

## CLOSEOUT FOR M-89020002

On 19 February 1989, [REDACTED] received allegations of misconduct in science from the complainant, [REDACTED] a former graduate student in [REDACTED] (the institution). The complainant alleged that her advisor, the subject, [REDACTED] a [REDACTED] institution, committed intellectual theft. She alleged that, on four separate occasions, the subject used her data or copied her text without proper attribution in presentations and publications. The complainant explained that she initially wrote to the Director of NSF's Office of Equal Opportunity (OEO) who suggested that she write to DGC/NSF about her allegations of misconduct in science. DGC forwarded the complainant's letter to OIG. The complainant's graduate work was supported by the subject's NSF awards [REDACTED]

OIG contacted the complainant, who explained that she had already informed the institution's administration about all of her allegations and that an inquiry had been initiated. OIG referred its inquiry into the four allegations of intellectual theft to the institution and asked that the institution provide OIG with either an inquiry or an investigation report when the matter was resolved. The authorized institutional representative informed OIG that attempts were underway to resolve the situation. After OIG referred the inquiry into the four allegations of misconduct in science it had received from the complainant, it learned that the complainant's original letter to OEO included allegations that the subject sexually harassed her while she was a graduate student under his supervision. The complainant linked the alleged sexual harassment with the subject's alleged intellectual theft. She also claimed that the subject's alleged sexual harassment impeded her research progress while she was a graduate student. NSF's Director of OEO had advised the complainant to contact the U.S. Department of Education (DoEd) about the alleged sexual harassment, which she did. About a year after OIG referred the inquiry to the institution, the complainant initiated litigation proceedings against the subject and the institution. OIG suspended its inquiry while the litigation proceedings were in progress.

In 1992, OIG was informed that a settlement agreement between the complainant, the subject, and the institution was reached that resolved all the issues between the parties. The institution provided OIG with what it considered to be an inquiry report and supplemental material describing the resolution of the case. OIG determined that, although the information indicated some of the allegations had substance, it did not constitute a complete assessment of the facts of the case. OIG requested that the institution initiate an investigation into the four allegations of intellectual theft against the subject. After reviewing the institution's investigation report, OIG concluded that further information was required and initiated its own investigation. The results from the institution's and OIG's investigations are discussed below.

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### Allegations of Intellectual Theft

Allegation #1: The complainant alleged that the subject committed intellectual theft when he used some of the complainant's data in a figure in a publication<sup>1</sup> he co-authored with another scientist and he failed to acknowledge the complainant. The complainant explained that she and the subject devised a new technique that enabled them to make specific experimental measurements in less time than had been possible previously. She said that, as a result of the new technique, the subject, in one evening, completed the measurements necessary to produce a new figure that he and his co-author used in the publication.

The Committee found that the subject and his co-author had been working on this particular problem before the complainant joined the subject's research group. The Committee determined that, because the subject and his co-author submitted the paper just one month after the complainant began working with the subject's research group, she would have provided little input into the data represented by the new figure. In addition, OIG learned that the complainant's move to the subject's research group represented a change in her field of study. The Committee said the complainant's statement that the subject took over the experiment and completed it in one night considered with the complainant's recent arrival with the group indicated that she did not contribute sufficient experience and effort with the development of the figure to consider its use as intellectual theft. The Committee suggested that the subject and his co-author might have made a mistake in not acknowledging the complainant's effort with the data collection for the figure, but concluded that no intellectual theft had occurred.

The subject told the Committee that his co-author had submitted their paper for publication before the complainant started to work with the subject's research group. According to the subject, his co-author withdrew the paper when he thought of a more convincing way to support one of the conclusions. The subject explained that the new analytical procedures that he developed with the complainant to collect these data were established by his co-author when he worked with the subject's research group before the complainant's arrival. The subject said that, while he and the complainant were collecting data for other studies with the newly established technique, he realized that one of the observations further supported the work in his co-authored paper. The subject admitted that, when he and his co-author re-submitted the paper, they replaced one of the original figures in the paper with a figure that used some of the data collected by the complainant. He said the complainant's participation with this effort was minimal, involving the collection of data, and her inclusion as a co-author would have been misleading.

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<sup>1</sup> The complainant claimed that Figure [REDACTED] the subject's [REDACTED] article contained her data. The article, entitled [REDACTED] was by [REDACTED]

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Although it might have been more collegial if the subject had acknowledged the complainant's role in the collection of data with the one figure, OIG concluded that the subject's action did not rise to the level of misconduct in science.

Allegation #2: The complainant alleged that the subject committed intellectual theft when, as the sole author, he published a paper, as part of his participation at an [REDACTED] (the first conference), that contained text copied from a separate manuscript that the complainant and the subject had prepared.<sup>3</sup>

The subject claimed he and the complainant had discussed his use of her work at the first conference. The subject provided the Committee with a note from the complainant that he said he had received prior to his departure for the first conference. In the note, the complainant agreed that the subject could use her work including photographs and figures at the conference. In addition, the subject said that he cited the complainant three times in the conference paper—in the abstract, in the text where he acknowledged her collaborative work, and in the references where he listed her Ph.D. thesis.

