

# Academic Freedom and Tenure: University of South Florida<sup>1</sup>

This report deals with actions taken by the administration and the governing board of the University of South Florida against Dr. Sami Al-Arian, associate professor of computer science and engineering, beginning in the fall of 2001 and culminating with his dismissal on February 26, 2003. The administration placed Professor Al-Arian on paid leave of absence in September 2001. In December 2001, it notified him of its intent to dismiss him. No further action was taken affecting his status until August 2002, however, when the board of trustees, while keeping him on paid leave of absence, initiated civil litigation against him in an attempt to obtain a declaratory judgment on whether discharging him would violate his First Amendment rights. In December 2002, a federal district judge declined to issue the judgment being sought by the administration and dismissed the litigation.

With the University of South Florida administration continuing to keep Professor Al-Arian on paid leave, a draft report prepared by the undersigned Association investigating committee was approved by Committee A on Academic Freedom and Tenure for release to the principal parties in the case and sent to them on February 12, 2003, with an invitation for their corrections and comments. On February 20, Professor Arian was arrested following his indictment by a federal grand jury, charging him and others with criminal activities relating to international terrorism. Six days later, the administration dismissed him, alleging that he had used his academic position to support terrorism.

The ultimate disposition of Professor Al-Arian's case remains to be determined. He has as yet not had an opportunity to

defend himself against the criminal charges nor to contest the dismissal in an academic proceeding. Nevertheless, based on the evidence currently available to the Association, Committee A believes that the investigating committee's findings and conclusions *as of mid-February 2003* warrant publication of this report. Events following the mid-February release of the investigating committee's text are summarized at the end of the report in a brief update by the chair of Committee A.

### **I. Introduction**

The University of South Florida (USF) is the third oldest of the member institutions of the State University System of Florida. It opened its doors in September 1960, on a campus northeast of Tampa, with a faculty of 130 and more than 1,000 students.

Before the new institution could graduate its first class, it became the subject of an AAUP investigation. The investigating committee found that action by the university's founding president, John S. Allen, in failing to honor a professor's appointment, revealed unsatisfactory conditions of academic freedom. The AAUP's 1964 annual meeting imposed censure, which was removed by the 1968 annual meeting after redress had been provided in the professor's case and the university had adopted dismissal procedures consistent with Association-supported standards.

Over the ensuing years, USF has become a comprehensive research university with more than 36,000 students and nearly 1,900 full-time faculty members, offering through ten schools and colleges degree programs at the baccalaureate, master's, and doctoral levels, the latter including the M.D. It has hospitals, medical clinics, a mental health research institute, and two public broadcasting stations. Supplementing its main location are additional campuses in St. Petersburg, Sarasota, Lakeland, and downtown Tampa.

Dr. Judy Lynn Genshaft, the current president of the university, received her Ph.D. in counseling psychology from Kent State University. She served for sixteen years at Ohio State University, where at different times she held positions as chair of the Faculty Senate, chair of her academic department, and associate provost for regional campuses. Dr. Genshaft in

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1. The text of this report was written in the first instance by the members of the investigating committee. In accordance with Association practice, the text was then edited by the Association's staff, and, as revised, with the concurrence of the investigating committee, was submitted to Committee A on Academic Freedom and Tenure. With the approval of Committee A, a draft of this report was sent on February 12 to the administration of the University of South Florida, to the faculty member about whose case the investigation was conducted, and to other persons directly concerned in the report. In the light of the responses received, and with the editorial assistance of the staff, this final report has been prepared for publication. The administration's response to the draft report is printed here as an addendum.

1992 accepted appointment as dean of the School of Education of the State University of New York in Albany, where in 1995 she became provost and vice president for academic affairs. She was appointed to the presidency of USF in March 2000.

Dr. S. David Stamps, who had served as dean of the College of Arts and Sciences at USF for several years, became interim provost in 2000 and provost and vice president for academic affairs in 2001. Dr. Louis Martin-Vega, formerly at Lehigh University, came to USF as dean of the College of Engineering in September 2001. Within the College of Engineering, Professor Abraham Kandel serves as chair of Professor Al-Arian's department, computer science and engineering.

Until 2001, the ten institutions (now eleven) that made up the State University System of Florida had been governed by a statewide board of regents. Pursuant to action by the Florida legislature in May 2001, each of the institutions came to have its own board of trustees. Accordingly, at the time of the actions discussed in this report, USF was under the control of a governing body of thirteen members (including an undergraduate student with voting rights), appointed by Governor Jeb Bush, with Mr. Richard A. "Dick" Beard III, a real estate adviser who resides in Tampa, serving as chair. In November 2002, however, the Florida voters approved an amendment to the state's constitution re-establishing a statewide board to oversee Florida's public universities.

A 2001-03 collective bargaining agreement between the former board of regents and the United Faculty of Florida (UFF), an affiliate of the American Federation of Teachers and the National Education Association, which has served since 1976 as the bargaining representative for the State University system of Florida faculty, sets forth provisions for disciplinary action that were applicable to Professor Al-Arian's case at least until the agreement's expiration on January 7, 2003. The president of the University of South Florida UFF chapter during the actions to be discussed has been Professor Roy C. Weatherford.

The USF Faculty Senate has also been involved in the case. Its president has been Professor Gregory J. Paveza.

## I. The Case Of Professor Al-Arian

Professor Sami A. Al-Arian, a descendant of Palestinian refugees, was born in Kuwait and moved with his family to Egypt before coming to the United States at age seventeen. He earned a bachelor's degree at Southern Illinois University and master's and Ph.D. degrees in computer engineering at North Carolina State University. Seventeen years ago, in January 1986, he was engaged as an assistant professor at USF. He was subsequently promoted to the rank of associate professor and granted tenure. He has received two awards for his teaching. The quality of his classroom work and of his scholarship in his field has not been called into question.

Professor Al-Arian's political activities and reaction to them by others date back at least to 1988, when he founded an organization known as Islamic Concern. In 1991, he established a "think tank," the World and Islam Studies Enterprise (WISE), which cooperated with a newly formed USF Committee for Middle Eastern Studies. A May 1995 series in the *Tampa Tribune* suggested an improper relationship between USF and WISE, and, in November 1995, federal immigration officials conducted a search of the WISE office and of Professor Al-Arian's home and office.

In January 1996, USF retained Mr. William Reese Smith, Jr., a former president of the American Bar Association, to investigate the agreements between USF and WISE. Shortly thereafter, Federal Bureau of Investigation (FBI) agents stated they had "probable cause" for believing that WISE and the Islamic Committee for Palestine (ICP), another group launched by Professor Al-Arian, were possible fronts for international terrorists. In April 1996, USF announced that Professor Al-Arian, who was then on sabbatical leave, would be placed on paid leave of absence beginning that summer pending completion of the FBI investigation. (Although no charges against Professor Al-Arian resulted at that time, the investigation seems to have been held open. On February 27, 2002, Florida newspapers reported a terse statement by a federal agent that the 1996 investigation was continuing.)

A month later, in May 1996, Mr. Smith reported that the available evidence did not sustain the implications of wrongdoing described the previous year in the *Tampa Tribune*. Professor Al-Arian returned in August 1998 to his regular academic duties. In October 2000, Judge R. Kevin McHugh of the U.S. Immigration Court in Bradenton, in a related immigration case, said there was no evidence that either WISE or the ICP was a front for terrorists. "To the contrary," according to Judge McHugh, there was "evidence in the record to support the conclusion that WISE was a reputable and scholarly research center and the ICP was highly regarded."

In a report presented to USF's board of trustees on December 19, 2001, President Genshaft referred to "two great crises" the university had endured that fall. The horrors of September 11, she reminded the board, were followed by a September 26 interview of Professor Al-Arian on the television program *The O'Reilly Factor*, the focus of which was Professor Al-Arian's association with people revealed to be terrorists and inflammatory remarks he had made about Israel over a decade earlier. The intensity of the public reaction to the O'Reilly interview in the twenty-four hours following its broadcast, with perceived threats to the safety of Professor Al-Arian and others, led to a decision to evacuate the computer science building for the afternoon of September 27 and to place Professor Al-Arian on paid leave pending an investigation of concerns relating to safety.

