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PERSISTENT STRUCTURAL BARRIERS TO GENDER EQUITY IN
THE LEGAL ACADEMY AND THE EFFORTS OF TWO LEGAL
WRITING ORGANIZATIONS TO BREAK THEM DOWN

RUTH ANNE ROBBINS, KRISTEN K. TISCIONE, & MELISSA H. WERESH*

IN 2020, we celebrated the centennial of the Nineteenth Amendment and the grueling effort it took for women to gain suffrage in the United States. The right of women to vote was hard-won, requiring the efforts of a multitude of individuals in a variety of organizations lobbying state and federal governments for more than seventy years. Beginning in 1848 with a convention in Seneca Falls, New York and a statement of equality,¹ the suffrage movement lasted for decades as its two major organizations worked to achieve equal rights for women and bring the issue of suffrage to a vote on state and federal levels.²

Although women are no longer fighting for the right to vote in federal and state elections, their nationwide struggle for equality, respect, and a meaningful voice continues in the workplace. Despite the protections of Title VII,³ women in the workforce have been and continue to be segregated into lower paying service occupations,⁴ and they consistently earn less than men,⁵ even in occupations dominated by women.⁶ As the percentage of women in any given occupation increases, earnings actually de-

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1. OLIVIA E. COOLIDGE, *WOMEN'S RIGHTS: THE SUFFRAGE MOVEMENT IN AMERICA 181* (1966) (timeline). The Seneca Falls Convention is so widely accepted as the start to the women's suffrage movement in the United States that it has become a National Park Service site. See, e.g., *National Historical Park, New York, Women's Rights*, NAT'L PARK SERV., <https://www.nps.gov/wori/index.htm> [<https://perma.cc/28H6-3GMN>] (last visited July 19, 2020).

2. See *infra* Part IV.

3. The Civil Rights Act of 1964 prohibits employment discrimination on the basis of "race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1) (2018).

4. See *infra* notes 23–31 and accompanying text.

5. See *infra* notes 32–35 and accompanying text.

6. See *infra* note 38 and accompanying text.

(1155)

crease,⁷ in large part due to the undervaluing of what amounts to “women’s work.”⁸

Somewhat surprisingly, given the law’s dedication to the rule of law and the concept of blind justice, neither Title VII nor Title IX⁹ have prevented women law faculty (or women faculty generally) from being segregated into lower paying “service” teaching positions.¹⁰ Men continue to hold the majority of tenured faculty positions, teaching doctrinal or casebook courses, and women hold the majority of positions teaching skills-focused courses, resulting in lesser status, security of position, and salary.¹¹ Tenured women teaching doctrinally focused courses earn less than their male counterparts,¹² and women teaching skills-focused courses earn less than tenured female faculty.¹³ A significant number of skills-focused faculty—again, predominantly women—have no security of position and no voting rights in faculty governance matters.¹⁴

Facing the same barriers to equality that suffragists fought against, a number of predominantly female organizations formed years ago to advocate for the most disenfranchised cohort of faculty, those teaching legal writing.¹⁵ In the mid-1980s, soon after the American Bar Association (ABA) Standards for law school accreditation required schools to offer stu-

7. See *infra* note 37 and accompanying text.

8. See *infra* notes 26, 37, and 44 and accompanying text.

9. Title IX of the Education Amendments of 1972 prohibits discrimination “on the basis of sex” in all educational institutions that receive federal funding. 20 U.S.C. § 1681(a) (2018).

10. See, e.g., Ann C. McGinley, *Employment Law Considerations for Law Schools Hiring Legal Writing Professors*, 66 J. LEGAL EDUC. 585, 590 (2017) (noting potential liability of law schools for gender discrimination under Title VII and Title IX because legal writing faculty are predominantly female); Ann C. McGinley, *Reproducing Gender on Law School Faculties*, 2009 BYU L. REV. 99, 99, 117 n.95 (noting potential liability of law schools under Title VII because women law faculty are segregated in inferior, gendered positions teaching a disproportionate amount of “female-identified courses”); see also Martha S. West, *Gender Bias in Academic Robes: The Law’s Failure to Protect Women Faculty*, 67 TEMP. L. REV. 67, 68, 115 (1994) (noting the failure of Title VII to produce equal employment opportunities for women in higher education and the “hostility” of the federal bench toward Title VII plaintiffs).

11. See, e.g., J. Lyn Entrikin, Lucy Jewel, Susie Salmon, Craig T. Smith, Kristen K. Tiscione, & Melissa H. Weresh, *Treating Professionals Professionally: Requiring Security of Position for All Skills-Focused Faculty Under ABA Accreditation Standard 405(c) and Eliminating 405(d)*, 98 OR. L. REV. 1, 22–24 (2020) (noting that the majority of clinical and legal writing faculty are women with lesser security of position than tenured faculty); Deborah Jones Merritt & Barbara F. Reskin, *Sex, Race, and Credentials: The Truth About Affirmative Action in Law Faculty Hiring*, 97 COLUM. L. REV. 199, 205 (1997) (reporting results of study showing “persistent sex bias in law faculty hiring”); see also *infra* Section I.B.

12. See *infra* notes 68–71 and accompanying text.

13. See *infra* notes 72–78 and accompanying text.

14. See *infra* notes 54–60, 136–38, and accompanying text.

15. See *infra* Part IV.

dents “at least one rigorous writing experience,”¹⁶ and law schools adopted formalized legal writing programs,¹⁷ legal writing faculty held a national conference; soon thereafter, they formed the Legal Writing Institute (LWI).¹⁸

A decade later, a group of legal writing faculty who were also program directors formed a sister organization—the Association of Legal Writing Directors (ALWD). ALWD was formed in part so that directors could advocate for the legal writing faculty they supervised, often with less security of position.¹⁹ Just as suffrage organizations split their work between state and national efforts,²⁰ LWI and ALWD have traditionally divided their work by focusing on individual institutions on the one hand, and nationwide lobbying efforts on the other.²¹ Not surprisingly, their efforts have often been met with resistance, anger, and resentment.

Part I of this Article discusses the social and cultural barriers to gender integration and equality in the general workforce and specifically in the legal academy. Parts II and III detail persistent organizational and institutional barriers in the legal academy, particularly for non-tenure track faculty teaching skills-focused courses. Part IV then explains the col-

16. *ABA Standards and Rules of Procedure for the Approval of Law Schools and Interpretations*, 1981 AM. B. ASS'N 1, S302, https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/standardsarchive/1981_standards.pdf [<https://perma.cc/8HJ7-FLLX>]. The rigorous writing requirement first appeared in the 1981 accreditation standards, although law schools had been required to provide training in the professional skills, such as “the drafting of legal documents,” since at least 1973. *Compare id.* (discussing Standard 302(a)(ii)), *with Approval of Law Schools: ABA Standards and Rules of Procedure*, 1, 1973 AM. B. ASS'N 7, https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/standardsarchive/1973_standards.pdf [<https://perma.cc/73RN-XDBY>] (discussing Standard 302(a)(ii)). In 2002, the ABA added the requirement of a “rigorous writing experience in the first-year” and one in the upper level as well. *ABA Standards for Approval of Law Schools*, 2001 AM. B. ASS'N 1, 24, https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/standardsarchive/2001_2002_standards.pdf [<https://perma.cc/8D4P-Y6YC>] (discussing Standard 302(a)(2)). In 2015, the ABA deleted the word “rigorous” from the requirement, which was renamed as Standard 303, but the need for rigor remains in Interpretation 303-2. *See ABA Standards and Rules of Procedure for Approval of Law Schools*, 2015 AM. B. ASS'N 1, 15, https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2015_2016_aba_standards_for_approval_of_law_schools_final.pdf [<https://perma.cc/M8LC-NSNW>] (discussing Standard 303(a)(2)).

17. *See* Jill J. Ramsfield, *Legal Writing in The Twenty-First Century: The First Images*, 1 J. LEGAL WRITING INST. 123, 123 (1991) (indicating that as of 1983, legal programs had become permanent features of law school curricula).

18. *See generally* Mary S. Lawrence, *The Legal Writing Institute the Beginning: Extraordinary Vision, Extraordinary Accomplishment*, 11 J. LEGAL WRITING INST. 213, 221–27 (2005); *see also infra* Part IV.

19. *See About ALWD*, ASSOC. LEGAL WRITING DIRECTORS, <https://www.alwd.org/about> [<https://perma.cc/L6GE-RC75>] (last visited July 19, 2020); *see also infra* Part IV.

20. *See infra* notes 179–80 and accompanying text.

21. *See infra* notes 181–86 and accompanying text.

lective efforts, successes, and failures of LWI and ALWD to improve the overall status of legal writing faculty. Although occupational segregation in the legal academy, with all the inequities that follow, is but one example of gender discrimination in the workforce,²² we conclude that its persistence in law schools sets and maintains a standard of gender inequity with unacceptable and far-reaching effects on the legal profession and beyond.

I. SOCIAL AND CULTURAL BARRIERS TO INTEGRATION AND EQUALITY

A host of social and cultural barriers, including implicit and explicit bias, stereotypes about appropriate roles for men and women in the workplace, disparate educational and employment opportunities, and the difficulties of achieving work–family balance, contribute to gender inequality in the workplace.²³ These are the major contributors to occupational segregation, a “simple—but profound—form of gender inequality that is too often seen as natural or inevitable.”²⁴ “Occupational segregation” refers to the fact that men dominate certain jobs, while women dominate others. As detailed below, it leads to a number of workplace inequities, most significantly the gender pay gap.²⁵

A. Occupational Segregation in the United States

Occupational segregation is both horizontal and vertical. “Horizontal segregation” refers to men and women at the same status level often engaging in different kinds of work. Horizontal segregation often—but not always—relates to the extent to which manual and emotional labor are involved in particular kinds of jobs.²⁶ For example, men tend to hold the

22. See, e.g., *infra* note 44 and accompanying text.

23. See, e.g., Richard A. Lippa et al., *Women’s Representation in 60 Occupations from 1972 to 2010: More Women in High-Status Jobs, Few Women in Things-Oriented Jobs*, PLOS ONE, May 2014, at 1, 1; SENATE OFF. RES. SENATE SELECT COMM. WOMEN & INEQ., OCCUPATIONAL SEGREGATION AND THE GENDER PAY GAP 3 (2017), <https://sor.senate.ca.gov/sites/sor.senate.ca.gov/files/White%20paper%20Background%20for%20occupational%20segregation%20hearing%20for%20website.pdf> [<https://perma.cc/7HAR-FP7M>] [hereinafter COMM. WOMEN & INEQ.]; Kim A. Weeden et al., *Stanford Center on Poverty and Equality, State of the Union 2018: Occupational Segregation*, PATHWAYS, 2018, at 1, 30, <https://inequality.stanford.edu/publications/pathway/state-union-2018> [<https://perma.cc/WQ29-PADW>].

24. Weeden et al., *supra* note 23, at 30.

25. See *Occupational Segregation in the United States*, WASH. CTR. FOR EQ. GROWTH (Sept. 2017), <https://equitablegrowth.org/fact-sheet-occupational-segregation-in-the-united-states/> [<https://perma.cc/G6N7-W3DL>].

