

# *ERFA POSTSCRIPTS*

## **News of the CSU East Bay Hayward Emeritus and Retired Faculty Association September 2017**

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### *President's Message:*

Good news for a change. Thanks to Don Sawyer who invited Provost Inch to our last luncheon at the exquisite Asian Buffet, the Provost decided that the University should sponsor our lunches on campus at their expense. I think that this shows his respect and appreciation for the emeriti which he referred to as "the founders of this University." Parking will also be provided. After the luncheon there will be availability of golf carts for tours of the campus.

I have asked him to be our luncheon speaker and his ideas and views for the future of CSU/EB will be enlightening.

Jodi Servatius deserves credit for approaching Don about the role of the University in providing for the emeriti. Thanks, Jodi, for getting this started.

While there is no cost for the luncheon itself, the Board requests donations of \$10 or more for scholarships for the students in the Renaissance Scholars program.

After we raised enough for the ERFA Library Endowment we started to ask for donations for Renaissance Scholars which provides scholarships, counseling, and other aids to former foster kids enrolled at the University. So far we have donated four \$1000 scholarships. Since we have no dues, this is our only means of raising money. So please give cash or a check (made out to Educational Foundation with Renaissance Scholars on the memo line.) Having read the applications, it is obvious that these young people need and deserve our support.

Instead of calling for a luncheon reservation, fill out the reply card included with the invitation which will be sent to you under separate cover. Please attend and let the University know we appreciate their effort to reach out to us.

Bea Pressley, President

## *Fall Luncheon, Wednesday, October 15, 2017*

☞ We have a major change of sponsor and venue! You will get an invitation from President Leroy M. Morishita and Provost Edward S. Inch. You will also receive an RSVP reply card to send back to the university.

Guest Speaker: Provost Ed Inch

Time: Gather starting at 11:30 am, social hour of 30 minutes, sit down at noon

Place: Multipurpose Room, New University Union, CSU East Bay campus; reserved parking in Lot B.

Cost: none, courtesy of CSUEB.

However, ERFA suggests that a donation to the Renaissance Scholar program would be much appreciated, and your whole \$20 can now go to this program, tax deductible.

### *On Moving our Luncheons to Campus*

Those of us who attended the ERFA spring luncheon were pleased to be joined by Provost Ed Inch. The Provost expressed surprise and disappointment that our esteemed group was meeting in such a humble place. He commented that retired faculty are the folks who built the university and that we should expect to be treated better! Shortly after the meeting, Dr. Inch's office proposed that, in the future, the university host our meetings on campus. The board considered this at our last meeting and enthusiastically accepted the offer.

Several important considerations were that we would need reserved parking and easy access to the location, and have wine and dessert. The university will provide all of that!

The Provost will be hosting our luncheons from here on and there will be no cost to the member. However, remembering our commitment to provide two scholarships per year to the Renaissance Scholars Program, ERFA is encouraging members to make a gift at each luncheon of at least \$10 for that cause.

For this luncheon, the Provost suggested that we have some campus memorabilia (celebrating the campus' 60th anniversary) to view and that we offer campus tours after the lunch. Golf carts will be available for those who would enjoy a tour of the much- expanded campus.

The October 25th luncheon will be a great time to welcome new retirees and to encourage those who haven't been attending to join in. The university is welcoming us back "home". You won't want to miss this one. Invitations have been sent, so be sure you return the enclosed response card. We look forward to seeing you there.

-Jodi Servatius



### *Helen Sowers, Treasurer Emeritus, CSU East Bay ERFA*

The Executive Committee of the CSU East Bay Chapter of ERFA wishes to extend our sincere thanks to Helen Sowers for serving as Treasurer of our group for at least the past 10-12 years. Helen, prior to her retirement from Cal-State, was a long-term Lecturer in the Department of Biological Sciences, teaching in the Medical Technology program where her speciality was Hematology. Attendees at our Fall and Spring Luncheons always had a pleasant interaction with Helen as she was the one responsible for collecting the money for the luncheon! Our financial records have been in great shape because of the diligence of Helen in 'minding the books". For that we are indeed grateful and wish her well in the coming years.

## *Class Action Lawsuits against University 403(b) Plans Now Include the CSU*

By John Kilgour

Many of us are participants in the CSU Section 403(b) plan. But, how much do we know about them and what is currently going on?

Section 403(b) was added to the Internal Revenue Code in 1958. However, its origins go back to the IRC of 1942 and its roots to the early years of the 20th Century. Sections 401(k), 457(b) and IRAs were not added to the Code until 1978 (effective 1981).

Section 403(b)(1) allows the purchase of tax sheltered annuities (TSA) from insurance companies. In 1974, Section 403(b)(7) was added. It allows the establishment of custodial accounts allowed to invest in registered mutual funds.

