Hon. Michael S. Spearman
Trial Date: Monday, January 24, 2005

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

RICHARD G. NEUHEISEL, JR.,

Plaintiff,

v.

UNIVERSITY OF WASHINGTON, an agency of the State of Washington; NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, an unincorporated association; JOHN/JANE DOES 1-10,

Defendants.

No. 03-2-34268-8SEA

PLAINTIFF'S MOTIONS IN LIMINE

Plaintiff Richard G. Neuheisel (hereinafter Neuheisel) moves in limine to exclude the following evidence and argument.

I. The Court Should Exclude All Evidence And Argument Relating To The Tapes Of Neuheisel's June 4, 2003 Interview By The NCAA

The University has placed the tapes of Neuheisel's June 4, 2003, interview with the NCAA on its trial exhibit list. Exhibit (hereinafter Ex.) A (University's proposed exhibit no. 36).[1] The NCAA generally tapes all such interviews. In this case, however, the first part of Neuheisel's interview was not recorded. Rather, the NCAA recorded only the later portions of the interview in which Neuheisel is alleged to have made false

[1] All exhibits cited herein are attached to the declaration of Robert M. Sulkin, filed herewith.

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statements. Neuheisel had no control over the taping of the interviews and bears no responsibility for the loss of this crucial evidence. Neuheisel moves to exclude the tapes or any transcript thereof on the grounds that such evidence would be unduly prejudicial under ER 403 and would violate the rule of completeness. ER 106.

Evidence may be excluded where the "probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, ..." ER 403. Here, Admission of the tapes would be unfairly prejudicial because they present Neuheisel's allegedly false statements entirely out of context. Neuheisel's recorded statement can only be understood in the context of the NCAA's initial questioning of him.

The first portion of the interviews demonstrates the unfair tactics and and surprise used by the NCAA. For example, Neuheisel understood the NCAA's questioning to imply that Neuheisel had connections to organized crime and that he had associated with individuals involved in criminal activity. This context is essential to understand the nature of Neuheisel's later statements, his reasons for making those statements, and, in particular, his demeanor at the time. Thus, introduction of the tapes would mean that the jury would hear only Neuheisel's allegedly evasive answers to questions but could never hear the NCAA's improper interrogation techniques that set the stage for such answers. Allowing the jury to hear only the latter portion of the interview would unfairly prejudice Neuheisel's ability to explain this context. Whatever relevance the tapes might have is substantially outweighed by this unfairly prejudicial effect. ER 403.

Similarly, any marginal probative value is substantially outweighed by the potential to mislead the jury as to the nature and context of the interview. Admission of the tapes would also present a substantial danger that the jury would be confused and believe that the issue is whether Neuheisel made the statements on the tapes when the fact of those statements is undisputed.

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Ordinarily, Neuheisel would be entitled to rebut Defendants' use of only a portion of the tapes by introducing the remainder under the rule of completeness. Where one party introduces only a portion of a writing or recording, the other party may "introduce any other part, or any other writing or recorded statement, which ought in fairness to be considered contemporaneously with it." ER 106. The rule of completeness is violated where the admission of the evidence in its edited form distorts the meaning of the statement or excludes "substantially exculpatory" information. *State v. Alsup,* 75 Wn.App. 128, 133, 876 P.2d 935 (1994). Yet, here, Neuheisel cannot introduce the missing portion of the interview because the NCAA failed to record that portion. Moreover, neither the Board of Regents nor Hedges listened to the tapes before firing Neuheisel. Thus, fairness demands that Defendants be precluded from introducing the tapes.

II. The Court Should Exclude All Evidence And Argument Relating To Hearsay Statements By the University's Board of Regents

Neuheisel anticipates that the University will attempt to introduce or solicit hearsay statements of the University's Board of Regents made during board meetings. In particular, the University has indicated that it intends to introduce a document containing hearsay statements of the University's Board of Regents. Ex. A (University's proposed trial exhibit no. 26), Ex. B. Neuheisel moves to exclude any such hearsay statements by the Board of Regents, including this document, as lacking foundation, irrelevant, inadmissible hearsay, and unduly prejudicial.

At the time it was produced, the document in question was attached to Hedges' notes of a February 21, 2003 meeting of the Board of Regents. Hedges, however, testified that it was "not her document." Ex. C at 285:5-6. Nor does the document give any indication as to who created it, what it references, when the statements referenced were made, or the context of the statements. Further, the University has not designated any Regent as a trial witness. Thus, the University cannot establish any foundation with

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respect to the document, let alone whether the statements were ever made or adopted by the Board of Regents.

