

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA  
OFFICE OF THE GENERAL COUNSEL



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March 27, 2006

Members of the Academic Council

Re: Disclosures Regarding the Senate Assembly Meeting of March 13, 2006

Dear Academic Council Members:

I know that many of you have been fielding inquiries from Senate members in connection with the Special Meeting of the Assembly held on March 13, 2006, at which the Assembly voted in favor of two items of business: a motion expressing No Confidence in the Chair of the Academic Senate, Professor Clifford Brunk, and for removal of Professor Brunk from office. Issues have arisen about what information can be shared, given concerns about Professor Brunk's right to privacy. It appears that it would be helpful for the Office of General Counsel to provide you with this statement, which you can share with your Senate colleagues, in order to help address their questions and concerns.

Shortly after the public meeting was convened on March 13, 2006, the Assembly decided to conduct this business in Executive Session. Attendance was then limited to members of the Assembly, the Interim Provost, two staff members, the Assembly Parliamentarian and two representatives from the Office of the General Counsel. In addition, the Chair requested that his wife, who is not a member of the Assembly be permitted to attend and the request was granted by unanimous consent.

The grounds for the Assembly's action removing Professor Brunk as Chair are set forth in the resolution of No Confidence, as follows:

"Resolved: The Assembly of the Academic Senate of the University of California, has no confidence that (1) Clifford Brunk is professionally, faithfully, or effectively performing the duties and responsibilities of the Office of Chair of the Academic Senate, and (2) that Clifford Brunk can faithfully represent the views of the University of California Academic Senate."

The amount of information from that meeting that can appropriately be disclosed to others within the Academic Senate is limited due to required confidentiality. The Assembly's observance of University policies regarding confidentiality of personal information has been undertaken in order to protect the right of Professor Brunk to have matters concerning his job performance (as Chair) treated as confidential, the same right all University employees have. To the extent a Senate member is concerned that Professor Brunk may not have been treated fairly, s/he can ask Professor Brunk to provide a signed release that would permit a member of the Assembly to discuss the substantive reasons for the decisions reached.

The requirements of confidentiality in this case are based on the provisions of the California Information Practices Act (Civil Code Sections 1798, et seq.), and the California Public Records Act (Government Code Sections 6250, et seq.), which are discussed in a recent court decision: Versaci v. Superior Court \_\_\_ Cal. App. \_\_\_ (2005) <http://caselaw.lp.findlaw.com/data2/californiastatecases/d044899.pdf> See also APM 160-20-d (1) and APM 160-20-b (5), which prohibit disclosure of personal information about an individual, the disclosure of which would constitute "an unwarranted invasion of personal privacy of the individual"-- the same standard applied under the Public Records Act and interpreted by the court in the Versaci case. Maria Shanle, in the General Counsel's office, and I would be happy to discuss the issue of confidentiality further with any Senate member at his/her request. We can be reached at (510) 987-9800, and at [david.birnbaum@ucop.edu](mailto:david.birnbaum@ucop.edu) and [maria.shanle@ucop.edu](mailto:maria.shanle@ucop.edu).

Confidentiality does not mean, however, that the process that was engaged in is itself protected from disclosure. Professor Brunk's performance in the office of Chair, and the way that has affected the functioning of Senate business, was evaluated by a Special Committee of the Academic Council, created in January, which made a report to the Council in February. This was followed by a vote by the Council of No Confidence in Professor Brunk as Chair of the Senate. Prior to the Academic Assembly meeting in March, the report of the Special Committee was made available to Assembly members, along with other written materials addressing Professor Brunk's performance, and including materials submitted by Professor Brunk in response. At the Assembly meeting, many members of the Assembly participated in the discussion of this issue, providing information and perspectives, and asking questions. Professor Brunk was afforded the opportunity to respond to the points made during the meeting as well as the privilege of making the closing remarks prior to each vote of the Assembly. Only after reading and hearing all of this did the Assembly act. The meeting lasted for several hours and all present who expressed a wish to do so, had the opportunity to speak or ask questions.

The vote on each item was as follows	<u>No Confidence</u>	<u>Removal</u>
	Yes: 48	Yes: 50
	No: 3	No: 2
	Abstentions: 2	Abstentions: 2

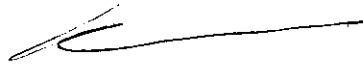
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I hope that this information is helpful to you and to those members of the Senate with continuing questions and concerns.

Very truly yours,

A handwritten signature in black ink, appearing to read "David M. Birnbaum", with a long horizontal stroke extending to the right.

David M. Birnbaum  
University Counsel

cc: James E. Holst  
Maria Shanle  
Susan M. Thomas