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COA# 62402-4

E

NO. 81135-1

by h

SUPREME COURT  
OF THE STATE OF WASHINGTON

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PERRY MILLS,

*Appellant,*

v.

WESTERN WASHINGTON UNIVERSITY,

*Respondent.*

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REPLY BRIEF OF APPELLANT

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ORIGINAL

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A. INTRODUCTION

From 2001 to 2003 Professor Mills made crude and derogatory sexual remarks to Professor Currier “on and off” though this “wasn’t an everyday occurrence.” RP III, 7-8. In 2003 she told him to stop doing this and he did. RP III, 32; FF 13. Similarly, “sometime in the fall of 1997” Mills called Professor Pulver a “faggot.” RP III, 55; FF 16. Then, in either the spring or fall of 1998, Pulver told Mills that he could not tolerate being spoken to in this way; after that Mills stopped addressing him in that manner. RP III, 56; FF 16. Mills also referred to Pulver as “Precious” when talking to others, but he stopped doing this “several years” before any disciplinary charges were brought. RP III, 56, 59, 135.

In the years 1997 through 2003 the University made no effort to bring disciplinary charges against Mills. Throughout this six year period no one asserted, or even suggested, that Mills’ verbally harassing behavior qualified as grounds for a severe disciplinary sanction under Article XV of the *Faculty Handbook* (Appendix A). Then, in 2004, seven years after Mills’ had ceased making verbally insulting remarks to Professor Pulver, and one year after he had stopped making demeaning remarks to Professor Currier, the University suddenly suspended Professor Mills from his teaching duties in the fall of 2004, and thereafter, in June of 2005, brought disciplinary charges against him.

The timing of Mills' suspension is quite suspicious. Mills was suspended by the University in October of 2004. This was roughly five months after Theatre Arts Department Chair Mark Kuntz wrote a letter (Exh. #16) to Carol Edwards, the Dean of the College of Arts and Sciences, complaining that that Professor Mills was still telling people that Professor Kuntz had "embezzled" \$20,000 of state funds. CP 1280 (Appendix B). Mills continually alleged that Kuntz' decision to spend student course fees to buy things which were not specifically for the use of students enrolled in that specific course was a violation of the *Student Course Fee Policy*. (Exh. #4) (Appendix C). Professor Kuntz concluded his letter to the Dean by complaining that he was tired of continuing "to protect [Professor Mills'] right to speak freely" while "he continues to be a considerable liability to the university." CP 1280. Professor Kuntz ended by asking, "I wonder how long we are going to allow this happen." CP 1280.

The University maintains that there is no relationship between Mills' public statements of embezzlement by Professor Kuntz and the initiation of disciplinary proceedings against Mills. According to the University, it was simply a coincidence that new incidents of inappropriate behavior came to Professor Kuntz' attention in the spring and fall of 2004, thus leading him to press the Provost for disciplinary action. But the University offers no explanation as to why no disciplinary action was

initiated when the verbally abusive behavior was still going on.<sup>1</sup>

The University insisted on keeping the disciplinary hearing closed so that the public would *not* learn about Mills' embezzlement accusation. Similarly, the public was kept ignorant of the strong student support for Mills' excellent teaching and opposition to the University's proposal to dismiss him. (Appendix D). The University violated the constitutional and statutory commands that Mills be given a public hearing, ignored the plain meaning of the contractual limitations set on the grounds for disciplining a tenured professor, and infringed upon Mills' academic freedom by punishing him for a didactic classroom remark about an artist's responsibility to produce art for public viewing. For these reasons, the decision to suspend Mills without pay for two quarters should be set aside.

**B. ARGUMENT**

**1. CLOSURE OF THE FACULTY DISCIPLINARY HEARING VIOLATED ARTICLE 1, § 10.**

The University denies that closure of the disciplinary hearing and

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<sup>1</sup> Mills submits that the real reason is that his insulting, demeaning and boorish verbal behavior simply does not qualify under the contract governing the discipline of tenured professors as one of the five enumerated grounds for the imposition of discipline. It was only when Mills persisted in accusing Professor Kuntz of improperly diverting student course fees that the University decided to take the position that making verbal insults constituted a "serious and persistent neglect of faculty duties" which is listed as one of "only" five enumerated grounds for dismissal or suspension. At this point, the University was so intent on silencing Professor Mills, that it was willing to initiate disciplinary proceedings based largely upon behavior which Mills had ceased to engage in years earlier. The University then padded the charges with more recent incidents including Mills verbally teasing a student about her political bumper sticker expressing

exclusion of the news reporter violated Article 1, Section 10. The University predicates its argument upon an artificial distinction between the administration of justice by an administrative panel and the administration of justice by a judicial officer. Such a distinction finds no support in the test of Article 1, § 10.<sup>2</sup>

a. **The Wording of Article 1, Section 10 Does Not Limit The Right to Open Hearings to Judicial Cases.**

Citing to a footnote in a law review article in support of its argument that Article 1, § 10 does not apply to proceedings held before an administrative tribunal, the University asserts that 40 states have “some type of constitutional open courts provision,” and that Mills has only identified two states “as having applied their open courts provisions to certain types of administrative proceedings.” *Brief of Respondent*, at 27.

One flaw in the University’s reasoning is rather obvious: Article 1, § 10 does not provide for an “open courts” guarantee. Twenty-six of the state constitutional provisions referenced in the cited law review article explicitly limit their openness guarantee to “courts.”<sup>3</sup> Article 1, § 10,

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support for the reelection of the President, and Mills taking his pocketknife out to show it to a student after a class. See FF 40, \_\_\_\_.

<sup>2</sup> The University also lamely asserts that the public’s ability to obtain a copy of a transcript of the hearing, many months, or in this case, more than a year after the fact, satisfies the constitutional command of openness. This Court, and many others, has previously rejected this argument.

<sup>3</sup> See, e.g., Ala. Const. art. I, § 13 (“That all courts shall be open . . .”); Tenn. Const. art. I, § 17 (same); Colo. Const. art. II, § 6 (“Courts of justice shall be open to every person . . .”); Idaho Const. art. I, § 18 (same); Mont. Const. art. I, § 14 (same); Mo. Const.

however, contains no limiting reference to “courts.” Instead, it refers more broadly to “cases” where justice is being administered.<sup>4</sup>

Of the forty jurisdictions referred to in the law review article cited by the University, only *two* – Washington and Arizona -- have constitutional provisions which use language specifying that “Justice in all cases shall be administered openly.” Thus, one cannot logically read much into the absence of more state constitutional case law on the subject of the “openness” of “cases” tried before administrative tribunals, when other state constitutional provisions use such markedly different language. Moreover, even in jurisdictions where the state constitutional openness provision *is* expressly limited to proceedings in “courts,” nevertheless this language has been construed as including quasi-judicial proceedings conducted before administrative tribunals:

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art. I, § 14 (“That the courts of justice shall be open to every person . . .”); Fla. Const. art. I, § 21 (“The courts shall be open . . .”); Okla. Const. art. II, § 6 (“The courts of justice of the State shall be open . . .”); W.Va. Const. art. III, § 17 (“The courts of this State shall be open . . .”); Or. Const. art. I, § 10 (“No court shall be secret . . .”); Conn. Const. art. 1, § 10 (“All courts shall be open . . .”); Del. Const. art. I, § 9 (same); Ind. Const. art. I, § 12 (same); Ky. Const. § 14 (same); La. Const. art. I, § 22 (same); Miss. Const. art III, § 24 (same); Neb. Const. art. I, § 13 (same); N.C. Const. art. I, § 18 (same); N.D. Const. art I, § 9 (same); Ohio Const. art. I, § 16 (same); Pa. Const. art. I, § 11 (same); S.D. Const. art. VI, § 20 (same); Texas Const. art. I, § 13 (same); Utah Const. art. I, § 11 (same); Wyo. Const. art. I, § 8 (same); S.C. Const. art. I, § 9 (“All courts shall be public . . .”).

<sup>4</sup> Moreover, another twelve of the cited constitutional provisions contain no reference to “open” or to “public” proceedings. These twelve jurisdictions do not guarantee “openness” in any forum, and all but one of them are actually constitutional guarantees that a *remedy* shall exist at law for every wrong or injury suffered. *See, e.g.*, Ark. Const. art. II, § 13; Ill. Const. art. I, § 12; Kan. Const. Bill of Rights § 18; Me. Const. art. I, § 19; Md. Const. Decl. of Rights art. XIX; Mass. Const. pt. I, art. 11; Minn.

This fundamental constitutional right of access is not limited to formal trials, but extends to other types of judicial and quasi-judicial proceedings.

Daily Gazette Co., Inc. v. Comm'n on Legal Ethics, 174 W. Va. 359, 326 S.E.2d 705, 710 (W. Va. 1984) (openness is constitutionally required at administrative disciplinary hearing).

b. **Many Courts Have Held That Due Process Requires That Administrative Hearings Be Open to the Public.**

Another reason why there are not many judicial decisions holding that state constitutional guarantees require open administrative hearings is that many state courts have simply recognized that the Due Process Clause requires that such hearings be open to the public. Morgan v. United States, 304 U.S. 1, 14-15 (1938) holds “that in administrative proceedings of a quasi-judicial character, the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play” and that these requirements include “‘a fair and open hearing,’ essential alike to the legal validity of the administrative regulation and to the maintenance of public confidence in the value and soundness of this important governmental process.” The Morgan Court simply held that when an administrative agency acts like a court by performing a quasi-judicial function, it must adhere to judicial standards of due process:

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Const. art. I, § 8; N.H. Const. pt. I, art. 14; N.Y. Civ. Rights Law § 10; R.I. Const. art. I, § 5; Vt. Const. ch. I, art. 4; Wis. Const. art. I, § 9.

The maintenance of proper standards on the part of administrative agencies in their performance of quasi-judicial functions is of the highest importance and in no way cripples or embarrasses the exercise of their authority. On the contrary, it is in their manifest interest. For as we said at the outset, if these multiplying agencies deemed to be necessary in our complex society are to serve the purposes for which they are created and endowed with vast powers, they must accredit themselves by acting in accordance with the cherished judicial traditions embodying the basic concepts of fair play.

Morgan, at 22.<sup>5</sup> One of those cherished judicial traditions is to conduct all hearings openly, allowing the public to attend and observe. Similarly, in FCC v. Schreiber, 381 U.S. 279 (1965), the Court stated: “The procedural rule, establishing a presumption in favor of public proceedings, accords with the general policy favoring disclosure of administrative agency proceedings.” Id. at 293.

The University contends that Morgan and Schreiber should not be read as holding that procedural due process requires open hearings in the administrative context, and that courts generally have not held that due process requires that administrative disciplinary hearings be open to the public. But the University is mistaken. In fact, courts in many jurisdictions have held that due process requires that quasi-judicial administrative hearings be open to the public, and many have specifically

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<sup>5</sup> Accord Amos Treat & Co. v. SEC, 306 F.2d 260, 263 (D.C. Cir. 1962) (“when government agencies adjudicate or make binding determinations which directly affect the

cited Morgan in support of this holding.<sup>6</sup>

Other courts have found that the Constitution requires that quasi-judicial administrative hearings be open to the public and the press, but have rooted this requirement in the First Amendment. See, e.g., Detroit Free Press v. Ashcroft, 303 F.3d 681, 694-96 (6th Cir. 2002) (Court explicitly rejects government's contention that constitutional requirement of openness is limited to judicial proceedings and does not apply to administrative hearings such as deportation proceedings);<sup>7</sup> Del Papa v.

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rights of individuals, it is imperative that those agencies use the procedures which have traditionally been associated with the judicial process.”)

<sup>6</sup> See, e.g., Pechter v. Lyons, 441 F.Supp. 115, 119 (S.D.N.Y. 1977) (immigration judge erred in closing deportation hearing to public because “there is a general policy favoring disclosure of administrative agency proceedings,” particularly when the agency is “performing quasi-judicial functions,” citing Morgan); Fitzgerald v. Hampton, 329 F. Supp. 997, 998 (D.D.C. 1971) (citing to both Morgan and Schreiber, court held employee facing possible termination in proceeding before Civil Service Commission was constitutionally entitled to hearing open to public and press; “The advantages of an open hearing are powerful, but at the same time intangible.”); Society of Professional Journalists v. Secretary of Labor, 616 F. Supp. 569, 575 (D. Utah 1985) (exclusion of public from hearings of the Mine Safety & Health Administration unconstitutional because “the press and the public have a first amendment right of access to formal administrative fact-finding hearings”); Mosher v. Hanley, 56 A.D.2d 141, 142, 391 N.Y.S.2d 753 (1977) (“[W]hen the State or a subdivision thereof conducts a hearing which may result in deprivation of employment, or the imposition of a fine or other monetary penalty, the affected employee is entitled to procedural due process. Due process requires that, when requested by an employee, the hearing be open to the press and the public. This accords not only with the Federal judicial tradition but also to general practice in administrative proceedings.”)

<sup>7</sup> “We reject the Government’s assertion that a line has been drawn between judicial and administrative proceedings, with the First Amendment guaranteeing access to the former but not the latter. . . . The Government cites no cases explicitly stating such a categorical distinction – that the political branches of government are completely immune from the First Amendment guarantee of access recognized in Richmond Newspapers. On the contrary, we believe that there is a limited First Amendment right of access to certain aspects of the executive and legislative branches. See Richmond Newspapers, 448 U.S. at 584, 100 S.Ct. 2814 (“The First Amendment protects the public and the press from abridgment of their rights of access to information about the operation of *their* government, including the Judicial Branch . . .”) (Stevens, J., concurring).”

Steffen, 112 Nev. 369, 915 P.2d 245 (1996)(First Amendment right of public access applies to judicial disciplinary proceedings).

Similarly, the University claims that courts have unanimously held that employees at state universities are not constitutionally entitled to open disciplinary hearings. But this is demonstrably incorrect. For example, in Randall v. Toll, 74 Misc.2d 315, 344 N.Y.S.2d 712 (1973), an employee of the State University of New York at Stony Brook was the subject of a disciplinary hearing and was facing charges which, if proved, could result in his removal from employment. The administrative hearing officer presiding over the hearing, ordered it closed to the public. In a writ proceeding, however, a New York Court held that "Due process requires that the . . . hearing be open to the press and public," and enjoined the hearing officer from conducting a closed hearing. Id. at 315-16.

c. **Making a Transcript Available to the Public at a Later Date is Not a Constitutionally Adequate Substitute.**

The University contends that since a transcript of the disciplinary hearing was ultimately prepared and filed in the Superior Court, this was sufficient to satisfy the constitutional imperative that justice in all cases shall be administered openly. *Brief of Respondent*, at 27. But many courts have recognized that this does not satisfy the requirement that the public be admitted to the hearing while it is being held.

In Richmond Newspapers Inc. v. Virginia, 448 U.S. 555 (1980),

Justice Brennan observed that *contemporaneous* public access to trials plays a critical structural role in a democracy where the simple fact of public scrutiny acts as a check against arbitrary decisionmaking:

open trials are bulwarks of our free and democratic government: public access to court proceedings is one of the numerous “checks and balances” of our system, because “*contemporaneous review* in the forum of public opinion is an effective restraint on possible abuse of judicial power,” [citation].

Richmond Newspapers, 448 U.S. at 592, quoting In re Oliver, 333 U.S. 257, 270 (1948) (bold italics added). The Oliver Court expressly recognized that “the availability of a trial transcript is no substitute for a public presence at the trial itself.”<sup>8</sup>

The holding in Richmond Newspapers was predicated upon the First Amendment.<sup>9</sup> But the Oregon Supreme Court made the same point in a case involving Oregon Const., art. I, § 10, which prohibits “secret” court proceedings.<sup>10</sup>

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<sup>8</sup> “As any experienced appellate judge can attest, the “cold” record is a very imperfect reproduction of events that transpire in the courtroom. Indeed, to the extent that publicity serves as a check upon trial officials, “[r]ecordation . . . would be found to operate rather as a cloa[k] than chec[k]; as cloa[k] in reality, as chec[k] only in appearance.” Richmond Newspapers, 448 U.S. at 597, n.22, quoting Oliver, 333 U.S. at 271.

<sup>9</sup> This fact highlights another state constitutional violation in this case. Article I, § 5 guarantees the right to “freely speak, write and publish on all subjects,” and yet the judicial officer presiding over the faculty disciplinary hearing excluded a newspaper reporter from the hearing room. It seems indisputable that by excluding the reporter, the University prevented him from freely writing and publishing on the subject of the disciplinary hearing. The only thing that he could publish at that time was the fact that he had been prohibited from attending the hearing.

