

# Report to the President on the Provost's Implementation of the Faculty Grievance Panel Report On the Grievance of Associate Professor Maurice N. Srouji

*by the Senate Committee on Academic Freedom and Responsibility*

*December 10, 1981*

Table of Contents	Page
I. Introduction and Preliminary Statement by SCAFR . . . . .	I
II. Background . . . . .	II
III. The Disputes Over the Implementation Actions by the Provost's Office . . . . .	II
A. Implementation Actions by the Provost's Office . . . . .	II
B. Disputes Over the Scope of Appropriate Implementation; Findings by SCAFR . . . . .	III
C. The Relationship between the "Findings" and the "Recommendations" in the Panel Report . . . . .	III
D. The Disputes over Recommendations 2A, 4 and 2B in the Panel Report . . . . .	III
IV. The Capacity of the University to Implement the Faculty Grievance Panel Report, and Insure Due Process Procedures by Surgical Associates . . . . .	IV
A. The Rationale of the Provost's Office Regarding Its Implementation Efforts . . . . .	IV
B. Motivation for the Relationship Between Surgical Associates and the University: The Relation Between Teaching and Clinical Practice . . . . .	IV
C. Findings by SCAFR on the University's Capacity to Implement Fully the Panel Recommendations . . . . .	V
D. Findings by SCAFR on the Question of Appropriate Timing for Full Exercise of the University's Capacity . . . . .	V
V. Conclusions by SCAFR and Recommendations to the President . . . . .	VI
<b>Appendices</b>	<b>Page</b>
A. The Faculty Grievance Panel Report of September 25, 1980 . . . . .	VI§
B. The SCAFR Decision on Professor Srouji's Tenure . . . . .	VII
C. Acting Provost Shen's Letter on Implementation, January 19, 1981 (with Dr. Shen's Letter of Nov. 10, 1980, attached) . . . . .	*
D. (a) Letter from Professor Srouji Renewing his Request for a SCAFR Hearing on the Provost's Implementation, September 9, 1981; . . . . .	*
(b) Written Statement of Professor Cathcart on behalf of Professor Srouji, October 12, 1981 . . . . .	*
E. Provost's Office's (Written) Presentation to SCAFR (October 16, 1981) . . . . .	VII
F. Summary of Implementation by the Provost's Office (July 8, 1981) . . . . .	*
G. Recommendation of Ombudsman Keene to the Acting Provost, July 6, 1981 . . . . .	*
H. Due Process Procedures Required of Hospitals by Regulations of the Pennsylvania Department of Health for Denying Reappointment or Clinical Privileges to Physicians . . . . .	*
I. Letter of Professor Robert E. Davies for SCAFR to Dr. Leonard E. Miller, Chair, Dept. of Surgery, on Due Process Procedures Adopted by the University Senate for University Clinicians (May 13, 1981) . . . . .	VIII
J. Due Process Procedures required by the University Clinical Practice Plan . . . . .	*
K. The Contract Between the University and Children's Hospital . . . . .	*
L. Excerpts from Partnership Agreement, Surgical Associates . . . . .	*
§ Appendix not published here in full, excerpts only published. Full text is available at the Faculty Senate Office, 15 College Hall.	
* Appendix not published here but full text is available at the Faculty Senate Office, 15 College Hall.	

## I. Introduction and Preliminary Statement by SCAFR

During the months of October and November of 1981, the Senate Committee on Academic Freedom and Responsibility (SCAFR) conducted an extensive investigation and formal hearing on the adequacy of the implementation by the Provost's Office of the Grievance Panel Report on the grievance of Associate Professor Maurice N. Srouji. The investigation and hearing had been twice requested by Professor Srouji.

The basic charge to SCAFR in this matter is set forth in the Faculty Handbook (p. 74) as follows:

The Senate Committee shall determine whether the provost's action in declining or failing to implement the recommendation of the panel to the satisfaction of the grievant was reasonable in the circumstances. . . .

The Senate Committee shall promptly report its findings and recommendations to the president with copies to the provost, the chair of the [grievance] Commission, the panel, the grievant and the respondent. A copy shall also be given to the editor of *Almanac*.

For the reasons fully set forth later in this report, we have concluded that: (1) the Provost's Office has failed to implement recommendations of the grievance panel; and (2) the failure to implement is *not* reasonable in the circumstances. In the course of reaching these conclusions, we examined with care the capacity of the University, through the use of legally and morally appropriate measures, to implement fully the Grievance Panel Report. Such measures have been and still are available to the University. They are also set out in detail in this report.

In transmitting this report to you, we wish to emphasize that the subject of this report involves matters of fundamental importance to the University and all its members. These matters include the academic freedom of University faculty members; the extent to which due process procedures are recognized, or flagrantly denied, as part of that academic freedom; and fairness to the aggrieved individual in this case, whose situation worsens daily as a result of the University's failure to implement the Grievance Panel's recommendations and right the wrongs inflicted upon him.

It is not unreasonable to suggest that the very integrity of the University Grievance Process is at issue. It is now nearly four years since the injuries over which Professor Srouji grieved were first inflicted. It is now more than twenty months since the grievance was filed. More than fourteen months have passed since the Grievance Panel Report was issued. It has taken this Committee, in its desire to be fair to all parties, nearly two months to complete its investigation, hearing, and report on implementation. Delay in dealing with the important issues in Professor Srouji's case is itself one of the fundamentally unfair aspects of the process thus far. Dr. Srouji, a surgeon whose core grievance is that his fellow faculty members have denied him his opportunities to teach and practice in his clinical setting (without stating just cause or even specific charges, and without a fair hearing), may soon lose the technical skills he needs to continue his teaching and practice, as a result of enforced inactivity.

Further delay in implementing fully the panel recommendations is, simply, wrong and a blot upon our collegial honor.

## II. Background

The Grievance Panel Report listed injuries inflicted upon Professor Srouji as long ago as January, 1978. New injuries were added periodically thereafter. They included removing him from the pediatric surgery teaching schedules by not scheduling him for seminars, conferences, surgical course core teaching, or grand rounds in Children's Hospital. Professor Srouji's name was removed from the University Catalogue and the letterhead of Surgical Associates (his clinical practice group), composed wholly of University faculty members. He was required to vacate his office. His malpractice insurance, purchased through the University, was cancelled. His professional income was restricted and eventually discontinued by removing him from the Surgical Associates "on call" schedule and by discontinuing his salary paid through the University.

As the Faculty Grievance Panel was later to find, none of these actions taken by his fellow faculty members was accompanied by an "orderly, formal or objective process that would be acceptable by general University of Pennsylvania standards."

On March 19, 1980, after the failure of protracted efforts to resolve his situation by discussions, Professor Srouji filed a grievance with the Faculty Grievance Commission. The Grievance Panel held a series of eight hearing sessions throughout the summer of 1980.

On June 16, 1980, the issue of Dr. Srouji's tenure alone was referred to the Senate Committee on Academic Freedom and Responsibility (SCAFR). SCAFR concluded that "By action of the Board of Trustees on September 16, 1974, Dr. Srouji was explicitly granted tenure."<sup>1</sup>

The Grievance Panel continued its own deliberations on the remainder of the issues Professor Srouji had raised, and on September 25, 1980, it issued its report (see Appendix A for partial text. (Full text is available for examination at the Faculty Senate Office). Among its findings was the following, concerning the relationship of Surgical Associates of Children's Hospital to the University:

In reaching these findings, the Panel considered carefully the role of Surgical Associates in this case, and the relationship of that practice group to the University. In the Panel's opinion, since all of the members of the Surgical Associates are faculty members of the University, and since the University takes overhead from the funds that pass through it from Surgical Associates, that practice group is sufficiently closely related to the University to require that its procedures be acceptable by general University standards, and that the University ensure that those procedures be followed.

