

Faculty Senate Minutes #221

John Jay College of Criminal Justice

November 20,2001

3:15 PM

Room 630 T

Present (30): Yahya Affinnih, Orlanda Brugnola, James Cauthen, Edward Davenport, Jane Davenport, Kirk Dombrowski, Betsy Gitter, Amy Green, Robert Hair, Karen Kaplowitz, Kwando Kinshasa, Sandra Lanzone, Gavin Lewis, Tom Litwack, Peter Mameli, Evan Mandery, Lorraine Moller, Jill Norgren, Dagoberto Orrantia, Daniel Paget, Rick Richardson, Jodie Roure, Ellen Sexton, Carmen Solis, Davidson Umeh, Margaret Wallace, Robin Whitney, Agnes Wieschenberg, Susan Will, Liza Yukins

Absent (8): Luis Barrios, Leslie Chandrakantha, P. J. Gibson, Edward Green, Maki Haberfeld, Ann Huse, James Malone, Mary Ann McClure

Guest: Professor Bonnie Nelson

Invited Guests: Student Council President Timyiaka Thomas, Vice President Robert Pignatello, DoIT Acting Director Bob Banowicz

Guests accompanying Ms. Timviaka Thomas: Yearbook Co-Chair Anika James, John Jay Times President Shard Pierre, Student Council Secretary Lavelle Thomas

November 20,2001 meeting agenda

1. Announcements from the chair
2. Adoption of Minutes #220 of the November 7, 2001, meeting
3. Invited guest: Student Council President Timyiaka Thomas
4. Update on the issue of possible College monitoring of computer use
5. Invited guests: Vice President for Administration Robert Pignatello and Department of Information Technology (DoIT) Acting Director Bob Banowicz
6. New business

1. Announcements

Senator Robert Hair was welcomed as a newly elected member of the Faculty Senate: he fills the second seat allocated to the Department of Law, Police Science, and CJ Administration; the other representative of that department is Senator Evan Mandery. Another member of the department, an at-large representative, Senator Maki Haberfeld, has asked that her apologies for missing today's

meeting be conveyed: she is – at this very hour – giving the keynote address at a major conference on terrorism at New Jersey City University.

Tonight at the University Faculty Senate, a combined panel discussion and hearing is being held on the draft revision of CUNY's policy on intellectual property: like all meetings of the UFS, tonight's is open to all CUNY faculty. It is at the Graduate Center on the 9th floor at 6:30 PM.

Thus far, Dr. Kay Redfield Jamison and Susan Brownmiller have accepted John Jay's offer of an honorary degree and will attend our May 30 commencement.

The agenda of tomorrow's College Council meeting has only one item: a proposal from the Committee on Graduate Studies to change the language on p. 36 of the Graduate Bulletin that explains the Grade of Incomplete.

2. Adoption of Minutes #220 of the November 7,2001, meeting

By a motion duly made and carried, Minutes #220 were approved.

3. Invited Guest: Student Council President Timviaka Thomas

President Kaplowitz welcomed Student Council President Timviaka Thomas, who was elected for a one-year term in May, and explained that each year the Senate invites to its first meeting the newly elected president of the student government but that Ms. Thomas has not been available to attend any Senate meeting except today's, which she asked to attend two days ago. And, thus, while Ms. Thomas is very welcome, it has been explained to her that the Senate is able to devote only a very few minutes at today's meeting to talking with her since the Senate agenda includes items that must be attended to today. President Kaplowitz introduced the three students who accompanied Ms. Thomas: Yearbook Co-Chair Anika James, John Jay Times President Shard Pierre, and Student Council Secretary Lavelle Thomas. President Kaplowitz began by reporting that Ms. Thomas recently told her that when President Kaplowitz told the Senate that Ms. Thomas had told her that she is the person at John Jay's B&N Bookstore who is responsible for receiving book orders from the faculty, as reported in the Senate Minutes, that was incorrect; while Ms. Thomas does work in the B&N store, she is a cashier and although she is in the bookstore when book orders are handed in, she does not receive them. President Kaplowitz said the record is being corrected through these Minutes.

Ms. Thomas expressed her appreciation for the correction of the record and expressed her appreciation for the invitation. She said the correction of the record is especially important to her because the bookstore has traditionally been attacked for many reasons, reasons she has no control over. She said that one of the most important issues to her is the availability of books for students. She said there is no question that the bookstore does have a number of problems but that as someone who works one day a week as a cashier at the store, it would probably be too difficult for her to control the faculty book orders, something which she probably would not want to do anyway because it would be too hectic a job. But one of her concerns, if she were the person in charge, is that from what she does know personally is that 68% of the College's faculty ordered their books late for the Fall semester. She said that this was the figure as of September, when the Fall semester classes were scheduled to start. She said this included faculty who changed their book orders for various reasons.

As of today, the bookstore does not have the number of book orders needed from the faculty for next semester. She acknowledged that there could be many reasons for this about which she is not informed but added that students have already been registering for Spring classes for three weeks and that one reason she wanted to come to the Senate today was to ask the faculty to order their books on time so students can purchase their books in time for the first day of class.

She said she also wanted to come today to *thank* the faculty because she has heard about the many ways faculty have been working in their classrooms with their students to help them in light of the tragedy of September 11. She said as faculty know, students speak among themselves about faculty and she has heard only positive things about their classroom experiences since September 11.

