PART II

Dissolution of EFCs
August 14, 2013

Professor John Silvester
Chair, Engineering Faculty Council
Viterbi School of Engineering
University of Southern California

Re.: Full Participation of VSOE Faculty in Faculty Governance

Dear Professor Silvester,

I want to emphasize the importance that the Academic Senate places on full participation of our entire faculty in university governance, including participation by full-time non-tenure-track (NTT) faculty. The Academic Senate has been working with the Engineering Faculty Council (EFC) towards this goal for a decade, including many informal communications, a formal Senate resolution in 2004-05, and a request by the Senate Executive Board this past academic year. It is gratifying that a large majority of the Viterbi faculty who voted in a referendum a year ago endorsed the principle that non-tenure-track faculty be represented in the EFC. The Executive Board recognizes this as expressing the will of the faculty as determined by a vote of the faculty by secret ballot.

At this time, there is an immediate need for the Viterbi School faculty to have an elected council compliant with all components of the Academic Senate Constitution.

This letter serves to reiterate that the EFC, as historically constituted, is not in compliance with the USC Academic Senate Constitution, Article I (Section 2), which specifies that all full time faculty are eligible to vote for and serve on school faculty councils. (Only tenured and tenure-track members vote on matters concerning tenure and the tenure system.) The historic EFC bylaws are out of compliance because they currently do not allow full-time NTT Viterbi faculty to serve on the EFC or vote for EFC candidates.

It is necessary that an elected council in the Viterbi School comply with Article I (Section 2) of the Senate Constitution in order for it to be recognized as representing the interests of Viterbi faculty in faculty governance, function as a faculty council under the Senate Constitution, and provide representatives who can be seated as Senate members. In order to move forward, the Senate Executive
Board directs that you convene a blue ribbon panel of past EFC Chairs along with Viterbi NTT faculty selected because of their prior involvement with faculty governance. The panel should be charged with recommending a model for the reconstitution of the elected council that includes a constitutionally appropriate opportunity for participation by all full-time Viterbi faculty. The Executive Board expects this panel will complete its work in September, 2013. The recommended model developed by this blue ribbon panel should be distributed to all full-time Viterbi faculty for review and ratification by faculty vote.

Ballots should be distributed to all full-time Viterbi faculty and tallied by October 1, 2013. With the ratified model, Viterbi can then issue a call for nominations and conduct council elections during the first few weeks of October, 2013. A newly elected council fully compliant with the Academic Senate Constitution should, thus, be in place to hold its first meeting by the latter part of October, 2013.

Again, I want to reiterate the importance that the Academic Senate places on full participation of our faculty in university governance, and the immediate need for the Viterbi School to have an elected faculty council compliant with all components of the Academic Senate Constitution. I am available to assist you as you move forward with this action.

Sincerely,

Charles J. Gomer
President of the Faculty

Cc: Dean Yannis C. Yortsos
First letter of Prof. Kunc to Prof. Gomer

Dear Professor Gomer:

I have a question regarding your August 14th letter to EFC Chair John Silvester. Your letter states that the “Senate Executive Board directs that you convene a blue ribbon panel ... The recommended model developed by this blue ribbon panel should be distributed to all full-time Viterbi faculty for review and ratification by secret vote.” How does EB have such authority under Article V, Section 5 of the Academic Senate Constitution, since that language only gives Senate authority to act:

Section 5. The Academic Senate, through an election committee, shall act to ensure that each school has a democratic and fair nomination and election process. There must be opportunity for open nominations, at least two candidates for every seat, and secret, written ballots counted by neutral teller. If election procedures or results are questioned, the election committee shall investigate and report its findings to the Academic Senate, which may take appropriate action. The Academic Senate may set standards for the manner, time, and details of elections. The Bylaws shall provide for reports to the Senate, for each school, of the names of its members of the Faculty Assembly, the member of its school faculty council, and its members in the Academic Senate.

The text plainly says that “Academic Senate,” not EB, “may take appropriate action.” But Academic Senate does not even meet this term until September 13th.

So how is this extraordinary EB action, and all that flows from it, legitimate?

Best regards,

Joseph A. Kunc, PhD
Professor of Astronautics, Aerospace Engineering, Physics and Astronomy
Prof. Gomer answer to Prof. Kunc questions

From: **Gomer, Charles J.** (CGomer@chla.usc.edu)
Sent: Thu 9/12/13 3:19 PM
To: Joseph Kunc (kunc@usc.edu)

Hello Joe,
Thank you for your email and your question. The Senate Executive Board acted in accordance with the Academic Senate Constitution, Article VI, Section 9.
Chuck

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Second letter of Prof. Kunc to Prof. Gomer

Professor Charles Gomer
Academic Senate President

Re: Respecting the legitimacy of the Engineering Faculty Council and the rights of the Engineering faculty

Dear Professor Gomer:

I am writing in response to your brief answer to my email message (see below) of August 31st. I asked you how the extraordinary action you took in your August 14th letter (attached), in which you claim to effectively dissolve the sitting Engineering Faculty Council (EFC), was consistent with the Academic Senate Constitution, Article V, Section 5, since that Article requires that the entire Senate, not the Executive Board, act to enforce the Constitution (“If election procedures or results are questioned, the election committee shall investigate and report its findings to the Academic Senate, which may take appropriate action.”). After almost two weeks, you answered with only a one sentence assertion, and without any supporting facts: “The Senate Executive Board acted in accordance with the Academic Senate Constitution, Article VI, Section 9.” As I will explain, simply pointing to this provision does not justify this extraordinary and disruptive action. As a result, your action has needlessly disenfranchised the Engineering faculty by stripping them of their longstanding right to faculty governance, as well as set a troubling precedent for future unauthorized actions of the Executive Board with respect to all faculty councils and the Senate itself.