The Grievance Report included a set of "Recommendations" to the Provost, whose relationship to the "Findings" are discussed in Part III(C) of this SCAFR Report.

On November 10, 1980, Acting Provost Benjamin Shen, in a letter to the Presiding Officer at the Grievance Hearing, expressed his intention to implement the recommendations of the Panel.

Four months after the Panel Report was issued, on January 29, 1981, Professor Srouji wrote to SCAFR, expressing his dissatisfaction with the implementation by the Provost's office and requesting a SCAFR hearing on the implementation by the Provost. SCAFR accepted Professor Srouji's request for a hearing but informed Professor Srouji that the Committee would delay a hearing so as to permit more time for the Provost's Office to negotiate with Surgical Associates regarding implementation of the Panel Report. In addition, members of SCAFR entered into the discussions with members of Surgical Associates. At the same time, SCAFR proposed due process procedures applicable where charges are made regarding the fitness for practice of University clinicians. These proposals were based on procedures for termination of clinician educators for failure to generate practice income which were accepted by the Faculty Senate and by the Medical School Senate (see Appendix I\*).

\*Unpublished appendix, available for examination at the Faculty Senate Office.

1. For full text of the SCAFR tenure decision, including its discussion of the University's salary obligations, see Appendix B. On October 28, 1981, Professor Srouji requested a new determination by the SCAFR with regard to the University's obligation to provide salary as part of its tenure obligation to him. Professor Srouji stated that he is prepared to present additional evidence on the issue, which is intended to establish that his original tenure status was "full affiliation, full salary, with tenure" without words of limitation as to salary obligation. SCAFR responded that it would delay consideration of a new hearing on that issue until it completed its hearing and report on the Provost's implementation—which it now completes with this Report.

The negotiations with Surgical Associates, however, were not fruitful. On the contrary, Professor Srouji's situation worsened. Surgical Associates voted to expel him as a partner effective June 30, 1981, once more without anything resembling a due process hearing acceptable under general University standards.

On September 9, 1981, Professor Srouji again requested a review by SCAFR of the Provost's Office's implementation of the Grievance Panel's report. The Committee did conduct the requested review, meeting throughout October and November. A formal hearing was held, in which both the Grievant and the Provost's Office<sup>2</sup> participated.

## III. The Dispute Over the Implementation Actions by the Provost's Office

### A. Implementation Actions by the Provost's Office

On November 10, 1980, Acting Provost Benjamin Shen, in a letter to the Presiding Officer of the grievance hearing, expressed his intention to implement the recommendations outlined in the Grievance Panel's report. Later, on January 19, 1981, Dr. Shen wrote to the Chair of the Faculty Grievance Commission and set forth the specific measures the Provost's Office would take in light of the panel's report and the limits the Provost perceived on the authority of his office. Acting Provost Shen's letter is set out in full in Appendix C.\*

We are aware that the Provost's Office made many good faith efforts to implement the Panel Recommendations, in the context of its view of those recommendations and of its own powers. The results of the implementation effort, however, insofar as Professor Srouji's grievance is concerned, are not encouraging.

1. As of this date, Professor Srouji has not yet had his teaching opportunities restored to him, clinical or otherwise. On February 23, 1981, Acting Provost Girifalco wrote to Dr. C. Everett Koop, then Surgeon in Chief/ Professor of Pediatric Surgery, and stated that Dr. Srouji should have his academic and professional opportunities "restored immediately." The same day, a letter was sent to Mr. Noel Kroncke, President of Children's Hospital, requesting his cooperation with Dr. Koop (see Appendix E). Neither letter resulted in the restoration of Dr. Srouji's teaching and professional opportunities.

2. Dr. Srouji has yet to be provided with all of the "standard amenities" mentioned in the Panel's Recommendations and the Provost Office's own proposed implementation. His malpractice insurance has been continued by the University, but he does not have an office or clerical help. The 1981-82 University Telephone Directory does include Dr. Srouji as an Associate Professor of Pediatric Surgery, but the telephone number given is the general number for Children's Hospital.

3. The Panel's "affirmation" (Recommendation 2A) of the need for "formal orderly procedures... acceptable to general University standards" when the opportunity to see patients is denied, was accepted by the Provost's office. However, Recommendation 2A was not taken by the Provost's office to be applicable to Dr. Srouji, and therefore no implementation was proposed by the Provost on that issue.

4. With regard to the financial recompense recommended in Panel Recommendation 2B, the Provost's office determined that \$75,000 was appropriate financial compensation, and paid Dr. Srouji that amount on March 3, 1981.

5. Recommendation 4 recommended that due process procedures be established for faculty members in clinical practice groups in the Medical Center. The Provost's Office takes the position that this recommendation was not intended by the Grievance Panel to be applied to Professor Srouji. Acting Associate Provost Clelland has more recently amended that position to add that, while the Provost's Office would like to see Professor Srouji receive a due process hearing with specific charges based on just cause (if he is not to be restored to his prior status), the University has no power to compel Surgical Associates to recognize or initiate such a procedure.

In sum, as of the present time, Professor Srouji is not teaching, is without his former clinical practice, has no office, and has yet to be given a due process hearing on the actions taken against him. He has received \$75,000, though his past and future financial losses are far greater than that amount. His name is in the University Telephone Directory and he can receive telephone messages at Children's Hospital.

\*Unpublished appendix, available for examination at the Faculty Senate Office.

2. It should be noted, of course, that during the fourteen months since the Panel Report was issued, there have been various Provosts, Acting Provosts and Associate Provosts who have played critical roles in this matter. We use the terms "Provost" and "Provost's Office" interchangeably to refer to the office, and not in reference to the present Provost, who is newly upon the scene, or any other specific individual except where named.

**B. Disputes over the Scope of Appropriate Implementation:  
Findings by SCAFR**

There are five separable issues regarding the implementation by the Provost's Office. These are:

1. Those matters which the Provost's Office has consistently acknowledged as the appropriate subjects for implementation, and which are concededly unimplemented at the present time (e.g., an appropriate office for Professor Srouji and other matters in Recommendation 1A and 1B of Section II of the Panel Report).
2. Those matters which are or have been the subject of dispute (a) as to whether the Grievance Panel called for implementation action by the Provost in Professor Srouji's case and (b) as to what such implementation action should be (these include, most importantly, Items 2A and 4 in Section II of the Panel Report).
3. Assuming that the Panel Report does call for implementation of Items 2A and 4 in regard to Professor Srouji, whether the University has the capacity to effect such an implementation—given the separate legal organization of Surgical Associates and CHOP.
4. The appropriateness of the Provost's implementation action on financial compensation, as recommended in Item 2B of Section II of the Panel Report.
5. Whether the "Findings" of the Panel Report, insofar as they set forth the injuries found by the Panel to have been inflicted upon Professor Srouji, thereby also state the matters to be corrected by the Provost in his implementation activities (as contended by the Grievant—see Appendix D) or whether the matters to be acted upon are found only within the "Recommendations" section of the Panel Report (as contended by the Associate Provost at the SCAFR Hearing).

**C. The Relationship between the "Findings" and the "Recommendations" in the Panel Report**

We consider here, briefly, dispute #5 listed above. The Grievant makes an argument of considerable force (see Appendix D\*). We note that the Faculty Handbook directs the grievance panel (p. 72):

In cases in which any element of the grievant's claim is upheld, the salient findings of fact that have held the panel to each of its conclusions with respect to the injury done to the grievant shall be summarized. The panel may propose remedies.... While the panel's report is to be accorded great weight, it is advisory to and not binding upon the provost....

