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# Policies and Higher Education

Jessica M. Swartz

Associate General Counsel

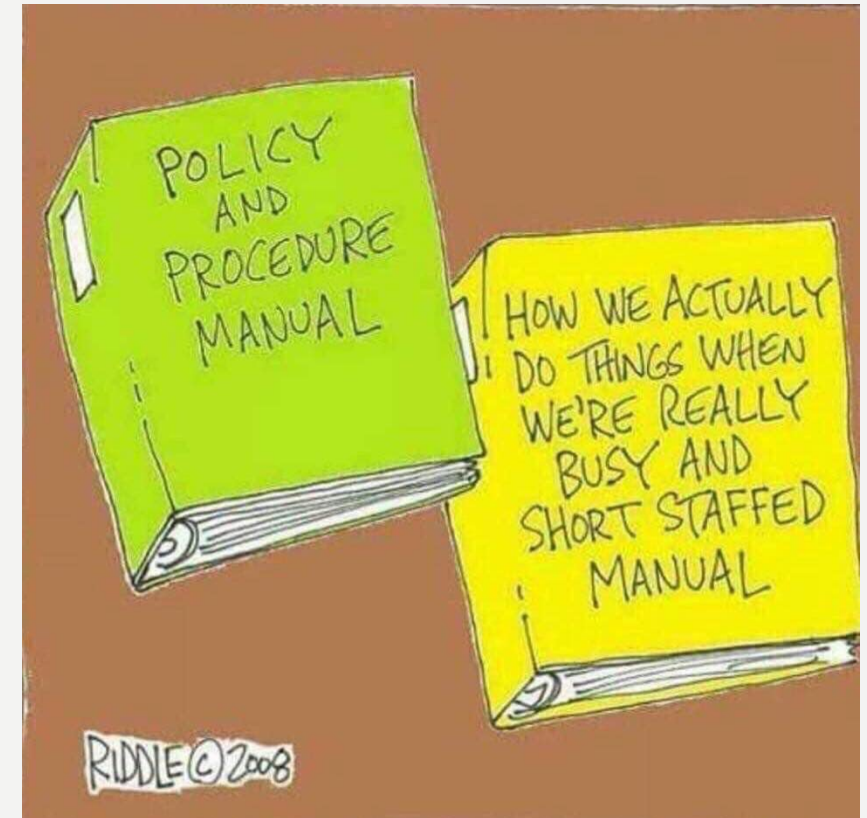
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# Does having clear, enforceable policies really matter?

- “When an employer has a written policy and then relies on a rule for which there is no written documentation, that deviation may support an inference of pretext [for discrimination.]” *CLS v. Hastings*, 561 U.S. 661, 737-38 (2010) (Alito, dissent)
- “An employer who only selectively enforces rules or policies may not rely on the principle that a breach of a rule is a breach of the [employment] contract, there being in practice no real rule.” *Ottawa County v. Police Officers Ass’n of MI*, WL 1890437 (2009)
- “Employees [can] legitimately expect that policies in force at any given time will be uniformly applied to all.” *Toussaint v. BCBSMI*, 408 Mich. 579 (1980)

# W Why Policies?

- Equal Protection & Application
- Accountability
- Decentralized purchasing and signature authority
- Decentralized discipline systems
- Transparency for internal and external stakeholders



