

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

VIETNAM VETERANS OF AMERICA, *et al.*,

Plaintiffs,

v.

Case No. CV 09-0037-CW (JSC)

CENTRAL INTELLIGENCE AGENCY, *et al.*,

Defendants.

DECLARATION OF PATRICIA CAMERESI
INFORMATION REVIEW OFFICER
DIRECTORATE OF SCIENCE & TECHNOLOGY
CENTRAL INTELLIGENCE AGENCY

I, PATRICIA B. CAMERESI, hereby declare and say:

1. I am the Information Review Officer ("IRO") for the Directorate of Science & Technology ("DS&T") of the Central Intelligence Agency ("CIA" or "Agency"). I was appointed to this position in January 2011. Prior to that, I served as the Associate Information Review Officer for DS&T for 15 years. I have 24 years in service with the CIA.

2. As the DS&T IRO, I am responsible for, among other things, conducting searches of DS&T Agency records systems in response to discovery requests in civil and criminal litigations and reviewing responsive material to ensure that classified or

otherwise privileged information is protected from unauthorized disclosure. Pursuant to the authority delegated by the Associate Deputy Director of the CIA, I have also been appointed as a Records Validation Officer ("RVO") for the Agency. As RVO, I am authorized to sign declarations on behalf of the CIA regarding its searches for records and the contents of any located records, including those located in or containing information under the cognizance of CIA Directorates other than DS&T.

3. The statements made herein are based on my personal knowledge and information provided to me in my official capacity. In the course of my duties, I have been made aware of this litigation and the Plaintiffs' claims. Because the subject matter of this litigation concerns allegations related to CIA components that currently fall within the DS&T, I have personally been responsible for searching for and reviewing a significant portion of the CIA records that are potentially relevant to this case. In addition, in response to a request from the Department of Veterans Affairs in 2006, I was responsible for leading an Agency effort to search for historical records concerning potential testing on volunteer service members.

4. The purpose of this declaration is to explain to the Court the basis for the CIA's determination that the eighteen magnetic tapes identified by Plaintiffs in the pending dispute do not contain human clinical data from Edgewood Arsenal. As explained below, ten of the magnetic tapes bear positive indicia that they were generated by a CIA contractor that was responsible for animal testing, not human testing. This conclusion is entirely consistent with the CIA's historical documents concerning this contractor. In addition, CIA records indicate that the remaining eight tapes were to be merged with the animal testing tapes from the contractor, making it reasonable to conclude that these tapes also contain animal testing data.

5. From the outset, I wish to emphasize to the Court that the eighteen tapes that are the subject of my declaration are different than the magnetic tapes that appear to contain human clinical data from Edgewood Arsenal, which the CIA transferred to the Department of Defense ("DoD") in the fall of 2010 for processing in response to Plaintiffs' discovery requests.¹ The CIA transferred these tapes to DoD for review because (a) the

¹ The CIA transferred six tapes in total. Four of them were labeled "human clinical data," and CIA records indicate that these tapes originated from Edgewood. Two additional tapes that were in the same box were also transferred to DoD even though their markings did not indicate that they contained human clinical data.

tapes originated from DoD, and therefore it was the only agency that could make the necessary privilege and classification determinations for the tapes (which are marked "SECRET") and (b) the CIA could not read the thirty-plus year-old tapes. Unlike the tapes that the CIA already transferred to DoD, the CIA's archival system and historical records concerning the remaining eighteen tapes did not bear any indication that they contained human clinical data, and therefore they were not transferred to DoD or otherwise produced to Plaintiffs.

6. All of the magnetic tapes potentially at issue are reflected on a CIA records retirement request from 1974, when the records apparently were sent to the CIA's archives for storage. (VET019-000039, attached as Ex. 1) ("manifest"). This manifest indicated that the CIA possessed six boxes, numbered Boxes 5-11, that contained certain magnetic computer tapes. Counsel has informed me that, by letter dated May 3, 2012, Plaintiffs do not seek the tapes that appear on the manifest as being contained in Boxes 5-7. Additionally, as noted above, the CIA transferred the six magnetic tapes listed as being contained in Box 11 to DoD in the fall of 2010. (VET124_000053-54, attached as Ex. 2.) Thus, the only tapes that are currently in the possession of the CIA that Plaintiffs

have placed at issue presently are those that are listed as being contained in Boxes 8-10 on the manifest.

7. Pursuant to this litigation, I have examined the magnetic tapes listed as being contained in Boxes 8-10.² As described below, the Agency reached the conclusion that these tapes are not responsive to Plaintiffs' discovery requests to the extent they seek data on service member testing.

8. All of the eighteen tapes at issue are marked SECRET, and they are each loaded onto reels that are between 10.5 and 11.5 inches in diameter. Of the eighteen tapes, ten are clearly labeled as being the product of a private contractor³ that had been retained by the CIA for work involving animal testing - all six tapes in Box 8 (numbers 305, 190, 363, 204, 043, 260), two tapes in Box 9 (numbers 196 and 252), and two tapes in Box 10 (numbers 168 and 057). The labels that remain on the tapes in these three boxes are entirely consistent with the manifest.