Section 403(b) plans may be sponsored by state and local governments and by 501(c)(1) charitable not-for-profit organizations. Governments (and churches) are exempt from ERISA (.Employee Retirement Income Security Act); NPOs are not. Thus we have ERISA and non-ERISA 403(b) plans.

ERISA plans must be compliant with the many requirements of ERISA including the annual filing of Form 5500. That is where we get most of our information and data on pension (and other benefit) plans. Since non-ERISA (public sector) 403(b) plans are not required to file Form 5500s, we know relatively about them.

There are private-sector and public-sector universities. Section 403(b) plans sponsored by private-sector universities are covered by ERISA. They tend to be large and usually the employer's main or only retirement income vehicle. They typically have substantial employer matching contributions.

Most public-sector university, 403(b) plans are voluntary supplementary retirement savings programs that augment a traditional defined-benefit pension plan (such as CalPERS). They are "non-contributory" (no employer contributions). That is, they are funded by employee "elective deferrals" only.

Until recently, non-ERISA 403(b) plans were a regulatory backwater. Under the Department of Labor's 1979 403(b) "safe harbor" regulations, if a plan was funded solely by employee elective deferrals and the employer exercised minimal administrative involvement, the plan would retain its non-ERISA status.

In 2007, the IRS issued new 403(b) regulations (effective 1/1/09). The regulations clarified that plan sponsors (employers) were fiduciaries responsible for administering the plans, including the selection and monitoring of investment choices. This presented a problem for sponsors of non-ERISA 403(b) plans that had been operating under the "non-involvement" principles of the Department of Labor's "safe harbor" regulations. When a sponsor took an action required to comply with the IRS regulations, it invalidated its safe-harbor status and subjected the plan to ERISA's fiduciary duties reporting requirements. Essentially, the rules for private-sector 401(k) plans (with their centralized administration and recordkeeping) had been foisted on 403(b) plans (with their non-centralized administration and multiple record keepers).

This presented class-action law firms with a huge opportunity to allege breach of fiduciary responsibility for allowing excessive fees for administrative and investment services, imprudent selection and monitoring of recordkeeping and offering a confusing array of investment options. One of them, Schlichter, Bogard & Denton, had made tens of millions of dollars in contingency fees suing private-sector sponsors of 401(k) plans. It has now turned its attention to private-sector universities.

Lawsuits were filed against 12 prominent universities (including many of our alma mater): Columbia, Cornell (yeah!), Duke, Emory, Johns Hopkins, MIT, NYU, Northwestern, UPenn, USC, Vanderbilt and Yale.

All of these lawsuits were coordinated. None of the university cases have gone to trial yet. As of this writing (September 2017), several have been allowed to move forward on some, but not all, of the assertions.

The most recent development involves the CSU. The law firm of Keller Rohrback of Seattle (and Oakland) intends to bring a class-action suit against the fiduciaries of the CSU's 403(b) plan. It is currently seeking participants in the plan to join the suit. Even if the class-action status is approved and the plaintiffs, represented by Keller Rohrback, prevail, none of them is going to get rich from this. The recoveries for individual participants will be quite modest. As in most class action lawsuits, the potential big winner is the plaintiff's law firm, Keller Rohrback.

Interestingly, the CSU 403(b) lawsuit is not under federal (ERISA) law. Rather it will be under the fiduciary duty requirements of California state law. If successful, it may open the floodgates of litigation against public sector universities and other governmental entities.

Class action lawsuits perform an important function in society. Often the potential recovery of individual plaintiffs is too small to warrant an individual lawsuit. However, if a law firm can aggregate the claims of several thousand claimants in a class action suit, it can amount to millions in contingency fees and expenses for the law firm. It may also result in the offending employer (or whatever) mending its ways.

In the case of the CSU 403(b) plan, the University has already made changes in response to the new rules. Effective April 1, 2016, Fidelity Investments is the only TSA allowed in the CSU 403(b) plan. No good deed goes unpunished.

There is a lot more to this story. Stay tuned in.



## *Health Advice Crowding Out Advice about Access to Campus*

Do you have feelings of inadequacy? Do you suffer from shyness?

Do you sometimes wish you were more assertive? Do you feel stressed at times?

If you answered yes to any of these questions, ask your doctor or pharmacist about Cabernet Sauvignon.

Cabernet Sauvignon is the safe, natural way to feel better and more confident about yourself and your actions. It can help ease you out of your shyness and let you tell the world that you're ready and willing to do just about anything.

You will notice the benefits of Cabernet Sauvignon almost immediately and, with a regimen of regular doses, you can overcome any obstacles that prevent you from living the life you want to live.

Shyness and awkwardness will be a thing of the past and you will discover many talents you never knew you had. Stop hiding and start living.

Cabernet Sauvignon may not be right for everyone. Women who are pregnant or nursing should not use it. However, women who wouldn't mind nursing or becoming pregnant are encouraged to try it.