Ms. Thomas said that on another note there is a problem at the College and that is that some faculty curse in their classrooms. She said she is not going to name any names because that is not the point. Rather the point is to ask faculty who know of faculty who use obscene language in the classroom to please speak to them to urge them to not do so. She said that students acknowledge that they themselves sometimes curse in the hallways and even in the classroom but that the faculty's role is to control such behavior, especially when it is the faculty who do the cursing. She said that some students curse because they do not know better, although they should. She repeated her request that faculty refrain from cursing in the classroom and that faculty urge their colleagues to not curse.

Ms. Thomas said that she also wanted to raise another issue, which she will probably also speak with Professor Kaplowitz about after the meeting, and that is the grade appeals committees because no students are members of such committees. She said that she believes, as does the Student Council Secretary, that any committee that directly affects students should have students among its members. She said she would even appreciate if students were *ex officio* members without vote as long as they were members of such committees. She said a statement is being made by the very fact that it is only faculty who sit on such committees.

In light of the tragedy of September 11, the Student Council is planning to purchase a collection of books on terrorism which it will donate to John Jay's Library and Ms. Thomas said she would like to see the faculty also do something for the students to commemorate September 11 because students have experienced a difficult time emotionally and academically.

The final issue, Ms. Thomas said, is that as president of the Student Council she has to find a way of informing the student body that 4,000 students do not have the updated ID cards that will soon be needed to enter the buildings. Similarly, more than 400 faculty do not have updated ID cards and, therefore, need to take care of this responsibility. She said this information comes directly from the Security Department.

Ms. Thomas offered to take questions here or suggested that faculty call her at the Student Council office. She said that Professor Kaplowitz has every one of her numbers and doesn't hesitate to use them nor should any other member of the faculty.

Senator Jane Davenport asked Ms. Thomas whether she or anyone from student government had spoken to anyone at the Library about the student government's book purchase plans. Ms. Thomas said she had left a message today for the Chief Librarian, Larry Sullivan, adding that the Student Council is asked every year to provide matching funds to the Library and traditionally the Student Council has provided half or even less than half of the matching funds or sometimes has provided no funds but this year the Student Council decided to contribute the entire amount, which is \$8,000, with which the Library can obtain \$16,000 in matching funds. But, she added, this year she

wanted to do something more significant and, thus, the decision to also purchase books on terrorism. Senator Jane Davenport urged that she be consulted in her capacity as the Library's Acquisition Librarian before any books are purchased. It was explained to Ms. Thomas that far more books could be purchased with the same amount of money if the Library does the actual purchasing than if the students were to purchase the books themselves. Ms. Thomas promised that she would be in touch with Professor Jane Davenport about this.

Senator Rick Richardson spoke of his concern about the Student Council's seeming inability to motivate students to participate in their official responsibilities, citing in particular the failure of virtually all the student members of the College Council, except Ms. Thomas and one or two others, to attend any meetings. Ms. Thomas said she has tried to lead by example and has not been absent from any College Council meeting but if no other students are at the meeting, they of course can not see the example she is trying to set. She said she spoke of this problem at the first meeting of this year's Student Council because she witnessed the same pattern last year. She pointed out how important it is to attend College Council meetings, especially because the students have voting rights. She said that impediments are students' class schedules which force them to rush to be at the College Council by 3:15 PM, about which she has written and spoken to Dr. Witherspoon and Dr. Lynch. Also, she said, students are often intimidated when they see so many faculty at the meetings.

President Kaplowitz said she regrets that there is no time for discussion about any of these issues but that as she had explained to Ms. Thomas the other day, when Ms. Thomas asked to come to today's meeting, the Senate has and already had a very full agenda, with items that can not be postponed or delayed. She said some of these issues might become future agenda items for the Senate to discuss and in the meantime she offered to meet with Ms. Thomas and with any other student leaders to discuss any issues of concern to the students and she also offered to attend a Student Council meeting, were she to be invited. She added that except for the topic of book orders, today's meeting is the first time she is hearing about any of the issues that Ms. Thomas has just raised. She noted that she and Ms. Thomas do talk frequently, and Ms. Thomas has called her often, and that because Ms. Thomas is such an involved student leader, to her credit, she and Ms. Thomas have many opportunities to talk. Ms. Thomas thanked the Senate for inviting her and for permitting her to accept the invitation on very short notice. She said it was a pleasure speaking to the Faculty Senate. [Ms. Thomas, Ms. Lavelle Thomas, Mr. Pierre, and Ms. Anika James left at this time.]

4. Update on the issue of possible College monitoring of computer use [Attachment A, B]

President Kaplowitz reviewed the issue of possible administrative monitoring of faculty and staff computer and internet use. She recalled that at our last Senate meeting, on November 7, she had reported that Vice President Pignatello had told the Council of Chairs the previous day, on November 6, that having seen the Faculty Senate's Resolution on Computer Monitoring [Attachment A] and having heard the faculty's opposition to such activity, he decided that the College will not engage in such monitoring nor purchase the software to do so. In response to this news, the Senate then voted to ask Professor Harold Sullivan, the Chair of the Council of Chairs, to write to VP Pignatello thanking him for that very welcome statement and thus reaffirming it in writing. Professor Sullivan agreed to do so but before he had a chance to, a new development occurred which rendered such a memorandum moot. That development occurred a few days later at the Curriculum Committee's November 9 meeting at which VP Pignatello took a very different position about the monitoring of computer use than he had stated at the Council of Chairs' meeting.

