

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 MICHAEL  
KILPATRICK DIRECTOR,  
STRATEGIC COMMUNICATIONS  
OFFICE OF THE UNDER  
SECRETARY OF DEFENSE FOR  
HEALTH AFFAIRS

I, Michael Kilpatrick, am familiar with the complaint in this case and declare the following under the penalty of perjury:

1. I am the Director of Strategic Communications for the Office of the Under Secretary of Defense for Health Affairs. I am familiar with the chemical and biological test programs the Department of Defense implemented from 1953 through 1975. I make this statement based on my personal knowledge and information provided to me in my official capacity.

2. Since 1976, the Department of Defense has thoroughly investigated the Army's test programs. The investigations have spanned years and cost millions of dollars. The investigations have addressed both the authorizations and procedures governing the testing programs, and the health effects of participation in the programs.

3. Two key investigations have examined the authorizations and procedures governing the chemical and biological testing programs. Addressing the U.S. Army's chemical testing programs between 1950 and 1975 in response to congressional and public inquiry, the Inspector General ("IG") for the Department of the Army ("DA") conducted a seven-month investigation in 1975 and 1976 and published the results in a March 1976 report titled, "Use of Volunteers in Chemical Agent Research." It is my understanding that the report has been produced to Plaintiffs. This report remains the best single-source document describing the use of servicemember test volunteers in Army chemical and biological testing programs. It describes

1 the history of chemical and biological warfare, the perceived threat that gave rise to the testing  
2 programs, the authorities enacted for the testing programs, implementation of those authorities,  
3 and specific tests conducted at Edgewood Arsenal and elsewhere. It also outlines tests that  
4 deviated from the established authorities. It is thorough and well documented. In addition to the  
5 detailed document review, the investigators noted that they interviewed 65 witnesses in 32 cities  
6 and travelled in excess of 160,000 passenger miles.

7 A year after the IG's investigation of the Army's chemical testing programs, the Army  
8 published a report concerning the biological testing program at Fort Detrick, Maryland, "U.S.  
9 Army Activity in the U.S. Biological Warfare Programs." The purpose of that report was to  
10 provide a comprehensive review of the Army's role in biological warfare programs. The report  
11 details biological testing activities from 1942-1977. It is my understanding that the report has  
12 been produced to Plaintiffs.

13 4. In addition to these comprehensive examinations of the authorizations and procedures  
14 governing the Army's chemical and biological testing programs, DOD has expended  
15 considerable resources to determine the long-term health effects on the test volunteers. In 1980,  
16 the Army's Medical Command published a report on its follow-up study on the test volunteers  
17 exposed to LSD during testing. The investigators determined that 741 test volunteers had been  
18 exposed to LSD. The investigators conducted a pilot study between 1975 and 1976 and then  
19 began the full follow-up study in 1978. The investigators examined 320 test volunteers as part  
20 of the follow-up study. The volunteers had the option of a medical exam that required one week  
21 of in-patient evaluation or they could submit responses to a questionnaire. 220 participated in  
22 the in-patient evaluation, while 100 submitted responses to written questionnaires. The report  
23 following the investigation, "LSD Follow-Up Study Report," fully detailed the health status of  
24 the responding test volunteers. It is my understanding that the report has been produced to  
25 Plaintiffs.

26 5. Between 1982 and 1985, working under contract with the Army, the National  
27 Research Council conducted a broader examination of 6,720 test volunteers from the chemical  
28 test program at Edgewood Arsenal to identify possible long-term health effects of participation  
in the tests. Of that group, the investigators received 4,085 responses. This research effort

1 resulted in a three volume publication detailing the health effects of participation in the chemical  
2 testing programs, "Possible Long-Term Health Effects of Short-Term Exposure to Chemical  
3 Agents," which is available publicly.

4 6. In 2003, the National Research Council, working under an Army contract, conducted  
5 a review of the 1985 report to confirm the long-term health effects for Sarin and other  
6 Anticholinesterase agents. Titled "Long-Term health Effects of Exposure to Sarin and Other  
7 Anticholinesterase Chemical Warfare Agents," the report is also available publicly. The  
8 investigation sought to confirm the findings discussed in the 1985 NRC report discussed above.  
9 The investigators in this study identified 4,022 test volunteers and either interviewed or received  
10 written responses from 2,748. Like the original NRC report, this follow-up details the health  
11 status of the responding test volunteers.

