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## No. 15: Intellectual Property: Unwanted Inclusion as Co-Author of Paper

Mon, Feb 8th, 2010 12:00:00 am

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### Intellectual Property:

### Unwanted Inclusion as Co-Author of Paper?

**Reader Question:** Because of some of our recent scientific papers, we have achieved a bit of prominence as "up and comers" in our field. At the institute lunch table, I have freely shared ideas and thoughts with a colleague whose lab is down the hall. But they were just collegial, rambling discussions, nothing more. Now, he has published a paper in a major journal and listed me as a co-author. This is without my permission and without there having been any real input or review from me. I do not want my widespread colleagues to feel I have endorsed this chap's research -- let alone contributed to it. He claims he was just being gracious by including our name, but we feel he might be "trying to ride on our coattails". At this point, how can I set the record straight, and also prevent him from doing this again?

### Expert Comments:

As you already realize, your colleague had no right to use your name on his paper without your permission. It was possibly a bad move legally, and was certainly one ethically. As a professional and a scholar, your name is more than just its letters; it communicates to the reader your expertise, knowledge, and reputation.

As such, you may have "publicity rights" in it. These vary from state to state, but typically they involve the right of an individual to control and profit from the commercial use of his or her name or likeness. Under most states' right of publicity laws, the individual is protected from the loss of commercial value that results from the unauthorized use of his or her name for commercial purposes. In some states, only celebrities and public personalities are protected.

Given that you have, most likely, used your name for a variety of papers, presentations, journal articles, books, and other publications, and have applied for and received significant research grants and awards under your name throughout your professional career, your name, by now, communicates your reputation as a scholar and it carries with it some "goodwill". Readers will expect a piece of work bearing your name to be yours, at least in part, and to have a certain quality, standard, or integrity to it.

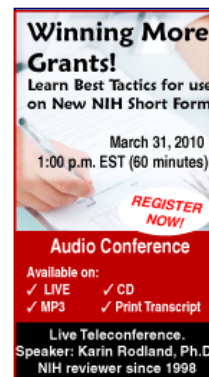
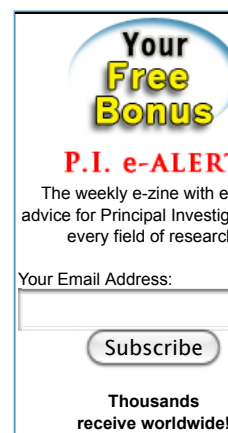
You are also correct in your assessment that the inclusion of your name on a paper or publication communicates at least your endorsement of the content, if not your active participation in the creation or development of it. As such, it would seem that your colleague, even inadvertently, was seeking to use your name for the "commercial purpose" of enhancing his paper for acceptance by the journal as well as the scientific community.

Without knowing more about the specific laws of your state, I cannot say for sure whether he has legally violated your right of publicity. However, even if your state protects the rights of publicity of celebrities and public personalities only, and even if the paper on which your name was used were not deemed to be used for a "commercial purpose," it would seem, nonetheless, that he has infringed the spirit - if not the letter - of your right of publicity.

You mention that your colleague may simply been "trying to be gracious". It is possible that in this, he may have been attempting to comply with what he believed to be your copyrights, and thereby inadvertently made this unauthorized use of your name. In fact, he may have believed that the copyright law required him to attribute to you what he believed to be your proprietary material that you had shared with him over lunch. Although well intentioned, this belief is incorrect. The copyright law does not protect ideas, thoughts or concepts alone, but rather, protects how ideas, thoughts, and concepts (among other things) are expressed in fixed form. In other words, if you had written down your ideas and thoughts, the substantial form of the expression of them as written would have been protected through copyright. If your colleague believed attribution of your "unfixed" ideas and thoughts to you to was required, however, it was not.

You could mention that you might be happy to be mentioned in his paper if such is not citation as an author, but instead is a credit or acknowledgement for ideas that you legitimately provided. However, in that case, you should require that he add a disclaimer indicating that the content and conclusions of the article are his alone.

