

- Speaker 1: I'd like to call the meeting to order. Is there a motion to approve the agenda for November 12th?
- Speaker 2: Approved.
- Speaker 1: Is there a second?
- Speaker 2: Second.
- Speaker 1: Any additions to the agenda? Any deletions? [crosstalk 00:00:17]. Yes.
- Anna Gordon: Anna [inaudible 00:00:22] Gordon, a large member. I noticed that the resolution and the presentation by Brian [Tephm 00:00:28] was listed as an information item. I don't remember at the steering committee whether we discussed it being listed as an information item or an action item.
- Speaker 1: The presentation by Brian Quinn, yes?
- Anna Gordon: Yes. Sorry, I don't know why I said Brian Tephm. Sorry.
- Speaker 1: I believe it was an action item, because the motion was tabled. I think that should be an action item. Thank you.
- Anna Gordon: Okay.
- Speaker 1: Any other additions? All in favor for approval of the agenda as amended, please say aye. [crosstalk 00:01:05] Opposed? Motion carries. Approval of the draft minutes for October 8th, that's attachment A. Is there a motion?
- Speaker 2: Removed.
- Speaker 1: Second?
- Speaker 2: Second.
- Speaker 1: Any comments, additions, deletions on the approval of the draft minutes? Hearing none. All in favor say aye. [crosstalk 00:01:29] Opposed? Motion carries. President Stanley is not here and we will move to the provost remarks. Interim Provost, Teresa Sullivan.
- Teresa Sullivan: Thank you. I'm sorry. The report that president Stanley's mother passed away yesterday and so he will be out of town to attend the services with his family. So instead, let me tell you a little bit about what I have been doing as a, as provost. I have been continuing visiting deans in their colleges. The deans and I have had some recent discussions that I hope will be promising concerning workplace respect. It seems to me that a fair number of the grievances, I've run across

really come fundamentally from a failure of respect. Sometimes it's related to a protected category. Sometimes it's just an inability to be respectful of other people in the workplace. We're going to continue those conversations and I'm going to return to that issue a little bit later below with the associate provost, I've been talking about issues of university level communications, particularly our internal communications, which I believe could use some work and we've also discussed some other issues related to their portfolios.

Teresa Sullivan: I've met with both COGS and also with the leadership of ASMs. You and I held my first conversation with a provost, with a variety of people from around the campus. There we did a number of things. We heard an admissions update. As you know, the admissions' regime is changing pretty radically this year because the justice department has said that, the ethics code under which admissions counselors worked violated any trust procedures. So many of the things we took for granted about admissions won't be true in the coming year. We had an update on SIS. This is the new student information system be phased in beginning for the fall semester, for the freshmen class only. We had an update on a reappointment promotion and tenure and on OIE, and we had a presentation on NIH T 32 training grants. This is a place where MSU is leaving money on the table.

Teresa Sullivan: Training grants are very attractive graduate funding opportunities. They're available in a wide variety of fields. You don't have to be in a medical school in order to get a T32 training grant. I led a T32 training grant for a number of years myself, so we think it's an opportunity for a lot of faculty to become PIs. It's a great opportunity for them to collect a great group of graduate students, around important issue that relates to health in this can be health differentials, it can be a basic methodology, approaches. It's a lot of different things it could be. In my own conversation, I talked about the transition with the new executive vice president for health sciences that's moving along. I talked about faculty development. I'd like to say a little bit more about that here. I realized that we are famed for our Midwestern modesty, but I think we've been too modest about how good the faculty is.

Teresa Sullivan: We really have a great faculty here and I think we should be more willing to claim that. One of the ways we can do that, is by nominating our colleagues for prestigious awards and fellowships as they become available. We've made that a priority this year in the provost office, and I've asked the deans to join me with that. We have several good nominations that are going to be going out in the mail later on this week. But I'd like to encourage all of you to think about this too, particularly when it's an opportunity for a junior colleague. One of the things that will most attract good new faculty to MSU is the belief they can have a very successful career here, and that other people are looking out for their welfare. So I need your help because you know more colleagues than I do. So, when you see somebody that you think is deserving of an award, and I don't mean just to an award on campus, but I mean something that is in your

discipline or something that is national or international, I hope you'll just send a note to the provost office.

Teresa Sullivan: I do look forward to celebrating the accomplishments of the newly promoted full professors, at a dinner on the 19th, and the university distinguished professor reception on the 21st. Some of you know that there was a list of demands given by a very diverse group of students representing the COGS and course student organizations, which president Stanley received. And one of those I would appreciate receiving some feedback from the faculty about. This was a demand that all faculty and staff have mandatory training in. Now this is variously worded and different versions of this racial and ethnic sensitivity, or maybe implicit bias. Sometimes it's differently worded. My understanding is that we have a couple of programs here, MSU dialogues, the implicit bias certificate and some others, and they have waiting lists of faculty who want to attend them. That suggests that there is certainly an appetite among your colleagues to get this training for themselves.

Teresa Sullivan: That's not mandatory. So, one issue would be, could we make that more of a point of emphasis in annual reports so that faculty get credit from their supervising chairs and deans, for having undertaken this kind of training? Or should we really think about something mandatory, let's say parallel to the RVSM training that is now mandatory? I appreciate having your feedback about this. My experience in general has been that faculty dislike mandatory training, and if it's mandatory they tend to pay somewhat less attention to it. But if this is something that's, that we should be thinking about doing, I'd like to know an online version of training would be possible. It might not be as impactful as the ones we currently offer, but it is a possibility. So if you have thoughts about that, I hope you'll let me know.

Teresa Sullivan: I'm easy to reach. It's provost@msu.edu. One other thing I've just liked to talk about briefly and that is accountability and transparency is two way streets. I understand that for good reason. A lot of members of the faculty have been upset by what they seen as a lack of accountability and transparency on the part of the administration. I want you to know that we're doing our best to deal with that, although you will understand, that there are areas of campus life that have to be kept confidential. All of you are bound by FERPA just as I am, so I can't answer questions about which students have been disciplined for this or that. That's a violation of FERPA and all of us are bound by it. In the same way, I often can't talk about personnel actions, because there is a range of confidentiality around personnel actions. Although you can see your whole personnel file under Michigan law, it's not necessarily the case that anybody else is going to be able to do that.

Teresa Sullivan: So there's some things that we can't always talk about. But on the other hand, sometimes we make an effort to be transparent. It backfires on us and that then makes administrators less likely to want to be transparent the next time. Let me give you an example of this. So an administrator was I think transparently trying

to communicate something to a group of faculty last week. The subject matter came back to us in the form of some, almost unrecognizable rumors about three days later. So three administrators spent time tracking down the rumors and trying to figure out where this all came from. It came from a misconception, probably not deliberate, but a misconception of what had actually been said at that meeting. So, it took one and a half administrator days to get that straightened out. It's easy for people to take the message that, that means we shouldn't be transparent anymore.

Teresa Sullivan: I don't think that's what any of us want. I don't think that's good for this culture. So in the spirit of greater transparency, I'd like to ask that you encourage your colleagues to have a spirit of generosity about what administrators are trying to communicate to you. I know the old joke is how do you know when an administrator is lying? And the answer is when her lips are moving. But let's see if we can leave some of that cynicism behind because that's not really going to be a good way for us to build the university, and the way that we need to build going forward. And I'll stop there.

Speaker 1: Thank you. Any questions for provost Sullivan? I will move to my comments. I'm sorry.

Philomeno: It actually may be a comment-

Speaker 1: Pardon?

Philomeno: ...in addition to a question. Okay, so, so you asked for feedback on the potential for racial training and...

Sheila: Could you identify yourself please?

Philomeno: I'm sorry Philomeno [Nura Safavov 00:10:35] Some of us have actually been talking about these demands and we feel that it is very important to respond to the sort of actions that have been happening on campus. That does take an increased level of awareness from all of us. I don't know how we can achieve that without treating it that seriously. Everybody needs to do this because, when you have voluntary training, when you have anything that is on a voluntary basis, usually it's those that are already more aware, that tend to participate because, they are concerned and they are involved in activities. But we need to target everybody. We need to make sure that everybody is getting the same level of increased awareness, that this is a situation that black people, people of color have to go through, and we need to be particularly attentive as faculty because, we have more power than undergrad students, or even grad students.

Speaker 1: Okay.Thank you.

Jennifer Johnso: I was just sending you an email that says almost literally word for word what she just said. It's around... Oh, sorry [crosstalk 00:11:58] Jennifer Johnson. College of Human Medicine. ...and around women also. Right. It's, it's mandatory means that it's important to us and it's the people who are least interested who may be most needed.

Stephen Guster: Just to further complicate matters, I... [crosstalk 00:12:21].

Sheila: Identify yourself please.

Stephen Guster: My name is Stephen Guster. College of Social Science. If we were to go the direction that we've gone with the RVSM training, I think we need to look very closely at the extent to which the online platform is impactful. Right. This online RVSM training is I [crosstalk 00:12:46] think, it has a minimal impact at best at this point. It is proforma, you go through it, you don't ever have to engage. I think that doesn't move us forward. So, this may be a situation where we're requiring quite a lot of ourselves. I think this is the kind of right we have seen in this last month, why it would be worth it to make that effort.

Speaker 1: Other comments? [inaudible 00:13:22]

Sheila: I'm [Donava 00:13:30] Nobutula, James Madison college. I concur 100% with what my colleagues said about the mandatory training. I also do think it's important to have a faculty trained. It's about bias, racism, bias, ethnocentrism, ethnocentrism. I can't even say it. Homophobia, sexism. This is also important not to diminish the requests of our students. I want to center on those right now. The RVSM does not offer training in sexism. I just want to clarify that. But onto a different point provost, I respect what you are saying about transparency and accountability Provost Sullivan. I really respect that and I think all of us really feel good that, you are now occupying the position you are in.

Sheila: One thing I... Having said that, I would like to remind you that, until very recently we had a position of provost, somebody that people might've liked or not, that's not the issue, but who according to the OCR report that we have seen, had committed some serious, how can I call them, errors in the decisions that this provost have made. Then we have a president who is now basically going to go to court. So there... It's not business as usual here in terms of distrust of administration. It is really, an institution in which an additional to whatever the typical relationship between administration and faculty might be, which we've had some very serious problems, and have serious problems with issues of trust that are very objectively warranted. I just want to make that emphasis and I appreciate the other points who might have over. Thank you.

Speaker 1: Thank you. Other comments? Okay. Moving onto my comments. Excuse me if I'm not responding to people. This is a very large room and it's kind of hard for me as a short person, it's hard for me to see where people are raising their

hands. So welcome to the Minskoff Pavilion. We will ask the faculty senate, not this time, but at after the January meeting, we will pass out pieces of paper and ask them to just give us their thoughts in terms of the Minskoff Pavilion intern. What they think of that in relation to the International Center, what they think are the pros and cons. I don't want to do it today because I think people need a little bit of time to think about it.

Speaker 1: Sometimes when you get away from things you're have a little bit clearer idea of what's going on, or how of what you think. I want to start off by just congratulating our Secretary for Academic Governance, Gary Hopkinstand, who was the winner of the Lynn Bartholomay Eminent Scholar Award. This award recognizes significant contributions by a scholar working in a field under the umbrella of popular or American culture. This is the highest award that this organization offers and we're very proud to have Gary receive this award. Thank you very much Gary.

Speaker 1: Everything pretty much that was discussed on the steering committee, or virtually everything that was on the steering committee agenda, is either on the agenda today or is on the agenda at the university council, so I will not be doing a recap of those agendas. Yesterday morning I received an email from a group of faculty senators, who wished to take the January meeting of faculty Senate, and use it to discuss the OCR report. Use the entire meeting to discuss the OCR report. Following that, I sent an email or I did not send the email. Sherry [Lodge 00:00:17:42], the Secretary to the Secretary for Academic Governance, sent an email to the steering committee to see if it would be possible to put that on the agenda for the January meeting.

