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

board—to revise the grant award. The board called for a two-phase approach: NIH and Maryland first will study the feasibility of running a successful conference on biology, behavior, and crime. Then, within 90 days, they must concur on a plan for a conference. The Center for Human Genome Research retains the right of veto.

As this feasibility study gets started, NIH is preparing to hear from another panel examining NIH-funded violence research. This one—requested by former NIH director Bernadine Healy—had two major assignments: to determine whether any projects in NIH's portfolio were so risky or questionable that they should be dropped, and to make recommendations for future research. The panel met once in June (*Science*, 11 June, p. 1584) and again on 22-24 September.

The second session, cochaired by Sandy Chamblee of the NIH director's office and Thomas Murray, director of the Center for Biomedical Ethics at the Case Western Reserve University School of Medicine, essentially gave the current NIH portfolio on violence research a clean bill of health. The 29-member committee held a closed meeting on 23 September to examine NIH's current projects. Members were instructed not to comment on particulars, but panel member Kenneth Tardiff, professor of psychiatry at the Cornell University Medical College, announced in open session that everything he'd seen was "well within the scientific bounds" of acceptable practice. The "only basis" for challenge, Tardiff said, would be to question the "entire basis of modern medicine and mental health research"—which he did not intend to do. Nor did any other panel member.

At this writing, according to an NIH official who did not wish to speak for attribution, only a few clinical studies of violence and aggression (out of 284) remain in limbo as investigators check for possible violations of the ethics code. But most of the projects have already passed muster.

Committee members also proposed ambitious goals for future research at NIH:

- Create a new, high-level monitoring group to ensure that violence research does not harm individuals or sensitive communities, especially minority communities.
- Seek at least a doubling of funds for research on violence, particularly for "preventive intervention" studies and projects that assist victims.
- Broaden NIH's portfolio to include more social research and studies that examine behavior over an entire life span.
- Increase training programs on violence research, especially those designed to encourage minority scientists.

These proposals will be incorporated into a draft text that will go out for review by the full committee next year.

–Eliot Marshall

AMERICAN PHYSICAL SOCIETY

Young Scientists' Network Shakes Up the Establishment

DARROW MONTGOMERY

Networker. Young Scientists' Network founder and APS board member-elect Kevin Aylesworth.

Members of the Young Scientists' Network (YSN) are used to being outsiders. This loose confederation of 2600 or so graduate and postdoctoral students who communicate via the Internet computer network has been taking the U.S. physics community to task for squeezing many of them out of jobs. The physics establishment, they say, is to blame for training record numbers of Ph.D.s, just when the job market for physicists is drying up. But now the YSN is about to join the establishment. *Science* has learned that in an election for four of the 15 at-large seats on the governing board of the American Physical Society (APS), the leading voice of U.S. physicists, two YSN candidates who clawed their way onto the ballot through an electronic mail-based petition drive managed to win, defeating candidates the APS itself had nominated.

The APS had planned to announce the results in November, after they have been ratified by an elections committee. But already the organization's brass is interpreting the upset as a strong signal about the depth of unhappiness among young physicists. "This election certainly sends a message to the council," says Burton Richter, director of the Stanford Linear Accelerator Center and president-elect of the APS. "It's an indication that a big part of the membership wants more emphasis on the employment problem." Now that two of their representatives will be sitting on the council, YSN members—who have mostly vented their steam over electronic bulletin boards—will be in a position to demand action to reduce the number of graduate students in physics.

Successful campaigner. Zachary Levine.

The two YSN winners, who say they are somewhat surprised at their success, make no bones about being one-issue candidates. "We're concerned that there seem to be no jobs for young scientists, and there hasn't been much recognition of this fact in high places," says Zachary Levine, who launched the YSN campaign. Or, as YSN founder and fellow winner Kevin Aylesworth ingenuously puts it: "We must have been judged pretty much only on the employment question, because we haven't demonstrated knowledge about any other issues." Their knowledge of the job shortage problem, though, is intimate: Aylesworth, who got his Ph.D. in 1989 from the University of Nebraska, supports himself doing legal research and working on a book, while continuing to send out resumes for physics research jobs. Levine, a 1983 University of Pennsylvania Ph.D., spent 4 years at AT&T developing electronic test equipment before landing a non-tenure-track physics "research specialist" position at Ohio State University.

The 44,000-member APS can't be accused of ignoring the young physicists' plight entirely. It has undertaken surveys of graduating physics students to document the scope of the problem and sponsored university job-finding workshops that emphasize opportunities outside the traditional markets of academia and government and industry laboratories. "The APS as a whole is very sympathetic with the job problem for young Ph.D.s," says Brian Schwartz, a Brooklyn College physics professor and associate executive secretary of the APS. "We can't do much about the market, but we have to at least take some responsibility for the supply side."

Still, not all APS leaders are convinced there is a glut of physics Ph.D.s to begin with. "We need more Ph.D.s in the physical sciences, not fewer, because it's technological prowess that's going to keep this country afloat," says Fermilab's Michael Turner, whose 4-year term on the APS council ends