

MARGARET A. CONE

July 18, 2020

President Mark S. Schlissel
University of Michigan
2074 Fleming Administration Building
503 Thompson Street
Ann Arbor, Michigan 48109-1340

VIA EMAIL

The Regents of the University of Michigan
500 S. State Street
Ann Arbor, Michigan 48109

Dear President Schlissel and the Honorable Members of the Board of Regents:

I am writing to inform you of the misuse of grant funds and other improprieties at the Center for Political Studies (“CPS”) in the Institute of Social Research (“ISR”) at the University of Michigan (“UM”).

Building on President Barack Obama’s call from Cairo, Egypt in June 2009 for a “new beginning” between the United States and the Muslim world, I secured a \$2 million grant from the United Arab Emirates (“UAE”) to fund an academic program to build a partnership between the next generation of religious leaders and scholars from the United States and al-Azhar in Cairo, Egypt, the chief center of Islamic and Arabic learning.¹ UM officials Mark Tessler (“Tessler”) and Sherman Jackson (“Jackson”) agreed on behalf of UM’s International Institute to administer the program and serve as its faculty directors. What I did not know at the time was that I had placed the program in the hands of individuals who did not intend to perform or abide by UM rules and would use program funds as personal income.

In fall 2009, after they accepted the financial terms and conditions set out in a letter from UAE Ambassador Yousef Otaiba (“Ambassador Otaiba”) to the United States, Tessler and Jackson routed the UAE funds away from the International Institute and into an account under the administrative control of David Howell (“Howell”) at CPS. Their motivation in arranging for CPS to administer the program was to line their own pockets.

¹ Gene Sperling, former director of National Economic Council under Presidents William Clinton and Barack Obama, formally announced the program in 2008 at the Clinton Global Initiative in New York.

Internal UM communications confirm Tessler and Jackson set up the program to mirror an arrangement used by Tessler and Howell on an earlier project at CPS funded by the government of Qatar with the goal of reaping the same financial rewards using funds provided by the UAE.²

To avoid UM restrictions placed on sponsored projects, Howell first requested the UAE funds be treated as a “gift.” When the then Assistant Director for ISR Anna Schork (“Schork”) balked, Howell arranged to bypass LSA: “All of the funds are coming directly to CPS and all will sit and be spent in CPS, LSA won’t be involved.”³

Because Howell was unable to characterize UAE funds as a gift, Howell rewrote the budget and denied to UM a budget ever existed. Under oath, Jackson and Howell certified there was no proposal, budget or guidelines. “Discretion has been delegated to the Principal Investigator Sherman Jackson as to how to spend the funds.” Jackson’s and Howell’s “new” budget allocated approximately \$490,000 in “Research Salaries” and fringe benefits for Tessler and Jackson and approximately \$457,475.00 in fees for CPS.

Howell then submitted a memorandum outlining the terms of the indirect cost recovery at CPS for UM officials in the office of sponsored projects. Howell claimed - falsely - the UAE waived the federal “indirect cost model” and “would be more familiar and comfortable” “with “a fee-based model” and “[i]t was ultimately agreed that it would be acceptable for CPS to receive \$15,775 per month for each of the 29 months of the project, charged as “**Service Personnel and Fees.**”⁴ This amounted to eleven months of

² As explained in the attachment, impropriety by Tessler and Howell appears to extend beyond the scope of my project. The key is CPS’s structure and its unique retention of management fees (“indirect costs”) for the administration of sponsored projects. UM documents established Tessler and Howell had developed a scheme to pay themselves hundreds of thousands of dollars through “sundry” accounts while administering a grant from the government of Qatar, avoiding UM safeguards and accounting standards. During the same period of time, CPS improperly administered three grants from the U.S. State Department Office of Public Diplomacy -11-PAF 05652, 12-PAF 06001 and 13-PAF 05412 - to develop academic exchange programs in entrepreneurship for young people and women from the Middle East

³ By placing the UAE funds under CPS control, the existence of these funds, their access to and use of them, was consequently not reported through ordinary UM administrative processes. Moreover, UM would be aware they were not supplying UM with almost \$500,000.00 in indirect costs UM might have derived from its management of the funds.

⁴ The journal entry is recorded as: Alloc Svs Pers 514600 P&A Institute Non-Ac. As describe in greater detail in the attachment, this lump sum falsely disguised as “**service fees**” was deposited directly into “CPS equity” - an unrestricted fund - which allowed them to spend the funds without accountability and explains how their actions and improper use of the UAE funds were undetectable through internal UM or ISR financial monitoring

“service fees” – May 2009 through March 2010 – or \$173,305.00 for work the three individuals never performed.

I learned about the “new” budget and discovered CPS - and not the International Institute - was responsible for the conduct of the program in the middle of February 2010.⁵ When I objected and tried to exercise proper oversight and accountability to protect program funds, they ignored my phone calls and emails. They then tried to demean me by labeling me “difficult.” When I persisted, they decided - in their words - they needed to “tame and domesticate” me.

Meanwhile, despite raking in massive unearned “fees,” these UM officials did almost nothing to actually create or administer a functioning program. In March 2010, I emailed Howell the forms for the al-Azhar participants' visas, along with the necessary documentation. On March 21, I reminded Jackson and Howell the al-Azhar participants were scheduled to arrive in Ann Arbor the first week of May 2010 and I left for Egypt to facilitate the visa process with the U.S. Embassy. On March 25, I emailed Jackson and Howell about the status of the visa applications but received no response. The following evening, Jackson emailed a file he said contained the completed visa applications. After seeing the visa application forms were not in the file, I tried to contact Jackson and CPS staff. On March 27, Howell told Jackson he did not have time to scan the documents.⁶ I ultimately had to remain in Cairo until April 11, 2010, to ensure each participant secured a visa.

