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LOCAL

## Nessel: MSU misused attorney-client privilege to shield Nassar documents from public

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LANSING — Nearly eight years to the day since former Michigan State University doctor Larry Nassar was first publicly accused of abuse, the university's long-withheld cache of thousands of remaining documents connected to the case are expected to be released.

The Michigan Attorney General's Office said Wednesday it has closed its investigation of MSU and planned to release the documents, although it noted some records from former MSU President Lou Anna Simon were deleted and that MSU had misused attorney-client privilege in withholding other records. The office also released a five-page summary of what its investigators learned.

The investigation included a review of more than 6,000 documents MSU fought to shield from the AG's office and public view since 2018. The university agreed to release them, with some redactions, to Attorney General Dana Nessel's office late last year.

During a news conference about the documents, Nessel said MSU's use of attorney-client privilege to keep the documents secret "was not always appropriate" and that a "significant number, if not a majority" of the documents did not appear to her office to be covered by the privilege.

"Sadly, there simply is no fulfilling answer to the question of how Nassar was able to perpetuate his abuse on so many for so long without MSU or anyone else putting a stop to it," she said. "To say that I am disappointed in this outcome is really an understatement."

Nessel also said documents showed that communications or additional records might have been deleted, specifically text messages to or from Simon.

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"We found emails where (Simon) acknowledged that she, up until she was advised by General Counsel specific to our investigation (in January 2018), that she was routinely just deleting text messages," said Danielle Hagaman-Clark, the assistant attorney general who led the investigation.

Simon was charged with lying to police and ordered to stand trial, but the case was later dismissed by a judge.

MSU Vice President of Communications Emily Guerrant said Wednesday the university had no policy requiring text messages be saved unless ordered by a judge, nor has it instituted one in the years since.

Guerrant said the university took so long to release the documents to Nessel's office because it was still in active litigation with insurance companies.

She added that MSU respected the "thorough" efforts from the AG's office in its investigation and recognized the impact on survivors, their families, and the MSU community.

Nessel said her office met with about 40 survivors and their advocates on Tuesday night to discuss the findings in advance of Wednesday's news conference.

Rachael Denhollander, the first woman to publicly say she was abused by Nassar, told the State Journal that it's "just absolutely asinine" that survivors and their families had to wait years for documents to be sent to the AG.

"I'm deeply grateful for the Attorney General, for both administrations, for continuing to pursue this and to pursue justice zealously and to act like it mattered," she said. "That being said, I have always believed that the vast majority of what went wrong at Michigan State University, and in general the vast majority of what goes on in an institutional cover up, isn't able to be prosecuted, either because it's not criminal or because the statute of limitations has expired."

Nassar, who had been a highly regarded sports medicine doctor for MSU and USA Gymnastics, pleaded guilty in state and federal court in 2017 to sexual assault and child pornography charges. Three different judges sentenced him to what amounts to a life sentence in prison.

Hundreds of women and girls that Nassar abused over more than 20 years at MSU and with USAG sued both organizations. In 2018, MSU agreed to pay a \$500 million settlement.

## Nessel criticized MSU's use of attorney-client privilege

The AG's office, which prosecuted Nassar on sexual assault charges, began its investigation of what MSU officials knew and when under former AG Bill Schuette in 2018. The investigation stalled when MSU refused to release the thousands of documents it said were protected by attorney-client privilege.

Schuette, Republican, released a statement about his Democratic successor's findings Wednesday, and promised he would personally review all the documents once the AG's office makes them available.

"The years-long delay in response from the University caused the survivors to continue to wonder what they, and law enforcement, did not know," Schuette said. "The reality for many survivors has been the inability to fully move on because these documents and the knowledge held within them was still out there."

MSU had for years fought the release of the documents, including to the AG, and was successful in keeping them secret. Then in December, after lawsuits with its insurance providers had been settled, the school's Board of Trustees voted to have General Counsel Brian Quinn review and redacted private information and other data deemed unrelated to the investigation before sending them to the AG.

But Nessel's office wasn't the first outside MSU to review the documents with regard to attorney-client privilege.

