

Closeout for M90070028

OIG learned that a *qui tam* lawsuit had been initiated by the complainant¹ against the university,² the subject,³ and various university administrators on July 26, 1990. Previously, the complainant and subject had been collaborators. After the collaboration ended, the complainant alleged that the subject had made misrepresentations, committed plagiarism (verbatim and intellectual theft), and attempted to obtain duplicative funding in NIH and NSF proposals.⁴ Specifically, the complainant made allegations that the subject:

1. denied authorship to co-workers by failing to include their names on a conference abstract;
2. submitted proposals to NIH and NSF that contained misrepresentations;
3. sought duplicate funding because she did not acknowledge the complainant's NIH grant as a source of funds that was supporting the same work as the subject was proposing;
4. committed plagiarism and intellectual theft by incorporating his methodologies and their joint research into her proposals; and
5. lied about the size and ownership of an animal colony in her proposals to NIH and NSF and mistreated the animals.

The complainant also alleged that the administrators at their university who were informed of the allegations:

6. attempted to cover up the subject's misrepresentations; and
7. retaliated against him because he made his charges against the subject public.

OIG learned that the complainant and the subject, in the early 80s, had agreed to collaborate on a project and to jointly publish their research results. A couple years later, the subject decided not to continue the collaboration with the complainant and began to submit proposals without him as a co-PI. Following the complainant's denial of tenure, he claimed that the subject's submission of proposals without including him as a co-PI had diminished his chance at promotion and tenure. The complainant requested, and was granted by the university, an appeal. A committee was convened to examine the

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Closeout for M90070028

complainant's tenure process and to investigate his allegations against the subject. The university committee found no evidence to support the complainant's allegations that he was unfairly denied tenure because of the subject's actions. The committee found no evidence to support the allegations of plagiarism or misrepresentation.

The subject subsequently filed a lawsuit against the university, various administrators, and the subject, for wrongful denial of tenure and termination. Several years later, after a deadlocked jury, the lawsuit was settled out of court; the complainant received a monetary payment and the suit against the defendants was dismissed with prejudice. Furthermore, the defendants admitted no wrongdoing involving the allegations listed above and discussed below. Several months after the civil suit settlement, the complaint brought his allegations to the attention of the NSF's Office of Audit and Oversight (OAO). Because NIH had provided most of the subject's funding, OAO deferred to it. Two years later, the complainant filed a *qui tam* lawsuit. We conducted an inquiry to evaluate the evidence adduced by the complainant to determine whether there was substance to the allegations of misconduct in science.

1. Authorship credit

The complainant alleged that the subject failed to properly attribute the names of three scientists as co-authors on an abstract submitted to a conference. The complainant indicated that he confronted the subject about this and she agreed to add the names and resubmit the abstract. The subject's explanation was that the conference abstract described new research that was based on joint publications with the three scientists and that her talk at the conference contained mostly new results. Nevertheless, she added the three names to the abstract and resubmitted it. OIG concluded that, since the names of the three scientists were added to the abstract, no one was deprived of authorship credit.

2. Misrepresentations

The complainant alleged that the subject misrepresented her NIH and NSF proposals as her own by omitting him as a co-PI. The complainant said these proposals relied on the use of his animal colony, and that as a result, he should have been a co-PI on these proposals because they used his colony. The established tradition in the area of the subject's research field is that animal colony ownership does not automatically guarantee that the owner of the colony should be a co-PI or co-author on the research done with that colony. OIG concurred with the university committee's conclusion that, because the subject cited the collaborative effort in her proposals, the subject did not misrepresent information in her proposals when she did not include the complainant as a co-PI.

3. Duplicate funding

The complainant claimed that the subject defrauded the government by requesting money for work that (a) had already been performed or (b) was being performed under the complainant's grants. Regarding allegation (a), OIG learned that the subject's earlier NSF

Closeout for M90070028

awards were not intended to provide sufficient funds to complete the experiments, but were designed to support only pilot studies to demonstrate the feasibility of the project. OIG concluded that there was no evidence to support the allegation that the subject sought duplicative funding for work she already performed.

Regarding allegation (b), the complainant stated that the subject did not disclose the complainant's funding in the Current and Pending Support (CPS) section of her proposals. According to section 203.5 of the Grant Policy Manual (NSF 88-47), the CPS section (NSF Form 1239) requires "the Principal Investigator and other senior personnel [researchers collaborating on the project including the co-PI(s)]" to identify "all current research awards [also including "all proposed projects which are being considered by or which will be submitted in the near future"] from all sources . . . to which time is committed." The CPS form does not require that the PI list the research support for scientists other than themselves and the complainant did not meet the requirements requiring CPS disclosure. OIG concluded that the subject did not seek duplicative funding.

4. Plagiarism (verbatim and intellectual theft)

The complainant alleged that the subject plagiarized, "almost verbatim," sections of a manuscript that they jointly authored into her NSF and NIH proposals. Co-authors of a joint paper in which their respective contributions are not distinct, are free to independently use material from their co-authored paper in their own subsequent work.

The complainant alleged that the subject committed intellectual theft when she incorporated his methodology into her proposals. The complainant alleged that four oral suggestions he made to the subject during the course of their collaboration were misappropriated by her. OIG determined that these suggestions were similar to the content of collegial discussions and were representative of general knowledge in the field, not unique to the complainant. Although the subject could have acknowledged them as helpful suggestions, her use of these general ideas did not constitute intellectual theft. OIG concluded that there was no substance to the allegation of plagiarism.

5. The animal colony

The complainant alleged that the subject misappropriated his animal colony and lied about its size in her NSF and NIH applications. OIG found that although the complainant had made some of his animals available to the subject for their initial collaboration, there was no formal arrangement on how the animals from his colony would be shared. This lack of a formal arrangement could have led to misunderstandings on how the animals should be shared. Based on the lack of evidence to the contrary, OIG concluded that there was no substance to the allegation that the subject misappropriated the complainant's animal colony.

With regard to the size of the colony, OIG learned that the subject had not accurately reported this number in her NSF and NIH proposals. However, OIG was informed by a

Closeout for M90070028

program manager⁵ that the specific number of animals to be used was not crucial to the successful completion of the proposed research. The subject had access to other animals through commercial providers and could have added more if needed. OIG concluded that, in this case, the subject's inaccurate representation of the exact number of animals in her animal colony was not a substantive issue and, as such, would not be characterized as misconduct in science.

The complainant alleged that when he removed his animals from the subject's lab, he observed that 20% of the animals showed symptoms of malnutrition. OIG learned from the Associate Dean⁶ that the Director of the Animal Care Facility⁷ said that he had watched over the animals daily and had not reported that the animals were abused. OIG concluded that there was no substance to the allegations that the animals were mistreated.

6. Administrative allegations

The complainant argued that the administration did not fairly pursue his allegations and, in the process, covered up the subject's actions. Including OIG's review, there have been four independent assessments of the complainant's allegations. OIG concluded that there was no evidence to support the allegation that the subject's actions were unfairly protected from scrutiny.

Although the internal decisions of the university to grant or deny tenure are not within OIG's purview, the complainant alleged that the university's termination of his contract was retaliation against him for whistle-blowing. OIG learned that the complainant first made his aforementioned allegations (#1-5) to the administration shortly *after* he was denied tenure. Thus, OIG concluded that there was no evidence to support the allegation that the complainant's termination from the university was because he made his allegations public.

This inquiry is closed and no further action will be taken on this case.

cc: Legal, AIG-Oversight, IG

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