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TO THE MEMBERS OF THE STANFORD COMMUNITY:

On behalf of the American Civil Liberties Union of Northern California, we write to protest the star-chamber quality of a "hearing" currently being conducted by the Stanford administration and its Advisory Board in the matter of former Professor H. Bruce Franklin.

As the University Administration is attempting to conceal the facts of Professor Franklin's case from the Stanford community, though issues in the suit have a serious impact on academic freedom far beyond Professor Franklin's particular situation, it is vital that the university community be made aware of the history and current status of the litigation:

- Professor Franklin, a nationally respected scholar of literature, was the first, and only, tenured member of the faculty ever to be fired by Stanford University.
- Professor Franklin was fired explicitly for delivering four speeches in 1971, denouncing Stanford's complicity in the Vietnam war and police suppression of an anti-war demonstration on campus. Those speeches, in the ACLU's view, are expressions of political dissent protected by the First Amendment. For that reason, in 1972, the ACLU decided to provide legal representation to Professor Franklin in a court challenge to this dismissal, and continues to represent him before the Advisory Board.
- The Santa Clara Superior Court in 1978 ruled that two of the speeches for which Professor Franklin was discharged are constitutionally protected, and ordered the university hearings to be re-opened to reconsider the penalty of dismissal.
- The Administration and its Advisory Board have now decided that the new court-ordered Advisory Board hearings will be held in private and allow for only two written comments as the sole presentation on Professor Franklin's behalf. The procedures ordered for the new hearings violate Stanford's own Rules for the Conduct of Hearings and fundamental principles of due

process. The Board will follow procedures which deny Professor Franklin the right to introduce any evidence, the right to an open hearing, the right of access to information critical to his defense, the right to address the Board members, the right to full representation on the Board by members of Professor Franklin's School of Humanities and Sciences, and the right to an unbiased panel.

HISTORY OF DISMISSAL

Professor Franklin is nationally recognized as a brilliant writer, scholar and teacher; even the Advisory Board which recommended his termination eight years ago conceded his "exceptional competence" as an English professor. He was fired explicitly for delivering four speeches in 1971, at the height of campus protest against the escalating war in Southeast Asia. In those speeches, Professor Franklin condemned Stanford's active involvement in the military effort in Vietnam and the police dispersal of an anti-war rally on campus. Specifically, Professor Franklin denounced a secret computer program being run in Stanford's Computation Center. Known as "Gamut H," that program was a plan for a potential amphibious invasion of Indochina, and, as classified research, was illegal under the University rules.

Professor Franklin's termination by the Stanford Trustees followed a hearing before the Stanford Advisory Board in 1971. In many ways, that hearing failed to satisfy the requirements of fundamental fairness: for example, the University expended substantial resources to hire a team of attorneys from a large law firm in Los Angeles, while Professor Franklin, who had no such financial resources, was forced to defend himself with the assistance of a changing cast of committed volunteers. Nevertheless, a hearing was held, as the Statement of Policy on Appointment and Tenure required. Its result: five members of the Board voted to discharge Professor Franklin; two members of the Board, Donald Kennedy and Robert McAfee Brown, believed a far less severe sanction (temporary suspension) should be imposed. Both recommendations were presented to President Lyman and the Board of Trustees, who chose termination.

ACLU INVOLVEMENT

Professor Franklin, without the finances to challenge Stanford University and its phalanx of lawyers in a protracted legal battle, turned to the American Civil Liberties Union for help. Members of the Stanford community, both enemies and supporters of Professor Franklin, barraged the ACLU with letters, telephone

calls, and visits. Considerable pressure -- unique in our experience -- was applied in an attempt to prevent or promote the ACLU's intervention in the suit.

A painstaking review of the case was conducted. Academic freedom experts at the ACLU's national headquarters in New York analyzed the bulky file. The ACLU's Northern California Legal Committee, comprised of some of the Bay Area's most distinguished attorneys, discussed the case at length. The ACLU of Northern California's Board of Directors reviewed the 140-page Advisory Board report which recommended Professor Franklin's discharge. Written legal analyses of the case were circulated to all ACLU members in Northern California (over 17,000) and their views were solicited. Finally, the controversy culminated in an oral debate on the case presented before the ACLU Board of Directors between constitutional law scholars Gerald Gunther of Stanford and Alan Dershowitz of Harvard.

At the conclusion of this thorough evaluation process, in March of 1972, the ACLU's Board of Directors voted unanimously, 20 to 0, to represent Professor Franklin.

The ACLU made this decision fully aware of this lawsuit's tremendous drain on our limited resources. But we felt that the time and expense were justified by two aspects of the case. First, Professor Franklin's speeches, characterized by the Stanford Administration as "incitement to misconduct," are expressions of significant political dissent plainly protected by the First Amendment. Second, Professor Franklin's firing was a blow to academic freedom which posed a critical threat to civil liberties: if unchallenged, the Franklin discharge symbolized a loaded gun held to the head of any faculty member who might wish to voice controversial positions on matters of public concern.

We have never retreated from those views of the Franklin case. We never will.

THE LAWSUIT

Since the ACLU originally filed a lawsuit in August, 1972, claiming that Professor Franklin's discharge violated his constitutional rights, the Administration and Trustees, defendants in the suit, have spent over a quarter-million dollars of the University's money to defend their actions in court. That expensive effort has not been successful.

In 1978, after six years of protracted litigation, the Santa Clara Superior Court ruled that two of the four speeches for which Professor Franklin was dismissed were protected by the

First Amendment, and that the Administration had violated Professor Franklin's constitutional rights by punishing him in part for protected speech. In light of its ruling, the Court ordered the matter returned to Stanford for reconsideration of the penalty inflicted on Professor Franklin.

