Is It Fair? Law Professors' Perceptions of Tenure

Katherine Barnes and Elizabeth Mertz

I. Introduction

A key moment in many law professors' careers occurs at the time of tenure, that important gateway to professional success and stability. Once tenured, a professor has virtually unrivalled job security. Tenured professors traditionally have significant input regarding hiring and other major decisions in law schools; tenure therefore also confers power to shape the institutions that train our nation's lawyers and judges. During the years when the profession began to admit female scholars and scholars of color in significant numbers, tenure was frequently described as the crucial institutional process through which the legal academy could block or open the doors to gender and racial integration. At the same time, the tenure process is perceived as a guardian of quality and high standards in legal education, standards that some have felt might be diluted were issues of gender or race to be raised in law school hiring and promotion. Tenure has also been the focus of disputes over the relative weight of different kinds of law teaching, favoring those who publish scholarship over those who focus on clinical training. Thus, the tenure process in law schools has come under a great deal of scrutiny both from within and outside of the legal academy because of its role at the center of struggles over the definition of law school education itself.

In this paper, we examine law professors' own perspectives on the tenure process. We focus in particular on the question of whether there are significant differences in perspective among professors along lines of race or gender. Law schools in the U.S. were largely homogenous in terms of gender and race until

Katherine Barnes is a Professor of Law and Director of the Rogers Program on Law & Society at the James E. Rogers College of Law at the University of Arizona, and Affiliated Faculty in the Department of Economics at the University of Arizona.

Elizabeth Mertz is a Research Faculty member at the American Bar Foundation, John and Rylla Bosshard Professor at the University of Wisconsin Law School, and Affiliated Faculty in the Department of Anthropology at the University of Wisconsin.

the 1970s and 1980s.[1] Empirical research has found that, despite significant progress toward more diversity, women and scholars of color face continued difficulties. For example, previous research demonstrated that these traditional outsiders were leaving the law school tenure track in greater proportions than were white men.[2] Studies have also shown disparities in terms of pay, tenure denials, and employment at the most elite law schools, in addition to double standards in assessing identical credentials.[3] A number of scholars have raised concerns about continuing racism and sexism in the legal academy—including forms of bias that are "neither intentional nor explicit."[4] Despite increasing diversity in law school faculties at entry levels, commentators have noted that there are ongoing disparities in the senior, post-tenure ranks.[5] However, much of the research on law professors has focused primarily on their pre-tenure experiences.

This paper reports initial findings from a national survey of post-tenure law professors, which was paired with a follow-up interview study that included 102 professors from the national survey.[6] We combine quantitative and qualitative results to shed light on the faculty climate in today's legal academy. We focus on the tenure process because it is an important moment in law school culture. Tenure "battles" can define recurring themes or problems in faculties. In addition, the tenure process itself can be perceived as many things: an obstacle to overcome in order to succeed in academia; a goal in and

1.   In her early research on law professors at the American Bar Foundation, Donna Fossum found that the law professoriate in the 1970s and 1980s was highly homogenous with respect to gender, race, and law school background. Fossum, Law and the Sexual Integration of Institutions: The Case of American Law Schools, VII ALSA Forum VII 222–50 (1983); Fossum, Law Professors: A Profile of the Teaching Branch of the Legal Profession, 1980 Am. B. Found. Res. J. 501, 507–38 (1980). *See also* Richard H. Chused, The Hiring and Retention of Minorities and Women on American Law School Faculties, 137 U. Pa. L. Rev. 537 (1988); Robert J. Borthwick & Jordan R. Schau, Gatekeepers of the Profession: An Empirical Profile of the Nation's Law Professors, 25 U. Mich. J.L. Reform 191–237 (1991).

2.   Deborah Jones Merritt, Are Women Stuck on the Academic Ladder? An Empirical Perspective, 10 UCLA Women's L.J. 249, 252 (2000); *see also* Marina Angel, Women in Legal Education: What It's Like to Be Part of a Perpetual First Wave or the Case of the Disappearing Women, 61 Temp. L. Rev. 799 (1988); Chused, *supra* note 1.

3.   Chused, *supra* note 1; Deborah J. Merritt & Barbara F. Reskin, The Double Minority: Empirical Evidence of a Double Standard in Law School Hiring of Minority Women, 65 S. Cal. L. Rev. 2299, 2299–359 (1992).

4.   Eleanor M. Fox & Norman Redlich, The Voices of Women: A Symposium on Women in Legal Education: Introduction, 77 Iowa L. Rev. 1, 3 (1991).

5.   Chused, *supra* note 1; Borthwick & Schau, *supra* note 1; Deborah J. Merritt, Barbara F. Reskin & Michelle Fondell, Family, Place, and Career: The Gender Paradox in Law School Hiring, 1993 Wis. L. Rev. 395 (1993); James R. P. Ogloff, David R. Lyon, Kevin S. Douglas & V. Gordon Rose, More Than "Learning to Think Like a Lawyer:" The Empirical Research on Legal Education, 34 Creighton L. Rev. 73 (2000); Martha S. West, Gender Bias in Academic Robes: The Law's Failure to Protect Women Faculty, 67 Temp. L. Rev. 68 (1994).

6.   We have 100 completed interviews approved for use by participants (2 additional interviewees ultimately did not grant permission to use their interviews).

of itself; irrelevant (or, at least, deemphasized) as only one moment in a long career; a safeguard for individual professors against institutional abuses; a guardian of institutional standards; or a retention tool through which schools can demonstrate their commitment to individuals and the fine work they perform. The tenure process provides a useful lens for investigating law school culture because it brings to light many attitudes and other characteristics of law faculties that we can compare across schools. Our broader study focuses on tenured professors, and so the tenure experience is also the entry point to our sample as every professor in our sample had to achieve that goal in order to be part of the study.

We begin with a quantitative analysis of the similarities and differences in perceptions of the tenure process across minority status and gender. We then present qualitative data that sheds more light on the broad patterns that emerge from the quantitative analysis. Both quantitative and qualitative findings led to further questions about the effects of cohort patterns on professors' reported views of the tenure process, patterns which are discussed in Section IV. We relate our findings to two different themes that have emerged from prior research on law schools: (1) Gulati, Sander, and Sockloskie's finding that while law students are overall happy with their experience in law school, there is a small pocket of quite alienated students—and that "women, blacks, and Asians" were "disproportionately represented among the alienated students"[7]; and (2) a concern raised in the 1992 report on tenure by the Association of American Law Schools (AALS) centering on the differential pre-tenure exit rates of minority professors from the legal academy.[8] In other words, one reason that the legal academy is experiencing slowed rates of integration, despite raised rates of minority hires, is that a disproportionate number is leaving prior to tenure. Professors' perceptions regarding the tenuring process itself could logically be an important factor in this pattern. If some professors differentially believe the tenure process to be unfair, it would be no surprise that they would exit rather than proceed.

II. Methodology

Our project combines an initial national survey of tenured law faculty (Phase 1) with a series of in-depth follow-up interviews to flesh out the quantitative results (Phase 2). The initial survey was performed using a stratified random sample. We created the initial survey sample from the 2002–2003 AALS database. This database augmented the survey, because it contained information about race, gender, current school, title, and a variety of data regarding each professor's background, teaching and research. The sample was stratified by gender, with an additional oversample that included all identified professors of color not included in the original sample. Our

7. Mitu Gulati, Richard Sander & Robert Sockloskie, The Happy Charade: An Empirical Examination of the Third Year of Law School, 51 J. Legal Educ. 235, 255 (2001).

8. Association of American Law Schools, Report of the AALS Special Committee on Tenure and the Tenuring Process, 42 J. Legal Educ. 477, 485–86 (1992) [hereinafter AALS Report].

final response rate for the sample and oversample together was 63.1 percent. We received 1,174 complete responses from mail, on-line, and phone versions of the survey; we also netted an additional 48 respondents who completed a substantial part of the survey. In our quantitative results, we control for nonresponse via re-weighting the sample based upon estimated response rates. In all, our respondents represented 29 percent of all tenured professors in the U.S. at the time.[9]

In the project's second phase, we conducted interviews with a sub-group of the survey respondents. We completed 100 usable interviews. Four of these interviews were deemed "out of scope" for purposes of interview targets, which specified goals of a certain number of interviewees from particular categories. (For example, we aimed at obtaining a certain minimal number of interviewees from diverse demographic categories, kinds of law schools, years of teaching experience, and reported levels of satisfaction on the survey.) Although the four "out-of-scope" interviews did not count for purposes of achieving those targets, they nonetheless generated some interesting information. Further methodological details regarding both phases of the project are available online.[10]

III. Perceptions of the Tenure Process

In this paper, we focus on perceptions of the tenure process, examining tenured professors' responses in general as well as any particular patterning that emerges around race, gender, or cohort. Although most of the study respondents were satisfied with the tenure process, there were also pockets of significant dissatisfaction. Female professors and professors of color expressed significantly more negative reactions to the tenure process as a whole. Breaking this down by cohort, we find that gendered differences in perceptions of the tenure process have lessened in recent cohorts, while differences across minority status have remained more stable after an early adjustment period. Thus, there remains a large racial gap in views of the tenure process, with professors of color, overall, viewing the tenure process more negatively than do their white counterparts.

