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Committee Investigates Klausner Role In $40 Million NCI Contract To Harvard

A Congressional investigation of Richard Klausner has been broadened to include questioning of the former NCI director's role in awarding a $40 million contract to Harvard University at a time when he sought to become president of that institution.

Though Klausner left his post two years ago, the investigation is significant because it unfolds during lean times for cancer research and in the midst of a growing movement in Congress to curb NCI's special authorities and make the Institute more responsive to directions from NIH.

The Nov. 10 letter from the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce also

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In Brief:

NCI Gives Doroshow, Fine "Lead Role" In Clinical Trials System Review

JAMES DOROSHOW, associate director for clinical research, City of Hope Comprehensive Cancer Center, was rumored for several months to have accepted the job of director of the NCI Division of Cancer Treatment and Diagnosis.

Doroshow's name surfaced publicly for the first time early this week in a communication by NCI Director **Andrew von Eschenbach**.

Howard Fine, chief of the Neuro-Oncology Branch in the NCI Center for Cancer Research, will serve as head of the Institute-selected committee to study the clinical trials system, sources said.

Von Eschenbach mentioned Doroshow and Fine in the last paragraph of his weekly "Director's Update," which appears in a prominent postion in the upper left corner of the NCI home page. "Improving the speed and efficiency with which cancer clinical trials are conducted will be an important priority for NCI over the coming years," von Eschenbach wrote in his Nov. 11 column. "Drs. James H. Doroshow and Howard Fine will be taking the lead role in this effort.

"NCI is now formulating a large-scale initiative aimed at developing and deploying an integrated clinical trials system to accelerate the development of interventions and ensure that those interventions are efficiently incorporated into the care of all who need them," von Eschenbach continued. "We will continue to keep you informed about this effort. "

Von Eschenbach did not discuss either appointment in his remarks

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NIH Begins Internal Review Of SAIC Subcontract

(Continued from page 1)

questions Klausner's business relationship with a company started by Stuart Schreiber, the principal investigator on the NCI contract, which established a "molecular target laboratory," or MTL, at Harvard.

The text of the document appears on page 4 and is posted at http://energycommerce.house.gov/108/News/11102003_1132.htm.

"This is fine," Klausner, executive director of the global health program at the Bill & Melinda Gates Foundation, said to **The Cancer Letter**. "This will play itself out. The facts are all incredibly clear. This is a series of dots that they put out there that have no connection."

The contract in question gave Harvard $8 million a year for five years to establish the laboratory. The venture was funded as a subcontract with Science Applications International Corp., the contractor that operates the NCI intramural research facilities in Frederick, Md.

Though Harvard announced the receipt of the MTL award in March 2002, "the committee has records and information that raise questions of whether the outcome or the circumstances ensuring that award outcome occurred well before March 2002, during the time Dr. Richard Klausner served as Director of the NCI before he left that position on Sept. 30, 2001," the letter states.

Schreiber and Klausner were among co-founders of Infinity Pharmaceuticals, a company intended "to commercialize research related to the MTL," the letter states. Schreiber serves on Infinity's scientific advisory board. Klausner is the chairman of the scientific advisory board and a member of the board of directors.

According to the committee, Klausner was also a consultant to Infinity and other companies started by the company's directors. Thus, after leaving NCI, Klausner "may have benefited financially from the subcontract award," the letter states.

The letter was signed by Committee Chairman Billy Tauzin (R-La.) and the Oversight and Investigations Chairman James Greenwood (R-PA). Similar letters requesting information were addressed to NIH, Harvard, SAIC, and Infinity.

The allegations emerge at a time of intense politicization of NCI, as Klausner's successor, Andrew von Eschenbach, is advancing a scientifically questionable goal "to eliminate the suffering and death due to cancer by 2015," convening closed-door meetings of the National Dialogue on Cancer to formulate public policy, and, on a recent occasion, bypassing peer review to hand out $2 million to the American Association for Cancer Research, a key political constituency (**The Cancer Letter**, June 20).

The Klausner controversy may strengthen political momentum of the recent recommendation by the Institute of Medicine that Congress reassess NCI's special status, including the Presidential appointment of the NCI director, observers say. "To have that as background noise while fighting for NIH dollars is not helpful," a Capitol Hill source said. "A logical thing to consider is whether this would make some folks on the Hill take the IOM recommendations about bringing NCI back into the fold more seriously,"

NIH officials have begun an internal review, said John Burklow, a spokesman. The review is being conducted by the Office of Management Assessment. "I don't have a time frame for them, but I am sure they would be working expeditiously," Burklow said.

Officials at Harvard said they are studying the document. "There are so many threads in within this long correspondence that the internal people are taking a look at it," said Kevin Casey, senior director of federal and state relations.

Casey said Harvard didn't seek special treatment from NIH. "As an institution, we don't seek academic

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earmarks, and we do that because we believe that the faculty that we are able to attract can compete fairly within the scientific peer review system, and we also believe that that's the bedrock of our international stature in the world of science," he said. "Therefore, we are very concerned that that integrity be maintained, so these kinds of charges we take very seriously."

Klausner said he welcomes the investigations. "I would be absolutely delighted for them to get any and all information they can possibly find," he said of the committee's efforts. "Because the only information they could find would just show that there is no basis for any of the issues that they have raised."

Klausner said NIH officials have assured him that the internal investigation would proceed quickly. "I expect NIH to quickly and definitively clarify this," he said. "That's what they assured me."

The Congressional investigation has been going on for over a year, and had produced nothing but "strange innuendoes," Klausner said. "They have been asking NIH about it, and as NIH has demonstrated to them, I think they know full well, this was a very standard, competitive, open contract review around which I had zero interaction at any point during the review and decision process. To this day, I have no idea who was on the committee.

