

Faculty Senate Minutes #250

John Jay College of Criminal Justice

October 9, 2003

3:15 PM

Room 630 T

Present (21): Desmond Arias, Orlanda Brugnola, Edward Davenport, Peter DeForest, Kirk Dombrowski, Janice Dunham, Michele Galietta, Konstantinos Georgatos, P. J. Gibson, Norman Groner, Judith Hawkins, Karen Kaplowitz, Kwando Kinshasa, Tom Litwack, John Matteson, Lorraine Moller, Francis Sheehan, Liliana Soto-Fernandez, Sung Ha Suh, Thalia Vrachopolous, Robin Whitney

Absent (17): Luis Barrios, Marvie Brooks, Effie Cochran, Joshua Freilich, Marilu Galvan, Betsy Gitter, Amy Green, **Ann** Huse, Barbara Josiah, Max Kadir, Evan Mandery, Joseph Napoli, Dagoberto Orrantia, Ellen Sexton, Davidson Umeh, Alisse Waterston, Patricia Zapf

Guests: Professors Ned Benton, Lou Guinta, William Heffernan, James Levine, Bonnie Nelson, Harold Sullivan

1. Announcements from the chair
2. Approval of Minutes #249 of the September 25, 2003, meeting
3. Discussion about the draft Policy on Workplace Privacy : Invited Guests: Dean James Levine, Taskforce Chair, and Professors Guinta, Heffernan, and Nelson, members of the Taskforce
4. Discussion of the agenda of the October 16 meeting of the College Council
5. Invited Guest: Provost Basil Wilson

1. **Announcements from the chair** [Attachment A, B, C]

CUNY Vice Chancellor for Legal Affairs and Legal Counsel to the Board of Trustees Frederick P. Schaffer issued a written legal ruling on October 6 stating that the election of the three faculty to the Search Committee for President complies with all Board Bylaws and Guidelines and was properly conducted [Attachment A]. This legal ruling was in response to a written challenge made to the *CUNY* Chancellory and to the *CUNY* Board of Trustees in which the legality of the election of the three faculty to the Search Committee was questioned and a formal request was made that the election results be set aside and a new election be conducted; this challenge was in the form of a letter from Professor James Malone dated September 30 [Attachment B]. The President of the Faculty Senate, Professor Karen Kaplowitz, on behalf of the Senate, wrote a letter, dated October 1, in response to Professor Malone's challenge [Attachment C]

The Senate applauded Senator Sung Ha Suh on having passed her oral examination for her doctorate the previous day.

A position notice, written by the Search Committee, was published in the October 5 issue of “The Week in Review” section of The New York Times. The notice will shortly appear in other publications. The Search Committee, which wrote the position notice, is now working on the text of the brochure that will be sent to more than 1,000 educational and agency leaders.

2. Approval of Minutes #249 of the September 25, 2003. meeting

By a motion made and carried, Minutes #249 of the September 25 meeting were approved.

3. Discussion about the draft Policy on Workplace Privacy: Invited Guests: Dean James Levine, Taskforce Chair, and Professors Lou Guinta, William Heffernan, and Bonnie Nelson, members of the Taskforce [Attachment D & D1-D3]

Dean James Levine, Chair of the Taskforce on Workplace Privacy, was welcomed as were Professors William Heffernan, Lou Guinta, and Bonnie Nelson, members of the Taskforce. They were thanked for accepting the Senate’s invitation to discuss with the Senate the draft Policy on Workplace Privacy [Attachment D & D1-D3].

Dean Levine said that he and the Taskforce appreciate the opportunity to discuss the draft policy with the Senate and he explained that the essential challenge for the Taskforce was to balance the privacy needs of faculty and staff with the unquestioned need of the College administration to, on occasion, have access to private information. He said Professor Heffernan, the lead author of the draft policy and the legal expert on privacy issues, will explain the provisions of the draft policy.

Dean Levine first provided background. Dean Levine said that, to its credit, the Faculty Senate had recognized that there are, indeed, many important privacy issues related to many of the Offices of the College. After discussing the issue, the Senate had passed a Resolution urging President Lynch to form a taskforce to look into this issue and optimally to make some recommendations which would be the basis of a John Jay College policy. The Senate had sent a letter on November 5, 2002, to President Lynch making this request. Shortly thereafter, President Lynch established the Taskforce which immediately went to work. It is a very solid committee comprising four faculty, Professors William Heffernan, Lou Guinta, Bonnie Nelson, and Anthony Carpi as well as four administrators, Dean Donald Gray, Dean Hector Ortiz, Dean Richard Saulnier, and DoIT Director Bob Banowicz. Everyone expressed an incredible commitment to developing policies that protect privacy of faculty, staff, and students at the College, he added.

Secondly, Dean Levine said, the Taskforce recognized that there are legitimate and essential needs at the College for information about faculty, staff, and students for a range of purposes. In shaping the policy, the Taskforce wanted to make certain that those important needs to make the College run well were not compromised. And so the Taskforce was looking for balance. Dean Levine acknowledged that there can, of course, be very legitimate differences of opinion on this matter. The Taskforce, he explained, spent much of its time educating itself through a series of presentations by those whose Offices have information of a sensitive nature and so the Taskforce heard from Dean Ortiz about student records, from Security Director Brian Murphy about security and cameras, and so forth. The Taskforce created an empirical basis for its work. Dean Levine

stated that all the members were very encouraged by the sensitivity of all the individuals whom they interviewed as to privacy matters and by the efforts by these individuals to do their best to see that legitimate privacy concerns are respected.

The Taskforce decided to then develop a set of procedures for the protection of privacy rather than to try to create a huge laundry list of different privacy areas, such as who has access to cameras, who has access to health records and immunization records, and so forth. The Taskforce reached unanimity, sent the proposal to President Lynch who approved it in principle, and then, as planned, transmitted it to the Faculty Senate for additional input [Attachment D].

Dean Levine said he is delighted that today's meeting is taking place because so many things are happening this year at the College he had feared that privacy might disappear from the radar screen. He praised the hard work, participation, and attendance of the entire Taskforce and, especially, of Professor Heffernan who, after the Taskforce had deliberated and had developed ideas, took on the work of making sense of it all and condensing it into a manageable document.

Professor William Heffernan said that as the person who wrote the document, he suggests that the discussion focus on the document itself [Attachment D1-D3]. He thanked Karen Kaplowitz for inviting him. As to the current laws and legal protections with regard to privacy at John Jay, the law is not at all clear. He said he did look for a federal or state statutory scheme that protects workplace privacy for State employees but found none. He said he knows that tort law that deals with this subject focuses primarily on property rights rather than on privacy rights; that is to say that, because employers provide employees with offices, desks, computers, email systems, and so on, employers have claimed property interests in the products of what it is that employees do and have claimed that on the basis of their property rights that they are permitted to inspect email messages, listen to phone conversations and phonemail messages, and so forth.