VP Pignatello was not at the Curriculum Committee meeting about the issue of monitoring; rather, he was there to speak against a resolution the Curriculum Committee had passed the previous month, for submission to and action by the College Council this month, which, if approved, would have required the Department of Information Technology (DoIT) to vet everything it does in advance with the Curriculum Committee on the grounds that all DoIT decisions affect the curriculum. VP Pignatello asked Associate Provost Kobilinsky to not transmit the resolution to the College Council so he could first address the Curriculum Committee. President Kaplowitz said that she attended the Curriculum Committee's November 9 meeting at which time VP Pignatello not only spoke against the Curriculum Committee's resolution (and, in response, after a lengthy discussion, the Curriculum Committee sent the resolution back to the Curriculum Committee's Subcommittee on Educational Technology for reconsideration) but said, in the context of speaking of DoIT's independence and the fact that DoIT reports directly to him, that in fact the monitoring of computer use is something he considers absolutely legitimate and that he has discovered that the CUNY policy on Computer User Responsibilities [Attachment B] permits such monitoring.

President Kaplowitz said that after hearing him make this statement, in order to make certain she had heard him correctly, she subsequently telephoned him to ask whether he had, in fact, reversed his position since the Council of Chairs' meeting at which time he had said the very opposite. VP Pignatello said that he had reversed his position, that in the interim between the Chairs' meeting and that of the Curriculum Committee he had read the CUNY policy on Computer User Responsibilities [Attachment B] and had discovered that monitoring is not only permissible but advisable. She drew the Senator's attention to page 2 of the policy [Attachment B], which, after the first set of bullets, states: "The University reserves the right to monitor, under appropriate conditions, all data contained in the system to protect the integrity of the system and to insure compliance with regulations."

President Kaplowitz reported that she told VP Pignatello that as he knows, the position of the Senate is not whether the College has the legal right to monitor, because it does as do all employers, but whether it should, given that this is **an** academic institution which depends upon freedom of inquiry without the chilling effect and explicit intrusion inherent in monitoring. She said she invited VP Pignatello to come to today's Senate meeting to discuss this issue with the Senate directly and were he to accept the invitation, she would withdraw, at least for now, the Senate's Resolution on Monitoring of Computer Use [Attachment A] from this month's College Council agenda. He accepted the invitation and she withdrew the agenda item, with the concurrence of the Senate's executive committee.

Senator Ellen Sexton noted that a statement of CUNY's Computer User Responsibilities policy also raises questions about issues of copyright because it states: "You may not duplicate copyrighted material" whereas the law on copyright is much more nuanced than this. President Kaplowitz thanked her for pointing this out, noting that the policy is dated 1995 and may, indeed, need to be revised. President Kaplowitz reminded the Senate that the Resolution of the Senate's Technology Committee and of the Senate [Attachment A] compares visited web pages to library records, which are confidential under State law and which require a subpoena to be seen (see the fourth "Whereas" clause) and also that the "Resolved" clause simply asks for a policy on privacy of electronic information before anything, such as the purchase or implementation of monitoring software, takes place. She suggested that we raise the general issue of expectations of privacy with VP Pignatello, asking, for example, whether we are correct in assuming **an** expectation of privacy in terms of documents and other materials in our offices. Professor Bonnie Nelson, Co-Chair of the Senate's Technology Committee, said that she would say it is not acceptable if there is no expectation of privacy: either the College needs a clear policy on privacy or the College must pledge

to not acquire the monitoring software.

Senator Kwando Kinshasa noted that IRB (the Institutional Research Board) requires research materials to be confidential and that has a direct relationship to the privacy of computer use and the privacy of one's office. Senator Jill Norgren suggested it would be helpful for us to review the case law on these issues and asked whether 80th Street had provided a briefing paper about these issues because these are issues that are not new to the academy. There has been litigation that has gone all the way through the Federal court system, she noted.

5. Invited Guests: Vice President of Administration Robert Pignatello and Department of Information Technology (DoIT) Acting: Director Bob Banowicz [Attachment B]

Vice President Pignatello was welcomed and thanked for accepting the invitation to today's meeting and Bob Banowicz, the Acting Director of DoIT was introduced and welcomed also. President Kaplowitz said that she welcomes the opportunity to thank Bob Banowicz publicly for the tremendous helpfulness and collegiality he has exhibited all his years at DoIT, both before becoming the Acting Director and since assuming that position in Fall 2000.

President Kaplowitz invited VP Pignatello to speak about his thinking about this issue and especially his return to his original position as he articulated at this month's Curriculum Committee meeting. She suggested that rather than issuing further resolutions without fully knowing the situation or the reasoning behind the situation, it is best to discuss this together to both gain an understanding on both our parts and also, it is hoped, to reach an agreement on how to best proceed.

