

## **AGENDA**

### **COMMITTEE OF THE WHOLE**

**Meeting: 8:00 a.m. Wednesday, September 20, 2006**  
**Glenn S. Dumke Auditorium**

Roberta Achtenberg, Chair  
Jeffrey L. Bleich, Vice Chair  
Herbert L. Carter  
Carol R. Chandler  
Moctesuma Esparza  
Debra S. Farar  
Kenneth Fong  
Murray L. Galinson  
George G. Gowgani  
Melinda Guzman  
William Hauck  
Raymond W. Holdsworth  
Ricardo F. Icaza  
Andrew J. LaFlamme  
A. Robert Linscheid  
Lou Monville  
Charles B. Reed, Chancellor  
Jennifer Reimer  
Craig R. Smith  
Glen O. Toney  
Kyriakos Tsakopoulos

#### **Consent Items**

Approval of Minutes of Meeting of March 14, 2006

#### **Discussion Items**

1. General Counsel's Report, *Information*
2. Report on Sarbanes-Oxley, *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**

**March 14, 2006**

**Members Present**

Murray L. Galinson, Chair  
Roberta Achtenberg, Vice Chair  
Herbert L. Carter  
Carol R. Chandler  
Moctesuma Esparza  
Debra S. Farar  
Bob Foster  
George G. Gowgani  
William Hauck  
Corey A. Jackson  
Andrew J. LaFlamme  
A. Robert Linscheid  
Melinda Guzman Moore  
Charles B. Reed, Chancellor  
Craig R. Smith  
Kyriakos Tsakopoulos

**Consent Items**

**Approval of Minutes**

Chair Galinson stated that the Minutes of September 20, 2005 was a consent item. He stated that unless there was an objection, the consent item would be accepted. There were no comments and the minutes were approved as submitted.

**General Counsel's Report**

Chair Galinson asked Christine Helwick, General Counsel, to present the item. Ms. Helwick directed the Trustees to the agenda item that presented a summary of significant cases and broad legal trends facing the CSU. Ms. Helwick drew attention to the written report on the status of 35 cases that have been identified as significant to the CSU. The cases are significant not in terms of their monetary value, she stated, but for the implications that they raise on important policy issues within the CSU. She introduced a PowerPoint report that displayed a brief analysis of trends. The first slide, she reported, showed the number of active cases pending against the CSU over the years and depicted the continuous decent in the volume of CSU case activity. The

next slide Ms. Helwick described presented the kinds of current cases against CSU. She noted that the area percentages have stayed consistent over time. Ms. Helwick stated that employment continues to be CSU's biggest exposure area, both in terms of volume and actual cost. The last slide she presented described how CSU cases have been resolved.

The meeting was opened to questions. In discussing *Sneath v. CSU*, a question was raised as to whether there was a standard form that CSU required students involved in hazardous activities to sign that would hold the university harmless from damages. Ms Helwick referred the question to University Counsel Donald Newman. Mr. Newman stated that in this case the Supreme Court had set the standard that was beyond negligence and required a degree of malfeasance. He stated that CSU's opinion was that such a standard had not occurred in this case. It was further questioned if the standard applied to the equestrian accident case at CSU Fresno. Ms. Helwick answered that the legal standard would be the same. She explained that CSU cannot have a form that would waive the legal standard that is required for CSU to sustain exposure in an injury of this sort.

Trustee Jeffrey Bleich suggested that there seemed to be an inflated percentage of CSU employment cases involving athletic personnel and wondered if improvement in training and prevention could be implemented that might be of benefit. Ms. Helwick agreed that that was an area worth looking into.

### **Discussion Items**

Chair Galinson introduced the next item, The Integrated Technology Strategy: Leveraging a Ten Year Investment. Chancellor Reed's opening remarks stated that CSU's Integrated Technology project was the largest single project of this type in the United States. As far as the software implementation, this was the largest implementation of any higher educational university in the world. CSU has been successful in implementing this project on time and within budget. There have been many huge implementation projects that the State has undertaken that have not been nearly as successful as this project. He continued that the Integrated Technology Strategy (ITS) was approved by the Board of Trustees 10 years ago. For the last 10 years ITS has served as CSU's information technology framework and has guided all technology investments. He gave a history of how and why the ITS project came into being. This item presented, Chancellor Reed stated, a description of the ITS vision and framework; a description of the processes used to develop priorities and evaluate initiatives; and an examination of the status of ITS initiatives re: infrastructure development, administrative systems, academic technology and identify continuing efforts with ITS.

President James Rosser, CSU Los Angeles, elaborated on the planning process, the results, orientation and continued success of ITS. He stated that three of the most important premises that shaped ITS were: that ITS is more than a static plan but rather an evolving framework within which a dynamic series of initiatives can be developed and implemented; the organization model is characterized by presidential leadership and significant internal and external constituency input; the ITS focuses on mitigating campus inequalities in technology resources and services

across the CSU. Another unique element of the ITS planning process was, he stated, that ITS was driven by principles and CSU institutional values. Principles, he said, provided the criteria used to create, select, design and implement ITS initiatives and projects – strategic, tactical and operational. He described the ITS pyramid and its significance, focusing his remarks first on the infrastructure section of the pyramid and, secondly, four of the initiatives – foundation skills, e-learning framework, MERLOT, and student success.

President John Welty, CSU Fresno, described in detail how ITS had made a positive difference in the everyday lives of faculty, students and staff. He presented a video which portrayed how ITS has greatly enhanced the CSU experience in learning, teaching, research, service and outreach. Dr. Welty informed Trustees that over 523,000 electronic applications had been received through CSU Mentor in 2005 from over a quarter of a million potential students. He stated that CSU has provided two websites to help potential students prepare for college and that improved access to a variety of materials better accommodate student learning styles and help faculty create more engaging opportunities. Facilitated communications between faculty and students is critical to the learning process. Dr. Welty discussed the importance of Common Management Systems (CMS), stating that investment in CMS has provided economic benefit – one of the most significant being the degree audit that assists students to make informed decisions.

