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# Seeking Tenure while Black: Lawsuit Composite Counterstories of Black Professors at Historically White Institutions

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## ABSTRACT

In tenure and promotion denial lawsuits against historically White institutions, Black professors submit evidence of discrimination based on implicit and explicit bias and gendered racism, yet legal redress rarely occurs because many courts will not recognize structural inequities as a persisting reality in academia. Informed by intersectional theory and methodology, this qualitative study synthesized data from legal documents of four tenure denial lawsuits filed by Black professors, with the results presented as a fictionalized composite counternarrative affirming these professors' lived experiences. Drawing on scholarship about tenure and promotion, the study identifies intersectional barriers to tenure attainment for Black professors that include inadequate institutional support, divergence from established institutional tenure and promotion policies, inconsistent application of tenure and promotion guidelines, and problematic academic politics. The study findings illuminate how inequitable, often haphazard tenure and promotion processes can result in litigation and extend scholarship about the retention of Black professors in the academy. The project delineates a path toward more humanity-affirming academic work environments with unequivocal institutional commitments to faculty retention. To translate these values into practice, the authors assert the need for a new approach to tenure and promotion policy anchored in anti-discrimination, referred to as *critical procedural justice*.

## ARTICLE HISTORY

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Black professors; tenure denial lawsuits; critical race feminism; composite counterstory

Normalizing equitable treatment and countering gendered racism against Black professors through the tenure and promotion process (T&P) are complex yet crucial goals in academia. Past and present experiences of Black professors who seek T&P at historically White institutions (HWIs) include commonly encountered challenges such as individual and institutional racism (Allen et al., 2002), microaggressions (Louis et al., 2016; Mobley et al., 2020; Zambrana et al., 2017) and racial battle fatigue (Arnold et al., 2016; Smith, 2004). The experiences of tenure-seeking Black professors reveal

inconsistencies in the purportedly meritocratic process of T&P. Inconsistencies arise when explicit and implicit standards for performance are compounded by intermittent, inadequate formative feedback and mentoring — creating inequitable procedural experiences for Black professors.

Since Title VII of the Civil Rights Act of 1964 was amended in 1972 to include colleges and universities, Indigenous and racially and ethnically minoritized professors (Professors of Color) and White women have filed tenure denial lawsuits alleging race and sex discrimination<sup>1</sup> (Rossein, 2016). White women have historically filed the majority of tenure denial lawsuits against HWIs (Leap, 1995). However, White women's experiences do not illuminate the racialized and gendered discrimination faced by Black professors. Additionally, employment laws have not been consistently interpreted to recognize or provide redress for gendered racism (Pappoe, 2018) or micro-aggressions in academia (Lukes & Bangs, 2014). While data on the experiences of Professors of Color denied tenure could help shape policies to address barriers to advancement, few empirical studies of tenure-denial lawsuits are available (American Association of University Women, 2004; Baez, 2002; LaNoue & Lee, 1987; Leap, 1995). Even fewer studies engage critical theories to examine tenure denial legal documents involving Black academics.

Guided by an intersectional-barriers-to-tenure framework (Deo, 2018), comprising the concepts of intersectionality, privilege, and implicit bias, we created a counterstory (Croom & Marsh, 2016) to provide more insight into Black academics' experiences with abuses of institutional power during their social and academic status as pre-tenured Black professors. Our composite, a fictionalized narrative is based on factual details in discrimination lawsuits filed by four tenure-seeking Black academics.

To inform and influence the enactment of equitable written and unwritten T&P procedures and policies, we offer a new concept of *critical procedural justice*. Inequities arise through arbitrary handling and mitigation of bias complaints and a lack of institutional accountability to provide humanity-affirming experiences. Critical procedural justice extends the concept of *procedural justice* (Konovsky, 2009) developed in organizational employment scholarship, about how employees perceive policies and procedures as just or unjust. The broader concept of *critical procedural justice* addresses persistent barriers to career advancement and distrust in T&P processes linked to T&P policies and norms that remain grounded in whiteness, anti-Blackness, genderism, heterosexism, and other systems of oppression. This approach can and should become the norm because the courts typically acknowledge and respect the institutional authority of colleges and universities to determine the criteria by which faculty will be granted T&P. Applying the concept of critical procedural justice to T&P processes creates remedies for academia's history of exclusion, bullying, harassment, and the interrogation of power.

This study was guided by one research question:

- (1) What intersectional barriers within tenure and promotion processes can be identified through tenure denial lawsuit experiences of Black faculty at HWIs?

In the following sections, we discuss the intersectional-barriers-to-tenure framework, relevant literature about Black faculty experiences; and conclude by elaborating on the value and implications of critical procedural justice for T&P policy formation and implementation.

### **Intersectional-barriers-to-tenure framework**

Black woman legal scholar Kimberlé Crenshaw (1989) advanced an expansive notion of employment law equity when she recommended that courts adopt an intersectional approach to recognize the significance of multiple forms of social identities that may be subjected to discrimination. Specifically, Crenshaw argued that Black women in workplace conflicts cannot receive full redress because the law recognizes the existence of racism and sexism, but not of gendered racism. Thus, legal rubrics require Black women to sever their race from their gender to assert a discrimination complaint — despite unresolved historical inequities in the treatment of Black women.

This study builds upon three concepts: legal scholar Meera Deo's (2018) interdisciplinary theorization of the intersectional barriers to tenure, which was inspired by and encompasses Crenshaw's (1989) articulation of intersectionality; legal scholar Stephanie Wildman's (1996) conceptions of privilege; and law and psychology scholars (respectively) Jerry Kang and Kristin Lane's (Lang & Lane, 2010) scholarship on law and implicit bias. Deo (2018) argued that “while different hurdles block the various requirements for tenure, they all involve intersectional discrimination, including both gender privilege, and bias” (pp. 1000–1001).

