



# Department of Justice

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STATEMENT

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OF

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BEFORE THE

SUBCOMMITTEE ON ADMINISTRATIVE LAW

AND GOVERNMENTAL RELATIONS

COMMITTEE ON THE JUDICIARY

U.S. HOUSE OF REPRESENTATIVES

CONCERNING

GOVERNMENT-SPONSORED RADIATION TESTS ON HUMANS AND POSSIBLE

COMPENSATION FOR PERSONS HARMED IN THE TESTS

PRESENTED ON

FEBRUARY 2, 1994

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear before you today to discuss the role of the Department of Justice in connection with the Administration's commitment to a full and open examination of the nature, extent, and effects of government conducted or sponsored human radiation experiments involving intentional exposure to ionizing radiation.

The Department of Justice has been an active, full-time partner in the Human Radiation Interagency Working Group since the inception of that group on January 3, 1994. Together with the Departments of Energy, Defense, Health and Human Services, and Veterans Affairs, and the National Aeronautics and Space Administration, the Central Intelligence Agency, and the Office of Management and Budget, the Department of Justice shares a commitment to a full and public accounting of the government's human radiation experiments during the past fifty years.

The Interagency Working Group will conduct an investigation of human radiation experiments conducted by or on behalf of the government since 1944, with particular emphasis on experiments conducted prior to May 30, 1974, the date of issuance of the Department of Health, Education, and Welfare Regulations for the Protection of Human Subjects (45 C.F.R. 46). The focus of the investigation will be on experiments on individuals involving intentional exposure to ionizing radiation (excluding common and

routine clinical practices) and experiments involving intentional environmental releases of radiation that were designed to test human health effects of, or the extent of human exposure to, ionizing radiation. In addition, the investigation will examine certain radiation experiments that were noted in the December 1993 report by the General Accounting Office (These experiments generally involved atmospheric releases that were not intended to test human exposure. However, their potential effect on humans will be studied by the Interagency Working Group). Further inquiry into other radiation experiments may be undertaken if warranted.

The task of the Interagency Working Group is to conduct an open and thorough investigation of Cold War-era government sponsored human radiation experiments. The group will coordinate a government-wide effort to uncover the nature and extent of such experiments, to seek answers to questions of whether medical follow-up to the experiments is warranted, and whether compensation or other assistance to those subjected to experiments may be appropriate.

The Interagency Working Group has established five subcommittees to address specific subject issues: Public Information and Communications; Retrieval and Review of Records; Ethical and Scientific Standards; Congressional Relations; and Legal Issues. Representatives of the Department of Justice have participated in the work of these subcommittees to begin the arduous task of

documenting, analyzing, and making public the details of experiments conducted since the onset of the Cold War era.

In the relatively brief span of time since the Interagency Working Group undertook its task, substantial progress has been made in developing mechanisms to gather maximum information from outside and within the government on the nature and extent of human radiation experiments, to preserve that information for deliberate and thorough investigation, and to make the information public to the fullest extent possible while protecting the privacy of the individuals involved.

Through its communications and outreach subcommittee, the Interagency Working Group has developed guidelines for collection of information from the general public concerning incidents and details of human radiation experiments. Information collected through these efforts will be pursued by the Interagency Working Group and compared with information in the files and records of federal agencies to capture the greatest amount of information on the extent of human radiation experiments.

In consultation with the Record Retrieval and Inventory subcommittee, each of the federal agencies that may have conducted or sponsored human radiation experiments has already taken steps to notify its components, as well as outside entities that conducted such experiments under agency contract or grant, to locate and

preserve records of human radiation experiments and to coordinate the retrieval and inventory of such records for further investigation. The Department of Justice has consulted with our partners in the Interagency Working Group to ensure that consistent procedures are employed at each agency and that the scope of these record searches will be comprehensive.

The investigation of human radiation experiments will not be restricted to the government's internal resources. The Interagency Working Group's Ethical and Scientific Standards subcommittee, in which the Department of Justice has participated, offered advice and counsel to the working group on the establishment of a body of citizens from outside the government to assist the working group through independent review of the ethical and scientific standards by which the experiments will be evaluated. To that end, on January 18, 1994, the President signed an Executive Order forming an Advisory Committee on Human Radiation Experiments, to be made up of private citizens, including experts in ethics, medicine, science, and law, that will afford independent advice and recommendations to the Interagency Working Group concerning human radiation experiments. The Advisory Committee will determine the ethical and scientific standards and criteria by which it will evaluate the experiments and the extent to which the experiments were consistent with applicable standards. If required to protect the health of individuals who were subjects of experiments or their descendants, the Advisory Committee may recommend that particular

subjects of an experiment, or their descendants, be notified of any potential health risk or the need for medical follow-up. The Advisory Committee may recommend further policies, as needed, to ensure compliance with recommended ethical and scientific standards for human radiation experiments.

