

Stop the Presses: Gender-Based Differences Discovered in the Legal-Writing Profession

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For over 25 years, empirical research has provided insights into legal-writing programs in American law schools.¹ Through periodic surveys, legal-writing professors have collected data and measured virtually every conceivable, or at least quantifiable, aspect of such programs. But only during this past summer's survey did we consider gender-based differences in the treatment of directors and instructors.²

By adding a single new question to the annual survey — one that hadn't been asked in the seven earlier surveys — we discovered some startling news: among directors of legal-writing programs, women are treated less well than men. For starters, women directors have lower salaries, less prestige, and less job security than their male counterparts. Now is this news startling enough to stop the presses?

To investigate, I started my analysis by comparing the salaries of female and male directors. In a quick comparison of annual salaries, I found an astounding disparity: an average annual salary of \$67,331 for women, but \$80,000 for men.³

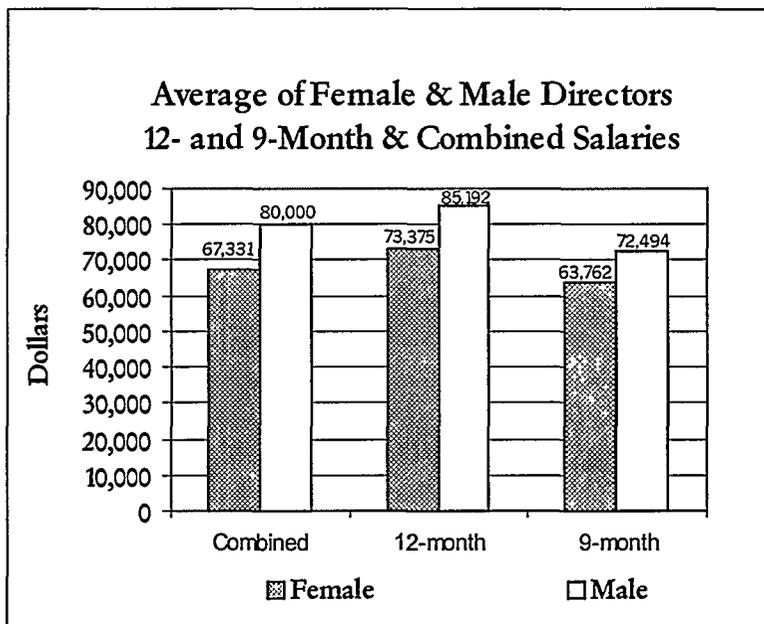
So I ran more comparisons to see if this first disparity was a statistical anomaly. It wasn't. The annual salary numbers are part of a pattern: women earn less than men for 12-month periods (\$73,375 for women vs. \$85,192 for men) and for academic-year periods (\$63,762 for women vs. \$72,494 for men). In fact, women directors must work a full calendar year to average the same salary as men for a 9- or 10-month

¹ See Jan M. Levine, *Legal Research and Writing: What Schools Are Doing, and Who Is Doing the Teaching*, 7 SCRIBES J. LEGAL WRITING 50, 52–53 (1998–2000).

² Association of Legal Writing Directors & Legal Writing Institute, 1999 Survey Results (conducted by Jo Anne Durako) (copy on file with the author).

³ *Id.* app. A, at 1.

academic-year contract (\$73,375 for women for 12 months vs. \$72,494 for men for 9 or 10 months).⁴ And more men who head legal-writing programs make six-figure salaries than their female colleagues (6 of 22 males vs. 4 of 67 females).⁵ Finally, as one might expect from this pattern of wage disparity, a woman director had the lowest reported annual salary, at \$30,000, and a man director had the highest, at \$135,000 — a difference of more than \$100,000 a year! What's going on here?

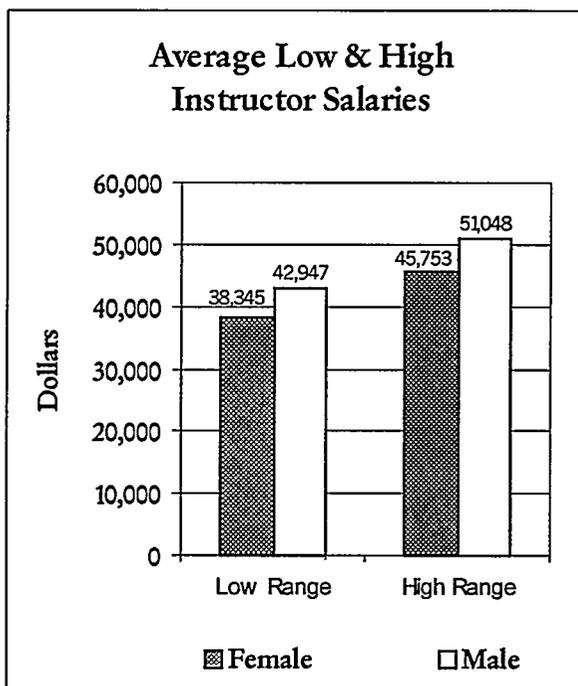


To discover whether this difference in pay was limited to legal-writing *directors*, a relatively small group in the legal-writing profession, I looked at the salaries of all legal-writing teachers. Although the 1999 survey collected limited salary data — starting salaries and salary ranges of nondirector teachers — these figures again reflected gender-based disparities. The figures revealed that teachers working for women

