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MESSAGE

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MEMORANDUM ON HANFORD ENVIRONMENTAL DOSE
RECONSTRUCTION PROJECT REPORT

On Thursday, April 21 in Washington State, two reports on radioactive releases into the air and water at DoE's Hanford facility will be announced by an independent Technical Steering Panel. The reports describe population exposure in a 75,000 square mile area including parts of Washington, Idaho and Oregon. Radiation releases which occurred between 1945 and 1992 are covered, though most of the radiation was released years ago (90% between 1945 and 1951, and 98% between 1945 and 1972). The affected communities and states are aware that radioactive releases occurred, and a preliminary report on radiation doses was released in August 1991. Thursday's announcement will provide exposure estimate reports for representative people living in the area at the time of the release.

For over 40 years, the U.S. Government manufactured plutonium for nuclear weapons at the Hanford Site, resulting in radioactive releases into the air and the Columbia River. In 1987, the DoE directed the Pacific Northwest Laboratories (operated by the Battelle Memorial Institute) to begin a study of the estimated radiation dosage for people living in the Hanford Area. This resulted in the Hanford Environmental Dose Reconstruction (HEDR) project. Pursuant to a 1990 Memorandum of Understanding, DoE transferred management of HEDR to HHS, which designated the CDC as lead agency. Technical guidance for HEDR is provided by the independent Technical Steering Panel making Thursday's announcement.

The reports to be released contain the best available information on population exposure, based upon emissions data. They provide estimates for 12 prototypical individuals who differ by age and gender. Nearly 99% of the total radiation exposure was due to radiiodine released into the air; children's exposure was mainly through milk.

Press and community concern will probably focus on the exposure of children during 1945 - 1951. For the maximally exposed child during this period (living in the most highly exposed areas) the most likely estimated exposure from airborne radiiodine is approximately five hundred times the natural background exposure to radiation over the six years (.5 rad) or 240 rad over the six years. There is a possibility that this six year exposure is as high as 870 rad. For the maximally exposed adult, the most likely estimated exposure was one tenth that of a child.

There is no estimate in the reports of the number of people actually living in areas where they would have received maximum exposure. While approximately 950,000 people lived in the study area in 1950, the report does not include data on how many people were actually exposed at any particular level.

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Risk of health effects is not addressed in either of the reports. The Hanford Thyroid Disease Study is in progress at CDC and is scheduled for completion in 18 months. According to the National Academy of Sciences, the risk of developing thyroid cancer increases by approximately a factor of 8 for each 100 rads of radiation doses to the thyroid, but this risk estimate is based on external exposure to x-rays and not on internal exposure to radiation as is the case with the Hanford doses.

The announcement will include a report that at least one radioactive release was intentional. In 1949, approximately 7000 Curies of iodine-131 were intentionally released to the air from the Green Run experiment. This release contributed less than one percent of the total radiation released at the site during its operation.

Followup to the HEDR reports will involve the local communities and states. The HHS Agency for Toxic Substances Research (ATSDR), pursuant to its Superfund responsibilities, will review the HEDR reports and, applying ATSDR criteria, develop a plan for medical surveillance and other public health activities in conjunction with community representatives and state and local governments. CDC also will be working with the very active community groups and with state and local governments to help the communities understand and deal with the exposures.

Thursday's announcement will not include estimates for exposure among eight affected Native American tribes. It is expected that exposure through river contamination may be more significant among Native Americans because of their reliance upon fishing. Agreement was reached with tribal leaders that special demographic, lifestyle, and dietary data need to be collected to make the estimates accurate, and CDC has separate contracts with the eight tribes to collect these data. This further research will take 6-12 months to conclude and has the support of the Indian leadership in the area (attached is more background on this issue).

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**Hanford Environmental Dose Reconstruction Project
Native American Involvement and Research:**

Representatives of the Colville, Coeur d' Alene, Kalispel, Nez Perce, Spokane, Warm Springs, Yakima, and Umatilla tribes/nations played a key role in the proceedings of the Health Effects Review Panel (1986) that recommended that DOE fund an environmental dose reconstruction project. The eight Tribes and Nations have been actively involved in the project from the beginning.

An 18-member Technical Steering Panel was formed to direct the technical work of the dose reconstruction project. This panel has three members nominated by the eight Tribes and Nations to represent them on the panel. As the project developed, the State of Washington took the lead in forming a Native American Working technical work of the dose reconstruction project. This panel has three members nominated by the eight Tribes and Nations to represent them on the panel. As the project developed, the State of Washington took the lead in forming a Native American Working Group to address the specific concerns of each Tribe or Nation. This working group has been pivotal in developing related Native American research and protocols.

Initial Native American research was conducted with the eight Tribes and Nations through Battelle Pacific Northwest Laboratory. Battelle has completed preliminary demographic and dose research with the Tribes and Nations. However, because of the unique

for Disease Control and Prevention (CDC) and the Tribes agreed
that CDC would award separate contracts to each Tribe or Nation
to conduct more extensive research. In addition, the Native

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American Working Group, CDC, the Technical Steering Panel and the Indian Health Service developed a training program to train Tribal researchers in public health and research methods. Currently, extensive research is going on within the tribes and completion of dose reconstruction for members of each Tribe or Nation. A protocol has been established where the results of the study will be presented to each Tribal council prior to public release of the reports. Completion of current Native American research is scheduled for early 1995.

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— Pm 528

- Designated Ethics Agency

official

is Beth Nolen

- Recusal

208, 216

- Statutory 18 USC 208

208(b)(3)

FAA - waiver or waiver
participation

- regulation

5 CFR 2635.502

—

11a. Official responsibility

Attorney was disqualified from acting as attorney for Chapter 11 trustee on ground of her previous employment as bankruptcy analyst by United States trustee, where attorney's position as bankruptcy analyst required her to review and analyze many aspects of Chapter 11 petitions and recommend courses of conduct to staff attorneys and assistant United States trustees based upon her conclusions and Chapter 11 case was filed before attorney left position with United States Trustee; Chapter 11 trustee might have violated Ethics in Government Act. In re Restaurant Development of Puerto Rico, Inc., Bkrtcy.D.Puer.to Rico 1991, 128 B.R. 498.

A former Justice Department attorney is not prohibited by subsec. (b) of this section from appearing in a condemnation case even though it may have been under his "official responsibility" during the year preceding his resignation where his resignation became effective more than one year ago. 1977 (Counsel-Inf. Op.) 1 Op.O.L.C. 10.

A former United States Attorney associated with a law firm representing a party in a case which was pending in the United States Attorney's Office at the time of his departure is personally barred by subsec. (b) of this section, for one year from the date he left, from appearing as agent or attorney in the case because it was under his "official responsibility" during his tenure, but this bar is not imputed to the partners and associates of his firm. However, his participation in the matter was not sufficiently substantial to give rise to the permanent bar in subsec. (a) of this section. 1977 (Counsel-Inf. Op.) 1 Op.O.L.C. 1.

§ 208. Acts affecting a personal financial interest

(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, a Federal Reserve bank director, officer, or employee, or an officer or employee of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—

Shall be subject to the penalties set forth in section 216 of this title.

(b) Subsection (a) shall not apply—

(1) if the officer or employee first advises the Government official responsible for appointment to his or her position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee;

(2) if, by regulation issued by the Director of the Office of Government Ethics, applicable to all or a portion of all officers and employees covered by this section, and published in the Federal Register, the financial interest has been

13. Evidence

By physically delivering bidder's proposal to Naval Sea Systems Command (NAVSEA), former employee of NAVS: A was communicating solely for purpose of furnishing technological information to Government and not to influence award of contract so as to require voiding of award, where employee's mission was to make absolutely certain that bidder's proposal was delivered to right place and at right time and employee followed NAVSEA procedures in delivering proposal to industrial liaison office. Robert E. Derecktor of Rhode Island, Inc. v. U.S., D.R.I.1991, 762 F.Supp. 1019.

16. Recusal

That consulting firm which was alter ego of chairman of Federal Trade Commission had received substantial amounts from automobile manufacturer for consulting services, that consent decree which was approved with vote of such chairman was favorable to the automobile manufacturer and that he refused to rule out a return to such consulting firm did not, in context, require recusal of the chairman from participation in so-called defects case against such manufacturer, wherein chairman participated in approval of consent decree. Center for Auto Safety v. F.T.C., D.C.D.C. 1984, 586 F.Supp. 1245.

17. Estoppel

Government was not estopped from asserting conflict of interest violation of former army procurement officer by failure of Commanding General of Army Armament Command to answer letter requesting opinion as to whether former procurement officer could represent supplier in seeking further modifications where opinion was sought after former officer had already represented firm in negotiations. U.S. v. Medico Industries, Inc., C.A.7 (Ill.) 1986, 784 F.2d 840.

exempted from the requirements of subsection (a) as being too remote or too inconsequential to affect the integrity of the services of the Government officers or employees to which such regulation applies:

(3) in the case of a special Government employee serving on an advisory committee within the meaning of the Federal Advisory Committee Act (including an individual being considered for an appointment to such a position), the official responsible for the employee's appointment, after review of the financial disclosure report filed by the individual pursuant to the Ethics in Government Act of 1978, certifies in writing that the need for the individual's services outweighs the potential for a conflict of interest created by the financial interest involved; or

(4) the financial interest that would be affected by the particular matter involved is that resulting solely from the interest of the officer or employee, or his or her spouse or minor child, in birthrights—

(A) in an Indian tribe, band, nation, or other organized group or community, including any Alaska Native village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians,

(B) in an Indian allotment the title to which is held in trust by the United States or which is inalienable by the allottee without the consent of the United States, or

(C) in an Indian claims fund held in trust or administered by the United States,

if the particular matter does not involve the Indian allotment or claims fund or the Indian tribe, band, nation, organized group or community, or Alaska Native village corporation as a specific party or parties.

(c)(1) For the purpose of paragraph (1) of subsection (b), in the case of class A and B directors of Federal Reserve Banks, the Board of Governors of the Federal Reserve System shall be deemed to be the Government official responsible for appointment.

(2) The potential availability of an exemption under any particular paragraph of subsection (b) does not preclude an exemption being granted pursuant to another paragraph of subsection (b).

(d)(1) Upon request, a copy of any determination granting an exemption under subsection (b)(1) or (b)(3) shall be made available to the public by the agency granting the exemption pursuant to the procedures set forth in section 105 of the Ethics in Government Act of 1978. In making such determination available, the agency may withhold from disclosure any information contained in the determination that would be exempt from disclosure under section 552 of title 5. For purposes of determinations under subsection (b)(3), the information describing each financial interest shall be no more extensive than that required of the individual in his or her financial disclosure report under the Ethics in Government Act of 1978.

(2) The Office of Government Ethics, after consultation with the Attorney General, shall issue uniform regulations for the issuance of waivers and exemptions under subsection (b) which shall—

(A) list and describe exemptions; and

(B) provide guidance with respect to the types of interests that are not so substantial as to be deemed likely to affect the integrity of the services the Government may expect from the employee.

(As amended Pub.L. 95-188, Title II, § 205, Nov. 16, 1977, 91 Stat. 1388; Pub.L. 101-194, Title IV, § 405, Nov. 30, 1989, 103 Stat. 1751; Pub.L. 95-188, Title II, § 205, Nov. 16, 1977, 91 Stat. 1388; Pub.L. 101-194, Title IV, § 405, Nov. 30, 1989, 103 Stat. 1751; Pub.L. 101-194, Title IV, § 405(1)(C), amended Pub.L. 101-280, § 5(e)(2), May 4, 1990, 104 Stat. 159; Pub.L. 101-280, § 5(e)(1), May 4, 1990, 104 Stat. 159.)

1 See Codification note set out under this section.

HISTORICAL AND STATUTORY NOTES

References in Text

The Federal Advisory Committee Act, referred to in subsec. (b)(3), is Pub.L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix 2 to Title 5, Government Organization and Employees.

Sections 107 and 105 of the Ethics in Government Act of 1978, referred to in subsecs. (b)(3) and (d)(1), respectively, are sections 107 and 105 of Pub.L. 95-521, which are set out in Appendix 6 to Title 5, Government Organization and Employees.

The Alaska Native Claims Settlement Act, referred to in subsec. (b)(4)(A), is Pub.L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (section 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43, and Tables.

Codification

Amendment by Pub.L. 101-194, SF405(1)(c), striking "partner" and inserting "general partner" has been executed to subsec. (a) in two places in view of absence of specific Congressional directory language with respect to placement of text.

1990 Amendment

Subsec. (a). Pub.L. 101-280, § 5(e)(2), as amending Pub.L. 101-194, § 405(1)(C), inserted "general" preceding "partner" wherever appearing.

Subsec. (b)(2). Pub.L. 101-280, § 5(e)(1)(A), substituted "subsection (a)" for "paragraph (1)".

Subsec. (b)(3). Pub.L. 101-280, § 5(e)(1)(B), struck out "section 107 of" following "individual pursuant to".

Subsec. (d)(1). Pub.L. 101-280, § 5(e)(1)(C), substituted provisions making any agency determination granting an exemption pursuant to subsection (b)(1) or (b)(3) of this section available upon request and pursuant to the procedures set forth in section 105 of the Ethics in Government Act of 1978 and authorizing the withholding from public disclosure any information contained in the determination that would be exempt from disclosure under 5 U.S.C. section 552 for provisions requiring that a copy of all agency determinations granting exemption pursuant to subsection (b)(1) or (b)(3) of this section be made available to the Director, who made all determinations received available to the public pursuant to section 105 of the Ethics in Government Act of 1978.

1989 Amendment

Subsec. (a). Pub.L. 101-194, § 405(1)(C), as amended by Pub.L. 101-280, § 5(e)(2), inserted "general" preceding "partner" wherever appearing.

Pub.L. 101-194, § 405(1)(A) to (D), substituted: "or of any independent agency" for "of any independent agency"; "an officer or employee of the District of Columbia" for "of the District of Columbia"; "general partner" for "partner"; and "shall be subject to the penalties set forth in section 216 of this title" for "shall be fined not more than \$10,000 or imprisoned not more than two years, or both".

Subsec. (b). Pub.L. 101-194, § 405(2), struck out second sentence of former subsec. (b) reading "In the case of class A and B directors of Federal Reserve banks, the Board of Governors of the Federal Reserve System shall be the Government official responsible for appointment.", now covered in subsec. (c)(1) of this section.

Subsec. (b)(1). Pub.L. 101-194, § 405(2), designated existing cl. (1) as par. (1) and substituted "Subsection (a)" for "Subsection (a) hereof", "his or her position" for "his position", and a semicolon for a comma.

Subsec. (b)(2). Pub.L. 101-194, § 405(2), designated existing cl. (2) as par. (2); substituted "regulation issued by the Director of the Office of Government Ethics, applicable to all or a portion of all officers and employees covered by this section, and published" for "general rule or regulation published", "paragraph (1)" for "clause (1) hereof", and "integrity of the services which the Government may expect from such officer or employee;" for "integrity of Government officers' or employees' services."

Subsec. (b)(3), (4). Pub.L. 101-194, § 405(2), added pars. (3) and (4).

Subsec. (c)(1). Pub.L. 101-194, § 405(2), which struck second sentence of former subsec. (b), redesignated the provision as par. (1), substituting "For the purpose of paragraph (1) of subsection (b), in the case of class A and B directors of Federal Reserve Banks" for "In the case of class A and B directors of Federal Reserve Banks".

Subsec. (c)(2). Pub.L. 101-194, § 405(2), added par. (2).

Subsec. (d). Pub.L. 101-194, § 405(2), added subsec. (d).

1977 Amendment

Subsec. (a). Pub.L. 95-188, § 205(a), extended the conflicts of interest prohibition to a Federal Reserve bank director, officer, or employee.

Subsec. (b). Pub.L. 95-188, § 205(b), added sentence "In the case of class A and B directors of Federal Reserve banks, the Board of Governors of the Federal Reserve System shall be the Government official responsible for appointment."

Effective Date of 1990 Amendment

Amendment by Pub.L. 101-280 effective on May 4, 1990, see section 11 of Pub.L. 101-280, set out as a note under section 101 of Appendix 6 to Title 5, Government Organization and Employees.

Effective Date

"Particular Matter" Defined. Pub.L. 100-446, Title III, § 319, Sept. 27, 1988, 102 Stat. 1826, which provided that: notwithstanding any other provision of law, for the purposes of this section the term "particular matter", as applied to employees of the Department of the Interior and the Indian Health Service, would mean "particular matter involving specific parties", was repealed by Pub.L. 101-194, Title V, § 505(b), Nov. 30, 1989, 103 Stat. 1756, as amended Pub.L. 101-280, § 6(c), May 4, 1990, 104 Stat. 160. Similar provisions had previously appeared in Pub.L. 100-202, § 101(g) [Title III, § 318], Dec. 22, 1987, 101 Stat. 1329-255.

CRIMES AND CRIMINAL PROCEDURE

Legislative History

For legislative history and purpose of Pub.L. 95-188, see 1977 U.S. Code Cong. and Adm.

News, p. 3636. See, also, Pub.L. 101-194, 1989 U.S. Code Cong. and Adm. News, p. 1225; Pub.L. 101-280, 1990 U.S. Code Cong. and Adm. News, p. 169.

CROSS REFERENCES

Advisory Commission on Conferences in Ocean Shipping, members appointed from private sector

not subject to this section, see section 1717(e)(3) of Title 46 Appendix, Shipping.

WEST'S FEDERAL PRACTICE MANUAL

Contract solicitation, see § 1529.

ADMINISTRATIVE LAW

Professional responsibility in administrative practice, see Koch § 1.13.

CODE OF FEDERAL REGULATIONS

Department of Justice, employees, disqualification arising from private financial interests, see 28 CFR 45.735-5.

Federal Reserve System, reserve bank directors, actions and responsibilities, 12 CFR 264a.1 et seq.

Federal Trade Commission—
Criminal sanction for conflict of interest, see 16 CFR 5.14.

Exemption of insubstantial financial conflicts, see 16 CFR 5.8.

Office of the Secretary of Commerce, employees, conflict of financial interest, see 15 CFR 0.735-13.

Tennessee Valley Authority, employees, disclosure of financial interests of, see 18 CFR 1301.4.

U.S. Arms Control and Disarmament Agency, employees, financial interests of, see 22 CFR 606.735-1 et seq.

LAW REVIEW COMMENTARIES

Deferred taxation of gains realized upon divestiture of property to avoid conflicts of interest: A proposal. Stuart A. Smith, 36 Fed.B.News & J. 126 (March/April 1989).

Finally, government ethics as if people mattered: Some thoughts on the Ethics Reform Act

of 1989. Eric J. Murdock, 58 Geo.Wash.L.Rev. 502 (1990).

Will the Ethics Reform Act change the way the government conducts business in the 1990's? 37 Fed.B.News & J. 414 (1990).

NOTES OF DECISIONS

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problem of nepotism in federal employment, would not be considered to preclude application of federal criminal statute prohibiting conflicts of interest to internal agency nepotism on theory civil penalties were intended to be exclusive remedy for personnel practices prohibited by CSRA and criminal statute was impliedly repealed as it applied to internal agency nepotism. U.S. v. Lund, C.A.4 (Va.) 1988, 853 F.2d 242.

2. Purpose

In enacting the general reform of the federal bribery, graft and conflict of interest laws, Congress plainly intended that prohibiting participation by government employees in decisions affecting organizations with whom the employees were negotiating or had arrangements concerning prospective employment would expand the reach of this section; however, since it was evident that Congress was concerned with permitting qualified persons to move between the public and private sectors and with facilitating government's recruitment and retention of talented personnel, to penalize by criminal prosecution indefinite and inchoate links to outside firms such as unsolicited offers of future employment or even unilateral hopes and plans would defeat the congressional purpose. U.S. v. Conlon, D.C.D.C. 1979, 481 F.Supp. 654.

Purpose of this section prohibiting a government employee from having any present or prospective financial interest in government decisions in which he participates is to insure honesty in the government's business dealings by preventing federal agents who have interests adverse to those of

1/2. Constitutionality

It was not necessary to require pleading of "specific acts of negotiating" or "specific bilateral arrangements or acts of arranging" in order to save this section from vagueness, as terms "negotiating" and "arrangement" were not exotic or abstruse words, requiring detailed etymological study or judicial analysis, but, rather, were common words of universal usage, so that people of ordinary intelligence would have fair notice of conduct proscribed by this section, and fact that there may be marginal cases was not sufficient reason to hold that this section was too ambiguous to define criminal offense. U.S. v. Conlon, 1980, 628 F.2d 150, 202 U.S.App.D.C. 150.

1a. Construction with other laws

Enactment of Civil Service Reform Act, which contains two provisions dealing specifically with

the government from advancing their own interests at expense of public welfare. *Exchange Nat. Bank of Chicago v. Abramson*, D.C.Minn.1969, 295 F.Supp. 87, appeal dismissed 407 F.2d 865.

3. Officers and employees within section

The Secretary of the Department of Transportation was not required to recuse himself from an airline fitness investigation involving a client of a law firm which was the Secretary's potential employer, where the firm did not represent the client in the matter at issue, but did represent the client in other matters pending before the Department. *Air Line Pilots Ass'n, Intern. v. U.S. Dept. of Transp.*, 1990, 899 F.2d 1230, 283 U.S.App.D.C. 245.

This section had no application to chairman of the Federal Trade Commission who had no present interest in motor vehicle manufacturer which was party to proceeding, request for recusal arising out of his previous relationship with economic consulting firm whose largest client was such automobile manufacturer. *Center for Auto Safety v. F.T.C.*, D.C.D.C.1984, 586 F.Supp. 1245.

Plaintiff bank, which claimed that receiver violated this section in serving both as an employee of the Justice Department and as a state court-appointed receiver, was not within class designed to be protected by this chapter. *Exchange Nat. Bank of Chicago v. Abramson*, D.C.Minn.1969, 295 F.Supp. 87, appeal dismissed 407 F.2d 865.

The staff director for the American members of the U.S.-Japan Consultative group on Economic Relations should be considered an "officer" or "employee" of the United States to whom the conflict of interest restrictions imposed on such persons apply. 1979 (Counsel-Inf.Op.) 3 Op.O.L.C. 321.

3a. Offenses within section

Former employee of Army Corps of Engineers, who provided contractor with significant assistance in connection with the letting and performance of certain contracts in return for percentage of profits, violated this section. *K & R Engineering Co., Inc. v. U.S.*, 1980, 616 F.2d 469, 222 Ct.Cl. 340.

A government attorney owning a corporation involved in a quiet title action with the United States government and having a financial interest in the action is not involved in any real or apparent conflict of interest with his duties and responsibilities where he does not intend to participate in the litigation on behalf of the United States or to act as agent or attorney on behalf of the corporation and the action is not being handled by his departmental section. 1977 (Counsel-Inf. Op.) 1 Op.O.L.C. 7.

4. Standard of conduct

Statute that prohibits federal employee from taking government action while having conflicting financial interest creates strict liability offense; general intent or scienter does not have to be shown in order to establish violation of the statute. *U.S. v. Hedges*, C.A.11 (Ala.) 1990, 912 F.2d 1397.

Assuming, arguendo, that bank, which claimed that state court-appointed receiver had violated this section by serving both as a federal employee and as a receiver, had standing to raise such claim

in civil suit wherein receiver sought recovery of \$10,500,000 from the bank for alleged fraudulent and conspiratorial conduct, record failed to show that conduct of the receiver, in working for the Justice Department as a fact witness and technical advisor for 90 days in connection with a criminal prosecution against number of defendants growing out of activities of insolvent insurance company with which the bank had had dealings, violated either the letter or spirit of the conflict of interest statute. *Exchange Nat. Bank of Chicago v. Abramson*, D.C.Minn.1969, 295 F.Supp. 87, appeal dismissed 407 F.2d 865.

