

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.

hope will be useful guidelines for other cases of this kind.

But if the board was unanimous in its treatment of standards, it disagreed upon the facts of the case. The charges against Franklin consisted of four points.

1) Franklin contributed significantly to the disruption of a speech by Ambassador Henry Cabot Lodge.

2) Franklin intentionally urged and incited students and others present at a rally to shut down the Stanford Computation Center.

3) During the subsequent occupation of the computer center, Franklin urged and incited persons to disregard police orders to disperse.

4) In a later rally, Franklin urged and incited persons to engage in violent conduct against university property and certain members of the university community.

The advisory board unanimously rejected the first charge and supported the second charge. On the third and fourth charges, however, five members found Franklin guilty, but two members, Kennedy and Brown, dissented, claiming evidence was not conclusive.

The majority of the board argued that the three charges on which they found Franklin guilty constituted a major violation of the professional responsibilities and duties of a Stanford professor, and they recommended that he be dismissed immediately. Kennedy and Brown, however, recommended against dismissal and proposed instead suspensions for one to three academic quarters. Brown urged:

Stanford University will be less a true university without him [Franklin] and more of a true university with him. I fear that we may do untold harm to ourselves and to the cause of higher education unless, by imposing a penalty short of dismissal, we seek to keep him as a very uncomfortable but very important part of what this University, or any university, is meant to be.

Stanford president Richard Lyman adopted the recommendation of the majority and was supported by a majority of the board of trustees. Lyman, in a statement released shortly after the decision, said:

This decision will stand as a landmark in a difficult but essential effort for higher education: to distinguish between the protected free expression of ideas, no matter how repugnant to how many people, and a license to wield any weapon and exploit any opening to attack and bring to a halt the functioning of one of the greatest strongholds of free expression in the world today, the American university.

Announcement of the decision to fire Franklin triggered protests by students and some faculty members. Franklin himself, accompanied by his wife—who was carrying an unloaded carbine—held a press conference at which he expressed the hope that there would be violence at Stanford in reaction to the decision. There were several days of demonstrations, and a referendum brought a tally of 2615 to 2114 students (a relatively large turnout, compared to prior referendums) in favor of retaining Franklin at Stanford. The council of presidents of the student body opposed the dismissal and the *Stanford Daily* editorially condemned the action. But observers of the protest movement at Stanford say that the political left essentially urged the Franklin decision as a springboard for attacking other issues, notably military recruiting at the campus placement center. Thus, despite the inclusion of "Rehire Bruce" in the lists of radical demands, the firing of Franklin seems to have dropped quickly out of sight as an active issue in student political circles.

Advisory Board Members Harassed

There has been a series of arsons, window breaking, paint smearing, and other acts of vandalism, for the most part minor, since the decision was announced, but there is no firm evidence to connect the incidents with the Franklin case. Members of the advisory board, however, have undergone some personal harassment and have had their classes disrupted. In one potentially ugly incident, a firebomb was found outside the residence of an advisory board member, sociologist Sanford Dornbush. Dornbush, who has played an active role in campus antiwar activities, seems, in fact, to have borne the brunt of the harassment, a circumstance that some observers ascribed to his being branded a turncoat for his participation in the majority decision. After the bomb incident, some 200 faculty members signed a statement condemning personal attacks on advisory board members and pledging more than \$5000 for information leading to the arrest and conviction of those responsible for the bomb.

Faculty reaction to the decision seems, on the whole, to have been one of some surprise at the severity of the penalty and concern for its implications. But the decision does not seem to have produced any deep and permanent divisions within the faculty, and most appear to agree with Daniel

Bershad, president of the academic senate, that the trial was a fair one and that Franklin was not censured for his political beliefs.

A dissident group of 70 to 100 persons associated with the Faculty Political Action Group, however, strongly oppose Franklin's dismissal and are attempting to raise funds to contest the decision in civil court. A number of faculty members have publicly condemned the decision. Two-time Nobel laureate Linus Pauling called it "a great blow, not just to academic freedom, but to freedom of speech." Some, such as the chairman of the French and Italian department, Raymond Giraud, went so far as to raise the "possibility that justice had nothing to do with the decision," which Giraud attributed to the need of a new university president (Lyman took office in 1970) to show the board of trustees that he could clean house.

The American Association of University Professors (AAUP) sent an observer to attend the hearings as a check that due process was observed. Although the AAUP made no formal comment on the case, the local chapter is known to have been satisfied. An official in the western division AAUP office told *Science* that he "could not take exception to the [Stanford] administration position" and noted that the case was not unique—there were seven dismissal actions (not all successful) in the California State College system alone in 1971. A national study of academic tenure, cosponsored by the AAUP and the Association of American Colleges, with support from the Ford Foundation, is expected to make some recommendations this summer for modifications in the tenure system.

But if tenure is alive and well at Stanford, there are those who are convinced that respect for civil liberties and freedom of speech is not. Harvard law professor Alan Dershowitz, who is spending the academic year as a visiting fellow at the Center for Advanced Study in the Behavioral Sciences (located at Stanford), became an interested observer in the Franklin case and authored the ACLU brief submitted to the faculty advisory board. Dershowitz believes that the board misapplied the legal precedents in the Franklin case and that they did not properly distinguish between advocacy and incitement. Furthermore, he castigated the Stanford law faculty for not responding to the freedom of speech issue in the case, claiming, in a debate at the law school,

that "this opinion will be a much more dangerous phenomenon in American academic life than the person who provoked the opinion himself, Bruce Franklin."

