

PHILLIPS COUNTY COMMUNITY COLLEGE (ARKANSAS)¹

Introduction

Phillips County Community College sits between Helena and West Helena in southeastern Arkansas, a short ride from Forrest City, a short walk from the Mississippi River. It was founded in 1965, a year after the Arkansas Constitution was amended by the electorate of the state to permit the establishment of districts to finance a state-wide system of community colleges. In 1966 and 1967, it held classes at a local naval reserve building; and, beginning in 1968, it has held classes on a campus laid out on a wooded ridge near the river. The College maintains an open-door policy for admission and offers associate degree programs in liberal arts and in preprofessional and occupational education. It also provides continuing educational programs for the citizens of Phillips County and eastern Arkansas. It has an enrollment of approximately 1800 students and a faculty of approximately 70. Phillips County Community College is accredited by the North Central Association of Colleges and Secondary Schools and the Arkansas Department of Higher Education.

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 Phillips County Community 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 Washington Office staff, the report has been revised for publication.

Mr. Marion Hickingbottom became a member of the first Phillips faculty in 1966 and received nine one-year renewals of his contract through the academic year 1975-76. According to faculty members who met with the undersigned investigating committee, Mr. Hickingbottom moved at his own pace, a pace somewhat different from that of his colleagues and, in particular, from that of the administration. He was a demanding history teacher; he demanded more work from his students than did many of his colleagues. He was an industrious chairman of the social sciences department who worked hard to bring new programs to Phillips. He was a supportive colleague; he helped found a faculty senate, of which he once served as president. He was an involved citizen; he spoke openly about public matters.

From time to time, the investigating committee was informed, what Mr. Hickingbottom did rippled the waters at Phillips. For example, he spoke against the eligibility of administrators for membership in the faculty senate; Dr. John W. Easley, President of Phillips County Community College since its establishment, supported their eligibility. Mr. Hickingbottom spoke against nepotism in faculty appointments; President Easley's wife was a member of the faculty and headed a department. At meetings held by President Easley with faculty, Mr. Hickingbottom often asked questions his colleagues were reluctant to ask; questions about admissions and academic standards, for example, were considered subjects about which the administration was sensitive.

Although Mr. Hickingbottom received notice on January 6, 1976, that his one-year contract would be re-

newed for the tenth time, the contract was not renewed. The investigating committee finds that the contract was not renewed because of a letter Mr. Hickingbottom wrote.

Facts

On February 20, 1976, approximately six weeks after receiving notice of reappointment for the following academic year, Mr. Hickingbottom wrote a letter to the Arkansas Motor Vehicle Division to inform it that the College and a local automobile dealership were participating in what he viewed as an improper leasing arrangement. The entire text of this letter stated:

I wish to call to your attention a violation of the use of Dealer Tags. In Helena the Ritchey Buick, Pontiac, GMC, Inc. has leased two cars to Phillips County Community College and both carry dealer tags. This has been the practice for several years. These are commercial leases and are paid by the state. This practice not only evades sales tax and tag fees but local assessment as well.

Your investigation and correction of this matter would be appreciated. I also consider this to be a confidential communication and will expect my confidentiality to be maintained.

Although Mr. Hickingbottom asked that his letter be kept in confidence, on or before March 8, 1976, President Easley was told about the letter. On March 9, 1976, President Easley called Mr. Hickingbottom into his office and asked him to resign. After this meeting Mr. Hickingbottom retained an attorney, Mr. Charles B. Roscof, who, on March 19, 1976, informed President Easley that Mr. Hickingbottom would not resign. Mr. Roscof also reports that during this conversation he requested from President Easley a statement of charges against Mr. Hickingbottom. According to Mr. Roscof, President Easley advised him that there were no charges, but that he had requested Mr. Hickingbottom's resignation because they "no longer saw eye to eye." Mr. Roscof also advised President Easley that he assumed Mr. Hickingbottom would be afforded his procedural rights if disciplinary action were to be taken. In a letter dated March 24, 1976, Mr. Roscof wrote President Easley to confirm this telephone conversation and to request that Mr. Hickingbottom be provided a detailed statement of charges and an opportunity to be heard if disciplinary action ensued. Mr. Roscof added his hope that any differences between Mr. Hickingbottom and President Easley would be settled without disciplinary action.

On April 2, 1976, President Easley wrote separate letters to Mr. Hickingbottom and Mr. Roscof, stating that he intended to recommend to the Board of Trustees that Mr. Hickingbottom's contract be permitted to expire and that it not be renewed after June 30, 1976. In his letter to Mr. Hickingbottom, President Easley wrote in part as follows:

I find that you have been most uncooperative with me and my staff, that you are not maintaining a proper rela-

tionship with your students, that you have followed and pursued disruptive procedures designed to, and which did, harm the college. Your attitude and actions are not conducive to the orderly operation of our institution. It is thus my studied opinion that the interest of the college would best be served by a severance of its relation with you.

