

March 17, 2021

## **Professor Eric Rasmusen’s Response to Vice Provost Eliza Pavalko’s Submission of February 26, 2021 to the Faculty Misconduct Committee**

The Vice Provost’s Submission is 11 pages long, with 42 pages of exhibits. This is my Response. The Submission is long and rambling, but most of it boils down to displeasure with one particular week in January 2021 in which I emailed students and administrators about the allegations of sex discrimination against me. I was given 10 days to respond to those allegations on January 26, and I told people about them during those ten days.

It is important to note that there were no allegations whatsoever of what in ordinary language we call “sexual misconduct”. Nobody says I raped anyone, or propositioned them, or touched them, or traded grades for sex. Nor, in fact, is anyone saying I discriminated in grading, or in who I admitted to my class. It was all about things I said, not things I did, and about things I said in public, not in closed offices or in telephone calls.

I attach my Response to the Investigatory Report into allegations of discrimination as Attachment R-1 (a separate file, since it is so long). I know the Vice Provost forbids this—indeed, it is a repetition of the conduct condemned in her Submission--- but, “in for a penny, in for a pound”. Attachments R-2 through R-7 are in a third file.

It’s useful to start at the end of the Submission, “III. Specific Code of Code Academic Ethics Violations,” since that is where the allegations are connected with specific rules.

**Allegation A.** I sent **emails to students** discussing my discrimination investigation. Some of these included the Report, quoted in full in my Response to the Investigator’s Report (Attachment R-1). Others included just a two-page summary (Attachment R-2). The Administration claims this violates University **Policy UA-03**.

**Allegation B—first part.** The Administration claims the acts in (A) also violate University Policy UA-03’s prohibition on **retaliation for filing complaints**.

Prof. Rasmusen sent more than 80 of his ex-students (dating back to Fall of 2018) a complete copy of the OIE report, along with his detailed annotations, thereby allowing some student and faculty identities to be inferred. The logical consequence of this act is to intimidate and discourage individuals from providing cooperation with OIE in the future.

**Allegation B—Second part.** I **refused certain demands** of the Administration. The Administration claims this violates *The Code of Academic Ethics*:

The Code of Academic Ethics further provides (No. 8 under “Personal Misconduct on University Property;”) that “... failure to comply with the directions from authorized university officials in the performance of their duties...” also violates the code.

Prof. Rasmusen, in refusing to comply with my reasonable directives, which were issued in an effort to protect the privacy of the report, violated this provision of the Code, as well as those cited above. He did the same when he disobeyed the reasonable directive from the Dean’s office and from General Counsel’s office regarding the KSB class video.

**Allegation C(1). I used student email addresses I learned as an employee. The Administration claims this violates [University policy IT-21](#):**

This policy states, in relevant part: “Electronic mail will not be sent by members of the University community to persons with whom the sender does not have an established, mutually-accepted personal, business or academic relationship.”

**Allegation C(2). I used [erasmuse61@gmail.com](mailto:erasmuse61@gmail.com) instead of [erasmuse@indiana.edu](mailto:erasmuse@indiana.edu) in emailing students on university business. The Administration doesn’t claim this violates any university policy, but they claim this shows I was up to no good and was not engaged in IU operations.**

By **using his separate, personal Gmail account** to communicate with his ex-students, Prof. Rasmusen underscored that personal these ex-student messages were not connected with legitimate Indiana University operations.

**Allegation C(3). I used student email addresses I learned as an employee. The Administration claims I did this for personal gain, violating [University policy IT-01](#):**

IT-01 states, in relevant part, that: “Indiana University technology resources may not be used in a manner that violates the law, for private commercial activities that are not approved by the university, [or] for personal private gain...”.

**Allegation C(4)-first part. I used student email addresses I learned as an employee. The Administration claims this violates [DM-01](#):**

“Users of institutional data must: ... **respect the confidentiality and privacy of individuals** whose records they may access,” DM-01 further states that institutional data should not **be used for an individual’s personal gain**.