12 7. In 1993, the National Institute of Health published a Department of Veterans Affairs  
13 ("VA")-contracted study of the potential long-term health effects arising from participation in  
14 Mustard Gas and Lewisite testing. Titled, "Veterans at Risk: The Health Effects of Mustard  
15 Gas and Lewisite," also available publicly, the results of the study gave rise to additional DoD  
16 investigation into the chemical and biological testing programs.

17 Specifically, in 1993, DoD initiated the Chemical Weapons Exposure Study with the  
18 primary purpose of identifying test volunteers who had participated in Mustard Gas or Lewisite  
19 testing. The study, conducted primarily from 1993 through 1995, reviewed thousands of  
20 documents at multiple locations in an effort to identify test volunteers involved in Mustard Gas  
21 and Lewisite testing.

22 8. Between September 2002 and March 2007, researchers from the Institute of Medicine,  
23 working under a VA contract identified and contacted veterans who had participated in Project  
24 112/SHAD (Shipboard Hazard and Defense), a series of tests conducted between 1962 to 1973 at  
25 the Deseret Test Center, headquartered at Fort Douglas, Utah. The purpose of the research was  
26 to determine the health effects of the veterans' participation in that testing program. The  
27 investigators identified 5,741 SHAD test participants. Of those, the investigators successfully  
28 contacted and received responses from 2,684. The investigators used surveys to determine the  
health status of the test participants. The investigators published the results in "Long-Term

1 Health Effects of Participation in Project SHAD (Shipboard Hazard and Defense),” which is  
2 publicly available.

3 9. The Army has also analyzed the long term health effects of participation in the  
4 biological agent test program. Army researchers contacted 358 biological test program  
5 participants who had been exposed to infectious agents during the test program and an additional  
6 164 participants who had not been exposed to act as a control group. The researchers used a  
7 self-administered questionnaire to assess the respondents’ health and published the results in  
8 “An Assessment of Health Status Among Medical Research Volunteers Who Served in the  
9 Project Whitecoat Program at Fort Detrick, Maryland,” Colonel Phillip R. Pittman et al., in  
10 2005, which is also publicly available.

11 10. There have also been multiple Congressional and public inquiries into U.S.  
12 Government chemical and biological tests since the 1970s. The history of the Army’s testing  
13 programs has been summarized in several reports from the Government Accountability Office,  
14 including “Human Experimentation: An Overview of Cold War Era Programs” (1994);  
15 “Chemical and Biological Defense: DOD Needs to Continue to Collect and Provide Information  
16 on Tests and Potentially Exposed Personnel” (2004); and “Chemical and Biological Defense:  
17 DOD and VA Need to Improve Efforts to Identify and Notify Individuals Potentially Exposed  
18 During Chemical and Biological Tests” (2008). The U.S. Senate Committee on Veterans’  
19 Affairs issued in 1994 a report titled “Is Military Research Hazardous to Veterans’ Health?  
20 Lessons Spanning Half a Century”. These reports provide background on both the history of the  
21 Army’s testing programs and the extensive efforts to locate veterans who participated in the  
22 tests.

23 11. As a result of these investigations and congressional and public inquiries, the subject  
24 of the Army’s chemical and biological agent tests involving human subjects has been aired  
25 extensively. I therefore do not have reason to believe that there exists a significant amount of  
26 critical information about those testing programs that is not already publicly known.

27 12. The Department of Defense has continued its efforts to identify all test volunteers  
28 involved in chemical or biological agent testing programs. Those efforts have involved three  
categories of test volunteers: those involved in Mustard Gas or Lewisite testing, those involved

1 in Project 112 / SHAD, and all other test programs. Test volunteers involved in the first two  
2 categories have been identified through previous investigations.

