



October 23, 2011

Jerry Menikoff, M.D., J.D.
Office of Human Research Protections
Department of Health and Human Services
1101 Wootton Parkway, Suite 200
Rockville, MD 20852

In Re: FR Doc No: HHS OPHS: 2011-0005

Dear Dr. Menikoff,

I write on behalf of the Organization of American Historians in response to your call for comments as to how current regulations for protecting human subjects might be modernized and revised. The Organization of American Historians (OAH) is the largest membership organization devoted exclusively to the study, teaching and presentation of American history. Since 1907, the organization has encouraged a wide discussion of historical questions and equitable treatment for all practitioners of history. Our organization strongly recommends that history as a discipline, and the practice of oral history, specifically, be excluded from oversight under the Common Rule and thus from the purview of Institutional Review Boards. We respond here to Question 25 of your call for responses to the current regulations.

Question 25 asks whether there are “certain fields of study whose usual methods of inquiry were not intended to or should not be covered by the Common Rule.” It cites history as an example of such a field. We believe that the application of the Common Rule, which was intended primarily for the biomedical and behavioral sciences and for research in it and related fields, should not extend to the practice of history. Oral history, a primary method for historians of the recent past, falls under the same rubric as history for the purposes of this statement. The application of this Rule to history is inappropriate for the following reasons.

1. The regulations assume a scientific, largely biomedical, model of research. While they have been extended to include the social sciences, such inclusion has been disputed by critics among both policy makers and scholars since the 1960s. Though the regulations fit some areas of social science, they do not fit history (or the humanities in general). Their coverage of oral history has been especially contentious, and efforts of institutional review boards to vet historical research problematic.
2. Oral history interviews are not intended to be scientific or systematic in the sense that the Common Rule implies. They are not systematic in the sense that they do not rely on a set of previously prepared questions that are submitted in the same order to a randomly selected group of participants. Nor are they intended to test a pre-selected hypothesis. Historians deal, instead, with carefully selected individuals chosen for their discrete and idiosyncratic knowledge of events.

3. Oral history interviews that document specific historical events or the experiences of individuals or communities over different time periods do not constitute "human subjects research" as they do not support or lead to the development of testable hypotheses in a manner that would have predictive value. The collection of such information, like journalism, is generally considered to be a biographical, documentary, or historical record of the individual's life or experience as it relates to particular historical events.
4. The methodology of oral history research is built on a free and open-ended dialogue with the interviewee and cannot be reviewed or assessed in the structured or systematic framework of an IRB. Efforts to force these interviews into a structured pattern, based on testable hypotheses, would distort the purposes of research and hinder the process of free inquiry on which historical interpretation is based.
5. The guidelines and ethical practices of history are monitored by the profession, and do not require IRB oversight.
 - a. Requiring anonymity of interviewees violates a fundamental principle of both oral history and all historical research. For historians, anonymous sources lack credibility; knowing the identity of a narrator allows the historian to gauge that person's relationship to the topic at hand and hence assess the perspective from which he or she speaks.
 - b. Historians (including oral historians) operate in accordance with a strict and long-standing ethical code that requires them to fully inform interviewees of the purposes of the interview, and to solicit permission in advance. Interviewees may review and correct transcripts before they are deposited in public archives; they sign release forms when their interviews are made available for use by researchers.
6. Because the experience of individuals and their relationship to events of the past is idiosyncratic, the way any interview unfolds cannot be predicted; historians who seek to probe the perspectives of individuals may be led by them into uncharted waters. Like journalists, historians who engage in oral history rely on their freedom to ask questions in order to develop truthful accounts. Similarly, the interviewees relish their freedom, in an open society, to give truthful testimonies.
7. Historical research, whether with living subjects or in the records of those no longer living poses no or minimal information risk. Established archival practices require researchers to protect confidentiality under circumstances where privacy concerns may be involved. And yet, the historian's deepest responsibility is to follow the evidence where it leads, to discern and make sense of the past in all its complexity, not necessarily to protect individuals from their past actions. In this respect, the historian is akin to the journalist.
8. The potential harms caused by the application of the Common Rule to History are great and threaten to become even greater. Current confusion about the application of these rules has resulted in their uneven and differential employment.
 - a. In the past, the OHRP has agreed that oral history does not fall within the rubric of the Common Rule. And yet fear of loss of federal funding has led many institutions to overstep their bounds and to demand that students and others whose projects involve only the use of publicly accessible archives and oral history interviews submit their projects for vetting.
 - b. Inappropriate oversight has created concerns among archival administrators that IRBs may limit the uses of their collections only to 'approved' individuals with approved projects. The possibility of limiting access to publicly available archives foreshadows a form of censorship and a violation of First Amendment rights to freedom of inquiry.

The occasional historian who engages in "systematic and generalizable" research can and should submit his or her project to IRB review. Such submission would, of course be required of a historian funded by a government agency such as the NSF or NIMH. But for the discipline as a whole, a Common Rule that

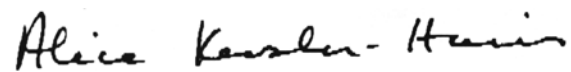
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inhibits the future use of archival or public-use data sources, and demands advance approval of interview protocols, may irreparably damage the capacity of historians to inquire freely into our past. History was never envisioned as falling under the OHRP rules for human subject research. This review of the Common Rule provides an opportunity to unambiguously remove the profession from unwarranted and restrictive oversight by making it clear that historians, in the ordinary practice of their discipline, are excluded from its purview.

Sincerely,

A handwritten signature in black ink that reads "Alice Kessler-Harris". The signature is written in a cursive, slightly slanted style.

Alice Kessler-Harris

President, Organization of American Historians

R. Gordon Hoxie Professor of American History in Honor of Dwight D. Eisenhower

Columbia University