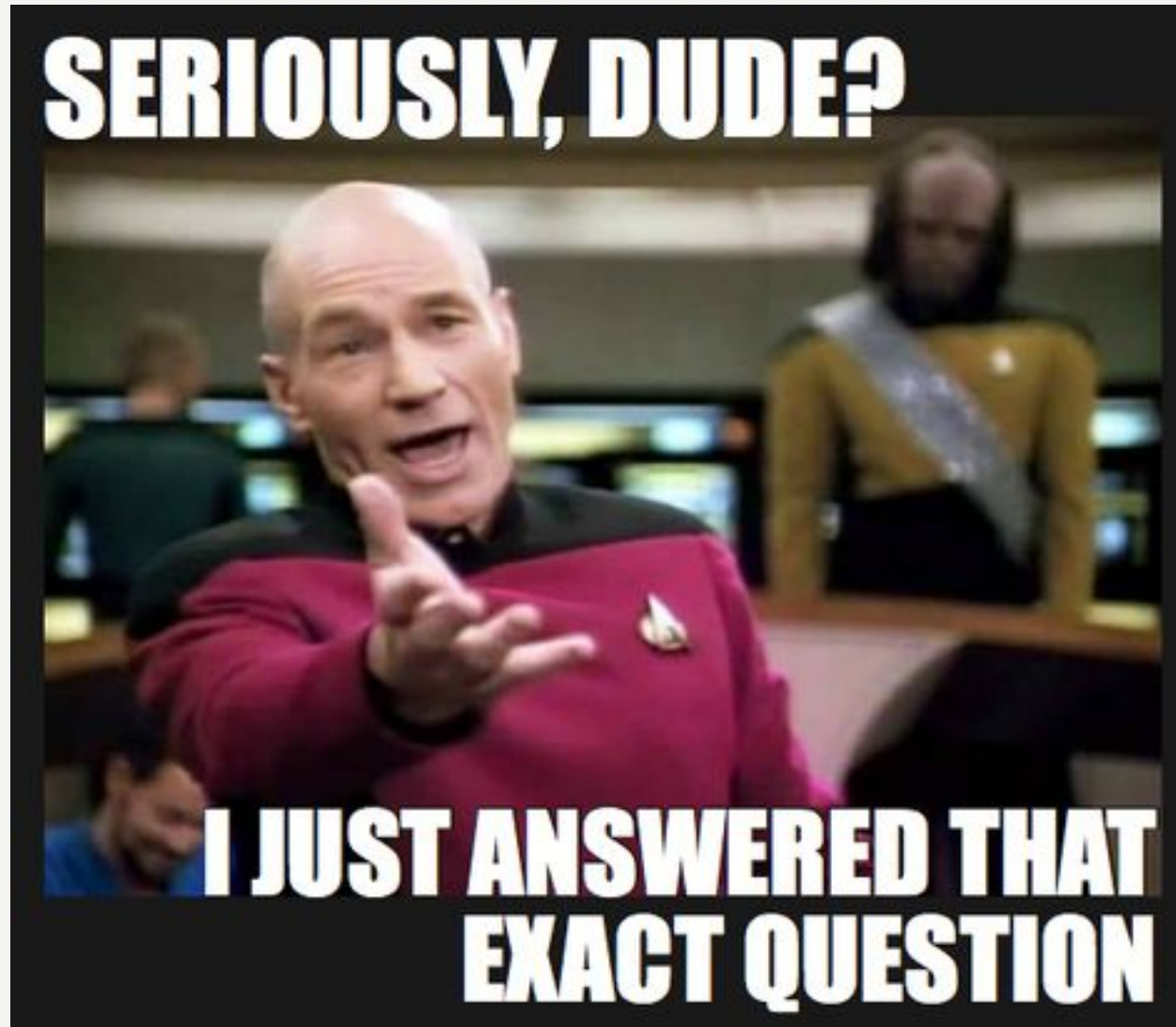


# Policy Writing 101: The Questions

- What is your goal/what problem are you trying to solve?
  - Proactive or responsive?
- Who are the stakeholders? Who is the audience?
- Do you already have something existing that can be revised?
- Are you applying a law or regulation?

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## Why Policies?



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## Policy Writing 101: DO

- State how you apply or interpret laws, regulations, and other authority.
- Have someone who is unfamiliar with the subject matter review the policy for readability.
- Include language stating that violation of policy could lead to disciplinary action.
- Consult with OGC (more later).



## Policy Writing 101: DO – Cont'd

- Use a Template (more later).
- Keep definitions to no more than 1-2 sentences.
- Make broad statements – *what, why*; extremely detailed information should be a procedure or rule – *how, where*.
- Include FAQs.
- K.I.S.S.



