

October 4, 2011

To: Professor Arthur Gilbert and Dean Christopher Hill

From: The Faculty Review Committee (FRC)

Re: Report of the FRC on the grievance filed by Professor Arthur Gilbert against Dean Christopher Hill

Introduction

Ten members of the FRC participated in consideration of this grievance. This report represents the consensus of nine members. One member disagrees with the findings and recommendations in the report that follows, and one other member has attached a supplementary statement.

FRC process

Professor Gilbert sought a determination from the FRC related to the above grievance in a memo dated August 26, 2011. Because the University was not in session, the grievance was delivered to the FRC during the week of September 5. The grievance met the requirements set forth in the University Employee Grievance Process. It included a number of documents not specifically referenced in this report but clearly available to both Professor Gilbert and Dean Hill.

The FRC met to initially discuss the grievance on September 13. We subsequently requested additional written information from Dean Hill. That information was provided in a document submitted by Amy King of Human Resources (HR) on September 19. The FRC met on September 27 to discuss the grievance in light of all documents submitted to it. A quorum was present at both meetings.

Grievance before the FRC

In his formal statement of grievance dated August 9, Professor Gilbert accused Dean Hill of:

1. "Mishandling" the Office of Diversity and Equal Opportunity (ODEO) determination regarding complaints filed against him;
2. "Ignoring DU policy"; and
3. Serving as "judge, jury, and executioner" in his case.

He added in the cover memo of his grievance to the FRC accusations that Dean Hill:

4. Violated "basic principles of academic freedom;" and
5. Behaved "in a manner sharply at variance with academic practice."

FRC response to the claims in the complaints

In direct response to these accusations, we conclude:

1. The findings of the ODEO regarding sexual harassment included in the grievance are equivocal at best. The overall ODEO conclusion is qualified by the phrase, "absent an academic justification." In addition, four of the 9 allegations were unfounded by the ODEO. Three of the 5 allegations that were founded were qualified by the statement that ODEO could make no determination of the relevance of the teaching methods to the course content. There is no reference in the report to either legal or accepted academic standards to support the conclusion that Professor Gilbert created "a sexual harassment environment" in his class.
2. According to the Grievance Policy, a respondent has 10 working days to reply to a written grievance. According to the record, Professor Gilbert submitted two written grievances. The first was dated May 26; the response from Dean Hill was dated June 28. The record indicates Professor Gilbert chose not to pursue this grievance. The second was dated August 9; the response was dated August 19. While the specific time frames set forth in the Grievance Policy were at least been partially observed by Dean Hill, the FRC is concerned about the total time elapsed between the time when Professor Gilbert was placed on administrative leave (April 6) and the final determination of Dean Hill (dated July 14).
3. There is nothing in DU policy requiring a dean to recuse from a faculty grievance.
4. We believe there was a violation of academic freedom in this case. There is no evidence in the record that members of the faculty were consulted by Dean Hill, HR, or ODEO in determining Professor Gilbert's teaching methods constituted sexual harassment. Nor was there any reference to external standards that might have led to such a conclusion.
5. 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.

Concerns raised by the grievance that extend beyond the case at hand

This grievance raises a number of broader concerns for us.

1. It appears to us there is an 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. Such an action can result in irreparable damage to career and reputation. What justifies such an extreme action? What rights does the faculty member have before the action is taken? The Grievance Policy addresses options for a grievant after an administrative action is taken, not before, but the damage may already be done, especially given the slowness with which investigations are completed and appeals are resolved. We believe policy is needed, and we believe it should be crafted with broad participation from faculty.

2. There is ambiguity about the role of Human Resources in cases such as the one before us. Under what circumstances are student complaints related to teaching method and classroom behavior referred to and accepted by HR? What is or should be the role of HR when such complaints are received? We believe concerns about teaching method and faculty classroom behavior, along with other matters related to teaching, should be addressed by the faculty, not an administrative unit. We also believe concerns should be addressed collegially within a unit, if possible, without referral to units such as HR.

3. Academic freedom is a long-held tenet of academe, designed to respect individual professors' expression of ideas and teaching methods. We recognize this may be tempered by decisions of faculty as a collective since faculty overall own curriculum, and we recognize there is also a role for University administration to play in determining academic programming and curriculum. The questions are, however, who is to determine what the bounds of academic freedom are and when have they been crossed? We believe these questions should be answered by the faculty, not an administrative unit within the University such as HR or ODEO.

We believe that in this case and in the absence of policy, Dean Hill should have, before removing Professor Gilbert from the classroom and prohibiting his presence on campus and interaction with colleagues and students:

1. Consulted with other deans and senior faculty in his and perhaps other units. To apparently consult only with HR and University Counsel neglects consideration of legitimate academic questions.

2. Attempted to engage Professor Gilbert in collegial and collaborative discussion. This may have occurred, but it is not apparent from the record.

