

Academic Freedom and Tenure: Philander Smith College (Arkansas)¹

This report concerns (a) the dismissal, effective November 6, 2002, of Professor Janice S. Chaparro from the faculty of Philander Smith College on stated grounds of insubordination; (b) the termination of the appointments, effective December 31 that year, of four other full-time faculty members on stated grounds of need to reduce the size of the college's faculty and staff; and (c) the earlier termination of the services of a program director who sought the assistance of the Association based upon her faculty function of teaching courses at the college.

Philander Smith College, the oldest historically black college in Arkansas, was founded in Little Rock in 1877 as Walden Seminary. Renamed in honor of a major donor, it was chartered in 1883 as a four-year, coeducational liberal arts college and has been accredited since 1949 by the North Central Association of Colleges and Schools. The college is affiliated with the United Methodist Church, and the bishop of the United Methodist Church of the Arkansas area sits on the college's governing board.

At the time of the events discussed in this report, the student enrollment was approximately eight hundred, and the faculty numbered forty-five. Dr. Trudie Kibbe Reed, the first woman to become president of Philander Smith College, was appointed to that office in 1998. Dr. Reed received the BA and MSSW degrees from the University of Texas at Austin and the EdD degree in adult and higher education from Columbia University. Prior to going to Philander Smith, Dr. Reed served as director of leadership studies and dean of the Leadership Institute at Columbia College in South Carolina.

During the academic year 1978–79, the Association investigated the dismissal of three professors at Philander Smith College and found the administration's actions to be in violation of the 1940 *Statement of Principles on Academic Freedom and*

Tenure and the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*. Censure was imposed by the Association's annual meeting in 1980. The following year, with a new administration in office, settlements were reached with the three dismissed professors, and college policies were revised to comport with Association-supported standards. Censure was lifted by the 1981 annual meeting.

I. Background

The dismissal of Professor Janice Chaparro and the termination of the appointments of other faculty members to be discussed in this report grew out of events surrounding a condition of financial exigency announced by President Reed in September 2002. On September 3, the college received notice from its health insurance vendor of a sharp increase in insurance premiums that, in the view of President Reed and the board of trustees, put the college's financial stability at risk. In a September 25 memorandum to faculty and staff, the president provided details of the financial shortfall and announced the appointment of a four-member budget task force to develop a plan to deal with the college's financial crisis. Among the actions necessary "to maintain a balanced budget and to continue the operations of the College," according to President Reed's memorandum, were the freezing of new positions, the elimination of faculty and staff positions, and the reduction of some faculty and staff salaries. Carolyn Valdez, the chief financial officer, and Maxine Allen, dean of chapel, were charged with making recommendations concerning staff positions and administrative reorganization. William Lindsey, dean of instruction, and Professor William Woods, the faculty representative to the board of trustees, were charged with developing criteria to evaluate faculty positions and with identifying faculty positions to be eliminated. Dr. Louise Miller, an external consultant, was hired to work with the budget task force as it formed its recommendations.

Over the course of the next several weeks, according to faculty members interviewed by the undersigned investigating committee, members of the staff were asked to submit answers to a questionnaire concerning their views about the direction of the college under President Reed's leadership. Academic administrators were also asked in some cases to submit performance evaluations of faculty members. According to their final

1. The text of this report was written in the first instance by the members of the investigating committee. In accordance with Association practice, the text was then edited by the Association's staff, and, as revised, with the concurrence of the investigating committee, was submitted to Committee A on Academic Freedom and Tenure. With the approval of Committee A, the report was subsequently sent to the faculty members at whose request the investigation was conducted, to the administration of Philander Smith College, and to other persons directly concerned in the report. In light of the responses received, and with the editorial assistance of the staff, this final report has been prepared for publication.

report to the president, Dean Lindsey and Professor Woods met privately on October 4 to “set criteria by which to evaluate faculty for possible elimination or reassignment” and to “identify those faculty whose positions may need to be eliminated or reassigned.”

President Reed accepted the recommendations of the budget task force to eliminate six faculty positions and nine staff positions and to adjust salaries identified by the task force as out of line with the salaries of others. As part of this process, the salaries of the four social work faculty members, including Professor Janice Chaparro, were each to be reduced by \$10,000. The recommendations of the budget task force were approved by the board of trustees on October 30 and announced by President Reed to the faculty and staff on October 31.

Within days of the president’s announcement, the media began to report on the financial crisis at the college and the attendant layoffs of faculty and staff. After receiving telephone calls from the media and accrediting bodies that, according to President Reed, had been given inaccurate information about the college’s financial problems and the steps taken to address them, she drafted a November 4 “presidential directive” requiring that employees’ communication with the media and other agencies about internal college business first be approved by her office. Failure to comply would be considered insubordination and grounds for immediate dismissal. The directive, which the president contended was merely a restatement of a long-standing policy at Philander Smith College, was approved by the college’s attorney and the chair of the board of trustees before its distribution to faculty and staff.

II. The Chaparro Case: A Brief History

Professor Janice S. Chaparro received a bachelor’s degree from the University of Chicago and the MSW degree from the University of Pennsylvania. Before going to Philander Smith College in March 1997, she served on the faculties of Rutgers University and the University of Arkansas at Little Rock. At Philander Smith, she held an appointment as assistant professor of social work from March 1997 to September 1998, served as an adjunct professor in the spring of 1999, and returned to a full-time appointment as an assistant professor in November 2000.

On October 31, 2002, Professor Chaparro and the three other faculty members in the social work department received notice from President Reed that, as part of the college’s plan to address the financial exigency created by an unanticipated rise in health insurance costs, their salaries would be reduced by twenty-five percent. On the next day Professor Chaparro, who states that she had become aware of a college press release just issued that addressed current “reorganization” in terms of positive developments, sent an e-mail to the *Arkansas Times* and the *Arkansas Democrat-Gazette* emphasizing negative aspects of the reorganization for faculty, staff, and students.

