

February 13, 2007

Hon. Joel I. Klein
Chancellor
New York City Public Schools
Department of Education
52 Chambers Street, Room 314
New York, NY 10007

Re: Richard Gallo
SCI Case No. 2006-2390

Dear Chancellor Klein:

An investigation conducted by this office has substantiated that Richard Gallo, a New York City Department of Education (“DOE”) teacher, unlawfully recorded conversations between other DOE employees without their consent by concealing a recording device in a classroom in the High School of Law, Government and Justice, a unit of P 721 in the Bronx. The office of the Special Commissioner of Investigation (“SCI”) has further determined that while a disciplinary proceeding based on an investigation conducted by the P 721 principal were pending against Gallo, he disseminated four e-mail messages in which the senders were identified by fictitious names. The e-mails were clearly intended to annoy and harass the recipients – witnesses in the disciplinary proceeding against Gallo, his supervisor, and the wife of the recorded employee.¹ Finally, we have determined that Gallo was the source of anonymous letters sent to parents of P 721 students which urged the recipients to lodge complaints of misconduct against the DOE employees whose conversations were captured by his unlawful recording.

¹ Gallo was reassigned from November 2005 until the referenced disciplinary proceeding against him was disposed of by a stipulation of settlement entered into in November 2006. It provided, *inter alia*, that Gallo pay a fine of \$2,500 over 12 months, “complete at least two to three counseling sessions” with a licensed professional, withdraw a lawsuit he had filed against the DOE, and be reassigned to P 811 in the Bronx. He is currently assigned to that school.

This investigation was initiated by SCI in June 2006 after it received a series of complaints about events at P 721 concerning Gallo, Teacher Kevin McCarthy, Paraprofessional Julia Juarez and/or (former) Principal Ilisa Sulner:

- In June 2005, Sulner reported to SCI that Gallo had placed a concealed video camera in a room at the school and recorded McCarthy and Juarez kissing. SCI referred her complaint to the DOE Office of Special Investigations (“OSI”), which directed Sulner to investigate the matter. She did so, and substantiated the allegation against Gallo.
- In May 2006, while reassigned and awaiting the disciplinary proceeding based on Sulner’s findings, Gallo wrote to SCI complaining about McCarthy and Juarez and Sulner’s failure to supervise them. SCI referred the complaint to OSI.
- In June 2006, Kevin McCormack, the Interim Acting Deputy Superintendent of District 75, contacted SCI to report that parents of P 721 students received anonymous letters complaining of misconduct by McCarthy, Juarez and Sulner, and urging the recipients to report it to this office. McCormack also advised SCI that P 721 teachers received e-mails disparaging Sulner, which were sent by an individual using the name “Rosy Gomez.” SCI referred the complaint to OSI.
- Later in June 2006, a parent of a former P 721 student contacted SCI, prompted by her receipt of an anonymous letter of the sort described by McCormack. SCI referred the complaint to OSI.

On the day following the parent’s complaint, Sulner advised SCI that more parents reported to her that they had also received anonymous letters as described by McCormack. SCI then initiated the instant investigation to determine whether Gallo was the source of the disparaging communications.

Sulner, who was promoted to Local Instructional Superintendent (“LIS”) of Region 75 shortly after her complaint to SCI, was unavailable to meet with investigators until September 2006. She then reported that in June 2006, while in her previous assignment as principal of P 721, parents notified her that they had received anonymous letters purporting to be from “Legal Assistance for the Disabled,” which urged the parents to report any misconduct by McCarthy to SCI. Sulner also said that P 721 faculty members received e-mails to their DOE addresses from “Hotmail” accounts which disparaged McCarthy. She gave the subject letter and e-mails to investigators. According to Sulner, Gallo had been investigated for concealing a video camera in a classroom at the school because he suspected a romantic relationship between McCarthy and Juarez. After she reported that matter to SCI, it was referred to OSI which, in turn, directed her to investigate the allegation.

Sulner and McCormack investigate Gallo at OSI's direction.

