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COUNSEL

2006 APR 10 A 11: 50

The California State University
OFFICE OF THE CHANCELLOR

BAKERSFIELD

April 7, 2006

Marc D. Mootchnik
University Counsel

CHANNEL ISLANDS

By Federal Express Overnight Delivery

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Fax (562) 951-4956
mmootchnik@calstate.edu

CHICO

DOMINGUEZ HILLS

Jeff S. Jordan
Federal Election Commission
Complaints Examination & Legal Administration
999 "E" Street NW
Washington D.C. 20463

EAST BAY

FRESNO

FULLERTON

Re: Francine Busby
FEC Matter No. MUR 5719
OGC File No. 06-1694

HUMBOLDT

LONG BEACH

Dear Mr. Jordan:

LOS ANGELES

MARITIME ACADEMY

I am the attorney for California State University, San Marcos ("CSUSM" or the "University") and am responding to your March 22, 2006 letter regarding matter MUR 5719 on its behalf. Enclosed is a copy of the Statement of Designation of Counsel executed by Neal Hoss, Vice President of Finance and Administrative Services, on behalf of the University.

MONTEREY BAY

NORTHRIDGE

POMONA

On March 16, 2006, CSUSM became aware that the Republican Party of San Diego County had filed a complaint with, among others, the Federal Election Commission, alleging that Francine Busby had placed election campaign materials on CSUSM's website. Upon being notified of these allegations, the materials were immediately removed from the University's website. As we discuss below, the University does not condone the use of its computers or its website for campaign activities and the use of the University website for campaign activities by Ms. Busby was not approved.

SACRAMENTO

SAN BERNARDINO

SAN DIEGO

SAN FRANCISCO

SAN JOSÉ

SAN LUIS OBISPO

Further, the Republican Party alleges that it is uncertain at this time "whether CSU-SM . . . actually paid for the website communication." In fact, CSUSM did not pay for the website communication by Ms. Busby nor did CSUSM provide any compensation or money whether by gift, loan or otherwise to Ms. Busby or her campaign. Rather, CSUSM's sole connection with this incident is that CSUSM maintained the website to which the materials complained of in the complaint were posted.

SAN MARCOS

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By way of background, CSUSM is a campus of the California State University. The California State University system is the State of California acting in its higher education capacity. Neither CSU nor CSUSM is a corporation or other private entity; nor is it a "person" as defined by the Federal Election Campaign Act.

CSUSM maintains a website. The general purpose of the website is to provide information to the campus community, prospective students and the general public regarding the University and its programs. Consistent with this purpose, the University permits its faculty to provide information on the University website relevant to their students and the mission of the University. Such information typically includes course information such as syllabi and coursework materials, articles and research authored by the faculty, as well as a curricula vitae or similar biographical information.

California State University takes election issues such as the one presented by this complaint seriously. It is California State University policy that its computers, including any pages on its websites, not be used for campaign purposes. CSU's Office of General Counsel has issued a Handbook on Election Issues. The Handbook is posted on the Office of General Counsel's website at http://www.calstate.edu/gc/Docs/Election_Issues.doc. The Handbook expressly states:

The law prohibits the use of public funds for political campaign activity. As stated in the leading case which established this principle, Stanson v. Mott (1976) 17 Cal.3d 206, 210, 130 Cal. Rptr. 697, 699:

"[A] public agency may not expend public funds to promote a partisan position in an election campaign."

Government Code section 8314 similarly provides:

"It shall be unlawful for any elected state officer, appointee, employee, or consultant to use or permit others to use state resources for a campaign activity . . . which [is] not authorized by law."

This rule of campaign neutrality is consistent with other laws that establish the foundational principle that the CSU must remain "entirely independent of all political and sectarian influence." Education Code section 66607. (See also, a similar restriction applicable to the University of California in Art. IX, Sec. 9 of the California Constitution.) It also furthers the California Constitutional proscription against gifts of public funds (Cal. Const. Art. XVI, Sec. 6), and the statute which prohibits the misappropriation of public funds. (Penal Code § 424). It is consistent with the related proscription on the involuntary assessment of student fees to support political positions. See, Smith v. Regents of University of California, 4 Cal. 4th 843, 16 Cal.Rptr.2d 181 (1993). Requiring state agencies to be politically neutral in election campaigns also promotes basic equity and fairness in the democratic process.

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State resources are implicated whenever any state property or asset is used in an election campaign, including land, facilities, equipment, supplies, telephones, computers, vehicles, employee time and funds.

A copy of the Handbook on Election Issues was distributed by e-mail to all faculty on October 12, 2004. Copies of that e-mail and the 1997 version of the Handbook that was sent with that e-mail are attached as Exhibit "A." Around that time, the Office of General Counsel was in the process of revising the Handbook. The revised version of the Handbook was distributed to all of the California State University campus presidents on October 12, 2004. The Handbook was subsequently revised in March 2006 solely to add a section addressing the filming of political ads on campus.