In compliance with the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2), the meetings of the Advisory Committee on Human Radiation Experiments will be open to the public except as to discussions of individual subjects or their records. Such discussions will be closed to protect personal privacy interests. Six months from the filing date of the Advisory Committee's charter, the Advisory Committee will issue an interim report stating whether it anticipates fulfilling its duties within a one-year time frame.

These measures constitute a major initiative on the part of the government to develop a clear and credible record concerning the nature, extent, and effects of human radiation experiments, and to answer questions of whether the experiments comported with applicable ethical and scientific standards. The Interagency Working Group has also undertaken the task of developing recommendations for appropriate responses to those who were affected by these experiments.

The Department believes that if the Administration and Congress determine that relief is warranted after a review of the facts, legislative action by Congress may be necessary to provide for an appropriate federal response. However, I want to emphasize that whether legislation is needed and what the nature of any such legislative proposal would be are questions that must await full development of the facts and details concerning the nature, extent, and effects of human radiation experiments.

The Interagency Working Group's Legal Issues subcommittee is working to develop a broad range of potential responses to individuals affected by human radiation experiments including the following:

1. Taking immediate action to provide information to subjects and their families;
2. Notifying particular subjects of human radiation experiments, or their descendants, of any potential health risk or the need for medical follow-up when required to protect the health of individuals.
3. Examining various models for appropriate federal responses, including those incorporated into other federal programs, such as those for "downwinders," Veterans exposed to radiation, and the Japanese-ancestry interns during World War II. The range of

federal responses under consideration include potential monetary compensation, medical follow-up, disclosure of detailed information, formal apologies or other recognition, and on-going research, education and information programs; and

4. Developing specific recommendations for legislative and other action that may be appropriate once the Working Group and Advisory Committee have completed at least their first phase of work and the interim report is issued.

The Department of Justice has played a unique role in the work of the Human Radiation Interagency Working Group. We have offered legal advice and counsel on a broad range of issues that have arisen in the Working Group's subcommittees since the first week of this year.

We worked closely with our fellow agencies to ensure that procedures for record review and retrieval will be carried out promptly, yet with no sacrifice of the personal privacy interests of individuals subjected to human radiation experiments. Our counsel on matters implicating the Privacy Act and the Freedom of Information Act has been offered in the spirit of the Administration's commitment to making public the greatest amount of information at the earliest possible time while still shielding experiment subjects and their families from embarrassing public exposure in matters of personal privacy.

We have worked to ensure that the mission of the independent Advisory Committee on Human Radiation Experiments is clear and that its membership includes a broad range of experts and persons of varying perspectives. Of primary concern to all of us was that its members be of the highest personal and professional qualifications and devoid of any vested interest or conflict of interest in connection with the crucial role they will play in evaluating the experiments and in making their recommendations.

We have given great attention to ensuring that the investigation entrusted to this interagency working group is comprehensive, that the integrity of records of experiments will be preserved, and that all of the facts will be developed without predisposition as to where those facts should lead us.

This is an opportunity for full and open disclosure of information that has been hidden away or ignored for too long. Once the details of what happened have been made public and judgments can be rendered on the propriety of these experiments, we will join our fellow members of the Working Group in making recommendations to the President and the Congress regarding an appropriate response to those citizens subjected to the experiments, to their families, and to the American people.

Throughout all of this activity, the Administration will continue active consultations with the Congress. However, I want to

emphasize that until the information is collected and analyzed, it would be premature to predict the form of response which will be most appropriate. The Administration has demonstrated its commitment to the subjects of radiation experimentation, and I would urge the Congress to give us an opportunity to complete the review and analysis process so that any legislative proposals can be structured on the basis of the fullest information possible to ensure that our response as a nation is fair.