**Allegation C(4)-second part. I disclosed student email addresses and the OIE report and my own response. The Administration claims this violates [DM-02](#):**

states that any agent of the university contemplating disclosing institutional data should “...take proactive steps to **reduce the risks associated** with the sharing of that information.”

In this Response to the Submission, I will address these various allegations, organizing them around the summaries I’ve just given. I will not address various inaccuracies in the Submission and how they damage the Vice Provost’s credibility except as they affect the issue at hand. Nor

will I address the allegations in the Investigative Report that I address in my Response to the Investigative Report (attachment R-1), or the procedural deficiencies in that process. I will, however, also add comments at the end to the accusation that I improperly kept a copy of video of my class for personal use.

**Allegation A.** I sent **emails to students** discussing my discrimination investigation. Some of these included the Report, quoted in full in my Response to the Investigator's Report (Attachment R-1). Others included just a two-page summary (Attachment R-2). The Administration claims this violates University **Policy UA-03**.

On January 26, 2021, I received the Investigative Report on the allegations of discrimination against me. I was given ten days to respond in writing before the Vice Provost was to decide my case. The allegations were of a pattern of discrimination consisting of oral remarks in public places such as classrooms and hallways. There were some 20 anonymous witnesses cited, with no names, not even that of the complainants.

Policy [2019 policy Sexual Misconduct UA-03](#) give me the right to identify witnesses. To do that, I contacted former students. Though the Investigative Report interviewed students as far back as seven years, I only contacted students for the three previous semesters. For two of the semesters, I emailed every student in the class and sent them a two-page summary of the proceedings against me (Attachment R-2), with an email like the Spring 2019 one shown below. For Fall 2019, I emailed not only each of the seventeen students, but the students who had dropped the course, and for those who stayed in the course I also sent them a draft of my Response to the Investigative Report (Attachment R-1), which quoted the Report in full. Thirteen of those seventeen students had been interviewed for the Report and their interviews were summarized in it. My emails were short: I asked the students if they had any comments, trying to ask that in a neutral way. Three of the responses, two from students who agreed to let their names be used, are Attachments R-3, R-4, and R-5. I received another very supportive email from a student who was reluctant to be possibly identifiable.

Dear Spring 2019 G406 Students,

As I explain in the attached pdf, the University has been investigating me and hopes to punish me for what I think are trivial or nonexistent offenses. If you have any comments that you think would be relevant, please email me at [erasmuse61@gmail.com](mailto:erasmuse61@gmail.com). I received the University's investigatory report on January 25, and I have until 5 p.m. February 5---Friday---to submit a response before the Vice-Provost decides how to punish me.

I hope you are doing well in your various vocations.

The email to the Fall 2019 students, who had been extensively interviewed by the Administration, was longer:

Dear Fall 2019 G406 Students,

As I explain in the attached pdf, the University has been investigating me and hopes to punish me for what I think are trivial or nonexistent offenses. If you have any comments that you think would be relevant, please email me at [erasmuse61@gmail.com](mailto:erasmuse61@gmail.com). I received the University's investigatory report on January 25, and I have until 5 p.m. February 5---Friday---to submit a response before the Vice-Provost decides how to punish me.

Most of you have been interviewed by the Investigators--- thirteen out of the seventeen of you in the class, it seems. My guess is that you were not shown the final report, or even the parts where you

are quoted. I've attached the report, together with the draft of my reply (which, however, I will still be revising until the Friday, February deadline at 5 p.m.).

If you have any comments, let me know. You are not identified in the report, which refers to you as "Witness 1", "Witness 2", and so forth. Witnesses 14 and beyond are from previous semesters. You can stay anonymous even if you want to respond. I hope you've remembered the valuable skill of anonymous email using Protonmail; you can email me as "Witness 7" or whatever your Report name is. Or, you can email me directly. If you do that, please also tell me if you want to be named in my Reply, or not quoted at all; I will follow your preference.

I have attached the 70-page combined Report and Reply, and a 2-page pdf summarizing it.

