

AGENDA

COMMITTEE OF THE WHOLE

Meeting: 9:00 a.m., Wednesday, March 13, 2002
CSU, Sacramento - University Union Ballroom

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
Erene S. Thomas
Kyriakos Tsakopoulos
Anthony M. Vitti
Stanley T. Wang

Consent Items

Approval of Minutes of Meeting of November 13, 2001

Discussion Items

1. Welcome to California State University, Sacramento, *Information*
2. Litigation Report No. 15, *Information*

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

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

November 13, 2001

Members Present

Laurence K. Gould, Chair
Debra S. Farar, Vice Chair
Roberta Actenberg
Daniel N. Cartwright
Martha C. Fallgatter
Bob Foster
Murray L. Galinson
Harold Goldwhite
William Hauck
Ricardo F. Icaza
Frederick W. Pierce, IV
Charles B. Reed, Chancellor
Kyriakos Tsakopoulos
Anthony M. Vitti
Stanley T. Wang

Members Absent

William D. Campbell
Shailesh J. Mehta
Dee Dee Myers, Vice Chair
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
Louis Caldera, Vice Chancellor, University Advancement
Jackie R. McClain, Vice Chancellor, Human Resources
Christine Helwick, General Counsel

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Chair Gould called the meeting to order at 1:10 p.m. and introduced the new trustee, Ricardo F. Icaza. Trustee Icaza spoke briefly, stating that he was honored and gratified to serve on such a prestigious board and looked forward to serving the university.

Consent Items

Approval of Minutes of May 15, 2001

The minutes of May 15, 2001 were approved as submitted.

Approval of Revised Minutes of Meeting of March 20, 2001

The revised minutes of March 20, 2001 were approved as submitted.

Discussion Items

Litigation Report No. 14A

Chair Gould asked Christine Helwick, General Counsel, to present the item. Ms. Helwick presented a series of slides providing the Board a broader view of the CSU litigation experience and how it compares with other institutions. The first slide, she stated, demonstrated the number of cases filed against CSU over time. Ms. Helwick pointed out the significant downward trend in the CSU litigation volume in the last 18 months. The second slide depicted the breakdown in current caseload by type; employment litigation being the largest area of CSU exposure, she noted, both in terms of volume and cost. The final slide benchmarked the CSU litigation experience against that of other comparable institutions, and she noted the types of cases that had been excluded from the data.

Ms. Helwick then turned the Board's attention to the written materials. There were three cases in particular she highlighted: Concerned Residents of Carson Committee, Inc., et al. v. California State University, et al. and the University Heights Homeowners Association v. California State University, et al., the two environmental lawsuits received after the approval of the national training center at CSU, Dominguez Hills. She reported that, after preparation of the agenda, one of the cases had been settled. The University Heights Homeowners Association v. California State University, et al. case, primarily addressing air quality issues, was in the process of finalizing the settlements and the case will be dismissed. The Concerned Residents of Carson Committee, Inc., et al. v. California State University, et al. lawsuit, she reported, remained on file and was set for hearing on December 27.

Ms. Helwick reported that Doe, et al. v. Regents and Gregorio T., et al. v. Wilson, et al., the two lawsuits challenging the legality of Proposition 187, had been dismissed with no cost to CSU. Both cases will finally be dropped from the semi-annual litigation report.

In reference to the Gruenberg v. CSU, NCAA, et al. case, Trustee Galinson asked if the rule requiring “every person, regardless of age, must have a ticket to enter the facility” was true of all NCAA games. Ms. Helwick confirmed that the rule was uniform.

Trustee Galinson requested that he be kept informed of developments in the Losco v. Board of Trustees, et al. lawsuit and was assured by Ms. Helwick that he would be. He asked about discrimination and harassment training programs for CSU employees on campuses. Ms. Helwick referred the question to Vice Chancellor Jackie McClain who reported that CSU has made a major effort in increasing training, both face-to-face training on individual campuses as well as web-based training widely accessible to managers and supervisors. She noted that there have always been training programs in place on the campuses, but in the last year Chancellor’s Office staff have begun a systemwide training program and increased efforts significantly on the campus and at a systemwide level. Trustee Galinson inquired if the training seminars were required of supervisory personnel and Ms. McClain replied that even though most campus training programs were not mandatory, there has been a very high attendance rate at the sessions that have been offered and the classes have received a very positive response from both management and supervisory employees. Trustee Galinson surmised that if the training were not mandatory, those employees who were in the most need would be the most likely not to attend.

Trustee Galinson then questioned the basis of CSU’s contention in the McClatchy Company dba The Fresno Bee v. CSU, et al. case that contributions to public institutions were not discoverable. Ms. Helwick replied that the prevailing viewpoint was that information about donors, separate and apart from the amount they contribute, was not available public information, which is why CSU took its position. In this instance, she continued, the court ruled that donations linked with the lease of luxury suites fell under a different category than traditional contributions where confidentiality would be respected.

There were no further questions.

