

## Faculty Senate Minutes #286

### John Jay College of Criminal Justice

Tuesday, November 29, 2005

3:15 PM

Room 630 T

**Present (22):** Marvie Brooks, James Cauthen, Roddrick Colvin, Edward Davenport, Robert DeLucia, Virginia Diaz, Janice Dunham, Robert Fox, Greg Donaldson, Betsy Hegeman, Ping Ji, Karen Kaplowitz, Tom Litwack, James Malone, Mary Ann McClure, Dagoberto Orrantia, Nicholas Petraco, Valli Rajah, Rick Richardson, Thalia Vrachopoulos, Robin Whitney, Susan Will

**Absent (15):** Danette Brickman, Teresa Booker, Orlanda Brugnola, Francisco Chapman-Veloz, DeeDee Falkenbach, P. J. Gibson, Amy Green, Yi He, Ann Huse, Roderick MacGregor, Evan Mandery, Edward Paulino, Raul Romero, Francis Sheehan, Shonna Trinch

### Agenda

1. Announcements
2. Approval of Minutes #285 of the November 14, 2005, meeting
3. Report on testimony presented to the CUNY Board of Trustees on John Jay's underfunding
4. Discussion of the proposed College Council agenda item about the College Seal and Logo
5. Discussion of the NYS Court of Appeals decision in Perez v. CUNY

#### 1. Announcements

The previous day the CUNY Board of Trustees approved amendments to the Bylaws of John Jay's College Auxiliary Enterprise Board (previously called John Jay's Auxiliary Services Corporation), which is the body responsible for the bookstore and food service contracts and for the dispersal of revenues generated by such entities. Most of the Bylaws amendments updated titles of Board members but the significant change was to designate the Faculty Senate, instead of the College Council, as the body which elects six faculty, from whom the President picks three, to serve on the Board.

The other substantive amendment introduces for the first time, as required by the New York State Not-for-Profit Corporation Law, a provision whereby the faculty representatives no longer shall serve "indefinitely at the pleasure of the President of the College," but rather for 3-year terms

to which they are eligible for reappointment if elected by the Faculty Senate.

These substantive changes appear as follows; the deleted material is in brackets:

The Faculty members shall be chosen by the College President from a panel of six elected by the [College Council] Faculty Senate of John Jay College. [The faculty members shall serve indefinitely at the pleasure of the President of the College.] Faculty representatives shall serve a three-year term. A faculty member may serve more than one term. However, in order to be eligible for re-election to the Auxiliary Enterprise Board, the faculty member must be re-elected by the Faculty Senate to the panel of six from which the College President appoints the faculty representatives to the Board.

The Senate will be electing the panel of six faculty later in the Spring semester and President Travis will appoint three from that panel to begin their 3-year term in June.

President Kaplowitz said both she and President Travis are worried that there will be sparse attendance at next week's Convocation at which Joan Wallach Scott will receive an honorary degree. Dr. Scott had been scheduled to receive the degree in June but the date for commencement was changed, because Madison Square Garden bumped us for someone willing to pay a higher rent, and as a result she had a scheduling conflict and so a convocation was decided upon. (Paul Farmer who also couldn't attend on the changed date was to have received his degree at this convocation but is not available.) Only three faculty have ordered academic attire to date; hence President Travis' and her concern. The Senate directed and authorized President Kaplowitz to send voicemail and email invitations to the faculty, on behalf of the Senate, urging faculty to attend.

**2. Approval of Minutes #285 of the November 14, 2005, meeting**

By a motion made and carried, Minutes #285 of the November 14 meeting were approved.

**3. Report on testimony presented to the CUNY Board of Trustees on John Jay's underfunding [Attachment A, B, C]**

At its previous Senate meeting, the Senate authorized its Fiscal Advisory Committee and Executive Committee to determine the best way for the Senate to further make the case to the CUNY Board of Trustees that John Jay's inequitable underfunding must be redressed. President Kaplowitz reported that it was decided that the best way to do this was to provide testimony about the Chancellor's proposed Investment Plan for CUNY, which was on the agenda of yesterday's Board of Trustees meeting and, thus, on the calendar of the Board's November 21 hearing for public comment.

Senator Tom Litwack, Professor Jon-Christian Suggs, and she testified, each using the

opportunity, but in different ways, to show the dire underfunding of John Jay. Each provided oral testimony, which is limited by the Board to 3 minutes. And each also provided the CUNY Board of Trustees with written version of their testimony [Attachment A, B, C].

Senator Litwack reported that four days after they testified, a lead article in The New York Times reported that New York State coffers are swelling and that tax revenues are rising. He said this budget development gives Karen and him an excellent opportunity to follow up on their testimony by writing a letter to the Board of Trustees on behalf of the Faculty Senate reinforcing the point that our College needs better funding and also that this is the time for the University to seek and allocate more funding.

And so he and Karen are requesting authorization from the Senate to use this opportunity to write to the Board of Trustees, reiterating and amplifying the extent of John Jay's severe and inequitable underfunding. Senator James Malone said he hopes this would be done only after consultation with President Travis so that the Senate and the President are not, unwittingly, working at cross purposes. Senator Litwack agreed, noting such consultation is standing operating procedure for Karen and him with this kind of initiative.

Senator Malone praised the testimony given to the Board of Trustees, saying it was truly excellent. Senator James Cauthen agreed and made a motion that the Senate express its appreciation to Tom Litwack, Chris Suggs, and Karen Kaplowitz for their excellent testimony. The motion was adopted by unanimous vote and the Senate also expressed its appreciation through applause.

