

● ACADEMIC FREEDOM AND TENURE

Nichols College¹

Nichols College is a private institution located in the small town of Dudley, Massachusetts, approximately twenty miles south of Worcester. Its curriculum emphasizes business and public administration. The College traces its ancestry to Nichols Academy, which was founded in 1815 and closed in 1911. In 1931, the Academy trustees decided to open Nichols Junior College, an institution which offered an Associate in Business Administration degree. The College was closed for a time during World War II but reopened in 1946. In 1958, it became a four-year college, the Nichols College of Business Administration, and was authorized to confer the degree of Bachelor of Business Administration. The College was accredited by the New England Association of Schools and Colleges in 1965. Its name was changed simply to Nichols College in 1971, when it was authorized to grant the degrees of Bachelor of Arts, Bachelor of Science in Business Administration, and Bachelor of Science in Public Administration. The degree of Master of Business Administration was added in 1974.

The College's student enrollment is approximately 700, and the faculty numbers about 40. The president is Dr. Lowell C. Smith, who took office in the spring of 1978. He holds degrees from Kent State University,

George Washington University, and the University of Alabama. In addition to being president, Dr. Smith serves on the faculty as professor of business administration.

The College's current Faculty Policy Manual quotes approvingly from the paragraphs under the heading "Academic Freedom" from the 1940 *Statement of Principles on Academic Freedom and Tenure* of the American Association of University Professors and the Association of American Colleges, but it makes no reference to the document's provisions on tenure. The Faculty Policy Manual was approved by the Board of Trustees in October, 1978, and was, therefore, in effect at the time of the events described below.

The undersigned *ad hoc* investigating committee met with several Nichols College faculty members in a motel near the campus on October 22-23, 1979. The administration of Nichols College denied the investigating committee permission to use College facilities and did not comment in any detail on the substance of the case to be discussed in this report.

THE DISMISSAL OF PROFESSOR SONGDAHL

Dr. John Songdahl, who obtained a Ph.D. in biology from the University of Rhode Island in 1971, was an assistant professor at Nichols College from the fall of 1972 until his services were terminated in the middle of the 1978-79 academic year, with the exception of the 1974-75 academic year when he served as assistant director of admissions.

In the fall of 1977, Professor Songdahl was considered for promotion to the rank of associate professor, but his candidacy was turned down by the Rank and Appointments Committee. Although the Faculty Policy Manual is silent on the composition of this committee, the investigating committee was informed

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 sent to the Association's Committee A on Academic Freedom and Tenure, to the teacher at whose request the investigation was conducted, to the administration of Nichols College, and to other persons directly concerned in the report. In the light of the suggestions received, and with the editorial assistance of the Association's staff, the report has been revised for publication.

that it consists of the tenured full professors at Nichols College, together with the dean of the faculty, Dr. James L. Conrad, who serves as chairman.

Consistent with Nichols College procedures, Professor Songdahl was considered for tenure in the fall of 1978. He received a favorable recommendation from his department chairman. The Rank and Appointments Committee then reviewed his tenure candidacy. President Smith attended the meetings of the Committee that year. It was his first year in office, and he apparently wished to acquaint himself with College procedures. On November 30, 1978, Professor Songdahl was informed by a letter from Dean Conrad that the Rank and Appointments Committee had "doubt about recommending that you be granted tenure." He was invited to meet with the Committee if he wished to do so.

Professor Songdahl met with the Rank and Appointments Committee on December 2. According to Professor Songdahl, there was little discussion in this meeting of his teaching ability or of his professional competence. Rather, there was considerable discussion by the dean about Professor Songdahl's spending too much time in the mailroom chatting with the secretaries, being seen too frequently in the company of a particular female staff member, etc. From conversations both with Professor Songdahl and with other faculty members, the investigating committee learned that he was known on campus as an outgoing person, one who was indeed friendly with members of the secretarial and library staff as well as with other faculty and staff members. Professor Songdahl has little doubt in his mind that these considerations, as opposed to his professional competence or performance, had a great deal to do with the failure to grant tenure.

On December 14, Dean Conrad wrote to Professor Songdahl informing him that the Rank and Appointments Committee had voted not to recommend him for tenure or reappoint him for the academic year 1979-80. No reasons were offered. Professor Songdahl was informed that the negative recommendation had been forwarded to President Smith, and he was reminded of his right to appeal to the president: "In the event you wish to appeal the Committee's recommendation, you have fifteen (15) calendar days in which to do so. The Faculty Policy Manual outlines the appeals process."