Intersectionality corrects the single-axis thinking (constrained to notions of a single identity) embedded in current law and policy. Intersectionality can be traced to early Black women thought leaders, including Anna Julia Cooper and Ida B. Wells, whose perspectives on human dignity in society encompassed inextricable identities of race and gender and provided foundational insights into the complexities of Black women's lived experiences. Scholarship and social movement activism of the 1960s and 1970s reflected intersectional perspectives on multiple systems of oppression (Harris & Patton, 2018).

Privilege, as characterized by Wildman (1996), enables those who control societal power systems, such as law, to set norms and make decisions that disadvantage those who are not in the privileged group (historically cis-heterosexual White men). Deo (2018) posited that “considering both the process and outcome of tenure . . . [there is value in exploring] how privilege creates both opportunities and challenges for faculty members based on each

individual's intersectional identity" (p. 1008). Implicit bias is described as "all people hav[ing] subconscious attitudes and stereotypes that affect their interactions with various individual[s]" (p. 1008). Deo noted even those who cultivate consciousness of their biases can still rely on "intersectionally devalued identity characteristics (i.e., women of color)" (p. 1008) to make detrimental tenure decisions for Professors of Color.

In sum, the intersectional-barriers-to-tenure framework used in this study incorporates these scholars' conceptualizations of intersectionality, privilege, and implicit bias. Informed by these concepts, our analysis names and critiques academic norms and behaviors once presumed to be objective and fair.

## Literature review

We reviewed the extant literature to determine what existing scholarship reveals about the T&P experiences of tenure-seeking Black faculty at HWIs. The literature offers information about the factors that precipitate tenure lawsuits, different forms of bias, discrimination experienced by Black and other Professors of Color, and possible remedies.

### *Precipitating factors*

Through empirical analysis, Leap (1995) identified typical factors that lead professors to sue for denial of reappointment, tenure, or promotion. He analyzed faculty discrimination lawsuits over 20 years, beginning in 1972 when Title VII was amended to include colleges and universities as workplaces with federal oversight. He focused on cases in which employment discrimination was alleged based on a protected category: race, sex, national origin, age, ability or religion. Of the 115 cases listed, 15 alleged race or sex discrimination, and 10 involved Black professors (four Black women and six Black men). The remaining five did not provide race or ethnicity.

Leap's findings revealed several key concerns. Administrators did not follow T&P standards established by their institutions. Discrepancies between guidelines that professors should have used during mentoring and advisement, actual mentoring practices, and applied review standards created points of contention in disputes and litigation. Similarly, T&P standards were inconsistently applied by institutional actors: this was a recurrent pattern in cases where a faculty member was denied tenure yet a peer with comparatively fewer, and in some cases subpar, credentials received a favorable tenure decision.

Leap (1995) found other forms of bias also affected T&P. For instance, faculty members reported they were unable to achieve an acceptable performance level because institutional support and resources were lacking. Inadequate resources, low funding, or heavy teaching and service loads can

undermine attainment of research, publication, and service goals. Unfavorable promotion or tenure decisions can be linked to academic politics (unsupported feedback spurred by interpersonal conflict), which surfaces in allegations of favoritism and meritless reviews. Overt bias occurred when faculty and administrative review bodies exhibited racism, sexism, or other forms of prejudice — such discriminatory perspectives and practices undermine a fair T&P process. In such instances, faculty plaintiffs typically presented evidence of ways that administrators created and condoned a hostile work environment, defined by the American Association of University Women (American Association of University Women, 2004) as “characterized by sexist [or racist] jokes, banter, and exclusion from social events, and other behavior that makes employees feel uncomfortable and unwanted” (p. 29). The hierarchy of work relationships in academic settings can compound the effects of this bias. Pre-tenured faculty may be cut off from valuable co-authorship or grantwriting opportunities, for example, due to difficulties collaborating in a “chilly work environment”; this “can weaken a candidate’s case for tenure” (p. 29).

Turning to documentation of women’s gender discrimination, the most recent report is nearly two decades old. Published by the AAUW Legal Advocacy Fund, the report analyzes 19 cases decided between 1983 and 2003 (American Association of University Women, 2004). Consistent with racist assumptions of whiteness as the norm and race-evasive practices (Matthew, 2016), none of the 19 women’s racial or ethnic identities were mentioned. Through a Google search of the plaintiff’s names and employers, we determined that none were identifiable as Women of Color.

With respect to race discrimination lawsuits by Professors of Color against HWIs, Baez’s (2002) study located (through a search of the legal database Lexis-Nexis) 52 cases filed between the mid-1970s and 2000 by tenure-track faculty denied tenure or reappointment who alleged racial or national origin discrimination under state or federal law. Baez (2002) studied the cases as narratives “to make larger arguments about prevailing notions of race and the academy, specifically, and society, more generally” (p. 4). Examining the cases of four Black women and 14 Black men who filed lawsuits against HWIs, Baez found that all 18 cases alleged disparate treatment, a type of discrimination claim available to individuals in legally protected classes. Disparate treatment claims tend to arise when professors perceive their protected social identities were factored into tenure, promotion, or reappointment decisions.

In addition, three faculty members alleged disparate impact, a form of discrimination where purportedly neutral institutional policies and practices impose harm, because in application those policies and practices have a disproportionate negative effect on legally protected groups. Courts are

reluctant to believe contemporary claims of disparate impact — often denying current evidence linked to historic patterns of systemic gendered racism, privilege, and structural barriers to advancement.

The literature encompasses T&P decision outcomes as well as the effects of litigation on professors as plaintiffs and higher education institutions as defendants. Legal scholars LaNoue and Lee (1987) collected data from documents concerning six lawsuits and surveyed the plaintiffs and university counsels associated with those cases. Of the six cases featured, only one was identified as a Black professor, a man who sued an HWI in 1975 for individual race discrimination as well as for class discrimination against all Black professors in the university's hiring and promotion practices. The professor died of a heart attack two days before the appellate court heard his lawyers' oral arguments. LaNoue and Lee speculated:

His loss at the trial level, the necessity of leaving the university, his difficulty securing employment in a related field, and loss of a second position (through layoff) after only one year may have combined to produce [the professor's] fatal heart attack, given his history of heart disease. (pp. 135-136)

This professor's experience occurred just three years after Title VII was first applied to higher education. His early tenure discrimination case evokes recurrent, problematic patterns in subsequent cases.