As a result of the November 2004 election, the Handbook on Election Issues was widely discussed at CSUSM. Around that time, the University made numerous efforts to inform the campus community regarding restrictions with respect to election campaign activities as they relate to the campus. The revised handbook was discussed at the November 2004 meeting of the Executive Committee of the Academic Senate. A copy of the Committee's minutes is attached as Exhibit "B." In its December 13, 2004 Tracks Newsletter, the University advised faculty, staff and administrators of the Handbook. A copy of the Newsletter article is attached as Exhibit "C." In its December 2004 newsletter, the Faculty Center reminded faculty of the revised Handbook and "encouraged" faculty "to examine the entire document." A copy of the Faculty Center's December 2004 newsletter is attached as Exhibit "D."

In addition, following receipt of the Republican Party's complaint regarding the Busby material, the University sent out a reminder via e-mail to its faculty, staff and administrators regarding the use of state resources in connection with elections and referred faculty, staff and administrators to the Handbook on Election Issues. A copy of that reminder is attached as Exhibit "E."

The University has attempted to determine how the Busby campaign materials appeared on its webpage. The University has learned the following: At the beginning of the fall 2005 semester, the outgoing and incoming faculty directors of the Women's Studies program requested Ms. Busby to provide a short biographical statement, as it had requested of all faculty in the program. We understand that Ms. Busby provided a statement, which she provided to a student assistant, who uploaded it on to the website. The University did not approve this biographical statement.

In sum, CSUSM committed no violation of the Federal Election Campaign Act. CSU, particularly its San Marcos campus, has taken steps to educate its faculty, staff and administrators of the prohibitions against using State resources for campaign purposes and have taken steps to prevent such from occurring. Immediately upon being aware of the objectionable material raised by this complaint, the objectionable material was removed and the campus has reminded the campus community of the prohibitions.

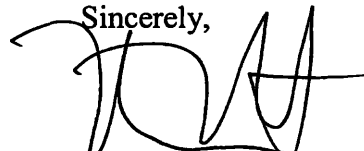
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April 6, 2006
Page 4

Finally, it should be noted that the California State University San Marcos Foundation, which was identified in the Republican Party's complaint, does not maintain the CSUSM website. Further, CSUSM is unaware of any facts that would suggest the Foundation had anything to do with the placement of the Busby materials on CSUSM's website.

We hope the foregoing provides clarification that CSUSM committed no violation of the Federal Election Campaign Act.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mootchnik', with a long horizontal stroke extending to the right.

Marc D. Mootchnik
University Counsel

Enclosures

cc: Karen S. Haynes, California State University, San Marcos

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EXHIBIT A

Mary Elizabeth Stivers

From: Mary Elizabeth Stivers
Sent: Tuesday, October 12, 2004 5.08 PM
Subject: FW: Election Issues

Good Afternoon,

The Academic Senate requested that all faculty receive a copy of the *Handbook of Election Issues* (attached) prepared by the Office of General Counsel for the CSU

