

**CUTTING THE HEART OUT OF THE LABOR CENTER:
A RESPONSE TO AN AUDIT BY MARYAM JACOBS,
TESC INTERNAL AUDITOR**

**by Peter A. Kardas, Director
TESC Labor Education and Research Center**

Timeline: How the Audit of the Labor Center Came to Be and How It Took the Form It Did

This audit saga began with a letter dated June 17, 2008 from the Landmark Legal Foundation/ Ronald Reagan Legal Center to the Washington State Auditor. The letter stated that the Labor Center "...is in violation of Washington's requirement that public funds must only be used for a valid public purpose....Rather than a valid public purpose, the Center's activities are designed to promote a particular political ideology." The saga – at least this stage of it – ends with the college's internal auditor finding "...numerous instances that has [sic] the appearance of violating the State Ethics in Service Act and cannot be tied to the Center's mission. The activities noted include work with and the appearance of support for special interest groups, training and classes pertaining to resisting work of federal agencies, possible political activity as part of a conference, and payment of dues to special interest groups for membership." In addition, the Labor Center's new mission "...creates close and strong ties with labor unions ...[which] provides the appearance of possible ethics issues." The College's internal auditor, in other words, claimed (mistakenly, I believe, as I'll illustrate below) to find evidence validating one of the very allegations made by the Landmark Foundation: that Labor Unions do not serve a valid public interest and that it is illegal for public employees to do educational work with them.

The Landmark Foundation does not hide its political intent, and so its letter to the state auditor should have been seen for the ideological document that it is. This is an organization that nominated Rush Limbaugh for the 2007 Nobel Peace Prize (<http://www.landmarklegal.org/uploads/Limbaugh%20Nobel.htm>) and that asks on its webpage, rhetorically, "Will the federal courts generally, and the Supreme Court in particular, continue down the path of creating new rights out of whole cloth without any support in the Constitution itself -- giving the nation such things as the right to privacy, the right to abortion and the right to homosexual sodomy -- or will it be returned to the republican fold by carefully-chosen and vigorously-defended nominees who are properly committed to the idea of judicial restraint?" (<http://www.landmarklegal.org/DesktopDefault.aspx?tabid=167>). Landmark has targeted several other Labor Centers in the country, including those at the University of Massachusetts, Florida International University, University of Michigan, University of California at Berkeley, UCLA, and Indiana University. They sent a complaint to the California attorney general and the State Department of Finance alleging that the Berkeley Labor Center violated

provisions of Proposition 209, the anti-affirmative action measure, by hosting a Summer Institute for Union Women and sponsoring a Latino Leadership School and a Black trade union leadership school. They refer to global warming as “hype” and claim that the National Education Association is the “nation’s chief obstacle to substantive education reform.”

Did the College and the state auditor have to do an audit in response to Landmark’s letter? Absolutely not. The state auditor, in fact, wrote a letter to Les Purce stating that they had reviewed the Landmark letter and “...determined the College is the best agency to address the concerns [regarding the Labor Education and Research Center].” “Addressing concerns” could have included a range of options, including telling Landmark that their concerns, and an audit, were unwarranted. Furthermore, Jeff Johnson from the Washington State Labor Council had a conversation on July 14, 2008 with Brian Sontag’s aide in which she said that Mr. Sontag’s office did not consider this an issue that his office would perform an audit on and they were not suggesting that Evergreen do its own audit. Jeff’s conversation with Brian Sontag’s aide followed his letter to the auditor’s office on June 27 in which he said, “...if you have a degree of flexibility in your response to this complaint, I would suggest not wasting taxpayer dollars on auditing issues of academic freedom and the role that Institutions of Higher Learning have in creating public dialogue around pressing issues of our times.... It is sad enough that as a nation of immigrants we have turned our public policy backs on the issue of immigrant workers and immigration reform, but to have a private legal foundation argue that we can not even discuss critical public policy issues facilitated by public institutions is a new moral low.”