Vice President Pignatello expressed his appreciation for having been invited and said he thinks the first issue to discuss is what exactly the issue is, what exactly the administration is undertaking. He noted that we are all depending more and more on the information network, that more and more data are running across the network, and that John Jay is in the final stages of implementing a \$1.4 million network upgrade through the support of the University. This has given all of us at John Jay a more secure network and a greater broadband to carry information and his job and that of DoIT is to make certain that all of us have uninterrupted and efficient access to the system in order to conduct College business, which includes research, email, accessing the Web, and using the many new Web-based applications. The demands of the network are growing all the time and even with this upgrade he is already concerned about how soon we will have to think about another upgrade and about when we will reach the capacity of this upgraded network. Because of these factors, he is concerned about the flow of traffic on the network.

When we talk about monitoring, VP Pignatello said it is necessary to understand how he and DoIT understand and define the term. He said he and DoIT define it as monitoring the traffic on the network, not monitoring the user on the network, which he called a very important distinction that he wants to make clear. He said it is not what faculty are doing on the computer or the specifics of where faculty are going, it is the ability of the network to serve us all collectively. Using the analogy of the superhighway, VP Pignatello said DoIT needs the ability to be in a helicopter over the superhighway in order to look down at the traffic. He said in looking at the traffic, what is seen are cars but not license plates, nor the occupants of the car, nor where the car is going, necessarily. But, he explained, what is known is that the cars will be getting off on ramps off the superhighway, and faculty have the right to go to those places, and he and DoIT have the responsibility and the job to ensure that the faculty get there. So, he said, he and DoIT want to enhance their ability to monitor

network traffic. Given all the applications on the network, there is a prioritization as to how the traffic flows, whether it is email traffic, the Web traffic, and so forth, and he wants to make sure there is an even access throughout the day so there are no periods when there is difficulty getting on or when movement is much slower than it should be. He said that is his responsibility and something he is certain we want him to do.

VP Pignatello added that David Eng is our network administrator and the goal is to give him the ability to do that job. It is not, he added, about snooping into peoples' email and keeping logs of where users go on the Internet. That is not at all what this is about. He said for some reason this was misunderstood and the misunderstanding set off panic here and elsewhere, which he wants to defuse.

VP Pignatello said it is also important for the Senate to know that CUNY has a Computer User Responsibilities policy and it is important to know how the University views computer use. The University feels that the network and the machines connected to it are University property and has a policy which goes far beyond what was being discussed at John Jay. He urged everyone to read the CUNY policy. President Kaplowitz explained that all the Senate members have been provided with a copy of the document [Attachment B]. VP Pignatello noted that this policy was adopted with review by the University Faculty Senate and the CUNY Office of Legal Affairs and states that "The University reserves the right to monitor data contained in the system." He said we at John Jay were never talking about that but that is University policy. He said he understands concerns about rights of privacy, rights of inquiry, and so forth, adding that he is certainly not interested in restricting anyone's right to access information for intellectual inquiry and research.

Senator Peter Mameli asked whether the software keeps logs of the websites faculty go to and look at, whether or not anyone is interested in actually looking at such information. Director Banowicz and VP Pignatello both said the College does not have any such software at this time because it has not yet bought any software for monitoring computer use. Senator Mameli asked whether the software being considered for purchase would keep such logs. Director Banowicz said right now whenever there is a problem, David Eng looks at one screen and sees something happening, looks at another screen and sees something happening, and does this hour after hour whenever there is a problem and as a result it takes three to four hours to determine where the problem might be. If we had software that identifies where the problem is that is slowing the network down, we could pinpoint the problem and go right to that area, such as computers on the fourth floor of North Hall.

Senator Mameli said his question is whether there is software available that does only that. Director Banowicz said there is. Asked if that is the software that will be purchased or whether software that does everything, including keeping logs, is being considered for purchase, Director Banowicz replied that there has not yet been discussion as to what kind of software will be purchased. He added that the issue first came up at the Faculty Senate Committee on Technology when the issue of monitoring was raised and he had answered the question by explaining that sometime in the future the College would purchase software for monitoring, and when he was asked what kinds of software are available, he had explained that software is available that can keep logs and software is available that does not have the capacity to keep logs.

Professor Bonnie Nelson said that when this came up at the Faculty Senate Technology Committee, there was no doubt on the part of the committee members that DoIT should have software to monitor the traffic on the network because it is necessary for DoIT to know what is going on. Saying that there had been some discussion at that meeting about keeping logs of where people visited, she apologized if she and the other Committee members misunderstood the conversation but,

she added, it had seemed to the Committee members that the purchase of software that could keep logs was being seriously considered by DoIT, that such software might be thought to be good to have for a variety of reasons, and so the Committee's intention and subsequently the Senate's intention was to make clear that the faculty thinks that purchasing or implementing software that can keep logs is a very bad idea.

Director Banowicz said he has been working with the Senate Technology Committee all year and has tried to be as honest as he could about what is going on and so his intention was to explain what is available, what the possibilities are, and that DoIT had not made any decision. Professor Nelson said she and her colleagues really appreciate his openness and **think** it is very good we are having this discussion because without such a discussion he and his colleagues might have thought that the purchase of such software is a good idea and not realize how strongly faculty feel about this.

