

**MINUTES
USF BOARD OF TRUSTEES
EMERGENCY MEETING
PHYLLIS P. MARSHALL CENTER, ROOM 270
UNIVERSITY OF SOUTH FLORIDA
TAMPA, FLORIDA
DECEMBER 19, 2001**

Call to Order and Chairman's Comments

The Chairman, Richard A. Beard, III, called an emergency meeting of the USF Board of Trustees for Wednesday, December 19, 2001 at 9:00 a.m. The Chairman notified the Corporate Secretary on Tuesday, December 18 at 3:30 p.m. to serve notice upon each member of the Board. Notices were served verbally and in writing (via fax and e-mail) to each member of the Board. (Notice on file in Board Office.)

The Chairman, Richard A. Beard, III, convened the emergency meeting of the University of South Florida Board of Trustees in Room 270 of the Phyllis P. Marshall Center, USF-Tampa Campus, Tampa, Florida, at 9:04 a.m. Corporate Secretary Genshaft called the roll with the following members present:

Richard A. Beard, III
Steven G. Burton
Margarita R. Cancio
Ann Wilkins Duncan
Michael Griffin
Rhea F. Law
Connie Mack
John B. Ramil
Gus Stavros
Chris T. Sullivan (via telephone)
H. Patrick Swygert (via telephone)
Robert Soran and Lee Arnold were enroute, officially noted at 9:11 a.m.

Judy Genshaft, Corporate Secretary

Chairman's Remarks

Chairman Beard opened the meeting with a statement thanking the Board members for rearranging their schedules in order to be here for this important meeting. He congratulated Senator Connie Mack for his recent Honorary Degree awarded to him during the USF Commencement ceremony on December 8, 2001. Chairman Beard noted that these are trying times, as we are currently involved in a war against terrorism, with heightened tensions for the world and USF. Two critical events for USF have recently occurred. One was the events of

September 11, 2001, and the second was the appearance of Dr. Sami Al-Arian on the television program The O'Reilly Factor. The purpose of today's meeting is to resolve the relationship between Al-Arian and USF. There are four choices for dealing with this matter. They are 1) reinstate Al-Arian; 2) maintain Al-Arian on paid leave; 3) put Al-Arian on leave without pay; 4) terminate Al-Arian from his position. Chairman Beard reviewed Al-Arian's history at USF that has resulted in a firestorm of negative reaction following his appearance on the O'Reilly program. Al-Arian was placed on paid leave on September 27, 2001 and was told that he was not to appear on campus and to refrain from associating himself with USF in the news. These conditions were ignored. Al-Arian claims that he is protected under Freedom of Speech and Academic Freedom principles. However his actions have had a detrimental effect on USF. Chairman Beard outlined the agenda for the meeting. President Genshaft's report would follow the Chairman's remarks, with remarks from Louis Martin-Vega, Dean of the College of Engineering, the report from attorney Thomas Gonzalez, a discussion and a recommendation of a course of action to President Genshaft. A copy of Chairman Beard's report is on file in the Office of the Board of Trustees Operations.

President Genshaft's report

President Genshaft summarized her written remarks, which highlighted many of Chairman Beard's opening statement. The principles of Academic freedom and academic responsibility, the rights of public university employees to express their views, and the University's obligation to maintain a safe and orderly environment for learning and working were reviewed, as were the items from the Collective Bargaining Agreement which impacted this situation. The issue of maintaining a safe environment on campus for students, faculty and staff was reiterated and emphasized. President Genshaft stated that this was not an issue of academic freedom, that Dr. Al-Arian's competence in his field of computer science was not being questioned. At issue is whether Al-Arian has been diligent in making it clear that he is not representing USF when he expresses his political opinions and whether Al-Arian's recent actions have caused disruption to USF's educational and research goals and created an issue of safety on campus. President Genshaft noted that a disproportionate amount of her time and energy have been spent on dealing with the issue of Al-Arian's relationship with this campus. She reviewed some of the history of Al-Arian and USF, beginning in 1995 and continuing to the events of September 26 and on to the present. President Genshaft concluded her remarks by stating again that the issue before the Board today is one of how much disruption the University must endure because of the manner in which a professor exercises his right to express political and social views that are outside the scope of his employment. A copy of President Genshaft's remarks is on file in the Office of the Board of Trustees Operations.

(Chairman Beard requested that the arrival of Trustees Arnold and Soran be noted for the record at 9:11 a.m.)

