



National Science Foundation • 4201 Wilson Boulevard • Arlington, Virginia 22230
Office of the Inspector General

February 25, 2010

Confidential

via Federal Express

Dr. Henry C. Foley
Vice President for Research, Dean of the Graduate School
Pennsylvania State University
304 Old Main
University Park, PA 16802-1504

Dear Dr. Foley:

The Office of Inspector General (OIG) at the National Science Foundation (NSF) is responsible for handling allegations of research misconduct involving NSF proposals and awards. In our telephone conversation of February 22, 2010, we discussed Pennsylvania State University's (PSU) inquiry report regarding allegations of misconduct by Dr. Michael Mann. Based on PSU's report, PSU has initiated an investigation as to whether Dr. Mann engaged in or participated in any actions that seriously deviated from accepted practices with the academic community for proposing, conducting or reporting research or other scholarly activities.

In accordance with NSF's regulation, awardee institutions bear primary responsibility for investigating allegations of research misconduct.¹ We will defer our investigation into these allegations until your institution has completed its investigation. **Please forward to me by March 15, 2010 the policies and procedures you will follow in carrying out this investigation** (if they are available online or electronically, please forward either the URL or the documents to me at the email address below).

I have attached our Dear Colleague Letter,² and we invite you to review selected excerpts from our Semiannual Reports to the Congress.³ These materials may be helpful to you as you plan and conduct your investigation. I have also included the current NSF regulation on research misconduct, 45 C.F.R. part 689. [NOTE: In cases such as this, in which any alleged conduct occurred before April 17, 2002, NSF applies its current regulation in whole, *except* that instead

¹ See 45 C.F.R. §§ 689.4 and 689.6(a) (attached at Tab 1).

² Attached at Tab 2.

³ <http://www.nsf.gov/oig/compiledsemiannual.pdf>.

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of using the current definition of "research misconduct" it uses the definition of misconduct found in the version of the regulation in effect at the time the alleged act occurred (see footnote 6 below).]

Your Investigation

Overview

General guidance concerning the role of institutions in NSF research misconduct cases is available in 45 C.F.R. § 689.4. In the course of your investigation you should obtain and review all relevant documents and interview individuals, including any colleagues and others who may have knowledge of [the action that is alleged to be misconduct]. Any information you acquire during your investigation, including any information we may provide to you, should be kept strictly confidential.⁴

The official(s) who conduct this investigation and any technical experts you might rely on to evaluate evidence related to this investigation should not have a current or previous personal or professional relationship with Dr. Mann that could be considered a conflict of interests. **Please forward to me by March 15, 2010 a *curriculum vitae* for each official appointed to conduct this investigation.**

Securing Original Research Records

As part of your investigation, you may need to secure pertinent research records.⁵ If you did not do so during an inquiry, you should immediately move to secure any and all records related to this matter. It is in the best interests of all parties to ensure that no one can assert that there was an opportunity to alter the primary data before or during your efforts. Therefore, you should ensure that the originals of all primary data, notebooks, manuscript drafts, computer files, and other relevant documents associated with the questioned research are secured and placed under the control of those conducting the investigation. If you discover that relevant documents are at a site not under your control (such as in Dr. Mann's possession elsewhere) or are not subject to your authority (such as Dr. Mann's personal property), please notify us immediately (if possible before starting to secure any records) so we may provide subpoenas to obtain them. It is important that all of the relevant records are secured at one time.

The materials should be held secure until NSF has informed you that the case is closed. This confidential investigative process should be conducted so as to minimize, to the extent practical, interference in the ongoing research of Dr. Mann. Dr. Mann and other affected individuals may be allowed reasonable access to the original records under careful supervision of an institution official designated for this role. Please be sure that when access is granted or

⁴ 45 C.F.R. § 689.4(a)(3)-(4).

⁵ We recommend that you consider, in consultation with your general counsel, whether all of the relevant research records are subject to your authority.

copies are made of computer files that the original files are not compromised or changed. We recommend that to be certain that the original computer files remain uncompromised, a computer expert who is knowledgeable in the specific systems involved assist you.

Scope of the Investigation

Nothing in this letter should be construed as limiting the scope of your investigation or imposing a particular view of this matter on you. Any new evidence or allegations of misconduct that may be revealed should also be investigated.

It is our sincere hope that the guidance provided in this letter will help you to investigate in such a way that meets the needs of all interested parties. Because a professional reputation is involved, fairness, due process, and confidentiality should be considered paramount. There is no presumption of wrongdoing by Dr. Mann or anyone else associated with the alleged misconduct; rather, your confidential investigation should be designed to determine, without preconceptions, whether research misconduct occurred, and if so, who committed it.

