

Variations of Tenure Review Prove to be Problematic

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Many people hold the misperception that achieving tenure at the higher education level grants the professor a lifetime appointment. While it does offer safeguarded measures of academic freedom to pursue research and creative activities freely without undue influence,¹ university-based tenure “simply overcomes a presumption of at-will employment” with an expectation of “continued employ[ment]” unless afforded due process rights for any separation or disciplinary proceedings.² A public employee with an express expectation of future employment, such as tenure, possesses a protected property interest.³ Significantly, denials of tenure associated with due process violations raise rather consequential impacts at public universities as the grant of tenure in those settings attach constitutional rights.⁴

An inappropriate denial of tenure or dismissal of tenured faculty invokes a Fourteenth Amendment due process violation in the form of an unconstitutional governmental taking.⁵ A specific concern involving such improper decisions is that inconsistent standards of review seem to impose discriminatory processes onto faculty members.⁶ For many, the granting of tenure represents another level in which the faculty member's inclusion into the institution becomes

¹ *Tenure*, AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, <https://www.aaup.org/issues/tenure> (last visited Sept. 16, 2022).

² JAMES T. HARRIS, JASON E. LANE, JEFFREY C. SUN, & GAIL F. BAKER, *ACADEMIC LEADERSHIP AND GOVERNANCE OF HIGHER EDUCATION: A GUIDE FOR TRUSTEES, LEADERS, AND ASPIRING LEADERS OF TWO-AND FOUR-YEAR INSTITUTIONS* 220 (2d ed. 2022).

³ *Bd. of Regents v. Roth*, 408 U.S. 564 (1972).

⁴ *Id.*

⁵ *Id.* at 221.

⁶ Colleen Flaherty, *Separate but Not Equal*, *INSIDE HIGHER ED* (Nov. 29, 2016), <https://www.insidehighered.com/news/2016/11/29/book-argues-faculty-members-color-going-tenure-are-judged-different-standard-white>.

more formal. Given the significance, the denial of tenure sends an unwelcoming message to those faculty affected by alleged (or perceived) discriminatory processes under the guise of “academic judgment.”⁷ The tenure denial is more problematic when signs of inconsistent faculty treatment (of the faculty member seeking tenure) is inferred or demonstrated. Some critics of the tenure process have also drawn on these inconsistencies of faculty treatment as further reasons to eliminate tenure altogether in an effort to depoliticize classrooms and lessen undesirable behaviors in tenured faculty, namely discrimination and retaliation.⁸ Examples of publicly displayed tenure denials which lead to reconsideration of those decisions and raise concerns about professors’ due process rights are illustrated in the experiences of Nikole Hannah-Jones and Paul Harris – two notable Black scholars.

Nikole Hannah-Jones won a Pulitzer Prize for her journalism work on the *New York Times Magazine*’s 1619 Project. She is a prominent professor of modern journalism.⁹ Hannah-Jones was recruited and hired as the University of North Carolina’s (“UNC”) Knight Chair in Race and Investigative Journalism at the Hussman School of Journalism and Media.¹⁰

An appointment to a position such as the Knight Chair is quite significant as appointees are commonly offered to tenured faculty, not pre-tenured faculty.¹¹ However, in Hannah-Jones’s case, she held the special title, and still, the Board of Trustees halted her review for tenure due to concerns that she lacked the proper academic background.¹² This concern was most loudly

⁷ *Id.*

⁸ Adam Barnes, *Texas and Florida Take Steps to Limit Professor Tenure at State Schools*, THE HILL (Apr. 21, 2022), <https://thehill.com/changing-america/enrichment/education/3274661-texas-and-florida-take-steps-to-limit-professor-tenure-at-state-schools/>.

⁹ Korie Dean, *UNC Chapel Hill Reaches Settlement with Nikole Hannah-Jones after Tenure Saga*, THE NEWS & OBSERVER (July 21, 2022), <https://www.newsobserver.com/news/local/education/article263506718.html>.

