

LEGAL WRITING PROFESSORS, SALARY DISPARITIES, AND THE IMPOSSIBILITY OF “IMPROVED STATUS”

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“Aren’t you happy with your improved status?” a colleague recently inquired. “I mean, things are better than they were before, aren’t they?” he continued.

Although I replied, “Yes, things are better,” I didn’t really feel this way, but I knew the truth was not what he wanted to hear. In his mind, the faculty already spent enough time discussing the legal writing program, and he is not personally responsible for setting my salary. Further, academics tend to shy away from salary discussions.¹

In the dictionary, the word *improved* means “made better.”² On the one hand, by at least some metric, this was the case: I was no longer called a “part-time lecturer;” instead, my new title had become “full-time assistant clinical professor.” And, for the yearlong class I taught, I now had a three-year contract as opposed to my prior semester-to-semester contract.

On the other hand, my status had not improved. Now that I was deemed a full-time faculty member (i) I was assigned 15% more first-time students, (ii) I could now be asked by upper-class students to read, edit, and advise them on their journal notes and monitor their externships throughout the calendar year, (iii) I was placed on several academic committees, and (iv) I was expected to write scholarly articles, without the possibility of a sabbatical or research funding. All of these additional burdens came with no salary adjustment. While to the ear, “full-time” sounds better than “part-time,” and the same is true regarding a three-year contract rather than a semester-to-semester contract, having more students, academic advising responsibilities, administrative obligations, scholarship

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¹ DEBORAH J. MERRITT, *Salaries and Scholarship*, Law School Café, <https://www.lawschoolcafe.org/2018/01/13/salaries-and-scholarship/> (Jan. 13, 2018).

² *Improved*, MERRIAM WEBSTER’S COLLEGIATE DICTIONARY (10th ed. 1997).

requirements, and no salary increase revealed a darker truth: My status had not improved.

As a woman, what I had experienced is a commonplace phenomenon in legal academia. While not every academic institution exhibits a disparity in faculty salaries due to gender,³ in the majority, this is the case.⁴ That is, women professors are paid less than their male counterparts,⁵ often a result of implicit biases that work systematically against women.⁶ Emblematic of the problem are legal writing professors, seventy percent of whom are women.⁷ Often pejoratively referred to toiling in “the pink ghetto,”⁸ LAWRS professors are expected to work more than their legal academic counterparts and, despite the breadth of their responsibilities, earn substantially less.

There should be a concerted effort to eliminate the wage discrimination experienced by legal writing faculty. A legal writing professor’s status cannot truly improve until the pay gap that exists between those who teach legal writing and those who teach other legal topics is closed. Until law schools address the economic disparity between these two classes of professors, a legal writing professor’s status will remain mired below that of her counterparts who teach other areas of the law.

This essay first highlights the pay disparities that exist among doctrinal faculty and legal writing professors. It then demonstrates the negative effect those disparities have on the employee and the institution. Finally, it suggests ways to achieve pay parity and improve the status of legal writing professors.

I. Pay Disparities

Legal writing professors earn significantly less than professors who teach doctrinal courses.⁹ The median salary for an associate

³ Constance Wagner, *Change from Within: Using Task Forces and Best Practices to Achieve Gender Equity for University Faculty*, 47 J.L. & EDUC., 295, 349 (2018).

⁴ *Id.* at 306.

⁵ *Id.*

⁶ *Id.* at 311.

⁷ Jo Anne Durako, *Second-Class Citizens in the Pink Ghetto: Gender Bias in Legal Writing*, 50 J. LEGAL EDUC. 562, 562 (2000).

⁸ *Id.* at 578.

⁹ MERRITT, *supra* note 1.

professor is \$168,840.¹⁰ Compare this dollar figure to \$95,664, the annual base salary of legal writing faculty, hired full-time, on a tenure track.¹¹ However, seventy-two percent of legal writing appointments are untenured;¹² the average salary for a full-time untenured, long-term legal writing professor is \$72,350¹³ and that of a short-term legal writing professor is \$69,083.¹⁴

No matter whether the contract is tenured-based, long-, or short-term, the salary of full-time legal writing faculty is far less than any other full-time law professor.¹⁵ This pay disparity negatively affects the morale of legal writing professors and, as explained below, negatively impacts the institution.