Does that, by now, well-established tort law for the private sector apply to government agencies as well, Professor Heffernan asked. Again, the answer is murky. It is not entirely clear but it certainly is a good bet that courts would take the same framework for us as employees in our relationship with the City University of New York, that is to say, the City University could claim property interests in our offices, our phones, our computers, and so on, and so could claim that we are not entitled to privacy protection with respect to those.

The Taskforce also looked at regulations that CUNY has promulgated with respect to privacy; again, it is shaky, at best. He quoted one dated 2000 with respect to email: "Despite the best intentions of users and the University or other system operators, it is difficult if not impossible to assure the privacy of emails." There are no promises at all on the part of CUNY that there will be privacy with regard to our email communications. So what the Taskforce confronted, at best, was a few patchwork provisions that deal with some privacy aspects rather than others at CUNY and, at worst, the Taskforce was confronted by a legal context for employees of CUNY that is no different than the legal context for employees of, for example, General Motors, with property being the primary tool for analyzing the privacy claims. Professor Heffernan said the Taskforce certainly thought it could improve upon that.

As Dean Levine noted, Professor Heffernan said, the Taskforce conducted extensive fact-finding and there was unanimity among the Taskforce members that there is a culture of respect for privacy claims at John Jay. He said as someone who works on privacy issues he would offer one example in the Fourth Amendment context. The Supreme Court has held unequivocally that what a

person knowingly presents to the public cannot be the subject of a privacy claim. That comes right from *Katz v. U. S.* What someone presents to the public, and what is observed by a television camera and by a closed circuit television camera, has been held by lower courts – this has never reached the Supreme Court – citing *Katz v. U.S.* – is not a subject of privacy. The Taskforce’s fact-finding revealed that Security Director Brian Murphy and others in the John Jay Security Department are extremely wary of revealing to people what has been caught on closed circuit television: there would have to be some kind of important consideration that the John Jay administration would have to advance before Director Murphy would be willing to reveal it. Taking it a step further, Director Murphy has also said he could recollect no instance of that having happened except in cases of a crime that the College administration wanted to investigate. Otherwise, what Professor Heffernan said he would call “Murphy’s Law,” is one of privacy.

And so the Taskforce found very substantial respect down the line and found that various heads of departments are very concerned about privacy, have taken steps to prevent abusive access to private information and the Taskforce tried to build this into the policy. But the Taskforce found that the routine access to information, which we probably will not deal with today because faculty are probably most concerned about special-needs-access, but the routine access to information is one of ongoing concern to people like Brian Murphy, Richard Saulnier, and Don Gray. The Taskforce was very impressed by what they found, Professor Heffernan said.

Therefore, in drafting the policy, the Taskforce worked from two postulates. One is that there is no absolute right to privacy but there are, instead, balance claims that have to be advanced and this refers, above all, to informational privacy. The Taskforce is concerned primarily with informational privacy and as far as informational privacy is concerned, a balance has to be struck. The question was how to strike the balance. But first another point needs to be made. Professor Heffernan said that as Jim Levine has pointed out, the Taskforce concluded that it would be fundamentally unhelpful to take a substantive approach to privacy, to try to calibrate this and have, as a result, a fairly long list of what is and is not private and how private it is and the circumstances for intervening.

Professor Heffernan said the Taskforce thought this is particularly appropriate given the Taskforce’s fact-finding, that is, given the conclusion that there is a culture of respect among the administrators and, therefore, has nothing to do with Gerry Lynch leaving, that the administration appears, to a person, to respect privacy of information. Given that culture of respect for privacy, the Taskforce thought it would be best to have a procedural approach. And the central procedure is a variation on the Fourth Amendment. The Fourth Amendment operates through a determination by a neutral and detached magistrate as to whether a warrant should be issued. Professor Heffernan said it was his opinion, and the Taskforce agreed with his opinion, that that would be legalizing and formalizing things too much to require that at John Jay.

Professor Heffernan said he thought that the procedurally central step was to get people to commit themselves in advance as to why some kind of interference with privacy interests should be played out: that is to say, a memo would be written by the administration explaining why they should interfere with privacy interests. And such a memo would be written in advance, which is similar to the Fourth Amendment in every respect but one: rather than involving a neutral and detached magistrate the administration instead writes the memo, they commit themselves to a search, and then they carry out that search. After the search, a determination would be made as to whether there had been a real justification for it. The Taskforce also established a Privacy Review Board so that if the Board were to conclude that there was some kind of pattern of abusive memo’s – he said his

expectation is that there would not be many memo's at all over the coming years – but were there to be a pattern of abuse in that the administration routinely issued these memo's and yet little turned up from a search, then we would have a way to question the administration about why the administration was doing this. The Faculty Senate would be the forum at which to do this: administrators would be called before the Faculty Senate so that the Faculty Senate could ask the administrators why they had been issuing memo's in this case, and in that case, when so little was produced by the searches.

What the appropriate standard should be is the next issue. Professor Heffernan explained that this was not a matter of debate among the Taskforce members but he gathers from emails he has received since the last Faculty Senate meeting that it may be an appropriate subject of debate today with the Senate. The Taskforce identified the appropriate standard as the “college's welfare.” One of the emails he has received suggests that the appropriate standard should be something like “in the direst state of emergency.” Professor Heffernan said he is skeptical of that standard even though the “college's welfare” may not be the appropriate standard, either.

The Taskforce is open to appropriate suggestions from the Senate. But, he suggested, that he give some hypothetical situations and that the Senate consider whether these situations come within the standard of “the direst state of emergency”: obviously crimes that might have been committed would come under the heading of “the direst state of emergency” but there are non-criminal activities that he thinks would have a bearing on the College's welfare and where a memo might be the appropriate step for administrators to take.

First, he said, consider two hypothetical email situations: imagine that a professor is using email communications with a student to engage in a pattern of sexual harassment of the student, which is not a crime, but is something that, in his opinion at least, should be of concern to the administration. The student comes to the administrators and asserts having received sexual innuendo in the emails from a professor; the administration wants to find out if the professor is engaged in the same activity with other students. This, Professor Heffernan said, is in his mind a subject of legitimate concern. The administrators would write and file the memo and then look at the emails. Another example: imagine after we fill out the multiple teaching form, there is reason to believe a professor is violating the terms of that form and is teaching at another campus and that emails might provide us with some information about that: again, the memo would have to be written and the memo must provide that there is some quantum of suspicion on the part of the administration, but given that quantum of suspicion it seems worthwhile for the administration to look into this and to check the emails.