Speaker 1: We already had an agenda for the January meeting and the votes came in as seven no's, two yes's and one abstain. I would like to explain the vote. No one, or I should say, everyone felt that this was a very important subject for discussion, and that they had no problem with a meeting being devoted to it. They had a problem with the January meeting being devoted to it because, there was already an agenda and they felt that people who had, had things put on the agenda and had gone through the channels, through the steering committee and gone through proper channels, and done it in the appropriate manner, should not be bumped for other people who, when something came in much later. So this will be on the agenda of the steering committee in January.

Speaker 1: At that time, they will be... I will propose three possibilities and if there are more possibilities from the steering committee, I would be happy to hear them. The possibilities would be to devote the entire February meeting to this issue. That there would be nothing else on the agenda except for this issue. The other possibility would be to hold a special meeting of the faculty senate to discuss this issue. That's also a definite possibility. The other possibility would be to put it on the January agenda, with one of the other subjects that was going to be on the January agenda. That is actually a very short and compact report.

Speaker 1: I'm asking today, all of the people, all the faculty senators who signed this email, would they please, if they are available to come to that steering committee meeting. Please come to the steering committee meeting to participate in this discussion. We would like to hear what you have to say. We would like to hear, which of these options you think is the best and if you have other options. That is my comments.

Speaker 1: So moving on to new business. The University Committee on Curriculum, Dr Marcy [Machtel 00:19:56].

Sheila: All right. UCC met at the end of October and approved the following. There are no new programs to report, 8 program changes and no deletions. Additionally, we approved 9 new courses, 22 course changes and two deletions. There is one more moratorium to report. It's actually an extension of an existing moratorium on international business. Master of Science is now effective through spring 2024. As always the link is in attachment B, or you can also click on the long report. At this time I make a motion to approve the UCC report as well.

Speaker 1: Is there a second?

Speaker 2: Second.

Speaker 1: Discussion? All in favor say aye. [crosstalk 00:20:47] Opposed? Motion carries. Next is the discussion of The Human Research Protection Program, IRB approval procedures. Kristen Birch, Director of Human Research Protection Program and Dr J R Haywood, Assistant Vice President for Regulatory affairs. This is an information item and this came about I think as we are all aware, of the survey that was sent out. The controversial survey that was sent out.

Dr J R Haywood: Thank you. Good afternoon. I'm J R Haywood, Assistant Vice President for Regulatory Affairs. Before Dr. Burt addresses you and talks about the Human Research Protection Program, I wanted to say a few words about the survey and about our activities around that, and results from that survey. First I want to say we share the responsibility, but we also share in the solution, and we are actively working on this. We are looking at processes of the Institutional Review Boards. We are looking at processes throughout Regulatory Affairs, and in fact, we're talking with groups around campus. First, we met with Council Research Deans, we met with the steering committee and we are delighted to be here today to hear what you have to say and engage in your conversation with you.

Dr J R Haywood: Importantly, if you are part of any other group on campus, and would like to us to come visit, we are prepared to do so. Just reach out to us and we'll work together. Set up a time. I think most importantly though, to get to positive results, to get to a good end game, what you need to know is that, we need your help unequivocally. This is not a regulatory thing. This is not an administrative thing. This isn't solely a faculty thing. This is a university thing and we all have to work together and we are here. We are prepared to do that and

we look forward, and moving forward to get good positive outcomes to this. We never let a bad situation rest. We turn it into a good situation. So with that, I'm available to answer questions any time. Just reach out to our office. I'd like to turn it over to Dr Kristen Birch, who's the director of the Human Research Protection Program. Kristen.

Stephen Guster: Hi. My name is Kristin Birch and I am just going to provide an overview of the IRB review and approval process. Talk about some of the changes that we're considering. And like Dr Haywood said, we really need your input as we go through those process. Some of you may be very, very familiar with IRB process. But for others, I'm just going to provide a very basic overview related to where the research survey fit within the federal regulations. So, for the protection of human subjects, there are federal regulations that provides certain standards for review and approval within those regulations. For the protection of human subjects, it requires for basic requirement, either IRB approval, or a determination that the research is exempt from the requirement for IRB approval. So, within the regulations, they provide certain categories of activities that, if the research meets those categories, it's exempt from IRB approval.

Stephen Guster: That means those exemptions do not require IRB approval. It's exempt from that IRB review process. Some examples of that would be something like surveys, interviews with adults. It could also be something like taste testing within the regulations, particularly related to research surveys. There's a particular provision that essentially, if you're doing research involving interview or survey procedures with adults, it meets the exemption criteria, even if it includes sensitive or other types of risk of criminal and civil liability, damaging reputation, etc. This is something that was recently revised. Previously, before the revisions to the regulations, there was a requirement to... If the research hat was related to criminal civil liability, damaging reputation etc, and was identifiable, it required IRB review under the revised regulations. Even those types of activities are, can be exempt from IRB review and approval with a limited IRB review related to privacy and confidentiality.

Stephen Guster: So, in looking at a particular... The research survey that had offensive content from social media posts, it was looked at as a survey that involved individuals that were adults, and met those exemption criteria. Now with that, even with meeting the federal requirements, that doesn't mean that from an institutional perspective, we aren't able to set higher standards. So, that's part of the discussion related to looking at what type of process changes, may be needed related to, when you may have some surveys such as that. Related to that, we'll be looking at whether institutional changes are needed that sets the standard higher. Sometimes it's said that the regulations are the floor, not the ceiling, and looking at whether there some additional protections that we can put in place related to the survey. Some of those particular areas that we're considering and looking at, recognizing that this is something that needs to be addressed quickly.



Stephen Guster: Some things may take longer discussion with some of the faculty and the community. But there are things that we'll want to move forward on, more quickly to address. One of the areas that we're looking at is engaging the department in college, as part of the IRB review process. So, some of you may be familiar when you submit the IRB application, it comes to the IRB and it's not routed to, for example, the department chair for signature. Similar to what you would do if it was a sponsored research protocol. That's something that we're looking at modifying, in terms of engaging the departments and colleges, as part of the IRB submission process, where the department chair would sign off on that IRB submission, whether it's exempt or requires non-exempt review, to engage the departments in college as part of the IRB review.

Stephen Guster: The other area that we're looking at is, research that involves MSU students. Whether MSU students may be seen as a vulnerable population within the regulations, there's additional protections to individuals such as children and prisoners, and other identified vulnerable populations, and whether as... If the research is going to be targeting MSU students, whether there may be some additional protections to put in place for those research studies.

Stephen Guster: Other areas we're looking at, is related to research when you have sensitive topics in terms of whether that continues to qualify for an exempt review, or if there are some categories of research that it would be more appropriate for it to undergo an IRB review. That's an area that we'll need more discussion with the colleges, and departments as we look at making those changes. Other areas that we're looking at related to changes in the process as we're always looking for, looking at membership on the committees. So in terms of... Currently we do not have a graduate student representative on the committees and we have a biomedical IRB and a social science IRB, so recruiting someone from graduate student perspective, and also perspectives for diversity and inclusion.

Stephen Guster: Additionally, we work with the colleges and the departments in recruiting IRB membership. That's something that I'm looking at. Whether we can look at recruiting some additional IRB membership to the committees for review of diversity inclusion, student representation. Looking at, like you said, training, more educational outreach from our standpoint, looking at topics related to diversity and inclusion as well, to have that additional sensitivity. I'm going through providing more information that way as well [crosstalk 00:29:41] for our staff. Yes, correct. So those are just some of the initiatives that we are looking at modifying our processes. This will be a lot of collaboration with departments and colleges as we go through. Some, we'd like to move on more quickly, others, for example, like the sensitive research topics that may take a little bit more time to define when those particular reasons...

PART 1 OF 5 ENDS [00:30:04]

Stephen Guster: Take a little bit more time to define when those particular research projects would need to undergo an IRB review and approval.

Speaker 1: Questions?

Jennifer J.: Thank you. Jennifer Johnson College of Human Medicine. Would this have been exempt under the previous federal regulations? Or was it a result of the recent federal change? [inaudible 00:30:34]

Stephen Guster: Okay. It would have been exempt. So it was a, it met the criteria for exemption in that it was a survey involving adults, and it was, I'm not considered to be identifiable.

Jennifer J.: Okay. All right. That was it.

Speaker 1: Yes.

David Wilson: David E. Wilson, Communication Arts and Sciences, so it was a person in my college who did the survey. Between graduate school, postdoc, and then several faculty appointments, this is the fifth IRB I've dealt with, and there's a balance between, so for example, at Ohio State, it was between four and six months to get a survey approved, and that was annoying. But you plan for it, you got used to it. But getting an approval in two days is what I get here is great from a researcher perspective, but I have to be honest that I find that the procedures are very lax. Every university I've been at besides here, that all the survey instruments are read through, and that doesn't, at other universities it's usually a month or two, and you build that into the process if you know what it is. Obviously I appreciate getting it back in two days, but to be honest, I've joked with my graduate students about trying to turn in the Milgram procedures, and see if it would get through or not.

Speaker 1: Other questions? Yes.

Stephen Gator: So one of the rumors that's going around- [inaudible 00:32:03].

Stephen Gator: Yes, I'm Stephen [Gator 00:02:02], College of Social Science. I will add to that, that actually I had a survey this summer that I was delivering on a Native American reservation, and I actually had to go back to IRB and say, "No, this can't just go through as exempt. I have to get a full approval. The tribes require it."

Stephen Gator: And then they said, "Well, we don't think this is particularly problematic."

Stephen Gator: And then I had to explain that actually asking people about not having access to water and sanitation could be exposing them to having their children taken away. It could be exposing them to health, the two health departments coming in and kicking them out of their homes. It could have very serious consequences. So I needed that. One of the rumors going around though, is that actually, while this might've been exempt, there were also ... the survey in question, actually had received back comments from, that researcher, had

received comments back from IRB and had responded to those comments. So I just was wondering if that's accurate or not?

Stephen Guster: In terms of comments as part of the review process-

Stephen Gaster: In other words, a request to amend the survey in certain kinds of ways.

Stephen Guster: I, yes, I'm-

Speaker 3: We haven't heard that rumor.

Stephen Gaster: Okay.

Speaker 3: We will look into that.

Stephen Gaster: But I think it does it-

Dr J R Haywood: Theoretically it should not have, right? If it met the criteria.

Stephen Gaster: If it met the criteria, it should have just sailed through.

Dr J R Haywood: Yes. And we recognize that there are a number of rumors and misconceptions going around. And I would just say call us. Probably the biggest rumor going, that was misstated, was this was approved by the IRB. As you know, it's either approved or it's exempt. It's not both. So this was exempted.

Anna Gordan: Anna [Pegula 00:34:16] Gordan. I wanted to add, though, to that, and I don't know if the rumor came out of that, and also to clarify what you said. Although it is true that it's exempt, I did ask in the steering committee whether the IRB committee had read the content of the questions, and you had told me that in fact the IRB had read the content of the questions that time.

Stephen Guster: The IRB administrator. So the IRB administrator who was reviewing the application, not the committee itself.

Anna Gordan: Okay. Right. So I think that's worth knowing, because it shows that even though a person who works as an administrator with the IRB had read the content of these questions, and still sort of under MSU policies, it was exempt, which I think we're hearing that that's very troubling about MSU policies.

Dr J R Haywood: That's under federal policy.

Anna Gordan: And MSU's decision to just meet the minimum criteria under federal policy. Right. Okay. So, and then the other question that I had, and this is somewhat separate, but the other thing that had come up among some of my students in the college, in James Madison College, who are also enrolled in College of

Communication Arts and Sciences was this, and I think it came up in some other colleges as well in discussion, is that students are required to take a certain number of these surveys in certain colleges in order to learn about research methodologies and so on.

Anna Gordan: I was speaking with a student who is a student of color, and who was saying that oftentimes they feel quite uncomfortable about a number of the surveys that come up, and they don't necessarily want to take particular surveys, so by the end of the semester they find that they actually need to either take the surveys, or they can also go and ask for an alternative option, but the alternative option is not offered on the syllabus. Then they're asking the person who's going to be grading them to give them an alternative, and that person is like, "Oh really? You want me to go and and come up with an alternative methodology assignment for you? I guess I can do that."

Anna Gordan: But there's not an automatic alternative offered. So I think that it's a separate question, I understand, from the IRB, but I do think that there is some faculty responsibility for considering those kinds of curricular questions as well, and at what point does this feel coercive, or is it coercive, to students and how that's a very problematic as well.

