



Foundation for Individual Rights in Education

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July 9, 2008

Mr. Malcolm L. Sherman
Vice Chairman, Board of Advisors
Gordon Brothers Group
101 Huntington Avenue
Boston, MA 02199

Dear Mr. Sherman:

For more than eight months now, Brandeis University has been facing an unprecedented faculty and student revolt, as well as a public relations disaster, over the administration's treatment of Professor Donald Hindley. After Hindley used the term "wetbacks" during a class and criticized the pejorative use of the term, he was found guilty of violating Brandeis's harassment policy, had a monitor placed in his classes, and was threatened with termination. Hindley never received a proper hearing, a copy of the report that found him guilty, or any specific account of alleged violations.

Brandeis's handling of the case has earned the university scorn and ridicule from national, local, and student press and from the American Civil Liberties Union of Massachusetts, and has resulted in Brandeis receiving "Muzzle Awards" from *two* organizations and a place on FIRE's "Red Alert" list—dubious distinctions that recognize the nation's worst censors. Admirably, the Faculty Senate, the Committee on Faculty Rights and Responsibilities, and the student body have actively and aggressively fought on behalf of Professor Hindley, but so far the administration has chosen to endure shame and revolt rather than admit any error.

FIRE—which exists to defend basic rights on campus—has also been fighting on behalf of Professor Hindley. For the details of this case, please see the enclosed letter to Brandeis president Jehuda Reinharz and the documentation on FIRE's website at <http://www.thefire.org/index.php/case/755.html>. All we ask is that Brandeis finally overturn the absurd finding of racial harassment against Professor Hindley. Much of the harm that this case has done to Brandeis's national reputation could have been avoided if President Reinharz had taken such sensible action—such morally and professionally mandated action—months ago. It is not too late, however, for Brandeis to overturn this terrible decision and declare that Hindley was not guilty of racial harassment for his classroom speech.

This case simply will not go away as long as the harassment finding stands. Please help us resolve this case once and for all before it brings further harm to the Brandeis name. Please ask President Reinharz to repudiate the harassment finding against Hindley. President Reinharz can be reached at 781-736-3001 or jreinhar@brandeis.edu.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Kissel". The signature is written in a cursive style with a large, stylized initial "A".

Adam Kissel
Director, Individual Rights Defense Program

Encl.



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July 9, 2008

President Jehuda Reinharz
Brandeis University
Office of the President
MS 100
415 South Street
Waltham, Massachusetts 02454

Sent via U.S. Mail and Facsimile (781-736-8699)

Dear President Reinharz:

We regret the need to send you this second letter regarding Brandeis University's abuses of free expression, academic freedom, and due process in its treatment of Professor Donald Hindley. As you know, Brandeis Provost Marty Krauss put a monitor in Professor Hindley's classes, required him to attend "anti-discrimination training," and threatened him with termination after an administrator found him guilty of discrimination for criticizing the use of the term "wetbacks" in class. Hindley never received a proper hearing, a copy of the report that found him guilty, or any specific account of alleged violations. In addition, his *Faculty Handbook* procedural rights were violated, Krauss then challenged the authority of the faculty body hearing his appeal, and finally, his appeal was unilaterally cut off when Krauss declared the matter "closed."

Through your administration's actions, Brandeis has dramatically violated its own policies guaranteeing academic freedom and freedom of expression, has chilled speech, and has produced an atmosphere of intimidation on campus.

Today, the Faculty Senate remains in open revolt, having suspended its support of the university's Non-Discrimination and Harassment Policy and having passed multiple resolutions against your administration's violations of faculty rights. Moreover, the Committee on Faculty Rights and Responsibilities, having found that your administration blatantly violated Hindley's rights, has deferred the hearing of new grievances.

Furthermore, this case has been a public relations disaster via the national, local, and student press. The ACLU of Massachusetts publicly criticized Brandeis, and The Thomas Jefferson Center for the Protection of Free Expression and *The Boston Phoenix* both gave your administration "Muzzle Awards" because of this case. A long list of news items is enclosed.

