



DVC FORUM



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**THE DVC REORGANIZATION BATTLE
– AS WE LIVED IT**

Part 2

Gay Ostelllo and Barbara Sawyer, Retired Faculty and Past Senate Presidents

(Authors' note: As major participants in the "DVC Reorganization Battle" we were disturbed to read Bruce Koller's generalized chapter in the 60th Anniversary book on that momentous episode in DVC's history. We believe that an historical record needs to exist to explain those years for our DVC colleagues now and in the future. Therefore we have undertaken to record the facts. Because of the length of our account, it was divided into two parts. Part 1 was published in the Dec. 2 edition of the DVC Forum.)

Part 2 (Continued from the previous issue of the DVC Forum)

Implementing the Reorganization Plan

- The college president moved forward with the plan to hire eight deans, but faculty declined to participate in the process.
- Faculty hand delivered a letter describing the controversy surrounding the dean position and the possibility of legal action contesting the reorganization to each candidate interviewed for the permanent division dean positions.

The Senate's Formal Complaint to the State Chancellor

- The DVC Faculty Senate lodged a formal complaint with State Chancellor Thomas Nussbaum in January 2002. The basis for the complaint was that "collegial consultation" with the Faculty Senate regarding "faculty roles in governance" as explicitly detailed in Title 5, Section 53200, was required before faculty division chairs could be replaced with deans. The Senate eagerly awaited his reply.
- Nussbaum's response to the complaint, released on July 22, 2002, ruled that collegial consultation was not

required because there was no written district policy or procedure, the issue was not an academic and professional matter, and the division chair selection procedure was a negotiated item, conclusions with which the Faculty Senate heartily disagreed.

- But, in January 2003 the Division Organization Procedure (DOP) was uncovered in a district Procedures manual, but its existence had been omitted from the table of contents. This procedure delineated all the details of the faculty division chair structure and specified the duties of the division chair. (This DOP is still on the books. It has never been rescinded.)
- The Senate forwarded this "new" evidence to Nussbaum and the formal complaint was reopened. He then ruled that a Board-adopted procedure or policy was necessary before collegial consultation was required, which was befuddling to faculty who had long operated in good faith with administration on academic and professional matters. Nowhere in Title 5, Section 53200 does it say that policies or procedures must be written or board-adopted, thus Nussbaum was apparently embellishing the language to justify his decision.

Pursuing Legal Action

- The faculty disagreement with Nussbaum prompted the Faculty Senate Council to pursue legal action against the CCCC District, the CCCC Governing Board and the State Chancellor. Individual faculty donated funding for the legal expenses. The Senate hired the law firm of Robert Bezemek to represent it. Several faculty members aided Bezemek by researching supporting documents and reviewing and editing numerous drafts before he filed the final Petitions for Writ of Mandate on Jan. 8, 2003.
- Sept. 13, 2004 was our day in court. The Superior Court issued written rulings on several issues, and we prevailed on all but one. The favorable rulings were important victories for DVC and for all California community colleges. Statements in *italics* are quoted from the rulings.
 1. The Court ruled that the Senate was a legal entity and has standing to bring legal action.
 2. The Court ruled that the division chairperson structure was not an issue for union negotiation. The UF deferred to the Senate at the outset, and

the District and Board did not attempt to negotiate before acting unilaterally.

3. *The Court did not interpret the applicable regulations as requiring that a given district policy be specifically approved by a formal resolution of the district's board of directors to trigger the collegial consultation requirement; the Court interpreted the regulations as applying to established procedures and practices, as well as to formally approved policies.*
4. *The Court found that the change in DVC's management structure did not implicate "district and college governance structures, as related to faculty roles . . ." (5 CCR Section 53200(c)(6).) The Court found that the phrase "as related to faculty roles" was intended to act as a substantial limitation on the kinds of changes in a college's governance structures which would trigger the requirement of collegial consultation. To interpret the regulation more broadly would unduly limit the freedom of a college district to improve its own governance structures in response to perceived deficiencies or changing circumstances. The Court found that, to trigger the requirement of collegial consultation, a change in a college's governance structures must substantially (emphasis added) diminish the ability of faculty members to function in "faculty roles," as opposed to management roles.*

