

Human Experimentation
Medical Research

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 WASHINGTON, D. C.

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 Director

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Dr. Irvin Stewart

James B. Donovan

Human Experimentation in Gonorrhoea

I wish to confirm our conversation of this morning in which I stated that I spoke yesterday with Oscar Cox, Assistant Solicitor General and General Counsel to the Office for Emergency Management. I wish to point out, at the outset, that one of the principal official functions of the Assistant Solicitor General is the preparation of legal opinions for the Attorney General.

Mr. Cox advised me that he had discussed the pending CMR problem on human experimentation with Attorney General Biddle, and that their conclusions were:

- (1) The problem is not a legal one but, if anything, political in nature. There should be no question of the legality of the experiments, in the absence of specific provisions of law to the contrary. While the experiments might be held to be technical violations of law in a particular jurisdiction, any criminal prosecution should be easily defended.
- (2) In view of the foregoing, no formal opinion would be rendered by the Attorney General, even though we set the matter up as a purely Federal question.
- (3) Dr. Bush should determine as a matter of policy whether the probable benefits of the experiments outweigh the possible political risks involved; if Dr. Bush believes it to be desirable, he could obtain the President's opinion before proceeding.

Cox stated that he could not "get very worried" about the political risks and that the experiments should not be subject



I reported these facts to Dr. Andrus and suggested that if Dr. Bush decides the expediency question in favor of the experiments, it would be wise (1) if possible, to avoid contracting with a municipality or a state university, since that might increase the risks, (2) if possible, to use Army prisoners or Federal prisoners, (3) to classify the contract and thus reduce the risks of public knowledge and comment, and (4) to have the work done in a cooperative jurisdiction in which no legal redtape will be encountered. I further suggested that if Dr. Bush approves the general project, we of course can seek the approval of the New York authorities but that my personal hopes for New York are not high. Our conference in New York City indicated difficulty with the Attorney General's Office (Mr. Caddy); this attitude may, of course, vanish and we need run no risk by finding out.

Our conclusions remain unchanged; viz., no criminal or civil liability should result in New York, Illinois or Georgia by reason of the experiments but the local authorities can find a technical basis for action if they are determined to oppose the work.

cc: Dr. Richards ✓
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