

The Case of Joseph Murray Hayse

Background:

Joseph Hayse

Scholarly Area: Comparative Literature

Joined UK 1971 as Instructor, Honors Program

Tenure Consideration Scheduled for fall 1976



Robert Evans

Director of Honors Program (since 1962):

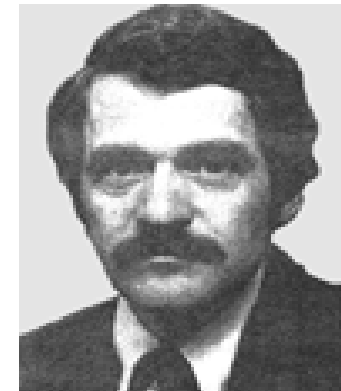
UK Great Teacher Award 1976



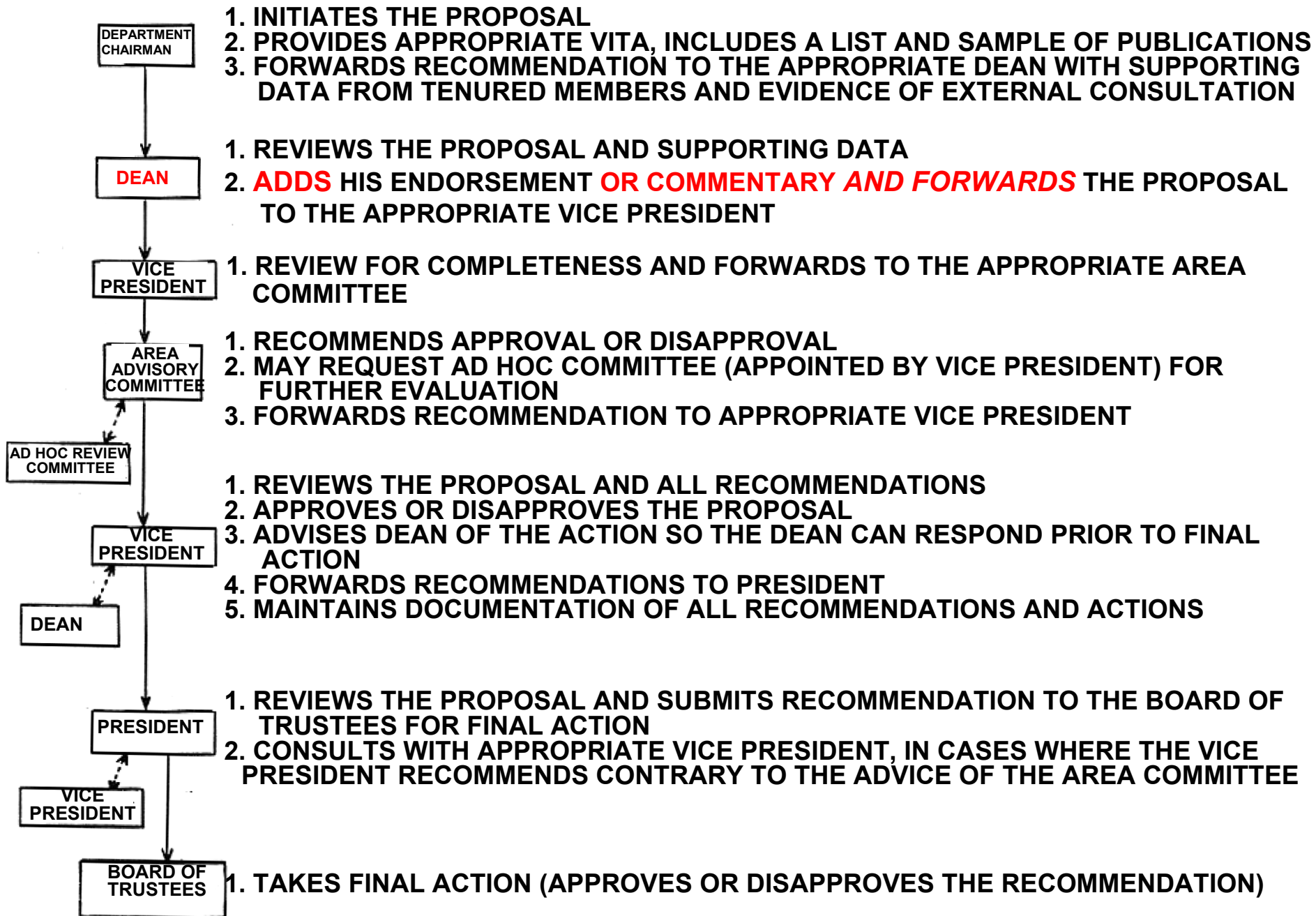
John Stephenson

Dean of Undergraduate Studies:

Appointed 1970



University Tenure Flow Chart in Effect in 1977



Fall 1976: Hayse' Promotion/Tenure Dossier is Initiated

1. Unanimous support of Honors Program Faculty
 2. Strong Support of Honors Program Director Robert Evans
-

Dean Stephenson Disapproves Proposal and *Stops* Dossier

Dean Stephenson Submits to Hayse a Terminal Reappointment Contract for 1977-8

Hayse Begins Terminal Contract 1977-1978 Academic Year

Fall 1977: Hayse' 2nd Promotion/Tenure Dossier is Initiated

1. Unanimous support again of Honors Program Faculty
2. Strong support again of Honors Program Director Robert Evans
3. Dean Stephenson in April 1978 appoints committee advisory to Dean, receives its negative recommendation
4. Dean Stephenson in April 1978 disapproves proposal; stops dossier
5. Hayse objects to Stephenson that the promotion/tenure flow chart in UK Regulations compels his dossier must travel all the way to the Board; that only Board can render final disapproval
6. Dean Stephenson in May 1978 forwards dossier for University-level Area Committee to evaluate and report back to Dean; committee recommendation is negative; Dean still keeps dossier stopped at level of Dean; Hayse again objects
7. Dean Stephenson in May 1978 receives from Graduate School Dean a negative recommendation on proposal to promote/tenure Hayse; Dean keeps dossier stopped at level of Dean; Hayse again objects
8. Hayse consulted a member of the University Senate Advisory Committee on Privilege and Tenure about possibly appealing to that committee; Hayse claims he was told that the committee would not be interested in the matter

Hayse Files Court Action

1. Hayse in 1978 files action in Franklin Circuit Court against Board of Trustees and Dean Stephenson
2. Hayse alleges he was wrongfully denied tenure; demands damage and reinstatement
3. In May 1981; Hayse amended his court complaint by adding allegations of violations of First, Fifth and Fourteenth Amendments to the United States Constitution; by reason of that Dean Stephenson denied his freedom of speech (freedom to associate with Director Robert Evans), by denying Hayse' tenure as a result of a raging dispute between Evans and Stephenson over the nature, future and faculty employees of the Honors Program
4. UK denied the allegations; pled sovereign immunity; argued Hayse' constitutional rights were not violated

Subsequent Court Actions Leading to Jury Trial

May 1981 - Franklin Circuit Court Judge grants Summary Judgment in favor of the Board and Stephenson

Feb. 1982 - Court of Appeals reverses in favor of Hayse, holding the University had failed to follow its own regulations:

“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”...- Court of Appeals Decision

Court of Appeals remands the case to trial court.

Jury Trial Begins January 29, 1986

Opening Statement to Jury By UK General Counsel John Darsie

“Now, as to this dispute between -- or purported dispute between Dr. Stephenson and Dr. Evans, our proof will show that the whole thing didn't come along until 1977...our proof will show that even if [] Stephenson was out to get Dr. Evans, which we certainly don't concede, and even if you should believe that somehow the dispute between Stephenson and Evans made Stephenson want to prevent Mr. Hayse's promotion, that he would not have been promoted anyway.”



UK Attorneys Attempt Surprise Announcement

UK Attorney Darsie: “What I intend to put in evidence is that subsequent to the decision of the Court of Appeals, the Hayse file was in fact put through again [2 weeks ago] ... that the President of the University then made a recommendation to the Board of Trustees at the University of Kentucky ... that Dr. Hayse not be promoted or given tenure.”

Hayse’ Attorney: “And we didn’t even have notice?... Nobody told us.”

UK Attorney Darsie: “I don’t think anybody was required to give you notice of that.”

The Court: “Mr. Darsie, do you have any authority to show that this would be acceptable?... Obviously, once they [UK] get sued ... they are going to readopt whatever they have done... we are getting into grounds of reversible error here if I let this in ... It is stretching the boundaries...”

UK’s motion to introduce this midnight-hour Board action was denied

Attorneys for UK and Hayse Further Debate Before the Judge Their Alternative Interpretations of Employment at UK



John Darsie

“I guess what I would say in that respect, is if we did it badly with Joe Hayse, we did it badly with everybody else. But under the equal protection claim, I think that the evidence is, without contradiction, that Dr. Hayse was treated precisely the same as everyone else...”



William Jacobs

“I guess Mr. Darsie’s argument is, like they did in Birmingham ... we don’t hire any of them. They are all treated the same. That is not what equal protection is all about.”