Our survey asked three direct questions about satisfaction with the tenure process itself. Each participant was asked to rank their level of agreement on a five point scale with the following three statements:

When I was first reviewed for tenure at a law school…

- I found the tenure process easy.
- I found the tenure process fair.
- I found the tenure process rewarding.

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9.   If we just count the 1,174 complete responses, our respondents represented 28 percent of all tenured professors in the U.S. at that time.

10.   *See* http://www.americanbarfoundation.org/research/project/67, Appendix A: Methods.

Logically, these statements can be ordered along a continuum that ranges from a minimal baseline (fair), to a level of ease that one would not expect in a challenging process (easy), and finally to an extremely positive level (rewarding). This ordering partially tracks the pattern of results obtained from the survey.

By contrast with the survey questions, our interviews proceeded in a relatively open-ended fashion, designed to permit interviewees to introduce their own concerns and preoccupations first, and only moving to more specific questions about fairness or bias toward the very end of the interview time. Despite this divergence in methodological approach, interviewees also described differing perceptions of the tenure process, and often brought up issues of race, gender, and generation without specific prompting.

Fair, Easy, Rewarding: Race and Gender Patterns

The quantitative results from the survey revealed that most professors perceived the tenure process to be "fair." Specifically, 76 percent of professors agreed or strongly agreed that the tenure process was fair. This aggregate percentage, however, masks significant differences in perceptions across gender and minority status. Table 1 reports the results broken down by gender, by minority status, and by the interaction of these two variables. Panel A provides the results broken down by gender. The clearest difference is that women were much less likely to strongly agree with the statement that the tenure process was fair; instead, they were generally more negative across all other categories. While most of the individual differences across gender in each response category are not large, together, 27 percent of female professors found the tenure process unfair (63 percent found it fair), as compared with 12 percent of men who perceived the tenure process to be unfair (80 percent found it fair). These differences are statistically significant.[11] The largest single difference is that women were much less likely to strongly agree with the fairness statement than men (17 percent versus 36 percent), that is, men were about twice as likely to strongly agree that the tenure process was fair as women were. Conversely, women were about twice as negative as men (27 percent versus 12 percent) regarding the fairness of the process.

11.   Pearson χ^2 (4)= 60.1; p-value < 0.001.

Table 1: Perceptions of a Fair Tenure Process

	Response to " I found the tenure process fair."				
	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
Panel A: Gender					
Male Professors	36%	44%	8%	7%	5%
Female Professors	17%	46%	11%	17%	10%
Panel B: Minority Status					
White Professors	33%	44%	8%	9%	6%
Minority Professors	18%	47%	12%	14%	9%
Panel C: Interaction of Gender & Minority Status					
White Male Professors	38%	43%	7%	7%	5%
Minority Male Professors	24%	47%	13%	9%	6%
White Female Professors	19%	45%	11%	15%	9%
Minority Female Professors	8%	46%	10%	22%	13%
Overall Population	31%	45%	9%	9%	6%

Like female professors, scholars of color were significantly less likely to agree that the tenure process was fair as compared with their white counterparts (65 percent to 77 percent, respectively; see Table 1, Panel B). In particular, they were much less likely to strongly agree (18 percent versus 33 percent) and much more likely to disagree or strongly disagree that the process was fair (23 percent versus 15 percent).[12] As Panels A and B make clear, the overall comparison between white and minority professors is similar to the comparison between male and female professors.

This apparent similarity does not, however, take into account the interactive effect of minority status and gender in combination (see Table 1, Panel C). White men overwhelmingly agreed that the tenure process was fair; only 12

12. Pearson χ^2 (4)= 18.4; p-value < 0.001.

percent disagreed with this statement in some fashion. In contrast, over one-third of female professors of color (35 percent) believed that the tenure process was not fair. These differences were highly statistically significant.[13]

When compared with male professors of color, female professors of color were more than twice as likely to find the tenure process unfair (35 percent versus 15 percent). Female professors of color were also the least likely to agree that the tenure process was fair, with just over one half (54 percent) of female professors of color in agreement. White female professors and male professors of color, in contrast, were more likely to agree that the tenure process was fair (64 percent and 71 percent), with a significant group finding the process unfair (24 percent and 15 percent, respectively). Interestingly, however, about the same percentage of professors across all these groups agreed (but not strongly) that the tenure process was fair, ranging from 43 percent to 47 percent. It is in the strong positive responses, as well as the negative responses more generally, that differences are most evident. Thus, while the majority of each demographic group perceived the tenure process to be fair, there are significant differences in degree and amount of negative feeling across lines of gender and minority status, with female professors of color being most negative.

We also found significant differences on the basis of both gender and minority status in the answers to the question regarding ease of the tenure process. As shown in Table 2, just under half of all tenured professors (47 percent) agreed in some form that the tenure process was "easy;" 40 percent disagreed with the statement. However, these overall figures again mask significant gender and race differences; in fact, the differences are larger than those we found with respect to fairness. A majority of tenured female professors disagreed in some form with the idea that the tenure process was easy (57 percent), while only 34 percent of male professors disagreed (see Panel A). Indeed, 54 percent of male professors agreed that the tenure process was easy; in contrast, just 30 percent of female professors felt this way.[14] These large differences in perception suggest that men and women see the process quite dissimilarly, despite the fact that both groups generally perceived their tenure process to have been fair.

13.   Pearson χ^2 (12)= 75.2; p-value < 0.001. Our respondent sample includes 153 female scholars of color, 209 male scholars of color, 420 white male scholars, and 385 white female scholars. Thus, we have sufficiently large numbers to be confident that we have the power to discern differences among the responses in these groups. Indeed, in each of these questions, the p-value testing whether minority status, gender, or both were statistically significant was less than 0.001.

14.   Pearson χ^2 (4)= 75.7; p-value < 0.001.

Table 2: Perceptions of an Easy Tenure Process

	Response to " I found the tenure process easy."				
	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
Panel A: Gender					
Male Professors	25%	29%	13%	27%	7%
Female Professors	9%	21%	14%	36%	21%
Panel B: Minority Status					
White Professors	22%	28%	12%	28%	10%
Minority Professors	9%	20%	18%	37%	17%
Panel C: Interaction of Gender & Minority Status					
White Male Professors	26%	30%	11%	26%	7%
Minority Male Professors	12%	19%	21%	36%	12%
White Female Professors	10%	21%	14%	35%	20%
Minority Female Professors	5%	20%	13%	38%	23%
Overall Population	20%	27%	13%	29%	11%

When we examine race at a broad level, again we find a pattern that is largely similar to the gender breakdown. White professors generally agreed that the tenure process was easy to a greater extent than did professors of color (see Table 2, Panel B). Professors of color were significantly more negative about the ease of the tenure process than their white colleagues; 54 percent disagreed with the statement that the tenure process was easy, in contrast to just 38 percent of white professors. Conversely, white professors were almost twice as likely as professors of color to agree or strongly agree that the tenure process was easy (50 percent to 29 percent), and close to half as likely to disagree strongly with the statement (10 percent to 17 percent). Overall, these differences are highly statistically significant.[15]

15.   Pearson χ^2 (4)= 26.2; p-value < 0.001.

These differences are even starker when we focus on the interaction between minority status and gender. White men were most likely to find the tenure process easy; indeed, only about one-third of white male professors found the tenure process difficult. In contrast, almost half of the male professors of color found the tenure process difficult (48 percent), while just over half of white female professors did (55 percent). Male professors of color were also more likely to be neutral on the subject than white professors of either gender.