Jeff clearly had helped enlarge the space the College already had to escape from the pressure Landmark was trying to create. The College administration could have written back to Landmark saying that, contrary to the Foundation’s claims, Evergreen believes that educating union members and immigrant workers about a number of topics, including their rights as workers, residents, and human beings, is a valid public purpose, and that strengthening union democracy through labor education is an important part of strengthening the democratic fiber of our country. Furthermore, the College could have told Landmark that the internal auditor was in the process of auditing the various parts of the college and would get around to the Labor Center when the time was right: there was no urgency in doing an audit now because management had paid close attention to the work of the Labor Center over time and had even served continuously on its Advisory Committee. I conveyed this general perspective and the information about Jeff Johnson’s communications with the state auditor to Don Bantz, Provost, who told me he relayed it to President Les Purce. I was then told that Les insisted on the College doing the audit and commencing with it as soon as possible. On July 9, 2008, Maryam Jacobs, College auditor, discussed Landmark’s letter with an audit manager from Brian Sontag’s office and told her that Evergreen would perform an audit of the Labor Center and provide a report of the findings to the state auditor’s office.

From this date forward, it's worth noting the ways that College officials brought us to the place we're in right now. In the audit plan for the Labor Center that Maryam Jacobs drafted in late June/ early July, 2008, she states that "the audit will **not** include a review of the ethical concerns related by the concerned party [emphasis added]. A list of issues noted in the complaint and any other concerns noted during the audit will be submitted to an authority outside the College (A.G. or Ethics Board) for an impartial opinion." On July 17, I met with Maryam (and with Labor Center Assistant Director Nina Triffleman, Business Services' Director Colin Orr, and the Provost's Executive Assistant Julie Slone) to discuss what the shape of the audit would look like. If there had to be an audit – and I still thought it a mistake to jump through hoops for the sake of an organization like the Landmark Legal Foundation – I had no objection to the audit being financial in nature. We have nothing to hide, and if we've been making mistakes in our accounting or financial practices, let's learn what they are and move on from there. I was assured by the Provost, both during the summer and at the Labor Center's Advisory Committee meeting on September 27, 2008, that the purpose of the audit was to figure out where there may be lapses in practice, make corrections, and move on.

Maryam Jacobs worked on the audit during the summer, then met with Nina Triffleman in late October to review the financial results. Along the way she prepared a list of "possible ethics issues related to the Labor Center," a list which Don Bantz shared with me in mid-September. I reminded Don that we had an agreement about the audit only focusing on financial issues, and I requested again that Les and the auditor honor that agreement. A couple of weeks later, Don told me he had conveyed my understanding and preference to Les, but that Les insisted on both a financial and an ethics audit. I then asked that at the very least Maryam provide a list of which laws or rules she thought each activity might be in violation of, and what it was that put the activities over the line. Don said he had taken this point of view to Maryam and that she was willing to make the list and to sit down with us to discuss these laws, rules, and potential violations.

That meeting with Maryam didn't happen, at least not until February 3, 2009, and we didn't get a list of laws we might have violated until Maryam sent an email following the February 3 meeting. What we did get in early November was Maryam's draft of her Executive Summary of the audit. The entire Labor Center staff read it, then Sarah Laslett, Juan José Bocanegra, and I met with Don Bantz on November 13 to review the draft. We went through the report in great detail, pointing out what we thought were its many and deep flaws, and told Don that if this was going to be the basic content of Maryam's final audit report, then we wanted to meet with Les to go over the flaws with him. Don said, before we made an appointment with Les, that he wanted to draft an email conveying to Les our objections. We agreed to that process. Within two weeks of that meeting we heard from Don that he wouldn't draft the email before meeting with Les, and that he wouldn't be able to meet with Les for a couple more weeks. Don never did

write the email, and I learned, after returning to work from two months of medical leave, that Les would not meet with us. The audit was to go forward in the form of the draft we had seen in early November.

At the February 3 meeting, Maryam answered questions we had about the audit and said she would respond by email to any further questions we might have. A couple of hours later she sent us the list of laws and rules she thought we were probably violating. Three days later I sent her a long email with an interpretation and critique of what I thought were her basic underlying assumptions. I asked if she were going to make revisions to the audit based on my critique that she provide the revisions in time for me to review and make comments before she finalized the audit. She wrote back saying that she was "...willing to consider changes in wording and language, but since this is mostly a legal debate it won't change the audit report." Of course, since the audit was based in good part on legal understandings, particularly Maryam's interpretation of the law and how it applies to the Labor Center, I assumed a change in legal interpretation could well require a change in the audit's findings. But Maryam apparently was determined to stick with her original draft no matter what kind of feedback she got from us.

