



UNITED STATES
ATOMIC ENERGY COMMISSION
WASHINGTON, D.C. 20545

COPY NO. 1 of 2

May 13, 1974

MINUTES OF

EXECUTIVE SESSION 74-28

9:00 a.m., Monday, April 29, 1974, Commissioners' Conference Room
Germantown, Maryland

Commissioners

Dixy Lee Ray, Chairman
Clarence E. Larson
William O. Doub
William E. Kriegsman
William A. Anders

General Manager

John A. Erlewine

General Counsel

Marcus A. Rowden

Secretary of the Commission

Paul C. Bender

Staff

J. Anderson
W. Burr
G. Grant
G. Ihmle
L. Kornfeld
J. Liverman
S. Marks
L. Miazga
R. McKinney
T. Rehm
W. Weyzen

74-28

US DOE ARCHIVES-
326 US ATOMIC ENERGY
COMMISSION
SECRETARIAL
3138
3

I. Medical Ethics Problem

A. Dr. Liverman reported to the Commission on recent developments in this case noting particularly:

1. two AEC teams consisting of Inspection and DBER representatives had interviewed 20 persons in 14 cities and had examined records at the Chicago, Oak Ridge and Atlanta Record Centers and at the Center for Human Radiobiology (CHR) at Argonne National Laboratory. From the records examined over 250 documents were copied and brought back to AEC Headquarters;

2. among the documents of particular interest were:

0000216

11-10-11

Exec Sess
April 29, 1974

- 2 -

May 13, 1974

- a. a memorandum from Col. K. D. Nichols, District Engineer, Berkeley, dated December 24, 1946, written in response to a progress report from Berkeley, in which Col. Nichols denied authority for any intravenous injections of humans with radioactive substances under the Manhattan contract and ordered an immediate hold to any planned actions of this type, and
 - b. a memorandum from John L. Burling, AEC Headquarters Legal Officer to Edwin E. Huddleson, contractor Legal Officer, dated March 7, 1947, which stated the view of the AEC Legal Division was that all clinical testing must be carried out as part of an approved research program and that it must be susceptible to proof that each patient understood the nature and possible risk of the treatment and consented to receive such treatment in the presence of two witnesses (physicians);
3. most of the injections of Pu were made before 1947, however there were two known injections made in 1947, one in June and one in July;
 4. in 1973 three persons who were injected in the 1945-1946 time-frame were brought to the University of Rochester Hospital for follow-up tests. During their hospitalization for tests these three patients were not advised of the real purpose of the tests nor were they advised of the earlier injections of Pu which they had received. Two of these patients live in Rochester where they have been under the care of some physician for 20 years and apparently they did not question the reasons for the hospitalization. The third patient, who was injected in California in 1947 was, according to hospital records, informed at that time of the experimental nature of the intramuscular injection of a radioactive tracer sample (plutonium) and agreed to the procedure. This man now lives in Texas and was brought to Rochester for the follow-up tests through his personal physician who had been advised by the Center for Human Radiobiology (CHR) that they wished to do a follow-up study of treatment the patient had received for his malignant tumor in July 1947;

5. in the one case involving a patient at Oak Ridge the physician who administered the Pu injection stated no consent was obtained from the patient at any time, and that the present existence of this patient was unknown;
 6. with regard to exhumation of deceased patients Dr. Liverman reported that the CHR administration had requested personnel of the MIT Radioactivity Center to obtain permission from ten deceased patients' families for exhumation on the basis that the remains would be examined to determine the distribution of residual radioactivity from past medical treatment, and that the families of the deceased were told that the latter had received injections of mixtures of radioisotopes for an experimental treatment except in one case where the family was not informed of the reason for the injection. Dr. Liverman indicated all exhumation activity had now been stopped; and
 7. that with regard to the Rochester group of patients the records were incomplete and there was a need to go into the records in more detail to bring that part of the investigation up to the level of the rest.
- B. Following his report Dr. Liverman made the following preliminary recommendations:
1. that we inform those still surviving of the nature of the injections;
 2. that we take the necessary steps to bring us into compliance with DHEW guidelines; and
 3. that we agree there were good scientific reasons for following the excretion curve of plutonium.
- C. The Commissioners then raised the following points and questions:
1. Chairman Ray asked that with the exception of the Rochester Group have we gone as far as we need to go with the investigation? Mr. Doub replied that he was not satisfied with the results so far at Chicago;
 2. Commissioner Anders stated that in his view the medical policy at the time of the injections was not clearly stated and that AEC had no legal commitment

