

# A History of the Role of College Deans in University of Kentucky Faculty Tenure Decisions

## The Original Laws on UK Faculty Employment Decisions

The University of Kentucky as an independent institution of higher education began with a series of laws enacted by the state legislature in 1880, that established the university, and that established a Board of Trustees we have today for its governance. For the hiring of faculty, the laws enacted in March of 1880<sup>1</sup> stated:

“The board of trustees may appoint a president, professors, assistants, and tutors and to determine the salaries, duties and official relations of each.”

The first reference to the “promotion” of an individual to the rank of “Associate Professor” was in 1903, where Assistant Professor J. R. Johnson, of the Department of Mathematics, appeared before the Board to request that the Board grant him such a promotion (the Board declined).<sup>2,3</sup> The first recorded actual “promotion” to Associate Professor was in 1909. During those first three decades, the Board of Trustees involved itself closely in the decisions on faculty hiring and retention.<sup>4</sup>

## First Codification of Role of Administrative Chain of Command in Faculty Employment Decisions

In 1918, early in the term of President **Frank McVey**, the Governing Regulations of the Board of Trustees were heavily revised, including much more detail on the role of the college deans (the legislature in 1908 had raised the institution to a University, which then elevated what had previously been departments to colleges, each administered by a dean). Those Governing Regulations of 1918 made the following prescriptions for decision-making in faculty promotion and tenure (notice, it does not provide a dean the authority to stop a departmental promotion recommendation from reaching the President):



“The Head of the Department recommends to the Dean the appointment, promotion or removal of members of his staff, which recommendations are to be transmitted to the President with approval or disapproval. Members of the staff may make recommendations to the Head ... Each departmental staff consists of such professors, associate professors, assistant professors, instructors and teaching fellows as may be appointment by the Board of Trustees”<sup>5</sup> ... “The Deans ... recommend to the President all appointments, promotions, removals of members of their respective college staffs.”<sup>6</sup> ... “All ... appointments or removals are made by the Board on the recommendation of the officers superior in rank to the persons in question, and the approval of the President. When the President dos[sic] not endorse the recommendation of the Dean for the promotion, removal or appointment of a member of the staff, he shall state in writing, when requested to do so, to the Board of Trustees, the recommendations of the Dean and the reasons therefore.”<sup>7</sup> “...Professors and Associate Professors are, placed on permanent appointment upon the recommendation of the President, with the approval of the Board.”<sup>8</sup>

## Clarifying the Role of the Dean and the Department Faculty



During the term of President **Hermann Donovan**, the Board’s Governing Regulations were revised in 1947, so as to increase the number of kinds of faculty personnel actions for which the dean “shall” make recommendations to the President. In addition, the regulations clarified that the department Head had no *obligation* to obtain consultation from the department members. These provisions continued in force until 1963.

“The dean ... shall recommend to the President all salaries, salary changes, appointments, promotions, removals, or changes of position of members of his college staff.”<sup>9,10</sup> ... “The head ... recommends to the dean the appointments, promotions, transfer, or dismissal of members of

his staff.”<sup>11</sup> ... “The head of the department recommends to the dean the appointments, promotion or removal of members of his staff, which recommendations are to be transmitted to the President, with approval or disapproval. Members of the staff may make recommendations to the head of the department.”<sup>12</sup>

## President Oswald Expands Authority of Dean and Role of Department Faculty in Faculty Personnel Actions

At a specially called meeting in May 1963, the Board of Trustees appointed John Oswald as the new University President. President Oswald arrived that September, and at his second meeting of the Board of Trustees, in October 1963, he obtained the Board’s direction to institute new policies in the appointment and promotion of faculty. He explained to the Board



“It is a long established practice at the University for all changes in personnel ... to be brought before the Board of Trustees for its approval.... In the best interests of use of the time of the Board and to insure consideration of quality factors in all decisions on appointments and promotions of faculty, I am proposing...the establishment of systematic procedures for more effective review...”<sup>13</sup>

These new procedures directed by the Board included that deans would have the authority to make final decisions (reported through the President to the Board) on the appointment of Instructors, and that the department chairperson in making recommendations on appointment or promotion of Instructors, Assistant Professors, Associate Professors and Professors shall make such recommendations “after consultation with his senior staff.” That is, for the first time it was mandatory that the department chairperson seek and obtain consultative faculty input. Importantly, the department chairperson would forward the recommendation to the dean “*who would forward the recommendation with his view to the President ... The President would upon advice from a faculty review committee*” make decisions of final action on assistant professors and would make recommendations to the Board on Associate Professors and Professors. That is, the dean could not stop a department chairperson’s recommendations concerning the professorial ranks, and for the first time a University-level faculty committee was required to exist and advise the President.<sup>14</sup>

President Oswald in September 1963 provided a draft of the new policy to the Faculty Council, which just prior to the October 1963 Board meeting provided its concurrence to President Oswald,<sup>15</sup> and agreed with President Oswald (as Chair of the Senate) that the new academic Area Committees were committees of the University Faculty (= University Senate today).<sup>16</sup> Five days after the Board meeting, President Oswald published by University-wide memo “To All Faculty Members”<sup>17</sup> the new procedures, which stated:

“... I am issuing with the advice and concurrence of the Faculty Council [ ] a standardized appointment and promotion procedure ... This procedure would bring the faculty into an active role in considerations on appointments and promotion...These procedures will go into effect on December 1”

“Recommendations for new appointments and promotions will normally be **initiated by the department chairmen**<sup>18</sup> ... Accompanying the recommendations [to the dean] will be supporting data which will include evidence of consultation with tenure members of the department...”

