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June 13, 2007

BY FACSIMILE AND FIRST CLASS MAIL

Eastern Michigan University Board of Regents  
201-B Welch Hall  
Eastern Michigan University  
Ypsilanti, MI 48197

Re: James Vick, Vice President for Student Affairs  
Butzel Long Report

Dear Regents:

I am writing this as a preliminary response to the Butzel Long Report (the "Report") recently submitted to your Board. I say "preliminary response" because it would not be possible to respond in depth to the Report and its many exhibits in this short a period. I was out of my office for three of the days since the Report was released and have only now concluded my own review of the document totaling over 600 pages. However, I am concerned that if we wait any longer to respond, the Board will "take action" as promised to the press and the public and that such action will be negative toward Mr. Vick who is the focus of all that may have gone wrong since the discovery of the body of Laura Dickinson on December 15, 2006.

Mr. Vick was made the focus of the Independent Investigation when he was placed on administrative leave by President Fallon. Mr. Vick was given this treatment because President Fallon reported that Mr. Vick had not been forthcoming in providing President Fallon with information about the death and the investigation by the University Department of Public Safety (the "DPS") and other police agencies. Following his suspension, the Board of Regents hired Butzel Long to conduct an independent investigation and report back to the Board. Mr. Vick was interviewed in my presence twice by Butzel Long and once by the U.S. Department of Education. During the second interview with Butzel Long, it was made clear that others at the University had apparently contradicted some of the things said by Mr. Vick during the first interview. It

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was also quite clear that at least one of the three interviewers during the second meeting did not believe Mr. Vick.

It was at that time that we offered to have Mr. Vick submit to a polygraph to be conducted by an examiner of Butzel Long's choosing. It seemed clear to us that either Mr. Vick would be believed or those who gave conflicting statements would be believed. Given the negative focus on Mr. Vick resulting from his suspension, bolstered by the obvious disbelief of at least one of the questioners, a polygraph was the only chance for Mr. Vick to be believed. That offer was reiterated in a letter sent to Butzel Long by the undersigned dated May 1, 2007. A copy of that letter was appended to the Butzel Long report but, given the more than 500 pages of exhibits to the report, it is entirely possible that busy regents will never get to read it. For that reason, we are attaching it to this letter for your review. Unfortunately, Butzel Long declined to grant Mr. Vick's request but said they would accept whatever additional input we chose to provide. We assumed that included the results of a polygraph examination.

A Polygraph was given on Thursday, June 7, 2007, by Lawrence Wasser, a forensic polygraph examiner who is well known in the field, is recognized as an expert in both state and federal courts, and is a member of the Michigan, California, Texas, Virginia, Indiana and Florida polygraph associations. He has been a forensic polygraph examiner since 1972 and, in 1983, was appointed by the governor and confirmed by the state senate, resulting in serving three four-year terms on the Michigan State Board of Forensic Polygraph Examiners. His report was not made available to Butzel Long because we were not kept in the loop concerning the timing of the preparation and release of the independent report. Had we known of the impending release of the independent report, we would have tried to prevail on Mr. Wasser to give the exam sooner. As it was, the exam date was primarily the product of fitting into Mr. Wasser's very busy schedule.

A copy of our May 1 letter to Butzel Long was given to Mr. Wasser along with a list of issues we felt were relevant to the inquiry. From this written information, Mr. Wasser conducted an extensive interview with Mr. Vick. After that interview, an exam date was scheduled and Mr. Wasser presented two all encompassing questions concerning Mr. Vick's veracity in this investigation. They were as follows:

1. During your interviews with the Attorneys from Butzel-Long did you knowingly provide any false information regarding the Laura Dickerson (sic) case?
2. During your interview with the United States Department of Education did you knowingly provide any false information regarding the Laura Dickerson (sic) case?

In both instances Mr. Vick answered, "No." Mr. Wasser stated that, in his opinion, Mr. Vick's answers were truthful. This means Mr. Vick was truthful about the answers he gave Butzel Long. This also means many of the conclusions about Mr. Vick found in the Butzel Long report are incorrect. A copy of the report from Mr. Wasser is also enclosed for review.

#### What our Documents Show

This letter, the previous letter to Butzel Long and the Polygraph Report should be read together and will show the following:

1. The Clery Act has been in effect for many years and has never been properly addressed by those at the University qualified to do so.
2. The absence of clear University policies and procedures under the Clery Act has left administrators to fend for themselves when situations have arisen requiring compliance.
3. Mr. Vick has been truthful in every respect regarding his knowledge and his actions throughout these proceedings.

