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UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

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PROGRAM ANALYSIS  
DIVISION

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DECEMBER 16, 1982

B-208938



The Honorable William Proxmire  
United States Senate

Dear Senator Proxmire:

Subject: Allegations Concerning a National Science Foundation (NSF) Employee Using Government Funds for Personal Travel (GAO/PAD-83-8)

On October 5, 1981, you forwarded to our office an anonymous letter containing allegations relating to a specifically named individual's travel. The letter alleges that the individual used Government funds for personal travel, traveled on weekends, and approved his own travel authorizations; and that NSF investigated the accusations against the individual, found them to be true, and dropped the matter. The letter also implies a connection between NSF's investigation and the individual's resignation from NSF.

We asked NSF to provide a written statement setting forth its position on the individual's travel (see enclosure I). NSF has concluded that the trips were "essential" and we defer to the administrative determination of the head of an agency. The weekend travel was not contrary to agency regulations. Agency regulations also allowed employees at the individual's management level to approve their own travel. We do not believe that the individual's resignation was connected to an investigation of the travel.

To assess these allegations, we examined relevant agency documents and NSF travel regulations, and interviewed agency officials. Our review was performed in accordance with generally accepted Government audit standards.

BACKGROUND

NSF has a staffing program <sup>1/</sup> that recruits qualified persons from colleges, universities, industry, and government for 1- to

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<sup>1/</sup>The National Science Foundation Act of 1950 allows NSF to hire people under an excepted appointment authority without regard to civil service regulations.

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2-year periods. Participants in the program are called rotators. The program allows NSF to employ active scientists to help shape and administer its programs for research support. Approximately 20 percent of NSF's scientific staff members are rotators. The individual was a presidential appointee and a full-time NSF employee from 1979 to 1981 as a Special Assistant to the Director of the Foundation and then as an Assistant Director. Although the individual was not officially classified as a rotator, NSF treated him as one since it was understood at the time of the appointment that he would work for NSF for 2 years and then return to his previous employment at Harvard University.

#### ALLEGATIONS

As mentioned earlier, allegations were made that:

- the individual used Government funds for personal travel,
- the individual traveled on weekends,
- the individual approved his own travel, and
- NSF found the allegation of the individual using Government funds for personal travel to be true but took no action.

An implication was also made that the individual's resignation was connected to NSF's investigation of the allegations.

The first allegation is that the individual used Government funds for personal travel. We found that the individual took 61 trips during his 2 years at NSF; of these, 55 were taken after he became Assistant Director on November 14, 1979, and could approve his own travel. The total cost of his travel after becoming Assistant Director was \$24,362. Thirty-nine trips (including all eight listed in the allegation) were made to Boston, Massachusetts. The average cost of each round trip to Boston was approximately \$300. These trips were paid for by funds allocated for staff travel.

NSF travel regulations (NSF Circular No. 40 (Revision No. 9) Section 5a, dated March 26, 1980) require that travel must be essential to effectively discharge NSF responsibilities. We asked NSF whether the trips to Boston that were made to visit his federally funded research group at Harvard University were essential to effectively discharge NSF responsibilities. NSF stated that

"...the travel involved here was indeed essential to effectively discharge NSF responsibilities..." and that "...the Director and Deputy Director unmistakably approved [this travel]..." (see enclosure I). We defer to the administrative determination of the head of an agency that particular outlays are necessary expenses in carrying out the object of an appropriation. (See 50 Comp. Gen. 534; 38 Comp. Gen. 782; 29 Comp. Gen. 419.)

Regarding travel on weekends, NSF travel regulations (Circular No. 40, Section 5c) state that "To the extent possible, travel should be scheduled during normal working hours...." NSF travel vouchers indicate that the individual often traveled and worked on weekends. In its response to our request for its position on the subject of the individual's travel (see enclosure I), NSF states that "...after working a full and hard week at the NSF (where he generally worked longer hours than most), he devoted his weekends to more work." Travel on weekends is not contrary to agency regulations.

NSF's travel regulations (Circular No. 40, Section 7b(1)) require that NSF's Assistant Directors "...must approve all travel for themselves...." For the 55 trips he took as an Assistant Director the individual approved his own travel.

