



17 April 2007

L. Rafael Reif
Provost
Room 3-208

Dear Provost Reif:

In response to your letter of 11 April 2007, I write to decline your offer to take part in the mediation process between Professor James Sherley and MIT within the framework you have laid out. I wish to state here for the record my reasons for this decision.

In your letter you wrote: "However, our willingness to engage in further dialogue through the mediator on tenure questions should not be misunderstood, as it continues to be our position that we have reached an endpoint on the question of whether Professor Sherley can be awarded tenure at MIT. Nor should our willingness to engage in mediated dialogue on transition issues be misunderstood, as it continues to be the case that Professor Sherley's appointment at MIT will end June 30, 2007."

The first part of this statement stipulates a position from which you will both start and continue, one not subject to change as the mediation process moves along, even if that process reveals a situation warranting a shift. In particular, if mediation were to show that the tenure process and/or the tenure grievance process involved breaches or flaws warranting reconsideration or redress, at variance with your own decision derived from your evaluation of the grievance committee's report and delivered to Professor Sherley in December 2006, the Institute would still hold that tenure for James Sherley at MIT is off the table. It is not clear to me how a fair process of mediation can proceed with an outcome predetermined in this way and with potential remedies so restricted, so inflexible.

The second part of your statement lays out parameters for the process in such a way that a mediator would have no leeway in determining the time that he or she needs to conduct a proper and deliberate process, nor any leeway in negotiating the timing of James's departure if the mediation determines that he should leave. Your often-repeated termination date of June 30, 2007, constrains—before the process even gets underway—both the conclusion of the mediation and the timing of any ensuing transition. Saddled by such pre-conditions, this is not "mediation" in any fair sense of the term that I am aware of.

Since 12 February (in a meeting with Professors Claude Canizares, Bob Silbey, and Munther Dahleh) I have maintained that the allotted time for mediation and any period of transition for James, if the outcome recommends his departure, should be decided within

the context of the mediation process itself, and the latter, by its very definition, should be the main process controlling resolution of all issues surrounding the dispute between James and MIT. But your proposal, as I read it, is tantamount to little more than a *Notice to Quit* for Professor Sherley, a notice of eviction, rather than a proposal for serious and professional inquiry into a matter where fairness and equity in a tenure and grievance process have been called into question. I cannot in good conscience join a process where outcomes have been predetermined in this way by one side.

I should emphasize here, too, that my role as a colleague assisting another colleague has operated scrupulously within the framework of faculty guidelines, which hold that no lawyers are permitted as part of the grievance process. Lawyers were never present in any of our deliberations before, during, or after James's hunger strike. When we agreed to continue with mediation as a condition for ending the hunger strike, no lawyer was ever part of our deliberations. Since the hunger strike, when Claude and Bob became involved, no lawyer appeared at our meetings. I cannot proceed with any collegial dispute resolution around the issues of tenure and tenure grievance in the presence of either an MIT lawyer or counsel for James, as doing so would compromise the ability of the mediator to bring the parties to a successful resolution.

I wish to clarify for the record my role in assisting James in the grievance process. Throughout, I have accompanied him to the various meetings and helped him formulate his complaints in a manner that would be clear, cogent, and understood within the guidelines laid out in *Policies and Procedures*. I have tried to answer his questions about process at MIT, as I have come to understand it, over my thirty-three years here. I have interacted with both sides when I thought I could be helpful in doing so, albeit with the primary aim of helping James. James, however, has always spoken for himself, written his own letters, and made his own decisions in pursuing his grievance. When you rendered a negative decision in December and after James responded with his email to the MIT community, I nevertheless continued to help James address his allegations of flaws and breaches in the tenure process, as well as in the grievance process. I expressed to you in early January, in a meeting also attended by Professors Rafael Bras and Paula Hammond, that you would best be served by seeking advice from colleagues other than me, as James's email had singled out your role in the process as part of the problem he was addressing. I explained the function I would play in helping James and MIT reach some kind of resolution, and you said you understood my position. To that end, I opened a line of communication with Claude Canizares as a way to keep lines of communication open between James and the administration, in the face of James's threat of a hunger strike. I specifically asked Claude to clear this process with you and President Hockfield, so that he and I might move matters toward an internal resolution with the aim of deterring a hunger strike. I chose Claude because he had been involved at one point in helping you with one aspect of the grievance. At the time, he seemed appreciative of my efforts to refocus on ways to resolve the tenure and tenure grievance processes. He and I met together several times alone, and once with James, to talk about these processes. Although we did not resolve anything, both sides at least established in Claude someone in the administration whom I could talk to on James's behalf and who had some knowledge of the issues around tenure and grievance. These and subsequent

conversations during the ensuing hunger strike were about tenure and tenure grievance, the only matters of concern to me in this case.

