

March 19, 2019

VIA ELECTRONIC MAIL

Christina Grossi
Assistant Attorney General
Michigan Department of Attorney General
G. Mennen Williams Building
525 W. Ottawa Street, P.O. Box 30212
Lansing, Michigan 48909

Re: Michigan State University Investigation – John Engler Voluntary Interview

Dear Ms. Grossi:

As counsel to John Engler, I am replying to your email dated March 19, 2019, which relates to your request to interview Mr. Engler in the context of your office's investigation into Michigan State University's handling of Larry Nassar's sexual assault investigation. Mr. Engler has at all times been willing, and agreed, to meet with you and your agent, Michigan Department of Attorney General Supervisory Special Agent David Dwyre, to answer questions about the matter. At no time has he communicated any unwillingness to do so. For that reason, your decision to cancel his interview is most surprising.

Specifically, you unilaterally canceled the interview scheduled for March 28, 2019 at 10:00 a.m., a meeting scheduled and reconfirmed since March 4, 2019. The cancellation of the interview appears to be for no legitimate reason, and certainly none that furthers an objective fact-finding investigation. In doing so, you mischaracterized the agreements between the parties and unfairly prejudged Mr. Engler without you or Special Agent Dwyre ever having interviewed or even spoken to him. To question Mr. Engler's integrity and veracity and reach unsupportable conclusions without one question being asked and answered is entirely unwarranted, especially given Mr. Engler's agreement to participate in the voluntary interview.

On behalf of the Attorney General and the people of the state of Michigan, and purportedly representing justice, you make the following unfounded and defamatory statements with regard to Mr. Engler:

- His "brazen disregard for this investigation";
- "[H]is willingness to lie about his whereabouts";

- His “attempt to secure a venue where he could lie to investigators with impunity”; and
- “[H]e never had any intention of participating in this process in good faith.”

Such prejudgments in most jurisdictions are the foundation for immediate removal of prosecutors from cases, as demonstrative of bias and lack of objectivity.

As set forth in our e-mail exchanges, you and I began discussions in February 2019 about setting up a voluntary interview for Mr. Engler. At all times, I represented to you that Mr. Engler was willing and able to participate in a voluntary interview. You and I met at your office in Michigan on February 12, 2019 to discuss the scope of the interview. On March 4, 2019, we finalized the date and time for the interview (March 28th at 10:00 a.m.). At no time did we alter that date or indicate in any way that Mr. Engler was not willing to participate in that interview. Indeed, in my last email to you on March 18, 2019, I confirmed that “we are going forward with the interview on the 28th. We look forward to meeting with Agent Dwyre then.”

Nevertheless, based on no action or statement by Mr. Engler, you claim that he has a “brazen disregard” for the investigation and was not acting in “good faith,” among other libelous statements. Mr. Engler agreed to the interview, that interview date is nine days away, and there is nothing more a witness can do before meeting voluntarily and answering questions.

On March 4, 2019, the Attorney General’s Office through Special Agent Dwyer agreed to the topic areas for the interview and lines of questioning, including the affirmative conclusion that Mr. Engler had not done anything wrong or engaged in any illegal conduct. That representation along with the following representations were detailed in a memo that was expressly signed-off on and agreed to by Special Agent Dwyre:

- “The Attorney General’s Office (‘AG’) does not consider Engler a ‘target’ or ‘subject’ of the investigation.”
- “AG has no current information that Engler has engaged in any illegal conduct or done anything wrong.”
- “AG views Engler only as a person who may have information about others (i.e., a witness).”
- “AG believes that Engler may not even rise to be a witness because Engler may not have any relevant information whatsoever.”
- “AG views Engler’s interview as necessary in order to perform a complete and thorough investigation.”

Above and beyond these written representations by the Attorney General's Office, you then went even further by saying to me that Mr. Engler's interview was a "check-the-box" interview that was being conducted for "completeness sake," given that all other high-level Michigan State University officials had been interviewed. A prosecutor's duty is to conduct interviews that are designed to elicit relevant evidence in furtherance of a legitimate law enforcement purpose, not to "check-the-box" for administrative or other purposes. Whatever your motivation, Mr. Engler has always agreed to participate in the voluntary interview, even if it is just to enable you to "check-your-boxes."

You first offered to conduct the interview in Washington, DC or Virginia near where Mr. Engler currently resides; that request was not lodged by me or Mr. Engler. The notion that you repeatedly raise that Mr. Engler was somehow "forum shopping" by accepting your offer to conduct the interview in Washington, DC is preposterous. Mr. Engler never indicated he was unwilling to travel to Michigan to conduct the interview.

