

## **Faculty Senate Minutes #259**

### **John Jay College of Criminal Justice**

**Thursday, April 15, 2004**

**3:15 PM**

**Room 630 T**

**Present (29):** Desmond Arias, Luis Barrios, Marvie Brooks, Orlanda Brugnola, Effie Cochran, Edward Davenport, Peter DeForest, Kirk Dombrowski, Janice Dunham, Joshua Freilich, P. J. Gibson, Heath Grant, Amy Green, Norman Groner, Judith Hawkins, Ann Huse, Karen Kaplowitz, Kwando Kinshasa, Tom Litwack, John Matteson, Lorraine Moller, Ellen Sexton, Francis Sheehan, Liliana Soto-Fernandez, Ayeley Sowah, Sung Ha Suh, Thalia Vrachopolous, Robin Whitney, Patty Zapf

**Absent (9):** Michele Galietta, Konstantinos Georgatos, Betsy Gitter, Max Kadir, Gavin Lewis, Evan Mandery, Joseph Napoli, Davidson Umeh, Alisse Waterston

**Guests:** Professors Ned Benton, Blanche Wiesen Cook, Robert Hong, Andrew Karmen, Jerry Markowitz, Bonnie Nelson, Rick Richardson, Harold Sullivan

**Invited Guest:** Vice Chancellor for Legal Affairs and Counsel to the Board Frederick P. Schaffer

### **Agenda**

1. Announcements from the chair
2. Approval of Minutes #258 of the March 18, 2004, meeting
3. Selection of the recipients of the 2 Faculty Senate Awards for Outstanding CUNY BA Students:  
Secretary Edward Davenport and Senator Elisabeth Gitter
4. Ratification of election to fill uncontested seats for delegates to the University Faculty Senate
5. Update on the Presidential Search
6. Review of the agenda of the April 19 meeting of the College Council
7. Update: Jointly Proposed Policy of the Council of Chairs and Faculty Senate on Academic Freedom and Workplace Privacy
8. Invited Guest: CUNY Vice Chancellor for Legal Affairs and General Counsel to the CUNY Board of Trustees Frederick P. Schaffer: Discussion about academic freedom and privacy

#### **1. Announcements from the chair**

On the previous day, the College's Standards Committee approved the Faculty Senate's proposal that the College subscribe to turnitin.com, the online plagiarism detection service, as a way to deter students from plagiarizing and also to help faculty respond to potential, suspected, and

actual cases of plagiarism. The Senate had voted to make this recommendation in May 2003. The proposal was immediately sent to the College Council Executive Committee which placed the item on the agenda of next month's April 19 College Council meeting for action by that body.

**2. Approval of Minutes #258 of the March 18,2004, meeting**

By a motion made and adopted, Minutes #258 of the March 18 meeting were approved.

**3. Selection of the recipients of the 2 Faculty Senate Awards for Outstanding CUNY BA Graduating Students: Secretary Edward Davenport and Senator Elisabeth Gitter**

Secretary Edward Davenport, who with Senator Betsy Gitter comprise the Senate's Awards Nominating Committee this year, explained that several years ago the Senate created two awards: one for the outstanding graduating CUNY BA student in the humanities and a second for the outstanding graduating CUNY BA student in the social sciences and professional studies. He noted that the Faculty Senate created these awards because of the academic excellence of the CUNY BA program and because CUNY BA students are not permitted to receive awards from their home college. He reported that there were many eligible students with truly excellent academic records again this year.

Secretary Davenport named the two students, for the Faculty Senate's consideration and vote, whom he and Betsy Gitter propose receive the Senate's CUNY BA Awards: Ms. Melissa Marlin was recommended to receive the Faculty Senate CUNY BA Award in the Humanities. She has a joint major in History and the Dynamics of Criminal Behavior and a 3.73 GPA. Her CUNY BA faculty mentors are Professors Carol Groneman and Sondra Leftoff. Ms. Agnieska Gospodarczyk was recommended to receive the Faculty Senate CUNY BA Award in the Social Sciences and Professional Studies. Her major is Forensic Biochemistry and she has a 3.53 GPA. Her faculty mentors are Professors Maki Haberfeld and Lawrence Kobilinsky. The Senate discussed the recommendations and voted unanimously that the two students be the recipients. The Awards will be presented at the June 1 Awards Night ceremony.

**4. Ratification of an election to fill seats for delegates to the University Faculty Senate**

The Senate ratified the uncontested election of Professors Karen Kaplowitz, Thomas Kucharski, and Timothy Stevens to fill three of the four vacant full-time delegate University Faculty Senate positions. This leaves one delegate position still unfilled. The Senate elected Professor Ned Benton to fill one of the three alternate delegate positions. The delegate position for the representative of the adjunct faculty/college laboratory technicians is being determined by a secret, mail ballot because two candidates are running for the one seat.

**5. Update on the Presidential Search**

Each of the four Presidential finalists – Jeremy Travis, Daniel Maier-Katkin, Frank J.

Thompson, and Ronald Goldstock (in the order of their campus visits) spent a full day at John Jay meeting with groups of faculty, students, staff, and administrators, and with members of the entire College community at an open meeting. Each group that met with the finalists was required to provide a written report to 80<sup>th</sup> Street by the Monday following the last finalist's visit. The three faculty members on the Search Committee, Professors Ned Benton, Karen Kaplowitz, and Maureen O'Connor, attended each session each of the four days as did University Dean Robert Ptachik and CUNY Director of Executive Searches Dolly Martinez. On the day following each finalist's campus visit, each then met with the Chancellor, Vice Chancellors, and others at the Central Office as well as with those Trustees who were available. Reference and background checks are now taking place.

The Chancellor will make his recommendation to the CUNY Board of Trustees at its next meeting on May 24 in Executive Session and the Board of Trustees will then vote in public session.

#### **6. Review of the agenda of the April 19 meeting of the College Council**

As reported at the beginning of today's Senate meeting, on the previous day, April 14, the College's Standards Committee approved the Faculty Senate's May 2003 proposal that the College subscribe to turnitin.com, the online plagiarism detection service, as a way to deter students from plagiarizing and also to help faculty respond to potential, suspected, and actual cases of plagiarism. [The Senate applauded this news.] The vote of the Standards Committee was unanimous and had the strong support of the student members of that Committee. Indeed, one of the student members had raised the problem of increased plagiarism by John Jay students at a student leadership conference several years ago and was a particularly strong supporter of the Senate's proposal.

The proposal was transmitted from the Standards Committee to the College Council for its action and is on the agenda of the April 19 College Council meeting.

Also on the College Council agenda is a Report from the Faculty Senate and Council of Chairs about the jointly developed proposed Chairs/Senate Policy on Privacy and Academic Freedom, for information only: the reason it is for information only will be explained in a few minutes [see Agenda Item #7]. Also, Dean Levine will provide a report about the proposal that had been developed by the Taskforce on Privacy that he chaired.

#### **7. Update: Jointly Proposed Policy of the Council of Chairs and Faculty Senate on Academic Freedom and Workplace Privacy [Attachments A, B, C]**

At the Faculty Senate's invitation, Vice Chancellor for Legal Affairs and General Counsel to the CUNY Board of Trustees Frederick Schaffer is meeting with the Senate today at 4 PM. In preparation for this meeting with the Vice Chancellor, because many Senators were not on the Senate the previous year, and because many faculty who are not Senators are at today's meeting, President Kaplowitz provided background about the Council of Chairs and Faculty Senate Jointly Proposed Policy on Privacy and Academic Freedom [Attachment A] and about its development and the approval process to date.

In October 2001, Professor Bonnie Nelson, Co-Chair of the Faculty Senate's Technology Committee, brought to the Senate a Resolution, which the Committee had developed and approved,

on the use of software to monitor computer use and privacy issues. The Senate endorsed that Resolution [Minutes #218]. The next month, in November 2001, Vice President Pignatello and DoIT Director Bob Banowicz came to the Senate, at the Senate's invitation, to discuss the Resolution [Minutes # 221].

At that meeting, VP Pignatello stated what is factually true: the College owns our computers and desks and file cabinets and can legally look at anything it owns at the College and employees have no privacy rights in the workplace. That statement raised faculty consciousness even more than the Senate Technology Committee's Resolution had. The Council of Chairs then invited VP Pignatello to a meeting and then VP Pignatello and Director Banowicz met with the Curriculum Committee, because that Committee had passed a Resolution on a related issue.

Then the following month, in December 2001, representatives of the Faculty Senate's Technology Committee and of the Curriculum Committee's Technology Committee met with VP Pignatello, Director Banowicz, Associate Provost Kobilinsky, and Provost Basil Wilson. Also at the meeting were Professors Karen Kaplowitz and Harold Sullivan representing the Senate and the Chairs. At this meeting the representatives of the two committees agreed to work together to develop a proposed policy on the privacy of computer use and everyone at that meeting agreed that the proposed policy they developed would be considered and commented on by the Chairs, by the Senate, by the Student Council, by the College Administration, and ultimately by the College Council for its vote, so as to make it College policy.

Subsequently, the two committees determined that what is needed is not only a computer privacy policy but a policy about issues of privacy that both includes and extends beyond the computer and that protects the privacy of one's office, paper files, desk, and so forth and they also decided that this task was beyond the charge of either committee.