5. Knowledge and approval of superiors

Defendant's acts of causing delivery of equipment to be made pursuant to contract and of receiving payment of monies under the contract for such equipment constituted participation in the contract, for purposes of this section proscribing participation through "decision, approval, disapproval, recommendation, the rendering of advice, or otherwise" in contracts involving conflict of interest. *U.S. v. Irons*, C.A.11.1981, 640 F.2d 872.

7. Negotiation and execution of contracts

Actions of Air Force reserve officer and private contractor constituted "negotiations" for purposes of statute that prohibits federal employee from participating in matter in which he or organization with whom he is negotiating concerning prospective employment has financial interests; officer approached contractor about possibility of employment and submitted application, contractor told officer during interviews that they needed someone who spoke Spanish, officer replied that he would learn to speak Spanish, and some months later officer received exact position he had discussed at interview. *U.S. v. Schaltenbrand*, C.A.11 (Ga.) 1991, 930 F.2d 1554, rehearing denied 942 F.2d 798, certiorari denied 112 S.Ct. 640, 116 L.Ed.2d 658.

In order to save this section from constitutionally impermissible vagueness, it was necessary to construe term "negotiating", as requiring allegations of specific acts of negotiating by the defendant in concert with a prospective employer. *U.S. v. Conlon*, D.C.D.C.1979, 481 F.Supp. 654.

7a. — Evaluation of bids

Evidence that two of Department of Justice officials involved in evaluation of successful bidder's bid on contract with information systems support group of Department's antitrust division had discussions with former chief of group, who was vice-president of successful bidder, about possible employment with successful bidder did not establish violation of this section. *Caci, Inc.—Federal v. U.S.*, C.A.Fed.1983, 719 F.2d 1567.

8. Validity and enforcement of contracts

Plaintiff contractor, which was involved in an arrangement prohibited by this section could not enforce contract against Government nor recover under quantum meruit theory. *K & R Engineering Co., Inc. v. U.S.*, 1980, 616 F.2d 469, 222 Ct.Cl. 340.

11. Accounting and restitution

Government was entitled to recover amount paid to contractor pursuant to contracts which

were procured as consequence of contractor's participation in an arrangement prohibited by this section. *K & R Engineering Co., Inc. v. U.S.*, 1980, 616 F.2d 469, 222 Ct.Cl. 340.

14. Instructions

Refusing requested instruction on entrapment by estoppel defense and giving charge that any advice given by standards of conduct officer to defendant was not defense to offense charged was reversible error in prosecution for taking government action while having conflicting financial interest; defendant, who was air force officer, claimed that he complied with applicable regulations, followed advice of the standards of conduct officer, and generally exercised extreme care to avoid breaking the law. *U.S. v. Hedges*, C.A.11 (Ala.) 1990, 912 F.2d 1397.

15. Exemptions

The scope of the prohibition of this section against federal employees' connections with outside interests related to employment should be read in pari materia with similar prohibitions of outside financial interests and this section which prohibits a government employee from participating substantially in a manner in which he has any "financial interest" makes clear that insubstantial interests are to be exempted. *U.S. v. Conlon*, D.C.D.C.1979, 481 F.Supp. 654.

16. Indictment

Indictment charging federal employee with 13 counts of having personal interest in government contract was multiplicitous; employee could be indicted for only one conflict of interest in connection with signature of authorizations of payment, which were written under single contract. *U.S. v. Jewell*, C.A.9 (Nev.) 1987, 827 F.2d 586.

In absence of any allegation of specific facts showing the existence of a bilateral agreement or ongoing events of negotiating, indictment charging defendant, a former federal employee, with violating this section by participating as a government officer in a proposal by a corporation while he was "negotiating and had an arrangement concerning prospective employment" with the corporation failed to state an offense. *U.S. v. Conlon*, D.C.D.C.1979, 481 F.Supp. 654.

17. Employment arrangements

Statute that prohibits federal employee from taking government action while having conflicting financial interest was not vague as applied to air force officer who participated in negotiations for employment before his terminal leave commenced. *U.S. v. Hedges*, C.A.11 (Ala.) 1990, 912 F.2d 1397.

Involvement by regional administrator of Small Business Administration in affairs of defense contractor after being promised position at law firm for which defense contractor would partially pay salary violated conflict-of-interest statute, which prohibits public official from participating in matter in which prospective employer has financial interest. *U.S. v. Biaggi*, C.A.2 (N.Y.) 1990, 909 F.2d 662, certiorari denied 111 S.Ct. 1102, 113 L.Ed.2d 213.

Evidence established that defendant, who was employed as assistant United States attorney, entered into employment negotiations with third party who had cognizable financial interest in outcome of criminal investigation conducted by defendant, for purposes of federal conflict of interest statute; third party had ten percent contingent fee arrangement with bankrupt's creditors, and defendant was conducting criminal investigation against banks accused of cooperating with criminal bankrupt. *U.S. v. Gorman*, C.A.6 (Ohio) 1986, 807 F.2d 1299, certiorari denied 108 S.Ct. 68, 98 L.Ed.2d 32.

In order to save this section from being impermissibly vague, it was necessary to construe term "arrangement", as requiring allegations of specific bilateral arrangements or acts of arranging. *U.S. v. Conlon*, D.C.D.C.1979, 481 F.Supp. 654.

There is no statute or administrative regulation that precludes an officer or employee of the Department of Justice who came to it after departing another place of employment, including a law firm in which he was a partner, from returning to that place of employment pursuant to a pre-departure agreement to do so. 1979 (Counsel-Inf.Op.) 3 Op.O.L.C. 278.

18. Prosecutors

It is improper for a prosecutor to participate in a case when he has a pecuniary interest in the outcome. *U.S. v. Heldt*, 1981, 668 F.2d 1238, 215 U.S.App.D.C. 206, certiorari denied 102 S.Ct. 1971.

19. Independent agency

Production credit association was not an "independent agency" of the United States for purposes of federal criminal conflicts of interest statute, 18 U.S.C.A. § 208, which imposes penalties on certain classes of government employees if they participate in government decision in which they have present or prospective financial interest. *U.S. v. Haynes*, D.C.Tenn.1985, 620 F.Supp. 474.

20. Other particular matters

Participation in deliberations of advisory committees in the Food and Drug Administration concerning a class of related products or an ingredient common to many products involves participation in a "particular matter" within the meaning of subsec. (a) of this section. 1978 (Counsel-Inf.Op.) 2 Op.O.L.C. 151.

21. Independent contractor

One who in fact will serve as a government employee may not be hired as an independent contractor to avoid the application of the conflict of interest laws. 1980 (Counsel-Inf.Op.) 4B Op.O.L.C. 441.

22. Ex officio trustee

The Attorney General, as an ex officio trustee of the National Trust for Historic Preservation, does not serve as an officer, director, or trustee within the meaning of this section. 1982 (Counsel-Inf.Op.) 6 O.L.C. 443.

emolument or when he consents to or agrees to receive such a fee or commission. U.S. v. Etheridge, D.C.Va.1976, 414 F.Supp. 609.

Officer's request and acceptance of kickback in exchange for his endeavoring to obtain loan for borrower violated several state and federal statutes enacted to protect economic interests of banks against officers and agents who might put their own interests ahead of banks, and thus, statutes would not be served by declaring loan agreements, as opposed to kickback agreement, unenforceable. In re 604 Columbus Ave. Realty Trust, Bkrcty. D.Mass.1990, 119 B.R. 350, appeal decided 968 F.2d 1332.

Loan made to allow purchase of business was illegal where savings and loan association's officers solicited and accepted interest in business and property in return for procuring loan, even if officers did not otherwise violate Federal Home Loan Bank Board (FHLBB) regulations governing loans to insiders and even if borrower received consideration in form of being able to affiliate his business with officers' preexisting businesses. Allred v. Sarovich, 593 N.E.2d 24, 171 Ill.Dec. 896, 230 Ill.App.3d 266.

6. Receipt of gift after loan

Indictment charging defendant with soliciting sexual favors with value of \$1,198, in violation of statute making it a felony for bank director or attorney to corruptly solicit or agree to accept more than \$100 in return for influencing banking transaction, charged single offense and was not duplicitous, where Government's theory was that defendant demanded that bank customer furnish him or others with sexual favors over determinate period until customer's entire debt to bank was extinguished. U.S. v. Brunson, C.A.5 (La.) 1989, 882 F.2d 151.

Bank officer could properly be convicted of violating this section making it an offense for officer of FDIC insured bank to stipulate for any fee a thing of value from any person or corporation for procuring any loan, where officer, instrumental in procuring loan for corporation, stipulated for the payment of commission to corporation of which officer was chairman of board of directors and controlling stockholder, even though he did not stipulate for payment of commission to him personally. U.S. v. Lane, C.A.Ark.1972, 464 F.2d 593, certiorari denied 93 S.Ct. 127, 409 U.S. 876, 34 L.Ed.2d 129.

For purpose of determining whether defendant was guilty of the offense of receiving and agreeing to receive a sum of money as a fee and commission for procuring a loan from a bank of which he was an officer, it was of no consequence that alleged fee was not paid until after the loan had been made or that the borrower did not know that the bank officer was sharing in the fee. U.S. v. Etheridge, D.C.Va.1976, 414 F.Supp. 609.

6a. Consideration

In suit for specific performance of option agreement for sale of bank stock or, alternatively, for damages for breach thereof, to prevail under theory of illegality movants for summary judgment had burden of proving, as a matter of law, that consideration given for the option was a promise by buyer, who was chairman of board of directors of bank insured by Federal Deposit Insurance

Corporation, to procure a loan to seller from such bank. Mann v. Perry, Tex.Civ.App.1972, 486 S.W.2d 853.

7. Note given for procuring loan

Finding that defendant, a bank officer, endeavored to procure a loan from the bank was supported by evidence that borrower executed promissory note payable to officer's bank and bank assigned that note to a second bank, second bank agreed to take full participation in the loan, officer's bank deposited \$500,000 of its funds in a noninterest bearing account with the participating bank, and person who received a \$250,000 fee for guaranteeing the loan paid bank officer \$100,000. U.S. v. Jumper, C.A.5 (Tex.) 1988, 838 F.2d 755.

9. Indictment

Any defect in indictment charging defendant with conspiring to defraud a financial institution and conspiring to bribe officer of financial institution, with respect to predicate acts that were committed before statutes in question covered institutions insured by Federal Savings and Loan Insurance Corporation (FSLIC), was cured by district court's action in ordering those acts stricken from indictment. U.S. v. Wicker, C.A. 5 (La.) 1991, 933 F.2d 284.

Even though defendant was not a bank officer, director, employee, agent or attorney, the indictment stated an offense when it charged defendant with aiding and abetting in the Commission of violations of this section prohibiting, inter alia, bank officers, directors, employees, agents or attorneys from receiving any fee, commission, gift or thing of value for procuring any loan, except as provided by law. U.S. v. Tokoph, C.A.N.M.1975, 514 F.2d 597.

9a. Variance

Since essence of offense of receiving a fee for procuring a loan is endeavoring to procure a loan from a bank for a thing of value by an officer of the bank, when the proof establishes that a bank officer endeavored to procure such a loan a variance between the indictment and proof of who in fact received the loan is immaterial where the officer is otherwise informed of the nature of the charges against him so that he is enabled to prepare his defense, is not taken by surprise and is protected against another prosecution for the same offense. U.S. v. Schoenhut, C.A.Pa.1978, 576 F.2d 1010, certiorari denied 99 S.Ct. 450, 439 U.S. 964, 58 L.Ed.2d 421.

There was not a fatal variance between information stating that defendant officer of FDIC insured bank stipulated for a commission to be paid to him personally and the proof which showed that commission paid for procuring of bank loan from officer was actually paid to corporation of which officer was the chairman of the board and controlling stockholder. U.S. v. Lane, C.A.Ark. 1972, 464 F.2d 593, certiorari denied 93 S.Ct. 127, 409 U.S. 876, 34 L.Ed.2d 129.

11. Evidence

Evidence that defendant, a bank employee in charge of trading various securities, received one half of the profits from securities traded for two of bank's customers without bank's knowledge, was sufficient to establish that payments were accepted corruptly with intent to be rewarded, in violation

of bank bribery statute, although defendant claimed he was a partner with the two customers and merely split partnership profits, and the bank did not suffer a loss. U.S. v. Denny, C.A.10 (Okla.) 1991, 939 F.2d 1449.

Credit union loan officer's attempt to sell to maker original note stamped "PAID" was in connection with maker's debt which was unpaid at time of the scheme, and, thus, officer could be found guilty of bank bribery. U.S. v. Hooten, C.A. 5 (Tex.) 1991, 933 F.2d 293.

Evidence that one defendant banking official's request for loan to finance his speculation in bank stock was rejected because of his financial condition and his speculative purpose, was relevant in prosecution of defendant officials for participating in reciprocal loaning scheme involving their respective institutions to fund their bank stock speculation, to show that official's application was viewed by independent bankers as unsound. U.S. v. McElroy, C.A.2 (Vt.) 1990, 910 F.2d 1016.

Evidence was sufficient to sustain conviction of defendant for bribing bank official; defendant offered bribe to bank officer that had definite value when defendant expressed his desire to deposit \$2.5 million by end of 1986 and \$25 million by end of first quarter in 1987 and promised to pay officer five percent of this amount, at which point defendant expressed ability and desire to pay bribe. U.S. v. Rasco, C.A.7 (Ill.) 1988, 853 F.2d 501, certiorari denied 109 S.Ct. 400, 102 L.Ed.2d 389.

Showing that mortgage loan officer at national bank endeavored to procure a loan from the bank to mortgage broker for use of corporate owner of development property and of holding company which was organized to acquire owner's stock was sufficient to make out offense of receiving a fee for procuring a loan even though loan was procured for a company, i.e., broker, other than that which gave the fee or commission, i.e., holding company, in that although broker granted construction loan to owner such funds were obtained pursuant to its mortgage warehouse line with bank and bank had right to consider each request for a draw separately and could reject any request. U.S. v. Schoenhut, C.A.Pa.1978, 576 F.2d 1010, certiorari denied 99 S.Ct. 450, 439 U.S. 964, 58 L.Ed.2d 421.

13. Instructions

Instructing jury that one purpose of bank bribery statute, was preventing conflicts of interest was not reversible error in bank bribery prosecution.

§ 216. Penalties and injunctions

(a) The punishment for an offense under section 203, 204, 205, 207, 208, or 209 of this title is the following:

(1) Whoever engages in the conduct constituting the offense shall be imprisoned for not more than one year or fined in the amount set forth in this title, or both.

(2) Whoever willfully engages in the conduct constituting the offense shall be imprisoned for not more than five years or fined in the amount set forth in this title, or both.

(b) The Attorney General may bring a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense under section 203, 204, 205, 207, 208, or 209 of this title and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil

action based on defendant's alleged acceptance of payments in return for trading securities on behalf of two bank customers while employed at bank; instruction was in accordance with law, and was not unduly prejudicial. U.S. v. Denny, C.A.10 (Okla.) 1991, 939 F.2d 1449.

14. Punishment

Conspiring with others to violate this section prohibiting any officer of a bank from receiving any fee, commission, gift or thing of value from a person to procure loan from bank of which he is an officer warrants suspension. In re Anderson, N.D.1972, 195 N.W.2d 345.

15. Wharton's rule

Wharton's rule did not preclude conviction of conspiracy to violate this section making it an offense for any bank officer to receive any fee, etc., for procuring a loan or renewal thereof; defendants, two of whom were bank officers, not only relied on themselves and the agreements between them to carry out the purposes of the conspiracy but gave false credit information to other members of the bank and gave credit information to outsiders, all of which advanced the purposes of the conspiracy, thereby raising the issue of the third-party exception to the rule. U.S. v. Foster, C.A.Tenn.1977, 566 F.2d 1045, certiorari denied 98 S.Ct. 1473, 435 U.S. 917, 55 L.Ed.2d 509.

16. Conspiracy

Conviction of conspiring to violate this section prohibiting a bank officer from receiving any fee for procuring a loan could stand in face of conviction of substantive offense since defendants could have been convicted of the conspiracy without any evidence of the offenses charged in the substantive counts. U.S. v. Foster, C.A.Tenn.1977, 566 F.2d 1045, certiorari denied 98 S.Ct. 1473, 435 U.S. 917, 55 L.Ed.2d 509.

17. Agents

Alleged agent's support of bank by bringing in customers in past and agent's assistance to prospective purchasers in their quest for a loan to purchase property did not indicate that bank had right to control alleged agent under Texas law and that agent was agent of bank within meaning of prohibition against offering anything of value with intent to influence agent of financial institution. Marriott Bros. v. Gage, N.D.Tex.1989, 717 F.Supp. 458.

penalty of not more than \$50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. The imposition of a civil penalty under this subsection does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the United States or any other person.

(c) If the Attorney General has reason to believe that a person is engaging in conduct constituting an offense under section 203, 204, 205, 207, 208, or 209 of this title, the Attorney General may petition an appropriate United States district court for an order prohibiting that person from engaging in such conduct. The court may issue an order prohibiting that person from engaging in such conduct if the court finds that the conduct constitutes such an offense. The filing of a petition under this section does not preclude any other remedy which is available by law to the United States or any other person.

(Added Pub.L. 101-194, Title IV, § 407(a), Nov. 30, 1989, 108 Stat. 1753; Pub.L. 101-280, § 5(f), May 4, 1990, 104 Stat. 159.)

HISTORICAL AND STATUTORY NOTES

Prior Provisions

A prior section 216, Acts June 25, 1948, c. 645, 62 Stat. 695, § 216, formerly § 221, amended Aug. 21, 1958, Pub.L. 85-699, Title VII, § 702(a)-(c), 72 Stat. 698; Aug. 18, 1959, Pub.L. 86-168, Title I, § 104(h), 73 Stat. 387, and renumbered Oct. 23, 1962, Pub.L. 87-849, § 1(d), 76 Stat. 1125, which related to receipt or charge of commissions or gifts for farm loan, land bank, or small business transaction, was repealed by Pub.L. 98-473, Title II, § 1107(b), Oct. 12, 1984, 98 Stat. 2146. See section 215 of this title.

Another prior section 216, Act June 25, 1948, c. 645, 62 Stat. 694, which related to procurement of a contract by an officer or Member of Congress, was repealed by section 1(c) of Pub.L. 87-849.

1990 Amendment

Subsec. (a). Pub.L. 101-280, § 5(f)(1), substituted "section 203, 204, 205, 207, 208, or 209" for "sections 203, 204, 205, 207, 208, and 209".

LAW REVIEW COMMENTARIES

Section 205's restriction on pro bono representation by federal attorneys. Carolyn Elefant, 37 Fed.B.N. & J. 407 (1990).

LIBRARY REFERENCES

United States ¶52.
WESTLAW Topic No. 393.
C.J.S. United States §§ 60, 61.

§ 218. Voiding transactions in violation of chapter; recovery by the United States

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 12448

Nov. 4, 1983, 48 F.R. 51281

EXERCISE OF AUTHORITY

By the authority vested in me as President by the Constitution and statutes of the United States of America, including section 218 of title 18 of the United States Code [this section], and in order to provide federal agencies with the authority to promulgate regulations for voiding or rescinding contracts or other benefits obtained through bribery, graft or conflict of interest, it is hereby ordered as follows:

Section 1. The head of each Executive department, Military department and Executive agency is hereby delegated the authority vested in the President to declare void and rescind the transactions set forth in section 218 of title 18 of the United States Code [this section] in relation to which there has been a final conviction for any violation of chapter 11 of title 18 [section 201 et seq. of this title].

Sec. 2. The head of each Executive department and agency described in section 1 may exercise the authority hereby delegated by promulgating implementing regulations; provided that the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration jointly shall issue government-wide implementing regulations related to voiding or rescission of contracts.

Sec. 3. Implementing regulations adopted pursuant to this Order shall, at a minimum, provide the following procedural protections:

(a) Written notice of the proposed action shall be given in each case to the person or entity affected;

(b) The person or entity affected shall be afforded an opportunity to submit pertinent information on its behalf before a final decision is made;

(c) Upon the request of the person or entity affected, a hearing shall be held at which it shall have the opportunity to call witnesses on its behalf and confront any witness the agency may present; and

(d) The head of the agency or his designee shall issue a final written decision specifying the amount of restitution or any other remedy authorized by section 218 [this section], provided that such remedy shall take into consideration the fair value of any tangible benefits received and retained by the agency.

LAW REVIEW COMMENTARIES

Regulating fraud in military procurement: A legal process model. Patrick H. DeSouza (1985) 95 Yale L.J. 390.

NOTES OF DECISIONS

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1. Construction with other laws

Proof of public official's violation of section 203 of this title establishes, as a matter of law, breach of fiduciary duty owed to the United States. U.S. v. Podell, D.C.N.Y.1977, 436 F.Supp. 1039, affirmed 572 F.2d 31.

1a. Purpose

This section was not intended to preclude action to impress constructive trust on money received by wrongdoer from third persons. U.S. v. Podell, C.A.2, 1978, 572 F.2d 31.

2. Amounts recoverable

In view of admission of former Congressman that he was paid by private entity through his law firm for appearances which he made before federal agencies and since he admitted that among the means used to carry out his activities were trips to the Bahamas, Congressman was accountable to the United States for amounts which law firm was shown to have received from the private entity with respect to trips by defendant to the Bahamas. U.S. v. Podell, D.C.N.Y.1977, 436 F.Supp. 1039, affirmed 572 F.2d 31.

3. Complaint

United States stated claim for relief on basis that it was entitled to constructive trust on monies defendant received in breach of his fiduciary duty as United States Congressman. U.S. v. Podell, C.A.2, 1978, 572 F.2d 31.

4. Matters to be proved

Public official stands in a fiduciary relationship with the United States, through those by whom he is appointed or elected; if he secretly advances interests adverse to those of the government which he serves, it is a breach of confidence and he must account to his "master" for the benefits received as result, irrespective of considerations of fraud or damage. U.S. v. Podell, D.C.N.Y.1977, 436 F.Supp. 1039, affirmed 572 F.2d 31.

5. Guilty plea

Defendant's guilty plea to count of indictment charging substantive violation of this section foreclosed defendant from denying his breach of fiduciary duties to United States when government subsequently sought to impose constructive trust on monies defendant had received in breach of that duty. U.S. v. Podell, C.A.2, 1978, 572 F.2d 31.

6. Limitations

Government's action to impress constructive trust on monies received by defendant in breach of his fiduciary duty as United States Congressman was not barred by state six-year statute of limitations for fraud. U.S. v. Podell, C.A.2, 1978, 572 F.2d 31.

7. Constructive trust

Public officials and employees serving interests in conflict with those of United States for their own gain hold funds they receive, no matter what the source, in constructive trust for the government. U.S. v. Podell, C.A.2, 1978, 572 F.2d 31.

8. Estoppel

Defendant who in criminal case carefully struck out portions of indictment to which he did not desire to plead guilty thereby admitted truth of remainder of allegations for purposes of subsequent action brought by United States against him to impose constructive trust on monies defendant received in breach of fiduciary duty. U.S. v. Podell, C.A.2, 1978, 572 F.2d 31.

criminal statute, 18 U.S.C. 208(a), from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he, his spouse, general partner or minor child has a financial interest, if the particular matter will have a direct and predictable effect on that interest. The statutory prohibition also extends to an employee's participation in a particular matter in which, to his knowledge, an organization in which the employee is serving as officer, director, trustee, general partner or employee, or with whom he is negotiating or has an arrangement concerning prospective employment has a financial interest. Where the employee's participation in a particular matter would affect any one of these financial interests, the standards set forth in subparts D or F of this part apply and only a statutory waiver, as described respectively in §§ 2635.402(d) and 2635.605(a), will enable the employee to participate in that matter. The authorization procedures in § 2635.502(d) may not be used to authorize an employee's participation in any such matter. Where the employee complies with all terms of the waiver, the granting of a statutory waiver will be deemed to constitute a determination that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of agency programs and operations.

