

NATIONAL SCIENCE FOUNDATION
OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

CLOSEOUT MEMORANDUM

TO: AIGI	File Number: I90060021	Date: 02 March 2002
Subject: Closeout Memo		Page 1 of 1

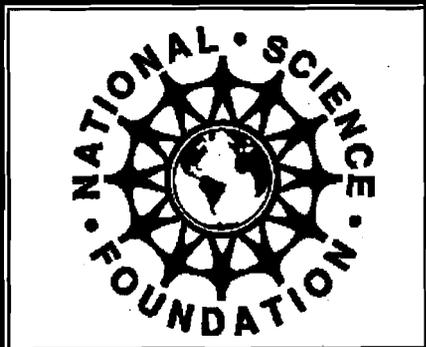
There was no closeout written at the time this case was closed. The following information was extracted from the file in conformance with standard closeout documents.

Our office was informed that the subject¹ was alleged to have committed financial conflicts of interests and travel abuse. An investigation revealed no travel fraud and we provided NSF management a report on the conflict of interest issues.

Accordingly this case is closed.

████████████████████

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



Background and Chronology

From June 1984 through January 1987, [redacted] was employed as a vice president for [redacted] and at the same time advised the Assistant Director for [redacted] on the condition of [redacted] on policy and direction for [redacted] and on strategies for achieving program balance. During this time, [redacted] also provided advice to [redacted], Division Director, [redacted], acting on advice from [redacted] developed the [redacted] project, originally named [redacted] project. The [redacted] project's solicitations were intended to encourage partnerships among [redacted] for developing and disseminating a number of competitive, high quality, alternative science programs for use in American schools.

In August 1986, [redacted] negotiated to bring [redacted] on board as program director. [redacted] to oversee the [redacted] Project. [redacted] proposed that [redacted] serve as a "volunteer" for a 1-year period with salary and benefits paid by [redacted]. At the end of 1 year, [redacted] would retire from [redacted] and become an NSF employee with government salary and benefits. The following is a chronology of [redacted] employment with NSF, as documented by NSF records.

* January 5, 1987, [redacted] became a full-time NSF volunteer. His salary and benefits were paid by [redacted].

* February 5, 1987. NSF received a proposal [redacted] from [redacted] was designated as the project's [redacted].

* May 14-16, 1987, the [redacted] n) proposal was considered by a review panel.

* June 4, 1987, [redacted] documented his possible conflicts with both [redacted] and [redacted] in a memorandum to all [redacted] staff. In the memorandum [redacted] e stated, "I disqualify myself from any activity in [the peer review] process whenever these two companies are involved."

* August 3, 1987, NSF received a proposal [redacted] from [redacted].

* October 17, 1987, the [redacted] proposal was considered by a review panel.

* November 20, 1987, [redacted] e issued a conflict-of-interest recusal notice concerning his financial interest with [redacted] n and [redacted]. He also delegated responsibility for handling any matters associated with these organizations to Ms. [redacted] s, Program Director for [redacted].

* December 15, 1987, a diary memorandum from [redacted] stated that [redacted] was not involved in the review panel discussion for the [redacted] proposal, and subsequent consideration and recommendation was made by [redacted].

* January 6, 1988, [redacted] accepted a full-time appointment as program director [redacted], [redacted] with salary and benefits paid by NSF.

* January 17, 1988, [redacted] changed his work schedule from full-time to part-time employment (Monday through Thursday, 32 hours per week).

* February 24, 1988, [redacted] (with [redacted]) was awarded [redacted] with future commitments of [redacted] for FY 1989 and [redacted] for FY 1990.

* February 26, 1988, [redacted] was awarded [redacted] with future commitments of [redacted] for FY 1989, [redacted] for FY 1990, and [redacted] for FY 1991.

* March 3, 1988, Memorandum from [redacted] to [redacted] NSF Conflicts-of-Interest Counsellor, Office of General Counsel (OGC), along with a copy to [redacted], requested a conflict-of-interest waiver for overseeing the [redacted] and [redacted] projects. [redacted] stated, "I would have no involvement in the renewal process or in any additional funding."