Sulner said that she undertook the investigation as directed by OSI, and in the course of it Gallo admitted to colleagues that he concealed a video camera to record possible inappropriate behavior by McCarthy and Juarez. Gallo "anonymously" gave Sulner a copy of the resulting videotape with a written demand that McCarthy and Juarez be disciplined for their behavior. Sulner reported that at the conclusion of her investigation, Gallo alleged that she failed to supervise McCarthy and Juarez. This caused the matter to be referred to McCormack. He substantiated the allegations concerning Gallo and initiated disciplinary charges (N.Y. Educ. Law § 3020-a) against him, and placed letters of reprimand in the personnel files of McCarthy and Juarez for their misconduct. McCormack determined that Gallo's allegation against Sulner was unfounded. Sulner reported that the subject e-mails and letters appeared during the course of the investigation, and that she believed that Gallo was the source of these messages.²

The subject videotape shows a classroom in which adults are observed entering and leaving, clearly oblivious to the fact that they are being recorded.³ The video images contain the date stamps of March 8, 2004 and October 4 and 5, 2004. On the March date, McCarthy can be seen entering the room where he is later joined by Juarez. The door to the corridor is closed, and no one else was present as they conversed with each other and briefly kissed. Their conversation was captured on the audio portion of the recording. In another portion of the tape, Ivette Mencia, a paraprofessional at the school, entered the classroom and is seen and heard conversing with McCarthy and Juarez. As described below, Gallo was shown the videotape at the SCI offices and admitted in sworn testimony that he concealed the video camera in the classroom, and that he turned the microphone on in order to capture what McCarthy and Juarez were saying. Gallo acknowledged that he did not have anyone's permission to do this.

SCI also obtained from Sulner written statements of three DOE employees which were prepared for her investigation; each is dated June 28, 2005. P 721 teacher Bendette Heyliger wrote that on June 27, 2005, Gallo told her that he was dating a paraprofessional whom McCarthy was also dating. According to Heyliger's statement, Gallo said that "somehow" the paraprofessional and McCarthy were recorded on video as they had sex in a classroom, and that Gallo had given the tape to Sulner. A statement by teacher Philip Levine indicated that Gallo approached him, also on June 27th, and asked if he had heard rumors concerning a videotape. Gallo told Levine that he had set up a camera because

² An SCI investigator contacted the DOE Office of Legal Services ("OLS") attorney assigned to prosecute the pending disciplinary charges against Gallo based on McCormack's findings to obtain a copy of the videotape.

³ The classroom effectively functions as a lounge for DOE employees at the school.

“McCarthy and a para were saying bad things about him, and he was surprised by what he saw” on the resulting tape. Levine asked if they were having sex, and Gallo responded, “What do you think?” Gallo told Levine that he had more videotapes, which he offered to show the teacher; Levine declined. Teacher Larry Culleton wrote in his statement that Gallo had approached him three times and acknowledged that he had taken videos of McCarthy and a paraprofessional, but that Gallo maintained that he was innocent of any wrongdoing.

On November 18, 2005, Sulner wrote to Gallo memorializing a disciplinary conference of that date in which Gallo was represented by United Federation of Teachers (“UFT”) Representative Alphonse Mancuso.⁴ The letter indicates that Mancuso would not allow Gallo to speak, but the union representative acknowledged that Gallo videotaped McCarthy and Juarez because he believed that they were behaving inappropriately. Sulner wrote:

After interviewing witnesses, reviewing their statements and your statements, I conclude you covertly videotaped colleagues in the High School of Law and Government during the 2004-2005 school year. I further conclude you mailed a videotape and threatening letter to me. In this letter you wrote, “I will be watching! If they are not removed I just might turn the video over to higher powers. I’m sure that they can find some use for it!”

Based on Sulner’s findings, which were later confirmed by McCormack, Gallo was reassigned by then District 75 Superintendent Susan Erber, and beginning on November 22, 2005, was directed to report to a DOE office on Chapel Street in Brooklyn; he remained in that assignment until November 2006.

Hotmail messages are sent to DOE employees and McCarthy’s wife.