Finally, minority women seem to be doubly affected: they were significantly more negative about the process than either white female professors or male professors of color. Thus, 23 percent of the female scholars of color strongly disagreed with the idea that the tenure process was easy; only 5 percent strongly agreed that it was easy. This is substantially fewer than any other group. Combining the two categories of disagreement together, 61 percent of all female scholars of color disagreed with the statement that the tenure process was easy, as compared with one-third of white male professors (and about half of male professors of color and white female professors). Overall, these differences were highly statistically significant;[16] the interaction of minority status and gender clearly affects professors' experiences with the tenure process.[17]

The third survey question asked whether respondents agreed with the statement: "I found the tenure process rewarding." Most professors did not find the tenure process rewarding; this is unsurprising, as the tenure hurdle is generally conceived to be stressful and challenging. (Alternatively, tenure is also an opportunity for the institution to make clear that it values professors it wants to retain.) The modal answer to the question was neutral, with about a third of professors professing neutrality. Nonetheless, there are still some strong differences across gender and minority status in professors' perceptions of the tenure process as rewarding.

Table 3, Panel A breaks down the professors' perceptions by gender. The largest difference is that women were far more negative on this question; overall, the distribution of responses has shifted negatively. One fourth of female professors strongly disagreed with the concept that the tenure process was rewarding. In total, over half of all female professors (54 percent) found the process unrewarding. Male professors, in contrast, are more measured: only 8 percent strongly disagree that the tenure process was rewarding, and only 15 percent have strong feelings in either direction on the subject (while 29 percent of female professors do, mostly negative).

16.   Pearson χ^2 (12)= 99.5; p-value < 0.001.

17.   Pearson χ^2 (4)= 55.7; p-value < 0.001.

Table 3: Perceptions of a Rewarding Tenure Process

	Response to "I found the tenure process rewarding."				
	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
Panel A: Gender					
Male Professors	7%	20%	36%	29%	8%
Female Professors	6%	15%	25%	31%	23%
Panel B: Minority Status					
White Professors	6%	19%	34%	29%	12%
Minority Professors	9%	18%	25%	33%	15%
Panel C: Interaction of Gender & Minority Status					
White Male Professors	6%	21%	37%	28%	8%
Minority Male Professors	13%	19%	26%	29%	12%
White Female Professors	6%	14%	26%	30%	25%
Minority Female Professors	4%	17%	22%	37%	20%
Overall Population	6%	19%	33%	30%	12%

In slight contrast to the differences across gender, the differences across race are smaller, and are not exclusively negative. Professors of color are somewhat more likely to express strong feelings in either direction than white professors, and are significantly less likely to express neutrality.[18] Twenty-seven percent of professors of color agreed that the tenure process was rewarding, a percentage similar to the 25 percent of white professors who found the process rewarding. Professors of color were somewhat more negative than their white colleagues: 48 percent of them disagreed with the idea that the process was rewarding, while only 41 percent of white professors did so.

Once again, however, these results mask a significant interaction effect between minority status and gender.[19] It is clear that any leaning toward

18.   Pearson χ^2 (4)= 7.8; p-value < 0.002.

19.   Overall, these differences are highly statistically significant. Pearson χ^2 (12)= 68.0; p-value < 0.001.

a positive perception of the rewarding aspects of the tenure process for professors of color was attributable to the men in that category. Almost one-third of male professors of color found the tenure process rewarding. Indeed, on this dimension of the tenure process, male professors of color were the most positive, indicating that at least some schools may be creating a tenure process in which male professors of color feel valued. White male professors came close to this percentage, with 27 percent agreeing that the tenure process was rewarding. Female professors, on the other hand, were overwhelmingly negative on this question. A majority of both white female professors and those of color disagreed with the statement that the process is rewarding (55 percent and 57 percent); this contrasts with about 37 percent of men who disagreed.

Implicit Bias and Institutional Structure:
Race, Gender, and the Tenure Process on the Ground

If our quantitative results point to racial and gendered differences in perceptions of the tenure process, our interview responses provide some of the stories behind these patterns.[20] To look more deeply behind the numbers, we use qualitative data from the interviews, focusing here on stories told about effects (or lack of effects) of race and gender in the tenure process. Common negative themes that emerge from these stories center on the effects of implicit

20. Out of 96 interviewees, 53 respondents commented on tenure-related issues. Of these 53, 10 expressed only satisfaction with the overall situation surrounding tenure in law schools, while 43 raised some kind of problem or concern. Note that interviewees were not selected to be representative but rather to give us the fullest possible spectrum in terms of race, gender, seniority, status of school, geography, and levels of stated satisfaction on the survey. Thus we do not look to the distribution of responses in the interviews as representative of the broader patterns of opinions, which are more appropriately discerned from the quantitative results. Instead, we turn to the interviews to give us more on-the-ground and nuanced understandings of the patterns in survey responses. We also look to the interviews as an independent source of information on how respondents understand their situations in terms of their own categories, when they are given open-ended invitations to discuss their careers and work settings. For this particular article, we concentrate on stories offered in the interviews that might help us to better understand race and gender tenure process dynamics indicated by patterns in the quantitative analysis. Note again that most respondents in the quantitative portion of the study expressed overall satisfaction with the fairness (or even ease) of the tenure process—and indeed, as noted, some of the interviewees expressed this view as well ("I had no problem getting through the tenuring process" [female professor of color]; "I haven't personally noticed any indication that minorities, for example, or that women have harder time getting tenure at the law school" [male professor of color]; "… you know, there's a very high tenure rate at law schools in general and…you know, I would say most, almost all of the people, women, minorities, and white men, who have started here since—in the twenty years I've been here—have gotten tenure if they did the necessary" [white female professor]; "[a]nd in the run-up to tenure, all schools that I've been at, and all the ones that I've heard of—with the possible exception, I guess, of Harvard—and even they may be changing now—basically view it as a failure of the school if somebody doesn't get tenure, and so work really hard to make sure that—that you know, their people will succeed" [white male professor]; "And most of the time [the tenure committee members'] names are out there, the fact that they have to support their positions—prevents that process, which in many cases can be the more…fraught process, from becoming too unfair" [white male professor]).

bias in the tenure process, and differential impacts on women and on scholars of color of the law school's pre-tenure institutional structures and cultures. Respondents describe these inputs to the tenure process as quite subtle and as frequently operating at an unconscious level. On a positive note, a number of respondents reported no bias in tenure processes, sometimes noting that aspects of the institutions had changed for the better in that regard.

1. Implicit Bias: "Risk" Or "Potential"?

Turning to elucidate possible reasons for the differentially negative perceptions of tenure, we begin with accounts of implicit bias. Scholars of color and white women tell stories of the subtle effects that tacit negative assumptions had on their experiences of the tenure process:

> PROFESSOR 4076 [woman prof. of color]: [When I went up for tenure], I'm told…the only person on the faculty who didn't vote for me for tenure,… what I'm told this person said is that he didn't think the record could be as it appeared–meaning that although everything was in place, you know, I'd written a book already…and I had a lot of articles and had a good recommendation, he somehow felt that the record had to be in some way cooked, that, you know, it couldn't really be that [way]. So there's that kind of lack of confidence, and I've experienced that as an African-American woman…even in college and graduate school, where certain people just could not believe I could do it, and then when I did it, they were just amazed that actually, I did it.[21]

On the other hand, as noted in the quantitative analysis, white male professors differentially viewed the tenure process as fair. In the following excerpt, a white male professor describes disparately negative tenure rates for women and minorities as fair, given what he sees as differential risks in the hiring procedure:

> PROFESSOR 4048 [white male]: I do think that you sometimes, at initial hiring, to the extent you take greater risks…to hire women and minorities, that sometimes that makes it more difficult at tenure stage…it's the consequence of (SIGHS), of being eager to–well, I think sometimes, I think there have been times when we have taken greater–made more allowances at the beginning, taken greater risks at the beginning, and sometimes the risks haven't paid off.

An African-American male professor comments from a different vantage on this issue of expectation and risk:

21. For purposes of this paper, we have edited out most of the small false starts, "ums," and similar hesitation forms from the transcripts. Were we performing a linguistic analysis for which consideration of those forms was salient, we would have preserved them in the transcript. For these purposes, we emphasize content rather than form and so present the data in a way that allows better focus on that aspect of the language. Only minor hesitation forms that do not contribute to central meaning in a sentence have been excluded. We have also excluded interviewer backchanneling ("uh-huh" or "right," for example) and prompts or questions, consolidating a section of text that contains the response to an overall interview question (or often just part of that response) into an uninterrupted narrative.

