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VIA FACSIMILE AND FIRST CLASS MAIL

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Re: Eastern Michigan University
James Vick, Vice President for Student Affairs
Laura Dickinson, deceased

Gentlemen:

After attending two interview sessions between our client, Mr. Vick, and yourselves, as well as an interview session between Mr. Vick and representatives of the U.S. Department of Education, I am writing, on behalf of Mr. Vick, as input to the task for which your firm was retained by the Eastern Michigan University Board of Regents. It is difficult from our perspective because, at this time, we are not privy to much of what you and other members of your firm have done, we do not have access to the investigative records of the EMU Department of Public Safety, we do not have an opportunity for discovery and we cannot cross examine those who have been interviewed by your firm. Nonetheless, there is much to be gleaned from the interview process, Mr. Vick's personal knowledge, a review of various aspects of relevant law and statements made to various news outlets, to the extent those sources can be relied upon for accuracy.

The focus of your investigation, we assume, centers on the issue of compliance with the Clery Act. The suspension of Mr. Vick makes him a natural target for blame as to anything that went wrong. We question, however, such a conclusion and offer the following in support of our position.

REQUIREMENTS OF THE CLERY ACT

The Clery Act is subsection (f) of 20 USC 1092. The subsection is titled Disclosure of campus security policy and campus crime statistics. The Regulations for implementation of the Clery Act are found at 34 CFR 668.46. In relation to the current inquiry, the Act provides at (f)(3):

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Each institution participating in any program under this title shall make timely reports to the campus community on crimes considered to be a threat to other students and employees described in paragraph (1)(F) that are reported to campus security or local law police agencies. Such reports shall be provided to students and employees in a manner that is timely and that will aid in the prevention of similar occurrences.

The Act also provides, at (f)(4)(iii), for an exception to disclosure:

If there is clear and convincing evidence that the release of such information would jeopardize an ongoing criminal investigation or the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence, such information may be withheld until that damage is no longer likely to occur from the release of such information.

This language is in subsection (4) dealing with the police log rather than subsection (3) dealing with timely reports. However, the exception would have to apply to timely reports as well or there would be no reason for the exclusion since what was excluded from the log would then be required to be disclosed in the timely report.

The Regulations require at Section 668.46(b)(2)(i):

(b) Annual security report. An institution must prepare an annual security report that contains, at a minimum, the following information: (2)(i) Policies for making timely warning reports to members of the campus community regarding the occurrence of crimes described in paragraph (c)(1) of this section; (homicide is included in c-1)

The Regulations expand on the Act at subsection (e) Timely warning:

(1) An institution must, in a manner that is timely and will aid in the prevention of similar crimes, report to the campus community on crimes that are—

- (i) Described in paragraph (c)(1) and (3) of this section;
- (iii) Considered by the institution to represent a threat to students and employees

(3) (i) An institution may withhold information required under paragraphs (f)(1) and (2) of this section if there is clear and convincing evidence that the release of the information would –

- (A) Jeopardize an ongoing criminal investigation or the safety of an individual;
- (B) Cause a suspect to flee or evade detection; or
- (C) Result in the destruction of evidence.

(ii) The institution must disclose any information withheld under paragraph (f)(3)(i) of this section once the adverse effect described in that paragraph is no longer likely to occur.

(4) An institution may withhold under paragraphs (f)(2) and (3) of this section only that information that would cause the adverse effects described in those paragraphs.

All of the foregoing, however, is subject to subsection (f)(2) of the Act which states:

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Nothing in this subsection shall be construed to authorize the Secretary to require particular policies, procedures, or practices by institutions of higher education with respect to campus crimes or campus security.

There is great uncertainty and confusion about interpretation and implementation of the Clery Act. There is no office of compliance for the Clery act as there is, for instance, for FERPA. No one person or group is well-trained and/or has a thorough understanding of the statute and regulations. There is no practical advice to tell a Director of Public Safety or a Vice President for Student Affairs when information must be released or withheld to protect the integrity of an investigation.