From the above, it would seem clear that while the panel is under no obligation to make *any* recommendations as to "remedies" for the "injury(ies) done", it must summarize its salient findings of fact. The panel may leave the task of devising such remedies to the Provost without the Panel's advice, or it may make limited or alternative suggestions for remedies. The fact that the Faculty Handbook requires the panel to set forth its findings of fact but states in regard to remedies only that the panel "may propose" them indicates that it is these "findings" as to "injury done", not the "recommendations" as to "remedies", that are to be the primary concern of the Provost, insofar as the Provost accepts the Panel's Report.<sup>3</sup>

We do not think that extended comment upon and resolution of this dispute is necessary *in this case*. Certainly the "findings" of the panel as to the "injur[ies] done" inform their reader with regard to any possible ambiguities in the "Recommendations" and remedies sections, Section II of the Panel Report. With this in mind, and in light of the specific language used in the Recommendations section of the Panel Report, together with the explicit comments by the panel members in the meeting with Dr. Girifalco and Dr. Randolph on February 2, 1981, we believe the more specific disputes over the Recommendations are easily resolved. We turn to these next.

**D. The Disputes over Recommendations 2A, 4 and 2B  
in the Panel Report**

**1. Recommendations 2A and 4**

Recommendation 2A of the Panel Report reads:

"2A. While the Panel considers that it is not within its jurisdiction to recommend any action that would either affirm or deny Dr. Srouji's opportunity to see patients, the panel affirms that the actions taken by members of the University to deny an individual a significant opportunity to see patients

\*Unpublished appendix, available for examination at the Faculty Senate Office.

3. We recognize that a Panel may choose to make "findings" as to an "injury done" for which the panel believes no remedy should be sought. Perhaps, too, a panel may have been unable to decide whether any remedy is appropriate, given other circumstances of the case before it. In the former case, if not the latter as well, it is helpful if the panel report is explicit on this subject.

be carried out in a formal, orderly way so as to be acceptable to general University standards."

To some extent, in the past if not at the present, the Provost's Office has taken the position that remedies suggested within Recommendation 2A do not apply to Professor Srouji. That is, the Provost's Office has viewed Item 2A as urging the Provost to help establish due process procedures in the future for other members of clinical practice groups associated with the University, but not as recommending that Professor Srouji be made the beneficiary of such due process. Thus, in Dr. Randolph's memo of July 8, 1981 to President Hackney and Acting Provost Girifalco, it is stated (p. 2, Appendix F\*):

In order to be sure he was not misinterpreting any of the Recommendations, Dr. Girifalco met with members of the panel in February 1981, to ask a series of questions about the intent and meaning of some of their recommendations. Among other points, the panel confirmed that Recommendation 2A of their report was not a recommendation for specific action, but was an affirmation of the general need for due process acceptable by University standards.

The same argument has been made by the Provost with regard to Recommendation 4.<sup>4</sup>

\*\*\*

We listened with great care to the tape of the meeting of February 2, 1981. We believe that the Provost's Office has misinterpreted the plain language utilized in the exchange concerning item 2.

The panel members in the taped discussion emphasized that Item 2A was written to induce the Provost to look *more broadly* at due process issues than was required by the Srouji case alone. The latter case was stated to be merely one example in a "can of worms." The panel's "intention was to broaden." There was no indication by the panel members that they intended to exclude the instance—involving Professor Srouji—which led to their general concern. The panel had the same purpose with Recommendation #4: the panel "wanted to emphasize this point" of due process. Item 4 was intended to be "general" in the sense that it grew out of the Srouji case. It dealt with a remedy "which properly applies to others *too*" (emphasis supplied). There might be many "such cases as this" one.<sup>5</sup>

This commentary by the Panel members on their intent in making Recommendations 2A and 4 is fully in accord with the plain language of 2A and 4. Moreover, it follows logically from the "Findings" of the Panel Report, which all parties have agreed should be used—at least—to inform the reader with regard to any possible ambiguities in the language of the "Recommendations." Item 3 of the "Findings" states that:

Dr. Srouji's professional income was restricted and eventually discontinued by:  
a) Removing him from the "on call" schedule *without* following any formal, orderly, or established procedure for such a removal...." (emphasis supplied).

And Item 4 of the "Findings" states:

In reaching these findings, the Panel considered carefully the role of Surgical Associates in this case, and the relationship of that practice group to the University. In the Panel's opinion, since all of the members of the Surgical Associates are faculty members of the University, and since the members are paid through the University, and since the University takes overhead from the funds that pass through it from Surgical Associates, that practice group is sufficiently closely related to the University to require that its procedures be acceptable by general University standards, and that the University ensure that those procedures be followed.

\*Unpublished appendix, available for examination at the Faculty Senate Office.

4. Recommendation 4 reads: "That the Provost work closely with the Dean of the School of Medicine to ensure that practice groups in the Medical Center establish and follow procedures that ensure due process with respect to their members and which are acceptable by general University standards.

5. The relevant comments by Panel members, taken from the tape of the February 2, 1981 meeting between the Panel and Dr. Girifalco are as follows:

*With Regard to Recommendation 2A*

*It was an attempt by the Panel to look at the problem more broadly than simply Dr. Srouji's case; I believe it was the intent of the panel that perhaps this case should be looked upon by the Provost as indicating that there may be a large number of somewhat similar future cases coming up that should be thought about at this time, and that with the existence of various practice groups within the Medical Complex particularly and perhaps similar groups in other parts of the University, with their own by-laws, that there existed somewhat of a can of worms, that this was an example of. But it was really our intention to broaden the whole thrust of the recommendations to include... (interrupted in mid sentence (emphasis supplied).*

*With Regard to Recommendation 4 (&3)*

These are meant to be general recommendations to the Provost which grew out of the specific situation and it seemed to us that—as Dr. Wheeler just said—that there are probably any number of other people in more or less comparable positions to Dr. Srouji's over there, and conceivably more grievance coming, and it seemed to us that... (The Panel member was interrupted at this point)

The conclusion is inescapable: the "injury done" was to remove Dr. Srouji from the "on call" schedule (and other opportunities) without following a University due process procedure. The Panel would not recommend or deny that Dr. Srouji should see patients on the "on call" schedule. The Panel recommended that *if* he was to be denied the opportunity to see such patients, a due process procedure had to be used to effect such denial. The Panel wanted, however, to go further than the case of Dr. Srouji alone. There may be others "out there" like him. A general approach should also be devised so as to provide due process for all faculty members in the clinical practices.

SCAFR finds that the Provost's Office has failed to implement the Panel Report insofar as: (a) it has failed to ensure that Professor Srouji be granted due process to help remedy the various injuries done to him prior to the issuance of the Panel Report; (b) it has failed to ensure that due process procedures be applied to Dr. Srouji before he was expelled by Surgical Associates on June 18, 1981—subsequent to the Panel Report; (c) it has failed to ensure that Surgical Associates of CHOP establish due process procedures for its other University faculty members.

We consider whether these failures of implementation were "reasonable in the circumstances" in Section V hereafter.

## 2. Recommendation 2B

Recommendation 2B of the Panel Report reads:

That the Provost work closely with the Dean of the School of Medicine and the Chairman of the Department of Surgery and its appropriate practice group to assure that Dr. Srouji be appropriately compensated financially for the past loss of his opportunity to build up a practice, and for the inevitable loss of reputation that he has suffered. It is not the Panel's intention to set aside the statement in the Provost's Staff Conference Minute of 2/13/75 regarding Dr. Srouji's tenure status which says: "fully salaried from funds paid to the University by Surgical Associates... without obligation on the part of the University to continue salary and benefits in the absence of these funds." The intention is that Dr. Srouji be recompensed in an appropriate manner for actions taken by the University which were detrimental to his professional standing.

On March 3, 1981, Professor Srouji was given a check in the amount of \$75,000 by the University, drawn from University monies (none of which originated from Surgical Associates sources). This amount had earlier been explained by Acting Provost Shen to be a "part of the settlement of this grievance" (Shen letter of February 19, 1981). No explanation of the rationale by which the figure \$75,000 was arrived at has been offered by the Provost's Office, other than the statement that it is not viewed as recompense for lost salary.