26. See Lippa et al., *supra* note 23, at 1; Weeden et al., *supra* note 23, at 31. In the context of the general and legal academy, see, e.g., Mary Nicol Bowman, *Legal Writing as Office Housework?*, 68 J. LEGAL EDUC. (forthcoming 2020); Nancy Levit, *Keeping Feminism in Its Place: Sex Segregation and the Domestication of Female Academics*, 49 U. KAN. L. REV. 775, 781 (2001) (explaining that “[s]egregation by sex persists in substantive course teaching assignments. Female law professors are much more likely than male law professors to teach substantive courses addressing familial issues, as well as skills courses that demand intensive labor and student nurturing.”); Paula A. Monopoli, *Gender and the Crisis in Legal Education: Remaking the Academy in*

majority of jobs as carpenters, machinists, computer programmers, and civil engineers, whereas women hold the majority of jobs as dental assistants, hairdressers, teachers, and registered nurses.²⁷ In 2018, 86% of civil engineers were men, and 88% of registered nurses were women.²⁸ Horizontal segregation by gender exists within each race and ethnic group,²⁹ as well as between men and women of different races,³⁰ but segregation by gender is considerably more pronounced.³¹

“Vertical segregation is based on ‘job quality,’ with men tending to work in ‘higher quality’ (i.e., higher status and higher paying) jobs than women.”³² The term “glass ceiling” refers to a form of vertical segregation in which men hold the positions in an organization with the highest salary, greatest authority, and better opportunities for promotion.³³ In 2018, the average gender wage gap for all women across professions was roughly 20%, meaning women earn 80% of men’s earnings in the same occupation.³⁴ The pay differential is even starker when applied to women of color, who earn even less, with Hispanic and African American women earning 61.6 and 65.3%, respectively, of white male earnings.³⁵

The gap also differs by level of skill, status of occupation, and the percentage of women working in that occupation. As the skill level and

Our Image, 2012 MICH. ST. L. REV. 1745, 1767 (noting that teaching and service are often associated with the feminine and research with the masculine); Joey Sprague & Kelley Massoni, *In Student Evaluations and Gendered Expectations: What We Can’t Count Can Hurt Us*, 53 SEX ROLES 779, 791 (2005) (finding that the burdens students place on women faculty are likely to be “far more consuming of time and energy” than those placed on men).

27. ARIANE HEGEWISCH ET AL., INST. WOMEN’S POL’Y RES., SEPARATE AND NOT EQUAL? GENDER SEGREGATION IN THE LABOR MARKET AND THE GENDER WAGE GAP 2–3 (2010), <https://iwpr.org/iwpr-issues/employment-and-earnings/separate-and-not-equal-gender-segregation-in-the-labor-market-and-the-gender-wage-gap/> [<https://perma.cc/SQ9D-2JFD>].

28. *Median Weekly Earnings of Full-Time Wage and Salary Workers by Detailed Occupation and Sex*, U.S. BUREAU L. STAT., <https://www.bls.gov/cps/cpsaat39.htm> [<https://perma.cc/W3Y9-SHY3>] (last updated Jan. 22, 2020) [hereinafter BLS].

29. See HEGEWISCH ET AL., *supra* note 27, at 7 (indicating that segregation by race and ethnic background is the greatest among Hispanic-Americans and the least among Asian-Americans).

30. See *id.* at 8 (indicating that segregation by race or ethnic background and gender is the greatest between white and Hispanic men and the least between white and black women).

31. *Id.* at 7 fig.5, 8 tbl.1 (indicating that segregation between men and women of all races and ethnic backgrounds is greater than that between races and ethnic backgrounds).

32. Lippa et al., *supra* note 23, at 1.

33. Weeden et al., *supra* note 23, at 31.

34. Ariane Hegewisch & Heidi Hartmann, *The Gender Wage Gap: 2018 Earnings Differences by Race and Ethnicity*, INST. WOMEN’S POL’Y RES. (Mar. 7, 2019), <https://iwpr.org/iwpr-general/the-gender-wage-gap-2018-earnings-differences-by-race-and-ethnicity/#:~:text=earnings%20Differences%20by%20Gender%2C%20Race%20and%20Ethnicity&text=hispanic%20women’s%20median%20weekly%20earnings,men%20also%20have%20low%20earnings> [<https://perma.cc/NC5P-LRQ6>].

35. *Id.*

status of the occupation increases, the wage gap increases too.³⁶ Similarly, as the number of women working in a given occupation increases, the pay in that occupation declines—even when controlling for education and skills.³⁷ Even in professions dominated by women, men earn more.³⁸ For example, although 88% of registered nurses are women, women nurses earn 96% of what male nurses earn.³⁹

Occupational segregation is the major cause of the gender pay gap.⁴⁰ Although gender integration in occupations increased considerably in the 1970s and '80s, integration has been virtually stalled since the mid-90s.⁴¹ The Stanford Center on Poverty and Inequality has stated it will take 320 years to achieve full integration at the current rate.⁴² In addition to perpetuating the gender gap, occupational segregation has a negative impact on our economy overall: it affects optimal matching of workers' skills with jobs, affects workers' willingness to enter professions perceived as traditionally female, and artificially depresses women's wages, which in turn depresses aggregate demand.⁴³

B. *Occupational Segregation in the Legal Academy*

The same barriers to gender equality in the workplace in general exist in higher education, including the legal academy.⁴⁴ The role of “scholar” in the university setting is “highly gendered” and associated with masculin-

36. HEGEWISCH ET AL., *supra* note 27, at 10 (indicating that women in low-, medium-, and high-skilled occupations earn 73.8, 79.9, and 66.9%, respectively, of men's earnings).

37. *Occupational Segregation in the United States*, *supra* note 25, at 1; see also Asaf Levanon et al., *Occupational Feminization and Pay: Assessing Causal Dynamics Using 1950–2000 U.S. Census Data*, 88 SOC. FORCES 865, 865–91 (2009); Weeden et al., *supra* note 23, at 32.

38. See BLS, *supra* note 28.

39. See *id.*

40. See HEGEWISCH ET AL., *supra* note 27, at 13; Weeden et al., *supra* note 23, at 32; COMM. WOMEN & INEQ., *supra* note 23, at 5.

41. HEGEWISCH ET AL., *supra* note 27, at 4; Weeden et al., *supra* note 23, at 30–31.

42. Weeden et al., *supra* note 23, at 31.

43. See *Occupational Segregation in the United States*, *supra* note 25, at 1.

44. These gender inequities also carry over to the legal profession. See JOAN C. WILLIAMS ET AL., YOU CAN'T CHANGE WHAT YOU CAN'T SEE: INTERRUPTING RACIAL & GENDER BIAS IN THE LEGAL PROFESSION 8 (2018) (reporting on study indicating that “women of all races reported pressure to behave in feminine ways, including backlash for masculine behaviors and higher loads of non-career-enhancing ‘office housework’”); Annie Pancak, *Glass Ceiling Slow to Break for Female Attys in 2018*, LAW360 (May 27, 2019), <https://www.law360.com/articles/1162800> [permalink unavailable] (indicating the percentage of women in law firms “has increased only marginally in the six years since Law360 started publishing the Glass Ceiling Report”); Sam Reisman, *At Top Firms For Women, ‘Slight Progress’ Closing Equity Gap*, LAW360 (July 16, 2019), <https://www.law360.com/articles/1178745/at-top-firms-for-women-slight-progress-closing-equity-gap> [permalink unavailable] (reporting on studies showing that women constitute 45% of new hires but represent on average 38% of lawyers and 22% of equity partners at top firms).

ity, which dates back to medieval notions of a woman's proper role as a private caretaker, not a public servant.⁴⁵ Traditionally, although the vast majority of all law faculty have J.D.'s,⁴⁶ male and female faculty are segregated horizontally and vertically. Male faculty tend to teach traditional casebook courses, whereas women tend to teach less traditional, skills-focused courses.⁴⁷ Although current data are hard to find,⁴⁸ roughly 64% of traditional, tenured faculty teaching casebook courses are men.⁴⁹ In contrast, women consistently dominate in clinical and legal writing faculty positions: the most recent data indicate that 67% of clinical faculty⁵⁰ and 70% of legal writing faculty⁵¹ are women.⁵² Finally, 68–70% of law librarians are women.⁵³

In terms of vertical integration, male faculty generally hold higher positions of authority and are afforded a higher status and security of position. For example, 62% of law deans are male, whereas 51% of associate deans and 68% of assistant deans are female.⁵⁴ Faculty teaching skills-

45. Monopoli, *supra* note 26, at 1759.

46. See, e.g., Sarah B. Lawsky, 2018 Spring Self-Reported Entry Level Hiring Report v. 4 4 (Jan. 1, 2019) (on file with author) (identifying the credentials of all law school, tenure-track hires in 2018).

47. For data regarding the academy in general, see West, *supra* note 10, at 68.

48. Neither the ABA, which accredits law schools, nor the American Association of Law Schools (AALS) compiles and publishes data on a regular basis relevant to gender integration and equality in legal education. The most current data on tenured faculty are from 2013. See, e.g., Kristen K. Tiscione, *Gender Inequity Throughout the Legal Academy: A Quick Look at the (Surprisingly Limited) Data*, 68 J. LEGAL EDUC. (forthcoming 2020) (citing *Law School Faculty & Staff by Ethnicity and Gender, Statistics Archives*, AM. B. ASS'N, https://www.americanbar.org/groups/legal_education/resources/statistics/statistics-archives/ [<https://perma.cc/JA59-CD2H>]). AALS links to the same data. See *Legal Education Statistics, Data Resources*, ASS'N AM. L. SCHOOLS, <https://www.aals.org/data-resources> [<https://perma.cc/S6LY-Z5SG>] (last visited Oct. 30, 2020).

49. See AM. BAR ASS'N, ABA APPROVED LAW SCHOOL STAFF AND FACULTY MEMBERS, GENDER AND ETHNICITY (2013), https://www.americanbar.org/groups/legal_education/resources/statistics/statistics-archives/ [<https://perma.cc/6HB2-9CFG>] (indicating that 4,410 out of 6,907 full-time, tenured, or tenure-track faculty were men).

50. ROBERT R. KUEHN ET AL., CTR. STUDY APPLIED LEGAL EDUC., THE 2019–20 SURVEY OF APPLIED LEGAL EDUCATION 52 (2020), https://uploads-ssl.webflow.com/5d8cde48c96867b8ea8c6720/5f8e46e59e39d4dc82e70a54_Report%20on%202019-20%20CSALE%20Survey.10.19.20.pdf [<https://perma.cc/J8Z4-YNT8>] [hereinafter CSALE SURVEY].

51. See ASS'N OF LEGAL WRITING DIRECTORS/LEGAL WRITING INST., REPORT OF THE ANNUAL LEGAL WRITING SURVEY 68 (2020), <https://www.alwd.org/images/researches/ALWDLWI2019-20InstitutionalSurveyReport.pdf> [<https://perma.cc/NX6C-4MMH>] [hereinafter 2020 ALWD/LWI SURVEY].

52. See Jo Anne Durako, *Dismantling Hierarchies: Occupational Segregation of Legal Writing Faculty in Law Schools: Separate and Unequal*, 73 UMKC L. REV. 253 (2004); Marjorie E. Kornhauser, *Rooms of Their Own: An Empirical Study of Occupational Segregation by Gender Among Law Professors*, 73 UMKC L. REV. 293, 295 (2005).

53. Jamie J. Baker, *The Intersectionality of Law Librarianship & Gender*, 65 VILL. L. REV. 1011, 1017 n.85, 1022 (2020).

