



MEMORANDUM

To: File
From: Robert García, Founding Director and Counsel, The City Project
cc:
Date: December 14, 2015
Re: US STD infections Guatemala reports on domestic and international laws

The English translation is attached of the legal analysis in the Guatemala technical report called *Experimentos en Seres Humanos: el Caso Guatemala 1946-48 (Abril 2011)*, by Comisión Técnica, Comisión Presidencial para el Esclarecimiento de los Experimentos en Humanos en Guatemala 1946-48.

The Guatemala government has published three reports on the experiments in which the US intentionally infected innocent Guatemalan people and left them untreated and uncompensated from the 1940s until the present day. Each report discusses the legal framework under domestic Guatemalan laws as of the time of the experiments, and international human rights laws. The reports are available online at <http://www.cityprojectca.org/blog/archives/41463>.

1. The Guatemala Presidential Commission Report is called *Consenting to the Damage: Presidential Commission Report for Elucidation of the Experiments Carried Out on Humans in Guatemala (2011)*. The US Department of State provided the English translation to The City Project under the Freedom of Information Act.

The report discusses the Guatemalan legal framework at pages 21-23, 31-32 and 34-35. The report refers to the Nuremberg Code at page 15. See also page 16, 121. See also the pages on responsibilities at 110-13. The report refers to the Helsinki Code at page 115. The report refers to bioethics and human rights at pages 117-18.

2. The Guatemala technical report is called *Experimentos en Seres Humanos: el Caso Guatemala 1946-48 (Abril 2011)*, by Comisión Técnica, Comisión Presidencial para el Esclarecimiento de los Experimentos en Humanos en Guatemala 1946-48.

The technical report states: “18) Given the applicable laws during that period, all directly responsible committed crimes punishable by law and its cover up suggests knowledge of criminal responsibility. (“Ante las leyes entonces vigentes, todos los directamente responsables cometieron delitos punibles por la ley y su encubrimiento insinúa conocimiento de su responsabilidad penal.”) Page 96.

The report refers to the framework of domestic Guatemala laws at the time of the experiments at pages 68-71, including prohibitions against transmission of STDs. See

also pages 92-98. The report refers to the framework of international human rights laws in section 7 at pages 80-82. Appendix One at pages 103-113 is an analysis of domestic and international laws by the Attorney General's Office of Guatemala. Appendix Two at pages 113-119 is an analysis of ethical considerations.

3. The Guatemala archival report is called *Investigación archivística sobre experimentos practicados en seres humanos en Guatemala, 1947-1948 (April 2011)*. This report was prepared by the Archivo General de Centro América (AGCA) (Central American general archives), the Archivo Histórico de la Policía Nacional (AHPN) (historical police archives), and the Dirección de los Archivos de la Paz (DAP) (peace archives).

The introduction at pages 4-6 is relevant. The report refers to domestic Guatemala laws in sections 2.4 at pages 41-45. The report refers to international human rights laws in section 7 at pages 159-66. The report concludes at page 165 that the experiments clearly violated fundamental rights of health, life, and protection, especially for the mentally infirm, and that these practices constituted a crime against humanity and a clear violation of the Nuremberg Code.

The English translation of the technical and archival reports was prepared by Border Philanthropy Partnership / Alianza Fronteriza de Filantropía.

The Guatemala technical report is called Experimentos en Seres Humanos: el Caso Guatemala 1946-48 (Abril 2011), by Comisión Técnica, Comisión Presidencial para el Esclarecimiento de los Experimentos en Humanos en Guatemala 1946-48. The following is a translation of the pages on the domestic and international legal framework.

5.3 Legal health framework applicable at the time [PDF pages 68-71]

From the perspective of the dominant explanatory model at the time, health was linked to processes of infection, giving some importance to relations with the environment but from the same perspective. At the time, new positions on the health-disease process started to emerge; thus, after technical and political discussions the WHO issues a statement in 1948 where it proposes that health is not only absence of disease but a state of complete physical, mental and social well-being, a breakthrough at the time by including these new variables. This international standard was endorsed by the Guatemalan government.

The influences and concepts that linked health to social processes that had finally managed to permeate the discourse of emerging international organizations, did not have the same echo in the discussions and debates that preceded and continued after the October Revolution of 44. As an example of the above statement, the 1945 Constitution of the Republic of Guatemala only mentions health in its 77th article regarding the protection of children, stating that the State must ensure the physical and moral health of children. (Constitution of the Republic of Guatemala, 1945). Reforms in subsequent years make no progress in proposing health as a social right.

The 45 Constitution repealed the bill of 1876 and its amendments; however, it is unclear whether the articles on health protection were included in this repeal which emphasized the control of epidemics in ports and environment sanitation as an obligation. It is important to remember that before the revolutionary period beginning in 1944, the Ministry of the Interior was the health authority by acting as a medical police (enforcing quarantine and sanitation actions), an agency where the newly ousted Jorge Ubico had been its first director. (Asturias, 1989)

Although not explicit, if the current concepts of social production of health and health promotion are applied, it is possible to see some elements in the constitutional law of 45 which, although not directly related to the health sector, undoubtedly impact the conditions that generate health. Perhaps, the most important elements in this regard are related to work, recreation, social participation, and directly the creation of the IGSS.

Regardless, the Constitution in place since March 15, 1945, provided for the protection of the person, so authorities were required to defend the rights of the people and any offense committed by a public official or employee was their sole responsibility.

Title III. Individual and social guarantees, Chapter I, Article 21 stated: "Individual Rights. Everyone enjoys the guarantees established by this Constitution, without restrictions other than those expressed herein. With the same caveat, any discrimination based on affiliation, sex, race, color, class, creed or political ideas is declared illegal and punishable."

Article 23 established that "The State shall protect human existence preferably. The authorities of the Republic are instituted to keep people in enjoyment of their rights, which are primarily the right to life, liberty, equality and security of the person, honor and property ... "

For its part, Article 24, referred to the rule of law, stating that "officials are not masters but custodians of authority, subject and never above the law and always responsible for their official conduct. In such circumstances, no government agency or public official has more power or authority than those expressly conferred on them by law. The civil liability of public officials and employees for any transgression of the law, committed while performing their duties, may be punishable at all times until the statute of limitations period has elapsed, which is ten years. Criminal liability shall be extinguished by the passage of double the time stated by criminal law. In both cases, the statute of limitations period begins from the time any public officer or employee ceased to hold office during which he incurred in the crime If the public official or employee violates his responsibilities in detriment of third parties, the State, or the corporation he serves while performing his duties, they will be collaterally liable for consequential damages... "

The health code¹ in effect at the time, established the organization of health activity in the country in order to ensure overall health and public hygiene. In that legal instrument it became clear that the Director General of Health is the authority appointed by the President to be directly in charge of health, and as such, he was responsible for the general administration of the agency.