The Provost's Office maintains the position that it is not responsible for Professor Srouji's salary, and that this absence of responsibility is explicitly recognized in Recommendation 2B, quoted above. Professor Srouji notes (Appendix D\*) that Acting Provost Girifalco, in his letter of February 23, 1981 to Dr. Koop (see attachment to Appendix E), recognized that remedy for the injuries done to Dr. Srouji requires restoration of his salary.

SCAFR finds that the Panel Report clearly intended a wide range of discretion for the Provost in determining what an appropriate financial recompense to Professor Srouji would be. Obviously, many factors—not then in the capacity of the Panel to predict—might be relevant. If, for example, the University succeeded in promptly implementing other recommendations—e.g., "immediate restoration" of Dr. Srouji's "academic rights and privileges" (Recommendation #1A) plus the "standard amenities" (Recommendation #1B) plus an early due process procedure with regard to "on call" opportunities (#2A), one level of financial recompense might be appropriate. Another level might be appropriate, however, if the other recommendations were not implemented promptly. Still another level of financial recompense might be appropriate if there was a general failure in implementation of other recommendations, and further injuries were inflicted upon Dr. Srouji as a result of the failure in implementation (as, in fact, happened when Dr. Srouji was expelled from Surgical Associates; and when the continued denial of professional opportunities to him—without due process—negatively affects his professional abilities and therefore his standing as well).

These and other factors were not explicitly by the Panel. They and other potential factors were implicitly left to the Provost's discretion. However, those factors are also relevant to performance of SCAFR's function: that is, an assessment of what implementation action with regard to Recommendation 2B is "reasonable in the circumstances."

SCAFR finds that, given the continuing and, indeed, accelerating injuries done to Professor Srouji's professional standing as a result of the University's failure to implement the other recommendations of the Panel Report, the March 3, 1981 check of \$75,000 is not "reasonable in the [continuing] circumstances as a final financial settlement."

How much more should the University be expected to grant Dr. Srouji? SCAFR believes that the answer to this is appropriately determined in the context of the University's capacity to implement the other recommendations, and to ensure that Surgical Associates assume its responsibility for providing some or all of the required financial recompense to Dr. Srouji. Also relevant is the extent to which the University unjustifiably failed to exercise its powers to promote remedy in the past. We turn these questions in Section IV, next.

## IV. The Capacity of the University to Implement the Faculty Grievance Panel Report and Insure Due Process by Surgical Associates: Given the Separate Legal Organization of Surgical Associates and CHOP, What is "reasonable in the circumstances"?

### A. The Rationale of the Provost's Office

#### Regarding its Implementation Efforts

The crux of the position of the Provost's Office at the SCAFR hearing, with regard to the critical Panel Recommendations 2A, 2B and 4, transcends the dispute over what the Panel Report recommended. As we understand the oral and written testimony of Acting Associate Provost Clelland, that office would like to restore Dr. Srouji fully to his original position; it would like to insure that due process procedures be applied to Dr. Srouji with regard to his professional activities and relationship with Surgical Associates; it would like to implement a broad reading of the Panel Report. The problem, as seen by the Provost's Office, is basically one of legal relationship and control.

Thus the Provost's Office has noted that both Surgical Associates and CHOP have emphasized their separate legal status and independence from the University. They have done this in response to implementation efforts of the Provost's Office (see Attachments to Appendix E) and have suggested that further communications of the Provost's Office be addressed to their respective lawyers. As summed up by the Provost's Office (Appendix E):

Children's Hospital, Surgical Associates and the University of Pennsylvania are separately organized entities. The University of Pennsylvania cannot at present, as a matter of law, compel an action by either of the other entities.

As a result, the Provost's Office argues that the best the University can do is seek to persuade these other entities, through quiet conversation, to do better by Dr. Srouji and due process.

The quoted statement, on its face, appears to be true. But the Panel Report did not recommend that the University "compel" certain actions by members of Surgical Associates "as a matter of law." It recommended that the University "ensure" that certain procedures be followed. This means, simply, that the University was urged by the Panel to take those legally and morally appropriate measures which would make it most likely that the wrongs they found Professor Srouji had suffered would be righted.

The Provost's argument, for this reason, begs the underlying questions. The threshold question is whether, given the close relationship between Surgical Associates, CHOP and the University and the direct relationship between the University and each of its faculty members, the University has the capacity, through the use of legal and moral means at its disposal, to convince the relevant University faculty members at Surgical Associates and CHOP that it is in the mutual interest of all of them to implement the Panel Report. If such tools exist, the next question is whether the University has utilized them. The final questions are, of course—if the University has such tools and has not thus far utilized them, should it? And if it should, when will it?

### B. Motivation for the Relationship Between Surgical Associates and the University: the Relation Between Teaching and Clinical Practice

The starting point for our inquiry concerning the University's capacity, however, concerns the motivation for a relationship between the individual faculty members who are members of Surgical Associates and the University. The members of that partnership have chosen to be where they are because they want to engage in University-related

(continued past insert)

teaching and research. Most of the teaching done in pediatric surgery is clinical in nature. Without the clinical practice, the teaching could not take place. Without the teaching and research, the clinical practice would lose much of its purpose. The two activities, teaching and clinical practice, are, at least to this extent, inseparable. As suggested in the testimony of Dr. Koop, during the Grievance Panel hearing, if the members of Surgical Associates did not want to engage in the teaching and research aspects of their clinical work, they would go into a different practice where their earnings would be much greater.

Indeed, because the practice and teaching aspects of medical faculty work are so inseparable,<sup>6</sup> the University has sought for many years to bring the clinical practices of faculty members into organizational settings that are not organized separately from the University. It has succeeded in doing this with almost all the clinical practices except pediatric surgery. University due process procedures are now recognized in these other clinical practices (see Appendix J\*<sup>7</sup>). Surgical Associates remains, in this sense at least, an "out-law" organization.<sup>8</sup>

Nevertheless, several documents detail a legal relationship among the University, Surgical Associates and CHOP as well as between the University and each of its faculty members. A consideration of these relationships suggests several appropriate tools which the University can and should utilize to insure implementation of the Panel Report. The documents which detail these relationships include<sup>9</sup> the currently effective Agreement between CHOP and the University; the By-Laws of the Children's Hospital; the Partnership Agreement of Surgical Associates of CHOP; the University's Faculty Handbook and certain other agreements to which we will subsequently refer.

Our findings as to these appropriate legal and moral tools are stated below, together with other considerations relevant to the general conclusions also set out immediately hereafter. The legal bases for our findings are detailed in the footnotes.

### C. Findings by SCAFR on the University's Capacity to Implement Fully the Panel Recommendations

1. The University, through its appointment of the University's Professor of Pediatric Surgery, has legal control over the position of Surgeon-in-Chief at CHOP and Division Chief for Surgical Associates. The latter positions control academic functions, promotions, professional activities and amenities, salaries, the "on call" schedule and other matters pertinent to the unimplemented Panel recommendations.<sup>10</sup>

2. In exercising its power of appointment of the Professor of Pediatric Surgery, it is appropriate to make that appointment conditional upon such professor's compliance with University due process procedures in his or her

6. The University and Surgical Associates both explicitly recognize the inseparable nature of the clinical practice and teaching in many ways pertinent to this case. For example, members of Surgical Associates, along with other faculty members at the University, are required to report to the University on their "extramural" income (as distinguished from their University income). Not surprisingly, none of the members of Surgical Associates partners so report that part of his or her income which the University gives back to the partner in the form of a University check (after receiving the funds to do this from Surgical Associates). More significantly, however, all but one of the Surgical Associates at CHOP chose not to report the *additional* income paid to them directly by Surgical Associates (above and beyond their University paid salary). The University, in turn, apparently approves this decision on the ground that such additional income, paid directly by Surgical Associates, is "intramural".