“The dean shall have authority to appoint instructors... The dean will forward recommendations on assistant professors and above together with his own recommendations to the President [for faculty Area Committee input prior to Presidential action]...”

“The President shall act in the case of assistant professors and report to the Trustees. For associate and full professors, the Board shall act upon the recommendation of the President.”

By a follow-up policy memo in December 1963, President Oswald further clarified:

“The department chairman should bear in mind that accompanying the recommendations should be supporting data, including evidence of consultation with tenure members of the department, and if there is a minority opinion, this should be documented.”<sup>19</sup>

### **Final Authority of Deans Expanded to Decisions on Appointment of or Promotion to Assistant Professor**

In two stages, President Oswald, with the approval of the Faculty Council, increased the authority of deans to making final decisions on appointment or promotion to assistant professor. First, in March 1965 he established a new procedure

“[w]ith the recommendation of the Faculty Council...On appointments to assistant professor of persons whose non-tenured period of service may, if necessary, entail the full term of seven years, the deans will be delegated the responsibility to act for the President without reference to the Area Committee.”<sup>20</sup>

That fall, at a meeting of the Senate Council

“...it was decided on the grounds of expedience to permit deans and department chairmen to make decisions on new assistant professors ... does the present policy hinder effective recruitment?”<sup>21</sup>

In response, President Oswald in December 1965 issued a further revised policy:

“After consultation with the Senate Council and the Area Committee Chairmen, I hereby modify the policy concerning appointments to the rank of assistant professor, previously modified in the directive of March 30, 1965. Henceforth, the responsibility for making all appointments to the rank of assistant professor is delegated to the dean of the college concerned.”<sup>22</sup>

### **Clarified Policy on Statement and Discussion of “Reasons” for Contemplated Negative Tenure Decision**

In response to complaint by some administrators (such as Biochemistry Department Chairperson Schwert) that they were not being provided an opportunity to make additional, supporting articulation in cases where the President (or his delegate, the Executive Vice President) were making negative final tenure decisions, President Oswald in early 1966 promulgated some important procedural modifications. In two set of instructions to the Provost (of the Lexington Campus) and the Vice President of the Medical Center, President Oswald prescribed:

“The Deans of the Colleges now have authority to make appointments to the ranks of Instructor and Assistant Professor and promotions from Instructor to Assistant Professor ... Recommendations for appointment or promotion to the ranks of Associate Professor or Professor and recommendations for the granting of tenure should be made by the Dean of the College to the Provost or Vice President for the Medical Center [which] will then be referred to the appropriate Area Advisory Committee...If [after receiving the Area Committee recommendation] the Vice President for the Medical Center or the Provost **intends** to act unfavorably, the Dean **will be informed** with a statement as to the reasons. The Dean will have an **opportunity to respond before**<sup>23</sup> any action becomes final. Recommendations will be made subsequently to the Board of Trustees by the President.”<sup>24</sup>

“...I am delegating to you the responsibility for working with the appropriate area committees in regard to recommendations for appointment or promotion to the ranks of Associate Professor or Professor and recommendations for the granting of tenure...I would ask that in those cases when you **intend** to act contrary to the advice of the Area Advisory Committee, **you will consult first**<sup>23</sup> with the Executive Vice President or me.”<sup>25</sup>

These policy expressions provide an important legislative history to an often misinterpreted Administrative Regulation that is in effect in 2005 (see below).

## President Oswald Reviews to the Faculty the University Procedures on Faculty Promotion and Tenure

A number of the above and other policy adjustments during 1965 and 1966 were provided by policy memo to deans and chairpersons, who were *not* in turn distributing the policy memoranda to the department faculties, even though it was the faculty whose personnel status was the subject of the procedural adjustments.<sup>26</sup> Therefore, President Oswald in April 1966 sent directly to every University faculty member a large policy summary,<sup>27</sup> along with copies of each policy memoranda he had promulgated since his last such communication directly to the faculty in October 1963. As a part of that summary, he issued a revised ‘tenure dossier flow chart’, that stated in part as below. To understand what happened later in the role of deans in tenure decisions, it is important to closely read the rooting legislative history in the language below. As you read this, assess whether the language authorizes a dean to make a final negative decision to stop a departmental recommendation for tenure. Also note whether or not an act of “disapproval” constitutes in and of itself the “final action” or whether it precedes the final action.

“Department Chairman ... **Initiates**<sup>18</sup> the proposal

“Dean ... Adds appropriate endorsement or commentary.

“Provost .[or].. Vice Pres. Medical Center....

1. Approves or **disapproves** the recommendation.
2. Dean **is advised** and may response **before**<sup>23</sup> final action
3. Action reported to Executive Vice President”

## President Singletary Codifies Oswald-Era Faculty Policy Memos as Into New Administrative Manual



President **Otis Singletary**, shortly after his being hired as the new UK President in the fall of 1969, initiated a process of collating and codifying the various policy memoranda issued by President Oswald (and his predecessors) into an administrative manual to be called the “Administrative Regulations.” With respect to faculty appointment, promotion and tenure, the President, as Chair of the University Senate, utilized the Senate Advisory Committee on Appointment, Promotion and Tenure (note: this is not the appeals committee), composed of the chairs of all the Academic Area Advisory Committees (and Chaired itself by **William Garrigus** (Animal Sciences), to draft that collation of faculty personnel action policies. The resultant committee product was adopted by President Singletary (with Senate Council concurrence<sup>28</sup>) and issued March 1972.<sup>29</sup> It is important to closely read the pertinent parts, which stated:



“All recommendations for appointment to the University faculty must **originate with the department chairman**<sup>18</sup>...The deans of the colleges have been delegated authority to make appointments, reappointments and terminal reappointments to the ranks of instructor and assistant professor...”

