

Faculty Senate Minutes #288

John Jay College of Criminal Justice

Tuesday, January 31, 2006

3:15 PM

Room 630 T

Present (25): Yahya Affinnih, Danette Brickman, Marvie Brooks, Orlanda Brugnola, James Cauthen, Roddrick Colvin, Edward Davenport, Robert DeLucia, Virginia Diaz, Janice Dunham, Robert Fox, Diana Friedland, P. J. Gibson, Amy Green, Ann Huse, Karen Kaplowitz, Tom Litwack, Roderick MacGregor, James Malone, Evan Mandery, Dagoberto Orrantia, Valli Rajah, Rick Richardson, Robin Whitney, Susan Will

Absent (12): Francisco Chapman-Veloz, Greg Donaldson, DeeDee Falkenbach, Yi He, Betsy Hegeman, Ping Ji, Mary Ann McClure, Edward Paulino, Raul Romero, Francis Sheehan, Shonna Trinch, Thalia Vrachopoulos

Guests: Professors Ned Benton, Harold Sullivan

Agenda

1. Announcements
2. Adoption of Minutes #287 of the December 9, 2005, meeting
3. Declaration of a vacant seat on the Faculty Senate and decision as to action to be taken
4. Nomination and election to fill a vacant faculty seat on the College Council
5. Selection of faculty to serve on the Search Committee for Provost

1. **Announcements** [Attachment A, B]

On January 11, Karen Kaplowitz and Tom Litwack wrote to the CUNY Board of Trustees, on behalf of the Faculty Senate, to once again make the case about John Jay's severe and inequitable underfunding and the need for immediate redress [Attachment A]. They had been authorized by the Faculty Senate to write to the Board of Trustees about this issue.

On January 2, CUNY Vice Chancellor for Legal Affairs Frederick Schaffer issued a memorandum to the college presidents on the "Requirements of the Open Meetings Law" [Attachment B]. This memorandum was occasioned by the unanimous ruling of the NYS Court of Appeals on November 17, 2005, in the case of Perez v. CUNY [see Faculty Senate Minutes #286 of November 29, 2005, for a discussion of the ruling and also for the text of the ruling as well as for the provisions of the NYS Open Meetings Law]. The requirements as explained in Vice Chancellor Schaffer's memorandum apply to John Jay's College Council and its

committees but not to department meetings or elections or to search committees or meetings of personnel committees when individual personnel actions are being considered.

2. Approval of Minutes #287 of the December 9, 2005, meeting

By a motion made and carried, Minutes #287 of the December 9 meeting were approved.

3. Declaration of a vacant seat on the Senate and decision as to action to be taken

The at-large seat of Senator Nicholas Petraco was declared vacant by the requisite vote of the Senate upon receipt from Senator Petraco of his resignation, as required by the Senate Constitution. The Senate then decided to elect the next highest vote recipient in the April 2005 at-large election. By a motion made and carried, this decision was effectuated without knowledge of the identity of the individual who had received the next highest number of votes. Professor Diana Friedland was, thus, elected. She was invited to the Senate meeting and upon arriving was introduced and welcomed.

4. Nomination and election to fill a vacant faculty seat on the College Council

By a motion made and unanimously carried, Senator Diana Friedland was elected to the College Council seat vacated by Professor Petraco upon his resignation from the Faculty Senate.

5. Selection of faculty to serve on the Search Committee for Provost [Attachment C]

The Search Committee for Provost and Academic Vice President will be chaired by Distinguished Professor of History Gerald Markowitz and will also comprise five faculty recommended by the Faculty Senate using a method decided by the Faculty Senate; five administrators; and three students of whom two will be undergraduate students and one a graduate student. The executive search firm of Heidrick & Struggles has been retained to assist the Search Committee in its work. The Search Committee is to start meeting the week of February 20. Applications will be reviewed beginning February 27.

The Senate Executive Committee's proposed method for the selection of the five elected faculty to serve on the Search Committee for Provost & Academic Vice President was presented [Attachment C].

Senator Rick Richardson questioned why the proposal does not give adjunct faculty the right to run for the Search Committee. President Kaplowitz explained that the Executive Committee believes it is important to have tenured faculty on a search committee for the provost, who is the chief academic officer, for a number of reasons, one of which is that untenured faculty often feel they must self-censor because of their real or perceived vulnerability; she added that it

is extremely likely that there will be internal candidates for this position.