54. Data compiled by and on file with authors based on law school websites.

focused courses—primarily women—often have security of position less than tenure, as sanctioned by ABA Standard 405.⁵⁵ Recent data indicate that 29% of clinical faculty have unitary or a lesser form of tenure, often referred to as programmatic tenure,⁵⁶ 33% have or are on track for long-term presumptively renewable contracts under 405(c),⁵⁷ which was enacted to protect clinical faculty,⁵⁸ and 38% have long (non-presumptively renewable) or short-term contracts or some other terms of employment.⁵⁹ The percentage of full-time clinical faculty has decreased from 82% in 2011 to 65% in 2020.⁶⁰

The percentage of individual legal writing faculty by status is unavailable, but roughly 36% of law schools have legal writing faculty (including directors) with some form of traditional or programmatic tenure.⁶¹ Forty-seven percent of schools have some or all legal writing faculty with 405(c) status, 20% have some or all with long-term, non-presumptively renewable contracts, and 44% have some or all with short-term contracts.⁶² Most librarians are classified as professional staff, with no security of position at all.⁶³

Although horizontal segregation in traditional professions, such as law and medicine, has actually decreased,⁶⁴ the gender wage gap in those professions has increased.⁶⁵ With respect to law faculty, it is likely that female tenured faculty earn less than their male counterparts,⁶⁶ but because law faculty salaries are grossly underreported,⁶⁷ it is difficult to de-

55. *See infra* Section II.B.

56. *See* CSALE SURVEY, *supra* note 50, at 18 (indicating that 21% of clinical faculty have traditional tenure or are on the tenure track and 8% have clinical tenure or are on the clinical tenure track). “Tenure” or “tenure track” refers to a faculty member being “hired with an expectation that, upon satisfactory performance of specified duties, the faculty member will be awarded employment that will presumptively continue indefinitely into the future.” 2020 ALWD/LWI SURVEY, *supra* note 51, at vii. “Programmatic tenure” refers to “tenure that is achieved through a separate track/using different standards than traditional tenure awarded to doctrinal faculty.” *Id.* at vi.

57. CSALE SURVEY, *supra* note 50, at 18.

58. Entrikin et al., *supra* note 11, at 11.

59. CSALE SURVEY, *supra* note 50, at 18.

60. *Id.* at 17–18.

61. 2020 ALWD/LWI SURVEY, *supra* note 51, at 60 (indicating 46 out of 169 schools have legal writing faculty with or on track for traditional tenure and 15 out of 169 have legal writing faculty with or on track for programmatic tenure).

62. *Id.*

63. Baker, *supra* note 53, at 1020–21.

64. *See, e.g.,* COMM. WOMEN & INEQ., *supra* note 23, at 1 (stating that legal occupations have the most parity in California); Lippa et al., *supra* note 23, at 2.

65. *See, e.g.,* Occupational Segregation in the United States, *supra* note 25, at 1.

66. *See infra* notes 68–71 and accompanying text.

67. Less than half of all law schools—seventy-nine—participated in the 2019 Society of American Law Teachers’ annual salary survey, and all of them were public, which omits the highest faculty salaries at private schools. *See* Society of American Law Teachers, 2018–19 SALT Salary Survey, SALT EQUALIZER, Nov. 2019, at 1,

termine how much less. A recent lawsuit filed against the University of Denver⁶⁸ alleged that the mean salary for female faculty was nearly \$20,000 less than that of male faculty,⁶⁹ and at least one other law school faces similar claims.⁷⁰ Since the wage gap is greatest in high-skilled professions, it is likely that tenured female faculty earn less than 80% of their male counterparts and perhaps as low as 67%.⁷¹

With respect to skills-focused faculty, there is a “clear penalty for working in female-dominated occupations,”⁷² with skills-focused faculty earning significantly less. Recent data indicate that the average salary for tenured faculty in 2018–2019 was roughly \$150,511 (the survey does not differentiate between male and female faculty).⁷³ Because the survey does not include private law school salaries, however, the average is significantly higher. Based on available data, the average median salary for clinical faculty in 2019–2020 was 76% (\$115,000 ÷ \$150,511) of tenured faculty earnings.⁷⁴

The average salary for legal writing faculty across different status levels is unknown, making it impossible to calculate the average wage gap. However, the most recent ALWD/LWI survey indicates that starting salaries at responding schools range from \$79,000 to \$180,000 (with a mean of \$108,089) for traditional tenured faculty and from \$50,000 to \$120,000 (with an average mean of \$84,909) for legal writing faculty, depending on their status.⁷⁵ The average mean for legal writing faculty is misleading, though, in part because it includes starting salaries for legal writing faculty on the tenure track, and the majority of legal writing faculty have at best 405(c) status.⁷⁶ The average mean of starting salaries for faculty with 405(c) status, short term, and long-term contracts without 405(c) status is \$77,393, roughly 72% (\$77,393 ÷ \$108,089) of starting salaries for tenured

1, <https://www.saltlaw.org/wp-content/uploads/2015/03/SALT-salary-survey-2019-final-draft.pdf> [<https://perma.cc/S5SX-UA8X>] [hereinafter SALT EQUALIZER].

68. See John Herrick, *Seven Female Law Professors Win \$2.6 Million Settlement from DU in Unequal Pay Lawsuit*, COLO. INDEP. (May 17, 2018), <https://www.coloradoindependent.com/2018/05/17/du-equal-pay-lawsuit-gender-discrimination/> [<https://perma.cc/R3LQ-7D33>].

69. *Id.*

70. See Kathryn Rubino, *Elite Law School Faces Gender Pay Gap Lawsuit*, ABOVE L. (Dec. 12, 2019), <https://abovethelaw.com/2019/12/elite-law-school-faces-gender-pay-gap-lawsuit/> [permalink unavailable].

71. See *supra* note 36 and accompanying text.

72. ARIANE HEGEWISCH & HEIDI HARTMANN, INST. WOMEN’S POL’Y RES., OCCUPATIONAL SEGREGATION AND THE GENDER WAGE GAP: A JOB HALF DONE 13 (2014), <https://iwpr.org/wp-content/uploads/2020/08/C419.pdf> [<https://perma.cc/26QK-KJSF>].

73. See SALT EQUALIZER, *supra* note 67 (adding the average salary of tenured (associate and full) faculty members at all reporting schools and dividing by seventy-nine, the number of participating schools).

74. See CSALE SURVEY, *supra* note 50, at 57 (indicating the median salary range is \$110,000–\$119,999 for an average median of \$115,000).

75. See 2020 ALWD/LWI SURVEY, *supra* note 51, at 146, 150.

76. See *infra* notes 61–62 and accompanying text.

faculty.⁷⁷ They are also misleading because the average starting salary for traditional tenure-track faculty is unknown and likely to be significantly higher than \$108,089.⁷⁸ The wage gap for librarians, whose starting salaries are roughly \$60,000,⁷⁹ is certainly worse.

II. EXTERNAL ORGANIZATIONAL BARRIERS TO INTEGRATION AND EQUALITY

Some challenges to equity faced by skills-focused faculty are due to adopted policies or positions taken by various organizations in the legal academy. The ABA Accreditation Standards for law schools create a hierarchy of faculty in legal education, imposing a barrier to equity for certain categories of faculty. Well-known rankings of faculty scholarly impact do not even acknowledge the contributions of skills-focused faculty. Advocacy efforts for skills-focused faculty are hindered by the failure of certain organizations to maintain data on gender statistics for law school faculty. Finally, the American Law Deans Association (ALDA) has routinely taken positions on security of position that are at odds with efforts of skills-focused faculty to obtain equitable status.

A. *The Hierarchy of Faculty Established by American Bar Association Standard 405*

As the accrediting organization for law schools, ABA has a quasi-governmental role in regulating many aspects of law school education and promulgates accreditation standards that include standards governing faculty employment. Standard 405(b) requires law schools to provide “an established and announced policy with respect to academic freedom and tenure.”⁸⁰ Standards 405(c) and (d) then explicitly exempt clinicians and legal writing faculty, segregating faculty by security of position based on the subject matter they teach.⁸¹ Standard 405(c) requires that a law school afford full-time clinical faculty “a form of security of position reasonably similar to tenure, and non-compensatory perquisites reasonably similar to those provided other full-time faculty members[,]”⁸² whereas 405(d) requires only that legal writing faculty have “security of position

77. See 2020 ALWD/LWI SURVEY, *supra* note 51, at 146; see also Amy H. Soled, *Legal Writing Professors, Salary Disparities, and The Impossibility of “Improved Status,”* 24 J. LEGAL WRITING INST. 47 (2020) (current essay on salary disparities for legal writing faculty); Kristen K. Tiscione & Amy Vorenberg, *Podia and Pens: Dismantling the Two-Track System for Legal Research and Writing Faculty*, 31 COLUM. J. GENDER & L. 47, 48–52 (2015) (addressing the salary disparity issue).

78. See *supra* note 67.

79. See Baker, *supra* note 53, at 1024.

80. See *ABA Standards and Rules of Procedure for Approval of Law Schools 2019–2020*, 2019 AM. B. ASS’N 27 [hereinafter *2020 ABA Standards*], https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2019-2020/2019-2020-aba-standards-and-rules-of-procedure.pdf [<https://perma.cc/7G6A-8WDE>] (citing Standard 405(a)).

81. See *infra* notes 82–88 and accompanying text.

82. *2020 ABA Standards*, *supra* note 80, at 27.

and other rights and privileges of faculty membership as may be necessary to (1) attract and retain a faculty that is well qualified to provide legal writing instruction as required by Standard 303(a)(2), and (2) safeguard academic freedom.”⁸³

This exclusion from full membership in the legal academy has been vigorously defended and maintained,⁸⁴ notwithstanding the fact that legal writing (in the first year and upper level) and experiential education are two of the three, ABA-required curricular components of an accredited law school.⁸⁵ Standard 405’s discriminatory impact on female faculty⁸⁶ and faculty of color is well-documented.⁸⁷ Established and encouraged by these standards, the resulting gender inequity is “a version of gender discrimination that no law firm or corporation would dare to institutionalize or rationalize, let alone put into print.”⁸⁸

The inadequacy of protection for legal writing and clinical faculty was explored in a series of articles published by the *Journal of Legal Education* in 2017.⁸⁹ For example, Linda Berger observes that the form of hierarchy created by the Standards is a form of subordination that members of the

83. *Id.*

84. *Id.* at 16 (discussing S303(a)(1)); *see also* Melissa H. Weresh, *The History of American Bar Association Standard 405(d): One Step Forward, Two Steps Back*, 24 J. LEGAL WRITING INST. 125 (2020) (tracing the evolution of Standard 405 from 2008–2014).

85. Standard 303(a) now requires the following:

- (1) one course of at least two credit hours in professional responsibility that includes substantial instruction in rules of professional conduct, and the values and responsibilities of the legal profession and its members;
- (2) one writing experience in the first year and at least one additional writing experience after the first year, both of which are faculty supervised; and
- (3) one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement

2020 ABA Standards, *supra* note 80, at 16.

86. *See, e.g.*, Kathryn Stanchi, *The Problem with ABA Standard 405(c)*, 66 J. LEGAL EDUC. 558 (2017) (asserting that “Standard 405(c) needs to be called out for what it is: an institutionalized bar to professional advancement divorced from any reasonable measure of merit”); *see also* Linda L. Berger, *Rhetoric and Reality in the ABA Standards*, 66 J. LEGAL EDUC. 553 (2017); Lucille A. Jewel, *Oil and Water: How Legal Education’s Doctrine and Skills Divide Reproduces Toxic Hierarchies*, 31 COLUM. J. GENDER & L. 111 (2015).