The Committee described the paper as a review article. The Committee verified that the subject had acknowledged the complainant in the paper and concluded that this allegation did not represent intellectual theft.

OIG confirmed that the subject had acknowledged the complainant three times in the first conference paper. OIG noted that there was evidence that some of the text in the conference paper was copied from a manuscript prepared jointly by the complainant and subject. OIG concluded that it was not possible to separate contributions made by the subject and by the complainant. OIG concluded that the subject's action did not rise to the level of misconduct in science because 1) the contributions in the allegedly copied portion of the jointly prepared text were not clearly attributable to the complainant, 2) the subject acknowledged the complainant in the paper three times, and 3) the complainant's note to the subject, a copy of which she sent to OIG, indicated she approved of the subject's presentation of her work at the first conference.

Allegation #3: The complainant alleged that the subject committed intellectual theft when he used copies of photographs and figures from her work<sup>3</sup> in a report to a private company and in a presentation at the first conference.

<sup>2</sup> The [REDACTED] was in [REDACTED]. The paper, entitled [REDACTED]

[REDACTED] by the subject was published in [REDACTED]

<sup>3</sup> [REDACTED] was a manuscript prepared by the complainant and the subject.

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The subject claimed that the complainant provided him with the photographs for his use at the first conference as indicated by the note discussed as part of allegation #2. Further, the subject said he did not use the photographs with his work for the private company, even though the complainant had given him permission to do so. The subject explained to the Committee that he sent the photographs to the committee in charge of the first conference, which used them to produce a video tape shown at the conference. The Committee concluded that the allegation did not represent intellectual theft.

If the subject used the photographs at the first conference or with a private company, it was done with the complainant's knowledge and permission. The note to the subject from the complainant specifically addressed the photographs and gave him permission to use them with the first conference and with the private company. Further, the subject had acknowledged the complainant for her work in the review paper presented for this conference as discussed in allegation #2. OIG concluded that there was no substance to the allegation that the subject committed intellectual theft if, and when, he used photographs or figures prepared by the complainant in the first conference presentation or in a report to a private company.

Allegation #4: The complainant alleged that the subject failed to properly acknowledge work she had accomplished when he and his co-author presented and published some of her results at the [REDACTED]<sup>4</sup> (the second conference). The complainant said the subject provided his co-author with her data and that the use of these data in the development of the theory presented in the second conference paper was not acknowledged.

The subject explained that his co-author was preparing another article that used the complainant's data and on which the complainant was a co-author. He provided the committee with a copy of the manuscript that the complainant agreed was in preparation for future publication.

The Committee characterized the second conference paper as a "general talk of a review nature that [was] published as an abstract or short paper." The Committee stated that many papers could have been cited in the second conference paper, including one authored by the complainant, but that conference papers like this one were typically restricted in length and that it was not reasonable to expect thorough citations. The Committee concluded that this allegation did not represent intellectual theft.

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<sup>4</sup> The [REDACTED] was in [REDACTED] The paper was entitled [REDACTED]  
by [REDACTED] It appeared in the [REDACTED]

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OIG compared the non-refereed second conference paper and the manuscript that included the complainant as an author. The paper did not reference any of the complainant's previous work. From the available evidence, it could not be determined whether the theoretical analysis presented in the paper was based on the complainant's data. OIG concluded there was insufficient substance to the allegation that the complainant's data were used in the development of the theory presented in the second conference paper.

### Allegations of sexual harassment

The complainant informed the U.S. DoEd of her allegations of sexual harassment against the subject. She also filed a lawsuit which ended with a settlement agreement. Following the settlement agreement, the DoEd closed the complainant's case. A DoEd representative explained to OIG that DoEd was responsible for assisting a complainant in the pursuit of justice. In this case, once the settlement was reached with respect to sexual harassment allegations, DoEd reviewed the information and determined the case should be closed.

The Committee did not consider the allegations of sexual harassment against the subject as part of its investigation of misconduct in science because it had previously considered them under other existing policies and procedures. OIG received a part of the settlement agreement in which the parties agreed to a resolution of the dispute to their satisfaction and to seek no further relief. The confidential settlement agreement restricted the parties from further discussion of the allegations. However, the complainant provided a great deal of information to OIG about the alleged sexual harassment a short time after she first contacted NSF. The complainant alleged that the subject's failure to properly acknowledge her research efforts was evidence of his sexual harassment. However, OIG's and the institution's investigations determined that, although the subject could have acted in a more collegial manner, no intellectual theft had occurred. Consequently, the complainant's claim that the subject's intellectual theft was evidence of his sexual harassment was not supported. OIG also reviewed the complainant's claim that the subject's alleged sexual harassment impeded her research progress. The complainant's detailed description of the alleged instances of sexual harassment revealed a complex and confusing relationship between the complainant and the subject and OIG was unable to find instances of alleged sexual harassment by the subject that could be clearly linked to his impeding the complainant's research progress. We regarded the settlement agreement reached between the parties as the resolution of the allegations in this case.

This investigation is closed and no further action will be taken by OIG.

## **CLOSEOUT FOR M-89020002**

cc: Staff Scientist, Deputy AIG-Oversight, AIG-Oversight, IG