Chancellor Reed took up the discussion stating that the Integrated Technology Strategy was the product of a unique planning process involving presidential leadership and intensive stakeholder involvement. The focus has always been outcome and results, and on disseminating the benefits as widely as possible. The successful momentum of the first wave of initiative continues, he said, and CSU has launched new initiatives focused on learning and teaching. He finished by stating that investments in ITS have provided CSU with a firm foundation upon which to build for the future. He plotted out the coming efforts that CSU must undertake to take advantage of new technologies and opportunities. He called for questions.

Chair Galinson congratulated the Chancellor on the system's progress. Trustee Guzman called the program outstanding, and that CSU had a lot to be proud of. She asked what steps were being implemented for disabled student access to these new tools and if there were parallel opportunities offered in CSU's K-12 initiatives for teacher preparation. She asked if CSU has been able to measure any successes as a result of ITS in math and English testing. David Ernst, Assistant Vice Chancellor, Information Technology, responded on the accessibility issue, stating that CSU has begun to address the access issue by starting development of systemwide guidelines and programs which build on the strong work that has already been done on the campuses. He stated that CSU was off to a good start. President Rosser addressed the College Readiness on-line capability CSU has today that makes it easier and more cost effective for students who are not quite college ready to acquire the necessary skills through a directed study basis. He said CSU is working closely with K-12 on these programs. The CalState Teach Program was also discussed and how K-12 teachers were completing their programs after receiving emergency teaching credentials. Chancellor Reed stated that there was data detailing how students that participate in the CalState Teach program get higher valuations for their

performance than others who have completed other regular programs. The CalState Teach program was based on a model that the British Open University used to train teachers.

Trustee Smith questioned how ITS would allow faculty to redesign their workload. Chancellor Reed responded that one example was by allowing faculty to redesign a class that currently met twice a week in a lecture setting to one that met once a week in lecture and use the second day for face-to-face meetings with students, another was that by changing how classes were structured could improve facility use. Dr. Rosser added that the Fly Lab was another demonstration on how faculty and staff time could be utilized better.

In response to a question if all campuses had on-line degree audits capability, David Ernst replied not at this time. Currently 10 campuses are running the CMS PeopleSoft student module that runs the on-line degree audit program. Several other campuses have degree-audit capabilities that were developed from other software or stand-alone campus effort. CSU's goal over the next couple years is to have all campuses using the CMS degree audit program. Chancellor Reed emphatically stated that all campuses would receive access to the program, and all campuses would have the capability to do course-demand scheduling. Dr. Reed reported that the program had been delayed one year because of budget constraints, but in the next couple of years the funding would be available. Dr. Rosser added that in the next couple of years infrastructure build-out should be in place. The commitment is, he noted, that by 2007-08 all CSU campuses would have that base-line capability.

Trustee Achtenberg questioned the timeline on seeing improvement in the path to graduation and remediation efforts. President Welty replied that the degree audit was one of the most significant pieces in improving the pathway to graduation had been implemented on 8 campuses and that CSU will start to see the real impact in probably 2 years when all students will have that tool and will be able to plan much more effectively when classes are available. Chancellor Reed addressed the CSU's goal regarding remediation. He stated that communications with all California school districts, 900 high schools and over 6 million students and their families was the biggest obstacle in reaching remediation goals. CSU has put an enormous amount of time, effort and resources into explaining to the public what is necessary to succeed in college. He spoke of the next steps necessary to ensure high schools are rigorous in the courses they offer and how to provide other pathways for students and parents to accomplish rigorous standards. He reported that CSU's "How to Get to College" poster was being revamped to include information on new on-line modules to improve English and Math skills and when Early Assessment Program exams were scheduled. President Rosser added that increased outreach efforts are underway to inform and aid under-served populations in accessing college-readiness programs and faculty are meeting with their K-12 colleagues, especially English teachers, to develop expository reading and writing programs.

Trustee Achtenberg asked if there was a specific program that could be shared with Trustees on CSU's approach to providing programs and information and sharing remediation improvement efforts with K-12 personnel on a systematic level. President Rosser spoke of the individual communities that have been approached, the increased number of college-ready students that can

be expected and the building of the interlocking relationship with colleagues in K-12. He said it would be possible to provide Trustees with a more comprehensive report on what outreach efforts are achieving. Chancellor Reed promised to provide the Board a report at a future meeting. This state and the nation's future, he said, depends upon universities figuring out how to provide access to under-served communities. California is about 15 years ahead of the rest of the country in such efforts, he stated, and the rest of the nation was watching our progress.

Trustee Gowgani reflected back to his time as a faculty member in the 1960's and how the system has changed. He hoped that with additional resources the technological efforts would bring noticeable results in the areas of access and remediation. He looked forward to seeing the promised report. Trustee Holdsworth commended the ITS committee's vision and determination. He also wanted to request a report be brought back to the committee, particularly on CMS and the priority for the rest of the campuses to implement the "road to graduation." Particularly as CSU looks to the future, he noted, with the projected increase in the school-age population, it will be absolutely critical for CSU to have all universities on-line in order to be efficient. Trustee Hauck commented that in the early 90s when this process first started, CSU campuses each had individual systems with outdated software and equipment, and so many of the access options available to students now through technology, were totally out of the question. If CSU had not started the ITS implementation, no matter how difficult, expensive and unpopular the program had been at the time, CSU would not be in a position to teach for the future today. He said it was a lesson for the current board and members to come that leadership is not always popular but is always critical and CSU is one of the most important institutions in the state today because leadership was willing to take on such a difficult project.

