

Memorandum

JK
1 Mar 76



TO : The President of the University Senate

DATE: 3.1.76

FROM : Senators Concerned with the General Issues Raised by the Non-Renewal of Richard Aumiller's Contract

SUBJECT: Call for a Special Senate Meeting on Monday, March 15 to be Informational in Nature, Relating to the General Issues Raised by the Non-Renewal of Richard Aumiller's Contract

The following senators call a special senate meeting on Monday, March 15 at 4 p.m. in order to (1) discuss the general implications of the non-renewal of Richard Aumiller's contract, as they affect the faculty and the University, (2) to hear reports and recommendations of the Welfare and Privileges Committee who are understood to be in the process of completing Senate legislation regarding this matter, and (3) to consider appropriate courses of senate, faculty, and student action.

(It is our understanding that the signatures of twenty percent of the members of the Faculty Senate are necessary to call a special Senate meeting and that this means a minimum of thirteen senators' signatures is required.)

- 1 *Andrew Hyburn - That-re*
- 2 *Robert Freeman*
- 3 *Judith Kunkle*
- 4 *Loring Moskey*
- 5 *Barbara Lind*
- 6 *Debrah Kliman*
- 7 *Franklin S. Newman*
- 8 *Paul D. Schweitzer*
- 9 *David Ermann*
- 10 *James R. Soler*
- 11 *Norman J. Talley*
- 12 *Larry D. Hutchinson*
- 13 *Kenneth A. Linn*
- 14 *Joseph L. ...*
- 15 *Fossil E. ...*
- 16 *Alan ...*
- 17 *James H. ...*
- 18 *...*
- 19 *J. ...*

UNIVERSITY OF DELAWARE
NEWARK, DELAWARE
1971

UNIVERSITY FACULTY SENATE
303 HULLIHEN HALL
PHONE: 302-738-2829

March 4, 1976

MEMORANDUM

TO: All Faculty Members

FROM: E. Paul Catts, Vice President
University Faculty Senate



SUBJECT: Special Senate Meeting, March 15, 1976

In accordance with Section IV, paragraph 6 (4) of the Constitution, and following a valid petition to the president of the Senate, signed by more than twenty per cent of the senators, a special meeting of the University Faculty Senate will be held on Monday, March 15, 1976, at 4:00 p.m. in room 110, Memorial Hall.

The purpose of this meeting will be to:

1. Discuss the general implications of the non-renewal of Richard Aumiller's contract, as they affect the faculty and the University;
2. Hear a report and/or recommendations from the Senate Faculty Welfare and Privileges Committee (R. Geiger, Chairperson);
3. Hear a report and/or recommendations from the Senate Committee on Academic Freedom (F.L. Smith, Chairperson);
4. Consider appropriate courses of Senate, faculty, and student action.

The provision of the Constitution of the Faculty dealing with special meetings states:

"The call of a special meeting shall state the purpose or purposes of the special meeting and no business shall be transacted other than that specified in the notice of the meeting."

EPC/b

Special Senate Meeting, March 15, 1976

UNIVERSITY FACULTY SENATE

Committee on Faculty Welfare and Privileges

Proposals for Changes in the Faculty Handbook, with Reference to Termination and Non-Renewal Policies.

I. Introduction

On January 19, 1976, The Executive Committee of the University Faculty Senate charged its Faculty Welfare and Privileges Committee as follows:

Statements made in the press by Professor Aumiller, Dean Gouldner and President Trabant suggest that there is considerable ambiguity in certain expressions used as the basis of the President's refusal to renew Professor Aumiller's contract. . . . The Executive Committee of the Senate is for this reason asking the Committee on Faculty Welfare and Privileges to examine the question of advocacy and all its implications, as well as other ambiguous expressions (moral turpitude, gross negligence, etc.) and to make recommendations to the Faculty Senate. Questions to be discussed might include: "What constitutes advocacy?" "Where can the lines be drawn between advocacy, proselytizing, examination and inquiry?" But your Committee is in the best position to pose such questions in the broad framework of faculty welfare and privileges.

The members of the Welfare and Privileges Committee met with Mr. Richard Aumiller, President E. A. Trabant, and Dean Helen Gouldner. Both Aumiller and Trabant fully and frankly reviewed the facts of the "Aumiller case." The Committee members reviewed a certain amount of documentary material, especially the newspaper stories that precipitated or announced President Trabant's actions in the case.¹ At least in terms of fulfilling our charge, we find no serious gap in the record and no serious disagreement among the principals as to matters of fact.