"They followed totally standard rules, and never had any interaction with any decision-making," Klausner said. **"**And what I see in this release are strange innuendos, and that's all they are. This is not gray. This is a black-and-white situation."

Any linkage between MTL and Infinity is a "complete red herring," Klausner said.

"Infinity has absolutely no relationship to the MTL," he said. "Infinity is a company I joined. I was bombarded with requests to join many companies. I joined it after I left NCI. I had no interaction with Infinity before. In all my time in Infinity, MTL has never even come up."

The letters broaden the focus of the inquiry, which began as an examination of Klausner's acceptance of lectureship awards from cancer centers funded by NCI. The committee alleged irregularities in disclosure of these awards, failure to recuse himself properly from matters involving these institutions, and, in one case, made improper travel arrangements that allowed him to fly first class (**The Cancer Letter**, July 4).

Claiming "possible violations of federal criminal and ethics laws," the committee said that as a Presidential appointee, Klausner was barred from accepting awards and honoraria. Klausner said that he had clearance from NIH to accept the awards and denied allegations of impropriety.

For decades, the Oversight and Investigations Subcommittee played a prominent and controversial role in oversight of cancer research, launching probes of the NCI lab of Robert Gallo, and the National Surgical Adjuvant Breast & Bowel Project. However, in 1995, after Democrats lost control of Congress, the subcommittee was pared down, and its focus on NCI and cancer diminished. In recent years, the committee returned to the cancer field, conducting hearings on the ImClone scandal, calling for prosecution of ImClone shareholder Martha Stewart, and triggering changes in review of cancer therapies at FDA.

Letter Probes Klausner Recusal, Link To Infinity Pharmaceuticals

The text of the committee's letter to NIH Director Elias Zerhouni follows:

The Committee is investigating whether, in some cases, purportedly open and competitive processes used by the National Institutes of Health to award research grants and contracts are structured to ensure or maximize the chances that certain institutions and/or individuals personally favored by high-ranking NIH officials win the awards.

Our concerns arise from a preliminary Committee staff review of the circumstances surrounding the March 2002 award to Harvard University of a five-year, $40 million subcontract for a molecular target laboratory through a prime contract funded by the National Cancer Institute. The prime contract used to fund the subcontract award was the Science Applications International Corporation Operations and Technical Support contract supporting cancer and AIDS research at NCI's federally funded research and development center, located in Frederick, Maryland. Information obtained from the preliminary Committee staff review raises questions about whether Harvard University received favorable treatment. Although Harvard announced its receipt of the award in March 2002, the Committee has records and information that raise questions of whether the outcome or the circumstances ensuring that award outcome occurred well before March 2002, during the time Dr. Richard Klausner served as Director of the NCI before he left that position on September 30, 2001.

This investigation is based on three concerns:

—First, Dr. Richard Klausner, the Director of the NCI (1995-2001), appears to have personally and substantially participated in the MTL initiative that NCI awarded to

Harvard University at a time when he had disqualified himself from personally and substantially participating in any matters affecting Harvard.

—Second, Dr. Klausner, after leaving NCI, may have benefited financially from the subcontract award because Infinity Pharmaceuticals, a company he "co-founded" with the lead Harvard MTL scientist to commercialize research related to the MTL, paid Dr. Klausner to be a consultant, and other companies started or financed by other Infinity directors paid Dr. Klausner for consulting.

—Third, unusual aspects of the subcontract award raise investigative and policy questions.

We note Dr. Klausner told the Committee staff that he was in compliance with ethics rules and that he believed there was no connection between the MTL award and Infinity Pharmaceuticals. Nevertheless, questions raised by the evidence and information outlined in this letter and attached chronology warrant further investigation.

The MTL Initiative and Dr. Klausner's Participation

In March 2002, Harvard University announced it had received a federal contract award of $40 million over the next five years from the NCI to establish the Molecular Target Laboratory (MTL). Under the direction of Dr. Stuart Schreiber, the MTL uses high throughput assays to identify proteins that cause disease and develop compounds that can block them. As described in the March 22, 2002 issue of News From Harvard Medical, Dental & Public Health Schools, "[t]he Molecular Target Laboratory will build on the efforts of the Harvard Institute of Chemistry and Cell Biology [ICCB], a collaboration created in 1997 between the Faculty of Arts and Sciences and the Faculty of Medicine to develop the field of 'chemical genetics,' using small molecules to explore protein function in biology. The target laboratory will provide the means to develop chemical genetics in a more systematic way, with the aim of identifying specific small-molecule probes for every gene product potentially relevant to cancer." Harvard University was the only awardee of the NCI-SAIC subcontract and thus is developing the Nation's only molecular target laboratory.

In 1997, the NCI under the leadership of its then director, Dr. Richard D. Klausner, funded a grant of about $2 million per year over five years to Harvard University in support of chemical genetics research. Five other research centers received funding as well, but Harvard appears to have had the largest grant of the six NCI grantees and also to have had its own financial support for its research. In June 1999, Dr. Klausner executed a written recusal relating to Harvard University because an institution affiliated with Harvard University was interested in hiring Dr. Klausner. Under his written recusal, Dr. Klausner was to be disqualified from participating in matters affecting Harvard University for one year from the date that negotiations were concluded with no position being offered. Sometime later than June 1999, Dr. Klausner was not offered the position and therefore, under the terms of his written recusal, he would have been disqualified from participating in matters affecting Harvard University starting from sometime in late summer or fall 1999 to sometime in late summer or fall 2000.

According to a conversation he had with Committee staff, Dr. Klausner conceptualized and designed the idea of funding molecular target laboratories during his summer vacation in August 1999. The basic concept of the initiative was the creation of "Chembank," a suite of informatics tools and databases aimed at promoting the development and use of chemical genetics by scientists worldwide. Both the term "Chembank" and the notion behind it were pioneered by Dr. Stuart Schreiber of Harvard.