¹⁰ *Id.*

¹¹ *Id.*

¹² Associated Press, *UNC-Chapel Hill Settles with Hannah-Jones in Tenure Flap*, AP NEWS (July 15, 2022), <https://apnews.com/d0594a531b4e080874a1e1abac223499>

voiced by a significant donor and journalist, Walter Hussman – the namesake of the journalism school at UNC-Chapel Hill.¹³ Hussman had previously criticized the journalist’s magnum opus, the 1619 Project, asserting that the *New York Times* “overstated the significance of protecting slavery in inspiring the nation's founders to break free of Great Britain.”¹⁴ Other scholars disagreed with Hussman and, valuing her contributions, UNC offered Hannah-Jones a five-year contract.¹⁵

The initial denial of Hannah-Jones’s tenure triggered weeks of intensive dialogue among colleagues, students, and donors at UNC. After further evaluation of Hannah-Jones’s merits and external influences by colleagues and donors, the Board of Trustees reconsidered and offered Hannah-Jones tenure at UNC-Chapel Hill.¹⁶ Ultimately, Hannah-Jones decided that she would instead move to Howard University, a historically black college in Washington, D.C.¹⁷

Another example of inconsistencies in the tenure process is the University of Virginia’s denial of tenure to Paul Harris for allegedly failing to meet tenure expectations.¹⁸ Successful tenure reviews at a research university typically require significant contributions to peer-reviewed publications; self-publications are not sufficient to meet this expectation. Harris had been published in the peer-reviewed *Journal of African American Males in Education*, but the university, via members of the promotion and tenure committee, misclassified this publication as

¹³ David Folkenflik, *UNC Journalism School Tried to Give Nikole Hannah-Jones Tenure. A Top Donor Objected*, NPR (June 21, 2021), <https://www.npr.org/2021/06/21/1007778651/journalism-race-and-the-fight-over-nikole-hannah-jones-tenure-at-unc>.

¹⁴ *Id.*

¹⁵ Associated Press, *supra*, n.

¹⁶ *Id.*

¹⁷ Branign, *supra*, n.

¹⁸ Walter Hudson, *After Fighting to Gain Tenure, Dr. Paul Harris Leaves UVA on His Own Terms*, DIVERSE ISSUES IN HIGHER EDUC. (May 11, 2021), <https://www.diverseeducation.com/tenure/article/15109207/after-fighting-to-gain-tenure-dr-paul-harris-leaves-uva-on-his-own-terms>.

a self-publication.¹⁹ Likewise, Harris’s review for tenure also relied on a miscalculation of his published work citations to include only 27 of his 148 citations on Google Scholar.²⁰ This reliance on incorrect information that was asserted or improperly referenced influenced the Promotion and Tenure Committee to deny tenure to Dr. Harris. After further investigation into the Harris’s publications and citation record, the Promotion and Tenure Committee of the University of Virginia offered him tenure.²¹ Harris instead departed Virginia, opting to work at Penn State.²² Following the decision of tenure, the editor of the *Journal of African American Males in Education* critiqued the university by emphasizing the importance of investigating misunderstood facts rather than blindly adopting misinformation.²³ This blind adoption of misinformation sequestered Harris’s opportunity for a fair tenure review.²⁴

Skepticism towards tenure reviews is rising across the United States.²⁵ Higher education institutions are under pressure to legitimize the tenure process to further increase diversity and lessen the subjectivity of personal bias.²⁶ Nikole Hannah-Jones, Paul Harris, and the many other stories of inconsistencies arising from the tenure review process may serve as catalysts to improve the inclusionary efforts at our higher education universities – especially if it wishes to offer adequate due process afforded under the 14th Amendment and stay of the radar of state legislators as a target.

¹⁹ Collen Flaherty, *Botched*, INSIDE HIGHER ED (June 22, 2020), <https://www.insidehighered.com/news/2020/06/22/two-black-scholars-say-uva-denied-them-tenure-after-belittling-their-work>.

²⁰ *Id.*

²¹ Hudson, *supra* note 18.

²² *Id.*

²³ Flaherty (2020), *supra* note 19.

²⁴ Hudson, *supra* note 18.

²⁵ Alexander C. Kafka, *Does Tenure Impede Diversity?*, THE CHRON. OF HIGHER EDUC. (Sept. 8, 2021), https://www.chronicle.com/article/does-tenure-impede-diversity?cid=gen_sign_in.

²⁶ *Id.*