

## ***Victims Again: Litigation Ends on the US Public Health Service Syphilis Studies in Guatemala***

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### ABSTRACT

A US Public Health Service study conducted after World War II led to a research scandal involving the intentional infection of 1300 Guatemalans with syphilis and other STIs. That news initially prompted an apology by President Obama to the President of Guatemala and an investigative report from the Presidential Commission for the Study of Bioethical Issues. Despite promises from the US Department of Health and Human Services to invest \$1.8 million to “improve the treatment and prevention of HIV and other sexually transmitted diseases,” there is no record that such funding nor any money to compensate the families of people victimized in the research debacle has reached Guatemala. Litigation followed public disclosures. This article analyzes the litigation and explores the likelihood that this lawsuit may represent another episode in the re-victimization of people in Guatemala who still await redress for the wrongs done to their families more than 70 years ago.

**Keywords:** Guatemala, Litigation, Research Ethics, Historical Injustice, Re-victimization, Informed Consent

### INTRODUCTION

Nine years after its initial filing, *In re Estate of Alvarez v. Rockefeller Foundation*, the case to recover damages for the infamous World War II-era syphilis experiments that the US Public Health Service (PHS) conducted in Guatemala has been dismissed by Fourth Circuit Court of Appeals.<sup>1</sup> The plaintiffs sought compensation as victims and descendants of victims of studies in which approximately 1300 Guatemalans were intentionally infected with sexually transmitted infections (STIs), and more than 5000 individuals had biological samples taken without proper consent. After the court rejected claims in 2022 that Johns Hopkins University and Bristol-Meyers Squibb should be held liable for the Guatemala scandal, the Rockefeller Foundation was the only remaining defendant. The Foundation had a longstanding interest in research to find a cure for syphilis. Lawyers representing alleged victims in the Guatemala research claimed that

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responsibility should accrue to Rockefeller because Thomas Parran was on its board and Frederick Soper was its Associate Director and a board member. Both were intimately involved in the experiments.

In this US case, plaintiffs claimed the court should assign responsibility and allow them to recover damages. Its conclusion makes it extremely unlikely that legal action will lead to compensation for those victims now or anytime in the future. The lawsuit described in this article raises the question of whether litigation is an effective avenue for addressing discoveries of historic injustices stemming from breaches of research ethics. Litigation may revictimize the very populations who endured harms during the original experiments. In this case, more than six decades after the studies themselves, and ten years after the details of those studies were publicly revealed, many of the people who became entangled in this litigation are arguably worse off as a result because they endured additional hardships during the litigation, their avenue to justice through the US courts is now foreclosed, and their credibility was called into question throughout the case.

## BACKGROUND

The PHS/Guatemala experiments occurred between 1946-1948, and related studies continued into the 1950s. However, the entire research plan did not become publicly known until the 2010 publication of an historian's analysis of an archival collection, and a subsequent bioethics commission report in 2011.<sup>2</sup>

The PHS researchers who designed the Guatemala studies were attempting to hone methods of prophylaxis against STIs for members of the US military and hoped to take advantage of the then newly discovered power of penicillin as a cure for STIs. Led by John Cutler,<sup>3</sup> a team of PHS doctors collaborated with health professionals in Guatemala City to design a series of experiments that monitored sexual intimacy between prisoners and commercial sex workers who had been confirmed to be carrying an STI. The experiment then moved on to manually infecting prison inmates, psychiatric patients, and soldiers, with syphilis, gonorrhea, and chancroid.

Between 1946 and 1953, PHS researchers also conducted serology studies on samples of blood and cerebrospinal fluid they had obtained via cervical and lumbar punctures on prisoners, orphans, school children, patients in a psychiatric hospital, and leprosy patients in Guatemala.<sup>4</sup>

The research was conducted without consent, without appropriate disclosures, and, in many cases, using the most vulnerable institutionalized populations. While formal standards of ethics for biomedical research later emerged in documents like the Belmont report and were adopted as part of US law, the consensus of scholars studying the Guatemala experiments is that they violated ethical standards at the time they were carried out, and the scientists and physicians who participated, well aware of their ethical toxicity, intentionally kept them hidden.<sup>5</sup>

A few experts in the STI field knew the details of these experiments, but the US government deliberately concealed them from public view for more than sixty years. The public exposure of John Cutler's papers clarified the scope of the studies, sometimes likened more to torture than medical experimentation, and placed the episode in Guatemala alongside the most infamous of research scandals.<sup>6</sup> News of the scandal initially prompted an apology by President Obama to the President of Guatemala. Lawsuits followed.