PROFESSOR 5037 [African-American male professor]: I'm an African-American professor and I think there was some doubt on the part of the faculty, back when I started…regarding whether I would be productive. And I think they were very pleased when I was. So yeah, I think there was a different approach to me than, say, other untenured faculty hired at or about the same time…who were not members of underrepresented groups. I think that, you know, if you will, there's more pressure, I think, on…a member of an underrepresented group, and in this school, it's on women professors, both in terms of student expectation and faculty expectation. That's the downside. The upside is, if you meet or exceed that expectation, the rewards are better. I think you get–you get rewarded more…

On the one hand, both this description and the prior one share the perception that members of underrepresented groups are viewed as differentially risky when they are first hired, although our white male respondent sees the fact that the hire happens despite the perceived risk as somewhat charitable or kindly intended. By contrast, the second speaker characterizes this doubt at the outset as a "negative," because it adds "more pressure." On the other hand, he also views the payoff for success as differentially positive for those who were initially under pressure. Thus it seems that in his view, there is a tradeoff in which later rewards compensate for early pressure, with at least an implication that the overall effect in the long run is fair.[22]

Yet another perspective on this situation emerges from the comments of a third respondent, also a professor of color:

PROFESSOR 4531 [male professor of color]: With respect to gender particularly, we're doing much better with respect to gender.…With respect to race, I think we're doing somewhat better–we're doing notably better.… I don't think we're yet at a place where there isn't still some pronounced concern or…questioning whatever minority candidates come up. We're not there yet. But at least we're getting them before the Appointments Committee and…getting them before the faculty, and the most extraordinary of the minority candidates are also getting hired. Although they have to be truly extraordinary. (LAUGHS) It helps if they're Rhodes Scholars and Supreme Court clerks and have published at least two or three articles before they come up as entry level candidates.

Interviewer: Okay. So when you say that questions come up, is there a focal point of those questions, uh, that seems to either be applied unequally to–

PROFESSOR 4531: Uh, no, there's no [focal] point. There's nothing that sharp. What there is is a…a general sense of a lack of competence that's expressed in clichés like, this person is solid. Or this person is risky or there are risks associated with candidacy. Now, officially at the entry level you only have two words to choose from–potential or risk. Because there's nothing

22. This reading is based on the informant's entire interview, in which he expressed overall satisfaction with his own current situation, despite some continuing disparities in service obligations that he viewed as differentially resulting from his minority racial status.

else at the entry level. And…there's always going to be some level of risk if you decide…to describe it that way. Or some level of potential if you'd prefer to describe it in that way…but those are the two choices. So what you would get with women, but…I think even more with minorities is a language of "risk"…and an announcement that no matter…no matter how much they've accomplished, their accomplishments are described as "solid"… rather than "brilliant" or, you know,…they're a "rising star," I mean, the sorts of praises that are…you know, and for somebody who's…for a white male who's a Rhodes Scholar and Supreme Court clerk, their language is that of a "rising star." Whereas I've heard the same candidate as a minority described as "solid" in his accomplishments.

Like the first two speakers, this respondent agrees that there is differential scrutiny of scholars from traditionally marginalized groups in the process leading up to tenure. However, this speaker problematizes the entire framework within which "risk" becomes the language associated with scholars of color.

Comparing these three perspectives casts a fascinating light on the deceptively simple questions asked in the survey: was the tenure process fair, easy, rewarding? Professors whom we interviewed can at the same time agree that scholars of color and white women are under extra scrutiny prior to tenure, but view the situation as more or less fair, easy, or rewarding–depending on their assessments of the overall context and their interpretive frames. Maybe, as the first speaker said, the hiring process involved more "risk," and so it would be entirely fair to be worried. Under this view, if a negative outcome occurs, this is simply a function of an overly generous initial decision. Or, taking the second speaker's approach, it may be that there is extra scrutiny causing extra pressure, which in turn adds to the burden of the tenure process for traditionally underrepresented faculty. In this sense, the process would not be as "fair" or "easy." But on the other hand, the rewards of success are greater once this gauntlet has been passed, in this view. Note also that in this second speaker's view, at the point where tenure is achieved, the burden of skepticism has been overcome for scholars of color and all is well. Our final speaker presents a third view, in which the problem of implicit bias creates an ongoing burden, because the initial skepticism continues to frame perceptions in a way that is condescending (even when assessment is positive) and so diminishes scholars of color and white women relative to the white men on the faculty. This last perspective puts into question the "rewards" that ensue when negative expectations are not met, because the "extra" rewards that follow tenure continue to mark and highlight that earlier sense of racial difference.

2. Institutional Structures and Cultures, For Worse or For Better?

In addition to questions of differential scrutiny, perceived "risk," and concomitant implicit bias, the narratives of professors of color and female professors pointed to the overall institutional structures and cultures of law schools as sources of invidious burdens in the tenure process. Respondents mentioned differential burdens that resulted from a paucity of women

and scholars of color, especially when combined with institutional needs surrounding staffing committees:

> PROFESSOR 4523 [white female professor]: It gets played out in—also in the tenure process, because you have untenured people, if they're—if they're women, and particularly if they're minorities—and I would say if they were—if they're black and Hispanic more than if they're Asian—who are just put on every damned committee…and then they're supposed to do the same work as people who haven't been on any committee their whole, you know, their whole seven years before tenure.

On the other hand, balancing this perspective, another white female professor notes the good intentions and institutional double-bind behind such situations:

> PROFESSOR 4643 [white female professor]: I think that, for the most part once people are here, under this dean, for sure, they tend to be treated very fairly. Except for the sort of situational demands I was talking about before, where…you think it's good for the law school to make sure that women are in, you know, positions where…they can influence decisions, but when you have very few women, that means more work for them. And you know, obviously, the only solution to that is to, you know, hire more women until the discrepancy isn't so glaring. So that's something that has been hard for women…in the past, but it—I mean, it's hard to say that's unfair, in a way, because it's—the whole motivation…is to allow women greater participation.

And another female professor comments that, "I am extremely over-extended in service, but that was my choice" [8082]. Thus both of these last respondents would agree that they carry a heavier burden of committee work because of their gender, but they would not deem the resulting impact on their ability to do other, more rewarded kinds of work as unfair. Interestingly then, just as with the problem of extra scrutiny for scholars of color prior to tenure, we find agreement among some respondents over the fact of disparate committee workloads for women and minorities, but they assess the fairness of this differently depending on their interpretive frames.

   Perhaps this helps to explain our quantitative finding that women and men do not differ significantly in their perceptions of the fairness of the tenure process based on their respective types of committee assignments, despite the fact that women and scholars of color reported differentially more kinds of committee workloads.[23] The quantitative analysis indicates that incremental

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23.   With respect to committees, the survey asked respondents to indicate which committee responsibilities they had had over the course of their careers—tracking specifically whether the committee responsibility was pre- or post- tenure. Thus, we can investigate whether reported kinds of committee assignments for minority and female professors differed pre-tenure from those of their white male colleagues. See Appendix C, Table 5 in the online supplemental materials for a table providing detailed results showing significant differences in committee assignments across minority status and gender, *available at* http://www.americanbarfoundation.org/publications/367. In particular, female professors (64.6 percent professors of color and 57.5 percent white women) are more likely than male professors (53.2 percent professors of color and 48.7 percent white men) to serve on appointment committees.

increases in the numbers and types of committees on which professors have served play only a small part in the differences among groups' perceptions of the tenure process. Being on any specific committee pre-tenure did not explain respondents' perceptions of the ease, fairness, or rewards of the tenure process. Each additional type of committee on which a pre-tenure professor served decreased the perceived fairness of the process by about 0.05 on a 5-point scale (a change of about 1 percent); while statistically significant, this finding does not point to any large substantive impact of the kinds of formal committee work on perceptions of the tenure process.[24] Appendix B in the online supplemental materials contains a more detailed analysis of the interaction of pre-tenure committee work and perceptions of the tenure process.

Another institutional issue mentioned was variability in procedures, where aspects of the tenure process or standard changed when "outsider" scholars were under consideration:

Additionally, pre-tenure female professors have a greater likelihood of serving on speaker series and diversity committees. Female professors, especially white women, are less likely to serve on advisory to the dean committees compared to male professors. Pre-tenure professors of color (37 percent male professors of color and 39 percent female professors of color) are less likely than white professors (50.2 percent white men and women) to serve on curriculum committees. Professors of color are more likely to serve on appointments and university-wide committees. Women of color were also more likely to serve on the diversity, speaker series, program development, and student issues committees pre-tenure compared to white women and both white males and male professors of color. Overall, the female professors report performing more kinds of committee work pre-tenure.

However, as noted in the text, this difference does not have a strong impact on their assessments of the fairness of the tenure process. There is one possible exception to this finding: Individuals on diversity committees—of which there were only 39 respondents who served pre-tenure—were less likely to find the tenure process easy. They are also significantly more likely to be female professors of color, the group most negative about the tenure process.

Here we see an interesting difference in what quantitative and qualitative results can tell us: When respondents think back to the fairness of their own tenure process, the kinds of committee work they performed might not impact their assessments to any great degree. But when telling stories about the overall backdrop against which the tenure process occurred, certainly some individuals describe unfair committee loads (along lines of race and gender) as a major factor in their assessments of fairness in the overall contexts surrounding tenure.

