

SCIENTIFIC MISCONDUCT

How Congressional Pressure Shaped the 'Baltimore Case'

The defining moment in the 10-year ordeal that has become known as "The Baltimore affair" came on 4 May 1989. Representative John Dingell, the Michigan Democrat who was then viewed as the most aggressive and dominating member of Congress, was wrapping up a long and grueling hearing. Sitting uncomfortably at the witness table was David Baltimore, the Massachusetts Institute of Technology (MIT) molecular biologist and Nobel prizewinner.

After claiming earlier that day that data in a paper Baltimore co-authored appeared "manipulated," possibly with "an effort to conceal or to confuse or to deceive," Dingell scolded Baltimore, saying it was "untrue" that "you had been charged with fraud." Baltimore couldn't stand it any longer. He interrupted the fearsome chairman. Baltimore reached for a copy of a *Boston Globe* story previewing a hearing Dingell's subcommittee conducted in 1988 titled "Fraud in NIH Grants." The story, which prominently featured Baltimore's picture and said he would be on Dingell's metaphorical "hot seat," quoted a subcommittee aide as saying, "At certain times, it appears to be fraud and other times, misrepresentation."

"I was charged with fraud," Baltimore said, shaking in anger as he held the *Globe* story aloft. "Not by any occupant of this room," Dingell thundered. Baltimore leveled his gaze on Peter Stockton, the aide who was whispering in Dingell's ear: "By Mr. Stockton, quoted in the *Boston Globe* and I ask to put it in the record." A surprised Dingell, who usually doesn't tolerate such interruptions, soon gaveled the hearing to a close.

Although that moment was the most public confrontation between the Nobelist and the congressman in this long saga, the Dingell subcommittee's involvement in the case, largely behind the scenes, was the crucial ingredient in keeping it grinding along. The congressman's role, exercised through an aggressive staff of investigators, some of whom were being paid by the National Institutes of Health (NIH), has not been fully told, however. Dozens of interviews with key players and stacks of documents—including memos, notes of meetings and telephone conversations between subcommittee staff

and federal investigators, and transcripts of hearings—tell a stark story of how Dingell's subcommittee was involved in virtually every aspect of the case, from the selection of evidence to its public dissemination.

Dingell's involvement generated bitter feelings among federal officials, and many in the scientific community. Indeed, when two judges and a senior scientist on the Departmental Appeals Board of the Department of Health and Human Services (HHS) dismissed

all fraud charges against one of Baltimore's co-authors last June (no charges were, in fact, ever filed against Baltimore himself), with a withering blast at the flim-



The Nobelist and the congressman. The only public clash between Baltimore (left) and Dingell came during a 1989 congressional hearing.



siness of the evidence (*Science*, 28 June, p. 1864), it was Dingell who bore the brunt of the fallout. A *New York Times* columnist and friend of Baltimore's denounced the congressman as a "bully," and leading scientists joined the chorus of the congressman's critics.

To some, the Baltimore affair is a prime example of how Congress can misuse its constitutional role in overseeing the executive branch to influence the conduct of what are supposed to be independent investigations. The executive branch's promise to keep sensitive documents confidential "doesn't pertain to requests from Congress and that just opens the floodgates for congressional committees, and therefore everybody, to have access to ongoing investigations, which is very unfair," says Barbara Mishkin, a Washington attorney specializing in scientific misconduct. And the public criticism that has been heaped on the government's handling of this case in the past few weeks is expected to strengthen efforts to provide more due process for scientists accused of misconduct.

Escalating charges. The hearing at which Baltimore made his dramatic interruption featured assertions that a paper published in the

25 April 1986 issue of *Cell* included flawed data from the laboratory of Thereza Imanishi-Kari. That paper had already been the subject of probes at MIT and Tufts University, where Imanishi-Kari worked. They had found errors in the paper, but no misconduct. The main whistleblower, postdoctoral student Margot O'Toole, testified at the time that she alleged only "error." Many scientists, especially Baltimore, urged Dingell to stay away from a complex scientific dispute that he would never understand. "The halls of Congress," Baltimore declared, "are not the place to determine scientific truth or falsity."

Dingell's interest in the case was bad news for Baltimore. Dingell's subcommittee was known for its dogged and uncompromising investigations of targets that ranged from nuclear reactor operators and oil companies to the Pentagon and the Environmental Protection Agency. Dingell believed that making an example of noted figures served as a useful deterrent to miscreants. "My old Daddy used to observe that a few public hangings would

help situations to a marked degree," he said on occasion, including at a hearing on indirect costs that helped lead to the 1992 resignation of Stanford University President Donald Kennedy, one of Baltimore's most outspoken supporters.