For the next several months, Dr. Klausner presented his MTLs idea to boards advising NCI and to other NCI officials. Dr. Klausner knew Dr. Stuart Schreiber, the lead researcher at Harvard on chemical genetics for over ten years, Dr. Schreiber was a member of the NCI's Scientific Advisory Board from 1996-99, and Dr. Schreiber was the lead investigator on chemical genetics research for the Harvard grant funded by NCI since 1997. Around the time of his August 1999 vacation (when Dr. Klausner said he conceptualized the MTLs), Dr. Klausner had scheduled a meeting and a phone call with a "Dr. S. Schreiber." Dr. Klausner's 1999 appointment calendar shows a 9:00 a.m. meeting scheduled with Dr. Schreiber on August 20 and a 10:00 a.m. phone call on September 10th. On October 1, 1999, Dr. Klausner and other officials involved in the MTLs initiative visited Dr. Schreiber and his lab at Harvard. Based on available records and information, the Committee staff has found no evidence of meetings, communications, or site visits between Dr. Klausner and the other five NCI-funded centers engaged in chemical genetics research during this time the MTL initiative was conceived and launched.

In December 1999, SAIC was informed that its prime contract for operating the Frederick NCI Cancer Center would be recompeted. Notice of the recompetition was published in the December 16, 1999 issue of Commerce Business Daily. This prime contract was valued at over $1 billion.

On January 7, 2000, at an annual NCI combined principal investigator retreat, Dr. Stuart Schreiber presented a talk on modern medicinal chemistry. According to the March 2000 NCI Division of Cancer Epidemiology and Genetics Linkage newsletter: "He [Schreiber] described the use of small molecules in conjunction with genomic studies to create probes for the development of new pharmaceuticals. Dr. Klausner stressed NCI support for this research and expressed the hope that the information generated will become part of public databases." A few weeks later, it appears that the NCI, through SAIC, acted to fund the expansion on the kind of work presented by Dr. Schreiber and the vision expressed by Dr. Klausner. On January 26, 2000, Dr. Klausner held a

meeting with senior NCI administrators Robert Wittes and Mary Ann Guerra to discuss MTLs, according to Dr. Klausner's and Ms. Guerra's appointment calendars. On February 1, 2000, according to a milestone chart provided by NIH to the Committee, it appears that an initial meeting between NCI and SAIC was held on the MTLs, and on February 2, 2000, an acquisition plan was developed for the NCI and SAIC to solicit molecular target laboratories. On February 23, 2000, Commerce Business Daily published a pre-solicitation notice from the NCI Frederick Cancer Research and Development Center for molecular target laboratories.

From late January 2000 through early July 2000, Dr. Klausner's appointment calendar shows he had several meetings scheduled with senior NCI staff to discuss the MTL initiative. Around early March 2000, Dr. Klausner, along with Dr. Wittes, selected the NCI source selection official for the MTL subcontract award, Dr. Robert Strausberg. On May 18, 2000, Dr. Klausner appeared at the MTL pre-solicitation conference to provide an introduction and technical program background about the MTLs. The registration list for the pre-solicitation conference showed five officials from Harvard (but not Dr. Schreiber) in attendance at this meeting, more than any other organization that registered.

It appears Dr. Klausner had detailed personal knowledge about this subcontract and its status. According to the 114th National Cancer Advisory Board Summary of Meeting, on June 13, 2000, Dr. Klausner reviewed new initiatives related to molecular targets including "expansion of the molecular target laboratories (MTL) initiative to develop a comprehensive program of ligand discovery for cancer-relevant targets. Dr. Klausner briefly described MTLs as having scientific components (chemistry for the design, synthesis, and acquisition of chemically diverse libraries; biology for the development of screening assays to evaluate the probes and identified targets) and an integration component to develop high-throughput screens, databases, and analytical tools that make the biologic and chemical resources of the MTLs accessible to the research community. Deliverables of these contract organizations in academia will be biologic assays, chemical libraries, repositories, and scientific databases. Dr. Klausner reported that a recent presolicitation meeting [held May 18, 2000] had elicited much interest among researchers."

Following the pre-solicitation conference, additional questions were invited and some were received later in writing. All questions were answered by amendment to the draft solicitation. A revised draft solicitation was issued which generated additional questions and comments. Based on comments from potential offerors and guidance from the NCI, a final solicitation was issued on October 14, 2000, which became the basis for the selection process.

While Harvard was developing its proposal for a molecular target laboratory in response to the NCI solicitation for MTLs, it appears that Dr. Klausner interviewed for the presidency of Harvard University sometime between October 1 and December 10, 2000. A few months earlier, in May of 2000, Dr. Neil Rudenstine announced that he would resign the presidency of Harvard effective June 30, 2001. The Harvard presidential search committee then commenced an extensive process for selecting the next president of Harvard. According to a May 7, 2001 article in the Harvard Crimson, after October 2000 the search committee was conducting interviews in the field with possible candidates, a subset of a list of over 400 names of suggested candidates. On December 10, 2000, the Harvard Corporation announced to the Harvard Board of Overseers that the slate of candidates had been narrowed to between 30 and 40. In discussing candidates who did not stay on the list, the article notes, "Richard Klausner, director of the National Cancer Institute, just did not seem to have 'it'." According to his signed memorandum, Dr. Klausner recused himself on December 11, 2000 from participating in matters involving Harvard University, the second recusal by Dr. Klausner involving Harvard. Dr. Klausner told Committee staff that he recused himself from participation in the MTL matter at this point. However, Dr. Klausner is quoted in articles and meeting minutes from 2001 that would reasonably give the appearance that he continued to be participating in the MTL matter. Moreover, Dr. Klausner was not recused from participating in any decisions affecting SAIC, the prime contractor that would award the MTL subcontract, and SAIC was recompeting for its prime contract at this time.