In a 2001 article, *Crime on Campus: Compliance, Liability and Safety*, 31 Campus L. Enforcement J. 27, 28 (July-Aug. 2001), Dennis E. Gregory, Assistant Professor in Educational Leadership and Counseling at Old Dominion University, Norfolk, Virginia, wrote:

Since its inception, the Clery Act and its implementing regulations (34 CFR 668) have drawn questions or criticism from campus administrative constituencies, including campus police and student affairs administrators. This criticism has resulted not from the intent of the legislation, which is to assist in making institutional campuses safer places to work and study, but from a perceived lack of clarity, changing interpretations of what crimes need to be reported and by whom. It has also come from the conflict between the legal interpretations related to privacy of student judicial records as guaranteed by (FERPA, 20 USC 1232g) and the need to report criminal activity which may also result in student conduct adjudication on campus.

It is under these circumstances that Eastern Michigan University addressed the issue of a timely warning concerning the discovery of the body of Laura Dickinson on December 15, 2006.

MATTERS UNDER REVIEW

Based on the questions asked at the three interviews of our client, James Vick, the following events are under review by the Board of Regents:

- > Circumstances in the room of decedent known to James Vick when her body was discovered.
- > Circumstances surrounding the decision to release a statement that said there was no evidence of foul play.
- > Circumstances surrounding a lack of revision of the statement that there was no evidence of foul play.
- > Knowledge of Mr. Vick up to the time of arrest of a suspect.
 - search warrant and supporting affidavit
 - police report
- > Knowledge of EMU President, John Fallon, from the time of discovery of the body until arrest of a suspect.

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> Overall responsibility for failure to make a timely warning of the circumstances surrounding Laura Dickinson's death.

A. Circumstances in the room of decedent known to James Vick when her body was discovered.

Mr. Vick has stated repeatedly that he received a call from Cindy Hall, Director of Public Safety, on December 15, 2006, when the body was discovered. When he got there, the door to decedent's room was partially open. He did not go in the room. From the hallway, he could see her lower body, from the knees down. She was on the floor and unclothed from the knees down. Her legs were spread apart but not abnormally. He did not see a pillow on her head.

Mr. Vick was told by Cindy Hall that evening that decedent's keys were missing but there was no evidence of violence, either on the body or in the room. Director Hall told Mr. Vick there were circumstances requiring the involvement of the state police crime lab but there was not yet a known cause of death.

Director Hall has told the investigators that she told Mr. Vick on the first night all of the circumstances involved at the decedent's room, including the presence of the pillow on decedent's head. She also stated that Mr. Vick was in decedent's room the first evening and able to observe all of the physical facts. However this would be inconsistent with other things said and done by Director Hall.

Since this matter is primarily a question of who is telling the truth, Mr. Vick is voluntarily requesting a polygraph examination pursuant to MCL 37.203 in order to clear his name and reputation.

B. Circumstances surrounding the decision to release a statement that said there was no evidence of foul play.

On the evening of discovery of the body, Director Hall told Vice President Vick that without a conclusive opinion of the medical examiner on the cause of death, she would not reach a conclusion about the nature of death. She insisted that it be called a "death investigation" which could include the possibilities that death had been caused by a homicide, suicide, accident or natural causes. That same evening, Mr. Vick and Ms. Hall met with at least two members of the Public Information staff. At that meeting, the Public Information people wanted to print more information than Director Hall was willing to allow because of her desire to protect the integrity of the investigation. Because the EMU Department of Public Safety was the lead police agency in the investigation, Vice President Vick required that Public Information defer to her approval as Director of Public Safety.

It is assumed that members of the Public Information staff have confirmed that fact with the investigators. Why else would they have released the statement they did stating there was no evidence of foul play?

Director Hall's statements to the press were consistent with her position on the press release. She was quoted in a January 12 all-campus email as stating, "We certainly understand that not knowing anything is uncomfortable for everyone, but as soon as we know something definitive, we will let the campus community know." She was also quoted on M.Live.com on February 28 about her position on the release of information to the public: "We put out as much information as was appropriate while preserving the integrity of the case. We always said we had a death investigation, and until we had the evidence, we didn't know what we had."

