

DR. MANWELLER'S RESPONSE TO CWU'S IMPROPER EFFORTS TO UNDERMINE HIS PROFESSIONAL CAREER

I. Introduction.

As we all know, Dr. Manweller, a tenured associate professor who is well-qualified, and was on track for a full professorship, was elected as a state representative in November 2012. In an effort to undermine Dr. Manweller's political aspirations, on July 11, 2012, the Yakima Herald Republic received an "anonymous" tip "alleging that *complaints* were filed with the Provost's Office accusing Dr. Manweller of offering better grades to students in exchange for favors that may have included sexual acts." A reporter with the Herald then sent an e-mail to CWU "to request copies of any documents relating to *complaints* filed with the institution against Professor Mathew Manweller in his time at Central Washington University." A copy of the e-mail is attached at **Appendix A** hereto. After conducting an investigation of its records, CWU concluded that no "complaints" were filed by any students alleging sexual misconduct, and in particular, no complaints of "offering better grades to students in exchange for [sexual] favors". CWU's investigation revealed that there had been only two allegations of improper conduct against Dr. Manweller, both of which occurred in 2006. The allegations were fully investigated at the time in accordance with CWU's then-existing policies and procedures. Neither of the allegations was substantiated, and neither met the definition of "sexual harassment" as that term is defined under CWU's policies and procedures, which are the same as required under Title IX. After the investigation, not only did CWU take no further action, it awarded Professor Manweller early tenure -- something granted to few professors.

II. CWU's Chief of Staff Targets Dr. Manweller.

CWU could have honestly responded to the Yakima Herald's request by stating that no complaints were filed with the Provost's office accusing Dr. Manweller of offering better grades to students in exchange for sexual favors, nor were there any other complaints filed with CWU alleging sexual misconduct. Instead, CWU produced to the Herald all documents it could find relating to the unsubstantiated 2006 allegations. Because the Herald found nothing in those records worthy of reporting, nothing appeared in the newspaper as a result of CWU's initial disclosure.

It is at this point that CWU's Chief of Staff, Sherer Holter, who is believed to have a law degree, made an ill-advised and misguided decision to reopen the 2006 allegations, even though no student complaints were ever filed with CWU, the two students in question had long-ago left CWU and moved out of the area, and no new complaints or information had come to the attention of CWU during the interim 6 years. Ms. Holter's excuse for reopening the investigation was her purported concern that the prior investigation may not have complied with the requirements of Title IX. A copy of Ms. Holter's sworn statement regarding her "reasoning" is attached at **Appendix B** hereto.

Although Ms. Holter's sworn statement "emphatically denies . . . that the investigation was politically motivated or conducted for any other improper purpose", any reasonable conclusion from the facts dictates otherwise. Indeed, if Ms. Holter were truly concerned about whether CWU's prior investigation of Dr. Manweller complied with the then-existing requirements of Title IX, she could have simply presented the relevant facts to an expert on the subject, and then asked if CWU complied with Title IX. Moreover, if there were any question as to whether CWU's investigation was in compliance, Ms. Holter could have also asked the expert if CWU was required to re-open an investigation into the 2006 allegations. She did neither.

Ms. Holter's sworn statement is dated October 25, 2012. However, in prior e-mail responses to CWU's Robert Hickey questioning Ms. Holter as to why CWU's Equal Opportunity Office was not running the investigation, and why the investigation was being opened based upon something allegedly occurring six years earlier, she made no mention of her purported concerns regarding Title IX compliance. It is also obvious from her responses that she is engaging in a "song and dance" to justify CWU's conduct. What Ms. Holter's responses to Mr. Hickey demonstrate is that she arbitrarily applied what she believes to be her discretionary authority to reopen an old, unsubstantiated allegation at her whim. A copy of Ms. Holter's e-mail responses to Mr. Hickey are attached at **Appendix C** hereto. One must also question why, if Ms. Holter truly believed that CWU "dropped the ball" in terms of its Title IX compliance in 2006, those who ran the investigations in 2006, and who are still employed by CWU, are not being disciplined or investigated for their failures?

Moreover, as a matter of law, it is extremely doubtful that a new investigation of two unsubstantiated, six-plus year old allegations would have been required; yet, Ms. Holter appears to have unilaterally decided otherwise. What makes Ms. Holter's decision even more suspect is this: If Ms. Holter was really concerned over whether CWU's policies and procedures complied with Title IX in 2006 (and thereafter prior to her employment with CWU), why did she limit the investigation to Dr. Manweller, when in fact there were numerous allegations of sexual misconduct against other faculty members and employees at CWU during this time?

