

**THE CONSTITUTION, THE UNIVERSITY,
AND FREEDOM OF SPEECH:
THE CASE OF PROFESSOR HABIB SADID**

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**Faculty Appeal Board Supports Sadid by a Vote of 4-1;
Faculty Senate by 19-5**

Habib Sadid, an award-winning engineering professor at Idaho State University for 22 years, has been dismissed from his position. In 2002 Sadid received the Distinguished Teacher Award in 2002, the Excellence in Engineering Education Award from Idaho Society of Professional Engineers in 2005, and the Distinguished Public service award in 2007. In the spring of 2008 his dean wrote that Sadid is "an asset for the College of Engineering."

Recently ISU students who had Sadid in classes posted the following comments in the *ISU Bengal*: "the best professor in the College of Engineering," "an ethical, knowledgeable and courageous member of society," "a great teacher," "one of the best professors at ISU." Kyle Woodhouse, the representative from the College of Engineering on the student senate stated: "He taught very well and his expectations were high, but always achievable."

On October 23 a faculty appeals board released a report in which, by a vote of 4-1, it found insufficient evidence for Sadid's termination. The majority concluded that due process had not been followed and that the lack of documentation for such a serious charge was "disturbing."

Initially the ISU officials commented that the brief report does not address the charges against Sadid thoroughly enough. I am also disappointed in the report's brevity and lack of depth, especially since the board heard detailed arguments from Sadid's attorneys, and testimony from a former faculty senate chair that the domain of academic freedom is not only teaching and research, but also faculty service on and off campus.

The one professor who voted against Sadid is guilty of the "piling on" as he lists charges for which he has not been formally charged. This professor claims that due process has been followed, but this simply cannot be the case if Sadid has not had a chance to respond to these charges. This same person joined four others in voting against an ISU Faculty Senate resolution, strongly supporting Sadid, which 19 other faculty passed. President Vailas had the audacity to demand that the Faculty Senate rescind its resolution. On November 9 the senators stood their ground courageously and refused to reconsider their vote. Read the resolution at www.class.uidaho.edu/ngier/SadidResolution.htm

President Arthur Vailas rejected the appeal board recommendation and sent Sadid a termination letter. In this letter Vailas adds even more accusations to the indictment, some going way back in time. In response to the question about why these issues were not brought up in Sadid's annual evaluations, Vailas makes the incredibly weak excuse that Sadid had been warned in separate statements and conversations. The annual evaluation should include all of a professor's activities, and the fact that Sadid had excellent reports every year up to 2008 demonstrates serious lack of administrative competence. It is has been my experience that courts do not look favorably on the firing of a faculty member who has been given consistently good evaluations.

The College of Engineering Meeting of April 21

In his letter of "contemplated action" of May 6 engineering dean Richard Jacobsen lists four incidents of unprofessional conduct all allegedly occurring in April, 2009, including criticisms of the administration at an April 21 college meeting. (Fortunately, the meeting was tape-recorded.) According to ISU policy, it is these charges and only these on which Sadid can be terminated. The accusations that are now being added are simply inadmissible.

It is really ironic that the dean said that this meeting was a good one and that faculty should not have concerns about voicing their opinions. Listening to the tape of the meeting, a reasonable observer could conclude that there were others present who were much more disruptive than Sadid. ISU administrators claim that Sadid's behavior has been unacceptable for years; nevertheless, he received outstanding evaluations up until 2008. Things began to change after September 2008, when Sadid filed a suit

charging retaliation. He claimed that he had been passed over as chair of his department and that he had received no annual evaluation for years.

The Virtue of Collegiality and the Medieval University

Richard Jacobsen, dean of the ISU College of Engineering, claims that the actions of Habib and another faculty member fit the "classical definition of insubordination, coupled with a complete lack of collegiality." He also asserts that their language is "disrespectful and defamatory at a personal level." Furthermore, the dean maintains that the problems in the college are not due to a "lack of leadership but more one of followership."

Collegiality is the virtue of being a good colleague, and has as its ideal the demonstration of mutual respect and support among people sharing the same vocation. The Roman *collegia* were the forerunners of the medieval craft guilds, on which the medieval academic colleges and labor unions were modeled. The virtue of collegiality can thrive only in setting of equality, not one of "followership." True colleagues are equal with all and subordinate to none.

The "masters" (as in the academic degree or craft skill) of colleges and guilds were not masters of other people; rather, they were masters of their subjects or their crafts. The craft guilds, academic colleges, and early Protestant congregations were some of our first democratic institutions. Today European university deans and presidents are still elected by their faculties. In contrast, American university leaders are appointed by governing boards whose members' academic credentials are sometimes very sketchy.

American deans and presidents leaders are not necessarily accountable to the professors they lead. They undermine democratic decision-making every time they veto faculty decisions, while governing boards can veto any decision campus executives make. The medieval university had minimal central authority and the various colleges made their own decisions about everything. What the modern, corporate university may have gained in bureaucratic efficiency, it has lost in terms of failing to acknowledge, let alone respect faculty autonomy.

A 1977 study done by the American Association of University Professors (AAUP) found that those faculty surveyed found that they rated

their input between "none" and "consultation." My hunch is that today the result would be closer to "none." When asked about faculty governance, one Idaho board of education member once exclaimed: "I thought that's what we do!" Years ago faculty representatives were regularly asked to speak at board meetings, but now they are denied a place on the agendas.