O'Toole is a strenuous defender of Dingell's involvement in the case. Until the congressman took an interest, she faced a big credibility gap, given Baltimore's stature and influence.

"The reason that [congressional investigators] have the powers is so that light will shine," she remarks. "They are supposed to stand up to special interests and all kinds of power in making the light shine."

To carry the torch, Dingell in July 1988 borrowed the services of Walter Stewart and Ned Feder, NIH researchers who studied the nervous systems of snails but who had made scientific fraud a professional crusade. Dingell brought them onto the subcommittee staff—while NIH continued to pay their salaries—which not only put them in a strong position to influence the investigation but protected them from reprisals by NIH. The pair stayed at the subcommittee full-time until June 1990 and continued on an as-needed basis after that.

Perhaps the most fateful step in the investigation came in August 1988, when Dingell sent Imanishi-Kari's subpoenaed data notebook—actually a collection of loose data pages cobbled together—to the Secret Service for forensic analysis. Secret Service investigators examined imprints on Imanishi-Kari's notes and tapes from radiation counters, and compared them with other notebooks

from MIT scientists to try to determine when the data were generated. The agency boasts among the most respected document examiners in the world, but agents there acknowledged during the Appeals Board hearing they had never dealt with such a complex and enormous task as analyzing five dozen data notebooks; it was a far cry from their usual tasks of handling presidential death threats and examining fake currency.

In April 1989, subcommittee and Secret Service staff met privately with NIH officials to unveil their forensic evidence. The Secret Service had determined that some of the tapes and data in Imanishi-Kari's notes apparently had not been generated at the time the experiments supposedly took place. "Walter Stewart was quite outspoken at the time that this was fraud. His point of view was that there are too many things wrong for it not to be fraud," says Hugh McDevitt, a Stanford University immunologist who served as an adviser to the NIH investigation and was present at the meeting. McDevitt told *Science*, "I kept saying, 'If you want to make a presumption of guilt, yeah, this fits with it But it fits equally well with other explanations.'"

But the public hearing held by Dingell's subcommittee the following month conveyed no such ambiguity, says McDevitt. "I think they knew the Secret Service could get up and show this magnified imprint analysis page and that auto-radiograph and nobody in the audience could possibly follow that," he says. "Believe me, I had been through a lot of that evidence three or four times, and when the Secret Service went through it [at the hearing], it went zip, zip, zip. The whole thing was supposed to be done in just 15 minutes. Well that's just insane." McDevitt came away in awe at Congress's power to orchestrate such hearings. "I was stunned by the investigative power of Congress," he says. "It's not like a court of law You can certainly make people look bad without half trying."

At a hearing before the HHS Departmental Appeals Board last year, Secret Service officials said Dingell's staff did not interfere with the forensic analysis. "All they asked us to do is do whatever we could do," testified Chief Document Examiner John Hargett. A different picture emerged in a private meeting between Secret Service agents and NIH officials on 14 July 1989 in Bethesda, Maryland, however. The meeting was attended by William Raub, the NIH's then-deputy director who today plays a key role in the misconduct debate as scientific

adviser to the secretary of HHS. According to a transcript of the meeting obtained by *Science*, a Secret Service official (the transcript does not reveal the names of the speakers) spoke of "continual conversations" with Capitol Hill "in order to keep our job as small as possible" and because "we relied on [Dingell staff] to determine the scientific significance of our findings."

"The reason that [congressional investigators] have the powers is so that light will shine. They are supposed to stand up to special interests ... in making the light shine."

—Margot O'Toole



SETH RESNICK

One finding, a Secret Service official said, was that a notebook used as a control—to see what forensic patterns might be expected in ordinary laboratory records—had forensic characteristics similar to

Imanishi-Kari's notebook, including what the official said were "unusual" signs that data sheets may have been ripped off and then re-taped to notebook pages. The official said that Dingell aides, saying "there could possibly be explanations for that," then instructed the Secret Service to use a different control notebook—one without such similarities. (The appeals panel called the circumstances surrounding the discarded control "somewhat ... troubling.")