We also asked the President, Dean Gouldner, and Mr. Aumiller about the policy implications of the case. All three did their best to help us identify a constructive approach that would not unduly overlap with the efforts of other bodies that were considering the case. We agreed that it could not be our function to make recommendations concerning Mr. Aumiller's status at the University of Delaware; or to weigh the issues of procedural due-process that were being tested through the collective bargaining grievance procedure; or to consider alleged violations of constitutional freedoms that are properly the province of the courts; or even to take up the issue of

¹The documents are on file and open to inspection in the Senate Office.

- 2 -

academic freedom as defined in the Faculty Handbook. That issue has been examined by our sister committee, whose report, now in your hands and endorsed by our Committee, speaks directly to the question of "advocacy" that was the starting point of our original charge from the Senate Executive Committee. All these approaches having been preempted, what fragment of the issues raised by the Aumiller case remained for our Committee to investigate? Our Committee's general charge from the Senate, as given in the Faculty Handbook, I-23, includes helping to develop "general policies in the areas of . . . appointment, reappointments, dismissal . . . , and to prepare recommendations concerning such policies. . . ." Thus we have examined the Aumiller case in relation to University policy on "Terminations and Non-Renewals" as it appears in the Faculty Handbook, III-N-1. We recommend substantial changes in that policy and point to the need for related changes in III-H.²

To simplify our task, we ignored the question of whether the Aumiller case is one of "termination" or "non-renewal." Such issues as whether he received adequate notice, whether his contract required any notice, and whether he should have received written reasons for being let go, are all germane to this question, and hence to Mr. Aumiller's grievance case, but they do not concern us. If Mr. Aumiller's case were one of non-renewal in which Handbook procedures were properly followed, it indicates the need for changes in those procedures. If his case were one of termination "for cause" in which Handbook procedures were followed, it indicates the need for changes in those procedures.

II. The Issues

A University exists and operates only in part on the basis of written rules and procedures. To an extent one tends to forget between crises, it also operates on the basis of shared assumptions which need not be written precisely because they are, or are thought to be, shared. A breach of written policy may be a serious matter but ordinarily it does not lead to a crisis because it can be handled, "processed," as an individual case, through established grievance and complaint procedures involving designated faculty bodies and administrative officers. But when one part of a university community suddenly discovers that another part is acting on different assumptions, a crisis may ensue.

²We have not made an investigation of the circumstances surrounding the termination of Associate Professor Malthon Anapol. It would appear, however, that the court decision in his case poses questions about the adequacy of Handbook procedures for termination. Our proposals are designed with this case as well as the Aumiller case in mind. They also change or add wording to deal with cases where the alleged reason for non-renewal or termination is financial exigency or the need for retrenchment. An ad hoc Senate Committee on Retrenchment is currently developing guidelines for this area.

- 3 -

We believe that the "Aumiller case" has revealed that two of the faculty's assumptions about the way the University works are not shared by President Trabant.

A. The first assumption that we believe to be shared by the great majority of the faculty is that "advocacy" (of homosexuality, communism, preemptive atomic war, etc.) of something legal, by a faculty member, speaking at least by implication for himself or herself, is not a reason for termination or non-renewal. We believe that this is true however "unwise" the act of advocacy may be or however distasteful the thing advocated may be in the eyes of University people or the larger community. As noted, we are not, in this report, taking our position on the basis of academic freedom as defined in the Faculty Handbook, although that is in part the basis for both Mr. Aumiller's grievance case and for the report from the Senate Academic Freedom Committee. Nor are we taking our position on the basis of the alleged constitutional rights of Mr. Aumiller, which he is now testing in Federal Court and which also form part of the case presented by the Academic Freedom Committee. Rather, we believe that there has been an assumption on this campus that faculty are free to "advocate" and generally express themselves freely as individuals because universities, including this one, are different from other employers. And we believe that that is true not only necessarily by reason of their function (which is the strict justification for academic freedom clauses in faculty handbooks) but gratuitously because of the kind of people who make up the University at all-levels.

