Deborah Johnson's Commentary on "Reviewer Confidentiality vs. Mentor Responsibilities: A Conflict of Obligations"

Commentary On
Reviewer Confidentiality vs. Mentor Responsibilities: A Conflict of Obligations

This is a very interesting case. At first, it appears to be about a conflict of obligations, but as one works through it, the conflict disappears and attention focuses on fundamental questions about ownership and credit for ideas and the obligations of reviewers. As I wrestled with Dr. Ethicos' obligation to her graduate student, Sarah Tonin, it became clear to me that the weight of Dr. Ethicos' decision (to give Sarah information about possible interaction between survivin and GFX) rests almost entirely on her responsibilities as a reviewer. Her obligation to her graduate student cannot entail doing something immoral to assist her. In other words, if it were clear that Dr. Ethicos has an obligation *not* to reveal anything she learns from reviewing a paper, then it would follow that she should not reveal anything to Sarah - whether she is distressed or not.

The problem is that the responsibilities of a reviewer (in this case Dr. Ethicos) with regard to what she learns when reviewing a paper are just not as clear as they should be. The responsibilities of reviewers and the rights of authors have been poorly articulated by the scientific community and continue to be open to a variety of interpretations. While I could only speculate about why the scientific community does not clarify the rights of authors and the responsibilities of reviewers, ideas about these rights and responsibilities seem to vacillate between trying to achieve a fair system of credit and a system of intellectual property rights. It is helpful to think through Dr. Ethicos' situation in terms of credit and property.

In the intellectual property system that prevails in the United States, it is quite clear that no one can own ideas. In the patent system, individuals can invent devices or processes that make use of abstract ideas, laws of nature and mathematical

algorithms, but they cannot own the ideas, laws of nature or algorithms. Similarly, in the copyright system, authors can own the expression of ideas but not the ideas themselves. If we think through the review process in these terms, it seems that the idea that survivin and GFX interact to extend the survival-promoting effects of survivin, is not patentable or copyrightable. It is simply an idea, and no one can own an idea. In this framework, there would be nothing wrong with Dr. Ethicos giving this idea to her student.

What has traditionally prevailed in science is a credit system, which is much more informal and less clear than intellectual property. Here the idea seems to be that individuals should be given credit for the work that they do and for being first to come up with an idea. Credit systems generally do not give authors control of ideas or information, although an author may also have a copyright on text describing the work done and/or ideas expressed in a particular way. In a credit system, the important thing is that an author (the right person) be given credit. Hence, in this case it would seem that Dr. Ethicos could also tell her student about the idea. She should credit it to Dr. Spacely, and when and if Sarah Tonin's research is published, Sarah should cite Dr. Spacely's paper - either as an unpublished manuscript or as a now published article.

Some might argue that this approach is not fair to Dr. Spacely, because Dr. Spacely submitted her/his manuscript to the journal in confidence. It seems, however, that there are and should be limits on the expectations of confidentiality. That is, it is reasonable for an author to expect that reviewers will not go back to their labs and duplicate the research they read about and try to beat the author to publication of an idea. On the other hand, it seems unreasonable to expect that reviewers will not absorb ideas. It is unreasonable to suppose that reviewers will not learn things from reviewing articles, things that will help them in their research. One of the reasons scientists agree to review articles is because they learn from doing reviews; reviewing helps scientists keep up in their area of specialty. I admit that there may be some gray area here, but it seems important to acknowledge that it is appropriate for reviewers to use some ideas they discover when reviewing unpublished manuscripts. Science progresses collectively, and any system that interferes with building on one another's ideas would be counterproductive. With these thoughts in mind, I now turn to the discussion questions at the end of the case.

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Dr. Ethicos should have refused to review the paper. She was probably selected as a reviewer because the paper is in the area of her expertise. If reviewers were to refuse to review papers in their areas of expertise, then papers could only be reviewed by nonexperts.

Should Dr. Ethicos suggest that Sarah try adding GFX? Yes. I don't see any reason not to mention this possibility to Sarah. The problem from the point of science, of course, is that the interaction has not been established. Sarah will probably have to do some work to establish the connection, and this work might overlap with Dr. Spacely's research. However, Sarah is primarily interested in using the interaction for another purpose. Whatever she does with the idea, she should cite Dr. Spacely.

How long would it be necessary to wait before mentioning this experiment? Given what I have already said, I don't think time is important here.

Would your answers to Questions 2 and 3 be different if Sarah came to Dr. Ethicos frustrated, dejected and ready to give up the project? I don't think Sarah's level of distress is relevant here. Either it's okay for Dr. Ethicos to tell her, or it's not okay to tell her. If it's okay for Dr. Ethicos to tell Sarah, then she should tell her before she becomes distressed.

If you were Dr. Ethicos, would your course of action be any different if another professor independently mentioned to you that you had heard a rumor that there might be an interaction between the two proteins? According to my analysis, this variation does not make a difference. However, the fact that it is possible to hear the idea as a rumor further illustrates how ideas (not texts or inventions) move about in science and how they cannot and should not be owned.