At least one NIH official quoted in the transcript of the 1989 meeting worried about the influence of Dingell's aides. "So they did focus you in on what they wanted to see each time. You didn't really do an entirely independent analysis in the sense of choosing random things and going at it," the NIH official said. "We couldn't understand what we were doing," a Secret Service official responded. "So they're directing you in the direction they want to see the results in. There might have been other things elsewhere or that might have been of equal importance to an overall analysis, but they are providing some direction to you," the NIH official followed up. "Absolutely," the official replied. A Secret Service official said that Walter Stewart would say, "Let me take a look at the information on those pages and see if it means anything" and "in most instances we were told, 'Well, that's not really

that important.' " What these "unimportant" findings were is not known because the Secret Service has not kept notes of much of its work.

A Secret Service spokesman, special agent Arnette Heintze, says there was nothing improper about taking direction from the subcommittee given that "the Secret Service wasn't investigating this," he says. "We were providing forensic assistance to whoever was doing the investigation." Dingell spokesman Dennis Fitzgibbons says this evidence of the subcommittee's managing the forensic analysis is "very, very thin if not vaporous and does not do anything to alter the conclusion drawn by the Secret Service."

But Jules Hallum, who became director of the NIH's Office of Scientific Integrity (OSI) 4 months after the July 1989 meeting, characterizes the Secret Service statements in this transcript about the direction provided by Dingell's staff as "shocking." Hallum said in an interview: "I would have had that case out of the place and Imanishi-Kari exonerated in the first 6 months if I had known about that."

Laurence Tribe, a leading constitutional scholar at Harvard University, says the Secret Service's cooperation with Dingell does not automatically taint the investigation legally, but "To the extent that [the Secret Service] does see a legislator or a legislative committee as a client, that does at least raise ... a question about the separation of powers. Not even with the consent of the president can an executive branch agency be put in the direct service of the Congress."

Playing the media. NIH officials were oblivious to the existence of the Secret Service's 9-month probe until just prior to Dingell's May 1989 hearing, and had already signed off on a scientific panel's report finding that Imanishi-Kari had not committed fraud. As they prepared to face skeptical questions at Dingell's hearing, however, NIH officials reopened their investigation and announced the creation of OSI to handle scientific misconduct investigations.

Media leaks kept pressure on OSI as it conducted its investigation. Brian Kimes, the OSI's first director, wrote in a memo in October 1989 that a reporter he spoke with had information that could "only have been obtained from Dingell's staff." Calling this "very troublesome," Kimes wrote: "In my opinion, it is clearly an effort on Dingell's staff to compromise our investigation and try to publicly force us to do it their way." Kimes re-

signed the following month. He told *Science* he was disgusted by the job, particularly Dingell's interference. Hallum, Kimes's successor, says he was also disturbed by Dingell's pressure, which carried weight because the congressman chaired the committee authorizing NIH's budget. "His influence was enormous," Hallum says. "He could make the NIH jump through hoops."

OSI Deputy Director Suzanne Hadley faced pressure as she began to write a draft report of the Imanishi-Kari investigation. She met with subcommittee aides in August 1990, and a day later took somewhat cryptic though revealing notes, obtained by *Science*, of a phone discussion with Walter Stewart. "Subcommittee believes second aspect in 072 (Imanishi-Kari) investigation is crucial—not be compromised. If we don't do—they will have to. 'Word to wise.'" Below is the phrase, "Test of our ability to do these things."

Stockton, the Dingell aide whose quote in the *Boston Globe* had so enraged Baltimore, spoke with Hadley and William Raub a few days before OSI's confidential draft report was leaked to the media in March 1991. What exactly was discussed then is unknown: The government claims in response to a Freedom of Information request that notes of this conversation and other records relating to Dingell's interactions with OSI "cannot be located," even though they were indexed last year for Imanishi-Kari's appeal. Nevertheless, as soon as OSI completed the report—which OSI stamped "confidential"—several reporters with long-established ties to the subcommittee called Hadley for comment on the draft they had obtained. Through an overnight mail receipt, investigators from the HHS Inspector General's Office later traced a leaked copy to a Dingell aide who was "authorized by the subcommittee to release the report," according to a summary of a report by the Inspector General on the leaks.