President Easley's letter to Mr. Roscof contained similar language and added:

Phillips County Community College is a young institution and to succeed it must have the active, full and complete support of the community, faculty, administrative officers and the Board. This, in my opinion, we are not getting from Mr. Hickingbottom.

In response to this letter, Mr. Roscof wrote President Easley on April 12, 1976, indicating his disappointment that this matter could not be resolved informally and requesting that Mr. Hickingbottom "be provided with a detailed statement of charges forming the basis for your recommendation, with charges to be factually stated rather than simply a statement of conclusions." On April 15, 1976, Mr. Jimason J. Daggett, the College's attorney, stated the basis for President Easley's recommendation not to rehire Mr. Hickingbottom as follows:

In short, it seems that he simply is not "on the team"; that he does not have the best interests of the college at heart; and that it will undoubtedly serve to avoid further complications, conflicts and disruptive situations if his connection with the college be terminated.

Mr. Roscof answered this letter by asking once again for a detailed statement of the charges against Mr. Hickingbottom, pointing out that Mr. Hickingbottom could not be expected to respond to the statements in Mr. Daggett's letter of April 15. On April 29, 1976, Mr. Daggett wrote Mr. Roscof in part as follows:

Some months ago, someone unknown wrote a letter to HEW which resulted in a rather disruptive investigation of the college by the FBI. The information afforded HEW was incorrect and had inquiry been made through proper administrative channels at the college, the resulting investigation would never have taken place. Following this instance, Dr. Easley, at a faculty meeting whereat Mr. Hickingbottom was present, advised all personnel that matters relating to the school should be channeled through the college's administrative offices and ultimately to him to afford the administrators an opportunity to correct their mistakes, if they be found to exist. This was well understood by all. He made it plain that if after following these administrative processes the faculty member felt that the information that he had received or the action taken thereon was unsatisfactory, then he was at complete liberty to proceed thereafter as he or she saw fit. Notwithstanding this request, Mr. Hickingbottom completely ignored same and wrote a letter to a state agency indicating that improper practices involving the college were being followed. This was not the only time that circumvention of channels has been practiced by Mr. Hickingbottom.

Dr. Easley has at no time, and does not now, consider that the act of the writing of the letter was improper. He

does feel, however, that the failure of the man to follow reasonable rules prescribed by him evidences an insubordinate attitude.

At a meeting of the Board of Trustees of the College on May 10, 1976, President Easley gave no basis for his action other than Mr. Hickingbottom's failure to exhaust internal channels before writing to the State Motor Vehicle Division. President Easley stated that these procedures were discussed, though not committed to writing, at a faculty meeting in January, 1976. President Easley also referred to the minutes of the Division Chairmen's meeting held on February 24, 1976. Under the heading, "Professional Ethics," the minutes stated:

Dr. Easley reemphasized line authority and protocol—an employee who feels he/she needs to discuss College problems should utilize line authority which is—division chairman, dean of the College, President and Board of Trustees. If a problem exists, it is to be channeled through proper line authority and not discussed off campus. Any faculty member or employee who does not utilize this procedure is subject to dismissal.

After the meeting of the Board of Trustees where Mr. Hickingbottom, through his attorney, had the opportunity to confront and cross-examine President Easley, to testify and to present witnesses on his behalf, the Board of Trustees unanimously voted to accept President Easley's recommendation not to renew Mr. Hickingbottom's contract.

On April 29, 1976, Mr. Hickingbottom requested the assistance of the Association. After the staff reviewed relevant material submitted by Mr. Hickingbottom and discussed the case with Mr. Hickingbottom and Mr. Roskopf, a member of the staff sent a telegram to President Easley and to the Chairman of the Board of Trustees of Phillips County Community College. This telegram advised that Mr. Hickingbottom was entitled to the protection of tenure under normative standards in higher education, that the action to dismiss him should occur only after adequate cause had been demonstrated by the administration in an appropriate hearing before faculty peers, and that the information thus far available to the Association suggested serious issues of academic freedom. These concerns were elaborated by the staff in a letter sent to President Easley on June 15, 1976, after his recommendation that Mr. Hickingbottom's services be terminated had been unanimously accepted by the Board of Trustees. In his June 22, 1976, reply, President Easley described the procedures before the Board of Trustees, and stated that none of Mr. Hickingbottom's substantive rights had been violated. The staff wrote twice to President Easley during the summer of 1976, reiterating the Association's concerns, but President Easley did not respond to either letter.