Mary Elizabeth Stivers

~~~~~  
Mary Elizabeth Stivers, Ph.D.  
Associate Vice President for Academic Resources  
California State University San Marcos  
San Marcos, California 92096-0001  
Office: (760) 750-4052  
Fax: (760) 750-3150

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# HANDBOOK OF ELECTION ISSUES



Office Of General Counsel

FEBRUARY 1997

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**HANDBOOK OF ELECTION ISSUES**

**TABLE OF CONTENTS**

I. INTRODUCTION ..... 1

II. THE LAW ..... 1

III. EXAMPLES ..... 2

    A. WRITTEN MATERIALS ..... 2

    B. DEBATES ..... 3

    C. POSTERS ..... 3

    D. USE OF FACILITIES ..... 4

    E. USE OF E-MAIL ..... 4

    F. PUBLIC RESOLUTIONS ..... 5

    G. MISCELLANEOUS ..... 5

IV. CONCLUSION ..... 6

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# HANDBOOK OF ELECTION ISSUES

## I. INTRODUCTION

This is intended to be a general reference guide to issues which have arisen within the CSU in the past relating to the use of state resources in elections, and to provide general guidance to analyze new election issues which may arise in the future.

## II. THE LAW

The law prohibits the use of public funds for the purpose of political advocacy in election campaigns. As stated in the leading case which established this principle, Stanson v. Mott (1976) 17 Cal.3d 206, 210, 130 Cal.Rptr. 697, 699:

“[A] public agency may not expend public funds to promote a partisan position in an election campaign.”

Government Code section 8314 similarly provides:

“It shall be unlawful for any elected state officer, appointee, employee, or consultant to use or permit others to use state resources for a campaign activity . . . which [is] not authorized by law.”

Requiring state agencies to be politically neutral in election campaigns promotes equity and fairness in the democratic process. Indeed, recent court decisions have ruled that mandating involuntary support of political positions through fees or dues is also illegal, for it violates the payor's First Amendment right to free speech.

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State resources are implicated whenever any state property or asset is used in an election campaign, including land, facilities, equipment, supplies, telephones, computers, vehicles, employee time and funds.

While it is difficult or impossible to establish clear or bright lines which apply universally in every case, because each situation must turn on its particular circumstances, it is hoped that the following general information will be helpful. Further consultation with the University Counsel assigned to your campus is encouraged with respect to specific situations.

### III. EXAMPLES

#### A. WRITTEN MATERIALS

In Stanson, it was ruled that to determine whether written materials are informational, or promotional, reference must be made to their overall content, including style, tenor, and timing. Therefore, it is impossible to establish hard and fast rules which govern every situation. Information which leads to only one logical conclusion will always be suspect. The closer in time to an election, the more scrutiny written materials can expect to undergo. In 35 Ops.Cal.Atty.Gen. 112, the Attorney General determined that a full page ad, which contained information and did not explicitly advocate a particular vote, was still political advocacy because the ad was placed the day before the election.

#### B. DEBATES

It is the function of an educational institution to inform the public on both sides of important policy issues. Therefore, a debate, where both sides are fairly represented, and have an opportunity to present their opinions, is unquestionably an appropriate expenditure of public funds.

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Where University officials are participants in a debate and advocate a particular point of view, they should make clear at the outset that they are presenting their own personal opinion and not an institutional position.

**C. POSTERS**

Campaign posters, which advocate a position, are a campaign activity and no public money can be used in their production. Since portions of university campuses are public forums, however, the display of political posters on a campus is more complicated.

Posters can be displayed in traditional free speech areas, such as public kiosks or other bulletin board or information arenas. They also can be displayed in areas which are generally regarded as private space, belonging to particular individuals. This could include the interior of dormitory rooms and private office space, depending on the size and nature of the poster, and whether its creates any ambiguity of an "official" position being taken (e.g. office space which is open and adjoined to other public areas). Displays of political posters in other areas of the university, which are not devoted to public speech or considered to be private is not permissible.

Political posters are, of course, subject, like any other poster display, to content neutral time, place and manner restrictions. If, for example, the size or location of a poster were to create fire risk, access problems, or other health or safety issues, and there were existing applicable time, place and manner restrictions to prohibit such activity without regard to content, a political poster display could be prohibited. In the absence of content neutral time, place and manner restrictions, the university is always open to the charge that limitation on a particular political poster is the result of its content and therefore violative of the First Amendment.

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**D. USE OF FACILITIES**

Campaign groups which request the use of campus facilities for meetings, rallies or other gatherings must be treated like other outside public groups which request to use campus facilities. If other groups are charged for the use of campus facilities, campaign groups should also be charged at the same rental rate. If the campus makes its facilities available to groups in general without any charge, campaign groups should also not be charged for use of the facilities.

**E. USE OF E-MAIL**

E-mail is generally provided for employees to conduct official University business. Therefore, it is not appropriate for individual employees to conduct campaign advocacy or solicit funds by using their University e-mail accounts. Even an effort to get out the vote, without advocating any particular position, is not appropriate. On the other hand, to the extent that a certain degree of personal communication is tolerated or allowed under applicable campus policy, a distinction must be drawn between what is, in fact, personal communication where political views are expressed, and what is more in the nature of a wide broadcast of political views.

