

NATIONAL SCIENCE FOUNDATION
OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

CLOSEOUT MEMORANDUM

TO: AIGI	File Number: I95030007	Date: 15 March 2002
Subject: Closeout Memo		Page 1 of 1

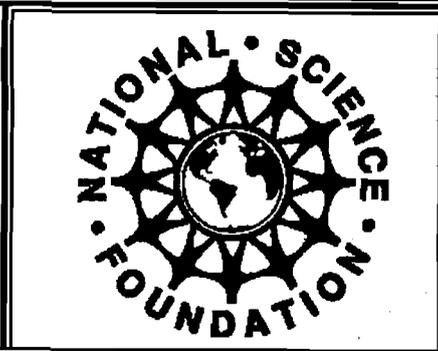
There was no closeout written at the time this case was closed. The following information was extracted from the file in conformance with standard closeout documents.

Our office was informed that the subject¹ was alleged to have participated in awards to his home institution.² Our investigation found that the subject participated personally and substantially in the process for deciding on the funding levels for two proposals from subject's university. The subject was reprimanded by NSF Deputy Director.

Accordingly this case is closed.

████████████████████

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



NATIONAL SCIENCE FOUNDATION

4201 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22230



May 30, 1995

OFFICE OF THE
DEPUTY DIRECTOR

CONFIDENTIAL

To: Linda G. Sundro
Inspector General

From: *ACP* Anne C. Petersen
Deputy Director

Re: Investigation No. I95030007

This is in response to your confidential investigation report concerning actions of [redacted] while serving as a program officer at NSF under an Intergovernmental Personnel Act (IPA) agreement with the [redacted]. You determined that [redacted] had participated personally and substantially in the process for deciding on the funding level for two proposals from [redacted]. When the Department of Justice declined to pursue criminal or civil action in this matter, you referred it to me for appropriate administrative action. At the same time, you recommended that NSF's Designated Agency Ethics Official (DAEO) provide ethics counselling to [redacted] concerning his recusal from participating in any matter involving [redacted] and that NSF reopen the assessment of funding levels for all recommended awards in the [redacted] program.

We have now completed action on your recommendations. First, based on considerations of timeliness, I asked that the funding levels for all recommended awards in the [redacted] program be reevaluated. That was done in mid-April. Following a mid-May meeting with [redacted], I issued a letter of reprimand. Both the letter of reprimand and a memorandum describing the reassessment process are attached. [redacted] met recently with the DAEO for the recommended counselling session.

I want to take this opportunity to thank you for your timely handling of this investigation. It permitted us to resolve the matter in a way that met both the desires of the [redacted] program for rapid award announcement and NSF's standards for ethical conduct in conflict of interest situations.

Attachments

cc: Lawrence Rudolph, Acting General Counsel
[redacted] OD

NATIONAL SCIENCE FOUNDATION
4201 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22230



OFFICE OF THE
DEPUTY DIRECTOR

May 17, 1995

MEMORANDUM

TO:

FROM: Anne C. Petersen, Deputy Director

A handwritten signature in cursive script that reads "Anne C. Petersen".

RE: Official Reprimand

This memorandum reprimands you for your failure to comply with applicable conflict-of-interest standards while serving the National Science Foundation under an Intergovernmental Personnel Act (IPA) assignment.

I have reviewed the findings of the Inspector General's report on Investigation No. 195030007, dated March 30, 1995 (attached). I also reviewed your March 28th comments on the draft Inspector General report.

The Inspector General concluded that you participated personally and substantially in two matters involving your home institution, the deciding whether to fund the proposals submitted under Phase II of the . Although you avoided taking part in two , you did participate personally and substantially in the process of deciding on funding levels for these two proposals. Since the Department of Justice has declined to pursue civil or criminal action in this matter, the Inspector General referred your case to me for appropriate administrative action.

The unlawful participation in the funding process for the proposals represented very serious and inexcusable misconduct on your part. You violated the terms of your own written recusal notice, and you disregarded written advice you received from the Office of the General Counsel.

