

Academic Freedom at Stanford: Lessons of the Franklin Case

Tenure is generally acknowledged to be an important safeguard of academic freedom, but whether the system in practice protects holders of extreme views is open to question. A case in point is the recent dismissal of Associate Professor H. Bruce Franklin by Stanford University, in an incident involving the limits of political advocacy and, according to some, the more fundamental issue of free speech on university campuses. The American Civil Liberties Union (ACLU) of Northern California decided last week to help Franklin contest the Stanford action in civil court. The ACLU is planning to base its case on the distinction between advocacy, which is constitutionally protected, and incitement, which is not. The ACLU board was unanimously persuaded that the Stanford decision, which they feel may become the new standard for many universities in cases of this kind, muddled this distinction and that Franklin's speeches were less extreme than, for example, those of H. Rap Brown or other militants that the ACLU has offered to defend.

The case was important for Stanford, evoking strongly held feelings and raising the difficult question of faculty self-discipline. One fear expressed by many faculty members, for example, was that the decision to dismiss Franklin for behavior not directly connected with his teaching or scholarly competence might put new pressure on tenure, an institution that is being increasingly scrutinized at Stanford and elsewhere for other reasons. Coming at the end of a decade of student activism, the Franklin incident also had unavoidable overtones of political repression and is seen in some quarters as having damaging implications for the future of academic freedom. The Stanford administration and its supporters, however, claim the decision to fire Franklin is an important precedent in strengthening academic freedom and in guaranteeing the survival of the university as a marketplace for the exchange of

ideas. At the very least, the Franklin case and its aftermath underscore the increasing politicization of the academic world and the growing recourse to legal and quasi-legal sanctions and remedies for resolving its internal disagreements.

Franklin, who was a tenured member of the Stanford English department and a recognized authority on the writings of Herman Melville, has in recent years been a self-professed Maoist revolutionary and a frank advocate of the use of violence to further radical political causes. As such, he was often an embarrassment to the Stanford administration in its fund-raising efforts with conservative alumni. Following the disruption of a speech by Ambassador Henry Cabot Lodge and a series of other incidents that occurred early in 1971, Franklin was accused by the administration of participating in disruption and of inciting others to illegal actions and violence. After lengthy hearings, the incitement charges (but not those alleging disruption) were upheld by the majority of an elected faculty advisory board, who also recommended by a vote of 5 to 2 that he be dismissed.

Franklin's supporters claim that the dismissal was, in effect, a political firing; others deny the charge that politics were at issue, claiming with equal vehemence that Franklin got his due. Still other observers have questioned whether, politics aside, the decision violates Franklin's rights to free speech under the First Amendment.

Despite the seemingly important issues raised, the case has remained largely a local issue. Interest in the case nationally has been almost nonexistent. Nonetheless, Stanford handled the case with elaborate concern for due process and for its precedent-setting potential on other campuses. The advisory board that heard the case consisted of seven full professors, including (as chairman) biologist Donald Kennedy; physicist Wolfgang Panofsky, director of the Stanford Linear Accelerator; and theolo-

gian and civil rights activist Robert McAfee Brown.* The university hired a Los Angeles law firm to prosecute its case, while Franklin was primarily defended by a Stanford law student, his wife and friends, and himself.

The advisory board took testimony 5 hours a day, 6 days a week, without pause, for what seemed to many an endless 6 weeks, prompting the comment in some circles that Franklin was not worth the time of such eminent and otherwise busy men. Both Franklin and the administration are said to have been satisfied with the hearing arrangements (the hearings were open to the public at Franklin's request) and convinced that they had had adequate opportunity to present their case, a fact that observers attribute to the good humor and effectiveness of board chairman Kennedy. The board members themselves, while admitting that the effort was "utterly disruptive" of teaching and other commitments, felt that it was important to try the case carefully. After hearing nearly 110 eyewitnesses give their accounts, the board spent two additional months in reaching and writing a decision.

The decision itself is, by any standard, a remarkable document,† representing in effect an attempt by laymen to interpret and apply legal precedents to a specific situation. The document concerns itself first with standards for faculty behavior, then with determining the facts of the case, and finally with a discussion of sanctions and recommendations.

The board was unanimous in defending existing standards for faculty conduct. In his defense Franklin charged that the standards under which he was accused were vague and overly broad. Briefs submitted by a group of faculty members and by the ACLU advocated the adoption of standards modeled on criminal law. The advisory board rejected both contentions, asserting that there is a special character to the relation between an academic institution and its members. The decision goes on to spell out standards that board members believe represent a substantial contribution to academic case law, otherwise almost nonexistent, and what they

* Other members of the advisory board were David Hamburg, psychiatry; G. L. Bach, economics and business; Sanford Dornbush, sociology; and David Mason, chemical engineering.
† Single copies of the faculty advisory board's decision are available without charge from the Stanford University News Service, Stanford, California 94305.