After I returned from Egypt, I learned Jackson was committed to teach in Egypt from May 29 - July 9 and he had undisclosed commitments to attend two overseas conferences that conflicted with effectively leading the program: one two-week conference from May 6-21 in Qatar, and then another conference from July 13-17 in Singapore. Moreover, and of particular concern, Jackson was in the midst of negotiating a full-time position with University of Southern California beginning in July 2010. Tessler, too, was on a previously undisclosed sabbatical beginning in January 2010, and under UM policy was ineligible for any assignments. When I emailed Tessler about their absences, he stated he knew of no arrangements to secure faculty to fill the void created

⁵ In his deposition on October 9, 2017, Jackson admitted he never informed me about these changes because he did not think it was a big deal.

⁶ I earlier questioned whether Howell had the requisite skills to administer the program. In January, I asked information packets about UM and folders for the al-Azhar scholars. When the package from Howell arrived in Egypt, it included neither an UM folder nor any material discussing UM or the English Language Institute. Howell instead sent a *Wikipedia* article about UM, copies of Curriculum Vitae for Tessler and Jackson and a nondescript UM pamphlet. None of what Howell provided could be used. When I emailed Howell about the incomplete package, he replied he had done the best he could on short notice.

by their absences, and he recommended I cancel the program if the airline tickets had not been purchased.

I looked into options at UM, including the CMENAS at the International Institute, the intended home for the program. Through the deposition testimony of Professor Gottfried Hagen, I learned Tessler and Jackson had sabotaged my efforts by claiming “*Ms. Cone was difficult to work with.*” I next contacted Jerry May (“May”), the then Vice President of Development, at the suggestion of Paul Dimond, a local Ann Arbor attorney. When I spoke with May, I learned no one from UM knew about the UAE funds and the program “was not an UM project.” May apologized and told me there was nothing he could do. He ended the conversation by stating his intention to inform the then Provost Teresa Sullivan.

That evening, Tessler and Jackson abandoned the program and told me they were returning the remaining funds to the UAE immediately. Literally leaving visiting scholars from al-Azhar without a roof over their heads, I contacted then Provost Sullivan's office the next morning to salvage the program:

I do not believe it is in anyone's interest not to live up to these obligations or to create unnecessary bad will. I have much respect for the University, al-Azhar University and the Crown Prince's generous grant and wish only that the transition be handled smoothly.

The following week, Tessler informed me May 15, 2010 was the end date for the program. After May 15, 2010, the financial responsibility for the program fell completely and personally on me. To protect UM's reputation and keep faith with these young people, I personally funded basic program needs myself. The al-Azhar participants arrived in Ann Arbor for a nine-weeks intensive English language study. I arranged a variety of field trips and events designed to expose the al-Azhar students to significant dimensions of American culture and society. For example, they participated in an intimate roundtable with then gubernatorial candidate and former Governor of Michigan Rick Snyder, and attended a special 50-year anniversary screening of the American classic film *To Kill a Mockingbird*.

Without support or assistance from Tessler or Jackson, I relocated the two-week conference to Georgetown University. Georgetown asked only \$34,000 for the program. To keep my word to the then Provost Sullivan, Georgetown invited Tessler and Jackson to the conference as well as three UM doctoral candidates recommended by Tessler. Tessler attended one day of the program. Jackson did not attend.

In June 2010, I met with Ambassador Otaiba in Washington, D.C., who asked UM to return the funds without delay. I relayed Ambassador Otaiba's request to Tessler. A week later, Tessler emailed Ambassador Otaiba for wiring instructions, and suggested the

delay was due to outside vendors. In fact, they were jiggering internal documents to ensure payments for themselves and CPS.

Despite backing out of the program, Tessler and Jackson arranged to award themselves thousands of dollars out of the UAE funds through sundry accounts Howell manufactured. In his deposition, Tessler admitted he received \$17,600.00 from the UAE's funds and he did not report the funds to the Internal Revenue Service because, in his words, the money earned on 105 hours of time he supposedly worked on the program was not income. Jackson received \$74,667.00 for his "work" from the UAE funds in July 2010.⁷ As discussed above, Howell's employer - CPS - received approximately \$173,305.00 in fees for work never performed.

UM officials and administrators "were concerned about the justification and associated documentation for expenses" and "wanted assurance at the Institute level that we could support any expenses and have documentation should an audit occur or reporting be required."⁸ Schork told Howell she expected "that this [project] is being

⁷ As detailed in the attachment, Jackson's payments were more complicated and required Jackson to falsely claim he had worked on the project nearly full-time during the summer months of 2009 and 2010, including June through August of 2010.

⁸ **Elaine Brock**, Office of Research and Sponsored Projects ("ORSP"), characterized the payments on the program as follows: "The funds expended on this do not seem to be fully justified against the benefit to the sponsor...The exposure, if this blows up, could be >\$700k for ISR."

Maureen Conlin, Human Resource for ISR, would not approve retroactive payments for Jackson because Jackson did not have a CPS faculty appointment.

Amanda Coulter and **Christine Koch**, ORSP, were concerned about the justification and associated documentation for expenses that "hit" after May 15.