Within this policy, the protection of the national territory against invasion of communicable diseases by international sea and river ports and border traffic was also established, designating a Maritime Security Service and even imposing the obligation on the country Ministers and Consuls living abroad to submit to the Directorate General of Health the possible emergence of infectious or contagious diseases of mandatory international declaration.

Article 28 also established the obligation of the Directorate General of Health to define in a regulation, the diseases considered infectious and of mandatory declaration in order to prevent spread of disease and take precautions and preventive measures.

Article 40 also stipulates that the General Directorate of Health would be required to enforce the

¹ Decree 1877, issued on September 7, 1936 during the government of Jorge Ubico, health code, amended by Decree 1486 on December 18, 1936

necessary measures for the prevention and treatment of venereal diseases, establishing Prophylactic Clinics, treatment and other necessary measures. It was even mandatory for people in the medical field to keep records of patients with syphilis, gonorrhoea, chancroid, granuloma venereum, papillomas in the vulva and vulvar tuberculosis, informing of patient data for transfer to the health authority in order to initiate treatment.

Thus, this legislation provided for the obligation of the Directorate General of Health to ensure health through prevention and subsequent treatment to prevent the spread of venereal diseases, establishing the need for urgent treatment and close monitoring of people suffering from such diseases.

Another legal body, not directly linked to health, clearly specifies what happened during the experiments as a crime: the penal code in place in that era² establishes the subjects who are criminally responsible: qualifying as perpetrators, accomplices and accessories, stating that anyone criminally liable for an offense, is also civilly liable.

Perpetrators are people taking a direct part in the execution of the act, directly forcing or inducing others to commit the act and those who cooperate in the execution of an action necessary to commit the act.

Accomplices do not take part in actions taken by the perpetrators but cooperate in the execution of the act by previous or simultaneous acts.

Accessories are people who did not participate in the commission of the offense as perpetrators or accomplices but participate after its execution.

Title VIII, paragraph V includes the crime of venereal infection, which is transcribed in the following articles:

"Article 337. A person with a venereal disease that infects another person on purpose will be punished with one year of correctional prison if the disease is easily curable and three years if the disease is of a serious nature".

"Article 338. A person knowing or suspecting he or she is infected with a venereal disease infects another will be punished with six months of arrest."

"Article 339. A person not knowing he or she is sick infects another with a venereal disease shall be punished with two months of arrest."

"Article 340. People with knowledge that a person under their care is infected with a venereal

² Decree No. 2164 of the Legislative Assembly of the Republic of Guatemala, May 25, 1936, criminal code.

disease are responsible as accomplices of venereal infection, if the infected person does not seek to avoid contagion."

"Article 342. Superiors, guardians, protutors, teachers and any person that abusing their authority cooperates as an accomplice to the commission of offenses described in the preceding five paragraphs, shall be punished as perpetrators."

Therefore, it is presumed that the people in charge of coordinating this kind of experiments knew their scope and the criminal responsibility they could face for committing acts against the laws of the time.

In addition to the above, the available literature lacks more references to regulations on the exercise of the medical profession and its ethical behavior; however there was already a code of ethics along with the Hippocratic oath that regulated the medical profession, even if the newly created Medical Association of Guatemala had not included such considerations in its founding statute.³

7. THE INTERNATIONAL LEGAL FRAMEWORK [PDF pages 80-82]

Human life is of course a fundamental legal right, the supreme good, and the subject of the primary obligations of any State, the fundamental rights of the individual and the strongest protective measures. It is an essential right conditioning all others, hence, bioethics and national and international human rights regimes. The Inter-American jurisprudence protects life in two ways in the specific case of the experiments. On the one hand, the negative aspect of government inaction. On the other, the positive side is becoming more explored by the Inter-American jurisprudence and involves positive public behaviors.

The State of Guatemala has direct obligations of action involving responsibility for active conduct or **omission**, attributable to the responsibility of other States, and obligations of care and diligence in regard to the situation and the duty of guarantor of the State itself.

Both the United States and Guatemala ratified the United Nations Universal Declaration of Human Rights and the Inter-American Declaration of the Rights and Duties of Man and from that ratification

³ The statutes of the College of Physicians established in its articles of incorporation that they were organized to: a) Praise the exercise of the medical profession, maintain decorum, discipline and the medical fraternity b) To ensure the defense and protection of professional interests; c) Defend doctors harmed or threatened by the practice of the profession; d) Maintaining the free exercise of the profession; e) Defend the liberal nature of the profession and ensure that medical professionals are not made civil servants against their will. (Asturias 1989)

they are obligated to ensure the conditions required so that violations of this basic right do not occur and in particular, it is a duty of the States to prevent its agents from violating it. In this way it is evident to recognize, respect and ensure the rights of the person under Article 1 of the Inter-American Declaration of the Rights and Duties of Man and of the American Convention on Human Rights, which the United States has not ratified, as well as Article 1 and 2 of the Universal Declaration of Human Rights.

Because the human being is the holder of such rights and demands recognition, respect and protection with broad authority to complain and accuse violation of their rights even if their legitimacy is limited to promote an international process. Guatemala on behalf of their citizens, then, holds dual capacity as holder and claimant regarding bioethics rights; primarily related to the protection of life and health, access to justice for research, knowledge of the truth and adequate reparation when the existence of violations is proven.

In the case of Guatemala, we must take into account the profound moral component of Human Rights, which radiates on all expressions and protections of rights. Some are direct, concerning the right to life and health protection, and some are indirect, regarding the protection of the family as well as the obligations of the States set forth in Article 1.1 of the American Convention on Human Rights (of which the United States is not a member, but signed the American and Universal Declaration of Human Rights, which includes all persons under its jurisdiction). In this regard the overall conduct of the State is analyzed: negligent as it is not immediately responsible for everything that happens in its jurisdiction, but responsible for the behavior of its agents, agencies and officials: In this sense, we must consider the extremes of accountability: a) action, which is the most obvious hypothesis, b) omission, claimable since the State has a duty to act.