# Policy Writing 101: DON'T

- Include language of statutes/regulations verbatim.
- Make a policy overly technical (if possible)
- Include procedures, guidelines, or rules
- Assume that a previously-approved policy will not require substantive review



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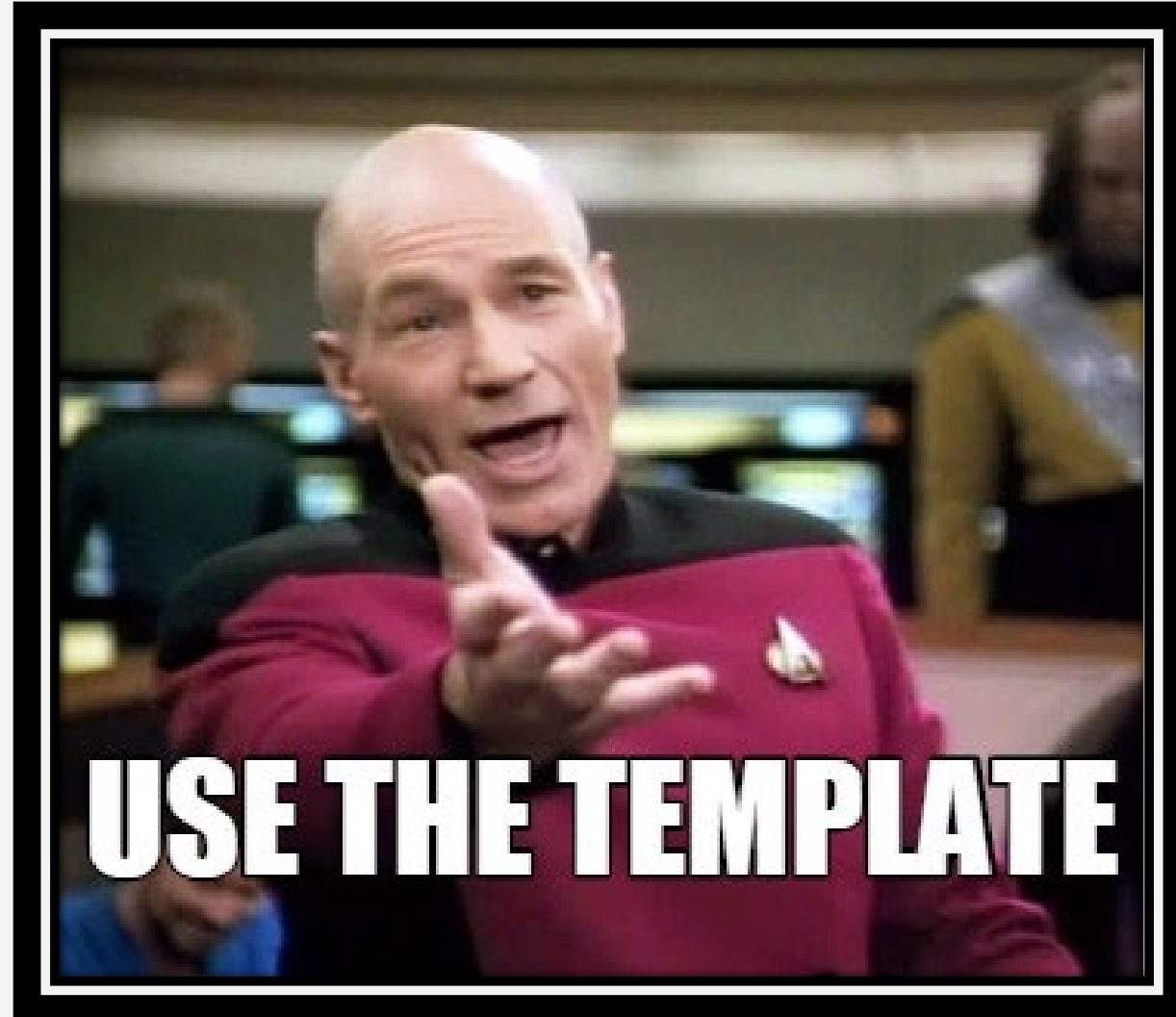
## Policy Writing 101: DON'T – Cont'd

- Forget spell/grammar check!!!
- Only write for an audience of people who already know how this works.
- Include policy substance in definitions.

