President's Report for March 29, 2023

The Senate officer elections close tomorrow morning (March 30), so I thought I'd use this space to reflect a little on the role of the Academic Senate President. This contains personal opinion as allowed in the President's Report. It is not endorsed by the BC Senate, Bakersfield College or KCCD administration or Board of Trustees, State of California, etc.

I process my thinking by writing things down

I'm known for my writing whether it is comprehensive emails about institutional processes, College Council reports posted on the web, ISIT chair reports posted on the web, and controversial issues on the faculty listservs over the past 27 years; my twice-monthly astronomy columns in the Californian; or my occasional Community Voices pieces. During one year of Greg Chamberlain's tenure as BC President, my College Council reports were used as the minutes of College Council. I was asked to be the editor of the 2018 Institutional Self Evaluation Report because of my writing and also because of the breadth and depth of my knowledge about how Bakersfield College functions, though I learned a whole lot more editing the ISER! I spent many, many more hours on the report than my allotted release time—so much extra volunteer time that my wife warned me that she would have my head examined if I agreed to be ISER editor again. I spent the time, long hours into the night writing and editing the ISER because I love this place—the people who make BC a special kind of community college.

Long experience of how BC operates

While I served on the Executive Boards of four Academic Senate Presidents, I also attended A LOT of Senate meetings. I also attended A LOT of College Council meetings as area rep under several permanent BC Presidents (plus the years of the interims). While on College Council, I created the website for the Decision Making Document, translating the material on the written page to the website. I served on Curriculum for over a decade. I was in the inaugural class of the KCCD Leadership Academy, way back in 2008. I received the Margaret Levinson Faculty Leadership award in 2011, so I'm now the second-longest serving member on that committee after John Gerhold. I received President leadership awards in 2012 and 2017. Through all those years on Senate and College Council and then as ISER editor, I learned a lot and saw many Academic Senate Presidents in action.

Public statements by past Senate Presidents

All of them were elected because we faculty felt they would be an effective voice for the faculty, upholding the values of the faculty for the highest quality learning environment for our students, when dealing with administration and the Board of Trustees. They were definitely not a "neutral umpire" at the Senate meetings—they shared their strong opinions of what the Senate should do before any vote was taken. They made statements to the rest of the faculty, administration, and Board that reflected their opinions of where BC should go, including several times recently that *I knew* had not had some official vote of the Senate. Since the great majority, if not all, of us shared a common goal and a set of core values as described eloquently in BC's Core Values, we let them be that voice for the faculty.

Weekly meetings with College President

At BC, we've had a long tradition of weekly meetings between the Senate President and the College President that sometime in the relatively recent past came to include the Senate Vice Presidents as well. At all of those meetings, the Senate President is asked to give their opinion or advice from the Senate perspective on all sorts of issues, not all of which get back to the Senate for official confirmation. Many times, potential problems are solved through these meetings, so the Senate doesn't have to weigh in. This has happened for all of the Senate

Presidents at BC and the current Senate President, and it happens for Senate presidents at many of the California Community Colleges.

Senate President gets advice from E-Board

The Senate President will use their Executive Board to help figure out next steps and there are more than a few items that are discussed with the E-Board that don't make it to the full Senate. The E-Board meetings have traditionally been closed session, so the faculty leaders could discuss things without administration being able to listen in—similar to what the College President has with their administrator councils and President Cabinets. Now, sometimes in those E-Board meetings in the tenure of other Senate Presidents, we've needed to have conversations about choosing one candidate for a faculty leadership position over another candidate or about a faculty member's proposal that was not feasible or problematic in some other way but usually it was advising the Senate President on how to approach an issue when dealing with the administration or Board.