In the Guatemalan and interamerican Corpus Juris there are founding principles related to bioethics, considering both Human Rights (according to the Inter-American Declaration of the Rights and Duties of Man, 1948), which effectively makes binding mandatory in the case of experiments on our country, because it includes the human rights referred to in the Charter of the Organization of American States, an international treaty.

The American Declaration has an ideological component that is linked to the international bioethics movement. On that component lies the regulations applicable to this legal analogy: Articles 1: Everyone has the right to life; XI: The right to health preservation. But in itself, the American Declaration addresses civil and political rights as well as social and cultural rights, which are the two categories of the same set of fundamental rights. The OAS Charter, which has legal status in the case of Guatemala, contains specific references about the benefits that might come from medical science. This is relevant to the subject of experiments in our country, as is Article 34 of the OAS Charter ratified by Guatemala and the United States, which declares that States shall devote their utmost efforts to defend the human potential through the extension and application of modern medical

science knowledge. The high importance of the rights associated with human life and health of the population is shown in its absolute inviolability.

The human being is the holder of those rights; the Human Rights violation in the case of human experiments is a violation against humanity.

In conclusion: in the international regime of Human Rights, the wrongful act generating State responsibility in this case being the United States, has a normative assumption for the implementation of repairs, because these serve a triple purpose: a) restore the broken legal system, proving the validity of the fundamental legal and political decisions that inform this international regime and sustain the effectiveness of objective law; b) create or restore the conditions for the course of social and legal relations which involve the prevention of future violations; c) compensate victims of the offense in the broader sense, in this case, the State of Guatemala.

9. CONCLUSIONS [PDF pages 92-97]

9.1 Culprits

1) The human experiments conducted in Guatemala between 1946 and 1948, constitute a crime against humanity, producing deliberate and surreptitious severe damage and offenses against defenseless people, the dignity and sovereignty of the country and represent serious unethical research practices.

Direct responsibility lies on those who decided, designed and executed, that is, the researchers and the institutions that sponsored them: the United States Public Health Service (USPHS) and the Pan American Sanitary Bureau (OSP), which signed an agreement with the Directorate General of Public Health of Guatemala. The direct responsibility of US professionals is fully documented: John C. Cutler (USPHS, in leading the Venereal Disease Training and Research Center in Guatemala); R.C. Arnold (USPHS); John F. Mahoney (VDRL Director); Thomas Parran (US Surgeon General), TB Turner (Johns Hopkins), Dr. Neurath, Mr. Portnoy, Dr. Thomas Rivers of the Rockefeller Institute for Medical Research in New York; from OSP: Sacha Levitan, John Murdock (Assistant Director), Virginia Harding; Dr. McAnally and Dr. Spoto; from Washington: Dr. Cummings and F. Sopor. These researchers secretly recognized constantly deceiving patients and public opinion. The above list is subject to future findings.

2) The Ministers of Health in the years of the experiments were Dr. Julio Bianchi (1945 - 1947), Dr. Guillermo Moran (1947-1948) and Dr. Bernardo Aldana (1948-1949). We still need to determine the extent of their knowledge. The Public Health Division, whose Chief of Venereal Diseases, Dr. Juan

Manuel Funes, who was, according to Cutler's documents, the national counterpart, played a leading role in Guatemala. Dr. Luis Galich, Director of Public Health, probably had knowledge of the experiments, having been part of the Venereology Section and for publicly presenting the results of the investigations. Also Dr. Julio Salvado, the Director of the Neuropsychiatric Hospital, having requested to conduct experiments with patients in their custody and, according to Cutler, inoculate weak and deteriorated epileptic patients. Dr. Clementino Castle was also there. According to Cutler, the Army participated under the leadership of the Military Hospital Medical Service, Dr. Carlos Tejeda and Dr. Raul Maza, Honor Guard doctor. In the Asylum for the Alienated, Dr. M. Molina (Director), Dr. Carlos Salvado and Dr. William Balz in Social Assistance were also involved. Although secondary in status, we still need to account for the Guatemalan officials who were directly responsible for having accepted what was being done and granting resources.

3) As far as we know, President Juan Jose Arevalo is unlikely to have had the accurate information and training to fully understand what was happening. The only written reference found so far in his 5th and second to last Report to Congress in 1950, refers to "significant experiences on the treatment of syphilis have been made under the direction of the center." We still need to identify the relationship of the Ministers of Health. The constant turnover of his Cabinet emphasized the weakness of the public health system (4 Ministers in 6 years, apparently for political reasons).

9.2. International political context

4) The political situation at the end of World War II was the beginning of the "Cold War" between the United States and the Soviet Union, each with its own areas of influence. The United States watched and intervened in particularly weak and sensitive areas: its "Backyard" with the "Banana Republics", supported by the ideological substrate doctrines of the Manifest Destiny, the Monroe Doctrine and the "Big Stick" policy to justify roughly 19 US interventions in Mexico, the Caribbean and Central America before the Guatemala invasion in 1954.

5) The liberal dictatorships in Guatemala before 1944, maintained an attitude of absolute dependence, subordination and external weakness, much to gain support always granted by the United States, in contrast to a policy of violence within the Republic. Perpetrators sought and found a country with these characteristics to act freely, as indeed happened.

6) But as a counterbalance, in 1947 the Nuremberg Code created during the Nuremberg Trials (1945-1946) had already been drafted and published in defeated Germany during World War II against Nazi war criminals and their inhumane practices in concentration camps including medical experimentation on humans. Relevant findings included the informed and voluntary consent and absence of coercion and beneficence. Following was the Declaration of Helsinki (Finland), issued in

1964, a self-regulation of the medical profession that provides a set of ethical principles for medical research involving humans.

9.3. National socio-political context

7) Why was Guatemala chosen and not some other country equally dependent? In reality, as Cutler wrote, was a personal invitation by a Guatemalan student doctor to the supreme authority of health in the United States enough to decide to go to Guatemala? Or could there be other reasons that would need to be revealed? Can the expansionist doctrines and disdain together serve as a backdrop?

8) Arevalo was aware of the weakness of the State, the country's backwardness in all spheres and hence the conviction of turning Guatemala into a leading country in the region in terms of art and science. He put into immediate effect policies to initiate exchanges with foreign countries in education, psychology, humanities, engineering, medicine and other disciplines. He brought young teachers to Guatemala and sent students abroad with scholarships.