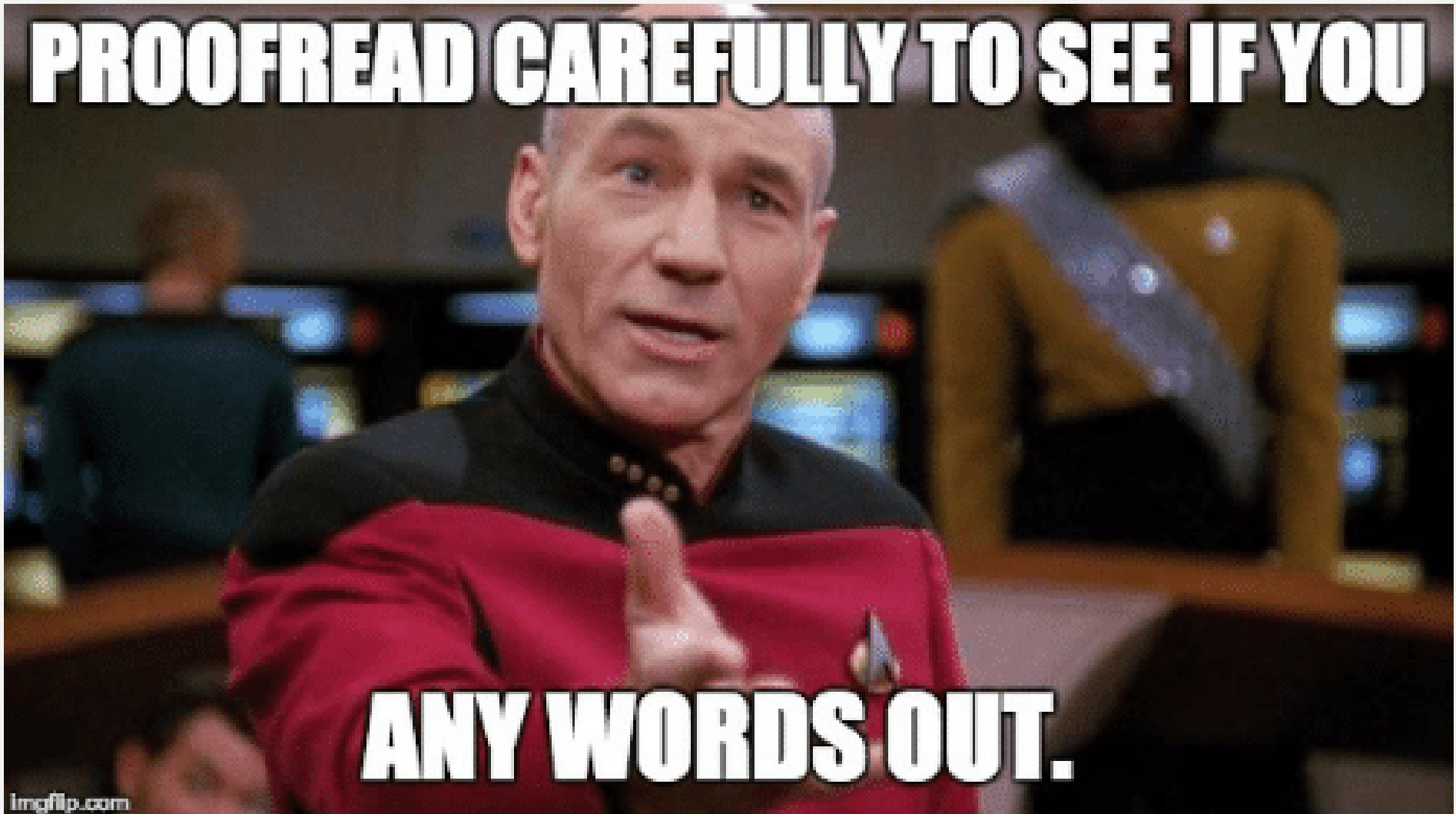


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## Policy Template



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## Do I *really* need to talk to the lawyers?

- You can establish contractual rights by the words you use in policies.
- They write for a living – let them help you.
- Legal protection for you.





## Process Success Stories

- Bullying policy – identified how students, faculty, staff were being treated differently; aligned/addressed under new policy
- Energy Star “policy”
- Academic Misconduct/Research Misconduct – two different originating committees; two different oversight offices; two different processes for students
- Athletics proactively drug-testing athletes vs. student conduct treatment of students caught with drugs.