* April 5, 1988, [redacted] AD for [redacted] and [redacted] Conflicts-of-Interest Counsellor, signed a Memorandum for Waiver under 18 U.S.C. 208(b), concerning [redacted]. The waiver allowed [redacted] to participate in the [redacted] and [redacted] projects, but did "not include any negotiation or other participation in the renewal, amendment, or extension of grants involving [redacted] or new proposals involving [redacted]; or any matters in which your wife is directly involved." (See Attachment 1.)

* April 1988, [redacted] became program officer for the [redacted] project and assumed general oversight authority for the [redacted] project. [redacted] remained program officer for the [redacted] project and handled all financial matters.

* November 2, 1988, Memorandum from [redacted] to the [redacted] file which stated that [redacted] had not been involved in the financial negotiations between [redacted] and the Foundation.

* November 7, 1988, [redacted] replaces [redacted] as Division Director, [redacted].

* November 16, 1988, [redacted] signed NSF Form 1036, Action Processing Form, recommending second year funding for [redacted] to [redacted]. (See Attachment 2.)

* April 1989, [redacted] notified his supervisor that his wife, vice president for sales for [redacted] and her staff had become responsible for selling the product, [redacted].

produced by _____ : under award _____
remained program officer for that grant.

* June 1990, OIG received the allegation and began inquiry.

* August 15, 1990, OIG advised the Department of Justice, U.S. Attorney's Office, that _____ e may have exceeded the terms of a waiver granted to him under 18 USC section 208(b). The U.S. Attorney's Office declined to prosecute with the understanding that NSF would take appropriate administrative actions.

* September 26, 1990, OIG notified _____ of the inquiry and advised him of his rights and obligations. _____ e signed the acknowledgement of his rights and obligations and agreed to cooperate fully with this inquiry. In addition, _____ was interviewed and provided two sworn statements.

* October 10, 1990, After _____ retrieved his personal records, the interview continued and _____ provided two additional sworn statements.

* October 18, 1990, _____ was interviewed and provided a sworn statement.

* December 11, 1990, On the advice of OIG, _____, Division Director, _____, removed _____ as program officer for the _____ award.¹

Evidentiary Findings Concerning Travel

We found no evidence that _____ abused official NSF travel. We found that the time/attendance records accurately reflected the total number of hours worked by _____ e. However, because of inadequate record keeping, the records did not accurately reflect when the work was actually performed.

The allegation received by this office suggested that _____ used NSF travel for his personal benefit. In response, we reviewed all of _____ s travel and time/attendance records. On September 26, 1990, _____ provided detailed answers to questions about recent travel and time/attendance. On October 10, 1990, _____ provided his personal daily calendars for 1988 and 1989. With the assistance of these calendars, _____ e provided adequate answers to all questions involving his travel and time and attendance.

¹In a routine review of jackets, we noted the appearance of a possible conflict of interest in the award to _____. On September 27, 1990, the current Division Director of _____ requested guidance from us on this matter. On December 11, 1990, after our investigation was completed, we recommended that the Division Director remove _____ as program officer for the _____ award. Our recommendation was immediately accepted and implemented.

There are several factors that hindered the review of travel and time and attendance records and raised questions about travel reimbursements and his working hours while in travel status.

1. The official travel and time/attendance records do not adequately document official business conducted and hours worked while in a travel status. The inadequacy of these records raised many questions that were easily answered by [redacted] who kept detailed personal records of his travel and time. [redacted] stated that he provided receipts and information to the clerical assistants who prepared the travel vouchers for his signature and signature of his supervisor. [redacted] was unaware of office review procedures in his office for these travel vouchers. In addition, [redacted] stated that the constant turnover of clerical personnel in [redacted] often complicated the processing of administrative duties, such as travel vouchers.

2. [redacted] work schedule is 32 hours a week, 8 hours per day (Monday through Thursday). [redacted] would often work Fridays and on weekends while in a travel status and was permitted to take compensatory time during his regular duty hours for those extra days worked. The official time/attendance records did not reflect those actual days worked and the compensatory time allowed during his regular duty hours.