Senator Evan Mandery spoke in favor of making the process as democratic as possible by extending eligibility to non-tenured faculty. Senator Litwack urged that the Senate restrict eligibility to tenured full-time faculty because of their better understanding of the governance of the College, their longer institutional memory, and their better understanding of the provost's job and role. He noted that very few adjuncts work directly with a provost.

Senator Mandery moved the Executive Committee's proposal and he then moved to amend the Executive Committee's proposed criteria for membership by having the word "tenured" be deleted. The Executive Committee's proposal was that "The five elected faculty members will be tenured members of the faculty from any of the 20 academic departments."

Senator Janice Dunham said she had been on a search committee with an untenured faculty member who found herself not feeling free to speak honestly about the candidates and who found the whole experience extremely stressful as a result of her untenured status. Senator Danette Brickman said she agrees with Senator Mandery, adding that junior faculty can choose to not run for the committee if they think they would be too vulnerable. Senator James Malone said that only tenured faculty should be eligible. Senator Roderick MacGregor said he does not think tenured full-time faculty will adequately represent the interests and concerns of the non-tenured faculty. The question was called on Senator Mandery's amendment. The vote on the motion to delete the word "tenured" from the eligibility requirement was 12 yes, 12, no, and 0 abstentions.

President Kaplowitz cast the tie vote against Senator Mandery's motion and so the motion to remove the word "tenured" failed. But, she said, there is clearly a strong sentiment for greater inclusion than proposed by the Executive Committee. She said the problem with Senator Mandery's motion to remove the word "tenured" is that it would have meant that faculty would have been eligible to run if they have been teaching at John Jay for only one semester and said this is not a wise approach. She suggested we require some type of eligibility requirement but that it be more inclusive than that originally proposed by the Executive Committee.

Senator Richardson proposed amending the eligibility requirement to include adjunct faculty but to exclude non-tenured full-time faculty. Professor Ned Benton noted that the departmental and College personnel committees do not permit adjunct members but do permit non-tenured full-time faculty, as long as a majority of the personnel committee is tenured. He said that what Senator Richardson is proposing is upside-down. There being no second to Senator Richardson's motion, the motion failed. Senator Richardson then moved that four of the faculty positions be set aside for full-time faculty and that the fifth position be set aside for adjunct faculty. The motion was seconded by Senator Robin Whitney. Senator Malone spoke strongly against the motion as did others. Senator Richardson withdrew his motion and Senator Whitney withdrew her second.

Senator Roderick MacGregor moved that the five members be full-time or adjunct faculty who have taught at John Jay for at least six consecutive semesters. Senator Fox seconded the motion. President Kaplowitz proposed a refinement of the motion: that full-time faculty must have taught for at least 3 consecutive years at John Jay and that adjunct faculty must have taught for at least six consecutive semesters at John Jay. This was accepted by Senators MacGregor and Fox. The motion to thus amend the Executive Committee's proposal

was adopted by a vote of 17 yes, 5 no, 0 abstentions.

As for the electorate, a question was raised as to why the Executive Committee is not proposing that the entire faculty be the electorate. President Kaplowitz explained that the search committee is having its first meeting, with the search firm, during the week of February 20, and the faculty members have to be chosen in advance of that date which makes the option of the entire faculty serving as the electorate impossible.

Senator Tom Litwack then moved that the Senate adopt the Executive Committee's proposed Option 4B rather than Option 4A. Option 4A provides that only the Senate shall be the electorate; Option 4B provides that the Senate and the Council of Chairs shall together be the electorate. Senator Litwack said it is crucial that the chairs be part of the electorate because the chairs work directly with the provost and have a critically important understanding, from their experience of working with the provost, of the talents, experiences, and temperament a good provost must have. Senator Fox argued against inviting the chairs to join the Senate as members of the electorate saying that chairs are more concerned with managerial matters than with academic ones. Senator Litwack's motion that the electorate compromise both the Senate and the Chairs was adopted by a vote of 15 yes, 5 no, and 1 abstention.

