SCIENTIFIC MISCONDUCT

Plagiarism Suit Wins; Experts Hope It Won't Set a Trend

The scientific community has been struggling for a decade to prove that it can handle its own misconduct cases effectively. This month, however, that effort may have suffered a quiet setback. With little fanfare, a Federal Court jury in Baltimore ruled on 1 May against the University of Alabama, Birmingham (UAB), and four of its researchers, who were accused of making false claims to the government and stealing intellectual property. What made the case so remarkable was that the plaintiff, Pamela Berge, a former Cornell University epidemiologist, never filed charges with the National Institutes of Health (NIH) or the Department of Health and Human Services' Office of Research Integrity (ORI). Instead she went straight to the courts, where she won a verdict that could cost UAB and the four researchers nearly $2 million.

Berge had filed suit under the False Claims Act, which allows private citizens who allege that government contractors have made false claims to bring a so-called qui tam suit on the government's behalf. In theory, government-funded research is within the act's purview, but the verdict marks the first time a misconduct case has gone to trial under the act—and one of the first times scientific misconduct has been settled by a jury. As such, it adds to the jitters that went through the misconduct world last year, when a qui tam suit filed against University of Utah burn researcher John Ninnemann and two universities drew a hefty out-of-court settlement (*Science*, 4 February 1994, p. 605). If the Berge case encourages disgruntled researchers to shun the newly established mechanisms for dealing with scientific misconduct and go to court, says Washington misconduct lawyer Barbara Mishkin, "it could promote chaos."

The UAB legal office says none of the defendants will comment on the verdict, pending an appeal. The dispute centered on an epidemiologic study of cytomegalovirus (CMV), which Berge undertook for her doctoral dissertation at Cornell. In 1986, she had sent Sergio Stagno, a professor of pediatrics at Alabama, a proposal to study UAB's numerous CMV cases for risk factors that contribute to mother-child transmission of CMV and for links between CMV and low birth weight. The UAB researchers approved her plan, and Berge says she spent 6 months in 1987 in Birmingham organizing the UAB cases, computerizing them and identifying appropriate controls for her study.

After analyzing the data and writing up her thesis, copies of which she sent to her UAB collaborators, Berge received her degree from Cornell in May 1989. In June 1990, at the annual meeting of the Society for Epidemiologic Research in Snowbird, Utah, Berge heard Karen Fowler, then a UAB graduate student working with pediatrics professor Robert Pass, give a talk that sounded to Berge like the first part of her dissertation. "I was completely shocked," she says.

She spent the rest of the summer trying to get a copy of Fowler's talk and thesis from UAB and received in reply what she describes as a "series of hostile letters." Eventually, Berge went to the associate dean for academic affairs at UAB and managed to get a copy of the Fowler thesis, which confirmed her fears. It seemed to Berge to be based largely on her own work, without any citation.

Vindicated. Pamela Berge bypassed the usual mechanisms for resolving misconduct.

Berge pressed the issue with UAB administrators, enlisted outside researchers to compare the two dissertations, and asked Cornell administrators to argue her case with their counterparts at UAB. Her efforts sparked two inquiries into the matter by UAB administrators, but neither found any misconduct. At that point, Berge says she decided not to pursue the case through official channels because she felt she would get nowhere. Instead, she took matters into her own hands. In the spring of 1991, she filed a freedom of information request with NIH to obtain copies of the grant proposals that UAB had submitted to NIH for its own epidemiologic study on CMV. "That's when I started to see that my work had been used in [their] progress reports [without] any kind of attribution whatsoever," she says.

Because the government was funding the UAB study, Berge saw an opportunity to file suit under the False Claims Act. In January 1993, she charged that UAB had made false claims in its NIH grant applications. And, in a "pendant" claim filed with the qui tam suit, she also charged that Stagno, Pass, Fowler, and Charles Alford, a UAB professor of pediatrics who was principal investigator on the NIH-funded study, had stolen her intellectual property. Under the False Claims Act, the government can elect to join qui tam suits, but after 6 months of review, the Justice Department elected only to observe the case. (Justice Department officials would not comment on the reason.)

The case went to court in the Federal District Court in Baltimore on 12 April. According to court documents, the defense denied Berge's charges, arguing that Fowler never used Berge's work and that the UAB researchers' progress reports to NIH were based on their own epidemiologic study. But less than 3 weeks later, the jury found for Berge. The false claims amounted to $550,000, it said; by statute the UAB is required to pay the government triple that amount, or $1.65 million. Berge is entitled to 30% of what the government recovers. The verdict also requires the four UAB researchers to pay Berge a total of $265,000 in compensatory and punitive damages. A UAB press release, signed by University Counsel Ina Leonard, said simply that the university believes "the verdict is wrong and that it is not consistent with or supported by the evidence presented."

Because of the money and the dramatic vindication that a jury verdict can bring, some misconduct experts are worried that this verdict could tempt others to bring similar suits. Washington misconduct attorney Robert Charrow points out that there is a disincentive: False Claims suits are costly to bring and can take far longer than the usual government procedures. But if False Claims suits should become more common, say the experts, the scientific community may be the loser. Says Suzanne Hadley, former deputy director of the Office of Scientific Integrity (ORI's predecessor), "The plaintiff may do just fine, but that might just exacerbate the perception that these kinds of questions have gone beyond the ability of the scientific community to deal with."

That would be unfortunate, says Mishkin, because a court isn't the place to resolve accusations of misconduct. "The nature and accepted process of conducting scientific research is ... foreign matter to a jury," she says. But Berge's lead attorney, Edward Dangel of the Boston firm Dangel and Fine, argues that the case "revolved not around complex scientific concepts but around basic questions of honesty and intellectual property. The jury understood it and gave us a very measured verdict. It's an example of science working in the courtroom."

–Gary Taubes