The public has a right to be confident that the NSF strictly adheres to basic ethical principles. Such public confidence is vitally important to the Foundation. Accordingly, I have ordered appropriate NSF staff to conduct a comprehensive re-evaluation of the funding decisions involving the . I am also directing you to contact Charles S. Brown in the Office of the General Counsel, within the next five working days, to set up an ethics counselling appointment with him.

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Your IPA assignment with the Foundation is scheduled to expire on June 12, 1995. The Foundation will not consider an extension of your current IPA agreement. After you leave the NSF, the Foundation will not permit you to become a PI, co-PI, or the equivalent on either of the two in question. NSF will not approve your receipt of compensation in future budgets of these awards.

I am aware of the fact that you have relatively limited experience here at NSF. I also know that you have done much good work in helping to establish the during your brief tenure here. While not excusing your ethical misconduct, these two factors led me to impose less severe discipline than I might otherwise have done under these circumstances. I trust that such misconduct will not be repeated.

If you have any questions about the contents of this memorandum, please contact the Acting General Counsel, Lawrence Rudolph.

Attachment

cc: w/o Attachment
OGC
DGA
HRM

NATIONAL SCIENCE FOUNDATION
4201 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22230



OFFICE OF
INSPECTOR GENERAL

30 March 1995

To: Anne C. Petersen
Deputy Director

From: Linda G. Sundt 
Inspector General

Subject: Investigation No. I95030007

This report concerns _____, who holds a position at NSF under the Intergovernmental Personnel Act (IPA) while he is on leave from the _____, where he is an associate professor of Natural Resources. We investigated to determine whether _____ had participated personally and substantially in decisions regarding his home institution, in violation of federal law.¹ We have determined that, although _____ avoided taking part in deciding whether to fund the two proposals from his home institution, he did participate personally and substantially in the process for deciding on the funding level for these proposals. The Department of Justice has declined to pursue criminal or civil action in this matter, so we refer it to you for appropriate administrative action.

I.
Background

The _____ is a Vice-Presidential initiative to _____ NSF co-sponsors this initiative with the National Aeronautics and Space Administration (NASA) and the National Oceanic and Atmospheric Administration (NOAA). The _____ is located on _____, and consists of approximately 30 people. The _____ receives policy advice from an interagency steering committee. _____, the Assistant Director for NSF's _____ directorate, represents NSF on this committee.² _____ of _____ serves as the Director of the _____ program, and _____ of NASA is his deputy. _____ and _____ of NSF serve as Assistant Directors for _____, respectively.

¹18 U.S.C. § 208; 5 C.F.R. part 2635 subpart D (but see discussion in note 13, below).

_____ and should not be contacted about issues involving _____.

As the Assistant Director of Science for _____, _____ is responsible for the Phase I and Phase II Science programs. The Phase I stage of the _____ involved selecting existing environmental/education outreach programs to develop the science component of _____.³ The Phase II stage of _____ was initiated by an NSF announcement of opportunity, soliciting proposals to be submitted for peer review. The proposals were submitted to the _____ office and NSF handled the administrative details. Drs. _____ of NSF's _____ directorate and _____ of NSF's _____ and _____ directorate were responsible for ensuring that the administrative tasks charged to NSF were accomplished. Drs. _____ and _____ managed the panel review and served as chairs for the panel subgroups for science and education, respectively.

II. Findings/Summary of Facts

A. Dr. _____ and the _____ Project

Dr. _____ joined NSF on 13 June 1994. Dr. _____ talked with Assistant General Counsel Charles S. Brown, NSF's Acting Designated Agency Ethics Official (DAEO), about conflict of interests issues. On the basis of these conversations, on 16 June 1994, Dr. _____ submitted a letter of recusal to Dr. _____, Director of the _____ program, which read as follows:

"As an NSF IPA, I am required to notify you that I should not be involved in any way with matters dealing with . . . the _____ . . . in _____-related issues."