It is also possible that he has run afoul of institution-specific policies and guidelines in his unauthorized use of your name. Most institutions have a committee to resolve questions and disputes about intellectual property. If your colleague's unauthorized use of your name were to happen again, your next line of defense might be this group. Perhaps even without another incident, the committee could be asked to reaffirm or issue guidelines setting forth proper acknowledgement, crediting, attribution of authorship, and uses of the names of others.



You may also want to seek redress through the journal that published your colleague's paper. Most periodicals readily publish corrections and retractions. Presumably, when your colleague's paper was accepted for publication, he had to sign a release form provided by the journal indicating that he either owns or has legitimately obtained all necessary rights, consents, and releases to the piece. Since the use of your name was not authorized, it is likely that the journal would be happy to publish a correction or retraction indicating that you are not one of the authors of the paper.

In conclusion - fair warning—in today's Google world of digital search and storage "forever", it is possible that your erroneously-attached name will never be completely expunged, and will confuse scholars for decades to come. But you will have done all you can.

*Comments by Suzanne K. Kettler, J.D., Ph.D., Roetzel & Andress, Akron, OH., She concentrates her practice in the area of Intellectual Property.*

*The foregoing has been legal information only and should not be considered legal advice on a specific issue. For legal advice, the reader should contact legal counsel of his or her choice.*

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### **Comments**

#### **Victor**

Not sure how to handle this, but the fact that YOU are a co-author on HIS paper without your explicit consent is a serious violation on his side. It is not just a matter of "gracious"/embarrassing anymore. Nowadays all research institutions and journals have a formal authorship policies in place, and if this event comes to light, your colleague might end up in a serious trouble. As a very minimum, most probably, he had to click "Yes" somewhere certifying that all authors agree with submission, and to fake your signature on a copyright transfer form, which is a fraud.

Jan 29 2010 9:14AM

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#### **Anonymous**

We all know that some journals will review a paper merely based on the names of the authors. Regardless, including someone without their knowledge is unethical as all authors must agree to a submission. It needs to be made clear to this individual that names cannot be included on a paper without the consent of those listed. Perhaps the Department Chair should send out a general reminder of this practice.

Feb 2 2010 6:42AM

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#### **anon**

It is a form of fraud to sign for all authors, without having sent them the manuscript for review. Being that you did not see the manuscript prior to submission, you should be concerned about the quality of work that is going out with your name on it. I would read the paper carefully. If it is a good paper, then I would recommend going to your colleague (that you know well enough to have lunch with) and start by thanking him for the inclusion but then let him know that you are uncomfortable with being an author on a paper that you did not see first as ask that next time he feels so inclined to please show you the manuscript first. If it is a bad paper you can report him to the journal and ask them to retract. As for your coattails, please, get over it. I highly doubt your coattails are as valuable as you seem to think. No ones really are. Authorship with other labs shows that you can "play well with others". While he should have shown you the manuscript, the addition of you as an author only adds to your CV.

Feb 2 2010 6:59AM

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#### **Victor**

To anon: I agree that most coattails have no real value, but still there are quite many people who are willing to ride them. The practice is not as benign as you think: when they include you in their papers, they implicitly and quite often even explicitly expect you to do the same, and with exactly the same reasoning, that it only adds to both our CVs. Oftentimes, though, your CV would be better off without such a "free" addition if the paper is crap, or especially if you disagree with it, or even because you just don't want to publish with that person. Such people (and I personally met several of them) are a very invasive species. They often can navigate their "profession" for decades in the middleman role: hearing something here and something there; not doing actual research/thinking themselves, but just brokering contacts between the labs which have some new compounds or cells and other labs which have access to "hot" experimental techniques; eventually writing up something and adding a bunch of unrelated high-profile co-authors to "thank" and to "oblige" for the future, and also hoping their names will help the paper to be published and to be taken seriously after publication.