What has become clear is the ethical standards and objectivity required for the conduct of an investigation are inapplicable to your approach to Mr. Engler. You have prejudged Mr. Engler's veracity and motives without ever talking to him. You have launched unfounded attacks and besmirched Mr. Engler, citing to and embracing a Deadspin tirade that expressly calls for an assault on Mr. Engler (the Deadspin author writes, "[i]f there's anyone who deserves an egg to the back of the head, it's this goon[,] referring to Mr. Engler). The Attorney General's Office cannot possibly conduct a fair and objective investigation when it treats authoritatively non-news hatchet writing as a basis for assailing an admitted non-target, non-subject and likely non-witness.

You even demonstrate your personal bias against Mr. Engler by claiming you are personally "embarrassed" as "an alumna of Michigan State" that Mr. Engler will not sit for an interview – a claim that is entirely inconsistent with Mr. Engler's agreement to meet voluntarily. You are a state prosecutor who carries the full weight and responsibility of representing the people of the state of Michigan. You appear to confuse your alma mater loyalty with your ethical obligations and interject your personal feelings about an investigation. The biases and prejudices you bring personally to any investigation are not relevant to, and are not proper considerations for, a criminal investigation. You know this given the oath you swore when you took office.

Your conduct diverges so drastically from the most basic principles of fairness, justice and what is right that you have undermined the integrity of your own investigation, which may be a result of your lack of experience handling criminal prosecutions (this being your first), let alone a high profile criminal investigation. Your actions also form a claim of prosecutorial misconduct and constitute grounds for your immediate recusal from the investigation.

I was a federal prosecutor for thirteen years in the United States Attorney's Office for the District of Columbia. Several of my colleagues were state and federal prosecutors. We each are appalled at the manner in which you have clearly politicized a fairly routine voluntary interview to serve whatever agenda and goals you secretly have in mind. Your continued participation in the investigation renders impossible Mr. Engler proceeding with and submitting to a prejudged and patently biased interview.

Similarly troubling is the fact that you refused to affirm the topic areas and lines of questioning for Mr. Engler's interview when Special Agent Dwyre had already agreed to both. You and Special Agent Dwyre work for the same office – the Department of Attorney General. This divergence sheds additional troubling light on the potential improper motives for the interview.

Your outrage about Mr. Engler's travels is similarly surprising and misplaced. Since early February 2019, I have been communicating with you about making Mr. Engler available for a voluntary interview. At no time did I represent that Mr. Engler would not travel to Michigan as we discussed scheduling. Mr. Engler owns a home in Michigan. He has family in Michigan. It stands to reason that he would and does travel to Michigan when his schedule permits doing so.

There has been no effort to hide that on two occasions Mr. Engler traveled to Michigan on weekends to see Michigan State University basketball games. Yet, you scurrilously allege that Mr. Engler somehow acted improperly by attending those events, as if he attended in disguise. He is not a criminal defendant. He is not under the supervision of a court. Indeed, Special Agent Dwyre has made clear that your office "has no current information that Engler has engaged in any illegal conduct or done anything wrong." You penalize and criticize Mr. Engler for exercising his unrestricted right to travel and, as do hundreds of millions of Americans, enjoy college basketball games.

Finally, as if your false representations and strong-arming is not enough, you now threaten to use Mr. Engler's lawful employment contract with Michigan State University against him. Is it correct that you expressly intend to force Michigan State to breach its contract with Mr. Engler by refusing to pay him if he does not capitulate to your demands? This would of course be a curious threat given that Mr. Engler has already donated all of his compensation back to Michigan State University. And, in any event, what right does the Attorney General's Office have to interject itself into and twist a contract between a private citizen and his employer into an illegitimate law enforcement tool? You not only appear to have acted beyond your authority, but also made yourself a witness to the broader investigation. That is a rare accomplishment for a prosecutor to subject herself to personal liability and become a witness.

There can be no doubt that Larry Nassar's conduct, as evidenced by his guilty plea and the sentences imposed, was appalling, criminal and some of the worst conduct that can occur to a student athlete - or any person for that matter. A vigorous, comprehensive investigation into such abhorrent behavior was warranted and justified. However, the fact that the underlying conduct involved unspeakable harms does not give the Attorney General's Office and its agents the right to attack, manipulate and deceive innocent people, including Mr. Engler.

Accordingly, unless and until you are properly recused from the case and in no way connected to the investigation as a whole in any manner, I have advised Mr. Engler to decline to participate in a voluntary interview with your office.

Very truly yours,

/s/

Seth B. Waxman