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The meeting was called to order at 3:05 p.m. As is customary at the first session of the Faculty Senate, a moment of silence was observed for colleagues who had passed away during the previous academic year.

APPROVAL OF AGENDA (Gregory Paveza)

Today's agenda included a slight change in the manner in which the Faculty Senate conducted business. At the request of the Senate Executive Committee (SEC), Interim General Counsel RB Friedlander and Mr. Bruce Rogow, University of South Florida (USF) Attorney for the Professor Sami Al-Arian case, were asked to come before the Senate to discuss and to explain the decision to file the lawsuit and to answer questions of the Senators. Therefore, this was the first item of business at today's meeting. Their presentation, with a question and answer period, was scheduled for 30 minutes after which the Senate would return to the normal Faculty Senate order of business. President Paveza asked for unanimously consent of the agenda as published to which there were no objections.

PRESENTATION AND DISCUSSION OF USF DECISION TO FILE FOR DECLARATORY RELIEF IN THE AL-ARIAN SITUATION (RB Friedlander and Bruce Rogow)

Mr. Rogow stated that the lawsuit is now pending in federal court because Professor Al-Arian's lawyer removed the case from state to federal court. The decision to file the lawsuit against Professor Al-Arian was because there is a dispute about whether or not, under the collective bargaining agreement and Professor Al-Arian's First Amendment rights, he can be terminated from employment. The Declaratory Judgment Act, developed in the mid-1930's, is the vehicle used by the lawsuit to present this question. Mr. Rogow explained that this act is a vehicle for someone to go to court and ask the court for advice as to whether or not the action they intend is legal. That is the decision that was ultimately made with regard to Professor Al-Arian. It is true that last year, in September, the Board of Trustees (BOT) voted to recommend Professor Al-Arian's termination. As the matter progressed, it was clear that there was an honest dispute as to whether or not Professor Al-Arian can be terminated under the collective bargaining agreement. The
decision was made to have a neutral arbitrator make that decision, and a neutral arbitrator would be the court using the Declaratory Judgment Act as the vehicle.

The answer to why the lawsuit was filed in state court was because there is no federal jurisdiction in a dispute between a citizen of the State of Florida (which is the BOT) and a permanent, resident alien who is deemed to be a citizen of the state in which he/she resides. There was no diversity of citizenship; therefore, the suit against Professor Al-Arian could not be brought to federal court based upon his citizenship. The only other way that federal jurisdiction could exist would be if the case arises under the constitutional laws of the United States. In Mr. Rogow's opinion, the way this complaint is constructed, it does not arise under the constitutional laws of the United States, but arises under the collective bargaining agreement and what the respective obligations are under that agreement. If a case does arise under the Constitution, it could be moved from state to federal court and that is what Professor Al-Arian's lawyer has done. A response will be filed to that move and the response will be that it does not meet "arising under standard" because the First Amendment issue is not part of the original part of the complaint. The original part of the complaint is whether or not under the collective bargaining agreement Professor Al-Arian can be terminated.

Professor Al-Arian will raise as a defense the First Amendment, which has been anticipated by the university. However, when the defense is anticipated, it does not mean that the complaint itself arises under the constitutional laws of the United States. Mr. Rogow stated that the first thing that will happen is that a federal judge will make a decision as to whether or not the case stays in federal court or has to go back to state court. In addition, Professor Al-Arian has also raised issue regarding whether or not the complaint states a claim for relief at all, or whether or not the collective bargaining agreement process has to be invoked first before one can end up in court. Mr. Rogow pointed out that all of this would take time. He added that this was, in President Genshaft's mind, a very principled way to approach this problem and to approach it incrementally to find out what each party's respective rights are. This is the posture of the case and where it is right now. The university's response is due next week to the motion that has been filed by Professor Al-Arian to either dismiss or remove the case.

At this time, the floor was opened for the following questions and responses:

Question (Vice President Susan Greenbaum): In the newspaper BOT Chairman Richard Beard has described this case, and most particularly the shift from State to Federal Court, as a trap. She asked what that means, and also for Mr. Rogow's comment on the appropriateness of the university pulling the faculty member into it.

Response (Mr. Rogow): What Mr. Beard said was his remarks, the first amendment protects him and he has a right to say what he pleases. It was not a trap and was never designed as a trap and, indeed, the federal judge may say that the case will remain in Federal Court. This is a real issue about what court has jurisdiction. As said in the beginning if there had been diversity of citizenship, that is Professor Al-Arian as a permanent resident alien was viewed as an alien for diversity purposes, USF would not have filed in Federal court, because that would have been the proper court to file that in even though we could not file in State court, but it was no trap.