9) Due to the rapid change in institutions following the October Revolution, the government apparatus could not be changed simultaneously. It was not "all or nothing", but by fragments. The bureaucracy was the past, not the future. He had been on duty at the tyranny of liberalism.

10) The fragmentation of the health system further complicated the regulation and supervision of medical practice and research: lack of regulation on research prevailed although ethical precepts of medical practice were in effect, and some sectors anathematized the emerging social practice.

11) Three factors seem important and explanatory: 1) the conditions of internal instability, dependence and subordination of the country. 2) The subordinate relationship of the Guatemalan doctors to their American colleagues. 3) The sharp structure of social exclusion and marginalization in Guatemala. The scenario for similar cases to occur may be present.

9.4 Discrimination and Racism

11) Racism has been evident in the United States, even legalized toward African Americans (as the Tuskegee events for this case) and native peoples. Also racism is evident in a double standard, on one hand, the punishment of Nazi genocide, but on the other and at the same time, the derogatory racism towards domestic and foreign populations regarded as inferior, justifying that indigenous people in prison and asylums should receive no explanations. In the United States, only certain professionals would know the indigenous Guatemalan dichotomy - *Ladino*, more generally, all Latin American

population is the same.

12) Discrimination and racism in social sectors is also prevalent in Guatemala, including educated strata as professionals towards indigenous people and possibly to devalued population groups like those subjected to the experiments. Most likely, it was a cause for health officials to see the experiments as normal. Most likely, they would never do the experiments had it been other social sectors.

9.5 Law and Ethics

9. 5.1 Legal Bases.

13) Human life is a fundamental legal right, the supreme good, conditioning of other rights.

14) The human being is the holder of those rights and the violation thereof in the case of human experimentation constitutes a violation against humanity.

15) Both the United States and Guatemala, having ratified the United Nations Universal Declaration of Human Rights and the Inter-American Declaration of the Rights and Duties of Man, have an obligation to ensure conditions to avoid violations of this basic right.

16) The State of Guatemala has direct obligations for its responsibility towards actions or omissions and duty as guarantor holding on behalf of its citizens, dual capacity as holder and claimant of rights regarding bioethics, but above all, the protection of life and health, knowledge of the truth and adequate compensation for violations.

17) The Guatemalan legal framework includes principles arising from Human Rights that are mandatory in the case of the experiments.

18) Given the applicable laws during that period, all directly responsible committed crimes punishable by law and its cover up suggests knowledge of criminal responsibility.

19) The unlawful act that generates State responsibility of the United States constitutes a regulatory framework to repair the damage, which will serve to restore the broken legal system, restore conditions to prevent future violations and compensate victims of the crime, in this case the State of Guatemala.

20) In conclusion: in the international regime of Human Rights, the wrongful act generating State

responsibility in this case being the United States, is normative assumption for the implementation of repairs, because these serve a triple purpose: a) restore the broken legal system, proving the validity of the fundamental legal and political decisions that inform this international regime and sustain the effectiveness of objective law; b) create or restore the conditions for the course of social and legal relations which involve the prevention of future violations; c) compensate victims of the offense in the broader sense, in this case, the State of Guatemala.

9.6 Bioethics Perspective

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21) There is sufficient evidence to conclude on the seriousness of ethical violations in these investigations. The following ethical principles were violated by conducting these experiments: Violation of the principle of nonmaleficence by inoculation with a harmful "substance". The principle of INFORMED CONSENT was violated: subjects received no explanation and were not asked their consent. DELIBERATE EXPOSURE TO THE DISEASE: It is unethical and unlawful to cause harm to patients. VULNERABLE POPULATIONS: Vulnerable groups must be protected by society and especially by the medical profession. COERCION TO AUTHORITIES TO ALLOW THE STUDY: The political situation allowed these actions in a weaker country, knowing that such experimentation would not be allowed at home. "GIFTS" TO ALLOW RESEARCH: it is unlawful to offer incentives to participate in research. INEFFICIENT LOCAL AUTHORITIES: Local authorities abused their power to facilitate the study in a country with vulnerable population. UNETHICAL MEDICAL PRACTICES: The doctor should seek the patient's health first.

22) John Cutler and his colleagues are accountable as they admitted. They were well aware that their actions constituted a serious violation of medical and research ethics. The biggest violation was the damage caused by the inoculation, violating the oldest principle, that of nonmaleficence.

23) As a first point, acts like these should not be considered as "normal". It is not enough to identify the problem, we must find the causes and ways to solve it. Historical abuse has as a backdrop 1) The ambition of capital accumulation by any means, and 2) An ideology that allows the justification of discrimination against certain human groups considered inferior.

10. RECOMMENDATIONS [PDF page 98]

The health subcommittee of the technical committee proposed the following preliminary recommendations (March 2011):

1. One of the actions that should not be postponed is the process of identification of victims, both deceased and survivors, as well as their relatives and descendants.
2. Determine the impact that the experiments had on their lives and from this knowledge, develop mechanisms for economic and social compensation.
3. This offense to national dignity can not be a simple pardon, so that even when it is difficult to monetize offenses to dignity, it is necessary to develop compensation processes for victims who were affected by the action and inaction of the State and for the State itself.
4. Establish necessary and effective measures to ensure that events like these experiments do not happen again, reviewing legislation and the regulatory framework that regulates research in Guatemala; clarifying whether these regulations are adequate to comply with the ethical standards of research.
5. Establish mechanisms for monitoring and regulation of research in Guatemala reflecting on how the Guatemalan health system is organized and operates, promoting the establishment of independent and binding authorities to monitor and enforce the rules of the research process.
6. Continue with this investigation and the Presidential Commission on Clarification, but at the same time, conduct independent studies to create balance and accountability of the government institutions involved to avoid conflicts of interest.

12. Appendices.

APPENDIX ONE [PDF pages 103-13]

Analysis of the Attorney General's Office, Guatemala (June, 2011).

I. INTRODUCTION:

The State of Guatemala, through Dr. Susan Reberby, became aware that in 1946 a group of researchers from the United States Department of Public Health and Guatemalan professionals, led by Dr. John C. Cutler, started a series of experiments in Guatemala by inoculating Guatemalan people with venereal diseases, such as gonorrhea, syphilis and soft chancre in order to obtain information on prophylaxis methods against these diseases.