David Wilson: David E. Wilson, College Communication Arts and Sciences. My understanding of the federal regulations in every university I've been at besides here, you are required to have an alternative. And my alternative takes up a page and a half on my syllabus, and they have to write, read research papers, and write a short synopsis of it. The same thing with the research. We don't grade those in the same way that a student has the right to discontinue participation. I talk about that in my class, but now on, and I think all faculty who would have this as a requirement, need to have the students rights as a research participant in their syllabus, if we're requiring them to do it. So for example, if they have the right to discontinue at any point in time, and they still get full credit.

David Wilson: And again, every university I've been at, that's been the rule. I think we need to do a better job of educating our students, especially if we're in those units where it is requiring that. But they're supposed to, as I understand it, they're supposed to do it. It's not being done. It's the same thing with the survey, I know a lot more about it, because I know somebody who was involved with it. It was supposed to be a few questions. It ended up being over 130 statements that they were reading. So there's a lot of things that they told the IRB that they were doing that were not done. And I don't know how you police that, but those are other things that we need to think about.

Dr J R Haywood: I'll only add to that, that we have been concerned about the student population groups for surveys, because of the coercive issue. And that is one of the topics that we'll be taking back to, certainly the research deans, and the colleges, about even the scientific validity of the score. I think there's a lot of discussion that needs to happen around this particular issue.

Sheila: And on our board, Sheila, James Madison College. What's striking to me, in addition to what I've heard other people say, is how much we really know about what actually happened. So what's striking to me was David, when you said, "I happen to know more about this, because I heard people talk about this."

Sheila: Is how we as a faculty, and we as a community, don't really know much about this except what we hear from the rumor mill, or except, that to me is a real problem of communication. I really appreciate that people from the IRB coming here is part of wanting us to address these issues, but we, I'm sitting here and I'm thinking we have a pretty complicated issue on our hands, and we have until this point, as far as I'm concerned, not really talked about what happened and what the multiple layers of this are. And we continue to kind of just ... and I'm wondering, how we can A, improve our communication and change our culture so that when something arises that really sparks this much of a, just kind of like a terrible ripple effect across campus, we can actually have a response to it that involves communicating what happened and what are the ways in which we can make sense of it. Thank you.

Speaker 1: Could I ask, could you simply run through the entire procedure? What happens with an approval? Because you said the the administrator looked at it, but the committee did not. How many people are on the committee, and what is the composition of the committee? And how is the committee formed?

Stephen Guster: Sure. So I'll start first with describing the overall composition of the committee. At MSU, we have two IRBs. We have a biomedical IRB, and a Social science IRB. The composition of the committees are faculty members from the respective colleges. So for example, on the Social Science side, you're going to have Social Science, Comm Arts, the more Social Science Education, those disciplines. On the biomedical, you're going to have faculty representation from the College of Osteopathic Medicine, College of Human Medicine, Nursing, those more biomedical disciplines.

Speaker 1: And how are those people chosen?

Stephen Guster: So those individuals are chosen, nominated by department chairs or research deans. Their nominations are then provided to Doctor Shu, as the institutional official for appointment. They're appointed for a three year term, of which they can be renewed. So it can go beyond a three year term.

Stephen Guster: With IRBs, you do also need to have representation from the community. So we have individuals who are not affiliated with Michigan State University that serve on the IRBs, as well as individuals that are non scientists. Sometimes the individual may have both representation, the non affiliate and non scientist.

Stephen Guster: So you need to have on, for our IRBs, we have approximately 12 to 14 primary members, and then we also ask for alternates when available, so that if the

primary member is unavailable to attend, the alternate is able to attend in their place. So that's the general composition of the IRBs.

Stephen Guster: In terms of the overall review process, an IRB, a researcher would submit an IRB application through our online system. It would come into the IRB office. We would then look at it to see, initially based on how they completed the form, whether it could qualify for exemption, or whether they qualify for a non-exempt review. If it is an exemption, exemptions are reviewed by IRB administrators. So individual IRB staff from our office to make an exempt determination. If it is a ... and if they go through and review it, I'll talk a little bit more about the exempt process, the IRB administrators will review the application. We would need to have the materials. So for example, the survey interview, a consent form, in terms of the information related to that research project. There's certain requirements in terms of within the consent that it needs to be voluntary. It needs to have certain information as part of the process. It's not subject to the regulations, but there still needs to be information for participants to participate and on a voluntary basis for the research study.

Stephen Guster: The IRB administrator will review the application to see if it meets the exemption criteria. That's based on the federal regulations for exempt criteria. If it does, the individual is issued an exempt determination. So one thing was if they have questions, there may be questions posed, so the researcher responds back. If there's something that's not clear about what they're doing, as part of if the application does not qualify for exemption, it would then undergo an IRB review, and this is getting a little technical, but with the IRB review, it either undergoes, kind of similar to exempt, there's expedited categories. So there's certain categories of research, if it meets the expedited categories and are known of minimal risk. And it goes through an expedited procedure, which means it doesn't have to go to the full convened meeting for review and approval.

Stephen Guster: So it's reviewed by the IRB chairperson, or one or more individuals designated as experienced by the IRB chair. Any more than minimal risk study, or study that does not fit into the expedited review procedures, would have to undergo a committee review. So that would mean it would have to go to a convened meeting to be reviewed and approved prior to an approval being issued.

Speaker 1: Thank you. So what the steering committee heard, or some members of the steering committee, heard from one of the graduate students was that there were people who were graduate students in Communication Arts who were concerned about this survey who were working with the person who was doing the survey, but did not want to say anything because they assumed that it would be caught at IRB. And I think that talking about sort of levels of communication, I think that there may be a feeling that IRB are the people who are there to be the final arbiters, and it sounds like they're not necessarily.

Dr J R Haywood: May I make a comment about that? Because that gets to be very tricky territory. I'm not sure anybody in this room wants the IRB to be a final arbiter on the kind of science, or kinds of research, or scholarly activity that they do. We can, however, work together. We can identify things, ask the department and college to give us feedback, and engage in a conversation as to whether research is appropriate. We really don't want to be in the business of stopping research, or saying that research can't be done at MSU. That's why we have faculty here. That's why we have faculty representation.

Speaker 1: So I, of course, totally agree, but I'm wondering in terms of talking about having deans sign off on things, I think that there are deans have many, many, many things that they are signing off on on a regular basis, and oftentimes sign off automatically. Is there any consideration in terms of if something comes to IRB and it seems like it might be a little bit difficult sending it back to the college?

Dr J R Haywood: Absolutely. In fact that's one of the items that Kristen lists in her long list.

Speaker 1: Okay.

Dr J R Haywood: So, again, we are not saying we don't have a responsibility. We will look to catch, what looks to be is sensitive research. What we're, as Kristen mentioned, what what we're dealing with is what is sensitive research. Sensitive research to some of you may be different than sensitive research to this side of the room. So this is going to require a conference sage. It's going to require some activity on the part of faculty in the colleges, but we're going to do our best. If departments and chairs don't catch things before they go out, we'll work to catch those things. In fact we have two or three that we've identified that at least one of which we've already sent back to a college for that kind of conversation. So we're, working to do this. Again, we may not have been good at this in the past, it's why we want our staff to get additional training in terms of what the sensitive issues are, what they need to be in tune with. So I hope that answered your question.

Jennifer J.: So Jennifer Johnson College of Human Medicine. Just to add to the conversation, because I was part of that conversation Debra had with the student. The part that struck me is that the three students, according to the student rep, were all uncomfortable, but didn't feel empowered to say something. And that graduate students are in an inherently difficult situation when they depend on the professor for their employment and maybe their admission. So I don't know what, as a faculty we can do, but where that went in my mind as a psychologist is about psychological safety, and in empowering our graduate students to speak, because if those graduate students had felt empowered, they could have saved their professor a world of pain.

Dr J R Haywood: That's right. And that's also why there is an anonymous hotline to the university compliance officer's office. They receive calls every day on various topics and I would encourage you to spread the word to students that if they're aren't

comfortable talking about it face to face, they can also send a message to this hotline, and believe me, we have feedback from it every day. We get things to look into. So that is one option that they can do. Address an issue anonymously. Yes, sir.

Jeff McKeagan: Hello, Jeff [McKeagan 00:49:04], College of Human Medicine also. Just a question to clarify that these layers of expedited review, and also exempt research, should be importantly distinctive between biomedical research, and the trouble with social science, is my impression, and a lot of IRBs going through exempt to expedited review, are efficient and clear in the biomedical arena when there are deidentified records and less than minimal risks. So I wouldn't want to add layers, if anything, we're trying to have a dialogue to decrease those for some of those straightforward cases.

Dr J R Haywood: You indirectly raise a question that I have to say I've been engaged in for over a decade, and that's the concept of regulatory burden. So that's one of those fine lines that we as folks in the regulatory area have to walk. We need to protect subjects. We need to protect the institution. We need to protect investigators. We also can't have you spending all of your time doing paperwork.

Dr J R Haywood: So we need, again, this is the conversation that we are asking for. What's that balance at Michigan State University that we find acceptable? What's that balance that we find unacceptable? We're here. We're available to listen to you.

Speaker 1: So how do we get in touch with you and what do we do? What do we do to be in touch with you to [inaudible 00:50:41] concerns?

Dr J R Haywood: Office, you can email us-

Speaker 1: Email the office.

Dr J R Haywood: Call us. We will come, if you have faculty groups, departments, whatever, we're happy to come listen to what you have to say. We're not incorporating every single suggestion, but we're going to listen. There are good ideas out there, I'm sure of that. And we want to hear what everybody has to say.

Juliet: Hi. Thank you. Thank you very much for your presentation. Juliet [inaudible 00:00:51:09], College of Arts and letters. I just want to go back to Doctor Sheila's point. I'm having a bit of an existential crisis right now, because we're here as faculty senators, and I think our role, I mean this might go back to the conversation about orientation and what we're doing here, is to represent faculty, and create a better and safer environment. And I have, I'm here thinking like, "Oh good. Interviews ..." because I was thinking about conducting some interviews. "This is good, because now I don't have to get approval. And this is on the agenda, the scooters were on the agenda the last time we met."



Juliet: And I have no idea about this survey. I'm Googling Lansing State Journal and the state news, and I'm thinking, "What are we talking about here?"

Juliet: Because I know about some of the acts on campus to fill Dr. Nunez' earlier point about the racism in this climate, and I thought, "Yes, I can think of several incidents."

Juliet: Survey is news to me in the moment. So how can we be effective here? I don't even know what comments to send you, because I have no idea what's going on. So I guess that's a comment for the steering committee, or for us as the senators, when we set the agenda, how do we inform the discussion that we want to have?

Speaker 1: I guess I should respond to that. The survey was fairly widely available through various means, and it was something that I did not want to attach to anything. Myself, it has huge numbers of very, I don't even know how to describe them, inappropriate doesn't even come close, racist, sexist, vicious, horrible comments. And it asking people to react to say how they would react to them, what their reaction would be. I mean it, it's just there. It was unbelievable. That's all I can say. And it was pages, and pages, and pages, and the way it was disseminated was students taking pictures of it, and putting it online on social media.

Juliet: Thank you. I'm not asking to read the survey. I'm asking more about process. We're having IRB come, because there was this terrible survey, which you can read about in the news as, I just did. So I don't need to see the survey. I don't want to continue to pass that around, of course, but I just want to know what's going on. That's more my point.

Speaker 1: Stephanie.

Stephanie: I spoke with our chairperson, if you recall, when the survey first came out, and I feel that as faculty of this fine university, we have a responsibility to address it even amongst ourselves. To Juliet's point, I wanted to perhaps propose, as it relates to this IRB, or just things in general, that we make a statement, a faculty resolution. I was told that there is something in our bylaws. I don't feel that that is enough. We have a responsibility to our students.

Stephanie: What I had hoped that would be that we as faculty would say, "We, the faculty of Michigan State University unequivocally support the students and staff of the Michigan State University community. We reject any circumstances which support hate speech, or we also create a better and safer environment. We are invested in that for our students. We are invested in an inclusive, diverse community."