Following the placement of Professor Al-Arian on leave of absence, President Genshaft emphasized in an October 4 letter to the faculty that news reports of his having been suspended were erroneous, that it "was not a disciplinary action, but an action to ensure safety," a concern that he had expressed for himself and his family, and that his leave would remain in force "until we are confident that it is safe for him to return." She characterized Mr. O'Reilly as "a talk show host who distorted bits and pieces of the historic record to make it appear that what occurred in the past is happening now." She affirmed "Dr. Al-Arian's right to state his personal views so long as he makes it clear he is speaking for himself and not the university." She concluded her letter to the faculty by stating that "truly great universities are the ones that have the character to remain focused on their core values during political turbulence and social upheaval. And they know that enduring freedom is built on the rule of law, on due process, and on the belief that if people are free to speak, free to think, and free to challenge, good ideas will triumph over the bad."

An exchange of letters dated October 8 and 9 between Provost Stamps and Professor Al-Arian reveals a factual dispute over what had been said orally regarding any physical presence by Professor Al-Arian on campus while on leave. Provost Stamps faulted him for having been on campus late on a recent afternoon, calling it "a violation of the terms of the leave." Professor Al-Arian replied that he had gone by invitation to a meeting of the Muslim Students' Association, to which he is faculty adviser, and that he "had that right, since I was not told otherwise." He went on to list several other needs requiring his occasionally being on campus, including transportation of his daughter (a USF student) to class, use of his banking account at the USF credit union, and check-out of books from the USF library. He adhered to the provost's interpretation of the terms of the leave, however, and he had not again appeared on campus when the provost, notifying Professor Al-Arian on December 19 of the administration's intention to dismiss him, included the single incident of his return in the charges against him, asserting that USF administrators had told him not to go there because of "significant safety concerns."

Well into the fall semester, however, there were no outward signs of any move to dismiss Professor Al-Arian. The October 28 *Dateline* television show included a segment about him and broadcast tapes of hostile remarks he had made against Israel in the early 1990s. The program rekindled some of the antagonistic reaction against him, but comments on his situation in the fall 2001 issue of *USF Magazine*, a house publication that alumni received about a month later, were supportive of USF's need to defend him. The comments referred to "old allegations" raised by "two national news programs" (the second, presumably, *Dateline*) about "ties to terrorists," allegations "thoroughly investigated by the FBI and others in the mid-1990s" with no resulting charges of any wrongdoing.

Following the televised re-airing of these allegations, according to the magazine, "USF was deluged with hundreds of telephone calls and e-mails demanding that Al-Arian be fired, a move for which there are no grounds." The magazine's comments concluded by quoting from President Genshaft's October 4 letter about those supporting resistance to these demands being aware that great universities are able to adhere to their basic values in the face of "political turbulence and social upheaval."

By the time that the magazine was published, the administration and board members were moving toward a sharply different position regarding Professor Al-Arian. At the beginning of November 2001 the administration retained Mr. Thomas M. Gonzalez, a Tampa attorney who had done work previously for USF, to advise it as to whether Professor Al-Arian's activities provided legally permissible grounds for dismissing him. Mr. Gonzalez produced a legal opinion dated December 17, in which he argued that Professor Al-Arian, while engaging in constitutionally protected speech, did so in disregard of "substantial disruption to the university's operations" resulting from that speech, and that he thereby caused harm to his public employer. Accordingly, Mr. Gonzalez concluded that Professor Al-Arian had acted contrary to "the university's legitimate interests and his own obligations as a member of the university's faculty." On the next day, President Genshaft conveyed Mr. Gonzalez's text to board chair Dick Beard, who called an emergency meeting of the board of trustees for the morning of December 19.

The transcript of the board's proceedings reveals that the December 19 meeting featured a lengthy presentation by Mr. Gonzalez and considerable discussion of the need to make clear that action to dismiss Professor Al-Arian would be attributed to the impact of his utterances rather than to their substance. Board members were informed that they were being asked to recommend to the president whether or not to dismiss Professor Al-Arian and that a recommendation calling for dismissal would be welcome. Under the collective bargaining agreement, the president has the authority to take such action. The trustees accordingly voted, by 12 to 1, that President Genshaft act to dismiss Professor Al-Arian "as quickly as university processes will allow." The one dissenter on the board was President H. Patrick Swygart of Howard University, who expressed little disagreement with taking action against Professor Al-Arian on the grounds stated but said he preferred indefinite suspension without pay to outright dismissal. Another board member, former U.S. Senator Connie Mack, expressed concern about the implications for academic freedom in the contemplated action but said he would go along with the group and vote for dismissal.

That same afternoon, Provost Stamps issued a letter to Professor Al-Arian providing "notice of intent to terminate." The provost's December 19 letter charged him with not having

adhered to the collective bargaining agreement by failing to indicate in public announcements that he was not representing USF, by "failing to contribute to [USF's] orderly and effective functioning," and by "engaging in activities that place [his] private interest in conflict with [USF's] public interests." As noted earlier, the letter also charged Professor Al-Arian with having returned to campus during his leave of absence after he had been told to stay away. Professor Al-Arian's failures in these respects, the charges concluded, did not allow USF "to carry out its mission in an efficient and productive manner," a situation which the administration viewed as "irreparable" as long as Professor Al-Arian remained an employee. The administration was thus exercising its right "to terminate [Professor Al-Arian's] employment with the university immediately."

The provost's December 19 notification informed Professor Al-Arian that he had ten days to respond to the charges. President Genshaft, however, acceded to a request from the officers of the USF United Faculty of Florida that the deadline be extended because of the holiday season, and it was set for January 14. Prior to that date, the USF Faculty Senate and the UFF both took action opposing the move to dismiss Professor Al-Arian, whose attorney, Mr. Robert F. McKee, responded to the charges on January 14. The response provided a rebuttal to each of the charges.

Regarding the disruption within USF that he was alleged to have caused, the response stated that "Dr. Al-Arian is simply not responsible for the unlawful conduct of those who would threaten to do violence to him or to the university because they disagree with his beliefs" and that his "exercise of his constitutionally protected rights cannot be curtailed because a mindless few have chosen to retaliate against him and against the university because he has spoken out about matters with which they disagree."

The involvement of the American Association of University Professors in the Al-Arian case, triggered by the December 19 notice to him, commenced with a December 21 letter from the AAUP's associate general secretary, Jordan E. Kurland, to President Genshaft. The letter referred her to several AAUP documents that address academic freedom in the context of extramural utterances and indicated the Association's availability for consultation by all the parties concerned in the case. By letter of January 9, 2002, the president responded, saying that she would welcome consultation. A conference telephone discussion between the associate general secretary and the president and several members of her administration took place on January 29.

Had President Genshaft, as was widely expected, acted against Professor Al-Arian upon receipt of his January 14 response to the charges, she would have declared him dismissed and removed him from the payroll. He could then have waived himself of the collective bargaining agreement's grievance procedures, which culminate in binding arbitration.

Alternatively, he could have moved promptly to seek a judicial remedy. As of the January 29 discussion, however, President Genshaft had not taken any further action on the matter, Professor Al-Arian remained a tenured member of the USF faculty on paid leave of absence, and President Genshaft seemed in no hurry to act.

Mr. Kurland pointed out that she did not seem to be under any imminent deadline for bringing the leave of absence to an end, either by dismissing Professor Al-Arian or by withdrawing the charges and returning him to teaching. He noted that returning him during the current semester, already well under way with the courses he would teach being taught by others, would in any event probably be unsound pedagogically. He urged President Genshaft not to take any further action on the matter over the next few months if political or other considerations prevented her at that time from withdrawing the charges and announcing the resumption of Professor Al-Arian's academic responsibilities at the start of a new semester. He said he was urging this in the hope that the president would see fit to withdraw the charges and return Professor Al-Arian to his academic responsibilities in a calmer time. The president expressed appreciation for this advice and said she would plan to consult with the Association informally before any further action she might take.