Regarding the allegation that NSF investigated the individual's travel, found it to be improper, and dropped the matter, the Director of NSF's Office of Audit and Oversight told us that he discussed the individual's travel with NSF's top management. He said that since they were aware of the travel and concurred in its approval, he did not conduct a formal investigation or prepare a written report.

Finally, the anonymous letter implies that the individual's resignation from NSF was connected to an investigation of accusations against him. We do not believe this for two reasons. First, NSF states that it accepts full responsibility for the travel. Second, we were informed that the individual planned at the time of his appointment to work for NSF for 2 years and then return to his previous employment; he did this.

#### AGENCY COMMENTS

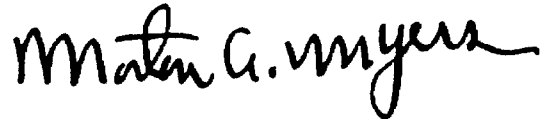
NSF reviewed a draft of this report and agrees with its contents. Its letter is included as enclosure II.

We will be happy to discuss this subject further with you or your staff. As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of

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this report until 30 days from the date of the report. At that time, we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

A handwritten signature in black ink that reads "Morton A. Myers". The signature is written in a cursive style with a large, prominent initial "M".

Morton A. Myers  
Director

Enclosures - 2

NATIONAL SCIENCE FOUNDATION  
WASHINGTON, D.C. 20550OFFICE OF THE  
GENERAL COUNSEL

July 15, 1982

Mr. Morton A. Myers  
Director, Program Analysis  
Division  
General Accounting Office  
441 -G- Street, NW, Room 6915  
Washington, DC 20548

Dear Mr. Myers:

You have inquired about travel expenses incurred by a named former senior official of the National Science Foundation for travel back to the scientific laboratory he had left to serve temporarily at the NSF. Your inquiry concerns the propriety of charging the expenses to NSF travel funds.

Facts

The official in question is a world-renowned physical chemist, one of the two or three world leaders in his specialty, a member of the National Academy of Sciences, and recipient of many international awards. He heads a sizable research group in one of the outstanding university chemistry departments in the nation. When first approached by then NSF Director Richard C. Atkinson and Deputy Director George C. Pimentel about becoming Assistant Director of the NSF for Mathematical and Physical Sciences, he was very reluctant to do so. He was responsible for the work of a very productive scientific laboratory and responsible for supervising the graduate work and doctoral dissertations of about ten Ph.D. candidates who were working in the laboratory under his supervision. Besides being reluctant to leave his home and his own research and teaching, with which he was very happy, he felt he could not abandon his responsibilities for the laboratory, the students, and the research they were doing.

Dr. Atkinson and particularly Dr. Pimentel nonetheless pressed this scientist hard to take the NSF position, believing him uniquely suited to it and urging upon him his duty to science and public service. The scientist reluctantly agreed to come for two years, as long as that would not preclude his returning to the laboratory on his own time, essentially on alternate weekends, to meet with his students and help keep the research going. Dr. Atkinson and Dr. Pimentel assured him, after consulting with me, that return visits to

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the laboratory would not be precluded as long as they would be consistent with his devoting the same full-time effort to his NSF position as to any other full-time job.

On this basis the scientist in question did agree to serve for two years in the NSF position and was appointed to it by the President with the advice and consent of the Senate. He served for those two years with distinction and has since returned to his university and his laboratory.

During his NSF tenure, as had been arranged, the scientist did regularly travel back to the laboratory on some weekends to meet with the graduate students and other young scientists who continued the research during his absence and to work with them on it. He did so at considerable personal sacrifice, for this entailed working seven days a week, forfeiting much of his personal life and leisure, while his wife remained behind at their temporary home in Washington.

