

NATIONAL SCIENCE FOUNDATION
OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

CLOSEOUT MEMORANDUM

TO: AIGI

File Number: I94110041

Date: 13 March 2002

Subject: Closeout Memo

Page 1 of 1

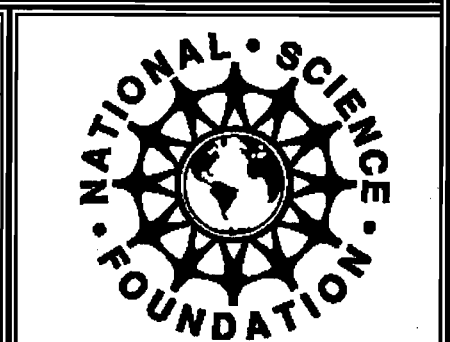
There was no closeout written at the time this case was closed. The following information was extracted from the file in conformance with standard closeout documents.

Our office was informed that the subject¹ was alleged to have violated financial conflict of interest standards. The subject allegedly misused grant funds to pay his wife² for secretarial services. The wife later incorporated herself as a business. Our investigation determined that the wife had received \$41,000.00 from the grant through her business.

Accordingly this case is closed.

[REDACTED]

Name:	Prepared by:	Cleared by:		
	Agent:	Attorney:	Supervisor:	AIGI
Signature & date:				



May 1, 1995

Mr. William Cole
Division Director
Division of Grants and Agreements
National Science Foundation
4201 Wilson Blvd.
Arlington, Virginia 22230

Re: Your File: OIG Investigation Report No. I941100441

Dear Mr. Cole:

In response to the final report from the NSF, this letter is to advise you of the actions taken by _____ concerning the above-referenced matter.

1. _____ has repaid to the NSF \$61,186.
2. _____ has instructed _____ that he has no authority to charge amounts over \$100 to NSF grants.
3. _____ has instructed _____ to repay to \$41,632, representing amounts paid to _____ from the NSF grant, but not indirect costs charged to the grant.

will report subsequent developments to you as they arise.

Sincerely,

cc:

c/o

NSF OIG Report

OIG Case Number I94110041

This document is loaned to you FOR OFFICIAL USE ONLY. It remains the property of the Office of Inspector General. It may not be reproduced. It may be disclosed outside of NSF only by the Inspector General, pursuant to the Freedom of Information and Privacy Acts, 5 U.S.C. §§ 552, 552a.

Investigation Report No. I94110041

I. Background

On January 22, 1986, (the "professor") at (the "university") submitted a written request to the university personnel director to hire the professor's wife as his permanent part-time secretary. On January 23, 1986, the university personnel director denied that request in writing because "it would violate the University's policy on employment of relatives when a supervisory relationship would result." However, on February 11, 1986, the personnel director granted the professor written permission to hire his wife in a "temporary" position "limited to 500 hours." At that time the personnel director reiterated, in writing, the university's policy regarding the employment of relatives when a supervisory relationship would result. The personnel director, the academic division dean, and the university provost¹ approved the temporary appointment for the professor's wife. The 500 hour temporary appointment of the professor's wife, ended in August 1986 with 63.5 hours unexpended.

On May 22, 1986, the professor's wife and the professor's brother registered to conduct business as a company in (the "company"). The professor's wife submitted through the company an invoice dated September 1986 to the professor at the university for "secretarial work, transcriptions, and literature search services rendered in August 1986." Between September 1986 and May 1994 the professor's wife submitted 119 invoices through the company to the university. Based on these invoices, the university issued payments totaling \$80,237.50 to the company. The payments to the company² were charged to the departmental account and the professor's various research grant accounts, which included 3 National Science Foundation (NSF) grants. A total of \$41,632 was charged to the professor's NSF grants as direct costs. In addition, \$19,554 was charged to the professor's NSF grants as indirect costs. In total, \$61,186 was charged to the professor's NSF grants under direct and indirect costs based on the invoices submitted by the professor's wife through her company.

