

AGENDA

COMMITTEE OF THE WHOLE

Meeting: 1:00 pm., Tuesday, November 13, 2001
Glenn S. Dumke Conference Center

Laurence K. Gould, Chair
Debra S. Farar, Vice Chair
Roberta Achtenberg
William D. Campbell
Daniel N. Cartwright
Martha C. Fallgatter
Bob Foster
Murray L. Galinson
Harold Goldwhite
William Hauck
Ricardo F. Icaza
Shailesh J. Mehta
Dee Dee Myers
Ralph R. Pesqueira
Frederick W. Pierce, IV
Charles B. Reed, Chancellor
Kyriakos Tsakopoulos
Anthony M. Vitti
Stanley T. Wang

Consent Items

Approval of Minutes of Meeting of May 15, 2001
Approval of Revised Minutes of Meeting of March 20, 2001

Discussion Items

1. Litigation Report No. 14A, *Information*
2. California State University Northridge – Final Report on the Earthquake Recovery Program, *Information*

REVISED

**MINUTES OF THE MEETING OF THE
COMMITTEE OF THE WHOLE**

**Trustees of The California State University
California State University, Long Beach
University Student Union-Multipurpose Room ABC
Long Beach, California**

March 20, 2001

Members Present

Laurence K. Gould, Chair
William D. Campbell
Daniel N. Cartwright
Martha C. Fallgatter
Debra S. Farar
Murray L. Galinson
Harold Goldwhite
William Hauck
Shailesh J. Mehta
Neel I. Muraka
Frederick W. Pierce, IV
Ali C. Razi
Charles B. Reed, Chancellor
Anthony M. Vitti
Stanley T. Wang
Cruz Bustamante

Members Absent

Dee Dee Myers, Vice Chair
Roberta Actenberg
Bob Foster
Ralph R. Pesqueira

Chancellor's Office Staff

David S. Spence, Executive Vice Chancellor and Chief Academic Officer
Richard P. West, Executive Vice Chancellor and Chief Financial Officer
Jackie R. McClain, Vice Chancellor, Human Resources
Christine Helwick, General Counsel
David J. Ernst, Assistant Vice Chancellor, Information Technology Services
Freda Hinsche Otto, Assistant Vice Chancellor, University Advancement

Chair Gould called the meeting to order at 1:10 p.m., stating that it was great to be on the Cal State Long Beach campus. He reported that Robert Garcia, President, Associated Students, was unable to join the committee meeting but had given the Board a wonderful welcome during lunch. The chair remarked that everyone on the Board was totally committed to the ideals Mr. Garcia had expressed regarding a mission of accessibility, affordability and high quality. Chair Gould also noted that the chair of the CSULB Academic Senate, Professor Crawford, was also unable to join the meeting as he was teaching a class, but that he would be available to meet Board members later that evening.

Consent Items

The minutes of September 20, 2000 were approved as submitted.

Discussion Items

Welcome

The Chair introduced President Robert Maxson. President Maxson thanked the Board, Chancellor Office staff and other people present for coming to the campus. He stated that the faculty, staff, and students were honored by the Board's presence. Chair Gould thanked the president, noting that staff, students and faculty had gone through a lot of extra work in preparing the welcome the Board had experienced.

Chair Gould extended a warm welcome to Lt. Governor Cruz Bustamante, who has served the university as an ex officio member of the Board in two different capacities, as Speaker of the Assembly and as Lt. Governor of California. The chair stated that in both of those capacities, Lt. Gov. Bustamante had been a tremendous booster of higher education throughout the state of California. Lt. Governor Bustamante had not only been helpful in all of CSU budgetary discussions in Sacramento, he continued, but also on policy issues. In addition, Chair Gould said, the Lt. Governor had been a participant at many CSU functions throughout the system.

Lt. Governor Bustamante spoke of his support for CSU efforts to offer the doctorate in higher education, stating the need here in California and nationwide for the doctorate and how California was currently not able to meet that demand. He promised his support as both Lt. Governor and as a UC regent to push the initiative forward.

Technology Update

Richard West, Executive Vice Chancellor and Financial Officer, introduced David Ernst who presented the item. Mr. Ernst informed the Board that in March 1996, Trustees had endorsed the CSU's strategic plan, the Integrated Technology Strategy (ITS), for the use of technology. Since that time, he reported, several major initiatives have been launched based on the ITS. The plan,

he said, continues to guide the University's strategic use of technology to further its academic and administrative activities.

Mr. Ernst guided Trustees through a slide presentation which gave an update on the accomplishments and future plans of the ITS. He stated that ITS strategy concentrates on outcomes first and technology second, by focusing on activities that further personal productivity, excellence in learning and teaching, the quality of the overall student experience and administrative productivity and quality. The strategy grew out of a systemwide common desire among faculty, students and staff for access to network, hardware and software resources and training and support.

Mr. Ernst spoke of the guiding principles: to plan and develop projects once and share them among multiple projects; that CSU would be known for its applied use of technology; and that technology access, training and support would be the highest priority for students, faculty and staff. He stated that those principles have remained consistent through the life of ITS projects.

Mr. Ernst discussed the three ITS major projects: the Merlot project; the Common Management Systems (CMS /People Soft project); and the Technology Infrastructure Initiative . He then opened the meeting up to questions.