So that's the story of how the College administration sanctioned and facilitated an audit that finds the Labor Center, in its fundamental purposes, to be in violation of state law. But what about the auditor's findings? Why does Maryam Jacobs think we're in probable violation of ethics laws? And what are our objections to her analysis?

Problems with the Audit: Ethics Law Violations

Leaving aside Maryam's findings on Labor Center "exceptions" regarding financial practices, some of which I'll return to below, her objections to our work with labor unions and community members (including immigrant workers) seem to derive from three principal assumptions: 1) that it is improper or illegal for the Labor Center's clients to be anyone other than Evergreen students; 2) that the Labor Center's mission is squishy, having changed substantially over the years; and 3) that the Center's mission was never approved by the College's Board of Trustees or the President or his/her designee.

Regarding assumption number 1, at our meeting on February 3 and in her follow-up email, Maryam cited RCW 42.52 and various advisories from the Washington State Executive Ethics Board. Paragraph 1 of RCW 42.52.160 states that "no state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another." Paragraph 2 of the same law, however, says that "This section does not prohibit the use of public resources to benefit others as part of a state officer's or state employee's official duties." So why, given that we're a Labor Center whose purpose is to do education with labor unions and working people,

doesn't paragraph 2 take care of any paragraph 1 objection that we're illegally using public resources for the private gain of labor unions and other entities? Based on our conversation with Maryam on February 3rd, her thinking seems to go something like this:

The clients whom Evergreen is supposed to serve are students, and this would be true of all parts of Evergreen, including the Public Service Centers. The definition of Evergreen's clients, according to Maryam, is spelled out in the College's RCWs and WACs. While it's true that RCW 42.52.160 and the ethics board advisories do **not** "prohibit the use of public resources to benefit others as part of a state officer's or state employee's official duties" (42.52), that will only be true if employees are doing things to benefit an agency's (or college's) clients. Since by Maryam's definition Evergreen's clients are students, benefiting union members through educational programs has to be a violation of the RCW, ethics board advisories, and the state constitution.

In our February 3rd conversation Maryam suggested there may be a way around this if the union members (and other non-matriculated participants in our programs) are re-defined as students. This happens when we require them to pay for the education we provide. Why is the payment of fees so critical? Because, in Maryam's assumptions, one of the important things that defines students is the fact that they pay tuition. If our union students are to be equivalent to matriculated students, they will have to pay for their education and at a standard rate, with payment reductions only allowable for reasons of need which are clearly spelled out in statute. By this understanding, we would not be able to charge participants different rates for different programs, because that's benefiting some people at the expense of others. We also can't do programs for free, since that would be a lending of the state's credit to people who should be paying for it, since it's only through paying that they become students and thus eligible for our services.

I see several problems with Maryam's assumptions. One is that I can find no language in any of Evergreen's RCWs or WACs about the College's clients having to be matriculated students. In fact, the College's Mission Statement (Policy Number 1 of the Board of Trustees) is quite broad, stating: "As the nation's leading public interdisciplinary liberal arts college, Evergreen's mission is to sustain a vibrant academic community and to offer students an education that will help them excel in their intellectual, creative, professional and community service goals." There is no inherent reason why maintaining a vibrant academic community cannot include the education, research, and community service done by the Public Service Centers. In fact, the College's most recent Strategic Plan states that "The innovative work of Evergreen's public service centers deepens the college's mission and extends its reach outward from local to international communities. Our public service centers enhance the curriculum, facilitate better ways of teaching, contribute to Evergreen's national reputation, and help prepare students and citizens for a lifetime of civic engagement." In addition, the

Northwest Commission on Colleges and Universities 2008 Accreditation Report states that “The seven Public Service Centers housed at Evergreen are consistent with the educational mission and goals of the college and provide a unique resource both to the campus and to the wider community. The development of the Centers has been guided by the educational values of the college and by the needs of the surrounding communities....[I]t is clear that they help to fulfill the mission of the Evergreen State College effectively.”

If the Labor Center’s primary clients are union and community members (and this has been consistently true since the Center’s opening in 1987), and if there’s no legal need to try to redefine these clients as matriculated students, it then follows that we don’t have to use the rules of tuition and tuition-waivers to determine how much we charge individuals, unions, and other organizations for our services. If charging a standard fee would make it impossible for us to provide the educational services which it’s our mission to provide, we can use a sliding scale to determine how much an organization or individual pays. We are not driven by a rigid set of charges because we are not trying to squeeze union and community members into the fabricated idea that they are college students. Consequently, any violations of statutes that would prohibit charging one student a different rate for tuition than another would not apply to us.

