

lated to divide and grow). Nor is it clear how NIH will draw the line between the permitted creation of extra embryos for clinical use (which may be donated to research) and the forbidden creation of embryos for research. And exactly how the field will be regulated is still up in the air. Several senior members of Varmus's advisory committee urged him to create a panel to review individual proposals and to model it on an existing committee that monitors recombinant DNA and gene therapy protocols. Varmus seemed agreeable to this idea.

Although many researchers welcome the expected resumption of some areas of embryo research, Clinton's statement has been greeted with disappointment. One important area that's likely to suffer, says Brigid Hogan, the Vanderbilt University biologist who chaired the science subpanel of the commission that drafted the guidelines, is research on human egg maturation, which requires that eggs be fertilized to test their viability. These studies—if they were allowed to proceed—would help improve the efficiency of in vitro fertilization, making the process safer and less expensive. Michael McClure, a reproductive scientist at the National Institute of Child Health and Human Development, adds that a ban on creating embryos for research will have a "substantial impact on basic science" aimed at understanding how sperm and egg interact. McClure adds that, while researchers hope they will soon be permitted to use "spare" embryos, these are "very scarce."

Not all researchers were disappointed by Clinton's stance, however. Patricia King, the Georgetown University law professor who served as co-chair of the commission that drafted the guidelines, was relieved to see that the president shared her own qualms and had acted on them. She felt that his decision was in tune with the public mood and said that in retrospect she wished she had been more forceful in arguing this point of view while on the NIH advisory panel.

David Challoner, vice president for health research at the University of Florida, Gainesville, and a senior member of Varmus's advisory panel, urged a philosophical perspective. "Clearly this is a political decision," says Challoner. "A good deal of heat has already been generated and will continue to be generated for the NIH, the Department [of Health and Human Services], and the White House" by those who oppose research on embryos. He thinks Clinton couldn't afford to "deal with" the most controversial of the proposed guidelines at this time. The result, says Challoner, is that Clinton has asked NIH to defer a socially important area of research, but at the same time, he has tried to quiet a furor that might have engulfed NIH in broader controversy.

—Eliot Marshall

## FREEDOM OF INFORMATION

# Washington Law Forces Grant Disclosure

The Washington State Supreme Court recently sent a tremor through Washington's research community. On 22 November, the court ruled that a 21-year-old state law requires institutions in Washington to make public on request grant proposals that would involve government money—even if the proposals haven't been funded.

The ruling will have a chilling effect on research, predicts Alvin L. Kwiram, vice provost for research at the University of Washington, because it means anyone can now gain access to ideas long before publication. And the impact could extend well beyond Washington's borders.

"This ruling will mean that many investigators in other states who are not subject to our kind of problem will be loath to collaborate with our faculty if they were forced to reveal their ideas prematurely," says Kwiram. "And

the same is true of any effort to collaborate with industry." The ruling, moreover, could make research involving animals more vulnerable to attack by animal-rights groups.

Indeed, the state supreme court ruling is the result of a suit brought by an animal-rights group—the Progressive Animal Welfare Society (PAWS)—in an effort to force the University of Washington to release details of an unfunded research proposal involving monkeys. The proposal, by primatologist Gene Sackett of the University of Washington Primate Center in Seattle and neuropathologist Linda Cork of Johns Hopkins University in Baltimore, was designed to study mildly self-abusive behavior in monkeys in search of clues to similar behavior in autistic children. The project, which would have involved isolating some monkeys at birth, didn't get a good enough priority score to be funded by the National Institutes of Health, however, and it has never taken place.

PAWS' lawyer, John T. Costo of Bellevue, Washington, said that in January 1991, his client sought the names of the researchers involved with the proposed study, the kinds of animals that would be used, budget details, and the researchers' bibliographies. The organization planned to circulate the information in its newsletter, he said. When the university refused to turn over the information, PAWS filed suit, arguing that Washington's Public Records Act requires release of the information. The act stems from a citizen initiative, approved by Washington

voters in 1973, that mandates "full access to information concerning the conduct of government at every level."

The university lost the first round in 1992, when a judge in King County Superior Court in Seattle ruled that the law required release of much of the information in Sackett's proposal. The university took the case to the state supreme court, where its appeal was supported by a bevy of learned societies and industry groups, including the American Psychological Association, the Association of American Medical Colleges, the American Council on Education, and the Washington State Biotechnology Association.

The university argued that unfunded research proposals are protected from disclosure by a variety of laws, including the federal Freedom of Information Act, copyright and patent stat-

utes, and the Uniform Trade Secret Act. Sackett, in an interview with *Science*, added that PAWS was "asking me to give up my intellectual property." He argued that proposals that have not been funded are the property of the individual researcher. Moreover, he noted that in his case, the implications of making unfunded research proposals public aren't merely theoretical: During his 30 years of animal research, he says, he has experienced death threats, has had his house trashed three times, and has received harassing telephone calls from animal-rights activists. "I'm getting a little gun-shy."

The supreme court, however, says the mandates of the Public Records Act are so strong that disclosure is required. The court even awarded attorneys' fees to PAWS and noted that the lower court can penalize the university \$100 for each day PAWS was denied access to the information. Costa says the penalties could amount to \$146,000 on top of \$20,000 in attorneys' fees.

The university is now planning to ask the legislature to amend the law. "Most other state laws exempt research proposals and intellectual property in its broadest sense from disclosure," Kwiram notes. "But the laws in the State of Washington ... are far more sweeping in what they encompass." In the meantime, the university is reviewing its immediate options.

—Victoria Slind-Flor

Victoria Slind-Flor is in the San Francisco bureau of The National Law Journal.

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