Stephanie: Some type of strong language that our student body can see how strongly we feel about this, and that we have some confusion as to how this information

was released, and just to share this with you, I have 130 high school students in the Lansing area who are in pre college training. I got this information regarding this survey from my students in Lansing area high schools. They sent it to me before I knew, as a faculty member here on this campus, what was going on. They sent it at the very same time I'm working with them regarding applications to college. Their parents reached out to me, once again, before I had heard anything from MSU, and I can tell you that it was not a good look for us, and it certainly did not feel good. So I am suggesting that we do something, and take this as an opportunity to continue to learn and improve, but we need to make a statement. Thank you.

Jane Vunnel: Hello. I'm Jane [Vunnel 00:56:39] in Music. I concur heartily with the statement, but I think again, this is emblematic of us receiving information in such a delayed fashion that the faculty doesn't know, and then your students in high school, our students in our classes, are asking about this, and looking for some form of response from us, which we can't have, because we don't even know it happened. Or I read it in the paper before anything comes from MSU, and I think it should be the other way around. I think we should learn it first, and have that information, I could be wrong, but there is no school newspaper, am I right? There's no Michigan State Review-

Speaker 1: There is a street review. There's the State News.

Jane Vunnel: Do they have investigative reporters? Okay, well, all right, so I'm ignorant in that regard though. But I just feel so strongly that we are often the last to know, and we need to be ahead of the curve, and also able to understand it, which again doesn't mean that we need to read everything, but we need to have some form of acknowledgement that an issue occurred. We need to be alert. We need to know we're going to have to respond, and we then are able to be the kind of teachers we want to be for our students, and the kind of support that this statement will say that we are.

Speaker 1: Other comments? Yes.

David Wilson: This may seem way out of line with with everything.

Dr J R Haywood: Could you identify yourself.

David Wilson: Oh, David E. Wilson College Communication Arts and Sciences. I've been here for three and a half years. I came here, and a week later Nassar was arrested. We have a person who's associated with this town who spoke out. Malcolm X spoke out for people who didn't have a voice. We don't do shit to celebrate him. If we want to give our students a voice, why don't we celebrate people such as Malcolm X, such as the victims of Nassar? When I first got here, I proposed, this was one of the few universities I've been at that doesn't have a First Amendment zone, and I don't, where students can go and speak.

David Wilson: I would rather have a listening zone as the opposite side of the First Amendment that we have an obligation to listen to each other. And that we have a listening zone, and in that listening zone we have a monument to the victims of Nassar. We have a monument to Malcolm X. We have a monument to Green. We have monuments to many of the people associated with this university who spoke out for people who didn't have a voice. And maybe then students will listen, will learn to speak out. But if we continue to hide, and run away from these people, I mean what are we supposed to expect?

Speaker 1: Thank you. Yes.

Dan Gold: From a process end, I think it was said earlier, Dan Gold, Education. Sorry. It's almost like we need a task force maybe from different colleges to come and almost do an-

PART 2 OF 5 ENDS [01:00:04]

Dan Gold: Task force maybe from different colleges to come and almost do an autopsy on this whole sequence of events because people are talking about partial information. It was said earlier, "What happened, what was done, who caught when?" And then get that sort of input and come up with, "Okay, here are the options." I think your group is doing that. But if you want faculty involvement, maybe have faculty on some sort of task force.

Speaker 4: Have the authority to look at our process.

Dan Gold: Yes.

Speaker 4: We don't have the authority to look at the whole university.

Dan Gold: Okay. And some of this ties to much larger issues, and I support virtually all the comments made so far. But there's some counter arguments being made nationally. In a book I read, *The Coddling of the American Mind*, about safetyism and we're so concerned with student safety, which on our campus we share better be. But when do we try to protect kids from all kinds of hurtful comments. And when you were talking about, "How do we legislate these sensitive topics," I think maybe people looking at both sides of those and trying to come up with the best solution. I mean, because it's just a hard issue unless you know all the details as we go forward. Thank you.

Deborah Moriarty: Thank you. So I'm hearing several different things. I'm hearing that we would like to have a faculty statement, a statement from the Faculty Senate. I'm hearing that a first amendment zone, I believe it was, and task force. And those are three things that have come up and it would seem to me that those might be things to put on the agenda to send to the steering committee to put on a future agenda that would be very valuable to have. So if you can send those to academic governance, then they will be on a future agenda. A faculty statement

is something that would need to obviously be written and it would need to be written by someone who's able to work... thank you, Stephanie. For someone who is willing to write it. And then it would have to be passed by the Faculty Senate. Yes, Jennifer.

Filomena Nunez: May I interject here?

Jennifer J.: Sorry.

Filomena Nunez: Is that okay? May I ask you?

Deborah Moriarty: I didn't see you, sorry. Yes.

Filomena Nunez: I was trying to get in.

Deborah Moriarty: Yeah, I moved.

Filomena Nunez: Okay, so-

Deborah Moriarty: Sort of blocked.

Filomena Nunez: There is an issue of timing.

Speaker 5: Filomena, could you identify?

Filomena Nunez: There is an issue of timing.

Deborah Moriarty: This is Filomena Nunez.

Filomena Nunez: Okay. I cannot overstate this. Unfortunately, we meet once a month. We've got a whole bunch of items in our agendas and somehow these things... This was part of the ad hoc committee suggestion, is that when there are urgent matters, they need to be on the agenda. We need to be foreseeing them. We need to understand, this is important. There is a large body of our student population that feels offended. They're not feeling safe, they're not feeling comfortable in this space. And half of us faculty don't know about it, which is a problem. Not of the faculty, but of how we share the information.

Filomena Nunez: The other half may not care. This is a problem. This is important and we need to make it important and the way we need to make an important is not by putting it in the next agenda. This is the way that we don't do anything. This is exactly the problem. We need to be doing things. And by doing, I mean now. We get together, we're here. What are we doing with our time? We're here. We just need to come up with one strong sentence. This is what we stand for as Faculty Senate. Can't we do that?

Jennifer J.: This is Jennifer Johnson. My thought might, it was going to be a question, which is these three things. We have the clickers. Dr. Anthony has a statement. We could vote, right? On whether we want to make task force, whether we want to approve the statement, and whether we want to at least assign somebody to look at the listening zone. We can just do it now, right?

Deborah Moriarty: Sure. If you would like to make a motion.

Jennifer J.: Oh, I'd like to make a motion.

Deborah Moriarty: You should probably make three separate motions because we have to vote-

Jennifer J.: Okay.

Deborah Moriarty: ...Three separate times.

Jennifer J.: I would like to make a motion that we vote on Dr. Anthony's statement now using our clickers.

Deborah Moriarty: Dr. Anthony will have to repeat her statement.

Stephanie: I-

Filomena Nunez: A simplified statement.

Stephanie: Yeah.

Stephanie: A simplified statement. I was just filling some things out. [crosstalk 01:04:41].

Jennifer J.: You need to get a clicker.

Stephanie: Okay. Want to read the statement?

Jennifer J.: Sure. Okay.

Stephanie: The statement as just in my notes, please forgive me. Just jotting down things. Says, "We the faculty of Michigan State University unequivocally support the students and staff of the Michigan State University community. We are invested in an exclusive diverse community that celebrates our academic potential, creates a better and safer environment for everyone, and that is free from," and it lists the different things. Hate speech.

Filomena Nunez: Racial slurs.

Stephanie: Racial slurs, sexism. Whatever areas that... Religious freedom.

Jennifer J.: And maybe the motion is that we approve some-

Stephanie: Version.

Jennifer J.: Assign somebody to... We agree with this statement sort of in general and we assign somebody to clean it up and send it out.

Filomena Nunez: Okay. I second the motion.

Jennifer J.: Okay.

Stephanie: Discussion. Any discussion? Sorry.

George Garrity: George Garrity, Natural Science. A point of clarification. Are we voting on the statement, or are we voting on writing the statement? It's not clear.

Filomena Nunez: We're voting on some version of that statement.

Jennifer J.: Yeah, we're voting on some-

George Garrity: Okay.

Jennifer J.: Yeah.

George Garrity: What what version of the statement are we actually voting on?

Filomena Nunez: We're voting on their being a statement. That's what we're voting on.

Speaker 6: I'm going to go find a restroom. I'll be back.

Jennifer J.: I mean, it could either be word for word what she just said or it could be that we support the idea and we are comfortable enough with assigning one of our colleagues to fix it up and send it out.

Deborah Moriarty: It sounds like we need to have... It would be best to say the Faculty Senate would support a statement that dealt with, and then put in a little bit of what Dr. Anthony said. Rather than saying, assign somebody to it and then that's a little bit vague.

Jennifer J.: All right, so we... All right. Is this discussion or do you want me to amend the motion?

Deborah Moriarty: Is there any discussion? We can restate the motion. Yes.

John Yun: Hi, my name is John Yun. I'm from the department of education. I think I support the idea of putting out a statement, but I think something that we're

just putting together in the moment is a bit troubling for a lot of reasons. I think there are a lot of issues involved. We definitely need to support the students. I know students were definitely hurt by what happened. Our processes need to be looked at. But there's also the issue of academic freedom and the value of the research that might've gone out. There may have been some deep value to that research and none of that is necessarily in this statement and in the discussion. And I think as a Faculty Senate, I think we have to include in our statement something that's relevant to the value of an inquiring protection for the kind of research that could happen on this institution within these broader guidelines.

John Yun: And I think it's a very complicated question and I think we do it disservice by, in 15 minutes, trying to put somebody together without thinking about the multiple sides of this particular issue and what it is that we want to put out there. Because I think we definitely need to educate as well as support our students. And for me this research might have been... We just don't know enough about it, which is actually a problem because by this point we really should know everything about it.

John Yun: There might've been something very valuable about this research because this stuff is out there and our students are coming into contact with this every day. Not necessarily from our faculty through research, but in their own social media and being directed at them directly through their social media. So understanding the impacts of these things could be just as important as making this broader statement in support of our students and the impact of really kind of a botched situation. So how do we make this complex statement? We can't do it in 15 minutes. So I would really support making a statement and assigning someone to put a statement together, but I'm very uncomfortable with saying, "Whatever statement we can come up with in the next 15 minutes, we're going to trust someone to be able to throw it out there." So that's my comment on the motion.

Deborah Moriarty: Yes. Dr. Bochilla.

Sheila: So I don't know too much about James Madison College. I don't know How to say this with... Okay. So I will say it this way. I think that we're dealing with three different issues. I think we need a statement because this "incident" happened within a broader context and because we want to make sure, at MSU it was one event, and we want to make sure that our students who have been at the receiving end of sexist, homophobic, xenophobic, but primarily with these incidents, racist acts feel supported. Okay? So we need to make a statement in support of our minority students who feel vulnerable at this institution right now and unwanted. So that's one thing. The other, and I think we need to work on that, but to this I do want to say that we don't all need to be present in a meeting for this. And I sent an email to the steering committee as soon as this stuffs started hitting in the sense that the news started covering. Is a steering committee working on a statement?

- Sheila: I don't want to point my fingers to this, but the fact of the matter is we can work as a faculty on a statement outside of this meeting and we need to do that. We need to respond to what's going on on our campus faster and I think this is clear by now. The other issue is what happened with this particular case and the issue of academic freedom, which I believe we do not have an understanding at all of what happened with this particular case and I think we should address that, but can we decouple them and agree that we need a statement that we need to work on outside of a regular meeting as soon as possible.
- Stephanie: Thank you.
- Jennifer J.: Jennifer Johnson. My comment was going to be, there is nothing in this statement that had anything to do with this specific incident because we don't, at least I don't, have the information I need. I agree with you. It's complicated. I think there was simply a, "We support our students of all races, ethnicities, et cetera."
- Deborah Moriarty: Yes. Dr Mixcheck.
- David Wilson: Richard Mixcheck, College of Human Medicine. In the interest of moving forward, I would like to suggest that a statement be drafted after fully informing ourselves as to what the issue is circulated by email and approved or not by an email booked so that we can actually move forward judiciously.
- Deborah Moriarty: Thank you. Would you accept that as a-
- Jennifer J.: Yes.
- Deborah Moriarty: Great? All right, so that is the motion.
- Filomena Nunez: Within a few days.
- Jennifer J.: Yeah, within a few days. Yes. Otherwise we have to do this again.
- Deborah Moriarty: We need to, however, decide who is going to come up with the statement because that's not going to happen within a few days if we have to do that by email.
- Speaker 7: Point of order. Is this a motion that's on the floor?
- Jennifer J.: Yes.
- Deborah Moriarty: Yes.
- Speaker 7: Should we second it before we discuss it?



