

AAUP

American Association of University Professors

Academic Freedom for a Free Society

November 30, 2011

VIA E-MAIL

Dr. Robert Coombe
Office of the Chancellor
University of Denver
2199 South University Boulevard
Denver, Colorado 80208

Dear Chancellor Coombe:

Dr. Arthur N. Gilbert, associate professor with tenure in the Josef Korbel School of International Studies at the University of Denver, has sought the advice and assistance of the American Association of University Professors as a result of an April 6, 2011, memorandum from Dean Christopher Hill notifying him of his suspension with pay from teaching his graduate course, "The Domestic and International Consequences of the Drug War," then under way. In that letter Dean Hill informed Professor Gilbert that this action was based on anonymous student allegations that he had "made statements during class that are not related to course content" which, "if confirmed, would violate University policies, including but not limited to the policy prohibiting sexual harassment." The memorandum directed Professor Gilbert "not [to] discuss this matter with any University employees and . . . not [to] have contact with any students," and instructed him to "make arrangements" with Dean Hill "prior to visiting in [Professor Gilbert's] office or other locations on campus." We understand that the university's diversity office proceeded to conduct an investigation of Professor Gilbert on the basis of the anonymous complaints and that no faculty review was made of these complaints before the sanctions were imposed.

The interest of this Association in Professor Gilbert's case stems from our longstanding commitment to academic freedom and tenure, the basic tenets of which are set forth in the enclosed 1940 *Statement of Principles on Academic Freedom and Tenure*. That document, a joint formulation of the AAUP and the Association of American Colleges and Universities, has received the endorsement of more than 210 scholarly and educational associations. Derivative procedural standards are set forth in the Association's enclosed *Recommended Institutional Regulations on Academic Freedom and Tenure*, *Sexual Harassment: Suggested Policy and Procedures for Handling Complaints*, and *Due Process in Sexual-Harassment Complaints*. We have noted the relevant provisions in the University of Denver faculty handbook.

Our recommended procedures for dealing with complaints of sexual harassment call for the complainant to submit a written statement of the allegations to the grievance officer, who should then "inform the alleged offender of the allegations and of the identity of the complainant. A written statement of the complaint should be given to both parties." In the event that efforts to reach an informal resolution acceptable to both parties prove unavailing, the statement then provides that "members of the faculty review committee should meet to discuss the complaint. Unless the committee concludes that the complaint is without merit, the parties to the dispute should be invited to appear before the committee and to confront any adverse witnesses." Under Regulation 7a of the *Recommended Institutional Regulations*, if the administration "believes that the conduct of a faculty member . . . is sufficiently grave to justify imposition of a severe sanction, such as suspension from service for a stated period, the administration may institute a proceeding to impose such a severe sanction." In such circumstances, the Association calls for the affordance of an adjudicative hearing of record in which the administration bears the burden of demonstrating adequate cause for the sanction it seeks to impose.

According to the information we have received from Professor Gilbert, he was informed by letter of June 8 from the Office of Diversity and Equal Opportunity (ODEO) that its investigation "found it more likely than not that, absent an academic justification, [he] created a sexual harassment hostile environment in [his] class." The letter stated further that "[w]hether this is justified by the academic integrity of your teaching of the subject matter is beyond the scope of this investigation and will be determined by the appropriate academic decision makers." By memorandum of July 14, Dean Hill informed Professor Gilbert of the ODEO findings that he "did violate the University's sexual harassment policy by creating a sexual harassment hostile environment in [his] class," that he "must cease this behavior immediately," and that he must "attend sensitivity training which will help [him] to understand both how [he] violated the sexual harassment policy and how to avoid further violations or inappropriate behavior in the future."

In late August, Professor Gilbert appealed the matter to the Faculty Review Committee on grounds that the sanction imposed by the dean violated his academic freedom in the classroom. The October 4 report of the committee sustained his complaint and found further that there was no evidence indicating that members of the faculty had been consulted before the diversity office and Dean Hill determined that his "teaching methods constituted sexual harassment." The report concluded as follows:

To summarily remove a member of the faculty from the classroom and ban that person from campus and from contacting colleagues and students because of something that was said in the classroom and reported anonymously, without full consideration, is outrageous and in variance with time-honored tradition in academe. This violates academic freedom and overall concepts of fairness.

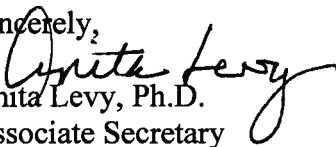
The committee went on to emphasize its concerns related to the “absence of both substantive and procedural rules regarding placing a member of the faculty on administrative leave and taking the action of prohibiting a member of the faculty from being present on campus and from communicating with colleagues and students.” Committee member and AAUP chapter president Dean Saitta, in an October 3 supplementary statement, suggested proposed revisions to the university’s policy on suspension or administrative leave, so that it “respects academic freedom and due process.”

The dean rejected the faculty committee’s findings and conclusions, and Provost Gregg Kvistad, in an October 20 letter to Professor Gilbert, upheld the dean’s response to his appeal. Finally, a November 14 response from your office to a Foundation for Individual Rights in Education (FIRE) letter of support for Professor Gilbert indicated that the administration believes the matter had been handled correctly and reiterated that the provost’s decision regarding the case was final.

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We appreciate that Professor Gilbert’s suspension from teaching and his banishment from campus have been lifted. Nonetheless, we wish to emphasize that the actions taken against him and the manner in which they were imposed raise basic concerns for our Association under widely accepted standards of academic due process. The imposition of a severe sanction without a prior faculty hearing is seriously at variance with established Association-supported procedures with regard to sexual-harassment complaints, especially those related to academic expression in the classroom. We understand that the university’s AAUP chapter has raised some of these same concerns, and we would welcome the opportunity to work with all parties to address these issues with a view toward revising the institution’s policies to bring them into close accord with generally accepted academic standards.

The information in our possession relating to the case of Professor Gilbert has come to us primarily from him, and we realize that you may have additional information that would contribute to our understanding of what has occurred. We shall therefore welcome your comments.

Sincerely,

Anita Levy, Ph.D.
Associate Secretary

Enclosures

cc: Provost Gregg Kvistad
Dean Christopher Hill, Josef Korbel School of International Studies
Professor Dean Saitta, President, AAUP Chapter
Professor Arthur N. Gilbert