

MINUTES OF THE THREE HUNDRED AND TWENTY-FOURTH PLENARY SESSION
OF THE UNIVERSITY FACULTY SENATE
OF THE CITY UNIVERSITY OF NEW YORK

December 12, 2006

The meeting was called to order by UFS Chair Philipp at 6:40 p.m. in Room C201-C203 at the Graduate School and University Center. 70 voting members of 118 were present.

Baruch: Present –Dumas, Hill, and Alternate Aubry. Absent – Albright, Freedman, Martell, Pollard, Smith, and Vora. Vacancies – 1. **BMCC:** Present –Belknap, Friedman, Martinez-Lopez, Niyazov, and Rani. Absent – Agwu, Persaud, and Roy. **Bronx CC:** Present – Alozie, and Alternate Ismail. Absent – Asimakopoulos, and Durante. Vacancies—2. **Brooklyn:** Present – Antoniello, Bell, Rodman, Shapiro, and Tobey. Absent – Bloomfield, Cherukupalli, Jacobson, Viscusi, and Wills. **CCNY:** Present – Crain, Daghli, Khalil, and Lascar. Absent – Habib, Leonard, and Sank. Vacancies – 2. **CSI:** Present – Cooper, Klibaner, Levine, Petratos, Yousef, and Alternates Stearns, and Zimmerman. Absent – Folen, and Jayatilleke. **CUNY Law School:** Present – McArdle. Absent – Copelon. **Graduate School:** Present – Baumrin, Cross, Lerner, Matthews-Salazar, and Orenstein. Absent – Nolan. **Hostos CC:** Present –Bernardini, Pimentel, and Alternate Sharma. Absent – August. Vacancies - 1. **Hunter:** Present – none. Absent – Friedman, Guzzetta, Kaye, Krishnamachari, McCormick, Palanda, Sherrill, Splitter, St. Hill, and Wimberly. Vacancies – 1. **John Jay:** Present – Caldwell, Crossman, King-Tobler, Kubic, Pascoe, and Alternates Chaffie, Dunham, Petraco, and Soto-Fernandez. Absent – Kaplowitz, and Romero. **Kingsborough CC:** Present – Barnhart, Galvin, O'Malley, Ruoff, and Wood. Absent – Hume. **LaGuardia CC:** Present – Beaky, Davidson, Mettler, Rushing, and Shean. Absent – Lerman. **Lehman:** Present – Aronowitz, Marianetti, Mineka, Philipp, and Alternate Holody. Absent – Jarvis, and Kolb. **Medgar Evers:** Present – Barker, and Hope. Absent – Hastick, and Stewart. **NYCCT:** Present – Cermele, Horelick, Hounion, and Karthikeyan. Absent – Dreyer, and Richardson. **Queens:** Present – Bird, Moore, and Savage. Absent – Brody, Casco, Gonzalez, Habib, Tse, and Zevin. Vacancies – 2. **Queensborough CC:** Present – Barbanel, Iconis, Jacobowitz, Pecorino, and Alternate Dahbany-Miraglia. Absent – Hest. Vacancies – 1. **York:** Present – Alternate Wolosin. Absent – Divale, Frank, Lewis, and Rosenthal.

The Vice Chancellor for Legal Affairs, Frederick Schaffer, attended.

Governance Leaders present: Anderson (BMCC), Levine (CSI), Mettler (LaGuardia), Tobey (Brooklyn), and Young (Hunter) attended. Parliamentarian Andrea McArdle, Executive Director Phipps, Administrative Assistant Pasela, and Secretary Blanchard were also present.

Barbara Bowen (PSC Liaison) attended. Guests: M. Fabricant (PSC), and M. Rosson (KCC).

I. Approval of the Agenda: Executive Vice Chancellor Dobrin had cancelled his Report, item III.B, to attend a reception with the Chancellor. Replacing him was Vice Chancellor for Legal Affairs Frederick Schaffer, who attended to discuss the latest draft policy on Computer Use. A report on Budget Information by Prof. Levine was added as item III.D. The agenda was adopted as amended.

II. Approval of the Minutes of November 14, 2006: The Attendance record was changed to delete Professor Simmons of Medgar Evers College, who is no longer a member of the Senate. Minutes were otherwise approved as distributed.

III. Reports (Recorded in Reports & Deliberations)

- A. Chair
- B. Invited Guest, Vice Chancellor for Legal Affairs, Frederick Schaffer on the draft policy on Computer Use
- C. PSC
- D. Budget Information, Prof. Levine

IV. New Business:

A. Resolution about Faculty Need for Privacy/Confidentiality. Professor Pecorino moved the motion, which was seconded. Discussion ensued. A motion by Professor Barnhart to table was defeated. A substitute motion Professor Cooper to refer to Executive Committee was also defeated. After a quorum call showing that a quorum was present, there was a paper ballot with a vote of 27 in favor, 20 against, and 6 abstentions. Since 59 aye votes were needed to carry, the motion failed. The text follows:

The University Faculty Senate must regretfully oppose the proposed policy on computer use (attached). In the absence of a more general university policy on privacy and confidentiality, the current computer use proposal creates more difficulties for the University than it settles.

There must be recognition of the necessity of and provision for both the privacy and confidentiality of faculty to do what they are required to do at this University.

Proponent: Executive Committee

There being no further business, the meeting was adjourned at 8:40 p.m.

Respectfully submitted,

Bill Phipps
Executive Director

REPORTS AND DELIBERATIONS OF
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III. Reports:

A. Chair, Manfred Philipp: You have the written report in your packet. I'd like to just amplify on that slightly. The amplification will come on the topics of the proposed policies for the restructuring of the Science Doctoral Programs. Since I wrote that report we've had information that has come through the Doctoral Faculty Policy Committee of the Graduate Center which provides stronger support that there will probably be an attempt, at least, to move some of the Science Doctoral Programs to stand-alone situations particularly at City College and perhaps at Hunter College. This is going to be a major restructuring, much more extensive than we originally thought. What is in the report is accurate as far as I know but this is a little more added information. Now you have that report in front of you. If you have questions about that please ask now. The situation at Medgar Evers we discussed in the Status of the Faculty Committee just now and right now there is nothing more to say about that except what is in the report. We had a meeting; it was a very satisfactory meeting with President Jackson of Medgar Evers. I would then like to go to our invited guest, Vice Chancellor Schaffer.

B. Vice Chancellor for Legal Affairs Frederick Schaffer - A month or two ago we had some conversation about the draft Policy on Computer Use and Privacy. We've gone through a subsequent draft which I believe has been distributed, is that right? I thought I'd just meet with you for a few minutes to see if there are any further questions about it. Let me just back up for a moment because some of you may not have been at the earlier meeting, just to very quickly outline the background to this policy. It has been in process for a couple of years now, the work of a task force, which consisted of University administrators, college presidents and faculty. It went through quite a number of drafts and revisions. The original draft was based upon a review by my office of similar policies across the United States adopted by other colleges and universities which are remarkably similar. We have modified it a number of times, including this most recent time. I think it's fair to say that in terms of the sensitivity with which it treats issues of faculty privacy and confidentiality it is probably the best policy of any college or university policy that I've seen, and I've

read, probably, about a hundred or not far away from it. The most recent revision includes, and during the time that I last met with you I've met with other representatives of faculty, union representatives, some individual faculty and researchers who had concerns and the most important change that I think you'll note from the prior draft is that it provides -- in the event that there might be any physical intrusion of an office of a faculty member in connection with the inspection of what is on a computer hard drive -- prior notice so the faculty member can be present in his or her office during that inspection. Mostly these things occur remotely and no physical intrusion is involved. The draft remains what it was with respect to inspections that do not involve physical intrusions into offices. There was some other cleaning up of typos and the like in this draft, but I think with that major exception it is pretty much the same as you saw, I think it was two months ago, maybe it was three. I just came back to see if there are any further questions that you'd like to ask me so I open the floor. / Chair Philipp - If there are questions please come up to the microphone and state your name as you normally do for these events. / Vice Chancellor Schaffer - Let me just add one other thing. Some people had expressed concern about the interrelation between this policy and research that involves sensitive and confidential information such as human subject research. I asked, some time ago, President Travis of John Jay -- because I know he has quite a number of faculty who do research in very sensitive areas -- to put together a group for me to meet with to learn a little bit more about how they protect the confidentiality of their research materials when they are using computers. I'm sure that there will be questions about that so I'll save most of what I might say in response to questions but I think that it's fair to say that there is a variety and a range of ways in which people deal with this. Certainly all of the people that I met with were exquisitely sensitive to the issues and problems involved and the way in which they handle these situations ranged from using non-University hard drives to store material, which is certainly fine, to using University systems but using encryption. There was one person who said, "Look, I'm aware of the issues but I'm comfortable with using the university system without encryption and my funders have never questioned this as a problem and I don't see the problem." I think the people who are researchers in this field, at least judging from the encounter with 8 or 10 fairly well known people, they certainly indicated to me that people are aware of the issues and they have dealt with it in a variety of ways and although there was a variety of opinions among them in terms of whether they liked or didn't like this policy, none of them offered as part of their criticism, those who had criticism, that it presented a problem for their research. They understood the ways in which they could achieve additional protection if they needed to, despite this kind of policy.