Vice President Pignatello said it is certainly clear now how the faculty feel, but he believes it was clear before and that the discussion seemed to treat the issue as a *fait accompli* when it wasn't. VP Pignatello added that long before this issue came up with the faculty he and DoIT discussed the importance of presenting the issue properly because if that were not done there would be a panic and, he added, that is exactly what happened. Professor Nelson said that she thinks that our discussions are very measured and useful. She added that monitoring software which also keeps logs has been implemented at other *CUNY* colleges without discussion and the faculty is unaware of what has happened but when they do become aware, as they will, their uproar will be a lot louder than we are hearing here and so this is a very healthy discussion and process we are engaged in at John Jay.

Senator Gavin Lewis said, speaking hypothetically, given the University policy which VP Pignatello characterizes as going far beyond what was being considered at John Jay, and the fact, of course, that policies are sometimes put into effect and sometimes are not, he asked whether there is a possibility at some point down the road that the College or DoIT would come under pressure to put this policy in effect. VP Pignatello replied that he thinks the policy is in effect and that he doesn't know whether we have a choice of selectively enforcing it. He said that, in his opinion, a policy that says "The University reserves the right . . ." does not leave the College with a choice as to whether or not to implement it. Senator Lewis asked VP Pignatello whether, therefore, there is a possibility or, perhaps, even, a likelihood that monitoring will be put into place at John Jay of a kind and to an extent that goes beyond what he described as originally envisioned at our College.

Director Banowicz said that as long as we have software that enables us to keep the network working and working well, we would have no need to go further in our monitoring. It is only if issues arise that require additional monitoring that we might have to do so, adding that at John Jay we have had problems with students who sent pornography using our College network to sites outside John Jay and the possibility of lawsuits have been raised to us by those who received that pornography. He said DoIT was able to focus in on only a broad area in terms of where the activity was happening and that if such activity were happening on an ongoing basis and John Jay were being hit with lawsuits, the College would have to take some type of action. Senator Lewis asked whether there would be some kind of process at that point in the decisions being made. Director Banowicz said that such a situation would start the discussion about we might do. VP Pignatello said there might be circumstances that would require intervention of some kind, adding that he does not want to speculate what those circumstances might be. But, he said, what the College is not going to do is have someone whose job is to sit at a computer terminal 24-hours a day looking at peoples' email and at where the email is going. He said there is no need to do that and they would never put someone on such a task. He said at the same time he is certain we could all envision circumstances that might require intervention.

Vice President Amy Green asked VP Pignatello how he envisions the decision-making process moving forward since software has not yet been purchased. VP Pignatello said because of the wish to monitor network traffic, a specific application will be chosen for purchase and that is something he and DoIT wish to accomplish.

Senator Tom Litwack said he wishes to first make a legal point, which is that when the *CUNY* policy states that “The University reserves the right to monitor” that does not mean the University has to exercise that right. The language of the policy does not direct John Jay to do anything, it does not direct John Jay to monitor in any shape, method, or form. He said he is not saying we should not monitor but, rather, he is saying that the policy does not require us to monitor, that the policy does not mandate us to monitor anything in any way. Moreover, the policy says, “The University reserves the right to monitor, under appropriate conditions” and, so, even if there were some implicit mandate to monitor, it would still be left to us to decide what the appropriate conditions are. He said it is crucial that we be clear that *CUNY* is not requiring us to do any monitoring whatsoever and that if we do engage in monitoring it is our choice entirely. Since this is our choice, the question is how much monitoring we should be doing. Noting that he has little expertise in computer technology, what he has not yet heard and what he would like to hear is that no monitoring software will be purchased or put into place that will allow anyone to know which websites are visited and what email addresses postings are sent to without prior discussion with the Faculty Senate.

VP Pignatello said that as far as he understands the situation, the software being looked at does not include that kind of ability. Senator Litwack said he would like to hear a more specific statement. VP Pignatello said he does not know enough about the particular applications that are available and, furthermore, he can speculate that there could be an application that does exactly what we want it to do in terms of monitoring the traffic and is the best at doing that, which is what we want, and happens to also have other features that we don’t need, which is something that could happen, it is a possibility.

Senator Litwack said that in his opinion the College should not purchase or implement any software until a discussion first takes place with the Faculty Senate about what software will be purchased or used. He added that he is not saying the Faculty Senate should have the right of approval – the *CUNY* policy, after all, doesn’t say upon approval of the Faculty Senate – but he said it seems to him it is very important to know what the software can do because anything can be misused. He added that it may well be that the purchase of such software is something the Senate would agree with or that such software would be purchased despite our disagreement. But, he said, he would like a commitment that no software that has those additional capacities beyond monitoring traffic will be purchased or used without prior discussion with the Faculty Senate.

VP Pignatello said he is not prepared to make such a commitment at this point, adding that he understands the point being made but he is not prepared to preclude the purchase of software that might meet the goal the College is trying to achieve. He added that he can only say that Professor Litwack’s point is duly noted. Senator James Cauthen said that he believes that Tom Litwack is not saying the Senate should have some role in deciding which software should be purchased but rather he is asking for a commitment to tell the Senate if the College is considering purchasing such software. Senator Norgren added that what is being asked for is notification. Senator Litwack said what he is requesting is not notification. Senator Litwack explained that he believes it is a real issue as to whether or not the College should purchase or implement software that would enable anyone to detect which websites faculty members contact or what email addresses faculty send postings to. He said that as someone coming to this with a great deal of ignorance about many of the issues that VP

Pignatello has mentioned, he doesn't personally have a judgment about this but he absolutely thinks it is a bottom line First Amendment and academic freedom issue as to whether faculty would feel free to go to websites with or without fear that their choices of research subjects could be monitored. And, he said, he thinks this is something that absolutely should not be done unless the Senate is consulted about it and has a chance to weigh in on it.