During the discussion, Mr. Kurland referred to a November 3, 2001, statement issued by Committee A on its "need to maintain a close watch" on cases with ramifications for academic freedom in the aftermath of the tragic events of September 11. Characterizing the intended dismissal of Professor Al-Arian as such a case, Mr. Kurland said that a decision whether to undertake an AAUP investigation had yet to be made but that he expected it to be authorized by the AAUP's general secretary, commencing promptly without awaiting a final outcome on dismissal. He said that the intention to dismiss Professor Al-Arian on the basis of the stated charges, particularly those relating to the Gonzalez argument, raised core issues of academic freedom, and he predicted that the AAUP would wish to address those issues publicly whether or not an actual dismissal resulted. Assuming the authorization of an investigation in the context of these considerations, he anticipated a site visit to USF by an ad hoc investigating committee in a month or two. President Genshaft said that the committee could expect full cooperation from her administration.

By letter of February 6, 2002, President Genshaft was informed of the authorization of an investigation, of the membership of the undersigned investigating committee, and of the contemplated dates for the committee's visit. Subsequent letters informed her that March 15 and 16 were the only dates that were possible for all three committee members over the weeks ahead, and, because the dates were during USF's spring break, the committee chair would make a return visit on

March 21. President Genshaft questioned the timing of the committee's visit because most of it would occur during the spring break and because it seemed premature in view of the fact that additional information on "the history and actions of Dr. Al-Arian" continued to be gathered (and to the extent possible would be shared with AAUP when the process was completed), but she continued to indicate that she would cooperate.

Accordingly, in March 2002 the three investigating committee members spent two full days on site at USF, and the committee chair returned the following week for an additional day and a half. Several dozen parties were interviewed, including the immediate principals and their legal counsel, officers of the Faculty Senate, officers of the USF United Faculty of Florida chapter, representatives from the student government and from another student group, representatives from the Department of Computer Science and Engineering, and several individual USF faculty members. The investigating committee had previously reviewed a formidable stack of materials on this highly publicized case that had been compiled in the Association's Washington office, and it also received a very large number of documents from the principal parties and others during its site visit. The committee is grateful to all with whom it met for the courtesies and cooperation they extended.

The chair of the investigating committee provided Committee A with what he called a "mission progress" report in the form of a detailed letter dated April 2, 2002. After consulting with the chair of Committee A and the general secretary, the investigating committee chair shared the report with President Genshaft. Shortly thereafter, responding to a request made under the State of Florida's laws on freedom of information, the university released the document to the press.

The April 2 letter noted that three full months had gone by since the issuance of the "notice of intent" to dismiss Professor Al-Arian. It recounted the committee's extensive discussions with the president, during which the committee questioned the soundness of the Gonzalez legal opinion as a basis for seeking dismissal. The report surmised that the president's delay in implementing dismissal might have been caused by growing doubts about the correctness of that course of action. Also giving her pause, the report went on, might well have been the Faculty Senate's rejection of a resolution supporting her, the strong opposition of the United Faculty of Florida, mixed coverage by the mainstream Florida media, and criticism from organizations and media on the national scene across the political spectrum.

Recounting that in September 2001 Professor Al-Arian had initially been placed on leave exclusively on the basis of stated concerns about immediate public safety, his own as well as that of others, the report stated that by the committee's March 2002 visits safety no longer appeared to be a significant factor. Cautioning that a subsequent report from the committee on

action to dismiss based on the December charges would be "almost certainly condemnatory," the chair's report concluded that no good apparent reason existed to extend the paid leave beyond the current semester and that Professor Al-Arian, "absent any untoward events of an unexpected kind," should be returned to his teaching and other professional responsibilities by the summer and certainly by the beginning of the fall semester.

At its spring meeting on June 1, 2002, Committee A approved an interim statement on the Al-Arian case which it presented a week later to the Association's 2002 annual meeting and released to the media. The interim statement conveyed the investigating committee's beliefs that it had all the information it needed for a full report on the charges against Professor Al-Arian as they had been articulated in December and, with respect to these charges, that Professor Al-Arian's statements that allegedly injured the university "fell well within the ambit of academic freedom" and that the other stated charges were "too insubstantial to warrant serious consideration as adequate cause for dismissal."<sup>2</sup> The Committee A interim statement reiterated the investigating committee's recommendation that Professor Al-Arian be returned to his professional responsibilities on campus by the beginning of the fall 2002 semester at the latest.

President Genshaft acted on the Al-Arian case prior to the start of the fall semester on August 26, and she did discard the charges that had been set forth in the December 19 notice of intent to dismiss. She did not, however, end his suspension and reinstate him to his academic responsibilities. Instead, at a press conference held on August 21, she stated that she had come to "believe that Dr. Al-Arian has abused his position at the university and is using academic freedom as a shield to cover improper activities." She announced that USF was initiating litigation in state court against Professor Al-Arian, seeking a declaratory judgment on whether the university could proceed to dismiss him and "not violate his constitutional rights." Attached to the document being submitted to the court was a proposed new notice of intent to dismiss. "This notice," it stated at the outset, "supersedes the notice sent to you on December 19, 2001."

The new notice essentially alleged that Professor Al-Arian, beginning in 1988 and continuing through 1995, used his academic position to raise funds "for a terrorist organization." Specifically, the charges asserted that he used the university's name to "book an event . . . at which money was raised for causes later associated with terrorist activities," and, moreover, that he personally "engaged in activities . . . directed to inciting or producing imminent lawless actions and . . . likely to

2. The investigating committee's analysis of the charges, which were the basis of the December 19 notification of intent to dismiss Professor Al-Arian, appears in the next section of this report.

produce or incite such actions." Not one of these charges was among the issues contained in the original notice of intent to dismiss. None of the materials the investigating committee gathered in the course of its university visits has equipped it to comment on the extent to which the university administration may or may not be able to support its new allegations.

These alleged past actions by Professor Al-Arian were then further described in the formal complaint filed in state court. That document alleged that he had engaged in these (and similar) activities: (1) with *knowledge* of the illegal activities to be conducted by the entities and persons benefiting from his activities; (2) *with a desire to help these illegal activities succeed*; and (3) his actions [in fact] helped the illegal actions succeed, *thereby aiding and abetting international terrorism, as defined by Title 18 U.S.C. § 2333.*<sup>3</sup>

The formal complaint sought to secure a state court judgment "declaring" that the administration might, on these several grounds, dismiss Professor Al-Arian without thereby acting inconsistently with any of his rights. It called the administration's justification for seeking this judgment essential not simply to insulate itself from possible legal action, but also to protect itself from potential AAUP censure. Its complaint in court thus stated expressly that it did "not want to be censured by the AAUP," and then further asserted its alleged need for the court's intervention *to avoid AAUP censure* (assuming that any court judgment in favor would have just that effect). The complaint concluded by making the case for its court action against Professor Al-Arian on the basis that only with the security of such a judgment might it forestall the likelihood of AAUP censure for its conduct.

President Genshaft's August 21, 2002, announcement that USF was taking legal action against Professor Al-Arian in an effort to obtain a judicial ruling on considerations of academic freedom in his case drew a strong reaction from AAUP general secretary Mary A. Burgan. In a statement issued the following day, she said, "We are stunned that a university would take one of its own faculty members to court on an academic freedom issue. We certainly recognize the difficulty that President Genshaft has faced in dealing with these issues in the midst of intense political controversy; but that's the very reason that we strongly encourage universities to adhere to nationally recognized standards of academic due process . . . . We are baffled by President Genshaft's continuing efforts to evade normal academic due process, especially in this politically sensitive case. . . . 'Pre-suing' faculty members as part of an effort to dismiss them is an extremely rare tactic, with ominous and chilling portents for academic freedom."

3. The quoted material in this paragraph (with emphasis added) is taken from a copy of the proposed notice and from the formal complaint.