The Faculty Handbook, III-N-1, states that "in the event of a decision not to renew, the faculty member shall be informed of the decision and of reasons which contributed to that decision." The stipulation that "reasons" should be given seemed adequate based on "past practices"; it has now proved to be an unreliable protection. What we believe to be the common-sense faculty view of the word "reasons" -- namely, that reasons must be "reasonable" and that "advocacy," among others, is not a reasonable reason, apparently differs radically from the President's perception of the meaning of "reasons."

While the Handbook merely stipulates that "reasons" must be given for non-renewal, it specifies that termination can only be "for cause," that is, "incompetence, gross irresponsibility, or moral turpitude." Although the President has maintained that the Aumiller case is one of non-renewal and has therefore not felt it necessary to take a position as to whether advocacy of homosexuality constitutes incompetence, gross irresponsibility, or moral turpitude, we take this opportunity of affirming that if it is not a sufficient reason for non-renewal it is even less a cause for termination.

It is, however, our view that we should not attempt to list reasons adequate for non-renewal or to define incompetence, gross irresponsibility, or moral turpitude. The University and its faculty as a whole are best served by allowing for flexibility and change in these matters and by treating each case of non-renewal or termination on an individual basis. Nevertheless, the legislative approach which we discuss below, while dealing

- 4 -

directly with a different issue, will, we believe, also help safeguard faculty members from unsatisfactory definitions of reasons or causes.

B. The second assumption which we believe the great majority of the faculty shares, and which the Aumiller case seems to demonstrate the President does not, is that all terminations and non-renewals, wherever the initiative for them may lie, should be processed through some sort of bottom-to-top deliberative procedure; that this procedure should at some point(s) involve faculty bodies in reviewing the facts of the case and in proffering their considered advice; and that the involvement of faculty bodies should always take place before the final decision is reached. After-the-fact grievance procedures are not a substitute for due-process decision-making; they are ways of enforcing due-process and correcting deviations from it.

Surprisingly, the present Handbook does not explicitly provide for prior faculty participation in any termination or non-renewal cases. With the implementation of the new tenure policy next year, the Handbook will require faculty bodies to participate, as in practice they long have done, in all non-renewal/tenure decisions at the seventh year or beyond. But in all cases of termination (i.e. firing) of tenured or untenured faculty, the Handbook merely provides for after-the-fact appeal. Similarly, in the case of non-renewal before a tenure decision arises, a "timely reconsideration by the decision-making body" (i.e., the President in the Aumiller case) and, again, after-the-fact appeals to an "appropriate faculty committee" are all that the Handbook provides. The President, then, has acted in accordance with the letter of Handbook policy, but counter to faculty assumptions about that policy.

We do not question the right of the President to suspend faculty members who in his opinion pose an immediate threat to the campus, although such acts should be followed by some sort of deliberations by faculty bodies before termination. We do not question the right of the President to take the initiative in ridding the campus of faculty members who are, in his view, "undesirables" by making his views known to the appropriate faculty bodies and urging them to begin proceedings, although he should obviously follow such a procedure as rarely as possible. We do not question here the fundamental power structure of the University which leaves final decision-making power in personnel decisions to the President and the Board of Trustees, although normally they should follow, as they generally have, the recommendations of faculty bodies except where they believe the bias, provincialism, or shortsightedness of the faculty has blinded it to the best interests of the University.

But at the least we do believe the President has violated faculty expectations that Mr. Aumiller's departmental colleagues should play at least an advisory part in a decision not to renew his contract, and that the decision not be announced initially, with no faculty consultation, in the newspapers. We believe that the most minimal consultation would have

quickly revealed the gulf that separated faculty and presidential views. We believe that a less drastic and less public way of dealing with the situation could have been found, through consultation, that would have spared Mr. Aumiller, President Trabant, and the faculty of the University of Delaware an experience that has engendered shock, misunderstanding, mistrust, fear and anger.

Therefore, we propose changes in the Handbook policies concerning both non-renewal and termination that will ensure faculty participation in such decisions. Thus reasons for non-renewal and causes for termination will be made more consistent with faculty assumptions of reasonableness, and consultation between faculty and administration will lessen the chance that a case of non-renewal or termination will lead to a confrontation.

III. Proposed Revision of the Faculty Handbook, III-N-1

N. TERMINATIONS AND NONRENEWALS

1. Terminations

A clear understanding of the terms of the contract between the faculty member and the University is a prerequisite for a harmonious relationship. Within the terms of his contract, a faculty member at the University of Delaware is assured that an appointment will be terminated only for adequate cause--incompetence, gross irresponsibility, or moral turpitude--except for retirement because of age or termination caused by bona fide University-wide financial exigency.