§ 2635.502 Personal and business relationships.

(a) *Consideration of appearances by the employee.* Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee in accordance with paragraph (d) of this section.

(1) In considering whether a relationship would cause a reasonable person to question his impartiality, an employee may seek the assistance of his supervisor, an agency ethics official or the agency designee.

(2) An employee who is concerned that circumstances other than those specifically described in this section would raise a question regarding his impartiality should use the process described in this section to determine whether he should or should not participate in a particular matter.

(b) *Definitions.* For purposes of this section:

(1) An employee has a *covered relationship* with:

(i) A person, other than a prospective employer described in § 2635.603(c), with whom the employee has or seeks a business, contractual or other financial relationship that involves other than a routine consumer transaction;

NOTE: An employee who is seeking employment within the meaning of § 2635.603 shall comply with subpart F of this part rather than with this section.

(ii) A person who is a member of the employee's household, or who is a relative with whom the employee has a close personal relationship;

(iii) A person for whom the employee's spouse, parent or dependent child is, to the employee's knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;

(iv) Any person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; or

(v) An organization, other than a political party described in 26 U.S.C. 527(e), in which the employee is an active participant. Participation is active if, for example, it involves service as an official of the organization or in a capacity similar to that of a committee or subcommittee chairperson or spokesperson, or participation in directing the activities of the organization. In other cases, significant time devoted to promoting specific programs of the organization, including coordination of fundraising efforts, is an indication of active participation. Payment of dues or the donation or solicitation of financial support does not, in itself, constitute active participation.

NOTE: Nothing in this section shall be construed to suggest that an employee should not participate in a matter because of his political, religious or moral views.

(2) *Direct and predictable effect* has the meaning set forth in § 2635.402(b)(1).

(3) *Particular matter involving specific parties* has the meaning set forth in § 2637.102(a)(7) of this chapter.

Example 1: An employee of the General Services Administration has made an offer to purchase a restaurant owned by a local developer. The developer has submitted an offer in response to a GSA solicitation for lease of office space. Under the circumstances, she would be correct in concluding that a reasonable person would be likely to question her impartiality if she were to participate in evaluating that developer's or its competitor's lease proposal.

Example 2: An employee of the Department of Labor is providing technical assistance in drafting occupational safety and health legislation that will affect all employers of five or more persons. His wife is employed as an administrative assistant by a large corporation that will incur additional costs if the proposed legislation is enacted. Because the legislation is not a particular matter involving specific parties, the employee may continue to work on the legislation and need not be concerned that his wife's employment with an affected corporation would raise a question concerning his impartiality.

Example 3: An employee of the Defense Logistics Agency who has responsibilities for testing avionics being produced by an Air Force contractor has just learned that his sister-in-law has accepted employment as an engineer with the contractor's parent corporation. Where the parent corporation is a conglomerate, the employee could reasonably conclude that, under the circumstances, a reasonable person would not be likely to question his impartiality if he were to continue to perform his test and evaluation responsibilities.

Example 4: An engineer has just resigned from her position as vice president of an electronics company in order to accept employment with the Federal Aviation Administration in a position involving procurement responsibilities. Although the employee did not receive an extraordinary payment in connection with her resignation and has severed all financial ties with the firm, under the circumstances she would be correct in concluding that her former service as an officer of the company would be likely to cause a reasonable person to question her impartiality if she were to participate in the administration of a DOT contract for which the firm is a first-tier subcontractor.

Example 5: An employee of the Internal Revenue Service is a member of a private organization whose purpose is to restore a Victorian-era railroad station and she chairs its annual fundraising drive. Under the circumstances, the employee would be correct in concluding that her active membership in the organization would be likely to cause a reasonable person to question her impartiality if she were to participate in an IRS determination regarding the tax-exempt status of the organization.

(c) *Determination by agency designee.* Where he has information concerning a potential appearance problem arising from the financial interest of a member of the employee's household in a particular matter involving specific parties, or from the role in such matter of a person with whom the employee has a covered relationship, the agency designee may make an independent determination as to whether a reasonable person with knowledge of the relevant facts would be likely to question the employee's impartiality in the matter. Ordinarily, the agency designee's determination will be initiated by information provided by the employee pursuant to paragraph (a) of this section. However, at any time, including after the employee has disqualified himself from participation in a matter pursuant to paragraph (e) of this section, the agency designee may make this determination on his own initiative or when requested by the employee's supervisor or any other person responsible for the employee's assignment.

(1) If the agency designee determines that the employee's impartiality is likely to be questioned, he shall then determine, in accordance with paragraph (d) of this section, whether the employee should be authorized to participate in the matter. Where the agency designee determines that the employee's participation should not be authorized, the employee will be disqualified from participation in the matter in accordance with paragraph (e) of this section.

(2) If the agency designee determines that the employee's impartiality is not likely to be questioned, he may advise the employee, including an employee who has reached a contrary conclusion under paragraph (a) of this

section, that the employee's participation in the matter would be proper.

(d) *Authorization by agency designee.* Where an employee's participation in a particular matter involving specific parties would not violate 18 U.S.C. 208(a), but would raise a question in the mind of a reasonable person about his impartiality, the agency designee may authorize the employee to participate in the matter based on a determination, made in light of all relevant circumstances, that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. Factors which may be taken into consideration include:

(1) The nature of the relationship involved;

(2) The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship;

(3) The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;

(4) The sensitivity of the matter;

(5) The difficulty of reassigning the matter to another employee; and

(6) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

Authorization by the agency designee shall be documented in writing at the agency designee's discretion or when requested by the employee. An employee who has been authorized to participate in a particular matter involving specific parties may not thereafter disqualify himself from participation in the matter on the basis of an appearance problem involving the same circumstances that have been considered by the agency designee.

Example 1: The Deputy Director of Personnel for the Department of the Treasury and an attorney with the Department's Office of General Counsel are general partners in a real estate partnership. The Deputy Director advises his supervisor, the Director of Personnel, of the relationship upon being assigned to a selection panel for a position for which his partner has applied.

If selected, the partner would receive a substantial increase in salary. The agency designee cannot authorize the Deputy Director to participate on the panel under the authority of this section since the Deputy Director is prohibited by criminal statute, 18 U.S.C. 208(a), from participating in a particular matter affecting the financial interest of a person who is his general partner. See § 2635.402.

Example 2: A new employee of the Securities and Exchange Commission is assigned to an investigation of insider trading by the brokerage house where she had recently been employed. Because of the sensitivity of the investigation, the agency designee may be unable to conclude that the Government's interest in the employee's participation in the investigation outweighs the concern that a reasonable person may question the integrity of the investigation, even though the employee has severed all financial ties with the company. Based on consideration of all relevant circumstances, the agency designee might determine, however, that it is in the interest of the Government for the employee to pass on a routine filing by the particular brokerage house.

Example 3: An Internal Revenue Service employee involved in a long and complex tax audit is advised by her son that he has just accepted an entry-level management position with a corporation whose taxes are the subject of the audit. Because the audit is essentially complete and because the employee is the only one with an intimate knowledge of the case, the agency designee might determine, after considering all relevant circumstances, that it is in the Government's interest for the employee to complete the audit, which is subject to additional levels of review.

(e) *Disqualification.* Unless the employee is authorized to participate in the matter under paragraph (d) of this section, an employee shall not participate in a particular matter involving specific parties when he or the agency designee has concluded, in accordance with paragraph (a) or (c) of this section, that the financial interest of a member of the employee's household, or the role of a person with whom he has a covered relationship, is likely to raise a question in the mind of a reasonable person about his impartiality. Disqualification is accomplished by not participating in the matter.

(1) *Notification.* An employee who becomes aware of the need to disqualify himself from participation in a particular matter involving specific parties to which he has been assigned

should notify the person responsible for his assignment. An employee who is responsible for his own assignment should take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a particular matter involving specific parties from which he is disqualified.

(2) *Documentation.* An employee need not file a written disqualification statement unless he is required by part 2634 of this chapter to file written evidence of compliance with an ethics agreement with the Office of Government Ethics or is specifically asked by an agency ethics official or the person responsible for his assignment to file a written disqualification statement. However, an employee may elect to create a record of his actions by providing written notice to a supervisor or other appropriate official.

(f) *Relevant considerations.* An employee's reputation for honesty and integrity is not a relevant consideration for purposes of any determination required by this section.

§ 2635.503 Extraordinary payments from former employers.

(a) *Disqualification requirement.* Except as provided in paragraph (c) of this section, an employee shall be disqualified for two years from participating in any particular matter in which a former employer is a party or represents a party if he received an extraordinary payment from that person prior to entering Government service. The two-year period of disqualification begins to run on the date that the extraordinary payment is received.

Example 1: Following his confirmation hearings and one month before his scheduled swearing in, a nominee to the position of Assistant Secretary of a department received an extraordinary payment from his employer. For one year and 11 months after his swearing in, the Assistant Secretary may not participate in any particular matter to which his former employer is a party.

Example 2: An employee received an extraordinary payment from her former employer, a coal mine operator, prior to enter-

ing on duty with the Department of the Interior. For two years thereafter, she may not participate in a determination regarding her former employer's obligation to reclaim a particular mining site, because her former employer is a party to the matter. However, she may help to draft reclamation legislation affecting all coal mining operations because this legislation does not involve any parties.

(b) *Definitions.* For purposes of this section, the following definitions shall apply:

(1) *Extraordinary payment* means any item, including cash or an investment interest, with a value in excess of \$10,000, which is paid:

(i) On the basis of a determination made after it became known to the former employer that the individual was being considered for or had accepted a Government position; and

(ii) Other than pursuant to the former employer's established compensation, partnership, or benefits program. A compensation, partnership, or benefits program will be deemed an established program if it is contained in bylaws, a contract or other written form, or if there is a history of similar payments made to others not entering into Federal service.

Example 1: The vice president of a small corporation is nominated to be an ambassador. In recognition of his service to the corporation, the board of directors votes to pay him \$50,000 upon his confirmation in addition to the regular severance payment provided for by the corporate bylaws. The regular severance payment is not an extraordinary payment. The gratuitous payment of \$50,000 is an extraordinary payment, since the corporation had not made similar payments to other departing officers.

(2) *Former employer* includes any person which the employee served as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee.

(c) *Waiver of disqualification.* The disqualification requirement of this section may be waived based on a finding that the amount of the payment was not so substantial as to cause a reasonable person to question the employee's ability to act impartially in a matter in which the former employer is or represents a party. The waiver shall be in writing and may be given



ASSISTANT TO THE SECRETARY OF DEFENSE
3050 DEFENSE PENTAGON
WASHINGTON, DC 20301-3050



AUG 24 1994

Phil Caplan
Cabinet Affairs
Old Executive Office Building
Room 111
Washington, DC 20500

Dear Mr. Caplan:

Phil =

This is in response to your memorandum of June 14, 1994 concerning letters to President Clinton and Mr. Podesta from Mr. Broschious. In a letter dated June 27, 1994 the Department of Energy (DOE) responded to the issues raised by Mr. Broschious. A copy of the DOE's letter was provided to the Naval Sea Systems Command which was tasked to develop the DoD's response to Mr. Broschious. After reviewing the DOE's response, the Naval Reactors component of the Naval Sea Systems Command was satisfied that the DOE's response provided Mr. Broschious with the information he requested. The Navy has recommended that no further response be provided to Mr. Broschious, since the DOE's letter addressed the issues. I concur with this recommendation and, unless otherwise requested, DoD will take no further action on this matter.

Warm regards.

Sincerely,

Gordon K. Soper
Gordon K. Soper
Principal Deputy

DOB 8/4/04 - Search group mtg.

Ellen Weiss

DOB- done by end of September

record series inventory

optically scanned + computerized

reduction backlog

classification backup

Pr will allow, on behalf of group

to Adv Center to read SDRC deckssing

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~~depart~~

inventory Adv Center over to DPA

11th Aug @ 8:00 am

THS:

done with vintage search

+ historical

Let me speak with

Christine

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not a competition

Scope

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Conte

Members

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meeting

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go home as well - no response

(as unpaid employees - by statute)

Victims,

Reports

let's

Decide

(may
or be
other)

MISC

DATE:

ASSISTANT SECRETARY
OFFICE OF ENVIRONMENT, SAFETY AND HEALTH
U.S. DEPARTMENT OF ENERGY
1000 INDEPENDENCE AVENUE, S.W.
WASHINGTON, D.C. 20585

OFFICE: (202) 596-6151

FAX: (202) 586-0956

TO:

PHIL CAPLAN 436-2215

FROM:

ELLY MELAMED

NO. OF PAGES TO FOLLOW:

☒ For your information☐ Please call upon receipt

As requested

For review and comment

Original copy to follow via mail

COMMENTS/MESSAGES:

12/15/95

WE HAD A MEETING THIS MORNING WITH

CHRIS KLEIN OF SENATOR GLENN'S

STAFF. HE ASKED FOR A COPY OF THE
(HUMAN RADIATION FOLLOW-UP)

STATUS REPORT WE WILL BE PROVIDING TO YOU.

DO YOU HAVE ANY PROBLEM WITH THIS?

IF YES, PLEASE LET ME (586-6857)
OR STU GAWSON KNOW. THANKS

95 DEC 28 P 3 : 53

December 27, 1995

Ruth Faden, Ph.D.
15112 Georgia Avenue
Rockville, Maryland 20853

Dear Ruth:

I want to convey my thanks for your service as chair of the Advisory Committee on Human Radiation Experiments.

The Committee's report shed light on a crucial chapter in the history of the Cold War and made a significant contribution to maintaining the trust between the American people and their government. I feel confident that this thoughtful work will serve as an important resource well into the future.

I am also grateful for the process you went through in creating this report. The hearings you held across the country that gave people the opportunity to recount their stories and convey their concerns contributed to a better understanding of what occurred during the Cold War era and helped to further the healing process.

I know that you have contributed much to this historic work. Please accept my deepest thanks for your efforts.

Sincerely, **BILL CLINTON**

BC/JS/MAH/lynn-ckb (Corres. #2627567)
(12.radiation)(v)

MAH

December 27, 1995

Duncan Thomas, Ph.D.
9, rue de val de Grace
Paris 75005
FRANCE

Dear Duncan:

I want to convey my thanks for your service as a member of the Advisory Committee on Human Radiation Experiments.

The Committee's report shed light on a crucial chapter in the history of the Cold War and made a significant contribution to maintaining the trust between the American people and their government. I feel confident that this thoughtful work will serve as an important resource well into the future.

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Sincerely, **BILL CLINTON**

BC/JS/MAH/lynn-ckb (Corres. #2627583)
(12.radiation)

MAH

December 27, 1995

Dr. Kenneth Feinberg
5200 Edgemoor Lane
Bethesda, Maryland 20814

Dear Kenneth:

I want to convey my thanks for your service as a member of the Advisory Committee on Human Radiation Experiments.

The Committee's report shed light on a crucial chapter in the history of the Cold War and made a significant contribution to maintaining the trust between the American people and their government. I feel confident that this thoughtful work will serve as an important resource well into the future.

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Sincerely, **BILL CLINTON**

BC/JS/MAH/lynn-ckb (Corres. #2627594)
(12.radiation)

MAH

December 27, 1995

Eli Glatstein, M.D.
Suite 507
4500 Roland Avenue
Dallas, Texas 75219

Dear Eli:

I want to convey my thanks for your service as a member of the Advisory Committee on Human Radiation Experiments.

The Committee's report shed light on a crucial chapter in the history of the Cold War and made a significant contribution to maintaining the trust between the American people and their government. I feel confident that this thoughtful work will serve as an important resource well into the future.

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Sincerely, **BILL CLINTON**

BC/JS/MAH/lynn-ckb (Corres. #2627598)
(12.radiation)

MAH

December 27, 1995

Jay Katz, M.D.
81 Alston Avenue
New Haven, Connecticut 06515

Dear Jay:

I want to convey my thanks for your service as a member of the Advisory Committee on Human Radiation Experiments.

The Committee's report shed light on a crucial chapter in the history of the Cold War and made a significant contribution to maintaining the trust between the American people and their government. I feel confident that this thoughtful work will serve as an important resource well into the future.

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Sincerely, **BILL CLINTON**

BC/JS/MAH/lynn-ckb (Corres. #2627601)
(12.radiation)

MAH

December 27, 1995

Dr. Patricia King
1253 Fourth Street, S.W.
Washington, D.C. 20024

Dear Patricia:

I want to convey my thanks for your service as a member of the Advisory Committee on Human Radiation Experiments.

The Committee's report shed light on a crucial chapter in the history of the Cold War and made a significant contribution to maintaining the trust between the American people and their government. I feel confident that this thoughtful work will serve as an important resource well into the future.

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Sincerely, **BILL CLINTON**

BC/JS/MAH/lynn-ckb (Corres. #2627602)
(12.radiation)

Ma

December 27, 1995

Susan Lederer, Ph.D.
31 Foxanna Drive
Hershey, Pennsylvania 17033

Dear Susan:

I want to convey my thanks for your service as a member of the Advisory Committee on Human Radiation Experiments.

The Committee's report shed light on a crucial chapter in the history of the Cold War and made a significant contribution to maintaining the trust between the American people and their government. I feel confident that this thoughtful work will serve as an important resource well into the future.

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Sincerely, **BILL CLINTON**

BC/JS/MAH/lynn-ckb (Corres. #2627604)
(12.radiation)

Truh

December 27, 1995

Ruth Macklin, Ph.D.
Suite 10B
3671 Hudson Manor Terrace
Bronx, New York 10463

Dear Ruth:

I want to convey my thanks for your service as a member of the Advisory Committee on Human Radiation Experiments.

The Committee's report shed light on a crucial chapter in the history of the Cold War and made a significant contribution to maintaining the trust between the American people and their government. I feel confident that this thoughtful work will serve as an important resource well into the future.

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Sincerely, **BILL CLINTON**

BC/JS/MAH/lynn-ckb (Corres. #2627608)
(12.radiation)

Ma

December 27, 1995

Ms. Lois Norris
320 South 68th Avenue
Omaha, Nebraska 68132-3314

Dear Lois:

I want to convey my thanks for your service as a member of the Advisory Committee on Human Radiation Experiments.

The Committee's report shed light on a crucial chapter in the history of the Cold War and made a significant contribution to maintaining the trust between the American people and their government. I feel confident that this thoughtful work will serve as an important resource well into the future.

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Sincerely, **BILL CLINTON**

BC/JS/MAH/lynn-ckb (Corres. #2627610)
(12.radiation)

MAH

December 27, 1995

Ms. Nancy Oleinick
3727 Meadowbrook Boulevard
University Heights, Ohio 44118

Dear Nancy:

I want to convey my thanks for your service as a member of the Advisory Committee on Human Radiation Experiments.

The Committee's report shed light on a crucial chapter in the history of the Cold War and made a significant contribution to maintaining the trust between the American people and their government. I feel confident that this thoughtful work will serve as an important resource well into the future.

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Sincerely, **BILL CLINTON**

BC/JS/MAH/lynn-ckb (Corres. #2627611)
(12.radiation)

Mar

December 27, 1995

Henry Royal, M.D.
815 Millfield Court
Chesterfield, Missouri 63017

Dear Henry:

I want to convey my thanks for your service as a member of the Advisory Committee on Human Radiation Experiments.

The Committee's report shed light on a crucial chapter in the history of the Cold War and made a significant contribution to maintaining the trust between the American people and their government. I feel confident that this thoughtful work will serve as an important resource well into the future.

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Sincerely, **BILL CLINTON**

BC/JS/MAH/lynn-ckb (Corres. #2627612)
(12.radiation)

MAH

December 27, 1995

Philip Russell, M.D.
11909 Coldstream Drive
Potomac, Maryland 20854

Dear Philip:

I want to convey my thanks for your service as a member of the Advisory Committee on Human Radiation Experiments.

The Committee's report shed light on a crucial chapter in the history of the Cold War and made a significant contribution to maintaining the trust between the American people and their government. I feel confident that this thoughtful work will serve as an important resource well into the future.

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I know that you have contributed much to this historic work. Please accept my deepest thanks for your efforts.

Sincerely, **BILL CLINTON**

BC/JS/MAH/lynn-ckb (Corres. #2627614)
(12.radiation)

MAH

December 27, 1995

Ms. Mary Ann Stevenson
98 LaGrange Street
Chestnut Hill, Massachusetts 02167

Dear Mary Ann:

I want to convey my thanks for your service as a member of the Advisory Committee on Human Radiation Experiments.

The Committee's report shed light on a crucial chapter in the history of the Cold War and made a significant contribution to maintaining the trust between the American people and their government. I feel confident that this thoughtful work will serve as an important resource well into the future.

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I know that you have contributed much to this historic work. Please accept my deepest thanks for your efforts.

Sincerely, **BILL CLINTON**

BC/JS/MAH/lynn-ckb (Corres. #2627615)
(12.radiation)

Handwritten signature

December 27, 1995

Reed Tuckson, M.D.
5647 West 64th Street
Los Angeles, California 90056

Dear Reed:

I want to convey my thanks for your service as a member of the Advisory Committee on Human Radiation Experiments.

The Committee's report shed light on a crucial chapter in the history of the Cold War and made a significant contribution to maintaining the trust between the American people and their government. I feel confident that this thoughtful work will serve as an important resource well into the future.

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Sincerely, **BILL CLINTON**

BC/JS/MAH/lynn-ckb (Corres. #2627616)
(12.radiation)

MAH

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

22-Jan-1996 05:42pm

TO: (See Below)

FROM: LORI.AZIM

SUBJECT: fyi - chris kline call

I spoke with Chris Kline at the end of last week and he informed me that the committee would not be holding a hearing on human radiation experiments until late February or early March (at the earliest), but that the majority was very interested in it. He'll keep me posted. He REALLY wants the IAWG report to the President. Told him we would give it to him as soon as it has gone to the President. (MY MANTRA.) Will keep ya posted...

Distribution:

TO: TARA.O'TOOLE
TO: MARY.ZACCHERO
TO: STEVE.GALSON
TO: PETER.BRUSH
TO: KEVIN.MONROE
TO: ELLY.MELAMED
TO: STEVE.LERNER
TO: MaryLouise.Wagner
TO: Lisa.Schiavo

CC: Robert.Zielinski
CC: CAPLAN_P

DATE: 3-23-94

ASSISTANT SECRETARY
OFFICE OF ENVIRONMENT, SAFETY AND HEALTH
U.S. DEPARTMENT OF ENERGY
1000 INDEPENDENCE AVENUE, S.W.
WASHINGTON, D.C. 20585

OFFICE: (202) 586-6151

FAX: (202) 586-0956

TO: Phil CaplanFROM: Lori Azim, 586-5319NO. OF PAGES TO FOLLOW: 1☐ For your information☐ Please call upon receipt☒ As requested☐ For review and comment☐ Original copy to follow via mail

COMMENTS/MESSAGES:

**Advisory Committee on Human Radiation Experiments
Membership Preferences for Names and Titles**

**Kenneth R. Feinberg
Maryland**

**Eli Glatstein, M.D.
Dallas, Texas**

**Lois L. Norris
Omaha, Nebraska**

**Frank Press, Ph.D.
Washington, D.C.**

**Henry D. Royal, M.D.
St. Louis, Missouri**

**Philip K. Russell, M.D.
Baltimore, Maryland**

**Reed V. Tuckson, M.D.
Los Angeles, California**

**Duncan C. Thomas, Ph.D.
Los Angeles, California**

**Ruth Macklin, Ph.D.
Bronx, New York**

**Jay Katz, M.D.
New Haven, Connecticut**

**Nancy L. Oleinick, Ph.D.
Cleveland, Ohio**

**Patricia A. King, J.D.
Washington, D.C.**

**Susan E. Lederer, Ph.D.
Hershey, Pennsylvania**

**Ruth R. Faden, Ph.D., M.P.H.
Baltimore, Maryland**

**Mary Ann Stevenson, M.D., Ph.D.
Boston, Massachusetts**



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

July 24, 1996

MEMORANDUM FOR: T.J. Glauthier
Phil Kaplan

THROUGH: Kathy Peroff *CP*
noted Gary Bennethum *ES*

FROM: Robert Civiak *RIC*

SUBJECT: Class action suits against DOE contractors

Attached is a revised version of legislation proposed by DOE General Counsel, Bob Nordhaus, that would limit class action lawsuits against DOE contractors. In return, the legislation would provide new health benefits to contractor employees and communities around DOE facilities.