Student e-mail accounts or webpages are more difficult, because it is generally accepted that they are widely available for largely personal use. Campus policy which prohibits the use of e-mail accounts and webpages for nonuniversity purposes is helpful in curbing political campaign activity. In the absence of campus policy, the line between appropriate personal communications and political advocacy is very difficult to draw. In short, a campus could become vulnerable to a charge of violation of the First Amendment if it attempted to interfere with student communications with political content.

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**F. PUBLIC RESOLUTIONS**

There is a rich tradition in academia that certain bodies within the university may express their common views on matters of public importance. The Academic Senate, for example, frequently "takes positions" on various matters in furtherance of its function within the institution.

There is no reason why such bodies cannot continue to express their viewpoints, even on matters which go before the electorate. To the extent that the timing of their expression is out of the ordinary, or especially close to the time of an election, or to the extent that any peculiar or unusual publicity is sought or achieved in connection with the action, it could be argued that the true purpose of the expressed opinion was to sway the electorate, and therefore that it is prohibited political activity.

**G. MISCELLANEOUS**

Foundation funds are not "public," even though the Foundation supports a public purpose. They may, therefore, be used for purposes of political advocacy, but only so long as consistent with a formal position taken by the Board of Trustees.

Faculty and staff may sign their name to letters or other written documents which advocate political positions. First Amendment rights to free expression are not sacrificed upon assuming public employment. Where the name of a campus employee is accompanied by a campus title, however, there may be some risk of confusion that the signature represents an official position of the institution. There is no strict prohibition on campus employees using their titles in advocating political positions, but care should be exercised depending upon the circumstances and the particular employee's position.

It is appropriate for employees to wear political campaign buttons to work as an expression of their own personal opinion.

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The university has no ability to restrict the use of its officially stated opinions, by others, as a part of their campaign advocacy. Care should be exercised, however, to ensure that the campus is not so closely affiliated with the campaign advocates to give rise to an argument that the official statement was really engineered for an outside purpose. Circumvention of the restrictions of the law is not permissible.

#### IV. CONCLUSION

Because there are no hard and fast rules in this area, and each situation presents unique and generally complicated fact circumstances, campuses are urged to consult with their University Counsel as they attempt to make decisions about appropriate behavior in the context of election issues.

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# EXHIBIT B

MINUTES

Executive Committee of the Academic Senate  
CALIFORNIA STATE UNIVERSITY SAN MARCOS  
Wednesday, November 17, 2004  
KEL 5207  
12 - 2 p.m.

---

**Members Present:** Jackie Trischman, Chair      Linda Holt, V. Chair      Rosario Diaz-Greenberg, Secty.  
                         Gilbert Valadez, APC      Patty Seleski, BLP      Marie Thomas, FAC  
                         Staci Beavers, GEC      Kathy Hayden, LATAC      Jorge Riquelme, SAC  
                         Carmen Nava, UCC      Dick Montanari, ASCSU

**Ex Officio Present:** Janet Powell, CFA; Robert Sheath, Provost

**Not Present:** Valerie Callanan, NEAC; Karen Haynes, President; Gabriela Sonntag, PAC

**Staff:** Marcia Woolf, Academic Senate Coordinator

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**I. Approval of Agenda**

**ADD: XII. New Business, D. Lecturer Facilities**

Motion #1 M/S/P\*  
To approve the agenda as amended.

**II. Approval of Minutes of 11/10/04**

**CHANGE: X. Committee Reports, GEC, 2<sup>nd</sup> line: "...that the UPGE UDGE course...."**

Motion #2 M/S/P\*  
To approve the minutes as amended.

**III. Chair's Report, Jackie Trischman**

**A. Announcements:** At this week's Cabinet meeting, the following items were discussed: (1) Honorary degrees – Two nominations have been received thus far; additional nominations should be sent to Miriam Schustack; degrees are awarded by the system. (2) Information concerning various types of assessments performed on campus will be collected into a spreadsheet which will include timelines and other pertinent information. (3) The results of the transition team survey are being used in a process to redefine our strategic goals. The next step of this dynamic process will likely be to invite feedback from the campus community. (4) Bonnie Biggs has assumed the role of Tribal Liaison for the campus, and is planning visits and action items for interaction with the area tribes. (5) A budget update. (6) Robert Stakes made a presentation on UTEP AWARE (University of Texas, El Paso) – a leadership institute program which takes individuals from all over campus to form a cohort which learns about all facets of the university, to improve relations and understanding.

Nava announced that the Library and Faculty Center will be hosting a training session on EndNote.

Suggestions provided to the Space Committee by BLP have been useful in discussions concerning development of a general fund for mandatory office moves, and design of office spaces.

**B. Referrals to Committees:**

NEAC EHOS Advisory Committee

*\*All motions were passed unanimously unless stated otherwise*  
Legend M = Moved      S = Seconded      D = Defeated      P = Passed      L = Lost      W = Withdrawn

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- IV. Vice Chair's Report, Linda Holt: No report.
- V. Secretary's Report, Rosario Diaz-Greenberg: No report.
- VI. President's Report, Karen Haynes: Unable to attend.

VII. Provost's Report, Robert Sheath: Searches: The search committee for the VP-FAS position expects to make its recommendation to the president this afternoon. The CoE dean advertisement is still being fine tuned, but the Extended Studies dean ad has gone to The Chronicle.

He met with BLP and engaged in a lively discussion concerning the College of Health & Human Services.

The UTEP AWARE program presented in Cabinet is a very successful program. Any effort to get people in various divisions to better understand each other can only help communications and collegiality.