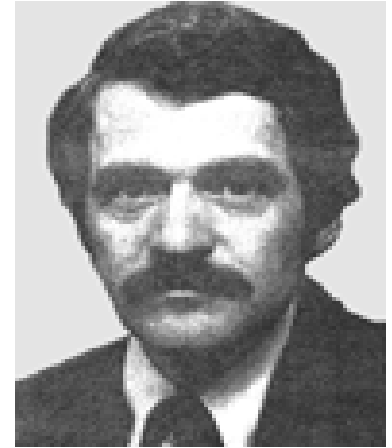
Hayse' Attorneys Introduce Evidence of Political Dispute Between Dean Stephenson and Honors Director Evans

Hayse Attorney Jacobs: “Was there anything that gave you the impression that the Honors Program needed changing or reviewed ...?”

Stephenson: “Oh, there are, I suppose, always questions that people bring to you about matters that need to be looked into...”

Hayse Attorney Jacobs: “...You indicated that you wanted to get it done in order to have enough time to find a replacement for Dr. Evans ...”

Stephenson: “If it became necessary, yes.”



Hayse' Attorneys Introduce Evidence of Strong Dispute Between Dean Stephenson and Honors Director Evans

Hayse Attorney: “Did the relationship between Dr. Stephenson and Dr. Evans have any effect upon the Honors Program and the standing of the Professors in the Honors Program while you were there?”



Virginia Lawson

Administrative Assistant to Evans

Virginia Lawson: “Yes it did.”

Hayse Attorney: “Would you tell about the relationship between Evans and Stephenson?”

Virginia Lawson: “There was a continual battle between Dr. Evans and Dean Stephenson...What they did was argue back and forth for the seven years I was there. Whatever Dr. Evans wanted to do, Dean Stephenson would say no...it got to the point of Dr. Evans resigning because it got to the point that after a while it was just unbearable to keep going.”

Hayse' Attorneys Introduce Evidence of Strong Dispute Between Dean Stephenson and Honors Director Evans

Hayse Attorney: “What was the nature of the relationship that evolved between you [and Stephenson]...”

Robert Evans: “In the early years [starting in 1971] the relationship was reasonably good... As time went on ... I began to get the opinion, which I am sure was quite correct, that Dr. Stephenson was not much interested in retaining me as the Director of the Honors program.”



Robert Evans

Hayse Attorney: “Did you notice any change in treatment of him for members of you staff who were employed by you and with the Honors program full-time?”

Robert Evans: “...in the case of Dr. Hayse, Dr. Stephenson had suggested to me -- this directly , and much earlier than [1975] -- that it would be a good idea to get rid of Dr. Hayse.”

Hayse Attorney: “Did he ever explain?”

Robert Evans: “No. As I told you before, he didn't have to explain anything to me. And he didn't.”

Hayse' Attorneys Introduce Evidence From Tenure Flow Chart Regulation that Dean Cannot Stop Tenure Dossier

Stephenson: "...if the dean's decision ... is negative and would result in a terminal reappointment, [] the dean is authorized to say no and turn it back at that point."

Hayse Attorney Jacobs: "...go up there and show the jury where that is on the flow chart."

Stephenson: "...It's not in that flow chart..."

Hayse Attorney Jacobs: "...has it been pointed out to you in the regulations where this flow does does not mean what it says?"

Stephenson: "No. No, I can't say that, no."

Hayse Attorney Jacobs: "Is it fair to say that the Board of Trustees at the University of Kentucky never had an opportunity to decide whether or not the application of Joe Hayse for tenure and promotion was to be approved or disapproved?"

Stephenson: "Not during my time of employment at the University."

Hayse' Attorneys Introduce Evidence From Tenure Flow Chart Regulation that Dean Cannot Stop Tenure Dossier

Hayse Attorney Jacobs: “You’ve heard Dr. Stephenson’s testimony relating to the method whereby he turned down at the dean level, contrary to that flow chart, Dr. Hayse’s application for promotion and tenure.”

Donald Sands: “...The regulations have been changed.”

Hayse Attorney Jacobs: “...when was the custom changed from ignoring the flow chart to paying attention to it?”

Donald Sands: “I think the change that took place was in 1982. The flow chart was redesigned to make it clearer what the regulations were saying.”

Hayse Attorney Jacobs: “In the years that would involve Dr. Hayse and now, the present flow chart are part of the regulations...?”

Donald Sands: “Yes, that’s page 22 of that regulation.”

Hayse Attorney Jacobs: “Does it say anything [in the other 21 pages] about the dean having the authority to deny promotion and tenure?”

Donald Sands: “It does not use those specific words.”