The legislation is still in draft and has not been formally approved by Secretary O'Leary for submission to OMB. Nevertheless, I will ask Alecia (TJ's assistant) to set up a meeting with Nordhaus for him to explain the proposal to us.

cc

Eric Macris
Jacquelyn Parrish

TABLED
7/26

To amend the Department of Energy Organization Act to provide for a more effective occupational and environmental health program for workers and communities affected by the operation of Department of Energy nuclear facilities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "DOE Occupational and Environmental Health Act".

SEC. 2. Title VI of the Department of Energy Organization Act (42 U.S.C. 7211-7270b) is amended by adding after section 662 the following new section.

"OCCUPATIONAL AND ENVIRONMENTAL HEALTH PROGRAMS

AT DOE DEFENSE NUCLEAR FACILITIES

"SEC. 663.(a) Purpose.-The purpose of this section is to reduce the cost of litigating radiation claims against DOE contractors and to use the funds saved thereby for occupational and environmental health programs for current and former workers at DOE nuclear facilities and for residents of communities that may have been affected by offsite releases of radiation from those facilities.

"(b) Definitions.-For purposes of this section --

"(1) 'DOE contractor' means a cost reimbursement contractor to the Department or a predecessor agency (or a cost reimbursement subcontractor of any tier to such a contractor).

"(2) 'DOE contractor employee' means an employee or former employee of

1 "(2) 'DOE contractor employee' means an employee or former employee of
2 a DOE contractor.

3 "(3) 'qualifying DOE contractor employee' means a DOE contractor
4 employee who was employed for more than two years at a DOE defense nuclear
5 facility, or who was exposed to radiation at such a facility in excess of current
6 exposure standards.

7 "(4) 'radiogenic illness' means an illness identified by the Secretary
8 that is associated with exposure to ionizing radiation of a type to which an
9 individual may be exposed at a DOE defense nuclear facility.

0 "(5) 'DOE defense nuclear facility' has the meaning given the term
1 'Department of Energy defense nuclear facility' in section 1363 of the National
2 Defense Authorization Act for Fiscal Year 1993 (42 U.S.C. 7274j), but also
3 includes a facility leased to the U.S. Enrichment Corporation or its successor.

4 "(6) 'predecessor agency' means the Energy Research and Development
5 Administration, the Atomic Energy Commission, and the Manhattan Engineer
6 District.

7 "(7) 'radiation liability' means injury, loss of property, personal
8 injury, or death due to occupational or environmental exposure to ionizing
9 radiation.

10 "(c)(1) Occupational Health Programs.-The Secretary shall establish a program to
11 provide supplemental health insurance or medical benefits to any qualifying DOE
12 contractor employee who contracts a radiogenic illness or chronic beryllium

disease, and who does not have, or who has exhausted, health insurance that covers such an illness or disease.

"(2) The Secretary shall prescribe guidelines for contesting or settling worker's compensation claims of and awards to DOE contractor employees that relate to exposure to radiation or toxic chemicals. The guidelines shall take into account current scientific knowledge concerning the health effects of exposure to radiation and toxic chemicals, the uncertainties associated with the level of exposure and the consequent health effects, and the need for fair, expeditious, and economical resolution of such a claim.

"(d)(1) Community Health Programs.-The Secretary shall establish a program to provide grants to State public health agencies in States in which a DOE defense nuclear facility is located to conduct environmental and occupational health programs in communities in which adverse health effects may have occurred because of the operation of a DOE defense nuclear facility. A grant under this section may be used for programs reasonably designed to improve public health in the community, such as public health information, medical treatment, or medical surveillance.

"(2) The Secretary shall allocate amounts to carry out this subsection to each State in which a DOE defense nuclear facility is located in a manner that in the Secretary's judgment reflects the potential health risks within and outside the State associated with the operation of the DOE nuclear facility in that State. If operation of a DOE nuclear facility in a State results in potential adverse health

DRAFT

4

effects in a contiguous State, the public health agency in the State in which the facility is located shall take reasonable steps to collaborate with the public health agency in the contiguous State to ensure that the benefits of the program under this section are made available in the contiguous State.

"(c) Remedy against the United States.-

"(1) The Atomic Testing Liability Act (referred to in this section as 'ATLA') (42 U.S.C. 2282) applies to a civil action for radiation liability based on an act or omission of a DOE contractor indemnified for radiation liability under section 170.d of the Atomic Energy Act or other law to the same extent as ATLA applies to a contractor described in section 3141(b)(1)(A) or (B) of ATLA.

"(2) This subsection does not apply to -

"(A) an extraordinary nuclear occurrence as defined in section 11.j of the Atomic Energy Act, or

"(B) a civil action commenced in a fiscal year following a fiscal year for which amounts at least as high as those authorized by subsection (f) are not appropriated.

"(f) Funding.-There are authorized to be appropriated for each fiscal year beginning with fiscal year 1997, \$6,000,000 to carry out subsection (c), and \$14,000,000 to carry out subsection (d). Funds so appropriated shall be available until expended."

DRAFT

SECTION-BY-SECTION ANALYSIS

DRAFT

The bill, the "DOE Occupational and Environmental Health Act", amends the Department of Energy Organization Act by adding a new section 663 entitled "Occupational and Environmental Health Programs at DOE Nuclear Facilities," which provides as follows:

Purpose

Subsection (a) states that the purpose of this section is to reduce the cost of litigating radiation claims against DOE contractors and to use the money thus saved for occupational and environmental health programs for workers and former workers at DOE nuclear facilities and for residents of communities that may have been affected by offsite releases of radiation from those facilities.

Definitions

Subsection (b) would define for the purposes of section 663 the terms "DOE contractor," "DOE contractor employee," "qualifying DOE contractor employee," "radiogenic illness," "DOE defense nuclear facility," "predecessor agency," and "radiation liability".

Occupational Health Programs

Subsection (c)(1) would require the Secretary of Energy to establish a program to provide supplemental health insurance or medical benefits for any qualifying DOE contractor employee who contracts a radiogenic illness or chronic beryllium disease when such an employee does not have, or has exhausted, health insurance to cover such an illness or disease.

Subsection (c)(2) would require the Secretary of Energy to prescribe guidelines for contesting or settling worker compensation claims of DOE contractor employees that relate to alleged exposure to radiation or toxic chemicals. In prescribing the guidelines, the Secretary is to consider current scientific knowledge concerning the health effects of such exposure, uncertainties concerning the levels of exposure, and fair, expeditious, and economical resolution of claims.

Community Health Program

Subsection (d)(1) would require the Secretary of Energy to establish a program to provide grants to State public health agencies in States in which a DOE nuclear facility is located to fund environmental and occupational health programs in communities that may have suffered adverse health effects as a result of the operation of such a facility.

Subsection(d)(2) would provide that the money appropriated to fund grants under subsection (d)(1) be allocated to each State in which a DOE nuclear facility is located in a manner that the Secretary of Energy determines reflects the potential health risks associated with the operation of such a facility. Where

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- 2 -

operations of a DOE nuclear facility may affect contiguous States, subsection (d)(2) requires the public health agency in the State in which the facility is located to collaborate with the public health agency in the neighbor State to ensure that the benefits of this program are shared.

Remedy Against the United States

Subsection (e)(1) would make the provisions of the Atomic Testing Liability Act (Section 3141 of the National Defense Authorization Act for Fiscal Year 1991) applicable to civil actions for radiation liability based on the acts or omissions of a DOE contractor who would be indemnified under section 170.d of the Atomic Energy Act (Price-Anderson) or under any other law. The effect of this subsection would be to substitute the United States as a defendant for a covered contractor and to require an affected claim to proceed under the terms and conditions of the Federal Tort Claims Act.

Subsection(e)(2) would provide that subsection (e) not apply to any claim arising out of an extraordinary nuclear occurrence (as defined in the Price-Anderson Act) or to any civil action commenced in a fiscal year following a fiscal year in which the amounts authorized by subsection (f) have not be appropriated.

Funding

Subsection (f) would authorize to be appropriated, for each fiscal year beginning with fiscal year 1997, \$6 million to carry out Occupational Health Programs under subsection (c) and \$14 million to carry out Community Health Programs under subsection (d). Funds so appropriated would be available until expended.

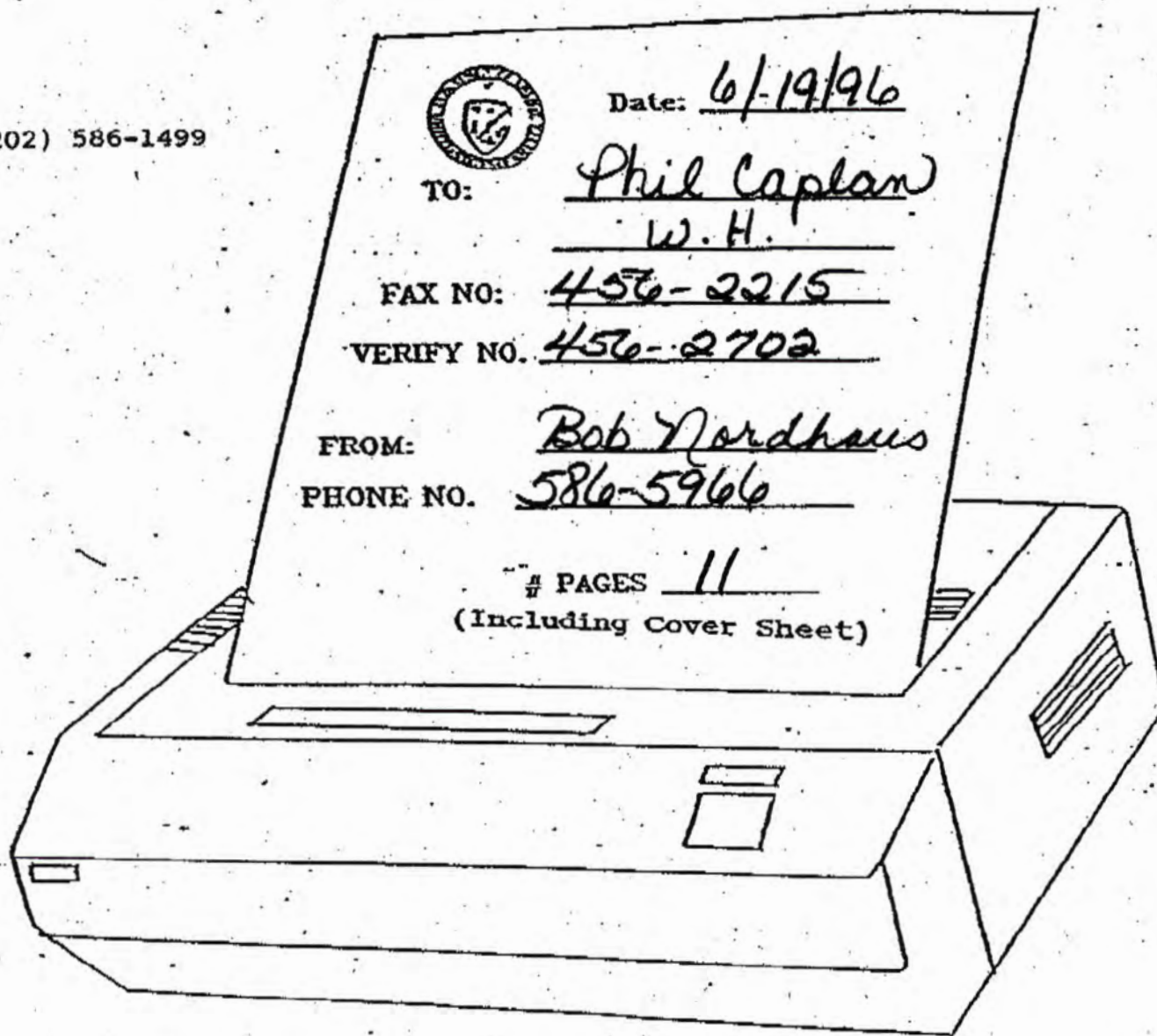
DRAFT

OFFICE OF THE GENERAL COUNSEL

U.S. DEPARTMENT OF ENERGY

WASHINGTON, D.C.

96 JUN 19 P12:52

FAX #: (202) 586-1499
COML:

 Date: 6/19/96

TO: Phil Caplan
W.H.

FAX NO: 456-2215

VERIFY NO. 456-2702

FROM: Bob Nordhaus

PHONE NO. 586-5966

PAGES 11
(Including Cover Sheet)

REMARKS:

Per our conversation.

0002
WEOR

ATTACHMENT A
DOE Draft Explanation

EXPLANATION

Since 1992, DOE has spent \$83 million to reimburse former and current DOE contractors for the costs of hiring lawyers and experts to defend class actions brought against these contractors for emotional distress and property damages (and in one case personal injury) allegedly resulting from radiation and toxic chemical releases at DOE weapons facilities. Settlements in these cases have totaled about \$22 million (of which about \$7 million has gone to plaintiffs' lawyers). Thus, of the \$105 million total spent so far to litigate and settle these cases, about \$90 million, or about 85% has gone to lawyers and experts, and only about 15% to the workers and community residents on whose behalf the suits were brought.

DOE's litigation management program has dramatically reduced contractor litigation costs for these cases, lowering the annual cost from \$24.4 million in FY 1992 to \$10 million in FY 1995. However, DOE's General Counsel's office does not anticipate further substantial reductions in the costs of defending these and similar cases. It also anticipates that some of the cases will result in settlements with or judgments against the contractor -- 25% to 30% of which will be paid to plaintiff's counsel.

The purpose of the DOE Occupational and Environmental Health Act is to end this expensive litigation exercise by substituting the government for the contractors as a defendant in these cases, and requiring the cases to be tried under the Federal Tort Claims Act, with the Department of Justice representing the government. The savings in litigation costs and in judgments and settlements, estimated to be about \$20 million per year, would be used to provide medical benefits and public health programs for workers and community residents impacted by the operation of DOE facilities.

The proposed bill would provide meaningful assistance to communities and workers affected by DOE's nuclear operations. First, the Department would establish a program to provide supplemental health insurance or medical benefits to employees who contract certain diseases and do not otherwise have insurance to cover such diseases. Second, the Department would issue guidance for contesting or settling workers' compensation awards and claims against contractors arising out of exposure to ionizing radiation or toxic substances. Third, the Secretary would establish a program for granting state public health agencies funds to provide for various forms of assistance for communities adversely affected by DOE's facilities. The money for these programs would be paid from savings resulting from the substitution of the United States for DOE contractors as a defendant in the class actions. The suits would proceed against the United States under the Federal Tort Claims Act, and the government would be represented by the Department of Justice. Consequently, the Department would no longer have to reimburse contractors to retain outside counsel to defend these cases.

In effect, the money saved from paying teams of lawyers would now inure to the benefit of those affected communities and workers.

If in any fiscal year Congress failed to appropriate the \$20 million necessary to fund the program, then the right to sue DOE contractors directly would be restored in the following year.

DOE Draft Bill

June 18, 1996 (10:03am)

A BILL

To amend the Department of Energy Organization Act to provide for a more effective occupational and environmental health program for workers and communities affected by the operation of Department of Energy defense nuclear facilities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "DOE Occupational and Environmental Health Act".

Sec. 2. Title VI of the Department of Energy Organization Act is amended by adding at the end thereof the following new section:

"OCCUPATIONAL AND ENVIRONMENTAL HEALTH PROGRAMS

AT DOE defense nuclear facilities

"Section 663.(a) Purpose.—The purpose of this section is to reduce the cost of litigating radiation claims against DOE contractors and to use the funds saved thereby for occupational and environmental health programs for current and former workers at

DOE defense nuclear facilities and for residents of communities that may have been impacted by offsite releases of radiation from those facilities.

"(b)(1) Occupational Health Programs. --The Secretary shall by rule establish a program for providing supplemental health insurance or medical benefits to any qualifying DOE contractor employee who contracts a radiogenic illness or chronic beryllium disease, and who does not have, or who has exhausted, health insurance that covers such illness.

"(2) The Secretary shall prescribe guidelines for contesting or settling worker's compensation claims of and awards to DOE contractor employees that relate to exposure to radiation or toxic chemicals. Such guidelines shall take into account current scientific knowledge respecting the health effects of exposure to radiation and toxic chemicals, the uncertainties associated with the level of exposure and the consequent health effects, and the need for fair, expeditious and economical resolution of such claims.

"(c)(1) Community Health Programs.--The Secretary by rule shall establish a program for providing grants to state public health agencies in States in which DOE defense nuclear facilities are located for purposes of conducting environmental and occupational health programs in communities in which adverse health effects may have occurred by reason of the operation of DOE

defense nuclear facilities. Such grants may be used for program reasonably designed to improve public health in such communities, such as public health information, medical treatment, or medical surveillance.

"(2) Amounts appropriated to carry out this subsection shall be allocated by rule to each State in which DOE defense nuclear facilities are located in a manner that in the Secretary's judgment reflects the potential health risks within and outside the State associated with the operations of DOE defense nuclear facilities in such State. If operations of a DOE defense nuclear facility in a State result in potential adverse health effects in a contiguous State, the public health agency in the State in which the facility is located shall take reasonable steps to collaborate with the public health agency in such other State to ensure that the benefits of the program under this section are appropriately made available in other affected States.

" (d) Remedy against the United States.—

"(1) The Atomic Testing Liability Act ("ATLA") applies to a civil action for radiation liability based on acts or omissions of a DOE contractor indemnified for radiation liability under section 170d of the Atomic Energy Act or other law to the same extent such ATLA applies to a contractor described in subsection (b)(1)(A) or (B) of such ATLA.

"(2) This subsection does not apply --

"(A) to any extraordinary nuclear occurrence as defined in Section 11.]
of the Atomic Energy Act, or

"(B) to civil actions commenced in a fiscal year following a fiscal year
in which amounts authorized by subsection (f) are not appropriated.

"(e) Definitions.— For purposes of this section:

"(1) The term 'DOE contractor' means a cost reimbursement contractor
to the Department or a predecessor agency (or a cost reimbursement
subcontractor to such a contractor).

"(2) The term 'DOE contractor employee' means an employee or
former employee of a DOE contractor.

"(3) The term 'qualifying DOE contractor employee' means a DOE
contractor employee who was employed for more than two years at any
'DOE defense nuclear facility, or who was exposed to radiation at such a
facility in excess of current exposure standards.

"(4) The term 'radiogenic illness' means an illness identified by the Secretary by rule that is associated with exposure to ionizing radiation of a type to which individuals may be exposed at DOE defense nuclear facilities.

"(5) The term 'DOE defense nuclear facility' as defined in Section 3163 of the National Defense Authorization Act for Fiscal Year 1993.

"(6) The term 'predecessor agency' means the Energy Research and Development Administration, the Atomic Energy Commission, and the Manhattan Engineer District.

"(7) The term 'radiation liability' means injury, loss of property, personal injury or death due to exposure to ionizing radiation.

"(f) Funding.— There are authorized to be appropriated for each fiscal year beginning with fiscal year 1997, \$6,000,000 to carry out subsection (b), and \$14,000,000 to carry out subsection (c). Funds so appropriated shall be available without fiscal year limitation."

SECTION-BY-SECTION ANALYSIS

The bill, the "DOE Occupational and Environmental Health Act", amends the Department of Energy Organization Act by adding a new section 663 entitled "Occupational and Environmental Health Programs at DOE Nuclear Facilities," which provides as follows:

Purpose.

Subsection (a) states that the purpose of this section is to reduce the cost of litigating radiation claims against DOE contractors and to use the money thus saved for occupational and environmental health programs for workers and former workers at DOE nuclear facilities and for residents of communities that may have been impacted by offsite releases of radiation from those facilities.

Occupational Health Programs.

Subsection (b)(1) would require the Secretary of Energy to establish, through a rulemaking, a program to provide supplemental health insurance or medical benefits for any qualifying DOE contractor employee who contracts a radiogenic illness or chronic beryllium disease when such an employee does not have, or has exhausted, health insurance to cover such illness.

Subsection (b)(2) would require the Secretary of Energy to prescribe guidelines for contesting or settling worker compensation claims of DOE contractor employees that relate to alleged exposure to radiation or toxic chemicals. In prescribing the guidelines, the Secretary is to consider current scientific knowledge concerning the health effects of such exposure, uncertainties concerning the levels of exposure, and fair, expeditious and economical resolution of claims.

Community Health Program.

Subsection (c)(1) would require the Secretary of Energy to establish, through a rulemaking, a program to provide grants to state public health agencies in States in which DOE nuclear facilities are located to fund environmental and occupational health programs in communities that may have suffered adverse health effects as a result of the operation of such facilities.

Subsection (c)(2) would provide that the money appropriated to fund grants under subsection (c)(1) be allocated by rule to each state in which DOE nuclear facilities are located in a manner that the Secretary of Energy determines reflects the potential health risks associated with the operation of such facilities. Where operations of a DOE nuclear facility may affect contiguous states, subsection (c)(2) requires the public health agency in the state in which the facility is located to collaborate with the public health agency in the neighbor state to ensure that the benefits of this program are shared.

Remedy Against the United States.

Subsection (d)(1) would make the provisions of the Atomic Testing Liability Act (Section 3141 of the National Defense Authorization Act for Fiscal Year 1991) applicable to civil actions for radiation liability based on the acts or omissions of a DOE contractor who would be indemnified under Section 170d of the Atomic Energy Act (Price-Anderson) or under any other law. The effect of this subsection would be to substitute the United States as defendant for a covered contractor and to require an affected claim to proceed under the terms and conditions of the Federal Tort Claims Act.

Subsection (d)(2) would provide that subsection (d) not apply to any claim arising out of an extraordinary nuclear occurrence (as defined in the Price-Anderson Act) or to any civil action commenced in a fiscal year following a fiscal year in which the amounts authorized by subsection (f) have not been appropriated.

Definitions.

Subsection (e) would define for purposes of Section 663 the terms "DOE contractor," "DOE contractor employee," "qualifying DOE contractor employee," "radiogenic illness," "DOE nuclear facility," "predecessor agency," and "radiation liability."

Funding.

Subsection (f) would authorize to be appropriated, for each fiscal year beginning with fiscal year 1997, \$6 million to carry out Occupational Health Programs under subsection (b) and \$14 million to carry out Community Health Programs under subsection (c). Funds so appropriated would be available without fiscal year limitation.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

07-Mar-1996 03:48pm

TO: (See Below)

FROM: LORI.AZIM

SUBJECT: HEADS UP

I just received a call from Anne Elliott in our press office, who told me that Paul Barton (Gannett) plans to file a story, following up on the workshop, in advance of the Glenn/Stevens hearing on Tuesday. I was told that Melamed and Galson's comments might be included. He called Anne and asked if any agreements had yet been signed...As soon as we get the clip (don't yet know which day), we will send it to you pronto! Lori

Distribution:

TO: ELLY.MELAMED
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TO: ge4i
TO: james.mccullough
TO: CAPLAN_P

CC: anne.elliott
CC: barbara.semedo

AMERICAN ENVIRONMENTAL
HEALTH STUDIES
6328 Strawberry Plains Pk.
Knoxville, TN 37914

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P 224 693 518

MAIL



Ms Christine Varney

**FORWARD TO: Fed. Trade Comm.
Room 326
WASHINGTON, DC 20580**

Send to:

Phil Caplan

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American Environmental Health Studies Project, inc.

