



# FACULTY ADVOCATE

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### **False Charges of Sexual Harassment Ruin UI Professor's Career Suit for Wrongful Termination Filed Local/State AFT Grants \$8,000 Legal Aid Read Article in Inside Higher Education**

[www.insidehighered.com/news/2013/11/20/professor-fired-sexual-harassment-sues-university-idaho](http://www.insidehighered.com/news/2013/11/20/professor-fired-sexual-harassment-sues-university-idaho)

By Nick Gier, IFT President

*Damage could result to the career and reputation of any person who is accused of sexual harassment falsely or not in good faith.*

—*UI Faculty Staff Handbook, Section 3220 C-2*

### **Two Dramatic Cases: Williams and Bustamante**

The University of Idaho has recently experienced some high profile sexual harassment cases. The most recent involved former law school professor Alan Williams, who was accused of harassing two female law students. One reported to police that she feared for her safety and that she knew that Williams possessed firearms. After receiving a termination letter from the university, Williams hanged himself.

The most dramatic case was that of psychology professor Ernesto Bustamante, who shot graduate student Katy Benoit to death after a tumultuous sexual relationship. Students complained that Bustamante told his classes that he was high on drugs for a mental disorder. After receiving an investigative report based on Benoit's charges, Bustamante shot himself to death in a local hotel.

### **Former Professor Sanjay Gupta Wrong Accused**

Despite the highly publicized events mentioned

above, the recent termination of potato specialist Sanjay Gupta is illustrative of his contractual and constitutional rights being trampled on due to paranoia caused by a few inappropriate actors. Instead of being innocent until proven guilty, Gupta was deemed guilty and was given no meaningful opportunity to prove his innocence.

### **Gupta's Accuser Exaggerates Her Qualifications**

In May of 2011, Gupta hired Priyanka Gajjar as his lab assistant, but it soon became apparent that she had overstated her qualifications on her resume and was not qualified to perform the experiments assigned to her.

Instead of terminating Gajjar's employment, Gupta decided to give her extra training (in his office and also out of state), and, eventually, an extension for her formal evaluation. On September 19, 2011, both signed an evaluation in which Gajjar admitted that she was still deficient in her duties.

On October 13, Ms. Gajjar, fearful of losing her job, went to Gupta's supervisor and accused him of sexual harassment. Specifically, Gupta was accused of asking her for hugs and for having long after hour meetings (later disputed at the dismissal hearing) with her. Additionally, Gajjar stated that Gupta told her that things would go easier for her if she was only nicer to him.

The UI then commenced an investigation and denied Gupta access to any of its information gathering. Gupta was not allowed to question his accuser or any other UI employee, and he was precluded from presenting any witness testimony. Based solely on Gajjar's accusations, which were never put in writing, Gupta was labeled a sexual harasser and was suspended.

UI policy provides that a professor can only be terminated for cause and upon clear and convincing evidence. Clear and convincing evidence is a legal term of art. It means that the fact finder has to be persuaded that it is highly probable that such a proposition is true.

### **Procedural Problems at Dismissal Hearing**

During the termination hearing on April 21, 2012, the UI attorney sat in the middle of the five faculty members. He ran the hearing as if he were a judge: calling witnesses and ruling on evidence. Gupta's friends and family assumed that he was the chair of hearing board, primarily because the professor appointed for that job did not perform that duty.

Across from the hearing board the UI's associate counsel sat with Ms. Gajjar for the duration, giving the clear impression that the UI was providing her with legal representation. Gupta of course had to hire his own counsel. UI policy is very clear that the university attorney represents the university and not its employees. Additionally, university counsel may not advise persons who have a claim against the university or one of its employees.

I have lost count of the number of faculty and staff who have called me over the years to complain that the Office of General Counsel refused to provide them with legal advice. In this case, the UI worked exclusively for Gajjar and gave her every benefit of the doubt, but Gupta was not afforded a chance to rebut her charges even at the lowest administrative level, even though UI policy requires it.