Therefore, I am asking now that you rescind your letter, and instead work collegially with the EFC, fully respecting its legitimacy, and through the entire Academic Senate, to find a reasonable way to incorporate nontenure-track faculty into the EFC’s governance structure. I also ask that you allow time for a discussion of this important matter at tomorrow’s Senate meeting on Wednesday, September 18th. Because of the importance of this matter to the University, I have copied on this message the senior administrators of USC, along with the members of the current Academic Senate and EFC.

I have three points of rebuttal to your August letter and your one-sentence answer to my email query.

First, your action was unauthorized because there was no bona fide urgency. Article VI, Section 9 states that the Senate Executive Board can act in the place of the Senate, but only if there is “urgency.”

“The Executive Board approves the Senate budget, serves as the channel of communication between the Academic Senate and the administrative officers of the university, and may act for the Senate between meetings, if there is urgency.”
Your one-sentence answer did not provide any factual basis for invoking this emergency procedure, and the burden is on you to do so, not merely to assert this emergency procedure as if it were a privilege. Further, Senate President-elect John Silvester, who also happens to be the outgoing two-term EFC Chair, told us at the EFC meeting on September 4th that what triggered this Executive Board intervention was that just two NTT faculty complained about the ongoing May elections of EFC members. Whatever the merits of these two complaints, they did not amount to “urgency,” and even if they did, such “urgency” expired over the three-month interval before you sent your letter in August. There was no need or authority to suspend the ongoing EFC elections in midstream and without any faculty notice. EFC Chair/Senate President-elect John Silvester had no authority under the EFC Bylaws to take such a disruptive and unprecedented action, and certainly not without informing us members of the EFC and the faculty at large. I only learned of this action in late August, when John sent me a copy of your letter, and then only because I was to be a member of your so-called “blue ribbon” committee to supersede the standing EFC. Indeed, John had a clear conflict of interest as both Senate Executive Board member and EFC Chair, and so should have recused himself from this matter, as well as given us prompt notice of such. Hence your August Executive Board action lacked any credible “urgency,” and it therefore did in fact violate Article V, Section 5 of the Senate Constitution. It also, frankly, lacked the collegiality we expect from a Senate President. As we see now, there was no reason for the Executive Board to take this radical action, it should instead have waited for the September meeting of the entire Senate and engaged the newly elected EFC members accordingly. In short, you violated the Senate Constitution while you claimed to be enforcing it. Your action was not valid, and thus the committee your letter set up has no authority to bind the Engineering faculty.

Second, the EFC Bylaws are not technically in violation of the recently modified Academic Senate Constitution. Even if the Executive board acted with bona fide “urgency,” and it did not, you appear to have misread the Senate Constitution about who may or must have the right to vote. The language in Article I, Section 2 identifies only those who may vote and who may serve, and who must not vote or must not serve, but not who must vote and serve:

“Section 2. All members of the Faculty Assembly (Article III, Section 1) are eligible to participate in faculty governance including in the Academic Senate and faculty committees. However, only non-retired, full-time faculty may vote for and serve on school faculty councils, and non-tenure track faculty are restricted from participation in certain bodies and votes (see Section 3).”

The operative words are “eligible” in the first sentence and, crucially, “may” in the second and restrictive sentence. A school’s rules relating to any sphere cannot be less restrictive than the University’s, but might be more restrictive than the University requires. Therefore, even though it may be a good idea to revise the current EFC Bylaws with respect to NTT participation, and despite your unsupported assertion to the contrary, the Bylaws do not technically violate the express language of this provision
Third, the Senate Executive Board has a duty to respect the legitimacy of the duly elected EFC. The Executive Board has no authority to state that the EFC is not “to be recognized” by the Academic Senate or to otherwise deny its right to representation in the current Academic Senate. For instance, the current Senate website does not list any Viterbi representatives in the Senate, only that they are “to be elected.” This is incorrect. As John Silvester has conceded to the EFC members, the EFC Bylaws do allow the current EFC members to stay in force until the EFC conducts new elections, elections again that John, working with the Executive Board, quietly suspended over the summer. So the website should identify last year’s Senate members as the Viterbi representatives, until the EFC elects new officers at the EFC meeting that John has just called for Wednesday.