In another gross error of judgment (or, perhaps, a calculated move to destroy or harm Dr. Manweller), Ms. Holter not only decided to re-open the investigation into the unfounded 2006 allegations, she decided to hire an outside law firm - Ogden, Murphy, Wallace ("OMW") - to conduct the investigation. In doing so, Ms. Holter made sure that CWU *did not* retain the law firm as counsel for CWU, but instead to act only as an "independent" investigator. Had she hired the law firm to act as CWU's attorneys, the investigation would have been protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine. Any person with a legal background knows this.

Further raising a red flag as to Ms. Holter's real motive is that it appears Dr. Manweller is the only professor for whom Ms. Holter caused CWU to hire an outside, private investigator, based upon such stale and unsubstantiated allegations. One must also wonder why Ms. Holter did not conduct the investigation internally to begin with, and why she felt compelled to take personal charge of the investigation as CWU's contact person with the outside investigator. Whether CWU's 2006 investigation of Dr. Manweller complied with Title IX clearly involves answering a legal question. By law, therefore, CWU was required to have this issue handled by the Attorney General's office, pursuant to RCW 43.10.040, which states in part: "The attorney general shall also represent the state [including state-funded universities] . . . in all legal or quasi legal matters, hearings, or proceedings, and advise all officials, departments, boards, commissions, or agencies of the state in all matters involving legal or quasi legal questions, except those declared by law to be the duty of the prosecuting attorney of any county."

Also casting a pall over Ms. Holter's and CWU's credibility in ordering and directing the investigation of Dr. Manweller are the following uncontroverted facts: (1) despite the fact the allegations were over six years old, and involved two former students who no longer live in the area, and no new information had come to light in the interim, Ms. Holter directed OMW to commence its investigation on *August 9, 2012*, and complete it on *August 17, 2012*; (2) the retainer with OMW made no reference to compliance with Title XI; and (3) CWU's attachment to the retainer falsely states: "A complaint of sex discrimination was received anonymously in 2006 and 2008." (Underscoring added.) A copy of CWU's agreement with OMW is attached at **Appendix D** hereto. Moreover, when it was clear that the investigation was going to take more time, on September 28, 2012, Ms. Holter sent an e-mail to the investigator (Ernest Radillo at OMW) stating: "*Please expedite as best you can.*" See **Appendix E** hereto (emphasis added).

These facts beg the obvious rhetorical question: Since the allegations went back over six (6) years, the two students in question were no longer at CWU and had moved out of the area, and there were no other allegations, why was Ms. Holter in such a rush to have the investigation completed and a report prepared? Two other disturbing, rhetorical questions are: Why was Ms. Holter insisting that she be consulted during the investigation process, which was supposed to be independent? And how could she reasonably believe that a competent investigation of ancient news could be completed in such a short timeframe? The only reasonable conclusion to be drawn from these facts is that Ms. Holter wanted to expedite the report so that it could be sent to the newspaper for publication in advance of the mailing of ballots in mid-October. Confirmation for this conclusion is found in Ms. Holter's sworn statement, confirming that "around mid-September 2012, the reporter for the *Yakima Herald Republic* initiated several calls to CWU requesting additional information about the Manweller matter." See Appendix B at ¶6. Somebody at CWU, or with access to CWU's internal affairs, leaked to the press the fact that the investigation was being conducted, and Ms. Holter apparently wanted to take full advantage of this leak to Dr. Manweller's detriment.

III. The Immediate Effect of CWU's Unwarranted Investigation.

Although the OMW/Radillo report, dated October 1, 2012, led CWU to determine that the allegations against Dr. Manweller remained unsubstantiated, and no disciplinary action was

initiated against him, CWU turned the report over to the Yakima Herald Republic and Ellensburg Daily Record. CWU made no attempt to prevent its disclosure, even though Dr. Manweller's attorney urged CWU's counsel to do so, and provided several grounds on which disclosure could be prevented, including the attorney-client privilege. Although CWU claimed that it did not hire the OMW law firm in its capacity as an attorney to conduct the investigation, OMW obviously believed otherwise. And the reason we know this is because, when Dr. Manweller attempted to get copies of OMW's files relating to its investigations, OMW initially refused to produce several documents on the ground that they were protected by the attorney-client privilege and/or work product doctrine. See **Appendix F** hereto.