“All recommendations for full-time appointments at the level of associate professor or above, with or without tenure, shall be supported by a file ... The recommendations of the chairman and the dean, with supporting file, shall be forwarded ... A flow chart with further procedural comments is provided at the end of this administrative regulation...”

“Recommendations to promote must **originate with the department chairman**<sup>18</sup> ... and must include the written opinion of each faculty member of the educational unit who was consulted in accordance with the Governing Regulations. This complete file with a letter of recommendation from the department chairman is forwarded to the dean for his review and recommendation... The deans of the colleges have been delegated authority to make promotions from the rank of instructor to assistant professor...”

“Promotions to Associate Professor or Professor...Such promotions will follow the same process as indicated in the preceding introduction...The Area Committee’s report will be returned to the

appropriate vice president, who will add his recommendation and forward the file to the President for his recommendation and subsequent action by the Board of Trustees . ...

“Whenever a recommendation to promote is **disapproved at any level**, this fact must be reported back to the preceding levels with supporting reasons and an **opportunity**<sup>23</sup> provided for a thorough **discussion** among the concerned parties.” [note: this often currently misunderstood final sentence is in the current Administrative Regulations of 2005]

In addition to the above text of procedural regulations, there was also provide a procedural flow chart for promotion and tenure. Again, note carefully below where is the level of authority for *final action* to deny a tenure proposal, and note carefully whether “disapproval” is a final action itself or whether “disapproval” is a procedural event that precedes “final action.”

“Procedural Flow Chart...

“**Department chairman** ... **initiates**<sup>18</sup> the proposal... forwards recommendation to the appropriate dean...”

“**Dean**

1. Review the proposal and supporting data
2. Adds his endorsement or commentary and forwards the proposal to the appropriate vice president”

“**Vice President**

2. Approves or **disapproves** the proposal
3. **Advises** the dean of the action so the dean **can respond prior**<sup>23</sup> to final action
4. Forwards recommendation to the President”

“**President**

1. Reviews the proposal and submits recommendation to the Board of Trustees for final action”



Subsequent to President Singletary’s promulgation of the above March 1972 Administrative Regulation for faculty appointment, promotion and tenure, the question arose in the April 1974 University Senate meeting<sup>30</sup> as to the handling of a dossier containing a negative recommendation. Provost **Lewis Cochran** articulated the administrative practices:

Dr. Cochran: “...if the area committee is contrary to the recommendation of the dean, this is reported back to the dean for further **comment or information before**<sup>23</sup> the final recommendation is sent on to the President’s office.”

.....  
“[Senator G \_\_\_] “asked the question if one does not recommend for promotion and tenure, does an action occur”?”

Dr. Krislov “responded that the thought the file would go forward with a negative recommendation.”

Dr. Cochran “responded that it would go forward only if it were a positive recommendation.”

(Compare that last statement of Provost Cochran again back to the actual language of the Administrative Regulations flow chart, reprinted immediately above). Six years later, President Singletary himself reiterated the same position as Provost Cochran, in response to a request from the Senate Council that following tenure denial by a dean that the proposal dossier still be allowed to proceed forward for review by an Area Committee:

“1. I do not believe that this is an appropriate function for the area committees. These committees were not envisioned as decision-making groups who would consider and recommend upon all promotion and tenure decisions. Rather, they were created as points of “quality control” where the faculty voice could be officially heard in those cases where established university processes had led to the consideration of a tenured appointment in the University. I do not believe it that it would be wise to alter the role of the area committees.



2. I do not wish to lessen the authority or responsibility of the deans. By definition, a dean is the chief academic and administrative officer of the college and I do not want to see that officer's role diminished in such matters. the delegation to the deans of the authority to appoint non-tenured faculty members carries with it the corresponding authority to terminate those appointments, so long as they are terminated in conformity with the Governing and Administrative Regulations."<sup>31</sup>

## **Tenure Earthquake at the University of Kentucky: the Hayse Tenure Case**

It is not possible to understand why we have the Administrative Regulations that are current today in 2005, concerning a dean's final decisional role in tenure cases, without understanding the Hayse tenure case. Dr. Hayse was an assistant professor in the Honor's program, at a time when that program could serve as the primary academic unit housing the tenure line of faculty members, and in the fall of both 1976 and 1977 he had the unanimous vote of his department, and of his department Chairman (Evans), in support of promotion with tenure, but Dean Stephenson disapproved tenure/promotion and stopped the dossier on both occasions. As described by Dr. Hayse in his court Affidavit in March 1981,<sup>32</sup>

"Dean Stephenson made it clear to [Hayse] that he, personally, had made the decision to deny tenure and promotion without having forwarded [Hayse]' dossier to the appropriate Area Advisory Committee, and further led [Hayse] to believe that, as Dean, he has such final authority...When [Hayse] requested the he be shown the source of such absolute authority in the Governing Regulations and Administrative Regulations, Dean Stephenson was unable to find such a passage; [Hayse] then called Dean Stephenson's attention to the PROCEDURAL FLOW CHART found therein; Dean Stephenson became visibly upset, and tried to telephone someone for advise, but was unable to reach the party called; Dean Stephenson then terminated the interview."

