



## Foundation for Individual Rights in Education

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December 12, 2007

President Jehuda Reinhartz  
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 Reinhartz:

The Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of speech, and freedom of conscience on America's college campuses. Our website, [www.thefire.org](http://www.thefire.org), will give you a greater sense of our identity and activities.

FIRE is concerned about the threats to free expression, academic freedom, and due process posed by Brandeis University's treatment of Professor Donald Hindley. After he used terms in class that some students found objectionable, Brandeis found Hindley guilty of discrimination without giving him a regular hearing, put a monitor in his classroom, and required him to attend "anti-discrimination training." In so doing, Brandeis has dramatically violated its own policies guaranteeing academic freedom and has chilled speech on the Brandeis campus.

This is our understanding of the facts. Please inform us if you believe we are in error. Professor Hindley has taught Southeast Asian politics and Latin American politics at Brandeis since 1962 without facing a single complaint of discrimination or harassment. In his Fall 2007 course on Latin American politics, Hindley used terms, such as in Hindley's description of the use of the word "wetbacks," that at least one student found objectionable. Apparently offended by the use of this word, one or more students complained to Steven Burg, chairman of the Politics Department. Hindley argues that he was describing a racist use of the term, having said, "When Mexicans come north as illegal immigrants, we call them wetbacks" (*The Justice*, November 6, 2007). In response to the controversy, Burg did not attempt to mediate, as the *Brandeis University Faculty Handbook*

recommends, but instead passed the matter on to Adam Jaffe, Dean of Arts and Sciences. The matter then reached Marty Wyngaarden Krauss, Provost and Senior Vice President for Academic Affairs, and Jesse Simone, Director of Employment, Employee Relations and Training.

According to Hindley, Simone e-mailed him on October 22, asking for an appointment to discuss an unspecified matter that she called urgent and confidential. Hindley and Simone met on October 22 or 23 for about an hour and fifteen minutes, during which time Simone announced that Hindley had been accused of racial harassment and discrimination and then interrogated him about his speech in his class. 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, concluding "that you 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, also dated October 30, Krauss notified Hindley that "The University will not tolerate inappropriate, racial and discriminatory conduct by members of its faculty."

As punishment for Hindley, Krauss wrote that Brandeis would be placing a monitor in his classroom "until I [Krauss] have determined that you are able to conduct yourself appropriately in the classroom" and by requiring Hindley to attend "anti-discrimination training." Assistant Provost Richard Silberman was assigned to be Hindley's classroom monitor, and Silberman appeared in Hindley's next class.

Hindley appealed the university's decision to Brandeis's Committee on Faculty Rights and Responsibilities. 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 completion of the committee's review of the appeal. But the discipline remained in place, and Silberman monitored both of Hindley's Fall 2007 courses throughout the remainder of the term.

Brandeis's Faculty Senate also discussed Hindley's case in an emergency session on November 8, unanimously passing a resolution expressing serious concern about the procedures used to investigate and punish Hindley.

On November 29, the Committee on Faculty Rights and Responsibilities issued its report in Hindley's case. According to an article in *The Brandeis Hoot*, the committee found that Brandeis's investigation had "lacked thoroughness and impartiality" and "concluded that decisions made by Provost Marty Krauss to threaten termination and place a monitor in Hindley's classroom 'should now be entirely withdrawn.'" The committee's report also faulted the university administration for its vague standards on allegedly offensive speech and its relation to allegations of discriminatory harassment, noting that the standard for true discriminatory harassment involves far more than merely offensive speech.

The report added, "The discipline imposed on the basis of those policies was excessive, and should also have been suspended during the period of our review, and ... [Krauss's] actions to

date pose a threat to Professor Hindley's academic freedom and to that of other faculty and students, a matter on which we retain an active interest." The report argued that "speech monitors should virtually never be used in harassment cases, and certainly not as the first attempted remedy, nor as a means of chilling the instructor pending further measures."

Brandeis has not, to FIRE's knowledge, officially responded to this devastating report. Brandeis's actions in this case pose a grave threat to Hindley's academic freedom and to the academic freedom of all students and faculty at Brandeis. If Brandeis is to legitimately claim to provide a liberal education, it cannot prioritize individual sensitivities over protecting the freedom of speech and academic freedom of its professors. Guarantees of liberty, such as those found in the canons of academic freedom and in Brandeis's own policies, are meaningless if they are jettisoned as soon as they become unpopular.

The *Brandeis University Faculty Handbook* promises academic freedom to Brandeis's faculty:

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.

Moreover, our nation's moral commitment to free expression clearly includes classroom expression, which we further protect under the principles of academic freedom. As the Supreme Court noted in *Healy v. James*, 408 U.S. 169, 180 (1972), "[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools."

Furthermore, Brandeis wholly failed to safeguard Hindley's basic due process rights in its handling of this case. Hindley reports that he was never told by the Brandeis administration specifically what he allegedly said or did that led to his conviction and punishment. The October 30 letters do not identify any specific comments that Hindley allegedly made. Brandeis appears to have violated not only its own published due process guidelines, but also its moral obligations to apprise Hindley of the specific evidence against him and to give him a reasonable chance to rebut specific evidence and allegations against him.

FIRE requests that Brandeis spare Donald Hindley any further infringements upon his rights. We request that Brandeis reverse its findings against Professor Hindley, withdraw its punishment, and remove all information regarding this case from his personnel file. We also urge you to assure the Brandeis faculty that Brandeis would never punish a faculty member in any way for exercising his or her academic freedom in the classroom or anywhere else. FIRE hopes to resolve this matter amicably and swiftly, but we are prepared to use all of our resources to see this terrible assault against academic freedom through to a just and moral conclusion.

We request a response in this matter by December 28, 2007.

Sincerely,



Adam Kissel  
Director, Individual Rights Defense Program

cc:

Marty Wyngaarden Krauss, Provost and Senior Vice President for Academic Affairs, Brandeis University

Adam Jaffe, Dean of Arts and Sciences, Brandeis University

Marc Brettler, Chair, Faculty Senate, Brandeis University

Steven Burg, Chair, Department of Politics, Brandeis University

Jesse Simone, Director of Employment, Employee Relations and Training, Brandeis University