Gallo was still awaiting McCormack’s determination and the disposition of the Section 3020-a charges against him when on April 1, 2006, a Saturday, an e-mail purporting to be from “Emmy Lopez” was sent to the DOE addresses of 40 teachers assigned to P 721. The message disparaged McCarthy, the school’s UFT Chapter Leader. It noted that the election for Chapter Leader was approaching, and urged the recipients to replace McCarthy in that position. In an unmistakable reference to Gallo, the message stated, in part: “One veteran teacher faces 3020-a charges because he was dating a woman that Mr. McCarthy took an interest in.” It continued:

That’s right teachers. Good ol’ Kevin (I’m a happily married man) McCarthy gets to date staff and even romance them on school time in the school. Now don’t dare bring your wives, your girlfriends or your daughters around. Who knows what might happen if he takes a certain interest in them. You may find yourself facing the 3020-a firing squad.

⁴ P 721 Assistant Principal Christopher Dugan was also in attendance.

The message also disparaged Sulner, stating that she was “not perfect,” and mentioned a 1994 “indictment” by the Bronx District Attorney against her.⁵ It stated: “And when you are not perfect McCarthy and people like Dr. Sulner will be waiting for you.”

Six days later on Friday, April 7, 2006 at 7:49 p.m., an e-mail purporting to be from “Emelia Lopez” was sent to McCarthy’s wife at her place of employment.⁶ The sender’s address was slightly different from that on the “Emmy Lopez” message, but both e-mails originated from free “Hotmail” accounts, and both identified McCarthy as a UFT Chapter Leader, and disparaged him as a philanderer.⁷ The message did not name Gallo, but clearly referenced the incident for which he was facing discipline, and it identified Juarez. The April 7th message, approximately 660 words in length, contained the subject line: “What is Kevin doing at work?” An excerpt from the message appears below:

Your husband has a long history of womanizing and philandering at his job, and many woman [*sic*] have complained that he had harassed them in the past. But last year he went too far. A man he works with, a single man whom your husband called a friend was beginning to date a woman at the job. Kevin was consumed with jealousy and rage. He slandered the poor man and began his own relationship with the woman himself. I can provide you with hard evidence, real proof which will, I am afraid, break your heart.

The message also states that McCarthy and Sulner were complicit in

... remov[ing] that man from the school so as not to endanger your’s husband’s reputation. But further, [Sulner] has pursued charges against that poor man that might soon cost him his job, his home, his mother’s home, his pension. He is a long serving veteran but now faces a severe future because of your husbands [*sic*] burning jealousy and undue influence.

⁵ In October 1994, Sulner was arrested by SCI investigators based on misconduct at the school to which she was then assigned, P.S. 162 in the Bronx. She was charged with one count of Petit Larceny (N.Y. Penal Law § 155.25 (McKinney 1999)), a class “A” misdemeanor, and one count of Offering a False Instrument for Filing in the First Degree (N.Y. Penal Law § 175.35 (McKinney 1999)), a class “E” felony. Sulner was not indicted. In November 1995, she pleaded guilty in New York City Criminal Court, Bronx Co., to Disorderly Conduct (N.Y. Penal Law § 240.20 (McKinney 2000)), a violation, in satisfaction of the charges, and was sentenced to an unconditional discharge.

⁶ An SCI investigator examined the DOE employee database for “Emmy Lopez” and “Emelia Lopez,” including variations of these first names; there were no such listings.

⁷ “Hotmail” is a free Internet e-mail service of Microsoft, Inc., which can be initiated by the user at any computer with Internet access. The user may open the e-mail account in a name of his or her choosing, and no proof of the user’s identity is required.

The writer, who purports to be a “friend” of the aggrieved subject, stated:

I just cannot see my friend suffer like this because he chose to date your husbands [sic] lust target. You, my dear, I think need to know the truth about him. You, my dear, need to get a blood test. You, my dear, need to be aware.

The writer repeats the offer to send “hard evidence,” adding, “Maybe I will send it whether you like it or not,” before signing the message, “emmy” [sic].

