

## CLOSEOUT FOR M95090038

This case came to OIG on September 21, 1995, when an NSF program officer<sup>1</sup> informed us of an intellectual property dispute between the subject<sup>2</sup> and three other scientists.<sup>3</sup> The dispute began when the subject alleged that the three other scientists had misappropriated the subject's ideas<sup>4</sup> and sued them to protect her alleged intellectual property. While the lawsuit was pending, evidence emerged that the subject may have committed misconduct in science by falsely claiming to have produced and distributed written presentations of research results by certain dates. The subject made these allegedly false representations in NSF-supported manuscripts that she had submitted for publication or otherwise distributed.<sup>5</sup> These manuscripts were allegedly either themselves falsely dated or made reference to other falsely dated manuscripts or publications. It was alleged that the subject made false representations about the timing of her work to substantiate her claims that she, and not other researchers, was the first to arrive at certain results (her priority claims). Consistent with OIG's general practice at the time to suspend independent investigative activity while litigation was pending, OIG delayed gathering evidence in this case until after the subject's lawsuit was settled in April, 1996. After the suit was settled, OIG received evidence that tended to substantiate the allegation of misconduct.

It was also alleged that (1) the written work of two of the other scientists<sup>6</sup> had been a source for the modifications the subject had made to her own earlier scientific work and (2) in the context of the subject's priority dispute with the other scientists, the subject's alleged failure to adequately acknowledge the contribution of their work to her own might constitute misconduct in science.

<sup>1</sup> Dr. [REDACTED] of the [REDACTED] in the Division of [REDACTED]

<sup>2</sup> Dr. [REDACTED] of the Program on [REDACTED] at [REDACTED]

<sup>3</sup> Dr. [REDACTED] of the Department of [REDACTED] at the [REDACTED], Dr. [REDACTED] of the Department of [REDACTED] at the [REDACTED], and Dr. [REDACTED] of the [REDACTED]

<sup>4</sup> Because the subject's allegations against the other scientists did not involve actions that occurred in the course of proposing, carrying out, or reporting on activities funded by NSF, OIG determined that they did not fall within our jurisdiction and did not formally consider them.

<sup>5</sup> The papers that were themselves allegedly falsely dated were "[REDACTED]" labeled as revised in November, 1993, (the November manuscript) and a manuscript entitled "[REDACTED]" that the subject has represented as in substance the manuscript that she sent or intended to send to [REDACTED] (the journal) accompanied by a cover letter dated January 11, 1994.

<sup>6</sup> In particular, we refer to their manuscript entitled "[REDACTED]" to which Dr. [REDACTED] appears to have had access before she submitted her corrected manuscript to the journal in June.

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In the course of our inquiry, we reviewed materials from the court documents relating to the subject's suit against the complainants; multiple versions of various scientific papers written by the disputants; and correspondence among numerous members of the research community concerning relevant technical, ethical, and priority questions. After reviewing these materials, OIG wrote to the subject, whose response to our letter did not adequately resolve our concerns. We subsequently interviewed the editors of two journals to which the subject submitted manuscripts and examined the journals' records concerning submissions by the subject that were relevant to the allegations.

We concluded that there was substantive evidence that the subject knowingly or recklessly submitted for publication or otherwise distributed two erroneously dated manuscripts whose dates, if accurate, would have substantiated aspects of the subject's priority claims. Among this evidence was (1) evidence that information in one of the manuscripts could not have been available until after the date the manuscript ostensibly was written; (2) documentation that the title of one of the subject's manuscripts incorporated an editorial change made by a journal copy editor eight months after the ostensible date of the manuscript; (3) evidence that the subject's first written versions of manuscripts that would have substantiated certain of her priority claims were produced after a manuscript written by two of the other scientists was in circulation; and (4) evidence that the subject attempted to further her priority claims by misleading others as to the accuracy of a published journal submission date. Although we received evidence that the subject was less than consistent and meticulous in dating her manuscripts and did not always indicate the date of her most recent revisions, we concluded that there was substantial evidence that her errors were not merely careless.<sup>7</sup>

OIG's review of the subject's various, evolving statements of her scientific contribution indicated that the subject's alleged failure to adequately acknowledge the contribution of the other two scientists to her own work warranted investigation. OIG noted that the subject, in her letter to us, denied making unattributed use of these scientists' work.

In our inquiry, OIG considered several other aspects of the subject's conduct, including her continuing claims to have privately developed certain research results, her claims to have communicated those results orally to other researchers, and her claims to priority for various scientific contributions. We concluded that none of these matters required investigation because each of these claims was backed by sufficient evidence that persistence in making the claims could not, in our view, be considered misconduct in science.

Despite our conclusion that certain allegations in this case had substance, OIG concluded that delays in processing this case made the case too old to pursue further. The complexity of the evidence in the case, and the importance of having scientists familiar with priority disputes master that evidence and assess the subject's action in context and in light of

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<sup>7</sup> We emphasize that the judgments expressed in this paragraph are conclusions of an extensive, but preliminary, inquiry. They were not reached after a full investigation and have not been tested in an NSF adjudication.

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applicable community standards, made it unlikely that an investigation and adjudication could proceed to conclusion in a timely fashion. We were also concerned about the availability of unbiased experts who could assess scientific issues relevant to the alleged misconduct. The allegations, if proven, did not appear to be sufficiently serious to bar the subject from receiving federal awards, and OIG concluded that there was no compelling federal interest in pursuing allegations of this level of seriousness at this time. In addition, insofar as testamentary evidence was relevant to an investigation, the time elapsed since the relevant events occurred would reduce the reliability of that evidence.

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

Cc: IG, Integrity