Elaine Johnson, Financial Operations, expressed concern about approval for the expenses occurring after the May 15 and would not close out the account until there was a final statement of expenses.

Lisa Michelin, administrator for Near Eastern Studies and Jackson's UM appointment unit, would not agree to accept funds from CPS to pay Jackson through Near Eastern Studies.

James Penner-Hahn, LSA associate dean for budget, did not accept funds from CPS in order for LSA to pay Sherman Jackson. He thought CPS paying was Jackson "probably a better solution, since ISR has all of the backup on [the project] and how this appointment came to be."

Anna Schork, ISR, among other things, testified: 1) it was improper for Tessler and Jackson to receive payment for work on a sponsored project through sundry accounts; 2) Howell's actions were not authorized under UM financial control policy or OMB regulations and the multiple accounts hid the nature of the income they received; and, 3) CPS' documents appeared inadequate to meet UM rules.

Ashley K. Tyler, Procurement Services, and **Laurie Winslow**, CPS administrator, had concerns about the UAE budget referenced in Ambassador Otaiba's funding letter.

managed in a transparent and defensible manner” as opposed to how it had been managed up to that point. In trying to explain and justify the payments, Howell responded, “this was indeed a nuanced and quirky project” and “the expenses were validated according to the requirements of the funder” when he knew the approved budget had not even been submitted with the project approval form.

In August 2010, I learned about these payments notwithstanding under the terms of the agreement with the UAE, I was responsible for directing disbursements of the funds. I emailed Jackson about the unsubstantiated expenses. Jackson responded not to contact him with questions relating to the use of the UAE funds. I then requested from Howell an accounting of the expenses charged to UAE. Internal UM documents indicate Howell told Tessler they cannot meet with me:

We are not in a position to have an official conversation with her about this anymore, and the project is over and the funds returned. All of the expenses of the project are in good shape and properly expended and well documented in case of audit, but the below meeting will surely devolve into something complicated and unproductive if it occurs, I think.

Howell worried such a conversation would result in my “questioning what we did here on the project” and “requesting volumes of documentation [to] question all of U-M’s processes.” Howell is right. I would never have allowed them to keep those funds.

In the end, the UAE did not cover my expenses and compensation, explicitly refusing to reimburse me for funds which had been withdrawn by Jackson, Tessler, and Howell. In discovery, I learned Tessler and Jackson had ruined my reputation with Ambassador Otaiba and deprived me of an ongoing relationship with al-Azhar University, and other key leaders in the Middle East. Despite their own unavailability to administer the program, Tessler and Jackson blamed me for problems at UM and told Ambassador Otaiba they *reluctantly* withdrew from the program “because of administrative complications associated with our relationship with Margaret Cone.”

I have spent years seeking accountability for these men only to be lied to and stonewalled at every turn. The physical and financial impact on me has been significant, including having a considerable portion of my life savings depleted. In 2016, I was forced to file lawsuit against the three individuals in federal court in Detroit, Michigan.

I am disappointed and baffled by what I saw in UM documents and by the testimonies of the three men. In their depositions, they admitted: they failed to follow UM policy and procedure; they misled UM officials about the terms of the program and

grant from the UAE; they submitted falsified documents to obtain UM approval for the program; and, they improperly paid themselves by manufacturing sundry accounts, among other admissions.

As I acknowledged in my letter to UM General Counsel dated September 11, 2017, if the three individuals had followed UM procedures and policies for the project, as they represented they would, the project undoubtedly would have turned out differently. Despite these revelations, UM paid out hundreds of thousands of dollars in attorney fees to protect these individuals. UM even allowed them to add the affirmative defense of governmental immunity one month before the close of discovery.

I kept thinking: These men destroyed a vital peace-building program attended by Valerie Jarrett and other high-ranking national security council and state department officials. They failed to follow every UM policy and procedure and they consistently lied about the terms of the UAE grant to UM officials and to their colleagues. Why would UM use its financial resources and reputation to defend such serious and troubling behavior? Why did UM shield these men? For what? To protect the money Tessler and Jackson stole? Quite honestly, I think my conduct and values reflect this great UM and the people of the state of Michigan.⁹ Frankly, I am at a loss to understand why UM made the decision to defend their conduct and not to champion me.

Curiously and regrettably, I was unable to obtain relief in the courts because of procedural determinations. No court has ruled against me on the merits. This board has no similar procedural limitations and, unlike the courts, is able to look at these facts in an equitable manner and consider issues of academic and institutional ethics and integrity, in addition to issues of law. Please do not turn a blind eye to Tessler's and Jackson's disgraceful conduct, all done in the name of our great maize and blue. If you did not know about Tessler's, Jackson's and Howell's conduct until today, you do now. I ask you to recommend UM fully investigate these matters and, upon finding the record I have stated is accurate - and you will - I ask for accountability from the three men and from CPS, including a public apology and restitution.

Sincerely,

Margaret A. Cone

Margaret A. Cone

⁹ Incredibly, Tessler updated his Curriculum Vitae in December 2010 to include the UAE grant "to develop and administer an international learning program with al-Azhar." Jackson likewise updated his Curriculum Vitae in March of 2013 and included the \$2,000,000 grant "obtained" from the UAE in the fall of 2009.

