CLOSEOUT MEMORANDUM

Case Number: A09120086

University Inquiry

Our office was notified by a University that it had initiated an inquiry into allegations regarding research integrity, including allegations of research misconduct. The allegations included:

1. Falsifying research data
2. Concealing, deleting or otherwise destroying emails, information or data
3. Misusing privileged information
4. Seriously deviating from accepted practices for proposing, conducting or reporting research and other scholarly activities.

We note that the University never received any formal allegations; rather, the University developed these allegations internally based on publically released documents. Consistent with our Research Misconduct Regulation (45 CFR §689), we referred an inquiry to the University.

Upon completion of the inquiry, the University provided us with its Inquiry Report which concluded there was no substance to the first three allegations listed above; however, the Inquiry Report did find sufficient concern regarding the fourth allegation listed above to recommend an investigation of that matter. Consistent with the NSF Research Misconduct Regulation, the University notified us that it was moving to investigation regarding the fourth allegation. In accordance with the NSF Research Misconduct Regulation, we referred an investigation to the University.

University Investigation

The University conducted its investigation and provided us with a copy of its Investigation Report. In accordance with the NSF Research Misconduct Regulation, we reviewed it along with the Inquiry Report and found that it did not provide the supporting evidence and documentation necessary for OIG to concur with the University's conclusions. We wrote to the University, requesting an extensive amount of documentation related to its investigation, including copies of all documentation the committees used in their assessments, copies of all interview transcripts, and specific transcripts or memorandums about certain conversations to which the report referred. We also asked the University to address several questions including:

1. How the inquiry committee determined that there was no substance to the first three allegations,
2. How both committees selected the individuals they interviewed,
3. How the investigation committee verified certain statements by the Subject and other individuals interviewed,
4. Evidence used by both committees to determine accepted practices, and
5. How the investigation committee reconciled differing viewpoints expressed by interviewees regarding data sharing expectations.

The University responded by providing us with the documentation we requested and with responses to

our questions.

OIG Review

We fully examined both the University Inquiry and Investigation Reports. Although the Inquiry Report dismissed three of the four allegations, we examined each *de novo* under the NSF Research Misconduct Regulation. That regulation, consistent with the policy of the Office of Science and Technology Policy[1], defines research misconduct as plagiarism, fabrication, and falsification (45 CFR § 689.1).

Based on our review of both University reports and all material we received and reviewed on the matter, we were satisfied that the University adequately addressed its Allegations 3 and 4 (misusing privileged information and serious deviation from accepted practices) identified in the Inquiry Report. We also determined that these allegations were not issues covered under our Research Misconduct Regulation.

We next considered the University's second Allegation, related to the emails. We reviewed the emails and concluded that nothing contained in them evidenced research misconduct within the definition in the NSF Research Misconduct Regulation. The University had been provided an extensive volume of emails from the Subject and determined that emails had not been deleted. We found no basis to conclude that the emails were evidence of research misconduct or that they pointed to such evidence. We concluded that the University adequately addressed its second Allegation.

Regarding the University's first Allegation (data falsification), however, we concluded that the University did not adequately review the allegation in either its inquiry or investigation processes. In particular, we were concerned that the University did not interview any of the experts critical of the Subject's research to determine if they had any information that might support the allegation. Therefore, we initiated our own investigation under the NSF Research Misconduct Regulation. Pursuant to that regulation, we did not limit our review to an allegation of data falsification. Rather, we examined the evidence in relation to the definition of research misconduct under the NSF Research Misconduct Regulation.

OIG Investigation

As a part of our investigation, we again fully reviewed all the reports and documentation the University provided to us, as well as a substantial amount of publically available documentation concerning both the Subject's research and parallel research conducted by his collaborators and other scientists in that particular field of research. As noted above, no specific allegation or evidence of data fabrication or falsification was made to the University; rather, the University developed its allegation of data falsification based on a reading of publicly released emails, many of which contained language that

[1] Federal Register: December 6, 2000 (Volume 65, Number 235), Page 76260-76264

reasonably caused individuals, not party to the communications, to suspect some impropriety on the part of the authors.

