

## Penn ordered to pay researcher \$2.9 million for scrapping project

by L. Stuart Ditzen  
Knight Ridder Newspapers

The Pennsylvania Supreme Court has ordered the University of Pennsylvania to pay \$2.9 million to a professor for destroying a unique cancer-research project the man had spent 20 years developing.

The high court said it had "little difficulty" in concluding that officials of Penn's School of Veterinary Medicine had worked an injustice on faculty member Jorge F. Ferrer, 71, whose research program collapsed when he was barred from it in 1991.

The 3-2 ruling, issued Dec. 31, upheld a 1998 Philadelphia Common Pleas Court jury verdict in Ferrer's favor. The Supreme Court, however, reduced the jury's \$5 million award, saying \$2.9 million plus interest was the maximum justified by the evidence.

The state Superior Court earlier had vacated the jury's verdict on the basis that Ferrer, who remains a faculty member at the veterinary school, had not suffered financial harm.

Ron Ozio, a spokesman for Penn, declined comment last week, saying university lawyers

had not seen the Supreme Court ruling.

Thomas A. Sprague, an attorney for Ferrer, said the court's ruling struck a blow for academic freedom.

"What happened here was nothing short of outrageous," Sprague said. Ferrer "was one of the country's leading scientists, and he had a cutting-edge research program until it was killed by the university."

In a 36-page opinion, Chief Justice Stephen A. Zappala said Ferrer, a physician and microbiologist, had been recruited to Penn from Stanford University in 1969 to study bovine leukemia. Ferrer's goal was to develop a model for the study of leukemia in humans.

Over two decades, Zappala wrote, Ferrer obtained independent funding, built a research staff, and developed a unique herd of cattle at the veterinary school's New Bolton Center, a 600-acre farm in Kennett Square used for teaching and animal research.

In 1990, a controversy arose when children visiting the New Bolton Center were permitted to handle lambs from Ferrer's research program that had been inoculated with a leukemia virus.

The lambs, under research protocols, should have been restricted from contact with visitors.

A university committee investigated and concluded that the lapse was minor and that Ferrer was "not guilty" of misconduct.

Under the rules of the university, Zappala said in his opinion, the matter should have been dropped at that point and the dean and provost of the veterinary school should have made efforts to "repair any damages" to Ferrer's reputation.

Instead, Edwin Andrews, then the dean of the veterinary school, barred Ferrer from continuing his studies for two years.

Andrews also sent a letter to the Kleberg Foundation, which funded Ferrer's research, reporting that the professor had made "serious errors" in judgment.

As a result, Zappala wrote, Ferrer's leukemia studies were halted, his funds dried up, his research staff disbanded, and his carefully developed herd of cattle was sold.

"The effects of the sanctions," the justice wrote, "were devastating."

## Bush opposes university's affirmative action policy

by Steven Thomma  
and Diego Ibarguen  
Knight Ridder Newspapers

Wading into a racially charged issue that has polarized Americans for two generations, President Bush said Wednesday that he would challenge the use of racial preferences in admissions to public universities while proposing an alternative way to guarantee diversity in college classrooms.

Bush's challenge could prove to be a historic turning point in America's efforts to overcome its legacy of racial discrimination. If the Supreme Court follows his approach, efforts to achieve diversity in higher education - and by extension, in other institutions throughout society - could shift to standards based on merit tests or socioeconomic class rather than race.

The president instructed administration lawyers to make the argument in a brief filed Thursday at the Supreme Court, in a case challenging the use of racial preferences in admissions at the University of Michigan. It is the first time the high court has considered a challenge to affirmative action in college admissions since 1978, and its ruling could affect all public colleges. The court will hear oral arguments in March.

Bush's move comes at a time when race, always a strong undercurrent in American politics, has re-emerged as a dominant issue. His two-step approach Wednesday aimed to take back the initiative on racial politics by simultaneously appealing to two groups, conservatives who oppose racial preferences and moderates who want to see the government help minorities get a leg up.

"I support diversity of all kinds, including racial diversity in higher education," the president said in a brief, televised statement from the White House.

"But the method used by the University of Michigan to achieve this important goal is fundamentally flawed. At their core, the Michigan policies amount to a quota system that unfairly rewards or penalizes perspective students solely on their race."

Bush criticized the Michigan system as fundamentally unfair and unconstitutional. He noted that the point system it uses to grade applicants assigns more points for being a racial minority than for getting a perfect score on the SAT test.

"The motivation for such an admissions policy may be very good, but its result is discrimination, and that discrimination is wrong," the president said.

He said the country should look to a different way of assuring diversity in admissions. He pointed to systems in California, Florida and Texas that guarantee admissions for the top graduates of every high school. Those color-blind systems have maintained diversity in the state college systems without overtly using race as a criterion.

"In these states," he said, "race-neutral policies have resulted in levels of minority attendance for incoming students that are close to, and in some cases slightly surpass, those under the old race-based approach."

Bush decided on a "narrowly tailored" legal attack that addresses only the policies at the University of Michigan, without categorically arguing that race never can be a factor in admissions.

The president weighed in on affirmative action at a time when race has surged back to the forefront of American politics.

He and his Republican Party found themselves on the defensive last month when Republican Sen. Trent Lott of Mississippi appeared to endorse former Sen. Strom Thurmond's 1948 segregationist presidential campaign. Bush condemned the remarks and helped engineer Lott's ouster as Republican leader in the Senate, but then opened a new round of criticism when he renominated Charles Pickering of Mississippi for the federal bench, a man Democrats accuse of racial insensitivity.

Democrats vowed to fight Bush, casting his opposition to racial preferences as opposition to minorities.

"President Bush had a chance to show he supported civil rights and diversity, but he failed," said Sen. John Edwards, D-N.C., who is running for president.

"Once again today, the administration has said as clearly by their action as anyone can that they will continue to side with those opposed to civil rights and opposed to diversity in this country," said Sen. Tom Daschle, D-S.D., the Democrats' leader in the Senate.

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