6328 Strawberry Plains Pike • Knoxville, Tennessee 37914 • 423-637-3193 • 423-525-6730 fax
e-mail: 74264,3525@Compuserve.com

C.Honicker, Executive Director J.Kittrell, General Counsel

3/9/96

Ms Christine Varney
Executive Secretary of the Cabinet
The White House
1600 Pennsylvania Ave.
Washington, DC

Dear Ms Varney:

I am enclosing a full copy of the speech I attempted to deliver on February 27, 1996 at the Interagency Working Group of the President's Advisory Committee on Human Radiation Experiments. It seemed odd that I would be cut off by Col. Bailey, as others in the two-day meeting exceeded their time limit much longer than the 7 minute limit. Bailey, who interrupted me for lack of time, nevertheless shortly after cutting me off felt compelled to ramble on for almost 30 minutes about the "behavior" of Dr. Egilman, M.D. After it was explained that Dr. Egilman sometimes got heated with government officials because individuals in government needed to be held personally accountable for their actions, and after Col. Bailey was told that Dr. Egilman lost his father at the Buchenwald Nazi concentration camp, it was Mr. Bailey who felt rather humbled by his own behavior, in my opinion. You might want to ask Col. Bailey if that is an accurate assessment of the situation.

I also heaped some very serious facts onto my panel member, Roger Anders. He did not respond on the record to any of the facts brought out in the speech, or six years earlier, as stated in the enclosed New York Times Sunday Magazine piece that tells of the 1984 coverup of human rad exp. documents in an investigation that Anders was involved with on a day-to-day basis. That story was strenuously fact checked by the NY Times, and was also nominated by them for a national award for public service. Both his and the DOE's non-responsiveness to the facts brought out in the article, in my opinion, are admissions of the truth of the facts. Roger Ander's bowed head, his silence throughout the panel was that of sadness and shame. I found it interesting that Anders, the chief historian in charge of gathering the human radiation experiment material on behalf of DOE would attend this two-day meeting, but would spend his full time at the meeting, except for his hour on the panel which he made his presentation, outside in the hallway, unable to hear poignant stories of hurt, and death and deceit effected by past government official actions. I may be, as Tara O'Toole said to me afterwards, "abusing my power" by pointing fingers to individuals. O'Toole asserted Anders was not at fault, that it was the larger "past" system that was at

fault.

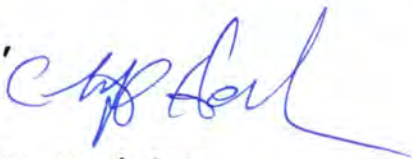
I'm sorry, but I learned as a child that each American, no matter their position, has to take individual responsibility for their knowledge and their actions. That is the basis from which I operate. And a "system" that would allow those involved in past coverups, or those with full and complete knowledge of past coverups who went along with the "system," knowing it was at fault, should not have been responsible for bringing us the truth, the whole truth and nothing but the truth in today's "new" system. Given that the "new system," at every step and turn, vigorously resisted our efforts to have truly independent, yet knowledgeable representation on to the President's Advisory Committee on Human Radiation Experiments, because, as Dan Guttman personally informed me, that they did not want "even the appearance of bias," then I have to say, with a very heavy heart, that I'm having a hard time distinguishing the "old" from the "new."

I hope you have a chance to read the entire speech and include it into the record. I think I left the impression that there was no solution to the problems at hand, when in fact, there are some rather elegant and simple solutions that are readily available, and have historical precedent as to their use. I would be happy to discuss them with you at your convenience, if you are interested.

Finally, I am enclosing a copy of a memorandum by Dan Guttman, I presume, that I found at the National Archives in College Park, MD. While Guttman was questioning my accuracy in the press, at least in internal memos, he seemed to take a different point of view. I'm very attached to accuracy, and would be more than willing to apologize for any mistakes in accuracy, if your administration would be willing to point them out. It's never too late to admit past mistakes and move on to the future. It's basically how we evolve as individual human beings, as a democracy, and society as a whole.

I look forward to hearing from you.

Sincerely,



Clifford T. Honicker

**Speech before the Interagency Working Group of the President's
Advisory Committee on Human Radiation Experiments**

February 27, 1996

Washington, DC FDA conference room

by Clifford T. Honicker, M.A.

Hi, I'm Cliff Honicker. These are my views and my views alone and not those of either the organization that I work for, The American Environmental Health Studies Project, nor the Taskforce on Human Radiation Experiments.

"4,200 second reflection on a half decade of deception."

I really have no time to tell you of my specific qualifications to come talk to you on this issue, other than to say if you would be interested in the new york times or washington post articles or the two master's theses I have written on the subject, or the Japanese Chugoku Shimbun book Nukes and Human Beings that I assisted on researching last year and that has won its second very prestigious international investigative news award, let me know and I'll send you copies of my work.

I also come to this issue uniquely qualified in that my oldest sister's life was saved by a human radiation experiment, and is now the 21st longest living survivor of Acute Mylogenous Leukemia in the world, thanks to the pioneering efforts of a group of doctors who later formed the "Hutch" or the Fred Hutchinson Cancer Research Center, which was mentioned earlier in the thyroid studies followup. Her doctor E. Donnell Thomas won the Nobel prize for his work a few years ago.

In 1984, I was also told by Jack Holl, Roger Ander's former boss, that I am the only non- DOE person in the country that had reviewed the entire collection of the Division of Biology and Medicine files of the Atomic Energy Commission from 1946-1962. I helped initiate the Ottinger investigation that later led to the Markey report "America's Nuclear Guinea Pigs." I wrote about all that in the New York Times article "The Hidden Files" which was nominated for a national award in Public Service by the New York Times staff.

But, before I get into my 4,200 second reflection, I would like everyone to very quickly stand up and join me in saying two words and say them with gusto. Let's shake off our weariness and let it out. If security comes after us for being loud, I take full responsibility.

This may be the only time that this highly opposing group of

folks ever say anything in unison or common, so I really want you to put your heart into this.

1. The word is Whoa Buck!

There is a true story to this as you can guess. I'm sitting around a bonfire in the Cherokee national forest, A group of people in this little hamlet up in the woods is sitting around a bonfire, passing around the bottle. Each time a person took a swig, everyone would join in singing out "Whoa, Buck! And then burst out laughing.

I had no idea what was going on. I just thought it was a bonfire thing to do, so I politely joined in, which they thought was even funnier for some reason.

The next day, I went horseback riding with my friend, riding on a sedate old quarterhorse whose name, coincidentally enough was "Buck." We have a wonderful afternoon ride, enjoying the beauty of the North Carolina Cherokee mountains. On the way back, about a mile from the farm, my horse lept in the air like he was on fire and started tearing off down a mountain trail. The horse kept going faster and faster and I kept pulling tighter and tighter on the reins, and then it came out of me, involuntarily, louder and louder and louder. "Whoa Buck, Whoa Buck, Whoa Buck! At the top of my lungs, I was shouting that. In every cabin on that mountainside, and probably the next mountain over, I imagined there were people rolling on their floors hearing me trying to stop that horse. After I got back to the barn, and impending death was no longer my primary concern, it occurred to me that either the joke was on me or that those folks around the bonfire, in their polite southern way, were trying to tell me something. It took the ride of my life to get the point.

Now, this story reminds of this issue in more ways than one. And I am not talking of that most famous cliché of "the buck stops here." Although each person in this room taking responsibility for both their knowledge and their actions is part of it. What I'm talking about is my telling you the punchline first and then telling you the story later.

When I saw that the Government vigorously rejected repeated attempts at complying with FACA laws for having the people most affected by this issue sit on the Panel and work on quality assurance in the gathering of the information, I told everyone last year, do not expect anything different from this government that has gone on for the last half century. I was at least partly right in my prediction.

A professor once told me that in life, the process is sometimes as important if not more important than the product. I think

that can be said for this investigation. A lot of people worked very hard, and invested a good bit of their life on this issue, so there is a lot of emotional investment that makes this a difficult issue to talk about in value neutral terms. For the people whose lives or whose family members lives have been harmed in one way or another, to even expect them to be anything but passionately moved by this issue would be unreasonable. But, just because they are passionate about the issue does not necessarily mean that their views are necessarily clouded or inaccurate. Sometimes they are wrong, but I think with the vast majority of the people in this room, their view is startling clear. At least they are human enough to admit it, which is more than I can say for the people on the "expert" panel. They, like the agencies they have investigated, have been very stingy in their admission of making pretty big errors, in my opinion.

To those affected radiation victims, to the thousands of people affected by the blatant wrong doings committed in the name of National Security, you owed these people at least one small consolation: that your effort to seek out the truth and to provide a fair picture of both the problem and the solution would be an effort beyond reproach.

You didn't do that.

Now that I've got everybody saying at least two words in common, I think we can all agree, after even a cursory review of the history of the AEC and Manhattan Project with respect to human experiments on the smaller part, and to how the downwinders, the atomic vets, and the nuclear workers were treated to a larger degree, that our government has dealt from the bottom of the deck from the gitgo. They have lied, suppressed information, distorted scientific findings and covered up massive environmental and human insults, all in the name of national security. I think we can all agree on that. Right? No Problem. I think you have also seen the difficulty of making this a cut and dried human experiment issue, because, not by happenstance, it was Stafford Warren who initiated the human experiments, and it was Stafford Warren who initiated the practices of deceptions and coverups with respect to nuclear workers, atomic veterans and downwinders. What few really good smoking guns that you released pointed out time and again that the real national security interests in the country were sacrificed in order to protect the government, which is not really accurate, it was the government officials in employment at the time, to protect them from lawsuits, adverse public relations, i.e., bad press and the like.

That being the case, it struck me as dizzingly, amazingly incredible that the President would allow the very agencies responsible for deceiving the American public for fifty years to have their own employees gather the records and expose their deepest darkest secrets to the American public. Human nature

doesn't work that way and neither do Government institutions. If you read the advisory report and the findings, you will see time and time again that the history of deception is wide and deep as the day is long. You will also see that when the Advisory Committee got down to specific incidents of wrong-doing, that the report gets mushy and vague. You find that that of 4,000 plus experiments identified, that the only experiment with identifiable victims due compensation, to my knowledge, is the Plutonium experiment, the very experiment that caused the DOE such intense "adverse public relations". That act was as fascile and callous as handing a gunshot victim a cork and saying heal thyself. It just doesn't work that way.

There is a saying by a German medical doctor, and pardon me but even if I could remember how to say it in German I would mangle the pronounciation so badly that God knows who I would end up offending. The english translation however, is, "if you look, you will find. I think the corollary is if you ask the right questions, you will find the right answers.

Why were the files fragmented to the point of being useless? Why did the government agencies on this one particular issue keep such consistently fragmentary files? I have seen first-hand the nature of those files, in conditions of both "before" and "after" redaction or deletion. I have dealt on a day-to-day basis with Roger Anders a dozen years ago as he wheeled boxes on top of boxes from the DOE Germantown Vault to a small room in the old DOE building while his superiors Charles Eddington Joe Diel and Dr. Thiessen "reviewed" the files before allowing the Subcommittee on Energy Conservation and Power staff, access to the material.

I knew at the time that Charles Eddington had somehow had his hands on the testicle irradiation studies of the prisoners in Oregon and Washington. It was a glaring conflict of interest that someone responsible for signing off on these experiments "so long as we are not liable" in Eddington's words would be responsible for deciding what the Congress and the American public should and should not know about these experiments, as well as the radiation exposure and injury claims of countless nuclear workers, atomic veterans and people downwind from the nuclear weapons tests. Yet, that was the case. I was so frustrated in that investigation, ranting even like Dr. Egilman, at how DOE could do such a thing. The response from my superiors on the Subcommittee staff was there was nothing that could be done about it. That was how Washington DC operated.

The story is even more poignant when you realize that ten years ealier than that, in 1973 the Inspector General of AEC/ERDA, in conducting an internal investigation of the issue of informed consent on the Plutonium injection cases, did not allow Eddington to conduct the search by himself because even he

recognized that there would be a "conflict of interest". Roger Anders knew what went on in those vaults as his three superiors "reviewed" the files before providing them to the subcommittee. But, he kept silent, then, as he does today. He went from the fellow pushing the carts in 1984, to a DOE official "leading a team" of investigators searching for human radiation experiment documents ten years later, thanks to the national focus on this issue brought by Eileen Welsome's articles.

I understand that one of the first sites, if not the first site that Anders took his research team to investigate for human experiment documents was not J.G. Hamilton's files in Berkeley, a scientist conducting the plutonium experiments, or Stafford Warren's files at UCLA who initiated the highly secret human radiation experiment program as chief of the Medical Division of the Manhattan Project, but he went directly to a locked vault in Oak Ridge, Tennessee. The vault is almost identical to the size of this room, it has white cinderblock walls, with some 300 boxes of documents from the early AEC and Manhattan Project years. The collection is not called "the human radiation experiment files, or the Smoking gun files, but they certainly include alot of both in them. They are a non-random hodge-podge collections of documents that have been pulled from various archival agency files from around the country. Now why in the world and how in the world did Roger Anders know about this obscure little collection of 300 boxes known as "RHTG?" If you go back and look at some of the most compelling documents "found" in the "massive" search of the advisory committee, you will find source locations such as "RHTG, box 1." These documents were never lost, and didn't take long to find. I think this vault is where the agency kept the documents they did not want the public, including possibly various Congressional Subcommittees, to know about. Hazel said "give us time to go through the documents, there is a stack the height of the empire state building to go through. Yet, Roger knew were the good documents were to be found. Why were they so easy to find now, and so hard to find ten years ago?

I have reviewed a subject index of sorts of RHTG, over 2,000 pages to be exact. Now, no kidding, the index that DOE provided me is called the "Sanitized" version. I wanted to believe Hazel and Clinton's words about the era of openness, but I also remember the words of Louis Hempelmann, who among other things told me that the proof of the pudding is in the practice," or it may have been in the eating, I can't remember. At any rate, a colleague of mine, a copy editor of a prestigious magazine in New York city asked my advice on getting documents from this RHTG for a book that he was working on. I told him it was the "era of openness" and to fly on down and DOE will pull them right out for you. At first Amy Rothrock, the FOIA officer in Oak Ridge was all smiles and accommodation. He only had a dozen or so documents he was asking for. The index had their specific box location. Nearly a

no-brainer. He went back to New York, expecting the documents within a week or so. Then he was informed that the documents were still classified and would remain so for at least three years before they could be gotten around to to be reviewed and downgraded. It's pretty amazing to think about, when you consider they were half century old documents. And Still Secret.

Cut off here by Col. Bailey

I can give you many, many examples of where I think both specific individuals and agencies specifically failed in their most fundamental duties to provide this information to the American public but 4,200 seconds just doesn't cut it. And frankly, I do not trust that you will use the information in some way to yet again buttress your defenses against those already harmed by your actions today.

You tear at the very heart of the Constitution when you sacrifice the rights and lives of American citizens when you claim that "national security" is more important than the lives of our nuclear workers, our atomic vets, our people downwind from the nuclear tests, when you steal from the Indians their family members sacrificed in order to dig uranium out of the earth. When you wrongly evoke "national security" the path all Americans walk upon grows dim. When you continue to cover up by appointing "expert panels" all the while resisting the ceaseless efforts of the people in this room to get independent representation on that panel, and independent folks like ourselves who know your inner workings better than most of you and certainly better than all those newly graduated philosophy majors who were hired to staff the ACRE, the path all Americans walk on grows dimmer still. But, when you dishonor the memory of all those who have died defending this country through their work and the injuries they sustained building, testing, or being caught downwind from the nuclear detonations, by saying that your recommendations reflect an accurate picture of the facts of what happened to them in past, the path all Americans walk upon grows dark.

The words of three famous presidents keep coming back in my mind. Their words reverberated almost daily for me these past few years. Lincoln once said "God must have loved the common man. Or else he would not have made so many of them." Harry Truman said "The Buck Stops Here." Bill Clinton said "Its time for a change."

You cannot undo the past. You futzed it when you let the agencies do their own searches, when people involved in the searches at critical points had obvious conflicts of interests,

or in more common terms had one hell of a good reason and plenty of temptation to lose documents that might put a bad light on their careers, or maybe even send their butts to jail. You know it, we know it. So, drop the act.

You could have let people like myself with a highly critical, but I believe fairly good eye for detail in on the quality assurance issue. I may be passionate about this issue, but my work stood the test of seven months worth of fact checking by the fact checkers at the New York Times. I don't think the same could be said for the facts contained in the final report, or in the draft recommendations, which by the way, I worked very hard on my responses, and then promptly left on the plane. Haste makes waste, right?

I don't want to give Mr. Clinton the impression that my responses to the recommendation are half-baked because I only had 48 hours to review them, and 4,200 seconds to tell all. If you really want to know what we think, let's do it, but let's do it right.

As I said yesterday, if you really wanted to get to the bottom of things, you could have had an independent Special Prosecutor with subpoena power and ability to take testimony under oath. You would have gotten a lot further and a lot faster had you had that. If you had the right people, looking in the right places and asking the right questions, that would not have hurt either. I have been dying to ask Roger where Eddington and his crew got the gall to give Ottinger's Subcommittee the file folder "Experiments and Tests 1947-1950" that had only a single sheet of paper in it? It was one of many scores of similarly worthless files he brought me in the summer of 1984? Why was it that in all the "fragmented" files, another polite word for gutted, was there nothing to tell the story of what really happened? I asked that very same question in the New York Times Sunday magazine cover story in November 1989, but the Department of Energy never issued a single, not one single response to any of the facts brought out in that story. They were not charges, they were not allegations, they were facts.

Those questions still have not been answered today. It's because they were never asked by the President's Panel? Why is that?

You probably wonder why we keep coming, and coming and coming back. With no money to support us, with ever diminishing odds of seeking justice, why do we persist? It is because we believe in America, and everything, absolutely everything that the American Constitution stands for. That might sound trite had it been said by one of a dozen people running for political office this year, but I don't think it does coming from these group of wonderful, heroic people in this room. I said I was speaking for myself alone, but I think that I can say without taking a vote that

every single advocate for real justice in this room, every person who has tried for years and years to seek the truth on this issue, without money or recognition or even support from friends and family has done so because of an unshakeable faith and hope that justice can be found somewhere out there, some how, some day.

But the clock is ticking, and I mean, really fast. We can do one of two things after we leave today. One, we can circle the wagons, and come out fighting. Personally, that's ok with me, because it draws the lines really clearly. Plus, you're the ones in the wagons, and I got the Indians on my side. But, like one of the victims of the second criticality accident in American history told me, if we do that, it would be like two skunks in a pissing contest. Nobody is going to come out smelling terribly good. That won't do us any good, but it will do you more harm. The radiation victims have lost just about everything there is to lose, the lives of friends and family, our basic American rights, our livelihoods. You have your jobs. How much more responsive would you truly be to these Americans if your entire future career depended on it? A lot I bet.

Having spent an inordinately long time on this problem, I have also seen glimpses into possible equitable solutions. They may not be THE solution, but they are at least good points for getting on the path that we should be walking together. Unfortunately, the path is darkened by fear of the effect of truly complete disclosure on the one hand, and a smouldering anger by those hurt on the other hand.

If we cannot sit down at the table and speak in a common voice, and from a common well-spring to reach an equitable ending to this most tarnished of all chapters in American history, then only one thing remains. You go tell your story, and we will go tell ours. You work really hard at putting the facts together, and we will do the same. Your wagons are already circled on a 100 other fronts. Make it a 101, if fear fuels your engines, so be it. I imagine we can find a number of good television stations and newspapers in this volatile year that will be see the angle of "big government letting down the people" one more time. I frankly am disgusted by that kind of approach and the prevailing cynacism in America that seems to be the order, or more accurately the disorder of the day. I have been, and will continue to be an optimist, thinking, perhaps irrationally so, that there are very elegant and equitable solutions to even the most intractable of problems.

We can fight, and scream, and name call, and rally the press on one more horror story after another. Or, we can work together, we can join hands and pull on the reigns of that run-away horse together and turn this issue around. We can make it a shining victory for not only the hurt people but think of the hope that

we can instill in our children if we can show that government can work, does work in this ever darkening time? We in this room, for whatever reason, from whatever source have been infected with hope, hope that no matter how great the odds, the truth and justice will guide our ways, and our leaders ways, shining a light so bright, that they will have no choice but to do the right thing. If Clinton could get one message from me it is that. Either settle this issue right, or live with it and us till the end of his career. Neither we, nor the issue will go away. He still has time to go down as a truly great American President. I hope he does. This is his one and perhaps greatest opportunity for a Great American Change. I hope he takes it.

* * * * * **STAFF MEMORANDUM** * * * * *

TO: Members of the Advisory Committee on Human Radiation Experiments

FROM: Advisory Committee Staff

DATE: June 20, 1994

RE: Newspaper Article on Medical College of Virginia Experiments

We attach an article from Sunday's *Washington Post* Outlook section on Department of Defense (DOD) sponsored experiments conducted at the Medical College of Virginia (MCV). The article is by Cliff Honicker who, as the article notes, has worked in the area for a number of years. The staff had a "get acquainted" meeting with Mr. Honicker, and provided him with the experiment lists noted in the article. (We did not discuss the article or, for that matter, the MCV experiment(s)).

As you will see, the article raises many questions about the MCV experiment. The Committee may want to add them to its list of publicized experiments that merit priority consideration. This will be discussed with the Subcommittees on Scope and Priorities and Cold War Data Collection. A further purpose of this memo is to alert the Committee to, and address, the article's statements that DOD, in particular, has not been forthcoming to the Committee or the public.

The article states that:

"[a]fter months of professed openness by the Energy Department and the Pentagon, the burn and radiation studies conducted at Richmond have not been revealed The Army has released a list of 30 Army-funded human experiments to the President's Commission on Human Experiments Nowhere to be found, however, are any references to Evans and his experiments, which seems odd And on the list of experiments provided to the Commission by the Army and Air Force, the agencies report that they have been 'unable to locate' any names of the victims."

As quoted, the DOD has not identified the MCV experiments in lists provided to date. As it happened, we had learned of them independently from multiple sources, including both the Department of Energy (DOE) and Atomic Energy Commission (AEC) records located by staff. Most useful was a foray by Jim David (of the Advisory Committee staff) into the Office of Secretary of Defense (OSD) files at the National Archives. Jim is surveying the files in an effort to help us point DOD and other agencies to collections of relevant headquarters/policy document

collections. Jim found that in 1949 the OSD established a panel on Medical Aspects of Atomic Warfare. The panel's charter shows that it was to develop and monitor a research program that encompassed the AEC and the Public Health Service (PHS), as well as the military services. By a separate enclosure we will transmit: (1) the panel's charter; (2) a research digest, which includes the Virginia experiment; and, (3) a program report, which shows the "burn" program to be one of many military-purpose atomic medical research programs.

As you will see, these materials indicate that the DOD possesses rich and readily retrievable documentation on the MCV experiments, and, equally importantly, the military and research agenda context for these, and other, military-purpose experiments.

The search process is not as simple as it may seem, and we are seeking to work closely with all agencies to assure efficient and useful searches. But we must note that we are very concerned that, at this date, the DOD (and, for that matter, the DOE) has neither identified to the Committee the MCV experiments (which should have been identified in the "Phase I" search for experiments) nor begun to provide headquarters documentation which would set experiments in meaningful context and provide a check on the experiment identification search.

On May 23 we requested, pursuant to Committee guidance from the May meeting, among other things: (1) the documentation surrounding the issuance and implementation of the 1953 Nuremberg policy; (2) histories of the Chemical Corps, which conducted intentional release tests; and, (3) further documentation surrounding the Cincinnati experiments. Subsequently, written requests were sent to the Defense Nuclear Agency and the Army, following meetings with them. To date minimal responsive information has been provided.¹

Moreover, as reported at the June 13 Committee meeting, only upon our inquiries at meetings with the Army and DNA did we learn that, DOD search guidance notwithstanding, intentional releases had not been searched for. (As you may recall, DOD search director Dr. Soper, who was in attendance at the June meeting, stated that this search would be performed).