Lt. Gov. Bustamante spoke of the importance of bringing technology to the Board meetings, suggesting agenda materials be available to board members during the meeting via computers and offered to bring the funding request to the attention of the Legislature. Trustee Vitti asked how CSU initiatives would integrate with K-12 and Community Colleges. Mr. Ernst replied that there are several cooperative initiatives currently underway driven by CSU. Trustee Goldwhite asked what the indicators of success were for the PeopleSoft project. Mr. Ernst spoke of the specific milestones that had to be met on a campus-by-campus basis. Trustee Wang asked how much would need to be invested and Mr. Ernst replied that for CMS it is anticipated that \$350-400 million would be spend over the 5 to 7 years of the project, while the Merlot project had a much smaller budget of approximately \$1 million. Over the 5-7 years of the entire Integrated Technology Strategy, between \$800 million and \$1 billion would be spent. Mr. West noted that much of what was being spent was the foundation of future support efforts. Trustee Vitti asked how these efforts would enhance remediation efforts for those who have not had access to computers. Mr. Ernst reported that the plan focused on having student computer access on campus but did not have a broader answer. Trustee Goldwhite added that in many classes computer access was required and CSU campuses have an elaborate infrastructure – e.g. computer labs – to ensure that students who do not own computers are not left out.

Chair Gould thanked Mr. Ernst and Mr. West for their presentation.

Chair Gould asked Christine Helwick, General Counsel, to present the item. Ms. Helwick stated that the last time she presented the litigation report, she had noted a downward trend CSU was experiencing in the total volume of cases pending against the university. This report, she said, reflects the continuation of that downward trend. There are currently 188 active cases pending against the CSU, the first time that the total volume of cases has dropped below the 200 mark.

Ms. Helwick reported on three noteworthy developments in cases reported in the item. In the Horsford case, the claim brought by 3 white police officers claiming to be victims of reverse discrimination, there had been a substantial verdict granted in favor of the plaintiffs of over \$4 million. Post-trial motions, she reported, have now been heard and the judge reduced the verdict to just over \$1 million, a significant reduction. In a March 7, 2001 mediation on the Lander case, an ADA suit at Sonoma State University, similar to the SFSU complaint regarding architectural barriers throughout the campus, Ms. Helwick reported that a settlement had been reached which awarded \$139,000 to the four plaintiffs and their attorneys in resolution of the case. In the Serviss case, the lawsuit involving a claim by Humboldt State University dormitory residents that they had been injured by noisy seismic retrofit work, Ms. Helwick reported that the insurer for the contractor to whom CSU had tendered its defense decided to settle the claim.

In December a payment was made to the students and the matter was closed at no cost to CSU.

Ms. Helwick opened the meeting to questions. Trustee Pierce asked for elaboration in the City of Marina and Fort Ord case. Ms. Helwick stated that the status remains unchanged, local entities in that case are claiming that they have rights that CSU is contesting. The issue has been tried and lost and CSU intends to appeal.

There were no further questions or comments.

Amended Policy on Punitive Damages

Ms. Helwick stated that the item proposes a revision to existing Board policy on payment of punitive damages awards. The intent of the item is to give the Board the greatest amount of flexibility to deal with instances where a judge or jury has entered a punitive award against a CSU employee or member of the Board.

The Board first adopted a policy on punitive damages in 1995 when it was statutorily impermissible to pay any punitive award from state funds. The Board's original policy called for an investigation into the circumstances of any punitive award, and where appropriate, the encouragement for payment of such awards from non-state funds sources, such as CSU auxiliary funds. The policy remained in effect for one year until new legislation was enacted which changed the ability of the state to pay punitive damages awards. At that time, the Legislature gave permission to State agencies, in appropriate circumstances, to pay punitive awards from State funds. After the new statute was enacted, CSU policy was amended, tracking the language of the new statute as to the circumstances when reimbursement might be appropriate, and requiring the first call for the payment of punitive awards to come from state funds.

Neither of these Board policies has ever been used, Ms. Helwick stated, as there have been no punitive awards entered against any CSU employee since 1995 until fairly recently. In fact, she noted, there have only been two punitive awards entered against any CSU employees in the history of the institution, and in both instances the amount of the actual award was very small.

Ms. Helwick called the Board's attention to one change made in the resolution text. Since the proposed amendment now covers punitive damages awards that might be entered against Board members as well as CSU employees, language now clearly expresses that any Board member who might be the subject of such an award, must recuse himself/herself from any decision-making that might pertain to his/her own personal circumstances. Ms. Helwick added that the only time that any Board member has been named individually in any CSU litigation has been in fairly political lawsuits such as the challenge to Proposition 187. Other than that, she said, the naming of Board members has been as a body, in which case there is no individual liability.

Ms. Helwick called for questions. Trustee Fallgatter questioned whether punitive damages award monies to be paid from auxiliaries came from campus auxiliaries or if there was a way for the university system to cover those awards. Chancellor Reed assured her that the system covered those awards against Board members and system administrators. Claims brought against a campus, he said, would be paid by campus auxiliaries. Trustee Pierce asked that, as this policy did not state the order from where funds should be sought, if the Board wished to seek reimbursement from the Legislature, could the Legislature now state that CSU Board's own policy, allowing payment to be made from CSU auxiliaries, work against the University. He asked if the CSU would be better served by being more specific or if the system was best protected by leaving options open. Chancellor Reed replied that options should be left open, which allowed CSU administrators to solve things internally or to go through the political process.