On 7 September 1994, the DAEO issued a letter to Dr. _____ certifying his financial disclosure form and reiterating that he was "disqualified from participating — by decision, approval, disapproval, recommendation, or rendering of advice — in any matter involving" the _____

B. Evaluation of the _____ Phase II Proposals

After the program announcement was issued and Phase II proposals were received at the _____ office — including two from _____ — the peer review process was initiated. The review process consisted of mail reviews and a special emphasis review panel which met from 1-3 February 1995. The panel format consisted of plenary meetings and subgroup meetings: there were three subgroups, two of which reviewed and rated science proposals, while the other group assessed education-related proposals. Each subgroup recommended 4-6 of their proposals

³Dr. _____ handled all Phase I activities involving the _____

for award. We are satisfied that Dr. [redacted] did not participate in any way in subgroup deliberations on the two Phase II proposals from the [redacted] during the review process.

On 3 February 1995, at the end of the special emphasis panel deliberations, Dr. [redacted] was responsible for reviewing the recommended science proposals for content and identifying which components of the proposed projects were needed for the [redacted] program and which were not. Dr. [redacted], also an NSF IPA with the [redacted] program, was responsible for reviewing the education proposals. These reviews were undertaken in preparation for subsequent proposal funding decisions.

The review process completed by Drs. [redacted] and [redacted] was an analysis of elements present in each of the proposals. Funding for the Phase II portion of the [redacted] program was to support projects in each of the four program elements.⁴ The total target funding for all Phase II awards was \$2.5 million, but the proposals recommended for funding requested a total of \$3.26 million. As a result, the projects recommended for funding needed to be cut an average of 23%. Thus, in addition to review of the proposals in relation to the four program elements, Drs. [redacted] and [redacted] were responsible for making initial suggestions regarding funding reductions.

In preparation for a telephone conference call to begin the process of cutting the budgets of the proposed projects, Dr. [redacted] reviewed all of the science proposals, including the [redacted] proposals.⁵ The science proposals reviewed had a requested funding amount of \$2.12 million. Dr. [redacted] reviewed each of the proposals for program content in relation to the [redacted] program elements. He then began typing into a document on his computer a list of the ten proposals, and began adding his technical observations for each proposal, along with preliminary rough-cut proposed funding levels for six of the 10 science proposals. These six proposals requested a total of \$1,654,000, and Dr. [redacted] suggestions cut that amount by 18%; however, Dr. [redacted] proposed funding levels suggested that three of the six projects receive the full funding requested — including one of the [redacted] proposals.⁶ On the document he prepared prior to the telephone conference call, Dr. [redacted] did not address the last four proposals on his list, including the other [redacted] proposal.

Dr. [redacted] told us that the funding levels he typed into this document were rough proposed funding levels that he felt the proposing institutions could accommodate and still achieve the

⁴The four elements were science measurements, development of unified support materials, training plan and implementation, and evaluation.

⁵The conference call was between Drs. [redacted]

⁶In his comments on our draft report, Dr. [redacted] said that he "left the requested amounts as is because I needed input from the others participating in the conference call in order to determine what proposed science reductions would be required." From our perspective, Dr. [redacted] comments support a conclusion that he participated personally and substantially in budget discussions involving the [redacted] proposals.

projects' program elements. He anticipated that additional funding reductions would still be necessary to meet the targeted budget of \$2.5 million.

Dr. [redacted] printed out his list and faxed it to Dr. [redacted] prior to the conference call between Drs. [redacted], and [redacted] on 22 February 1995. The purpose of the conference call was to discuss the proposals as they related to the four program elements, and to refine (that is, cut further) Dr. [redacted] and [redacted] proposed funding levels. Dr. [redacted] admitted to us that during the conference call he participated in the discussions of how much money to allot to each proposal, including the two [redacted] proposals. (Indeed, he could not have done otherwise, since Dr. [redacted] was the only person involved in this conversation who was intimately familiar with the science proposals.) As a result of the funding discussions in the course of the conference call, the proposed funding levels for the 10 science proposals were reduced an average of 25%, to a total of \$1.6 million. The proposed funding levels for the [redacted] proposals were cut by 16% (from \$327,000 to \$275,000) and 14% (from \$174,000 to \$150,000). The reductions for the other proposal budgets ranged from 1% to 82% with five exceeding 16% and three less than 14%.