### **Accuser Breaks Confidentiality Vow**

Sometime before the first of November, 2011, a colleague called Gupta to say that Gajjar told people at a party that Gupta was "going to prison." On November 2, 2011, Gupta e-mailed the UI administration to complain about this violation of a vow of confidentiality to which both parties agreed. This misdeed was ignored, and Gajjar was transferred to the UI Moscow campus where she is still employed. Gupta's research grants were assigned to a woman who testified against him, and he was left without employment for seven months.

Unfortunately, the dismissal hearing board found that a probationary employee, who had padded her resume, and who, with an UI official's encour-

agement, falsified her research notebook, was believable, but decided that Gupta and his wife were not credible. Former UI President Duane Nellis, now president of Texas Tech University, fired Gupta in June of 2012.

### **Appeal Board Sides with Gupta, March, 2013**

Gupta waited eight long months for his appeal to be scheduled. A panel of five faculty met on March 21, 2013, and they voted 3-2 that the evidence against Gupta was not enough to warrant dismissal. Here is a summary of their findings:

- Some of the evidence the university administration presented at the termination hearing was known to have been falsified.
- There is an alternative and plausible explanation for virtually every single allegation made against Gupta.
- The panel worried that the case was investigated during a time of heightened sensitivity because of the two previous high profile cases.
- The UI should have a high standard for the evidence it presents against one of its faculty, and it should discard it once it has been proven either false or unreliable.

After another eight month's delay, Interim President Don Burnett has not responded to the appeal decision, and he has rejected a very reasonable offer of settlement. UI policy requires that the administration respond to any appeal decision within 45 days.

Everywhere Gupta turned for comparable employment, the false charges arrived before he could apply. Gupta was shocked to learn that some of these prospective employers knew about the accusations even before the UI made his suspension official. He is now in a post-doctoral position with his former employers at the University of Minnesota, who know very well that he is innocent.

Currently, Gupta's applications for research funding are in limbo because of questions about what happened in Idaho. Early in 2011 Gupta received a 4-year \$7.8 million research grant that he obtained with five other scientists, and his share of the funds and data generated in his lab are now being used by a woman who testified against him. Part of the lawsuit charges theft of intellectual property.

Do Gupta's constitutional rights mean anything? These are the questions that the Idaho Federal District Court will decide. Gupta has retained attorney April Linscott of the Coeur d'Alene law firm Owens & Crandall to represent him in a wrongful termination suit against the UI. A jury trial will be held in Moscow and the date will be decided when the parties appear before Judge Lynn Winmill in December.

forms please go to [www.idaho-aft.org/IftDues.htm](http://www.idaho-aft.org/IftDues.htm).

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### **Local/State AFT Grants \$8,000 Legal Aid**

The local and state chapters of AFT have committed \$8,000 to Gupta's case, and we anticipate that our national office will also grant substantial legal aid. We will stand by him until his good name is cleared, and when he is able to receive compensation for lost wages, \$30,000 in unpaid attorneys' fees, and emotional damage.

### **University of California Staff Union on Strike at Nine Campuses over Unfair Labor Practices**

By Doug Cunningham, Worker's Independent News

Workers affiliated with the American Federation of Federal, State, County, and Municipal Employees (AFSCME) at the University of California are on strike today with picketing at more than a dozen locations statewide. AFSCME's Todd Stenhouse says the strike stems from a coordinated campaign of illegal harassment and intimidation from UC administrators against frontline service and patient care workers advocating safe staffing standards.

Stenhouse stated: "We are organizing Californians from every walk of life— from students to patients to everyday taxpayers. So we're going to continue to organize, we're going to continue to fight. We're going to continue to show up at Regents' meetings. And we're going to continue to demand that they come back to the table and offer these folks—the foundation of California's middle class at the leading public university system in the country— that they're going to offer them a fair contract."

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