Letters

NIH Misconduct Procedures: Effect of New Ruling

The News & Comment article by David P. Hamilton concerning the decision in Abbs *vs.* Sullivan *et al.* (11 Jan., p. 153) presents an inaccurate picture of the facts and possible implications of the judge's ruling in this case. Hamilton correctly notes that the judge's ruling in Abbs *vs.* Sullivan *et al.* applies only in the Western District of Wisconsin, yet he goes on to make overgeneralized predictions about the potential impact of the ruling for operations of the National Institutes of Health Office of Scientific Integrity (OSI).

We are studying carefully the judge's ruling to determine the proper course of action with which to preserve our ability to fulfill our important responsibilities to protect the public interest. Meanwhile, the activities of the OSI are far from being in disarray, as Hamilton suggests. There is no reason for the OSI to "suspend" ongoing inquiries and investigations, and we have no plans to do so. Moreover, since the judge's ruling found that the Public Health Service (PHS) procedures provide adequate due process, any substantive changes in the procedures would be within the discretion of the Department of Health and Human Services, even if the policies and procedures are eventually subjected to public notice and comment.

What is *most* significant about the court's ruling is its affirmation of the policies and procedures by which the OSI handles inquiries and investigations. Specifically, the court found that (i) neither James Abbs nor the co-plaintiffs, the University of Wisconsin Board of Regents, "has a legally cognizable liberty or property interest that implicates the due process clause"; (ii) adequate procedures exist for protecting the interests of Abbs and the Board of Regents, both with respect to "lesser sanctions" that may be imposed by the PHS and with respect to the most severe sanction that may be imposed—debarment from receiving federal grant and contract support; therefore, there is adequate due process in the PHS policies and procedures; and (iii) the doctrine of administrative res judicata does not bar the OSI from investigating possible scientific misconduct on the part of Abbs.

The court's opinion also made other observations important to the PHS mission. In particular, the judge found that Abbs has no enforceable right to receive grants or awards—"such funding is always discretionary with the funding agency." Moreover, the judge noted that grant awards to the University Board of Regents are not made for the benefit of Abbs, "but for the benefit of the public that may enjoy the fruits of his research." These are compelling affirmations of the fundamental purpose of the Public Health Service research grant program to serve the public interest.

The issues raised in Abbs. *vs.* Sullivan *et al.* are vital ones. The OSI is proceeding with its assigned responsibilities while the implications of the court's ruling are assessed.

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Energy Conservation

Jeremy Cherfas' recent News & Comment article "Skeptics and visionaries examine energy saving" (11 Jan., p. 154) considers only the lighting benefits of new, high-efficiency light sources. The article refers to replacing a 75-watt conventional incandescent light bulb with a modern 15-watt fluorescent tube and states that one can "cut your lighting bill by 80% to 90%. . . ." However, very few electricity users ever see a utility bill for lighting only. Also, the energy consumed by a light bulb includes a significant component in the form of heat. Finally, the lighting component ultimately degrades to heat, so it is naïve to view the energy cost of a light source without regard to the concomitant heat source it generates. It is well known that large, modern office buildings receive a significant contribution to their heating plant from the waste heat from lighting systems. Therefore, the impact of substituting a high-efficiency light bulb for one of lower efficiency is not as simple as conservation advocates say it is (even ignoring the unlikely ability of the fluorescent tube to match the generally preferred optical properties of incandescent bulbs). In the heating season, the lost heat source must be made up elsewhere by the heating plant. If electrical heating is used, there will be no net savings. Conversely, during air-conditioning season, the reduced heat load will have an enhanced benefit from saving additional energy otherwise needed for cooling.

In order to predict the savings (if any) to be realized by switching to new, high-efficiency light bulbs, the consumer needs to know the facts concerning both lighting and heating aspects of the alternatives.

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If, at the Dahlem Workshop, Amory Lovins "is willing to concede half" of his projected energy savings, it means at least two things.

1) He can no longer talk about "saving 75% of the energy we use," and no credible publication should carry such claims from now on.

2) Now even Lovins' projections show that we will need more power plants. W will need them in this decade, which means that we should be designing them now and starting environmental studies for their sites. In fact, the tremendous capital requirements and the decades to achieve the actual results of the measures Lovins describes make even half of the 75% savings an impossible goal, regardless of how valuable it would be to reach it.

Until there is confidence that conservation measures will actually achieve the penetration into the marketplace to defer (not eliminate) additional capacity, we should be building new plants. The problem facing the United States now is that it has become "politically correct" for state public utility commissions to approve expenditures for conservation and charge the ratepayer for them, perhaps years before they pass the traditional "used and useful" test. At the same time, investments in generating facilities face years of contentious hearings, and even then there is no firm assurance that adequate rates will be allowed when they are finished.

Those with responsibilities to the public for energy supply have listened to the words about providing energy services. But they know that their obligation to the territory they serve is to ensure that there is enough electric generating and distribution capacity to allow people to make their own free choices as to what they want and how to do it. We're running out of capacity as insurance against future shortages, and the costs, both to the ratepayer and to the environment, will be high in gas turbines and other inefficient catch-up fixes.

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Cherfas's welcome and stimulating account of the Dahlem Conference described our findings slightly inaccurately.

1) The ~0.6¢ cost of saving a kilowatt-