87. *See, e.g.*, Lorraine K. Bannai, *Challenged X 3: The Stories of Women of Color Who Teach Legal Writing*, 29 BERKELEY J. GENDER L. & JUST. 275 (2014); Teri A. McMurtry-Chubb, *On Writing Wrongs: Legal Writing Professors of Color and the Curious Case of 405(c)*, 66 J. LEGAL EDUC. 575 (2017); Nantiya Ruan, *Papercuts: Hierarchical Microaggressions in Law Schools*, 31 HASTINGS WOMEN’S L.J. 3 (2020).

88. Kathryn M. Stanchi & Jan M. Levine, *Gender and Legal Writing: Law Schools’ Dirty Little Secrets*, 16 BERKLEY WOMEN’S L.J. 3, 4 (2001).

89. *See generally* Kate O’Neill & Kellye Testy, *From the Editors*, 66 J. LEGAL EDUC. 455, 455–49 (2017) (introducing a set of articles on the inadequacies of ABA Standard 405(d)).

academy would challenge in other settings, “demand[ing] full protections and equal rights for those in the resulting marginalized categories.”⁹⁰ Kathryn Stanchi takes a more definitive stance, arguing that Accreditation Standard 405(c) “brands clinicians and legal writing faculty as ‘other’ and ‘lesser,’” and “artificially suppresses the growth and potential of certain faculty by discouraging them from behavior that might enhance their teaching and the reputations of their institutions.”⁹¹

This type of observation is not new, and there have been significant efforts over many years to address this situation.⁹² Several organizations, including ALWD, the Clinical Legal Education Association (CLEA), LWI, and the Society of American Law Teachers (SALT), have publicly criticized the ABA’s approach to status and security of position in Standard 405.⁹³ Notwithstanding these public positions and the resulting gender discrimination facilitated by Standard 405, the ABA has yet to repeal (c) and (d).

90. Linda L. Berger, *Rhetoric and Reality in the ABA Standards*, 66 J. LEGAL EDUC. 553, 554 (2017). Berger observes,

Chapter 4 explicitly names who’s in and who’s out. Faculty at the top are referred to simply as “faculty,” while those who fall into the lesser categories are known either as “clinical faculty members” or “legal writing teachers.” (The ABA recently discarded even more explicitly hierarchical labels once attached to those who teach legal writing: “instructors” and “other teaching resources.”) As always, language choices matter: Labels like these make the resulting categories appear to be “found, not made,” preexisting and warranted, not created and perpetuated by the Standards themselves.

Id. at 556–57.

91. Stanchi, *supra* note 86, at 559. Like Berger, Stanchi illuminates this unsubstantiated categorization and challenges the academy to seriously evaluate its merit, or lack thereof. Stanchi asserts:

[W]hile the institutional cost of Standard 405(c) is worth noting, it isn’t what makes Standard 405(c) such an embarrassment. Making broad categorical judgments about human beings—and their value—should be something we do only in rare instances because of the risk of bias and damage. We should interrogate ourselves carefully when we are tempted to do this to make sure that it is a moral choice free from discriminatory effect. While it may be easier to generalize about people, lazy thinking is simply never a good enough reason to discriminate.

Id. at 561.

92. See, e.g., *The Professional Status Committee and Status-Related Advocacy*, LEGAL WRITING INST., <https://www.lwionline.org/resources/status-related-advocacy> [<https://perma.cc/EJ6Q-47MT>] (last visited July 26, 2020); *ABA Engagement*, ASS’N LEGAL WRITING DIRECTORS, <https://www.alwd.org/aba-engagement> [<https://perma.cc/6SPM-XUP7>] (last visited July 26, 2020).

93. See Entrikin et al., *supra* note 11, at 11–18; Weresh, *supra* note 84, at 137–38, 143–47; see also *infra* Part IV.

B. *Law School Rankings That Exclude the Impact of Skills-Focused Faculty*

The law school rankings known colloquially as the “Leiter rankings” are based on a law school’s “scholarly impact.”⁹⁴ Scholarly impact scores are based on the mean and median number of citations over the past five years to the scholarship of tenured faculty.⁹⁵ Excluding a large percentage of citations to scholarship by non-tenure track, skills-focused faculty devalues their scholarship as well as their contribution to the law school’s mission.

U.S. News & World Report’s law school rankings are currently based on a different set of factors, including tenured faculty assessment of other schools.⁹⁶ However, U.S. News has announced a plan to publish its own set of scholarly impact ratings, separate from its law school rankings, in 2021.⁹⁷ As of December 2020, it was still evaluating whether and how non-doctoral faculty will be included in the rankings.⁹⁸ As currently calculated, the U.S. News rankings, which are based on the input of tenured faculty only, exclude a large percentage of skills-focused faculty. If U.S. News decides to exclude non-doctrinal faculty from its new ranking system, the scholarly impact of clinicians, librarians, legal writing faculty, and externship instructors (the bulk of whom are female) may be ignored in the calculation of these rankings as well.

C. *The Failure of the ABA and the American Association of Law Schools to Publish Longitudinal Faculty Data*

As noted above, neither the ABA nor the American Association of Law Schools (AALS) publishes detailed longitudinal data on law school

94. See, e.g., Gregory Sisk et al., *Scholarly Impact of Law School Faculties in 2018: Updating the Leiter Score Ranking for the Top Third*, 15 U. ST. THOMAS L.J. 95 (2018) (explaining the computation of Leiter rankings that are currently being maintained by the authors).

95. Clinical faculty are explicitly excluded unless a law school specifies those faculty “have identical scholarly expectations with other [tenured] faculty.” *Id.* at 101 n.7. Legal writing faculty are not mentioned in the report.

96. Robert Morse et al., *Methodology: 2021 Best Law Schools Rankings*, U.S. NEWS & WORLD REP. (Mar. 16, 2020, 9:00 PM), <https://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology> [permalink unavailable].

97. Paul Caron, *U.S. News to Publish Law Faculty Scholarly Impact Ranking in 2021*, TAXPROF BLOG (Nov. 9, 2020), https://taxprof.typepad.com/taxprof_blog/2020/11/us-news-to-publish-law-faculty-scholarly-impact-ranking-in-2021.html [<https://perma.cc/4SVQ-DZ7M>]; see also Robert Morse, *U.S. News Considers Evaluating Law School Scholarly Impact*, U.S. NEWS & WORLD REP. (Feb. 13, 2019, 1:00 PM), <https://www.usnews.com/education/blogs/college-rankings-blog/articles/2019-02-13/us-news-considers-evaluating-law-school-scholarly-impact> [permalink unavailable].

98. Paul Caron, *U.S. News Updates FAQ on Law School Scholarly Impact Rankings to Address Inclusion of Non-Doctrinal Faculty*, TAXPROF BLOG (Feb. 21, 2019), https://taxprof.typepad.com/taxprof_blog/2019/02/us-news-updates-faq-on-law-school-scholarly-impact-rankings-to-address-inclusion-of-non-doctrinal-fa.html [<https://perma.cc/4BGR-QZXP>].

faculty by ethnicity, gender, and security of position.⁹⁹ The ABA's most recent aggregate data, to which AALS links on its website, is from academic year 2013–2014.¹⁰⁰ The lack of consistently updated and easily accessible information available only to these organizations on the gender, race, and ethnicity of law faculty by security of position poses an insurmountable barrier to all forms of equity in the legal academy. Where faculty are unable to substantiate suspected discrimination with up-to-date data, it becomes more difficult to advocate for positive change.

D. *The American Law Deans Association's Ambiguous Stance on the Need for Tenure at All*

Historically, ALDA has opposed the tenure requirement under Standard 405(b), representing another structural barrier to equity in the legal academy.¹⁰¹ While the official ALDA position is difficult to ascertain,¹⁰²

99. See *supra* note 48 and accompanying text.

100. See *supra* note 49 and accompanying text.

101. One scholar asserts that “[ALDA] was organized largely to oppose ABA regulation of the status of skills teachers.” Minna J. Kotkin, *Clinical Legal Education and the Replication of Hierarchy*, 26 CLINICAL L. REV. 287, 292 n.16 (2019) (citing Marina Angel, American Law Dean Association (“ALDA”) *Attack on Tenure and Long Term Contracts §§ 205(c), 405, and 603(d)*, FEMINIST L. PROFESSORS BLOG (Mar. 30, 2006), <http://www.feministlawprofessors.com/2006/03/american-law-deans-association-alda-attack-tenure-and-long-term-contracts-aba-standards-%C2%A7%C2%A7-205c-405-and-603d/> [<https://perma.cc/YLG2-CF9X>]; see also Deborah Post, *The Attack on Tenure: Downwardly Mobile Professionals*, SALT (Aug. 10, 2020), <https://www.saltlaw.org/the-attack-on-tenure-downwardly-mobile-professionals/> [<https://perma.cc/J4YV-QTWH>] (stating that “the entire battle over tenure had been precipitated because clinicians and legal writing faculty asked for security of position similar to that afforded podium or doctrinal faculty was ignored”).

102. For example, in 2006, a document purportedly representing the position of ALDA that the ABA cease regulation of conditions of employment was filed with the Department of Education. See Geoffrey Manne, *Tenure and the Law Deans*, TRUTH ON MKT. (Apr. 4, 2006), <https://truthonthemarket.com/2006/04/04/tenure-and-the-law-deans/> [<https://perma.cc/A7SU-WBJ3>] (reporting that the ALDA statement was an objection to “the broad imposition of specific employment contract terms by a law school accrediting body, the ABA”). Questions arose as to the actual authorship of the document and as to whether it memorialized a position that was in fact taken with authorization from the organization. See, e.g., Angel, *supra* note 101 (questioning the makeup of the ALDA Board of Directors and questioning whether the statement had been voted upon by the ALDA membership); see also Andy Guess, *Threat to Tenure at Law Schools*, INSIDE HIGHER ED (May 4, 2007), <https://www.insidehighered.com/news/2007/05/04/threat-tenure-law-schools> [<https://perma.cc/VQ63-2V62>] (reporting questions raised as to “whether statements made on behalf of the [ALDA] board represent all of the board’s members”); Letter from Robert Kuehn, then President of CLEA, to Honorable Christine Durham, Chair Council on Legal Education and Admissions to the Bar; Hulett H. Askew, Consultant on Legal Education Section of Legal Education and Admissions to the Bar; and Donald J. Polden, Chair, Standards Review Committee (Nov. 4, 2010) (copy on file with authors) (objecting to the standards revision process and noting “with some dismay that the only commentary that seems to inform the Committee is the deregulatory agenda of the self-perpetuating Board (not the membership) of the American Law Deans Association”).

ALDA has stated that the ABA standards should not require a system of tenure.¹⁰³ Although ALDA favors deregulation generally, its statements help maintain the status quo. In 2012, a report from the Task Force on the Status of Clinicians and the Legal Academy observed, “For years, the [ALDA] has campaigned to gain more decanal control over programmatic and employment status decisions, consistently opposing ABA accreditation standards and interpretations of those standards that have provided protections for the security of position for clinical faculty.”¹⁰⁴

III. INSTITUTIONAL BARRIERS TO INTEGRATION AND EQUALITY

A host of barriers to gender integration and equality in the legal academy, particularly those in clinical and legal writing programs, exist at the institutional or law school level and vary widely among law schools. As noted above, women comprise 67 and 70%, respectively, of clinical and legal writing faculty,¹⁰⁵ a statistic that has not changed significantly for *decades*.¹⁰⁶ These institutional barriers include lower salaries and fewer perquisites; separate hiring practices; less security of position and lesser titles; diluted or no voting rights; burdensome workloads that prevent full participation in the life of the law school and lead to burnout; barriers to scholarly productivity, including dismissive attitudes towards legal writing scholarship; and under-crediting of coursework, which sends a confusing message to students about the value of skills-focused courses.

