

CLOSEOUT FOR M93040027

This case was brought to OIG on March 8, 1993, when we received a telephone call from Dr. [REDACTED] (the complainant) of the [REDACTED] at the [REDACTED]. The complainant amplified on his allegations in subsequent letters and telephone conversations. The complainant alleged that articles<sup>1</sup> by Dr. [REDACTED] (the subject) of [REDACTED] (the institution) and his collaborators contained ideas that had been misappropriated from a proposal<sup>2</sup> that the complainant submitted to NSF. The complainant said he suspected that his proposal had been sent to the subject for merit review and that the subject had violated the integrity of NSF's confidential merit review process. OIG determined that the subject had indeed reviewed the proposal.

The complainant alleged that the subject misappropriated the general idea in a part of the complainant's proposal, the rationale for the work the complainant proposed to undertake, and certain important aspects of the complainant's research strategy. The complainant also alleged that the subject repeated an erroneous claim contained in the complainant's proposal. The complainant averred that the subject's repetition of this claim was evidence that the subject had used the complainant's proposal as a source of his ideas and that the subject's conclusions were not simply the logical outcome of applying the subject's scientific knowledge to interpreting the subject's data.

OIG wrote to the subject. We sent the subject a copy of the

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<sup>1</sup>The articles are "[REDACTED]" by [REDACTED] ( [REDACTED] ) and [REDACTED] " by [REDACTED] ).

<sup>2</sup> The proposal was [REDACTED], entitled "[REDACTED]" NSF declined to fund the proposal, and its contents therefore remain confidential.

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relevant portions of the complainant's proposal to aid him in preparing his reply, but reminded him that the proposal remained confidential. The subject's reply to our letter did not satisfactorily address our concerns. It also raised additional concerns about a pattern of misconduct, manifested in the subject's possible misuse of an unpublished manuscript that the complainant had sent him, allegedly in confidence. This alleged misuse of the unpublished manuscript did not involve an NSF proposal or award.

We concluded that an investigation was necessary and informed the institution of this conclusion. The institution informed us that the subject, after receiving our letter, had himself informed the institution of the allegations. The institution further informed us that it had initiated an inquiry into the matter and that the inquiry committee was on the verge of concluding that the allegations lacked substance. The institution informed us that, because OIG had stressed that the complainant's declined proposal was confidential, the subject had felt obliged not to share it with the inquiry committee. We also learned that the inquiry committee, in addition to not examining the complainant's proposal, had not interviewed the complainant.

The institution requested that we delay further investigative activity to permit the institution to complete its consideration of the case. We sent the institution a letter explaining the issues that we believed, at a minimum, an adequate investigation would need to address. We also sent a copy of the complainant's proposal for the institution's confidential use.

The institution concluded that the subject had not committed misconduct and supplied documentation and reasoning that supported its conclusions. It concluded that the ideas the subject allegedly misappropriated from the complainant's proposal were available in the published literature and provided citations substantiating this conclusion. It noted that the timing of the subject's work suggested that developments in the published literature, and not exposure to ideas in the complainant's proposal, were the impetus for the subject's initiation of the research in question. The institution concluded that the subject's data included evidence supporting the subject's interpretation. It therefore determined that the subject's espousal of this interpretation was not evidence that he had repeated the complainant's scientific error and misused the complainant's proposal.

OIG analyzed the institution's report and supplemental information that the institution sent in response to questions we raised about the report. We concluded that the report was accurate and complete and that it supported the institution's findings.

However, the history of the institution's handling of the case

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caused us to have special concerns about whether its ultimate conclusions had been influenced by a predisposition not to find misconduct. We were especially concerned about the institution's apparent readiness to draw conclusions in the absence of necessary evidence and about its initial willingness to permit scientists with a close professional relationship to the subject to play key roles in its examination of the case. Our concerns were heightened by the fact that the institution had received information impugning the complainant's motives. We were worried that this information might have inappropriately colored the institution's view of the complainant's allegations against the subject. OIG consulted a scientist knowledgeable about this area of research but unfamiliar with the investigative history at OIG and the institution. The scientist shared the judgment of OIG and the institution that the evidence in the factual record in no way justified a finding of misconduct.

OIG determined that, because the NSF-related allegation of misconduct was not supported by the evidence, the allegation concerning a pattern in activities not related to NSF fell outside our jurisdiction. The institution's report concluded that this allegation lacked substance.

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