In addition, you did not respond to our letter of December 12, 2007. To date, our understanding of the facts has not been disputed. Since we are sending copies of this letter to other university presidents and many others beyond Brandeis, we include material on the severe breakdown of relations between your administration and the Brandeis faculty because of this case. The documentation and press coverage are available on FIRE's website at <http://www.thefire.org/index.php/case/755.html>. Please alert us if you believe we are in error.

History of the Case

For nearly fifty years, Professor Donald Hindley has been teaching—with his students' acclaim. During his Fall 2007 course on Latin American politics, he used the term "wetbacks" in the context of criticizing the pejorative use of the term. He reportedly said, "When Mexicans come north as illegal immigrants, we call them wetbacks" (*The Justice*, November 6, 2007). A student complaint against Hindley was passed, contrary to Brandeis's own guidelines, from Department of Politics Chair Steven Burg to Dean of Arts and Sciences Adam Jaffe and then to Jesse Simone, Director of Employment, Employee Relations and Training. According to Hindley, Simone summoned him to discuss an unspecified, urgent matter. They met on October 22 or 23 for about an hour and fifteen minutes. She announced that Hindley had been accused of racial harassment and discrimination and then interrogated him about his classroom speech. This meeting was the extent of Hindley's opportunity to face the allegations against him.

In a letter dated October 30, Simone notified Hindley that her investigation had found him guilty of having "made statements in class that were inappropriate, racial, and discriminatory" and that this "conduct" had violated Brandeis's Non-Discrimination and Harassment Policy. In another letter dated October 30, Provost Krauss notified Hindley that she would be keeping a monitor in his classroom until she had determined that Hindley was "able to conduct [him]self appropriately in the classroom" and added that she was requiring him to attend "anti-discrimination training."

Hindley appealed the decision to Brandeis's Committee on Faculty Rights and Responsibilities (CFRR). Its chair, Richard Gaskins, noted in a letter to Krauss on November 1 that according to the *Brandeis University Faculty Handbook*, the disciplinary actions against Hindley should have been suspended immediately, pending the committee's review. But the discipline remained, and Assistant Provost Richard Silberman monitored Hindley's courses throughout the term.

Scathing Faculty Reaction

Brandeis's Faculty Senate discussed Hindley's case in an emergency session on November 8, unanimously passing a resolution expressing serious concern. On November 29, the CFRR issued its initial ruling in Hindley's favor. The committee faulted your administration's overbroad application of the charge of "discriminatory harassment" against Hindley and faulted Krauss for choosing classroom monitoring as a proper punishment. The report also outlined a number of failures by Brandeis employees to follow established procedures and decried the lack of thoroughness and promptness in the investigation.

In a December 10 report, the CFRR noted that Krauss had rejected its ruling, adding that she "continues to impose unilateral limits on the authority of our Committee, based on her own reading of faculty rules," ignoring the CFRR's official power to interpret the *Faculty Handbook*.

The CFRR also stated that the Provost had violated Hindley's faculty rights and that her actions "present a threat to the academic freedom of ... other faculty and students at Brandeis."

After Krauss responded to this report, in a supplementary ruling on December 19, the CFRR noted that Krauss had added "new allegations in the guise of [her] reply memo." The CFRR also challenged Krauss's "narrow reading of academic freedom" and her departures from "the full stated definitions" of harassment.

Meanwhile, the Senate Council, in a letter to you on December 12 regarding the reappointment of Krauss as provost, wrote that "several faculty reported a 'chilling atmosphere' concerning free speech of faculty throughout the campus and some untenured faculty members are afraid to speak their minds candidly and forthrightly."

FIRE wrote you on December 12, urging you to redress such outrages. You did not respond. Instead, Krauss simply sent Hindley a letter on January 7, 2008, stating that "I trust that you understand your responsibilities" and that "the University now considers this matter closed"—unilaterally cutting off any further appeal.

Unprecedented Criticism From and Conflict With the Faculty

The Brandeis Faculty Senate then passed *several unanimous resolutions* decrying the actions of your administration and defending faculty rights. On January 31, the Faculty Senate unanimously suspended its support of the Human Resources Non-Discrimination and Harassment Policy, stating its objection to your administration's "violation" of faculty rights. In another unanimous resolution, the Senate reasserted the *Faculty Handbook* guarantee of freedom of expression:

The university affirms and protects the full freedom of scholarly and intellectual inquiry and expression of all faculty in the fulfillment of their university responsibilities, including teaching, advising, discussion, research, publication, and creative work, as well as other scholarly activities.