When this recommendation of the two committees was reported back to the Senate, the Senate passed a Resolution in November 2002, which was addressed to and sent to President Lynch, recommending that President Lynch appoint a taskforce of administrators and faculty, with the administrators named by the President and the faculty members named by the Senate, to develop a proposed privacy policy [Minutes #235]. President Lynch did establish a taskforce, naming Dean James Levine its chair, and President Lynch named all the members without consulting with the Faculty Senate.

The taskforce wrote to the CUNY Legal Office at 80<sup>th</sup> Street, informing them about the taskforce and its charge and, in turn, received a letter in April 2003, a year ago, from one of the 12 lawyers in the CUNY Office of Legal Affairs, expressing interest in seeing a copy of John Jay's policy when it had been developed, a letter which implicitly indicated that it is permissible for the College to develop its own policy.

Then the taskforce wrote and issued its proposed privacy policy to President Lynch, who signed off on it. The taskforce then sent the policy to the Faculty Senate in September 2003 for the Senate's comments, with a cover letter stating that President Lynch had approved the policy and that upon receiving the Senate's comments and suggestions, the policy would be revised and sent to the College Council for action [Minutes #249].

When the Senate discussed the proposed policy in September 2003 [Minutes #249], many very serious problems and disagreements with the proposed policy were articulated and, therefore, the Senate decided to invite the chair and the faculty members of the taskforce to meet with the Senate. Dean Levine and Professors William Heffernan (the lead author), Lou Guinta, and

Bonnie Nelson attended the meeting as did many faculty not on the Senate [Minutes #250]. The taskforce members acknowledged the seriousness and legitimacy of the issues raised during the meeting, especially but not limited to issues regarding third party privacy – such as the confidentiality requirements for the study of human subjects – and, therefore, it was decided that a summary of the comments made during the Senate meeting would be emailed to the taskforce by the Senate President and that the Senate members and the other faculty at the meeting would have a week to email any additional comments for the Senate's and the taskforce's consideration. It was agreed that the taskforce would then work on the issues raised and report back.

In the meantime, a Labor-Management meeting took place in December 2003, at which President Lynch agreed with the PSC Executive Board that the College needs a strong privacy policy. At this point, Professor Harold Sullivan began drafting an alternate privacy policy with Senator John Matteson's help and then Senator Francis Sheehan became a major participant with Professor Harold Sullivan in the writing of a proposed policy. Karen Kaplowitz also participated but to a much lesser extent: the two authors of the policy are Harold Sullivan and Francis Sheehan.

Last month, the Council of Chairs, on March 17, and the Faculty Senate, on March 18, amended and approved the Chairs/Senate proposed policy [Minutes #258]. At that point, a member of the John Jay administration sent the Chairs/Senate document to 80<sup>th</sup> Street, at which point Vice Chancellor Schaffer read it and said that a college can not have its own privacy policy, that any policy on privacy has to be University-wide. Upon ascertaining which faculty had worked on the Chairs/Senate policy, Vice Chancellor Schaffer asked Karen Kaplowitz, whom he knows, to call him, and the two spoke for about an hour on March 30.

President Kaplowitz reported that she explained to Vice Chancellor Schaffer that we had been given the clear impression by the CUNY Legal Office that there was no impediment to John Jay developing its own privacy policy and she reviewed the history of this project for him. The Vice Chancellor informed her that he had had no idea that anything had ever been communicated to or by his Office, that he had never seen the letter that one of the lawyers on his staff had sent to the taskforce and, she said, he was extremely apologetic. She also told him that people have put in hundreds of hours of work, both taskforce members and members of the Chairs and Senate. Vice Chancellor Schaffer, while extremely apologetic, was very clear that a college policy is not permissible. And so she asked him if he would come to today's Senate meeting, which was the next scheduled Senate meeting, to convey his position and his reasons and he agreed to do so.

Two days later, on April 1, the day prior to spring recess, at Dean Levine's suggestion, several members of the taskforce and Professors Harold Sullivan, Francis Sheehan, and Karen Kaplowitz had an hour long speakerphone discussion with Vice Chancellor Schaffer and three of his lawyers.

President Kaplowitz reported that during her March 30 conversation with Vice Chancellor Schaffer she recalled that since a year ago, at meetings of the Executive Committee of the University Faculty Senate, she has raised with him the need for a University policy on privacy and his response has been that this issue had not risen to his attention as something that is needed but he had asked her for examples of privacy policies at other universities and in November 2002 she had sent him the URLs of policies, which Professor Bonnie Nelson had provided to her. At the Vice Chancellor's request, she resent the email, which was dated more than a year ago, so that he could review the issue in preparation for his meeting with the Senate today.

She reported that Vice Chancellor Schaffer told her that there are several reasons why a college can not have its own privacy policy – that is, why a privacy policy must be a University

policy. One reason is that because issues sometimes come directly to him and to other vice chancellors at 80<sup>th</sup> Street and because the vice chancellors have to operate through the administrators of the college in question, he and the other vice chancellors can not be told by a college's administrators that those administrators can not take the needed action because their college's internal policy prevents them from doing so: he said University administrators have to do their work and meet their obligations and cannot be prevented from doing so because of a college policy.

Another reason Vice Chancellor Schaffer gave as to why a college can not have its own privacy policy is that the Chairs/Senate policy, which deals in part with the internet and email and computer use, addresses John Jay actions but all transmissions that go from and to John Jay computers go through the 57<sup>th</sup> Street CUNY mainframe and the 57<sup>th</sup> Street CUNY staff can not be held obligated to a John Jay policy and, therefore, were the College to adopt the policy, a false expectation of privacy would be created at John Jay.

She said that one of her responses was that if a college is not permitted to create its own privacy policy, then the University has to do so, and the Vice Chancellor immediately offered to name a University-wide faculty and administration taskforce to develop a CUNY privacy policy.

Furthermore, during the speakerphone conversation two days later, on April 1, Vice Chancellor Schaffer said he and his legal staff are looking at the CUNY Computer User Responsibilities Statement [Attachment B] to bring it up to date and that they are also looking at the computer user policies at other universities. During the conversation, the faculty spoke about the fact that computer user privacy is only part of the issue; also needed is a policy about the privacy of one's office, desk, files, phonemail, mail, and so forth. The IRB [Institutional Review Board] issue was raised during both telephone conversations and Vice Chancellor Schaffer acknowledged that IRB is a compelling argument as to the necessity of having a privacy policy.

President Kaplowitz said that during her telephone conversation with Vice Chancellor Schaffer on March 30, she explained that she could not and would not unilaterally suppress a policy that had been approved by the Faculty Senate nor could she nor would she ignore a resolution adopted by the Faculty Senate to submit the policy to the College Council for its action. He said he certainly understood this but added that if the policy were to be approved by the College Council, he would have no choice but to nullify the policy.

During the speakerphone conversation two days later, the Vice Chancellor had said that if our College Council were to pass the policy, he would have to immediately have the Board of Trustees pass a resolution nullifying our policy.

So the Senate Executive Committee and the Council of Chairs Executive Committee had to decide before today's meeting what to do about the decision of both the Chairs and the Senate to submit the proposed policy to the College Council because the agenda deadline for the April 19 College Council meeting was prior to the subsequent meetings of the Chairs and of the Senate: the agenda deadline was April 8.

The majority of the members of the two Executive Committees decided to submit the item to the April meeting of the College Council as a report only, that is, for discussion purposes only, and not for a vote, because of the tremendous efforts which would be required to have the policy approved by the College Council, given the position taken by the Vice Chancellor, efforts which might not be successful, and then, if the policy were to pass, the policy would be nullified by the Board of Trustees. Those who voted to submit the policy as a report only and not for action felt that to do otherwise would not be politic and would not be in the best interests of our College. Others on

the two Executive Committees did not agree and felt very strongly that the policy should be submitted to the College Council for action.

If the Senate does not agree with the majority decision to not submit the policy for action by the College Council in April, the policy can still be submitted for the May meeting of the College Council: this is a decision the Senate must make by April 30, which is the deadline for agenda items for the May meeting. Because the Senate meets again on April 28, we can meet with Vice Chancellor Schaffer today, hear his position and reasons, and have him hear what the faculty concerns are, and the Senate can make that decision at our April 28 meeting. It is possible that when Vice Chancellor Schaffer meets with the Senate and with the other faculty here today, he will modify his position.

Senator Orlanda Brugnola asked if Vice Chancellor Schaffer has read the latest version of the Chairs/Senate privacy and academic freedom policy. President Kaplowitz said he has and that what is very, very important is that the Vice Chancellor said he completely agrees with the preamble of the policy, that is, he completely agrees that there is a different need for privacy for faculty, because of academic freedom needs, than exists in traditional workplace situations such as at businesses and corporations [Attachment A].

President Kaplowitz reported that Professor Susan O'Malley, the Chair of the University Faculty Senate (UFS), has already been asked by Vice Chancellor Schaffer to name three faculty to serve on the taskforce and Professor O'Malley asked her whom she recommends at John Jay and she recommended both Professor Harold Sullivan and Senator Francis Sheehan. Upon ascertaining that Senator Sheehan declines appointment on the taskforce, she recommended Professor Sullivan. Professor O'Malley then recommended for appointment Professor Sullivan as well as Professor Stefan Baumrin of Lehman and the Graduate Center, who is a lawyer and professor of philosophy and a member of the UFS Executive Committee, and Professor Philip Peccorino of QCC, the chair of the UFS Committee on Technology. Also on the taskforce will be several college presidents and members of the Chancellery and other CUNY administrators.