Hayse Attorneys Question About Dean's Advisory Committee



Stephenson: "... On the strength of that advice, that expert advice which I solicited from a specially-put-together committee I did reach that decision (against tenure)

Hayse Attorney Jacobs: "Again, the flow chart does not authorize that procedure, does it?"



Stephenson: "I believe there -- you're correct. The flow chart does not refer to it."

Hayse Attorney Jacobs: "Did you tell Dr. Evans or relay on to Dr. Hayse that you had not followed this flow chart the second year for the re-application for promotion & tenure?"

Stephenson: "No."

Hayse Attorney Jacobs: "Who were the members ...?"

Stephenson: "The chair of the committee is Dr. Louis Swift...and I cannot remember the other two persons who were members ..."

Hayse Attorney Jacobs: "Was their advice to deny tenure..?"

Stephenson: "Yes"

Hayse Attorney Jacobs: "And you don't know who the other two persons were?"

Stephenson: "I wish I did."

Hayse Attorney Jacobs: "So...you had appointed an ad hoc committee --then of course you knew who they were, but now you don't know who they were -- and they concurred in your denial of promotion and tenure. That was forwarded on to the vice-president [and] Area Committee?"

Hayse' Attorney, Unable to Obtain from Stephenson the Names of Persons He Appointed to His Own Committee, Seeks that Information from the Committee Chair

Dr. Louis Swift: "...I was called up by John [Stephenson] one afternoon and asked to do this as part of a special committee..."

Hayse Attorney: "Do you have any recollection of the other members of the committee?"

Dr. Louis Swift: "No."

Hayse Attorney : "Do you remember how many people were on it?"

Dr. Louis Swift: "My recollection is that probably was two additional people."

Hayse Attorney : "Can you tell us what you remember specifically about how you evaluated Dr. Hayse's case?"

Dr. Louis Swift: "I can't remember the details of the discussion that took place."

Hayse Attorney : "Are you able to recall whether there was a vote...?"

Dr. Louis Swift: "I can't recall the specifics of whether we took a vote"

Hayse Attorney: “But there was no actual letter that went into the record appointing you or appointing you and naming the others?”

Dr. Louis Swift: “Not to my knowledge”

Hayse Attorney: “In the [committee] letter, did you identify for the record the other members of the committee?”

Dr. Louis Swift: “Apparently not. No.

Hayse Attorney: “Were you familiar at the time that you were involved with this ad hoc committee what its position was in the course of rules and regulations and the flow chart that was in existence at the time?”

Dr. Louis Swift: No. I was not familiar with the flow chart.”

Hayse Attorney: “...do you think it is of some significance that you personally know the regulations that are being considered and also the flow chart that must be followed to see whether or not your committee was even authorized under the existing rules and regulations and flow chart at the time?”

Dr. Louis Swift: “I guess my answer to that is no.”

Hayse Attorney Introduces Evidence From Flow Chart re Participation of Graduate Dean in Hayse Tenure Case

Dean of Graduate School: “The standard practice in reviewing promotions has been that the promotion comes up to the Vice President for Academic Affairs [= Provost today]... Then it goes to the Area Committee, and comes back to the Vice President, and then is reviewed by me.”



Hayse' Attorney: “Next, I would like to ask you in the flow chart ... it says Procedural Flow Chart for Academic Appointment, Promotion, Granting of Tenure and Termination...”

Dean of Graduate School: “Right.”

Hayse' Attorney: “...Tell me where in the flow chart are you?”

Dean of Graduate School: “Well, I've been left out of that flow chart. I am not in there.”

Hayse' Attorney: “... thank you.”

Hayse Attorneys Continue Pursing an Apparent Administrative Philosophy Regarding Compliance with Regulations

Hayse Attorney Jacobs: “Is it fair to say that your view is that the Distribution of Effort Agreement is irrelevant when a person is being considered for promotion and tenure?”

Stephenson: “I would say it is considered but is not an overriding consideration, no. The tenure decision is a separate decision from the annual review for which this Distribution of Effort is used.”

Hayse Attorney Jacobs: “...don’t you think there’s something fundamentally unfair about hiring an employee in the Program and say you teach 70, 75% of your time; but when it comes to time for tenure, you better have a whole bunch of research ... Did you answer my question of whether or not you felt that it was fundamentally unfair ...?”

Stephenson: “...no, I don’t think it is unfair fundamentally because anyone should understand what is expected.”

Hayse Attorney Jacobs: “ Are you saying he should have understood that Distribution of Effort Agreement didn’t mean what it said?”

Stephenson: “Well, it meant what it said in the sense that as an annual review instrument it would be used. But, in terms of the ultimate review at tenure time, the criteria still require publication...”