In 1994 the university Internal Audit Department reviewed payments to the company. The Internal Audit Department found that the professor did not disclose to appropriate university officials any conflict of interests with the company; that, between 1992 and 1994, all payments to the company were charged to the professor's federal, state, and private research grant accounts;

¹The university provost was who is now the . Accordingly, is recused from this matter and any queries regarding this matter that would otherwise be directed to him should instead be directed to Lawrence Rudolph, NSF's Acting General Counsel.

²Between 1986 and May 1992 payments to the company were mailed to the home address of the professor's brother. Beginning in June 1992 payments were sent to an address which has been verified as a post office box.

and that payments to the company charged to federal grants were inappropriate under OMB Circular A-110, Attachment O. The university then notified us of their findings including the payments to the company from the NSF grants. We coordinated our investigation with university officials.

II. Findings

We found that the company submitted invoices for services which were almost exclusively provided by the professor's wife.³ The professor's wife assisted her husband with all of his administrative duties, which included non-technical research assistance, proposal and report preparation, academic activities, and other general secretarial duties. The professor stated that his wife handled many administrative duties so he could focus his attention on his research.⁴ The professor's wife performed her work for the professor in his office and lab at the university. She then prepared invoices for that work and submitted the invoices to the department secretary.

The invoices submitted by the professor's wife specified which university account number was to be charged for the services rendered. Both the professor and his wife stated that the professor told his wife which account numbers to list on the invoices.⁵ The majority of invoices were approved by either the department secretary or the department administrator. However, on two occasions the invoices were approved by the professor, and on one occasion by the department chair.

On February 22, 1995, the professor, through his legal counsel, responded to our draft report. The professor asked us to delay issuing the report until further investigation of this matter could be completed. The professor also contested several aspects of our draft report. After reviewing the professor's response, we have decided to issue the report to the university, addressing the main points raised in the professor's response which were not previously covered in the draft report.⁶ The university is responsible for the proper administration of its NSF grants. We believe

³In 1987, the company submitted 10 invoices for a temporary employee and a university student totaling \$2,276.20. According to the professor and his wife, the professor's brother provided services for drawings and equipment repair. We found 6 invoices totaling \$1,176.75 for drawings and equipment repair services.

⁴The professor stated that, with his wife's assistance, he published more than 50 research papers and presented approximately 115 professional talks based on the research he conducted at the university.

⁵Both the professor and his wife agreed to voluntary interviews but refused to provide statements under oath.

⁶In his response to our draft report, the professor asserts that he "was accused of using NSF funds to purchase non-existent equipment, and using NSF equipment for his own personal purposes." Reviewing expenditures, especially in the area of equipment, is not unusual. The professor was never accused of purchasing non-existent equipment. He was simply asked to document and supply verification that all equipment could be accounted for and was being used in an acceptable manner. During our review we discovered several purchases of equipment which were initially ordered by the professor's wife and/or picked up by the professor's brother. During our tour

that all issues addressed in this report are within the administrative purview of the university and should now be resolved by the university.

A.
The Professor Did Not Disclose
His Conflict Of Interests To The University

The university's conflict of interests policy lists the following as a situation under which a conflict of interests may arise:

"Directing the purchase of services from a private firm in which a member of his/her family has a significant or controlling interest, without open competitive bidding."

The policy states further that faculty and staff members who have authority to commit funds or influence the commitment of funds, including sponsored research funds, must avoid actual or apparent conflicts of interests between their official business and their personal business or affairs. In addition, since 1990 the university conflicts of interests policy has required faculty and staff members to report conflict of interests situations to the appropriate academic division dean during the submission of their Annual Report to the President. Between 1990 and 1994, the professor submitted Annual Reports stating that he did not have any conflicts of interests.

The professor told us that he did not consider his wife providing services through the company as a conflict or in violation of university policy because he claims to have performed competitive bidding through phone calls, and then concluded that his wife was less expensive than other secretarial services. The professor could not provide documentation that he made phone calls. However, even if the professor solicited bids through telephone calls, we do not consider this to be open competitive bidding. In addition, we found no evidence that the professor disclosed to any appropriate university official that he was paying his wife through the company to provide clerical assistance.