California State University Northridge – Final Report on the Earthquake Recovery Program

Chair Gould remarked that on January 17, 1994 a magnitude 6.7 earthquake struck Northridge CA. Besides the damage done across Southern California, the campus of Cal State Northridge had been severely damaged. Periodically the Board has been informed about the rebuilding efforts. This agenda item, he said, would be the final report on the rebuilding.

Pres. Jolene Kester introduced the video presentation that described the multi-year effort of the faculty, staff, students, Chancellor’s Office, government officials, architects, engineers, contractors, and the community to restore and remake the campus.

When the video presentation finished, President Kester stated that this was the last of the presentations from CSU, Northridge on the 1994 earthquake. She emphasized the campus’

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thanks to every one from the system to FEMA to the people in CSUN's community who helped bring the university back. It was through multiple partnerships that she was now able to come before the Board proud to be part of a very vibrant, very alive university.

Vice Chancellor Richard West commented that he had only been on the job one week when the earthquake hit, reminded Trustees of the consternation and concern involved regarding how CSU would be able to pay for the reconstruction. Even though the federal government was willing to increase the usual percentage of disaster aid, it was still a very difficult task. Vice Chancellor West described how CSU's excellent documentation process had decreased the 10% disallowance rate of \$40 million anticipated to only \$8-12 million. This, he emphasized, was a tribute to the campus' management and documentation of how FEMA monies were spent. He remarked on how Chancellor Reed's efforts in working with the chairman of FEMA had made a big difference in some of the disallowances.

Vice Chancellor West reported that, since leaving the federal government administration, the FEMA chairman has continued to work with CSU in planning different disaster recovery scenarios. He noted that there are five CSU campuses conducting a major disaster recovery analysis. Even though these scenarios had been planned prior to the September 11th terrorist attack, he said, one plan concerned a terrorist threat. Campuses are conducting drills to test emergency preparedness from both a fiscal perspective as well as from a life safety perspective. To that end, he added, the experience at CSUN was very instructive.

Chancellor Reed reported that CSU would conduct a meeting of the emergency preparedness staff from all the campuses some time in December or January. He stated that staff has been continually informed about events occurring in the country and state after the September 11 attack and that it had been important that CSU police and emergency preparedness people remain on the campuses through this semester. Dr. Reed defined the planning scenarios being tested on campuses: a major fire, a flood, two earthquakes, and a terrorist event. He noted that there would be a plan in place by spring, and at that time they would be shared with all of the presidents.

Chancellor Reed continued that the other important thing learned from the 1994 earthquake recovery was FEMA aid was crucial and in order to limit disallowances, good documentation was critical.

Chair Gould congratulated President Kester and those on CSUN who prepared the video. He remarked that there are some very fine film schools in Southern California and CSUN had been selected number one over a number of others. This presentation, he stated, was a very good example of the fine work being done on campus. He asked the president to inform those involved in the video presentation how impressed the Board had been.

Adjournment

The meeting adjourned at 1:45 p.m.

COMMITTEE OF THE WHOLE

Welcome to California State University, Sacramento

Presentation By

Donald R. Gerth, President
California State University, Sacramento

Artemio Pimental, President
CSUS Associated Students, Inc.

Bob Buckley, Chair
CSUS Faculty Senate

Summary

President Gerth, the chair of the Academic Senate, and the president of the Associated Students will welcome the Board of Trustees to California State University, Sacramento.

COMMITTEE OF THE WHOLE

Litigation Report No. 15

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 153 currently active litigation files.

New Cases

Boze v. CSU – San Diego County Superior Court

Gomez v. CSU – San Diego County Superior Court

Fraday v. CSU – San Diego County Superior Court

These three cases were brought by a current and two former employees of the Fiscal Operations department at CSU San Marcos. Each claims that she was subjected to gender and pregnancy discrimination, harassment, retaliation, and denied promotional opportunities. Boze, a Filipino, also alleges race and national origin discrimination. All three are represented by the same law firm. These cases are in the discovery phase.

Broadnax v. SJSU – Santa Clara County Superior Court

Dillon v. SJSU – Santa Clara County Superior Court

Dodd v. SJSU – Santa Clara County Superior Court

Elsbery Broadnax, H. Kimberly Dodd and Patricia Dillon, while still employed in the Human Resources department at San Jose State University, testified in support of a former supervisor, Steve Bartz, in his race discrimination suit against SJSU. Subsequently, a long contemplated department reorganization was implemented, their existing positions were eliminated, and each was offered a new position at the same salary and benefits levels. They quit instead, claiming to have been constructively discharged in retaliation for their deposition testimony. The cases have been consolidated for discovery, which has just begun.

Dupris, et al. v. CSU – United States District Court – San Francisco

Three professors in the Native American Studies Department at Humboldt State University filed this action against the university and its Foundation, alleging race, national origin (Native American) and religious discrimination, improper termination from a grant-funded project, retaliation, refusal to grant promotion, hostile work environment, and conspiracy to violate their civil rights. CSU and the Foundation have filed separate early motions to dismiss. A hearing is scheduled for March 20, 2002.