A. Lower Salaries and Fewer Perquisites

The pay gap for female law faculty at all status levels is difficult to ascertain.¹⁰⁷ As indicated, tenured women likely earn somewhere between 67 and 80% of their male peers’ salaries.¹⁰⁸ Women comprise the majority of faculty teaching skills-focused courses and earn significantly less than female tenured faculty.¹⁰⁹ Women of color earn less at all status levels than men and women in their peer group.¹¹⁰

103. Angel, *supra* note 101.

104. Bryan L. Adamson et al., *The Status of Clinical Faculty in the Legal Academy: Report of the Task Force on the Status of Clinicians and the Legal Academy*, 36 J. LEGAL PROF. 353, 360 (2012).

105. *See supra* notes 50–51 and accompanying text.

106. For example, the 1996 ABA Commission on Women in the Profession Report, *Elusive Equality*, characterized legal writing as the “pink ghetto.” AM. BAR ASS’N COMM’N ON WOMEN IN THE PROFESSION, *ELUSIVE EQUALITY: THE EXPERIENCES OF WOMEN IN THE LEGAL EDUCATION* 4 (1996). In 2000, Richard Neumann reported that “70 percent of legal writing teachers were women.” Richard Neumann, *Women in Legal Education: What the Statistics Show*, 50 J. LEGAL EDUC. 313, 326 (2000). That statistic remains today. *See, e.g.*, Entrikin et al., *supra* note 11, at 27.

107. *See supra* note 68–78 and accompanying text.

108. *See supra* note 71 and accompanying text.

109. *See supra* notes 47–53, 68–78 and accompanying text.

110. *See supra* note 23 and accompanying text.

Although male and female tenured faculty typically enjoy the same job perquisites, such as summer research grants, eligibility for sabbaticals, and funding for travel and professional development, not all skills-focused faculty do.¹¹¹ Since a greater percentage of women teach skills-focused courses, the impact on women faculty overall is disproportionate in this regard as well. For example, legal writing faculty are ineligible for paid sabbaticals at 14–64% of schools, depending on their security of position.¹¹² Fifty-five percent of clinical faculty are ineligible.¹¹³ As for travel and professional development funds, 95% of clinical faculty are eligible, but 11% receive less than tenured faculty, and 32% do not know what tenured faculty receive; at 21–38% of schools make certain legal writing faculty eligible based on their security of position, but not all grant comparable funding (e.g., less frequently or in smaller amounts).¹¹⁴

B. *Separate Hiring Practices*

At a significant number of schools, skills-focused faculty are hired using a different process from that used for hiring doctrinally focused, tenured faculty. For example, 67% of schools have clinical faculty on long-term contracts, but 38% report hiring by some method other than a faculty vote.¹¹⁵ Typically, these faculty are hired by the school's dean or a committee but without a subsequent faculty vote.¹¹⁶ Many legal writing faculty, even those hired on the tenure track, are not hired with full faculty input.¹¹⁷ A similar process may be used to evaluate skills-focused faculty hired in this manner when eligible for promotion and tenure,¹¹⁸ resulting in the faculty as a whole having little built-in opportunity to become familiar with their teaching and scholarship efforts. When committees as opposed to the full faculty are used to review legal writing faculty for promotion or tenure, only legal writing faculty with the same status as

111. See *infra* notes 112–14 and accompanying text.

112. 2020 ALWD/LWI SURVEY, *supra* note 51, at 94 (indicating eligibility at 14, 50, 64, and 63% of responding schools who have faculty with programmatic tenure or faculty on presumptively renewable, short-term, and long-term contracts, respectively).

113. CSALE SURVEY, *supra* note 50, at 61.

114. See *id.*; 2020 ALWD/LWI Survey, *supra* note 51, at 95 (indicating eligibility but to a limited degree at 21, 38, and 26% of schools with legal writing faculty on presumptively renewable, short-term, and long-term contracts, respectively).

115. CSALE SURVEY, *supra* note 50, at 20.

116. See *id.*; see also 2020 ALWD/LWI SURVEY, *supra* note 51, at 103 (indicating that deans and program directors do the bulk of the hiring).

117. See 2020 ALWD/LWI SURVEY, *supra* note 51, at 102 (indicating that full faculty approval is required only at 74, 53, 53, 19, and 21% of schools hiring legal writing faculty on traditional tenure, programmatic tenure, presumptively renewable, short-term, and long-term contracts, respectively).

118. *Id.* at 103.

those being reviewed are generally eligible to serve on those committees.¹¹⁹

Such hiring practices signal to the faculty as a whole that skills-focused faculty—again, primarily women—are less important than doctrinally focused, tenured faculty because the latter need not invest in the hiring process of the former. The segregation between these two faculty cohorts from the outset of employment establishes and contributes to exclusionary behavior and practices.

C. *Less Security of Position and Lesser Titles*

Separate hiring practices lead to less security of position for clinical and legal writing faculty. Only 29% of full-time clinical faculty have some form of tenure or are on a tenure track, a 9% decrease since 2013–2014.¹²⁰ Although ABA Standard 405(c) was enacted specifically to protect clinicians,¹²¹ only 33% have 405(c) status, with the remaining 38% having short-term, nonrenewable contracts ranging from one to five years or other unspecified employment terms.¹²² The percentage of full-time clinical faculty has dropped from 82% in 2010–2011 to 65% in 2019–2020.¹²³

Comparable data for individual legal writing faculty does not exist, but roughly 36% of law schools have some legal writing faculty (who are not solely directors) with some form of tenure, traditional or programmatic, or on a tenure track.¹²⁴ Forty-seven percent of schools report having some or all legal writing faculty with 405(c) status,¹²⁵ 20% report having some or all with long-term, non-presumptively renewable contracts,¹²⁶ and 44% report having some or all with short-term contracts.¹²⁷

119. *See id.* at 104–05. The clinical survey does not appear to collect this information.

120. CSALE SURVEY, *supra* note 50, at 18 (indicating that in 2020, 21% of clinical faculty had traditional tenure or were on the tenure track and 8% had clinical tenure or were on the clinical tenure track, as opposed to 28% and 10%, respectively).

121. Entrikin et al., *supra* note 11, at 11.

122. *See id.* at 23 n.104 (stating “that 70% of the 60% not on a tenure track have long-term presumptively renewable contracts under 405(c) of five or more years”).

123. CSALE SURVEY, *supra* note 50, at 17–18.

124. *See* 2020 ALWD/LWI SURVEY, *supra* note 51, at 60 (indicating that 61 out of 169 reporting schools have some legal writing faculty with traditional or programmatic tenure (or on track for tenure) who are not solely directors).

125. *See id.* (indicating that 79 out of 169 reporting schools have legal writing faculty with 405(c) contracts (or on track for 405(c) contracts) who are not solely directors).

126. *See id.* (indicating that 33 out of 169 reporting schools have legal writing faculty with long-term, non-presumptively renewable contracts who are not solely directors).

127. *See id.* (indicating that 74 out of 169 reporting schools have legal writing faculty with short-term contracts who are not solely directors).

Clinical and legal writing faculty also tend to have titles that signal their lesser status.¹²⁸ For example, non-tenure track faculty, specifically legal writing faculty, are likely to have titles other than professor of law, such as “Professor, Legal Writing” or “Professor of Legal Writing.” The inherent message is clear and deliberate. It identifies faculty who are *other*.¹²⁹ They teach skills, not doctrine.¹³⁰ Even though 36% of law schools make their legal writing faculty eligible for some form of tenure, and 47% provide presumptively renewable long-term contracts and some have done so for years,¹³¹ tenured faculty in our experience often still refer to legal writing faculty as “instructors,” a title that excludes them entirely from the professorship.¹³²

D. *Diluted or No Voting Rights*

Although female citizens can vote in governmental elections, a significant portion of female faculty teaching skills-focused courses are ineligible to participate in faculty governance.¹³³ Twenty-eight percent of all clinical faculty (67% of whom are women)¹³⁴ either cannot attend faculty meetings or can attend but have no voting rights, and 2% can vote only on administrative matters.¹³⁵ Thirty-three percent of schools with legal writing faculty on long-term contracts deny them any voting rights.¹³⁶ Similarly, 42% of schools with legal writing faculty on short-term contracts do not permit them to vote.¹³⁷ Often, legal writing faculty with 405(c) status can vote on some but not all matters, excluding those related to tenure decisions.¹³⁸ With no or diluted voting rights, these faculty are largely invisible, with no opportunity to provide meaningful input on curricular or other matters that affect their responsibility for students and unable to voice their concerns or affect policies on hiring or other employment matters.

128. See Durako, *supra* note 52, at 258–60.

129. Kathryn Stanchi, *Who Next, the Janitors? A Socio-Feminist Critique of the Status Hierarchy of Law Professors*, 73 UMKC L. REV. 467, 487 (2005).

130. *Id.* at 480; see also Kristen Konrad Robbins-Tiscione, *Philosophy v. Rhetoric in Legal Education: Understanding the Schism Between Doctrinal and Legal Writing Faculty*, 3 J. ASS’N LEGAL WRITING DIRECTORS 108, 113–14 (2006) (describing this dichotomy as valuing truth over style or the expression of truth).

131. See *supra* notes 61–63 and accompanying text.

132. Ruan, *supra* note 87, at 14, 28–29.

133. See, e.g., Durako, *supra* note 52, at 260–62.

134. See *supra* note 50 and accompanying text.

135. CSALE SURVEY, *supra* note 50, at 58.

136. 2020 ALWD/LWI SURVEY, *supra* note 51, at 89 (indicating that faculty on long-term contracts have no voting rights at eleven out of thirty-three schools).

137. See *id.* (indicating that faculty on short-term contracts have no voting rights at thirty-one out of seventy-four schools).

138. See *id.* at 89 (indicating that faculty on 405(c) or 405(c) track have voting rights on everything except matters related to tenure or promotion of faculty at fifty-five out of seventy-nine schools).