Then, by unanimous vote, the Senate voted to authorize Tom Litwack and Karen Kaplowitz to write a letter on behalf of the Senate to the CUNY Board of Trustees to further make the case that John Jay is severely underfunded and that the situation requires redress by 80<sup>th</sup> Street.

#### **4. Discussion of the proposed College Council agenda item about the College Seal and Logo: Senator Tom Litwack**

At the previous Senate meeting, Senator Tom Litwack reported that he had submitted to the College Council an agenda item on the College emblem which was a proposed resolution stating that the current logo shall remain the College logo unless and until such time that the College Council votes to change it. Then President Travis met with the Senate later at that same meeting and Senator Litwack subsequently withdrew his agenda item and submitted a different item. The College Council Executive Committee meets tomorrow to set the agenda for the December 14 meeting. Also, just an hour ago, Karen met again with President Travis about this issue.

Senator Litwack recalled that at the previous Senate meeting a kind of compromise had developed, although no formal vote on the compromise was taken. With the encouragement of others he yesterday submitted to the College Council a revised resolution that takes into account that compromise and he reformulated it to be a "sense of the College Council resolution" because the question as to whether the President or the College Council has the ultimate authority to determine what the icon/logo of the College has not been resolved.

A "sense of the College Council resolution" means it would not be binding on the President but rather would be only advisory to the President and so avoids the issue of who, in fact, has the

ultimate authority.

Senator Litwack's revised agenda item, as submitted, is as follows:

It is the sense of the College Council that the traditional icon of the College be, and shall be known as, the Seal and Emblem of the College and shall appear on (without necessarily being limited to) the following: college diplomas, transcripts, commencement and convocation programs, the college flag, the college web site and official college home pages, college rings, Presidential Medals, and college podia.

It is the further sense of the College Council that the Seal and Emblem should be changed only by a process recommended by the College Council.

It is also the sense of the College Council that having the Seal/Emblem of the College on college materials (including electronic materials) does not preclude having other representations or icons of the college on such materials; and that materials not mentioned in the first paragraph above may have college presentations or icons other than the Seal/Emblem of the college.

Senator Litwack explained that he submitted this to the Secretary of the College Council the previous day and also sent it to President Travis. He asked Karen to report on her meeting this afternoon with President Travis, which she briefed him about just before the Senate meeting began.

President Kaplowitz called the last Senate discussion productive and thoughtful, and recalled that the distinction that had emerged during the discussion with President Travis was between a seal of a college and its logo. And so Senator Litwack's proposal is for the traditional emblem to be the official seal but the new logo will be used as well and, indeed, both could be used on the same occasion. For example, the commencement program could have the seal on the front cover, as we have always done, and the logo on the back cover.

At her meeting with President Travis at 2:00 pm today, he presented a proposal which she is presenting now to the Senate with the President's concurrence. Important to understanding the President's proposal, she said, is the fact that CUNY Vice Chancellor for Legal Affairs Frederick Schaffer has advised Rosemarie Maldonado, President Travis' legal counsel, that this matter is, in fact, within the authority of the President and not the College Council.

President Travis's proposal is that at the December 14 the College Council meeting, when we come to the agenda item called "announcements," he will announce that he agrees with the first and third paragraphs of Tom's proposed "sense of the College Council resolution," although he won't necessarily list everything that the seal is to be used for but would, instead, list examples of those kinds of things. In other words, he is offering to publically embrace the views asserted in Tom's agenda item rather than have the Council vote it on it.

Her response to President Travis had been that she can't, of course, speak for Tom or for the Senate, but a problem she foresees is that "announcements" are at the end of the College Council meeting, after even "new business." She explained to him that "announcements" used to be at the

beginning of Council meetings and can be moved to the beginning of the December 14 meeting. In this way, President Travis could make his announcement about the seal and logo at the beginning of the Council meeting and if there is dissatisfaction with the President's statement, there would still be the opportunity, under "new business," for the matter to be brought to a vote by the Council. If the announcement were made after "new business," that option would be foreclosed.

President Travis agreed, calling that a creative solution and said it is only fair that if anyone does not agree with the statement he makes that person could raise the issue under new business. She then proposed that he read his statement into the official record of the Council and he, in turn, offered to distribute his statement in writing on his official stationary. She said that would be fine as long as the statement is attached to the minutes of the meeting so an official record exists so that if a future president wants to change the seal there is a record of how this was resolved and President Travis agreed to this as well.

President Kaplowitz explained that the reason President Travis does not support Tom's second paragraph, which says "It is the further sense of the College Council that the Seal and Emblem should be changed only by a process recommended by the College Council," is because it would wrongly, in the opinion of both the President and Vice Chancellor Schaffer, give the College Council authority over something that they view as administrative.

Senator Litwack said he would be happy to change the second paragraph to state that "if the Seal and Emblem of the College should be changed in the future it should happen only after *discussion with* the College Council" because in this way the College Council can voice an opinion; we would not be saying that the College Council would have any authority if that change were made.

President Kaplowitz said she told President Travis she would communicate his proposal to the Senate and report to him the Senate's response. Senator Will said Tom's second paragraph is very important because without it the President could simply change his mind six months from now.

Senator Cauthen said he thinks the proposed compromise is excellent especially because it puts the President on notice about our position and it also doesn't prejudice our ability to put before the College Council, now or in the future, matters which we believe the College Council has authority over. Senator Rick Richardson said we haven't directly heard the views of the legal counsel and he, for one, thinks the College Council has authority in this matter.