As might be expected, once the report hit the news the week before the November 2012 election, a former student left a voice mail message with CWU, alleging that she knew of a student who years ago had made an allegation against Dr. Manweller. The student in question, [redacted] [redacted], is one of the two students who was the subject of the original 2006 allegations and investigation that Ms. Holter reopened in 2012, giving rise to the OMW/Radillo report of October 1, 2012. In addition, two CWU personnel claim that a student, [redacted] stated she had been the subject of inappropriate conduct by Dr. Manweller. [redacted], however, stated, under penalty of perjury, that this was not true. See **Appendix G** hereto.

Nonetheless, Ms. Holter used these suspect allegations to order a second investigation of Dr. Manweller by Mr. Radillo and OMW. Ms. Holter again failed to conduct the investigation internally or through the AG's office; she again failed to take any steps to have the investigation remain confidential (i.e., by retaining OMW and Mr. Radillo as outside attorneys); she again insisted that she be the contact person in the investigation and, as will be made clear below, Ms. Holter and other CWU "speaking agents", had their hands in drafting the language of the second OMW/Radillo report. (This response will later fully expose how the report was not objective, was result-oriented, and is not worth the paper it is written on.)

IV. Dr. Manweller Was Wrongly Disciplined and Denied Promotion.

To make matters worse, this second investigative report caused Dean Johnson to reject the COTS Personnel Committee's unanimous recommendation "that Dr. Manweller has met department,

college, and university standards" to "be granted promotion to the rank of Professor." A copy of the letter of recommendation, dated March 6, 2013, is attached at **Appendix H** hereto.

Attached at **Appendix I** hereto is a copy of Dean Johnson's letter to Provost Levine stating that he does not recommend Dr. Manweller for promotion to the rank of full professor. Although Dean Johnson concurred with the prior levels of review regarding the three criteria for promotion (teaching, scholarship, and service), and that Dr. Manweller's performance in these areas "reaches the level of exemplary or exceptional", he nonetheless opines that Dr. Manweller's "interaction with students outside of the classroom setting and his behavior in public have both breached professional levels at times."

A day earlier, on April 3, 2013, Dean Johnson had issued Dr. Manweller a written reprimand based upon the investigative reports, in which he inaccurately states that, during a meeting of March 19, 2013, Dr. Manweller "admitted that [he] engaged in inappropriate behavior with a female student in a class of [his] and another female student at a local bar." According to Dean Johnson, Dr. Manweller "admitted to buying drinks for two (2) women, accepting drinks from them, and saying something to them that was inappropriate." This is an inaccurate characterization of what was actually stated by Dr. Manweller. Moreover, Dean Johnson later admitted, under oath, that there is no policy against faculty members having drinks with students. Dean Johnson's second basis for his reprimand is that Dr. Manweller exchanged cell phone numbers with a current female student, and included her as a Facebook friend. Dean Johnson states: "I find these incidents to be unprofessional and have the appearance of abuse of power."

Dean Johnson's "findings" are not sufficient to warrant any formal discipline or to justify denying Dr. Manweller's promotion. At most, Dr. Manweller had drinks with two students in 2006, and *may have* said something inappropriate, although he does not recall anything specific about the alleged incident that occurred over six (6) years ago. And exchanging cell phone numbers or other contact information with a student does not appear to be prohibited by any of

CWU policies or procedures.¹

To Dean Johnson's credit, however, when he wrote the letter of reprimand and made his recommendation against promoting Dr. Manweller, he did not have before him the facts demonstrating the total lack of credibility of the second investigative report and the influence CWU's Ms. Holter and others had in dictating its pre-ordained and biased conclusions, each of which will now be fully exposed.

V. The Second Investigative Report, Prepared by Ernest Radillo of OMW, is Not Worth the Paper it is Printed On.

A. OMW's and Mr. Radillo's Biased Predisposition.

OMW and Mr. Radillo had a vested interest in giving CWU the outcome-driven report desired by Ms. Holter and perhaps others at CWU. Prior to investigating Dr. Manweller, OMW and Mr. Radillo substantially cut their fees in an unrelated investigation, in order to induce CWU into making OMW the "go to" firm for outside legal services. Specifically, in November 2011, during the investigation of another CWU faculty member, OMW wrote off "over \$6,800 in fees and costs", thus resulting in a "total net savings for CWU of approximately \$19,370." A motivating factor behind this was OMW's desire "to establish a long term continuing relationship with CWU." See **Appendix O** hereto. Significantly, the billing statement attached at **Appendix O** reveals just how "hands on" CWU was in influencing the outcome of the investigation. For example, on November 3, 2011, Mr. Radillo spent three hours attending a debriefing meeting at CWU with HR personnel and Ms. Holter, which resulted in a "checklist of suggested changes and revisions to Report of Investigation." CWU's intimate involvement in drafting the report eliminates any colorable claim that the report was independent and objective.