CLOSED DOOR HEARING

We believe that the members of the Stanford community have a right to know both the procedures by which that court-ordered reconsideration of Professor Franklin's dismissal is to be conducted and the basic grounds for the University's ultimate decision on sanction. The Administration apparently opposes the concept of community awareness of the Franklin case, and has used every weapon in its arsenal to prevent a fair and open reconsideration of Professor Franklin's discharge.

First, the Administration attempted to delay any reconsideration at the University, by seeking to block the court-ordered rehearing until the Court of Appeal reviewed the finding that two of Professor Franklin's speeches were constitutionally protected. The Administration petitioned for a delay three times; its request was unanimously rejected three times by the Superior Court and the Court of Appeal. Those rulings, a major legal defeat for the Administration, were then distorted by its press office in its publication, Campus Reports, to conceal the fact that the Administration had strenuously and unsuccessfully resisted having the Bruce Franklin case returned to the Stanford community.

Second, having distorted the facts surrounding the new Franklin hearing, the Administration is proceeding to conceal the hearing itself from the University. How? By ordering its Advisory Board to conduct a closed-door rush to judgment and complete its "deliberations" so that President Lyman can issue his decision "no later than the end of May."

And the Advisory Board has been very compliant, revoking each and every procedural protection granted by the 1972 Advisory Board, specified in the 1973 Rules for Conduct of Hearings for Faculty Discipline, and compelled by fundamental notions of fairness. According to procedures adopted by the Board last week:

- (1) Professor Franklin has been denied the right to introduce any evidence.
- (2) Professor Franklin has been denied the right to an open hearing.

- (3) Professor Franklin has been denied the right to an oral argument by counsel before the Advisory Board members.
- (4) Professor Franklin has been denied the right to address the Advisory Board members personally.
- (5) Professor Franklin has been denied the right to a seven-person Advisory Board, and specifically to full representation on the Board by members of his School of Humanities and Sciences (a majority of whom, in 1972, voted not to terminate him.) After a regular member of the Board from the School of Humanities and Sciences withdrew from this case, the Board refused to seat his alternate.
- (6) Professor Franklin has effectively been denied the right to challenge Advisory Board members for cause, by the refusal of the Advisory Board members to divulge any information regarding their prior involvement in the events in question or their relationship with Professor Franklin.
- (7) Professor Franklin has been denied the right to review or submit public records documenting the discipline inflicted on other Stanford professors found to have engaged in serious misconduct. In Professor Franklin's hearing, the Board is charged with redetermining a penalty for a tenured faculty member who "urged and incited" violence. As a matter of public record, there are faculty members at Stanford who committed violence, and suffered punishment far less severe than dismissal. Certainly, a fair and non-discriminatory sanction should be consistent with the standards for the Stanford community, particularly when the case concerns an individual whose ideas are as controversial as Professor Franklin's. Yet the Board calls those other penalty determinations "not relevant" and will neither permit the ACLU access to those public records nor consider them in deciding whether to rehire Professor Franklin.

These extremely restrictive procedures violate the Rules for the Conduct of Hearings, the Board's own prior procedures and fundamental principles of academic due process. Both the Administration and its Advisory Board are apparently willing to jettison even the forms of justice in their haste to put this case quietly behind them this month.

Perhaps the most disturbing and revealing manifestation of the approach adopted by the Administration and Advisory Board is the refusal to allow any oral argument at a public hearing because, in the words of the Board's counsel, "The Board does not consider that oral argument would be helpful." The 1973 Rules grant

a faculty member an absolute right to an open hearing, at his or her request, in a room which may accommodate at least 100 people, with broadcasting to the rest of the community by KZSU radio. Moreover, the Rules grant a right to oral argument, limited only by a provision that argument consume "no more than one day" for each party. (We requested two hours.) Here, the Board is infringing not only Professor Franklin's right to procedural due process, but your right to know how the University administration conducts its significant trials.

What evidence has the Board allowed for its reconsideration of the firing -- or "academic capital punishment" -- of a tenured faculty member? The Board will accept two written statements from Professor Franklin's attorneys and from the Administration's counsel. Thus, Professor Franklin has been relegated to a star-chamber, closed-door, "reconsideration," which is proceeding at breakneck speed: the Board members will meet privately, probably within the next month, and release their decision in early summer.

ACADEMIC FREEDOM

We are dismayed by the treatment afforded Professor Franklin, in part, of course, because he is the ACLU's client, and we wish to see him receive a full and fair hearing. But it is not this legal representation which impels us to protest. Rather, we speak out as the American Civil Liberties Union, an organization dedicated to the preservation of the fundamental principles of due process and the public's right to know. As civil libertarians, we must be, and are, appalled at the spectre of a major university trampling on the rights of a tenured faculty member, disregarding its own procedures, and concealing these actions and their implications from members of its community.

The Superior Court has refused to intervene at this stage of the Advisory Board proceedings. We intend to raise all these procedural defects, and the fundamental unfairness of the entire proceeding, after the University decision is released and the case returns to court.

But this issue should not be viewed simply as a legal dispute. Nor should this matter be dismissed as the lonely battle of Professor Bruce Franklin, perceived by some as a banished and forgotten figure from Stanford's distant past. These due process violations are occurring now, and they stem from manipulations of terms of the tenure contract and Rules of Conduct which are supposed to protect all faculty members. What about the next faculty discipline case at Stanford? Which procedural protections will then be sacrificed in the interests of administrative expedience?

It is for these reasons that we have brought these issues to your attention. Ultimately, what is at stake here is not the fate of Professor Franklin but due process and freedom of speech at this University; and it is you, the men and women of Stanford, who must cherish and protect these rights if they are to survive.

Sincerely,


Dorothy M. Ehrlich
Executive Director

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