Even if an adequate foundation could be established, however, the document should be excluded as inadmissible hearsay. The document purports to reflect statements or resolutions made by the Board of Regents. Such statements by an out of court declarant cannot be offered by the party who made them for the truth of the matters asserted. ER 802.

Nor is the document a business record or public record pursuant to RCW § 5.44.040 or RCW § 5.45. As an initial matter, the University should be estopped to argue that the document represents a business or public record of the meeting of the Board of Regents because it failed to produce any evidence of such statements or actions by the Board of Regents during discovery. Any such documents, including for example, resolutions or minutes of board meetings, fell within the scope of Neuheisel's discovery requests. The court may exclude evidence that a party fails to produce in response to proper discovery requests. CR 37(b)(2)(B).

Moreover, the University cannot establish the foundational elements of either exception. To fall within the business record exception to the hearsay rule, a document must have been: (a) made in the regular course of business, (b) at or near the time of the statements described. RCW § 5.45.020. In order to fall within the public record exception, the document must have been "on record or on file with the various departments . . . of this state, when duly certified by the respective officers having by law the custody thereof, ..." RCW § 5.44.040. The unsigned list of bullet points authored and faxed by an unknown person to an unknown recipient simply cannot satisfy any of these requirements. Even if the University could establish the elements of one of these exceptions, the circumstances and the face of the document itself indicate that the

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document is not reliable. It should therefore be excluded as not trustworthy. RCW § 5.45.020.

Finally, even if the University could establish a foundation and an exception to the hearsay rule, admission of the document would be unduly prejudicial. ER 403. Although Hedges contends that she spoke to Neuheisel about the 49ers incident after the Board of Regents meeting on February 21, 2003, there is no evidence that the document in question was ever shown to Neuheisel, or that its contents were communicated to him. Indeed, Hedges testified that the document was never "issued publicly," but instead was at most an "internal statement." Ex. C at 289:18-22. Although the University now contends that the February 21, 2003, Board meeting resulted in a decision to give Neuheisel a letter of reprimand, it is undisputed that no such letter was ever given to Neuheisel. Hedges specifically testified that she did not discuss anything else with Neuheisel in relation to the Board meeting. Ex. C at 282:12-283:8. Thus, even if the Board of Regents actually made the statements reflected in the document, those statements were never communicated to Neuheisel, nor were any of the statements made public. In short, the statements referred to in the documents, if they were ever actually made, were never acted upon by the University.

It would be patently unfair to allow the University to introduce such negative characterizations of Neuheisel when it neither acted upon nor advised Neuheisel of such statements at the time. Admission of such statements would also pose significant dangers of confusing the issues and misleading the jury when no discipline was ever imposed and no Board decisions were ever communicated to Neuheisel regarding the 49ers incident.

Based on the same analysis, any testimony of witnesses as to hearsay statements made by the Board of Regents at the February 21, 2003 meeting is also inadmissible hearsay, ER 802, and unfairly prejudicial. ER 403. Accordingly, the University also should be precluded from introducing or soliciting any other hearsay statements allegedly

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made by the Board of Regents. In the alternative, Neuheisel requests an order requiring the University to disclose any other hearsay statements of the Board in a hearing outside the presence of the jury to establish admissibility pursuant to ER 104(c).

III. The Court Should Exclude All Evidence Relating to the Sex Scandal At the University of Colorado

The University has conducted discovery regarding a nationally reported scandal that recently erupted at the University of Colorado. Ex. D. The allegations have absolutely nothing to do with Neuheisel's termination. The Colorado scandal involves allegations of improper recruiting activities, including the alleged use of "sex parties" to lure recruits. These allegations refer to events that occurred only after Neuheisel left the University of Colorado. Two women have filed suits claiming that they were raped in connection with these events. Neuheisel moves to exclude evidence, argument, or questioning related to these events on the grounds that the allegations are irrelevant and prejudicial and constitute inadmissible character evidence.