Question (Senator Gregory McColm): What possible action can the court take to alleviate USF concerns about any action that might be taken by the American Association of University Professors (AAUP)?
Response (Mr. Rogow): There is nothing that the court can do vis-à-vis AAUP. It is not a defendant in this case, not a party in the case, and indeed no court would enjoin an organization from using its first amendment rights to say whatever it thinks ought to be said. However, there is no question about the threat of censure from the AAUP which was a real threat if the notice of termination had really been sent to Dr. Al-Arian. This was one of the things that drove the lawsuit because it underscored the need to get a declaratory judgment as to whether or not consistent with the first amendment, that notice of termination could be filed. It could be that the AAUP would censure the university no matter what it does, and there is nothing we can do to stop that. This was really an attempt to show good faith on the part of the university by trying to get a ruling before there was any kind of final action taken vis-à-vis Dr. Al-Arian.

Question (Senator Graham Tobin): As reflected in the collective bargaining agreement, the faculty contract expires January 7, 2003. Where does this leave the court case as it progresses and, clearly, where does this leave Professor Al-Arian in general?

Response (Mr. Rogow): Mr. Rogow responded he has nothing to do with the collective bargaining aspect of whatever issues happen on January 7th. His take on this is that for our purposes it does not change anything. Until something happens with regard to January 7th, he is not prepared to have any comment on that issue.

Response (Ms. Friedlander): There are separate processes going on right now with respect to collective bargaining. USF has responded to United Faculty of Florida's petition to amend certification with the Public Employee Relations Commission (PERC). This is an on-going and a completely separate process with respect to Dr. Al-Arian. The answer to your question as to what will happen after January 7th, is that nobody really knows at this point. Therefore, the university is proceeding in the forum that has been chosen and taking the positions that are legally correct at the time.

Question (Senator McColm): Has the USF administration received any communication from the Justice Department in Washington concerning Professor Al-Arian's case by expressing any projections as to what may happen if he is dismissed or not dismissed? Has any federal granting agency put any pressure on USF?

Response (Ms. Friedlander): We have made certain contacts seeking information on the federal law enforcement side of the equation because it will be helpful for us to know what is happening. However, no pressure has come from any source in Washington. Nothing has been heard from any granting agency.

Question (Senator Fraser Ottanelli): Is it reasonable to assume that if the contract is allowed to expire or is not renewed starting January 7th, that there will no longer be a reason to pursue a declaratory judgment?

Response (Mr. Rogow): Until this question was raised, this issue had not occurred to him. Although it is an interesting question as to whether or not there will be any sort of agreement on January 7th between the faculty and USF, he is not involved in it at all.

Response (Ms. Friedlander): AAUP has made it very clear in their written documentation that they intend to censure if USF sends the notice in an attempt to terminate. That threat would still be there regardless of whether or not there is a contract. No one really knows th
what is going to be in place after January 7.

Question (Senate President Paveza): The AAUP and others have clearly deemed this to be an extraordinary action relative to this situation. He asked Mr. Rogow to expand on his perception of how extraordinary it is, and if he perceives that as being extraordinary what motivated the consensus of the attorney in terms of why this was the appropriate action?

Response (Mr. Rogow): He answerer the second part of the question first. It was decided that this was sensible because it was the conservative course to take. Is it extraordinary? The answer is, yes, it is.

Question (Vice President Greenbaum): She asked for clarification as to why the firing of Dr. Al-Arian as an academic freedom issue is being posed as a First Amendment issue.

Response (Mr. Rogow): He did not think it would or could in that he feels that academic freedom and the First Amendment are closely linked concepts. At a state university, the First Amendment is probably the biggest or the largest kind of protection that one can have. In a private university setting there is no first amendment issue because the first amendment only relates to government action. Therefore, academic freedom and the first amendment go hand in hand. The question is what can you say and what can you do? You can say pretty much what you want, but the focus in this situation is what can you do. It is the conduct that goes beyond that and that would be protected either under principles of academic freedom or principles of the First Amendment.