Professor Roberta Klibaner (Computer Science Department, College of Staten Island) - I'm concerned about any policy that remotely monitors a computer. First of all, our students are savvy enough to get into anything that is online. What protection do we have from that? I might as well open my door, leave my computer on and let anybody walk in and take whatever they want off of my hard drive. / Vice Chancellor Schaffer - Well, I don't think students can hack into your computer but I'm not the right person to ask. / Professor Klibaner- I know they can. / Vice Chancellor Schaffer- Brian [Cohen] who couldn't be here tonight would be happy to come on another occasion, I'm sure. I just don't have the technical expertise but I don't think there is anything in this policy that makes that any more likely. It is certainly not permissible under this policy. We explicitly prohibit it. I don't think there is anything about this policy that makes it more likely that students will do that. In response to your initial statement that you don't like a policy that permits any monitoring at all, I understand that. I have to tell you that every university and college in the United States has such a policy. They tend to be more protective of the interests of privacy than would be true outside of universities and that's how it should be. At the same time, every college and every university in the United States recognizes that the computer systems that exist on their campuses belong to the university and there are situations, there are extraordinary circumstances in which monitoring may become necessary and then they provide for procedures to make sure that this is being appropriately reviewed. As I said, compared to all of the others that I've read, the procedures that we have in this draft policy are the most protective. If your feeling is that this should be like your home and nobody should ever be able to look at it then I'm not going to be able to satisfy you other than to say that this is the policy at every other college and university. / Professor Klibaner - What I did not get from this policy is, if monitoring happens, are we supposed to be keeping our computers on? I traditionally shut mine off at the end of the day. / Vice Chancellor Schaffer - You can do whatever you want. / Professor Klibaner - So, when would this monitoring take place? / Vice Chancellor Schaffer - Again, I'm not the technical expert but I gather that in most situations there are ways for computer use to be monitored that is remote and requires no access and for the most part, to the extent that this occurs, at least for the six years that I've been here, it is to deal with technical problems. As you can read, the policy does recognize some situations might arise where substantive monitoring, the actual reading of texts is authorized. You don't have to do anything different from what you'd normally do.

Professor Julian Aronowitz (Math & Computer Science Department, Lehman College) - There are two aspects to what you are saying. One has to do about the difference between a person using a computer at the University for their personal use and a person using it for the University's use, that's number one. Obviously if a person is only using it for their own use then any kind of anything goes. But in terms of the security part there is a very simple way that everyone can make sure that there is next to no chance of there being things on the hard drive that you don't want there. When you create something, never first put it on the hard drive at all, have an external source to put it on that you can take away from the computer, as long as you let the people know where it's going so you can validate that you've been doing the work. Then if the people want to take a look at it they would have to ask you specifically to take a look at what you have. As long as you take it away from the computer when you leave the computer, no one can find out exactly what you had there. Especially if you wipe out the RAM, switch it off and do whatever else that's necessary. That's a simple, straightforward and easy way.

Professor Lenore Beaky (English Department, LaGuardia Community College) - I understand that there is a proposed Research Misconduct Policy and a Conflict of Interest Policy that are being drafted--are at some stage of drafting by you and your office. Could you tell us a little bit more about those and what your plans are for presentation to the Board of Trustees Committee? I think we'd be interested in seeing drafts so that we could begin to work on these with you. I know that the computer policy is something that we've worked with you on for a long time. Still there are questions, very substantial ones, that we have but we'd like to work with you on. / Vice Chancellor Schaffer - Well, you know something about them because at the beginning of the year, I guess maybe it was in August before Manfred left on vacation, he and I sat down and I went over with him what the policies were that were being worked on and which I thought would come to the board this year. The Research Misconduct Policy is something that my office and the Office of Academic Affairs have been working on for a fairly long time because of new Federal regulations relating to research misconduct that we're required to comply with. They were in draft form for a long time awaiting comment, we did a draft policy based on the draft regulations, then they were finalized, and we revised it. It's pretty much done; the draft is pretty much done. I should have it for you this week. I'll be happy to discuss it, after you've had a chance to review it, at the next meeting or the meeting after the next meeting of the Executive Committee. It's certainly not going to the Board in January; it may or may not be ready in February. I frequently predict that things are

not going to be controversial and then I seem to be wrong most of the time. We have a current policy on research misconduct and this is largely an effort to bring that policy into compliance with Federal regulations. To the extent that there are changes in procedures, they are for the most part required by federal regulations and I think you will find more protective of due process rights than the old policy. With respect to conflicts of interest, that one is a little bit further behind. I expect to have it to you within a month and I hope to take it to the Board before the academic year is over. The phrase “conflict of interest” may be somewhat misleading. What it mostly deals with are conflicts of interest in the context of research and patents, so it is in some sense a companion to the research misconduct policy. To some extent this is also required by Federal regulations but since the University had no other policy relating to conflicts of interest we took this occasion to broaden it beyond just research and patents to commercialization of patent type issues to deal with other types of conflict issues that have arisen or might arise within the University. As I said, that one should be ready to reviewed and discussed within a month. / Professor Beaky - When you say that the Research Misconduct Policy is done and that it will go to the Board of Trustees in February it seems like there’s not a lot of time for us to have input and additions. / Vice Chancellor Schaffer - By done I simply meant that my office is finished with the draft and that we now begin the process of consultation. If the consultation requires more time, we won’t go to the Board in February. I’ve never been dogmatic about dates and we’ll take as much time as is needed to appropriately review it and discuss it with you and with other faculty groups. / Professor Beaky - I appreciate that because I think that we need to be involved in an earlier stage especially as these have been, as you indicated, in the works for quite a while. I appreciate what you can do to bring us drafts when they’re more amenable to change. / Vice Chancellor Schaffer - Sure, I completely agree. This particular one required a lot of time in my office because the Federal regulations are 60 pages of single-spaced four column pages of the Federal Register and the first thing I needed to make sure of is that whatever it said, it complied with and was consistent with the Federal regulations. We have to keep it that way but to the extent that there’s room for changes and discussions that keep it in compliance with the regulations that we’re all required to live by, we’ll take the time necessary to sort it out. / Professor Beaky - Thank you.

Professor William Crain (Psychology Department, City College) - Can I ask you about the events that are going to be in the news today. / Vice Chancellor Schaffer - I can answer any question you want. I’m not here to talk about this but I’ve read the same newspaper articles you have. Beyond

that I'm not sure what I can say. / Professor Crain - You might have something to say because as you know, 17 years ago, students in the college named a room the Morales/Shakur Center and then suddenly yesterday, the Daily News-- through a lead--discovered that the woman was convicted of killing a policeman although they are saying that it's not true. Today the Chancellor said that the sign had to come off, 17 years later because it never got Board approval. I assume your office had something to do with finding out whether that had Board approval or not. / Vice Chancellor Schaffer - I don't think that there's any controversy. There had not been Board approval and it's the policy of the University that rooms aren't named without Board approval. / Professor Crain- It looks like though that this is a convenient way of getting the Daily News off of our back that's how it looks. You could have said, "Well, you need Board approval," and let the college figure out what it wants to do rather than order the sign taken down. It's been up there for 17 years and it presents a lot of issues that the college could grapple with. Instead we get an edict of, "Take it down." It looks like technical grounds and that we just do what the New York Post and the Daily News want us to do. Why couldn't it have been left up? / Vice Chancellor Schaffer - I don't have an answer to that question for you, Bill. / Professor Crain - OK.