Exec Sess
April 29, 1974

- 4 -

May 13, 1974

to those who received the early injections. We did however have a real commitment to those patients who were recalled in 1973 for further study. Commissioner Anders asked if the efforts at the Chicago Hospital were carried out in conjunction with those at Rochester and was advised by Dr. Liverman that they were not. Mr. Anders then asked if the Chicago patients were injected because the CHR group wanted them injected. Dr. Liverman affirmed this was the case;

3. Dr. Larson asked if a risk benefit analysis had been done on the exhumation program and received a negative answer;
4. Commissioner Doub stated that he was very concerned about the exhumation program and wanted it stopped at once. Dr. Liverman replied that the program had been stopped and that Inspection investigators could only find evidence of one exhumation having been done from records available at Chicago. Dr. Marks reiterated that the exhumation program has been stopped completely and no further actions would be taken without approval from Headquarters. At this point Commissioner Doub expressed his unhappiness with the progress of the entire investigation noting that up to this point the Commission had received no staff paper covering the investigation, no recommendations to solve the problems, and no draft press statement for use in the event of a press query.
5. In response to Commissioner Doub's expressed concern the General Counsel noted the difficulties in obtaining medical records and that particularly with regard to the Rochester records we might have a problem since these records did not belong to AEC and our only course of action was to depend on the Rochester groups Voluntary Cooperation.

Commissioner Anders agreed that Dr. Liverman could not force the release of the Rochester records by court action without Commission approval and such action would not be in the best interests of AEC.

D. The Commission agreed:

1. Dr. Liverman would circulate to each member of the Commission a paper summarizing the problem and the

0000219

~~CONFIDENTIAL USE ONLY~~

DOE ARCHIVES

Exec Sess
April 29, 1974

- 5 -

May 13, 1974

actions taken to date. (AGMBER) (This paper was circulated on May 6 as SECY-S-74-77.)

2. a full summary report including recommendations would be made to the Commission on May 13, 1974; (AGMBER) and
3. Dr. Liverman was authorized blanket authority to do whatever he thought necessary to complete the investigation except that he would not take action to inform the patients at this juncture. (AGMBER)

II. Public Documents Room

A. The Commission noted that:

1. on February 19 and 20, two individuals from Senator Abourezk's office requested certain documents dealing with solar energy research; they did not receive the documents in question and taped the conversations in the Document Room on February 20;
2. the GAO began an investigation on April 26, and found that the documents requested had been released by the Document Room on previous occasions without difficulty; and
3. in at least one other instance, Senator Abourezk has received special assistance from the Commission on energy related matters.

B. The Commission asked to be kept apprised of the situation.

III. Safeguards Task Force Report

- A. Commissioner Kriegsman noted that he had immediately notified JCAE staff and Mr. Bauser of the JCAE when the report was released by the Ribicoff Committee to the press.
- B. Chairman Ray noted a reply was necessary to Senator Ribicoff's April 26 letter, and requested Commission coordination on the draft before release. (Rehm)

Exec Sess
April 29, 1974

May 13, 1974

C. The Commission requested that AEC management be aware of what internal studies are being conducted by their staffs, and guard against premature release. In addition, a list of such studies was requested. (GM/DR/OPA)

IV. GAC Membership

The Commission requested their offices be polled on the proposed candidates. (SECY)

V. Preparation for GAC Meetings May 1 and 3

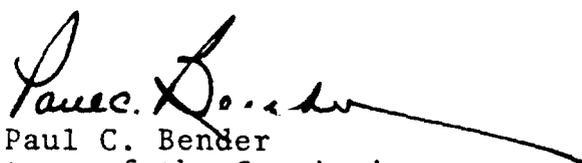
The Commission agreed Commissioner Doub would represent the Commission at the May 1 Meeting and Commissioners Kriegsman and Anders would attend the May 3 Meeting.

VI. SECY-S-74-33 - 1974 AEC Citation Nominees

The Commission requested their offices be polled re their choices on the proposed nominees. (See Secretary's memorandum to the Commissioners dated May 6, 1974 for final selections.)

VII. SECY-74-574 - Reply to Lombard Squires, Chairman, General Advisory Committee (GAC)

The Commission requested their offices be polled individually for their approvals. (Approval was obtained on April 30, and the reply to GAC dispatched on that date.)



Paul C. Bender
Secretary of the Commission

(11:00 a.m.)