Believing that members of the social work faculty had been the source of misinformation reaching the press, President Reed called the department’s faculty members to her office on November 4. The president, who was herself initially absent from the meeting, had instructed Professor William Woods and Professor Learmond Chapman, chair of the Social Sciences Division, to provide those faculty members with copies of the presidential directive that forbade contact with the media without her prior approval.

According to Professor Chaparro, a reporter from the *Arkansas Times* telephoned her that evening seeking further comment on the recent cutbacks at the college. She declined to comment, reading instead the text of President Reed’s directive. Subsequently, she sent a facsimile copy to the *Arkansas Times*.

Upon learning of Professor Chaparro’s release of the directive to the media, President Reed instructed Dean Lindsey on the morning of November 7 to deliver a letter to Professor Chaparro notifying her of her immediate dismissal from the faculty, eviction from her office, and banishment from further contact with the campus or its students. Dean Lindsey was accompanied by the assistant dean and an officer of the campus security force, who remained with Professor Chaparro until she left the campus. Salary payment to her ceased on November 6, the effective date of her dismissal.

Having learned of Professor Chaparro’s dismissal and of the faculty appointments that were being terminated on grounds of financial exigency, the Association’s staff wrote to President Reed on November 19. The letter expressed the Association’s concern that none of the procedures called for in the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings* or in Philander Smith College’s own regulations appeared to have been followed in the dismissal of Professor Chaparro. Adding to the concern over the lack of academic due process was the possibility that the action against her may well have been taken in violation of her academic freedom. The letter urged President Reed to reinstate Professor Chaparro to her faculty position and to afford her requisite academic due process.

On November 22 and again on November 25, President Reed responded with a lengthy and strenuous defense of her actions in dismissing Professor Chaparro. She contended that the dismissal did not violate Professor Chaparro’s academic freedom, nor did the action violate the institution’s regulations. Her two letters, supplemented by enclosed testimony from other officials at the college who supported her, provided an account of incidents related to the dismissal that differed from the account provided by Professor Chaparro to the Association. President Reed challenged Professor Chaparro’s statement that notice of her dismissal was delivered to her while her class was in session. She also challenged Professor Chaparro’s assertion that she had not initiated the communication with the reporter on the evening of November 4.

President Reed stated to the Association's staff that Professor Chaparro was directly responsible for inaccurate information that subsequently appeared in an *Arkansas Times* article. Her letter of November 25 characterized Professor Chaparro's alleged contact with the press as "retaliation against my administration" in order to "confront my leadership."

President Reed's November 25 letter did offer assurance that Professor Chaparro's right to a grievance hearing would be respected. Accordingly, on December 2, Professor Chaparro filed a request for a hearing before the Faculty Grievance Committee with Professor Chapman, who at that time chaired the committee. She referred in that request to her right under college regulations to a verbatim record of the proceedings and asked that she be notified of any changes in the published membership of the committee.

In a telephone conference with President Reed on December 10 regarding the requested hearing, a member of the Association's staff made several recommendations in the interest of due process. While acknowledging that current faculty handbook provisions for grievance proceedings allow the faculty member to be accompanied only by "a non-legal representative who is currently an employee," the staff member urged President Reed to afford Professor Chaparro the right to counsel of her choice in accordance with the 1940 *Statement of Principles*. The staff member also urged President Reed to allow the presence of an AAUP observer at the proceedings and to consider reinstatement of Professor Chaparro to faculty status and to the payroll pending the result of the proceedings. Finally, the staff member encouraged President Reed to consider the advantage of withdrawing Professor Chaparro's dismissal in favor of nonreappointment, an alternative that could spare Professor Chaparro and the college a formal hearing and potential litigation.

Writing on December 11 and again on January 15, President Reed rejected the Association's recommendation to afford Professor Chaparro the right to counsel of her choice on grounds that handbook policy prohibited the presence of legal representation. Allowing exceptions in Professor Chaparro's case, she stated, would be unfair to others not afforded that exception and could expose the college to potential litigation. The president, however, affirmed Professor Chaparro's right to appoint a current college employee as a voting representative on the grievance committee. With respect to reinstatement of Professor Chaparro, President Reed stated that "the best course at this point is to await the recommendation of the Faculty Grievance Committee."

On January 16, the Faculty Senate voted on a reconstituted Faculty Grievance Committee, a vote made necessary by President Reed's termination of the faculty appointments of two members of the committee as of the end of the fall semester. The newly reconstituted committee elected Professor Andrew Nwanne as its chair.

On February 6, three months after Professor Chaparro's dismissal and removal from the payroll, Professor Nwanne notified her by telephone that a hearing with the grievance committee was being scheduled for February 11. According to Professor Nwanne, Professor Chaparro did not contact him until February 10 to request a delay and gave no rationale for her request. A February 7 electronic message from Professor Chaparro to Professor Nwanne, however, copied to the Association's staff, requested that the hearing be delayed until the week of March 3 in order to provide her the opportunity, as called for in the faculty handbook, to receive and review the president's detailed statement of reasons for dismissing her preceding the grievance committee hearing.

Because Professor Nwanne had been among those making public allegations that Professor Chaparro had intentionally given inaccurate and damaging information to the media, Professor Chaparro also requested that Professor Nwanne recuse himself from the grievance proceedings. Supporting her concern about Professor Nwanne's lack of objectivity in the case was a November 11, 2002, memorandum to accrediting agencies from Professor Nwanne and his nephew, Utomi Nwanne, a former student government president at Philander Smith College. Written on stationery of the office of the president, the memorandum referred to Professor Chaparro as "a disgruntled faculty member" and claimed that she "contacted the press and has falsely alleged that the administration was using its power to get rid of people they did not like with an intention of damaging the integrity of the school."

Also dated February 7 was a letter from Professor Nwanne to Professor Chaparro, which she has stated she received on February 10. His letter reaffirmed that the hearing would take place as scheduled on February 11. He enclosed President Reed's statement, this too dated February 7, of reasons for the dismissal. Writing to Professor Chaparro on February 10, however, Professor Nwanne informed her that her request for an extension had been taken into account and that the hearing would be held on February 17. Professor Chaparro wrote to Professor Nwanne on February 12, informing him that she would be away from Little Rock and unavailable on February 17. She again requested an early March date for the hearing and again called for his recusal from the proceedings.