Professor Sullivan said that he was among those who voted to not submit the policy to the College Council for a vote in April. He said that as a member of the CUNY taskforce he will urge as the starting point an identification of the kinds of extraordinary situations that would require and justify an intrusion of faculty privacy. He said he thinks the Chairs/Senate policy should be a starting point and he will bring that document to the taskforce but he will also tell the taskforce that, quite frankly, he does not think our policy goes far enough. He noted that we were trying to write a policy that covers not only faculty but staff and others, in part because half the members of the College Council are not faculty and they would also be voting on the policy.

Professor Jerry Markowitz said that if the policy were to be approved by the College Council and then nullified by the Board of Trustees, he does not see how those actions would harm us in any way. He said that in any case the Vice Chancellor has to hear that this policy and these protections are what the faculty at John Jay want.

Senator Francis Sheehan said he was among those who voted to submit the policy to the College Council for a vote and not just as an information item and had argued that if our College administration were successful in having the policy voted down, then so be it. He had taken that position because if we were to put the policy forward for a vote, the bar would be set for the taskforce that the Vice Chancellor is establishing. He said that during the speakerphone conversation he had asked Vice Chancellor Schaffer whether there is anything right now to stop administrators from entering our offices, from going through our desks and searching them, from

going through our file cabinets, and the answer was no, there is not.

[Vice Chancellor Schaffer arrived at this time.]

Senator Sheehan said we could set the bar, the threshold, for what the University develops as a policy by saying this is our document, this is what we think about the issue, that we do not think, for example, it is appropriate to use keyboard logs. He explained there is no policy right now that stops the administration from logging our keyboard and searching any time anyone types certain words or phrases: the software exists to do this. We know from our DoIT people that the software packages they use include software to do such logging and that they cannot remove that software from the software packages and so they have the capacity but no policy to deter the use of it. The software can log the password to one's private email account, for example.

We all agree, Senator Sheehan said, that the chances that our keyboards would be logged right now are very slight because we have faith in the people who run our system but we should not operate a college based on faith. Policies should not be based on the good will of others, Senator Sheehan said. Rather, we should have policies that protect when that good will does not exist. This privacy policy is a compromise from what Harold Sullivan initially proposed, which would have required a court order for every search, and so it sets the bar but does not set it really high. We are saying that if the administration wants to conduct a search, the person being searched must at some point know that the search has taken place – which is not provided for right now – and we are also saying that there has to be some justification for conducting a search so that no fishing expeditions take place.

Senator Sheehan said that in the course of working on the Chairs/Senate policy, as he and Harold and Karen have learned about more and more searches that have taken place at John Jay, he has become more and more certain that we have to have a policy. He said what the three of them learned is frightening.

He noted that Karen has long been an advocate of letting people know that each department chair receives a monthly log of all phone calls made to telephone numbers outside the College from each telephone extension, a log that includes the actual telephone numbers dialed, the time and date of each call, and the amount of time spent on each call. These logs are supposedly for productivity purposes but faculty fall into a different category. He said if a staff member who works a 35-hour week is spending time browsing the internet instead of entering student records, that is something the administration does have to deal with.

Senator Sheehan added that according to the CUNY Computer User Responsibilities Statement [Attachment B], we are actually prohibited from using College computers to send personal emails and that it is not reassuring to him to be told that everyone sends private emails and to not worry about this. The CUNY Statement prohibits such activities and if someone wanted to use it against any of us, they could. He said he had heard the comment that he is being alarmist: he said he is describing reality.

Another question he had asked the Vice Chancellor during the speakerphone conversation has to do with the potential vulnerability of someone who is doing IRB work who is currently signing a statement that the information is confidential when the faculty member now knows that the information is not confidential. He said we know that it is not confidential because Queensborough Community College has made it very clear: QCC has on its website a statement that emails can and will be read – the statement has been modified in the last few days, he has been led to believe, to state that emails could be read rather than will be read.



More to the point, Senator Sheehan said, our faculty do not now know that their emails can be read, that their files – both computer and paper – can be inspected. What bothers him, he said, is that we were trying to adopt a policy that said that if the administration is going to do these things, then we should be informed of the action. He said he understands that there is a University server – he characterized that as a very valid point – but said there is no such thing as a University office. We could at least have been permitted to go forward with certain sections of our policy – those not relevant to the University computer mainframe – but instead we were basically stopped cold and told that the policy would be nullified. And that is not good, he concluded.

**8. Invited Guest: CUNY Vice Chancellor for Legal Affairs and General Counsel to the CUNY Board of Trustees Frederick P. Schaffer [Attachment A, B, C]**

President Kaplowitz welcomed Vice Chancellor Schaffer [Attachment C] and thanked him for accepting the Faculty Senate's invitation to come to today's meeting. She thanked him not only for coming today but for having been willing to leave a cabinet meeting early in order to do so. She introduced Professors Harold Sullivan, Francis Sheehan, and Bonnie Nelson, all of whom were participants, among others, in the speakerphone conversation with him on April 1. She explained that he arrived during a debate among the faculty about the decision to submit the proposed policy to the College Council as an information item rather than as an action item and added that this discussion is taking place in the context of the fact that there is another College Council meeting in May. She invited the Vice Chancellor to present his position.

Vice Chancellor Schaffer thanked Karen and said it is a pleasure to be at this meeting. He said he would begin by explaining what he knows and how he came to know it. He said that before he knew there was this issue or controversy at John Jay, his Office had begun work on a successor CUNY Computer User Responsibilities Statement [Attachment B], which he heard being referred to, because, first of all, the University does not actually have a policy on computer use – he said Karen has pointed out to him that this is not a policy because it has never been adopted by the Board of Trustees – but, in addition to that, the Statement is old, it is out of date, and it seemed, upon review, flawed.

One of the respects in which he thinks the Statement is flawed is its prohibition of the use of computers for personal use: he said he is in complete agreement that it is utterly unrealistic to have a policy that there can be no personal use. Nobody believes that we can have a policy that prohibits personal use, adding that we all use computers at some point for personal reasons. And, therefore, for many reasons his staff has begun collecting policies from other universities from around the country and have begun thinking about ways in which this computer user Statement should be changed and updated. Of course, he said, among the issues that would need to be considered and which are not dealt with in the current Statement are issues of privacy and security. So he and his staff were working on this and it was his intention, once they had pulled together the material and had thought about it and had figured out the categories of issues that needed to be addressed, to take the Statement to the Chancellor, as he did some years ago with the intellectual property issue, and suggest the creation of a CUNY-wide taskforce to study the issue and to come up with a draft policy about a whole series of issues relating to computer use and computer privacy.

And then, he explained, he learned about the controversy at John Jay which was broader because the faculty here are concerned with not only computers but also with the privacy of their physical space, their telephone, and so forth. It was clear to him, he said, that whatever the correct resolution of these issues is, it really had to be the same resolution for the whole University and that,

in any event, whatever he thought of the issue, it was certainly clear to the Chancellor that a University-wide policy was desirable rather than each college making its own policy on this very, very important issue.

And so, he said, he got in touch with a number of people at John Jay, including Karen, and suggested that we really needed to do this on a CUNY-wide basis, that his Office had been working on an aspect of this already, and that he was ready to move quickly to create a taskforce to do this. He said it would not really be helpful for John Jay, as a college, through its governance institutions, to adopt a policy – although, he said, obviously the faculty can, if they wish, do so. He said he does not think it would be helpful because what we really need is a CUNY-wide policy. Vice Chancellor Schaffer then offered to answer questions.

President Kaplowitz asked the Vice Chancellor about his statement just now that we could adopt a policy if we chose to do so. Vice Chancellor Schaffer said he can not stop people at John Jay from adopting a policy but it is his wish that that not be done. She asked what would happen if we were to adopt a policy. He said the faculty could vote to approve a document but, as a legal matter, he does not think such a document would constitute policy for the University or for any segment of the University, in this case John Jay.

Vice Chancellor Schaffer reiterated his position that a privacy policy needs to be enacted on a CUNY-wide basis. He said, as he tried to make clear on the conference call with a number of people here at John Jay, his purpose is not to generate controversy or a confrontation. Rather, once he realized that the faculty had moved along, in many ways in a helpful direction, in gathering information, in considering the issue, which has certainly advanced the ball, he felt it necessary to communicate the fact that he does not think it is helpful to have individual colleges adopt individual policies on a matter that really needs to be addressed as a University.

Vice Chancellor Schaffer added that he has already been in touch with Professor Susan O'Malley and he has asked her, as UFS Chair, to designate three faculty members for the taskforce, and she has given him the names of three faculty members. He is reaching out to a couple of college presidents and is thinking about who in the Central Administration has the necessary expertise and background to be the logical people to appoint and it is his hope that by next week we will have a taskforce formed and ready to start working.

Senator John Matteson said that, as we know, there is now no University-wide policy and asked what Vice Chancellor Schaffer would say if John Jay were to enact a policy for the interim, until such time as there is a CUNY policy. Vice Chancellor Schaffer said someone asked him that same question during the telephone conversation, had asked why not preempt the John Jay policy later but in the meantime permit John Jay to have its own policy. President Kaplowitz explained that it had been Professor Harold Sullivan who had asked that. Vice Chancellor Schaffer said his response to the question, which had been framed using the analogy of federal and state law, was that some things are self executing, that the commerce clause of the U.S. Constitution, for example, prevents states from passing laws that interfere with state commerce. He said he and Harold Sullivan had laughed about the analogy but he had added that while such a debate is enjoyable it is not, in fact, a useful debate to have.

