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 Faculty 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 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 schedule 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 official 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."

The Grievance Panel continued its own deliberations on the remainder of the issue. 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 over funds 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 of 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 University faculty, for termination of University staff, and for all faculty members in clinical practice groups in the Medical Center. The Provost's Office would take in light of the panel's report and the limits of the Provost implemented by the Provost's Office.

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 Provost, 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 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's Office's own proposed implementation. His malpractice insurance has been continued by the University, but he does not have an office or clerical help. Since 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 "normal 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 Cillessan 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.

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.

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.

*Unpublished appendix, available for examination at the Faculty Senate Office.
B. Disputes over the Scope of Appropriate Implementation:
Findings by SCAF R

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 conceded 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 SCAF R 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..." (emphasis supplied). We note that the Provost's Office has viewed these findings as the appropriate subjects for implementation, and which are conceded 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.

"...in cases in which any element of the grievant's claim is upheld..." (emphasis supplied). We note that the Provost's Office has viewed these findings as the appropriate subjects for implementation, and which are conceded 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.

"...in cases in which any element of the grievant's claim is upheld..." (emphasis supplied). We note that the Provost's Office has viewed these findings as the appropriate subjects for implementation, and which are conceded 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.

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.

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 "injury[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

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

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 professional 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 January 22, 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. 4

...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—invoking Professor Srouji—which led to their general concern. The panel had the same purpose with Recommendation #4: the panel "wanted to emphasize this point" due process issues. 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." 5

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 over 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 4 (A): 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 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 (B): 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 probably any number of other people in more or less comparable positions to Dr. Srouji's over there, and consequently more grievance coming, and it seemed to us that..." (The Panel member was interrupted at this point)
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 Shen notes (Appendix D) that acting Provost Girfalco, 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 by 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 explained 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."
II. Inasmuch as the University has sought, for years, to bring the University- associated Pediatrics into the University, it is appropriate to make that appointment conditional upon such procedures being followed. University due process procedures are now recognized in these other clinical practices (see Appendix J). Surgical Associates remain, in this sense at least, an "out-law" organization.

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 assure implementation of the Panel Report. The documents which detail these relationships include the currently effective Agreement between CHOP and the University, the By-Laws of the Children's Hospital; the Partnership Agreement of Surgical Associates; 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 SCAFAR 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 Professor of Surgery for the Children's Hospital. 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.

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 position.

3. The University and Surgical Associates both explicitly recognize the inseparable nature of 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 their "extramural" income; they are only to receive their "extramural" income (as distinguished from their University income). Not surprisingly, one or the members of the 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 partners 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".

4. The University's "Professor of Pediatric Surgery" shall be the Surgeon-in-Chief of CHOP. The University director of the "on-call" schedule and salary issues pertaining to Professor Srouji.

5. The University's "Professor of Pediatric Surgery" shall be the Surgeon-in-Chief of Children's Hospital. 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 Part. 6, Appendix K. (In using the title "Professor of Pediatric Surgery," we refer to that position discussed within the CHOP-University contract.)

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6. Inasmuch as the University has sought, for years, to bring the University-associated Pediatrics into the University, it is appropriate to make that appointment conditional upon such procedures being followed. University due process procedures are now recognized in these other clinical practices (see Appendix J). Surgical Associates remain, in this sense at least, an "out-law" organization.

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 assure implementation of the Panel Report. The documents which detail these relationships include the currently effective Agreement between CHOP and the University, the By-Laws of the Children's Hospital; the Partnership Agreement of Surgical Associates; 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.

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6. Inasmuch as the University has sought, for years, to bring the University-associated Pediatrics into the University, it is appropriate to make that appointment conditional upon such procedures being followed. University due process procedures are now recognized in these other clinical practices (see Appendix J). Surgical Associates remain, in this sense at least, an "out-law" organization.

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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.

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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 position.