Professor Songdahl met with President Smith shortly thereafter. According to Professor Songdahl, there was some discussion by President Smith of the same issues that had been raised by the dean at the December 2 meeting. Both Professor Songdahl and President Smith report that Professor Songdahl sug-

gested at this meeting that the president ask individual faculty members whether they favored tenure for Professor Songdahl.

On December 19, a letter signed by thirteen professors and four members of the administration and staff was sent to President Smith urging that Professor Songdahl be granted tenure. Of the professors who signed this letter, some had tenure and others did not.

On December 22, Dean Conrad sent a memorandum to President Smith, with a copy to Professor Songdahl, which read in its entirety as follows:

The Rank and Appointments Committee has recommended that Dr. John Songdahl not be reappointed nor be granted tenure. It is the Committee's perception that Dr. Songdahl repeatedly has used poor judgment thereby challenging his status as a professional and reflecting adversely on his continuing ability to support the objectives of the College as stated in the College catalog.

The investigating committee has had little success in determining the meaning of the second sentence of the memorandum just quoted. It may be, as some faculty members have suggested, that this sentence referred to Professor Songdahl's relationships with members of the College staff.

Professor Songdahl met again with President Smith on January 11, 1979. Professor Songdahl reports that President Smith urged him at this meeting to resign and to drop any further appeals. He told the investigating committee that President Smith said he would help him find another position if he were to do so; on the other hand, if he were, for instance, to get in touch with the AAUP, he would get no help whatever from the president in gaining an academic appointment elsewhere. Professor Songdahl reports having stated to the president that his failure to receive tenure was "wrong" and that he would indeed take his case to the AAUP and perhaps seek legal advice.

Professor Songdahl telephoned the Association's Washington Office on January 15. The next day, he wrote to the director of the Association's Northeast Regional Office, describing his situation and requesting advice. The director advised him as to possible avenues of review of the decision at the College in light of applicable Association procedural standards. But a number of events then occurred in quick succession which served to heighten the controversy.

Professor Songdahl had agreed to an interview with the student newspaper. The result appeared on January 25, with the front-page headline: "Dr. John Songdahl Unjustly Fired." There followed a special front-page editorial, which recounted most of the events described above; the point of view was not favorable to the administration. The editorial concluded

by urging a student campaign for Professor Songdahl's reinstatement. A few days earlier, Professor Songdahl had written to some members of the Board of Trustees, telling them his version of his case.

On January 26, following the editorial in the newspaper and the letters to the Trustees, Professor Songdahl met again with President Smith and suggested a number of possible courses of action: promotion and tenure followed by his resignation; promotion with a terminal appointment for the following year; or review of his case by a faculty grievance committee. None of these suggestions was accepted by President Smith.

President Smith asked Professor Songdahl to come to a meeting the following day, on Saturday, January 27. Present were Professor Songdahl, President Smith, Dean Conrad, and Mr. Edson Phelps, chairman of the Board of Trustees. Professor Songdahl was informed not only that he was not to receive tenure but also that he was relieved immediately of all teaching responsibilities, with his salary and fringe benefits to be paid to the end of the academic year. He was instructed to remove his belongings from his office by the end of that day (an extension was later given to the following day), after which, he reports having been told, his office would be padlocked. He was directed not to return to the campus thereafter.

As far as the investigating committee has been able to determine, the possibility of dismissing Professor Songdahl immediately, as opposed to denying him tenure and not reappointing him, had not been mentioned by President Smith prior to January 27. President Smith insists that, because Professor Songdahl's salary and fringe benefits were paid to the end of the academic year, "dismissal" is not a proper description of these actions.

The decisions conveyed to Professor Songdahl at the January 27 meeting were confirmed in the following letter from President Smith to Professor Songdahl dated February 3:

At the regular meeting of the Board of Trustees on January 27, 1979, I recommended that you not be reappointed nor granted tenure nor should you be promoted. The Trustees sustained that recommendation.

The reasons for that action are as follows:

1. Your expressed threats against the College
2. The recommendations of the Rank and Appointments Committee
3. An independent survey and evaluation performed by me in which I determined that there was a significant amount of opposition to your continuation as a faculty member here

Since you have already chosen to implement part of the

threats you have made against the College, I have elected to relieve you of all further responsibilities at Nichols College and this action has been approved by the Trustees as the logical end of the due process cited in the Faculty Handbook.