Vice Chancellor Schaffer said whether we are talking about preemption or not, the fact is that we need a University-wide policy. These issues come up very rarely: in his almost four years at CUNY he can't recall, he said, a single instance, either relating to computers or otherwise, where at least in an investigative kind of context, which is the context in which he would most likely hear about it, it has to come his attention that a faculty or staff member's computer was read for content

or office was searched.

Harold Sullivan, Karen Kaplowitz, and Francis Sheehan said they know of instances of both such actions having happened at John Jay.

Vice Chancellor Schaffer said that then certainly suggests that there is a need for a procedure. Whatever that best procedure might be he said he does not know but that procedure needs at least to involve his Office, even if he is not necessarily the decision maker. He said we will have a taskforce; the taskforce will start to work as soon as possible; he has a member of his staff putting together a summer reading list for the members of the taskforce; and he expects that we will get down to business very, very quickly in the fall, and in the course of the next academic year produce policy.

Returning to the question he was asked, Vice Chancellor Schaffer said if he were confronted with a situation in which he was asked his legal judgement if John Jay were to pass a policy in the interim, he would have to say that he does not think the policy is effective in constraining CUNY as a University. He gave a hypothetical situation in which evidence of wrongdoing by someone came forward and the question was presented to him as the University Counsel whether we can, in light of this evidence, conduct a search of an office; he said he would analyze that question without regard to a policy adopted by a college because he does not think that a particular college has the power individually to do that. He said he does not expect that to happen: he thinks it is better and it gets us off to a better start not to set up that kind of confrontation at the outset. He said if the faculty choose to move to adopt their policy then they choose to.

Senator Tom Litwack said: granted, ultimately we have to have a CUNY policy and granted, CUNY ultimately controls the situation. But, he said, his concern is the interim, which could be a long, long time, during which there would be no explicit policy in place. Senator Litwack said his question is what would be Vice Chancellor Schaffer's objection to having the following statement precede our policy: "Except insofar as it violates CUNY policy or an explicit official CUNY directive, this shall be the Privacy Policy of John Jay College." Such a statement would make it clear that if an appropriate John Jay administrator felt the need to violate our policy and CUNY approved that violation of our policy, that would be permitted.

In this way, Senator Litwack said, in the interim while we wait for a policy to be developed and approved, we would be saying this is our policy and a John Jay administrator can not violate this policy without CUNY's permission. Furthermore, we would have an established policy that CUNY could look to in establishing its own policy. Senator Litwack said he does not see what possible objection there could be to that. Karen explained that Tom, too, is a lawyer. [The Vice Chancellor and the faculty laughed.]

Vice Chancellor Schaffer replied that the reality is that, in the interim, there would be no CUNY policy dealing specifically with privacy. Senator Litwack pointed out he had suggested "or CUNY directive." Vice Chancellor Schaffer said he takes it from Professor Litwack's question that Professor Litwack would take some comfort if he knew that here, or in any other college, those kinds of – to be blunt – searches that are of concern to the faculty would not be undertaken without someone at a very high level at the College talking with someone at a very high level at 80<sup>th</sup> Street before doing conducting that search. Senator Litwack said that is correct.

Vice Chancellor Schaffer said he has no objection to Professor Litwack's proposal and added that he would have thought that is already what is taking place. He said when you sit at the apex of a large bureaucracy you think you know what is going on but you don't always. Vice Chancellor

Schaffer said there is something else he would rather do instead of what Professor Litwack has proposed and it is something he will commit to doing: he prefaced what it is that he is willing to do with an explanation that he had already planned to talk about this issue at the next meeting of the Council of Presidents (COPS), that he had planned to talk about the formation of the taskforce, and to talk about the background as to the concerns here at John Jay.

The Vice Chancellor said that what he is certainly prepared to do and had intended to do in any event at the COPS meeting is to say to the Presidents that this is a very sensitive area and that, while we are formulating the privacy policy, any time a decision is made to read content or to search an office, with an exception he would come back to in a second, that decision should not be made by a President or by a President's subordinates but rather that it should be made by a President only after he or she has consulted with him.

Vice Chancellor Schaffer said he has no problem with the concept that during the interim we ought to have an understanding as to what the procedure is and he said he is prepared to do that. He said the problem with doing it in the form that Professor Litwack suggested is that a lot of other content is contained in the Chairs/Senate proposed privacy policy right now and, in effect, the faculty would be acknowledging that the policy is not effective because it can be overridden by the College President after talking to the Vice Chancellor. If that is the case, Vice Chancellor Schaffer said, why not just put into place the procedure that he is suggesting and not adopt a document that includes all that substance which may or may not make it to the final CUNY policy. Senator Litwack said because by doing what he proposed it would be clear that the President has to go to the Vice Chancellor for Legal Affairs.

Vice Chancellor Schaffer said he would like to backtrack to the exception that he mentioned. The Vice Chancellor said the faculty at John Jay have looked at many college and university policies and, he noted, all the policies have the following provision: in the routine monitoring of computers there are going to be times when text is read for content; that is not the purpose of the monitoring but it happens on occasion. And so in that particular area, he said, he cannot give any assurance and he cannot create a procedure that prevents the occasional reading of content, short of preventing his tech people from doing their jobs. Brian Cohen, the University Director of Computing, and people under him monitor computer use at the University for many good and sufficient technical reasons. In that regard, he said, the reading of content does not seem to happen very often but when it does happen it really is more or less inadvertent.

He said all the university policies that he has looked at recognize that the routine maintenance and monitoring of a computer system will involve, from time to time, the reading of text. But putting that to one side, he said, with respect to office security, the better way to go is to not adopt such a detailed policy as the one the John Jay faculty are proposing, but rather to put it aside pending a taskforce consideration, but also to establish, through the Presidents, an understanding with respect to things like searches of offices and phonemail messages.

Vice Chancellor Schaffer added that he had not thought of phonemails until Karen had mentioned them to him; he said that that could be attributable to a failure of imagination on his part or, more likely, it is because, given his life experience, he assumes he has no privacy at all. But, he said, privacy of phonemail messages is a good point. He said he would make that clear to the Presidents and that is the way he thinks we should proceed until we have a formal, written policy.

President Kaplowitz suggested that Vice Chancellor Schaffer copy the faculty governance leaders if he issues a written memorandum to the Presidents about the prohibition of conducting searches without the prior approval of the Vice Chancellor. She explained that none of the John Jay

faculty, and presumably none of the faculty at some of the other colleges, ever see the memoranda that Vice Chancellor Schaffer and other vice chancellors and the chancellor send out to the CUNY community as far as she can determine. Vice Chancellor Schaffer said that when he sends out memos he sends them to college presidents and there is a list of cc's; he explained that he originally sent memos to only the college presidents thinking that those memos would be distributed to everybody and it turned out that was not the case. So he now knows he has to indicate all the cc's at the end of the memo. President Kaplowitz suggested he consider adding a cc to the college faculty governance leaders.

She added that although minutes of COPS meetings are distributed to the presidents, a memorandum from him is a document that can be distributed to administrators who may be conducting searches. If it is put in writing, it would be very helpful if the faculty governance leaders were cc'd and sent a copy because without such a cc, faculty at the various campuses may not know about the interim procedure: it should not be that only John Jay faculty know about it and other faculty do not.

Professor Ned Benton said as someone who is not a lawyer, he wants to speak to the kinds of privacy issues that arise in a faculty member's office and that he would use himself as an example. Before beginning he explained he has assumed many things about privacy in years past and in listening to this debate and discussion at the College during the past month he has come to realize that his assumptions have been incorrect. He said he would like to outline some levels of privacy that the University policy will need to protect in a reasonable way.

He said he has a lot of student records, both paper and on his computer, ranging from transcripts of grades to requests for various kinds of medical accommodations, some of which he believes are protected. Then there are documents associated with our personnel process. As a department chair and as a Personnel and Budget Committee member, he sees tenure records and various kinds of personnel documents which the Committee members are told are confidential and the confidentiality of which the members are required to maintain.

Working with doctoral students brings another level: a third of his doctoral students are working on topics that involve IRB requirements for the protection of the privacy of the subjects of the studies. The doctoral students have confidentiality obligations and he, as their faculty mentor, signs the IRB document along with the doctoral student assuring confidentiality. He and each of his doctoral students email back and forth, send documents electronically back and forth, all the time assuming he is honoring the confidentiality agreement which the University is a party to and, furthermore, the University is subject to penalties if the confidentiality agreement is violated. And so that is another protection we need to think through.

There is also external service that the faculty do, Professor Benton noted. He, for example, serves as the monitor in federal civil rights cases, such as U.S. v. Michigan and U.S. v. Puerto Rico, and he communicates with the parties *ex parte*, in written documents and by email, with the assumption that when he is communicating with one party he is having a confidential conversation and that that conversation is not going to be disclosed or be accessible to the other party. He also gets medical records of the youths in the prisons involved in the case, sensitive records, the confidentiality of which he assumes he is required to maintain: the records are given to him based upon a confidentiality agreement which he has signed and so he has an obligation to maintain that confidentiality. Also, in U.S. v. Michigan, he is authorized to have *ex parte* communications with the judge and to participate in the writing of the findings of fact and if there is an order he sometimes participates in that, too, all of which is confidential. And he goes back and forth by email with the court clerk.