### I. Litigation

Public exposé of the experiment's details led to condemnation of the studies, which in turn prompted calls for legal action. The first lawsuit related to the PHS/Guatemala research, *Garcia v. Sebelius*, was a class action suit filed on behalf of victims against the US Government in 2011. A federal trial court called the

Guatemala STI experiments a “deeply troubling chapter in our Nation’s history” but determined that the law shielded the government against such claims under the principle of sovereign immunity. The court declared itself “powerless to provide any redress...” and dismissed the suit in 2012.<sup>7</sup>

In response, the US Department of Health and Human Services promised \$1.8 million to “improve the treatment and prevention of HIV and other sexually transmitted diseases ... in Guatemala and to further strengthen ethical training on human research protections.”<sup>8</sup> No commitments were made to the victims, and no compensation was delivered to them in Guatemala.

Because the *Garcia* case ruled out a suit against the US government, in 2015, plaintiffs filed another class action lawsuit against Johns Hopkins University, the Rockefeller Foundation, and pharmaceutical manufacturer Bristol Myers Squibb, demanding \$1 billion in damages. The suit claimed that Johns Hopkins had been the faculty home for many members of the National Institutes of Health (NIH) syphilis study section that recommended that a grant of financial support be approved to fund the Guatemala project.<sup>9</sup> Most prominent in this group of Hopkins faculty members was Joseph Earle Moore. He chaired the study section and almost every review committee for the NIH that reviewed the study. The Rockefeller Foundation’s board eventually included Thomas Parran, Surgeon General at the time of the experiments and Rockefeller employee Frederick Soper, both of whom held roles critical to the study.<sup>10</sup> The three companies that previously made up Bristol Myers Squibb manufactured the penicillin used in the experiments to test levels of efficacious dose to cure syphilis.<sup>11</sup>

The plaintiffs contended that the web of connections among these entities and the researchers who “helped design, support, develop, encourage, and finance, and participated in and benefitted from the Guatemala Experiments,” made all three entities liable for the damages to compensate Guatemalan research subjects and their descendants.

From the initial filing of the suit in 2015 until eighteen months later, defense lawyers attempted to have the case dismissed, arguing that delays in filing a claim violated the statute of limitations and the speculative nature of plaintiff damages rendered them legally inadequate to provide a causal link to the original experiments.

In late 2016, the plaintiffs amended their claims a third time to address these issues. At that point, the plaintiff class included more than 800 people made up of spouses, children, and other descendants of deceased individuals alleged to have been part of the intentional infection experiments. But the largest numbers of listed plaintiffs were school children whose blood had been drawn for serology experiments. While the Presidential Commission had found no evidence supporting this assertion, some of the plaintiffs also claimed to be direct victims of intentional infection experiments conducted at their schools.

The court found no evidence that the Rockefeller Foundation controlled or directed either Parran’s involvement in approving the Guatemala project or Soper’s more thorough engagement with the research as a staff member at the Pan American Sanitary Bureau (PASB). The Court stated, “The connection between TRF’s [Rockefeller] interest in finding a cure for syphilis and the work that Dr. Soper did while at PASB is simply far too attenuated to establish an agency relationship...there is no indication that TRF had the ability to exercise control over Soper.”<sup>12</sup> In 2024, with Rockefeller as the only remaining defendant, the motion to dismiss the suit was granted.

While the litigation was still active, lawyers deposed people in Guatemala who had been responsible for identifying the plaintiffs named in the lawsuit. By March 2019, it became clear that serious irregularities

had occurred in recruiting those participants. Fraudulent testimony and unethical behavior in recruiting sparked the defendants to move for sanctions against the plaintiffs' attorneys.<sup>13</sup>

## II. Fraudulent Testimony

### a. Serology Experiments in Port of San José

One kind of experiment conducted in Guatemala included serology testing on blood samples taken from school children. Norma Alicia Lorenzo Lopez was a plaintiff in the lawsuit and former director of the school at the remote Pacific coast town of Puerto San Jose, an initial location for blood draws in school studies during the late 1940s. She signed a copy of a letter certifying that historical records and the testimony of former students verified that plaintiffs were enrolled in school at the time of the experiments. But Lopez eventually admitted under questioning that relevant records for the school were destroyed years ago in several floods and earthquakes. She had no documents to confirm that claimant's testimony was correct, nor did she have any personal knowledge of what happened.

