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MEMORANDUM FOR SECRETARY OF DEFENSE
DEPUTY SECRETARY OF DEFENSE *JAN*

SECDEF
HAS BEEN
JUN - 4 1997

FROM: Judith A. Miller, DoD General Counsel
(Prepared by: John A. Casciotti, OGC, 697-9657)

SUBJECT: Apology for Families of Cincinnati Radiation Experiment -- DECISION MEMO

PURPOSE: To obtain a SECDEF decision on who should sign apology letter.

DISCUSSION: The 1995 report of the Advisory Committee on Human Radiation Experiments recommended financial compensation and an apology for certain types of experiments in which violations of ethical standards resulted in harm to participants. In accepting the report, President Clinton apologized for these experiments. The most notable DoD case was at the University of Cincinnati Hospital, in which, with about \$650,000 from DoD, 88 cancer patients between 1960 and 1971 received total body radiation. There remains a dispute over whether this was to benefit the patients or to produce data on radiation effects. Based on the Advisory Committee's recommendations, the Justice Department, with our concurrence, has agreed to contribute approximately \$1 million to a \$4.3 million settlement of the families' class action litigation (the remainder being contributed by the researchers and the University). The tentative settlement, pending court approval, also calls for a DoD apology (details unspecified) to each family.

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For two reasons, I recommend that the SECDEF sign the apology letters (after court approval of the settlement). First, this best implements the Administration's approach to the apology remedy, as underscored by the President's own apology for the radiation experiments, former Secretary of Energy O'Leary's apology letters to families involved in DoE experiments, the 1997 report of the Human Radiation Interagency Working Group, and the President's May 16 apology to the Tuskegee experiment survivors. Second, the promise of a SECDEF signature will strengthen the apology remedy, possibly nudging the court toward approving the settlement.

Other points: 1) the Justice Department would be pleased with your signature, but defers to our judgment. 2) We need not be overly concerned regarding a precedent; there is only one other DoD radiation case in which an apology might be considered. 3) Alternative signatories of an apology letter include ATSD(NCBDP) (the DoD principal on the radiation experiments issue) and the Director, Defense Special Weapons Agency (which funded the research).

RECOMMENDATION: I recommend SECDEF signature. A draft apology letter is attached.

6 JUN 1997

COORDINATION: ATSD(NCBDP) concur (see attached)

SECDEF DECISION
APPROVED: *JSC*

SECDEF DECISION: Signature by: SECDEF _____

OTHER DISAPPROVED: _____

OTHER: _____



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DRAFT

Name
Address
City

Dear _____:

On behalf of the Department of Defense, I am writing to extend an apology to you for the Department's involvement in the University of Cincinnati radiation experiment, conducted from 1960 through 1971. In accepting the report of the Advisory Committee on Human Radiation Experiments, President Clinton said:

... 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 be able to rely upon the United States to keep its word, to tell the truth, and to do the right thing.

In this spirit, and with sincere regret for past wrongs and a firm rededication to the highest principles of ethics in present and future scientific research, the Department of Defense extends to you this apology for harm to participants that resulted from the University of Cincinnati total body irradiation experiment.

Sincerely,