The resolution was approved as submitted in the revised agenda item. (RCOW 03-01-01)

Adjournment

The meeting adjourned at 2:00 p.m.

**MINUTES OF THE MEETING OF
COMMITTEE OF THE WHOLE**

**Trustees of The California State University
Office of the Chancellor
Glenn S. Dumke Conference Center
401 Golden Shore
Long Beach, California**

May 15, 2001

Members Present

Laurence K. Gould, Jr., Chair
Dee Dee Myers, Vice Chair
Roberta Achtenberg
Daniel N. Cartwright
Martha C. Fallgatter
Debra S. Farar
Harold Goldwhite
William Hauck
Neel I. Murarka
Ralph R. Pesqueira
Frederick W. Pierce, IV
Charles B. Reed, Chancellor
Kyriakos Tsakopoulos
Stanley T. Wang

Members Absent

William D. Campbell
Bob Foster
Murray L. Galinson
Shailesh J. Mehta
Anthony M. Vitti

Chancellor's Office Staff

David S. Spence, Executive Vice Chancellor and Chief Academic Officer
Richard P. West, Executive Vice Chancellor and Chief Financial Officer
Jackie R. McClain, Vice Chancellor, Human Resources
Christine Helwick, General Counsel
Freda Otto, Administrative Officer in Charge, University Advancement

Chair Gould called the meeting to order at 1:34 p.m.

Approval of Minutes

The minutes of March 20, 2001 were approved.

Chair Gould introduced newly appointed trustee, Kyriakos Tsakopoulos, and welcomed him on behalf of the trustees to the CSU board.

The Chair announced there was one item on the committee agenda and asked Mr. Richard P. West, Executive Vice Chancellor and Chief Financial Officer to introduce the item.

Quality Improvement Initiative

Mr. West briefly reviewed the history of the initiative, noting a report on the program was last presented to the board in 1995. Since that time there have been significant changes to the board's membership, as well as extensive progress made in CSU's overall quality endeavours. It was therefore thought to be an appropriate time to update current board members on the status of on-going and future quality improvement measures. Mr. West noted the program is campus-based and has been quite successful in helping design and streamline support services to students, faculty and staff, as well as the general public.

Mr. West introduced Mr. Don Kassing, Vice President for Administration at San Jose State and Chairman of the Systemwide Quality Improvement Programs Steering Committee, and Ms. Lenore Rozner, Assistant Vice Chancellor for Business Planning, who jointly presented the report.

With the assistance of a series of slides, Mr. Kassing began by reviewing the program's history, mission, and desired outcomes along with a comprehensive overview of the various tools utilized in the Quality Improvement Program. He emphasized that the program is a voluntary partnership between the campuses and the Chancellor's Office. Mr. Kassing took a moment to acknowledge the exceptional support for the program from Chancellor Reed and Executive Vice Chancellor West. He also praised the campuses for their substantial contributions of personnel time and funding support. He then introduced and publicly thanked the support staff members in the Chancellor's Office responsible for the smooth functioning of the program.

Some highlights of the presentation included:

In the current year there are 12 administrative and student functions being measured with 21 campuses in participation.

CSU is now piloting its own web-based collection tool to enhance performance measurement data collection efforts. Mr. Kassing credited the CSU, Long Beach campus' Institutional Research Office with the implementation of this highly effective and constructive web-based approach.

Ms. Rozner focused on the process-mapping component, explaining it as flow-charting the specific tasks in a process. This is an important quality improvement tool that has caught the attention of the campuses because it can be effectively used to implement changes and streamline a process. Currently, over 300 CSU personnel have been trained in this approach to map processes at the campuses.

What has been learned in the seven or eight years of the program's existence is that none of the tools can be used effectively in isolation. For example, customer satisfaction survey questions are built to link to performance measures of critical processes. To further illustrate the process, Ms. Rozner cited several examples of recent projects at various campuses to demonstrate the breadth, depth, and variety of the projects, as well as the types of functions and number of participants involved in the quality improvement program.

Ms. Rozner also described the move toward a performance measurement software package recently purchased by the central office. All sources of data including that from customer surveys as well as operational systems such as CMS (the Common Management System) will be integrated into using this tool.

Mr. Kassing added that for the past three years, CSU has held an Annual Quality Improvement Symposium and Expo. The symposiums, held in November, have been extremely well attended and have provided valuable opportunities for campuses to share and exchange ideas, and to obtain a sense of what other campuses are doing to develop additional quality improvement support functions.

He concluded the presentation by thanking Chancellor Reed and Executive Vice Chancellor West for allowing time to provide this update.

Chair Gould thanked Mr. Kassing and Ms. Rozner for the very special and informative presentation.

The meeting adjourned at 1:50 p.m.

COMMITTEE OF THE WHOLE

Litigation Report No. 14A

Presentation By

Christine Helwick
General Counsel

Summary

This is the twice-annual report on the status of significant litigation confronting the CSU, which is presented for information. "Significant" for purposes of this report is defined as litigation: (1) with the potential for a systemwide impact on the CSU; (2) which raises public policy issues of significant interest or concern; (3) brought by or against another public agency; or (4) which, for other reasons, has a high profile or is likely to generate widespread publicity. *New information since the date of the last report is printed in italics.*

The cases contained in this report have been selected from over 155 currently active litigation files.

