



CUSD RECALL COMMITTEE

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January 14, 2008

Via Email

**Trustees Sheila J. Benecke, Marlene Draper,
Mike Darnold and Duane Stiff**
Capistrano Unified School District
33122 Valle Road
San Juan Capistrano, California 92675

Re: Complaint re Brown Act Violations

Dear Trustees Benecke, Draper, Darnold and Stiff:

This letter is to file a formal complaint against you for actions that you took during your most recent regular Board Meeting (December 10th, 2007) in violation of the Brown Act and other applicable laws. As described below, you voted during that meeting to approve sending several highly controversial, multi-million dollar construction projects out to bid – **projects that were never placed upon an official board agenda.**

Item 37 in the published Agenda for your most recent December 10th regular meeting was entitled:

“SAN JUAN HILLS HIGH SCHOOL: Consideration and approval ...for further discussion and action, advertise for bids for the **stadium complex** at San Juan Hills High School.”

On a 4-3 vote, you each voted to approve seeking bids for the stadium complex. However, even though there was nothing on the agenda related to seeking bids for a multi-million dollar aquatics center, additional two story modular classrooms, or a new track and field at SJHHS, each of you also voted to approve sending these highly controversial projects out for bid – **all without any prior notice to the public.**

As you should know, the Brown Act prohibits you from taking action on any matters unless the topics are placed on a formal agenda posted in public at least 72 hours in advance of the meeting.

You violated this most fundamental requirement of the Brown Act.

Your most recent violation of the Brown Act was extremely detrimental to the public. Your actions denied the public, as well as the three newly-elected reform trustees (Trustees Addonizio, Bryson and Christensen) any meaningful opportunity to review staff reports and documentation and prepare for discussion and debate of these highly controversial projects that will cost the district millions of dollars. Had these items been properly agendaized, there certainly would have been a tremendous number of public speakers protesting the expenditure of millions of additional tax dollars at San Juan Hills High School.

These continuing violations are extremely troubling given the pending criminal investigation by the Orange County District Attorney against the CUSD leadership and the alarming findings and recommendations contained in the Waldrip investigative report – not to mention the embarrassing scandal involving the Board’s previous violations of the Brown Act.

In fact, Terry Francke, general counsel for Californians Aware and one of the State’s foremost experts on open-meetings laws urged the district attorney to file charges against the CUSD leadership for what he described as "...the worst example of a Brown Act violation in closed session I have ever seen in 25 years."

The District Attorney hasn’t filed criminal charges...yet.

However, in October of 2007, the Orange County District Attorney released a report that detailed dozens of instances where you illegally discussed district issues in secret behind closed doors. On October 26, 2007, in order to avoid further enforcement action by the District Attorney, you each voted to accept the findings of the District Attorney’s report and admitted you had repeatedly violated the Brown Act.

Unfortunately, since that time, none of you ever has accepted personal responsibility for having done anything wrong. To the contrary, you have repeatedly stated you have “done nothing wrong” and you have merely blamed others for giving you bad advice. This does not give you an excuse to repeatedly violate the law.

Your illegal actions taken during the December 10th Board meeting demonstrate you have not changed your ways and you continue to commit serious violations of the Brown Act.

It is unacceptable for you four Fleming-era Trustees to continue to operate this district in violation of the law. This culture of corruption and incompetence must end. The fact that you continue to violate California law as you purport to carry out the people’s business suggests you are either unwilling to comply with the law, or unable to understand it’s clear requirements.

Therefore, for the reasons set forth above, we hereby demand that:

- (a) Trustee Benecke and Draper immediately resign from the Board of Trustees;
- (b) Trustee Darnold step down as the acting President of the Board;
- (c) Each of you immediately issue a formal written public apology for your actions;

and

(d) CUSD place an item on its next official Board agenda calling for the rescission of the illegal vote taken during the December 10, 2007 Board meeting.

Sincerely,

/s/ Thomas K. Russell

Thomas K. Russell
Spokesperson
CUSD Recall Committee

cc: Hon. Ellen Addonizio, Trustee
Hon. Anna Bryson, Trustee
Hon. Larry Christensen
A. Woodrow Carter, Superintendent