We had a productive meeting with Dr. Soper and his search team representatives last Friday, and agreed to meet with Dr. Soper weekly to set and assess goals for document requests and production. The first such meeting will be held today. Please be assured that we and Ruth Faden are monitoring this situation closely. We hope to report back by the next Committee meeting that documents have begun to flow in the DOD pipeline.

¹ DOD has transmitted: (1) some journal articles related to the Baylor and Sloan-Kettering experiments; (2) the 1975 Army Inspector General report (a redacted copy of which Jay Katz had provided previously); and, (3) a copy of the June 1953 Army document implementing the Secretary of Defense's guidance. In addition, on June 16 we were told by the DOD orally that Dr. Saenger had a top secret clearance as of 1954.

OUTLOOK

Commentary and Opinion

BURNING SECRETS

*In a Virginia Hospital,
A Cold War Time of
Strange Experiments*

By Cliff Honicker

BETWEEN 1949 and at least 1957, the Medical College of Virginia (MCV) ran a secret metabolic lab whose primary goal was preparation for massive nuclear casualties. Imbued with Cold War zeal and scientific arrogance, doctors conducted a series of potentially dangerous experiments on hundreds of unaware human subjects, most of them poor and African American. They were patients, severely burned in accidents, who became unwitting human guinea pigs in the course of their free medical treatment in "Special" burn units set up with Army research funds.

At MCV and two sister hospitals (Dooley, a charity hospital for black children, and St. Philip, a hospital for black adults), about 100 patients and/or volunteers a year were subjected to experimental burning, radiation or antibiotic treatment for what, at least in some cases, were acknowledged to be "investigational purposes."

The doctors injected radioactive isotopes into some of these patients, age 6 months to 90 years, knowing that, in earlier experimentation in their labs, the combined effect of burns and radiation led to significantly increased mortality rates in animals. The goal of the experiments was to develop new methods of medical triage and treatment for handling the millions of U.S. civilian and military casualties that could be expected in a nuclear war.

Last year, at the order of Energy Secretary Hazel O'Leary, the Department of Energy offered to release long secret dossiers on human experimentation. The order came as a result of Albuquerque Tribune reporter Eileen Welsome's Pulitzer Prize-winning series on plutonium experiments in the '40s. The Energy Department, citing a 1986 report by Rep. Edward Markey (D-Mass.), said experiments had been conducted on approximately 800 people nationwide. President Clinton established an Advisory Commission on Human Experiments a month later.

See BURNS, C4, Col. 1

Cliff Honicker is director of the American Environmental Health Studies Project of the Commission on Religion in Appalachia, based in Knoxville, Tenn.



BY FRANCES JETTER FOR THE WASHINGTON POST

Burning Secrets

BURNS, From C1

Some of these human experiments across the country caused little or no proven damage—for example, some involved only the addition of certain trace elements to food; others were conducted on patients judged to be beyond medical help.

But there appears to be no such benign explanation for the Richmond experiments, and after months of professed openness by the Energy Department and the Pentagon, the burn and radiation studies conducted in Richmond have not been revealed.

Files in the college archives suggest that the Richmond experiments may be the only ones in which the principal investigator wrote to the Atomic Energy Commission (AEC) with concerns of malpractice and in-

formed consent *before* conducting the experiments.

In his inquiry, Everett Idris Evans asked about the history, experience and malpractice insurance claims arising from radiation experiments that were "purely investigational with no therapeutic benefit." The AEC and Army nuclear weapons-related human experiments were coordinated through the Armed Forces Special Weapons Project, based in Washington.

Evidence in the Richmond experiments also points to violations of the 1948 Nuremberg International Code that stated that all human subjects be fully informed of experiments conducted on them, that animal studies be done first and that no harm be anticipated in the human subjects as a result of the tests.

The Richmond study met only one

of these conditions: They did the animal experiments first and then set out to experiment on humans. There is no evidence that the patients in special burn units at the three Richmond hospitals were ever told they were being experimented upon, much less fully informed as to the nature of the experiments.

I learned of Evans's concern about malpractice in 1984, in the course of prompting a congressional investigation that subsequently made the first request for Energy Department data on their "Special Case Files" and on human radiation experiments. ("Special cases" was a code used by the AEC to identify injury cases brought on by radiation exposure from the U.S. nuclear weapons programs.)

Evans was a highly-respected and highly decorated military surgeon. In the 1940s, he had served as the chief investigator for the U.S. Army's Office of Scientific Research and Development Board on Shocks and Burns. After the atomic bomb-

ing of Hiroshima and Nagasaki, he served as a consultant to the Atomic Bomb Casualty Commission, the scientific body overseeing studies of survivors. In 1948, he became director of the surgical research laboratories at MCV.

In 1947, Evans, under the auspices of the surgeon general of the Army, set up the first civilian burn unit in the United States at MCV. The unit was to study the metabolic effects of thermal injury in humans and thermal and irradiation injuries in dogs.

By comparing the results of the two, Evans hoped to find ways to quickly distinguish between lethal and nonlethal burns, to develop better one-piece field dressings for such burns and to find the best course of antibiotics to stop infections. The larger goal was to prepare civilian and military doctors for the treatment of casualties that would result from nuclear war on American soil.

In one set of experiments, Evans matched dogs to burn patients, subjecting the animals to first-, second- or third-degree burns depending on the severity of the humans' burns. He then followed the same course of treatment for the dogs and the people, with one exception: He irradiated the dogs. This was supposed to create the type of radiation exposure that people would suffer in a nuclear explosion. Evans discovered that even though the dogs received "insignificant" (i.e., non-lethal) doses of radiation, the animals had a death rate five times higher than dogs that were burned but not irradiated.

Then came the chilling part of the experiments. Evans injected human burn patients in the "Special" Burn Units at Dooley, St. Philip and MCV hospitals with radioactive isotopes that he knew would attach to the red blood cells so that he could chart their rise and fall during the course of the patients' recovery or demise. The problem was that the radioisotopes, being highly energetic, could have contributed to the further destruction of red blood cells—cells in patients who were already on the brink of life and death.

Evans appeared to be aware that his actions might pose danger. On April 8, 1948, on MCV stationery, he wrote to the head of the Division of Biology and Medicine of the AEC, asking for advice on the "medical-legal" aspects of his experiments.

"Have any malpractice suits been instituted against individuals or institutions who have used radioactive material simply for investigation? Do you have advice regarding insurance against such malpractice? If there have been suits, what have been the court ruling in such instances?" Evans also asked if he should get patients to sign permission forms.

The response of the AEC to Evans's inquiry is unknown. If Evans obtained written consent from the burn patients used in the Richmond experiments, he did not include such information in 800 pages of personal papers and medical research reports from the period 1948 to 1956 that are found in leather-bound volumes kept in the Special Collections archive of MCV. According to Hermes Kontos, who has been acting dean of MCV since 1993, consent forms "did not exist in those days." Kontos said the human subjects were volunteers, but did not know if they were told the military purpose of the experiments. Kontos, who has been at MCV since 1960, said that he first learned of the human experiments last week.

Although the patients' names, dates of death, levels of burns and estimated probabilities of mortality are reported in the files, exactly what was done to whom and over what length of time, is unclear. But the substance of the experiments themselves is clear.

It is hard to imagine any claims of



FRANCES J. LITTELL FOR THE WASHINGTON POST

medical treatment in the spotlight experiments. Evans worked under his Army contract to study the energy level needed to inflict first-, second- and third-degree burns. To do this, Evans and his colleagues set up an intensely hot Army searchlight in a secret lab at MCV, focused the beam to a narrow point of light, and then simulated the "flash burn" an individual could receive from a nuclear blast. Using both black and white "volunteers," the scientists and doctors proceeded to inflict half-inch square burns on more than 100 people.

By burning their subjects at graduated energy levels, the medical doctors, working with the physicists on the team, were able to determine the precise energy level needed to induce moderate to severe burns. The medical doctors and physicists then calculated the percentage of people that would be killed at varying distances from a 20-kiloton nuclear bomb (about the size detonated over Hiroshima) in a typical U.S. city. A team of MCV scientists flew to the Nevada nuclear weapons test site to take part in the experiments there and issued at least two secret reports, according to Evans's reports to the Army.

Evans summarized his conclusions in a report entitled "The Problem of Atomic Burns" submitted to the Surgeon General of the Army in 1951: "No matter how lightly or how conservatively one views the 'burn problem' which will confront a city and its population recovering from an atomic bomb attack, the one conclusion permissible is it will be stupendous. It may be pointless to refer here to the numbers of trained doctors, nurses and first aid workers necessary to solve this problem. Only free men with strong hearts and wills can face up to the gigantic task of providing by training and discipline the necessary workers. Provision for this training must be made at once, lest contemplation of the magnitude of the task only encourage despair."

His closing words were: "Adequate and intelligent provision for the care of thousands of burn casualties in any large American City is possible when strong men face up to this task."

Evans's medical prognosis given to the top military leaders at the height of the Cold War was that Americans could "withstand and prevail" under nuclear attacks on our cities. It came at a time of "national emergency," an era when informed consent did not appear to be foremost in the minds of military planners.

But did Evans knowingly put his patients in harm's way?

Certainly he knew from the animal studies the dangerous synergistic effect of thermal burns and radiation exposure. In the burn unit's 1954 annual report to the Army, Evans and his successor noted that there were seven unexpected

deaths. Were they part of the radiation experiments?

On Jan. 14, 1954, at the age of 44, Evans died of a heart attack and was succeeded by B.W. Haynes Jr.

Haynes, who retired in 1991 from what is now the Evans-Haynes Burn Center at MCV, acknowledges both the burn and radiation experiments, but claims that no one was injured as a result of the investigations.

"We finally got to the point of making a few small wounds on patients, volunteers," said Haynes, now 76, in a telephone interview. "The burns were never large. They never threatened any of the patients in terms of the application and treatment of small burn injuries on humans."

Haynes denied that he and Evans inflicted third-degree burns. "They were," he said, "burns that heal with proper treatment." Haynes confirmed the use of radioisotopes on the patients, but said they were used for therapeutic purposes.

Haynes acknowledged the lab's participation in classified burn studies in Nevada, but said he could not remember details of the experiments.

I would have liked to interview the families of the seven patients who died unexpectedly, but their death certificates are protected by confidentiality laws in Virginia. The main causes of death were infection, allergic reaction to antibiotics and choking on vomitus.

On Friday, acting MCV dean Kontos said that there is "no chance" that human experiments continue at MCV. He also said, "It's pretty hard to pass moral judgment on something that happened 50 years ago."

What was happening at MCV was almost unearthed in early 1951 when a novice Richmond newspaper reporter got word that Evans was burning dogs in his experiments. Fearing bad publicity, Evans, on Jan. 27, 1951, informed everyone working on all Army-contracted research that their work would henceforth be classified. The memo admonished, "All personnel on these projects are advised to take care they do not indulge in loose talk or gossip."

Now, more than 40 years later, how can we be assured that documents in government files on the Richmond experiments and others like them will be released, even in this new era of "openness"? The Army has released a list of 30 Army-funded human experiments to the President's Commission on Human Experiments. Among them are experiments following in the footsteps of Evans's ground-breaking investigations on burns. Nowhere to be found, however, are any references to Evans and his experiments, which seems odd, given the Army was the primary, if not the sole funder of Evans's work. And on list after list of experiments provided to the Commission by the Army and Air Force, the agencies report that they have been "unable to locate" any names of the victims.

Meanwhile, even unclassified documents giving clues to the existence or whereabouts of classified information on human experiments is not forthcoming, according to internal Department of Energy memoranda. "Unclassified, sensitive indicators can provide an adversary with data that could lead to a knowledge of classified information," one memo reads. Are these adversaries the American public?

Short of appointing an independent investigator, perhaps the only way even to attempt to get at the whole truth is for everyone looking into or with knowledge of these experiments to pool their resources, knowledge and "leads." It is time to put together the many pieces of the puzzle so that we can have the whole, clear picture of this sorry, hidden chapter in American history.

The New York Times Magazine

A BLUE GLOW SHROUDED THE ROOM FOR
AN INSTANT, THEN WAS GONE
IN THAT MOMENT, IN 1946, LOUIS SLOTIN
KNEW HE HAD RECEIVED A LETHAL
DOSE OF RADIATION FROM THE CORE OF THE
PLUTONIUM BOMB HE WAS TESTING.

AMERICA'S RADIATION VICTIMS

The Hidden Files

BY CLIFFORD T. HONICKER



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One fatal slip of a screwdriver ended the life of Louis Slotin. Physicists Allan Kline and Alvin Graves

AMERICA'S RADIATION VICTIMS

The Hidden Files

IN 1946, A NUCLEAR ACCIDENT KILLED
ONE SCIENTIST AND INJURED
SEVERAL OTHERS. THE GOVERNMENT
RESPONSE TO THAT TRAGEDY
ESTABLISHED A PATTERN
OF SECRECY THAT STILL PERSISTS.

BY CLIFFORD T. HONICKER

A BLUE GLOW SHROUDED THE ROOM FOR AN INSTANT, THEN was gone. In that moment, Louis Slotin knew he had received a lethal dose of radiation from the core of the plutonium bomb he was testing.

Eight men had been working in the secret laboratory that day. Called the Omega Site, it was nestled in Pajarito Canyon, four miles from the main compound of the Los Alamos Scientific Laboratory in New Mexico. Slotin was preparing Alvin C. Graves to take over his duties at the Omega Site. The two stood together at a table with the core of the bomb in front of them. A third man, a junior-level physicist named S. Allan Kline, a 26-year-old graduate of the University of Chicago, had been called over only a moment before the experiment began. Five others stood behind them as Slotin gently brought together the two halves of the beryllium sphere that would convert the plutonium to a critical state. The date was May 21, 1946.

Although it was a potentially deadly experiment, Slotin had performed the "crit test" more than two dozen times before. The physicists involved that afternoon had been part of the team that designed the atomic bombs that annihilated Hiroshima and Nagasaki. This test was being done in anticipation of the Operation Crossroads test, which would take place at Bikini Atoll in the Marshall Islands a month later.

Slotin lowered the upper hemisphere onto the larger lower one, his thumb lodged in a hole in the top. In his other hand was a screwdriver, which he wedged between the two halves to keep them from touching as he attempted to bring the plutonium to a critical state. The men held their breath. And then the screwdriver slipped. The two halves met, and the as-

ILLUSTRATION BY PAOLA PIGLIA

Clifford T. Honicker runs an independent research project on radiation policy in Knoxville, Tenn.



sembly went supercritical. Slotin stopped the chain reaction by knocking the sphere apart. But in less than a millisecond, deadly gamma and neutron radiation had burst from the assembly. The blue glow lighted the room as the air became momentarily ionized.

The eight men rushed out of the laboratory and called the authorities in Los Alamos. Then they sat down in the afternoon sun, and, as calmly as they could, began to assess the levels of their exposure. They made a diagram of the room, noting where each had been standing. None of them had been wearing radiation badges, which would have helped register the extent of the exposure. Slotin asked the scientist who had been farthest from the accident to go back and retrieve the film badges out of the lead box where they were stored, and throw them onto the assembly.

Those who had been standing at the table fared the worst. Kline, who had been three or four feet away from Slotin, received what he calculated to be between 90 and 110 rads of neutron radiation. Graves, standing a foot closer, received an estimated 166. For Slotin, the exposure was nearly 1,000 rads, a lethal dose twice over.

The men drove themselves to Los Alamos Hospital, where they were surrounded by teams of specialists who had been preparing for their arrival.

There was not much they could do for the injured men. The doctors closely monitored their bodily functions. They took radiation counts on their blood and bones. They took readings from the gold fillings in their teeth, from silver belt buckles, from a gold Sheaffer pen that Slotin had been carrying and from a coin Kline had had in his pocket.

The doctors knew the next two weeks would provide them a unique opportunity. From a civil-defense standpoint, the knowledge gleaned from these cases could prove invaluable in the event of a nuclear war. For the first time, doctors and scientists would have a chance to view the effect of measurable levels of neutron radiation on humans without the complicating factor of other damages from a bomb. Before the week was over, experts from all over the country had been flown in.

For Kline, the next days were hard. According to notes made by nurses on the hospital records, he suffered nausea and vomiting on the first day, fainting spells and complete loss of appetite for the next five days, and rapid weight loss. The men knew Slotin was dying, but despite their anxiety they tried to keep their spirits up. Kline told the nurses his vomiting was due to nervousness and eating hot dogs rather than to radiation.

The men's bodily fluids and excretions were gathered day and night and tested for radiation. Doctors watched the steady concurrent rise and fall of the victims' blood counts, blood pressure and temperature as the radiation ran its course through their bodies.

Fearing that the gold inlays in Kline's teeth were radiating damaging rays into his jawbone, constituting a threat of future cancer, the scientists decided to shield them with a mouthpiece made of gold foil. It was not thick enough to absorb the radiation. A second mouthpiece was made of heavy solid gold. Kline wore it for five days, until the radiation in his inlays subsided.

On the ninth day, Louis Slotin died.

ALLAN KLINE, THOUGH STILL WEAK, WAS RELEASED FROM the hospital two weeks after the May 1946 accident. Then he was fired. The dose of radiation that he had received precluded him from working around or being exposed to radiation for at least 25 years.

Kline knew he faced the prospect of cancer. After the initial re-



CLIFFORD T. HONICKER



LAS VEGAS SUN

Far left, 1980: John Smitherman, one of 220,000 servicemen exposed to nuclear radiation in the postwar years, developed lymphedema, then cancer. He died in 1983.

Left, circa 1980: Ben Levy, president of the Nevada Test Site Radiation Victims Association.

Below: Louis Slotin's ID from the Los Alamos lab. On May 21, 1946, his experiment on a bomb core went wrong. Nine days later, he died.

Below left, 1986: Allan Kline in San Francisco. Kline spent years trying in vain to get his official medical records. Now, he is silent.



Right, May 1955: Alvin Graves, shown here at a Nevada nuclear test, stayed with the U.S. atomic program. He died in 1966.



DAVE CICERO/UP/BETTMANN NEWSPHOTOS

covery from acute radiation sickness, a person may lead a healthy life, with the real damage manifesting itself only years or decades later. Leukemia, testicular cancer or other radiogenic maladies might appear.

The director of the Los Alamos Laboratory wrote a letter to Kline's mother informing her that her son was "not seriously affected," and that he had "only minimal symptoms." Yet the final note on Kline's hospital chart stated, "The depression of the lymphocytes and leukopenia which developed makes it obvious that this man's exposure was significant. Final Diagnosis: Radiation Sickness."

From Los Alamos, Kline returned to his hometown of Chicago. At the time of his discharge from the hospital, one of his physicians, Louis R. Hempelmann, advised him to stay out of the sun for at least two years and to wear a sombrero, long underwear and women's long kid gloves whenever he went outdoors. Kline took these precautions during the summer of 1946. (The hair on the front of his head was falling out, and he rarely had the energy to leave his apartment.) In a letter to another of his doctors, he said he looked quite the spectacle walking down the street in his protective outfit.

Kline had been referred by the Los Alamos Hospital to the University of Chicago Metallurgical Laboratory, which took 22 blood samples between June 10 and Nov. 22.

On Dec. 8, Kline went into Billings Hospital in Chicago, for what was to be an extended battery of tests. He quickly decided he was being

(Continued on Page 98)



CLIFFORD T. HONICKER



Left, 1946: Stafford Warren, at left, an A.E.C. safety official, sought changes in policy in order to avoid possible government embarrassment "by medical legal suits."

Above, 1987: Dr. Louis Hempelmann, who says his files on the 1946 incident have been destroyed. Why was Kline denied access to the records? "That was not my responsibility."

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RADIATION

Continued from Page 41

studied — not treated. On Dec. 10, angry that he was being used as a guinea pig, he left, cutting short the hospital stay.

Two months later, Kline began a campaign to gather his medical files, which he would need to receive compensation for the accident. On Feb. 24, 1947, a law firm he had retained wrote to the administrator in charge of the Los Alamos operations to say that Kline intended to seek compensation.

THE LETTER ANNOUNCING Kline's intentions was probably not unexpected. As early as Dec. 3, 1946, Norris E. Bradbury, who had succeeded J. Robert Oppenheimer as director of the Los Alamos Scientific Laboratory, issued a directive that no Los Alamos personnel were to make any statements or commitments involving Kline, because of the possibility that Kline might file a lawsuit.

A week later, on Dec. 10, the same day Kline walked out of Billings Hospital, Louis Hempelmann, the Los Alamos physician, wrote to Kline's Chicago physician, James J. Nickson, medical director of the Argonne Medical Laboratory, that the prospect of a lawsuit from Kline was giving everyone "a most remarkable case of jitters." The letter also said, "This case is being handled in a most unusual manner. We... have been instructed not to contact Kline directly nor to commit the project in any way."

That same month, Stafford L. Warren became involved. Chief of the medical section for the \$2 billion Manhattan Project, Warren had headed the American team assessing the damage at Hiroshima and was chief of the radiological safety section for Operation Crossroads. He advised that a situation existed "requiring a clarification of policy in order to save possible embarrassment of the Government by medical legal suits." The case of Allan Kline, he wrote, had been handled in such a way as to leave the Government in a bad light. Kline had been treated as a "research case," and things were not handled in a "business-like arrangement." He recommended the development of a policy for

medical investigations of people claiming injury from radiation.

In April 1947, Warren wrote a similar letter to the general manager of the newly formed Atomic Energy Commission, which that year officially replaced the Manhattan Project, calling for a procedure to deal with former employees who claimed they were injured in the course of their work. For most people, he wrote, a simple letter from a leading medical representative from the commission would suffice, assuring them that they had not been subjected to anything that would affect their health. For others, more detailed investigations needed to be made. In both letters, the handling of the Kline case was singled out as the example of the need for such a policy.

That June, Allan Kline entered Yale Law School. All that year, letters went back and forth between Kline and the A.E.C., culminating, on Aug. 16, 1948, with an offer from the commission of a cash settlement of \$3,333, in exchange for an agreement that Kline would drop all claims. The evidence indicates he turned it down.

Almost a year later, in July 1949, following Warren's suggestion, the A.E.C. issued guidelines on investigating radiation and chemical injury cases that fell under the "special hazards" category. As Warren had recommended, when the commission heard that a former employee was claiming injury from exposure to radiation or other toxins used in the production of nuclear weapons, it was to initiate an investigation to determine the validity of the claim. The directive spelled out what information was to be gathered and who in the A.E.C. was to receive the information. There was no indication that the claimant was to be given the information.

MEANWHILE, ALLAN Kline persisted in his attempts to get his medical records. On Aug. 15, 1949, his attorney, Paul Stickler, wrote to Senator Brien McMahon, Democrat of Connecticut, who had sponsored the Senate bill establishing the Atomic Energy Commission in 1946 and was chairman of the Joint Committee on Atomic Energy. He described



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the "shabby" treatment Kline had received and asked McMahon to consider legislation to rectify the case. He included a six-page, detailed assessment written by Kline of the injuries he had sustained.

Three months later, on Nov. 14, a top official of the A.E.C. denied that Kline's medical records had been withheld from him by either the commission or the University of California, which operated the Los Alamos laboratory for the Government. In a letter to McMahon's committee, the deputy general manager of the A.E.C. said Kline had not even requested the information: "Neither the files of the Commission nor the University disclose any request by Mr. Kline for such information nor any indication of any refusal by the University or the Commission to furnish such information to him." Furthermore, the letter stated, "With respect to the extent of the injuries sustained by Mr. Kline, the statements contained in Mr. Stickler's letter and attachment appear inconsistent with available medical reports."

On March 17, 1950, another top official commented on the Kline case, this time linking the A.E.C.'s response to it to future similar claims. Carroll L. Tyler, manager of the commission's Santa Fe operations (where the administrative work for the Los Alamos projects was done), wrote to a colleague instructing him on how to respond to Senator McMahon's continuing inquiries about the Kline case.

