

Report from the Committee on Faculty Rights and Responsibilities Brandeis Faculty Meeting, May 15, 2008

Back in March the Committee on Faculty Rights and Responsibilities announced that we were deferring any new grievance cases, pending discussion on basic ground rules with the Faculty Senate and the administration. We felt we had no choice but to acknowledge that the system had broken down, not just in the famous Hindley case, but because that case now called into question the integrity of the whole grievance process. In particular, the Provost had challenged the jurisdiction of our Committee to hear appeals in certain cases, as well as our authority to investigate violations of core faculty rights to fair treatment and academic freedom. The Committee could no longer promise our colleagues a grievance process where everyone was playing by the same rules. There were also faculty members who declined to pursue grievances already in the pipeline, given these uncertain conditions.

Since March the Committee has been working closely with the Faculty Senate, which passed resolutions on March 13 and May 1 that can help guide us back to normal operations. As I reported at the April faculty meeting, the Committee scheduled a meeting with the Provost and Dean, hoping to gain their agreement on some common principles, so that the grievance system could once again rest on a solid foundation. I am sorry to report, however, that these discussions have encountered a serious roadblock, which I will explain in a moment. The door remains open for further discussion, provided the Provost and Dean are willing to endorse the key recommendation contained in the Senate's May 1 resolution. If we get a positive response, then our discussions can likely move forward.

When the basic rules of our Handbook are called into question, it is not enough just to sit down and write new or tougher rules. We can spend hours debating new language for the Handbook, but everything depends on how those rules will be interpreted, and by whom. Here is that roadblock I just mentioned. Any grievance system needs to rely on fixed and predictable rules. The Provost and Dean, on the other hand, are looking for maximum flexibility and discretion, relating to their roles as administrators who may need to override the rules for the larger good of the University, as they see it. While the Handbook gives to this Committee the authority to interpret the rules, the question is whether the administration can override that authority, especially by interpreting rules retrospectively in the context of grievance cases.

Is there a way around this problem? Our Committee and the Faculty Senate believe that there is a possible division of authority that all sides might eventually accept. The Handbook makes it plain that judgments by our Committee in grievance cases are not ultimately binding on the administration. In other words, the Provost can, if she chooses, reject our findings, although she needs to articulate her reasons. In a practical sense, the Provost remains the final judge of her own case when it comes to appeals under the grievance process. That is already a powerful concession to the authority of the Provost: to make decisions which, in her judgment, reflect the greater interest of the University,

even if they do not conform to the rules of the Handbook. Such occasions would presumably be rare, but they do not completely undermine a grievance system administered by the faculty. The problem, however, is that the Provost wants to assert even broader powers. Along with her authority to make final decisions, she also wants the final authority to interpret the rules themselves, whenever she reads them in a different way from the faculty. Combining these two kinds of authority in the Provost makes it impossible to sustain any semblance of a grievance process. Under the Provost's approach, she is not only the final judge of her own actions, but also the final interpreter of the very rules by which her actions are being judged. At the end of the day, these rules will mean whatever she decides they mean, applied retrospectively to her own actions that are being challenged. It is hard to reconcile this approach with basic notions of accountability. We have seen the heavy hand of this approach in the Hindley matter, but also in some prior controversies unrelated to grievances.

What the Senate and the Rights and Responsibilities Committee have proposed is best described as a division of authority along with mutual accountability. The faculty interprets the rules of the Handbook and applies them to grievance cases, knowing that our judgments must be compelling and based solely on the rules themselves. The administration retains the power to override any particular decision, but it would be expected to acknowledge the divergence from the formal rules, whenever it believes that the larger interests of the University go against those rules. This may not be a perfect system from the standpoint of faculty governance, but it is a strong improvement over the current system, where the Provost's reasons can be presented simply as differences over interpretation. This division of authority seems workable to the Senate and to this Committee—indeed, it is the only structure that would still protect a faculty-run grievance process. The faculty would retain interpretive authority over the rules, while the administration reserves the authority to override the rules in exceptional cases, for reasons it would need to articulate. It is not entirely clear, however, whether this kind of accommodation is acceptable to the Provost and Dean.

To some degree the controversies this year have brought the campus to a state of exhaustion. There are vague allusions to legal complexities. People are worried that somehow the worthy goals of promoting diversity on campus are being lost in the shuffle. And then there is the untidy display of confrontation between faculty and administration. Tired as we all are at the end of the year, it would be tempting to paper it over with smiles and handshakes, and to pretend to patch things up with a few brisk amendments to the Handbook. But we simply cannot let this issue slide away. What concerns us most is the next faculty member, perhaps someone sitting in this room, who comes to this Committee with a formal grievance. If it involves the campus harassment policy, right now we have no confidence that the Committee can take jurisdiction in your case. We have no confidence that the Committee can investigate whether you were denied your basic right to fair treatment under University policies, or your right to academic freedom. There is no guarantee that any sanctions imposed on you would be suspended pending the deliberations of this Committee. And we can give you no assurance that the rules as written and interpreted by your faculty peers will be the rules under which you and others on campus will be judged.

This is clearly not an acceptable state of affairs. With the backing of the Senate, the Committee on Faculty Rights and Responsibilities, speaking with one voice, has proposed to the Provost and Dean a division of authority that would allow them to fulfill their managerial functions, while still upholding the basic rules of faculty governance. We have come to a standstill, however, until the Dean and Provost tell us their response to the Senate's resolution of May 1. It may be too late to proceed any farther this year, but we hope that eventually the Provost and Dean will consider removing the roadblocks to further discussion, so that the normal systems of faculty governance can be restored.

Richard Gaskins, Chair