Although the scientist received no salary, consultant fees, or other compensation for these many days of work, the NSF did reimburse his travel expenses from NSF travel funds. Savings were sought whenever possible by combining this travel with other travel called for by his position, but often the laboratory work was the sole purpose for the trips. The official concerned was at every stage entirely above-board about this and about the fact that the travel expenses were being paid for by the NSF. Though in his position he approved his own travel for this and other purposes, the nature and number of the trips was well known to both the Director and Deputy Director of the Foundation. It was informally but unmistakably approved by them and discussed with Counsel. Thus, the Foundation approved and accepts full responsibility for this travel and the way in which it was handled.

#### Public interest

The NSF believes that its reimbursement of the travel expenses for these periodic return trips to the scientist-official's laboratory served the public interest well and furthered the Foundation's mission, in two primary ways. For one, it eliminated what otherwise would have been a major barrier to bringing into the service of the NSF and the nation one of our most distinguished scientists. For the other, it significantly contributed to the continuation of the important scientific work being pursued in his laboratory.

Support for such scientific work is, of course, the National Science Foundation's primary reason for being. Indeed, at the time he was approached about taking an NSF position this particular scientist and his laboratory had significant NSF support for the work in molecular beam spectroscopy in which

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he is a leading figure. An unusually large number of young scientists were at work under his direction and guidance, pursuing experiments that employed this technique. The laboratory could not shut down while he was away without a major loss to science and a breach of commitment to the young scientists. The arrangement described allowed the work to go forward on a day-to-day basis under the part-time guidance of another senior chemist in the department, designated as substitute principal investigator, and of a post-doctoral fellow in the laboratory. The principal scientist could periodically return, deal with scientific problems and questions that arose during his absence, and provide inspiration and supervision to the graduate students doing their dissertation work under him. Thus, the Government's small investment for the expenses of his travel ensured that the research and graduate training went forward and that his fertile scientific imagination continued to contribute to direct creation of new science even while he served in a science-management position in Washington.

Without that small investment the NSF and the Nation could not have secured this scientist's service in that position. His case was unique, because he was a Presidential appointee and because, being an exceptionally distinguished scientist, he headed a major laboratory and directed a large number of graduate students. The basic concern, however, is not unique, but common to academic scientists asked to accept positions at the NSF on temporary leave of absence from their home institutions.

Active scientists who interrupt their careers to serve in the Government for a year or two make a special contribution to the NSF. They usually have ties and interests within their scientific fields quite different from predecessors in the same positions, and so over time they contribute to the balance of NSF programs. Because they are new to the NSF and the Government, they question and invent and take nothing for granted. Because they come from among active scientists, they bring a depth of understanding of current trends, techniques, and conditions that long-time science administrators find difficult to maintain. Because they come from among those most directly affected at the receiving end by NSF policies and activities, they prevent the NSF from becoming a distant and indifferent bureaucracy. In short, they do a great deal to keep the NSF fresh, open, and alert, and to maintain the quality of its programs.

As in this case, the more distinguished the scientists the NSF seeks to attract to such temporary service, the more likely it is that they will feel it essential to stay in contact with and at least occasionally visit the laboratories they have headed and the students for whom they are responsible.

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If the public is to have the benefit of outstanding scientists as public servants, such visits must in some way be made possible.

#### Law

In this case visits were made possible by NSF reimbursement of the scientist's travel expenses. You have particularly asked me to comment on the legal propriety of this mechanism. I believe it was proper.

The core statutory responsibility of the National Science Foundation is "to initiate and support basic scientific research and programs to strengthen scientific research potential and science education programs at all levels in the . . . sciences." National Science Foundation Act of 1950, as amended, §3(a)(1), 42 U.S.C. §1862. In each of the years relevant to this matter the Foundation received an appropriation for "research and related activities" identified as "for necessary expenses in carrying out the purposes of the National Science Foundation Act . . ." E.g., Public Law 96-103, 93 Stat. 771, 780 (1979). It was this appropriation that was drawn upon to reimburse the travel expenses at issue here.

As a general proposition the administrative determinations of the head of an agency that particular outlays are "necessary expenses" in carrying out the object of an appropriation will be honored (unless, of course, there is a more specific provision for such expenditures, as here there was not). See 50 Comp. Gen. 534; 38 Comp. Gen. 782; 29 Comp. Gen. 419. In light of the facts and circumstances already described, we believe the general judgment of the NSF's Director and Deputy Director that paying these travel expenses was reasonably necessary or incident to supporting "basic scientific research and programs to strengthen scientific research potential" was more than amply supported. The purposes of the trips were to pursue scientific research and develop the research potential of the young scientists working in the laboratory.

