

## **AGENDA**

### **COMMITTEE OF THE WHOLE**

**Meeting: 3:30 p.m., Tuesday, March 11, 2003**  
**California State University Fullerton**  
**Titan Student Union, Portola Pavilions B & C**

Debra S. Farar, Chair  
Murray L. Galinson, Vice Chair  
Roberta Achtenberg  
William D. Campbell  
Martha C. Fallgatter  
Bob Foster  
Harold Goldwhite  
William Hauck  
Ricardo F. Icaza  
M. Alexander Lopez  
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

#### **Consent Items**

Approval of Minutes of Meeting of September 17, 2002

#### **Discussion Items**

1. Litigation Report No. 17, *Information*

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

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

**September 17, 2002**

**Members Present**

Debra S. Farar, Chair  
Roberta Actenberg  
William D. Campbell  
Martha C. Fallgatter  
Murray L. Galinson  
Harold Goldwhite  
William Hauck  
M. Alexander Lopez  
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

**Members Absent**

Bob Foster  
Ricardo F. Icaza

**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

Chair Farar called the meeting to order at 3:58 p.m.

**Consent Items**

**Approval of Minutes of July 18, 2002**

The minutes of July 18, 2002 were approved as submitted.

Whole

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## **Discussion Items**

### **Proposed Revision to Title 5 Regulations – Second Hand Smoke Policy (RCOW 09-02-01)**

Chair Farar introduced the item. She alluded to the prior presentation made by the student group, Campuses Organized And United For Good Health. She asked Vice Chancellor Jackie McClain to make the presentation.

Ms. McClain explained that the action item recommended adding a section to Title 5, delegating authority to the presidents and the Chancellor to adopt rules regulating smoke on the CSU campuses and properties. As Chair Farar indicated, she said, the item was introduced following the second-hand smoke discussions heard at the May and July meetings of the Board. Ms. McClain stated that existing California Government Code currently prohibits smoking in state owned or leased buildings and in outdoor areas within five feet of the main entrance of such buildings. Persons may smoke in any outdoor areas surrounding those buildings, unless otherwise prohibited by law. Ms. McClain continued that the state Education Code grants trustees authority to regulate CSU buildings and grounds, including the authority to establish regulations regarding smoking on campuses and grounds. In response to the July discussion, system presidents were surveyed to determine campus ability to be responsive if a more stringent resolution were passed. All presidents indicated that they would be able to respond promptly to the passage of such a resolution. When asked what process would be utilized, virtually all presidents responded they would use an inclusive process, which would provide the opportunity for input by students, faculty and staff prior to the adoption of a policy. It is therefore recommended, Ms. McClain stated, that the item amending Title 5 to add Section 42356, “Smoking on Campuses” to Article 9, Subchapter 5, Chapter 1, Division 5 of Title V of the California Code of Regulations be approved. The amendment would provide campus presidents authority to extend second hand smoking policy to all individuals including members of the public and willful violation of the campus rule would be a misdemeanor under Education Code Section 89031.

Trustee Pierce reiterated his prior comments that CSU should really set a strong example by adopting regulations that address health conscience concerns raised by students in regards to the impacts of second hand smoke. He encouraged campuses that could accommodate a 20-foot setback do so, stating that it would be in the best health interest of those that are visiting CSU campuses. He asked the Chancellor require a report in 6 months to 12 months delineating actions have been taken on the campuses and to report back to the Board.

Trustee Galinson reaffirmed Trustee Pierce’s comments. He stated approval of the item would let the presidents know the Board is very concerned with this issue and he requested that they act quickly to rectify the situation.

Chair Farar noted that there was a request from the public to address the committee. She recognized Mr. Erik Fallis, Student Body President, San Bernardino. Mr. Fallis stated that the CSULB ASI and the CSSA Board of Directors had both asked him to address the Board

regarding a possible consideration to the Title 5 amendment. The amendment has been supported by COUGH, the CSSA board and by CSULB ASI board. Students support the amendment because they believe that the smoking policy as it stands now does not protect students from second-hand smoke. COUGH and the student boards are primarily concerned about those who are exposed unwillingly to cigarette smoke. They ask that student advisory groups are consulted in both the systemwide and campuswide discussions on implementation of this policy. COUGH has shown overwhelmingly that students are knowledgeable and can be a dynamic force for change. He asked that student advisory groups be involved in adoption of rules regulating smoking both at the campus and system level.

