFP family members cannot enroll in TRICARE Prime.)

- Former spouses of active, retired or former military members may be eligible for TRICARE if they meet the following requirements:
  1. Must not have remarried. (If remarried, the loss of benefits remains applicable even if the remarriage ends in death or divorce.)
  2. Must not be covered by an employer-sponsored health plan.
  3. Must not be the former spouse of a North Atlantic Treaty Organization or Partners for Peace nation member.
  4. Must meet the requirements of one (not all) of the following three situations:

Situation 1

- Must have been married to the SAME member or former member for at least 20 years, and at least 20 of those years must have been creditable in determining the member's eligibility for retirement pay.
- If the date of the final decree of divorce or annulment was on or after February 1, 1983, the former spouse is eligible for TRICARE coverage of health care that is received after the date of the divorce or annulment.
- If the date of the final decree is before February 1, 1983, the former spouse is eligible for TRICARE coverage of health care received on or after January 1, 1985.

Eligibility continues as long as the preceding requirements continue to be met.

Situation 2

- Must have been married to the SAME member or former member for at least 20 years, and at least 15, but less than 20, of those years must have been creditable in determining the member's eligibility for retirement pay.
- If the date of the final decree of divorce or annulment is before April 1, 1985, the former spouse is eligible only for care received on or after January 1, 1985, or the date of the decree, whichever is later.

Eligibility continues as long as the preceding requirements continue to be met. However, if the date of the final divorce decree or annulment is on or after April 1, 1985, but before September 29, 1988, the former spouse is eligible for care received from the date of the decree until December 31, 1988, or two years from the date of the decree, whichever is later.

Situation 3

- Must have been married to the SAME member or former member for at least 20 years, and at least 15, but less than 20, of those years must have been creditable in determining the member's eligibility for retirement pay
- If the date of the final decree of divorce or annulment is on or after September 29, 1988, the former spouse is eligible only for care received for one year from the date of the decree.

Health Plan Options
If you qualify for TRICARE coverage based on the requirements listed above, you're covered with the same benefits as a retired family member.

Visit www.tricare.mil/enrollment/index.cfm for TRICARE Enrollment and Claim Forms.

For general information about TRICARE, call one of the many toll-free TRICARE information lines found at the TRICARE Contact Us web page.

In This Section:

- DEERS
  - Updating Personal Information
  - Newborns, Adopted Children and Pre-Adopted Children
  - Unremarried Former Spouses
- ID Cards
- Who's Eligible?
- Who's Not Eligible?
- Loss of Eligibility
- Certificate of Creditable Coverage

Who's Eligible?

Eligibility for TRICARE is determined by the uniformed services and reported to the Defense Enrollment Eligibility Reporting System (DEERS). All eligible beneficiaries must have their eligibility status recorded in DEERS.

TRICARE beneficiaries can be divided into two main categories: sponsors and family members. Sponsors are usually active duty service members, National Guard/Reserve members or retired service members. When we say "sponsor," we are referring to the person who is serving or who has served on active duty or in the National Guard or Reserves.

Select a Beneficiary Category
Learn more about health plan and dental options by selecting a beneficiary category from the drop down menu below.

Retired Service Members and Their Families GO

Retired Service Members and Their Families

Retired service members of the uniformed services and their family members (spouses and children) are eligible for TRICARE. The uniformed services include the:

- U.S. Army
- U.S. Air Force
- U.S. Navy
- U.S. Marine Corps
- U.S. Coast Guard
- Commissioned Corps of the Public Health Service
- Commissioned Corps of the National Oceanic and Atmospheric Association.

Retired service members and their family members are eligible for the following options:

- TRICARE Prime (enrollment fees apply)
- TRICARE Standard and Extra
- US Family Health Plan (in specific U.S. locations)
- TRICARE For Life (with Medicare Part A & B coverage)
- TRICARE Standard Overseas
- TRICARE Retiree Dental Program

Additionally, adult children who "age out" at 21 (or 23 if enrolled in college full time) may qualify to purchase TRICARE Young Adult.

Medically-Retired Service Members
For a service member to be placed on the Temporary Disabled Retirement List (TDRL), their Service has determined that they have a physical condition, injury or disease that renders them unfit for military service, and the member must receive a disability rating from the service of at least 30 percent. This rating is a separate rating from the one given by the Department of Veteran's Affairs (VA).

TDRL members are re-evaluated by the Service at least every 18 months for a period of up to five years. At that time, the Service determines whether the situation has improved, remained the same or has gotten worse. Depending on the outcome, the member can be retained on the TDRL, separated from service, returned to duty or placed on Permanent Disability Retirement List (PDRL).