In our February 3rd meeting, Maryam suggested that we can no more provide educational services to a labor union than we could to an individual company like Boeing. In a follow-up email, I suggested that she might want to check out a page from the Everett Community College website:

<http://www.everettcc.edu/ce/corporate-training/index.cfm?id=978&linkFrom=Search>. There she would see that “employee training is available [from the college] for businesses and agencies seeking to enhance employee skills. Our content experts can bring the training to your site, or we can provide it at our Applied Technology Training Center in south Everett (near Fluke Corp. and Boeing). We’ll match your training timeline – whether merely a one-day seminar or in-depth skill building over several weeks.” You’ll also see reference to a “Customized Training Program” in which “businesses expanding in or relocating to Washington State are eligible for a program that pays the up-front costs of employee training. Participating businesses will receive a state business and occupation tax credit for 50 percent of the cost of training.” More description of this program can be found at the Washington State Board for Community and Technical Colleges website (<http://www.sbctc.ctc.edu/College/e-wkforcecustomizedtraining.aspx>). There one can find the following summary:

Under the Customized Training Program, the State Board for Community and Technical Colleges (SBCTC) pays the costs up front for customized training. After training is completed the business repays the costs to the SBCTC interest free. Upon completion of training 25 percent of the full amount is due, and the remaining 75 percent due is spread over 18 months. After a business makes the initial payment of 25 percent to the

SBCTC, they may take a state B&O tax credit equal to half of that amount. As the business pays off the remainder over the 18 month period, the business may continue to take tax credits equal to 50 percent of each repayment amount. Thus, the total tax credit is equal to 50 percent of the cost of the training program.

A state agency paying costs up front for training? A company getting tax credits to help them in repaying the training costs? That sounds a lot more like a lending of the state's credit than the Labor Center's trainings offered at reduced rates. In the Everett Community College situation there's actually a crediting of money, which is what Article 8, Section 7 of the state constitution is supposed to prohibit. These business-oriented educational/ training programs run through a community or technical college can push up against the state constitution in this way but we can't provide any training to unions and union members because they're a "special interest," as Maryam says in her audit? There's something profoundly wrong, and profoundly biased, with this picture.

The Labor Center's Mission Statement: Morphed Beyond Recognition?

Okay, if it's not illegal for Labor Center staff to do educational work with labor unions and with union and community members, what about the charge that the Labor Center's mission statement has morphed dramatically over the years? In the text of Section W/P G of the full audit, Maryam says that "a review of the mission under which the Center currently operates found it to be significantly different from the original language used for establishment of the organization. Significantly, the role of the unions themselves in the mission had changed drastically. The original language...stated the main purpose of the Center was to provide opportunities to union members for education, however the revised mission signified the Center also provided services to Unions themselves and was in close partnership with the organizations."

Maryam accurately quotes from paragraph one of the original mission statement ("The Center's mandate is to provide access for union members within this state to education and research opportunities at the post-secondary level"), but neglects to quote paragraph 2: "The Labor Center provides educational programs and research emphasizing history, political economy, and organizing. It is committed to exploring a variety of joint Labor/College educational formats and to creating a learning environment that will benefit working people in the state of Washington." That sentence is not drastically different from this sentence in the May, 2004 mission statement which Maryam uses by way of comparison: "The educational focus of the center is to develop programs in a collaborative fashion with organized labor and labor support groups to address issues relevant to workers and their unions." What makes the latter statement different and, for Maryam, significant, is the mention of unions instead of Labor (though among those of us who work with unions, we know that a capitalized L for Labor signifies organized labor, i.e., unions). As Maryam says, "*Since Unions*

are separate organizations, the current mission of the Center as written, could provide the appearance of a possible conflict of interest” (emphasis in original). However, we established above that there’s no conflict of interest if the work with the “separate organizations” is part of a staff person’s official duties. And since working with unions has always been part of Labor Center activities and there’s been no fundamental change in staff duties since the Center opened in 1986, the drastic difference Maryam finds between the Center’s original mission and the revised mission evaporates. (The Labor Center’s long history of working with unions, and also with community organizations, students, and faculty, was documented for the years 1986-1993 in the so-called Pink Book entitled “Labor Center Review 1986-1993.” The Activities section of the book opens with this statement: “The Labor Center develops educational activities and programs to suit the needs of different unions.” It continues: “The Labor Center originated with individual unions requesting customized educational programs for their members. Our work has continued in this tradition.”)

