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A controversial Marquette University professor, who has not been allowed to teach after he ignited a firestorm when he wrote on his personal blog about a teaching assistant's refusal to allow a classroom discussion of the ethics of same-sex marriage, asked the Wisconsin Supreme Court to order the school to give him his job back and pay damages.

The incident occurred nearly three years ago and has generated national news coverage. Marquette, apparently stinging from criticism the case generated, recently took out a full-page ad in *The Wall Street Journal*, one of the justices noted during the hearing, holding up a copy of the ad.

[At the hearing](#) on April 19, the university characterized the case as merely a contract dispute that should be found in their favor. Marquette's lawyers argued that the university followed well established procedures when a [seven-member committee](#) of tenured faculty appointed by the faculty senate conducted a lengthy hearing that was referred to President Michael Lovell. Although Lovell's demand that John McAdams apologize went beyond the faculty recommendation that he be suspended without pay for two semesters, the school's lawyer insisted that it was within the established procedure.

A lower court agreed with Marquette and summarily dismissed the case in the school's favor. The case bypassed the appeals court and went directly to the state's high court because it is the first of its kind in Wisconsin.

Only five of the seven justices were present for the oral arguments. A sixth justice was listening via telephone, according to Chief Justice Patience Roggensack, and will participate in the deliberations. No explanation was given for why the seventh justice, Annette Ziegler, was not present and would not participate in the deliberations.

The five remaining justices peppered the lawyers for both sides with lengthy questions — some more statements than queries — for an hour.

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Among the topics that play into the case: Is a private university required to give faculty members the same degree of free speech protection as a public school? Did Marquette's contract provide that higher degree of protection? Was the teacher who was called out in the blog a student who McAdams should have protected?

Richard Esenberg, founder of the libertarian Wisconsin Institute for Law & Liberty and a former adjunct professor at the Marquette Law School, argued McAdams had the same rights as faculty at public schools because of the contract the school entered into with its faculty.

"Marquette didn't have to give the same rights but yes, related to termination they are the same because of the contract," he said.

Justice Ann Walsh Bradley read part of the contract that states that the threat of dismissal will not be used to restrain the academic freedom of faculty or other rights guaranteed by the United States Constitution. She went on to say that the First Amendment only bars the government from abridging free speech, not those in the private sector. Esenberg responded that the "literal and plain meaning" of the phrase should be interpreted to include the faculty because it was included in the contract.

Justice Michael Gableman noted that the faculty hearing found that McAdams violated the norms of an obligation of accuracy, exercising restraint, respecting the opinions of others and maintaining integrity. He described what happened as "Orwellian."

Cheryl Abbate, the graduate student who was the teaching assistant criticized by McAdams, was teaching a class on a theory of ethics and how it applies to modern political issues and controversies. When a student raised the issue of same-sex marriage, she refused to allow it to be discussed, saying everyone agrees on the issue and that there was no reason to discuss it further. A member of the class approached her afterward and said he felt it should have been discussed. She told him some opinions were not appropriate for the class and invited him to drop the class if he disagreed. She asked him if he was taping the conversation and he replied no but when she asked to see his cell phone he acknowledged that he had been recording the conversation. That conversation was the basis for McAdams' first posting.

At one point, Gableman said, "The papers have been calling her a student but she was a teacher."

The point is important because Marquette acknowledged that if McAdams criticized a colleague, that was fair game — and he did so often. But, they argue, he had an obligation to not use a student's name on his blog. He also linked to Abbate's personal blog, which Marquette argued resulted in her receiving threatening emails.

Gableman questioned whether Abbate was stifling free speech by refusing to allow the discussion, and asked if her actions were consistent with those that McAdams had been disciplined for.

Ralph Weber, a lawyer representing Marquette, referred to her as "an apprentice teacher." He said that "she could have handled it better" and that she was counseled but not disciplined, noting that she soon left Marquette after the episode.

Justice Rebecca Bradley asked if McAdams was expected to anticipate such a response and Weber argued that was McAdams' intended response to the blog.

"You rev up a hostile audience, then you put a way to get in contact with that person in front of them," Weber said, adding that McAdams contacted a number of news outlets to drum up interest in the topic.

Gableman asked: "I wonder how many emails and phone calls Mr. McAdams has gotten. It's simply a rhetorical question."

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Rebecca Bradley questioned why one of the faculty members who conducted the McAdams hearing was not disqualified after she wrote a letter supporting the teaching assistant and criticizing McAdams. Weber said the seven members were unanimous in their findings and that the faculty had considered that objection but did not consider it a disqualification.

Roggensack said that a person who expressed opinions before hearing a case would not have been allowed to sit on a jury.

Gableman also brought up records that showed that the teaching assistant had applied for graduate school at the University of Colorado a year before the incident but there were no places available. He also read a court document quoting an email that the teaching assistant sent: "Honestly, in light of all that has happened I am very thankful that McAdams started this attack because it prompted Boulder to reach out to me and offered to transfer me there. Besides, they have a much better program in philosophy than Marquette."

[Marie Rohde is a freelance writer in Milwaukee and a frequent NCR contributor.]