Proposals for the MTL initiative were submitted in January 2001. The selection process then had several stages. SAIC used an Independent Technical Evaluation Group (ITEG) to evaluate and score the technical aspects of the proposals consistent with the Request For Proposal (RFP) and to recommend the competitive range. Because the Committee staff was conducting a preliminary review and did not have access to non-public records, information was not available about the composition of the ITEG, its deliberations, and the scoring of the proposals. Given the crucial role of the ITEG, the Committee is interested in the composition and deliberations of the ITEG. On July 16, 2001, the ITEG completed its competitive range report. Harvard was one of two finalists.

On September 7, 2001, SAIC conducted a site visit of the Harvard laboratory. Based on the recommendation of the ITEG, the SAIC source selection official made a preliminary decision and submitted it to the NCI for review and consent to award. According to SAIC, in early October 2001, Dr. Robert Strausberg (the NCI selection official selected by Dr. Klausner) made the decision to choose Harvard. This would have been a few days after Dr. Richard Klausner left his position as NCI Director on September 30, 2001.

NIH officials involved in funding decisions are

responsible for becoming familiar with and observing federal government ethics requirements, and exercising judgment to avoid conflicts of interest. The NIH Policy Manual, "Avoiding Conflicts of Interest" (June 19, 1998 release date), governs recusals. The manual states: "An employee may be disqualified from participating in a particular matter or category of matters. Disqualification is appropriate when the conflicting interest bears a direct or indirect relationship to particular, identifiable duties performed by the employee. A disqualification is also referred to as a recusal. A disqualified employee signs a written statement reflecting the scope of the disqualification and the precise nature of the conflicting interest or activity." The NIH Policy Manual delineates "personal and substantial participation" as "to participate personally means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To participate substantially means that the employee's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter." The NIH Policy manual defines "particular matter" as referring "to the official action taken by the employee and includes matters that involve a deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons."

Applying these provisions to the facts detailed above raises concerns about whether Dr. Klausner violated his own recusal decisions. Dr. Klausner executed a written recusal for Harvard in June 1999 that by its terms would have been in effect for a year and well past June 2000. During this time, information available to the Committee can be reasonably interpreted to show that Dr. Klausner was personally and directly involved in launching the MTL initiative for which Harvard would be a prime candidate. This initiative was aimed at expanding an approach of chemical genetics research in which NCI had funded six biology-chemistry centers. Harvard appeared to be the best funded and most publicized of the six centers. These centers constitute a discrete and identifiable class of institutions that would be expected to be interested offerors in the initiative. From his friendship with Dr. Schreiber, his knowledge and promotion of NCI's previous funding of chemical genetics research, and the October 1999 site visit to Dr. Schreiber's lab, we have reason to believe Dr. Klausner was well aware that Harvard was a prime candidate for this initiative. When Dr. Klausner appeared at the May 18, 2000 pre-solicitation conference, Harvard had registered for this meeting as a potential offeror. Dr. Klausner's involvement in the MTL initiative as detailed above supports the notion of personal and substantial participation: he conceived, helped design, and promoted the initiative; he held meetings on the MTL before the earliest solicitation notice was issued; he held meetings with the prime contractor on the MTL; he appointed and supervised the source selection official; and he even provided technical background at the MTL pre-solicitation conference. In addition, Dr. Klausner's reported statements in 2001 that suggest further participation raise questions about whether he complied with his second Harvard recusal executed in December 2000.

Infinity Pharmaceuticals

Heightening our concerns is the possibility that Dr. Klausner may have derived personal financial benefit in part from the subcontract award that was initiated, solicited, and evaluated during his tenure as NCI Director. After leaving the NCI, Dr. Klausner reportedly received consulting fees from Infinity Pharmaceuticals ("Infinity"), a company he "co-founded" with Dr. Stuart Schreiber. Infinity is developing drug discovery approaches based significantly on the chemical genetics research developed by Dr. Schreiber's laboratory. In addition, there is a high level of coincidence of relationships and communications between Dr. Klausner and certain individuals connected with Infinity Pharmaceuticals and Harvard University from August 1999 until shortly after Dr. Klausner left the NCI in September 2001, the time period when the MTL initiative was conceived and launched.

We note first that Dr. Klausner serves on Infinity's Board of Directors and is the Chairman of the Scientific Advisory Board of Infinity Pharmaceuticals. Dr. Schreiber serves on the Scientific Advisory Board. In addition to his receipt of stock, Dr. Klausner told the Committee staff that he became a paid consultant for Infinity in October 2001. Dr. Klausner told the Committee staff that around January 2002 he became a paid consultant for Prospect Venture Partners, a venture capital firm and a major investor in Infinity. The managing director of Prospect Venture Partners is Dr. James Tananbaum, a member of Infinity's Board of Directors. In addition, Dr. Klausner became a paid consultant for two other drug companies, Biospect and Genpath, in 2002. Dr. Tananbaum served as a start-up CEO and helped found Biospect. Genpath is financed by Prospect Venture Partners, and Dr. Russell Hirsch, a managing director of Prospect Venture Partners and a member of Infinity's Board of Directors, is a member of Genpath's board. Dr. Anthony Evnin of Venrock Associates, another member of Infinity's board, is also a member of Genpath's board. We note also that D. Ronald Daniel, another member of Infinity's Board of Directors, serves as Treasurer of Harvard University, a Member of the Harvard Corporation, a Member of the Board of Overseers, and Chairman of the Board of Fellows of the Harvard Medical School. Mr. Daniel was also a member of the Harvard presidential search committee.

Dr. Schreiber and Dr. Klausner are publicly presented as co-founders of Infinity Pharmaceuticals. Articles and documents give the appearance that Dr. Klausner co-founded Infinity prior to when he left the NCI on September 30, 2001. First, Infinity was founded prior to September 30,

2001. According to its website, Infinity was founded in February 2001. Moreover, according to Delaware's Division of Corporations, Infinity Pharmaceuticals Inc., was incorporated as Moab Inc., on February 7, 2001, and changed its name to Infinity Pharmaceuticals Inc., on August 7, 2001.