GAO staff have also raised with me the appropriateness of the travel under Federal and NSF travel regulations. I confess that I have been and remain somewhat vague about the precise nature of the legal issue thought to be presented. The only provision of the Federal Travel Regulations we have been able to identify that seems to have any bearing on the matter is the very general principle that

"Traveling expenses which will be reimbursed are confined to those expenses essential to the transacting of official business." FPMR 101-7, §1-1.3.

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This principle is made more concretely applicable to the NSF in the NSF's own travel regulations:

"Travel must be essential to effectively discharge NSF responsibilities." NSF Manual No. 18, §1-1.3.

The NSF determined, in effect, that the travel involved here was indeed "essential to effectively discharge NSF responsibilities." It is not, of course, that all the trips were essential to fulfilling the duties associated with the NSF administrative position filled by the scientist concerned, though several of them served that function as well. It is that in a context such as that presented here the operative terms have a broader scope. "NSF responsibilities" and the "NSF's official business" are, above all, to support just such research as the scientist-official traveled to pursue.

To illustrate my point, let me posit a somewhat different case. Suppose that an NSF employee is expert in laser spectroscopy, but is working at the moment in an administrative position having nothing directly to do with laser spectroscopy or the fields of science in which laser spectroscopy is used. Nonetheless, responsible NSF officials might well determine that the participation of the NSF scientist at a laser spectroscopy conference would help advance the scientific field, maintain his or her scientific currency, and otherwise contribute to support of basic research and research potential. If on this basis they approved reimbursement of the scientist's expenses for travel to the seminar we assume their administrative determination. Notwithstanding the irrelevance of the conference to the administrative duties, a reasonable official might well determine that the expense is reasonably necessary or incident to the "official business" of the NSF.

In just the same way, the travel in question here was thought essential to effectively discharge the NSF's broad responsibilities and business, even though not always tied to the named official's immediate administrative duties.

Of course, in this case the NSF's leadership did not approve this travel only because of the obvious benefit to the science involved or the contribution to the scientific currency of the official in question. They were deeply concerned to remove what otherwise might have been an insuperable barrier to recruiting the person they thought best qualified for one of the most critical positions at the NSF. Thus, to use an expression that has come up in discussions with your staff, "recruitment and retention" did indeed enter into the judgment. In the circumstances of this case, we see nothing illegal or improper in that.

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Indeed, the Comptroller General has recognized that in certain circumstances "recruitment and retention" considerations can appropriately enter into a judgment to approve travel when the travel itself bore far less direct relationship to the "official business" of the agency. In decision B-130082, 55 Comp. Gen. 1291 (1976), he ruled that where an agency's employees are required to perform extended periods of temporary duty away from their home base, the agency may properly determine that the cost of periodic weekend return travel may be considered a necessary travel expense of the agency -- if the agency finds that the cost of the travel "is outweighed by savings in terms of employee efficiency and productivity, and reduced costs of employment and retention of such employees." (Emphasis added.) This was taken to be a logical extension of previous rulings

"in situations involving the availability of appropriations for expenses other than travel (where) our Office has not objected to determinations that expenditures for particular purposes constituted necessary expenses under the appropriation involved on the basis of factors such as . . . assisting the agency in hiring and retaining employees". (Emphasis added.)

Here too the agency has found the cost of periodic weekend return travel outweighed by offsetting savings and benefit to the agency and to its statutory mission. We doubt that a quantitative cost-benefit analysis of the sort suggested by that decision could be meaningfully performed. The principal "hiring and retaining" consideration by which the cost of the travel was offset here was not the dollar cost of recruiting replacements, but the cost of being unable to recruit a senior scientist active in research and with laboratory-leadership responsibilities at all. Nonetheless, the principle involved seems to us just the same.