Professor Philip Pecorino (Social Sciences Department, Queensborough Community College) - We've spoken about this before. I've made remarks here at this body on the privacy issue. In my thinking, I've moved quite a bit from the initial approach where I was looking somehow for the University to give us a guarantee that we'd have privacy wherever we need it, to thinking about how that could never be delivered and I haven't come up with any way that makes that physically possible under all circumstances that not only might arise but under all of those that have arisen. So, I've reversed, kind of, and I am looking at it a different way, the University's need to preserve privacy and confidentiality where it is absolutely needed for us to do what we're required to do. I'm particularly concerned about confidentiality. I'm a bit of a techie but nowhere near some other folks that I know about. / Vice Chancellor Schaffer - You understand that I'm not even in your league. / Professor Pecorino - I know a little bit more than some others. I know about how to protect certain things but I'm at a total loss for how I'd ever protect everything. Just dealing with digital information, which this policy is primarily aimed at, my advice to folks is that if you have any information in digital form, don't ever put it on a network of any type, otherwise you've compromised whatever your interest is in absolute privacy and confidentiality. That doesn't just mean the University network, it means Yahoo, and it means any network that you'd be using for

communicating. That's pretty much my bottom line. I have happy news, we like to report happy news anecdotes, and for the first time in 34 years I'm about to get a new computer. It hasn't happened yet but they tell me I just might be eligible for one now after several refurb upgrades (I get hand-me-downs). So I know about the procedure, I know about remote access, I've even done remote access-- the techie folks at my place allowed me to remotely move stuff from one of my machines, a university machine I was using, onto another university machine I was going to use. I know what they can do to push things onto our machines and generally what's been pushed on are useful things. I'm happy for them but the folks are about to come around again and I'm a lot more sensitive. I've got data on my machine I should not have there. Sorry, I report, I'm probably in violation of Federal laws. I have student's names, addresses, birthdays and social security numbers. I have a lot of them; I probably have over 1,000 of them that I've accumulated since we got the computer 6 years ago. So when those folks come over I know that they're not authorized to have access to that information, they're only authorized to upgrade the hardware, but if they take my machine or even remotely access my machine, I don't know what I'm supposed to do to protect that information. I'm getting to thinking that the University has to be more concerned about protecting that than I do and my having it in the first place, my moving it around in the second place, and who's getting access to it in the third place, inadvertently, advertently, whatever, so my concern is that although I know that you wanted to approach this first because of the computer use and digital information, the University, I believe really needs a more all inclusive approach to privacy and confidentiality. I learned about FERPA, I learned about the Buckley Act and a lot of other federal laws and I'm really worried that directly or indirectly, advertently or inadvertently, violations are taking place, almost every day. I kind of feel for you and once again I'm sure, whatever policy results as a result of all of this, 5 or 10 years we're going to be revisiting it again and trying to fix up the loopholes, where the weaknesses are. I'm encouraging the University, I know you made allusions to it already, to really thoroughly and effectively to consider what we all can do to ensure that we faculty have what we need to do that job that we need to do and where that involves privacy and confidentiality in the contract and the federal law, whatever, what we need is something in place that will respect that. I hope that as soon as possible you can bring the resources of the university to bear to provide that for us. / Vice Chancellor Schaffer - Thank you, I appreciate your sympathy. I spend, and my office spends, a lot of time advising the campuses on compliance issues relating to FERPA and that includes individual faculty members who call with questions from time to time. I invite you do the same. I actually don't believe that we're violating FERPA every day of the week. I think we

do occasionally and inadvertently violate it but I think your concerns may be exaggerated and if you give me a call I'll be happy to go over with you what you have to do with your old computer.

Professor Stefan Baumrin (Philosophy Department, Graduate Center) - I'm lucky, I never got a computer. I haven't earned the right to have one but there are two things I want to discuss with you. The first you mentioned and I missed the fact that faculty members would be notified if the privacy of their offices was going to be breached for something or other and it was the something or other that I missed. / Vice Chancellor Schaffer - Under the original draft policy where we anticipated that any inspection that might take place would be done remotely, the policy provided that the affected faculty member would be notified after the fact. In recent conversations a number of faculty members indicated unhappiness with the possibility that this might involve physical intrusion as they understood it and suggested that in the case of a physical intrusion to inspect a computer that the faculty member should be notified before the fact so that he or she can be present since you want to make sure that nothing is disturbed in your office and we were understanding and sympathetic to your concern so we added that proviso; in the case of a physical entry into the office the faculty member would be notified in advance so that he or she could be present. / Professor Baumrin - It would seem to me you might broaden that out into anything. It's interesting that you would want to protect the computer privacy of my office, you're going to come into my office and look into my computer and I should be present to watch you rummage around in it but I might want that extended to my files, to my desk drawer, to my filthy books and a few other things like that so I recommend that you revise that and revise that *tout de suite* because that would be the first instance of a privacy policy coming out of your office. / Vice Chancellor Schaffer - Stefan, you'll recall that when we created the taskforce and Stefan and Phil were both members of it that we agreed that once we had the Computer Use and Privacy Policy done that we would reconvene to talk about privacy of other space beside the computer and the physical entry is a prime example of such other space. We dealt with it only in passing here because somebody specifically mentioned it in relation to the monitoring or inspection of the computer hard drive. We will reconvene on this point and I've obviously shown my hand in terms of what I think because I have no problem at all with the idea that unless we're served with a subpoena that doesn't permit us to give advance notice that we should give advance notice so that faculty members can be present in any case where there's an inspection or a search. / Professor Baumrin - The other issue is the issue about which we parted company some months ago. / Vice Chancellor Schaffer - Was it only one? / Professor Baumrin -

Having to do with computers it was just this one. / Vice Chancellor Schaffer - OK / Professor Baumrin - I don't think that you intend to put in place procedures that protect the privacy of the material on faculty member computers. What you in fact have put in place is authorization to invade that space. / Vice Chancellor Schaffer - Under limited circumstances, correct. / Professor Baumrin - Limited schrimited. That's what's being put in place. Why shouldn't a rational person advise a faculty member to take himself or herself off of the University server? The cost of being off the University server, \$300 a year, \$360 on a bad day, it protects one from the threat of that invasion immediately. The question is would you advise people to stay on the system? I know that you're not our counsel, but I would advise them not to. / Vice Chancellor Schaffer - I think each individual will reach his or her own conclusions, Stefan. I work on the system too and my view of it is that it's an enormous convenience to be on the system. I think most of what I write would put people to sleep. I also think that the chances are very, very small that there would ever be such a monitoring or intrusion. Each person has to weigh the risks and benefits for himself and decide whether he or she wants to be part of this system. I view it as a wonderful tool and I'm happy to work on it knowing that there is some remote chance that what I write and put on my computer will be read by someone else. That's a risk I'm prepared to live with. Others may reach the opposite conclusion and will take themselves off of the system or will use the system for some purposes and not others. Part of the purpose of this policy is to be fair to everybody, all of our employees, including the faculty so that you know what the rules of the road are and you can make your own decision. I think the worst thing we can have is a subterranean policy that people don't know about. I want everybody to know what the circumstances are in which we are retaining the right to monitor, what the procedure is for that to happen and then you make your own judgment. / Professor Baumrin - I wish I'd brought up the last point because we have lots of subterranean policies; they're the ones that actually govern our academic work. For example, there is no policy against retaining books from the library; you just have to bring them back eventually. There are just a lot of things that we don't need written policies for and you can write policy us to death. It gets to the point at which this is not merely a waste of your time but it actually gets to be a waste of our time because we're trying to shore up these things so they don't invade areas where they shouldn't be. / Vice Chancellor Schaffer - Stefan, I am completely of sympathy that we don't need a written policy for everything. One of the great changes in American law is that as we've graduated more and more students from law schools and more and more of them went to work for Government agencies, the volume of regulations exploded and I think there is some causal connection there. I do not spend a whole lot of my time drafting policies.

I've done very few since I've come here but there are some gaps that obviously need to be filled and as far as I can tell there aren't too many universities of our size and stature who don't have a computer use policy. / Professor Baumrin - We're leading the pack. / Vice Chancellor Schaffer - I thought that this one was one gap that was worth filling in.

Professor Dean Savage (Sociology Department, Queens College) - This is about Item 12 on Confidential Research Information. Suppose I was doing a study that involved extremely sensitive information, say I was doing a study of pedophilia on the part of Catholic Priests, for example, and I'm confronted now with a policy which asks for my responsibility to use password protection and then strong encryption to protect the data. At the same time, I should use software such that the University, in case of need, would be able to go ahead and overcome this strong encryption and go ahead and gain access to this extraordinarily sensitive information. That strikes me as really being very much in opposition to the interests and the responsibility of the faculty researchers to go ahead and protect the confidentiality of such extraordinarily sensitive information. I'm looking at number 12 here and it says you've got to use strong encryption software and provide the capability to properly designated CUNY personnel to decrypt the information when required and authorized under this policy. One, what did the people at John Jay say when you asked them about this, because they are the study that I was referring to? And two, what if somebody uses strong encryption and doesn't give you the key? / Vice Chancellor Schaffer – In the Bishop study that you're referring to, the researchers didn't use the University system. That was their decision and it was probably a good decision. Nothing could have been more sensitive and what they did is they used separate hard drives which were physically connected to each other, because it was a small group. They never sent out anything over the Internet or any other system that could be hacked into and I understand a lot of researchers do that. That's fine; forget about encryption, that's the strongest protection. If you've got really, really sensitive information and you can deal with a situation where you don't have to send it out, you can create your own interconnection among the people who are all part of the same team and it never goes out except from wire to wire, one computer to another, that's what you should do. They had the funding and the demand that that be the case and I know other researchers who do the same thing. The other option is very strong encryption and what you use is up to you. If you choose to go that route, it's your encryption, you don't have to share it with us and you don't have to share it with anybody. / Professor Savage - I'm at a loss to understand this last sentence in Item 12 then which says that "Software and protocols used should be endorsed by CUNY office of