24.   In other words, service on a committee like Appointments (often characterized as onerous in terms of time commitment) did not negatively influence a female or minority respondent's sense of fairness regarding the tenure process any more or less than their white male colleagues. As the list of kinds of committees on which any respondent served got longer, the respondent was incrementally more likely to think that the tenure process had been unfair, but this was not a major factor in explaining gendered and raced differences in perceptions of tenure-process fairness. We did not, however, measure the total times that an individual served on particular committees pre-tenure; if a professor served on Appointments for all six years pre-tenure, we know only that the individual served on that type of committee at least once. We also were unable to find an accurate way to assess how much time particular people spent on their committee work; theoretically, two people could serve on the same committee but wind up spending quite different amounts of time. These limitations curtail our ability to make firm conclusions from the quantitative data regarding the relative burdens of institutional service.

PROFESSOR 4677 [woman of color]: We also instituted–this came out of some horrific experiences of myself–one of [the other tenured professors] is a woman of color, as well, and when we were coming through the process, we both had issues in terms of the kinds of discussions that would take place in the promotion and tenure meetings, where things were raised about which you had no notice. And to me, I thought there were some–that was a significant due process issue. And by the way, it also happened to a white male colleague who came through the process after us, but we were at the table, and of course, having been burned by this, were very vocal about it. So as a result, there is now written feedback from those committee meetings, so that the candidate knows if there were any concerns raised about them. And has a chance to address those or respond. Furthermore, each faculty member is given a mentor, and they can talk to their mentor about different concerns they have, can ask about, for example, where should I send this piece, should I trade up? Uh, so trying to create a formal mentoring system and also a lot more notice, prior to a significant vote.

The theme of improvement over time in the tenure process often comes coupled with accounts of better consistency, transparency, and routinization of procedures:

PROFESSOR 4048 [white male professor]: So I don't know whether there's a–there's nothing about our process that I think is particularly unfair or …bad. There's–I don't know that there's anything about it that I think is particularly good or fair. It's gotten more routinized over the years, so we have a more routine set of evaluations and reviews throughout time, and I suppose I think that's a good thing. But all that happened after I got tenure, so I have less connection with it. We review people fairly seriously now, about three years in, and they have annual discussions with the dean or the dean's designate about their progress. And I think those are probably good things, just to give people more notice and more early warning of where things are going well or poorly. So I guess I think on balance, though, if you're going to have a serious tenure review, there's probably no way to do it that makes everyone happy. I think ours is probably on the fair side. Or–better than it used to be. So I'm suspecting better than it is at some places. Um, what else?

INTERVIEWER: And that better than it used to be has to do with things that have become uh, a little more routinized for folks and regular?

PROFESSOR: Yeah. The expectations are clearer, the feedback's more– seems to be more regular and more useful. Again though, not being on that end of it, it's hard to say. But my impression is that–that we've gotten a lot better at that. Well, no, I mean, we have [emphasis] gotten a lot better at that.

Note that this perception of change for the better over time emerges from the retrospective account of a professor who received tenure in the early 1990s. By contrast, our quantitative cohort analysis shows that more recent cohorts of white male professors perceive the tenure process to be less fair than did early cohorts of white male professors. (Note that it is also important to distinguish

between our retrospective, cross-sectional perspective on the part of several cohorts looking back to different time periods, as opposed to comparing the longitudinal perspectives of one cohort surveyed over different time periods.)[25]

Another structural feature of law school employment mentioned in the interviews was flexibility of the institutions in dealing with childcare issues. Here again some interviews tell a retrospective story of gradual improvement over time:

> PROFESSOR 6712 [white female professor]: [W]hen I faced those issues [maternity leave] most directly, a number of the policies that are now in effect were not in effect. So, for example, my first maternity leave was cut short… it was cut short because another faculty member became ill, so that was an urgent situation–I understood. But, that would not happen now. And it was very difficult. It was quite exhausting. And also, I believe now the policy–the university policy for suspending your tenure time-clock, if you're on personal, maternity or parental leave is now much clearer. When I took these leaves, it wasn't at all clear whether you could actually even stop the clock, even though you could barely think straight, 'cause you were up at all hours of the day and night (LAUGHS), it still wasn't clear that the clock was stopped during that time. I think that the–at least those policies are much more clear now. I don't really know exactly what they are, but they're much clearer.

The quantitative results are consistent with a finding that having children before tenure can negatively impact perceptions of the tenure process; however, this pattern holds for both men and women, and does not fully explain the difference in perceptions of the tenure process that we found between male and female professors. Overall, about one quarter of male and female professors with children perceived the tenure process to be unfair, while only 10–15 percent of professors without children prior to tenure did so. Professors who had children before tenure also perceived the tenure process to be significantly more difficult than did professors without children; about half of all professors with children found the tenure process difficult, while only about one quarter of professors who did not have children before tenure found the process difficult.[26]

25. So, for example, an older professor might report the tenure process as having been unfair when she was reviewed, but feel that the current process is fairer by comparison (a retrospective perspective). However, a younger professor from a recent cohort might experience the same current process negatively, based on her different expectations and temporal perspective. Still different would be a series of interviews that permitted us to track longitudinally how members of cohorts describe their tenure experiences as their career moves on. Taking a one-time snapshot of the perspectives of people in different time cohorts, as we have done, is different from examining one or more cohorts' perspectives in a sequence over time as their views evolve.

26. Throughout this section we report statistics that do not prove causation but rather indicate trends and correlations that are consistent with some patterns rather than others. Qualitative data indicate some of the mechanisms that could be contributing to or causing the patterns to which the quantitative data point.

Given the changes in parental leave policies and the tenure process over time, it is useful to break down the results by cohort as well. Appendix C in the online supplemental materials provides the details for a cohort analysis in terms of fairness of the tenure process.[27] For all cohorts, professors who had children before tenure found the process less fair than did their contemporaries who had not had children before obtaining tenure. This pattern was somewhat attenuated in the 2000s cohort (where professors without children were less positive than their immediate predecessors). It is also consistent with the finding we discuss in the next section, that male professors in the 2000s cohort are less positive about the fairness of the tenure process in general than were earlier cohorts of men. Overall, however, it is a bit surprising that the significant changes in parental leave policies over the past 15 years have not led to noticeable changes in perceptions of the tenure process between those with children and those without. Male professors without children were the most positive about the fairness of the tenure process; there is a more marked difference between male professors who had and did not have children prior to tenure than there is between female professors with and without children pre-tenure.[28] This is arguably consistent with interview materials that point to additional gender-based struggles faced by women apart from the challenges of parenting—as, for example, struggles with the effects of implicit bias.[29]

<div align="center">***</div>

In sum, a complicated picture emerges from the quantitative and qualitative results. We do see statistically significant differences in perceptions of the tenure process among law professors of different races and genders, based on the quantitative analysis. Qualitative results point to two possible sources for these perceptions—implicit bias within law faculties, and aspects of institutional structure and culture within law schools that have differential impacts on scholars of color and white women.[30] Looking at the structure of the workplace, two kinds of issues are often mentioned in interviews as

27. *See* http://www.americanbarfoundation.org/research/project/67, Appendix C: Supplemental Tables and Graphs, Figures 4 to 6.

28. *Id.*

29. It is also possible that respondents differentiate between the fairness of the tenure process itself (how letters are solicited, how scholarship and teaching are assessed, etc.) and the fairness of their overall situation leading up to the tenure process. As noted above, qualitative results also demonstrate that respondents can agree that women and minorities have to perform extra work of various kinds, but differ in their assessments of how fair that is. Here the qualitative results provide a useful supplement in that they contain stories in which some respondents make clear links between fairness of the tenure process and differential institutional burdens. These professors spell out the internal logic of connections that may not emerge from external measures in the survey. The survey results can tell us overall patterns, while the interviews provide missing parts of the picture—as well as framing information that helps in interpreting quantitative findings.

30. As always in any such study, this does not exclude the possibility of other factors influencing these perceptions as well; however, these are the influences on perception supported by the data we have available.

possible sources of inequality: differential institutional service demands and lack of accommodation for child-rearing. Rough quantitative measures from our survey do not show a straightforward connection between kinds of committee service or childrearing, on the one hand, and perceptions of the tenure process, on the other.[31] On the other hand, the qualitative results provide interesting insights into how professors can differ in their assessments of the impact of more committee work, so that raw numbers do not tell the whole story. The interviews also explain how pregnancy and childcare needs could differentially impact women's lead-up to tenure, even if men with children feel the time pinch as well (especially in recent cohorts)–and even if this differential impact did not affect how women assessed the fairness of the tenure process in and of itself.