Professor Nwanne replied by letter of February 14 that the grievance committee would convene as scheduled and that Professor Chaparro's failure to attend would end the grievance process. Then, by letter of February 18, Professor Nwanne, without reference to Professor Chaparro's repeated requests for an early March hearing, informed her that the hearing would be conducted on April 21. Citing the absence of a handbook provision allowing for recusals and asserting his ability to evaluate objectively the merits of her case, he informed her that he would not recuse himself from the proceedings.

A hearing by the Faculty Grievance Committee was held on April 21, with the committee expected to meet the following

week to formulate its report. Professor Nwanne later informed Professor Chaparro that the second meeting would be postponed until May 15 because she had failed to provide the committee with a copy of a local newspaper editorial to which she had referred during the hearing. On May 14, however, Professor Nwanne notified Professor Chaparro that unavoidable conflicts would make it impossible for some members of the committee to meet again until after the beginning of the fall term.

Professor Chaparro filed two complaints with the Equal Employment Opportunity Commission (EEOC), one on March 7 alleging violation of the Americans with Disabilities Act of 1990, and a second on March 19 alleging violation of Title VII of the Civil Rights Act of 1964 as amended. The regional EEOC director issued Professor Chaparro a “right to sue” letter in each case. In June, having reached the “right to sue” deadline, Professor Chaparro filed a lawsuit against the college in federal district court.

Correspondence between the Association’s staff and President Reed had continued during the early months of 2003, with the staff notifying the president of complaints received from other college faculty members suffering termination of their services and of its concern regarding the delay in affording Professor Chaparro a hearing. By letter of March 14, after the staff learned that a hearing expected in February was not to occur until April 21, the staff informed President Reed that the Association’s general secretary had authorized a formal investigation of issues of academic freedom and tenure at Philander Smith College, but, in order not to seem to be interfering with the hearing scheduled for April 21, the investigating committee would not be activated until after that date. Upon later learning that there would be no report from the hearing committee until after the end of the summer, the staff notified President Reed by letter of May 19 that the Association’s investigation would go forward in June. Replying on May 23, President Reed informed the staff that the investigating committee would not be welcome on campus and that complaints filed by Professor Chaparro with government agencies would prevent the president and others affiliated with the college from participating in the investigation.²

2. Stephen W. Jones, Esq., counsel for Philander Smith College, did respond to the draft text of this report that was sent to the administration with an invitation for corrections and comments. Mr. Jones expressed disappointment with the report’s going forward, stating that pending litigation made it inappropriate “to publicly discuss events involved” and that responding to many allegations in the report would require “disclosing private facts” and thereby risking accusation of invasion of privacy. He went on to specify some alleged inaccuracies “by way of example only.” The Association’s staff informed him that the specific references to inaccuracies he offered were being taken into account and that others he might be willing to provide would be most welcome. Replying, Mr. Jones reiterated his previous position.

The undersigned investigating committee visited Little Rock on June 23 and 24, 2003, and met off campus with more than a dozen concerned individuals. Previous to its visit, the committee had received and examined extensive documentation, much of it provided to the Association by President Reed. While regretting the lack of opportunity to discuss the issues directly with the president, the committee believes that it has ample documentation for the writing of this report.

III. The Chaparro Case: Procedure

This section deals with the issues of procedure relating to Professor Chaparro’s case.

1. INITIAL ACTION TO DISMISS

By letter of November 6, 2002, President Reed dismissed Professor Chaparro and stopped her salary as of that date. The next morning the letter was delivered to her, and she was evicted from campus. Under the widely accepted 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*, issued jointly by the AAUP and the Association of American Colleges and Universities, before a dismissal can be effected the administration is to provide a written statement of cause “with reasonable particularity” and afford opportunity for a hearing on adequacy of cause before an elected body of faculty peers.

Although the November 6 letter stated the cause for dismissal—insubordination through noncompliance with the presidential directive—meeting the “reasonable particularity” standard awaited the president’s detailed letter of February 7, 2003, which was issued as a requirement under the college’s faculty handbook preceding a hearing before the Faculty Grievance Committee. The applicable faculty handbook provisions refer to a recommendation for dismissal, followed by an adjudicative hearing upon the professor’s request, followed by final action on dismissal by the president or the board of trustees (the handbook is inconsistent as to which). The November 6 letter carried no suggestion that dismissal with cessation of salary on that date was other than final, and it said nothing about Professor Chaparro’s right to a hearing. The investigating committee finds that the letter, taken on its face, constitutes a summary dismissal, disregarding academic due process as set forth in the 1940 *Statement of Principles on Academic Freedom and Tenure*, the 1958 *Statement on Procedural Standards*, and the college’s own faculty handbook.

2. SUSPENSION

Despite the asserted finality of President Reed’s November 6 action, soon thereafter the president acknowledged Professor Chaparro’s right to a hearing on dismissal. In January she informed the AAUP staff, which had recommended the reinstatement of Professor Chaparro to the payroll and to faculty

status pending the outcome of the hearing, that she would await the hearing body's recommendation before taking any action on the matter. The investigating committee accordingly considers it appropriate to view Professor Chaparro as having been placed on suspension without pay until a final decision was reached on the president's move to dismiss her.

The 1958 *Statement on Procedural Standards* considers suspension pending affordance of due process to be justified "only if immediate harm to the faculty member or others is threatened by the faculty member's continuance." The college's faculty handbook also allows for suspension prior to a hearing when it is judged necessary to ensure "the safety of personnel" and additionally when it is needed "to uphold the good name and reputation of the College." The investigating committee has encountered no evidence, and indeed no one has suggested, that the Chaparro suspension was warranted by concern for anyone's personal safety. The committee thus finds that her suspension was not justified under the criterion set forth in the 1958 *Statement on Procedural Standards* and the first of the two faculty handbook criteria. The investigating committee finds the second handbook criterion, relating to the need to uphold the college's "good name and reputation," so loose and so open to differing interpretations as to be nearly meaningless. It could be used to justify the suspension of members of the faculty who say or do anything of which the administration does not approve.