### ***Bias and procedural justice***

Organizational behavior scholarship illuminates how cognitive biases in meaning-making may influence tenured faculty on T&P committees, leading to a detrimental, potentially discriminatory tenure review process, especially for Black and other Professors of Color. Psychology and organizational theories reveal ways individuals are influenced by confirmation bias when making decisions (Stewart & Valian, 2018). *Confirmation bias* describes a pattern of seeking evidence to confirm preconceived notions. Confirmation bias is embedded in T&P processes in evaluations that typically use subjective terms like high quality and rigorous — concepts that can be interpreted broadly and used as a pretext by review committee members to disparage colleagues who are T&P candidates. In such instances, bias and discrimination can be difficult to prove. In a qualitative study applying psychological concepts to analyze semi-structured interviews with Black academics, Arnold et al. (2016) asserted there are invisible, often unspoken influences in the T&P process such as likability and congeniality that are unrelated to a candidate's scholarship and are not stated in T&P criteria documents.

Using procedural justice, a term that characterizes decision-making approaches that people believe are fair, offers a way to address confirmation bias. Lawrence et al. (2014) utilized procedural justice as a conceptual

framework to explore how tenure-track professors with various socio-demographic identities perceive fairness in T&P processes. The study participants were mainly White men in STEM disciplines who worked, on average, three years at institutions with very high research activity. Through correlational analysis, the authors found a positive and significant association between obtaining effective feedback and perceived equitable treatment; they characterized such feedback as a form of procedural justice. Disaggregating results by gender and race (but not by race and gender combined), Lawrence et al. (2014) reported “women and faculty who have been at their campuses for longer periods of time are less likely to think the tenure process is equitable” (p. 179). However, they obtained inconclusive results on the association between beliefs about fairness and race that they attributed to “limitations in our data and methods” (p. 172).

### ***Black faculty experiences***

A robust and growing body of scholarship details the experiences of Black faculty across ranks at HWIs: Black women as full-time contingent faculty; Black women seeking and within full professor status; and queer Black men in the classroom. Recent scholarship using intersectional analyses of oppression based on race, gender, and sexual orientation illuminates how Black faculty at HWIs navigate power structures that marginalize and discriminate against them (Cobham & Patton, 2015; Croom, 2017; Croom & Patton, 2012; Mobley et al., 2020; Porter et al., 2020). Professors of Color experience the workplace as stressful due to the absence of mentoring, unsatisfying collegial relationships, and pervasive discrimination that affects their sense of belonging and research productivity (Eagan & Garvey, 2015; Ponjuan et al., 2011).

In a review of 20 years of literature on Professors of Color, Turner et al. (2008) identified recurring themes of isolation, marginalization, racism, sexism, and lack of departmental and institutional support. Black scholars (Haynes et al., 2020) have identified broad, dehumanizing, and subordinating stereotypes that originated in slavery yet persist in the white imagination. These embedded stereotypes, rooted in socio-historical subordination tropes, can take many disturbing forms. Black women have been viewed as mammies, innate caretakers, and docile (Collins, 1990). Black men have been viewed as childlike or entertainers (Sambo), submissive (Uncle Tom), and hyper-sexualized or effeminate, regardless of gender expression (Haynes et al., 2020). The persistence of these cultural tropes can render the identities and achievements of Black academics as illegible in the academy. Black faculty have distinct experiences in employment due to socio-historical legal realities of exploitation and exclusion (Scarborough,



1989). Scholars have described the damage inflicted by gendered-racial indignities as a form of “spirit murder” of Black men and women academics (Gutiérrez Y Muhs et al., 2012; Johnson & Bryan, 2017).

Research has chronicled the accounts of Black and other Professor of Color in academic departments and with colleagues who are blatantly and subtly unwelcoming and bully-prone, and who communicate via normalized saboteur behaviors (Zambrana et al., 2017). The scholars described subtle discrimination on individual and institutional levels in the form of gendered-racial perceptions as well as in more overtly disparate teaching and research support compared to white peers. As a result, Black faculty described T&P processes as stressful and mentally taxing (Thompson & Dey, 1998; Zambrana, 2018). Racial battle fatigue (Arnold et al., 2016; Smith, 2004) can be experienced physically and psychologically — often due to gendered racial microaggressions, the “subtle and everyday verbal, behavioral, and environmental expressions of oppression based on the intersection of race and gender” that compromise the health and well-being of Black and other Professors of Color (Lewis et al., 2013, p. 51).

### ***Potential remedies and obstacles in employment law***

In addition to identifying discriminatory experiences, the scholarship advances feasible and implementable solutions. Supportive mentorship (Griffin, 2020; Ross & Edwards, 2016; Tillman, 2001), improved institutional climates (Jayakumar et al., 2009; Victorino et al., 2013), and transparent T&P policies (Matthew, 2016) all help Professors of Color to thrive in their professional development and advancement.

Legal recourse should be available to those who experience discrimination. However, potential plaintiffs face many obstacles. For example, an individual cannot independently file a lawsuit against their public or private employer: they must submit a charge of discrimination either to the Equal Employment Opportunity Commission (EEOC) and/or a state fair employment practices agency. If a claim is filed, and the EEOC finds merit with the case, EEOC lawyers will either represent the person in a lawsuit or the agency will issue a right-to-sue order that permits an individual to move forward with obtaining an attorney and filing a lawsuit themselves. The courts then determine whether there has been employment discrimination through application of legal concepts developed under Title VII.