As long as the member is on TDRL or PDRL, he or she is eligible for TRICARE benefits as described above (as long as they are registered in DEERS). Eligible family members (registered in DEERS) are also eligible for TRICARE benefits like any other family member of a retired service member.

If the Service disability rating is less than 30 percent, the member is separated from active duty, and they may qualify transitional health care benefits:

- Transitional Assistance Management Program

Contact
Defense Manpower Data Center Support Office
Toll-free: 1-800-538-9552
TTY/TTD: 1-866-363-2883
Fax: 1-831-655-8317
DEERS Website

Downloads
Transitioning from Active Duty to Retirement

Related Topics
Retiring from Active Duty
Retired National Guard and Reserve Members
Children
Former Spouses

Related Web Sites
Find an ID Card Office
Veterans Affairs

Continued Health Care Benefit Program

Additionally, medically-retired members of the Armed Services enrolled in the Federal Recovery Coordination Program (FRCP) are eligible for the same medical and dental care for that severe or serious illness or injury that would be available to an active duty service member when the care is not reasonably available through the Department of Veterans Affairs (DVA).

Retired National Guard or Reserve Members
Benefits for retired Reserve members are different depending on the sponsor's age:

- May purchase the TRICARE Retiree Dental Program at any time.
- If under age 60, may qualify to purchase TRICARE Retired Reserve.
- At age 60 (and when receiving retired pay), eligible for the same benefits as all other retired service members (described above).

Learn more about benefits for retired Reserve members.

If you're not in DEERS, you're not eligible.

Be sure that all members of your family are registered in DEERS, and all information is kept current.

Last Modified: November 30, 2010

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

VIETNAM VETERANS OF AMERICA *et al.*,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY *et al.*,

Defendants.

Case No. CV 09-0037-CW

DECLARATION OF STACEY M. SPRENKEL IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION WITH EXHIBITS

[AMENDED VERSION PURSUANT TO FEBRUARY 24, 2012 ORDER]

Hearing Date: April 5, 2012
Time: 2:00 pm.
Courtroom: 2, 4th Floor
Judge: Hon. Claudia Wilken

Complaint filed January 7, 2009

EXHIBITS 3, 12, 14 & 65 REDACTED

EXHIBITS 69, 70, 71, 72 & 73 FILED UNDER SEAL

PUBLIC REDACTED VERSION

I, STACEY M. SPRENKEL, declare as follows:

1. I am an attorney licensed to practice law in the State of California and am admitted to practice before this Court. I am an associate with the law firm of Morrison & Foerster LLP, counsel of record for Vietnam Veterans of America, Swords to Plowshares: Veterans Rights Organization, Bruce Price, Franklin D. Rochelle, Larry Meirow, Eric P. Muth, David C. Dufrane, Wray C. Forrest, Tim Michael Josephs, and William Blazinski ("Plaintiffs") in this action. I submit this Declaration in Support of Plaintiffs' Motion for Class Certification. I make this Declaration based on personal knowledge and discussions with support staff working under my direction. If called as a witness, I would testify to the facts set forth below.

2. This Declaration incorporates instructions from the Court's February 24, 2012 Order Granting in Part, and Denying in Part, Plaintiffs' Motion to File Under Seal (Docket No. 352)and now reflects that the public version of the document attached hereto as Exhibit 3 contains redactions. Separately, this Declaration also now reflects that the document attached hereto as Exhibit 65 contains redactions. This Declaration is intended to replace the declaration lodged with the Court on February 10, 2012.

3. Attached hereto as Exhibit 1 is a true and correct copy of what I am informed and believe is a document entitled, "Chemical Warfare Agent Experiments Among U.S. Service Members," produced by Defendants at Bates labels VET001_015675 through VET001_015707 and Deposition Exhibit No. 554 in this case.

4. Attached hereto as Exhibit 2 is a true and correct copy of what I am informed and believe is a string of emails, produced by Defendants at Bates labels VET140_001609 through VET140_001610 and Deposition Exhibit No. 774 in this case.

5. Attached hereto as Exhibit 3 is a redacted true and correct copy of what I am informed and believe is a string of emails and attachments, produced by Defendants at Bates labels VET125_047490 through VET125_0047505 and Deposition Exhibit No. 807 in this case.