President Kaplowitz said that Vice Chancellor Schaffer did, in fact, speak directly with her and he referenced Article 11.4 of the CUNY Bylaws, which describes the responsibilities of a College president, which are extremely broad and vaguely described and which extends, in his opinion, to choosing the college logo, which he considers to be an administrative matter. Senator Richardson said he thinks such a legal interpretation is wrong and should be opposed.

Senator Litwack said he thinks what we have is a fair compromise and that there's a value to compromise. And in the spirit of compromise, he proposed that the Senate convey to the President the importance of retaining the second paragraph but as revised so as to make the point that the College's seal should not be changed unilaterally even if the President has the legal authority to do so.

Senator Richardson said we'd be conceding the President's authority if we agree with the compromise. President Kaplowitz said that the opposite is true: no precedent would be set by

President Travis or by us; rather, the President would be making an affirmative statement about the seal of the College, a statement we agree with and that we want him to make. Senator Litwack agreed, adding that if the President's written statement, distributed during the "announcements" were acceptable, he would then withdraw his agenda item.

Senator Robert Fox said we have a good compromise here, it's a gracious resolution to the situation, and we should agree to it. Senator Robert DeLucia said he too sees this as a wonderful compromise but wants the President's statement to include a list of those places where the seal will appear, including student transcripts, diplomas, honorary degrees, and the college ring. There was general concurrence about this.

President Kaplowitz said that she thought the Senate's discussion with President Travis at the last meeting on November 14 had been critical. Indeed, President Travis earlier today told her that he found the distinction between the seal and the logo made during his discussion with the Senate to be invaluable and that it provided the way to resolve the issue. She said she will further communicate with President Travis and will report back to the Senate at our December 9 meeting, which is prior to the December 14 College Council meeting.

**5. Discussion of the Court of Appeals decision in Perez v. CUNY: Senator James Cauthen [Attachment D, E]**

President Kaplowitz explained that Senators James Cauthen, Tom Litwack, and Francis Sheehan have studied the legal decision in the case of Perez v. CUNY and she asked Senator Cauthen to summarize the court decision and his analysis of it.

[See Attachment D for the Perez v. CUNY court decision and Attachment E for the provisions of the NYS Open Meetings Law.]

Senator Cauthen explained that a number of students wanted to attend meetings of the Hostos Community College Senate, which is comparable to our College Council, and its executive committee, meetings from which they had been excluded. The students filed a lawsuit, Perez v. CUNY [Attachment D]. The case addressed the question as to whether the Hostos College Senate and executive committee are subject to the NYS Open Meetings Law [Attachment E] and, thus, also subject to the Freedom of Information Act. The issue the court was addressing is to what extent college governance bodies are subject to the Open Meetings Law.

The court concluded that the Hostos College Senate is subject to the NYS Open Meetings Law and so the issue for John Jay and for other CUNY schools is how that decision applies.

Senator Cauthen said his reading of the decision – and Tom, Francis, and Karen have studied the decision as well – is that this court decision applies to John Jay's College Council, to its executive committee, and to the committees of the College Council. Therefore, the John Jay College Council and its committees will now be subject to the Open Meetings Law of New York State.

This means, Senator Cauthen explained, that the College Council and its committees must provide adequate notice, must adhere to specific timelines about public notice of meetings, must make minutes of those meetings available to the public, and meetings of the Council and of its

committees must be open to the entire public and, furthermore, and probably most importantly, all meetings must adhere to regulations about how a vote is taken by the body.

Until now, in keeping with Roberts Rules, votes at the College Council have sometimes been conducted by secret ballot and when a secret ballot was not used votes were cast by a simple show of hands and the hands were simply counted, but now no secret ballots are permitted and a record must be kept, available to any member of the college community and, indeed, to any member of the public, as to how each member has voted on each issue.

Senator Cauthen said that this court decision is going to make the College Council meetings very different and will pose a particular challenge for junior, untenured faculty on the Council.

President Kaplowitz added another way the College Council meetings and the meetings of the Council committees will be very different: until now, following Roberts Rules, in order for a motion to pass, a majority of the members present had to cast affirmative votes. But now, as a result of this court decision, once a quorum is present – and a quorum must be present – an absolute majority of the total membership of the body must cast affirmative votes for a motion to pass rather than a majority of those present and voting. This is because the court decision means that the General Construction Law also applies and under the General Construction Law an affirmative vote by an absolute majority of the body is required for a motion to pass. The College Council has 56 members and a quorum is 29 (half the membership plus one). Until now, if 29 members were present and if at least 15 (a majority) cast an affirmative vote, the motion passed. But now if 29 members are present, all 29 have to cast affirmative votes.

In other words, no matter how many members are present, if a quorum exists and business can, thus, be conducted, at least 29 members must cast an affirmative vote for any item to pass no matter how many are present and voting. So if 50 of the 56 members are present, for example, and 28 vote for a motion, which is a sizable majority, the motion nonetheless fails because the law requires that 29 yes votes (an absolute majority) be cast at a minimum.

Senator Cauthen spoke about the court decision's applicability or non-applicability to our Faculty Senate. Given the role the Senate plays in College governance, which is a deliberative and an advisory role, rather than a policy-making role, the court decision does not apply to our Faculty Senate or, therefore, to our Senate's executive committee or its other committees, in his opinion and in the opinion of Tom Litwack, who like him, is a lawyer, or in the opinion of Francis Sheehan, who has extensive experience with the OML, or in the opinion of Karen, who has discussed the court decision with VC for Legal Affairs Frederick Schaffer. The Faculty Senate often transmits items to the College Council about policy matters but those are recommendations only. The Senate does not set policy and, more importantly, the Senate does not have the power to implement policy and, therefore, in his opinion, the court decision does not apply to the Senate.