Following the conference call, Dr. [redacted] generated a revised list of proposals and proposed funding levels which incorporated the decisions reached in the course of the conference call. The revised list was then distributed by Dr. [redacted] at the next meeting with Drs. [redacted] and [redacted] on 27 February at NSF. Further reductions in proposed funding levels were made at this meeting. This time, Dr. [redacted] left the room when the proposals were discussed. As a result of the 27 February meeting, the proposed funding total for the 10 science proposals was reduced further, from \$1.6 million to \$1.4 million. The proposed funding level for one of the [redacted] proposals was further reduced (from \$275,000 to \$200,000) and the other remained at \$150,000.

Upon agreement on the proposed funding levels arrived at during this meeting, Drs. [redacted], and [redacted] were to begin final budget negotiations with the proposing institutions, using the funding amounts as discussed in the February 27 meeting. Dr. [redacted] told us that it was his understanding that the final funding negotiations with [redacted] were to be completed by Drs. [redacted] and [redacted], while Dr. [redacted] was to undertake negotiations with the institutions that had submitted the other successful science proposals.⁷

C.

Assessment of Dr. [redacted] Participation

Dr. [redacted] told us that he understood that he could not be involved with any decisions during the peer review process which would affect his home institution, [redacted], and that he could not be involved in negotiating the budgets of any proposals with [redacted]. However, Dr. [redacted] said

⁷These negotiations had not been completed at the time we began our investigation on 9 March 1995, and it is our understanding that the negotiation process has been on hold pending completion of our investigation.

he had concluded that it was acceptable for him to be involved in the process of allocating funds among the awardees, including [redacted], by proposing reduced funding levels. Dr. [redacted] never consulted with either his ethics counsellor or NSF's DAEO. In our view, the scope of the direction Dr. [redacted] had received from the DAEO, as well as his recusal, clearly prohibited him from any involvement with any [redacted] proposal or project, and he had no reasonable basis for concluding otherwise without consulting with an agency conflicts official.⁸ The DAEO had informed Dr. [redacted] in writing that he was "disqualified from participating — by decision, approval, disapproval, recommendation, or rendering of advice — in any matter involving" the [redacted]. Although he heeded this prohibition during significant parts of the proposal evaluation process (as described above), we have concluded that [redacted] participated personally and substantially⁹ in interim budget reduction discussions involving the proposals during the 22 February conference call.

On the basis of all the evidence, NSF should determine what administrative actions, if any, should be taken against Dr. [redacted]. In addition, NSF should evaluate whether action is necessary to ensure that programmatic decisions have been made without a real or apparent conflict of interest. To do so, NSF should assess whether, from the perspective of a reasonable person with knowledge of the relevant facts, Dr. [redacted] participation creates an appearance that

⁸Dr. [redacted] told us that the science proposals, including the two [redacted] proposals, were handed to him by Dr. [redacted]. Like Dr. [redacted], Dr. [redacted] is an IPA. Their relationship can best be described as one involving equivalent colleagues; they do not have a subordinate/supervisor relationship. Dr. [redacted] came to NSF in September 1994 and began to work on the [redacted] program in December.

Dr. [redacted] stated that he asked Dr. [redacted] if it was appropriate for him to have and review the proposals. According to Dr. [redacted], Dr. [redacted] stated that it was acceptable for Dr. [redacted] to review the proposals because the review process was over, award recommendations had already been made, and he was a senior scientist charged with developing the [redacted] science program based on the proposed activities. Dr. [redacted] told us that although she was aware that Drs. [redacted] and [redacted] took the proposals, she was not sure whether or not the [redacted] proposals had been included in the proposals that Dr. [redacted] took with him. She did not recall Dr. [redacted] questioning her with regard to the [redacted] proposals. In our view, Dr. [redacted] knew that NSF's DAEO had determined that he was to have no involvement whatsoever with the [redacted] proposals, and therefore any conversation he had with his colleague Dr. [redacted] was a wholly inadequate basis upon which to involve himself in part of the decision making process involving the two [redacted] proposals, namely the 22 February conference call. If Dr. [redacted] was unsure whether to participate, he should have either contacted the DAEO or elected not to participate.