VIII. Statewide Senate Report, Dick Montanari: In last week's ASCSU FAC meeting, there was a presentation about an effort to develop a systemwide database of faculty expertise. CMS was also discussed, and the consensus was to drop the effort to try to stop it since the majority of campuses are now implementing it. Another issue discussed was that of background checks for speakers, which some risk management offices are requesting. Other issues included use of graduate teaching assistants, and off-campus speakers.

Montanari then provided an overview of the presentations made at last week's plenary session (John Vasconcellos on a statewide trust-building program; David Spence on the quality impact of budget cuts; Chancellor Reed on a system marketing push), as well as the resolutions discussed (teacher credential fee, lecturer representation on campus senates, reaffirmation of academic freedom, academic freedom for students, voluntary community service learning requirement, flexibility in completion of the general education package prior to upper division transfer, quality of teaching in extended university, and commendation for campuses' voter registration drives). Full minutes of the meeting will be distributed via e-mail once available.

X. Committee Report - LATAC (taken out of order): The committee has been discussing the issue of which staff should undergo Copyright/Fair Use training. They plan to recommend that all staff who deal with copyrighted materials in the course of their work should undergo training. It was suggested this information be added to job descriptions. The committee suggests a legal review of this recommendation.

IX. CFA Report, Janet Powell: The CFA has received a draft legal opinion on the Moore issue, and the final opinion will be shared with the EC. They are pleased to see that the Handbook of Election Issues has been revised.

X. Committee Reports

APC: The committee has revised the language of the policy on graduation requirements and will be bringing it to the EC shortly. A resolution and revised policy and procedure concerning credit by exam were distributed. In order to put this item on the December Senate agenda, it must be approved by the EC on December 1. Trischman asked that comments/concerns be broadcast via e-mail between now and that meeting.

FAC: The emeritus policy has been revised since the first reading based on comments received, and may generate some debate at the second reading. Trischman noted that FAC may wish to consider that other campuses include language regarding adjuncts in their emeritus faculty policies. FAC has been working with Pat Worden on this year's call for the UPD/RSCA grants; Worden will make model applications available on her website. The committee has also been discussing the research misconduct policy, and has received CoBA's RTP policy for review. There has been discussion about inclusion of reviews in a WPAF and some inconsistency in the language of the university RTP policy, as well as about the evaluation procedure for temporary faculty as described in the CBA. It was noted that the CFA and administration have been discussing the interpretation of the CBA language as it relates to student evaluations and temporary faculty.

NEAC: No report.

\*All motions were passed unanimously unless stated otherwise  
 Legend. M = Moved    S = Seconded    D = Defeated    P = Passed    L = Lost    W = Withdrawn

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**PAC:** The committee is continuing its review of four programs, and considering revisions to the PEP.

**SAC:** The committee is working on revisions to policies and will be bringing those to the EC shortly.

**UCC:** The committee is reviewing the Mass Media program proposal, as well as potential changes to a CoBA option, and will soon review the Nursing proposal. A question has arisen regarding the interface between UCC and the Graduate Studies Council for evaluation of graduate courses and programs. It was suggested that the Council might be structured as a sub-committee of UCC. The council is comprised of all graduate coordinators and Pat Worden. Trischman will discuss the matter with Worden, and it will likely be agendaized at a later date.

**XI. Old Business**

**A. SAC Disabled Students Issues** There was a discussion about how to proceed, based on the information gathered thus far. Trischman noted that the goal is to provide feedback to those in a position to make any necessary changes to the facilities offered, and to understand the challenges from the faculty viewpoint. With regard to emergency preparedness, a campus plan is currently being developed (including a provision for "floor marshals") and feedback concerning disabled students would be welcomed from the Senate. Trischman asked that SAC prepare a list of recommendations based on the information the committee has gathered. Trischman will discuss with Segoria the issue of room scheduling and will report back to SAC. It was suggested that maps of wheelchair routes would be helpful. There was concern expressed about how items are budgeted for and funded within DSS, and a question asked about whether DSS has an advisory council.

**B. Policing Issues** A draft resolution was distributed. Trischman solicited input concerning interactions with police. Responses suggest a possible "attitude" problem, and it is not clear that this feedback is reaching the police department. There were also responses concerning very positive interactions with police. The resolution suggests formation of a community oversight body. Trischman asked that comments be provided, with the goal of finalizing the resolution at the next EC meeting, and bringing it to the Senate for action on December 1. It was noted that the ASI has also developed a resolution. EC members discussed the language of the Senate resolution and various options for defining the problem and possible solutions, as well as coordinating language with the ASI.

**XII. New Business**

**A. ASI Resolution Concerning Academic Advising** An ASI resolution requesting additional support for advising was distributed. The Chancellor's Office will carry this resolution to the legislature on ASI's behalf.

**B. Communication Between Senate and Departments** It has been requested that Senate committees copy the deans' offices when sending a request to department chairs to gather information, and to be sensitive to department chair workload when assigning deadlines. A standard communication scheme is advised for these types of communications. Trischman suggested a task force be formed for this purpose. Holt will lead this task force and will call for volunteers from the colleges.

**C. CSU Handbook of Election Issues** The newly revised handbook was provided as an agenda attachment. Significant changes were made to the section on speakers. It was suggested that the President be encouraged to make some public comment acknowledging the changes.

**D. Lecturer Facilities** This item was postponed to the December 1 meeting.

The meeting was adjourned at 2:05 p.m.  