Further, your letter misstates the facts of the EFC secret vote on changing the EFC Bylaws that took place last April and May. The proposed revised Bylaws allowed full NTT representation in the EFC, but the motion failed under the Bylaws provision for changing the Bylaws, because fewer than half the tenure-track faculty voted, even though John Silvester twice extended the voting period to encourage more participation. Yet you now claim that the “will of the faculty” is somehow other than that this motion failed to pass, even though at the time the Executive Board supported the EFC effort to conduct this important vote, and was willing to stand by its outcome. Further, in 2003, the Engineering faculty did vote successfully to modify the EFC Bylaws, and those changes included a small expansion in the governance role of NTT faculty, by allowing NTT faculty to nominate candidates. The further changes needed to provide the Viterbi School’s NTT faculty a substantive role in faculty governance are within reach, but it remains the right and the responsibility of the Engineering faculty and their elected representatives on the EFC to propose changes that the tenure-stream faculty will find acceptable. The EFC and the Senate should continue to pursue these changes through open collegial channels, and not through unauthorized Executive Board edicts and the closed meetings of an ad hoc committee.

In summary, your letter of August 14th exceeded your authority, and therefore has no binding power on anyone. The closed “blue ribbon” committee it sets up, and which I have resigned under protest, is free to make recommendations about reshaping faculty governance in the Viterbi School of Engineering. However, it cannot bypass the current valid EFC Bylaws, and it cannot bypass the EFC itself by conducting a binding secret faculty vote on its proposals. Only the EFC may conduct such a vote, just as it did in 2003 and 2012. The Senate needs to work with the EFC in addressing the important issue of NTT representation. This requires rescinding your unauthorized letter, fully recognizing the EFC’s legitimacy, and immediately restoring the Engineering faculty rights that your actions have abridged.

Sincerely,
Professor Joseph Kunc
EFC member and past four-time EFC Chair
May 5th, 2014

Dear Senate President Gomer and Senate President-elect Silvester:

I write as the five-time-elected Chair of the Engineering Faculty Council, and current and frequent member of the Academic Senate, to ask that you set up a blue-ribbon committee to review and evaluate the overall performance of the Academic Senate and suggest ways to improve it.

The current Academic Senate is an experiment in faculty governance following the dissolution of the earlier Faculty Senate. It is an experiment with very mixed results, and it makes sense to revisit the structure of the Senate in light of accumulated experience.

The fundamental problem with the current Academic Senate is that it does not adequately represent the faculty. One often hears the charge that the Senate is a “closed shop,” a small, largely self-perpetuating body, subject to considerable influence from the Administration, and yet a body whose actions, especially in matters of the Faculty Handbook, bind all the faculty.

More specifically, the Senate Executive Board has too much influence. A review of the online record shows that almost all Senate resolutions originate with the Executive Board, and that almost all of these resolutions pass in the Senate itself. This extraordinary success rate effectively reduces the Senate to just the Executive Board. Further, the role of the Nominating Committee does not allow Senators or the faculty at large to directly nominate candidates for Senate President or for other positions on the Executive Board, nor does it allow the faculty to directly vote for candidates for Senate President or other offices. A related concern is that the same senior administrator, who himself helped design the framework of the current Academic Senate, has served as the Administration’s liaison to the Academic Senate for sixteen years, including direct participation in many, if not most, of the weekly meetings of the Executive Board. A legal concern is that the Executive Board does not consult independent legal counsel on the many complex matters of state and federal labor law that the Senate deals with, especially on Handbook matters. Instead, the Executive Board appears to rely, if on anyone, on members of the body or other USC faculty who happen to be lawyers but who are not licensed to practice law in California (and who, if licensed, would have a conflict of interest representing
employees against their own employer). We also saw this past August that the Executive Board purported to suspend the Engineering Faculty Council itself by invoking a claim of “urgency,” rather than proceed to make its case openly through the entire Senate at its September meeting, as I argued there at that September meeting, and after which the Executive Board duly recognized the Engineering Faculty Council. Such an extreme action by the Executive Board was unusual and unwarranted, must not set a precedent for more of the same, and indeed should never occur again. Last, the Executive Board can easily send to all University faculty the agenda and all attachments for pending Senate meetings. This is especially important when, as now, those meetings involve resolutions changing the Faculty Handbook, because the Handbook defines the most important terms of the faculty contract with the University.

Therefore, I ask that you set up a blue-ribbon committee to fairly and objectively evaluate the performance and structure of the Academic Senate, and to report its findings and recommendations back to the entire Senate by the end of this calendar year. On August 14th, the Executive Board set up just such a blue-ribbon committee to restructure the Engineering Faculty Council: “the Senate Executive Board directs that you convene a blue ribbon panel...charged with recommending a model for the reconstitution of the elected council.” So by the same authority, and for the far stronger reasons stated above, I ask that you now convene a blue-ribbon panel to evaluate the Academic Senate’s two-decade experiment in faculty governance, and propose suitable recommendations to improve it.

As I did in my email to you in September, I have copied the Academic Senate on this message.

Best Regards,

Joseph Kunc
Chair of the Engineering Faculty Council
Member of the Academic Senate
Professor of Astronautics, Aerospace Engineering, Physics and Astronomy