

CLOSEOUT FOR M92080035

This case was brought to the attention of OIG by [REDACTED] (the complainant), who sent us a letter and supporting materials on August 25, 1992. In her letter, the complainant alleged that [REDACTED] (Subject #1) of the Department [REDACTED] at the University [REDACTED] was guilty of intellectual theft, sex discrimination, harassment and intentional infliction of emotional distress, misuse of government funds and property, intentional damage to career prospects, and unfair labor practices. The complainant alleged that Subject #1 had stolen work or ideas from another postdoctoral fellow in addition to herself, [REDACTED] (the other post doctoral fellow), who had collaborated with Subject #1 on a declined proposal to NSF [REDACTED] entitled "[REDACTED]". She also alleged that [REDACTED] (Subject #2) and [REDACTED] (Subject #3), the vice-chair and chair of Subject #1's department, had retaliated against her when she blew the whistle on Subject #1. In subsequent communications (telephone call and letter of July 22, 1993), the complainant alleged that Subject #1 had misrepresented his research in progress in an NSF proposal [REDACTED] entitled "[REDACTED]". This same proposal was the subject of the first intellectual theft allegation (see below).

The complainant was a post-doctoral researcher working under Subject #1's supervision. She was funded under a grant Subject #1 obtained from another government agency (the original grant) and based on a proposal which she helped to write. OIG determined that many of the complainant's allegations against Subject #1 did not fall within our jurisdiction. In particular, the complainant's allegations of intellectual theft, misrepresentation in a proposal, and misuse of grant funds were the only ones that raised issues of possible misconduct in science in connection with NSF proposals or awards. Because the allegations of retaliation against a whistleblower referred to actions that took place after the complainant allegedly accused Subject #1 of intellectual theft in his NSF proposal, OIG determined that these allegations also fell within OIG's jurisdiction.

OIG considered two allegations of intellectual theft. The first was the complainant's claim that Subject #1's proposal [REDACTED] was in fact the complainant's work. The proposal uses [REDACTED] the complainant had [REDACTED] prior to her work with Subject #1, which the two then used in their collaborative experiments. The complainant claimed that "the experiments proposed in this grant are obvious extensions of the original work, and do not represent novel ideas" and that she designed and executed similar experiments under the original grant. The complainant admitted, however, that Subject #1's proposal took work that they had done together, with [REDACTED] that she had brought to their collaboration, and developed

M92-35

that work in somewhat different, original directions. She agreed that the ideas that she had developed that appeared in his proposal were not ideas she had developed independently, but ideas contained in the work that the two did jointly. Because collaborators are entitled to the fruits of collaborative work, and because the complainant was alleging only that the subject chose to use those fruits in subsequent independent work, we have concluded that the facts, as the complainant presented them, did not sustain an allegation of intellectual theft.

The second allegation of intellectual theft concerned work done by the other post-doctoral fellow. The complainant alleged that Subject #1 submitted a proposal to NSF in which this researcher was not given co-principal investigator status even though he had performed a large majority of the work and had been promised such status. OIG contacted the other post-doctoral fellow, who reported that he had not in fact been promised such status. OIG examined the proposal in question and determined that the other post-doctoral fellow's contribution to writing the proposal was not explicitly acknowledged. We wrote to the subject, who noted that the other post-doctoral fellow was clearly indicated to be a key collaborator in the research and his curriculum vitae was included in the proposal. OIG concluded that a reasonable scientist reading the proposal would expect that the other post-doctoral fellow had helped to prepare it and that the deprivation of credit involved, if any, was minimal and did not rise to the level of misconduct in science.

The complainant also alleged that Subject #1 routinely "pirated" grant funds and provided OIG with a memorandum from Subject #1 in which he specifically stated his intention to "pirate" funds from a prospective NSF award in order to do other research. Subject #1's memorandum further stated that he routinely "pirates" funds. The complainant did not report any specific instances of actual misappropriation of funds under NSF awards, however, and the NSF proposal Subject #1 mentioned in the memorandum was not funded. When contacted about this memorandum, Subject #1 explained that he uses grant money only to pay for grant related work, but that he is flexible in exploiting opportunities for scientific achievement that were not anticipated in his original proposals. He further noted that the "pirating" contemplated in his memorandum involved work that was clearly within the scope of his pending proposal, which had been written so as to permit him the option of supporting the complainant's research without committing him to doing so. OIG has confirmed that this assertion is correct. Subject #1 added that he used colorful language in his memorandum in an effort to motivate the complainant, and that he would not have used such language if he were explaining his practices to a granting agency. The state auditor examined the administration of the original grant and did not find a pattern of improprieties; the auditor questioned less than two percent in costs on a grant of over \$100,000. OIG found

Subject #1's explanation of the language in his memorandum credible and chose not to pursue this matter further.

OIG asked Subject #1 to respond to the complainant's allegation that he had misrepresented a [REDACTED] experiment as ongoing that had in fact already failed. Subject #1 explained that he did not know the experiment had failed until after he had submitted the proposal that represented it as ongoing. As evidence for this assertion, he cited a memorandum to the complainant, written shortly after the proposal was submitted, that discusses this experiment as ongoing. OIG concluded that the allegation of misrepresentation in the proposal lacked substance.

The complainant alleged that after she went to university officials with complaints about Subject #1 she was threatened with withdrawal of her teaching assignment by Subject #2 and damage to her career by Subject #3 if she continued to pursue her complaints. The complainant had no written documentation to support these allegations. OIG wrote to Subjects #2 and #3, both of whom denied that they had ever in any way threatened the complainant with retaliation. They also claimed that at the time of their alleged actions the complainant had not raised issues of misconduct in science at all, a view that was supported by the university administrator to whom the complainant brought her allegations against Subject #1. Subject #3 supplied OIG with notes of his conversations with the complainant and others, made at the time of the alleged retaliation, that support his version of events. OIG concluded that there was insufficient evidence of retaliation against a whistleblower to warrant an investigation and no prospect that persuasive evidence of retaliation could be produced.

OIG was unable to find sufficient evidence to support any of the allegations. This case is closed and no further action will be taken.

[REDACTED]

Staff Scientist, Oversight

Concurrence:

Peggy L. Fischer
Peggy L. Fischer
Acting Deputy Assistant Inspector General,
Oversight

noted

James J. Zwolenik 1/26/94

James J. Zwolenik
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L. Nancy Birnbaum
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cc: Signatories
Inspector General.