Regretably, neither the UK Chapter of the AAUP, nor the Senate Advisory Committee Privilege and Tenure would challenge the position of the UK administration on behalf of Hayse in his intramural efforts of appeal (each opined in essence that 'he had no case').<sup>32</sup> Therefore, in March of 1978, Hayse filed a court action in Franklin Circuit Court against the UK Board of Trustees and Dean Stephenson alleging he was wrongfully denied tenure.<sup>33</sup> As the KY Supreme Court later summarized in its published decision<sup>34</sup>

"... Hayse claims his employment was terminated in violation of First Amendment rights to freedom of association and Fifth Amendment guarantees of due process because of a raging internal dispute between [Dean] Stephenson and [Director] Evans involving the Honors Program. Hayse was recommended for tenure by his Department Chairman, Dr. Evans. This recommendation was forwarded to Stephenson, who rejected his application..."

"...the University's Regulations did not authorize the Dean to reject appointment to the rank of Associate Professor. His authority was limited to reviewing the proposal, adding his endorsement or commentary, and forwarding everything through channels, ultimately to the Board of Trustees, which had the exclusive final authority to approve or disapprove the application. The University and Stephenson dispute this interpretation of the Regulations, claiming the procedure was altered by custom and application. But this dispute was resolved by the Court of Appeals in its Opinion on the first appeal of this case. This 1982 Court of Appeals Opinion states in pertinent part:

*"The university further contends that as a matter of practice and custom all recommendations for promotion are passed on for higher review only in the event they are approved by the dean of the college. This is not the procedure established by the regulations which have been adopted and custom cannot be allowed to supercede the duly adopted procedures"...*

Indeed, the KY Supreme Court decided that not only did the 1972 Administrative Regulations (still in effect 1976-1977) not authorize a dean to make final, stopping denial of tenure, but that under those regulations and flow chart, no administrative level had the authority to make final, stopping denial of tenure, each could only “disapprove” and forward that disapproval<sup>34</sup> --- only the Board of Trustees possessed the final decisional authority (quoting the Supreme Court “*The application and supporting documents were never forwarded to the Board of Trustees to consider Hayse’ applications as the Regulations prescribed.*”<sup>34</sup> Hence, when the Supreme Court ordered the circuit court to issue an injunction<sup>35</sup> compelling UK to process Hayse’ dossier in accordance with the regulations in effect at the time Dean Stephenson had stopped Hayse’ dossier, that court injunction compelled that the dossier must go all the way to the Board of Trustees, even if “disapproved” by the dean and every higher administrative level. The dossier did finally reach the Board of Trustees, and the Board did make a decision of final action on Hayse’ tenure and promotion.<sup>36-39</sup>



Just before the Court of Appeals in March 1982 rendered the decision against UK quoted by the Supreme Court above (to the effect that the 1972 Administrative Regulations did not authorize a disapproving dean to stop (not forward) a tenure dossier), President Singletary issued a new Administrative Regulation new flow chart (wordsmithed with much effort by Special Assistant to the President **Paul Sears**). That new flow chart, and its accompanying text language, were essentially the regulations and flow that we have in 2005, that expressly provides to deans the authority to make a final action to stop a tenure dossier. President Singletary, in reaction to the Hayse case, expressly directed that the new flow chart was effective “immediately.”<sup>40</sup> The response of the Senate Council to the issuance of a new flow chart, that expressly provided tenure-dossier-stopping authority to colleges deans, was not to lodge an objection, but rather, to make an acquiescent statement to the effect ‘at least now the flow chart matches the practice.’<sup>37</sup>

## **A Role of the Department Faculty to Appeal a Decision of a Dean to Deny a Fixed-term Reappointment**

Although the post-Hayse Administrative Regulations do not make a procedural provision for a supportive department faculty and department Chairperson to force a department faculty member’s tenure case beyond a dean’s final action to stop the tenure dossier, there is such a provision in the regulations for the situation in which a dean has made final action to deny a recommendation for a fixed-term reappointment of a department faculty member (e.g., an annual reappointment). This provision has its origin in a 1971 case from the Department of Political Science in the College of Arts and Sciences. The point of contention was that the dean (not a Political Scientist) was persistent on a particular view of what were proper disciplines of faculty research. The faculty member contended that as a matter of academic freedom to pursue scholarly inquiry wherever it may lead he

“changed from the more traditional, quantitative variety popular in refereed journals in political science to more policy-oriented, dare I use the term ‘relevant,’ political research of increasing interest among certain segments of the discipline.”<sup>42</sup>



The Senate Advisory Committee on Privilege and Tenure (SACPT), through its Chair **Roger Eichhorn** (Mechanical Engineering) reported to the President that the candidate “*stated that he should have the right to use the outlets for his research which will achieve the greatest impact and research the widest audience,*” about which “*the administration agrees that it was an important factor in the decision not to reappoint [and that the administration tends] to discount, for example, the type of research [the candidate] has recently undertaken and his articles in non-refereed journals.*”<sup>42</sup> The SACPT committee also reported that the department faculty as a body petitioned to the Vice President [= Provost today] that “*decisions on reappointment should be based on academic grounds ... and opinion is widespread among students and faculty members at the University that the decision not to reappoint was based on non-academic considerations.*”<sup>42</sup> The department Chairperson’s impassioned letter to the SACPT committee stated that he “*is not questioning the Dean’s authority to override a recommendation from the department*” but at the same time he “*think[s] it very*