President Kaplowitz noted Perez v. CUNY was a unanimous decision of the Court of Appeals, which is the highest court in NYS, and also there are no federal or constitutional issues involved and so for both reasons this ruling cannot be appealed. And the decision was effective as soon as the court issued its ruling on November 17 and so our December College Council meeting will have to abide by these new rules.

She said Vice Chancellor Schaffer is issuing an advisory document for all the colleges explaining the requirements under the law and how to implement them and she will distribute it as

soon as its available but in the meantime Vice Chancellor Schaeffer has said that his reading of the reasoning in the Perez v. CUNY decision leads him to conclude that the ruling does not apply to departmental meetings or to department elections or to search committees or to the personnel actions of the P&B committees.

Senator Fox said that the court ruling would appear to violate Roberts Rules, which our College Charter requires us to follow, and which permits secret ballots and it also violates our right to privacy. President Kaplowitz replied that when Roberts Rules conflicts with the OML and with the Freedom of Information Act and the General Construction Law that the court decision requires us to abide by, those laws supercede Roberts Rules, but in those matters where there is no conflict Roberts Rules remain in effect.

As for privacy of votes, according to the ruling, President Kaplowitz explained, the members of the Council (and its committees) are public officers. The court decision is saying that college governance bodies are government agencies rather than advisory bodies and make policy and, therefore, the public has the right to know how those decisions are made and that it is a higher good for light to be shed on the work of such agencies than that those who are making the decisions have privacy. This is so even though the court decision acknowledges that decisions by college governance bodies may be overturned by the President and the CUNY Board of Trustees.

Senator Cauthen added that the Freedom of Information Law, which is not part of the OML but which applies, states that “public agencies must maintain a record of the final vote of each member in every agency proceeding in which the member votes.” President Kaplowitz noted that who each person on the College Council votes for in Council elections is also public knowledge now.

Senator Fox said the court’s decision really means that we should elect only tenured full professors to the College Council. President Kaplowitz said each department may want to formally direct its representative as to how to vote so as to take the onus off the representative, especially if the person is not, as Senator Fox recommends, a tenured full professor.

Also, she said, chairs can be urged to attend Council meetings to give support to their department representatives. She added that the Senate’s practice of meeting after the Council agenda has been set but before the Council meets so we can discuss agenda items as a faculty body is a practice that is now more important than ever and she suggested that we make every effort to have the time to review each College Council agenda.

In response to the dismay expressed by the Senate members about the court decision, President Kaplowitz noted that Vice Chancellor Schaeffer and the Chancellery on behalf of the University vigorously opposed the lawsuit because they did not think that it would be healthy for the colleges if the court were to rule in favor of the plaintiffs. Some colleges are already reporting that they won’t be able to function because they haven’t been able to achieve a quorum in years.

President Kaplowitz also reported that Vice Chancellor Schaffer has said that he would expedite college charter amendments that would make the functioning of the body more workable under the new requirements. Some faculty, she added, view this court decision as wonderful because the court is saying that college governance bodies are not advisory but policy making, even if the decisions of those bodies can be overturned by the president and the Board of Trustees. The latter fact was part of the basis of CUNY’s defense against lawsuit.



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

Respectfully submitted,

Edward Davenport  
Recording Secretary

&

Virginia Diaz  
Associate Recording Secretary

&

James Cauthen  
Associate Recording Secretary

## ATTACHMENT A

Testimony to the CUNY Board of Trustees

Calendar Item #4A  
November 21, 2005, Public Hearing

by Professor Karen Kaplowitz

President, Faculty Senate  
John Jay College of Criminal Justice

Good afternoon. My name is Karen Kaplowitz. I am testifying in my capacity as the President of the Faculty Senate of John Jay College of Criminal Justice.

I wish to commend the fact that the Budget Request has been framed as a way of effectively making the case that CUNY is severely underfunded and needs significant investment from the State and City. The inclusion of the college expenditure plans dramatizes and particularizes the needs of the CUNY colleges. The requirement that elected faculty and student leaders be involved in making the spending decisions and the requirement that they are to be involved henceforth is also commendable.

I wish to also commend the fact that the Budget Request addresses the need to begin to bring equity in at least the area of full-time faculty to those senior colleges that are the most severely underfunded. While all the CUNY colleges are underfunded, some are more underfunded than others. This is the first time to my knowledge — and I have been a long time faculty member of the Board of Trustees Fiscal Affairs Committee — that the CUNY Budget Request tries to redress this situation, at least in terms of full-time faculty.

John Jay, the most severely underfunded of all the CUNY senior colleges by a variety of measures, is very far, indeed, from the CUNY Master Plan goal of 70% course sections taught by full-time faculty. Of even greater concern to me and to my John Jay colleagues is the fact that during the past several years the percent of course sections taught by full-time faculty has decreased rather than increased. This is because when enrollment increases at the senior colleges — and there has been remarkable enrollment growth at John Jay — funding is provided for part-time faculty but not for full-time faculty. Unlike the CUNY community colleges, enrollment increases are not matched with base budget funding increases.

Last year, overall, only 46% of all course sections at John Jay were taught by full-time faculty. Of the undergraduate course sections, only 40% were taught by full-time faculty. To be more specific, among our unique majors, at the undergraduate level, the percent of course sections taught by full-time faculty was only 42% in Law and Police Science; only 34% in Forensic Science; only 34% in Sociology; and only 29% in Forensic Psychology.

