
Today's News

Tuesday, September 18, 2007

Turnaround at Irvine: Controversial Professor Will Be New Law School's Dean After All

By [KATHERINE MANGAN](#)

The on-again, off-again marriage between Erwin Chemerinsky and the University of California at Irvine is back on. The outspoken Duke University professor and Irvine's chancellor, Michael V. Drake, held a joint news conference on Monday to announce that they had worked out areas of "miscommunication and misunderstanding" and that Mr. Chemerinsky had again agreed to become the law school's inaugural dean.

The appointment must be approved by the University of California Board of Regents, which is scheduled to consider it on Thursday.

The late-night negotiations that led to the agreement took place on Sunday in Mr. Chemerinsky's home in Durham, N.C., less than a week after the chancellor had flown across the country to tell the professor he was rescinding the offer he had extended on August 16 ([The Chronicle](#), September 17).

On Monday the chancellor again insisted that he hadn't been pressured by donors or politicians to yank the offer, despite news-media reports that dozens of local Republicans had organized to try to block the hire.

(A spokesman for Michael D. Antonovich, a Los Angeles County supervisor who had circulated an e-mail message seeking to stop the appointment, said on Monday that his boss had no comment. Donald Bren, the Republican billionaire whose \$20-million donation is paying for the salaries of the law dean and first 11 faculty members at the law school that has been named for him, also declined comment, a spokesman said.)

Goodwill Revived

Mr. Chemerinsky, a well-known scholar and a professor of law and political science at Duke who has expressed his liberal views in newspaper commentaries and in high-profile legal cases, had accused the chancellor last week of violating his academic freedom and succumbing to political pressure to drop him. But in their telephone news conference on Monday, with Mr. Chemerinsky speaking from Durham and Dr. Drake from Irvine, they had nothing but nice things to say about each other. Both said repeatedly that they wanted to focus on moving forward, with Dr. Drake referring to the last week as a "hiccup" in their relationship.

"We've been in this very intense spotlight with lots of pieces of information floating around out of context," the chancellor said. "Throughout, we maintained a dialogue that was always positive and always sane."

The about-face was greeted with cheers by many people at the Irvine campus, who had worried the widely publicized debacle had tarnished the reputation of the law school before it had even gotten off the ground. The Donald Bren School of Law is scheduled to open in 2009 as the first new public law school in California in 40 years.

"E-mails are flying, and people are high-fiving, and there's just a lot of excitement around here," said Elizabeth F. Loftus, a professor of psychology and social behavior at Irvine who served on the search committee for the new law dean.

Still, some faculty members who were unhappy with the chancellor's handling of the matter do not want to let the matter drop. An emergency meeting of the university's Academic Senate was scheduled for Thursday to discuss lingering concerns about academic freedom and Dr. Drake's leadership, according to a memo released shortly after the reinstatement was announced.

Both Dr. Drake and Mr. Chemerinsky, in a joint statement released on Monday morning, urged everyone to focus on the future.

"We resolved to put recent events behind us and immediately begin to focus on our shared vision of creating a law school dedicated to providing the best education for future lawyers, to producing the finest legal scholarship, and to helping to address the legal needs of Orange County and the nation," they said. "The law school, like all great educational institutions, will be a place of great diversity, where differing viewpoints are nurtured, debated, and cherished."

Mr. Chemerinsky, who apparently angered some conservatives by criticizing Alberto R. Gonzales, then the U.S. attorney general, in a [commentary](#) in the *Los Angeles Times* on August 16, said Dr. Drake did not ask him to stop writing.

Praise for Reconciliation

"I would never accept a faculty or dean position where I felt I was being muzzled or prevented from speaking out on important legal issues," the professor said during the news conference. "That being said, I know I have to be aware of the impact that language has on constituents. If you're asking me whether I will continue to write op-ed pieces -- absolutely."

Brian R. Leiter, a professor of law at the University of Texas at Austin who has been running daily updates about the controversy on his law-school [blog](#), called the reconciliation "a wise move."

"I assumed they got the message that this was the only way to salvage the enterprise," he said in an interview, referring to the fledgling law school. "I gather there are still some faculty at Irvine who are upset about the way this was handled, and the chancellor would be well served to offer a *mea culpa* and admit he made a bad judgment call."

Mr. Chemerinsky went out of his way to praise the chancellor. "I wouldn't have accepted this position if it weren't for Michael Drake," he said. "He is everything a chancellor should be. I was dazzled by him. The saddest thing for me in the past week was seeing how he was being treated."

Joseph F. DiMento, one of the law school's two founding professors, said he was "thrilled" by the news.

"It was a wonderful statement that they articulated their desire to work together and showed mutual respect for each other," said Mr. DiMento, a lawyer and professor of social ecology at Irvine.