There is nothing in the University's policies, nothing in case law, nothing in the Clery Act and nothing in other sources explored that suggest a police chief (Director of Public Safety) should not be in charge of what information in an investigation is released to the public. Vice President Vick, not being a trained police investigator or an attorney familiar with such issues, deferred to the Director of Public Safety when she stated she did not want facts or conclusions released to the public. If he had done otherwise, he could later have been accused of interfering with the investigation. Since the time he assumed administrative responsibility for the Department of Public Safety, it has been Mr. Vick's expectation that the Director of Public Safety, as with any other Director, would advise and recommend any necessary action within her department, including public notification in the Dickinson case regarding facts relating to the death investigation.

C. Circumstances surrounding a lack of revision of the statement that there was no evidence of foul play.

Vice President Vick has stated he was consistently told there was no cause of death determined and that he was not told of other facts that would lead him to believe otherwise. To the extent that others have suggested otherwise, Mr. Vick is requesting a polygraph to clear his name and reputation.

However, the fact no revision was ever made suggests in itself that the Department of Public Safety was sticking to its position on not releasing information to the public. Certainly, if people outside of DPS, especially those in Public Information, knew otherwise, they were in a position to go through their own Vice President and request he take it up with the President if necessary.

At one meeting, at which 12 to 14 people were present, questions were raised by the Public Information people about changing the public notice. Vice President Vick said they would have to rely on Cindy Hall's opinion on what should be released. Director Hall was present and did not suggest otherwise. Nor did Director Hall suggest to that larger group

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that there were any facts then known that would change her opinion of what should be released.

D. Knowledge of Mr. Vick up to the time of arrest of a suspect.

1. Search warrant and supporting affidavit.

Director Hall has told the investigators that she gave Vice President Vick a copy of either a search warrant, affidavit in support of a search warrant, or both, and that Mr. Vick physically read what he was given. Mr. Vick categorically denies this and requests a polygraph to clear his name and reputation.

Mr. Vick also states he was never given other facts by DPS other than the fact the investigation was ongoing, which included reviewing video tapes of those who had access to the dormitory during a period before discovery of the body. Mr. Vick assumed that was just part of a normal investigative process in a death investigation. Around February 20, he was advised by Director Hall that they were investigating a person of interest whose identity was not given but who was described by her as not being a person with a violent past. At that time, Ms. Hall also mentioned bodily fluid to Mr. Vick, for the first time, but did not identify the fluid as semen.

2. Police report.

A police report on the Dickinson case was delivered to Vice President Vick's office along with a stack of other police reports. This was a customary process by which his office would review the reports and forward them to General Counsel McKander's office. It was brought to his attention that a police report on the Dickinson case was included. Mr. Vick states that he believed Director Hall would not want that report out of her office under the circumstances and called DPS to alert them about the report. Mr. Vick initially recalled that he talked with Director Hall but, based on her denial, states it was most likely Jeff Nesmith, the lead investigator on the case. He is certain, however, that he did call DPS and was instructed to have it shredded rather than return it to DPS.

Mr. Vick's staff have confirmed that he called DPS about the report but stated the report was shredded before the call. Mr. Vick is certain he did not have the report shredded before the call. It was customary to receive copies of reports, not originals, so Mr. Vick had no concern about shredding a copy of the police report, believing that the original remained with DPS. Here, again, Mr. Vick requests a polygraph to clear his name and reputation on this issue.

E. Knowledge of EMU President, John Fallon, from the time of discovery of the body until arrest of a suspect.

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President Fallon was quoted in the Eastern Echo on March 7:

I know there were gaps in the information flow that maybe did have an impact on campus safety. Vick was the leader of the division in which things were taking place. He didn't follow the proper course of channels from the sources of information to me.

