



An Investigator Calls

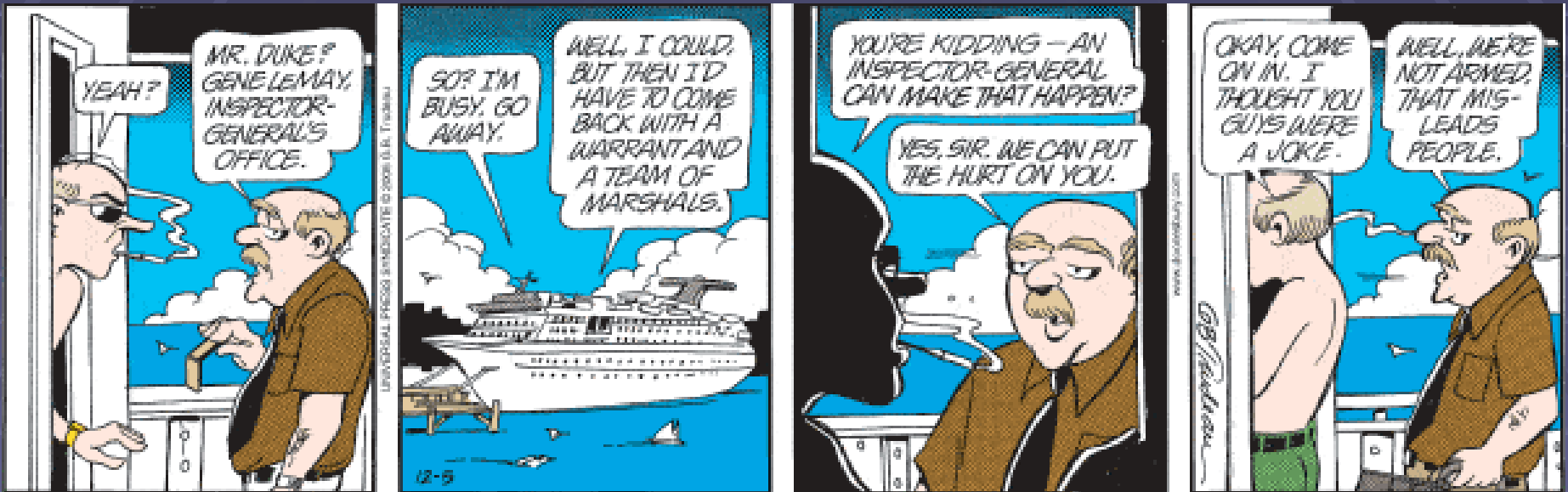
What every PI should know
before NSF OIG comes knocking

Southern Methodist University
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What's an OIG?



Doonesbury, 5 December 2005

Office of Inspector General (OIG)

- Almost every federal agency/entity has one
- Independent office for oversight
 - Promote economy, efficiency, and effectiveness...
 - Prevent and detect fraud, waste, and abuse...

...in agency programs and operations

- NSF OIG
 - 38 audit staff, 22 investigative staff
 - Investigations staff includes:
 - Ph.D. scientists
 - Special Agents
 - Accountants (CPA)
 - Attorneys

Overview

- What does NSF OIG investigate?
 - Research Misconduct (RM)
 - Regulatory Violations
 - Civil and Criminal Misconduct
- Where do you fit in?
 - Investigation Committee Member?
 - Witness?
 - Subject?
- What happens at the end of the investigation?

What does NSF OIG investigate?

The simple answer

Allegations of:

Lying

Cheating

Stealing



NSF OIG Inquiries/Investigations

- Administrative
 - Research Misconduct (RM)
 - Conflict of interests (COI)
 - Other regulatory violations and grant administration issues

- Civil/Criminal Misconduct
 - False statements and False claims
 - Embezzlement and other financial crimes
 - Mail fraud and Wire fraud

More and more frequently we are
encountering “hybrid” cases

How does OIG know what to investigate?

