

Closeout of Case M91080031

This case began in August 1991 when OIG received a complaint concerning proposal [REDACTED] submitted by Prof. [REDACTED] of the Department of [REDACTED] College of [REDACTED] University. The allegation was that this proposal contained false statements regarding the programs that the subject's college maintained for minority students.

OIG conducted an investigation of this matter and sent an investigation report to the Deputy Director of NSF in which it detailed a number of incorrect statements about these programs that the subject had sent to NSF in proposals and other documents. OIG recommended a finding of misconduct in science against the subject and certain remedial actions. Actions were also recommended against another subject who submitted similar false statements in a proposal and against the college.

Copies of the NSF investigation report and of the Deputy Director's letters to these parties resolving this matter are attached.

[REDACTED]

91-31

NATIONAL SCIENCE FOUNDATION

4201 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22230



April 29, 1994

OFFICE OF THE
DEPUTY DIRECTOR

[REDACTED]
Dean
[REDACTED]
[REDACTED]
[REDACTED]

Re: Notice of Misconduct Determination

Dear Dr. [REDACTED]

The National Science Foundation's Office of Inspector General (OIG) issued an Investigation Report on September 28, 1993, in which it found that false statements about minority programs at [REDACTED]

[REDACTED] (the "College") had been submitted to NSF in connection with four different grant proposals. A copy of the Investigation Report is attached.

In the Investigation Report, OIG concluded that the College as a whole bears responsibility for the false statements that were sent to NSF, and recommended that NSF issue a finding of misconduct against the College. This letter confirms the agreement reached by the National Science Foundation (NSF) and the College to settle this matter as follows:

1. NSF will not make a finding of misconduct against the College.
2. For a period of three years from the date of this letter, a copy of every proposal submitted to NSF from the College together with a separate written certification indicating that any representations in the proposal involving programs for minority students are true to the best of the signers' knowledge and belief, will be submitted to the Assistant Inspector General for Oversight, Office of Inspector General, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. Such submittal will be made simultaneously with the submittal of the proposal to NSF. The statement will be signed by the dean of the College and by the Authorized Institutional Representative on behalf of the University. This requirement also applies to any proposals from the College that are pending at NSF on the date of this letter.

Please confirm your agreement to the foregoing by signing the enclosed copy of this letter and returning it to me. If you have any questions, please contact Lawrence Rudolph, Acting General Counsel, at (703) 306-1060.

Sincerely,



Frederick M. Bernthal
Deputy Director

AGREED:



By: _____

Dean

Enclosure

NATIONAL SCIENCE FOUNDATION

4201 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22230



OFFICE OF THE
DEPUTY DIRECTOR

April 29, 1994

Personal and Confidential

[REDACTED]
[REDACTED]
[REDACTED]

Re: Notice of Misconduct Determination

Dear Prof. [REDACTED]

The National Science Foundation's Office of Inspector General (OIG) issued an Investigation Report on September 28, 1993, in which it found that you submitted several false statements to the Foundation relating to minority programs at [REDACTED]

[REDACTED] (the "College"). These false statements were made in (1) a June 1989 letter supplementing Proposal [REDACTED]; (2) Proposal [REDACTED]; and (3) Proposal [REDACTED]

In defense of your actions, you claimed that a former dean was the source of many of the false statements in your letter and proposals. However, as described in the Investigation Report, a copy of which is attached, a preponderance of the evidence shows you either included the false statements in those documents knowing them to be false, or did so with a reckless disregard for their truth.

Misconduct and Proposed Sanctions

Under NSF's regulations, "misconduct" is defined to include any "serious deviation from accepted practices in proposing, carrying out or reporting results from activities funded by NSF." 45 CFR §689.1(a). Your submission of these false statements to NSF, as described in the Investigation Report, constitutes a serious deviation from accepted practices, and, therefore, misconduct.

NSF's regulations establish three categories of actions (Group I, II and III) that can be taken in response to a finding of misconduct. 45 CFR §689.2(a). Group I actions include issuing a letter of reprimand; conditioning awards on prior approval of particular activities from NSF; and requiring certifications on

the accuracy of reports or assurances of compliance with particular requirements. 45 CFR §689.2(a)(1). Group II actions include restrictions on designated activities or expenditures; and special reviews of requests for funding. 45 CFR §689.2(a)(2). Group III actions include suspension or termination of awards; debarment or suspension from participation in NSF programs; and prohibitions on participation as NSF reviewers, advisors or consultants. 45 CFR §689.2(a)(3).

In deciding what response is appropriate, NSF has considered the seriousness of the misconduct; whether it was deliberate or careless; whether it was an isolated event or part of a pattern; and whether the misconduct affects only certain funding requests or has implications for any application for funding involving the subject of the misconduct finding. See 45 CFR §689.2(b).

You submitted false statements to NSF in connection with three different NSF grant proposals, clearly demonstrating a pattern of such behavior with obvious implications for any future proposals that you submit. I, therefore, take the following actions:


- o For three years from the date of this letter, a copy of every proposal you submit to NSF together with a separate written certification from you, the dean of your college and the Authorized Institutional Representative of your university, indicating that the representations in it involving minority programs are true and correct, will be submitted to the Assistant Inspector General for Oversight, Office of Inspector General, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. Such submittal will be made simultaneously with the submittal of the proposal to NSF. The certification must also be provided for any proposals pending at NSF on the date of this letter, and must be provided whether or not you are employed at [REDACTED]; and
- o For three years from the date of this letter, you will be excluded from participating as an NSF reviewer, advisor or consultant.

Procedures Governing Appeals

Under NSF's regulations, you have 30 days after receipt of this letter to submit an appeal of this decision, in writing, to the Director of the Foundation. 45 CFR §689.9(a). Any appeal should be addressed to the Director at the National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. For your

information we are attaching a copy of the applicable regulations. If you have any questions about the foregoing, please call Lawrence Rudolph, Acting General Counsel, at (703) 306-1060.

Sincerely,

A handwritten signature in dark ink, appearing to read "Fred Bernthal", with a stylized flourish at the end.

Frederick M. Bernthal
Deputy Director

Enclosures

~~ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED~~

NATIONAL SCIENCE FOUNDATION
4201 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22230



OFFICE OF THE
DEPUTY DIRECTOR

April 29, 1994

Personal and Confidential

[REDACTED]
[REDACTED]
[REDACTED]

Re: Notice of Misconduct Determination

Dear Dr. [REDACTED]

The National Science Foundation's Office of Inspector General (OIG) issued an Investigation Report on September 28, 1993, a copy of which is enclosed. In the Report, OIG found that you submitted several false statements to the Foundation relating to minority programs at [REDACTED]

[REDACTED] (the "College"). These false statements were made in Proposal [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

In defense of your actions, you explained that you were a newly appointed assistant professor at the time the proposal was prepared and had asked for Dr. [REDACTED] assistance in preparing portions of your proposal. Dr. [REDACTED] gave you a copy of the June 1989 letter described in the Investigation Report, which contained false statements about the College's minority programs. You took these statements as facts and included them in your proposal without independently checking their accuracy.

In the Investigation Report, OIG concluded that you were at least reckless when you signed the proposal without checking the accuracy of the statements you received from Dr. [REDACTED], and recommended that NSF make a finding of misconduct.

NSF's regulations define "misconduct" to include "fabrication, falsification, plagiarism, or other serious deviation from accepted practices in proposing, carrying out or reporting results from activities funded by NSF." 45 CFR §689.1(a). The OIG recommendation is apparently based on its belief that your actions constitute a serious deviation from accepted practices. However, I do not believe that the administrative record before me supports this conclusion.