During the strike, when you wrote to the minority faculty that MIT would agree to mediation, Claude and I added to our discussions Bob Silbey from your side, and Munther Dahleh on James's behalf, to help us move the process along. The subject of these discussions was always the tenure process and the tenure grievance process, and how to move them towards a resolution. You are correct in stating that Claude and Bob represented the administration's view that decision-making power on tenure not be relinquished to an outside party, and for this reason you preferred mediation to the external process of arbitration. Both Munther and I listened, and neither of us objected to MIT's position in this regard. The question for us was whether tenure would be granted automatically as a form of redress, or whether James would be subjected to another review altogether, if it was determined through mediation that either the tenure process or the grievance process had been flawed.

Your side suspended deliberation on 13 February 2007, stating that MIT could not work toward mediation while a hunger strike was going on. One day before the MLK celebration, on Thursday, 15 February, I constructed a statement of truce that would end the hunger strike and that would open lines of communication again on the tenure issue under the guidance of a mediator. I proffered a statement to this effect from James to Claude and requested a reciprocal and simultaneous statement from MIT as a condition for ending the hunger strike. Claude took the proffered statement to the administration and returned with the reciprocal statement. James agreed to both statements in good faith; MIT agreed to both statements, presumably also in good faith. When we met on Friday, 16 February, at noon in the Office of the President, both sides agreed that the mutual statements alone would be released to the press, with no accompanying commentary from either side. President Hockfield requested that Claude, Bob, Munther, and I continue deliberating with due speed the following week.

A few minutes after our noon meeting on Friday, however, the MIT News Office issued the mutual statements, but also conveyed by comments to the press that tenure was off the table. I contacted Claude that afternoon about monitoring the News Office's interactions with the media, both on and off the record. The next day, on Saturday, I wrote to everyone present at our Friday meeting to correct what I could only assume was a serious error on the part of the News Office. I was assured by Claude that the News Office comments were unintentional and in error. Munther reported to me a conversation he had had with you that same day confirming that you had indicated that tenure was indeed on the table.

Claude and I met on two occasions after the strike ended, a week later and then two weeks later. He told me that he would be unable to continue our deliberations because of the press of other duties. At my last meeting with him, he said that Bob Silbey would be in touch with me to proceed with selecting a mediator and establishing a framework for the process.

When Bob and I first met, I suggested that one possible course of action would be to explore tenure for James outside of BE. Within a couple of days, on Thursday 8 March, Dean Tom Magnanti sent me a copy of a letter he had circulated to the faculty of the School of Engineering supporting the actions of the BE faculty in James's case and declaring that all tenure and grievance processes had been fair and equitable. Dean Magnanti's letter preempted any fair chance to come up with an alternative opportunity for tenure in the School of Engineering. A similar fate seemed to have resulted earlier when you and President Hockfield did the rounds of the various schools, explaining your decision in James's case and the position you had drawn. Meanwhile, the BE faculty as a group had signed a statement laying out their actions in James's case, a private and confidential process by MIT's own definitions; subsequent letters from the BE faculty have gone even further in characterizing, for example, the substance of outside letters within James's tenure dossier.

All of this has worked at cross purposes with what some of us were hoping was a good-faith effort at resolution. Furthermore, the process you are now designing—including the introduction of a lawyer and taking tenure, either inside or outside of BE, off the table at the outset—is not in keeping with what was agreed to in our ensuing mutual statements at our meeting in the President's Office. I cannot continue to be part of a process in which boundary conditions and stated goals continue to shift in unilateral and unpredictable ways.

In addition to Claude, Bob, and Munther, I am copying this letter to President Hockfield, who presided over the meeting more than eight weeks ago, when we agreed to mediation and who bears ultimate responsibility for the mediation of disputes, and to James, who deserves to have his issues fully addressed and satisfactorily resolved. I deeply regret that this dispute between James and MIT has not moved towards a successful resolution.

Respectfully submitted,

Kenneth R. Manning
Professor

cc: President Susan Hockfield, Professor James Sherley, Dean Robert Silbey, Associate Provost Claude Canizares, Professor Munther Dahleh