

Stanford must reconsider Franklin firing

Stanford University must reconsider whether it should have fired Prof. H. Bruce Franklin in 1972 for having incited violence on campus, according to Judge John Flaherty of Santa Clara County Superior Court.

In a memorandum of decision made public today, Judge Flaherty ordered that Franklin's case should be returned to Stanford for redetermination of penalty, partly because the court determined that one of the actions on which Franklin's dismissal was based was constitutionally protected.

John Schwartz, the university counsel, said today that the question of the penalty against Franklin will be discussed first by the Faculty Advisory Board.

The same board, with a different membership, was the one whose majority recommended Franklin's dismissal in 1972.

Asked if Franklin might be rehired, Schwartz said he did not wish to speculate on what action the current Advisory Board might recommend.

Judge Flaherty's decision today is related to an action last Jan. 4, in which he upheld two charges and struck down a third which were the basis for Franklin's firing.

Franklin was a self-avowed Maoist and member of the now-defunct Midpeninsula revolutionary group, Venceremos. He was fired on the recommendation of five out of seven Advisory Board members, after the board majority determined he had incited violence on three occasions during campus demonstrations in 1971.

The case has been tied up in civil court appeals for years. Franklin is represented by the American Civil Liberties Union.

Last January Judge Flaherty determined that Franklin had indeed incited violence during two out of the three occasions: speeches in White Plaza and at the Stanford computation center.

However Flaherty determined that Franklin's statements on the third occasion, a rally at the Old Union courtyard, were within his rights under the First Amendment to the U.S. Constitution. At the time, Flaherty said his decision "still leaves open the question of whether Stanford should have terminated him (Franklin) or could have taken a lesser penalty such as suspending him."

Subsequently Flaherty asked attorneys for both Franklin and Stanford to submit briefs arguing whether the dismissal decision should be reconsidered, since one of its bases was struck down.

The judge's decision today notes that the Advisory Board based its decision on "the entire record" of his alleged misconduct.

"Because of the fact that the minority of two professors each thought that a suspension rather than termination was an adequate penalty, and in the light of the fact that the court has found that one of the three charges relied upon by the majority involved constitutionally protected conduct," Flaherty's decision says, "the court orders the matter remanded to Stanford University solely on the issue of the penalty to be imposed consistent with this court's opinion."

Franklin is now a full professor of American literature at the Rutgers University campus in Newark, N.J.

Accomplice testifies