During our interview with the professor, he stated that many people in the professor's department and academic division knew that his wife worked for him through the company. Through interviews conducted by our coordinated investigation⁷, we found that only three

of the professor's lab and office we verified that most of the equipment could be accounted for. However, the university inventory numbers did not always match the pieces of equipment. In addition, the professor and his assistants repair old PC's and other equipment which has been discarded by other University staff. It was therefore difficult to determine what specific items of equipment had been purchased with grant funds. We did conclude, however, that the professor's labs contained the type of equipment reflected in the purchase orders that were charged to the NSF grants.

⁷OIG investigators conducted many of these interviews (including those of the professor and his wife), but others were conducted by individuals from the university's office of internal audit and the university's attorneys. In this report we rely on information gathered by OIG investigators as well as information gleaned by university

university employees knew that the professor's wife was being paid for her work for the professor through the company. Two of those employees were secretaries in the department that stated that the professor and his wife told them that they had received university administration approval for the professor's wife to provide the services. The third employee was the department administrator from 1990 through 1993, who stated that she did not inquire about the appropriateness of the payments because she was also told that the professor and his wife had received appropriate administrative approval. Others in the department and academic division, including department chairs and the dean, stated that they thought the professor's wife assisted the professor on a voluntary basis, and did not know that she was being compensated.

The professor also said that he had received approval to hire his wife through a company but not as a university employee. The professor could not produce documentation of any approval but claimed that the former university personnel director had advised him that his wife could start a company and bill her hours through the company. The former personnel director denied ever giving such advice or approval.

The former personnel director stated that her first personal meeting with the professor occurred after the professor's wife completed her temporary appointment. The professor's wife's temporary appointment ended in August 1986, three months after she established her company. According to the former personnel director, in that meeting the professor attempted to assert that his wife should be allowed to continue to assist him. After the personnel director informed the professor that university policy would not allow the professor's wife to work under him, the professor replied that he had a company where his wife could do his work. The personnel director stated that she instructed the professor not to involve the university and the situation was not discussed again. In addition, the personnel director stated that she had never heard of the company. We do not view this as an adequate or appropriate disclosure by the professor nor could it be considered approval to charge his wife's services through a company.

B.

The Professor Circumvented University Personnel Policy

While the professor charged secretarial and administrative assistance provided by his wife to three separate NSF grants, the grant budget proposals submitted by the professor to NSF never requested funds for secretarial or administrative assistance, nor were funds requested for consultant or sub-contract services. This includes proposals submitted to NSF in 1987, 1991, and 1994, after the professor charged payments for the company to the NSF grants. In addition, the professor never requested that the university re-budget approved grant funds to pay for the services provided by his wife.

The NSF grant funds used to pay the professor's wife came from funds budgeted for supplies and materials. The professor admitted that he knew the funds for his wife came from

personnel.

supplies and materials and that he never requested funds for secretarial and administrative assistance in the NSF grant proposals or from the university. The professor stated that if he requested funds for secretarial or administrative assistance he would have to request fringe benefits as well. The professor added that by using his wife, and charging her invoices to supplies, he did not have to use NSF funds to pay for fringe benefits. We do not accept the professor's explanation because in the detailed budget requests and explanations submitted by the professor in the NSF proposals, the professor failed to disclose that he was using NSF funds budgeted for supplies and materials to pay his wife. The detailed budget explanations submitted between 1987 and 1994 categorize and specify the dollar amounts to be utilized under supplies. The categories listed under supplies are lab supplies, "single crystal materials," and nitrogen. We believe that the professor intentionally did not request secretarial or administrative assistance in order to circumvent the university personnel process, which he knew would have excluded his wife from working as his assistant.

In addition, regardless of what the professor knew about the applicability of the university's conflict of interests policy to this arrangement, under NSF's Grant General Conditions the use of NSF grant funds for secretarial and administrative activities not specified in the grant proposal are unallowable unless the expenditure received appropriate institutional review and approval to ensure that the expenditure was necessary and reasonable for the conduct of the project. By cloaking these charges as payments to an outside contractor, the professor obscured their true purpose and frustrated the university's review and approval process. These costs therefore must be repaid to NSF by the university regardless of the university's conflict of interests policy.