E-Board cannot block Senate consideration

Sometimes, though, the E-Board has been used to act on behalf of the Senate or block things from ever reaching the Senate, despite the great majority of its membership not being elected. Because of this, I told the E-Board on February 8, that their vote on the EODAC charge would be only an advisory vote and the vote would not block the EODAC charge from going forward to the full Senate (body rep). The EODAC charge would be decided by faculty elected to represent their departments—the Senate (body rep)—not the E-Board. EVERY other committee charge change has been put on the Consent agenda with just one reading before we vote. I put the EODAC charge under New Business of the February 15 meeting instead of Consent because I knew that there were differences of opinion—definitely not a Consent item. I made it an action item because I knew that plenty of people, including Senators and Officers had already studied the charge due to all of the fuss raised at the October EODAC meeting, the swirling emails, social media posts, and several Board of Trustees meetings that actually made it into the news. Views were VERY likely already set. If a Senator who uses the delegate model of representation (instead of the trustee model) hadn't already gauged their department's views on the matter since the October controversy, then it was on that Senator.

Posting Referendum signatories

The complaint I've received about the posting of the referendum petition signers is about my interpretation of the Senate Constitution's statement: "Upon presentation to the Senate (body rep.) of a referendum petition…" The Senate (body rep) is a Brown Act body. The Brown Act requires that documents that the Senators+Officers view at a public meeting must be put into the agenda packet and be available for the general public to view as well. This was not a personnel matter but a public protest of a Senate action. I checked with Schools Legal counsel several times to verify the legality of posting the referendum petition signatories. I had signatories tell me that they knew it would become public and even some late signers complained that their names were not displayed on the first posting of the referendum petition. This particular episode clearly illustrates why we need to have more detailed procedures about the referendum than what is stated in the Constitution. This brings me to the controversy over referendum procedures but first a little background about the relationship of the Constitution and the By-Laws.

Constitution vs. By-Laws

When I became Senate President, I found that there were many processes that were not written down, so what happened depended on who held the office of Senate President. For some of the matters I'd process my decision-making by writing it down and documenting the rationale. I attended the ASCCC Faculty Leadership Institute to learn from sharp, experienced faculty leaders at the state level. (I strongly recommend that any new Senate President attend

the FLI!) When I became Senate President, I studied the Constitution and By-Laws and found that although there were many things written down, there were some gaps and inconsistencies and some things that needed to be clarified or updated to how we were doing things now.

The Constitution mentions the "Executive Board" in a few places but does not define its composition or its duties. All of that is in the By-Laws. The By-Laws (past and current) make it very clear that the Executive Board *advises*, *not directs*, the President on what to do. By the way, it is important to note that E-Board advises the *President* and not the Senate (body rep) because if the E-Board advised/assisted the Senate (body rep), it would need to become a Brown Act body with all of the requirements and restrictions that go with that.

The Constitution mentions elections but the details of the elections (including who can vote, the process of nominations and the elections procedures, etc.) are in the By-Laws. The Constitution mentions committees but the details of committees (including which are participatory governance committees—"College-wide" committees in the By-Laws—and which are Senate committees), that is in the By-Laws. The By-Laws talk about nominations but the Senate (body rep) in Fall 2021 and Spring 2022, established more detailed procedures, Standing Rules, on committee nominations. In Fall 2021 the Senate also established Standing Rules on Public Comments at Senate meetings that are within the bounds of the Brown Act.

Historically, we have used the By-Laws and other approved procedures to implement policies stated in the Constitution. I checked with the ASCCC leaders at the most recent Area A meeting about where the referendum procedures should go and immediately, they said they should be in By-Laws (I have also sent in a query to the ASCCC executive office about this). Succinctly: the constitution of an organization contains the fundamental operating principles that govern its operation—its structure, while the by-laws establish specific rules by which the group is to function—its procedures. The Senate Constitution requires at least 50% of the entire full-time faculty membership to vote and then two-thirds of those voting must agree to the change. That's an extremely high bar with over 340 tenured/tenure-track faculty. The Senate By-Laws require just two-thirds of the Senate (body rep) who are present and voting as long as there's a quorum—a much lower bar.

Grant Herndon from Schools Legal shared an analogy at the March 22 Special Meeting for community college and K12 school districts using the Board of Trustees (a Brown Act body) and the Board Policies vs. the Administrative Procedures. The Board is analogous to the Senate with the Board Policies being like the Constitution and Administrative Procedures being like the Senate By-Laws. It's not a perfect analogy but it's another way of conveying the idea that the Constitution provides the structure while the By-Laws provides the procedures. This is a common understanding of the difference between the Constitution and the By-Laws and we have operated under that principle since the founding of the Academic Senate.