Trustee Carter asked where the funding for the program was coming from. Vice Chancellor Richard West responded that there had been no additional monies identified in any of the legislative budget processes, so funding is being spread across the system. Presidents had been asked to identify and direct funding towards these priorities. It was presidential leadership, he stated, that was absolutely key in keeping the program on track. He reported that the first phase, the TII infrastructure project, had been implemented with \$190 million of capital budget. In lieu of buildings, the presidents recommended that, over a three-year period, the funding for rewiring the campuses be taken from the capital budget line. Mr. West reported that this year's budget provides \$5 million increment for technology that is earmarked for equipment that is refreshed every three years to support the network. Trustee Carter then asked if there was budget language that required a report from CSU every year to the legislature and Mr. West replied yes. He described the various reports that CSU submits to the legislature.

Lt. Governor Bustamante asked if CSU had created its own model or used one already in existence. Mr. West replied that CSU had hired IBM's higher education consulting group that helped facilitate based on planning efforts that had been successful around the nation, but the model had really come out of the collaborative efforts of the CSU campuses. CSU's model works well because it is not a technology plan, but a plan about what the institution values the most and the outcomes it wants to achieve, which supersedes where the technology goes. That's why, Mr. West explained, we can continue to use the model even as technology changes.

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Chancellor Reed further explained steps being taken to keep the model fresh and how PeopleSoft and Oracle are working with CSU in development of new technology. President Rosser stated that the objectives established 10 years ago have not changed and the consistency with which CSU has applied those objectives has been instrumental in the success that has been enjoyed to date. Those objectives were not established on top, he explained, they emerged by virtue of CSU's reflective values. There was significant student, faculty, staff and outside input relative to the decision matrix established.

Chair Galinson thanked Chancellor Reed, President Rosser, President Welty, Executive Vice Chancellor West and Assistant Vice Chancellor Ernst for their efforts on behalf of the system. Chancellor Reed invited Trustees to visit the demonstrations set up in the lobby areas.

There being no further discussion, the meeting was adjourned.

## COMMITTEE OF THE WHOLE

### General Counsel's Report

#### Presentation By

Christine Helwick  
General Counsel

This is the semi-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 100 currently active litigation files; CSU is the party pursuing relief in two of those cases.

#### New Cases

##### *Carreira v. Trustees* - Los Angeles County Superior Court

*Maria Carreira, a professor in the Department of Romance, German and Russian Languages and Literature, filed a whistleblower complaint alleging irregularities in the administration and operation of her department. She also filed a related complaint alleging that she was harassed for having filed her whistleblower complaint. Both complaints were investigated, and summaries of the findings of both reports were issued to Carreira. Carreira subsequently made requests for copies of the full investigative reports under the Public Records Act. CSU declined to release the full reports on the grounds they are privileged and protected from disclosure by the Act. Carreira then filed this action seeking an order compelling CSU to disclose the full reports. The court ruled that the reports are privileged and denied Carreira's petition to have the reports disclosed. Carreira filed an appeal. Carreira subsequently dismissed her appeal in exchange for CSU's agreement to not pursue the recovery of its costs.*

*Carreira filed a second lawsuit claiming that she was retaliated against for having filed the whistleblower complaint. Although Carreira's whistleblower complaint was intended to be confidential, it was released by faculty members to others in her department and Carreira claims she was then bullied and harassed as a result. The outside investigation concluded that some of her claims had merit, but that she had not suffered any adverse employment consequences. Appropriate action was taken against those found to be at fault. This case is in the pleading*

*stage. The court granted the University's motion to dismiss the lawsuit, but gave Carreira an opportunity to file an amended complaint, which she did. The University has filed another motion challenging the sufficiency of Carreira's complaint which is set to be heard on September 12, 2006.*

*Carson Harbor Village v CSU* --- Los Angeles County Superior Court

*Carson Harbor Village, a mobile home community situated across the street from the Dominguez Hills campus, filed two writ petitions alleging that CSU failed to comply with the California Environmental Quality Act. The first sought to enjoin the construction of the Home Depot Center Hotel and Training Facility on the grounds that CSU improperly submitted a Supplemental Environmental Impact Report instead of a separate Environmental Impact Report. The second sought to enjoin the use of permanent lights at the campus track stadium on the grounds that Carson Harbor Village failed to receive proper notice of the SEIR for that project. On August 17, 2006, the court denied both petitions.*

*CH2MHill v. CSU, et al.* --- San Francisco County Superior Court

*Plaintiff is the general contractor on the campus technology infrastructure project. The project was scheduled to be completed in April 2006, but was only 50 percent completed on that date. Plaintiff filed an action to have the court declare that the contract was illegal and invalid and that the plaintiff should be excused from performing. Plaintiff's motion for a temporary restraining order was denied. The case is in the early pleading stage.*

*CSU v. PERB* - Court of Appeal

*CSU has filed a petition for writ of mandate against the Public Employment Relations Board seeking an order reversing PERB's decision that would bar CSU from bargaining for limitations on an arbitrator's authority in faculty status arbitrations. CSU has filed its opening brief.*

*Erixson v. CSU, Fullerton* - U.S. District Court, Santa Ana

*Darrell Erixson is a disabled student at CSUF. He claims he was not provided alternative text books in a timely manner under the ADA and that he was denied admission to a graduate program because of his disability. Erixson seeks unspecified monetary damages and injunctive relief. The case is in the discovery stage.*

*Jackson, et al. v. CSU, et al.* – San Bernardino County Superior Court & U.S. District Court, Riverside

*A group of nine students at CSU San Bernardino seek to represent a class of students who claim that the campus does not provide adequate transportation for disabled students, nor provide timely course materials in a format accessible by students with visual or other disabilities. The students also complain about physical access and testing accommodations. Their claims were initially filed in both state and federal court. The state claim has been dismissed. The federal case is in the discovery phase.*