**ATTACHMENT A (cont)**

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To put the situation another way: one senior college that has almost as many student FTEs as John Jay nevertheless has 173 more full-time faculty than John Jay. Another senior college has virtually the same number of full-time faculty as John Jay yet it has 4,000 fewer student FTEs than John Jay.

Students attending senior colleges pay the same tuition and they will have to pay the same tuition increase if there is an increase. But the budgets – derived in large part from tuition revenues – are allocated to the colleges inequitably and it is time to redress this situation in terms of full-time faculty and in other areas as well. I hope this Budget Request enables us to begin to redress this situation, which is so unfair to our students.

Thank you.

## ATTACHMENT B

STATEMENT OF THOMAS R. LITWACK, PH.D., J.D.

PROFESSOR OF PSYCHOLOGY,

JOHN JAY COLLEGE OF CRIMINAL JUSTICE

Good evening. I'm Professor Tom Litwack from John Jay College. Although I am speaking for myself at this hearing, I am the Chairperson of the Fiscal Affairs Committee of the John Jay Faculty Senate. As such, I am knowledgeable about John Jay's, and CUNY's, budget.

I would like to speak in support of the CUNY Budget Request and Compact Investment Plan, even though I know they may cause some hardship for some students. But I do so for a particular reason: John Jay College is in severe financial straights, and desperately short of full-time faculty, because we are so inequitably funded by CUNY. However, if supported by the State and, especially, if continued in future years – the Investment Plan will significantly, *though only partially*, improve John Jay's situation.

The CUNY Chancellery is currently developing a model for objectively funding the Senior Colleges. It is very long overdue. CUNY has been operating with an unjust Senior College Allocation system for far too long. I am confident that when the model is fully developed it will reveal that John Jay is currently underfunded, *relative to other CUNY Senior Colleges*, by at least \$10 million annually. That is, if the current CUNY Senior College Budget were to be objectively and equitably distributed, John Jay's Base Budget would be increased by at least \$10 million annually, which would be more than a 20% increase over our current Base Budget.

Although all CUNY colleges are poorly funded by national standards, according to CUNY's own study of a few years ago, John Jay is one of the worst funded colleges in the United States. And a major consequence of our severe lack of funding is our lack of full-time faculty. Apart from John Jay, CUNY Senior Colleges average fewer than 25 FTE students per full-time teaching faculty member. At John Jay, we have approximately 38 FTE students per full-time teaching faculty member. In my own department – which, despite our lack of resources, has nationally, and even internationally, renowned programs in Forensic Psychology – only 20% of our undergraduate course instruction is provided by tenure track full-time faculty.

I support the Investment Plan because it would begin to improve John Jay's fiscal

## ATTACHMENT B (cont)

Testimony to the CUNY Board of Trustees  
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situation and because it would support much needed enhancements of student services and academic support, as well as teaching faculty. I wish to emphasize, however, that the current budget request, even if fully funded, would only *begin* to address the extreme underfunding of John Jay. The Plan, if fully funded, would lead to the addition of 14 full-time teaching faculty positions at John Jay next year. To achieve equity with the rest of CUNY John Jay needs approximately *100* additional full-time faculty positions. Moreover, the Investment Plan, *even if fully funded*, would do virtually nothing to improve the underfunding of John Jay in the areas of Administrative Support and Services and Other than Personal Services (OTPS). I hope and intend to address the Board again in the future about these gross and inequitable deficiencies in CUNY's funding of John Jay.

Thank you very much for your attention.

## ATTACHMENT C

### The Chancellor's Compact Initiative

Thank you for the opportunity to speak to this matter, Item 4A. I am the chair of the English department at John Jay College. We are the largest department in a college of 14,000 students and every student who enters John Jay as a freshman passes through the department at least four times before she graduates; if she enters as an associate degree student, the chances are that she will take six courses with the department before she leaves with a baccalaureate degree, even if she takes nothing other than required General Education and developmental courses.

I currently administer 37 full-time faculty and 107 adjuncts. I am authorized 39 tenure-track faculty and next year I will be authorized 41. Next semester we will teach 282 sections of English and literature. If the Chancellor's goal of 70% of the courses in the university taught by full-time faculty were to be met in my department, I would have to have a fully realized authorization of 83 tenure track faculty instead of 41. You would have to double the size of my department tomorrow just to meet the demands of the Spring, 2006, semester. As each year passes and the college grows, so too does the gap between the premise of adequate higher education and our practice of it.

John Jay has been under funded and under staffed for thirty years. In my estimation, the work we do with so little is amazing. It is our good luck that the students at John Jay struggle alongside us, out of necessity, as we try to manage an academic culture of scarcity not matched, I think, elsewhere in the university. The Chancellor's Compact Initiative will go some distance toward repairing that condition. My department will gain three new lines if the Initiative carries. Not the 42 I need but at least three. And the ESL Resource Center and the Writing Center, operations overseen by my department, will find new support in the Compact as well. President Jeremy Travis's plan for the allocation of the balance of the funds due to the college under the Compact seems reasoned and equitable as an intramural accounting. I only wish there were more dollars to go around.

I do applaud the Chancellor and his staff for an imaginative approach to a complex problem. I think we all realize that the Compact itself is not a solution but a best faith attempt on the part of the University to manage conditions not of our own making but visited on us nevertheless. I will do my best to hold up our end of the Compact. I will certainly try to hire three new PhD's who are willing to do the work of 13 times their number.