Trustee Thomas asked that the motion be amended to read that student advisory groups be involved in adoption of rules regulating smoking at either the campus or system wide levels.

Trustee Hauck suggested that the committee proceed to adopt the motion as is and then deal with the suggestion that's been made after adoption of the main motion. He offered to make that motion after the board adopted the current recommendation.

The Chair concurred and after a motion and a second, the motion carried.

### **Student and Employee Participation in adopting Rules Concerning Smoking on Campuses (RCOW 09-02-02)**

Trustee Hauck stated that in light of comments made, the committee should recommend to presidents that they involve students in the process at both the campus and systemwide level in a manner that the Chancellor and the President deem appropriate for this purpose.

Trustee Pierce, in a question to Jackie McClain, asked if the proposal involved also a labor issue because it affected working conditions. Ms. McClain responded that the issue had been addressed with presidents in the survey to insure processes gave appropriate consideration to bargaining issues. As the issue did affect the working terms and conditions of employees and might be bargainable, she continued, both faculty and staff would also need to be involved in the process.

Trustee Gallinson affirmed his support for the motion, stating his preference for the new wording, which allowed student participation in the decision. Trustee Ackenberg also voiced her support.

Trustee Hauck restated that the motion is a direction to the presidents and to the Chancellor in relation to implementing the amended version of Title 5 that student views be considered in the process of implementing the amendment to Title 5.

The motion was approved.

**Litigation Report No. 16**

Chair Farar asked General Counsel Christine Helwick to present the item. Ms. Helwick reported that the item was the twice-annual update on CSU litigation. She directed trustee attention to written materials provided which gave a full report on the status of various significant cases. There was a slide presentation with overall statistical information. Ms. Helwick reported that CSU's overall case volume has continued to go down. Currently, she said, there are 145 active cases pending against the CSU contrasting with a high of nearly 300 in 1999; a breakdown of the cases by type show percentages consistent with previous reports. Ms. Helwick stated that employment cases continue to be the largest area of concern, both in volume and exposure and that claims under the public records act and environmental cases have increased. One slide showed the breakdown of employment cases brought by faculty and those brought by staff or management. Other provided a view of how all cases had been resolved -- 39% were settled; and of the remaining 61% that were resolved in court, CSU prevailed in 49% and plaintiffs prevailed in just 12%. She added that in two of the cases where plaintiffs did prevail, CSU had been able to get the court to order new trials and in a third case CSU succeeded in convincing the court to reduce the jury's verdict significantly. She stated that the statistics would compare favorably with any other institution of comparable size and complexity.

Ms. Helwick then returned to the item which recounted specific cases of interest. In Board of Trustees v. Perini Building Company, she reported, CSU had very recently settled the premium litigation, receiving a payment of 16.7 million dollars for campus loses and promise of reconstruction of the residence apartment building. Chancellor Reed expressed his delight noting that the litigation had taken over 2 year as Perini Building Co. had thought they could out spend and out wait CSU. A decision was made that CSU would see the litigation through. The litigation expenses which CSU will recover amounted to around 5 million dollars. He expressed his hope that the verdict would send a message to the construction industry that if CSU does not get what was paid for, the university would seek recompense in court.

Ms. Helwick reported that the court had overturned the verdict in the El Sayed v. CSU Hayward discrimination case. Last fall, she explained, the jury had entered a punitive award against two CSU administrators. At a post trial motion, she said, the court ordered a retrial because of improper admission of expert testimony.