Another example, which Professor Heffernan said he is familiar with and which doesn't strike him as being “in the direst state of emergency” but has to be investigated: imagine that a professor is routinely sleeping in his office at night, that he lives out of town and treats his office as a place of overnight residence every, let's say, Monday night during the course of the semester: this is not a crime but a subject that he thinks the administration must look into for the College's welfare because we're not permitted to do this and, again, a memo would be the appropriate step. Imagine, he said, that a professor has a hotplate in his office and is in violation of the fire code: this is not necessarily a crime but, again, is something that is worth looking into.

So the term, “the college's welfare,” captures the variety of kinds of setting, unrelated to criminal activity, not necessarily bearing on criminal activity, that require inquiry on the part of the administration in the event of some kind of information that justifies the inquiry: that is how the

Taskforce structured the procedure. Professor Heffernan said that the draft policy does state at the very outset that if there is some kind of legal framework that is more extensive in protecting privacy rights then, of course, it supercedes this policy but the Taskforce's belief is that this policy goes beyond what is currently required by the law and provides a durable framework for the College.

Dean Levine added that requiring this accountability in writing, in itself, would function as a deterrent against abuse. It could be a deterrent if people know they are on the line, that their reasons could be examined, that they could, in fact, be reprimanded if these reasons were wanting.

Professor Harold Sullivan said the proposed policy says nothing about who would keep the file containing these special-needs access memoranda nor who would have access to the file nor who would be notified about these searches, about these intrusions, nor whether or when the person whose privacy has been invaded would be so informed. So a memo could be in the Provost's Office if the Provost issued a memo, a memo could be in the VP for Student Development's Office if the VP issued a memo. Nor is there any indication of any report that would be issued nor to whom.

Professor Heffernan agreed that that should be changed. He suggested that the Privacy Review Board be a permanent committee and that it be in charge of the file containing the memos.

President Kaplowitz asked for a clarification: is the proposal that an administrator issuing a memo would have to issue it to the 3-member Privacy Review Board. She said that is the only way all three would know of each memo's existence. Professor Heffernan agreed, saying that is the only way the Privacy Review Board would be able to determine if there is a pattern of abuse.

Professor Sullivan said the composition of the privacy board is not acceptable but that there are bigger issues because this is an academic institution. The reasonable expectation of privacy we have in such an institution must be one that includes protecting our views, which may be controversial, which may be subversive, which may involve research that may be highly questionable from many peoples' point of view and which could be chilled in a very significant way if administrators, some of whom are not academics and even if the administrator is an academic the field may be one that the administrator is not familiar with, on the basis of writing a memo, can search emails and hard drives and phonemails. An academic institution should have higher standards for invasion of privacy than General Motors because of issues of intellectual freedom.

Professor Sullivan said the standard of the "college welfare" is intolerably broad. And, he said, a policy that provides that suspicion alone would permit a search of one's emails or files is simply not acceptable. He added that Professor Heffernan's examples are, quite frankly, rather frightening. The notion that an institution that is supposed to respect academic freedom, intellectual freedom, and freedom of inquiry is going to have the same standards as at General Motors is not acceptable. And even if what is being proposed is legal, and Professor Sullivan said that he thinks it probably is legal, that does not make it right.

Professor Sullivan quoted from Justice Jackson in the 1944 *Korematsu v. U.S. Supreme Court* decision, which is the case concerning the internment of Japanese during WWII: "A military order, no matter how unconstitutional is not apt to last longer than the military emergency. But once a judicial opinion rationalizes such an order to show that it conforms with the Constitution, or rather, rationalizes the Constitution to show that the Constitution sanctions such an order, the Court for all time has validated the principle of racial discrimination" – or in this case, invasion of privacy in non-criminal matters or academic pursuits – "in transplanting American citizens. The principle then

lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of urgent need.”

Here what is being proposed is a policy whereby an “urgent need” is not even required; all that is required, Professor Sullivan said, is a plausible claim that something is in the “welfare” of the College. The “College’s welfare” is such an amorphous notion: it could be anything from making sure our budget is good next year to not offending certain politicians who might be involved in decisions regarding the funding of the University. This institution should have standards that are far, far more rigorous than those in other institutions. If we’re going to go on record as saying the faculty of John Jay College, the administration of John Jay College, the dean of research, of all things, a political scientist himself, is willing to say that this is satisfactory, it is unimaginable what could go on other places, Professor Sullivan concluded.

Senator Kwando Kinshasa said he considers the examples mentioned by Professor Heffernan as too broad a range of justifications for invading privacy. Senator Kinshasa said he is worried about the slippery slope of a professor who allegedly sent emails sexually harassing a student to a hotplate. That range is not only extremely wide but the slide is so steep. It opens all kinds of possibilities. Sexual harassment is a serious claim but a hotplate is not but then everything in between becomes fair game. Senator Kinshasa asked how the Privacy Review Board is to establish standards between a hotplate and sexual harassment to determine if there are abusive searches. He also asked what the standards are for the memo that would trigger a search.

President Kaplowitz said as she understands it, the standard would be whatever the president or a vice president deemed to be in the “welfare” of the College.

Dean Levine said that the very reason for having a Privacy Review Board, two of the three members of which would be a member of the faculty and a member of the non-teaching instructional staff (a HEO) as well as an administrator, would be to have a range of perspectives to review the legitimacy of the claim and to determine if there has been a frivolous claim for a search. If the claim is frivolous, there is a provision for a reprimand and a censure.

Vice President Kirk Dombrowski said that one problem is that the proposed policy as put forward does not give any oversight function to the Privacy Review Board and he thinks that strict prior oversight is needed, not just a review of possible patterns of abuse after the fact. He said the only oversight the proposed policy provides is after the fact and only if there is a pattern of abuse, which doesn’t really help the first two people whose privacy is invaded. Furthermore, the Privacy Review Board, as envisioned, would comprise people who have no actual power or authority over the people who can issue the memo and, indeed, administrators serve at the pleasure of the President and almost all HEOs lack tenure or the equivalent of tenure. Vice President Dombrowski said that any policy we put into place now would be operative five years from now when there might be a very different culture at the College and, indeed, a policy such as this, he suggested, might alter the culture. But certainly the forthcoming change in administration can not be dismissed as irrelevant or insignificant.