InfoTech and provide the capability for properly designated CUNY personnel to decrypt the information.” / Vice Chancellor Schaffer - The only reason for that being there, and I’m glad you pointed to it because I didn’t understand a question that Manfred had previously raised with me as coming from that sentence, is we’ve got technical people who’ve advised me on what’s a good decryption system and what’s a bad decryption system. You’d be well advised to consult with them. They’re not going to demand it of you and it’s not required, but if you encrypt something and you lose the code, just be warned that you are up the creek. That’s all. / Professor Savage - I can live with that. / Vice Chancellor Schaffer - If you can live with that. That’s all that was meant to say, is that if you don’t tell us we can’t help you. / Professor Savage-This actually means that you’ve given an answer to Stefan’s previous question about what you would advise faculty to do with extraordinarily sensitive information. You have, and the record should show, joined with the UFS in recommending getting it off of the CUNY computers. / Vice Chancellor Schaffer - Well, that depends on the level of sensitivity and your level of risk. As I said, the Bishop study certainly was off of the system and one or two other things at John Jay they mentioned were off of the system. There was a range of what they did. They all felt comfortable with whatever it was they were doing or they wouldn’t have done it. These are all highly respected researchers and each individual will make his or her own decisions.

Professor Alfred Levine (Engineering Science & Physics Department, College of Staten Island) – On page 7, in Item 13 it reads, “The office of General Counsel shall issue an annual statement of the instances of account monitoring or inspection that fall within Categories D-G above.” Why not “Categories A-G above”? / Vice Chancellor Schaffer - D-G are the ones which can only be done with the permission of the President of the institution after consulting with the Office of the General Counsel. Those are the ones that we would know about; they’re the ones that I would loosely categorize as law enforcement situations. Those are the ones, I assume, people are most concerned about because those are the ones that would involve what I previously called a substantive monitoring. I expect this to happen very, very rarely. As a way of trying to give some reassurance, I’m prepared to give an annual report detailing the number of instances. The earlier ones, A, I don’t know about and B, they can’t always be tracked. While you’re at home sleeping there are tech workers who are trying to keep the system running every night and there are going to be intrusions for technical reasons to clear up problems that you don’t know about, you don’t need to know about, but nobody’s reading what’s on your computer and it’s an attempt to take care of

technical problems. That takes care of B. A is when you put it out there yourself -- I don't think we need to monitor that. C is also a technical problem issue so I didn't think A, B, and C were of the same nature. I thought that substantive ones, at least the ones that I could give a statistical breakdown on, were the ones where a President came to me and said, "I have reason to believe that a law is being violated, or some such situation, is this OK?" and I say, "Yeah, it sounds to me like this is within what was intended by this policy." I'll have a record of it and then I'll publish that record annually. / Professor Levine - I agree leave A alone, but if the campus technical people were to issue a report on B & C, you would have no objection to that? / Vice Chancellor Schaffer - I would have to talk to them. I don't know how burdensome that would be.

Professor Janice Dunham (Library, John Jay College of Criminal Justice) - The gentleman brought up the question of confidentiality and I have to say that a lot of the people in our Psychology Department at John Jay are very concerned. Some of them are individual investigators who don't always have the kind of individual support and help so that they can get their work done and keep their information confidential off the network. On the other hand, they are required by the grants they get and the work they do to keep it entirely confidential. In several of the meetings that we've had they have expressed serious concerns about this policy and they think it needs to be thought through a little bit better. / Vice Chancellor Schaffer - Let me say, this has occupied a lot of my thought about this policy for a long time and this concern was raised early on in the drafting process. Every other college or university that's worth its salt has a policy that looks more or less like this. For the most part they are less protective. I'm aware of no instance, and I've searched and I've communicated with general counsels across the country, where any researcher has ever been cited with a breach of an obligation of confidentiality because they dealt reasonably with confidential information whether it's taking it off the system or encrypting it or whatever it is, merely because their University had a policy that permitted occasional monitoring. I know it's not a complete answer, but the funding agencies and the agencies that enforce the human subject research laws have never taken the position that your obligation to confidentiality means that you can't be a part of a university system that has a policy like this. I believe they never would take that position because every university has a policy like this. I appreciate and sympathize with the concern and as the previous questions have indicated, if you're concerned enough you can just keep your information off the system altogether. I understand the nervousness but it doesn't derive from what's in this policy, it just derives from the facts of life. One of the researchers I remember very distinctly with

whom I met at John Jay said, “Look, I’ve got this very sensitive material but I need to share it with a co-author at another university.” A lot of this rather sensitive information in his case happened to be downloaded from Internet chat rooms, so it was in a sense “out there.” He said, “I’ve made a decision that the only way I can get my work done is this way and I don’t believe I’m violating any obligation to confidentiality.” He was comfortable with that. I’m not a researcher. You guys are and you know a lot more about this than I do. All I can say is that this policy isn’t what might create the problem for you, it’s just the reality in which you live that creates these problems and you just have to figure out the best way, individually, to meet it and obviously your academic disciplines could meet and talk about best practices. That’s not for me to say.

Professor Philip Pecorino (Social Sciences Department, Queensborough Community College) -

What happens if somebody below the President gives the instruction? No one calls your office to have that little discussion? What’s the mechanism for enforcing it? Would the person who felt violated or invaded have no recourse other than the collective bargaining agreement mechanism that this is a violation of a Board policy that they suffer from? Or can we have a faculty complaint policy concerning the acts of administrators in academic settings? / Vice Chancellor Schaffer - In answer to your question about other employees below the level of President engaging in conduct, that’s clearly forbidden by this policy. They would be violating university policy and if it was brought to the administration’s attention, either at the college level or centrally, I imagine some fairly strong action would follow. Part of what this does is it makes clear what your protections are as well as what your risks are. In that regard you’re much better off having this policy. If I were a college president and I learned of one of my employees, without authorization, having invaded someone else’s hard drive and copied what was there, I would think seriously about disciplinary action. At the level of the college presidents what do we do when they don’t consult with me? / Professor Pecorino - What do we do if the president says, “Oh, I didn’t know about that.” How do we know how accurate a report that might be? / Vice Chancellor Schaffer - What’s in University policy is deemed to be known by College Presidents and ignorance is no defense and believe me I have my ways of being heard.

Professor Sandi Cooper (History Department, College of Staten Island) - Do those ways include monitoring my hard drive? You have alluded on one or two occasions this evening and other times to a sort of standard practice to protect people browsing around the system. As somebody who has

just recently graduated from the quill pen to the ballpoint pen I haven't a clue what you're talking about. Can you please explain? / Vice Chancellor Schaffer - I'm not the best person to explain but as I understand it, occasionally there are slow-downs, there are log jams and malfunctions in computer systems. The tech people are monitoring to determine when these occur and when they occur they have to try to figure out what the source of the malfunction is and that's what they do. I can't really explain beyond that but I'm sure Brian Cohen could. This is about the third time I'm laying it off on Brian and he's probably not going to appreciate it but I can't do any better than that, Sandi. / Professor Cooper - You're basically referring to what I would call servicing the system. That's somewhat different than quasi-criminal curious investigation. / Vice Chancellor Schaffer - Absolutely, and that's why it's in separate categories under Item 13. / Professor Cooper - Then why is it necessary even to get into that if it's required to keep the system going? / Vice Chancellor Schaffer - For fairness, it lets people know that it's going on. / Professor Cooper - There's something about this that is either surreal or Byzantine. I don't quite get it. But if we're talking about things that emanate from a legal authority, the police, the FBI something like that, don't they have the right to issue subpoenas and summonses in order to get this equipment without having the university to have its own policy to do the same thing? Secondly, couldn't you give us an example of an instance when the substance of data was, in fact, read centrally or by a President? / Vice Chancellor Schaffer - I can't give you an instance, because as far as I know in my tenure here it hasn't happened. I can give you a hypothetical, which is a very serious allegation of sexual harassment, perhaps verging on rape, by either a student against an employee or one employee against another employee where there's reason to think that there is material in the email that would be relevant to that inquiry. Sexual harassment, for the most part, is not investigated by law enforcement agencies. The University does it and is expected to do it itself some fairly severe civil penalties if it doesn't. I can imagine a situation, it has not occurred to my knowledge, but I can imagine a situation where in the course of that kind of investigation a President would say, "I think we should be looking at this employee's emails." Remember, there is a policy for all of our employees, faculty included. I think it's appropriate where the President would consult with me and I would say, "Yes, I think you have reason to do it and this is just the kind of situation that this policy envisions and go ahead." It's not inconceivable; I think it would be very rare.