The move will be a double loss for Duke. Mr. Chemerinsky's wife, Catherine Fisk, a professor of labor and employment law at Duke, is also expected to accept a position at Irvine.

Monday's carefully choreographed telephone conference came to an abrupt end after a reporter apparently put the call on hold and a piano recording drowned out the participants' final comments. They tried shouting over the music, but like Emmy winners who know it's time to leave the stage, Dr. Drake and Mr. Chemerinsky gracefully signed off.



<http://www.latimes.com/news/local/la-me-uci18sep18,1,3851560.story?coll=la-headlines-california>
From the Los Angeles Times

UC Irvine rehires Chemerinsky as dean

The school's chancellor flies east to re-recruit the legal scholar, whom he had earlier fired.

By Garrett Therolf and Richard C. Paddock

Los Angeles Times Staff Writers

September 18, 2007

UC Irvine's chancellor tried to salvage the reputation of his fledgling law school Monday by announcing that he had reinstated Erwin Chemerinsky as its founding dean, but his own troubles persisted as faculty members continued to question why he had sacked the liberal scholar and contemplated taking action against their university's leader.

The agreement with Chemerinsky, made five days after the deanship was rescinded, came after Chancellor Michael V. Drake and his wife flew to Durham, N.C., over the weekend so the two men could speak face to face.

The talks began Sunday morning over pastries at Chemerinsky's home and continued late into the night.

"Many issues were addressed in depth," the two said in a joint statement, "including several areas of miscommunication and misunderstanding. All issues were resolved to our mutual satisfaction."

Drake still faces crucial meetings this week when the UCI Academic Senate holds an emergency meeting to consider his actions and the UC Board of Regents meets in Davis, where some members will probably ask why Chemerinsky had been dropped.

"People at the regents level will be asking what really happened," said Richard Blum, chair of the regents. "At the end of day, the whole thing was a little awkward."

According to Chemerinsky, Drake had said he was pulling back the job offer because of pressure from conservatives over his outspoken liberal politics. The chancellor denied it.

In a conference call with reporters, the chancellor and new dean agreed that Chemerinsky would enjoy absolute academic freedom and would continue to write opinion articles on a wide range of issues, not just legal education as Drake suggested last week.

"Chancellor Drake reaffirmed in the strongest possible way the academic freedom that I would have, as all deans and faculty members do," Chemerinsky said. He later noted that he was aware that his role as dean also would require him to build a broad base of support. Before he was ousted, the dean had sought conservatives for some slots on his board of advisors.

Drake declined to discuss his decision to drop Chemerinsky, and he was vague on the reasons behind his turnaround. "Circumstances change; knowledge comes in," Drake said.

Before the agreement, brokered with the help of a small group of influential Orange County attorneys, both men said their conflict left them feeling bruised. On Monday, however, both professed to have a strong relationship that would not hinder the law school.

Chemerinsky, a professor at Duke University, said he hoped Drake was not so politically damaged that he could not continue as chancellor. "I never would have accepted this position if I didn't think I would have the chance to work with Michael Drake," he said.

Some faculty at UCI were not so supportive.

Business Professor Richard McKenzie did not think the chancellor could keep his job. "I personally do not see how [Drake] can be effective going forward given the opposition across campus to what he did. I've never seen the faculty so unified."

The cabinet of UCI's Academic Senate met in closed session Monday to consider a response to the furor.

The panel has sway over the university's curriculum and has played a critical role at pivotal moments in university controversies. In 1983, UCI was the prime candidate to house Richard Nixon's presidential library, but the sponsoring foundation dropped the university as a prospect after the Academic Senate voted to place restrictions on it.

The panel's current vice chairwoman, Jutta Heckhausen, said: "I think that Chancellor Drake did an excellent job as chancellor for UCI until the Chemerinsky hire. . . . All the more perplexing it is to see him be so secretive and vague about the reasons for rescinding the offer."

She declined to say what proposals were drafted in Monday's closed-door meeting, but an emergency meeting open to all faculty members will be held Thursday to discuss "concerns about academic freedom and the chancellor's leadership on campus," according to Timothy Bradley, a biology professor who is the senate chairman.

Some faculty members said one proposal to be presented would be to investigate whether Drake caved in to pressure from political conservatives when he decided last week to drop Chemerinsky.

Others have pushed for a no-confidence vote.

This week, Drake is expected to be at UC Davis for the meeting of the regents, who must approve Chemerinsky's \$350,000 salary. The regents do not have veto power over Chemerinsky's appointment, only his salary. They must approve any salary greater than \$205,000.

Some regents are likely to ask Drake informally to explain the controversy.

Blum had been traveling in the Middle East when the crisis over Chemerinsky began. He said he looked into the matter on his return and found no indication that any of the regents were involved in the decisions to fire the law professor or to rehire him.

Blum said he had yet to talk to Drake.