Dean Martin Louis-Vega's report

Dean Martin Louis-Vega reported that the events of September 26 impacted the College of Engineering immediately by taking the focus away from Dr. Robin Murphy's success with her robots at the site of the World Trade Center Towers. In addition to that impact, there is the impact on the finances of the College of Engineering by having an instructor on paid leave, thus diverting funds that might be used to support other faculty, students and staff. The Dean addressed the issue of safety and security in his area, and the concerns of the faculty, students and staff in being secure in coming onto campus and specifically going into the College of Engineering. Dean Louis-Vega noted that it is his belief that the concerns of safety and security and the issue of disruption to the College of Engineering will continue into the future.

Thomas Gonzalez's report

Attorney Thomas Gonzalez presented his legal opinion in a seven-page report, which was distributed to the Trustees, a copy was also faxed to Trustee Swygert, and later e-mailed to Trustee Sullivan. Gonzalez described how he had been requested to review the employment of Dr. Al-Arian, a tenured associate professor at USF with all the protections offered by the United Faculty of Florida. In Gonzalez's opinion, Al-Arian's failure to comply with the agreement of leave with pay led to grounds for discipline, up to and including dismissal. Al-Arian's actions, including his appearances on the O'Reilly Factor, his failure to disassociate himself from USF when stating his political views, and his return to campus, in violation of the agreement, impacted the University in an adverse way and disrupted the campus. While a public employee can speak on public concerns, his speech must be balanced against the impact that that speech has on the operation of a public agency. Gonzalez has found that security concerns have continued on campus. Several University Police investigations continue, including investigations of campus safety, safety at the College of Engineering and continued phone calls, 12 of which contained death threats to Al-Arian. The University Police feel that they cannot guarantee the safety of students and faculty if Al-Arian were to return to campus. The Alumni Association has experienced a drop in response to its direct mail campaign, and the Foundation reports a drop in contributions, pledges revoked and withholding of money from high-level donors due to the Al-Arian situation. Gonzalez said that when dealing with First Amendment law and an employee's right to engage in protected speech, you must use a "balancing test" which weighs an institution's obligations to its employee against that institution's ability to continue business in a safe manner. The employer must act on a reasonably held belief that the employee's actions may disrupt or harm the public agency. Gonzalez then reviewed cases of disruption where an employee was removed, including Pickering v. Board of

Education of Township High School District 205, 391 U.S. 563 (1968), Waters v. Churchill, 511 U.S. 661, 667 (1994), and Rankin v. McPherson, 483 U.S. 378 (1987). A review of these cases and the issues of security, fundraising and recruitment (both faculty and student) have resulted in Gonzalez's opinion that there is a strong and compelling case that the level of disruption to USF is sufficient to allow USF to consider discipline up to and including dismissal.

Discussion

A discussion to clarify points made by attorney Gonzalez ensued, with a review of the case law and the balancing test that must be used to weigh the right of free speech against the impact on the institution. Gonzalez stated that an institution cannot take action because of what is said or whether the employer does or does not like the speech, only speech that causes disruption of the orderly and safe operation of the employer can be considered and used in the balancing test. Trustee Law called for further discussion of the issue of safety on campus, noting that although fund-raising is an important component of what the University does, it is not the as important as depletion of resources, rescheduling class coverage, security, death threats, fear on campus and the issue of insubordination associated with the previous suspension. Trustee Cancio stated that the role of the University was to teach and do research, and that Al-Arian was not able to fulfill those obligations. Sergeant Klingebiel, University Police, noted that the UP's role is to ensure that the academic environment is safe, but that the department is limited in size and generally deals with short-lived situations. Al-Arian's return would result in great expense in order to ensure Al-Arian's safety as well as those of students, faculty and staff who work in his building, attend his classes or even park their cars near his. The UP does not have the internal resources to provide that level of safety on an on-going basis. Trustee Swygert offered that if it was found that Al-Arian had breached the conditions of his leave with pay, perhaps an alternative to dismissal would be leave without pay. Chairman Beard noted that that alternative was one of the four he had offered in his opening remarks. Trustee Griffin asked whether Al-Arian had broken any of the agreements of his latest leave with pay from campus. General Counsel R. B. Friedlander said that he has returned to campus, which he was instructed not to do, but that he had said he was unaware of this restriction. Trustee Law asked if violations included not identifying himself as a representative of USF. Friedlander: "Yes". Trustee Mack said that the question before the Board was whether the disruption rises to a level that justifies taking action, and requested legal guidance on how high the bar is with respect to disruption. Gonzalez said that the bar is high, and that the burden is on USF to show a level of disruption sufficient to justify taking action, but that he is of the opinion that the level (of disruption) reaches high enough.

