

APPENDIX A: Methods for *Is It Fair? Law Professors' Perceptions of Tenure* by K. Barnes and E. Mertz

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 American Association of Law Schools (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. Following the initial survey, during the project's second phase, we conducted interviews with a sub-group of the survey respondents.

Phase 1: National Survey

The initial challenge in surveying post-tenure law professors was to determine which professors were, in fact, post-tenure. At the time we created the random sample for the survey (2003), AALS did not maintain records regarding the tenure status of professors at law schools.¹ We followed the methodology of Merritt and Reskin (1992) in our efforts to determine which professors were active, tenure-track faculty, and therefore eligible for inclusion in the study.² As mentioned above, the national random sample was stratified by gender; we initially mailed the survey to 814 men and 814 women. We also over-sampled minority professors, sending the survey to all associate and full professors identified as members of racial minorities in the AALS database of law professors who were not already included in the random sample. The final sample included a total of 2,076 who were mailed surveys in 2005.

A total of 0.48% of participants from the original mailing could not be located. A number of professors moved from the institutions to which the surveys were mailed; new contact information was pursued for these cases. To increase the response rate, two additional mailings were sent out and a Web version of the survey was launched in the summer of 2005. Non-respondents were contacted by telephone by the National Opinion Research Center (NORC) to complete a phone version of the survey. A total of 1,174 (63%)³ of the eligible sample fully

¹ The AALS subsequently changed this and has begun recording tenure status.

² See Merritt and Reskin, *The Double Minority*, *supra* note 4. We used data provided on professors' titles, and we opted to be over-inclusive rather than under-inclusive. For example, we included all individuals with the title "Associate Professor," even though some associate professors have not yet received tenure. The first question of the survey asked respondents to tell us if they were indeed tenured, permitting us to identify the untenured associate professors who were ineligible for the survey.

³ We calculated our overall response rate based on full responses in order to generate a conservative number. If we included substantial partial responses (N= 48), the response rate would be 65.6%. This response rate is quite good for the elite population that we studied. Cummings, S., L. Savitz, and T. Konrad, *Reported Response Rates to Mailed Physician Questionnaires*, 35 *Health Serv. Res.* 1347 (2001) (reporting average response rates for mailed physician surveys of more than 1,000 observations at 52%); Goldstein, K., *Getting in the Door: Sampling and Completing Elite Interviews*, 35 *PS: Political Science & Politics* 669-672 (detailing particular challenges involved in surveying elite populations); Curtin, R., S. Presser,

completed a version of the survey, including 465 male professors (64% of eligible males), 477 female professors (66% of eligible females), and 232 minority professors (57% of eligible minorities). In addition, 48 respondents completed substantial amounts of the survey (20 completed roughly half of the 65 questions, while another 28 completed between 29 and 32 of the 65 questions). These partial responses were included when analyzing the questions to which these respondents answered. Finally, 10 people answered 8 or fewer questions and were counted as “nonrespondents”; their answers were not included in any of the analyses.

Nonresponse Issues in the National Survey -- As with any social science survey, we must contend with nonresponse bias as a potential problem with our study. While our response rate of 63.1% is quite good by social science standards (particularly when surveying elite populations), we still have significant nonresponse. To attempt to correct for this, we investigated what factors correlate with nonresponse. Based on this investigation, we obtained corrected weights that control for nonresponse by weighting more heavily those participants who were less likely to respond.

Specifically, we investigate three types of data on all eligible individuals surveyed (both respondents and nonrespondents): (1) data from the AALS database on law professors, which includes gender, race, coif membership, law review membership (as a student), age, and title; (2) data on the school at which the individual works (religious affiliation, public/private, maintenance of a part-time program, urban/rural, US News ranking, and city population); and (3) data on our sampling method, including whether the individual was part of the minority over-sample or not (recall that some minority professors were initially selected as survey recipients, and therefore were not a part of the minority over-sample) and whether the individual’s response was obtained through follow-up with NORC.

Only one of these variables – “whether the respondent was contacted by NORC” -- predicts response well. Individuals who completed the survey in the first instance (either by answering the survey, or by explicitly refusing to do so) were significantly more likely to respond to the survey than those individuals whom NORC contacted after no response in the first round. Thus 72% of eligible survey recipients completed the survey without NORC involvement; an additional 36.4% of those who did not initially complete the survey did so after being contacted by NORC.

None of the remaining variables explained more than 1% of the variance in response rate in individual ANOVAs. Nonetheless, we constructed a logistic regression to find the best model to predict response, including NORC contact and other variables that are statistically significant in a logistic regression. This model contained five independent variables: gender, ethnicity, age, NORC contact with the individual, and US News Tier of the school. From this logistic regression, we predicted the probability of response. Theoretically, if this model provided accurate estimates of the predicted probability of response for each individual, weighting by the inverse of this prediction would perfectly control for nonresponse bias. Although it provides the best available statistical correction given our data, the model is imperfect at predicting nonresponse, and is therefore imperfect at controlling for the potential bias that results from nonresponse. (Note, however that this would be the case with all such statistical estimating).