Jon-Christian Suggs  
Chair, English  
John Jay College  
Professor  
Ph. D. Program in English  
The Graduate Center

November 21, 2005

ATTACHMENT D

Matter of Perez v City Univ. of N.Y.

2005 NYSlipOp 08765

November 17, 2005

Kaye, Ch.J.

Court of Appeals

Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.

[\*1] In the Matter of Aneudis Perez et al., Appellants,  
v  
City University of New York et al., Respondents.

Argued October 19, 2005; decided November 17, 2005

Matter of Perez v City Univ. of N.Y., 9 AD3d 310, reversed.

OPINION OF THE COURT

Chief Judge Kaye

Once again we are asked to determine whether certain entities within a public college—in this case, the Hostos Community College Senate and its Executive Committee—are subject to the Open Meetings Law. We also consider whether secret ballots by the College Senate are prohibited by either the Open Meetings Law or the Freedom of Information Law.

I.

Hostos Community College is one of 19 colleges that comprise the City University of New York (CUNY). Pursuant to Education Law § 6204 (1), control of CUNY's educational work resides solely in its Board of Trustees. The Board can, among other things, establish departments, divisions and faculties; establish and conduct courses and curricula; and prescribe conditions of student admission, attendance and discharge (Education Law § 6206 [7] [a]). Under Education Law § 6204 (3) (a), CUNY Board meetings are subject to the Open Meetings Law.

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The CUNY Board has enacted its own bylaws to facilitate its mission. Those bylaws govern all CUNY campuses and explicitly allow the individual colleges to implement [\*2]their own governance plans, which supersede any inconsistent provision contained in CUNY's bylaws (CUNY Bylaws § 8.14). In its bylaws, the Board has delegated its authority under Education Law § 6206 (7) (a) in part to the faculty (or a faculty council) of the individual colleges, making the local faculty (or faculty councils) responsible "for the formulation of policy relating to the admission and retention of students including health and scholarship standards therefor, student attendance including leaves of absence, curriculum, awarding of college credit, granting of degrees" (CUNY Bylaws §§ 8.6, 8.7).

In lieu of the faculty council authorized by the CUNY bylaws, the Hostos Community College Governance Charter established a College Senate composed of full-time faculty members, nonteaching instructional staff, students, classified staff and the President and Deans of the College. The faculty, staff and student members are elected by their respective constituencies, faculty and staff to three-year terms and students to one-year terms. The Senate is to "recommend policy on all College matters . . . [and is] specifically responsible for the formulation of academic policy and for consultative and advisory functions related to the programs, standards and goals of the College" (Hostos Community College Governance Charter, art I, § 1).

The Governance Charter sets forth a noninclusive list of 14 areas of college policy, including curriculum and admission requirements, as to which the Senate is authorized to formulate new policy recommendations and review existing policies. The Charter prohibits additions or alterations to the divisions of Hostos Community College without the College Senate first approving those changes; and it provides that changes to the Charter may be proposed only by a member of the Executive Committee or a written petition signed by 10 members of the College Senate.

The nine members of the Executive Committee and the nine members of the Committee on Committees are elected from the College Senate. The Executive Committee organizes the work of the Senate by scheduling and preparing the agenda for Senate meetings and transacts necessary business between Senate meetings. The Committee on Committees assigns all of the members to the Senate's 13 remaining standing committees, including the Academic Standards Committee (which determines student appeals of academic dismissals or matriculation decisions), the Admissions Committee (which implements college admissions policies) and the Scholarships and Awards Committee (which selects recipients of the Hostos Scholarships and other prizes). Appointments to the standing committees and a number of the decisions issued by the committees are final and nonreviewable.

On May 24, 2001 petitioner Chong Kim, a Hunter College student, was denied entrance to a College Senate meeting during which several changes in the college curriculum were approved by secret ballot. On September 6, 2001 petitioner Aneudis Perez, a Hostos Community College student, was denied entrance to an Executive Committee meeting; Perez tried to hand an Executive Committee member a petition regarding an incident that had arisen months earlier during a political protest on campus. Neither of the two meetings had moved into executive session, though had the Senate or the Executive Committee needed to discuss confidential matters it could have done so (see Public Officers Law § 105).



Petitioners initiated a CPLR article 78 proceeding, arguing that the College Senate and the Executive Committee were subject to the Open Meetings Law and the Freedom of Information Law. Supreme Court granted the petition, but the Appellate Division reversed, concluding that the Senate was only an advisory body and thus outside the purview of the Open [\*3]Meetings Law and the Freedom of Information Law. We agree with Supreme Court and now reverse the Appellate Division order and reinstate the judgment of Supreme Court.

II.

In enacting the Open Meetings Law, the Legislature sought to ensure that "public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy" (Public Officers Law § 100). Similarly, the Legislature intended the Freedom of Information Law to guarantee "[t]he people's right to know the process of governmental decision-making and to review the documents and statistics leading to determinations" (Public Officers Law § 84).

Thus, all "public bodies" are subject to the Open Meetings Law and all "public agencies" are subject to the Freedom of Information Law. Both provisions define, in part, organizations within their ambit as those that perform a "governmental function" (Public Officers Law § 86 [3]; § 102 [2]). And in applying these laws, we construe their provisions liberally in accordance with their stated purposes (see Matter of Gordon v Village of Monticello, 87 NY2d 124, 127 [1995]; Matter of Encore Coll. Bookstores v Auxiliary Serv. Corp. of State Univ. of N.Y. at Farmingdale, 87 NY2d 410, 418 [1995]).

