

U.S. Attorney Decides Not to Prosecute Imanishi-Kari

In a dramatic announcement that has brought a celebrated case of alleged scientific fraud back into the headlines, federal prosecutors in Baltimore announced last Monday that they had decided not to bring criminal or civil charges against Thereza Imanishi-Kari. After one of the longest running and highly publicized scientific misconduct investigations in history, the National Institutes of Health (NIH) accused the Tufts immunologist in a March 1991 draft report of fabricating data associated with a 1986 paper in *Cell*. The prosecutors did not dispute the findings of the NIH investigation, but they said a criminal case based on those findings would have been too difficult to prosecute successfully.

Through her lawyer, Imanishi-Kari immediately declared herself vindicated. And Nobel laureate and former Rockefeller University president David Baltimore, the *Cell* paper's most prominent coauthor, announced that he would issue a statement expressing confidence in the original paper, in essence retracting a retraction he issued in the spring of 1991 in the wake of publicity surrounding the NIH draft report.

The announcement by U.S. Attorney Richard Bennett comes as the latest twist in an affair that has spanned more than 6 years, damaged prominent individuals and institutions of science, and infuriated some scientists because no one has been able to bring it to an end. Bennett's announcement, however, may break a year-and-a-half-old logjam that resulted when his office sequestered forensic analyses of Imanishi-Kari's lab notebooks conducted by the Secret Service. Without Imanishi-Kari's response to that evidence, NIH's Office of Scientific Integrity (OSI) has been unable to produce a final investigative report. Now, presumably, that investigation can begin to move forward again.

But this last stage in NIH's investigation is unlikely to be smooth: Baltimore and his supporters will almost certainly use the prosecutor's decision to argue for a dramatic toning down of the NIH report. In fact, Harvard microbiologist Bernard Davis, a longtime defender of Baltimore, has scheduled a talk at the Woods Hole Oceanographic Institution on 20 July devoted to "new facts" in the case. On the other hand, if officials change the conclusions of the draft report, Representative John Dingell (D-MI), who was instrumental in bringing the case to national attention, is waiting in the wings, ever ready to charge an administration whitewash.

Burden of proof. For their part, the federal prosecutors are attempting to steer clear of suggestions that their decision not to seek an indictment constitutes an endorsement of Imanishi-Kari's scientific work. "I think it would be a serious mistake for anyone to give this action greater weight than it's due," says Geoffrey Garinther, an assistant U.S. attorney in Baltimore. "It's simply a decision by criminal prosecutors that this case shouldn't be decided in the courtroom."

According to Garinther, the sticking point for the U.S. attorney's office was the difficulty of meeting the criminal evidentiary standard of proof "beyond a reasonable doubt." At the root of that difficulty lay the complexity of the proposed criminal case against Imanishi-Kari, which involved fine details of immunology—a tough subject even for many immunologists to slog through. With this standard in mind, Garinther says it would have been essential—and difficult—to prove not just that Imanishi-Kari fabricated her data, but that she had intended to mislead the government by fabricating "impossible" data she couldn't have produced in her lab. "If any of her results were true, a juror might have had trouble finding beyond a reasonable doubt that she had corrupt intent—that she had intended to mislead with experiments that achieved results that could not actually be achieved."

Imanishi-Kari's supporters suggest that such explanations are simply an attempt by prosecutors to cover up flaws in the evidence underlying the charges of data fabrication—particularly a Secret Service analysis of Imanishi-Kari's laboratory notebooks that concluded several key experiments had been fabricated. Last spring, Imanishi-Kari's lawyer Bruce Singal commissioned a second forensic analysis by Albert Lyter, a forensics expert (and frequent expert witness) formerly with the federal Bureau of Alcohol, Tobacco, and Firearms. Lyter wrote in an affidavit that the Secret Service conclusions "are not supportable by the test results or available data" because of what he called "a number of serious flaws" in the analysis. These flaws, Lyter

said, included "inadequate samples of data," "erroneous interpretations of results," and "poor methodologies and procedures."

Members of the Secret Service forensic team were unavailable for comment. Garinther insists, however, that "we were very confident about the Secret Service findings," which he characterized as "very persuasive." But he does admit that Lyter's affidavit increased the difficulty of meeting high evidentiary standards, because "it's difficult in a criminal case to pit one expert against another."

Prosecutors also shelved a proposed civil case against Imanishi-Kari because they considered it unlikely that the government could

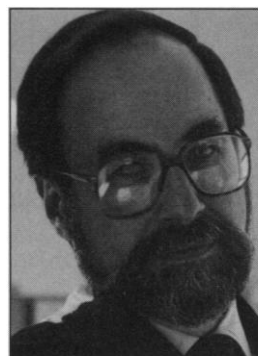
collect damages, Garinther said. While they could theoretically have sued the institutions involved—the Massachusetts Institute of Technology and Tufts University—Garinther says it would not have been "fair" to hold them responsible for failing to oversee the details of Imanishi-Kari's lab work.

The backlash. While Imanishi-Kari has decided to lie low for now (calls to her were referred back to Singal), Baltimore has taken a more aggressive tack. In an interview with *Science*, he said Lyter's analysis had "clearly discredited" the Secret Service evidence of fabricated data. "So far as I can tell, the [*Cell*] paper is a valid contribution to scientific discourse," he says. "The only thing that ever bothered me was that the Secret Service had evidence that purported to show criminal conduct, that [Imanishi-Kari] had somehow attempted to consciously fabricate data. It's now clear from the analysis of the Secret Service in-

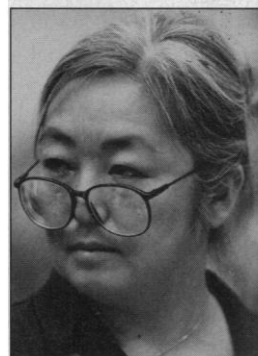
formation that they have no such evidence." Baltimore says he plans a short letter to *Cell* that will set forth his new stance on the paper.

In so doing, Baltimore runs a risk of reopening the wounds of a scientific community that was already traumatized by the initial disclosure of the draft report. "My reaction to [Baltimore's unretraction] is probably unpublishable," says Nobel laureate Walter Gilbert, a Harvard molecular biologist. "It's such foolishness I can't believe it." One of a handful of Harvard biologists who have championed Margot O'Toole, the postdoc who first challenged the paper, Gilbert says his reading of the science convinced him that "the paper was correctly withdrawn. Dr. Baltimore would be wiser to put the issue behind him." For better or for worse, however, Baltimore clearly has decided he can't take that kind of advice.

—David P. Hamilton



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No retraction. Baltimore (top) and Imanishi-Kari.