Feb 2 2010 11:27AM

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#### **GWSW**

Step 1. Gently, but firmly, inform the colleague that including you as a coauthor without asking first is not compatible with your publication philosophy nor is it an accepted practice endorsed by most peer-reviewed journals Step 2. Insist that your name be removed as a coauthor. Step 3. If #2 occurs, great. If #2 does not occur, send a letter to the Editor of the Journal with a copy to the Colleague's department Chair (and perhaps to the Dean as well) indicating that the manuscript submitted was not reviewed by you prior to submission and that you are unwilling to assume responsibility for the content. that should do it.

Feb 2 2010 11:47AM

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#### **Mick**

GWSW is right, as far as it goes. Your story sounds very plausible in the context of this site. But a couple of years from now, it will look like, at the minimum, the printed text has you claiming credit for work you did not do. If you let the situation go, YOU are now committing scientific fraud since it is your duty to let an editor know that the paper has this misrepresentation. Now that you know there is a problem, it is your problem and it is not just between you and your colleague. The editor may judge that there is no issue and let the publication stand without correction. His judgement, not just yours. Keep the correspondence. Down the road, it would otherwise be difficult to convince a misconduct committee that your role is entirely innocent. After all, who wants to share the credit for a publication? Bottom line is that your colleague deserves whatever fallout occurs and you should get as far from this as you can as soon as you can. So I'd stick with GWSW's idea to be firm, but I would not be so committed to gentle.

*Feb 2 2010 2:46PM*

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**Yehudah Werner**

Something somewhat similar has happened to me and I have learned: 1) Strict rules as to who may be listed as author have been declared by many scientific journals and federations of editors. 2) Actually, unlike the expert's opinion, most editors resist and refuse to publish corrections, critical responses, and retractions, as these show their weakness of editing. (But some journals include all coauthors in communications and check with them). 3) One address for complaints, at least theoretically, is the funding agency (if any) mentioned in the culprit's paper. Some of the major ones, e.g. US Gov & NSF, investigate the ethics & misconducts of their authors. Hoping to have helped, Yehudah L Werner, Hebrew University,

*Feb 5 2010 8:56AM*

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**bittner**

This happened to me, but I caught it before it went to press. I was extremely miffed to say the least...especially since I considered the paper to have some serious problems (that the referees AMAZINGLY missed!). I contacted the journal editor directly and informed my co-author that I wished to have my name removed from the paper. Even though we work in similar fields, I have avoided sharing students, being on proposals, etc...

*Feb 9 2010 6:08AM*

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**AZ**

I would emphasize that (as noted by a couple of previous commenters) your ultimate line of defense is the journal itself. Any well-run journal these days requires a copyright form which certifies the authors' willingness to be listed as such; in fact some require this for acknowledgments as well. If your name was submitted without your consent then a fraud was committed against the journal (ethically, if not legally). In a journal that follows this procedure there is no informality about inclusion of authors. Of course if your relationship with the person involved is basically collegial you should discuss it with him/her (perhaps with mediation by a department chair or other authority figure).

*Feb 9 2010 6:10AM*

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**George**

I also had this happen to me, but I fortunately caught it during the review process. I asked about what happened to a paper a colleague was writing, and he wrote back, "here are the reviews!" I was shocked. I expressed my displeasure, and when I didn't receive an explanation or apology, I wrote to the editor of the journal and asked that my name be removed from the paper. The paper was eventually published without my name, and the senior author that did this to me did not, as far as I can tell, even receive a slap on the wrist. Turns out, the senior author was an associate editor for the journal. Needless to say, the senior author and I are no longer friends, and I will never submit to the journal.

*Feb 9 2010 6:14AM*

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**Tim**

I think you should talk to the person privately and explain that what they did was wrong. By making the primary author's actions known publically you run the risk of destroying his/her career. If this was a one-time event I'd think twice before taking public action.