At the Faculty Meeting of March 6, the CFRR extended its criticism of the "breakdown," reporting that it had "deferred the review of faculty grievances pending a clear reaffirmation by the Senate and by the administration of shared principles of faculty governance."

On March 13, the Faculty Senate passed *additional unanimous resolutions* objecting to Krauss's actions: "we object as a Senate to the administration's actions and statements that have undercut [the CFRR's] authority." One resolution required that administrators specifically justify violations of the *Faculty Handbook* when they claim "legal necessity" for such violations. Krauss responded on April 10, invoking "specific legal responsibilities" in Hindley's case, yet she still failed to explain those responsibilities.

The Faculty Senate passed yet another resolution on May 1, reaffirming the CFRR's findings of "serious violations of the Faculty Handbook," including the judgment that Krauss had "violated Professor Hindley's faculty rights, including the right to academic freedom and the right to be treated fairly under University policies." The resolution added, "We regret that this recent case has damaged the collegiality of our University, its academic and intellectual function, its faculty governance procedures, and its public reputation." The conflicts between the faculty and the Provost remain unresolved.

The Public Shaming of Brandeis

Indeed, the public reputation of Brandeis has suffered considerably. *The Chronicle of Higher Education*, *The Boston Globe*, and many other print and online publications have exposed your administration's treatment of Hindley and the faculty and student revolts that have resulted. The ACLU of Massachusetts has also denounced Brandeis over this case. A *Brandeis Hoot* editorial, headlined "There is such a thing as bad publicity," brings the point home:

Brandeis has been all over the news, for all the wrong reasons. This university has had two former Presidents speak in two semesters, hosted a U.S. Senator last week, and has an ever expanding number of students advocating for myriad causes, yet every mention of Brandeis in the national and regional press for the last few weeks revolves around the administration's mismanagement of the situation involving Professor Donald Hindley.

Conclusion

Brandeis University clearly faces serious problems regarding faculty governance and university policy. Resolving them will require further discussion. From the public's point of view, however, the resolution of the Hindley affair is simple. **You can declare that Hindley is innocent of having violated Brandeis's now-unsupported Non-Discrimination and Harassment Policy.**

Brandeis has entirely failed Donald Hindley and its faculty in protecting faculty rights even at the level of the *Faculty Handbook*, much less according to the moral and constitutional principles of academic freedom and freedom of expression. Your administration has betrayed the legacy of Supreme Court Justice and free-speech champion Louis D. Brandeis, who wrote in 1927,

Those who won our independence believed ... that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth [T]hey knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government ... Only an emergency can justify repression.

Your administration's persistent and unabashed violations of faculty rights have earned Brandeis the notorious dishonor of being one of only five schools on FIRE's Red Alert list—a list reserved for schools with such a poor record of protecting individual rights that we urge faculty and students to think twice before joining those academic communities. It is particularly inappropriate and shameful for the president of a liberal arts university to refuse to engage in any public discussion or accept any public accountability for the administration's persecution of a faculty member for protected classroom speech.

We request a response by July 31, 2008.

Sincerely,



Adam Kissel
Director, Individual Rights Defense Program

Encl.

cc:

Henry Aboodi, Alpine Capital
Tzvi Abusch, Department of Near Eastern and Judaic Studies
Mitch Albom, Columnist, Sports Division, *The Detroit Free Press*
Allen B. Alter, Senior Coordinating Producer, CBS News
Stuart Altman, Dean, Heller School for Social Policy and Management
American Civil Liberties Union of Massachusetts
Joseph E. Aoun, President, Northeastern University
Leonard J. Asper, President and CEO, CanWest Global Communications
Eric Athas, *The Daily News Tribune*
Lawrence S. Bacow, President, Tufts University
Alex Barkas, Managing Director, Prospect Venture Partners
John Bassett, President, Clark University
Noah Bein, *The Justice*
Dennis D. Berkey, President, Worcester Polytechnic Institute
Wendy A. Berliner, President, Brandeis University Alumni Association of Greater Boston
David E. Bernstein, Professor, George Mason University School of Law
Joan Bertin, Executive Director, National Coalition Against Censorship
Christine Bishop, Director, Ph.D. Program, Heller School for Social Policy and Management
Sidney Blumenthal, Fellow, Center on Law and Security, New York University School of Law
Marc Brettler, Department of Near Eastern and Judaic Studies
Charles Bronfman, Chairman, The Andrea and Charles Bronfman Philanthropies
Robert A. Brown, President, Boston University
Steven Burg, Chair, Department of Politics
John Burt, Chair, Department of English and American Literature
Bulbul Chakraborty, Chair, Department of Physics
Ruth Charney, Chair, Department of Mathematics
Joe Conason, Columnist, *The New York Observer*
Jack M. Connors, Jr., Chairman, Hill Holliday
Peter Conrad, Chair, Health: Science, Society, and Policy
D. Ronald Daniel, Infinity Pharmaceuticals
Jonathan G. Davis, CEO, Davis Marcus Partners
Susan Dibble, Chair, Department of Theater Arts
Michael Doonan, Director, MPP Program, Heller School for Social Policy and Management
Donald G. Drapkin, Vice Chairman, Lazard Asset Management
Margery Eagan, *Boston Herald*
Jean Eddy, Senior Vice President, Students and Enrollment
Daniel Elkaim, President, Libertas Partners, Inc.
Irving Epstein, Chair, Department of Chemistry
Drew Gilpin Faust, President, Harvard University
William Fleisch, English & American Literature
Henry L. Foster, Charles River Laboratories, Inc.
Seth Fraden, Department of Physics
Peter French, Executive Vice President & COO

Thomas L. Friedman, Foreign Affairs Columnist, *The New York Times*
William S. Friedman, CEO, Tarragon Corporation
Deborah Garnick, Heller School for Social Policy and Management
Richard Gaskins, American Studies Department
Jeff Gelles, Chair, Department of Biochemistry
Ira Gessel, Mathematics Department
Morton Ginsberg
Jody Gittell, Heller School for Social Policy and Management
Thomas P. Glynn, Ph.D., COO, Partners Healthcare
Benjamin Gomes-Casseres, Director, MBA Program, International Business School
Vartan Gregorian, President, Carnegie Corporation of New York
Andy Guess, *Inside Higher Ed*
Karen Hansen, Chair, Department of Sociology
Hollie Harder, Department of Romance Studies
Sylvia Hassenfeld
Christie Hefner, Chairman and CEO, Playboy Enterprises Inc.
Judith Herzfeld, Department of Chemistry
Timothy Hickey, Chair, Department of Computer Science
Eric Hill, Department of Theater Arts
Donald Hindley, Politics Department
Susan Hockfield, President, Massachusetts Institute of Technology
Jody Hoffer Gittell, Director, MBA Program, Heller School for Social Policy and Management
David Jacobson, Anthropology Department
Jonathon Jacobson, Senior Managing Director, Highfields Capital
Adam Jaffe, Dean of Arts and Sciences
Paul Jankowski, Chair, Department of History
Daniel J. Jick, Managing Director and CEO, HighVista Strategies
Kenneth S. Kaiserman, President, Kaiserman Company, Inc.
Edward Kaplan, Chair, Department of Romance Studies
Stephen B. Kay
Gershon Kekst, President, Kekst and Company
Alice Kelikian, Chair, Film Studies Program
Carol Kern
Dolores Kohl
Ann Olga Koloski-Ostrow, Chair, Department of Classical Studies
Meyer G. Koplow, Partner, Wachtell, Lipton, Rosen & Katz
Myra Kraft, President and Director, New England Patriots Charitable Foundation
Marty Wyngaarden Krauss, Provost and Senior Vice President, Academic Affairs
Margie Lachman, Chair, Department of Psychology
Sarah Lamb, Chair, Department of Anthropology
Elisha Fara Landman, President, Brandeis University Alumni Association of Southern California
Richard Lansing, Chair, Italian Studies Program
William P. Leahy, S.J., President, Boston College
Blake LeBaron, Director, Ph.D. Program, International Business School
Thomas H. Lee, Founder, Thomas H. Lee Partners Executives
Jeanette Lerman