The evidence is entirely irrelevant. As an initial matter, any suggestion that Neuheisel was connected with the alleged events is false and entirely unsupported. Although Neuheisel was formerly the head football coach at the University of Colorado, there is absolutely no evidence connecting him to any of the alleged incidents. To the contrary, all evidence suggests that Mr. Neuheisel had absolutely nothing to do with any of the alleged events at Colorado. In fact, the University of Colorado has told Neuheisel that "there is nothing in the evidence which has been developed in this case which would indicate that Rick Neuheisel acted inappropriately or indifferently." Ex. E. The University of Colorado has also praised Neuheisel for his conduct while head football coach there.

Even if such evidence existed, however, any allegation that Neuheisel was involved in the alleged activities would be entirely irrelevant to the issues in this case.

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There is no evidence, nor could there be, that the University terminated Neuheisel based on events at Colorado that came to light only after his termination from the University of Washington. Nor is there any evidence that the NCAA's investigation and public statements were in any way related to events at Colorado. Thus, the evidence should be excluded as irrelevant. ER 402.

Even if the evidence could be considered relevant, the probative value would be substantially outweighed by the unfair prejudice to Neuheisel and should be excluded pursuant to ER 403. Given the nationally-reported nature of the scandal and the visceral emotional reaction jurors would likely experience upon hearsay allegations of rape and sex parties, even the mere suggestion of Neuheisel's involvement through questioning would be highly prejudicial and would invite the jury to decide this case on the basis of purely emotional reactions to the allegations unfolding in Colorado. The suggestion would also raise significant dangers of misleading the jury and confusing the issues in this case as none of the allegations regarding Colorado are in any way connected to the NCAA's investigation or the University's wrongful termination. Indeed, because of the inflammatory nature of the scandal, Neuheisel would be forced to rebut any suggestion of his involvement. Such a rebuttal would essentially require a mini-trial regarding allegations arising at another University, at another time, and having nothing to do with the issues in this case, thereby causing undue delay and wasting time. ER 403.

Finally, Defendants' only possible use of the allegations regarding Colorado would be to attack Neuheisel's character. It is fundamental that: "evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion . . . ." ER 404(a). In addition, "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." ER 404(b). Defendants cannot rely on any

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of the exceptions to the prohibition against evidence of "other crimes, wrongs, or acts" to prove character. ER 404(b).

IV. The Court Should Exclude All Evidence and Argument Relating to The 2002 Pac-10 Letter Of Reprimand

The University's exhibit list includes a February 27, 2002 letter from Pacific 10 Conference (hereinafter Pac-10) Commissioner, Thomas Hansen, reprimanding Neuheisel based on allegations unrelated to the circumstances of Neuheisel's termination. Ex. A (University's proposed trial exhibit no. 43), Ex F. Such instances of prior bad acts are irrelevant, hearsay, unduly prejudicial, and inadmissible character evidence. Moreover, neither the incident nor letter were identified as a basis of Neuheisel's termination in the University's termination letter dated June 11, 2003. Accordingly, Neuheisel moves the court to exclude any evidence or argument relating to the Pac-10 letter and the incident it references.

The 2002 Pac-10 letter is inadmissible hearsay not falling within any exception to the hearsay rule. ER 802, 803. No party has identified Hansen on a witness list. In addition, the 2002 incident has no relevance to the issues in this case because it was not a basis for either the NCAA's investigation or the University's wrongful termination. The 2002 Pac-10 letter related to Neuheisel's allegedly inappropriate statements about other institutions' recruiting practices. But Neuheisel's allegedly inappropriate comments about other institutions have nothing to do with the claims and defenses in this case. In particular, Neuheisel contends that the University terminated him because of the NCAA's improper conduct and public statements about gambling, while the University contends that it terminated Neuheisel for conduct "taken as a whole" as set forth in the termination letter dated June 11, 2003. Ex. G. Hedges specifically testified that the June 11, 2003 sets forth the University's reasons for terminating Neuheisel. Similarly, Neuheisel contends that the NCAA wrongfully interfered with his employment because of alleged gambling

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activity, while the NCAA contends that Neuheisel's alleged gambling activity justified its actions. The 2002 Pac-10 letter and Neuheisel's comments about recruiting at other institutions are irrelevant and inadmissible as to all of these issues.

Any possible probative value of this prior bad act would also be substantially outweighed by the unfair prejudice to Neuheisel. ER 403. It would be unfair to force Neuheisel to defend his record on issues totally unrelated to the events and circumstances surrounding his termination. Such evidence would also raise substantial danger that the jury would be confused as to whether it was being asked to decide if this prior unrelated incident occurred and whether it justified Neuheisel's termination.