Regarding the second investigation of Dr. Manweller, on January 24, 2013 at 10:41 a.m., Mr. Radillo forwarded to CWU's Staci Sleight-Layman an e-mail attaching his "*Final* Second

¹ A copy of Dean Johnson's letter of reprimand is attached at **Appendix J** hereto. Attached at **Appendix K** hereto is a copy of Dr. Manweller's Official Grievance Form regarding Provost Levine's decision not to promote him. Attached at **Appendix L** hereto is a copy of Dr. Manweller's rebuttal to Dean Johnson's claims of inappropriate behavior; attached at **Appendix M** hereto is a copy of Dr. Manweller's letter to Provost Levine responding to Dean Johnson. Attached at **Appendix N** hereto is Provost Levine's response to Dr. Manweller's letter, which states that her decision to deny his promotion was based upon her reading of Dean Johnson's reprimand letter.

Investigative Report concerning Dr. Manweller." See **Appendix P** hereto. The report is dated January 24, 2013. At page 16, it is signed by Mr. Radillo under the following statement: "THIS INVESTIGATIVE REPORT WAS COMPLETED ON JANUARY 24, 2013."

Curiously, however, seven days later, on January 31, 2013, at 2:26 p.m., Mr. Radillo e-mailed to Ms. Sleigh-Layman his "Revised Second Investigative Report Documents". A copy of Mr. Radillo's e-mail and the first and last pages of his "Revised Second Investigative Report", dated January 31, 2013, are attached at **Appendix Q** hereto. The first page of the report, however, does not indicate that it is a "Revised" Second Investigative Report, and Mr. Radillo's signature at page 16; is again under the following statement: "THIS INVESTIGATIVE REPORT WAS COMPLETED ON JANUARY 31, 2013". This calls into question Mr. Radillo's credibility, as well as that of CWU, because an objective, ethical investigator, particularly one who is also a lawyer, would have indicated that the "final" January 31st report had been revised or amended from the "final" report dated January 24th.

So what happened in between? A review of the documents subpoenaed from Mr. Radillo's office, but withheld by CWU in response to Dr. Manweller's public records disclosure requests and his formal document production requests during the litigation, show that CWU participated in revising the language of the report. On January 24th, at 3:34 p.m., Mr. Radillo sent an e-mail to Ms. Sleigh-Layman attaching yet another "Second Investigative Report (Final)", in which he stated: "Attached is an updated Report *to reflect the change on page 1 referenced in your voice mail.*" (Emphasis added.) See **Appendix R** hereto. So it now appears we have an interim, third "final" report, which incorporates CWU's changes to the original "final" report. But CWU's involvement in drafting the "final" report does not end here.

On January 30th, Ms. Sleigh-Layman sent an e-mail to Mr. Radillo in which she stated: "Hi, Ernest. This question came from Alan Smith. Can you help me understand what you meant? I think he makes a good point." Ms. Sleigh-Layman then typed out, in quotes, what apparently is AG Smith's suggested change: "'I want to suggest one change on Page 11 of the Second Investigative Report, at the beginning of the last paragraph, where it states that 'Ms. Yastchenko condoned Dr. Manweller's behavior.' To 'condone' behavior means to 'pardon' or

'excuse' the behavior. I'm sure that's not what was meant.'" See **Appendix S** hereto. In response, the following day (January 31st), Mr. Radillo sent an e-mail to Ms. Sleigh-Layman stating: "I made a correction to the Second Investigative Report. Attached is a letter explaining my change, and a copy of the updated Second Investigative Report." See **Appendix S** hereto (the final e-mail), and Mr. Radillo's attached letter at **Appendix T** hereto.

Mr. Radillo's e-mail and attached letter were sent at 12:12 p.m. on January 31st, along with the attached updated Second Investigative Report. However, something else must have happened during the interim, because a little over two hours later, at 2:26 p.m., Mr. Radillo sent additional "Revised Second Investigative Report" documents. Compare Appendices Q and S. And who knows how many telephone conversations took place between Mr. Radillo and CWU's representatives between the "final" report of January 24th, and the official "final" report dated January 31st.