<sup>10</sup> “Nor can the constitutional requirement of openness be satisfied by making a hearing transcript publicly available at some time after the hearing, as the judge apparently did in

Moreover, even if the newspaper reporter had been given a daily transcript of the closed faculty disciplinary proceeding at the end of each day's proceedings, this Court itself has previously recognized that a cold transcript is not an adequate substitute for being able to observe the actual demeanor of witnesses and hearing participants. Cf. State v. Coe, 101 Wn.2d 364, 383, 679 P.2d 353 (1984).<sup>11</sup> Accord Society of Professional Journalists v. Secretary of Labor, 616 F. Supp. 569, 577 (D. Utah 1985).<sup>12</sup>

d. **The University Fails to Explain Why An Administrative Hearing to Consider The Imposition of Discipline for Misconduct By a Faculty Member Is Not a Part of the Process of the Administration of Justice.**

The University takes the strange position that the open access guarantee of Article 1, § 10 is satisfied, even if the public is excluded from the administrative hearing, so long as the public can later obtain access to a transcribed record of the administrative hearing once the matter is

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this case. The command of section 10 would be ill-served by a practice in which the public had to rely on the court itself to learn in what manner justice was administered. Moreover, because many court proceedings are of immediate public importance, an after-the-fact account will rarely be an adequate substitute for contemporaneous knowledge." Oregonian Publishing Company v. O'Leary, 303 U.S. 297, 302, 736 P.2d 173 (1987) (footnotes omitted) (bold italics added).

<sup>11</sup> "[W]e have already noted that the inflections of voice recorded on the tapes themselves constituted substantive information which could not be adequately communicated to the public through the publication of cold transcripts or their readings by actors."

<sup>12</sup> "A transcript is not an adequate substitute for an open hearing. Preparation of a transcript requires time. By the time the transcript is ready, the information it contains is stale. . . . Transcripts are also inadequate because they are incomplete. . . . [T]he full flavor of the hearing cannot be sensed from the sterile sheets of a transcript. Emotions, gestures, facial expressions, and pregnant pauses do not appear on the reported transcript. [Citation]. Much of what makes good news is lost in the difference between a one-dimensional transcript and an opportunity to see and hear testimony as it unfolds."

appealed to a Superior Court and subjected to judicial review.<sup>13</sup> But under the Administrative Procedures Act, all the Superior Court does is review the decision made by the University. The subject of both the administrative and the judicial proceeding is the same. The issue, at both the University level, and in Superior Court, is whether some misconduct by the Professor “warrants” a severe disciplinary sanction. It is difficult to understand why the task of dispensing appropriate discipline for acts of misconduct is not part of the “administration of justice” when performed by the University, but is part of the “administration of justice” when the University’s disciplinary sanction is subjected to judicial review.

- e. **Exclusion of the Public is Structural Error Which is Never Harmless. Prejudice is Necessarily Presumed and Reversal is Always Required Because the Public Is Always Harmed by Being Excluded from the Administration of Justice.**

The University asserts that in order to obtain relief due to the improper closure of the hearing, Mills must demonstrate that he was prejudiced by the closure. *Brief of Respondent*, at 24. This directly contradicts decisions of this Court which hold that a litigant need *not* show such prejudice in order to obtain relief. “Prejudice is presumed where a violation of the public trial right occurs.” State v. Bone-Club, 128 Wn.2d

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<sup>13</sup> One obvious flaw with this contention is that not all public university disciplinary decisions will get appealed to the Superior Court. In those cases where no appeal to Superior Court is taken, the public would *never* be able to gain even after-the-fact knowledge of what transpired at the hearing, because there would be no judicial review of the administrative decision.

254, 261-62, 906 P.2d 325 (1995). In re Orange, 152 Wn.2d 795, 814, 100 P.3d 291 (2004); State v. Marsh, 126 Wash. 142, 147, 217 P. 705 (1932).<sup>14</sup> The constitutional open hearing guarantee is designed to protect the public's right to know, as well as the litigant's right to a fair hearing. Whenever the public is denied complete and timely access to the hearing, reversal is constitutionally required.<sup>15</sup>

With respect to improper closure of a hearing which by constitutional command should have been an open hearing, this Court "has never found a public trial right violation to be de minimis." State v. Easterling, 157 Wn.2d 167, 180, 137 P.2d 825 (2006). Instead, this Court has consistently held that denial of the right "is one of the limited class of fundamental rights not subject to harmless error analysis." Id. at 181. In the present case, the violation of article I, § 10 was total, since the public was excluded from the entire disciplinary hearing. "As a result, precedent directs that the appropriate remedy . . . is reversal . . . and remand for [a] new [hearing]." Id.

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<sup>14</sup> "[W]hen he shows that his constitutional right has been violated, that law conclusively presumes that he has suffered an actual injury. I go further, and say that the whole body politic suffers an actual injury when a constitutional safeguard erected to protect the rights of citizens has been violated in the person of the humblest or meanest citizen of the state."

<sup>15</sup> This court deliberately chose to employ the same standard for testing a closed hearing against article I, § 10 that the U.S. Supreme Court employed in Waller v. Georgia, 467 U.S. 39 (1984) when assessing the validity of a closure of a criminal trial against the Sixth Amendment public trial guarantee. The Waller decision specifically endorsed the principle that "the defendant should not be required to prove specific prejudice in order to obtain relief for a violation of the public-trial guarantee." Id. at 49 (footnote omitted):

f. **The Nexus Between Openness and Confidence in the Administration of Justice Has Been Recognized Throughout Our Legal History. The Right to Attend and Observe Quasi-Judicial Administrative Hearings Is Within the Scope of Article 1, Section 10.**

The promotion of the “administration of justice” has been historically linked to openness in government institutions. “The crucial prophylactic aspects of the administration of justice cannot function in the dark; no community catharsis can occur if justice is ‘done in a corner [or] in any covert manner.’” Richmond Newspapers, 448 U.S. at 571. “The nexus between “openness, fairness, and the perception of fairness” was not lost upon observers of the English system of justice. Id. at 570. In a state where the first principle recognized in the state constitution is the inherent sovereignty of the people, article 1, section 1, the right of the people to observe the administration of justice in a public hearing is clearly included within the constitutional guarantee afforded by article I, § 10.

**2. CLOSURE OF THE HEARING VIOLATED RCW 34.05.449(5) BECAUSE A CONTRACT IS NOT A “PROVISION OF LAW.” ADMINISTRATIVE AGENCIES ARE NOT PERMITTED TO EXEMPT THEMSELVES FROM STATUTORY COMMANDS.**

RCW 34.05.449(5) unambiguously required that Mills’ disciplinary hearing be “open to public observation.” The statute exempts “the parts” of the hearing which the hearing officer finds are to be closed under “a provision of law expressly authorizing closure.” The University

notes that Article XVII, § 2 of the Faculty Handbook expressly provides that the hearing “will be private, unless the Hearing Panel, in consultation with the Provost and only with the agreement of the faculty member decides that the hearing should be public.” Seemingly reticent to assert that this article of the Faculty Handbook constitutes “a provision of law” authorizing closure, the University limits its argument to the contention that this article “had the effect of law.” *Brief of Respondent, at 23.* Accordingly, the University maintains that RCW 34.05.449(5) was not violated because it simply does not apply to faculty disciplinary hearings at Western Washington University.

At the same time, in another section of its brief, the University explicitly recognizes that the Faculty Handbook is simply a *contract* that has been entered into by the University and its faculty:

The Faculty Handbook, along with a faculty member’s letter of appointment, constitute a faculty member’s contract.

*Brief of Respondent, at 16.* And, indeed, article IV § B.1 of the Handbook also makes this same point.<sup>16</sup>

But a contract is not “a provision of law.” Employers and

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<sup>16</sup> “The terms and conditions of employment of a faculty member are contained in the faculty member’s contract with the University, and shall include the provisions of this handbook. These terms and conditions, which shall have the approval of the department and the dean, will be described in a letter of offer from the Provost/Vice president for Academic Affairs. This letter and the provisions of this handbook will be the sole basis for determining this contract.”

employees enter into contracts every day, but they do not legislate new laws when they do so. Nor can employers and employees contractually agree to ignore laws enacted by the legislature. The Legislature conferred authority upon the University Trustees to adopt “such rules and regulations, and [to] perform all other acts *not forbidden by law* . . . as the board of trustees may . . . deem necessary or appropriate to the administration of the regional university.” RCW 28B.35.120 (bold italics added). But the act of closing an administrative hearing is “forbidden by law” and thus such an act is not authorized by the legislature.<sup>17</sup>

Even if Article XVII, § 2 of the *Faculty Handbook* were construed as an “agency rule or regulation,” as opposed to a contract between an employer and its employees, the University *still* could not circumvent the command of RCW 34.05.449(5) by means of such a “rule.” Several court decisions unequivocally hold that “administrative efforts to curtail the effect of statute will not be upheld. Agency rules and regulations, or agency interpretations thereof, cannot amend legislative enactments.” Univ. of Washington v. Manson, 98 Wn.2d 552, 562, 656 P.2d 1050 (1983) (rejecting University’s “presumption of resignation” rule as an attempt to eviscerate a statutory right). Accord Whidbey Island Manor v.

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<sup>17</sup> Obviously, RCW 28B.35.120 is not “a provision of law *expressly* authorizing closure,” and thus it does not authorize a violation of RCW 34.05.449(5).

DSHS, 56 Wn. App. 245, 783 P.2d 109 (1989).<sup>18</sup>

In sum, the University cannot claim that it is at liberty to enter a contractual agreement to ignore a statutory command. A contract is a private agreement between the contracting parties. It is not a “provision of law” and thus Article XVII, § 2 does not provide the University with an exemption from the statutory command of RCW 34.05.449(5) that the hearing held in this case should have been open to public observation.

**3. THE UNIVERSITY MAKES NO ATTEMPT TO DEFEND ITS CONSTRUCTION OF THE EMPLOYMENT CONTRACT IN THIS CASE.**

In his opening brief Mills argued that the University’s construction of Articles XV, XVI and XVII of the Faculty Handbook is objectively unreasonable. Since Washington follows the objective manifestation theory of contract interpretation, words such as “after,” “only” and “following” cannot reasonably be interpreted as having meanings such as “before,” “not limited to,” and “preceding.” The University has not even attempted to respond to appellant Mills’ arguments. No argument has been advanced explaining how these articles of the contract can be read as permitting the University to suspend a professor before disciplinary charges have been brought, contrary to Article 17 § 2a. Nor has any argument been advanced explaining how the phrase “only for one or more

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<sup>18</sup> “DSHS, by way of administrative rules . . . has no authority to amend legislative

of the five following reasons” can possibly be read as referring to eight other reasons which do not follow in the text at that point.<sup>19</sup>

The University prefers to attempt to influence this Court with alarmist statements such as the single sentence which asserts, without citing to anything in the record, that the Provost received a complaint that Mills had brandished a knife in the classroom where he was teaching playwriting. *Brief of Respondent*, at 21. No citation to the record is given. In fact, the testimony in the record shows that a student playwright asked another student if he had a knife which he could use as a prop in a scene in his play; Professor Mills then took out his pocket knife, showed it to the student, and said he could use it in the scene. FF 45. A female student, who admitted that she had been instructed by Professor Kuntz to report to him any behavior by Mills which made her uncomfortable, RP III, 95, reported only that she felt it was “inappropriate to her that Mills was displaying a knife in a classroom setting.” FF 44. But “she did not observe the other students to react in any way” to Mills’ display of his

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enactments.”

<sup>19</sup> Moreover, the University continues to ignore the evidence in the record. For example, Provost Bodman sent Mills a letter informing him of his suspension. Bodman explicitly testified that he did *not* consult with the Executive Council of the Faculty Senate prior to suspending Mills. RP II, 70. Article XVII, ¶ 2a states that “*Before* suspending a faculty member . . . the Provost will consult with the Executive Council of the Faculty Senate concerning the propriety, the length, and the other conditions of any suspension.” Incredibly, the University asserts that since Bodman sent a copy of this letter to the President of the Executive Council, that Bodman fulfilled his contractual obligation to consult with the Council “before” suspending Mills. *Brief of Respondent*, at 22.

own knife. FF 44. She never alleged that the knife was used in a threatening manner, and she was roughly 15 feet from Mills when she made her observation. RP III, 94. Nevertheless, the University alleged in its *Statement of Charges* (Appendix E), CP 45, that this incident warranted a severe disciplinary sanction under Section 2 of the Code of Ethics (Appendix F) because Mills' behavior constituted a violation of the duty "to exercise self-discipline and judgment in using, extending, and transmitting knowledge" which is not set forth in Article XV.F, but which appears in the Code of Faculty Ethics at the end of the Handbook as a separate Appendix.<sup>20</sup> This is but another example of the University's naked attempt to blatantly ignore the contractual limits which it imposed upon itself when it contracted to limit the grounds for severe disciplinary sanctions to the five set forth in Article XV.F.

When an employment contract provides that only specified

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<sup>20</sup> The University argues that Mills' possession of a pocket knife was a violation of a University policy that prohibited the possession of "weapons" on campus. *Brief of Respondent*, at 4. A copy of the campus "weapons policy" was admitted into evidence as Exhibit #8. CP 1271 (Appendix G). It makes no mention at all of knives. Moreover, Professor Mills testified that he consulted Bellingham city police officers and University campus police, and that they both explicitly advised him that there was nothing illegal about his knife, and that it was "not a weapon" but merely a pocket knife. RP III, 112-113. One of the five enumerated grounds for the imposition of a severe disciplinary sanction set forth in Article XV.F of the *Faculty Handbook* is "Conviction of a felony." Given the undisputed evidence that Mills' pocket knife was perfectly legal under state and local law, and the fact that Mills was never even charged, much less convicted, with anything – not even a simple misdemeanor -- the University's contention that Mills can be suspended for violation of a campus rule against the possession of a "weapon" is an absurd attempt to ignore and evade the contractual limitations set by of Article XV.F upon the permissible grounds for imposition of a severe disciplinary sanction.

grounds for discharge or suspension exist, an employer cannot ignore the just cause provision of the contract and impose discipline for other reasons. If a cause for dismissal or discipline is not listed in a contract that specifies the grounds for such action, then the absence of such a provision acts as a “stringent limitation” on the employer’s freedom to take disciplinary action. Comfort & Fleming Insurance v. Hoxsey, 26 Wn. App. 172, 177, 613 P.2d 138 (1980).

In this case, the University’s expansion of the types of behaviors which could constitute just cause for severe disciplinary sanctions beyond those specifically listed under Article XV was a clear breach of the employment contract between the University and Professor Mills.

**4. THE ETHICS CODE SECTIONS ARE VAGUE BOTH FACIALLY AND AS APPLIED TO MILLS’ SPEECH.**

**a. The Adamian Case Is Not On Point.**

The University confuses an overbreadth challenge with a vagueness challenge. Mills has not made an overbreadth challenge. Nevertheless, the University relies heavily on Adamian v. Jacobsen, 523 F.2d 929 (9<sup>th</sup> Cir. 1975), which is an overbreadth case. Moreover, Adamian did not involve classroom speech. Adamian, a professor at the University of Nevada, “participated in a demonstration during Governor’s Day ceremonies in the campus stadium in 1970, protesting the Cambodia invasion and the Kent State killings.” 523 F.2d at 931. Adamian was

discharged because during the demonstration he “tried to stop a motorcade bringing officials for the ceremonies into the stadium” and “led by Adamian the demonstrators then made loud noises to disrupt the ceremonies.” Id. Based on this *conduct* – preventing others from speaking or from being heard – the University discharged him under a University Code provision which required that a professor “strive for accuracy, restraint, and respect for the opinion of others.” Id.

Adamian did not make a vagueness challenge. Nor did he ever assert that the University code provision was unconstitutional *as applied* to his conduct. He did assert, however, that the University Code provision was *facially* overbroad, and thus contended that it was susceptible of interpretations under which it could suppress a substantial amount of protected speech. The Court agreed that there was a potential overbreadth problem with the University code provision:

On its face, section 2.3’s requirement that a professor exercise appropriate restraint and show respect for the opinion of others is susceptible of interpretations which would render it overbroad . . .

Id. However, the Court also noted that the American Association of University Professors (AAUP) had adopted a narrowing construction of its code provision. The Court stated that while that narrowing construction “is itself not entirely free of overbreadth problems, we believe that it circumscribes within constitutional limits, insofar as is practicable, those

situations in which a faculty member is subject to discipline. Any overbreadth remaining . . . falls short of [the case law's] requirement of 'substantial overbreadth.'" *Id.* at 935. The Ninth Circuit remanded the case for a determination as to whether the University of Nevada had adopted the AAUP's narrowing construction.<sup>21</sup>

None of this has any relevance to this case. Mills has not made an overbreadth challenge. He does not claim that the Code of Ethics is susceptible of many unconstitutional applications to the conduct of others. He asserts that the Ethics Code sections are unconstitutionally vague as applied to *his* statements.<sup>22</sup>

**b. The Dambrot Case Held That A Similar Faculty Code Provision Was Unconstitutionally Vague.**

Although the University claims that the decision in Dambrot v.

