Investigators investigated

Washington

A year after it was first created, the National Institutes of Health's Office of Scientific Integrity (OSI) is still getting an on-the-job lesson in the difficult art of investigating scientific misconduct. Faced with a growing case load (nearly 80 at the last count), congressional and media scrutiny and criticism from universities and scientists who have passed through its doors, OSI is under pressure to prove in its second year that it can deal effectively with misconduct without stifling research.

The first step it will take is to publish, in the coming weeks, a set of formal procedures describing how OSI works. Included will be rules that will give those found guilty of misconduct a chance to negotiate their own sanctions and those found innocent a greater opportunity to clear their names. Congress is also considering taking matters into its own hands. A draft bill now being circulated by the subcommittee on investigations and oversight of the House of Representatives Science Space and Technology Committee would set new guidelines to assure fairness in university misconduct investigations and increase the protection of whistle-blowers.

Legal rights?

The lack of any published procedures has fuelled the principal complaint against OSI that it fails to accord basic legal rights to people accused of misconduct. And, because no one knows what action is being taken, OSI appears to take far too long to complete an investigation — the inquiry into the case of the *Cell* paper written by David Baltimore and others has now been running for over two years.

Another celebrated case, that of AIDS researcher Robert Gallo, raised new criticisms when OSI decided to appoint a National Academy of Sciences panel to oversee its investigation. If an oversight panel was needed in this case, why not in others? "It would appear that the entire *ad hoc* 'process' has been devised with at least one purpose in mind — protecting NIH from congressional criticism", wrote former Health and Human Service (HHS) deputy counsel Robert Charrow in last month's *Journal of NIH Research*.

The most severe criticism of the NIH investigatory process comes from those who have suffered at its hands. "Potentially career-destroying investigations should not be carried out the way mine was", says David Bridges, a Purdue University vision researcher who was found guilty of plagiarism by an NIH investigation last year (see *Nature* 340, 173; 1989). In the three years since allegations were first made in his case, Bridges says he has spent uncounted hours and well over

\$20,000 of his own money on his defence. He still protests his innocence and is the only researcher to have gone through every appeal process up to and including a just-completed four-week debarment hearing.

Bridges must now wait until the end of the year to learn if, as a result of the hearing, the Department of Health and Human Services (HHS) will reverse the earlier NIH decision or concur and ban him from receiving federal grants. Until the debarment hearing earlier this month, Bridges claims that neither he nor his lawyers had been allowed to cross-examine witnesses or take testimony on the record.

Under the current NIH rules, a researcher "can be debarred without even getting the chance to testify", complains Bridges' lawyer, Houston attorney Leslie Ribnik. Debarment hearings are granted at the discretion of HHS. There are no laws that compel NIH to call the accused researcher to give evidence during earlier investigations, Ribnik claims.

University regulation

Although OSI has operated without making its own procedures public, it has laid out a set of rules for how universities receiving HHS money should conduct their misconduct hearings.

Once alerted to the possibility of misconduct, the university is expected to put together a panel to review the charges in no more than 60 days. If the panel finds cause for a formal investigation, the university is to conduct an investigation within 120 days. At the investigation stage, the university must inform NIH and submit a report on the outcome to OSI. If it is dissatisfied it may then carry out its own investigation.

Although institutional guidelines have been in print for over a year, there are still doubts over whether they are fair, in the sense of whether they grant the accused adequate rights of "due process".

One problem is that at no time is an accused researcher guaranteed the right to see the evidence or hear the charges against him or her. "You can spend a lot of money trying to respond to unnamed people and uncharacterized charges. Meanwhile, your funding can be halted and your grant application can be denied", says Barbara Mishkin, an attorney with the Washington law firm of Hogan and Hartson.

But Suzanne Hadley, OSI's acting director for most of its first year, says that granting full access to evidence and written transcripts has become OSI policy, even if they are nowhere published. Another unwritten OSI policy is to spell out the charges, although OSI sometimes draws the line at revealing the informant.

"We try to depersonalize things — to treat it as a federal office making the accusations. Too often the whistle blowers feel that they're carrying the whole fight on their own shoulders", she says.

The draft congressional bill provides for even greater whistle-blower protection but its authors are wary of going too far. Greg Simon, staff director of the oversight and investigations subcommittee, is concerned that overprotection of informants could create "a new tenure track". If whistle-blowers are made sacred, universities may find themselves unable to dismiss them for legitimate reasons years later, he says. Meanwhile, both OSI and NIH as a whole are considering sanctions against those who make false accusations.

Due process

Simon's bill proposes more emphasis on due process, at least at the university level. For researchers under university investigation, the bill lays out a series of rights, including the right to an attorney, to call and cross-examine witnesses, to present evidence and to file a statement. In return, for universities that accept the guidelines, the bill offers protection against lawsuits by accused researchers.

Full due process within NIH investigations is a stickier issue. Hadley argues that it is inappropriate for OSI. "What we do is not a trial", she says. But others point out that because OSI reports directly to the Office of Scientific Integrity Review, the overseeing body within HHS that recommends sanctions, the combination has the effective force of a judge and jury. "A judicial procedure has due process, an investigation doesn't. 'Which is OSI?' asks Charrow.

Inside NIH, criticism of the investigation process has been fanned by messy cases that last years and draw congressional charges of bias or whitewash. "I do have the feeling that these cases should be investigated more diligently and promptly. When misconduct investigations drag on, the public thinks there are more and more of them", says Edward Rall, director of intramural research.

Rall believes that much of the problem lies in the initial investigation by the university. "I'm not sure that all the universities understand that they can't cover up. When they close ranks, they only postpone the moment of truth."

Although NIH plans at present to retain the policy of letting the university do the first inquiry, it is fine-tuning other OSI procedures. Under consideration are 60- or 120-day deadlines — similar to the guidelines for university investigation — on the various stages of the OSI process. But it may be too soon to look for clockwork precision. Says Hadley, "the length of the investigations is one concern — but a lack of balance and objectivity is another."

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