A motion was made to support the Executive Committee's proposed Option 6B rather than Option 6A. Option 6B provides that the same run-off method be used as that required by the College Council in at-large College P&B Committee elections, in other words, the run off will be among the top two recipients for every unfilled position. For example, if one position is unfilled, the run-off is among the top two candidates; if two positions are unfilled, the run-off is among the top four candidates; if three positions are unfilled, the run-off is among the top six candidates. The motion was approved with the condition that, as with the College Council procedure, the 40% rule that would trigger a run-off would not apply to the results of the run-off election itself, but rather that the highest vote recipients in the run-off would be elected. The motion was adopted by a vote of 17 yes, 1 no, and 2 abstentions.

The proposed methods for nominating faculty, for soliciting and disseminating election statements, for voting, and for the election of campus faculty groups to assess the finalists for provost were approved by unanimous vote. The Senate Executive Committee was authorized to establish a timetable for each aspect of the election process. The complete, amended method, was adopted by a vote of 17 yes, 1 no, and 0 abstentions.

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

JOHN JAY COLLEGE OF CRIMINAL JUSTICE

The City University of New York
445 West 59th Street, New York, N.Y. 10019
212 237-8000

January 11, 2006

To: The Board of Trustees
The City University of New York

From: Prof. Karen Kaplowitz, President, John Jay College Faculty Senate
Prof. Tom Litwack, Chair, John Jay College Faculty Senate Fiscal Affairs Committee

Dear Members of the Board of Trustees:

We provided testimony regarding the Compact Proposal at the public hearing of the Board of Trustees on November 21, 2005, testimony which focused on the substantial and inequitable funding of John Jay College as evidence of the necessity for more funding for CUNY. We are writing to you now, at the direction and on behalf of the John Jay Faculty Senate -- the official voice of the John Jay College faculty -- to provide background and context for that testimony and to further support the need for a substantial increase in the base funding of John Jay (*in addition to that envisioned in the Compact*).

Since the mid-1980s, the administration and the Faculty Senate of John Jay College have repeatedly made the case, primarily to the CUNY Central Administration, but also to the Board of Trustees, that John Jay is very seriously underfunded, both in absolute terms, as is all of CUNY, *and* relative to the other Senior Colleges in CUNY. Nevertheless, and despite some efforts by the CUNY Central Administration to redress this inequity, John Jay remains severely and inequitably underfunded. Consequently, the John Jay Faculty Senate has continued to communicate to the administration of CUNY the need for more equitable funding for John Jay based on a fair and objective funding model for the Senior Colleges.

In recent years, under the leadership of Chancellor Goldstein, and as noted in the CUNY Master Plan (pp. 121-122), the administration of CUNY has made, and continues to make, notable efforts toward developing an objective funding model for the Senior Colleges. We recognize that there are many difficult issues involved in perfecting and implementing such a model. However, based on our own analyses and our knowledge about allocation models to date, we have concluded that if the *current* CUNY Senior College budget were distributed objectively and equitably, John Jay would have at least \$10 million more in its annual Base Budget than it has today, which would be an increase of more than 20% above its current Base Budget.

We wish to emphasize that the underfunding of John Jay leaves our College far removed from the CUNY Master Plan goal of 70% of instruction taught by full-time faculty. 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 Criminology; and only 29% in Forensic Psychology.

Other data make the inequitable underfunding of John Jay manifest. Consider the following data for Fall 2005, which is derived from the CUNY Mid-Year Financial Report FY 2006, issued by the University Budget Office, December 23, 2005. *In every staffing category, John Jay is the least resourced Senior College in CUNY.*

	<u>CUNY SENIOR COLLEGE</u> <u>AVERAGE * MINUS JOHN JAY</u>	<u>JOHN JAY COLLEGE</u>
Classroom full-time faculty positions per 1000 FTE students	39	26
Instructional & Departmental Research ("I&DR") Staff positions per 1000 FTE students	12	6
Non-teaching Instructional Support Staff positions per 1000 FTE students	13	9
Civil Service except for I&DR Civil Service positions per 1000 FTE students	31	10

Here is another way of looking at the same data:

	<u>CUNY SENIOR COLLEGE</u> <u>AVERAGE * MINUS JOHN JAY</u>	<u>JOHN JAY COLLEGE</u>
FTE students per Full-time classroom faculty	25	38
FTE students per I&DR position	85	176
FTE students per non-teaching support staff member	74	114
FTE students per non-I&DR Civil Service position	32	96

*Excluding the Graduate Center and Law School.