² Due to historical archiving efforts, the box numbers referenced on the manifest are not the same as those currently used by the CIA. While the contents of the boxes appear to be the same, respectively, the numbers assigned to the boxes have changed as the materials have been rearchived. For ease of reference, the historic box numbers as listed on the manifest will be used here.

³ The name of the contractor is redacted pursuant to CIA statutory privileges protecting the names of CIA sources and methods from unauthorized disclosure. 50 U.S.C. § 403-1(i)(1); 50 U.S.C. § 403g; see also *CIA v. Sims*, 471 U.S. 159, 167 (1985) (upholding the CIA's ability to protect the identities of MKULTRA researchers from public disclosure). The contractor's name has been withheld here and replaced with "Contractor Name."

- a. Box 8: Within Box 8, tapes 305 and 190 bear the label "[Contractor Name] Catch-up Raw Data Files," while tapes 363, 204, 043, and 260 have labels stating that they contain "[Contractor Name] Raw Data." This is consistent with the manifest, which describes the tapes in Box 8 as containing "[o]riginal raw data from [Contractor Name] sequential card or print images." (Ex. 1 at VET019-000042.)
- b. Box 9: Tapes 196 and 252 in Box 9 bear the label "8 [Contractor Name abbreviated] SYMOUT Files." This is consistent with the manifest, which describes the tapes in Box 9 as containing "SYMOUTS of [Contractor Name] and Edgewood final data bases." (*Id.*)
- c. Box 10: Tapes 168 and 057 in Box 10 bear a label stating that they contain "GULF Backup of Current [Contractor Name abbreviated] Data Bases." This is consistent with the manifest, which describes the tapes in Box 10 as containing "GULF of Edgewood and [Contractor Name] final data bases" (*Id.* at VET019-000043.)

9. A 1975 memorandum produced by the CIA makes clear that the contractor tapes contained in Boxes 8-10 contained animal data. (VET020-000123-24, attached as Ex. 3.) Pursuant to

congressional investigations of the CIA's historical test programs in the 1970s, the CIA recalled and examined boxes of magnetic tapes related to Project OFTEN. (*Id.*) The memo states that there was a single box that "contained solely CIA data," namely "data from an ORD contractor with whom [the CIA] had a classified association contract." (*Id.*) I have concluded that this refers to Box 8, as that is the only box listed on the manifest as containing solely data from a CIA contractor; the other boxes all appear to contain data from Edgewood as well. (See Ex. 1 at VET019-000042.) The memo then describes that the data contained in this box, Box 8, as "raw data, compiled under Project OFTEN, concern[ing] testing on cats, rats, mice, and monkeys." (Ex. 3 at VET020-000123.) Additionally, the memo states that "[t]wo boxes have tapes, and accompanying duplicates, that contain what appears to be machine (computer) oriented data relating to the merging-without attribution to originator-of animal test data compiled by an Agency contractor and data from a third agency." (*Id.* at VET020-000124) I have concluded that the two boxes referenced in this section are Boxes 9 and 10, as they are the only two boxes containing content from both a CIA contractor and another entity. (See Ex. 1 at VET019-00042-43.) Thus, the 1975 memo makes clear that

Boxes 9 and 10 consist of "animal test data" from the contractor.

10. Moreover, CIA records available to me indicate the nature of the CIA's relationship with the contractor listed on the identified tapes in Boxes 8-10, and those records consistently state that the contractor had a relationship with the CIA for purposes of conducting animal research. Conversely, I am unaware of a single indication in the CIA's records that this contractor ever conducted research on humans - service members or otherwise - on behalf of the CIA. Several of the records produced in this case demonstrate that the contractor listed on these ten tapes conducted animal testing research for the CIA.

- a. One document states that the contractor performed "[r]esearch on mice, cats, rats and monkeys conducted" from 1966-1973. (VET020-000121, attached as Ex. 4.)
- b. Another document states that "The principal contractor under Project OFTEN was [Contractor Name]" and that it "established and used test procedures with animals from which the behavioral effects of drugs and chemical compounds in humans could be predicted," including secondary screening procedures . . . using

nonhuman primates" (VET020-000165, attached as Ex. 5.)

c. A memo from one CIA employee states that "[i]n the second stage [of Project OFTEN], a few substances were selected (I would guess 20) for preliminary testing by [Contractor Name]. This testing involved toxicological studies and animal screening. It did not involve human testing." (VET019-000080, attached as Ex. 6.)

11. In light of the fact that (1) historic CIA records consistently indicate that the ten contractor tapes in Boxes 8-10 contained animal data and (2) CIA records also consistently indicate that this contractor performed animal research for the CIA, the CIA reasonably concluded that the ten tapes indicating that they were produced by the contractor were not responsive to Plaintiffs' discovery requests to the extent they sought human clinical testing data arising from tests at Edgewood Arsenal.