3 13. DoD continues to search for test volunteers in the Army's chemical and biological  
4 agent tests other than Mustard Gas, Lewisite and Project 112/SHAD under a contract with the  
5 Battelle Memorial Institute. The contract provides for Battelle to identify all test volunteers  
6 involved in chemical or biological testing programs other than Mustard Gas / Lewisite and  
7 Project 112 / SHAD from 1942 through present. A copy of the pertinent Statement of Work is  
8 attached as Exhibit 1. This task requires researchers to review individual test records and other  
9 sources for veterans' identifying information and details about the tests they underwent. In some  
10 cases the test records do not identify test volunteers by name. Therefore, the researchers must  
11 piece together information from a variety of records to identify test volunteers. In many cases  
12 the most pertinent records are archived hard-copy lab notebooks researchers used to record  
13 information about the tests. The intended result of the project is to consolidate as much  
14 information as possible about the test volunteers, including their names, the chemical or  
15 biological agent each was exposed to, and the amount administered and route of administration  
16 (e.g., oral) where available.

17 14. Battelle's search is all-encompassing. The search requires a laborious by-hand  
18 search of hard copy records that must be conducted by individual researchers. Battelle transmits  
19 test volunteer identifying data to the Office of the Assistant Secretary of Defense for Health  
20 Affairs (OASD (HA)) for inclusion in a database of test volunteers maintained by DoD, the  
21 "Chemical and Biological Tests Repository" ("Chem-Bio Database"). The search is projected to  
22 last until September of 2011. Battelle's effort has cost millions of dollars.

23 15. A primary objective of the investigation is to enable test participants to receive  
24 pertinent information about the tests. Once the test information is gathered for a given  
25 participant and entered into the Chem-Bio database, DoD transmits it to VA so that VA may  
26 notify the participant of the potential exposure and, in case the individual has health concerns,  
27 provide guidance on scheduling a free clinical examination at a VA health care facility, applying  
28 for VA health care benefits, and filing a VA disability claim.

1           16. DoD and the Army have already searched for and produced a large number of  
2 documents in this litigation. DoD and the Army continue to search for documents related to the  
3 Army's chemical and biological agent testing, including the documents listed in the footnotes  
4 and bibliography of the original DA IG investigation, documents pertaining to health effects of  
5 tested substances, and documents relating to test volunteers' consent to the tests.

6           17. The previous investigations into DOD's chemical and biological testing programs  
7 have clearly delineated the purpose, authorities, conduct of the programs. Additionally, previous  
8 investigations have analyzed the potential long-term health effects of participation in the testing  
9 programs. Finally, DOD is actively working to identify all test volunteers. As illustrated by  
10 these previous investigations, and the level of effort expended to date to identify test volunteers  
11 and the fact that the Army's chemical and biological testing programs began over 60 years ago  
12 and spanned more than 20 years, there are an enormous number of very old records concerning  
13 the tests. Searching through all of those records – many of which are not digitized and would  
14 require by-hand review – for documents responsive to all of the requests that Plaintiffs have  
15 served would require an enormous amount of time and resources. By way of example, Battelle's  
16 on-going investigation to identify test volunteers, covering only a portion of these documents,  
17 has spanned years and cost millions of dollars.

18           I hereby declare under penalty of perjury that the foregoing is true and correct. Executed  
19 this 27<sup>th</sup> day of August, 2010.

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22 

23 Michael Kilpatrick  
24 Director, Strategic Communications  
25 Office of the Under Secretary of Defense  
26 Health Affairs  
27  
28

**Beaudoin, Kathy E.**

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**From:** ECF-CAND@cand.uscourts.gov  
**Sent:** Thursday, September 16, 2010 12:06 AM  
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**Case Name:** Vietnam Veterans of America et al v. Central Intelligence Agency et al  
**Case Number:** [4:09-cv-00037-CW](#)  
**Filer:** Central Intelligence Agency  
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**Document Number:** [147](#)

9/16/2010

**Docket Text:**

**AFFIDAVIT in Opposition re [131] MOTION for Sanctions *Declaration of Michael Kilpatrick* filed by Central Intelligence Agency, Robert M. Gates, Pete Geren, Michael V. Hayden, Eric H. Holder, Jr, Michael B. Mukasey, Leon Panetta, United States Department of Defense. (Wolverton, Caroline) (Filed on 9/16/2010)**

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