

The Punishing of Margot O'Toole

The secret sociology of whistleblowing

Whistleblowing is praised until it happens. Then the whistleblower is ignored, punished or both as the top people in the alleged fraudster's institution dictate, but seldom in the whistleblower's favor because fraud would embarrass the institution.

The top people's decisions may be sanctified by kangaroo courts, the first in the institution where the alleged fraud occurred, then the Office of Research Integrity (ORI) in bioscience, next a *qui tam* judge or the Departmental Appeals Board (DAB) of the Department of Health and Human Services. Fraud's footprints are often its data numbers. The reliability of statistical evidence can be calculated and is typically high, but by custom it must be confirmed by evidence such as eyewitness testimony that Authority can say it doubts. Most accusations, about 19 out of 20 in bioscience, are found unproven, and all the whistleblowers bear the mark of Cain, "T for troublemaker," to be forever shunned.

And the top people? They look out for each other, feeling that the whistleblowers' own science and his or her exposing of bogus science must be sacrificed for the good of their institutions and the scientific profession. As a whistleblower, I think Lord Acton was right: Power corrupts.

Most of this happens in secret, but the interest of Representative John Dingell in the Imanishi-Kari case or “Baltimore Affair” made a hero of successful whistleblower Margot O’Toole. So the top people “made an example of her,” smearing her and exonerating Imanishi-Kari in a public hearing that lasted six weeks.

Walter Stewart and Ned Feder became interested in science fraud when they saw how ineffectively their *alma mater* Harvard dealt with it. As their friend, I watched the Baltimore Affair from its start. Senator Al Gore and Representative Ted Weiss had shown an interest in science fraud, but Stewart thought that fraud by or involving a well-known scientist might interest Representative John Dingell, who had the personality and power to cause reforms.

As a nuclear physicist/biomechanic, I found details of immunology hard to follow, but when Walter told me that accused Imanishi-Kari had presented a set of data numbers from the “June subclonings” that were in the low hundreds and whose digits in the tens place were not randomly distributed, I knew those numbers had not come from an experiment.

The Departmental Appeals Board (DAB) of the Department of Health and Human Services thought otherwise. “ORI’s statistical analyses of the June subcloning data and other data are not evidence from which it is reasonable to infer fabrication here.” (DAB Decision # 1582)

Why weren't they? Not because "In general, ORI's statistical analyses were flawed" (DAB Decision # 1582), but because the DAB is a kangaroo court. It lives in the pouch of the bioscience establishment, and for the good of its members' careers it must keep Mother happy. Mother does not like to admit that there is cheating in her family — it would be so embarrassing — so the DAB told Mother what she wanted to hear.

(Had the case of whistleblower O'Toole *vs.* Imanishi-Kari been settled by a jury trial, potential jurors with DAB-like conflict of interest would have been excluded when challenged by O'Toole's lawyers.)

As the DAB needed to find Imanishi-Kari innocent, O'Toole's accusations had to be false; thus from DAB Decision # 1582, "After hearing Dr. O'Toole and the other witnesses testify and examining all of her statements over the years, we question the accuracy of Dr. O'Toole's memory and her increasing commitment to a partisan stand." Did the other witnesses' "statements over the years" receive such examination?

Institutional fraud offices and the Office of Research Integrity (ORI) likewise are kangaroo courts in the pouch of Mother Bioscience. Result: Whistleblowers have at most a 6% chance of winning, which falls to less than 3% if the accused's punishment includes debarment from federal grants. (Jeffrey Mervis, "After the fall" (*Science*, Oct. 28, 2016)).

During the Baltimore Affair ORI believed that honesty had broken out, and did a real investigation. After the DAB reversed ORI's verdict the routine punishing of whistleblowers resumed.

(Google "The Departmental Appeals Board and the Imanishi-Kari case" (<http://conductinscience.com/>) for an account of the DAB's dealing with the case's statistical evidence.)

As Imanishi-Kari said her super-unlikely numbers resulted from "casual rounding" one needed to see an example of her rounding of undisputed numbers. On his page 347 of "The Baltimore Case" Daniel Kevles said ORI had not provided an example. But it had; see McCutchen, C. W., *Journal of Information Ethics*, Spring 2002, pp. 5-6. Her rounding was sloppy, but not weird enough to alter digits in the tens place of numbers in the low hundreds.

Mistreatment of whistleblowers seems universal. Pack behavior guarantees that without protection by some Dingell outside the pack they find themselves in kangaroo courts biased against them.

*Charles W. McCutchen, 5213 Acacia Ave., Bethesda, MD 20814-2893
tel. 301-530-5146 e mail cwmcc2000@yahoo.com*

June 27, 2019

PS Sept. 28, 2019

The DAB could without controversy have reduced Imanishi-Kari's debarment from 10 years to the usual three, but by in effect charging O'Toole with making a false charge and finding her guilty it became part of the establishment's whistleblower-punishing apparatus.

Authority prefers that the Office of Research Integrity (ORI) find nearly all bioscience's cheats to be innocent. ORI's people need their salaries, and play the tune their paymaster selects.

As the top people in bioscience are happy with things as they are, change would have to come from the ultimate paymaster, the U. S. Congress.

Representative John Dingell tried. His hearings showed what happened to whistleblowers, but rather than be embarrassed, bioscience's top people used their poodles¹ in the scientific and national press to say that Dingell wanted to control science when he wanted only that science treat whistleblowers fairly. Unable to reach Joe and Josephine Scientist through the fog of lies (A scientist I had known for 50 years tried to warn me against Walter Stewart), Dingell, a politician, gave up, leaving bioscience with the corruption it loved — and Margot O'Toole at its mercy.

- 5 -

¹ When I telephoned *Science* asking it to correct an anti-Stewart and Feder piece by Baltimore the response, from two separate people, was giggles.

There are many kangaroo courts in science. If one objects to something NIH is doing or has done, the complaint will likely go to a committee staffed by NIH employees or others not likely to offend NIH. (Leon Vann warned me of this long ago.)

To get justice (maybe) from such a committee it would have to make a provisional report, then allow itself to be questioned about it by the contesting parties or their agents, the questions and replies being on the record, and then deliver its final report.