In City of Arcata v. Humboldt State University, Ms. Helwick noted, the city of Arcadia had abandoned its appeal of the environmental decision in favor of Humboldt State. The court ruled that the environmental assessment of the Behavioral and Social Sciences building was adequate and that further review would not be required. That ruling prevails and Humboldt State University is now free to proceed with the beginning of the building according to the original plan. Chancellor Reed praised President Richmond, citing the president's determined efforts at continued meetings with the city.

Trustee Galinson voiced his concerns regarding intellectual property rights. He questioned if CSU currently has appropriate institutional controls in place to ensure that the system would benefit from whatever is developed on university time and at university campuses and expense. He also asked if sufficient controls were in place to ensure that professors spent sufficient time at their main role of teaching and other campus activities. He worried that if professors took on other employment it could conflict with their ability to perform their teaching obligations to the fullest extent. In response, Chancellor Reed replied that at this time CSU does not have in place proper policies and procedures on intellectual property or on other employment. He recommended that he put together a task group including members of the Academic Senate, presidents, provosts and Chancellor's Office staff from the General Counsel and H.R. offices, to work on this issue. He could report back to the board on a periodic basis, perhaps every 90 days until a policy is developed that could be presented to the Board. Trustee Vitti recalled that when he was Board chair the CSU Institute had been formed to develop a policy on work products. Trustee Galinson added that other institutions had benefited greatly from products that had been developed by university employees, citing Gatorade as an example of products that have provided hundreds of millions of dollars to the institutions and departments where they were developed.

Trustee Pesqueira asked when accusations of discrimination or sexual harassment are made and it is determined that a CSU employee is guilty of such acts, if that employee can be terminated or if additional procedures had to occur. Ms. McClain replied that CSU was not be able to terminate someone solely because of a court case, but would also have to complete the appropriate procedure determined for the employee's particular classification. Trustee Pesqueira questioned if, during that time it took to determine if termination were appropriate, would such an employee be transferred to another position that would put them in less contact with other employees. Ms. McClain responded that, depending on the facts and the circumstances, CSU would take whatever prudent action was felt appropriate to reduce the risk to the university and honor the rights of the employee.

Chair Farar announced that the business of the Committee Of The Whole was concluded.

### **Adjournment**

The meeting adjourned at 4:23 p.m.

## COMMITTEE OF THE WHOLE

### Litigation Report No. 17

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 153 currently active litigation files.

### New Cases

#### *Birk v. SDSU, et al.* – San Diego County Superior Court

*Malik Birk, a student at SDSU, sued the University, the Inter-Fraternity Council, Nu Alpha Kappa fraternity, and several third parties for serious head injuries he suffered in an automobile accident on Highway 8 near San Diego in the early morning of October 28, 2001. Birk alleges he was returning to campus from a fraternity “pledge weekend” when another fraternity member fell asleep at the wheel causing their car to strike a fence. Birk has petitioned the court to approve a settlement with his fraternity brother for his insurance policy limits of \$100,000. The CSU matter is in the early pleading stage.*

#### *CSU v. Huntcor et al.* -- Los Angeles County Superior Court

*CSU filed this action to redress construction defects which are now appearing in Cal Poly Pomona’s Classroom, Laboratory and Administration Building, completed in 1992. There is significant water infiltration throughout the building and the exterior skin is not holding up. This case is in the discovery stage. Dates are set for construction experts’ review and exchange of information. Mediation is set for June 12, 2003 and trial is scheduled for January 14, 2004.*

#### *Rodgers v. SDSU, et al.* –United States District Court, San Diego

*Susan Rodgers, a Caucasian woman, was denied admission to a graduate program in the SDSU Department of Counseling and School Psychology. She was placed on the waiting list and was advised that she would be admitted to the program only if another Caucasian candidate dropped out. She has sued the University for race and sex discrimination. The case is in the early pleading stage.*