The matter of the administration's seeking a declaratory court judgment partly in order to avoid an AAUP censure was addressed by the AAUP's Committee A at its fall 2002 meeting on November 2. The committee issued a statement emphasizing that the "constitutional and professional definitions of academic freedom are separate and distinct. The Constitution, insofar as it protects academic freedom, generates legal rights. In contrast, academic freedom as defined by the AAUP inheres in the professional standards of the academic community. Because the AAUP imposes censure based on its determination that AAUP policies have been violated, and not on whether an administration's conduct violated the First Amendment, a court's determination of First Amendment rights does not control the imposition of censure."

Promptly after the administration's filing of *University of South Florida Board of Trustees v. Sami Al-Arian*, Professor Al-Arian removed the case to U.S. district court, because it involved federal constitutional issues. The university, on October 8, moved to remand the action to state court. The federal judge denied the motion to remand on November 18. Professor Al-Arian meanwhile had moved to dismiss the action, or, in the alternative, to stay proceedings pending resort to arbitration under the USF-United Faculty of Florida collective bargaining agreement. Oral argument on this motion took place on December 12. The judge ruled in Professor Al-Arian's favor on December 16, 2002, stating that the issuance of a declaratory judgment "would not be a wise and practical use of judicial resources." She accordingly dismissed the litigation.

On January 6, 2003, the day before the expiration of the existing collective bargaining agreement, the USF United Faculty of Florida filed a grievance against President Genshaft in behalf of Professor Al-Arian, alleging several violations of the agreement in the administration's actions against him.

Professor Al-Arian remained on paid suspension from his academic responsibilities for over fifteen months after having been placed on leave because of safety considerations, until the USF administration's February 26 action to dismiss him.

### III. First Set of Issues

The issues discussed in this section relate to the December 2001 notification of intent to dismiss.

#### 1. PRELIMINARY PROCEEDINGS

The 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings* was adopted jointly by the AAUP and the Association of American Colleges and Universities as a supplement to the 1940 *Statement of Principles on Academic Freedom and Tenure*, "providing a formulation of the 'academic due process' that should be observed" in cases of dismissal for cause. While the authors of the document initially presented it as a "guide" rather than a "norm," as was the



1940 *Statement's* intent, over the ensuing decades its provisions have generally been accepted as the norm in the community of American higher education.<sup>4</sup>

Under the 1958 *Statement's* provisions, two steps are to be taken before charges constituting grounds for proposed dismissal are decided upon and communicated to the faculty member whose fitness to continue is being questioned. The USF–United Faculty of Florida collective bargaining agreement did not require these steps, but neither would it seem to have precluded their being taken. The first is for appropriate administrative officers to discuss the matter with the faculty member to explore the possibility of resolving the matter by mutual consent. No such discussion seems to have been attempted with Professor Al-Arian; he was afforded no advance indication of the action being initiated against him. If the first step does not result in an adjustment, the second step involves the administration's obtaining advice from an elected faculty committee, which would informally inquire into the situation, explore the possibility of an adjustment, and, if it sees none, render judgment on whether to commence formal proceedings.<sup>5</sup> Only after hearing back from this advisory faculty committee should the administration, with or without the committee's endorsement, take further action.

The undersigned investigating committee finds President Genshaft—who in the months ahead was to express her wish to consult widely in reaching a final decision regarding Professor Al-Arian—remiss in not having had a discussion with him and not having consulted with representatives of the university's faculty before notifying him of her intent to dismiss him.

While the president was evidently reluctant to consult with the faculty prior to initiating action, she showed no such reluctance with respect to the board of trustees. The 1958 *Statement on Procedural Standards* provides a role for the board in a dismissal only *after* findings have been made following a formal hearing and the case has gone to the governing body for final review and potential ratification. Under the USF–UFF collective bargaining agreement, final authority for dismissal rests with the president, and the board has no official role. President

Genshaft, nonetheless, upon receiving the legal opinion from Mr. Gonzalez asserting that dismissal could be legally effected, had the chair of the board call for an immediate "emergency meeting" of that body.

The board members convened the next morning, on December 19, 2001. In a session closed to Professor Al-Arian (who was under a standing instruction not to appear on campus), they received a presentation of allegations concerning his activities and their ramifications and learned of Mr. Gonzalez's legal opinion, all of which pointed to a foregone set of conclusions. They were urged to vote on a recommendation, virtually an indictment, which was framed in a motion presented by the vice chair calling on the president to "terminate Dr. Al-Arian as quickly as university processes will allow." The board voted overwhelmingly in the affirmative.

The investigating committee finds that the president and the board of trustees, in respectively seeking and providing the governing body's commitment to the dismissal of Professor Al-Arian before he was presented with charges and allowed any opportunity to be heard in his defense, acted in disregard of academic due process and indeed of elementary fairness.

## 2. EXTRAMURAL UTTERANCES

The December 19, 2001, notice of intent to dismiss Professor Al-Arian charged him, in his "various public announcements on issues of terrorism and world conflict," with having disregarded the USF–UFF collective bargaining agreement's provisions that a professor should "indicate when appropriate that one is not an institutional representative." According to the 1940 *Statement of Principles*, professors in their extramural utterances "should make every effort to indicate that they are not speaking for the institution." That professors do in fact commonly "make every effort" (or that they are expected to do so) can, however, be doubted. A 1970 interpretive comment (no. 4) on the 1940 *Statement*, in addressing this matter, refers to the caution to professors cited in the AAUP's *Statement on Professional Ethics*, that "when they speak or act as private persons they avoid creating the impression of speaking or acting for their college or university."

The investigating committee is unaware of anything provided by the university administration that could plausibly sustain the claim that Professor Al-Arian harmed the university by having failed to make clear that he was not speaking as its representative. No administrator interviewed by the committee claimed that Professor Al-Arian, when appearing on *The O'Reilly Factor* or elsewhere, had ever affirmatively presented himself as a spokesperson for the USF, for its computer science department, or for any other part of the university. Nothing the committee reviewed suggested that he had presumed to "speak for 'the faculty,'" much less for the administration or the university in general.

4. A major exception came with the advent of faculty collective bargaining and resulting bargaining agreements, at institutions such as USF and the others making up the State University System of Florida, for resolution of disputes through arbitration. In these cases, arbitration is employed in lieu of an adjudicative hearing before a faculty hearing body, as called for in the 1958 *Statement*, in determining adequacy of cause. See the AAUP's 1983 report, "Arbitration in Cases of Dismissal," *Policy Documents and Reports*, 9th ed. (Washington, D.C.: American Association of University Professors, 2001), 92–93.

5. Even when formal findings on cause for dismissal are to be determined through arbitration, the AAUP's "Arbitration in Cases of Dismissal" calls, as does the 1958 *Statement*, for "faculty participation in a mediative effort prior to the formulation of dismissal charges."

It is certainly true that *The O'Reilly Factor* referred to Professor Al-Arian as a member of the USF faculty and the local and national media frequently identified him in much the same way.<sup>6</sup> The investigating committee could find no basis, however, for concluding that Professor Al-Arian disregarded the expected norm of professional conduct with respect to separating his activities as an individual engaging in public discourse from instances in which he spoke professionally (that is, within his field of academic repute), or "institutionally," on behalf of his institution as such. President Genshaft acknowledged as much in her meeting with the investigating committee.

Professor Al-Arian obviously did not preface each of his off-campus interviews or appearances with a disclaimer—for example, "None of my remarks should be misunderstood to represent the views of the University of South Florida, or any division, department, or group associated with the university, its alumni, its administration, or its board of trustees"—but the investigating committee can find no reasonable warrant for such an extraordinary and gratuitous disclaimer, nor was the committee advised of any other instance in which this kind of disclaimer was expected of others at the university.

The USF-UFF collective bargaining agreement called upon faculty members to "indicate when appropriate that one is not an institutional representative." The circumstance in which the norms of sound academic practice might require such a statement would ordinarily be the exceptional one in which confusion of roles might otherwise occur, that is, in which some audience might assume one was a "spokesperson" or a "representative" of some sort. There was assuredly no such likelihood here.