- When the court ruled that faculty's governance role was not changed by the President's action, it did not mention the word "vote" at all. The court ignored the argument that faculty members' right to vote for division chair nominees was a fundamental faculty role in college governance. The fact that we were disenfranchised was not deemed to be a "substantial" change.
- Without hesitation, the Senate voted to file an appeal on the ruling that collegial consultation was not required. Further briefs were written, again with considerable collaboration between faculty members, Bezemek, and his staff. This time we focused on the single remaining issue: Was collegial consultation required before the division chair structure could be changed? Did this change involve a change in faculty roles in the college governance structure?
- Mar. 14, 2007, was our second day in court. Bezemek presented our case by focusing on 10 words: "district and college governance structures, as related to faculty roles" and describing faculty's unique role in voting for the nominees and by serving as division chairs.
- The Court of Appeals ruled in favor of the district, and an attempt to put the case before the California Supreme Court failed.

Inexplicably, Bruce appended only the Appellate Court ruling to his chapter. The important rulings in our favor appear in the Superior Court decision.

- The cost of this legal struggle has been enormous. Legal expenses totaled almost \$305,000. The total would have been considerably higher if Bezemek and his staff had billed us for all their time. His firm donated countless hours to the effort. We are still paying off the outstanding balance of \$ 34,162.
- Faculty and friends have donated \$ 219,780 to date. The major contributor was George Turner. In addition, Turner loaned the Faculty Senate legal defense fund \$ 60,000 of which \$ 51,045 remains to be repaid.

The Aftermath

This struggle came about because the faculty role in governance was perceived so differently by different segments of the college and district communities. A very determined administration prompted the Board to change our role over the objections of faculty. No middle ground, no willingness to consider a division governance structure that included a faculty voice and vote in accordance with Title 5 was established on the major point.

What was lost by the change? Probably the most significant loss was the close connection between faculty and administration afforded by the division chair structure. Since Division chairs were elected from the faculty and returned to the faculty after serving their terms, discussions of academic problems, issues and solutions always included a faculty perspective. After all, who knows better than faculty the needs of the students in the classroom? Who has daily contact with the instructors and the support staff who provide the education to those students?

What was won? The aforementioned victories were truly significant and will surely positively influence future faculty-administration relationships at DVC and throughout the state.

The court decisions soundly reaffirmed a significant legal role for the Faculty Senate: a role that cannot be ignored nor taken lightly and a role that includes good-faith collegial consultation between faculty and administration. Collegial consultation is dictated by law, but most importantly collegiality is achieved, without legal battle or disruptive controversy, when faculty and administrators work together to define problems, to seek the best courses of action, and to reach agreement. A long tradition of such collective decision making had existed at DVC. As we pointed out earlier, DVC was ahead of Title 5 in collegially consulting when Division Chairs were established. We look forward to a future in which both the college and the District administrations join the Faculty Senates in participating in true collegial consultation for the greater good of our students, the colleges and the District.

FAILURES

George D. Turner, *Geology Instructor, Retired*
<http://www.Eclecticplagiodoxy.wordpress.com>

The District brochure announces:

“The living history is a collection of stories...struggles and successes.”

But anyone who lives long enough to actually reach adulthood understands that our most important lessons are learned through failures. Struggling and succeeding are fine, but simply that alone teaches us to repeat the same mistakes until they become obvious.

Looking back on the part of the story that I have lived, two large and encompassing failures stand out. First, particularly in this context, the failure to honor our own actual history. Second, the failure to excel in the pursuit of excellence itself.

Honoring history

*The moving finger writes; and, having writ,
Moves on: nor all thy Piety nor Wit
Shall lure it back to cancel half a Line,
Nor all thy Tears wash out a Word of it.*

Omar Khayyam

The stories we tell each other, sitting around the campfire enjoying our wine, stories about what the Moving Finger has writ, those stories can be changed. A word here, a phrase there- more to our liking. So it has been since before Homer. But what the Moving Finger wrote is not changed thereby, merely made obscure in the smoke of the campfire and the haze of the wine.