Moreover, Mr. Radillo's explanatory letter (Appendix T) appears to be deliberately misleading, because it states he made the correction based upon a conversation with Ms. Yastchenko to reconfirm her testimony, making no reference to the fact that the change was based upon the advice of CWU's counsel, Alan Smith. In fact, it appears that Mr. Radillo first considered changing the word "condoned" to "condemned" at page 11 of his report, as reflected from a version of page 11 produced by his office in response to Dr. Manweller's subpoena. See **Appendix U** hereto. Furthermore, the OMW billing records produced by CWU relating to Mr. Radillo's second investigation do not show that he had a conversation with Ms. Yastchenko on January 31st, nor do they indicate that CWU suggested making any changes to the first "final" report he sent to CWU on January 24th. See **Appendix V** hereto. In short, the circumstances surrounding Mr. Radillo's second investigation raise a large red flag regarding his and CWU's "objectivity"; hence, their credibility. And an examination of the report itself drives home the utter lack of objectivity and credibility.

B. Radillo's Second Investigative Report is an Untrustworthy Document Upon Which No Action by CWU Can Justifiably be Taken.

The Second Investigative Report, dated January 31, 2013, provided to Dr. Manweller, is attached at **Appendix W** hereto (without exhibits). The following analysis will include documents produced from Mr. Radillo's files, pursuant to Dr. Manweller's subpoena, which thoroughly destroy Mr. Radillo's credibility, as well as the findings and conclusions in his report.

1. [redacted]

At page 1 of his report, Mr. Radillo describes [redacted] as follows: "Credible witness testimony exists that Dr. Manweller violated CWU's Sexual Harassment Policy; but this incident occurred in 2006 and [redacted] did not submit a complaint with CWU at that time." (Nor has she ever.) Mr. Radillo's report, at page 2, states that [redacted] was interviewed on December 20 and 21, 2012, and on January 14, 2013. His report, however, omits any reference to an interview of [redacted] on January 15, 2013, in which she completely contradicted what she stated during her December 21st interview regarding an alleged stalking incident. This glaring, material omission strongly suggests deliberate malfeasance by Mr. Radillo; and it can be characterized at best as sheer incompetence. (Was CWU/Ms. Holter complicit in this?) The interview notes with [redacted], produced pursuant to the subpoena issued to OMW, are found at **Appendix X** hereto.

What makes [redacted] allegations totally untrustworthy, and destroys Mr. Radillo's credibility as an independent investigator, is that [redacted] made no mention whatsoever about any stalking incident in her initial interview of December 20th. The first mention of it was in her second interview, on December 21st, in which she claims she left a restroom of CWU with another female student (whose name she cannot recall) "and walked home." She "notice[d] Prof. Manweller was stalking [her]. (He was following me). I lost him at a Starbucks." During the interview of January 15th, however, which Mr. Radillo's report fails to disclose, [redacted] describes the alleged stalking incident entirely differently, as follows: "[redacted] alleges Dr. Manweller followed her for approximately 1 hour in his car. . . . [redacted] claims Dr. Manweller probably followed her b/c he saw her talking w/ [redacted] in the restroom."

[redacted] statements materially contradict each other across the board regarding the alleged stalking incident. In one version of her story, she leaves a restroom and walks home with a woman whose name she cannot recall, with Dr. Manweller apparently stalking her by foot until she ditches him at Starbucks. In the next story, [redacted] is in the restroom with [redacted], and then leaves CWU, apparently alone, whereupon Dr. Manweller allegedly follows her in her car for approximately one hour. These are profoundly two different stories, and not merely indicative of a cloudy memory. Indeed, they are so fundamentally different that one can only conclude that they are complete fabrication. This conclusion is further supported by the fact [redacted] never called for help while allegedly being stalked for over an hour. Certainly, an honest, competent "independent" investigator would address such issues in his report, rather than omitting any reference to the second version of the story.

Mr. Radillo's report further states that [redacted] told Dr. Cole and the [redacted] about the alleged stalking incident. See Appendix W at p. 6. However, Dr. Cole has no notes or recollection of [redacted] ever mentioning the incident. And there is no mention of the alleged incident in Mr. Radillo's notes of his interviews with the [redacted]. Copies of Dr. Cole's interview notes are attached at **Appendix Y** hereto; the interview notes of the [redacted] are attached at **Appendix Z**. Furthermore, Mr. Radillo's follow-up interview notes with [redacted], [redacted] friend who was with her during the alleged Starlight Lounge incident, stated she "was not aware of [the] stalking incident." See **Appendix AA** hereto.