Clearly, you would have been well advised to have checked the accuracy of the statements at issue before submitting them to NSF in a grant proposal. Nevertheless, I have concluded that your failure to do so, given the entire circumstances of this case, does not amount to 'misconduct' under NSF's regulations. I strongly urge you, however, to check on the accuracy of such statements in all future proposals you submit to NSF.

If you have any questions about the foregoing, please call Lawrence Rudolph, Acting General Counsel, at (703) 306-1060.

Sincerely,

A handwritten signature in dark ink, appearing to read "Frederick M. Bernthal", with a stylized flourish at the end.

Frederick M. Bernthal
Deputy Director

Enclosure

INVESTIGATION REPORT
MISCONDUCT IN SCIENCE AT

[REDACTED]

Summary. The Office of Inspector General (OIG) has conducted an investigation of misconduct allegations against a present and a former faculty member in [REDACTED] (the "college") at [REDACTED] (the "university"), and against the college itself. The allegations concern false statements about the college's programs for minority students that were written in, or attached to, proposals submitted to NSF. OIG has concluded that Prof. [REDACTED] (the "first subject") of [REDACTED] (the "department") made a number of false statements to NSF. OIG recommends that the Deputy Director issue a finding of misconduct in science and send him a letter of reprimand. NSF should also require assurances regarding the use of funds under his current grant, as well as assurances about the accuracy of similar statements in proposals from the first subject over the next three years, and should exclude him from serving as an NSF reviewer, advisor, or consultant during that time. A finding of misconduct in science and a letter of reprimand should also be issued against Dr. [REDACTED] (the "second subject"), a former faculty member who submitted some of the same false statements in another NSF proposal. Finally, a finding of misconduct in science should be issued against the college, and assurances should be required about the accuracy of statements in future proposals from that college.

Background. In August 1991, OIG received allegations concerning a proposal that had recently been submitted to NSF. The proposal was [REDACTED]. It was essentially a request for funding to purchase computer equipment to be used in undergraduate computer science courses. The proposal was received in April 1991 (and is referred to herein as the "April 1991 proposal") and a grant was awarded in [REDACTED], in the amount of [REDACTED]. It was co-funded by the [REDACTED] program and the [REDACTED]. The award expires on [REDACTED].

The allegations were against the first subject, the chairman of the department. He is the PI on this award. The award has four co-PIs: Profs. [REDACTED] and [REDACTED] in the [REDACTED] and [REDACTED] and [REDACTED] in the department. (See Attachment A, the college directory. [REDACTED] is currently on leave.) The proposal was also signed by Dr. [REDACTED], Associate Academic Vice President of the university, acting as NSF Authorized Institutional Representative.

The allegations against the first subject stated that he had inserted into the proposal statements about the college's programs for minority students that were untrue and that exaggerated the extent to which the college assists such students. Allegedly, he did this because he was trying to use the "minority angle" with NSF, and thereby improve his chances for funding. It was also alleged that officials of the college and of the university were aware of these false statements,

did nothing to correct them, and even condoned the use of such false statements in grant proposals. The statements at issue are in the Narrative section of the April 1991 proposal, which is given below as Attachment B.

OIG received the following specific allegations:

1. On p. 4, the proposal says that the college awards 20 full scholarships to the top Hispanic students enrolling as freshmen each fall. The allegation was that no such scholarships had been given to Hispanic students and none were forthcoming.
2. On p. 4, the proposal also speaks of 20 full scholarships that are awarded each fall to Native American students. The allegation was that the original intent was to award 20, but that the actual number was uncertain, and the proposal did not accurately reflect the terrible condition into which the college's program for Native American students had fallen.
3. On the same page, the proposal says that the engineering college has full-time directors for both the Native American Engineering program and the Hispanic Engineering program. The allegation questioned whether the Native American program had a full-time director.
4. Also on p. 4, the proposal says that the college runs summer workshops for selected groups of minority students to enhance their knowledge in the sciences, mathematics, and technology. The allegation was that there had been only one such workshop.

The OIG inquiry. On September 19, 1991, OIG wrote to the first subject asking for his view of these allegations. On September 25 the first subject telephoned and remarked that there was an erroneous statement in the proposal. On October 7, OIG received his written reply.

The reply letter, discussed in detail below, indicated that (1) there in fact was no program to provide full-time scholarships to Hispanic freshmen in engineering, (2) the program for Native American freshmen did not award 20 scholarships per year after its beginning in 1989, and was in serious difficulty by 1991, (3) the Native American program did not have a full-time director at the time the proposal was submitted, and (4) the college did not have a series of summer workshops, but in fact had held only one workshop. Other problems with the proposal and with this letter were discovered during the subsequent investigation.

In order to determine the extent to which the university used statements like the ones in the allegations, OIG collected and reviewed all the retrievable proposals submitted to NSF by the university from the beginning of October 1987 to November 1991. We observed that the university is primarily an undergraduate institution, situated close to large Hispanic and Native American populations. Consequently, it has submitted many Research Improvement in Minority Institutions, Research Experiences for Undergraduates, and Research in Undergraduate Institutions proposals. These frequently mention the university's large minority populations, and propose projects that may serve such students. We noted that the proposals involved in this case were submitted to programs that encourage the participation of minorities in science,

mathematics, and engineering, and that improving the human resource base was an evaluation criterion for proposals received. We also noted that reviewers frequently mention that the university's location and minority population are positive aspects of the proposals it submits. However, only proposals from the college contained statements about the university's programs for minority students that resemble those mentioned in the allegations. The proposals in which such statements were found are discussed below.

OIG also contacted other Federal agencies that fund external research, in order to determine whether similar statements about the college's programs to advance minority students had been submitted to those agencies. No proposals containing such statements were found. However, we found that NASA has had difficulties with the college in connection with a scholarship program it is funding in that college for Native American students. These difficulties are discussed below to the extent that they are relevant to this case.

The OIG investigation. OIG decided that the allegations that false statements were made in the April 1991 proposal had substance and deserved full investigation, and OIG further decided to perform this investigation itself. OIG decided not to offer the university the opportunity to conduct an investigation, in place of an OIG investigation, because the allegations included some actions attributed to officials of the college and the university. University faculty conducting such an investigation might have been accused of a conflict of interests and might have been placed in an awkward position, because the same college and university officials make administrative decisions concerning those faculty.

Two OIG staff members visited the university campus from September 28 to October 2, 1992, conducting personal interviews and collecting documentation. Telephone interviews took place with witnesses on and off the campus and documents were collected before, during, and after that time. Sworn statements were taken from the first subject, as well as from Prof. [REDACTED], former Associate Dean of the college and currently on the faculty of the department (the "associate dean"); from three of the co-PIs; and from the director of the college's program for Native American students from May to September 1991.

Summary of inaccurate statements. The investigation found that the following inaccurate statements were sent to NSF from the college. The documents that contain these statements are also indicated. Below, these statements are discussed individually.

1. The college awards full scholarships (specifically, 20 per year) to Hispanic students (June 1989 letter, the second subject's proposal, April 1991 proposal). In fact, there was no program during this period that awarded full scholarships to Hispanic students.
2. Twenty scholarships are awarded to Native American students every year (June 1989 letter, the second subject's proposal, April 1991 proposal). In fact, 20 scholarships were awarded in 1989, but only 10 in 1990 and 9 in 1991. Moreover, the recipients of the 1990 and 1991 awards did not receive new

scholarships, but only replaced earlier awardees who had dropped out of the program.

3. After the first year, about 10 new scholarships per year were awarded to Native American students (October 1991 letter). In fact, as noted under 2. above, these were not new scholarships.