\*Unpublished appendix, available for examination at the Faculty Senate Office.

7. We are informed that discussions aimed at bringing Surgical Associates members into conformity with these procedures, even aside from their application to Professor Srouji, have not yet succeeded.

8. CHOP is also required, as a matter of state law, to grant due process procedures to physicians denied reappointment to its staff, see Appendix H. And CHOP does grant such due process procedures. See CHOP Medical Staff By-Laws, Section 5. Surgical Associates, however, has acted as though it had removed its activities from the University requirements as well as the State regulations and the CHOP by-laws. Surgical Associates is not denying staff "reappointment." Yet its actions against Dr. Srouji are as effective in removing him from practice in CHOP as a denial of staff reappointment would be. More so, perhaps, because a due process procedure would be required by the latter, and the result of such a procedure might well be vindication for Dr. Srouji. In this sense too, Surgical Associates acts as an "out-law" organization.

9. Although some dispute over the current effectiveness of the March 8, 1962 Agreement between Children's Hospital and the University (Appendix K) is reflected in the Grievance Panel Record, we have received assurance from the Provost's Office that the University considers that agreement valid and currently in effect.

10. During the course of the Grievance hearing, Dr. Koop was firm in his position that he, as Surgeon-in-Chief of CHOP, controlled the "on-call" schedule and salary issues pertaining to Professor Srouji. See also Sec. 4.1, Article IV, Partnership Agreement, Surgical Associates. The contract between the University and Children's Hospital makes it clear that the University's "Professor of Pediatric Surgery" shall be the Surgeon-in-Chief of Children's Hospital. See Par. 6, Appendix K. (In using the title "Professor of Pediatric Surgery," we refer to that position discussed within the CHOP-University contract.)

actions affecting University faculty members in the Department of Surgery and in the Surgical Associates clinical practice at CHOP.<sup>11</sup>

3. The University appointed a new Professor of Pediatric Surgery subsequent to the Panel Report. The Provost and other University officials failed to utilize their appointment power to implement the Panel Report.<sup>12</sup>

4. No pediatric surgeon on the full-time "Children's Hospital Staff" can practice at CHOP without an appointment to the University faculty. The University has failed to exercise, or warn that it will exercise, its control over faculty appointments, as a means of ensuring implementation of due process procedures for Professor Srouji.<sup>13</sup>

5. For the past several years, at the request of Surgical Associates, the University has participated in an arrangement whereby Surgical Associates transfers funds to the University so that the faculty members in Surgical Associates may receive University salaries with University fringe benefits. While the University receives monies from Surgical Associates to purchase the benefits, the University's group purchasing adds special value to the benefits.<sup>14</sup>

6. The University has not sought to eliminate the fringe benefits, or warn that it will eliminate the fringe benefits, if Surgical Associates does not apply due process procedures to University faculty members, including Professor Srouji.<sup>15</sup>

7. The University, under its tenure procedures, has the authority and responsibility to remove faculty members for "just cause". The University has failed to consider, or warn members of its faculty who are members of Surgical Associates that it may consider, whether the continuing denial of due process by members of Surgical Associates to their fellow faculty member, Professor Srouji, and the continued defiance of the University Provost's efforts to implement Faculty Grievance Panel Report, constitutes "just cause" to remove offending members from the faculty.<sup>16</sup>

8. The Provost has not issued a public, clear, strongly worded statement to the faculty members in Surgical Associates, in which he informs them that their various actions against Professor Srouji violate University policy. Nor has he called upon Surgical Associates, in a public and clear manner, to rescind their actions or grant Professor Srouji due process. Nor has he done so through a more private communication. Nor has he recommended that the President use his authority to do so.<sup>17</sup>

In light of these findings, and the findings made earlier in this Report, SCAFR concludes (a) that the University has the capacity through use of appropriate legal and moral measures, to ensure full implementation of the Grievance Panel Report, and (b) that the University has not exercised that capacity.

### D. Findings by SCAFR on the Question of Appropriate Timing for Full Exercise of the University's Capacity

We are aware that use of some or all of the measures considered in Section C, above, may not be warmly received by some faculty members in Surgical Associates. It is quite possible that indicating an intent to use such measures could, under certain circumstances, impede what might otherwise turn out to be fruitful negotiations among the University, Surgical Associates and Professor Srouji. During the course of the SCAFR hearing, acting Associate Provost Clelland suggested that use

11. Inasmuch as the University has sought, for years, to bring the University-associated clinical practices under general University standards, which include due process procedures in such instances, it would hardly be inappropriate for the University to condition an appointment of its pediatric surgery professor upon his or her agreement to apply such University standards to the relevant clinical practice.

12. Professor Koop resigned from his position in the spring of 1981. Professor O'Neil was appointed as his replacement. In a letter dated October 28, 1981, Associate Provost Clelland informed SCAFR that the Provost's Office "did not seek to condition the appointment" in the way described in Finding #2 above.

13. See Par. 3 and Par. 6 of the University-Children's Hospital Agreement, Appendix K, with regard to practice at CHOP without faculty appointment. Although the University has sought to convince Surgical Associates to accept due process procedures, as yet, to our knowledge, appointments are not conditioned on agreement to apply such procedures in general or in the case of Professor Srouji.

14. These benefits include retirement benefits, malpractice insurance, health care benefits, educational benefits at the University for children and spouse, among others. On December 16, 1974, Professor Koop formally requested the University, on behalf of the members of Surgical Associates, to place the members "en bloc" on the University payroll (with funds supplied by Surgical Associates) so as to enable the members to "pick up the fringe benefits of the University payroll"... "as has been arranged for other similar groups." Letter of C. Everett Koop, M.D. to Professor William E. Fitts, Jr., then Chairman of the Department of Surgery.

15. Information from the Provost's Office.

16. The Faculty Handbook, citing the Trustees of the University of Pennsylvania, 10: 16: 59, states (p. 54):

1. Action to suspend or terminate the appointment of a member of the standing faculty may be taken for just cause, which shall mean:

... b) Such flagrant disregard of the rules of the University or of the customs of scholarly communities as to render the faculty member unfit to continue as a member of the academic staff...

17. Letter from Associate Provost Clelland to SCAFR October 25, 1981.

of such measures (as discussed above) would have been premature had they been taken in the past.

In the hope that fruitful negotiations would take place and succeed, this Committee delayed commencement of this hearing on the Provost's implementation actions for more than half a year past the time the hearing was first requested by Professor Srouji. Members of this Committee were involved in direct discussions with some members of the faculty in Surgical Associates and were hopeful that Surgical Associates would initiate a due process hearing for Professor Srouji. However, rather than remedying the wrong previously committed, the faculty members in Surgical Associates have inflicted further injury: they expelled Dr. Srouji in the summer of 1981, again without a due process hearing.

Thus far, the negotiations have borne only bitter fruit. On the other hand, the University has lost its opportunity to use one of the measures listed above: conditioning its appointment of a new Professor of Pediatric Surgery on the appointee's agreement to remedy those injuries inflicted upon Professor Srouji by the former Professor of Pediatric Surgery.

More serious, the continuing passage of time without remedy has worsened Professor Srouji's situation in every respect. Surely his financial situation has grown more difficult and his reputation has not been enhanced by the continuing failure of the Provost's Office to implement the Panel Report. But of greater significance, further passage of time without remedy may soon result in a situation where Professor Srouji may lose his technical skills to practice surgery even though fully competent when first denied his opportunity to practice by Surgical Associates.

In SCAFR's view, further delay in implementing the Panel Report is unconscionable. We find that the appropriate time for full exercise—on a step by step basis—of the University's capacity to implement the Report through the use of all the appropriate tools heretofore discussed is already long overdue.