We recognize that differences in Senior College programs, physical plants, and the like objectively require and justify differences in funding. That is, we recognize that the funding of CUNY Senior Colleges should *not* be based on enrollment alone. But it is clear from these data – *and from funding models developed by CUNY itself* – that John Jay College is severely underfunded relative to other CUNY Senior Colleges. It is equally clear to us, and we hope to you, that providing more equitable funding for John Jay should be a priority of the Board of Trustees.

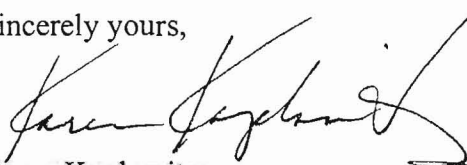
All CUNY colleges are underfunded by national standards. For that reason, in addition to our concern for John Jay, we provided testimony that supports the CUNY Investment Plan, despite its call for an increase in tuition. But the Investment Plan itself, even if fully funded, would only partially -- and only very gradually -- address the underfunding of John Jay and John Jay's severe lack of full-time faculty (and it would not at all address the under-staffing of John Jay in non-faculty areas nor our relative dearth of Other than Personal Services [OTPS] funding).

John Jay students pay the same tuition as all other CUNY Senior College students. They deserve to be provided with equitable educational resources and related services. John Jay faculty deserve to have the same opportunities and publicly funded support for research as their colleagues at the other CUNY Senior Colleges. And John Jay staff members, who are paid on the same scale as their counterparts at the other CUNY Senior Colleges, deserve to have similar workloads as their CUNY peers.

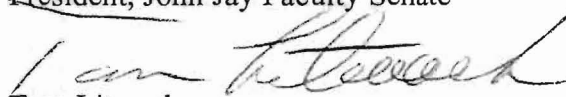
The inequitable funding of John Jay severely disadvantages John Jay students, faculty, and staff and, therefore, also undermines the mission of CUNY. We respectfully request that the Board of Trustees and the CUNY Central Administration make every effort to provide far more adequate funding for John Jay College as soon as possible. It is clear that John Jay College is severely and inequitably underfunded. Moreover, there is no need to perfect a Senior College funding model before significantly addressing the severe and inequitable underfunding of John Jay (which the Compact, even if fully funded, would only very partially address).

Thank you for your attention to this letter and for your dedication to the City University of New York.

Sincerely yours,

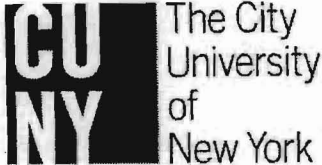


Karen Kaplowitz
President, John Jay Faculty Senate



Tom Litwack
Chairperson, John Jay Faculty Senate
Fiscal Affairs Committee

cc: Chancellor Matthew Goldstein
Executive Vice Chancellor Selma Botman
Senior Vice Chancellor Allan H. Dobrin
Vice Chancellor for University Relations Jay Hershenson
Vice Chancellor for Budget & Finance Ernesto Malave
Vice Chancellor for Academic Administration & Planning Michael J. Zavelle
Jeremy Travis, President, John Jay College



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January 2, 2006

MEMORANDUM

To: College Presidents
From: Frederick P. Schaffer
Re: Requirements of the Open Meetings Law

The New York Court of Appeals recently decided Perez v. CUNY, a case holding that the New York State Open Meetings Law and the New York State Freedom of Information Law apply to the Hostos Community College Senate. (These statutes are codified in the Public Officers Law.) I know that a number of questions have been raised as to the meaning and implications of that decision. I am therefore taking this opportunity to update prior advisory memos on the key provisions of those statutes as they apply to various bodies at our Colleges.

General Rule

Under the Open Meetings Law, the public has the right to attend any meeting of a public body. Any time a quorum of a public body gathers to discuss business, the meeting must be held in public, subject to the right to convene an executive session under certain limited circumstances. In addition, there must be prior notice of the meeting; the business of the meeting must be recorded in written minutes; and a record must be maintained of the final vote of each member of the public body on all matters on which a vote is formally taken. These requirements apply to meetings not only of the public body itself, but also to meetings of its committees, subcommittees and other similar bodies.

Definitions

Public Body:

Under the Open Meetings Law, a public body includes a group of two or more people that conducts public business and performs a governmental function for the State or an agency of the State. The statute also defines a public body to include committees and subcommittees of that body. The University's Board of Trustees is such a public body, as are the Board's standing committees.