Accounting Irregularities Involving Transfers of UAE Funds

Under fund accounting standards, restricted funds cannot be used for discretionary purposes without converting them from their restricted fund classification.¹ Internal UM accounting records show Tessler and Howell circumvented these rules by charging indirect cost as **service personnel fees** on a grant funded by the government of Qatar. Once the funds were cleared as **service personnel fees**, they were transferred into CPS equity, an unrestricted fund.² With no restrictions placed on their use, Tessler and Howell improperly paid themselves hundreds of thousands of dollars through sundry accounts.³ Tessler, Jackson and Howell then mirrored that method using the funds from the UAE grant.

While Tessler, Jackson and Howell carried out their scheme through numerous, complex transactions and communications, the essence of the scheme was simple. **First:** Gain control over the UAE funds by promising to run the program at International Institute under UM protocols and procedures. In this case, Tessler and Jackson used official UM Vice-Provost of International Affairs International Institute letterhead ("official UM letterhead") for all correspondence. None of the correspondence even mentioned CPS. Tessler's and Jackson's use of official UM letterhead created the false impression about the administration of the program and use of the UAE funds. They continued to use – improperly - official

¹ See, Forensic and Investigative Accounting, Chapter 7, Money Laundering and Transnational Financial Flows, ¶7021, 8th Ed., D. L. Crumbley, E. D. Fenton, G.S. Smith, and L. E. Heitger, Wolters Kluwer 2017:

In recent years, a number of universities were caught using methods similar to traditional money laundering as they converted federal grant monies into discretionary spending....Universities receive federal, state, and grant monies that restrict expenditures to specific spending purposes. These monies must be accounted for in separate funds to show that restricted monies are spent appropriately. Such monies cannot be used for discretionary purposes without converting them from their restricted fund classification. One method to complete the conversion would be to record a charge against the restricted fund for "**services**" rendered by the university. Such a charge may be for the rent of facilities or IT support charges as long as they are allowable charges under the grant. Once the monies are cleared out of the grant and paid to the university as revenues for the services rendered, they become available for discretionary spending

² The setup allowed payments to CPS which were "not otherwise listed in the proposal" and done without disclosure to avoid "being perceived as nickel-and-diming" Qatar University, while also admitting the arrangement was hidden from Qatar: "[M]y impression is that we do not have to report back to Qatar University about these expenditures). The plan allowed Howell to "sweep off" hundreds of thousands to "go into an un-sponsored center account [CPS Equity] to do with as [they] saw fit[.]" Howell justified the arrangement by stating the Qatar arrangement was a "weird contract" and an "unusual agreement" thus justifying the unusual fee arrangement. In response to questions about this set-up, Howell said it might be changed and "set up in some way that fits their system better" but "not at the expense of restricting my spending." Howell's emails relating to "Indirect Cost Approach" in relation to Qatar project.

³ Between December 2008 – October 2015, CPS managed two grants from Qatar at CPS, totaling \$6,155,345.15. CPS received \$3,068,318.17 in management fees. Tessler received at least \$350,000.00 from August 1, 2009, through June 30, 2013, when he was ineligible under the Office of Management and Budget ("OMB") regulations and UM policy to earn income from sponsored projects. Tessler also manufactured two personal sundry accounts from Qatar funds in the amounts of \$156,625.84 and \$54,795.33. Howell appears manufactured for himself at least one a sundry account from the Qatar funds in the amount of \$39,000.00.

UM letterhead through April 2010, including for the final letter sent to Ambassador Otaiba dated April 28, 2010, announcing their withdrawal from the program.

Second: Divert the UAE funds away from UM's oversight (without UAE or my approval) by directing the UAE funds into an account controlled by them at CPS.⁴ In Tessler and Jackson's letter to Ambassador Otaiba, dated December 1, 2009, they wrote: "[I]n preparation for the transfer of funds." Tessler and Jackson then requested the UAE wire the funds into a CPS account even though they used official UM letterhead.⁵ Tessler's use of official UM letterhead to engage in financial negotiation is unauthorized under UM bylaws.

Third: Falsely certify the UAE waived the standard federal indirect cost model and agreed to designate the indirect cost as **service personnel fees**.⁶ This fee arrangement explains how their improper use of the UAE funds was undetectable through internal UM or ISR financial monitoring.

Lastly: Falsely claim to have performed work to justify personal payments. Using the Qatar model, described above, Howell requested "JE's for **Service Personnel fees**... to move \$74,667 from [] project NO1228 [UAE grant] to CPS equity for Sherman Jackson's effort on this project (and then from

⁴ Tessler, who had the necessary affiliation to gain the authority at CPS to accept responsibility for the grant, was made a co-PI notwithstanding he was on sabbatical leave beginning in January 2010, and, under UM policy, was prohibited from accepting any assignment during this period.

⁵ During his deposition, James Jackson, the Director of ISR, the letters to Ambassador Otaiba on International Institute letterhead "didn't seem to be on behalf of CPS" even though the letter directed the UAE to wire \$2 million to CPS. James Jackson believed Tessler's involvement with the program was through his position with the International Institute, and he was "not even sure what ISR's role was supposed to be in that." which created the false impression about the administration of the program and use of the UAE funds. Also, during his deposition, Tessler admitted he did not have the authority to accept funds for a sponsored project and he knew prior UM approval of a proposal and budget was required.

⁶ Howell Deposition Transcript at 60-62:

Q: "So it goes on to say, "This has been agreed to between CPS, the funder, and the principal investigators." How did you come to understand that the funder and the principal investigators had agreed?

A: Well, I talked to the principal investigators and Sherman talked to Margaret

Q: So you were told by Sherman Jackson that the funder had agreed?