## V. Conclusions by SCAFR and Recommendations to the President

Given:

- 1) the important issues of academic freedom that are involved in this case;<sup>18</sup>

18. The Faculty Senate and this Committee have repeatedly addressed themselves to the important issues of academic freedom which are involved when the clinical opportunities of a faculty clinician are terminated without just cause and a fair hearing. Because the clinicians' teaching and research roles (no less the income of a clinical faculty member) are dependent upon clinical work, the potential for intimidation of such faculty members is obvious. Requirements of just cause and fair hearing protect such faculty from intimidation, even while they protect patients and the University from incompetent clinical practice. For a review of past statements and resolutions on such procedures at this University, see Appendix I (Letter of Professor Robert E. Davies to Dr. Leonard E. Miller, Chairman, Department of Surgery, May 13, 1981).

- 2) the passage of more than a year since the Panel issued its Report;
- 3) the thus far unsuccessful nature of the negotiations aimed at implementing the Report;
- 4) the increasing harm done to the Grievant as a result of the continuing passage of time and new injuries inflicted by faculty members in Surgical Associates;

And given the capacity of the University through the use of appropriate legal and moral measures to ensure full implementation of the Panel's Recommendation;

*SCAFR concludes:*

*First*—The Provost's failure to implement the Panel's recommendations leading to due process procedures or alternative relief for Professor Srouji is *not* "reasonable in the circumstances."

*Second*—The financial recompense given to the Grievant in March, 1981, however appropriate it might have been at that time, can no longer by itself be considered as "recompense" in an "appropriate manner" for actions taken by members of the University which were detrimental to Professor Srouji's standing (Panel Rec. 2B).

*Third*—The President and Provost should act immediately, utilizing the University's full capacity as discussed in this Report plus any other measures they deem appropriate, to ensure full implementation of the Grievance Panel Report, including full restoration of Professor Srouji's salary, practice privileges, and other faculty status and privileges, removable only for just cause by the due process he was earlier denied.<sup>19</sup>

19. We note again that the University Clinical Practice Plan, to which most other medical groups at the University belong, has formally accepted such due process procedures. See Appendix J.

*Respectfully submitted by the Senate Committee on  
Academic Freedom and Responsibility*

*Ruzena Bajcsy  
Murray Gerstenhaber  
Alan C. Kors  
Morris Mendelson*

*Phyllis R. Rackin  
Elaine Scarry  
David Solomons  
Edward Sparer—chair  
Ingrid Waldron*

*Note:* SCAFR wishes to thank Professors Robert E. Davies, Phoebe S. Leboy, and Ralph S. Spritzer for serving as consultants to SCAFR during and after the hearing on this matter. Each of these consultants had worked on behalf of SCAFR and/or the Faculty Senate in the last academic year, seeking a satisfactory implementation of Professor Srouji's grievance. They were generous in making their time and insight available to the SCAFR.

## Appendices

### Appendix A: Faculty Grievance Panel Report:

#### Grievance of Dr. Maurice N. Srouji

In the grievance case of Dr. Maurice Srouji, the panel has arrived at the following findings and recommendations:

#### I. Findings

1. Dr. Srouji's academic activities have been hampered without recourse to any orderly, formal, or objective process that would be acceptable by general University of Pennsylvania standards.

a. He was removed from the teaching schedule as of January, 1978.

b. He was not asked to give seminars or conferences as of January, 1978.

c. He was removed from the surgical core course teaching schedule.

d. He was not assigned grand rounds.

None of these actions was accompanied by an objective evaluation of his teaching ability which would indicate that he was a poor teacher. On the contrary, there is evidence to indicate that he was an excellent teacher (see the remarks accompanying his application for tenure, attached).

2. Dr. Srouji's professional activities and development were restricted and hampered without recourse to any orderly, formal, or objective process acceptable by general University standards.

a. His name was removed from the University catalogue in 1978.

b. His name was removed from the letterhead of his practice group while he continued to be a member of that group.

c. His name was removed from the University telephone book.

d. He was required to vacate his office, thus depriving him of the use of a telephone, and making it difficult or impossible for him to avail himself of secretarial services.

e. His malpractice insurance was cancelled.

These actions were taken in spite of the fact that the major part, if not all, of Dr. Srouji's professional activities were being carried out at the Medical Center.

3. Dr. Srouji's professional income was restricted and eventually discontinued by:

a. Removing him from the "on call" schedule without following any formal, orderly, or established procedure for such a removal, and

b. discontinuing his salary without following the process clearly stated in the Bylaws of Surgical Associates, in that he was neither declared to be "disabled" nor was he expelled from the partnership. Furthermore, there was no report from the Management Committee of Surgical Associates to the members concerning the withdrawal of his salary.

4. In reaching these findings, the Panel considered carefully the role of Surgical Associates in this case, and the relationship of that practice group to the University. In the Panel's opinion, since all of the members of the Surgical Associates are faculty members of the University, and since the members are paid through the University, and since the University takes overhead from the funds that pass through it from Surgical Associates, that practice group is sufficiently closely related to the University to require that its procedures be acceptable by general University standards, and that the University ensure that those procedures be followed.

5. The Panel was unable to find sufficient evidence of discrimination against Dr. Srouji on the basis of his age or minority status to uphold his grievance to this regard.

#### II. Recommendations

1.A. That Dr. Srouji's academic rights and privileges as a tenured faculty member be immediately restored, specifically:

a. that he be placed on the appropriate didactic teaching schedules, and

b. that he be assigned to the appropriate seminars and grand rounds.

1.B. That the Provost, working through the Dean of the School of Medicine and the Chairman of the Department of Surgery ensure:

- a. that Dr. Srouji be granted the standard amenities usually accorded a faculty member in his status, including providing him with appropriate office space, a telephone, and access to clerical help, and
- b. that his name appear in the appropriate catalogues, telephone books, and letterheads, and
- c. that his malpractice insurance be continued.

2.A. While the Panel considers that it is not within its jurisdiction to recommend any action that would either affirm or deny Dr. Srouji's opportunity to see patients, the Panel affirms that actions taken by members of the University to deny an individual a significant opportunity to see patients be carried out in a formal, orderly way so as to be acceptable to general University standards.

2.B. That the Provost work closely with the Dean of the School of Medicine and the Chairman of the Department of Surgery and its appropriate practice group to assure that Dr. Srouji be appropriately compensated financially for the past loss of his opportunity to build up a practice, and for the inevitable loss of reputation that he has suffered. It is not the Panel's intention to set aside the statement in the PSC Minute of 2/13/75 regarding Dr. Srouji's tenure status which says: "fully salaried from funds paid to the University by Surgical Associates... without obligation in the part of the University to continue salary and benefits in the absence of these funds." The intention is that Dr. Srouji be recompensed in an appropriate manner for actions taken by the University which were detrimental to his professional standing.

3. That the Provost work closely with the Dean of the School of Medicine to establish procedures for dealing with situations involving a faculty member's personnel status and the terms of his or her employment. (See, e.g., "Responsibility of Clinician-Educators in Generating Appropriate Levels of Income," draft copy attached.)

4. That the Provost work closely with the Dean of the School of Medicine to ensure that practice groups in the Medical Center establish and follow procedures that ensure due process with respect to their members and which are acceptable by general University standards

William L. Hanaway, Jr.

Robert G. Hanna  
James E. Wheeler  
September 25, 1980

**Appendix B. Decision of the Senate Committee on Academic Freedom and Responsibility in the Matter of the Tenure Status of Dr. Maurice N. Srouji**

(The question of the tenure status of Dr. Srouji arose during a Grievance Hearing on Monday, June 16, 1980, and was referred to this Committee for a determination.)

1. By action of the Board of Trustees on September 16, 1974, Dr. Srouji was explicitly granted tenure. The language of the Trustees was "Full affiliation, full salary contingent on funds from Children's Hosp. and PGH; with tenure."