The next meeting will be held December 1 at 12 p.m. in COM 206  
Marcia Woolf, Academic Senate Coordinator

APPROVED: \_\_\_\_\_  
Rosario Diaz-Greenberg, Secretary 04/05

DATE: \_\_\_\_\_

\*All motions were passed unanimously unless stated otherwise  
Legend M = Moved      S = Seconded      D = Defeated      P = Passed      L = Lost      W = Withdrawn

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# EXHIBIT C



# TRACKS

News on where we're going and where we've been for faculty and staff

DECEMBER 13, 2004

VOLUME 14 No. 14

## 16-Year Blasting Project Nears Completion

"THEY TOOK DOWN HALF A MOUNTAIN" AND "SAVED US MORE THAN \$10 MILLION IN SITE PREPARATION COSTS."

The quarrying project that has carved 16 flat acres from what was solid granite hillside at the back of the campus is nearly complete.

Final excavation, on a utility tunnel, is the last part of the project. Hanson Aggregates, the firm that has conducted the blasting and quarrying, expects to vacate the campus site by the end of 2004.

The project began in 1988, before construction began on Craven Hall. Initial work prepared the hillside site for the first cluster of campus buildings. Once they were built the work continued, clearing more than two million cubic yards of rock to create a flat space that will one day hold as many as 11 academic buildings, student housing and several parking structures.

"They took down half a mountain," said Russ Decker, director of planning, design and construction. "They have saved us more than \$10 million in site preparation costs," he estimated.

Hanson has performed the blasting and quarrying work at no charge to the campus, in exchange for the rock and use of the site. The rock is crushed for use in concrete. Large boulders are sold for use as riprap.

Hanson has conducted more than 1,200 blasts at the site, with only one accident. July 30, 2001, a blast threw rocks and pebbles onto faculty-staff parking Lot "E", damaging 80 parked cars and several buildings. After the accident, blasting schedules were changed and the parking area was cleared before each blast.

The first campus improvement likely to follow completion of the quarrying project is more parking. A new parking lot ("F") is planned with approximately 1,200 spaces for students, faculty and staff. Completion is scheduled for 2006.

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## Chancellor Approves Kinesiology Program

Cal State San Marcos has received approval for its latest degree program, kinesiology. The final approval was granted Nov. 22 by Chancellor Charles B. Reed. In expectation of the chancellor's okay, the program was launched this fall, and approximately 40 students have already begun coursework.

This major prepares students for the single subject teaching credential in physical education or for graduate work in physical education, kinesiology, exercise science, sports medicine or physical therapy and rehabilitation. Beginning this spring, the program will offer an array of physical activity courses open to all students.

"Receiving the final approval for the program is reassuring for our students who are already working toward the degree and for community college students who can transfer

into the program when they've completed 60 units," said Bud Morris, interim director of the planned College of Health and Human Services.

"It's exciting and gratifying to know that kinesiology is finally a reality on our campus," said interim faculty director Steve Nichols, who was instrumental in helping design the program. "We are working now to add an exercise science concentration to the major, which is an area of kinesiology that is of great interest to many of our current and prospective students."

The program's first faculty member, Todd Astorino, began teaching this fall. A search has begun for a permanent faculty director.

(Continued on page 2)

T R A C K S

### Kinesiology Program

(Continued from page 1)

RECEIVING THE  
FINAL APPROVAL FOR  
THE PROGRAM IS  
REASSURING FOR  
OUR STUDENTS.

Kinesiology is the first degree program launched that will eventually be housed in the planned College of Health and Human Services. "With the approval of the kinesiology degree, we have the foundation upon which we can grow other anticipated programs in the College of Health and Human Services," said Morris. These programs include a bachelor's in nursing, which is expected in fall 2006, a master's in social work, planned for fall 2007, a master's in physical therapy, planned for fall 2008, a bachelor's in health care management, planned for fall 2009, and the Center for Healthy Living.

### Revised Handbook on Election Issues Available

The CSU Handbook on Election Issues has been revised and updated and is now available on line. Visit [www.calstate.edu/gc/Docs/Election\\_Issucs.doc](http://www.calstate.edu/gc/Docs/Election_Issucs.doc). The booklet is a general reference guide to issues that have arisen within the CSU relating to the use of state resources in elections and guidance for other election questions. It covers debates, speakers, free speech zones, posters, use of facilities, use of e-mail, campaign buttons and more. For future reference, the link has been added to the "Policies Guidelines & Goals" section of the "Faculty & Staff" page on the campus website.

### December Paychecks

To pick up your December paycheck, stop by the university police dispatch window in the University Services Building (on La Moree) between 10 a.m. and 2 p.m. on Fri., Dec. 31. Checks WILL NOT be released to you without picture ID.

If you wish to have someone else pick up your pay warrant, the designated person must present a signed note of approval from you and have his/her picture ID.

Any pay warrants that are not picked up on Dec. 31 will be delivered to the cashier's office on Monday, Jan. 3, and will be available for pickup after 9:30 a.m.

Reminder: The cashier's office holds pay warrants for 30 days.



### Artists Hit the Streets

Student artists lead a tour of their installations along Escondido's Grand Avenue, Monday night, Dec 6. More than a dozen storefronts have turned into temporary gallery spaces for UpFront, an installation art project involving art majors in Karen Schaffman's process of art class. Working with the Office of Community Service Learning and First Night Escondido, the installations will be on display until Jan 2.



At the December Academic Senate meeting, the following items were passed:

- Resolution on civic engagement
- Emcritus faculty policy revision
- Resolution on minor policy revisions
- Fair use training (recommended for all staff who deal with copyrighted materials)
- Minor in cognitive science
- Policing issues resolution