To the contrary, in none of the instances brought to the investigating committee's attention, including the one provoking the greatest reaction, *The O'Reilly Factor* interview, was there any evidence to support the idea that those reacting against Professor Al-Arian were under the impression that he "represented" USF. Indeed, it seems that their reactions would not have been in any way affected had he tried (whether successfully or not) to preface the few statements the brief O'Reilly interview allowed him with a disclaimer of the kind described above.

It is plausible that persons or groups feeling hurt, hostile, or angry over his publicly aired views on the Israeli-Palestinian conflict might seek to have him removed from his university position under threat of withholding support for the university. Their objectives, however, cannot reasonably be construed to

6. As distinct from Professor Al-Arian's referring to himself, that is, as distinct from seeking to gain purchase by claiming *special* status or *special* competence on account of being such a "professor," which he did not presume to do in this or other interviews noted in the materials the committee received.

indicate that Professor Al-Arian himself said or did anything to suggest he was speaking on behalf of the university and was thus causing it harm. The investigating committee finds no evidence that he did so.

### 3. RETURN TO CAMPUS

As to the charge that Professor Al-Arian returned to campus "despite specific instruction" not to do so, the parties were in flat disagreement regarding the existence of such a clear instruction the one time, in early October 2001, when Professor Al-Arian came onto the campus (to attend a previously scheduled event). Once the provost faulted him for doing so, he stayed away, whatever the inconvenience to him of being unable to meet with student advisees, gain access to his office or papers, or effectively conduct professional work by occasional access to the computer science building. The administrative officers agreed that there was no recurrence. The "understanding" the administrators insist they had with Professor Al-Arian aside, all concede that as soon as a clearer communication was produced (re)iterating to Professor Al-Arian that he must abide by the instruction laid upon him, he fully complied.

In the investigating committee's view, moreover, none of the material it received from the university, nor any statements offered to it in during its interviews with senior administrators, provided any convincing basis to *continue* the "no-return-onto-the-campus" condition imposed on Professor Al-Arian as part of his leave. The condition remained in effect not merely for the first weeks following the events of September 11 and Professor Al-Arian's appearance on *The O'Reilly Factor*, and not merely through all of the balance of the fall 2001 semester, but also through the spring 2002 semester, and then even further, into and through the summer—indeed, until his indictment and arrest nearly a year and a half later. Quarantining him from university access for any and all purposes in this manner carries a stigma and undercuts academic freedom (by physical exclusion from the means of a professor's ordinary academic work). Moreover, Professor Al-Arian's exile—extended again and again—has not been warranted by any discernible exigent public safety concerns.<sup>7</sup>

### 4. ALLEGED DISRUPTION OF THE UNIVERSITY

Professor Al-Arian was charged, by his off-campus conduct, with placing "private interest in conflict with the public interests of the university," and with engaging in activities causing disruption sufficiently severe to impair the ability of the university to carry out its mission in an efficient and productive manner.

These acts and asserted delinquencies, in turn, were alleged to have placed him in sufficient breach of faculty responsibilities,

7. See Section VI of this report for further discussion of the continuance of Professor Al-Arian's suspension.



as described in the collective bargaining agreement governing the status of USF faculty, to serve as grounds for dismissal. The collective bargaining agreement called upon faculty members to "contribute to the orderly and efficient functioning of the . . . university." Principal among the allegations against Professor Al-Arian in emphasis was that his "off-campus conduct . . . caused disruption to the university." The other items previously identified as actions (or omissions) by Professor Al-Arian, while also allegedly improper in and of themselves, were mentioned again insofar as they allegedly "caused and/or heightened" the disruptions brought upon the university.

In the view of the investigating committee, however, these charges confuse the lines of responsibility. There were genuine distractions and difficulties, but they were caused by others. The committee, based on the information before it, finds that responsibility for them cannot be sustained in charges against Professor Al-Arian. The efforts of others (alumni, state officials, or ordinary citizens) to transfer their animus toward Professor Al-Arian to the university arguably were "disruptive." The university administration, however, cannot plausibly claim there was "just cause" to seek relief from those disruptive actions by turning upon Professor Al-Arian, whose swift "termination" might allay the anger of his critics. To cast him out on that account cannot be justified—not under sound academic practice, not under general principles of civil liberty, not under principles of academic freedom, and, indeed, not as a matter of sound law.

First to be noted in this regard is the lack of evidence (indeed, there was not even an assertion offered by anyone whom the investigating committee interviewed) that Professor Al-Arian himself disrupted or encouraged anyone else to disrupt or otherwise impede anyone at the university. No one the investigating committee interviewed made any such claim. There was no suggestion of any efforts by him to make it difficult for the university to administer its programs, facilities, or any other feature of its mission as an institution of higher education. Second, there is no evidence, nor was it alleged, that he gratuitously offered any views, controversial or otherwise, in his classes, relating to the political and religious causes and controversies that engaged him off campus and on his own time.

In short, the investigating committee finds that dismissing Professor Al-Arian because of the impact of his extramural utterances, which the committee sees as having been well within the ambit of academic freedom, would have violated his right under the 1940 *Statement of Principles* to freedom of extramural expression.

#### IV. Additional Issues

The issues discussed in this section relate to the August 2002 legal action and the proposed new notification to dismiss.

#### 1. SUIT AGAINST PROFESSOR AL-ARIAN

Suing a faculty member, whom the administration and governing board wish to dismiss, to obtain a declaratory court judgment that the proposed grounds for dismissal will pass legal muster is, as the AAUP's general secretary, Mary Burgan, noted at the time, a most unusual phenomenon. The media commonly called it unprecedented. One precedent in American higher education occurred in 1973, when the board of trustees of Southern Illinois University, having issued notice of layoff to over one hundred faculty members, initiated a class-action lawsuit against several of them. The board sought a declaratory judgment on the necessity of the mass layoffs because of financial exigency. It thereby hoped to pre-empt having to deal with this issue through existing university procedures. The AAUP's president and general secretary promptly declared to the Southern Illinois administration and board that this was a "shocking move" that was "utterly alien to academic due process and elementary standards of fairness."<sup>8</sup>

These words can be echoed by the undersigned investigating committee, which finds severe fault with the USF administration and board for having presumed to sue Professor Al-Arian in the manner described in this report. The committee offers the following additional comments on this extraordinary action.

The failed lawsuit by the USF administration and board only underscores their disregard of academic due process already noted by the investigating committee. Professor Al-Arian had been confronted with charges calling for his dismissal without any prior discussion with him and without prior consultation with a representative faculty body. These deficiencies were compounded, again before notifying Professor Al-Arian of any intent to dismiss him, by convening an emergency session of the board of trustees for presentation of a single solicited legal opinion in a manner structured to obtain a judgment by the board that he should be dismissed as promptly as possible.

Then, prior to using third-party arbitration as provided in the collective bargaining agreement, in which the administration would need to sustain the justification for dismissal, the administration abruptly "superseded" its earlier notification and grounds for dismissal. It now asserted a very different basis for dismissing Professor Al-Arian, making claims of wrongdoing that occurred many years earlier. It had not previously mentioned these claims in faulting him, and he had not been charged with them. In doing so, it sued him as well, choosing a state court in which to name him as defendant, attempting thereby to secure a binding favorable judgment that its proposed action would not transgress his constitutional rights.

8. The Southern Illinois litigation was not pursued. Within a few months following its initiation, a change in administration occurred, the new president proved receptive to resolving the AAUP's concerns, settlements were reached in the large majority of the cases, and the board's lawsuit was withdrawn.

It was incumbent upon Professor Al-Arian through his attorney to contest this action by the administration and board, lest there be a court judgment treating their claims as having been conceded by the named defendant. Through his attorney Professor Al-Arian was successful, first, in removing the suit from state to federal court and, second, in having the suit dismissed as an inappropriate effort to achieve advance immunity. These successes, while effectively accomplishing nothing more than fending off the USF administration's attempt to short-circuit the university's own procedures, were nonetheless significant. The initiation of this litigation by the administration and the governing board, with its considerable attendant costs to the taxpayers of Florida and to the defendant faculty member, was a deplorable affront to basic norms of academic due process.