A: No, not directly.

Q: Were you told by anyone that the funder had agreed?

A: To what, the fee-based model?

Q: Were you told?

A: No.

Q: You said it even though you -- even though you didn't know that the funder had agreed, correct?

A: I didn't know that the funder hadn't agreed.

Q: You didn't know that the funder had agreed?

A: What does "agree" mean, like a written communication or just how they feel about it?

Q: You didn't know that the funder had agreed?

A: I don't know either way."

equity [Howell] will JE this amount to the new [sundry] account.”⁷ “And for Mark Tessler for his effort in the amount of \$17,602.”⁸ From CPS equity, Howell transferred those funds into sundry accounts out of which Jackson and Tessler were paid.

Fabrication of Key Evidence

In order to conceal their improper activities Tessler, Howell and Jackson falsified UM documents.⁹ Under oath, these individuals produced an email thread dated 11/3/2009, purportedly cc'd to me, to dispute my allegation of fraud and misrepresentation. At my request, a digital forensic expert, Kevin Knierim performed a forensic analysis of the 11/03/09 email thread. Knierim co-founded a digital forensic and cyber investigation firm and he has over 25 years of experience in the area of complex investigations and legal matters, including 15 years as a Special Agent with the Federal Bureau of Investigation, in the area of digital forensic and cyber investigations. I have attached his affidavit. **Knierim concluded the email thread had been intentionally fabricated.**

It is my professional opinion the 11/3/2009 email is fabricated. The University argument the incorrect time zone stamps are the result of 'email migration' is false. The migration of the 11/3/2009 email had no impact on time zone stamp contained within its Internet header.”

Knierim discovered the **send information** of the 11/03/09 email contains the “-0400” time zone stamp, which corresponds to Eastern Daylight Time. Eastern Daylight Time, however ended two days

⁷ Howell first attempted to transfer funds to LSA in order for Jackson to be paid, but LSA refused to accept the funds to pay Jackson. Instead, at the end of June, Howell backdated a fake faculty appointment at "CPS" for Jackson so he could be paid. This arrangement was outside the existing framework and protocols of his employment with UM. During his deposition testimony on October 9, 2017, Jackson admitted his effort reporting with respect to the time he claimed to spend on the program was inaccurate. He likewise conceded he submitted inaccurate approval forms to UM and failed to provide UM with the approved budget and terms agreed upon by Ambassador Otaiba and me in violation of UM procedures. Jackson also admitted he falsely claimed he developed the program, obtained the funding from the UAE, secured commitment from al-Azhar, and prepared the curriculum.

⁸ Despite being on “Duty Off Campus Leave” from October - December 2009, and on “Scholarly Activity Leave” from January - August 2010, with salary support from UM, and under UM rules and OMB regulations made Tessler ineligible to earn income from sponsored projects such as this one did not stop him from receiving payments. At first Tessler claimed he devoted 75 hours of time to the WLP. Then, after upping it to 100 hours, he “put in another 5 hours or so since [he] gave Dave [Howell] that figure [of 100], so let's make it 105. That also sounds more like an actual count.” Because Tessler claimed he could not recall how he spent the UAE funds, whether his use of the funds violated UM policy and OMB regulations relating to sponsored project is unclear.

⁹ UM had agreed to re-produce ten email threads in their native format with associated metadata I identified from its April 2017 production. This agreement was made because Tessler and Howell had been tasked with reviewing and selecting responsive documents that formed the basis of UM's subpoena response. On the date for compliance, UM failed to produce complete native files it promised for the ten email threads. The failure to produce any electronic file or corresponding metadata for the 11/3/2009 email was left unexplained. Because Howell and Nancy Burns are identified as recipients of disputed email messages, a simple search of Howell's and Burns' custodial files would have corroborated the authenticity the disputed email thread.

earlier – on 11/02/09 - making these “emails” a physical impossibility. There was no place in the Continental United States from which they could have sent the 11/03/09 email with an accurate “0400” time zone stamp. Had this email been authentic, Knierim claimed its **send information** would have displayed the “-0500” time zone stamp, reflecting Eastern Standard Time. Knierim knew of no reason why the 11/03/09 email thread showed a “- 0400” time zone stamp unless they were altered. Knierim then identified UM 05795 as the altered email file.¹⁰ Knierim also provided additional evidence relating to other email alterations, including the results from Knierim’s use of an industry standard tool for detecting tampering.¹¹

A number of indisputable facts confirm the 11/3/2009 email is fabricated, including the lack of any response to “by me” or Jackson.¹²

1. Simultaneous emails are impossible. In discovery, UM produced a copy of another email message, dated 11/03/09, and also from Tessler (the “Winzer email”). The Winzer email is timestamped at 10:45:10, which is forty-four seconds after Tessler purportedly emailed Jackson and me at 10:44:26. This is not humanly doable.
2. UM June 2017 letter confirmed the **send information** was not altered during the migration process: “Fields like ‘To, From, Cc, Subject, and Date (where present)’ should be the same.” The UM June 2017 letter detailed how UM had employed a specialized software program, Mozilla Thunderbird, to ensure the **send information** for all email messages was accurate and the **send information** had not altered during the migration process. “When the documents procured from Google Vault in M-box format were reviewed, Mozilla Thunderbird was used to ensure the headers correctly represented the date sent, etc.”
3. Three contradictory versions of story relating to the facts surrounding the decision to run the program at CPS further undermining the authenticity of the 11/03/09 email.
4. A March 2010 article published by the University of Arkansas claims Google fixed the migration issues described in William Rhee declaration in 2009 by building “Google Apps Sync for Microsoft Outlook,” a migration tool to fix incorrect transactional headers or routing information works with Microsoft Exchange.
5. The internet header of an email an UM professor sent from an official UM account on UM server. The routing information reflects both the original date, as it existed on UM server, and the date of the migration from UM servers into the Google system. This contradicts William Rhee’s representation the “the original Received headers showing the delivery timestamps, and server names and IP addresses, will be absent.”

