

December 1, 1994

MEMORANDUM FOR BRUCE LINDSEY

FROM: PHIL CAPLAN

SUBJECT: Human Radiation Experiments -- Vacancy on the Advisory Committee

You are scheduled to come to a meeting on Friday, December 2, at 11:30 am in Room 476 OEOB. The meeting should last about 45 minutes.

In attendance will be Tara O'Toole, Assistant Secretary from DOE; Bob Nordhaus, General Counsel from DOE; MRC Greenwood from OSTP, Holly Gwin from OSTP; Kathy Hudson from HHS and Steve Neuwirth.

We hope to make some final decisions regarding a vacancy on the Advisory Committee on Human Radiation Experiments.

It will be helpful to have your political, legal and personnel advice at the table.

BACKGROUND

As you know, the Advisory Committee was created in January, 1993, to advise the Interagency Working Group on Human Radiation Experiments. The charter of the Committee provides for "up to 15 members to be appointed by the President." The President appointed 15 members in April, 1994. Frank Press, who occupied the "general scientist" slot on the Committee, resigned shortly thereafter because of the time commitment.

In the summer, the victims rights community began to write letters to Christine asking that a "representative of the victims of human radiation experiments" be placed on the Committee. After talking with Tara and Dr. Ruth Faden, Chair of the Committee, we concluded that we should not appoint a replacement. Christine responded to the letters by writing "[t]o date, no decisions have been made to fill the vacancy...but we'll keep your letter on file..."

After that round of letters, the groups started in again; they are now pursuing two tracks: a) pushing to fill the vacancy on the Committee alleging that without a replacement, the Committee violates FACA, and b) making FOIA requests to the White House and the agencies for all documents relating to the selection of the Committee.

Vacancy Their theory is that the Committee is biased against victims of experiments. Specifically, the groups allege that the Committee is constituted in violation of FACA: They wrote, "[t]he underlying rationale of FACA requires that members on chartered advisory committees be drawn from those persons most affected by the advice to be given....[t]he President might have chosen to create a technical advisory panel only, but having selected one lay person to serve on the present Committee, it clear that the White House did not choose that option -- at least not to the exclusion of the requirement that it 'consider a cross section of those directly affected.'"

The groups have formed a coalition, "The Citizens' Task Force on Radiation and Human Rights," led by a Mr. E. Cooper Brown. He recommended in a letter that we add *seven* additional members to the Committee. While this number of people is violative of the Charter, they have made it clear that the addition of one member would make them happy.

I have spoken or met with most of our people involved in this effort (Tara, Steve, Christine, MRC and others), and we have firmly concluded that **we should not add a member to the Committee**. The Committee is too far down the road and, by agreeing to the demands of *these* groups, we will be favoring them over another interest group; additionally, most of these groups are in litigation with the federal government. This is an expert Committee and should remain that way.

This position has not yet been formally conveyed to the groups.

FOIA One of the groups FOIAed the White House in September for documents pertaining to the creation of the Committee and selection of the members. Once they realized they can't FOIA the White House, they FOIAed all of the agencies. That request, dated November 14, is still pending.

I spoke with Jackie Kittrell, the lawyer who made the FOIA requests. She is very nice but threatened to sue if we don't let her see the documents. Her goal is to prove that we considered a wide range of people in January/February and should fill the vacancy to meet FACA.

Although the groups are pursuing two different tracks, their efforts are very much coordinated and aimed at filling the vacancy with a victim's rights advocate. (For example, ten minutes after I spoke to Ms. Kittrell on the phone, E. Cooper Brown called me.)

NEXT STEPS

In the last month or two, the groups have turned up the heat a bit by a) calling and writing me repeatedly, and b) getting several reporters interested in this, although there have only been three local stories and one wire story.

My goal here is to avoid "poisoning" in any way all of the good that has come out of this whole effort, i.e, the next *New York Times* story shouldn't have two paragraphs about this "blip" of controversy. Therefore, my inclination in all of this is to be open and forthcoming without giving material to the groups that would simply make it easier to file their lawsuit. The whole Human Radiation effort has been about openness in government; there is no need to change course now.

We need to come out of the meeting with several things:

- 1) How to respond to the letters to me regarding the vacancy.
- 2) Whether I (or someone else) should meet with a representative of these groups.
- 3) How the White House should respond to the FOIA requests. (I assume the White House should not give any guidance to the agencies as there are well established procedures, but we should probably respond to the request directed here.)

Please let me know if you have any questions before the meeting on Friday. I have copies of all of the correspondence if you wish to see them.

