

## TAKING A SHOT AT THE (UNMODIFIED) TITLE: THE VALUE OF THE TITLE “PROFESSOR OF LAW” FOR IMPROVING THE STATUS OF LEGAL WRITING FACULTY AND ALWD/LWI SURVEY TRENDS

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Inside the legal academy, titles matter.<sup>1</sup> One of the most important changes that can be made to improve the professional status of legal writing faculty is the adjustment of faculty titles to properly reflect that legal writing faculty have the same status as other faculty members.<sup>2</sup> As a step towards complete equality for legal writing faculty, title changes cost law schools nothing in dollar value.<sup>3</sup> However, they are of immeasurable worth to their recipients and a necessary step towards showing the worth of legal writing faculty

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<sup>1</sup> As Professors Lisa McElroy, Christine Coughlin, and Deborah Gordon note: “Titles send messages; in academia, a title carries prestige, and, with it, respect.” Lisa T. McElroy, Christine N. Coughlin & Deborah S. Gordon, *The Carnegie Report and Legal Writing: Does the Report Go Far Enough?*, 17 LEGAL WRITING 279, 301 (2011).

<sup>2</sup> See Kathryn M. Stanchi, *Who Next, the Janitors? A Socio-Feminist Critique of the Status Hierarchy of Law Professors*, 73 UMKC L. REV. 467, 487 (2004) (“The [law school] status hierarchy . . . imposes on legal writing professors [various] markers of low status. . . . [A] [significant] marker is title—a kind of branding typical of the most entrenched hierarchies.”); Kristen K. Tiscione & Amy Vorenberg, *Podia and Pens: Dismantling the Two-Track System for Legal Research and Writing Faculty*, 31.1 COLUMBIA J. GENDER & LAW 47, 62-63 (2015) (citing Stanchi, *supra*, at 481) (“Title, security of position, compensation, and faculty entitlements are the cultural capital withheld from LRW faculty both to prove their inferiority and to make existing law school hierarchies appear merit-based.”); Jan M. Levine, *Leveling the Hill of Sisyphus: Becoming a Professor of Legal Writing*, 26 FLA. ST. U. L. REV. 1067, 1094-95 (1999) (“[T]he very titles of [AALS Placement Bulletin] positions proclaim the second-class status of many legal writing jobs[] . . .”).

<sup>3</sup> See Kent D. Syverud, *The Caste System and Best Practices in Legal Education*, 1 J. ALWD 12, 19 (2002) (“[D]eans should address . . . factors that communicate caste to the community. The ones that matter most to writing faculty are, in my experience, salary and security of position. . . . But deans can also address caste by costless things—[such as] titles[] . . .”).

when more tangibly expensive status improvements are being considered.<sup>4</sup>

In many law schools, legal writing faculty do not share the same titles as traditional doctrinal faculty; titles such as “Professor of Legal Writing,” “Clinical Professor of Law,” and “Professor of the Practice,” or other nomenclature aside from the traditional title of “Professor of Law” are quite common.<sup>5</sup> Although such differences may appear

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<sup>4</sup> It is worth noting that some scholars have expressed concern with enhanced titles in certain circumstances. See Marina Angel, *Women Lawyers of All Colors Steered to Contingent Position in Law Schools and Law Firms*, 26 CHICANA/O-LATINA/O L. REV. 169, 173 (2006) (citing Marina Angel, *The Glass Ceiling for Women in Legal Education: Contract Positions and the Death of Tenure*, 50 J. LEGAL EDUC. 1, 4-9 (2000)) (“Some women . . . may be hired as full time faculty with assistant, associate, or full professor titles, but they are actually on contract rather than tenure track and work as legal writing teachers, clinicians, and academic support personnel.” (footnote omitted)); Susan Sturm, *The Architecture of Inclusion: Advancing Workplace Equity in Higher Education*, 29 HARV. J.L. & GENDER 247, 266 (2006) (citing e-mail from Ann Bartow, Professor of Law, University of South Carolina School of Law to Susan Sturm, Professor of Law and Social Responsibility, Columbia Law School (Sept. 27, 2004, 12:25 EST) (on file with the Harvard Journal of Law & Gender)) (Affirmative action information “[r]esults are . . . easily manipulated to show adequate utilization by strategies such as redefining titles to increase the percentage of women or people of color on staff or counting visitors and contract positions.”); but see Melissa H. Weresh, *Form and Substance: Standards for Promotion and Retention of Legal Writing Faculty on Clinical Tenure Track*, 37 GOLDEN GATE U. L. REV. 281, 295 (2007) (“The Assistant/Associate Professor of Law title has no negative implications for members of the legal writing faculty.”). While the benefits of enhanced titles appear to far outweigh such potential risks and problems, they are certainly worth considering.

