

A Question of "Fitness"

When NIH cut Thereza Imanishi-Kari's funding in the middle of an ongoing investigation, did it violate norms of fairness?

PERHAPS THE ONLY SCIENTISTS under closer scrutiny than Thereza Imanishi-Kari are her scrutinizers themselves. The fraud investigators at the National Institutes of Health, having endured accusations that their first investigation of the Tufts University researcher amounted to little more than a superficial examination of scientific wrongdoing, may now find themselves facing exactly the opposite charge. Nearly 4 years after postdoctoral researcher Margot O'Toole first raised questions about a 1986 *Cell* article that Imanishi-Kari coauthored with then Whitehead Institute head and Nobel laureate David Baltimore, the NIH investigation is caught between opposing imperatives. Secret Service forensic evidence, elicited at the request of Representative John Dingell (D-MI), apparently demonstrates that large portions of one Imanishi-Kari lab notebook are "not authentic," as Secret Service agents testified, increasing the pressure on investigators to show Dingell they can be hardheaded in determining whether Imanishi-Kari faked her data. At the same time, investigators don't want to be seen prejudging the case.

These conflicting impulses went head to head last March when NIH grant reviewers faced a quarterly review of one of two Imanishi-Kari projects getting NIH funding. Could they give her more NIH money in the face of the Secret Service allegations? Apparently not, since they denied the extension—a precedent-setting action for the agency, which has never before terminated the funding of a researcher under investigation.

A year ago, NIH wasn't ready to take such a dramatic step. When Imanishi-Kari's \$300,000 award from the National Institute of Allergy and Infectious Diseases came up for a competing renewal in July 1989, NIAID decided against awarding a new 3-year grant. Instead, it extended the existing grant for 3-month intervals. In March, acting NIH director William Raub issued an "advisory"—something between a strongly worded memo and an order—to NIAID director Anthony Fauci suggesting that he stop the grant. In April, Fauci decided to do just that.

Is terminating a grant a punitive action? Office of Scientific Integrity deputy director Suzanne Hadley doesn't think so. While describing the decision as resulting from

"questions about the fitness of the principal investigator," she argues that it can be viewed in isolation from concerns about due process. "The decision to extend funding is discretionary," she says.

Hadley, the only NIH official willing to discuss the case, won't elaborate on Imanishi-Kari's "fitness" as a researcher. But the ongoing investigation—and accompanying congressional pressure—clearly played a large role in the decision to cancel her grant. In testimony before Dingell's oversight and investigations subcommittee on 14 May (see *Science*, 18 May, p. 809), Hadley said: "The evidence that was developing in the investigation raised significant questions about [Imanishi-Kari's] fitness to hold a [Public Health Service] research grant."

Secret Service agents testified last year and again this May that the notebooks contained altered dates, misordered pages, and anomalous tapes generated by gamma-ray counters—enough to conclude that "large

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—Robert Charrow

portions of the notebook, at least one-third, are false." Imanishi-Kari has defended herself both times by explaining that while she keeps her notebooks in a sloppy fashion, her lack of organization is not evidence of fraud.

Dingell has never accepted this argument. At the May hearing, he caustically asked Hadley why Imanishi-Kari still held a second NIAID grant: "Doesn't one hand know what the other is doing at NIH?" Hadley explained that the evidence against Imanishi-Kari was more compelling in March, when Raub suggested revoking the first grant, than in January, when the second grant was renewed.

Imanishi-Kari's lawyer Bruce Singal shares Dingell's concern, although for a diametrically opposed reason. "We're very concerned about the actions NIH has taken before the [investigative] process is com-

plete," he says. "This is a classic case of verdict first, evidence later." Singal declined to say whether Imanishi-Kari was considering legal action.

Just as alarming to Singal is his client's inclusion in the Public Health Service's ALERT system, a service which maintains a hard copy file of researchers whose work is flagged because of ongoing investigations or actual findings of misconduct. As many as 75 scientists, most of whom are under investigation, are currently listed in the system. "Great care is taken to make sure this information is held confidential," says institutional liaison director Janet Newburgh.

Singal, however, opted to begin telling reporters last February that Imanishi-Kari was listed on ALERT. "All Public Health Service granting agencies have been informed that my client is a scientific cheat," he says. "It's a draconian procedure." Draconian? The information held in the ALERT system actually amounts to little more than the scientist's name, research affiliation, and a notation reading either "Under Investigation" or "Sanction Imposed." Institute directors and misconduct officers are notified only when someone on the list comes up for a new position or grant.

Singal is not alone in thinking that Imanishi-Kari's situation illustrates flaws in NIH's investigative procedures. Robert Charrow, former principal deputy counsel for the Department of Health and Human Services, says the NIH investigative process is almost bereft of due process when compared with federal agencies that require formal hearings and allow appeals in cases of suspected misconduct. Within NIH, "there is no clear demarcation between investigation and adjudication," he says. "This is a legal netherland. Scientists are reluctant to construct formal procedures, but their absence allows people to swing in the wind for years."

According to Hadley, however, NIH follows "detailed and elaborate" investigative procedures. Subjects of investigation are allowed to retain legal counsel, correct interview transcripts, rebut early drafts of investigative reports, and comment on recommended sanctions. "These are not pro forma comments, either," she says. "We take them very seriously." Although only the most serious penalty—debarment from receiving NIH grants—permits an individual to appeal the decision, Hadley says OSI is "quite confident" that its process treats individuals fairly.

The Imanishi-Kari conundrum may turn out to be the first of many legal headaches for the NIH. "This is not a unique case," says Charrow. "There are large numbers of people suffering from the same infirmities at NIH."

■ DAVID P. HAMILTON