She then testified that she had no legal authority to issue certifications on behalf of the school and had violated the rules of the Ministry of Education in so doing. Additionally, she admitted that at least one person was dead at the time he was supposed to have given his sworn statement to her.<sup>14</sup> Fraudulent testimony unfortunately was not limited to Lopez. Under questioning, many named plaintiffs testified that they did not know why their or their family members' names had been included among the victims.

Another witness, Dr. Orozco Aguirre, reported that he tested hundreds of people who had given blood as children in Puerto San Jose. Some of them were supposed to have also claimed to be infected with syphilis by researchers. But in a hearing before the presiding judge, lead plaintiffs' counsel confirmed that Aguirre had given false testimony.<sup>15</sup>

Aguirre eventually admitted that the effective date of the certificate presented to the court to show his qualifications to run a laboratory in Guatemala had been altered to conceal that it had expired. He also conceded under questioning that his expert report had been plagiarized, then altered to include data that would correspond with his planned testimony in support of the plaintiffs. As a result, plaintiffs' counsel withdrew Dr. Orozco as an expert witness after his first day of testimony.

### b. STI Testing in Guatemala City

Dr. Pablo Werner Ramirez Rivas, a physician consultant and medical expert for the plaintiffs, former Guatemalan Health Minister Roberto Paiz, and his wife Clara de Paiz had arranged "information sessions" to recruit plaintiffs. Werner's testimony was intended to provide the factual foundation upon which several of the plaintiff's claims were based. However, the day after Dr. Aguirre was withdrawn and only a few days before Dr. Werner was scheduled to testify, plaintiffs' counsel also withdrew him as an expert. Additional reports emerged showing that Clara de Paiz was taken into custody in Guatemala in 2018, following charges by the International Commission Against Impunity in Guatemala with "active bribery" in connection with a scheme to influence the selection of Guatemalan judges in an unrelated case.<sup>16</sup>

On March 11, 2019, the plaintiffs' counsel disclosed that they were "going forward" with a more limited list of plaintiffs and claims. The number of Guatemalan plaintiffs was reduced dramatically; fewer than one hundred remained in the lawsuit. Thirteen of the most important eighteen plaintiffs—those who claimed direct infection in the original experiments or a family relationship to someone who was involved in those experiments — were dropped from the case.

### III. Sanctions Against Plaintiffs' Lawyers

After extensive discovery, the defendants' lawyers made a motion for sanctions against the plaintiffs' lawyers. According to the defendants, depositions and other material "revealed that plaintiffs' claims are based on manufactured evidence, false sworn statements, and unsupportable allegations."<sup>17</sup>

The defendants accused the plaintiffs' lawyers of doing just what the initial alleged wrongdoers did – withholding positive test results from plaintiffs. It was a major contention of the lawsuit that those who directed the PHS/Guatemala experiments actively deceived the victims. They did not inform victims in the 1940s that they were part of an experiment, that they had been infected with syphilis, or that their condition might expose other family members to infection. Nor did they provide medical care to infected victims or counsel them to seek it. In preparing for the lawsuit, plaintiffs were sent on bus trips lasting up to five hours to reach Guatemala City for syphilis testing. Although Dr. Aguirre claimed in sworn court documents that many of the plaintiffs tested positive for syphilis, their testimony indicated they were not informed of their infection status, nor was treatment offered to those who did test positive. Defendant's arguments for sanctions declared that by withholding infection status from plaintiffs, their lawyers "did precisely what they had accused others of doing or, more precisely, of not doing."<sup>18</sup>

### IV. Unsatisfactory Outcome

The original complaint in this case alleged that defendants, Johns Hopkins University, the Rockefeller Foundation, and Bristol Meyers Squibb, had "designed, developed, approved, encouraged, directed, oversaw, and aided and abetted nonconsensual, nontherapeutic, human subject experiments in Guatemala."<sup>19</sup> But the trial court found that there was "insufficient evidence to support" that conclusion against any of the three defendant organizations.