The Administration is moving forward on all aspects of this important issue, including reviewing many existing compensation programs as potential models for any legislative proposals that may be appropriate once the facts have been developed. The Interagency Working Group's Legal Issues subcommittee is studying various compensation plans, including several administered by the Department of Justice. Those programs are the Radiation Exposure Compensation Act, the National Vaccine Injury Compensation Program, and the Civil Liberties Act of 1988.

#### **The Radiation Exposure Compensation Act**

The Radiation Exposure Compensation Act, 42 U.S.C.A. § 2210 note (Supp. 1993), was enacted on October 15, 1990. The Act established an administrative program to provide lump sum compassionate payments to certain individuals, or their survivors, who contracted specified cancers and nonmalignant respiratory diseases as a result of either their exposure to radiation released during above-ground

nuclear weapons tests or their exposure to radiation during employment underground in uranium mines. The procedures established in the implementing regulations are designed to utilize existing records so that claims can be resolved in a reliable, objective, and non-adversarial manner, quickly and with limited administrative costs to the United States or to the person filing the claim.

There are three basic categories of eligible claimants: Downwinders, Onsite Participants, and Uranium Miners. Claimants in each of these categories must meet two major criteria and, depending on the type of disease, several minor criteria in order to establish their eligibility to receive a compensation payment.

"Downwinders" are individuals who were exposed to fallout from atmospheric nuclear weapons testing while residing in certain statutorily designated areas in Utah, Nevada, and Arizona. In order to be eligible for the lump sum compensation payment of \$50,000.00, these individuals must establish that they resided in the area affected by fallout for the required length of time, and subsequently developed one of thirteen statutorily specified cancers.

"Onsite Participants" are individuals who participated onsite in a test involving the atmospheric detonation of a nuclear device. In order to be eligible for the lump sum compensation payment of

\$75,000.00, these individuals must establish that they participated onsite in the atmospheric detonation of a nuclear device, and subsequently developed one of the thirteen specified cancers.

"Uranium Miners" are individuals who were employed underground in uranium mines in Utah, Colorado, Arizona, New Mexico and Wyoming between 1947 and 1971. In order to be eligible for the lump sum compensation payment of \$100,000.00, these individuals must establish that they were exposed to certain levels of radiation while working in the mines, and subsequently developed lung cancer or one of four statutorily designated nonmalignant respiratory diseases.

The regulations implementing the Radiation Exposure Compensation Program were published in the Federal Register on April 10, 1992. The first claims were received on April 1, 1992, and paid on May 11, 1992. Between April 1, 1992 and January 26, 1994, the Department of Justice has received 3,595 claims. Of those, 1,570 claims have been approved for payment for a total amount in excess of \$112.5 million dollars. Denied claims total 1,493, and only 532 are pending resolution.

A recent Department of Justice Inspector General's report concluded that the Radiation Exposure Compensation Program was "well managed" and that "Government funds were properly expended for the purposes intended by the [Act]."

## The National Vaccine Injury Compensation Program

The National Vaccine Injury Compensation Program has been operating for more than five years and has largely accomplished the goals it was set up to achieve. The Program is available to compensate persons who believe they have been injured by receiving one of the standard vaccines administered in childhood. The purpose of the Program is to provide compensation in an equitable manner for persons who suffer vaccine-related injuries, while simultaneously insulating vaccine manufacturers from unpredictable liability in the civil justice system. The end result is a stable supply of critical vaccines.

Claims are resolved in the United States Court of Federal Claims, where the Justice Department represents the Secretary of Health and Human Services, the statutory administrator of the Program. Whether to pay a particular claim -- and how much is appropriate -- is determined by experienced special masters whose exclusive function on the court is to make these determinations.

Although lawyers are involved on both sides, proceedings under the Vaccine Program are less adversarial than traditional tort litigation. The resolution process is less formal, less costly, and moves more quickly than a typical lawsuit once the Secretary's position on a particular claim is made known to the court. To succeed, the process depends upon cooperation between the claimant and the Secretary. However, the resolution process frequently

includes hearings where fact and expert testimony is presented by both sides.

Since the Program started accepting claims in October of 1988, more than 1700 claims have been resolved. More than 500 of those claims were decided in favor of the claimant, resulting in awards between several hundred and several million dollars in compensation. As of the end of 1993, a total of more than \$400 million has been paid under the Program. To the extent that the Program has had difficulty, it is largely because many more claims have been filed than were expected. Several thousand claims are at some stage of the resolution process, many have yet to be assigned to a special master. Due to the volume of claims and their complexity and the limited number of court personnel available to resolve vaccine claims, the pace of resolution has been somewhat slower than many people had hoped. Nevertheless, the basic goals of providing equitable compensation to persons who suffer vaccine-related injuries and ensuring a stable supply of critical vaccines have been achieved by the Vaccine Program.