Side effects may include:

- Dizziness, nausea, vomiting, incarceration, loss of motor control, loss of clothing, loss of money, loss of virginity, delusions of grandeur, table dancing, headache, dehydration, dry mouth, and a desire to sing Karaoke and play all-night rounds of Strip Poker, Truth Or Dare, and Naked Twister.

Warnings:

- The consumption of Cabernet Sauvignon may make you think you are whispering when you are not.
- The consumption of Cabernet Sauvignon may cause you to tell your friends over and over again that you love them.
- The consumption of Cabernet Sauvignon may cause you to think you can sing.
- The consumption of Cabernet Sauvignon may create the illusion that you are tougher, smarter, faster and better looking than most people.

LIFE IS A CABERNET OLD CHUM!

Notes: Effectiveness diminishes with age.

Habitual use disproportionate to body weight not recommended.



### *Advice From Editor about Access to Campus in Remaining Space*

Auto access is the major cause of campus greenhouse gases. Transit, to compete, has to be faster than driving in the same corridor. The major corridor to campus is from the north and has more than enough CSUEB people to support rapid bus. Two buses can support a run time of eight minutes and a headway of ten minutes, if they are thirty-foot buses, use powerful dual mode motors, use techniques to minimize dwell time, have right lane queue jumping and signal preemption, are financed by eco-pass, have a convenient end point, and use other modern ideas common in advanced countries. Parking structures, by contrast, have to be heavily subsidized, increase traffic, reduce corridor throughput, hinder sustainable housing development, and increase pollution. We should study new ideas, involving all stakeholders of the university.

One view is that we need parking structures to have enough parking when buildings are built on current surface parking and more people are coming to the campus. We can reduce car access somewhat with shuttle buses to BART and Transportation Control Measures—a number of different policies. For example, car access can be reduced by more on-campus housing, bike share, carpools, Zipcar short term rentals, and rideshare programs. It is unrealistic to expect shuttles to replace the need for parking structures. We can meet sustainability goals and still build parking structures. Parking structures provide for necessary access at a reasonable cost.

That view is so comfortable for most people that it takes more words to explain alternative access. Is the cost reasonable? Can shuttles really work?

As to reasonable cost, we need a frame of analysis, and here's mine: A parking structure in relation to the land it is built on provides spaces only on the upper levels, minus spaces possible for surface parking needed for structural support for the upper levels. That cost in terms of real economics consists of land value, all-in construction costs, operating costs, profit, congestion delay, air pollution, and greenhouse gases.

These costs are likely to be so high that people would choose other ways to get to campus. In my case, I bought a house close to campus so I could walk, but I understand I am not a reasonable person. The CSU system is to increase the cost of surface parking to reduce the costs of structured parking, a cross subsidy. I made some estimates many years ago. The information needs to be developed to understand the environmental impacts of parking structures which subsidize car access.

All well and good, but not enough, because such a high cost could simply reduce enrollment, which brings us to the question, can shuttles work? My answer is that shuttles as currently conceived cannot work, and I don't know if rapid shuttles could work, but I think it is worth studying.

Studying requires specific research with engineering, accounting, marketing, management, planning, and environmental components and should involve the various stakeholders of CSUEB—administration, faculty, staff, students. We need to know class schedules, buildings, and enrollments in order to chart the flow of people to campus by half hour increments. We need to calculate total travel time for the campus end of the trip combining shuttle and walk time and compare it to park and walk time as that changes over the course of a day. We need to estimate student origins. We need to use Alameda County Transportation Commission network models to know the flow of traffic to campus via Harder and Bee over the day and the gateway corridors used from different directions. These models and air shed models can estimate the amount of greenhouse gases. The Hayward Police have traffic counts that supplement the above. The financial analysis will reveal the costs relative to a parking structure. The overall travel time for all stages needs to be calculated and compared to a parking structure, as well as comparative personal costs. The route would have several stops supporting housing development on the old quarry and along Mission, with smart growth support based on eco-pass. Guaranteed ride home needs to be built in, as it is at UC Berkeley. Space limits a more detailed discussion. Based on my experience, the research can be done in less than quarter.

This effort would focus on the BART to campus corridor, but the principles apply to other access gateways.

The involvement of stakeholders is equally important to achieve support for a culture of sustainability. The best research will not guarantee success, and people will have many objections and have to think in new ways. Research and debate can produce a good proposal, and then we can decide if the benefits are worth the risks.



## *Obituaries*

Ruthy Stephan maintains <http://www20.csueastbay.edu/oa/memorial/index.html> honoring deceased tenured and tenure-track faculty. It has links to more details.

Reuben H. Krolick, Professor Emeritus of the Department of Management, deceased May 16, 2016. <http://www.csueastbay.edu/oa/files/docs/memorial/memorialkrolick.pdf>

George J. Perazzo, Professor Emeritus of the Department of Educational Leadership, deceased March 6, 2017. <http://www.csueastbay.edu/oa/files/docs/memorial/memorialperazzo.pdf>

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