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24 July 1978

78-3131

MEMORANDUM FOR : Director of Central Intelligence
VIA : Deputy Director of Central Intelligence
FROM : Anthony A. Lapham
General Counsel
SUBJECT : MKULTRA - Program to Identify Subjects
of Agency-Sponsored Drug Testing

1. Action Requested: It is requested that you review the portions of this memorandum which summarize the opinion of the Justice Department to the effect that the United States Government has an obligation to attempt to identify, locate, and notify persons who unwittingly may have been subjected to, and continue to suffer harm from, drug-testing activities sponsored by this Agency in the past, and that you consider the approach described below to implement that opinion.

See Recommendation 17, p. 9

2. Background:

A. Summary of the Opinion. On 17 July 1978 the Department of Justice responded finally and officially to our 22 September 1977 request for guidance concerning the existence, extent and nature of any legal or other responsibility on the part of the U.S. Government to persons who were subjected to CIA-sponsored drug-testing in the 1950s and 1960s. (A copy of our request is attached for your information as Tab A. A copy of the Justice opinion and a covering letter which summarizes that opinion in some detail are attached as Tab B.)

3. Briefly stated, the opinion concludes that the government does have an obligation, supported by general principles of tort law, to attempt to identify, locate, and notify unwitting persons whose health might continue to be affected adversely as a result of those portions of the Agency activities in question which may reasonably be determined to have resulted in such long-term present-day consequences. You should be aware that the prior drafts of this opinion which we have seen concluded in addition that there existed a policy judgment to be made by CIA, although Justice

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avored proceeding in this regard, as to whether unwitting persons who were subjected to drug-testing sponsored by CIA, which however could not reasonably be expected to have produced long-term effects, also should be found and notified of this fact. The discussion of this policy area was removed from the final opinion, reportedly on the instructions of Judge Bell. Although the opinion now is limited to the legal aspects of this problem and finds a duty to notify only persons who may suffer continuing health consequences, it is of course still open to you to determine that a larger number of persons meeting different criteria should be included in the notification program.

4. After concluding that such a duty to notify exists, at least where further harm may be thus avoided, the opinion notes that any effort to fulfill this duty must be circumspect because of existing legal constraints and a concern for avoiding damaging intrusions into the privacy of these individuals. Accordingly, such an effort must be limited generally to an examination of federal records and the records of the institutions which were involved where such records have survived and are not protected by law from disclosure, and other documents not subject to limited disclosure such as telephone books and voter registration lists. "To the greatest extent practicable" this effort should be conducted, it is the Justice Department's opinion, without the use of personal interviews with family members, former neighbors, employers or friends since such interviews would cause further embarrassment and loss of privacy to identified subjects.

5. We have determined, and Justice has agreed in this opinion, that this Agency is not in a position, without special legislation, to offer indemnification to any institution or associated individual against liability which may be incurred as a consequence of their involvement in these activities and their agreement to cooperate with the government by making their records available and facilitating the identification of test subjects. In addition, notes Justice, in some cases the institutions themselves may be precluded by law or professional ethic from allowing the government to review their records for these purposes.

6. As to what may be done for confirmed test subjects who are identified and located, the Justice Department conclusion is that a simple notification of involvement may be made along with an offer to provide available information to the subject's physician. Neither this Agency nor any other federal agency appears to have authority, again in the absence of special legislation, to provide medical treatment or to pay the costs of private treatment in this regard. The sole recourse for persons suffering medical expenses as a result of governmental activities is to file claims and institute litigation under the Federal Tort Claims Act.