New Cases

Albez v. SFSU et al. - San Francisco Superior Court

Plaintiff, age 4, claims that she was injured when a five-year-old SFSU HeadStart Program enrollee placed her hands up plaintiff's shorts and inserted a hair barrette into her vaginal area. Plaintiff alleged that she informed the HeadStart Program personnel but they sent her home without informing plaintiff's parents. Plaintiff's mother discovered the existence of the incident after finding her daughter huddled on the couch with blood covering her private areas. The University tendered the defense of this case to HeadStart's insurance carrier, which is now providing the defense for the CSU. The case is in the discovery phase.

Catellus Residential Construction, Inc. v. SFSU Foundation, et al. - San Francisco Superior Court

The San Francisco State University Foundation contracted with Catellus Residential Construction, Inc. for the design-build project known as "The Village at Centennial Square." The project includes residential housing for SFSU students, parking and retail facilities and a student services building, on SFSU property. Catellus claims that project delays and cost overruns were caused by the Foundation and SFSU. Catellus filed this lawsuit seeking damages for breach of contract against the Foundation and SFSU, and to foreclose on mechanics' liens. The Foundation is currently defending and has agreed to indemnify SFSU. The lawsuit was then dismissed and the parties agreed to proceed with the dispute in arbitration. The arbitrator has

required Catellus to file an amended claim to explain why CSU should remain a party to the arbitration.

City of Arcata v. Humboldt State University et al. – Humboldt County Superior Court

The City of Arcata filed this action to set aside the negative declaration in connection with the CEQA process for the HSU Behavioral and Social Sciences Building, which was approved by the Trustees in 1993. An early motion by the University resulted in the dismissal of the City's complaint. The City has filed a second amended petition and the University filed another motion to dismiss. The court has not yet ruled on this latest motion.

Concerned Residents of Carson Committee, Inc., et al. v. California State University, et al. - Los Angeles County Superior Court

University Heights Homeowners Association v. California State University, et al. - Los Angeles County Superior Court

Concerned Residents, a community organization in Carson, has filed a petition challenging the Trustees' approval of the EIR for the National Training Center project at CSU Dominguez Hills. The petition alleges that the content of the EIR is inadequate because it fails adequately to address issues such as traffic circulation, the impact of the project on wildlife, and that improper procedures were followed in approving the EIR because significant new information was presented to the Trustees after the close of public comment. University Heights, another homeowners' association in Carson, has filed a second petition which focuses on air quality, and alleges that the EIR fails to properly address the project's impact on emissions during construction and operation of the Training Center, and also fails to describe and evaluate reasonable mitigation measures that could eliminate or substantially lessen these emissions. After a certified record is filed, a briefing schedule will be established in both cases and a date for a hearing set. Under CEQA, the hearing must take place no later than early December, 2001.

Gruenberg v. CSU, NCAA, et al. -San Diego County Superior Court

Karen Gruenberg, an SDSU basketball season ticket holder, claims that she and her infant daughter (whom she was breast-feeding) were discriminated against when they sought admission to the Second Round of the NCAA Basketball Tournament in Cox Arena at SDSU on March 17, 2001, because they were required to purchase an additional ticket for the infant by reason of the NCAA requirement that "every person, regardless of age, must have a ticket to enter the facility." Gruenberg claims the NCAA's ticket policy is a violation of her civil rights based on "sex or gender" because it treats women who breast-feed differently from others, and that it is a restriction on her ability to breast-feed her child. Gruenberg also alleges the NCAA's ticket policy is an unfair and fraudulent business practice. She is attempting to have the court designate this matter a class action. The case is in the early pleading phase. The CSU and NCAA are sharing defense costs.

Losco v. Board Of Trustees, et al. – Orange County Superior Court

David J. Losco, the former Executive Director of Human Resources at California State University, Fullerton, was reassigned to the position of Director of Risk Management. He seeks money damages against the university and four individuals based on the contention that his reassignment was in retaliation for assisting campus whistleblowers in making their claims and for assisting his sister, Pamela Losco, in pursuing her sexual harassment and discrimination claims against her supervisor at the Fullerton campus. The case is in the early discovery stage.

The Regents of the University of California, et al. v. Enron Energy Services, Inc. – United States District Court – San Francisco

In March 2001, UC and CSU filed suit to enjoin Enron from unilaterally returning certain of the Universities' direct access electricity accounts to utility service, to require Enron to provide direct access and related services and to perform its other contractual obligations, and for breach of contract. The Court issued an order enjoining Enron to restore direct access electric service and to perform the other terms of its agreement with the Universities. Enron appealed and the Ninth Circuit Court of Appeals issued an emergency stay of the injunction pending appeal. On June 29, 2001, the parties settled the dispute. The Universities' accounts were returned to direct access service; the complaint and appeal have been dismissed; and the parties agreed to the allocation of certain charges and rate increases for the remainder of the contract term. The parties also agreed to a two-year extension of the contract for direct access service upon terms to be negotiated.