Hayse' Attorneys Then Inquire as to Whether the Area Committee Felt it Needed to Comply With the Tenure Criteria Regulations

Hayse Attorney: "...did you read the specific regulation that applies to the matter of granting tenure as it defines the considerations to make some evaluation on research as part of the considerations?"

Area Committee Chair: "I must say I can't answer your question whether I've read this specific material or not and I don't know whether the people on the committee did, but this I would say the committee thought irrelevant."

Hayse Attorney: "...You considered the guidelines and the basis by which tenure is determined, as far as research is concerned, not material?"

Area Committee Chair: "I beg your pardon. I wonder if you would rephrase that."

Hayse Attorney: "The regulations adopted by the University in reference to tenure and the particular guidelines of evaluating research, did you read it at the time or did you know it at the time?"

Area Committee Chair: "I don't know; I certainly didn't read it at the time."

Hayse Attorney: "If you are on an Area Advisory Committee and thereby take on an assignment to make a decision or participate in a decision by a committee, do you consider that you review that regulation related to research and follow and live by it?"

Area Committee Chair: "No."

Jury Receives the Case for Deliberation February 6, 1986

Closing Statement to Jury By UK General Counsel John Darsie

“... what Dr. Hayse doesn’t want to do to get tenure in this case. He doesn’t want to earn it the old fashioned way. He wants to get it through technicalities propounded not by him but by all his lawyers.

“...the flow chart argument is as I said an attempt to do one thing, get tenure on a technicality.

“Why would Dr. Hayse try to persuade you that Dean Stephenson wouldn’t promote Hayse because Evans hired him? Why would he try to make the claim that this had something to do with University politics...? Why would [Dr. Evans] come in here and make that preposterous claim ... one word -- sympathy. I submit to you sympathy isn’t enough. You can feel sympathetic for me that I can’t make the UK basketball team ... but I don’t think you can expect the coach to put me in on the first team...Sure President Singletary, Dean Stephenson ... they have to make hard choices and sure we feel sorry for Joe Hayse.

“...you are asked to draw a logical inference ... what the Board would have done ... if all the material was submitted to them. I think you know what they would have done and it wouldn’t have been to promote Joe Hayse ...

“Thank you, ladies and gentlemen”

The Jury Deliberates Four Hours, Then...

The Court:

“Ladies and Gentlemen ... have the jurors reached a verdict?”

Jury Foreperson:

“Yes, we have your honor.”

The Court:

“Please hand it to the sheriff who will bring it forward...All the verdict forms are signed by the foreman which means, ladies and gentlemen, that it is a unanimous verdict of each of you.

Verdict form on Instruction No. 1...”

A Unanimous Decision *in Favor of Hayse*

The Court:

“...We find for the plaintiff [Dr. Hayse, that he should be reinstated with tenure] ... [and] award to Dr. Hayse the following damages:

Lost earnings: \$50,134.24; Damage to Professional Reputation, \$5,812.88; and the same amount once again for Embarrassment, Humiliation, and Emotional Distress, once again a unanimous verdict.

Ladies and gentlemen, on behalf of the Court, we want to thank you...”

Hayse' Joy in the Jury's Verdict Awarding Him Tenure was Shortlived

Following the trial outcome in favor of Hayse, the UK Board of Trustees and Stephenson filed with the Trial Court Judge a “Motion for Judgment Notwithstanding the Verdict,” that is, a motion that the Judge decide that

- the verdict of the jury in favor of Hayse was so unsupported by the evidence as to be unreasonable, and
- therefore the verdict in favor of Hayse ought to be set aside, and
- that the Judge ought substitute a verdict in favor of the University.

The Trial Court Judge Sustained the University's Motion

Hayse then appealed to the Court of Appeals ...

KY Court of Appeals Decides in Favor of Hayse

Ten years after his tenure had been denied, the Court of Appeals on April 1, 1988 held:

- that the Trial Court erred in granting Judgment Notwithstanding the Verdict
- that sovereign immunity does not apply to prospective injunctive relief against state officials, and on that basis reversed the Trial Court's decision, and ordered that Hayse be *reinstated with tenure*
- denied to Hayse the award of monetary compensation, by deciding that sovereign immunity does protect the Board and Dean Stephenson from monetary damages

UK Then Appealed to Supreme Court to Block Award of Tenure to Hayse

Court says professor should be reinstated

By Jamie Lucke
Herald-Leader education writer

The state Court of Appeals ruled yesterday that a University of Kentucky professor who lost his job in 1978 should be reinstated.

But it said that Joseph Murray Hayse, a former assistant professor in the UK honors program, was not entitled to \$61,760 in damages that a jury awarded last year.