3. The University and Surgical Associates both explicitly recognize the inseparable nature of 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 their "extramural" income; they are only to receive their "extramural" income (as distinguished from their University income). Not surprisingly, one or the members of the 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 partners 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".

4. The University's "Professor of Pediatric Surgery" shall be the Surgeon-in-Chief of CHOP. The University director of the "on-call" schedule and salary issues pertaining to Professor Srouji.

5. The University's "Professor of Pediatric Surgery" shall be the Surgeon-in-Chief of Children's Hospital. 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 Part. 6, Appendix K. (In using the title "Professor of Pediatric Surgery," we refer to that position discussed within the CHOP-University contract.)

6. Inasmuch as the University has sought, for years, to bring the University-associated Pediatrics into the University, it is appropriate to make that appointment conditional upon such procedures being followed. University due process procedures are now recognized in these other clinical practices (see Appendix J). Surgical Associates remain, in this sense at least, an "out-law" organization.

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 assure implementation of the Panel Report. The documents which detail these relationships include the currently effective Agreement between CHOP and the University, the By-Laws of the Children's Hospital; the Partnership Agreement of Surgical Associates; 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.
Respectfully submitted by the Senate Committee on Academic Freedom and Responsibility

Ruzena Bajcsy  Phyllis R. Rackin

Academic Freedom and Responsibility

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 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.

3. The details of his professional income were restricted and hampered without recourse to any orderly, formal, or objective process acceptable by general University standards.

4. His name was removed from the University catalog in 1978.

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

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

7. 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.

8. 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.
   b. Discontinuing his salary without following the process clearly stated in the Bylaws of 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.

4. 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.

B. Recommendations:

1. That the academic rights and privileges of a tenured faculty member be immediately restored, specifically:
   a. That his name be placed on the appropriate didactic teaching schedules,
   b. That he be assigned to the appropriate seminars and grand rounds.

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

Appendices

Appendixes
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 attached memorandum from Dr. Robert E. Davies, Chairman of the Senate Committee on Academic Freedom and Responsibility, is reproduced here in full:

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

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

October 19, 1981

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

Some of the steps taken by Dr. Koop in these dismissals included his authority as an agent of the Children's Hospital, surgical services of Surgical Associates of Surgical Associates, and some involvement as an agent of the University of Pennsylvania. The more recent recognition 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, the Senate Committee on Academic Freedom and Responsibility concluded that the academic and professional opportunities comprising the academic rank of Professor Emeritus of Pediatrics of the University of Pennsylvania were not 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 agreed to implement 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 Faculty Grievance Panel are reasonable and consistent with the recommendations of the Senate Committee on Academic Freedom and Responsibility. We have recommended to Dr. Koop that he take the steps as indicated in the recommendations of the Faculty Grievance Panel.

As regards the recommendation that the privates' practice groups be returned to Dr. Srouji, we believe that this can be achieved through the University's existing machinery for implementing the relevant recommendations.

We have recommended to Dr. Koop that he take the following steps to ensure the implementation of the recommendations of the Faculty Grievance Panel:

1. To restore Dr. Srouji to his academic rank of Professor Emeritus of Pediatrics of the University of Pennsylvania.
2. To implement the recommendations of the Faculty Grievance Panel.

We look forward to your positive response to these recommendations.

Sincerely,

Louis A. Girifalco
Acting Provost
Appendices

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 request related to his participation at appropriate seminars, conferences, and grand rounds. Dr. Srouji has had full opportunity to participate in all of 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 SCAFRto 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. This request was raised against the backdrop 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 University, academically engaged and responsible faculty members, having relationships with such professional entities and or institutions to fulfill their appointed roles as members of the University and to pursue respective professional disciplines may depend in substantial measure upon the continuity of those relationships and the economic security thereby afforded.

The Senate Committee on Academic Freedom and Responsibilites, an further communications on this matter should be through counsel for Surgical Associates and the Children's Hospital of Philadelphia.

Sincerely yours,
Andrew Price, Esq.

ALMANAC SUPPLEMENT January 12, 1982