The allegation of implementing threats has not been explained, and the administration has revealed no further reasons for taking such sudden and serious actions. The letter of February 3 was the last official communication from the administration of Nichols College to Professor Songdahl.

THE ASSOCIATION'S INTEREST

As noted above, the Association's staff initially advised Professor Songdahl on the procedures he might utilize in seeking a reversal of the decision to deny him reappointment and tenure. After the meeting of January 27, the director of the Regional Office telephoned President Smith, and on February 9 wrote to him, conveying the Association's concerns. Replying on February 12, President Smith wrote, "Since Nichols College does not subscribe to any of the AAUP statements on anything, it's difficult to see how we can be held to be in violation of any of them." The president also stated that the staff's letter had been turned over to the College's legal counsel and that any further correspondence on the matter should be with counsel. The staff attempted to pursue the case with the attorney, who wrote to the director of the AAUP's Northeast Regional Office on March 26, 1979, that neither his law firm nor the College had any particular response to make to the Association.

The general secretary then authorized the appointment of this *ad hoc* committee to investigate Professor Songdahl's case. In response to a letter informing him of this action, President Smith stated that the administration of Nichols College had no intention of consulting with the investigating committee.

Since there was no local chapter of the Association at Nichols College, the director of the Northeast Regional Office asked several individual faculty members, some of whom were Association members, for assistance with arrangements for the *ad hoc* committee's visit. All such requests were turned down. Some said then that they would be willing to meet with the investigating committee, but later they declined to do so.

President Smith was informed in June, 1979, of the names of the committee members. He replied, in no uncertain terms, that members of the administration would not meet with the committee, that faculty members who had been involved with the case were cautioned to decline to consult with the committee,

and that the Association's committee could not use any Nichols College facilities.

The investigating committee accordingly remained off campus during its visit in October, locating itself in a motel room several miles from the College. It met with Professor Songdahl and, in separate meetings, with several other faculty members.

While appreciating that President Smith had earlier been quite emphatic in declining to cooperate with the investigation, the chairman of the committee called his office, and that of Dean Conrad, to leave word that they were in the vicinity and would welcome the chance to meet or talk with the president or the dean. Some time later, President Smith returned the call and spoke at length with the chairman of the committee. The conversation was cut short when President Smith said he had to leave his office for a time. He called again, several hours later. At the start of this second call, he insisted that he would not continue the conversation unless the recipient of the call was alone. The purpose of this request was not at all clear. For better or worse, the chairman decided to accede to President Smith's condition so that the conversation could continue, and the other member of the committee did leave the room for the balance of the conversation. In any event, President Smith's statements in both conversations were more acrimonious than informative, consisting mainly of his reiterated views, largely uncomplimentary, of the AAUP.

ISSUES AND FINDINGS

Academic Freedom

None of the various professors with whom the investigating committee talked, including Professor Songdahl, was aware of any instances in which there had been interference by the administration with what transpired in the classroom or with their research or extramural utterances. As to the freedom of faculty members to oppose the administration, one might consider the reluctance to make arrangements for the investigating committee, or of some faculty members to meet with it, as symptomatic of an atmosphere of suspicion and mistrust. On the other hand, a significant number of faculty members signed the letter of December 19, 1978, urging President Smith to grant tenure to Professor Songdahl. That they felt sufficiently confident to sign such a letter, an action which could be construed as a public announcement of opposition to the administration on this issue, is an indication that they do not feel intimidated by the administration.

As to whether considerations violative of Professor

Songdahl's academic freedom motivated the decisions first to deny him reappointment and tenure and then to dismiss him, Professor Songdahl has not alleged that his freedom to teach or to publish as he saw fit was at issue. He did allege that considerations other than professional competence determined the decisions to deny him reappointment and tenure, and he had no opportunity to have this allegation tested through an appropriate procedure for review by a faculty committee. These considerations, from what the investigating committee can infer them to be in the absence of stated reasons for nonreappointment and denial of tenure, may have been inappropriate as grounds for what was done, but the investigating committee has seen no evidence that they were related to Professor Songdahl's academic freedom.