Second, several articles presented Dr. Klausner as a co-founder of Infinity. For example, according to an article in the November 2001 issue of Start-Up:

"One of the freshest examples of the star-powered platform is Infinity Pharmaceuticals Inc., founded this summer in Boston, MA. Steven Holtzman, perhaps the industry's most celebrated dealmaker in his former role as the chief business officer of Millenium Pharmaceuticals Inc., runs the company, which he helped co-found with Eric Lander, PhD, a highly respected computational biologist; Stuart Schreiber, PhD, a renowned chemist and Rick Klausner, MD, a leading biomedical researcher (emphasis added)."

We further note that handwritten notes on Dr. Klausner's 2001 Appointment Calendar suggest numerous communications between Dr. Klausner and other co-founders/directors of Infinity Pharmaceuticals (Steven Holtzman, James Tananbaum, Stuart Schreiber, and Eric Lander) between February 2001 and October 1, 2001.

Dr. Klausner and other individuals connected to Infinity have acknowledged to Committee staff that there were communications but that Dr. Klausner made no commitment to get involved with Infinity until after he left NCI. Moreover, statements from Dr. Klausner and others connected to Infinity raise the question of whether calling Dr. Klausner a "co-founder" of Infinity overstated his role, but some of these individuals confirmed that listing a large group of co-founders in start-up biotechnology companies is a typical practice and that "founder" is an imprecise term.

Nevertheless, Dr. Klausner's role, however characterized, appears to have been significant in helping launch Infinity, with some indications that Dr. Klausner's role may have began while he was still Director of NCI. First, Dr. Schreiber has said that he received advice from Dr. Klausner on when to commercialize the technology platform largely derived from Schreiber's NCI-funded work at the Institute of Chemistry and Cell Biology (ICCB) and thus when to launch Infinity. According to February 10, 2003 Bio-IT World, ". . . Schreiber bided his time to ensure the technology platform was mature before sending it out into the commercial world. Finally, others prodded him to action. By 2001, he says, 'many of my trainees at the ICCB were champing at the bit to industrialize the process. Several of my trusted colleagues and friends particularly Eric [Lander] and Rick [Klausner], agreed the platform was ripe."

Second, it appears that Dr. Klausner's name may have been used by Infinity to help raise venture capital. We note that attracting stars, such as Dr. Klausner, to Boards of Directors or Scientific Advisory Boards is a strategy for raising funds for start-up biotechnology firms. The November 2001 Start-Up article notes:

"In this model, the names, backgrounds and contacts of the company's founders and managers create value. Investors bet that these people know what they're doing and will attract other top talent, and that therefore it will be worth giving them time and money to build an integrated platform – basically, in whatever they deem fit. Firms like Infinity don't have to prove their bona fides by signing alliances. In fact, their cash-rich and faithful backers prefer that such companies stay private and build value, instead of giving away technology or product rights in the sorts of partnering deals most biotech firms have to do. By concentrating on building a product-generating platform, not simply providing technology or partial solutions for others, companies of this ilk accumulate upside."

A star with the appearance of access (or actual access) to non-public information, such as Dr. Klausner, might further enhance the raising of funds. The same article in the November 2001 issue of Start-Up continues:

"Infinity is counting on Rick Klausner to help tie Schreiber's and Lander's abilities together in a biomedical context. On October 1, the respected oncologist and immunologist resigned after five years of running the National Cancer Institute to become president of the new Case Institute of Health, Science, and Technology, established by AOL's founder Steve Case and his wife. . . . Given his time administering NCI's $4 billion budget, Klausner is in position to know where the very best biology is being done, and to point Infinity to it (emphasis added)."

It appears that Infinity successfully applied the star-power of individuals such as Dr. Klausner to its fund-raising. Despite what a trade publication called the chilly financing climate of 2002, Infinity raised $82 million, including a $70 million Series B financing placement in June 2002.

We also note that it appears that the technology base for Infinity Pharmaceuticals is linked to the laboratory of its co-founder Stuart Schreiber at Harvard University, funded in part by the NCI under Dr. Klausner's leadership as previously indicated. According to the June 24, 2002 issue of Biocentury: "Infinity's technology has its origins at Harvard University, where Stuart Schreiber and Mike Foley [now Vice President–Chemical Technologies at Infinity] were developing the use of high throughput chemistry to interrogate biology."

Finally, Infinity has promoted the connection of its company to Dr. Klausner, the ICCB, and the MTL. In his November 19, 2002 presentation, "Chemical Genetics, Chemical Genomics, and the Creation of Value," Infinity CEO Steven Holtzman discussed Infinity's strategy of: the right technology platforms; the right people; the right environment, culture and values; the right partners. On slide 11 of the presentation, Dr. Klausner is mentioned as one of the right people. Slide 15 is entitled, "The Right

Partners: ICCB, MTL, Lander/Schreiber Collaboration." In his conversation with Committee staff, Dr. Holtzman called the MTL "Infinity's intellectual birthright."

The Subcontract

The $40 million subcontract award to Harvard Medical School raises several questions of oversight interest. First, we note that the SAIC contract on its face would not be an apparent source to fund MTLs operating outside of the NIH. We note that the SAIC contract is used to support operations and support of the NCI facility at Frederick, Maryland. On its website, SAIC-Frederick states that its mission is:

"To provide scientific, technical, management, administrative, and logistical support of the NIH intramural laboratory research and development related to the causes of and cures for cancer and AIDS. Intramural research is that conducted by Government scientists operating within various units of NIH, principally the National Cancer Institute (NCI), and the largest institute of NIH. We also conduct basic and applied research in cancer and AIDS; operate and manage the Advanced Biomedical Computing Center (ABCC), the world's only supercomputer devoted exclusively to biomedical research; and conduct large drug and natural product screening programs (emphasis added)."