Eleven days after the “Emelia Lopez” message was sent to McCarthy’s wife, 24 teachers at P 721 received an e-mail from “Elsa Rodriguez” in their DOE mailboxes during Spring recess on April 18th at 4:18 p.m.⁸ The message contained no text, but attached an illustration – a “Wanted!” poster featuring a photo of Sulner over which prison bars were superimposed. A caption centered under the photo stated in large type:

Indicted Bronx DA, 1994
Steals from Retarded Children
See Dr. Ilisa Sulner; Google.com

The return e-mail address – also a Hotmail account – contained a corruption of the former principal’s name: “sulnot@hotmail.com.”

Another Hotmail message appeared in the mailboxes of 41 DOE employees on Tuesday, June 13th, at 7:36 p.m. It purported to be from “Rosy Gomez” and alleged that Sulner stole “hundreds of thousands of dollars (not just a chair) from the New York City Public School System.”⁹ The message stated that “All kinds of deals were made to cover up her criminal activities.” It claimed that Sulner used the stolen money to buy real estate in the Berkshire Mountains, and pronounced her “a liar and a thief.” The unsigned message concluded: “And those who give criminals like her power over honest people should be in jail with her. Whether they be former superintendents or present superintendents, chancellors or politicians.”

SCI investigators subpoenaed data from Microsoft, Inc., which identified a single Internet service provider where the four Hotmail accounts were established, and from which the subject messages were sent. SCI then subpoenaed the Internet service provider, and the responsive data showed that the account was subscribed to by Jimmy Li, the proprietor of Hyra Technologies (“Hyra”), a computer repair shop on Broadway in

⁸ An SCI investigator examined the DOE employee database for “Elsa Rodriguez,” including variations of the first name; there was no listing for anyone assigned to P 721.

⁹ An SCI investigator examined the DOE employee database for “Rosy Gomez,” including variations of the first name; there was no listing for anyone assigned to the Bronx.

Elmhurst, Queens. In January 2007, SCI investigators visited Li at his shop, which also offers Internet access to the public at computer terminals in the store for an hourly fee. Based on the subpoenaed data, Li showed investigators a public terminal at Hyra from which all four messages were sent.¹⁰

Gallo complains to SCI.

In the month between the last two e-mail messages, SCI Commissioner Richard J. Condon received a signed three-page letter from Gallo, undated, but postmarked May 20, 2006.¹¹ Gallo complained that he was being subjected to Section 3020-a discipline because McCarthy was “extremely jealous” of his relationship with Juarez, and that:

Mr. McCarthy knew that I was aware of his sexual involvement with Ms. Juarez and he was afraid that I would reveal it. I am equally sure he was afraid his wife would find out.

Gallo also attributed his Section 3020-a predicament to Sulner, and claimed that she retaliated against him for being a “whistleblower” by alerting her about McCarthy and Juarez. The letter reiterated the information in the three prior and one subsequent Hotmail messages. Gallo’s letter also contained at least one grammatical error (repeated eight times) which also appeared in the April 7th “Emelia Lopez” message to McCarthy’s wife: Use of the term “behaviors” rather than “behavior.” The letter to SCI also stated a new allegation against McCarthy which did not appear in the e-mails, specifically, that he violated students’ rights by manipulating class size, thereby ignoring regulatory mandates. In summary, Gallo requested that SCI investigate McCarthy and Juarez for their inappropriate conduct at P 721, and Sulner for failure to supervise them, and for Sulner’s retaliatory action against Gallo. SCI referred Gallo’s letter to OSI.

Anonymous letters are sent to P 721 parents.

Approximately two weeks after Gallo’s letter to SCI, and one week before the “Rosy Gomez” Hotmail message appeared, Sulner contacted this office and reported that parents of P 721 students advised her that they received letters purportedly from “Legal Assistance for the Disabled,” which disparaged McCarthy and Sulner, and which urged the recipients to contact SCI.¹² Sulner forwarded a specimen copy of the letters to investigators on June 6, 2006. The letter begins:

¹⁰ More than six months after the subject e-mails appeared, SCI investigators showed Li and two workers at Hyra a photograph of Gallo obtained from his DOE personnel file. All stated that they had no recollection of Gallo. Li also explained that Hyra customers pay cash when using the public terminals, and that he only recently began requiring users to sign in on log sheets. Li further reported that his store’s security videotape from the subject period has since been erased and reused.