¹⁰ The content of UM 05795 is identical email sent by Tessler to Howell and Burns on 11/3/2009 at 10:55 pm. UM 05795 was created on 10/23/2014 at 2:02 pm (Eastern Daylight Time) and modified an earlier email sent by Tessler on 11/3/2009 at pm.

¹¹ Howell, Schork, Laurie Winslow, Patrick Shields and Carole Bach are identified as recipients of disputed December 2009 email messages. A search of their custodial files will corroborate the authenticity of the emails.

¹² The magistrate decided – without a hearing – I offered only my “own memory” to support my argument that the 11/3/2009 email was altered.

SUPPLEMENTAL AMENDED DECLARATION OF KEVIN KNIERIM

I, Kevin Knierim, declare as follows:

1. I am one of the co-founders of Cyopsis, a digital forensic and cyber investigation firm that also provides individual and financial investigations, forensic engagements, cyber breach investigations and other internal investigations of varying types. I have been retained by Margaret Cone (“Plaintiff”) to serve as an expert in connection with electronic discovery with respect to the above-captioned proceeding.
2. I make this supplemental amended declaration in support of Plaintiff’s Motion for Sanctions based on my education, training and years of experience, and the information provided to date. These opinions provided herein are given to a reasonable degree of professional certainty. I reserve the right to supplement or amend these opinions based on additional information that is obtained.
3. I have over 25 years of experience in the areas of digital forensic and cyber investigations including 15 years as a Special Agent with the Federal Bureau of Investigation. I am also trained as a Certified Public Accountant, and as a private investigator. I also utilize and rely on a highly trained staff of professionals who assist in my investigative analysis.
4. Unless otherwise specified, I know the facts set forth in this supplemental declaration personally, and I have firsthand knowledge of them. If called as a witness, I could and would testify competently, under oath, to such facts.
5. In preparation for this supplemental amended declaration, I reviewed the following documents: the June 26, 2017 letter from Misbah Shahid, counsel for the University of

Michigan, to Rick Juckniess, former counsel for Plaintiff; the Court Order entered November 14, 2017; the November 22, 2017 document productions made by the University, with the assistance of Defendants Mark Tessler (“Tessler”) and David Howell (“Howell”); various court documents filed by the University and Defendants, including the Declaration of William Rhee; data received pursuant to subpoenas; and other various sources.

6. Under the terms of a court order, the University was obliged to produce the native files for the ten identified e-mail threads - including the November 3, 2009 e-mail - in Mbox file format with associated metadata. On November 22, 2017, pursuant to that Order, the University produced what it represented as ten native Mbox files designated by Bate numbers.

7. My analysis focused on Mbox files containing native files for the November 3, 2009 e-mail threads with the subject “Sherman”: (a) Mbox 5346/U-M 2300-2312; (b) Mbox 5348/U-M 2333-2337; (c) Mbox 5350/U-M 2347-2349; and, (d) Mbox 5351/U-M 2401-2409.

8. The November 3, 2009 e-mail appears in the midst of an e-mail thread with the subject line of “Sherman.” The thread starts with two e-mail messages.

9. The first e-mail (at 11:27 AM -0500) from Tessler to Jackson notes that a response was sent to the UAE embassy and asks Defendant Sherman Jackson (“Jackson”) about receiving a draft budget. Jackson replies (at 9:33 p.m., also on November 3), attaching a budget for the WLP, and purports to be cc’d to Plaintiff (i.e., MargaretCone@aol.com).

Plaintiff has given sworn testimony that she never received Jackson’s e-mail, and that she knows of no other time in which Jackson cc’d her on e-mail communication with Defendants.

10. The e-mail referred to as the November 3, 2009 e-mail (time-stamped 10:44 pm) comes next. The e-mail details the specific procedures that apply to sponsored projects at the University. It states that “it would be extremely difficult for [International Institute] to take on all the administration and budget management,” and suggests running the WLP through CPS, a center then directed by Nancy Burns.

11. The e-mail concludes with an acknowledgment that Jackson will be Principal Investigator (“PI”) and Plaintiff should be co-PI. The e-mail was purportedly copied to Plaintiff. Plaintiff has given sworn testimony that she never received the November 3, 2009 e-mail.

12. E-mail conversations, also known as threads, represent e-mails in a conversation chain (i.e., replies and forwards stemming from an initial e-mail). To form a conversation, all e-mails must have the same normalized subject line, at least one common participant, and the date of all said e-mails must be within 90 days of each other.

Structure of Internet Header

13. An Internet "header" is a set of lines containing information about the message's transportation, such as the sender's address, the recipient's address, or timestamps, showing when the message was sent by intermediary servers to the transport agents (MTAs), which act as mail sorting offices.

14. When an e-mail message is transmitted across the Internet from a sender to a recipient, each server that is used in the transmission affixes to the header information of the e-mail the date and time when the e-mail message was received by the server. This information can be used to reconstruct an e-mail message's path through the Internet, as it shows both which

servers were used to transmit the e-mail along its path from sender to recipient, and the date and time of the transmission.

