

# features

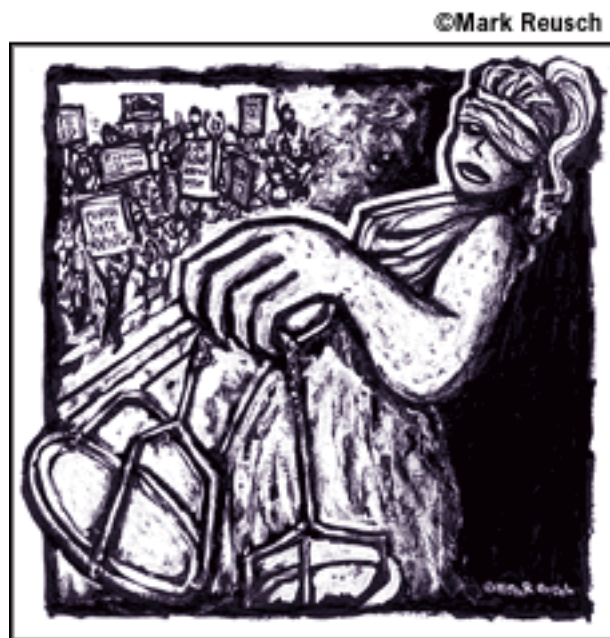
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## By the book

### A recent SJC ruling will expand students' rights by forcing colleges to honor their word -- even though the student who brought the case lost

by Harvey A. Silverglate

Judging by the media coverage of the Massachusetts Supreme Judicial Court's September 25 ruling in *Schaer v. Brandeis University*, you'd think that Brandeis and the 10 colleges that filed friend-of-the-court briefs in the case had won an important victory. But if Brandeis and its allies won this particular battle over institutional authority, their efforts also secured the principle of student civil rights. In *Schaer*, the SJC made clear that campus disciplinary boards -- which too often operate like kangaroo courts -- must now adhere to the procedures outlined in student handbooks. They can no longer make up rules as they go along.



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In its majority opinion, the SJC reaffirmed that a university's student handbook serves as a contract between the school and its students. With this ruling, the court gave some measure of protection to Massachusetts students brought before campus tribunals. But the court went even further: it applied to private colleges the old common-law principle that a

private association must treat its members with a minimal level of fairness. (Public colleges are bound by the fairness requirements in the Constitution's Bill of Rights.) This means that even if a university were to eliminate all mention of student rights from its handbook, it would still be legally bound to treat students with some degree of fairness.

The opinion is of tremendous importance in Massachusetts; the SJC's decisions are highly influential, especially in the area of academic law. Higher education is a major industry in the Bay State, and the court's affirmation of students' rights can only be good news for the tens of thousands studying here. The decision also has national implications, for among state supreme courts throughout the US, the SJC has long been considered the foremost interpreter of common-law doctrine.

But if the decision supported students' rights, why did the *Globe* write that "the majority of judges said colleges may discipline and punish students as they see fit, without interference from the courts"? And why did the *Herald*, as well, fail to grasp the import of the court's opinion? Remarkably, neither paper seemed to understand that the point of this case *wasn't* whether campus tribunals must follow the same standards used in a court of law. Instead, it was whether they must follow their *own* standards as set forth in student handbooks. The answer to the latter question is "yes." And that's a welcome development in the evolution of students' civil liberties.

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