Professor Benton said he is now rethinking whether he should be doing this, not that he thinks that someone is attempting to find out what he is doing, but because he does not think he can give the assurance of confidentiality that he had thought he was able to give. He explained that the sensitivity and importance of the privacy policy issue is because as a professor some of his value to his students, to the University, and to the community at large involves his ability to engage in these kinds of activities. He said he hopes we can have a policy that allows him to relate concretely what the limitations are. If he has to take some of his work outside the University in order to do his work he understands that, but he needs to understand what the boundaries are so that he can work within them and, he added, he believes it is in the University's interest to be able to protect the privacy interests that he is responsible for as much as possible because it is in the interests of the University for his most valuable work to occur at the workplace and within the University.

Vice Chancellor Schaffer responded that he completely agrees, that he agrees one hundred percent, with everything Professor Benton has said. He said his job as a lawyer is to make sure we comply with the law whether it is FERPA or HIPPA or whether it is the obligation the faculty have to those who entrust the faculty with confidential information, including the law governing human subject research. He noted he is responsible to ensure that the University complies with those laws. So we absolutely have to have mechanisms and procedures to safeguard compliance with those laws. He said this is true even in the cases where some office intrusion, for example, is appropriate: in such cases we need to have mechanisms for faculty to flag items, or to simply lock file cabinets, or to encrypt information on their computers: there are many ways to do this. Then the fallback position is that if there is ever a legitimate search and someone needs to determine which documents are the ones that are responsive to the particular focus of that search, you want to have a lawyer along in those situations, to inform decisions about what can and should be touched. He said he agrees that all of those things should be part of a good policy.

Professor Robert Hong asked about a story in the current issue of the *Chronicle of Higher Education*, the issue which arrived the previous day, about a Federal Communication Commission plan or proposal to require that universities install detection devices so that the Justice Department and the FBI and other law enforcement agencies could monitor computer use. A coalition of universities has taken a position opposing this because of the violation of the privacy needed for faculty research that would result. He asked the Vice Chancellor's perspective.

Vice Chancellor Schaffer said he saw the article briefly but is a little uncertain as to the context, adding that he knows that a number of law enforcement authorities around the country, including our Attorney General, Elliot Spitzer, are pushing the FCC to require the installation of this capability, which is not just for universities but rather for everyone. The law enforcement community says it needs the ability, under appropriate court order, to engage in wiretaps but technologically one cannot wiretap internet phone calls. He said he thought it was a larger issue and that the university community was asking to be carved out of it. He said he does not know what is going to happen with this and that the FCC will decide what it decides and then, he said, he will have to decide what the law is and whether we have to comply with it or not. He said he thinks that issue is a bit premature.

Professor Hong said there is another issue that is very sensitive for him. As the administrator responsible for Blackboard, he has access to all the on-line courses and can interject himself into any professor's course without the professor knowing. He said it has not happened yet, but in anticipation of the possibility, he has set a policy for himself that if any department chair or any member of the College administration were to want access to an online classroom without the instructor's permission he will not grant such access. He said that is a policy issue that should be included in the University privacy policy that will be developed.

Vice Chancellor Schaffer said this is a new one for him and an interesting point. He asked what if the college president or an administrator wants to come to a classroom to visit a class. President Kaplowitz said her understanding is that no one may enter a classroom while a class is in session without the instructor's permission except for the peer observation, for which the instructor must have at least 24 hours prior notice. Vice Chancellor Schaffer said then that would be an argument in favor of the position that Professor Hong has taken.

Professor Harold Sullivan asked the Vice Chancellor if he has seen the original version of the Chairs/Senate policy. Vice Chancellor Schaffer said he has seen several documents, including the taskforce document, and several versions of the Chairs/Senate policy but does not know if he has seen the original version. Professor Sullivan explained that the original version is one that he drafted and which was weakened in some ways in the current version although strengthened in other ways in that the current version covers more territory. Professor Sullivan explained that the original document said the University simply has no right to authorize searches, has no right to intrude. Although external search warrants from a duly constituted court, perhaps, cannot be resisted, absent such a court order no searches or intrusions are permissible.

Professor Sullivan said that from what we heard from Ned Benton, his original approach to the policy was probably the correct approach. He said he finds it very hard to imagine any circumstances under which, without violating the principles of academic freedom, without violating the presumption that we have to have privacy to do the kinds of research and the kind of work Ned is talking about, a search would be justified. He sees the taskforce's task as deciding whether there are going to be circumstances when University officials, whether it is the vice chancellor, whether it is the chancellor, whether it is the college president, whether it is the chair of a department, have a right to intrude into the files in a faculty member's office or listen to phonemail or search a computer hard drive. And if there are, indeed, such circumstances, the taskforce needs to determine what they are.

Professor Sullivan explained that he thinks it is clear that we are starting off with the position that privacy protection is essential to the entire function of the University, and rather than having to go into all the arguments investigating why that is the case, it is clear that is the case. The question, therefore, is what might possibly justify an intrusion without a court order. We can not resist a court order; if we could, he would say we should resist a court order. The initial draft of the policy also said that if there were a court order it would be the obligation of the College to inform the person who is subject to the court order of that fact as soon as possible unless specifically forbidden by law.

Vice Chancellor Schaffer responded that Professor Sullivan will be a member of the taskforce and will, therefore, have the opportunity to say that he assumes that is the task of the taskforce and then see whether everyone agrees. He said Professor Sullivan wants to start with a presumption of absolute privacy and develop a policy that may or may not have some narrowly crafted exceptions: that may be the way it goes, Vice Chancellor Schaffer said, adding he is not prejudging what the other taskforce members will say.

Senator Janice Dunham said that during the Faculty Senate's many discussions of the privacy issue, she has been most struck by the concerns of our psychology faculty and counseling faculty and others, such as those involved in the Catholic Bishops study of pastoral pedophilia, as evidencing the need for an absolute guarantee of privacy for the work faculty do. She said the psychology faculty are not here now but that they had spoken about their sense that privacy protection is essential to their work with human subjects both as researchers and as teachers who mentor doctoral students who work with human subjects. She said the work conducted at John Jay may be different in kind from that conducted by faculty at other colleges but, whether it is different

or not, it is certain that our faculty need privacy protections because of the nature of their research and the supervision of their graduate students' clinical work.

Vice Chancellor Schaffer said he and his staff will be very interested in hearing from the psychology faculty and from others who have those kinds of issues. He said the attorney in his Office who has been the most directly involved in this issue and who will remain involved in this was a member, because she was interested in this subject, of a human research board at one of the CUNY colleges – it may have been at John Jay – and accordingly obtained training in human research protections. She is a person who is sensitive and expert in these issues.

Professor Jerry Markowitz said rather than talk about legal issues he wishes to talk about, and would like to see, John Jay's privacy policy treated as a timely political document in the broader sense. He said he assumes that the issues raised by the taskforce that the Vice Chancellor is forming and the results of that taskforce will be disseminated throughout the University for discussion and debate and refinement. He said he would think the University would consider it very helpful to have the considered opinion of one college, or of many colleges, about what should constitute a legitimate and good and important privacy policy. He said he would, therefore, encourage the Vice Chancellor to accept whatever a college does adopt as its policy with the proviso, of course, that when the University develops a privacy policy there will be preemption. But in the meantime, by following such a course, what will result are very concrete proposals of what one college, at least, sees as the correct approach. And given what we are faced with as a nation at large, in terms of broad-based assaults on privacy, such an approach would be extremely important, Professor Markowitz added.

Vice Chancellor Schaffer said he certainly agrees with Professor Markowitz about the value of having people's thoughts and the thoughts of groups of people out there and in writing, noting he has the document that the John Jay faculty has produced to read and to think about and, he said, if individuals want to write concurring or dissenting opinions and groups from other colleges want to write their proposals and suggestions about this issue, those written documents would be welcome.

He said he understands that this document has been adopted by the Faculty Senate and by the Council of Chairs – and, President Kaplowitz said, by our local PSC Chapter Executive Board – and therefore, the Vice Chancellor said, the document carries the weight of endorsement by those groups. He said his problem is taking the last step and promulgating the governance mechanism in a way that makes it purport to be binding policy for the College. He said he doesn't think that is necessary: the document exists, he has read it, he is sure everyone else on the taskforce will read it and consider it, and so from that perspective the work of the faculty bodies is done and done well. He said he just does not see the point of setting up a confrontation or a conflict between differing branches of government.

Professor Markowitz said he assumes that one of the reasons the Vice Chancellor does not want the policy to be acted on by the College governance body is that the document would carry more weight than it now does. Vice Chancellor Schaffer said were the College Council to approve the policy, that would not make it carry any more weight with him than it now does. Professor Markowitz said then he assumes that the Vice Chancellor's opposition to the College Council adopting the policy is that the taskforce that is being formed and the University at large would then give the policy more weight. Vice Chancellor Schaffer said that really is not his motivation: his motivation is that if the College Council approves the policy, such an action would be confusing and would create an unnecessary confrontation. He said he really believes in judging things on their merits. The merits of this proposal are the same whether actions stop now or whether the policy is pushed through the College Council: neither course of action changes its merits.