The issue is whether I had a right to email those students and send them the materials I did. Faculty do, of course, have the right to email students present or past. The [2019 policy Sexual Misconduct UA-03](#) says :

i. Privacy

1. The university is committed to safeguarding the privacy of the parties **in a manner consistent with the objective to effectively investigate** and prevent incidents of sexual misconduct. In all cases, the university will share the parties' information and details of the allegation only with university officials, law enforcement personnel, and other individuals who have a legitimate administrative or legal reason to be so informed. Records will not be disclosed outside the university unless required by law or subpoena.

**2. All individuals with knowledge of an alleged incident of sexual misconduct are expected to safeguard the privacy of those involved and should refrain from discussing the incident with anyone other than appropriate university officials and law enforcement.**

I deny that the 2019 policy is legal, for numerous reasons, but suppose it were legal. Even so, under the correct interpretation, I have not violated it. Consider the later section:

IV. Procedures for Responding to Incidents Involving Allegations of Faculty or Staff Sexual Misconduct...

2. **All parties will have equal opportunities to present information**, have advisors present, and pursue an appeal, if applicable. All procedures, excluding any appeal, should be conducted in a reasonable timeframe given the circumstances of the specific case.

3. Throughout this process, **the university will have as a priority the interests of all parties involved**, in regard to fairness, dignity, privacy, and due process. ...

The University, as wanting to look at the interests of the parties involved, will want to get maximal information on the allegations. A respondent (me) cannot get information from witnesses unless he can tell them what allegations they might have been witness to.

Another section says

8. Equitable participation in the investigation and disciplinary process, including **the opportunity to identify witnesses** and other appropriate evidence.

How is the Respondent to identify witnesses? They, like the Complainants, are anonymous in the Investigative Report. The Submission claims anybody out there would be able to identify them. I, the Respondent, don't think I can tell who was who. Indeed, if I could, then the redaction of the Investigative Report would be a failure, and a discredit to the Investigators.

Thus, what I was doing was merely trying to level the playing field, to let a few of the students in support of the Respondent have a voice in the process. I also wished to let those quoted in the Investigative Report confirm that what the Report said they said was true, since the Report was merely a summary, not a transcript of what they said, nor a recording, and they would otherwise be unable even to know what the Administration claimed they had said, much less to object to false quotations.

**Allegation B-first part.** The Administration claims the acts in (A) also violate University Policy UA-03's prohibition on retaliation for filing complaints.

Prof. Rasmusen sent more than 80 of his ex-students (dating back to Fall of 2018) a complete copy of the OIE report, along with his detailed annotations, thereby allowing some student and faculty identities to be inferred. The logical consequence of this act is to intimidate and discourage individuals from providing cooperation with OIE in the future.

My asking students for comment does not constitute retaliation. I have no power over former students. Why should they be intimidated? Most of them have even graduated by now. As I said earlier, how I am I to even know their names? Even the Complainants are anonymous. The only retaliation the witnesses need fear is from the Administration, which does retain extraordinary power over those of them who have not yet graduated and over the employees who were interviewed.

The Submission notes that I gave warnings to the Provost as to what I might do were her harassment against me to continue. She has perhaps misunderstood me. I said I would ask faculty to take a stand on whether they are willing to allow other faculty to be mistreated. I do not intend to ask members of my own department whether they support me or oppose me, however. I've deliberately refrained from asking junior colleagues, in particular, what they thought of my Twitter posts and such, even before the Investigation started, since I didn't want to put them on the spot. This was in contrast to the letter denouncing me that some circulated within the Kelley School to not just tenured faculty but to untenured faculty and staff in support of the Dean's position (Attachment R-6). I also waited many weeks before I asked senior faculty privately for their opinions, though my restraint may well have resulted in those less delicate mobilizing opinion against me—certainly some of them were not shy about criticizing me, my church, and the puzzling tenderness of American law for free speech in emails to the department. Rather than asking junior faculty whether they are for me or against me, what I have in mind canvassing senior faculty (\*not\* junior) in the wider university community.