By letter of January 14, 1977, President Easley was informed of the General Secretary's decision to appoint an *ad hoc* committee to investigate the issues posed by the termination of Mr. Hickingbottom's appointment.

Mr. Daggett answered on behalf of the College, noting that Professor Hickingbottom had filed suit, in the United States District Court for the Eastern District of Arkansas, raising the same issues discussed in the Association's letter to President Easley announcing its investigation. According to Mr. Daggett, the College administration preferred to present its case in the "forum selected by Mr. Hickingbottom." He concluded that an AAUP *ad hoc* investigation would not "serve any useful purposes." The staff pointed out to Mr. Daggett and President Easley, in several subsequent letters, that the Association's interests in Mr. Hickingbottom's case relate to conditions of academic freedom, due process, and tenure measured by widely accepted standards in the academic community, whereas the litigation centered on specific questions of constitutional law. The administration of the College continued to take the position, however, that it would neither participate nor assist in the Association's investigation as long as litigation was pending. As a result, the undersigned investigating committee was unable to meet with President Easley or the Board of Trustees during its investigation of this case. The investigating committee, visiting Helena on April 21 and 22, 1977, located itself in a hotel near the College, and met with ten persons, including administrators and faculty members from several different departments.

Issues and Findings

The 1940 *Statement of Principles on Academic Freedom and Tenure* sets forth the standards by which the academic community in this country has come to judge itself. The 1940 *Statement* was drafted jointly by the American Association of University Professors and the Association of American Colleges and has been endorsed by over one hundred educational organizations and learned societies. Intended to set standards for all institutions of higher education, it has been incorporated into the regulations of colleges and universities throughout the United States.

Although Phillips County Community College has not adopted the 1940 *Statement*, the investigating committee views its principles as providing the basis for judging this case. In fact, as a previous *ad hoc* investigating committee concluded in its published report:

The 1940 *Statement* has the greatest applicability to those institutions which do not have explicit regulations regarding tenure and academic freedom; for them it provides a "common law."²

This reasoning applies with particular force to newly founded institutions such as Phillips County Community College.

*Academic Freedom*³

The 1940 *Statement* emphasizes that the common

² "Academic Freedom and Tenure: Dutchess Community College (New York)," *AAUP Bulletin*, 55 (March, 1969), p. 47.

³ As noted above, the chief administrators of Phillips

good provided by institutions of higher education “depends upon the free search for truth and its free exposition.” It provides in part:

The college or university teacher is a citizen, a member of a learned profession, and an officer of an educational institution. When he speaks or writes as a citizen, he should be free from institutional censorship or discipline, but his special position in the community imposes special obligations. As a man of learning and an educational officer, he should remember that the public may judge his profession and his institution by his utterances. Hence he should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that he is not an institutional spokesman.

This paragraph of the 1940 *Statement* is amplified in Interpretive Comment 4 of the 1970 Interpretive Comments on the *Statement*. The Comment quotes in pertinent part from the 1964 *Committee A Statement on Extramural Utterances*:

The controlling principle is that a faculty member’s expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member’s unfitness for his position. Extramural utterances rarely bear upon the faculty member’s fitness for his position. Moreover, a final decision should take into account the faculty member’s entire record as a teacher and scholar.

The Phillips County Community College Faculty Handbook itself provides, under the heading “Academic Freedom,” that faculty members

must be able to examine ideas in an atmosphere of freedom and confidence and to participate as responsible citizens in community affairs. Academic freedom must be subject to the self-restraints imposed by good judgment. The faculty member must fulfill his responsibility to society and to his profession by manifesting academic competence, scholarly discretion, and good judgment.

At different times during the spring of 1976, President Easley and his attorney, Mr. Daggett, gave different explanations for the decision not to renew Mr.

County Community College declined to meet with the investigating committee because Mr. Hickingbottom had filed suit in federal court. The committee regrets that the administration chose not to cooperate in the investigation, although it recognizes that defendants in a law suit may have valid reasons for refusing to discuss material to which they may have to answer in legal proceedings. The resolution of the issues of academic freedom involved in this case is partly a function of the credibility of the witnesses. Because President Easley and other administrators declined to participate in the investigation, the investigating committee has not had the opportunity to take their views into account on these issues. The investigating committee, therefore, has decided to present the information it has received on the issues of academic freedom without reaching its own formal conclusions. On the basis of its own investigation, the committee nonetheless believes it unlikely that comments by administrators would require any substantial modification in the presentation of the information in this section of the report.