One would expect that a subcontract of this contract would be used to assist uniquely NIH intramural research efforts in Frederick, Maryland. SAIC told the Committee staff that the subcontract is in support of research at Frederick. However, the MTL is located at Harvard and the database created by the MTL is for the public and not intended for a strictly supportive role for NIH intramural research. There is no apparent direct, specific, and unique link to intramural research at the NCI facility in Frederick.

Even if the SAIC mission were liberally construed to support the MTL, this subcontract seems to stand in contrast to one possible precedent. For example, SAIC supported in part a NIH initiative known as the Mammalian Gene Collection Project, which was a multi-institutional effort that involved several NIH institutes to build a publicly accessible resource of sequences and clones. But the MTL initiative involved only one awardee outside NIH, not multiple institutions including intramural research centers at NIH.

Given the evidence at this stage, it is not apparent that funding a subcontract for a MTL at Harvard University in Cambridge, Massachusetts is consistent with the stated mission of the SAIC contract for NIH intramural research in Frederick, Maryland. In addition, our concerns about the possible misuse of government contractors at the NCI Frederick facility are heightened by Dr. Klausner's previous misuse of the other government contractor at the NCI- Frederick Cancer Research and Development Center.

Second, the subcontract involves an extraordinarily large amount of concentrated research funding to one institution ($40 million—5 years, $8 million per year), especially in contrast to the size of the average NIH grant award ($365,000). Moreover, in comparison with the average amount for a NIH award at about $367,000 in Fiscal Year 2001, $40 million over five years (or $8 million a year) seems to be an extraordinarily large amount for any individual NCI award. The amount also seems extraordinarily large, considering this is an award for only a subcontract. The amount of the award is also significant for Harvard University. In FY 2001, the year before the subcontract award, Harvard University received $31.876 million in NCI grants and $0 in NCI contracts.

Third, the single award of the subcontract raises questions. The single award seems to be contrary to NCI's explicit expectation of multiple awards, and communications on this point are confusing. As noted in the February 23, 2000 Commerce Business Daily notice for the MTLs: "It is also expected that multiple awards will be made." In a solicitation notice on the MTLs in the April 14, 2000 Commerce Business Daily, NCI stated: "It is anticipated that up to two awards will be made." However, a subsequent communication indicates, that while the number of multiple awards was expected to be small, the minimum was two. As stated in the NIH's "Determination of Exceptional Circumstances Under 35 U.S.C. 202(a)(ii) and 37 CFR 401.3(a)(2) and (e) for the NIH Molecular Targets Laboratory Initiative Contract and Its Subcontracts," January 29, 2002, at 8: "If the MTL is carried out as anticipated, NCI expects that the subsequent resources will be developed through the participation of a small number (perhaps as few as two) of subcontractor organizations." The rationale for multiple awards was based in part on the belief that the MTL initiative was beyond the capabilities of a single laboratory to accomplish the goals in an accelerated timeframe. Further raising questions about the single award were the inconsistent explanations given by NCI and SAIC for why a single award was made. On the one hand, NIH sent an e-mail dated February 20, 2003 to Committee staff stating in part: "We only made one award. Originally it was envisioned that there would be $15M[illion] for each year of the program and that was the basis for considering up to two awards. However, only $8M[illion] was actually available at the time this was funded, and only one award was made." Similarly, SAIC officials said that the funding level for the MTL initiative was changed and therefore there were only funds for a single award. On the other hand, the NCI source selection official, Dr. Robert Strausberg, told the Committee staff that the number of laboratories was not affected by the budget, the allocation was always $8 million, and that he simply followed the peer review process. Moreover, statements by Dr. Klausner and other NCI officials suggest that the MTLs initiative was conceived along the lines of the Jet Propulsion Laboratory (JPL), a single federally funded laboratory

managed by the California Institute of Technology for the National Aeronautics and Space Administration. The JPL comparison invites the notion that a single laboratory at one institution was actually the intended outcome all along, despite the stated expectation and need of multiple awards. Therefore, the conflicting information concerning the single award warrants further investigation.

Fourth, the subcontract is unusual because it involved the rare invocation of the "Determination of Exceptional Circumstance." Under the Bayh-Dole Act, the NIH recognizes the rights of contractors/subcontractors normally to elect and retain title to subject inventions developed with federal funding. However, to address the federal government's interest to make new technology available, the NIH in the MTL subcontract request-for-proposal (RFP) invoked the provision of the Bayh-Dole Act that enables the government to restrict or eliminate the right to retain title to any subject invention when it is determined by the agency that restriction or elimination of the right to retain title to any subject invention will better promote the policy and objectives of the Act. The MTL initiative was only the third instance in eight years that NCI had invoked the "Determination of Exceptional Circumstances" and required the approval of the Director of NIH. The transcript of the May 18, 2003 pre-solicitation conference and Committee staff conversations with potential offerors indicate that some potential offerors were concerned, and some even discouraged from competing, because of these restrictions on intellectual property rights. However, such a restriction would not have deterred Harvard. In his conversation with Committee staff, Infinity CEO Steven Holtzman mentioned that Dr. Schreiber wanted nonexclusive licenses and no special position on intellectual property. This view may not have been driven by altruism, but by Dr. Schreiber's difficult experiences in starting companies while at Harvard because of the conflicts of interest in the commercial need to protect the confidential information in an exclusive license versus the academic need to publish research.

Fifth, the subcontract award was inexplicably delayed. During the procurement process, NCI and SAIC had emphasized the urgency in making the award quickly—by August 2001—and establishing the MTLs on an accelerated timetable. Yet the subcontract award was not made until March 2002.