No Management Approval?

Well, what about the final charge that the Labor Center has been making changes in its mission and practices without the approval of the Board of Trustees or college management? The College Provost has always been an ex-officio member of the Labor Center’s Advisory Committee, and during my tenure as director, has attended many meetings. Furthermore, the Provost has always been provided minutes from Advisory Committee meetings that s/he might have missed, and s/he has done annual reviews of the Labor Center Director based on a Director’s annual report and the Provost’s own knowledge of Center activities. So management has been intimately familiar with the purposes and activities of the Labor Center, including how those purposes get spelled out in mission statements. Changes in mission statements (the most recent revision was in the Fall of 2008) have been made to try to better capture and elaborate on what the Labor Center does, not to change the Center’s basic purposes. Management has been presented with proposed changes and been given the opportunity to comment on them. All these years of management overview of Labor Center activities constitute what those of us in the labor trade call “past practices”: longstanding, frequent practices accepted and known by both union and management (David Cohen in *Labor Notes*, based on Robert Schwartz’ “How to Win Past Practice Grievances”). There should be no suggestion that Labor Center staff have been blithely doing our own thing without management knowing what we’re up to.

Concluding the Three Assumptions Critique

I’ve addressed what I see as the three major assumptions underlying the auditor’s findings that the Labor Center has engaged in unethical and illegal activity. Before turning to other specific examples of alleged improper behavior, however, I think it’s important to address the fix she proposes for our unethical

ways. As she says in Recommendation 1 on page 2 of her Executive Summary, “The Center’s mission and the advisory board’s by-laws should be reviewed by the College’s legal counsel and approved by the Senior Management. A clear and legally sound mission would assist the College and Center to better determine legal guidelines and parameters for the Center’s work and prevent many appearances of ethics violations.” Given that in her analysis Maryam only cites paragraph 1 of RCW 42.52.160 (a state employee can’t provide private benefit for another) and ignores paragraph 2 (it’s okay to provide private benefits if doing so is part of one’s official duties), and given that she cites approvingly only paragraph one of the Labor Center’s original mission statement (which focuses on providing educational opportunities for union members at the post-secondary level) and ignores paragraph 2 (which emphasizes “a variety of joint Labor/College educational formats”), it’s not hard to imagine what Maryam would consider appropriate legal parameters for the Center’s work. We’d have to cease all educational services provided directly to unions and community organizations and provide education only to matriculated students. The mission statement has to follow the law, and in Maryam’s understanding the law prohibits us from doing educational work of benefit to private parties, i.e., labor unions. To follow her advice would be to cut the heart out of the Labor Center, and by extension, disable all the public service centers on campus. Fortunately it appears that Maryam’s interpretation of the law is incorrect, and if she had looked at all the paragraphs in the RCW and Ethics Board advisories instead of editing them to fit apparently preconceived notions of what’s proper and what’s not, she would have come to very different conclusions about whether Labor Center activities are in violation of ethics laws and advisories.

Resisting Federal Agencies and Other Alleged Indiscretions

A reading of the law to fit what appear to be preconceived notions of proper activity is evident in other parts of Maryam’s audit. Take, for instance, her claim that the Labor Center does “training and classes pertaining to resisting work of federal agencies” (p. 2 of Executive Summary, paragraph 9), a claim that she spells out in Section W/P G, page 2, through reference to our Winter 2008 newsletter: *“Again, the newsletter contained work being done in opposition to several federal agencies and efforts by the Center to encourage opposition of these efforts [emphasis in original].* The newsletter also stated and included comments regarding a rally held at the Tacoma NW Detention Center as part of a Center workshop. The demonstration and expression of opposition for the federal agencies work constitutes a violation of the [State Ethics in Public Service] Act.” This language is remarkably similar to the charge made in the Landmark Foundation’s letter of complaint to the state auditor: “... the Center’s focus appears to be increasingly directed toward thwarting federal and state law enforcement efforts to combat illegal immigration in Washington....The use of public funds to undermine federal and local law enforcement in the performance of their duties is not a valid public purpose.”