Because this procedure can also significantly inflate the variance of the estimators, we

and E. Singer, *Changes in Telephone Survey Nonresponse over the Past Quarter of a Century*, 69 *Public Opinion Quarterly* 87 (2005) (describing how University of Michigan’s Survey of Consumer Attitudes dropped from 75% in 1979 to 48% in 2003).

group the predicted probabilities into deciles, and use the inverse of the mean response rate within each decile as a corrected weight. This essentially provides a variance/bias trade-off: we allow some bias, in order to significantly reduce the variance.⁴ Our final weights include both the nonresponse correction, and the initial weight determined by our stratified sampling method.

2. Phase 2: Qualitative Methods

As noted above, we conducted follow-up interviews with 102 of the survey respondents, which resulted in a total of 100 usable interviews.⁵ Our final interview group was deliberately selected to represent a range of demographic and attitudinal variables. It included equal numbers of target interviews from each of 3 satisfaction levels as reported on the survey (very satisfied, neutral, very dissatisfied), each of 4 Census regions, each of 3 seniority groups (0-9, 10-19, or 20+ years of experience), and each of 4 combinations of race and gender (women of color, white women, men of color, white men).

The interviews were also deliberately designed to be minimally pre-structured, so that respondents' own views and leanings could be more clearly discerned. They began with a positive prompt, and did not raise the issue of possible bias or fairness until the final question – at which point a balanced set of options was introduced. Thus faculty who discussed discriminatory impacts of race or gender, especially before the end of the interview, were clearly introducing the topic on their own. There were four main questions, and interviewers were given additional prompts for each question for situations where respondents didn't bring up topics on their own:

Question 1: Could you start by talking about things that your law school does that make it easier for you to do your job or things that make it a productive place for you to work?

Additional prompts: Formal or informal policies aiding teaching, research & publication, service in relation to career goals, getting job done while handling family or personal responsibilities, anything else?

Question 2: Can you talk about things that make it harder at your law school to do your job—things that make it a less productive place for you to work?

Additional prompts: Formal or informal policies impeding teaching, research & publication, getting job done while handling personal challenges or responsibilities?

Question 3: Please discuss the general culture and climate of your work setting. How comfortable is the law school as a place for you to work and what makes it a better or worse fit for you?

Prompts: Feel accepted/respected by colleagues, look forward to interactions with colleagues, both formally and informally, feel you have a voice, that your concerns and issues are heard and responded to? Do you feel that you've had to work harder or less hard than others to gain respect, anything else you'd like to add about the culture and climate of your work setting?

Question 4: Please talk about issues of equity and fairness. Discuss on the one hand aspects of work life that you feel are handled in fair and unbiased ways, and then, on the other hand, about

⁴ We have also performed robustness checks investigating how different the model is without controlling for nonresponse bias.

⁵ Two respondents requested final review of the transcripts from the interviews before release of the redacted transcripts to project researchers, but then did not respond when the transcripts were sent to them. Four interviews were determined to be “out of scope” for purposes of interview targets but yielded interesting information and thus included in study.

aspects that may be handled in ways that seem biased or cause tension and resentment among the faculty.

Prompts: Do you feel that there are things that are handled in ways that disproportionately affect you more positively or negatively than your colleagues on the faculty/or/things that affect others disproportionately more or less than you? Would you say there are any inequities in your workplace based on gender or marital status, sexual orientation, having children, race, ethnicity, religion, or regional background? Are there biases or inequities based on areas of teaching or kinds of scholarship that are assigned to various members of the community? Are inequities or biases more likely to arise just among faculty members, or between faculty and administration? Are there things that your law school has done or can do to increase a sense of equity and fairness among your faculty?

As noted, the interviews were conducted by NORC, using safeguards to guarantee anonymity. They were taped and transcribed, and then the transcripts were redacted in order to remove any potentially identifying information. Each redacted transcript was then analyzed by two coders at ABF using Atlas.ti. After separately coding each transcript, the coders then compared their results and reconciled any differences. During the first phase, transcript analysts tracked themes that emerged from the interviewees' own words and preoccupations. These individual-level themes were then grouped into larger categories. In this article we discuss results derived both from the "ground-level-up" coding process, and from a "top-level-down" examination that selects and analyzes all comments pertaining to the tenure process itself. Coding also differentiated themes that emerged early in speakers' responses without prompting from those that were more responsive to particular interview prompts.