E. *The Perception of Skills-Focused Faculty as Teaching Undesirable and Less Intellectual Courses*

The ABA has required law schools to teach professional skills and provide students a rigorous writing experience since 1981.¹³⁹ Teaching legal writing in the first year has been required since 2002.¹⁴⁰ Despite these requirements, and in contrast to clinical faculty, legal writing faculty still perform the lower paying, lower status, gendered “service work” of legal educators,¹⁴¹ rather than the type of work that promotes recognition, advancement, and status. The undervaluing of legal writing education stems in part from the mistaken view that “writing is writing,” “writing can’t be taught,” and if students cannot write when they enter law school, it is too late to teach them.¹⁴²

In keeping with the view that women are caretakers more than scholars,¹⁴³ teaching writing is also considered less intellectual than teaching a doctrinal course, much as teaching rhetoric was considered inferior to teaching philosophy.¹⁴⁴ As Stanchi suggests, there is an implicit assumption that teaching a doctrinal course, such as Torts, is in some way more intellectual than teaching a writing assignment involving an issue of tort law.¹⁴⁵

F. *Burdensome Workloads that Prevent Scholarly Productivity and Full Participation in the Life of the Law School*

The teaching life of skills-focused faculty differs significantly from that of their doctrinally focused colleagues. Traditionally, doctrinally focused faculty conduct classes that take the primary form of lecture and discussion, with an exam at the end of the semester. This format allows one faculty member to teach a large number of students at the same time, with the demand of grading papers coming once at the end of the semester. This format works well, giving these faculty time to work on their scholarship during the year as well as during the summer and to attend various faculty gatherings during the semester, such as faculty workshops, job talks, and symposia or other local conferences.¹⁴⁶

Skills-focused faculty may teach fewer students at a time, but they review and provide formative assessment on multiple student drafts through-

139. See *supra* note 16 and accompanying text.

140. See *supra* note 16 and accompanying text.

141. See *supra* note 26 and accompanying text.

142. See, e.g., J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 WASH. L. REV. 35, 40–44 (1994).

143. See *supra* note 45 and accompanying text.

144. See generally Robbins-Tiscione, *supra* note 130.

145. See Stanchi, *supra* note 129, at 480.

146. Susan P. Liemer, *The Quest for Scholarship: The Legal Writing Professor’s Paradox*, 80 OR. L. REV. 1007, 1021 (2001) (describing the difficulties legal writing as opposed to doctrinally focused faculty face trying to find time to write).

out the semester and spend many hours in individual conferences.¹⁴⁷ This “crushing workload,”¹⁴⁸ effectively adopted by Interpretation 303-2 of ABA Standard 303,¹⁴⁹ interferes with legal writing faculty’s ability to produce scholarship.¹⁵⁰ It also makes it difficult for legal writing faculty to participate fully in the academic and social life of the law school, such as attending faculty functions, workshops, job talks, etc., scheduled during times legal writing faculty are conferencing with students.

The ABA currently recommends that faculty teaching required legal writing courses have thirty to thirty-five total students, regardless of how many sections of writing the faculty member teaches.¹⁵¹ Yet, a significant percentage of faculty teach significantly far more students and are required to serve on committees and required or encouraged to produce scholarship. Although the average number of students for full-time legal writing faculty ranges from twenty-nine to thirty-four (with the highest number of students sometimes taught by faculty with the least status),¹⁵² a significant number of contract faculty (with and without presumptively renewable terms) teach forty-one to fifty students¹⁵³ and up to ninety students at one school.¹⁵⁴ This heavy teaching burden is exacerbated by full-time legal writing faculty at all status levels being permitted, required, or

147. John A. Lynch Jr., *The New Legal Writing Pedagogy: Is Our Pride and Joy a Hobble?*, 61 J. LEGAL EDUC. 231, 237 (2011) (acknowledging the burden of teaching writing but blaming both legal writing faculty for developing a sophisticated process pedagogy to teach writing and the ABA for embracing it); see also Liemer, *supra* note 146, at 1016–17 (describing the burnout teaching writing causes); Stanchi, *supra* note 129, at 484 (explaining that the average workload for legal writing faculty requires the review of 3,000 pages of student writing and 100 hours in individual meetings).

148. Lynch Jr., *supra* note 147, at 237.

149. Interpretation 303-2 states, “[f]actors to be considered in evaluating the rigor of a writing experience include the number and nature of writing projects assigned to students, the form and extent of individualized assessment of a student’s written products, and the number of drafts that a student must produce for any writing experience.” 2020 ABA Standards, *supra* note 80, at 16.

150. See, e.g., Liemer, *supra* note 146, at 1012 (likening the challenge of finding time to teach and to write to “professional juggl[ing]”); Lynch Jr., *supra* note 147, at 237; see also 2020 ALWD/LWI SURVEY, *supra* note 51, at 126 (indicating that scholarship is expected or required for retention or promotion at the following number of schools: 54 (for tenure), 16 (for programmatic tenure), 31 (for 405(c) contracts), and 9 (for short-term contracts)).

151. Compare AM. BAR ASS’N, SOURCEBOOK ON LEGAL WRITING PROGRAMS 251 (J. Lyn Entrikin ed., 3d ed. 2020) (reducing the suggested ratio from the second edition of 30-45 students for clinical or contract faculty to 30-35), with AM. BAR ASS’N, SOURCEBOOK ON LEGAL WRITING PROGRAMS XX (Eric B. Easton ed., 2d ed. 2006).

152. See 2020 ALWD/LWI SURVEY, *supra* note 51, at 99.

153. See *id.* (indicating faculty on 405(c), long-term, and short-term contracts teach forty-one to fifty students at seventeen, fifteen, and six schools, respectively).

154. See *id.*

expected to serve on committees at all but nine schools (excluding faculty with short-term and long-term contracts).¹⁵⁵

G. *Barriers to Scholarly Productivity*

1. *Lack of Scholarship Mentoring*

Legal writing faculty tend not to receive the same kind or degree of scholarship mentoring as their peers on a tenure track.¹⁵⁶ This lack of mentoring may stem from implicit bias against the scholarly potential of legal writing faculty,¹⁵⁷ the lack of procedures in place for mentoring to occur in the normal course of faculty review, or a lack of established guidelines or expectations in their scholarship standards.

Doctrinally focused faculty on the tenure track routinely receive scholarship mentoring, as the school monitors their progress towards tenure.¹⁵⁸ In addition, because these faculty tend to develop expertise within a defined subject matter,¹⁵⁹ they have a ready group of identifiable mentors. Also, these faculty typically have substantive scholarship standards that denote the quantity and, in some instances, the quality or type of scholarship that counts toward tenure.¹⁶⁰

Legal writing faculty, who are not on the tenure track or required to publish, rarely receive institutional interest or feedback on their scholarly agenda or output. Although many law schools have adopted scholarship standards for legal writing faculty (at all status levels),¹⁶¹ they may not include stated requirements for the nature and number of articles or publications needed for promotion or retention. At many schools, it is unclear whether legal writing scholarship, which could include articles exploring the creation and meaning of legal texts and all forms of communication, legal writing pedagogy and curricula, and the importance of le-

155. See *id.* at 92. Fourteen percent of clinical faculty (including fellows) cannot participate in or vote on any committee. CSALE SURVEY, *supra* note 50, at 59.

156. See, e.g., Liemer, *supra* note 146, at 1013–20 (describing generally the lack of scholarship support for legal writing faculty).

157. See *infra* Section III.E.

158. See Nancy Levit, *Scholarship Advice for New Law Professors in the Electronic Age*, 16 WIDENER L.J. 947, 952 (2007) (explaining that “[t]enuring bodies are looking for indications that candidates are interested in writing and will be productive scholars over an academic lifetime”).

159. *Id.* at 951 (questioning “Does your school expect to predict, at the end of your tenure-track period, whether you are likely to become a leading scholar in your chosen area?” (quoting Williams R. Slomanson, *Legal Scholarship Blueprint*, 50 J. LEGAL EDUC. 431, 437–38 (2000))).

160. See, e.g., *id.* at 949–50. Levit explains that most tenure standards set forth the “number of publications required for promotion and tenure.” *Id.* at 949. Moreover, “many schools also impose a qualitative requirement that may ‘depend on a number of factors including: positive reads by the senior faculty members in [the candidate’s] field, a good journal placement for the article, lots of citations, and approval from outside readers.’” *Id.* (quoting Devin Carbado & Mitu Gulati, *Tenure*, 53 J. LEGAL EDUC. 157, 160 (2003)).

161. See 2020 ALWD/LWI SURVEY, *supra* note 51, at 106.

gal writing and other skills training in legal education, would count as scholarship towards promotion or retention.¹⁶²

2. *Dismissive Attitude Toward Legal Writing Scholarship*

In spite of these institutional challenges, legal writing faculty have produced significant scholarship on legal writing that builds the discipline and improves the status of legal writing faculty.¹⁶³ But scholarship by legal writing faculty on legal writing topics is devalued or disregarded at many law schools.¹⁶⁴ As Stanchi explains, having identified scholarship as the “cultural capital” for advancement, schools then impose significant barriers to the ability of legal writing faculty either to produce scholarship or be recognized for the scholarship they do produce.¹⁶⁵ When schools fail to recognize the value of legal writing scholarship, legal writing faculty are forced to develop expertise in another, second area of the law,¹⁶⁶ writing scholarship that does little to develop their teaching expertise and the discipline of legal writing; moreover, it is likely to be undervalued by the scholars teaching in that area as written by an outsider.¹⁶⁷

162. See generally Kristen K. Tiscione, *The Next Great Challenge: Making Legal Writing Scholarship Count as Legal Scholarship*, 22 J. LEGAL WRITING INST. 50 (2018).

163. There are two peer-reviewed journals that have published sixteen and twenty-three annual volumes, respectively. See *Legal Communication & Rhetoric: JALWD*, ASS'N LEGAL WRITING DIRECTORS, <https://www.alwd.org/aboutlcr> [<https://perma.cc/5GED-RN7C>] (last visited Oct. 28, 2020); J. LEGAL WRITING INST., <http://www.legalwritingjournal.org> [perma.cc/H3H2-D6UC] (last visited Oct. 28, 2020). Just one bibliography of a sub-discipline of legal writing, *Applied Legal Storytelling*, shows 100 entries. See J. Christopher Rideout, *Applied Legal Storytelling: A Bibliography*, 12 LEGAL COMM. & RHETORIC: JALWD 247 (2015), <https://www.alwd.org/lcr-archives/fall-2015-volume-12/58-applied-legal-storytelling-a-bibliography> [<https://perma.cc/T6LA-NT3G>]; see also Terrill Pollman & Linda H. Edwards, *Scholarship by Legal Writing Professors: New Voices in the Legal Academy*, 11 J. LEGAL WRITING INST. 3, 59–212 (2005) (listing the scholarly works of nearly 300 legal writing professionals); Terrill Pollman, *Building a Tower of Babel or Building a Discipline? Talking About Legal Writing*, 85 MARQ. L. REV. 887, 887–88 n.4 (2002) (discussing the emergence of legal writing scholarship).

164. See Jan M. Levine, *Voices in the Wilderness: Tenured and Tenure-Track Directors and Teachers in Legal Research and Writing Programs*, 45 J. LEGAL EDUC. 530, 545 (1995); Stanchi, *supra* note 129, at 485; Tiscione, *supra* note 162, at 52 (noting the idea “that legal writing scholarship is no less scholarly than the subject we [legal writing faculty] teach remains a significant barrier to equality”).

165. Stanchi, *supra* note 129, at 485.

166. See, e.g., Mary Beth Beazley, “Riddikulus!”: *Tenure-Track Legal-Writing Faculty and the Boggart in the Wardrobe*, 7 SCRIBES J. LEGAL WRITING 79, 84 (2000) (noting that “some schools have even forced tenure-track legal-writing professionals to develop another area of specialization by refusing to accept legal-writing scholarship as part of the tenure-review process”); Tiscione, *supra* note 162, at 53.

167. See Tiscione, *supra* note 162, at 53 (expressing doubt that traditional faculty are uniformly generous when evaluating scholarship on legal doctrine authored by legal writing faculty).

H. *Undercrediting of Legal Writing Courses*

According to the most recent survey conducted by LWI and ALWD, 53% of schools require two semesters of legal writing.¹⁶⁸ Twenty-three percent also require a third semester, usually in the fall of the second year, and 11% require four semesters.¹⁶⁹ However, at nineteen percent (32) of law schools, students earn four or fewer credits for their required legal writing courses.¹⁷⁰ Law school websites indicate that traditional first-year courses, such as Torts, Contracts, Civil Procedure, Property, Criminal Law, and Constitutional Law earn three or four credits per semester. When legal writing courses are allotted fewer credits than the rest of the courses in the students' course load (e.g., two credits in legal writing as opposed to three or four in Torts), students understand that the school places a higher value on their non-writing curriculum, and they make understandable cost-benefit analyses in determining how to apportion their time, often to the detriment of their writing and competitiveness in the job market.