Moreover, none of the other interview notes or documents subpoenaed from Mr. Radillo's office mention the alleged "stalking incident". Nonetheless, Mr. Radillo found [redacted] to be a credible witness; and he then described the fabricated stalking incident in his report as if it in fact occurred. No mention is made of [redacted] contradictory statements describing the alleged incident, or that nobody corroborated her story. Mr. Radillo could only pull this off by concealing [redacted] interview of January 15, 2013, and the fact that no one else had ever heard of it.

Casting further doubt on [redacted] credibility is the fact that Mr. Radillo's interview notes of Dr. Cole show that [redacted] represented that Dr. Manweller was "her advisor", which is

not true, as can be confirmed from CWU's records. Mr. Radillo, however, fails to note this fact in his report. He also fails to note that Dr. Cole described [redacted] as being "naïve", and that she saw her for "multiple issues", not just her alleged concern with Dr. Manweller.

Further undermining [redacted] and Mr. Radillo's credibility are the questions [redacted] claims Dr. Manweller asked her while she and [redacted] were having drinks with him at the Starlight, as reflected at p. 4 of Mr. Radillo's Second Investigative Report and at page 1 of his notes from his interview with [redacted] on December 20th. The questions, if they were in fact asked, are of such a profoundly disturbing and offensive nature that they would have caused any two women, especially one who brought a friend with her because she allegedly felt uncomfortable, to immediately leave the table. Instead, it was Dr. Manweller who left the table and the bar. See Radillo's interview notes with [redacted] at Appendix AA hereto.

Significantly, Mr. Radillo's interview notes reveal that [redacted] "can't recall [the] questions asked by Dr. Manweller". If [redacted] allegations regarding the highly offensive questions purportedly asked by Dr. Manweller were true, one would expect [redacted] to recall them. One would also expect that [redacted] would have mentioned the specific questions to others; yet, Mr. Radillo's notes support the conclusion that she did not do so. And once again, Mr. Radillo fails to address this obvious inconsistency in finding [redacted] to be a credible witness.

At the top of page 7 of his report, Mr. Radillo states, "[redacted] *was shocked* by Dr. Manweller's comments and questions." This statement is, at best, grossly incorrect and, at worst, deliberately false and misleading. Mr. Radillo's follow-up interview notes with [redacted] states she merely "brushed off" Dr. Manweller.

2. [redacted] and [redacted]

Mr. Radillo also found the statements of [redacted] and [redacted] to be credible. See Appendix W at p. 15. A review of their statements, however, establishes both their and Mr. Radillo's utter lack of credibility, and the extremely biased, outcome-driven nature of his Second Investigative Report.

It was [redacted] who left the voicemail message with CWU, on October 26, 2012, that prompted Ms. Holter's ill-advised decision to conduct the second investigation of Dr. Manweller. In her voicemail message, [redacted] stated, "I keep in contact with the young lady who was involved with, um somewhat inappropriate behavior the [sic] he was having with his students." She left her telephone number at [redacted] for CWU to return her call. CWU's Memorandum of Conversation with [redacted] is dated October 29, 2012, a copy of which was provided to Mr. Radillo. CWU's notes of the October 29th conversation state: "He did some inappropriate stuff to a woman [redacted] when she/he was here." [redacted] describes the time frame as being during 2003-2004, then goes on to state that Dr. Manweller was dating [redacted], was oppressive, and that [redacted] grade was on the line. She further states that she "saw them out downtown sometimes." She also notes that she saw that Dr. Manweller "is running for congress." Copies of [redacted]'s voice mail message and CWU's interview notes are attached at **Appendix BB** hereto.

It was subsequently established that [redacted] timeframe is way off base, and that Dr. Manweller never dated [redacted] or put her grade on the line. [redacted] herself never stated she was dating Dr. Manweller, or that she had any contact with him during 2003-2004. Additionally, [redacted] indicates she only met Dr. Manweller once off the CWU campus (the alleged Starlight Lounge incident). [redacted] initial statements to CWU were simply wrong, if not deliberately false, even according to [redacted] Mr. Radillo, however, fails to mention these facts and, instead, disingenuously finds [redacted] to be a credible witness.

Not only is it amazing that Ms. Holter decided to conduct a follow-up investigation based upon this stale hearsay statement of one woman, it becomes evident from Mr. Radillo's interview notes that her story changed based upon what she was subsequently told. On December 17, 2012, Mr. Radillo apparently had a conference call with both [redacted] and [redacted]. This is not how a competent, objective investigator would conduct an interview. Instead, he would speak with each person individually, outside of the presence of the other.