Professor Tim Aubry (English Department, Baruch College) – This worried me slightly. It says, "Use of CUNY computer resources for partisan political activity is also prohibited." I was

wondering, as an example, if I'm checking my email and I get a message from Moveon.org and they want me to sign a petition and I'm at my computer at work and it's going to take me 3 seconds, is that prohibited by this policy? If so, why? / Vice Chancellor Schaffer - I can come up with a lot of examples, and that's a good one, where the line is not absolutely clear. Let me circle back to that by giving a counter-example that's a little clearer. You support Candidate X for President of the United States. You have access at your college to the email addresses of every employee or every faculty member and you start bombarding them with campaign literature on behalf of your Candidate X. That's not what our computer systems are there for, that's not why we gave them to you; you shouldn't do it. Now, is it partisan political activity to respond to an email? I don't know but I wouldn't lose a lot of sleep over it. / Let me answer the question this way because it's always been the way in which I answer ethical questions. If you have to ask the question, don't do it, and then you're safe. You can just as well do it as home. / Professor Aubry - I just think this is fairly broadly defined, "partisan political activity," that's being restricted; the answer you gave me was very legitimate. I can understand why that kind of activity would be banned. / Vice Chancellor Schaffer - We have a Federal Election Commission that issues thousands and thousands of regulations because every one of these concepts can be defined and defined and refined infinitely. That's not what we're about here and this is not, obviously, a policy intended to catch the unwary. We're just trying to put people on notice that this is what the system is for, this is what it's not for, and by the way it liberalizes the prior policy and every other policy that ever been subject to by saying, "and occasional personal use is OK." We all do it so we might as well have a policy that's realistic. This was actually a battle among some of my colleagues in administration who were saying that we couldn't have our system being used for incidental personal purposes. My view is that if you can go to the bank during your lunch hour and do a banking transaction then why during your lunch hour can't you sit at the computer and do the same transaction or read the New York Times online or whatever it is that you might occasionally do. We've tried to come up with a reasonable balance. Not all questions are clearly answered, I understand, but unless you want 600 pages of regulations it's the best we can do.

Professor Barbara Bowen (President, Professional Staff Congress) - I'd like to ask the Chair for permission to speak, since I'm not a Senator. I just wanted to say to the delegates as well as to the Vice Chancellor, as you know that phrase that was just raised by the previous speaker is one of the things that the Union has raised in our discussions with CUNY management about this policy. The Union's position is, as you know, Rick, that there are items in this policy that are in conflict with the

Collective Bargaining Agreement and we've had several meetings with your representatives and with you on the subject. I wanted the Senate members here to know that that phrase was troubling to us and we didn't feel that the answer that we heard tonight was sufficient because it's a very broad phrase, partisan political activity. That could be interpreted in a number of ways and while we know that most CUNY employees are not going to use the University system to launch a political campaign, there are many, many things that we do in our legitimate activities as thinking people and as people who contribute to public life that might be considered by some to be partisan political activity. As you know, we've had instances even of partisan union activity where this has been a subject of debate between the Union and the University-- we've reached a settlement on that. I don't want to rehearse all of our discussions here; we've been having discussions with the university, but to tell my colleagues that that was one of the phrases that the union objected to and finds problematic in this proposed policy. / Vice Chancellor Schaffer - That is correct, Barbara, although you began by saying that it's the union's view that parts of this policy conflict with the collective bargaining agreement. We obviously disagree with that. That issue didn't pertain to the partisan political activity issue, it pertained to other things. / Barbara Bowen- I understand because I formulated those objections. / Vice Chancellor Schaffer - I know, you and I were in on the conversation and the rest of this group wasn't. I just want to make clear that the two are separate issues. / Barbara Bowen - I know, but the union raised that issue specifically. Article 8 of the contract does speak about protections on activities that we undertake. We didn't raise it in the context of conflict with the contract but I think people should know that it's one of the issues that the union raised. / Vice Chancellor Schaffer - Let me just be clear, if we took out the last sentence of paragraph 2, took out the reference to partisan political activities altogether, took out reference to private commercial purposes altogether, my own view is that nothing would be changed. That is to say, they would be forbidden. The purpose of putting them in was to give a couple of examples of things that we thought were clearly outside what the system was intended for as guidance. Was that a mistake to provide a few examples? I don't think so because I don't think it changes what's provided here. / Barbara Bowen - With all due respect, the final phrase of that sentence, "is also prohibited" does not read as guidance. / Vice Chancellor Schaffer - No, I disagree. The first sentence makes clear what the system is for and the next two sentences give examples of things that fall without it, outside of the purpose, and are therefore prohibited. They are intended as and, I believe, are simply examples. I think it's useful to give a couple of examples of the things that are clearly outside what the purposes are. / Chair Philipp - For those people back there, it was suggested that he say, "for

example.” / Vice Chancellor Schaffer - Barbara, if I say “for example” in the first sentence and “similarly” in the third sentence are you all with me? / Barbara Bowen - I appreciate your willingness to participate in discussion and maybe it can be changed, if it’s merely meant as an example, or maybe it can simply be dropped. / Vice Chancellor Schaffer - I don’t think it’s a good idea to drop it but I will certainly consider Martha’s suggestion of using the words, “for example.” I have got to go -- in fact I’m overdue.

Professor Baumrin - The general policy under 2 is perfectly clear because that’s what we know from all of our experiences in academic life. Offices and such are supposed to be for professional use only. We don’t need any examples. To quote the man in *The Treasure of Sierra Madre* without my having to say the words, just drop the rest of it. / Vice Chancellor Schaffer - I have seen *The Treasure of Sierra Madre* at least 20 times but I’m missing the reference.

Professor Beaky - Recently the Baruch faculty governance or the faculty group at Baruch did an extended exegesis of the policy, bringing up a whole variety of ambiguities and I just wanted to mention one which is vaguely occurring to me, the definition of CUNY computer resources. Yes, occasionally in our offices we use our computers for personal use but we also, most of us, use our home computers for CUNY use. My question is does that make my DELL laptop at home covered by that policy? I access networks; I access LaGuardia’s GroupWise. / Vice Chancellor Schaffer – No, and I don’t know why you would think so. I think the definition is pretty clear on that. You have your own personal computer at home and that’s your computer. Sorry for having taken up so much of your time. Thank you very much.

Chair Philipp - I would like to make a small change in the agenda, we had agreed to have Professor Levine discuss the enrollment and budget figures at this point but PSC President Bowen has informed me that she was not able to generate a written report. She doesn’t feel well but she thought she could give a short oral report. I’d like your indulgence to have that now and then we’ll have the somewhat more lengthy discussion of the budget.

C. PSC President Barbara Bowen - I appreciate that. I will be brief because I was meant to do a written report. I just wanted to speak on a couple of things. One was the computer use policy. As you heard from the back and forth earlier, the PSC has been working on this policy; we’ve been in

conversations with the leadership of the UFS. We believe strongly that several provisions of it are in violation of the contract. Under Article 2 of the contract the PSC has the right to challenge any policy put out by the University during the course of in-between contracts. If a part of that policy contradicts an already existing part of the contract, we have the right to demand negotiations on that. As you can imagine, if there's something already in the contract the University should not be putting out a policy that contradicts that. We were looking especially at the disciplinary implications of the computer use policy, how many of the incidents of surveillance might lead to discipline, and how this policy suggests a separate procedure for discipline, and we covered that in the contract. We've had two meetings now with Schaffer and various others from CUNY management trying to get some changes in the policy; some are reflected in the drafts that we saw, others are still under debate. Obviously they don't readily agree with us that parts of their policy contradict the contract. I mentioned this in the PSC Delegate Assembly that we do see a pattern in the PSC of management increasingly trying to carve out areas through policy and claim them, gobble them up and make sure that they are not in the contract. Anything that's in the contract is solid and we can grieve it and we can fight over it, and policy is something that they make. The second thing is, and I only have a few, the student complaint procedure. The PSC Delegate Assembly passed a resolution unanimously opposing the student complaint procedure. We were heartened to see what happened here in the UFS and we believe for many reasons that the procedure is unnecessary; it doesn't really clarify what a policy on a student complaint is. In fact, it opens the door, which in fact has behind it a set of politics that really hasn't been a problem at CUNY. It's not as if we see thousands of students making complaints. We opposed that and I know that you are on record here also in opposition. We should testify very strongly at the Board hearing in January and I think it will be very important to have the Faculty Senate as well as union testifying in order to make it clear that the policy was a mistake. Just two other things briefly. One is that the PSC has testified on CUNY's budget requests. Our position is that while we support the mandatory increases that CUNY has asked for and the programmatic increases, we believe that CUNY's formula for seeking those increases is too unambitious and it lets the State off-the-hook, in a sense. The State funding for CUNY has decreased by 25% since 1990 and this request asks only for a 7.74% increase, while SUNY asked for a 12% increase at the same time. This seeks \$37 million new dollars in student tuition and enrollment increases. A big chunk of the increases come from increased student payment and we in the PSC take the position that because student tuition has increased so much faster than State funding it is not an acceptable solution. It's really a message, to the State that a marginal investment