Faculty members shall be terminated for cause only after being afforded a hearing before the faculty or an appropriate group of faculty of their department/unit and the opportunity to appeal this body's decision to the Senate Committee on Faculty Welfare and Privileges. Faculty members shall be informed in writing, prior to hearings, of the reasons for the proposed termination, shall have the opportunity to be heard in their own defense by all bodies or individuals who pass judgment on the case, and shall be permitted to have advisors of their own choosing in their presentations. In the case of proposed termination for moral turpitude, faculty members may be suspended while hearings are held in the event that their continued presence at the University would constitute a clear and present danger to the health, morals, or safety of members of the University community. Termination for cause not involving moral turpitude or gross irresponsibility shall become effective after one year's notice of the final decision to terminate.

2. Non-renewal

Proposals for the non-renewal of faculty members' contracts, and the reasons for them, shall be reviewed by the faculty or an appropriate group of the faculty of the departments/units concerned. The written opinions resulting from such review shall be taken into consideration by

by all the administrative officers concerned before a final decision is made. Faculty members shall be given notice in writing of the decisions and the reasons for them. When a decision not to renew a contract is made for reasons of insufficient demand or the termination of an existing program, University procedures governing retrenchment shall apply.

In the event of a decision not to renew, the faculty member shall have an opportunity to request a timely reconsideration by the decision-making body. A faculty member who alleges that academic freedom has been violated by the decision-making body, or that the decision-making body did not give adequate consideration to the circumstances, may petition the appropriate faculty committee. Notice of non-renewal will be given in accordance with the following standards recommended by the Faculty Senate and approved by the administration.

[Notice dates follow unchanged]

IV. The Need for Revision of the Faculty Handbook, III-H

The first paragraph of III-H, "Outside Employment" reads:

The first duty and responsibility of the faculty member is to render to the University the most effective service possible. At the same time, consultation and other activities of a highly professional nature are looked upon favorably and encouraged where these activities make a positive contribution to the University. No outside service or enterprise, professional or other, should be undertaken that might interfere with the discharge of this prime responsibility or bring the faculty member, as an expert or in any other capacity, into conflict with the interests of the University. [Emphasis added.]

The intent and scope of the underlined words are not clear. Could they be interpreted in such a way that, for example, a faculty member could be deemed to have given reason for non-renewal or cause for termination if, as a Newark city councilperson, he or she voted against the University's position on electricity rates? Do they conflict with the revised policy on faculty political activity passed by the Senate in March? Our Committee will propose a revision of this paragraph in the near future.

Call for Special Senate Meeting, March 15, 1976: Attachment

The Committee's Charge

1
2 The Committee on Academic Freedom "...shall study any condition
3 within or without the University which in its judgment may affect the
4 academic freedom of the University or of any of its members and shall
5 report thereon to the faculty or its Senate." (University of Delaware
6 Faculty Senate Bylaws, C).

7
8 On 10 February 1976 the Committee was requested by the Senate's
9 executive committee to determine whether issues of academic freedom were
10 involved in the case of Mr. Richard Aumiller, Lecturer in the Department
11 of Theater. The Committee examined the available records, studied
12 the tradition of academic freedom as defined and interpreted by the
13 American Association of University Professors and by our own Faculty
14 Handbook, and concluded that the case does indeed raise questions
15 of academic freedom of a most serious nature.

The Case

16
17 The adjudication of the legal issues in the Aumiller case is not
18 within the scope of this Committee's charge; it is being undertaken
19 internally in the grievance procedures established by the Collective
20 Bargaining Agreement, and externally in the civil courts. A brief review
21 of the record of the case is necessary, however, to make clear whether
22 deficiencies exist in our present policy statements on academic freedom,
23 and to establish the basis for our recommendation that changes be made
24 in those statements. The brief recapitulation of the salient public
25 record of facts which follows is from Exhibits A through I, on file and
26 available in the Senate office, and listed at the end of this report.