⁹The regulation provides the following guidance in this regard: "To participate substantially means that the employee's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. . . . While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter." 5 C.F.R. § 2635.402(b)(4).

he influenced the proposal evaluation process in favor of [redacted],¹⁰ then NSF should undertake to begin again the process of assessing the funding levels for the [redacted] science proposals recommended for award, using individuals with no conflict, or appearance of a conflict, of interests regarding any of the proposals recommended for award.

D.

Dr. [redacted] Comments

On 28 March 1995 Dr. [redacted] reviewed our draft report. After reviewing the report, Dr. [redacted] reiterated that he had received approval from Dr. [redacted] "to read the proposals both for science activities proposed and consider how best to trim all the budgets" ¹¹ Based on Dr. [redacted] comments, on 29 March, we again interviewed Dr. [redacted]. Dr. [redacted] signed an affidavit stating again that she did "not recall having any conversations with Dr. [redacted] concerning the exact proposals he was taking or how he would handle the programmatic decisions." Dr. [redacted] further stated that had Dr. [redacted] questioned her regarding the propriety of his handling the financial aspects of the [redacted] proposals she "would have emphatically advised him to avoid doing so, and to meet with [NSF's DAEO] before he did."¹²

We cannot reconcile these statements by Dr. [redacted] and Dr. [redacted]. Nonetheless, it is clear that Dr. [redacted] had been specifically instructed by NSF's DAEO not to "participat[e] — by decision, approval, disapproval, recommendation, or rendering of advice — in any matter involving" [redacted]. It is also clear that Dr. [redacted] did not follow this instruction. Any conversation that Dr. [redacted] believes he may have had with his colleague Dr. [redacted] should not, in our view, affect a decision to hold Dr. [redacted] personally accountable for not following these instructions; instructions that he received personally.

III.

Recommendations

Because Dr. [redacted] participation in this matter was personal and substantial, we referred this matter to the Department of Justice, as required by law. The Department declined to pursue criminal or civil action against Dr. [redacted], deferring to administrative action by the agency.

¹⁰Cf. 5 C.F.R. § 2635.101(b)(14): Federal government employees "shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts."

¹¹See note 8, above.

¹²Dr. [redacted] and Dr. [redacted] statement are attached.

Accordingly, NSF should now evaluate what administrative actions would be appropriate.¹³ In addition to any administrative action that NSF may take, we recommend that NSF's DAEO provide ethics counselling to Dr. _____ concerning his recusal from participating in any matter involving _____, particularly regarding administration of any awards that may be made to _____.

We also recommend that NSF assess whether, from the perspective of a reasonable person with knowledge of the relevant facts, Dr. _____ participation creates an appearance that he influenced the proposal evaluation process in favor of _____. If so, we recommend that NSF begin again the process of assessing the funding levels for the _____ science proposals recommended for award, using individuals with no conflict, or appearance of a conflict, of interests regarding any of the proposals recommended for award.

Please advise us of the actions taken (if any) in response to our recommendations.

cc: Acting General Counsel

¹³The Office of Government Ethics has determined that the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. part 2635, do not apply to individuals who hold IPA positions. Therefore, NSF can not take action against Dr. _____ pursuant to 5 C.F.R. § 2635.106, which covers corrective or disciplinary actions for violations of part 2635. Nevertheless, in our view NSF has several options available, depending on its assessment of the seriousness of Dr. _____ conduct: (1) Negotiate an amendment to the IPA agreement to modify Dr. _____ duties and responsibilities at NSF; (2) Terminate the IPA agreement with _____; (3) Determine that Dr. _____ conduct constitutes a "serious deviation from accepted practices in ... carrying out ... activities funded by NSF" and take appropriate action under 45 C.F.R. part 689; or (4) Determine that Dr. _____ conduct is a "cause of so serious a nature that it affects the present responsibility of" Dr. _____ and take appropriate action under 45 C.F.R. part 620.