will fix CUNY. You can't take a quarter out of the budget and say a marginal investment is going to make everything OK. It's not and that's our position on it. Finally, I just wanted to mention, I mentioned this to Fred earlier, Fred reported on the meeting we had at Medgar Evers. I was very pleased to be able to go with the chair of the UFS and I thought it was a successful meeting. I thought it was an interesting thing to have the president of the PSC and the chair of the UFS invited by Medgar Evers to come together and meet. I have to say that I don't think it's accurate to say that the contract article, especially Article 21, was not a useful tool in reaching a resolution. I think what's not understood there is that we wouldn't have had that meeting—which was about individuals and we don't have to go into the whole story, there are plenty of people here who know the story—it was about individuals and trying to make a settlement on something. The fact that we have a contract and had the threat of, in fact, two grievances; this is what got us in the room and got a settlement created. Many times we don't pursue a case all the way through the grievances which can take a long time. Many times we solve something because we have the hammer of the contract to say to management, "Look, do you really want to go through this whole long process. Wouldn't you rather reach a settlement?" Many times things do not come to the level of a formal grievance. One of the most effective tools in a contract is that you can use the contract to solve problems before they start and you can even use the existence of a contract to keep people on track and keep certain practices honest and transparent. I think it's very important for you as a leadership body to know that those articles are critical in that discussion and they're critical in creating leverage to get these settlements and it was successful at Medgar so far. That's all I have to say for now and I'm very grateful to you for giving me the time. Thank you. / Chair Philipp- Barbara, you might want to take some questions if that's all right?

Professor Alfred Levine (Engineering Science & Physics, College of Staten Island) – Barbara, I completely agree with you about the importance of having a contract but I'd like to comment on the discussion that was held at the last plenary where a number of people stated that the Student Complaint Policy is not needed due to Article 21 in the PSC/CUNY contract. I actually agree with you that the proposed student complaint policy may not be needed for many, many reasons but I apologize to the entire body, - I've read Article 21 and I've also read Article 7 of the by-laws and frankly the protections in Article 7 of the by-laws actually seem stronger than Article 21 of the contract. Let me explain. Article 7 of the by-laws says "charges shall in the first instance be presented in writing to the President together with such evidence as would support the charges,"

while in Article 21 what triggers the complaint is a “written notice of intent to proffer charges.” There is no reason to put down evidence that comes later in the procedure. Once the President has issued a written Notice of Intent, the faculty member may be suspended immediately, that’s what it says in Article / President Bowen - With pay. / Professor Levine - With pay. The protection in Article 21 is that it protects the salary of the faculty member but not the Academic Freedom. I know that this Article 21 pre-dates your leadership; it was in the contract before you were there but I would hope that you would understand our feeling that Article 21 is completely inadequate to protect academic freedom. / President Bowen- That’s an interesting reading, I think important to raise. Article 21 is the article that explains what happens if a disciplinary charge is brought against you. Article 20 tells what happens if you bring a charge against CUNY, that’s the grievance procedure. Discipline procedure is if they charge you with something. It might be fruitful another time to talk about the different ways that those two provisions work, the by-law provision, the Article 21. I certainly don’t want to stand up here and say that everything about it is magnificent. The contract is a compromise document that both sides have to sign. I think the important thing is that the contract protects the by-laws and as you know when there’s a conflict between them the contract supersedes the by-laws, also that the contract protects academic freedom in its first article -- actually the preamble speaks about academic freedom and it’s a strong principle in the contract. I actually think that in saying that we don’t need a student complaint procedure because of Article 21 is probably not what people meant to say. I think we don’t need it for a lot of other reasons and then we have a whole disciplinary procedure just as we have a whole set of other procedures about grade disputes and everything else that covers a lot of other areas. I would never want to say that everything in the contract is our optimum language because it’s the language that we’ve always fought over and I think that one of the things that we did effectively in this meeting at Medgar was cite the by-laws and the contract. The union is pledged to supporting faculty governance and that’s written into our mandate, wherever that is possible and even where that seems impossible we always support faculty governance. / Chair Philipp - Michael? This will be the last question.

Professor Michael Barnhart (History, Philosophy & Political Science, Kingsborough Community College) - I just wanted to mention in relation to what Alfred was talking about, the issue of by-laws versus the contract and so on. A grievance can be based on both a violation of the by-laws and the contract, and also the written policies of the University; so whichever is more protective is actually what applies. If you think that Article 7 of the by-laws is better protection then rest assured, you’re

actually covered by that. / President Bowen - There are some merits to the ways that Article 21 is written -- and I know you function as a grievance counselor -- that even the intent to bring charges has to be done in writing. One could argue that that has some superior protections. You are absolutely right, one can bring a grievance, and I know we're talking about discipline, but in Article 20 we have the provision that you can grieve an infraction of the by-laws, the contract, or of CUNY written policy, and we have done all three. What we should do is see them working together and understand that they perform different functions and there are different times to use different ones.

/ Professor Barnhart- I just want to add that generally we do try to make the contract reflect what's in the by-laws so that any protections that are in the by-laws end up in the contract. / President Bowen - We did and we tried to get CUNY to do that in this round of bargaining in Article 8 on discrimination and they wouldn't do it. They would not agree to the change and both parties have to sign the contract. Where the by-laws have something that we want we would like them to agree but there are places where we don't want to put something that's in the by-laws into the contract. Thank you, Michael. / Chair Philipp - Again it's a pleasure. I should add that when Barbara and I were together at Medgar Evers I think we worked very well together on this project of getting a particular faculty member's rights restored immediately, promptly. As I reflected in my report, I think Barbara emphasizes that it was the contract that got us there but in the discussions we used means that I'd rather not discuss in public to get that faculty member back in the classroom immediately and if you want to talk to me privately you can do that. Having said that, I would like to reflect a little bit on PSC/UFS relationships. As you know I'm the one who moved so that we would have these mutual and joint reports. We also, have meetings between members of the Executive Committee of the UFS, and members of the PSC leadership before Board committee meetings to exchange opinions. Now, these meetings do not mean that we will have unanimity of opinion. We will not have the same opinions and we should not actually have the same opinions. We are separate organizations that represent the faculty in different ways. For one thing, this group is not the defender of the contract. The PSC is the defender of the contract and we cannot reasonably invoke the contract in what we do. We can invoke the by-laws. The PSC is the sole defender of the contract and we will not step on their toes, at least I will not do that. I hope it's clear that I will not step on the PSC's toes and I am sure that the reverse will be true so that we do what we do. They have the full responsibility of defending the contract and they do that job well. / President Bowen- I would just add that everyone who is covered by the contract has the responsibility of defending the contract and I totally applaud Fred for drawing a line between us, absolutely, but we're all covered by the

contract. You can defend the contract by insisting that it be applied properly and you can defend the new provisions by saying, “Yes, there is enough money for sabbaticals at 80% pay” and so on. / Chair Philipp - Institutionally is what I’m talking about, of course. / President Bowen- Institutionally, but I also want to encourage that we should all feel that it’s our right and our duty to defend it. / Chair Philipp - Of course it is everyone’s job but not as this collective. I have to say that it’s important to keep the two organizations clearly and distinctly separate because these are two legs that faculty governance and rights can walk on and defend. If we are perceived as one organization, we have become weaker. I brought and I am in favor of this connection but at the same time you will sense that at times I will be saying, “push apart a little bit.” Lenore has remarked on that in our own discussions and that’s true because we have to be closely connected and closely interchanging information, but at the same time we must remain separate organizations. I think that’s essential. The other thing I want to mention is a personal item. One of the members of the Executive Committee, Karen Kaplowitz, has been hospitalized, has undergone back surgery. Her surgery was, in fact, on the day of our last plenary. I am happy to report that Karen is well in recovery, I communicate with her several times a day, and she is after all a member of the Exec. We exchange emails several times a day. Item A under New Business was taken up at this point out of sequence. I’ve asked Professor Pecorino to present this resolution to us on behalf of the Executive Committee.

D. Report on Enrollment and Budget Figures: Item follows New Business.

IV. New Business:

A. Resolution about Faculty Need for Privacy/Confidentiality:

Professor Phil Pecorino (Social Sciences Department, Queensborough Community College) - There are no whereases here for me to get carried away with so we get right to the resolution. The Executive Committee is asking the Senate to adopt the following statement to be sent to the Board of Trustees. “The University Faculty Senate must regretfully oppose the proposed policy on computer use. In the absence of a more general University policy on privacy and confidentiality, the current computer use proposal creates more difficulties for the University than it settles. There must be recognition of the necessity of and provision for both the privacy and confidentiality of faculty to do what they are required to do at this University.” / Chair Philipp - That is the motion, it has been

made as a motion, and we now require a second. / [off mic] - second / Chair Philipp - It has been seconded. Does anybody wish to discuss this motion?