#### **The Office of Redress Administration**

The Justice Department's Civil Rights Division administers a compensation program providing for monetary payments and additional services, pursuant to the Civil Liberties Act of 1988 (Public Law 100-383, codified at 50 U.S.C. App. Section 1989).

During World War II, approximately 120,000 Japanese Americans were interned, relocated or evacuated in the U.S. because of their race. Nearly fifty years later, the country apologized for this grave injustice. On August 10, 1988, the Civil Liberties Act of 1988 was signed into law, authorizing payment of \$20,000 to each U.S. citizen or permanent resident alien of Japanese ancestry who meets the criteria for eligibility. The Act acknowledges the fundamental injustice of the internment and directs the Attorney General to identify, locate and distribute payment to each eligible individual, without requiring an application. The Act also provides for funding of a public education program to prevent the recurrence of any similar event in the future.

Of the original 120,000 persons interned or evacuated during the war, about 80,000 surviving individuals have received their redress payments. The 1988 Act and its 1992 amendments authorize \$1.65 billion for redress payments, of which, not more than \$500 million may be disbursed each fiscal year. The program will end in 1998 or when maximum program appropriations are expended, whichever occurs first.

The success of the redress program is due largely to superb research and outreach efforts utilized to identify and locate those who qualify under the Act. The task of identifying and accounting for 120,000 potential redress recipients required extensive research into historical and current information sources including

50-year-old camp rosters of the War Relocation Authority, and other government records retained by the National Archives and the Immigration and Naturalization Service.

Once a potential recipient's historical record is located, the Office of Redress Administration must then track down that person's current address or verify that the individual is deceased. This was accomplished through official sources such as the Social Security Administration and state vital statistics bureaus. Frequently, unofficial sources were utilized including relatives of potentially eligible individuals, civic associations and religious organizations.

Perhaps the most unique aspect of the redress program is that the responsibility of locating redress recipients is placed on the Attorney General. Though the Act makes provisions for accepting voluntary information from the public, it prohibits the Department from requiring internees to submit an application for redress. Specifically, the Act states that the Attorney General "shall, subject to availability of funds appropriated... encourage through a public awareness campaign, each eligible individual to submit his or her own current address..."

Rather than waiting for funding, the Office of Redress Administration began a public outreach campaign immediately. Soon after its opening, the Office opened six toll-free telephone lines

to begin gathering information about potential redress recipients, receiving 1,724 calls in the first week. The Help Line proved to be a main source of communication between the Office of Redress Administration and redress recipients.

Since over 70 percent of redress recipients reside in California, contacting and educating this sector of the Japanese American community about the redress program was a priority for the Office of Redress Administration. On October 11, 1988, a temporary office opened in San Francisco. The office operated for 90 days, distributing and gathering information, publicizing the redress program and making contacts with the Japanese American community on the West Coast. As a result of the opening of the San Francisco office, extensive contacts were made with leaders of the Japanese American community. Outreach continued through public speaking engagements, community workshops, publication of informational materials, press releases and mailings. The Office of Redress Administration has conducted over 50 workshops within the Japanese American community, meeting individually with thousands of redress recipients to provide information and assistance with their cases. These outreach strategies have been an integral part of the philosophy of the Office of Redress Administration and have continued throughout the program. The Office of Redress Administration has also brought three groups of Japanese American community leaders to its office in Washington, D.C. to participate

in a series of meetings and consultations which provide an 'inside view' of the program.

The outreach efforts and community work, in conjunction with the Office of Redress Administration's commitment to the redress effort, have made the redress program a success, fulfilling both the letter and the spirit of the redress law.

Each of these programs was carefully designed and tailored to provide efficient, appropriate compensation for the carefully defined injuries Congress intended to address. Great attention was paid to defining an appropriate recipient population, setting eligibility standards, assessing the availability of relevant evidence, and determining the propriety of monetary and other forms of compensation. We don't have any of that information with regard to the subjects of human radiation experiments at this time. The Human Radiation Interagency Working Group and the independent Human Radiation Advisory Committee are dedicated to developing a record on which the Administration can report to and work with the Congress in crafting the appropriate response the Nation deserves.