In addition to this obstacle to filing a case, a favorable outcome in cases that are heard often revolves around a subjective judgment call: whether a court determines a plaintiff's evidence to be direct or indirect evidence. In one example of this conundrum, an Asian American man professor submitted as direct evidence “testimony that members of his department mocked his accent at different times” (Yul Chu v. Mississippi State University, 2014, p. 264). The Fifth Circuit Court of Appeals did not agree that this constituted direct or even

indirect evidence of discrimination. In a ruling about standards that has influenced how other courts determine if comments can be classified as direct evidence, that court stated that remarks must be “(1) related to the plaintiff’s protected status; (2) proximate in time to the adverse employment action; (3) made by an individual with authority over the employment decision at issue; and (4) related to the employment decision at issue” (p. 264). Most cases involving what Professors of Color identify as direct evidence of discrimination are rejected by courts because mockery that echoes historical exclusion is not often interpreted or recognized as a contemporary contributor to hostile work environments. Legal scholar Michael Selmi (2001) notes that courts tend to operate with default assumptions that plaintiffs’ evidence of workplace bias, hostility, or exclusion is generally unfounded and does not rise to the level of discrimination.

In some workplace discrimination lawsuits, plaintiffs also sue for mental anguish such as intentional infliction of emotional distress (IIED). However, this too is difficult to prove in the courts. To establish an IIED claim, “the plaintiff must show that the extent of her or his harm is exceptional . . . the law intervenes only where the distress inflicted is so severe that no reasonable man could be expected to endure it” (Austin, 1988, p. 800). The threshold for IIED claims is rooted in a white cis-heteronormative patriarchal logic that sets a high standard for those who do not have proximity to it, and typically requires an actual medical or behavioral health diagnosis. The distress must surpass “the humiliation and embarrassment endured by the many who are disciplined or dismissed [that on its own] simply will not be considered sufficiently egregious to warrant relief” (p. 800). This standard of proof in many cases is insurmountable for Black academics who experience T&P-related emotional distress.

T&P processes are considered a form of academic freedom,<sup>2</sup> which creates another barrier to successful litigation. Courts typically show almost absolute deference to faculty decision-making, as illustrated in this excerpted court opinion:

We [Seventh Circuit Court of Appeals] generally do not second guess the expert decisions of faculty committees . . . recognizing that scholars are in the best position to make the highly subjective judgments related to the review of scholarship and university service.” (Adelman-Reyes v. Saint Xavier University, 2007, p. 667)

The courts’ deference to faculty committees leaves Black academics without recourse for unfair, biased processes. Recognition of the many obstacles to legal redress, as highlighted in this literature, underscores the need to ensure that T&P processes are carried out consistently and equitably.

## Methods

We aimed to design qualitative intersectional research that “generate[s] transformative knowledge which is used to transform institutions of higher education” (Harris & Patton, 2018, p. 9). Therefore, we selected critical race theory composite counterstory as a method to center and examine tenure seeking Black academics’ lived experiences at HWIs (Patton & Catching, 2009; R.A. Griffin et al., 2014). Counterstories are real lived experiences conveyed through factual or fictional characters that give epistemic justice to marginalized communities and critique interpretations informed by power-avoidance rationales. Counterstories can be autobiographical, biographical, and composed from multiple peoples’ lived experiences (Croom & Marsh, 2016). We synthesized Black academics’ accounts into a counterstory that challenges dominant, majoritarian stories about purportedly clear expectations and assumptions embedded in the common story about T&P reviews — that they are fair, consistent, merit-linked and aligned with institutional policies. Stories gleaned from legal records reveals and validates what Black and other Professors of Color often experience as a result of unspoken norms that can allow implicit and explicit biases, microaggressions, and gendered racism to compromise reviews. Intersectional research has an ethic of care and humanity affirmation; therefore, we do not provide lawsuit names and use pseudonyms for the professors and the institutions where they work(ed) to compound the harm or trauma for the Black academics in these cases. Also, we do not conclude whether T&P should have been granted in each vignette or advocate T&P as the only way to thrive as an academic in the academy.

## Positionality

We are cisgender Black women on the tenure track invested in research that improves the experiences of Professors of Color with a specific focus on Black faculty. Guided by intersectionality theory, we acknowledge that our lived experiences as Black women seeking tenure shapes our relationship to the study’s data. Author one researches how U.S. law serves as a tool that can advance or stymie equity and inclusion efforts within higher education institutions with attention to Professors of Color seeking tenure. Author two’s research explores the recruitment and retention of Professors of Color with a focus on current inadequacies in institutional strategies to support Professors of Color across ranks. Both our scholarly knowledge and lived experiences frame our perspectives on T&P. Our experiences with microaggressions and unclear expectations about T&P contextualize our motivation and interest in the study, influences our data analysis and counterstory creation.

### **Data sources and sampling procedure**

We identified lawsuit complaints, institutional responses, and court decisions as data to answer our research question: what intersectional barriers within tenure and promotion processes can be identified through tenure denial lawsuit experiences of Black faculty at HWIs? No existing legal database currently delineates the number of lawsuits filed by Black professors for tenure denial because court documents do not always specify social identities such as race and gender. Therefore, like Baez (2002), we used Westlaw legal database to search state and federal cases for the following: “Black faculty tenure denial” (zero cases); “faculty tenure denial” (two cases); “tenure denial” (413 cases); and “tenure discrimination” (15 cases). The combined searches yielded only one case from 2018 that met all the inclusion criteria. We then searched Google for “Black faculty tenure denial lawsuits” which yielded three million returns. After the first two pages of results, a 2017 article about Black faculty tenure denial lawsuits appeared that listed several case names. We searched Westlaw for the cases and located court documents for three more cases that met the criteria for inclusion. Cases eligible for inclusion in our study involved: (a) Black faculty who filed tenure denial lawsuits against HWIs; (b) plaintiffs whose race was identified; (c) and the availability of documents (not behind a pay wall).