I. *Physical Separation from Doctrinal Faculty*

Differences in hierarchy and status are also evident in the assignments of office space¹⁷¹ and a law school's categorization and showcasing of faculty on its promotional materials, including the law school website. With respect to physical separation, at many law schools, legal writing faculty are grouped together or in office locations that keep them separate from doctrinally focused faculty.¹⁷² The offices housing faculty teaching legal writing may be smaller or otherwise less desirable, such as not having windows.¹⁷³ At some locations, they may be in a different building altogether. Legal writing faculty may also be listed separately in the faculty directory or the faculty website. These faculty may even be explicitly designated as "other."

168. 2020 ALWD/LWI SURVEY, *supra* note 51, at 19–20 (indicating 90 out of 169 schools have two required courses with a mean credit total of 6.0).

169. *See id.* at 19 (indicating 17% of schools (twenty-nine) have a second required course on persuasive writing).

170. *See id.* at 20.

171. *See Durako, supra* note 52, at 255–58.

172. One of the co-authors of this article has her office on a lower floor of the law school, where legal writing and clinical faculty offices are located, apart from doctrinal faculty, whose offices are on higher floors. The message this sends to students and faculty is both unmistakable and obvious.

173. The policy of another author's law school is to assign window offices to new legal writing faculty not as of right but based on availability, unlike with tenure-track faculty, who routinely get window offices. In addition, legal writing faculty are not eligible to participate in the office lottery for faculty who wish to move to a vacant, more desirable office.

IV. EFFORTS OF LEGAL WRITING ORGANIZATIONS TO ACHIEVE
INTEGRATION AND EQUALITY

In light of these challenges, early in the development of the discipline, legal writing faculty collectively formed two organizations, the Legal Writing Institute (LWI) and the Association of Legal Writing Directors (ALWD). These organizations were formed to provide teaching and scholarship support, as well as to advocate for the recognition of their members as full and valuable citizens of the legal academy. Advocacy efforts were directed at improving the writing curriculum, security of position, governance rights, salaries, and related benefits.¹⁷⁴

Comprised primarily of women, LWI and ALWD share certain characteristics with the suffragist organizations of the late nineteenth and early twentieth centuries, in terms of the gender bias they fight against and in the ways in which they have divided their efforts. Both sets of groups formed in response to political opportunity that drove their members to mobilize, had sufficient resources in the form of energetic members, and worked from ideals and issues of equality susceptible to ideological framing.¹⁷⁵

In the United States, the women's rights movement began with a convention, held in Seneca Falls, New York in 1848. Elizabeth Cady Stanton and Lucretia Mott wrote and read aloud the famous Declaration of Sentiments—the foundational document of the Women's Movement.¹⁷⁶ The document outlines the rights they argued women need to achieve equality of citizenship, drawing their inspiration largely from the Declaration of Independence.¹⁷⁷ The convention led to the formation of suffrage organizations, including, eventually, the National American Woman Suffrage Association and the National Woman's Party.¹⁷⁸

The two organizations took different approaches to their lobbying efforts. The National American Women Suffrage Association (NAWSA), founded first, focused a great deal of energy on efforts at the state level.¹⁷⁹ It held conferences, lobbied state legislatures, and sent its leaders (such as Elizabeth Cady Stanton and Susan B. Anthony) to states to give speeches.

174. Lawrence, *supra* note 18.

175. Holly J. McCammon, *Stirring Up Suffrage Sentiment: The Formation of the State Woman Suffrage Organizations, 1866–1914*, 80 SOC. FORCES 449, 450 (2001); *see also* SIDNEY TARROW, *POWER IN MOVEMENT: SOCIAL MOVEMENTS, COLLECTIVE ACTION AND POLITICS* 17–18 (Cambridge Univ. Press 1st ed. 1994).

176. The 1848 text is available online at the website of the National Park Service. *See Declaration of Sentiments, Women's Rights*, NAT'L PARK SERV., <https://www.nps.gov/wori/learn/historyculture/declaration-of-sentiments.htm> [<https://perma.cc/L6YE-F27S>] (last visited Oct. 28, 2020).

177. *See id.* The document begins with the famous language, “[w]hen, in the course of human events . . .,” and in the next paragraph, declares, “[w]e hold these truths to be self-evident.” *Id.*

178. *See* COOLIDGE, *supra* note 1, at 87. Its leaders included Alice Stone Blackwell, Elizabeth Cady Stanton, and Susan B. Anthony. *Id.* at 89.

179. McCammon, *supra* note 175, at 453.

The National Woman's Party (NWP), led by Alice Paul, split from NAWSA in 1913. That group focused its suffrage efforts at the national level, working towards a federal constitutional amendment.¹⁸⁰

The formation of the legal writing organizations followed a similar path. LWI was also founded after a national conference. Formed in 1985, it was conceived at a 1984 legal writing conference, hosted by Professors Chris Rideout and Laurel Oates at the University of Puget Sound School of Law.¹⁸¹ ALWD was formed eleven years later by directors of legal writing programs.¹⁸² Like the suffrage organization NAWSA, LWI has focused on providing support to members on the local level—individual law schools. To do that, LWI created the first journal dedicated to legal writing scholarship¹⁸³ and devised the first survey of law schools and legal writing programs.¹⁸⁴ Like the NWP, ALWD has focused more on national efforts, advocating on behalf of all legal writing faculty before the Council of the Section of Legal Education and Admissions to the Bar with respect to accreditation standards¹⁸⁵ and publishing a citation manual designed by and for legal writing faculty to make citation more accessible to legal writing practitioners.¹⁸⁶

In their efforts to achieve integration and equality in the legal academy, ALWD and LWI have battled the same gender bias that fueled the arguments against suffrage more than 100 years ago—the intellectual ability of women to be more than caretakers in the home. Just as ALWD and LWI work to demonstrate the merit and worth of (primarily) women teaching legal writing and producing related scholarship, the suffrage organizations worked to oppose the assumption that women lacked the intellect to understand politics, vote responsibly, or think creatively.¹⁸⁷

A. *The Legal Writing Institute (LWI)*

LWI, the first independent organization of legal writing faculty, was created in part because AALS was not providing enough support to legal writing section members.¹⁸⁸ Unlike clinical professors, for whom AALS

180. COOLIDGE, *supra* note 1, at 115–18, 181 (timeline).

181. Lawrence, *supra* note 18, at 214.

182. *About ALWD*, *supra* note 19.

183. Lawrence, *supra* note 18, at 232.

184. *Id.* at 239. Today, ALWD and LWI work together to conduct the survey.

185. *See ABA Engagement*, *supra* note 92.

186. *Guide to Legal Citation*, ASS'N LEGAL WRITING DIRECTORS, <https://www.alwd.org/about-guide> [<https://perma.cc/F3K3-9PQ4>] (last visited Oct. 28, 2020).

187. *See, e.g.*, Kara Swanson, *Inventing the Woman Voter: Suffrage, Ability and Patents*, 60 J. GILDED AGE & PROGRESSIVE ERA 559 (2020) (explaining the doubt as to women's ability to be inventors). In response, Matilda Joslyn Gage published a pamphlet titled *Women as Inventor*, describing numerous patents and inventions of women. M. E. JOSLYN GAGE, *WOMAN AS INVENTOR* (1870), [https://iif.lib.harvard.edu/manifests/view/drs:2575141\\$2i](https://iif.lib.harvard.edu/manifests/view/drs:2575141$2i) [<https://perma.cc/7PPA-55CW>].

188. Lawrence, *supra* note 18, at 225.

organized annual meetings, there was only one national conference that AALS organized for legal writing professors.¹⁸⁹ To fill this void, Professors Chris Rideout and Laurel Oates used part of a grant from the National Endowment for the Humanities to hold a national conference in 1984.¹⁹⁰ The conference was so successful that at its close, participants looked for ways to maintain the professional contacts made at that event.¹⁹¹

A year later, a group of faculty met as a Board of Directors at the newly formed Legal Writing Institute.¹⁹² Most of the early work provided professional development in terms of teaching and scholarship support via biennial conferences; the publication of *The Journal of the Legal Writing Institute*, a peer-reviewed journal, now in its thirty-second year; the publication of a newsletter, now known as *The Second Draft*; the facilitation of conversation through an active community listserv still active today; a teaching-materials “Idea Bank” (now known as the Teaching Bank); and various related committees.

Since it began, LWI has been staffed and funded completely by member volunteers.¹⁹³ Organizers of the first conference had to pledge their own salaries to the law school in the event the conference costs exceeded the grant funds, and many attendees had to pay out of pocket in the absence of professional development funding.¹⁹⁴

LWI has focused on the work of legal writing faculty at their home schools, providing critical information on legal writing programs across the country and calling upon law schools to treat legal writing faculty equally. After the 1984 conference at Seattle and, much like the Seneca Falls *Declaration of Sentiments*, Professors Terrill Pollman and Jill Ramsfield proposed a *Statement on Security in Employment for Legal Writing Professionals*, urging law schools to extend legal writing faculty the same job security available to other law faculty.¹⁹⁵ The statement included a list of five adverse effects caused by hiring legal writing faculty on short term contracts.¹⁹⁶

Today, LWI hosts one major conference every year and one-day workshops across the country each fall semester; publishes its peer-reviewed journal, *The Journal of Legal Writing*,¹⁹⁷ two collections of articles on

189. *Id.*

190. *Id.* at 215.

191. *Id.* at 217–24.

192. *Id.* at 227.

193. This has not changed. As of 2020, the Legal Writing Institute has no employees and is maintained by thousands of volunteer hours donated by its more than 1,000 members nationwide. The authors are all former presidents of the Legal Writing Institute.

194. Lawrence, *supra* note 18, at 216.

195. *Id.* at 222–23.

196. *Id.* at 223.

197. See *Legal Writing Journal*, LEGAL WRITING INST., <http://www.legalwritingjournal.org/> [<https://perma.cc/3583-MEGR>] (last visited Oct. 28, 2020).

pedagogy (*The Second Draft*¹⁹⁸ and *The Monograph Series*¹⁹⁹), and a newsletter featuring the careers of its members (*LWI Lives*).²⁰⁰ It also maintains a sophisticated website for its members, including a Teaching Bank with sample teaching problems.²⁰¹

Recently, in 2015, LWI formed two committees to address status-based inequities at individual, law school, and institutional levels. The Discipline Building Working Group works to promote scholarship creation and scholarship consumption.²⁰² The Professional Status Committee was formed to reaffirm LWI's original *Citizenship Statement*,²⁰³ to support members involved in status debates at their law schools, and to consider best practices under Standard 405(c).²⁰⁴ Soon thereafter, the Professional Status Committee members wrote, and the LWI Board adopted, a *Full Citizenship Statement for All Law Faculty*, once again calling on law schools to treat all full-time faculty as equal regardless of the subject matter they teach.²⁰⁵

198. See *The Second Draft*, LEGAL WRITING INST., <https://www.lwionline.org/publications/second-draft> [<https://perma.cc/92X7-66RN>] (last visited Oct. 28, 2020).

199. See *Monograph Series*, LEGAL WRITING INST., <https://www.lwionline.org/publications/monograph-series> [<https://perma.cc/7Y79-C4TA>] (last visited Oct. 28, 2020).