It is presumed that such procedures were coordinated by Dr. Juan Funes, director of the Venereal Diseases Unit, who had been trained in the research center where Dr. Cutler worked; it is presumed that he facilitated the arrival of the American doctors to Guatemala and coordinated all actions⁴.

⁴ Archival research on experiments on humans in Guatemala. 63, 171 .

Such experimentation was practiced specifically in people who were under the responsibility of the State, including the mentally ill confined in an asylum, inmates of the Central Prison, orphans and female prostitutes. Different methods were used to propagate the venereal diseases. The number of cases totals 3,780 of which 1,160 were affected.

II. LEGAL FRAMEWORK:

A) EXISTING REGULATIONS IN THE HISTORICAL CONTEXT OF INOCULATION WITH VENEREAL DISEASES IN GUATEMALANS FROM 1946 TO 1948.

CONSTITUTION OF THE REPUBLIC, in effect since March 15, 1945

It is important to note that the Constitution provided protection to the individual, and the authorities were responsible for upholding the rights of individuals and any transgression was the responsibility of the official and public employee committing the offense.

Title III. Individual and social guarantees, Chapter I, Article 21 stated: *"Individual Rights. Everyone enjoys the guarantees established by this Constitution, without restrictions other than those expressed herein. With the same caveat any discrimination based on affiliation, sex, race, color, class, creed or political ideas is declared illegal and punishable."*

Article 23 established that *"The State protects human existence preferably. The Republic authorities are instituted to keep people in the enjoyment of their rights, which are primarily the right to life, liberty, equality and security of the person, honor and property ... "*

For its part, Article 24, referred to the rule of law, stating that *"officials are not masters but custodians of authority, subject and never above the law and always responsible for their official conduct. In such circumstances, no government agency or public official has more power or authority than those expressly conferred on them by law. The civil liability of public officials and employees for any transgression of the law, committed while performing their duties, may be punishable at all times until the statute of limitations period has elapsed, which is ten years. Criminal liability shall be extinguished by the passage of double time stated by the criminal law. In both cases, the statute of limitations period begins from the time any public officer or employee ceased to hold office during which he incurred in the crime If the public official or employee violates his responsibilities in detriment of third parties, the State, or the corporation he serves while performing his duties, they will be collaterally liable for consequential damages... "*

DECREE 1877, ENACTED ON 7 SEPTEMBER 1936, DURING THE GOVERNMENT OF JORGE UBICO, HEALTH CODE.

This health code established the organization of health action in the country in order to ensure overall health and public hygiene. That legal instrument clearly shows that the Director General of Health is the authority appointed by the President to be directly in charge of health, and as such, is responsible for the general administration of the agency.

Sections under the General Directorate of Health:

1. Bacteriological Laboratory (Laboratorio Bacteriológico)
2. Biological Laboratory (Laboratorio Biológico)
3. Chemical, Fuel and Beverage Laboratory (Laboratorio Químico y de Combustibles y Bebidas)
4. Section to Fight Malaria and Endemic Diseases (Sección de Lucha Antimalárica y Enfermedades Endémicas)
5. Epidemiology Section (Sección de Epidemiología)
6. Supplies Section (Sección de Abastos)
7. Health Court (Juzgado de Sanidad)
8. Inspection of Pharmacies and Opium Traffic (Inspección de Farmacias y del Tráfico del Opio)
9. Child Protection (Protección a la Infancia)
10. General Treasury and Procurement (Tesorería General y Proveduría)
11. Inspections and Sanitary Engineering (Ingeniería e Inspecciones Sanitarias)
12. Veterinary and Animal Police (Veterinaria y Policía Animal)
13. Medical Zone Inspection (Inspección Médica de Zonas)
14. Control of Venereal Diseases Section (Sección de Lucha contra las Enfermedades Venéreas)
15. Health Statistics Section (Sección de Estadística Sanitaria)

Within this policy the protection of national territory against invasion of communicable diseases by international traffic through sea and river ports and borders was ensured by establishing a Maritime Security Service and even by the obligation imposed on the country Ministers and Consuls, living abroad to submit to the Directorate General of Health, the possible emergence of infectious or contagious diseases of mandatory international declaration.

Article 28 also established the obligation of the Directorate General of Health to specify in a regulation the diseases considered infectious and of mandatory declaration in order to prevent spread of disease and take precautions and preventive measures.

Article 40 stipulates that the Department of Health is required to enforce the necessary measures for the prevention and treatment of venereal diseases, establishing prophylaxis clinics, treatment and other necessary measures. It was even mandatory for people who exercise medicine, to keep records of patients who were suffering syphilis, gonorrhoea, chancroid, granuloma venereum, papillomas in the vulva and vulvar tuberculosis, which should include the patients data for transfer the health authority of the place in order to initiate treatment.

Thus, this legislation provided for the obligation of the Directorate General of Health to ensure health through prevention and subsequent treatment to prevent the spread of venereal diseases, establishing the need for urgent treatment and close monitoring of people suffering from these diseases.

REGULATION OF THE SEXUAL PROPHYLAXIS AND VENEREAL DISEASE SECTION OF JUNE 7, 1938 AMMENDED ON OCTOBER 22, 1938 AND MAY 13, 1947.

This regulation affects women whatever their nationality, who are engaged in prostitution and must register before the Sexual Prophylaxis and Venereal Disease Section to obtain a permit; otherwise the regulation establishes penalties for the illegal exercise of prostitution.

This enrollment would be voluntary or court-appointed through a proceeding before the Health Courts. Registration was not allowed if women were under 18 and over 45, pregnant, those who preserved a state of virginity, married women living with their husband and children, divorced women separated for less than 10 months, the feebleminded, alcoholics, drug addicts, and those suffering from the following diseases: active syphilis, gonorrhoea, chancroid, venereal granuloma, leprosy, tuberculosis open, genital or rectal prolapse, advanced pyorrhoea, contagious skin diseases and others determined by the Directorate General of Public Health.

By being enrolled in the Health Courts, women were obliged to keep a registration form that included the following data: serial number and registration, photograph, full names, age, nickname, marital status, place of birth, nationality, residence, trade or profession, names of parents, and a section for committed offenses and penalties imposed.

Enrolled women would get a "health booklet" that contained identification data, photograph and signature of the attending physician in charge of conducting tests and their results. Main obligations included:

1. Carry the health booklet and present it to authorities upon request.
2. Undergo inspection and medical examination twice a week in the Prophylactic Clinic in the days and times specified by the Department Chief.
3. Keep a prophylactic kit as indicated by the Clinic Chief
4. Comply with the prescriptions as indicated by the Medical Director.