Tillman v. CSU, et al. -- Los Angeles County Superior Court

Donna Tillman, a professor and former Chair of the Academic Senate at Cal Poly Pomona, filed this action alleging defamation and invasion of privacy by CSU and the President based on a series of newspaper articles about Tillman that were written by student reporters and published in the campus newspaper, The Poly Post. In the course of researching the articles, The Poly Post made a Public Records Act request seeking records relating to Tillman's compensation from the University. The University complied with the request and provided the records. Tillman's compensation was accurately reported in the newspaper. The case is in the initial pleading phase. CSU filed a special motion to strike the complaint, which was heard on September 6, 2001. The court dismissed several of Tillman's causes of action and continued the hearing to see whether additional causes of action should be dismissed. No date has been set for the continued hearing.

Triggs v. California State University, Fresno – Fresno County Superior Court

Charles Triggs, a part-time temporary parking officer, alleges that from July 1999 through August 2000 he was subjected to unwanted sexual harassment and discrimination by CSU Fresno police dispatcher Melinda Combs. The case is in the discovery stage.

Construction Cases

Board of Trustees v. Blake Construction, et al. - San Diego County Superior Court

CSU filed this lawsuit against Blake Construction Company, the prime contractor, Richard Bundy & David Thompson, Inc., the architect, the stucco and window subcontractors, and the window manufacturer at the Chapultepec Residence Hall at San Diego State University, which has experienced significant water intrusion into some of the living units. *During a mediation conference in May 2001, the parties agreed to settle this lawsuit for \$6,127,500. The CSU has not released its right to seek compensation for any personal injury claims that may be brought by students or employees related to Chapultepec Hall.*

Board of Trustees v. Dillingham Construction - San Francisco Superior Court

CSU filed this lawsuit against Dillingham Construction, contractor for the Humanities Building on the San Francisco campus, which has experienced leaks through the windows and walls as a result of the failure of the exterior insulation finish system. The case is in the discovery stage. Field tests are underway, which it is hoped will lead to a repair plan. *Mediation is scheduled for November 19, 2001. A settlement conference is set for December 7, 2001. The court granted Dillingham's motion to vacate the January 7, 2002 trial date and determined that this is a complex civil action that should be assigned to a single judge for all purposes including trial.*

Board of Trustees v. Perini Building Company – San Francisco County Superior Court

CSU filed this action against Perini Building Company, the design-build contractor on the Guest Center/Resident Apartments on the San Francisco campus, which has experienced significant leaks through the windows and walls as a result of the failure of the exterior insulation finish system. An early mediation was not successful. Additional seismic issues in the building have also been uncovered. The case is in the discovery phase. A further mediation is anticipated. Trial is scheduled for December 3, 2001.

Employment Cases

Beyene v. CSU, et al. -United States District Court - San Diego

Asfaw Beyene, an African Lecturer in the School of Engineering at San Diego State University for eleven years, claims that he was not hired into a tenure track position because of his race. He also claims to have been defamed in the search process by Dean Pieter Frick, a former South African military officer, who purportedly stated that Beyene was not qualified. An early motion eliminated all of his claims, except for race discrimination. *This case is in the early discovery phase. The court has scheduled an Early Neutral Evaluation conference for October 25, 2001.*

Brown v. California State University - Fresno County Superior Court

Horsford, et al. v. California State University - Fresno County Superior Court

Auwana Brown, a former employee in the CSU Fresno Police Department, filed a lawsuit claiming to have been sexually harassed by the former chief of police, Willie Shell. Daniel Horsford and five other employees or former employees in the CSU Fresno Police Department filed a separate lawsuit claiming that a variety of actions in the CSU Fresno Police Department

while Shell was chief constituted reverse discrimination. The plaintiffs in the second action are white, Hispanic and Asian; Shell is black. Plaintiffs in both lawsuits are represented by the same attorney. Shell resigned his employment at CSU Fresno before either lawsuit was filed, and later pled no contest to felony charges of misconduct while he was chief of police at CSU Bakersfield before coming to Fresno. Brown was settled in December 1998. CSU filed motions for summary judgment against all six plaintiffs in Horsford. Three were granted. The other three were granted in part, leaving significant but narrowed issues for trial. The trial of this case began on May 16, 2000 and continued through August 11, 2000. The jury rendered a verdict for plaintiffs in the total amount of \$4.25 million. On December 22, 2000, the court reduced this verdict to \$1.17 million. *The court awarded plaintiffs' attorneys \$1.2 million in fees. Both the verdict and the attorneys' fee award are on appeal.*

Deutsch v. Hulsey, et al. – United States District Court – San Diego

Stuart J. Deutsch, a former professor at Northeastern University applied for positions at CSU Northridge and San Marcos in 1997 and 1999 respectively. He did not get either job. He filed this lawsuit against the CSU, various CSU employees, an employment search consultant, Northeastern University, and its in-house counsel, claiming that he was denied both jobs because of a conspiracy to retaliate against him for having earlier filed claims of discrimination against Northeastern and its counsel. *After three pleading motions, the court dismissed this case on March 29, 2001.*

Donoho v. Trustees, et al. - Los Angeles County Superior Court

Sean Donoho, who is developmentally disabled, was employed, while still a minor, as a cafeteria dishwasher in the Forty-Niner Shops at CSU Long Beach as part of a transition program run by the Long Beach Unified School District. Donoho claims to have been the victim of a series of sexual molestations and attacks by a fellow cafeteria employee, and is suing the CSU, the Forty-Niner-Shops (a campus auxiliary), the Long Beach Unified School District and various individuals. The CSU is being defended and indemnified by the Forty-Niner Shops. *The case has been settled for \$435,000, comprised of \$20,000 from the LBUSD, \$90,000 from the Forty-Niner Shops and \$325,000 from the Forty-Niner Shops' insurer.*