3. HEARING

As has already been noted, the standards supported by the Association and widely adopted in the academic community require opportunity, before a dismissal can become effective, for a hearing at which the administration demonstrates adequacy of cause for its intended action. By abruptly dismissing Professor Chaparro and only afterward referring to her right to a hearing, President Reed acted in disregard not only of these generally accepted standards but also, the investigating committee finds, of college policy as set forth in the faculty handbook.

Professor Chaparro requested a hearing once its availability became known, yet she had to wait four and a half months after she was removed from teaching and her salary was stopped before a hearing was convened. Two members of the elected hearing body, the Faculty Grievance Committee, had been notified of the termination of their own appointments shortly before the action against Professor Chaparro, and the investigating committee appreciates that the election of replacements was needed. The election took place on January 16, but more than three additional months went by before a hearing was finally held on April 21. The Faculty Grievance Committee had indicated that it would report its findings promptly after the hearing, but it subsequently stated that it would not be in a position to meet to decide on the content

of its report until after the summer respite and the start of the next academic year late in August. The committee chair, Professor Nwanne, wrote to Professor Chaparro by letter of September 18, noting that her case was being litigated and asking her to advise him within one week on whether she wanted the committee to reconvene and deliberate on her case. The letter was forwarded to her current address and she replied to it on September 26, stating that she did indeed want the committee to proceed. As of this writing, the hearing body has yet to issue a report. The investigating committee finds that the failure of the Faculty Grievance Committee to bring the hearing to closure leaves Professor Chaparro's case, nearly a year after she was removed from teaching and the payroll and banned from campus, one of summary dismissal in violation of the 1940 *Statement of Principles*.

With respect to the hearing that took place on April 21, adherence to Professor Chaparro's request that she be accompanied by an attorney, while permitted under the 1940 *Statement of Principles*, would have required an exception to the college's current faculty handbook provision against allowing the presence of legal counsel. The investigating committee is unconvinced by President Reed's explanation, in rejecting the request, that making an exception in this case would have discriminated against others who had not asked for or received special treatment. The committee is unaware of any other cases of dismissal for cause that have come before the Faculty Grievance Committee during President Reed's tenure in office.

Another issue of procedure relating to the hearing was Professor Nwanne's rejection of Professor Chaparro's request that he not serve on the hearing body. Professor Nwanne, in refusing to step aside, contended that he could render objective judgment. He was certainly not a disinterested party, however, having made public statements, distributed by President Reed, supporting the president and accusing Professor Chaparro of misconduct.

It can be argued that objectivity and conflict of interest in this case at Philander Smith College are matters of degree. The previous Faculty Grievance Committee chair was Professor Chaparro's division chair, who supported her, who in November declined to participate in delivering the dismissal letter, and who might not have been significantly less susceptible than Professor Nwanne to criticism for conflict of interest. It can be further argued that many if not most of the members of the college's small faculty are identifiable as having taken sides in the dispute and that an independent-minded hearing body was not a reasonable expectation.

Association-supported standards in a dismissal proceeding, as specified in Regulation 5 of the *Recommended Institutional Regulations on Academic Freedom and Tenure*, lessen problems of this kind by allowing each party a maximum of two challenges to hearing committee membership without stated

cause. Had there been provision for peremptory challenges of this kind in the Philander Smith College procedures, Professor Chaparro's challenge would have resulted in Professor Nwanne's removal from the hearing committee.

4. TERMINAL SALARY

As stated earlier, salary payment to Professor Chaparro ceased on November 6, 2002, the date of President Reed's notification of her dismissal for cause. The provisions on dismissal in the college's faculty handbook, however, state that "final adjudication of the matter" follows a hearing before the Faculty Grievance Committee and that the faculty member's salary "shall continue until the matter is resolved." Under these provisions, payment of Professor Chaparro's salary should not have been stopped, and her salary should continue at least until the hearing body submits its report and action is taken on it. If and when a final decision on dismissal is reached, the 1940 *Statement of Principles* calls for payment of severance salary for at least a year in the case of a faculty member who had tenure. The Association's derivative *Recommended Institutional Regulations*, in Regulation 8, also requires a year of salary upon dismissal for a nontenured faculty member like Professor Chaparro who has served at least eighteen months prior to being dismissed. (These documents allow an exception to payment of terminal salary if the dismissal is found to have been based upon conduct amounting to moral turpitude. Although President Reed may allege that Professor Chaparro's alleged "insubordination" relating to the "presidential directive" constituted moral turpitude, any such determination would be appropriate only after consideration of the hearing body's report that has yet to be issued.) The investigating committee finds that the college administration acted in violation of the 1940 *Statement of Principles* and in disregard of the college's own stated policy by ceasing further salary payment to Professor Chaparro with the president's initial notification of dismissal.

IV. Issues of Academic Freedom

Because of the centrality of President Reed's November 4, 2002, directive to the consideration of academic freedom issues in the case of Professor Chaparro and, more broadly, to the climate for academic freedom on the Philander Smith College campus, the full text of the directive follows.

Presidential Directive

It is imperative that communications with accrediting bodies, media, state agencies and like bodies be made in a coordinated fashion in order to avoid misunderstandings and to ensure that there is no confusion regarding the College's position and message. Therefore the following policy is to be observed: All communications with accrediting bodies and agencies, state agencies, newspa-

pers and other media discussing the professional and internal business of the College shall be coordinated through the President's Office. It will be considered an act of insubordination for any faculty or staff person to contact any such entity without the prior approval of the President of the College and will be grounds for immediate termination.