6. Attached hereto as Exhibit 4 is a true and correct copy of what I am informed and believe is an excerpt of a document entitled, "Department of Defense Office of the Under Secretary of Defense Personnel & Readiness Chemical Weapons Exposure Project Summary for

1993," prepared by Martha E. Hamed, produced by Defendants beginning at Bates labels VET017-000001, and is also an excerpt of Deposition Exhibit No. 467 (Parts 1 and 2) in this case.

7. Attached hereto as Exhibit 5 are true and correct copies of what I am informed and believe are U.S. War Department documents from 1937 concerning testing on human subjects, produced by Defendants with Bates labels VET110-000003 through VET110-000007.

8. Attached hereto as Exhibit 6 is a true and correct copy of what I am informed and believe is a document entitled, "U.S. Army Activity in the U.S. Biological Warfare Programs, Volume I," dated February 24, 1977, which is an excerpt from Congressional Hearings on "Biological Testing Involving Human Subjects by the Department of Defense" held on March 8 and May 22, 1977, and is an excerpt of Deposition Exhibit 320 in this case.

9. Attached hereto as Exhibit 7 is a true and correct copy of what I am informed and believe is a document entitled, "The Edgewood Arsenal Database [Also Known as the Chemical, Biological, Radiological, Nuclear, Explosive (CBRNE) Database]," produced by Defendants at Bates labels VET007_0011419 through VET007_0011420 and Deposition Exhibit No. 288 in this case.

10. Attached hereto as Exhibit 8 is a true and correct copy of what I am informed and believe is a document entitled, "VBA Outreach Efforts to Veterans Exposed to Chemical and Biological Substances at Edgewood Arsenal," produced by Defendants at Bates labels DVA003 021519 through DVA003 021520 and Deposition Exhibit No. 805 in this case.

11. Attached hereto as Exhibit 9 is a true and correct copy of what I am informed and believe is a document entitled, "Chemical Compounds Used in Human Testing at Edgewood Arsenal (1955 to 1975)," produced by Defendants at Bates labels VET001_011697 through VET001_011698 and Deposition Exhibit No. 104 in this case.

12. Attached hereto as Exhibit 10 is a true and correct copy of excerpts from the transcript of the July 7, 2011 deposition of Martha Hamed.

13. Attached hereto as Exhibit 11 is a true and correct copy of excerpts from the transcript of the June 3, 2011 deposition of William Blazinski.

14. Attached hereto as Exhibit 12 is a redacted true and correct copy of excerpts from the transcript of the June 1, 2011 deposition of Tim Michael Josephs.

15. Attached hereto as Exhibit 13 is a true and correct copy of what I am informed and believe is a draft report, produced by Defendants with Bates labels VET123-002581 through VET123-002617 and Deposition Exhibit No. 737 in this case.

16. Attached hereto as Exhibit 14 is a redacted true and correct copy of what I am informed and believe is a letter from John Josselson to Colonel McClure, dated August 8, 1975, and produced by Defendants at Bates labels DVA035 001169 through DVA035 001170.

17. Attached hereto as Exhibit 15 is a true and correct copy of what I am informed and believe is an excerpt from the Joint Hearings before the Subcommittee on Health of the Committee on Labor and Public Welfare and the Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary, United States Senate, held on September 10 and 12 and November 7, 1975, and Deposition Exhibit No. 319 in this case.

18. Attached hereto as Exhibit 16 is a true and correct copy of what I am informed and believe is a memorandum from Army General Counsel Jill Wine-Volner with the subject, "Notification of Participants in Drug or Chemical/Biological Agent Research," dated August 8, 1979, produced by Defendants at Bates labels VET123_004994 through VET123_004995 and Deposition Exhibit No. 710 in this case.

19. Attached hereto as Exhibit 17 is a true and correct copy of what I am informed and believe is a memorandum from Army General Counsel Jill Wine-Volner with the subject, "Notification of Participants in Drug or Chemical/Biological Agent Research," dated September 24, 1979, produced by Defendants at Bates labels VET017-000279 through VET017-000280 and Deposition Exhibit No. 310 in this case.

20. Attached hereto as Exhibit 18 is a true and correct copy of what I am informed and believe is a memorandum from Army Chief of Staff John McGiffert with the subject, "Notification of Participants in Drug or Chemical/Biological Agent Research," dated October 25, 1979, produced by Defendants at Bates labels VET030-022686 through VET030-022691 and Deposition Exhibit No. 465 in this case.

21. Attached hereto as Exhibit 19 is a true and correct copy of what I am informed and believe is a memorandum with the subject, "Notification of Participants in Drug or Chemical/Biological Agent Research," dated November 2, 1979, produced by Defendants at Bates labels VET030-022692 through VET030-022696 and Deposition Exhibit No. 318 in this case.

