

SCIENTIFIC MISCONDUCT

Court Orders PHS to Reveal Names

If you have been investigated by the federal government for scientific misconduct and been found innocent, details of the case against you—including the fact that you have even been investigated—have traditionally been kept secret. But perhaps not for long. Last week, a federal judge in Washington, D.C., ruled that the Public Health Service (PHS) must release the names of researchers it has investigated, regardless of its findings.

Since 1988, PHS has argued that releasing reports of completed scientific misconduct investigations in which it found no evidence of wrongdoing—or even naming the individuals involved in such cases—would represent a “clearly unwarranted invasion of privacy” because of the potential damage to the reputations of researchers who had been cleared of misbehavior. “I think by virtue of the fact that allegations were made and an investigation undertaken, that those things can be damaging,” says Lyle Bivens, director of policy at PHS’s Office of Research Integrity (ORI). “That’s one reason to protect those names.” (The agency does, however, release

reports of investigations in which it made a finding of misconduct.)

A year and a half ago, however, Charles McCutchen—an NIH physicist and self-described “dilettante”—sued the agency under the Freedom of Information Act (FOIA), claiming that as long as PHS withheld the names of scientists it had cleared, the public had no way of knowing whether or not the agency’s misconduct office (then the Office of Scientific Integrity, since restructured as ORI) was carrying out thorough investigations.

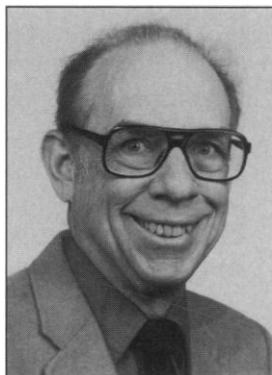
What McCutchen did not expect was to win. Much to his surprise, and to that of his lawyer, Joseph Damato, Federal District Court Judge John Pratt agreed with their arguments. In an opinion issued on 24 August, Pratt, an 82-year-old judge who was nominated to the bench by President Lyndon Johnson in 1968, wrote

that the privacy interests of individuals who have been investigated for misconduct were not quite as strong as the public interest in knowing who they are. Only disclosure of the names of researchers who have been investigated, Pratt wrote, could satisfy the public’s right to know about “scientific work done at taxpayer expense whose credibility has been called into question.”

The court order doesn’t go as far as McCutchen would like, however, since it doesn’t require PHS to release the reports of its closed investigations—just the names of the individuals involved. “Technically speaking, that would require a second FOIA suit,” Damato says. But he adds that the precedent set by Pratt’s ruling—if it stands—will make it easier to challenge any attempt to withhold the reports. “Certainly the spirit and rationale of [Pratt’s] order would support such an attempt,” he says.

Pratt’s order will take effect in 60 days, unless the government appeals the ruling—a step Damato says he fully expects.

—David P. Hamilton



Surprised victor. Plaintiff Charles McCutchen.

ELECTRONIC PUBLISHING

Online Journal Joins Forces With *Lancet*

Current Clinical Trials (CCT), AAAS’s entry into electronic publishing, has hooked up with *The Lancet* in what is billed as a pioneering adventure in “parallel publication.” According to the agreement, announced in simultaneous editorials in the two journals on 28 August, papers published by the online journal—the first of its kind—can also appear, in abridged form, in the weekly British journal.

As the editors—CCT’s Edward Huth and *The Lancet*’s Robin Fox—have described it, the arrangement neatly fills the needs of both publications. *The Lancet* has been looking for more short reports with broad appeal, and the electronic journal, a specialty publication with a limited audience, hopes to attract more contributors by offering them the possibility of an amplified audience in *The Lancet*’s 29,000 readers.

The new arrangement won’t change the electronic journal’s basic modus operandi, conceived by AAAS and its publishing partner, Online Computer Library Center. Electronic publication eliminates space constraints and time “in press,” opening a quick route into “print” for complete findings from key clinical trials.

But starting with the 28 August announcement, authors will have a new option. Papers coming in to CCT—unless they have “irremediable” defects—will be forwarded to *The Lancet*, if the authors want. If the weekly

journal is interested, it will submit the works to its own peer reviewers while CCT is doing its peer review. Authors of papers accepted by *The Lancet* will get directions about shortening them—the printed version will usually be about one-third the length of the electronic version—and the abridged version will appear in *The Lancet* on the same date that the full version of the paper is put online.

The editors of the two journals fully expect the arrangement to draw criticism. “This joint enterprise will be castigated as an encouragement of multiple publication,” says *Lancet* editor Robin Fox in his editorial. But he and Huth contend that there should be no problems. Says Huth, who comes to CCT after 20 years as editor of *Annals of Internal Medicine*: “Wasteful publication usually means putting a content in much the same form before the same audience in different journals.” But in this case, he says, the audiences are different, and the two papers will be clearly identified as two versions of the same thing.

What’s more, the novel arrangement may give a needed boost to CCT, which had a slow start due to lagging software development and some initial difficulty getting papers—associate publisher Pat Morgan of AAAS says there have not been “as many as we would like.” CCT was launched on 1 July, 3 months after originally planned. And by last week, just five papers had come on-

line, with two more expected shortly.

The trouble, Morgan says, is that contributors are still leery of the new journal. “It’s the sort of thing that everyone endorses in principle,” she says, but existing online journals are still thought of as “counterculture.” And given that “the average clinical trial costs a half a million dollars to run, involves dozens of investigators and 7 to 10 years of labor,” says Morgan, publishing the results electronically “looks like a lot of risk.” Adds managing editor María Lebrón, “This is a massive educational process. We are tinkering with things that are very embedded in the academic community.”

One group that isn’t leery of the innovative nature of the effort is the “600 plus” subscribers who have plunked down \$95 per year for a subscription. To CCT’s marketers, this is an excellent start toward the anticipated level of about 5000 subscribers after 5 years, Morgan says.

The strong initial interest in the venture should comfort potential authors. Still, a key challenge for CCT has always been the worry that work published electronically will be “invisible,” says Morgan, even though the contents are indexed elsewhere and nonsubscribers can get copies in various ways including a document delivery service. Agrees Lebrón, “We have a journal that you can literally not put your hands on.” She and her online colleagues hope that their *Lancet* deal will help allay that worry.

—Constance Holden