The hierarchical model of university governance makes it very difficult for faculty to air their grievances and communicate their concerns without fear of retaliation. Personal outbursts at faculty meetings may not be due to "mental instability" as Dean Jacobsen suggests, but a symptom of deep frustration dealing with an unresponsive and undemocratic system. Former ISU President Richard Bowen admitted that Jacobsen's predecessor was "not the best administrator," so there may well be very good reasons for long-lasting faculty resentment that Sadid and others have been expressing openly and boldly. If Dean Jacobsen dean believes that he has been defamed, he should file a suit against the two professors.

So far there has been no attempt at mediation between the two parties, but in an April, 2009 meeting, the dean proposed that they hold a conflict resolution workshop or, more problematically, individual training for specific faculty. Recently the dean rejected Sadid's request that the ISU ombudsman be present at a meeting with the dean and his department chair.

The history of the academic disciplines is replete with top scholars who have never made any attempt to be collegial. None of them to my knowledge has ever been fired for this reason. Collegiality is a virtue and an ideal, but one cannot require any virtue as a condition of employment (other than the virtues of industry and talent that make an academic qualified), and certainly one should not make lack of it a reason for firing a tenured professor.

The Constitution and the Extent of Faculty Free Speech

Professor Sadid has been tenured since 1994, and U.S. courts have determined that tenure is a property right that can be removed only by full due process of law. A tenured professor can be fired for professional incompetence, a felony conviction, or moral turpitude. The charges against Sadid fall outside of these categories, and he believes that the First Amendment protects his criticism of the ISU administration. The university attorney, however, counters that constitutional free speech is not absolute,

and that faculty members may not undermine the operation of the university with personal vendettas and other "unprofessional" behavior.

Sadid's attorneys have objected to aspects of ISU personnel policy, which indicate that "any conduct seriously prejudicial to the University" is adequate cause for dismissal. If the administrators initiate termination under these broad, subjective, and vague reasons, then they may suspend professors and remove them from campus. This flies in the face of traditional safeguards for job security on America's campuses.

In claiming that Professor Sadid's First Amendment rights may be limited, the university's attorney is no doubt citing the 2006 Supreme Court decision *Garcetti v. Ceballos*, in which the court ruled that public employee free speech rights may be limited while performing "official duties." Richard Ceballos was an L.A. county prosecutor who criticized the use of a warrant in an investigation, and then alleged that he was passed over for promotion because of his criticism.

The justices explicitly wrote that this decision may not apply to college and university professors, and AAUP President Cary Nelson has stated that ISU's use of *Garcetti v. Ceballos* "represents a dangerous application of [the case] to a faculty member at a public institution of higher education." AAUP guidelines for the suspension of faculty also insist that "immediate harm" to other persons must be clearly demonstrated, which of course the ISU administration has failed to do.

There is no question that academic tenure protects professors' freedom to teach, following traditional classroom decorum, any content they deem appropriate in their classes, and to pursue any research topic they wish to propose. Without the protection of tenure, faculty members would be very vulnerable to political or other ideological pressures.

Our academic campuses must remain society's essential bastions of free speech and free inquiry. College and university administrators must proceed with utmost caution when they interfere with not only those conditions under which learning and research occur, but also the conditions under which decisions about faculty and college governance take place.

The Faculty Union Grants Legal Aid to Professor Sadid

The ISU administration is apparently angry that the faculty union has decided to support Sadid. This is indeed very curious. Why shouldn't any American facing serious charges, which we believe are unfounded, have the best legal defense? At a meeting on October 22 the ISU Federation of Teachers voted to support Sadid with a legal aid grant of \$2,300. On November 9 the executive committee of my organization, the Idaho Federation of Teachers, voted to match that amount.

Sadid's attorney is now filling out an application form for legal aid from our national office. We fully expect them not only to send us \$4,600, but also match the over \$20,000 that Sadid has already paid in legal fees. Since 1974 the Idaho faculty union has won 9 out of 11 major court cases, and we are prepared to go all the way to gain justice for Professor Sadid. We have estimated that for every dollar we spend on attorneys, campus administrators spend two dollars of Idaho's taxpayer money.

The American Association of University Professors (AAUP) might also send an investigation team. They rarely get involved in suits, but they do place wayward institutions on their famous censure list. Any self-respecting academic institution would want to do anything possible to avoid being among the censured institutions. In 1984 our UI faculty union won a million dollar settlement for eight faculty members in the College of Agriculture, and the AAUP had also sent a team to the UI campus. The result was that the AAUP placed the UI on its censure list.

In 1989 Elizabeth Zinser, a finalist for the UI presidency, insisted that she would not take the position unless the UI was removed from the blacklist. The Idaho State Board of Education (SBOE) quickly revised its financial exigency policies so that they were compliant with AAUP principles. These financial emergency policies have also passed muster with our national legal office. Instead of revising its personnel policies in such an ill-advised and haphazard way, as it has done recently, the SBOE should use these procedures to reorganize the campuses to meet the exigencies of the current financial crisis.

Sadid's case has already been featured in *Inside Higher Education* and the *Chronicle of Higher Education*. It raises fundamental issues of tenure, academic freedom, and constitutional free speech. A negative resolution of Sadid's suit will impact the rights of all American professors. That is why my union is committed to financing the best legal representation possible.

Sadid has hired some of the best employment attorneys in the state, so Vailas could avoid a costly legal battle and more embarrassment for his already embattled administration by reinstating Sadid. We are willing to match the ISU administration dollar for legal dollar until we achieve justice for this brave professor.