3. [redacted] has residences in Washington, D.C.; New York, NY; and [redacted] Connecticut. [redacted] would often spend his weekends in New York or Connecticut and return to Washington, D.C., on Monday morning. He would usually leave Washington, D.C., on Thursday afternoon to return to New York. When [redacted] would travel for his official duties, he would often travel from New York and return from official travel to New York. These travel arrangements complicated [redacted] travel records. Lack of adequate documentation made the travel and time/attendance records appear questionable, especially official travel to New York and New England.

We were not able to determine allowable costs for many of these trips because the travel records did not provide enough detail and there were no comparable costs for the same travel from Washington, D.C., his official duty station. According to the Head, Voucher Examination Section, Division of Financial Management, all of [redacted] s travel cost should have been compared to travel from Washington, D.C.. [redacted] stated that he was unaware that this comparison should have been made.

Evidentiary Finding Concerning

Conflict

We found that _____ exceeded the limits of the April 5, 1988, waiver by signing Form 1036 on November 16, 1988, which recommended a second year award for the I-_____ project. However, we do not find evidence that _____ acted with intent to exceed the limits of the waiver or for personal gain. In a sworn statement on September 26, 1990, _____ stated, "I have never received anything of value as a result of this grant." We have no evidence that _____ received anything of value in exchange for his actions. On October 18, 1990, when questioned about signing the form, _____ said that he had no recollection of signing it. _____ stated,

"I assume that I signed this form in error because the environment in my office is very chaotic and we have little clerical and administrative support. We do a great deal of our work without having adequate time to consider what we are actually doing. I know that the previous funding recommendations came from _____ and I always did my best to avoid any involvement in the funding of this project. Further evidence of the chaotic pressure we are all under is the fact that both _____ and _____, who were both aware of my potential conflict of interest, signed this document after I signed."

On October 11, 1990, we interviewed _____ by telephone and _____ and _____ previous supervisors. Both stated that they were fully aware of _____ potential conflicts with _____ and _____ and that _____ was not involved in the funding aspects of the _____ project. _____ was interviewed on October 11, 1990, and stated that she was the program officer on the _____ grant from the beginning until _____ assumed responsibility at the end of 1989. _____ said that the intent from the beginning was to limit involvement only to product development and program oversight while she handled the financial aspects of the project. _____ added that she received no supervision or recommendations for funding from _____ and she received her own reports directly from the principal investigator. After reviewing her personal calendar, _____ stated that she was on official travel on November 16, 17, and 18, 1988, when _____ signed the recommendation for the second year award for the _____ project.

Evidentiary Findings Concerning Scholastic Conflict

We found that _____ did exceed the limits of the April 5, 1988, waiver by continuing to act as Program Officer on the _____ project after his wife became directly involved in the selling of _____ produced by _____ under the grant. We do not recommend that _____ be censured for exceeding the waiver because he did notify his supervisor of his wife's involvement and was allowed to remain the program officer for the grant. The supervisor's reasoning is discussed below.

Findings Concerning Jacket Documentation

The documentation in the _____ and _____ jackets were so inadequate and disorganized that we were not able to determine basic facts and events pertinent to the investigation. Lack of documentation in the jackets prolonged and complicated our inquiry. We eventually had to rely on interviews to obtain all the needed information. The following are examples of inadequate documentation.

1. As described above, the jackets were riddled with memoranda and recusal statements mentioning the conflicts, but neither jacket had a copy of the waiver, mentioned the waiver, or fully documented the conflict-of-interest advice which allowed _____ to work on these projects. The waiver was found by OGC only after our third request and after we talked personally with the former NSF Conflict-of-Interest Counsellor/OGC.

2. The jackets did not clearly describe assignments of the program officers for these projects. The _____ jacket did not clearly show when _____ started as program officer or when _____ became program officer. The _____ jacket did not clearly show the separation of duties between _____ as program officer and _____ who had general oversight responsibilities.