22. Attached hereto as Exhibit 20 is a true and correct copy of what I am informed and believe is a memorandum with the subject, "Chemical Weapons Research Programs Using Human Test Subjects," dated March 9, 1993 and signed by Secretary of Defense William Perry, produced by Defendants at Bates labels VET001_011181 through VET001_011182 and Deposition Exhibit No. 235 in this case.

23. Attached hereto as Exhibit 21 is a true and correct copy of excerpts from the transcript of the January 11, 2012 deposition of Norma St. Claire.

24. Attached hereto as Exhibit 22 is a true and correct copy of what I am informed and believe is VHA Directive 2009-047, Provision of Health Care Services to Veterans Involved in Project 112-Shipboard Hazard and Defense (SHAD) Testing, dated September 30, 2009.

25. Attached hereto as Exhibit 23 is a true and correct copy of excerpts from the transcript of the January 20, 2012 deposition of Mark Brown.

26. Attached hereto as Exhibit 24 is a true and correct copy of excerpts from the transcripts of the January 24-5, 2012 deposition of David Abbot.

27. Attached hereto as Exhibit 25 is a true and correct copy of what I am informed and believe is a document prepared by Brian Pegram, Senior Defense Analyst, U.S. Government Accountability Office, Defense Capabilities and Management Team, produced by Defendants at Bates labels DVA003 000299 through DVA003 000301 and Deposition Exhibit No. 281 in this case.

28. Attached hereto as Exhibit 26 is a true and correct copy of what I am informed and believe is a memorandum with the subject, "Use of Human Volunteers in Experimental Research," dated February 26, 1953 and signed by C. E. Wilson, with Bates labels C001 through C003 and Deposition Exhibit No. 95 in this case.

29. Attached hereto as Exhibit 27 is a true and correct copy of what I am informed and believe is a memorandum with the subject "Use of Volunteers of Research," dated June 30, 1953, sent by Chief of Staff John C. Oakes, produced by Defendants at Bates labels VVA 024538 through VVA 024549 and Deposition Exhibit No. 96 in this case.

30. Attached hereto as Exhibit 28 is a true and correct copy of what I am informed and believe is Army Regulation AR 70-25 "Use of Volunteers as Subjects of Research," dated March 26, 1962, and Deposition Exhibit No. 94 in this case.

31. Attached hereto as Exhibit 29 is a true and correct copy of what I am informed and believe is Army Regulation AR 70-25 "Use of Volunteers as Subjects in Research," dated January 25, 1990 and Deposition Exhibit No. 311 in this case.

32. Attached hereto as Exhibit 30 is a true and correct copy of what I am informed and believe is Department of Defense Directive 3216.02, "Protection of Human Subjects and Adherence to Ethical Standards in DoD-Supported Research" dated March 25, 2002, produced by Defendants with Bates labels VET113-000104 through VET113-000112.

33. Attached hereto as Exhibit 31 is a true and correct copy of what I am informed and believe is Department of Defense Directive 6200.2, "Use of Investigational New Drugs for Force Health Protection" dated August 1, 2000.

34. Attached hereto as Exhibit 32 is a true and correct copy of what I am informed and believe is a document with the subject, "Implementation Plan for U.S. Chemical and Biological (CB) Tests Repository Program," approved by Jean Reed, produced by Defendants at Bates labels DVA002 004549 through DVA002 004551 and Deposition Exhibit No. 199 in this case.

35. Attached hereto as Exhibit 33 is a true and correct copy of what I am informed and believe is a memorandum with subject "Release from 'Secrecy Oaths' Under Chemical and Biological Weapons Human Subject Research Programs," dated January 11, 2011 and produced by Defendants at Bates labels VET021-000001 through VET021-000002 and Deposition Exhibit No. 332 in this case.

36. Attached hereto as Exhibit 34 is a true and correct copy of what I am informed and believe are Compensation and Pension Service meeting minutes for a meeting held on March 30,

2006, dated April 1, 2006, produced by Defendants at Bates labels DVA003 007671 through DVA003 007674 and Deposition Exhibit No. 285 in this case.

37. Attached hereto as Exhibit 35 is a true and correct copy of what I am informed and believe is an email with attachments, produced by Defendants at Bates labels VET140-002110 through VET140-002112 and Deposition Exhibit No. 809 in this case.

38. Attached hereto as Exhibit 36 is a true and correct copy of what I am informed and believe are Compensation and Pension Service meeting minutes dated June 3, 2005, produced by Defendants at Bates labels DVA003 006754 through DVA003 006761 and Deposition Exhibit No. 796 in this case.