While an entity must be authorized pursuant to state law to be within the ambit of the Open Meetings Law and the Freedom of Information Law, not every entity whose power is derived from state law is deemed to be performing a governmental function. Certainly not all advisory bodies that issue recommendations to state agencies are performing governmental functions for purposes of compliance with the Open Meetings Law. Rather, in each case the court must undertake an analysis that centers on "the authority under which the entity was created, the power distribution or sharing model under which it exists, the nature of its role, the power it possesses and under which it purports to act, and a realistic appraisal of its functional relationship to affected parties and constituencies" (Matter of Smith v City Univ. of N.Y., 92 NY2d 707, 713 [1999]).

In Smith, for example, this Court concluded that the Fiorello H. LaGuardia Community College Association, Inc.—a group of administrators, faculty members and students authorized to allocate student activity fees to various campus entities—exercised a quintessentially governmental function and was thus subject to the Open Meetings Law. The association not only drew its powers from state law but also was a "formally chartered entity with officially delegated duties and organizational attributes of a substantive nature" (id. at 714). The group's governmental function was further evidenced by its operation "under protocols and practices where its recommendations and actions [were] executed unilaterally and finally, or receive[d]

merely perfunctory review or approval" (id.).

Here, we are persuaded that the College Senate and its Executive Committee similarly are exercising a quintessentially governmental function.

The College Senate's organizational structure is set forth in the Governance Charter, which mandates that the Senate conduct business only if a quorum is present and that the Senate and its committees conduct meetings pursuant to Robert's Rules of Order Newly Revised. The members of the Senate elect representatives to the Committee on Committees, which has sole, nonreviewable authority to select members to the College Senate's other standing committees, some of which exercise nonreviewable power regarding disciplinary findings and [\*4]punishments, academic disputes and scholarship awards. The Executive Committee schedules regular and special Senate meetings, determines what is appropriate Senate business, sets the agenda for the Senate meetings and conducts all business between Senate sessions.

Key to our conclusion in this case is the record evidence that the College Senate (which includes its Executive Committee) has been charged with a number of the responsibilities delegated by the Legislature to the CUNY Board and that the Senate functions as a proxy for the faculty councils authorized by the CUNY bylaws. The Senate is to recommend policy on all college matters to the Board. The Senate is explicitly imbued with the power to formulate new policy recommendations and review existing policies, forwarding those recommendations to the Board of Trustees in areas as far-reaching as college admissions, degree requirements, curriculum design, budget and finance; it is represented on all committees established by the College President or Deans; it is to review proposals for and recommend the creation of new academic units and programs of study; it must be consulted prior to any additions or alterations to the College's divisions; and it is the only body that can initiate changes to the College Governance Charter.

Under CUNY's comprehensive university governance scheme, the College Senate is the sole legislative body on campus authorized to send proposals to the CUNY Board of Trustees, and although the policy proposals must first be approved and forwarded by the College President, they overwhelmingly are. While the CUNY Board retains the formal power to veto recommendations of the College Senate, that does not in and of itself negate the Senate's policy-making role or render the Senate purely advisory. Realistically appraising the Senate's function, we conclude that the Appellate Division erred in holding that the Senate was only an advisory body (contrast Matter of Snyder v Third Dept. Jud. Screening Comm., 18 AD3d 1100 [3d Dept 2005] [proceedings of Judicial Screening Committee not subject to the Freedom of Information or Open Meetings laws because its role is limited to providing information to appointing authority]). As Supreme Court held, "the college senate and the executive committee thereof constitute integral components of the governance structure of Hostos Community College. The senate and its executive committee perform functions of both advisory and determinative natures which are essential to the operation and administration of the college" (195 Misc 2d 16, 33 [Sup Ct, Bronx County 2002]).

Whether the votes of the College Senate may be by secret ballot, however, is a separate question.

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The Open Meetings Law does not speak to balloting or voting procedures, requiring only that "[m]inutes shall be taken at all open meetings of a public body which shall consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon" (see Public Officers Law § 106 [1]). A final determination may easily be recorded in the meeting's minutes without an accounting of each participant's ballot. Though we construe the provisions of the Open Meetings Law liberally, we will not add a requirement to the text of the statute.

Under the Freedom of Information Law, however, a public agency must maintain "a record of the final vote of each member in every agency proceeding in which the member votes" (Public Officers Law § 87 [3] [a]). This requirement differs from the summary of a final vote mandated by the Open Meetings Law. The requisite record of the final vote of each member would be impossible were the final vote of each member anonymous or secret. Consequently, [\*5]under the Freedom of Information Law, voting by the College Senate and the Executive Committee may not be conducted by secret ballot.

Accordingly, the order of the Appellate Division should be reversed, with costs, and the judgment of Supreme Court reinstated.

Judges G.B. Smith, Ciparick, Rosenblatt, Graffeo, Read and R.S. Smith concur.

Order reversed, etc.

## ATTACHMENT E

### OPEN MEETINGS LAW PUBLIC OFFICERS LAW, ARTICLE 7

#### OPEN MEETINGS LAW

Section 100. Legislative declaration.

101. Short title.

102. Definitions.

103. Open meetings and executive sessions.

104. Public notice.

105. Conduct of executive sessions.

106. Minutes

107. Enforcement.

108. Exemptions

109. Committee on open government.

110. Construction with other laws.

111. Severability.

§100. Legislative declaration. It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy. The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonweal will prosper and enable the governmental process to operate for the benefit of those who created it.

§101. Short title. This article shall be known and may be cited as "Open Meetings Law".