Senator Francis Sheehan said he is following up on Professor Jerry Markowitz's comments: if we were to adopt the policy as an interim document, the Vice Chancellor would benefit by receiving the input that would result from our implementing it and would learn whether the policy is limiting or whether the policy works well. This can not be ascertained by just reading it. Senator Sheehan explained that the Vice Chancellor would have the benefit of John Jay College serving as the pilot of at least some aspects of the policy so that the taskforce would be able to take this information into consideration.

And, Senator Sheehan explained, the Vice Chancellor and the taskforce would then be able to understand not only what the faculty want but would learn what the administrators think about the policy's provisions and what problems, if any, are encountered in the actual administering of such a policy. Right now, in the absence of adopting and implementing a policy, we are limited by the language of the CUNY Computer User Responsibilities Statement which says, "The University reserves the right to monitor, under appropriate conditions, all data contained in the system to protect the integrity of the system and to insure compliance with regulations" [Attachment B]. That, Senator Sheehan said, is a broad statement that permits a search of our hard drives.

The Vice Chancellor said he thinks Senator Sheehan is pushing his argument too far, because nothing prevents any outsider from breaking into a faculty office and stealing records and yet this has never prevented professors at Stanford or elsewhere from signing pledges of confidentiality.

Professor Bonnie Nelson pointed out that there are others in addition to faculty, namely staff and students, who need privacy protection. She also pointed out that there is a New York State Law [NY CLS CPLR § 4509] which prohibits the disclosure of library records and she asked how, without a privacy policy, we can comply with this law. The Vice Chancellor asked her for the citation for this law which she offered to email to him and to Karen Kaplowitz.

Professor Blanche Cook said she feels a tremendous sense of urgency about this matter, especially in the light of the USA Patriot Act, which has a provision for not only surveillance and monitoring but also for a kind of imposed silence in that persons being investigated may not be informed of that fact. The details of the first Patriot Act and the details of the second Act, which have been leaked, are horrific. The American Library Association and, she is proud to say, the American Historical Association have unanimously condemned these new structural changes which have transformed our community. She said that in developing this privacy and academic freedom policy, the John Jay faculty have engaged in an important action and she is stunned to hear – and maybe she is not hearing correctly – a lack of a sense of urgency on the part of the Vice Chancellor. Is there no sense of urgency, she asked, since this is a significant, major policy that the faculty have developed. We need to stand up and we need to do so in a united way because what we are faced with in this nation, in her opinion, may be termed totalitarian.

Vice Chancellor Schaffer said he agrees that this is a very important subject and he agrees that it is really quite regrettable that we have gone as long as we have with nothing more than the CUNY Computer User Responsibilities Statement [Attachment B] which Professor Sheehan just quoted. He said in candor, however, he does not share the sense of urgency that Professor Cook is expressing because, first, in his experience at the University, the facts are not disturbing. He said he would be as disturbed as the faculty would be if things that could be happening, but are not happening, were actually taking place. He said he thinks we need to have a policy but we need to do it right. By next week the taskforce will be formed. He is not delaying or deferring work on this policy and he said he certainly will *not* give the taskforce the charge of proceeding "with all deliberate speed."

Vice Chancellor Schaffer said he shares the faculty's sense of the importance of this issue but noted that we have gone a lot of years without a proper policy and he does not think going some period longer will make that much of a difference, particularly because, at the end of the day, whatever one thinks about the Patriot Act, and he said he certainly is no fan of it, to the extent that the Patriot Act lawfully permits certain actions, we are not going to be able to do anything about that anyway. All we can do is limit ourselves within the scope of discretion that we have. We can not collectively, as a University, prevent government agencies that have the force of law from doing what the law permits them to do. What we can do is in the way we deal with each other as a community and reach agreement as to what the ground rules are. Vice Chancellor Schaffer said he is certain he shares many of the faculty's views about the Patriot Act but he sees the Patriot Act as a somewhat separate issue.

The issue really, he said, in its most concrete form, comes up in universities, as he has read not only in university policies but also as a member of an organization of university lawyers, quite a wonderful group, called NACUA – the National Association of College and University Attorneys – who share information with each other. Members post questions and others write back. To the extent that this issue comes up, and it does, but not very often, it comes up in the context of an investigation relating to some form of wrongdoing, which could potentially be criminal. He gave as an example a person who is selling drugs to students – a hypothetical situation – and the question is: what can the administration do, what should it do, does the administration want to force the matter to go to the criminal law enforcement authorities, or is it something that is desirable, in some instances at least, to allow the administrative discretion to investigate internally and deal with. And what is the procedure for doing that and who has to approve it. That is the kind of situation we are more likely going to be dealing with and that we need to confront.

The Vice Chancellor said that perhaps some of the reasons why he views this issue as important but perhaps less immediately urgent than the faculty at John Jay is that this is the example he has in his mind but he knows the faculty here have other examples in their minds. But he assured the faculty that he will make certain a policy is developed. He said it took the University basically one academic year to get through the Intellectual Property Policy – and that it would have taken less time but 9/11 occurred – and so this is something he expects will get done fairly promptly.

Vice President Kirk Dombrowski said he is not sure that we haven't already done exactly what the Vice Chancellor prescribes – that is, developing a policy to guide ourselves and limit ourselves. He said his real concern about our not forging ahead to adopt our policy at John Jay is the timeframe: as an anthropologist doing field research, he has an IRB report due on April 30 and he has to answer a question about what steps he is taking to ensure the confidentiality of his research subjects. He does not want to write “nothing” as his answer. He suggested that in lieu of John Jay moving ahead with our policy in the interim, he asked the Vice Chancellor if he would be willing to immediately issue a set of policy directives in writing to guide us from now until a University policy can be put into place. Vice Chancellor Schaffer said he is not willing because he thinks it would be presumptuous of him to do this, because he does not view this as his role, and because whoever disagreed with what he issued would have very strong grounds to question the basis for his coming to a particular conclusion. He thinks the best we can do in the interim is what he suggested before: to have in a macro way a procedure set out so that at least what happens is happening at a high enough level that it is receiving thoughtful and legal attention. He said that between now and the time a policy is promulgated that is the best he can do.

Senator Robin Whitney pointed out that Queensborough Community College has its own policy on computer use on its website – a copy was included as an attachment with the agenda for today's Senate meeting – and she said she does not know why one college is permitted to have a

policy and we are not. Vice Chancellor Schaffer said he had never seen QCC's policy until a week or two ago and the University does have a Statement which while not quite a policy has been in existence for quite a while. He said when he saw the QCC policy his reaction was that it was unnecessary and redundant and was an effort to make sure that everyone at that college understood what the system was and what they were responsible for; it is more or less a reiteration of the CUNY Statement. But it is not desirable: we ought to have one CUNY policy and that policy should be on every college's website.

Vice Chancellor Schaffer said he certainly does not mean to suggest that it is permissible for one college to promulgate a policy and it is not for another college. But it happens at this University all the time: he said he is always amazed at how University-wide policies get translated into different language in student handbooks, in faculty handbooks, and then people identify what they characterize as conflicts between the different versions. President Kaplowitz noted that Queens College has an information technology and computer policy on its website that is in some parts a reiteration of the *CUNY* Statement but not in others.

President Kaplowitz recalled having said to the Vice Chancellor when they spoke two weeks ago that if no one from our administration had sent our policy to him, we would have submitted it to the College Council where it probably would have been approved. Vice Chancellor Schaffer said in all candor what concerns him as the lawyer for the University is a policy on behalf of an individual college that purports to limit – using the example he used earlier – the University's investigative authority in a situation where he may feel or the Chancellor may feel the investigative authority is necessary and that before we do that we need to come to a consensus CUNY-wide.

Senator Whitney spoke of the tremendous amount of work that has gone into this policy by members of the Senate and of the Chairs and by both bodies in discussing and deliberating about the policy. Vice Chancellor Schaffer acknowledged this and said the faculty have done valuable work and he wants to recognize that fact. Senator Whitney said before he arrived it had been reported that the Vice Chancellor had said that were we to pass the policy at the College Council he would have to nullify it and she said she found that troubling, adding that many faculty do not want to engage in a confrontation with 80<sup>th</sup> Street.

Vice Chancellor Schaffer replied that he did not mean to imply that he actually has veto power over a College's resolutions but rather that if someone were to ask him if the policy is effective if we were in a situation where an investigation was needed, where there was a legitimate reason to conduct an investigation, his answer would be, 'no.' He said he does not want to start off on a confrontational basis either and said the John Jay faculty have done valuable work and said he wants to use it to get a running head start on a University policy.

Senator Lorraine Moller said she is not only a researcher but also a practitioner and has 500 to 600 filled out inventories from men from a maximum security prison – Sing Sing – for a three-year long study that she has been doing on the impact of drama-based techniques. From the prisoners' perspective – and it is not an uncommon perspective of quite a number of fairly uninformed individuals – John Jay College has been known as something of a "cop shop" which does not help those, such as she, who are trying to bring rehabilitation into the prison environment. She asked the Vice Chancellor whether he would see any harm in our publishing our document on our website with the necessary qualifications that this is not, in fact, our College policy but it is a statement of the beliefs deeply held by the faculty of John Jay College and contains provisions that the faculty of John Jay believe and hope will be incorporated into a privacy policy that is being developed by the University. Vice Chancellor Schaffer asked if she means the Faculty Senate website. She said no, the College's website. President Kaplowitz noted that the Faculty Senate has

a homepage on the John Jay College website where we could post the document. Vice Chancellor Schaffer said he is in no position to say what we should or should not post on the Faculty Senate homepage because that is the Faculty Senate's prerogative.