Jennifer J.: It's been seconded.

Deborah Moriarty: It's been seconded. Yeah.

Jennifer J.: It'll take a committee of volunteers.

Deborah Moriarty: Yes. We need a committee. We need, how many people do we want to put on this statement writing? Three people? [crosstalk 01:13:28] Dr. Anthony. Dr. Nunez.

Filomena Nunez: Stephanie, I can-

Deborah Moriarty: Dr. Anthony, Dr. Nunez. Yes, doctor. I'm sorry, I don't-

David Uleson: Dave Uleson.

Deborah Moriarty: UI-?

David Uleson: Uleson.

Deborah Moriarty: Uleson. All right. That committee of three will draft a statement to be sent to Faculty Senate. So there's a motion on the floor to form a committee made up of these three individuals to draft a statement that will be forwarded to Faculty Senate. Any more discussion? You have clickers? All in favor? [crosstalk 01:14:14] A is yes. B is no. C is abstain. Is everybody's set? Are we good? Give it five more seconds and then we're done. Thank you.

Deborah Moriarty: The next motion was for a task force. Is a motion to form a task force to look at what is happening at IRB.

Jennifer J.: Was it the IRB or was it the [inaudible 01:15:03] Oh, it was the IRB, right? No.

Speaker 5: Well, I don't know the structure, but if the IRB was like faculty involvement, to form a task force, that would help inform the IRB.

Deborah Moriarty: So a task force that would help inform the IRB. How many people are you thinking of on the task force?

Speaker 5: We have no clue.

Deborah Moriarty: Pardon me?

Speaker 5: We have no clue.

Anna P: There are faculty on the committee for the IRB. So I think the relevant colleges are represented already.

- Speaker 5: Yeah, we need to have people identify themselves during the conversation for the official audio record. Okay?
- Anna P: Sorry. Anna Pegler-Gordon, James Madison College. I would like to actually suggest that perhaps we just invite the IRB back to say the end of next semester or the beginning of the following semester meeting to actually report on the specific changes that have been made.
- Deborah Moriarty: Excellent idea. So we can find out and we had don't need to wait until the end of the semester, we can do it sooner because they realize that they need to do something in a speedy fashion, an academically speedy fashion, not a real speedy fashion. Okay. The other one was to have a listening place on campus, a first amendment spot on campus.
- Jennifer J.: [inaudible 01:16:36] If you want to make that motion, because that's [crosstalk 01:16:38]
- Speaker 6: What were the other motions?
- Jennifer J.: On the agenda? Oh, yeah. Yeah.
- Deborah Moriarty: Would you like to make a motion?
- David Uleson: Yeah, microphone.
- Speaker 5: We need a microphone.
- Deborah Moriarty: Oh, sorry.
- Speaker 6: David Uleson, College of Communication Arts and Sciences. I would move that we put together a task force of five senators to propose a listening zone on campus.
- Deborah Moriarty: Is there a second to the motion?
- Speaker 5: Second.
- Deborah Moriarty: Is there discussion? Do we want to do a clicker vote? Yes.
- Dan Gold: Could you please make sure that your clickers are turned on, too, before you vote.
- Deborah Moriarty: So A is yes. B is no. C is abstain. Five seconds. Thank you. Motion passes. We will put that on the agenda of the steering committee to form a task force. Thank you.

Deborah Moriarty: I would like to move to the next, the formation of an ad hoc subcommittee for the organizational restructuring of the Secretary for Academic Governance position. I would like to put that in the form of a motion. Is there a second to that motion.

Dan Gold: Second.

Deborah Moriarty: Discussion? Let me just start off by talking a little bit about it. I want to make this relatively quick. We now have information that you have all received about what the other Big Ten schools do in terms of Secretary for Academic Governance and the structures. We are an outlier in this and we would like to look at making the Secretary for Academic Governance office more vital in terms of more people involved and having a full time position for the Secretary for Academic Governance, but we would like to do it with a task force from the Faculty Senate. This was something that was brought about by the ad hoc committee who suggested this. This is also something that has been suggested by numerous at large members as we have been working in the system and the committee would be able to come back to the Faculty Senate and to the steering committee and then to the Faculty Senate with a recommendation.

Dan Gold: I saw that a Dr. Curry?

Deborah Moriarty: Yes.

Dan Gold: No.

Dr. Curry: That's something I'll read at the end of the meeting.

Dan Gold: Okay. He'll make his comment at the end.

Deborah Moriarty: Okay.

Dan Gold: Thank you.

Deborah Moriarty: All right, so is there further discussion on forming an ad hoc subcommittee from Faculty Senate?

Filomena Nunez: Excuse me.

Deborah Moriarty: Yes.

Filomena Nunez: I think it's really important to put a timeline on this.

Deborah Moriarty: On when the decision... it would come back to Faculty Senate. What we are hoping to have happen would be that we would have someone in place in the summer. Dr. Hoppenstamp would stay on through this year and then he would

take the summer and during the summer he would have the opportunity to work with a new person and sort of break them into the idiosyncrasies of Michigan State University's Academic Governance bylaws and all those kinds of things. So what we're looking at is to have something that would happen by January, have a subcommittee that is formed in January, working subcommittee, that would then come back to Faculty Senate in February and at that point have a job description and put out a job description. Any other discussion?

Deborah Moriarty: With your clickers. All in favor?

Tyler Sylvestri: I did have a question.

Deborah Moriarty: Yes.

Tyler Sylvestri: Sorry. The way the subcommittee's decision was made at the outset, that it's a subcommittee to put together and then hopefully they'll put together a job description to have this happen? I think therefore closes the possibility that the subcommittee does not think that the position should be restructured in that way. I would just point out that we're making a subcommittee to debate whether it's a good thing to do.

Deborah Moriarty: Right.

Tyler Sylvestri: But not that they're instructed to reach that-

Deborah Moriarty: No, no.

Tyler Sylvestri: Just wanted to make that clear.

Deborah Moriarty: No. The subcommittee will simply look at the materials and then come back with a recommendation.

Tyler Sylvestri: Sure.

Deborah Moriarty: But the recommendation, would we would want to have that in place by February.

Tyler Sylvestri: Sure. Just wanted to make that clear. Thank you.

Deborah Moriarty: Yep. Yes, that is... Sorry.

Tyler Sylvestri: It was Sylvestri from UCAG, by the way.

Deborah Moriarty: I was just giving the timeline if this came through. Okay.

- Speaker 8: So the recommendation comes back to senate?
- Deborah Moriarty: Yes, the recommendation come back to senate. Correct. All in favor A. Opposed B. Abstains C. Five seconds. Thank you. The motion passes. The recommendation regarding Faculty Senate special meeting procedures. I would like to put a time limit on this since we have spent a lot of time discussing this and just simply have a vote on the options that are presented. If that is okay with everyone, because we are going to have a fairly lengthy discussion on the proposed Faculty Senate resolution, the waiver of confidentiality, so this is Tyler Sylvestri.
- Tyler Sylvestri: Hi, Tyler Sylvestri, UCAG chairperson. We heard you loud and clear after the last Faculty Senate meeting. You do not like a two step process for special meetings on Faculty Senate. Got it. Step taken out. No more two steps, just the one. As to the threshold, you asked for some options. We put together three options. For reference, the old model that we had proposed was 33% for the initial step and then two thirds, 67%, to actually have the meeting. It's all a good deal lower now. The three options are 15%, 25%, and 33%, or there's a fourth abstain, which is, we don't like any of those options, to just try again UCAG. So those are the options.
- Deborah Moriarty: Can you make that in the form of a motion?
- Tyler Sylvestri: So strictly speaking, what the motion is, is a recommendation to UCAG. I'm telling you, UCAG will adopt your recommendation so just to be clear, but it's recommending... So I move that we recommend the voted on percentage to UCAG.
- Deborah Moriarty: Is there a second to the motion?
- Anna P: I second.
- Deborah Moriarty: Is there discussion?
- Jennifer J.: Just to clarify. This is the percent of people.
- Dan Gold: Microphone.
- Jennifer J.: Of the Faculty Senate-
- Dan Gold: Jennifer, could you-
- Jennifer J.: Jennifer Johnson, College of Human Medicine. Is this the percent of people in Faculty Senate that would have to agree to call a special meeting? Is that? Okay.

- Tyler Sylvestri: Sorry, Sylvestri. Correct. If that that number of people contacted the steering committee to have the meeting, the meeting would be on, one step.
- Andona Bartula: Thank you. Andona Bartula, James Madison College. So just to clarify, so the percentage of the number of faculty that would have to ask for an emergency meeting, and of the number of faculty that would have to agree with for it with the emergency, is the same. It's just one step, right?
- Deborah Moriarty: Just the process.
- Tyler Sylvestri: Correct.
- Andona Bartula: Ask. Ask or agree?
- Tyler Sylvestri: So we don't have the language draft yet because we're waiting on it from... Basically we want the recommendation. It'll be put on Thursday and then voted on at University Council. But what it would be is if 15% or 25% or 33% of Faculty Senators email the steering committee saying, "We would like to have a special meeting X," special meeting is on for X.
- Deborah Moriarty: Is that clear? Yes.
- Gewn W: Gwen Whittenbaum, Communication Arts and Sciences. I'm just wondering, I don't know how many Faculty Senators we have, so 15% is how many people? 25% is how many people? Can we clarify that just to inform the voting? [crosstalk 01:25:27]
- Speaker 9: I think 77 voting Faculty Senators.
- Deborah Moriarty: How many Faculty Senators do we have?
- Speaker 7: We have 77 voting Faculty Senators. But you could make it 15% of the quorum or 25% of the quorum, so you need not have all 77 votes just as long as you have a quorum, which is 50% plus one.
- Deborah Moriarty: Let's not confuse it. Okay?
- Tyler Sylvestri: Right. So, so-
- Deborah Moriarty: Let's just do the number of Faculty Senates.
- Tyler Sylvestri: So by my-
- Deborah Moriarty: We have 77 Faculty Senators. What is 15% of 77?
- Tyler Sylvestri: Looks like 12? 11 and a half, 12.

Deborah Moriarty: Twelve, okay. So we'll say 12. And what is 25%?

Tyler Sylvestri: Twenty.

Deborah Moriarty: Twenty. And what's-

Tyler Sylvestri: Thirty-three is 25.

Deborah Moriarty: Okay. Is that clear? That's what we're voting on.

Speaker 7: Clear.

Deborah Moriarty: Thank you. We ready?

Speaker 5: Sherri, do you have a comment?

Sherri: We have 79 voting members.

Speaker 5: What's that?

Tyler Sylvestri: 79.

Sherri: We have 79 voting members.

Speaker 5: 79.

Deborah Moriarty: So we add one to each. But that's a general idea of how many we have. Is everyone ready to vote?

Ed Rosser: I have one more comment. Just a comment. Ed Rosser from College of Veterinary Medicine. One of the things that I mentioned and hasn't been addressed or discussed is the short notice is a great idea, but if somebody tells me, based on this and my responsibility, that tomorrow at one o'clock I have to be at a meeting, I got some news for you. There's a 90% chance that I can't do that, so what about a quorum for these meetings? Because our schedules, at least with my own, it's calculated out for my day to day stuff, two months in advance just to function. Being a clinician, referral specialist, didactic research, and everything else.

Ed Rosser: So I don't have that kind of wiggle room and maybe other people do, but that would be big. So that's why when I take on a responsibility to be this, I like to know when are those meetings in advance so I can get them on my darn calendar so I can attend them. That short type thing, at least in our college, when that happens, we don't have enough people for a quorum in many cases when we do that. So I don't know that I have an answer. I just want to point that

out, that we may not be able to have a quorum when we do that by this method, is all.

Deborah Moriarty: Correct.