§102. Definitions. As used in this article: 1. "Meeting" means the official convening of a public body for the purpose of conducting public business, including the use of videoconferencing for attendance and participation by the members of the public body. 2. "Public body" means any entity, for which a quorum is required in order to conduct public business and which consists of two or more members, performing a governmental function for the state or for an agency or department thereof, or for a public corporation as defined in section sixty-six of the general construction law, or committee or subcommittee or other similar body of such public body. 3. "Executive session" means that portion of a meeting not open to the general public.

§103. Open meetings and executive sessions. (a) Every meeting of a public body shall be open to the general public, except that an executive session of such body may be called and business transacted thereat in accordance with section one hundred five of this article. (b) Public bodies shall make or cause to be made all reasonable efforts to ensure that meetings are held in facilities that permit barrier-free physical access to the physically handicapped, as defined in subdivision five of section fifty of the public buildings law. (c) A public body that uses videoconferencing to conduct its meetings shall provide an opportunity to attend, listen and observe at any site at which a member participates.

§104. Public notice. 1. Public notice of the time and place of a meeting scheduled at least one week prior thereto shall be given to the news media and shall be conspicuously posted in one or more designated public locations at least seventy-two hours before such meeting. 2. Public notice of the time and place of every other meeting shall be given, to the extent practicable, to the news media and shall be conspicuously posted in one or more designated public locations at a reasonable time prior thereto. 3. The public notice provided for by this section shall not be construed to require publication as a legal notice. 4. If videoconferencing is used to

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conduct a meeting, the public notice for the meeting shall inform the public that videoconferencing will be used, identify the locations for the meeting, and state that the public has the right to attend the meeting at any of the locations.

§105. Conduct of executive sessions. 1. Upon a majority vote of its total membership, taken in an open meeting pursuant to a motion identifying the general area or areas of the subject or subjects to be considered, a public body may conduct an executive session for the below enumerated purposes only, provided, however, that no action by formal vote shall be taken to appropriate public moneys: a. matters which will imperil the public safety if disclosed; b. any matter which may disclose the identity of a law enforcement agent or informer; c. information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed; d. discussions regarding proposed, pending or current litigation; e. collective negotiations pursuant to article fourteen of the civil service law; f. the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation; g. the preparation, grading or administration of examinations; and h. the proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof. 2. Attendance at an executive session shall be permitted to any member of the public body and any other persons authorized by the public body.

§106. Minutes. 1. Minutes shall be taken at all open meetings of a public body which shall consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon. 2. Minutes shall be taken at executive sessions of any action that is taken by formal vote which shall consist of a record or summary of the final determination of such action, and the date and vote thereon; provided, however, that such summary need not include any matter which is not required to be made public by the freedom of information law as added by article six of this chapter. 3. Minutes of meetings of all public bodies shall be available to the public in accordance with the provisions of the freedom of information law within two weeks from the date of such meeting except that minutes taken pursuant to subdivision two hereof shall be available to the public within one week from the date of the executive session.

§107. Enforcement. 1. Any aggrieved person shall have standing to enforce the provisions of this article against a public body by the commencement of a proceeding pursuant to article seventy-eight of the civil practice law and rules, and/or an action for declaratory judgment and injunctive relief. In any such action or proceeding, the court shall have the power, in its discretion, upon good cause shown, to declare any action or part thereof taken in violation of this article void in whole or in part. An unintentional failure to fully comply with the notice provisions required by this article shall not alone be grounds for invalidating any action taken at a meeting of a public body. The provisions of this article shall not affect the validity of the authorization, acquisition, execution or disposition of a bond issue or notes. 2. In any proceeding brought pursuant to this section, costs and reasonable attorney fees may be awarded by the court, in its discretion, to the successful party. 3. The statute of limitations in an article seventy-eight proceeding with respect to an action taken at executive session shall commence to run from the date the minutes of such executive session have been made available to the public.

§108. Exemptions. Nothing contained in this article shall be construed as extending the provisions hereof to: 1. judicial or quasi-judicial proceedings, except proceedings of the public service commission and zoning boards of appeals; 2. a. deliberations of political committees, conferences and caucuses. b. for purposes of this section, the deliberations of political committees, conferences and caucuses means a private meeting of members of the senate or assembly of the state of New York, or of the legislative body of a county, city, town

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or village, who are members or adherents of the same political party, without regard to (i) the subject matter under discussion, including discussions of public business, (ii) the majority or minority status of such political committees, conferences and caucuses or (iii) whether such political committees, conferences and caucuses invite staff or guests to participate in their deliberations; and 3. any matter made confidential by federal or state law.

§109. Committee on open government. The committee on open government, created by paragraph (a) of subdivision one of section eighty-nine of this chapter, shall issue advisory opinions from time to time as, in its discretion, may be required to inform public bodies and persons of the interpretations of the provisions of the open meetings law.

§110. Construction with other laws. 1. Any provision of a charter, administrative code, local law, ordinance, or rule or regulation affecting a public body which is more restrictive with respect to public access than this article shall be deemed superseded hereby to the extent that such provision is more restrictive than this article. 2. Any provision of general, special or local law or charter, administrative code, ordinance, or rule or regulation less restrictive with respect to public access than this article shall not be deemed superseded hereby. 3. Notwithstanding any provision of this article to the contrary, a public body may adopt provisions less restrictive with respect to public access than this article.

§111. Severability. If any provision of this article or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction such judgment shall not affect or impair the validity of the other provisions of the article or the application thereof to other persons and circumstances. For further information, contact: Committee on Open Government, NYS Department of State, 41 State Street, Albany, NY 12231