39. Attached hereto as Exhibit 37 is a true and correct copy of what I am informed and believe is an email with attachments, produced by Defendants at Bates labels VET140-002114 through VET140-002119 and Deposition Exhibit No. 811 in this case.

40. Attached hereto as Exhibit 38 is a true and correct copy of excerpts from the transcript of the November 4, 2011 deposition of Paul Black.

41. Attached hereto as Exhibit 39 is a true and correct copy of what I am informed and believe is a table reflecting outreach letters mailed and returned, produced by Defendants at Bates labels DVA006 104636 through DVA006 104639 and Deposition Exhibit No. 580 in this case.

42. Attached hereto as Exhibit 40 is a true and correct copy of what I am informed and believe is an document entitled, “Outreach Efforts of Project 112/SHAD, Mustard Gas and Chemical Biological Programs as of January 31, 2010,” prepared by Procedures Staff, Compensation and Pension Service, dated February 5, 2010, produced by Defendants at Bates labels DVA004 014448 through DVA004 014452 and Deposition Exhibit No. 581 in this case.

43. Attached hereto as Exhibit 41 is a true and correct copy of excerpts from the transcript of Volume II of the deposition of Michael Kilpatrick, dated July 7, 2011.

44. Attached hereto as Exhibit 42 is a true and correct copy of what I am informed and believe are Compensation and Pension Service meeting minutes dated November 29, 2004, produced by Defendants at Bates labels DVA003 006436 through DVA003 006440 and Deposition Exhibit No. 269 in this case.

45. Attached hereto as Exhibit 43 is a true and correct copy of excerpts from the transcript of the July 6, 2011 deposition of Dee Dodson Morris.

46. Attached hereto as Exhibit 44 is a true and correct copy of what I am informed and believe is an excerpt of the MKULTRA Briefing Book, dated January 1, 1976 and beginning at Bates label MKULTRA0000190090_0001, and is also an excerpt of Deposition Exhibit 594 in this case.

47. Attached hereto as Exhibit 45 is a true and correct copy of what I am informed and believe is a January 31, 1975 James Hirsch Memorandum: ORD Research and Development for Intelligence Applications of Drugs, and attachment "Influencing Human Behavior," produced by Defendants with the Bates labels VET001_009239 through VET001_009247 and Deposition Exhibit 542 in this case.

48. Attached hereto as Exhibit 46 is a true and correct copy of what I am informed and believe are excerpts from four reports to Congress regarding Medical Research in the Veterans' Administration, prepared by The Department of Medicine and Surgery of the Veterans' Administration, dated April 26, 1957, May 6, 1958, January 30, 1959, and January 15, 1970.

49. Attached hereto as Exhibit 47 is a true and correct copy of what I am informed and believe is Training Letter 06-04, dated September 12, 2006, produced by Defendants at Bates labels VET001_015121 through VET001_015134 and Deposition Exhibit No. 296 in this case.

50. Attached hereto as Exhibit 48 is a true and correct copy of what I am informed and believe is Training Letter 05-01, dated March 28, 2005, produced by Defendants at Bates labels VET001_014953 through VET001_014970 and Deposition Exhibit No. 588 in this case.

51. Attached hereto as Exhibit 49 is a true and correct copy of what I am informed and believe is the Under Secretary for Health Information Letter IL 10-2006-010, dated August 14, 2006, and produced by Defendants at Bates labels VET001_015606 through VET001_015609 and Deposition Exhibit No. 275 in this case.

52. Attached hereto as Exhibit 50 is a true and correct copy of what I am informed and believe is the Under Secretary for Health Information Letter IL 10-2005-004, dated March 14, 2005, and produced by Defendants at Bates labels DVA012 001252 through DVA012 001266.

53. Attached hereto as Exhibit 51 is a true and correct copy of what I am informed and believe is an outreach letter from Daniel Cooper, Acting Under Secretary for Benefits, dated June 30, 2006 and produced by Defendants at Bates labels VET001_014266 through VET001_014271 and Deposition Exhibit No. 264 in this case.

54. Attached hereto as Exhibit 52 is a true and correct copy of what I am informed and believe is an email from Mark Brown to Kenneth Hyams and others, dated June 29, 2006, produced by Defendants at Bates labels DVA052 000113 through DVA052 000114 and Deposition Exhibit No. 727 in this case.

55. Attached hereto as Exhibit 53 is a true and correct copy of what I am informed and believe is a mustard gas outreach letter from Daniel Cooper, Under Secretary for Benefits, undated, produced by Defendants at Bates labels DVA012 000269 through DVA012 000271 and Deposition Exhibit No. 766 in this case.