15. A line beginning with “Received” contains the list of the servers that the message traveled in order to reach your Inbox. The received lines contain the e-mail server and IP address information, the date sent, and other useful information.

16. An Internet header, depending on the server, will include the following elements: the sender, the recipient, the subject, the date, the message ID, the in reply to, and the thread index.

The Migration to M+Google

17. I reviewed the letter sent to Mr. Juckniess, dated June 26, 2017, from Mr. Shahid. The letter details the migration process performed by the University to migrate e-mails, documents and accompanying metadata from the Exchange servers into the M+ Google system.

18. In that letter, Mr. Shahid confirmed that the sender, the recipient, the subject and the date fields affixed to e-mail messages had not been disturbed or altered during the migration process. Mr. Shahid stated that “[w]hen the documents procured from Google Vault in M-box format were reviewed, Mozilla Thunderbird was used to ensure that the headers correctly represented the date sent, etc. ... Fields like ‘To, From, Cc, Subject, and Date (where present)’ should be the same.” *See Attachment A, page 9.*

19. Mr. Shahid indicated that an artifact of the migration, however, is that the original transactional headers of e mails - the Received fields described above - as they were on the Exchange server, were not preserved. Therefore, the transactional information in the e-mail headers relate to the transfer of the e-mail from Exchange to M+Google, and not the original

delivery to our in-house Exchange server in 2009.” See Attachment A, page 9

20. The Internet header relating to the transmission of the purported e-mail from Tessler to Jackson, and cc'd to Plaintiff, on November 3, 2009, appears below. Consistent with the representations made by Mr. Shahid, the transactional header of that e-mail reflects its migration from the ITS Exchange to M+Google outlined in the June 26, 2017 letter.

**Figure 1: Internet Header for the Purported November 3, 2009 E-mail
With Time Zone Stamp -0400**

```
Delivered-To: tessler@umich.edu
Received by: 10.180.95.131 with SMTP id dk3csp36527wib; Sun, 1 Apr 2012 13:43:30 -0700 (PDT)
Received by: 10.42.197.137 with SMTP id ek9mr3557855icb.5.1333313000061; Sun, 01 Apr 2012 13:43:20 -0700 (PDT)

From: "Tessler, Mark" <tessler@umich.edu>
To: "Jackson, Sherman" <sajackso@umich.edu>
Cc: MargaretCone@aol.com
References: <68E21AF94DB8D800C00B3D6F@[192.168.1.100]>
In-Reply-To: <68E21AF94DB8D800C00B3D6F@[192.168.1.100]>
Subject: RE: Sherman
Date: Tue, 3 Nov 2009 23:44:26 -0400
Message-ID: 3EAABA89D046BD49B271131FDF18E85C0177F76329@ITCS-ECLS-1-VS3.adsroot.itcs.umich.edu>
MIME-Version: 1.0
Content-Type: multipart/alternative; boundary="-----_NextPart_000_30754_01CD1026.8B2A9DC0"
X-Mailer: Microsoft Office Outlook 12.0
Thread-Index: Acpc9zKbpPwzpal9TDSdbbrkRNAKIAACEjR0
Content-Language: en-us
x-google-migrated: true

Hi Sherman (and Margaret). Thanks. I'll print a copy and try to look i
```

21. The message was received by 10.180.95.131, with SMTP id dk3csp36527wib, at 13:43:20-0700 (PDT) on April 1, 2012, and routed through 10.42.197.137, with SMTP id ek9mr3557855icb.5.1333313000061, at 13:43:30 (PDT) on April 1, 2012. The message was then delivered into the mailbox tessler@umich.edu.

The Purported November 3, 2009 E-mail Contains the Wrong Time Zone Stamps

22. As discussed above, an Internet header of an e-mail contains a “Date” line, which includes the date and time when the e-mail was supposedly sent. The Date line is normally automatically added to an e-mail by the computer’s system clock.

23. As affirmed by Mr. Shahid, the date lines within Internet headers are correct and were not altered during the University’s migration process.

24. The end of each “Date” line includes the time zone from which an e-mail is sent. The time zone is identified by its deviation from Coordinated Universal Time (“UTC”), as “+HHMM” or “-HHMM.” “HH” refers to hours and “MM” refers to minutes from UTC, with the designation of “+” or “-“indicating whether the time zone is before or after UTC.

25. Within the continental United States, Eastern Standard Time (“EST”) is represented as “-0500.” Eastern Daylight Time (“EDT”) is represented as “-0400.” Because EST was in effect in the United States from November 1, 2009 through March 14, 2010, the time zone stamp for an authentic e-mail sent during that period of time from within a location in the Eastern Time Zone, assuming an accurate computer system clock, would be “-0500” stamp.

26. An examination of the text and Internet header of the November 3, 2009 e-mail - **Figure 1 above** - evidences fabrication.

27. The November 3, 2009 e-mail, purportedly sent to Plaintiff, contains the “-0400” time zone stamp, which corresponds to Eastern Daylight Time. But Eastern Daylight Time ended two days earlier – on November 1, 2009.

28. Standard time was in effect on November 3, 2009. Had this e-mail been authentic, it

would have displayed the “-0500” time zone stamp, reflecting Eastern Standard Time. This e-mail is a physical impossibility: there is no place in the Continental United States from which Defendants could have sent these “e-mails” with those time stamps on that date.