Professor Sullivan said that in light of the Vice Chancellor's comments about the fact that he or the Chancellor may have occasion to decide that a search is necessary, he wants to point out the Chairs/Senate policy provides for an oversight committee with a majority of members being faculty. The Vice Chancellor said he noticed that. Professor Sullivan said a practical question is that in the absence of a policy, in light of IRB and other requirements, we are telling the faculty, in a sense, that if they want to have the assurance of the confidentiality of their work, they can't do their work at the College. Vice Chancellor Schaffer said that is no more true here than at any other university.

Professor Sullivan said if faculty can not be assured that they have privacy then we are, in effect, telling them that they should not do their research on campus, that they should do their research where the confidentiality of their research can be assured, which means they would not be available to their students. Vice Chancellor Schaffer said he does not think we are telling faculty that. He said if he were in Professor Sullivan's shoes and he had very, very sensitive material, like the questionnaires of the Sing Sing prisoners, he would put them in a file cabinet and lock the file cabinet. President Kaplowitz said that all the file cabinets, at least those in North Hall, have the same key: there is no security to be obtained by locking one's file cabinet.

Vice Chancellor Schaffer explained that if a disciplinary search were required, for example, in his hypothetical case of a faculty member who is selling drugs to students, and the faculty member's office were entered, if the question arose whether to break the lock on the file cabinet his response would be to ask whether the rest of the office had been searched yet, whether anything had been found, and the consideration would have to then be made as to whether the circumstances were such that such an action was appropriate. He said that at the end of the day we want someone responsible to make the judgment calls because there will be judgment calls in each of these kinds of situations and that, he said, is probably the best that can be provided. He said he and the faculty would probably disagree as to whether that responsible party should be a committee of faculty and, he added, he is not sure, in fact, that faculty would welcome the role of being the judge of conducting a search on each other. He said the faculty at John Jay may be willing to play that role but he is not certain that would be universally true of faculty at other colleges. Sometimes it is better to let someone else make these kinds of decisions. President Kaplowitz acknowledged that this issue has, indeed, been discussed at length. He said that at any event these are substantive questions to take up.

President Kaplowitz explained that some of our faculty know about searches and intrusions where evidence was, indeed, found that, arguably, justified the intrusion and where there had been, at least at first blush, wrongdoing. Faculty learned about those intrusions because of the ways those situations were handled internally either to avoid media attention and harm to the reputation of our college or out of compassion for the individual. Faculty, therefore, wonder how many intrusions may have occurred that did not produce any evidence and thus did not result in internal actions and, therefore, may have occurred without our being aware of them; and presumably those who were the subject of such searches were also not aware that those intrusions took place. But that is what raises our level of discomfort and concern because we do know searches have taken place and we do not know how much and how credible the evidence had been that led to those searches. Vice Chancellor Schaffer said he was involved in one of those cases and that ultimately the evidence was found to be less than had originally been thought. Vice President Dombrowski said we are aware of that and that is the point: ours is not an unfounded worry but rather one based on information given to us. Vice Chancellor Schaffer said some suspicions are fed by talk and others are by factual events and it

is important to distinguish between the two although he acknowledged that doing so can be difficult.

Senator Sheehan said that what is frustrating is that faculty worked on the privacy document so long and although it is still unfinished we were getting close to finishing it and the minute we were getting close we were told that we could not have a policy. He said it is extremely frustrating especially in light of the fact that we are left with the CUNY Statement which permits intrusions “under appropriate conditions.” He said for the Vice Chancellor, who has to represent the University, that is probably fine because that language does not limit him at all, but it gives a faculty member absolutely no protection at all. Vice Chancellor Schaffer said he is not, in fact, comfortable with individual mid-level administrators interpreting that language as they see fit and he said action needs to be taken on that, and it will be taken, through the interim procedure he spoke about earlier.

Karen Kaplowitz thanked Vice Chancellor Schaffer for his willingness to meet with us and to spend so much time with us, and for his candor. The Vice Chancellor said it was his pleasure and said this is a very tough, a very interesting, and a very important issue and is sure that Harold Sullivan and he, among others, will be debating it at length. He said he was pleased to meet all the faculty who attended today’s meeting. [The Senate expressed its appreciation with applause.]

By a motion made and adopted, the meeting was adjourned at 5:15 pm.

Respectfully submitted,

Edward Davenport  
Recording Secretary

&

Amy Green  
Executive Committee Member-At-Large

&

Desmond Arias  
Senator

1                   **Jointly Proposed Policy of the Council of Chairs and Faculty Senate on**  
2                   **ACADEMIC FREEDOM AND WORKPLACE PRIVACY**

3                   **Unanimously Approved by Both Bodies for Transmittal to the College Council for its Action**

4                   [Original Proponents: Professor Harold Sullivan and Senator Francis Sheehan]  
5

6                   Freedom of inquiry is essential to an academic institution. Unimpeded pursuit of knowledge and  
7                   the ability to research and express unorthodox ideas is an essential part of academic freedom.  
8                   For these reasons and others cited below the traditional relationship between employee and  
9                   employer cannot exist in an academic institution. Faculty must be free to express ideas and  
10                  pursue research without threat of sanction.  
11

12                  While employers generally have the legal right to access employer-provided forms of  
13                  communications, offices and computers, in an academic setting faculty offices, phone mail,  
14                  email, files and computers can contain confidential materials, the confidentiality of which are  
15                  protected by law, such as, but not limited to, raw data concerning human subjects of research,  
16                  preliminary research findings not yet ready for outside review, as well as disciplinary hearing  
17                  records and student records. Confidentiality of faculty records, files and communication is an  
18                  essential prerequisite of academic freedom. There is both explicit and implicit foundation for  
19                  that confidentiality in law and practice. Institutional Research Board (IRB) requirements, for  
20                  example, are designed to protect the anonymity of human subjects in research. Student records  
21                  are protected by the Family Educational Rights and Privacy Act (FERPA), also known as the  
22                  Buckley Amendment.  
23

24                  Academic freedom has been accorded an extraordinarily high level of protection in First  
25                  Amendment case law. The purpose of the Academic Freedom and Workplace Privacy Policy of  
26                  John Jay College is to ensure the fullest possible protection for these values which are of  
27                  paramount importance in an institution of higher learning.  
28

29                  **SECTION ONE: Academic Freedom**  
30

31                  It is the policy of John Jay College fully to respect and safeguard academic freedom in  
32                  accordance with the American Association of University Professors' (AAUP) 1940 Statement of  
33                  Principles on Academic Freedom and Tenure. Since it is antithetical to academic freedom to  
34                  block access to Internet websites based on content, this policy prohibits such blocking even  
35                  though Internet access is not specifically addressed in the 1940 Statement which predates the  
36                  creation of the Internet.  
37

38                  While recognizing that all faculty have a responsibility to teach courses within the scope of the  
39                  Bulletin course descriptions and consistent with stated course objectives, no member of the  
40                  College community may be penalized by the College in any way for the political, artistic,  
41                  religious, or social content of views lawfully expressed in the course of orderly, open debate or  
42                  discussion on or off campus, or as part of his/her published or unpublished research. All  
43                  decisions respecting the hiring, tenure, promotion, reappointment, and retention of College  
44                  faculty, as well as employment decisions regarding other College personnel, shall be made in

**Amended Proposed Academic Freedom and Workplace Privacy Policy**

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45 keeping with the letter and spirit of this policy, while also recognizing that the quality of a  
46 faculty member's teaching, service, and publications are legitimate considerations in  
47 employment and promotion decisions.

48  
49 Students are free to take orderly and reasoned exception to the data or views offered in any  
50 course of study and to reserve judgment about matters of opinion, without penalty, but are  
51 responsible for learning the content of and demonstrating standards of academic performance  
52 established for each course in which they are enrolled.

53  
54

55 **SECTION TWO: Workplace Privacy**

56

57 1. Members of the College community shall have an expectation of privacy pertaining to the  
58 contents of physical spaces over which they typically exercise primary or exclusive control,  
59 including, but not limited to, desks, file cabinets, cubicles, and personal office space. This  
60 expectation shall also extend to portable personal spaces, including, but not limited to, their  
61 briefcases, satchels, and pocket books brought onto the campus. No officer of the College  
62 may search or cause to be searched any such space in a manner not consistent with this  
63 policy without the express consent of the individual(s) whose space is to be searched.

64

65 2. No member of the College community shall intercept, read, copy, take or listen to, or cause  
66 the interception, reading, copying, taking or listening to, any material contained in or on  
67 papers, faxes, files, computers, portable or fixed electronic data (including diskettes, hard  
68 drives, PDAs, and other data storage devices) or audio or video recordings owned by or  
69 assigned for the use of individual members of the College community without the consent of  
70 the individual who owns or has been assigned such papers, files, media or equipment.

71

72 3. The expectations of privacy affirmed by this policy shall extend not only to items related to  
73 interpersonal communication, but also to physical items within the lawful possession of  
74 College community members, including, but not limited to, books, personal notes, personal  
75 electronic devices, laptop computers, photographs, drawings, and prescription medications.