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

*Hamo Lalehzarian, Prakash Mahajan, Masud Mansui, all former faculty members in the College of Engineering and Computer Science at CSU Fresno, filed a wrongful termination case claiming racial and age discrimination. They have a parallel grievance, which has not yet been assigned to arbitration. A stipulation to transfer this case to Fresno County Superior Court has been filed. This case is in the pleading stage.*

Mason, et al. v. Klaus, et al. - U.S. District Court, Los Angeles

*Keith Mason, Nathan Buchinger and Jason Storms came to the CSU Long Beach campus in November 2004 for a pro-life demonstration. They held signs, passed out flyers and tried to engage passersby in conversations. Plaintiffs failed to comply with the campus time, place and manner restrictions on free speech. Among other things, they failed to register with the campus prior to engaging in their activities. The University Police asked plaintiffs to leave and follow the proper campus procedures. Plaintiffs refused multiple requests from the University Police and were eventually taken into custody and removed from campus. No criminal charges were filed. Plaintiffs allege they were falsely arrested and deprived of their constitutional right to free speech. The case is in the discovery stage. Trial is set for March 27, 2007.*

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

*John Travis, as President of the California Faculty Association, filed a petition for writ of mandate challenging that the appointment of former Chancellor Barry Munitz as Trustee Professor at California State University, Los Angeles violated the Open Meeting Act, and that CSU violated the Public Records Act by not disclosing certain unspecified documents in connection with this appointment. CSU filed a motion to dismiss both claims as frivolous. After evaluating the record, Travis dismissed the claim for violation of the Public Records Act as meritless. CSU's motion to dismiss the Open Meeting Act claim will be heard on August 31, 2006. In opposition, Travis acknowledges that there is no merit to his Open Meeting Act claim, and proposes instead that he be permitted to amend this lawsuit to state an entirely new theory of Open Meeting Act violation, that Chancellor Reed was not permitted to inform the Board in closed session of Dr. Munitz's return to CSU.*

## **Employment Cases**

Giovannetti v. Trustees, et al. - U.S. District Court, San Francisco

*Joseph Giovannetti, a tenured professor in Native American studies, alleges that Humboldt State University subjected him to discriminatory treatment based on his ethnicity as a Native American. He alleges that HSU also retaliated against him for complaining about discrimination by unlawfully removing him as Chair of the Native American Studies Department, refusing to hire additional faculty for the department as promised in an earlier settlement, and canceling some of Plaintiff's courses. Giovannetti and two other complainants had an earlier lawsuit for similar discrimination claims that was settled. On June 12, 2006, the court granted part of CSU's motion for summary judgment and dismissed plaintiff's claims of racial discrimination and racial*

*harassment. Plaintiff's retaliation claim remains. On July 12, 2006, the court granted plaintiff's attorney's request to withdraw from the case and continued the September trial date. A case management conference is scheduled for October 19, 2006 and a new trial date will be scheduled.*

Horsford, et al. v. Shell, et al. - Fresno County Superior Court

Brown v. CSU, et al. - Fresno County Superior Court

Snow v. CSU, Fresno, et al. - Fresno County Superior Court

King v. CSU, et al. - Fresno County Superior Court

Daniel Horsford, Steven King, Richard Snow and three other former campus police officers filed a lawsuit claiming that they were victims of reverse discrimination in the CSU Fresno Police Department while it was under the direction of former police chief Willie Shell, who is black. Summary judgment was entered against three of the police officers. The case was tried in May 2000 against the three remaining plaintiffs, Horsford, King and Snow. The jury returned a verdict of \$4.25 million. The court reduced this verdict to \$1.17 million. Plaintiffs sought attorneys' fees of \$3.3 million. The court reduced that claim to \$1.2 million. CSU appealed. The appellate court affirmed the verdict but sent attorneys' fee issue back to the trial court for further review. The verdict was then paid. *On July 7, 2006, the trial court awarded \$3,062,961 in attorneys' fees. Two of plaintiffs' lawyers have filed a motion for new trial seeking a larger award. Their motion is set for August 29, 2006.*

Auwana Brown, also a former employee in the CSU Fresno Police Department, settled a sexual harassment lawsuit against former police chief, Willie Shell in 1998. She is represented by the same attorneys who are representing Horsford, King and Snow. As a part of the settlement, Brown agreed to resign. But after her resignation became effective, and the Horsford verdict came in, she petitioned the State Personnel Board to reinstate her. The State Personnel Board refused, and Brown then asked the Court of Appeal to order the State Personnel Board to set aside her resignation. The court instead sent the case back to the State Personnel Board for further findings. *After three years of inactivity, the State Personnel Board has accepted additional briefs on the remanded issues, and the matter is set for oral argument on September 5, 2006.*

Richard Snow suffered a work-related hip fracture in November 2000 and was deemed disabled in 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. *This case is in the discovery stage.*

Steven King filed a new lawsuit also claiming that the university discriminated and retaliated against him because of the Horsford verdict, because he was not appointed lieutenant and/or

chief of police in the CSU Fresno Police Department. *This case is set for trial for August 29, 2007.*

Johnson-Klein v. CSU, Fresno, et al. - Fresno County Superior Court

Stacy Johnson-Klein was terminated as CSU Fresno's head women's basketball coach in March 2005 for serious performance issues. In September 2005, she filed this lawsuit against CSU, President Welty, retired Athletic Director Scott Johnson, and Fresno State's athletic corporation for gender discrimination, sexual harassment, Title IX violations, retaliation and wrongful termination. She claims that her supervisors sexually harassed her by making inappropriate comments about her breasts and clothing, and that she was inappropriately touched by one or more of her supervisors. Johnson-Klein alleges that she was terminated in retaliation for complaining about harassment, as well as gender inequities in athletics. This case is in the discovery phase.