There was a discussion of leave without pay as an alternative. Trustee Sullivan asked if leave without pay would be done internally. Gonzalez noted that the Collective Bargaining Agreement would protect him, that that action would go to

grievance and arbitration through the Collective Bargaining Agreement. Friedlander added that the Florida Board of Education has the authority to suspend without pay. Trustee Swygert said that leave without pay would make it clear to the campus, the community and the nation that this is a serious step, but would show that USF is bigger than Al-Arian. Trustee Burton asked whether Al-Arian would still be an employee of USF if he was put on leave without pay. Gonzalez: "yes". Burton then asked Sergeant Klingebiel whether threats have continued, even with Al-Arian on leave with pay and whether there would be continued safety concerns if Al-Arian were to return to campus. Klingebiel answered yes to both issues. Burton then stated that if threats and disruption continue with Al-Arian on campus and off-campus, there seemed to be no other choice except dismissal. Trustee Law added that the first responsibility of USF was to the students, deans, and administrators and that there is an on-going problem with providing what this University is supposed to and that action must be taken to remove the problem, not just delay it. Law made a motion that based on actions taken by Dr. Al-Arian outside the scope of his employment, the Board make a recommendation to President Genshaft that she terminate Al-Arian's employment. The motion was: *"I believe that the actions that Dr. Al-Arian has taken outside his scope of employment has, in fact, impacted this University, has effected the legitimate interests of this University and that this Board of Trustees, while we cannot take action, we can make recommendations, and it would be my motion that we make a recommendation to President Genshaft that she take actions to terminate Dr. Al-Arian as quickly as University processes will allow that to take place."*

Trustee Mack questioned whether, in regards to safety and the resources needed to ensure that safety, if the "speech" in question was something that most people at USF agreed with but was not supported by the community and the result was disruptions, would the resources be found to provide needed security? Mack added that freedom of speech is a fundamental principle that must be carefully considered. Trustee Arnold noted that disruptions may be a normal course of business in the future, but that the primary concern at this point was that of safety and that issue would impact his decision the most. He added that if Al-Arian were threatened exclusively, that would be a different issue. Trustee Swygert announced that he would have to leave the meeting (via phone) and he wished for the record to reflect that, absent an amendment, he would vote against the motion on the floor.

Attorney Gonzalez said that it is appropriate that this not be an easy decision. It was his legal advice that the content of the speech in question not play any part in the decision today, and that he would counsel a vote against this motion if the speech was being considered. He added that you do not need to experience actual harm, but only a reasonable belief that harm will occur (because of the speech), to take action on this issue.

Trustee Stavros noted that he had great concern about the safety and security of the University, that USF is a part of the community at large who looked to this institution for research and education; that the University had been hurt by what is happening and we must do the right thing.

Trustee Ramil offered that his was a very difficult decision, that the primary issue is the safety of this campus and the disruption vs. the right of free speech. The College of Engineering has been disrupted, Alumni and supporters relationships with USF have been disenfranchised and all this activity has affected the ability to run this operation effectively.

Trustee Duncan added that, although Engineering had obviously been severely impacted, the disruption has affected more than just Engineering or the administration; the issue of disruption and security has affected the whole University.

Trustee Mack thanked attorney Gonzalez for focusing the issue on disruption and not the speech itself.

Chairman Beard noted that there was a motion on the floor, which was restated by Trustee Law, and called for a vote on whether the Board should recommend to President Genshaft that she begin the process of dismissal of Dr. Al-Arian from this employment with the University of South Florida. The motion was: *"based upon the activities by Dr. Al-Arian outside the scope of his employment, I believe that it has had an adverse impact on the legitimate interests of the University, and therefore would recommend to Dr. Genshaft that she take actions to terminate Dr. Al-Arian as quickly as University processes will allow."* Motion passed 12 to 1, (vote via phone previously casted by Trustee Swygert).

Having no further business, Chairman Beard adjourned the emergency meeting of the University of South Florida Board of Trustees at 11:04 a.m., December 19, 2001.

Richard A. Beard, III
Chairman

Judy L. Genshaft
Corporate Secretary