76

77 4. Unless approved by the Committee on Academic Freedom and Workplace Privacy, the  
78 privacy protections of this policy shall not be violated except by Court Order. Unless  
79 specifically forbidden by law, any member of the College community who participates in  
80 providing access pursuant to a Court Order shall inform members of the College community  
81 who are the targets of such Court Order as soon as practicable after such court ordered access  
82 is provided. If access is provided pursuant to the Committee's approval, it shall be the  
83 Committee Chair's responsibility to provide such notification as soon as practicable after the  
84 Committee-authorized access has been provided.

85

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- 86 5. The Committee may not authorize an exception to the privacy protections established by this  
87 policy in a specific case unless an absolute majority makes a specific finding that there are  
88 reasonable grounds to believe that possibly illegal conduct is taking place that could  
89 jeopardize the rights or safety of other members of the College community, the community at  
90 large or that there is conduct that could subject the College to legal liability if the College  
91 were to fail to act. The finding shall be reported in writing and kept in the file maintained by  
92 the Committee Chair.  
93
- 94 6. Nothing in this policy shall interfere with the proctoring of exams and the College's and  
95 University's policies against using prohibited materials during exams.  
96
- 97 7. Nothing in this policy shall prevent searches of persons or personal property in areas where  
98 posted signs indicate such searches may be conducted.  
99
- 100 8. Except in exigent circumstances, one or more members of the Committee, selected by the  
101 Committee membership, shall be given the opportunity to be present when there is a breach  
102 of the privacy protections of this policy to verify the intrusion is the minimum necessary to  
103 accomplish the stated purpose of the breach.  
104
- 105 9. Nothing in this policy is intended to interfere with the responsibility of the College to provide  
106 for the immediate safety of the College community. Members of the College community  
107 affected by the implementation of this provision and the Committee Membership shall be  
108 notified in as timely a manner as is practicable after the immediate threat to safety has  
109 subsided.  
110
- 111 10. If there is no immediate threat to the safety of the College community, but the President or a  
112 Vice-president feels a breach of the privacy protections of this policy is necessary to protect  
113 public safety or to protect the College from legal liability and it is not practicable to convene  
114 the Committee, approval of the Committee membership may be obtained by phone, fax  
115 and/or email.  
116
- 117 11. The person requesting a breach of the protections provided by this policy must, as soon as  
118 practicable, provide the Committee, in writing, with the alleged justification for the breach.  
119 Following the breach, a written report, prepared by the person who requested the breach or  
120 his/ her designated agent, shall be filed with the Committee detailing the extent of the breach  
121 and the findings. The Committee may also request others involved in the breach to prepare a  
122 report.  
123
- 124 12. Nothing in this policy is intended to nullify or abridge provisions mandated by local, state or  
125 federal law, CUNY bylaws or policies, or by any applicable collective bargaining agreement.  
126 Should a member of the College community seek to violate provisions of this policy,  
127 asserting a contradictory superseding provision, the College member shall so notify the  
128 College community of the applicable superseding provision and the planned action, in  
129 advance, via College-wide email and phone mail announcements.



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131 13. Nothing in this policy shall relieve members of the College community of their obligation to  
132 provide to legally responsible officers of the College access to student attendance and grade  
133 reports, to provide to a Grade Appeals Committee all data requested reasonably to decide a  
134 filed appeal, to provide to the Judicial Committee all materials needed for a hearing, and to  
135 provide to any other legally established College or City University body materials needed  
136 according to College or University policies.  
137

138 14. Nothing in this policy shall interfere with the responsibility of DoIT and other designated  
139 network administrators to scan for and protect against computer viruses or other threats to the  
140 integrity of information systems. Except as provided for by Court Order or Committee  
141 approval, network administrators may not intentionally seek out the contents or transactional  
142 information of communications where not germane to the foregoing purposes, or disclose or  
143 otherwise use what has been unintentionally observed.  
144

145 15. Nothing in this policy shall interfere with the maintenance of the physical plant.  
146  
147

148 **SECTION THREE: Committee on Academic Freedom and Workplace Privacy**  
149

150 1. Membership

- 151 a. Four tenured faculty, who are not serving in appointed administrative positions, elected  
152 as follows:  
153 i. Two tenured faculty elected by the Faculty Senate by secret ballot  
154 ii. Two tenured faculty elected by the Council of Chairs by secret ballot  
155 b. One HEO elected by the HEOs by secret ballot  
156 c. One administrator selected by the President  
157

158 2. Term of office

159 Members first elected after the establishment of the Committee shall take office immediately  
160 upon election and serve through the next academic year. Thereafter, the term of office shall  
161 be one academic year. The unexpired term of a member who resigns midyear shall be filled  
162 by the entity which elected or selected the resigned member.  
163

164 3. Chair

165 A tenured full-time faculty member elected each academic year by the Committee from  
166 among the Committee membership.  
167

168 4. Mandate

- 169 a. Recommend to the Council of Chairs, Faculty Senate, College Council, and entire  
170 College community measures to safeguard the freedom of inquiry and debate essential for  
171 academic freedom.  
172  
173 b. Monitor activities on campus which affect academic freedom and workplace privacy.  
174  
175

## **Amended Proposed Academic Freedom and Workplace Privacy Policy**

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- 176 c. Receive written complaints of alleged infringements of academic freedom or workplace  
177 privacy and bring the nature of those complaints to the attention of the College  
178 community, Faculty Senate, Council of Chairs, and/or the College Council for discussion  
179 and resolution.  
180
- 181 d. Receive and act in a timely way on signed written requests to deviate from the privacy  
182 protections of this policy and implement procedures confidentially to act on those  
183 requests.  
184
- 185 e. Maintain a file of all documents pertaining to the Committee's work. It shall be the  
186 Committee Chair's responsibility to ensure the completeness of the file and to transfer it  
187 to the next elected Chair. Any member of the Committee may review the file upon  
188 request.  
189
- 190 5. Implementation  
191
- 192 a. Effective immediately upon approval by the College Council of the establishment of the  
193 Committee on Academic Freedom and Workplace Privacy:  
194 i. the administration must obtain prior approval by the Committee of the purchase or  
195 installation of any software and electronic equipment capable of monitoring campus  
196 communications and computer use  
'97
- 198 ii. elections shall be scheduled by the Faculty Senate, the Council of Chairs, and the  
199 HEOs to elect the Committee's membership in a timely manner  
200
- 201 iii. the President shall select a representative to serve on the Committee in a timely  
202 manner  
203
- 204 b. Within 60 days following approval of the establishment of the Committee, the  
205 administration must:  
206
- 207 i. provide the Committee with a complete inventory of all software and electronic  
208 equipment capable of monitoring campus communications and computer use  
209
- 210 ii. provide the Committee in writing a comprehensive report of current and past uses  
211 of communications monitoring equipment and software  
212
- 213 c. Effective 60 days following approval by the Committee, the administration must obtain  
214 approval by the Committee of any continuing use of existing or newly acquired  
215 equipment or software to monitor communications or Internet sites accessed or to block  
216 any Internet sites visited by members of the College community.  
217

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- 218 6. Sanctions  
219 Any member of the College community who violates the Academic Freedom and Workplace  
220 Privacy Policy shall be liable to reasonable sanction(s) by the President, administered in  
221 accordance with the requirements of due process as provided in the Bylaws of the City  
222 University of New York and any applicable collective bargaining agreement. The President  
223 shall seek a recommendation from the Committee on Academic Freedom and Workplace  
224 Privacy before rendering a decision and shall thereafter inform the Committee of the action  
225 taken.

# The City University of New York Computer User Responsibilities

ATTACHMENT B

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

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

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

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

- Any user who is found to be in violation of these rules shall be subject to the following:
- Suspension and/or termination of computer privileges;
- Disciplinary action by appropriate college and/or University officials;

## ATTACHMENT B (cont)

- Referral to law enforcement authorities for criminal prosecution;
- Other legal action, including action to recover civil damages and penalties.

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

Revised 1/95

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

[Top of Page](#)

The City University of New York

Last Updated: 11/20/02

## ATTACHMENT C



**Frederick P. Schaffer**  
**General Counsel and Vice Chancellor for Legal Affairs**

**Frederick P. Schaffer, J.D.**, is General Counsel and Vice Chancellor for Legal Affairs. He is responsible for providing legal counsel to the Board of Trustees, the Chancellor and the constituent colleges and schools of CUNY on a wide range of issues and for supervising a legal department of 12 attorneys.

Before coming to CUNY, Mr. Schaffer was a litigation partner in the law firm of Schulte Roth & Zabel LLP, where he specialized in commercial and securities litigation and employment law. Earlier in his career, Mr. Schaffer served as Counsel to Mayor Koch, Chief of Litigation in the Office of the Corporation Counsel of the City of New York and Assistant U.S. Attorney in Manhattan. He also **was** an Associate Professor at the Benjamin N. Cardozo School of Law. Mr. Schaffer is currently Chairman of The Legal Aid Society and a Trustee of the Practising Law Institute. He has also served as Chairman of NYC Public/Private Initiatives, Inc. and is active in the Association of the Bar of the City of New York, where he has served as Chairman of the Committee on Education and the Law. He received his J.D. degree magna cum laude from Harvard Law School in 1973 and his B.A. degree summa cum laude from Harvard College in 1968.