Combining the quantitative and qualitative analyses opens up fascinating areas for further exploration. How, for example, do law professors' assessments of the overall atmosphere in their work environments connect with their views of the tenure process? Our initial findings leave open the possibility that these two do not always go together, indicating a more complex story about perceived fairness, processes of integration, gate-keeping, and institutional cultures. Committee work and childcare can affect professors' experiences of tenure, but not in monolithic or simple ways. Survey and interview results do indicate robust racial and gender differences in perceptions of the tenure process. Some accounts describe continuing negative effects of implicit bias and institutional cultures and structures. Others tell a story of noticeable improvement over time–at least in terms of procedures and institutional structures. To understand change over time in professors' experiences of the tenuring process in more detail, we turn now to the quantitative picture generated by analyses of distinct cohorts of law professors in U.S. law schools.

IV. Cohort Effects and Changes over Time

Because our respondents earned tenure between 1956 and 2005, our question regarding their tenure process asks them to reflect on very different times, during which significant changes have occurred in the legal academy. This section breaks down the responses by tenure cohort, investigating how the experiences of minority faculty and women faculty have changed over time across different generations. It is important to note, however, that we measured perceptions of different cohorts at the same time (2005) rather than following the same cohort over time. As a result, there may be some differences simply because older participants from the earlier cohorts were reaching back further into their memories than were participants from more recent cohorts.[32]

31.   Neither of these measures can capture the full gamut of issues and information needed to definitely assess the impacts of these factors and, short of having respondents keep time-budget diaries over many years, it is dubious that any quantitative assessment could. In this case, the interaction of quantitative and qualitative results provides better information than could either kind of data on its own.

32.   For example, it might be that respondents would view the tenure process as more stressful and less rewarding soon after they had undergone that process, but that over time their

Table 4: Race and Gender Distribution Across Cohorts[33]

	All	Pre-1980s	1980s	1990–94	1995–99	2000–05
Panel A: Gender						
Male	75% (658)	96% (164)	76% (182)	67% (99)	64% (131)	59% (82)
Female	25% (550)	4% (22)	24% (135)	33% (112)	36% (160)	41% (121)
Panel B: Minority Status						
White	88% (821)	96% (155)	93% (252)	87% (148)	78% (162)	74% (104)
Minority	12% (374)	4% (29)	7% (61)	13% (63)	22% (124)	26% (97)
Panel C: Interaction of Gender & Minority Status						
White Men	67% (430)	92% (135)	70% (131)	60% (67)	51% (63)	44% (34)
White Women	21% (391)	4% (20)	23% (121)	27% (81)	27% (99)	30% (70)
Minority Men	8% (218)	4% (27)	6% (48)	7% (32)	11% (64)	14% (47)
Minority Women	5% (156)	*†	1% (13)	6% (31)	11% (60)	12% (50)

† The percentage of respondents is small enough that we do not provide information about them due to privacy concerns.

Table 4 presents basic demographic information for each tenure cohort. Overall, professors of color represent 12 percent of tenured faculty at the time of our study. The percentage of professors of color has increased from just 4 percent in the pre-1980s to 26 percent of professors who were tenured between 2000 and 2005. White female professors account for 21 percent of tenured faculty, and the remaining respondents (67 percent) are white male professors. As reflected in our sample, integration of law faculties began in the late 1960s, with a first wave of male professors of color receiving tenure in the 1970s. White female professors began joining the ranks of tenured professors at the same time, and their presence increased significantly in the 1980s cohort, gaining at least a double-digit representation on tenured law faculties over a decade <u>earlier than did professors of co</u>lor. In contrast, female professors of color

     perspective might shift.

33.   Table 4 contains the weighted percentage of respondents (representing the underlying population of tenured law professors) and the actual, unweighted number of respondents in parentheses.

did not gain substantial representation on tenured faculties until the 1990s. The 2000–2005 cohort was significantly more integrated, with 26 percent of this youngest tenure cohort being professors of color and 30 percent of these professors being white women.

Fairness of Tenure Process over Time

Given the changing demographics of law faculties, perceptions of the tenure process might be expected to differ across cohorts for different demographic groups. Figure 1 contrasts perceptions of fairness across cohorts for white men, white women, minority men, and minority women. White male professors' pattern essentially demonstrates no statistically significant differences across cohorts;[34] white men overwhelmingly perceived their tenure process as fair irrespective of the cohort in which they received tenure. In contrast, the perceptions of white women differ significantly across cohorts, as white women from later cohorts are significantly more positive about the fairness of the process.[35] In fact, there is no significant difference between white male and white female perceptions of the fairness of the tenure process for the most recent cohort that received tenure in the 2000s. This positive shift is not found among male or female professors of color. Indeed, male scholars of color from the 2000s cohort are the most negative about the fairness of the tenure process, with over one-fourth of these scholars finding the process unfair. Still, across all cohorts, a significant majority of male scholars of color perceive the process as fair; between 67 percent and 79 percent found the process fair, with the earlier cohorts being more positive than later ones about the process.[36] Female scholars of color from the 2000s cohort are also more negative than those from the 1990s; 40 percent of these scholars found the tenure process unfair, while 30 percent did so in the 1995–1999 cohort. The small cohort of female scholars of color from the 1980s are the most negative, with fewer than half of the professors believing that the tenure process was fair, and 44 percent believing that the process was unfair. Overall, however, the perceptions of female professors of color have not gotten significantly more positive in recent cohorts. (While the differences among women of color across cohorts are statistically significant, this is primarily because of the somewhat more positive perceptions of the 1995–1999 cohort. These gains in positive perception had disappeared by the 2000s cohort.)[37]

34. Pearson χ^2 (16)= 25.0; p-value = 0.18.

35. Pearson χ^2 (16)= 34.5; p-value = 0.007.

36. Overall, a test of whether different cohorts of male scholars of color perceive the fairness of the tenure process differently suggests that they do. Pearson χ^2 (16)= 98.4; p-value = 0.001.

37. Excluding the pre-1980s cohort because of small numbers, the test of statistical significance

Figure 1: Fairness of the Tenure Process by Cohort, Race and Gender

Tenure Process Fair
(by Race, Gender, and Cohort)

Tenure Process Not Fair
(by Race, Gender, and Cohort)
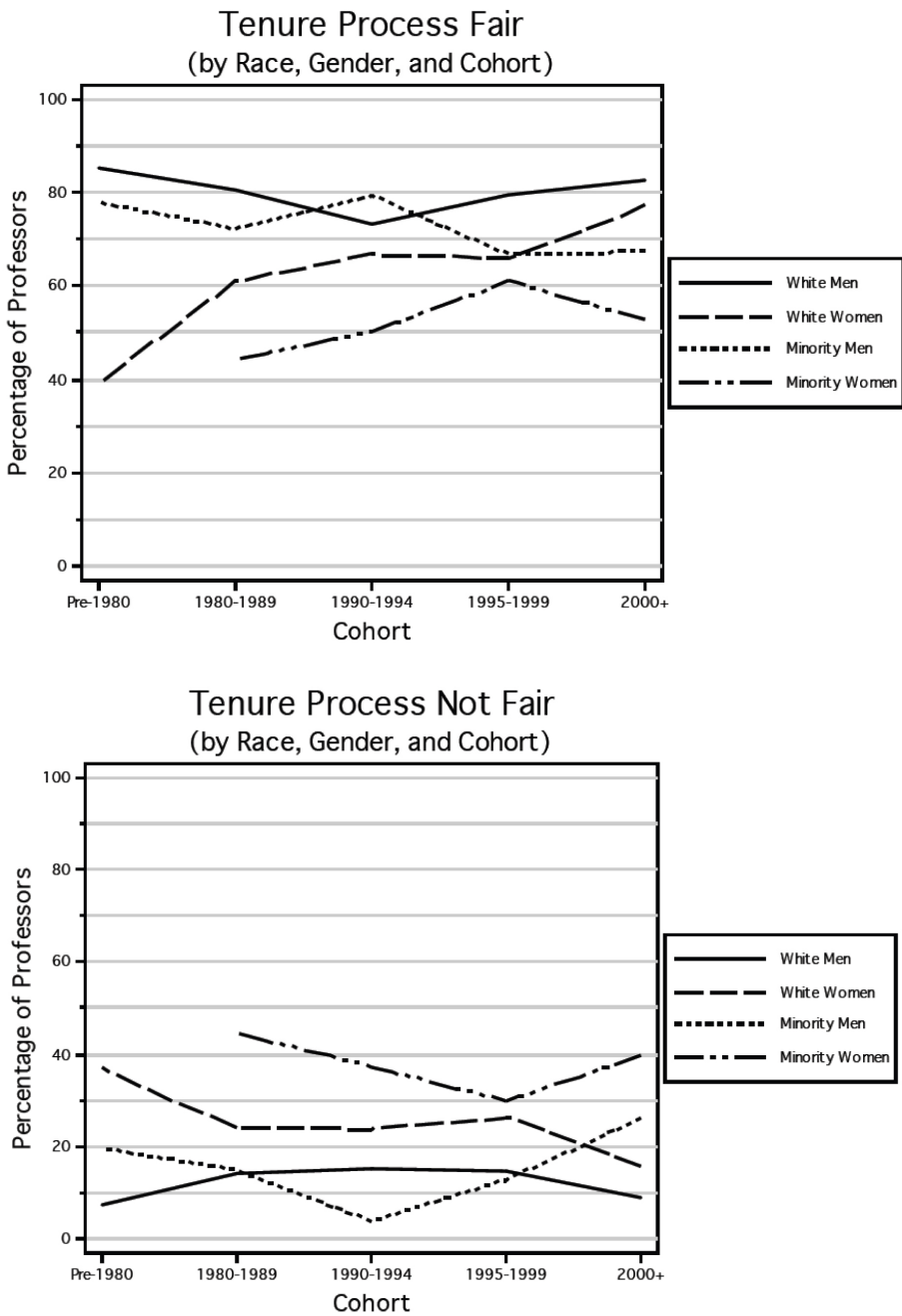
is Pearson χ^2 (12)= 63.1; p-value = 0.04.