Whether various entities at the individual colleges are public bodies subject to the Open Meetings Law must be determined on a case-by-case basis.

In Smith v. CUNY (1999), the New York Court of Appeals held that the LaGuardia Community College Association is a public body subject to the Open Meetings Law. The Court of Appeals determined that CUNY, through its Bylaws, had delegated to college associations its statutory power to administer student activity fees, and that the college association in that case exercised a real and effective decision-making power regarding the expenditure of these funds. The Court rejected CUNY's argument that the college association was merely an advisory body, holding that the President's review of student activity fee expenditures was neither mandatory nor regularly exercised. The Court further reasoned that the President only had the authority to disapprove expenditures budgeted by the college association, and not to initiate appropriations, so that the association's decision not to appropriate monies was tantamount to a final determination of at least that kind of matter.

In Wallace v. CUNY (2000), a New York Supreme Court justice held that the University Student Senate is subject to the Open Meetings Law because, as in Smith, the USS allocated and expended its share of student activity fees. The University did not appeal this decision.

Most recently, in Perez v. CUNY (November 17, 2005), the New York Court of Appeals held that the Hostos Community College Senate and its executive committee are subject to the Open Meetings Law. The Court ruled that the College Senate exercises a quintessentially governmental function because under the College Governance Charter it has the power to formulate policy recommendations in a wide variety of areas delegated by the Legislature to the CUNY Board, especially those relating to academic matters. The Court also pointed to the Senate's authority to review proposals for and recommend the creation of new academic units and programs, its right to be consulted prior to any additions or alterations to the College's divisions and the fact that it is the sole body at the College that can initiate changes to the College Governance Charter. The Court also emphasized that the College Senate is the sole legislative body on campus authorized to send proposals to the CUNY Board of Trustees, noting that although the policy proposals must first be approved and forwarded by the College President, they overwhelmingly are. Thus, the Court concluded that the College Senate and its executive committee constitute integral components of the governance structure of

Hostos Community College and perform functions of both an advisory and determinative nature.

The reasoning of the Court of Appeals in Perez makes the Open Meetings Law applicable to the University Faculty Senate and to each legislative body at a College that exercises the powers of faculty councils under Section 8.7 of the CUNY Board Bylaws. At some campuses, this body consists solely of representatives of the faculty and other instructional staff and is called the Faculty Senate, Faculty Council or Academic Senate. At other campuses, this body also contains representatives from the student body, non-instructional staff, alumni and/or the administration and is called the College Senate, College Council or Policy Council. In a few instances, there is both a college-wide body and a faculty body; questions as to which of those bodies (or both) is subject to the Open Meetings Law should be directed to me.

Under the reasoning of Perez, however, the Open Meetings law does not apply to search committees or P&B committees (at either the departmental level or above).

Meetings:

Pursuant to the statute, a meeting is the official convening of a public body for the purpose of conducting public business. Any time a quorum of a public body gathers for the purpose of discussing public business, the meeting must be convened in public, whether or not there is an intent to take action and irrespective of the manner in which the gathering may be characterized. Consequently, work sessions, planning sessions, and informal meetings of a quorum of a public body have all been deemed to be subject to the Open Meetings Law.

While the courts have stated that private meetings of public bodies that do not involve a quorum are not subject to the Open Meetings Law, the courts have also recognized that a series of less than quorum meetings could be used by a public body to thwart the purposes of the Open Meetings Law, and hence be violative of the law.

There are very few reported court decisions that have concluded that specific meetings of a public body are not covered by the Open Meetings Law. In one case, a court determined that the collective bargaining sessions between a public employer and a public employee organization are not subject to the Open Meetings Law. Another decision dealing with this issue states that a dinner gathering sandwiched between two open meetings during which discussion of public issues was incidental to general social exchange between members of the public body did not violate the Open Meetings Law. In that same decision, the court found that a luncheon meeting, at which staff reported on public issues to the public body, was in violation of the statute. In a third case, the court held that a tour of proposed project sites by Public Service Commissioners did not constitute a meeting required to be open under the law.