Thank you.

cc: Steve Neuwirth

Advisory Committee on Human Radiation Experiments
1726 M Street NW, Suite 600, Washington, DC 20036
phone # 202/254-9795 fax # 202/254-9827

FAX COVER SHEET

NUMBER OF PAGES (INCLUDING COVER SHEET): 3

TO: Phil Caplan

FROM: Anna Mastoracci

DATE: May 5, 1994

RE: Resignation of Frank Puro

Please forward to Christine Vanev
and call Rick Fader (in office until
1 pm today) to discuss. Thx

CARNEGIE INSTITUTION OF WASHINGTON

DEPARTMENT OF TERRESTRIAL MAGNETISM

5241 BROAD BRANCH ROAD, N.W.

WASHINGTON, D.C. 20015

TEL. 202/686-4370

CABLE ADDRESS: MAGNETISM

TELEFAX: 440427

FAX: 202/364-8726

DIRECT NO. 686-4411

April 27, 1994

Dr. Ruth Faden
Chairman
Advisory Committee on Human Radiation Experiments
1726 M Street, N.W., Suite 600
Washington, D.C. 20036

Dear Ruth,

Now that I have seen something of the scope of the effort and the time commitment required, I have reached the conclusion that it would be a disservice to you and the advisory committee for me to continue with it. You have no choice but to follow the pace that you have outlined in view of the enormous magnitude of data that have to be analyzed and understood, and the time required for the committee to reach consensus, and the deadline for the delivery of the report.

I must say that I found you to be an excellent chair, fully on top of the issues, giving each member a sense of real participation, yet disciplined so that something gets done.

It may be gratuitous of me to do so, but if you want the names of "generalists" to replace me you may wish to consider any of the following:

Jack Roberts - Famous chemist at Caltech;

Norman Hackerman - Former university president, chair of the National Science Board, now at the Welch Foundation in Houston;

Joe Goldstein - Nobel Laureate biologist at Southwestern Medical Center in Dallas;

Torsten Wiesel - Nobel Laureate, President of Rockefeller University;

George Whitesides - Professor of Chemistry at Harvard;

Nina Federoff - Biologist, Carnegie Institution of Washington;

Mary-Lou Pardue - Biologist, MIT;

Dr. Ruth Faden
April 27, 1994
Page 2

William Nierenberg - University of California at San Diego;

Joshua Lederberg - Nobel Laureate biologist at Rockefeller University.

All of the preceding men and women are members of the National Academy of Sciences. I would have enjoyed working with you but I have made too many unbreakable commitments to fit the schedule that you must meet. I am sorry that I did not appreciate this earlier and that I caused so many people so much work to get me appointed.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Frank", written in dark ink.

Frank Press
Senior Fellow

cc: The Honorable John Deutch
The Honorable John Gibbons
The Honorable Donna Shalala
The Honorable Christine Varney

THE WHITE HOUSE
WASHINGTON

July 26, 1994

MEMORANDUM FOR STEVE NEUWIRTH

FROM: PHIL CAPLAN 

SUBJECT: Phone call re: Advisory Committee on Human Radiation Experiments

This morning, I received a call and spoke with Jacqui Kittrell, General Counsel of the American Health Studies Project of Knoxville, Tennessee (615/637-3193).

Her group, and other similar groups, wish to fill the vacancy on the Advisory Committee with a representative of the "victim's rights" community.

Ms. Kittrell wrote a letter to Christine last month making such a request. Christine responded on July 12 (correspondence attached).

Ms. Kittrell wants to inspect all underlying documents surrounding the White House's decisionmaking process in appointing members to the Committee. She believes that FOIA permits her to do so. Although she was very cordial and polite, she threatened to file suit over access to the documents. She told me that she was willing to file a FOIA request first if need be.

She met with Dan Reicher and Ellen Weiss at the Department of Energy who told her that there were "a lot of meetings and discussions about who would be on the Committee" and that she would have to "check with Cabinet Affairs" about that process.

I told her that I would have to check with White House counsel about her inquiry and would have to get back to her

Ms. Kittrell told me that if I could not help her, she would check with the Interagency Working Group on Human Radiation. I did tell her that she really could not call the Working Group as it does not have staff or a location and that the members of the Working Group now met on an ad hoc basis.

Please let me know if you need more information.

Thank you.

cc: Christine Varney

American Environmental Health Studies Project

6328 Strawberry Plains Pike • Knoxville, Tennessee 37914 • 615-637-3193 • 615-525-6730 fax

June 29, 1994

Christine Varney
Secretary to the Cabinet
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

RE: composition of the President's Advisory Committee on Human Radiation Experiments

Dear Secretary Varney,

I am writing to request that you appoint a victim's representative to the President's Advisory Committee on Human Radiation Experiments. Our group is a public interest research and litigation project based near Oak Ridge, Tennessee. For the last ten years, we have worked on the issues surrounding government human experimentation and have worked with the population in Tennessee most directly affected by these experiments. Our director, Cliff Honicker, was responsible for initiating a Congressional investigation in 1984 into the Department of Energy's role in human experimentation, which eventually led to the so-called "Markey Report" being published in 1986. We are pleased to see the Clinton Administration's commitment to openness in government, exemplified by the creation of this Advisory Committee, and we heartily approve of the support you all have given Secretary of Energy Hazel O'Leary in her resolve to declassify and disclose to the public the human experimental legacy of nuclear secrecy. While we applaud the President's efforts in this regard, we also think that it is critically important to expand the Advisory Committee to seat at least one member of a category of citizenry most affected by the subject matter about which you have requested advice--the victim, or survivor of the experiments.

