



T 215-717-3473 • F 215-717-3440 • fire@thefire.org • www.thefire.org



March 8, 2010

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commented on the posting in ways showing that Gadsden's message was clearly non-threatening; all of them took the message as either humorous or as a mere expression of having had a hard day. One person remarked, "I know that day!" and another wrote simply, "ROFL!!!" (i.e., "rolling on the floor laughing"). After potentially seeing three of the comments ("ROFL!!!," "Ouch!," and "discreet? and hitman? woman has anyone ever told you, your asking for a lot...."), Gadsden herself commented, "No further comment necessary."

One month later, on Monday, February 22, 2010, Gadsden posted a new message on her personal Facebook page. Since Gadsden later removed the message, the exact punctuation and capitalization is not on record. Gadsden reportedly wrote:

Had a good day today. Didn't want to kill even one student :-) ... Now Friday ... that was a different story.

Again, given the context of the posting—a tongue-in-cheek expression of frustration with the workaday world, sharply denoted by a "smiley face" emoticon—no reasonable reader would have construed this posting as communicating a serious intent to kill a student. Gadsden's message was clearly not threatening to anyone and did not name anyone. Nor did Gadsden note that she was referring to any particular course or group of students. In addition, the posting clearly notes that whatever negative feelings she might have had three days earlier, those feelings had already passed.

On February 24, Gadsden attended a meeting with College of Arts & Sciences Dean Peter Hawkes to discuss Gadsden's "postings on Facebook." According to Gadsden, Hawkes suggested that the comments were threatening, invoking an unrelated shooting at another college campus earlier in the month. Gadsden also has reported that ten minutes after this meeting, she was placed on leave by Hawkes, who was accompanied by a security officer. According to Gadsden, the security officer escorted her out of the building and kept watch until she reached her car in the parking lot.

According to a letter sent to Gadsden on February 26 by Interim Provost and Vice President for Academic Affairs Marilyn J. Wells as a "follow up" to the meeting with Hawkes, "The University is concerned about your **conduct** and believes that it is necessary for you to undergo a fitness for duty evaluation." (Emphasis added.) Wells' letter also stated that ESU had put Gadsden on paid administrative leave pending a mandatory "psychological evaluation [at the university's cost] to determine your fitness for continued duty and type of treatment, if any, that you may require." The university reserved discretion to "make a final determination" after receiving "the outcome of the assessment (fit or unfit for duty)" by the evaluator.

The letter also banned Gadsden from "report[ing] to your position at the University without prior authorization." Under the ban, according to Gadsden, she has missed various college-wide meetings, will miss a university-wide meeting, and is missing her five regularly scheduled classes this term, which are instead being taught by other faculty members.

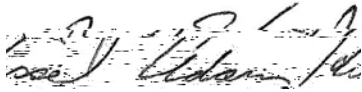
Wells' letter also demanded, as a "**direct work order**" (emphasis in original), that the appointment with the psychological evaluator be made with a specific "licensed clinician, the

name of whom will be provided to you by Teresa Fritsche of Human Resources.” Wells demanded that “[t]he appointment must occur on or before Friday, March 19, 2010.” As of today, however, Gadsden has reported that although she is willing to prove her complete fitness for duty and has asked for the clinician’s name, she has not been given the clinician’s name.

The exclusion of Gadsden from her university position and the mandatory psychological evaluation are in violation of ESU’s moral and legal obligation to uphold the First Amendment. We trust you understand that as a public university, ESU is legally bound by the United States Constitution’s guarantee of freedom of speech, especially regarding the non-threatening, off-campus speech of faculty members. Faculty member

uncertain terms, that individuals and faculty members are free to engage in such speech, which the First Amendment protects. No reasonable person would see Gadsden's postings as a danger to the campus, ESU itself apparently does not truly believe she is a danger, and the fact that another faculty member elsewhere had recently shot some of her colleagues should have no bearing whatsoever on the analysis of Gadsden's postings.

While Gadsden is out of the classroom, ESU is denying her students' expectation that they will be taught by the professor with whom they chose to study. ESU must reverse Gadsden's administrative leave and ban from teaching, rem

A handwritten signature in cursive script, appearing to read "Gadsden". The signature is written in dark ink on a light background.