After unsuccessfully appealing the denial of reappointment and tenure to the president, Professor Songdahl took his case to the student press and to members of the Board of Trustees. These actions by Professor Songdahl were followed promptly by President Smith's actions to dismiss him immediately, and banish him from the campus. The president referred to Professor Songdahl's having implemented threats, but the investigating committee has seen no evidence of any immediate threat of harm to anyone, the only justification according to the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings* for immediate suspension from faculty responsibilities. Professor Songdahl may not have acted wisely, but he had the right to talk with the student newspaper and to write to Board members, and in doing so he did not threaten anyone. In dismissing Professor Songdahl, the administration thus deprived him of his academic freedom. The drastic consequences which he suffered for having taken his concerns to Nichols College students and Trustees speak poorly for the climate for academic freedom at Nichols College.

Procedures Relating to Nonreappointment

Professor Songdahl's candidacy for reappointment and tenure was evaluated at the appropriate time under Nichols College regulations. According both to those regulations and to the Association's *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments*, a faculty member who is not to be reappointed has the right to be advised of the reasons for a negative recommendation. In the investigating committee's judgment, the statement given to Professor Songdahl, in the December 22, 1978, memorandum from Dean Conrad to President Smith,

about using poor judgment, cannot be considered an adequate explanation.

Lateness of Notice

The Nichols College Faculty Policy Manual provides that probationary faculty members in the first two years of service be given notice of reappointment no later than March 1. For faculty members with more than two years of service, notice is to be sent prior to December 30, with the exception of the year of a decision on tenure when notice is to be sent within ten days following the January meeting of the Board of Trustees. Except for faculty members in their first year of service, these deadlines for notice are insufficient when measured against generally accepted standards. Professor Songdahl in being denied tenure received less than six months of notice, although according to the 1940 *Statement of Principles*, "notice should be given at least one year prior to the expiration of the probationary period if the teacher is not to be continued in service after the expiration of that period." The Association's *Standards for Notice of Nonreappointment* provide for notice by March 1 of the first year of service, December 15 of the second year, and for twelve months of notice for a probationary faculty member who has served for two or more years.

Professor Songdahl's Dismissal and Academic Due Process

President Smith has taken the position that Professor Songdahl was not dismissed since he was paid to the end of his term appointment for the 1978-79 academic year. Professor Songdahl was, however, unable to perform any of those responsibilities normally associated with a member of the Nichols College faculty after he was relieved of them at the meeting of January 27, 1979, with the president, the dean, and the chairman of the Board of Trustees. Interpretive Comment number 9 to the 1940 *Statement of Principles* states, "A suspension which is not followed by either reinstatement or the opportunity for a hearing is in effect a summary dismissal in violation of academic due process." Payment of the faculty member's salary and benefits to the end of the term of appointment does not relieve an administration of its obligation to provide requisite academic due process in moving to dismiss a faculty member from duties prior to the expiration of that appointment.

The 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings* was adopted jointly by the AAUP and the Association of American Colleges. It

provides further specification of the academic due process called for in the 1940 *Statement of Principles* when a faculty member is subjected to dismissal from a continuous appointment or prior to the expiration of a term appointment. To the best of the investigating committee's knowledge, none of the procedures set forth in the 1958 *Statement* was followed in the dismissal of Professor Songdahl. While the 1958 *Statement* calls for preliminary discussion with the faculty member, the administration did not mention the possibility of dismissal to Professor Songdahl prior to January 27, 1979, when he was informed that he was dismissed. He received no statement of specific cause, no opportunity to defend himself in an appropriate hearing before a faculty body, and no opportunity to obtain review by the governing board. Instead he was confronted with an accomplished fact.

An additional issue is whether the administration followed the College's own procedures in terminating Professor Songdahl's appointment. The College's Faculty Manual has the following provision which refers to dismissals of professors without tenure, and is thus applicable in the case of Professor Songdahl. The section reads as follows:

4.5—DISMISSAL (and SUSPENSION)

Dismissal for cause can result from the same considerations which pertain to termination of a tenured appointment. . . . In considering a dismissal for cause, the president shall consider the views of the dean of faculty and the appropriate division and department chairmen. A faculty member who is dismissed for cause has the right to appeal through the due process procedure outlined in Section 8.5. Pending final resolution of his case, salary and other benefits will continue during the period of suspension (if suspension has been the initial action of the president).