Determination of Research Misconduct

To establish whether research misconduct was committed under NSF's regulation, we request that the investigating official(s) answer the following questions for each alleged act of research misconduct:

1. Does a preponderance of the evidence prove that committed fabrication, falsification, or plagiarism, as defined by NSF's regulation?⁶
2. If so, does a preponderance of the evidence prove that the fabrication, falsification, or plagiarism constituted a significant departure from accepted practices of the relevant research community?⁷

⁶ 45 C.F.R. § 689.1(a). Any alleged misconduct occurring before April 17, 2002, NSF will use the following definition of misconduct:

- (1) Fabrication, falsification, plagiarism, or other serious deviation from accepted practices in proposing, carrying out, or reporting results from activities funded by NSF; or
- (2) Retaliation of any kind against a person who reported or provided information about suspected or alleged misconduct and who has not acted in bad faith.

This definition did not elaborate further on what conduct is covered. You may find the selected articles from our Semiannual Reports to Congress (regarding fabrication, falsification, plagiarism, and other acts that can constitute serious deviations), *supra* note 3, helpful in determining whether particular acts meet this definition.

⁷ 45 C.F.R. § 689.2(c)(1).

3. If so, does a preponderance of the evidence prove that the fabrication, falsification, or plagiarism was committed intentionally, knowingly, or recklessly, and not merely carelessly?⁸

The response to each question must include a full explanation of the specific evidence that forms the basis for the conclusion.

Our primary concern, when evaluating whether to recommend that NSF make a finding of misconduct, will be your assessment of each allegation with respect to NSF proposals and/or awards. However, misconduct involving other agencies' proposals and awards, as well as misconduct unrelated to federal funding, can be relevant to the determination of state of mind in an NSF-related case. While the commission of other acts of misconduct should not be considered when evaluating the evidence that Dr. Mann committed a particular act in this case, it can and should be considered in evaluating whether Dr. Mann acted recklessly, knowingly, or intentionally in this case.⁹

Additional Considerations

To assist NSF's evaluation of what actions to take when research misconduct is found (that is, all three of the above questions answered affirmatively), we also request that the investigating official(s) determine whether [subject]'s actions:

1. Were an isolated event or part of a pattern.¹⁰
2. Had a significant impact on the research record, research subjects, other researchers, institutions, or the public welfare.¹¹ If so, please describe how.

Here too the response to each question should include a full explanation of the specific evidence that forms the basis for the conclusion.

Finally, please note that your investigation efforts should be completed within 180 days of your receipt of this letter.¹²

⁸ 45 C.F.R. § 689.2(c)(2). If your policy requires a different state of mind for a finding of misconduct, your report should state this, and we ask that your report include an assessment of the subject's actions under NSF's state-of-mind requirement.

⁹ For a discussion of the various levels of state of mind and its role in evaluating whether a subject committed misconduct in science, see the section titled "Evidence of Intent" in the selected excerpts from our Semiannual Reports to the Congress, *supra* note 3, at 56 (PDF).

¹⁰ 45 C.F.R. § 689.3(b)(3).

¹¹ 45 C.F.R. § 689.3(b)(4).

¹² 45 C.F.R. § 689.6(a).

Your Investigation Report

When your investigation concludes, please provide us with a copy of the investigation report. To be of the greatest assistance to our independent assessment for NSF's purposes, your investigation report should include a description of all of the evidence relevant to your resolution of the allegation(s) investigated, including documentary evidence, interviews conducted, and witness statements. Your report should include legible copies of all relevant documentary evidence, and transcripts (or summaries, if transcripts are unavailable) of all interviews or statements. Your report should contain a full explanation of the findings, conclusions, and recommendations of the investigation. If, as a result of the investigation, you take administrative action, provide us with the name and title of the person(s) who imposed the action, and copies of documents detailing the basis for action and how it was implemented.

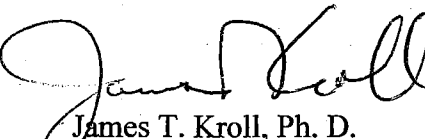
Upon receipt of your investigation report, we will assess the accuracy and completeness of the report and whether your institution followed reasonable procedures.¹³ We must evaluate the evidence independently to determine whether any action by NSF is necessary. If your investigation report provides sufficient evidence to form the basis for our independent assessment, we will be able to accept your investigation rather than conducting our own.

Conclusion

We have found that institutions conducting misconduct investigations find it helpful to meet with us in person beforehand, to discuss NSF's and their institution's policies and procedures. I will be in contact with you shortly to arrange a date when I and another member of our staff can visit your institution to meet with the officials who will be conducting the investigation as well as the official(s) who will make the final decisions and impose any action.

In closing, I would like to emphasize that you should feel free to discuss with me any concerns or issues that may arise during the course of your investigation. If, at any time during your investigation, you find evidence supporting new allegations of research misconduct or civil or criminal wrongdoing, please contact me immediately so that we may determine the best course of action. I can be contacted at 703-292-████ or █████@nsf.gov. Our office will be happy to contribute in any way possible that safeguards the thoroughness, fairness, confidentiality, and objectivity of your investigation.

Sincerely,



James T. Kroll, Ph. D.
Head, Administrative Investigations

¹³ 45 C.F.R. § 689.9(a).

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Enclosures: 1. NSF Research Misconduct regulation, 45 C.F.R. part 689
 2. Dear Colleague Letter, 26 November 2002

cc: Dr. Michael Mann