Vice President Vick has stated to the investigators that he told President Fallon everything he knew when he knew it. What information does President Fallon state that Vice President Vick withheld? Mr. Vick stated that he told President Fallon about the scene and what Director Hall had told him of the facts the first night and, on numerous occasions, that there was an ongoing death investigation which could include homicide, suicide, accident or natural causes. President Fallon admitted the substance of these communications in another interview with Mlive/Ann Arbor News published March 1, 2007 in which he was quoted as saying: "Jim was clear the whole time through that this was an ongoing investigation." He also told President Fallon that the medical examiner had not yet determined a cause of death and that he would wait six months if necessary to make a decision, based on the results of the police investigation, this according to Director Hall in response to the President's frequent requests to Vice President Vick to get the medical examiner to make a decision. On February 20, Mr. Vick met with President Fallon and told him of the information he had just received from Director Hall about the person of interest. These are the facts that Mr. Vick had from Director Hall and he is requesting a polygraph to prove that he told President Fallon this information and that this is all the information he had.

This information is consistent with what Director Hall and the medical examiner said in the press during the two months of investigation so why is it not believable that President Fallon was told the same thing by Mr. Vick? In fact, if he had been told anything different by Mr. Vick from what he surely read in the press, he would have been expected to confront Mr. Vick well before an arrest was made.

F. Overall responsibility for failure to make a timely warning of the circumstances surrounding Laura Dickinson's death.

If anything is clear in this investigation, it is that the failure to make a timely warning, if that is the case, was a systemic failure of long standing at the University. There was some evidence of foul play, though inconclusive, and that is why outside agencies were brought in. There were suspicions of foul play but no cause of death. This raises two questions: Who knew sufficient facts to conclude the public release was inaccurate and did the public release, in the language of the Act and Regulations, in any way impede *the prevention of similar crimes*?

1. Systemic Failure.

The Clery Act has been on the books since 1991. During that time there have been innumerable changes at every level at Eastern Michigan University. There have been

changes in reporting responsibility for the Department of Public Safety and, at some point, someone with authority crafted whatever Clery policies, practices and procedures now exist. Yet, according to the Department of Education after its recent visit, there are numerous deficiencies in University compliance, including the absence of *policies for making timely warning reports to members of the campus community regarding the occurrence of crimes described in paragraph (c)(1) of this section.* (34 CFR 668.46(b)(2)(i)) Who should stand responsible for those failures? The current President who has been here two years? The current Vice President for Student Affairs whose division has included Public Safety for about a year and a half? The current Director of Public Safety, who functions based on procedures in place long before she assumed the position? What about the former Vice Presidents for Business and Finance in whose divisions Public Safety reported for about 15 years? What responsibility does the Office of General Counsel at EMU hold since that is the one source on campus for systemic legal advice? Was that office ever brought into the picture to create policies and procedures, or review and revise policies and procedures over the years in light of statutory amendments and practical experience? Was Public Information ever involved in establishing policies and procedures for what information they release under the Clery Act? What about the various subcommittees of the Board of Regents that had oversight of Public Safety and/or Public Information?

It is understood that the current administration has been involved in a complete review of all the University's policies and procedures. The Clery policies and procedures had not yet been addressed. Nor are those procedures to be presumed by laymen and women to have had precedence over other policies and procedures since the existing policies and procedures (or more accurately, practices) had been in place for such a long time.

Specific problems existing with Clery compliance, in addition to formal, technical compliance, include:

a. Failure of a coherent chain of responsibility for compliance. Public Safety, in charge of assembling data and deciding what facts from an investigation are released, reports to the Vice President for Student Affairs. Public Information, in charge of drafting and releasing statements required by the Clery Act, reports to the Vice President for Advancement. Neither department has, as a job requirement for vice presidents, a law degree or police training and experience. It would seem appropriate that a compliance committee, consisting of Public Safety and Public Information VPs and Directors, General Counsel and others to be determined, be formed.

b. Absence of a written policy defining what is now a very blurred line between Clery timely warning requirements and facts to be withheld from the public to protect the integrity of investigations and the constitutional rights of suspects and defendants in criminal proceedings. Moreover, there should be a mechanism clearly described that

resolves conflicts between those three very important sectors. The question was asked of Mr. Vick by an investigator, "Where does the buck stop?" Which buck? Who is to say?

c. A lack of positive, informative discourse between the University and the U. S. Department of Education on resolving various practical and compliance issues. One experienced police professional stated that talking to the Department of Education about compliance was like talking to the IRS about taxes. You either get no answer or many opinions, none of which they would stand behind if the press got involved. The only way that will change is for colleges and universities to insist, through elected representatives, if necessary, that the Department of Education establish a compliance section that will be able to take an active role in helping colleges and universities adequately and accurately meet the Clery Act requirements.