Fields v. CSU Hayward – United States District Court – San Francisco

Philip Fields, a student at CSU Hayward, filed this action alleging violations of the Americans With Disabilities Act and various other civil rights statutes. He was also active in the Campos litigation (described below) against San Francisco State. Fields claims he has been discriminated against because of his disabilities, which he describes as mobility impairments, vision problems and learning disabilities. He also claims he has been retaliated against for complaining about the alleged discrimination. His claims are primarily that the accommodations the University provided for a chemistry course he took, and is now retaking, were and are inadequate. Fields moved for a temporary restraining order to require the University to provide him with further accommodations. The court denied his motion. Fields has moved for a preliminary injunction on the same grounds, but no hearing date has been set. The case is in the early discovery phase.

Green v. SFSU, et al. – San Francisco County Superior Court

Plaintiffs Geoffrey and Marcia Green, both professors at SFSU, allege that they have been retaliated against following the verdict in Ms. Green's lawsuit (described below). A copy of the complaint has been provided, but the lawsuit has not yet been filed or served.

Zamora v. Trustees, et al. - Fresno County Superior Court

Mark Zamora, formerly an officer in the CSU Fresno Police Department, filed a lawsuit claiming that Sgt. Lupe Shrum sexually harassed him and then retaliated against him from January 1995 through December 1999, and that Chief Lynn Button and Lt. Sergio Silva did nothing to stop it. Zamora also complains that the university discriminated against him because of his disability (diabetes), and refused his requests for reasonable accommodation. Zamora resigned from his university employment, but claims that he was constructively discharged. Zamora is represented by the same attorneys who represent the plaintiffs in the Brown and Horsford cases (described below). The complaint has been filed, but not yet served.

Construction Cases

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. 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. *A mediation was held on February 15, 2002. Settlement was not reached, but discussions continue.*

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 been uncovered. *The case is in the final pre-trial phase. Another mediation is scheduled for February 26, 2002. Trial is set for March 4, 2002.*

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 claimed 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 defended and agreed to indemnify SFSU. The lawsuit was then dismissed and the parties agreed to proceed with the dispute in arbitration. *The case was settled in mediation on November 16, 2002 at no cost to the University.*

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.

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. *Briefing is underway.*

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. *Briefing is in progress.*

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 have been filed.*

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 set for trial on May 20, 2002*.

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, race, disability and age discrimination, harassment, retaliation, failure to prevent discrimination, and wrongful termination. *Trial began on January 29, 2002 and will last until late February.*

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. He also filed a claim for immigration violations with the INS. 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.

The University prevailed on plaintiff's INS claim and was awarded attorneys' fees. McNier then dismissed his federal case in exchange for the University's agreement not to pursue its entitlement to those fees.

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

This action is brought by 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. *Trial is scheduled for April 29, 2002.*

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. *It is now subject to dismissal for failure to prosecute.*

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 *has been stayed by order of the U.S. Bankruptcy Court because plaintiff failed to disclose this lawsuit as an asset in his bankruptcy.*

Environmental Cases

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. *After two motions, a portion of the case has been dismissed. The remaining claim that the university made a change in the project after CEQA approval will be heard on March 21, 2002.*

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 *completed*.

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, filed a petition challenging the Trustees' approval of the EIR for the National Training Center project at CSU Dominguez Hills. The petition alleged 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, filed a second petition which focused on air quality, and alleged that the EIR fails to properly address the project's impact on emissions during construction and operation of the Training Center, and also failed to describe and evaluate reasonable mitigation measures that could eliminate or substantially lessen these emissions. *Prior to the hearing on its petition, University Heights dismissed its action in exchange for the*

developer agreeing to certain mitigation measures during construction. On January 7, 2002, the court denied Concerned Residents' petition and entered judgment in CSU's favor. Ground-breaking is scheduled for February 26.

Personal Injury Cases

Albecz 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. *A mediation was held on February 12, 2002, but no settlement was reached.*

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. Mandatory settlement conferences in June *and November 2001 were also unsuccessful. Mora sought a continuance of the December 4, 2001 trial date because of illness. Trial is now set for April 9, 2002.*

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 *has dismissed all remaining claims for individual damages. Fee arbitration is scheduled for March 29, 2002.*

Holander 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. *The court has recently dismissed this case for failure to prosecute.*

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 once again appealed this ruling to the Ninth Circuit, which has established a briefing schedule.* 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.

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. *The court has not yet set a briefing schedule.*

Effective January 2, 2002, the Legislature amended the Education Code to clarify that the name "Cal Poly" and other abbreviated campus names are state property and may not be used without CSU's express permission. CSU's appeal will rely on this statutory clarification.

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. *In January 2002, plaintiff dismissed CSU from this case.*

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. CSU filed a special motion to strike the complaint. *On January 15, 2002, the court dismissed the entire lawsuit. CSU is now seeking to recover its attorneys' fees as permitted under the special motion.*