56. Attached hereto as Exhibit 54 is a true and correct copy of what I am informed and believe is a Sample Partial-Body Mustard Gas Veteran Notification Letter from Daniel Cooper, Under Secretary for Benefits, undated, produced by Defendants at Bates labels VET001_015113 through VET001_015115 and Deposition Exhibit No. 767 in this case.

57. Attached hereto as Exhibit 55 is a true and correct copy of what I am informed and believe is a Sample Surviving Spouse Mustard Gas Veteran Notification Letter from Daniel Cooper, Under Secretary for Benefits, undated, produced by Defendants at Bates labels VET001_015116 and Deposition Exhibit No. 352 in this case.

58. Attached hereto as Exhibit 56 is a true and correct copy of what I am informed and believe is a report on Outreach Activities prepared by the Department of Veterans Affairs, produced by Defendants with the Bates labels DVA003 013242 through DVA003 013253 and Deposition Exhibit 299 in this case.

59. Attached hereto as Exhibit 57 is a true and correct copy of what I am informed and believe is a document entitled, “Outreach Activities, Compensation and Pension Service,” dated September 2009, produced by Defendants at Bates labels VET001_410 through VET001_420 and Deposition Exhibit No. 286 in this case.

60. Attached hereto as Exhibit 58 is a true and correct copy of what I am informed and believe is a document entitled, "Briefing Book for 28 September 1994 Hearing Before the Subcommittee on Legislation and National Security of the Committee on Government Operations, Volume II: Chemical and Biological Warfare and Drug Testing," Deposition Exhibit No. 635 in this case.

61. Attached hereto as Exhibit 59 is a true and correct copy of what I am informed and believe is a document entitled, "Hearing on Experiments with Human Test Subjects, Briefing Book for April 27, 1994," produced by Defendants at Bates labels VET122-001617 through VET122-001622 and Deposition Exhibit No. 689 in this case.

62. Attached hereto as Exhibit 60 is a true and correct copy of what I am informed and believe is a document entitled, "Chemical Weapons Exposure Study Update, July 1993," prepared by Office of the Director, Information Resources Management, Office of the Assistant Secretary of Defense, produced by Defendants at Bates labels VET123-004120 through VET123-004153 and Deposition Exhibit No. 696 in this case.

63. Attached hereto as Exhibit 61 is a true and correct copy of Defendant Department of Defense and Department of Army's Objections and Responses to Plaintiffs' Amended Set of Requests for Admission, served on August 15, 2011 and an excerpt of Deposition Exhibit 685 in this case.

64. Attached hereto as Exhibit 62 is a true and correct copy of what I am informed and believe is an email from Anthony Lee to Capt. Omar Hottenstein and others, dated May 21, 2010 and produced by Defendants at Bates label DVA003 006674 and Deposition Exhibit No. 469 in this case.

65. Attached hereto as Exhibit 63 is a true and correct copy of what I am informed and believe is an email from Glen Wallick to Elizabeth Burke and others, dated February 14, 2010, and produced by Defendants at Bates labels DVA002 025799 through DVA002 025800 and Deposition Exhibit No. 287 in this case.

66. Attached hereto as Exhibit 64 is a true and correct copy of excerpts from the transcript of the June 29, 2011 deposition of Joseph Salvatore.

67. Attached hereto as Exhibit 65 is a redacted true and correct copy of what I am informed and believe is a Volunteer's Participation Agreement for a Named Plaintiff, produced by Defendants at Bates labels VET034-010680 through VET034-010681.

68. Attached hereto as Exhibit 66 is a true and correct copy of what I am informed and believe is a Vietnam Veterans of America web site "Who We Are," at www.vva.org/who.html, accessed on February 8, 2012.

69. Attached hereto as Exhibit 67 is a true and correct copy of Morrison and Foerster's web site "Offices," at www.mofo.com/offices/, accessed on February 6, 2012.

70. Attached hereto as Exhibit 68 is a true and correct copy of excerpts from the transcript of the June 13, 2011 deposition of David C. Dufrane.

71. Attached hereto as Exhibit 69 is a true and correct copy of excerpts from the transcript of the October 12, 2011 deposition of Veteran A, whose identity is protected because he is a third-party putative class member and not a named plaintiff.

72. Attached hereto as Exhibit 70 is a true and correct copy of excerpts from the transcript of the October 13, 2011 deposition of Veteran B, whose identity is protected because he is a third-party putative class member and not a named plaintiff.