Sixth, the evaluation factors in the subcontract and the conduct of the procurement seemed to favor Harvard. If indeed NCI only anticipated at most two laboratories under this subcontract, the infrastructure for any individual laboratory would have to be one that was large and pre-existing. Few competitors of Harvard appeared to have had this infrastructure, and many of the competitors would have had concerns about the effects on academic environment from a sudden build-up. Deciding which offeror would get the subcontract award was based on the evaluation factors. As stated in the MTL RFP: "The evaluation of technical factors will be paramount in the selection. Technical factors will be weighted as identified below. Each technical factor listed below will be evaluated separately, as well as, in relationship to each other:

1. Scientific Plan (including informatics and QA/QC) (60%)

2. Key Staff Capabilities, Qualification and Experience (20%)

3. Management Plan (20%)."

There is reason to believe these evaluation factors favored Dr. Stuart Schreiber and Harvard. Dr. Schreiber was the best-funded chemical genetics researcher, experienced, and a pioneer in chemical genetics, particularly of the notion of a "Chembank." He was a friend of Dr. Klausner's and had served on the NCI's Scientific Advisory Board. Harvard was uniquely well positioned because of the NCI support and other financial support over the previous years for the Institute of Chemistry and Cell Biology (ICCB). Harvard had already provided substantial support to the ICCB, providing 10,000 square feet of space, 3,000 additional square feet adjacent to ICCB, $3 million in start-up funding, a $2 million renovation budget, and a recruitment package for a professor. Harvard had also committed to make available another 500,000 square foot expansion laboratory and $470,000 in renovations. For the MTL, Harvard had agreed to commit a senior faculty position, appropriate laboratory space, and salary endowment to allow recruitment of a second director for MTL. As previously mentioned, unlike many of its competitors, Harvard was willing to accept the intellectual property restrictions. Thus, only six offerors actually competed.

Even where it appeared Harvard would not be able meet a RFP requirement, there appeared to be exceptional leniency. For example, SAIC required the final proposal revision to include a one-year proposal with four one-year options. Harvard declined to include this required proposal in the revision but was still selected for the award.

Seventh, there are legitimate oversight reasons for questioning the use of a subcontract to fund the MTL initiative. In using a subcontract for the MTL as opposed to a prime contract, NCI may have diverted funds from program funds in the SAIC prime contract instead of from a salary and expense account if the initiative had been supported through a prime contract. Thus, this subcontract appears to add cost that would come out of cancer research funds. The subcontract route also bypasses rules of full and open competition required for prime contracts. For example, a GAO contract specialist confirmed to Committee staff there is no right of review for a protest of a subcontract award.

Lastly, even above the integrity concerns, this subcontract award raises profound policy questions about how to best manage cancer-research funds. As the federal government examines ways to accelerate drug development, especially of cancer drugs, this matter raises

the questions of whether it is most advantageous to concentrate large amounts of research dollars at one university and to commit federal funds for five years to one particular approach. Even if Dr. Schreiber's approach proves to transform drug development, it is important that future support for this research not be clouded by integrity concerns.

The totality of the information outlined above raises serious appearance issues as to fairness and favoritism that we must pursue to ensure the integrity of the NIH process for awarding grants and contracts. In light of these concerns and pursuant to Rules X and XI of the U.S. House of Representatives, we request the following by December 10, 2003:

1. All records relating to the MTL initiative and subcontract, including all records relating to the development, draft solicitation, final solicitation, selection process (including the list of ITEG members and all records of the ITEG), and award of the subcontract for the Molecular Target Laboratory, and all communications among NCI, SAIC, and Harvard University relating to the MTL.

2. All records of calls made from phone numbers of the Office of NCI Director or from phone numbers associated with Dr. Richard Klausner for the period starting January 1, 1999.

3. All records of communications since January 1, 1999 between Dr. Klausner and the following individuals: Neil Rudenstine, D. Ronald Daniel, Stuart Schreiber, James Tananbaum, Eric Lander, and Steven Holtzman.

4. All records dated since August 1, 1995 relating to communications concerning Dr. Klausner and any federal government ethics issue relating to him.

5. All records relating to Dr. Klausner's communications on the recompetition of the SAIC prime contract, a copy of the SAIC prime contract used for the Molecular Target Laboratory subcontract, and a list of all of subcontracts awarded from this SAIC prime contract since its inception.

6. A list of all individuals of the NCI Board of Scientific Advisors and the NCI Executive Committee, or any other NCI/ SAIC Committee or subcommittee, involved in the review of the Molecular Target Laboratory subcontract.

7. All records of any OMA reviews related to allegations against Dr. Klausner, ABL, and/or SAIC since August 1, 1995.

8. The 1998 OMA review concerning Dr. Vande Woude noted that "additional issues, not specifically related to the allegations against the Contractor, were identified that will be brought to the attention of senior NIH management, including Institute and Center Directors in an advisory memorandum that will be issued subsequent to this report." All records relating to these allegations and the advisory memorandum issued subsequent to the Vande Woude report.

9. All records relating to the appointments, telephone messages, or any other logs for Dr. Richard Klausner from January 1, 1999 to October 1, 2001.

10. A list of all recipients of NCI awards (grants, contracts, cooperative agreements) to fund work relating to the use of small molecules to probe biological targets. The time period is for January 1, 1996 to the present. Include in the list the following: grant number, title, institution, type of award, award start date, and dollar amount.

11. All records since August 1, 1995 relating to Dr. Stuart Schreiber and/or Harvard's ICCB, including but not limited to those relating to the October 1, 1999 NCI visit to Dr. Schreiber's laboratory.

12. All records relating to Infinity Pharmaceuticals.

13. All records relating to any communications between Dr. Klausner and NIH officials/employees since October 1, 2001.

14. All records relating to any outside activities (including compensation for any work) of any current NIH employee for the following companies with which Dr. Klausner is associated: Infinity, Genpath, Biospect, and Prospect Venture Partners.