Response (Ms. Friedlander): She believes that it is a First Amendment issue. However, case law basically talks about academic freedom as being a subset of the First Amendment. That is, it is a type of First Amendment freedom. First Amendment provides you the maximum level of protection that there is basically because it is a part of the United States Constitution. Actually that is helpful, because the First Amendment is in the Constitution, so you cannot deprive someone of that Constitutional right. Ms. Friedlander stated that faculty will still have tenure and academic freedom without a contract. The contract outlines very specifically what the elements are which are there to provide notice, rights and expectations on both sides. However, when January 8th arrives and if there is no contract in place, faculty will still have protections of those two elements.

Question (Senator McColm): Is the USF Administration prepared to present as evidence in the courts any particular, specific action that Professor Al-Arian did that will justify a decision?

Response (Mr. Rogow): Yes.

Question (Senator Ottanelli): How much is this case costing the university in terms of legal fees, and where are these funds coming from?

Response (Ms. Friedlander): As stated in today's issue of The Oracle, the total legal cost to date is $54,000 for outside counsel. This cost comes out of General Counsel Office funds. There is a portion of it that is not coming from State sources because the State can pay up to $125 per hour.

At this time, the time limit established for this issue was reached, therefore ending the discussion. President Paveza returned to the standard order of business. The Minutes of the April 17, 2002, Faculty Senate meeting were approved as presented.
FACULTY SENATE PRESIDENT'S REPORT (Gregory Paveza)

President Paveza welcomed members old and new to the first meeting of the Faculty Senate for the 2002-2003 academic year. He pointed out that there were a number of initiatives from last year that still need to be resolved, the most pressing of which is the development and implementation of the Senate resolution calling for the establishment of a faculty disciplinary committee. The process has been reinitiated and it is anticipated that a procedure and such a committee will be in place by spring term.

Although there are other long and short-term issues to address, the most immediate one is the need for faculty input into the University Strategic Plan. The Administration and the Board of Trustees (BOT) has asked for faculty input on this document. The strategic plan is available on-line and President Paveza urged each member of the Senate to take the time to review the plan and send comments either to him or the Provost's Office.

President Paveza stated that the faculty need to respond to this request from the Administration and the BOT and to establish a willingness to be members in the governance process.

Another issue of concern for involvement is the budgeting process. Vice President Carl Carlucci has requested the Senate's input and participation. However, there is no clear mechanism in place by which to do this. President Paveza stated that a mechanism needs to be developed that will permit the Senate's active involvement in the process.

President Paveza commented that although faculty have been appointed to the Board's workgroups, there is no mechanism in place for those faculty to report back to the Faculty Senate or the SEC. The Senate needs to know what is happening so that they can be better able to offer appropriate input. To begin the process, President Paveza will be sending letters to the faculty members of those committees asking that they appoint one of them to serve as a liaison back to the Senate and the Executive Committee. They will be asked to prepare brief reports for the SEC and the Senate after each workgroup meeting, highlighting those areas which may require Senate or Standing Committee action. Another step that President Paveza has taken is to ask the Committee on Committees to develop a plan for faculty appointments to these workgroups that is more closely tied to the manner in which faculty are normally appointed to committees. He hopes that a recommended plan is in place to present to the Senate in the near future that can then be forwarded to President Genshaft for her consideration and implementation, but input is still needed on a regular basis.

President Paveza indicated that another critical area is that in the past there have been a number of occasions when committees or task forces have been established, and he has been requested to nominate several persons for possible appointment with a short turn around period. There is no such authority addressed in either the Constitution or Bylaws of the Senate for him to perform this duty. Therefore, in order to avoid any major hassles, he has taken on the task himself, but this has its limits. Or, he has made recommendations even if he felt he could not serve. He did so because it seemed that the alternative was not to participate in the governing process or to call emergency meetings of the SEC and the Senate for a series of simple recommendations. While he has made these decisions, he is not completely comfortable with the process and believes that some form of statutory responsibility permitting the Faculty Senate President to take such action must be incorporated into the Bylaws.
Another task still before the Senate is that it has been ten years since the last review of the General Education requirements of the university. It is time to reassess them. This task will need to involve first the Undergraduate Council and then the whole Senate. President Paveza added that the Provost might want to broaden the groups that participate in this review. However, when this review is accomplished it needs to be a coordinated effort that recognizes the rightful role of both Senate Standing Committees and the Senate in the process.

**REPORT FROM THE PROVOST (David Stamps)**

Provost Stamps welcomed everyone to the beginning of a new year. He appreciates the opportunity to address this group as it is probably the only time that he is able to do so.