*unfortunate if such carefully considered and well-documented recommendations of a department are overridden.*"<sup>42</sup> The SACPT opined to President Singletary

"We believe the administration should be able to anticipate such disruptive effects [in overriding a department's recommendation] and should utilize every available resource for resolving differences of opinion so that questions of the autonomy of a department in selecting and evaluating its faculty need rarely arise."<sup>42</sup>

Toward that end, the SACPT recommended a change to the University's procedures, so that in cases where a dean denies a departmental recommendation for untenured reappointment, that by a subsequent majority vote of the tenured faculty and with the support of the department chairperson, the case will be forwarded above the dean to the Area Committee, which will make a recommendation to the Vice President [=Provost today] for final decision.<sup>42</sup> President Singletary accepted the recommendations, that the individual's case proceed to the Area Committee, and that the policy regulation be changed to include the new procedure recommended by the SACPT.<sup>43</sup> That regulation was codified the next year in the new 1972 Administrative Regulations manual,<sup>28</sup> and still in exists in the Administrative Regulations of 2005 at AR II-1.0-1.II.C and AR II-1.0-1.II.D.2.<sup>44</sup>

### **Appeal as a Basis to Cause a Denied Proposal for Tenure to Move Past a Dean and to the Area Committee**

An amendment in 1974 to the Administrative Regulations required the dean to establish the existence of a college-level advisory committee on appointment, promotion and tenure.<sup>45,46</sup> From 1974 to 1980 however, sometimes instead of using the dean's own college-level committee, a college dean would utilize the University-level Academic Area Advisory Committee prior to making a final decision at the level of the dean. The procedural basis for doing so was in the nuance of the 1972 language:

"The deans of the colleges have been delegated authority to make appointments, reappointments and terminal reappointments to the ranks of instructor and assistant professor without reference to an Academic Area Advisory Committee."<sup>28</sup>

The above language contains the implication that the default procedure is for the dean to send such cases to an Academic Area Advisory Committee, but that the dean has the authority to cause exceptions in which the dean may make appointments, reappointments, and terminal reappointments (the latter of which is typically the alternative outcome when tenure is denied) without reference to an Area Committee. However, when the Administrative Regulations were changed in 1980 to require that during the mandatory 6<sup>th</sup> year consideration of tenure cases, a dean must use the college-level committee,<sup>47</sup> the regulations were shortly thereafter also changed to affirmatively prohibit a dean from instead using an Area Committee during the procedural steps leading to the dean's decision of final action.<sup>48</sup>

However, there still remained the possibility that once a final decision to deny tenure had been made, then a post-final-action appeal could cause the proposal dossier to proceed beyond the dean to an Area Committee. The basis for merit-based appeal of a final action to deny tenure is found not in the President's Administrative Regulation AR II-1.0-1.III, but instead in the higher Board of Trustee's Governing Regulation XII.H.<sup>49</sup> In 1990, Medical Center Chancellor **Peter Bosomworth** informed Paul Sears and the President



"We do advise faculty members of their right to appeal in the dean's letter. A few take advantage of that and, if I feel the decision is a close call, I have permitted the appeal to go forward to the Medical Center Area Committee."<sup>50</sup>

And the President stated to the Senate Council in 1990:



“...the dean of a college should have a central role in decision making at a critical point in the development in college programs” and “It is also currently feasible for an assistant professor to appeal a decision not to promote and/or grant tenure to the Chancellor/Vice President, the University Senate Advisory Committee on Privilege and Tenure, and the President. In some cases, as a result of existing appeal procedures, promotion and tenure dossiers have been further reviewed and evaluated by an Academic Area Advisory Committee and a Chancellor/Vice President.”<sup>51</sup>

## President Conceals From Senate Council That Majority of Deans Do Not Oppose Area Committee Review of Dean’s Denial of Tenure



In what this author personally considers as an epitome of the nontransparency of the decade the University was about to begin, President **Charles Wethington** concealed important information from the *University System* Senate Council on the level of support among *University System* deans for the Senate Council’s January 1990 proposal to the President for conditions (short of post-denial appeal) under which a tenure proposal dossier would proceed on to the Area Committee beyond a disapproving dean. President Wethington sent the Senate Council’s January 1990 policy proposal<sup>52</sup> to the following persons for comment, and shown are the responses of the individuals to the proposal:

### Opposed

1. Chancellor Bosomworth – “I do not support...”<sup>53</sup>
2. VP Wimberly Royster - “I am not in favor...[in]” cases where the Department and College Advisory Committee recommend promotion and the Dean not recommend promotion ... Under these circumstances maybe review by ... the Area Committee would be justified upon petition by the faculty member and the Department.”<sup>54</sup>
3. Community College System Chancellor Ben Carr – “I am opposed to this...”<sup>55</sup>

### Not Opposed

1. Chancellor Hemenway – “I have spoke with the Deans of the Lexington Campus ... Neither the Deans nor I see any reason why this should not be adopted.”<sup>56</sup>
2. VP Gene Williams (by Paul Willis) – “Looks fine”<sup>57</sup>
3. VP Ed Carter – “No reaction. Chancellor issue – they can best respond”<sup>58</sup>

The result was an even split among the six Chancellors/Vice President that President Wethington consulted. Further, all 12 Lexington Campus deans did not see why it should not be adopted (and no indication from Chancellor Bosomworth that he actually consulted his 5 deans). However, the official response of President Wethington to the Senate Council Chair Don Leigh was the following quintessential example of Wethington’speak:

“Neither a majority of the Chancellors and Vice Presidents ... support the proposed change. Hence, I am disapproving the recommendation at this time.”<sup>51</sup>

However, it is also true that there was *not* a majority of Chancellors and Vice Presidents *against* the proposal either, and clearly there was a majority support of the University college Deans. However, President Wethington’s parsed words never revealed this full truth to the frustrated University Senate Council.