Stuart Lewtan, Founder, Lewtan Technologies, Inc.
Jacqueline Liebergott, President, Emerson College
Jeffrey Lurie, Chairman and CEO, The Philadelphia Eagles
Bruce R. Magid, Dean, International Business School
Harry Mairson, Computer Science Department
Peter Malkin, Partner, Wien & Malkin LLP
Barbara A. Mandel, Morton and Barbara Mandel Family Foundation
Jim Mandrell, Chair, Women's and Gender Studies Program
Catherine Mann, International Business School
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Michael C. McFarland, S.J., President, College of the Holy Cross
Charles, McLendon, Chair, Department of Fine Arts
Sabine von Mering, Department of German, Russian, and East Asian Languages and Literature
Robert Meyer, Department of Physics
Lorna Miles, Senior Vice President, Communications
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Douglas M. Monasebian, President, Brandeis University Alumni Association of New York
Robert Moody, Department of Theater Arts
Bradley Morrison, Brandeis International Business School
Walter S. Mossberg, Technology Columnist, *The Wall Street Journal*
Leonard Mueller, Classical Studies Department
Joe Murray, *The Bulletin*
Wellington W. Nyangoni, Chairman, Department of African and Afro-American Studies
Richard Parmentier, Chair, International and Global Studies
David Pepose, *The Brandeis Hoot*
Martin Peretz, Editor in Chief, *The New Republic*
Daniel Perlman, Chair, Department of Environmental Studies
Louis Perlmutter, Lazard Corporate Partners LLC
Dorothy Pierce, Brandeis University National Women's Committee
Mark Pratt, *The Boston Globe*
James Pustejovsky, Department Chair, Language and Linguistics
David Rakowski, Department of Music
Michael Randall, Chair, Department of Comparative Literature
Ronald A. Ratner, Executive Vice President and Director, Forest City Enterprises
Mary Ruth Ray, Chair, Department of Music
Phyllis Redstone
Stephen R. Reiner
Robert S. Rifkind, Senior Counsel, Cravath, Swaine & Moore LLP
Vardit Ringvald, Director, Hebrew & Arabic Language Program
Barbara, Rosenberg, Advisory Committee Member, Brandeis Hillel Day School
E. John Rosenwald, Jr.
Carol R. Saivetz
Lynn Schusterman, Chair, The Charles and Lynn Schusterman Family Foundation
Malcolm L. Sherman, Vice Chair, Gordon Brothers Group
Stephanie Siek, *The Boston Globe*
Harvey Silverglate, Chairman, Board of Directors, FIRE

Laurence Simon, Director, M.A. Program, Heller School for Social Policy and Management
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Judith Ryland Sizer, General Counsel
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Christina Hoff Sommers, Resident Scholar, The American Enterprise Institute
Govind Sreenivasan, History Department
Michael Steinhardt, Chairman, The Steinhardt Foundation for Jewish Life
Nadine Strossen, President, American Civil Liberties Union
Marie Szaniszlo, *Boston Herald*
Andreas Teuber, Chair, Department of Philosophy
Ralph A. Thaxton, Jr., Program Chair, East Asian Studies
Perry Traquina, President, Wellington Management Company
Ilan Troen, Department of Near Eastern and Judaic Studies
Gina Turrigiano, Biology Department
Javier Urcid, Chair, Latin American and Latino Studies Program
John Usdan, President, Midwood Management Corporation
Malcolm Watson, Psychology Department
Kimberly Wexler, *The Daily Free Press*
Linda Whitlock, Nicholas President and CEO, Boys and Girls Clubs of Boston
Barton J. Winokur, Partner, Dechert LLP
Nancy Winship, Senior Vice President, Institutional Advancement
Aida Yuen Wong, Department of Fine Arts
David Wright, Chair, Department of Near Eastern and Judaic Studies
Robert J. Zimmer, President, The University of Chicago
Rhonda Zinner, President, Carl and Ruth Shapiro Family Foundation
Paul M. Zlotoff, Chairman, Uniprop & Design