Professor Ned Benton said he thinks the College needs a privacy policy but that a good policy would combine the concept of a presumption of privacy with some more rigorous standards as to when the policy could be invoked. And what is also needed is a more structured and independent process of oversight. But, he added, he has another concern that has not yet been raised and that is the privacy entitlement of third parties. He said we need to think this issue through with regard to

the policy because faculty need to be able to guarantee absolute confidentiality in various third party cases and there is no possibility of doing so under the proposed policy. He gave several examples: he said when he was doing his clinical psychology internship he kept a journal and he could imagine doctoral students emailing their supervisors about patients whose confidentiality had been guaranteed. He said the answer may be that when there's third party privacy, people might not be able to use emails or phonemail because the third party cannot be assured of privacy, which could hamper one's work substantially.

But, Professor Benton said, there are other examples such as researchers who have guaranteed anonymity of their subjects in their research. A third kind of case is, he said, is his own work: he is a court appointed federal monitor and he must not participate in *ex parte* communications with the court. As part of his order of appointment, he has had to promise absolute confidentiality in any communications with the court. If this policy were adopted, he said, he could not email materials back and forth and, therefore, he could not do any of his work in his John Jay office because if he used the College server he couldn't comply with the court appointment obligations of confidentiality. So we need a policy that addresses third party privacy rights.

Professor Heffernan apologized for having to leave the campus at this time but added that the Taskforce had found no Big Brother syndrome at John Jay and, therefore, had felt no need to address most of the concerns that have been raised at today's meeting. He said this policy would provide much more significant privacy protection than currently officially exists. He said what is being conjured up is far removed from what the Taskforce has determined exists. He acknowledged that the third party privacy issue is an important one, one that the Taskforce had not considered, and he said he does not know at this point how it might be addressed.

Professor Heffernan said that Professor Sullivan's concerns about academic freedom and freedom of inquiry do not make sense given the fact that the fruits of such inquiry are published and are not kept private; indeed, the purpose of research is to present it to public scrutiny and for public review. He said it is faculty's obligation to engage in the publication of those ideas the privacy of which Professor Sullivan has expressed concern about. This is not a privacy issue at all, he said, since publication is the presentation of those ideas in a public forum. And then in a public forum those ideas might be supported or repudiated. We would be remiss, he said, as academics to seek to keep such ideas private.

Professor Bonnie Nelson said she really appreciates today's meeting because without a meeting such as this, the Taskforce could never have been sure if it had gotten the policy right. She said that the Taskforce had not considered several issues raised today at the Senate, such as the privacy rights of third parties, which it needs to do. The Taskforce also missed an important issue raised today, which is whether and under what conditions a person whose privacy has been invaded should be informed of that fact. Also, she said, she now thinks that the standard proposed by the Taskforce, that of the "college's welfare" is, in fact, too low. She suggested that a higher standard be established. She said she has the policies of several other colleges and universities and she quoted from the policy on privacy and confidentiality of the University of California; but that policy is about only electronic communications and the Taskforce wanted John Jay's policy to be broader than that, because there is concern about paper files and other non-electronic materials in our offices.

Senator John Matteson said that he believes the Taskforce had worked conscientiously to address an important issue, but he nevertheless feels a responsibility to articulate several objections. In particular, he said, Professor Heffernan's comments about the existence of a culture of respect for

privacy at the College at present is not an adequate basis for a policy on privacy which will be the policy henceforth. He said that this is particularly true at a time when the College is facing a major change of administration which means that there is no guarantee and there should be no assumption that any culture that now exists will exist in the near or distant future. He said we need a policy which will protect us from possible future abuses of any administration's right to override privacy. He noted, also, that the policy lacks a strong statement of the right to privacy and of the College's commitment to protecting privacy.

Senator Michele Galietta spoke about faculty who are studying the sexual abuse scandal in the Catholic Church. She noted that as one of the researchers on this project, not only it is crucial that there be privacy of such information but that the College and the researchers have had to guarantee such privacy.

In addition, Senator Galietta said, the new doctoral program in forensic psychology will have, as an integral part, the training of doctoral students who will do patient intake and have records of patients that must be safeguarded at the very highest levels of privacy.

President Kaplowitz said that Institutional Review Board [IRB] federal regulations require absolute privacy when research is conducted involving human subjects and that not only is this a moral imperative but a legal one: any violations could jeopardize not only the privacy of the people who are participating as subjects in studies but could jeopardize both John Jay's federal funding and the federal funding for all of CUNY since violations in IRB regulations can lead to a loss of federal funding for the entire University of which a college is a component part.

Professor Sullivan spoke about faculty who, for example, study hate speech and the possibility that the faculty member's visits to hate speech sites on the web could be used against that professor. Professor Sullivan said he believes that the administration should obtain a search warrant if they want to look at emails or listen to phonemail messages or look at files on a hard drive or engage in any other kinds of invasions of privacy and that there should be no lower standard.

Professor Sullivan said he regrets that Professor Heffernan had to leave because he wants to respond to Professor Heffernan's argument that faculty's work is for the purpose of publication and that, therefore, there should be no undue need for or concern about privacy. Professor Sullivan called this a misunderstanding of his earlier comments. First, there are issues of ownership of ideas. Secondly, work that is not yet published is often work that is in a hypothetical stage and may not, in fact, be substantiated by one's own subsequent research and, therefore, premature disclosure could embarrass the reputation of the faculty member, the college, and the university.

President Kaplowitz noted that many of the examples mentioned by Professor Heffernan are situations that would not require or merit invading a faculty member's privacy because they are situations or issues that could be resolved by just speaking to the professor about the alleged abuse, such as a hotplate in an office or a person sleeping overnight in an office. She said that the Senate had recommended that President Lynch appoint a Taskforce to develop a policy that would protect our privacy, not a policy that would give license to violate our privacy. Furthermore, she said, unlike at most colleges, most of our office staff and security staff are our students who have access to private information the confidentiality of which must be protected. The policy does not address the protection of the privacy of information about us or about our students by these individuals.

Professor Nelson said she thinks it would be beneficial to the College and to all of us to have

a privacy policy in place this year and so she asked whether this draft policy is salvageable at all, and if so, how it could be salvaged at this time. She added that she agrees with Karen's point, saying that the policy should include an explicit requirement that when information is desired by the administration, that the administration should request it directly from the individual rather than invade the person's privacy, whenever that is practicable. She said she agrees that the draft policy should state that a person should be asked directly for information as the first step and that that would usually be sufficient to obtain the needed information.

Vice President Kirk Dombrowski said that the proposed policy is not a privacy policy but a policy about the violation of privacy, and he said it will not have faculty support if it is not reworked into a policy protecting privacy in the workplace.