Elsayed v. CSU, Hayward, et al. – United States District Court - Oakland

Osman Elsayed, an African male, was denied tenure at Hayward in May of 1996. He sued claiming to have been the victim of discrimination on the basis of his Islamic religion, race and national origin. The case was tried for two weeks in September 2000. The jury returned a verdict for the plaintiff in the total amount of \$637,000. Elsayed was awarded \$100,000 for economic loss, \$500,000 for emotional distress, and \$37,000 in punitive damages against the president, provost and a dean. *At a post trial motion, the court dismissed the provost and reduced the punitive damages to \$22,000. The CSU has filed an appeal from the judgment.*

Elimimian v. Board of Trustees of the California State University, et al. – San Luis Obispo County Superior Court and United States District Court – Los Angeles

Isaac Elimimian, a former tenure track faculty member in the Department of English at San Luis Obispo, filed a lawsuit in both state and federal court claiming he was denied tenure and promotion because of his race and national origin. He is a Nigerian.

The state court action was transferred to San Luis Obispo County and dismissed. The federal court action went to trial on January 23, 2001. After eight days of testimony, the jury returned a unanimous defense verdict. *Elimimian has filed an appeal.*

Green v. SFSU -- San Francisco County Superior Court

Marcia Green, a 15 year Lecturer at San Francisco State University, was not hired into a tenure track position and subsequently was not rehired as a Lecturer. She alleges that she was the victim of discrimination on the basis of her Polish ancestry, marital status and age. The case was tried for three weeks in August and September 2000. The jury returned a verdict in favor of the CSU on the discrimination claim, but awarded Green \$1.56 million for retaliation. The CSU has filed an appeal. *Briefs are being prepared.*

May v. Trustees – Monterey County Superior Court

James May is a former faculty member at CSU Monterey Bay who retired in 2000. He alleges that he was forced to take an early retirement due to continuing mistreatment. He alleges race, disability and age discrimination, harassment, retaliation, failure to prevent discrimination, and wrongful termination. The case is in the *discovery* stage. *A Mandatory Settlement Conference is scheduled for December 7, 2001 and trial is scheduled for January 28, 2002.*

McNier v. CSU – San Francisco Superior Court & United States District Court – San Francisco
Plaintiff is a Lecturer in the Accounting and Management Departments who claimed reverse discrimination because he was not interviewed for a tenure-track position in the Hospitality Management Department. He filed in both state and federal courts. After a three-week trial in the state court, the jury awarded plaintiff \$2.75 million for discrimination and \$2.3 million for retaliation. By agreement of the parties, only the larger award was entered. The court subsequently reduced the verdict to \$1.9 million. Plaintiff was also awarded \$315,000 in attorneys' fees. The university appealed. The trial court outcome was affirmed. *Plaintiff was paid the state court verdict plus attorney's fees.*

Plaintiff filed a federal counterpart to his state court action in which he seeks punitive damages against three individually named defendants. *A pretrial conference is set for April 16, 2002 and trial is scheduled for April 29, 2002.*

Rivas, et al. v. CSU Monterey Bay – Monterey County Superior Court

This action is brought Vicente Rivas, the former Vice President for Student Affairs at CSU Monterey Bay, who retired, Octavio Villalpando, the former Director of Institutional Research, who resigned, and Cecilia Burciaga, a current employee who was reassigned from the President's

area. All allege discrimination on the basis of their race, ethnicity and sex, harassment and retaliation. The case is in the *discovery* stage.

Tillinghast v. Humboldt State University, et al. - United States District Court, San Francisco & Sacramento County Superior Court

Professor Tillinghast brought this action in Federal Court after he forfeited an offer for a lectureship in the Religion Department at Humboldt State University because he would not sign the loyalty oath required of all state employees by the California Constitution. He alleged that the oath interfered with his religious beliefs in violation of the Religious Freedom Restoration Act. Professor Tillinghast subsequently filed a separate lawsuit in State court on these same issues.

On June 25, 1997, the United States Supreme Court invalidated the Religious Freedom Restoration Act on constitutional grounds. CSU then filed a motion for summary judgment in the Federal action, which was granted on September 4, 1997. Professor Tillinghast has not continued to press his state court claim.

Yoo-Madrigal v. Trustees – United States District Court – Sacramento

Moon Jee Yoo-Madrigal, a Lecturer at Chico for 23 years, alleges that she has been the victim of discrimination and harassment because of her race (Korean), gender (female), marital status (married) and age (56), in violation of several state and federal laws. She also claims that, due to the ongoing discrimination and retaliation, she has been repeatedly denied appointment to any of the tenure-track positions she has sought over the years. *The parties have agreed to settle the matter for \$300,000, in addition to an appointment of plaintiff to a three and one-half year lecturer position, at \$55,000 per year at which time a pre-signed resignation will take effect.*

Personal Injury Cases

Mora v. State of California et al - Los Angeles County Superior Court

Timoteo Mora, a CSU Dominguez Hills student, received a significant electrical shock upon plugging in a microscope in his chemistry class in February of 1999. A campus investigation determined that the plug was faulty. Mora has filed this action to recover for his physical injuries. The university has confessed liability and the only remaining issue is the extent of Mora's injuries attributable to this incident. The case is in the early discovery phase. Medical reports have been submitted. An initial mediation in August 2000 was unsuccessful. Mora did not appear at a continued mediation session. Mora hired a new attorney who agreed to further mediation. *A mandatory settlement conference was held on June 26, 2001, but was unsuccessful. The Court set another mandatory settlement conference for November 6, 2001, and trial for December 4, 2001.*