4. The Native American scholarships go to the "top" students (June 1989 letter). In fact, there was no mechanism for identifying the "top" students in order to award them the scholarships.

5. The program for Native American students was in place in June 1989 (June 1989 letter). In fact, the Memorandum of Understanding establishing the program at the university was not signed until July 1989 and the project was not funded until November 1989.

6. Each year, 20 Hispanic and 20 Native American students receive financial aid packages (1991 letter, November 1991 proposal). In fact, neither program had that many aid packages at the time these statements were made.

7. The Native American program had a full-time director in June 1989, April 1991, and November 1991 (June 1989 letter, April 1991 proposal, November 1991 proposal). In fact, in June 1989 the director was employed only part-time. At the other times, there was no director as described.

8. The college holds summer workshops (plural) for selected groups of minority students (April 1991 proposal, November 1991 proposal). In fact, there was only one summer workshop, with no funding in sight for more.

Statement 1. There were full scholarships to Hispanic students. This statement first appeared in connection with Proposal [REDACTED], which the first subject submitted in November 1988 and which was funded in [REDACTED] in the amount of [REDACTED]. The proposal file contains a letter dated June 4, 1989 (the "June 1989 letter") that the first subject sent to the program officer. It was in reply to the program officer's questions about minority populations on the [REDACTED] campus, among other things. This letter (Attachment C) contains several paragraphs about minorities that later appeared almost unchanged in the April 1991 proposal, and it is the source for some of the untrue statements in that proposal.

The June 1989 letter contains this statement: "In addition, the college awards full scholarships to the top 20 Hispanic and top 20 Native American students enrolling as freshman [sic] each fall majoring in engineering or computer science". (p. 2) In fact, the college did not have a program then or later for awarding full scholarships to Hispanic students.

The first subject has admitted to being the original author of the material in this letter. He stated that he obtained his information about the college's minority programs from Dr. [REDACTED], who was then the Dean [REDACTED] (the "former dean"), and from the associate dean.

Essentially the same untrue statement is in Proposal [REDACTED], which was submitted to NSF in July 1990 by the second subject (the "second subject's proposal") and was ultimately declined. At that time the second subject was a faculty member in [REDACTED] (the "second subject's department") at the university. He no longer has an academic position.

The second subject's proposal (see Attachment D) contains much of the language about minorities that was in the first subject's June 1989 letter and that the first subject later put into his April 1991 proposal. In the second subject's proposal, the statement about Hispanic student scholarships is: "This program awards full scholarships to the top 20 Hispanic and top 20 Native American Students enrolling as freshman each fall majoring in engineering or computer science." (p. 20) The program referred to is [REDACTED] (the "funded scholarship program"), discussed below, which had recently been established at the college. However, this program did not provide full scholarships for Hispanic students, and neither did any other program in the college.

The second subject has explained that he had received this language in material supplied to him by the first subject (Attachment E). The first subject gave him the 1989 proposal and the June 1989 letter, and allowed him to copy and use them. The second subject did not give any citation to these sources in his proposal, and thereby failed to acknowledge his use of the first subject's intellectual property.

The first subject has stated that he made his letter available to others inside and outside the college. He recalls discussing the second subject's proposal with him, but does not specifically recall giving the second subject his letter or working with him on the proposal. However, he stated that the second subject's text clearly was drawn from his letter (the first subject's affidavit, Attachment F).

The first subject's April 1991 proposal gives the statement in this form: "In addition, the college awards full scholarships to the top 20 Hispanic and top 20 Native American students enrolling as freshman each fall majoring in engineering or computer science and engineering." (p. 4) Again, the statement about scholarships for Hispanic students is untrue.

The first subject has admitted to being the author of the statements in this proposal about minorities. According to their testimony, the co-PIs read these statements before signing, but relied on the first subject for their accuracy. The associate dean approved the proposal on behalf of the former dean, who was out of town. He reviewed the proposal quickly, but did not check the accuracy of the statements relating to minority programs and minority scholarships. The former dean did not read the proposal.

On September 19, 1991 OIG sent the first subject a letter (Attachment G) asking, among other things, for the names of the 20 Hispanic students receiving scholarships each year. On September 25, OIG received a phone call in which he explained that there was an erroneous statement in the April 1991 proposal and a confusion between two programs. This apparently referred to a confusion between the Native American program, which had 20 full scholarships, and the Hispanic program, which did not.

In October 1991, OIG received an undated letter from the first subject (Attachment H). This letter (the "October 1991 letter") does not mention the confusion between two programs or any error in the proposal. It does not directly mention the question in the OIG letter about full-time scholarships or say that the claim is untrue. Instead, it says: "The director of the Hispanic program is responsible for recruiting at least 20 qualified Hispanic students into the [college] each year... [and] works with the college and university to put together a financial support package for each student." (p. 2) An attachment to the letter gives the names of approximately 20 students in the Hispanic program for each year. These clearly are not the 20 recipients of full scholarships per year that OIG requested, and this reply addresses OIG's question only in an indirect and confusing way. In fact, it makes a new statement that is not true (see Statement 6.)

Statement 2. There were 20 scholarships for Native American students per year. As quoted above, the first subject's June 1989 letter says: "In addition, the college awards full scholarships to the top 20 Hispanic and top 20 Native American students enrolling as freshman each fall majoring in engineering or computer science." In June 1989, when this letter was written, the college was in the process of negotiating the funded scholarship program to award full scholarships to Native American students. NASA was the supporting agency and the Jet Propulsion Laboratory (JPL) in Pasadena was the institution that would administer the project under contract with NASA. A Memorandum of Understanding between the university and JPL was signed in July 1989. It did not mention any number of scholarships. The proposal was funded in November 1989. It specified a total of 20 scholarships. There were never plans for 20 new scholarships each year, as the June 1989 letter states. Hence the claims made in that letter were inaccurate. The announcement of the program in June 1989 was also premature. (See Statement 5.)

By the time the second subject wrote his proposal, the funded scholarship program was in place and 20 scholarships had been awarded. He modified the language in the first subject's June 1989 letter to say the following: "The [college] in association with NASA and the Jet Propulsion Laboratory also engages in the direct recruitment and funding of a scholarship program for Native American Engineering Students. This program awards full scholarships to the top 20 Hispanic and top 20 Native American Students enrolling as freshman each fall majoring in engineering or computer science." (p. 20 of proposal, Attachment D) Thus, he added an explicit reference to the funded scholarship program. However, by repeating the first subject's language about 20 Hispanic and 20 Native American students, he created the erroneous statement that the funded scholarship program also serves Hispanic students. He also repeated the first subject's erroneous statement that this program awards 20 scholarships per year.

As noted under Statement 1, the first subject's April 1991 proposal again contains the language about 20 scholarships per year for Native American students. He was asked about this in OIG's September 19, 1991 letter, and he replied in the October 1991 letter. The letter does not actually mention this point or the statement in the proposal, but it says that the Native American students program was planned to provide 20 full scholarships for Native American students in engineering in its first year and 10 per year thereafter, in addition to summer employment and other assistance. The statement about 10 additional scholarships per year is an additional false statement. (See Statement 3.) Thus the October 1991 letter implicitly corrects the statement about 20 scholarships per year, but it makes a new false statement.

Statement 3. There were 10 scholarships per year for Native Americans after the first year. The October 1991 letter says, regarding the funded scholarship program: "Initial plans called for 20 participants the first year with 10 additional per year to a total of 50 participants. The program provides full support.... The students supported by [the funded scholarship program] are shown on attachment 2." (Attachment H, p. 3) The list of Native American awardees in attachment 2 to the letter shows 20 awardees in 1989, 10 awardees in 1990, and 9 awardees in 1991. Thus, it seems to give support to the first subject's statement about the number of scholarships offered by the program year by year.