2. Who knew sufficient facts to conclude the public release was inaccurate?

a. Director of Public Safety, Cindy Hall. Only one person in the administrative chain of command clearly knew about the pillow, bodily fluids and the opinions of other investigative officers on the scene. That person was Public Safety Director, Cindy Hall. In addition, she was privy to what was seen on tapes reviewed by investigators as the investigation progressed and could have changed the contents of the release at any time. As previously stated, it would have been Vice President Vick's expectation and Director Hall's duty to advise Mr. Vick of a change or changes in circumstances suggesting a change in the contents of the release. However, given her primary focus on protecting the integrity of the investigation, the fact there was no known cause of death, the absence of visible evidence of physical violence to the body or in the room, and no clear guidelines on "timely notice", she may have honestly concluded in her own mind there was no actual evidence of foul play. Just because the police and medical examiner were investigating the possibility of a homicide, the absence of firm evidence to support such a conclusion may have meant, in her mind, "no evidence of foul play."

b. Vice President for Student Affairs, James Vick. Assuming the accuracy of what Mr. Vick says he knew on December 15, 2006 and thereafter prior to the arrest of a suspect, such knowledge being primarily the absence of a cause of death, the absence of evidence of physical violence and the perceived right of the Director of Public Safety to control the release of information in order to protect the integrity of the investigation, the conclusion there was no evidence of foul play can be understood. Given that he knew there was a "death investigation" that included the possibility of a homicide along with three other possibilities, none of which included foul play, the investigation, in and of itself, is not evidence of foul play. The accuracy of what Mr. Vick says he knew should be tested by a polygraph in order to bring some clarity to this investigation.

c. The staff of Public Information. They apparently questioned the sufficiency of the release from the beginning. Should they have gone upstairs to their Vice President for

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Advancement with a request he either resolve the conflict with Mr. Vick or take the matter to the President of the University for resolution? Perhaps a carefully crafted policy would have resolved that question. Assuming they were aware of the Clery Act and its requirements for "timely notice," they could have been more proactive.

d. The President of the University, John Fallon. President Fallon knew there was a death, knew it was being investigated, knew of the Clery Act and knew of the initial release stating there was no evidence of foul play. It is unclear what he admits was told to him by Mr. Vick, but that should not matter. In a matter potentially as explosive as to how and why a student dies on campus, there should have, at least, been an assembly of University stakeholders by the President. This assembly should have included General Counsel, the Vice Presidents for Student Affairs and Advancement, the Directors of Public Safety, Public Information and Housing, and anyone else with direct involvement in the process. Direct questions could have been asked of the Director of Public Safety, the office of Public Information and legal counsel. Then, if a local newspaper editorialized about concealment of facts, the response could have been closer to the tenor of that given by the president of Virginia Tech, supporting EMU staff and the procedures followed rather than looking past what was, in fact, a very complex, long-standing problem whose origin is likely spread over many years and many people.

3. Did the public release, in the language of the Act and Regulations, in any way impede *the prevention of similar crimes*?

What if, instead of stating, "there is no evidence of foul play", the release had said something to the effect, "There is no evidence of physical violence to the person or at the scene and there is no known cause of death. However, the University, through its Department of Public Safety, with the assistance of the State Police crime lab, other police agencies and the Washtenaw County Medical Examiner, is conducting a death investigation. A death investigation leaves open the possibility that the cause of death could have been 1) natural causes, 2) suicide, 3) accident or 4) homicide." Would such a statement have resulted in any change on the part of any student, employee or member of the community whatsoever? If not, did the statement released in any way impede the prevention of similar crimes?