## Senate Advisory Committee on Privilege and Tenure 3 Times Supports Senate Council’s 1990 Proposal

After President Wethington’s March 1990 rejection of the Senate Council’s above-recommended policy proposal, the Senate Advisory Committee on Privilege and Tenure in three subsequent annual reports reiterated a University need for revision of the tenure regulations to allow under certain conditions for a tenure dossier proposal to proceed to the Area Committee beyond the tenure denial of a dean:

Annual Report of SACPT For 1991-1992 (**Gretchen LaGodna**, Chair)

“The committee strongly believes that the right of review at the Chancellor and Area Committee level should be extended to assistant professors being considered for promotion and tenure. A change in the Administrative Regulations would insure that faculty at this critical juncture would have access to a review by the broadest possible body, the same right that is now afforded tenured faculty members seeking promotion. While faculty denied promotion and tenure at the college level can avail themselves of an appeal process, the procedures are time consuming and often inadequately understood by faculty. Further, appeals can frequently result in adversarial and acrimonious working relationships. The committee recommends the same change in Administrative Regulations as suggested by the Senate Council in January 1990.”<sup>59</sup>



Annual Report of the SACPT for 1992-1993 (Gretchen LaGodna, Chair)

“Experiences with cases before the committee this year reaffirmed the need for revision of the Administrative Regulations extending the right to area advisory committee review in all tenure cases, even when denied at the college dean level. This recommendation has been made by this committee and by the Senate Council several times but rejected by the administration.”<sup>60</sup>

Annual Report of the SACPT for 1994-1995

“While we do not believe that cases that are rejected at one level should automatically be passed up the line for continuing consideration, we do believe that consideration should be given to allowing for substantive appeals, particularly when negative decisions have been made at the Dean’s level.”<sup>61</sup>

### **Senate Ad Hoc Committee Recommends Change to Regulation on Relationship of Dean to Area Committee**

During her terms as Chair of the Senate Advisory Committee on Privilege and Tenure, Dr. LaGodna had become convinced of the need to resolve the continuing frustration of department faculties, especially over situations in which a dean (whose specialty may not be in the field of the candidate) denies the tenure proposal over the support of the department, over the support of the external letters, over the support of the department Chairperson, and over the support of the college-level committee. Yet, she had seen President Wethington repeatedly reject proposals from the Senate Council and Senate Advisory Committee on Privilege and Tenure that were aimed at solving the issue. Thus, upon her election to Chair of the Senate Council for the 1995-1996 academic year, she was instrumental in effectuating the establishment of a University Senate Task Force for Promotion and Tenure.<sup>62</sup> The Senate Task Force subdivided into two subcommittees, one chaired by Dr. Mary Witt was charged to examine issues relating to criteria. The second subcommittee, chaired by Dr. Mike Nietzel, was charged to examine issues relating to procedures. The subcommittee chaired by Dr. Nietzel, among other issues, closely examined the relationship of the college deans to the University-level Area Committees and potential new procedural ways to approach resolving the ongoing frustration of the department faculties. However, after discussion in the University Senate Council it was adduced that the subcommittee had not yet identified a solution that was both satisfactory to the frustrated department faculties and that would also be adopted by President Wethington.

### **Future Prospects in the 2004-2005 Academic Year**

At this writing, the University Provost is Dr. Mike Nietzel, who chaired the previous University Senate ‘Procedures’ Subcommittee of the 1996-1997 Task Force on Promotion and Tenure that determined an issue existed, unresolved, in the role of the college deans in faculty promotion and tenure. The University Administrative Regulations on this aspect remain as they existed in 1996-1997, essentially the same as when promulgated by President Singletary in 1982 in reaction to the Hayse tenure case. Recently, the Provost has presented to the University Senate a number of what he termed as “provocative” proposals relating to promotion and tenure procedures.<sup>63</sup> It may be now is an occasion that the Provost could support to the President additional proposals relating to promotion and tenure issues still unresolved since the last attempt in 1996-1997. Under the Board of Trustee’s Governing Regulations, before the President makes any changes to the current Administrative Regulations

concerning promotion and tenure procedures, a draft of the proposed change must be considered by the University Senate Council.<sup>64</sup> Or, as has occurred on some previous occasions, a proposal may satisfy that requirement by having been proposed to the administration under the sponsoring apparatus of the University Senate and Senate Council. Individuals or department faculties interested in the opportunities of the present circumstances can consider the option of utilizing the instrument of the University faculty, i.e., the University Senate, in development and sponsorship of proposals on this topic.