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<sup>21</sup> Significantly, the Ninth Circuit also held that a mere desire for civility could *not* justify the suppression of speech: "The desire to maintain a sedate academic environment, "to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint," is not an interest sufficiently compelling, however, to justify limitations on a teacher's freedom to express himself on political issues in vigorous, argumentative, unmeasured, and even distinctly unpleasant terms." 523 F.2d at 934.

<sup>22</sup> Moreover, Mills was not charged with preventing any other person from speaking – a charge based on the *conduct* which accompanied his anti-war speech. Unlike Adamian, the accusation of "lack of respect for the opinion of others" against Mills *was* predicated on the content of what he said. Mills was charged with being disrespectful to student Faleafine (because he mocked her political bumper sticker), to Professor Pulver (because he used derogatory terms to refer to him as a homosexual), and to Professor Currier (because he implied that she used sex to advance her academic career). Moreover, Western Washington University has never adopted a "narrowing construction" of the provisions of the Faculty Ethics Code. Whereas the AAUP's construction made it clear that a violation of its model code provision "may not lie . . . in the error or unpopularity, even though gross, of the ideas contained in the utterance," *id.* at 934, Western has taken the exact opposite approach, and has treated the grossness of Mills' remarks and the

Central Michigan University, 55 F.3d 1177 (6<sup>th</sup> Cir. 1995) supports its position, in fact that case held that the University's discriminatory harassment policy was both overbroad, 55 F.3d at 11, and "also void for vagueness." Id. at 12. Accordingly the Court held that the policy "violates the First Amendment." Id. at 13. The policy prohibited any verbal behavior "that subjects an individual to an intimidating, hostile, or offensive educational environment." Id. at 8. The Dambrot court cited with *approval* the statement in Doe v. University of Michigan, 721 F. Supp. 852, 863 (E.D.Mich. 1989) that a University could not proscribe speech "simply because it was found to be offensive, even gravely so, by large numbers of people." And yet in this case, that is precisely what the Trustees have done, taking it upon themselves to find that Mills' speech shows a lack of "respect for the opinions of others" because he insults them with epithets referring to their sexuality or stupidity.

**5. THE IDEA THAT AN ARTIST'S WORK MUST BE VIEWED BY AN AUDIENCE IN ORDER TO BE VALUED IS CENTRAL TO THE TEACHING OF A CLASS ON PLAYWRITING.**

The University argues that Mills' academic freedom was not violated by the imposition of discipline for his classroom statement to student C.D. It argues that like the use of the word "nigger" by the

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"discomfort and unpleasantness" that they caused, as the basis for finding a violation and imposing discipline.

basketball coach in Dambrot, Mills' comment to student C.D. "served no legitimate educational purpose." *Brief of Respondent*, at 47.

In Dambrot the college basketball coach told his players that they needed to play like "niggers." He claimed that "he used the word . . . to connote a person who is fearless, mentally strong, and tough." 55 F.3d at 1180. The Court held that "Dambrot's message was that his players needed to play harder," and thus his use of the word "nigger" "was not the essence of his communicative act." *Id.* at 1190. The Court also noted:

Dambrot's use of the N-word is even further away from the marketplace of ideas and the concept of academic freedom because *his position as coach is somewhat different from that of the average classroom teacher. Unlike the classroom teacher whose primary role is to guide the students through the discussion and debate* of various viewpoints in a particular discipline, Dambrot's role as a coach was to train his student athletes how to win on the court.

55 F.3d at 24-25 (bold italics added).

Unlike Coach Dambrot, Mills *is* a "classroom teacher" and his primary role *is* to guide classroom discussion in a "particular discipline." Moreover, that is exactly what he was doing when he told Doyle that if she didn't agree to put up her play for classroom discussion, it would be "just as if you had died of cancer and aren't here at all." RP III, 137. Moreover, his comment to her that nonproduction of her play would make it "as if you had died" *was* "the essence of his communicative act." 55 F.3d at 1190. His message was not that she needed to "try harder." His

message was that an artist's responsibility is to produce art so that the public could view it. He testified that he made his comment to her "to consider that art is worth putting yourself out for, and if we don't produce art, it's just as if we never had existed," and to convey "the concept of allowing your art to live past you means that you focus on it and sacrifice for it." RP III, 137, 153. As a classroom professor of a specific type of literature (drama), Mills' message regarding the responsibility of an artist was "the essence of his communicative act."

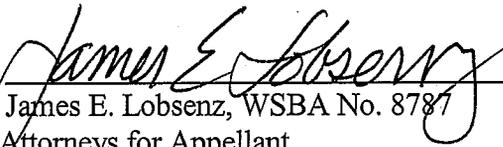
**C. CONCLUSION**

Appellant asks this Court to hold that the University violated his constitutional and statutory rights to an open hearing; breached its contractual agreement with him by disciplining him for conduct which was not mentioned in the exclusive list of five permissible grounds for imposing discipline, and by suspending him prior to the bringing of any charges; punished him under a faculty ethics code that is unconstitutionally vague; and infringed upon his protected right to academic freedom.

DATED this 17th day of July, 2008.

CARNEY BADLEY SPELLMAN, P.S.

By

  
James E. Lobsenz, WSBA No. 8787  
Of Attorneys for Appellant

APPENDICES FOR MILLS REPLY BRIEF

APPENDIX A – FACULTY HANDBOOK, Articles XV, XVI & XVII

APPENDIX B – KUNTZ LETTER “HOW LONG WILL WE LET THIS GO ON”

APPENDIX C – STUDENT COURSE FEE POLICY

APPENDIX D – STUDENT LETTERS OF SUPPORT

APPENDIX E- STATEMENT OF CHARGES

APPENDIX F- CODE OF FACULTY ETHICS

APPENDIX G – WEAPONS POLICY

## APPENDIX A

# FACULTY HANDBOOK

## 2005-2007 Edition



**WESTERN**  
WASHINGTON UNIVERSITY

appointment for more than two quarters of an academic year. The rate of contribution is five percent of salary to age 35, and seven and one-half percent following the 35th birthday of the participant. (After reaching age 50, and upon application, a faculty member may elect to raise his/her contribution rate from seven and one-half percent to ten percent of salary in order to obtain maximum University Supplemental Income Payment upon retirement.) Participation in Social Security begins the first year of employment. TIAA/CREF participants are eligible for tax deferral plans. For details of such plans, inquire of the Faculty/Staff Benefits Office.

- C. The University contributes an amount equal to the faculty member's contribution as described above. The contributions, both the University's and faculty member's, are allocated 50 percent to TIAA and 50 percent to CREF unless the faculty member elects a different distribution, provided that the percentages are not fractional percentages. The Faculty Senate has approved two CREF options: "Social Choice" and "Bond Market Account." Information on these options is available from the Faculty/Staff Benefits Office.
- D. A faculty member retires at the end of the academic year in which he/she reaches the age of 70. However, a faculty member may elect to retire at the earliest age specified for retirement by Federal Social Security Law. Likewise, a faculty member may be retired for reasons of health and/or disability at an earlier age. Before making a decision to retire before age 65, a faculty member should check what benefits he/she will receive.
- E. A faculty member making a request for retirement should specify the effective date and should make the request at least six months in advance of that effective date so that arrangements can be made.
- F. Before retirement, a faculty member is permitted to arrange with his/her unit for a reduced load and salary, acceptable to both the faculty member and the unit, without loss of tenure or rank until retirement. After retirement, the faculty member may be re-employed annually on a part-time basis consistent with program needs and with departmental agreement without loss of rank. Individuals who take this option may jeopardize the supplemental TIAA/CREF income normally made by the State of Washington Retirement System.
- G. Retirement benefits at age 65 and after 25 years of full-time employment in Washington State institutions of higher education shall be not less than 50 percent of the average of the highest two years (24 consecutive months) salary from such Washington State institutions, assuming 10 percent contribution to TIAA/CREF after age 50 as per above, this in addition to Social Security benefits.
- H. In case the TIAA/CREF benefits (combined with Washington State teachers retirement benefits earned in Washington State institutions of higher learning, if any) on retirement after the age of 65 and after 25 years of full-time employment in Washington State institutions of higher education are less than 50 percent of the average highest two years salary, all as described above, then the University shall provide a Supplemental Retirement Income Payment equal to that difference. A faculty member must be employed in a position requiring more than 70 hours per month in at least five months of the year for the year to count as full-time employment.
- I. Details of the faculty retirement plan are found in Retirement Rules and Regulation as approved by the Board of Trustees June 3, 1982, (amended on February 3, 1994, to allow up to 100% cashability withdrawal of CREF accumulations) and available in the Faculty/Staff Benefits Office.

## **XV. Termination and Non-Reappointment**

### **A. Resignation**

A faculty member may terminate his/her appointment effective at the end of an academic year, provided that notice is given in writing at the earliest possible opportunity, but not later than May 15, or 30 days after receiving notification of the terms of appointment for the coming year, whichever is later. The faculty member may properly request a waiver of this requirement of notice in case of hardship or in a situation where substantial professional advancement or other opportunity would otherwise be denied.

**B. Non-Reappointment**

1. Written notice that a probationary appointment is not to be renewed will be given to the faculty member by the dean or Provost/Vice President for Academic Affairs in advance of the expiration of the appointment. The faculty member shall receive this written notice:
  - a. Not later than March 1 of the first academic year of service if the appointment expires at the end of that year; or, if a one-year appointment terminates during an academic year, at least three months in advance of its termination;
  - b. Not later than December 15 of the second academic year of service if the appointment expires at the end of that year; or, if an initial two-year appointment terminates during an academic year, at least six months in advance of its termination;
  - c. At least 12 months before the expiration of an appointment after two or more years of service at the institution.
2. The institution will notify faculty members of their renewals by March 15.
3. When any recommendation not to renew an appointment has been made or a decision not to renew an appointment has first been reached, the faculty member involved will be informed of that recommendation or decision in writing by the body or individual making the recommendation or decision. If the faculty member so requests, he/she will be advised orally of the reasons which contributed to that decision. The faculty member may request a reconsideration by the recommending or deciding body or individual within ten working days of the date on which the written notice was received. For the purpose of this section, a faculty member will be deemed to have received notice after five working days of the date on which the notice was mailed by registered mail.
4. If the faculty member so requests, the reasons given in explanation of the nonrenewal will be confirmed in writing.

**C. Reduction in Force (RIF)**

Termination of an appointment with continuous tenure, or of a probationary or limited-term appointment before the end of the specified term, may occur under extraordinary circumstances because of a demonstrably bona fide financial exigency or reduction/reallocation in force owing to legislative mandate. In such a case, the procedures set forth in Appendix I shall apply.

**D. Elimination or Merger of a Degree Program, College or Department of Instruction**

Termination of an appointment with continuous tenure, or of a probationary or limited-term appointment before the end of the specified term, may occur as a result of bona fide formal discontinuance of an interdepartmental degree program, college or department of instruction. These procedures are intended to apply to the proposed elimination or merger of degree programs, departments of instruction, or colleges. They are not intended to apply to programs, other than degree programs, housed exclusively within a single department nor to settle questions within a department regarding the internal allocation of that department's resources. The following standards and procedures will apply:

1. The decision to discontinue formally a program, department of instruction, or college will be based essentially upon educational consideration as recommended to the President by the Provost with input from the appropriate Dean(s), the faculty, the Academic Coordinating Commission and University Planning Council. The recommendation of the Provost and President shall be based primarily on the input received through the processes of faculty governance as provided for below. The final decision will be made by the Board of Trustees.
2. Each college will develop a policy for elimination or merger of a degree program or department. Each college policy will be published in the college section of the **Faculty Handbook**. The policies shall

address procedures and criteria for elimination or merger and shall identify how faculty input concerning the proposed elimination and merger will be obtained.

The Provost will develop a policy for merger and elimination of a college. The policy will address the procedures and criteria for elimination or merger and will identify how faculty input concerning the proposed elimination or merger will be obtained. The policy will be submitted to the Dean(s), the Academic Coordinating Commission and the University Planning Council for input. The final policy will be posted on the Faculty Senate website and delivered to the faculty through an email, flyer, or by publication in *FAST*.

3. Degree programs, departments or colleges may be identified as candidates for elimination or merger by the appropriate Dean(s) or the Provost. A program, department or college may be identified for possible closure or merger if educational policy dictates a change in the priorities of the University or if it no longer contributes to the educational mission of the University. The criteria for eliminating or merging programs, or departments departments or colleges will be consistent with the Higher Education Coordinating Board's "Policy and Procedures for the Review of Existing Academic Programs" as well as with the Strategic Plan of the University and its colleges.
4. Provost will initiate a review of a degree program, department or college for possible closure or merger.
  - a) In the case of merger or elimination of a degree program or department, the college will undertake the review following procedures developed within the college. After review within the college, the faculty recommendation and report, together with the criteria and rationale for the proposed elimination or merger, will be forwarded to the Academic Coordinating Commission and the University Planning Council. The ACC and UPC will review the proposal and may provide justified recommendations to the Dean(s). The Dean(s) will forward to the Provost a recommendation that will include the recommendations of the college review process. The Dean(s) will also forward to the Provost the reports and recommendations of the ACC & UPC. The final recommendation of the Provost will be submitted to the President and will include the recommendations and reports of the ACC and UPC.
  - b) In the case of college elimination or merger, the Provost will undertake the review following the publication of procedures as per Section XV.D.2. The recommendation of the Provost will be submitted to the ACC and UPC. The criteria and rationale for the elimination or merger will be included with the recommendation. The ACC and UPC may submit justified recommendations and reports to the Provost. The final recommendation of the Provost will be submitted to the President and will include the recommendations and reports of the ACC and UPC.
5. Before the administration issues notice to a faculty member of its intention to terminate an appointment because of formal discontinuance of an degree program, department or college the institution will make every effort to place the faculty member concerned in another suitable position. If placement in another position would be facilitated by a reasonable period of training, financial and other support for such training will be proffered. If no position is available within the institution, with or without retraining, the faculty member's appointment may then be terminated with severance salary of two quarters for non-tenured faculty, three quarters for tenured faculty. Tenured faculty may elect to receive three years notice of termination as an alternative to three quarters severance salary, provided that the termination of the program is not part of a Reduction in Force.
6. A faculty member may appeal a proposed relocation or termination resulting from a discontinuance, as mentioned above, and has a right to a full hearing before the Faculty Senate or an appropriate subcommittee thereof. The hearing need not conform in all respects with the proceeding conducted pursuant to termination for cause, but the essentials of an on-the-record adjudicative hearing will be observed. The issues in such a hearing may include the institution's failure to satisfy any of the conditions specified in this section. In such a hearing a faculty determination that a program or department is to be discontinued will be considered presumptively valid, but the burden of proof on other issues will rest on the administration.

### E. Termination for Medical Reasons

Termination of an appointment with continuous tenure, or of a probationary or limited-term appointment before the end of the period of appointment, for medical reasons, will be based upon clear and convincing medical evidence that the faculty member cannot continue to fulfill the terms and conditions of the appointment. The decision to terminate will be reached only after there has been appropriate consultation and after the faculty member concerned, or someone representing the faculty member, has been informed of the basis of the proposed action and has been afforded an opportunity to respond to the evidence. If the faculty member so requests, the evidence will be reviewed by the Faculty Senate before a final decision is made by the Board of Trustees on the recommendation of the President. The faculty member will be given severance salary not less than two quarters for a non-tenured or three quarters for a tenured faculty member.

## TERMINATION FOR CAUSE

### F. Termination for Cause

Termination of an appointment with continuous tenure, or of a probationary or limited-term appointment before the end of the specified term, may be effected by the institution only for adequate cause. Hereafter, "faculty member" refers to the person against whom a charge of misconduct has been made.

- A. Adequate cause for a dismissal will be related, directly and [materially], to the fitness of faculty members in their professional capacities as teachers or researchers. Dismissal will not be used to restrain faculty members in their exercise of academic freedom or other rights [guaranteed by the United States Constitution and the Constitution of the State of Washington] (adapted from American Association of University Professors Policy Documents and Reports, Recommended Institutional Regulations on Academic Freedom and Tenure, Section 5, paragraph (a), 1995 Edition). To warrant a removal for cause, conduct falling within the five categories in 1.b. below must in a substantial way adversely affect the faculty member's academic, scholarly, or professional ability to carry out his or her University responsibilities. In cases in which the faculty member's behavior is alleged to have adversely affected another person, the impact of the faculty member's behavior must have affected the other person's ability to carry out his or her academic, scholarly, or professional University responsibilities in an intentional and malicious way. Faculty responsibilities are listed in the FH Section I, Part III, paragraphs C and D (page 3 of the 1999 edition).
- B. A faculty member covered under the Faculty Handbook may be dismissed for cause from his or her position only for one or more of the following reasons:
  - 1) A serious and persistent neglect of faculty duties.
  - 2) Unlawful discrimination or sexual harassment. (*See Appendix C of WWU FH.*)
  - 3) Serious scientific or scholarly misconduct, consisting of, but not limited to, significant misrepresentation of credentials, falsification of data, plagiarism, abuse of confidentiality, violation of regulations applicable to research, or failure to meet minimum standards of professional competence.
  - 4) Conviction of a felony.
  - 5) Intentional and malicious interference with the scientific, scholarly, and academic activities of others.
- C. Termination will follow the procedures in the section of the Faculty Handbook on Imposition of Severe Sanctions and Dismissal.