Speaker 7: If I could speak to that, and that might be the reason why to have a 50% plus one standard in terms of reaching the 15%, 25%.

Deborah Moriarty: But that won't make any difference in terms of getting people together. That's a completely separate issue.

Speaker 7: You could have fewer people get together.

Deborah Moriarty: No you have to have a quorum of the numbers of Faculty Senate get together.

Speaker 7: Yeah. 50% plus one. So-

Deborah Moriarty: Right, so-

Speaker 7: So 79, half of that plus one.

Deborah Moriarty: In order to have a meeting.

Speaker 7: Yes.

Deborah Moriarty: Correct. But not in order to call a meeting.

Speaker 7: Okay.

Tyler Sylvestri: Sure. Sorry, Sylvestri again. Just to be clear, this is for calling the special meeting.

Deborah Moriarty: Right.

Tyler Sylvestri: Once at the special meeting, all regular rules apply and so your concern is valid.

Deborah Moriarty: Right?

Tyler Sylvestri: Can we not get them? Maybe not. That's a separate issue from, "How many do we need to get the meeting." But of course you do need a quorum to do things. Sure.

Speaker 5: Microphone?

Juliet: Okay. Juliet Casada, College of Arts and Literature. So, I appreciate the point. My understanding with these kind of emergency special meetings is that they're an



emergency and so something really serious is going on on campus that we need to address. So there's a question about priority, although not speaking to you personally, I understand we all have various priorities. So I have a concern that if we're calling this meeting, I think that means that we kind of need to be here. Or I guess I'm asking, what is our understanding? What is our commitment to ourselves, to each other, about these special meetings? If X percent of our colleagues say, "There's an emergency situation, we need to be there." I think we need to make every effort to attend.

Ed Rosser: Yeah. My major concern with that... Ed Rosser again, College of Veterinary Medicine, is when students are involved. If I have a lecture that I'm going to give at a certain period of time, it maybe an emergency, I can't cancel that lecture, as an example.

Speaker 10: You can't send a voting representative in your place? I think representatives can't vote, right?

Ed Rosser: Nope.

Speaker 5: That's correct.

Deborah Moriarty: Yeah. If you send a representative, they are not allowed to vote.

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Deborah Moriarty: Yeah. If you send a representative, they are not allowed to vote.

Speaker 11: I was under the impression that they could as well.

Speaker 12: They have to be approved by the college.

Speaker 13: That's right.

Deborah Moriarty: It has to be an official or some representative.

Dan Gold: Dan Gold, education.

Deborah Moriarty: Yes.

Dan Gold: Just want to make sure I know what I'm voting on because we've sort of left the question. We might get an email saying we want to have an emergency meeting and I'm voting on whether 15% of the Senate would be required to have that meeting, 25 or 33%. All this other stuff right now it would just go to our normal procedures whether people show up or not. There would have to be a quorum. To me, that's a whole different issue. Just want to clarify, we're voting on the percentage. If we got an email that said we needed an emergency meeting or if

somebody brought it up here and said, we need one next week in person. Either way.

Deborah Moriarty: Right.

Dan Gold: Okay. Thank you.

Deborah Moriarty: Correct. Are we ready to vote? So A is 15%, B is 25%, C is 33%, D is abstain.

Deborah Moriarty: Five seconds. Five seconds.

Speaker 11: Oh dear.

Deborah Moriarty: Wow.

Speaker 11: Man. You're killing me. Can we vote between A and B?

Deborah Moriarty: So let's have a vote between A and B. Either A. Yes. [inaudible 01:32:10] The chair has already voted. Sorry. I can vote twice.

Speaker 12: Give us a second to set it up.

Deborah Moriarty: At least we finally had something funny.

Speaker 12: You would talk to one another in doing so, but yes. Correct. Okay. Correct. All right.

Deborah Moriarty: A is 15% B is 25% four seconds?

Deborah Moriarty: Four seconds. I don't think so. I think the 33% will vote for the 15% that's my bet. I'm betting on 25%.

Speaker 11: Can you do that again?

Deborah Moriarty: Huh?

Speaker 11: It didn't catch it.

Deborah Moriarty: It didn't catch. Okay. We need to vote again. Everybody ready? Vote.

Speaker 11: Very close.

Deborah Moriarty: Has everybody voted? [crosstalk 01:33:44] All right, let's see the results.

Deborah Moriarty: 25% it is. Thank you. Proposed faculty senate resolution, waiver of confidentiality, Brian Quinn from the general counsel's office, acting vice

president for legal affairs and general counsel. I would also like to say that we invited the attorney general's office to come and speak and they declined. I will search out the email and I will be able to read it to you after Brian Quinn gives his presentation.

Brian Quinn: Good afternoon. My name is Brian Quinn. I'm the acting general counsel. I'm here this afternoon, or at least let me tell you why I think I'm here this afternoon. Last time you met there was a recommendation, or a resolution, that you all would recommend that the board and the president disregard the general counsel's advice and recommend that they waive attorney client privilege. It's my understanding that that was tabled, that there was a request for additional information on what the privilege entails. So last week I went to the steering committee and basically gave this same presentation. They said, "Yeah, that's great, but we're really not the audience that you should be talking to. So why don't you start over and come back next week and speak to the faculty senate?" So this is why I'm here. So I'm going to you an overview of the attorney client privilege.

Brian Quinn: Sort of a caveat, I'm going to be speaking in very general terms about what the attorney client privilege is, who holds the privilege and what the consequences of waiving privilege are. I'm not going to get into case specific information, but to educate you all on what exactly the privilege entails.

Brian Quinn: So the attorney client privilege protects communications between a client and his or her attorney. This is the definition of what the privilege is. The privilege has three components. It has to be a confidential communication, meaning one that's obviously made in confidence between the client and his or her attorney, and it has to be made for the purpose of seeking legal advice. Unless all three are met, the communication is not subject to privilege. Okay? Next slide.

Brian Quinn: So the courts interpret the privilege very narrowly, meaning that it has to be clear cut, that something's privileged in order for the court to deem itself. Most of these inquiries are fact specific and they often involve the third requirement, which is for the purpose of obtaining legal advice. Just because someone communicates with an attorney does not mean that the communication itself is privileged. I'll give you an example.

Brian Quinn: So if Jane is purchasing a house and Jane decides to contact her attorney, if Jane's question to the attorney is, "Do you think the kitchen is nice?" that communication is not privileged? Jane was not contacting the attorney for the purpose of obtaining the attorney's legal advice. Now, if Jane contacts or attorney and says, "Hey, can you look over the purchase agreement and tell me if the easement in the backyard granted to the utility is enforceable?" That's a request for legal advice and therefore the communications, the discussions that Jane has with her attorney are privileged. With me so far? Next slide.

Brian Quinn: So the privilege protects those communications regarding legal advice. It does not shield the discovery of facts. Okay? Just because a client incorporates a fact in a communication with an attorney does not mean that that fact is privileged. So let me give you an example. So Bob Jones is injured when he's riding his bike and he's struck by a car. Bob contacts his attorney, who we'll call Attorney Smith. He contacts Attorney Smith for the purpose of saying, "Hey, do I have a legal claim against the driver of the car who hit me?" So during that conversation, Bob tells Attorney Smith numerous facts about what happened. What time of day it was, what the weather conditions were, whether Bob himself was obeying the traffic laws. All the facts surrounding the circumstances of the accident.

Brian Quinn: Fast forward and Bob actually pulls the trigger and files a lawsuit. In the lawsuit, bob will not have to answer questions about what he specifically communicated to Attorney Smith, or more importantly, the legal advice that Attorney Smith told back to Bob. That's the privileged communication. But Bob can't refuse to answer any questions about the facts of the answer, or about the accident, just because Bob communicated those to the attorney. If Bob is asked about the time of the accident and when it occurred, Bob must answer the question because it's not privileged. Communications with an attorney are privileged, discovery of the facts are not. Next slide please.

Brian Quinn: So this is how it kind of works in practice. When you get a lawsuit, the parties put together what's known as a privilege lock. So if the driver of the car sends Bob a bunch of discovery requests, meaning written questions, requests for documents, things of that nature, Bob's attorney, Attorney Smith, has to pull all those documents that are responsive to the questions. Anything that the attorney and Bob decide are privileged, meaning that they're going to withhold on privilege or redact based on privilege, they'll come together with a privilege log telling the other side saying, "This document is indeed responsive to your requests, but we're claiming privilege over it."

Brian Quinn: Again, this is because it's a communication between Bob and his attorney. But as I mentioned on the previous slide, Bob can't hide the facts. The other side can ask Bob anything they want about the bike accident. Next slide please.

Brian Quinn: So the privilege, like any rule is subject to exceptions. One of the main exceptions is the crime fraud exception. The law holds that when a person is seeking legal advice for the purpose of committing or covering up a crime or fraud, the privilege fails. The reasons for the attorney client privilege is to foster frank communications between a client and as an attorney. And the common law says that the reason for that is to advance the public interest.

Brian Quinn: The public interest obviously is not seeing that crimes and frauds are committed or covered up and using an attorney for that. So if a review in court determines that a communication is in furtherance of a crime or fraud, that reviewing court

will deem that this exception applies and therefore it's not privileged. Next slide please.

Brian Quinn: So this comes to the question of who holds the privilege. The client is the holder of the privilege. The attorney can assert it on behalf of the client, but is the client who is the ultimate holder of the privilege and who decides if it may be waived in an institutional setting, the attorneys in my office, and even our outside counsel that we've retain, represent the university. Obviously the university has to act through its individuals. So in this particular case, the ultimate client and decide who waves or preserves privilege is the board of trustees for us.

Brian Quinn: So the next question becomes how do you waive privilege. Privilege is waived. Anytime you voluntarily disclose it to a third party, someone who is outside the attorney client relationship. In the sixth circuit, which includes Michigan, once a client waves privileged as to one person, the privilege is waived for everybody. This is true even when a client produces privileged documents to a regulator, or to the government, in cooperation with an investigation or a subpoena. The law requires that you can't voluntarily give it. So I'll give you an example for the Columbia case. Next slide.

Brian Quinn: The Columbia case involved a situation where Columbia, which was a health care company, was accused of engaging Medicare fraud. The Department of Justice opened an investigation into the potential allegations involving fraud. Columbia decided that they would get ahead of it and they wanted to do an internal audit or internal investigation. The DOJ came in, this was again earlier on in the 2000s. The DOJ came and said, "That's great. Give us your privilege communications. We want to see the communications between the client and the attorneys and all the legal advice."

Brian Quinn: So Columbia ultimately decided to do that. They did so with the express written agreement with the DOJ that all the information that they gave the Department of Justice would be held in strict confidence, that the Department of Justice wouldn't give it to other people. They also agree in their written agreement that Columbia was not waiving privilege by giving the documents to the Department of Justice. They were doing it just to cooperate with the investigation.

Brian Quinn: Fast forward, a couple months later after Columbia gives the privileged documents, the Department of Justice, Columbia starts getting sued by plaintiffs and insurance companies alleging fraud. The plaintiffs learned of the disclosure of privileged information to the Department of Justice and asked Columbia to cough it up. And the court said, "You absolutely have to, Columbia. That you cannot pick and choose among adversaries opponents, regulators who you give privileged information to. If you voluntarily give it to someone, even the government, for the purposes of cooperation, it's gone." The theory is that you can't use the privilege as a sword. It's only used as a shield. Next slide.