Let's look first at how accurately both Maryam Jacobs and the Landmark Foundation have represented what we said about our activities with immigrant workers, then look at Maryam's belief that we've violated state ethics laws through engagement in political activities. Landmark's assertion that we're trying to thwart the work of federal agencies is based on articles from the same newsletter that Maryam refers to. However, the quotes Landmark provides to bolster the charge that we're trying to undermine law enforcement in the performance of their duties say nothing, in fact, about thwarting state or federal law. The quotes talk about people being persecuted by ICE (Immigration and Customs Enforcement), about divisions between workers based on immigration status, about the importance of workers talking with one another about exploitation on the job and in the streets, and about trainings regarding the "legal aspects of support in a legal and peaceful demonstration." Of course, the Landmark letter did try to implicate the Labor Center in impermissible activities through a creative rearranging of sentences in one of our newsletter articles. The article discussed how labor unions around the country are taking the lead in "defending the rights and dignity of immigrant workers" by, among other things, filing a lawsuit claiming ICE raids to be "excessive, illegal and unnecessary." Landmark twisted this article into a suggestion that the Labor Center was helping people resist ICE raids. It was a cheap editing trick that could easily be caught by a careful reading of the newsletter article itself.

Maryam draws from the same newsletter articles to claim that we oppose the work of federal agencies like ICE and Homeland Security as well as oppose local law enforcement work, specifically in the City of Pacific. The article on "Responding to Anti-Immigrant Police Actions in Pacific, WA" opens with this sentence that was highlighted (in the audit) by Maryam: "Reports indicate that the city of Pacific has been the site of indiscriminate arrests of Latinos based on racial profiling and a confused understanding of jurisdictional responsibility by local law enforcement officials and city government." That's a *report* about how local police may themselves be violating the law and how they may be engaged in police work that properly belongs to another agency. The article goes on to talk about how statewide faith and secular communities were organizing support for the Latino community of Auburn/Algona/Pacific, and how the Labor Center's Juan José Bocanegra was helping to provide trainings to community members so they could know how to legally and peacefully deal with possible police misconduct. There was no mention of trying to oppose the lawful work of local police officials. And if police are acting unlawfully, is it our duty as public servants to turn our backs and not help educate people about their rights in dealing with police misconduct? Particularly if this education will help build trust in the community and therefore help with our broader project of doing outreach and education about workplace issues with the immigrant Latino population?

Concerning ICE, the only other mention of that agency in the Winter 2008 newsletter outside the article on Pacific was in the article entitled "Labor Unions Defending the Rights of Immigrant Workers," the one that Landmark creatively

edited. There is no suggestion in this article that the Labor Center is teaching people to interfere with the legal activities of ICE agents. There is a paragraph which opens, “In Washington State our own local unions are also taking proactive steps to defend their memberships.” This is being done in part “through trainings that teach all workers about their rights; the Labor Center will soon be scheduling such trainings with the Laborers’ Union.” Teaching people about their rights – human, civil, and worker – seems like a very appropriate activity for Labor Center staff. Teaching about rights is far different from teaching people how to interfere with the legitimate activities of law enforcement agencies, even if some law enforcement agents would prefer that people not know their rights (because they believe it makes their work easier). What law enforcement agents want in the way of intimidation and what they’re legally entitled to are not necessarily one and the same thing. It’s important in a country that values rights and freedoms to help people understand the difference.

What about Maryam’s claim that the Labor Center violates RCW 42.52.180, which prohibits use of State resources for political purposes? That section of the RCW is very clear about what is meant by political activity. Paragraph 1 states that “No state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition.” Those two things – working on an electoral campaign and working on a ballot proposition campaign – are things we do not do as Labor Center staff. However, as part of conferences or workshops, we do sometimes help participants organize demonstrations, for instance in favor of health care for all or in opposition to Wal-Mart’s anti-union policies. We do these demonstrations because we see exercising first amendment rights as an important part of learning to become effective worker advocates. Educating people about how to organize more effectively is an important part of what we do. But we don’t join with people in anything related to electoral or ballot measure activities.

Ethics Law Violations in Advisory Committee Discussions?