5. Attend and be on time to prophylaxis course conferences.
6. Consumption of alcoholic beverages is not allowed in the room.

Having the right to free treatment and hospitalization; the power of reaching authorities in the case of aggression or exploitation with gain by others, and the right to temporary or permanent retirement.

This regulation provided for a technical service performed by a Physician, General Chief of the Department, under the authority of the General Directorate of Public Health, with the following units:

- a) Prophylactic Clinics: Where female prostitutes should enroll to receive periodic clinical and laboratory tests at least twice a week in order to detect communicable diseases and manifestations of syphilis and chancroid; as well as serological testing for syphilis that should be performed at least once every two months.

These tests were intended to keep enrolled women in good health and safe to avoid spreading venereal diseases as well as to provide them with necessary treatment to avoid sources of infection.

- b) Diagnostic laboratories: Bacteriological and serological, providing services to the Section; results were delivered to the Chiefs of the Service.
- c) Hospitals: should administer treatment for venereal diseases which required surgical intervention and hospitalization in the Republic.

Also, the only competent to judge breaches of the Regulation were the Judges of Health, who could impose the following sanctions:

Infection

- a) Warning: to be imposed for minor offenses committed by enrolled women, including not carrying the health booklet; not attending mandatory medical examinations without a good reason; moving without giving notice and not having the required prophylaxis kit at home.
- b) Fine: For offenses considered not minor yet not considered a crime either, applying a scale of five to thirty quetzales in the following cases: Enrolled women who were sick and ceased to attend the clinics for treatment without a good reason; women who left the hospital without the required medical certificate; and enrolled women who were sick but continued exercising the activity of commercial sex;
- c) Prison: this penalty was applied to repeat offenders and was punished by imprisonment of up

to fifty days.

Healthcare courts were required to record the necessary statistics of female prostitutes.

This regulation aimed to prevent the spread of sexually transmitted venereal diseases, and women who worked in the sex trade were required to undergo the necessary periodic studies to protect the health of citizens.

DECREE NUMBER 2164 OF THE LEGISLATURE OF THE REPUBLIC OF GUATEMALA, 25 MAY 1936, CRIMINAL CODE.

Defines the subjects who are criminally responsible: classified as perpetrator, accomplices and accessories, and stipulates that all persons criminally liable for an offense are also civilly liable.

Perpetrators are people taking a direct part in the execution of the act, directly forcing or inducing others to commit the act and those who cooperate in the execution of an action necessary to commit the act.

Accomplices do not take part in actions taken by the perpetrators but cooperate in the execution of the act by previous or simultaneous acts.

Accessories are people who did not participate in the commission of the offense as perpetrators or accomplices but participate after its execution.

Title VIII, paragraph V, includes the crime of venereal infection, which is reproduced in the following articles:

"Article 337. A person with a venereal disease that infects another person on purpose will be punished with one year of correctional prison if the disease may easily be curable and three years if the disease is of a serious nature".

"Article 338. A person knowing or suspecting he or she is infected with a venereal disease infects another will be punished with six months of arrest."

"Article 339. A person not knowing he or she is sick infects another with a venereal disease shall be punished with two months of arrest."

"Article 340. People with knowledge that a person under their care is infected with a venereal disease are responsible as accomplices of venereal infection, if the infected person does not seek to avoid contagion."

"Article 342. Superiors, guardians, protutors, teachers and any person that abusing their authority cooperate as accomplices to the commission of offenses described in the preceding five paragraphs,

shall be punished as perpetrators."

From these regulations it is assumed that the people in charge of coordinating this kind of experimentation knew its scope and the criminal responsibility they could be subjected to.

b) INTERNATIONAL REGULATIONS

Universal Declaration of Human Rights (adopted and proclaimed by General Assembly resolution 217 (III), December 10, 1948.

Proclaiming that every persona has the right to life, liberty and security.

The International Covenant on Economic, Social and Cultural Rights (applicable since January 3, 1976)

States in its Preamble that the rights are based on the recognition of the inherent dignity of the human person.

In this regard it is important to mention the Vienna Convention on the Law of Treaties 1969, which in Article 53 states: "*Treaties conflicting with a mandatory norm of general international law ("jus cogens"). A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.*"

c) NATIONAL LEGAL FRAMEWORK

CONSTITUTION OF THE REPUBLIC OF GUATEMALA

In effect since January 14, 1986.

States in its preamble the primacy of the human person as the subject and purpose of social order, also in Article 1 provides for the protection of the individual and in Article 2 establishes the duty of the State to guarantee the life, liberty, justice, security, peace and integral development of the person.

DECREE NUMBER 17-73, CONGRESS OF THE REPUBLIC OF GUATEMALA, CRIMINAL CODE.

The existing Criminal Code includes the following offenses:

Article 151. "Contagion of sexually transmitted infections. A person who knowingly suffering from a sexually transmitted infection exposes another person to infection shall be punished with imprisonment of two to four years. If the victim is a minor or person with volitional or cognitive disability, the penalty shall be increased by two thirds. "

Article 301. "Spread of disease. A person who spreads dangerous or contagious disease to people on purpose, shall be punished with imprisonment of one to six years."

Article 418. Abuse of authority: "Any public official or employee who, abusing his position or function, orders or commits any arbitrary or unlawful act not specifically defined in the provisions of this Code to the detriment of the administration or individuals, shall be punished with imprisonment of one to three years. The same penalty shall be imposed on public officials or employees who use unlawful or use unnecessary coercion."

III. LEGAL ANALYSIS OF THE STATE'S RESPONSIBILITY FOR THE EVENTS DURING 1946 TO 1948.

In accordance with the applicable laws in 1946-1948, we can conclude that the State of Guatemala had a responsibility to guarantee the life and health of people and provide a decent life for all. These principles are still valid today. The fact that the laws cited in section III) of the present report are no longer in effect, does not mean that the principles and guarantees stated in international laws and treaties in favor of people that transcend the scope of validity of such laws have not survived.

To understand this situation that exceeds the temporality of applicable regulations, it is important to show what the right to human dignity means, as defined by Cabanellas: "The right of every man to be recognized as having his own end and not as a simple means to other people's ends."⁵ In this case, we presume the authorization of public officials and employees, as well as the consent of the authorities responsible for ensuring people's protection to carry out experiments on the most vulnerable groups in society under protection of the state (the mentally ill, prisoners, orphans).