The three-judge panel said that sovereign immunity protected trustees and regents of the state's public universities from paying damages in civil rights lawsuits.

Hayse's attorney, William C. Jacobs, said yesterday that he might file an appeal to try to win the damages. Jacobs said he was "ecstatic" about the reinstatement order.

UK lawyer John Darsie Jr. could not be reached for comment. The university is expected to appeal.

Hayse had contended that his tenure fell victim to a feud between John B. Stephenson, then dean of undergraduate studies, and Robert O. Evans, then director of the honors program and Hayse's supervisor.

Stephenson, now Berea College

president, twice denied Hayse's application for tenure. The official explanation was insufficient research and lack of scholarly writing.

Hayse argued before a Franklin Circuit Court jury in January 1986 that the real reason for the dismissal was his friendship with Evans. The jury had awarded Hayse \$61,760 to cover lost pay and other damages. It ordered him reinstated as an associate professor.

But the circuit court judge had overturned the verdict.

Hayse had also sued Stephenson. The appeals court said Hayse was not entitled to collect damages from Stephenson.

The Kentucky Constitution does not distinguish between suits for monetary damages and injunctive relief, but many states have made such distinctions, the judges said.

"The reason cited for this distinction is the belief that immunity statutes have been enacted as protection for the state treasury. . . . No such shield exists, however, for the injunctive relief of reinstatement," they said.

* * *
The Associated Press contributed to this article.

KY Supreme Court Supports Award of Monetary Damages but Decides that Hayse Tenure Dossier Must be ReProcessed

11 years after his tenure had been denied, the KY Supreme Court **by a 4-3 vote** in Nov. 1989 held:

-that the Court of Appeals was correct in vacating the Trial Court's Judgment
Notwithstanding the Verdict

-that sovereign immunity did not protect Dean Stephenson, a govt. official, from personal liability for \$ damages arising from improper acts he performed through his office, but that the Board was not liable for these acts performed by Stephenson

- Hayse was not entitled to automatic reinstatement, but the University under force of court injunction must properly process his tenure proposal under the written procedures

Joseph Hayse



Former
UK
professor
awarded
\$61,760

U of L filed a friend of the court brief arguing that academic freedom is threatened when the courts or other outside powers can dictate tenure decisions.

UK and Stephenson have the option of asking the state Supreme Court to review the decision. Then an appeal could be filed in the federal courts. No decision has been made about the next step, Dawahare and UK attorney John Darsie said.

Hayse's attorney, William Jacobs of Lexington, said he did not know if his client would ask for a review in an effort to obtain reinstatement. Hayse now works in the state Department of Transportation.

By Jamie Lucke
Herald-Leader education writer

A former University of Kentucky professor who was denied tenure and therefore lost his job in 1978 is due \$61,760 in damages, the state Supreme Court ruled yesterday. But the court ruled the professor was not entitled to automatic reinstatement.

The 4-3 decision came in a lawsuit by ex-professor Joseph M. Hayse of Lexington. He sued UK's board of trustees and a former UK dean, John B. Stephenson, now president of Berea College.

The Supreme Court reversed a 1987 Court of Appeals ruling that ordered UK to return Hayse to his old job with tenure. But Hayse is entitled to have his tenure application considered by the UK board under the rules that applied when he was turned down, the court said.

The Supreme Court also disagreed with the Court of Appeals on damages, ruling that Hayse is entitled to the \$61,760 awarded by a Franklin Circuit jury in 1986.

UK had argued — and the Court of Appeals agreed — that sovereign immunity protected Stephenson and the university from having to pay damages. Sovereign immunity is a legal doctrine that bars lawsuits against the government.

The Supreme Court rejected the sovereign immunity argument on technical grounds.

But the court also said Stephen-

son's official capacity did not shield him from damages because he was sued for "personal wrongdoing" and violating Hayse's constitutional rights.

Hayse had argued that Stephenson retaliated against him because the dean was having a feud with another administrator, who was friendly with Hayse. Hayse contended this violated his First Amendment right to freedom of association. Hayse also argued that Stephenson and UK violated his rights to due process and equal protection.

The three dissenting justices said Hayse would have been denied tenure regardless of personal motives. He was four years late earning his doctorate and published no scholarly works for almost seven years, despite urging from his superiors to do so, according to the dissenting opinion.

Debra Dawahare, an attorney for UK and Stephenson, said the ruling appeared to be part of a state Supreme Court trend that is eroding the sovereign immunity defense for state government entities. The trend could be costly to Kentucky taxpayers who foot the bill when the state loses lawsuits, she said.

But she applauded the Supreme Court for striking down the appeals court's order to reinstate Hayse.