Quorum:

The Open Meetings Law contains no definition of quorum, but Section 41 of the General Construction Law provides that a quorum consists of a majority of the whole number of persons who are charged with any public duty to be performed or exercised by them jointly or as a board or similar body and that the phrase "whole number" means the total number of the members that the board, commission, body or other group of persons would have if there were no vacancies and no one was disqualified from acting. That law goes on to provide that not less than a majority of such persons may perform or exercise such power, authority or duty. Thus, a majority of all the members of a public body must be present to constitute a quorum, and a majority vote of all members is required to take action on a matter within its authority. This provision trumps any contrary rule contained in the governance plan of any College or in Robert's Rules of Order. The stringency of the majority requirement for a quorum and for action may be mitigated by providing for alternate members who are authorized to vote or take other action in the absence of a regular member, but who do not count as part of the "whole number" of the body for the purpose of determining whether a quorum is present or a majority have approved an action.

Public Notice of Meetings

The Open Meetings Law requires that public notice of the time and place of any meeting of a public body that is scheduled a week or more in advance must be given to the news media and conspicuously posted in one or more designated public locations at least 72 hours before the meeting. In the case of meetings scheduled less than a week in advance, notice must be given at a reasonable time prior thereto. What is reasonable will, of course, depend on the circumstances, but notice should certainly be given as promptly as possible after the decision to hold a meeting has been made.

Notice to the news media may be given by mail, e-mail, telephone, or in person, depending upon the time element. A paid legal notice in a newspaper is not required. The college body should keep a copy of the notice (if it is in writing) or other evidence that the notice was given, along with a record of the persons or entities receiving the notice, in order to defend against any claim of an improperly noticed meeting. The college body should also keep a record of the content and location of the public posting(s).

Executive Sessions

The Open Meetings Law provides for closed or executive sessions under specific circumstances set forth in the statute. An executive session is not separate from an open meeting, but is a portion of an open meeting during which the public may be excluded. The statute itemizes the subjects that may be discussed in an executive session; most of them relate to matters that are not likely to be discussed at a meeting of bodies such as a college association or a faculty senate. They include issues of public safety and law enforcement, proposed or pending litigation, collective bargaining, 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, the preparation, grading or administration of examinations and the proposed acquisition, sale or lease of real property or the proposed acquisition, sale or exchange of securities.

To close a meeting for executive session, a public body must take several steps. First, a motion must be made during an open meeting to enter into executive session. Second, the motion must identify the general area or areas of the subject(s) to be considered. Third, the motion must be carried by a majority vote of the total membership of the public body.

Exemptions from the Law

The Open Meetings Law does not apply to discussions concerning matters that might be made confidential under other provisions of state or federal law. For example, the Family Education Rights and Privacy Act (FERPA, or the Buckley Amendment) requires that records identifying individual students must be kept confidential, unless disclosure of such records has been consented to by the students and/or their parents. Accordingly, disclosure of personally identifiable data regarding students must not take place in an open meeting, unless the consent of the students and/or their parents has been obtained.

Minutes of Meetings

The Open Meetings Law requires that minutes of both open meetings and executive sessions be compiled and made available to the public.

Minutes of an open meeting must consist of a record or summary of all motions, proposals, resolutions, and any other matter formally voted upon and the vote thereon; such minutes must be available to the public within two weeks from the date of the meeting. Minutes of executive sessions must consist of a record or summary of the final action that was taken and the date and vote thereon; such minutes must be available to the public within one week from the date of the executive session. If a public body discusses a matter during executive session, but takes no action, minutes of an executive session need not be compiled.

Record of Final Votes

In addition, the Freedom of Information Law requires that a public agency must maintain a record of the final vote of each member in every agency proceeding in which the member votes. A public agency may use any effective means of recording the vote of each member, such as a roll call, signed written ballots or electronic "clickers". In order to minimize delay, especially on uncontroversial matters, several motions may be grouped together for a single vote and/or the chair may seek unanimous consent of the members present. Although the record of final votes is ordinarily contained in the minutes of a public agency, the Freedom of Information Law does not require that; it is

sufficient if the agency maintains records of such votes and makes them available upon request.

Audio/Video Recording of Meetings

Courts have held that it is unlawful to ban outright the audiotaping or videotaping of meetings covered by the Open Meetings Law. However, such taping may be prohibited if, in the circumstances of the particular meeting, it is obtrusive and distracting. I recommend consulting with this office before prohibiting a recording of a meeting of a public body.