The defendants did not downplay the horrific nature of the PHS/Guatemala syphilis studies, nor the culpability of those who conducted them. They merely rejected the idea that they, as institutions, shared blame for the activities that the government planned, conducted, and subsequently hid from the public eye. In issuing its ruling, the court endorsed that conclusion, stating that any evidence of the defendant's complicity in these actions "has been lost to the sands of time."<sup>20</sup> The court emphasized that this result "illustrates the limits of the court system to provide justice for every injustice," concluding that other remedies were "beyond the power of this Court to grant."<sup>21</sup>

The final decision in this controversy yielded similar language. In a separate opinion, 4th Circuit Court of Appeals Judge J. Harvie Wilkinson said that people working with the Rockefeller Foundation had a relationship that "is too attenuated" to consider them agents of Rockefeller in carrying out the Guatemala experiments. "I thus concur . . . with some sadness" he said, "that the rule of law is not advanced as an instrument of justice by affixing liability where it does not belong."<sup>22</sup>

## CONCLUSION

We are left with an unsatisfactory ending to a scandal that festered over more than seventy-five years and legal drama unfolding over more than a decade. An appellate court decision now echoes what scholars and a presidential commission concluded as legal challenges began: "It was our own government . . . that was the driving force behind these monstrous wrongs."<sup>23</sup> Fashioning remedies for the horrors of this and other scandals that may yet be uncovered in the archives of scientific and biomedical research remains a job that our own government should still be required to undertake.

When hidden scandals perpetrated by deceased individuals in government service are finally revealed, how should accountability be satisfied? We know that suits against the government are exceedingly unlikely to be allowed. As this case has demonstrated, assessing damages against other institutions whose culpability cannot be proven is also likely to fail. First steps taken by government commissions of inquiry that are free to investigate past wrongs and expose them to public scrutiny are a beginning, but never the end of the accounting. They allow some measure of recognition for victims, but those who are long dead can never be made whole. As the 4th Circuit Court concluded, the judiciary is limited in its powers “to provide justice for every injustice.” What is needed beyond all else is a motive for a majority in Congress squarely to face scandals like those that occurred in Guatemala and craft a remedy that more fully addresses their causes and their consequences. At this point, we have few, if any, models of what such remedies would look like, and almost no reason to believe that there is the political will to take on that task.

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<sup>1</sup> *In re Estate of Alvarez v. Rockefeller Foundation*, No. 22-1678, (4<sup>th</sup> Cir. 2024) March 20, 2024. <https://caselaw.findlaw.com/court/us-4th-circuit/115960805.html>

<sup>2</sup> Reverby, S. ““Normal exposure” and inoculation syphilis: a PHS ‘Tuskegee’ doctor in Guatemala, 1946–1948.” *J Policy Hist* 23, no. 1 (2011):6-28 [DOI: <https://doi.org/10.1017/S0898030610000291>]; Presidential Commission for the Study of Bioethical Issues (PCSBi), “*Ethically Impossible: STD Research in Guatemala from 1946 to 1948* (Washington, D.C.: Government Printing Office; 2011). [https://bioethicsarchive.georgetown.edu/pcsbi/sites/default/files/Ethically%20Impossible%20\(with%20linked%20historical%20documents\)%202.7.13.pdf](https://bioethicsarchive.georgetown.edu/pcsbi/sites/default/files/Ethically%20Impossible%20(with%20linked%20historical%20documents)%202.7.13.pdf) The author was a senior advisor to the Presidential Commission for the Study of Bioethical Issues that issued *Ethically Impossible*, and he contributed to the research and drafting of the Report as a staff member. He testified by deposition under subpoena and without compensation in the lawsuit described in this article.

<sup>3</sup> Cutler [1915-2003] also conducted the Tuskegee syphilis experiments, which included Black American research subjects who were intentionally not informed about the nature of the experiment or the availability of treatment.

<sup>4</sup> Spector-Bagdady K, Lombardo P.A. “US Public Health Service STD Experiments in Guatemala (1946-1948) and Their Aftermath,” *Ethics Hum Res.* 2019;41(2):29-34. [DOI: 10.1002/eahr.500010]

<sup>5</sup> See “The Guatemala Experiments—Looking Back, Looking Ahead, and Apportioning Blame,” Presidential Commission for the Study of Bioethical Issues, “*Ethically Impossible: STD Research in Guatemala from 1946 to 1948*, 2011, GPO (Washington DC)107-108.