Believing in the unchangeable nature of what the Moving Finger has writ, and continues to write, I peer through the smoke and haze, seeking the traces of what the Moving Finger did. Astronomers look to the stars. Geologists look in the rocks. Paleontologists look into the fossils. Archeologists look into abandoned garbage pits. Literate scholars invented history by looking into libraries and archives.

Neither piety nor wit can change what is there. But we have learned how to read the story that is there. Astronomers have learned how to read history from stars, geologists from rocks, paleontologists from fossils, archeologists from pot shards. And, being literate, we all know how to go to the library and read.

In this digital age, we don't have to go that far. What Google can't do, some other machine can. But while I can go back through journals and newspapers, even look at Leonardo's handwriting, I can't get to Forum articles prior to 2000 or so. If you don't respect your own history enough to preserve it and make it available, you can be sure that some else will re-write it for you, more to their own liking.

Excelling in excellence.

It's a simple statistic that was formerly available regularly and it tells a simple story. On the average, the faculty of DVC, like that of many other institutions, cannot distinguish between excellent performance of students and performance that is good or average. That is, the grade distributions show that the mean grade plus or minus a little diversity (standard deviation), embraces the full range of A, B and C. There is no way any student at DVC can excel, compared to the mathematical mean.

A simple conclusion drawn from this fact would be that the faculty, as a group, is unfamiliar with excellence within themselves and so cannot recognize it in others! I have ranted about this particular disgrace and its harmful impact on students for years. If you could access the Forum back far enough...

Since academies were first invented, Socrates etc., the debate has been "Education for whom?" Should the learning of skills of thinking and expression be restricted to the aristocratic elite or should it be available to ordinary folk. Plato's response was to restrict real learning to the elite and keep the ordinary folk in a dark cave watching Power Point presentations.

The very existence of tax supported community colleges declares which side of that debate we are on. But we send forth our bright students, drawn from across the demographic spectrum and equipped with 4.0 GPA's, into a global world where they will brutally discover the real meaning of excellence. Can you say that you have prepared them well?

You can put all this down to the ranting of an idiopathic old man. But bear in mind, old age and infirmity lie ahead for anyone who is lucky enough to live long enough! When that time comes for you, and you are contemplating the balance sheet of your successes and failures, will you be satisfied that you were true to yourself and those you cared about.

PUBLISHERS NOTE The Forum is a biweekly publication of the Diablo Valley College Faculty Senate. Its pages are open to any faculty member, manager, classified staff member, or student who wishes to communicate something of concern and interest to the campus community

DVC FACULTY SENATE VOLUNTARY CONTRIBUTIONS

DVC Faculty Senate has accounts to receive voluntary contributions to support the Faculty Senate Voluntary Fund and the Faculty Senate Legal Defense Fund. The Voluntary Fund has traditionally paid for the Faculty Lecture, the Faculty Senate Dinner Theater beverages, the DVC Retirement Dinner and gifts for retirees, scholarships and other events as approved by the Faculty Senate Council. The Faculty Senate Legal Defense Fund has been paying down the debts incurred in the lawsuit over Division Deans and still have a ways to go. You can help by donating through a payroll deduction or a quarterly, annual, or lump sum donation. You can use the form below to submit your pledge of support. Thank you!

LEGAL DEFENSE FUND PLEDGE FORM

Please fill out this pledge form and the enclosed authorization card and return BOTH to the Faculty Senate Office. To ensure your donations are designated to the Legal Defense Fund do not return pledge forms or authorization cards to payroll.

Print Name _____ Date _____

Department _____

Faculty Senate Voluntary Fund Payment Options

Monthly payroll deductions

***Complete attached payroll deduction authorization card**

Monthly contribution _____

Check for lump sum

Send written check to Faculty Senate Office

Contribution amount _____

Legal Defense Fund Payment Options

Monthly payroll deductions

***Complete attached payroll deduction authorization card**

Monthly contribution _____

Check for lump sum

Send written check to Faculty Senate Office

Contribution amount _____

***Fill out only one payroll deduction authorization card and include your total monthly contribution. The Faculty Senate Office will use this pledge form to allocate the funds to legal defense and/or the voluntary senate sponsored activities.**

THANK YOU FOR YOUR SUPPORT AND GENEROSITY!