3. Finally, neither jacket contained complete copies of NSF Form 1036, which shows the signatures of the program officer, division director, and assistant director recommending second and third year funding. We finally obtained copies of Form 1036 for these projects from the Division of Grants and Contracts, which had copies on microfilm.

Poor documentation is particularly disturbing because the jacket is the authoritative source of information documenting the grant process, the basis of NSF decisions, and the source for systems input.

Findings Concerning Program Management and Conflicts Advice

The early overall program management of the [redacted] program, as well as advice from OGC, contributed to the initial decision to allow [redacted] to be involved with these grants. [redacted] was an informal advisor to [redacted] Division Director for [redacted], and was part of the initial development of the [redacted] program, before becoming a full-time volunteer and later an employee assigned to [redacted]. [redacted] stated that he was always aware of [redacted] conflicts, but that he used [redacted] because he was a specialist whose expertise was needed on these projects. [redacted] was also the conflicts official for [redacted] and stated that the division did everything it could to keep the conflicts issue public and protect all parties involved.

We believe that there was a good faith effort to document the conflicts, but most of the memoranda and recusal statements were generated after the fact. For example, [redacted] became a volunteer in January 1987, but the first memorandum addressing his conflicts is dated June 4, 1987. In addition, the [redacted] proposal was received on February 5, 1987, and the [redacted] proposal was received on August 3, 1987, but the first conflict-of-interest recusal notice is dated November 20, 1987.²

March 3, 1988, request for a waiver stated, "The purpose of the waiver we discussed would be to give me oversight permission--I would have no involvement in the renewal process or in any additional funding." However, in April 1988, OGC found that [redacted] interest in [redacted] was not substantial and accordingly allowed [redacted] to become actively involved in the [redacted] matter even though he suggested that his involvement be limited.

²During this period [redacted] was to file financial disclosure forms (NSF Form 681) which would have identified his financial interests in both [redacted] and [redacted]. OGC and Division of Personnel Management (DPM) were only able to find one NSF Form 681 filed by [redacted] dated July 11, 1990, which listed his financial interest in both [redacted] and [redacted]. We could find no evidence that any action was taken based on the information disclosed on this form. DPM did notify OGC that [redacted] did not file a NSF Form 681 in 1989. However, we found no evidence that OGC took any action after being advised that [redacted] had not filed a NSF Form 681 in 1989.

In a memorandum to the AD [redacted] the NSF Conflicts-of-Interest Counsellor/OGC stated,

"With respect to his interest in [redacted], this comes through his wife who is an officer in the [redacted] company. However, her work in marketing involves virtually no contact with the program whose development NSF is funding. I think this connection is remote and minor enough to permit a waiver, except I suggest that the waiver not apply to any matter in which his wife is directly involved."

As the former NSF Conflicts-of-Interest Counsellor/OGC indicated, OGC had been advised in writing that [redacted] wife was a vice president of [redacted] responsible for sales who had "little or no contact with the [magazine] that [NSF was] developing." However, OGC was not advised in writing and apparently was not aware that [redacted] wife would have supervisory responsibility for selling the magazine after it had been developed by [redacted] under the NSF grant. Program management apparently did not volunteer essential information and OGC apparently did not request additional or more specific information. This represents a substantial breakdown in communication in the NSF conflicts-of-interest system.

The waiver was drafted by the former NSF Conflicts-of-Interest Counsellor/OGC and reviewed and approved by the General Counsel. It allowed [redacted] to be program officer for the [redacted] award. However, the waiver explicitly stated that it did not apply "to any matters in which your wife is directly involved."

In April 1989, [redacted] notified his new supervisor, [redacted] that his wife had become responsible for selling the magazine produced under the NSF grant. [redacted] stated that he allowed [redacted] to continue as program officer for the [redacted] award after he read the waiver and past conflict-of-interest documents pertaining to [redacted] stated that he did not request advice from OGC because he'd had reservations about the conflict prior to this, and discussed his reservations with OGC and the AD [redacted] who told [redacted] that the issue had been properly reviewed and that the waiver was final. According to [redacted] he believed that it was not his place to question a determination previously made by NSF lawyers and management.