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## WHY DO I CARE?

“[An employer that chooses to establish personnel policies and practices and makes them known to its employees] secures an orderly, cooperative and loyal work force, and the employee [has] the peace of mind associated with job security and the conviction that [they] will be treated fairly.” - *Toussaint v. BCBSMI*, 408 Mich. 579 (1980)



# COMPLIANCE AND POLICIES IN RESEARCH

Steven J. Weber, Ph.D.  
Research Contracts Administration  
Office of Research and Innovation  
Western Michigan University

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## WHY RESEARCH POLICIES?

Because sometimes we have to...



2019 University of Kansas Professor...

One count of wire fraud and three counts of program fraud. If convicted, he faces up to 20 years imprisonment and a maximum fine of \$250,000 on the wire fraud count, and up to 10 years imprisonment and a maximum fine of \$250,000 on each of the counts of program fraud.

Rock Chalk Jayhawk KU!







# COMPLIANCE IN THE OFFICE OF RESEARCH AND INNOVATION (ORI)

## Four General Areas of Compliance within ORI

- Research Administration
- Grants and Contracts (financial administration)
- Technology and Innovation Advancement
- Research Compliance



# ORI RESEARCH ADMINISTRATION

## Research Administration

- Federal and State regulatory drivers
  - Debarment and Suspension
  - Public Health Service (CFR 42 Part 50)
    - Financial conflict of interest & commitment [FCOI](#)
  - National Science Foundation
    - Important Notice No. 144 re: sexual harassment  
[NSF Harassment Statement](#)
  - Office of Science & Technology
    - Research Misconduct [Federal Research Misconduct Policy](#)



# ORI RESEARCH ADMINISTRATION

## Research Administration (cont'd)

- Internal drivers
  - Board of Trustees
    - Signature Authority on Grants and Contracts
  - Best practice, Faculty Senate – shared governance
    - Eligibility to Serve as PIs on Sponsored Projects
    - Recovery of F&A Cost
    - WRAP – Return of F&A to PIs/Dept/College
    - Institutional Base Salary



# ORI RESEARCH ADMINISTRATION

## Research Administration (cont'd)

- **Applicable policies**

Signature Authority on Grants and Contracts Policy

Eligibility to Serve as Principle Investigators on Sponsored Projects Policy

Debarment and Suspension Policy

Research Conflict of Interest Policy

Research Misconduct Policy

Corresponding Procedures

<https://wmich.edu/research/policies>

- **Bad Actor(s) – There are numerous examples**

[Office Research Integrity Research Misconduct Cases](#)

- **Research misconduct, when proven, leads to disbarment and suspension**

- Typically falsification/fabrication of data.

- “Publish or Perish”



# ORI GRANTS AND CONTRACTS

## Grants and Contracts

- Federal and State regulatory drivers
  - Office of Management & Budget
    - “Uniform Guidance” [2 CFR 200](#)
    - ~521 sections, 12 appendices, 145 pages
  - Funding agency audits
  - Funding agency terms & conditions
- Internal drivers
  - GAAP and best practices
  - Faculty Senate – shared governance



# ORI GRANTS AND CONTRACTS

## Grants and Contracts (cont'd)

- **Applicable policies (trust your SMEs!)**

- Recovery of Facilities and Administrative (F&A) Costs Policy

- Institutional Base Salary Policy

- Cost Transfer Policy

- Federal Costing Principles Policy

- FFATA Reporting Policy

- Fly America Act Policy

- Participant Support Costs Policy

- Project Closeout Policy

- Prior Approval Policy

- Excess Compensation in Sponsored Program Policy

- Program Income in Sponsored Projects Policy

- Subrecipient Monitoring Policy

- Unallowable Cost Policy

- Summer Salary Policy

- Time and Effort Certification Policy

Corresponding Procedures

<https://wmich.edu/research/policies>



# ORI GRANTS AND CONTRACTS

## Grants and Contracts (cont'd)

- **Bad actor - Columbia University**
  - DOJ announces \$9.5 Million settlement with Columbia University for improperly seeking and receiving excessive cost recoveries in connection with research grants funded by NIH.
  - July 1, 2003, through June 30, 2015, Columbia impermissibly applied its "on-campus" indirect cost rate instead of the much lower "off-campus" indirect cost rate when seeking federal reimbursement for 423 NIH grants where the research was primarily performed at off-campus facilities owned and operated by the State of NY and New York City.
  - Columbia failed to disclose to NIH that it did not own or operate these facilities and did not pay for use of the space.