⁴ *Id.*

⁵ *Id.*

directors are paid less than those working for men directors — at both ends of the salary range. At the low end, the average salary for these teachers was \$38,345, as compared to \$42,947 for teachers working for men directors. At the high end, those working for women directors earned an average of \$45,753, as compared to \$51,048 for those working for men. Teachers working for women directors also had the lowest annual salary reported (\$20,800).⁶ So the director's gender was significantly related to the salaries of the legal-writing teachers at the law school.



I considered whether these disturbing differences were an illusion created by a selective response pattern among survey participants. A total of 117 law schools responded, a seemingly good sample size from the 180 or so accredited American law schools. Perhaps the sample size

⁶ *Id.* app. A, at 4.

was skewed by the small number of male respondents. But the respondents were 74% female and 26% male⁷ — a breakdown that mirrors the gender distribution of the Association of Legal Writing Directors, a valid standard. So the pattern of disparity is real, not illusory.

Because money is not the sole measure of value, I also looked at professional titles. Perhaps women directors were being rewarded in prestige if not in cash. But the pattern of gender differences continued. I found that more men had titles of *professor* or *professor of legal writing* in official law-school materials (64% of men are *professors* vs. 51% of women; 12% of men are *professors of legal writing* vs. 5% of females). And more women had the lower-prestige titles of *director* and *instructor* (14% of women are *directors* vs. 8% of men; 5% of women are *instructors* vs. 0% of men).⁸

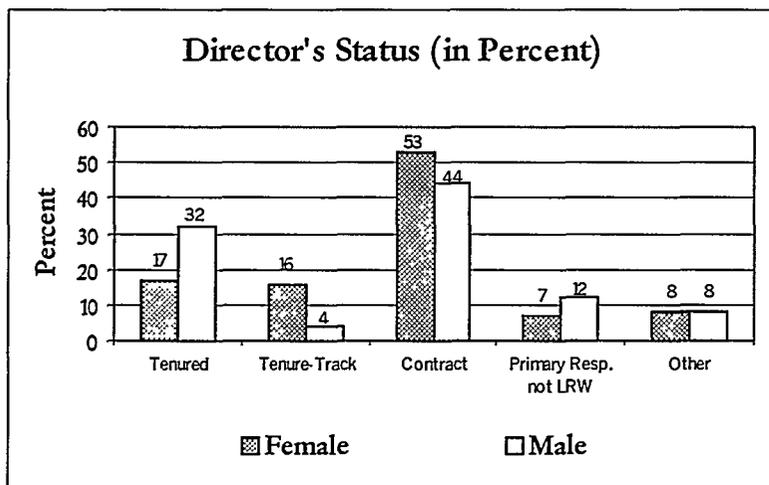
Continuing the search for good news, I examined job security — tenure, the golden ring of academia. But on that score, women directors fare as badly as our doctrinal colleagues outside the field of legal writing. Men directors lead in the tenure race almost two to one, or 32% to 17%. In a field where the ratio of women to men is 3 to 1, the tenure imbalance is profoundly disheartening.

But not all the news was bad. Significantly more women than men are on tenure track (16% of females vs. 4% of males). If all those women can make it to tenure and grasp that golden ring, the combined levels of tenured and tenure-track women will begin to close the gap with their male colleagues (33% women vs. 36% men). (That is, of course, if no more men move into the tenured and tenure-track slots.) You have to wonder, though, why proportionally more men than women were already tenured (8 tenured of 31 men responding; 13 tenured of 86 women responding).⁹

⁷ *Id.* at 1 (86 women and 31 men responding).

⁸ *Id.* app. A, at 2.

⁹ *Id.* app. A, at 1.



At this point I had looked at salary, prestige, and job security, and in each instance the pattern of unfair treatment for women was repeated. Was I looking for fairness in all the wrong places? Perhaps women were given greater professional opportunities to do high-status work like teaching outside the first-year writing courses. No one enjoys being stuck in the trenches of teaching the incoming 1Ls, with all the papers to review, hands to hold, and basic lessons to teach year after year.¹⁰ But my findings continued to sound the single note of unfair gender difference.