Writing to the Association's staff on November 22, President Reed asserted that Philander Smith College "abides by the understanding of academic freedom set forth in your benchmark 1940 *Statement of Principles on Academic Freedom and Tenure with 1970 Interpretive Comments*." She contended that her directive "does not in any way violate or constrain the academic freedom of faculty." President Reed stated that her directive had to do with "communication with the media not about academic matters or issues, but with communication about the internal administrative business of the College." President Reed further contended that such policies as her directive are "an almost universally held practice of other academic and corporate institutions." She also asserted in this letter and in other communications that the directive was a well-known, long-standing policy of the college and that its issuance on November 4 served only as a reminder to faculty and staff.

The investigating committee disagrees sharply with the assertion that the elimination of six out of approximately forty-five full-time faculty positions is a matter only of "internal administrative" concern and that a faculty member's public comment on the matter should be exempt from the protection of academic freedom. Indeed, these are matters directly related to the educational mission of the institution and, in the committee's view, matters about which members of the faculty should be free to express their professional judgment. A policy that allows public faculty discussion of such matters only with "coordination through the President's Office" can clearly stifle the airing of views not in harmony with those of the administration and thereby impair the academic freedom of members of the faculty as officers of the institution.

At issue as well for the investigating committee is whether Professor Chaparro's release to the media of the official directive constitutes a violation of the directive itself. If the president's concern, as stated in the directive, is to "ensure that there is no confusion regarding the College's position or message," the committee questions whether Professor Chaparro's mere release of the directive could be considered hostile to that concern or that it constitutes an act of insubordination. Indeed, Professor Chaparro's action to inform the press that she could not provide comment was in keeping with the constraints of the directive. Even so, had Professor Chaparro chosen to go beyond the release of the directive and offered her opinion as a faculty member about the directive or about other

matters at Philander Smith College, we believe her having done so would clearly have fallen within the ambit of academic freedom.

President Reed's position to the contrary is captured in a statement she is quoted as having made to the *Arkansas Democrat-Gazette* about Professor Chaparro's dismissal: "As a leader, just like all other CEOs, my authority cannot be challenged." Assuming the corporate analogy were to be apt, the investigating committee would wish to point out that society has come generally to accept the proposition that the affairs of even private profit-making business enterprises are not insulated from public scrutiny and that employees who publicly raise serious issues of their corporate employers' policies and practices are worthy of protection. Far more important, however, the corporate analogy is inapt. As the 1940 *Statement of Principles* asserts, institutions of higher education, private as well as public, are conducted "for the common good." Thus, the Association has long rejected the claim, implicit in President Reed's statement, that a faculty member owes a duty of "loyalty" to the incumbent administration. Such, for example, was the position of the president of the University of Louisville in 1926, who asserted, in the context of dismissing a dissident faculty member, that, "We have a right to expect a spirit of cooperation and loyalty to the declared purposes" of the institution. The response of the Association's committee of investigation is worthy of note:

The sort of "loyalty" which [the] President . . . seems to have demanded is not loyalty, but subservience, and somewhat resembles the disciplinary subordination of a company to its lieutenant, or of employees to a foreman The Committee cannot too strongly condemn the attempt to introduce such a conception of "loyalty" into the administration of a reputable college or university. It is impossible, and rightly so, to suppress critical discussion by members of a faculty, of general or special educational policies, unless that end is accomplished by the simple and drastic means of dismissing that faculty. The attempt to abolish such discussion among the members of the Faculty . . . in the center of a highly civilized community, is not only a deplorable anachronism, but tends to destroy the values which can be created only by patient and tolerant effort, by free and open discussion, and by the gradual increase of a common stock of wisdom, which is incapable of monopolization by any administrative officer.³

The undersigned investigating committee appreciates a president's concern that potentially harmful inaccurate infor-

mation might be released to the press. But there is no evidence that Professor Chaparro made any malicious or, indeed, even any knowingly inaccurate statements. (The assertion that a pre-clearance directive of the kind issued by President Reed is a commonplace in academic institutions has, to the best of this committee's knowledge, no basis in fact.) Suffice it to say, the Association has long considered a faculty member's freedom of public utterance on matters of institutional policy to include unfettered access to the press.⁴

V. Four More Terminations

On October 31, 2002, President Reed sent notices to six members of the faculty that their appointments would terminate at the end of the semester on December 31, with six weeks of severance salary to be paid to them on January 15. Although the notices did not explicitly refer to financial exigency, they followed President Reed's September announcement of a condition of exigency and her appointment of a budget task force with a charge that included the identification of faculty positions for elimination.

Four of the six faculty members sought assistance from the Association, submitted documentation, and met with the investigating committee during its June 2003 visit to Little Rock. They are Professors Herbert L. Benjamin of the Division of Business and Economics, Micheal Pelt of the Department of Philosophy and Religion, and Kenneth R. Andrews and Patricia Robillard of the Department of Language and Letters. Because comments, complaints, and accusations relating to race have occurred in several of the cases at this historically black college, it might be helpful to note that Professor Benjamin, like Professor Chaparro and like Professor Wynona Bryant-Williams (whose case is still to be treated) is black, and that Professors Pelt, Andrews, and Robillard are white.

Common to the terminations allegedly warranted by financial exigency is the administration's disregard of all the essential procedures called for by the Association in such cases, and its failure to adhere to applicable criteria set forth in the college's faculty handbook.⁵ The AAUP-supported standards provide for participation by a faculty body in the decision to declare financial exigency. The standards also call for a primary faculty role in determining where terminations may occur, how those who will lose their positions are to be identified, and what person or group will do the identifying. In the cases at Philander Smith College, the only member of the faculty who played any role was Professor Woods, whom President Reed had appointed to her budget task force.

4. See "Academic Freedom and Tenure: Oklahoma State University," *AAUP Bulletin* 56, no. 1 (March 1970): 72.

5. See Regulation 4(c) of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*.

3. "Report on University of Louisville," *AAUP Bulletin* 13 (October 1927): 451, 452.

