

## SCIENTIFIC MISCONDUCT

## Michigan Gets an Expensive Lesson

Universities struggling to investigate allegations of misconduct by their faculty members have a new incentive to do it right. Earlier this month, a judge upheld a jury verdict of \$1,246,000 to a former University of Michigan psychology researcher who claimed the university botched an investigation into her allegations of scientific misconduct. The ruling, which the university plans to appeal, represents the first time a court has fined a university a substantial amount in a case involving scientific misconduct. But legal experts expect the high cost of such actions to deter most scientists from rushing into court.

The plaintiff is Carolyn Phinney, a former research psychologist at the University of Michigan's Institute of Gerontology. Phinney claimed that in 1989, while she was at the institute, her supervisor, Marion Perlmutter, took her research on the measurement of wisdom and its correlation with aging and included it in a grant application to the National Science Foundation (NSF) without crediting Phinney. Phinney discussed her concerns with a colleague, who reported them to Richard Adelman, director of the institute. When Adelman launched an investigation, Phinney was forced to take an active role as a whistleblower. Four faculty panels were eventually formed to investigate Phinney's allegations of plagiarism and theft of research materials against Perlmutter, but the court heard evidence that each panel contained at least one member who had been a participating faculty member on one or more of Perlmutter's grants. None of the faculty panels found Perlmutter guilty of plagiarism. In 1990, Phinney filed suit, charging that during and after the investigation Adelman had sought to discredit her and damage her reputation. In 1992 Phinney's contract with the university was not renewed, and she is currently unemployed.

In May, a jury ruled in Phinney's favor, finding that Adelman had violated the state's Whistleblower Protection Act. The jury also found that Perlmutter had committed fraud by making false promises regarding grants, authorship, and employment to Phinney in order to obtain access to Phinney's research. It awarded Phinney \$1.1 million—\$130,300 to be paid by Perlmutter and \$989,200 by Adelman. Last week the judge upheld the damages, and awarded another \$126,000 in interest fees.

The university is paying for Adelman's lawyers (and will pay the damages Adelman owes Phinney if the award is not reversed on appeal), but not Perlmutter's. University spokesman Walter Harrison says this is because Adelman was acting as an agent of the university in overseeing the investigations,

but Perlmutter was acting as an individual. "We don't indemnify all university researchers," he says.

"We believe Professor Adelman made a good-faith effort to investigate" the charges, Harrison says. "But clearly, we were unable to convince a jury of that." Adelman declined to comment on the case and Perlmutter was unavailable for comment.

Attorneys specializing in scientific misconduct say the case is the first in which a whistleblower has won a financial award as a result of a suit charging retaliation. But they do not predict a flood of imitators. "A civil suit has always been an option," says Barbara Mishkin of the Washington, D.C. firm Hogan & Hartson, "but it's costly to do

and hard to find a lawyer willing to do it." The cost of such cases typically amount to hundreds of thousands of dollars, she says. Robert Charrow, an attorney with the Washington firm of Crowell & Moring, says a whistleblower contemplating a civil suit has to be prepared for years of "psychic energy-sapping" litigation.

Although the decision may still be appealed, Phinney believes that her point has been made. "I hope that my victory dissuades scientists who are considering retaliating against a whistleblower," she says. Harrison says that the university will review its procedures for investigating misconduct allegations in the wake of the verdict. Among the possible changes are making sure at least one member of every investigation panel comes from outside the university and including legal experts from the outset.

—Christopher Anderson

## VIOLENCE RESEARCH

## NIH Told to Reconsider Crime Meeting

A controversial meeting to probe the biological bases of violence, which was canceled last year by the National Institutes of Health (NIH) after it had come under attack largely by African-American groups, may be resurrected. Last month, an NIH appeals board ruled that NIH had used spurious reasoning to withdraw support for the meeting and ordered the agency to work with the conference organizers to produce a new proposal.

The appeals board's decision came out just days before an NIH advisory committee met to put together a report that will urge an expansion of NIH's portfolio of research on violence—currently some \$43 million worth of studies. The panel, established in the aftermath of the furor over the canceled conference, also judged the work that NIH now supports in this area to be ethically acceptable. Taken together, the two events may pave the way for NIH to cautiously expand studies of the biology of violence.

The idea for the aborted conference came from David Wasserman, a former criminal lawyer, psychologist, and policy researcher at the University of Maryland. In June 1991, he submitted a grant proposal to the program on ethical, legal, and social implications, run by the National Center on Human Genome Research, to fund a conference at Maryland to be called "Genetic Factors and Crime" (*Science*, 9 October 1992, p. 212). The proposal won a peer-review score of 178 (out of a possible high of 100 and a low of 500), and in April 1992, the genome center's advisory council approved a \$78,000 grant to Wasserman. The proposal quickly ran into flak, however, when Peter Breggin, an independent psychiatrist in Bethesda, Maryland, claimed the conference was part of a scheme

to pacify unruly people with psychoactive chemicals. Breggin's critique caught the attention of Congress, particularly members of the Black Caucus.

Almost a year after NIH had given Wasserman the go-ahead, John Diggs, former deputy director of NIH for extramural research, canceled the grant. In a letter to the University of Maryland on 22 April 1993, Diggs said he was withdrawing NIH funds because the university had "significantly misrepresented the objectives of the conference" in a brochure. The document gave "the distinct impression that there is a genetic basis for criminal behavior, a theory that has never been scientifically validated," wrote Diggs, adding that the brouhaha had created "an environment that has made it impossible for the conference to proceed in a scientifically objective manner."

Wasserman objected and appealed the decision in May. On 3 September, the NIH Grant Appeals Board—composed of senior NIH and Public Health Service grant administrators—ruled 7-2 in his favor, finding that NIH's main charge of misrepresentation was "not substantiated" because NIH had been fully aware of the plans for the conference all along. Moreover, the board found that NIH was "unreasonable" and "erroneous" itself in refusing to help the University of Maryland revise the brochure and the conference. But the board agreed with NIH in one respect: It would not have been right to let the project go forward on its original schedule, because doing so might have been viewed "as an affront to the black community."

Wasserman says he is "pleased" with this outcome. He and university officials are now negotiating with NIH—as ordered by the