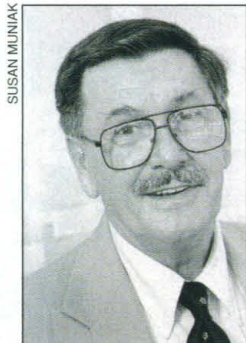
Dingell's relationship with OSI became more entangled in 1992, when Hadley went to work full time for the subcommittee "on detail," an arrangement in which NIH continued to pay her \$74,000 salary until summer of 1994. (She is still on paid leave, currently at George Washington University.) With Hadley providing insider knowledge and access, Dingell turned up the heat on the Office of Research Integrity (ORI), which was established in the Department of Health and Human Services in May 1992 and took over OSI's duties. Various officials at ORI and HHS have said in depositions in another case that Dingell aides were "yelling," "abu-

sive," "heckling," "ruthless," "intimidating," "belligerent," and "profane." Read some of these descriptions, Stockton responded nonchalantly: "How disgusting. I'm shocked." Stockton denied that Dingell aides tried to intimidate anybody, and says they didn't have any power to threaten anyone.

The subcommittee's intent in frequent meetings with ORI aides was described in a deposition last year by ORI Director Lyle Bivens, who retired in March of this year. Asked whether it was "normal practice" for Dingell aides "to criticize or pressure ORI to bring or initiate scientific misconduct inquiries or investigations," Hallum agreed that it was. He added that "they felt that we were not being aggressive enough in pursuing cases."

Imanishi-Kari's former attorney Bruce Singal sought to use the subcommittee's activities in his client's defense. In 1993, he

argued that the ORI investigation should be abandoned altogether, in part because it was "tarnished by undue congressional interference." Singal cited a landmark appeals court decision in 1966 that reads: "To subject an administrator to searching examination as to



SUSAN MUNIAK

"I would have had that case out of the place and Imanishi-Kari exonerated in the first 6 months if I had known about [congressional influence on the Secret Service investigation]."

—Jules Hallum

how and why he reached his decision in a case still pending before him ... sacrifices the appearance of impartiality—the sine qua non of American judicial justice."

Edward Richards, a law professor at the University of Missouri, agrees with Singal's concerns. Richards, who has followed other misconduct probes and read the rulings in those cases, claims that Dingell has unfairly treated several scientists by interfering in ORI probes. "You're going to have a hard time convincing me that this wasn't as bad as McCarthy," Richards concludes. "It's every bit as bad as McCarthy in a smaller universe."

Dingell, through a spokesman, declined to be interviewed for this story, but he responded to the general concerns about his

role in this affair with an opinion piece in the *Washington Post*. He called comparisons to McCarthy "ironic, and moronic. In spite of the cries of unfairness, the subcommittee in the Imanishi-Kari matter received sworn public testimony from every relevant party, including Drs. Baltimore and Imanishi-Kari All witnesses received a full opportunity to state their cases." He repeated the assertion that Baltimore's research "was never at any time under question." He also noted that his interest was warranted since the Appeals Board found the paper in question to be "rife with errors of all sorts."

Officially, Dingell has played no role in misconduct investigations since he lost the chairmanship of his subcommittee when Republicans won control of the House in 1994. But his influence on at least one current ORI investigation lives on. In January 1994, according to a deposition by ORI Investigator Dorothy Macfarlane, Dingell aides demanded to know why ORI was not investigating Bernard Fisher, the pioneering University of Pittsburgh breast cancer researcher, for reporting—but failing to publicize—fraud by a doctor in a huge clinical trial he ran. Two months later, the story of the tainted data in the study made national headlines and the ORI then launched an investigation of Fisher. Macfarlane has testified in a deposition in a civil suit Fisher has filed that because she agreed with Fisher on a scientific matter, a subcommittee aide "as nastily as possible" told her to resign from the probe, which she reluctantly did.

Procedural reform. The controversy over the Baltimore affair is likely to influence ongoing efforts to reform the handling of misconduct allegations. The Ryan Commission, named after its chairman, Harvard pediatrician Kenneth Ryan, offered a sheaf of recommendations last year on reforming misconduct probes, one of which may help remove politics from misconduct rulings. The Commission suggested that the role of investigating and adjudicating disputes be separated. But some scientists fear that another of the Ryan Commission's recommendations, that scientific misconduct be more broadly defined, could open the door to more investigations of trivial cases.

The commission's recommendations recently got a mixed review from a panel headed by Raub (*Science*, 21 June, p. 1735), and HHS Secretary Donna Shalala is now deciding on their implementation. And a White House panel is conducting a separate review of government-wide misconduct procedures. The ignominious collapse of the "Baltimore case" after a decade of investigation has added new urgency to these deliberations.

—Jock Friedly

Jock Friedly is a reporter in Arlington, Virginia.