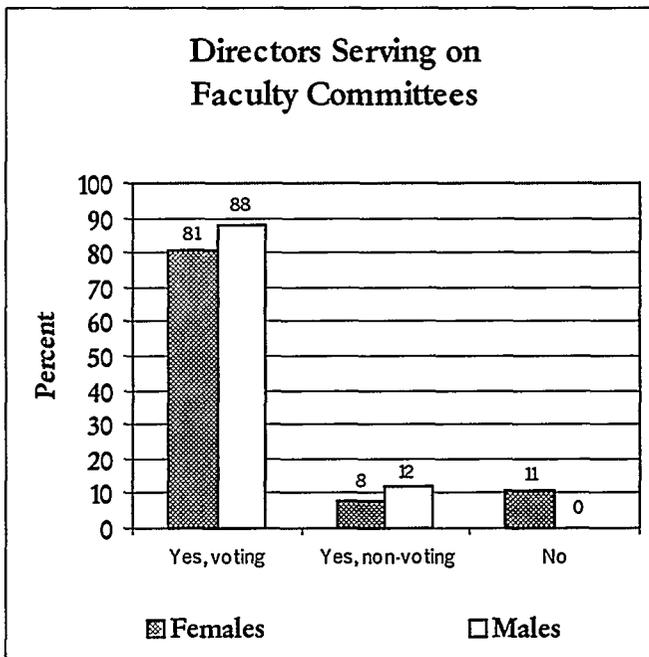
Only 59% of women directors teach second- and third-year students, while 84% of men have that privilege.¹¹ But I did find that, on average, women earn more money than men for teaching beyond the entry-level courses. Women average \$8,417 for that extra teaching, compared with \$6,700 for their male colleagues. That extra \$1,717 may go some short distance toward resolving the disparity in their annual salaries. After all, there's a \$12,669 difference between the average salaries reported for

¹⁰ See Susan Ayres, *Pink Ghetto*, 11 YALE J.L. & FEMINISM 1, 2 (1999) ("Grading all those papers, never/again. I did that, too/when I first started." Statement attributed to doctrinal faculty member, in a poem about teaching legal writing.).

¹¹ Survey, *supra* note 2, app. A, at 2.

women and men directors (\$67,331 for women vs. \$80,000 for men — a \$12,669 difference for the same job).

In a last-ditch effort to find some element of fairness for women in this field, I looked at a few other variables. Were women directors given broader voting rights at faculty meetings? No, 48% of women vote on all matters at such meetings, compared with 52% of their male colleagues.¹² Do they have greater voting rights on committees, where the real work of the law school occurs? Nope, 81% of women directors vote in committees, and 88% of the men. Well, at least more women are “saved” from the burden of committee work — 11% don’t even serve on committees, compared with 0% of their male colleagues.¹³



My initial surprise had turned to alarm. Are these statistics lying? Isn't teaching legal writing a female-friendly profession? After all, almost

¹² *Id.*

¹³ *Id.* app. A, at 3.

three-quarters of the writing directors are women. Surely, women directors give more women the chance to enter this profession, without discriminating based on gender. But no. Looking at the gender split of writing teachers currently in legal-writing jobs (disregarding adjunct teachers), I found that male directors hire more women for their staffs than female directors do (about 3 to 1 females to males on male directors' staffs vs. about 2 to 1 females to males on female directors' staffs).¹⁴

This survey of 117 law schools reveals not a string of coincidences, but a pattern. What reasonable conclusions can be drawn from this pattern? And what should law schools do about these marked differences in how women and men legal-writing directors and teachers are paid and treated?

Certainly, adding one question to 63 others about the state of writing programs around the country does not produce a rigorous scientific study. Since the primary purpose of the 1999 survey was not to investigate gender differences, the survey did not ask other questions that might offer insights into these discrepancies, such as length of time in the field. There are limits to the inferences that can be drawn from this preliminary data. But even preliminary data are useful to begin the conversation about this crucial issue — and to start thinking about how to change this alarming situation. The patterns here are too clear and consistent to be completely discounted by attacks on methodology. The data reported here are important enough to call to stop the presses.

In an article, Peter Schuck once asked the question, “Why Don’t Law Professors Do More Empirical Research?”¹⁵ He posited that it was because the academy doesn’t reward them for the time, trouble, and risk of such research. Maybe it’s also because they’re afraid of what they’ll find. Whatever the reason, it’s time now for us to do more empirical research on gender-based inequities in this field, to learn the extent of the problem, and to take action to solve it.

¹⁴ *Id.*

¹⁵ Peter Schuck, *Why Don’t Law Professors Do More Empirical Research?*, 39 J. LEGAL EDUC. 323 (1989).

Miscellany