*Sy, et al. v. Union Pacific Railroad Company, et al., San Luis Obispo County Superior Court*  
*Plaintiffs, Enrique Sy (father), Amelia Finocchio (mother) and Erika Sy (sister and personal representative), filed this action for the wrongful death of Cal Poly student Jason Sy, who, while riding his bike to attend classes at Cal Poly, was struck by a freight train at a grade crossing located adjacent to the campus. The defendants are the landowner Union Pacific Railroad Company, and adjacent landowners, CSU, The Church of Jesus Christ of Latter Day Saints, First Worthing Company, and City of San Luis Obispo. Causes of action against CSU include dangerous condition of public property and nuisance. The case is in the initial pleading stage.*

*Villanueva v. CSU – Sacramento County Superior Court*  
*Ricardo Villanueva completed his doctorate degree in Theater in 1994 and was a participant in the CSU Forgivable Loan/Doctoral Incentive Program. He claims that CSU breached its contract and defrauded him because no campus has hired him for a tenure-track faculty position, and as a result his loans have not been forgiven. The case is in the early pleading stage.*

*Walker, et al. v. Trustees et al. -- Butte County Superior Court*  
*This is a wrongful death action resulting from an automobile accident that killed Carlos Rojas, age 8, and seriously injured his brother Cecilio Rojas, age 10. The driver, CSU Chico student Victor Lopez, Jr., lost control of his car and drove off a mountain road on the way back from a sledding event sponsored by Community Action Volunteers in Education, a program administered by the Chico Associated Students. The University has tendered the case to the Associated Students for a defense and indemnification. The case is in the early pleading stage.*

## **Construction Cases**

*BDM Construction Co. v. CSU – Sonoma County Superior Court*  
*BDM Construction Co. built student apartments at Sonoma State University, and is now suing for over \$4 million for delays, costly changes in the project, and change orders that it alleges were signed under fraud and duress. The CSU Claims Review board previously granted BDM \$58,204.00 and CSU \$1,542,510.00. Two subcontractors have now sued BDM. BDM has in turn filed a cross-complaint for indemnification against CSU. The cases are all in the early discovery phase.*

*Pearl Development Corp. v. CSU Dominguez Hills – Los Angeles County Superior Court*  
*Pearl Development was the general contractor on the Extended Education Building Project at CSU Dominguez Hills. Shortly after occupying the buildings, the campus discovered that they leak through the masonry walls. Consequently, the campus held back the final retention payment due under the contract (approximately \$150,000). Pearl has sued, claiming the campus breached the contract by withholding payment of the retention. Pearl acknowledges that the buildings leak, but asserts this is because the campus provided defective building plans, made unwarranted changes during construction, and interfered with Pearl's ability to complete the*

project in a workmanlike manner. *In December 2002, a settlement was reached whereby CSU retained approximately \$13,000 of the final retention payment, and Pearl dismissed its lawsuit. In return, CSU released Pearl from liability for the waterproofing issue, but retains the right to sue Pearl for any future unknown defects that might arise with the buildings.*

## **Employment Cases**

### Barcelo, et al. v. CSU, Fullerton - Los Angeles County Superior Court

Six Hispanic plaintiffs, employed in several different departments at CSU, Fullerton claim that they have been harassed, discriminated and retaliated against on the basis of their race. Two have left the university. Four remain employed at CSUF. The case is in the discovery stage. *A trial date has been scheduled for May 5, 2003.*

### 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 cases were brought by three 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. Boze and Gomez are represented by the same law firm; *Fraday is now representing herself. Gomez is set for trial in April 2003. Boze is set for trial in July 2003; Fraday is set for trial in August 2003. Summary judgment motions in all three cases are pending.*

### Brown v. California State University - Fresno County Superior Court

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

### Snow 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. As a part of the settlement of this lawsuit, Brown agreed to resign her university employment. After Brown's resignation became effective, however, she petitioned the State Personnel Board to reinstate her. The State Personnel Board refused, and Brown then filed *a second* action, which asks the Court of Appeal to order the State Personnel Board to set aside her resignation. *The Court's decision will be based on briefs. The schedule has not yet been set. Brown subsequently filed yet another action, which seeks monetary damages and to rescind her resignation under the settlement agreement. Trial of this action is scheduled to begin on July 14, 2003.* Brown is represented in the current actions by the same attorneys who represented her in the earlier sexual harassment case, and who also represent the plaintiffs in the Horsford and Snow cases, as well as the Zamora case (described separately below).