However, OIG has obtained the document from which the first subject compiled this list. It shows that many of these students left the program quite soon after receiving their scholarships. It explains that many of these "de-selections" were made because of low grade-point averages. The students added to the list in 1990 and 1991 were not getting 10 new fellowships per year, as stated in the letter, but were replacing dropouts. As noted earlier, the NASA grant provides only for a total of 20 scholarships. The actual number of current awardees was never more than 20 at a time and was often much less. The letter does not mention the dropouts. Instead, it gives the clear impression that the 10 awardees in 1990 and the 9 in 1991 were receiving scholarships over and above the original 20, under the fictitious total of 50. OIG believes that this combination of incorrect information and selective presentation of information, in a document expressly written to clear up false statements that OIG previously pointed out, demonstrates an intent to deceive NSF.

Statement 4. The scholarships went to the top Native American students. As noted under Statements 1 and 2, the first subject's June 1989 letter said that the funded scholarship program scholarships went to the "top" 20 Native American freshmen each fall majoring in engineering or computer science. This statement was repeated in the second subject's proposal and in the first subject's April 1991 proposal. However, we have learned that the first 20 students were simply recruited for the program, with no effort to determine whether they were academically more qualified than other Native American students enrolling at the same time. In fact, the fall 1989 group of awardees was recruited on very short notice because the program was established after the beginning of the academic year. Many of these students proved to be unsuccessful. In his October 1991 letter (p. 3) the first subject more accurately states that in fall 1989, 20 very high risk high school graduates were recruited from reservation schools.

Statement 5. The program for Native American students was in place in June 1989. As discussed under Statement 2, the first subject's 1989 letter was written in June of that year. At that time, there was not as yet any source of full scholarships for Native American students. The college was in the process of negotiating the funded scholarship program. In June 1989, however, a formal proposal had not been submitted and there was no guarantee of funding. A Memorandum of Understanding between the university and JPL was signed in July 1989. The proposal was funded in November 1989. Hence, the statement made in June 1989 was untrue, but the first subject gave no indication that the program had not yet even been proposed to the federal funding agency, and might not materialize. This exaggerated statement seems to be due to the former dean. He had already announced that funding was available in a memorandum of June 2, 1989 (see Attachment J, p. 3).

Statement 6. 20 Hispanic and 20 Native American students receive financial aid packages each year. In addressing OIG's questions about scholarships for Hispanic and Native American students, the October 1991 letter states that: "The director of the Hispanic program is responsible for recruiting at least 20 qualified Hispanic students into the [college] each year.... The director of the Hispanic program works with the college and university to put together a financial support package for each student.... The Native American program is modeled after the Hispanic program and was started in the fall of 1989. Again, the director is responsible for recruiting at least 20 qualified students per year and working out financial support packages for each student." (Attachment H, p. 2)

OIG has found that there were never as many as 20 financial aid packages for Hispanic students at one time, nor did every student in that program have a financial aid package. With regard to the Native American program, it was noted above that there was one pool of 20 full-time scholarships through the funded scholarship program. There was no program or combination of programs that gave out as many as 20 new financial aid packages every year. In fact, by October 1991 it was well known in the college that the Native American students program was in great difficulty. Students had been failing, and the number of scholarship holders had fallen to seven.

However, Statement 6 was repeated in Proposal [REDACTED], which the first subject submitted to NSF in November 1991 and which was subsequently declined (the "November 1991 proposal"). There he says that: "As part of the college's active role in recruiting minorities, the directors for the minority programs are charged with the task of recruiting at least 20 qualified students each year into degree programs within the college. The directors put together financial support packages for each of their students." (Attachment I, p. 2)

The first subject made these untrue statements in documents written after OIG had contacted him about previous untrue statements. The number 20 repeats his previous use of the number 20 in the untrue statements in his June 1989 letter and April 1991 proposal.

Statement 7. The Native American program had a full-time director in June 1989, April 1991, and November 1991. The first subject has repeatedly employed the same statement about the

presence of a director in the Native American students program. In the June 1989 letter, the statement is: "The college has *full time directors* for both the Native American Engineering program and the Hispanic Engineering program. These directors are respectively [REDACTED] and [REDACTED]." (Attachment C, p. 2) In fact, [REDACTED]'s appointment was full-time, but [REDACTED]'s was part-time. (She was employed half time from September 1988 to January 1989, and three-quarters time from January 1989 to July 1989.)

In the April 1991 proposal (p. 4), the first sentence of the above statement again appears, but the second sentence giving the names of the directors does not. In fact, at that time the post of director of the Native American program was vacant, so that no name could have been provided for that director. The October 1991 letter explains that the first program director under the Native American students program resigned in February 1991 and an interim director was appointed for the period May through August 1991 while a new full-time director was recruited. This acknowledges indirectly that there was no director at the time the April 1991 proposal was submitted.

The November 1991 proposal (on p. 1) again repeats the first sentence quoted above to the effect that the Native American Program has a full-time director. Like the April 1991 proposal, it does not repeat the second sentence that gives the names of the program directors, and again there was no director for the Native American program at the time this proposal was submitted. The position was vacant from September 1991 to September 1992. During that time, the program was staffed by a person on loan from JPL. The proposal describes this situation as follows: "In addition to the resources of the university, the minority programs are supported by staffing for [sic] outside sources. Currently, the college has two staff members on loan in support of our minority efforts.... [One] individual is on loan directly to the minority programs and is provided by Jet Propulsion Laboratories." (p. 3) The proposal is correct in mentioning this person, but incorrect in speaking of a full-time director in addition. In all three of these instances, the first subject exaggerated the amount of assistance that was offered to Native American students.

Statement 8. Summer workshops were held for selected groups of minority students. The April 1991 proposal contains the paragraph:

The [college] also recognizes that the minority student population from which we recruit has fewer educational opportunities in the areas of science and mathematics than would be typical of the majority population. This leads to a large group of incoming minority freshmen whose science and mathematics skills are remedial when trying to pursue a degree in an engineering discipline. In an attempt to address this problem the college runs summer workshops for selected groups of minority students to enhance their knowledge in the sciences, mathematics, and technology. (p. 4)

This implies that such summer workshops were held with some regularity. However, in reply to a question from OIG, the first subject in his October 1991 letter explained that there had been

only one workshop, in 1990, involving 16 students. He further explained that at the time he wrote the April 1991 proposal, negotiations were underway for a summer 1991 workshop, but that in May 1991 he learned that funding would not be available. No workshop was held. He hoped to hold a summer workshop in 1992. (In 1992 there was a summer workshop for 10 Native American Students. It was not under the auspices of the college, but had an engineering component. See Attachment J, p. 2.)

In the November 1991 proposal, this statement is modified to say:

The [college] also recognizes that the minority student population from which we recruit has fewer educational opportunities in the areas of science and mathematics than would be typical of the majority population. This leads to a large group of incoming minority freshmen whose science and mathematics skills are remedial when trying to pursue a degree in an engineering discipline. In an attempt to address this problem the college attempts to reach minority students before they enter the [college] in several ways.... The college offers summer workshops to help supplement high school student's [sic] backgrounds in science and technology. These residential workshops are conducted using funding from federal and private sources and are subject to the availability of these funds....
(p. 2)

This modification — following the OIG inquiry — points out that the workshops are subject to the availability of funds. However, it still gives the false impression that the workshops are offered regularly. An accurate statement would have been that the college was attempting to offer summer workshops and had succeeded in offering one.