Section 8.5 of the Manual, headed "Due Process: Matters Other Than Reappointment, Promotion, and Tenure," provides, in part:

A faculty member must initiate the grievance procedure by appearing before the [Faculty Grievance Committee] with a written statement of his grievance. The FGC shall then request statements from all parties involved in the grievance. At this stage of the process, the FGC will strive to bring about an informal resolution of the case in a manner satisfactory to all involved. Should such informal resolution prove impossible, the FGC will make a formal recommendation as to disposition of the case. This formal recommendation will be made, in writing, both to the faculty member involved and to appropriate other parties involved in the grievance. In the event the faculty member declines to accept the recommendation of the FGC, he may appeal to the president if he so desires.

Speed is of the essence in this process. Between the initi-

ation of the grievance procedure by the faculty member and the final recommendation by the FGC, a period of not more than one month shall pass, unless all parties concerned agree to an extension.

If one were to read Section 8.5 by itself, one might suppose that it was the intention of the authors to cover only complaints initiated by a faculty member and thus to exclude dismissal and suspension from this section. The investigating committee's initial reaction to Section 8.5 was that it was only through an oversight that it was not headed "Due Process: Matters Other Than Reappointment, Promotion, Tenure and Dismissal." However, Section 4.5, "Dismissal (and Suspension)," refers explicitly to Section 8.5; it thus seems that the procedures described in Section 8.5 are meant to be applicable in Professor Songdahl's case.

Under Section 8.5, faculty members who are notified of dismissal are not afforded a hearing of record before a faculty body where they can confront those who are acting against them. The burden rests on them to show somehow that they should not have been dismissed or suspended.

President Smith was asked by the committee whether the procedures found in Sections 4.5 and 8.5 were used in the case of Professor Songdahl. His response was essentially two-fold; first, because Professor Songdahl was paid for the remainder of the year, the action was not a dismissal; second, a response perhaps inconsistent with the assertion that Professor Songdahl was not dismissed, the procedures were there for Professor Songdahl to use if he had chosen to do so. Professor Songdahl did not choose to invoke these procedures, President Smith said, and the administration was under no obligation to remind him of their existence.

It is as difficult for the investigating committee to accept this second position of President Smith as it is his first. Informing faculty members of their procedural rights when their services are being involuntarily terminated is the necessary and well-accepted responsibility of officers of academic administration. Indeed, the Nichols College administration met this responsibility earlier in the case of Professor Songdahl in the letter to him of December 14, 1978, from Dean Conrad, quoted above, in which Professor Songdahl was reminded of the existence of appeal procedures available to him in contesting nonreappointment and denial of tenure.

The investigating committee finds that Professor Songdahl was summarily dismissed. The committee cannot accept the description of Professor Songdahl's dismissal, in President Smith's letter to him of February 3, 1979, as "the logical end of the due process cited

in the Faculty Handbook," nor the president's statement in a letter to the director of the Association's Regional Office on July 16, 1979, that "all of the substantive and procedural requirements of [the Faculty Policy Manual] have been scrupulously observed in this case."

CONCLUSION

1. The administration of Nichols College dismissed Professor John Songdahl from his position as a member of the faculty prior to the expiration of his term of appointment, without providing him with the basic safeguards of academic due process set forth in the 1940 *Statement of Principles on Academic Freedom and Tenure* and the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*. The administration failed to provide Professor Songdahl with the year of notice to which the 1940 *Statement of Principles* entitled him.

2. No discernible issue of academic freedom was raised by the decision to deny Professor Songdahl tenure and reappointment. The administration's prompt action to dismiss him, however, after he presented his complaints to the student newspaper and members of the Board of Trustees, deprived him of his academic freedom and speaks poorly for the climate of academic freedom at Nichols College.

Robert H. Romer (Physics), Amherst College, *Chairman*

Murray Katzman (History), Central Connecticut State College

Investigating Committee

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

Bertram H. Davis (English), Florida State University, *Chairman*.

Members: Clark Byse (Law), Harvard University; Jesse H. Choper (Law), University of California, Berkeley; Peter Falley (Mathematics), Fairleigh Dickinson University; Martha Friedman (Library), University of Illinois, Urbana, *ex officio*; Mary W. Gray (Mathematics), American University; Jordan E. Kurland (History and Russian), Washington Office; Walter P. Metzger (History), Columbia University; Carol Simpson Stern (Interpretation), Northwestern University; Victor J. Stone (Law), University of Illinois; Mary K. Bonsteel Tachau (History), University of Louisville; Judith J. Thomson (Philosophy), Massachusetts Institute of Technology; Darwin T. Turner (English and Afro-American Studies), University of Iowa.