May v. Trustees - Monterey County Superior Court

James May is a former faculty member at CSU Monterey Bay who retired in 2000. He alleged 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. In 2002, the jury returned a \$375,000 verdict in favor of May for harassment and retaliation on the basis of race and national origin. The court granted CSU's motion for a new trial. May appealed both the trial court's grant of a new trial and the defense verdict on his discrimination claims. In 2005, the Court of Appeal affirmed the trial court's ruling and the defense verdict. In June 2005, the California Supreme Court granted May's petition for review. The issue of interest to the Supreme Court is the standard for granting a new trial, which is the same issue raised in the Oakland Raiders v. National Football League case. The Court has postponed briefing in the May case pending decision in the Raiders case.

Milutinovich v. CSU, Fresno, et al. - Fresno County Superior Court

Diane Milutinovich, formerly Associate Athletics Director and Senior Women's Administrator at CSU Fresno, was reassigned to be Director of the University Student Union after her position was eliminated in an effort to cut administrative costs through reorganization. Milutinovich's first lawsuit for wrongful termination was dismissed because she failed to file a government tort claim. She refiled this second action, asserting statutory claims that she was fired because of her alleged efforts to achieve Title IX compliance and in retaliation for her advocacy of gender equity issues in employment and athletics. This case is in the discovery stage. *Trial is scheduled for March 5, 2007.*

Mokhtari-Shargri v. CSUCI, et al. - Ventura County Superior Court

Shariar Mokhtari-Shargri was a temporary lecturer in the Mathematics Department at CSU Channel Islands. He applied, but was not selected, for a tenure-track position in the same department. Plaintiff alleges that his non-selection was discriminatory and based on his religion (Muslim) and national origin (Middle-Eastern). On May 16, 2005 the court granted CSU's

motion for summary judgment on the grounds that plaintiff had failed to exhaust his administrative remedies. The plaintiff appealed. *The Court of Appeals affirmed the lower court's decision and denied plaintiff's petition for rehearing. The California Supreme Court denied plaintiff's petition for review.*

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

David Ohton, San Diego State University's Athletics Department strength and fitness coach, has sued the CSU and various individuals for alleged retaliation under the state "whistleblower" statute, claiming he was retaliated against for statements he made in the context of the CSU's investigative audit of alleged improprieties in the SDSU Athletics Department and its equipment room. The trial court granted CSU's motion for summary judgment. Ohton appealed. *Oral argument is scheduled for September 15, 2006.*

Roth v. CSULA, et al. - Los Angeles County Superior Court

Tamaki et al. v. CSU Auxiliary Services, Inc., et al. – Los Angeles County Superior Court

Instructors employed by CSULA University Auxiliary Services, Inc. in the university's American Culture and Language Program have filed these two actions for recovery of unpaid wages. The first is a lawsuit on behalf of instructor Howard Roth. He claims that he was paid for some, but not all, classroom preparation time, office hours, photocopying, grading, attending meetings, preparing evaluations, and accompanying students to events and outings. He is also suing for age, national origin, gender, and race discrimination and for improper reduction in his work hours which he characterizes as "wrongful termination." Roth also claims that his employer was the university, and not the auxiliary. *The parties have tentatively agreed to mediate the case on August 21, 2006. A Motion for Summary Judgment will be heard on August 31, 2006. Trial is scheduled to begin on October 17, 2006.*

The second lawsuit is a class action lawsuit on behalf of approximately 60 persons. Plaintiffs claim that they were paid for some, but not all, classroom preparation time, office hours, photocopying, grading, attending meetings, preparing evaluations, and accompanying students to events and outings. *Following mediation, the Tamaki class action settled for \$650,000 pending receipt of opt out notices from no more than 20% of the class members.*

Runyon v. CSULB, et al. - Los Angeles County Superior Court

L.R. Runyon, a professor in the Finance Department of the College of Business at CSU Long Beach, alleges he was removed from his position as department chair in retaliation for reporting alleged improper activities by the Dean of the College of Business, Luis Calingo. Runyon made various complaints to his supervisors and others that the Dean made inappropriate and wasteful business trips and spent too much time away from campus. The Dean subsequently removed Runyon as chair of the department citing Runyon's failure to meet certain performance objectives. An extensive investigation into Runyon's claims of retaliation concluded that he was removed as department chair for performance reasons and not in retaliation for his complaints about the Dean. This case is in the discovery stage. *Mediation was held on July 21, 2006, but*

*was unsuccessful. CSU filed a motion for summary judgment which will be heard on September 22, 2006. Trial is set for October 23, 2006.*

Villanueva v. CSUMB, et al. - Monterey County Superior Court

Henry Villanueva is a former Associate Vice President at CSU Monterey Bay who was not retained in summer 2003. He alleges that he was let go for recommending the discipline of other employees and for reporting waste of public funds. He also claims that his former subordinates attempted to undermine his efforts to obtain new employment by distributing false and personal information about him. He states claims of wrongful termination in violation of public policy, defamation, violation of the Information Practices Act, and invasion of privacy. The case is in the discovery stage.