¹¹ Gallo acknowledged the letter in his sworn testimony at SCI described below.

¹² “Legal Assistance for the Disabled” does not appear in the telephone directory for the Northeastern U.S., and an Internet search for that term yielded no results.

Dear Parent,

It has come to the attention of this group that a teacher at PS 721x and a former principal, Dr. Ilisa Sulner, might have violated the rights of your disabled child.

The letter comprises a full page above the closing, “Sincerely, Legal Assistance for the Disabled;” there is no signature, letterhead, or named author. However, the letter repeated allegations first raised in Gallo’s letter to SCI of the previous month – that McCarthy “violat[ed] the rights” of P 721 students by ignoring class size mandates. The letter to parents claimed that McCarthy combined classes and in the resulting free periods “cavort[ed] romantically” with Juarez. It also repeated the allegations stated in some of the Hotmail messages and in Gallo’s letter to SCI – that Sulner had evidence of their misconduct, but failed to act on it. The anonymous letter is in the same font as Gallo’s complaint to SCI, and similarly described Sulner’s conduct: In the SCI letter, Gallo wrote that with respect to McCarthy, Sulner “has hidden his behaviors;” the subsequent letter to parents twice stated that Sulner had “hidden” evidence she obtained which implicated McCarthy.¹³

The anonymous letter to P 721 parents continued: “This group of advocates is advising the parents of PS 721X to organize, seek legal aid in finding why, where, when and how these violations occurred.” The letter urged parents to complain by telephone or letter to the SCI Commissioner, and identified him by the exact name and honorific as in Gallo’s letter to him. In the final sentences, the writer offered a financial incentive for parents to “[s]ee an attorney and contact the Department of Investigation as soon as possible. You and your child may be due compensation.”¹⁴

Gallo sues the DOE.

Gallo also decided to “see an attorney” and seek compensation concerning this matter. In October 2006, the media reported that Gallo filed a civil lawsuit against the DOE, claiming that it was seeking to terminate him in retaliation for reporting misconduct by McCarthy, Juarez and Sulner.¹⁵ Gallo’s Section 3020-a hearing was still pending. SCI subsequently obtained the documents filed for Gallo’s suit – an application for an order to show cause on his behalf against the DOE in Supreme Court, New York County, in October 2006. The accompanying petition restated the complaints set forth in the messages described above, including Gallo’s most recent allegation – that he was a “whistleblower,” and that his pending disciplinary proceeding was the result of Sulner’s retaliation.

¹³ The grammatically incorrect term “behaviors,” as noted above, also appears in the “Emelia Lopez” e-mail to McCarthy’s wife.

¹⁴ The letter prompted at least one parent of a P 721 student to telephone SCI in June 2006 and report that she was calling in response to an anonymous letter she received concerning McCarthy. SCI referred the matter to OSI.

¹⁵ See Dareh Gregorian, *Sex Ed was Real: Lawsuit*, N.Y. Post, Oct. 5, 2006, at 8.

Gallo's filing in the lawsuit against the DOE included a seven-page affidavit, apparently signed by him. It recounted his allegations against McCarthy, Juarez and Sulner. Remarkably, however, Gallo is vague in describing his own conduct. Although he previously told Levine, Culleton, and Mancuso that he personally made the surreptitious recording of McCarthy and Juarez, Gallo did not acknowledge this in the affidavit. He merely stated that "in or about the first week of June, 2005, I became privy to a video recording that depicted the 'monkey business' that apparently had been transpiring [between McCarthy and Juarez] all year long," and acknowledged sending the tape, which also depicts Mencia, to Sulner. The fact that Gallo did not specifically assert that he personally made the recording likely stemmed from his attorney's recognition that doing so would be fatal to their lawsuit. Gallo's allegations in the suit are based on his eavesdropping, a felony.¹⁶ Evidence obtained by criminal eavesdropping may not be received in evidence at any trial, and it cannot withstand a motion to suppress.¹⁷

DOE settles Gallo's Section 3020-a charges and lawsuit.

