the program to include another 77,000 people is, say the critics, grossly unfair.

The critics think that along with the rationing program a tax increase of some sort is necessary—an idea that raises difficulties in a state where there is tremendous resistance to new taxation. "The Oregon politicians want you to believe that they can give health care to all the poor, pay the providers for the cost of doing this, and not raise taxes. But in reality, you can't do all these things, and it's disingenuous to say so," says Maxwell J. Mehlman, director of the Law Medicine Center at Case Western Reserve University, where a special conference was held in June to discuss the Oregon proposals.

In Mehlman's eyes, the Oregon plan will simply take services from the poorest people, "people at the bottom of the barrel," in order to give to people who are only slightly better off. "It's a zero-sum game," he claims. Kitzhaber disagrees, arguing that to him "the most vulnerable people in our society are the uninsured." and those are the folks that the plan would cover. Unlike the critics, he expects women and children to benefit most because of the emphasis on preventive care. Nor does he worry about finding additional funds. He believes that once all Oregonians are involved in health care policy—through voting and participation in formulating the list—they will be more willing to increase funding if necessary.

"Health care will no longer be just a line item in the budget, where you can throw people out of the system to balance the bottom line, and then hold no one responsible for what happens to them." Under his plan, Kitzhaber sees citizen advocacy groups pressuring the legislature to increase funds for health care if the budget provides only skimpy coverage. He is also optimistic enough to think that wasteful spending in medical services will be identified by the Oregan rationing plan and eliminated.

Yet until the commission produces the final version of its much criticized list and the waivers from Washington come through, much of this debate will remain academic. Without the list, no one can predict just how Oregon's plan will affect the health, or pocketbooks, of its citizens. Nor are there any promises that situations like Coby Howard's won't occur again. Overall, Oregon's exercise in rationing may be seen as either a grand experiment or a crazy aberration. But if nothing else, it has stirred the pot in a national debate that won't go away: health care reform.

■ VIRGINIA MORELL

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NIH Sued Over Misconduct Case

Investigations conducted by the National Institutes of Health into alleged scientific misconduct have long made a convenient punching bag. For years, a small band of critics has charged that investigative panels move too slowly, ignore important evidence, and shut whistleblowers out of the process. These days, it's more common to hear complaints from lawyers and the targets of investigation themselves, who complain that NIH's Office of Scientific Integrity (OSI), which conducts the investigations, confuses investigation with adjudication and provides its subjects with little or no due process (*Science*, 20 July, p. 240). Who's right? It may soon be up to the courts to decide. NIH's investigative procedures are about to face an acid test—a legal battle over whether NIH affords the subjects of such inquiries their constitutionally guaranteed rights.

Claiming that a protracted OSI investigation of fraud allegations threatens his reputation, neurologist James H. Abbs of the University of Wisconsin filed suit against the OSI and a handful of officials in the Public Health Service on 12 July. Abbs claims the investigation violates his right to due process because OSI can recommend any sanction short of the most severe punishment possible—debarment from receiving NIH funds—without allowing Abbs a hearing or affording him any opportunity to confront his accusers. According to court papers filed in the case, Abbs is seeking a preliminary injunction and a judgment dismissing the entire investigation as "constitutionally deficient."

At the center of the controversy are three graphs in a 1987 paper Abbs published in the journal *Neurology*. These graphs compared the lip, jaw, and tongue tremors in healthy patients with those in patients suffering from Parkinson's disease. Shortly after publication, a former graduate student in Abbs' laboratory named Steven Barlow noticed that these graphs bore a striking resemblance to smoothed versions of three graphs he and Abbs had published in an earlier paper in the *Journal of Speech and Hearing Research*. Barlow then widely distributed a letter to *Neurology* accusing Abbs of illicitly copying the graphs.

Like many such misconduct investigations, the resulting NIH inquiry into Abbs' work is replete with stumbles, missed cues, fits and starts of enthusiasm, and retraced footsteps. In 1987, NIH formally accepted the report of a University of Wisconsin investigation that found Barlow's allegations "unsubstantiated." Then, in April 1988, Charles McCutchen, an NIH scientist with a personal interest in scientific fraud, presented the NIH office responsible for the investigation with a statistical analysis in which he claimed the odds of a chance correspondence between the graphs were one in a billion. Within 2 weeks NIH was reviewing McCutchen's analysis for "soundness," and several months later the agency decided to convene a panel of external statistical experts to examine the graphs themselves. This panel apparently disagreed with the earlier dismissal of Barlow's charges, and by last February OSI deputy director Suzanne Hadley informed Abbs that OSI was pursuing a formal investigation.

Abbs has long maintained that the graphs contain data taken from separate patients. Unfortunately for his defense, Abbs no longer has the original data. He says he produced the graphs by hand, tracing oscillograph signals and then cutting up and photocopying his traces, a process in which he often discarded the original data. Abbs does argue that the apparent similarity of the graphs can be explained by the fact that parkinsonian patients exhibit a "characteristic instability" or by artifacts introduced by the measurement apparatus. Furthermore, Abbs says that another set of data taken from one of the original patients closely resembles the published data, providing "strong counterfactual evidence" that supports his case.

The Abbs case is unusual in at least one respect—it has been fought out in public, in a sharp exchange of letters between Abbs and his critics published in *Neurology* in March 1989 and January 1990.

Some NIH critics believe that a suit like Abbs' was bound to occur sooner or later. "It was a foregone conclusion that someone would challenge the rules, or rather, lack of rules at NIH," says Robert Charrow, a former Department of Health and Human Services attorney. OSI officials, on the other hand, express confidence in their investigative procedures. "We have substantial due process rights," argues OSI director Jules Hallum. "The burden of proof is always on the scientist whose data is challenged." But even Hallum doesn't believe that existing procedures are fixed in stone. "We're evolving—we've only been in existence for 15 months. There may be changes in the procedures as we go along."

A hearing is scheduled in U.S. District Court on 2 August.

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