*Feb 9 2010 6:18AM*

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**DL**

When submitting a paper for publication, the journal requires that ALL authors approve the manuscript. This requirement should have let this person know that you needed to review and approve the manuscript before submission. This demonstrates that the addition of your name was not a benign act of kindness, but rather a benefit on his part. If he truly thought that you would see authorship on his paper as a positive thing, there would be no reason to keep it secret until after the paper was published. As such, I would contact the journal and let them know that you did not approve the manuscript before submission and want your name removed from the paper.

*Feb 9 2010 6:22AM*

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**dbh**

You have to get your name off that paper. The author has committed a series of ethical lapses that should tell you that you want nothing to do with him. He has violated rules about who is an author (completely ignored). He has violated requirements that all authors declare their contributions and accept responsibility for the work (completely ignored). He appears to have forged your author acknowledgment. And he has shown astonishing contempt for the simple ethical principle that you have a right to participate in anything with your name on it. Someone who is prepared to behave like this should not be trusted. You do not want your reputation attached to his work. Finally, you are NOT an author. So you should not be listed as such. If you leave your name on this paper, then you are accepting all of this. It matters not at all whether this is a good or bad paper. Get your name off. How to go about it? First ask the author to join you in writing to the editor to have your name removed. Once the erratum has been published, bring this to the attention of the authorities at your institution. If

he refuses to write the editor, or the editor refuses to issue the erratum, then you must work through your institution to force these actions. Even if you cannot get the journal to take your name off, the fact that you asked protects you if the paper later turns out to be fraudulent not only on the author list, but also in the data.

*Feb 9 2010 6:45AM*

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**Larry**

The Journal of Physical Chemistry now prevents this situation by emailing each author to confirm that they approve the submission. If the author approves he/she needs to do nothing. Perhaps more journals should adopt this approach.

*Feb 9 2010 7:08AM*

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**Imk**

Re: "When submitting a paper for publication, the journal requires that ALL authors approve the manuscript." This is definitely not the case for all or even most journals. I recently submitted a manuscript after distributing it to my 3 co-authors and asking for feedback and approval. Two approved, but one author, who provided some funding for the project but was otherwise uninvolved, simply never replied to numerous contacts. After the paper was accepted, I told the editor that I did not have confirmation of approval of this author. He published the article with that author's name anyway. I also published a paper with a deserving co-author who died unexpectedly before it was submitted. No approval obviously, but no problem putting the name on the paper.

*Feb 9 2010 7:18AM*

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**echarles**

Agreeing with many above: I would go for an "escalation of force" approach. If you believe him that it was a well intentioned move, and the paper is not embarrassing, I would simply tell him that in the future you do not want your name on any manuscript you have not seen or approved, but you would be happy to find a place in the acknowledgments section. There is nothing horrible about having your name on a paper you only partially agree with, if asked you can just pass it off as a combination of your and his ideas... which it is. If the paper is embarrassing, you need to get the journal to issue a retraction. If you do not believe he was well intentioned, you need to report it as an ethical violation to whatever board (local or professional) would be relevant. If it is embarrassing and your name was on it for unethical reasons, step be more aggressive. In any case, if you like the guy and believe he was not acting maliciously, don't do anything that will tarnish his professional reputation to badly, but still make sure it is clear to him that he made a serious professional mistake - i.e. be a mentor, not the police.

*Feb 9 2010 7:33AM*

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**badcafe**

The opposite happens too, and that's sometimes worse. Someone gives you a rambling opinion with no real content, and expects you to include him/her as co-author. These are 'gray areas'... sometimes people include the others as co-authors to avoid fighting over murky issues with no clear resolution. The flip side is this 'graciousness' factor, where some people bend over to include others if they are contributing even through discussions, so you cannot blame them for this. The best option is to usually do everything openly above the table, ie, offer an authorship rather than assuming it. In one case where someone just sat in discussions and expected coauthorship, I sent an email asking him to list his concrete contributions to the paper if he wanted to be a coauthor and he backed out... so again, these are very murky situations where the only resolution is on a case by case basis.