The resulting four cases were heard in different states and took place between 2000 and 2018. Documentation for the four cases yielded over 1,00 pages (see Table 1). We did not engage in a comprehensive search for all lawsuits filed by Black faculty because we are not attempting to make claims about trends, prevalence, or typicality of cases, but rather to craft our composite counterstory from actual cases.

**Table 1.** Black faculty tenure denial lawsuit data sources for analysis.

Lawsuit Case	Lawsuit Data	Page Total
1	complaint, institutional response, depositions of tenure committee members, and court decision	571
2	complaint, institutional response, depositions of tenure committee members, and court decision	807
3	complaint, institutional response, court decision	156
4	complaint, institutional response, court decision	163

### **Analytical approach and data coding**

Beginning with 1,697 pages of complaints, institutional responses, and court opinions, we worked collaboratively to distill the data and then identify narrative themes shared among the four cases. This analysis process consisted of four parts. Because some of the documents were repetitive in nature (i.e., complaint and court’s account of the matter) we were able to focus in on fewer

documents to analyze. First, given the illuminating nature of Deo's (2018) three concepts characterizing the barriers to tenure (intersectionality, privilege, and implicit bias) and Leap's (1995) four factors leading to tenure denial lawsuits: lack of institutional support for acceptable performance, not following T&P standards, nonacademic reasons for tenure denial, and an inconsistent application of standards, we determined these seven items would serve as our deductive codes (Saldaña, 2011). Next, we read each of the documents from the first case (571 pages) line-by-line, labeling sections of data anywhere from one to several paragraphs long that reflected the seven codes. For example, in the complaint, the Black woman received verbal and written feedback that she was "on track for tenure" with "strong" teaching and scholarly record. We both coded this occurrence as a nonacademic reason for tenure denial, intersectional discrimination, and implicit bias.

Third, after coding the first case's documents, we each wrote analytical memos reflecting on prompts we developed to: (a) center the relevance of social identities, social location, and inequitable power structures and dynamics; and (b) respond to the socio-historical context that may have contributed to institutional barriers for Black academics at HWIs (Esposito & Evans-Winter, 2022).

Finally, we exchanged memos to compare our data identification for the seven deductive codes and discussed responses to the prompts and data analysis for the remaining cases. We repeated this four-step process for each of the remaining three cases, examining and distilling 807 pages for case two, 156 pages for case three, and 163 pages for case four. After this iterative analysis process, we agreed on data to be used to create a composite counterstory that illuminates power abuses, normalized dignity depriving behaviors, and Black faculty agency. Drawing upon specific scenarios and quotes from the legal documents whenever possible, we embodied the data through character, setting, and dialogue based on the thematic inference developed in the analysis stage. The first author crafted the composite story and revised it based on iterative feedback from the second author and an external reviewer with expertise in employment law — adding more explanation of legal concepts, describing experiences with attention to anonymity, and clarifying the value of critical procedural justice.

### ***Methodological boundaries***

Intersectional research praxis (Esposito & Evans-Winter, 2022) foregrounds the knowledges, cultural experiences, and beliefs of researchers, and prompts us to recognize that court opinions are typically written from "facts" that judges who are mostly White men select from documents filed on behalf of Black faculty and HWIs. Due to court document page restrictions, attorneys tend to convey information that they view will most likely resonate with judges

and not necessarily all content relevant to understanding T&P process inequities. Specifically, there is likely information the Black faculty may have communicated that their lawyers did not include in their complaints that we could use to further explain dignity-depriving experiences. We recognize this content absence as a data limitation. Still, our findings are important because we center the resilience and agency of Black faculty involved in tenure denial lawsuits, and we illuminate T&P procedural injustices.

## Findings

### *A composite counterstory*

Dr. Cora Tubman buckled her seatbelt and drove away from Sankofa Suites, the Black-owned bed and breakfast in Savannah, Georgia and unofficial host of her 21st annual windedown writing retreat with mentees. She was elated and relieved to resume her retreats after isolating due to COVID-19 protocols. As she adjusted the air-conditioning, she smiled and recalled her first meeting with Toni, Kenya, and Malcolm at Gilmore University. Cora's first year as a tenure-track assistant professor began during their first year as undergraduates. At the time, she was the only Black person in her department and attended a social hosted by the Black cultural center on campus with hopes of meeting and being in community with other Black people. That is where she first met Toni, Kenya, and Malcolm and enjoyed their memorable first conversation.

Their relationships flourished. Cora mentored Toni, Kenya, and Malcolm throughout their undergraduate and graduate studies at three different HWIs. She participated in each of their hooding ceremonies and later advised them on how to navigate discrimination during their professorial job searches and as they pursued tenure and promotion. Cora savored these memories during her 2-mile drive to Karamu, the restaurant where Toni, Kenya, and Malcolm had arrived a few minutes earlier. She opened the door to a burst of conversation and laughter. "Hey Cora! So great to see you!" said Kenya.

They all hugged before a Black host escorted them to their table on the terrace and collected their dinner orders. "I'm so excited we're back together again for our annual retreat. We have a lot to catch up on!"

"Yes. I'm so glad to be here," said Kenya. "I need to be in community with you all as we continue to cope with the painful, disproportionate effects of COVID-19 on Black people, along with the ongoing police massacres of trans and cis Black folks."

"I know, right?!" said Malcolm, with a shudder. "Hey, did y'all see the attention on Twitter about Black faculty and graduate students' experiences in white academe?"

Kenya replied:

Yes! It all makes me reflect on one of my pre-tenure experiences. As you all know, I was hired at Aiken University as a visiting assistant professor before being offered a tenure-track position two years later. Karen, a White woman full professor in my program, was assigned to mentor me. So, we met each year to discuss my annual reviews. At no point did she say anything about my progress not meeting the nebulous T&P criteria. Interestingly, when Karen and I talked about my fifth-year review — which, by the way, was rated “beyond satisfactory” in teaching, research, and service — Karen said she hoped the T&P committee would interpret my publication record as “strong” during my review. I asked for more guidance on what she meant by “strong” as that was the first time she said something about it. Karen said that unfortunately, because I am a Black woman, I would be held to a higher standard for publication numbers, journal quality, and demonstrable evidence of an independent scholarly identity.