Viboolpanth v. CSU San Bernardino; San Bernardino County Superior Court

Kanokpun Viboolpanth, a CSU San Bernardino student, claims that the campus was negligent in not warning her about, and keeping her safe from, the high winds on the campus. As she left a classroom building in December 1998, she was allegedly swept off her feet and thrown into a concrete pillar causing severe head trauma. *A motion for summary judgment in the CSU's favor has been granted. Plaintiff has appealed this ruling.*

Student Cases

Campos, et. al. v. San Francisco State University, et. al. - United States District Court, San Francisco

Elizabeth Campos, a disabled San Francisco State student, and STARS, an unincorporated association of 20 other disabled students at SFSU, filed this action alleging various civil rights violations and a denial of educational opportunity based on the alleged existence of multiple, although unspecified, architectural barriers throughout the campus. The plaintiffs sought to represent a class of disabled CSU students. The California Faculty Association is also named as a plaintiff in the action claiming injury on behalf of disabled SFSU faculty. The CFA, however, expressly did not seek certification of any class. The plaintiffs are collectively represented by Disability Rights Advocates, an organization that has gained some publicity in the past for pursuing similar litigation against other organizations involving these issues.

A class of mobility disabled and/or visually impaired students who have been denied access to university programs, services and/or activities due to the existence of physical barriers was certified. Following extensive mediation, a tentative settlement was reached in October of 1999, which, among other things, commits SFSU to \$5 million over seven years for various construction projects to improve campus access. *After a variety of disputes and complications, a fairness hearing on the settlement was held on October 12, 2001. The judge granted the parties' joint motion for final approval of the settlement and continued the matter to November 9, 2001 for a Case Management Conference to determine if any individual damage claims survive.*

Doe, et al. v. Regents, et al. - San Francisco County Superior Court

This is a class action challenging the legal validity of the higher education components of Proposition 187. The case was filed against CSU, the University of California and the California Community Colleges. A preliminary injunction was entered on February 8, 1995, barring implementation of the new law before trial. On November 21, 1997, the court issued a tentative decision dismissing this lawsuit because of the unconstitutionality ruling in the companion federal court action described below, which rendered moot any need to reach the issues in the state court suit. With the entry of a final judgment barring enforcement of the law in the companion federal action, it is likely this case will be dismissed as moot. Plaintiffs *filed a motion to recover their attorneys' fees, which was granted, but limited to the Governor and the Attorney General only. The CSU will pay no fees, and the case is now resolved.*

Gregorio T., et al. v. Wilson, et al. - United States District Court, Los Angeles

This is one of several class actions filed in the Los Angeles Federal District Court challenging Proposition 187. The cases were consolidated before Judge Mariana Pfaelzer, who ruled in November of 1995, among other things, that the reporting requirements of the higher education components of Proposition 187 are unconstitutional. On November 14, 1997, Judge Pfaelzer ruled the balance of the claims was preempted by the Personal Responsibility and Work Opportunity (Welfare Reform) Act. Final judgment was entered in March of 1998. The state (not including the CSU or UC) filed an appeal. The parties to the appeal were directed by the Governor to mediate the issues, and agreed on July 29, 1999, to dismiss the appeal and allow the lower court ruling to stand (with minor modifications). Plaintiffs' attorneys' fees were left unresolved. *Plaintiffs filed a motion for their fees, which was granted. CSU subsequently moved the court to clarify that the fee award did not apply to the CSU. That motion was granted, which resolves all of the issues in the case.*

Hollander v Munitz, et al. - Sonoma County Superior Court

Lynne Hollander, the widow of 1960s Free Speech activist Mario Savio, sought unsuccessfully in this lawsuit to halt a Sonoma State campus referendum on a proposed student fee increase. The complaint alleged unfair election practices and noncompliance with Trustee policy. A limited temporary restraining order was entered before the election; the court refused to halt the election but stayed implementation of the results pending a subsequent hearing. The referendum was thereafter defeated. Hence, a fee increase is not currently planned for the Sonoma campus, and the parties stipulated that the issue in the subsequently scheduled hearing had become moot. The plaintiff's counsel has nonetheless refused to dismiss this case and indicated his intent to amend the complaint to challenge fee election procedures systemwide.

Lander, et al. v. Sonoma State University, et al. – United States District Court – Oakland

Inks v. Sonoma State University, et al. – United States District Court - Oakland

Three Sonoma State students with disabilities filed the Lander lawsuit alleging violations of the Americans With Disabilities Act and various other civil rights statutes, based on the alleged existence of multiple architectural barriers throughout the campus. A fourth student filed similar claims in Inks. The two lawsuits have been consolidated. The plaintiffs are represented by an attorney, whose law firm has gained publicity for similar ADA litigation in the past against, among others, Clint Eastwood. In an effort to minimize litigation costs, the parties agreed cooperatively to identify and address all undisputed architectural barriers. *The case was settled during an early mediation in March 2001. CSU agreed to remediate certain architectural barriers on and pay plaintiffs \$137, 000 which includes their attorneys' fees.*

Neal, et al. v. Board of Trustees of the CSU, et al. - United States District Court, Fresno

Members of the CSU Bakersfield wrestling team, both men and women, filed this lawsuit to enjoin the elimination of wrestling, or the placement of any cap on the male membership of the team, in order to comply with the Consent Decree in the Cal NOW litigation. The plaintiffs

argued that both the Consent Decree and the federal regulations implementing Title IX are discriminatory.