12. In addition to these ten tapes from the contractor, Boxes 9 and 10 contain eight tapes that are likely from Edgewood Arsenal. Tapes 283 and 366 in Box 9 are labeled as containing "Four EARL SYMOUTS"; EARL is the acronym for Edgewood Arsenal Research Laboratories. Though they are not clearly marked, I also presume, as discussed below, that six of the eight tapes in

Box 10 are from Edgewood. The manifest indicates that the eight tapes in Box 10 are from "Edgewood and [Contractor Name]." (Ex. 1 at VET019-000043.) As discussed above, two of the tapes are clearly labeled as being the product of the CIA contractor. The remaining six tapes do not expressly state their origin and instead state the contents as follows: tapes 103 and 192 state "GULF Backup of DEFINES, SHOWS, and COMPOSE"; tapes 186 and 296 state "GULF P1CGEN P5GEN"; and tapes 398 and 307 state "GULF P1AGEN P1BGEN." Nonetheless, because the manifest indicates that Box 10 contains tapes received from Edgewood, I presume that the tapes without an express statement of origin are from Edgewood.

13. The CIA's records reflect that all eight tapes believed to be from Edgewood likely do not contain human clinical data.

- a. First, in 1974, a CIA employee conducted a review of all the magnetic tapes relating to Project OFTEN. (VET019-000086, attached as Ex. 7.) The employee's "review covered some 30 tapes," after which he concluded that there were only "four tapes from Edgewood that included the names along with biographic data of some of the people tested." (*Id.*) The four tapes referenced are most likely the four that bore

the labels "human clinical data from Edgewood" that the CIA subsequently transferred to DoD. (Ex. 2.)

b. Second, the CIA also reviewed the magnetic tapes in its possession related to Project OFTEN in 1975. (Ex. 3 at VET020-000123.) At that time, it noted that there were two boxes containing "what appears to be machine (computer) oriented data relating to the merging—without attribution to originator—of animal test data compiled by an Agency contractor and data from a third agency." (*Id.* at VET020-000124.) Boxes 9 and 10 are the only two boxes that contain CIA contractor data and data from another entity, thus it appears reasonably likely that the Edgewood tapes in Boxes 9 and 10 contain animal data that was to be merged with similar data by the CIA contractor. As demonstrated by the contents of Boxes 6 and 7 (which appear to contain data from Edgewood on mice testing), Edgewood did conduct animal testing, and therefore it is entirely plausible that Edgewood's animal testing data was to be merged with the contractor's.

14. Plaintiffs' declarant, John Ashley implies that some of the tapes at issue in this dispute, namely those in Boxes 8-10 or the four tapes transferred to DoD and labeled as containing

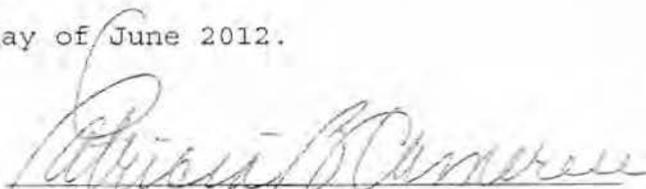
human clinical data from Edgewood, had been "converted" for use on CIA computer systems thereby indicating that the "data on the magnetic tapes is capable of being accessed." (Dkt. 425-1 at ¶ 23-26.) However, the document to which Mr. Ashley cites does not support his conclusion. The memorandum states only that "The software programs, which were converted for use on the OJCS hardware, were programs which used, as input, the WISSWESSER [sic] line notation for chemical compounds and produced, as output, a graphic representation of the structure of the compound." (VET001-009236, attached as Ex. 8.) The only reference to Wiswesser line notation on the manifest is with regard to the two tapes, numbers 340 and 343, that I understand were transmitted by CIA to DoD, successfully accessed by DoD, and produced by DoD to Plaintiffs. Furthermore, even to the degree that the memo cited by Mr. Ashley is referring to another set of Wiswesser line notation data, the context of the memo makes clear that it would not contain human clinical data, as the memorandum states that the data produced "a graphic representation of the structure of the compound" but did not contain "physicochemical data or other information." (*Id.*)

15. Finally, I wish to make clear that to the best of my knowledge, the CIA does not have the ability to read these thirty-plus year-old magnetic tapes. In response to a request

from the Department of Veterans Affairs in 2006, I conducted an internal inquiry to determine whether the CIA could read the tapes. After consulting with the appropriate offices, I was informed that the Agency no longer possessed the necessary technological capability to exploit the tapes. Thus, it would be quite burdensome and expensive for the CIA to be required to access the tapes today.

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

Executed this 6th day of June 2012.


Patricia B. Camerese
Information Review Officer
Directorate of Science & Technology
Central Intelligence Agency