That's why I found the whole controversy over establishing referendum procedures and the claim that the procedures had to be in the Constitution to be bizarre—not following widely-held understanding (and our own past practice) of a constitution vs. by-laws. Also, the proposal offered at the March 22 meeting to put all of the procedures we needed for the referendum election into the Constitution (a six-page packet!) within the three weeks election time limit we have for a referendum election, seemed to me to be totally unreasonable, particularly when you remember what is required to pass a constitutional amendment. In my opinion (remember all the legal disclaimers at the top), this and the CPRA request appears to be another procedural game/delaying tactic designed to gum up the process.

Disrespect of the Senate process

The Senate has studied and debated the EODAC/DEI Committee and referendum issue to great lengths but our former Senate president has not accepted the decision. We had 35 minutes devoted to the DEI Committee proposal at the February 15 meeting and then the

EODAC charge had an additional 28 minutes of debate followed by a vote of 10 yes, 7 no, 2 abstentions for a vote total of 3 people above a quorum. Completely legitimate process that we've used for ALL past Senate meetings. For the first time ever in BC's history, we have someone invoking the "nuclear option" of a referendum, establishing a new norm. Yes, of course, this is an argument of tradition! So is the argument about faculty majority on our committees—there is NO legal mandate for a faculty majority! See my **March 15 President's Report** for an analysis of what the AB1725 law actually says and what all of the governance processes documents from the ASCCC say. Also see that report for what actually happened at the BC Budget Committee and the Districtwide Budget Committee. See my **March 22 President's Report** for an analysis of all 116 community colleges. Eighty-eight percent of the California Community Colleges that have a staff diversity/EEO type of committee (57 colleges) do NOT have a faculty majority on their staff diversity/EEO committee. In fact, I found that many of the colleges without a staff diversity/EEO committee had equal faculty:classified:admin ratios and some even made sure the student proportion was equal to the others! Five of BC's participatory governance committees (excluding EODAC) also do not have a faculty majority.

With the referendum petition submission looming, two additions to the agenda were made properly under the Brown Act (**see Govt Code 54954.2**) for the March 1 meeting. At the March 8 E-Board meeting and the March 15 meeting, the former Senate president insisted that the additions to the agenda were done illegally and that the Brown Act allows for only narrowly defined emergencies (e.g.,work stoppage, public health catastrophe, terrorist act, etc.)—only under those narrowly defined emergencies can additions be made. We had to take time to educate everyone that the Brown Act allows additions also if "upon a determination by a two-thirds vote of the members of the legislative body [Senate] present at the meeting…that there is a need to take immediate action and that the need for action came to the attention of the local agency [Senate] subsequent to the agenda being posted." An "additions to the Senate agenda" item has been on the Senate agenda for YEARS. We also have had it on our Curriculum Committee agendas for YEARS. Even after looking at what the law actually says, the Senate agreeing overwhelmingly with the rationale given, and having Kern County's Brown Act guru (Grant Herndon) advising us, our former Senate president insisted it was illegal or improper.

One of the things I was authorized to do at the March 1 meeting was to speak publicly about the referendum election process that we'll use, so look forward to an email from me about the referendum election process. Another agenda item we added was Referendum procedures that we were unable to get to because the Senate voted to adjourn after already going an hour beyond the nominal ending time. Referendum procedures was on the agenda for March 22.

At the March 22 meeting, the former Senate president and then others advised by him, insisted that referendum procedures could only be put in the Constitution. Each time they were told by legal counsel that it was okay for the Senate to create the procedures and that they did not need to be put into the Constitution. Question asked repeatedly and answered repeatedly! Our BMIT Senator, familiar with business law, also noted that the Senate is able to create the procedures without going through a Constitutional amendment. After 2.5 hours of debate the Senate approved the *opportunity to create* separate Ballot Statements by EODAC and the referendum petition author. The Senate hoped that the former Senate president would respect the hours of good faith effort expended by his Senate colleagues to approve this method of sharing information about the referendum issue. All done properly according to the By-Laws and legal statutes. Nope! He said creating a ballot statement would be an undue burden and he would seek legal counsel and submitted a CPRA request. No reasonable argument will work, so it's time to vote and move on!