27
28 Mr. Aumiller is in the second of two one-year appointments as

1 Lecturer in the Department of Theater, with a current contract which
2 expires 31 August 1976. In a letter dated 6 January 1976 the Chairman
3 of the Department of Theater informed Mr. Auriller that his contract
4 would not be renewed for the 1976-77 year, and that he would not be
5 associated with the Summer Festival of the Arts 1976. The letter gave no
6 reasons for these decisions beyond saying that Pres. Trabant had requested
7 that Mr. Auriller be informed of them, and closed by suggesting that
8 Mr. Auriller direct any questions concerning the action to Pres. Trabant
9 (Exhibit B).

10
11 The Committee has been unable to discover any documentary evidence of
12 such questions having been asked, or of answers given to them, except in
13 the public press. Pres. Trabant is extensively quoted in an article
14 appearing in the Wilmington Morning News for January 13, 1976 (Exhibit H);
15 the Committee has found no public statements of corrections to those
16 quotations, so assumes them substantially accurate. Three of the statements
17 attributed to and appearing in quotation marks as having been made by
18 Pres. Trabant are especially relevant: "The University does not normally
19 comment on why contracts are not renewed. But, to pretend to say that
20 [the advocacy of homosexuality] was not the reason is wrong" (brackets in
21 original). Later, [Auriller] "has placed himself in a position of
22 advocacy, and as president of this institution, I have to make clear
23 we don't encourage that. This will clarify our stand." Finally, "As
24 an individual, I do not advocate homosexuality, and as an individual
25 I resent the bedroom behavior of University employes (sic) or others
26 being portrayed in the public press." The article reports no comments
27 giving reasons other than the alleged advocacy of homosexuality for the
28 termination of Mr. Auriller's contract.

1 The Committee has not attempted to judge whether the
2 published statements attributed to Mr. Aumiller (in part at Exhibit C)
3 constituted "advocacy of homosexuality," or the adhering question of
4 whether the advocacy of homosexuality is inherently evil or beneficial.
5 The Committee's concern is whether the statement of opinions concerning
6 a matter of general, social concern by a member of the University com-
7 munity may put that member's job in jeopardy simply because the content
8 of those statements is distasteful to the chief administrative officer
9 of a publicly supported university.

11 The Arguments

12 The Committee deliberated and presents here its conclusions concerning
13 two aspects of the problem: I. What is "academic freedom," both
14 locally, and by a tradition as dear as it is important to the academic
15 community at large? II. What is the relation between academic freedom
16 and freedom of expression as protected by the First Amendment to the
17 Constitution of the United States?

19 I. The Meaning of Academic Freedom

21 A. At the University of Delaware. In December 1973 the Faculty
22 Senate adopted a resolution which appears in its entirety at
23 III-B-1 of the University of Delaware Faculty Handbook 1975
24 (and which is included as Exhibit A), and is there stated to
25 have been "adopted as policy by the University administration."
26 That statement reads, in part: "The maintenance of freedom of
27 speech, publication, religion, and assembly (each of which is a component
28 of intellectual freedom) is the breath of life of a democratic

1 society. The need is greatest in fields of higher education,
2 where the use of reason and the cultivation of the highest forms
3 of human expression are the basic methods... Without freedom to
4 explore, to criticize existing institutions, to exchange ideas,
5 and to advocate solutions to human problems, faculty members and
6 students cannot perform their work, cannot maintain their self-
7 respect..." (emphases added). "Academic freedom is incompatible
8 with censorship or surveillance of communications both on and off
9 the campus..."

10
11 The Committee believes those statements of policy to be
12 unequivocal in committing the University of Delaware to at least
13 as much freedom for the expression of opinions by faculty members
14 as the United States Constitution requires the government and all
15 its agencies to afford all Americans.

16
17 B. In American colleges and universities. Since its original
18 publication in 1940 of the Statement on Academic Freedom and
19 Tenure, the American Association of University Professors has
20 maintained constant surveillance of American college and univ-
21 ersity practices relating to the preservation of academic
22 freedom. The following excerpts, gathered together in the
23 1973 AAUP Policy Documents and Reports, are especially useful
24 in defining academic freedom as it is practiced in the best,
25 and aspired to in most, institutions of higher learning.

26 1. The "protection of academic freedom and the requirements
27 of academic responsibility apply... to the full-time probationary
28 as well as to the tenured teacher" (AAUP 'Interpretive Comments')

1 of 1970 re: 1940 Statement of Principles on Academic Freedom and
2 Tenure, item h).