II. Negative Effect of Pay Disparities

Unjustified pay disparities create two classes of professors. This is unconstructive for legal education because it (1) sends the erroneous message that legal writing is of secondary importance, (2) limits legal writing faculty from participating in academic endeavors, and (3) fosters sex discrimination.

A. The Importance of Legal Writing Classes

First, the pay disparities suggest that law schools do not think it is worth investing in legal writing or those who teach it. As a preliminary matter, in recognition of its importance, the American Bar Association (“ABA”) has made clear that legal writing is essential to legal education.¹⁶ All law schools mandate legal writing to be part of their first-year curriculum, and the ABA will not accredit a school that lacks faculty-supervised writing experiences.¹⁷

¹⁰ *Id.*

¹¹ ALWD/LWI Annual Legal Writing Survey Report of the 2017-2018 Institutional Survey 8, <https://www.lwionline.org/sites/default/files/Final%20ALWD%20LWI%202017-18%20Institutional%20Survey%20Report.pdf>

¹² *Id.* at 58.

¹³ *Id.* at 138.

¹⁴ *Id.*

¹⁵ MERRITT, *supra* note 1.

¹⁶ *Id.*

¹⁷ AMERICAN BAR ASSOCIATION 2019-2020 STANDARDS AND RULES OF PROCEDURES FOR APPROVAL OF LAW SCHOOLS, Ch. 3, Standard 303(a)(2), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2019-2020/2019-2020-aba-standards-chapter3.pdf (August 2019).

But aside from the accreditation requirement, every basic legal research and writing course is designed to impart fundamental knowledge upon which both the student and future employers rely, connecting the law school to the legal community at large. Students value legal writing courses and recognize their importance, as they know these courses expose them to the skills that they will need to utilize in their internships and as part of their future careers. They routinely return to school after the summer to report how they were able to use the skills they acquired in their first-year legal writing course. Legal writing classes are also significant to future employers. In selecting clerks or law firm associates, judges and hiring partners inevitably review writing samples, the legal writing courses job applicants have taken, and the grades earned by applicants. Additionally, they often speak to legal writing professors regarding students' legal abilities and favor those law schools that produce good legal researchers and writers, as employers heavily depend upon these skills.¹⁸

It is not just employers in the legal community who evaluate law schools based on legal research and writing; alumni of the school do so as well. That is, alumni are more loyal to an institution when they feel connected to it or the people within it.¹⁹ Because legal writing courses are usually smaller and students receive feedback, students tend to establish closer bonds with their legal writing professors compared with their doctrinal professors.²⁰ Legal writing professors are the ones to whom alumni return to seek career advice or to review writing samples. It thus makes sense for law schools to invest in professors who are the link between the academic community and the bar. Alumni are aware that their lifeline to the school – the legal writing professor – is not treated on par with other members of the law school faculty. By fairly compensating members of their legal writing staff, law schools will generate good will among alumni, which in turn could lead to greater financial support of the institution. Ultimately, making salaries more equitable would boost the school's reputation for fairness.²¹

¹⁸ Susan C. Wawrose, *What Do Legal Employers Want to See in New Graduates?: Using Focus Groups to Find Out*, 39 OHIO N.U. L. REV. 505, 532-539 (2012-13).

¹⁹ GEORGE D. KUH ET AL., *STUDENT SUCCESS IN COLLEGE* 119 (2005).

²⁰ Ann Iijima, *Lessons Learned: Legal Education and Law School Dysfunction*, 48 J. LEGAL EDUC. 524, 528 (1998).

²¹ Wagner, *supra* note 3, at 324.

B. Maximize Worker Utility

Pay disparities send the message that legal writing professors are inferior to other faculty members, undermining the professors’ confidence and the contributions that many legal writing professors make to the institution. Insecurity and feelings of worthlessness hinder legal writing faculty from speaking at faculty meetings, participating in colloquiums, and taking initiatives. While some may contend that these things happen because of the lack of job security, pay equality would boost the confidence of legal writing professors, propelling their productivity. Needless to say, the institution would thrive if the potential of its entire faculty were maximized.