Professor Susan O'Malley (English Department, Kingsborough Community College) - It seems to me that we should be against this policy and list the reasons why we're against this policy, rather than saying that we want an entire policy before we can vote on this policy which we think is not correct. I say that because we've worked on this policy for two and a half years and it's still not where it should be. Suddenly to back up and say, "Hey, we're not going to vote on this policy because there's not an entire policy," seems to be a dodge. Maybe someone can persuade me that it's not a dodge but why don't we just vote against the policy and list the reasons why?

Professor Michael Barnhart (History, Philosophy & Political Science, Kingsborough Community College) - Usually, or lately, I've been speaking against CUNY policies but after tonight I'm not really so sure that this is necessarily a bad one. I've heard a lot of objections but for the life of me I can't really figure out exactly what people are concerned about. It seems to me that if we don't have a policy they can probably do worse than they can under the policy that is being proposed. Let me just make a few remarks about the resolution. I'm not sure I want a more general University policy on privacy and confidentiality. Sometimes with what they come out with I'm a little concerned with what it might look like. The other thing is, in terms of the provision for both the privacy and confidentiality of faculty, I'm not sure that given the fact that computer networks are inherently insecure that we're asking for something that can realistically be provided in terms of privacy and confidentiality. I think whatever the policy happens to be at CUNY it's going to be largely up to us to do whatever is necessary in order to protect the privacy and confidentiality of our information. It seems to me that what we're proposing here in the way of a resolution doesn't really speak to the issues that are being raised in regard to what Schaffer brought to us today. I would like to either vote against this or table it for now and consider it further. / Chair Philipp - Is that a motion to table? OK, it has been moved that this policy be tabled. Do we have a second? Second. So, it's been moved and seconded that this resolution be tabled, not debatable. So, all in favor please? All opposed? All abstentions? I believe that motion to table has been defeated. We resume the discussion.

Professor Emily Anderson (Social Sciences Department, BMCC) - I would like to speak in opposition to the resolution for a couple of the same reasons that Michael indicated. I think we have to be clear and up front about why we are opposing the computer policy and not put in our resolution that we want them to do a different kind of policy about privacy and confidentiality. Either we're against it or we're not. / Professor O'Malley - The proposal is that this is only the first part of a comprehensive policy that Schaffer wants to do. People are speaking against him doing a comprehensive policy; he's going to do that. This is only the first part on computers so it doesn't make sense to be against his doing the other parts of the policy. Either we support the resolution that's on the floor or we have to amend it in some way and give reasons.

Professor Alfred Levine (Engineering Science and Physics Department, College of Staten Island) - One of the reasons that I seconded the motion to table and voted in favor of tabling is that I have great suspicion of attempting to reword resolutions on the floor. My reaction is that Vice Chancellor Schaffer actually moved in a positive direction. I happen to feel that CUNY does need a written policy. I think it is something that provides us protection as well as a threat. I don't think we should be in a position to oppose every policy especially when there is a sincere attempt at listening to criticism. While I still have concerns about wording in this policy I am not convinced that I am prepared to oppose the existence of any policy.

Professor Anne Friedman (Behavioral Skills Department, BMCC) - I have a practical question, I guess to the chair but also just for the body to hear. On January 8 the Board Committees will be meeting and the committee on CAPPR, we expect, will get the student complaint policy. It's pretty clear how our UFS Executive representative on CAPPR should vote on the student complaint policy. However, this policy on computer privacy or is coming to CFSA on January 8th as well. As of today we don't know what kind of changes are going to be made. I also regret that we have not seen the Baruch exegesis or deconstruction as you say, because that I think would have been very informative to the discussion. The practical question is, I just happen to be the UFS faculty voting member on CFSA and I would like to vote in a way that reflects my constituency. It was my understanding that as of last week the Executive Committee was opposing the privacy policy. With the changes that came out today in writing it hadn't changed very much. It's a practical concern that if we don't vote on something today, it's going to be difficult for us to know. I'll have to vote, I guess, the way I think I need to vote but I'd rather be guided by my constituency.

Professor Sandi Cooper (History Department, College of Staten Island) - I have to agree with Al and some of the others that he did make, both here and in the Executive Committee, a move which he frankly has not done before. I am not worried that he is going to go on a fishing expedition looking for some kind of MoveOn.org petition I may have signed, but I have no idea what his successor is going to be like and neither does he. None of us can. The problem with these policies is that a lot depends on the interpreter, as we know. On the other hand, we have to go with what's in front of us, and what's in front of us shows a little bit of flexibility and interest in faculty opinion. I think they began to get nervous over the fact that some of the senior researchers on the campuses might just take their business elsewhere. Anne is right, we did vote something last week and propose a resolution but we hadn't had this conversation with him last week. Frankly, if that policy gets written and modified a little more we would look bad voting down the changes that we have largely been promoting. It seems to me that we need to keep our options open even though we don't have another meeting. When you don't have another meeting it's up to the Executive Committee to use its judgment, so I to refer the motion on the floor back to the Executive Committee. / Chair Philipp - Second? OK, now we're moving on the motion to refer back to the Exec. / Professor Friedman - Yes, I would like to speak against this alternate motion, substitute motion to send it to the Executive Committee. Look, we cannot intelligently determine our vote based on what our feeling is about the Vice Chancellor's response to the conversation and questions tonight. We have no empirical data which has to be the written document at this point, to vote on and to have some expectation that between December 12, the end of the term, the holidays and all that and that by January 8 something is going to materialize in writing that's markedly different from this proposal that we had today, I personally do not think it will happen. Again, I think there are lots of other problems in this policy that were not raised today and discussed today and specifically I refer again to the Baruch thing. I think it is the obligation of this body to vote today, up or down, the written policy in front of us today that had a few revisions. I would rather take direction from this body based on what we have in front of us today. I do not want to see this referred back to the Executive Committee; I would rather see the policy as it is today voted down. If we need to add reasons, fine. / Professor Baumrin - I subscribe, to everything that Professor Friedman just said. Thank you.

Professor Martha Bell (SEEK Department, Brooklyn College) - I'm going to support the opposite. I think we're going to get a document that's changed and I think that if we vote ourselves into a

position that requires people from the Executive Committee to vote based on a document that's still changing, and we have almost a month before that happens, that we're boxing ourselves into the corner. Those of us on the Executive Committee meet and talk constantly about these issues. I think we can listen to and hear the sense of the body. Certainly the body could vote a straw vote of how they would vote if the document stays as it is. We have to allow for the fact that this may change and we shouldn't be tied into it. It's too important an issue and we don't want to look like we're just dragging our feet for the sake of dragging our feet. / Professor Barnhart- I think if we vote for Sandi's motion, what we're saying essentially is that what we have in front of us is maybe not perfect but is tweakable. Personally, I think it's tweakable. For the life of me, I've heard nothing specific yet that couldn't be fixed and on pressure seemed to be something that Schaffer was willing to accommodate. Sometimes I think we misinterpret the language. I think we clearly misinterpreted the language about encryption, that somehow we were forced to give over the key to our encryption. We are not forced to give over the key to our encryption -- it simply means that if we encrypt and don't give it to the University, if we happen to lose the code ourselves, we're out of luck. That doesn't sound to me like a huge, onerous burden on the faculty. I would rather, in this matter, give the Executive Committee to respond. I don't think this is so fundamentally flawed and I've yet to hear a fundamental flaw. / Chair Philipp - I'd like to say that I don't want more speakers right now because I want to have a quorum on the vote, and the longer we talk the less likely that is. So, if you're indulgent I'm going to call this. I'm going to call this motion before we lose more people. The last thing I want is the absence of any ability of this group to meet. All in favor of Sandi Cooper's substitute motion to refer to the Executive Committee raise their hand. It fails, thank you. Now, since there has been a quorum call that I've successfully ignored so far but I can't ignore it further, can we check for a quorum? / - We have a quorum. Now we vote on the motion itself. The substitute failed. Now we vote on the resolution. All in favor of the resolution? Raise your hands please. The resolution about Faculty Need for Privacy/Confidentiality, the one in your packet, that's what we're voting on directly. It failed. All opposed? All Abstentions? We have to record the vote even though it failed. [Off microphone it was stated that 60 constituted a quorum and also the absolute majority needed to pass this motion. A quorum was present but only 26 voted in favor of the motion, 22 against with 6 abstentions.] OK, ladies and gentlemen, we have some information items for you today. Don't go away because this information is really interesting. On your campuses, the function of our Senate is not only to vote and do things but also to provide you with information to take back home to distribute to others. I remind you that you will be giving reports

to your college senates on this. I've asked Professor Levine, a member of the Budget Advisory Committee of the UFS, to report. What he is going to present to you is public information, recently made public by the Chancellery. Everything that Professor Levine gives you for information is public and you may transmit.