I do not know what form that will take. I tried this, with only minor success, in the case of a professor who was unjustly punished by the Administration of Widener Law School. See "[The Opinion of the Faculty of Widener Law School, Delaware Campus, Regarding the Punishing of Professor Lawrence Connell](#)" (2011). I might try to get someone to introduce a resolution regarding "The Eric Rasmusen Case" in the Bloomington Faculty Council. Win or lose, it would require people to take a stand. Faculty are deathly afraid of the Administration, but if forced to take a stand, they might also be ashamed to stand silent before their colleagues in the international scholarly community.

**Allegation B—Second part.** I refused certain demands of the Administration. The Administration claims this violates *The Code of Academic Ethics*:

The Code of Academic Ethics further provides (No. 8 under “Personal Misconduct on University Property;”) that “... **failure to comply with the directions** from authorized university officials in the performance of their duties...” also violates the code.

Prof. Rasmusen, in refusing to comply with my **reasonable** directives, which were issued in an effort to protect the privacy of the report, violated this provision of the Code, as well as those cited above. He did the same when he disobeyed the **reasonable** directive from the Dean’s office and from General Counsel’s office regarding the KSB class video.

The entire question is whether the Administration’s demands were reasonable. I think not. I had a right to disclose the allegations against me. To deny me that right is to encourage the Administration to make baseless allegations. This has been stated in many eloquent ways, e.g., “Democracy dies in darkness,” and “Sunlight is the best disinfectant.” Or, from a more authoritative source:

And this is the condemnation, that light is come into the world, and men loved darkness rather than light, because their deeds were evil. For every one that doeth evil hateth the light, neither cometh to the light, lest his deeds should be reproved. But he that doeth truth cometh to the light, that his deeds may be made manifest, that they are wrought in God.

-- John 3: 19-21.



**Allegation C(1).** I used student email addresses I learned as an employee. The Administration claims this violates [University policy IT-21](#):

This policy states, in relevant part: “Electronic mail will not be sent by members of the University community to persons with whom the sender does not have an established, mutually-accepted personal, business or academic relationship.”

The Administration is saying a professor should not communicate with former students. You can tell it was administrators who wrote this up, not teachers. I am amazed that Vice Provost Pavalko, who once was an academic, thinks that professors should cut off students after the semester ends. In the business school, we often write recommendations for former students. We sometimes keep in touch with them. Sometimes they ask questions later when they encounter a course’s material in later classes. The University should be encouraging professors to keep in touch with alumni, not telling professors it is contrary to university policy.

It is also wrong to say that inquiring of past students whether they encountered sexual discrimination is not “university business”.

**Allegation C(2).** I used [erasmuse61@gmail.com](mailto:erasmuse61@gmail.com) instead of [erasmuse@indiana.edu](mailto:erasmuse@indiana.edu) in emailing students on university business. The Administration doesn't claim this violates any university policy, but they claim this shows I was up to no good and was not engaged in IU operations.

By using his separate, personal Gmail account to communicate with his ex-students, Prof. Rasmusen underscored that personal these ex-student messages were not connected with legitimate Indiana University operations.

I have started using my gmail account in general because I fear that I will have my erasmuse.indiana.edu account unlawfully cut off at some point. I am willing, however, to disclose any relevant erasmuse61.gmail.com emails if somebody issues a FOIA request for them. I hope the Provost will do the same.

**Allegation C(3).** I used student email addresses I learned as an employee. The Administration claims I did this for personal gain, violating [University policy IT-01](#):

IT-01 states, in relevant part, that: “Indiana University technology resources may not be used in a manner **that violates the law**, for **private commercial activities** that are not approved by the university, [or] **for personal private gain...**”.

Is the furthering of just and accurate results in University investigations the same as “personal gain”? Is it “private commercial activity”?

On the other hand, using university resources to harass a professor who irritates the Provost does seem improper, both in itself and as a use of State resources. Billing the Office of Institutional Equity staff at “normal and customary rates”, how much State money has the University spent to help the Provost in her personal vendetta against me? They may not be very expensive lawyers, but it still adds up.