"As to what happened, your guess is as good as mine," said Blum, a behind-the-scenes Democratic Party advisor and husband of U.S. Sen. Dianne Feinstein (D-Calif.). "I think he was left pretty much on his own to do whatever he wanted to do. The call was up to him to straighten it out or not straighten it out."

The ousting of the law school dean quickly shot through academic and legal circles, fast becoming a national story about academic freedom.

"I do not believe that Chancellor Drake realized how this could become an issue of national importance," said Joan Irvine Smith, a Chemerinsky supporter who has donated \$1 million to the new Donald Bren School of Law through her foundation.

Drake originally offered Chemerinsky the job of dean Aug. 16, the same day his opinion article appeared in The Times, criticizing then-Atty. Gen. Alberto Gonzales' death penalty policy. Chemerinsky signed his contract Sept. 4 and was fired a week later.

UC President Robert C. Dynes, who heads the 10-campus system, said Monday that he conferred with Drake as the controversy unfolded but that the decisions on Chemerinsky were Drake's alone.

Dynes said he continues to have complete confidence in the chancellor.

"The decision regarding Professor Chemerinsky's employment or that of any other administrator at UCI rests with Chancellor Drake, and it would have been inappropriate for me to intervene," Dynes said. Dynes noted that under UC's bylaws, hiring and firing deans rest with the chancellor.

Chemerinsky said last week that Drake had cited a likely "bloody battle" for his confirmation by the regents. That seemed unlikely, since it was listed on the consent calendar, where items usually are approved without debate.

In addition, The Times reported that Drake was "disturbed" when the state Supreme Court questioned the accuracy of Chemerinsky's article about the death penalty. Chemerinsky stands by the article.

UC Provost Wyatt R. Hume, who is the system's chief operating officer, said that he also was unaware of involvement by any regent. "That was an unfortunate perception and a misperception. We have seen no evidence of any kind of pressure," he said.

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<http://www.latimes.com/news/local/la-me-parsons18sep18,1,3988582.column?coll=la-headlines-california>

From the Los Angeles Times

UCI, Chemerinsky putting on a happy face

Chancellor and new law school dean are all smiles, but questions about breakup-to-makeup ado remain unanswered

Dana Parsons

September 18, 2007

It should have been a feel-good moment, reflecting all the admiration and respect that warmed the cross-country phone line Monday morning between the chancellor and the professor.

That was clearly how they wanted it to be, UC Irvine Chancellor Michael Drake and Duke law professor Erwin Chemerinsky. All is well, they said, with both ecstatic that Chemerinsky, after being picked and un-picked to be the founding dean of UCI's law school, is now picked again.

Ain't love grand?

The only thing missing from their 30-minute conference call for the media was that nobody piped in the old Peaches and Herb song: "*Reunited, and it feels so good.*"

Yes, it probably does feel good for them and many others, because Drake finally got his act together and lured Chemerinsky back into the fold. In the long run, that is what matters most, because jettisoning Chemerinsky after offering him the job last month was, to put it mildly, not playing well.

Just a week after Chemerinsky signed the contract, Drake retracted the offer, doing a great impression of someone buckling under pressure from conservatives who didn't like Chemerinsky's liberal viewpoints.

Drake continues to dispute that interpretation, despite Chemerinsky writing in a Times op-ed article last week that Drake specifically cited it when he pulled the plug on the job and with at least two UCI faculty members on the search committee quoting Drake as saying significant opposition led to his decision to rescind the contract offer.

For whatever reasons, Drake backslid on Chemerinsky. Then came the backlash to his backsliding. Then, came Monday with Drake and Chemerinsky announcing that the deal was back on, following Drake's trip to North Carolina over the weekend to make things right.

One gets the impression the gentleman from UCI listens closest to whoever speaks to him last.

Drake said Monday the two "have come out of this with a stronger bond than we had before" and

Chemerinsky said he's accepted the offer "with great excitement." He went out of his way to praise Drake, saying he was "dazzled" when he first met him and wouldn't have taken the job if not for him.

He probably meant it, because Drake impresses a lot of people. Which is why it is disappointing that he can't find it in himself to explain how he got gummed up in his own works.

In the face of strong circumstantial evidence, he could have discussed the pressures on him since the Chemerinsky selection became public. Instead, he referred to snippets of conversation being taken out of context and to needing "more comfort" with his new hire.

That's his story and he's sticking to it, but it remains unconvincing. Instead, he left a vague trail on a timeline that doesn't explain how he offered the job Aug. 16, received Chemerinsky's acceptance Sept. 4 and then withdrew the offer Sept. 11.

We all understand buyer's remorse, but what caused it? And what did Chemerinsky do in the interim to ease that remorse?