During the interview on October 10, 1990, [redacted] stated that he did not know the specifics of his wife's financial interest in [redacted] prior to our investigation. On October 10, 1990,

complete information about his wife's financial interest in [redacted]. This included information about salary, incentive opportunities (including bonuses for sales), 4,000 option shares of common stock of unknown value, and a non-liquid debenture bond for 1,000 option shares worth approximately \$6,000. According to the former NSF Conflicts-of-interest Counsellor/OGC and [redacted] these details were not discussed when the April 1988 waiver was issued.

We believe that the details of [redacted] wife's financial interest in [redacted] should have been thoroughly reviewed prior to the issuance of a waiver. [redacted] financial interest in [redacted] appears substantial. Moreover, as noted above, program staff were aware at the time the waiver was issued that [redacted] wife would ultimately become responsible for selling the magazine developed under the NSF grant. For this reason, we consider the initial waiver to be inappropriate. We also believe that OGC should have been formally asked to reevaluate the appropriateness of the waiver once [redacted] wife's obtained direct responsibility for marketing the NSF funded product.

Finally, [redacted] and [redacted] management had prior warnings of possible problems in the August 3, 1988, "Report of the External Peer Oversight Committee for the Review of the National Science Foundation [redacted] Management [redacted] Program." Under the section, "Are decisions understandable from the documentation," the report stated,

"some jackets need a better 'paper trail', particularly in cases where there are funding anomalies. For example, in cases where funding was split between programs or where proposals initially were declined in this program but were funded later in another program, the information in the jacket was incomplete and we were required to query program officers for clarification. We recommend that the entire history of a project be included in the jacket. This information, together with more information about the qualifications of reviewers to review the particular proposal, would provide a more defensible position regarding how decisions were made."

Under the "Additional comments" section, the report stated,

"One programmatic aspect of this program demands comment. This is the focus through solicitations on [redacted] partnerships in projects, in the design phase as well as in dissemination activities."

It demands comment because of its potential both for positive accomplishments and for abuse or the appearance of abuse. ...

We wish to point out that this could be a very sensitive, high-risk area; and it requires careful monitoring, frequent evaluation, and exceptionally good documentation. We are certain that everyone is aware of the potential political issues associated with requiring the participation of [redacted] in what could be one-half the funding of materials development projects. ... We recommend that serious consideration be given to holding a special oversight review of this aspect of the program in order to place the Directorate in the best position to meet possible criticisms."³

We could find no evidence that this guidance was heeded or implemented.

Conclusions

The [redacted] program was designed to include the [redacted] in marketing and selling educational materials produced under NSF grants. From the perspective of the [redacted] NSF was providing venture capital and the [redacted] were involved to make a profit. [redacted] as vice president and later as a retired employee and stockholder of [redacted] had a substantial financial interest in [redacted] wife is the Vice President and Director of Sales of [redacted] and has stock options in [redacted] that make her financial interest in [redacted] substantial. [redacted] as program officer for the [redacted] project and "general overseer" of the [redacted]

³In responding to our draft Investigative Report on this matter, [redacted] criticized the report of the External Peer Oversight Committee by objecting to any implication "that [redacted] are less honest than professors or other developers". According to [redacted], "our government administration encourages cooperative efforts with private industry".

We do not mean to discourage cooperative ventures with private industry. However, like the External Peer Oversight Committee, we believe that financial conflicts of interest can become quite serious when commercial applications are involved. Accordingly, in our opinion, NSF program officers like [redacted] need to be especially careful in handling financial conflicts of interest which may arise in the context of commercial ventures.

[redacted] project, was in a position to influence grants involving companies in which he and his wife had substantial financial interests. As an NSF official, [redacted] conducted site visits at publishing companies in which he and his wife had substantial financial interest and personal contacts. These visits heightened the appearance of conflicts and may have led to these allegations.