Further, pay inequity reduces worker utility.²² The possible parade of horrors include, but is not limited to, greater absenteeism,²³ decreased productivity,²⁴ community division,²⁵ and resentment.²⁶ On a personal level, I have seen time and energy that could have been spent on innovative pedagogy or scholarship, instead spent on addressing employment concerns. That is, pay equity issues are distracting, and legal writing professors could be more efficient and productive if they did not have these issues on their minds.²⁷ If law schools eliminated pay equity issues, they would reap the benefits.

C. Wage Discrimination Based on Sex

Finally, the pay differential between legal writing faculty and doctrinal faculty is a byproduct of the wage disparity in academic institutions between male and female professors, and it fosters sex discrimination. The classroom setting is a microcosm of society, and the gender pay gap in law schools reflects the gap that exists outside of the law school. Law schools should not actively participate in the wage discrimination that plagues this country. The law school – an institution that challenges society’s inequities – should be leading the charge to eliminate this miscarriage of justice.

²² Emily Breza, Supreet Kaur, & Yogita Shamdasani, *The Morale Effects of Pay Inequality*, 133 Q. J. ECON. 611, 635 (May 2018).

²³ *Id.* at 636.

²⁴ *Id.* at 640.

²⁵ *Id.* at 616.

²⁶ *Id.* at 612.

²⁷ Wagner, *supra* note 3, at 324.

III. Rectifying Pay Disparities

Compensation is usually a taboo topic.²⁸ But the first step toward rectifying pay disparities is to expose them, not just to mention that they exist.²⁹ Faculty must openly talk about pay disparity. Professors' salaries at public institutions are available, but this information needs to be broadly publicized. At private institutions, legal writing professors should inquire and learn what their writing and non-writing colleagues earn. These numbers should be distributed to alumni and the public and, in addition, faculty should meet with university administrators and boards of trustees to collaborate on ways to close the pay gap.³⁰

Further, law schools need strong leadership to take remedial action and address wage discrimination. True leaders will not perpetuate an inequitable status quo that hurts individuals, the organization, and society.³¹ Law school deans have the power to close the pay gap in several ways. First, they could earmark funds to eliminate substantial salary differentials that are attributable to gender,³² like those who teach legal writing. Second, they could accelerate promotions and advancements for legal writing faculty, enabling them to receive appropriate salary increases that come with such promotions. Third, they could establish a task force that focuses on adjusting faculty salaries to make the discrepancies more equitable.³³ The task force would study and highlight when a variation in pay cannot be explained by a variable independent of gender.³⁴

By closing the pay gap, law school deans will tighten the internal fabric of the school. Pay equity would strengthen faculty loyalty and warm the cultural climate without having to touch a thermostat.

²⁸ Laura Freebairn-Smith, *Impact of Gender Pay Inequity on Morale and Work Culture*, PSYCHOLOGY TODAY, <https://www.psychologytoday.com/us/blog/change-your-mind-change-your-money/201903/impact-gender-pay-inequity-morale-and-work-culture?amp> (March 6, 2019).

²⁹ See Wagner, *supra* note 3, at 354 (noting that usually the administration will focus on only the worst cases, or the remedy requires an aggrieved faculty member to negotiate an individual resolution).

³⁰ *Id.*

³¹ Freebairn-Smith, *supra* note 28.

³² See Wagner, *supra* note 3, at 335.

³³ *Id.* at 337-43.

³⁴ *Id.* at 351.

Further, by eradicating discrimination of some faculty, law school deans can distinguish their schools and receive positive press. Ultimately, this could lead to an increase in alumni donations.

IV. Conclusion

Not every professor should earn the same salary, but pay differentials should not be based on whether a full-time faculty member teaches legal writing or some other course. Instead, the difference in pay among faculty – regardless of the course the faculty member teaches – should be determined based upon a number of factors such as educational background, scholarly productivity, performance in the classroom, and experience.

Law schools should support their faculty holistically. The first step towards equality is to erase the pay gap that exists between legal writing professors and other faculty members. Until this is done, legal writing professors will always be de facto second-class citizens compared to their colleagues. Pay equity will improve the status of the legal writing professor and, by extension, the quality of legal education in general.