Media Coverage of Brandeis's Treatment of Professor Donald Hindley

["Judging a book by its cover—literally,"](#) Greg Lukianoff, *The Huffington Post*, May 2, 2008

["Tenure protects campus speech,"](#) Greg Lukianoff, *Los Angeles Times*, April 18, 2008

["Anti-free-speech zones,"](#) Greg Lukianoff, *Los Angeles Times*, April 15, 2008

["2008 Jefferson Muzzle Awards: Brandeis University administration,"](#) Thomas Jefferson Center for the Protection of Free Expression, April 13, 2008

["Muzzle tov to Brandeis University!"](#) Greg Lukianoff, *The Huffington Post*, April 11, 2008

["Justice Brandeis would be proud ... or would he?,"](#) Harvey Silverglate, *The Phoenix*, April 8, 2008

["EDITORIAL: We didn't start the FIRE: Future of free speech at stake,"](#) *The Justice*, March 25, 2008

["Free speech 'dead' on campuses,"](#) Anya Bergman, *The Justice*, March 18, 2008

["FIRE founder discusses speech,"](#) David Pepose, *The Brandeis Hoot*, March 14, 2008

["Injustice in Hindley investigation,"](#) Jay Bergman, *The Justice*, February 12, 2008

["Prof investigated for offensive class remark,"](#) Kimberly Wexler, *The Daily Free Press*, February 6, 2008

["Smart sensitivity,"](#) Staff Editorial, *The Daily Free Press*, February 6, 2008

["ACLU statement criticizes Provost,"](#) David Pepose, *The Brandeis Hoot*, February 1, 2008

["FIRE publishes report on Hindley,"](#) Noah Bein, *The Justice*, January 29, 2008

["Brandeis overreacts,"](#) Sean O'Brien, *Boston Herald*, January 28, 2008

["Ethnic sensitivities threaten academic freedom,"](#) Joe Murray, *The Bulletin*, January 28, 2008

["Shhh! Free speech crackdown on campus,"](#) Margery Eagan, *Boston Herald*, January 27, 2008

["Civil liberties group defends Hindley,"](#) David Pepose, *The Brandeis Hoot*, January 25, 2008

["Prof fights reprimand for 'wetback' reference,"](#) Marie Szaniszlo, *Boston Herald*, January 25, 2008

[“Brandeis professor says his right to free speech violated,”](#) Stephanie Siek, *The Boston Globe*, January 25, 2008

[“Slang term use lands professor in hot seat,”](#) Eric Athas, *The Daily News Tribune*, January 25, 2008

[“Prof in trouble for blasting ‘wetbacks’ slur,”](#) *WorldNetDaily*, January 24, 2008

[“Professor takes heat over wetbacks stance,”](#) *Newsmax.com*, January 24, 2008

[“Censorship at Brandeis, again,”](#) Harvey Silverglate, *The Phoenix*, January 24, 2008

[“Brandeis professor under fire for description of racial epithet,”](#) Mark Pratt, *The Boston Globe*, January 24, 2008

[“Harassment vs. academic freedom, round two,”](#) Andy Guess, *Inside Higher Ed*, January 24, 2008

[“Brandeis professor under fire for description of racial epithet,”](#) Associated Press (AP), *Eyewitness News WPRI*, January 24, 2008

[“Brandeis curbs your enthusiasm,”](#) Wendy Kaminer, *The Phoenix*, January 23, 2008

[“Professor allegedly makes racist remarks in class at Brandeis University,”](#) Jamal Watson, *Diverse Issues in Higher Education*, Dec 2, 2007

[“Brandeis professor in trouble for classroom comments gets faculty panel’s support,”](#) Robin Wilson, *Chronicle of Higher Education*, November 30, 2007

[“Sending in the classroom monitor,”](#) Andy Guess, *Inside Higher Ed*, November 9, 2007

The extensive reporting on this case in the blogosphere since November 2007 has not been included on this list.