

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30212
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BILL SCHUETTE
ATTORNEY GENERAL

June 15, 2018

Robert P. Young, Jr.
Vice President for Legal Affairs & General Counsel
Michigan State University
Hannah Administration Building
426 Auditorium Road, Room 494
East Lansing, Michigan 48224

Dear Mr. Young:

In reviewing your letter dated June 8, 2018, I wish to clarify several points for you and any others with whom you have chosen to share your response.

Having been a prosecuting attorney for over 40 years, and the elected Kent County Prosecutor for 30 years, I am very familiar with the "sacred American legal principle" of attorney-client privilege. Notwithstanding your April 20, 2018, letter, it is your client, the Board of Trustees, that can ultimately waive the privilege, not its attorney.

Related to that point, when asking the Attorney General to investigate, the Board of Trustees pledged that it would cooperate with our review. While I understand the Board may have legitimate legal reasons for not waiving its attorney-client privilege, without complete information, I will not be able to conduct a thorough investigation. Because the University's attorneys have to date withheld or redacted over 1,500 emails identified as "attorney-client privileged," I requested to meet with you before asking the Board to waive its privilege or, in the alternative, agree to an independent third-party review of the documents that the University's attorneys are claiming to be privileged. Consequently, we met in your offices at Dickinson Wright on May 11, 2018.

I sought that meeting to discuss my request to the Board – your characterization aside, it was a request, not a demand – because I believed that even though the Trustees asked the Attorney General to investigate, it was best not to communicate with them directly since they are represented by legal counsel. After I explained my request, I was told to put it in writing with the assurance that you would forward it to the Board of Trustees. By any reasonable interpretation, I did

not engage in an "end run around" you or any other attorney who may represent the Trustees.

More significantly, your letter contends that it was inappropriate ("shameful") to request that the Board waive its privilege. This point, which is repeatedly asserted in your letter, appears to rest, in part, on a lack of familiarity with the criminal investigatory process. It is a common investigative tool for a prosecutor to ask a criminal defendant to waive the attorney-client privilege. For example, it is a protocol often followed by prosecutors when entertaining claims by convicted criminal defendants asserting their innocence and by the federal government when conducting a corporate investigation.

Even apart from that, I must be sure that the University is not improperly shielding documents from the investigation under the guise of privilege. In that regard, the Privilege Log is already almost 200 pages long and, as noted, includes over 1,500 emails, many of which involve key persons of interest in our investigation. For example, there are emails between William Strampel and Larry Nassar that have been identified as "attorney-client privileged," despite not having an attorney included on the email. Furthermore, our concern that MSU might be improperly withholding information was heightened by an email produced by the University from Chairperson Breslin to his fellow Trustees discussing non-privileged information but directing them to copy legal counsel on their response in order to "protect client privilege."

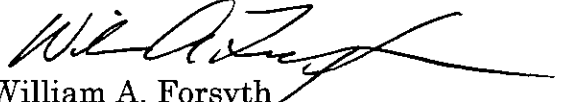
As I indicated at our May meeting, in the event the Board chose to deny my request for an independent third-party review, I would have no recourse but to seek a search warrant for the documents withheld or redacted by the University. It is not my intention, however, to physically seize the documents. Rather, I will be requesting that the University turn the documents at issue over to the Judge who signs the search warrant so that the Judge, or a person appointed by the Judge, can review them to determine whether they have been legitimately withheld or redacted. If the documents are determined to be protected by the attorney-client privilege, they will be returned to the University without this office viewing them.

One final point. In your letter, you suggest that the investigation seeks to obtain the "legal advice" provided by the University to its employees. Not true. You misunderstand what I am trying to obtain. I need the factual information underlying the communications for purposes of my investigation as well as all relevant communications and emails between University officials and other employees. What was known, by whom and when. For a variety of reasons, no investigator relies on the target's own factual "summaries."

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As I mentioned in our meeting, I will call you once I have obtained the search warrant to enable you to take what action you believe is appropriate. In the meantime, if you have any questions or concerns, please feel free to contact me.

Sincerely yours,


William A. Forsyth
Special Independent Prosecutor

cc: John Engler, President
Bill Beekman, Secretary to the Board
Brian Breslin, Trustee
Joel Ferguson, Trustee
Dianne Byrum, Trustee
Melanie Foster, Trustee
Dan Kelly, Trustee
Mitch Lyons, Trustee
Brian Mossallam, Trustee
George Perles, Trustee
Bill Schuette, Attorney General