

Franklin resumes his fight

Fired Stanford professor
appeals to judicial panel

By Mary Madison
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Free speech and campus protests were hotly debated Thursday in the 8th District Court of Appeal during a hearing on H. Bruce Franklin's fight to regain his job as a tenured professor at Stanford University.

Franklin, 51, has been suing Stanford since he was fired in 1972 for speeches he gave at the height of campus demonstrations against the Vietnam War.

Now an English professor at Rutgers University in New Jersey, Franklin is the first and only tenured faculty member ever to be fired at Stanford.

Presiding Justice Edward Panelli of the three-judge San Jose panel said the case was an important one for the court and commended lawyers on both sides "for the quality" of their briefs and arguments. A decision on the case is expected within 90 days.

Franklin said he will appeal to the state Supreme Court if the district court rules against him. He has already lost decisions in the case before Stanford's Faculty Advisory Board and in Santa Clara County Superior Court.

Franklin is challenging his dismissal for allegedly inciting about 700 people at a White Plaza rally to shut down the university computer center, for inciting students and others to disobey an order to disperse given by sheriff's deputies at the computer center and for another speech at the Old Union courtyard. At the Old Union he allegedly incited students and others to disrupt more university functions that led to injuries and property damage.

At Thursday's hearing, Stanford sought to eliminate the constitutional issue of free speech, which is the cornerstone of Franklin's case.

San Francisco lawyer David Heilbron, arguing for Stanford, put the entire matter in the context of an employer dismissing an unruly employee.

"This is a case of academic freedom, but Mr. Franklin has got it backwards," said Heilbron. "The (Stanford Faculty Advisory) Board believed the university could not survive if it permitted force and violence to accomplish goals. Mr. Franklin used force and violence to accomplish his goals, and therefore he struck at the heart of what a university and academic freedom are all about."

"That is why a board of his peers found his dismissal an appropriate remedy to match the gravity of that offense," Heilbron said.

However, Alan Schlosser, an attorney for the American Civil Liberties Union which is representing Franklin, said, "We are not

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dealing with force or violence, but with free speech. ... At the worst, we are at the elusive borderline between advocacy and incitement."

Heilbron disagreed. "This is not a constitutional case," he said. "This is a private contract case between two parties."

Heilbron sought to persuade the court that no further review of the facts and lower court arguments was necessary to decide the issue. The ACLU argued that "constitutional privilege" gives Franklin the right to a full independent review of the case by the District Court of Appeal.

"The fact that Professor Franklin was an employee in no way diminishes his First Amendment rights ... particularly where he was

speaking out on the Vietnam War and Stanford's complicity in the Vietnam War," ACLU lawyer Margaret Crosby told the court.

"Employees are in the best position to speak out against wrongdoing by their employers because they are in the best position to know," she said.

She denied that Franklin had incited his listeners to riot, adding, "You can punish the acts, but not the words of advocacy."

Crosby noted that none of the other faculty members or students who acted to shut down the computer center had been punished and that anti-war protests by other professors, such as sit-ins, never received university discipline. Only Franklin was singled out, she said.

"Stanford is a powerful and prestigious institution," Crosby said. "Here is a professor who is a communist, whose views are repugnant, a persistent critic of the university. They wanted to get rid of

him, and they did get rid of him. The price paid was a blow to academic freedom."

Crosby said that Franklin did not violate any written university policy in giving his speeches, which she said were intended to encourage his audience to show the community's wrath at the Stanford computer being used to program an amphibious assault on North Vietnam.

Associate Justice Harry F. Brauer asked, "How relevant is that? Would that justify bombing the building?"

He said that speech leading to lawless conduct is not protected by law. As for the lack of written university rules about such activities, he said, "There is no university rule against murder either."

Franklin was "not advocating immediate destruction of university property," but instead was urging workers to join the anti-war movement and suggesting a volun-

tary boycott or shutdown of the computer, Crosby said.

Justice Panelli pondered whether Franklin's actions could be seen as a violation of his teaching contract "because he exposed students to serious harm."

Heilbron said that when Franklin addressed the crowd at White Plaza "there had been days of violence, there was electricity in the air, he was a leader of the movement. At the end of the rally he told the crowd what to do: 'Shut down that most obvious machine of war,' and they did it. They pulled out the wires and shut it (the computer center) down."

Later at the center when Franklin argued against the order to disperse, Heilbron said, "He knew he risked students to serious injury or arrest, but he did not warn them."

"Anyone with any common sense knows a professor shouldn't go around campus inciting violence and disruption," Heilbron said.