#### Issues of Veracity Concerning Mr. Vick

The following are issues detailed in the Report in which conclusions reached suggested Mr. Vick was not truthful:

1. What was told to Vice President Vick by DPS Director Cindy Hall?
  2. What was seen by Mr. Vick at decedent's room the night of December 15, 2006?
  3. What was not told to Mr. Vick about the facts at the scene on December 15?
  4. What did Mr. Vick tell President Fallon on December 15<sup>th</sup>, 16<sup>th</sup> or the 19<sup>th</sup> and throughout the investigation prior to the arrest of a suspect in the death?
  5. What were the circumstances surrounding the shredding of the Initial Draft Report (IDR)?
1. What was told to Vice President Vick by DPS Director Cindy Hall?  
Mr. Vick told Butzel Long and the Department of Education (the "ED") that Director Hall told him on the afternoon and evening of December 15 that the student's body was on the floor, that she was naked from the waist down, that there were no signs of physical trauma on the body, that there were no signs of violence in the room, that there was no known cause of death at that time, that decedent's keys appeared to be missing and that Director Hall was electing to

describe police activity as a “death investigation” rather than a “homicide investigation” because of the lack of evidence and lack of a conclusive opinion of the medical examiner (the “ME”). Director Hall said a death investigation left all possibilities open, including homicide, suicide, accident and natural causes.

2. What was seen by Mr. Vick at decedent’s room the night of December 15, 2006?

Mr. Vick told Butzel Long and the ED that he did not go into decedent’s room on the 15<sup>th</sup>, looked part way inside through a partially open door and only saw the lower portion of decedent’s legs, from about the knees down. He testified they were open about 18 inches. That was all he saw of the room that evening.

3. What was not told to Mr. Vick about the facts at the scene on December 15?

- a. Mr. Vick said he was not told about the pillow on decedent’s head until February 23, 2007.
- b. Mr. Vick said he was not told about a substance on decedent’s thigh until late in the investigation and was not told it was semen until February 23, 2007.
- c. Mr. Vick said he was not told about the discarded tampon until the first interview with Butzel Long.

4. What did Mr. Vick tell President Fallon on December 15<sup>th</sup>, 16<sup>th</sup> or the 19<sup>th</sup> and throughout the investigation prior to the arrest of a suspect in the death?

Mr. Vick told Butzel Long that he told President Fallon everything he knew when he knew it or shortly thereafter. They had four formal meetings and five to six informal meetings between December 15<sup>th</sup> and February 23. Among disclosures:

- a. The body was found on the floor.
- b. Decedent was naked from the waist down.
- c. Her keys were missing.
- d. The ME was waiting for lab test results and conclusion of the investigation before ruling on the cause of death.
- e. The ME said he would wait up to six months if he had to pending conclusion of the police investigation.
- f. It was an open investigation and that anything was possible, including homicide. (This was said by Mr. Vick to President Fallon numerous times over the course of the investigation.)

The Report states that on January 23<sup>rd</sup>, President Fallon expressed concern about the delay in the ME’s determination of a cause of death. It is reported that Mr. Vick told the President he had to be patient. Why was this even in the Report? What else could he say? Is there some suggestion that Mr. Vick had any control

whatsoever over the functioning of the ME and his department?

5. What were the circumstances surrounding the shredding of the Initial Draft Report (IDR)?

Mr. Vick told Butzel Long his office customarily received stacks of 40 to 50 copies of police reports dealing with campus incidents. These reports are reviewed by Mr. Vick, members of his staff and then sent on to the office of General Counsel for review. However, in January, 2007, Mr. Vick was informed by his secretary that the IDR was included with a stack of copies of police reports. The IDR was not an incident report per the Butzel Long Report. Given Director Hall's admonitions about not disclosing evidence of the investigation, Mr. Vick called DPS to see what they wanted done with the IDR. Mr. Vick reported to Butzel Long at the first meeting that he talked with Director Hall about the IDR. At the second interview, given Director Hall's adamant denial of the conversation, Mr. Vick stated it could have been Lieutenant Nesmith he talked to but is certain it was one of the two of them. Mr. Vick then stated that he was told by DPS the IDR should not have been included in the stack and to please have it shredded. The inappropriateness of its presence in circulation was confirmed by Lieutenant Nesmith to Butzel Long according to their Report.

Much was made in the Report of the fact that Greg Peoples said Mr. Vick ordered the document shredded before calling DPS but then acknowledges a call was made to DPS after telling his staff to shred the IDR. Mr. Vick is quite certain to the contrary and passed the polygraph test on his truthfulness. In reality, it should not matter which came first. The only issue is whether the IDR should have been shredded. Since it was included by mistake and since the DPS did not want it in circulation, it clearly should have been taken out of circulation which it was.

It was also suggested in the Report that, had the IDR been sent on to General Counsel McKanders, he would have noted the facts stated therein and called for a timely statement to the college community in conformity with the Clery Act. First, the IDR was not supposed to be in circulation so it was not meant to be sent to Mr. McKanders and, second, it is only conjecture to suggest that had it been forwarded to General Counsel's office, it likely would have resulted in a revision of the "no foul play" statement. There is no evidence Mr. McKanders even knew about the press release stating "no foul play" and, given the state of compliance with the Clery Act to date, no reason to believe the office of General Counsel was even involved in that aspect of University compliance.