*Feb 9 2010 7:43AM*

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**badcafe**

I've had much worse happen... a post-doc I know had a habit of sending papers off for publication without letting me know, with data from our group on them (a clear case of plagiarism!). I got him to retract the paper and warned him against future such events, but he feigned ignorance and I let him off the hook. When I sensed later a similar tendency, I found a way to let him go. He joined another group, and a few weeks later his supervisor called me to inform that he had submitted a paper as single author with data that did not seem to be his. I confronted him and found out that he had pulled this stunt again (this time with my students' results and some of my unpublished work that he was privy to). I approached the legal division in our department, but they scared me saying that if my complaints lead to his dismissal he can sue me for something called "libel by tortuous interference with contractual obligations" (!) and that it wasn't worth my time to fight that even if I would go on to win it. So I had to (unhappily) confront him alone and ask him to retract the paper, without being able to spell out everything to his supervisor (who seems to have gotten the hint, but has no idea how deep it runs)... so there are clear cases of willful violation of rights... but the example you mention could be one of bad things done with good intention.

*Feb 9 2010 8:06AM*

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**Morris**

I am sorry for the difficult situation this person has put you in. He needs to know your thoughts immediately so this does not happen again. It is most likely that they did this so that you would not be offended when they published a paper using some of your ideas. They probably thought this was appropriate and this thought may be based on how their previous mentors dealt with authorship. Based on these previous posts it is sad that many scientists have such a negative view of their fellow colleagues. It is certainly difficult to navigate the intricate boundaries of many times awkward social encounters. This person most likely respects you if indeed you feel you are good enough to support others on your coattails, will feel rather miserable from your reprimand, and will never do this again. There is no worry about frauding due to the fact these were your ideas, and authorship is a concept which is not easy to define. Whether embarrassed or proud, it is difficult to pay the rent without publications. Unfortunately we have to play this game that some understand better than others. Let's try to remember why we went into research. Science is about the progression and dissemination of ideas for the betterment of mankind, not about individual glory.

*Feb 9 2010 8:42AM*

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**Raj**

The deed is now done and so basically one needs to address whether correcting the record only adds to the harm already done. While it's easy to follow the moral high road, there are careers, reputations, collegiality etc. to also consider here. Hence, I would suggest reading the paper extremely carefully and concluding whether you're comfortable with the contents. As long as you have no reasonable doubt (i.e., to the extent capable) about the integrity of the benchwork, I would simply end the matter with a brief chat with the culprit to inform him/ her politely that next time you'd like to be involved in the writing of a paper that bears your name. It's important to feel comfortable that there is little chance that the work is not reliable and that can be ascertained in part by looking at the quality of publications from this individual from the past. If there is any hesitation on your part in any of these matters, I suggest requesting the alleged culprit to write to the editor and not do it yourself unless absolutely necessary. This way you do the least harm while rectifying the situation, i.e. you let the alleged culprit appear to be in control of rectifying a problem created perhaps by mistake on their part rather than an intended act...which is a totally different and much bigger crime.

*Feb 9 2010 8:52AM*

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**Bethesda**

I suggest you write up these fraudsters and send the account to the Office of Research Integrity at NIH (if that institution funded the grant). They may be willing to carry the ball for you. and pursue the culprit.

*Feb 9 2010 8:59AM*

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**Robin**

Don't let this pass. And don't put off correcting it fully. (I can't believe some of the posters here advise that it's too late to change the error. It isn't.) Keep it polite but firm. To what GWSW advised, I would add: Inform your colleague that you will need to raise the matter to a higher level if he doesn't take care of it fully, and that it's therefore much better for him if he rectifies the error himself. Don't assume the worst from your colleague. Give him the benefit of the doubt, but make sure the error is 100% fixed. The journal editor WILL correct the error. Again, I can't believe some folks think it's too late. Journals are aware of their legal obligations and publish retractions when needed. Make sure they do. Make sure, too, that any online listings are updated to remove your name. That includes all journal references (TOC, abstract lists, etc.) and your colleague's pubs page on his website. Good luck.