Tyler's advice was to stress that Kline was a difficult man to deal with. It should be pointed out, Tyler wrote, that Kline had broken medical appointments and turned down settlements offered him. Tyler advised that "McMahon should consider the fact that there may be many other individuals not now known who have been exposed to radioactive emissions at this or other installations and the preparation of such specific legislation might lead to a deluge of requests for individual legislative acts."

Twelve months later, on March 21, 1951, Tyler wrote Kline that specific studies on his contamination were unavailable. "There are certain data which you request such as calculations of radiation emitted from objects on your person which are apparently non-existent and we can only presume that if any count was taken on these objects it was primarily as a matter of curiosity and no record was made."

That was an outright lie.

IN 1984, QUITE BY CHANCE, I discovered a 270-page dossier, most of it legal and medical evidence pertaining to Allan Kline's exposure and his subsequent medical problems. It had been compiled by the A.E.C. and stored in cardboard boxes in the radiological archives at the University of Tennessee, where I was researching my master's thesis. The thesis I had been planning was on an unrelated subject, but because I came from a family knowledgeable

about radiation issues, I knew immediately that this particular file was significant.

The files were those of Stafford Warren, who had died in 1981. They contained the records of more than two dozen people who had formally or informally claimed injury from exposure to radiation. In nearly every instance, Warren had been asked by the Atomic Energy Commission how to handle the case.

Of the two dozen, mostly servicemen and workers at nuclear-weapons plants, none had been treated or compensated for radiation injury, despite the fact that some of the records revealed well-documented overexposures. In none of the cases did the A.E.C. acknowledge to the claimant a diagnosis of radiation injury.

Most of the files were very brief, indicating a quick settlement of the case (and never to the claimant's advantage). Of the two dozen claimants, only one, Allan Kline, had apparently persisted through years of documented stonewalling. Kline's file included medical records, radiological exposure records, telexes, letters and conference reports. All were related to the Los Alamos accident at the Omega Site on May 21, 1946.

For six weeks, I pored over the records that Kline himself had been denied. By the end of that time, I had written an 80-page paper on the case, which I decided to submit as my master's thesis.

In the summer following the accident, I read, Kline had suffered severe lassitude, sleeping 16 hours a day. He couldn't walk up a flight of steps without resting; he couldn't swim more than a few strokes; he couldn't read a newspaper for more than a few minutes. He was sterile for more than two years. The level of exposure had been so high, and he had had such immediate debilitating effects, that I was almost certain that now, 38 years later, he must be dead.

On the day I finished my thesis, my wife, a health and safety adviser to nuclear-weapons workers at Oak Ridge, brought me a book that included a follow-up of the survivors of the 1946 accident. "Case Five" — a designation that clearly referred to Kline — had refused to cooperate with the study, but a note indicated that in 1978, when the article was researched, he was still alive.

I knew he had gone on to Yale Law School. I called the alumni office and was told that the man whose files I had practically memorized was living in California. I had no trouble getting Kline's phone number.

My first call met with a brusque rebuff.

"No comment," he said when I identified myself and said I wanted to talk about the criticality accident.

"What?" I said.

"No comment." He hung up.

I called again, this time barely giving him a chance to say hello. I started reciting facts: I told him what I knew about the accident, and about his treatment. I quoted from his own letters. I described his symptoms.

I told him that I knew he had em-

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played three different law firms in an effort to get his records. And that finally he had been told by the director of the Los Alamos laboratory that the files simply no longer existed, that in fact those records might have never been collected in the first place.

"I have in my hands the files that are not supposed to exist," I told him. For a few seconds there was silence on the line. But this time, he did not hang up.

THREE WEEKS later, we met at his home near San Francisco. From 9 P.M. until midnight, we went over the letters, reports, telegrams and medical records in the file. Then Kline wiped a tear from his eyes and said, "What they did to me... lies, all lies."

But when I asked permission to use his case as my master's thesis, he turned me down.

The former physicist was now a successful businessman, the founder of a number of companies including Xicor Inc., which manufactures computer chips that have potential defense applications. He insisted that he did not want his story to affect in any way the nuclear-weapons testing and development programs in this country. Even though the accident had left him with debilitating and life-threatening conditions — and he detailed a list of longterm effects, which he refused me permission to mention in print — he wanted to keep his story a secret. He blamed the stonewalling on the work of a few misguided, overzealous officials within the Atomic Energy Commission.

TWO MONTHS AFTER my session with Kline, I met with staff members of the House Energy Conservation and Power Subcommittee in Washington. The subcommittee, then chaired by Representative Richard L. Ottinger, Democrat of New York, had oversight and investigative mandates over the Department of Energy, which had replaced the A.E.C. in the 1970's. After I briefed the subcommittee members on what I had found in the Warren files, they drafted a letter to Energy Secretary Donald P. Hodel, signed by Ottinger, initiating a Congressional investigation on the medical and radiological record-keeping practices of the two agencies over the last 40 years.

We hoped to find duplicates of the 270-page file on Kline

and the two dozen other files I had seen in the archives at Knoxville. But I also suspected that a repository existed that would show that hundreds of other people had been treated in the same way.

We requested all the files of the commission's division of biology and medicine from 1946 through 1962. It was the same division that 40 years earlier had blocked Kline's request for his own files. We were told the request would take time to process, so in the meantime I decided to look into A.E.C. policy directives.

Among the stack of directives delivered to me was Chapter 0521, from the A.E.C. Manual, entitled "Medical Investigation of Alleged Disabilities From Special Hazards." Issued in 1954, it dealt with "radiation exposure or exposures to toxic materials peculiar in kind or degree to atomic energy operations."

The "medical investigation" referred to in the title was not, the policy stated, one that would be made after a routine claim of injuries. It was, rather, a policy to collect information, "to the extent permitted by law, and to the extent consistent with the best interests of the Atomic Energy Commission," whenever it heard about any allegation made by a former commission employee of injury from "special hazards" — radiation or any toxins used in the production of nuclear weapons.

The policy spelled out in detail which commission officials would be informed of an investigation. Conspicuously absent was any mention of whether the radiation survivor himself would be informed.

Chapter 0521 was very similar to the directive issued, at Stafford Warren's suggestion, by the A.E.C. in 1949. The title was identical. The similarities seemed to go beyond the possibility of coincidence. The 1949 directive, which came out in the heat of dealing with Kline, seemed a direct forerunner of Chapter 0521.

TWO WEEKS AFTER our request, I was allowed to see the division of biology and medicine files. From the first, I suspected they were incomplete. Brand-new legal-brief fasteners were in place on 30-year-old file folders. Folders labeled "Case Histories, 1953," and "Claims, 1954" consisted of only a single piece of paper apiece. Chapter 0521 spelled out what material should be in each person's file. Little of it was there.

Over the next three weeks, other boxes of files arrived, in similar condition. Toward the end of that time, a Department of Energy employee supplied me with an index listing of additional departmental files, stored separately. The list referred to more than a hundred other special cases stored in four boxes, two of them containing classified material. Ten days after I asked for those four boxes, they were delivered. A subcommittee staffer with a top-secret security clearance went through the two boxes marked classified and made notes, which the D.O.E. cleared for me to see. A formal request to declassify these files, which dealt only with scientific and medical issues, was not only refused but in some cases resulted in the files being reclassified from secret to top secret.

I was allowed to study the two boxes that were unclassified. These included the Kline file and 50 others. Allan Kline's file was identical to the legal-medical file kept on him by Stafford Warren — except that 90 percent of it was missing. It contained only 27 pages of the 270 that I had seen in Tennessee. (According to the Department of Energy's official version of the Kline case, the Government had acted rapidly to provide Kline with all the records he wanted.) It was clear that material had also been removed from the other 50.

As the files came in, I'd gone back several times to the D.O.E. Congressional liaison with whom I'd been working to ask if the material was complete. After I got the last batch, including Kline's file, I asked once again. He denied that the files had been tampered with in any way.

Staff members of the subcommittee were not hopeful about their ability to investigate further. "There's no way to prove it unless you can find a whistleblower in D.O.E. who will admit that the files have been tampered with and destroyed," one of them told me. "Hang in there: document what you think is missing, and find us a whistleblower."

Sensing that my very presence in the repository was causing a large-scale destruction of the files, I decided to go back to Tennessee.

ON AND OFF OVER THE next three years, I tried to persuade Allan Kline to go public with his story. He repeatedly denied me permission to use any information



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he had divulged at that first meeting. (All the facts about Kline's case in this article come from the public record.) Finally, it became clear that if it were up to him, he would take it with him to his grave.

Meanwhile, I had received a number of grants to pursue investigations into cases of radiation contamination. Much of my work focused on similar instances of suppression of information by the Government, in atomic veteran and downwinder cases. But I couldn't let the Kline case go. In April of this year, I went to Los Alamos, determined to review the technical documents connected with the accident. In particular, I was interested in a report I had seen referred to in the 1978 follow-up study. It had been labeled simply "Los Alamos document LA-687" and its authors were scientists I knew had been involved in the Kline case from the start.

LA-687 turned out to be a formerly secret report called "Radiation Doses in the Pajarito Accident of May 21, 1946." Written by Joseph G. Hoffman, it was completed two years after the accident. Listed on the title page as contributors to the section on "Theory" were Louis Hempelmann and Philip Morrison. Hoffman had died in 1974, but both Hempelmann and Morrison were still alive.

Drawing on the medical and radiation exposure files kept on Kline and the others — the files that Kline had been denied, that in 1951 the A.E.C. told him were "non-existent," but that I had later found in the University of Tennessee archives — the report gave a dry detailed account of the scientists' efforts to determine precisely each man's exposure following the accident.

The report indicated that the experts (many of whom had also examined the men at the hospital following the accident) had gone as far as to make hollow life-size models, called "phantoms," filled with simulated blood. The accident was then recreated time and again using the same guts of the atom bomb, only now by remote control. Comparisons were made with the phantoms' exposures and those recorded from the radioactive blood samples taken from the men after the accident.

LAST SUMMER, I WENT back to Washington with this new information. My first visit was to Senator Paul

Simon of Illinois, who had worked for seven years to pass a compensation bill for atomic veterans who have developed commonly accepted radiation-related cancers. The bill was enacted in 1988.

It took about 30 minutes to brief Simon on my findings. When I was finished, he stood up and began pacing the floor in agitation. "This is an incredible story," he said. "What can I do to help you?"

I had interviewed Louis Hempelmann, the chief medical doctor at Los Alamos during the criticality accident, in 1987 at his summer home in Rochester, N.Y., but he had been reluctant to speak of specifics. He had also been at Los Alamos last spring, but had refused comment altogether. I asked the Senator to intervene for me.

He called Hempelmann as I stood by in his office, and urged him to meet with me. "For the good of the country," he said. Hempelmann sounded startled, Simon told me, but he agreed.

To his knowledge, Simon told me, this kind of withholding of files in a case of nuclear exposure had never been documented before. He felt, as I did, that Kline's case set the stage for a policy that has been applied in hundreds of other similar cases. "There have been things to cover up, just for an individual," he commented to me in August. "I don't know of any cover-up that is this extensive, that could affect the lives of so many people."

TWO WEEKS AFTER Simon's call, Hempelmann met with me at Strong Memorial Hospital in Rochester, where he had been the head of radiology for more than a decade. Among his first words were, "The records have all been destroyed since I retired from this place in 1979."

Noting my surprise, he explained that he had seen no reason to keep his notes after his report was published. "As far as I was concerned, I was finished with it."

I outlined to Hempelmann what I knew about Allan Kline's experiences. I mentioned his own letter, dated Dec. 10, 1946, which said "everyone" was getting a "most remarkable case of jitters" over the possibility of a lawsuit from Kline.

Hempelmann said he knew of the difficulty that Kline had had getting his records, but that Kline had never come to him. Kline's request would have had to go through

the proper channels, he said. He would have needed approval from Norris Bradbury, then director of the Los Alamos laboratory. It was Bradbury who issued the directive on Dec. 3, 1946, that Los Alamos personnel were to make no commitments or statements involving Kline.

I reminded Hempelmann that Kline had gone through the proper channels. The proper authorities were the very people denying him access to the records.

"That was not my responsibility," Hempelmann replied.

Hempelmann had been the principal doctor of record for the patients after the accident, as well as a participant in the "phantom" study. His correspondence makes it clear that he was aware that Kline was being stonewalled in his attempts to retrieve his records, even unclassified documents.

Hempelmann listened as I recited all this. He turned his head away and said nothing. Finally, he softly repeated, "That was not my responsibility."

PHILIP MORRISON, 74, is a professor emeritus in the physics department at the Massachusetts Institute of Technology. He had been a colleague and close personal friend of Louis Slotin, and had worked with him, and with Kline, in the laboratory at the Pajarito site. Slotin had called Morrison after the accident, and he was the first to arrive on the scene. It was Morrison who insisted that an announcement be made that the accident had occurred. Reports of a similar accident nine months earlier had been squelched by project officials. The military director of the Manhattan Project, Maj. Gen. Leslie R. Groves, was known for his passion for secrecy, and officials wanted to keep a lid on this accident, too. But Morrison insisted.

Like Kline, Morrison had come to Los Alamos from Chicago. For the test explosion of the first atom bomb, Morrison had ridden to the Trinity Site at Alamogordo, N.M., with the bomb core beside him in the back seat of an automobile. Three weeks after Trinity, on Tinian Island in the Pacific Ocean, Morrison participated in the assembly of the bomb that destroyed Nagasaki.

Following the criticality accident, it was Morrison who coordinated a team of physicists to monitor the radiation emanating from the men and the objects they'd been carry-

'I don't know of any cover-up that is this extensive,' said Senator Paul Simon, 'that could affect the lives of so many people.'

ing. A memo, written by him in the week after the accident, detailing the radiation levels found in Kline's body, was among the documents I had found in Stafford Warren's file. After Slotin's death, Morrison filed a detailed secret report with Los Alamos.

When, last summer, I showed Morrison the secret study I had found in Los Alamos — LA-687 — which listed him on the title page as a contributor to the section on "Theory," he denied having ever seen it before. He said he had been "furiously concerned" with the case and had prepared a report, but that this was not it. (At Los Alamos, I had requested a 1946 report by Morrison and a co-author, which may have been the one he was now referring to; I was not allowed to see it.)

I asked Morrison about the 0521 policy, commenting that its recommendations as to how the Government should respond to radiation injury claims seemed very similar to those made in the Kline case. Was Kline's case part of an orchestrated response?

"It probably was a policy, I don't think they would deny it, would they?" Morrison replied. "I think the Government was very scared about this litigation. The Government..." he paused. "I don't know who 'the Government' is, but somebody was. Some lawyers."

THE POLICY OF tightly restricting the information the United States Government is willing to give people who fear they have been exposed to radiation goes far beyond the Kline case.

Some 220,000 American servicemen were exposed to radiation at Hiroshima and Nagasaki or witnessed the atmospheric nuclear tests performed between 1945 and 1962. Of the more than 9,600

veterans who have filed radiation injury claims with the Veterans Administration, only 812 have been compensated for disability, the vast majority in the last couple of years.

One who was not compensated was John Smitherman, who, like 42,000 other servicemen, witnessed the two Operation Crossroads explosions in the Marshall Islands in 1946. Although he became a double amputee and suffered multiple cancers, he died in 1983 without ever having received compensation for his injuries. The Veterans Administration admits that he suffered from six radiation-related cancers, as well as several others, but says that the cancer that killed him was not radiogenic.

Hundreds, if not thousands, of people downwind from nuclear weapons tests were exposed to potentially damaging levels of radiation.

Elma Barnett witnessed the cloud from the nuclear-weapons test code-named Grable as she was watering her grazing sheep in Hamblin Valley, Utah, on May 25, 1953. She developed nausea and vomiting and rashes over her body; her skin began to scale off her body, her hair fell out, and her weight dropped from 130 to 100 pounds. Atomic Energy Commission doctors diagnosed hypothyroidism. Eight and half months after the incident, a Geiger counter passed over her body failed to detect radiation in her body, and on that basis, doctors working under Stafford Warren at the Los Angeles Atomic Project reiterated their diagnosis that radiation was not the cause of her problems.

More than 600,000 people have worked in nuclear-weapons facilities across America since 1943. Untold millions of pounds of radioactive and chemical waste have been released into the environment. Estimates range from \$50 billion to \$200 billion and more to clean it up. Countless workers have undoubtedly been exposed to the wastes.

The Three Mile Island Public Health Fund, established after the accident in 1979 at the T.M.I. reactor, has spent the last three years in legal battles trying to get the D.O.E. to release records it compiled on 300,000 workers at the nation's principal weapons facilities; many of them are believed to have been exposed to radiation. Dr. Thomas F. Mancuso was hired by the Government in (Continued on Page 120)

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RADIATION

Continued from Page 103

1964 to study the radiation exposure of 225,000 workers at nuclear-weapons plants; he collected most of the data the T.M.I. fund is requesting. His 15-year study concluded that "low-level" exposures significantly increased the chance of developing cancer, and that industry standards for safe levels of exposure were at least 10 times too high. When Mancuso published his findings, the Government fired him and denied him access to his data.

One case that may be in those suppressed files is that of Harry F. Reece, who was exposed to radiation while working as a machinist at the Hanford, Wash., nuclear plant from 1946 to 1951. His "special jobs" lasted from 15 seconds to 8 hours a day, depending on the radiation levels involved. For years afterward, he suffered a variety of debilitating symptoms. The special case file on him kept by Stafford Warren includes a letter from a consulting physician saying that no thorough work-up seemed necessary unless the A.E.C. wanted to conduct it "solely on the basis of public relations."

The D.O.E. has also effectively kept such cases out of the courts. In a collective suit involving 220 claims of injury at the Nevada Test Site since the mid-1970's, a Federal judge ruled just last month that the workers, some of whom had been pursuing their suits for 15 years, were entitled to bring their case to court. Ben F. Levy worked at the site for more than 25 years and heads the Nevada Test Site Radiation Victims Association. His group has accumulated death certificates on more than 300 people who worked at the site and since 1951 have died from cancers that seem to be radiation related. Levy says he and the other workers were never warned of the dangers. "They never gave us that alternative," he says. "They always said it was nothing to worry about. Come five years later, this started happening."

Last summer, the Government acknowledged for the first time that radioactive emissions from a nuclear-weapons plant may have harmed large numbers of people living nearby. After a nonbinding trial before a Federal jury, the D.O.E.

promised to pay at least \$73 million in settlement of claims made by 24,000 neighbors of the plant in Fernald, Ohio, where hundreds of thousands of pounds of uranium dust have been emitted since 1951. The Government did not acknowledge that the dust had made people ill; instead, it said the money was compensation for emotional distress and diminution of property values.

OF THE SURVIVORS of the 1946 accident, Alvin Graves, who stayed with the atomic program, died of a heart attack in 1966. The 1978 follow-up study suggested the attack had been caused by complications from radiation exposure.

That study also found that two others who had been in the lab were still alive and healthy, that one had died in the Korean War, one had died of clinical aplastic anemia (which results when the bone marrow fails to produce adequate blood components), and one had died of leukemia. The accident itself has gone down in history, most recently being re-enacted in the movie "Fat Man and Little Boy."

Allan Kline was a physicist. He had measured his exposure levels. He went to law school and learned how to fight. Unlike other injured workers who accepted the Government's assertions that their ailments were unrelated to exposure, Kline was certain that his were.

In July, I flew to California to inform Kline about the impending release of this story. He was aware of my attempts to contact him, but made himself unavailable for comment. Upon checking out of my hotel, after trying to reach him for three days, I found a letter from him attached to my hotel bill. Once again, he objected to the release of the story.

But everything in the documents and cover-up indicates that Kline's case was the apex of a pyramid, that hundreds of other claims like his were effectively suppressed.

Kline's case tells us about far more than what happened to Allan Kline. It was the first, and probably the most extensive. For the Government, it was the proving ground. ■

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TO: Phillip M. Caplan
FROM: Tracey E. Thornton
 Office of Legislative Affairs

SUBJECT: RE: Radiation

I have called you but the short answer to the question of what do we do now is we get our act together. phone me if you want to discuss. I will have a conversation with Glenn's folks.

Draft 2/27/96

LET ME BEGIN WITH SIMPLE THANK YOU TO EVERYONE WHO HAS PARTICIPATED IN THIS WORKSHOP OVER THE LAST DAY and a HALF.

TO DORIS CAMPOS-INFANTINO AND CLAUDE BAILEY FOR MODERATING. THANK YOU VERY MUCH. I KNOW YOU'VE DONE AN OUTSTANDING JOB UNDER SOME TRYING CONDITIONS.

TO THE STAFF FROM THE VARIOUS AGENCIES, AND IN PARTICULAR THE ENERGY DEPARTMENT, THANK YOU FOR ORGANIZING THIS, THE ROOM, THE TRAVEL, THE LOGISTICS. THOSE OF US THAT HAVE ORGANIZED EVENTS KNOW HOW MUCH GOES INTO THIS.

FINALLY, I'D LIKE TO THANK THOSE OF YOU THAT HAVE TRAVELLED FROM ACROSS THE COUNTRY, SOME OF YOU I UNDERSTAND FROM VERY FAR PLACES, TO COME HERE. I KNOW THAT YOU HAVE BEEN LIVING WITH THESE ISSUES FOR DECADES AND THE LAST 2-3 YEARS HAVE BEEN BOTH A BLESSING AND A CURSE IN MANY WAYS. A BLESSING IN THAT THE PRESIDENT HAS STARTED A PROCESS - AND I EMPHASIZE STARTED, BECAUSE THIS IS NOT THE END - THAT HAS ENABLED MANY OF YOU TO GET SOME ANSWERS TO SOME QUESTIONS THAT HAVE BEEN A DARK SECRET FOR SO MANY YEARS. BUT IT HAS ALSO BEEN VERY PAINFUL FOR MANY OF YOU. MANY PAINFUL MEMORIES THAT HAVE BEEN DREDGED UP AS A RESULT OF THIS INITIATIVE.

AND PLEASE UNDERSTAND THAT THE PRESIDENT, MYSELF, THE STAFF FROM THE AGENCIES, ALL UNDERSTAND VERY, VERY CLEARLY THE PAIN THAT MANY OF YOU, OR YOUR FAMILIES HAVE FELT. WE ARE VERY SYMPATHETIC AND CANNOT BEGIN TO UNDERSTAND FOR OURSELVES. BUT BY PROVIDING ACCESS TO RECORDS, ACCESS TO INFORMATION, HOLDING A CONFERENCE EXACTLY LIKE THIS, WE WANT YOU TO KNOW THAT YOU ARE BEING LISTENED TO.

Ms. Gordon
Mr. See
Dr. Egleman
Mr. Silverman

I KNOW THERE HAS BEEN SOME HEATED DISCUSSION IN THIS ROOM. BUT ALL IN ALL I THINK THIS HAS BEEN A POSITIVE CONFERENCE, AND I THINK MOST OF YOU WOULD AGREE THAT IT IS A POSITIVE. AND FOR THAT WE HAVE TO THANK SECRETARY O'LEARY, THE OTHER MEMBERS OF THE CABINET, AND THE PRESIDENT.

4 AS THE PRESIDENT SAID ON OCTOBER 3RD, "I SAW THIS AS AN INDISPENSABLE PART OF OUR EFFORT TO RESTORE THE CONFIDENCE OF THE AMERICAN PEOPLE IN THE INTEGRITY OF THEIR GOVERNMENT."