Ease of Tenure Process over Time

Focusing on the perceptions of the ease of the tenure process, there are significant differences across cohorts for all demographic groups. White male professors in the pre-1980s cohort viewed the tenure process quite positively, with only 20 percent of professors responding negatively (see Figure 2). However, all other cohorts are significantly more negative regarding the ease of the tenure process, with about 40 percent negative responses from the 1980s and both 1990s cohorts. This negative perception moderates by the 2000s cohort, where just under one-third of white male professors (32 percent) disagreed with the statement that the tenure process was easy. Still, just under half (46 percent) of white male professors agreed that the tenure process was easy.[38]

For white female professors, the differences across cohorts are not statistically significant.[39] About a third of these professors held positive views while negative perceptions are in the range of 53–59 percent for all cohorts except the small pre-1980s cohort (19 respondents). Over time, perceptions of the ease of the tenure process have not shifted significantly for white female professors and remain mostly negative.

Unlike white female professors, younger cohorts of male professors of color are significantly more negative than earlier cohorts regarding the ease of the tenure process.[40] Although 35–45 percent of professors in the early cohorts, through 1994, held negative views, there is still a significant positive group as well; 45 percent of the pre-1980s cohort agreed that the tenure process was easy, as did 44 percent of the 1990–94 cohort. By the 2000s cohort, however, only 20 percent found the process easy, and 70 percent expressed negative perceptions on this issue. Time will determine whether this recent increase in negative perceptions persists past the early 2000s cohort. Overall, no cohort had a majority of positive responses, but the more recent cohorts are more negative than their older colleagues.

Female scholars of color also remain quite negative about the ease of the tenure process. From the 1990s onward, only about 30 percent of this group agreed that the tenure process was easy. The percentage of negative responses moderated somewhat in the 2000s cohort after a jump in the 1995–99 cohort, but in all of these cohorts, a majority was negative (56–65 percent). The number of respondents in earlier cohorts is small, but the responses are clearly more negative than positive.[41]

38. Pearson χ^2 (16)= 46.2; p-value = 0.002.

39. Pearson χ^2 (16)= 25.8; p-value = 0.07.

40. Pearson χ^2 (16)= 98.4; p-value < 0.001.

41. Dropping the pre-1980s cohort because of small numbers, the test of statistical significance is Pearson χ^2 = 85.1; p-value = 0.002.

Figure 2: Ease of the Tenure Process by Cohort, Race and Gender

Tenure Process Easy
(by Race, Gender, and Cohort)

Tenure Process Not Easy
(by Race, Gender, and Cohort)
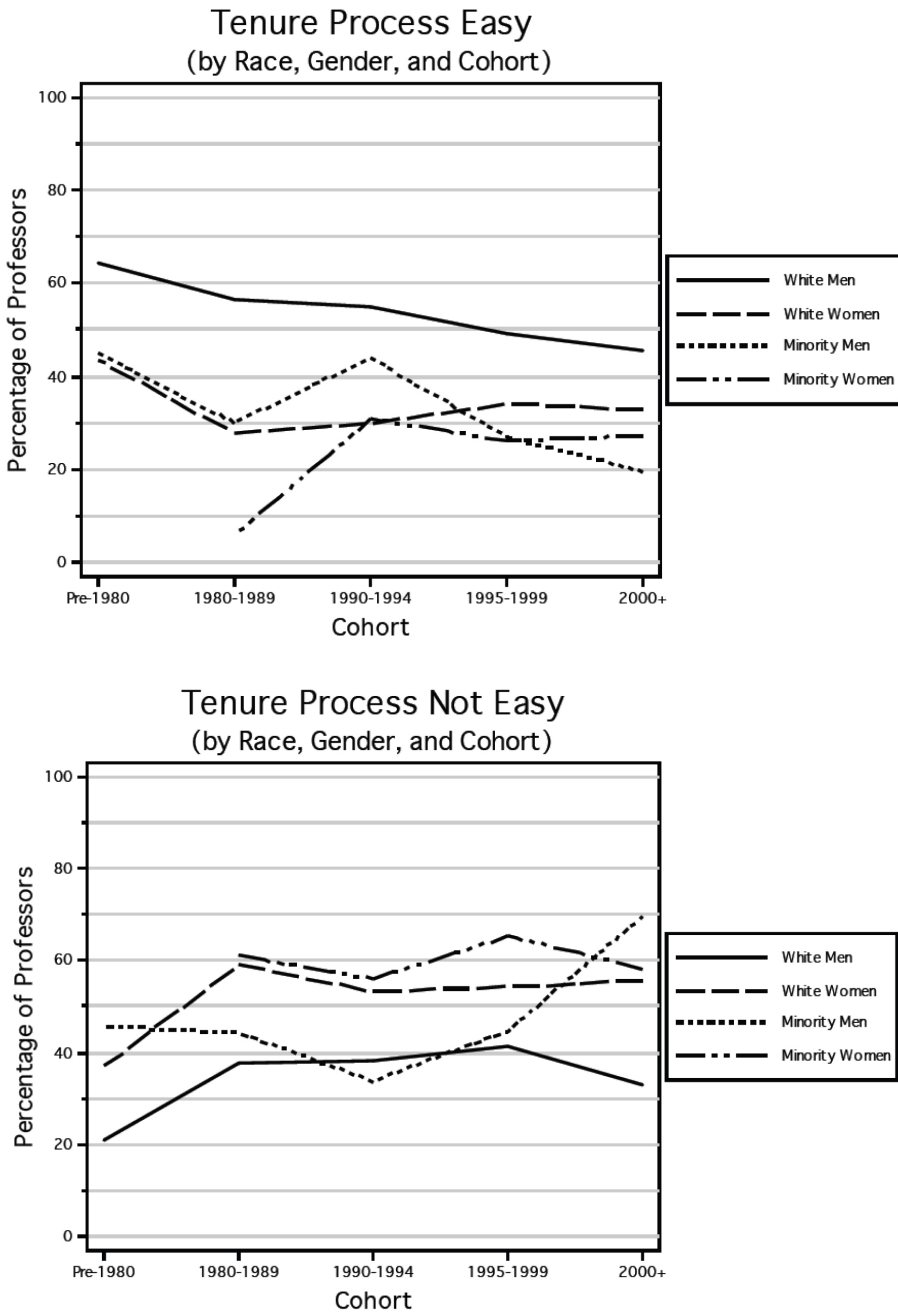
Reward of Tenure Process over Time

As Figure 3 indicates, the perceptions of the tenure process as rewarding follow a similar pattern. The responses of white female professors do not differ significantly across cohorts, as is the case for the ease of the process as well.[42] Generally only 15-25 percent of them perceived the process as rewarding. In contrast, white male professors differed significantly across cohorts, with these professors becoming less neutral and more negative in younger cohorts.[43] About one-fourth of white male professors in the cohorts before the 2000s agreed that the tenure process was rewarding, while somewhat more–about one-third– disagreed with that statement. The 2000s cohort was more polarized, with 34 percent of white men who got tenure in the 2000s characterizing the process as rewarding, while 52 percent disagreed with that statement.