Credit by exam policy and procedures: Input is being sought on this new business item.

Informational items included.

- Draft campus guidelines on evacuation of disabled students
- Draft campus strategic goals revision
- CSU handbook of elections (revised Oct. 2004)

For additional information, please visit the Senate's website: [www.csusm.edu/academic\\_senate/](http://www.csusm.edu/academic_senate/)

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# EXHIBIT D



# Faculty Center Newsletter

December 2004

Volume 1 Number 4

## In This Issue

- New Staff
- Speakers and Free Speech
- EndNote Software
- FMP Holiday Event
- 2005 CSU Symposium
- Prof. Development Grants
- Exchanges Book Review
- NCHEA

## Faculty Center Hours

Monday – Friday  
8:00 a.m. – 12:00 p.m.  
12:30 p.m. – 4:30 p.m.

## Faculty Center

Library 2400  
CSU, San Marcos  
San Marcos, CA 92096

## Carmen Nava

Director  
(760) 750-8028  
cnava@csusm.edu

## Samantha Hua

Administrative Support  
Coordinator  
(760) 750-4019  
shua@csusm.edu

Faculty Mentoring Program  
(760) 750-4017

Fax:  
(760) 750-3151

Faculty\_center@csusm.edu  
<http://www.csusm.edu/fc>

*As the fall semester wanes, the Faculty Center is busy planning for Spring semester and the coming AY 2005/06. In the spring, I will survey the faculty about which services they would like the Faculty Center to provide, and then use your responses to plan for the next academic year.*

*Please be sure to come by and introduce yourself to our new support staff member, Samantha Hua. Sam brings many skills and some impressive experiences to her position in the Faculty Center. I hope you will help me in welcoming her to our CSUSM community.*

*-Carmen Nava, Director, Faculty Center*



CSUSM Faculty Center Director Carmen Nava, second from right in front, recently attended the bi-annual meeting of the CSU Faculty Development Council, which brings together faculty development officers from all 23 CSU campuses with representatives from the Chancellor's Office. The two-day agenda included campus reports, presentations on instructional technology, and discussion about strategies for supporting faculty development across the CSU in difficult budget times. A significant number of the faculty development officers are new, and so one concrete objective that emerged was to promote the development of the new faculty developers! The meeting fostered a strong consensus about the value of faculty development in the CSU today, and the group re-affirmed its commitment to share expertise and successful programs for the benefit of CSU faculty.

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## REMINDER:

RTP Workshop  
Friday, December 3  
1:00-2:50 p.m.  
COM 206

### Faculty Center Library

The Faculty Center Library maintains an archive of sample WPAFs (Working Personnel Action Files). These files are available for faculty who are preparing their own WPAFs. These items do not circulate, and may be viewed in the Faculty Center Library only.

## Speakers on Campus

The recent controversy on our campus about filmmaker Michael Moore brought to light a little known CSU document called the *Handbook of Election Issues*. Authored by the CSU's Office of General Counsel, the *Handbook* is "intended to be a general reference guide to issues that have arisen within the CSU relating to the use of state resources in election and guidance for other election questions." [http://www.calstate.edu/gc/Docs/Election\\_Issues.doc](http://www.calstate.edu/gc/Docs/Election_Issues.doc)

At the time of the controversy, the *Handbook* existed in a version that bore the date of 1997. Faculty should be aware that the *Handbook* is now available in an updated form, with the date of October 2004. The updated handbook contains new sections on "Speakers" and "Free Speech Zones" that did not appear in the 1997 version. It is important to note that the new section on "Speakers" reads as follows:

"Every university campus is considered "a market place of ideas." Healy v. James, 408 U.S. 169, 180, 92 S.Ct.2338, 2346 (1972). Broad latitude therefore must be provided for speakers from every spectrum to address groups on campus, both in formal and informal settings, subject only to reasonable campus time, place and manner restrictions. Reasonable restrictions are those which are designed to avoid material disruption of instruction and/or campus security. Public funds may be used to pay speakers who advocate a particular point of view, and even advocate for a candidate or position in an election year. Balance in viewpoints needs not be achieved at every speaking event. However, over time campuses should ensure that various points of view have been presented. The closer a speaker comes to the date of an election, the more compelling the need for balance."

CSUSM faculty are encouraged to examine the entire document.

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## New Staff Member

**Samantha Hua** has joined the Faculty Center as the new Administrative Support Coordinator. She has a degree in Zoology and Marketing and a background in wildlife biology as well as an advocate of education and world travel. She is particularly interested in creating practical, dynamic, and creative programs to support both faculty and students. Please drop by and introduce yourself and offer any suggestions you may have.

Phone: (760) 750-4019 Email: [shua@csusm.edu](mailto:shua@csusm.edu)

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## EndNote Bibliographic Software

Kellogg Library and the Faculty Center are pleased to announce a training seminar for EndNote Bibliographic Software on December 2, 2:00-4:00 p.m. in Kellogg Library 3400.

The training will be conducted by Thomson ResearchSoft representative Bob Farrell. Bob will speak about EndNote 7, the newest release EndNote 8, and their newest module RefVis. He will

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(EndNote continue)

introduce Web Conference Training modules for registered users. Bring your questions, curiosity, and learn how to conduct your literature reviews faster and more efficiently. Students are also welcome.

To learn more about EndNote: <http://www.endnote.com/> or contact Ann Fiegen ([afiegen@csusm.edu](mailto:afiegen@csusm.edu), 760-750-4365).

## Mentors



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## Faculty Mentoring Program Holiday Event

The Faculty Center is hosting the FMP Holiday Event on Friday, December 3 at 4:00-5:30 p.m. in COM 206. This is a great opportunity for Mentors and Protégés to unite and celebrate the end of the year as well as discuss improvement and outreach strategies for next semester.

Special thanks to **Marilyn Ferri** at the SSS & EOP office for organizing the event and **Marie Thomas**, Chair of the Psychology Department and FMP Faculty Fellow, for coordinating the program.