Vivas v. CSU, et al. - Fresno County Superior Court

Lindy Vivas, former head women's volleyball coach at Fresno, filed this lawsuit for discrimination, retaliation and Title IX violations, based on her sexual orientation, gender and marital status, after her employment contract expired and was not renewed in December 2004. Vivas reapplied for the position, and was considered. After evaluating all of the applicants, Ruben Nieves was hired as the new head coach. *This case is in the discovery stage.*

Washington v. Trustees, et al. - San Diego County Superior Court

Pat Washington, an African-American woman and former San Diego State University tenure-track faculty member in the Women's Studies Department, sued the University and the Women's Studies Department Chair alleging she was improperly denied tenure because of racial discrimination and retaliation. CSU's motion for summary judgment was granted. Washington appealed. *In June 2006 the Court of Appeal affirmed the trial court's decision. The California Supreme Court refused a further review.*

Wells v. Trustees, et al. - U.S. District Court, San Francisco

Former Humboldt State track coach David Wells complains that his contract was not renewed because he complained about the mishandling of funds in the athletic department and unequal spending on women's athletics. *This matter is in the discovery stage. A mediation was held on February 17, 2006 and was unsuccessful. On June 28, 2006, CSU filed a Motion for Summary Judgment. This motion is pending.*

## **Environmental Cases**

Alvarado Hospital Medical Center v. SDSU, et al. - San Diego County Superior Court

City of San Diego v. Trustees, et al. - San Diego County Superior Court

Del Cerro Action Council v. Trustees, et al. - San Diego County Superior Court

The environmental impact report for the SDSU campus Master Plan revision has been challenged in three lawsuits filed by the City of San Diego, the Alvarado Hospital, and the local neighborhood association, each alleging the EIR does not adequately address necessary

mitigation measures. These cases have been consolidated. *Briefing was stayed pending the outcome of the City of Marina case. CSU will now decertify its EIR and prepare a supplemental report. The court has retained jurisdiction over the dispute.*

City of Marina v. CSUMB, et al. - Monterey County Superior Court

Fort Ord Reuse Authority v. CSUMB, 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 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. The trial court issued a decision in favor of the City of Marina and FORA. CSU appealed. In 2003, the Court of Appeal reversed the trial court and ruled that CSU is not required to contribute to the cost of local infrastructure improvements, notwithstanding the mitigation requirements of environmental law. FORA filed a petition with the California Supreme Court. *On July 31, 2006, the California Supreme Court ruled that the cost of environmental mitigation is voluntary and does not constitute a tax or assessment. CSU must therefore revise its environmental impact report to account for its fair share of environmental impacts caused by its projects. The Court held that CSU has the ultimate discretion to determine the value of its fair share, subject only to an abuse of discretion. The Court also required CSU to seek reimbursement for environmental mitigation costs from the Legislature.*

### **Personal Injury Cases**

Costello v. SFSU, et al. - San Francisco County Superior Court

Costello was a Presidential Scholar at San Francisco State University. During the Presidential Scholars Retreat at the Marin Headlands, he fell from a cliff and died. His parents filed this lawsuit to recover damages for wrongful death due to lack of supervision. *The trial is scheduled for September 11, 2006.*

DiNardo v. CSU, et al. - Santa Clara County Superior Court

Tarah DiNardo, a member of the cheerleader squad at San Jose State University, claims that she was assaulted by an SJSU Associate Athletic Director at a campus basketball game when he grabbed her forcefully by the right bicep, after she complained to him about the purportedly insulting comments made by a University booster during the game. *The lawsuit was settled for \$5,000.*

Eriksson v. CSU, Fresno, et al. - Fresno County Superior Court

Stan and Karan Eriksson are the parents of an equestrian student-athlete at CSU Fresno, who died as a result of massive head injuries suffered when her own horse fell on her, after being startled by a herd of cows in a pen. At the time of the accident, the student-athlete was on a recreational ride in an agricultural area of the campus. The parents allege that the university negligently failed to supervise and train their daughter, failed to warn her about the presence of

the animals, maintained a dangerous condition of property in that the cows were "violent and aggressive," and failed to provide appropriate emergency medical assistance. *On July 17, 2006, CSU prevailed on a motion for summary judgment on the theory of plaintiff's assumption of the risk.*

Sneath v. CSU, et al. - Santa Clara County Superior Court

Rechelle Sneath was a San Jose State University cheerleader. On January 7, 2004, she suffered major injury and paralysis as a result of being thrown in the air as part of a cheerleading routine. Plaintiff alleges that the University and the coach are responsible for her injuries. *The case is in discovery.*

**Student Cases**

Alpha Chi v. CSU, Chico, et al. - Butte County Superior Court

Alpha Chi, a local sorority, along with individual members, alumni, and an advisor of the sorority filed this suit, alleging that the Chico campus' development, implementation, and enforcement of new rules adopted from the Greek System Review Task Force Report violates First Amendment, due process, and equal protection rights. The sorority seeks to regain University recognition, which was withdrawn when the sorority violated the fall 2005 "no recruitment" rule. The plaintiffs also seek an injunction prohibiting enforcement of the new rules, a declaration stating that the rules are unconstitutional, and money damages. *Plaintiffs' motion for preliminary injunction was denied on May 24, 2006. Plaintiffs filed an amended complaint on July 21, 2006. CSU's challenge to the legal adequacy of the pleadings will be set for hearing on September 22, 2006.*

Every Nation Campus Ministries, etc. v. Reed, et al. - U.S. District Court, San Diego

A group of Christian student organizations and students at the San Diego and Long Beach campuses have sued under various legal theories to challenge the constitutionality of the Trustees' anti-discrimination policy, which refuses recognition of student organizations that discriminate on the basis of religion, sexual orientation or marital status. The plaintiff groups exclude homosexuals and others from joining or becoming officers. They allege that their First Amendment rights of freedom of religion and association trump the Trustees' anti-discrimination prohibition, and that they must be recognized and provided full access to university facilities. The court denied plaintiffs' motion for a preliminary injunction, and partially granted CSU's motion to dismiss several claims. *Both sides filed summary judgment motions, which were heard July 25, 2006. The court took the matter under submission, and is expected to rule before the start of the fall semester.*

Martinez, et al. v. Regents of the University of California, et al. - Yolo County Superior Court

This is a class action filed by non-resident citizen students against UC, CSU, and the California Community Colleges, challenging the exemption from out-of-state tuition for those, including undocumented immigrants, who meet the three year California high school attendance

requirement of AB540. Plaintiffs allege AB540 violates federal immigration laws, the U.S. and California Constitutions, and the Unruh Act. Plaintiffs seek an injunction enjoining enforcement of AB540, a declaration that the statute is unlawful, class-wide tuition restitution, damages, and attorney fees. The case is in the pleading stage. Defendants collectively filed motions to dismiss, which were heard *on August 17, 2006*. *The court took the matter under submission, and is expected to rule shortly.*

### **Other Cases**

#### CSU v. Dynegy, Inc., et al. - San Diego County Superior Court

In October 2005, CSU filed this complaint against producers, marketers, traders, transporters, and distributors of natural gas, for manipulating and fixing their price in violation of state antitrust laws. The case has been consolidated with many others in San Diego County Superior Court asserting the same claims. The case is in the discovery stage.