Senator Francis Sheehan said that the proposed policy is worse than no policy. He noted that a different standard is given for requiring employees to respect privacy than for administrators to do so. He suggested that the proposed policy is biased against college employees, such as faculty members, because it states, on page 3 of the proposed policy, that if an employee violates the privacy policy, then that employee "*shall* be liable to sanction" [emphasis added] but if an officer of the college violates the policy, that officer "*should* be liable to sanction" [emphasis added]. Dean Levine said the standard should have been the same and that this was an editorial mistake which will be corrected by using the term "shall" for both situations. President Kaplowitz added that the phrase "officer of the college" is too ambiguous because the CUNY Board of Trustees Bylaws state that the faculty are the officers of the University.

Senator Robin Whitney asked whether the CUNY Central Administration is working on a University policy which would make this whole issue moot. President Kaplowitz said she had asked that question at 80th Street and the answer is that they are not and have no plans to do so at this time.

President Kaplowitz asked for a show of hands as to whether the Senators want to have a privacy policy put in place this academic year or whether they are content with the current situation of having no policy. The Senate unanimously voted that a College policy that protects privacy and that makes clear that invasion of privacy is unacceptable is preferable to the absence of any College policy, given the laws and the ease for invasion of privacy that currently exist.

Dean Levine said that the Taskforce is committed to workplace privacy and that he has been educated by this discussion and thinks that the Taskforce members will be willing to meet and reformulate its proposal to be responsive to the comments made at the Senate. He asked how the Senate wishes to proceed.

President Kaplowitz proposed that she write a summary of the comments made at today's meeting which she will post by email to the Senate and to the faculty on the Taskforce and to the other faculty who are attending today's meeting. She suggested that those on the Senate and those at today's meeting add comments by email until October 20 by either using the "reply all" function or by emailing their comments to her, which she will forward to the Senate, to the Taskforce faculty members, and to the other faculty at today's meeting. The Taskforce can then use those comments as it continues its work. The Senate's Executive Committee and the Taskforce would then develop a protocol for proceeding. The Taskforce members, the Senators and guests approved of this plan of action.

In response, Dean Levine, in his capacity as the Chair of the Taskforce, as well as the other

members of the Taskforce, offered to withdraw the draft policy in response to the compelling issues raised during today's discussion and the plan of action that has been agreed upon.

The Senate expressed its appreciation to Dean Levine and to Professors Lou Guinta, William Heffernan, and Bonnie Nelson for accepting the Senate's invitation and for engaging in today's discussion and for being so responsive.

4. Discussion of the agenda of the October 16 meeting of the College Council

The sole agenda item is approval of the Minutes of the September 17 meeting.

5. Invited Guest: Provost Basil Wilson

Provost Basil Wilson was welcomed. He said he is pleased to have been invited. He spoke about the potential fragility of the social order at the College. President Kaplowitz said Provost Wilson is an extremely appropriate person to help in the efforts underway to restore harmony at the College, given the important role he played at the time of the student protests about 15 years ago.

Provost Wilson spoke about the importance of sending strong messages to the Presidential Search Committee about the attributes that we want the next president to have.

As for the Westport facility, Provost Wilson spoke about the approximately 18 classrooms in North Hall that will be closed to decrease the overcrowding of that facility and that these classrooms are to be replaced in the Westport building at 56th st and 10th Avenue.

President Kaplowitz asked the Provost to comment on the Chancellor's expressed wish that the College move to eliminate or to reduce our associate degree programs. Provost Wilson replied that he is gathering data about the associate degree programs, adding that he believes that the interventions which the College has developed for assisting the students in these programs have been successful in improving retention and graduation rates.

Senator Litwack asked whether the data now being gathered would be similar to the data we relied on when as a College we decided to raise our admission standards in the late 1990s. At that time we had analyzed data about our students which showed different results for students with different high school averages. Senator Litwack asked whether we would have the same kinds of data, which are, in fact, needed. The Provost said we would. He added that he would like to return to the Senate to discuss the new Honors Program that is being developed at John Jay.

By a motion made and seconded, the meeting was adjourned at 5:30 pm.

Respectfully submitted,

Edward Davenport
Recording Secretary

The City University of New York
Office of the General Counsel and Vice Chancellor for Legal Affairs
535 East 80th Street, New York, N.Y. 10021

Phone: (212) 194-5382
Fax: (212) 794-5426

ATTACHMENT A

Writer's directphone: (212) 794-5506
Writer's e-mail: frederick.schafflerfti@mail.cuny.edu

Frederick P. Schaffer
General Counsel

Jane Sovern
Deputy General Counsel

Amy S. Bennett
Jane E. Davis
Marina B. Ho
Abby L. Jennis
Richard Malina
*Daphna H. Mitchell**
Linda Myles
Paul F. Occhiogrosso
Katherine Raymond
*Michael D. Solomon**
Jo-Anne Weissbart

**Associate General Counsel*

October 6, 2003

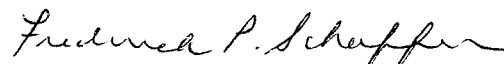
Professor James A. Malone
John Jay College of Criminal Justice
899 Tenth Avenue
New York, New York 10019

Dear Professor Malone:

I am writing in response to your request that I look into to the validity of the recent election of the faculty members of the presidential search committee at John Jay College of Criminal Justice. I have considered your memorandum to Dean Robert A. Ptachik dated September 30, 2003 and the letter dated October 1, 2003 from Professor Karen Kaplowitz to Dean Ptachik in reply to your September 30 memorandum. I have also considered the Guidelines for Presidential Searches adopted by the Board of Trustees of The City University of New York and the governance plan of the College. It is my conclusion that the election of the faculty members of the presidential search committee complied with the applicable provisions of those Guidelines and governance plan and was not otherwise invalid.

The most recent version of the University's Guidelines for Presidential Searches was approved by the Board of Trustees on October 25, 1999 and can be found in the minutes of the meeting on that date. A copy is enclosed for your convenience. It provides, in relevant part, that the three faculty members from the college shall be "elected as determined by the appropriate faculty governance body of the college concerned." In the case of John Jay College of Criminal Justice, that body is the Faculty Senate. The Faculty Senate met, deliberated and adopted procedures for the election of the faculty members of the presidential search committee and an election was held in accordance with those procedures. Your contention that the election process "was developed and implemented by a candidate running for a seat on the search committee" is thus factually incorrect. As for the other alleged irregularities that you cite, they amount to no more than your disagreement with the procedures that were adopted by the Faculty Senate.