Both UK and the University of Louisville had argued that decisions about promoting professors belong exclusively to universities.

So, After 15 Years, Hayse' Tenure Proposal Reaches the Board

In accordance with the KY Supreme Court decision, the Circuit Court finally issued in Oct. 1992 an injunction compelling the University to process Hayse' tenure proposal in accordance with the 1978 UK regulations, as specified in the injunction and Supreme Court decision. In accordance with the Court of Appeals' prior decision that the proposal can only be finally disapproved at the level of the Board of Trustees, Hayse tenure proposal was finally acted on by the Board at its Aug. 19, 1993 meeting....

...the Board *disapproved* Hayse' tenure.



DAVID PERRY/HERALD LEADER

President Charles Wethington read a statement to the board recommending Cliff Hagan's

name for the baseball stadium; at left was board Chairman Edward T. "Ned" Breathitt.

UK board rejects former teacher's bid for tenure in 15-year-old case

HERALD LEADER STAFF REPORT

A former University of Kentucky faculty member was again denied tenure yesterday, the latest round in a legal case against UK that has spanned 15 years and been to the state Supreme Court and back.

With little discussion, the UK Board of Trustees turned down an application for promotion and tenure from Joseph Murray Hayse, an assistant professor in UK's Honors program until 1978.

"That doesn't end the matter," Hayse said yesterday. "There's still a lot of things left for the courts to decide."

He referred questions about possible future action in the case to his attorney, who was out of town yesterday.

The last major court development in the case occurred in 1989 when the state Supreme Court ruled Hayse was entitled to have his application for tenure considered by UK's top governing board.

The case began several years earlier, when a Franklin Circuit Court jury awarded Hayse \$61,760 to cover lost pay and other damages and ordered him reinstated as an associate professor with tenure.

That verdict was overturned by the circuit court judge. Hayse appealed to the Court of Appeals.

In 1987, the appellate court ruled Hayse should be reinstated but was not entitled to \$61,760 the jury awarded him as damages.

The case then went to the state Supreme Court.

The high court ruled Hayse was not entitled to automatic reinstatement, but should get the \$61,760 in back pay and should be allowed to have his tenure application considered by the UK board.

The board did so yesterday.

Hayse, who now works for the state Department of Transportation, was the taxpayer who, in the late 1970s, filed a class-action suit against Lexington's Urban County Government to get more money for the Lexington Public Library.

The case ended in 1984 when the state Court of Appeals agreed that state law required the city to give the library at least 5 cents for every \$100 of assessed property valuation.

Believing that the Board's Disapproval of His Tenure Merely Culminated a University *A Priori* Decision that He Will Never Be Tenured, Hayse Seeks Relief in the Federal Court

On August 15, 1994, Hayse filed an action in the U.S. District Court for the Eastern District of Kentucky claiming constitutional defects in the *ab initio* review of his application for promotion or tenure... the U.S. District Court dismissed the action, and on April 7, 1997, the U.S. Court of Appeals affirmed, sending the case back to the Kentucky Court System. However, Hayse' urged that it is a futile cycle for the Federal court send it back to KY courts, because KY Court has shown that it will merely order the University to 'do it again, ...and again..and again,' and that remedy provides no protection against the UK each time disapproving the proposal for reasons other than merit. In response the U.S. Court of Appeals directed the Ky court:

'If the defendants [UK] have responded to the injunctive order by retaliating against plaintiff [Hayse], the defendants have placed themselves in contempt. The court has continuing jurisdiction over its injunction ... Though Hayse claims that as a practical matter he has no real opportunity to obtain a remedy for his new claim because the Kentucky Supreme court only provided for reconsideration of his application, rather than reinstatement, we are not persuaded that the Kentucky courts would not now act to correct and remedy the wrong, if one is provided. The fact that the defendants were only ordered to reconsider plaintiff's application under certain criteria *does not mean that the Kentucky courts will again simply order another review by the defendants.*'

As Directed by the Federal Court, Hayse Tries Again in the Kentucky Court System

On January 25, 1999, Hayse filed a motion in Ky Circuit Court for a show cause order setting forth various alleged violations of the injunction ...

However, the trial court Judge held that Hayse' fourth amended complaint was precluded, and dismissed Hayse motion in favor of the University....

Hayse and his Attorney were convinced that the trial court had erred, and filed an appeal with the **Kentucky Court of Appeals** ...