<sup>5</sup> See, e.g., Stanchi, *supra* note 2 (citing Assn of Legal Writing Directors/Legal Writing Inst. 2003 Survey Results, 41 (Question 68) (2003), [http://www.alwd.org/alwdResources/surveys/2003survey/PDFfiles/2003surveyresults\\_alwd\\_.pdf](http://www.alwd.org/alwdResources/surveys/2003survey/PDFfiles/2003surveyresults_alwd_.pdf) (last visited Sept. 9, 2004)) (“The overwhelming majority of law schools refuse to give legal writing professors the unqualified title of professor, associate professor or assistant professor of law. Instead, most legal writing professors are given either the lesser title of ‘lecturer’ or ‘instructor’ or are given the qualified title of ‘clinical’ professor or professor ‘of legal writing.’” (footnote omitted)); Tiscione and Vorenberg, *supra* note 2, at 58 (citing ALWD/Legal Writing Inst., Report of the Annual Legal Writing Survey, 65 (2014), <http://www.lwionline.org/surveys.html> [<http://perma.cc/T2QU-WFYV>]) (“[L]egal research and writing . . . faculty usually have lesser titles, such as professor of legal writing, lecturer, or instructor.” (footnote omitted)); Weresh, *supra* note 4, at 292-293 (A number of “institutions employ academic titles for legal writing faculty that are distinguishable from the academic titles for tenured, doctrinal faculty. At some schools, members of the legal writing faculty are considered clinical professors and bear that academic designation. Many schools delineate legal writing faculty by course content. Faculty members who

subtle, the designation attached to any professorial title other than “of Law,” or a modifier placed before the title “Professor of Law,” indicates there is some professional divide between the position’s holder and that of the holder of a standard professorship.<sup>6</sup> Accordingly, such a distinction in titles is, by itself, a differentiation in the professional status of legal writing faculty and faculty who specialize in other subjects.<sup>7</sup> The difference between two tenured “Professors of Law,” one of whom teaches contracts and one of whom teaches torts, is a matter of specialization, not of position; however, the difference between a professor “of law” and a professor “of legal writing,” even if both are tenured, is much starker in contrast, because one holds a title that is markedly different from the other.<sup>8</sup>

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teach legal writing are known variously as: Legal Writing Professor/Instructor; Assistant/Associate Professor of Legal Writing/Lawyering Skills; Instructor of Legal Analysis, Research and Communication (‘LARC’); and, Legal Rhetoric Instructor. At most institutions, the rank and term of academic title mirrors that of doctrinal faculty. At these institutions, the academic progression is from Assistant to Associate to full Professor of Law.” (footnotes omitted).

<sup>6</sup> As Professor Jo Anne Durako describes, “separate and unequal academic titles” may be “seemingly inconsequential[.]” but constitute “branding [through] inferior academic titles[.]” Jo Anne Durako, *Dismantling Hierarchies: Occupational Segregation of Legal Writing Faculty in Law Schools: Separate and Unequal*, 73 *UMKC L. REV.* 253, 254-255 (2004). Professor Stanchi opines that “[t]he clear purpose of this distinctive branding is to make obvious the separation between the higher and lower ranks of the hierarchy and to stigmatize the lesser group.” Stanhci, *supra* note 2.

<sup>7</sup> Stanchi, *supra* note 2; *see* Durako, *supra* note 6; Tiscione & Vorenberg, *supra* note 2.

<sup>8</sup> According to Professor Durako: “Legal writing teachers may wear the badge of segregation through their distinctive academic titles. Their titles may specify the subject they teach by labeling them Professor of Legal Writing. These full-time faculty are not accorded the traditional title of Professor of Law, signaling some limitation on their abilities or inherent inferiority. There is no Professor of Contracts, Professor of Torts, Professor of Civil Procedure, or Professor of Professional Responsibility listed in the AALS Directory, unless these titles have endowed chairs attached. . . . Professor of Legal Writing is a type of immutable branding announcing one’s place in the hierarchy and preventing a teacher from passing as a fully recognized member of the faculty at large.” Durako, *supra* note 6, at 258 (footnotes omitted) (citing AALS Directory of Law Teachers 2003-2004 38 (2003); Kristin Gerdy, ALWD/LWI 2004 Survey Results (on file with author)). Moreover, “[a]lthough some law schools also have a separate title for clinical professors, no other course required for law school graduation has a separate track for professional identification or separate titles.” *Id.* at 258 n.30. Roger Haydock similarly states: “[In] [an] ideal world[] . . . [d]esignations like ‘clinical professors’ (like ‘legal writing instructors’) would be replaced with ‘professor of law.’ Whether one teaches