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JUST THINK WHAT THIS VERY CONFERENCE MEANS. HOW FAR WE HAVE COME. THE FACT THAT PEOPLE LIKE CLAUDE , AND OTHER OFFICIALS OF MY GOVT AND YOUR GOVT ARE HEAR TRYING TO GET AT THE TRUTH, HOW TO FOLLOW UP CORRECTLY BUT EFFECTIVELY. CAN YOU IMAGINE THIS HAPPENING 20 YEARS AGO, 10 YEARS AGO, FIVE YEARS AGO? NO. BUT THIS PRESIDENT HAS MADE A COMMITMENT TO THE AMERICAN PEOPLE AND TO YOU TO TRY AND DO THE RIGHT THING...TO RESTORE TRUST. AS WE'VE SEEN, GETTING AT THE TRUTH IS NEITHER SIMPLE OR EASY..

BUT THE PRESIDENT IS COMMITTED TO INSURING THAT ALL RECORDS BE MADE AVAILABLE TO THE PUBLIC. HE HAS PLEDGED TO US THAT THE GOVERNMENT WILL TELL THE TRUTH AND DO THE RIGHT THING SO THAT THE GOVERNMENT CAN KEEP ITS COMMITMENT TO THE AMERICAN PEOPLE.

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2

OF MIND.

WE MUST DEPEND ON THE GREAT TRADITION OF OUR DEMOCRACY TO KEEP YOUR VOICES HEARD. THE PEOPLE YOU SEE IN THIS ROOM CANNOT DO IT ALONE. THEY DEPEND ON YOU TO CORRESPOND WITH YOUR MEMBERS OF CONGRESS, URGE THEM TO STAY INVOLVED AND STAY ATTENTIVE. WORK WITH THOSE IN THIS ROOM TO CRAFT INNOVATIVE SOLUTIONS

PROBABLY MOST IMPORTANTLY, WE MUST WORK WITH EACH OTHER RESPECTFULLY AND TOGETHER TO CRAFT SOLUTIONS, EVEN WHEN WE DISAGREE. THIS WON'T BE EASY. BUT YOU HAVE TO START SOMEWHERE. THIS PRESIDENT STARTED THIS INITIATIVE AND THIS CONFERENCE IS YET ANOTHER STEP.

I URGE YOU TO STAY INVOLVED. AS THE PRESIDENT SAID, "BY MAKING OURSELVES ACCOUNTABLE FOR THE SINS OF THE PAST, I HOPE MORE THAN ANYTHING ELSE, WE ARE LAYING THE FOUNDATION STONE FOR A NEW ERA....AND UNDER OUR WATCH, WE WILL NO LONGER HIDE THE TRUTH FROM OUR CITIZENS. WE WILL ACT AS IF ALL THAT WE DO WILL SEE THE LIGHT OF DAY. ALL OF US AS AMERICANS WILL BE BETTER OFF BECAUSE LARGER LESSON WE LEARNED IN THIS EXERCISE AND BECAUSE OF OUR CONTINUING EFFORT TO DEMONSTRATE TO OUR PEOPLE THAT WE CAN BE FAITHFUL TO THEIR VALUES.

THIS CONFERENCE HAS BEEN ABOUT BEING FAITHFUL. I KNOW YOU HAVE NOT HEARD THAT THIS GOVERNMENT CAN SOLVE ALL OF THE PROBLEMS OF THE PAST... BUT IT CAN TELL THE TRUTH...BE OPEN...BE SINCERE, ENGAGE IN MEANINGFUL DIALOGUE. WE ALL ARE BETTER OFF BECAUSE OF IT AND WE SHOULD REMEMBER WHAT WE HAVE LEARNED HERE.

THANK YOU ALL VERY, VERY MUCH FOR PARTICIPATING. FOR TRAVELLING HERE AND SPENDING SO MUCH OF YOUR TIME HERE. THANK YOU AGAIN TO THE ORGANIZERS. THANK YOU FOR HAVING ME. GOOD LUCK. TRAVEL SAFELY. THANK YOU

MEMORANDUM
OF CALL

Previous editions usable

TO: PC

☒ YOU WERE CALLED BY- ☐ YOU WERE VISITED BY-

Lori ~~to~~ Azim

OF (Organization)

☒ PLEASE PHONE ☐ FTS ☐ AUTOVON

1800 493 3103

☐ WILL CALL AGAIN ☐ IS WAITING TO SEE YOU

☐ RETURNED YOUR CALL ☐ WISHES AN APPOINTMENT

MESSAGE

Day Energy

RECEIVED BY

S

DATE

2/23

TIME

5:00

50363-111 NSN 7540-00-634-4018
*U.S. G.P.O.:1994-300-891/00003

OPTIONAL FORM 363 (Rev. 1-94)
Prescribed by GSA

MEMORANDUM
OF CALL

Previous editions usable

TO: Phil Pager

☒ YOU WERE CALLED BY- ☐ YOU WERE VISITED BY-

Anne Elliot

OF (Organization)

☒ PLEASE PHONE ☐ FTS ☐ AUTOVON

586-1607

☐ WILL CALL AGAIN ☐ IS WAITING TO SEE YOU

☐ RETURNED YOUR CALL ☐ WISHES AN APPOINTMENT

MESSAGE

Mondays Human Radiation event
• AP reporter Melissa Robinson
will be there

• Press release
will be in office for 1/2 hr -

RECEIVED BY

J

DATE

2-23

TIME

5:25

50363-111 NSN 7540-00-634-4018
*U.S. G.P.O.:1994-300-891/00003

OPTIONAL FORM 363 (Rev. 1-94)
Prescribed by GSA

①

Draft 2/27/96

LET ME BEGIN WITH SIMPLE THANK YOU TO EVERYONE WHO HAS PARTICIPATED IN THIS WORKSHOP OVER THE LAST DAY and a HALF.

TO DORIS CAMPOS-INFANTINO AND CLAUDE BAILEY FOR MODERATING. THANK YOU VERY MUCH. I KNOW YOU'VE DONE AN OUTSTANDING JOB UNDER SOME TRYING CONDITIONS.

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FINALLY, I'D LIKE TO THANK THOSE OF YOU THAT HAVE TRAVELLED FROM ACROSS THE COUNTRY, SOME OF YOU I UNDERSTAND FROM VERY FAR PLACES, TO COME HERE. I KNOW THAT YOU HAVE BEEN LIVING WITH THESE ISSUES FOR DECADES AND THE LAST 2-3 YEARS HAVE BEEN BOTH A BLESSING AND A CURSE IN MANY WAYS. A BLESSING IN THAT THE PRESIDENT HAS STARTED A PROCESS – AND I EMPHASIZE STARTED, BECAUSE THIS IS NOT THE END – THAT HAS ENABLED MANY OF YOU TO GET SOME ANSWERS TO SOME QUESTIONS THAT HAVE BEEN A DARK SECRET FOR SO MANY YEARS. BUT IT HAS ALSO BEEN VERY PAINFUL FOR MANY OF YOU. MANY PAINFUL MEMORIES THAT HAVE BEEN DREDGED UP AS A RESULT OF THIS INITIATIVE.

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AS THE PRESIDENT SAID ON OCTOBER 3RD, "I SAW THIS AS AN INDISPENSABLE PART OF OUR EFFORT TO RESTORE THE CONFIDENCE OF THE AMERICAN PEOPLE IN THE INTEGRITY OF THEIR GOVERNMENT."

(7)

JUST THINK WHAT THIS VERY CONFERENCE MEANS. HOW FAR WE HAVE COME. THE FACT THAT PEOPLE LIKE CLAUDE , AND OTHER OFFICIALS OF MY GOVT AND YOUR GOVT ARE HEAR TRYING TO GET AT THE TRUTH, HOW TO FOLLOW UP CORRECTLY BUT EFFECTIVELY. CAN YOU IMAGINE THIS HAPPENING 20 YEARS AGO, 10 YEARS AGO, FIVE YEARS AGO? NO. BUT THIS PRESIDENT HAS MADE A COMMITMENT TO THE AMERICAN PEOPLE AND TO YOU TO TRY AND DO THE RIGHT THING...TO RESTORE TRUST. AS WE'VE SEEN, GETTING AT THE TRUTH IS NEITHER SIMPLE OR EASY..

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THANK YOU ALL VERY, VERY MUCH FOR PARTICIPATING. FOR TRAVELLING HERE AND SPENDING SO MUCH OF YOUR TIME HERE. THANK YOU AGAIN TO THE ORGANIZERS. THANK YOU FOR HAVING ME. GOOD LUCK. TRAVEL SAFELY. THANK YOU

Draft 2/27/96

LET ME BEGIN WITH SIMPLE THANK YOU TO EVERYONE WHO HAS PARTICIPATED IN THIS WORKSHOP OVER THE LAST DAY and a HALF.

TO DORIS _____ AND CLAUDE BAILEY FOR MODERATING. THANK YOU VERY MUCH. I KNOW YOU'VE DONE AN OUTSTANDING JOB UNDER SOME TRYING CONDITIONS.

staff of Interagency Working Group
TO TARA O'TOOLE AND HER STAFF AT THE ENERGY DEPARTMENT, THANK YOU FOR ORGANIZING THIS, THE ROOM, THE TRAVEL, THE LOGISTICS. THOSE OF US THAT HAVE ORGANIZED EVENTS KNOW HOW MUCH GOES INTO THIS.

Painful
FINALLY, I'D LIKE TO THANK THOSE OF YOU THAT HAVE TRAVELLED FROM ACROSS THE COUNTRY TO COME HERE. I KNOW THAT YOU HAVE BEEN LIVING WITH THESE ISSUES FOR DECADES AND THE LAST 2-3 YEARS HAVE BEEN BOTH A BLESSING AND A CURSE IN MANY WAYS. A BLESSING IN THAT THE PRESIDENT HAS STARTED A PROCESS – AND I EMPHASIZE STARTED, BECAUSE THIS IS NOT THE END – THAT HAS ENABLED MANY OF YOU TO GET SOME ANSWERS TO SOME QUESTIONS THAT HAVE BEEN A DARK SECRET FOR SO MANY YEARS. BUT IT HAS ALSO BEEN A CURSE IN THAT YOU THERE HAVE BEEN MANY PAINFUL MEMORIES THAT HAVE BEEN DREDGED UP AS A RESULT OF THIS INITIATIVE.

Sympathetic awareness & empathy starting
BUT ALL IN ALL I THINK THIS HAS BEEN A POSITIVE CONFERENCE, AND I THINK MOST OF YOU WOULD AGREE THAT IT IS A POSITIVE. AND FOR THAT WE HAVE TO THANK SECRETARY O'LEARY, THE OTHER MEMBERS OF THE CABINET, AND THE PRESIDENT.

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and don't
JUST THINK WHAT THIS VERY CONFERENCE MEANS. HOW FAR WE HAVE COME. THE FACT THAT PEOPLE LIKE CLAUDE, AND TARA, AND OTHER OFFICIALS OF MY GOVT AND YOUR GOVT ARE HEAR TRYING TO GET AT THE TRUTH, HOW TO FOLLOW UP CORRECTLY BUT EFFECTIVELY. CAN YOU IMAGINE THIS HAPPENING 20 YEARS AGO, 10 YEARS AGO, FIVE YEARS AGO? NO. BUT THIS PRESIDENT HAS MADE A COMMITMENT TO THE AMERICAN PEOPLE AND TO YOU TO TRY AND DO THE RIGHT THING...TO RESTORE TRUST. AND IT'S PRESIDENT CLINTON WHO WE HAVE TO THANK.

As we've seen, getting at the truth is simple not easy.

The President ^{and a cabinet} is committed to ensuring that all records are made available ² to the public / fair reading - really with copies

HE HAS PLEDGED TO US THAT THE GOVERNMENT WILL TELL THE TRUTH AND DO THE RIGHT THING SO THAT THE GOVERNMENT CAN KEEP ITS COMMITMENT TO THE AMERICAN PEOPLE. NOW YOU MIGHT NOT LIKE ALL OF THE REMEDIES. MODERN GOVERNMENT IS CONSTRAINED BY FISCAL RESOURCES, POLITICAL GRIDLOCK AND AN EVER-SHRINKING WORKFORCE. BUT THE GOVERNMENT WILL TELL THE TRUTH, SO THAT YOU CAN HAVE TRUST AGAIN AND KNOW THIS SORT OF THING CAN, NEVER, EVER HAPPEN AGAIN.

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AS A RESULT OF THIS CONFERENCE

- uranium miners
- greater understanding of your concerns
- a commitment to ongoing dialogue

We must depend on the great task of our democracy to keep these stories alive.

BUT THE PEOPLE YOU SEE IN THIS ROOM CANNOT DO IT ALONE. THEY DEPEND ON YOU, IN THE GREAT TRADITION OF OUR DEMOCRACY, TO KEEP THESE STORIES ALIVE. CORRESPOND WITH YOUR MEMBERS OF CONGRESS, URGE THEM TO STAY INVOLVED AND STAY ATTENTIVE. WORK WITH THOSE IN THIS ROOM TO CRAFT INNOVATIVE SOLUTIONS IN

Work when can show responsibility and together to craft solutions, even when we disagree. This won't be easy. But you have to start somewhere.

*think the
remedies don't
go far
enough*

THIS MODERN ERA WHERE THE GOVERNMENT HAS LESS RESOURCES. WORK TO ENSURE THAT CURRENT AND FUTURE SCIENTIFIC RESEARCH IS CONDUCTED ETHICALLY AND FAIRLY.

SCIENCE IS NOT BAD. THIS COUNTRY, THIS WORLD, NEEDS SCIENCE. MY MOTHER-IN-LAW AND OTHER MEMBERS OF MY FAMILY WOULD NOT HAVE SURVIVED BREAST CANCER WITHOUT SCIENCE AND RADIATION THERAPY. WE HAVE TO CONTINUE TO RESEARCH, BUT THERE IS A RIGHT WAY AND A WRONG WAY. AND THIS GOVERNMENT HAS PLEDGED TO DO IT THE RIGHT WAY.

I URGE YOU TO STAY INVOLVED. AS THE PRESIDENT SAID, "BY MAKING OURSELVES ACCOUNTABLE FOR THE SINS OF THE PAST, I HOPE MORE THAN ANYTHING ELSE, WE ARE LAYING THE FOUNDATION STONE FOR A NEW ERA....AND UNDER OUR WATCH, WE WILL NO LONGER HIDE THE TRUTH FROM OUR CITIZENS. WE WILL ACT AS IF ALL THAT WE DO WILL SEE THE LIGHT OF DAY. ALL OF US AS AMERICANS WILL BE BETTER OFF BECAUSE LARGER LESSON WE LEARNED IN THIS EXERCISE AND BECAUSE OF OUR CONTINUING EFFORT TO DEMONSTRATE TO OUR PEOPLE THAT WE CAN BE FAITHFUL TO THEIR VALUES.

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THANK YOU ALL VERY, VERY MUCH FOR PARTICIPATING. THANK YOU AGAIN TO THE ORGANIZERS. THANK YOU FOR HAVING ME. GOOD LUCK. TRAVEL SAFELY. THANK YOU

MESSAGE CONFIRMATION

FEB-27-96 08:19

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THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

October 3, 1995

REMARKS BY THE PRESIDENT
IN ACCEPTANCE OF HUMAN RADIATION FINAL REPORT

Old Executive Office Building

11:07 P.M. EDT

THE PRESIDENT: Let me begin with a simple thank you to everyone who participated in this extraordinary project and to everyone who supported them.

I am especially glad to see here today Senator Glenn, who's been so active in working on medical ethics issue, Congressman Markey, who's worked on this issue for a very long time, Congressman Frost, Secretary Shalala, Deputy Secretary of Veterans Affairs Herschel Gober, and of course, the Attorney General who basically tries to get us all to do the right thing all the time. (Laughter.)

I want to thank Secretary O'Leary for her extraordinary devotion to this cause. And you heard in her remarks basically the way that she views this. It's a part of her ongoing commitment to finish the end of the Cold War. And perhaps no Energy Secretary has ever done as much as she has to be an advocate, whether it is for continued reforms within the Energy Department or her outspoken endorsement of the strongest possible commitment on the part of the United States to a Comprehensive Test Ban Treaty, which I believe we will achieve next year in no small measure thanks to the support of the Secretary of Energy.

And, of course, I want to thank Dr. Ruth Faden for her extraordinary commitment of about a year and a half of her life to this unusual but important task.

And all of you who served on the committee -- I remember the first time we put this committee together. I looked -- I said, that's a pretty distinguished outfit. I wish I could give them five or six jobs to do. (Laughter.) I'll expect you back next Monday and then we'll -- (laughter). I do thank you so much for the work you have done.

Let me tell you that, just as this is an important part of the efforts that Secretary O'Leary outlined, I saw this committee as an indispensable part of our effort to restore the confidence of the American people in the integrity of their government. All of these political reform issues to me are integrated. When I became the President, I realized we had great new economic challenges, we had profound social problems, that a lot of these things had to be done by an energized American citizenry, but that our national government had a role to play in moving our country through this period of transition. And in order to do it, we needed to increase the capacity of the government to do it through political reform, but we also needed, as much as anything else, to increase the confidence of the American people that, at the very least, they could trust the United States government to tell the truth and to do the right things.

So you have to understand that, for me, one reason this is so important is that I see it as part of our ongoing effort to give this government back to the American people -- Senator Glenn's long effort to get Congress to apply to itself the same laws it

MORE

imposes on the private sector; the restrictions that I imposed on members of my administration in high positions for lobbying for foreign governments; and when the lobby bill failed in the Congress, I just imposed it by executive order on members of the Executive Branch. All these efforts at political reform, it seems to me, are important.

But none of these efforts can succeed unless people believe that they can rely on their government to tell them the truth and to do the right thing. We have declassified thousands of government documents, files from second world war, the Cold War, President Kennedy's assassination. These actions are not only consistent with our national security, they are essential to advance our values.

So, to me, that's what this is all about. And to all those who represent the families who have been involved in these incidents, let me say to you, I hope you feel that your government has kept its commitment to the American people to tell the truth and to do the right thing.

We discovered soon after I entered office that with the specter of an atomic war looming like Armageddon far nearer than it does today, the United States government actually did carry out on our citizens experiments involving radiation. That's when I ordered the creation of this committee. Dr. Faden and the others did a superb job. They enlisted many of our nation's most significant and important medical and scientific ethicists. They had to determine first whether experiments conducted or sponsored by our government between 1944 and 1974 met the ethical and scientific standards of that time and of our time. And then they had to see to it that our research today lives up to nothing less than our highest values and our most deeply-held beliefs.

From the beginning, it was obvious to me that this energetic committee was prepared to do its part. We declassified thousands of pages of documents. We gave committee members the keys to the government's doors, file cabinets and safes. For the last year and a half, the only thing that stood between them and the truth were all the late nights and hard work they had to put in.

This report I received today is a monumental document -- (laughter) -- in more ways than one. But it is a very, very important piece of America's history, and it will shape America's future in ways that will make us a more honorable, more successful and more ethical country.

What this committee learned I would like to review today with a little more detail than Dr. Faden said, because I think it must be engraved on our national memory. Thousands of government-sponsored experiments did take place at hospitals, universities and military bases around our nation. The goal was to understand the effects of radiation exposure on the human body.

While most of the tests were ethical by any standards, some were unethical, not only by today's standards, but by the standards of the time in which they were conducted. They failed both the test of our national values and the test of humanity.

In one experience, scientists -- experiment -- scientists injected plutonium into 18 patients without their knowledge. In another, doctors exposed indigent cancer patients to excessive doses of radiation, a treatment from which it is virtually impossible that they could ever benefit.

The report also demonstrates that these and other experiments were carried out on precisely those citizens who count most on the government for its help -- the destitute and the gravely

ill. But the dispossessed were not alone. Members of the military -- precisely those on whom we and our government count most -- they were also test subjects.

Informed consent means your doctor tells you the risk of the treatment you are about to undergo. In too many cases, informed consent was withheld. Americans were kept in the dark about the effects of what was being done to them. The deception extended beyond the test subjects themselves to encompass their families and the American people as a whole, for these experiments were kept secret. And they were shrouded not for a compelling reason of national security, but for the simple fear of embarrassment, and that was wrong.

Those who led the government when these decisions were made are no longer here to take responsibility for what they did. They are not here to apologize to the survivors, the family members or the communities who's lives were darkened by the shadow of the atom and these choices.

So today, on behalf of another generation of American leaders and another generation of American citizens, the United States of America offers a sincere apology to those of our citizens who were subjected to these experiments, to their families, and to their communities.

When the government does wrong, we have a moral responsibility to admit it. The duty we owe to one another to tell the truth and to protect our fellow citizens from excesses like these is one we can never walk away from. Our government failed in that duty, and it offers an apology to the survivors and their families and to all the American people who must -- who must be able to rely upon the United States to keep its word, to tell the truth, and to do the right thing.

We know there are moments when words alone are not enough. That's why I am instructing my Cabinet to use and build on these recommendations, to devise promptly a system of relief, including compensation, that meets the standards of justice and conscience.

When called for, we will work with Congress to serve the best needs of those who were harmed. Make no mistake, as the committee report says, there are circumstances where compensation is appropriate as a matter of ethics and principle. I am committed to seeing to it that the United States of America lives up to its responsibility.

Our greatness is measured not only in how we so frequently do right, but also how we act when we know we've done the wrong thing; how we confront our mistakes, make our apologies, and take action.

That's why this morning, I signed an executive order instructing every arm and agency of our government that conducts, supports or regulates research involving human beings to review immediately their procedures, in light of the recommendations of this report, and the best knowledge and standards available today, and to report back to me by Christmas.

I have also created a Bioethics Advisory Commission to supervise the process, to watch over all such research, and to see to it that never again do we stray from the basic values of protecting our people and being straight with them.

The report I received today will not be left on a shelf to gather dust. Every one of its pages offers a lesson, and every lesson will be learned from these good people who put a year and a half of their lives into the effort to set America straight.

Medical and scientific progress depends upon learning about people's responses to new medicines, to new cutting-edge treatments. Without this kind of research, our children would still be dying from polio and other killers. Without responsible radiation research, we wouldn't be making the progress we are in the war on cancer. We have to continue to research, but there is a right way and a wrong way to do it.

There are local citizens' review boards, there are regulations that establish proper informed consent and ensure that experiments are conducted ethically. But in overseeing this necessary research, we must never relax our vigilance.

The breathtaking advances in science and technology demand that we always keep our ethical watchlight burning. No matter how rapid the pace of change, it can never outrun our core convictions that have stood us so well as a nation for more than 200 years now, through many different scientific revolutions.

I believe we will meet the test of our times -- that as science and technology evolve, our ethical conscience will grow, not shrink. Informed consent, community right-to-know, our entire battery of essential human protections -- all these grew up in response to the health and humanitarian crises of this 20th century. They are proof that we are equal to our challenges.

Science is not ever simply objective. It emerges from the crucible of historical circumstances and personal experience. Times of crisis and fear can call forth bad science, even science we know in retrospect to be unethical. Let us remember the difficult years chronicled in this report, and think about how good people could have done things that we know were wrong.

Let these pages serve as an internal reminder to hold humility and moral accountability in higher esteem than we do the latest development in technology. Let us remember, too, that cynicism about government has roots in historical circumstances. Because of stonewallings and evasions in the past, times when a family member or a neighbor suffered an injustice and had nowhere to turn and couldn't even get the facts, some Americans lost faith in the promise of our democracy. Government was very powerful, but very far away and not trusted to be ethical.

So today, by making ourselves accountable for the sins of the past, I hope more than anything else, we are laying the foundation stone for a new era. Good people, like these members of Congress who have labored on this issue for a long time, and have devoted their careers to trying to do the right thing, and having people justifiably feel confidence in the work of their representatives. They will continue to work to see that we implement these recommendations.

And under our watch, we will no longer hide the truth from our citizens. We will act as if all that we do will see the light of day. Nothing that happens in Washington will ever be more important in anyone's life affected by these experiments, perhaps, than these reports we issue today. But all of us as Americans will be better off because of the larger lesson we learned in this exercise and because of our continuing effort to demonstrate to our people that we can be faithful to their values.

Thank you very much. (Applause.)

END

11:23 A.M. EDT