In order to determine the responsibility of the State, the involvement of authorities in the coordination of inoculations and the lack of knowledge and consent of the subjects must be proven. If it is proven that the Guatemala government cooperated to enable physicians from the United States to carry out experiments that resulted in illness and death of Guatemalan men and women, the State's responsibility would be both civil and moral and continues to the present day even though applicable laws in the years 1946-1948 are no longer valid.

⁵ Cabanellas, Guillermo. Diccionario Enciclopédico de Derecho Usual. Volume II. 12th Edition. Editorial Heliasta S.R.L. Argentina 1979. Page 586.

In this case, the time between inoculation with venereal diseases and death of those affected cannot be an argument in favor of prescription of legal action. The statute of limitations is not applicable to these actions since the experiments violated fundamental rights of highly vulnerable groups in society who did not consent to undergo an experiment against every principle of human dignity.

These acts caused a moral damage to subjects: "injury suffered by a person in his honor, reputation, affections or feelings, due to malice or culpable action by another... In the civil sphere: The compensation for moral damage ... deserves appropriate compensation; and even more so when the victim suffers a moral harm rather than the destruction of a moral object ... "⁶ not only violating the right to health but causing consequences that go beyond physical damage and affect the dignity of the person.

CONCLUSIONS

In light of international law, we assert the responsibility of the State of Guatemala, considering that fundamental rights such as dignity of the human person, equality and health were violated and the State has the obligation to provide protection and ensure the enjoyment of rights.

Considering that the experiments were carried out on people who were under the responsibility of the government, the facts disclosed to the State of Guatemala reveal an obvious violation of human rights of the affected population, the mentally ill at the asylum, inmates at the Central Penitentiary, orphans and prostitutes who did not consent to such experiments, acting in violation of applicable regulation at the time.

In relation to this, the Office of Human Rights shall issue a position also taking into account the pejorative and discriminatory way Americans referred to ethnological groups taking part in the experiments "pure blood, Indian and Indians."

Thus, the State of Guatemala and the United States are liable:

1. Morally: Resulting from the actions of public officials in charge of the experiments. Thus, the State of Guatemala must make a public apology for moral damage.
2. Civilly: The State of Guatemala could be sued by people who consider themselves affected by violations of their human rights after proving the damage they suffered.
3. Criminally: According to the context of the time, people responsible for the experiments were the perpetrators and accomplices of the crime of venereal infection.

⁶ Ibid. Page 473.

4. In parallel, through its governing health agency, the State of Guatemala should take appropriate actions to recover the right to health for people identified as direct victims or suffering from sequels from the events being reported within the parameters of the repair and complete compensation of possible victims.
5. Any decision on the case shall be made by the Cabinet of Ministers President.

APPENDIX TWO. [PDF pages 113-119]

NATIONAL ETHICS COMMITTEE ON HEALTH: ETHICAL ANALYSIS OF "EXPERIMENTS IN GUATEMALA BY INOCULATION WITH SYPHILIS AND OTHER SEXUALLY TRANSMITTED DISEASES. 1946-1948"

(February 10, 2011).

INTRODUCTION:

In preparation of the final Ethics Opinion, the National Ethics Committee of the Ministry of Health analyzed the available information on the study in question. Based on proven facts, we can make an analysis of the righteousness or ruthlessness of the acts performed by people involved and if they can be liable for unethical behavior

For this study, we began by contrasting published documents against recognized ethical principles such as human dignity, the physicians commitment to their relationship with patients, ethical basis in research with human beings, and moral and bioethics values and principles.

The responsibility of researchers depends on their scientific knowledge of what they did and to whom they were applying medical knowledge and techniques, the righteousness or ruthlessness of their actions, and whether they acted on their own. The advancement of scientific knowledge is good, but it must be carried out using appropriate methodologies and not favoring the interests of science over human well-being.

"THE END DOES NOT JUSTIFY THE MEANS"

CONTEXT:

A literature review related to the ethical aspects throughout history and contextual elements was made to support the opinion of this committee.

International level

Hippocratic Oath

1776 The Declaration of the Good People of Virginia

1789 Equal People of the French Revolution.

1924 Geneva Declaration.

1928 Alexander Fleming discovered penicillin, its widespread use began in World War II

1944 Fleming received the Nobel Prize for Medicine in 1945

1944 Nuremberg Trial

1947 Nuremberg Code

1948 Declaration of Human Rights

National:

In the beginning of the study a decree from the time of Jorge Ubico was in effect, stating that sex work was considered a profession and prostitutes' health must be in control.

During this period the country was emerging from a dictatorship resulting in political instability.

Therefore, the study could be carried out primarily for two reasons: The domination relations of rich countries over poor countries and the vulnerability of health services to accept the imposition of studies without proper analysis.

Main players involved:

The medical team was led by Dr. John C. Cutler, a member of the United States Public Health Service (USPHS) who worked under the supervision of doctors R.C. Arnold and John F. Mahoney, members of the United States Public Health Service (USPHS) and the Venereal Disease Research Laboratory (VDRL) in Staten Island, New York.

Dr. Juan Funes, head of the Division of Venereal Disease Control of the Ministry of Health who had recently conducted studies on sexually transmitted diseases in the VDRL Institute, was an accessible partner.

The study was sponsored by the Pan-American Sanitary Bureau (PASB), under the direction of the Venereal Disease Research Laboratory of the United States Public Health Service.

Participating national institutions:

The National Army of the Revolution

The National Hospital for Mental Health

The Ministry of Justice

The Guatemalan Ministry of Health

Events:

- At the end of World War II, penicillin was already accessible and its effectiveness as a treatment for syphilis and many other diseases started to become evident.

- In 1944, the United States initiated a study by infecting healthy prisoners with gonorrhea. The study was abandoned after difficulties in its development. The reason for starting the study in Guatemala was to complete the investigation initiated in the United States of America.
- Guatemala seemed an excellent place to conduct studies due to a low incidence of syphilis in previous years, according to available information.