The Association of Legal Writing Directors and the Legal Writing Institute have surveyed legal writing faculty on various status matters beginning in 1998-1999.<sup>9</sup> The results of these surveys, viewed in intervals, indicate significant progress with regard to titles. In the earliest available data from the 1999 ALWD/LWI Survey, out of 93 respondents, 19 out of 93 faculty members (approximately 20%) held the title of “professor” without modification. Thirty-seven out of 93 (approximately 40%) held the title “professor” with or without modifications.<sup>10</sup> Of faculty members who had the term “professor” in their title under the survey’s questions, 19 out of 37 (approximately 51%) held the title without modification. However, in the 2005 ALWD/LWI Survey, 41 faculty members out of 157 responses (approximately 26%) held the title of “professor” without modification. Ninety-one faculty members out of 157 (approximately 58%) held a position title that included the title “professor” either with or without modification. Of those faculty, 41 out of 91 (approximately 45%) held the title without modification. Five years later, in the 2010 ALWD/LWI Survey, 45 faculty members out of 206 responses (approximately 22%) held the title of “professor” without modification. One hundred thirty-one faculty members out of 206 (approximately 64%) held a position title that included the title “professor” either with or without modification. Of those faculty, 45 out of 131 (approximately 34%) held the title without modification. Finally, in the last available data from the 2015 ALWD/LWI Survey, 55 faculty members out of 230 responses (approximately 24%) held the title of “professor” without modification. One hundred fifty-one

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in a law school *res ipsa loquitur*, incorporeal heredita[.]ments, collateral estoppel, or refreshing recollection, one is a law professor.” Roger S. Haydock, *Clinical Reflections: Looking Ahead Toward the Past*, 30 WM. MITCHELL L. REV. 51, 56 (2003). According to Professor John Lynch: “When I teach a legal writing course rather than federal income tax, I am teaching a different subject matter, but I am not doing a different job. It would be absurd to treat me differently for purposes of status and compensation because my teaching load includes legal writing than I am treated when I teach only doctrinal courses.” John A. Lynch, Jr., *Teaching Legal Writing After a Thirty-Year Respite: No Country for Old Men?*, 38 CAP. U. L. REV. 1, 14 (2009). Obviously, of course, “[t]his badge of inferior status based on titles may manifest itself even more dramatically when writing teachers do not even have some variant of the official title of ‘professor.’” Durako, *supra* note 6, at 258.

<sup>9</sup> The ALWD/LWI Surveys for all years have been posted at <https://www.lwionline.org/resources/surveys>.

<sup>10</sup> The category of “other” in the survey is treated as a title that did not include the title professor either with or without modification (the other answer choices are clear in this regard).

faculty members out of 230 (approximately 66%) held a position title that included the title “professor” either with or without modification. Of those faculty, 55 out of 151 (approximately 36%) held the title without modification.<sup>11</sup>

ALWD/LWI Survey Year	Total Responses	# with unmodified title of “professor of law”	# with “professor” in title with or without modification	% of faculty with “professor” in title who held the unmodified title “professor of law”
1999	93	19 (20%)	37 (40%)	51%
2005	157	41 (26%)	91 (58%)	45%
2010	206	45 (22%)	131 (64%)	34%
2015	230	55 (24%)	151 (66%)	36%

Based upon these overall trends, in comparison to the original survey data, it appears that a notably higher percentage of legal writing faculty now hold a title that includes the term “professor,” although the percentage of legal writing faculty overall who hold the title “professor of law” without modification has only increased slightly (and, in fact, is a lower percentage of titles now than it was in 2005). As a percentage of faculty who hold a professorship with or without modification, however, faculty holding the title “professor of law” in 2015 were a lower percentage than in previous years (aside from a slighter smaller percentage in 2010). This trend indicates that faculty titles have evolved towards professorships, but that the full status of professor of law still is not the standard within academia.

However, the intermediate step forward of professor titles with modification has moved legal writing faculty significantly closer toward professorships without modification. Because ALWD/LWI survey trends indicate that title changes have been steadily improving for legal writing faculty, the push for the next step of standardizing the title of legal writing faculty as “professors of law” appears to be a

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<sup>11</sup> The only two ALWD Surveys available past 2015 (2017 and 2018), do not include questions similar to those on previous surveys regarding legal writing faculty titles.

much less drastic change than might have been in the past. As such, the transition to professorships of law appears much more obtainable for legal writing faculty and a more reasonable goal than in the past. The circumstances may well be right for legal faculty to “take a title shot”—specifically, a shot at obtaining the unmodified title of “professor of law” as the legal writing faculty standard.