## XVI. Severe Sanctions Other Than Dismissal

To warrant a severe sanction other than dismissal, conduct falling within the five categories listed under Termination for Cause, section 1, must affect the faculty member's academic, scholarly, or professional ability to carry out his or her University responsibilities. In cases where the faculty member's behavior is alleged to have adversely affected another person, the impact of the faculty member's behavior must have

affected the other person's ability to carry out his or her academic, scholarly, or professional university rights or responsibilities in a substantial way.

Sanctions will not be used to restrain faculty members in their exercise of academic freedom or other rights guaranteed by the United States Constitution and the Constitution of the State of Washington.

Appropriate sanctions will be recommended by a committee of faculty peers. *See* section, *Imposition of Severe Sanctions and Dismissal* for the procedures. Severe sanctions are those that involve reduction in salary or temporary suspension with or without pay. Such sanctions in no way abrogate tenure.

## **XVII. Procedures for the Imposition of Severe Sanctions or Dismissal for Cause**

Adequate cause for the imposition of a severe sanction, including dismissal for cause, is defined in XV.F

If the Dean or Provost believes that the conduct of a faculty member constitutes adequate cause for dismissal or is sufficiently grave to justify imposition of a severe sanction, such as suspension from service for a stated period, the Provost may institute a proceeding according to the procedures outlined in C. below.

### **Procedures for Imposition of Severe Sanctions Including Dismissal for Cause**

1. A formal hearing on charges relating to severe sanction or dismissal will be preceded by: (1) discussions between the faculty member and appropriate administrative officers looking toward a mutually acceptable settlement which, if agreed to, terminates the proceeding; (2) informal inquiry by a three-person panel chosen by the Executive Council of the Faculty Senate in consultation with the Chair of the Standing Committee on Grievance and Sanctions from among the members of the latter committee, which may effect an adjustment with the agreement of all parties. The three-person panel's inquiry is to be limited to discussions with the faculty member, Department Chair, Dean and Provost and is to be completed within 15 working days of formation of the Panel; (3) Failing such an agreement, within ten days a written statement of charges will be framed with reasonable particularity by the Provost and given to the faculty member and the President of the Faculty Senate. (Here and hereafter, faculty member refers to the person against whom the charges of misconduct have been made).
2. The charges having been stated, the individual concerned will have the right to be heard initially by a Hearing Panel. The Hearing Panel, appointed within 10 working days of the filing of the statement of charges, will consist of five or more members selected by the Executive Council of the Faculty Senate in consultation with the chair of the Standing Committee on Grievance and Sanctions from among the membership of the latter committee who did not serve on the three-member panel of informal inquiry in C.1.(2) above. Members deemed disqualified for bias or interest will remove themselves from the case, either at the request of a party or on their own initiative. Each party will have a maximum of two challenges without stated cause. Vacancies will be filled by additional members of the Standing Committee on Grievance and Sanctions. If there are insufficient members of that committee, then temporary additional members will be appointed by the Executive Council of the Faculty Senate. The temporary members may also be challenged for prejudice. The hearings are coordinated by a Hearing Officer, appointed within 10 working days of the filing of the statement of charges and selected by the President of the University and the President of the Faculty Senate, and serving as a non-voting presiding officer of the panel. In cases in which the sanction may be dismissal for cause, the Hearing Officer shall be an administrative law judge or other attorney in good standing with the Washington State Bar Association.
  - a. From the time at which charges are specified, the faculty member may be suspended, or assigned to other duties in lieu of suspension, only if immediate harm to the faculty member or others is threatened by continuance. Before suspending a faculty member, pending an ultimate determination of the faculty member's status through the institution's hearing procedures, the Provost will consult with the Executive Council of the Faculty Senate concerning the propriety, the length, and the other conditions of any suspension. This consultation will occur within 10 working days of the filing of the statement of charges. No suspension or assignment to other duties in lieu of suspension will be final, for that would constitute dismissal. Salary will continue during the period of the suspension.

- b. The Hearing Panel may, with the consent of the parties concerned, hold joint prehearing meetings with the parties in order to (i) simplify the issues, (ii) effect stipulations of facts, (iii) provide for the exchange of documentary or other information, and (iv) achieve such other appropriate prehearing objectives as will make the hearing fair, effective, and expeditious.
- c. Within ten days of his or her appointment, the Hearing Officer shall schedule a hearing. Service of notice of hearing on the specific charges filed by the Provost will be made at least 15 working days prior to the hearing. Working days are defined for these procedures as days in which the university is in regular academic year session (not summer quarter) and engaged in instructional activities. Proceedings may continue out of the regular academic year session with the agreement of the parties and all members of the Hearing Panel, and with appropriate compensation to those whose involvement is required. The faculty member may waive a hearing or may respond to the charges in writing at any time before the hearing. If the faculty member waives a hearing, but denies the charges or asserts that the charges do not support a finding of adequate cause, the Hearing Panel will evaluate all available evidence and rest its judgment upon the evidence in the record.
- d. The hearing will be private, unless the Hearing Panel, in consultation with the Provost and only with the agreement of the faculty member, decides that the hearing should be public.
- e. During the proceedings the faculty member will be permitted to have an academic advisor, a representative of a responsible educational association, and/or counsel of the faculty member's choice.
- f. A verbatim record of the full hearing, consisting of a court-quality audio-tape and its transcript, will be taken by a court reporter or other qualified individual acceptable to the Attorney General's office at the University's expense. At the faculty member's request, a copy of the transcript will be made available to the faculty member without cost as soon as possible. The records generated during these proceedings, including the tape, will be kept in the Faculty Senate office.
- g. The Hearing Panel will grant adjournments to enable either party to investigate evidence as to which a valid claim of surprise is made.
- h. The faculty member will be afforded an opportunity to obtain necessary witnesses and documentary or other evidence. Both parties will cooperate with the Hearing Panel in securing witnesses and making available documentary and other evidence.
- i. Both parties will have the right to confront and cross-examine all witnesses. Where the witnesses cannot or will not appear, but the Hearing Panel determines that the interests of justice require admission of their statements, the panel will identify the witnesses, disclose their statements, and, if possible, provide for interrogatories.
- j. In the hearing of charges of neglect of duties, misconduct, failure to meet minimum standards of professional competence, or interference, the testimony may include that of qualified faculty members from this or other institutions of higher education.
- k. The Hearing Panel will not be bound by strict rules of legal evidence, and may admit any evidence that is of probative value in determining the issues involved. Every possible effort will be made to obtain the most reliable evidence available.
- l. The findings of fact and the judgment of the Hearing Panel will be based solely on the hearing record. The burden of proof that adequate cause exists rests with the institution and will be satisfied only by the preponderance of the evidence in the record considered as a whole.
- m. The judgment of the Hearing Panel shall be by majority vote. The number of ayes and nays will be part of the record. The judgment shall be rendered within fifteen days of the conclusion of the hearing.
- n. Except for such simple announcements as may be required, covering the time of the hearing and similar matters, public statements and publicity about the case by any person involved in the case will be avoided

so far as possible until the proceedings have been completed, including consideration by the Board of Trustees of the institution. The University President, the Provost and the faculty member will be notified of the judgment of the Hearing Panel in writing and will be given a copy of any part of the record of the hearing that they have not already received.

- o. (1) If the Hearing Panel concludes that adequate cause for dismissal or other severe sanctions has not been established by the evidence in the record, it will so report to the President within 10 days. o. (2) If the Hearing Panel concludes that adequate cause for dismissal or other severe sanctions has been established, it will recommend to the President dismissal or the sanction it considers appropriate, with supporting reasons.

### 3. **Action by the President**

- a. The decision of the Hearing Panel shall become a final decision of the University unless either party files an appeal to the President within 10 days of the date of mailing by registered mail of the decision to the parties, or unless the President elects to review the decision by giving written notice of intent to review to the parties within 15 days of the date of delivery of the decision to the President. The presidential review shall include consideration of the written record. No new evidence shall be considered by the President.
- b. Within 30 days of commencement of the review, the President shall make one of the following determinations: (1) affirm the Panel's decision; or (2) remand for further proceedings. Any decision of the President to remand must be based on findings of the President that the decision of the Panel was arbitrary or capricious; the procedures followed by the Panel in reaching its decision were materially and prejudicially unfair or not in accordance with the law or University rules or regulations; and/or the review in which he or she has engaged has revealed the importance of evidence in the record which the Panel did not adequately consider.
- c. In the event that the President remands the decision to the Panel, the Panel then has 20 days to reconsider its decision and the reasons given by the President for remand, and to report back to the President its decision on remand. If the President rejects the report in whole or in part, the President will state the reasons for doing so, in writing, to the Hearing Panel and to the faculty member. The responses of the Hearing Panel and the faculty member will be transmitted to the Board, along with the recommendation of the President for a determination under the provisions in item # 4. below.

### 4. **Action by the Board of Trustees**

- a. Within ten days of a recommendation for dismissal or other severe sanction, the University President will, on request of the faculty member, transmit to the Board of Trustees the record of the case. The Board of Trustees' review, to be conducted in Executive Session and scheduled within seventy-five days after the receipt of the request, will be primarily based on the record of the panel hearing, and it will provide opportunity for argument, oral or written or both, by the parties or by their representatives. The Board may request the parties to submit additional written arguments on particular issues and may request oral argument from the parties. No new evidence shall be considered by the Board of Trustees.
- b. Within ten days following the review, the Board shall make one of the following determinations: (1) affirm the Panel's decision; (2) reverse or amend the Panel's decision; or (3) remand for further proceedings. Any decision of the Board of Trustees to reverse, amend, or remand must be based on findings of the Board that the decision of the Panel was arbitrary or capricious; the procedures followed by the Panel in reaching its decision were materially and prejudicially unfair or not in accordance with the law or University rules or regulations; or the review has revealed the importance of evidence which the Panel did not adequately consider. Any decision to reverse or amend without remand for further proceedings must include a finding that, and explanation as to why, further proceedings are not advisable. In the event the Board's decision is to affirm, reverse or amend the decision of the Panel, the adjudication will be deemed closed.
- c. If the decision is remanded to the Hearing Panel, the panel will then reconsider, taking into account the stated objections and receiving new evidence if necessary. The panel will respond to the Board's finding within 15 days. The Board shall make the final decision only after study of the panel's reconsideration. In the event that the Board decides to reverse or amend the reconsidered decision of the Panel, the final decision shall state the basis of such decision, including specific findings as to why the decision of the Panel was arbitrary or capricious, or why the procedures followed by the Panel in reaching its decision were materially and prejudicially unfair or not in accordance with the law or University rules or regulations.

## APPENDIX B

05/34

Date: May 28, 2004  
To: Linda Smeins  
From: Mark Kuntz  
Subject: Perry Mills

Last night was the retirement party for Lee Taylor held at the Bellingham Theatre Guild.

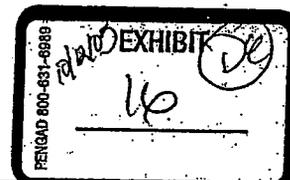
Perry was in attendance.

Perry was overheard telling a group of community members how I had embezzled \$20,000 of state funds, and how he had "called the cops on me".

Later, when he was speaking at the retirement in front of a large crowd, he had mouthed a former theatre department faculty member who had died in 1974. Perry did not know that that faculty member's wife was in the audience.

Perry continues to be an embarrassment to the university. While we continue to protect his right to speak freely under the protection of tenure, he continues to be a considerable liability to the university.

I wonder how long we are going to allow this to happen.



## APPENDIX C

## STUDENT COURSE FEE POLICIES AND PROCEDURES

Approved by Provost's Council, 27 April 1999

These policies and procedures have been developed to define and formalize the creation, change, and cancellation of student course fees.

Student course fees are fees assessed to students enrolled in a specific course and used to fund supplies, materials, and services specifically for the course for which the fee is charged.

### POLICIES

Student course fees are a means of supplementing those consumable materials or services that tuition or state funds cannot cover.

It is acknowledged that student fees are often the sole means through which academic programs can fulfill their educational mission in the absence of total cost recovery through state allocations. It is also realized that, as tuition rises and the cost of living increases, student finances may be impacted. Therefore, student course fees should be established only in instances where there is no other alternative to maintaining the quality of instruction deemed essential for fulfilling the academic mission of the unit and the university.

The establishment of student course fees is acceptable for the following educational contexts:

1. For classes that use consumable materials directly in the instructional process; this may include items such as supplies, chemicals, etc.
2. For classes that require specific or unique personnel; this may include artist models, accompanists, certain classes of teaching assistants, etc.
3. For classes for which supplementary materials are otherwise unavailable or difficult to accommodate within normal budgetary parameters; this may include special library materials, costs for field trips, transportation, etc.

Student course fees must be approved by the President and Board of Trustees before being implemented.

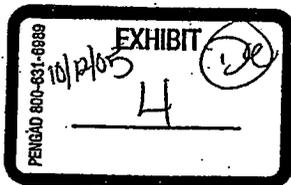
### PROCEDURES

- A) Student course fees should be reviewed by the department each year. If no changes are necessary the student course fee will carry forward into the next year automatically and no action by the department is necessary.

+ Ron Kleinrecht @007

WVU PROVOST

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B) A department wishing to implement, change or eliminate a course fee follows the following procedures.

1. Obtain the appropriate form(s) from the Budget Office. After they are completed, they should be routed, approved by the Department Chair if applicable, to the appropriate Dean. A memo describing the fee, providing a justification, and describing any limits should be attached to the form(s).
2. The Dean reviews and approves the student course fee and forwards the forms to the Vice President for Academic Affairs for approval.
3. The Vice President for Academic Affairs approves and forwards the forms to the Budget Office.
4. For a new student course fee, once it is approved by the President and Board of Trustees, the department obtains the appropriate forms from Accounting Services and creates a new budget for the fee.

Timeline

October 16	Departmental review of student course fees; forms for New/revised/eliminated fees sent to Dean
October 22	Dean's review of each account; forms sent to Vice President
October 31	Vice President's review of each account; forms sent to Budget Office
November 5	Consolidation of data by Budget Office/Summary Reports
November	Vice President's Presentation(s) to President's Council
December 15	Board of Trustees approval of student course fees

C) At the end of each academic year, the Department Chair should submit to the Dean, as part of the unit's Annual Report, a report which shows the revenue, expenditures, and balance for each student course fee and which describes how the fees have been spent.

E:\W\POLICY\STUDENT\COURSEFEES

12/05/01

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Ron Kleinmecht

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## APPENDIX D

INDEX TO EXHIBIT -- Support and Thank You Letters from Students and Former Students

1. [REDACTED] letter dated October 21, 2003
2. [REDACTED], undated letter
3. [REDACTED], undated letter
4. [REDACTED], letter dated June 9, 2003
5. [REDACTED], undated letter.
6. [REDACTED], undated letter
7. [REDACTED] letter dated March 14, 1999
8. [REDACTED], undated note
9. [REDACTED] letter dated February 21, 1998
10. [REDACTED] letter dated May 1, 1998
11. [REDACTED], undated letter
12. [REDACTED] letter dated April 30, 1998
13. [REDACTED] letter dated April 21, 1998
14. [REDACTED], letter dated May 29, 1998
15. [REDACTED], letter dated April 20, 1998
16. [REDACTED], letter dated April 10, 1998
17. [REDACTED], letter dated April 28, 1998
18. Robert Lopresti, letter dated March 10, 2000
19. [REDACTED] letter dated June 5, 1998
20. [REDACTED] letter dated June 2, 1998
21. [REDACTED] undated letter
22. [REDACTED] letter dated October 29, 2004

October 21, 2004

Karen Morse, President  
Western Washington University  
516 High Street  
Old Main 450 / MS 9000  
Bellingham, WA 98225-9000

Dear President Morse:

I write to you this day—or, rather, this night, as it is very late here in New York and I should be getting to bed—as a concerned alumnus of Western. Something came to my attention earlier this evening that was so distressing I could not imagine myself falling asleep without somehow addressing it.

First, an introduction: In 1998 I transferred to Western, eager to join the creative writing department. To my disappointment, I was informed that, as a transfer student, I would have no right to register for a writing course until all other students who wanted to had done so. Of course, it being a popular department, the writing courses filled up leaving no room for me. My advisor suggested I pay a visit to the theatre department; something I was reluctant to do since I had, as yet, no interest in dramatic writing. But I went anyway and spoke with Professor Mills who invited me to join his class. Put quite simply, it changed my life.