Allegations from

- Program officers
- Reviewers
- Colleagues
- Students and post-docs
- University administrators
- People like you
- Anyone with an interest in what NSF funds

We take a look at things

- Proactive reviews

Research Misconduct (RM)

- Federal-wide definition and procedural framework.
- RM means **fabrication**, **falsification**, or **plagiarism** in proposing or performing research [], reviewing research proposals [] or in reporting research funded by [the agency]. 45 C.F.R. 689.1.a

Fabrication:
making up data or results and recording or reporting them

Falsification:
manipulating materials, equipment, or processes, or changing or omitting data or results

Plagiarism: appropriation of another person's ideas, processes, results or words without giving appropriate credit.

The RM Procedure

Allegation
Inquiry
Investigation
Decision

The Referral Process

Inquiries and Investigations may be referred

NSF Grant Conditions

If institution determines that an investigation is needed

it MUST notify NSF immediately

RM Case Examples from the March 2006 Semi-Annual Report

- PI Ignores Warning to Remove Plagiarized Text From His Proposal
- PI's Pattern of Plagiarism Continues During OIG Investigation of His Proposals
- PI Provides False Evidence to Refute Allegation of Plagiarism
- Plagiarism Found in University Professor's Dissertation

Useful Tidbits about RM

- Copyright permission/public domain has nothing to do with plagiarism
- Text or ideas may be copied
- Even paraphrasing requires citation
- “NSF expects strict adherence to the rules of proper scholarship and attribution” for the whole proposal
- All authors share the credit or allegation equally unless evidence shows otherwise

More Useful Tidbits about RM

- Avoid “cleaning up” the figures
 - If the editor requires it, get it in writing
 - Report the “enhancements” in the paper/proposal
- Review your students’/postdocs’ data
- Keep good records / notebooks
- Keep raw data

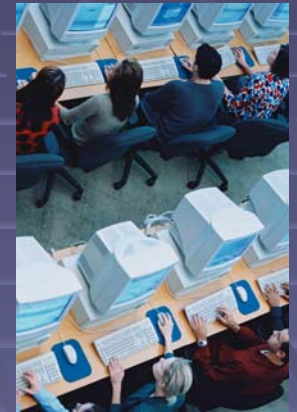
Other Regulatory and Rule Violations

- Human Subjects / Animal Welfare
- Violation of Reviewer Confidentiality
- Annual Financial Conflicts Disclosures
- Mismanagement of Funds
 - Program Income
 - Participant Support
 - Travel-related issues
 - Time and effort reporting

Examples of Other Regulatory Violations

- Human Subjects / Animal Welfare
 - Cross-discipline research with humans

Example: A physical sciences award with an education component for undergraduates that tracks student career paths post-graduation



- IACUC and IRB Committees w/o assurances

Example: Institution with both an IRB and IACUC without approved assurances loses award.



When Administrative cases turn Civil/Criminal . . .

- PI submitted his student's thesis chapter as an SBIR-1 proposal (\$100K, 6 months) from a non-existent company.
- When awarded, PI used the money to pay his child's tuition at an ivy league institution and other personal expenses.
- PI copied the thesis into his final report and proposal for the SBIR-2 award (\$500K).
- University notifies OIG of plagiarism allegation
- PI denied everything.



BUT

His wife admitted everything

When Administrative cases turn Civil/Criminal . . .

- NSF suspended the award
OIG issued subpoenas.



DEPARTMENT
OF
JUSTICE

- OIG referred the case to DOJ, who accepted it for prosecution.

When Administrative cases turn Civil/Criminal . . .

- At a meeting with DOJ, the professor through his attorneys agreed
 - 1) Plead guilty to a criminal count (1001) but wanted to avoid jail
 - 2) Would pay \$240,000
 - 3) No action against wife
- NSF OIG recommended RM finding and debarment. Professor and NSF settled for 3 years voluntary exclusion from Federal funding.

