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September 1, 2023

Michael Lauer, MD
Deputy Director of Extramural Research
National Institutes of Health
Office of the Director
Building 1, Room 144
1 Center Drive
Bethesda, MD 20892
michael.lauer@nih.gov

RE: Your article in Extramural Nexus

Dear Dr. Lauer,

I am writing as a citizen and as founding partner of Allen Harris PLLC, a law firm that represents faculty and students throughout the United States in legal disputes with institutions of higher education. Our firm represents and has represented numerous faculty members with extensive portfolios of sponsored research programs as Principal Investigators with the NIH, NSF, Office of Naval Research, and many other federal agencies (and other institutions). It is not unusual for clients to engage our firm who have, in aggregate, seven and sometimes eight figures of funding in sponsored research from various government agencies or private foundations.

Therefore, I read with great interest your article in Extramural Nexus, “Case Study in Research Integrity – Banned From Supervising, Can’t Go in Lab, but No Impact on NIH Funded Research?” July 17, 2023 (available at <https://nexus.od.nih.gov/all/2023/07/17/case-study-in-research-integrity-banned-from-supervising-cant-go-in-lab-but-no-impact-on-nih-funded-research/>).

One of the problems you identify in your article that has afflicted public and private institutions of higher education and research throughout the United States is, I fear, much more prevalent than you may believe. Namely, this is interference in the direction of essential sponsored research by HR bureaucrats claiming to “investigate,” discipline, and punish academic professionals responsible as PIs on federal grants.

Your article identifies experiences, no doubt available to you through the records of the NIH, in which faculty had committed sexual discrimination that manifested itself in demeaning work hours and other unprofessional, if not always strictly illegal, work practices in laboratories whose work is at least partially funded through the NIH.

As a civil rights attorney, I am of course deeply concerned that illegal discrimination might be tolerated in any federally funded programs, and our firm has represented clients who are the victims of such discrimination. That real discrimination in federally funded programs should not be tolerated is, I would hope, not controversial.

However, I am writing to call your attention to a trend we are noticing throughout the academic research sector. Human Resources departments, by whatever name, be they housed within offices of Diversity, Equity, and Inclusion, the Title IX Office, or other offices that combine various administrative oversight functions, are intervening in sponsored research programs to enforce standards of conduct that bear no relationship to any potential legal liability for actual discrimination.

Let me illustrate with some few examples that are drawn from our client base. In all cases, I will keep the names of the institutions and individuals involved confidential. However, in all examples, I am talking about faculty members, typically full professors or at the very least tenured faculty, who are PIs on multiple grants with major private or public sponsors (albeit not necessarily exclusively from your agency).

All of them were subjected to investigation and many were subjected to interim sanctions such as suspension with pay, separation from their research laboratories and duties as PIs, and proscriptions on speaking with their coworkers, postdocs, students, and staff. In some cases, they were also banned from campus, forced to surrender their university-supplied computer equipment, and even had their email suspended. Some were even fired. All suffered long, wearisome investigations. Usually these were conducted by human resources staffers who are all too often woefully underqualified, even at the most prestigious universities. In other cases, they were investigated by attorneys, either hired from outside the universities or on staff, but in almost no case by people with any knowledge of scientific or technological research and development.

It is important to note the impact this has not only on the sponsored research and on the scientist/PI targeted by the so-called “investigations,” but also on the rising scientists who work as PhD students, postdocs, and junior professors under the supervision of the PI. This is the case even when PIs are found “not responsible” because the investigations are so burdensome and interim measures imposed on the PIs so restrictive, that the damage is done regardless of outcome. When the essential research conducted in the laboratory of a PI is obstructed, the progress of the entire laboratory team can be stopped in its tracks. This also means that the careers of aspiring, up-and-coming scientists can be severely impaired, even derailed.

You may ask, what were their infractions? Even if the accusations against them were considered true, I think you would agree that the following supposed transgressions cannot, even by the wildest stretches of the HR bureaucrats’ imagination, rise to the level of serious civil rights violations that could trigger any kind of legal liability. These include the following:

- Having a movie poster signed by a nationally recognized movie director in the office, which counted as “sexual harassment”;