## 2. NEW CHARGES

The university administration asserted for the first time in August 2002 that Professor Al-Arian, from 1988 through 1995, used his university status in forming organizations, in raising funds, and in inciting disruption, all linked with terror-related groups. It asserted that he did so knowingly, and in ways that not only breached his university obligations but also violated major federal felony statutes ("aiding and abetting international terrorism"). Indeed, the administration now claimed, he engaged in actions that would constitute crimes against the United States.<sup>9</sup>

The proposed notice (like the December 2001 notice that preceded it) further alleges, in connection with these activities, that Professor Al-Arian has failed to take "reasonable precautions" to "ensure" that participants in them understand that he "engaged in those outside activities [i.e., those from 1988 through 1995] as a private citizen and not as an employee, agent, or spokesperson of the university." The notice alleges that he—as a member of the USF faculty—was required to take such precautions under the collective bargaining agreement, and that his resulting dismissal would therefore be for suitable cause.

As stated earlier in this report, the investigating committee had no inkling, when it conducted its site visit in March 2002, or at any time afterward until August 21, 2002, that the administration would subsequently move to charge Professor Al-Arian with misconduct during the years from 1988 through 1995. Thus the committee is not equipped to comment on the administration's potential ability to support its new charges. The committee can, however, comment on the additional charge that Professor Al-Arian was at fault for having failed to make clear that he had engaged in the alleged activities on his

9. These activities are then also alleged to be "misconduct" under the USF-United Faculty of Florida collective bargaining agreement (such "misconduct" as in turn would constitute grounds, within that agreement, for dismissing him).

own and not on behalf of the USF. The committee believes that the possibility of anyone's reasonably being left with an assumption of the university's sponsorship of the claimed violations of federal felony statutes truly strains credulity.

## 3. LAWSUIT TO AVOID AAUP CENSURE

The statement issued in November 2002 by Committee A, specifying that a judicial determination of First Amendment rights and a determination by the AAUP of professional rights under principles of academic freedom are distinct from one another, has been summarized earlier in this report.

The Association's published case reports over more than eight decades—including those resulting in Committee A's recommendation to an AAUP annual meeting that censure be imposed—have never turned simply on a determination of whether an institution's conduct did or did not also violate some part of the Constitution, or also violate parts of some collective bargaining agreement, apart from violating standards memorialized in the 1940 *Statement of Principles* and derivative principles and standards that the AAUP has sought to secure in institutions of higher learning in the United States.

That being so, it should be obvious that no declaratory judgment (least of all in a proceeding to which the Association is itself not even a party), pronouncing solely on speculative First Amendment claims that Professor Al-Arian may or may not have standing to raise, could determine whether the case would warrant a recommendation of censure to the AAUP's annual meeting.

Indeed, that has always been the case. The standards and practices of the Association were forged and first applied with published reports of investigations (and, beginning in the 1930s, with expressions of censure), in historical circumstances in which few, if any, courts recognized any constitutional rights of either students or faculty as such. First and Fourteenth Amendment doctrine has gradually adjusted to come part way toward standards originally developed by the AAUP, and persisted in by the Association. It has done so both when courts have failed and when some courts have responded well, attesting to the overall constancy of the Association's enduring commitments.<sup>10</sup>

## V. One Further Issue

The issue discussed in this section relates to continuation of the suspension of Professor Al-Arian.

10. Private as distinct from public colleges and universities are not constrained by constitutional requirements in this regard, but the AAUP has consistently considered its recommended standards regarding academic freedom and tenure to apply at all accredited institutions of higher education. The authors of the 1940 *Statement of Principles on Academic Freedom and Tenure* and the many scores of learned societies that endorse this seminal document have not subscribed to any notion that its tenets command less respect in the private than in the public sector.

As discussed earlier, Professor Al-Arian assented to being placed on paid leave of absence on September 27, 2001, the day following his brief appearance on *The O'Reilly Factor*. The leave was attributed solely to concerns with physical safety—both that of Professor Al-Arian himself and of others, including his family, colleagues, students, and staff in the computer science building (which was briefly evacuated). The leave was to allow the administration opportunity to assess the credibility and magnitude of threats the university had received. The compelled leave necessarily deprived Professor Al-Arian of his ability to continue teaching, doing research, using computer facilities, and having contact with students and colleagues, directly impairing his professional access to the university (and thus impairing also his academic freedom in precisely that regard). Still, with his salary and benefits continued, if his standing at the university had not otherwise been called into question, and if the administration had tried to ensure his return to campus participation as speedily as practicable, consistent with bona fide public safety concerns, the AAUP doubtless would have found no fault.

When the administration brought charges against Professor Al-Arian in December 2001, however, it accused him of not having adhered to what it claimed to be the terms of the leave, thereby treating his absence as an imposed suspension. Under the 1958 *Statement on Procedural Standards*, suspending a professor pending the result of dismissal proceedings “is justified only if immediate harm to the faculty member or others is threatened by the faculty member’s continuance.” In March 2002, during the investigating committee’s site visits to USF, the committee asked for but received no evidence of threats to safety that appear sufficient to sustain the continuance of the compelled leave (and thus the denial of access to the university’s facilities). The chair of the investigating committee, in the April “mission progress” report that he shared with President Genshaft, stated that the committee was not aware of any sound reason for extending the leave beyond that semester; he urged that Professor Al-Arian be returned to his teaching and other professional responsibilities in any event by the beginning of the fall 2002 semester. Committee A joined in the call for lifting the suspension in the interim statement that it issued in June 2002, and President Genshaft subsequently indicated that she would act on the case before the beginning of the new academic year in late August. The action she announced on August 21, however, continued the suspension yet longer, well into its second year, with its duration indefinite.

The investigating committee finds that the administration, by continuing the suspension into yet another academic year, had removed Professor Al-Arian from his teaching responsibilities and denied him professional access to the university, thereby impairing his academic freedom, for an unconscionable amount of time beyond any threat of immediate harm. Prior to Professor Al-Arian’s indictment on criminal charges and the

administration’s resulting action to dismiss him, the committee finds that the administration had for all practical purposes already removed him from his tenured position at the University of South Florida without having afforded any of the basic elements of academic due process.

## VI. Conclusions (as of Mid-February 2003)

1. The University of South Florida administration acted in disregard of academic due process as called for in the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings* (a) by not having consulted with an appropriate faculty body before notifying Professor Sami Al-Arian of its intent to dismiss him and (b) by procuring the governing board’s commitment to dismissal before presenting the professor with charges and allowing him opportunity to be heard.

2. The administration’s December 2001 charge against Professor Al-Arian, that he was responsible through his extramural utterances for the disruptive activities of others, which warranted his dismissal, cannot be sustained. Dismissing him on grounds of the impact of utterances falling within the ambit of academic freedom would have violated his right to free extramural expression under the 1940 *Statement of Principles on Academic Freedom and Tenure*.

3. The administration’s other December 2001 charges against Professor Al-Arian, that he failed to indicate that he was not speaking for the university and appeared on campus contrary to instructions, cannot plausibly constitute adequate cause for seeking his dismissal.

4. The administration acted in disregard of the 1958 *Statement on Procedural Standards* by keeping Professor Al-Arian on suspension from his faculty responsibilities when his resuming them no longer posed any claimed threat of immediate harm.

5. The administration’s August 2002 lawsuit against Professor Al-Arian, in quest of a declaratory judgment that new proposed grounds for dismissing him would be legally permissible, was inimical to academic due process as called for in the 1940 *Statement of Principles* and amplified in the 1958 *Statement on Procedural Standards*.

6. The administration, in continuing into a second year to bar Professor Al-Arian from his faculty responsibilities and thereby impair his academic freedom, effectively removed Professor Al-Arian from his tenured position without afford-ance of academic due process as set forth in the 1940 *Statement of Principles* and amplified in the 1958 *Statement on Procedural Standards*.