Keep in mind that the University closed for the holidays the following day, that Housing personnel visited the students who were still in the dormitory to advise them of the death, that the University wrote to students about the death before they returned from vacation, and that there was still no cause of death determined by the medical examiner. Granted, at the time of the autopsy a few days after discovery of the body, the medical examiner stated to the press there was "some suggestion" of violence. Mlive.com, 12/19/06. As might be expected, the headline read: "Autopsy suggests violence in EMU death." However, the very next day, 12/20/06, Mlive.com, under a neutral heading, "Ruling in EMU student's death 2 weeks off", reported it would be at least two weeks before the medical examiner

could rule whether the death was a homicide, accidental or medically related. It was further reported that the ME stated advanced decomposition made it impossible to determine visually whether her death was violent. He was quoted as saying, "I can't rule it out at this point." Of course, they failed to state the obvious that he couldn't rule out accident or medical cause either.

What should the statement, absent hindsight and press sensationalism, have said that would have aided in the prevention of similar crimes because, if there was nothing that could have been released to prevent similar crimes, there was no obligation under Clery to release any particular statement. Since the cause of death was undetermined and only subject to the suspicion of certain investigative officers, should the statement have repeated those suspicions? If those suspicions were published, wouldn't the release be misleading since no one knew what the cause of death was?

Should the warning statement have disclosed facts, beyond the fact of the death itself? If so, which facts? Who, other than the chief investigative officer, would have been qualified to make that judgment? Obviously, the chief investigative officer, the Director of the Department of Public Safety, did exercise her judgment and declined to have such facts disclosed in a warning notice because she did not want to, in the language of the Act and Regulations, *jeopardize an ongoing criminal investigation*. She exercised her discretion and should not be second guessed now by others absent an abuse of that discretion or bad faith in her decision making, none of which is in evidence at this point.

It would have been irresponsible to print unsubstantiated conclusions of the cause of death in a warning statement. It also would have been irresponsible to disclose important facts in an investigation when the cause of death was still undetermined. The press will always howl otherwise because the more they can sensationalize, the more "news" they can sell. However, it is not the function of public institutions to join the press in that endeavor, nor is it the function of public institutions to engage in knee-jerk reactions to unsupported and often inaccurate reporting and editorializing by the media.

CONCLUSION

Laura Dickinson was apparently the tragic victim of a senseless crime in her dormitory room at Eastern Michigan University. Because of the circumstances surrounding her death, it was difficult to reach an early conclusion about the cause of death. While police agencies and the medical examiner wrestled with the difficulties of the investigation, the University wrestled with a problem of its own. What should it do, if anything, to comply with the "timely warning" requirements of the Clery Act?

In order for there to be a "timely warning" requirement under the Act, there must be a crime. The Act says nothing about suspicion of a crime. There was apparently plenty of that on the part of police investigators at the scene but no visibly observable evidence of

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violence to the body or within the room. There were also facts, known by at least one University administrator, the Director of Public Safety, that led to the suspicions of investigating officers. That is why the crime lab was brought in. However, as authorized by the Act, the Director of Public Safety exercised her judgment on the release of facts and asked that no release take place so as not to jeopardize the ongoing investigation.

Whether the Clery Act applied or not, the University had the need to prepare and release a statement regarding the death. At a meeting of the Vice President of Student Affairs, the Director of Public Safety and representatives of the University's Public Information office, it was decided that no facts would be released and a statement made that there was no evidence of foul play. Apparently the Public Information people weren't happy with these restrictions but went along based on the support of the Vice President for Student Affairs for the discretionary powers of the chief police investigator of the death. The release was not modified at any time until a suspect was arrested and charged with homicide.

When an arrest was made for homicide, the press went on the attack. Various media alleged that there had been a cover-up, that students were unnecessarily put at risk and that the University president should resign. In response to the media attack, targets began working to secure their positions in the fort. The President, John Fallon, suspended the Vice President for Student Affairs, James Vick, and told the press he was not kept informed. The Director of Public Safety, Cindy Hall, claimed that her immediate superior, Mr. Vick, knew everything she knew, had been in the room the night the body was found and was personally aware of all the facts relevant to the case. Mr. Vick, in response, has consistently stated he never went into the room, saw the unclothed lower extremities of the body through a partially open door, and was told by Ms. Hall only that there was no visible evidence of physical violence and no known cause of death. Either Mr. Vick is being untruthful or President Fallon and Ms. Hall are. This is why Mr. Vick is requesting a polygraph exam.