Despite these real and apparent conflicting interests, a waiver was issued which allowed [redacted] to participate actively in the [redacted] project. The basis for deciding whether a waiver should be granted is whether the financial interest is likely to affect the integrity of the service expected of the employee. In order to make this assessment it is necessary to evaluate all relevant information. However, OGC did not obtain specific information about the extent of the [redacted] financial interest in [redacted]. Moreover, because of poor communications between attorneys and program staff, OGC apparently was not aware of the essential fact that [redacted] wife would have supervisory responsibility for selling the NSF-funded magazine after it was developed. Given these facts, we believe that [redacted] should not have been allowed to participate actively in the [redacted] grant.

Past decisions aside, at the present time [redacted] wife has supervisory responsibility for individuals who are now selling the magazine produced under the NSF grant. Accordingly, we believe [redacted] should no longer be involved in any way with the [redacted] project and should immediately discontinue site visits to [redacted] and [redacted]. In our view, continued participation on site visits would be insensitive to past and present conflicts and create an unacceptable appearance of conflict of interest.

As a matter of law, [redacted] cannot be sanctioned for acting within the terms of a waiver, even a waiver issued improperly. However, [redacted] twice exceeded the terms of the waiver; once by executing the second amendment to the [redacted] award, and a second time when continuing to participate in the [redacted] project after his wife had become responsible for the active selling of the magazine funded by NSF. Both of these actions were undertaken with the approval of his supervisors and do not appear to have been motivated by personal gain. Quite to the contrary, our review of this matter indicates that [redacted] is an employee who works hard in support of NSF's effort because of a genuine interest in the subject matter.

In addition, we are aware of no evidence which indicates that the funding decisions made by the Foundation would have been

materially affected had not exceeded the terms of the waiver. For these reasons, and because [redacted] cooperated with our investigation fully and credibly, we recommend that he not be formally censured. During the course of our investigation, [redacted] was counseled and admonished about his obligations to conform to conflict-of-interest restrictions. We believe this counseling should be adequate to prevent reoccurrence of similar problems.

In addition to conclusions which are particular to the actions of [redacted] our review uncovered what we suspect are significant systemic problems. First, it is evident to us that adequate, well-organized records on conflicts of interest were not maintained in appropriate jackets, in program files, or by OGC. We believe that the poor condition of these records may be a significant management deficiency. If conflicts of interest, recusals and waivers are not obvious after a review of a file jacket, individuals who should be recused from a particular project may inadvertently be asked to become involved. More important, if OGC does not have adequate records concerning conflicts waivers, and the underlying reasoning supporting those waivers, there is significant reason to be concerned about possible carelessness, adequacy of supervisory review and consistency among decisions.

Finally, it is important to emphasize that the [redacted] program and many other programs undertaken by the [redacted] directorate involve extensive interaction with for-profit organizations. For this reason, [redacted] management should be especially sensitive regarding financial interests which employees have in commercial organizations. Management within the [redacted] division was not appropriately sensitive to conflicts problems in this case. Instead the former Division Directors, who were also the Division Conflicts Officials, actively encouraged [redacted] to continue to participate fully in the [redacted] project. The attitude of past division management is particularly troubling because of the warnings contained in the report of the 1988 External Peer Oversight Committee for the [redacted] Division. Accordingly we suggest that the Assistant Director for [redacted] initiate steps to ensure that program staff become especially sensitive to any financial interests that they may have in commercial organizations with which they have official contact. [redacted] staff should seek counselling on these issues, particularly with respect to 18 USC 208.

Recommendations

Based on the above-stated findings and conclusions, we recommend that:

(1) [REDACTED] should be removed as program officer on the [REDACTED] project.⁴

(2) [REDACTED] should not have any active involvement in grants involving [REDACTED] including participating in site visits to [REDACTED].

(3) [REDACTED] should clearly document: (1) conflict-of-interest advice in jackets, (2) time/attendance records, and (3) travel vouchers.

(4) Because so much of the [REDACTED] program involves commercial applications, the Assistant Director for [REDACTED] should conduct a review of [REDACTED] focusing on conflicts of interest and the recommendation of the 1988 External Peer Oversight Committee report.

March 25, 1991

⁴This recommendation was forwarded to the Division Director, [REDACTED], on December 11, 1990, and was immediately accepted and implemented.