29. **Figure 2** below is a copy of the Internet header for a thread of the November 3, 2009 e-mail, with the subject line Sherman, purportedly sent by Howell on December 23, 2009.

30. The e-mail contains the “-0400” time zone stamp, which corresponds to Eastern Daylight Time.

Figure 2: Internet Header for E-mail November 3, 2009 Thread
December 23, 2009 With Time Zone Stamp -0400

Delivered-To	dahowell@umich.edu
Received by:	10.76.35.97 with SMTP g1cs157358oaj; Mon, 20 Aug 2012 14:49:18 -0700 (PDT)
Received by:	10.50.217.134 with SMTP id oy6mr5434881igc.5.1345499347024; Mon, 20 Aug 2012 14:49:07 -0700 (PDT)
From:	"Dave Howell" < dahowell@umich.edu >
To:	"Laurie Winslow" < lwinslow@isr.umich.edu >
Subject:	FW: Sherman
Date:	Wed, 23 Dec 2009 13:07:29 -0400
Message-ID:	< 5359171219EB3E4EB2B33C06D8641B0905014721@isr-mail1.ad.isr.umich.edu >
MIME-Version:	1.0
Content-Type:	multipart/mixed;
boundary="-----"	NextPart_000_00B4_01CD7EFC.181A2F40" X-Mailer: Microsoft Outlook 14.0
Thread-Index:	AQHffArLGOhFOLjj6Gf5wbZCt0p1mw== Content-

31. This e-mail is a physical impossibility: there is no place in the Continental United States from which Defendants could have sent these “e-mails” with those time stamps on that date. If this were an authentic e-mail, it would have displayed the “-0500” time zone stamp, reflecting Eastern Standard Time.

32. **Figure 3** is the Internet header for an e-mail exchange between Plaintiff and Howell, on January 21, 2010, produced from Plaintiff’s AOL account. By comparison, this e-mail is authentic from Howell to Plaintiff. Eastern Standard Time was in effect on January 21, 2010. Accordingly, the Internet header displays the correct time zone stamp of “-0500,” reflecting Eastern Standard Time.

Figure 3: Internet Header, E-mail dated January 21, 2010
Between Howell and Plaintiff With Time Zone Stamp -0500

```
Return-Path: dahowell@isr.umich.edu
Received: from mtain-ma11.r1000.mx.aol.com (mtain-ma11.r1000.mx.aol.com [172.29.96.19]) by air-df01.
mail.aol.com (v126.13) with ESMTP id MAILINDF012-5ee34b58fb63d7; Thu, 21 Jan 2010 20:12:03
-0500
Received: from tyre.isr.umich.edu (tyre.isr.umich.edu [141.211.32.11])
by mtain-ma11.r1000.mx.aol.com (Internet Inbound) with ESMTP id D3ADE38000114
for <margaretcone@aol.com>; Thu, 21 Jan 2010 20:12:02 -0500 (EST)
Received: from localhost (localhost [127.0.0.1]) by tyre.isr.umich.edu (Postfix) with ESMTP id 9F36EDF348
for <margaretcone@aol.com>; Thu, 21 Jan 2010 20:08:08 -0500 (EST)
Received: from tyre.isr.umich.edu ([127.0.0.1]) by localhost (smtp.isr.umich.edu [127.0.0.1])
(amavisd-new, port 10024) with ESMTP id 04193-10 for <margaretcone@aol.com>;
Thu, 21 Jan 2010 20:08:06 -0500 (EST)
Received: from mail.isr.umich.edu (isr-webmail.isr.umich.edu [141.211.32.39])
by tyre.isr.umich.edu (Postfix) with ESMTP id A15F5DF278
for <margaretcone@aol.com>; Thu, 21 Jan 2010 20:08:06 -0500 (EST)
Received: from isr-mail1.ad.isr.umich.edu ([141.211.32.28]) by mail.isr.umich.edu with Microsoft SMTPSVC
(6.0.3790.3959);Thu, 21 Jan 2010 20:12:00 -0500

Content-class: urn:content-classes:message
MIME-Version: 1.0
Content-Type: multipart/alternative;
boundary="-----=_NextPart_001_01CA9AFF.E5EA4010"
Subject: RE: Your materials arrived in Cairo
Date: Thu, 21 Jan 2010 20:11:08 -0500
Message-ID: <57FB79AC7A8713428736C8FA2BD20C64038BDB68@isr-mail1.ad.isr.umich.edu>
Thread-Topic: Your materials arrived in Cairo
Thread-Index: Acqa7y/+3gzg+ywmQdq0q/59D9NRUwAEJdR6
References: <14cbd.3367de8c.388a393b@aol.com>
From: "Dave Howell" <dahowell@isr.umich.edu>
To: <margaretcone@aol.com>
X-Virus-Scanned: amavisd-new at isr.umich.edu
x-aol-sid: 3039ac1d60134b58fb62729d
X-AOL-IP: 141.211.32.11
X-Mailer: Unknown (No Version)

Hi Margaret -

We did the best we could on short notice. I tried to keep good
```

33. It is my professional opinion that the November 3, 2009 e-mail is fabricated. The University argument that the incorrect time zone stamps are the result of “e-mail migration” is false. The migration of the November 3, 2009 e-mail had no impact on the time zone stamp contained within its Internet header.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed on SEPTEMBER 18 2018.

Kevin S Knierim

Dated: September 18, 2018

Kevin Knierim