As part of our investigation, we attempted to determine if data fabrication or falsification may have occurred and interviewed the subject, critics, and disciplinary experts in coming to our conclusions. As a result of our interviews we concluded:

1. The subject did not directly receive NSF research funding as a Principal Investigator until late 2001 or 2002.
2. The Subject's data is documented and available to researchers.
3. There are several concerns raised about the quality of the statistical analysis techniques that were used in the Subject's research.
4. There is no specific evidence that the Subject falsified or fabricated any data and no evidence that his actions amounted to research misconduct.
5. There was concern about how extensively the Subject's research had influenced the debate in the overall research field.

Analysis and Conclusion

To recommend a finding of research misconduct, the preponderance of the evidence must show that with culpable intent the Subject committed an act that meets the definition of research misconduct (in this case, data fabrication or data falsification).

The research in question was originally completed over 10 years ago. Although the Subject's data is still available and still the focus of significant critical examination, no direct evidence has been presented that indicates the Subject fabricated the raw data he used for his research or falsified his results. Much of the current debate focuses on the viability of the statistical procedures he employed, the statistics used to confirm the accuracy of the results, and the degree to which one specific set of data impacts the statistical results. These concerns are all appropriate for scientific debate and to assist the research community in directing future research efforts to improve understanding in this field of research. Such scientific debate is ongoing but does not, in itself, constitute evidence of research misconduct.

Lacking any direct evidence of research misconduct, as defined under the NSF Research Misconduct Regulation, we are closing this investigation with no further action.

Other matters raised

During the course of our investigation we considered issues possibly raised by "compliance with, or violations of, OMB administrative procedures, 2 C.F.R. Part 215 (OMB Circular A-110), in particular 2 C.F.R. §215.36; Freedom of Information Act, 5 U.S.C. §552 (NSF Regulation, 45 C.F.R. Part 612); NSF guidelines implementing OMB information quality guidelines (515 Guidelines); Federal False Claims Act, 18 U.S.C. §287, and 31 U.S.C. §§3729-33; and Federal False Statements Act, 18 U.S.C. §1001."

Concerning the Freedom of Information Act (FOIA) and 2 C.F.R. Part 215.36, we note that 2 C.F.R. Part 215.36, requires that federal awardees make their research data available to the awarding agency so that the data can be processed for potential disclosure in response to a FOIA request made for such data. This provision applies explicitly to data that has been used to develop agency action that has the force and effect of law. Under NSF's organic statute (42 U.S.C. §1861 et seq.), the Foundation's primary mission is to "initiate and support basic scientific research and programs to strengthen scientific research potential and science education at all levels . . . ." The agency has no regulatory or rule-making function or authority; no NSF-funded research at issue has been used in developing NSF action that has the force and effect of law. Thus, the FOIA and 2 C.F.R. Part 215.36 are not implicated in our investigation.

Concerning NSF guidelines implementing OMB information quality guidelines (515 Guidelines), we note that OMB has determined that the guidelines do not apply to federally funded grantees who publish their research findings in the same manner as their academic colleagues unless the agency represents the information as, or uses the information in support or, an official position of the agency.[2] Thus, the "515 Guidelines" are not implicated in our investigation. Similarly, NSF's corresponding guidelines,[3] specifically state:

> Research data, findings, reports and other materials published or otherwise distributed by employees or by agency contractors or grantees that are clearly identified as not representing NSF views. NSF grantees are wholly responsible for conducting their project activities and preparing the results for publication or other distribution. NSF promotes data sharing by its grantees through its data sharing policy and by data archiving by its grantees. *NSF does not create, endorse, or approve such data or research materials, nor does the agency assume responsibility for their accuracy.* NSF's encouragement of data sharing and archiving helps to ensure that researchers and the public have quicker and easier access to data and research materials. *Distribution of research in this manner is not subject to these guidelines*, even if NSF retains ownership or other intellectual property rights because the Federal government paid for the research.[4] (emphasis added).

Concerning False Claims, 18 U.S.C. §287 and 31 U.S.C. §§3729-33, and False Statements, 18 U.S.C. §1001, we examined the elements of each suggested offense and have concluded that there is insufficient evidence of violations of any of these statutes to warrant investigation.

Thus, we have determined that these other matters are not implicated in this investigation.

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[2] 67 Fed. Reg. 8452, at 8453 (2002).
[3] NSF Information Quality Guidelines [NSF Guidelines], *published at* www.nsf.gov/policies/infoqual.jsp
[4] NSF Guidelines at 4.

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Finding no research misconduct or other matter raised by the various regulations and laws discussed above, this case is closed.