**Allegation C(4)-first part.** I used student email addresses I learned as an employee. The Administration claims this violates [DM-01](#):

“Users of institutional data must: ... **respect the confidentiality and privacy of individuals** whose records they may access,” DM-01 further states that institutional data should not **be used for an individual’s personal gain**.

This repeats an allegation that I have already addressed, just using a different University policy as the pretext for it being a disciplinary violation.

**Allegation C(4)-second part.** I disclosed student email addresses and the OIE report and my own response. The Administration claims this violates [DM-02](#):

states that any agent of the university contemplating disclosing institutional data should “...take proactive steps to **reduce the risks associated** with the sharing of that information.”

The “risks associated with the sharing of the information” were zero. Every recipient already had all the information. They were all students in the same class, so they already had each other’s email addresses on Canvas to contact each other for mutual assistance and learning.

I did disclose the OIE and my own report (Attachment R-1). But those are not “institutional data”. A memo may be secret and violate some other policy, but it’s not “data”.

**Conclusion**

The Administration's complaints are baseless and I should not be punished in any way. Indeed, they should be ashamed to bring such complaints.

## Postscript: The Video Complaint

I am glad to see that the Submission does not say that for a professor to keep video of himself teaching his class violates any specific university policy. It isn't mentioned in the Complaint's Section III. "Specific Code of Code Academic Ethics Violations" except in passing in "The Code of Academic Ethics further provides (No. 8 under "Personal Misconduct on University Property;") that "... failure to comply with the directions from authorized university officials in the performance of their duties..." also violates the code. Prof. Rasmusen, in refusing to comply with my reasonable directives, which were issued in an effort to protect the privacy of the report, violated this provision of the Code, as well as those cited above. He did the same when he disobeyed the reasonable directive from the Dean's office and from General Counsel's office regarding the KSB class video.

But I'll discuss it here anyway, and perhaps we will want to go over it in the hearing, though the Administration may prefer to drop it rather than have me **bring Dean Idalene Kesner as a witness.**

I will quote the Complaint's entire section on this topic:

### D. Prof. Rasmusen Engaged in a Pattern and Practice of Privacy Violations

The 2021 violations of student privacy are not isolated. Prof. Rasmusen has previously violated student privacy rights. While investigating the classroom behavior complaints, OIE learned that Prof. Rasmusen committed **significant** privacy violations covered under FERPA and University policy. One of the more concerning violations occurred when Prof. Rasmusen improperly copied, and then turned over to the IDS, in approximately December of 2019, a video of his KSB class. This video, because it originally contained students' images, first names, voices, and one particular student's email address (while also personally identifying some students' faces due to the camera angle) **was determined to be a violation of FERPA by the University's office of General Counsel.** Prof. Rasmusen was advised by General Counsel's office that this video was not his property, **that it was University property** under Indiana University policy UA-05, and that he should relinquish it, rather than publicize it, as he desired. He did not follow this directive, which came directly from his Dean. See Exhibit 18.<sup>1</sup> He maintained, despite the fact that he called this unauthorized download a "hack" (see Exhibit 19) that this was his own personal property.

This is roughly true, though wrong in its spin. I don't recall if I said that the video was my property--- I wouldn't say the University had no right to use it too, just that I was entitled to keep a copy for personal use. The video was of me teaching, taken from behind the students, so any students that showed up were sitting facing away from the camera. Still, with diligent detective work, somebody might be able to figure out who was who, and thus know that a particular Indiana University student had taken a particular Indiana University class. If someone was really that interested, though, they could achieve the same goal by standing outside the classroom and taking photos of the students as they left class. Thus, this would be a FERPA violation that

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<sup>1</sup> Dean Kesner wrote to Prof. Rasmusen on December 5, 2019, stating, in relevant part: "I asked you this morning-and you agreed--not to share the video of the class any further until IU General Counsel can advise on the matter. I ask that you respect your students' concerns. As such, I am reiterating and reconfirming that you **may not** distribute this video without authorization. In addition, I am specifically asking you to delete it from your files." [Emphasis in original.] See Exhibit 18.

resulted in no more information reaching the public than could be gotten by means the University permits already. And the video was filmed at the University's request—indeed, at their demand, though I did agree to it and the question of legality did not come to a head.