2. In view of the words "with tenure", we interpret the language "full salary contingent on funds from Children's Hosp. and PGH" as designed to relieve the University of responsibility for full salary in the event that those funds ceased to be generated. Whether or not such limitation would be effective to relieve the University of that responsibility, it is clear that resources from Surgical Associates of Children's Hospital are in fact available and forthcoming to the University.

3. On January 15, 1975, the Dean of the Medical School sent to the Provost's Staff Conference a proposal to change Dr. Srouji's status to:

"full affiliation, full salary without obligation to the University of Pennsylvania to continue the portion of Dr. Srouji's salary which comes from the Surgical Associates of the Children's Hospital in the absence of these funds, with tenure."

An attachment to the document, entitled "Current appointments-proposals for change in status," contains the following entry:

"Dr. Maurice N. Srouji- Promoted to Assoc. Prof. Pediatric Surgery, Dept. Surgery, Sch. Med., eff. 7/1/74 (full affil., full sal. contingent on funds from Children's Hospital & PGH; with tenure).

"Fully affiliated with indefinite tenure of academic rank; fully salaried from funds paid to the University by Surgical Associates of Children's Hospital and other external sources retroactive to Oct. 1, 1974, without obligation on the part of the University to continue salary and benefits in the absence of these funds."

If the substitution of the phrase "fully affiliated with indefinite tenure of academic rank" for the phrase "with tenure" was designed to alter or diminish the protections of tenure previously accorded to Dr. Srouji, we conclude that it was ineffective to do so. There was neither an adequate explanation of any purpose to diminish the

protections incident to tenure nor an informed consent to the loss of such protections.

4. Without due process and adequately supported findings of just cause termination or substantial curtailment of salary or other professional prerogatives of Dr. Srouji would, in the opinion of this committee, constitute a fundamental denial of the principles of academic freedom.

The above statement was approved unanimously by those members of the Senate Committee on Academic Freedom and Responsibility present at the meeting at 10 a.m. on June 19, 1980. They were Robert E. Davies, Phoebe S. Leboy, Morris Mendelson, Erwin Miller, Phyllis R. Rackin, and Ralph S. Spritzer.

The Committee read documents relevant to the case, questioned and heard testimony from Dr. Maurice N. Srouji and his University Colleague Dr. Alan Cathcart. Dr. John R. Brobeck was present during this part of the meeting

Robert E. Davies  
Chair, Senate Committee on  
Academic Freedom and  
Responsibility

June 19, 1980

**Appendix E: Provost's Office Presentation to the Faculty Senate Committee on Academic Freedom and Responsibility**

October 16, 1981

The position of the Provost's Office in the grievance case of Dr. Maurice N. Srouji has been and is that the recommendations of the Grievance Panel have been accepted and implementation is under way.

Some of the steps taken by Dr. Koop in these dismissals involved his authority as an agent of Children's Hospital, some involved his authority as an agent of Surgical Associates, and some involved his authority as an agent of the University of Pennsylvania. The more recent termination of Dr. Srouji as a member of Surgical Associates was an action of that practice group.

As regards restoration of academic activities at the University of Pennsylvania, a former Acting Provost, Professor Benjamin S. P. Shen, accepted the recommendation of the Faculty Grievance Panel. If any of Dr. Srouji's academic activities at the University of Pennsylvania—as distinct from Children's Hospital and Surgical Associates—have not been restored, the Provost's Office will make sure that the relevant recommendations of the Faculty Grievance Panel are carried out.

Children's Hospital, Surgical Associates, and the University of Pennsylvania are separately organized entities. The University of Pennsylvania cannot at present, as a matter of law, compel an action by either of the other entities.

As regards restoration of professional activities at Children's Hospital and Surgical Associates, former Acting Provost Shen again accepted the recommendations of the Faculty Grievance Panel. The Provost's Office will continue to use its influence in an attempt to see that the relevant recommendations of the Faculty Grievance Panel are carried out.

It is our belief that the particular recommendations of the Grievance Panel which need implementation at this time are those stated in Acting Provost Louis A. Girifalco's two letters of February 23, 1981 addressed respectively to Mr. Noel E. Kroncke, President of Children's Hospital of Philadelphia and Dr. C. Everett Koop, Surgeon-in-Chief of Children's Hospital of Philadelphia. These letters are attached along with the responses from Mr. Kroncke and Dr. Koop. It seems that the matters of concern involving malpractice insurance, name in telephone directories, and name in catalogs have been rectified. The University has also made a payment of \$75,000 to Dr. Srouji.

At the present time, the most promising avenue for resolving Dr. Srouji's situation appears to lie in the direct conversations that he is having with Dr. James A. O'Neill, new Surgeon-in-Chief of Children's Hospital. It is quite important that these talks continue in an atmosphere of mutual understanding.

The recommendations of the Grievance Panel also addressed the general question of relationships between University faculty members and separately organized medical practice groups. It is the position of the Provost's Office that faculty participation in separately organized medical practice groups should be phased out as rapidly as is feasible, and that such practice groups should be located within the structure of the University. We note that most clinical faculty of the School of Medicine now practice through internally organized groups. The attached memorandum from Dr. Baum to Dean Stemmler speaks to the fact that the Clinical Practice Executive Committee of the Medical School agrees with this position. The attached letter from Ms. Parris to Dr. Winegrad indicates that the machinery for implementing this

policy is being put in place. We are told that reappointments as well as new hirings and promotions will be considered in this way in the future.

Dear President Kroncke:

As you know, the grievance of Dr. Maurice N. Srouji has been heard by a faculty panel in accordance with the University's Faculty Grievance Procedure. After receiving the panel's report, considering very carefully Dr. Srouji's situation, and consulting widely, I find that we are faced with a problem shared among three entities (the University, Children's Hospital, and Surgical Associates) which existing mechanisms may not accommodate. Therefore, I seek your cooperation. In addition to the substantial remedies already offered by the University, I believe that Dr. Srouji, as a pediatric surgeon and partner in Surgical Associates, ought to be provided with appropriate office space in the Children's Hospital of Philadelphia. I am requesting that you work with Dr. Koop and the other partners of Surgical Associates to make arrangements for Dr. Srouji to have suitable office space in the Children's Hospital as soon as possible. Also, if any of the matters in my letter to Dr. Koop should more properly be addressed by Children's Hospital, I am requesting that you work with Dr. Koop and Surgical Associates on those as well.

I would be pleased to answer any questions you may have in this matter.

Sincerely,  
Louis A. Girifalco  
Acting Provost

Dear Mr. Girifalco:

As you know, Children's Hospital of Philadelphia is an entity separate from and legally independent of both the University of Pennsylvania and Surgical Associates. As a consequence, while it is useful for us to know of the conclusions reached by the University with regard to its response to Dr. Srouji's grievance, as a legal matter our response must be dictated solely by an analysis of our legal position. Richard Berkman of Dechert Price & Rhoads has reviewed this matter with us and discussed it with the University's counsel and counsel for Surgical Associates and for Dr. Srouji. It would seem appropriate that any further communications from you to us on this subject be directed to him.

Sincerely,  
Noel E. Kroncke  
President

Dear Dr. Koop:

After careful study and consultations concerning the grievance of Dr. Maurice N. Srouji, I have come to the conclusion that the academic and professional opportunities comparable to those of tenured members of the department of surgery and partners of Surgical Associates should be restored immediately to Dr. Srouji. As I have indicated in the enclosed letter to President Kroncke, in the face of this shared problem, I seek the cooperation of Children's Hospital and of you as surgeon-in-chief in the resolution of Dr. Srouji's situation. In addition to appropriate office space in Children's Hospital, I think Dr. Srouji should have the following professional rights and privileges restored immediately: assignment to appropriate seminars, conferences, grand rounds, and the surgical core course teaching schedule; access to clerical help; restoration of the "on call" schedule; and restoration of his salary.