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 this action

are white, Hispanic and Asian; Shell is black. Shell resigned his employment at CSU Fresno before any of the lawsuits were filed, and later pled no contest to felony charges of misconduct while he was chief of police at CSU Bakersfield before coming to Fresno. CSU filed motions for summary judgment against all six plaintiffs. Three were granted. The other three were granted in part, leaving significant but narrowed issues for trial. The trial of this case began in May and continued through August 2000. The jury rendered a verdict for plaintiffs in the total amount of \$4.25 million. In December 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.

*Richard Snow, one of the Horsford plaintiffs, suffered a work-related hip fracture in November 2000 and was deemed disabled as a police sergeant in subsequent workers' compensation proceedings. His disability retirement became effective in February 2003. Snow filed a new lawsuit shortly thereafter, alleging that the university discriminated against him because of his disability, failed to accommodate him, and retaliated against him because of the Horsford verdict and other protected activities. The matter is in the pleading stage.*

Dupris, et al. v. CSU – United States District Court, San Francisco  
Hill v. CSU et al. --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, conspiracy to violate their civil rights, and violation of copyright. *The Court has granted CSU's motions for partial summary judgment and narrowed the case somewhat. Discovery is underway. Trial is scheduled for April 7, 2003.*

*On November 7, 2002, a second lawsuit was filed when one of the plaintiffs was not reappointed. The second case is in the pleading stage.*

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 -- \$100,000 for economic loss, \$500,000 for emotional distress, and \$37,000 in punitive damages against the president, provost and a dean. In a post trial ruling, the court dismissed the provost and reduced the punitive damages to \$22,000. The CSU appealed the judgment. In August 2002, the Court of Appeal granted CSU's request to vacate the jury's verdict, and ordered the case back to the District Court for a new trial. *Elsayed filed a petition for rehearing which the Court denied on February 12, 2003.*

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 in January 2001. After eight days of testimony, the jury returned a unanimous defense verdict. Elimimian filed an appeal. *The Ninth Circuit Court of Appeal denied Elimimian's appeal, and affirmed the jury's defense verdict.*

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 alleged 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 CSU on the discrimination claim, but awarded Green \$1.56 million for retaliation. CSU appealed. *Judgment was affirmed on October 1, 2002 and has been paid. A petition for attorneys' fees is set for hearing on March 6, 2003.*

Green and her husband, Geoffrey, who is also a professor at SFSU, *filed* a second lawsuit in which they claim to have been retaliated against following the verdict in Ms. Green's first lawsuit. *Trial is set for August 4, 2003. The case is in the discovery phase.*

Koslosky v. CSU – Alameda County Superior Court

Major v. CSU – Alameda County Superior Court

Carole Koslosky, an office assistant in the Department of Public Safety at CSU Hayward, claims she was sexually harassed by her supervisor, Bob Pitta, and is seeking damages resulting from that harassment and retaliation. Her husband, Michael Koslosky, has filed a loss of consortium claim. *The case settled for \$98,500 at a mediation held on November 11, 2002.*

Darryl Major, an African-American police officer at CSU Hayward, claims he has been discriminated against on the basis of his race and disability. He further claims he was harassed and retaliated against for complaining about the discrimination. He is represented by the same counsel as Koslosky. *This case is in the discovery phase. Trial is set for August 22, 2003.*

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. On February 28, 2002 the jury returned a \$375,000 verdict in favor of May for harassment and retaliation on the basis of race and national origin. On May 9, the court granted

CSU's motion for a new trial. May has appealed both the trial court's grant of a new trial and the defense verdict on his discrimination claims. *A briefing schedule has not yet been set.*

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.

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 above). The case is in the discovery stage. Trial is scheduled to begin on June 23, 2003.

