

SUMMARY OF ADVISORY BOARD REPORTA. THE PROCEEDINGS

President Lyman on March 22, 1971, preferred charges against Associate Professor H. Bruce Franklin under Stanford's Statement of Policy on Appointment and Tenure, indicating his intention to dismiss Professor Franklin on the basis of these charges. Pursuant to Paragraph 15 of the Statement, Professor Franklin requested hearings on the charges before this Advisory Board, composed of seven faculty members elected by the entire Stanford faculty. The hearings covered the period September 28 to November 5, 1971. Final briefs were filed by both parties on December 17, 1971; the Board has also received numerous written statements from other interested groups and individuals.

The following pages summarize briefly the charges against Professor Franklin, the standards used by the Board, findings of fact on the charges, considerations concerning possible sanctions, and the decision of the Board as to the appropriate penalty. In accordance with the Statement, this report has been transmitted to the President of the University.

B. CHARGES

In summary, the four charges against Professor Franklin are:

- 1) On January 11, 1971, Professor Franklin intentionally participated in, and significantly contributed to, the disruption of a scheduled speech by Ambassador Henry Cabot Lodge. Such conduct prevented Ambassador Lodge from speaking, forced cancellation of the meeting, and denied to others their rights to hear and to be heard.

2) On February 10, 1971, a war-protest rally was held in White Plaza. At that rally Professor Franklin urged the audience away from tactics aimed at influencing government policy off-campus. Instead he urged and incited students and others to disrupt University functions by shutting down the Computation Center. Subsequently a shutdown was effected by an unlawful occupation of the Center.

3) Following the unlawful occupation of the Computation Center, Professor Franklin significantly interfered with orderly dispersal in response to police orders by intentionally urging and inciting students and others to disobey the orders to disperse.

4) Following these events, during an evening rally in the Old Union Courtyard Professor Franklin intentionally urged and incited students and others to engage in disruptive conduct which threatened injury to individuals and property. Acts of violence followed.

To establish culpability on the conduct charged, the Board required as standard of proof that strongly persuasive evidence be furnished.

C. FUNDAMENTAL ISSUES AND STANDARDS

The Board held the following principles to be applicable in resolving the issues before it:

1) Rigorous standards of due process should be met by the hearing and associated procedures, but these need not be modeled specifically after the criminal (or any other external) standard. The University context, whether state or private, is a special one.

2) Similarly, standards for the judgment of what speech or conduct may properly be regulated may or may not correspond to those in effect in particular external legal systems.

3) Regulations should not be vague, since a vague regulation may leave a person in doubt about what conduct is permitted; nor overbroad, since an overbroad regulation prohibits conduct which the Constitution guarantees as well as conduct which the institution may legitimately regulate. In the University setting, the identification of proscribed conduct is partly a matter of tradition and partly codification. The Board believes that the concepts of "appropriate function" and "duty" in the Statement of Policy on Appointment and Tenure do reflect commonly understood and accepted standards of conduct, including restraints as well as positive obligations. We also affirm that the Policy on Campus Disruptions provides an explicit though not exhaustive list of conduct which is proscribed under the Statement. We thus do not accept the contention that the rules and understandings governing faculty conduct are vague or overbroad.

4) Advocacy is punishable, if it is directed to inciting or producing imminent lawless action, and is likely to produce such action; lawless action here refers to conduct proscribed by state or local laws, by the Policy on Campus Disruptions or other campus regulations, or by commonly-held understandings in the University community. Advocacy is also punishable if the advocate knowingly increases the likelihood of injury to persons.

D. FINDINGS OF FACT1. Lodge Incident.

The Board accepts as accurate the University administration's contention that the speech to be delivered by Ambassador Lodge was disrupted to such a degree that it was reasonable to cancel the meeting before the speech could be given. This contention does not directly connect Professor Franklin with the events that are the subject of the charge; accordingly, his personal culpability is not demonstrated by the Board's agreement with this description. The Board finds strong evidence, however, that a large number of those in the audience denied others the right of speech, hearing and assembly on this occasion, and considers such actions destructive to the fundamental values of the University.