In his response to our draft report, the professor contends that his wife did not charge for secretarial and administrative services, and only charged for authorized research and laboratory assistance which she provided. The response stated:

"The true fact is that such secretarial and administrative services were NOT CHARGED TO NOR PAID BY ANY GRANT FUND NOR [the] UNIVERSITY NOR ANY OTHER SOURCE. Those services were provided for free."

The response further asserted that the professor's wife "was a research and laboratory assistant" whose duties "included keeping archives of physical collections and research related objects and products, literature search in multiple journals and databases, assistance in testing electronic circuits, replacement of electronic components, and other research support." However, this contention is contradicted by documentary evidence and by testimonial evidence. This includes testimony from departmental staff, the professor's paid research assistants, and the professor and his wife. We can only conclude that the professor's wife's work for the professor was virtually exclusively secretarial in nature.

Of the 119 invoices submitted by the company, 113 specifically list "secretarial work/literature search" as part of the services provided. The other 6 invoices were for drawing services and equipment repair, both of which were services that the professor and his wife stated were provided by the professor's brother. The statement that the professor's wife provided secretarial work for free suggests that the company possessed a time management system sufficient

to distinguish between hours spent on secretarial work and hours spent on technical services. We found no evidence of the existence of such a system. Instead, the record system the professor's wife showed us consisted of pieces of paper with handwritten notes and copies of pages from a daily calendar with daily notes listing only the number of hours worked. These notes did not distinguish categories of work. In addition, the most common number of hours worked per day was seven. Seven hours a day is consistent with 35 hours per week, which was the average that the professor's wife charged the university for her secretarial services.

During the investigation, the professor gave us a tour of his labs. He pointed out that the professor's wife kept the filing cabinets in order, which included putting small pieces of equipment back on their designated shelves. We do not consider laboratory maintenance of this type to be technical or research related assistance. Furthermore, we met with the professor on February 17th, 18th, and 19th, and with the professor's wife on February 18th and 19th, and neither at any time stated to us that the professor's wife ever tested electronic circuits or replaced electronic components. However, the professor did state that his wife provided research support by handling all his office and administrative duties so he could be free to conduct research in his labs. This is consistent with the departmental staff's testimony that the professor's wife did all of the professor's secretarial work. It is also consistent with the professor's paid research assistants' testimony that the professor's wife spent very little time in the lab, and when she was in the lab, she was cleaning up, organizing the lab, and filing copies of research articles.

In addition, none of the 119 invoices submitted list laboratory assistance, assistance in testing electronic circuits, replacement of electronic components, or other research support as services provided. When the professor's wife was asked in an interview as to what the majority of her work entailed, her response was "copying, library search, filing, and fixing regular departmental messes." According to the professor's wife, "regular departmental messes" were payments being charged to the wrong accounts. To fix these "messes" the professor's wife would call or write to the appropriate person in the department to sort out the problem. In their interviews with OIG investigators, the professor and his wife did state that the professor's wife routinely conducted literature searches for the professor's research articles and proposals, but the professor's wife explained that this involved merely looking up an article which the professor had referenced in his papers, copying the article, and filing it. We believe that this activity was more secretarial in nature than research related.

It should also be noted that even if some portion of the work performed by the professor's wife was technical in nature — which we have no documentation of — payments for that work would still be unallowable under attachment O of OMB Circular A-110 (as explained below).

C.

The Professor Did Not Accurately Allocate Charges To The NSF Grants

We found that the invoices adequately reflected the approximate hours worked by the professor's wife. Between 1987 and 1991, the professor caused the university's payments for his

wife's invoices to be charged to the department account, to the professor's university start-up account, and to the professor's various research grant accounts. In 1992 and 1993, the professor caused the university's payments for his wife's invoices to be charged only to his various *research grant* accounts, including a substantial amount charged to the NSF grant accounts. In 1994,⁸ the professor caused the university's payments for his wife's invoices to be charged only to the *NSF research grant* account. However, between 1992 and 1994 the professor's wife continued to assist the professor with *all* of his administrative duties, including non-grant related activities. In our interviews with the professor and his wife, neither was able to explain the basis for the professor's allocation of the charges, initially among various grant and non-grant accounts, then only among various grant accounts, and finally exclusively to the NSF grant account. We found that the professor wrongfully caused payments to be charged the NSF grant accounts with full knowledge that much of the work performed did not relate to the NSF grants.