Senator Cauthen agreed, saying that all the faculty is requesting is that if the College is considering buying and implementing such software, the Senate have the opportunity to engage in such a discussion. Senator Norgren said that means we are talking consultation. Senator Litwack said yes, prior to purchase.

VP Pignatello said he does not know what applications are available and does not want to handcuff the College by making the commitment being requested. Director Banowicz said that he could think of an example where we might need to have capabilities beyond what is being discussed: because the Secret Service is at John Jay **and** because of national security and because of what is happening on the Internet, the Secret Service or others might require information about websites visited or emails sent without anyone knowing that such activity is being monitored. There might be a legal requirement that we conduct such an activity for which we would need the proper software.

VP Pignatello said that he wasn't really prepared at this point for the kind of debate we are having here, explaining that he is making that statement to preface the point he wants to make, which is that when the University states in a policy that "The University reserves the right to monitor, under appropriate conditions, all data contained in the system . . ." we have to assume that the University has the ability to conduct such monitoring. He asked whether there is agreement with this assumption. Senator Litwack said no, that such language might have been a way for the University to reserve for the future an ability to do this and has not yet chosen to do so. But anyway, he added, that is the University's statement and it does not give the College a mandate to monitor. VP Pignatello said he understands that but that he reads that policy statement as being an explicit statement of the ability of CUNY to monitor.

Senator Norgren told VP Pignatello that just as he was arriving she was asking whether 80* Street had provided a briefing paper either to him, the President, and the Provost, or to the faculty, because these are not issues that are new to the academy. There has been litigation that has gone all the way through the Federal court system. So in a certain sense there is a parallel conversation here that very much has to do with the law, the state of the law prior to the Patriot's Act, the state of the law after the Patriot's Act, and that was the reason she asked about a briefing paper.

Senator Norgren added that said she is reading Tom Litwack's and Jim Cauthen's request differently than VP Pignatello is. She said VP Pignatello is interpreting the request **as** precluding him from signing off on software that would do the kind of monitoring of traffic that he wants if such software has additional capabilities that the faculty would not want it to have, whereas she hears her colleagues **ask** that, as the capability of the various software is studied and becomes known to him and as he begins to entertain the choices, he come to the Senate – and perhaps to a variety of bodies at the College, one of which would be the Senate – to explain the capabilities of the various software. She said this is not saying anything about precluding but rather is asking that at an institution of education we be educated, that there be an education process before a decision is made.

VP Pignatello said that is different from what he was hearing. Senator Litwack said that Senator Norgren stated his position accurately but he wants to add that the Faculty Senate does not, in any case, have the power to preclude such a purchase by the administration but that the College

Council does have the power to preclude such a purchase and were he on the College Council he might well vote to preclude the purchase of such software, although he is keeping a very open mind on the issue. And that is why it is important to have an education process.

VP Pignatello said he doesn't know that we want John Jay to be the posterchild for Internet policy at CUNY, noting that this is an extremely important, sensitive issue about which he would rather have the University provide a clear policy that would apply to all the colleges. He said he does not think this should be a debate waged campus by campus, adding that we should be talking about this but not necessarily have different policies at different campuses. But, he added, this is important enough to discuss at the University level to obtain a clear determination of SO* Street's position before we embark on any action. He said in the meantime, DoIT will continue to research the software that is available and if we are lucky we can find software that doesn't get us into all these other issues.

Senator Kirk Dombrowski said he does think John Jay should have a special policy because we are a special institution: we teach courses in social deviance here. He noted he teaches courses in social deviance, courses in sex and culture, and in deviant sexuality. And so a University policy that doesn't accommodate that on a large scale would prove very counterproductive to us at John Jay, given what we teach and research and our special mission to do so. He said a specter of legal action had been referred to earlier and so is asking whether there has been any actual legal action taken against John Jay having to do with John Jay's Internet use and whether there has there been any consultation with legal experts about the possibility of purchasing software that has the monitoring capability that the faculty is concerned about. VP Pignatello said there has not been legal consultation because the goal is to monitor the network traffic; he and DoIT have a responsibility to ensure the integrity of the network and that is the intent.

Senator Dombrowski said speculation about the possibility of lawsuits and the extrapolation that we might thus need the capacity to monitor should be based on legal advice from legal counsel. VP Pignatello said that he feels bound by University policy which reserves the right to monitor. Senator Litwack said that the policy does not say the University shall monitor all data; it says "The University reserves the right to monitor, under appropriate conditions" and the fact that one reserves the right to do something does not mean that one is going to do it and does not mandate the College to do it and it certainly does not spell out what the "appropriate conditions" are. Senator Litwack said the one thing that this policy makes absolutely clear is that the University does not require us to monitor. VP Pignatello agreed but said it also doesn't stop us. Senator Litwack said that is right, but it leaves the decision up to us. VP Pignatello said nonetheless the policy is binding. Asked by Senator Litwack what we are being bound to do, VP Pignatello said that under certain circumstances, which are not provided, we may monitor. He agreed that the policy does not require us to monitor.