“What did Karen expect you to do or say after she basically told you that being a Black woman is synonymous with unfairness?” Toni exclaimed. Kenya continued:

Good question. In depositions for my tenure denial lawsuit case, two of my department colleagues said that, under the guise of protecting me, they had advised me that Black women are known to struggle obtaining tenure, and that I should focus on an airtight dossier, especially regarding my scholarship. My attorneys hired a sociologist with expertise in organizational behavior. Her report asserted that there was organizational injustice in my tenure denial process exemplified by the previously unspoken yet enacted culture of higher standards for Black women. But the judge — no expert on the topic, mind you — said that wasn’t enough.

Kenya’s lawsuit listed claims of race, gender, and implicit bias discrimination. The court that reviewed Kenya’s case did not find merit with the sociologist’s report explaining implicit bias. The court reasoned that Kenya’s lawyers failed to present compelling evidence that implicit bias had played a role in deciding how professors and institutional leaders evaluated her dossier for tenure. However, the court found Kenya’s claims of race and gender discrimination valid because the record of statements that Black women have to do more scholarship supported Kenya’s claims that she was held to a higher standard than non-Black women also seeking tenure. The court ruling for Kenya included a stipulation that Aiken University create mandatory equal opportunity employment training for faculty. Aiken also voluntarily created a centralized system to track tenure-related discrimination complaints.

Toni chimed in:

In its 150-year existence, Odyssey University has yet to award tenure to a queer Black woman. And what I experienced ensured that I would not be the first. If mentor-mentee pairings are not done with intentionality and assessed for fit and collegiality — as professors love to say — they can do more harm more than help. When I started as a tenure-track assistant professor at Odyssey, the department chair Tim sent an email

informing me that Trevor, a White man full professor in the department with college-level administrative duties, would be my mentor. Trevor and I met for coffee mid-semester. He shared that, based on what he saw and heard, I was not fitting in.

Cora interrupted,

I can only imagine what he and others said about you not fitting in. Collegiality can be weaponized to pressure professors, especially Black ones, to do things we don't want to do. But then if we don't behave in ways determined by norms of whiteness, we get bullied and ostracized. It often feels like a lose-lose situation.

Toni continued:

I didn't bother to ask Trevor what he meant by 'not fitting in.' Instead, when I tried to discuss my scholarship productivity, he said he needed to leave to prepare for another meeting. As Cora and others recommended, I reviewed the dossiers of professors who had received tenure in my department and college in the last five years to get a sense of how to approach my scholarship production. I also tried to talk to Tim, the department chair, about my scholarship agenda, but he was often abrupt and seemed agitated by my requests for meetings. Tim's behaviors made sense later, when my lawyers shared the numerous disparaging email exchanges between Tim and others in my department about my T&P review.

"It sounds like he was doing exactly the opposite of what he should have been doing. Aren't mentors and department chairs both supposed to support the advancement of tenure-track faculty?" interjected Malcolm. Everyone at the table groaned in unison. Toni spoke again:

In one email exchange between Tim and Trevor, Tim suggested I should not be granted tenure and Trevor agreed. Then, Zack, the external reviewer selected by Tim, emailed Tim asking whether he should even accept the invitation to review my dossier. Tim responded that my case was not going to be an easy one so he needed Zack to write an 'honest review.'

"The reviewer selection process can be very problematic," Cora said. "Tim didn't directly ask Zack to write a bad review. Yet given his earlier emails to Trevor where he said Toni shouldn't get tenure, it's reasonable to assume that Tim's request for Zack to write an honest review was not well-intentioned."

Toni filed a lawsuit against Odyssey for race, gender, and sexual orientation discrimination. The court did not interpret the e-mails as compelling evidence of a discriminatory department culture or as proof of Tim's attempt to negatively influence Zack's review of Toni's dossier. The court ruled in favor of Odyssey University, giving credence to its claims that the e-mails between Tim, Trevor, and Zack contained stray remarks — not evidence of discrimination.

Malcolm described his similarly difficult tenure experiences:



Vadar University hired me for a two-year non-tenure-track lecturer position. When I was hired, I was the fifth Black person to be hired into the more than 300-person faculty in the college and the only Black person in my department. After the two-year position expired, I was then offered a tenure-track position. During my fifth-year review meeting with Mike, the White man department chair, to review feedback from department and college T&P committees, he emphasized that I had a record of accomplishments in scholarship, teaching, and service, and was therefore in a good position to get tenure.

“How does one reconcile being told they are ‘in a good position’ during milestone reviews and then later being denied tenure?” Kenya asked. She had not spoken since sharing her narrative. Malcolm responded:

That’s a good question. If the university was really committed to racial equity, I wouldn’t have received such affirming feedback and then later be denied tenure. Neither Mike nor my assigned mentor, Marge, a White woman full professor, with whom I met with about my dossier, gave me any indication that there could be issues with my tenure case. I was shocked when I received a letter from the provost notifying me that I was denied tenure. That letter mentioned two reasons for the denial. First, I was told that my email response time to students was considered a deficiency that I had not adequately improved over time. I had really worked to improve my response times so that didn’t feel fair. Second, my scholarship was viewed as low, both in terms of citation numbers and in terms of publications in high-quality journals. I don’t agree because I was never given a number to work towards and quality is subjective. Even though my four external reviewers recommended me for tenure and my tenure case had also received the necessary department and college T&P votes, the provost decided to deny tenure.