73. Attached hereto as Exhibit 71 is a true and correct copy of excerpts from the transcript of the October 14, 2011 deposition of Veteran C, whose identity is protected because he is a third-party putative class member and not a named plaintiff.

74. Attached hereto as Exhibit 72 is a true and correct copy of excerpts from the transcript of the October 11, 2011 deposition of Veteran D, whose identity is protected because he is a third-party putative class member and not a named plaintiff.

75. Attached hereto as Exhibit 73 is a true and correct copy of Plaintiff Vietnam Veterans of America's Amended and Supplemental Responses to Defendants' Interrogatories Numbers 19 & 22, served on June 17, 2011 and Deposition Exhibit No. 240 in this case.

76. Attached hereto as Exhibit 74 is a true and correct copy of Plaintiff Swords to Plowshares' Amended and Supplemental Reponses to Defendants' Interrogatories Numbers 3 & 20, served on August 24, 2011.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed in San Francisco, California on this 28th day of February, 2012.

/s/ Stacey M. Sprenkel
Stacey M. Sprenkel

EXHIBIT 14

REDACTED VERSION

Exhibit # 5

SAREA-SL-RC

8 August 1975

COL C.C. McClure, M.D.
Director
Biomedical Laboratory
Edgewood Arsenal, MD 21010

Dear COL McClure,

I am writing this letter to document my distress concerning the sudden discharge of medical bolunteers from our research program on 29 July 1975 and the manner in which the situation was handled. I would hope that this letter may be forwarded through the chain of command to the appropriate authorities because fundamental medical and ethical issues have been raised in my mind over the propriety of this precepitous decision.

As background let me explain that as a member of the Clinical Investigations Section of the Medical Research Division it was and is my responsibility to minister to the medical problems of the volunteers who enter our program. This not only involves overviewing the entire inprocessing medical evaluation, but also involves the ongoing follow up and resolution of the medical illness of our volunteers. While this function has never been an officially designated one, it was an implied one I assumed as a matter of routine some fifteen months ago when our physician strength inthe laboratory was redueed by 50%. It is a responsibility which I consider, and have always considered, of paramount importance to the human research program, exceeding my responsibilities for research, because of the need to avoid subjecting any volunteer to undue risks which might be complicated by existing medical problems.

In virtually all of the five groups of volunteers that I have been responsibility for inprocessing we have, in the course of their evaluations, uncovered active medical problems, ranging in severity from minor to major illness, in 25 to 30% of our subjects. Because of our desire to avoid utilizing persons not fit to participate in studies, and because of a promise and commitment to the volunteers to give them the most thorough medical evaluation most of them will ever probably have, a considerable

Exhibit 5

Summary; Some Vols had medical problems we uncovered but they were then ignored & we couldn't help due to short notice.
NOTHING to do with experiments per se

Exhibit # 5 (pg. 2)

SAREA-CL-PC 8 August 1975
A

portion of my time has been spent in obtaining thorough attention to even the most minor of their problems. Upon discharge from the program those problems that are not resolved are documented to the volunteer, and on his medical records. Letters to Chief Medical Officers at home duty stations are written when deemed necessary.

The directive of 29 July 1975 to return the present group of 36 volunteers to their home duty station on eight hours notice, without even the courtesy of prior consultation with either Dr. Sidell or myself at the very least demonstrated an absolute lack of respect for the well being of these individuals, and completely undermined our efforts to discharge our medical responsibilities to them.

Of the 36 volunteers, 12 of them had unresolved problems, and of these twelve I was only able to appraise four of them personally of the status of their medical problems at the time of discharge. While letters were sent to the Chief Medical Officers of seven other volunteers together with copies of our extensive work-ups, it has been my impression in the past that these letters are generally disregarded by dispensaries at home duty stations if they ever reach the appropriate destination. Hence I am left with the distasteful thought that some of these individuals may never receive appropriate medical follow up. Had I been given even one hour to talk to these volunteers, this trouble could have been avoided.

It is ironic that the current investigations being conducted by the Department of the Army were initiated, presumably in part, to identify and possibly rectify improper medical practices of the past, because the action of summarily discharging our volunteers makes the Army responsible, in fact, for the same types of injustices of which it is being accused.

I refuse to accept the ethical responsibility for any consequences of the aforementioned decision about which neither I nor Dr. Sidell was consulted. Though this type of situation will hopefully not arise again, I would hope that more thoughtfulness would be exerted in the future.