In December 2006, an SCI investigator visited P 721 to speak with some of the teachers who received the subject e-mails and learned that the Section 3020-a proceeding against Gallo and his lawsuit against the DOE had been settled the previous month.¹⁸ A DOE Office of Legal Services ("OLS") attorney confirmed that the Section 3020-a matter had been discontinued and, in exchange, Gallo withdrew his lawsuit. It was stipulated that Gallo pay a fine of \$2,500 over 12 months, complete "two to three counseling sessions ... regarding boundaries," and be reassigned to a teaching position at P 811 in the Bronx.

Gallo testifies at SCI.

Gallo appeared at the SCI offices pursuant to a subpoena and was examined under oath. He was accompanied by the attorney who represented him in the Section 3020-a proceeding and the civil lawsuit. Gallo was questioned concerning the subject e-mails and recordings. In response, he invoked the Fifth Amendment privilege against self-incrimination approximately 30 times. Specifically, he asserted the privilege when asked if he used Internet e-mail accounts (including Hotmail), if he ever sent e-mail messages from public access terminals in Elmhurst or elsewhere, and if he visited Hyra – or any store with public access Internet computer terminals – on Broadway in Elmhurst. Gallo, who resides in the Bronx, and reported to a DOE office in Brooklyn during the period the

¹⁶ N.Y. Penal Law § 250.05 (McKinney 2000).

¹⁷ N.Y. C.P.L.R. § 4506 (McKinney 1992); see *People v. Qike*, 182 Misc.2d 737, 700 N.Y.S.2d 640 (Sup. Ct. Kings Co. 1999), *aff'd* 284 A.D.2d 417, 726 N.Y.S.2d 294 (App. Div. 2d Dep't 2001), *leave to appeal granted* 97 N.Y.2d 687, 738 N.Y.S.2d 302 (N.Y. 2001), *appeal dismissed* 97 N.Y.2d 750, 742 N.Y.S.2d 609 (N.Y. 2002).

¹⁸ Assistant Principal Christopher Dugan informed the investigator of the settlement.

e-mails were disseminated, acknowledged that he sometimes visits family and friends in Queens and on Long Island.¹⁹

When questioned about and shown a copy of the April 1st “Emmy Lopez” e-mail to teachers at P 721, Gallo denied composing the message or any portion of it. He claimed that he did not send the message or direct anyone to do so. He invoked the Fifth Amendment when asked if he ever sent any e-mail to any of the recipients indicated on the message from a computer other than a DOE office terminal.

Gallo denied sending any e-mail in which “Emelia Lopez” is identified as the sender, or with the Hotmail address indicated on the April 7th message to McCarthy’s wife at her workplace. He declined to answer on Fifth Amendment grounds when asked if he ever sent an e-mail to McCarthy’s wife, and gave the same response when shown the message and asked if he knew of anyone who communicated any of the information contained in it. He similarly declined to answer when asked if he believed that the message would annoy or alarm McCarthy. Gallo claimed that he did not compose or send the message, and that he was not aware of anyone else who did so.

Gallo gave essentially similar denials and Fifth Amendment assertions when questioned about and shown the April 18th message from “Elsa Rodriguez” to DOE employees which attached the mock “Wanted!” poster of Sulner. He denied sending any e-mail which identified the sender as “Rosy Gomez” or with the Hotmail address indicated on the June 13th message to DOE employees. When asked if he communicated by any means any of the disparaging information regarding Sulner contained in the message, he claimed the privilege against self-incrimination.

Gallo was shown a copy of the signed letter of May 2006 to the SCI Commissioner, and acknowledged his signature and authorship.

With respect to the “Dear Parent” letter purportedly written by “Legal Assistance for the Disabled,” Gallo denied composing the letter, or writing any document using that group name. He was shown the letter, and asserted the Fifth Amendment privilege when asked if he was familiar with its content, if he learned that P 721 parents ever received any of the information contained in the letter, or if he ever sent a general letter to parents of P 721 students.