Very truly yours,



Frederick P. Schaffer

ATTACHMENT A (cont)

c: Chancellor Matthew Goldstein
Chairperson Benno C. Schmidt, Jr.
Secretary and Vice Chancellor Jay Hershenson
Trustee Randy Mastro
Dean Robert A. Ptachik
President Gerald W. Lynch
✓ Professor Karen Kaplowitz



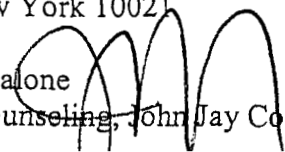
JOHN JAY COLLEGE OF CRIMINAL JUSTICE

ATTACHMENT B

The City University of New York
445 West 59th Street
New York, NY 10019
(212) 237-8000

September 30, 2003

TO: Dr. Robert A. Ptachik
University Dean for the Executive Office
535 East 80th Street
New York, New York 10021

FROM: Dr. James A. Malone 
Professor of Counseling, John Jay College

Re: Presidential Search Committee, John Jay College

I received your voice mail message on September 29, 2003. I am pleased that University Legal Counsel will look into our recent faculty election for search committee members. However, there are some particulars about the election that need to be illustrated, for Legal Counsel to consider:

1. The election design and process was developed and implemented by a candidate running for a seat on the search committee. This same candidate queried other candidates about their qualifications and eligibility to run.
2. The College Faculty Election Committee representing the College's governance body did not design or advance the electoral process.
3. The ballot utilized did not allow all candidates to **run** against each other.
4. The total College Faculty did not vote for the candidates. Only a select group of faculty voted. Therefore, those elected are not serving to totality of the faculty, only that small percentage of the faculty that was allowed to vote.

Based on the above, I would request a new election that would be properly and fairly presented to the totality of the John Jay Faculty.

CC: Chancellor Matthew Goldstein
President Gerald W. Lynch
Trustee Randy Mastro
Professor Karen Kaplowitz



JOHN JAY COLLEGE OF CRIMINAL JUSTICE

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

October 1, 2003

Dr. Robert A. Ptachik
University Dean for the Executive Office
The City University of New York
535 East 80th Street
New York, NY 10021

Dear Dr. Ptachik,

I am writing in response to Professor James Malone's September 30, 2003, letter to you.

Professor Malone's first part of his first assertion that "The election design and process was developed and implemented by a candidate running for a seat on the search committee" is either a misunderstanding or a misrepresentation. The Faculty Senate's Executive Committee, comprising 6 faculty, proposed two sets of options for each step in the process [Document A]. On September 3, the second day of the semester, at a specially scheduled meeting, the Faculty Senate deliberated and, by vote of the body, determined the design and process for electing the 3 faculty members on the search committee [Document B]. At that point there were no candidates, but more importantly, the design and process was determined by the Faculty Senate, the official voice of the faculty of John Jay College [Document H]. In several cases the Faculty Senate voted to reject both options proposed by the Executive Committee for each of the various steps in the process and to adopt different processes.

Furthermore, as stated in the Faculty Senate Constitution, all Senate meetings are open to all members of the John Jay faculty, all of whom may participate in all discussions [Document H]. On behalf of and at the direction of the Senate's Executive Committee, in my capacity as President of the Faculty Senate, I sent voicemail and email messages to the entire faculty inviting them to attend this extremely important September 3 meeting. The Minutes show which non-Senators among the faculty attended the September 3 meeting [Document B].

Professor Malone's second part of his first assertion that "This same candidate queried other candidates about their qualifications and eligibility to run" is not true unless he is referring to someone other than myself. There were a number of candidates who may have acted in this manner, although no one queried me, except about my positions and my willingness and ability to serve, which I considered to be entirely appropriate and responsible on their part. I can only speak for myself: I did not query anyone about her or his qualifications or eligibility to run. Nor was there any reason to do so: the only qualification is the one delineated in the CUNY Search Guidelines, which state that the faculty members on the search committee must have faculty rank or faculty status, based on Sections 8.1, 8.2, and 6.2(a), and 6.3(a) of the Board Bylaws. All the candidates were eligible to run: all met the CUNY Guideline requirements. The Senate did not

add any additional qualifications or eligibility requirements [Documents A, B, C]. Furthermore, there was no need to query candidates about their qualifications: all candidates were “invited and urged” to present oral statements at the Senate’s September 11 meeting at which time they could state their qualifications [Documents A, B, C]. (This was not, however, a requirement.) All the candidates did, in fact, make oral presentations and so there was no need to inquire about qualifications. At the September 11 meeting, the Vice President of the Faculty Senate, Professor Kirk Dombrowski, presided (and I sat in a seat different and far removed from the one I sit in as President of the Senate.) Furthermore, all candidates were “invited and urged” to provide written statements about their qualifications in paper and email format (although, this, too, was not a requirement) [Documents A, B, C].

The Faculty Senate did direct me, in my capacity as President of the Faculty Senate, to transmit information to the entire faculty, including such information as your Office provided directly to me, in my capacity as President of the Faculty Senate, about such matters as the anticipated meeting schedule, the likelihood that meetings would be held during the January intersession, and the request by the Search Committee Chair that committee meetings begin no earlier than 5 PM. At the Senate’s direction, I provided such information to the entire faculty.

Professor Malone’s second assertion, that “The College Faculty Election Committee representing the College’s governance body did not design or advance the electoral process” is predicated on false assumptions or misunderstandings. The College Faculty Elections Committee is a 5-faculty Committee, elected by the College Council, which is chaired by the President of the College. However, this Committee is not named in the College’s Charter of Governance. The College’s Charter is on file with the Secretary of the Board of Trustees: the Charter does not contain any reference to a Faculty Elections Committee or to any other elections committee. In its entire history, at least since 1986, which is as far as my experience with the Committee extends, the Faculty Elections Committee has only counted ballots; it has never been involved in the “design or advance” of any election.

The Faculty Senate’s Executive Committee was empowered by the Faculty Senate to determine who should count the ballots and the Executive Committee decided to request the Faculty Elections Committee to do so because none of the five Faculty Elections Committee members happened to be a member of this year’s Faculty Senate and none was a member of this year’s Council of Chairs, and, therefore, none was a member of the electorate, and, as it turned out, none was a candidate for election to the search committee [Documents E, F, G].

Professor Malone’s third assertion that “The ballot utilized did not allow all candidates to run against each other” is also the result of misunderstanding or is a misrepresentation. The Senate decided, in choosing an option different from either of the options proposed by the Executive Committee, that the electorate would vote for one candidate from among those candidates from departments that have a major; would vote for one candidate from among those candidates from departments that do not have a major; and would vote for a third candidate from among all the remaining candidates. Thus the ballot reflected the will of the Senate and, furthermore, the candidates did, in fact, run against each other, both within their own categories and, then, in the case of those who did not garner the most votes in their category, they ran against all the remaining candidates for the third seat on the search committee.