Enforcement

The Open Meetings Law provides that any aggrieved person may enforce the statute through a State court proceeding. If a court finds that the statute was violated, the court has the power to nullify in whole or in part any action taken in violation of the statute. In addition, a court has the discretion to award costs and reasonable attorney fees to the successful party.

* * *

A copy of the full text of the Open Meetings Law is attached. Please feel free to call my office if you have any questions.

Enclosure

- c: Chancellor Matthew Goldstein
- Chancellor's Cabinet
- Chief Academic Officers
- Vice Presidents for Administration
- Chief Student Affairs Officers
- Legal Affairs Designees

N.B. The text of the Open Meetings Law, attached to this Memorandum, is not reprinted here. It is available as Attachment E of Faculty Senate Minutes #286: November 29, 2005.]

ATTACHMENT C

Proposed Method for selecting 5 faculty to serve on the Search Committee for Provost and Academic President: Executive Committee

The Search Committee will be chaired by Distinguished Professor Gerald Markowitz and will also comprise 5 faculty recommended by the Faculty Senate using a method decided by the Faculty Senate; 5 administrators; and 3 students of whom two will be undergraduate students and one a graduate student. The executive search firm of Heidrick & Struggles has been retained to assist the Search Committee in its work. The Search Committee is to start meeting the week of February 20. Applications will be reviewed beginning February 27.

1. *Criteria for eligibility of the 5 faculty members on the Search Committee (in addition to the Chair):*

Proposal: The five elected faculty members will be tenured members of the faculty from any of the 20 academic departments.

Action: The Senate amended this provision to provide that full-time faculty are eligible to run for election if they have taught at least three consecutive years at John Jay and adjunct faculty are eligible to run if they have taught at least six consecutive semesters at John Jay.

2. *Method for nominating faculty for election to the Search Committee:*

A call for nominations will be sent by email and phonemail to all faculty inviting nominations and self-nominations. The Corresponding Secretary of the Faculty Senate will ascertain whether each candidate is willing to serve and is eligible to serve.

Action: Approved.

3. *Election statements:*

Each candidate will be invited to submit an election statement by email of no more than 300 words. These election statements will be posted by email to the electorate by the Corresponding Secretary of the Faculty Senate.

Action: Approved.

4. *The electorate:*

Option A: Members of the Faculty Senate will comprise the electorate and will vote at an additional meeting of the Faculty Senate scheduled for the week of February 13.

Option B: Members of the Faculty Senate and the Council of Chairs will together comprise the electorate and will vote by mail ballot. Each ballot will be returned in a plain sealed envelope inside an outer envelope which each voter will sign so as to ensure that each voter has only one

ballot and to ensure that only Senators and Chairs vote.

Action: The Senate selected Option B.

5. *Voting:*

Each member of the electorate will vote for a maximum of five candidates and will do so by written secret ballot.

Action: Approved.

6. *Runoff election:*

To be elected each candidate must receive at least 40% of the votes cast. Any unfilled seats resulting from this rule will be filled by a runoff election in which each member of the electorate will each receive a written, secret ballot. The run-off will be conducted by one of the following two methods:

Option A: The run-off will be among the top vote recipients equal to one over the number of positions remaining. For example, if one position is unfilled, the run-off is among the top two candidates; if two positions are unfilled, the run-off is among the top three candidates; if three positions are unfilled, the run-off is among the top four remaining candidates.

Option B: The run-off will be among the top two recipients for every unfilled position. For example, if one position is unfilled, the run-off is among the top two candidates; if two positions are unfilled, the run-off is among the top four candidates; if three positions are unfilled, the run-off is among the top six candidates.

Action: The Senate selected Option B.

7. *Campus faculty groups to assess the finalists:*

After the five faculty have been elected and appointed to the Search Committee, the Senate will post a call for nominations and self-nominations for faculty willing and interested in meeting with all the finalists and providing an assessment of the finalists to the Search Committee. There will be at least one group of 15 faculty, with two of those seats allocated for adjunct faculty. If the Senate so determines, a second group of 15 faculty, with two seats allocated for adjunct faculty, will also be established. These groups will meet with all finalists. Any faculty who are not on the Search Committee and are not on the faculty campus group(s) will have the opportunity to meet each finalist at meetings with each finalist which will be open to all members of the John Jay community. (There will also be campus groups of students, administrators, and HEOs.)

Action: Approved.

Approved, as amended, by the Faculty Senate: January 31, 2006