In 2018, East Lansing District Court Judge Richard Ball, who has since retired, reviewed the documents at MSU's request. He determined that 177 were not privileged, the State Journal previously reported, and ordered those be turned over to the AG's office. MSU objected to 29 of those and ultimately released 13 of the 177.

"I have disagreement with courts all the time on their rulings, right, that is not an unusual set of circumstances," Nessel said on Wednesday of Ball's review. "I would say, respectfully, to the retired judge, 'We believe that many of the documents that were withheld as attorney client privilege were withheld improperly.'"

Nessel added that while she feels the records were improperly kept from her office, they were "not illegally withheld" and she didn't believe any sanctions or action was available to her office.

Guerrant said the university stood behind its decision to withhold the documents, and that the use of attorney-client privilege was always appropriately applied and supported by Ball in 2019.

## More details on what's in the documents still to come

The documents included communication that dealt with issues related to the investigation, but would not have assisted investigators, Nessel said. Communications about public relations strategy, preparations for a U.S. Senate hearing, donor emails and criticism of the AG investigation are among those in the records.

"They were inconsistent in their redactions or they applied the attorney-client privilege to the entirety of the document, instead of redacting just portions that were regarded to be privileged," Nessel said.

MSU routinely cites attorney-client privilege in denying the release of entire documents through public records requests and appeals of those denials.

Nessel said her office was preparing to provide the extensive records through public records requests, but as of 3 p.m. on Wednesday they had not yet been released.

Denhollander on Wednesday renewed her call for an independent investigation of the university's culture and policies.

"We see a significant cultural problem where you have leaders of the university deliberately undermining efforts by survivors for justice, for truth, for accountability," Denhollander said. "You have negative discussions of survivors, negative characterizations of survivors."

"They reveal a deep-seated cultural problem at Michigan State that we already knew existed and was only further confirmed."

Amanda Thomashow, who was among the first to report to MSU that she was abused, said MSU put the survivors through "pointless pain" for years by withholding documents and delaying investigation.

"I'm disappointed in the way that MSU spoke about survivors in the documents," she told the State Journal. "I wasn't real surprised because they've been nothing but consistently disdainful toward the people harmed on their campus."

Thomashow, who reported Nassar to MSU's Title IX office and police department in 2014, said she hoped the AG investigation could provide a "final chapter," but that "my healing is not dependent" on MSU.

## **Simon was among MSU officials who faced criminal charges**

William Strampel, the former dean of the MSU College of Osteopathic Medicine and Nassar's boss, was convicted in 2019 of felony misconduct in office and two misdemeanor counts of willful neglect of duty. Jurors found Strampel, then 71, used his power as dean to proposition and control female medical students. They also determined he displayed "complete indifference" as to whether Nassar was following protocols meant to decrease risk for the university following a complaint of sexual assault against the doctor in 2014. He exhausted his appeals and served about eight months in jail on his convictions. He permanently surrendered his medical license in December 2019.

Three former MSU officials were charged in the aftermath of the scandal.

Simon was charged with lying to police. Her case was bound over to trial in 2019 but Eaton County Judge John Maurer dismissed the case in 2020. Authorities said Simon knew in 2014 that Nassar had been accused of molesting a patient at a campus clinic. Simon resigned in January 2018, hours after Nassar was sentenced to prison following days of wrenching testimony from his victims.

Former Michigan State University gymnastics coach Kathie Klages' was convicted of lying to police in 2020 in connection to the AG's investigation. The Michigan Court of Appeals reversed that conviction, saying that Klages' statement that she did not remember being told by two gymnastics in 1997, who were 14 and 16 at the time, about Nassar's abuse of them did not have a material impact on the AG's criminal investigation. Klages served 89 days in jail and 18 months on probation.

In 2021, an investigation into the FBI's handling of the sexual abuse allegations against Nassar found that FBI officials exhibited "extremely poor judgment," said a report by the Inspector General of the U.S. Department of Justice. In April, the DOJ announced it would pay nearly \$139 million to Nassar survivors as part of a settlement stemming from the FBI's mishandling of the allegations.

Also in 2021, more than 500 women who were abused by Nassar, another coach or someone else affiliated with the sport reached a \$380 million settlement with USA Gymnastics.

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