The only possible relevance of prior bad acts such as that referenced by the 2002 Pac-10 letter would be to attack Neuheisel's character and imply that he has a character trait for violating rules. That is, the Defendants would be arguing that because Neuheisel has a character trait for violating rules, he must have violated the NCAA rules regarding gambling. Such specific instances of prior conduct are inadmissible character evidence where offered to show action in conformity therewith. ER 404(b). Nor could such prior wrongs be relevant to show "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. ER 404(b).

V. The Court Should Exclude All Evidence And Argument That The University's 1999 Email regarding March Madness Pools Was Never Sent

In emails dated March 8, 1999, and March 13, 2003, the University authorized participation in off-campus March Madness pools, stating that such participation did not violate NCAA gambling rules. It is undisputed that the March 13, 2003 email was sent to the University's athletic staff via email. During discovery, however, the University appears to have taken the position that the March 8, 1999 email was never actually sent to University employees. The court should preclude the University from introducing any such evidence, argument, or questioning because (1) the University's apparent position is

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directly contradicted by the testimony of the document's author and (2) the University refused to produce evidence in discovery that would have countered the argument.

Notably, Dana Richardson, who authored the March 8, 1999 email, testified that he sent the email to University athletic staff. Ex. H at 31:7-35:24. The University cannot now contend that the email was never sent.

In addition, during discovery, Neuheisel specifically requested emails going back to 1999. The University, however, refused to produce emails from 1999. Sulkin decl. at ¶ 3. The University's refusal to produce emails from 1999 prevents Neuheisel from establishing that the March 8, 1999 email was sent to athletic staff. The University should not be allowed to benefit from its own refusal to produce documents properly requested in discovery, particularly where the University's former employee who authored the email testified that it was sent. The court may exclude evidence that a party failed to produce in response to proper discovery requests. CR 37(b)(2)(B). In addition, allowing the University to suggest through questioning that the email was never sent, when the University's refusal to produce documents prevents any rebuttal, creates a serious danger that the jury will be misled to believe the email was never sent. Thus the University also should be precluded from such questioning pursuant to ER 403.

VI. The Court Should Exclude Any Witnesses Not Disclosed Prior to Discovery Cut Off

The parties were required to disclose primary witness lists by August 23, 2004 and rebuttal witnesses by October 4, 2004. Pursuant to this court's order of November 10, 2004, Ex. I, and LR 26(b), the parties were further required to disclose trial witnesses by November 15, 2004. Discovery was cut-off on December 6, 2004.

After the exchange of the last witness disclosure pursuant to this court's order, and after discovery cut-off, the University has for the first time disclosed a new witness on its trial witness list, Ms. Nancy Hovis. Ex. A at 3:2. Though Ms. Hovis is an assistant

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attorney general who represented the University in the negotiation of Neuheisel's contract, and thus someone about whom the University has known since this case was filed, the University never previously disclosed her as a witness. Ex. J. Indeed, Ms. Hovis's involvement was described in one of the first depositions in this case nearly seven months ago. In that deposition, Ms. Hedges testified that Ms. Hovis was the person that Ms. Hedges worked with concerning Neuheisel's contract. Ex. C at 63:16-25, 64:1-17.

Local Rule 26(f) specifically provides that a party may not call a witness at trial whom it has failed to disclose. In addition, because Ms. Hovis was never identified as a witness, Neuheisel never deposed her, conducted other discovery concerning her, or took her testimony into account in preparing his case. To allow a party to add a witness on the eve of trial and after the court ordered witness disclosure and discovery cut-off deadlines is patently unfair and substantially prejudices Neuheisel's ability to prepare for trial. Accordingly, the court should preclude all parties from calling witnesses not disclosed prior to discovery cut-off, including Ms. Hovis. *See, e.g., Dempere v. Nelson,* 76 Wn.App. 403, 405-06, 886 P.2d 219 (1994) (court may exclude witnesses not properly disclosed in discovery), *rev. denied*, 126 Wn.2d 1015 (1995).

VII. The Court Should Exclude All Evidence And Argument Relating To Neuheisel's Failure to Pass the Bar On His First Attempt

Neuheisel did not pass the Arizona bar exam on his first attempt.[2] The University has conducted discovery on this subject and appears to contend that Neuheisel may have failed the professional responsibility portion of the exam. The court should exclude any evidence, argument, or questioning relating to this subject.