D.

**All Payments To The Company
With NSF Grant Funds Were Inappropriate
Under OMB Requirements And University Policy**

The professor's wife did provide some services that related to the NSF grants. However, all payments from NSF grants to the company were inappropriate under OMB Circular A-110,⁹ Attachment O, which requires the university to:

maintain a code or standard of conduct that shall govern the performance of its officers, employees or agents engaged in the awarding and administration of contracts using Federal Funds. No employee, officer or agent shall participate in the selection, award or administration of a contract in which Federal funds are used, where, to his knowledge, he or his immediate family, partners, or organization in which he or his immediate family or partner has a financial interest or with whom he is negotiating or has any arrangement concerning prospective employment. . . . Such standards shall provide for disciplinary actions to be applied for violations of such standards by the recipients' officers, employees or agents.

We found that the professor, an employee of the university, participated in the selection, award, and administration of a contract to the company in which NSF grant funds were used, where, to his knowledge, his wife had a financial interest. The professor has a clear financial interest in the company because the company is, for the most part, the professor's wife doing business as "the company". In fact, the professor's wife's Social Security Number is the Taxpayer Number for the company, as stated on the university's SF Form 1099, Miscellaneous Income

⁸Based on Fiscal Year June 1993-May 1994.

⁹"Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations."

statement. The professor and his wife stated that income from the company was reported on their joint income tax returns.

The professor contends that he did not know of OMB circular A-110 and should not be held responsible for the funds expended in violation of this regulation. The professor also contends that he is a productive scientist and that the university should be responsible for ensuring that his grant funds are expended properly. Attachment O states that "the recipient [the university] shall maintain a code or standard of conduct that shall govern the performance of its officers, employees or agents engaged in the awarding and administration of contracts using Federal Funds." We found that the university had such a standard of conduct in place and that the professor violated it. We have never questioned the professor's ability as a scientist nor as a researcher; in fact, we acknowledge that the professor has been a very productive researcher. We do however, question the administrative decisions he made involving these grants and we have therefore asked the university, the grantee, to take appropriate action.

III. Conclusion

The professor did not disclose to appropriate university officials that he had a financial interest in the company. From 1986 to 1994, the professor and his wife submitted 119 invoices through the company which caused \$61,186 of NSF Funds and \$38,605.50 of non-federal funds to be expended in violation of the university policy and OMB circular A-110, Attachment O. In addition, many of the invoices submitted between 1992 and 1994 caused NSF grant funds to be expended for work not directly related to the NSF grants.

IV. Recommendations

Based on our findings and conclusions, we recommend that the university:

1. Refund to NSF \$61,186, the amount charged to NSF grants for payments to the company.
2. Review this matter and take appropriate action(s), including developing adequate controls to supervise the professor's expenditure of NSF funds.
3. Submit a report to the Division Director of NSF's Division of Grants and Agreements (DGA), which describes the action(s) taken and controls implemented.

When the DGA Division Director receives the report from the university, we recommend that he determine whether further action should be taken to protect NSF funds.

V.
The University's Response

On March 17, 1995, we received a response from the University regarding our draft report. The University accepted our recommendations, stating that:

1. Upon receipt of the final report, the University will pay, as soon as practicable, the amount charged to NSF grants for payments to the company.
2. For five years from the date of the final report, the professor will have no authority to sign for any charges over \$100 made to NSF grants.
3. As soon as practicable, and not later than 30 days after receipt of the final report, the University will submit to the Division Director of DGA a report describing the actions the University has taken and the controls implemented.

We consider the University's proposed actions regarding this matter to be acceptable.