Hickingbottom’s appointment. The explanation ultimately offered by the College administration at the meeting of the Board of Trustees on May 10, 1976, was that Mr. Hickingbottom failed to consult with “the proper channels of the administration” before writing to the State Motor Vehicle Division regarding the leasing arrangement between the College and a local automobile dealership. Both at this meeting and in Mr. Daggett’s letter to Mr. Roscof of April 29, 1976, the administration claimed that Mr. Hickingbottom’s failure to follow “proper channels” before writing his letter, rather than the content of the letter itself, was the reason for his nonrenewal. Earlier discussions and correspondence between the College and Mr. Hickingbottom, however, centered on other reasons for the nonrenewal. For example, Mr. Hickingbottom was accused of being uncooperative with President Easley and his staff, of not maintaining a proper relationship with his students, and of not being “on the team.” None of this earlier correspondence referred to Mr. Hickingbottom’s letter to the State Motor Vehicle Division or to any failure on his part to consult with the administration through proper channels.

Each person who met with the investigating committee stated that there had been no written policy about exhausting internal channels before Mr. Hickingbottom wrote his letter, and all but one agreed that there had been no generally understood unwritten policy either. Many indicated that for many years President Easley had resented Mr. Hickingbottom’s role as an independent and outspoken member of the faculty. Most stated that they believed Mr. Hickingbottom’s services were terminated because of President Easley’s pique at the letter to the State Motor Vehicle Division rather than because of Mr. Hickingbottom’s failure to exhaust proper channels. The fact that President Easley referred to this alleged failure only after giving other explanations of his recommendation not to retain Mr. Hickingbottom lends support to this testimony and suggests that the basic reason for the action was President Easley’s displeasure with Mr. Hickingbottom, and particularly his displeasure with Mr. Hickingbottom’s letter to the State Motor Vehicle Division. The tardy assertion that Mr. Hickingbottom’s offense was his failure to exhaust proper channels suggests an impermissible *post hoc* rationalization. Most of those interviewed, it might be added, stated that nonretention was too severe a penalty, even assuming that Mr. Hickingbottom had violated a clear policy of the College.

Mr. Hickingbottom’s letter to a government agency was an accurate and appropriately restrained communication and a responsible exercise of citizenship; moreover, this communication in no way bears upon Mr. Hickingbottom’s fitness as a faculty member. In addition, the committee has not found any evidence that sending this letter was in violation of any reasonably known policy at Phillips County Community College. The policy subsequently announced by President Easley during the Division Chairmen’s meeting on February 24, 1976, by stating that a faculty member is subject

to dismissal for discussing a "College problem" without first reviewing it through "proper line authority" within the College, itself suggests an "institutional censorship or discipline," prohibited by the 1940 *Statement*, that impermissibly restricts the freedom of a faculty member as a citizen. In any event, even were there a reasonable policy of exhausting internal channels at Phillips County Community College applicable to Mr. Hickingbottom's letter, the sanction of non-retention seems much too severe under the circumstances.

Academic Tenure and Due Process

The 1940 *Statement* provides with regard to tenure:

After the expiration of a probationary period, teachers or investigators should have permanent or continuous tenure, and their service should be terminated only for adequate cause, except in the case of retirement for age, or under extraordinary circumstances because of financial exigencies.

The 1940 *Statement* further provides:

Beginning with appointment to the rank of full-time instructor or a higher rank, the probationary period should not exceed seven years. . . . 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.

Mr. Hickingbottom, as a full-time teacher for more than seven years at Phillips County Community College, was entitled to the protections afforded to a tenured faculty member, and the decision not to issue him a new contract should appropriately be viewed as a dismissal. His services, therefore, could be terminated only in the three situations specified in the 1940 *Statement*. Mr. Hickingbottom was not at the age of retirement, nor did the College claim "extraordinary circumstances because of financial exigencies." Moreover, the investigating committee, in view of its findings above, finds that adequate cause to dismiss Mr. Hickingbottom was not established.

The 1940 *Statement* provides as follows concerning the due process required in cases involving dismissal for cause:

Termination for cause of a continuous appointment, or the dismissal for cause of a teacher previous to the expiration of a term appointment, should, if possible, be considered by both a faculty committee and the governing board of the institution. In all cases where the facts are in dispute, the accused teacher should be informed before the hearing in writing of the charges against him and should have the opportunity to be heard in his own defense by all bodies that pass judgment upon his case. He should be permitted to have with him an adviser of his own choosing who may act as counsel. There should be a full stenographic record of the hearing available to the parties concerned. In the hearing of charges of incompetence the testimony should include that of teachers and other scholars, either from his own or from other institutions. Teachers

on continuous appointment who are dismissed for reasons not involving moral turpitude should receive their salaries for at least a year from the date of notification of dismissal whether or not they are continued in their duties at the institution.