I am pleased to learn from your letter of January 14, 1981 to then Acting Provost Shen that you are restoring Dr. Srouji's name to the letterhead of the Surgical Associates, and I understand this will automatically provide him telephone access through the Surgical Associates switchboard.

Please feel free to contact me if you have any questions in this matter.

Sincerely,  
Louis A. Girifalco  
Acting Provost

Dear Mr. Girifalco:

As I am sure you know, I have accepted an appointment with the Reagan administration in the Department of Health and Human Services and ultimately expect to be appointed Surgeon General of the United States. As a result of this appointment, I have already resigned from the partnership of Surgical Associates. I have agreed, however, to continue with my administrative responsibilities as Surgeon-in-Chief of the Children's Hospital of Philadelphia until July 1, 1981, in order to help facilitate a smooth transition to a new Surgeon-in-Chief.

In response to your letter of February 23, 1981, I must note that Surgical Associates, as you know, is a partnership of individual doctors and a separate legal and economic entity from the Children's Hospital of Philadelphia and from the University of Pennsylvania. Since I am no longer a partner of Surgical Associates, the future relationship between Dr. Srouji and that partnership will have to be decided by the present partners. The Surgical Associates has retained Andrew Price, Esq., to represent them with regard to any issues related to Dr. Srouji.

With regard to Dr. Srouji's operating privileges at the Children's Hospital, including his request to be assigned to the on-call schedule, *I am responsible as Surgeon-in-Chief* to review his current qualifications in the course of the mandated re-evaluation and re-certification annually of operating privileges for each of the surgeons at the Children's Hospital. Neither the University nor I nor Surgical Associates has any right to require the Children's Hospital to provide office space, clerical help or any compensation to Dr. Srouji.

With regard to your requests related to his participation at appropriate seminars, conferences, and *grand rounds*, Dr. Srouji has had full opportunity to participate in all these academic functions. I trust that the *Dean* of the Medical School can work out with Dr. Srouji his participation in these and any other academic functions.

While I trust that the University will resolve its own relationship with Dr. Srouji without further involvement of the Children's Hospital of Philadelphia or Surgical Associates, any further communications on this matter should be through counsel for Surgical Associates and the Children's Hospital of Philadelphia.

Sincerely yours,  
C. Everett Koop, M.D.

**Appendix I:** *Letter of Prof. Robert E. Davies for SCAFR to Dr. Leonard E. Miller, Chair, Dept. of Surgery on due Process Procedures Adopted by the University Senate for University Clinicians (May 13, 1981)*

Dear Len:  
I am writing in response to your oral request that the Senate Committee on Academic Freedom and Responsibility provide guidance as to procedures and standards to be followed in instances where the status of a faculty member-clinician is brought into question by a professional group of which he or she is a member. This question was raised against the background of the resolution proposed by the Committee and approved by the Senate last month. That resolution reads as follows:

WHEREAS the University has recently adopted policies and procedures relating to the status of clinician-educators holding University appointments, these being designed, among other things, to safeguard their academic freedom and to protect them from arbitrary action affecting their status and professional opportunities;

WHEREAS various members of the faculty, including such clinicians, are associated, in the conduct of their principal activities as members of the University, in professional partnerships or other professional entities;

WHEREAS it further appears that various members of the faculty, in their roles as members of the University, are substantially engaged in professional activities in institutions that are not part of the University;

WHEREAS the ability of members of the faculty having relationships with such professional entities and/or institutions to fulfill their appointed roles as members of the University and to pursue their respective professional disciplines may depend in substantial measure upon the continuity of those relationships and the economic security thereby afforded;

THEREFORE the Committee moves that the Senate approve the following resolution:

The Faculty Senate recommends that the University administration and the respective Deans initiate measures (1) to ensure that partnership and similar agreements as described above, to which faculty members are parties, conform and be subject to University policies and practices safeguarding academic freedom and protecting faculty members from arbitrary action affecting their status and professional opportunities; and (2) to ensure that agreements between the University and other institutions pursuant to which members of the faculty engage in substantial professional activity in such institutions shall provide like protection.

Specifically, your request brings into focus the question: What are the University's "policies and practices" to which reference is made in the final paragraph of the resolution? The Committee's view is as follows.

In the first place, it must be said that the University's Handbook of Policies and Procedures does not specifically address the special situation of a faculty member who is associated, in the conduct of his or her principal activities, with professional partnerships or other professional entities. The University, however, expressly recognizes that the tenured members should enjoy "the continuity of existence and economic security within which academic freedom is both fostered and protected" (Faculty Policies and Procedures, paragraph 2, Handbook p. 30). It is also clear from the provisions governing suspension or termination of the standing faculty for just cause (*id.*, paragraph 12, p. 54 et seq.) that the requirements of due process must be satisfied before any such action is taken. These requirements include the provision of adequate notice of any charge of failure to meet applicable standards, the right to a hearing before the appropriate body, and a right to the assistance of counsel at such a hearing.

Although many of the detailed provisions of paragraph 12 are inapposite with respect to proposed action by a professional partnership or entity that is not within the formal organization of the University, we have no doubt that conformity with University policies and practices requires that the essentials of due process be observed before taking any action that would adversely affect the status and professional opportunities of a faculty member-clinician.

We suggest further that the procedures adopted by the School of Medicine and approved by the Senate with respect to termination of clinician educators for failure to generate an appropriate level of practice funds provide a useful procedural guide in the case of a faculty member-clinician whose

continuation in a clinical role with a professional group is brought into question. Those procedures provide:

If a clinician educator believes that a determination by the department chair that he or she has not generated the appropriate level of practice funds is incorrect, that the amount of funds required to be generated is excessive, or that he or she had been or may be prevented from earning the appropriate level of funds by inadequate patient-care assignments, he or she may, at any time after the commencement of the observation period, but not later than one month after the termination notice, file a written appeal with the dean and the chair of the Steering Committee of the Medical Faculty Senate. Within one month of receipt of such a written appeal, the Steering Committee shall elect its own chair. The ad hoc committee shall investigate and report to the clinician-educator, the chair of the department and the Steering Committee within one month of its appointment whether termination is or would be in accordance with the standards and procedures set forth above. Either the department chair or the clinician educator can request review of the ad hoc committee's conclusions by the Steering Committee, which shall conduct such a review within one month. The decision of the ad hoc committee or the Steering Committee (where the Steering Committee has reviewed the ad hoc committee's decision) shall be transmitted in writing to the dean.

Similarly, in a case where the responsible supervisory administrator believes that a faculty member-clinician has failed to satisfy the standards or requirements of a clinical position, we believe that an appropriate course would be to advise the Dean of the School of Medicine and the chair of the Steering Committee of the Medical Faculty Senate, and to request the formation of an investigatory committee as provided above.\* The procedures for review of the Committee's report likewise appear adaptable.

In setting forth procedures adapted to a determination whether a faculty member shall be permitted to continue in a particular clinical capacity, we are not of course suggesting that such a determination would be dispositive of any question of tenure in an academic position or of any rights incidental to status as a member of the faculty.

Finally, we recognize that the standard to be applied in deciding whether a person in a clinical role is performing satisfactorily must take into account the character and function of the clinical practice of which he or she is a part. In emphasizing the requirements of fair procedure, we are not questioning the right - indeed the obligation - of professional groups and institutions to insist upon high professional standards in the delivery of health care and related services.

Sincerely,  
Robert E. Davies

Chair, Senate Committee on Academic Freedom and Responsibility (1980-1981)

\*This is not to say that the procedures described above would be applied in precise detail. Thus, the provision for a period of observation set forth in the quoted passage relates to a particular deficiency of performance. The critical consideration, in the Committee's view, is the need to provide an appropriate mechanism of investigation and review.