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If there was a mistake regarding the IDR, one that Mr. Vick acknowledged, it was in not reading the IDR before ordering it shredded. He did not do so because he thought he had been fully informed by Director Hall and therefore knew what was in its contents.

### Taped Statements of Mr. Vick to Alumni and Students

There are two taped statements of Mr. Vick talking to groups, a meeting at the Towers and an alumni board meeting. The Report says at page 46 that Vick and Hall adopted the term “death investigation.” The implication is that they colluded to deceive the university community and the press about the circumstances of the death. The Report cites the Tower meeting tape, *Exhibit 25, p.4*, and quotes the phrase, “our decision involved presenting it as a death investigation.” The Report makes it sound as if Mr. Vick sat down with Director Hall and discussed what to call the investigation.

Keep in mind that Mr. Vick told Butzel Long that it was Director Hall’s decision to call it a death investigation, based on the evidence and the absence of a cause of death. He was shown to be truthful by the polygraph. The quote from the Tower Hall meeting was out of context. What the complete statement said was,

“Our decision, and obviously, there’s different ways to look at this, our decision involved presenting it as a death investigation. There were some people and some of the police agencies, we worked jointly with the state police and with the county police, a team approach to this, and some officers thought well we should probably call this a criminal investigation or a homicide investigation. ***Some thought, and our chief, who was the lead – we were the lead department on this investigation felt that that was – maybe going a little bit too far, calling it a death investigation was the option open as it could have been any of those things we described and that’s the way we proceeded.***” (Emphasis added)

Clearly, Mr. Vick was speaking of the institutional “we” rather than of himself and Director Hall.

Compare that partially quoted statement in the Report with this quote from the meeting of the Alumni Association Board at page 3:

“There’s a group, in the police group, that says, well you want to treat this as a homicide. Another group that says, no you don’t have enough information here, given what is going on, to call it that. ***It was our call, Public Safety’s call, their call, which I agree with.***” (emphasis added)

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There is a large gap between jointly deciding something and agreeing with the decision made by another, especially when the decision maker is the person in charge with the credentials to make that decision.

### Conclusion

It is clear, from the polygraph results, that Jim Vick spoke the truth to the Butzel Long firm and to the Department of Education. That being the case, it is equally clear that neither President Fallon nor Director Hall spoke the truth or their memories were very faulty when they contradicted Mr. Vick's statements. The positions taken contrary to Mr. Vick are fatally at odds with Mr. Vick's statements. It should also be clear from a neutral reading of the Report and its many conclusions, that every inference was drawn against Mr. Vick and in favor of the President of the University.

A University is an institution. In times of crisis institutions through their leadership seek survival. Often that survival is acquired by focusing blame on lower level staff, removing the staff person(s) and claiming redemption. That process is in play in this Clery Act debate and Mr. Vick, possibly along with Director Hall, is the designated scapegoat. In fact, as described in the Report, the problem is systemic, has been around long before the present staff members assumed their current rolls, and is in need of correction, not deflection. There is and has been no timely warning policy since the inception of the Clery Act more than 15 years ago. To hold individuals wrong who attempted to navigate these tricky waters without policies and procedures would be an injustice.

Cindy Hall, who holds a law degree, believed there was insufficient evidence to call Laura Dickinson's death a homicide. She also believed her paramount task was to protect the integrity of the investigation. After all, the Clery Act requires a timely warning of a crime, not suspicion of a crime. Butzel Long may be correct in referring to the spirit of the Act but that reference is made in retrospect, a time when intense study and investigation brings clarity. James Vick, a layman in charge of Student Affairs, newly attached to the DPS because of a decision to transfer DPS from Business and Finance, believed that police officers should run police investigations and had no policies or procedures to tell him otherwise. He deferred to Director Hall's judgment on issues related to the investigation in order not to interfere with the investigation. One can only imagine the public reaction if the suspect was not caught or if the case against him was dismissed because of interference with the investigative process and/or interference with the constitutional rights of a potential defendant.

The University now has the opportunity for redemption by following the recommendations of Butzel Long concerning the Clery Act while, at the same time, doing justice to its long serving and loyal staff members who may, in hindsight, have

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made some mistakes but who made them in good faith and with the well being of the University and its constituency at heart.

As indicated earlier, this is a preliminary reply with the intention of responding to the entire report and its numerous exhibits. We respectfully beg the Board's indulgence in this process because we think justice requires an opportunity for a more complete response. In addition, because Mr. Vick's suspension was reported to the press, and because the Report was made available to the press on the day it was given to the Board, this letter, with its attachments, will be made available to the press contemporaneously with being forwarded to the Regents. Mr. Vick has been pilloried in the press up to now. It is time his position has its day in the public forum.

Very truly yours,

Manchester & Associates

Thomas C. Manchester

cc: James Vick  
Eastern Echo  
Ann Arbor News  
Ann Arbor Observer  
Ypsilanti Courier  
Detroit Free Press  
Detroit News