The Board does not, however, feel that it has been presented with strongly persuasive evidence that Professor Franklin's conduct included "chanting and clapping" as specified in the charges. He did engage in "loud shouting" on at least two occasions when the rest of the audience was quiet, and possibly at other times as well, but there is not strongly persuasive evidence that Professor Franklin participated in the kind of disruptive conduct charged, in particular while Ambassador Lodge was at the podium. Accordingly the Board unanimously holds that the specific charges against Professor Franklin in connection with this incident are not sustained.

2. White Plaza Rally

At the White Plaza rally at noon on February 10, Professor Franklin gave the concluding speech. It was followed by an illegal occupation of the Computation Center by several hundred persons, many of whom had attended the

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rally. The occupation posed a grave danger to the facility and the research projects that depend upon it; there were no explicit group understandings before the occupation to avoid damage to the machine or to stored data.

The Board considered the background that provides context for this rally and the events that followed it. These included the invasion of Laos, resulting in protests of various kinds on the campus, and a rally the evening before in Dinkelspiel Auditorium. At that rally, which was attended by Professor Franklin and many of the Computation Center occupiers, the vulnerability of computers was discussed and the Center was selected as a tentative target for the next day.

In light of this background, Professor Franklin had reason to expect that his speech was given to an audience already prepared for illegal actions. At the conclusion of his speech, he said: "See, now what we're asking for is for people to make that little tiny gesture to show that we're willing to inconvenience ourselves a little bit and to begin to shut down the most obvious machinery of war, such as, and I think it is a good target, that Computation Center.

The Board does not accept Professor Franklin's argument that he was in fact discussing a "strike" or a "voluntary boycott"; that was not the main tone of the discussion at the previous rally, nor is it consistent with the preparations for action. The Board is thus strongly persuaded that, given the context of the speech, Professor Franklin did intentionally incite and urge persons at the White Plaza rally to occupy the Computation Center illegally. We therefore unanimously sustain the University administration's charge regarding this incident.

3. Computation Center Incident

After the Computation Center had been illegally occupied for about three hours, during which time some damage had occurred and the occupiers had refused University requests to leave, police declared the occupation unlawful and ordered the demonstrators to disperse. After police had cleared the building, many persons were moving away from the building, as ordered, but some, including Professor Franklin and other members of the "movement," stayed immediately in front of the police line near the building, protesting the order to disperse. When a police official denied Professor Franklin's protest, Professor Franklin strode into the crowd, denying the legality of the police order to disperse and shouting at Professor Moses to stay as a "faculty observer." Professor Franklin testified that he believed a police charge and arrests were almost certain under the circumstances.

After urging Professor Moses to stay, Professor Franklin then returned to confront the police officer in charge; he testified that he addressed only the police officer and he denied urging or inciting anyone else to remain. But at least three witnesses testified specifically that as he turned away from Moses, and with numerous demonstrators between him and the police 40-60 feet away, Professor Franklin was urging the crowd to defy the police order. Professor Franklin produced no witnesses who directly contradicted this evidence; most of his witnesses were close to the police line and could not observe his actions during this period. Indeed, five of his own witnesses contradicted his version of the spatial relationships. As Professor Franklin returned to the police line, others returned with him, and the general dispersal of the crowd was reversed. Following a further brief, angry confrontation between Professor

Franklin and the police, an attempt was made to arrest Professor Franklin, and the police line charged, dispersing the crowd, with arrests and minor injuries to some persons.

We conclude that the police order to disperse at the Computation Center was clearly reasonable. We find the evidence strongly persuasive that Professor Franklin did intentionally urge and incite others to disobey the order to disperse, thereby increasing the danger of arrest or injury to those present, a risk of which many were unaware. The Board therefore sustains this charge.

Professors Brown and Kennedy, while agreeing that Professor Franklin's behavior may have induced members of the crowd to stay, do not find the evidence strongly persuasive that he intentionally urged and incited them to do so, and therefore do not sustain the charge.