In any event, during the December 17th interview, Mr. Radillo's notes state: "According to both [redacted] Manweller asked [redacted] if she wanted to have sex with him and [redacted] can join in

and make it a threesome." This, again, refers to the singular incident at the Starlight Lounge, and neither [redacted] was even there. And [redacted] made no mention of this alleged event during CWU's initial interview of her. This begs the obvious question: what caused her story to completely change? The obvious answer: somebody was leading or coaching her.

Casting further suspicion on the veracity of Mr. Radillo's report is that it identifies only one interview of the [redacted] (on December 19, 2012) and makes it appear they were separately interviewed; yet, the records subpoenaed from his office confirm there were two other joint interviews of the [redacted], including the interview of December 17th. Although all three interviews involved the alleged Starlight Lounge incident, each separate interview should have been documented in the report. The fact that two interviews were omitted suggests Mr. Radillo wanted to cover-up any inference that he was leading and/or pressuring the [redacted] to make the statements he was looking for.

At page 3 of his report, Mr. Radillo falsely states, "[i]n October 2012, after reading a newspaper article concerning allegations by CWU female students of sexual harassment against Dr. Manweller, [redacted] contacted CWU *to report [redacted] 2006 comments concerning Dr. Manweller.*" (Emphasis added.) As the first document at Appendix BB establishes, [redacted] [redacted] voicemail message of October 26 simply referred to "some inappropriate behavior that he was having with his students". No mention is made of any alleged 2006 comments.

Also at page 7 of his report, Mr. Radillo states that the [redacted] "informed them Dr. Manweller made several sex-related comments to [redacted] and her friend, including a request to engage in a threesome with her, having drinks at the Starlight Lounge." This again is a gross and misleading overstatement, as Mr. Radillo's notes of his interviews with the [redacted] [redacted] make no mention of Dr. Manweller making any such comments to [redacted] and her friend, only the alleged threesome.

Despite all of the conflicting and inconsistent statements, Mr. Radillo reached the following conclusion: "[redacted], [redacted], [redacted], [redacted], and Dr. Cole appear credible and provide a testimonial evidence suggesting Dr. Manweller violated CWU's Sexual

Harassment Policy in 2006. For example, Dr. Manweller would have violated this Policy in 2006 by asking [redacted] sexually explicit questions (e.g., Are you having sex with your boyfriend? Are you on birth control? What is the wildest sexual thing you've done?) and asking [redacted] and [redacted] if they wanted to join him in a threesome. Not one of these witnesses can corroborate [redacted] inconsistent allegations that she was "stalked" by Dr. Manweller or that Dr. Manweller asked her the sexually explicit questions she attributed to him while in the presence of [redacted]. Again, had Dr. Manweller asked the questions attributed to him by [redacted] (see p. 4 of Radillo's second report), there is no question that she and [redacted] [redacted] would have immediately left the table, and that [redacted] would recall the questions. And [redacted] would have also mentioned them to Dr. Cole. Mr. Radillo, however, completely disregards this objective evidence in reaching his unsupported conclusion regarding [redacted] credibility.

3. [redacted]

At page 1 of his report, Mr. Radillo states, as though it were an uncontroverted fact, that "[redacted] [redacted] ([redacted]), a current CWU student, told CWU in 2012 that Dr. Manweller left her inappropriate voice mail and text messages". This is a completely misleading, out-of-context statement. And the objective evidence fails to support it.

[redacted] is the only "witness" who provided Mr. Radillo with a statement under oath; yet, without ever speaking to [redacted] personally, Mr. Radillo makes the following credibility determination: "Ms. Yatschenko, Ms. Sleigh-Layman, and Ms. Dengate provided evidence to impeach [redacted] statements in her Declaration and to suggest Dr. Manweller's conduct towards [redacted] may have violated CWU's Sexual Harassment Policy." Mr. Radillo further states: "[redacted] also appears to have retracted her prior statements in her Declaration". See report at 16. Thus, despite [redacted] sworn statement, Mr. Radillo arbitrarily made a credibility determination, instead of properly, and objectively, finding that the facts regarding [redacted] are in dispute, and, therefore inclusive. (At page 1 of his report, Mr. Radillo identifies [redacted] as one of the "persons with whom [he] spoke as part of this investigation"; yet, the truth is he never did, as his own files and report establish this is another fact that undermines Ms. Radillo's credibility.)