Senator Kwando Kinshasa asked whether bottlenecks in the traffic are the primary concern and VP Pignatello said that is exactly what the concern is. Senator Kinshasa asked whether traffic can be monitored without concern for where that traffic comes from and where it goes. He said that if there is a bottleneck, one would want to know more than the location. He said that anyone concerned with traffic is going to be concerned with the qualitative nature of that traffic. VP Pignatello said we are now monitoring traffic but we are doing it in a labor-intensive, manual, inefficient way. Senator Kinshasa asked if the lawsuit threatened in response to pornography sent by John Jay students did, in fact, occur. Director Banowicz said that instead of a lawsuit, the recipients of the pornography henceforth refused to receive any email from John Jay.

Senator Mameli asked VP Pignatello that since he has raised the specter that CUNY may

already have the ability to monitor, and has correctly raised it, whether VP Pignatello could ascertain whether **CUNY** does have this ability because of two reasons: first, because, obviously, it would be of concern to know if CUNY does have the ability and, secondly, if the University already has this ability, why would the College need to purchase any software at all, since it would presumably be less expensive to obtain the site license for the University software. Vice President Pignatello said that he agrees that it is important to clarify how the University interprets this policy, especially since the policy is six years old and much has changed since 1995, and that he will pursue this question. He suggested that Karen Kaplowitz might also want to do so and she said that she would.

Professor Nelson said that we have to be careful to not get confused by semantics and not confuse the issue of protecting the integrity of the network, which must be done through various forms of monitoring, and which is something that she and those involved in technology totally support, with the issue of Big Brother looking over our shoulder and seeing what we researching, which is what we don't want. She noted that much of this is addressed in the New York State law cited in the Senate Technology Committee's and the Senate's Resolution. She urged that the statute be read because it states that the "Statute was enacted to protect library users' inquiring minds from self-appointed guardians of public and private morality and government officials." That law was specifically passed to protect library users, the seekers of information, from being spied on by the government, and by other people, and this is exactly what the faculty are worried about.

Maybe, Professor Nelson said, we should be thinking at John Jay and, perhaps, CUNY-wide, about policies of privacy and confidentiality of electronic information. Because, she added, there could be cases where the College needs the ability to collect the information but that certainly does not mean that anybody needs to be able to look at it unless there is an extremely good reason, such as a subpoena, or because laws have been broken. She said some universities have developed privacy policies, which she imagines are very difficult to write, but may be what we need. Last year the Senate Technology Committee discussed email and how private our email is and Marvin Weinbaum, the former and at that time head of DoIT, said that as long as he is the director of DoIT no one would read anyone's email. And then he left a month later for a university in California. She said she doesn't think anyone in DoIT or anyone else at the College wants to read anyone's email or look at the Web sites anyone visits but what is needed, perhaps, is a policy that makes clear that no one will do so and that if we have to maintain logs for some reason that no one will look at those logs.

VP Pignatello said he has absolutely no interest in keeping logs or looking at anyone's Web or email activity. He said he can't emphasize this fact strongly enough. Professor Nelson said that libraries don't keep back information of book records because they don't want anyone asking them for that information and, that is why, she said, she *thinks* keeping electronic records would be a bad idea. But there is various information which is kept and, perhaps, even though we trust the people here, we need to institutionalize that trust, she said.

President Kaplowitz said that she has no doubt whatsoever that VP Pignatello has absolutely no interest in looking at anyone's email or Web site visits, that this was never a concern, but were he to leave to become the vice president of a huge university, and the person who takes his place were perhaps to have an interest in looking at such information, the software, once purchased, could be misused by this other person. And without a policy there would not even be a statement by the College opposing such activity. Similarly, if Director Banowicz chose to become director of DoIT at a larger university, his successor might not be as scrupulous as we have no doubt he is. VP Pignatello acknowledged the validity of this point. The best solution, President Kaplowitz said, is to have software without the capacity to keep logs but Professor Nelson's suggestion about a policy on privacy and confidentiality is very wise, whether we had such software or not.

VP Pignatello said he is already 15 minutes late for another meeting but sees that we need to discuss this matter further, so he and DoIT will further research the software that is available and he will return to the Senate to discuss this issue before any decisions are made and before any software is purchased. President Kaplowitz said that is wonderful and thanked him and said he is always welcome at the Senate.

Senator Kinshasa asked if VP Pignatello had time for one last question, which was raised just before the Vice President arrived, and that is whether faculty have the assumption of privacy in terms of what is in their office; in other words, can people – such as administrators – legally enter faculty offices and look at documents, at diskettes that contain research data, and so forth. In other words, whether, as a faculty member, he controls everything in his office **and** whether everything in his office is private. The Vice President said everything in a person's office is College property: the College owns the computers, the diskettes are College property if the College purchased them, but the data on the diskettes raise questions about the ownership of intellectual property and he is not an expert in that area. But, VP Pignatello said, no one is going to invade anyone's office to look at someone's research, adding that faculty do have an expectation of privacy but the equipment and diskettes do belong to the College. That is just the reality, he explained.

The Senate thanked Vice President Pignatello for accepting the invitation to come to today's meeting and thanked both him and Director Banowicz for their forthright statements. Vice President Pignatello was especially thanked for agreeing to discuss the issue further with the Senate prior to any purchase or implementation of software for monitoring. [The Senate applauded the guests.]