4. Old Union Courtyard Rally

On February 10, 1971, about 350 people attended an evening rally in the Old Union Courtyard. Speakers debated demands and tactics. The situation was tense: there was resentment toward the war, the police, and the University; the occupation of the Computation Center and the police charge had occurred that afternoon; the preceding four days had been marked by arson, false fire alarms, fire bombing, breaking of windows, bomb threats, fighting between demonstrators and other students, disruption of the Trustees' meeting, and occupation of the Old Union.

Professor Franklin made two speeches at the rally. His first speech, emotional and intense, linked the struggle at Stanford with the struggle in Southeast Asia. He drew parallels between the occupation army on campus and imperialist forces in Asia. His briefer second speech, in which he urged

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action that night to bring more police on campus and thereby relieve police pressure on the ghettos and barrios, was the last speech at the rally. There is substantial agreement between Professor Franklin and witnesses for the University administration as to the content of the second speech. Professor Franklin said that militant action in large groups would be suicidal, given the number of police on campus. He urged responding with "the methods of people's war." Professor Franklin said that he "ended by telling people that people's war meant that they should go back to the dormitories, organize people into small groups, and talk with them, or play football, or whatever, as late into the night as possible." Violent acts followed.

Professor Franklin must have known that the circumstances under which he spoke involved a high risk of subsequent violence. He urged responses to the police and the University at many levels of action. His speeches sought to generate further hostility toward these targets and, with deliberate ambiguity, he urged immediate retaliation against them by both legal and illegal means. The specific tactics to be used were left to the judgment and imagination of each individual and small group. His message included a general call to employ immediately a range of action including violent and illegal behavior.

The Board is strongly persuaded that Professor Franklin intentionally urged and incited his audience to engage in conduct which would disrupt activities of the University community and threaten injury to individuals and property; it therefore sustains the charge.

Professors Brown and Kennedy, while agreeing that the situation was one of risk, place a different interpretation on the context of Professor Franklin's speeches. They do not find the evidence regarding the content of his second speech sufficient to sustain the charge.

E. SANCTIONS

The Board has considered various elements that might enter the consideration of penalty, given a finding of fact that would justify a range of substantial sanctions.

Professor Franklin engages in a pattern of conduct that constitutes a continual challenge to the institution: he states that he wishes to encourage violent and coercive actions, but at the same time not to risk the loss of his position in the University. This pattern of conduct, however, is guided by a set of perceptions which differ markedly from those of most faculty members: Professor Franklin views the University as a central agent in domestic repression and in an imperialist foreign policy.

These facts make it necessary for the Board (1) to consider carefully what implications Professor Franklin's pattern of conduct may have for the efficacy of various possible penalties, and (2) to enter as sympathetically as possible into the perception of reality he espouses, so as to make a fair evaluation of such mitigating factors as necessity and sincerity of conviction.

In applying such considerations, it is important to balance Professor Franklin's rights as an individual against those of others in the University upon whom his conduct may infringe, and against the functional integrity of the institution. Where there is doubt, such external considerations should be applied asymmetrically in Professor Franklin's favor.

The Board considers probation and very long suspensions to be unworkable. The range of penalties from one quarter without pay to dismissal encompasses substantial penalties, but in the Board's view that range is justified by the gravity of the charges.

F. DECISION

The Board, having sustained the University administration's charges involving the White Plaza rally, the Computation Center incident, and the Old Union rally, believes that immediate dismissal of Professor Franklin from the University is warranted. The Board recommends that he be paid a sum equivalent to his salary until August 31, 1972.

Professors Brown and Kennedy dissent from this recommendation, having sustained only the University administration's charge involving the White Plaza rally. They recommend that Professor Franklin be suspended for one quarter without pay; Professor Kennedy recommends an additional quarter of suspension with pay to extend through June 1972.

Professor Brown has appended an argument against dismissal even if all charges are sustained.

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