3
4 2. The AAUP 1940 Statement of Principles, and the AAUP 1970
5 Interpretive Comments on the Statement of Principles make utterly
6 clear their commitment to the principle that no university should
7 punish a faculty member for the content of comments made in that
8 faculty member's role as private citizen, when those comments are
9 within the area of speech protected (from governmental interference)
10 by the First Amendment.

11
12 1940 Statement: "When [the college teacher] speaks or writes
13 as a citizen, he should be free from institutional censorship
14 or discipline..."

15 1940 Interpretation of Statement of Principles: "If the
16 administration of a college or university feels that...
17 the extramural utterances of the teacher have been such as
18 to raise grave doubts concerning his fitness for his
19 position, it may proceed to file charges under Para. (a)
20 h) of the section on Academic Tenure. In pressing such
21 charges the administration should remember that teachers are
22 citizens and should be accorded the freedom of citizens"
23 (emphasis added).

24 1964 AAUP Committee A statement on Extramural Utterances:
25 "The controlling principle is that a faculty member's
26 expression of opinion as a citizen cannot constitute
27 grounds for dismissal unless it clearly demonstrates the
28 faculty member's unfitness for his position...Moreover,

1 a final decision should take into account the faculty
2 member's entire record as a teacher and scholar" (emphasis
3 added).

4
5 3. The only proper limits to the freedom of speech of a faculty
6 member are those that stem from the peculiar responsibilities of
7 "an educational officer." These special limitations are NOT
8 limits on the content of ideas that may be advocated, but rather
9 are limitations on situational context, i.e., on the circumstances
10 in which the expression is to take place. As itemized in various
11 AAUP statements, the limits are as follows:

12 a) "The teacher ... should be careful not to introduce into
13 his teaching controversial matter which has no relation to
14 his subject" (emphasis added; 1940 Statement, Para. (b)).

15 b) Because "the public may judge his profession and his institution
16 by his utterances... he should, at all times be accurate,
17 should exercise appropriate restraint, should show respect for
18 the opinions of others, and should make every effort to indicate
19 that he is not an institutional spokesman" (AAUP 1940 Statement,
20 Para. (c)).

21 c) "When[the professor] speaks or acts as a private person
22 he avoids creating the impression that he speaks or acts for
23 his college or university" (AAUP Statement on Professional
24 Ethics quoted in 1970 Interpretive Comments).

25 d) "In relations with the public, they should make it clear
26 at all times whether they speak as private citizens, as
27 experts on the subject in question or as institutional spokes-
28 men. In speaking as private citizens, faculty should make clear

1 that they are doing so. In this context university titles
2 should be permitted for identification purposes only and it
3 should be made clear that institutional endorsement is not
4 implied" (Univ. of Del. Fac. Handbook, preamble to statement
5 on Academic Freedom, III-R-1; emphases added).

6
7 As the above statements (b) to (d) emphasize, faculty members are
8 obligated to identify the role in which they speak. But when they
9 do make clear that they are speaking as private citizens, the uni-
10 versity is to permit them no less freedom for honest expression
11 of opinion than the U.S. Government permits its citizens under the
12 First Amendment.

13 14 II. The Meaning of the First Amendment

15
16 As has been explained above, academic freedom, as understood by the
17 University of Delaware and by the AAUP, in a sense incorporates the First
18 Amendment. The meaning of the First Amendment is therefore worth examining.

19 A. The First Amendment, according to the the Supreme Court, expressed
20 "a profound national commitment to the principle that debate on
21 public issues should be uninhibited, robust, and wide-open"
22 (New York Times v. Sullivan, 1964; emphasis added).

23 Since debate includes advocacy, this means that faculty members
24 in their role as private citizens need not inhibit themselves from
25 advocating controversial positions on public issues.

26 B. Freedom to advocate forms of sexual behavior that are viewed as
27 immoral by the majority of society is unquestionably protected
28 by the First Amendment. The Supreme Court unanimously endorsed

1 this principle almost twenty years ago in Kingsley International
2 Pictures Corp. v. Regents, 1959. What the Supreme Court said
3 in that case regarding an attempt to censor the advocacy of adultery
4 is directly relevant to President Trabant's recent concern with the
5 advocacy of homosexuality:

6 "What New York has done ... is to prevent the exhibition
7 of a motion picture because that picture advocates an idea--
8 that adultery under certain circumstances may be proper
9 behavior. Yet the First Amendment's basic guarantee is of
10 freedom to advocate ideas. The state, quite simply, has thus
11 struck at the very heart of constitutionally protected liberty.