<sup>6</sup> *Presidential Commission for the Study of Bioethical Issues, “Ethically Impossible: STD Research in Guatemala from 1946 to 1948*, 2011, GPO (Washington DC). [https://bioethicsarchive.georgetown.edu/pcsbi/sites/default/files/Ethically%20Impossible%20\(with%20linked%20historical%20documents\)%202.7.13.pdf](https://bioethicsarchive.georgetown.edu/pcsbi/sites/default/files/Ethically%20Impossible%20(with%20linked%20historical%20documents)%202.7.13.pdf) H. Brevy Cannon, “Arras, Bioethics Commission Condemn 1940s Guatemalan Syphilis Research as Unethical,” *UVA Today*, August 31, 2011, <https://news.virginia.edu/content/arras-bioethics-commission-condemn-1940s-guatemalan-syphilis-research-unethical>.

<sup>7</sup> *Garcia v. Sebelius*, 867 F. Supp. 2d 125 (D.D.C. 2012). <https://casetext.com/case/garcia-v-sebelius-2>

<sup>8</sup> “HHS Commits Nearly \$1.8 million to Health Initiatives in Guatemala and to Improving Global Human Research Protections,” *Business Wire*, January 10, 2012,

<sup>9</sup> *Alvarez v. Hopkins*, complaint, Case 1:15-cv-00950-JKB Circuit Court Baltimore City (April 1, 2015). Spector-Bagdady K, Lombardo P.A. ““Something of an adventure’: postwar NIH research ethos and the Guatemala STD experiments,” *J Law Med Ethics.* 2013;41(3):697-710. [DOI: 10.1111/jlme.12080]

<sup>10</sup> Thomas Parran [1892-1968] was Surgeon General of the US Public Health Service and approved the funding proposal that resulted in the experiments. He was also a member of the Rockefeller Foundation’s Board of Trustees and the Board of Scientific Directors of the foundation’s International Health Division. At times his government service and his work at Rockefeller overlapped the work that occurred in Guatemala. Frederick Soper [1893-1977] was an Associate Director at Rockefeller and in 1947 was assigned to work on the Guatemala experiments at the Pan American Sanitary Bureau (PASB).

<sup>11</sup> *Alvarez v. Hopkins*, complaint, Case 1:15-cv-00950-JKB Circuit Court Baltimore City (April 1, 2015). The original complaint filed in the Circuit Court for Baltimore City, was moved to the United States District Court for the District of Maryland.

<sup>12</sup> *In re Estate of Alvarez v. Rockefeller Foundation*, No. 22-1678, (4th Cir. 2024) March 20, 2024. p. 15.

<sup>13</sup> Defendant's Opening Brief in Support of Request for Discovery and Motion for Sanctions, Case No. 1:15-cv-950 TDC, Document 262-1 Filed 04/09/19.

<sup>14</sup> Transcript of Norma Alicia Lorenzo Conducted on February 7, 2019, Case 1:15-cv-00950-TDC Document 263-5.

<sup>15</sup> Preliminary Transcript of Hearing, Case 1:15-cv-00950-TDC Document 231-1 March 6, 2019., p. 3.

<sup>16</sup> Defendant's Opening Brief in Support of Request for Discovery and Motion for Sanctions, Case No. 1:15-cv-950 TDC, Document 262-1 Filed 04/09/19. Exhibit 8, at J.R.0778 (December 4, 2018, Exhibit 8 at J.R.0775 (record from Guatemala Central Registry of Detainees indicating when Clara de Paiz was taken into custody). She was later acquitted of the bribery charges.

<sup>17</sup> *Estate of Arturo Giron Alvarez, et al., v. The Johns Hopkins University, et al.*, Defendant's Motion for Discovery and Sanctions, April 9, 2019; Memorandum Opinion <https://law.justia.com/cases/federal/district-courts/maryland/mddce/1:2015cv00950/312057/350/>

<sup>18</sup> Defendant's Opening Brief in Support of Request for Discovery and Motion for Sanctions, Case No. 1:15-cv-950 TDC, Document 262-1 Filed 04/09/19. Case 1:15-cv-00950-TDC Document 262-1. April 9, 2019, page 24 of 42. The motion for sanctions was not renewed after the case was dismissed.

<sup>19</sup> Memorandum Opinion on Motion for Summary Judgment, Case 1:15-cv-00950-TDC Document 480, page 13 of 77.

<sup>20</sup> *Id.*, page 75 of 77

<sup>21</sup> *Id.*, Page 76 of 77

<sup>22</sup> *In re Estate of Alvarez v. Rockefeller Foundation*, No. 22-1678, (4th Cir. 2024) March 20, 2024, Wilkinson, J., concurring at 20.

<sup>23</sup> *Id.*