Male professors of color also demonstrate significant differences across cohorts.[44] First, the oldest cohort, from the pre-1980s, includes a substantial group (40 percent) who strongly agreed that the tenure process was rewarding. This early cohort's disproportionately positive view explains why male professors of color as a group are overall more positive; in fact, it is only these early integrators who perceived significantly more rewards from tenure than did white professors more generally. After this early cohort, about one-third of male professors of color perceive the tenure process as rewarding throughout the 1980s and 1990s cohorts, until, once again, the 2000s cohort is significantly more negative than earlier cohorts, with only 20 percent of the professors finding the process rewarding (and 57 percent disagreeing).

This significant negative shift for the 2000s cohort occurred for female scholars of color as well; fewer of them found the tenure process rewarding in the 2000s than in other cohorts with sufficient numbers of respondents.[45] Again, the very first cohort of female professors of color (in this case, the 1980s cohort) was somewhat more positive–and certainly less negative–than later cohorts. While this could be an artifact of memory, the fact that "rose-colored" glasses exist for professors of color but not white female professors suggests that the tenure process was experienced differently by these early integrators (both men and women of color) than by white male or even white female professors.

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42. Pearson χ^2 (16)= 18.4; p-value = 0.37.

43. Pearson χ^2 (16)= 37.5; p-value = 0.02.

44. Pearson χ^2 (16)= 169.4; p-value < 0.001.

45. Overall, a test of whether different cohorts of female scholars of color perceive the rewards of the tenure process differently suggests that they do. Pearson χ^2 (12)= 126.0; p-value < 0.001.

Figure 3: Rewarding Nature of the Tenure Process
by Cohort, Race and Gender

Tenure Process Not Rewarding
(by Race, Gender, and Cohort)

Tenure Process Rewarding
(by Race, Gender, and Cohort)
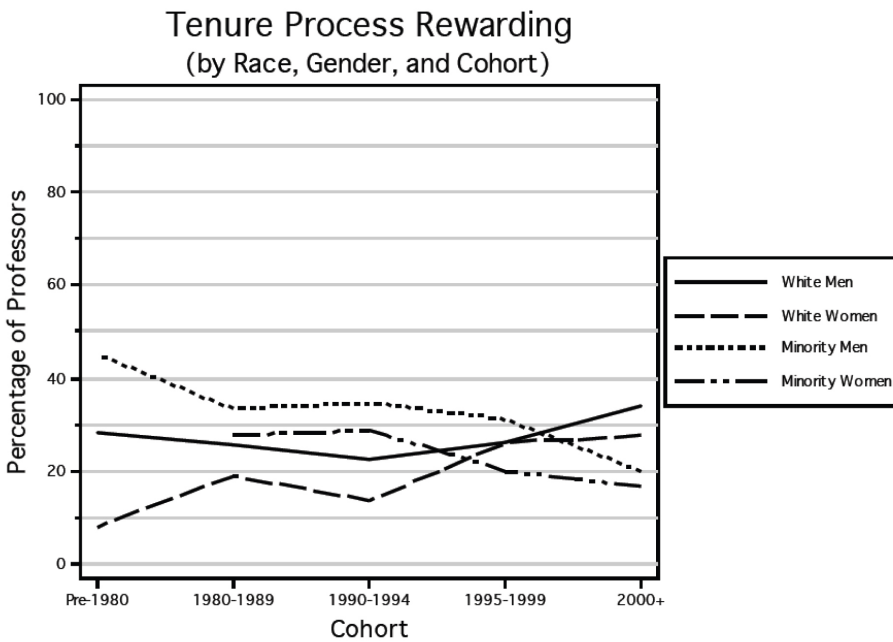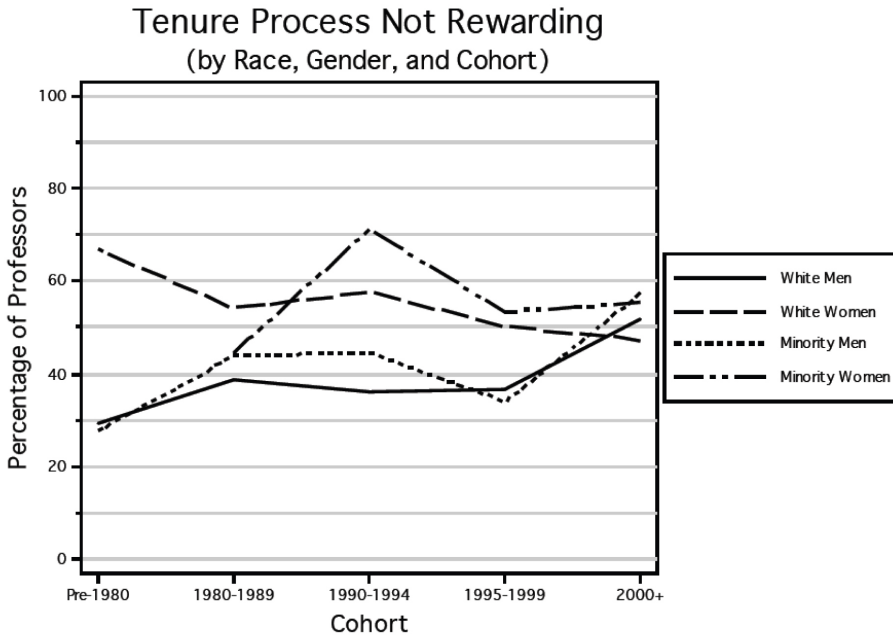
Summary

The demographic composition of cohorts of newly tenured professors has changed drastically over the past 30 years. It is not surprising that attitudes toward the tenure process might differ across gender and minority status given these changing demographics. These demographics are one potential reason for change in perceptions of the tenure process across cohorts. Institutional changes, including formal changes to tenure standards, as well as informal changes in the way the tenure process is handled, may also have affected perceptions across cohorts.[46] Our findings confirm the general story laid out above: that female professors and professors of color perceive the tenure process more negatively than their white male counterparts across cohorts, with some changes in the strength of these differences over time. But the nuance of when an individual was reviewed for tenure is quite important in describing that individual's perceptions. And cohorts, in general, matter. Recent cohorts of white women are happier with the tenure process than were previous cohorts, leaving open the possibility that some institutional changes have in fact created improved circumstances for these groups. On the other hand, recent cohorts of men of color are significantly less sanguine about the tenure process, joining women of color, who have a sustained negative view of the tenure process across cohorts from a variety of time periods.

V. Conclusion

We stress again that the majority of tenured professors believe that the tenure process is fair. Indeed, our data show that even a very slim majority of female scholars of color (50.2 percent) believe this. Thus, despite large divisions in how the tenure process is experienced overall, a majority of tenured professors agree that U.S. law schools are meeting the fundamental requirement of fairness in the process. This positive news, however, is somewhat counterbalanced by the finding that female scholars and scholars of color have significantly more negative experiences with the tenure process than do their white male counterparts.

The 1992 *Report of the AALS Special Committee on Tenure and the Tenuring Process* stated that the most significant gendered and racial disparities in relation to law school tenure were due to pre-tenure resignations rather than actual tenure denials.[47] Of course, law schools may be giving scholars a signal that they are unlikely to succeed at tenure, thereby prompting the resignations. Alternatively, scholars who view the process as unfair or unduly harsh might also withdraw to avoid what they forsee as an unjust result. Thus, differences in perception are worth examining on their own, even before we address the question of whether perceptions map reality. Just as with law students, there appear to be "pockets of bleakness" within law school faculties that are

46.   These two causal mechanisms are not, in fact, separable: Changing demographics affect institutional responses, and institutional responses can change the demographics of the tenured faculty.

47.   *See* AALS Report, *supra* note 8, at 477, 485–86.

differentially populated by traditional outsiders.[48] Tracking these pockets over time will help us to understand the dynamics surrounding integration of law schools, key locations for the socialization of those who control the political and legal systems in the U.S. An optimistic reading of this study suggests that the critical mass of female professors in the legal academy helped change their institutions for the better, to the point where there is little difference in the perceptions of the tenure process for male and female professors in the 2000s cohort. A more pessimistic reading would note that the gap only lessened after two decades with a "critical mass" of female tenured professors, and that professors of color are still significantly more negative about the tenure process than their white colleagues. Assuming that professors of color obtained significant representation in the legal academy in the 2000s cohort, does this mean that it will take another decade to close the gap in perceptions for professors of color? We leave this somewhat rhetorical question for future study.

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48.   Gulati et al., *supra* note 7, at 255–56.