Explanations of the inaccurate statements.

The first subject (October 1991 letter and 1992 interviews). The first subject was asked on four occasions to explain the inaccurate statements he sent to NSF: when he received a letter from OIG and sent his October 1991 letter in reply, in his two interviews on campus during the OIG visit, and in a December 1, 1992 letter responding to a letter OIG sent after the visit to the campus.

As noted, the first subject's first contact with OIG was by telephone on September 25, 1991, after he had received OIG's first letter. In this conversation, he acknowledged some inaccuracy in the proposal. His October 7, 1991 letter makes this acknowledgment only indirectly, by implication. In his two interviews with OIG at the university, the first subject admitted the errors and explained how they had occurred.

In his first interview (September 28, 1992), the first subject acknowledged that the statements about scholarships in the proposal were erroneous. He explained that the former dean's target was to recruit 20 Hispanic and 20 Native American freshmen each year. He further explained that all students enrolled in the two minority programs received some form of financial

assistance. The proposal should have said "20 financial support packages" for Hispanic students. (In fact, this was also an overstatement, as noted above.) The funded scholarship program provided 20 full scholarships for Native American students that could be renewed each year if the student was performing satisfactorily. He further stated that he had depended on the former dean for his information about scholarships for minority students.

In this interview, the first subject also stated that he composed pp. 3-4 of his April 1991 proposal entirely in March 1991. He had never used those statements before and he did not know of anyone else who had. In his second interview three days later (October 1, 1992) OIG obtained a sworn affidavit from him. In that interview, he recalled using his June 1989 letter in writing this April 1991 proposal. (The university Grants and Contracts Administrator has told OIG that between the first and second interviews he questioned the first subject about the similarity between language in the second subject's proposal and language in the first subject's April 1991 proposal.) He stated that the information about minority scholarships was copied from the June 1989 letter without correction.

According to the first subject's affidavit, when he copied the statement about scholarships for Hispanic and Native American students from the June 1989 letter, he did not read it carefully. If he had, he would have noticed that the statement about scholarships for Hispanic students was wrong. By that time, he realized that the funding for Hispanic students was from a separate source from that for Native Americans, and did not provide 20 full scholarships. However, he did not learn until the summer of 1991, after the proposal was submitted, that the number of Native American students holding scholarships had decreased. Hence he did not realize the problems with his statements about the Native American program.

The first subject's sworn statement further says that during the drafting of the June 1989 letter and the April 1991 proposal he never requested information about these scholarship programs from the program directors of the Hispanic and Native American programs. His knowledge of these programs came solely from information provided by the former dean during staff meetings. When he sent his letter to OIG, he assumed OIG would communicate the corrected information about scholarships to the program. Therefore, he did not contact the program directly to correct the proposal. (The first subject did not send or call in any corrections to NSF until he was contacted by OIG. Then he sent his corrections to OIG alone, not to the program.)

According to the sworn statement, when drafting the proposal the first subject knew that the director of the Native American program had resigned and that a replacement was being sought. He copied the statement about full-time directors in both programs from the June 1989 letter. He says it was true in 1989. (As noted above, the statement was inaccurate with regard to the Native American program in 1989.) In 1991, he thought that the statement was correct because the Hispanic program did have a full-time director, and the college had a full-time position it was trying to fill for the Native American program. (The latter position was vacant from February 1991 to May 1991, and from September 1991 to September 1992.)

The first subject wrote the statement about summer workshops for the first time in March 1991, when he was writing this proposal. The statement was based on the fact that there was a 1990 workshop for Hispanic students. In staff meetings, the former dean implied that this summer program would be an annual event and would also include Native American students. At the end of the spring 1991 semester, the former dean announced that the funding for these programs would not come through. The first subject did not notify NSF of this development. He did not discuss these proposed summer workshops with the Hispanic and Native American program directors. (In fact, the director of the Hispanic students program at that time has testified that the 1990 workshop was supported by very "soft" money and there was never any strong expectation of funding in 1991 or later.)

The second subject. In his December 1992 letter to OIG (Attachment E), the second subject explains how his proposal came to be written. In late 1989 he was a newly appointed assistant professor. He asked the former dean for advice on how to prepare a research proposal and was referred to the first subject, who had recently submitted a successful proposal to NSF. They discussed the first subject's proposal and the first subject gave him the folder to copy, including the June 1989 letter. The second subject received unwritten permission from the first subject to use this material. Because he was submitting a Research in Undergraduate Institutions (RUI) proposal, he decided to use the information in the file about the college's minority programs in his RUI Impact Statement. He asked the first subject and was informed that he could update the minority enrollment information that the first subject had used with the university Fact Book. (Although OIG's letter to him asked about the other revisions he made to the first subject's discussion, he does not address them. Specifically, he updated the name of the Native American program officer and added material about the Native American students program. This indicates that he took an active part in writing the passages in his proposal that contain erroneous statements.)

The proposal was reviewed by the chairman of the second subject's department and by the former dean. It was then reviewed and approved by the university's Grant and Contract Administrator and [REDACTED] the NSF Authorized Institutional Representative at the university.

The associate dean. The routing sheets transmitting both the second subject's proposal and the first subject's April 1991 proposal to the university's Office of Grant and Contract Services were signed by the associate dean, on behalf of the college. In his interview with OIG, the associate dean explained that he was never responsible for the college's minority programs. The program directors reported to the former dean, who provided information about the programs to other faculty and staff. The associate dean saw annual reports from the directors of the two minority programs, but otherwise he had no regular formal briefings about the status of those programs (affidavit, Attachment F).

The first subject says that when he wrote the April 1991 proposal he asked the associate dean to update the enrollment statistics from those shown in the June 1989 letter. In his affidavit the associate dean confirms that he updated the enrollment statistics at the first subject's request.

He did not review the material related to minority programs or minority scholarships at the college. In the view of the associate dean, his signature did not imply that he was taking responsibility for the truth of those statements, and he did not try to verify those statements. No-one took such responsibility on behalf of the college. If he had reviewed the statements, he believes he would have questioned the number of scholarships attributed to the Hispanic program, and he would have asked the first subject to check that information.

The former dean. The former dean was interviewed by telephone. He stated that he discussed the April 1991 proposal with the first subject in a general way, but never read it. He also discussed the first subject's preparation of the October 1991 letter with him, but does not recall any specifics. He said that the first subject would not have been aware of weaknesses in the Native American program or the attrition rate. The former dean had told the faculty broadly that the program was doing well. The statement about 20 scholarships for Hispanic students was not correct, but it was a stated goal of the college to have that many, and the first subject might have thought that the college actually had secured the funds. (OIG does not believe these statements in defense of the first subject are persuasive. The former dean took a different position in a subsequent letter to OIG, as discussed in detail below.)

The first subject (1992 letter). In his December 1, 1992 letter (Attachment J), the first subject provided further information. He enclosed a memo from the former dean dated June 2, 1989, which shows that by that time the former dean was announcing in writing that funding was available for the funded scholarship program. The first subject was not aware that the director of the Native American program was not employed full-time in June 1989. In his November 1991 proposal, he said that there was a full-time director in the Native American program, though there was none at the time, because the position existed and he fully expected it to be filled.

When he wrote in late 1991 of 20 financial support packages per year for Native American students, he had received that information from the former dean, who, he expects, was referring to the funded scholarship program. (However, the first subject admitted in his affidavit that by this time he knew that there were problems with the academic achievements of the Native American scholarship students, the number of such students had decreased, and the program was being revamped.) His information about 20 financial support packages per year for Hispanic students came from the director of the Hispanic program, who told him that she worked out a support package for each of her students. (OIG was informed by the person who was program director in late 1991 that there were not that many support packages, and she did not tell the first subject that there were.)