The committee's letter to J.R. Beyster, chairman, president and CEO of SAIC, requested:

—"All records relating to the MTL initiative and subcontract, including all recored relating to the development, draft solicitation, selection process (including the list of ITEG members and all records of the ITEG), and award of the subcontract for the Molecular Target Laboratory, and all communications between NCI, SAIC, and Harvard University relating to the MTL.

—"All records relating to the recompetition of the SAIC prime contract, a copy of the SAIC prime contract used for the MTL subcontract, and a list of all of subcontracts awarded from this SAIC prime contract since its inception."

The letter to Lawrence Summers, president of Harvard, requested:

—"All records relating to the MTL initiative and subcontract, including all records relating to the development of Chembanks, draft proposal, and award of the subcontract for the Molecular Target Laboratory, and all communications of Harvard to or from NCI and/or SAIC relating to the MTL.

—"All records of the Harvard University Search Committee, Neil Rudenstein, D. Ronald Daniel, Stuart Schreiber, and any other Harvard employee at the ICCB or the Dana Farber/Harvard Cancer Center relating to Dr. Richard Klausner, the Office of NCI Director, SAIC, Dr. Eric Lander, Dr. James Tananbaum or Infinity Pharmaceuticals since January 1, 1999.

—"All records relating to the October 1, 1999 NCI visit to Dr. Schreiber's laboratory, and any other visit by

Dr. Klausner to Harvard since August 1, 1995."

The letter to Steven Holtzman, president and CEO of Infinity Pharmaceuticals, requested:

—"All records relating to the MTL.

—"All records relating to Dr. Richard Klausner, including any communications between Infinity and Dr. Klausner.

—"All records relating to any communications between Infinity and any official, employee, or contractor of the National Cancer Institute.

"All records relating to the appointments, call logs, or schedule of Steven Holtzman since July 1, 2001."

Funding Opportunities:

Program Announcement

PA-04-017: Studies of the Economics of Cancer Prevention, Screening, and Care

NCI Division of Cancer Control and Population Sciences and the Agency for Health Care Research and Quality invite investigator-initiated grant applications that will generate economic knowledge for optimal design of cancer prevention and control trial studies and interventions and will facilitate the formulation of effective health care policy related to cancer prevention and control.

NCI has an interest in economic and health services studies with particular emphasis on meeting the goals of the NCI Quality of Cancer Care Initiative (see http://plan.cancer.gov/public/quality.htm). The PA will use the NIH investigator-initiated research grants R01 and exploratory/developmental R21 award mechanisms. The PA is available at http://grants1.nih.gov/grants/guide/pa-files/PA-04-017.html.

Inquiries: Martin Brown, Health Services and Economics Branch, Division of Cancer Control and Population Sciences, NCI, 6130 Executive Blvd., EPN Rm 4005, Bethesda, MD 20892-7344, Rockville, MD 20852 (for express/courier service), phone 301-496-5716; fax 301-435-3710; e-mail mb53o@nih.gov.

NCI Contract Awards

Title: Phase 1 and Phase 2 Clinical Trials of Cancer Chemopreventive Agents. Contractors: Mayo Clinic, $9,298,979; Univ. of Wisconsin-Madison, $5,082,349; Northwestern Univ., $9,981,492; Univ. of Arizona, $7,529,593; M.D. Anderson Cancer Center, $6,593,296; Univ. of California, Irvine, $3,756,432.

Title: Synthesis of Selected Chemical Carcinogens, Derivatives of Polynuclear Aromatic Hydrocarbons and Chemopreventive Agents. Contractors: Institute For Cancer Prevention, Valhalla, NY, $1,505,575; SRI International Inc., Menlo Park, Calif., $1,521,820; Midwest Research Institute, Kansas City, Mo., $1,524,343.

In Brief:

NIH Wins A-76, 200 Positions "Saved," But No Jobs Lost

(Continued from page 1)

to the NCI Board of Scientific Advisors at its Nov. 13 meeting, and declined to respond to a reporter's questions.

* * *

NIH EMPLOYEES won a second competition this year under mandated outsourcing known as A-76. The Real Property Management group was found to be effective at less cost than the proposal from a private contractor. The group conducts construction, property, and utilities management. In a statement, NIH said 200 positions will be "saved" when the group's plan is in place next March. HHS pledged that NIH employees whose positions are lost--er, saved--under A-76 will continue to have a job. Thus, NIH may have to pay those salaries, as well as the costs of the competition and the reorganization. . . . **BECKMAN LASER INSTITUTE** at University of California, Irvine, won a $7 million grant from NCI to lead a consortium to standardize diffuse optical imaging. Other institutions participating include University of California, San Francisco, University of Pennsylvania, Harvard University/Massachusetts General Hospital, Dartmouth University, University of Illinois at Urbana-Champaign, Siemens Corporate Research Inc., and NIH. **Bruce Tromberg**, BLI director, is the lead investigator. . . . **CAROLINE MCNEIL**, acting chief of the NCI Mass Media Office, is moving to Vanguard Communications, of Washington, D.C., as editorial director. McNeil has served in the NCI Office of Communications since 1995. She worked at the National Institute on Aging from 1992-95. **Nelvis Castro**, OC director, will serve as acting director of the Mass Media Office. **Mike Miller** will be the program manager and main media contact. . . . **NYU School of Medicine** Institute for Urban and Global Health won a $5 million grant from NIH to establish the first U.S. Center for the Study of Asian American Health. The center will integrate the work of more than two dozen NYU researchers studying liver, stomach, lung, and prostate cancer, that occur more frequently in Asian Americans than in other minorities, said **Mariano Rey**, executive director of the institute. The center will participate in community outreach with Asian American groups, Bellevue and Gouverneur Hospitals, and the Charles B. Wang Center, formerly Chinatown Health Clinic.

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