Drake chose not to clarify that Monday. It was Chemerinsky's role to be the gracious one, and he played it well. Neither would provide details of their several hours' visit Sunday in North Carolina, which will leave Drake free to complain about people speculating about it.

Let me be the first:

Drake: I've been horrible to you. I don't deserve you.

Chemerinsky: I know.

Drake: People were saying awful things about you, and I believed them. Can you forgive me?

Chemerinsky (pausing, then breaking into a wide grin): Of course, you big knucklehead.

Onward, both men said Monday. Drake described the episode, which attracted national attention both in and out of legal circles, as a "hiccup."

Chemerinsky says he's taking the job without reservation and described last week as "amazing" and unlike any he'd had in his life.

Remaining up in the air is whether the UCI Faculty Senate will be content with the outcome and give Drake a pass on the tortured path that got him there.

As for Drake and Chemerinsky, don't worry. After what they've been through, they'll always have "their" song.

Cue Peaches and Herb:

"I was a fool to ever leave your side/

Me minus you was such a lonely ride/

The breakup we had has made me lonesome and sad/

I realize I love you because I want you bad, hey, hey. . . "

Dana Parsons' column appears Tuesdays, Thursdays and Saturdays. He can be reached at (714) 966-7821 or at dana.parsons@latimes.com. An archive of his recent columns is at www.latimes.com/parsons.

September 18, 2007

Furor Ends in Deanship for Liberal Scholar

By [ADAM LIPTAK](#)

After backing out of a deal last week, the [University of California](#), Irvine, reversed course yesterday and announced that it was hiring Erwin Chemerinsky, a liberal law professor, to be dean of its new law school after all.

The decision followed five days of gale-force criticism from campuses around the nation, almost all of it centered on accusations that the university allowed politics to interfere with academic freedom when it withdrew its offer to Professor Chemerinsky last week.

In a conference call with reporters yesterday, Professor Chemerinsky and Irvine's chancellor, Michael V. Drake, gave few details about what had led to their reconciliation. But it was clear that Dr. Drake had gone to considerable lengths to patch things up, flying to North Carolina and spending the better part of Sunday with Professor Chemerinsky, a member of the Duke law faculty, at his home in Durham.

"I needed more comfort," Dr. Drake said. "I have developed that comfort."

Professor Chemerinsky was first offered the job in August. After weeks of discussion about his role and the mission of the new law school, which is to open in 2009, he signed a contract on Sept. 4.

A week later, Dr. Drake flew to North Carolina to withdraw the offer. By Professor Chemerinsky's account, which he reaffirmed yesterday, Dr. Drake said the professor was "too politically controversial," pointing to an Aug. 16 op-ed article in *The Los Angeles Times* in which he criticized a plan to speed up death penalty appeals.

In an interview last week, Dr. Drake said the problem was not the substance of Professor Chemerinsky's views but rather "his larger-than-life voice."

Professor Chemerinsky has for decades been a prominent liberal public intellectual and litigator, and he has written scores of opinion articles taking liberal positions.

Dr. Drake denied yesterday that he had been urged to withdraw the appointment by conservative donors. "There was no pressure to withdraw the offer," he said.

But he indicated that he had at least listened to some critics. "Since Professor Chemerinsky is a public figure, people have different opinions," Dr. Drake said.

The decision to withdraw the offer was almost universally condemned by legal scholars across the political spectrum last week.

Dr. Drake declined to say yesterday what accommodation the two men had reached about Professor

Chemerinsky's public role. "We're not going to talk about the discussion per se," Dr. Drake said.

A joint statement issued yesterday was no less cryptic. "Many issues were addressed in depth, including several areas of miscommunication and misunderstanding," the statement said. "All issues were resolved to our mutual satisfaction."

Dr. Drake did say that "I've never instructed any dean about any aspect of academic freedom."

For his part, Professor Chemerinsky said, "I would never accept a faculty position, a dean position or any other position where I felt I was being muzzled." He added that he would continue to write opinion articles but would be mindful of his new role.

Professor Chemerinsky said that neither the terms of his contract nor a memorandum on the mission of the new law school had changed. His appointment remains contingent on the approval of the University of California's board of regents.

Looking forward, Professor Chemerinsky said, "I want to build a law school that is as diverse as possible, in all ways."

On the Irvine campus yesterday, there was wary satisfaction.

"One obviously is hoping that it represents a renewed commitment to the things the university takes to be its underlying principles," said David T. Goldberg, a professor of comparative literature. He said he was referring primarily to integrity and academic freedom.

"We will have to see how this plays out," said Professor Goldberg, who had prepared an open letter to Dr. Drake severely critical of his decision to withdraw the offer. By yesterday afternoon, almost 700 people had signed it.

Dr. Drake said that he had turned his attention to helping the new dean build a great law school. Their rocky start, he said, will soon be forgotten.

"Every relationship has bumps," Dr. Drake said.

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