He then provided a partially edited video to the IDS.

**False.** I provided a partially edited video to the IDS before Dean Kesner made a fuss. She only knew I had downloaded the video because of the IDS; someone there must have told her. **You can ask her how she found out.** The IDS had asked me if they could videotape my class, and I suggested that instead I could just send them some video, which they seemed to like even better. I wonder if Dean Kesner would have fussed as much if I'd said they could come and film my class instead. **Do faculty need permission from administrators to have their classes filmed?** I don't think so. It isn't uncommon for faculty to have themselves filmed— so they can see the video and improve their teaching, for example.

After learning of the video's release,...

**How did they learn of the video's release?** It wasn't released to the public. The IDS complied with the Administration and deleted their copy. But **how did students learn that I had a copy of the video?** Only the IDS and the Administration knew. **At the hearing, maybe the Committee could ask.**

...students became concerned and indicated they feared Prof. Rasmusen's release of the video could result in online postings on social media, potentially **impacting** their personal safety.

I'm [old enough to think](#) that [using "impact" as a verb is a sign of a poor education](#). I find its use embarrassing in university documents.

Even though Prof. Rasmusen attempted to edit the video, students' faces could still be viewed on the video he released to the IDS due to the positioning of the video camera. Nevertheless, **Prof. Rasmusen refused to retrieve the video from the IDS**, as he had been directed to do by his Dean,

**False.** The IDS shut down the story first, and then the Dean contacted me on the subject. The Dean didn't have to ask me "to retrieve the video from the IDS", because there was never any need for me to do so. The Administration had already gotten them to suppress the story.

and refused to relinquish or destroy other copies of the video, as he had been directed. **Many students** signed documents specifically indicating they declined their consent to have their images or other identifying features revealed by Prof. Rasmusen.<sup>2</sup>

The students only signed forms after the video had been filmed. The University never requires students to be offered release or non-release forms before it takes video of them. It does allow them, in some circumstances, to refuse video; I'm not sure of the rules. If the University takes publicity video of students in a class, can a single student later sign a form and require the

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<sup>2</sup> Although Prof. Rasmusen worked with the IDS to release the video, **to the best of my knowledge**, the IDS ultimately did not publish or release the video.



University to reprint its publicity pamphlets minus the photo that has them in it? **Who recruited students to sign the forms for my class, ex post?** Another question for Dean Kesner. **And what number is “many”?** Three, perhaps, like the number of hostile students in the class in the Title IX complaint?

Prof. Rasmusen’s refusal, in late 2019, to follow University directives related to the student video **is submitted for consideration as part of a larger pattern of misconduct** Prof. Rasmusen demonstrates. This behavior demonstrates a **strong** disrespect for student privacy protections as well as for the University directives that indicate - clearly - **why** he could not do this. The pattern continues with the events of February 2021; Prof. Rasmusen continues to disrespect privacy and continues to disobey directives specifically related to protecting **essential privacy rights**. I include this information in my report to this Committee so that you will understand the further background for, and hence the **severity** of, Prof. Rasmusen’s **repeated** pattern of **utter disregard for the rights of our students**, as protected both by federal law and by IU policy, as well as the **privacy interests of faculty**.

It is hard to know what to make of the Vice Provost’s claim that I showed “a strong disrespect for student privacy protections” and “utter disregard for the rights of our students”. Is my keeping a video of myself teaching class “severe” faculty misbehavior that compromised “essential privacy rights”? I would think that even if after careful consideration of university policies on intellectual property, academic freedom, due process, and my claim that the Administration had agreed to let me use the video in exchange for allowing them to film it rather than give them free ammunition with no recompense (see Attachment R-7), it were determined that the University had copyright in the video, my keeping a personal copy on my hard drive, shown to nobody else in the world, would be a *de minimis* violation of university policy. Nonetheless, I will submit the issue to the University Intellectual Property Policy Council for their attention.