## References

<sup>1</sup> KRS 164.220 in today's laws <http://www.lrc.state.ky.us/KRS/164-00/220.PDF>

<sup>2</sup> Minutes, Board of Trustees, June 3, 1903

<sup>3</sup> In an example of the quaint common vernacular used at the turn of that century, faculty were not referred to as being hired or appointed, but rather, "elected" by the Board to the academic faculty position, e.g., "Thereupon Mr. Stoll made the following motion. I move that all instructors and Assistant Professors be elected for the ensuing year. Said motion was seconded and carried." BOT minutes June 5, 1902

<sup>4</sup> Minutes, Board of Trustees, June 1909. President Patterson stated "... I recommend that J. M. Davis be promoted from the position of first assistant in Mathematics to the position of Associate Professor of Mathematics..."

<sup>5</sup> Board of Trustees Governing Regulations, 1918, Section IX page 19

<sup>6</sup> Board of Trustees Governing Regulations, 1918, Section VII, page 17

<sup>7</sup> Board of Trustees Governing Regulations, 1918, Section XI, page 22

<sup>8</sup> Board of Trustees Governing Regulations, 1918, Section XIII, page 24

<sup>9</sup> Board of Trustees Governing Regulations, 1947, Section VIII.5, page 12

<sup>10</sup> The new reference to "*changes of position*" roots directly to the case of Lester O'Bannon, web posted at: [Tenured Faculty Member Criticizes Administration: Board Threatens Dismissal - O'Bannon Case](#)

<sup>11</sup> Board of Trustees Governing Regulations, 1947, Section VIII.21, page 20

<sup>12</sup> Board of Trustees Governing Regulations, 1947, Section VII, page 20

<sup>13</sup> Minutes, Board of Trustees, October 18, 1963, page 64

<sup>14</sup> The actual text of the Board's October 18, 1963 minutes on this point states:

"1. Instructors – that the department chairman would recommend appointments [after consultation with his senior staff](#) to his dean who would have the authority to appoint with reporting of all action to the president and through him to the Board.

"2. Assistant Professors – that the department chairman would recommend [in consultation with his senior staff](#), to his dean who would forward the recommendation with his view to the president. the president would upon advice from a faculty review committee make appointments and promotions to the level of assistant professors with reporting to the Board.

"3. Associate and Full Professors and All Tenure Appointments – that [after consulting his senior staff](#), the department chairman would recommend to his dean who would forward it with his own recommendation to the president. After appropriate faculty committee review, the president will make recommendations for appointments and promotions to these ranks to the Board for action."

<sup>15</sup> Minutes, University Faculty Council, Oct. 15, 1963

<sup>16</sup> Minutes, University Faculty Council, Oct. 24, 1963, "Dr. Weaver [Faculty Council Chair] reported that the President had notified him ... that he was asking the Faculty Council to think about membership to the four Area Committees; that these committees would be the Council's committees."

<sup>17</sup> [President Oswald's Oct 1963 Memo on Faculty Appt/Promotion/Tenure Criteria](#)

<sup>18</sup> This provision that it is the department Chairman, not the Dean, who has the authoritative power to initiate recommendations concerning appointment, promotion or tenure, spawns a long series policy promulgations that each reaffirmed that authority, including Presidential policies dated (1) October 28, 1963; April 27,

1966; March 1, 1972; Lewis Cochran for the President at the April 1974 Senate meeting; the current Administrative Regulations AR II-1.0-1.III.I at [Page III - Promotion and Tenure](#); see also footnote 34

<sup>19</sup> [President Oswald's 12/18/63 memo](#)

<sup>20</sup> March 30, 1965 memorandum from President Oswald to “*All Deans and Department Chairmen*”

<sup>21</sup> Minutes, Senate Council, Nov. 9, 1965

<sup>22</sup> December 13, 1965 memorandum from President Oswald to “*All Deans, Department Chairmen, Area Committee Chairmen*”

<sup>23</sup> This provision spawns a long series of policy promulgations that each reaffirmed that when an administrative official in the administrative chain of command formulates an intent to adopt an unfavorable position toward the proposal to promote or tenure a faculty member, that administrator will notify the lower administrative level(s) so as to provide an opportunity for discussion prior to that administrator’s ultimate action. The series of policy promulgations reaffirming this policy include those Presidential policies dated: January 4, 1966; January 5, 1966; April 27, 1966; March 1, 1972; the current Administrative Regulations AR II-1.0-1.III.I at [Page III - Promotion and Tenure](#); see also footnote 34.

<sup>24</sup> January 5, 1966 memorandum from President Oswald to “*Deans of Schools and Colleges*”

<sup>25</sup> January 4, 1966 memorandum from President Oswald to the Vice President of the Medical Center (William Willard) and the Provost (Lewis Cochran)

<sup>26</sup> President Oswald’s cover memo to his April 27, 1966 policy document, stated in part “*Sometime ago the University began ... the codification and publication of a revised governing regulations and a new administrative manual setting forth policies, regulations and procedures which govern the University in matters of faculty...however, that task is not yet completed and because, recently, questions have been raised concerning certain policies and procedures I should like to set forth a composite of information from the various memoranda which may have not reach all faculty members...*”

<sup>27</sup> April 27, 1966 document from President Oswald to all University faculty [President's April 27, 1966 Memo](#)

<sup>28</sup> Minutes, June 1, 1971, University Senate Council

<sup>29</sup> Administrative Regulation AR II-1.0-1, issued March 1, 1972 [First Issuance of AR II-1.0-1 on March 1, 1972](#)

<sup>30</sup> Minutes, University Senate, April 22, 1974

<sup>31</sup> August 28, 1980 memorandum from President Singletary to University Senate Council Chair