I graduated two years later with a degree in dramatic writing, and was awarded the 2000 Graduate of the Year Award. I am a produced, award-winning playwright and am, for three years now, the personal assistant to Pulitzer Prize-winning playwright Edward Albee (arguably the most important dramatist still writing in these States). None of these things would have happened if it wasn't for the unparalleled support, encouragement, and skills Perry Mills gave me during the years I spent at Western.

Moments ago, in a previous draft of this paragraph, I jotted a list of the skills Professor Mills supplied me with (an intense and always growing thirst for knowledge, the understanding of how to continue my education beyond the University's borders, etc.) But as I read it over I realized how impersonal it all seemed and how arbitrary. I may as well have been describing any conscientious and lucid teacher. So, instead, I'll let you know this: Professor Mills, who I feel blessed to have known as my teacher, and to continue to know as my mentor and great friend (I return to Washington State at least twice a year to visit him), was the most powerful force in my education during my time at Western. When I fretted about my displacement in the school's writing program, he invited me, warmly, into his class. When I told him I wanted the chance to exercise more control over my education, to gain more experience in the field I had decided to explore, he brought me on as the Artistic Director of our beloved New Playwrights Theatre (a post I happily served for a full academic year). When I came to him and told him that I felt lost within the world of academia had considered dropping out of school, he encouraged

me to stay, to keep strong and to always be the driving force behind my own education. And, at the end of my time at Western, when I invited him to speak on my behalf at the ceremony celebrating my status as Graduate of the Year, when I thanked him for all he had done for me, he replied modestly by saying: "Listen, kid. All I ever did was stay out of your way."

In the years since I first stepped foot in Professor Mills' playwriting class I have watched several of his colleagues react hysterically to minor events, acting like frightened puritans waiting desperately for a sign of witchcraft so that they can burn him at the stake. This most recent incident--quite obviously an error of one student's judgment--regarding Professor Mills' carrying of a pocketknife on campus, which has resulted in Professor Mills' suspension, is certainly of this same witch-hunting order: a minor incident turned major for the sole purpose of vilifying Professor Mills and opening his position for a newer, less intense candidate. To be quite plain, as far as I remember the University is populated by adults, and not children who are prohibited from carrying sharp things.

Here's the saddest thing I have to say about the personal nature of this action taken against Professor Mills: I am deeply embarrassed to consider Western Washington University my alma mater. I am deeply embarrassed to have attended, been celebrated by, and graduated from a school run by people who respond rashly and do not consider a larger picture when dealing with the most precious commodity it has: a teacher who has never become apathetic, who has always upheld the spirit of education, and who has inspired his students to truly be great. This is a rare thing, and I fear that Western is throwing it straight into the trash. And so, I am deeply embarrassed at having graduated from Western Washington University. But at the same time I do not regret having attended. Had I not attended, I would never have met Professor Mills, to whom I will be always grateful for many things my life is now and continues to be.

I would, of course, be happy to assist further in clearing up the matter surrounding Professor Mills' suspension. It is my hope that the school will recognize the serious mistake that has been made and invite Professor Mills to return, which would, thankfully, alleviate this embarrassment that has made it difficult for me to sleep tonight. So, I welcome you to contact me at any time by phone, email, or post.

Sincerely,

[Redacted signature block]

- cc: Andrew Bodman, Provost
- Carol D. Edwards, Dean, College of Fine and Performing Arts
- Perry F. Mills, Professor of Playwriting

To: Tom Ward  
From: [REDACTED]  
Date: November 31, 1998  
Re: Introduction to Cinema

To Whom It May Concern:

I am a student in Perry Mills' Introduction to Cinema class. I have heard that there are some complaints about Mr. Mills' teaching and I would like to present my perception as a counter argument.

From the first day of class Mr. Mills told us that this was going to be no ordinary class, that we might be asked to think beyond our experience, and that if we had a problem with this as students, we should drop the class. Even though he was very clear about this, I don't think most of the class took him seriously. Mr. Mills is an avid thinker and talker with very little space between; and unlike most people, he does not censor his thoughts. To me, as a student, this is very refreshing and example of the freedom I hope to experience as an intellectual. His lectures, while comedic and shocking, add to the cumulative effect of his class. The movies he has chosen have the same effect, to unnerve us and teach us that the world is larger than our own microscopic experience, that perhaps we should think about others for a small part of every day.

I think the reason that students do get so angry when they are called on to think differently, is that they don't want to self-examine their own mindless behavior. In Mr. Mills' class we are asked to be more adult than most adults are, and to take responsibility for ourselves and our actions. Isn't this the reason we go to college? So that we can acquire the skills to become independent and self-reliant? It seems to me that most people struggle through this a reasonable portion of their lives. Mr. Mills uses humor and wit to help us see this struggle in ourselves and in the characters we study. I have learned so much from this class about being human, I know that sounds strange, but that's a subject it is hard to teach even in sociology classes. Too often human nature is reduced to numbers and stereotypes. Mr. Mills speaks about all aspects of the human experience, not just the made for TV version.

Another variable in this whole situation is the level of maturity in the class. For a number of the two hundred plus students this is their first quarter in a college setting. Most of them can't watch a love scene in a movie without snickering, and they definitely don't want to think about people their parents' age as sexual. I've started renting the movies that have love scenes in them to watch at home instead of during class because I can't stand the reaction of the students to anyone that is different looking, or old, or fat. The way that I excuse them is to remind myself that they are young and will grow up. I don't know how Mr. Mills excuses them but it is hard for me to keep my mouth shut, I feel relieved when he calls them on it

The students in the Cinema class may not realize it yet, but even their taking offense is teaching them how to deal with life. I consider myself an open-minded person, but I think I need stretching too, constantly. I can't remember the last time that I have been so delighted, stimulated, and affected by material in a college course.

I don't know if this will help in the evaluation of this class. I hope that I have presented another side to the contentions. I realize that I am a senior and I have had more experience in college than most of the other students in the class, but I feel that this class is being taught well and I would hate to see it changed. It is so important to have a variety of teaching styles in a university, and for every student that Perry Mills offends there are five more who he inspires.

I appreciate the opportunity to be heard.

Thank you,

[REDACTED]

To whom it may concern:

This spring quarter marks the end of my second year here at Western. Looking back at my time here, there is no teacher who stands out more in my mind than Perry Mills. In these two years, Perry has somehow managed to sneak into my subconscious and now he won't leave. Thank God, this is a good thing.

I took Perry's Intro. to Cinema class in the fall of '96 and it was my first introduction to Western's theater department. Perry has enthusiasm about learning unlike anyone else, and it made me look into the program. Once I met Perry and all the students who flock around him between classes, I knew it was something I wanted to be a part of. Without ever having thought about writing plays before, I took Perry's play writing class in the spring of '97, and that set me off on a new path I'd never been down before. What got me through it was Perry's acceptance of any material, and his willingness to tell you what he thought about it. Because of that class, I got a chance to see one of my plays performed and critiqued.

The greatest thing about Perry is that he is honest and that he expects the same from his students. If everything in his lecture sounded like bull---- to you, he wants to hear about it. And he'll actually listen, and try to help you understand, or change if he is wrong. I like to take Perry's classes because his honesty seems so harsh to some students that they actually drop his class, and then I don't have to be in a class with a bunch of people who just want a pseudo-intellectual baby-sitter for a teacher - and then I get to learn the good stuff. It would probably sicken Perry to hear it, but he is like a good dad. He wants you to learn, god-damnit; but he wants to help if he can and he wants to see you succeed at what you love. When I decided I wanted to go to Fairhaven College to finish my education, Perry did his best to help me, with a letter of recommendation that my mother could have written.

When I register for classes, I always hope they'll be as educational as Perry's classes. I always wonder what Perry would think of a paper I write, and I always hope that I can live up to Perry's expectations, even when I am not in his class. I look forward to having Perry as a teacher in future classes, and as a mentor for many of my educational and even life decisions. Perry makes me feel like I have someone rooting for me, encouraging me to better myself, no matter what I do, and I think we are all very lucky to have him as a Professor at this University.

Sincerely,  


June 9, 2003

Perry F. Mills

Dear Perry:

I wanted to take the time to write you a letter of thanks. You see, I have been thinking about my college experience of late, especially now that I am graduating, and have come to the conclusion that you are special in many ways. I won't begin to attempt to flatter you with the ideas that come to me when I think of your attributes, but I will share the affects: You see, one of the reasons that I took your 300 level class was that (I) needed some change from the stodgy English 'professors'. Of course, your colorful antics and dialogue gave me just that. In short, I liked coming to class, if only to hear you harangue on various topics. I became again interested in what I was doing

This is not to say that I would have strayed from my course towards graduation. No, not nearly so, but I can say that I wouldn't have had nearly as much fun, and interestingly enough, as when anything is fun, I learned more.

Aside from all of this, I appreciated your ability and willingness to admonish those who were lazy (sometimes I began to chastise myself before I would sleep...just knowing that you would be willing and ready to give me a ration of shit for it) or were merely stupid. These last need it most, and I loved the fact that you felt as I did about Bertolino and his damn foppery.

As you may remember, I take martial arts training. I recently told my Sifu that I wished I could learn from him and him alone as my fellow students didn't always know or hadn't trained enough to have kept the knowledge I said, 'Sifu, 5 minutes of your time is worth more than a week of that other shit, at least then I know I have it right'. Perry, I got more than my 5 minutes with you on numerous occasions, and I thank you. I now that you don't like cheeky praise, so I will keep this short, you have had a profound effect on me.

In all Sincerity and with Gratitude

[Redacted signature]

[Redacted address]

Ps. I will call on you from time to time. Just to make sure you can still fire out a good one-liner.

Perry,

I woke up this morning with the shameful realization that it's been almost four years since I graduated from Western and that I haven't written you since then. If you don't remember me, well, too bad, you get a letter anyway.

You were the best professor I had at Western, the one I learned the most from both in and out of the classroom, and often the grumbly voice critiquing me in my head now when I write plays. So I wanted to let you know that, as I'm sure there are former students even lazier than me who never get around to letting you know.

I apologize for the pink paper, I hope it doesn't make you as cranky as it makes me.

I'm living in Seattle these days. I wrote two plays that were produced in the Seattle Fringe Festival in the last two years, and now I'm trying to write something worth doing something more substantial with. Also, since the Fringe just went tits up, I'm putting together a little production company to try and produce some plays on my own. I'm hoping to head back to school for my Master's or MFA in the near future, and, heaven forbid, eventually end up teaching.

I hope you're doing well, and that there are a few gems amongst the shitheads and cretins in your classroom every now and again. Also in the department. Good lord.

If you ever need any more reference letters, I would happily supply one, though I'm so out of the loop, I never heard if you got your tenure or not. I hope so.

Thank you, Perry. Take care.

Sincerely,

[REDACTED]

Professor Perry Mills,

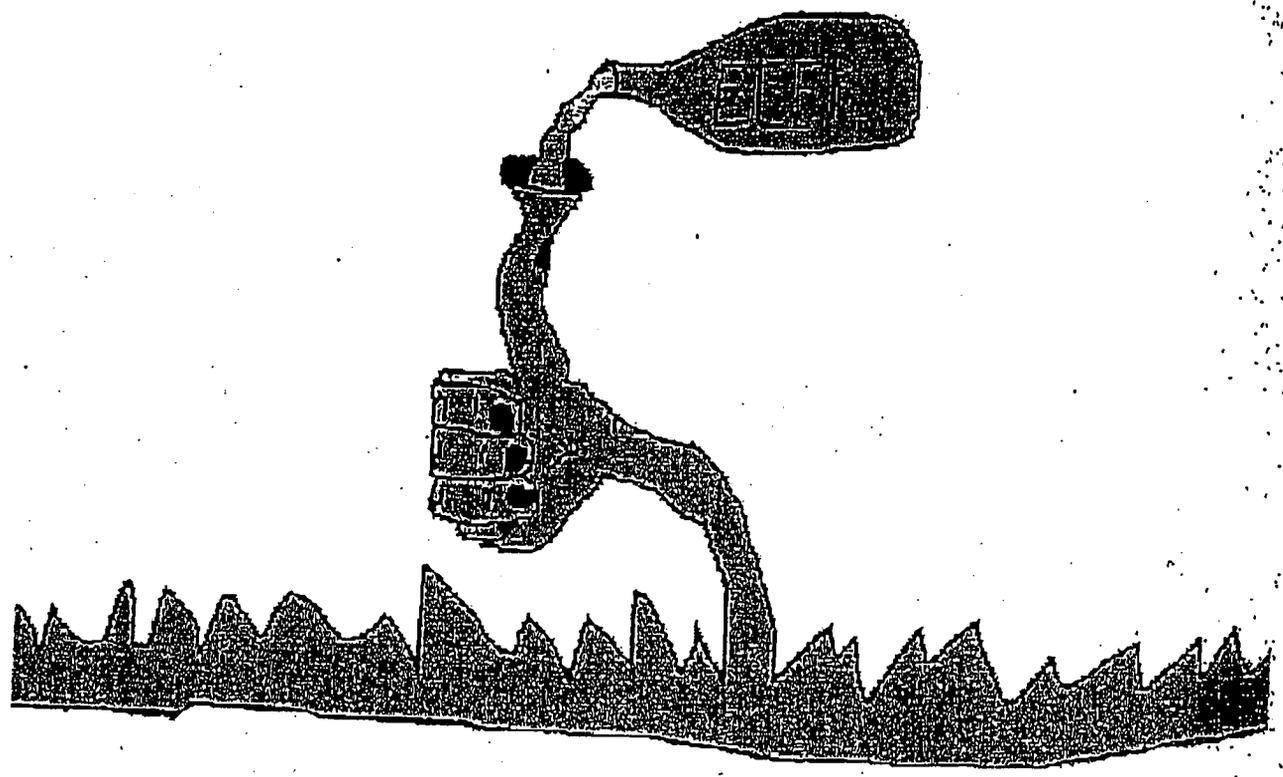
This is a long overdue letter of gratitude. My name is [REDACTED] but I go by [REDACTED]. I was in your Art Inquiry class the second quarter of my freshman year. I took your class because I was an athlete here on the men's soccer team and I couldn't get in to any classes because of my soccer schedule and my insignificance as a second quarter freshman with 12 credits. Before I enrolled in your class I was uninterested in school and wanted to drop out. Originally I only came here to play soccer and school was something that I just had to do. The first quarter I all but flunked out of my classes and ended with a 1.69 G.P.A. I had a serious ailment to my knees and I quit playing soccer. Basically I was sucking at my life at the moment. Fortunately I took your class and learned what it was like to enjoy learning. We read Nietzsche, Artaud, and Shahn, with Shahn being the most influential. I started to paint and still do as an active form of expression which I believe along with Shahn that everyone should take part in. Most of all I learned what it meant to strive for a higher education. School wasn't a job anymore but a gateway to opening my mind. It wasn't about getting an "A" or brown nosing it was about achieving a new level of thinking. Basically I want to thank you for not tolerating stupidity and ignorance. I want to thank you for encouraging intelligence instead of lowering the curve and making it more accessible for us to achieve less of ourselves. Since I took that class I have been so much more involved in life. I question everything, get in fights, have passion, read more, attend all my classes, challenge my teachers, and I'm an interacting human mind and not a fucking robot...plus I get laid on a consistent basis. Just so you know I have a steady 3.1 G.P.A. I figured out how to

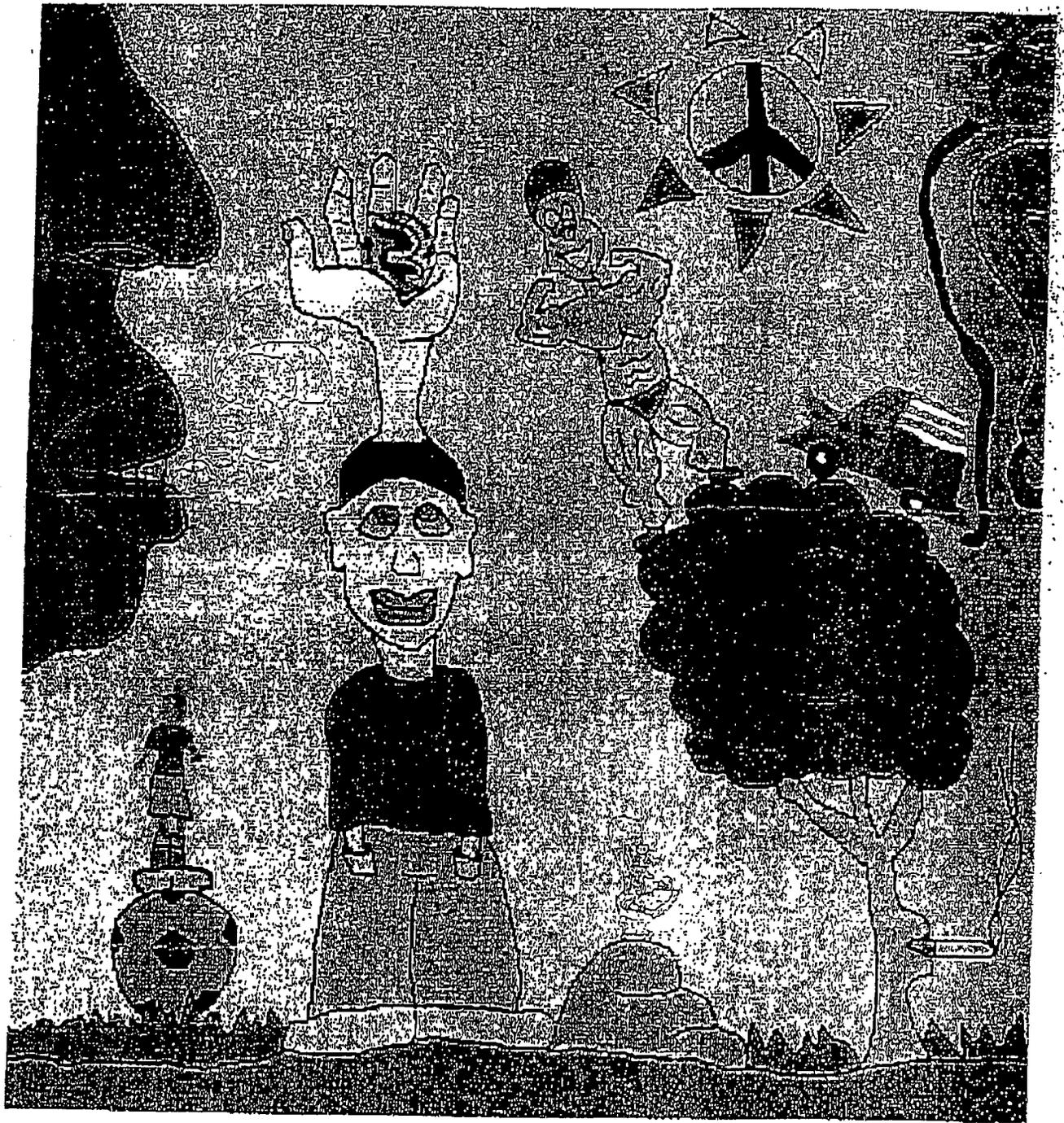
succeed in school with out selling myself out. I am playing soccer again for the school after two knee surgeries and excelling as well.