Sincerely,

JOHN JOSSELSON, M.D.
MAJ, MC
Clinical Investigations Section
Medical Research Division
Biomedical Laboratory
Edgewood Arsenal

Exhibit 5

DVA035 001170

EXHIBIT 61

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Attorneys for Defendants

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

VIETNAM VETERANS OF AMERICA, *et al.*, Plaintiffs, v. CENTRAL INTELLIGENCE AGENCY, *et al.*, Defendants.	Case No. CV 09-0037-CW **DEFENDANTS DEPARTMENT OF DEFENSE AND DEPARTMENT OF THE ARMYS' OBJECTIONS AND RESPONSES TO PLAINTIFFS' AMENDED SET OF REQUESTS FOR ADMISSION**

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, and in accordance with the parties' agreement of July 12, 2011, as memorialized in email between counsel of that date, Defendants Department of Defense and Department of the Army (collectively, "DoD"), by and

REQUEST TO ADMIT NO. 4:

Admit that neither DOD nor DOA has provided NOTICE to TEST SUBJECTS of the possible health effects that may result from their participation in and/or exposures during the TEST PROGRAMS.

RESPONSE: DoD objects to the phrases "TEST SUBJECTS" and "TEST PROGRAMS" for the reasons stated in General Objections 2 and 4. Notwithstanding and without waiving these objections, DoD denies Plaintiffs' request for admission no. 4.

REQUEST TO ADMIT NO. 5:

Admit that DOD believes that it does not have a legally enforceable duty to provide health care to TEST SUBJECTS for health effects possibly resulting from their participation in and/or exposures during the TEST PROGRAMS.

RESPONSE: DoD objects to the phrases "TEST SUBJECTS" and "TEST PROGRAMS" for the reasons stated in General Objections 2 and 4. Notwithstanding and without waiving these objections, DoD admits in part, and denies in part Plaintiffs' request for admission no. 5. DoD admits that it has no legally enforceable duty to provide health care to volunteer service members decades after their termination of activity military service for health effects possibly resulting from participation or exposure during chemical or biological agent testing. Denied to the extent a volunteer test participant had acute health effects during that participant's time in military service, or to the extent that the participant is a military retiree entitled to retirement pay and benefits under statute.

REQUEST TO ADMIT NO. 6:

Admit that DOA believes that it does not have a legally enforceable duty to provide health care to TEST SUBJECTS for health effects possibly resulting from their participation in and/or exposures during the TEST PROGRAMS.

RESPONSE: DoA objects to the phrases "TEST SUBJECTS" and "TEST PROGRAMS" for the reasons stated in General Objections 2 and 4. Notwithstanding and without waiving these objections, DoA admits in part, and denies in part Plaintiffs' request for admission no. 5. DoA admits that it has no legally enforceable duty to provide health care to test subjects decades after their termination of activity military service for health effects possibly resulting from participation or exposure during chemical or biological agent testing. Denied to the extent a volunteer test participant had acute health effects during that participant's time in military service, or to the extent that the participant is a military retiree entitled to retirement pay and benefits under statute.

REQUEST TO ADMIT NO. 7:

Admit that neither DOD nor DOA has any agreements with the Department of Veterans Affairs ("DVA") for the DVA to provide health care specifically to TEST SUBJECTS for health effects possibly resulting from their participation in and/or exposures during the TEST PROGRAMS.

RESPONSE: DoD objects to the phrases "TEST SUBJECTS" and "TEST PROGRAMS" for the reasons stated in General Objections 2 and 4. DoD further objects to the phrase "agreements" as undefined and vague. Notwithstanding and without waiving these objections, DoD admits in part, and denies in part Plaintiffs' request for admission no. 7. Admitted to the extent that neither DoD nor DoA has any formalized, written agreements with VA for VA to provide health care specifically to TEST SUBJECTS. Denied to the extent that, in discussions between DoD and VA, VA agreed that it was the appropriate federal agency to provide health care for veterans who may be entitled to such care.

REQUEST TO ADMIT NO. 8:

Admit that, for any agreements between the DOD and/or DOA for the DVA to provide NOTICE to TEST SUBJECTS related to the TEST PROGRAMS, the DOD and DOA still have

Current animal studies show that this pharmacologic class is unlikely to have induced malignancies among the Edgewood subjects." The 2003 follow-on study concerning anticholinesterases agents did not identify any increased risk of hospitalization for malignant neoplasms for the volunteer test subjects. Admitted to the extent that DoD has not provided notification to volunteer test participants concerning any alleged causal relationship between anticholinesterases and hospitalizations for malignant neoplasms.

Dated: August 15, 2011

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MELINDA L. HAAG
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