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## 2005 CSU Regional Symposium

The Faculty Center for Professional Development at Cal Poly Pomona will host the **2005 CSU Regional Symposium on University Teaching on Saturday, April 2, 2005**. Please consider submitting a proposal for this multi-disciplinary conference. Proposal applications are due to The Faculty Center for Professional Development at Cal Poly Pomona on **Friday, December 3, 2004**.

Link to the Call for Proposals

[http://www.csupomona.edu/%7Efaculty\\_center/programs/2005\\_csu\\_symposium/rfp.pdf](http://www.csupomona.edu/%7Efaculty_center/programs/2005_csu_symposium/rfp.pdf)

Link to Online Application

<http://trc.csusb.edu/proposal/>

If you have any questions, or would like the Call for Proposals in a different format, please contact Carmen Nava (x8028).

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## Grants Available at CSUSM

The call for proposals for the **2005-06 UPD/RSC** grants has been announced to CSU SM faculty. You can also find information about this and other internal grant opportunities at: <http://www.csusm.edu/research/Grants.htm>.

***New feature this year:*** we have posted several examples of model proposals from recent years.

UPD/RSC proposals are due at the Academic Senate office:  
Friday, January 28, 2005, at 4:00 p.m.

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(Grants continued)

**Seed funds** are also available to assist faculty in preparing external grant proposals. You can find information on the GPSM program, a list of colleagues who have recently taken advantage of this program, and an application form at:

<http://www.csusm.edu/research/Grants.htm>

Please confer with Pat Worden or with a member of the GPSM team before filling out the form. The application is designed to be easy, straightforward, and short. GPSM team members are Merryll Goldberg, George Vourlitis, Wes Schultz, Raj Pillai, and Laurie Stowell.

For guidance on preparing your grant proposal, contact Jan Cushman in the Foundation (x4703).

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## New Book Review

A new book review in *Exchanges: The On-line Journal of Teaching and Learning in the CSU* is now available. Lorie Roth (CSU Office of the Chancellor) has reviewed *Integrating Information Literacy into the Higher Education Curriculum: Practical Models for Transformation* by Ilene Rockman and Associates:

[http://www.exchangesjournal.org/reviews/rew\\_1191.html](http://www.exchangesjournal.org/reviews/rew_1191.html)

Please submit manuscripts that feature CSU perspectives, teaching innovations, and research on teaching and learning. The contact person for Exchanges is:

Cheryl Jung, Ph.D.

Associate Director, CSU Institute for Teaching and Learning

Managing Editor, *Exchanges*

401 Golden Shore, 6th Floor

Long Beach CA 90802

(562) 951-4752

(562) 951-4982 (fax)

<http://www.cjung@calstate.edu>

<http://www.calstate.edu/itl>

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## North County Higher Education Alliance

In October, the board of NCHEA hosted a dinner for the approximately 40 new faculty members who joined MiraCosta College, Palomar, and CSUSM this academic year. Held at the Victorian Gardens in Twin Oaks Valley, the catered dinner provided a networking opportunity for new faculty. **Darci Strother**, CSUSM Professor of Spanish and NCHEA president, welcomed the faculty and encouraged them to work together to facilitate the smooth transition of Palomar and MiraCosta students to CSUSM, and to explore ways to collaborate "across Highway 78" on projects of research and service as well as instruction.



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EXHIBIT E

**Mary Elizabeth Stivers**

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**From:** Paige Jennings [pjenning@csusm.edu]  
**Sent:** Tuesday, March 28, 2006 9.43 AM  
**Subject:** Election Season Reminder from Academic Resources

This information is sent on behalf of Academic Resources. Please do not reply directly to this message. Thank you.

Academic Resources would like to remind faculty, staff, and administrators about the use of state resources during an election year. Please see the Handbook of Election Issues written by the Office of General Counsel at [www.calstate.edu/gc/Docs/Election\\_Issues.doc](http://www.calstate.edu/gc/Docs/Election_Issues.doc). Thank you for your cooperation.

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# EXHIBIT F

## DECLARATION OF LINDA PERSHING

I, Linda Pershing, declare and state that, if called as a witness in this matter, FEC matter no. MUR 5719, I would and could competently testify to the following facts of my own personal knowledge:

1. I am a professor in the Women's Studies Program at California State University, San Marcos. I have been employed with California State University, San Marcos since 2001. Prior to the Fall 2005 semester, I was the director of the Women's Studies Program. My colleague, Terry Allison, became the director of the Women's Studies Program beginning Fall 2005.

2. Francine Busby taught a course, Women Changing Our World (WMST 375), for the Women's Studies Program in the Fall 2005 semester. At the beginning of the semester, I asked Francine Busby to provide the program with a short biographical statement, to be linked to the WMST 375 website of Women's Studies Program, in conjunction with her course. The Women's Studies Program often posts this type of material on the website, so that students and others can find information about faculty expertise, interests, research, and experience. Ms. Busby forwarded a biographical statement entitled "Francine's Story" to a student assistant, who then forwarded it to a student volunteer, Jackie Fu, who was serving as our webmaster. Jackie Fu then posted it on the web, as a link to the WMST 375 course web page. I do not recall reviewing the biographical statement before it was posted on the web.

3. On March 16, 2006, I became aware that the Republican Party of San Diego County had filed a complaint that Ms. Busby had used the university website to

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support her campaign for the local Congressional seat. I asked Mr. Fu to remove Ms. Busby's biographical statement from the WMST 375 website at that time.

4. The posting of Ms. Busby's biographical information was related to her instruction of the course. In her work as adjunct professor in the Fall 2005, Ms. Busby never, in any of her e-mail or verbal communications with me, included any information regarding fundraising for her campaign, nor did she solicit support for her campaign in any manner.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge. Executed this 5<sup>th</sup> of April 2006, in San Marcos California.

*Linda Pershing 4-4-06*  
Linda Pershing, Declarant

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