I purchased this cigar for you while I was in Madrid this summer with my dad. I hope you enjoy it. Thanks again for upholding the idea of a liberal education.



P.S. Here's a couple of paintings I did while I was enrolled in your course.





3/14/99

Dr. Mills,

I have spent the last week or so attempting to come up with the words I wanted to say to you. I can't, but I'm going to try. I just wanted to take a moment and let you know how much I appreciate you. My father's a teacher, so I have some small idea how much work and energy it takes to interest, much less motivate unwilling students.

I have spent some time in classrooms, and have had a few teachers. But I have only ever had one other teacher who has cared so much about learning. I'm here at college, and I do need to get a degree so I can get a job. But if I wanted to go to trade school, I'd have gone to DeVry and be out by now making 50 grand a year. I came here to learn, to be enriched, to expand my mind and gain exposure to some things and ideas that I would not have encountered anywhere else. I came for the sensual pleasures of knowledge and experience.

I love the fact that you teach that way. I respect the joy you take from thought and learning. I respect the honesty with which you do it. I love coming to your class, and I bask in the realness of the situation. You are honest. You are uncensored. You say what you think, and that is so rare, especially in a classroom situation. Life is not PG rated, and trying to absorb literature on only that level destroys its power. I share many of the thoughts you express; some I don't; others I simply don't understand. But I honor the spirit, the sheer vitality you bring to the classroom.

I'm not very good at expressing this, and am not doing it as well as I wanted, but I want you to know that you inspire me. The class this quarter has been utterly delightful. I have heard of the drama scene on campus, but this was my first real taste of it, and I loved it. The people were so much more real than people I deal with every day in all the GUR bullshit I go through. I have always loved literature, and love the way it is celebrated amongst these people. It is a scene I can never be a part of, but whose beauty I admire. I have been given a whole new world to explore, and I plan to read and attend as many plays as I can. I've also been given a whole new perspective on literature, and the concept of living theatre. That's a gift beyond measure. And just once, I will see a Judith Thompson play on stage.

I have also been inspired to write, simply for myself, to try to learn to celebrate language, and existence, even if only for my own enjoyment. Of all the classes I have taken here, all the classes for my major, and classes for my "general education" this has been the most valuable class I have ever taken.

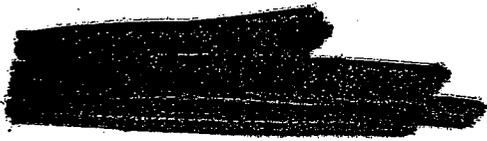
Thank you for giving the energy and time that you do, thank you for sharing your enthusiasm and passion, thank you for teaching me. I have never felt so fulfilled by a class, never been in a situation so enjoyable. This is what I wish it could all be like, and what it all should be like. I hope I can learn to live up to it.



Professor Mills -

I would like to take the opportunity to thank you for the two lectures you gave to Mark Kintz's 9:00 am Theatre 101 class. I am a member of that class, and wish to express my gratitude. First of all, thank you for the sacrifice of your time, but also, thank you for sharing your ideas and intellect. I am never a party to false or trite flattery; I do not approve of it - I do, however, wish for you to know that I was rather profoundly impressed and quite moved by your lectures, in particular, the Friday lecture (I am sure I enjoyed it more due to the smaller crowd... the LITERATE ones, I believe you hinted at.) At any rate, I honestly took to mind and heart the things that you presented us with. Your passion for the theatre is nothing short of inspiring to me, and it was very apparent to those who were 'open for learning' that day. Again, thank you for your time and your wisdom.

Best wishes and most sincere thanks -



February 21, 1998

Dear Sir or Madam:

As a senior in the Theatre Department at Western Washington University I have met many teachers, some of who have taught me a great amount of information about a subject and I have met others who I left the classroom feeling like I have just wasted my time. In Perry Mills class, I never feel like I have wasted my time. Currently I am in his Theatre Arts 325, Modern European Drama class where I have learned one of the most valuable lessons of my university experience. In this class every day I am required to stretch my brain, to think beyond the obvious concepts of the play we are discussing and then take those ideas and write a paper about what I think. In my first paper, I had some problems in making my thoughts complete and having my opinions supported. Perry gave me comments and worked with me on where my thinking broke down, and especially, what made sense and what did not make sense in my writing. It was a frustrating process for me, but with the rewrite of just one paper, I learned more about myself as a writer and thinker than I have in the four years I have been at this university.

Its true, I have been frustrated in some encounters with Perry Mills. However, I respect him greatly for just that reason. Every time I speak with him, I know I am going to have to think harder than I ever have before although many of those ideas may be unpopular. Through being in Perry Mills' classes I crave to read, to think, and especially, to have intellectual conversations with others. I am forever changed by his classes because now every day I feel starved for something ~~to~~ "hard" to think about.

Sincerely,



May 1, 1998

[REDACTED]

To whom it may concern,

I am writing to recommend Mr. Perry Mills for the position of full professorship at Western Washington University. I am currently a student of Mr. Mills and have found his classes to be of high regard and intellectual content.

As a student in both the playwriting 384 class, and a class on aesthetics, both taught by Mr. Mills, I have found his teaching style to be new and refreshing. A style, while being unconventional, such as the one Mr. Mills implements encourages students to think of their own volition and to organize and communicate their thoughts in logical manner. This style of teaching is well received as he is currently the only teacher who puts emphasis on the logical thought process and how to communicate those thoughts in a manner that is both beneficial to the students and to those who are reading the content of the piece.

I believe that Mr. Mills has many wonderful insights and talents that can be utilized in a full professorship and that his commitment to the betterment of students and their education is an asset to this institution.

I think you for your time in reading this letter and hope that my comments may help you to see that Mr. Mills would be a wonderful person to have in the position of full professorship.

Sincerely,

[REDACTED]

[REDACTED]

To whom it may concern,

I am writing this letter as a recommendation for Perry Mills' professorship. I am a student currently enrolled in Western Washington University, under sophomore status, recently transferred from the University of Alaska, Anchorage where I attended for nearly three years. I entered the Western Washington University last April as an English major but am now seriously considering altering my major to accommodate a supporting theater/drama major. The reason for my decision is Perry Mills.

As I was enrolling at Western, "scrounging for whatever classes were left for us transfer students to scrape off the bottom of the registrar floor, I became aware of two classes taught by Mr. Mills--that is the Drama Writing course and the Introduction to Cinema. On the recommendation of two friends who were attending the school I enrolled in these classes in order to experience Mr. Mills' teaching style. I was unsure as to what I would find but did not hesitate as I am interested in live theater and film, and majoring as a creative writer.

Luckily Mr. Mills allowed me to enter his classes through the add-code system as they were already full, and as I would soon discover, not surprisingly so. The first day of class Mr. Mills told us young and aspiring dramatic writers to "go off and write something, and see if we can do it." Not unused to this idea of getting down to things and jumping right into them I enthusiastically set forth to have a ten minute short play written by the next class, two days later. It was to be my first attempt at dramatic writing.

I managed to finish the piece on time and brought it to class tingling with the tumultuous melange of nervousness, excitement and uncertainty that comes with presenting a work of art in front of strangers. By the next class I had my piece cast and cold acted in front of me--an incredibly wonderful process which allows the author to see how his or her piece works. The enthusiastic comments I received from the class, as well as Mr. Mills, inspired me to drive on in my endeavors and produce the fifty page portfolio required with no delay. Since that day I have written three more short plays, a monologue, a complete one-act, and have completed thirty cumulative pages of a full-length play in progress which will be finished by the end of this summer. I would have done none of this without Perry Mills.

Besides being an inspirational force in my life, Perry Mills is a damn fine teacher and orator. In a time when students find it easier to simply fall asleep in class, and worry about their

grades during finals week, Mr. Mills has his students awake and talking fervently early in the morning. Which, I might add, is more than I can say for some of the other instructors in this university who have alrerady achieved Professorial status.

As I stated earlier in this letter I will be ammending my degree status to include theater/drama so that I myself might teach the subject one day. I can only hope that I will be half as effective and devoted to it as Mr. Mills is now. Next quarter I will select my classes very carefully and will register for any subject Perry Mills will head. If Mr. Mills decided to teach the "Theory of Chalk on the Board" one quarter you better believe I would take it; because no matter the class, if Perry Mills is involved then so am I.

In closing I will say that the fact that Perry Mills is not yet a Professor in his field is entirely unbelievable and unacceptable. I have referred to him as Professor Mills from the moment I met him and will continue to do so forever. With some hope the people who read this letter will see to it that this title becomes entirely accurate as it is already befitting a man of Perry Mills' nature.

Thank You,



Letter of Recommendation  
For Perry Mills  
Written By Joe Osier  
30 April, 1998

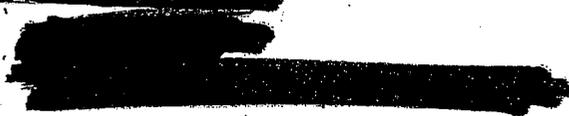
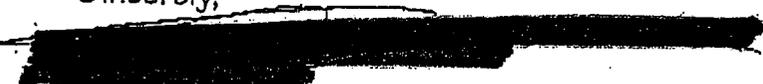
I was approached by Mr. Mills and asked to write this letter after completion of his Aesthetics class. Although it has taken me several months to actually get it complete I'm glad I have. Not to recognize and reward Mr. Mills, would be a travesty of the highest order.

When I think of the meaning of the word university, I think of a place of learning, questioning and new ideas. Sadly, after jumping through several years of university hoops there are only a handful of faculty that I can honestly say care about the progress of the students they teach. Perry Mills is such a person.

It was in Perrys classes where I truly knew that I was learning. Not through rote memorization and regurgitation of the teachers' ideas, but through the questioning and deconstruction of ideas that I thought were unattainable. That is Perrys greatest gift. He forces his students to become thinking human beings. To reconsider things that they have taken for granted for many years and not to let the world roll over you and crush your inquisitiveness.

It would be a poor commentary on the University if Perry Mills is not encouraged and rewarded by this institution the same way he encouraged and rewarded his students.

Sincerely,



To: Whomever it may concern  
Re: Mr. Perry Mills  
April 21<sup>st</sup>, 1998

Dear sirs :

I am writing to you in order to speak on behalf of Mr. Perry Mills. The function of a professor at the collegiate level is to enhance, enlighten, and to encourage the creative or analytical thought process of their students. And I cannot think of one person who exemplifies this standard better than Mr. Mills. I have known Mr. Mills for the entire length of my four years at Western, and have concluded that not one teacher had challenged my thought process the way Mr. Mills has consistently done. His unique methods of lecturing, followed by intense rounds of discussion, have always left me with the desire to institute longer class periods (this has occurred very rarely in my collegiate career). I am constantly amazed by his intellectual knowledge, as he intently dissects the readings of Frederic Nietzsche and Antoine Artaud.

I have also had the pleasure of working with Mr. Mills in a more creative format. Through his playwriting classes, Mr. Mills has been the key player in finding a venue for these young writers to perform their play in. New Playwright's Theatre (NPT) has become one of the most popular events that the Department of Theatre Arts produces. Every quarter, a group of four or five scripts are selected from the class in order to be produced the following quarter's NPT. The playwrights are given a director, and are cast among anyone who comes to the audition. This is an excellent venue for young playwrights to see their work in action, and two of our recent graduates have received recognition and honors from the Kennedy Center for the Performing Arts. Mr. Mills has branched even further this year, by testing his skills as an actor. During the Fall of 1997, Mr. Mills accepted the lead role in Kaufman and Hart's *The Man Who Came to Dinner*. Performed in our very own Performing Arts Center, the show was a huge success, and I can't think of a more interesting experience than gracing the stage with Mr. Mills.

Perry Mills is an asset not only to this school, but to the community as well. His relentless pursuit to educate the minds of his students has no equal. I wish there were more professors like him. In my mind Perry Mills is not only a teacher, but also a friend. Thank you for your time.

Sincerely,



May 29, 1998

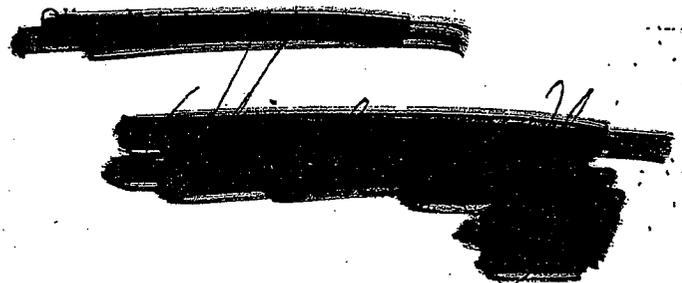
CP 1334

To Whom It May Concern,

My name is Oliver Latimore Oberg; I am a student here at Western Washington University. I am currently majoring in the Theatre Arts where I have encountered Professor Perry Mills quite a few times in my course of studies. I can honestly say that I have never met a more thought provoking man in my entire life. I have been awakened to readings and lectures that have offered me new insight and new outlooks to my existence as an artist and a human being that I am forever grateful for. Through my relationship with Mr. Mills I am on my way to developing what I believe to be good "shit detectors," pardon the expression; but there is a lot of garbage to sift through in this world. Whether it be in art or science or relationships with others, I now have a better understanding of what it is I am to do with myself; and that is to think, to read, to accept, to disapprove, to follow my own path, to decide for myself. I have come to the belief that I do not want to die stupid and for me to make sense of the world I live in I have to live my life by my own standards.

It is the power of teaching that enables humans to provide new avenues for thought; so that a student can ingest the new information and take off like a rocket as the teacher sits back and relishes the experience of a fresh mind chewing on the tasty bits of knowledge. What I have learned from Perry Mills is the ability to form an objective opinion about answers that are not necessarily set in permanent form. I now know that the answers to my questions are only other people's opinions and that if I truly desire rational answers I must come to find them myself.

Thank you,

A large area of the document is redacted with thick black ink, obscuring the sender's name and address. The redaction covers approximately the bottom right quadrant of the page.

April 20, 1998

To Whom It May Concern,

I am writing this letter on behalf of Mr. Perry Mills who, over the course of my three years at Western as an undergraduate student, has become a good friend to me. I have worked with Perry both professionally and playfully and feel that this man offers my school something so very unique, Western would be seriously lacking without him.

Perry is a fixture outside the theatre building; cigar in hand and always engaged in conversation with a student about anything and everything from knives to Nietzsche. Perry is the man to ask if you come across an obscure quote in a book you are reading and you want to know what it means. He is a well of knowledge. Just don't approach him looking for a handout or easy answers. To talk to Perry, one has to commit to thinking about the subject at hand as much as he will.

