Giraud says it's time to refresh the campus memory on the Franklin case

Editor, *Campus Report:*

In a 1978 decision of the Santa Clara Superior Court, Judge John Flaherty invited the reconsideration of Professor Bruce Franklin's firing by the University. That reconsideration may be imminent, and it seems appropriate for the community to refresh its memory of the case and consider some aspects of it that have not received much public attention.

It has been seven years since President Richard Lyman and the Board of Trustees, with the approval of a majority of the Advisory Board fired Franklin, then associate professor of English. Many young professors lost their jobs around that time amid suspicions that it was because of their vigorous opposition to the war in Vietnam and to their institution's complicity in the conduct of the war, but Franklin was probably the only tenured professor in the country to become the victim of a political firing in that era.

Although he had been generally recognized as an extraordinarily able teacher and productive scholar, and despite efforts by other English departments to persuade their institutions to engage him, Franklin remained unemployed for several years because of the circumstances of his dismissal, but finally, after brief stop-gap appointments at Yale and Wesleyan, he obtained both tenure and the rank of full professor at Rutgers University.

Some at Stanford might now be tempted to view all this as a closed chapter in history, one event among many in a tragic era from which we have been happily liberated.

Such is not the case. When Franklin was fired in 1972, the American Civil Liberties Union's Board of Directors voted unanimously to support his suit against the trustees, Lyman and the Advisory Board, holding that the speeches for which he had been fired were plainly protected by the First Amendment.

Creeping through courts

Since then the case has been creeping slowly through the courts. The trustees' attorneys have made every effort to prevent judicial review of the case, disposing of it without reaching the merits.

Even so, feeling obliged to act solely on the basis of the administrative record, Judge Flaherty decided that two of Franklin's speeches condemned by a majority of the Advisory Board are protected under the First Amendment, and then raised the question of remanding the case to the Board for "redetermination of the penalty meted out to Franklin."

There are, broadly, two courses open to the University.

One is to fight intransigently every inch of the way in opposition to revision of a punitive action that, indefensible from the first, is gradually being legally reduced to shreds.

The other is to act in good faith upon Judge Flaherty's invitation and undertake genuine reconsideration of a penalty hastily imposed in the heat of emotion.

President Lyman's original charges have been seriously eroded. At the outset the board rejected the charge that Franklin had disrupted Henry Cabot Lodge's speech. Now Judge Flaherty has disagreed with both Lyman and the Board about the two Old Union Courtyard speeches (on which the Board's opinion was divided). To maintain its extreme penalty, the University must argue that the number of sustainable charges against Franklin is irrelevant, with perhaps only one being enough to warrant dismissal.

ACLU sees a winner

Apart from the embarrassment of a retreat to such a position, the University must face the fact that the ACLU is convinced they have a winning case on the other charges as well, and will not give up. Future court action can lead only to increasingly rigorous scrutiny of the legal standards applied, as well as to additional public attention to the personal bias of members of the Board, the factuality of their findings, and the criteria used for determining the penalty.

The Board's decision was not based simply on factual findings or legal standards, contestable as both are. They also justified dismissal (as opposed to a lesser penalty) by relating Franklin's speeches to a general "pattern of conduct." They accused him of espousing "a perception of reality... which differs drastically from the consensus in the university" and which made his "rehabilitation" likely to fail.

Central to Franklin's unorthodox perception of reality, in the Board's view, were his "deep convictions about the evils of America's foreign and domestic policy and about the inevitable influences of our socioeconomic system in shaping that policy." Two other sentences from their decision (which should be read in its entirety) are revelatory of what they felt was at the heart of Franklin's perception of reality:

"*Essential to this perception* is a mistrust of the allegedly intricate interrelationship between the economic power of America's 'ruling class', and the maintenance of policies that are imperialistic abroad and oppressive at home. *Of crucial importance in the present case* is his expressed view that the University, run by and for this ruling class, possesses substantial institutional guilt for the ongoing prosecution of these policies" (my emphasis).

The Board's obvious horror of this far-from-startling analysis would be ludicrous if they had not used their ideological bias to deprive a colleague of his livelihood, to attack freedom of expression at Stanford and diminish the stature of this institution. It is incumbent on us to decide how far a university should go to defend a firing justified by such an argument.

A far from unimportant aspect of the case is the staggering cost of prolonging the struggle in the courts. In carrying on what appears to many like a personal vendetta against Franklin, the trustees have engaged the services of a legal firm that regularly sends a battery of seven attorneys to court (the ACLU sends one) and has produced a mountain of briefs.

The cost of the Advisory Board hearing alone, for which the University had also hired an outside firm of lawyers, was reputedly enormous. (Franklin hired no attorneys and had to make do with volunteer help, mainly from law students.)

We do not know how much of the University's money the trustees have spent or committed in this case, nor how much the case will have cost years from now when it has reached the court of last appeal. An educated guess based on the going rate for legal services places the cost to date near $250,000. Subsequent costs in a case not even at the halfway mark may well rise in geometric proportion.

An element of serious and legitimate concern is that the law firm engaged to defend the trustees is one on which two of the trustees, Brown and Doyle, are partners (McCutchen, Doyle, Brown, and Enersen).

Conflict of interest seen?

If they are paying costs out of their own pockets, there may be no clear conflict of interest, but, if University funds are involved, there may be grounds for questioning the propriety of this procedure. We have the right to expect that the trustees, who are literally in a position of "trust," not channel University business or money to firms with which they are associated. Indeed, that might also foster the suspicion that, by prolonging the case, the trustees may be serving the financial interests of two of their members.

Every day we have fresh revelations of ways in which the working members of the Stanford community are required to make sacrifices: salary raises for faculty and staff that fall far short of the rise in the cost of living, increases in tuition for students, curtailment of financial aid to graduate students and of affirmative action programs. These painful economics make it all the more urgent to insist on a strict public accounting for the University money spent on the Franklin case.

Decision-making at Stanford is not a democratic process, as Richard Lyman never tires of telling us. Still, there are some more or less representative bodies here that should be raising pertinent questions about the Franklin case in a persistent way: the Faculty Senate, the ASSU, USE, to name a few.

The community has a right to know what is going on, how much it is costing us, who if anyone is profiting, and whether justice is being served in what may turn out to be in the long run a vain, if not ignoble, effort to save face in the Franklin firing.

—Raymond Giraud
Professor of French