Regarding Ms. Dengate, who is an assistant at Mr. Radillo's former law firm (OMW), she reported to CWU's counsel, Alan Smith, that she took no notes during her brief conversation with [redacted] yet, the handwritten notes produced by OMW in response to the subpoena appear to contradict her statement. Moreover, the notes do not support Ms. Dengate's typed memorandum of her purported conversation with [redacted]. See **Appendix CC** hereto. To the contrary, the handwritten notes of December 18, 2012, state that [redacted] was contacted at 3 p.m. and that she "doesn't have anything to say they dropped the ball." Ms. Dengate's denial of having any handwritten notes of her conversation with [redacted] brings her credibility into question, as does the fact the handwritten notes make no reference to what Ms. Dengate later represented in her memorandum to Mr. Radillo.

At page 9 of his report, Mr. Radillo misleadingly concludes that [redacted] "has given conflicting statements about her interaction with Dr. Manweller." [redacted], in fact, gave a single statement, and that statement was under oath. The other purported statements were actually hearsay statements to Mr. Radillo given by others reporting what they thought [redacted] stated. Mr. Radillo even goes so far as to question whether [redacted] declaration, which was provided by Dr. Manweller's counsel, is in fact her signed declaration. This further demonstrates Mr. Radillo's bias towards finding evidence against Dr. Manweller.

Further support for this conclusion is found in Mr. Radillo's notes of his interview with CWU's Yatschenko. See **Appendix DD** hereto. Page 2 of his notes state: "According to [redacted], she spoke w/Rex Weitz [actually it is Rex Wirth] about this [alleged improper conduct]". Amazingly, despite this major lead, the importance of which cannot be overstated, **Mr. Radillo's report establishes he never spoke with Professor Wirth to confirm Ms. Yatschenko's statements regarding what [redacted] allegedly said to her.** Or, perhaps he did, and simply chose not to include it in his report. **And CWU's own records contain no evidence that Ms. Yatschenko, or anyone else at CWU, ever followed up with Professor Wirth.**

In any event, any competent, objective investigator would have promptly followed up on this lead, which would have been of great value in determining the credibility of the witnesses

regarding the statements attributed to [redacted]. [redacted] subsequently explained, in person, to Dean Johnson, Alan Smith, and James Busalacchi, that Ms. Yatschenko misunderstood what [redacted] was reporting about a former student, and mistakenly believed she was talking about Dr. Manweller. Nonetheless, these key players, acting for CWU in this matter, chose to disregard [redacted] and rely on Mr. Radillo's biased report, and the unsworn statements of others at CWU, to take disciplinary action against Dr. Manweller.

V. CONCLUSION

The bottom line is this: The only possibly objective finding in Mr. Radillo's second Final Investigative Report is that Dr. Manweller, while he, [redacted], and [redacted] were having drinks in 2006 at the Starlight, might have made one inappropriate comment. However, it is impossible to determine the context in which the alleged comment was made. And this singular allegation, which was made nearly seven years ago, does not rise to the level of sexual harassment in any way, shape, or form. As Mr. Radillo's report states, CWU's Sexual Harassment Policy in 2006, which remains basically unchanged today, stated, in pertinent part: "sexual harassment is defined as unwelcomed sexual advances, and other verbal or physical conduct of a sexual nature when, submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or career advancement; submission to or rejection of such conduct by an individual is used as a basis for employment decision or academic decision affecting such individuals; or such conduct has the purpose or effect of unreasonably interfering with an individual's work or creating an intimidating, hostile or offensive work or academic environment." The singular incident at the Starlight Lounge simply does not meet this definition. Taken in its worse light, an alleged comment about a "threesome", although maybe inappropriate, is insufficient to warrant any disciplinary action whatsoever this long after the fact.

Indeed, if anyone should be disciplined or reprimanded, it should be Sherer Holter, whose lack of judgment, or perhaps intentional targeting of Dr. Manweller, depending upon what conclusion you drew from the facts, lead to her unwarranted decision to investigate the 2006 allegations against Dr. Manweller, when no complaint was ever made, and to have the investigation done under the disingenuous guise of her purported concern over CWU's compliance with Title IX in

2006. Finally, the only reasonable conclusion to be drawn from the objective evidence surrounding the second Radillo report is that it is biased and self-serving, with the outcome pre-ordained and the entire process tainted by an improperly motivated and politically charged agenda, at least in this author's opinion.