Again, the Kentucky Court of Appeals Held in Hayse' Favor

24 years after his tenure was first denied, the KY Court of Appeals on July 2, 2002 agreed with Hayse that the trial court erred in finding that Hayse' fourth amended complaint was precluded ... (the KY Supreme Court then rejected UK's appeal of this Court of Appeals decision)

The Court of Appeals supported that Hayse was to file in Circuit Court

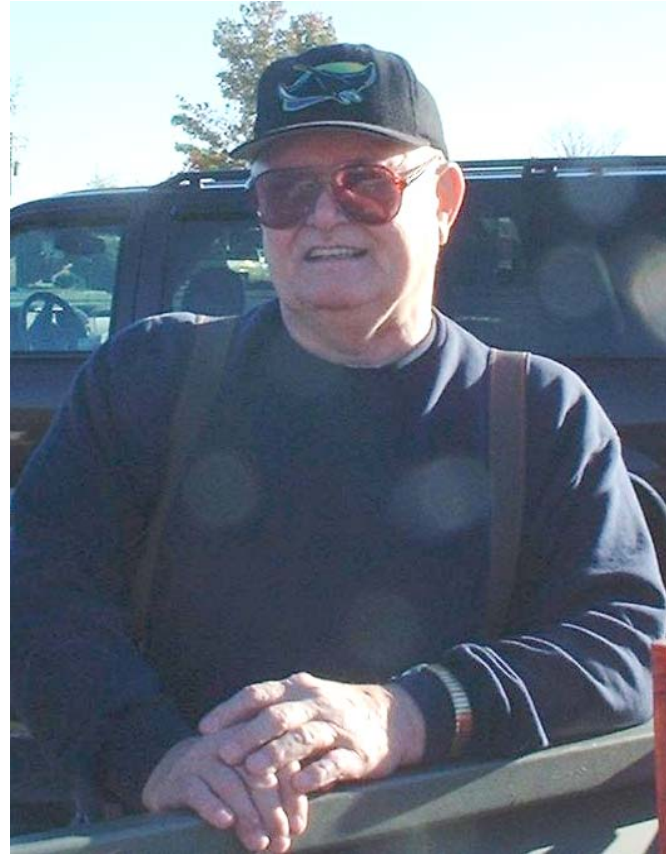
“a motion to **show cause** why the University should not be held in contempt for failure to comply with the injunction...”

The University also argued to the court that after so many years it would be unreasonably difficult for the University to locate the necessary documents for the show cause exercise, to which Hayse responded to the court that much of the delays were of the University's own making. The Court of Appeals again supported Hayse, stating:

“Although the University will have to retrieve the necessary documents and information regarding the *ab initio* review process, it has been well aware of Hayse's challenge to its compliance with the injunction ... When abstaining from Hayse's federal claims, the federal court placed confidence in our state court to adequately provide Hayse with the remedies to which he may now be entitled...”

The result of the above court order for a **show-cause** action was that

28 years after his tenure was first denied



**... the University of Kentucky is still litigating in the
Kentucky courts (at the show cause stage) to stop the
court from ordering that
Joseph Murray Hayse be awarded tenure**

Epilogue...

What ever happened to that promotion/tenure flow chart, that the courts had held did not reflect that any UK Dean (nor any higher administrator) was authorized to use “disapproval” to stop the dossier?

Just days before the KY Court of Appeals rendered its 1982 decision in favor of Hayse, President Singletary in **January 1982** issued a new Administrative Regulation Flow Chart...

Hayse’ Attorney Jacobs: “The change of the regulations ... was done after ... whatever happened to Dr. Hayse happened, is that correct, the change of the flow chart...?”

President Singletary: “Yes, after Hayse’s case was brought before us.”

...the Flow Chart for the first time expressly stated that Deans were authorized to disapprove and stop a tenure dossier, which is the UK practice we have today. In issuing the new Flow Chart, that we use today, President Singletary by cover memo emphasized that it was “*effective immediately*”

*... and now you know
the rest of the story.*

**References in “Transcript of Evidence”
Franklin Circuit Court
Civil Action No. 79-CI-0437
Division I**

UK Attorney John Darsie and Hayse Attorney William Jacobs: pg. 543
Hayse Attorney Jacobs and Dean John Stephenson: pgs. 221, 222, 226, 227, 246,
248, 249, 251, 252, 620
Hayse Attorney and Virginia Lawson: pgs. 321, 323
Hayse Attorney Jacobs and Donald Sands: pgs.350,351, 352, 360
Hayse Attorney and Robert Evans: pgs. 446, 449, 468
Hayse Attorney and Louis Swift: pgs. 661, 662, 663, 666, 668, 669, 674, 674
Hayse Attorney and Area Committee Chair John Thomas: pgs. 739, 742
Hayse Attorney and Dean Wimberly Royster: pgs. 767, 770, 774
Hayse Attorney Jacobs and President Otis Singletary: pg. 804
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