The study consisted of:

- Exposure of subjects to syphilis, gonorrhea and chancroid through sexual contact with prostitutes previously infected by those responsible of the investigation.
- Inoculation of arm skin, genital and anal mucosa, and central nervous system.
- After inoculation, subjects were treated with penicillin along with other prophylactic measures.
- The primary purpose of the study was to develop a model of human transmission of *Treponema pallidum*, both sexually and by skin and mucous membrane inoculation, to evaluate the effectiveness of chemoprophylaxis regimens. In addition, the study was conducted to evaluate the potential for reinfection in people with untreated and latent syphilis or who had a recent penicillin treatment for syphilis, comparing the quality of various serological syphilis tests and developing human transmission and chemoprophylaxis models for gonorrhea and chancroid agents.
- People included in the study of transmission were sex workers, prisoners in the central penitentiary, patients in the national mental hospital and soldiers.
- Children between 6 and 16 years at the National Orphanage were tested for seropositivity with the cooperation of the Guatemala government.
- Unsatisfactory results led investigators to consider another group for testing, turning to the asylum for the mentally ill where they planned inoculations instead of exposure to sex. The anticonvulsant drugs they needed were offered to subjects and their families in exchange for their cooperation.
- Investigators directly inoculated the genital area of men and women, causing abrasions in the penis in men and in the cervix in women, and placing swabs impregnated with pollutant discharge.
- Investigators also administered intravenous bacteria injections as part of the study.
- They made sure that the subjects did not have the disease or had taken prophylactic medication before inoculation.
- Investigators admitted they did not tell all subjects that injections contained syphilis bacteria.
- A virologist at the Rockefeller Institute of Research said it is against the law to do many things, but the law "winks" when a man with a good reputation wants to carry out a scientific experiment.
- In the city of New York injecting a person with infectious material is considered a crime.
- Government officials asked Cutler for more penicillin as part of the price of the country's cooperation.
- Cutler maintained his confidence because he believed he had a gold mine to experiment.
- The investigation had many problems and was inconclusive.

- One of Cutler's supervisors admitted being concerned of conducting experiments with the mentally ill because they could not give consent and did not know what was happening to them. Soldiers or prisoners could be better subjects because they had the capacity to give consent.
- Apparently, everyone who participated knew that the study involved complicated ethical issues.
- There had been debates since the 1940s about whether it was ethical to conduct gonorrhea studies with prisoners.
- Investigators knew they could not carry out that kind experiments in their country.
- Another problem was being unable to replicate the induction of infection study elsewhere.
- Deductions of the study did not serve as a basis for implementing prophylaxis in people with natural transmission of the disease.
- Supervisors decided to stop the study.
- All the efforts to produce the disease and try to obtain various kinds of prophylaxis were buried and were never published.
- The investigation did not provide consistent expertise on syphilis research.
- Subsequently, a study in Sing Sing prison was conducted in the United States by subcutaneous inoculation without making abrasions on the penises of prisoners.

ETHICAL CONSIDERATIONS:

1. HUMAN DIGNITY

Every human being is worthy by the mere fact of being human, without distinction of race, color, sex, language, religion, political of any other opinion, national or social origin, property, birth, or other status.

The dignity of every human being must be respected, and every human being should behave according to this dignity, assuming a relationship of respect for each person; this is particularly true for doctors, who enjoy their patients' trust.

2. UNIVERSAL RULE OF ETHICS:

"DO NOT DO TO OTHERS WHAT YOU DO NOT WANT FOR YOU"

3. MEDICAL ETHICS

HIPPOCRATIC OATH

About 2,500 years old, it is the code of medical ethics that has had the widest influence on universities and medicine schools in the western world.

It outlines a commitment to practice medicine according to ethical principles.

"I will, according to my ability and judgment, prescribe a regimen for the health of the sick; but I will utterly reject harm and mischief."

Never harm a patient.

Human life has a very high value, and the doctor is not a judge to determine the value of an individual's life.

I. BIOMEDICAL RESEARCH

There are ethical limits to research.

"Never the interests of science or society should prevail over the individual." Science is a great good, whose acquisition is a morally noble act, but not as an absolute value.

The personal rights of patients to physical and spiritual life, respect for their human integrity, and to maintain a trusting relationship with their doctor, are ethical values that exceed the interests of science.

II. BIOETHICS

Is the systematic study of human behavior in the area of life sciences and health care in relation with values and moral principles.

PRINCIPLES FOR BIOMEDICAL RESEARCH

1. AUTONOMY:

Respect for the patient and the individual's right to self-determination.

2. BENEFICENCE - NONMALEFICENCE

The duty to do good and avoid doing harm to a patient.

3. JUSTICE

Respecting everyone, according to their dignity. Treating everyone equally.

ETHICAL PRINCIPLES VIOLATED IN THE STUDIO

1. INFORMED CONSENT

Subjects were not explained the methodology or risks they were exposed to and were not asked for consent.

2. DELIBERATE EXPOSURE TO DISEASE

It is especially serious and it is not lawful to cause harm to patients and subjects with absence of the disease.

3. VULNERABLE POPULATIONS

Vulnerable groups must be protected by society and especially by the medical field.

4. COERCION OF AUTHORITIES TO ALLOW THE STUDY

The political situation allowed for control on a weaker country, knowing such experimentation would not be allowed at home.

5. OFFERING "GIFTS" TO ALLOW THE INVESTIGATION

It is not lawful to offer incentives to participate in research.

6. SCIENTIFIC QUALITY

Fully knowing the poor results being obtained, investigators improvised methodologies to continue with the project without obtaining relevant data to better understand the disease and its treatment. Results were never published as scientific or other type of literature.

7. INEFFICIENT LOCAL AUTHORITIES

It is the government authorities' duty to ensure the well being of society. The Ministry of Health must seek and protect the health of the population, which they did not do. Local authorities abused their power to facilitate the study in their country, using vulnerable population.

8. UNETHICAL MEDICAL BEHAVIOR

Any doctor should seek the patient's health first.

CONCLUSION

People who conducted the experiments, sponsors and those who authorized implementation committed faults against ethics, which are aggravated by the fact that subjects were vulnerable people who did not give their consent or had knowledge of the experiment, betraying the trust between doctor and patient. In addition to all the damage caused, scientific results were not of any use.

People involved from the Venereal Disease Research Laboratory of the United States Public Health Service, the Guatemalan Ministry of Health, the National Army of the Revolution, the National Mental Health Hospital and the Ministry of Justice, with the financial support from the National Institutes of Health of the Pan-American Sanitary Bureau had actual knowledge of the ethical transgressions and the experiment continued without making it known publicly.