In the first subject's view, the statement in November 1991 about the college conducting summer workshops was justified by the 1990 summer workshop. In addition, faculty from the college took part in a subsequent workshop for 10 Native American students in the summer of 1992 that was not sponsored by the college. (In our view, this does not justify the continued use of the statement that the college offers summer workshops.)

Responses to draft investigation report. On June 7, 1993 OIG sent a draft of this report to the first and second subjects and to the current dean of the college, and offered them the opportunity to reply. The second subject did not reply. The first subject sent a brief reply (Attachment K) stating that he did not knowingly provide inaccurate information to NSF. He stated that he relied on the sources that provided him information and he referred to the current dean's reply for additional substantiation. The current dean sent an extensive reply (Attachment L). Because the current dean's reply referred repeatedly to communications between the first subject and the former dean, on July 21, 1993 OIG sent the draft investigation report to the former dean also, and requested any reply he wished to make. The former dean sent a handwritten reply (Attachment M).

The current dean's reply. This letter (Attachment L) is mostly devoted to defending the first subject. It denies that the first subject had any intent to deceive NSF or to commit misconduct. It states that the first subject obtained his information from people directly associated with the minority programs and accepted it at face value. Like the first subject's reply, this reply refers to those sources in the plural. However, all misleading statements are later attributed to the former dean alone. He is charged with choosing not to generally broadcast much information about the progress of the minority programs to members of the faculty.

The current dean's reply speaks to some of the inaccurate statements identified in this report individually. With regard to Statement 1 about full scholarships for Hispanic freshmen, he refers to an undated document from the college that contains the statement "It is intended that these [Hispanic freshman] students will be on a full scholarship with the same conditions as per the Native American program." (current dean's Attachment A, p. 7) This document is supposed to show that the former dean issued such statements describing his vision for the Hispanic program and that the first subject must have mistaken this vision for the reality. However, this whole argument is conjectural. It is not claimed that the first subject even saw this document. Moreover, the document says that full scholarships were intended, not that they were actually being awarded. It is pure conjecture that the first subject confused the former dean's vision with reality.

Moreover, this document shows internal evidence of having been written in the fall of 1989 or later. (On the same page, it refers to 44 Hispanic students being in the program in the fall of 1989. On p. 3, it speaks of [REDACTED] as being in place as director of the Native American program. She was not hired until August 1989.) Hence this document could not have been the source for the first subject's statement in June 1989, which was simply repeated in later documents.

The current dean provides additional documents (current dean's Attachments B, C, and D) that indicate that the Hispanic program had the goal of recruiting at least 25 freshmen each year and providing each with financial aid assistance. Apart from their late or uncertain dates, which cast doubt on their relevance, these documents say nothing about 20 full-time scholarships (Statement 1) and do not indicate that 20 financial aid packages were actually provided (Statement 6).

With regard to Native American freshmen (Statement 2 in this report), the current dean's reply refers to two attached documents (current dean's Attachments E-1 and E-2) indicating that in April 1989 the former dean planned to recruit 25 qualified students each year and to give each a full scholarship. One of these documents is undated and both are anonymous. Again, the current dean is arguing that the first subject confused this statement of the former dean's vision with the reality. This argument again relies on the assumptions that the first subject saw these documents and that he was subject to such confusion. These documents also do not contain the number 20 and therefore do not explain why the first subject used it in Statement 2.

With regard to Statement 3 (10 new scholarships for Native American freshmen per year after the first year for a total of 50), the current dean states that the first subject was apparently confused. He encloses many documents (current dean's Attachments F-1 through F-6) variously showing that 5 or 10 scholarships were planned or requested at various times. We have already noted that the number 10 is documented by the fact that there were 10 new awardees in 1990 and 9 in 1991, but that these were replacements for dropouts rather than new scholarships. These documents do not make Statement 3 any more plausible. The number 50 is not documented at all. In fact, these documents (especially current dean's Attachment F-5) show that by February 1991 the former dean knew that NASA had not approved the 10 new scholarships that had been requested. Hence the first subject should have known this by the time he put Statement 3 in his October 1991 letter, particularly if he relied on the former dean for information.

With regard to Statement 4 (the "top" Native American students were recruited for the funded scholarship program) the current dean provides a document (current dean's Attachment F-1) indicating that in the fall of 1990 the students receiving scholarships would have to have a certain grade point average. If this practice was continued in future years, as is likely, then it is defensible to say that the "top" students received scholarships in those years. However, this does not apply to the class recruited in fall 1989. (See above discussion under Statement 4.) Hence Statement 4 was not true when the first subject originally made it in June 1989. When the second subject repeated it in July 1990, it was a true statement of the college's plans for fall 1990, and it was true when the first subject repeated it in 1991.

The current dean's reply discusses the staffing of the director's position in the Native American students program and also the summer workshops (Statements 6 and 7). His account is consistent with the account given in this report.

The current dean's reply does not separately address the allegations made against the college itself, except to say that officers of the college had no intent to fabricate, falsify, or plagiarize information and that the college is not guilty of misconduct in science.

The former dean's reply. The former dean states (Attachment M) that he did not tell anyone that there was full scholarship support for Hispanic students. He noted that both minority programs had faculty advisory committees and stated that it was primarily the responsibility of the program directors and the advisory committees (rather than himself) to communicate with

other faculty about those programs. He insisted that he did a very good job of informing the Executive Committee about those programs. If people were uninformed, it was in part because they did not listen or did not ask.

The former dean stated that he never misinformed the first subject about the minority programs. As a member of the Executive Committee and with open access to the directors of both programs, the first subject had ready access to all available information regarding those programs. The former dean stated that he was always specific in describing what had been accomplished and what was planned. He never had indication that anyone, including the first subject, had confused target numbers with reality. He had no recollection of any specific documents that indicated that the funded scholarship program would have a total of 50 scholarships.

Responsibility for inaccurate statements.

The first subject. As noted, the first subject sent NSF eight false statements about the college's minority programs, some repeated in various documents. Seven of these statements were in proposals or in a letter in support of a proposal. Two of the statements were also supplied to the second subject, who used them in his proposal. The first subject did not inform NSF about the inaccuracy of these statements until questioned about them by OIG. Even after that, he continued to supply NSF with inaccurate and misleading statements.

The problem began with his June 1989 letter to NSF. The erroneous statements in that letter were attributed — by both the first subject and the former dean — to the former dean, who at that time was negotiating the funded scholarship program. It does appear that by that time the former dean was publicly announcing that the funds had been awarded. This announcement misrepresented the actual state of the negotiations. However, it would not have been unreasonable for the first subject to mention the scholarship program for Native American students in his June 1989 letter if he had been more careful about describing the exact status of the negotiations. Unfortunately, he also presented as fact erroneous information about the number of scholarships awarded under the program. Later, he repeated this erroneous information in further communications to NSF.

Much of the effort of this investigation was directed to the question of whether the first subject made his false statements about the minority programs knowing them to be false or with reckless disregard for their truth. OIG found that by April 1991 many people in the college knew in a general way that the Native American students program was in trouble. The college is housed in a single three-story building of moderate size in which one could expect news of this kind to be widely known. Many people certainly knew that that program was different from the Hispanic students program.