In critical respects, furthermore, the case here is stronger than the one presented by the reported decision. There the travel in itself served no other purpose than to let the employees return to their homes and families for leisure activities and purely personal pursuits. Here the official involved instead left his home and family at sacrifice of leisure and purely personal pursuits to attend to scientific research and scientific training -- which this agency exists to support and, indeed, in this case had been supporting.

#### Ethics and frequency of travel

Finally, I should like to comment on two aspects of this case that may not have been the focus of your investigations, but that could affect the way the matter is viewed.

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One of these is concern over potential conflicts of interests. No one has suggested that any conflict-of-interests law was violated here. Obviously, however, a scientist who returns to his laboratory at an institution from which he is only on leave of absence has not severed all ties with that institution or with the laboratory. It would be most improper for such an official to influence in any way NSF decisions related to that institution, still less ones related to projects in his own laboratory. For this reason the NSF maintains a rule, drawn from statute, that no such official may participate in any way in such a decision. As far as we are aware, the named scientist scrupulously observed this rule throughout his tenure.

More recently the NSF has proposed unique additional rules for circumstances where such an NSF official has an involvement or interest in a proposal or other application that comes to the NSF. The proposal or application will receive special attention and special handling designed to ensure that actions taken by other employees or reviewers are in no way influenced by relationships with the interested official. See Proposed Rule, §§ 681.23 and 681.47, at 47 Fed. Reg. 200, 202 (1/5/82).

But the conflicts concerns to which the NSF has thus attended would not have been significantly affected one way or the other by the official's visits to the laboratory during his or her NSF tenure. With or without those trips the official would have an interest in the affairs of the home laboratory, which would be dealt with in the same way. Thus, though I would be glad to elaborate further on the manner in which we deal with the conflicts concerns, they have little or no bearing on the legitimacy of the travel.

Your staff has also raised with us the number of trips back to the laboratory made and paid for in this particular case. We can understand the question. We are aware of no similar case involving such a high frequency of return trips to the home laboratory. Yet, it seems to us that the benefit to the science the NSF supports was fully commensurate. One reason, indeed, that the issue of frequency has not come up in this way before may be that very few scientists would have the dedication or energy to do what this man did.

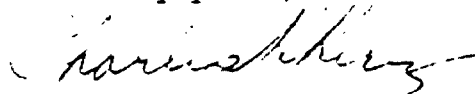
When our prospective colleague first spoke of returning to work in his laboratory every other weekend, I suspect he was privately thought a bit naive about the physical and mental demands of such a practice. Yet he did just what he had said he would. With extraordinary frequency, after working a full and hard week at the NSF (where he generally worked longer hours than most), he devoted his weekend to more work, on the scientific research and graduate training

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in his laboratory. For this he received no compensation but the joy of doing his science and working with his students. He then flew back to resume his NSF schedule and duties without a break. That he should have reached world acclaim as a scientist is in this light not surprising. The Foundation is proud to have attracted him to the Nation's service, pleased that it was able to make possible his continued involvement while at the NSF with the science to which he has made such great contributions, and satisfied that the mechanism it chose to accomplish this was a legitimate one. I hope you will agree.

Sincerely yours,



Charles H. Herz  
General Counsel

NATIONAL SCIENCE FOUNDATION  
WASHINGTON, D.C. 20550



OFFICE OF THE  
DIRECTOR

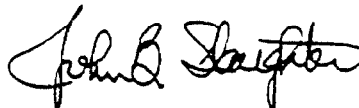
October 29, 1982

Mr. Morton A. Myers  
Director, Program Analysis  
Division  
General Accounting Office  
441 - G Street, N.W., Room 6915  
Washington, D.C. 20548

Dear Mr. Myers:

Thank you for offering us an opportunity to comment on the draft of a proposed GAO report to Senator William Proxmire on "allegations concerning a National Science Foundation employee using government funds for personal travel". We confirm the facts as stated in the letter and agree with the conclusions drawn from them. We have no further comments beyond those contained in the letter from our General Counsel that would be attached with the report as an enclosure. We appreciated the opportunity your staff afforded us to address the issues.

Yours very truly,



John B. Slaughter  
Director