#### The Copley Press v. CSU - San Diego County Superior Court

The San Diego Union Tribune made a Public Records Act request for all correspondence between CSU attorneys and opposing counsel and all deposition transcripts in the Bartel and Ohton cases (Ohton is described above). CSU asserted various exemptions to disclosure, including allowing a public entity to withhold documents created in pending litigation until the case is resolved. The newspaper succeeded on its application for a court order to compel the CSU to surrender the documents. CSU appealed. *The appellate court ruled that CSU properly withheld from disclosure attorney correspondence while the litigation is pending, but ordered the disclosure of deposition transcripts. The California Supreme Court denied the Union Tribune's request for further hearing. Based on its partial victory on the issue of deposition transcripts, the Union Tribune was awarded \$41,409 in attorneys' fees.*

#### Enron Energy Services, Inc., et al. v. CSU, et al. - U.S. Bankruptcy Court

CSU and UC jointly contracted with Enron for the purchase of electricity before Enron's 2001 bankruptcy. CSU filed two claims in the bankruptcy for approximately \$240 million. UC filed a similar claim. In March 2005, Enron filed approximately \$21 million in counter-claims for unbilled or incorrectly billed power delivered to CSU and payments allegedly made by Enron to California electric utilities on CSU's behalf. *The parties have agreed to settle their respective claims against one another and the settlement agreement is pending execution and bankruptcy court approval. Because Enron's resolution of creditors' claims is ongoing, the parties have agreed that the terms of this settlement shall not be disclosed publicly for a limited period of time.*

LAUSD v. LADWP, et al. - Los Angeles County Superior Court

The Los Angeles Unified School District filed this action against the Los Angeles Department of Water and Power to recover capital facilities fees and to invalidate a new ordinance imposing those fees as a part of a June 2004 water rate increase. The University of California and CSU, which are also subject to these new fees, joined LAUSD and cross-complained against LADWP. California law only permits LADWP to impose new capital facilities fees on educational institutions with consent and after negotiations between the parties. *In April 2006, the parties conceptually agreed to a settlement of the case. The parties are striving to resolve differences regarding specific terms and language in the settlement agreement.*

## COMMITTEE OF THE WHOLE

### **Report on Sarbanes-Oxley**

#### **Presentation By**

Christine Helwick  
General Counsel

### **Report on Sarbanes-Oxley**

In connection with discussion on the appointment of an external auditor at the July meeting, a request was made for a report on California State University's conformance with the principles of Sarbanes-Oxley.

#### **Background**

The Sarbanes-Oxley Act was adopted by Congress in 2002 in response to the unprecedented failure of several major corporations. Its stated purpose is:

“ . . . to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws . . . ”

As such, it is not directly applicable to the nonprofit sector, or to institutions of higher education. Indeed, one commentator remarks that wholesale adoption of Sarbanes-Oxley may “carry unwholesome cultural baggage” at a higher education institution.<sup>1</sup> Nevertheless, the principles of individual and entitywide accountability set forth in Sarbanes-Oxley have been widely accepted as good practice in the nonprofit world and in higher education. The difficulty is a lack of precision over which Sarbanes Oxley requirements carry over and make good sense in the higher education environment. (The Act is 60+ pages. It includes three separately-named Acts. In some places it directs agencies – e.g., the stock exchanges -- to adopt certain regulations; those have not always been consistent with each other.) California's Nonprofit Integrity law adopted in 2005 is also not a good fit with higher education and is expressly inapplicable to public colleges and universities in this State.

We have reviewed the following resources which have specifically considered the applicability of Sarbanes-Oxley to higher education:

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<sup>1</sup> Martin Michaelson, “The Significance of Sarbanes-Oxley for College and University Boards,” Trusteeship Magazine, May/June 2005.

The National Association of College and University Business Officers, in consultation with several public accounting firms and campus administrators, prepared an Advisory Report in 2003 with recommendations as to those Sarbanes-Oxley provisions with the most relevance for colleges and universities. It focuses on three main areas – independent auditors, senior management and audit committees.

The National Association of College and University Attorneys produced a Note on “Sarbanes-Oxley, Corporate Responsibility and Colleges and Universities” in 2003, and presented a virtual seminar on “Corporate Responsibility and Colleges and Universities: Sarbanes-Oxley’s Impact on Higher Education” also in 2003.

The AGB Magazine Trusteeship published five Sarbanes-related articles: (2003) “A New Era of Corporate Governance Bears Down on Higher Education, (2004) “A Sarbanes-Oxley Review Can Address Accountability Issues, (2004) “Should Boards Alter Governance Practices in Response to the Federal Sarbanes-Oxley Law?” (2004) IRS Eyes Executive Compensation at Tax-Exempt Organizations” and (2005) “The Significance of Sarbanes-Oxley for College and University Boards.”

The Journal of College and University Law published “Sarbanes-Oxley in Higher Education: Bringing Corporate America’s ‘Best Practices’ to Academia” in 2005. It divides the areas of concern under the following three headings --- internal controls, external checks and investigations.