<sup>32</sup> Affidavit, March 24, 1981, Joseph Murray Hayse, filed in Franklin Circuit Court; [Hayse Case - March 1981 Affidavit](#)

<sup>33</sup> [Hayse Case - Original Complaint](#)

<sup>34</sup> [Supreme Court Decision](#) in Hayse Case *Board of Trustees of the University of Kentucky vs. Hayse*, Ky., 782 SW 2d 609 (1990) A very important outcome of the Supreme Court’s decision on this meaning of the University’s Administrative Regulations was that “disapproved at any level,” as that phrase is used in the 1972 regulation (which is the same language as the current AR II-1.0-1.III.I) stating “*Whenever a recommendation to promote and/or grant tenure is disapproved **at any level**, this fact shall be reported back to the preceding level(s) with supporting reasons and an **opportunity provided** for a thorough discussion of the recommendation among the concerned parties*”, does not mean either (1) the final decisional action to stop the dossier nor (2) the final level that renders the final decisional action to stop the dossier. Rather, the phrase refers (just as it did in the spawning flow chart of 1966) both to (1) any of the levels up the procedural flow chart and (2) that the reporting back to lower levels with reasons and an opportunity for discussion happens before that flow chart level performs its final function in the process at that level. For example, today if a dean has formed an intent to deny tenure and stop the dossier, the dean will first notify lower levels with reasons and provide an opportunity for input prior to rendering the final decisional action. Similarly, if the Provost has formed an intent to deny tenure and stop the dossier, the dean will first notify lower levels with reasons and provide an opportunity for input prior to rendering the final decisional action.

<sup>35</sup> [Court Injunction Against University of Kentucky Compelling Ab Initio Reconsideration of Hayse Tenure Case](#)

<sup>36</sup> [President Wethington memo to Board of Trustees recommending that Board reject tenure for Dr. Hayse](#)

<sup>37</sup> [Minutes of Board of Trustees 08/18/93 meeting showing Board rejecting tenure for Dr. Hayse](#)

<sup>38</sup> [Newspaper Report of UK Board Decision to Deny Tenure to Hayse](#)

<sup>39</sup> Incredibly, 27 years after it was initially filed, the University is still litigating Dr. Hayse about his tenure

case complaint. For a summary of the current status of the Hayse Case see:

<http://biology.uky.edu/djones/PDF/5/5.xvii/Hayse%Case%Current%Status%2002.doc>

40 Singletary memorandum on new tenure process flow chart:

[New Administrative Regulation Promotion-Tenure Flow Chart 1982](#)

41 This writer saw in the early 1990's a document in Senate Council files making this statement, but subsequent to the loss of some Senate Council records in the 2001 fire that document cannot be located.

42 June 4, 1971 letter from SACPT Chair Roger Eichhorn to President Singletary

43 June 11, 1971 letter from President Singletary to Roger Eichhorn

44 AR II-1.0-1.II [Page II - Appointments](#)

45 [Vice President's 10/30/74 memo](#) to President Singletary re: new regulation on college-level committee

46 [President's 10/31/74 memo](#) to VP Cochran providing an interpretation of the new regulation

47 September 29, 1980 memorandum from President Singletary to VPs Bosomwoth and Cochran distributing the new sections of AR II-1.0-1

48 New entire AR II-1.0-1 issued April 4, 1983

49 [www.uky.edu/Regulations/GR/gr12.pdf](http://www.uky.edu/Regulations/GR/gr12.pdf)

50 February 13, 1990 memo from Chancellor Peter Bosomworth to President Wethington, and "Attn" Paul Sears

51 March 1, 1990 memorandum from President Charles Wethington to Senate Council Chair Don Leigh

52 January 1990 proposal from Senate Council (Chair Don Leigh) to President Wethington

53 February 13, 1990 memorandum from Chancellor Peter Bosomworth to President Wethington

54 February 15, 1990 memorandum from VP Wimberly Royster to Paul Sears

55 February 13, 1990 email from Roberta Combs to Paul Sears, transmitting same dated memorandum text from Chancellor Ben Carr to Paul Sears

56 February 23, 1990 memorandum from Chancellor Robert Hemenway to President Wethington

57 Feb. 14, 1990 email from Karen Willmott to Paul Sears relating the comments of Paul Willis who was asked to provide a response on behalf of VP Gene Williams.

58 Undated handwritten note back to President Wethington from VP Ed Carter

59 August 31, 1992 Annual Report of SACPT For 1991-1992 [Academic Year 1991-1992 Annual Report](#)

60 July 23, 1993, 1992 Annual Report of SACPT For 1992-1993 [Academic Year 1992-1993 Annual Report](#)

61 September 8, 1995 Annual Report of SACPT For 1994-1995 [Academic Year 1994-1995 Annual Report](#)

62 Minutes, University Senate, September 9, 1996. [www.uky.edu/USC/USMinutes/US.09.09.1996.html](http://www.uky.edu/USC/USMinutes/US.09.09.1996.html)

63 Provost's powerpoint presentation to the University Senate [Provost's Senate Address - December 13, 2004](#)

64 Board of Trustees Governing Regulations GR VIII.B [www.uky.edu/Regulations/GR/gr08.pdf](http://www.uky.edu/Regulations/GR/gr08.pdf)

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Acknowledgements: The author wishes to express his great appreciation to Frank Stanger, University Archives, and Rebecca Scott, University Senate Council Administrative Coordinator, for facilitating this author's access to documents containing historical information utilized in preparing this writing.