As noted, the first subject explained for the first time in his October 1, 1992 interview that in March 1991 he was aware that the Hispanic program was not supported by the funded scholarship program, and that the latter program was in difficulty. He said he would have

corrected the corresponding statements in his April 1991 proposal if he had read them carefully. (However, it is worth noting that in March 1991 he did update the statements about minority populations in the university and the college that are in the same part of the proposal and that also came from the June 1989 letter. He also did not retain the names of the program directors from the June 1989 letter, but dropped them. Hence there are grounds for doubting his claim that he did not read this section of his proposal carefully. Moreover, as a member of the faculty advisory committee for the Hispanic program for at least two years, he had little excuse for being misinformed, if he was, about the scholarships that program offered.)

Even in his October 1991 letter to NSF and his November 1991 proposal, the first subject made inaccurate statements about the numbers of Native American and Hispanic students receiving financial aid, about the Native American program having a full-time director, and about the college offering summer workshops. These statements appeared to correct his earlier false statements. As shown above, he was in a position to know that all these statements were untrue.

Some indication that the first subject has been intentionally untruthful is given by the pattern of inconsistency in the various explanations he has provided to OIG at various times, by his failure to give timely notice to NSF of errors in his proposal when he became aware of them, by the evasiveness of his October 1991 letter, and by the continuing inaccurate statements he made to NSF in that letter and in his November 1991 proposal. We also note that the false statements are overstatements about the minority programs rather than understatements, and that it was therefore in the first subject's interest to make them.

Following up on an indication from the former dean that the minority programs had faculty advisory committees, OIG requested the names of the committee members. The current dean provided the lists he could find (Attachment N). They indicate that the first subject served on the Hispanic Engineering Program Advisory Committee for at least two years. This fact, which no-one at the university volunteered, makes it even less credible that the first subject could have been ignorant about the financial aid awarded by that program. This strengthens the claim that his misinforming NSF on so many occasions was reckless if not deliberate.

We conclude that a preponderance of the evidence favors the finding that the first subject knew that he was making false statements to NSF in his proposals and letters to NSF. The first subject has been in the college for 20 years. He has been chairman since the department was formed in 1989, and before that he was Administrative Head for Computer Science within the college. As chairman, he serves on the college's Executive Committee. Hence, he is in a position to be well informed about the college, and he has a general responsibility for understanding the college's programs for minority students and for implementing those programs in his department. Further, if the first subject did not know that his statements were untrue, he still was guilty of recklessness. He had the opportunity and the responsibility to inform himself before writing his various descriptions of the minority programs and sending them to NSF. However, we have learned that he had almost no conversations with the minority program directors over a period of years and, in particular, did not ask them to verify the information he was submitting in his proposals.

Even if the first subject did not know his statements were false, he signed the two 1991 proposals as Principal Investigator, in addition to signing the two letters, and he thereby took responsibility for their contents. Moreover, he is the admitted author of the false statements, and others relied on him for their truth. In sum, if the first subject was not intentionally untruthful, he showed a flagrant disregard for the truth in his efforts to impress NSF with his college's minority programs. We suggest that NSF should make a finding of misconduct regardless of whether the first subject willfully deceived the agency or whether he merely was reckless.

The second subject. The second subject was at least reckless when he signed his proposal as PI without checking on the accuracy of the statements he had received from the first subject about minority programs, as he checked and updated the minority population statistics. This is especially true since he added new information about the minority programs to what he received. He also copied text from the first subject's June 1989 letter into his proposal without acknowledging the source of that material.

The college. Although the former dean did not himself submit these proposals or review them, by misinforming the first subject he was the source for some of the erroneous information that was later presented to NSF by the first subject. The first subject, as a department chairman and member of the college executive committee, was himself a leading official of the college. As a member of the executive committee, he received and passed on information about the college's programs. As a leading official of the college, he sent information about the college's programs for minority students to NSF and passed that information on to the second subject.

The associate dean signed two proposals that contained representations about the college's minority programs without inquiring into whether those representations were true. In the case of the second subject's proposal, the associate dean provided information about the numbers of minority students in the college, but he did not verify the statements about minority programs and scholarships before he signed off on the proposal on behalf of the college. In the case of the first subject's April 1991 proposal, the associate dean again updated the numbers referring to minority enrollments. He did not review the information relating to minority programs and minority scholarships at the college, either while the proposal was being prepared or when it came to him for signature. The former dean delegated to him the responsibility for signing the proposal, but neither the former dean nor the associate dean reviewed the proposal carefully enough to notice the false statements about minority programs, nor did either official have these statements checked by someone else. The associate dean noted in his affidavit that if he had reviewed this part of the proposal, he would have questioned the number of scholarships awarded to Hispanic students and would have asked the first subject to check that information. However, this did not happen.

Because of these actions on the part of the former dean of the college, the associate dean, and a department chair (the first subject), OIG believes that the college as a whole bears a responsibility for the false statements that were sent to NSF. However, OIG was told that no-one in the college administration took responsibility for assessing the accuracy of representations

about the college when reviewing and clearing the proposal. It is not acceptable for the college to renounce its responsibility in this way. The false statements supplied to NSF were about matters that are within the college administration's knowledge and control. These statements described the minority programs created and administered by the college. Institutional reviewing officials are not expected to review the technical content of proposals, and the institution would not ordinarily bear any responsibility if the proposal contained false statements about science or engineering. However, institutions are reasonably expected to take responsibility for the truth of statements in proposals that concern matters within the purview of the institution itself. In this case, the statements in these proposals that concerned the college's minority programs were within the purview of that college's administration, and the administration was responsible for ensuring their accuracy.

Leading officials of the college were the source of erroneous statements in three proposals that were sent to NSF. They caused those proposals to be forwarded to NSF without noting and correcting those errors and without even reviewing the proposals carefully. Moreover, they denied their responsibility for doing so. The college therefore should be held responsible along with the two subjects for the erroneous statements in the proposals.

Remedies available to NSF. Making false statements to a federal agency is a serious matter. Once an agency has established that false statements have been submitted to it, it can pursue criminal, civil, or administrative remedies.

In a criminal proceeding, the Government would have to prove beyond a reasonable doubt that in grant proposals or letters to NSF the first subject knowingly and willfully falsified, concealed, or covered up by a trick, scheme, or device, a material fact; or that he made a false, fictitious, or fraudulent statement or representation; or made or used a false writing or document knowing it to contain a false, fictitious, or fraudulent statement or entry. The Government would also have to prove that the false statements caused NSF to award grant money to the university, and would have to show some loss to the Government.

In this case, that loss would be the grant funds, \$300,000, awarded to the university on the basis of the first subject's two funded proposals [REDACTED]. We have reviewed the expenditures of [REDACTED] under the earlier grant and the amount expended so far under the current grant. An examination of university financial records showed that the expenditures of the grant funds have been appropriate and consistent with the proposals, and the university has appropriately provided matching funds. Because there have been no inappropriate expenditures and the first subject has not personally benefited from these expenditures, OIG believes that criminal prosecution would not be appropriate in this case.

The next available remedy would be to pursue civil recovery of the grant funds under the False Claims Act (31 U.S.C. § 3729-3733). In a civil proceeding, the Government would have to prove by a preponderance of the evidence that the first subject submitted false statements to NSF and that the false statements caused NSF to award the grants to the university. Under the False Claims Act, the Government would only have to prove that the first subject (1) had actual

knowledge that the information was false; (2) had acted in deliberate ignorance of the truth or falsity of the information; or (3) had acted in reckless disregard of the truth or falsity of the information.

This matter was brought to the attention of the U.S. Attorney's office, which decided not to prosecute criminally or proceed with a civil action, on the understanding that NSF would pursue administrative action.

NSF can take action to recover the grant funds and impose administrative sanctions against those responsible for the false statements through administrative proceedings. Like a civil proceeding, an administrative proceeding would require a preponderance of the evidence as its standard of proof.