Professor Malone’s fourth assertion is that “The total College Faculty did not vote for the candidates. Only a select group of faculty voted. Therefore, those elected are not serving to [sic]

totality of the faculty, only that small percentage of the faculty that was allowed to vote.” The decision that the Faculty Senate and the Council of Chairs would together comprise the electorate was a decision by the Faculty Senate in a meeting open to the entire faculty, all of whom could participate in the discussion. The Senators and the Chairs, the electorate for the search committee election process, have been elected by the faculty, by their peers, and they represent the faculty. Furthermore, four adjunct faculty are Faculty Senate members and, thus, the adjunct representatives, elected by the adjunct faculty, were able to be included in the election process [Document H]. The Senate rejected the option presented by the Executive Committee that the entire full-time faculty be the electorate; instead, the Senate voted to adopt the alternative option presented by the Executive Committee that the Senate and the Council of Chairs together be the electorate. (The Senate could have chosen a third option, that the Senate, alone, be the electorate but it did not do so nor did the Executive Committee recommend that option) [Documents A, B].

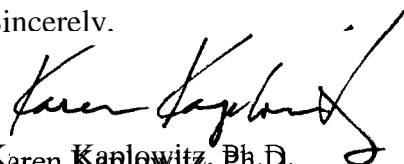
The options chosen by vote of the Faculty Senate enabled the entire electorate to hear each candidate’s oral statement and to read each candidate’s written statement. In this way, the votes could be cast by an informed electorate.

The time constraint, given that the first day of classes was September 2 and the first meeting of the search committee was September 24, was a significant factor in the decisions made by the Faculty Senate. The Senate decided upon a series of processes that could be implemented and effectuated within a very tight timetable and these decisions were made in an open and transparent manner. Ultimately, the election results, which were decisive, are a clear mandate of support for the three faculty who were elected [Documents F, G].

Professor Malone’s concluding request in his September 29 letter is: “Based on the above, I would request a new election that would be properly and fairly presented to the totality of the John Jay Faculty.” Based on my knowledge and information, it is a request without merit.

I am available to respond to any questions and to provide any additional documents.

Sincerely,



Karen Kaplowitz, Ph.D.
President, Faculty Senate

cc. Chancellor Matthew Goldstein
Chair Benno C. Schmidt, Jr.
Trustee and Search Committee Chair Randy M. Mastro
Vice Chancellor for Legal Affairs Frederick P. Schaffer
Vice Chancellor and Board Secretary Jay Hershenson
President Gerald W. Lynch
John Jay Faculty Senate
Professor Harold Sullivan, Chair, Council of Chairs
Professor Valerie Allen, Chair, Faculty Elections Committee
Professor James Malone

att.

The following documents, to which I refer in my letter, are attached: ATTACHMENT C (cont)

Document A: A 3-page set of proposed options for each step in the process of electing the 3 faculty to the search committee: this document was sent by the Faculty Senate Executive Committee for the Faculty Senate's consideration at its specially called meeting of September 3, 2003. This document was developed after thorough consultation by the 6-member Executive Committee of the Faculty Senate and was sent with the agenda in advance of the September 3 meeting. The document was prepared after the Faculty Senate's Executive Committee invited the entire full-time faculty and a large percentage of the adjunct faculty to submit suggestions to the Executive Committee about what processes the Faculty Senate should adopt for the election of the 3 faculty members. Please note that this document states that each set of options represents the best approaches in the opinion of the Executive Committee but that the Senate could adopt a different option for any of the steps or could adopt, in some cases, both proposed options.

Document B: The Minutes of the September 3, 2003, special meeting of the Faculty Senate. These Minutes were approved by the Senate on September 25 by unanimous vote. Please note that the Senate did, in fact, reject the options that the Executive Committee proposed for several of the steps and did adopt some of the proposed options. In each case, the option selected by the Senate was by affirmative vote of all present except for one negative vote and one option selected was by unanimous vote of all Senators present.

Document C: The Minutes of the September 11 meeting, which were approved by unanimous vote of the Senate at its September 25 meeting. The September 11 meeting was a joint meeting of the Faculty Senate and the Council of Chairs, in accordance with one of the decisions of the Faculty Senate at its September 3 meeting. At the September 11 meeting, the candidates presented oral statements and a discussion took place by those in attendance about the qualifications and attributes that the next President should possess and about the direction the College should take. The Vice President of the Faculty Senate, Professor Kirk Dombrowski, presided over the meeting.

Document D: A faxed copy of the ballot provided to all members of the electorate.

Document E: A faxed copy of the envelope pre-addressed to the Chair of the Faculty Elections Committee, Professor Valerie Allen. This envelope was provided to each member of the electorate, with the ballot, and with a blank envelope in which the ballot was to be sealed. The envelopes were to be delivered or mailed either through inter-office mail or through a delivery service to Professor Allen.

Document F: A letter from Professor Valerie Allen, Chair of the Faculty Elections Committee, reporting the results of the election and the members of the Committee who counted the ballots and verified the election results.

Document G: The vote tally signed by the four members of the 5-member Faculty Elections Committee who counted and certified the election results.

Document H: A copy of the Constitution of the Faculty Senate, which was ratified by the faculty of John Jay in 1988. The Faculty Senate is recognized in John Jay's Charter of Governance and, indeed, the Charter provides that the Faculty Senate has the responsibility for determining how 8 of the 28 faculty seats on the 56-member College Council are to be filled each year. When the Charter was amended, the CUNY Office for Legal Affairs reviewed and approved the Senate Constitution.



JOHN JAY COLLEGE OF CRIMINAL JUSTICE

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office of *the* Dean of Graduate Studies and Research

MEMORANDUM

To: Professor Karen Kaplowitz
President, Faculty Senate

From: Dean James P. Levine
Chair, Workplace Privacy Committee

Re: Proposed Privacy Guidelines

Date: September 11, 2003

In response to a request by the Faculty Senate, President Lynch in December 2002 appointed a workplace privacy advisory committee to recommend policy for John Jay College. Its membership is as follows:

Dean James P. Levine, Chair
Mr. Bob Banowicz
Professor Anthony Carpi
Dean Don Gray
Professor Lou Guinta
Professor William Heffernan
Professor Bonnie Nelson
Dean Richard Saulnier

The committee concluded its deliberations in June 2003. After a searching fact-finding expedition and careful consideration of a range of issues, the committee unanimously approved the enclosed recommendations and policy guidelines at John Jay College of Criminal Justice.