200. See *LWI Lives*, LEGAL WRITING INST., <https://www.lwionline.org/publications/lwi-lives> [<https://perma.cc/V5BD-YA4U>] (last visited Oct. 28, 2020).

201. See *The Professional Status Committee and Status-Related Advocacy*, *supra* note 92.

202. The Discipline Building Working Group created an annual award for excellence in legal writing scholarship, organizes tri-annual scholarship writing retreats, promotes recent publications by sending out discussion points on the national listserv, and presents updates to members at conferences semi-annually. See *Discipline Building Working Group*, LEGAL WRITING INST., <https://www.lwionline.org/resources/committees> [<https://perma.cc/CJY8-LA5M>] (last visited Oct. 28, 2020); *Teresa Godwin Phelps Award*, LEGAL WRITING INST., <https://www.lwionline.org/awards/phelps-award> [<https://perma.cc/8DVT-A3VQ>] (last visited Oct. 28, 2020); *We Write Retreats*, LEGAL WRITING INST., <https://www.lwionline.org/conferences/we-write-retreats> [<https://perma.cc/V2YF-5SYW>] (last visited Oct. 28, 2020); *Peer Scholarship Exchange*, LEGAL WRITING INST., <https://www.lwionline.org/conferences/peer-scholarship-exchange> [<https://perma.cc/E9LR-M5EJ>] (last visited Oct. 28, 2020).

203. *Full Citizenship Campaign for All Law Faculty*, *The Professional Status Committee and Status-Related Advocacy*, LEGAL WRITING INST., <https://www.lwionline.org/resources/status-related-advocacy#Full%20Citizenship%20Campaign%20for%20All%20Law%20Faculty> [<https://perma.cc/CN5M-FS2E>] (last visited Oct. 28, 2020).

204. *Id.*

205. *Id.* The text is simple:

No justification exists for subordinating one group of law faculty to another based on the nature of the course, the subject matter, or the teaching method. All full-time law faculty should have the opportunity to achieve full citizenship at their institutions, including academic freedom, security of position, and governance rights. Those rights are necessary to ensure that law students and the legal profession benefit from the myriad perspectives and expertise that all faculty bring to the mission of legal education.

To date, over 570 law deans and faculty have signed the statement,²⁰⁶ which has also been adopted by SALT²⁰⁷ and ALWD.²⁰⁸ CLEA advertised the statement on its website.²⁰⁹ Individual law professors also signed the statement at the LWI and SALT conferences in 2016.²¹⁰

More recently, LWI's Professional Status Committee has published articles on best practices for compliance with Standard 405(c),²¹¹ compiled data on schools that provide tenure eligibility for legal writing faculty,²¹² compiled data on schools where legal writing programs are no longer under the supervision of a director,²¹³ and created toolkits for members to use in negotiating status issues at their home schools.²¹⁴

B. *Association of Legal Writing Directors (ALWD)*

The second major organization of legal writing faculty, ALWD, was formed in 1996.²¹⁵ Several legal writing program directors, who were also LWI members, wanted to form an organization that would help their members advocate for the legal writing faculty they supervised, often with less security of position. They also wanted to engage in advocacy directed at a national level, a direction LWI Board of Directors had not taken.²¹⁶

Id.

206. *Id.*

207. *LWI & ALWD Full Citizenship Project for All Law Faculty*, SOC'Y AM. L. TEACHERS (Mar. 8, 2017), <https://www.saltlaw.org/lwi-alwd-full-citizenship-project-law-faculty/> [<https://perma.cc/AEC9-37GB>].

208. *About ALWD*, *supra* note 19.

209. The website announcement is no longer available; CLEA updated its website in 2019.

210. The co-authors volunteered at the signature tables during the 2016 Biennial Conference of the Legal Writing Institute and the 2016 Teaching Conference of the Society of American Law Teachers. Volunteers at the signature tables even wore white shirts, evoking the image of suffragists in their white dress costumes. *See, e.g., Image 47 of National American Woman Suffrage Association Records: Subject File, 1851-1953*, LIBR. CONGRESS, https://www.loc.gov/resource/mss34132.mss34132-036_00322_00372/?sp=47&r=-0.078,-0.031,1.156,0.616,0 [<https://perma.cc/6LT7-CUZ3>] (last visited Oct. 28, 2020).

211. *See* Melissa H. Weresh, *Best Practices for Protecting Security of Position for 405(c) Faculty*, 66 J. LEGAL EDUC. 538 (2017). Companion articles in the same volume discuss status issues related to compliance with Standard 405(c).

212. *Data Compilations, Schools with Tenure Eligibility for LRW Faculty as of 6/19, The Professional Status Committee and Status-Related Advocacy*, LEGAL WRITING INST., <https://www.lwionline.org/resources/status-related-advocacy> [<https://perma.cc/5WP4-HHY4>] (last visited Oct. 28, 2020).

213. *Data Compilations, Schools with Autonomous LRW Program as of 7/18, The Professional Status Committee and Status-Related Advocacy*, LEGAL WRITING INST., <https://www.lwionline.org/resources/status-related-advocacy> [<https://perma.cc/WHA9-4RM2>] (last visited Oct. 28, 2020).

214. *Toolkits on Faculty Status, Security of Position, Workload, and Voting Rights*, LEGAL WRITING INST., <https://www.lwionline.org/resources/status-related-advocacy> [<https://perma.cc/WHA9-4RM2>] (last visited Oct. 28, 2020).

215. *About ALWD*, *supra* note 19.

216. Lawrence, *supra* note 18, at 242.

ALWD's primary mission has been to advocate for legal writing faculty with respect to ABA-accreditation standards, specifically Standard 405.²¹⁷ ALWD soon became one of the ABA Council's affiliate organizations, eligible to attend and speak at meetings. Over the years, ALWD has filed numerous statements with and testified on behalf of legal writing at hearings of the Council.²¹⁸

Today, ALWD welcomes as its members both legal writing program directors and designated representatives from law schools without directors. It hosts a major biennial conference; publishes a second peer-reviewed journal, *Legal Communication & Rhetoric: JALWD*, which features legal writing scholarship of interest to the practicing bench and bar;²¹⁹ continues to lobby on behalf of the legal writing community on changes to ABA Standards, and maintains its own listserv and sophisticated website, with information and resources for members. More recently, ALWD has adopted and implemented a Strategic Action Plan²²⁰ and launched an innovative program to train and develop leaders both in the discipline and in the legal academy more generally.²²¹

C. ALWD and LWI Successes

The success of these organizations is demonstrated in the survey data. Each semester, one or more law schools announce the establishment of a pathway to tenure for its legal writing professors. The most recent list shows 47 schools²²² whereas the 1999 survey identifies only eight schools where legal writing professionals had access to tenure.²²³

217. *ABA Engagement*, *supra* note 92.

218. *ALWD Comments on ABA Standards*, ASS'N LEGAL WRITING DIRECTORS, <https://www.alwd.org/aba-engagement/alwd-comments-on-aba-standards> [<https://perma.cc/WL8U-8UCA>] (last visited Oct. 28, 2020). Both websites detail the division of labor between ALWD and LWI. See *Summary of ALWD and LWI's Status-Related Advocacy Work*, ASS'N LEGAL WRITING DIRECTORS, <https://www.alwd.org/images/resources/Summary-ALWD-LWI-Models.pdf> [<https://perma.cc/4Q8Z-F52K>] (last visited Oct. 28, 2020); *The Professional Status and Status-Related Advocacy*, *supra* note 92.

219. See *Legal Communication & Rhetoric: JALWD*, *supra* note 163. The journal has been successful in reaching its audience: it has over 3,000 subscribers including members of the federal and state judiciaries as well as many private-practice, government, and public interest attorneys.

220. *Commitment to Diversity*, ASS'N LEGAL WRITING DIRECTORS, <https://www.alwd.org/about/commitment-to-diversity> [<https://perma.cc/Y6AS-5MBX>] (last visited Oct. 28, 2020).

221. *Leadership Academy*, ASS'N LEGAL WRITING DIRECTORS, <https://www.alwd.org/leadership-academy> [<https://perma.cc/QT53-K9G9>] (last visited Oct. 28, 2020).

222. *The Professional Status Committee and Status-Related Advocacy*, *supra* note 92.

223. See JO ANNE DURAKO, 1999 ALWD/LWI SURVEY HIGHLIGHTS 13 (1999), [https://www.alwd.org/images/resources/1999%20Survey%20Report%20\(AY%201998-1999\).pdf](https://www.alwd.org/images/resources/1999%20Survey%20Report%20(AY%201998-1999).pdf) [<https://perma.cc/256R-5EN5>] (last visited Oct. 28, 2020).

One of the most successful resources LWI (and now ALWD) have developed has been a survey of the field, dating back to 1990.²²⁴ Every year, the survey collects information on legal writing programs nationwide, including questions on the number and nature of legal writing courses offered, credits, curricular content, faculty workload, and the status of the faculty teaching those courses, including job security, voting rights, and salary ranges. The survey data have been of critical value to members of the legal writing community, who use it to argue for improved curricular offerings, status, and benefits at their home schools.²²⁵

Legal writing faculty note their success on the LWI and ALWD listservs, crediting the survey in particular with helping them negotiate increases in salary, increases in credits for the first-year legal writing courses, changes to titles, access to professional development funds for conferences and scholarship. The accessibility of the data, the constancy of the data-collection, and the high response rate all contribute to its authenticity and persuasiveness. If there is one thing that other groups might take away from this history, it is to collect data—continuously.

CONCLUSION

Just as women struggled for decades for equal rights, including the right to vote, women struggle today for integration and equality in the workplace. Women continue to be segregated into lower paying, lower status occupations, and the legal academy is no exception. Women law faculty hold fewer tenured positions than men, and tenured women consistently earn less than their male colleagues. In addition, the majority of legal writing, clinical, and library faculty—all primarily women—have less security of position, ranging from presumptively renewable to short-term contracts. The limited salary data available strongly suggest that the gender pay gap for this group of contract faculty is significantly higher than the overall average.

Although this predominantly female faculty cohort is entitled to equal treatment under both Titles VII and IX, a host of social and cultural, organizational, and institutional barriers continues to prevent them from achieving equity in the legal academy. These barriers include persistent notions about women as caretakers and service providers rather than scholars; the status hierarchy imposed by ABA Standard 405 for the accreditation of law schools; lesser treatment in terms of security of position, salary, benefits, voting rights, and other perquisites of law faculty; their designation as “other,” and the lack of respect for and support for the courses they teach as well as their scholarship. The resulting disparate

224. Lawrence, *supra* note 18, at 240.

225. See ASS'N OF LEGAL WRITING DIRECTORS/LEGAL WRITING INST., REPORT OF THE ANNUAL LEGAL WRITING SURVEY 94 (2015), [https://www.alwd.org/images/resources/2015%20Survey%20Report%20\(AY%202014-2015\).pdf](https://www.alwd.org/images/resources/2015%20Survey%20Report%20(AY%202014-2015).pdf) [<https://perma.cc/NRJ5-8SU4>].

impact on female law faculty has persisted and been exposed and ignored for decades.

Like the suffrage organizations, LWI and ALWD work to raise awareness of gender discrimination and to confront barriers to equality in legal education. And again, like the suffragists, their efforts are often met with resistance and anger. Although they have made undeniable progress, neither organization has the power to break down barriers outside of their control. Denying women faculty—a large percentage of whom lack equal status and respect—the same benefits afforded male faculty establishes an inequitable workplace norm that is replicated in the profession itself.