*Feb 9 2010 9:21AM*

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**Anonymous**

Most journals ask the author to sign a statement saying that all co-authors have contributed to the work. I think this irons out some of the concerns and gives the journals (as well as you the wronged party) grounds to say that fraud/misuse was committed.

*Feb 9 2010 10:20AM*

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**Anonymous**

If this is your colleague with whom you have had social and technical discussions, why not simply talk to the person and let them know that you feel uncomfortable with lending your name to a paper that you haven't contributed towards? Most academics are smart and reasonable people and will likely respond to clear thinking and reason.

*Feb 9 2010 11:01AM*

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**susanna.priest@unlv.edu**

The response deals with the legal issues but not the practical, social ones. The person who added a co-author without their permission was clearly wrong. But asking that person to withdraw or modify a paper on this account casts what was probably an innocent misunderstanding of protocol in a much more negative light, and could in fact cast the person who was wronged in a negative light as well. No one wants to hire, or promote, a trouble-maker! This is an academic reality, not a legalistic ideal about who is "right." I'd say, let it go, unless the paper contains truly egregious or otherwise embarrassing errors. Certainly don't sue - I suspect it will be unsuccessful and there is little tangible value directly associated with co-authorship of an academic paper!

*Feb 9 2010 12:16PM*

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**+whoknows**

This discussion brings up a common situation for some. That is the inability to locate authors to obtain their approval for credit on a paper. More than once I have tried to locate former students (either undergraduates or M.S. students in particular) who are extraordinarily difficult or impossible to find. With the choice being to give them authorship without permission or to deny their due credit, I have opted for the former. While this may seem a different problem altogether, I think it brings up a difficult ethical situation. What do you all think?

*Feb 10 2010 5:43AM*

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**Robin**

I think the advice from many posters to just let this pass, while well intentioned, is misguided. If you let this go, perhaps to avoid embarrassing your colleague, you will be tacitly agreeing to support a deception. This may seem like the easy thing to do, and the least painful for your colleague, but that may not turn out to be the case in the long run. What will you do if you receive a courtesy call two years from now from a colleague at a different lab because results in this paper are not repeatable? Will you continue the deception to "help" your colleague? Or will you betray your colleague and make yourself look foolish as well by explaining what actually transpired? If others ask about your collaboration on this paper, how will you reply? You can best help your colleague by insisting that he fully correct the error now. If he does that, and it never has to be elevated to a higher level, the damage will at least be contained, and the situation will be over -- no skeletons in closets.

Feb 10 2010 9:31AM

**@whoknows**

Very simple. Just tell your students \*while\* they are students to keep you up to date on their contact information if they wish to have the chance to get publication credits later on. If they don't, then they've missed the chance to be a co-author. They need to take responsibility for their own life and career. It's not your place to make acceptance decisions for them. I'd be appalled if I were to discover that someone, including a more senior researcher, had included me as a co-author without my consent.

Feb 10 2010 12:36PM

**oldtechie**

Every NIH-related institution has, at a minimum, course in research ethics. I am quite amazed at how many of the comments above are willing to excuse action that violates the guidelines we are sworn to uphold. This matter should be handled by the institutional officials. The offender here should be given a formal notice that he has violated accepted ethical guidelines. This serves as a warning for any repeat action (no longer mitigated by pleas of ignorance). As for the paper itself, a journal also has legal responsibility. If an author requests that his name be removed (if this is the letter writer's choice), the journal is obligated to publish an erratum. For goodness sakes, folks, if we in science accept such ethical sloppiness, woe be society.

Feb 12 2010 12:41PM

**David K.**

Dear "Old Techie", EVERY institution has course in ethics? What a joke. I defy you to find most, or any realistic content if you do.

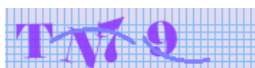
Feb 23 2010 5:03PM

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