WILLIAM W. VAN ALSTYNE (Law)  
Duke University, *Chair*

STEPHEN LEBERSTEIN (History)  
City College, City University of New York

ANN M. LESCH (Political Science)  
Villanova University

*Investigating Committee*

**Update**

Before dawn on February 20, 2003, FBI agents arrested Professor Al-Arian at his home and took him to the federal courthouse in Tampa, where he was confronted with a fifty-count indictment, running to 121 pages, that was returned by a grand jury. The indictment charges Professor Al-Arian and seven others, three of whom were in this country and were also arrested, with engaging in criminal conspiracy against the United States. It charges that Professor Al-Arian was a key official in the Palestinian Islamic Jihad, designated by the U.S. Department of Justice as a terrorist organization. He was charged specifically with having helped manage money for the organization, helped develop its policy, maintained regular contacts with the organization's leaders abroad, and distributed statements claiming responsibility for bombings in Israel. He was jailed without bond and, as of this writing in mid-April, is being held in solitary confinement in a federal facility an hour from Tampa. An extremely lengthy and expensive trial is predicted, its beginning date highly uncertain.

President Genshaft, after consulting with the members of the University of South Florida's Department of Computer Science and Engineering, the president of the Faculty Senate, and the two faculty senators from the College of Engineering, acted on February 26 to dismiss Professor Al-Arian. The administration's letter notifying him of dismissal referred to the indictment as "a new release of information to which the university has never before had access." The decision for USF to make, it stated, was not whether he had committed crimes but whether there was just cause to dismiss him. The letter went on to allege that his outside activities "as detailed in the indictment confirm the university's previously stated position; namely, that on numerous occasions, [he] used the University of South Florida's name, reputation, resources, and personnel for illegal and/or improper purposes." In a public statement on the dismissal, President Genshaft offered two observations on its consequences: Professor Al-Arian's "use of this educational institution for improper, non-educational purposes will not be tolerated" and "no longer will he be able to hide behind the shield of academic freedom."

On February 19, just prior to Professor Al-Arian's arrest and subsequent dismissal, the Faculty Senate adopted two new proposed policy documents. The first, on "Academic Freedom and Responsibility," is consistent with AAUP-supported standards and includes freedom relating to extramural utterances ("to speak, write, or act as a public citizen without institutional discipline or restraint"), an area of academic freedom that had not been addressed in the collective bargaining agreement. The second document, entitled "Peer Advisory Committee on Faculty Termination," provides faculty members receiving notice of

actual or intended termination with the right "to have the case heard before a committee of faculty peers," a right that had not been available to Professor Al-Arian. President Genshaft has informed the Association that the USF administration has already reviewed the second document, finds it "a sound policy statement that recognizes the vital role of shared governance with our faculty," and will move toward its implementation.

While we await further developments in Professor Al-Arian's case, two basic concerns of due process warrant emphasis. The criminal charges against him, while manifestly very serious, remain to be proven in a court of law. The facts may sustain the imposition of severe criminal sanctions, they may exonerate Professor Al-Arian of any criminal culpability, or they may substantiate academic malfeasance having no criminal liability. All that remains to be determined. With respect to his dismissal, its implementation before he had any opportunity to defend himself against the administration's charges is fundamentally at variance with Committee A's long-standing insistence on academic due process. Beyond that, the principle of "innocent until proven guilty" ought to be observed in our institutions of higher learning no less than it is in our courts.

JOAN WALLACH SCOTT  
*Chair, Committee A*

Committee A on Academic Freedom and Tenure has by vote authorized publication of this report in *Academe: Bulletin of the AAUP*.

JOAN WALLACH SCOTT (History), Institute for Advanced Study, *chair*

Members: JEFFREY HALPERN (Anthropology), Rider University; EVELYN BROOKS HIGGINBOTHAM (Afro-American Studies and Divinity), Harvard University; CANDACE C. KANT (Social Sciences), Community College of Southern Nevada; STEPHEN LEBERSTEIN\* (History), City College, City University of New York; ROBERT C. POST (Law), University of California, Berkeley; RODNEY A. SMOLLA (Law), University of Richmond; CHRISTOPHER M. STORER (Philosophy), De Anza College; DONALD R. WAGNER (Political Science), State University of West Georgia; MARTHA S. WEST (Law), University of California, Davis; JANE L. BUCK (Psychology), Delaware State University, *ex officio*; MARY A. BURGAN (English), AAUP Washington Office, *ex officio*; ERNST BENJAMIN (Political Science), Washington, D.C., *consultant*; MATTHEW W. FINKIN (Law), University of Illinois, *consultant*; ROBERT A. GORMAN (Law), University of Pennsylvania, *consultant*; LAWRENCE S. POSTON (English), University of Illinois at Chicago, *consultant*; GREGORY SCHOLTZ (English), Wartburg College, *liaison* from Assembly of State Conferences.

\* Did not participate in the vote on publication.

# Addendum

## Comments from President Judy Genshaft and Provost David Stamps on Draft Report

The University of South Florida was, and is, acutely aware of the importance of academic freedom, due process of law and First Amendment principles. The university appreciates the special importance of maintaining those principles in times of national anxiety. History does not look kindly on the instances where those principles have been compromised in the name of national security. The university has been, and is, sensitive to the duty to protect individual faculty rights. The University of South Florida's treatment of Professor Sami Al-Arian has not compromised those principles.

### I. Dr. Al-Arian's Employment

The draft report mainly focuses on events that preceded the recent federal indictment and arrest of Dr. Al-Arian. In the report, the investigating committee concluded that the university's previous charges were "remarkable, even startling, especially in light of the fact that no federal charges have ever been brought against Professor Al-Arian. Nor, indeed, has any federal grand jury, between 1988 and 1995 or since, been known to make a determination on whether probable cause has existed to believe that Professor Al-Arian has engaged in any unlawful activity at any time, past or present, sufficient to warrant his indictment, much less a trial and conviction that he is guilty of crimes against this country."

Now that a federal grand jury has found probable cause to conclude that Professor Al-Arian has committed conspiracy to commit racketeering; conspiracy to murder, maim or injure persons at places outside the United States; conspiracy to provide material support to known and illegal terrorist organizations; conspiracy to make and receive contributions of funds, goods, or services to or for the benefit of specially designated terrorists; money laundering; multiple counts of illegal use of facilities, mail, and so on, in interstate or foreign commerce; attempt to procure citizenship or naturalization unlawfully; false statements in immigration proceedings; and obstruction of justice in violation of various provisions of federal and Florida law, the draft report should be reconsidered.

The indictment alleges Professor Al-Arian used the University of South Florida for the purpose of giving cover to other faculty and students associated with the Palestinian Islamic Jihad as an instrumentality through which Jihad members could be brought into the United States under the guise of academic conferences and meetings; used the World and Islam Studies Enterprise, Inc. (WISE) as an organization affiliated with the university through which he concealed the activities of the Palestinian Islamic Jihad on multiple occasions; actively solicited and raised funds for the support of the Palestinian Islamic Jihad through direct contributions to WISE while a university professor; used the university name, equip-

ment, and resources to further the operations and management of the Palestinian Islamic Jihad; assisted terrorists by causing others to make false, misleading, and evasive statements, not only about their roles at USF, but also in other venues such as the Immigration and Naturalization Service; and utilized the USF Federal Credit Union to launder money going to and coming from the Palestinian Islamic Jihad. These allegations in the indictment are consistent with the university's long-standing contention that Dr. Al-Arian's actions while at the university were inconsistent with his responsibilities as a university professor.

Of course, a federal grand jury indictment does not establish criminal guilt beyond a reasonable doubt. But criminal guilt is not the standard for the university's decision. Responsible members of the university community have recognized that the university had just cause to terminate Professor Al-Arian as reflected in the comments of the USF Faculty Senate President who referred to President Genshaft's decision to terminate as "justified," and one of Dr. Al-Arian's former professorial colleagues who stated, "Whether [Al-Arian] violated the law is still to be proven, but there is no question whatsoever that [he] violated the trust of the university and its supporters."