In addition, the AAUP's standards entitle the affected faculty members to a hearing before a faculty committee at which the administration has the burden of proving the existence and extent of financial exigency. In the Philander Smith College cases, officers of the college maintained that the terminations were not subject to faculty review. Two of the affected faculty members wrote to ask for hearings and were eventually informed by President Reed that the requests were untimely because they had not met a thirty-day faculty handbook deadline for filing such requests.

The only basis stated in the faculty handbook for determining terminations on grounds of financial exigency is seniority, with terminations to occur "in the order of those who have no tenure to those who have had tenure for the greatest length of time." President Reed stated in her November 25 letter to the Association's staff that no tenured faculty positions were eliminated. The investigating committee, however, considers Professors Benjamin and Pelt to have been entitled to the protections accruing with indefinite tenure, as will be pointed out below. Moreover, the committee considers the question of whether those appointments terminated on grounds of financial exigency were with indefinite tenure or for a definite term to be essentially irrelevant in the light of requisite due process. The appointments in all of the cases—those of definite duration as well as those of an indefinite duration—were terminated prior to their expiration. Tenure or no tenure, the handbook's criterion of seniority was not among the criteria Dean Lindsey and Professor Woods reported having used in their recommendations for eliminating faculty positions. Prominent among the criteria which they said guided them was adequacy of performance, and President Reed herself stated that identification of appointments to be terminated would be based on faculty performance.

To the extent that the terminations were based on judgments of lack of merit, whether relative or absolute, the Association has viewed them as assuming the characteristics of dismissals for cause, actions that cannot properly be taken merely by rating individuals in order of strength of performance. Whether assessment of performance determined the selections for termination any more than did seniority can be sharply questioned, however, as a brief review of each of the four cases reveals.

Professor Herbert Benjamin had served on the college faculty for thirty-four years when he was notified of the termination of his appointment. He had been an associate professor with tenure until the spring semester of 2002, when a complaint of sexual harassment was lodged against him by a female student. He was then serving as chair of the scholarship committee, and he states that the student's complaint followed a meeting with her to discuss the denial of her scholarship application. He states that the complaint, which was never provided to him in writing, was referred to an administratively

appointed Professional Review Committee. (The investigating committee has been unable to find information on the membership and procedures of this body in the faculty handbook or elsewhere.) In April 2002, President Reed presented Professor Benjamin with a series of disciplinary choices recommended by the Professional Review Committee, all but one of which, "tenure removal with mandatory counseling and two years probation," would have resulted in his separation from the college. In order to remain, Professor Benjamin accepted the "tenure removal" choice. (Under Association-recommended practice, the choice offered was inappropriate. Tenure, once bestowed, continues as long as the professor continues as a full-time member of the faculty. The only exception would be a demonstrated flaw in the initial granting of tenure.)

It is clear to the investigating committee that Professor Benjamin in this incident, whatever the actual facts, had incurred the displeasure of the administration. He has informed the committee of a subsequent episode, in which a question he asked President Reed at a public meeting relating to the future of the college may have contributed further to her displeasure with him. In any event, writing to Professor Benjamin about disciplining him because of the spring 2002 incident, the president acknowledged both his "many years of service" and his "overall value as an instructor." These comments suggest that neither lack of seniority nor poor performance evaluation was a factor in her decision a year and a half later to terminate his appointment.

Professor Micheal Pelt had served on the faculty and in various administrative positions for thirteen years when he was notified that his appointment was being terminated. Although President Reed did not classify him as among the faculty members notified of termination, the members of the budget task force who dealt with faculty matters considered him as holding a faculty position and, while supporting the elimination of the administrative position he held, also recommended "his termination as a full-time faculty member in the Department of Philosophy and Religion."

Professor Pelt began at Philander Smith College in 1989 as an associate professor of music and later served as the department's chair. He served as chair of the Division of Arts and Humanities from 1996 to 2000, when President Reed appointed him successively to a series of other administrative positions: special assistant to the president in 2000; dean of institutional research, assessment, and planning in 2001; and executive dean in 2002. Throughout he continued to teach at least one course, in music or in philosophy, each semester. In 2002, President Reed presented him with a Presidential Merit Award in recognition of his contributions to the college.

Recognition of Professor Pelt's accomplishments at Philander Smith College did not extend to granting him tenure. According to Professor Pelt, he applied for tenure in fall 1995, as required by the faculty handbook after six years of

service, and the academic dean forwarded his application to the Committee on Tenure and Promotion with a positive recommendation. After deadlines for committee action and notification had come and gone without word on the status of his tenure application, he was told by the academic dean late in the spring of 1996 that no action had been taken on it because the further granting of tenure had been frozen by the board of trustees. (In a letter to the Association, President Reed identified 1988 as the year that tenure granting was frozen.)

Contrary to the handbook's stipulation that a terminal appointment must be issued if a probationary faculty member fails to apply for or to receive tenure, Professor Pelt was retained for six more years until the termination of his appointment. Although the president has stated that she "unfroze" the granting of tenure after her arrival in 1998, and although other professors have since been awarded tenure, Professor Pelt reports having received no substantive response to repeated inquiries about the status of his tenure application.

An incident in fall 2002 seems to have triggered an abrupt change in Professor Pelt's relationship with President Reed. The previous spring, he reports, she had assigned him to supervise the administrator of a federal grants program, expressing concern that the administrator was obstructing the president's discretionary use of the grant funds and asking him to "take charge of the situation." According to Professor Pelt, his close supervision of the administrator's performance over the ensuing months led him to regard her management of the program as excellent and her interpretation of the restrictions on the funds as justified. When he was asked to submit an evaluation of the administrator's performance to the president's budget task force that was considering positions for elimination, his assessment of her was positive. Believing that his opinion may well have been contrary to what President Reed expected of him, Professor Pelt told the investigating committee that subsequently, in a meeting of administrative officers, she expressed her dissatisfaction with those who were loyal to people who worked under them rather than loyal to her. On the day that he submitted the positive evaluation of the administrator, Professor Pelt reports, even though as executive dean he held a position requiring close and frequent contact with the president, she ceased all communication with him.