First, there is absolutely no evidence that Neuheisel failed the professional ethics portion of the examination. Neuheisel took the exam approximately 15 years ago. Other than having not studied sufficiently, Neuheisel has no specific memory of the exam or the

[2] Neuheisel did not study for the first exam, but passed the exam on his second attempt.

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reason that he did not pass on the first attempt. The University has not identified any evidence relating to the exam. Thus, any suggestion that Neuheisel failed the "ethics" portion of the bar exam would be sheer speculation.

Moreover, such evidence is entirely irrelevant to any issue in this case. Even if Neuheisel had failed the professional responsibility portion of the bar exam (a suggestion that is sheer speculation), that fact would have no probative value whatsoever. The failure to pass a professional responsibility examination, which relates to complicated rules of professional conduct for lawyers, has nothing to do with ethics in general or whether a person is ethical or not. Obviously this is not to say that ethics play no role in the rules governing attorneys. Yet, the rules of professional conduct are distinct from ethics. For example, an action might be entirely consistently with the rules of professional responsibility and still be considered "unethical." By the same token, the fact that an attorney fails an examination about the rules of professional responsibility says nothing about that person's ethical standards. There simply is no theory of relevance that would permit admission of Neuheisel's bar exam results.

Because jurors would not necessarily understand the distinction between the rules of professional responsibility and "ethical" conduct, there is a substantial danger of unfair prejudice to Neuheisel. Thus, even if there were a colorable theory of relevance, it would be substantially outweighed by the unfair prejudice to Neuheisel. ER 403.

VIII. The Court Should Exclude All Evidence And Argument Relating To Attorney-Client Privileged Communications or the Assertion of Attorney-Client Privilege

Attorney-client communications and attorney-work product are privileged and inadmissible. RCW 5.60.060(2)(a); CR 26(b)(4). Throughout discovery in this matter, the University has precluded Neuheisel from conducting discovery by asserting the attorney-client privilege or work-product privilege. The University may not now waive these privileges to introduce testimony or other evidence when it prevented Neuheisel

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from conducting discovery on the same issue. Accordingly, Neuheisel seeks an order excluding any evidence, argument, or questioning relating to any issues as to which the University has precluded Neuheisel from conducting discovery on the basis of the attorney-client or work-product privileges.

IX. The Court Should Exclude All Evidence And Argument That the University Ever Created A Letter of Reprimand Relating to the 49ers Incident

The University contends that after Neuheisel's statements to the press regarding the 49ers it decided to give him a letter of reprimand. Yet, it is undisputed that the University **never** gave Neuheisel any such letter of reprimand. Accordingly, the University should be precluded from offering any evidence or testimony of such a letter of reprimand. While the University may contend that it created such a letter at a later date, any suggestion that it actually did so would be irrelevant because it never gave the letter to Neuheisel. ER 402.

Indeed, any such evidence would, at most, constitute self-serving hearsay statements by the University. Out-of-court statements by a party are admissible only if offered against, not in favor of, that party. ER 801(d). Finally, any marginal probative value of such evidence would be substantially outweighed by the unfair prejudice to Neuheisel since no such letter was ever given to him. ER 403.

X. The Court Should Rule As to Whether There is Only One Reasonable Interpretation of the Termination Provision of Neuheisel's Contract with the University and, if so, Exclude Evidence and Argument Relating to Any Contrary Interpretation

On summary judgment, the University argued that Neuheisel's contract should be interpreted as defining any act of dishonesty to be a "serious act of misconduct" justifying termination, regardless of whether the incident of dishonesty rose to the level of a serious act of misconduct. Ordinarily, the meaning of the termination provision in Neuheisel's contract would be a question of fact for the jury, and extrinsic evidence would be

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admissible in determining the parties' intent in agreeing to that provision. *Berg v. Hudesman,* 115 Wn.2d 657, 667, 801 P.2d 222 (1990) (extrinsic evidence of entire circumstances under which contract was made is admissible to aid in determining intent even if contract is unambiguous).