He, too, urged the Senators to review the Strategic Plan to which he referred to as a "living document." This Plan will be the driving force in terms of budget allocation and he stressed the importance of faculty input. The Provost pointed out that the Strategic Plan is broad, not specific. That is, if a particular program is not listed in the Plan, it does not mean it will not be funded it means that it is located within a broader overview of the Plan.

Provost Stamps announced that USF is up for SACS accreditation this year which will be different this time than it has ever been before. In the past, preparation for SACS was done and then forgotten about until the next time around. However, this time there is a compliance section and a quality improvement plan which was emphasized by the Provost. He explained that every university has to have a quality improvement plan which is set into place and then show how over a period of five to ten years the plan will be developed. Provost Stamps proposed that the review of the General Education requirements becomes the quality improvement plan for USF. That is how important he feels these requirements are as far as this university is concerned.

At this time the Provost made the following announcements:

- The search for a Dean for the new Honors College is underway. It has been narrowed down to nine candidates who are being interviewed via telephone.

- There was a failed search for the Dean for the College of Education. Therefore, a new search will be started. The first meeting will be during the early part of October.

- Dr. Louis Martin-Vega is the Chair of the Search Committee for the Vice President for Research. The pool of candidates has been narrowed and interviewing via videoconferencing is currently taking place prior to bringing the final candidates to campus.

- Construction is about to begin on the Environmental and Natural Sciences building. The start date will be October with a completion of January 2004. Chemistry will also be located in this new building. As a part of this construction, the Chemistry building will be completely renovated. The estimated cost for this project is $24 million.
At the August BOT meeting, ten faculty were approved for tenure as a condition of employment. There were eight full professors (seven from the Tampa campus; one from the St. Petersburg campus) and two associate professors (from Lakeland and Sarasota campuses).

There were 114 new faculty hired this year on all campuses. Forty-eight percent were females and 52 percent were males. Minority faculty recruitment was significantly increased over the past year. The current breakdown of total university instructional faculty is as follows: 470 professors, 420 associate professors, 438 assistant professors, 206 instructors and 23 lecturers equaling an overall total of 1,557.

In terms of student figures, the total enrollment on the first day of classes was 39,170 students. This also included the medical school and all graduate students.

Although the Florida Board of Education is only approving Ph.D. programs in the areas of technology and science, a proposed Ph.D. program in Music Education was sent forth for their review and consideration. This is the only Ph.D. program being sent forward. Instead, through the Cooperative Doctoral Program colleges and universities can form alliances with universities that already have Ph.D. programs. However, when students graduate the degree will be given from the host institution as opposed to the cooperative institution. Therefore, there will be no more money for these programs.

UNITED FACULTY OF FLORIDA REPORT (Roy Weatherford)

Before proceeding with his report, USF United Faculty of Florida (UFF) President Weatherford clarified his quoted remarks in the *St. Petersburg Times* about the relevance of President Genshaft's religion and its relevance to the Al-Arian case.

Secondly, President Weatherford stated that he was very surprised to hear Mr. Rogow say that the issues raised in the lawsuit are those which arise under the collective bargaining agreement, because the collective bargaining agreement itself explicitly states that no rights arising out of this agreement shall be adjudicated in the courts. The only resolution shall be through the grievance process and binding arbitration. That means, if they take this to the courts and win, we still have to go through the grievance procedure. None of Professor Al-Arian's rights can be advocated by the court, and they will still be settled by binding arbitration. The reason that it was agreed to do it this way is that the courts are so expensive. In this manner, a relatively neutral judgment can be reached about which side is correct and get on with the business of the university.

Thirdly, UFF affiliates who have intervened in the case have been asked not to defend Professor Al-Arian. He is not eligible for free, legal defense from the union because he did not become a member until after he got into trouble. UFF is not intervening to defend him, but to defend the contract and the rights of faculty, in general; including, in particular, the troubling precedent of the university suing its own faculty. The contract provides that faculty are protected against unreasonable dismissal, but have no protection against unreasonable lawsuits. Members are protected, but non-members and colleagues around the nation are potentially facing an entirely new tool of repression when the universities start suing its own faculty, and our national affiliates are very concerned about that.
President Weatherford stated that the fourth Academic Freedom Forum scheduled with Dr. Grebstein was not intentionally done to conflict with President Genshaft's Annual Address to the University. The speech was scheduled to suit Dr. Grebstein's schedule and not to raise the level of confrontation at this university yet. There were two main points from Dr. Grebstein's message which President Weatherford pointed out to the Senators. First of all, Dr. Grebstein was completely innocent of what he was charged with and he had full amendment protections. The second point Dr. Grebstein made was when he was asked what faculty could do to help avoid such things in the future. He replied that faculty need to find a political candidate who supports their issues, or at least respects them enough to listen, and to get behind the candidate and get him/her elected.