- Having one's mother, an established scientist in her own right, visit a university office and assist on sponsored research as a volunteer, without compensation, for approximately a total of 10 hours over several weeks, which counted as "unprofessional behavior";
- Asking individual students who had disclosed their national origin from a specific foreign country whether they spoke the language of that country, which counted as "discrimination";
- Asking a student to dog-sit for a weekend *with* compensation *above* market rates for such work (after which the student sent a thank you note), which counted as "exploitation";
- Telling the aforementioned dog-sitting student (for a weekend when the faculty member was away at a conference) that she could use the faculty member's own bed if the student so chose, rather than sleep on a couch, which counted as "sexual harassment"— this despite the fact that all individuals involved were straight females.
- Hosting a lab party for graduate students and postdocs, at which alcohol was served, where alcohol is not prohibited on campus for students over the age of 21, which counted as "unprofessional behavior" and, potentially, "grooming."
- Instructing a failing postdoc that the individual did not meet standards and expectations of the laboratory, which counted as "discrimination";
- Reorganizing the distribution of resources within a major medical department and its faculty, including indirect costs, which counted as "bullying" and "retaliation" against those who demanded more resources despite no documented "protected activity" by the accusers, protected activity which supposedly prompted the "retaliation";
- Insisting that graduate students return to in-person work in the laboratory rather than continue, long past the end of widespread COVID restrictions, to work remotely, which counted as "retaliation"— and like the instance of "retaliation" mentioned above, retaliation for what was never identified.

These are but a few examples. You may reasonably believe that I am leaving out certain context which would raise suspicion about otherwise innocuous activity. But I can assure you that the most relevant context is bureaucratic incompetence and an almost complete void of common sense, combined always and everywhere with the will to investigate, discipline, and punish.

Please allow me to illustrate the impact on one NIH-sponsored program at a large state university. For six weeks, our client's email was locked down and the university seized the client's computer. For an additional eight weeks after that, the client was still prohibited from talking to staff, post-docs, and students in the client's lab. The client was prevented from completing deliverables that were promised on NIH programs and could not reliably communicate with contacts at the NIH because of the lockdown of the client's email. Despite repeated requests, our client was not informed of the nature of the accusations, the identity of the accuser, what policy or rule the client supposedly violated, if any, or what process was being followed by the HR department and its so-called "investigation." Members of our client's research team were also subjected to hypervigilance and the suspicion of their peers. The HR bureaucrats undertaking the so-called "investigation" had no awareness or knowledge of the client's obligations to the

NIH, and the client's department chair suggested substituting other university personnel as PI on sponsored projects, without, to our knowledge, informing or seeking permission from the NIH.

Unlike the example given in your article, we frequently have clients (and the example above was another such client) who have committed no infractions of anyone's civil rights. Instead they are rung up on diaphanous "professional conduct codes," "faculty codes of conduct," or other ill-defined and often hopelessly vague standards, which seek to hold academic scientists to standards which the law does not recognize as infringements of civil rights or employment rights—to the extent that written codes or standards are referenced at all in these intrusive and harassing investigations. Frequently, the guiding principle appears to be captured by the motto: "bring me the man and I will find you the crime."

Also alarming is the lack of due process. This includes 1) refusal to inform the accused of the charges or specific allegations against them; 2) failure to inform the accused of the identity of their accusers; 3) failure to inform the accused of what policies or rules they are supposed to have violated; 4) failure to identify what procedures are being applied; 5) prohibitions on contacting witnesses or access to exculpatory evidence; 6) withholding evidence; and 7) the prohibition on PIs from communicating directly with coworkers and subordinates to deliver sponsored research.

Given that universities will act with impunity, often ignoring their own policies and procedures, to pursue any faculty member upon the least accusation based on vague notions of "misconduct," there has been a noticeable increase in bad-faith and even fabricated accusations. Any disgruntled colleague, undergraduate, PhD student, or postdoc now realizes that they can tie up a laboratory for months by triggering an investigation on the basis of the most frivolous accusations. In several matters we have handled (though they did not involve sponsored research), professors who recorded their classes were able to demonstrate that accusations of "harassment" of various kinds had simply been made up by the accusers.

Given that universities benefit from sponsored research in the form of indirect costs which are directly siphoned from grants to pay for ordinary overhead and, increasingly, for pronounced administrative bloat, when universities interfere with the work of PIs in this way, this should and must raise concerns within agencies such as the NIH (and others) that you are, to put it colloquially, not getting what you paid for.

In fact, in some few cases I have felt that the interference with government-sponsored research is so extreme that it might well constitute a claim under the False Claims Act, 31 U.S.C. §§ 3729 – 3733, which imposes liability for knowingly submitting false claims for payment to the government.

I write to bring this to your attention not only because I am committed to my own clients' well-being and legal rights, but also because, as a citizen and a former tenured faculty member of a R1 university, I am concerned about the misuse of federal funds by institutions which appear, increasingly, to subordinate world-class research and

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development, indeed all academic functions, to the whims of poorly trained and frequently incompetent Human Resources departments.

I would hope that government agencies, which hold the purse strings to the research funding that is the lifeblood of R1 universities, would take a leading role in holding academic institutions accountable for this waste of public resources and erosion of our world-leading research universities.

Sincerely,

A handwritten signature in blue ink, reading "Michael Thad Allen". The signature is fluid and cursive, with the first name "Michael" and last name "Allen" clearly legible.

Michael Thad Allen, JD, PhD