The Department of Education conducted an investigation on campus and is apparently going to hold that the University is in substantial noncompliance with the requirements of the Clery Act. While any conclusion about a "timely statement" could be debated, there is no question that the University has failed to establish policies in writing in accordance with the Clery Act and Regulations. However, this problem, as with the levies in New Orleans, didn't happen overnight. The problem is systemic and has developed since the Clery Act was made effective in 1991. Many people have dropped the ball in many ways and it is unlikely that anyone currently defined in the Act as having responsibility could reasonably be held responsible. The University should now learn from the experience and undertake an effort to meet the Clery Act requirements.

Vice President Vick did everything that should have been expected of him. He met with and consoled the family of decedent, made sure students and staff were informed of the death, made sure counseling services were available, notified appropriate University

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personnel of the death, made sure Housing informed housing staff and residents and held appropriate meetings, contacted Public Information and generally oversaw details of addressing University related issues and support service requirements resulting from the death. Because he was not a trained or certified police officer, he did not attempt to micromanage or interfere with the ongoing death investigation in which the University Department of Public Safety was the lead investigating agency.

The suspension of Jim Vick was a deflection of responsibility on the part of the University President. Mr. Vick is widely viewed, on campus and in the community, as the hardest working, most honest and concerned member of the University administration. The suggestion that he withheld information he had from the President is inconsistent with the reality that, if anything, he is known to provide an overabundance of information. Mr. Vick had nothing to gain from a cover-up as alleged by the media or from withholding information as alleged by President Fallon. The suggestion by Director Hall that she disclosed everything to Mr. Vick is either a product of forgetfulness and assumption on the part of a very busy person or the effort of an employee under fire trying to deflect responsibility from herself. As previously stated, it was her duty and Mr. Vick's expectation that she would give advice and make recommendations regarding any change or approach to the case. Either way, it is an injustice to Mr. Vick and unsupported by the facts and her own statements to the media. It is unlikely that she would have told Mr. Vick one thing and made public pronouncements to the contrary.

The undersigned believes that Mr. Vick should be exonerated by the University, reinstated to his position as Vice President, and a public announcement of his exoneration made through appropriate channels. We would like to have this letter in the hands of the Regents and the President of the University. We are uncertain about how ethical restrictions on communicating with another attorney's client would come into play since you are acting as investigators rather than advisors. Your comments on that would be appreciated. If you are of the opinion we should not disseminate this letter to Regents and the President, it would be appreciated if you would do so, either as an attachment to your report or separately.

POLYGRAPH REQUEST

At our meeting of April 17, 2007, during which you continued your questioning of Mr. Vick, we offered to submit Mr. Vick to a polygraph concerning his knowledge of any facts connected to your investigation. We offered to do so without any restrictions and without a prior private polygraph as is so often done in other circumstances. You raised questions about the legality of a polygraph under these circumstances and asked for a written request.

We reviewed the Michigan law on the subject. The Michigan Polygraph Protection Act of 1981, MCL section 37.203, prohibits an employer from requesting a polygraph as a condition of gaining or keeping employment. However, the Act does allow an employee to request a polygraph exam. On behalf of Mr. Vick, I am requesting that, as part of this

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investigation, the University provide him with a polygraph examination by an examiner licensed under Act No. 295 of the Public Acts of 1972. Given the contradictory statements reported by investigators during the interview with Mr. Vick, he and I believe it is the only way to clear up the inconsistencies. It should also assist the University in determining how to proceed with this difficult set of circumstances from here on out.

Thank you for the opportunity to communicate these matters to you during your investigation on behalf of the Board of Regents.

Very truly yours,

Manchester & Associates

Thomas C. Manchester

Approved:

James F. Vick

Date: _____