- Brian Quinn: So the consequences of waiving privilege is that if you waive privilege on some communications, you run the risk and the default rule is that you waive privilege with respect to the subject matter. This is kind of similar to the Columbia case where you can't pick and choose among who you give privileged information to, nor can you pick and choose what information that you give. So you can't cherry pick favorable privileged communications and then try to hold back unfavorable privileged communications. If you wave it to some, you wave it to everything on the subject matter, you run the risk of doing that.
- Brian Quinn: So in more recent times, Baylor University learned this lesson the hard way. So Baylor, as you know, had its own issues revolving title nine and sexual assaults that happened on its campus. They hired a law firm, Pepper Hamilton, to come in and do an internal investigation, and then would use the results of that to provide information to regulators. Pepper Hamilton did the investigation, Pepper Hamilton's again, a law firm, attorneys, so it was deemed privilege.
- Brian Quinn: At the end of the investigation, the board of Regents at Baylor University submitted a 13 page findings of fact. They also submitted a 10 page recommendation that they made publicly available. Included in the 13 page findings of fact and the 10 page recommendations, they included privileged communications between them and Pepper Hamilton, facts that Pepper Hamilton disclosed to them and legal advice surrounding those facts.
- Brian Quinn: Fast forward, similar to the Columbia case, Baylor University was sued by survivors of sexual assault. During those lawsuits, the plaintiff's representing the survivors said, "We want everything that you gave to Pepper Hamilton and we want all the legal advice that Pepper Hamilton gave you. All its work product, all your attorney's mental impressions, thoughts, everything." The district court judge in Texas said, "Baylor, you waived privilege on this subject matter. You cannot pick and choose what facts you trickle out, and that which you don't. And because you tried to use it as a sword and trickle out the things that were favorable to you, you waived privilege on the entire subject matter related to title nine." Next slide.
- Brian Quinn: So again, this kind of goes back to the Columbia case. In going back to Baylor, there's obviously some... It may be a good idea in the public eye to say we're being cooperative, and there is some natural instinct to be cooperative and waive privilege for it.
- Brian Quinn: So in the early 2000s, the Department of Justice, when they would conduct criminal investigations starting in 1999 with then deputy attorney general Eric Holder's memo, they came out with a set of 10 different factors that prosecutors can use when they're looking at whether or not a corporation organization, institution who is under criminal investigation is being cooperative.

- Brian Quinn: One of those 10 factors had to do with whether or not the corporation voluntarily waived attorney client privilege. Prosecutors read that memo and the argument was is that they implicitly, or in some cases explicitly, were pressuring corporations to waive privilege in order to garner cooperation credit.
- Brian Quinn: In 2006, amongst backlash and outcries from the legal community and others of what the DOJ was doing, the DOJ doubled down with what's known as the McNulty memo saying, "We think that absolutely we're entitled to do this, to sort of encourage corporations to waive privilege during the sculpted an investigation."
- Brian Quinn: Then Congress started to get involved. Diverse organizations, such as the American Bar Association, the Civil Liberties Union, US Chamber of Commerce said that this is a grossly overreach by the Department of Justice trying to pressure people to waive the common law privilege of attorney client. So they enacted proposed legislation that would preclude prosecutors from asking corporations, institutions to waive privilege. At the 11th hour, the DOJ said, "Okay, our bad, we'll back off. We won't do that anymore."
- Brian Quinn: So this is how they revise the manual. They started off by saying, "No, we get it. The attorney client privilege is a third rail. You don't mess with it. We understand if you can see in the highlight. When we're doing an investigation, we don't need for waiver of those protection, we just want to know the facts." And therefore they directed Department of Justice prosecutors that they cannot ask to waive attorney client privilege. What they're concerned with is the disclosure of facts, not legal advice. Next one.
- Brian Quinn: So what are the consequences of waiving privilege? The consequences of waiving privilege is you're giving the other side, if you're an act of litigation, your playbook. Again, facts are not shielded from discovery, but by waiving privilege, you're giving your legal advice in those communications. If you're an active litigation, you're giving direct frank and candid discussions about the strength and weaknesses of your claims settlement strategy, the scope of insurance coverage.
- Brian Quinn: Not only would prior communications be subject to being disclosed to people who you're in active litigation with, but a strong argument could be made that also future communications may lose their privileged status, meaning that the attorneys representing the client can't really communicate with their client in active litigation because everything they say would be subject to being disclosed. This is the consequences of waiving privilege, particularly with your in multiple litigation. It's not about facts, it's about giving the other side your legal playbook. Any questions?
- John Yun: Hi, John Young, College of Ed. I just have a quick question. So if Baylor had just disclosed the facts of what had happened, they wouldn't have been seen to have waived privilege, is that correct? So even if those facts came from

privileged communications, if they had disclosed the fact that then privilege would not have been waived?

- Brian Quinn: In a general sense, yes. If Baylor's sort of limited at saying, "Here's the facts as we understand them and what we have figured out," then yes it went involved. But Baylor messed up and went one step further and divulged the communications that had had from Pepper. Pepper, being the ones who investigated and disclosed those facts to them and gave them the legal advice. And the recommendation is really where Baylor got in trouble because the recommendations were also tied to legal advice.
- Stephanie: Apologies, my apologies. I do not want to interrupt, but I do want to, if we can give voice to representative Julie Briggsy who has a statement that she wants to read to the faculty senate before because she needs to leave.
- Speaker 12: Linda, could you identify yourself?
- Stephanie: I'm Linda [inaudible 00:24:39], James Madison college.
- Speaker 12: Thank you.
- Julie Briggsby: Thank you very much. I appreciate your willingness to be flexible. I know that you guys have had a very packed agenda talking about some really important issues here on campus.
- Julie Briggsby: My name is Julie Briggsy and I am a state representative representing the 69th district, which includes Michigan State University, the City of East Lansing, Meridian township, Williamstown township and [inaudible 01:55:04] township. I spent 18 years in local government and had many a closed session in that time on a variety of different issues.
- Julie Briggsby: And in all those years we would get legal advice. And at one time in my career in Meridian township, I felt moved to go directly against the legal advice that was given to me by our attorneys. And that was a case regarding a person who had been a survivor of Larry Nassar. And so I am here before you today to express my support and encourage the MSU faculty senate to adopt a resolution in favor of waiving privilege.
- Julie Briggsby: MSU really must demonstrate responsibility for the tragedies that happened, and responsibility for the students and their families in order for true healing to begin. Anyone who violates our trust must be held accountable. And our students and their families, and really the entire MSU community, deserves nothing less.
- Julie Briggsby: It seems to me that throughout this process it's taken an outside investigation, or discovery of facts, for any action to be taken. And accountability is only



seeming to happen when something's discovered externally. And this is proven to be the case with multiple resignations here at the university.

Julie Briggsby: I would love to see the university take a different approach with all due respect to the presentation that you are hearing. Sometimes doing the right thing is not the thing that the attorneys are telling you to do, and there probably is something to be afraid of because there probably are additional facts that really need to be discovered, uncovered and allow the accountability to take hold.

Julie Briggsby: So I appreciate you giving me time on the microphone and I hope that you understand that the faculty, the alumni and the Spartan Faithful across the globe really want MSU to do the right thing because that's what Spartans will be about. Thank you very much. I appreciate your consideration.

Gary Hoppin S.: Thank you. This is Gary Hoppin Stand. Before any motion is voted on here, there would be a motion first to give a voice to this individual so that she could address the body for a vote. So are you asking for a vote for this group?

Julie Briggsby: [inaudible 00:28:11].

Gary Hoppin S.: Okay. Okay. So if a vote is being encouraged, there needs to be a vote first that this individual has official voice in this committee meeting.

Brian Teppan: I'd like to ask a question of the council. Brian Teppan from a College of Ag and Natural Resources. So privilege protects the legal communication, and I think probably in this group we're not going to get a lot of support for giving away the playbook as you say. But in fact, doesn't privilege actually hide facts because we don't even know what questions to ask? You say that it does not protect facts, but could you support MSU releasing all the facts in the case separate from the legal communication that communicates those facts? Is that is that even possible?

Brian Quinn: So going back to the proposition, discovery of facts aren't privileged. So releasing facts, it's not an issue. And so the question is that by asserting privilege, are you hiding facts? Meaning that the onus is on the prosecutor or investigator to ask the right questions. Is that kind of what you're asking?

Brian Teppan: I guess so, I'm no legal expert.

Brian Quinn: Yeah. So look at what Bob was communicating with his attorney in the bicycle accident. Everything involving the accident is fair game. It's the other side-

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Brian Quinn: ... helping the accident is fair game. It's the other side's obligation to ask the right questions. In this particular case, when hundreds of thousands of

documents are disclosed, non-privilege and facts, over 550 interviews are conducted, all the facts are fair game.

Speaker 14: Can I ask you a question and make a comment related to that? So, the Bob example isn't really relevant because the question here is, did Michigan State University cover up evidence and how far did that cover up go? So, I asked last time we met of the President, what about situations in which you have factual issues that are also issues of legal strategy? For example, former President Simon requesting legal strategy about Nassar by name at a time that she claims she did not know specifically that it was Nassar. She wasn't engaged or planning criminal conduct at the time, so it seems like in that case, because she wasn't planning it at the time, it would remain privileged, but since she was asking legal advice, would that be a fact that is also legal advice? Or Bill Beekman handling strategy on Nassar, communicating with general counsel about legal strategy and then later lying to the media about not knowing anything about Nassar until the Indianapolis Star investigation. Would that also be a fact that is extremely relevant to whether the Michigan State University covered the up and it was at the highest levels that we are not learning about because it's also a question of legal strategy?

Brian Quinn: So, let me answer your question this way, and it's going to be completely unsatisfying without getting to the specifics of the case, facts, again, aren't privileged. Oftentimes, you can have facts and legal advice [merced 02:01:47] into one, but just because they're in mesh doesn't preclude somebody from asking for the facts. If you're asking for whether or not a crime or fraud was committed actively, the crime/fraud exception applies to the covering up of the crime and fraud. Covering up is not privileged.

Sheila: I'm Anna Pegler-Gordon, James Madison College. So, I have a couple of different questions. I mean, one is a point. The point is that the resolution is asking the President and the board of trustees to consider other issues than what they hear about all the time, which is MSU legal counsel. We know that MSU legal counsel is advising the President and the board of trustees to not waive privilege. We understand that it's also risky legally to waive privilege, but as a faculty Senate, this resolution, if we pass it, as a community we need to make the statement that there are other things beyond and other voices beyond and other interests beyond the ones that expressed by MSU legal counsel. And that is a really important statement for us to make. Now, I am not the one who called for the resolution, so defer to Dr. [inaudible 02:03:23] further.

Sheila: But I do want to make the point that MSU legal counsel has also advised MSU poorly. And also, if we look at the OCR report, which, by the way, we need to address, we need to address very, very soon in January, if we look at the arts OCR report, we see examples of, I don't know what to call them. I do not mean to be insulting with you, and I know you weren't general counsel then, either incompetence or obstruction. I mean, once you read that report, if you haven't already, you'll see how many times when MSU was asked to put something

forward. They've then forgotten to include 25 or 35 cases, which they then reminded, this was about [inaudible 02:04:15] which and then remembered to do. So, I don't really want to go into that depth, but there are two points here. So, one is MSU legal counsel is going to give a certain kind of advice, and we're asking for a different and an ethical view and taking an ethical stance and doing what's right. And second, MSU legal advice has also failed, so that's the second point. Thank you.

David Wilson: Richard Nixon, Chair of College of Human Medicine. I have a technical question. Your presentation indicated that only client can waive privilege, so in this case, I presume that's the board of trustee, only the board of trustees can waive privilege.

Brian Quinn: That's correct.

David Wilson: And then the technical question is, when they do so, are they waiving privilege for individual members of the board or are they waiving privilege collectively for the board, are they waiving privilege for the board as representative of the university? And more specifically, do they waive privilege for past and potentially future members of the board? So, right now, we have seven members of the board. If the board did choose to waive privilege, are they waiving privilege for that eighth member in the future?

Brian Quinn: So, the board as a body would have to decide to waive privilege. No individual trustee can waive privilege. Once the privileges waived, it's gone, so if the board waives privilege now and the composition of the board changes months and years from now, the privilege was already waived and that ship has sailed. In terms of individuals or employees, this is something, for those of you who've had the joy to work with me or my office, the board can waive privilege, and that waiver trickles down to the employees. Meaning, that if the board decides to waive privilege, they do it on an institution-wide basis, so any communications, for example, that an attorney has with an employee, that employee can't say, "No, privilege, privilege, privilege," because the board as the holder of the privilege for the institution has waived it. I hope that answers your question.

Nora Teagan: Hi, my name is Nora Teagan, ASMSU student representative. So, a question that many students were having at the proposal of this resolution possibly being passed on to the trustees, Steering Committee, [inaudible 02:06:45] academic governance, was how it would overall impact the students, our insurance? I know that you touched upon insurance and the scope of that a little bit. I was wondering if you could expand upon that as if this resolution were to be passed, trustees would waive all of our privilege and how that would impact the functioning of the university? Thank you.