**Environmental Cases**

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 filed an appeal. *The Court of Appeal heard oral argument in November 2002 and has requested supplemental briefing.*

Neighborhoods North of Foothill, Inc v. Trustees of the California State University, et al. - San Luis Obispo County Superior Court

Neighborhoods North of Foothill, Inc., a homeowners' association in San Luis Obispo, filed a petition challenging the Trustees' certification of the environmental impact report for the faculty and staff housing project on the Cal Poly campus. The petition alleges that the EIR failed to adequately address a number of impacts, including traffic safety and circulation. Additionally, the complaint asks for a judicial declaration that the project is subject to planning and zoning laws of the County and/or City of San Luis Obispo.

*On December 23, 2002, the court found that there are several deficiencies in the environmental impact report. CSU was ordered to prepare a Supplemental Environmental Impact Report*

*which must be re-certified by the Board. The court further ruled the project is not subject to local zoning or building regulations and ordinances*

### **Personal Injury Cases**

#### Albecz v. SFSU et al. - San Francisco County 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. *The case was settled on January 30, 2003, for \$80,000.*

#### 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 filed this action to recover for his physical injuries. The university confessed liability and the only remaining issue to be tried was the extent of Mora's injuries attributable to this incident. The case was tried in May 2002, and the jury returned a verdict in Mora's favor in the amount of \$420,000. (He had asked the jury for \$10,000,000.) Because the jury awarded Mora less than was offered in settlement, CSU is entitled to offset costs (approximately \$120,000) against the amount of the judgment. Mora filed bankruptcy immediately following the jury verdict and the case has now been stayed until the bankruptcy issues are resolved. *Settlement discussions with the Bankruptcy Trustee and interested parties are underway regarding a reduction in the costs claimed by CSU in exchange for an immediate resolution of this matter.*

### **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 in October 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 resulted in an award to plaintiffs' attorneys of \$234,000 in fees and costs. *The individual claim of Elizabeth Campos, who had opted out of the settlement, was recently resolved for \$25,000, which ends the action.*

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 above) 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. *In December 2002, the Court granted a portion of CSU's motion for summary judgment and dismissed several of Fields' claims. The remaining claims are the subject of a motion for summary judgment scheduled for hearing on April 12, 2003. Trial is set for May 12, 2003.*

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 appealed this ruling to the Ninth Circuit. *The Ninth Circuit affirmed the trial court's decision. Plaintiffs have consistently 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 sought 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 Cal Poly Foundation. After further motions, Bello's dropped its complaint for money damages, seeking an injunction only to prevent the CSU from enforcing its trademark rights.

In July 2001, the trial court denied most of the relief sought by CSU in a decision that ruled 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 instead 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. Both CSU and Bello's appealed this ruling.

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. Briefing is in progress.

#### CSU v. CollegeUnits.com, Inc., et al. – San Diego County Superior Court

Jack Logan is a SDSU professor granted release time to develop a methodology to deliver online university courses. After developing this methodology, he turned it over to a corporation in which he is a principle, CollegeUnits.com, which then licensed it to 2Learn2.com. CSU has now

filed suit against Logan, his associate, Samantha Mills, CollegeUnits.com, and 2Learn2.com for profits resulting from the use of this methodology, and to enjoin CollegeUnits.com from representing that it has offered SDSU classes in the past. An early effort to enjoin a related arbitration proceeding where Logan was attempting to compel the university to pay 2Learn2 for courses offered through SDSU extended education was not successful. 2Learn2 was awarded \$525,000 in that proceeding. *After the arbitration outcome and further assessment of the complicated facts that led to this dispute, it was determined to adjust campus policies to protect against future abuses and to abandon this litigation.*

Moser v. SDSU, et al. -- San Diego County Superior Court

Kenneth Moser, an unsuccessful candidate for the Community College Board in San Diego in November 2000, filed this petition for writ of mandate to compel SDSU to produce telephone and computer records for Martin Block, a successful candidate who is also Director of Policy Compliance and Analysis at SDSU. SDSU has now produced the relevant documents. *The case was settled for \$9,500.00 in attorney's fees and has been dismissed.*