Malcolm filed a lawsuit for race discrimination. The court considered the unanimous four external reviews and favorable departmental and college T&P committee votes as evidence that Malcolm was likely discriminated against due to his race. In a settlement with Vadar, the institution agreed to retroactively award Malcolm the promotion to associate professor, though that was of little use after he obtained tenure at a different institution.

Cora held off sharing her tenure experience because she wanted to give her mentees space and support. When Cora entered the discussion, she had her mentees’ full attention. They knew she had experienced comparatively fewer supports through her tenure journey:

Unlike all of you, I didn’t have an assigned mentor; so, I relied heavily on Black and non-Black tenured professors at Gilmore and around the country for guidance on seeking tenure as a Black woman. Cliff, a White man colleague in my program who submitted his dossier the same year I did, published mainly with his mentors from his doctoral degree-granting institution. The department vote was unanimous for him. The vote was six to three against my tenure and I was told my scholarship lacked high-quality journal placement and adequate numbers of solo-authored publications to demonstrate an independent scholarly identity; therefore, my work did not meet the department’s rigorous standards.

Toni chimed in, “Cora, it is a travesty that our experiences are similar to yours despite the many years of separation. You would think institutions would decide that it is helpful for early career faculty to receive feedback that includes specific publication expectations for tenure. Why not share the number of publications expected plus a list of journals that are considered high quality? Isn’t it obvious that T&P committees determine rigorous standards and scholarly identity by numerically examining publications and journal placement? It’s so illogical and frustrating to be told we’re not working toward a certain publication number or toward particular journal placements when clearly we are.”

Pushing through painful memories, Cora finished her story,

In a deposition, the department T&P chair, Cathy, said the committee decided that, although Cliff had mainly published with his mentors, his scholarship placement in generally high-quality journals had outweighed his low number of solo publications. My attorneys hired a higher education scholar who studies T&P processes and he identified several procedural issues during my T&P review process, including the evaluation of my scholarly productivity compared to Cliff’s, but — as Kenya mentioned — the judge didn’t see it that way.

Gilmore University likewise received a favorable ruling.

Their conversation paused as the waiter brought their appetizers. They took a moment to raise a toast to their perseverance and resilience in their respective careers. Since they had last met, Cora became a full professor, and Kenya, Toni and Malcolm were now each tenured associate professors at new HWIs. They raised their glasses as Cora proposed a toast to being in a supportive community and thriving futures.

### ***Counterstory explanation***

This counterstory centered the lived experiences of four Black professors who filed lawsuits against HWIs for tenure denial. The accounts are presented in a culturally affirming and supportive context to assert the agency of Black professors and explicitly reject the legacy of “pain porn” scholarship about discrimination in academia. The location and yearly gathering described reflect community support, epistemic justice, and resilience among the Black professors. Cora’s story particularly echoes scholarship on the role of Black professors, especially Black women, who are role models and advisors to students who eventually become professors in the academy (Stanley, 2006). Three of the four academics are Black women who sued for gender and race discrimination that manifested as targeted overt and covert actions toward them yet judges did not view their accounts as necessitating legal redress.

These vignettes mirrored scholarship about Black academics seeking tenure and illuminated how systems of oppression operate in T&P processes in manifestations of gendered racism, bias, and privilege as well as in indifferent or hostile institutional climates. Grounded in data from actual lawsuits, the counterstory vividly depicts key characteristics of inequitable procedural T&P experiences: unfounded and ad hoc assessments of scholarly productivity, vagueness of standards, failure to establish and assess supportive mentoring relationships, abusive power relationships, and professional sabotage. These painful experiences manifested into tenure denial lawsuits spurred by a lack of institutional support (e.g., mentors), divergence from T&P guidelines, inconsistent application of T&P guidelines, and political rather than academic reasons for T&P denials.

Ironically, some of the Black professors involved in the four lawsuits reviewed were initially hired through intentional efforts to recruit Professors of Color. Such efforts are compromised when recruited Professors of Color subsequently receive overt and covert messages from institutional leaders that they do not belong (Diggs et al., 2009; Griffin, Pifer, Humphrey, & Hazelwood, 2011; Osei-Kofi, 2012).

## Discussion

The intersectional-barriers-to-tenure framework (Deo, 2018) and factors that can predict lawsuits (Leap, 1995) informed the synthesis of factual details from court records in T&P cases into our counternarrative. Extensive documentation from T&P lawsuits contained evidence that we identified as reflecting each of the seven deductive coded criteria. None of the four professors in the counternarrative had what most courts would recognize as direct evidence, such as statements by T&P committee reviewers like, “We won’t grant tenure to [name] because they are Black/a Black woman.” Intersectional barriers to tenure do not work in such a manner: empirical sociolegal researchers argue that “racism and sexism tend to be hidden within social structures” (Edelman et al., 2016, p. 395). Covert behaviors (e.g., e-mails) and coded conversations (e.g., “lack of high-quality journal placement”) occurred in all four review processes. Black women’s experiences were nuanced due to gendered racism but the courts were not convinced even with expert testimonies that the discrimination claims were meritorious. When academic administrators, like the courts, ignore the realities of structural discrimination, they permit inequitable procedural treatment to flourish. Such coded language and covert behaviors are experienced as acutely stressful, a form of spirit murder that robs Black faculty of dignity.

By illuminating recurrent patterns in problematic mentoring and in inequitable procedures, haphazard T&P processes in these cases, we expanded the body of knowledge needed to inform meaningful improvements in T&P policy

and practice. Our aim is to create T&P procedures that will be viewed as just, transparent, and trustworthy. As presented in our findings, the composite counterstory, mentoring relationships and scholarship expectations were especially crucial.