12 "It is contended that the State's action was justified because
13 the motion picture attractively portrays a relationship which
14 is contrary to moral standards, the religious precepts, and the
15 legal code of its citizenry. This argument misperceives what it
16 is that the Constitution protects. Its guarantee is not confined
17 to the expression of ideas that are conventional or shared by
18 a majority. It protects the advocacy of the opinion that
19 adultery may sometimes be proper no less than the advocacy of
20 socialism..." (emphases added).

21
22 Whether or not Richard Aumiller advocated homosexuality, the fact
23 remains that, according to publicly espoused administration policy, faculty
24 members of the University of Delaware may not be disciplined by the University
25 for the exercise of their First Amendment rights in their role as private
26 citizens. And those rights do include the right to advocate homosexuality,
27 as well as to advocate adultery, socialism, and any other unpopular idea.
28

Recommendations

The Committee finds the statement of University of Delaware policy unequivocal in so defining academic freedom as to make the dismissal of Mr. Aumiller for the published reasons contrary to that policy. The Committee therefore unanimously moves that it be in the Faculty Senate

Resolved: That the University Faculty Senate finds the decision not to renew the contract of Mr. Richard Aumiller as Lecturer in the Department of Theater for his alleged advocacy of homosexuality to be contrary to University policy as set forth at III-B-1 of the 1975 Faculty Handbook.

And that it be further:

Resolved: That Mr. Richard Aumiller, having been wrongfully dismissed from his position as Lecturer in the Department of Theater for the year 1976-77, and having been wrongfully dismissed from his position as Managing Director of the Summer Festival of the Arts for 1976, should and must be awarded contracts for those positions, unless the usual and established process of peer evaluation and recommendation, and of chairperson, college dean, and University Provost concurrence would have resulted in his non-renewal for reasons independent of and other than Mr. Aumiller's expression of his informed and honest opinions regarding an issue of general social concern.

And that it be, finally,

Resolved: That the following paragraph be adopted by the President's Cabinet and published as an addition to the present statement on Academic Freedom in the Faculty Handbook, as an apparently needed reaffirmation of this University's understanding of and continued dedication to the highest principles of academic freedom:

"While the teacher should be careful not to introduce into his teaching controversial matter which has no relation to his subject, the advocacy of ideas, opinions, or solutions to human problems is an inalienable academic freedom, even when the ideas advocated are unconventional or held only by a minority. The right to take or defend even unpopular positions is essential to a community of scholars. No exercise of that right, or of any other form of freedom of speech, publication, religion, or assembly which is protected by the Constitution of the United States or the laws of the State of Delaware shall be the basis for any action by any officer or administrator of the University against any member of the University of Delaware community; nor shall the exercise of those rights, actual or alleged, enter into any decision concerning contract renewal, promotion, or tenure for members of the faculty of the University."

Respectfully submitted: for the Committee on Academic Freedom
(Profs. LeRoy B. Allen, Leslie F. Goldstein, Norfleet W. Rives, and Ms. Doris Combs)

Prof. F. Loren Smith, Chairperson, Committee on Academic Freedom

1 The material gathered by the Committee for its deliberations, and
2 cited in part in the text of the Report, is on file in the office of
3 the Faculty Senate, Room 303 HULLIHEN Hall, where it may be inspected
4 by any member of the University Community. Following is a list of
5 those Exhibits:

- 6 A. Statement on Academic Freedom, University of Delaware Faculty
7 Handbook, 1975.
- 8 B. Letter, Dr. Brian Hansen to Mr. Richard Aumiller, 6 Jan 1976.
- 9 C. Copy, News-Journal article, 2 Nov 1975.
- 10 D. Statement concerning Exhibit C, by Mr. Aumiller, undated.
- 11 E. Copy, Review article, 4 Nov 1975.
- 12 F. Copy, press release by Mr. Aumiller, 14 Jan 1976.
- 13 G. Copies, articles in Morning News and Evening Journal (Wilmington),
14 15 Jan 1976.
- 15 H. Wilmington Morning News article announcing non-renewal, 13 Jan 1976.
- 16 I. Review article, same topic, 15 Jan 1976.

17

18

19

20

21

22

23

24

25

26

27

28