¹⁹ According to an Internet mapping service, the Hyra store in Elmhurst is near the recommended auto route linking Gallo’s DOE worksite in Brooklyn at the time of the e-mails, and his home in the Bronx as shown in his DOE personnel file. The Hyra store is approximately equidistant from the two addresses. Mapquest, <http://www.mapquest.com/main.adp> (last visited Jan. 24, 2007).

In the course of Gallo's sworn testimony, investigators played a few minutes of the videotape obtained from the OLS attorney, including the audio which captured conversations between those depicted. Significantly, Gallo acknowledged that he made the recording. Specifically, he admitted that he concealed the video camera in the classroom and switched on the camera's microphone because he wanted to record what the people in the room were saying. Gallo further admitted that he did not tell anyone in advance of making this recording, and that no one gave him permission to do so.

Conclusion and recommendations.

Even if one were to disregard the adverse inferences which may be drawn by Gallo's refusal to give testimony which he claimed might incriminate him, the subject e-mails and the letter to P 721 parents, when examined in chronological order with his admissions and acknowledged writings, clearly and convincingly establish that he authored them. Each message contains facts, stylistic elements, or new allegations which link it to the preceding or succeeding message. All of the e-mails originated from the same public access computer and the same e-mail service – Hotmail – at times when Gallo was not required to be at work. The Hyra store in Elmhurst was accessible to Gallo, but sufficiently distant from his home and worksite to deflect suspicion of him. The choice of feminine Hispanic pseudonyms to identify the senders echoes Gallo's apparent adolescent-like infatuation with Julia Juarez.

Gallo is the only person with motive to send the Hotmail messages to the recipients indicated. The full pattern of his conduct was deceitful, insubordinate, and criminal. Gallo unlawfully eavesdropped on colleagues to confirm his jealous suspicions, and sought to use the recording to persecute them. When Gallo became the subject of a disciplinary proceeding, he sought to undermine it by harassing and defaming Sulner, McCarthy, and Juarez in messages to their colleagues, McCarthy's spouse, and the parents of disabled schoolchildren. When these actions proved ineffective, Gallo rationalized his behavior by styling himself as a "whistleblower" and filed a disingenuous and frivolous lawsuit. For months, Gallo displayed a reckless disregard for his colleagues, their families, his supervisors, and even for the parents who placed their children in the care of P 721. His suggestion to McCarthy's wife that she be tested for sexually transmitted diseases is particularly appalling. The e-mails and the letter to parents represent a continuation of Gallo's criminal conduct, compounding the felony of eavesdropping with the misdemeanor of harassment.²⁰

²⁰ N.Y. Penal Law § 240.30(1)(a) (McKinney 2000).

It is unfortunate that Richard Gallo's Section 3020-a case was disposed of while SCI was still conducting its investigation. Based on our investigation we recommend that Gallo's employment be terminated and that this matter be taken into consideration should he seek employment with the DOE or any of its affiliates in the future.²¹

We are also referring this matter to the District Attorney of Bronx County for whatever action he deems appropriate.

We are sending a copy of our report and of our recommendations to the Office of Legal Services. Should you have any inquiries concerning this matter, please contact Deputy Commissioner Gerald P. Conroy, the attorney assigned to this case. Please advise Deputy Commissioner Conroy within thirty days of receipt of this letter what, if any, action has been taken or is contemplated with respect to Richard Gallo. Thank you for your attention to this matter.

Sincerely,

RICHARD J. CONDON
Special Commissioner
of Investigation for the
New York City School District

By: _____
Gerald P. Conroy
Deputy Commissioner

RJC:GPC:gm

c: Michael Best, Esq.
Theresa Europe, Esq.

²¹ We specifically recommend that in charging Gallo's misconduct described herein, in addition to specifying the criminal elements of Aggravated Harassment in the Second Degree, OLS should specify the criminal elements of Eavesdropping, none of which appeared in the previous Section 3020-a charges or in the stipulation and settlement.