I directed a play that Perry wrote for last winter's New Works Theatre. Blood Type is a play about a 20 year relationship and marriage condensed into 20 minutes -- 25, if you hold for laughs. Perry was always willing to take time out of his schedule to talk to me about the script, to give me suggestions, and for me to bounce directorial concepts off of. I would gladly work with him again.

I have also been involved with New Playwright's Theatre with Perry since I was a freshman. He hosts all the performances and leads the discussions afterwards. One night, I was wearing my hair in pigtails. Perry and I decided it would be funny if I went out between plays and introduced myself as Mr. Mills. As I am doing so, Perry finds some rubber bands and puts his hair up in pigtails, too. Then he came out on stage and kicked me, the impostor Perry off. The audience loved it. It is his ability to joke as well as his intelligence that makes Perry an asset.

I highly value Mr. Mills at this school and in our theatre department. If you have any questions regarding him, please contact me.

Sincerely,



April 10, 1998

To whom it may concern:

My name is [REDACTED] and I am currently a student at Western Washington University. Over the past two and a half years I have taken several classes from theatre arts assistant professor Perry Mills. These classes include: *Introduction to Cinema (201)*, *Introduction to Playwriting (384)*, *Arts Inquiry (397)*, and *Existential Drama (327)*. I feel that each one of these classes has contributed a great deal to my education here at Western. I also believe that it is vital for Professor Mills to continue to have the opportunity to teach his curriculum here in the future.

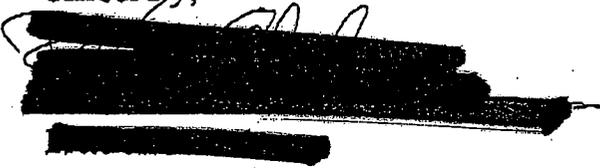
Professor Mills has played a key role in introducing me to unique ideas and literature that have changed the way I think, act and perceive the world around me. While taking his *Introduction to Playwriting* class I was able to develop a script which I got to witness in production during *New Playwright's Theatre*. This experience was so electrifying for me that I changed my major to playwriting - an area of study that I plan to pursue until graduation and beyond. Both *New Playwright's Theatre* and the unique workshop atmosphere of the *Introduction to Playwriting* class would probably not be possible without the careful instruction of Professor Mills.

The literature offered in Professor Mills' *Arts Inquiry* and *Existential drama* classes is unique, challenging, and thought provoking. There seems to be no other classes on campus where a student can learn about the philosophy of figures such as Friedrich Nietzsche or Jean-Paul Sartre, or be challenged by the ideas of cutting-edge playwrights such as Judith Thompson.

The biggest reason why I continue to take classes from Professor Mills is that he challenges his students in ways many other professors do not. He challenges students to think for themselves; to formulate their own opinions about the material covered, and to back those opinions up with evidence from the text. Professor Mills has helped me to develop the attitude that there are still great plays to be written, there are still great ideas to be interpreted and since no one else is going to do it, *I have to* - with every ounce of my being.

I only hope that Professor Mills will have the opportunity to influence students, much like myself, in the future.

Sincerely,

A large, solid black rectangular redaction covers the signature and name of the sender. The redaction is positioned below the word "Sincerely," and extends across most of the width of the page.

April 28, 1998

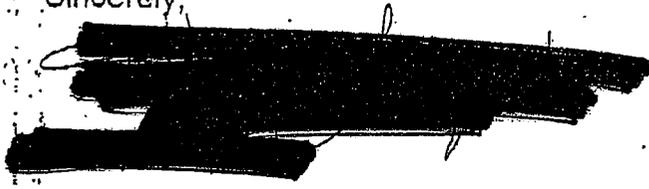
To Whom it May Concern:

This letter is regarding the role of Perry Mills as a professor at Western Washington University. In the three years that I have attended Western as a Theatre Arts major, Perry easily stands out as the professor that has had the greatest impact on my education. I have taken three different classes from him, and in these short periods of time, I feel I have learned more from him than from any other professor. Perry's teaching style is unique, in that he works with each student to ensure that he/she accomplishes college level work. His passion for knowledge and education is inspiring and has strongly influenced my own outlook on knowledge, as well as my involvement in educating myself.

Perry has also taken a large part in a program in the theatre department that I feel is one of the most important: New Playwright's Theatre. This particular event allows students to write, direct and act in self-produced productions, and I am quite grateful to attend a school that provides such an opportunity. Perry's encouragement and participation has helped to keep the program strong. He is a great proponent of students taking action and doing things for themselves, which is a message that many of us need to learn at this point in our lives.

To many students, myself included, Perry's place at Western is a vital one. His presence is a large reason that I have continued my education here. I would easily recommend him, in any academic situation, as someone who deserves the highest consideration.

Sincerely,





The Libraries

Bellingham, Washington 98225-9103  
(360) 650-3050 ☐ Fax (360) 650-3044

March 10, 2000

Professor Perry Mills  
Department of Theatre Arts

Dear Perry;

Thank you for taking the time to participate in our Library 201 class on Wednesday.

Your discussion gave a practical application to much of what we have been discussing all quarter. I know that it helped the students see the relevance of what they have been learning, as well as opening their eyes to approaches and points of view that we hadn't covered.

The fact that we had to go on fifteen minutes longer than planned - due to student's questions - is a testimonial to the level of interest you inspired in them.

We appreciate your willingness to share your knowledge.

Sincerely,

Robert Lopresti

June 5, 1998

To whom it may concern:

I wholeheartedly recommend Perry F. Mills for promotion to professor at Western. I have taken numerous classes from Mr. Mills, and have learned a great deal from each of them. Their content has been spectacular; they stress an uncompromising challenge to learn not only what things are, but why they mean. Through this method of strenuous mental exercise, I have learned (and questioned) the meaning, use, and construction of art. With this foundation, Mr. Mills has also assisted me in my studies of existentialist philosophy. The readings and course materials from these classes are without question the most important and enlightening texts I have ever read, and they have inspired me to undertake and find such readings for my own edification.

In finding these readings and discovering new things about art, theater, and philosophy, I have always been able to take my findings to Mr. Mills and discuss them in full. This is a perfect example of how Mr. Mills is always inclined to both learn and teach, an increasingly rare attribute among the college professors I have worked with.

Perry Mills's uncompromising will to both learn and teach are what sets him apart from all instructors I have had in the past. I have little question that my college career-- my learning career-- started when I began taking Mr. Mills's classes; I now feel like a complete student. Many people have talked to me about Mr. Mills, questioning his teaching content. They say it is, at times, disturbing. I believe this comes from their fear of new material and new concepts; for what is more disturbing than true enlightenment? It is with great enthusiasm that I recommend Perry F. Mills for promotion to full professor.

Yours truly,

[Redacted signature and name]

CP 1341  
Christopher J. Sheets  
907 21<sup>st</sup> Street, #203  
Bellingham, WA 98225

June 2, 1998

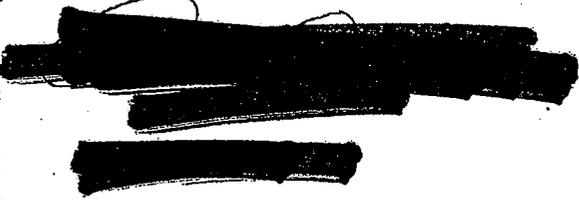
Western Washington University  
Bellingham, WA

Mr. Mills asked me to write a letter giving my opinion of the structure, content, teaching style of Introduction to Cinema class. Structurally, the class is broken up into weekly units that stress a common theme. The films share this theme. Mr. Mills has chosen films that often represent polar positions within the common theme of the week, which lends the films as focal points for discussion. Class begins with the presentation of the film, followed by a discussion. The discussions are information rich and always ask the students to "think", rather than simply record facts.

The content of the class encompasses an historical overview of film, film genres, directing approaches and styles, and the social commentary that the films viewed in class make on society. In this study of societal critique through film is where Mr. Mills excels.

Mr. Mills Teaching styles is one of a kind. His presentation is cohesive and well thought out, but by no means didactic. By posing serious questions as to why such films were created we can look into the face of our own beliefs and cultural views and discover how and why we do the things we, as humans, do. Students are strongly encouraged to interact with Mr. Mills and each other in a discussion of ideas which the films present. Mr. Mills has a wonderful style of presentation of these ideas. He inspires students to "think", by challenging their present worldview.

I have been Mr. Mills TA for the past three quarters, and during that time I have been able to truly see his method of inspiring discussion. His style creates an atmosphere for learning. I am so pleased to have had the opportunity to study his methods as well as seeing what it is like to truly care about the students and what they are learning.



Western Washington University  
Bellingham, Washington

President Morse:

I have recently received word that one of your professors has been placed on administrative leave, and his dismissal is pending. A dismissal of Mr. Perry Mills would be a grave mistake for an institution which puts so much stock into its students and their academics.

During my five years at Western, I had many fine professors, most of which I cannot remember their names. Perry Mills is one professor which I will never forget. His classes in theatre and the arts impacted my life and influenced my views because of his vivacious, natural teaching style. He connects with his students on a personal level. His concern for their academic well-being transcends the theatre and arts department. In fact, without his direct help, I would not have been able to bring a national teaching honor upon Western in 1998.

Perry Mills guides his students not only through his classes, but through their educational careers, with patience and humor. He makes the process of learning enjoyable by making it human. He takes it down off its pedestal and fits it into everyday life. In short, he cares about the success of his students at Western and beyond.

It would be a shame to let such a fine teacher and professor go. Please consider this testimony when it comes to making a decision for Perry Mills.

Sincerely,



Cc: Provost Bodman  
Dean Edwards  
Assistant Dean Friesen

[REDACTED]

October 29, 2004

Karen Morse, President  
516 High Street  
Old Main 450, MS 9000  
Bellingham, WA 98225-9000

Dear President Morse,

I am writing to you in regards to the suspension of one of Western's professors, Perry Mills. As a former student of his who is forever indebted to this man for all that he did during my sojourn in the theatre department, I cannot be apathetic about the matter.

I came upon Mills in the Winter quarter of my freshman year in his film class, ground upon which so many had tread before, and upon which so many have continued to tread. When I looked up and watched the great classic Citizen Kane for the first time, we were cozily set up in the Old Main theatre. By the time my little sister saw the Orson Wells masterpiece four years later, she was lost somewhere in the great lecture hall of Frasier.

I came across Mills again when I timidly began in earnest my theatre degree, two years later, in his Greek playwrights class. I never spoke, in his class or any other, and he was understandably unimpressed - until I turned in my first paper. I had his utmost respect from that day forward, all without the boisterous and extraverted personality his students are known for. I eventually took all of his classes, happily settling on a concentration in dramatic literature because that was the bulk of what he taught.

In terms of scholarly essays, I learned more about writing from him than from any other teacher or professor in all my years of schooling. My grades in my other literature classes improved thanks in great part to the detailed and lengthy feedback I received on each and every single paper I produced for him over the years. One paper in particular stands out in my memory, for it was at the bottom of this page where he wrote that it was the finest piece of scholarship he'd ever come across in all his years of teaching. No one has encouraged me more to continue my education, both on my own and through academia. It was he who first put the idea of graduate school into my head, and though this has been suggested by many others since, to hear it come from him, he who truly knows me on an academic level, means so much more than coming from anyone else.

In terms of thought, only one other professor - Dr. Margaritis from the English department - has ever influenced my own view of the world in such a monumental way. Perry Mills taught me how to examine the threads of philosophy running through the fabric of a play and how to see

their influence upon the action, the characters, and even the very words used to voice a particular school of thought. His aesthetics class was certainly the most valuable class I took as far as helping me to develop my own philosophies regarding the nature and valuation of art, something that is very dear to me. There has honestly never been a day gone by that I have not pondered over the subject. And one day, when I have sufficiently answered these questions as pertaining to the literary arts, and am able to put words to paper in explanation of just what great literature truly is, I guarantee you Perry Mills' name will be on the dedication page.

- Having known Mills for nearly eight years, having taken every one of his classes, I am at a loss as to how anyone could think this man a threat to his students. Since graduating, I have sat in on his classes, I have skulked around outside waiting for the hour to be up, I have encountered him on campus in the midst of eager students, and none of these times have I ever seen a man who was anything but thoroughly interested and dedicated to those students he has taken under his wing to teach and guide. Just a few weeks ago, I had a weekday off, and as I always do in such an event, I headed up to Bellingham. I found Mills and one of his playwriting students engaged in discussion regarding the structure of a play and its effects on the work as a whole. I have always known him to be available for his students, and most importantly, to enjoy being there for his students. I have seen this in so few other professors, for too often is the answering of students' questions seen as a mere obligation and, sometimes, pure drudgery.

I'm very concerned at what the loss of him would mean to both his current and prospective students. I've spoken to many of them since the incident occurred, and it is very apparent that he is not only wanted by many, but needed by them too. They are outraged and saddened and scared. These students are not being told what is to become of them or how their academic careers will ultimately be affected. I fear for them, the future playwrights, filmmakers, and, especially, those, like me, who long to find their own professorships in the hallowed halls of academia. Looking back, I can see no others from the theatre department who offered me any type of guidance or support. Without him, I would have been swallowed by the mediocrity and bureaucracy that is steadily eroding the shores of academia, that sacred land where knowledge is still sacred and valued. To allow this man to be dismissed from his position based on the request of a bitter colleague could only be an assault to Western's mission statement, for where is "the pursuit of truth, learning and the dissemination and development of knowledge" in the mess that has transpired?

I beg of you to take notice to the situation and help it come to a resolution that best serves the student body and the honorable ideals for which our university strives.

Please do not hesitate to contact me if I can be of any assistance.

Sincerely,

[Redacted signature]

## APPENDIX E



## MEMO

Office of the Provost and  
Vice President for Academic Affairs

Bellingham, Washington 98225-MS 9033  
(360) 650-3480 Fax (360) 650-7475

**To:** Perry Mills, Department of Theatre Arts  
**From:** Andrew R. Bodman, Provost and Vice President for Academic Affairs  
**Date:** June 6, 2005  
**Subject:** Statement of Charges

ARB

I am informed that the three member panel of the Faculty Committee on Sanctions and Grievances was unable to "effect an adjustment" though its efforts in meeting with you, your original attorney, Greg Thulin, Dean Edwards, Chair Mark Kuntz, and Senior Counsel Wendy Bohlke, on March 9. I was informed that a settlement had been achieved on May 4 and that you then withdrew from it and hired a different attorney, James Lobsenz of Seattle.

Dean Edwards, Chair Mark Kuntz and I hold the view that formal proceedings should commence. I am informed by legal counsel that you share this view and hereby provide you with a statement of charges as contemplated in the Faculty Handbook in Section I, XVII.1. We hold the view that your behavior and conduct towards students and fellow faculty falls substantially below the standards to which faculty should be held. Please consider this communication to you the Statement of Charges.

Dean Edwards arrived to assume her post as Dean of the College of Fine and Performing Arts in September 2004. Within 4 weeks of her arrival, she received two written complaints from Theater faculty and a written complaint from a student regarding you, Professor Perry Mills. Within that same time period, a student lodged a written complaint about you with me. I forwarded that complaint to Dean Edwards. Professor Kuntz also reported to Dean Edwards within this time frame that he had received reports from two students that Professor Mills had waved a knife around in a discussion with the students, ostensibly to make a point about a dramatic reaction, and the students felt that doing so with a real knife was threatening, inappropriate and concerning. He reported to the dean that similar threatening and abusive behaviors by Professor Mills had been the subject of a written warning within the past 4 years. A copy of that October 31, 2000, memorandum to you is attached as Attachment A.

Professor Kuntz reported to Dean Edwards that library staff had reported to him that they were very uncomfortable in having to work with Professor Mills due to his behavior, which they felt was menacing and threatening. He also reported having heard Professor Mills speaking with a female student during Spring Quarter 2004 using abusive and derogatory words, and receiving a report from another female student he'd referred to Professor Mills that the student chose not to take a course from Professor Mills due to Professor Mills' use of derogatory and hostile words during that time frame.

The WWU Faculty Handbook states, in Section I, III. D:

#### **D. Scholarly and Professional Qualifications of Faculty Members**

1. It is the policy of Western Washington University to appoint faculty members who provide evidence of achievement (or the promise of achievement) in teaching, in scholarly or creative endeavors, and in service to the University and community. Unless otherwise specified in the letter of appointment, retention shall be on the basis of continuing effectiveness in these areas. Assessment at all levels is to be carried out in accord with the unit evaluation plan.
2. **Faculty members have an obligation to adhere to and behave in keeping with the principles of faculty conduct contained in the Code of Faculty Ethics (found in Appendix F of the Handbook).**
3. Faculty have an obligation to pursue excellence in teaching.
4. Faculty have an obligation to engage in scholarly and/or creative activity of recognized quality.
5. Faculty have an obligation to serve their departments, colleges, University, and profession. In addition, the University values contributions to the wider scholarly and civic communities.