President Lynch has reviewed and approved these proposed guidelines. I **am** now forwarding them to the Faculty Senate for its consideration. After the Senate deliberates, I would like to place them on the College Council's agenda for approval.

I look forward to the Senate's reaction. Feel free to get in touch with me if you want to discuss the guidelines before presenting them to the Senate.

Cc: Workplace Privacy Committee

JOHN JAY COLLEGE OF CRIMINAL JUSTICE
City University of New York

PROPOSED PRIVACY GUIDELINES

Preamble. The growth of information-storage technology and the development of devices for conducting surveillance of individuals have made privacy a major concern in modern organizations. Academic institutions have particularly strong reasons to be concerned about privacy. The freedom to inquire, to think, and to express ideas, so necessary to academic institutions, rests on **an** expectation of privacy, and that the privacy of those who teach, study, work, and conduct research in the college will be respected.

Academic institutions also have strong reasons to be concerned about the personal information contained in their files. Student transcripts contain critical personal data. The personnel files of faculty and other staff members refer to medical histories, salaries, and past employment. And faculty research files are replete with data essential to work that is in progress but not ready for publication. A college's privacy policy must provide a coherent, readily understandable **framework** for dealing with these and other facets of informational privacy. These guidelines are designed to provide such a framework for John Jay College of Criminal Justice.

The Legal Baseline. The guidelines have not been created in a legal vacuum. Federal and state statutes establish a context for determining access to personal information held by the college's officials. The regulations of administrative agencies are also relevant here, as are the judgments of federal and state courts. Policies ordained by the City University of New York also serve as a source of constraint governing access to personal information. Taken together, these legal rules can be said to provide a baseline for privacy protection at the college. The privacy guidelines contained in this directive will sometimes *exceed* this baseline; they should not be interpreted **as** providing less protection than is already provided by the legal baseline.

A Note on Defining Privacy. Because the guidelines establish procedures for protecting privacy, it is not essential to provide a precise definition of the term. In applying the guidelines' procedures, college officials can rely on conventional understandings of the term without having to worry about the precise lines to be drawn about what is and what is not private.

This said, it is nonetheless helpful to note the general thrust of privacy concerns. When we speak of privacy, we focus on two different matters. *Privacy of the person* has to do **with** the practices that respect the body and solitude. By its very nature, privacy of the person is limited to the space an individual occupies at a given time. *Informational privacy*, by contrast, is not subject to such a limitation. Even when an individual is far removed from repositories of information about his or her personal life, that individual continues to have a legitimate interest in maintaining the confidentiality of the information they contain.

Each of these facets of privacy is informed by a distinction between what has and has not been deliberately revealed to the world-at-large. If someone chooses to reveal a portion of her body (her face, for example) or information about the facts of her life to anyone who might be interested, then the act of presenting these matters to the public constitutes a relinquishment of a privacy claim of what was presented. Special-use presentation, however, *cannot* be interpreted as a relinquishment. For example, if someone reveals information about the facts of her life while filling out a college form, the understanding associated with completion of the form is that the information is being presented to facilitate the work of the office issuing the form—the information, it is implicitly understood, is not to be disseminated to the public-at-large. Most, though not all, privacy issues at the college involve information provided to officials on a special-use basis. The aim of the guidelines is to protect such information while ensuring that college officials have access to information necessary for efficient administration.

The Units of Administrative Responsibility. The guidelines treat the various offices within the college (for example, the Personnel Office, the Office of the Dean of Students, etc.) as the basic units of responsibility for implementing the guidelines. A full list of these offices can be found at the beginning of the college's telephone directory under the heading "Academic, Administrative and Departmental Offices." A Privacy Review Board will be charged with enforcement of the guidelines in settings where an individual is aggrieved by an office's method of implementation.

The Structure of the Guidelines. The guidelines are informed by a distinction between routine and special-needs access to information. Designated employees of the various college offices must have access to information managed by their offices—thus the rules for routine access. Also, there will be occasions when administrators will need to discover information about a member of a community on a one-time basis—thus the rules for special-needs access.

The guidelines require that rules be drawn up by each office to determine routine access to information by the office's employees. The guidelines also make allowance for special-needs access to information by administrators with general responsibility for the operation of the college.

The Guidelines

First Guideline: Routine Access

1.1 Routine Access Defined. An employee of a college office has routine access to information held by that office when he is required to seek that information and use it in the course of his job.

1.2 Abuse of Routine Access. An employee abuses routine access if that employee seeks information not necessary for the performance of his job or uses information in a manner inconsistent with his job description.

1.3 Sanctions for Abuse of Routine Access. If an employee of a college abuses his routine access, that employee shall be liable to sanction by the head of his office. If an officer of the college abuses routine access, that officer should be liable to sanction from the person to whom the officer reports.

Second Guideline: Special-Needs Access

2.1 Special-Needs Access Defined. An administrator of the college may have special-needs access to information held by a college office when there is an issue pertaining to the college's welfare that makes it necessary for the administrator to request information from that office.

2.2 Officials Entitled to Claim Special-Needs Access. Only the president and the vice-presidents of the college are entitled to seek information on a special-needs basis.

2.3 Procedure for Securing Special-Needs Access. A Written memorandum, signed by the president or one of the vice-presidents, must be sent to the appropriate director of a college office requesting information on a special-needs basis. This memorandum must be placed in a file.

2.4 Instances when Special-Needs Memoranda Are Required. A special-needs memorandum is necessary if college officials deny employees access to their offices or seek to examine material contained in their offices. Such a memorandum is also necessary to examine the electronic files and e-mail messages of an employee of the College whether those files and email messages reside on a personal computer that the college has made available to an employee of the college or on a college-owned server (outside of files that are routinely shared in the course of work-related activities). This list is not intended to be exhaustive. There may be other occasions of a similar nature in which a special needs memorandum may be required.

2.5 Request for Information from Outside Sources. No entity outside John Jay College may have access to private information contained in John Jay files except as required by law or authorized on a special needs basis.

Third Guideline: Privacy Review Board

3.1 Jurisdiction of the Board. A Privacy Review Board shall be established to monitor compliance with these guidelines. Any member of the college community is entitled to seek a ruling from the board concerning the application of the guidelines to information held by the college pertaining to that person.

3.2 Correction of Board Rulings. All rulings by the Privacy Review Board are subject to revision by the president of the college.

3.3 Composition of the Board. The board shall be composed of three full-time employees of the college, one of which shall be a member of the administration (appointed by the president), another a professor (elected by the Faculty Senate), and a higher education officer (appointed by the Council of HEO's). The term of office shall be three years.