These due process requirements are elaborated in the joint 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings* and in the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*. Of special relevance are the requirements of (a) a statement of charges, framed with reasonable particularity, of the grounds proposed for the dismissal, and (b) a hearing before a duly constituted faculty committee. The Faculty Handbook of Phillips County Community College states that the College has "no policies regarding tenure." Neither does the Handbook contain adequate protection for the rights of nontenured faculty members. The date for notice of nonreappointment is April 1 each year. The Board of Trustees, which may suspend or dismiss a faculty member, serves also as the hearing body on suspensions or dismissals; there is no provision for a hearing before faculty colleagues.

The committee finds that the administration of Phillips County Community College did not provide Mr. Hickingbottom the due process to which he was entitled. Although Mr. Hickingbottom was afforded counsel and the opportunity to be heard in his own defense, to confront and cross-examine President Easley, to present witnesses on his own behalf, and to receive a transcript of the proceeding before the Board of Trustees, he was at no time informed with sufficient specificity of the charges against him, and he at no time had the opportunity to be judged by his colleagues.

The committee further finds that, even if Mr. Hickingbottom were properly to be regarded as a nontenured faculty member, he was not afforded procedural due process. Because Mr. Hickingbottom received notice on January 6, 1976, that his contract would be renewed, he had an expectation under College policies and practices of further appointment through the 1976-77 academic year. The 1940 *Statement* provides that nontenured faculty members have the same procedural protections against dismissal during the term of their appointments as do tenured faculty members on continuous appointment.

In addition, a faculty member who establishes a *prima facie* case that a decision not to reappoint was based significantly on considerations which violate academic freedom is entitled to essentially the same procedural protections as tenured faculty members who are threatened with dismissal.⁴ Because Mr. Hickingbottom was never afforded an opportunity to appear before a faculty committee, in violation of the 1940 *Statement* and the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*, no faculty judgment

⁴ See Regulation 10 of the *Recommended Institutional Regulations on Academic Freedom and Tenure*.

was ever made on the merits of his case. Based on its own investigation of the facts, however, the investigating committee is confident that an appropriate faculty committee would have concluded that the action taken against Mr. Hickingbottom constituted a *prima facie* violation of his academic freedom justifying the procedural protections described in the 1940 *Statement*. The investigating committee also finds that, contrary to the provisions of the 1940 *Statement*, Mr. Hickingbottom was not given one year of termination notice or salary following the date of notification of his dismissal.

General Conditions of Academic Freedom and Tenure at Phillips County Community College

Faculty members and administrators with whom the investigating committee met emphasized that they feel defenseless against arbitrary administrative authority and are afraid that they may be subject to dismissal, without peer review, in retaliation for unpopular speech or action. They stressed that this condition has been exacerbated by the dismissal of Mr. Hickingbottom, a man viewed by his colleagues as a conscientious and constructive campus leader.

The Faculty Handbook provides that the College "has no policies regarding tenure."

Conclusions

1. Mr. Hickingbottom was dismissed without the basic procedural protection of academic due process as set forth in the 1940 *Statement of Principles on Academic Freedom and Tenure* and the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*.

2. There are no written regulations or by-laws which

safeguard academic freedom, tenure, and due process at Phillips County Community College. Apart from the lack of written safeguards—indeed, perhaps in part because of this deficiency—sound conditions of academic freedom, tenure, and due process do not exist at the College.

Neil H. Cogan (Law), Southern Methodist University, *Chairman*

Murlene E. McKinnon (Communications and History), Delta College

Investigating Committee

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

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

Members: Morton S. Baratz (Economics), Washington Office, *ex officio*; Ralph S. Brown, Jr. (Law), Yale University; Clark Byse (Law), Harvard University; Jesse H. Choper (Law), University of California, Berkeley; Peter Falley (Mathematics), Fairleigh Dickinson University; Jordan E. Kurland (History and Russian), Washington Office; Walter P. Metzger (History), Columbia University; Terrance Sandalow (Law), University of Michigan; Peter O. Steiner (Economics), University of Michigan, *ex officio*; Carol Simpson Stern (Interpretation), Northwestern University; Judith J. Thomson (Philosophy), Massachusetts Institute of Technology; Darwin T. Turner (Afro-American Studies), University of Iowa; William W. Van Alstyne (Law), Duke University; Robert K. Webb (History), University of Maryland, Baltimore County.