Brian Quinn: So, if they decide to waive privilege on this subject matter, that means that the privilege on this subject matter would be waived. That doesn't mean that any

sort of unrelated incidents, contacts would be waived forever and that the institution can't have attorneys. So, it would be very much just for the specific subject. So, hopefully that answers the first part of your question. In terms of the impact. I wish I could give you a clear cut answer. I don't know. I do know that we are in active litigation right now with many, many different people as well as with our insurance companies.

Stephanie: Okay. Other comments? Questions? We have a motion on the floor. I'm sorry. Is there someone else? We have a motion on the floor from last meeting that was tabled and-

Brian Quinn: I'm not sure, we've had a number of people leave, if we have a quorum.

Stephanie: Can we check and see if we have a quorum?

Brian Quinn: I can count.

Speaker 15: It's true you can vote and see if it adds up to 41.

Stephanie: Oh, yeah... Okay. So, then we have a... Yes.

Speaker 16: Did you say you were going to have a statement from the Attorney General's Office?

Stephanie: Yes, I have a statement from the Attorney General's Office. Thank you. This was Gary [inaudible 02:09:01] wrote to the Attorney General's Office, and the response was, "I reached out to our team, and as much as we would like to meet with you, and believe me we do, because MSU is still represented by counsel, we can't talk to the faculty without going through council. As a result, we have to regrettably decline the invitation. Believe me, we would love to meet with you and your colleagues." And this is from a representative from the Attorney General's Office... Yes?

David Wilson: Richard Nixon, Chair of College of Human Medicine. With all due preference to Brian Teppen, I did have some reservations about the motion that was on the table, and it was my intention to propose alternate wording to that motion. And it's my understanding that to do so I have to table the amendment one more time. Is that true?

Brian Quinn: Yes.

David Wilson: And I've circulated the alternate wording, so I hope this doesn't look frivolous. It's a sincere attempt to improve the force and the effect of the resolution.

Stephanie: So, would you like to make a motion?

- David Wilson: I would like to move to table the motion with the understanding that I will propose alternate language.
- Stephanie: Thank you. And we don't need a vote on this.
- Brian Quinn: No.
- Stephanie: So, then you have a motion that you would like to make?
- David Wilson: So, the motion is to suggest a friendly amendment and revisions to the proposed resolution, and I'm prepared to read that. Most of you have it in front of you, and if you don't, please raise your hand, we can give you copies. I hope. So, is-
- Stephanie: Does everyone have a copy?
- David Wilson: Are we okay with the time here? I'm concerned that we're way over.
- Stephanie: We're way over.
- David Wilson: Okay. So, to put this in context, the proposed wording honors the spirit of the original resolution by Brian Teppen. I think it clarifies, in a forward looking fashion, steps that should be taken rather than simply rejecting actions that had been taken in the past, namely the recommendation by general counsel to not to waive privilege, and it also provides transparent justification for why we're calling for this action. So, should I read the new wording?
- Stephanie: Yes, please.
- David Wilson: The new wording is, "In the interest of transparency and full disclosure, the faculty Senate recommends and encourages President Stanley and the board of trustees to waive attorney/client privilege overseen, if necessary, by a special master process to release all information relating to the abusive and criminal behaviors of Larry Nassar during his term of employment at Michigan State University and to facilitate investigation of this episode including actions of Nasser's supervisors, the MSU board of trustees and the University administration that were taken in response to reports of this inappropriate and criminal behavior. These actions are deemed necessary to promote the healing of victims of Larry Nassar, to provide an accurate record of these events, and to avoid any repetition of similar tragedy in the future." And I provided some rationale in support of this. If there's sufficient time, I can go into that, but I'll turn it over.
- Stephanie: Is there a second for the motion?
- Speaker 17: Second.

Stephanie: Discussion?

Marty Crimp: Marty Crimp, College Of Engineering. Just can you clarify the special master process and how that would work in relation to what we've just heard about attorney/client privilege?

David Wilson: My understanding is that there was a essential arrangement worked out by representatives of the victims that would provide a process for deciding what documents that are privileged should be released, and that would involve, essentially, assigning, and this is something that a legal person could explain better than I, assigning a trusted person to look through the privilege document to determine what should be released and what should not be released.

Stephanie: Thank you.

David Wilson: Can you clarify that?

Brian Quinn: Yeah, I can clarify it. I was dying to see what the vote was so I didn't bail yet. So, two responses to that. One is that some third party is already reviewed the privilege document, Judge Ball, and he reviewed them, determined that we validly asserted privilege over all the documents except for 177 which were disclosed to the AG. So, we've had that. The Attorney General did not appeal that decision. It's done. In terms of getting a new special master without a case or controversy, that would be a third party. If you disclose the information to a third party, you waive privilege.

Marty Crimp: Marty Crimp again at College of Engineering. So, would you be willing to take as a friendly amendment striking that line?

David Wilson: If that is the sense of the Senate, then I would accept that. The friendly amendment would have to be voted on first.

Stephanie: Is there a second to the friendly amendment?

Speaker 17: Second.

Stephanie: Discussion?... All in favor, please, after we get set up, press A for yes, B for no, C for abstain. Voting right now.

David Wilson: Okay.

Stephanie: We finished?

Brian Quinn: You have a quorum vote.

- Stephanie: Okay. Can we show the vote? So, the friendly amendment passes. Is there further discussion on the motion as amended?
- Stephanie: Yes.
- Stephanie: Yes.
- Stephanie: Ms. Stephanie Anthony. My question is actually in regards to the entire process, not just the motion. Is that out of order? Okay.
- Stephanie: I don't think so.
- Stephanie: As I'm reflecting on this, I'm thinking to myself that there's a faculty member that is preparing to come to Michigan State from another university, one who we believe would be an excellent faculty member for this university. There's that individual. There's another faculty member across campus that is up for tenure. There is a clerk in the warehouse at stores that has worked for the university for 25 years. There's a secretary in the administration building that has been with this community since she was 19. There is a cafeteria employee in Brody cafeteria. And I list all of these people because as I sit here and I contemplate and listen to waiving privilege, the people of this university certainly are not Larry Nassar.
- Stephanie: We rebuke everything that he is ever done to victims of his horrible actions. That being said, this university continues to pay. People do not understand that there are very good people in Michigan State University. I am not Larry Nassar. You are not Larry Nassar. It's a painful, painful chapter in our history. That being said, I am sitting here wondering how waiving privilege, which is the legal advice that has been given to this university, in order to take care of the entire university, serves a purpose, and I'm sorry, this may not be the most popular response but I speak my truth as I see it, how this serves all of the hardworking people who make up MSU. I don't. I'm missing something, and I'm sorry if I don't see it, but I do not see, by opening up the book and saying everything that council has talked to us about, how do you stop it? We want it to end, so by waiving privilege, does it end? Does it end? Am I missing something here? And I'm open to that, but that's what I'm trying to figure out. By giving everything that is our legal position. We have to. There are people who contribute to this university who are not Larry Nassar. I don't understand it. I'm sorry, but I'm open to [inaudible 00:18:57].
- Sheila: Sorry, Anna Pegler-Gordon, James Madison College. If I can just say very briefly, in addition to all of those very important individuals, I think we should put foremost and elevate the voices and the needs of the more than 500 survivors of Larry Nassar. And every single person I've spoken to, the three organizations that represent those people, they have all repeatedly requested for us to speak out in favor of waiving privilege. And so, I think that their voices should be the first voices that we hear.

Stephanie: Okay. In the discussion segment of this, as we talked about in the Robert's Rules of Order, each person can speak no more than three times. We're clear on that?

Sheila: Thank you.

Brian Teppan: I would respond to your valid concerns that in the way that the legal advice has not served the university well so far. And we have got a new president. The legal advice is the same, and the actions are looking to be the same. And so, what we're asking, I think, is for a break with the past, and I would look at it more as a beginning of a new university instead of an ending of the Nassar affair.

Stephanie: Thank you. Other comments? We're going to be losing a quorum rather quick. Yes?

Margarey K.: Tell me your name again. I should know it. You just spoke.

Stephanie: Stephanie Anthony.

Margarey K.: Stephanie. My name's Margaret Kingry, and I'm from the College Of Osteopathic Medicine and have lived this most intimately for the last two or three years. I'm an acting chair for UCFT so I'm not familiar with all the history of this group, but when I heard a little bit about it last time and now this time, I'm having trouble grasping what you're looking for. I mean, there has been so much on this topic. What else needs to be found out to help the survivors, to help us? I mean, there's all the television shows, the survivors all wonderfully got to speak. There's been a half billion dollar settlement, which every penny of it I'm all for. But it's like, I think it would be more healing... If the whole thing is resurrected again, I'm not sure how that helps the healing. So, being from COM and being a witness in Dean Strampel's trial, so... I'm not getting what you're looking for, so I'll just share that along with Stephanie's question.

Stephanie: Thank you.

David Wilson: Have I exhausted my three statements?

Stephanie: This is your third.

David Wilson: This is my third. Okay. Richard Nixon, Chair of College of Human Medicine. To that point, I would argue that it is important not just to respond to past events, but essentially my point four, under statement and support, "Any investigation should include a broader examination of systems failures involving Larry Nasser's supervisors in the MSU administration up to and including the board of trustees." And essentially, the problem is a culture of trust that we have lost and that an external independent investigation would identify failings that have happened at MSU so that they are not repeated in the future. So, it's as much about administration reaction to the problems as it is About the crimes and criminal behavior of Larry Nassar.



Margarey K.: So, more than Bill Strampel being in jail, the provost being removed from her job, Luanne [inaudible 02:23:53] now coming up on criminal charges, and they really messed it up. I mean, if you want the specifics of how they messed it up, a lot of which I think have been in newspaper articles and whatever, I guess go for it. But Brian Quinn-

Stephanie: Do we have a quorum?

Margarey K.: I mean, I think part we have to think about is when are we going to open the university? They've been opened up already. But what more is this going to open up in terms of liability, and could MSU go bankrupt or whatever? I don't know whether they could, but if the attorney is giving that advice, I guess it seems [crosstalk 02:24:56]

Stephanie: So, right now we are one person short of losing a quorum.

Speaker 18: [inaudible 00:25:02].

Stephanie: Thank you. We don't need a vote. Right? Okay. So, are we supposed to vote on the question? All in favor of culling the question?

Sheila: What question?

Audience: Aye.

Stephanie: Opposed?

Speaker 19: I can't make [inaudible 02:25:23].

Stephanie: Where is our technical person?

Speaker 20: He's trying to move it up.

Stephanie: Oh. Okay. A is yes, B is no, and C is abstain. This is the new faculty Senate resolution that was-

Brian Quinn: That is amended.

Stephanie: That is amended. That comes from Richard Nixon [inaudible 02:25:54]

Brian Quinn: Okay. You have quorum now, I think.

Stephanie: Okay. Two seconds

Brian Quinn: [inaudible 02:26:23] plus one.

- Stephanie: Yep.
- Brian Quinn: [inaudible 00:26:25].
- Stephanie: That's because so many people left. Thank you all. The motion passes. Comments from the floor?
- Sheila: I'm sorry everybody. I really do think we need to move on the OCR report issue before we weighed in to go to the January meeting with the Steering Committee. Is it possible to do that before that meeting? Because it will not give time for people to read the OCR report.
- Stephanie: I think that what we can do at this point in time is send out the OCR report to all of the faculty Senate members and let them know that this will either be on the January meeting or on the February meeting and that they need to read it. I think that is a very simple thing to do, and this will allow it to go to the Steering Committee and also give people plenty of time to read the report.
- Sheila: An additional meeting is not out of the question, right? Then January.
- Stephanie: Pardon me?
- Sheila: An additional meeting is not out of the question.
- Stephanie: An additional meeting is not out of the question.
- Sheila: Thank you.
- Stephanie: But what is important is to get the OCR report out to the faculty Senate. Is there a motion to adjourn? We don't have a quorum. We're good.

PART 5 OF 5 ENDS [02:27:49]