Nonetheless, from *Berg* to the present day, the Washington Supreme Court has consistently recognized that: "Interpretation of a contract is a question of law if (1) extrinsic evidence is not required to interpret the contract or (2) only one reasonable inference can be drawn from the extrinsic evidence." *Berg,* 115 Wash.2d at 668 (emphasis added) (citing Restatement (Second) of Contracts, § 212(2) (1981)); *Scott Galvanizing, Inc. v. Northwest EnviroServices, Inc.,* 120 Wn.2d 573, 582, 844 P.2d 428 (1993) (same). Additionally, whether a contract is ambiguous is a question of law. *Syrovy v. Alpine Resources, Inc.,* 122 Wn.2d 544, 551 n. 7, 859 P.2d 51 (1993). Here, there is only one reasonable interpretation of the termination provision in Neuheisel's contract. Under that provision, any ground for termination, including dishonesty, must rise to the level of a serious act of misconduct. *See* Declaration Of Tom Bagan In Support Of Plaintiff's Response To University Of Washington's Motion For Summary Judgment.

Accordingly, there is no reason for the University to present evidence or argument to the jury regarding the meaning of the contract provision. Instead, to the extent that this court has not already decided the issue, a hearing outside the presence of the jury should be held, and the court should make a determination as to whether "only one reasonable inference can be drawn from the extrinsic evidence." *Berg,* 115 Wash.2d at 668. Of course, if the court determines that there is more than one reasonable interpretation to be drawn from the extrinsic evidence, evidence and argument relating to the parties' intent may be admissible.

If, on the other hand, the contract can only be interpreted to require an act of "serious misconduct" to justify termination, the University should be precluded from

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offering any evidence or argument to the contrary. Such evidence and argument would be irrelevant if the court had already determined a contrary interpretation as a matter of law. ER 402. Such evidence would also substantially confuse the issues before the jury. ER 403. More importantly, Neuheisel would be unfairly prejudiced if the University were able to present evidence and argument totally unsupported by the only reasonable interpretation of the contract. ER 403.

As an additional basis for excluding such evidence and argument, the University should be precluded from offering evidence or argument that it believed it could terminate Neuheisel for any single incident of dishonesty without regard to whether that incident rose to the level of a serious act of misconduct. The University's letter of termination given to Neuheisel on June 11, 2003 specifically states that Neuheisel was terminated on the grounds that his "conduct, taken as a whole, constitutes 'serious acts of misconduct,' under Section 8(c) of your contract . . . ." Ex. G. Thus, at the time of the termination, the University unambiguously took the position that Neuheisel's conduct rose to the level of "serious acts of conduct' under Section 8(c)" of the contract. Here, the University made a factual representation as to the basis of Neuheisel's termination in a formal termination letter. Given the circumstances, the University knew that the termination would be disputed and, at a minimum, knew that litigation was likely. Accordingly, the University should be estopped to assert a contrary basis for the termination or a contrary interpretation of the contract in these judicial proceedings.

XI. The Court Should Exclude Any Evidence, Argument, or Questioning Regarding Neuheisel's Appeal of His Termination

Neuheisel exercised his right to appeal the termination decision of Ms. Hedges. Neuheisel anticipates that the University may attempt to introduce evidence regarding this appeal, including the transcript. Neuheisel appeared at the appeal with his attorney, Robert M. Sulkin, and Mr. Sulkin made the presentation. Neuheisel had a right to an

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internal appeal of Hedges' termination decision under his contract as well as pursuant to his fundamental due process rights. Neuheisel was represented at the time of the appeal and the proceedings were a precursor to this litigation. Thus, the statements by Neuheisel's attorney at the appeal were essentially part of this litigation. The statements of Neuheisel's attorney at the hearing are no more evidence than the argument of counsel during discovery disputes or pretrial motions. Finally, the University did not listen to the tapes of the appeal prior to terminating Neuheisel and thus the transcripts could not have played a role in the decision. Accordingly, Neuheisel moves to exclude any evidence, argument, or testimony relating to his appeal.

DATED this Eighteenth day of January, 2005.

McNAUL EBEL NAWROT & HELGREN PLLC

By: _____
Robert M. Sulkin, WSBA No. 15425
Gregory J. Hollon, WSBA No. 26311
Gregory G. Schwartz, WSBA No. 35921

DECLARATION OF SERVICE

I declare, under penalty of perjury under the laws of the United States and of the State of Washington, that a true and correct copy of this document was
1) mailed first class postage prepaid
2) delivered via messenger
3) sent via facsimile

to: Louis Peterson & John Aslin

on the 18th **day of** January **20** 05

Signed _____

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