In December of 1997, the court ruled that achieving proportionality in male and female participation in athletics is not a “safe harbor” against claims of (reverse) discrimination. The opinion acknowledged its inconsistency with five federal appellate opinions that have considered this same issue. It followed instead a lone Louisiana district court opinion.

In February 1999, the court granted plaintiffs’ request for a preliminary injunction, stating that capping men’s teams is a quota in violation of Title IX. CSU appealed. In December 1999, the Ninth Circuit Court of Appeals reversed the lower court, ruling that the capping of men’s teams is not a violation of Title IX.

The plaintiffs filed and lost a petition for rehearing in the Ninth Circuit. The case was returned to the trial court, where the plaintiffs argued a need for further discovery. *On September 25, 2001, the court granted CSU’s motion for summary judgment. In conformity with the Ninth Circuit’s earlier decision, the court ruled that Title IX does not prevent a university from making gender-conscious decisions where there is a disproportionately higher percentage of athletic availability for the male students.* Plaintiffs have expressed their intent to take this issue to the United States Supreme Court.

Other Cases

Board of Trustees v. Bello’s Sporting Goods – San Luis Obispo County Superior Court

This lawsuit seeks a permanent injunction to prevent Bello’s Sporting goods, a store in San Luis Obispo, from engaging in further sales of clothing and other merchandise bearing the “Cal Poly” name. Bello’s contends that it has a right to do so because: (1) it sold clothing with the “Cal Poly” name before CSU began doing so; and (2) CSU waived its rights by not filing suit earlier. In April 1999, the court denied CSU’s request for a preliminary injunction.

The court subsequently granted CSU’s request to amend its complaint to include claims against Bello’s based upon state and federal trademark, unfair competition and anti-dilution laws. Bello’s filed a cross complaint for damages against CSU and the Cal Poly Foundation. After further motions, Bello’s dropped its complaint for money damages, and is seeking an injunction only to prevent the CSU from enforcing its trademark rights.

The case went to trial before the court in January 2001 for four weeks. *On July 24, 2001, the trial court denied most of the relief sought by CSU in a ruling that the phrase "CAL POLY" is not protected under trademark law because it is not understood by the public as a name for a particular educational institution but rather, is a generic term that identifies and refers to all polytechnic or technical schools located in California. Thus, Bello's Sporting Goods can continue using the phrase because it is generic. However, the court did enter a limited injunctive*

order directing that Bello's Sporting Goods place labels on all goods indicating that the CSU did not approve, sponsor or authorize the clothing goods sold by Bello's that are marked with the words CAL POLY. Also, the court denied and dismissed Bello's cross-complaint against CSU. CSU and Bello's have both filed an appeal.

City of Marina v. CSU, et al. – Monterey County Superior Court

Fort Ord Reuse Authority v. CSU, et al. – Monterey County Superior Court

Plaintiffs in these two lawsuits are challenging the adequacy of the final environmental impact report prepared for CSU Monterey Bay's Physical Master Plan. They allege that the city and FORA will suffer unmitigated adverse impacts if the plan is implemented and that the CSU improperly fails to recognize the jurisdiction of FORA over campus development that does not involve education or research. After settlement discussions failed, the court issued its decision in favor of the City of Marina and FORA. *CSU has filed an appeal. Briefing is underway.*

The McClatchy Company dba The Fresno Bee v. California State University, et al. - Fresno County Superior Court

The Fresno Bee made a request under the Public Records Act for documents, which disclose the names of donors who have paid for luxury suites in CSU Fresno's new Save Mart Center. The IRS officially recognizes a significant portion of the cost of these suites as a charitable contribution. The CSU refused to disclose the names of its donors on the grounds of protecting their interest in privacy. Records describing the terms of the luxury suite agreements (including prices and amenities) were provided to the Fresno Bee. This lawsuit seeks an order requiring the CSU to surrender the names of its donors. On December 19, 2000 the court issued an order requiring CSU to surrender the donor names. The CSU has appealed this order. *On July 16, 2001, the Court of Appeal affirmed the lower court opinion. The CSU has now provided the Bee with the suite license agreements and settled the Bee's claim for attorneys' fees for \$50,000.*

COMMITTEE OF THE WHOLE

California State University, Northridge—Final Report on the Earthquake Recovery Program

Presentation By

Richard P. West
Executive Vice Chancellor
and Chief Financial Officer

Jolene Koester
President
California State University, Northridge

Summary

This item will be a video presentation on the earthquake recovery program at CSU Northridge.

Background

The “1994 Northridge Earthquake” destroyed many buildings on-campus and damaged several more. The university appeared to be reduced to rubble with the recovery task seeming insurmountable. The campus reopened for classes in temporary facilities within four weeks and then undertook a seven-year reconstruction program. The video describes the multi-year effort of the faculty, staff, students, the chancellor’s office, government officials, architects, engineers, contractors, and the community to restore and remake the campus.