Finally, in regard to potential ethics violations, Maryam mentioned “several possible conflicts” in regard to the Labor Center Advisory Committee. One involved our joining, and paying dues to, U.S. Labor Against the War. Maryam suggests this is a violation because state funds are supporting an outside organization. However, if it’s legitimate for the Labor Center to work with outside organizations and to use public resources to benefit them when doing so is part of our official duties, this should not be a problem. The programmatic reason for joining the organization, as the minutes to which Maryam refers make clear, was in part to “encourage the formation of an organization chapter in Olympia” which “might help with important conversations, like between longshore workers and peace activists.” We see helping facilitate those discussions as an important part of our educational work with union members. So we joined U.S. Labor Against the War. We’ve since dropped our affiliation, however, in part because being a

member was not helping achieve the conversations and networking we hoped it might.

In the section on potential Advisory Committee conflicts, Maryam also mentions discussion of Juan José Bocanegra's workplan in the minutes from the November 3, 2007 Advisory Committee meeting. Maryam says that "as part of this work plan he [Bocanegra] states he will work to 'get an agreement from the police departments not to cooperate with ICE'." In fact, what the minutes say is that "the Comité pro-Amnistía has been organizing in Pacific and also in Lynnwood to get an agreement from the police departments not to cooperate with ICE." Those are very different things – what the Comité has been doing versus what Juan José Bocanegra will do during the coming year; Bocanegra reporting on another organization versus him talking about his own work. The twisting of the clear meaning of a sentence to imply a legal violation suggests the Landmark Foundation's similar attempt to distort meaning.

Finally, in this section on the Advisory Committee, Maryam mentions that "the minutes of the June 21, 2008 meeting...discuss several political races and work being performed on those campaigns. It also mentions support of some candidate. *This discussion is in violation of State Ethics laws* [emphasis in original]." What Maryam is referring to are reports made by Advisory Committee members about political activities they or their unions/ organizations are involved in. The purpose of these reports is for the committee members to educate each other about union issues and political issues that pertain to unions. It's not to use committee time to rally people around one candidate or issue or another. Education of this sort seems very appropriate for a public agency, and particularly a College program whose purpose is to educate union and community members about things having to do with unions. Imagine what state agencies would be like if all discussion about legislators, candidates, issues, and bills were prohibited within agency walls. It's obviously very important to make a distinction between people becoming educated about political matters and people using state resources to work on political campaigns. We help with the former but not with the latter.

A Summary of Laws and Advisories Pertaining to Ethics

In her February 3, 2008 email to me Maryam included a list of laws and Ethics Board advisories she thought we might have violated. Following is her list (the underlined hyperlinked references), with the comments I sent back to her (beginning with PK) about how I think they do or do not apply to the Labor Center.

<http://www.leg.wa.gov/LawsAndAgencyRules/constitution.htm> PK: Article 8, Section 7 Section 7 says that "no county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except

for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.” This seems to refer directly to money, or credit to enable an individual or business to get money, but presumably it’s meaning is spelled out in the RCWs and Advisory Opinions referred to below.

<http://apps.leg.wa.gov/RCW/default.aspx?cite=42.52>: PK: Paragraph 1 of 42.52.160 says that “No state officer or state employee may employ or use any person, money, or property under the officer’s or employee’s official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another,” but it’s followed by paragraph 2 which states that “This section does not prohibit the use of public resources to benefit others as part of a state officer’s or state employee’s official duties.”

Examples of union business vs. state business:

<http://www.ethics.wa.gov/ADVISORIES/opinions/02-01.htm>: PK: Part of this Advisory says that “In EEB Advisory Opinion 00-09, the Board found that RCW 42.52.160(2) provides that the limits on using state resources in RCW 42.52.160(1) do not apply when the use of resources is part of a state officer’s or employee’s official duties.”

http://www.ethics.wa.gov/ADVISORIES/opinions/02-01%20Revised%202003.htm?zoom_highlight=political+activity: PK: This advisory pertains to the conducting of union business. We do not conduct union business at the Labor Center. We don’t organize as part of our official duties, nor do we do union representation. We do education with union members, but that’s no more the same as acting like a union than it is for the Everett Community College to be acting as a business by providing education to a company’s employees. By the way, this Advisory also states, “The Ethics in Public Service Act prohibits the use of state resources for private benefit or gain, except in the course of official duties.”