Recommendation related to Professor Gilbert

While we have serious concerns about respect for academic freedom and the response of Dean Hill in this case, we also believe Professor Gilbert, despite his 50 years of teaching and high teaching ratings, might be more sensitive to the impact of his teaching methods and classroom presentation on some of his students. We believe it is not appropriate to mandate sensitivity training, as Dean Hill has directed, but we do believe Professor Gilbert would benefit from careful reflection and peer consultation concerning the concerns that were raised by some

students about the sexualized content and personal disclosure in some of his classroom presentations.

Recommendation related to Dean Hill

We recognize Dean Hill has a distinguished professional record, but we also recognize he is new to academe. We believe he would benefit from guided discussion around the mores and values of higher education and the role of faculty. We also believe he would benefit by consulting other deans and members of the faculty when questions related to teaching arise.

Recommendation related to University administration

The question of the role of HR in investigations and recommendations extends beyond individual faculty and units on campus. The same is true of overall substantive and procedural policy related to administrative leave. We believe these questions need to be addressed under the direction of the Provost or the Chancellor, with involvement of faculty in order to assure both policy and procedure take into account the unique aspects of an academic environment.

Date: 3 October 2011

To: Professor Arthur Gilbert, JK SIS
Dean Christopher Hill, JK SIS

From: Dean Saitta, Professor of Anthropology and Member, Faculty Review
Committee *DAS*

Re: Supplementary Statement for the FRC Report on the Arthur Gilbert
Complaint

Cc: Faculty Review Committee

I concur with the bulk of the FRC report detailing conclusions, concerns and recommendations in this case. But I would like to (1) make a stronger statement in support of exonerating Professor Gilbert of the sexual harassment charges against him, and (2) say something more about what a jointly-produced administrative leave policy should contain.

(1) In its conclusion #1 the FRC states that ODEO findings regarding sexual harassment are "equivocal at best." ODEO findings are almost always qualified by an admission that judging the academic relevance of Professor Gilbert's course content and teaching methods was beyond the scope of its investigation. The FRC finds that there's nothing in the ODEO report to support the conclusion that Professor Gilbert created a "sexual harassment environment" in his class. However, the FRC stops short of recommending that Professor Gilbert be exonerated of the charge. This limitation—combined with the FRC's recommendation that Professor Gilbert "be more sensitive to the impact of his teaching methods and classroom presentation on some of his students" and seek "peer consultation...about the sexualized content" of his courses—preserves a cloud of suspicion around Professor Gilbert that troubles me.

The FRC rightly notes that only faculty peers can evaluate the academic relevance of course content and pedagogy. Professor Gilbert has published in his course subject area. The titles of his refereed publications—easily located by just a few minutes of web searching—contain words and phrases like "buggery", "sodomy", "masturbation", "insanity", "sexual deviance", and "sexual repression." Thus, Professor Gilbert's area of scholarly research and academic expertise is demonstrably "highly sexualized." Professor Gilbert's course films and other visual teaching aids, as described in the complaint materials, clearly relate to this subject matter. Students have the freedom to take, or not to take, Professor Gilbert's courses. They have the freedom to drop them if they find the subject matter too uncomfortable. In my experience explicitly interdisciplinary teaching—which our academic leaders have identified as a top institutional priority, and which describes Professor Gilbert's courses to a tee—has a way of making students uncomfortable. Students who complete Professor Gilbert's courses have evaluated them very highly over a very long period of time.

The content and tone of the two anonymous letters that triggered Professor Gilbert's suspension, in my opinion, suggest students who feel shortchanged and disappointed by Professor

Gilbert's classroom presentations rather than sexually harassed by them. Unless the FRC or another committee of faculty peers wants to argue otherwise, Professor Gilbert should be fully cleared of the sexual harassment charges against him. His standing as a Korbel faculty member should be fully restored. If the cloud of suspicion around Professor Gilbert is allowed to persist then the university's commitment to academic freedom and due process is also suspect. DU's reputation, and not just Professor Gilbert's, is on the line.

(2) In the "Recommendation to the Provost" section the FRC identifies and justifies the need for an explicit policy governing "administrative leave." Apropos the FRC's accurate characterization of the academic environment as "unique", an administrative leave policy that respects academic freedom and due process should include the following basic principles:

- a) Teaching faculty require the widest possible latitude to exercise professional judgment in determining the appropriate content and presentation of classroom material.
- b) Any offensive behavior capable of triggering forced administrative leave must be persistent, pervasive, and documented by more than just a couple of anonymous accusations or complaints.
- c) Charges of academic misconduct should be weighed in light of the faculty member's entire record as a teacher and scholar.
- d) Investigation of charges should not become the occasion for a wide-ranging 'fishing expedition' in an attempt to dredge up negative evidence.
- e) Issues of a specifically academic nature should be handled by faculty and not Human Resources personnel.
- f) Forced administrative leave should be activated only after all other reasonable steps to deal with the situation, including consultation with all appropriate parties, have been taken.