The National Association of College and University Business Officers, in conjunction with Pricewaterhouse Coopers released a “Sarbanes Summit” report in 2006 which identifies the Sarbanes-like provisions that make the most sense for colleges and universities and provides information on how they are currently being implemented in institutions of higher learning across the country. It organizes the issues under four headings --- governance, internal controls, certification, and enterprise risk management.

### **CSU’s Conformance with Sarbanes-Oxley**

The chart that appears below incorporates advice from all of these sources and records CSU’s conformance with the sections from Sarbanes-Oxley identified to be most applicable to higher learning institutions.

<b>Sarbanes Requirement</b>	<b>CSU Status</b>	<b>Comments</b>
Company must have separate Audit Committee	Consistent.	Required by Trustees' Rules of Procedure.
Audit Committee members must be independent –i.e., unaffiliated with, and not receive consulting, advisory or other compensation from, the company.	Consistent.	Trustees' Rules of Procedure prohibit the Chancellor serving on the Audit Committee. Under Education Code section 66604.5 Trustees are paid only for travel and per diem in connection with their Board service. Trustees also must file annual Conflict of Interest disclosure forms.
At least one member of Audit Committee must have financial expertise.	Consistent.	This is a new requirement in the Trustees' Rules of Procedure. The composition and expertise of the Board is, however, out of the control of CSU.
Audit Committee has responsibility for appointment, compensation and oversight of external auditor, who reports directly to Committee.	Not consistent.	A formal amendment to the Trustees' Rules of Procedure will be presented at the November meeting to conform the written rules to what has generally been the practice.
Audit Committee to establish procedures for receipt of complaints to the company regarding accounting, internal controls and auditing matters and anonymous submissions from employees about questionable accounting or auditing matters.	Substantially consistent (procedures established by Chancellor's Office policy, not Audit Committee).	Executive Order 929 sets out a process for employees and applicants to make protected disclosures of improper governmental activity, including any financial improprieties. Executive Order 822 protects those who make protected disclosures from retaliation. The California Whistleblower Protection Act (Government Code section 8547 et seq.) also provides a mechanism for the State Auditor to receive complaints of improper governmental activity.

<p>External auditor prohibited from performing non-audit services.</p>	<p>Consistent.</p>	<p>By practice, not express requirement. (NOTE: KPMG is currently performing a construction audit under separate contract.)</p>
<p>External auditor cannot have employed CEO or CFO within one year before audit.</p>	<p>Consistent.</p>	<p>By practice, not express requirement.</p>
<p>Lead and reviewing partner in external audit firm (not firm itself) must rotate off every five years.</p>	<p>Not consistent, but meets higher education norms.</p>	<p>NACUBO identifies the norm for nonprofit rotation of partners at 10 years. Because of the limited availability of audit firms with knowledge of and experience in higher education, NACUBO also recommends rotation of the audit partner within higher education every seven years, with a two year timeout. JCUL concludes that this requirement has “little urgency” for academia, and suggests consideration “from time to time” of change in the external auditor.</p>
<p>CEO and CFO must certify annual audit report, including the existence of internal controls.</p>	<p>Substantially consistent.</p>	<p>Chancellor and CFO sign a representation letter that all information provided to the external auditor is true and correct. Chancellor and CFO present annual financial report to Board for approval.</p>
<p>Unlawful for any officer or director to fraudulently influence, coerce, manipulate or mislead an auditor.</p>	<p>Consistent.</p>	<p>Addressed in Trustees’ Code of Conduct.</p>
<p>Unlawful for company to extend personal loans to any director or executive officer.</p>	<p>Consistent.</p>	<p>By practice, not express requirement.</p>

Directors and officers must report designated equity security transactions.	Consistent.	Covered by CSU Conflict of Interest policy, and annual Conflict of Interest disclosure forms filed by all Trustees.
Annual reports shall contain internal control structure and procedures for financial reporting and an assessment of their effectiveness.	Substantially consistent.	FISMA audits performed biannually by internal auditor address internal controls, but in less detail than called for by Sarbanes-Oxley.
Company must have code of ethics for senior financial officers.	Not consistent.	All CSU executives and managers undergo conflict of interest training. Designated employees, including senior financial officers, must file annual Conflict of Interest disclosure forms.

**Other CSU Accountability Measures**

In addition to the above, CSU has implemented many other measures, to meet the overall Sarbanes-Oxley spirit of openness and accountability:

The Trustees’ Rules and Standing Orders, and Title 5, were recently updated and put into plain English

In addition to the annual financial statement, the Board also receives annually in open session an investment, debt capacity, and advancement report

The Board receives in open session an annual Cornerstones Accountability Report

The Board receives in open session an Annual Remediation Status Report

The Board receives in open session a Semi-annual Report on Litigation and Litigation Trends

The Board receives in open session an annual Construction Report

The Board receives in open session a Seismic Review Board Report

The Board receives in open session an annual California Environmental Quality Act Report

The Board receives in open session an Employment Profile Report

Each of the reports and documents listed above is posted on the CSU website

The Board participates in regular evaluation of all executives

The Board approves in open session all executive compensation

The Board sets aside time to receive public comment at every Board meeting

The Audit Committee annually establishes the audit priorities, and receives in open session reports from the Internal Auditor at every meeting

Trustee Committee membership is rotated annually

The Trustees have adopted a Code of Conduct with procedures for breaches of that Code

The CSU has a rigorous Conflict of Interest Code, and annually reviews all categories of employment for inclusion

The CSU General Counsel reports jointly to Chancellor and the Board

The Internal Auditor reports jointly to the Board and the Chancellor

Board agendas are published 10 days in advance of every meeting and posted on the web

### **The Future**

We will continue to monitor other resources and literature, legislation, standard-setting bodies, and other materials for the best recommended practices applicable to higher education and take additional steps as are appropriate.