As stated above, we have reviewed the expenditures of grant funds through September 1992 and have found no irregularities. We also witnessed students using the equipment purchased with the grant funds and heard from several students about the benefits of being able to experiment and learn by using this equipment. Although we believe that NSF would be justified in moving to recover the grant funds in a civil or administrative proceeding, we also believe that this could have the undesirable effect of harming the instruction of students. Hence, we do not recommend such a recovery of funds. The only remaining question, in our view, is whether NSF should impose administrative sanctions under NSF's misconduct in science regulation (45 C.F.R. part 689) on those responsible for the false statements.

Relation to misconduct in science. Providing false information in grant proposals is a practice that the scientific community would recognize as a serious breach of its professional ethics. As such, it is a "serious deviation from accepted practices" in the sense of the NSF definition of misconduct in science (45 C.F.R. § 689.1). This position has also been recognized by the former Office of Scientific Integrity Review (OSIR) in the Public Health Service (PHS). The PHS definition contains a clause very similar to "serious deviation from accepted practices", viz. "practices that seriously deviate from those that are commonly accepted within the scientific community" In its first annual report, OSIR listed the following as kinds of behavior that fall under that clause:

- Misrepresentation of the publication status of multiple manuscripts in the subject's bibliography;
- Fabrication of entries in subject's bibliography;
- Outright failure to perform research supported by a PHS grant while stating in progress reports that active progress has been made. ("First Annual Report: Scientific Misconduct Investigations, Reviewed by Office of Scientific Integrity Review, March 1989-December 1990", p. 5)

The first two directly involve misrepresentations in proposals, while the third involves misrepresentation in progress reports.

The Panel on Scientific Responsibility and the Conduct of Research, convened by the National Academy of Sciences, has recommended that government agencies adopt a very restricted definition of misconduct in science. Still, it recognized that the fabrication of bibliographic material and falsely reporting research progress, as described in the OSIR annual report, are behaviors that fall within its definition. ("Responsible Science: Ensuring the Integrity of the Research Process", Vol. 1, National Academy Press, 1992, p. 86)

We maintain that the misrepresentation of a college's programs for minority students in a proposal is potentially as misleading and damaging as the fabrication of bibliographic material. In both cases, false information is being given that exaggerates the eligibility of the individual or college to receive the requested award. Similarly, falsely reporting research progress is, in part, a deception of the agency that can induce it to make unjustified additional grants to the same PI. False statements about an institution's minority programs can have the same effect. Moreover, such information is directly relevant to the National Science Board's fourth criterion for the selection of research projects, which pertains to the effect of the research on the infrastructure of science and engineering. "Included under this criterion are questions relating to scientific and engineering personnel, including participation of women and minorities...." (*Grant Policy Manual*, July 1989, p. II-6) NSF should take a strong position against such misrepresentation, and it can appropriately do so under the misconduct in science regulation.

Recommendations.

The first subject. Although we do not recommend the recovery of grant funds under [REDACTED], we note that these funds were awarded in part for the purpose of assisting Hispanic and Native American minority students. NSF should ensure that the equipment purchased serves this purpose. Hence, we recommend that for five years from the date of NSF's final decision on this case, the first subject be required to file with the funding programs annual reports that contain such assurance. The assurance should take the form of a statement listing by name the courses and other activities in which the equipment purchased under this award was used, and how many Native American and how many Hispanic students used the equipment under the listed activity during the reporting period. This statement should be signed by the Principal Investigator/first subject, the co-PIs, and the current dean of the college.

NSF should be protected from further misrepresentations by the first subject. We recommend that the Office of the Director issue a finding that the first subject committed misconduct in science by his repeated misrepresentations to NSF of his college's programs for minority students. A letter of reprimand to this effect should be sent to the first subject, with copies to the current dean of the college, to the Authorized Institutional Representative, and to the university President.

We further recommend that, over a period of three years from the announcement of this requirement by NSF, *every* proposal that the first subject submits to NSF should be accompanied by a separate written assurance that any representations in the proposal involving the programs of his university, college, or department for minority students are true to the best of his knowledge and belief. This assurance should be provided whether or not he continues to be employed at the same institution. It should be signed by the first subject, any co-PIs, the dean of the first subject's college, and the Authorized Institutional Representative of his university, who should all give the same assurance. This requirement should also extend to any proposals the first subject has pending at NSF on the date the requirement is imposed by NSF.

Since the first subject has shown himself to be consistently unreliable in his communications with NSF, thereby exhibiting a pattern of unacceptable behavior, we further recommend that the first subject be excluded from participating as an NSF reviewer, advisor, or consultant for the same three-year period. These three sanctions would amount to a Group I, a Group II, and a Group III Action under the NSF regulation on Misconduct in Science and Engineering (45 C.F.R. § 689.2(a)).

The second subject. The Office of the Director should issue a finding a misconduct in science against the second subject and should send him a letter of reprimand because he copied material from the first subject's June 1989 letter into his proposal without attribution, and because he updated and even amplified that material without checking and correcting the false statements about the college's minority programs. However, we consider that his culpability in this matter is significantly less than the first subject's. The second subject was a young assistant professor with no experience in submitting NSF proposals. The first subject provided the material that the second subject used and embellished. Moreover, the second subject did not show a pattern of behavior, but submitted only one proposal containing false information. Hence, we believe that a lesser penalty is justified. In the second subject's case, we are recommending only a Group I action under the NSF regulation.

The college. The college has approved and sent forward proposals from the first subject and from the second subject that contain false statements about the college's programs for minority students. The college did not review these statements. These statements arose in part because the former dean misinformed the first subject or failed to keep him adequately informed. The first and second subjects acted at least recklessly when they made these statements in their proposals without checking with the program administrators. We believe that the college needs to take some responsibility for the false statements that were sent to NSF and needs to ensure that such misrepresentations are not repeated. We recommend that NSF issue a finding of misconduct in science against the college and send a letter of reprimand to the college, in the person of the current dean.

We further recommend that over a period of three years from the announcement of this requirement by NSF, *every* proposal submitted to NSF from the college should be accompanied by a separate written assurance that any representations in the proposal involving the programs of the university, the college, or an individual department for minority students are true to the

best of the signers' knowledge and belief. This statement should be signed by the PI on that proposal, any co-PIs, and the current dean of the college. As an external check, it should also be signed by the Authorized Institutional Representative on behalf of the university. This requirement should also extend to any proposals from the college that are pending at NSF on the date the requirement is announced. These recommendations would amount to a Group I Action and a Group II Action.

In his reply to a draft of this report, the current dean suggests that NSF not take action under the misconduct in science regulation. He states that the college is willing to accept a letter of reprimand or warning and to provide the recommended assurances if these are not attached to a submitted proposal or made part of the proposal review. He does not address OIG's recommendation that the first subject be excluded from being a reviewer, advisor, or consultant. OIG believes that the evidence of misconduct in science on the part of the college is convincing, and does not recommend that NSF send a letter or require assurances without making a finding of misconduct in science against the college.

OIG believes that the replies supplied by the first subject and the two deans strengthen the case for misconduct by the first subject and do not at all affect the case against the college. The first subject repeatedly sent untrue statements to NSF. He was in a position to know they were untrue and quite possibly did know. In any case, he was responsible for their truth. The current dean's and the first subject's replies appeal to his lack of intent to deceive. They do not address the possibility that a finding of misconduct in science may be based on a showing of reckless behavior. Reckless behavior on the part of all three subjects in sending false information to NSF has been amply shown, and therefore findings of misconduct in science are justified against all three.