# ORI TECHNOLOGY AND INNOVATION ADVANCEMENT

## Technology and Innovation Advancement

- Federal and State regulatory drivers
  - US Patent and Trademark Office [USPTO](#)
    - Intellectual property law
- Internal drivers
  - Licensing, Faculty Senate – shared governance
- Applicable policies
  - Intellectual Property Policy
    - Intellectual property and scholarly works
    - Ownership, commercialization, and distribution of royalties, license agreements, equity interests, sale of intellectual property, and similar income generating intellectual property agreements





# ORI TECHNOLOGY AND INNOVATION ADVANCEMENT

## Technology and Innovation Advancement (cont'd)

- **Bad Actor(s) – Yale and Professor John Fenn**
- Yale University declined to pursue a patent on Electrospray Ionization used in Mass Spectrometry invented and disclosed by Professor John Fenn. Yale waived IP rights back to Fenn (1983).
- Fenn pursued a patent and license, and was awarded the Nobel Prize for Chemistry for his invention (2002). A dispute arose over what Fenn did or did not disclose to Yale.
- Over three decades, Yale prevailed in multiple civil charges waged against Fenn. Fenn, up until his death at age 93 (2010), continued to appeal the rulings that denied his IP rights to his Nobel Laureate invention.



# ORI RESEARCH COMPLIANCE

## Research Compliance

- Federal and State regulatory drivers
  - Subject related research
    - Health & Human Service (human)
      - “Common Rule” [45 CFR 46](#)
    - US Dept. of Agriculture (animal)
      - “Animal Welfare Act” [The Blue Book](#)
  - Dept. of Commerce - Bureau of Industry and Security
    - Export control [Export Control Regulations](#)
  - Dept. of Defense, Dept. Education, FBI, National Intelligence
    - Foreign influence [Foreign Influence 32 CFR 147.4](#)
  - OSHA
    - Biosafety, Radioactive materials, biohazards
  - Agency audits



# ORI RESEARCH COMPLIANCE

## Research Compliance (cont'd)

- Internal drivers
  - Best practice
  - Committees
    - Institutional Review Board (IRB)
    - Institutional Animal Care and use Committee (IACUC)



# ORI RESEARCH COMPLIANCE

## Research Compliance (cont'd)

- **Applicable policies**

Compliance—Agency Training

Agency-Required Training Policy

Compliance—Animal Safety

Animal Use in Research, Teaching and Testing Policy

Compliance—Biosafety and Radiation Safety

Dual Use of Research Concern Policy

Microbiological Safety and Security Policy

Recombinant or Synthetic DNA Policy

Radiation Safety Policy

Compliance—Export Control

Research Export Control Policy

WMU Policy for Inviting International Visitors to WMU

Compliance—Human Subjects in Research

Human Subjects Research Protection and the Institutional Review Board Policy

Research subject consent/assent document approval stamp policy

Registering with ClinicalTrials.gov Policy

Corresponding Procedures

<https://wmich.edu/research/policies>



# ORI RESEARCH COMPLIANCE

## Research Compliance (cont'd)

- Bad Actor – Van Andel Research Institute (VARI)
  - “Department Of Justice Reaches \$5.5 Million Settlement With VARI To Resolve Allegations Of Undisclosed International Grants To Two Researchers”
  - Violated the False Claims Act by submitting federal grant applications and progress reports to NIH in which VARI failed to disclose other international grants that funded two VARI researchers.
  - VARI learned of the international grants yet instead of confirming and disclosing the information to the NIH, VARI removed references to those grants from the proposed funding attributions in its press release. "VARI made certain factual representations to NIH with deliberate ignorance or reckless disregard for the truth"

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## ANY QUESTIONS OR COMMENTS?