<http://www.ethics.wa.gov/ADVISORIES/opinions/99-02.htm>: PK: The issue defined in this advisory is “whether state employees may operate a non-profit corporation within a state agency for the purposes of overseeing fund-raising activities and ensuring compliance with the state’s ethics laws?” The Labor Center is not operating a non-profit corporation within the college, nor are we doing fund-raising on behalf of a non-profit organization. Therefore this advisory does not apply to our activities.

http://www.ethics.wa.gov/ENFORCEMENT/Results_of_Enforcement/03-24ince.pdf: PK: This pertains to lobbying the legislature. We don’t lobby the legislature.

http://www.ethics.wa.gov/ENFORCEMENT/Results_of_Enforcement/03-023BirdOrder.pdf: PK: This has to do with an employee using state resources (email) for union purposes. We do not use email for union purposes. We use email as part of our educational work with and about unions, but that is not the same as using email in one’s capacity as a union activist within an agency.

Examples of providing services to a non-profit:

http://www.ethics.wa.gov/ENFORCEMENT/Results_of_Enforcement/02-03wilhitestip.pdf: PK: Has to do with an employee using his position as a public employee to gain special privileges for his non-profit organization. The Labor Center is not running a non-profit organization, therefore this decision does not apply to our activities.

http://www.ethics.wa.gov/ADVISORIES/opinions/9-02.htm?zoom_highlight=political+activity: PK: Same as above (99-02)

Petitions:

http://www.ethics.wa.gov/TRAINING/quiz/question-9.htm?zoom_highlight=political+activity: PK: This has to do with an employee using work time to circulate a petition in support of, or opposition to, a ballot proposition. We don't circulate petitions. We may inform people that a ballot proposition is being considered or some other petition is being circulated, but we do that because it's part of our job to educate people about issues pertaining to working people and unions. It is not our policy to actively encourage people to sign onto petitions. As for the question of whether notifying people that a petition is around is the same as encouraging them to sign it, consider this scenario. Let's say a group of individuals in the state is circulating a petition to have Evergreen shut down. Les Purce hears about the petition and sends out an email informing the Evergreen community about the petition. He says he thinks it's important for people at the college to have this information. Has he violated the ethics act by sending out this email?

Payment for banquets and award ceremonies

<http://www.ofm.wa.gov/policy/70.15.htm>: PK: I don't see how this policy pertains to banquets, but if it does, I'm happy to get educated about it.

Financial Indiscretions

While finding no evidence that there's been any graft or corruption in the Labor Center, the auditor did find a number of instances in which we could improve our invoicing, receipt of funds, record-keeping, and so on. We're happy to work with the appropriate offices on campus to make improvements and have already begun to change some of our practices.

There are a couple of "exceptions" Maryam defines that I would like to clarify, however. One has to do with our providing "scholarships" for the Summer School for Union Women, and the other with providing childcare and transportation at some of our events. Maryam's objection to our scholarship policy has to do with our using funds deposited in a state account for the scholarships rather than Foundation monies. In most cases, people we call scholarship recipients are actually registrants whose registration is paid by a

union or organization to which they do not belong. I don't believe there's anything wrong with depositing registration monies in a state account and using those funds to pay expenses related to a conference. Who will be covered by registration contributions is determined by the organizations that have paid the money, in communication with the Labor Center. People who have no money and no organization paying their way are true scholarship recipients, and in that case it's always been our practice to transfer funds from the Foundation to pay their registration fees. In the case of neither registrants nor scholarship recipients does anyone receive funds directly from us.

As for the Labor Center providing childcare or transportation at events, I assume Maryam finds that to be in violation of gifting laws because we are providing these services to people outside of Evergreen. It's that issue again of violating paragraph 1 of RCW 42.52.160. But since we know that paragraph 2 allows us to provide resources to outside parties if it's part of our duties, I would assume that providing daycare to help people participate in an educational event should not be a problem. The same for providing transportation so people can physically show up.

Conclusion

By way of conclusion, just a few questions. Why did the College jump so quickly to do an audit of the Labor Center when the letter arrived from the Landmark Foundation? Why, if there was to be an audit, did it have to include the political/ethical/mission issues as well as the financial questions? Why were we not able to get an appointment with the President to convey our concerns to him? Once we had provided feedback to the auditor, why was our feedback not included in a revision of the audit? Why does Maryam Jacobs ignore paragraph 2 of RCW 42.52.160 while making so much of paragraph 1? Why is she so fixed on the college's only proper clients being registered students? Why are the questions she poses and the answers she finds so similar to the Landmark Foundation letter? Why is the consistency of 22 years of Labor Center activity not reflected in her report? Why all the intellectual and organizational activity to skewer the Labor Center instead of supporting us in our work?