At the least, it seems both prudent and fair to await the outcome of the criminal process before further decisions are made. Dr. Al-Arian cannot testify in university arbitration proceedings without jeopardizing his criminal defense and it is anticipated that he will ask the university to await the outcome of the criminal case before he proceeds with a grievance directed to the university's actions. The university requests this as well to provide an opportunity for all the facts to be known before any decision is made by Committee A or the AAUP. At that time, all parties, and all the members of the AAUP, will have a clearer picture of whether or not Professor Al-Arian wrongfully used his position as a tenured faculty member to knowingly support and assist illegal activities that aided and abetted terrorism.

### II. Academic Freedom Issues

The university's termination of Professor Al-Arian does not relate to his discussion of controversial topics within the classroom, his extramural utterances, or the impact of those utterances. In fact, Professor Al-Arian's statements, as listed in the draft report, were not directed to an academic audience. The principles of academic freedom do not apply to extramural *conduct*. Indeed, this position has been espoused by the investigating committee's own chair in past publications. (See chapter 5, part 2, of *The Concept of Academic Freedom*, published in 1975, as authored by William Van Alstyne.) Academic freedom has not been implicated or violated by USF because its personnel action regarding Professor Al-Arian is not based on his academic efforts. The action was based on misconduct (albeit as

accomplished with university resources) outside the classroom: misconduct that Professor Al-Arian has avoided contesting.

### III. Due Process Issues

The draft report fails to recognize that Dr. Al-Arian has knowingly declined to timely assert his rights to challenge his first leave with pay, his second leave with pay, or his proposed termination. This omission from the draft report is troubling. Even the lawsuit, which the investigating committee writes “underscores their [the university’s] disregard of academic due process,” would have provided Dr. Al-Arian another opportunity to dispute in court the allegation that

Sami Al-Arian engaged in the acts that form the basis of the violations set forth in Exhibit A: (1) with knowledge of the illegal activities to be conducted by the entities and persons benefiting from his actions; (2) with a desire to help those illegal activities succeed; and (3) his actions helped the illegal actions succeed, thereby aiding and abetting international terrorism, as defined by Title 18 U.S.C. 2333. (Citations omitted.)

That allegation is the heart of the university’s basis for action. The dispute has always been clear-cut: Dr. Al-Arian has maintained he was raising monies to help orphans; the university believed he was using university resources to make orphans.

Dr. Al-Arian avoided confronting the complaint’s allegations on their merits, contending that the collective bargaining agreement—an agreement that he knew expired by its own terms on January 7, 2003—was his exclusive remedy, not the declaratory judgment the university sought. At the moment the university put Dr. Al-Arian on leave with pay in 2001, he could have sought relief under the collective bargaining agreement. He chose not to do so until a few days before the expiration of the agreement. His university grievance on that subject was denied because he waited over a year to assert his due process rights under the agreement.

It is clear that Dr. Al-Arian has had multiple fora in which to challenge the university’s personnel actions, but has chosen not to pursue them. Of course, one of the reasons he had to avoid his opportunities to be heard is now clear; he would have exposed himself to testifying, an obligation which might have exposed him to criminal liability. In fact, in the immigration proceedings related to his now deported brother-in-law, a proceeding mentioned in the draft report, Dr. Al-Arian invoked the Fifth Amendment protection against self-incrimination on at least one hundred occasions. The report, which mentioned certain of the immigration judge’s remarks, failed to mention Dr. Al-Arian’s refusal to testify or the judge’s ruling that in the few answers he gave, he was not

credible. Simply put, Professor Al-Arian had the right in that proceeding, and other subsequent proceedings, to defend or explain his conduct, yet he has consistently chosen not to do so.

Postindictment, Dr. Al-Arian has chosen to grieve his termination under applicable university rules, but is anticipated to seek postponement of those proceedings until the conclusion of the pending criminal charges. For the reasons we have outlined above, all parties would be best served by awaiting the outcome of the criminal charges.

Whatever one may think of the university’s basis for termination, or its declaratory judgment action, Dr. Al-Arian clearly has had opportunities to contest the allegations against him. His protestations have been made in the press, not in the fora in which they could have been addressed to consider his due process and academic freedom contentions. Indeed, Professor Al-Arian has placed Committee A in the position of defending his academic freedom and due process rights despite his declination of the opportunities to do so over the past eighteen months. There is nothing wrong per se with Dr. Al-Arian’s declination—but if he was a manager and organizer of the Palestinian Islamic Jihad in America and as “powerful as any member [of the Jihad] on the planet” (quoting assistant U.S. attorney Terry Furr) under cover of his USF employment, then the AAUP should have that information before considering the university’s actions.

### IV. Cooperation of USF

There are numerous references in the draft report to the university and President Genshaft’s affirmation of important academic values, references to favorable consideration of requests for deadline extensions by the faculty union, recounting of the university’s welcoming of consultation by the AAUP, consideration of the AAUP’s request for postponement of decision, and consultation and cooperation with the AAUP and its representatives. The university and President Genshaft reaffirm to Committee A and the AAUP that they will continue this level of professional consideration throughout this process and are confident that the AAUP will extend the same professional respect and courtesies.

### V. The Future at USF

The University of South Florida values its faculty—a faculty that has excelled in teaching, research, and service, despite the economic handicaps found in all of higher education in the past few years. We believe we have considered the rights of the university community as well as Dr. Al-Arian in taking recent personnel actions. Criticism of the process can always occur after the fact, but that criticism fails to take into account the factors that were known by decision makers at the times decisions were made. We believe we had sufficient justification to terminate Dr. Al-Arian, and we did so in accordance with applicable processes.



There is no doubt that the faculty is the heart of the university. There is no evidence our conduct with respect to Dr. Al-Arian has impaired our academic health. We are always seeking ways of listening to our faculty and relating to them in a cooperative way. In that vein, the university immediately adopted the Faculty Senate resolution that provides for faculty peer evaluation and recommendation prior to any termination of a tenured faculty member at USF. We are also currently actively engaged in consultation with two Faculty Senate committees, one regarding the content and adoption of permanent employment rules at USF and another to consult on improvement of the university's system of shared governance.

## **VI. Conclusion**

The draft report concludes that USF acted in disregard of academic due process by not having consulted with a faculty body prior to notifying Dr. Al-Arian of our intent to dismiss him. Although such discussion did take place informally, neither the collective bargaining agreement nor personnel rules (which we followed) provided a formal mechanism for that type of input at that time. In the future, there will be formal consultation.

The report concludes that USF's proposed dismissal of Professor Al-Arian was because of his extramural utterances. The notice of termination reveals this is simply not the case; that conduct, not speech, was the basis for the action.

The report concludes that USF's attempt to seek ruling on the First Amendment issue raised by Dr. Al-Arian with respect to his proposed termination at that time somehow violated his

academic due process, when in fact it gave him an additional opportunity to tell his side of the story.

Other report conclusions, in light of the discussion above, are now outdated.

The university is absolutely committed to academic freedom, shared governance, and its faculty's rights. Current conditions of academic freedom, tenure, and due process can always be improved upon, and we are committed to those efforts.

However, the Sami Al-Arian case is unique in academic history. We know of no other tenured university professor investigated and charged by a federal grand jury with aiding and abetting terrorism, knowingly assisting an organization committed to murdering innocent men, women, and children and doing so by using his university affiliation.

Academic freedom and aiding and abetting terrorism are mutually inconsistent. The University of South Florida has carefully and cautiously sought to protect its faculty, staff, student body, and administration while respecting Professor Al-Arian's presumption of innocence and right to speak.

The University of South Florida respectfully requests that the draft report's findings be tabled until the university's due process is completed, which cannot realistically occur until the criminal proceedings are over. Once a jury returns a verdict, Dr. Al-Arian may be in a position to then participate in our process and the university, and the AAUP, and the community at large, can better assess USF's actions in light of the evidence of Dr. Al-Arian's activities. 