Mentoring was a salient factor for each of the four Black professors in the counterstory and is a significant element in socialization in the professoriate (Tillman, 2001). How mentor-mentee pairings are made can affect scholarly productivity. Regardless of whether mentoring relationships are formal or informal, a mentor's demonstrated critical consciousness about gendered-racism matters and can directly influence whether a Black professor thrives in the tenure process and feels the process is just. From the court cases, we identified two aspects of mentoring that precipitated lawsuits by Black academics: when mentoring was an inadequate institutional resource (as in Cora's case), and when mentoring contributed to political (or interpersonal) rather than academic reasons for tenure denial (as in the cases of Kenya, Malcolm and Toni). These conditions are unjust and decrease the credibility of institutions' T & P processes.

Black professors employed at HWIs have been and continue to be subjected to inconsistent written and unwritten T&P evaluation standards (Griffin, Bennett, & Harris, 2013; Matthew, 2016). The courts rejected expert testimonies about tenure procedural flaws and organizational bias in Kenya's and Cora's cases. The expert findings presented in their cases illuminated how discrimination was condoned — damaging institutional integrity, undermining retention of Black professors, and imposing racial battle fatigue, emotional distress, and spirit murder. The partially favorable judgments for Kenya and Malcolm are unusual because courts typically defer completely to faculty T&P decisions (Muhammad, 2007).

The counternarrative reflect the unwritten, uncommunicated expectations that are a consistent factor in T&P lawsuits. Scholarship production is among the most mysterious and important criteria in T&P processes at research focused HWIs (Leap, 1995; Matthew, 2016). T&P committees and institutional administrators judge T&P candidates by benchmarks of publication numbers and journal impact. However, tenure-track professors rarely, if ever, receive specific guidance on expectations such as the number of articles they should publish or the specific high impact journals where they should focus their efforts (Matthew, 2016). Similarly, ambiguous, subjective terms such as “air-tight,” “strong,” and “rigorous” are commonly used in tenure review discussions about scholarship (Matthew, 2016). While such terms do not reflect overt bias, these concepts “are more subject to cultural forces than many in the academy will allow” (p. 9).

Hostile environments that include professional sabotage are another aspect of dignity depriving tenure experiences (Jones et al., 2015; Lee & Leonard, 2001). Gendered-racial microaggressions can also complicate the lived

experiences of Black professors and affect productivity (Lewis et al., 2013; Lukes & Bangs, 2014). All four Black professors' lawsuits requested financial compensation for a range of damages, including severe intentional infliction of emotional and physical distress, mental anguish, retaliation, and loss of enjoyment of life. Their psychological and physical harms mirror research about Black professors' experiences of marginalization and exclusion within the professoriate (Arnold et al., 2016). "As colleagues, professors have the obligations that derive from common membership in the community of scholars. Professors do not discriminate against or harass colleagues" (AAUP, n.d.). Sabotaging and inequitable procedural treatment of colleagues are incompatible with professorial ethical and moral standards.

### ***Implications and conclusion***

The composite counterstory vividly depicted Black professors' experiences of inequitable procedural T&P processes and lack of institutional accountability. In their accounts, the costs of structurally broken T&P processes are compounded by the absence of legal redress — most courts prefer not to question faculty tenure reviews. To improve and repair the broken, interdependent components of T&P systems, we propose use of critical procedural justice as a foundational value, standard, and tool for scholars and institutional leaders.

Critical procedural justice is distinct from business as usual because it affirms T&P candidates' humanity and dignity. It has the potential to strengthen T&P policy formation and implementation by elevating anti-discrimination as a requisite condition — a proactive approach that is necessary for equitable, transparent, and effective T&P policies and practices to support career advancement for Black and other Professors of Color. Use of critical procedural justice holds the potential to reduce litigation risks and costs: it requires administrators to address bias incidents and unfair treatment, and take steps to keep them from recurring. Considerations for T&P committees and academic administrators include:

### ***Mentor-matching and support***

Identify faculty mentors equipped with cultural competencies to understand the complexities of the T&P process for Professors of Color. Mentors should understand the myth of T&P being meritocratic and challenge decisions and behaviors that create inequitable evaluations. Provide mentees with opportunities to evaluate the mentoring relationship and have an active role deciding who mentors them. Tangible support should be provided to mentors for service to early career Professors of Color, such as service stipends, and increased professional development or research funds.

### ***Transparency for publication expectations***

While T&P processes allow for wide latitude and discretion, Professors of Color (as well as all early career faculty), would benefit from clear expectations for the range or number of published articles, first-author publications, and a list of journals considered acceptable (and/or top-tier).

### ***Fair review and T&P processes***

Written expectations and feedback during faculty review processes should include specific skills and outcomes to target for improvement and achievement and should match the criteria considered by T&P committees. Ensure that reviewers for milestone evaluations are approved by Black faculty and other Professors of Color.

### ***Accountability for dysfunctional behaviors***

Policies and procedures should affirm university accountability for and responsiveness to microaggressions, covertly biased, and overtly discriminatory behaviors. Department chairs and T&P committees should be tasked to recognize and address undermining or disparaging behaviors by colleagues that are non-germane to scholarship, teaching, and service.

In an era when equity and inclusion must be more than buzzwords, we offered this composite counterstory to synthesize and illustrate problematic patterns in T&P processes for Black academics. Shaped by legal documents, the story was developed to build a broader understanding of the dignity depriving experiences that lead to tenure denial lawsuits — especially those that reflect Black professors' pervasive experiences with discriminatory workplace practices. Our hope is that the concept of critical procedural justice will influence scholarship, and likewise strengthen T&P policies and procedures toward demonstrable fairness and equity.

## **Notes**

1. “Sex” is used in Title VII, most state laws, and court opinions. However, “gender” and “sex” can be seen interchangeably in legal documents despite sex and gender being different social constructs. We use gender in our discussion and analysis to accurately describe stereotypical societal perspectives that influence how Black women and men can experience intersectional discrimination.
2. Academic freedom “is a catchall term to describe the legal rights and responsibilities of the teaching profession, and courts usually attempt to define these rights by reconciling basic constitutional law or contract law principles with prevailing views of academic freedom’s intellectual and social role in American life” (Kaplin & Lee, 2014, p. 286).

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