III. Reports: (continued.)

D. Report on Enrollment and Budget Figures:

Professor Alfred Levine - Thank you. I hope you've all picked up this document saying "Excerpts". It's excerpts from this document, the College Year-end Financial Report for Fiscal Year 2006. The excerpts that you have contain a lot of CUNY wide information, and information for each campus and I have taken the liberty of reproducing that. Please have either the governance leader or one member of the delegation pick up the specific information for your campus. I would like to start though with the information that was presented in the Budget Request for next year, which is highly relevant to this discussion. In the Budget Request information was presented on CUNY funding by source, showing that State aid produced \$897 million, City support produced \$189 million and tuition produced \$775 million, or 41.6% of the total CUNY budget, for a total of \$1.8617 billion. If you now open to the first page and you look at the University total, you will see that the adjusted tax levy allocation is around \$1.2 billion, which means that there's another \$600 million that isn't described in this document. The biggest portion of that is money held centrally, including fringe benefits. I know people are going to ask me, "What does it cost to operate 80th Street?" The answer is I don't know. I'm not sure anybody knows... If you now move ahead to the page entitled "Tuition Revenue Summary," page 9. Here you have information on fiscal year 2005 targets, fiscal year 2006 targets, fiscal year 2005 actual, fiscal year 2006 actual. Just to illustrate, if we go back and hold the first page and we look at tax-levy allocation at, say, Baruch, which happens to be the top of the list, we see adjusted tax levy allocation of roughly \$85 million. Now we look at their actual revenue and we see \$80 million. That means that in terms of the portion of the budget that was actually allocated to Baruch \$80 million came from tuition; \$5 million came from other than tuition. The true expenses at Baruch included fringe benefits; I'm using Baruch because it's alphabetically the first, and if you want you can pick any campus you wish. Overall it is true, 41.6% of the money came from tuition. Remember, 80th Street doesn't collect tuition. We, the campuses, collect the tuition. That's the first piece of information. Now you'll notice that if you stay on that page, Tuition Revenue, that there is a target and an actual. If you go to the next to last column you see there is collection over Fiscal Year 2006 targets, anything you collect over your target you keep.

If you come back to page 2, you can understand the column that reads Tuition Revenue above Targets. It's the difference between what you actually collected and what your target was. As long as your enrollment is increasing you wind up with more money. If, however, enrollment actually goes down you're in trouble. What happens with this money? On page 2 you have expenditures. This is what was actually spent. The college can spend more or less than its revenue. If the college spends less than its revenue you have an under-expenditure, you have a positive number. Baruch spent more than its revenue and therefore had to take its money from the bank account. The bank account is CUTRA (City University Tuition Reimbursement Account). The way to read this is that you have prior year CUTRA, you have your over or under-expenditure, and then you have total year-end balance in CUTRA. That's the money you can carry forward to the next year. Before I go, let's make sure I haven't lost the class. Are there any questions? / [Off mic comments] / Professor Levine - Community Colleges have a different system -- they don't have a CUTRA however they have something equivalent, it's a stabilization account. They're moving the Senior Colleges to a stabilization account. They have another bank account that they shift the money in and out of. / [Off mic comments] / Professor Levine- No, CUTRA has nothing to do with above or below the target, CUTRA has to do with spending more or less than your revenue. In other words, you can spend more or less. / [Off mic comments] / Chair Philipp - Let me interrupt please, if you have questions we are happy to have them but you must go to a microphone so that you can be recorded.

Professor Mohamed Yousef (Computer Science Department, College of Staten Island) - The question is what happens with above-target tuition? / Professor Levine - The campus keeps it for themselves -- they can spend it, they can save it. They can hire faculty or they can hire adjuncts. After all, if your enrollment goes up you need to run more classes. If you're not running more classes you're doing something wrong. If you have more students you need to run more classes, you need to spend money. / Professor Yousef - You have a tax levy of \$83 million, \$1.8 above target. / Professor Levine - Correct, that's right. / Professor Yousef- You actually put it in the university's pocket and the CUTRA is what was accumulated over previous years. / Professor Levine - Right. You'll notice that at the end of the fiscal year '05-'06 the total amount of money in the CUTRA accounts was \$32 million. When you consider a total university budget of \$1.8 billion, \$32 million is a fairly small reserve. If you go to the next page you see the expenditure comparison on page 3. This is showing how much additional was spent in fiscal year '05-'06 as compared to '04-'05. You may say, "What do they spend it on?" Go to page 4 and this gives the various categories, "Personnel

Service Regular,” “Adjunct Summer,” “Temp services,” “OTPS,” etc. Because we’re running out of time I want to go ahead to the enrollment numbers. On page 11 you have the enrollment numbers, “Head Count FTE 2005-2006.” If you want to have fun you can take the initial allocations, the tax levy allocations, and compute how much it is per FTE. It will especially depress you if any of you are aware how much is spent pre FTE in a reasonable junior high school. Most of the money gets spent on salaries -- page 18 tells you full-time staff and how much it changed. It only tells you the changes -- I’m sorry I didn’t make this up. In the information that I’ve handed out here, you have the actual numbers. The last page shows the University totals, “NDR teaching Fall 2004, Fall 2005.” You will be happy to know that in Fall 2005 we had more people teaching than in 2004. University wide we had one more person. Please don’t look at the Springs, in the Spring we went down 24. Only pay attention to the Fall because we want to see more faculty. The sheet that I wanted to show you was the split up by campus and this sheet was not reproduced but I have the information that I’m handing out. So, when you get the information you will all have the information on the number, the actual staffing number, Fall 2004, Fall 2005, Spring 2006 on every campus so please pick this up. Are there any questions? I’m done.

Professor Sandi Cooper - You said there was no way to figure out what the central office budget is because of the mix of funds. / **Professor Levine** - Correct. / **Professor Cooper**- Something has changed drastically in their presentation because up until 1998, which was my last time looking at these things, there was a separate item. They went from around \$13 million in 1989 to about double by 1998. / **Professor Levine** - Sandi, I’m trying my best to get the numbers. / **Professor Cooper**- But the numbers were listed as a special category, they weren’t fudged. Don’t you think this is an FOIA thing? / **Professor Levine** - I think I can get the numbers. / **Professor Cooper** - All right.

Professor Levine - I will now go over with you the budget numbers for the School of Professional Studies. I assume you all have this document. It was on the table. I am not an accountant so I will rely on the accountants in the room to help me understand this document. I would call your attention to the statement about revenue and expenses. I will call your attention to the statement in Box 4 where, under revenue, it says “CUNY online BA/BS Communication and Culture,” \$360,396 and then under expenses it says, “CUNY online BA/BS Communication and Culture,” \$360,396. The revenue and the expenses were identical to the dollar and so when you subtract the two that number has no effect. When you subtract the two at the bottom you get Total Expenses, Total

Revenue and you get a deficit in the fiscal year 2005 of \$337,102 and in fiscal year 2006 a deficit of \$308,649. The School of Professional Studies is showing a deficit. Then, look at the line underneath where it says, "Surplus excluding the CUNY online BA/BS," where they have added back in the \$360,396 to show that excluding that SOPS made a profit. I'm not an accountant but it seems to me that that doesn't work. I would suggest a new way of funding the University. Let's change that box from \$360 thousand to \$360 million. Then we can add this back in and fund the entire college. We can add more faculty with it.

Professor Vasilios Petratos (Political Science, Economics and Philosophy Department, College of Staten Island) - Al, have you ever worked at 80th Street? Give us an idea of what's inside. Is it 29 people, 300 people, 500 people? Any idea at all what the budget may be? / Bill Phipps - The last figure I recall, 10 years ago, was \$18 million. Two campuses had smaller budgets on the list I saw. / Professor Petratos - So it's safe to say it's \$40 million now. Where to solve the problems of this University is obvious.

Professor Baumrin - If you only had an increase in one faculty member and we were told we had an increase of around 100 lines, where did they go? / Professor Levine - That's not a question I can answer but I do think it's a highly appropriate question to ask. I think the Chancellor should answer it. / Professor Baumrin - The normal way we move is we have a static number of lines, some people die, some people retire, and some people go on leave, and then we replace them and we move forward with a static number of lines. Sometimes they steal the money, sometimes they don't, but if they tell us that they increased funding by 100 lines or 200 lines, that should be in excess of retirements, deaths and leaves. That budget that Al reproduced the page for only said 1 -- that's 100 lines that disappeared. I don't understand that. I follow this stuff really well and I don't understand it. We really have to prepare a question for the Chancellor. / Chair Philipp - Are there other questions? Then I would entertain a motion to adjourn.