When Professor Pelt on October 31, 2002, received the letter notifying him of the termination of his appointment, he was escorted off the campus by a security officer. Although allowed to return to campus to teach his class for the remainder of the semester, he was instructed to arrive no more than half an hour before class and to leave immediately following it. Earlier in the fall, the chair of the music department, which Professor Pelt had formerly chaired, had requested that Professor Pelt teach a music class during the spring semester. Although Professor Pelt's faculty position was said to have been eliminated as a result of financial exigency, a position in

the music department, for which he was presumably well qualified, was advertised and was filled by someone else as of that spring. Regulation 4(c) of the Association's *Recommended Institutional Regulations* was designed to prevent terminating an existing appointment and appointing someone new: "If the institution, because of financial exigency, terminates appointments, it will not at the same time make new appointments except in extraordinary circumstances where a serious distortion in the academic program would otherwise result."

As in Professor Benjamin's case, the investigating committee sees considerations of seniority and of academic performance as absent from President Reed's decision to terminate Professor Pelt's faculty appointment.

Professor Kenneth Andrews joined the college faculty in fall 1998 and was serving as an associate professor in the Department of Language and Letters when notified of the termination of his appointment. He reports having received positive evaluations of his faculty performance for the 2000–01 and 2001–02 academic years, and he asserts that his rank and service gave him seniority over faculty members in his department who were retained.

Professor Andrews talked with the investigating committee about problems he had experienced with the college administration dating back to August 1999, when he says he received a hostile reaction from President Reed to his complaining about his low salary. Threats to rescind or abridge his 1999–2000 appointment resulted. He reports having been called to a meeting with the president, during which she cautioned him against using racial terms in the classroom even though he denied having done so except in response to a student's question concerning the etymology of a racial epithet. The next day he received a letter from President Reed notifying him that his classes would be subject to monitoring and that a decision would be made by December on whether to continue his appointment into the spring semester. No further action or communication about the matter followed, however.

After receiving the October 31 notification of termination, Professor Andrews submitted requests for a hearing to the chair of the Faculty Grievance Committee on December 3 and December 11, and again on February 7. He acknowledged in his first request that it was late by three days under the faculty handbook's thirty-day deadline for requesting a hearing, but he argued for compliance with the request on grounds that the administration had not abided by the college's own standard for notification in its action against him. Having received no response to his December 3 and December 11 requests, Professor Andrews filed a complaint on December 13 with the Equal Employment Opportunity Commission, alleging discrimination based on age and on race. The EEOC issued a "right to sue" letter, and Professor Andrews initiated litigation in federal district court on March 14, 2003, alleging violation

of Title VII of the Civil Rights Act of 1964, as amended. His claims included receiving a lower salary than African American and other minority professors with less seniority and suffering termination of his position while similarly situated minorities with less seniority were retained.

By letter of March 31, nearly four months after Professor Andrews's initial request for a hearing, President Reed wrote to deny him a hearing on grounds that the request had not been filed within thirty days following notice of termination.

Professor Patricia Robillard, like Professor Andrews, began working at Philander Smith College in fall 1998. She reports that she had seniority over three full-time members of the Department of Language and Letters who were retained. Her teaching performance had been evaluated positively. She states, and others who met with the investigating committee confirmed, that she incurred the hostility of the administrative officers who were members of the president's budget task force over matters unrelated to her professional performance.

The preceding brief accounts of the cases of the four professors indicate that they were not released because of lack of seniority (the sole criterion provided in the faculty handbook for termination necessitated by financial exigency, and a legitimate criterion under AAUP-supported standards), nor were they released because of a negative evaluation of their professional performance (a criterion that is not legitimate under AAUP-supported standards for financial exigency terminations but that was employed in these cases, according to President Reed and her budget task force). Before commenting on why these particular professors were selected for termination of their appointments, the investigating committee wishes to express its strong doubt that the financial situation at Philander Smith College required the termination of any full-time members of the faculty in the middle of the 2002–03 academic year. A thorough analysis of the college's financial situation was beyond this committee's charge, and it cannot therefore cite facts and figures. Still, the committee is aware that new faculty members were engaged for the second semester of the 2002–03 academic year, that funds were obtained for significant new construction on campus that semester, and that at the end of the semester the dean of institutional advancement was reported in the press as stating that the college was operating with a balanced budget. The 1940 *Statement of Principles on Academic Freedom and Tenure* requires that terminations because of financial exigency "be demonstrably bona fide." With requests by affected professors for a hearing having been denied by President Reed, the bona fides of the terminations clearly were not demonstrated.

The affected professors allege that they were selected for termination of appointment because those in administrative authority doubted their loyalty to the administration. With hearings on terminations denied by President Reed, their allegations stand un rebutted. In the case of most if not all of the

four professors who turned to the Association for assistance, the investigating committee believes that the reasons for termination lie in President Reed's belief that she was not receiving the loyalty that she repeatedly emphasized as being due her in her communications to the faculty. Moreover, the committee is concerned that the president used the September 2002 budget shortfall as a convenient opportunity to terminate their appointments in the guise of need to reduce the number of faculty positions. Professor Pelt reports that, when he was serving as executive dean that September and President Reed was still communicating with him, she wrote to him as follows: "I am proposing to cull out all folks who are not wanting to work, catch the new vision, or get on board . . ." The investigating committee finds the administration's actions in those cases to have been in violation of basic principles of academic freedom and tenure.

VI. The Bryant-Williams Case

Dr. Wynona Bryant-Williams began at Philander Smith College in January 1999 as director of a new Black Family Studies Program and remained until her services were terminated with the expiration of her appointment for the academic year 2001–02. While as program director she had significant administrative responsibilities, she held the academic rank of associate professor. In addition, she reports having carried a significant teaching load: six hours during her initial semester, nine hours (which she says is the normal load for program directors at the college) during each of the five semesters that followed, and twelve hours during her final semester. Mr. Sherman E. Tate, chair of the board of trustees, writing in May 2002 to notify Professor Bryant-Williams of the board's rejection of her appeal against termination, referred to her having fulfilled her teaching responsibilities for that academic year. The investigating committee sees this reference as ample evidence that Professor Bryant-Williams also functioned as a member of the college faculty and was therefore entitled to the rights afforded faculty members under generally recognized academic standards.