6. New business

President Kaplowitz invited comments about the issues that were raised with VP Pignatello and Director Banowicz. Professor Bonnie Nelson said she feels strongly that we need a College policy on privacy and that she has discovered two universities with such privacy policies and she is certain there are others. She offered to research this further and provide examples of such policies to the Senate's Technology Committee for review and the Committee could then report to the Senate. This was agreed to and Professor Nelson was thanked for offering to do this research.

By a motion made and carried, the meeting was adjourned at 5 pm.

Respectfully submitted,

Edward Davenport
Recording Secretary

&

James Cauthen
Associate Recording Secretary

&

Amy Green
Vice President

ATTACHMENT A

Resolution on Monitoring Software

Whereas, The faculty have learned that DoIT is investigating the acquisition and use of software that will keep detailed logs of Internet use and email communication by computers on the John Jay College network, and

Whereas, The faculty believes that such software has no place in an academic institution dedicated to the investigation and advancement of knowledge, and

Whereas, The faculty believes that such software is an abridgement of academic freedom, and specifically violates the **AAUP** principal that "teachers are entitled to full freedom in research," and

Whereas, The faculty believes that use of such software may violate *N Y S* Law, specifically NY CLS CPLR §§ 4509 on the confidentiality of library records, which was specifically revised in 1988 to include confidentiality of database searches because, according to the Recommendations of the Law Revision Commission "Without such privacy, there would be a chilling effect on the citizen's right to seek information freely, contrary to the objectives of the First Amendment," and

Whereas, Keeping such logs may encourage lawsuits that seek to discover what individuals have been reading or viewing, and

Whereas, Investigation of such software is extremely time-consuming for a short-staffed department, and

Whereas, Such software is expensive and would reduce the amount of scarce funding for other programs,

Therefore, The Faculty Senate resolves that the Department of Information Technology should cease to consider the purchase of such software and should in no event purchase such software until the various legal and ethical issues have been thoroughly debated and resolved and a College policy on privacy of electronic information has been approved by the College Council, and

Therefore, The Faculty Senate requests that the College Council of John Jay College of Criminal Justice join in the endorsement of this Resolution.

**Adopted by unanimous vote of the John Jay Faculty Senate Technology Committee
October 10,2001**

**Adopted by unanimous vote of the John Jay Faculty Senate
October 11,2001**

The City University of New York

Computer User Responsibilities

NOTE: The City University of New York Computer User Responsibilities is a statement originally prepared by the University's Computer Policy Committee. It underwent review by the University Faculty Senate and the CUNY Office of the Vice Chancellor for Legal Affairs.

The computer resources** of The City University of New York must be used in a manner that is consistent with the University's educational purposes and environment. All users of computer resources are expected to act in a spirit of mutual respect and cooperation, and to adhere to the regulations for their use set forth in this document. As a user of CUNY computer resources:

- You must have a valid authorized account to use computer resources that require one and may use only those computer resources that are specifically authorized. You may use your account only in accordance with its authorized purposes and may not use an unauthorized account for any purpose.
- You are responsible for the safeguarding of your computer account. For a mainframe computer account, you should change your password frequently and should not disclose it to anyone. You should take all necessary precautions in protecting the account, no matter what type of computer resources you are using.
- You may not circumvent system protection facilities.
- You may not knowingly use any system to produce system failure or degraded performance.
- You may not engage in unauthorized duplication, alteration or destruction of data, programs or software. You may not transmit or disclose data, programs or software belonging to others and may not duplicate copyrighted material.
- You may not engage in abusive or improper use of computer hardware. This includes, but is not limited to, tampering with equipment, unauthorized attempts at repairing equipment and unauthorized removal of equipment components.
- You may not use computer resources for private purposes, including, but not limited to, the use of computer resources for profitmaking or illegal purposes.

- You may not use computer resources to engage in abuse of computer personnel or other users. Such abuse includes the sending of abusive, anonymous, or unsolicited messages within CUNY or beyond via network facilities.
- The use of college computer resources may be subject to college regulations, and you are expected to be familiar with those regulations.
- These regulations and college regulations are subject to revision. You are expected to be familiar with any revisions in regulations.

The University reserves the right to monitor, under appropriate conditions, all data contained in the system to protect the integrity of the system and to insure compliance with regulations.

Any user who is found to be in violation of these rules shall be subject to the following:

- Suspension and/or termination of computer privileges;
- Disciplinary action by appropriate college and/or University officials;
- Referral to law enforcement authorities for criminal prosecution;
- Other legal action, including action to recover civil damages and penalties.

** "Computer Resources" is an inclusive term referring to any and all computing/information technology: hardware, software and access. Hardware includes, but is not limited to, terminals, personal computers, workstations, printers, mice, monitors, cabling, peripheral devices. Software includes, but is not limited to, mainframe shared software, networked software, and stand-alone software residing on personal computers. Access includes, but is not limited to, accounts on timesharing systems as well as access to stand-alone personal computing systems and other relevant technology.

Revised 1/95

This statement is also available on CUNYVM as a file: ETHICS POLICY Y. If you have any questions about the statement please contact the CUNY Help Desk at 212-541-0981 or via e-mail: ctrcu@cunyvm.cuny.edu.

The City University of New York