As noted above, faculty at WWU are obligated to adhere to and behave in conformance with the Code of Faculty Ethics. That document states, in part, in its preamble:

Membership in the academic community and in the faculty of Western Washington University imposes upon faculty a range of obligations beyond that currently accepted by the members of the wider society. **These obligations, which ensue from the faculty member's commitment to learning and to the role of teacher, including obligations to respect the dignity of others; to acknowledge the right of others to express differing opinions; to foster learning; to defend intellectual honesty, freedom of inquiry, learning and teaching; and to support freedom of expression on and off the campus. An obligation to protest injustices and seek correction of inequities carries with it the**

corollary responsibility to do so in ways which do not intentionally, persistently, or significantly impede the functions of the institution.

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CP 44

The Faculty Handbook states, in Section I, D:

A faculty member covered under the Faculty Handbook may be dismissed for cause from his or her position only for one or more of the following reasons:

- 1) A serious and persistent neglect of faculty duties.
- 2) Unlawful discrimination or sexual harassment. (*See Appendix C of WWU FH.*)
- 3) Serious scientific or scholarly misconduct, consisting of, but not limited to, significant misrepresentation of credentials, falsification of data, plagiarism, abuse of confidentiality, violation of regulations applicable to research, or failure to meet minimum standards of professional competence.
- 4) Conviction of a felony.
- 5) Intentional and malicious interference with the scientific, scholarly, and academic activities of others.

It is the view of Dean Edwards, Chair Mark Kuntz and I that your conduct and behavior fall under #1 and #5 above, because:

- faculty duties include behaving in conformance with the Code of Faculty Ethics, and your behavior and conduct has violated several elements of that code; and
- your behavior constitutes intentional and malicious interference with the scholarly and academic activities of others, including faculty and students.

Here is a list of references to particular elements of the Code of Faculty Ethics that the Dean, Chair and I assert have been breached through your pattern of behavior towards your faculty colleagues, and your interactions with the particular students who lodged complaints in Fall 2004:

1. Two female students who lodged complaints make reference to language used and statements made by Professor Mills in the classroom towards, in the one case, to the student complainant, and the other, to other students, which the complainants viewed as cruel and demeaning. This violates:

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**Section 1**

Western faculty members, guided by a deep conviction of the worth and dignity of their role in the advancement and dissemination of knowledge, recognize the special responsibilities placed upon them as scholars. Their primary responsibility to their respective subjects is to seek and to state the truth as they, in consequence of their academic competence, perceive it. To this end faculty energies are devoted to developing and improving their scholarly competence. **They accept the obligation to exercise self-discipline and judgment in using, extending and transmitting knowledge.** They practice intellectual honesty. When subsidiary interests are followed, they must insure that these interests do not seriously compromise freedom of inquiry nor the fulfillment of academic responsibilities.

Clearly, using language and words that are cruel and humiliating does not demonstrate self-discipline and judgment in using, extending and transmitting knowledge.

- Shareen Julieta Faleafine wrote to me on October 7, 2004, complaining that words used towards her by you in a parking lot that morning caused her to feel uncomfortable, put-down, discouraged and scared. A copy of her letter is attached as Attachment B.
- Caitlin Doyle lodged a complaint received by the college dean's office on October 12, 2004, against you. The incident about which she writes occurred in Spring 2004. She chose to lodge it in Fall Quarter 2004, after having completed your course. A copy is attached as Attachment C.

Two students complained to Chair Mark Kuntz on October 5 that you pulled your knife after class in a discussion with a group of males in the class that day. They indicated to the chair that using a real knife was threatening, inappropriate and concerning. I would also note it is contrary to university regulation to bring firearms, knives and other weapons to campus. After having been warned in 2001 that having weapons on campus was a violation of university regulation, and being told not to do it again, you apparently chose to disregard the warning and regulation.

2. The two female students who lodged complaints describing language and conduct set out facts which demonstrates a violation of Section 2 of the Code, which states:

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**Section 2**

As teachers, the Western faculty encourage the free pursuit of learning by students, and demonstrate by example the best scholarly standards of their respective disciplines. The faculty respect students as individuals and adhere to their designated role as intellectual guides and counselors, make every effort to foster honest academic conduct and to assure that evaluations of students reflect their actual performance. **The faculty avoid and condemn sexual harassment, intimidation, and the exploitation of students.** The confidential nature of the relationship between professor and student is respected, and any exploitation of students for private advantage is avoided by the faculty member who acknowledges significant assistance from them. Faculty strive to help students develop high standards of academic competency and respect for academic freedom.

3. Two faculty, one woman, and one man, complained in writing to Dean Edwards that they have felt harassed, threatened and intimidated by Professor Mills over a series of years due to his use of language towards them. The woman stated that he had called her a "bimbo," "slut" and once even "cunt." She has witnessed him call students in her classes "shit-for-brains," "blondies," and one over-weight student a "400 pound canary who warbles nothingness" and "makes him sick." She indicates she considers Professor Mills' student and faculty 'victims' to suffer merciless verbal abuse.

The man indicates that he seriously fears Professor Mills due to having been labeled by Professor Mills "just a stupid fagot" early in his career at Western (several years ago), being subjected to direct offensive comments until they subsided upon his demand, but remaining in fear of him due to Professor Mills' volatility and his continued name calling as Gregory Lawrence "Precious." He views Professor Mills as a threat to his safety and that of students.

Dean Edwards and Chair Mark Kuntz hold the view that the above-described behaviors are in direct conflict with Section 4 of the Code of Faculty Ethics, which states:

**Section 4**

As a colleague, the Western faculty member has special obligations that derive from membership in the community of scholars. These include respect for, and defense of, the free inquiry of associates and, in the exchange of criticism and ideas, the respect for the opinions of others. Faculty members acknowledge the contributions of their colleagues and strive to be fair in their professional judgment of colleagues. Each accepts his/her share of faculty responsibilities for the governance of this institution.

4. ~~Dean Edwards and Chair Mark Kuntz hold the view that Professor Mills' language used towards students, as witnessed by Chair Mark Kuntz and others, and towards college faculty, the previous dean, and library staff is unacceptable in a faculty member. Chair Mark Kuntz reported in a memorandum to Dean Edwards a series of incidents in academic year 2003-2004, which Chair Mark Kuntz believes demonstrate unprofessional, rude and unacceptable conduct on Professor Mills' part.~~

- a. In Spring 2004, Chair Mark Kuntz referred a student to Professor Mills to discuss playwriting courses, warning her about Professor Mills' verbal approach. She later reported that she chose not to take the course because Professor Mills twice referred to her as a bimbo during their conversation;
- b. At the end of Spring Quarter 2004, Chair Mark Kuntz witnessed a conversation between Professor Mills and the department's administrative assistant for one of Professor Mills' courses. Professor Mills language included saying, "You bitch, you screwed up." "I would understand if she were missing a leg." "Is she retarded?"
- c. In Winter Quarter 2004, former Dean Smeins called a meeting of the college faculty which Professor Mills attended. Professor Mills sought to speak and, according to Chair Mark Kuntz, went on two rants, both including phrases about killing those administrators in administration responsible for his argument. Professor Mills spoke the entire time Dean Smeins attempted to speak. Smeins was unsuccessful in her attempt to speak.
- d. Chair Mark Kuntz reported that library staff express fear of Professor Mills in Professor Mills' dealings with them, indicating their hope that the college deal with Professor Mills' anger with his challenge to course fee expenditures and that he not bring the library staff into it.
- e. Chair Mark Kuntz noted that his department had discussed their fear of Professor Mills at their Fall 2004 retreat and determined that their previous approach of dealing with him, enabled his behavior. He reported to the chair that their collective response 'comes from a place of fear.'

A copy of that memorandum is attached as Attachment D:

Dean Edwards and Chair Kuntz hold the view that Professor Mills' anger towards others, including administrators, is disruptive to the work of the college and the university. The following item in the Code of Faculty Ethics speaks in part to this concern. It states:

### **Section 8**

The expression of dissent and the attempt to produce change on campus and in the larger society are legitimate, but they must be carried out in ways which do not violate academic freedom, injure individuals, disrupt the classes of colleagues, intrude on the individual rights of others, or damage institutional facilities or

private or public property. All members of the academic community and visitors to the University must be assured of the right to be heard in an atmosphere of free inquiry and in a situation devoid of violence.

Chair Kuntz wrote to you, Professor Mills, October 31, 2000, regarding incidents regarding your display of a 5 inch knife, which was viewed as a threatening gesture by a student complaint then. You were further warned in that memorandum that reported off-color remarks concerning your faculty colleagues, women, gay students and minority populations on campus. References to your obligation to behave in conformance with the Code of Faculty Ethics was made in that memo.

Given your apparent failure to abide by the Code of Faculty Ethics, and your hostile remarks and behavior towards your students and colleagues, your continued ability to serve on this faculty is at issue.

Through these charges, I ask the Faculty Committee on Sanctions and Grievance be formed to hear these charges, make factual determinations, and render judgment as to whether severe sanctions, including termination from your tenured position on the faculty, should be imposed.

- c: James Stewart, President, Faculty Senate, 2004-2005
- William Lyne, President, Faculty Senate, 2005-2006
- Wendy Bohlke, Senior Counsel
- Dean Carol Edwards
- Chair Mark Kuntz
- ✓ James Lobsenz, Attorney for Professor Mills

**APPENDIX F**

## **Appendix F**

# **Code of Faculty Ethics for the Faculty of Western Washington University**

### **Preface**

Membership in the academic community and in the faculty of Western Washington University imposes upon faculty a range of obligations beyond that currently accepted by the members of the wider society. These obligations, which ensue from the faculty member's commitment to learning and to the role of teacher, including obligations to respect the dignity of others; to acknowledge the right of others to express differing opinions; to foster learning; to defend intellectual honesty, freedom of inquiry, learning and teaching; and to support freedom of expression on and off the campus. An obligation to protest injustices and seek correction of inequities carries with it the corollary responsibility to do so in ways which do not intentionally, persistently, or significantly impede the functions of the institution.

A professional faculty, as guardian of academic values, serves as the instrument of disciplinary action against unjustified assaults upon those values by its own members. The traditional faculty role of limiting participation in disciplinary action to assurance of academic due process is inadequate to protect the conditions enumerated in the 1940 AAUP Statement on Academic Freedom. This function must be preserved but must also be strengthened by faculty assumption of responsibilities in adopting, practicing and promoting adherence to those principles of conduct essential to academic endeavor.

In recognition of this responsibility, the faculty of Western Washington University have adopted this Code of Ethics as a guide for present and future members of the University faculty.

### **Section 1**

Western faculty members, guided by a deep conviction of the worth and dignity of their role in the advancement and dissemination of knowledge, recognize the special responsibilities placed upon them as scholars. Their primary responsibility to their respective subjects is to seek and to state the truth as they, in consequence of their academic competence, perceive it. To this end faculty energies are devoted to developing and improving their scholarly competence. They accept the obligation to exercise self-discipline and judgment in using, extending and transmitting knowledge. They practice intellectual honesty. When subsidiary interests are followed, they must insure that these interests do not seriously compromise freedom of inquiry nor the fulfillment of academic responsibilities.

### **Section 2**

As teachers, the Western faculty encourage the free pursuit of learning by students, and demonstrate by example the best scholarly standards of their respective disciplines. The faculty respect students as individuals and adhere to their designated role as intellectual guides and counselors, make every effort to foster honest academic conduct and to assure that evaluations of students reflect their actual performance. The faculty avoid and condemn sexual harassment, intimidation, and the exploitation of students. The confidential nature of the relationship between professor and student is respected, and any exploitation of students for private advantage is avoided by the faculty member who acknowledges significant assistance from them. Faculty strive to help students develop high standards of academic competency and respect for academic freedom.

### **Section 3**

A teacher's mastery of his/her subject and scholarship entitles the teacher to a classroom and to freedom in the presentation of a subject. Faculty thus avoid injecting into classes material which has no relation to the subject and conscientiously develop the content of a course as announced to students and as approved by the faculty in their collective responsibility for the curriculum.

### **Section 4**

As a colleague, the Western faculty member has special obligations that derive from membership in the community of scholars. These include respect for, and defense of, the free inquiry of associates and, in the exchange of criticism and ideas, the respect for the opinions of others. Faculty members acknowledge the contributions of their colleagues

and strive to be fair in their professional judgment of colleagues. Each accepts his/her share of faculty responsibilities for the governance of this institution.

### **Section 5**

As a member of this institution, each Western faculty member seeks above all to be an effective teacher and scholar. Although all regulations of the institution that do not contravene academic freedom are observed by the faculty, the right to criticize the institution is determined by the faculty member with due regard to the paramount responsibilities within it. When considering the interruption or termination of service, the faculty member recognizes the effect of such decisions upon the program of the institution and gives due notice of such intentions.

### **Section 6**

As a member of a larger community, the Western faculty member maintains the same rights and obligations as does any other citizen. The urgency of these obligations is measured in the light of responsibilities to the discipline, to the students, to the profession, and to the institution. When speaking or acting as a private individual, each faculty member avoids creating the impression of speaking or acting for the University. As a citizen engaged in a profession that depends upon freedom for its integrity and welfare, the Western faculty member exercises a special obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

### **Section 7**

Academic Freedom has traditionally included the instructor's full freedom as a citizen. Most faculty members face no insoluble conflicts between the claims of conscience and of social and political action, on the one hand, and the claims and expectations of students, colleagues and the institution on the other. If such conflicts become acute, and the instructor's attention to obligations as a concerned citizen precludes the fulfillment of academic obligations, he/she should either request a leave of absence or resign his/her academic position.

Relationships of a romantic or sexual nature between a faculty member and a student under that faculty member's supervision always endanger the faculty member's decision-making abilities and the student's need for a non-intimidating learning environment. Even if both parties in such a relationship are capable of separating their personal and professional relationships from one another, the faculty member cannot exhibit the professionalism that is expected of him/her. Consequently, a faculty member is obliged to disengage himself/herself from a supervisory role over any student with whom he/she has established or seeks to establish a romantic or sexual relationship. No faculty member at Western Washington University will evaluate, grade, or supervise a student with whom the faculty member is romantically or sexually involved.

### **Section 8**

The expression of dissent and the attempt to produce change on campus and in the larger society are legitimate, but they must be carried out in ways which do not violate academic freedom, injure individuals, disrupt the classes of colleagues, intrude on the individual rights of others, or damage institutional facilities or private or public property. All members of the academic community and visitors to the University must be assured of the right to be heard in an atmosphere of free inquiry and in a situation devoid of violence.

### **Section 9**

It is presumed that members of the Western faculty will find this Code of Ethics an adequate guide for the choices they must make in the fulfillment of their academic functions. If rules are needed to implement the principles inherent in this Code, they shall be developed by the faculty within the spirit of the Code, shall be in accordance with the 1940 AAUP Statement on Academic Freedom, and shall carry full provision for due process.

*[Adopted by the Faculty Senate 5/3/93 and faculty referendum 5/14/93; approved by the Board of Trustees 7/8/93]*

## APPENDIX G

Effective Date: December 4, 1992

**POLICY**

Authority: RCW 28B.35.120(12)

Approved: Board of Trustees 8/3/90; Amended 12/4/92

**POL 350-40 – POSSESSING FIREARMS OR DANGEROUS WEAPONS ON WWU CAMPUS**

*This policy applies to all individuals who work, live, or otherwise visit the Western Washington University campus.*

**Only Persons Who Are Authorized May Carry Firearms or Other Weapons on Campus**

**Firearms and dangerous weapons.** (1) Only such persons who are authorized to carry firearms or other weapons as duly appointed and commissioned law enforcement officers in the state of Washington, commissioned by agencies of the United States government, or authorized by contract with the university, shall possess firearms or other weapons issued for their possession by their respective law enforcement agencies or employers while on the campus or other university-controlled property, including, but not limited to, residence halls. No one may possess explosives unless licensed to do so for purposes of conducting university-authorized activities relating to building construction or demolition.

**Storage Facility is Provided to Place Firearms or Weapons**

(2) Other than the law enforcement officers or other individuals referenced in subsection (1) of this section, members of the campus community and visitors who bring firearms or other weapons to campus must immediately place the firearms or weapons in the university-provided storage facility. The storage facility is located at the university public safety Department and is accessible twenty-four hours per day.



Arrangements Can Be Made for Demonstration or Educational Activities Involving Weapons

(3) If any member of the campus community or visitor wishes to bring a weapon to the campus for display or demonstration purposes directly related to a class, seminar, or other educational activity, permission for such possession may be applied for at the university Public Safety Department, which shall review any such proposal and may establish the conditions of the possession on campus.

WAC 516-52-020