We also believe it is imperative under the mandate of the Federal Advisory Committee Act (FACA) that the advisory committee in question be diverse in all points of view it represents.¹ The Advisory Committee on Human Experimentation is diverse in its representation of institutions which have previously engaged in human experiments, but it does not have on it one single member of the class of those who were affected directly by the medical experimentation. Although the President might have some hesitancy about appointing to the Advisory Committee someone who might bring to the table a sense of emotion and subjectivity vis a vis their own experience with the issue, I think the benefit of having such a person present during Advisory Committee priority-setting, during decisions on how to advise and outreach to the victims' community (a role which DOE understands the Advisory Committee will be playing) and lending an imprimatur to any final report, outweighs any possible problems.

Once a decision is made to create such a seat or seats on the Advisory Committee, one very important factor in the selection should be that the person or persons appointed should represent truly

¹ An advisory committee, including one that advises the President, must be created pursuant to a plan to "attain fairly balanced membership. The plan will insure that, in the selection of members for the committee, the agency will consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the committee." 41 CFR 101-6.1007 (iii),

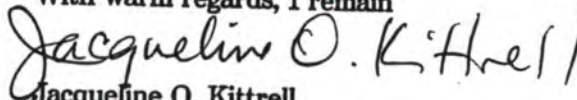
GSA implementing regulations for P.L. 92-463; 86 Stat. 770, Sec. 5 (b) (2), effective 10/72.

Clinton Letter
June 29, 1994
Page 2 of 2

the vulnerability of those who were experimented upon. What I mean by this is that most of the medical experiments involving radiation were done by Government institutions or universities working with Government monies, isotopes, and approval, and were done to subjects who were defenseless and accessible--African Americans, the poor, the elderly, the mentally incompetent, children, and pregnant women, those hospitalized already with a pre-existing condition, and workers. My recommendation to fill this important slot is an African American man who resides in the District and who is a mental health professional with experience in counseling, Mr. Gwendon Plair. His grandmother, now deceased, was a victim of Dr. Eugene Saenger's Defense Department-funded human experiments using total body irradiation on cancer patients in Cincinnati, Ohio. He has been instrumental in founding one of the first experiment victims' support groups, Concerned Relatives of Cancer Study Patients (CROCSP, pronounced "cro-sep"). Mr. Plair is an intelligent and deliberate thinker and an excellent communicator with laypeople and technical people alike.

We would strongly urge the President to create a spot on the Advisory Committee to represent the diversity of the community affected by the issue of human experimentation, both in the spirit of common sense and FACA, and to appoint Mr. Gwendon Plair to that position.

With warm regards, I remain


Jacqueline O. Kittrell
General Counsel

cc: Mr. Dan Guttman, Esquire
Executive Director, President's Advisory Committee on Human Radiation Experiments
Mr. Dan Reicher, Esquire
Office of the Secretary of Energy

THE WHITE HOUSE

WASHINGTON

July 12, 1994

Ms. Jacqueline Kittrell
General Counsel
American Environmental Health Studies Project
6328 Strawberry Plains Pike
Knoxville, TN 37914

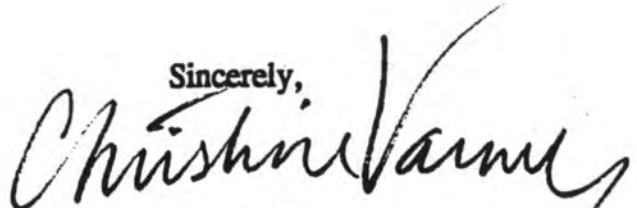
Dear Ms. Kittrell;

Thank you for your letter regarding the position on the Advisory Committee on Human Radiation Experiments.

To date, no decisions have been made to fill the vacancy. We will keep your letter on file and inform you of any changes in the status of the Committee.

Thank you for your interest.

Sincerely,

A handwritten signature in black ink, reading "Christine Varney". The signature is fluid and cursive, with a long, sweeping line extending from the end of the name.

Christine A. Varney
Secretary to the Cabinet.

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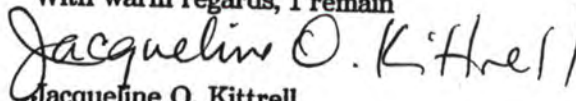
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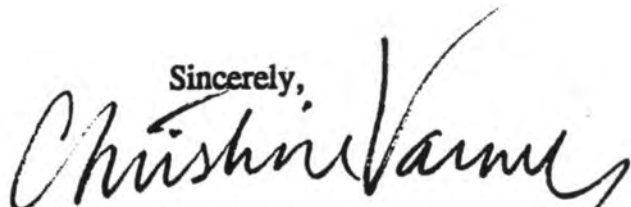
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