Until August 2001, according to Professor Bryant-Williams, her performance evaluations and her professional and personal relationships with President Reed had been quite positive. Then, Professor Bryant-Williams and others who met with the investigating committee assert, she made a remark about the college at an awards banquet which was intended to be, and was recognized by most in the audience as being, humorous. The remark, however, visibly annoyed President Reed. Thenceforth, the investigating committee was told, the president's attitude toward her and toward the program she directed changed dramatically. Professor Bryant-Williams became aware of meetings the president was holding about the future of the Black Family Studies Program without including her. In November she managed to arrange a meeting with the presi-

dent to discuss the program's future, and she was confronted by President Reed's strong displeasure with the August remark at the banquet as well as sharp questioning of the direction of the Black Family Studies Program under its current leadership. By letter of February 20, 2002, President Reed notified Professor Bryant-Williams that the program was being reconfigured and that her appointment therefore would not be renewed beyond that academic year. This notification was significantly late when measured against the twelve months called for in the Association's *Standards for Notice of Nonreappointment* in the case of a faculty member who has completed three years of service. President Reed, and subsequently Mr. Tate, attributed the action to financial pressures. Although the program initially received federal financing through Title III funds, the president's explanation was silent about the possibility of renewing the Title III funding. Whatever the alleged financial pressures, however, the program was not ended; rather, it was continued under a new director.

Professor Bryant-Williams was allowed to submit a written appeal to the board but not to meet with that body. The board rejected her appeal in May, notifying her that she would be paid through August when her appointment expired but was being relieved of further administrative responsibilities. She filed a complaint in August with the Equal Employment Opportunity Commission, received a "right to sue" letter in October, and in January 2003 initiated litigation in federal district court alleging discrimination based on sex and age and infringement of her rights under the First Amendment.

The investigating committee finds that the Philander Smith College administration denied Professor Bryant-Williams essential elements of academic due process by not providing her with adequate notice and adequate procedures for appeal. The committee also notes a lack of adequate faculty involvement in the reconfiguration of her academic program. Of particular concern to the committee is the strong possibility that the president's personal displeasure with a public comment by Professor Bryant-Williams was a key reason for terminating her services. Her case, then, would seem to constitute yet another instance in which a position was lost and academic freedom suffered because of perceived disloyalty to the current administration of the college.

VII. Final Comments

The investigating committee ends this report with observations, first, on current Philander Smith College policies relating to academic freedom and tenure compared with previous policies and, second, on the regard in which the college is held by faculty members whom the current administration has released.

In the course of its work, the investigating committee became aware of instance after instance in which official college policies protective of academic freedom and tenure,

adopted in 1981 in the context of achieving removal of the Association's censure, had been discarded from the faculty handbook or seriously weakened. Financial exigency, the alleged basis for terminating six faculty appointments in 2002, was defined in the 1981 policies by a provision adhering to the AAUP-recommended standard: "an imminent financial crisis that threatens the survival of the college and cannot be alleviated by less drastic means." The 1981 policies on financial exigency also included a provision affording an affected faculty member "the right to a hearing before a faculty committee to determine if the criteria are being properly applied in the individual case." Both of these provisions are now absent from the college's policies.

Regarding dismissal for cause, had the 1981 policies been applied in the case of Professor Chaparro, her case would have been reviewed by a faculty committee prior to any formal action. In addition, she would have had the "right to counsel" at her hearing (not limited to a college employee who is not an attorney), and her salary would have been continued "pending a final determination by the hearing committee" (which in her case, as of this writing, has yet to occur). Last but hardly least among the 1981 protections absent from the current faculty handbook is the following commitment to academic freedom: "In no case will dismissal be used to restrain a faculty member in the exercise of academic freedom or other rights of an American citizen."

In its interviews with faculty members whose services were terminated by the college administration, the investigating committee was struck by how positively they continued to speak about the institution. The committee was impressed by their deep commitment to the mission of Philander Smith College, to its students, and to the educational challenges, despite their abrupt release by an administration that had come to question their loyalty. The loss to the college of these dedicated faculty members, some of whom had served it for most of their professional lives and most of whom for very meager salaries, is particularly deplored by the investigating committee because the sense of loyalty to the college they have conveyed is much at odds with the perceived lack of loyalty that incurred the hostility of President Reed.

VIII. Conclusions

1. The Philander Smith College administration's action to dismiss Professor Janice S. Chaparro on grounds of insubordination relating to the presidential directive of November 4, 2002, violated the academic freedom to which she was entitled under the 1940 *Statement of Principles on Academic Freedom and Tenure*. The mere issuance of the directive threatened the academic freedom of all members of the college faculty.

2. The administration's dismissal action, which included immediate cessation of salary payment and banishment from the campus, was devoid of the basic requisites of academic due

process as set forth in the 1940 *Statement of Principles*, in the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*, and in the regulations of Philander Smith College. Months went by after the dismissal action before a faculty body held the hearing that should have preceded any dismissal, and additional months have gone by without a report from the hearing body. Both the administration and the hearing body are to be faulted for thus allowing a summary dismissal to stand.

3. The administration terminated the appointments, before their expiration, of Professors Herbert L. Benjamin, Micheal Pelt, Kennneth R. Andrews, and Patricia Robillard, attributing the actions to financial exigency. A bona fide condition of financial exigency was not demonstrated as the 1940 *Statement of Principles* requires, and the professors were released neither because of a lack of seniority nor because of a negative evaluation of their professional performance. The professors have alleged convincingly that they were released because they were viewed as disloyal to the administration and that their academic freedom was thereby violated. With their requests for a hearing on termination having been denied by the administration, their allegations stand unrebutted. ✍

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Committee A on Academic Freedom and Tenure has by vote authorized publication of this report in *Academe: Bulletin of the AAUP*.

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