Civil and Criminal Misconduct from the March 2006 Semi-Annual Report:

- Former Professor Indicted for Mail, Wire Fraud
- Embezzlement Investigation Uncovers Additional Issues with the University's Cost-Sharing and Award Accountability

Civil and Criminal Misconduct: Common Issues

- False Statements / False Claims
 - Certifications are especially important
 - Criminal sanctions – fines and jail
 - Civil sanctions – up to triple damages possible
- Mail / Wire Fraud
 - NSF FastLane system

What we don't do

- Academic Divorces
- Institutional personnel issues that do not violate statutes, regulations, or grant conditions connected with NSF programs
- Authorship disputes
i.e., Whose name goes on the paper? In what order?

However omission of a name could be intellectual property theft, which we do investigate.

Where do you fit in?

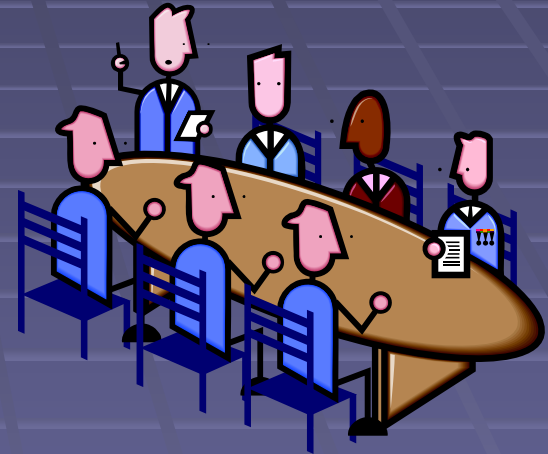
Investigation Committee Member?

Witness?

Subject?

Investigation Committee (IC) Member

- Institution usually appoints a committee
- Committee member obligations
 - Follow the institutional policy
 - Explain the decision as supported by the evidence
 - Confidentiality
 - Avoid the Faculty / Student double standard



IC Issues #1

Institution conducted investigation finding that the PI had knowingly and recklessly plagiarized over 150 lines of text from over 20 sources = “violation of institutional standard of scholarly integrity”

BUT

said it was not a “significant departure from accepted practices in the research community” as it was “low level copying”

IC Issues #2

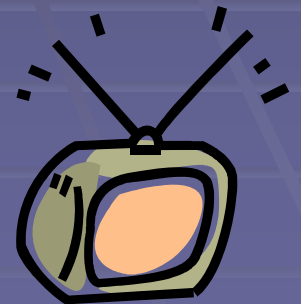
Institution conducted inquiry into data fabrication and notified NSF OIG that it was proceeding with an investigation. We concurred, referred, and deferred.

Subject got attorney;
Institution changed mind citing many plausible
explanations for data

RESULT: OIG in-house investigation
recommending finding of RM and debarment

IC Lessons Learned

- The report and recommendations should be supported by logic and evidence
- Don't decide first and then fit the evidence to the decision
- Don't let an attorney intimidate or confuse you
 - You have a University GC – make the GC earn his/her keep
- It's not prime time TV –
You don't have to solve it in an hour
 - Inquiries are to determine whether an investigation is needed.
 - Investigations are when you collect all the information.
 - Generally, its preponderance of the evidence that's needed.



Witness?

- Complainants are witnesses, not plaintiffs
- Witness obligations

CONFIDENTIALITY

TRUTHFULNESS

- Participation is voluntary and confidential to the extent possible

Subject?

- Allegations are unsubstantiated rumors
Firewall between OIG and program office to prevent taint
- When possible in RM cases, subject is contacted first
Protect reputations until there is a determination
- If you go to your GC, understand his/her obligations
- Think before you speak
If the excuse doesn't fly when your student uses it ...
- Your parents were right:
Tell the truth and the process goes much easier

What happens at the end of the investigation?

- Case could close for lack of evidence

Majority of cases

If sufficient evidence:

- OIG reports to the decision maker:
 - DOJ for Civil/Criminal
 - NSF Office of the Director for RM and other regulatory issues
- OIG makes recommendations

Possible Outcomes

- Whatever sanctions the institution makes
- Letter of Reprimand
- Ban from serving as a reviewer
- Ethics Training
- Certifications
- Assurances
- Federal-wide Debarment
- Fines / Restitution
- Prison





Contact Information

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QUESTIONS?