There is no question that Franklin was a popular and effective teacher. He was also, as one student put it, the only professor at Stanford who both advocated and lived according to Marxist ideas, and thus exposed students to Marxist principles in a fashion that no one not fully committed was capable of. But it was perhaps inevitable that Franklin, who had the habit of signing

his letters "death to all Fascist pigs" and frequently identified the university as part of an educational-industrial complex that he held responsible for the Vietnam war, should clash with the Stanford administration, who correctly identified Franklin's long-range goal as stopping the "normal" activities of the university.

Dershowitz and other civil libertarians have pointed out that the quasi-legal nature of campus hearings—which exclude, for example, the right to challenge prospective jurors—provides fewer guarantees of due process than exist in

criminal law. Thus the dismissal of persons such as Franklin for "just cause," as interpreted by most faculty members in U.S. colleges and universities, may nonetheless result in the weakening of academic freedom. Disagreeing with this view, however, advisory board chairman Kennedy told *Science* that, his dissent on Franklin's dismissal notwithstanding, he believes existing procedures do protect academic freedom. The result at Stanford, in any event, has been to leave the university a quieter, but possibly less interesting, place.—ALLEN L. HAMMOND

Division of Biologics Standards: The Boat That Never Rocked

There can be few graver opportunities for man-made disaster than the mass immunization campaigns that are now routine in many countries. Should the vaccine preparations become contaminated with an undetected agent present in the host cells, such as a cancer-causing virus, a whole generation of vaccinees could be put in jeopardy. This, of course, is no science fiction writer's horror story—it has already happened once; millions of people have been injected with a monkey virus known as SV40, which was found in 1961 to be contaminating polio and adenovirus vaccines. The virus causes cancer in hamsters; no one yet knows what it may do in man.

Short of forswearing all vaccines and inviting the return of epidemic diseases, the necessary safeguard against such accidents is vigilant surveillance and research. The government institution entrusted with this duty is the Division of Biologics Standards (DBS), a 260-man agency set on the campus of the National Institutes of Health, in Bethesda, Maryland. The DBS has recently been the focus of unfavorable publicity. A Civil Service grievance committee recommended censure of the division's management for allowing a DBS research scientist, J. Anthony Morris, to be harassed by his supervisors (*Science*, 25 February), and Morris and his attorney, James S. Turner, have accused the DBS of sci-

entific mismanagement in a document made public by Senator Abraham Ribicoff (D-Conn.) (*Science*, 3 March). The significance of the specific charges raised by Morris and Turner has yet to be determined, but their indictment prompts a number of general questions about the role of the DBS in vaccine regulation. How well has the DBS research program been managed? What are the important decisions that have faced the DBS and how has it approached them? What kind of a track record does the division have in fulfilling its regulatory responsibilities?

These questions are hard to answer from the outside, in part because of the clublike, partly closed nature of the vaccine community. Federal responsibility for vaccines does not rest solely on the DBS, but is diffused over a handful of committees with interlocking memberships. Thus, if the mass annual inoculations against influenza were indeed the "forcing on the public [of] a bogus situation. . . . The vaccine we were promoting was not having any beneficial effects,"* it is not too clear whether responsibility would lie with the DBS for certifying an inefficacious vaccine or with a second body, the

Center for Disease Control's Advisory Committee on Immunization Practices (ACIP), whose function is to decide who should be vaccinated against what. Again, when the typhus vaccine shot into every U.S. Army recruit since World War II turned out in 1969 to be producing insufficient antibody even though it had regularly passed the DBS tests, it was unclear whether the DBS or the Armed Forces Epidemiological Board (AFEB) should claim fatherhood of the fiasco. Federal responsibility for the development of new vaccines is notably imprecise. Both the DBS and another segment of the NIH, the Infectious Diseases Branch of the National Institute of Allergy and Infectious Diseases, are permitted to develop new vaccines, but neither has specific responsibility for doing so.

Besides diffuseness of responsibility, the picture is also blurred by a reluctance among vaccine workers to discuss problems openly when they arise. This is because of the understandable fear that public confidence in vaccines—and vaccine authorities—will be eroded. As one participant—in fact, the chairman of the NIH committee that studied the Morris-Turner charges—said at a recent conference on vaccines: "From our debates on what is best or what is wrong, we are conditioning the public to reject measures that sometimes, in some situations, are very important."† The importance attached to presenting an unruffled surface to the public is exemplified by the SV40 incident of 1961; even when the contaminating virus was found to be oncogenic in hamsters, the DBS and its expert ad-

* A. D. Langmuir, *International Conference on the Application of Vaccines* (Pan American Health Organization, Washington, D.C., December 1970), p. 614. Langmuir, now at the Harvard University Medical School, was formerly head of the epidemiology branch of the Center for Disease Control at Atlanta, Georgia.

† A. S. Benenson, *International Conference on the Application of Vaccines* (Pan American Health Organization, Washington, D.C., December 1970), p. 612.