On the merit pay issue raised by President Paveza, President Weatherford's response was that when it is put on the table for collective bargaining negotiations, then they will talk for the collective bargaining rights themselves. Mr. Phil Handy told the UFF affiliates that there were no intentions to attack collective bargaining rights through the reorganization process. The contract will continue until replaced by successful agreements negotiated by each university. When UFF approached the PERC to redefine the bargaining units to go ahead with the bargaining process to make the necessary changes, PERC requested comments from every university. Every university opposed the rejoining of bargaining units and opposed recognition of UFF as the collective bargaining agent. At the same time the presidents of each chapter of the university unions, agreed that a request be made to begin renegotiations of the grievance procedures. President Genshaft and Assistant Provost Phil Smith were contacted regarding this but replied that it is inappropriate to do so at this time but after the PERC ruling maybe it will be then. Although President Genshaft told President Weatherford that she is not personally opposed to collective bargaining, to UFF continuing as the collective bargaining agent, or to the continuation of contract, she is not sure what the administration can do legally at this point since they are not now legally our employer.

Now that PERC has ruled that they will not fix the problem, President Weatherford pointed out that there are two possible ways to do it:

- One is by the University voluntarily recognizing the union and voluntarily establishing a legal document that says the contract will be continued. President Genshaft and President Weatherford are working to explore that possibility. Legal staffs from both sides are trying to come up with an instrument that would be legally permissible from her point of view and strong enough to satisfy our concerns.

- Between now and January 7, 2003, the union will continue to collect representation cards. The law says that 30 percent of the collective bargaining unit can request a collective bargaining election and when that occurs management may not change the terms and conditions of employment until the election has been held. Our attorneys believe that that will get us pass the crisis point, but at least it is a reasonable way of proceeding to try to guarantee the continued existence of the contract. There is almost no chance that any other agent will seek to intervene to replace UFF. It will either be UFF or no agent and collective bargaining will go away along with the summer pay as well as many of the other things hard fought for through the years.
REPORT FROM STUDENT SENATE PRESIDENT (Michael Berman)

Student Senate President Michael Berman reiterated the resolution passed last year to establish a liaison between the Student Senate and the Faculty Senate. The Student Senate did have a Faculty Senate liaison, but she has stepped down due to academic duties. The Student Senate is working on selecting a new liaison and that person will be at the October meeting of the SEC.

The second issue to be revisited will be the grading scale structure. The Student Senate will be specifically requesting that the penalty for being assigned an "A-" be removed, and that all grades assigned an "A" carry the same weighting of 4.00 regardless of the usage of a plus/minus designation.

REPORTS BY OFFICERS AND COUNCIL CHAIRS

There were no reports for today's meeting.

OLD BUSINESS

There was no Old Business to discuss.

NEW BUSINESS

President Paveza announced that he will refer the grading scale issue to the two appropriate committees. A copy of the memo and resolution will be given at that time. There were no other issues.

ISSUES FROM THE FLOOR

Vice President Greenbaum announced she had copies of the collective bargaining authorization card if anyone is interested to see her after the meeting.

Past President Nancy Jane Tyson announced she would like to reconvene the Governmental Relations Committee so a chair can be elected and reactivate the committee. The purpose of the committee is to communicate with the Legislature and to acquaint the Legislators of faculty issues. She asked for either self-nominations or nominations from the floor.

President Paveza announced that he needs people for the Bylaws Committee. If no one steps forward, he will make the appointments.

Senator Sara Mandell stated that President Castor set up several breakfasts with the Legislators and the Government Relations Committee. As a member of that committee, Senator Mandell thought these breakfasts were effective, and encouraged the Faculty Senate to ask President Genshaft to continue that policy. President Paveza indicated there had been a Legislative breakfast originally scheduled for September 11, 2001. He
will contact Vice President Kathy Betancourt to find out when it has been rescheduled.

RECEPTION ANNOUNCEMENT

President Paveza announced there would be a reception for members of the Faculty Senate immediately following the meeting. This reception was hosted by Provost Stamps and was held in the Chandelier Lobby of the Florida Mental Health Institute.

ADJOURNMENT

There being no further business, the meeting was adjourned at 4:29 p.m.